

# Claims Advisory

## Coronavirus Policy Coverage Concerns

The recent outbreak of a pneumonia in Wuhan, China, involving a new or novel pathogen, the novel coronavirus (2019-nCoV), raises significant issues for businesses globally and in the region, and highlights risk, insurance, and related concerns regarding outbreaks and pandemics in general.

Health authorities have been coordinating with Chinese authorities, and global experts, to learn more about the virus, how it affects the people who are sick with it, how they can be treated, and what countries, organizations, businesses and entities can do to respond. However, as the virus is a coronavirus, which usually cause respiratory illness, health authorities have generally counselled to utilize similar techniques for prevention of influenza-type respiratory infections to combat its spread.

From a risk management standpoint, hospitality, food and beverage, travel-related, educational, and transportation industries have the highest risk in regard to these incidents, in general. Specifically, these would include the following types of business entities:

- Hotels/resorts.
- Theme parks and other entertainment establishments.
- Tourist related areas and/or attractions.
- Restaurants.



- Airports and other transportation hubs.
- Universities and other schools.

That being said, all businesses and commercial establishments (and, indeed, all persons) could, conceivably, be affected by any outbreak or pandemic particularly where a government or

locality orders closures or suspends services and/or transport. Obviously, this highlights the need for robust crisis response and business continuity plans.

With respect to insurance, pandemic and other outbreaks raise significant issues with coverage under various forms. Accordingly, this advisory will discuss the risk response and coverage issues in-turn.

## Policy Coverage Concerns

With respect to insurance, clients are advised to review their requisite cover particularly their Property Damage/Business Interruption (PD/BI) and Public Liability/CGL (CGL) and Employee Compensation (EC) policies. These would be the policies most likely to have any applicability to the current situation, barring and bespoke solutions that a client may have arranged, specifically.

### Property Damage/Business Interruption (PD/BI)

Many modern policy forms in use in the market will contain an “infectious disease extension” clause (the “ID Extension”) that will specifically write coverage for this event into the policy. Such clauses will add closure of your business, or premises, due to due to an “order of a competent public authority as the direct and sole result of . . . any infectious or human contagious disease . . .,” to the definition of “loss” for the purposes of business interruption cover.

Under a ID Extension it is imperative that a governmental order be the cause of your business or premises being shut down. In the absence of such an order coverage may not be afforded. As such, documentation of any governmental order must be obtained and preserved for use in establishing your insurance claim.

An additional complication of coverage are certain policies where there is language which requires that the infection for which the closure occurs (again via government order) is actually “present” at the location or upon the premises insured. Obviously, in such circumstances clients must be certain of their language requirements and that they have adequate documentation from authorities of: 1) when a closure is ordered; and 2) that such a closure is the result of the authority finding that the virus is actually present in the vicinity, or location, where it is required for policy coverage. Closing your business as a precaution, without a virus actually present, may endanger coverage, so clients must tread carefully in this regard.

Another complication is the measurement of trading losses as Insurers would likely factor in the wider reduction in trade across the country/region and seek to adjust any trading losses of an Insured against the current wider economic downward trends post virus outbreak.

### Commercial General Liability (CGL)

Generally, CGL policies will respond to pandemic events if the insured has been negligent in, or found liable for, failing to protect other persons/third parties from infection where they have a duty to do so. We consider the possibility of such liability to be fairly difficult to prove if clients act reasonably to safeguard persons for which they have a duty to protect. However, such coverage could be triggered if liability is legally present or established. The wording of the coverage under these policies generally reads as follows:

Insurers will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury”, “personal injury” or “property damage” to which this insurance applies.

As can be seen from the plain language above, “liability” is necessary for this coverage to be triggered. If there is liability, then the policy will respond subject to its limits. There are no, usual, exclusions for infectious disease liability under CGL policies (but, of course, individual, particularly manuscript, policies should be reviewed for any deviation from this norm). That being said, the goal here should be to minimize liability and preserve policy proceeds by ensuring that all reasonable precautions against the spread of disease and protection of customers, or other third parties, is achieved.

Use of reasonable precautions will decrease liability and/or severity of any loss due to failing to prevent the spread of the disease where you have a duty to do so. Accordingly, the risk response and review under the previous section of this advisory, particularly, subject to the rules of the relevant Departments of Health in each country, should be undertaken at all times.

### Employer’s Liability (EL)

EL is one of the insurance lines which would possibly respond to losses arising from the virus. For instance, if the virus outbreaks at a work environment and affects an employee or a group of employees, courts might favor the employees and trigger the policy in question on the basis of employer negligence, if proven. However, qualification of an infectious event at the work place might be a challenge to establish in a court of law in order to avail compensation.

## Conclusion

From an insurance perspective, knowing your policy language is an absolute necessity. Certainly, in this area, with the differences in form, language and cover, detailed study is imperative. Marsh can, of course, assist all of its clients if they need clarity with the scope of cover in this regard.

Assistance in documentation of your claim, whether it is from a business interruption perspective, or a liability perspective, or even an employees' compensation perspective, is available. Our technically proficient team is here to help ensure that your claim is quickly, and fully, responded to by your applicable insurance policy.

Please contact your Marsh representative if you wish to obtain further information, or if you wish to obtain details of our full service risk advisory review regarding these current events from technical risk, business resiliency, and insurance perspectives.

Essentially, this is a situation where "forewarned is forearmed" and we encourage all clients to call Marsh if they have any questions or if you have any other insurance coverage, claims, and risk advisory needs.

For more information please contact your Marsh representative or a colleague below.

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