

Insurance Coverage for Risks Associated with the Ebola Outbreak

by Robert M. Horkovich, Marshall Gilinsky and Diana Shafter Gliedman

Two months after the first reported case of Ebola in the United States, Americans have had the opportunity to put the limited outbreak in some perspective. Ebola is difficult to contract; procedures for screening, reporting and treatment have been tightened; and widespread outbreaks in the United States remain unlikely. That said, the risk of being affected by Ebola—either directly or indirectly—is a significant concern for businesses across the country, particularly those in the health care, hospitality or travel industries and for those with extensive overseas operations or supply chains. The disease is far from contained in West Africa and could spread to other regions.

Prudent measures to mitigate potential financial losses stemming from Ebola or other infectious disease outbreaks include review of the coverage provided by existing insurance policies. Because policy language varies, businesses should review current exposure and take steps to secure coverage where it may be lacking.

Some insurance brokers and insurance companies are rushing to market policies specifically designed to cover Ebola-related losses. Companies most at risk, such as hospitals, may want to consider buying such coverage, but they first should closely analyze whether existing policies already provide adequate coverage. Other types of insurance coverage that may protect against risks posed by Ebola and other infectious diseases include business interruption, workers' compensation, general liability, D&O and E&O.

Business Interruption

Business interruption insurance, typically purchased as a component of a business' property insurance policy, is designed to protect businesses against lost profits due to disruptions to their operations. Contingent business interruption coverage may apply to losses stemming from similar disruptions to a company's suppliers or customers—but usually only if the underlying cause

of damage is covered with respect to the policyholder's own property.

In most property policies, business interruption coverage is triggered when the policyholder suffers physical damage to insured property. Physical damage, however, can include contamination. Moreover, some policies, particularly those written for policyholders in the hospitality industry, expressly provide coverage for losses stemming from infectious diseases without requiring other physical damage to property. Further, many property policies include civil authority coverage, triggered when authorities limit access to an area in which a business is located—even, in some cases, if there is no physical damage to the policyholder's premises.

In recent years, hospitals and other health care facilities have become increasingly aware of the business risks posed by hospital-acquired infections, and many—though by no means all—have bought hospital pollution liability coverage, which can include business interruption, as well as disinfection and remediation, evacuation of patients, emergency expenses and crisis management. As noted above, some brokerages are introducing coverage specifically for Ebola—which may or may not be redundant for health care facilities that have purchased hospital pollution liability insurance. At the same time, certain insurance companies are warning that they plan to introduce exclusions for Ebola-related losses on new and renewed coverage sold to policyholders with increased risk of such losses.

Workers Compensation

Assuming one or more of a company's workers become ill, are those workers entitled to workers compensation benefits? Virtually every state's workers compensation statute provides that an employee is entitled to benefits for what is known as an "occupational disease." To constitute an "occupational disease," two conditions must be met: 1) the disease must be due to causes and

conditions that are characteristic of and peculiar to a particular trade, occupation or employment; and 2) the disease cannot be an ordinary disease of life, to which the general public is equally exposed outside of employment.

While “ordinary diseases” generally are excluded, they may in some circumstances be if a direct causal connection to the workplace can be established. Because Ebola allegedly is contracted only through contact with an infected person’s bodily fluids, the question of whether a worker contracted the disease in the course of employment is likely to be clearer than with other diseases.

CGL, D&O and E&O Coverage

Commercial general liability insurance is designed to cover against claims alleging that the policyholder’s conduct caused bodily injury to the claimant, such as sickness or disease resulting from exposure to harmful conditions. Because most claims by sickened non-employees fit this description, commercial general liability coverage is a key source of protection.

Shareholders in companies adversely affected by an outbreak may make claims against companies or their executives alleging that management’s acts or omissions caused such claimants to suffer financial losses. Directors’ and officers’ policies may respond to such a claim. Although most D&O policies contain exclusions for claims alleging bodily injury, claims for financial damages are covered under D&O insurance. In most cases, the bodily injury exclusions should not come into play in financial claims—though some broadly written exclusions may prove problematic.

Hospitals and health care facilities often purchase specialized errors and omissions or hospital professional liability coverage for damages that the facility must pay because of injury or death arising out of the provision or failure to provide professional services such as “medical, surgical, dental, nursing, counseling or psychological diagnosis or treatment to such person.” Such policies often contain exclusions holding that the insurance does not apply “to bodily injury to any employee of the insured arising out of and in the course of employ-

ment by the insured.” Thus, if a nurse sues her place of employment claiming she contracted Ebola because the hospital did not implement the appropriate safety protocols, there may not be coverage for the hospital under a standard medical E&O policy—but there should be coverage under workers compensation policies, as noted above. However, if a patient alleges that he contracted the disease because he was placed in a room with a patient who was later diagnosed with Ebola, that case could potentially be covered. At issue will be the policy’s definition of “professional services,” and whether the allegations fall within that definition. If not, CGL coverage will probably be triggered.

Read the Policy

For each type of insurance, coverage may depend in large part on language specific to the policy. Risk managers should conduct a coverage analysis now to determine what coverage exists and whether to consider changes or additions. And risk managers should push back when insurance companies attempt to expressly exclude Ebola claims from current policies only to profit by selling separate Ebola coverage the policyholder already possesses.■

Robert M. Horkovich is managing partner and shareholder in the New York office of Anderson Kill. He is a trial lawyer who has obtained more than \$5 billion in settlements and judgments for policyholders from insurance companies.

Marshall Gilinsky is a partner in the Washington, D.C. office of Anderson Kill. His practice is focused on property insurance, commercial general liability insurance, directors’ and officers’ insurance, captive insurance and reinsurance issues.

Diana Shafter Gliedman, a shareholder with Anderson Kill’s New York office, represents policyholders in actions ranging from small insurance coverage disputes to multi-party, multi-issue insurance coverage litigations, with an emphasis on CGL insurance, directors & officers liability insurance, professional liability insurance and employment practices liability insurance.

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