



COVID-19 Claims' Forecast in Commercial General Liability ("CGL") Policies

We understand that one of the main liability concerns that CGL insureds face in these challenging times is the potential for claims alleging negligence from failing to protect a customer and/or invitee from the spread of Covid-19. But, does the CGL policy provide coverage for defense and payment of damages under these circumstances?

CGL policies are the most common type of liability insurance held by businesses. The CGL policy (ISO form), subject to all policy language included therein, promises to pay the insured's legal liability for damages that result from "bodily injury" and/or "property damage" that arises out of an "occurrence" that takes place during the policy period (coverage A). The CGL policy also may provide "personal and advertising injury" coverage (coverage B), and medical payments (coverage C).

BODILY INJURY AND PROPERTY DAMAGE

We anticipate that proving that a claim falls under the bodily injury definition will not pose any major problem. However, we also expect that it will be difficult for insurers to acknowledge that a covered "property damage" took place. Such "property damage" allegation can become complex since physical injury to tangible property or loss of use of tangible property is not as straight forward when claiming the presence of Covid-19 in or on such property.

OCCURRENCE/INTENTIONAL ACTS

An "occurrence" (accident) must take place for coverage A to be triggered and the "bodily injury" or "property damage" cannot be expected or intended from the insured's standpoint. Since most jurisdictions use the rule that the injury or damage must be expected for it to be excluded, not the act itself, the lack of an occurrence or presence of an intentional damage in the Covid-19 context (to avoid coverage) can be hard to conclude. However, depending on the facts of the particular case, some insurers may decide not to provide coverage based on the lack of an occurrence or reasoning that the intentional acts exclusion is applicable.

EXCLUSIONS THAT MAY BE RAISED:

- A) Pollution Exclusion** – We find it very controversial to qualify Covid-19 as a pollutant and it appears unlikely so. To us, it is evident that when people think of a pollutant, Covid-19 does not come to mind.
- B) Employers Liability Exclusion** – This exclusion is extremely important to consider as in most cases, Covid-19 would not be considered an occupational disease for employees who are not in the healthcare industry. However, several jurisdictions made changes to workers compensation laws to consider Covid-19 as such. Moreover, if your workmen's insurance does not cover Covid-19 employee claims, your CGL most likely will not cover "bodily injury" linked to Covid-19 while on the job.

- C) **Fungi or Bacteria Exclusion (endorsement CG 21 67 12 04)** – This exclusion could be raised by insurers. However, in view of the existence of the endorsement that relates to communicable diseases (which will be discussed next), insurers would have a hard time trying to apply the CG 21 67 endorsement to Covid-19 claims because the communicable disease exclusion was designed for viruses.

- D) **Communicable Disease Exclusion (endorsement CG 21 32 05 09)** – We anticipate that all policies that carry this endorsement will not cover any Covid-19 allegation as the exclusion applies to “bodily injury,” “property damage,” and “personal and advertising injury” arising out of the actual or alleged transmission of a communicable disease. This endorsement was intended to eliminate CGL coverage for diseases such as: the avian flu, SARS, and rotavirus. Hence, it is extremely difficult and awkward to argue that Covid-19 is not included within the exclusionary language. In our opinion, insurers will be able to deny coverage in order to avoid defending lawsuits (and indemnify plaintiffs) against insureds due to the “alleged” and “arising out of” wording that is found in the endorsement.

The predictions made throughout this article, as in any CGL claim’s final analysis, will depend on the particular allegations made and the specific circumstances surrounding an individual claim. However, our assessment is shared by many articles that we have examined regarding this critical subject.

We fully understand that this language can be complicated and many areas of these terms may call for further clarification, and we are here to help. If you have questions regarding your **Commercial General Liability** policy and the potential Covid-19 claims, please contact one of our insurance experts at fulcro@fulcroinsurance.com and we will answer all of your questions.

Best regards,
Team Fulcro

