

Covid 19 Insurance – Frequently Asked Questions – August 2020

From: Erik Mathiesen,

As with all pandemic related developments, things change. The information here is accurate to the best of our knowledge as of August 1, 2020. The focus is very much on protecting people from harm rather than protecting churches (or any other public body) from lawsuits.

Has Covid 19 caused the huge increase in insurance premiums for property and liability insurance we are seeing this year?

No. Insurance premiums were already increasing pre-Covid due to a variety of industry factors – notably concern around extreme climate events. The pandemic will likely result in considerable litigation and coverage wording changes to clarify whether there is coverage for pandemic related claims in future. Premiums for Directors and Officers liability coverage will likely be higher as a result of Covid considerations.

What are the insurance implications around the mandated closure of our church buildings due to the pandemic and maintaining coverage?

Insurer guidelines varied considerably by company. Closed or empty buildings are generally considered higher risk and require regular ongoing monitoring –and higher premiums- to maintain coverage. However this guideline certainly didn't contemplate systemic closures. About one half of united church congregations have signed on to the nationally endorsed UCC Protect Plan through RSA/Northbridge. In consultation with this insurer, it was agreed that 2 visits per week and normal safeguards would be sufficient to maintain insurance coverage.

Our church insurance policy includes Business Interruption coverage. Are we able to claim for lost revenue or additional expense?

As you may read in the press, there will be much litigation on this topic. Generally though, insurers appear to be denying coverage for Covid 19 related revenue loss. Although the answer will depend on the specific wording of your insurance policy, generally any claim by a church is unlikely to be successful. We have had a test case under UCC Protect. There is specific wording in UCC Protect policies for camps that may –repeat may – result in some degree of potential coverage,

Absent very specific contract language, if a ministry is sued by a third party, and the pleadings allege there was COVID-19 transmission, the insurer would have no automatic duty to defend unless it is also alleged that the insured ministry was in some way negligent. Generally insurance is intended to cover sudden and unforeseen risk, rather than an event with a high probability of happening. If there is a duty to defend, there is not necessarily a duty to indemnify. If it is found that the proximate cause of the loss was a result of an act of God, and

there is no negligence in ministry handling or maintenance, then there would be no liability found against the ministry and hence no indemnification from the insurer.

Commercial insurance property policies that include business interruption, including as a result of civil authority, almost always require losses to be caused by direct physical damage to property from a covered cause of loss. Since COVID-19 was declared a pandemic this past March, many Canadian provinces have brought in temporary laws requiring entire classes of business either to close their premises or limit their activity.

What should a camp do to explore possible Business Interruption claim coverage?

We are seeing there are a few class action suits being filed tied to specific wordings. We are also aware of 3-4 camps that have already filed claims under UCC Protect. Camps should be aware that pandemic coverage interpretation is being challenged through class action suits and therefore it is prudent for camps to file a notice of claim confirming that revenue has reduced and/or expenses increased resulting from the pandemic confirming the date the business began to be impacted advising that the loss is ongoing and the quantum is yet to be determined.

Should I check with my insurance company or broker regarding any special requirements related to re-opening?

It would be prudent to double check, but to date insurance companies have not gotten involved other than to reiterate the expectation that any opening abide with all government and public health protocols.

Does our comprehensive general liability insurance cover Covid-19 related claims?

In short, no or probably not. The policy does provide for legal defense costs to respond to a claim, but as mentioned earlier, there would need to be proof of some physical damage.

Does the Directors and Officers Liability coverage apply to decisions our governors might make related to re-opening?

In short, no or probably not. The policy does provide for legal defense costs to respond to a claim, but as mentioned earlier, there would need to be evidence of fault in decision making. Following government and public health advice and protocols should be an adequate defense.

Should we be requiring signed waivers for anyone entering the building?

No. Insurers are not requesting waivers nor is this suggested by government or public health officials. Generally, waivers are deemed useless if the recipient does not have adequate prior notice of the requirement as a consideration and therefore understanding to confirm agreement.

Waivers are common where there is an activity with some foreseeable risk of something going wrong. ie physical activities - road races, contact sports etc.

Used in rental situations more as an awareness tool. Not overly enforceable legally as noted.

Insurance requires a trigger event and a degree of fault. If any space is following all public health and government guidelines it would be up to a claimant to demonstrate fault and to sue. Our insurance covers defense costs. There is also considerable lobbying in several provinces to exempt charities and other public service organizations from liability under Good Samaritan laws.

We don't – yet at least- see asking for waivers to enter buildings.

Loblaws? church? offices? We do see landlords documenting covid related expectations for tenants (who cleans what, when). Here is a sample wording we've seen recently in a lease.

Tenant acknowledges that during the time of the novel coronavirus COVID-19, the Landlord may in its sole discretion limit use of all or parts of the building located at XYZ location from time to time according to measures and restrictions instituted by the Province of Ontario. Tenant also acknowledges that its employees will be subject to COVID-19 safety guidelines established and amended from time to time by the Landlord.