

COVID-19: HOW INSURANCE CAN HELP MITIGATE BUSINESS LOSSES THROUGH THE CRISIS

Date: 18 March 2020

UK Insurance Alert

By: Sarah Turpin, Alexander J. Bradley-Sitch

The COVID-19 outbreak is now a pandemic, affecting governments, businesses and individuals all over the world. As borders are closed, and day to day life is put on hold, it presents an unprecedented threat to the global economy and to the future viability of many businesses. Nevertheless, there are steps that organisations can take to protect themselves, and to ensure the financial consequences are kept to a minimum. In particular, businesses should be considering whether they can mitigate losses through their existing insurance policies.

Regardless of the type of insurance, particular attention should be paid to notice requirements typically set out in each policy wording. These notice requirements can be stringent and may require notice of any loss or claim to be made immediately, as soon as practicable or within a set time period. Importantly, insureds may need to give notice to insurers of circumstances which may give rise to a loss before any loss actually occurs. Prompt action is critical as delay in notification may result in insurers seeking to deny or reduce the amount payable. This is particularly important when the insurance is coming up for renewal.

One of the critical issues faced by many business at present is business interruption. This may arise because business premises have to be shut down, operate with only limited staff, or because key links in the organisation's supply chain are disrupted. This can have significant consequences resulting in organisations being unable to fulfil contracts, provide services at the level expected by customers or even continue trading, in the short or longer term.

BUSINESS INTERRUPTION

Losses flowing from business interruption may be recoverable under a business interruption policy. In the UK, business interruption cover typically operates alongside property insurance and trigger events are usually limited to physical damage to property (for example, where a factory has burnt down). If an insured premises is suspected of being contaminated with COVID-19, this may qualify as "physical damage", but this will depend on the specific wording of the policy and any relevant exclusions.

As well as interruptions caused by physical damage, some business interruption policies expressly include supplements or extensions of cover which are not dependent on physical damage, for example for supply chain disruption, denial of access and protection and preservation of property. Thus, if a business is unable to fulfil an order with a client as a result of its supply chain failing, it may be able to recover under its business interruption policy. Similarly, if specific areas around the business premises are cordoned off, and this prevents employees from getting to work, this may qualify as a 'denial of access' event, the losses resulting from which may be

recoverable. Some policies also include extensions of cover for "notifiable diseases" without the need for actual physical damage but the scope and extent of these extensions does vary depending on the precise policy terms.

Businesses should consider their specific risk scenario and whether their business interruption insurance can assist as the situation continues to evolve. Close attention should be paid to relevant exclusions and extensions in your specific policy wording.

EVENT CANCELLATION

Some organisations may also carry event cancellation insurance, which is crucial in the current climate where many events are being cancelled or postponed. The costs associated with cancelled events such as ticket refunds, hire charges and other wasted costs may be recoverable under these policies. Event cancellation insurance often has very specific triggers for liability and may not respond where, for example, there is a voluntary cancellation. The wording of these policies is key and careful analysis is required to identify the particular circumstances in which cover is, or may be, available for losses arising from a cancelled event.

It should be noted that, in the wake of the outbreak of SARS in 2004, many insurers began to impose exclusions for "communicable diseases" in their event cancellation policies. However, the wording of such exclusions does vary and some organisations have been able to secure some "disease" cover which applies in limited circumstances. The ability to recover will, again, depend on the specific circumstances which have led to loss, and the language of the policy wording.

LIABILITY INSURANCE

Most companies have some form of liability insurance, including employers' liability, public liability, professional liability or directors' and officers' liability insurance. Many companies also carry specialty lines of coverage such as premises pollution liability insurance. These policies provide cover for the legal costs of defending liability claims (as well as damages payable) and may provide critical coverage for some of the, as yet unknown, future consequences of COVID-19. For example, organisations might face claims (whether or not misconceived) by employees and/or third parties who claim to have been infected at the business's premises or during the course of business operations as a result of some action or inaction by the organisation.

DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

D&O insurance may be impacted where directors (and in some circumstances, the company) face claims by third parties or by shareholders based on the alleged inadequacy of management's response to the outbreak, for example for failing to develop supply chain alternatives or failing to properly manage the financial impact on the organisation. While the viability of these types of claims by third parties remains to be seen, understanding the extent of coverage available will provide reassurance to any organisations facing losses.

D&O policies may also include extensions of cover for additional elements such as Crisis Management Costs which may be needed by the organisation.

CONCLUSION

The COVID-19 outbreak is already causing economic volatility and disruption to many businesses. This is likely to continue and the full impact of the pandemic may not become completely apparent for some time. It is therefore essential that organisation takes steps in a timely manner to understand their risk profiles and to develop their loss mitigation strategies. In pursuing this goal, insurance may prove to be a lifeline for businesses facing a major and unprecedented loss scenario.

KEY CONTACTS



SARAH TURPIN
PARTNER

LONDON
+44.20.7360.8285
SARAH.TURPIN@KLGATES.COM

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