



## Coronavirus Disease (COVID-19) Business Insurance Coverages Answers to Frequently Asked Questions

### Property

We anticipate that most property policies will not respond to this event in any meaningful way as it is not a direct physical loss. This is traditionally defined as property damage to physical characteristics of the location that require repair. 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.
- 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 direct physical damage.

## Business Interruption

When evaluating Business Interruption coverage, the first question is whether the losses are driven by the existence of the virus directly at an insured location or due to indirect impact from a Civil Authority order or Supply Chain disruption.

### Direct Loss

Business Interruption coverage is normally triggered as a result of direct physical loss. This is traditionally defined as property damage to physical characteristics of the location that require repair. The presence of a virus on a surface or in the air does not change the physical characteristics, therefore no trigger for Business Interruption coverage.

### Indirect Loss

The vast majority of claims will be tied to losses from indirect exposures. The most notable are a Civil Authority order 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.

- Civil Authority – This coverage is based on direct physical loss within one mile of the location. This is traditionally defined as property damage to physical characteristics of an area that require repair. The presence of a virus on a surface or in the air does not change the physical characteristics, therefore no trigger for Civil Authority coverage.
- Contingent Business Interruption/Supply Chain – This coverage is for losses resulting from disruptions in a company’s supply chain, specifically, interruption of the company’s business caused by direct physical loss to the property of a supplier or downstream customer. This is traditionally defined as property damage to physical characteristics of the supply chain or customer location that require repair. The presence of a virus on a surface or in the air does not change the physical characteristics, therefore no trigger for Contingent Business Interruption coverage.

## General Liability

General liability policies cover Bodily Injury 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 the Coronavirus is contracted. Examples of potential claims arising out of employment include:

- Healthcare worker that contracts the virus present in the healthcare facility
- 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 hotel contact

## Director's & Officers (D&O)

A D&O policy would likely not cover claims because of the standard Bodily Injury exclusion.

However, here are some scenarios in which D&O liability could potentially apply:

- 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.

## 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
- For employees that are considered 'at risk' due to recent travels, plans for employee isolation 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 (medical, disability, etc.), employees may allege wrongdoing of their employers - i.e. 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 employee benefits plans.

## 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.

## In the Event of a Claim

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 their 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 file a claim will require documentation of all claim details and of the actual losses. Tracking and reconciling this information while losses are being sustained can be critical, as collecting that necessary information at a later time can become far more difficult. Therefore we recommend, as a starting point, to develop a detailed narrative outlining the loss and gather supporting documentation.

This material is for informational purposes and is not intended to be a definitive claim determination. Reference must be made to your policies for actual details of coverage, terms, conditions and exclusions that apply.