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COVID-19 and Insurance Claims Related To Pool Openings at Condominiums, Cooperatives, and Homeowners Associations

We've had many inquiries from board members and property managers of condominiums, cooperative ("co-op") apartments, and homeowners associations ("HOAs") about how association/co-op liability policies would respond to lawsuits claiming COVID-19 (Coronavirus) infection, due to negligent opening/operation of the association/co-op pool.

While a liability claim relating to a pool deck slip-and-fall injury, or drowning, is typically covered, the policy language alone often does not provide an obvious response for claims relating to this new-to-the-world pandemic situation, and carrier claims staff will (understandably) not give definitive responses for hypothetical COVID-19 claim scenarios. (Carriers are normally reluctant to give definitive opinions on coverage without knowledge of the specific allegations, and facts at-hand; the unknowns involving this unique pandemic make predicting coverage even more difficult.)

Having said that, some condo/co-op General Liability policies will have a specific "Virus and/or Communicable Disease" exclusion (or will add this exclusion upon renewal), which makes the answer simple: No coverage.

Even in the absence of a Virus/Communicable Disease exclusion, virtually all General Liability policies include a "Pollution" exclusion, which typically excludes bodily injury (e.g. sickness) due to "contaminants". We cannot say for certain that COVID-19 would be considered a "contaminant", or if a carrier would apply this exclusion, or perhaps another policy exclusion, to a COVID-19 sickness claim.

Of course, if the General Liability policy excludes a bodily injury (e.g. sickness) claim, then so too will the Umbrella policy (as a general rule, the Umbrella policy only responds if the underlying General Liability carrier has agreed to provide coverage.)

ALL D&O policies exclude "bodily injury" claims (e.g. "sickness"), since the General Liability policy covers such claims, per policy terms. (As noted above, the General Liability policy may not provide coverage for COVID-19 claims.)

If you need a definitive position regarding COVID-19 sickness liability and insurance, in order to make a decision on whether or not to open a pool, it may be prudent to ASSUME "no coverage" (that's the safest position.)

On a separate note, if an association/co-op EMPLOYEE claimed sickness from COVID-19, contracted while working at a pool, there may be coverage under workers compensation, provided sufficient evidence that the disease was contracted while working (which, as you might imagine may be difficult to prove.)

Finally, COVID-19 insurance claim coverage will be the subject of many court cases, so legal decisions may dictate how carriers respond to such claims. The government may also influence COVID-19 claims coverage (as was the case with Superstorm Sandy). We do not recommend that you rely on either future legal precedent or government involvement when making a decision on whether or not to open a pool.

Please contact your Levitt-Fuirst representative if you have questions, or wish to discuss further. Stay Safe.

We Are Here to Help

Please contact us should you have any questions or problems on billing or coverage.
We will get through this together.

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