

COVID-19 Impact on the Insurance Industry

The COVID-19 pandemic has caused unprecedented disruption in nearly every business enterprise, and the significant economic impact is being felt across nearly all sectors of commerce. Quarantine orders, travel restrictions, government-imposed shutdowns, supply chain interruption, and the cancellations of activities of every kind have had a massive effect on the bottom line for nearly everyone. These events are sure to impact the insurance landscape in a myriad of ways. To what extent virus-related losses may be covered by insurance policies has become a frequent topic of conversation in the news and the internet, and the viability of claims is becoming a hotly-debated topic as losses mount.

A. Business Interruption Claims

As soon as it became clear that managing the COVID-19 pandemic would involve the temporary closure of most in-person commercial business, questions arose as to the extent that business interruption coverage, provided by many property insurance policies, would cover the massive losses experienced by insureds with closed doors.

Business interruption insurance covers loss of income and related expenses when a business is unable to operate at its normal location, but only as specifically described in the policy. Generally, losses are only covered when caused by property damage to the insured's premises that is otherwise covered by the associated property insurance policy. Although policy language varies, many property policies with business interruption coverage contain the requirement that there be "direct physical damage" to the premises. Clauses providing coverage for closures imposed by governmental action also often refer to physical damage occurring elsewhere. In addition, some policies contain exclusions for losses caused by bacteria, viruses, or disease. Some more custom or specialized policies may have nonstandard language that do not fall within the generalizations being discussed in the press. As always, a careful review of relevant policy language is key to any determination of coverage.

In response to the unprecedented losses caused by the COVID-19 pandemic, calls for legislation have been made, to require insurers to cover business interruption losses, notwithstanding policy language that may be to the contrary. Several state legislatures have considered action whereby contract language barring coverage for the reasons discussed above would be deemed void as against public policy. However, such measures have been met with much skepticism, as they purport to effectively re-write existing contracts. Whether such measures could withstand Constitutional scrutiny remains to be seen. Meanwhile,

litigation over coverage under these policies has commenced.

B. Liability Insurance

As with any situation that brings loss, we expect claims to be asserted, seeking damages. Demands and lawsuits will likely be filed that attempt to assess blame for COVID-19 exposure and infection. Those types of cases may be covered by Commercial General Liability Insurance, depending on the definition of “occurrence” and the endorsements and exclusions contained in the policy.

We also expect to see an increase in certain errors and omissions claims, against professionals who had some role in controlling the crisis, although immunity statutes and regulations at the state and federal levels may protect some of those individuals from claims. For those that are not immune, errors and omissions coverage may be implicated.

For corporate managers, we may see claims from shareholders, critical of the company’s managers’ handling of the crisis. In such an instance, directors and officers policies may come into play.

C. Other Types of Insurance Likely Impacted

Insurers and others in the insurance industry are likely to see an uptick of claims in various sectors as a result from the COVID-19 pandemic. Life, disability, health, and workers compensation insurers may see increased claims, and in some instances, difficult coverage questions, arising from the pandemic. Other sectors, such as auto insurance, have experienced a decrease in claims activity, and some insurers have provided premium refunds to their insureds as a result.

D. Class Actions

Because of the global nature of the losses created by the COVID-19 pandemic, and the ubiquitous nature of insurance coverage in our society, we expect to see cases brought on a classwide basis into the future. Many of the types of claims discussed above potentially could be brought as putative classes. Whether these matters are appropriate for class treatment could well be litigated for years to come.

E. Next Steps if your Business is Impacted by COVID-19

If you have questions about insurance matters, please contact your Bodman attorney, Bodman Insurance Industry Team Chair Michelle Thurber Czapski at mzczapski@bodmanlaw.com or 248-743-6056 or Michael G. Costello of our COVID-19 Response Team at mcostello@bodmanlaw.com or 248-743-6027.