

# COVID-19 – The Payment of Non-Covered Events



COVID-19 is on the list of the most challenging events of the humankind and its welfare and protection systems since history has been written.

The lack of paradigms and precedents, in turn, generate responses, whose maturity and technical accuracy level is quite heterogeneous.

Even concerning the treatment of the sick, there are conflicting views supposedly based on the Science about what should be done.

Specifically concerning the Brazilian insurance sector, at the beginning of the crisis, it was proposed by the National Brokers Union (FENACOR) that the insurers cover losses related to the COVID-19, even when they were expressly excluded risks. Given the very nature of the losses in question and the humanitarian nature of the proposal, it was more directed to the personal insurance.

In accordance with the proposal, the coverage would be a humanitarian act, an act of solidarity and empathy on the

part of the insurance market towards those hit by the pandemic.

In this context, some issues arise.

An act of solidarity or empathy must not be funded with technical reserves set aside to cover payments of losses. Otherwise, the funds set aside for payment of covered losses may, in theory, in awful scenarios, which are not expected at this moment, be necessary when effectively covered losses occur.

Irrespective of being necessary or not, and regardless of the resilience of the Brazilian insurance market, acts of solidarity should be directly funded by the insurers' shareholders or by the insurers net equity, which contains, in general terms, the funds to be allocated to the shareholders and therefore, whose allocation may be more freely decided by them.

Treating these events as losses covered by insurance contracts suggests that the exclusion was not valid or that



the insurers may decide to disregard exclusions that were legitimately agreed under the contract. Both premises are wrong and, in all likelihood, will generate distortions.

We know that such decisions are not easy and that at this moment, we cannot afford the luxury of carefully assessing them.

We also know that, in Japan, the insurers and reinsurers' creation of humanitarian funds to compensate for losses not covered by insurance played a fundamental role in response to disastrous natural events that hit that country.

In Latin America, the experience of humanitarian funds has been the worst possible. This happens, maybe, because of our lack of respect for contracts and other cultural elements that are major obstacles to our development, like the fallacious victimism, which also permeates court decisions, for example, related to consumer relations, insurance, and health care plans.

Anyway, in this case, we would do better should we follow the example of Japan.

Many are the distortions arising from the mistaken treatment of the issue.

We have already seen articles by reputed Brazilian attorneys that "make it clear" and "reveal" that such payments of non-covered losses are nothing but the recognition of the lack of validity of the exclusion of pandemics.

We have already seen Global leaders that have publicly stated that the exclusion of pandemics, relating to the coverage of business interruption, is not fair because, for many years, the companies kept insurance without losses. It is not necessary to demonstrate that statements like this are not helpful in a serious discussion about correct responses to the pandemic is intended.

Note that the issue of coverage of loss of profit is, in general terms, customarily associated with loss of covered assets, which, in theory, would much reduce the chance of coverage of losses caused by the pandemic.

We are not saying that no losses are deriving from the pandemic covered by insurance. We learned, for example, of insurance policies contracted and renewed since 2003 to compensate for losses caused by the cancellation of the Wimbledon tournament because of the pandemic, and these losses will be paid.

Anyway, in the future, other stress situations may be subject to the mistaken treatments pointed out, and not always the impacts may be comfortably supported by the insurers.

Situations such as group life policies, where the insurance was taken out before the pandemic, but the insured adhere to them after the outbreak, especially considering the Brazilian practice of "open" policies sold to non-determined groups, are possible catalyzers of undesirable

coverage, even if the exclusion of pandemics (currently disregarded) or even specifically the exclusion of COVID-19 has been expressly established.

Class actions have already been filed to prevent that the non-payment of contributions results in loss of coverages of medical assistance plans. At this point, it is interesting noting how the absolute essentiality of a health care plan is used, in a way distorted by the disinformation or bad faith, as grounds to destruct its immediate viability when funds are more needed.

In sum, the demonstration of deep human solidarity and the behavior of companies with economic conditions to help the victims of COVID-19 are perhaps the most beautiful aspects of this tragic situation we are experiencing. They are the basis for the prediction that, after the storm, we will find that we can be much better.

Indeed, it seems that empathy, as said many times, is the most distinctive trait of the human being, which allowed us to invent cities, industries, technology, and love. And no action for the exercise of empathy and solidarity may be frontally attacked at this moment, even an action that does not achieve the best results or that is taken erroneously.

However, with this proviso, solidarity cannot be confounded with a contractual obligation. On the contrary.

\*\*\* This alert is for information purposes only and does not contain any legal opinion, recommendation, or advice by Santos Bevilaqua Advogados with respect to the matter addressed herein.



### João Marcelo dos Santos

Seguro e Resseguro  
(11) 5643-1066  
jmsantos@santosbevilaqua.com.br

João Marcelo dos Santos is President of the National Insurance and Social Security Academy, former Director and Deputy Supervisor of the Private Insurance Superintendence, and Founder Partner of Santos Bevilaqua Advogados.



### Ana Paula Costa

Seguro e Resseguro  
(11) 5643-1067  
apcosta@santosbevilaqua.com.br

Ana Paula Costa is President of the National Group of Consumer Relations of the International Association for Insurance Law - AIDA – and Partner at Santos Bevilaqua Advogados.