

Insurance and the Coronavirus: Assessing Potential Claims and Coverage Issues

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The worldwide outbreak of COVID-19 has the potential to impact various lines of insurance coverage. As always, the determination of whether an insurance policy affords coverage for a specific claim will depend on the language of the policy and the facts at issue. This article provides a general overview for three types of potential claims and coverage issues that may arise as a result of the outbreak: event cancellations, business interruptions and workers' compensation.

Event Cancellation

As the outbreak spreads to new areas, groups of all sizes and types must decide whether to cancel events. Large-scale events have already been canceled, including the South by Southwest Festival in Austin, Texas, the BNP Paribas Open tennis tournament in Indian Wells, California, and numerous concerts, movie premieres, conferences, and sporting events. In some instances, the organizers of the event will make the decision to cancel. In others, such as in the case of South by Southwest, a state or local government may order the cancellation. When planning such large-scale events, organizers, businesses planning to take part and other participants may have purchased event cancellation insurance policies to offset any costs associated with an unexpected cancellation.

In addition to large scale events, businesses are canceling conferences and meetings, and individuals are canceling events such as weddings and reunions. These businesses and individuals may have purchased event cancellation policies as well. In the wake of cancellation, these policyholders will look to the event cancellation insurance policies to offset some of the costs.

Event cancellation insurance is generally more tailored to the specific insured than other types of insurance, and thus insurers and policyholders will need to review the language of the specific policy at issue to determine whether coverage is afforded for a particular cancellation. For example, many event cancellation policies exclude coverage for cancellations due to infectious disease. Insurers often offer coverage for this specific risk for an extra premium. Even when an event cancellation policy affords coverage for cancellation due to infectious disease, however, the policy may not afford coverage for a cancellation due to mere fear of the virus; rather, to trigger the coverage the cancellation may have to result from an active outbreak in the area or even a government action requiring the cancellation.

Additionally, beginning in mid-January 2020, specific COVID-19 exclusions have often been added to event cancellation policies. Thus, any policies purchased or renewed after January 2020 may not afford coverage for cancellations due to COVID-19, even if coverage for cancellations due to infectious disease is otherwise afforded under the policy.

Business Interruption Insurance

Many businesses will experience some form of interruption as the COVID-19 outbreak spreads. In areas affected by an outbreak, businesses may face mandatory or voluntary shutdowns, staffing issues, supply issues and a decline in demand for goods and services. In areas not directly affected by an outbreak, businesses may still suffer interruption as people take steps to avoid the further spread of the virus. Property insurance policies often include some coverage for business interruptions and lost profits, but the coverage is often limited.

The business interruption coverage part of most property insurance policies requires that (1) the business interruption result from a "direct physical loss of or damage to" the insured's property, and that (2) the direct physical loss or damage result from a covered cause of the loss that is not excluded by the policy. Thus, losses from a voluntary shutdown or from a lack of workers due to illness or fear of illness, absent direct physical damage to the property, may not trigger coverage.

Some insureds may argue that the direct physical damage requirement is satisfied in some of these policies when contamination of the physical property renders the premises unusable. For example, one or more employees may contract coronavirus requiring the company to shut down while the building is cleaned and disinfected. Additionally, such policies may afford coverage for business interruption if the federal, state or local government issues a mandatory quarantine order or an exclusion order that limits access to the insured's facilities. Whether coverage is actually afforded is fact-specific and will depend on the policy language and particular circumstances.

Even if there is a direct physical loss or government action that causes the business interruption, policies may contain exclusions for infectious or communicable diseases and epidemics.

In response to prior outbreaks of various infectious diseases, the insurance industry has developed endorsements that specifically provide coverage for business interruption due to such diseases even absent evidence of direct physical damage. These endorsements may provide general coverage for business interruption resulting from an outbreak of an infectious disease, or they may be drafted to afford coverage only for outbreaks of specific types of diseases. Thus, the endorsement must be reviewed to determine the scope of insurance afforded. The insurance industry is developing a similar endorsement specifically for COVID-19, as well, so insureds should consider whether the purchase of such insurance is necessary or desirable for their business at renewal time.

Workers' Compensation

Workers' compensation policies generally afford coverage for injuries "arising out of or in the course of employment." Such injuries could include illness. If a company experiences an outbreak of COVID-19 among its employees, employers may question whether their workers' compensation policy will respond. As with other insurance questions, the answer will depend on the specific facts and circumstances.

For coverage to be afforded by a workers' compensation policy, the employee will have to demonstrate that his or her illness was caused by the employment. In most industries, the causation question will be difficult for the employee to prove, particularly if there is an outbreak in the geographic area. One exception will be employees in the health care industry, particularly at the beginning of an outbreak in a particular area. In order to determine causation, employees and employers should keep detailed records of potential exposures.

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