

# Coronavirus – Property & Casualty Update from Cottingham & Butler

## Overview

Every claim must be investigated and adjudicated on its own merits. We encourage our clients to file claims for losses arising from the COVID-19 pandemic. However, coverage may be restricted or not available under certain property and casualty policies. Should you have questions about your specific policies, or should you wish to file a claim, please contact your Cottingham & Butler service team and we will be happy to assist you.

We provide the overview below for your reference.

## Property/Business Interruption

Most property policies require physical loss or damage to covered property by a “covered cause of loss” in order for coverage to apply. With respect to the property component of the policy, contamination by COVID-19 of property at an insured’s location may constitute physical loss or damage. Whether the presence of COVID-19 constitutes physical loss or damage will likely be a litigated issue.

Turning to business interruption, this coverage applies, generally, from losses that arise from property damage at your own location. Under most business income and extra expense coverage parts, the coverage trigger is “direct physical loss of or damage to property,” at a “covered location” that results from a “covered cause of loss.” Thus, if there is COVID-19 contamination at an insured location, the fighting issue will again be whether the contamination constitutes physical loss or damage.

Business interruption coverage extensions such as contingent business income, ingress/egress, loss of attraction and civil authority are subject to the same restrictions outlined above. These coverage extensions apply when the property damage does not occur at the insured’s location.

Importantly, policy exclusions for viruses may preclude coverage.

Limited coverage for communicable or infectious disease is offered on some property policies. This coverage is likely sub-limited and the coverage provided is narrow in its scope.

Typically, there must be an actual presence of the contaminant (e.g., COVID-19) at the insured location. Covered costs can include cleanup, removal and disposal of contaminated property. To the extent that any business interruption is covered under this limited coverage, it will likely only apply to locations that are owned or operated by the insured.

The Insurance Services Organization (ISO), the insurance industry's leading provider of standard policy language and endorsements, has drafted two endorsements intended to be used with standard commercial property and business interruption policies. These endorsements provide business interruption coverage for COVID-19 virus-related loss under limited circumstances. However, property and business interruption insurance carriers have been unwilling to add this coverage to policies in the midst of the outbreak.

## **General Liability Insurance**

Liability for third-party bodily injury claims arising from exposure to harmful conditions and/or failures to mitigate or warn others of the risk of infection is another potential risk. Given the wide spread of COVID-19, issues of proving causation will likely be very difficult for a potential claimant. While general liability policies typically cover liability for bodily injury and property damage, as well as a legal defense against those claims, policies contain exclusions for viruses or communicable diseases.

## **Workers' Compensation**

We anticipate that coronavirus claims will be compensable under workers' compensation only when contraction of the disease is occupational in nature. In other words, we expect coverage to apply if the virus was contracted during the course of employment and due to conditions specific to the nature of the employment. Whether the disease is occupational in nature will be subject to the law of each specific state. If an employee presents a claim of employment-related exposure or illness, a claim should be reported to your workers' compensation carrier for a compensability determination.

## **Conclusion**

Should you sustain loss or damage as a result of the COVID-19 pandemic we encourage you to file a claim and be prepared to substantiate your loss should coverage be afforded. Each insurer has an obligation to review and adjudicate claims and determine whether coverage is available. For further information concerning COVID-19 and resources on prevention, treatment and best practices for employers, please review Cottingham & Butler's COVID-19 Business Response Resource Center.