Cooley

Your Insurance Checklist for Coronavirus Losses

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With the constantly changing landscape and the obvious need for us all to prioritize the health and well-being of our employees, clients and business partners, it can be difficult to focus on the next steps businesses need to take to protect themselves.

Cooley recently published two blog posts on the possible insurance implications of the continuing spread of the coronavirus and on the more general commercial pressures that businesses are facing and will continue to face.

But when it comes to maximizing returns from a company's insurance portfolio, every business should be thinking about two critical steps:

1. Evaluating your insurance policies

Depending on the nature of the problems faced, a number of classes of insurance may be available to protect businesses, including event cancellation or other contingency insurance, political risk insurance, business interruption cover, directors & officers insurance, credit insurance or specialized insurance protections such as trade disruption cover and some types of performance bonds. With insurers already expecting to cover some of the losses, now is the time to think about how insurance might be useful in the coming months.

There are a number of key questions businesses should be considering when evaluating coverage under their existing insurance policies.

- **Event cancellation insurance**: Are there exclusions for disease? Is government action covered? Are insureds required to mitigate their losses? Are there sublimits that may apply?
- **Political risk insurance**: What event(s) trigger coverage? How long is the waiting period before coverage is activated?
- **Business interruption insurance**: Is coverage triggered only by physical property damage, or are there other coverage triggers?
- **Civil authority coverage**: What government action is necessary to trigger coverage? Are there waiting periods or time limits on coverage?
- **General liability insurance**: Have your operations caused or exacerbated the amount of bodily injury to others? Are there exclusions for disease?
- **Trade credit insurance**: When and how is coverage triggered? Does it require insolvency by a contracting party?

2. Understanding what a company needs to do to preserve insurance coverage

Insurance is often a two-way street, with insurance companies requiring insureds to be proactive and appropriately mitigate and provide notice as soon as possible. Here are a number of additional steps companies may want to take:

- **Mitigating losses**: Ensure any steps that can be taken to mitigate your losses are put in place. Failure to do so may result in a reduction in any ultimate insurance claim.
- **Give timely notice**: Give careful consideration to the notice requirements in both your general contractual arrangements and in your insurance policies. Questions to consider when reviewing the notice provisions of your insurance policies include whether there have been any threats of a lawsuit or complaints by customers, and whether contractual counterparties have issued termination or force majeure notices. It is also important to bear in mind that notice provisions vary from policy to

policy, and a failure to properly consider under what circumstances an insured must notify the insurer has the potential to compromise an entire claim. Finally, depending on your policy language, it may be appropriate to issue a notice of circumstances to preserve coverage.

- **Calculate losses**: Consider a plan for quantifying your losses, and preserve all information needed to calculate that loss.
- **Work with brokers**: Contact your insurance brokers to see what claim advocate resources they might have available. You should consider whether your broker can help you identify and assess coverage that might be available to you.
- **Consider contractual relationships**: Contact your contractual counterparties. You should consider whether you owe indemnity obligations to other parties and should notify your insurers of their losses. If your organization is an additional insured on other policies, you should also consider notifying their insurers of your losses.

Of course, the situation remains fluid and fast-moving. Cooley is ready to assist you in navigating all aspects of the difficulties you may face and will continue to post updates as this challenging situation develops. Please see our dedicated coronavirus resources page for further information.

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