

Coronavirus and the CGL

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Because of the fears (warranted or not) stemming from the Coronavirus, questions and answers regarding insurance policy response to the virus appear almost daily in various publications. To date, two articles have been published by the VU in relation to insurance and the virus:

- [Coronavirus and Workers' Compensation](#)
- [Coronavirus and Business Income Losses](#)

Although the VU has not yet received questions regarding how the commercial general liability (CGL) policy will respond, the CGL's response must still be understood. Various publications have addressed the CGL's response to the coronavirus with varying degrees of accuracy (be careful and don't depend on other sources of information).

Legal Liability Required

To lead into the CGL's response to the coronavirus, one key fact must be understood. If there is no legal liability, coverage is not triggered in the CGL and the policy will not respond. Legal liability exists when:

- The wrongdoer is found guilty of "Negligent Conduct" (meaning they breached a duty owed to the injured party);
- The injured party suffers actual damages; and
- The wrongdoer's "Negligent conduct" is the proximate cause of the injury or damage.

Far more than these triggers are required to ultimately establish legal liability, but such detail is not the focus of this article. For more detail on what is required to establish legal liability see, [Are You Applying the MOST Basic CGL Coverage Rule](#) and [How Does a 'Person' Become Legally Liable](#).

Because the insured must be legally liable before the CGL responds, what actions or inactions could possibly lead to the insured being found legally liable for an injury from the coronavirus? To answer this question requires some imagination considering the requirements that must be met to be held legally liable. Following are a few ideas (but not all the possibilities):

- Allowing an employee who is **known** to be infected with the virus to continue working;
- Failure to adhere to required health and prevention guidelines;
- Remaining open following an order by a civil authority to close;
- Maybe (but not likely) selling a product from China on which the virus can live for long periods;
- Not screening and refusing service to customers with the virus; or
- Other weird actions or events.

To be direct, the likelihood a business owner may be held legally liable for injury to a third party who contracted the coronavirus on the insured's premises is very low to almost non-existent. Thus, it is unlikely the CGL will be called upon to respond. But the lack of legal liability doesn't stop people from trying to sue to prove negligence and legal liability – especially in the face of irrationality.

But if the insured does breach a duty owed and is held legally liable (although unlikely, nothing is impossible), will the CGL respond? Review the unendorsed CGL and no exclusion is found within Coverage Part A, Bodily Injury and Property Damage.

Was There an "Occurrence"?

A second requirement contained within the insuring agreement plays a role in the CGL's response to any injury supposedly arising from the coronavirus - the injury must qualify as an "occurrence" before the policy responds. The CGL form reads:

b. This insurance applies to "bodily injury" and "property damage" only if:

*(1) The "bodily injury" or "property damage" is caused by an "**occurrence**" that takes place in the "coverage territory"*

Within the CGL an occurrence is defined as *an accident, including continuous or repeated exposure to substantially the same general harmful conditions*. Is contracting a virus an occurrence within the policy form?

To decide if this qualifies as an "occurrence" the question must be asked, is passing along a virus an accident? Maybe, but there are too many variables are involved to provide a definitive answer. As part of the question of an "occurrence," the injured party has to prove that the virus was contacted at the insured's premises or arising from its operations. Given the specifics, this might be almost impossible.

For sake of the overall discussion, assume making another person sick qualifies as an "occurrence" in the CGL, and that the person is able to prove that his/her only exposure was at the insured's locations or a result of the insured's operations.

If the insured is legally liable, if there is an occurrence as defined in the CGL and if the exposure can be narrowed down to the insured, the next step is to look for exclusions within the CGL.

Are There Any Exclusions?

Review the exclusions in the unendorsed CGL and only one exclusion could possibly negate coverage for spreading the coronavirus to members of the public, exclusion **2.a. Expected or Intended Injury**. For example, if the insured requires an employee to continue working or come to work who is known to be infected, spreading the virus should be expected (even if not intended). No coverage due to the exclusion.

Look back at the earlier examples that could trigger a liability claim and many of those questionable actions may fall under the expected or intended injury exclusion. If a reasonable person could or should expect the virus to spread because of actions taken or decisions made, this exclusion is likely to apply.

If, however, the expected or intended injury exclusion does not apply, there do not appear to be any other exclusions applicable to the spreading of the coronavirus. Although some enterprising claims person would surely try to use the pollution exclusion.

This leaves us with the impression that the CGL may provide coverage for infecting a third in certain circumstances. But this is not necessarily true.

A Common (Ubiquitous) Exclusionary Endorsement

Even if an incident leading to bodily injury from coronavirus clears all the required hurdles (the insured is legally liable, the incident qualifies as an occurrence, the injured party can prove the exposure is the from the insured's actions, and the claim is not hindered by the expected or intended injury exclusion), there is still one roadblock – an exclusion common to most CGL policies – the CG 21 32 05 09 - Communicable Disease Exclusion.

If and when this endorsement is attached, coverage for injury from the coronavirus appears to disappear. The form reads (in part):

A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

2. Exclusions

This insurance does not apply to:

Communicable Disease

"Bodily injury" or "property damage" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;
- b. Testing for a communicable disease;
- c. Failure to prevent the spread of the disease; or
- d. Failure to report the disease to authorities.

Undoubtedly the question to be answered is, does a virus qualify as a disease? In a "roundabout" way, yes. It's not the virus that causes harm, it's the disease that results from the virus. The immune system destroys some viruses before they can cause any harm, but some viruses overpower the immune system and lead to sickness (disease).

When the CG 21 32 is attached, there is no coverage for the transmission of the coronavirus and the resulting sickness (disease).

How is the CGL Going to Respond to the Coronavirus?

Without overstating the reality, it seems rather unlikely that a CGL policy will ever pay a claim arising from the coronavirus. The facts may negate any possibility that the insured is legally liable for spreading the virus/disease. And even if the insured is legally liable, does spreading a virus actually qualify as an occurrence as defined in the policy? If these two insuring agreement conditions aren't met, there is no need to go any further into the coverage form because there is no coverage.

If the loss meets all the conditions contained within the insuring agreement, might the actions of the insured fall within the scope of the expected or intended injury exclusion? If the exclusion does not apply, then there may be coverage.

However, the CG 21 32 is a ubiquitous exclusion attached to most commercial general liability policies.

We have gone the long way around to answer the question, "how will the CGL respond to a coronavirus claim," but the trip was necessary. Based on the requirements within the insuring agreement, the need to prove the insured was the source of any exposure, the application of the expected or intended injury exclusion, and the usual attachment an exclusionary endorsement, in most cases, the bodily injury coverage available in Coverage Part A of the CGL will never respond to pay a coronavirus claim.

Don't expect the coronavirus to be a factor in CGL loss ratios.

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