

A new environment for insurers and claimants

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19 Mar 2020

After the likely spike in insurance claims arising from the Covid-19 pandemic, insurers are likely to introduce new or change existing exclusionary clauses which were not previously considered to be necessary.



Image source: Getty/Gallo

In the following sections, we discuss the insurance policies that are most likely to experience claims as a result of events arising from the coronavirus outbreak.

Life and health insurance

Life insurance, income protection and disability policies, which pay out when the policyholder dies or is incapacitated, could provide protection in this event, if all other conditions are met and there are no other exclusions or limitations.

One exclusion is risk-taking behaviour. If the policyholder does not follow well-publicised government recommendations to avoid contagion, for example by visiting banned countries, then the insurance company could regard this as high-risk behaviour and may not pay out on the policy.

These policies generally preclude pre-existing conditions, such as HIV. The policyholder should check what diseases are excluded. Other policies may specifically exclude a pandemic of certain diseases.

Medical malpractice insurance

This covers any act, error or omission on the part of a doctor, specialist, nurse or health establishment, in the context of providing a health service to patients, that gives rise to a claim for damages. The standard of reasonableness applies. In a pandemic, the circumstances will be dictated by international best practice, so the health practitioner or establishment will be held to the infection control measures recommended by global bodies.

Given the numbers affected by the coronavirus, there may be class actions formed by groups of patients exposed to harm through inadequate infection control measures. In this situation, the reality that health infrastructure is under stress could be raised as a valid defence. In SA, there are only about 7,000 critical-care beds available (across the public and private sectors) and it would only require 20,000 severe infections to reach the upper limit of what our health infrastructure can

respond to.

Business interruption

Unfortunately, businesses interruption policies may not cover damage arising from the consequences of coronavirus. Certain policies require that there must be underlying material damage to insured property to trigger the business interruption section of a policy, and the spread of Covid-19 are unlikely to result in physical damage to insured property.

However, some business interruption policies do include extension clauses for infectious or contagious diseases. Those clauses do not require material damage as a condition of indemnity, although even some of those extension clauses can be limited to a certain radius from the insured's premises before the policy will respond. Some interruptions may be outside the specified radius, making it difficult to claim under the extension clause.

General liability

These policies cover the liability of an individual to pay damages to a third party as a result of negligent conduct, e.g. the "slip and fall" cover that supermarkets carry to protect themselves against claims from shoppers who injure themselves as a result of a slippery floor.

In the Covid-19 situation, businesses may potentially be sued for negligently allowing it to spread. A typical example would be a business in the hospitality industry which holds a gathering of more than 100 people, despite the prohibition, at which someone is infected with coronavirus.

It is difficult to prove negligence and causation in the event of the spread of a disease. The claimant would have to demonstrate the necessary steps were not taken to contain it and that the infection was a direct result of the event.

It might be easier to prove negligence on the part of the government (for not having correct infection control in public buildings or government institutions, such as prisons) than it would be against individual businesses. Currently, to limit the potential number and size of those claims, a State Liability Amendment Bill is under discussion, but it has not yet been passed.

Directors & officers insurance

These policies cover wrongful acts by directors and officers of a company that result in the company or third parties such as shareholders and creditors incurring a loss. This can result in a claim against the directors and officers of the company in their personal capacities to make good the loss.

The coronavirus could present a similar scenario to that experienced in the case of cyberattacks on companies. This can result in claims against directors and officers for failing to take steps to protect the business, which may be covered under directors and officers insurance. If appropriate policies and procedures are not implemented, directors and officers may

risk being liable. For example, the liquidator of a company could sue the directors and officers as a result of acts or omissions that caused the company to collapse. The US and China are already seeing the first sign of class actions.

Employment practices liability

Employment practices insurance provides additional compensation for employees above that provided by the Compensation for Occupational Injuries and Diseases (COID) Fund, for example if employees contract Covid-19 in the course of their work.

Many companies are recommending that their employees work from home because they cannot guarantee their protection in the workplace. There has to be a balance between keeping employees safe and continuing to earn revenue.

Travel and credit insurance

In the context of Covid-19, travel insurance may pay out for claims arising from events such as the cancellation of flights or travel plans, repatriation, medical expenses and delays.

Credit insurance will protect a company against non-payment of accounts by debtors who go insolvent. Their insolvency could be triggered by supply disruptions or business closure caused by the Covid-19 pandemic.

Although we expect that Covid-19 will result in an increase in the number of insurance claims, the success of claims arising from the pandemic is not inevitable. At this stage, the effect and consequences of the coronavirus pandemic and Covid-19 on insurance are as uncertain as what to do next to avoid catastrophe.

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