General Outlook

Following the outbreak of the Coronavirus, companies within the (re)insurance market scrambled to deal with the immediate operational impact, now they have turned to consider what it will mean more widely with regards to their business. The following document aims to give you an updated summary of (re)insurer views on Coronavirus exposures, the potential impact on rate change, exclusionary language deployment and possible losses coming into the market.

Companies are adopting differing stances with regard to their outlook on COVID-19 claims activity. The general confusion being caused by this global crisis does have the potential to expose inherent weaknesses in the business models of some insureds, opening them up to becoming insolvent. This, twinned with knee-jerk actions to combat it, will drive an uptick in industry claims.

Claims will also arise as a result of failure to implement and enforce recommendations by the WHO/Government/State regulator leading to COVID-19 induced injury or death. Commonly in these scenarios it’s the government/health authority which comes under scrutiny as they are setting the rules and guidelines. Though it is believed that claimants will face serious obstacles in successfully bringing wrongful act / negligence claims, given the nature of the virus and the spread of the pandemic, reckless approaches to hygiene by an insured should not be ignored, particularly those with regular contact with vulnerable persons such as hospitals or care homes.

In the case of SARS, most claims fell on the Hong Kong Health Authority with negligence attributed to their failure to respond quickly enough in setting the public health agenda on the disease whilst there was time to mitigate its spread. Might we see these sorts of claims this time around? Many consider the UK government to have been slow in ‘locking down’ its population.

There were no D&O claims filed in connection with the SARS, MERS or Ebola outbreaks. Clearly, this is a far more devastating and wide-reaching event and context will play its part. This is also an event that is ripe for impact from social inflation.

A number of key precedents will soon be set regarding claims on business interruption and directors and officers policies which we discuss in detail. Furthermore, rumours of policymakers obliging insurers to pay claims despite the presence of an exclusion may impact the stability of the sector.

With the economic slowdown, insurers are taking some solace in the reduced or even paralysed operations of their insureds and the commensurate reduction in exposures that this brings with it. Barring insured insolvency discussed above, this will mean that policies priced prior to the outbreak will undergo a diminution in exposure. Insurers expect a consequent reduction in non-COVID loss activity. Resultant improvements in loss ratios could be dampened by overall reductions in net premium levels (offset to an extent by minimum premium provisions).

Due to increased concerns surrounding the impact of COVID-19, Fitch Ratings has revised its outlooks for the global reinsurance market and U.S. Property & Casualty insurance to negative, specifically citing concerns over credit quality and near-term performance for the markets. From an underwriting standpoint, no company is immune to the unprecedented challenges that COVID-19 has brought. However, certain industries are likely to be more exposed than others.
COVID-19 Development

The coronavirus continues to spread throughout the world, with over 180 countries now having confirmed cases of the virus. Both reported cases and death tolls continue to rise – there are now more than 424,000 people infected worldwide, of which over 18,900 are reported to have died. At the time of writing, Italy has the largest number of confirmed cases making it the new epicentre.

Rating and Exposure Environment

- Generally, insurers expect a continued hardening of the market, driven by the outbreak.
- Insurers may further reduce their line sizes on programmes, a phenomenon that was hitherto taking hold with the hardening of the market. This will further tighten capacity.
- Although % rate may continue to rise, overall net premium levels will reduce due to insolvencies, turnover reductions, premium holidays / returns.
- Rate change is difficult to quantify in real-time when economic activity has declined, especially if said decline is temporary. Many policies are rated on turnover, market capitalisation and asset value, so insurers must be conscious to not compromise rate adequacy.
- Insurers have noted that liquidity and financial position will also be increasingly important areas of focus including cash position, free cash flow, debt maturities, access to capital, strength/visibility of customer contracts and diversification of revenue sources.

Reinsurance Considerations

- Further reduction in limits reduces the coverage reinsureds are receiving from their excess of loss programmes
- Reinsureds will want to cede away less premium, to maintain the already reducing net premium levels
- Net premium uncertainty adds to basis risk within excess of loss structures, pushing a drive towards proportional
Perspectives on Exposures by Line of Business

Directors & Officers
- Despite private D&O business being perceived as much less exposed, the risk is of a large number of insureds declaring bankruptcy during this period of lockdown.
- Not all bankruptcies result in claims, not all bankruptcy claims are serious, and not all bankruptcy claims are covered.
- As seen via class actions filed (see Notable Claims), there is the potential for D&O claims as a result of communication, in particular false or misleading statements and communication issues with stakeholders. How companies handle communication with their stakeholders in this marketplace is likely to be the differentiating factor when determining potential liability in a claim situation.

Employers Liability
- There is certainly exposure to EL, but provided the insureds adhere to the WHO or local health authority guidelines in their work environment, it should be a fairly low risk exposure. Nonetheless, this is a clear and obvious exposure.
- It is likely to be extremely difficult for an infected individual to prove that their condition was caused by a workplace breach, given the many other potential sources of infection, on the balance of probabilities.

General Liability
- In respect of GL, causation is expected to be difficult to prove and thus any loss here is to be driven largely by defense costs.

Medical Malpractice
- It is possible that as the majority of policies would not exclude Covid-19 or other infectious diseases, hospital and clinic accounts could face claims arising from non-Covid-19 positive patients contracting the disease in the hospital or clinic setting.
  - However, as more and more client accounts are cancelling elective activities, that risk is possibly decreasing.
- Clients could also face ‘failure to diagnose’ claims across the portfolio but testing is becoming more widely available and of better quality
- The following scenarios are resultant of the healthcare sector being stretched and working under duress, leading to increases in exposure:
  - Retired doctors returning to the workforce – the NHS will be bolstered by c.11,000 former medics and c.24,000 final year student nurses and medics.¹
  - Doctors working outside of their specialty
  - Entire hospitals shifting from largely elective activities to provide overflow intensive care/ED activities to the public sector
- There is hope that society and the courts may take a more liberal view of negligence (as they did post SARS in HK per one of our Medico-Legal Solicitors) as the activity above may being performed in an almost wartime, force majeure like setting.

¹ Source: https://www.bbc.co.uk/newsround/52037999
Trade Credit
- COVID-19 is widely regarded as the latest “black swan” event to hit the insurance market. As companies struggle to survive among the most testing of circumstances, it is forecast that the number of reported insolvencies will sharply increase in 2020, with industries most likely to suffer being hospitality, retail and aviation.
- Moody’s expects rising claims to hit three of the world’s biggest trade credit insurers Atradius, Coface and Euler Hermes. The ratings agency cited data from Atradius and Coface showing that for each, nearly 15% of their total net potential exposure is in Asia and Australia, two of the worst hit regions. Atradius said recently it expected corporate insolvencies to grow 2.4% globally in 2020, “largely resulting from the coronavirus outbreak”.  
- Trade Credit insurers are very well capitalised owing to the Solvency II directive, a strong underwriting result in 2019 and the extended period since the last economic downturn (12 years)

Cyber
- Increase in phishing attacks as criminals proprot to be delivering information, assistance or instruction relating to COVID-19.
- Data sprawl from remote working – employees are far more likely to place data outside of the firm’s defences and control when working remotely.
- Attacks on remote access – systems are more vulnerable than when centrally controlled, for example from Malware offensives.
- Insecure connections to networks or shared spaces – publicly shared Wi-Fi networks can create entrance opportunities for hackers.
- Denial of Service – systems are more vulnerable to overload given the increased volume of remote workers. Systems may not even require external malicious involvement and may crash of their own accord.

Societal & Governmental Pressure
The (re)insurance industry is facing the stark choice of devastating reputational damage or ceding to demands to pay coronavirus-related claims that are catastrophic, wholly unanticipated and largely absent from policyholders’ contracts. The risk is also rising that, in certain jurisdictions, it may be given no choice at all. Existential threats include US Congress members’ and state attempts to force the industry to make good these losses – and action in the US courts, including by a New Orleans restaurant firm that argues that COVID-19 business interruption (BI) losses are physical.

2 Source: https://www.moodys.com/research/Moodys-takes-action-on-five-trade-credit-insurers--PR_1000002044
Notable Claims

**Inovio – Biotech firm involved in vaccine production**

- A class action has been filed on behalf of all investors who traded shares in Inovio between February 14th 2020 and March 9th 2020
- On February 14th 2020, Inovio claimed that they had developed a COVID-19 vaccine “in a matter of about 3 hours”. This boosted Inovio’s share price by c.10% in the next few days’ trading
- On March 2nd 2020 Inovio went on to make the same claim in a meeting with President Trump. This further bolstered Inovio’s share price by 300% in the following days.
- On March 9th Citron Research alleged that the claim that they had developed a vaccine was false. This reduced Inovio’s share price from $18.72 per share to $9.83, and then further to $5.70 the following day.
- Per the complaint, this two-day reduction is the equivalent to a market capitalisation loss of $643m.

**Norwegian Cruise Lines – 3rd largest cruise line in the world (by passengers) based in the US**

- A class action has been filed on behalf of all investors who traded shares in Norwegian Cruise Lines between February 20, 2020 and March 12, 2020
- On February 20th 2020, the company said that “despite the current known impact” from the coronavirus outbreak, “the Company’s booked position remained ahead of prior year and at higher prices on a comparable basis.” The company also claimed that it “has an exemplary track record of demonstrating its resilience in challenging environments” and that it has “proactively implemented several preventive measures to reduce potential exposure and transmission of COVID-19.”
- The complaint alleges the company put their business interests ahead of the lives of customers and cruise members by using sales tactics which provided customers with unproven and/or blatantly false statements about COVID-19 to entice customers to purchase cruises.
- A supposed script for the company’s sales team to use to respond to concerns about cruise cancellations and also to suggest that the virus could not survive in various cruise conditions is quoted in the suit. The suit claims that “managers have asked sales staff to lie to customers about COVID-19 to protect the company’s bookings” and that some of the recommended responses to be given to concerned customers “are blatantly false”. These include instructions for sales representatives to tell customers that the coronavirus is not a concern in warm Caribbean climates.

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Notable Claims continued...

**Oceana Grill – Restaurant based in New Orleans**

- In the first coverage case in US courts stemming from COVID-19, Oceana Grill has filed suit against a number of Lloyd’s insurers to demand clarity over coverage for losses associated with the pandemic.
- It has launched litigation against the market and are seeking to obtain a court ruling that will confirm it will be compensated for physical and business interruption losses caused by the pandemic.
- According to court documents filed by plaintiff, it is covered by an all-risks policy, which remains in force and responds to “all risks unless clearly and specifically excluded”.
- “The virus is physically impacting public and private property, and physical spaces in cities around the world.” If there is a dangerous substance on the premises, is this physical damage?
- The plaintiff goes on to argue that “any effort by Lloyd’s to deny the reality that the virus causes physical damage and loss would constitute a false and potentially fraudulent misrepresentation that could endanger policyholders and the public”.

**Chicksaw Nation – Native American Casino Owner, Oklahoma State**

- In a bid to slow the spread of the coronavirus, the Native American Gaming industry shut all casinos, which are the sole source of commercial income for dozens of tribes. They are subsequently requesting $18 billion in federal aid.
- The Chicksaw Nation closed its casinos because its property has been damaged due to the coronavirus pandemic and “cannot be used for its intended purpose”.
- As a result they are suing a number of insurance companies, asking the court to determine that all losses incurred from shutting all their casinos as a result of the pandemic are covered.
- Several underwriters from Lloyd’s of London are named in the lawsuit, as well as a unit of AIG and XL Insurance America, now part of AXA SA.
- The Chicksaw tribe said it has an “all risk” insurance policy covering business interruptions.
- Many business interruption policies exclude coverage for pandemics and require physical damage to occur on the site. Others can be ambiguous, leading to possible coverage, legal experts said.

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COVID-19 Wordings/Exclusions & Renewal Behaviour

- Some markets are seeing opportunity to create more consistency in exclusionary language – industries in those more exposed sectors will undoubtedly take time to adapt to the post-COVID-19 environment.

- Most are currently navigating the wordings environment surrounding out and out COVID-19 exclusions on 01/04 business, with certain markets insisting on them being added to binding authority agreements.

- The below clause was issued by the LMA earlier this month for those wishing to take this route.

LMA COVID-19 Exclusion

Your Insurance Policy does not / This Insurance does not (delete as applicable) cover any claim in any way caused by or resulting from:

a) Coronavirus disease (COVID-19);

b) Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

c) any mutation or variation of SARS-CoV-2;

d) any fear or threat of a), b) or c) above.

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04 March 2020

A summary of the variety of actions being taken by different companies is provided below:

- Hesitant to start slapping exclusions on policies, concern that this may send the wrong message to market

- Work to be exposed to fortuity, not known losses. They will not be withdrawing existing coverage but may exclude on new and renewing policies where appropriate.

- Standard LMA clause applied to all new retail, tourism/travel and hospitality wordings, not agreeing to any automatic broker extensions and only considering justified extensions and then only limiting them to a max 2-month extension, requesting trading statement of all renewals and new business relating to COVID

- Requested LMA exclusion to be applied to binding authority agreements

- Considering an absolute exclusion referring to any loss relating to Coronavirus, as requested by markets
**Finish on a Positive Note**

- Monday 9th March 2020 – due to COVID-19 concerns and the beginnings of the Saudi Arabia / Russia oil price war, global stock prices suffered their largest one-day fall.
  - Brent crude fell 31% while The Dow dropped more than 2,000 points at closing (its largest decline since the 2008 financial crisis) and Brent crude fell by 31%. Circuit breakers that temporarily halted trading were triggered as the S&P 500 fell by more than 7%.

- Tuesday 24th March 2020 – in the first major rise since the outbreak of COVID-19, with sentiment boosted by the hard-line approach of Boris Johnson and the prospect of a $2trn stimulus package in the US, European Reinsurance stocks experienced their best day since the 2008 financial crisis.
  - The Stoxx Europe 600 Insurance Index surged more than 15%;
  - The FTSE 100 had its best ever day of trading, increasing by more than 9%.

*NB the above graphs show the trend for 24th March 2020.*

- The trend experienced in European Reinsurance stocks was mirrored across all major European markets, despite new data revealing the overwhelming impact of COVID-19 on economic activity, particularly in France and Germany.
- This trend continued as markets re-opened on 25th March 2020.
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