

# Risk International Insurance Update:

## How will this be impacted by COVID-19?

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### Claim Coverage

There are very few, if any, instances where your policies will provide insurance coverage to respond to a COVID-19-related claim. Insurers largely excluded coverage for these types of events after the viruses of the early-2000's. State insurance agencies are closely monitoring claim activity related to the virus, and should anything change (i.e. should states begin recognizing COVID-19 as a covered disease under worker's compensation statutes, which we do not believe is likely), we will address that with you.

As such, claim frequency is not expected to be impacted. Whenever there is a coverage question, we can get involved in determining whether to submit the claim. Please do not hesitate to reach out to discuss any coverage issues that come up. Below please find a coverage, by coverage review of policies that could be implicated at this time.

### Insurance Market

As of now, little impact is being seen in the insurance market. Insurers are continuing to issue quotes, even as many in the industry are working remote. Most of the industry is already equipped and flexible for working remote, so we expect this to continue for the duration. You may expect some lag in the responsiveness of some underwriters, so it would be prudent to build some extra time into the marketing process to ensure timely renewals and placements.

We are keeping a close watch on the effects on pricing, and we have not noted any instances of predatory pricing or price gouging. Given that we were already facing a hardening market on most lines, current market estimates hold steady. Any estimated pricing we or the brokers have provided recently are still expected to fall within those ranges.

The industry is well prepared for this type of event and is still very well capitalized (perhaps the best it's ever been). The industry is certainly more than it was in past economic events (9/11, 2008 Recession, etc.).

We're hopeful that carriers will actually start writing new business with bond returns slowing. The carriers performed well financially in 2019 and will need to reach booking goals and targets. Again, we will continue to stay close to any developments and will stay close in touch with our clients.

### Coverage Review

You have many different insurance policies in many jurisdictions that may / may not cover certain exposure to loss. Following is a brief summary of the main coverages that might come into play. Unfortunately, at this time there is not a clear path to recovery on any line of coverage as the impact noted below is due to a general slowdown in business activity, which is not a covered cause of loss.

### Property Policy

#### Clean-Up and Business Interruption Coverage

The policy responds to clean-up costs and loss of business income, but it would have to come from property damage due to a direct physical loss from a covered peril. If a facility was shown to be contaminated with COVID-19, needed to be cleaned, and was shut down while being cleaned, those are the types of losses that would be covered under a property policy. The likelihood of a covered peril from physical loss from COVID-19 is low. For business income purposes, as soon as the facility was cleaned and could go back on line, the period of indemnity would be over. In a lot of these instances, the cost to clean up and the period of time the facility would need to be closed for that clean up would most likely fall under the policy deductible time waiting period.

Another scenario is where, because of a government order or your own business decision, you close a facility. In those circumstances, if there is no physical damage to the facility, the associated loss of revenue resulting from the shutdown is probably not covered under the property policy. Unfortunately, most businesses will end up with interruptions under the latter scenario.

## Property Policy - continued

### Clean-Up and Business Interruption Coverage

You may come across some white papers on this topic discussing “communicable disease coverage.” This is a coverage that businesses with a specific exposure to communicable disease (i.e. legionnaires disease) might purchase (i.e. Hospitals, Casino/Hotels, Cruise Lines, etc.). This is not a typical coverage purchased by manufacturing/service/contractor companies.

## Employer's Liability

If an employee contracts COVID-19 through work or work-related travel and claims that the infection is a result of the employer's negligence, the employee may sue under employer's liability. If a spouse, child, parent, brother or sister of that employee is infected by the employee (known as a third-party-over action), that family member could also make a claim through the employer's liability coverage or the general liability policy (see “General Liability” below). This highlights the importance of restricting essential or non-essential travel during the upcoming weeks.

## General Liability

General Liability coverage is very broad. It covers bodily injury and property damage to third parties for which you are legally liable. Aside from the third-party over claims noted above, the main other foreseeable scenario under which the company could be legally liable is for allegations of negligence from failing to protect a customer and/or invitee from being exposed to the virus. Even if the company isn't liable, the GL policy still provides coverage for legal expenses incurred while defending a claim (subject to policy retentions). Outside of those scenarios, there are not many other foreseeable instances that would trigger coverage under a GL policy.

## Workers' Compensation

Workers' compensation is a statutory insurance coverage, so terms of coverage are determined by state law and vary state-by-state. In general, for a disease or illness to be considered a WC claim, it has to result from an employee's “occupation.” Roughly speaking that means:

- It arose in the course of business.
- It is proven to be the result of a workplace exposure.
- It is “peculiar” to the employee's work, meaning that the disease is found exclusively among or presents greater risk for certain employees (i.e. nurses or doctors working in a hospital).

On its face, it would be difficult for manufacturing employees to have a work comp claim resulting from this virus. That doesn't mean that claims won't be filed. If an employee wishes to file a claim for COVID-19, we will want to obtain a copy of the test results, report the claim to our third-party claims administrator, and contact the legal and risk management departments so that the claim can be investigated, and we can address preventive measures. More than likely, compensation for employee medical expenses and lost income would come through a corporate employee benefit program or government healthcare scheme.

## Business Travel Accident and Foreign Voluntary Workers' Compensation and Employer's Liability

If you have foreign subsidiaries or employees traveling to, or employed in, a foreign country, those employees may be covered through company travel insurance policies or foreign liability policies. Business Travel Accident policies provide accidental death and dismemberment benefits for employees while traveling on company business, but they typically exclude illness or sickness, unless it is a direct result of a covered injury. There may also be coverage if the employer is held to be legally liable to cover damages for illness.

A foreign casualty program will usually include coverage for foreign voluntary workers' compensation (FVWC) and employer's liability. FVWC usually extends state- or country-of-hire benefits for covered injuries. Foreign Employer's Liability will typically include a limit of liability, per employee, event, or in the aggregate for endemic disease only. The World Health Organization has classified COVID-19 as a global health emergency, and thus the employer's liability coverage would likely not apply. However, two instances where the coverage may apply:

- For benefits resulting from contracting the illness during employment under foreign voluntary workers' compensation, subject to the state or country-of-hire benefits, if applicable.
- For repatriation or evacuation services to move the injured employee to their home country, and in some cases, with their family and/or dependents.