

Will Insurance Cover Economic Loss Resulting From the Coronavirus?

Insurance Recovery, Counseling and Litigation Alert

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The coronavirus is wreaking havoc in Wuhan, China, as over 28,000 people have been infected to date and the death toll rises. China issued the largest quarantine in human history, locking down an estimated 45 million people. The virus' effects, however, have been (and will continue to be) felt far beyond China's borders. The World Health Organization recently declared the viral outbreak to be a global health emergency. Major airlines have canceled flights to and from mainland China, and global brands such as Starbucks, Apple, and IKEA have temporarily closed branches around the country. The financial impact of this virus could be similar to that of severe acute respiratory syndrome ("SARS"), the epidemic that caused overall economic losses of more than \$50 billion.

Businesses with global operations and/or that rely on international supply chains should consider whether insurance will cover their losses. For example, in 2003, Mandarin Oriental hotels in Hong Kong, Malaysia, Singapore and Thailand suffered economic loss due to cancellations and reduced restaurant sales stemming from the SARS outbreak. Mandarin Oriental International Ltd. recovered \$16 million from its insurers to pay for such business interruption losses. Similarly, as a result of the coronavirus, there may be business interruption and contingent business interruption claims.

Careful analysis of policy language is necessary, however, as there may be provisions that limit or bar coverage. For instance, while business interruption coverage is often available, it is usually linked to "property damage," which in some instances can include loss of a property's use, value, and/or function. Similarly, some policies may provide coverage when there is an order of civil authority (i.e., preventing access to one's business); however, such coverage may need to be as a direct result of physical damage, and depend on whether loss of use and function constitute such damage.

Coronavirus-related insurance claims may also arise in other ways. General liability insurance may be implicated if there are third-party bodily injury claims resulting from exposure to harmful conditions and/or failures to exercise reasonable care in guarding against, or warning of, the risk of exposure to the virus. However, policies often include environmental exclusions, such as for mold, fungi, or bacteria. Some of these exclusions may be broader than their title suggests – e.g., the Absolute Mold Exclusion bars

coverage for bodily injury, property damage, or personal and advertising injury related or attributed to, arising out of, resulting from, or in any way caused by any bacteria, *virus*, mycotoxin, fungus, spores, scent or byproducts. There also may be an “Organic Pathogen Exclusion” that excludes coverage for loss or damage caused directly or indirectly by an “organic pathogen,” which can be defined as including a virus. In contrast, however, the Insurance Services Office “Fungi or Bacterial Exclusion” does not specifically refer to a virus and, therefore, should not apply to loss arising from the coronavirus.

There also may be coverage (or exclusions) specifically referring to “communicable disease,” which can be defined as a contagious disease or illness arising out of or in any manner related to an infectious or biological virus or agent or its toxic products. Even when a policy specifically covers communicable diseases, however, there may be an exclusion for epidemics and/or pandemics. How a policy defines such terms will determine whether (or not) such exclusion might apply to limit or bar coverage for the coronavirus.

Directors and officers liability insurance may be implicated in shareholder litigation alleging a company’s failure to develop adequate contingency plans, to observe recommended or required protocols, or the disclosure of risks to financial performance. Employment practice liability insurance also may be implicated if employees allege they were mistreated when suspected of being infected. Some employment practices liability policies expressly cover alleged discrimination based on origin and medical status.

Regardless of the line of coverage implicated, policyholders should be aware of (and seek to comply with) all of the policies’ notice requirements. Under “claims made” policies, a policyholder must report a covered claim to the insurer within the policy period or extended reporting period, and such requirement usually is a condition precedent to coverage. Additionally, policies may require a “notice of circumstance” that is likely to lead to a claim, or a written notification providing various details concerning the possible claim. Failure to comply with notice requirements may lead to an insurer disputing coverage and arguing for an unintentional forfeiture of coverage.

The devil is in the details when it comes to insurance contracts. Corporate policyholders facing such risks and losses should therefore familiarize themselves with their insurance policies. For more information on insurance matters, please visit our website or reach out to members of the [Insurance Recovery, Counseling and Litigation Group](#).