



AAIS Bulletin

Member Focused Advisory Solutions

March 18, 2020

Bulletin:	State:	Line(s) of Insurance:	
20-0065	Countrywide	Agricultural Excess/Umbrella Agricultural General Liability Agricultural Output Artisans Businessowners Commercial Inland Marine Commercial Liability Commercial Output Program	Commercial Properties Commercial Umbrella Farm Inland Marine Farm Properties Farm Umbrella Farmowners Inland Marine Guide

COVID-19 Informational Bulletin for AAIS Commercial, Farm, and Inland Marine Programs

NOTICE: This document does not constitute legal advice and should not be relied upon as such. This document is solely for informational purposes and should not be referenced in support or as part of any particular claim resolution, coverage decision, or legal proceeding.

The purpose of this document is to provide guidance relating to coverage issues in our commercial, farm, and inland marine programs that may arise as a result of COVID-19 claims. This document will provide a brief overview of COVID-19, outline anticipated COVID-19 claims, and identify the AAIS forms that are relevant to a coverage analysis related to these claims.

Background

Coronavirus Disease 2019 ("COVID-19") is caused by a novel coronavirus. COVID-19 is a severe respiratory illness that was first detected in Wuhan City, Hubei Province, China. COVID-19 is a rapidly spreading virus, transmitted human to human. The virus was first reported in the United States on January 21, 2020 with the first confirmed report of person-to-person spread in the United States on January 30, 2020. The first report of death in the United States as a result of the virus was reported on February 28, 2020. On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic.

Transmission of COVID-19 most frequently occurs among close contact, within about 6 feet via respiratory droplets. Transmission to persons from contaminated surfaces or food has not been documented. The viability of the virus on surfaces is uncertain. However, there are indications based upon early testing that the virus is detectable for up to three hours in the air, four hours on copper, 24 hours on cardboard, and up to two to three days on plastic and stainless steel.

COVID-19 claims are expected to impact multiple lines of insurance. Liability and property damage claims are anticipated. Several AAIS forms and endorsements are implicated in the analysis of possible coverage for these anticipated claims. The following is intended to provide direction regarding the forms and endorsements that should be considered in the analysis of coverage for COVID-19 claims. **The information contained herein is not exhaustive but intended to provide guidance and general information when coverage is at issue.**

Third-party liability claims may arise as a result of individuals allegedly contracting COVID-19 on the premises of an insured's business. The claims may allege unintended transmission to others, breach of contract or injury. Damages in these liability claims may seek recovery for personal injury, emotional distress and, possibly death.

It is further expected that property claims will arise from the COVID-19 pandemic. Depending upon the facts, property COVID-19 claims may seek damages for business interruption, damage, or destruction. The claims may seek recovery for vandalism, spoilage, contamination, product recall, negligent cleaning and disinfecting or direct loss.

When considering whether such claims are subject to coverage, an analysis of the applicable AAIS form and endorsements compared to the claim should be the first action taken.

AAIS Form Language

There are various terms that are applicable within AAIS programs. The following terms could be considered when analyzing coverage issues relevant to COVID-19 claims.

The forms in many programs providing commercial, inland marine, or farm liability coverage include a virus or bacteria exclusion that precludes coverage for bodily injury or property damage that results directly or indirectly from any virus that causes disease, illness, or physical distress. The exclusion also precludes any loss, cost, or expense arising out of any requests, demands, or orders for testing or clean up.

The Communicable Disease exclusion revises coverage provided for bodily injury and property damage and personal advertising injury. Pursuant to this exclusion, coverage is not available for injury or damage that arises out of actual or alleged transmission of a communicable disease by a person; an insured's property; or the property of others. The exclusion explicitly denies coverage for any loss, cost or expense relating to detoxification, disinfectant or testing. This exclusion is available in the Commercial programs. In some of the farm forms, such terms can be found within the definition of bodily injury. In other forms, the terms are stated in a separate exclusion. Many forms also preclude coverage for property damage and, when provided, personal and advertising injury arising out of a communicable disease.

Within AAIS programs, "pollutants" is defined to mean, in part, any solid, liquid, gaseous, thermal, or radioactive irritant or contaminant, including acids, alkalis, chemicals, fumes, smoke, soot, vapor, and waste. The controlling jurisdiction's precedent law will need to be considered to determine whether a pollutant includes a virus, such as COVID-19.

Third-Party Liability Claims

Pursuant to the terms of AAIS' commercial, inland marine, and farm liability forms, a claim may be subject to coverage if the claim asserts bodily injury or property damage caused by an occurrence that takes place in the coverage territory. All of the relevant terms are defined by the forms.

As generally stated in the forms, bodily injury is defined to include sickness or disease sustained by a person and includes required care and loss of services. The term further includes death that results from sickness or disease. Claims alleging COVID-19 related sickness or disease may fall within the definition of bodily injury. However, the same definition may provide a basis to exclude coverage for mental or emotional injury, suffering, or distress that does not result from physical injury.

The forms generally define property damage as physical injury or destruction to tangible property or the loss of use of tangible property. In some forms, loss of use is deemed to occur at the time of the occurrence that caused it. The determination of whether the claims alleging property damage fall within this definition may offer guidance when deciding whether the form affords coverage.

Some forms define an occurrence to mean an accident and includes repeated exposure to similar conditions. Some forms specify that for coverage to apply, the occurrence must take place in the coverage territory. In such forms, the coverage territory is generally defined as the United States, its territories and possessions, Canada and Puerto Rico. The coverage territory includes injury or damage that occurs in the course of travel to or from the aforementioned territories. Therefore, the location of the alleged COVID-19 exposure may be critical to the issue of coverage. Please refer to your respective program for territorial restrictions.

The coverage form offers an initial insight into potential coverage for COVID-19 claims. There are several endorsements that may be relevant to the examination.

First Party Property Claims

It is anticipated that claims will be asserted for business interruption or loss of income due to time spent either closed to prevent the spread of the virus, or cleaning or detoxifying the property from potential exposure to the virus. Some forms, such as the AAIS Businessowners forms, explicitly denies coverage for indirect loss caused by loss of use, delay, or loss of market. In addition, Coverage C outlines the loss of income coverages available and explicitly states that the recoverable restoration period does not include time due to clean up, testing, or detoxifying pollutants. As previously stated, the issue of whether pollutant would include COVID-19 is likely to depend upon the applicable jurisdiction's law.

To the extent claims may be asserted following damage claimed as a result of quarantine or destruction, the Civil Authority exclusion may be applicable. This exclusion states:

We do not pay for loss or damage caused directly or indirectly by, or consisting of, one or more of the following excluded causes, events, or conditions. Such loss or damage is excluded regardless of other causes, events, or conditions that contribute in any sequence to or aggravate the loss, whether such causes, events, or conditions act to produce the loss before, at the same time as, or after the excluded causes, events, or conditions.

1. Civil Authority -- Order of any civil authority, including seizure, confiscation, destruction, or quarantine of property. We do cover loss resulting from acts of destruction by the civil authority to prevent the spread of fire, unless the fire is caused by a peril excluded under this coverage.

To the extent that government mandated orders and quarantines are instated, the Civil Authority exclusion may apply. In addition, such action may provide a basis for alternative claims. In these instances, members should be familiar with coverage afforded in package policies providing property and liability coverages that may contain personal advertising injury. The form defines personal injury to include injury arising out of false arrest, detention, or imprisonment. The specific facts of a claim will determine if this term is relevant to a coverage analysis.

Summary

AAIS continues to monitor the legal landscape for legislative actions taken in response to the COVID-19 pandemic. To the extent new laws are passed that implicate AAIS form language, we will notify our members and act as appropriate.

Potentially Relevant AAIS Forms and Endorsements

The following multistate forms and endorsements are illustrative of forms that might be impacted. Note that the multistate forms may not be approved in every state. **Check the state-specific listing to determine the forms and endorsements approved for use in each state, including any state amendatory endorsements.**

Agricultural Commercial Excess And Umbrella Liability

AU 3010	07 10	Exclusion -- Communicable Disease
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Agricultural General Liability

AL 3014	09 08	Exclusion - Communicable Disease
AL 0001	09 08	Farm Commercial Liability Coverage
AL 0002	09 08	Agribusiness Commercial General Liability Coverage
AL 0170	09 08	Personal Liability Coverage

Agricultural Output

AG 0650	10 06	Virus or Bacteria Exclusion
AG 0100	01 01	Agribusiness Property And Income Coverage Part

Artisans

AP 0365	10 06	Virus Or Bacteria Exclusion
AP 0853	09 09	Exclusion -- Communicable Disease
AP 0854	09 09	Exclusion -- Communicable Disease - Limited Products Excepted

Businessowners

BP 0100	06 12	Businessowners Standard Policy
BP 0200	06 12	Businessowners Special Policy
BP 0813	01 15	Contaminated Food Coverage
BP 0858	09 09	Exclusion -- Communicable Disease
BP 0859	09 09	Exclusion -- Communicable Disease - Limited Products Excepted

Commercial Inland Marine – Filed

CL 0700	10 06	Virus Or Bacteria Exclusion
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Commercial Liability

GL-200	1.0	Commercial Liability Coverage (Broad Form Coverage)
GL-870	2.0	Teachers' Liability Coverage
GL 1023	09 09	Exclusion -- Communicable Disease
GL 1024	09 09	Exclusion -- Communicable Disease - Limited Products Excepted

Commercial Output Program

CL 0700	10 06	Virus Or Bacteria Exclusion
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Commercial Properties

CP 0080	01 18	Commercial Property - Perils Insured Against - Fire Perils Part
CP 0082	01 18	Commercial Property - Perils Insured Against - Basic Perils Part
CP 0083	01 18	Commercial Property - Perils Insured Against - Broad Perils Part
CP 0085	01 18	Commercial Property - Perils Insured Against - Special Perils Part
CP 0089	01 18	Commercial Property - Perils Insured Against - Earthquake Perils Part

Commercial Umbrella Liability (CU 0002)

CU 0819	09 10	Exclusion -- Communicable Disease - Coverages L And P
CU 0820	09 10	Exclusion -- Communicable Disease - Limited Products Excepted - Coverages L And P

Commercial Excess/Umbrella Liability (CU 0001)

CU 0728	09 10	Exclusion -- Communicable Disease - Coverages E And U
CU 0729	09 10	Exclusion -- Communicable Disease - Limited Products Excepted Coverages E And U

Farm Inland Marine

FM 1300	09 06	Virus Or Bacteria Exclusion (Farm Machinery and Farm Irrigation Equipment)
FM 1301	09 06	Virus Or Bacteria Exclusion (Livestock Coverage)

Farm Properties

FL 0675	10 06	Virus Or Bacteria Exclusion
FL-1	1.0	Basic Form
FL-2	1.0	Broad Form
FL-3	1.0	Special Form
FL-6	1.0	Farm Coverage
FL-355	1.0	Farm Extra Expense

Farm Umbrella

UM 0002	01 99	Personal Umbrella Liability Coverage (Farm)
UM 0610	01 99	Commercial Umbrella Liability Coverage (Farm)

Farmowners

FO-1	1.0	Dwelling Coverage - Basic Form
FO-2	1.0	Dwelling Coverage - Broad Form
FO-3	1.0	Dwelling Coverage - Special Form
FO 0005	02 00	Dwelling Coverage - Special Building and Contents Form
FO-6	1.0	Farm Coverage
FO 0675	10 06	Virus Or Bacteria Exclusion
FO 0400	02 00	Farm Income Coverage
FO-20	1.0	Additional Policy Conditions and Property Coverage Terms
GL-2	2.0	Personal Liability Coverage (Farm)
GL-610	2.0	Commercial Liability Coverage (Farm Premises and Operations)

Inland Marine Guide

CL 0700	10 06	Virus Or Bacteria Exclusion
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Personal/Farm Personal Liability Program

GL-1	1.0	Personal Liability Coverage
GL-2	1.0	Personal Liability Coverage (Farm)

Links for additional resources:

[CDC - Coronavirus Disease 2019 \(COVID-19\)](#)

[CDC - Environmental Cleaning and Disinfection Recommendations](#)

[World Health Organization - Coronavirus disease \(COVID-19\) outbreak](#)

[Map of Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering \(CSSE\)](#)

[NAMIC - Coronavirus Resource Center](#)

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AAIS GOVERNMENT AFFAIRS, LEGAL & COMPLIANCE (GLC) MONITORS THE LEGISLATIVE/REGULATORY CHANGES IN THE EVOLVING P&C MARKETPLACE

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