



Lowenstein Sandler's In the Know Series

Video 3 - Long-Term Effects of Russia/Ukraine on Insurers

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Eric Jesse:

Hi, I'm Eric Jesse, partner in Lowenstein Sandler's Insurance Recovery Group. Last month on "In the Know," we discussed cyber insurers' reactions to Russia's invasion of Ukraine and its impact on underwriting, particularly in a challenging cyber insurance market. Today, what we're going to do is look into our crystal ball to try and identify some of the longer-range impacts to insurance coverage.

In general, our market intelligence indicates that insurers are considering exclusions to all different types of policies as a result of the war in Ukraine; for example, under special crime policies, insurers are considering territorial exclusions for Russia, Ukraine, and Belarus to exclude risks such as employees or business travelers being detained under false pretenses by authorities in those jurisdictions. Insurers that issue property and liability policies are also considering absolute cyber exclusions in response to the conflict. And there are also reports of insurers that issue ocean cargo policies and trade credit policies who have the right to cancel their war risks coverage with advance notice to the policyholders of actually doing so, and leaving policyholders in the lurch. In fact, in our last "In the Know" video, we warned policyholders to beware of consequential but subtle revisions to the war and terrorism exclusion in cyber policies, but it looks like insurers may be more direct. They are considering adding exclusions that are specific to any loss originating from Russia's invasion of Ukraine.

So, what are policyholders to do? One option—and I'll admit that this is easier said than done—is for policyholders to forcefully push back on insurers' attempts to add these types of restrictions and exclusions to policies. In a way, insurers may be—dare I say—trying to overcompensate with these exclusions, because one large brokerage firm has stated that they haven't seen any cyber losses that are specifically tied to Russia's invasion of Ukraine. But if a policyholder is ultimately left with no choice but to accept these exclusions or restrictions, at least make sure there's a trade-off—premiums need to come down if a major risk area is being excluded, or policyholders need to try and obtain enhanced terms and conditions in other parts of the policies in exchange for accepting or having to accept these exclusions.

In our policyholder world, we often say that when a policyholder pays premiums and buys a policy, what they're really doing is paying for the right to try and negotiate coverage for a claim down the road. And that's just a reality policyholders need to accept here. If and when insurers try to invoke these Russia- and Ukraine-specific exclusions and try to broadly apply them

to any loss that is coming out of Russia, and isn't specifically tied to the war, policyholders should accept that there's going to be increased coverage disputes and litigation. In that case, the devil is going to be in the details of these complex policies, and policyholders need to make sure that they are carefully documenting and describing cyberattacks in a way to fend off these exclusions.

Thank you for joining us on "In the Know."