

# Coronavirus (COVID-19) Insurance and Risk Management Considerations for Life Sciences Companies



Life Sciences

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The COVID-19 pandemic is causing unprecedented business disruptions for virtually all life sciences companies globally. Clinical trials have been delayed, supply chains have been interrupted, lab operations have been significantly scaled back, employees are working from home and face-to-face meetings are virtually nonexistent.

Over the last several weeks, many questions have been posed as to whether or not commercial insurance coverage may be triggered under various COVID-19-related scenarios. Understanding the scope and limitations of coverage is important in setting expectations, as well as making preparations for potential next steps, such as submitting a claim or simply initiating the process of documentation. Gallagher is committed to being your advocate by providing accurate information and sound advice with respect to coverage, claims strategy and the claims management process.

This review contains questions and answers relative to several COVID-19 loss scenarios.

### **Does property insurance cover COVID-19-related losses?**

Standard property policies require the occurrence of physical loss or damage to covered property by an insured peril to trigger coverage. Examples include fires that cause damage to lab equipment, mechanical breakdown of freezers that results in spoilage of clinical or research materials, water damage in a lab that causes loss of an ongoing research project, or smoke that causes the death of research animals.

While it is possible that COVID-19 contamination may be considered physical loss or damage, or may be specifically covered under a contamination endorsement, several standard provisions within property insurance policies could present significant challenges to coverage arguments. Common examples might include:

- Has physical loss or damage occurred?
- Is there an exclusion for loss caused by pathogenic organisms; viruses; or bacteria-, disease- or illness-causing agents?
- Are there other exclusions that may preclude coverage?

### **Unfortunately, the answer to the above question is unclear for the following reasons:**

- Little precedent exists for the current situation.
- Several case law examples have applied broad interpretations of physical loss or damage.
- It is uncertain how courts will decide on coverage disputes relative to COVID-19 claims.
- Several states have recently introduced bills that would require insurers to cover COVID-19 losses under property policies (as of this writing, we are not aware of any of these bills being enacted into law).

### **Does business interruption insurance cover COVID-19-related disruptions?**

Traditional business interruption insurance also requires physical loss or damage by a covered peril in order to trigger coverage. In some cases, coverage is also extended to include specified indirect losses. Insurance companies examine both direct physical loss and indirect loss when evaluating claims.



#### **What is direct physical loss?**

The clearest examples of direct physical loss include fire, lightning, explosion, water damage, windstorm, vehicle damage, falling objects, etc. at a company facility. Life sciences companies generally purchase between three and 12 months of business interruption insurance for direct physical losses.

#### **What is indirect loss?**

Examples of indirect losses that may be sustained by life sciences companies include but are not limited to: disruptions at supply chain partner locations or clinical sites, and civil authority actions that restrict access to your facility. Under many policies, coverage limits that apply to these scenarios are a fraction of the limits for direct loss. Similar to coverage for direct loss, insurance for indirect loss requires physical loss or damage (at a company location, supply chain partner location or a nearby location that restricts access to a company location).

Because coverage triggers for business interruption and property insurance are very similar, the answer to this coverage question is also unclear, for the same reasons outlined above.

Although nonphysical damage business interruption policies have been available for many years, their uptake has been extremely limited. Even if these nonphysical damage policies were more broadly purchased, coverage for most COVID-19 losses would be unclear at best; the reason is that coverage generally applies to specified nonphysical damage events (e.g., contamination or regulatory shutdown) that occur only at designated facilities.

### **Does product liability and clinical trials liability insurance cover COVID-19-related claims?**

These policies cover claims alleging that bodily injury or property damage resulted from the use of a company's products. Examples of potential COVID-19-related claims include allegations that the virus was contracted as a result of participation in a clinical trial or through the use of a commercially approved product (i.e., the product was determined to be contaminated by COVID-19). Although it would be rare for a policy to include a COVID-19 exclusion, other provisions within the policy could restrict or exclude coverage, depending on the specific details of a claim.

The FDA's Emergency Use Application of products (EUA) and the PREP act limitations on immunity both may have resultant consequences to coverage under products liability policies for life science companies. For more information about the EUA and the PREP Act, please refer to the following links:



<https://www.fda.gov/medical-devices/emergency-situations-medical-devices/emergency-use-authorizations>

<https://www.phe.gov/Preparedness/legal/prepact/Pages/default.aspx>

Regarding any protocol deviations due to COVID-19 (e.g., alternate hospitals, sites or doctors used for treatments; home delivery of oral medications; contracted medical professionals for in-home IV drug delivery, forgoing procedures or reduced frequency of procedures outlined in the protocol), we recommend securing written confirmation of coverage from insurers.

#### **Does general liability and/or umbrella liability insurance cover COVID-19-related claims?**

General liability policies provide coverage for injury to persons (other than your employees) and damage to property of a third party for which you are legally liable. Liability for such injury or damage involving the coronavirus or a similar health emergency would likely arise out of a failure to protect persons or property against exposure to infection. Examples of potential COVID-19-related claims include allegations that COVID-19 was contracted while visiting a company's facilities or meeting with employees off-site.

Many liability policies include pollution exclusions that relate to the escape, release or dispersal of contaminants or irritants of any kind. Careful review of this exclusion, as well as all other terms and conditions, would be necessary in order to determine whether or not coverage would apply to a COVID-19-related claim. In addition, umbrella and/or excess liability policies generally contain a separate pollution exclusion, and may also contain a communicable disease exclusion.

#### **Could workers' compensation coverage be triggered if an employee contracts COVID-19?**

Compensability for workers' compensation will likely come down to whether or not the virus was contracted during the course of employment and due to conditions specific to an employee's job responsibilities. Occupations in healthcare that treat infected coronavirus patients, or first responders who transport sick individuals to hospitals or healthcare sites, are more likely to be covered under workers' compensation insurance. Otherwise, a communicable disease that affects the general public is not usually considered a workers' compensation claim.

#### **What measures can be taken now?**

We encourage clients to file a claim if they believe a covered loss has occurred relative to COVID-19. Clients interested in pursuing a claim should start the process now, including detailed documentation of losses/damages, dates when any civil authority orders were issued, dates when operations were scaled back and/or suspended, etc.

Separately, as businesses continue to close and buildings become vacant, even on a temporary basis, we are advising our clients to take appropriate measures to secure locations and periodically monitor them in order to reduce the probability of loss or damage. Vacancy coverage limitations may exist within your property policy, which should be proactively addressed with insurers as soon as possible.

### How is Gallagher responding to the crisis?

Gallagher's Life Sciences experts have been wholly focused on connecting with clients to address coverage questions, understand how their businesses have been impacted, assess the need for coverage adjustments and discuss the claims reporting process.

Gallagher's Claims Advocacy professionals have kicked into high gear over the last several weeks, advising clients on coverage terms and documentation, facilitating the claims reporting process, and formulating strategies for optimal outcomes.

Our teams remain committed to providing the most accurate information and sound guidance, as well as expedient service throughout this crisis. As companies look for clarity, we will continue to provide honest information based on facts and transparency, with the goal of helping you confidentially navigate these uncertain times.

This is an evolving risk that Gallagher continues to monitor through the CDC and the WHO. Please visit [ajg.com/us/pandemic-preparedness](https://ajg.com/us/pandemic-preparedness) for the latest information, or contact:

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