

TOPIC SPOTLIGHT:

HOW WILL INSURANCE HANDLE COVID-19 (CORONAVIRUS)

The pandemic outbreak of the coronavirus (COVID-19), a communicable disease that may be transmitted directly or indirectly from human or animal to a human, is already creating a major disruption in our lives and our economy. The disruptions include:

- Individual exposure to the virus and the related medical cost, along with the real fear of an exposure which can be equally disruptive on an individual's life.
- Increased absenteeism in the work force.
- Disruption of business supply chains and reduced customer traffic.
- Actual cost associated with prevention of the virus from spreading including sanitizing efforts, voluntary cancellations of events, and mandatory closings mandated by civil authorities.

While the economic impact of the above may be addressed by one or more of your current commercial insurance policies, it must be noted that most standard commercial policies have not been designed to address the hazards associated with communicable diseases such as the coronavirus. The following information is being provided concerning how insurance coverages may respond to a loss associated with the virus. **Subsequent court rulings and legislation could change how losses are treated.**



WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

Most states do not cover employee to employee transmission of a disease nor the transmission of a disease from a customer to an employee. An exception to an "ordinary disease of life" such as the contraction of a viral disease, are employees that work in the health care industries such as hospitals, medical testing labs, and emergency rescue personnel.

- Under Coverage A. Workers Compensation, the policy provides for injury due to occupational disease as set forth in each state's workers' compensation statutes. In general, the states have in common statutory language to the effect that the disease must be identified as arising in the course of employment and resulting from a risk associated with the employment. An "ordinary disease of life" is not compensable unless following an exposure that would result in an occupational disease, and an occupational disease is only considered compensable when the occupational exposure was the prevailing factor.
- Under Coverage B. Employers Liability, the policy provides legal liability coverage for the employer due to an injury sustained by an employee, including the contraction of an occupational disease not covered under the state's workers compensation statutes.

Foreign Travel

All employees who will travel out of the United States should be covered by a Foreign Voluntary Workers Compensation Coverage Endorsement, or through the purchase of a standalone Foreign Workers Compensation policy. The foreign coverage can provide broader coverage for your employees who travel abroad than the coverages found in your standard workers compensation policy. Coverage can be included for an employee's contraction of an illness due to endemic disease, which is a disease that is common to a specific area or region that your employee may be working in, and coverage can also be provided for the expense incurred in transporting the injured or ill employee back to their home country.



COMMERCIAL GENERAL LIABILITY (CGL)

The standard Insurance Service Office (ISO) CGL coverage form covers those sums an insured becomes legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence. The term bodily injury by definition includes injury caused by sickness or disease including death resulting from a covered occurrence. Property damage means physical injury to tangible property including all resulting loss of use.

- An unendorsed CGL policy does not include exclusionary language that would prohibit coverage for liability arising out of the actual or alleged transmission of a communicable disease such as COVID – 19. However, it is very rare to have an unendorsed CGL policy.
- There are, however, endorsements that insurance companies can use to delete coverage due to an injury caused by the transmission of a communicable disease. The Fungi or Bacteria Exclusion (CG 21 67) is commonly attached to and made a part of CGL policies. Used less frequently is the Communicable Disease Exclusion (CG 21 32) which is an absolute exclusion for any liability arising out of the actual or alleged transmission of a communicable disease. It is anticipated that the industry going forward will be increasing its use of the CG 21 32 endorsement or a similar broadly framed exclusion to delete coverage arising out of the transmission of viral disease.



COMMERCIAL PROPERTY COVERAGES

Direct Damage to Buildings, other Structures and Personal Property Coverage:

The ISO commercial property coverage form will pay for direct physical loss or damage to covered property caused by or resulting from any covered cause of loss. The Special Cause of Loss Form covers direct physical loss unless the loss is excluded or limited by the form and is the broadest cause of loss form used with most standard commercial property policies.

One of the exclusions included in the Special Cause of Loss form is for loss caused by Fungus, Wet Rot, Dry Rot and Bacteria. The policy form does provide for limited coverage under a separate Additional Coverage clause. This additional coverage only applies, however, when the fungus, wet or dry rot or bacteria are the result of one or more specified causes of loss. While there is no reference to loss caused by a virus included in the Special Cause of Loss form, ISO does make available endorsement CP 01 40 which is an absolute exclusion for loss due to a Virus or Bacteria. This endorsement in addition to excluding any loss caused by a virus or bacteria also excludes the coverage for loss due to bacteria that was included in the Additional Coverage clause referenced above.

Business Income and Civil Authority Coverage:

Business income coverage provides coverage for loss of net income and continuing expenses resulting from direct damage to covered property by a covered cause of loss. The civil authority coverage provides for loss of income due to a civil authority order prohibiting access to an insured's premises following direct damage by a covered cause of loss to property other than the insured's premises.

Loss of income due to a civil authority order that prohibits access to your premises due to the presence or threat of a communicable disease are, with a few exceptions, not covered.

ISO has, however, released in February 2020 two advisory Business Interruption forms that provide Limited Coverage for Certain Civil Authority Orders Relating to COVID-19. An advisory form is a form that ISO is not filing on behalf of their member companies but can be filed for use by individual companies. These are limited loss of income forms identical to advisory forms issued in 2014 by ISO to address business income loss exposures created by the Ebola pandemic. We are monitoring the market to see if any carriers are independently filing these forms.

The following link contains further information on why current policies and court cases indicate there is no coverage for Business Interruption and Civil Authority Coverage:

<https://www.stroock.com/publication/will-business-interruption-insurance-provide-coverage-for-coronavirus-losses/>



ENVIRONMENTAL POLICIES

Environmental policies forms, unlike ISO forms, are normally drafted by the individual companies that are providing pollution coverage. Some site policies have named "viruses and bacteria" as pollutants and include coverage for disinfectant expense.

We have been advised by a leading environmental insurance broker that pollution carriers are not intending to cover claims related to coronavirus in the current environment, but if your current policy does not have a communicable disease exclusion in it, and the definition of a pollutant includes a virus you may have coverage for loss due to COVID-19.

WE ARE HERE TO GUIDE YOU!

If you have any questions about your insurance program or a specific policy, please contact your Risk Advisor or Account Manager. We are also available to answer questions you may have about developing a comprehensive risk management program that can help you manage the risk associated with COVID-19.