



Current Position

Coronavirus (Covid-19) has now spread throughout UK and Ireland, and either directly or indirectly has affected the vast majority of businesses, as well as public and local authorities.

With numerous businesses closed or impaired, and widespread disruption predicted in the weeks and months ahead, many companies are looking to their Insurers and Brokers to assist them with the significant losses that lie ahead.

A wide range of policies are in force, with subtle variations of cover, and will require careful examination on an individual basis. In the meantime, however, this paper provides an early overview of the principal considerations arising.

Potential Types of Loss

The span of loss types arising from this incident is broad and is likely include both material damage and business interruption claims. As always, the paramount consideration is the policy wording as there are no standard or typical wordings or extensions. Many Insurers have evolved their coverages over time, some being bespoke for Brokers.

Material Damage

Such losses may arise where there have been identified cases of the disease and could involve workplaces, hotel accommodation or other hospitality industry premises, medical facilities etc, essentially anywhere which has public exposure. We have already seen claims being made for disinfecting / deep cleaning, food stock disposal etc. The key points in consideration are whether such scenarios result in '*damage*' as defined by the policy and whether a '*contamination*' exclusion applies.

Some cover may be available under '*Loss Prevention*' extensions although, often, such additions are restricted to specified perils and do not alone trigger the '*Material Damage Proviso*'.

The wording must be studied, and insurer's position established.

Business Interruption / Loss of Rent

There are a number of ways in which BI or Loss of Rent losses, albeit some restricted by monetary Limits and/or restricted indemnity periods:

- 🔵 From a material damage loss, with BI losses flowing directly from the damage itself
- 🔵 From non-damage covers
 - Notifiable Disease (COVID-19 is potentially a trigger)
 - Act of Competent Authority
 - Denial of Access
 - Loss of Attraction
 - Suppliers (and Suppliers of Suppliers) and Customer Extensions
 - Contingency covers for event cancellations



Factors affecting Policy Coverage

Notifiable Disease

A number of Policies respond to an outbreak of a 'Notifiable Disease', without further definition. On 5 March 2020, COVID-19 was classified as a Notifiable Disease in England and Wales. The Republic of Ireland had already made this declaration 20 February 2020, followed by Scotland on 22 February 2020 and Northern Ireland on 29 February 2020.

This removed this potential barrier for some Policies although others specify the diseases that are covered and, as a new virus, Covid-19 is unlikely to appear in any specified list. Equally, COVID-19 may be excluded under a generic influenza, atypical pneumonia or pandemic exclusion.

Case Law

The overriding situation to consider is the concept of *wide area damage* and the effects of the *Orient Express Hotels* case, which was heard post Hurricane Katrina (*Orient Express Hotels Ltd v Assicurazioni Generali SPA – 2010*). Whilst the loss occurred in New Orleans, cover was written in the UK which held jurisdiction.

This case is precedent setting, but insurers may take a different view and indemnify for losses which flow directly from the period of interruption resulting from *Damage* at the *Insured Premises*.

Another case of relevance is *New World Harbourview Hotel Co Ltd & Ors v ACE Insurance & Ors (2012)* which followed the SARS incident and a delay in the virus being determined notifiable. The trigger date for consideration of the loss arising under the notifiable disease coverage being established as the date that SARS was declared as a notifiable disease rather than the date of the commencement of loss as a result of SARS. This may have application for UK COVID-19 losses, given its delayed notifiable status.

Act of a Competent Authority

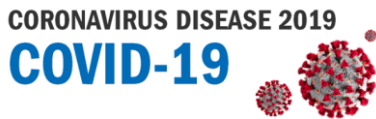
Cover may be available under some policies for closure of or denial of access to the insured premises resulting from the act of a competent authority, which may not be dependent either on any Notifiable Disease trigger or damage at the Insured premises or other locations. The Government have publically validated this cover.

However, even where cover is technically available, Insurers will still need to consider the implications of the aforementioned legal case, *Orient Express Hotels Ltd v Assicurazioni Generali SPA – 2010*.

Unrelated Claims impacted by Covid-19

There will be many pre-existing claims which require replacement of machinery, equipment, materials, stock etc, on which Insurers have set a BI reserve based upon a pre-virus time-line of supply/delivery dates. Supply will of course be dependent upon production, often from some of the most impacted territories where production has ceased or reduced. Lead times will be unavoidably extended, increasing the cost and the reinstatement time-line, potentially beyond the policy indemnity period.

Conversely, consideration is needed on the '*other circumstances*' clause in considering trend on general BI claims. COVID-19 is and will continue to have a major economic impact, particularly but not exclusively in the leisure and tourist industries. Reserve reviews should be undertaken on new and existing cases.



McLarens' Approach

McLarens UK and Ireland have established a specialist COVID-19 Complex Technical Team of senior adjusters and accountants to lead the claims arising from the Pandemic, providing technical guidance and ensuring consistency in approach. The Team comprises:

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All new losses to McLarens should continue to be instructed through the normal channels.

Further technical bulletins will be issued as the situation develops.

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