

# Current Observations Of The Management Liability, Professional Liability And Cyber Risk Marketplace Amidst The Covid-19 Pandemic

*First and foremost, we hope all those reading this article, along with your families, continue to remain safe and healthy.*

As COVID-19 has so clearly impacted our personal lives, we are also beginning to witness both immediate and subsequent effects on businesses as well. In response to these changes, and the underlying uncertainty on what the future may hold, we are starting to see some MLI underwriters making/considering changes, which include, but are not limited to, the following:

- Requesting COVID-19 specific questions during the underwriting process (*we anticipate continuation of these type of questions for the foreseeable future*)
- Increasing premiums
- Increasing retentions
- Suspending the quoting of new business ventures, or those previously uninsured
- Restricting capacity (most notably, not offering mid-term limit increases)
- Restricting policy period extensions (*or if offered, may not be at pro-rata premiums, may be based on new/current rates, and/or for shorter than requested times frames*)
- Adding additional exclusions (*such as, absolute Bodily Injury exclusions, Coronavirus specific exclusions, Creditor/Bankruptcy exclusion, etc.*)

Some MLI carriers are limiting the above changes to only those industries most impacted by COVID-19 exposures (i.e., healthcare, hospitality, retail, travel, etc.), while others are taking more broad sweeping approaches by applying some/all of the above changes across their entire books of business. It is also worth noting that some MLI carriers have sent out emails stating that they will continue to individually underwrite accounts as they always have, with no blanket COVID-19 mandated changes (so far). As we are still in the early stages of this new environment, it is possible MLI carriers will implement additional changes as we continue to progress through the COVID-19 bell curve. To help navigate this rapidly changing and uncertain landscape, provided below are some coverage considerations, specific to COVID19 exposures.

## **Management Liability, Professional Liability and Cyber Risk coverage considerations arising from COVID-19 exposures:**

### **D&O**

- **Bodily Injury exclusions** – All Private D&O policies have Bodily injury exclusions. Unsurprisingly, many COVID-19 related exposures include some type of bodily injury component. In turn, we would suggest that, when negotiating D&O coverage, you seek to obtain the more insured favorable “for” preamble language to this exclusion, rather than the more restrictive “based upon, arising out of, attributable to” preamble language. Achieving such can increase the possibility of obtaining coverage under your D&O policy.
- **Creditor/Bankruptcy exclusions** – As the financial condition of insureds may be adversely impacted by the economic side effects of COVID-19, some underwriters may look to add bankruptcy and/or creditor exclusions, if they are not confident in insureds ability to financially survive the COVID-19 induced economic downturn.
- **Duty to Defend / 100% Defense Costs Allocation language** – If available, this can be a significant advantage for insureds coverage, as it can provide defense costs coverage for uncovered allegations, provided the claim includes a covered allegation. The benefit of this provision is that insured’s may obtain some defense costs coverage that would have otherwise been excluded.

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## EPL

- **Reduction In Force (RIF) exclusions** – As companies are forced to engage in RIF, some carriers may look to exclude claims arising from such layoffs; if not excluded outright, some underwriters may impose higher layoff retentions and/or lower limits for potential layoff claims.
- **Duty to Defend / 100% Defense Costs Allocation language** – Similar to D&O, if available, this is a notable insured-friendly clause that can typically provide defense costs coverage for uncovered allegations, provided the claim includes a covered allegation. This is a considerable benefit if secured, as an insured may obtain some defense costs coverage, which could otherwise be excluded.

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## CYBER RISK

- **Work at Home exposures** – Cybersecurity research firms are predicting a spike in hacks and breaches as the COVID-19 outbreak continues to progress, given businesses increased utilization and dependence on technology. Most notably, insureds should be aware of the increased exposures arising from a remote workforce. A remote workforce equates to a rise in the number of personal devices employees are utilizing to fulfill their job responsibilities, and an increase in the use of online conferencing tools like Zoom, Google Hangouts, Microsoft Teams, and Slack. Not only are businesses being inundated with malicious email from bad actors attempting to access company data, but so are individuals. IT departments and outsourced providers should properly configure remote services to maintain strict isolation/segregation of the company's network from a user's personal computer. Failure to isolate a company's network assets from an employee's personal device, increases (in some cases exponentially) a potential breach of the network. Insureds should have thoroughly crafted cyber coverage in place, and if not, it is highly advisable to re-address this coverage which is vital to a business's continuity.

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## PROFESSIONAL LIABILITY

- **Allied Healthcare** – The Healthcare industry is on the frontlines in defending against COVID-19. In light of this, Healthcare Professional Liability underwriters are evaluating the exposures that arise from being on the forefront, in terms of services rendered, and where claims are expected to increase:
  - **Understaffed Facilities & Home Healthcare exposures** – with a large number of the population contracting the virus and anticipated to contract the virus, underwriters are concerned about staffing issues for healthcare facilities due to employees calling out sick. With a limited number of staff to care for a large number of patients, medical facilities are exposing themselves to issues as it is difficult to maintain a property duty of care. Home Healthcare risks are especially vulnerable as patients who receive daily care from an aid, may have to go multiple days without care until a staff member is able to visit them. As such, we are seeing some carriers that have put a STOP on offer quotes or building in exclusions.
  - **Telemedicine Services Rising/Gaps In Coverage** – Telemedicine Services have been drastically increasing in recent years, and COVID-19 has further increased the relevancy and demand for these services. In light of such, Investors and healthcare facilities are building new platforms for patients and physicians to connect. It is important to note, Medical Malpractice policies can leave gaps in coverages when physicians use these services. We have seen situations where physicians are not able to access proper medical records through platforms, and/or platforms are experiencing system interruptions due to heightened volume, and underwriters are disputing coverage as Technology E&O claims instead of Medical Malpractice claims. It is important for insureds to address these exposures with their underwriters to make sure all aspects of the risks are covered.

- **Communicable Disease exclusions** – We are seeing absolute exclusions being added to healthcare forms with broad preamble wording, such as “arising out of, based on, in connection with, resulting from, contributed by, directly or indirectly, whole or in part”, as it relates to claims involving Communicable disease, Epidemic, or Pandemic. Similar to the aforementioned coverage considerations, it is vital to address these exposures and potential restrictions with respective underwriters.

We are also observing underwriters, like all of us, attempting to fully grasp and comprehend the potential ramifications of COVID-19, and more specifically, its relevance and impact to their coverages. In the absence of certainty, they are cautiously offering the most conservative / restrictive options when quoting accounts. However, where our relationships are the strongest, we have already been able to work with some underwriters to negotiate more favorable terms and agreements. As many of us have heard, and reiterated over the years, this is still a “relationship” and “people” business. As such, we would highly encourage working with knowledgeable brokers that you trust and who have strong relationships with underwriters in their respective marketplace.

What can our insureds expect as a result of the COVID-19 impact on the marketplace? We recommend that brokers set client expectations as follows:

- Expect more questions from underwriters. In some cases, conference calls between underwriters and insureds may prove helpful. Doing so could help address or quell underwriters concerns surrounding insureds perceived COVID-19 exposures.
- Expect Increases in retentions and premiums.
- Expect additional exclusions may be added, and be prepared to work with underwriters to try to remove or mitigate the exclusions.
- Don't expect that historically common coverage requests will be as easily granted in the future (i.e., pro-rata extensions, higher limit requests, etc.)
- Expect slower / delayed responses from underwriters, considering all underwriters are working remotely, and more accounts are requiring underwriting management approval, under revised underwriting guidelines from COVID-19.

We recognize that during difficult economic times such as these, some insureds are inclined to reduce costs dramatically wherever applicable. Many insureds will push for the lowest price possible, and some might consider non-renewing certain lines of coverage altogether. Because we believe that efficiently transferring risk through insurance is more essential than ever to preserve companies' financial viability during economic downturns, we will do our best to accommodate insured's needs. That being said, it's essential to continue emphasizing that the current economic climate is a precarious time for companies to drop insurance coverages, given the potential for these policies to provide defense and indemnity protection, and thus contribute to maintaining insured's financial sustainability.

Considering we are in the early days of the COVID-19 effects on the Management Liability, Professional Liability, and Cyber Risk marketplaces, it is possible the above expectations may change- for the better or the worse. As such, please don't hesitate to contact your local Socius representative for further details relating to changes in the respective marketplaces.

Hoping everyone remains safe and healthy!!

***Please contact your Socius producer to discuss available coverage solutions.***

**833-476-2487**

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