

# Client Alert

February 2020

## For Businesses Suffering From Coronavirus Losses, Insurance May Be the Remedy

The World Health Organization (WHO) has designated the coronavirus an international public health emergency. With nearly 500 people dead and nearly 25,000 infected across 27 countries, the outbreak increasingly looks like a pandemic. Hundreds of Americans have been evacuated from China, and the US Centers for Disease Control and Prevention (CDC) has issued a Level 3 travel warning, advising that all nonessential travel to China be avoided due to the ongoing outbreak.

In addition to the health concerns, world economies are on alert. Businesses worldwide have already been affected. Travel and events have been postponed or cancelled. Supply chains have been disrupted. For instance, 10 percent of the worldwide supply of flat panels for televisions and other electronic devices are manufactured in Wuhan, China, the virus's epicenter, suggesting an imminent impact on electronics manufacturing, among other sectors. Meanwhile, automaker Hyundai just announced that it will idle plants in South Korea, pointing to a shortage of components due to the coronavirus outbreak. In other sectors, retailers have simply closed their doors. For example, Starbucks announced the closure of more than 2,000 cafes in China, while McDonald's has closed 300 stores in Hubei Province. The financial impact is mounting and affected businesses are looking for ways to offset losses. Insurance may provide a source of relief, with a variety of coverages potentially responsive to losses associated with the outbreak.

### Business Interruption and Supply Chain Disruptions

Business disruptions due to the coronavirus can create financial problems for policyholders. Commercial property policies cover losses of business income. Typically, however, the interruption must be caused by physical damage to covered property. In certain instances, coverage may be available where the interruption is due to other causes, such as orders from a civil authority. For instance, access to the insured's business may be prohibited by federal emergency management directives, such as those provided under the Stafford Act, the Homeland Security Act of 2002 and the National Incident Management System. On the state level, disaster management directives, such as those provided under the Texas Disaster Relief Act and the powers of the Texas state government upon the declaration of "disasters," specific "public health disasters" and "emergencies," and similar statutes in and powers of other states, may trigger business interruption coverage. Even where the insured business is interrupted by a civil authority order, however, most but not all property policies require that the civil authority order result from some physical damage to property. Importantly, the law is not settled on what constitutes a "physical loss," as cases throughout the country hold that contamination and other incidents that render property uninhabitable or otherwise unfit for its intended use constitute a "physical loss" for the purpose of business interruption coverage. Whether there is "physical loss" must be determined on a case-by-case basis. Thus, while traditional physical property damage associated with the coronavirus may be unlikely, it is important to pay close attention to any action by civil authorities and the particulars of each case, and review the specific language of each policy since even subtle variations in policy wording can make a difference between a covered or uncovered claim. And, where civil authority coverage is not available, policyholders should carefully examine all other available insurance to determine whether coverage may be available there.

As noted above, supply chains are already feeling the impact of coronavirus as manufacturing of critical components in China ceases, transport of completed goods slows to a crawl and suppliers, transporters and customers face facility shutdowns, quarantines or other workforce disruptions. When facing losses caused by supply chain issues, policyholders may look to their contingent business interruption (CBI) coverage for relief. CBI coverage is typically purchased as a property insurance extension. The extension addresses “contingent” losses, or losses that involve third parties on whom the policyholder’s business is dependent. CBI coverage is generally triggered when a supplier or key customer suffers a direct physical loss, which, in turn, disrupts the business operations of the policyholder, without any requirement that the policyholder itself suffer physical damage. CBI insurance can be an important risk management tool in the face of a public health emergency like the coronavirus.

## **Event Cancellation Insurance**

Many businesses and organizations hosting events, particularly those involving attendees, performers or presenters from China, may cancel or postpone events due to concerns about the virus. Impacted businesses may be able to recover under event cancellation insurance policies for, among other things, lost profits and revenue; amounts paid to reimburse vendors, ticketholders or other third parties due to the cancelled event; and additional amounts that must be spent to host the event at an alternate time or place. Coverage is also potentially available for out-of-pocket or unexpected costs, lost advertising, lost ticket sales or other contractual obligations a business must pay as a result of the cancelled event. However, policyholders should be on the lookout for policy exclusions for communicable or reportable diseases, and for restrictions limiting coverage to necessary cancellations caused by government order.

## **General Liability Insurance**

Commercial general liability (CGL) policies provide coverage for liability to third parties for bodily injury and property damage, as well as claims concerning privacy and other personal injuries. With thousands suffering bodily injury due to the coronavirus, the procedures that businesses implement to warn and protect against exposure to the virus may become a potential liability. For instance, businesses in the retail, travel, entertainment and hospitality businesses may face claims by customers alleging that the companies were negligent in failing to warn of or protect against the risk of exposure to the outbreak. These businesses may look to their CGL policies to provide coverage for such claims. Insurers may seek to rely on exclusions for exposure to viruses, bacteria or pollutants but such exclusions must be evaluated on a case-by-case basis and a myriad of arguments are available to policyholders to overcome such exclusions.

## **D&O Insurance**

In addition to third-party claims targeting businesses directly, a company’s directors and officers may be subjected to shareholder suits alleging that unreasonable actions (or inaction) in response to the coronavirus caused the company economic loss. For example, federal securities laws may require certain disclosures by publicly held companies potentially affected by the spread of coronavirus. As a result, there is a risk that shareholders may allege executives and management failed to disclose risks posed by the coronavirus to the business’s financial performance, failed to observe protocols recommended by authorities or failed to develop adequate contingency plans. Directors and Officers (D&O) policies may provide coverage for these types of costs and liabilities. Although D&O policies generally exclude claims for bodily injury, such exclusions should not preclude coverage for shareholders’ economic loss claims that allegedly stem from management-level decisions. As with other potentially implicated coverage, the availability of coverage may turn on the precise wording of the policies at issue.

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Insurance coverage may be available for coronavirus-related losses under many types of policies. In

addition to the policies discussed in this alert, other potentially applicable coverages include insurance for cyber risks and data breaches, product recalls, worker's compensation, employment practices, professional liability, travel-related risks and other exposures. For each policy, coverage will turn on the specific language of the policy and the factual circumstances at issue. Policy conditions, such as the timing of notice to the insurer, should be carefully evaluated as events develop. For businesses suffering losses and looking to navigate or obtain coverage for the coronavirus, having experienced coverage counsel can be invaluable.

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