

Coronavirus and Commerce: Possible Insurance Implications

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The coronavirus pandemic and its consequences are spreading throughout the world at an alarming rate. Governments at all levels and the private sector are scrambling desperately to mitigate these consequences even as new closures, stricter quarantines, and fresh fears develop on an hourly basis.

While some industries are more directly impacted than others (e.g., airlines and hospitality), the economic losses associated with coronavirus cut across sectors and are reverberating throughout the economy. As companies look to mitigate coronavirus-related losses, they should carefully review their insurance policies to determine whether they provide coverage for losses associated with the disease. While coverage will ultimately turn on the specific terms of the relevant insurance policies and the precise nature of the losses, a number of insurance lines may provide relief.

First-Party Property Insurance – Business Interruption Insurance

Business interruption insurance is a common component of commercial property insurance policies. In general, business interruption insurance covers loss of income that a business suffers after an interruption of their business operations. Often, business interruption coverage is triggered as a result of “direct physical loss of or damage to” insured property as a result of an otherwise covered peril. Depending on the specifics of the claim, a dispute may ensue as to whether “physical loss” occurred as a result of the coronavirus. The term “physical loss” has been the subject of litigation in many jurisdictions and the outcome of such disputes is not uniform. Property that becomes unusable or uninhabitable as a result of the coronavirus may be sufficient to satisfy the requirement of “physical loss.”

Some property insurance policies also include contingent business interruption coverage. Contingent business interruption insurance provides insurance for lost earnings resulting from a third-party supplier or distributor shutdown directly impacting the policyholder’s operations. Typically, contingent business interruption insurance requires that the type of damage sustained by the third party be a covered type of loss for the policyholder. Contingent business interruption insurance is often marketed to businesses such as hotels, restaurants, or food vendors that derive business from nearby properties that draw large crowds (e.g., sports stadiums). Given cancellation of sporting events and conferences, this coverage could potentially be significant.

Specialized Insurance Policies

There are many types of insurance that provide specialized coverages. For example, trade disruption insurance is political risk insurance that covers loss of gross earnings and extra expenses resulting from delay or failure of materials to arrive due to actions or inactions of a foreign government. As the coronavirus and the response thereto continue to evolve, potential governmental restrictions on travel and trade will continue to be fluid. This is just one example of more specialized insurance that could come into play. Companies should be sure to evaluate all potentially applicable policies (or sublimits within policies) that may respond to coronavirus-related losses.

Commercial General Liability Policies

Commercial general liability insurance typically provides coverage for “all sums that the insured becomes legally obligated to pay as damages because of ‘bodily injury’ or ‘property damage’ to which th[e] insurance applies.” This is coverage for third-party claims against the company. Although causation may be difficult for plaintiffs to prove based on the specific facts, an important aspect of commercial general liability insurance is that it provides defense for third-party claims and the insurer’s duty to defend is broader than the insurer’s duty to indemnify.

Given the nature of coronavirus, it is not difficult to envision scenarios in which individuals assert claims against companies alleging that they were exposed to coronavirus as a result of negligent behavior by company employees. Companies should turn to their commercial general liability insurer for both defense and, if ultimately necessary, indemnity of such claims.

Conclusion

The coronavirus pandemic is an evolving threat with catastrophic human and economic consequences. While the first priority of companies should be the safety of their employees and customers, they should also look to mitigate the economic impact of the disease, including utilizing insurance tools as applicable. While coverage will ultimately depend on the specific facts associated with the loss and the relevant policy language, companies would be well served to review all of their potentially applicable coverages, including but not limited to those discussed above.

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