What Won't Cure Corona: Lawsuits

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Coronavirus has delivered the most severe blow to the American economy since the Great Depression. The contraction in growth and spike in unemployment will add to the human misery as the health crisis unfolds. How long the disaster will last -- or how much worse it will get -- is unclear. But it won't help Americans or the economy to allow lawsuits to proliferate or to try to pin the damage on insurers like my company.

First, some history is in order. Many experts, including professional economists and leaders of the Federal Reserve, believe the great lesson of the 1930s was a failure of monetary policy. This accounts for the unconventional measures that Ben Bernanke's Fed adopted after the financial crisis in 2008, now expanded by Jerome Powell's Fed in the pandemic. In fact, there was an even bigger collective failure: competitive devaluations and protectionism, which undermined confidence and hastened the economic decline.

This is essential context for the debate in the U.S. about liability arising from the pandemic. The risk is a return of beggar-thy-neighbor policies. The modern version will be a wave of litigation filed against managers and boards of every kind of organization. Then there are efforts to damage one industry (insurance) to help another (small businesses). Nobody wins in this scenario.

Unchecked litigation for any injury linked to the coronavirus would significantly increase uncertainty -- for small businesses, nonprofits, corporations, universities, transit systems, shopping malls and retirement villages. All of them are trying to protect their people, serve the public, and preserve their organizations. Dealing with urgent needs, scarce information, and often dwindling resources, they make the best decisions they can. And now these businesses all face the threat of litigation for not only present decisions but even actions before the threat of coronavirus was evident. This is wildly counterproductive -- and it will be expensive.

Meanwhile, there is an effort to force the insurance industry to pay for losses related to the virus that it did not insure. Some businesses and policy makers think business-interruption coverage should pay out for the pandemic's damage, even though those risks aren't covered in these policies, nor were premiums collected for the exposure. This would violate the integrity of contracts set forth in Article I of the Constitution. If implemented, it would bankrupt the insurance industry to prop up other parts of the economy.

Insurance works by spreading risk across many individuals or businesses. The fundamental assumption is that only a few will have a fire or an illness at any given time. Insurance also covers natural catastrophes such as hurricanes, where many are making claims at once. But these events are limited both in geography and duration, allowing the same pooling of risk.

Pandemics are different. The coronavirus started in China but it has neither geographic boundaries nor a time limit. The loss potential in practical terms is infinite, but insurance companies have finite balance sheets. Only the government has the financial resources to deal with this pandemic -- a fact recognized by the Fed's extraordinary lending actions and the $2 trillion aid package passed by Congress.

As it is, the coronavirus pandemic imposes a heavy burden on the insurance industry. The crisis means tens of billions of dollars of additional claims. The economic shutdown means revenues are down, which will reduce earnings in turn.

Our balance sheets will also be hit: The value of assets will be diminished by market prices. Asset impairments will come from credit defaults and reduced real estate and equity valuations. The Fed's interest-rate actions will weaken our investment income. These will be tough times for all businesses. Insurers don't need -- and aren't asking for -- special treatment. But these challenges could turn existential if the insurance industry is compelled to cover business interruptions it didn't insure.

For example, it is estimated that the nation's small businesses will suffer losses from shutting down ranging from $250 billion to $430 billion a month. Insurance companies have a total of $800 billion in capital and surplus, which supports not only legitimate coronavirus claims but also day-to-day claims, plus hurricanes, wildfires and the like. That capital exists to support these exposures.

Standard industry policy forms, which are approved by regulators, stipulate clearly what business-interruption events are covered. The overwhelming majority of insured coverage requires physical damage such as a fire or flood that prevents the business from operating. Viruses aren't covered.

As for business, Congress should grant limited immunity from litigation driven by the coronavirus crisis. Congress has done this before. No one knew the impact this pandemic would have on frontline crisis responders, businesses, organizations and others supporting society and the economy. Why hold any single industry accountable for human and financial consequences no one saw coming? Again, no special treatment for insurance -- exempt us from immunity.

Litigation may help the tort industry but it doesn't serve the national interest. It would add to uncertainty, crippling prospects for an orderly recovery. It would repeat the beggar-thy-neighbor mistakes of the Great Depression. And it would violate the first rule in a crisis: Do no harm.

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