

Association for Corporate Growth

Insurance Coverage for Coronavirus Losses

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Third Party Coverage: Commercial General Liability

- 1. Claims alleging bodily injury or property damage arising out of an occurrence (Coverage A)**
 - Customer claims for bodily injury due to exposure to COVID-19
 - Negligent policies or procedures resulting in exposure, e.g., failure to implement strict guidelines to prevent exposure; failure to implement a contingency plan.
 - Product liability: e.g., air filtration and recirculation equipment.
- 2. Claims for personal or advertising injury (Coverage B)**
 - Wrongful eviction or imprisonment
 - Constitutional claims involving the quarantine
- 3. Coverage Issues**
 - Is there bodily injury?
 - Is there an “occurrence” (accident including continuous exposure to harmful conditions)?
 - Defense vs. Indemnity



Third Party Coverage: D&O

1. Claims alleging directors or officers breached their fiduciary duties

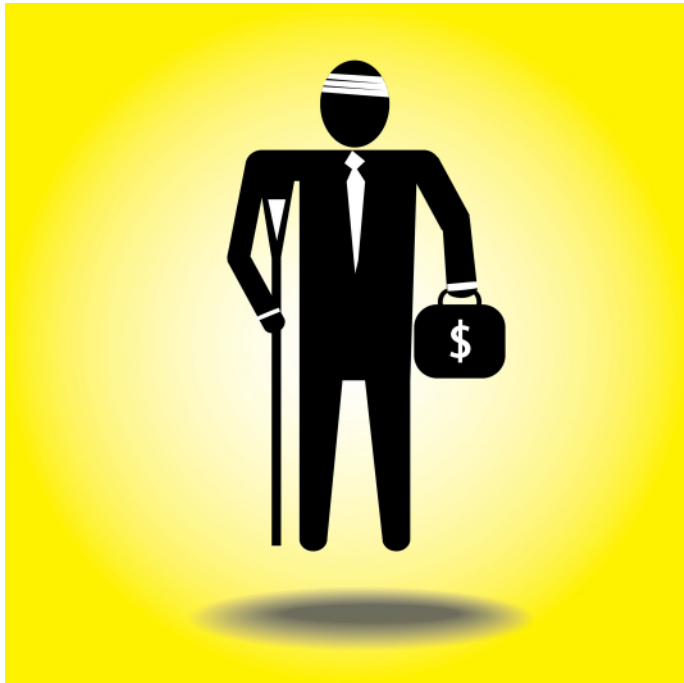
- Shareholder claims
- Inadequate preparation or response to the outbreak
- Inaccurate financial statements
- Failure to properly account for risk of outbreak
- Failure to procure coverage for disease

2. Coverage Issues

- Bodily injury exclusions
- Capacity (whether the allegedly wrongful acts were committed in the individual's capacity as a director or officer)



Third Party Coverage: Workers' Comp/Employer Liability



1. Worker's Compensation

- Employee injury in the scope of employment
- Not work-related condition; employee was at no greater risk than the general public.
- Proof of exposure at place of employment or associated travel.

2. Employer Liability

- Claims by workers not covered under workers compensation laws
- Claims for additional damages (other than medical bills and lost wages)
- Claims for loss of consortium

First Party: Property & Business Interruption

- **Property Damage** (direct physical loss or damage to property)
- **Business Income and Extra Expense** (loss of business income and extra expense due to suspension of operations)
- **Civil Authority** (loss of business income and extra expense due to an order restricting access to insured locations)
- **Contingent Business Interruption** (loss of business income and extra expense due to interruption of the supply chain)
- **Leader Property** (loss of business income due to damage to a nearby property that attracts business)



First Party Coverage: Property/BI Coverage Issues

1. Direct physical loss or damage to property

- Is physical alteration required?
- Does physical loss include loss of use?
- Burden of proof is on the policyholder

2. Pollution exclusions

- Is the virus a contaminant?
- Coverage offered via separate policies for separate premium; sometimes will include business interruption



First Party Coverage: Property/ BI Coverage Issues (cont'd)



3. Virus exclusions

- Added roughly 15 years ago, in response to the Avian bird flu scare, as a standard form (ISO COP 01 40 07 06)
- "We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease."

4. Total suspension of operations

- Do operations have to stop completely?
- Mitigation of damages vs. slowdown

First Party Coverage: Reps & Warranties Insurance

1. Exclusions and/or Changes to Definition of Loss

- Example: Loss arising out of or relating to the COVID-19 disease or the SARS-CoV-2 virus, or any evolution thereof.
- Example: Loss arising from or relating to business interruption or other business downturn solely to the extent such interruption or downturn arises out of or relates to the Coronavirus including (any COVID-19 illness) or any government or other regulatory sanctioned response thereto.



2. Underwriting & Diligence

- COVID-19 treated as an area of “heightened risk”
- How will COVID-19 affect the target? Customer demand, supply chain issues, workforce health?

Recommendations

Make a claim now

Document your losses

Seek qualified representation

**Don't take no for an answer until
you've gotten a coverage
opinion from qualified counsel**



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