



COVID 19

IMPACT ON FINANCIAL LINES & CASUALTY INSURANCE

Updates on the spread of the coronavirus continue to dominate news channels and impact global financial markets. Governments around the world are battling on two fronts; to protect their citizens health wellbeing through socially restrictive measures and at the same time protect their economic wellbeing through financial aid measures.

Insurance is pivotal to both battles. It is no surprise that media headlines frequently refer to the role of insurance in dealing with a range of impacts on individual consumers and corporations, including travel, health, event cancellation and business interruption. It may also be of little surprise that at a time of such uncertainty and financial turmoil, fingers are pointed, and accusations are made.

Various insurances exist to protect you or your company's liability to colleagues, clients, suppliers, and shareholders. This paper explores how they may, or may not, protect you or your company and highlights longer-term impacts that could be anticipated.



Directors & Officers



Employment
Practices Liability



Professional
Indemnity



Cyber Liability &
Crime



Commercial
General Liability

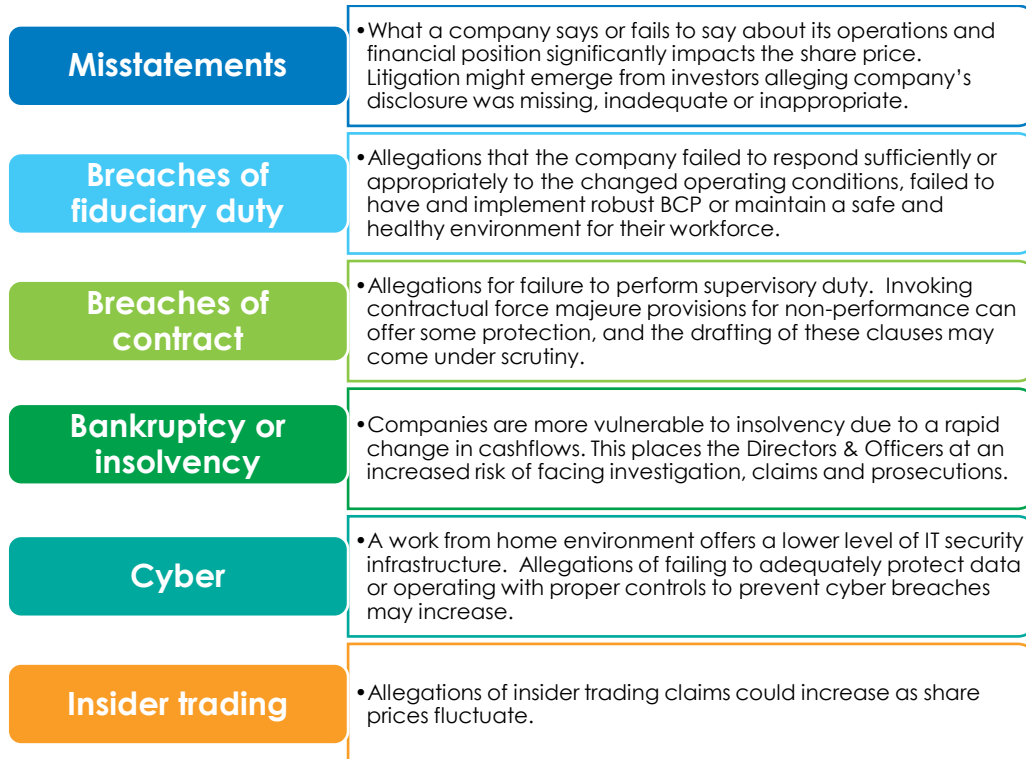


Workmens'
compensation

Directors & Officers

Directors & officers are making business critical decisions in short timeframes to respond to a never seen before business environment. Companies may be perceived to have failed in the adequacy and robustness of their response to new operating conditions, and their directors & officers may need to turn to their insurance protection.

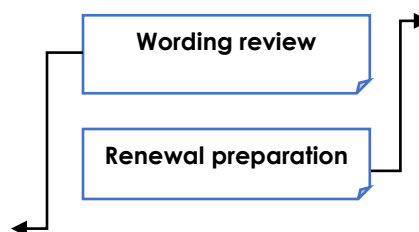
Claims could arise from the below scenarios:



There is already evidence of COVID-19 claims, and claims will continue to develop until performance during and post COVID-19 is visible. Insurers will be factoring in a market impact to their renewals in expectation of a rapidly developing claims trend. Insured's should prepare.

Look for:

- Broadly worded bodily injury / property damage related exclusion
- Insolvency exclusion
- Coverage for costs related to certain government investigations and enquiries
- Pollution exclusion wording
- Public relations expenses
- Professional liability exclusion carves back



Expect insurers to request more detailed information including:

- BCP info
- Operational impact and resilience to covid-19
- Employee impact including pay cuts, furloughs, redundancies, etc.
- Cash resources, cash flow and credit position
- WFH cyber resilience

Explore Side A to enhance coverage
Pandemic Exclusion may be introduced

The news cycle is filled with updates of companies making redundancies as a response to survive the disruption to their business caused by COVID-19.

If the redundancies involve discretionary criteria there is an increased risk that employees challenge the criteria. EPLI is a solution for companies facing such claims. Like all policies, the devil is in the detail and insureds should review their coverage including the following exclusions which are not uncommon:



Bodily Injury Exclusion: Claims may be better addressed under a workers' compensation policy. However, EPLI policies that exclude bodily injury typically contain an exception for claims alleging emotional distress, mental anguish, and humiliation. An employee alleging emotional distress as a result of contracting the virus in the workplace could trigger coverage for defense costs and related indemnity amounts.



Occupational Safety and Health Act Exclusion: Cases have already been filed by employees citing an unsafe work environment caused by a shortage of PPE or workspace to practice social distancing. Such claims are unlikely to trigger coverage as it is considered a duty of the employer to maintain safety at work. But coverage could potentially be triggered by an employee being discriminated against if they refuse to return to the workplace citing an unsafe environment.



Third Party Exclusion: Not all policies provide coverage for third party discrimination claims, however there is a potential for claims such as vendors alleging refusal of service or preferential treatment.

EPLI policies are typically 'claims made'; they provide coverage for claims made during the policy period and not afterwards. However, if the company anticipates that a situation could give rise to a claim later it can preserve coverage by providing notice of circumstance that may later give rise to a claim. If the claim is later asserted, it will be deemed to have been made at the time the notice of circumstance was provided.

In preparation for renewal you should expect insurers to request more detailed information similar to that highlighted in the D&O review, with a focus on the impact on employees through the BCP and measures taken to impact their employee benefits. It is also expected insurers will seek to incorporate a Pandemic Exclusion.

Professional Indemnity

Professional indemnity or errors and omissions insurance protects the company in the event of allegations of a wrongful act in the company's delivery of professional services.

The measures imposed as a result of COVID-19 make it a certainty that some companies will be unable to deliver their professional services in the manner and timeframe that was expected and contracted to. Companies should focus on Force Majeure provisions within their customer contracts. The drafting of this clause will be critical to its application in the scenario of COVID-19, and would typically provide for contractual non-performance, or delay in performance, due to an event beyond the 'reasonable control' of the performing party. It may list the events which are considered beyond 'reasonable control' including some or all of acts of God, war, strikes, government actions and pandemics. In the event that a contract is silent on the events, or does not explicitly include pandemics, consideration should still be given to the consequential effects of the pandemic such as government-imposed lockdowns. Contractual interpretation will be key, and it is likely legal cases will focus on this.

Companies should also consider the duration of Force Majeure provisions. Companies that are making redundancies will have to demonstrate that when the Force Majeure event is "over" they are still able to deliver on their contractual requirements with the same level of professionalism as at the time the contract was entered in to.

It is advisable to keep a watchful eye to ensure that broad exclusions for allegations linked to delay in delivery of services or bodily injury and property damage do not feature in the renewal.

A company's reputation, never more so than in the age of social media, is of utmost importance and how a company manages its public relations when facing negative attention is critical. An extension for the engagement of public relations expertise can be negotiated and may prove very valuable when weighed against a decrease in company's value if an event is mismanaged from a PR perspective.

Insurers are approaching renewals with increased caution and companies should be prepared for increased information demands in areas including:

- BCP info
- Operational resilience to deliver the same professional level of services
- Dependency of large supplier and customer relationships, failure of which would create operational sustainability
- Contractual discipline of FM clauses and undertakings

COVID-19 has created an unprecedented shift in working environment, as companies have transitioned to work from home models to ensure employee safety and comply with government lockdowns. Home networks and equipment may not have the same level of firewalls and security as that of an office set up. There is also an increase in **financial fraud risk** given the economic uncertainty faced by employees.

Some of the threats faced by companies are:



Cybercriminals will exploit fears via email scams, phishing, and ransomware attacks



Financial transactions are vulnerable to employee and third-party computer frauds.



Increase in social engineering, extortion, and diversion of funds fraud.



Shift to remote working conditions people with business less likely to follow the set.

Some of the step's companies can take are:

Phishing/ Ransomware Attacks /Social Engineering Attacks

- Educate employees to identify phishing emails and follow protocols.
- Ensure up to date antivirus and monitoring tools.
- Simulate a spear phishing attack to understand the level of resistance.
- Make checker/approval of financial transactions protocols are followed.

Network resilience

- Prepare for an increased volume of traffic on the company's network:
 - VPN's and multifactor authentication
 - Periodic vulnerability tests on the system including load tests

BCPs

- Run test scenarios and understand the impacts.
- IT resource capabilities equipped to quarantine a compromised device and detect the source of threat to protect the company network.

Cyber insurance policies have been designed to broadly cover expenses incurred as a direct result of the breach, including incident response costs, forensics, legal expenses, PR costs, business interruption losses and legal liability arising out of third party losses including regulatory investigations. They also provide pre and post event mitigation expenses. Insured's should review their policy to ensure it is fit for purpose, including:



Infrastructure exclusion: Failure from infrastructure or services (power, telecom, internet) not under the insured's direct operational control.

Definitions: Computer system and network should provide cover for owned, operated, or leased systems and those operated by third parties.



Companies should be prepared to provide insurers with more extensive information when renewing or purchasing this insurance for the first time, including an increased focus on questions such as:

- Are employees allowed to use personal devices for official use?
- Is webmail accessible outside of the corporate network? If yes, how is access protected?
- Are servers/desktops accessible via remote connectivity i.e. remote desktop, team viewer, etc.? If yes, how is access protected?
- Is there a BCP plan in place? If yes, has it been tested for a scenario where all employees must work from remote locations?
- Do you have log monitoring?

Commercial General Liability

Commercial General Liability policies typically cover third-party claims for bodily injury and property damage under Coverage A and personal and advertising injuries under Coverage B.

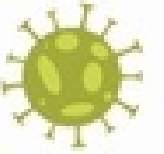
Under Coverage A, companies may be at risk for claims alleging that proper care and precautions were not taken to mitigate the spread of COVID-19, thus resulting in bodily injuries. This may lead to inquiries whether companies knew and ignored risks, or whether the circumstances were indeed unknown and unforeseen.

Under Coverage B, companies may be sued for false imprisonment as a result of improper or unwarranted quarantines.

Hence, any claim by a third party for bodily injury or property damage resulting from an alleged failure of the company to take precautions against the virus should ideally fall within the coverage scope of the CGL policy. However, under both Coverage A and B, Insurers may seek to rely on the exclusions below as a line of defense:



Pollution Exclusion: Some policies that are silent on the definition of a “pollutant” and describe them as irritants or contaminants may construe COVID-19 within the exclusion.



Communicable Disease Exclusion: Some international forms come with this exclusion.

Fungi/Bacteria/Mold Exclusion: COVID-19 is a virus; however, insurers may seek to interpret this exclusion as a defense.



Intentional Act Exclusion: Admissibility of claims may become questionable if it is established that the Insured carried on with their operations by insisting employees to come to work, despite the risk to health being known.



Insurers have quickly adopted a Pandemic Exclusion for renewals to provide a clear position going forward. This may open up scope for clients to allege policies without the explicit exclusion are implicitly providing coverage.

Workmens' Compensation

Workmens' Compensation policies cover injury and accidents occurring during the course of employment.

In the current scenario, COVID-19- related workers' compensation claims can be filed by employees against their employers. However, for it to fall within the scope of the WC Act, the injury to the employee must be occupational in nature and should arise during the course of employment or must be as a result of exposure to a specific workplace of the employee. Insurers may also argue that the illness must be specific/peculiar to the employee's work and is exclusively found in employees engaging in a certain kind of work only.

It will be extremely difficult to determine where an employee has contracted the illness given the widespread nature of COVID-19. Doctors and health care workers are among those who are most vulnerable.

Where an employee contracts the virus at workplace or due to work related travel and alleges that the infection is a result of the employer's negligence, will the employee be compensable under the WC Act? There is little precedence set and may eventually conclude with the decision of the court, from which the policy will then respond subject to terms and conditions of the policy.

If a company receives an allegation of this nature, they must inform their insurer while carrying out a detailed investigation of the claim by the employee.

In addition to virus-related injuries, it is anticipated that claims could arise from employees alleging they were not provided with the appropriate ergonomic environment to work from home during a lockdown period. Companies may wish to explore measures to minimize this risk by offering employees wellness advice and allowances for them to make their working environment more comfortable.

For additional information on the above content, you may reach out to:

[Pankhuri Saxena](#)

Assistant Vice President - Financial Lines & Casualty and M&A

pankhuri.saxena@anviti.in

[Apurva Gopinath](#)

Senior Manager - Financial Lines & Casualty

apurva.gopinath@anviti.in

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Anviti Insurance Brokers Private Limited

Corporate/Registered Office - Unit 102, 1st Floor,

The Estate, #121, Dickenson Road,

Bengaluru – 560042, Tel - 080 46113601,

Fax - 080 46113600, Email - Info@anviti.in,

Website - anviti.in, CIN - U66000KA2016PTC095559 | Composite

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