

Insurance Coverage and COVID-19

By Ronald B. Lee

No one knows the ultimate outcome and long-term effects of COVID-19. Businesses are facing challenges daily which are currently, or will in the future, disrupt their business operations. Now is the time to see what protections your company has. We recommend that you consult with an attorney well versed in insurance coverage matters. The presentation of the claim will be critical to the ultimate outcome of available coverages.

First Party Claims

Business Interruption/Business Income Coverage

Many commercial property policies of insurance include business interruption or business income coverage. This type of coverage is triggered when a covered “cause of loss” creates a slowdown or suspension of business operations. The question is whether a COVID-19 caused slowdown or suspension of operations can be characterized as a covered “cause of loss”. Most commonly, a covered “cause of loss” is defined to include only direct physical loss or damage. The threat of a communicable disease is not typically considered a covered “cause of loss.” In fact, many business interruption policies expressly exclude contagious diseases from coverage. Unfortunately, the Government’s announcement that the Coronavirus is a “notifiable disease” may have the adverse effect desired. While the statement was made to assist businesses, it may in fact result in insurers being able to refute coverages under the terms of the policies. However, every policy of insurance is different, and the specific language must be reviewed. The question is what caused the slowdown or shutdown of your business - the COVID-19, or the fact that you could not get the appropriate supplies or products to do your work?

One might be able to argue that there is some contamination or loss to physical property, such as phones, computers, HVAC systems that become sources of contamination. Other areas of coverage that may be triggered is coverage for when a civil order prohibits access to a property or building.

The focal point for determining whether insurance policies apply will be the cause of any loss or damages. As previously described, while the COVID-19 contamination may not be a covered “cause of loss”, there may be some coverage if the slowdown or shutdown is due to a supplier related shutdown, i.e. Dependent Property Coverage.

Business interruption and slowdown claims will arise through a trickle-down effect. If your company’s slowdown is a result of workers not coming into work, resulting in a significant reduction in productivity or customers are just not doing business at the outlet so that the business’s ability to see is significantly compromised, claims could potentially be made under “contingent business interruption loss” coverages, if your policy contains the same. The ability to present such claims will depend upon the wording of the insurance policy.

Civil or Military Acts Coverage

Depending upon how the government, both state and federal, respond to this pandemic, coverages related to actions of civil or military authority may be implicated. Again, it is important to know what is in your insurance policies now to better present claims as they may arise.

Event Cancellation Insurance

Another area of concern is the impact of the widespread reporting of cancelled events, ranging from business conferences to sporting and music events. Cancellation and Abandonment insurance typically covers irrecoverable expenses and loss of net profit should an event be cancelled for a reason not excluded in the policy. However, the policies often have exclusions for cancellation caused by a specifically named disease (avian flu, swine flu etc.) or because quarantine/restriction of movement imposed by a civil authority as a result of a communicable disease.

The reason for the cancellation is important. Are you cancelling due to the attendees' fear, or event organizer's fear of spreading or catching COVID-19 even though there is no ban on the event going forward? That may not be a covered claim. Coverage is typically triggered for cancellations due to circumstances beyond the control of the event organizer.

Third Party Claims Commercial General Liability Coverage

Third party claims against your company will be part of this trickle-down effect from the COVID-19 pandemic. Typically, a CGL policy covers damages for "bodily injury" or "property damage" resulting from an "occurrence". These liability claims may be what companies face down the road. What if one of your employees was infected and spread the disease to another while on the job? Is the spread of a communicable disease excluded pursuant to the terms of a standard policy pollution exclusion? Additionally, many policies contain bacteria and fungus exclusions. Will the COVID-19 virus qualify as bacteria so as to exclude coverage? These are all issues and questions that will unfold in the coming months, even after the dust has settled from the pandemic.

We recommend a review of your insurance coverages now to anticipate areas of coverage and no coverage. Maximizing any potential coverages under your business policies will be best effectuated with a review of your policies so that you can understand and manage your current and future coronavirus related risks. The presentation of any insurance claim is critical to maximize coverage. Know your coverages – what is and is not excluded – before any claim is presented.

If you have any questions or concerns, please contact Practice Group Manager, Ron Lee, by email rlee@ralaw.com, or by phone at 330.849.6648.

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