

UNITED STATES 
COVID Infects TECH

By Marci De Vries-Todtz

My how things change. In an eyeblink, the social media and tele-work sector went from being perceived Privacy and Information Vampires to the salvation of business and quarantined individuals. Just one pandemic and suddenly you see who your real friends are.

In all seriousness, the telework industry leapt ahead ten years in the space of a week with forced school, office building, public space and other closures. For the technologists behind the scenes it was a natural disaster of technical requirements. “Cloud meeting” platforms like Zoom, posted huge increases in traffic. According to CNBC, “Employees on Zoom’s engineering operations team have been adding servers and other equipment inside every one of the company’s 17 data center locations. Two more [data centers] were planned to go online within a week or two.” <https://www.cnbc.com/2020/03/18/zoom-cfo-explains-how-the-company-is-grappling-with-increased-demand.html>

Facebook is helping isolated workers stay in touch, showing 50 percent increased usage in its messaging platform and 100 PERCENT increase in video calling, and neither of these services is monetized within Facebook. <https://www.theverge.com/2020/3/24/21193094/facebook-coronavirus-covid-19-messaging-service-reliable-strain-outages> This means Facebook is scaling up for usage that doesn’t generate revenue, meanwhile their tech teams are also trying to figure out how to transition Facebook’s own in-office staff to telecommuting.

And don’t forget Slack – According to Marketwatch, Slack CEO Stewart Butterfield said, “the more “real” the pandemic got, the more companies and individuals began signing up for Slack. Butterfield noted that on Tuesday, March 10, Slack hit 10 million simultaneously connected users; that’s up from 1 million in October 2015. Less than a week later, it hit 11 million. As of Wednesday night, it was counting 12.5 million simultaneously connected users.”

The technologists responsible for keeping these platforms up and running deserve a parade. This is very, very hard work that was done ‘in real time’ with no idea what kind of numbers would be on the other end of the usage spike.

The other side of the coin is this: with all these novel users in the telecommuting space, a lot of critical data is at risk of being lost or compromised.

Because the telecommuting change was made “overnight” (literally, in many cases), corners may have been cut in the way companies archive data as it flows between teams and customers. We also have thousands of users who are not accustomed to using these platforms, and therefore might miss out on critical archiving protocols. Add these factors together and the possibility for loss of critical communication about deliverables, payment schedules, and work product somewhere in the ether between email, slack, Zoom and Facebook chat seems like a real possibility. This proliferation of data platforms has been a main driver of quashed telework programs in the past.

We also see risk in the simple fact that several new data centers and work platform setups were done in a heartbeat. Companies can anticipate data privacy issues in the next six months due to configuration mistakes may have crept into the setup. When you’re building new systems that fast it’s practically unavoidable.

However, now that telework is necessary, we are all eager to see how information usage and capture is reshaped in this new business landscape. My sincere hope is that all goes smoothly, and employees now have a whole new option for work/life balance available to them.

And in the meantime, consider sending a pizza to your data architects and network engineers. They could use a little recognition right now.

Insureds Likely Face Uphill Battle in Seeking Coverage for Coronavirus Losses

By Peter E. Kanaris, Scott M. Seaman, Judith A. Selby

As the coronavirus, COVID-19, continues to spread, organizations around the globe are facing mounting business disruptions and economic losses. Some of these entities may seek coverage for these losses under a variety of insurance policies. Coverage under any form will depend, of course, on the facts of the claim, policy wordings, and the applicable law. Here, we highlight some policy wordings insurers should keep in mind when evaluating coronavirus-related claims under various coverage forms.

It is highly unlikely that a coronavirus claim would be covered under a named peril property insurance policy, but insurers may receive business interruption and contingent business interruption claims under all-risk property forms. Those coverages, however, do not come into play in the absence of direct physical loss or damage to property. Insurers should also consider whether the policy contains a contamination or other similar exclusion. Coverage for lost income or profits should be examined under a Civil Authority or Ingress/Egress coverage extension, if applicable. (See below)

As businesses continue to experience economic losses related to the coronavirus, allegations that directors and officers did not properly plan for, manage, or disclose coronavirus-related risks may emerge. Coverage for such claims under D&O forms, however, may be precluded by bodily injury and conduct exclusions. Commercial general liability policies may contain exclusions applicable to both Coverage A and Coverage B for claims arising out of communicable disease. Pollution and other exclusions should also be examined.

Coverage for business income losses under a Communicable Disease Endorsement typically will require the actual, not suspected, presence of a communicable disease at an insured location and a mandatory governmental order. Coverage under a Civil Authority coverage enhancement will likely require off-premise property damage, as well as a civil authority order. An Ingress/Egress coverage enhancement may not require an act of a civil authority, but physical loss or damage caused by a covered peril to property that prevents or hinders ingress to or egress from the insured’s business will be required. Supply Chain coverage is triggered by business interruption resulting from a disruption or delay in the receipt of products, components, or services from only a named supplier or supply. Physical damage may not be required, but the relevant suppliers and supplies must be scheduled, unless the form provides blanket coverage. In either case, coverage may be subject to a communicable disease exclusion.

Event Cancellation policies may contain an express coronavirus exclusion^[1] and/or a communicable disease exclusion. In addition, coverage may be excluded for any voluntary cancellations. Compliance with the policy’s notice provision—which typically requires prompt notice following discovery of any event likely to give rise to a claim—should be carefully considered in light of the well-publicized impacts of the coronavirus. Event Cancellation policies also typically contain a mitigation requirement, which may be relevant in certain circumstances.

Final Thoughts

In view of the potential large losses, companies may aggressively seek coverage under these and a wide variety of additional policy forms such as travel, workers compensation, and errors and omissions policies. Of course, coverage under any specific policy form may be barred by certain policy terms, conditions, and exclusions. Please contact the authors to discuss coverage issues that might arise in relation to coronavirus claims.

[1] Some carriers introduced coronavirus exclusions in January 2020.