



Global Impact: 2019 Novel Coronavirus

The first cases of coronavirus disease 2019 (COVID-19) were reported in late 2019 and were primarily from the Chinese Hubei Province. Since the first reports, the viral outbreak has spread at a rapid pace. Chinese officials have traced the source of the outbreak back to the Huanan Seafood Wholesale Market, a large “wet” seafood and live animal market located in Wuhan. It is thought that an animal source from the market was responsible for some of the first human infections. Although first detected in China, several hundred cases have been identified in countries around the world.

With the rapid spread of COVID-19, it is important for businesses to have a clear understanding of the potential impact such an outbreak can have on their operations. It is equally important for businesses to consider the effects a viral outbreak will have on their insurance policies and programs. Businesses should have a keen understanding of the reach and limitations of their insurance policies, how these policies will respond to a viral incident, and how those insurance products will minimize or mitigate the financial impact a viral incident may have on their business. The following guide outlines the potential impact COVID-19 may have on a company’s commercial insurance programs and policies.



WHAT IS COVID-19?

COVID-19 is a highly contagious, acute respiratory syndrome. Health officials have confirmed human-to-human transmission by way of respiratory droplets from infected individuals. The Center for Disease Control is reporting symptoms appear in as little as 2 days and as many as 14 days and can include fever, cough and shortness of breath. In extreme cases, infection can cause pneumonia, organ failure and even death. Currently, there are no specific antiviral treatments for COVID-19.





Property

If an insured property is damaged as a result of COVID-19, there would be potential coverage provided for a business interruption loss. Loss or damage to an insured's property triggers standard business interruption coverage. Loss or damage to property not owned by the insured could trigger one of the following time element coverage extensions if the property damaged is "of the type insured" under the policy: civil authority, ingress/egress or contingent business interruption. Policy exclusions should be reviewed carefully to ensure there are none applicable for communicable disease.

It is a more likely scenario that a company sustains a business interruption loss from COVID-19 in the absence of any real property damage. Some property policies do provide limited coverage for these types of losses. These coverages were added to programs during the last soft market cycle as a byproduct of insurers and brokers working to make insurance programs more competitive.

Typically, these coverages require the "insured event" to occur at the insured premises or within a certain distance of the premises (e.g., 5 miles) and are usually offered as a small sublimit (\$100k or \$250k). Given the current state of the market, many underwriters are pushing these atypical business interruption coverages out of property programs.

With the many quarantines and closures in China and other countries, COVID-19 may also affect the transit of goods. Possible business interruption losses or incurred extra expenses may result if goods are not allowed to be shipped into or out of the country. Companies can also turn to their ocean cargo or stock throughput programs to find potential coverage for these types of exposures. These policies typically do not have exclusions for "communicable disease." Each situation is different and potential coverage would depend on the actual loss or damage experienced by the insured.

The following are examples of coverages

that could be in a property policy that may provide cover for business interruption in the absence of property damage:



Communicable Disease



Crisis Management



"Special Perils Business Interruption" Endorsement



Casualty

WORKERS' COMPENSATION

Bodily injury to employees, specifically injury by disease, as a result of COVID-19 has the potential to significantly impact a company's domestic workers' compensation and employers' liability insurance policies. It is important to understand how it applies relative to the policy coverage and to the state jurisdiction. Most jurisdictions also require that an illness or disease arise out of or be caused by conditions particular to the work to be compensable. For a claim to be compensable; however, it would have to be proven that the virus was in fact contracted at work and exposure to the employee was not due to an alternative source. If an illness can be contracted at work and in the wider world, it will generally not be found compensable. Bodily injury by disease must be caused or aggravated by the conditions of the employment. Additionally, the employee's last day of last exposure to the conditions causing or aggravating such bodily injury must occur during the policy period. U.S. workers' compensation will only respond to suits, and any related legal actions for damages for bodily injury by accident or a disease must be brought in the United States, its territories or possessions, or Canada. Coverage should include voluntary workers as insureds (if applicable) and coverage for executives traveling abroad (or a separate foreign voluntary workers' compensation policy in place for foreign travel).

FOREIGN VOLUNTARY WORKERS' COMPENSATION, FOREIGN EMPLOYERS' LIABILITY AND TRAVEL ASSISTANCE

As mentioned, foreign voluntary workers' compensation and foreign employers' liability coverages could also be impacted and should be carefully reviewed. Coverage is provided for bodily injury to employees while traveling or working outside their country of hire. It is important to remember that, unlike standard U.S. workers' compensation, foreign voluntary workers' compensation offers coverage for "endemic disease." Endemic disease can be broadly defined as an infectious disease that is generally

peculiar to a specific country or geographic region and COVID-19 is thought to be contemplated in that definition.

Foreign voluntary workers' compensation and foreign employers' liability policies typically include an additional component – coverage for and access to travel assistance services. These services often include indemnification for and coordination of travel assistance, medical assistance, personal assistance and security assistance as well as miscellaneous travel benefits and expenses. Coverage typically extends in some capacity to both employees and their traveling companions. Direct access to the 3rd-party travel assistance providers (International SOS, Europe Assistance, AIG Travel Guard, etc.) that implement and coordinate these services are typically included as well.

BUSINESS TRAVEL ACCIDENT

The benefit provided under a business travel accident policy is for accident, illness or death. Business travel accident policies are often purchased to supplement standard employee health care plans and are typically meant to cover loss of income or debt repayment. An employee who has contracted the virus and sustained bodily injury as a result will likely be a covered claim. Terms and conditions on the policy should be reviewed to ensure no specific exclusions or limitations apply in the case of a COVID-19 incident.

Business travel accident policies often include coverage for and access to travel assistance services. Repatriation or relocation as a direct result of contracting the virus could be covered if bodily injury is sustained.



If a traveling employee needs immediate travel assistance, the first line of communication is the travel assistance provider.



Casualty

GENERAL LIABILITY

Under a standard general liability policy, “disease” is included under the definition of bodily injury. Coverage could be applicable if an insured is found to have liability for inadvertently being responsible for spreading the virus, not taking enough of a precaution in preventing the spread of the virus, or by virtue of the insured’s operations. In the same context, any third-party visitors who claim to acquire the disease while on an insured’s premises could file against the company. Ensuring that the general liability policy is structured appropriately to protect third-party vendors and suppliers (i.e., protecting business partners, relationships and revenue stream) is vital. All terms and conditions of the policy should be carefully reviewed to ensure there are no exclusions specific to COVID-19.

Personal and advertising injury is another aspect of general liability coverage where COVID-19 could potentially cause a third party to claim libel, slander or defaming products or services with resulting financial damages to the company. Personal injury would fall within the scope of being defamed publicly as a result of contracting the virus.

POLLUTION LIABILITY

There should be no expectation of coverage under pollution lines of business. Viruses or bacteria are not considered pollutants under standard pollution products as the definition only includes “any solid, liquid, gaseous or thermal irritant, or contaminant, including smoke, soot, vapors, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials, or waste materials, including medical, infectious, and pathological wastes, at levels in excess of those naturally occurring.”

EVENT CANCELLATION

Event cancellation coverage is commonly underwritten as its own unique risk. The potential for a viral outbreak that forces the cancellation of events is another source

of financial protection worth noting. Additionally, companies should ensure that there is liability coverage built around the possibility of a viral outbreak.

OTHER CASUALTY ITEMS

Another consideration is third-party relationships and how this particular risk is mitigated, should a vendor or supplier become affected.

Contractual agreements between businesses and third parties should be reviewed to ensure the liability surrounding communicable or infectious disease is transferred appropriately. Additionally, risk management protocols around the particular risk should be considered (documenting visits, assigning responsibilities in the event of a loss, etc.). This acts as a barrier of protection for the insured, and it also supports policy language to follow contracts in place (ensuring the policy form does not exclude coverage).

Certificates of insurance and policy documentation from third parties should always be gathered and checked to ensure companies are protected under the third party’s liability coverage as an additional insured as well as further supporting agreements that have been made.



Coverage language is constantly being tested in courts, and outcomes vary by policy language interpretations, jurisdictions, societal trends, and the unique circumstance involved. A review of policy language and contractual requirements should be conducted for the best possible protections around exposures, especially ones that are not as commonplace.



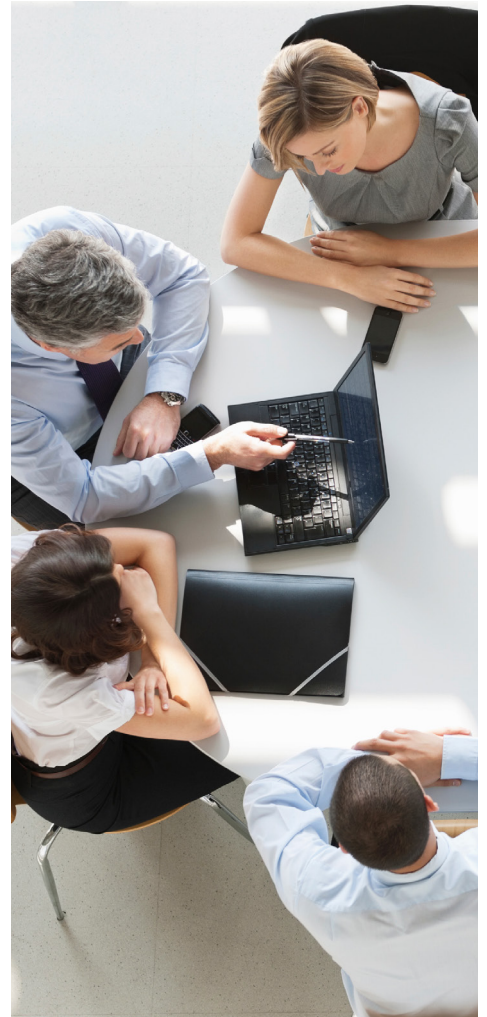
Executive Risk

DIRECTORS AND OFFICERS (D&O)

D&O insurance provides coverage to corporations and its directors and officers as indemnification for losses or defense costs in lawsuits or other demands brought against them for wrongful acts in their capacities as directors and officers. With respect to COVID-19, there is a real possibility of action being brought against a corporation or its directors and officers if the organization's financial performance is impacted as a result of actual or alleged negligence or mismanagement relating to the preparation, response, or management of COVID-19 as it relates to their business operations. Being unprepared to respond to the outbreak and how it may impact an organization's ongoing operations, including supply chain impacts, is just one example of how COVID-19 could implicate a D&O program.

EMPLOYMENT PRACTICES LIABILITY

Employment practices liability may also be affected, specifically with respect to discrimination. Companies are at risk if they single out employees based on their ethnicity (for testing, quarantine or leave). Such actions could potentially lead to discrimination charges against the employer. The ADA prohibits mandatory medical examinations unless an employer has a reasonable belief that an employee's medical condition poses a "direct threat" to the workplace. Employers that isolate or quarantine employees when public health agencies have not yet done so risk liability.



Sources:

<https://www.cdc.gov/coronavirus/2019-ncov/faq.html>

<https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html>

<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports/>

Please be advised that any and all information, comments, analysis, and/or recommendations set forth above relative to the possible impact of COVID-19 on potential insurance coverage or other policy implications are intended solely for informational purposes and should not be relied upon as legal advice. As an insurance broker, we have no authority to make coverage decisions as that ability rests solely with the issuing carrier. Therefore, all claims should be submitted to the carrier for evaluation. The positions expressed herein are opinions only and are not to be construed as any form of guarantee or warranty. Finally, given the extremely dynamic and rapidly evolving COVID-19 situation, comments above do not take into account any applicable pending or future legislation introduced with the intent to override, alter or amend current policy language.