

Federation of Insurance Women of Texas
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Eric Johnson
eric@comedyce.com
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Recap from Yesterday's COVID-19 Class

- Start with the why – why is health insurance and COVID's impact important to you if you don't sell health insurance?
- Because consumers have priorities, and until their health concerns are answered, they can't focus on anything else.
- Clients are suffering. Many are having trouble keeping employees. Some are struggling to stay in business. Keeping the health plan is a big concern for many.
- Clients are also overwhelmed with communication from carriers as they continue to adjust to this pandemic.
- COVID is also impacting brokers and the way they communicate with clients.
- Some of these changes are a positive – we've been forced outside our comfort zones.

Recap from Yesterday's COVID-19 Class

- This isn't going away anytime soon. In fact, the numbers are increasing again.
- Obviously, COVID and the way people feel about the restrictions will have an impact on the election.
- The results of the election will determine what happens with health insurance going forward – who controls the White House, House, and Senate will determine whether the ACA stays or goes and whether a replacement plan can be passed.
- The Supreme Court case to be heard in November could also determine the fate of the ACA.
- While there's an outside chance we could see a Medicare for All system if Democrats control the White House and both chambers of congress, there's a greater chance they could simply pass a reconciliation bill that reinstates the individual mandate penalty and makes the Supreme Court case moot.

DOES MY POLICY COVER THAT?

Eric Johnson, October 21, 2020

WRITTEN BY:

Audra Sullivan, Owner
Vogue Insurance Agency , LLC
Current TAHU President

AGENDA



BUSINESS
INTERRUPTION
INSURANCE



CYBER LIABILITY
INSURANCE



WORKERS
COMPENSATION



AUTO EXPOSURE



GENERAL
LIABILITY



SHORT TERM
HEALTH PLANS



SHORT TERM
DISABILITY PLANS



HOSPITAL
INDEMNITY

PANDEMIC

What is it?

A pandemic is defined as, an outbreak of a disease that occurs over a wide geographic area and affects an exceptionally high proportion of the population." Although the media lives by the motto, "If it bleeds, it leads," declaring a pandemic anytime more than a few people contract a virus, this time even the World Health Organization (WHO) is warning of a possible Coronavirus (COVID-19) pandemic.

One Coronavirus expert, Professor Gabriel Leung, Chair of Public Health at Hong Kong University, says that unchecked, the virus could infect 60 percent of the global population meeting the definition of a pandemic.



**TEMPORARILY
CLOSED
DUE TO
COVID-19**

BUSINESS INTERRUPTION INSURANCE

BUSINESS INTERRUPTION INSURANCE

What is it?

- Business interruption insurance covers financial losses (e.g., continuing operating expenses, lost income) when a business cannot function because of **physical damage** to a commercial property due to a covered loss (e.g., a fire in a restaurant kitchen).
- Only about 40% of commercial property insureds purchase this coverage, and it is purchased by an even smaller percentage (30%) of small businesses.
- Explicit Exclusion Clause

BUSINESS INTERRUPTION INSURANCE

Why Exclude?

- Pandemics are uninsurable, and the losses associated with a pandemic are beyond what the existing insurance mechanism can afford to cover.
- Insurance policies contain exclusions for losses caused by events like war, nuclear and radiation accidents, and pandemics because the potential losses are so extreme and widespread that providing such coverage would threaten insurer solvency and force companies to charge premiums that would be cost-prohibitive.
- Exclusions for extreme perils of this nature are commonplace, and the policy terms are contained in filings routinely submitted to state insurance departments.

BUSINESS INTERRUPTION INSURANCE

Why Exclude?

- Requiring insurers to compensate businesses with fewer than 100 employees for these excluded losses would cost the industry \$220 billion to \$383 billion per month. That amount rises to \$900 billion per month if the threshold is raised to 500 employees. In contrast, the P&C industry's total surplus – which exists to pay covered automobile, home, and business losses – is only \$812.2 billion and would be wiped out quickly if such mandates ever took effect.

BUSINESS INTERRUPTION INSURANCE

- **NAIC – National Association of Insurance Commissioners** released statement
 - Were not designed or priced to provide coverage against communicable diseases
 - Would create substantial solvency risks for the sector significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial economic impacts the country is currently experiencing.

BUSINESS INTERRUPTION INSURANCE

- **NCOIL – National Council of Insurance Legislators**
 - Sent letters to 18 Members of Congress that urged insurers to pay for COVID-19 losses not covered by business interruption
 - Legislative action to require payment for such losses
 - Destabilize Insurance companies
 - Render them unable to pay for claims which they did accept the risk
 - Jeopardize the solvency of any number of insurers

BUSINESS INTERRUPTION INSURANCE

- Legislation – Currently no state has mandated that insurers compensate businesses for financial losses
 - New Jersey AB 3844 (authorized to act and vote remotely)
 - Massachusetts S2888
 - Ohio HB589
- Maryland – issued bulletin unlikely to apply to COVID-19 losses
- Connecticut – issued similar bulletins

WORTH READING

<https://www.buildingindiana.com/would-business-interruption-insurance-have-helped/?MvBriefArticleId=16885>

CYBERLIABILITY INSURANCE

CYBERLIABILITY INSURANCE

- Cyber liability (or, cyberliability) is a reference to Internet-based risks and those relating to information technology infrastructure and activities. Such are typically excluded from traditional commercial general liability policies.

HOW IS COVID-19 INCREASING CYBER RISK?

Fear and Urgency – Cybercriminals are preying on your fear and urgent need for news and supplies related to COVID-19. Attacks are frequently initiated through social engineering (phishing/spear phishing) and could lead to credential theft, financial fraud, ransomware and more.

Increased Attack Surface – Government and employers are pushing employees to temporarily work remotely – outside of the fortress walls so to speak – creating opportunities to exploit people and resources like never before.

HOW IS COVID-19 INCREASING CYBER RISK?

Fake Domains – A significant spike in newly registered COVID-19-related domains has been observed. These domains are used to lure visitors to malware-infected sites or to further perpetrate social engineering tactics. There are hundreds of new fake domain registrations.

Phishing Attacks – A significant spike in COVID-19-themed phishing attacks has been observed and these attacks exploits the fearful mindset of recipients. Supply shortages (e.g. hand sanitizer, masks, etc.) foster a sense of urgency and create opportunities for threat actors to “meet the demand” by selling supplies. In reality, they take your money and don’t deliver.

Use of Familiar Brands/Trademarks - Social engineering tactics focused on gaining trust by leveraging brands such as the US Centers for Disease Control (CD) and the World Health Organization (WHO), as well as country-specific agencies and businesses such as FedEx and major airlines are being used to similarly trick unsuspecting and fearful recipients.

Sophisticated Attackers - Nation-state attackers – Advanced Persistent Threats from China, North Korea, Russia and elsewhere - have been associated with a handful of cases that reference COVID-19. Such attackers have better skills and resources and their goal is often to silently infiltrate an organization, where they meticulously gather information, move laterally through the network in search of privileged accounts and sensitive information prior to executing a variety of attacks.

Malware – The use of fake domains, social engineering and familiar brands is ultimately designed to get something valuable from you. Often, these techniques are also used to deliver malicious software, or malware, that facilitate the theft of information or fraud.

HOW IS COVID-19 INCREASING CYBER RISK?

Sensitive Information – Inside the corporation there are typically more controls in place to protect and monitor sensitive information such as intellectual property and trade secrets. While executives, managers and certain team members may have remote access privileges, it is likely that not everyone does. With the rapid expansion of the remote workforce companies will grapple with how to keep their critical information secure while expanding their footprint beyond the traditional perimeter defenses.

Strain on IT Staff – IT teams are already short staffed and overburdened and now the prospect of having to send the workforce home – with connectivity to the office – may be overwhelming. Mistakes or oversights, particularly with respect to security, will increase.

VPN Security – VPNs are devices or software that encrypts your computer's connection to the corporate office and they are essential to data security. Unfortunately, the patch window for VPNs (the time between discovery of a vulnerability and the time it is fixed by the company) is historically long, leaving the vulnerability exposed to exploitation. Further, employees typically access other corporate resources, such as email (e.g. Office 365) and other online portals without utilizing a VPN from home and insecure public networks.

Unmanaged Devices – The remote employee may utilize a company-issued computer on a home network with dozens of other Internet-connected devices, including vulnerable Smart TVs. Unless the employee is technically savvy and cyber-aware, the patch window on personal computers is probably longer than desired. These unmanaged systems may be running outdated antivirus or none at all.

HOW IS COVID-19 INCREASING CYBER RISK?

Lack of Monitoring – Companies typically have no visibility into an employee’s home network and may have no process in place for monitoring VPN connections or what the employee is doing while connected remotely to the company network. Further, most companies have little to no visibility into what the employee does with sensitive information that has been removed from the company’s internal network.

Insecure Wi-Fi – Home Wi-Fi is often a “set-and-forget” service. Typically, home wi-fi broadcasts the network name (SSID) with descriptive information about the router and may be secured with a weak or default password – which are available online.

Skeleton Office Crews – Vacant homes with unlocked doors are invitations to burglars. An empty office without monitoring of critical systems and data is no different.

ALWAYS check the email 'From' field to validate the sender. This 'From' address may be spoofed.

ALWAYS check for so-called 'double-extended' scam attachments. A text file named 'safe.txt' is safe, but a file called 'safe.txt.exe' is not.

ALWAYS report all suspicious emails to your Information Technology help desk.

ALWAYS note that verify the domain name of the websites you visit or that are revealed in embedded links. For example, [www.microsoft](http://www.microsoft.com)

NEVER open any email attachments that end with: .exe, .scr, .bat, .com or other executable files you do not recognize.

NEVER "unsubscribe" - it is easier to delete the e-mail than to deal with the security risks.

NEVER click embedded links in messages without hovering your mouse over them first to check the URL and verify the domain is safe/secure.

NEVER respond or reply to spam in any way. Use the delete button.

CYBERLIABILITY INSURANCE

WORKERS COMPENSATION INSURANCE

WORKERS COMPENSATION INSURANCE

What is it?

Legal Definition of workers' compensation:

Compensation for injury to an employee arising out of and in the course of employment that is paid to the worker or his or her dependents by an employer whose strict liability for such compensation is established by statute.

WORKERS COMPENSATION INSURANCE

Two tests must be satisfied before any illness or disease, including the Coronavirus, qualifies as occupational and thus compensable under workers' compensation:

1. The illness or disease must be occupational, meaning that it arose out of and was in the course and scope of the employment; and
2. The illness or disease must arise out of or be caused by conditions peculiar to the work.

WORKERS COMPENSATION INSURANCE

Concluding that an illness is occupational, peculiar to the work and ultimately compensable is not necessarily based on the disease in question but on the facts surrounding the worker's illness. Factors investigated and considered by medical professionals and the court include:

- The timing of the symptoms in relation to work: Do symptoms worsen at work and improve following prolonged absence from work (in the evening and on weekends);
- Whether co-workers show or have experienced similar symptoms;
- The commonality of such illness to workers in that particular industry;
- An employee's predisposition to the illness (an allergy or other medical issue); and
- The worker's personal habits and medical history. Patients in poor medical condition (overweight, smokers, unrelated heart disease, etc.) and/or with poor family medical histories may be more likely to contract a disease or illness than others in similar circumstances. Bad habits and poor medical history (and heredity) cloud the relationship between the occupation and the illness. For example, smokers may be ill-equipped to fight off the effects of illnesses to which others may have no problem being exposed.

WORTH READING

- <https://www.insurancejournal.com/news/national/2020/07/13/575233.htm?MvBriefArticleId=14236>

AUTO EXPOSURE

AUTO EXPOSURE

Personal or
Business
Auto

Delivery is
the new
concept

AUTO EXPOSURE

Is there liability coverage in the personal auto policy (PAP) for food delivery?

Is coverage provided by the business auto policy (BAP) for employees using their personally-owned autos for food delivery?

Who is covered by the BAP, if coverage is provided?

Which policy is primary?

Which policy is excess?

What key endorsement is needed?

GENERAL LIABILITY

GENERAL LIABILITY

What is it?

- General liability covers a business owner from **risk of loss "due to damage or injury** (caused by negligence or acts of omission) during performance of his or her duties or business" according to the website Business Dictionary. Injury or damage could occur on site or off site during the performance of business services.

GENERAL LIABILITY

This insurance does not apply to:

- **Communicable Disease**
- "Bodily injury" or "property damage" arising out of the actual or alleged transmission of a communicable disease.
- This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:
 - a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;
 - b. Testing for a communicable disease;
 - c. Failure to prevent the spread of the disease;
or
 - d. Failure to report the disease to authorities.

GENERAL LIABILITY

The key factor regarding the CGL's response to the coronavirus is: If there is no legal liability, the CGL is not triggered and the policy will not respond. Legal liability exists when:

- The wrongdoer is found guilty of "Negligent Conduct" (meaning they breached a duty owed to the injured party);
- The injured party suffers actual damages; and
- The wrongdoer's "Negligent conduct" is the proximate cause of the injury or damage.

GENERAL LIABILITY

Because the insured must be legally liable before the CGL responds, what actions or inactions could possibly lead to legal liability arising out of the coronavirus? A few ideas come to mind, but these are not all the possible scenarios:

- Allowing an employee who is known to be infected with the virus to continue working;
- Failure to adhere to required health and prevention guidelines;
- Remaining open following an order by a civil authority to close;
- Maybe (but not likely) selling a product from China on which the virus can live for long periods;
- Not screening and refusing service to customers with the virus; or
- Other weird actions or events.

SHORT TERM DISABILITY

SHORT TERM DISABILITY PLANS

What is it?

- Short-term disability refers to an injury or illness that keeps a person from working for a short time. The definition of short-term disability (and the time period over which coverage extends) differs among insurance companies and employers.

SHORT TERM DISABILITY

- Covered – typically not an exclusion
- Unemployment
- Federal Emergency Sick Leave
- Death Benefit
- Quarantine
- Remote Employees
- Actively at Work – Waiting Period

SHORT TERM HEALTH PLANS

SHORT TERM HEALTH PLANS

What is it?

- Short term medical insurance, also called temporary health insurance or term health insurance, can provide a temporary solution to help fill gaps in coverage. Consider short term if you're:
 - Between jobs
 - Waiting for other coverage to begin
 - Waiting to be eligible for Medicare coverage
 - Without health insurance, outside of Open Enrollment

SHORT TERM HEALTH PLANS

Is it Covered?

- Trump has announced testing for COVID-19 has been designated as an Essential Health Benefit (EHB) – may not be covered
- Pre-existing conditions still apply

SHORT TERM HEALTH PLANS

HOSPITAL INDEMNITY INSURANCE

WHAT IS IT?

- Hospital indemnity insurance is considered fixed indemnity coverage, which means that when you incur covered medical expenses resulting from hospitalization, surgery, chemotherapy and radiation services, your HIP will pay a fixed benefit (i.e., a set amount). That amount may be per day, per week, per month, per visit or per event, depending on the plan and the benefit that applies.

HOSPITAL INDEMNITY INSURANCE

Is it Covered?

- Limited Benefit plans will cover COVID-19 like any other sickness or illness.
- If plan covers other limited benefits
- Charges for Physician visits , lab test and hospitalization as a result of COVID-19 testing would be covered under respective per day indemnity benefit.
- Fixed costs would apply

Figure 1: Summary of conversations with 9 brokers marketing short-term or other non-compliant coverage products to a shopper concerned about COVID-19.

	Written Plan Details Provided	Description of COVID-19 treatment coverage	Description of COVID-19 testing coverage	Description of when COVID-19 is an excludable pre-existing condition
Broker A	No	False	Misleading	Ambiguous
Broker B	Yes (partial)	False	Accurate	False
Broker C	Yes	Not discussed	Misleading	False
Broker D	No	Ambiguous	Not discussed	Not discussed
Broker E	Yes	Misleading	Accurate	Not discussed
Broker F	No	Ambiguous	Ambiguous	Not discussed
Broker G	No	False	Accurate	Accurate
Broker H	No	False	Misleading	False
Broker I	Yes	Accurate	Not discussed	Ambiguous

False – Broker’s statements were demonstrably or extremely likely to be false

Misleading – Broker’s statements omitted key information

Ambiguous – Broker’s statements either cannot be evaluated because of a refusal to provide written plan details or were incomplete

Accurate – Broker’s statements appear to be accurate

Not discussed – Conversation did not include sufficient discussion of the issue to evaluate

AUDRA'S THOUGHTS

- Never say it is not covered as an Agent
- Always advise client to file a claim
- Advise about Pre-existing conditions
- Advise about fixed cost and limited benefits
- Please read policy exclusions

QUESTIONS??