

Lawyer Insights

For Business Suffering From Coronavirus Losses, Insurance Coverage May Offer a Remedy

By Walter J. Andrews and Cary D. Steklof
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The World Health Organization has designated the outbreak of the 2019 Novel Coronavirus, dubbed Covid-19 on Tuesday, an international public health emergency. The outbreak is not confined by national borders and increasingly looks like a pandemic, with more than 1,300 people dead and 64,000-plus infected across 26 countries.

Hundreds of Americans have been evacuated from China, and the U.S. Centers for Disease Control and Prevention has issued a Level 3 travel warning, advising that all nonessential travel to China be avoided due to the ongoing outbreak.

As a hub for international travel and tourism, South Florida businesses are hardly immune from the economic consequences of this epidemic. Around the world, travel and events have been postponed or canceled and supply chains have been disrupted.

For example, 10% of the worldwide supply of flat panels for televisions and other electronic devices are manufactured in Wuhan, China (the virus' epicenter), suggesting an imminent impact on electronics manufacturing. Automaker Hyundai announced that it will idle plants in South Korea due to a shortage of components. Starbucks announced the closure of more than 2,000 cafes in China, while McDonald's has closed 300 stores in China's Hubei province.

Just as South Florida had to deal with the impact of the Zika virus several years ago, the financial toll is mounting and affected businesses are looking for ways to offset losses. Insurance may provide a source of relief, and a variety of coverages may respond for 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 insurance policies cover losses of business income, but frequently require some type of 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. Even where the insured business is interrupted from a civil authority order, however, many property insurance policies require that the civil authority order result from some physical damage to property.

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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 unfit for its intended use are sufficient. Whether there is “physical loss” must be determined on a case-by-case basis under the facts and applicable policy language

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 coronavirus. 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, ticket holders or other third parties due to the canceled 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 canceled event. But policyholders must still be on the lookout for policy exclusions for communicable diseases and restrictions limiting coverage to necessary cancellations due to a government order.

General Liability Insurance

Commercial general liability insurance 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 coronavirus may become a potential liability.

For example, 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 an individual basis. A myriad of arguments are available to policyholders to overcome these provisions.

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 the 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’ financial performance, failed to observe protocols recommended by authorities, or failed to develop adequate contingency plans. Directors and officers insurance policies may provide coverage for these types of costs and liabilities.

Although such 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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No matter the type of insurance policy under which a business seeks coverage for coronavirus-related losses, coverage will depend on the specific policy language and 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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