Coughlin Midlige & Garland LLP

Alert

Insurance Implications Of COVID-19 Pandemic

By: Insurance Services Group
March 24, 2020

The Covid-19 virus is affecting almost every business and every aspect of life. State governments across the United States are mandating business closures and shelter-in-place policies. Although the economic impact is still difficult to project, it will be severe for businesses in the United States and worldwide. Almost every business will suffer loss of income; publicly traded companies have seen significant losses in stock value; and individuals are suffering injuries and death. If history is any guide, businesses will look to the insurance industry to address these exposures and help ameliorate their losses.

Most commercial policyholders carry some type of business income loss or interruption insurance. Those policies, however, typically are triggered by some variation of "direct physical loss or damage to" insured property. Whether a business property that had been infected with Covid-19 has suffered "physical loss" or "physical damage" should be a significant issue for any such claims. The issue of insurance recoveries appears to be on the mind of government leaders as well, which may result in further scrutiny of insurer claim decisions. For example, Executive Order No. 100 issued by New York City Mayor de Blasio on March 16, mandating closures of restaurants, bars, entertainment venues and other businesses, states that the closures are in part being ordered because "the virus physically is causing property loss and damage." Moreover, a proposed New Jersey bill, A-3844, which has now been withdrawn, aimed to create business interruption insurance coverage for COVID-19 related claims despite virus exclusions in many policies. Certain members of the U.S. House of Representatives have also asked insurers to afford business interruption coverage irrespective of policy language.

Directors and officers polices will also likely face significant exposures. It is going to be extremely challenging to assess the financial impact of the pandemic. Failure of publicly-traded companies to disclose risk factors that resulted in a stock price drop could result in securities litigation. Poor decision-making by management in responding to the health crisis may also become fertile ground for litigation as investors will be looking for ways to recoup losses. Covid-19 related securities class action lawsuits have already been filed against Norwegian Cruise Line Holdings, Ltd. and Inovio Pharmaceuticals.

Liability policies that protect companies from liabilities resulting from bodily injury or death may face exposures due to allegations that a company failed to adequately protect its employees, business invitees or patients from the spread of the virus. Health care professionals, nursing homes and fitness centers/gyms may see the most significant exposures here. Those exposures, however, may be limited to the extent an individual's or entity's liability arises from the manufacture, distribution, administration, or use of medical countermeasures to fight

the pandemic, in which case the Public Readiness and Emergency Preparedness Act (Prep Act) may provide immunity from liability.

Coverage for all of these exposures should be carefully scrutinized. Whether the virus has caused physical loss will be a significant issue. Certain policies may have virus-related or communicable disease exclusions. Policyholders and their brokers will be aggressively looking to the insurers to alleviate what are likely to be catastrophic losses. Whether insurers accepted those risks will be dependent upon the particular policy language at issue.

Should you require any support for potential Covid-19 related exposures or want additional information on thee issues, please do not hesitate to contact us.