

Insureds Likely Face Uphill Battle in Seeking Coverage for Coronavirus Losses

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As the coronavirus, COVID-19, continues to spread, organizations around the globe are facing mounting business disruptions and economic losses. Some of these entities may seek coverage for these losses under a variety of insurance policies. Coverage under any form will depend, of course, on the facts of the claim, policy wordings, and the applicable law. Here, we highlight some policy wordings insurers should keep in mind when evaluating coronavirus-related claims under various coverage forms.

It is highly unlikely that a coronavirus claim would be covered under a named peril property insurance policy, but insurers may receive business interruption and contingent business interruption claims under all-risk property forms. Those coverages, however, do not come into play in the absence of direct physical loss or damage to property. Insurers should also consider whether the policy contains a contamination or other similar exclusion. Coverage for lost income or profits should be examined under a Civil Authority or Ingress/Egress coverage extension, if applicable. (See below)

As businesses continue to experience economic losses related to the coronavirus, allegations that directors and officers did not properly plan for, manage, or disclose coronavirus-related risks may emerge. Coverage for such claims under D&O forms, however, may be precluded by bodily injury and conduct exclusions. Commercial general liability policies may contain exclusions applicable to both Coverage A and Coverage B for claims arising out of communicable disease. Pollution and other exclusions should also be examined.

Coverage for business income losses under a Communicable Disease Endorsement typically will require the actual, not suspected, presence of a communicable disease at an insured location and a mandatory governmental order. Coverage under a Civil Authority coverage enhancement will likely require off-premise property damage, as well as a civil authority order. An Ingress/Egress coverage enhancement may not require an act of a civil authority, but physical loss or damage caused by a covered peril to property that prevents or hinders ingress to or egress from the insured's business will be required. Supply Chain coverage is triggered by business interruption resulting from a disruption or delay in the receipt of products, components, or services from only a named supplier or supply. Physical damage may not be required, but the relevant suppliers and supplies must be

scheduled, unless the form provides blanket coverage. In either case, coverage may be subject to a communicable disease exclusion.

Event Cancellation policies may contain an express coronavirus exclusion^[1] and/or a communicable disease exclusion. In addition, coverage may be excluded for any voluntary cancellations. Compliance with the policy's notice provision—which typically requires prompt notice following discovery of any event likely to give rise to a claim—should be carefully considered in light of the well-publicized impacts of the coronavirus. Event Cancellation policies also typically contain a mitigation requirement, which may be relevant in certain circumstances.

Final Thoughts

In view of the potential large losses, companies may aggressively seek coverage under these and a wide variety of additional policy forms such as travel, workers compensation, and errors and omissions policies. Of course, coverage under any specific policy form may be barred by certain policy terms, conditions, and exclusions. Please contact the authors to discuss coverage issues that might arise in relation to coronavirus claims.

^[1] Some carriers introduced coronavirus exclusions in January 2020.

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Peter E. Kanaris

Partner

📞 312-704-3628



Scott M. Seaman

Partner

📞 312-704-3699

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