

Claims Advisory

Coronavirus Policy Coverage Concerns in Asia

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, organisations, 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 utilise 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 Workers' Compensation (WC) policies. These would be the policies most likely to have any applicability to the current situation, barring any bespoke solutions that a client may have arranged, specifically.

Property Damage/Business Interruption (PD/BI)

Many property policies will contain an "infectious disease extension" clause (the "ID Extension") that will specifically write coverage for outbreaks emanating from the "Insured Premises" into the policy.

Such clauses will add closure of your business, or premises, due to an "order from 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 an ID Extension it is necessary that the competent public authority 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 competent public authority order must be obtained and preserved for use in establishing your insurance claim.

Typically in Australia, for coverage to be triggered in policies, it requires that the infection, disease or virus for which the closure occurs (again via competent public authority order) is actually "present" at the location or upon the premises insured (and in some instances within a radius (15 kms for example) from the Insured premises). Obviously, in such circumstances clients must be certain of their policy 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 be prudent management to ensure safety of customers and employees, but does not trigger cover under the policy, so clients must be careful in this regard.

Another complication is the measurement of trading losses as Insurers will 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 may respond to pandemic events if the insured has been negligent in, or found legally liable for, failing to protect other persons/third parties from infection.

The term "legally liable" is very broad although it envisages civil liability rather than criminal liability. Legal liability can arise at common law or under statute or a contract with a third party. Most common law liabilities involve a negligent act or omission, that would need to be proved.

We consider the possibility of such liability to be fairly difficult to prove if insured 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/operative clause under these policies typically read (in summary) as follows:

Insurers will pay to or on behalf of the Insured all sums that the insured becomes legally liable for Compensation in accordance with the law of any country or assumed under contract or agreement for Personal Injury or Property Damage.

Coverage is further qualified by:

- first happening during the Period of Insurance;
- within the Territorial limits
- in connection with the Insured's Business or Products

As can be seen from the coverage/operative clause, "legal liability" is necessary for this coverage to be triggered. If there is liability, then the policy will respond subject to the Policy's limits.

A CGL policy does not routinely include an infectious disease exclusion, however, the policy should be reviewed to ensure any deviation from this norm, particularly the more bespoke and manuscript wordings.

That being said, the goal for all insured's should be to minimise liability and preserve policy proceeds by ensuring that all reasonable precautions against Personal Injury spread of disease and protection of customers, or other third parties, is achieved.

Most CGL wording will impose obligations on the Insured, which will typically be referred to as either 'Insured's Duties' or "Reasonable Precautions" (usually be found within the Conditions section of the policy). In both instances, it is a Condition of cover, that the Insured must take all reasonable steps, and at their own expense, prevent a Personal Injury, in this case spread of disease. Failure to do so could prejudice a claim.

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.

Workers' Compensation (WC)

WC coverage is another avenue where coverage could be afforded for losses arising as a result of the virus, coverage under WC can be broad and Marsh would expect that courts will endeavour to find coverage where an employee, through no fault of their own, was exposed to the coronavirus at work in a demonstrable way. Again, the exposure would have to take place in an employment setting (as per local regulation definitions) and in the case of an employee contracting the virus elsewhere they may not be afforded cover under the policy. Again, documentation of any infectious event, or exposure at work, would be necessary to ensure that the employee receives medical care and compensation through your WC policy.

For more information
please contact your
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Conclusion

From an insurance perspective, knowing your policy conditions/exclusions are an absolute necessity. Certainly, in this area, with the differences in policy wordings, and cover, therefore a detailed study of your wording 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 workers' 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.

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