



COVID-19 Insurance Impacts

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[Brian Zagon](#), [Michael Goodstein](#), and [Ani Esenyan](#)

Introduction

In the throes of the COVID-19 pandemic, businesses have been significantly impacted and, whenever possible, should turn to their insurance carriers for coverage to mitigate the fallout from this virus. Van Ness Feldman has been and continues to closely monitor the impacts of COVID-19 for our clients. As an initial step, policyholders should consider the insurance coverages listed below that may be triggered by COVID-19 losses or claims;

- Business Interruption Coverage
- General Liability Coverage
- Workers Compensation Coverage
- Directors and Officers Coverage

Policyholders should keep in mind that each situation is unique, based on the policy language, factual circumstances and applicable state law. As a starting point, policyholders should examine their policy language carefully to determine whether coverage may exist for COVID-19 related losses or claims.

Property Policies-Business Interruption Coverage

Business interruption coverage in general

Some policyholders might benefit from claims under business interruption coverage in their Property Policy in the wake of COVID-19, even though this kind of coverage is generally triggered where there is physical loss or damage. Courts vary on whether contamination rendering a building uninhabitable or unusable constitutes physical damage. Given that COVID-19 rendered buildings uninhabitable and unusable, the issue that may arise is whether COVID-19 contamination constitutes physical damage. We are aware of at least one case where a policyholder is suing its insurance carrier for business interruption coverage arguing that COVID-19 constitutes physical damage because the virus contaminates surfaces.

Policy exclusions must also be taken into consideration when determining coverage. After epidemics such as SARS, MERS, Zika, and Ebola, many insurance companies wrote in exclusions for infectious diseases. However, state legislatures might intervene and forbid these types of exclusions as a matter of public policy. For example, recently the New Jersey state legislature introduced [a bill](#) that would require insurance companies to cover business interruption losses as a result of COVID-19 despite the presence of these types of exclusions.

Given the level of uncertainty resulting from the pandemic, and the significant adverse financial impacts many businesses are facing as a result, the New York State Department of Financial Services (NYSDFS) issued [a letter](#) instructing insurance companies to provide policyholders and NYSDFS with an explanation of benefits letter to provide clarity around business interruption coverage under the policies at issue.

Contingent business interruption coverage

Some policyholders might benefit from contingent business interruption coverage in their Property policy, which is triggered when someone in your supply chain cannot perform due to a covered loss which in turn interrupts your business. In the case of the COVID-19 pandemic, businesses have certainly been impacted as a result of supply chain interruptions of third parties. Whether contingent business interruption coverage is available depends on policy language.

Off-premises business interruption coverage

This type of coverage is triggered where a service, such as electricity, water, sewage, communications, or gas, is disrupted leading to business interruption. We may see these essential services heavily challenged by COVID-19 impacts on the workforce and there may be adverse effects that have not yet reached businesses, but may be coming soon.

“Civil Authority” coverage

Some Property policies include “civil authority” coverage which covers losses as a result of a government or civil authority restricting access to the policyholder’s premises. Policies differ as to the terms of coverage including duration of coverage, whether the premises has to be damaged by a covered cause, and whether coverage extends broadly, such as when the civil authority restricts, hinders, impairs access, or narrowly, such as when the civil authority “prohibits” or “denies” access. Generally, civil authority coverage applies when there is a direct link between the civil authority’s order and the policyholder’s loss. For policyholders in localities where the state or local government has ordered a shutdown or curtailment of businesses to curb the spread of COVID-19 policyholders might recover under civil authority coverage.

General Liability Coverage

Businesses with general liability policies might be covered against third-party claims arising out of COVID-19. General liability policies typically cover third-party claims for “bodily injury” and “property damage” under “Coverage A,” and personal injuries, such as false imprisonment, under “Coverage B.” “Property Damage” is typically defined to include both physical injury to tangible property and loss of use of tangible property that is not physically injured.

Under Coverage A, businesses may be at risk for claims alleging that the business did not take proper precautions to mitigate the spread of COVID-19, thus resulting in bodily injuries. Princess Cruise Lines recently was sued by two of its passengers after the ship was quarantined because of a COVID-19 outbreak, alleging that the company did not take proper precautions to prevent the spread of the virus despite knowing that some passengers were infected. The occurrence giving rise to the claim must be “accidental” and there may ultimately be an inquiry whether companies knew and ignored risks, or whether the circumstances amount to an accident. Coverage claims will also have to address any potentially applicable exclusions to coverage under general liability policies.

In terms of liability under Coverage B, companies may be sued for false imprisonment as a result of improper or unwarranted quarantines.

Workers Compensation Coverage

Businesses that face claims from their employees who contracted COVID-19 in the course of employment should turn to workers compensation policies for coverage. Generally, workers compensation provides coverage for employees who were injured by accident or contracted a disease in the course of their employment. Many state statutes carve out coverage exceptions for “ordinary diseases of life,” meaning diseases that can be contracted by the general public. Whether insurers cover workers compensation claims for employees who contract COVID-19 through the course of employment is yet to be determined.

Directors and Officers Coverage

Businesses are also at risk of shareholder and securities suits, particularly in the context of disclosing the impacts of COVID-19 on business. The U.S. Securities and Exchange Commission (SEC) has been active in monitoring the impact of COVID-19 on publicly-traded companies, investors, and the market. On March 4, 2020, the SEC issued a press release, through which the SEC Chairman encouraged companies to provide investors with as much information as possible regarding COVID-19 impacts, plans, and risks. A class action lawsuit has already been filed against Norwegian Cruise Line alleging deceptive practices by the company in hiding the impacts of COVID-19 on the business, and subsequent stock losses.

If you have paid your premiums, you are entitled to all of the benefits your policies provide. In these challenging times, be sure to check all of your insurance policies for potential coverage.

FOR MORE INFORMATION

For questions regarding your insurance policy, and coverage, please contact Michael Goodstein (mgoodstein@vnf.com, 202-298-1923) or Anne Lynch (alynch@vnf.com, 202-298-1926) in our

Washington, D.C. office, and Brian Zagon (bzagon@vnf.com, 925-282-8015) or Allison McAdam (amcadam@vnf.com, 925-282-8011) in our California Bay Area office.

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