

# MANAGING THE RISKS OF CORONAVIRUS

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## THE GLOBAL IMPACT OF COVID-19 & POSSIBLE INSURANCE COVERAGE

**Worldwide media outlets have focused in recent weeks on the growing risks of the coronavirus (COVID-19), which originated in China and has been spreading throughout the world.**

At this writing, cases have been reported on every continent but Antarctica. Although the coronavirus has not yet reached saturation points worldwide, the World Health Organization (WHO) has characterized the COVID-19 outbreak as a global emergency, the Centers for Disease Control (CDC) has identified the spread of the disease as an “epidemic,” and non-essential travel to areas that are believed to contain the greatest risk of exposure has been restricted. People everywhere are assessing the potential risks—medical, scientific and financial—that could arise if the virus spreads beyond containment points. Previous worldwide viral infections, including the SARS and Ebola outbreaks, caused tens of billions of dollars in financial losses, and similar losses could be expected from the COVID-19 virus.

There could also be risks for liability insurers as the virus spreads, and not only for those that provide coverage for medical treatment. It is anticipated that insurers will receive claims that are created, impacted or exacerbated by the coronavirus virus and the consequences of the epidemic.

Claims arising out of or relating to the COVID-19 epidemic could have an impact on a wide range of policies and coverages. Since the ultimate impact of the epidemic—and the resulting losses—are currently unknown, insureds may search for coverage (even in policies unintended for such losses) to help offset financial impact.



## POLICYHOLDERS MAY START TO BRING MANY TYPES OF FIRST-PARTY CLAIMS SUCH AS:

- » **Business interruption claims:** Although most business interruption policies require an underlying physical loss, it is expected that insureds will submit claims arising from COVID-19-related interruptions to their income streams, whether directly or because of a disruption to their suppliers or customers. Business interruption claims can also arise under “civil authority” coverage.
- » **Claims arising from event cancellation:** Insurance claims could be asserted for conferences, exhibitions, tours, conventions or other events that are canceled because of low-attendance, government mandated travel restrictions, or other reasons attributable to the coronavirus.
- » **Environmental impairment claims:** Businesses that incur losses from bodily injury, property damage, cleanup and decontamination could assert claims for coverage under environmental policies typically directed to “pollution events,” as such policies can sometimes include coverage for disinfection costs and image restoration.
- » **Workers’ compensation claims:** Employees who are exposed to the coronavirus on the job and/or are injured by the disease by virtue of their occupation may assert claims both domestically or internationally.
- » **Political risk claims:** Insureds with a global presence may submit claims asserting that their business has been disrupted by local government actions, such as a government’s restriction on travel or exchange of goods in a specific area.
- » **Employer claims:** Insurers could face claims from employees who are infected during work travel or from employers who are unable to perform the functions of their business (or to fulfill contracts or meet expectations) because of an ill workforce or one that is avoiding exposure.
- » **Travel insurance or protection:** Travelers who purchase “trip cancellation” coverage may submit claims for reimbursement.
- » **Medical expenses:** Insurers that provide policies that cover medical expenses are expected to receive claims under health & medical, business travel accident and business travel medical policies.





## THE CORONAVIRUS MAY ALSO LEAD TO THESE SPECIFIC THIRD-PARTY CLAIMS AGAINST INSURED FOR WHICH THIRD PARTIES MAY SEEK DAMAGES:

- » **Directors & Officers liability:** Directors & Officers may expect claims from shareholders alleging that decisions relating to or arising out of the risks of the coronavirus epidemic negatively impacted the company and caused a financial loss.
- » **Commercial property and general liability claims:** Policies that cover losses resulting from bodily injury or property damage caused by infectious diseases may receive claims. Claims from third parties are expected against insureds that provide hospitality services (e.g., hotels, malls, convention services, restaurants and other food and beverage services); transportation services; health care, including long-term nursing care, and services; and other businesses.
- » **Global Products Liability claims:** manufacturers that have policies that cover losses resulting from bodily injury caused by the failure of their product to protect from an infectious disease may receive claims (think of the maker of medical masks as an example).
- » **Travel agent claims:** Travel agents and others in the travel industry may face claims regarding a perceived failure to warn travelers about the risks of travel and exposure.
- » **Medical malpractice claims:** Physicians, nurses and other medical professionals may face claims alleging a failure to properly diagnose, quarantine, treat or limit exposure to the coronavirus.
- » **Claims against transportation companies and common carriers:** Airlines, bus companies and other common carriers may receive claims alleging a failure to prevent exposure or to warn travelers of the risks of exposure.

The first step for insureds and brokers is to review policies to determine the scope of coverage intended in each. Indeed, there may be many policy terms or exclusions that would apply to or limit claims arising from the coronavirus crisis. While such issues will likely be litigated in courts and reviewed by insurers in the months and years to come, there are several potential issues relating to both first- and third-party claims unique to the risks and losses associated with the COVID-19 that are worthy of consideration even before any claims are asserted.

**Reviewing the type of coverage:** Review the terms of the policies to determine whether a different insurance policy may apply to the risks or losses.

**Reviewing renewals:** Review policies at renewal or inception to determine whether there are any risks of coverages not otherwise foreseen or bargained for.

**Consideration of endorsements for event cancellation:** Consider a new endorsement aimed at obtaining coverage for losses arising from cancellation of a concert, convention, tour or other event, because of a particular illness.

**Business interruption:** Consider specific coverage grants for losses arising from bacterial or viral infections. Insurers may limit contingent losses to those arising from previously-identified suppliers. Such coverage would address potential future disputes over coverage for business interruption losses that might focus on whether there has been a “physical loss” underlying the claim or whether the interruption is truly attributable to the action of a “civil authority.”

**Force majeure clauses:** Review applicable policies to determine whether a global virus outbreak triggers the application of a force majeure clause or whether the insured has separate contractual obligations that may be of import. Some insurance policies will exclude losses that arise from an unforeseeable total loss, sometimes defined to include embargoes, labor strikes, acts of terrorism or other actions.

**Pollution and mold exclusions:** Review CGL policies to consider whether coverage can be excluded for airborne viruses or bacteria on the basis that they are pollutants or contaminants, as such an analysis could apply to the coronavirus. Environmental impairment policies may similarly exclude coverage for losses arising from pollutants consisting of “naturally occurring substances.”

**Travel insurance:** Review whether the cancellation of a trip is due to the risks associated with the coronavirus or whether the cancellation is due to the traveler’s fear of exposure or personal consideration. Cancellations not forced by governmental closures or other restrictions may not be covered, depending on the policy. Further, by some accounts, the risk of COVID-19 became a “known event” by late January 2020; consider whether the date of purchase for a protection plan is limited to only provide coverage for events or losses that were not at that time foreseeable.

**Workers’ compensation:** Consider whether the employer/employee has the same general risk of exposure as the public. Coverage for disease exposure may be limited where the claims indicate an ordinary or common (non-covered) risk.

**D&O coverage:** Review whether the claimed loss relates to bodily injury or other exclusions. Shareholder claims that they suffered financial harm because of others’ bodily injury may not be covered. Other exclusions—including those relating to willful misconduct—could also apply.

We are in the early stages of the coronavirus pandemic. It is a very fluid and ever-changing environment. As a result, it is difficult to know what the full impact of these circumstances may present in time to come. With potential widespread illness and financial losses, questions are sure to arise concerning the possible role of insurance to mitigate the damages and/or to provide relief for such losses. While insurance policies vary for each line of business, the coverage provided by each policy also differs. There are exclusions in policies that may or may not address issues related to COVID-19. Likewise, insurance carriers' interpretation of coverage often differs as well. At this time, we do not know what coverage decisions will be made by carriers in response to losses related to COVID-19 nor what legislative or legal action may take place.

We are in uncharted territory in the United States and internationally. **If you believe that you may have a claim, or circumstance that could lead to a claim, we continue to recommend that you report all claims or potential claims to their appropriate carriers per the instructions provided in your Claim Reporting Manuals.**

Be assured that RCM&D strives to advocate on behalf of every client. When coverage is denied or disputed, our team will assist in evaluating the carrier's position against the policy language. Every effort is made in assisting our clients with negative coverage determinations. Any valid and appropriate argument will be considered to advocate on behalf of our clients when coverage is disputed.

RCM&D is making every effort to anticipate our clients' questions and concerns during these rapidly changing times. If there are any questions, or if further assistance is needed with the claim process, please let us know.



**Questions? Talk to a trusted advisor.**  
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