

# ANDERSON KILL HOSPITALITY

# ALERT

## Insurance Coverage For Possible Ebola Claims Involving Hospitality Businesses

By Marshall Gilinsky and Diana Shafter Gliedman

**A**s Americans absorb news of the first Ebola cases on U.S. soil, job one is to maintain perspective. Ebola is difficult to contract, and widespread outbreaks in the United States remain unlikely. That said, the risk of being affected by Ebola is a significant concern for businesses across the country — especially hospitality businesses.

While every business is concerned with the safety of its workers and customers, the hospitality industry in particular needs to take prudent measures to mitigate potential financial losses stemming from Ebola or other infectious disease outbreaks, including a thorough review of the coverage provided by existing insurance policies.

Some insurance brokers and insurance companies are rushing to market policies specifically designed to cover Ebola-related losses. Companies at risk may want to consider buying such coverage, but they should first closely analyze whether existing policies provide adequate coverage. These may include policies providing business interruption, workers' compensation, general liability, and D&O coverage. Below, we consider each in turn.

### Business Interruption

Typically purchased as a component of a business's property insurance, business interruption coverage 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

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property. Further, many property policies include civil authority coverage, which is triggered when authorities limit access to an area in which a business is located, even if there is no physical damage to the policyholder's premises.

Some brokerages are rushing to introduce business interruption coverage specifically for Ebola — which may or may not be redundant for businesses with some provision for infectious disease coverage. 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. In this environment, it is a good idea to review existing policies to confirm the scope of coverage already in place for these risks.

### Workers' Compensation

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 occupational diseases are covered and ordinary diseases generally are not, there are circumstances where the latter may be covered if a direct causal connection to the workplace can be established. Because Ebola is generally 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 may be more clear than with other diseases.

### Commercial General Liability and Directors & Officers Liability Insurance

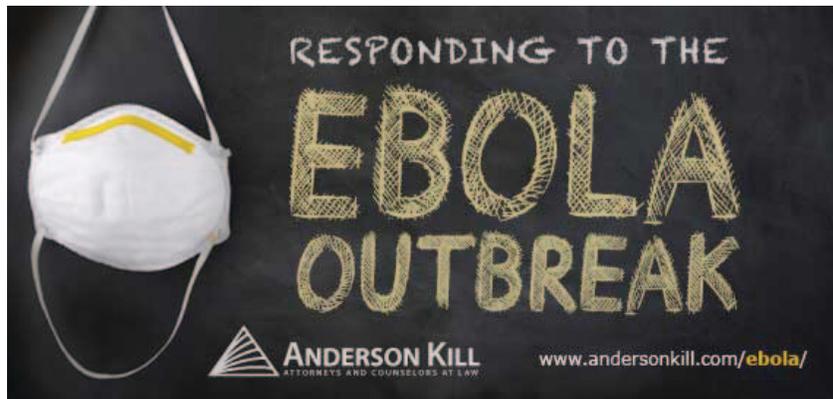
Commercial general liability insurance is designed to cover against claims alleging that the policyholder's conduct caused bodily injury to the claimant, such as sickness or disease resulting from exposure to harmful conditions. Since most claims by sickened non-employees fit this description, commercial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

It is possible that individuals other than those personally sickened, e.g., shareholders in companies adversely affected by an outbreak, could bring claims against companies or their executives based on allegations that management's acts or omissions caused such claimants to suffer financial losses. Directors' and Officers' policies may respond to such claims. 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).



## Read the Policy

For each type of insurance, coverage may depend in large part on language specific to the policy. Risk managers are urged to conduct a coverage analysis now to determine what coverage exists and whether to consider changes or additions. ▲



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The hospitality industry relies on insurance coverage to protect against an enormous range of risks, from bodily injury claims to devastating property damage, to crime and even dreaded bedbug claims. At Anderson Kill, we combine our firm's expertise in analyzing and obtaining coverage with our specialized knowledge of the hospitality industry to maximize coverage for our clients.

But Anderson Kill's experience in the hospitality and lodging industry goes beyond insurance coverage. Our Hospitality Industry Group attorneys routinely assist clients with needs relating to real estate and construction, bankruptcy, executive compensation, litigation, finance and a wide range of corporate issues. Our specific experience providing legal services to companies in the hospitality industry ranges from the routine — such as negotiating construction contracts — to the extraordinary — such as litigating a multimillion dollar insurance coverage case arising out of severe hurricane damage to an international resort and acting as insurance counsel to the world's largest chain of casual dining restaurants.

For additional information about the firm's national Hospitality Industry Practice Group, please visit our web site at [www.andersonkill.com](http://www.andersonkill.com) or contact the group's chairs:

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