

An aerial photograph of a two-lane asphalt road winding through a forest. The trees on the right side of the road show vibrant autumn colors in shades of orange, yellow, and red. The trees on the left are mostly green. To the left of the road, there is a rocky shoreline next to a body of water with clear, turquoise water. The sky is not visible.

Risk and Insurance implications of COVID-19

Client Update from Willis Towers Watson Belfast

April 21, 2020

Introduction

We hope that all our clients and your families are keeping safe during these difficult times.

The global insurance industry, like all industries, is grappling with the ongoing impact of COVID-19.

The situation is extremely fluid and we are committed to delivering timely updates to our clients.

Our Global Specialists continue to support our local COVID-19 Specialist and Service Teams with technical input, and we aim to use our combined knowledge and experience to steer you through the many issues that continue to evolve.



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COVID-19 Update



- For most exposures, not all, COVID-19 is an uninsured event
- The coverage issues are complex, and highly dependent on specific policy language
- Exposure and Policy Issues addressed in this presentation
 - Business Interruption
 - Public Liability
 - Employment Practices Liability
 - Directors & Officers Liability
 - Cyber
 - Travel
- We also address recent developments and recommended actions / plans to address issues at renewal

Market Update

- We are in the midst of unprecedented and changing circumstances.
- Rapid decline in rateable exposures e.g. profit; payroll; turnover; cargo - is becoming an immediate issue for renewals and a consideration for current insurance programmes.
- We are seeing underwriters take fairly aggressive initial positions in the light of the COVID-19 pandemic.
- Policy Period Extensions – unoccupancy etc. are being generally catered for by Insurers.
- Already challenging market conditions for target classes are likely to become more challenging very quickly e.g. Crime, Directors & Officers Liability
- Decisions about how coverage will respond to claims relating to COVID-19 will be made by each insurer based on the facts of each claim, the policy at issue and applicable law.



Business Interruption



Most attention has, understandably, focused on Business Interruption (BI) and whether insuring clauses will respond.

- There are two broad issues:
 - whether the cover is **contingent** (the “material damage proviso”) or **stand alone** (the Infectious Diseases Extension),
 - whether Covid-19 can be said to fall within the scope of insured causes for the interruption.
- BI policies vary widely, however in most cases, it is likely **contingent** BI cover will not respond to cover interruption caused by a government mandated shut down as there is unlikely to be any property damage that is needed to trigger a claim under the main insuring clause.
- BI cover as a **standalone** insurance may offer protection in the event of COVID-19 losses, subject to how the wording is drafted, for example, whether policies list specific diseases by name (if it is not on the list then it will most likely not be covered) or refer to a class of disease, typically “notifiable diseases”.
- Covid-19 was added to the list of notifiable diseases on March 5, 2020 and so, provided the definition of notifiable diseases is not fixed to the list as at a particular point in time (like inception, as can happen), the policy may well respond to provide cover in the event of subsequent losses.
- So, under these policies, insurers face exposure to considerable losses that they would not have fully anticipated at the time the policy was underwritten
- We have reviewed many policy versions and engaged with all the insurers concerned. We await their responses.
- This is one of the central issues during ongoing discussions between the Regulators and local insurers, who are also governed by direction from their international holding companies

Public Liability Insurance

What might not be covered

■ **Communicable Disease Exclusions:**

Exclusions for communicable diseases are emerging in the marketplace. The wording of these exclusions varies, with some focusing on bacterial disease and others viral infections. Depending on the wording, the exclusion may bar coverage for coronavirus claims.

■ **Organic pathogen/fungi/mould/mildew/yeast/microbe exclusions:**

While these exclusions are often referred to as “mould” exclusions, they sometimes can be applied more broadly and exclusions often include fungus, mould, mildew and yeast. In some instances, they also include bacteria, microbes and viruses. Scientists debate whether a virus constitutes a living microbe.

■ **Pollution exclusions:**

We expect policyholders to take the position that COVID-19 is not a pollutant because it occurs in nature and not as a consequence of traditional environmental pollution.

■ **“Expected or intended” exclusions:**

Insurers typically have a high factual burden to overcome in order to successfully apply this exclusion and it is difficult to see any issues arising at this time.



Employment Practices Liability (EPL)



Exposures to be concerned about

- *Discrimination--National Origin or Suspicion of being Infected; Targeting or mistreating groups of employees because of their national origin or suspicion of being infected.*
- *Privacy/Disability Discrimination: Questioning employees about their personal health, health history or family health history.*
- *Disability Discrimination: Failure to accommodate.*
- *Retaliation: Employees opting out of client meetings, conferences, etc.*
- *Benefits: Remote working may lead to wage & hour issues – inability to track time to determine how much (if any) work is being done “off the clock” and potential overtime claims*
- *Redundancy : Issues will arise as businesses inevitably fail*

Best Practice

- ✓ Ensure compliance with legal obligations.
- ✓ Communicate plan to employees, especially line managers who will be responsible for addressing these issues with their team.
- ✓ Avoid Discrimination: Ensure that any policies and procedures that are being implemented do not have a discriminatory impact.

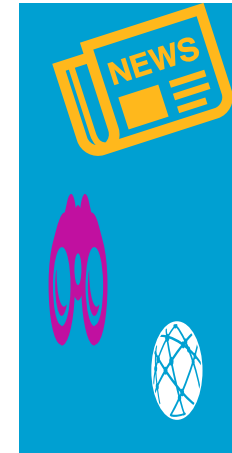
Directors & Officers Liability (D & O)

Exposures to be concerned about

- *The adequacy and accuracy of disclosures in a financial / business environment with so much in flux, including many businesses trying to cope with shutdowns and other unprecedented pressures.*
- *Fiduciary and other duties owed. Changes are occurring quickly and there is no real precedent for many of today's tough decisions.*
- *Complications and challenges in balancing the needs and priorities of today's diverse and complex interests among key stakeholders.*
- *Regulatory and compliance uncertainty in facing unparalleled events and responses by authorities.*
- *Workforce and operational adjustments bring new, potentially unanticipated risks.*
- *Legal, financial and other external advisors may be overtaxed or unavailable as many others are wrestling with COVID-19 related issues.*
- *Reputation risk arising from perceptions, well-founded or not, of how management has responded to the pandemic.*

What not be covered

- **Bodily injury exclusion:** Depending on the exact wording and the industry involved e.g. Healthcare, an “absolute” exclusion may apply.
- **Pollution exclusion:** Again, depending on the exact wording, the Exclusion may include “germs,” “viruses,” and “biological irritants.” Exceptions to the exclusion may be available for Side A losses and securities claims.
- **Conduct exclusion:** The exclusion for intentional/deliberate acts is not anticipated to apply in most COVID-19 cases.
- **Professional services (E&O) exclusion:** Similar to a bodily injury exclusion, should an E&O exclusion appear in a policy, it is likely to exclude loss “for” or “based upon, arising out of” acts or omissions in the rendering or failure to render professional services. The “based upon” wording may have more impact in COVID-19 cases for companies in affected industries, such as healthcare and life sciences. Exceptions for Side A losses and securities claims may be available.
- **Other insurance:** Should claims trigger coverage under the D&O policy, they may also implicate additional coverage lines, such as general liability or environmental.



CYBER

Typical Cyber Coverage Triggers

Core: a security failure (computer related).

Core: a privacy event (information related).

Optional: Business Interruption--only from a system failure.

Optional: For media coverage--a media wrongful act

Claims can arise from

- *Security Failures, Privacy Events or Systems Failures could occur, exacerbated by the pandemic .*
- *Minimum staffing and remote working arrangements which result in weakened system controls and more errors (programming or administrative errors running systems)*
- *For Media claims - less control and scrutiny over published content, rather than breach of data. Damage could potentially arise from COVID-19 misinformation which a third party relied on and subsequently suffered a loss.*
- *Pandemics do not cause the above, but they give rise to conditions that make such events more likely. More mistakes are likely to happen under the stress of unusual working arrangements.*

What might not be covered

- **Network Slowdown:** Generally, a programming or administrative error is required, and neither of these are necessarily evident in the event of a slowdown.
- **Business Shutdown:** A business shutdown which leads to a system shutdown is not what business interruption is intended to cover. Instead, it is intended to cover the reverse – a system shutdown leading to a business shutdown.
- **Bodily Injury (BI) Exclusion:** Insurers may argue that the proximate cause of the loss was bodily injury/COVID-19. The intent of a BI exclusion is to preserve coverage for mental anguish and emotional distress, not to exclude coverage arising from disease.
- **Force Majeure:** We believe the context of the wording if not also industry practice with respect to how far an “act of God” is to be interpreted will likely argue against successful use of this exclusion. However, some reference by insurers to the exclusion is likely.
- **Failure to Maintain Systems:** While a far less common exclusion, this could be invoked if it applies.
- **Other Insurance:** There may be coverage in other policies e.g. Property Damage / Business Interruption.



Travel – Cancellation Cover

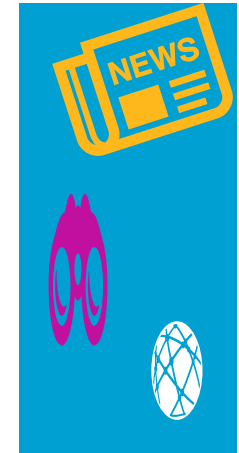
- The UK Government website www.gov.uk/foreign-travel-advice provides the latest travel advice on the area/country it is intended to visit.
- If the policyholder travels against the advice of the Foreign Office then no cover will apply unless specifically agreed with the insurer to cater for exceptional circumstances.
- Under Cancellation or Curtailment cover, the Policyholder will usually be able to claim for any irrecoverable, unused accommodation and other unused prepaid charges, and reasonable additional travel costs to return home once the period of quarantine has ended. The quarantine must be in place for a minimum of 48 hours.
- In the first Instance the Policyholder should seek compensation from the airline. If the Foreign Office advises against travel to an area it is likely the airline will stop flying to the area and will offer a refund or change of flight. If the policy or trip was booked after the Foreign Office advice changed to 'All But Essential Travel', the policyholder may not be able to claim.
- Some policies will cover irrecoverable unused Travel and Accommodation costs and other unused pre-paid charges (including sports, concert and entertainment tickets) only if the Foreign Office advise against travel to that area or if they advise them to leave the country or area.
- There is generally no cover for Consequential Loss (such as food, personal hygiene products etc.) or loss of earnings.
- Additional accommodation costs arising from forced quarantine at pre-booked accommodation or elsewhere, is normally met by local authorities.
- If an insured person cannot return home as scheduled due to being quarantined, the policy is usually extended automatically until such time as they are able to return home.
- Medical Expenses Cover will cover the cost of medical expenses which arise as a result of a Policyholder falling ill with the COVID-19 while abroad.



COVID-19: Looking Ahead

Actions to address current issues

- We are closely monitoring ongoing discussions between insurers and the Regulators and are pressing insurers to clarify their individual positions
- Insurers are seeking to impose broad exclusions on a wide range of covers and in a broad range of circumstances. We are aiming to resist the imposition of these exclusions and negotiate their wording to the extent that this is practicable.
- To be well prepared for coverage discussions with insurers, our experienced teams are well equipped to help assess policy terms and conditions, advocate on your behalf and work to frame the facts and circumstances surrounding any claims in the most favourable light for insurance recovery.



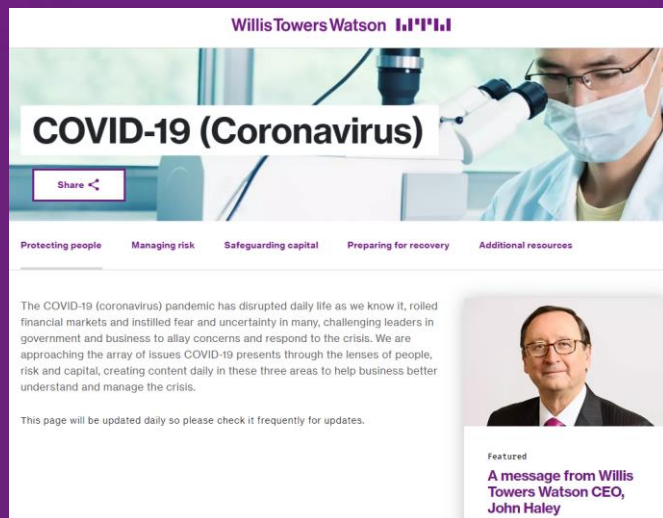
Programme Renewals

- COVID-19 risk exposures should be reviewed in detail and associated coverage terms scrutinized carefully going forward.
- Get ready early for a challenging renewal: COVID-19 is likely to present new dimensions to renewal challenges. Clients should expect heightened underwriter focus on COVID-19 impact, plans and disclosures.
- We encourage clients to work with us in commencing the renewal process earlier than normal, and to advise us of anticipated changes in exposures



Visit our Website

Information and resources



COVID-19 'Trending Topic' Hub with information to help you

- Protect People
- Manage Risk
- Safeguard Capital
- Prepare for Recovery

Updated daily.

Includes articles, webinars, WTW experts, WTW resources and links to government and third party resources to assist you through this unprecedented and rapidly changing event.

<https://www.willistowerswatson.com/en-gb/Insights/trending-topics/covid-19-coronavirus>

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Disclaimer

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Each applicable policy of insurance must be reviewed to determine the extent, if any, of coverage for COVID-19.

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