

## Taking Inventory of Insurance Policies: Coronavirus

### ▪ **PROPERTY AND BUSINESS INTERRUPTION**

Each insurer's policy language is unique and should be reviewed for coverage. When in doubt, an insurer should be put on notice of a claim.

The standard understanding is commercial property insurance policies are unlikely to respond, as there is no direct physical loss or damage to insured property. Viruses, such as influenza, have not traditionally been considered to cause direct physical loss or damage. In large, without direct physical loss to property, business interruption coverage would not be triggered. Many insurers include specific exclusions for viruses.

Commercial property policies may provide coverage for business interruption losses sustained when a civil authority restricts access to an insured premise. This coverage is often subject to a physical damage trigger. Depending on specific wording, a policy might respond to current outbreak. Crisis management expense coverage may have a similar trigger. In some cases, policies include a sublimit specifically for communicable disease.

The Insurance Services Office (ISO) recently released two optional endorsements, which provide clear, but limited, business interruption coverage for Certain Civil Authority Orders relating to Coronavirus. Depending how the policy is structured, coverage could apply to scheduled locations and/or dependent properties. While these endorsements are not yet in use, a sublimit and narrow coverage period would apply.

### ▪ **CARGO AND SUPPLY CHAIN**

We anticipate a large number of cargo and supply chain losses as a result of the coronavirus outbreak. These policies will experience some of the same hurdles as seen under a property policy. Without physical damage, triggering coverage losses will be hard to recover. While some policies have an extension for disease-related delay, the coverage grant is often narrow in focus.

A specialized policy is available for supply chain exposures; mostly used for just-in-time manufacturing. These policies are subject to sizeable minimum premiums. The intent is to cover business interruption due to delayed inventory. One such policy trigger is the World Health Organization declaring a Public Health Emergency of International concern. The underwriting process is rigorous and, often, exposures are limited by exploring and reducing potential bottlenecks.

- **EVENT CANCELLATION INSURANCE**

In general, policies do offer, as an option, coverage for communicable disease. With the recent outbreak, insurance carriers are now including a coronavirus exclusion to the communicable disease extension. This is on any new quote or placement since the end of 2019.

- **GENERAL LIABILITY**

General Liability policies cover claims involving bodily injury and property damage resulting from your products, services and operations. Policies are designed to protect businesses against third-party claims for bodily injury resulting from harmful conditions and could cover illness involving third parties. General Liability policies usually provide legal defense against such claims. Policy terms, conditions and exclusions should be carefully reviewed. There is thought that insurers could invoke the expected or intended injury exclusion.

- **WORKERS' COMPENSATION**

Policies provide benefits to employees who have contracted an illness that qualifies as an occupational disease under state law. The illness must arise out of and in the course and scope of employment. The illness must also arise out of conditions peculiar to the work. These could be challenging to prove.

- **WORKERS' COMPENSATION, FOREIGN VOLUNTARY**

Policies typically provide state or country of hire benefits. Policies also typically include repatriation coverage in the event an employee need to be evacuated to any county.

- **EMPLOYERS LIABILITY (AND STOP GAP)**

If an employee believes they have contracted coronavirus through work, travel related or otherwise, they might claim the illness is a result of their employer's negligence. A suit could be filed against the employer's liability coverage.

- **BUSINESS TRAVEL ACCIDENT**

A business travel accident policy with an out-of-country medical coverage grant could provide coverage if a workers' compensation policy does not cover an employee falling sick due to viral illness. These policies typically do not include pandemic/epidemic exclusions. Medical evacuation coverage could apply. Family members and dependents may be added.

- **HEALTHCARE**

In addition to medical insurance, employees may also be covered by state and employer's disability insurance.

## ▪ **ENVIRONMENT/POLLUTION**

Businesses could incur disinfection costs and might be forced to temporarily close by governmental authorities. Coverage could be triggered depending on policy language. Policies typically require that locations be scheduled for coverage to apply.

## ▪ **DIRECTORS & OFFICERS**

Directors and Officers policies exclude coverage for bodily injury. While some policies utilize 'absolute' exclusionary language, others may provide more favorable wording. Additionally, some policies may have very broad pollution and/or mold exclusions, which could be impacted.

Directors and Officers policies could respond to shareholder litigation for economic loss due to mismanaging the Coronavirus exposure or due to representation/disclosures made about the impact that the outbreak may have on their business.

## ▪ **EMPLOYMENT PRACTICES**

Employment Practices Liability policies exclude bodily injury. However, there could be situations where employees claim unsuitable working conditions or where employees seek accommodations due to working from home or while under quarantine. Additionally, the decisions as to when, how and which employees will return to work can have an impact on potential liability. Employers should consider both the Family Leave Act, as well as the new Families First Coronavirus Response Act, when making decisions.

- Separately, and based upon early indications, it appears an impact of the COVID-19 outbreak is the expected increase in job losses/layoffs as a result of the business interruptions/mandated shutdowns as required by local, state and federal authorities. How a company handles any such layoffs could lead to a rise in Employment Practices Liability claims activity for allegations surrounding such terminations/reductions in force (ADA violations; discrimination based on gender, age, salary, etc.).

## ▪ **CYBER AND CRIME**

There are a host of different phishing scams where cyber criminals are sending supposed 'links' from the CDC or other regulatory bodies with critical information to combat the impact of Covid-19. These links are malicious in nature and are doing nothing but exposing the company's servers and network infrastructure. Most cyber policies include free cyber coaches or resources to help mitigate these risks.

## **General Note**

Several insurance policies provide crisis management support and crisis management expense reimbursement. Refer to policies for terms.

This review is intended to be general in nature versus industry specific. There may be other insurance that applies, such as medical malpractice, and would depend on your industry. Please look to the specific wording in each policy.