

## Coronavirus: Are You Covered?

By Janet Menacher

Public entities facing increasing losses and costs in the wake of the COVID-19 crisis should check their insurance policies to determine whether those losses may be covered by their insurance profile. Many insurance policies, particularly, specialized coverages with sub-limits contain strict claims reporting deadlines, so now is the time to inspect those policies.

Although the potential for coverage will depend on the specific facts of any loss and the exact policy terms at issue, public entity policy holders should carefully examine their policies. Although, many types of coverage in a public entity's insurance profile may ultimately be relevant, here are some issues to consider in relation to first party property damage, liability insurance and event cancellation insurance:

**Property Insurance:** Many property insurance policies provide some form of business interruption coverage. Generally, first party property policies predicate business interruption coverage on actual physical damage to a covered property. Whether the presence of Coronavirus constitutes "actual physical damage" is the key issue and depends on the policy wording and the facts surrounding any loss. Courts have previously held that the presence of harmful substances, such as harmful gases in a building, rendering it uninhabitable and/or unusable constitutes direct physical loss or damage, notwithstanding the absence of tangible property damage<sup>1</sup>. This line of case law leaves room for an argument that the presence of COVID-19 in a property constitutes physical loss or damage sufficient to trigger business interruption coverage, depending on the specific policy wording. This does, however, require the actual presence of Coronavirus in a covered building, which may be difficult to establish.

Some first party property policies expressly provide specific coverages for damage and losses arising from communicable disease, which may include decontamination costs. It is important to review carefully the scope of such provisions and relevant definitions, to determine if it extends to viruses, and in particular, COVID-19. This type of provision may also provide for valuable coverage for decontamination costs. Be aware however, that this type of express coverage for disease is often subject to sub-limits lower than the broader policy limits and in the case of public entities, may be subject to an overall limited pool for all named insureds. Also, this type of coverage is often contingent upon strict compliance with stringent notification requirements and public entities should act promptly to comply with claims notification requirements and authorizations. .

Conversely, certain property insurance policies expressly exclude loss and damage arising from pollutants and contaminants and communicable disease. Again, the wording of the exclusions and any related definitions is crucial in determining whether such exclusions extend to viruses.

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<sup>1</sup> See for example, *Gregory Packaging, Inc. v. Travelers Prop. Cas. Co. of America*, Civil Action No. 12-CV-04418, 2014 U.S. Dist. LEXIS 165232, 2014 WL 6675934 (D.N.J. Nov. 25, 2014)

**Civil Authority:** Closures and shutdowns, which directly result from California’s “Stay at Home Order,” may fall within express coverages for losses arising from “Civil Authority.” Broadly, this is where an order is issued as a result of “property damage” which prohibits or limits access to buildings within a specific area. Depending on the exact policy wording, this may provide coverage for losses arising from government ordered closures. The question of what constitutes “property damage” is again crucial in determining the availability of coverage.

Whether a policy will provide coverage for COVID-19 losses will depend on the fact specific losses incurred and the policy wording which makes it essential that policies are reviewed in detail and losses carefully and accurately recorded.

**Liability Insurance:** Ultimately, counties and cities may find themselves facing claims alleging loss or injury arising from actions they have taken or have failed to take in response to the COVID-19 crisis. Liability policies may be triggered by and provide coverage for such claims. It is important to read liability policies carefully to determine the scope of the grant of coverage and whether any exclusions relating to communicable disease or contamination or pollution apply, bearing in mind that that any such exclusions must be unambiguous and will be narrowly construed in favor of coverage.

**Event Cancellation Insurance:** These policies provide compensation where an event is cancelled. Many municipalities rent out their premises for both special events and regularly scheduled activities, which have been cancelled due to California’s Stay at Home Order. This can result in losses to the public entity as well as the event organizer. Many public entities will be “additional insureds” on policies issued to event organizers and lessors. Where activities have been shuttered due to Coronavirus orders, counties and cities should check their insurance certificates as “additional insureds” to see whether they provide an alternative avenue for recovery of losses, including lost income.

In sum, whether coverage will be available is highly fact dependent and will turn on the exact wording of the policy. In these unprecedented times, counties and cities should accurately document the costs they are incurring and actions they are taking, make a careful analysis of their policies and notify their insurers promptly in accordance with policy requirements.

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