



COVID-19: Insurance Coverage for Property-related Losses

As developments surrounding the new coronavirus mount, business leaders likely are becoming overwhelmed with information from what appear to be knowledgeable and credible sources suggesting the manner in which property insurance coverages may or may not respond in a claim situation. The simple fact is, what may seem straightforward today may look much different in the months or even years to come as a result of court decisions and government regulatory actions yet to occur.

DETERMINING COVERAGE

When advisors are not up to date completely on current forms and litigation, it results in misinformation on what constitutes a covered loss. For example, an industry leader recently published guidance on coverage triggers for property-related policies that directly conflicts with the current industry position, which was unaccounted for in their assessment.

All insurance coverages are subject to the particular circumstances of each loss. Most commercial policies routinely carried by the majority of organizations, such as general liability, auto, business income, management liability (e.g., D&O and EPLI), and property, contain a variety of exclusions and language that likely would preclude coverage from being available in a pandemic.

The key to success for every organization is to work with expert advisors who possess a deep understanding of their industry as well as the insurance implications of new and potential exposures. In case of a claim, they know how to assess which policies potentially could be triggered for coverage.

Due to the myriad possibilities where losses could be incurred that relate to the new coronavirus, it is important to understand the entirety of the policies in place and how they might respond. Here are some examples where a potential loss is most likely to occur:

- You have a known exposure to the virus at one of your locations. There is an outside chance an argument can be made that you have suffered property damage

to the location, and therefore, coverages may be available under business income, extra expense, and property policies.

- The government mandates restrictions that interfere with access to or use of your facilities resulting in a potential claim under the civil authority clause in your policy. Establishing these actions as a covered cause of loss may prove to be very difficult, but there is potential that coverage could be triggered.
- You voluntarily take part in social distancing—an action recommended by the government as a way to protect society as a whole, but it is not mandated. You incur costs, but there is no direct damage to your business due to the virus or resulting from the governmental action. Therefore, there is no triggering event for coverage under any of the policies.

WHERE WE ARE TODAY

Currently, there is no case law that clearly indicates coverage would be triggered for losses attributable to this pandemic. However, we are in unprecedented territory, and there may be new legislation, litigation, or actions taken as this event unfolds that impact prior norms.

For the many questions business owners have now and in the days ahead, definitive answers simply cannot be provided at this time. Those who suggest they can either are mistaken or simply have not done their due diligence.

Rest assured, IOA is doing everything possible to stay on top of insurance market conditions and changes, particularly as they relate to how property insurance and other policies will respond to coronavirus-related losses.

WHAT YOU CAN DO

First, take care of your people and community. Second, keep track of any losses you sustain during this period that you believe are related to the outbreak. This information and documentation may not come into play, but if circumstances change, quantifying your losses will be the first step you'll take to file a claim.

