

## Influenza A (H1N1)—Business Interruption and Time Element Coverage Considerations

With the possibility that the current outbreak of influenza A (H1N1) could reach the pandemic phase, businesses worldwide may experience significant disruptions to their normal way of operating. On April 29, 2009, the World Health Organization (WHO) raised its global pandemic alert level to Phase 5—the second highest level—and said that “a pandemic is imminent.”

As the virus continues to spread from its origination point in Mexico to numerous other countries, governments and businesses increasingly are imposing or considering restrictions on the movement of goods and people. Mexico, for example, has banned large public gatherings and closed schools, convention centers, and many businesses. The United States has declared a “public health emergency,” advised against non-essential travel to Mexico, and released stockpiles of antiviral medications.

### **Business Interruption, Physical Loss, and Damage Coverages**

Despite the potential for influenza A (H1N1) to result in significant disruptions to business operations, there will not be many situations in which standard business interruption and other time element policies will provide coverage to those affected. A detailed review and analysis of individual policies is necessary to fully understand which terms and conditions are applicable or exclusionary.

Under standard U.S. property policies containing

business interruption coverages (i.e., the standard ISO business income form) and under the loss-of-profits provision of various foreign forms, coverage is provided for the actual loss of net profit plus necessary continuing expenses caused by all of the following:

- suspension of business;
- during a period of restoration or recovery;
- occurring because of direct physical loss or damage to property;
- at the premises described under the policy; and
- as a result of a covered cause of loss.

Several of these requirements are problematic in the context of influenza A (H1N1). Insurers may contend that contamination of premises by the virus is not physical damage—and are even more likely to assert that possible contamination, proximity to contaminated premises, or fear of contamination is not physical damage. It is also possible that the policy explicitly excludes viruses, or that the policy excludes contamination and viruses will be interpreted as falling under the definition of contamination. Another possible insurer position is that business interruption is inherently a property policy, responding to structures on the property and effects on the property, rather than threats to the health of

persons entering the property.

Business interruption is not a financial guarantee and does not cover, for example, a decline in business or a reduction in demand for the insured's products because traffic diminishes in the area where the insured's business is located. One exception to this is the "civil authority provision" that grants limited coverage to an insured business when governmental authority prohibits access to the insured's premises. However, that prohibition must be triggered by an event that would be covered by the insured's own policy if it had happened at the insured's own premises. Influenza A (H1N1) may not be such an event, as previously described.

While coverage may be denied even if businesses are closed by government order, it is even more likely that coverage will be denied if a business closes voluntarily.

A few large hospitality and entertainment organizations have secured programs that contain a policy extension that may supply some coverage for losses resulting from closure of premises by a public authority resulting from manifestation of a contagious or "notifiable" disease at such premises. Such coverage is usually subject to a sublimit and a qualifying waiting period may also apply.

Fear that influenza A (H1N1) may be present in or near the insured's property, thereby leading to employee absences or diminished customer traffic, will likely not in and of itself trigger this extension of coverage.

## Reporting Pandemic Claims

If an insured feels it has a claim resulting from an occurrence of a contagious "notifiable" disease, it should immediately begin the process of gathering documentation to support a potential claim, including:

- details of the specific case to the extent information is available to the public—including where the case was diagnosed and where the individual(s) was in relation to the property;
- what authorities have been or are required to be notified; and
- the specific date of the occurrence.

## For More Information

Marsh's Property Practice and Property Claims Practice are available to answer questions and work with individual clients to assess current policy structures. Additionally, the Marsh Pandemic Response Center can assist clients with accessing crisis management, business continuity, and workforce strategies resources and solutions regarding pandemic.

For more information, please contact your Marsh client executive, claims consultant, or property broker. You can reach the Marsh Pandemic Response Center at 866 9AtRisk or via e-mail: [At.Risk@marsh.com](mailto:At.Risk@marsh.com).

You can also visit the Marsh Web site – <http://global.marsh.com/risk/pandemic/index.php> – for additional pandemic planning and response resources.

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