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Barriers To Insurance Coverage For COVID-19 Impact

By Amy Churan and Sean O'Connor (March 23, 2020, 5:43 PM EDT)

Since it first emerged in China's Hubei province in late December 2019, COVID-19 has spread across the globe with surprising speed. As of March 23, the coronavirus responsible for COVID-19 has infected more than 341,500 individuals and left nearly 15,187 dead. As governments and health organizations scramble to enact measures to contain the disease, fear and uncertainty abound over the fate of the global economy.

Economists first shuddered at the potential global economic impact of China's decision to quarantine nearly 60 million of its citizens in the Hubei province — one of the country's major manufacturing hubs. Now cities across the world are enacting social distancing measures, countries have implemented international travel bans, and an entire nation is under quarantine.

Even in those corners of the globe that have not yet enacted restrictions, consumers have retreated. And in the face of mounting public fear and increased measures to stop the spread of disease, unprecedented business interruption losses are imminent.

Given the scope and severity of economic disruption, organizations will likely look to insurance in an effort to recoup their losses. But many traditional insurance products — particularly property and business interruption coverages — will not respond to these losses, as pandemic-related claims will lack the physical damage required to trigger coverage. Additionally, broadly worded exclusions and other restrictive policy language may further limit the overall exposure of COVID-19 claims.



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Specialized Coverages for Infectious Diseases

Although it was much smaller in scale, the 2002-2003 Severe Acute Respiratory Syndrome outbreak is an instructive starting point for analyzing potential COVID-19 business interruption claims.

Similar to COVID-19, SARS is a respiratory disease caused by a coronavirus that first infected humans in southern China in 2002. At the conclusion of the SARS outbreak in July 2003, the disease had spread to more than 8,000 people and killed 774. The World Bank has estimated that the outbreak cost the global economy \$54 billion.

Notably, there are no published cases in the U.S. finding, or even addressing, potential

coverage for the SARS outbreak under traditional first-party property policies.

Outside of the U.S., one often-referenced SARS insurance matter involved the specialized coverage provided to the Mandarin Oriental Hotel in Hong Kong. The hotel secured a \$16 million settlement for its business interruption losses that it claimed fell within the terms of its infectious disease coverage.

In contrast, the court in the published Hong Kong case involving New World Harbourview Hotel found there was no coverage for the insured's business interruption losses that did not meet the specific terms of the policy's "notifiable human infectious or contagious disease" provision.

Following the initial SARS outbreak, some carriers expanded their traditional first-party property policies by offering special endorsements and coverages for losses stemming from infectious or communicable diseases, as well as government-ordered cessation of operations following a viral or bacterial outbreak.

In response to the recent COVID-19 outbreak, the Insurance Services Office has now created two endorsements that provide coverage for business interruption losses resulting from civil authority orders related to the disease.

Traditional Trigger: Physical Loss or Damage

Absent a specialized coverage for infectious diseases, there are numerous hurdles to coverage under traditional first-party property policies. As a preliminary matter, property insurance policies and the business interruption coverages often provided by them require physical loss or damage to insured property resulting from a covered peril. Without physical loss or damage, business income loss associated with a suspension of operations will not trigger coverage in the vast majority of jurisdictions.

Contingent Business Interruption

Business owners may also look to their contingent business interruption coverage for relief from their COVID-19 losses. Contingent business interruption insurance protects against business losses sustained by the insured that result from the disruption of the business of the insured's supplier or customer.

The shutdown of the business of the supplier or customer must have been caused by physical loss or damage of the type that is covered with respect to the insured's own property. Thus, the physical damage trigger would, again, likely bar coverage.

Civil Authority

To the extent that there is civil authority coverage in an insured's policy, it often only applies when business operations are suspended due to an order of civil authority that prohibits access to the premises as a result of physical loss or damage by a covered peril. To the extent that the civil authority coverage requires that access must only be impaired, and not prohibited, there may be additional geographic limitations and significant sublimits on such coverage.

Other Limitations

Some policies ensure that infectious diseases are excluded from property and business interruption insurance policies with a belt and suspenders approach. For example, in addition to the insuring clause requirement of physical damage, some policies also exclude contamination arising from any cause whatsoever. Others exclude microorganisms that pose an actual or potential threat to human life; and some specifically exclude viruses.

The Answer: Specialized Coverage Untethered From Physical Damage

Physical loss or damage requirements inherent to traditional first-party property policies are an obstacle to coverage for claims related to COVID-19.

Two decades of lessons learned from previous infectious diseases and viral outbreaks indicate that the best way for organizations to ensure coverage for COVID-19 going forward is to purchase a specialized policy or endorsement for infectious or communicable disease that is untethered to the traditional notions of physical damage.

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