

Impact of COVID-19 on Commercial General Liability Policies

The emergence of COVID-19 is posing novel insurance coverage issues across our industry. We have already seen several lawsuits filed against Princess Cruise Lines Ltd. for allegedly failing to protect passengers from the virus on the Grand Princess cruise ship after at least two passengers on the previous voyage exhibited COVID-19 like symptoms. And more recently, the Attorney General of Florida launched an investigation into Norwegian Cruise Line's alleged potentially dangerous sales tactics that misrepresented the risks of the virus. Indeed, many more similar lawsuits and investigations are likely to follow across many sectors.

Specifically, it is expected that many third-party negligence claims for damages related to COVID-19 will be tendered to general liability carriers. General liability policies typically provide coverage for "bodily injury," "property damage" and "personal and advertising injury." Though coverage for each claim must be assessed individually based on the applicable policy language, an influx of COVID-19 related claims will undoubtedly lead to coverage disputes between carriers and policyholders. The following illustrates some coverage issues that may arise.

First, with respect to "Coverage A" of the standard form commercial general liability policy, it is foreseeable that issues will arise with regard to whether any alleged "bodily injury" or "property damage" was caused by an "occurrence" as required by the policy language. Additionally, several exclusions applicable to "Coverage A" may apply to bar coverage for COVID-19 related claims. For instance, where a claim or suit alleges "bodily injury" or "property damage" expected or intended by the insured, coverage may be barred by the "expected or intended injury" exclusion.

Further, issues related to the applicability of pollution exclusions may arise. The typical general liability pollution exclusion excludes coverage for "bodily injury" or "property damage" arising out of "pollutants," which are typically defined as irritants or contaminants. Though it remains to be seen whether courts will interpret pollution exclusions broadly to bar coverage for COVID-19 related claims, some courts have excluded coverage where a viral contaminant or harmful microbe resulted in a third party contracting a virus. In addition, some policies contain exclusions or endorsements that exclude "bodily injury" and "property damage" arising from of a bacteria, virus, or communicable disease.

Certain COVID-19 related claims may also trigger coverage under "Coverage B" of the standard form general liability form. "Coverage B" typically provides coverage for "personal and advertising injury" caused by an "offense" arising out of the insured's business. Specifically, insurers may see an increase in false detention/imprisonment claims as a result of COVID-19, and will have to navigate the majority of these coverage issues as those of first impression.

The COVID-19 pandemic has created (and will continue to create) novel issues pertaining to the availability and scope of coverage under various lines, including General Liability. These issues, as discussed above, will likely result in coverage disputes and new case law as we enter into these uncharted waters.

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