

# Client bulletin

## Coronavirus policy coverage issues

25<sup>th</sup> January 2020

The outbreak of Coronavirus, originating in Wuhan in China, has been widely reported in the media and there's a handy summary of what we know about it so far on the Sedgwick website.

Although, there have now been confirmed cases in France, at the time of writing there haven't been any confirmed cases of Coronavirus in the UK, and it has not been categorised as a Notifiable Disease by the UK government.

But with evidence of the virus spreading beyond China, what should insurers, brokers and claims handlers be considering when it comes to policy coverage under the Notifiable Diseases extension?

### When a disease becomes Notifiable

In 2002, Severe Acute Respiratory Syndrome (SARS) spread, infecting over 8,000 people, and killing more than 750. That went on to cause significant damage to the economy of Hong Kong.

- In February 2003, SARS had spread from South China to Hong Kong
- 11 February 2003 the Hong Kong government requested (voluntary) reporting of cases by hospitals
- 12 March 2003 the World Health Organisation (WHO) declared SARS a worldwide threat
- 27 March 2003 SARS was declared (compulsorily) Notifiable by the government in Hong Kong.

Businesses had seen a downturn in trade from February 2003, some time before SARS became Notifiable on 27 March – and there was a further deterioration after that.

The New World Harbourview Hotel, sought to recover its losses from insurers, resulting in an important legal case. In 2012, the appeal judges

on the case found that the insurance trigger was 27 March, the date that the disease became Notifiable, and that the claimants should base their expected turnover on their reduced performance from February 2003, not on the anticipated unaffected turnover, had there been no outbreak.

In other words, claims should be dealt with on the basis that turnover would have been impacted by SARS even if it had not become a Notifiable Disease.

This ruling is also consistent with the judgement in the case of Orient Express Hotels (2010), which found that the general impact of a peril affecting the Premises (in that case flooding in New Orleans) should be taken into account when applying the other circumstances, or trends, clause.



### Notifiable Disease cover

Whilst some policies list the specific diseases that are covered, obviously that won't include diseases that were unknown at inception.

Other policies provide wider cover by allowing diseases which are Notifiable at the point that a claim is submitted.

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Typically, policies require a specific outbreak of (rather than a general fear of) a Notifiable Disease, and will also specify a distance within which the outbreak must occur.

General economic downturn, caused either by fear before a disease is declared Notifiable, or by the impact of outbreaks beyond the specified distance, is not covered.

This was also the case in the 1980's and 1990's during the outbreaks of 'mad cow disease' in UK. The government had discouraged the public from going into the countryside – which had already negatively impacted some businesses - before Notifiable outbreaks subsequently occurred. Only the exacerbation of loss caused by the latter was covered.

## Other policy extensions

There are also other policy extensions that could be relevant if there is an outbreak in UK.

### *Act of competent authority (non damage denial of access)*

Policies don't tend to cover business interruption losses merely because the police (or other agency) restrict access to (or hinder the use of) their premises. Wordings usually require these restrictions to be due to some other occurrence – typically a disturbance, commotion, emergency, or danger in the vicinity. Each wording should be considered on its merits.

Wordings usually require physical prevention, not just hindrance or advisory guidance, for a claim to succeed.

### *Supplier/customer extensions*

Wordings in these extensions are sometimes poorly defined, with a particular challenge around the terms 'customer' and 'supplier'. Whilst these may intend to apply only to the entity that a policyholder trades with, they

sometimes inadvertently include more of the supply chain than intended.

Cover requires 'damage' at the supplier or customer premises, as opposed to 'Damage' as defined, at the Premises. Outbreaks causing hospital closures, which require deep cleaning/disinfecting, may constitute damage. Laundries and other service providers might be covered too.

Most of these extensions do not require the customer or supplier themselves to be covered for their own losses.

It's worth noting that injury or loss of health to people will not trigger cover, as damage to assets is required.

Another point for consideration is how territorial limits apply in terms of these extensions. Policies for UK businesses affected by customer or supplier damage in the Far East may not respond, as many policies have territorial limits that would apply.

Whilst we all hope that Coronavirus doesn't give rise to any significant claims, Sedgwick are engaging in early discussions with our clients to determine how they would want to respond.

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