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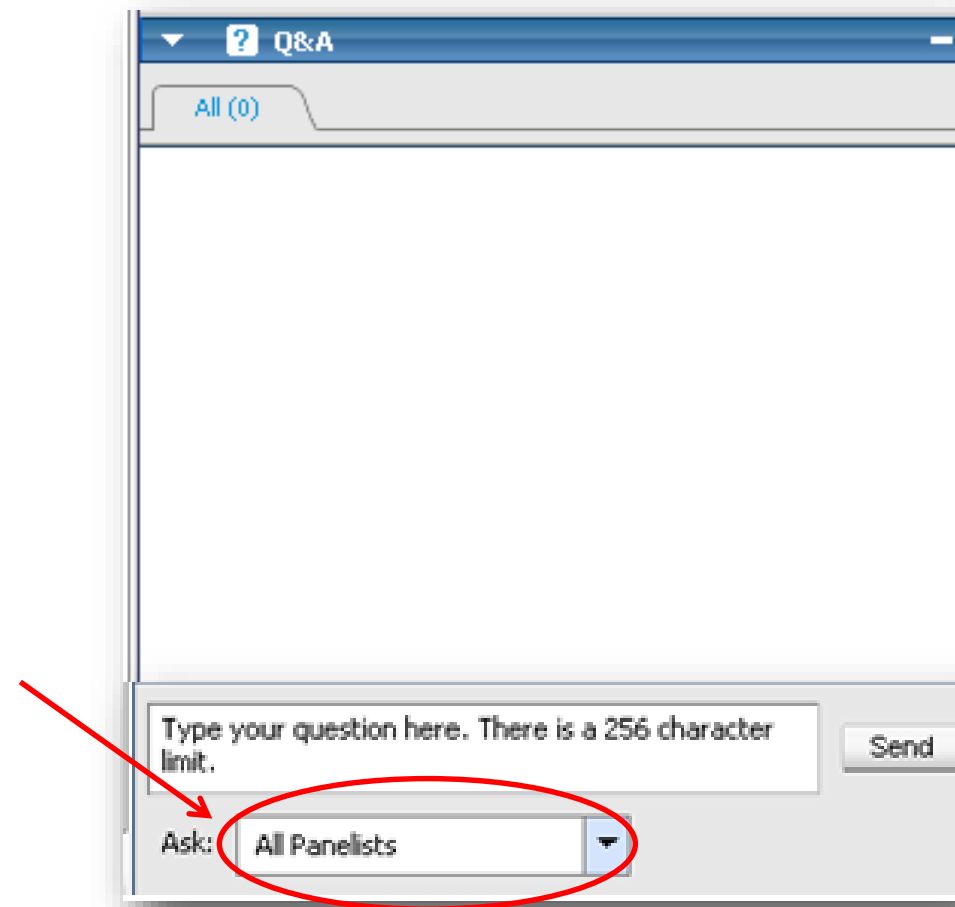
***Coronavirus:
A Primer on Insurance Implications
Arising from a Global Pandemic***

**Presented by The Institutes CPCU Society Risk
Management Interest Group**

Q&A

- Click on the arrow next to Q&A located in the lower right hand corner of your screen.
- Type in your question in the space provided.
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Note: Please make sure you send your question(s) to “**All Panelists.**”



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Coronavirus: A Primer

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Webinar Speaker



Paul S. White--Speaker

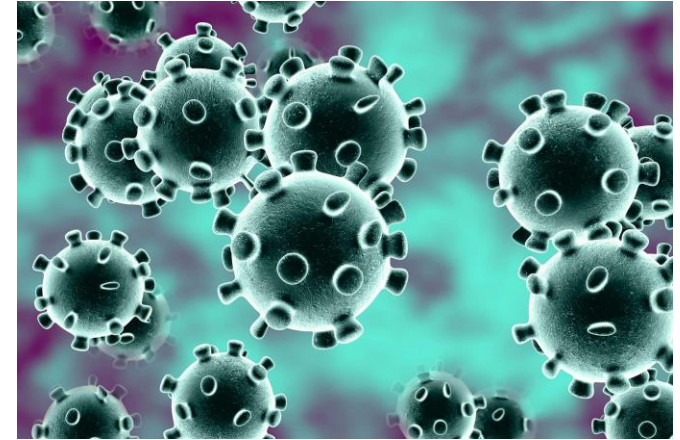
Partner

Wilson Elser

Coronavirus / SARS-CoV-2 / COVID-19: *What Is It?*

SARS-CoV-2 = severe acute respiratory syndrome coronavirus 2

COVID-19 = coronavirus disease: respiratory; asymptomatic to severe pneumonia, respiratory distress, organ failure, and even death



Seven types of coronaviruses

- Family of viruses with halo (crown/corona) of spiked proteins
Seven types that infect humans
 - ***Four regularly circulate*** causing mild to moderate upper respiratory tract infections—***common colds***
 - ***Three have jumped from animal hosts to humans: SARS-CoV-2; MERS-CoV Middle East Respiratory Syndrome (MERS), and SARS-CoV (SARS)***

ars TECHNICA.com (March 11, 2020)

Coronavirus / SARS-CoV-2 / COVID-19: *Where Did It Come From?*

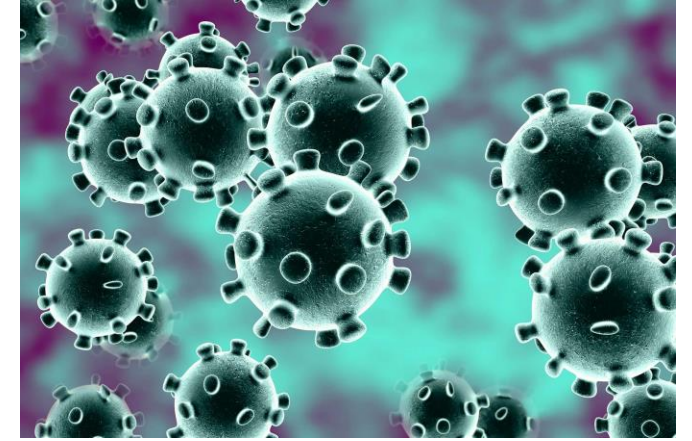
- **Moved from bats to humans via intermediate host**
 - Suspect: pangolin
- **Food market in Wuhan**
 - “Filthy and messy”
 - Sold seafood, live animals (some wild)
 - Initial SARS-CoV-2 infections linked
 - Markets notorious for cramming humans and animals together with variety of pathogens present
 - *The Lancet*: 41 early cases; earliest person **not** linked to market (man with symptoms that manifest before December 1, 2019)
 - Market shut down and sanitized on January 1, 2020, when outbreak began to grow
- **Spreads in respiratory droplets to eyes, nose, mouth: 40,000 droplets per sneeze**
 - *Survival: minutes to days depending on temperature, humidity, surface*



ars TECHNICA.com (March 11, 2020)

Coronavirus: Where is it and What is the Impact?

- **Declaration of pandemic: March 11, 2020**
- **114** countries report the disease
 - 79 have fewer than 100 cases
 - 57 have fewer than 10 cases
 - 81 countries—0 reported
- Confirmed cases worldwide: **113,584/118,000+***
 - 30,665 outside mainland China (10,000 a week earlier)
- 90 percent in four countries (China and Korea declining, Italy and Iran increasing)
- Confirmed deaths: **3,996/4,291+***/Confirmed recoveries: **62,000+**
- Median age: **59**
- Higher morbidity and mortality among **elderly and those with preexisting conditions**
- Flu affects **9.3 to 45 million** in U.S. (140,000 to 800,000 hospitalizations, 12,000 to 61,000 deaths)
(Globally: 500,000 – 1,000,000)

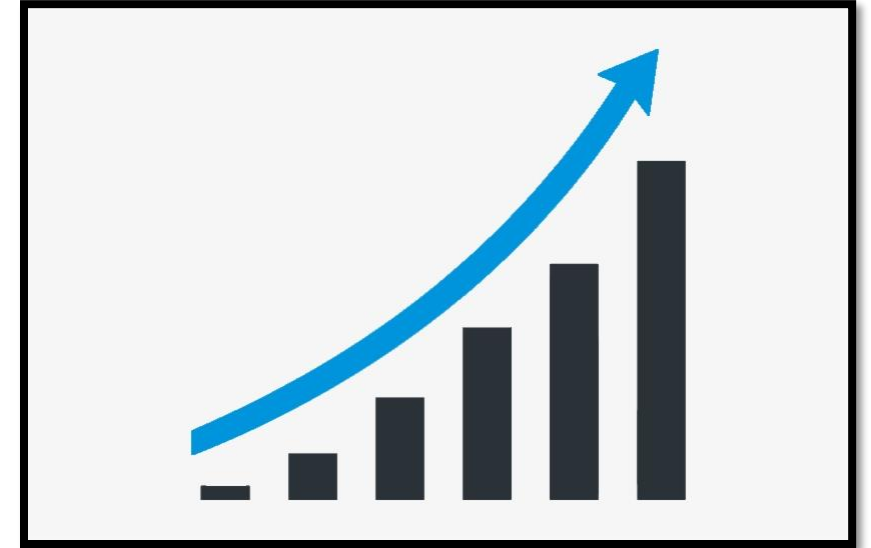


*Statistics change daily. See WHO; ars TECHNICA.com (March 11, 2020);
Wall Street Journal, "Coronavirus Epidemic is Close to a Pandemic, WHO Says" (March 9, 2020)
The American Thinker, "Coronavirus Codswallop—By the Numbers" (March 9, 2020)*

Pandemics: Coronavirus/COVID-19

Cases and Exposure Appear to Increase Exponentially

- **Wuhan, Hubei province**
 - January 23: 444 confirmed cases
 - January 30: 4,903 confirmed cases
 - February 6: 22,112 confirmed cases
- **Italy**
 - February 22: 62 confirmed cases
 - February 29: 888 confirmed cases
 - March 6: 4,636 confirmed cases
- **United States**
 - March 10: 604 confirmed cases (but sluggish testing). Could have 10 times that in a week, 100 times in two weeks based on Wuhan and Italy.



(For detailed discussion re these three facts, see Mounk, Yascha, *The Atlantic*, "Cancel Everything" (March 10, 2020))

Pandemics: Coronavirus / COVID-19

Deadlier than the flu—no comparison

- At 1% fatality (still a guess), it is 10 times more deadly.
- Fatality rate could be much higher.
- WHO: current fatality rate is 3.4%.
 - Possible overstatement since mild cases are less likely to be reported
 - Possible understatement because some patients have been diagnosed but not yet recovered (and could die)
- **China:** more than half now cured.
- **South Korea:** of 7,478 confirmed cases, 118 have recovered.
- **Italy:** of 7,375 confirmed cases (3/8), 622 recovered, 366 died, majority still sick.
 - Even if those still sick recover, fatality rate of 5% (higher, not lower, than China)



For detailed discussion re these three facts,
see Mounk, Yascha, *The Atlantic*, "Cancel Everything" (March 10, 2020)

Pandemics: Coronavirus/COVID-19

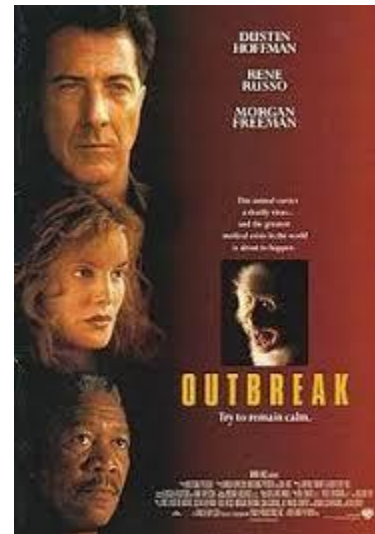
Only Proven Effective Measure: Extreme Social Distancing

- China: was spreading in exponential fashion
 - Government imposed social distancing
 - Self-quarantine
 - Canceled public gatherings
 - Sealed off most heavily affected region
- Number of new cases leveled off
- Each day, news of more patients healed than infected

For detailed discussion re these three facts,
see Mounk, Yascha, *The Atlantic*, “Cancel Everything” (March 10, 2020)

Pandemics: *Life Imitating Art?*

- *The Walking Dead*
- *Fear the Walking Dead*
- *Outbreak*
- *Contagion*
- *Rise of the Planet of the Apes*
- *I Am Legend*
- *28 Days Later*
- *Independence Day*
- *War of the Worlds*



Pandemics: *Life Imitating Art?*

“I mean, we can't even tell people right now what they should be afraid of. We tried that with swine flu, and all we did was get healthy people scared. It's the biggest shopping weekend of the year.”

Contagion (Dir. Steven Soderbergh, Warner Bros. Pictures 2011).

Steven Soderbergh's *Contagion* is "the rare movie that recognizes that real life is more disconcerting than almost anything fiction writers could dream up."

The Washington Post

Pandemics: A Snapshot of History—Reason for Concern

YEAR	EVENT
1918	Spanish Flu: 40-50 million die; global population was 1.75 billion
1957–68	“Milder” pandemics: 1-4 million die worldwide
1976	Ebola: high fatality; 21-day incubation; widespread west African nations
1997	Bird flu: Poultry to human; 33% fatality (6 of 18); 1.5 million chickens in Hong Kong (mutant strain kills 3-year-old boy)
2003	SARS: Spreads globally from Hong Kong hotel. Infects 8,000 in 29 countries. 800 die—10% fatality
2004	Mutated bird flu: 140 cases; 70 deaths—50% fatality. 150 million birds destroyed. Billions in economic loss.
2005	Bird flu H5N1: carried via migratory birds throughout world
2006	H5N1 humans; 251 cases, 148 deaths—59% fatality
2014	Ebola: USA has first diagnosis
2015	HPAI HF (mutated bird flu) hits commercial poultry. 48 million birds destroyed.

Pandemics: What Is a Pandemic?

- A pandemic is a global disease outbreak.
- A flu pandemic occurs when a new influenza virus emerges for which people have ***little or no immunity and for which there is no vaccine.*** The “life” of a virus involves ***reproduction, mutation, and selection.***
- Influenza infects humans, animals, wild migratory birds, etc.
- Ebola: highly fatal and no vaccination to prevent or to cure.
- SARS: highly contagious, 10% mortality rate.
- Swine flu (H1N1): 60 million US cases, 12,000 deaths.
- Compare flu: 280 million immunizations. Infects 600 million to 1.2 billion, 500,000 to 1,000,000 deaths annually.

Pandemics: World Health Organization

- March 11, 2020: WHO declares COVID-19 a pandemic, a Public Health Emergency of International Concern (**PHEIC**).
- Extraordinary event that constitutes public health risk through international spread of disease and requires international response.
- Started 2005 with International Health Regulations (IHR).
- COVID-19: Only the sixth time WHO has declared PHEIC. Others:
 - *Swine flu (2009), polio outbreak (2014), Ebola outbreak (2014), Zika outbreak (2016), Ebola (2019)*

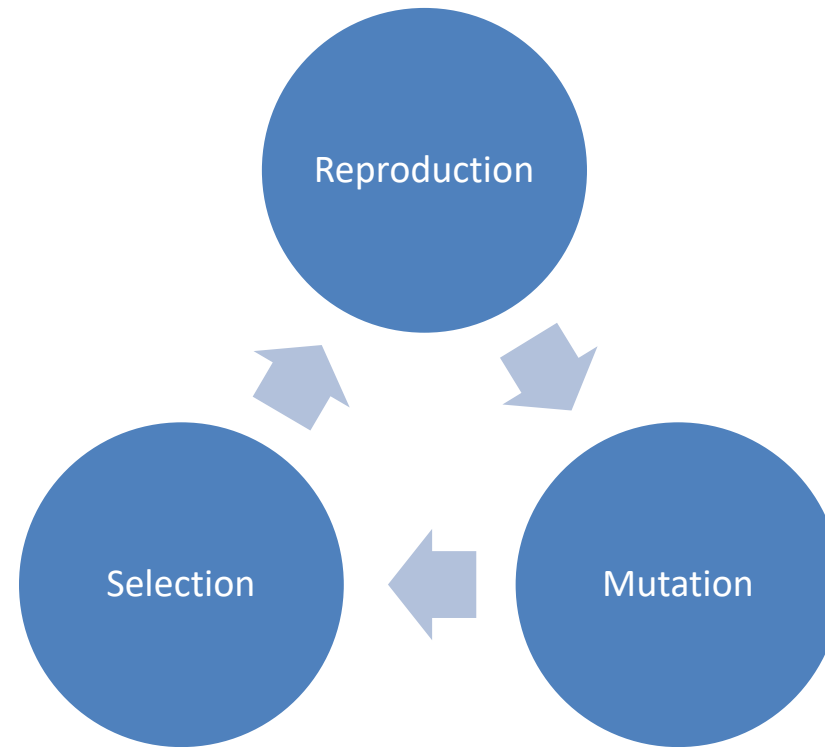
Pandemics: Prior Projections

- The U.S. Congressional Budget Office predicts:
 - Severe pandemic would infect more than 90 million in the United States
 - Severe pandemic has potential to cause death of more than two million people in U.S.
- World Bank estimates FOR each year of a severe pandemic:
 - Could cost U.S. economy \$100-\$200 billion
 - Globally: losses could exceed \$800 billion
 - World Bank estimates Ebola outbreak in 2014–15 resulted in \$30 billion in lost economic output

Pandemics: Origin and Global Threat

Animal-to-human transmission → Human-to-human transmission

- Often arises from mutation



Pandemics: Monumental Decisions at Every Level of Society

- Destruction of property (including livestock)
- Business closures
- Quarantines of towns, cities, and countries
- Bodily injury
- Property damage
- Business interruption
- Liability

Pandemics: Insurance

- Commercial property
- Contingent business interruption
- Specialized business interruption
- Civil authority coverage
- Event cancellation
- General liability
- Errors & omissions
- Directors & officers
- Life and disability
- Employer liability/workers compensation



Pandemics: Commercial Property Insurance

Specified Risk/Designated Peril

- Most property insurance policies insure named perils, losses from specifically identified causes—e.g., fire or earthquake.
- Some insure against “all risks” of physical loss unless perils are specifically excluded.

Direct Physical Loss

- Policy requires direct physical loss to the property.
- May involve losses that result from more than one concurrent cause.
- The majority of jurisdictions employ the doctrine of efficient proximate cause.
- Each claim likely to require investigation and evaluation on its own specific facts.

Pandemics: Commercial Property Insurance

***Foster Poultry Farms v. Certain Underwriters at Lloyd's*, No. 14-953 (E.D. Cal. Oct. 9, 2015)**

- \$12 million claim for destruction of poultry due to salmonella contamination at processing plant covered under Accidental Contamination and Governmental Recall provisions of product contamination policy.
- Policy did not require insured to prove “actual contamination” of its products in light of evidence that insured’s products consistently tested positive for salmonella at very high rates. Policy only required a “reasonable probability” that contaminated products would result in bodily injury if not recalled and triggered “product recall” coverage.

***In Source Food Tech., Inc. v. U.S. Fidelity & Guar. Co.*, No. 06-1166 (8th Cir. Oct. 13, 2006)**

- Source Food’s inability to transport its truckload of beef product across the U.S. Canadian border did not constitute product that was physically contaminated or damaged in any manner and to characterize an inability to transport such beef product across the border due to closure based on closure due to concerns over mad cow disease would render the word “physical” meaningless.
- Court granted summary judgment in favor of an insurer: Source Food did not experience direct physical loss to property.

Pandemics: Commercial Property Insurance

Business Interruption Losses

- Pandemics will result in the temporary—in some case permanent—loss of human capital.
- Airlines, cruise ships, and travel industry hit hard.

International Trade—Global Supply Chain Disruption

- Essential imported goods, such as raw materials, medicines, and certain foods, would become suddenly unavailable.

Employer/Employee

- Parents will stop coming in to work to stay home and take care of their children; remote office; potential infections at workplace.

Pandemics: Commercial Property Insurance

- **Exclusions**
 - Virus specific
 - Ebola, bird flu, SARS, MERS, swine flu, etc.
 - Arising from bacteria or viruses
 - Arising from a pandemic
- **Other Circumstances/Conditions**
 - “Wide area damage” issue: Would business have suffered losses anyway due to lack of customer appetite, loss of critical services, or loss of transport infrastructure?

Pandemics: Commercial Property Insurance

- **Pollution Exclusions**

- Nationwide, there is a split of authority as to whether pollution exclusions apply solely to industrial pollution or also apply to indoor events.
- Many policies provide coverage for lost business income for the period of cessation or interruption of operations.
- But this coverage may only be available where the cessation of operations arises from actual damage to property.

Pandemics: Contingent Business Interruption Insurance

- **Contingent Business Interruption Extensions**
 - Most financial loss claims will be directed to complex CBI extensions.
 - Coverage catalyzed by something “deemed” by policy to be damage *not* by actual damage to insured property.
 - Each clause is different.

Pandemics: Contingent Business Interruption Insurance

Pandemics: Contingent Business Interruption Insurance

- **Contingent Business Interruption: Civil Authority Orders**
- **WHO's PHEIC Declaration:**
 - Unlikely to have direct triggering effect on contingent business interruption clauses with civil authority coverage.
 - Each clause must be read on its own.
 - Relevant public authority order is usually domestic, not the WHO.
 - Local governments and authorities are likely to exercise their own discretion on whether or not to close down a business and are not bound to strictly follow WHO's declaration.

Pandemics: Specialized Business Interruption

- **Hospitality and Health Care—For Communicable and Infectious Diseases**
 - Shutdown of operation, in some circumstances without requiring physical loss to property
 - Likely insured: health care and hospitality industries
 - Losses caused by “communicable or infectious diseases”
 - Circumstance/peril specific
 - May be manuscript form
 - May be limitations or exclusions regarding specific diseases, viruses, bacteria, pandemics

Pandemics: Specialized Business Interruption

Pandemic Specific Coverage or Exclusions

- **Specific language:** Pandemics and pandemic scares have prompted the insurance industry to offer specific **coverage and exclusions for pandemic events**.
- **Virus or bacteria.**
- **Ebola:** Insurers offered coverage endorsements; insurers expressly excluded. Others offered business interruption coverage for specific facilities such as hospitals, hotels, airports, shopping centers, restaurants, theaters, and gyms.
- **Pandemics:** May 2018, Marsh, in collaboration with Munich Re and epidemic risk modeler Metabiota, launched PathogenRX, a fully integrated pandemic coverage product.
 - Metabiota utilizes a Pathogen Sentiment Index that provides analytics into infectious disease outbreaks and allows businesses to model potential losses from outbreak.
- **COVID-19 language:** Outbreak has prompted inquiries into business interruption coverage for pandemics. Reports are that brokers are backlogged and insurers are expressly excluding COVID-19.

Pandemics: Specialized Business Interruption

Civil Authority Coverage/Denial of Access

- Business interruption coverage for losses arising from “civil authority” orders that impair or prohibit access to an insured’s property
- Scope and limitations vary: standard form endorsement, may or may not require “direct physical loss”
- Manuscript form: specific insureds, address specific needs based on:
 - Expenses
 - Geography
 - Disease
 - Calendar year
 - Voluntary or mandatory orders
 - Direct physical loss
 - Designated risk

Pandemics: Event Cancellation & Contingency Nonappearance Insurance

- **Most effective measure: extreme social distancing**
 - NBA suspends season March 11 after Utah Jazz player tests positive.
 - Movie production: Tom Hanks and Rita Wilson test positive.
 - Movie attendance.
 - NCAA March Madness: play games in front of empty stadium.
 - Other professional sports.
 - Postpone conferences until fall.
 - Employees work from home.
 - University classes moved online.
 - Political rallies canceled.

The Atlantic, “Cancel Everything” (March 10, 2020)

Pandemics: Event Cancellation Insurance

- **Most effective measure: extreme social distancing**
 - **Spanish flu:**
 - 200,000 marched in Philadelphia parade. By end of season, 12,000 residents had died (Wilmer Krusen—health commissioner).
 - St. Louis: Health commissioner shut down city. Unpopular. Fatality rate was half of Philadelphia. (Max Starkloff—health commissioner).
 - *The Atlantic* states that in coming days, thousands will face the choice between becoming a Krusen or Starkloff.

Mounk, Yascha, *The Atlantic*, “Cancel Everything” (March 10, 2020)

Pandemics: Event Cancellation Insurance

- **Event Cancellation/Non-Appearance Coverage**
 - Cancellation or nonappearance of key person
 - Coverage generally extended due to perils beyond the control of:
 - Insured
 - Organizer of event
 - Attendees
 - Peril results in cancellation, abandonment, postponement, or enforced reduced attendance
 - Possible perils:
 - Death
 - Accident
 - Illness
 - Unavoidable travel delay
 - Venue damage
 - Inclement weather
 - Communicable disease manifest at venue and arising from WHO declared PHEIC

Pandemics: Event Cancellation Insurance

- **Event Cancellation / Non-Appearance Coverage**
 - Fear of traveling or fear of spreading/catching coronavirus will generally not qualify.
 - Specific travel restrictions, quarantine orders, actual coronavirus illness may qualify.
 - Policyholder usually has obligation to mitigate losses by reasonably seeking to postpone or reschedule an event to a different time or location.
 - Policy may address specific financial losses:
 - Lost-ticket sales
 - Out-of-pocket expenses
 - Contractual guarantees to others
 - Possibly reimbursement to attendees for purchased tickets

Pandemics: Event Cancellation Insurance

Event Cancellation/Non-Appearance Coverage: Exclusions

- Lack of interest
- Pre-existing condition
- Terrorism
- Breach of contract
- Financial failure of venture
- Communicable disease
 - Some policies may expressly exclude coverage for loss that arises out of fear of world epidemic determined by WHO.
 - Other policies may expressly include coverage for loss that arises out of fear of world epidemic determined by WHO where event closed under government order (public or local) due solely to communicable disease that manifested within the venue.

Pandemics: Event Cancellation Insurance

- **Event Cancellation—Note re travel insurance:**
 - Policies can vary.
 - Risk or fear of infection generally not covered.
 - Travel prohibition may be covered, but a key factor may be date on which travel prohibition or warning was made.
 - Insured falling ill with virus before or during trip may be covered.
 - Policy may provide extension or exclusion for cancellation due to epidemic or pandemic.

Pandemics: General Liability Insurance

Property damage caused by pandemic “occurrence”?

- Turkey farmer who loses turkey crop and sues the policyholder for loss of the flock/crop. License to raise poultry flocks is denied.
- *Board of Supervisors of Rockingham County v. Stickley*, 556 S.E.2d 748, 749 (Va. 2002): The court found that the board did not act arbitrarily when it denied Stickley’s application for a special use permit.

Turkey “Depopulation”—Property Claim from Quarantine or “Taking”?

- *Reichley v. Pennsylvania Department of Agriculture*, 427 F.3d 236, 240 (3d Cir. 2005) (avian influenza) (no notice required if compensation in place)
- *Empire Kosher Poultry, Inc. v. Hallowell*, 816 F.2d 907, 909 (3d Cir. 1987) (Quarantine zone not overly broad, diminution insufficient for compensation)
- *Rose Acre Farms, Inc. v. United States*, 373 F.3d 1177, 1183 (Fed. Cir. 2004) (Taking of its contaminated eggs and hens—Vacated trial judgment granting compensation and remanded for further evaluation)

Pandemics: General Liability Insurance

- **Vaccination liability:** Would the U.S. government or pharmaceutical manufacturers somehow be legally responsible for vaccination?
 - *Cook v. United States*, 545 F. Supp. 306, 306-7 (N.D. Cal. 1982)—The plaintiffs sought damages from the federal government for injuries they sustained due to Guillain-Barre Syndrome (GBS), which they argued was caused by their federally sponsored swine flu vaccinations.
 - *American Home Products Corp. v. Liberty Mutual*, 565 F. Supp. 1485 (SDNY 1983) (Injury in fact trigger applied to swine flu vaccine—manuscript form)

Pandemics: General Liability Insurance

- **Exclusions**
 - Manuscript endorsement for specific industries:
 - Pandemic
 - Professional liability
 - Virus or bacteria
 - Contagious or infectious disease
 - Form endorsement
 - Pollution exclusions
 - Employer liability

Pandemics: Errors & Omissions Insurance

- E&O coverage for medical professionals and managed care operations



Pandemics: Errors & Omissions Insurance

- **Coverage:** Insuring clauses generally provide coverage for bodily injury to a patient arising out of acts, errors, or omissions in providing or failing to provide medical care or managed care.
- **Exclusions:** Policies generally exclude coverage for bodily injury to employees during the course of their employment (i.e., an employee being exposed to an infectious or contagious disease).

Pandemics: Directors & Officers Insurance

COVID-19 has roiled stock markets worldwide.

- Shareholder claims now commonplace when market valuations purported to have unreasonably dipped.
- Claims may arise by and among companies and directors/officers as to whether company was sufficiently prepared for risks associated with epidemic illness or whether appropriate steps taken in response to the crisis.

Exclusions

- *Absolute bodily injury exclusion*: “based directly or indirectly arising out of, or relating to actual or alleged bodily injury.” Intended to preclude coverage for any claim, even economic loss, arising out of or related to bodily injury. Such exclusions are being challenged in courts.
- “Known Claims” exclusion
- “Dishonesty” exclusion
- “Continuous Wrongful Act” exclusion—applies to injury that began prior to policy inception

Pandemics: Life and Disability Insurance

- Projection: Severe pandemic could result in 2 million American deaths
- Insurance Information Institute estimates that even a moderate outbreak of avian flu will generate \$3.1 billion in death claims
- If outbreak is severe, will cause about \$133 billion in death claims

Pandemics: Employer Liability/Workers Compensation

Employer Liability

- Employers—aggressive testing/failure to test
- Americans With Disabilities Act (ADA) and state-law discrimination claims
- Occupational Safety and Health Act claims (Workplace is to be free from “recognized hazards”)

Pandemics: Employment Practices/Workers Compensation

Workers Compensation

- Generally extend benefits to employees for injuries “arising out of or in the course of employment.”
- Disputes often focus on whether injury is truly work-related:
 - Nature of loss
 - Employee’s activity at time of injury
 - Time and location of injury
- Employees and employers whose work is related to coronavirus should maintain records identifying potential exposures.

Pandemics: Conclusion

Pandemics: Conclusion

Thank You

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