

*This is for informational and educational use only. Nothing in this discussion should be considered legal advice. Please consult with the appropriate attorney or advisor before addressing any situation raised in this discussion.*

## **Information from Monday, March 30 Risk Management Webinar:**

### **Contractual Risk**

- A. Injury and Damage to Property
  - i. Indemnification Clause
  - ii. Insurance Requirements
  - iii. OCIP and CCIP
- B. Payment
  - i. Notice Clauses
    - a. Claims for extension of time
    - b. Claims for money
    - c. Requests for contract interpretation
  - ii. Don't waive or release your rights!
    - a. Monthly progress payment documents.
    - b. Change Order language.
- C. Flow Down and Project Delivery
  - 1. What "flows down"

### **Risk Management**

#### Safety & Hygiene

- OSHA is incorporating the exposures associated with Covid-19 into their existing standards.
- OSHA Guidance Document provides very good process for setting up your exposure assessment process (<https://www.osha.gov/Publications/OSHA3990.pdf>)
- General Duty Clause is available to non-specific issues – based on assessment of exposure.
  - Employer still has duty to provide a safe place to work.

#### Things that can be done on a construction site:

- Assess the exposure – each site may be a little different.
- Increase the number and quality of hygiene stations.
- Evaluate the need for PPE
  - PPE Standard still applies – assessment, selection, etc.

- Training for use of PPE
- Housekeeping & Maintenance of job sites
- Pandemic training
  - Hygiene, social distancing, etc.
- Take into account the site
  - You may be a sub, or you may be working within another building.
    - Don't just rely on their hygiene controls
  - Share information with the GC and other subs on potential exposures, and demand they share with you.
- Develop an Exposure Response Plan
  - What to do if one of your employees has a significant exposure and must be quarantined.
  - What is your employee tests positive for the virus.
  - What if someone else on the site tests positive or is quarantined.
  - Communication plans, cleaning and decontamination, project scheduling.
  - Notification requirements
    - Driven by local health department in event of positive tests
    - Precautionary / informational communications.
    - Remember the protections on medical information (HPPA)

## Business Insurance Claims and Coverage

### General updates within the property and casualty insurance market

The insurance carriers we have spoken with want us to know that they are open for business. As they are a member of the financial world, they are considered "essential" by definition and available. Team members are working remotely and are available to assist with claims, address questions, process endorsement requests, processing renewals, etc.

Another message we're receiving from our carrier partners is that they will remain flexible relative to payment terms:

- Some have issued holds on cancellations for non-payment
- Some are positioning holds on non-renewals
- We have also experienced flexibility with audit payments
- We anticipate most will also be flexible relative to mid-term exposure changes tied to payroll and sales.

*These are not necessarily automatic accommodations; and can vary from carrier to carrier; so if anything is needed, we would ask that you please just reach out to a member of our Team to assist you through the process.*

This is important to note within the area of personal insurance as well. Carriers are willing to help with issues tied to payment, coverage modifications, etc. Personal insurance advisors will be available to assist with those calls. If you partner with us for this or not; we're here to help.

### **Coverage**

Business interruption policies require that there be a direct physical loss of or damage to the insured property in order for coverage to be triggered. Most of the business losses that we're experiencing will likely be the result of declined economic activity as a result of the virus. Some carriers have taken the position of proactively sending notices out to policy holders referencing their coverage position.

That being said- there may be some *rare circumstances* where coverage could be applied, for example- WC, D&O; if you have specific circumstances you would like to discuss, please connect with us.

Lastly, we find ourselves being an intersection of a variety of different businesses and resources. While we do not want to over inundate you with information (we understand that you have a lot being thrown at you right now); we want you to know that we are here to help you in any way we can. If you find you have a specific question or need; please let us know, we're happy to do the research, connect you with the right people and do anything we can to help you through this time.

### **Updates from the NYS Workers' Compensation Board (WCB)**

- From last week the WCB has now gone to strictly only doing virtual hearings.
- The WCB has suspended handwritten signatures on all documents until further notice.
- WCB is allowing claimant's attorneys to sign on behalf of their clients with proper consent.
- [Here is the NYS WCB website to for your review updates.](#)

### **Updates from the Department of Financial Services (DFS)**

On 3/19/2020, the DFS issued a memorandum to all CEO's and equivalents of DFS-regulated entities stating that now both NY and Federal governments have declared states of emergency, and that they will be providing guidance to all regulated DFS entities to do their part to alleviate the financial burden to businesses and families. They recognize that the financial impact of this crisis is going to be significant. To make the situation easier for customers, they're allowing people to pay premiums online, are extending due dates, minimizing late fees and re-instatement fees, etc. DFS is advising carriers to increase their resources to assist with claim submissions. Each carrier is being asked to prepare a clear and concise description of coverage benefits that may be triggered as a result of the COVID-19 situation continues to situation. The insurance market is in a state of flux at the moment.