



# FINPRO Insurance Considerations in Light of COVID-19

Our expert financial and professional (FINPRO) team designs solutions to help safeguard your company and your staff, enabling you to focus on your business. Against the backdrop of the COVID-19 pandemic, there are a number of issues applicable to these specialist lines which need to be examined and we can advise further upon:

## Cyber

More remote working means cyber security will likely be stressed to a level never experienced before.

As cyber criminals look to exploit weaknesses from this surge in remote connections, claims under cyber policies may arise.

## Crime

Higher propensity for Social Engineering Fraud as people may be less likely to follow standard protocol given greater use of remote access.

## Medical Malpractice

How hospitals and health professional handle the COVID-19 crisis is hugely testing. Unfortunately the current high esteem and admiration for the sector is not without risk of being questioned when the crisis has passed.

The overlap between medical malpractice and public liability if a non COVID-19 patient contracts COVID-19 in a hospital setting could be challenging.



## Employment Practices Liability

Claims by employees alleging discrimination or harassment as a result of HR policies implemented in response to the COVID-19 outbreak are a growing risk.

COVID-19 will result in downsizing, redundancy or reduced compensation. This will inevitably lead to ELP litigation.

## Directors' & Officers' Liability

Given the volatility in the financial markets the possibility of a stock drop after an announcement relating to the effect of COVID-19 is more than plausible. Such stock drops could attract litigation alleging disclosure deficiencies, breaches of fiduciary duty and corporate mismanagement, which may trigger coverage under D&O insurance.

For businesses in direct economic firing line of COVID-19, retail, hospitality, leisure and travel we expect D&O insurers to increase underwriting scrutiny so it will be critical to engage with insurers as early and openly as possible.

## Professional Liability

Professionals and service providers will be responsible for errors or failure to deliver services they're expected to provide.

How many PI policies will be triggered?

Will all these events all trigger PI coverage which often requires a breach of professional duty trigger?

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## Directors & Officers Liability (D&O)

- Given the volatility in the financial markets the possibility of a stock drop after an announcement relating to the effect of COVID-19 is more than plausible. Such stock drops could attract litigation alleging disclosure deficiencies, breaches of fiduciary duty and corporate mismanagement, which may trigger coverage under D&O insurance.
- Furthermore the possibility of a derivative actions and/or regulatory investigation also remains real.
- COVID-19 Exclusion- we are seeing examples of insurers trying to apply COVID-19 exclusions to D&O policies. These developments will need to be responded to as the situation evolves. They should certainly be resisted wherever possible.
- For businesses in direct economic firing line of COVID-19, retail, hospitality, leisure and travel we expect D&O insurers to increase underwriting scrutiny so it will be critical to engage with insurers as early and openly as possible.
- Bodily Injury Exclusion: Most company D&O policies have some form of direct bodily injury (BI) exclusion and attention should be given to any which might restrict indirect or consequential "mis-management" coverage.

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## Crime

- In times of economic turmoil, crime generally increases, particularly as employees and others feel less certain about their future and unfortunately this is likely to trigger an increase in frauds.
- With everyone working remotely, we expect there to be a higher propensity for Social Engineering and Fund Diversion frauds. This area was already a "problem" for many business and the rapid movement to remote working means people and businesses will be less likely to follow standard and tested protocols which increases the risk landscape.

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## Employment Practices Liability (EPL)

- Claims by employees alleging discrimination or harassment as a result of HR policies implemented in response to the COVID-19 outbreak are a growing risk.
- Businesses need to rapidly adapt and evolve HR policies which often may not have the benefit of usual referral and cross checking.
- There is typically a bodily injury (BI) exclusion in an EPL policy but bodily injury claims by employees arising out of possible infection at work may fall under the company's workers' compensation policy.
- Inevitably the financial consequences of COVID-19 will result in some downsizing, redundancy or reduced compensation. This will inevitably lead to ELP litigation in some situations and depending on applicable workplace statutes some may be excluded under a typical EPL policy.

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## Medical Malpractice

- How hospitals and individual health professional handle the COVID-19 crisis is obviously hugely testing. Unfortunately the current high esteem and admiration for the sector is not without risk of being questioned and reviewed when the crisis has passed. These risks will and should in most circumstances be protected by medical malpractice insurance policies.
  - In many jurisdictions such protection is often split with one policy covering the hospital and its staff and another covering the doctors. The apportionment of claims and management for defenses will potentially be a complex issue if claims do start materializing.
  - Another important area that will require careful management is the potential overlap of coverage between medical malpractice and public liability. If a non COVID-19 patient contracts COVID-19 in a hospital setting whether it is medical malpractice or public liability can often be a challenging determination.
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## Cyber

- As the COVID-19 outbreak has resulted in one of the largest work-from-home situations in history, cybersecurity will likely be stressed to a level never experienced before by corporations around the globe.
- Use of BYOD and private emails and phones will inevitably test protocols, security and data ownership protocols.
- To the extent cyber criminals are able to exploit weaknesses from this surge in remote connections, claims under cyber policies may arise.
- Not only is cyber security being stressed by the new operating environment but so are systems and infrastructure that support businesses which have increased business interruption risk arising from system failures.

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## Professional Indemnity / Liability

- How responsible will professionals and service providers be to their customers for errors or failure to deliver services they're expected to provide?
  - If lawyers miss filing documents or appeals, if accountants can't deliver audited accounts on time because of stresses on their businesses how many PI policies will be triggered?
  - Will these events all trigger PI coverage which often requires a breach of professional duty trigger?
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