

Coronavirus - losses and liabilities for insurance industry

Businesses across the world are suffering a variety of different losses as a result of the spread of, and public reaction to, coronavirus. The answer to the question of whether these losses will be covered by your insurance policies is, as with most questions regarding insurance coverage, "it depends".

Whilst there are broad statements that can be made about which type of insurance policies typically cover which type of losses or liabilities, the use of different coverage terms and conditions within each type of insurance policy mean that it is necessary to review your particular policies to see what cover you have.

Below is a summary of the cover that may be afforded by common types of commercial insurance policies for coronavirus-related losses and liabilities (excluding obviously applicable policies such as medical and travel insurances).

Traditional Business Interruption Insurance

Typically purchased alongside property damage cover, traditional Business Interruption policies require damage to, or loss of, insured property as the trigger for cover for losses caused by interruption to your business. It quickly becomes clear that insureds may struggle to identify physical damage to property caused by the coronavirus or the reaction to it.

However, it may be worth exploring whether the policy provides that loss of use of insured property by reason of coronavirus could be a trigger. The language and definitions used will be important – loss of use is unlikely to be a "*physical loss*" of property, but it could be a "loss" of property. It is conceivable that coronavirus could cause loss of use of a property such as it causing an inability to clean health premises. On balance however, with traditional Business Interruption insurance, it will be difficult to secure coverage without physical loss or physical damage to property causing the interruption.

Contingent Business Interruption Insurance

Contingent Business Interruption insurance (usually offered as an extension to traditional Business Interruption insurance) seeks to plug gaps not covered by traditional Business Interruption policies, for example by offering cover where your business is interrupted due to loss or damage to the property of customers or suppliers. The same points arise again as to whether a loss has been suffered.

Contingent Business Interruption insurance policies sometimes also offer cover where the trigger is loss of use of the property due to the action of civil authorities. Debate arises as to who or what constitutes a civil authority, and what action by them causes loss of use (for example, is it when they advise that properties should not be used, or when that advice has the force of law?).

Cover is also available for losses caused by a notifiable infectious disease. However, such policies will often also contain an exclusion for avian flu, SARS and foot and mouth disease, given insurers' previous experience of those outbreaks. Notifiable infectious diseases are listed under the Health Protection (Notification) Regulations 2010. Coronavirus became a notifiable infectious disease on 22 February 2020 in Scotland, on 28 February 2020 in Northern Ireland and on 3 March 2020 in England and Wales. Any losses caused before these dates will not be covered, even if you have this cover

Liability Insurance

Business operators could face claims from clients, members of the public and employees for the failure to adequately protect them from contracting coronavirus. Obvious examples are hospitality and travel companies (cruise ships, hotels, restaurants, airports, airlines etc). Similar claims may be brought by employees in those businesses, but also employees in the health sector if they are not adequately protected. Public Liability and Employer's Liability insurance policies are likely to cover such claims. Health care businesses, for example, may also carry professional indemnity insurance which also may be triggered by such claims.

Cancellation and Abandonment Insurance

Finally there has been widespread reporting of cancelled events, ranging from business conferences to sports and music events. Cancellation and Abandonment insurance usually covers irrecoverable expenses and loss of net profit should an event be cancelled for a reason that is not excluded by the policy. However, policies often have exclusions for cancellation caused by specifically named disease (e.g. avian flu, swine flu etc) or because of quarantine/restriction of movement imposed by a civil authority (or even a travel advisory warning issued by a civil authority) as a result of a communicable disease. Even if you have this cover, you may fall foul of such exclusions.

What you should do now

You will have seen that not only the type of policies that you have, but also the language and clauses used in those policies are key to an understanding of whether your losses will be covered by your insurance policies. It is therefore essential that you have these policies reviewed so that you can understand and manage your current and future coronavirus related risks.

For more information contact



James O'Connor
Partner
Tel: 020 7919 4877
Email:
jamesoconnor@eversheds-
sutherland.com



Monica Peto
Parliamentary Agent
Tel: 020 7919 4717
Email:
monicapeto@eversheds-
sutherland.com