



## TAKING INVENTORY OF INSURANCE COVERAGE: COVID-19

RHSB has conducted a broad review of how different insurance products may respond and what you can do from a risk management perspective, given COVID-19 (Coronavirus) concerns. As a result of the SARS outbreak in the early 2000s, many carriers now exclude epidemics from various types of insurance policies. Subsequently, coverage may still be available depending on the policy, so always rely on the actual language in your specific insurance contract.

*See below interpretations of how various lines of coverage may reply to potential claims scenarios brought forward resulting from COVID-19. Please note, this review is intended to be general in nature versus industry specific and there could be other insurance that applies.*

### PROPERTY AND BUSINESS INTERRUPTION

Standard commercial property insurance policies are unlikely to respond, as there is no physical damage to insured property. In large, without physical damage, business interruption coverage would not be triggered.

Most property insurance policies do not provide coverage (including Business Interruption) resulting from a communicable disease outbreak. For coverage to apply, there must be a “covered cause of loss”. Contamination by disease is rarely a covered cause of loss. In fact, most property policies contain one or more of the following exclusions:

- Contamination – definition commonly includes a virus, bacteria, pathogen and/or disease causing agent.
- Microbes – an organism that causes infection or disease.

Many commercial property policies provide coverage for business interruption losses sustained when a civil authority restricts access to an insured premise. This coverage typically requires physical damage to property from a “covered cause of loss” as well as contains the same exclusions for contamination by disease as mentioned above.

What to do in the event of a claim:

- Prepare details surrounding the direct physical loss to your location. It will be necessary to provide proof there was one or more confirmed positive COVID-19 diagnosis(es) at your location.
- Retain invoices related to the loss of business associated with your location being closed or impaired, along with costs associated with sterilization and disinfection, and any extra expenses you incurred.
- Provide documentation surrounding any governmental authority prohibiting access or requiring a restriction and/or closure of your business.



## CARGO AND SUPPLY CHAIN

We anticipate a large number of cargo and supply chain losses as a result of the Coronavirus outbreak. Policy holders will experience some of the same hurdles as seen under a property policy. Without physical damage, there will be no coverage trigger and therefore losses will be difficult to recover. While some policies have an extension for disease-related delay, the coverage grant is often narrow in focus.

A specialized policy is available for supply chain exposures; mostly used for just-in-time manufacturing. These policies are subject to sizeable minimum premiums. The intent is to cover business interruption due to delayed inventory. One such policy trigger is the World Health Organization declaring a Public Health Emergency of International Concern. The underwriting process is rigorous, and often exposures are limited by exploring and reducing potential bottlenecks.

What to do in the event of a claim:

- For a supply chain claim, document the loss of sales that resulted from the interruption and explore all possible ways to describe your claim in order to trigger coverage.

## WORKERS' COMPENSATION

Policies provide benefits to employees who have contracted an illness that qualifies as an occupational disease under state law. A complicating factor is that each state sets the rules for its own workers' compensation system; however a commonality is that all states require the following factors as a basis of coverage:

- The injury or illness must arise out of and in the course and scope of employment.
- The condition must be linked to a workplace exposure.
- A worker must be able to prove their employment put them at an "increased risk" of contracting a disease.

The following exclusions are likely to apply as determined by states and/or case law:

- Communicable diseases such as the common cold and flu are not recognized as work related conditions.
- Third party claims such as a vendor or customer alleging they contracted the illness through one of your employees (or your business) is not covered under a workers' compensation policy.

Example of a Non-Covered Claim:

During a measles outbreak, an onsite administrative support employee noticed symptoms while at work. Employee was later diagnosed with measles and workers' compensation benefits were denied because there was no link to employment. As a result, the infected employee put other employees at risk by bringing the disease to the workplace. The other employees' measles-related workers' compensation claims were not covered either because it was found those employees had not been put in a position of greater risk than that of the general public.



What to do if you believe an employee has been placed at an increased risk and/or tested positive for Coronavirus:

- Isolate sick employee and send them home immediately.
- When in doubt, you may consider reporting the claim to your workers' compensation carrier.
- Keep in close (phone) contact with your employee who may have been exposed to the Coronavirus.
- For further guidance please call your RHSB service/claims team.

## **FOREIGN VOLUNTARY WORKERS' COMPENSATION**

Policies typically provide state or country-of-hire benefits for employees working outside of their home country, covering bodily injury by accident or disease (including endemic disease) when arising out of and in the course and scope of employment. Policies also frequently include repatriation coverage in the event an employee needs to be evacuated from any country. Majority of these policies offer a global medical assistance hot-line helping extract your employees from potential hot-spot regions.

When and Where Does this Coverage Apply:

- Short-term business travel for covered employees.
- Long-term assignment outside of the United States for covered employees.
- Travel outside the country of origin (the U.S. or another country) for covered employees.

## **GENERAL LIABILITY**

General Liability policies cover claims involving bodily injury and property damage resulting from your products, services and operations. Policies are designed to protect businesses against third party claims for bodily injury resulting from harmful conditions and could cover illness involving third parties. General Liability policies usually provide legal defense against such claims.

The Following Exclusions are likely to Apply:

- Communicable Disease exclusions - claims "arising out of the actual or alleged transmission of a communicable disease."
- Pollution exclusions – Standard General Liability policies define pollution as, "...any irritant...", though case law is split as to whether viruses are pollutants.

Providing liability will be a major challenge for claimants therefore initial claims investigation is critical. Additionally, understanding contractual risk transfer is important to assign liability and provide indemnification related to a virus.

## **ENVIRONMENTAL/POLLUTION**

Businesses could incur disinfection costs and might be forced to temporarily close by governmental authorities. Coverage could be triggered depending on policy language. Policies typically require that locations be scheduled for coverage to apply.



## DIRECTORS & OFFICERS LIABILITY

Directors and Officers policies exclude coverage for Bodily Injury/Property Damage (BI/PD). Some exclusions are absolute, whereas others are more forgiving.

While there is no coverage for bodily injury or wrongful death actions, the BI/PD exclusion does not necessarily exclude coverage for Regulatory Actions or Securities Claims, such as shareholder litigation for economic loss due to mismanaging the Coronavirus exposure.

Many private company policies are broader in nature and may provide Regulatory coverage, but they are also more likely to contain an Antitrust exclusion for any claim alleging price-fixing or other anti-competitive behavior (i.e. price gouging).

Here's a [recent article regarding potential D&O claims related to coronavirus](#).

## EMPLOYMENT PRACTICES LIABILITY

Similar to Directors and Officers coverage, Employment Practices Liability policies exclude Bodily Injury/Property Damage. There could be situations where employees claim unsuitable working conditions, or where employees seek accommodations due to working from home or while under quarantine.

## CYBER LIABILITY

Cyber policies do not respond to a human virus, but they do respond to a computer virus. Coverage is triggered by an event that could result in a cyber threat or a claim arising from a cyber-attack against an organization.

Preventative Steps You Can Take:

- Remind employees of the dangers of opening attachments and links.
- Networks may be at a higher risk of breach for work-from-home employees. Enterprise security teams should increase monitoring for attacker activities.
- Employees' personal computers can be a weak point that attackers can leverage in order to gain access to corporate resources. Having a Bring Your Own Device (BYOD) policy and standards to prepare for remote working will assist in loss prevention. Dual Factor Authentication is highly recommended.
- Virtual Private Networks (VPNs) should be patched regularly and networks should be load-tested to ensure that the increased traffic can be handled.
- Run simulated phishing campaigns to demonstrate the level of resilience from attacks, along with antivirus and monitoring tools which can limit the effectiveness of successful phishing attacks.



#### Examples of Potential Claims Scenarios:

- Extortion/Ransomware as a result of Phishing attacks.
- Phishing emails posing as Coronavirus alerts with attachments purporting to offer information about the outbreak.

It is being reported that 4,000+ domain names have been registered in 2020 with “Corona” or “Covid”, disguised as COVID-19 help emails. Cyber criminals are attempting to get employees to click on malware/ransomware.

Fraudulent emails may come in the form of a message from the Center for Disease Control (CDC), World Health Organization (WHO), health advisors from a medical specialist, or even internal workplace policy notifications.

## HEALTHCARE

The fully insured vendors have announced they will waive all member cost sharing for COVID-19 diagnostic testing including copays provided at approved locations in accordance with CDC guidelines.

Level-funded and self-funded plans have the option to waive all member cost sharing or implement discounted fees. The level-funded vendors and Third Party Administrator’s (TPA’s) administering self-funded plans have indicated they are sending clients an email asking whether or not they want to opt-out of this program at their discretion. Employers should work with their risk advisors and legal professionals to determine the financial impact. Additionally, it is important that stop loss vendors approve any plan changes.

On March 11, 2020 the IRS announced that High Deductible Health Plans (HDHPs) with Health Savings Accounts (HSAs) may cover COVID-19 testing and treatment without a deductible or with a deductible below the required minimum deductible for HDHPs without losing their HDHP status under the IRS code or threatening the tax-favored treatment of participants’ HSAs.

Read the full notice at <https://www.irs.gov/pub/irs-drop/n-20-15.pdf>. This notice applies broadly to “all medical care services received, and items purchased associated with testing for and treatment of COVID-19.”

We are continuing to monitor carrier notices and CDC updates and will alert our customers to any changes.

## BUSINESS TRAVEL ACCIDENT

A business travel accident policy with an out-of-country medical coverage grant could provide coverage if a workers’ compensation policy does not cover an employee falling sick due to viral illness contracted while on business travel. These policies typically do not exclude pandemics or epidemics. Medical evacuation coverage could apply as well. Family members and dependents may be added.



## **RHSB, YOUR RISK MANAGEMENT RESOURCE**

The impact of COVID-19 on our global society and economy is unprecedented and the RHSB team is continually reassessing as new information and updates are being published daily. RHSB is making every reasonable effort to present current and accurate information to our clients. At this time, it remains unclear how coverage may apply industry wide. For further guidance pertaining to your specific insurance portfolio please call a member of your RHSB service/claims team as we are dedicated to assisting you and navigating you through the emerging exposures of COVID-19 from a risk management perspective.

*Please note, this review is intended to be general in nature versus industry specific. There may be other insurance that applies. The above is our opinion of how various insurance policies will respond to COVID-19. The final decision on coverage will be based on your specific policy wording and the issuing carrier providing the insurance.*

This communication is for informational purposes only. Although every reasonable effort is made to present current and accurate information, RHSB makes no guarantees of any kind and cannot be held liable for any outdated or incorrect information. Please consult with outside counsel before implementing any policy or procedure.