

# Construction Industry Specific COVID-19 Claims and Coverage Implications

When considering potential construction claim scenarios that may result from the COVID-19 virus, government and private sector response to the declared pandemic, generally, insurers tend to be hesitant to issue advisory coverage opinions. Moreover, it may take years for courts to rule on coverage interpretations and positions.

However, claimants' attorneys, insurers and courts are, or rapidly becoming, operational using virtual and remote technology.

Accordingly, the following is intended as a framework for analyzing developing arguments. Aon will continue to monitor the insurance market and the U.S. legal environment, including legislative actions and will update our clients and friends with future letters/notes. As this situation is rapidly developing, our recommendation is that you track all costs related to COVID-19.

*Please Note: The following commentary is being provided for informational purposes only and coverage, if any, under the policy (or policies) would be determined based upon the facts of the particular loss subject to the specific terms and conditions of the insurance policies and contracts.*

## First Party Claims

### Workers' Compensation

Workers who contract COVID-19 may be entitled to benefits depending on the class of employee, individual circumstances, time and place of exposure, subject to proof of causation and rules of the local jurisdiction among other factors.

Workers' Compensation is a fact-based no fault benefit which requires supporting evidence that opines that the condition (COVID-19) either arose from or was caused by an employee's employment.

While most, if not all, jurisdictions place the burden on the "injured" party to prove their claims, courts often transfer that burden to the insurer or employer to prove an injury or medical condition did not arise from or was caused by his or her employment.

As a general principal, if an employee is not placed at greater risk associated with their employment, then most cases pursued under Workers' Compensation would likely be deemed not compensable.

However, at times governing parties adjudicating workers' compensation claims can make compensation decisions that provide benefits to the employee, especially if claimant's access to financial and medical support is lacking or inadequate. If a disabled party lacks these support mechanisms and there is evidence that causally relates the claimant's condition to their employment, it is possible a governing body may determine COVID-19 is a compensable condition. The compensability decision will or should also depend on how a jurisdiction defines occupational disease.

### Builder's Risk

Procurement and supply chain disruptions are likely to cause delays to schedules and substantial or final completion of projects, however, there will be significant challenges to obtaining Builder's Risk or other first party coverage where the cause of loss does not meet "damage" or "caused by a covered peril" requirements.

There are material costs that project stakeholders will experience. These material costs include, but are not limited to, the following:

- Project financing costs.
- Contractors costs that include General Conditions and other direct project expenses.
- If governmental officials issue stop-work orders, the cost to partially demobilize and the need to maintain a presence and additional expense to maintain site security.
- Procurement and supply chain disruptions.
- Subcontractors that are not able to fully staff a crew and advance the work to maintain sequencing and project schedule.

## Contact:

**Todd M. MacDermott**  
Director Technical Services

National Practice Leader – Claims  
Aon | Construction Services Group

53 State Street, 22nd Floor  
Boston, MA 02109

T 617.457.7654 | c 781.962.8241

todd.macdermott@aon.com

Other factors are likely to cause delays to schedule and substantial or final completion of projects, however, there will be significant challenges in securing positive coverage grants and ultimately indemnity under Builder's Risk or other first party policies where the cause of loss does not meet "damage" or "caused by a covered peril" or "not otherwise excluded" definitions and requirements.

### Commercial Property

Typically, business interruption coverage is subject to "designated peril" and "direct physical loss" requirements and infectious disease outbreak exclusions or "civil authority" provisions may be relevant; contingent business interruption may provide coverage for supply chain interruption but may be subject to scheduling suppliers by name. For more information, please visit [www.aon.com/coronavirus](http://www.aon.com/coronavirus)

### Professional Liability

May face similar challenges as Builder's Risk coverage relating to satisfying damage requirements.

### Force Majeure

Contractual provisions known as force majeure or "impossibility" or "act of God" clauses, particularly in P3 or design build scenarios, may provide schedule relief for delays beyond the control of the parties outside the insurance context.

Such provisions tend to be narrowly construed. Foreseeability and impossibility as opposed to merely prohibitively difficult may be the subject of disagreement. Check your jurisdiction for whether governmental prohibition will excuse performance.

### Cyber

With a relocated workforce companies are now faced with an increased risk of a cyberattack from

those who are now required to work remotely as the COVID-19 pandemic is forcing social distancing on the public and organizations. COVID-19 has provided an opening/opportunity for enterprising "hackers" to take over/hold ransom client's IT platforms using creative phishing expeditions. Emphasizing the importance of complying with company protocols and usage of approved "networks" is now of utmost of importance to avoid the potential from an attack that may interrupt business operations. For more information, please visit [www.aon.com/coronavirus](http://www.aon.com/coronavirus)

### Third Party Claims

#### General Liability

For claims against owners and general contractors for negligence in failing to provide a safe place to work; an analysis would start with comparing the allegations in the pleadings with the coverage grant and the duty to defend.

The GL ISO wording provides "we [the insurer] will pay those sums the insured becomes legally obligated to pay as damages because of ... bodily injury...." Accordingly, negligence allegations in the complaint may trigger a duty to defend under the GL policy even if ultimately the claim is determined to be meritless.

With regard to the duty to indemnify, a GL insurer acknowledging a duty to defend may issue a reservation of rights based on the insuring agreement and relevant exclusions.

#### Pollution

Depending on the source, cause and other factors, some pollution liability policies could respond to the cost of clean-up and related exposures. Policy terms will govern how the individual policy could be engaged. For more information, please visit [www.aon.com/coronavirus](http://www.aon.com/coronavirus)

*Disclaimer: This document has been provided as an informational resource for Aon clients and business partners. It is intended to provide general guidance on potential exposures and is not intended to provide medical advice or address medical concerns or specific risk circumstances. Due to the dynamic nature of infectious diseases, Aon cannot be held liable for the guidance provided. We strongly encourage visitors to seek additional safety, medical and epidemiologic information from credible sources such as the Centers for Disease Control and Prevention and World Health Organization. As regards insurance coverage questions, whether coverage applies or a policy will respond to any risk or circumstance is subject to the specific terms and conditions of the insurance policies and contracts at issue and underwriter determinations.*