Insuring Against the Business Risks of Coronavirus

Now is the time to take inventory of risks to your operations, supply chain, liability profile and personnel, and ensure you understand the coverage available to meet those exposures, before an outbreak impacts your business.

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TAKEAWAYS

COVID-19 is having drastic economic impacts on industry, including business interruption and supply disruptions. Liability risks also exist, especially in industries like health care, hospitality, transportation, and retail. Businesses are well-advised to assess their risks and determine whether existing insurance coverage may help meet such exposures.

Insurance products exist for business interruption, supply chain losses, event cancellation, exposure liabilities, and workers compensation for job-related exposures. Business Interruption and supply chain coverage, including Contingent Business Interruption, will typically require a showing of property damage that gave rise to the loss.

Keep in mind, insurance markets have restricted coverage for pandemic diseases, including coronavirus, through exclusions and sublimited coverage. If you think you may have coverage, it is prudent to check your policies with your broker and counsel to understand what protections you have for these exposures.

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Note: this alert, originally published on February 11, 2020, has been updated to reflect new developments.
The coronavirus pandemic is savaging the global economy, resulting in widespread business closures, near-universal event cancellations, remote officing, the cancellation of orders and slowing of deliveries, and a general disruption of supply chains. News reports indicate that the impacts are already being felt in virtually all industries. Travel, transportation, hospitality, education, health care, entertainment, and event planning are especially hard-hit, but most manufacturing and service activities are being disrupted. In recent years, the insurance industry has cut back on coverage available for pandemic diseases, introducing new or broadened exclusions and applying strict sublimits to contain insurer exposure. Nonetheless, pockets of coverage continue to exist. It is important to make an assessment now of your own business’s vulnerabilities and of the insurance you may have to address future losses.

**Business Interruption Insurance**

Many businesses carry Business Interruption (BI) insurance as a component of their first-party property insurance or as a freestanding policy. BI coverage protects against losses sustained due to periods of suspended operation due to property damage. In most cases, contagious diseases do not constitute property damage, especially when passed from person to person. Actual contamination of tangible property (as distinct from fear of contamination) may constitute property damage for insurance purposes. Likewise, contamination in HVAC systems has been held to constitute such property damage. If actual contamination of property forces your business to shut down facilities or assets, with concomitant losses, BI coverage may respond. But there are important limitations:

- In recent years, particularly in the aftermath of the SARS epidemic, many insurers added specific exclusions for bacterial or viral infections to their coverage. We have seen both stand-alone Bacterial Exclusions and combined Bacteria/Virus Exclusions. It is important to understand that viruses are not bacteria. If your policy only excludes coverage for bacteria, you may still have coverage for the coronavirus.

- Insurers can also be expected to argue that their standard pollution exclusions apply to bar coverage. Whether viruses or bacteria are pollutants is a controversial question to which no settled rule yet applies. Specific policy wordings sometimes provide relevant definitions.

**Supply Chain Insurance**

Some businesses have purchased supply chain insurance or Contingent Business Interruption (CBI) insurance to protect against losses stemming from supply chain disruptions. Policies exist to cover interruptions of deliveries of raw materials, parts or supplies, and specialized insurance has been written to cover vulnerable industries, such as health care providers, the hospitality industry and manufacturers. CBI insurance covers economic losses, typically including increased costs, from lost or reduced operations resulting from physical damage on the premises of a named or unnamed supplier. Finally, some supply chain and CBI policies may also cover loss of services to the insured business, such as loss of utility services. Limited coverage may also exist for loss of markets for your own products.
Event Cancellation Insurance

Some insureds may carry specialized Event Cancellation coverage. Variants of this type of insurance exist in the sports, entertainment and event planning industries (including convention planning). Such coverage may be written expressly to include specific insurance against cancellation because of infectious diseases. Nevertheless, we are learning that some insurers have already begun to insert endorsements to exclude coronavirus into this coverage. Policies written before the end of 2019 are unlikely to contain such exclusions. If you have purchased express coverage for infectious disease cancellations, be sure to check your policy to assure that no coronavirus endorsement has been added without your agreement.

Liability Insurance

Many policyholders face a risk of liability for failing to protect others from exposure to infection on their premises. Providers of health care, transportation or hospitality services and retail establishments may be particularly vulnerable. Your general liability policies cover liability for bodily injury and property damage, and primary Commercial General Liability policies will usually provide a legal defense against such claims. Insurers with a duty to defend should meet that obligation if there is even a possibility of coverage for the underlying liability. Do not overlook this coverage if you face third-party claims, and do not back down if your insurer pushes back on the duty to defend.

Companies may also face claims for losses that do not involve bodily injury or property damage. Professionals may face claims based on failure to meet a duty of care that may be covered under Errors and Omissions insurance, and some companies or their managements may face claims for financial losses resulting from mismanagement of their response to the pandemic, which may be within the coverage of Directors and Officers policies. It pays to be mindful of these risks and understand the scope of the relevant insurance.

Workers’ Compensation

Workers’ Compensation insurance covers your employees who suffer injury or illness contracted in the workplace. This extends coverage to injuries “arising out of or in the course of employment,” meaning that claims for compensation must allege work-related losses. Coverage, based on “work-relatedness,” is analyzed based on the time the loss occurs, the place where the loss occurs, the specific activity the claimant was engaged in when the loss took place, and the specific nature of the loss. Thus, there would be a good
argument for coverage of a health care worker who becomes infected because of exposure to patients on the job. In assisting employees with Workers’ Compensation claims, it will be critical to make a prompt, careful record of the time, place, and circumstances of the exposure.

Some companies may see employment-related claims related to injuries that are not covered by Workers’ Compensation insurance. For example, claims may be brought on behalf of family members who claim infection brought home from the workplace, or contractors may claim for injuries contracted on a company’s premises. Employers Liability insurance may provide coverage in some instances.

The best time to prepare for infectious disease exposures is before they happen. That includes taking careful stock of your risk pathways and assessing all the insurance that may become relevant. Pillsbury’s Insurance Recovery and Advisory Team is poised to assist. To learn more about Pillsbury’s Insurance practice, click here.

Pillsbury’s experienced crisis management professionals are closely monitoring the global threat of COVID-19, drawing on the firm’s capabilities in supply chain management, insurance law, cybersecurity, employment law, corporate law and other areas to provide critical guidance to clients in an urgent and quickly evolving situation. For more thought leadership on this rapidly developing topic, please visit our COVID-19 resources page.

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