

Insurance Coverage & Coronavirus: Is My Business Protected?

We've received calls from many of our valued clients about insurance coverage and COVID-19; businesses want to understand the many reasons a business could suffer an economic loss and what they can do to mitigate loss related to COVID-19.

We all agree that the Coronavirus is spreading geographically and its impact on businesses is also spreading – from an employee and customer health concern to a supply chain disruption to an interruption in business. Whether your company is involved in providing travel and hospitality services (among the hardest hit industries) or manufacturing industrial or consumer products, you are likely feeling some type of impact of the coronavirus.

Company officials and boards of directors are asked to assess the risk their companies face from the coronavirus and report whether their companies are protected from related risks of loss by their existing insurance policies. Many companies carry an array of commercial insurance policies that potentially afford coverage. The range of potential claims, meanwhile, is broad and deep and, as with the assessment of any claim, the availability of insurance coverage will depend upon the factual details surrounding each loss and the specific language of the policies a company has in place. Each company should assess the range of losses they may face from the coronavirus and carefully determine whether their insurance policies can be accessed to defray their business losses. Several of the potentially implicated coverages are described below.

Many of the questions we've received have been related to property and business interruption coverage, so we want to provide all of our clients with the following information to help them understand what coverages may help them and what they can do in the event their business is affected in some way by the virus.

Property Coverage

Typical property losses include those resulting from fire, theft, natural disaster, business interruption, with possible extensions for civil authority, supply chain, contingent business interruption, and communicable disease response.

Most property policies do not cover a loss resulting from a virus. However, some property and business interruption policies include specific property damage or time element coverage for Communicable Disease. This coverage is usually sub-limited and could provide coverage for cleanup, removal and disposal of the actual, not suspected, presence of communicable diseases from insureds property and actual costs of fees for public relations services and using an insured's own employees for reputation management. Currently, without such language, coverage is unlikely to be triggered. For example, coverage would not be triggered simply by a fear that a communicable disease may be present in or near the insured's property, thereby leading to employee absences or diminished customer traffic.

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Physical Damage to Property

The trigger for a property policy is typically “Physical damage to the insured's property by an insured peril.” You could argue that the contamination to your property caused by this virus is an unforeseen event and should be covered.

After the SARS epidemic in 2003, many insurers added specific exclusions to their property policy such as:

- Bacteria or viruses or bacterial/virus combination: Viruses are not bacteria.
- Definition of a contaminant: Might mention virus, disease or illness-causing agent as a contaminant

Business Interruption and Extra Expense Coverage

Business interruption (BI) coverage provides relief for lost profit and extra expenses that are triggered by physical damage to the insured property by an insured peril. Your property policy might also have coverage for “Contingent Business Interruption” if a customer or supplier also suffers a physical loss or damage to their property and you suffer a BI loss because you can't make or get your product.

Business interruption losses can arise even without physical damage. Impacts associated with COVID-19 include:

- Cost of sanitizing and testing insured property
- Costs of evacuation of an insured property
- Resulting loss of income, either from the closure of the premises during sanitization or the loss of customers due to identification of the virus at the insured premises
- Contingent business interruption or extra expense if the facility of a key customer or supplier closes

In the context of COVID-19, you would hope that BI coverage is available if it is proven that the pathogen has physically damaged property in the form of viral contamination. But insurance carriers could argue that BI coverage is not triggered because there is no physical loss or damage to property in a traditional sense as a result of the pathogen. They might also rely on pollution exclusions. However, whether a virus is a pollutant must be proved by the insurance carrier. Some policies also contain communicable disease exclusions that may prevent coverage of losses related to COVID-19.

In case law, people becoming sick on your property will not count as property damage, but contaminants at a property could qualify.

Civil Authority Shutdown of a Business or Event - Time Element Extension

This extension could provide coverage for losses including extra expense when access to the insured premises is prevented by order of a governmental authority due to the ACTUAL presence of the virus. You still have the requirement that your insured location has suffered “property damage” that is caused by a covered cause of loss on your property policy.

Communicable Disease Response (CD)

This coverage usually has a sublimit. If your property policy does have coverage for Communicable Disease Response (CD), coverage would most likely read: “If a location owned, leased or rented by the insured has the ACTUAL not suspected presence of CD and access to such location is limited, restricted or prohibited by: An order or decision of an authorized governmental agency regulating the ACTUAL presence of CD.”

If CD coverage does apply then the property damage coverage could be limited to cleanup, removal, and disposal of the CD from the insured property.

Non-Property Coverage Information:

General Liability: These policies are intended to protect the insured in the event of claims for bodily and or property damage brought by a third party (excluding employees). In the context of COVID-19, it would have to be proved both that you were negligent and that a third party was damaged. Your policy will usually provide a legal defense against such claims.

Workers Compensation: If one of your employees was ill and it was determined to be COVID-19, it would be investigated. If it can be proved that the employee contracted the virus due to a work environment or exposure, the workers compensation policy could be triggered.

Active Assailant Coverage: The trigger on this policy is the involvement of a “Weapon”. The definition of weapon is very broad, but it does not include a virus-type illness

Event Cancellation: This type of specialized insurance provides coverage if an event is cancelled or postponed or otherwise adversely affected by a “covered event”. What constitutes a covered event is defined in the policy. These policies are subject to exclusions and we are already seeing exclusions that specifically mention COVID-19.

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Directors & Officers (D&O) Coverage: D&O coverage applies to a financial loss suffered by a third party, but these policies have exclusions for bodily injury, as it is typically covered under General Liability policies. This policy could cover costs for shareholder lawsuits alleging that the company acted unreasonably in response to the coronavirus. Again, D & O policies have exclusions for bodily injury.

Employment Practices Coverage: If an employee believes they have contracted COVID-19 and self-quarantines and you fire them as a result, they could potentially have an EPLI claim. However, it will depend on how the claim is brought.

Many insurance carriers provide access to a toll-free hotline that insureds can call to ask questions about certain EPLI situations. The hotline is available toll-free from anywhere in the US and puts the insured in touch with a national employment law firm.

Here are some websites that you can monitor with the most up to date information:

- www.who.int/emergencies/diseases/novel-coronavirus-2019
- www.cdc.gov/coronavirus/2019-ncov
- www.travelguardworldwide.com/coronavirus
- <https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b49e0ecf6>
- Centers for Disease Control and Prevention (CDC): <https://www.cdc.gov/coronavirus/2019-ncov/guidance-business-response.html>

Solutions

- **Be prepared:** Does your business have a Business Continuity Plan/ Crisis Response Plan?
- **Insure my trip:** Supposed to write a policy that will reimburse you for cancelling your trip for any reason; however, we haven't been able to read any policy forms.
- **Read your contract:** If contracts allow, you may attempt to invoke force majeure clauses, which "excuse a party's performance of a contract if an unforeseen event beyond its control prevents performance."

Moreton & Company will continue to monitor the situation to ensure we are informed on where insurance companies stand on the Coronavirus.

We are reviewing insurance policies and focusing on things like the definition of a contaminant and pollutants in the list of exclusions. Also important is policy language regarding actions by civil authorities in establishing quarantine areas. When in doubt, turn in a claim. Additionally, we are happy to turn in any claim for a coverage interpretation based on specific loss details, or you can call us to discuss hypothetical situations.