

NEWS ALERT**INSURANCE RECOVERY GROUP****When The Coronavirus Strikes, Insurance May Help**
Is there insurance coverage for losses related to the new Coronavirus?

By Rachel Snow Kindseth and Benjamin H. Nissim | March 12, 2020

The spread of the new Coronavirus (COVID-19) has caused stock markets around the world to fall as investors fear the economic impact that the disease will have on the global economy. Companies are looking at forced closures, employees are being sent home to work remotely, and mixed messages from politicians, business leaders, and the media have caused confusion throughout the public and private sectors.

It is plain that the virus has had and will continue to have a powerful impact on the global economy for some time to come. To mitigate the virus' economic harm, every business must ask whether its insurance program provides coverage for losses arising out of the Coronavirus. The answer to that question of course turns on the factual details underlying each loss and the language of the business's insurance policies.

Many commercial insurance policies potentially provide an avenue of recovery. The following discusses some of the more common insurance coverages and considerations with respect to making claims under these policies.

Business Interruption Insurance

Typical business interruption coverage can be found as part of a commercial property insurance policy. This coverage generally provides for the recovery of lost income and associated "extra expense" in connection with a "direct physical loss" or "physical damage" to insured property by a covered peril – such as business interruption related to a fire or other catastrophic event. Insurers likely will argue that these common business interruption provisions do not provide coverage because losses as a result of the Coronavirus do not implicate "direct physical loss" or "physical damage." Whether insurers are correct in this position will likely need to be tested in court and will require a highly fact sensitive inquiry.

Supply Chain and Contingent Business Interruption Insurance

Supply Chain and Contingent Business Insurance have developed as a result of the growing supply chain risk. These policies cover losses related to interruptions of deliveries of materials, part or supplies, and other goods. Contingent Business Interruption Insurance generally protects against interruptions to a company's business because of physical loss or damage to property of a "direct" supplier or customer within a specific geographic area. Supply Chain Insurance typically covers losses resulting from disruptions or delays with respect to certain products or suppliers.

Importantly, these insurance coverages often only provide coverage for losses suffered by a supplier that would ordinarily be covered in the insured's own first-party property policy. These policies may also contain exclusions related to bacteria and viruses or other "infectious diseases."

Civil Authority Coverage

In some instances commercial property policies may also extend business interruption coverage to losses arising from “civil authority” orders. This Civil Authority coverage is typically triggered when a governmental authority impairs or prohibits an insured’s access to its property as a result of physical damage to property at or nearby the insured’s location. Civil Authority coverage will provide insurance for business interruption losses, including additional (or “extra”) expenses, arising out of that governmental order. This insurance may be found as an additional coverage part or extension, or it may have been purchased on a manuscript basis to reflect your business’ individual needs.

Civil Authority coverage may require that the governmental order arise out of direct physical loss to covered property as provided in the broader commercial property policy. It may also provide coverage for situations where damage to adjacent property results in a government order that limits access to the insured property causing a business interruption. That said, these limiting conditions are not universal and the individual terms and conditions of the coverage must be examined closely to determine whether any insurance is available.

Commercial General Liability Insurance

If your business is open to the public, it may become subject to claims that its actions led to transmission of the Coronavirus to the public. For instance, claims for negligence arising out of the business’ failure to provide for proper controls, cleaning, or security to prevent exposure to Coronavirus at physical locations, failures to provide or upkeep sufficient air filtration or other environmental control systems, or injury arising out of wrongful eviction or imprisonment (e.g. forced quarantine on a cruise ship) are certainly possible. Commercial General Liability insurance (“CGL”) – policies that provide coverage for accidents resulting in third party bodily injury or property damage – are likely to respond to such claims.

If your business receives such a claim, remember that CGL policies often contain a duty to defend and you must report the claim and demand a defense promptly in order to satisfy claims reporting obligations.

CGL policies often contain any number of exclusions through which an insurer will attempt to limit coverage with respect to claims arising out of the Coronavirus. Common exclusion for claims arising out of a pandemic, bacteria, viruses, or “infectious diseases” and pollution are likely to be asserted by insurers to avoid coverage.

Event Cancellation and Nonappearance Insurance

As national and local governments in both the United States and abroad close borders, limit travel and restrict large gatherings, both major and smaller scheduled events have been and will continue to be cancelled. Insurance products specific to individual events are available to protect against such contingencies. These policies typically provide insurance for losses beyond the control of the insured, the event organizers, and attendees that result in cancellation, postponement, or similar limitations on the event.

If your business has such insurance, it is important that you act to limit or mitigate the losses associated with the cancellation or nonappearance. Mitigation efforts can take many forms including postponing or scheduling the event or limiting the number of attendees. In addition, the terms and conditions of the policy must be carefully considered. In some cases, policyholders may submit a claim because an event was cancelled out of concern for patrons or as a matter of public relations. Such a cancellation may not be covered because the cancellation was under the policyholder’s control and not the result of any travel restriction or other outside limitation.

Directors and Officers Insurance

Claims arising out of Coronavirus may also trigger coverage under a company’s Director and Officers (“D&O”) policies. Given the scale of losses experienced by investors over the last several weeks, public companies will likely face significant scrutiny from both investors and regulators in the coming months. Shareholder lawsuits alleging a company failed to act reasonably in response to the Coronavirus – such as alleging that a company’s directors or officers failed to properly institute supply chain contingencies or failed to disclose the scope of financial risk related to Coronavirus in required public filings – would likely be covered under D&O policies.

D&O policies may provide coverage for any of these “event-driven” claims, including providing coverage for alleged shareholder economic losses arising out of management decisions. As a consequence, it is important to review the terms and conditions of any D&O policies that your company has purchased if it is subject to a claim or regulatory inquiry related to management decision-making and the Coronavirus.

Coronavirus-Specific Policies

In addition to the typical business interruption coverage found in commercial property policies, the Insurance Service Organization ("ISO") has issued two forms which will provide certain coverage for Coronavirus related business interruption:

- 1) Business Interruption: Limited Coverage for Certain Civil Authority Orders Relating to Coronavirus; and
- 2) Business Interruption: Limited Coverage for Certain Civil Authority Orders Relating to Coronavirus (Including Orders Restricting Some Modes of Transportation).

According to ISO, these coverage forms modify coverage under certain business income and/or extra expense forms and relate to scheduled premises and scheduled dependent properties. The coverage is to be written for a period specified by the number of days, weeks or months, and an annual aggregate limit of insurance will apply, regardless of the number of occurrences. The endorsements are also subject to certain exclusions, including if the virus was spread or introduced intentionally and for any fines or penalties levied by any organization or authority. While you may not currently have this coverage, if you are interested in obtaining such coverage for the future, you should contact your insurance broker to see if this insurance is an option for your company.

* * * *

In addition to the policies discussed above, insurance coverage for personal and business losses arising out of the Coronavirus may also be available under other policy types such as Workers Compensation, Cyber Risk, Error and Omission, and Travel.

Ultimately an insurer's coverage obligation to its policyholder is contingent upon the terms and conditions of the individual insurance contracts. If you have questions about whether your current insurance policies provide coverage for losses arising out of the Coronavirus, do not hesitate to contact us.

If you have any questions about the information contained in this bulletin, please contact:

Marilyn B. Fagelson at 203.772.7725 or mfagelson@murthalaw.com

Rachel Snow Kindseth at 203.772.7774 or rkindseth@murthalaw.com

Benjamin H. Nissim at 203.653.5419 or bnissim@murthalaw.com

Marilyn B. Fagelson, Chair
203.772.7725
mfagelson@murthalaw.com

Terence J. Brunau
203.772.7785
tbrunau@murthalaw.com

George A. Dagon, Jr.
860.240.6039
gdagon@murthalaw.com

Michael J. Donnelly
860.240.6058
mtonnelly@murthalaw.com

David P. Friedman
203.653.5438
dfriedman@murthalaw.com

Rachel Snow Kindseth
203.772.7774
rkindseth@murthalaw.com

Benjamin H. Nissim
203.653.5419
bnissim@murthalaw.com

James F. Radke
617.457.4130
jradke@murthalaw.com

Emily McDonough Souza
203.772.7711
esouza@murthalaw.com

Andrew G. Wailgum
617.457.4006
awailgum@murthalaw.com

Kristen L. Zaehring
203.653.5406
kzaehring@murthalaw.com

With more than 100 attorneys in six offices throughout Connecticut, Massachusetts and New York, Murtha Cullina LLP offers a full range of legal services to meet the local, regional and national needs of our clients. Our practice encompasses litigation, regulatory and transactional representation of businesses, governmental units, non-profit organizations and individuals.

CONNECTICUT + MASSACHUSETTS + NEW YORK

© Copyright Murtha Cullina LLP. | This material is intended for general information purposes only

**MURTHA
CULLINA**
ATTORNEYS AT LAW

MURTHALAW.COM