



## COVID-19: Insurance Coverage Considerations

March 19, 2020

With the current COVID-19 pandemic, your priority should be the safety and health of your employees and the community at large. It is important to understand your insurance coverages, exposures, and potential considerations during the current events. There are many state legislatures that are reviewing insurance policy language on an ongoing basis and we will provide updates if any legislation is passed that may affect the filing of claims. We are open to discussing your policies with you if you would like. In the meantime, we wanted to provide you some coverage insight to your various commercial coverages as follows:

### **Property/ Business Interruption**

Most property policies require physical loss or damage to occur to covered property by an insured peril (fire, wind, EQ, etc.) before coverage is triggered. Property policies commonly include exclusionary wording for pandemic or virus-related claims. The Business Interruption coverage included in Commercial Property policies follow suit; thus, we would not expect coverage to be triggered in most situations without a physical damage event. Policies that include coverage for Civil Authority have specific wording that indicates that physical damage or imminent physical threat must occur to trigger Business Income coverage.

Some policies may include extensions for communicable or infectious disease. Such an extension may only apply to the extra expenses associated with evacuation, disinfection, and testing after a building has been closed due to the introduction of a virus, and may not extend to any loss of income. Reviewing this coverage is important for hospitality, entertainment, agriculture, and other food related businesses.

A major concern going forward will be the security issues arising out of empty buildings if you are unable to occupy. Some Commercial Property policies include vacancy provisions, and these should be reviewed if the issue arises. We recommend securing all vacant properties as soon as possible to prevent any losses from occurring due to the uncertainty and potential for unrest.

### **Business Interruption and Supply Chain**

Supply chain losses can affect large and small business across all industries. Construction, equipment manufacturing even food distributors are seeing disruptions in supply chain due to shutdowns of upstream providers or downstream customers.

Contingent Business Interruption claim typically is triggered by a direct physical loss or damage to the property of a defined supplier or customer.

While the situation is still developing, coverage for communicable disease as part of Contingent Business Interruption will be heavily scrutinized by underwriters with elaborate exclusionary wording expected.



### **Workers Compensation**

Workers Compensation coverage extends to occupational disease/ illness which in theory may result in covered claims. The Workers Compensation system is a no-fault system where workers can potentially claim they contracted COVID-19 on the job. We expect insurance carriers to review each claim on its merits and the intricacies of each State's statutory requirements will also be in play on each claim. We expect insurers to investigate whether employees were exposed to COVID-19 during the course and scope of employment or if the virus was community acquired to determine compensability. Current OSHA guidelines have included COVID-19 as a recordable illness.

### **General Liability**

Insureds should review their General Liability policy language as policies commonly include Communicable Disease and/or Virus exclusions. In the absence of these exclusions, a case can be made for coverage in the event that a third party alleges bodily injury arising out of COVID-19. We would expect insurance carriers to aggressively defend these cases and push any burden of proof or liability on the plaintiff.

### **Management Liability**

As-is typical in the Public D&O space, we expect to see claims related to stock drops caused by COVID-19. Typical D&O policy language does not exclude pandemic or virus-related claims if connected to a securities class action or other related claim. We recommend working with counsel on your specific disclosures that you may release to the marketplace to mitigate potential claims related to your disclosures. Private D&O coverage could provide coverage for alleged negligence involving management decisions associated with the virus.

The Employment Practices liability coverage should be taken into consideration due to the uncertainty and changes occurring to the overall workforce. With expected layoffs, furloughs, or other reductions in force, whether permanent or temporary, we recommend meeting with and discussing all options with your Employment attorneys to ensure compliance with any notice requirements.

With all medical data, confidentiality of those infected remains important. While members of your organization may want to discuss specifics of those infected please remember that HIPAA and other confidentiality laws prohibit employers from sharing specific information related to illness or disease of your employees.

### **Environmental Liability**

Clients should review their Environmental liability policies in the event of a COVID-19 liability claim with a specific emphasis on the definition of Pollutants. Policies do not specifically exclude COVID-19 as a Pollutant which could lead to some coverage, possible limited cleanup coverage for claims under these policies. However, policies may include exclusions for Communicable Diseases which may preclude coverage.

### **Event Cancellation/ Travel Insurance Policies**

Event Cancellation and Travel Insurance policies are not standardized and vary from carrier to carrier. We recommended reviewing your specific policy for communicable disease or pandemic exclusions as many include that language. If the policy language doesn't specifically exclude coverage for communicable disease or pandemic, coverage may be triggered on the policy.



### **Cyber Liability**

Cyber security experts are warning employers that they expect Cyber incidents will be on the rise due to more employees working remotely. Carriers are recommending instituting VPN logins with two-factor authentication immediately. The insurance coverage provided by Cyber carriers would currently include coverage for claims caused by employers moving to a more remote workforce. Going forward, we would assume that carriers will be asking questions in regard to your remote work security protocols and system redundancies.

### **Project Policies**

With orders to “Shelter-in-place” arising across the country we’re monitoring all project specific policies. Most policies won’t provide any delay or loss of market coverage for this specific scenario but some may have sublimits (typically \$10K-\$25K) that may kick in depending on the wording. We also expect that clients will need extensions on all policies and will work diligently with the carriers to find a solution.

### **Claim Reporting**

As always, our team remains available to discuss any and all potential claims. With respect to coverage determinations, each claim will be reviewed individually and judged based on its merits including specific allegations, time of loss and circumstances. Our team will work with you to prepare and file any claims on a go forward basis.

If you would like to discuss filing a claim under your current policies please contact your account management team or one of our claim’s executives:

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