

Alerts & Publications

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Coronavirus (COVID-19): Coming Insurance Claims

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While we do not yet have a firm fix on where the COVID-19 outbreak is heading, we do know one thing that is certainly on its way: a torrent of insurance claims. Every day we read about quarantined cities, cancelled travel plans, and disrupted supply chains across the globe. The scale of the outbreak—and its economic consequences—is almost like a natural disaster, but insurers do not typically sell coverage for corporate losses caused by epidemics or pandemics.

Based on recent natural disasters and epidemics, the claimed losses could fall into several categories:

- **Business Interruption:** With massive shutdowns and disrupted supply chains, business-interruption claims are likely coming.
- **Decontamination Costs:** Depending on the severity of the outbreak, organizations might incur voluntary cleanup costs. And governments and regulators may force other businesses to temporarily close to clean facilities.
- **Evacuation Costs:** Several infected people have already been evacuated to their home countries. There could be more. To the extent that any business—such as the employer of an evacuee—is forced to bear these expenses, it will likely seek coverage for these costs.
- **Medical Expenses:** Infected people may make claims for medical expenses—especially if they got sick during business travel. Either the employees themselves or their employers may seek coverage.
- **Travel Cancellation Losses:** Many travelers have canceled travel and accommodation bookings (or may in the future be required to) as a result



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of the travel restrictions and quarantine laws being adopted around the world. This will inevitably lead to claims from individuals and businesses under their travel insurance.

- **Other:** D&O claims and third-party liability suits are also sure to follow, particularly as the plaintiffs’ bar develops theories of liability.

Traditional property and casualty insurance policies have limited coverage for epidemics. In fact, following the SARS outbreak in 2003, many insurance carriers began to include exclusions for epidemics and pandemics in business-interruption policies. Thus, many policies exclude coverage for losses “in connection with a notifiable infectious disease”—that is, a disease that doctors and medical staff must report to the government by law. So, there may be less insurance available for claims arising from COVID-19 than some businesses expect.

Still, a patchwork of policies may provide some coverage. Beyond workers’ compensation, property, and business-interruption, coverages including professional liability and some marine policies might respond in specific circumstances. While the practices used by some employers to contain the spread of the virus could give rise to claims of discrimination against protected classes, employment-practices liability policies might apply in those situations. D&O policies could cover shareholder allegations about lack of preparedness or a slow response to the crisis. General liability policies could cover illnesses by customers or other third parties. Property policies could provide coverage for decontamination and cleanup costs. Obviously, the language of each policy would govern.

The unusual circumstances of the claims that may be made over COVID-19 could give rise to a number of coverage issues:

- **Liability of Hotels/Cruise Ship Operators/Venues of Public Gatherings:** These businesses risk liability for any outbreaks that occur on their premises on grounds of alleged negligence. Such situations may trigger commercial general liability policies.
- **Bodily Injury Damages:** Many general liability policies cover damages “on account of, or because of, bodily injury.” But, what damages will be considered related to COVID-19? Will loss of reputation and brand value diminution because of the outbreak be damage “because of” bodily injury?
- **Damages Calculations:** If a policy provides business-interruption coverage, how will those damages be calculated and what categories of damages will policyholders be allowed to recover?
- **Site-Liability Policies:** Some policies provide coverage for remediation and third-party liability based on the presence of biological agents at certain sites, such as hotels or common carriers. These policies could be triggered if there is an outbreak in a hotel or at an airport.
- **Maritime Policies:** Some maritime policies provide coverage if there is an outbreak of disease on a vessel. Since cruise-ship operators have been severely impacted by COVID-19, they will search for all possible coverage—and they may be surprised to find some available coverage

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where they did not expect it.

Obtaining coverage based on the unique circumstances related to COVID-19 may, in many cases, be like trying to fit a square peg into a round hole. What is clear is that these coverage questions will put a variety of issues to the test in courtrooms and before arbitration tribunals around the world. Both policyholders and carriers should be mindful that the cases arising from the outbreak may be highly complicated and contentious.

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Just as SARS and MERS preceded it, COVID-19 is surely not the last pandemic. The novelty and nature of the financial risks presented by the current outbreak may encourage entrepreneurial market participants to turn to insurance-linked securities—not unlike catastrophe bonds for hurricane risk. While it is too late for similar offerings related to COVID-19, we may see robust interest in such products in the near future.

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