

# ADJUSTING COVID-19: INITIAL CLAIM AND DISCOVERY CONSIDERATIONS

## SET UP CLAIM FILE AND DIARY

Once you are first alerted to a potential claim, start building a claim file and a detailed diary to document the actions taken in the investigation of the insured's claim. Be sure to record all significant communications (and all unsuccessful attempts to communication) with the insured.

## REVIEW THE POLICY

Be sure to familiarize yourself with the insured's specific policy. Many policies contain variations of common provisions, such as the pollution and microorganism exclusions, that are likely to feature prominently in COVID-19 claims. However, these exclusions are not in every policy. Be certain of the forms included an insured's policy before providing a coverage position—even if only on the phone.

## REQUEST INFORMATION

The initial lawsuits filed by policyholders indicate that policyholder attorneys will likely aggressively pursue extra-contractual claims against insurers. Quickly disclaiming coverage for the insured's loss will likely fuel policyholders' allegations that an outcome-oriented or "sham investigation" was undertaken. While industry-based trends are likely to emerge, be sure to request information unique to each insured. For instance, requests should be made for documents and information related to:

- The reason they halted their operations
- Any governmental order the insured contends required them to close their operations
- Whether the insured requested an exemption from governmental orders
- Information related to the dates their operations were disrupted
- Documentation related to any increased or unique costs (cleaning/disinfecting; special storage)
- Whether efforts were taken to alter their regular operations and mitigate their losses. If not, why not?
- Whether any employee or patron that has tested positive for COVID-19 visited the premises while they were asymptomatic

## DETERMINE WHETHER INSPECTION NEEDED

If the policyholder suspects that their premises may have been exposed to COVID-19, it may be advisable to conduct an inspection and collect surface samples to determine whether any surface actually came in contact with the virus. Failure to request access before making a determination may result in the waiver of the right to do so.

## MONITOR COVID-19 ORDERS AND LEGISLATIVE DEVELOPMENTS

State legislatures have begun considering legislation that would require insurers to provide coverage for small businesses operating in their states. While none of these laws have been enacted, their status should be monitored.