
Insurance Coverage for Financial Institution COVID-19 Claims and Losses

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First-Party Insurance

- § Commercial Property Insurance
- § Business Interruption and Other Time Element Coverages
- § Event Cancellation Coverage
- § Trade Credit, Trade Disruption, and Political Risk Insurance

Government Actions

Third-Party/Liability Insurance

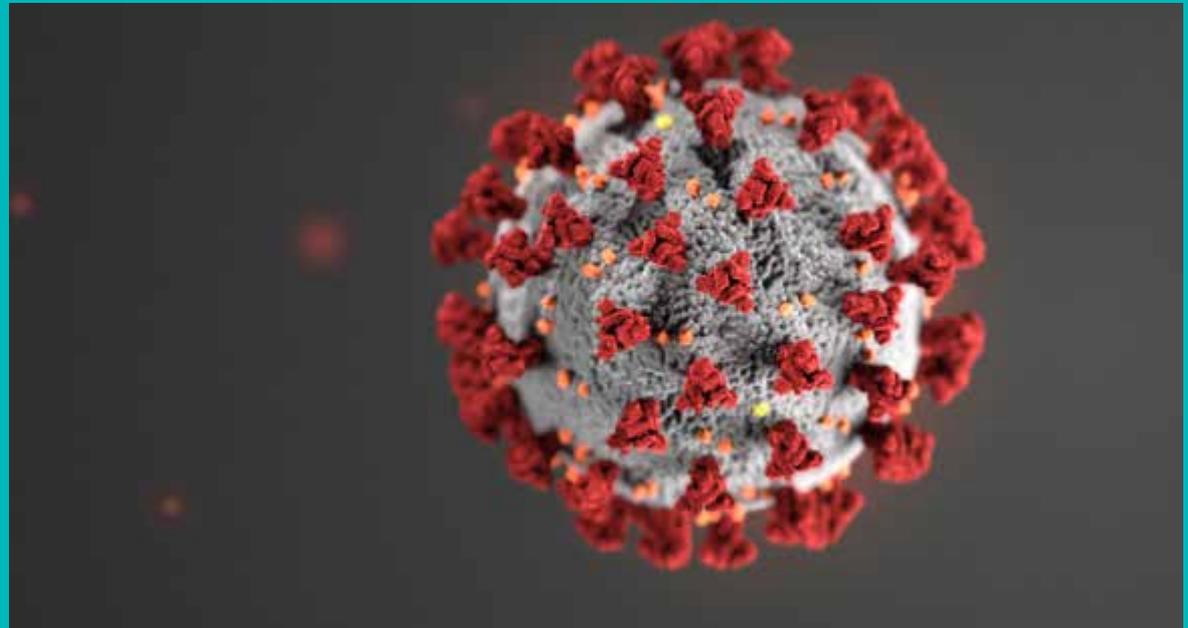
- § Commercial General Liability (CGL)
- § Directors & Officers Liability (D&O)
- § Employment-Related Insurance (WC, EL, EPLI)

Cyber Insurance Considerations

Key Takeaways

Commercial Property Insurance

- ✓ **Commercial Property Insurance** – Covers physical damage to insured buildings and contents due to a covered cause of loss, and provides other time element coverages.



- ✓ **Business Interruption** - Covers loss of income suffered by an insured when damages to its premises cause a slowdown or suspension of operations.



Commercial Property Insurance

- ✓ **Extra Expense** - Covers costs necessary to mitigate business-interruption loss
- ✓ **Preservation of Property**
- ✓ **Contingent Business Interruption (CBI)** - Covers losses resulting from an interruption of business at the premises of a customer or supplier (supply chain interruption)
- ✓ **Civil Authority** - Covers loss resulting from governmental orders due to property damage elsewhere
- ✓ **Ingress/Egress** - Covers loss due to blocked ingress to or egress from insured property
- ✓ **Service Interruption** - Covers loss due to lack of utilities, such as power, caused by damage from a covered cause of loss to property away from the insured's premises

- ✓ Key coverage question – Is there physical damage?
- ✓ Key exclusions
- ✓ Recent Lawsuits to Enforce Business-Interruption Coverage for COVID-19:
 - § *Cajun Conti, LLC, et al. v. Certain Underwriters at Lloyd's of London, et al.* (La. Dist. Court, Orleans Parish, 3/17/20)
 - § *Chickasaw Nation v. Lexington Ins. Co. et al.* (Pontotoc Cty, OK, 3/24/20)
 - § *Choctaw Nation v. Lexington Ins. Co., et al.* (Bryan Cty, OK, 3/24/20)

✓ Other Features of Commercial Property Coverage

- § Claim Preparation Costs
- § Extended Period of Indemnity

✓ Other Specialized Coverages

- § Rent Loss Insurance
- § Communicable Disease Coverage/Endorsement

Key Considerations for Business Interruption Coverage

- ✓ Have government orders shut down your business (or part of it) due to the virus?
- ✓ Has there been a confirmed infection at your premises?
- ✓ Have your customers' properties shut down and impacted your business as a result?
- ✓ Has you or your customers' supply chain been disrupted because of COVID-19?
- ✓ Notice
- ✓ Documenting your loss
- ✓ Analyze your policies' terms, conditions, and exclusions

Government Action

- ✓ U.S. Congress
- ✓ New Jersey
- ✓ New York
- ✓ California
- ✓ Texas
- ✓ Florida

Event Cancellation Insurance

- ✓ Covers financial losses arising out of the cancellation, curtailment, or postponement of specified events
- ✓ Caused by factors that are beyond the insured's control
- ✓ Exclusions
- ✓ Notice



CANCELED

Event Cancellation Insurance

Sample Policy Language:

Insuring Agreement: This insurance indemnifies **Named Insured** against any loss occurring subsequent to the **Insurance Effective Date** and causing the unavoidable:

Cancellation, Curtailment, Postponement, Removal to Alternative Premises, or Abandonment of the Event;
and/or . . .

Enforced Reduced Attendance.

due to any unexpected cause beyond Named Insured's or event organizer's control.

Definitions:

-Cancellation...means the inability of the **Named Insured** to open or commence, keep open, or otherwise maintain the **Event** in whole or in part for its original published duration or scope.

-Enforced Reduced Attendance means the enforced inability of **Participants** to attend the **Event** solely or directly as a result of the same specific cause....

Exclusions:

- Government shutdown
- Communicable Disease
- Coverage Buy-back Options

Other First Party Coverages

Trade Credit
Insurance

Trade Disruption
Insurance

Political Risk
Insurance

- ✓ CGL policies generally cover liability for bodily injury and property damage caused to third parties on insured premises.
- ✓ Examples of COVID-19-related allegations:
 - ✓ Sickness caused by insured's failure to take necessary precautions to prevent exposure to infected individuals
 - ✓ Insured's failure to have proper procedures and plans in place
 - ✓ *Weissberger v. Princess Cruise Lines* (C.D. Cal. 3/12/20)
 - § Individuals quarantined on Grand Princess off CA coast allege company's failure to take precautions to prevent a coronavirus outbreak on the ship after two passengers on the previous sailing disembarked with symptoms.
- ✓ To the extent that a customer, guest, or other third party alleges bodily injury or property damage as a result of an insured's negligence, there should be coverage absent an applicable exclusion

- ✓ Pollution exclusion
 - § *Westport Ins. Corp. v. VN Hotel Group, LLC*, 761 F. Supp. 2d 1337, 1343–44 (M.D. Fla. 2010), aff'd, 513 Fed. Appx. 927 (11th Cir. 2013)(finding pollution exclusion inapplicable, as Legionella bacteria is not a pollutant)
- ✓ Virus/bacteria exclusion
 - § Post-2003 (SARs outbreak) exclusion for loss caused by any “virus, bacterium, or other micro-organism that induces or is capable of inducing physical distress, illness or disease.”
- ✓ Analyze policy for such exclusions and any endorsements that can change or add coverage and are specific to each policy
- ✓ Consider policy construction rules in applicable jurisdiction
- ✓ Broad Duty to Defend – Potentiality and Eight-Corners Rule
- ✓ Significance of “because of” language in GL insurance policies

✓ D&O Coverage

- § Defense and indemnity coverage for companies and their directors and officers
- § Wrongful acts arising from responses or lack of response to COVID-19 outbreak
- § Allegations of failure to properly prepare for COVID-19 and failure to have proper procedures and plans
- § Ask: Are there concerns that business-interruption losses and related claims by counterparties, shareholders, or others could lead to claims against the company or its officers and directors?
- § Norwegian Cruise Line Class Action: Shareholder Litigation for violations of statutes and policies.
- § Bodily injury exclusion?
- § Crisis Management Coverage: Covers public relations costs, travel and other expenses that the insured incurs as a result of a triggering event, which can include announcement of widespread layoffs, notice of claims against insured, or sickness or disease that the insured was alleged to have caused.

Employment-Related Coverages

Workers' Compensation (WC)

Employer's Liability (EL)
Insurance

Employment Practices Liability
Insurance (EPLI)

Cyber Exposures

Increased cyber risks faced by businesses during COVID-19 crisis:

- ✓ Social Engineering and Phishing Schemes
- ✓ Ransomware Attacks and Cyber Extortion
- ✓ Internal and External System Vulnerabilities
- ✓ Network Interruption and Dependent Business Interruption
- ✓ Rogue Employees
- ✓ Lost Hardware



Insurance Coverages for Cyber Risks

✓ Financial Institution Bond / Commercial Crime Insurance

- § Computer Fraud
- § Social Engineering
- § Employee Dishonesty
- § Computer Systems/Funds Transfer Fraud
- § Fax, Email, and Voice Instruction Fraud
- § Social Engineering
- § Ransom/Extortion

✓ Cyber Insurance

- § Incident Response Costs
- § Legal and Regulatory Costs
- § Crisis Management Costs
- § Extortion
- § Reputational Harm
- § Damage to Hardware
- § Loss of Income

Key Takeaways

- ✓ Take inventory of your bank's policies
- ✓ Gather the facts and other details of your claim
- ✓ Analyze the specific terms and conditions of your policies in view of the facts of your claim
- ✓ Notify your insurers – analyze timing and other notice requirements in all applicable policies.
- ✓ Other People's Insurance (OPI)
- ✓ Assignment of insurance rights and claims

Questions and Contact Information

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