

COVID-19 Coronavirus

Coverage Considerations Newsletter



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The Coronavirus is now becoming a global pandemic and causing a major disruption in supply chains running through China. The contagion is significantly affecting many industry sectors but most significantly the manufacturing arena, causing unforeseen business interruption losses around the world.

As companies look to their corporate insurance policies to respond to this peril, the first consideration for coverage should be to their Property Insurance Policy.

Unfortunately, not all property policies will provide the same coverage. In this newsletter, we will discuss how two different policy forms could potentially recognize the coronavirus.

Property policies including coverage for “**Interruption by Communicable Disease**”

For property policies that include a coverage extension for “**Interruption by Communicable Disease**,” these policies typically provide a \$1,000,000 specific controlling sublimit for Time Element (Business Interruption) losses due to the presence of a communicable disease at the insured’s location (either owned, leased or rented). This coverage generally precludes any Contingent Business Interruption coverage.

1

There needs to be actual presence (not suspected) of the virus at the insured’s location.

2

Access to the insured’s location must be limited by a governmental authority or by an insured’s officer to keep the site closed.

- Please note a waiting period may apply

In order for the policy to respond, both of the two coverage triggers below must be satisfied:

It is important to recognize that some property policies specifically exclude “*contamination*.” This exclusion is defined as “...[a] *pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent*.” The insurance company should bring the virus/bacteria back in after specifically excluding it under the “Interruption by Communicable Disease Extension.”

Property policies NOT including coverage for “**Interruption by Communicable Disease**”

For property policies that do not include a coverage extension for “**Interruption by Communicable Disease**,” finding coverage in the policy becomes challenging, as many policies are silent with regard to viruses, bacteria or other pathogens. When reviewing the policy for coverage, it must be determined whether the presence of a virus represents a “physical loss or damage” as required by the policy, which could happen if the product had to be destroyed or rendered useless. If contamination is not specifically excluded by the policy, there may be a very small avenue for coverage. However as of this writing, presently there are a number of insurers definitively stating that Coronavirus is not being considered “physical loss or damage.”

On almost all property policies, in order to secure coverage under either Civil/Military Authority or Ingress/Egress, the loss must be related to property damage of the like kind insured. In this instance, the insurer would have to classify the presence of the virus as *physical damage that would be of the like kind insured*. The problem with an ambiguous policy is that a loss scenario will invariably lead to the carrier disclaiming coverage and litigation to follow. Insurers without bacteria or virus exclusions shall try to rely on more ambiguous pollution exclusions (some of these exclusions may refer to contamination, but the intent of the language makes it clear that it is referring to something like an oil spill or ground contamination).

For policies without the coverage extension for “**Interruption by Communicable Disease**,” the following items should be reviewed within the policy to determine if the policy will respond:

1. Does the policy include a Contamination Exclusion?
 - » If yes, is the Contamination Exclusion defined?
 - » Does the exclusion pertain more to pollution (i.e., ground pollution) or radioactive contamination? Insurers are going to try and rely on an ambiguous pollution exclusion if there is no virus or bacteria exclusion on the policy.
2. Does the Contingent Business Interruption section contain any form of exclusions for a virus-based closing of the facility?
3. What are the triggers for coverage under a Contingent Business Interruption Extension?

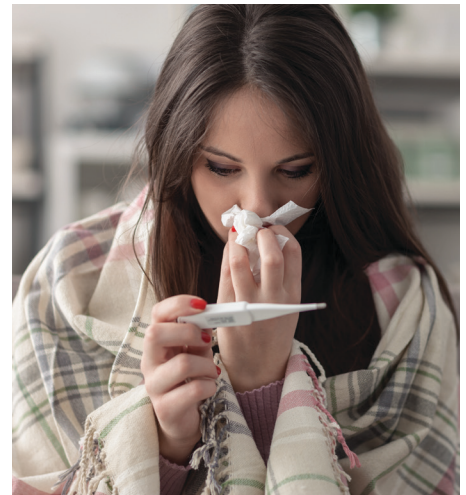
It is widely believed that carriers that do not currently have a “**Communicable Disease**” extension will likely explicitly exclude any virus or bacterial disease from a property policy going forward.

Environmental Insurance

In addition to the Property policy, consideration should be given to the Environmental Liability policy. These policy forms are designed to respond to claims for bodily injury, property damage or cleanup/remediation costs caused by “Pollution Conditions.”

Currently environmental liability policy forms do not identify “Coronavirus” as a pollutant and do not specifically exclude it by name. Some policies, however, do contain “Communicable Disease” exclusions that preclude coverage when a disease is transmitted by personal contact. However, they do not exclude transmission of the disease caused by the environment within the insured site. For example, if the virus is spread through the HVAC system similar to Mold and other indoor air quality concerns, a case for coverage may be able to be made. Surface contact could also be a possible pathway of exposure that could be covered.

Another source of coverage lies within some of the policy form definitions. The definition of Bodily Injury means “illness” or “disease” caused by a “contaminant” or specifically identified constituent. Acute bronchitis, a disease, could be attributed to either a bacterial or viral infection present within the insured site. In similar circumstances to other policies, if the cause or action that creates the Bodily Injury or Property Damage or



cleanup/remediation is not excluded it can be covered unless it can be demonstrated that it is not covered or it is specifically excluded. So long as a “Pollution Event” has taken place, or a “Pollution Condition” exists, coverage will apply in cases of negligence or strict liability. In turn negligence can be the failure to prevent the spread of the disease in your premises, or the coverage may be triggered by strict liability as the result of a “Pollution Event” that has taken place, or a “Pollution Condition” under environmental laws.

Environmental liability insurance also offers the option to purchase “Bioterrorism” as a step up from pure TRIA coverage. If coverage is afforded for Bioterrorism, coverage can be deemed to exist in cases where infected people are purposely introduced (as environmental weapons) into populated premises or where Coronavirus is introduced through the HVAC system to cause illness in order to intentionally create panic or terror, or further a cause. In order for coverage to apply, a connection to a source on the insured site or the insured site itself contributed to the initial exposure and injury or spread or exacerbation. The ultimate scope of coverage, i.e., Bodily Injury, Property Damage, Cleanup, Business Interruption, etc., will depend upon the circumstances surrounding the injury or damage and the policy forms.

The spread of this virus continues to be fluid and untested in this market place. While there are other insurance coverages to consider such as Workers Compensation, Directors & Officers Liability and Employment Practices, we will be bringing you updates in the next newsletter as this situation continues to develop.

However, this newsletter has only discussed the possibilities of insurance coverage. Like any risk factor, it is important to be looking at all possible risks and exposures to loss – such as Supply Chain and Contingent Supply Chain vulnerabilities. Hopefully, as this virus dissipates, we will be spending the next few newsletters focusing on Supply Chain Management.

Please note that other terms and conditions within your specific policy, as well as those discussed in this newsletter, may affect coverage.

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