

## 8 Possible Paths To Insurance Coverage For COVID-19 Losses

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(March 26, 2020, 2:26 PM EDT) -- What insurance coverage is available for losses and liabilities related to COVID-19? Some early insurance commentators have been too quick to opine that there simply is none. They note that business interruption coverage requires physical damage and that property and liability policies often exclude contamination by viruses and bacteria.

But policyholders faced with coronavirus-related losses need not throw in the towel so quickly. If they study their specific policy language and unique factual circumstances carefully, they may find that the insurance naysayers' generalizations do not apply to them. Insurance coverage may be available for a variety of COVID-19-related losses, and for corporate policyholders of all types.

To illustrate the point, and help guide the path forward for policyholders seeking coverage, we suggest here eight hypothetical situations that appear promising for coronavirus-related coverage under property policies, general liability insurance, D&O liability insurance and event cancellation insurance. These hypotheticals are illustrative only; careful study of individual policies and fact patterns will likely reveal additional paths to insurance coverage.[1]

As we write, state legislatures are starting to address these and related issues,[2] and courts are already being called upon to do so, as well.[3] We focus here, however, on the lessons to be drawn from existing policy language and case law.

### 1. First-Party Property/Time Element Claim Under Policy With Express Communicable Disease Coverage Grant

Several guests at your hotel become infected with the coronavirus, and consequently the state Department of Health orders you to close the hotel for at least two weeks. Your property policy includes coverage for communicable disease.

The insurance industry has developed specialty products that expressly include a specific coverage grant, usually as part of a commercial property package, for losses arising out of communicable diseases. One such coverage extension reads as follows:

We will pay for the actual loss of Business Income you sustain as a result of having your entire "operations" temporarily shut down or suspended by an order from any local, state or federal Department of Health having jurisdiction over your "operations." Such shutdown must be the direct



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result of an outbreak at the insured premises of a “communicable disease” such as, but not limited to, Meningitis, Measles, or Legionnaire's Disease, or to a “food contamination” caused directly by infectious or bacterial organisms such as, but not limited to, infectious Hepatitis, E.Coli bacteria, or Salmonella. An actual business shutdown must occur.[4]

This provision defines “communicable disease” expansively, using the phrase “including but not limited to.” Some policies define “communicable disease” to include losses arising from diseases that are transmissible from human to human. Both formulations would likely include COVID-19, the disease caused by the coronavirus.

In addition to the business interruption component, communicable disease coverage often includes the costs of cleaning up a contaminated facility, as well as the costs of disposing of contaminated materials. It may even include PR costs related to reputational issues arising from the crisis.

Importantly, if a policy contains a specific communicable disease coverage grant, this may negate the impact of any contamination exclusion, particularly if the exclusion is phrased to except “loss or damage otherwise covered” by the policy.

In addition, while some policies may have sublimits for communicable disease coverage, these sublimits may not apply where a communicable disease, such as COVID-19, leads to other losses covered by other parts of the policy, such as business interruption or contingent business interruption coverage for lost revenue or extra expense due to a plant shutdown or supply chain disruptions, as discussed further in Scenarios 3-6 below. These coverages may not be subject to the communicable disease sublimits, and should instead be subject to the policy’s overall limits (or other, typically larger sublimits).

## **2. Event Cancellation Insurance Claim**

Your company organizes a large annual music festival that draws thousands of attendees to the same state park each year. Following an outbreak in another part of the state, and out of an abundance of caution, the governor issues an emergency order banning large public gatherings, forcing cancellation of your event.

Organizers of large events like concerts, music festivals, sporting events, and trade shows often purchase event cancellation insurance policies that may respond to losses arising from disruption or cancellation of events due to circumstances beyond the insured’s control. These policies vary considerably, and a particular policy may contain descriptions of the covered loss (or exclusions) that are specific to the covered event. Careful attention to the policy wording is critical; but in the absence of a specific on-point exclusion, an event cancellation policy should respond in the situation described above.

Event cancellation policies commonly indemnify the insured for losses arising from the unavoidable cancellation, curtailment, postponement, removal to alternative premises, or abandonment of an event, and for any enforced reduced attendance. Notably, the loss generally must be caused by factors beyond the control of the insured or the attendees: for example, an insurer would likely try to deny coverage for losses from voluntary nonattendance due to generalized fear of infection (even here, however, some policies may language granting coverage in such a situation).

If, however, a lawful order prohibits attendance by some (or, as in our hypothetical, all) attendees, the policy may well respond — absent an applicable exclusion.

A different scenario arises where absolute compulsion is lacking and the policyholder must make a judgment call whether to cancel the event. If such a decision is made in order to avoid other covered losses, then the policyholder may have an opportunity to consult with the insurer to reach an agreed cancellation of the event, which might mitigate losses for both policyholder and insurer.

In the absence of such consent, however, the unavailability requirement, if it exists in the policy at issue, may present a challenge, but even in this case, the scope and severity of the coronavirus crisis should support arguments that the cancellation was, in fact, unavoidable.

Some, but not all, event cancellation policies contain a communicable disease exclusion. For example, some policies exclude coverage for losses:

Directly or indirectly arising out of, contributed to by, or resulting from ... any communicable disease which leads to (a) the imposition of quarantine or restriction in movement of people or animals; (b) any travel advisory or warning being issued by a national or international body or agency; and in respect of a. or b. above any fear or threat thereof (whether actual or perceived).[5]

Where such an exclusion is present, some policies define “communicable disease” as one that the World Health Organization (or other relevant authority) has declared an epidemic or pandemic. On March 11, the Director General of the WHO declared the COVID-19 outbreak a pandemic.[6] If the governor’s order in the above hypothetical were issued after such a declaration, an insurer may attempt to deny coverage under an event cancellation policy with such a communicable disease exclusion, but even there a policyholder may be able to point to other causes for the cancellation (e.g., logistical obstacles, government decisions, etc.) in order to avoid the exclusion.

Before the pandemic declaration, however, an insurer would be on considerably weaker ground if it argued that prior WHO announcements, such as those identifying coronavirus as a global health emergency,[7] could bring COVID-19 within its communicable disease exclusion.

In short, while event cancellation policies may contain limitations, and both policy language and specific factual circumstances need careful parsing, such policies should provide significant coverage for coronavirus-related losses. Furthermore, even without an express cancellation coverage grant, protection for this scenario might yet apply, inter alia, if the policy contains the civil authority coverage discussed in Scenario 6 below.

### **3. First-Party Property/Time Element Claim**

Several plant employees are diagnosed with COVID-19, and testing reveals coronavirus on surfaces within the plant’s premises and inside its HVAC systems. You shut down operations for decontamination.

The Telegraph recently reported that traces of the coronavirus have been found in the air ducts of British hospitals.[8] That not-uncommon scenario forms the basis for this hypothetical. Although cases involving coronavirus in HVAC systems are as yet untested in the courts, analogous situations involving asbestos, noxious odors, mold and carbon monoxide suggest that if the virus is present on HVAC systems, walls, floors, doors, equipment, and other inanimate objects, physical property damage may well be found.[9] Some of the coronavirus-related orders issued by public authorities to date have acknowledged as much.[10]

Under an all risks commercial property policy, a common form of policy that covers all causes of property damage that are not expressly excluded, coverage may exist for the costs of cleaning up the

property (assuming the policy lacks an express exclusion for virus contamination — see below).

In addition, lost profits, extra shut-down related expenses and other components of covered loss during down time should be covered under such a policy with the business interruption coverage (one of the so-called time element coverages), so long as the interruption of operations and resulting loss resulted from the property damage.

Even without physical damage to property per se, there is some support in the case law for coverage arising out of the inability to use the property.[11] Under this line of cases, if a policyholder suffers a loss due to, for example, a harmful substance rendering the property unusable or uninhabitable, even temporarily, that might be sufficient to satisfy the physical loss or damage requirement.[12]

In other words, even if there has not been a tangible and permanently detrimental change to real or personal property, sufficient physical loss or damage may be present to trigger coverage for the loss of use of property.

While many property policies contain exclusions for contamination by bacteria, viruses or communicable disease, not all policies do. And some policies with such exclusions may not define their key terms, thus opening the door to a narrow interpretation of the exclusion by the courts.

Other policies may define these terms or phrase the exclusions in a way that does not bar coverage for all coronavirus-related losses. For example, some policies have contamination exclusions with exceptions that preserve coverage for loss “caused directly by physical damage to the property covered ... by a peril not excluded in this policy.”[13] In some policies, this includes communicable disease coverage. Other policies, rather than purporting to exclude contamination as a cause of loss, may apply lower sublimits to such losses.

In short, the physical property damage requirement and/or the contamination exclusion found in many first-party property policies are by no means insuperable obstacles to coverage, and many coronavirus-related claims should qualify for coverage under the plain language of the policy. As noted above, additional support for coverage for this scenario may be found in prior court rulings that found coverage in analogous situations. Careful investigation of the facts — and scrupulous documentation of the evidence — will buttress the coverage claim.

#### **4. Ingress/Egress Claim Under First-Party Property/Time Element Insurance Policy**

Your facility is inside the boundaries of a quarantined area, which has prevented ingress to or egress from your facility. This lack of access has required your business to shut down, even though no coronavirus has been detected inside your plant or among your employees.

While this scenario posits no physical damage to the policyholder’s facility, business interruption coverage might still be available to the extent that (1) the commercial property policy extends coverage to loss of ingress or egress from the insured property (another type of time element coverage); and (2) the basis for loss of ingress/egress is coronavirus-related property damage.

Ingress/egress coverage is designed to pay for a loss of profits and other economic losses due to the suspension of access to the insured's business. In some policies the prevention of ingress and egress must be caused by a physical impediment, such as collapsed construction blocking the road, a mudslide or downed power lines. In other policies, however, the ingress/egress insuring clauses do not necessarily tie the facility’s inaccessibility to direct physical damage.[14] For example, one form provides as follows:

Loss of Ingress or Egress: This policy covers loss sustained during the period of time when, as a direct result of a peril not excluded, ingress to or egress from real and personal property not excluded hereunder, is thereby prevented.[15]

In other words, depending on the policy language, a coronavirus-based quarantine order imposed on a particular locality that prevents access to an insured location might trigger this coverage, even in the absence of virus contamination or other physical damage to the insured property itself. And where the ingress/egress coverage does require physical damage, that may well be satisfied by the presence of coronavirus near (but not at) the insured property at issue.

### **5. Contingent Business Interruption Claim Under First-Party Property/Time Element Insurance Policy**

Your supply chain was interrupted when a supplier shut down operations due to a coronavirus contamination of its plant. Your facility was not contaminated, but you can no longer obtain all the supplies or materials you need to continue operations and supply your own customers or clients in turn.

Although this scenario lacks any coronavirus contamination or other damage at the policyholder's own facility, coverage might be available under the contingent business interruption component of its commercial property insurance, another type of time element coverage that property insurers offer and corporate policyholders frequently opt to purchase.

Contingent business interruption insurance expressly covers the policyholder's lost profits and other economic losses that result from loss or damage to the property of a supplier (i.e., a third-party entity upstream in the supply chain) or a customer or client (i.e., a third-party downstream in the supply chain).

Contingent business interruption coverage usually requires physical damage to customers' or suppliers' property. Accordingly, if the policy is one in which (as discussed above) Coronavirus contamination constitutes physical damage, then the presence of coronavirus at the supplier's plant resulting in a shutdown could trigger this coverage. Again, a careful investigation and documentation of the evidence may reap insurance rewards.

### **6. Civil Authority Claim Under First-Party Property/Time Element Insurance Policy**

Your supply chain was interrupted when a supplier shut down plant operations due to a coronavirus-related quarantine ordered by the government. Neither your supplier's plant nor your facility suffered coronavirus contamination, but you can no longer obtain all supplies or materials you need to continue operations and supply your own customers or clients in turn.

Scenario 6 differs from Scenario 5 in that the cause of the supplier's plant shutdown was a quarantine order rather than coronavirus contamination at the supplier's plant. The absence of covered property damage at the supplier's plant, for the reasons discussed above, would ordinarily be a barrier to contingent business interruption coverage.

Nevertheless, coverage might be available under a civil authority coverage extension, if part of the applicable policy. Similar to coverage for loss of ingress/egress, civil authority coverage reimburses lost profits and other economic losses when a government entity has issued a legal order resulting in denial of access to the policyholder's insured premises.

While some civil authority provisions expressly require physical property damage,[16] others do not.[17] For example, some civil authority extensions simply "cover the loss sustained during the period of time

when, as a result of a peril not excluded, access to real or personal property is prohibited by order of civil or military authority.”[18]

Thus, as long as the peril itself is not expressly excluded from this all-risk policy, losses arising out of a coronavirus quarantine order that shuts or slows down a supplier’s business may be recoverable. And where the civil authority coverage does require physical damage, this may be established by the methods discussed above (e.g., presence of coronavirus within the required area).

## **7. Claim Under Directors and Officers Liability Insurance Policy**

In Scenario 6 above, the interrupted supply chain leads to a halt of production at your facility and, as a consequence, the share price of your publicly traded company plummets. An ensuing putative shareholder class action against your company and certain directors and officers alleges violation of the securities laws for failure to disclose material information about the company’s exposure to adverse financial impacts from the pandemic.

On March 4, the U.S. Securities and Exchange Commission issued a press release reminding companies properly to inform investors of coronavirus-related risks of which they are aware.[19] A scenario like the one described above contemplates allegations that such guidance was not followed, and implicates coverage under a directors and officers liability policy.

Such policies typically cover the corporate entity for securities claims such as the one hypothesized under their so-called Side C coverage, as well as claims against individual directors and officers, where wrongful acts are alleged. That term is typically defined broadly, as “any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted.”[20]

While this D&O coverage grant is broad, insurers may assert the bodily injury/property damage exclusion or the pollution exclusion commonly found in D&O policy forms.

The bodily injury/property damage exclusion in most D&O liability policies applies to claims “for bodily injury ... sickness, disease or death of any person, or damage to or destruction of any tangible property.”[21]

A policyholder would have good arguments that a shareholder suit alleging failure to disclose coronavirus-related business risk does not constitute a claim “for” bodily injury or property damage: It is the very type of securities claim for which D&O policies are marketed and sold, not a tort claim alleging physical harm caused by the policyholder. Otherwise stated, this is a dove-tailing exclusion, which allocates claims that are traditionally the subject of general liability insurance to that line of coverage.

Some D&O insurers may resist coverage, citing broader causation terms, such as “based upon” or “arising out of,” which have crept into the bodily injury/property damage exclusion. But stretching such boiler-plate causation language to SEC disclosure obligations allegedly relating in any way to injury or damage not only distorts the ordinary meaning of these terms in their context, but also would violate reasonable expectations of coverage for a wide range of securities claims not limited to those relating to the coronavirus.

As applied to a securities class action alleging a stock price drop attributable to the general decline of economic activity from a pandemic, many courts would hold that this exclusion, even in its broadest wording, is at best ambiguous; and under well-established doctrines of insurance contract construction that ambiguity is resolved in favor of coverage.

Finally, some D&O policies contain a clear-cut savings clause for securities claims that arise from matters otherwise within the scope of the injury/damage exclusion, cutting through any possible doubt about the availability of coverage under this scenario.[22] Accordingly, policyholders should pay careful attention to the specific wording of personal injury/property damage exclusions, as well as to the broader principles of construction that would account for its intended function in their D&O liability policies.

Turning to D&O policies' pollution exclusions, a wording with broad causation terms reads as follows:

The insurer shall not be liable for Loss on account of any Claim made against any Insured ... based upon, arising out of, or attributable to (a) the actual, alleged, or threatened discharge, release, escape, seepage, migration or disposal of Pollutants into or on real or personal property, water or the atmosphere; or (b) any direction or request that the Insureds test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants, or any voluntary decision to do so.[23]

Other policies may have the narrower "for" causation language, thus further limiting the scope of this exclusion. But even where the broad causation language is present, the policyholder can point to the causation arguments and general interpretive principles discussed above. In addition, the specific definition of "pollutants" or "pollution" in a D&O policy may be a critical factor in the potential application of the pollution exclusion.

As with the term "contamination" in property policies (see Scenario 1 above), a D&O policyholder might well find that the term "pollution" is not defined in its policy in a manner that clearly and conspicuously encompasses coronavirus, in which case the exclusion should be inapplicable.

## **8. Claim Under Commercial General Liability Insurance Policy**

A cruise line learns that some passengers on its flagship vessel are infected with coronavirus. Authorities at the vessel's intended port allow it to dock, but order that all passengers remain onboard for a 14-day quarantine period. During that time, the virus spreads to other passengers. Infected passengers later sue the cruise line for their medical expenses and pain and suffering; uninfected passengers sue for false imprisonment.

In response to third-party claims alleging direct responsibility for coronavirus-related harms, companies like the cruise line in this hypothetical can be expected to look to their commercial general liability policies as a first line of defense. CGL policies characteristically cover "those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies." [24]

"Bodily injury" is typically defined (somewhat circularly) to include "bodily injury, sickness, or disease sustained by a person, including death resulting from any of these at any time." [25] Thus, an infected passenger's claim that the cruise line negligently allowed coronavirus to spread onboard would fall within the coverage grant.

The uninfected passengers' claims for false imprisonment present a slightly different question — if the passengers have not been infected or otherwise physically harmed, they probably don't meet the "bodily injury" requirement. However, CGL policies usually provide so-called Coverage B protection for "sums the insured becomes legally obligated to pay as damages because of 'personal and advertising injury' to which this insurance applies." [26]

“Personal and advertising injury” is further defined to include injury “arising out of ... [f]alse arrest, detention, or imprisonment” under the standard CGL form.[27] Accordingly, the hypothetical false arrest claims may well fall within this CGL coverage grant.

A potential impediment to CGL coverage could be an exclusion for communicable disease, discussed above, to the extent it is present in a policy (and it is not always present). While the insurers will argue that exclusion would bar coverage for a bodily injury claim, its effect is less clear with respect to a false imprisonment claim by an uninfected passenger, which is predicated not on the transmission of a disease, but on measures taken to prevent its transmission.

Again, careful attention to the policy language, as well as careful analysis and documentation of the specific facts, may result in CGL coverage protection for serious tort claims such as those in this hypothetical.

## **Conclusion**

Policyholders with COVID-19 or coronavirus-related losses or liabilities should carefully analyze their property, event cancellation, CGL, D&O and other insurance policies. Substantial coverage will almost certainly exist under some or all of these policies for some coronavirus or COVID-19 claims.

Whether or not coverage applies for any specific coronavirus losses will depend largely on the precise wording of the policies and the specific pattern of the facts, along with the applicable case law. Proper understanding of potentially applicable policy language — both the words used and the words omitted — is critical. Understanding the legal landscape governing the interpretation and application of those words will likewise help identify avenues to coverage, obstacles to coverage and potential coverage gaps to fill at renewal time.

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[1] In addition to the four types of policies examined here — D&O, GL, Event Cancellation and Property — coverage for coronavirus-related losses may arise under a wide variety of other policies, including representations and warranties, employment practices liability, trade credit, and errors and omissions policies.

[2] For example, the New Jersey state legislature is considering a bill that would mandate coverage for claims “due to global virus transmission or pandemic” for small businesses, while allowing insurers to seek reimbursement from a state fund. New Jersey Bill A-3844 (draft), reported at <https://www.insidernj.com/assembly-agenda-monday/>. While insurance industry opposition to this measure seems likely, more robust legislative initiatives may ultimately become law in New Jersey or elsewhere and may prove helpful to some policyholders.

[3] See, e.g., *Cajun Conti, et al vs. Certain Underwriters at Lloyd’s, London*, No. 2020-02558 (Louisiana District Court, Orleans Parish), filed on March 17, 2020.

[4] Markel Insurance Company, Form No. MCP 011 (01/07).

[5] Hiscox Organisers Cancellation and Abandonment Wording 7613 03/09, available at <https://www.hiscox.co.uk/sites/uk/files/documents/2017-04/7613-event-organisers-cancellation-abandonment.pdf> (accessed 3/15/20).

[6] Donald G. McNeil, Jr., Coronavirus Has Become a Pandemic, W.H.O. Says, N.Y. Times (Mar. 11, 2020), available at <https://www.nytimes.com/2020/03/11/health/Coronavirus-pandemic-who.html> (accessed 3/13/20).

[7] Sui-Lee Wee, et al., W.H.O. Declares Global Emergency as Wuhan Coronavirus Spreads, N.Y. Times (Jan. 30, 2020), available at <https://www.nytimes.com/2020/01/30/health/Coronavirus-world-health-organization.html> (accessed 3/13/20).

[8] Henry Bodkin, Air Conditioning Systems Could Spread Coronavirus, Research Shows, The Telegraph (Mar. 6, 2020), available at <https://www.telegraph.co.uk/news/2020/03/06/air-conditioning-systems-could-spread-Coronavirus-research-shows/> (accessed 3/18/20). However, the CDC stated in early February, 2020 (approximately one month before the report in The Telegraph) that it had “no current evidence to suggest that the virus spreads ... through the air-handling system.” U.S. Dep’t of Health and Human Serv’s, Centers for Disease Control and Prevention, Letter to U.S. Passenger/Crew Member of Diamond Princess (February 8, 2020), available at <https://www.princess.com/news/pdfs/alert-cdc-letter-for-diamond-princess.pdf> (accessed 3/13/20). Accordingly it appears that further research and study may be required to ascertain whether HVAC contamination may be a vector for Coronavirus transmission.

[9] See, e.g., *Sentinel Management Co. v. New Hampshire Ins. Co.*, 563 N.W.2d 296 (Minn. App. 1997) (released asbestos was direct physical loss, even though no tangible injury to the physical structure of building resulted from the release, no regulation required the insured to abate the asbestos, and the building remained occupied); *Farmers Ins. Co. of Oregon v. Trutanich*, 858 P.2d 1332 (Or. App. 1993) (strong, persistent odor from an illegal methamphetamine laboratory in rented house qualified as “accidental direct physical loss”); *Sullivan v. Standard Fire Ins. Co.*, 956 A.2d 643 (Del. 2008) (unpublished) (mold contamination was “physical loss” because mold spores “undoubtedly have a ‘material existence,’ even though they are not tangible or perceptible by the naked eye”); *Matzner v. Seaco Ins. Co.*, 1998 WL 566658 (Mass. Superior Ct. 1998) (carbon monoxide infiltration due to blocked chimney constituted a “direct physical loss”).

While these decisions support coverage, it is important to note that not all courts agree, and none has yet addressed this particular factual situation. It goes without saying that novel Coronavirus will present novel legal issues for the insurance coverage industry.

[10] See, e.g., *City of New York, Office of the Mayor, Emergency Exec. Order No. 100* (March 16, 2020), <https://www1.nyc.gov/office-of-the-mayor/news.page>, at 2 (“this order is given because of the propensity of the virus to spread person to person and also because the virus physically is causing property loss and damage”); *Civil District Court for the Parish of Orleans, State of Louisiana, City of New Orleans, Mayoral Proclamation to Promulgate Emergency Orders During the State of Emergency Due to COVID-19* (Docket No. 2020.02602) (March 16, 2020) at 2 (“there is reason to believe that COVID-19 may be spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing property loss and damage in certain circumstances”).

[11] See *Gregory Packaging, Inc. v. Travelers Prop. & Cas. Co. of Am.*, Civ. No. 2:12-CV-04418 (WHW)

(CLW), 2014 U.S. Dist. Lexis 165232 at \*17 (D.N.J. Nov. 25, 2014) (evacuation of building due to dangerous ammonia discharge “physically rendered the facility unusable for a period of time,” which was sufficient to constitute “direct physical loss or damage” under the policy); Port Authority of N.Y. and N.J. v. Affiliated FM Ins. Co., 311 F.3d 226, 235 (3d Cir. 2002) (where building was made uninhabitable and unusable due to asbestos in indoor air, such “distinct loss to its owner” constituted “physical loss” under the policy); TRAVCO Ins. Co. v. Ward, 715 F. Supp.2d 699, 708-710 (E.D. Va. 2010) (drywall emitting noxious gases constitutes “direct physical damage” rendering dwelling uninhabitable). Wakefern Food Corp. v. Liberty Mut. Fire Ins. Co., 406 N.J. Super. 524, 544 (2009) (grocery store chain’s inability to operate due to widespread blackout was covered under power outage coverage extension, where power grid was physically incapable of supplying power for days, even though it suffered no “physical damage” per se); Motorists Mutual Ins. Co. v. Hardinger, 131 Fed.Appx. 823, 825-27 (3d Cir. 2005) (bacteria contamination of house’s well water would constitute direct physical loss to house if it rendered house unusable); but see, e.g., United Airlines v. ICSOP, 439 F.3d 128 (2d Cir. 2006) (rejecting claim for contingent business interruption due to 9/11 damages).

[12] Property policies vary as to whether they require “physical loss or damage,” “physical damage,” “physical loss, destruction, or damage,” or some other variant. The exact wording may be important for assessing coverage for Coronavirus-related losses.

[13] See, e.g., Raybestos-Manhattan, Inc. v. Industrial Risk Insurers, 433 A.2d 906 (Pa. Superior Ct. 1981) (finding that negligent introduction of fuel oil into a heptane storage tank, which then contaminated the production process, was a covered cause of otherwise excluded contamination of the heptane, and rejecting insurer’s argument that enforcing the exception would effectively moot the contamination exclusion, because “this appears to be the intent of the policy’s language.”).

[14] See, e.g., Fountain Powerboat Industries v. Reliance Ins. Co., 19 F. Supp. 2d 552 (E.D.N.C. 2000) (allowing ingress/egress coverage even though there was no physical property damage where flooded roadways were passable, but only at increased expense).

[15] *Id.* at 556.

[16] See, e.g., Dickie Brennan & Co., Inc. v. Lexington Ins. Co., 636 F.3d 683, 685 (5th Cir. 2011).

[17] See, e.g., Sloan v. Phoenix of Hartford Insurance Company, 207 N.W.2d 434 (Mich. App. 1973) (business interruption coverage provided for city-wide closures of multiple businesses due to riots, which were included among the policy’s named perils).

[18] See IRMI, Expert Commentary, “When Civil Authorities Take Over, Are You Covered?” (June 2001), available at <https://www.irmi.com/articles/expert-commentary/when-civil-authorities-take-over-are-you-covered> (accessed 3/12/2020).

[19] SEC, Press Releases, “SEC Provides Conditional Regulatory Relief and Assistance for Companies Affected by the Coronavirus Disease 2019 (COVID-19)” (Mar. 4, 2020), available at <https://www.sec.gov/news/press-release/2020-53> (accessed 3/13/2020).

[20] See, e.g., ACE USA, “Directors, Officers and Company Securities Liability Coverage Part,” at § III, available at <https://www.irmi.com/online/dno/cos/ace-usa/public/ace-usa-public-directors-officers-company-securities-policy-02-99.pdf> (accessed 3/13/20).

[21] See *id.*, at § IV.A.3.

[22] See, e.g., Travelers Private Company Directors and Officers Liability Coverage, Form No. IVDO-16001 Ed. 01-16, at Exclusion A.1(c) (“Exclusion A.1 will not apply to a Securities Claim”), available at <https://www.travelers.com/iw-documents/apps-forms/directors-officers/ivdo-16001.pdf> (accessed 3/17/20).

[23] Id. at § IV.A.4; see also XL Insurance, “Directors and Officers Liability Coverage Part,” at §§ III(A)(3), II(O)-(P), available at <https://www.irmi.com/online/dno/cos/xl-ins/public/xl-insurance-public-company-general-dno-policy-dno-liability-coverage-part-05-03.pdf> (accessed 3/16/20).

[24] Insurance Services Office, Commercial General Liability Coverage Form - CG 00 01 04 13, §I.A.1.a. (2012), available at <https://www.irmi.com/online/frmcli/sc0000cg/ch00cg00/00010413cgcw.pdf> (accessed 3/13/20).

[25] Id. at § V.3.

[26] Id. at § 1.B.1.a.

[27] Id. at § V.14.a.