

Coronavirus Disease (COVID-19)

Frequently Asked Questions (FAQ)

April 1, 2020

Coronavirus Disease (COVID-19) continues to develop rapidly across the globe and has already affected many organizations in the U.S. and abroad with business disruptions and supply chain issues. Governments, businesses, and individuals are currently taking action against the threat of a pandemic event. This FAQ has been assembled to help businesses and organizations prepare for the Coronavirus and respond to the potential for a widespread public health emergency.

Q: How are Coverage Areas Affected?

A: Property, Business Interruption (BI), Extra Expense

The Coronavirus will likely impact businesses on both a direct and indirect basis. Whether impacted directly or as a result of supply chain disruptions throughout the world, businesses will likely look to a variety of first-party coverages for relief against losses. Simply pointing to the Coronavirus as the proximate source of losses will start the discussion, but a thorough review of the facts will be needed to evaluate coverage. It is critical to understand specific loss drivers and to be able to demonstrate and support the causal relationship between those triggers and sustained losses.

Property Loss:

We anticipate that most property policies will not respond to this event in any meaningful way. However, we expect coverage to be tested given the emerging nature of the risk, such as:

- Whether the presence of a human to human contagious disease/virus reaches the threshold of “direct physical damage of the type insured against” or simply “property damage.”
- Given previous cases, whether the presence of the virus (and requirement to clean it) on the surfaces

of equipment, walls, in HVAC units, etc., constitutes “property damage.”

- For those policies that do not have specific exclusionary language, whether the inability to occupy or utilize an insured building, due to the virus, constitutes property damage.
- How policies with specific “infectious disease” endorsements/extensions, providing limited and targeted coverage, will respond.

With any claim, policy wording and specific triggers driving losses will determine the applicability of coverage. We will advocate on behalf of our clients, for the most favorable response available under the applicable policies. That said, this is a unique situation and losses are so significant that future litigation will likely challenge many policy defenses presented by insurers. Any intent to ultimately pursue insurers will require the documentation/support of all claim details and losses. Tracking and reconciling this information while losses are being sustained can be critical, as gathering that necessary information at a later time can become far more difficult.

Business Interruption:

When evaluating BI coverage, the first question is whether business income losses are driven by the existence of the virus at an insured location or due to indirect exposures where we would look to traditional coverage extensions (i.e., Civil Authority, Ingress/Egress, Supply Chain or other Contingent Time Element type coverages).

Direct Physical Loss:

BI coverage is normally triggered as a result of direct physical loss or damage insured herein and occurring during the term of the policy to real and/or personal property insured herein. That's the starting point when evaluating coverage. Has the insured sustained direct physical loss/damage insured herein at an insured location? Similar to the above Property discussion, specific policy triggers need to be met for BI coverage to apply.

Indirect Loss:

The vast majority of claims will be tied to Business Income losses from indirect exposures. The most notable indirect exposures that will trigger BI losses are Civil Authority and Supply Chain disruption. If your property policy extends coverage for either or both, the "physical damage" or "property damage" is still a requirement that needs to be met, albeit away from the insured location. However, like other policies, the form/coverage varies.

- Civil Authority - policies are always specific on what details are required to trigger coverage. The coverage is in place to address BI losses when a Civil Authority has prohibited access to an insured location. There are normally distance qualifiers, time limits and always the premise that the Civil Order is in response to "direct physical damage of type insured against..." One must read the coverage in its entirety to understand how it will respond in the case of a loss.
- Ingress/Egress Coverage - is similar to Civil Authority in that coverage is in place for BI when access to the insured location is prohibited due to "direct physical damage of type insured against." Again, one must read the coverage in its entirety to understand how it will respond in the case of a loss.
- Contingent Business Interruption (CBI) – Provides coverage for losses resulting from disruptions in a company's supply chain, specifically, interruption of the company's business caused by physical loss or damage to the property of a supplier or downstream customer. In addition to coverage triggers such as how the policy defines third parties, suppliers and customers, CBI insurance will

involve the same property/physical damage hurdle mentioned previously.

- Supply Chain Insurance - When considering the global economy, Supply Chain disruptions are probably the most significant and costly impact from the Coronavirus. Supply chain insurance provides broader business interruption coverage than CBI, although terms of coverage can vary greatly. It is intended to protect against losses resulting from disruption in a company's supply chain, providing BI coverage due to disruption or delay of product or services by a named supplier. Unlike CBI, it may provide coverage for insured events that are not limited to physical loss or damage - For example, non-physical damage events may include pandemic, regulatory action, or strike, civil or military action
- Stock Throughput Policies (STP) - Similar to property, STP policies are primarily based on physical loss of or damage to product, and as a result a similar analysis of policy form and potential coverage should be completed, to identify potential BI and extra expense coverage including third party supply chain disruption and cargo accumulation clauses.
- Trade Disruption Insurance - provides coverage for loss of earnings, extra expense and contractual penalties resulting from delays or disruption of trade, arising out of specific perils such as governmental closure of ports and boarders. Unlike standard business interruption coverage afforded by marine cargo or property forms, trade disruption does not require there be a direct physical loss to goods or their conveyances. Coverage should be reviewed for potential protection of global supply chain risks and interdependencies.

How the Industry is Responding:

The industry is taking steps to address specific exposures brought on by the Coronavirus. The Insurance Services Office (ISO) has drafted two new endorsements, but they have not yet been filed or added to the ISO portfolio of forms. The two forms are as follows:

1. Business Interruption: Limited Coverage for Certain Civil Authority Orders Relating to Coronavirus and
2. Business Interruption: Limited Coverage for Certain Civil Authority Orders Relating to Coronavirus (Including Orders Restricting Some Modes of Public Transportation).

Coverage must be scheduled for locations, list a specific coverage period (days, week, months), and an aggregate amount. Some of the exclusions are:

- If the virus was spread or introduced intentionally by any person or group with the intent to cause disease, damage, fear or anxiety.
- Losses or expenses attributable solely to fear of contraction of the disease, i.e., if customers, vendors or tenants avoid part of the premises not under quarantine.
- Loss or expense attributable to absence of workers, including managers, due to infection or suspected infection of that worker, except to the extent that there is a suspension of operations as covered by the endorsement.
- Any fines or penalties levied against the insured by any organization or authority.

This is a BI Endorsement only, and there is no coverage for direct damage or cleanup.

In the Event of a Claim:

If a formal Property or BI claim is filed, it will be adjusted based on the applicable policy wording and specific details driving losses. The following information is a starting point for supporting a claim and should be gathered early on as losses are being sustained.

- Develop a detailed narrative outlining the loss.
- Details of impairments or direct damage at insured facilities.
- Details that outline any Civil Actions or Ingress/Egress issues prohibiting access to insured locations and impairing operations.
- To the best of your ability, details/specifics impairing suppliers/receivers. It's recognized this can be very difficult (at best) to achieve.

- Details (including civil actions) that are disrupting transit of materials, inventory, etc.
- Track all costs/losses in real time. If a claim is pursued, losses will have to be specifically reconciled and tied to the triggers noted above.

Every claim will be evaluated fully on its own merits, based on the facts presented, in conjunction with all applicable policy provisions and the law in the applicable jurisdiction. As a result, markets are not inclined to address hypothetical claim scenarios and cannot speculate as to how insurance policies might respond to losses resulting from this virus.

Environmental Liability

There may be some coverage under an Environmental Policy for viruses particularly for disinfection, but each policy is unique and will need to be examined. First, environmental policies cover Bodily Injury, Property Damage and Cleanup Liability arising out of a Pollution Condition. The policies are fairly bespoke and there are various forms including site-specific, that cover scheduled locations, blanket environmental legal liability (non-location specific), Contractors Pollution Liability, Professional Pollution and other forms focused on industry verticals such as Healthcare.

Given that the policies are bespoke, the coverage will be specific to that policy and the specific facts and circumstances. Key areas that must be reviewed in the policy are as follows:

1. Is there a specific insuring agreement that covers bacteria and viruses? There are some newer forms in the marketplace, particularly for real estate or healthcare risks that contain a specific insuring agreement covering bacteria and viruses for disinfection/cleanup.
2. Does the definition of Pollution Conditions contain bacteria or viruses, or is it contained in the definition of Microbial Matters if Microbial Matters are included within the definition of Pollution Conditions? If there is no specific language and the policy is silent, with no exclusion for bacteria and viruses, you may still have coverage depending on the facts, state law and case law. There is at least one long-time insurer who states that their policy does not exclude bacteria and viruses per se and has issued comfort letters assuring insureds that there is some level of

coverage under the standard Pollution Condition language.

3. What is the trigger of coverage – is it discovery of the virus condition, a third-party notice or governmental authority including Health department, or Center for Disease Control?
4. What is the threshold for action – is it at the direction of a governmental authority and does this include the Center for Disease Control or a Health Department? What does the Emergency Response provision of the policy state – can take action to mitigate without prior consent of the insurer? What is the Emergency Response time period and when do you need to report?
5. Does the policy contain Business Interruption and Contingent Business Interruption – what is the scope of this language – does it include government shutdown and do you (likely) need to demonstrate that the virus is at your location or at a location within a designated range?
6. Does the Policy contain an exclusion for communicable disease by human-to-human transmission?

It is important to understand the potential coverage that may exist if your company has a Pollution Legal Liability policy. Additionally, if you are a contractor it is important to know how your policy will respond, particularly if you are engaged in disinfection/cleanup work or have a general contractor out at a project site, and you are held legally liable for causing sickness to another worker at the job site during the course of your activities. As an example, there was a third-party action over claim, alleging that a worker contracted meningitis at the job site. The Contractors Pollution Liability policy responded to this claim, whereas the General Liability policy did not because of the absolute pollution exclusion.

As Pollution Policies come up for renewal, we are seeing the marketplace pull-back on coverage for viruses and limit it solely to disinfection coverage, typically with a sublimit of \$1 million or less.

General Liability

General liability policies cover Bodily Injury (BI) arising out of the insured's negligence. A claimant

would have to allege the virus was contracted because of the insured's negligence and be able to localize how, when, and where it was contracted. This would be a very difficult standard to meet. But examples could include:

- Customer at a restaurant contracts the virus that is later linked to an employee of the restaurant.
- Hotel guest contracts the virus that is later linked to a general outbreak at the hotel.
- Delivery worker contracts the virus that is later linked to a location that received a delivery from the worker.
- Vendor's employee contracts the virus that is later linked to a customer's location.
- Subcontractor's worker contracts the virus that is later linked to an owner's construction site.

Workers' Compensation

The intent of Workers' Compensation statutes is not to cover claims presented for communicable and contagious diseases. However, there may be exceptions depending on how and where a disease like the Coronavirus is contracted. Considerations are given based on "arising out of employment" or where an employer may place an employee in an "increased risk" to contract the disease/virus. Each situation is examined on a case-by-case basis to determine compensability. Examples of potential risks include:

- Healthcare worker that contracts the virus present in the healthcare facility
- Airline or transportation worker that contracts the virus that is linked to a passenger
- Delivery employee that contracts the virus that is later linked to a known contaminated site
- Service employee that contracts the virus that is later linked to a large gathering or event.
- Hotel employee that contracts the virus that is linked to a known contamination site.

International – Controlled Master Policy, Local Policies & Cargo/Transit Coverages

When reviewing first-party losses, we must examine all policies that may be applicable at the time of loss. Clients with a global program may have a variety of locally placed policies along with a master global policy. If this is the case, all applicable policies should be identified and reviewed for potential coverage, as some local country policies can provide cover for infectious disease and microorganisms. Coverage is typically sub-limited at \$25,000 to \$100,000 unless specifically endorsed to provide higher limits. In addition, property that is in transit may be quarantined or delayed, which could result in a loss to the client.

If there are transit/cargo or stock throughput policies in place, losses and coverage will be thoroughly reviewed for potential third-party supply chain, cargo accumulation and additional expense coverage. The details concerning the cause of delays, which may include government mandates, should be carefully documented to examine where coverage may apply. Clients should also be aware they may incur additional costs such as cost of mitigating the spread of the disease by providing employee testing, and the cost for decontamination or sanitization as a result of an infectious disease being identified on their premises.

Executive and Professional Risks (EPS)

The stock market is in a decline that rivals the financial crisis and acute risks to global supply chains, significant travel restrictions and amended profit and growth warnings are now being seen across most industries. Today, any major event that impacts a company's performance becomes a board level issue – i.e., board engagement, strategy and guidance is expected; if the event is not handled appropriately by the board, risks are not properly disclosed to investors, clients, employees, vendors and other constituents, there is a risk of potential company liability.

Some early thoughts follow regarding how the Coronavirus may impact D&O (Directors & Officers) liability, Employment Practices Liability (EPL), Fiduciary Liability, Professional Liability/Errors & Omissions (E&O), Cyber Liability, Crime and Special Crime (Kidnap & Ransom). While claims made in these areas may ultimately be meritless, the costs to

defend litigation, or respond to claims, can be significant (i.e., millions of dollars).

EPS coverage carriers are monitoring the situation but as of today there has been no definitive guidance on insurance pricing/terms impact – this situation may change rapidly. Additionally, meetings planned with carriers may be subject to sudden change/cancellation as travel restrictions come rapidly into play.

Directors & Officers (D&O) Coverage

A D&O policy would likely **not cover direct claims** for bodily injury because of the Bodily Injury exclusion. It would also not cover any allegations of Pollution (in the event that it is suggested that the spread of the disease via public surfaces make it a pollutant).

However, here are some scenarios in which D&O liability could potentially apply in the event of follow-on exposures and “Event-driven” D&O litigation:

- If a company's financial performance is materially impacted and its stock price declines precipitously, there is always the chance of shareholder litigation and/or a regulatory investigation by the SEC or even other federal agencies. These investigations could include directors and officers personally.
- Derivative claims could arise out of a company's leaders' alleged failure to manage the exposure of the Coronavirus. These claims could involve allegations of mismanagement or failed oversight.
- Failure of, insufficient or incorrect disclosures to investors regarding pandemic exposure as well as other potential risks (i.e., selective disclosure violations) are particular possibilities for publicly traded companies.

Examples:

- Management of a manufacturer allegedly failed to create a redundant supply chain, resulting in loss of production and sales for a significant period of time (an alleged failed duty of care); alternately, the company allegedly failed to disclose material supply chain risk to investors in its filings, etc.
- An insurance company becomes overexposed to coverage triggered by this crisis, and therefore had unexpected and outsized losses that impact the insurance company's share price, bringing regulatory scrutiny and perhaps litigation.

- Industries likely to be impacted (a sampling): manufacturing, technology, transportation/airlines, logistics, insurance, pharma, tourism, food service and hospitality.

Coverage considerations/discussion:

- Dedicated Side A Coverage/Side A DIC (Difference in Conditions): These cover only individual directors and officers for non-indemnified losses and typically do not have any bodily injury or pollution exclusions.
- Review carve-backs for securities claims and Side A loss to any relevant exclusions within a D&O policy.
- Claims may allege fraud on the part of directors and officers in failing to disclose critical information, so defense cost carve-backs, final adjudication limitations and severability language are areas to examine as respect to within a D&O policy.

Employment Practices Liability (EPL)

As governments, companies and other institutions respond to this crisis, the potential impact to employees should be considered. The following actions may trigger EPL claims:

- Allegations of discrimination based on race/national origin related to the spread and origin of the virus
- Allegations of retaliation in the form of negative reactions to employees that refuse to travel
- For employees that are considered ‘at risk’ due to recent travels, plans for employee isolation (quarantines) may result in alleged harassment, allegations of career deprivation, etc.
- Third-Party EPL Exposures: claims alleging harassment or discrimination of clients, vendors, others due to race/national origin/recent travels.
 - Industry examples: hotels, cruise ships, schools, and retail.

Fiduciary Liability

A significant loss of value of employer stock could impact the retirement savings of employee plan

participants and lead to ERISA (Employee Retirement Income Security Act of 1974)/fiduciary liability claims.

It is possible that if this crisis tests the scope of coverage for healthcare and other employee benefits provided by employers (disability coverage, etc.), employees may allege wrongdoing of their employers (too limited benefit offerings, employer chose vendors and products based on price versus the breadth of coverage). Fiduciary Liability policies can include coverage not only for Retirement plan exposure, but also for acts, errors or omissions in the administration of an employee benefits (“employee welfare”) plan.

Cyber Liability Crime/Special Crime (K&R)

Potential media and privacy violations based on company updates regarding specific employees’ health or release of other protected information, could trigger Cyber liability or regulatory impact.

- Ransomware: the use of the Coronavirus as a subject of an attachment, or in conjunction with an email or a website for delivery of ransomware (and other malware), is rapidly increasing – playing on a scared population.
- Phishing and/or social engineering attacks: using the importance of the Coronavirus response to businesses to dupe employees to turn over information (cyber) and/or money/assets (crime) could cause company losses.
- Special Crime/Kidnap & Ransom (K&R): a company may not have this coverage at all. If it does, a review of whether it includes emergency medical repatriation coverage and emergency travel assistance is essential.

Professional Liability

Many professional liability policies exclude coverage for claims arising out of bodily injury. However, for professions within the healthcare industry that have a special duty to protect the public from health issues, coverage for a pandemic event may possibly be provided.

Other industry specific examples include, but are not limited to:

- High-Tech Manufacturing Firms: if substandard replacement parts have to be commissioned from

alternate sources due to supply chain disruption, this could increase the risk of an E&O claim.

- Logistics Firm or Those That Provide Logistics-Related Services/Products: a potential claimant question could be: how did you not prepare and come up with alternate plans to avoid negative impact?
- People-Centric Firms: i.e., outsourcing firms including cloud and Software as a Service (SaaS), Platform as a Service (PaaS), and Infrastructure as a Service (IaaS) companies that cannot provide services.

Worldwide Policies

Many locally admitted EPS policies exist today for multinational companies and these policies are typically the first responders to claims brought in local jurisdictions. Clearly understanding the scope of that local coverage (especially in areas most impacted by the Coronavirus – China, South Korea, Italy, etc.) will be critical to understanding the ultimate breadth of available coverage.

Trade Credit

Trade credit insurance covers losses due to late payment and default, meaning the inability of the customer to pay. As the impact of the Coronavirus spreads and companies are no longer able to engage in income producing activities, the threats of insolvency and business failure rise. As a result, we may see an increase in company failures or extremely delayed payment cycles resulting in credit losses and an increase in trade credit insurance claims.

Life Insurance

Most life insurance policies will not be impacted by the Coronavirus. Life insurance applicants may see a delay or postponement in receiving coverage if the applicant has plans to travel to, or has recently arrived from, an affected area. The insurer may choose a longer wait period before binding coverage and premiums may be affected for these individuals.

Once a life insurance policy is in-force, the policy will pay out for most types of death, including death from Coronavirus. It is prudent to review life insurance

policy exclusions, but it is unlikely that communicable diseases such as the Coronavirus, would be excluded.

Business Travel Accident (BTA)

Medical expenses for “illness” including infectious disease are often covered under a BTA policy, but exclude any medical expenses covered under a Workers’ Compensation policy. BTA policies may also include trip cancellation benefits if a covered person’s trip is cancelled due to an illness that renders them unable to travel. Trip delay and/or trip interruption coverage is typically included if the covered person contracts the infectious disease/illness or is quarantined by a medical or governmental authority while already traveling because presence of the infectious disease is suspected. It is important to note that most policies exclude coverage for travel to countries after a travel advisory has been issued by a governmental authority.

Q: What Can Businesses Do Now?

A: Businesses should prepare for potential losses and impacts related to the Coronavirus. Suggestions include:

Operations

- Review/modify business contingency plans
- Identify services critical to ongoing operations
- Identify critical supply chain services and examine alternatives
- Determine if there are backups in place for critical operation functions
- Estimate the potential impact of widespread facility closures
- Examine necessary or potentially needed disclosures to shareholders and regulators
- Update all staff on the increase of Cyber risk malware due to Corona subject matter
- Examine and review all alternate means and methods with organizational stakeholders

Staff

- Review and implement health and safety policies
- Determine if any employees have potentially been exposed and create a plan for preventing exposure to other employees
- Plan for employees to work from home
- Forecast absenteeism – consider alternative staffing
- Disinfect common areas and personal workspace
- Provide employees with personal protection equipment
- Plan to address employee health and safety concerns
- Work with employees and leadership to identify and monitor potential areas of harassment, deprivation of career opportunity, discrimination, bullying due to Corona virus effects

Coronavirus appears to be transmitted in much the same way as the flu or common cold and employees should use common preventive measures (wash hands, hand sanitizer, sneeze/cough into elbow, and stay home from work).

Employers should take a practical approach to easing employees' concerns about Coronavirus by:

- Reviewing the company's sick or Paid/Personal Time Off (PTO) policies and any applicable state or local sick leave policies, then reminding employees of the policies (be prepared to explain them).
- Ensuring employees know of any work from home provision offered by the company and how/when it may be utilized.

department of health for direction as to where the employee can be tested for the Coronavirus.

- Employers who have asymptomatic employees who have recently returned from affected areas may want to prohibit these employees from returning to the worksite as a preventive measure. Prohibiting these employees from returning to work could be construed as a violation of the Americans with Disabilities Act (ADA) and discrimination violation under Title VII of the Civil Rights Act of 1964. There are appropriate defensive strategies from a legal perspective, however, employers may determine that it is best to continue to pay these employees during this period.

Helpful Resources

For more resources, tools and information, please contact us:

Address: **The Liberty Company Insurance**
5955 De Soto Ave UNIT 250
Woodland Hills, CA 91367

Phone: (818) 914-3960

Email: info@libertycompany.com

URL: www.libertycompany.com

Q: Are There Additional Considerations?

A: If an employer suspects that an employee has the Coronavirus, the employer should immediately contact the Communicable Disease division of their state's