

**MARCH 3, 2020**

For more information,
contact:

Meghan Magruder
+1 404 572 2615
mmagruder@kslaw.com

Anthony P. Tatum
+1 404 572 3519
ttatum@kslaw.com

Shelby S. Guilbert, Jr.
+1 404 572 4697
sguilbert@kslaw.com

Joseph M. Englert
+1 404 572 3536
jenglert@kslaw.com

Melanie C. Papadopoulos
+1 404 572 4651
mpapadopoulos@kslaw.com

King & Spalding

Atlanta
1180 Peachtree Street, NE
Atlanta, Georgia 30309-3521
Tel: +1 404 572 4600

Cancelled Due to the Coronavirus: Maximizing Insurance Coverage for Event Cancellation Losses

Over the past several weeks, the COVID-19 coronavirus outbreak has shaken global markets and caused widespread disruption to businesses throughout the world. As the virus continues to spread around the globe, many companies are faced with the difficult decision of whether to cancel large events due to public health concerns and the threat of travel restrictions and quarantines.

Just two weeks ago, GSM Association canceled the Mobile World Congress, the world's largest annual mobile communications show, which was scheduled to take place in Barcelona, Spain last week from February 24 to 27. MWC was expecting 100,000 people from almost 200 countries to attend. Facebook also cancelled its F8 conference, which would have attracted over 5,000 people from all over the globe to San Jose, California in May. The Swiss Government has announced a temporary ban on all gatherings, events, and conferences of over 1,000 people, and many countries are considering similar measures. Meanwhile, the International Olympic Committee is reportedly considering whether to postpone, reschedule, or cancel the Summer Olympics in Tokyo due to Coronavirus fears. With an estimated 3.2 million tickets sold already, the Olympics will bring together a staggering number of spectators, athletes, and employees from over 200 countries to Tokyo. The cost of canceling the games would be substantial, as the Japanese Government has invested \$12 billion preparing for the Olympic Games, and Japan's National Audit Board has reported that the overall cost of the Games could reach approximately \$28 billion.

As the threat of the COVID-19 coronavirus continues to expand globally, and governments decide what actions to impose, many companies will also face similar decisions about whether to cancel or postpone events in the coming months. If your company is determining whether to cancel an event due to the coronavirus, it is important to first consider whether losses associated with cancellation might be covered under event cancellation



insurance policies and, if so, what steps your company should take now to maximize the potential for insurance recovery.

EVENT CANCELLATION INSURANCE

What is Event Cancellation Insurance?

Event cancellation insurance protects event revenues and related expenses against the risks of cancellation, postponement, curtailment, relocation, or abandonment of the event for unforeseen circumstances beyond the control of the event organizer. Beyond the lost revenue, the costs of canceling a large event can run in the tens of millions of dollars, if not more. While the specific terms of event cancellation policies vary, many policies offer broad “all-risk” or “all-cause” coverage that is triggered by any unexpected cause that is not expressly excluded under the policy. Other policies, however, are written such that only specific causes or risks (e.g., extreme weather, terrorism, etc.) trigger coverage. Notably, some event cancellation policies also include coverage for losses when an event goes forward as planned, but there is a significant reduction in attendance and revenues due to a covered cause.

What Types of Losses Are Covered Under Event Cancellation Policies?

If coverage is triggered, most event cancellation policies cover (subject to the limits and deductibles of the policies) both: (1) expenses incurred in connection with the cancellation, rescheduling, or relocation of an event; and (2) loss of revenue that the insured would have received if the event had gone forward as scheduled. Such losses would typically be reduced by any expenses or costs saved as a result of the cancellation. Further, many policies also provide coverage for “extra expense”—i.e., necessary expenses incurred to continue the normal operations of the event despite the unforeseen peril or event.

Are Cancellations Related to the COVID-19 Coronavirus Outbreak Covered Under Event Cancellation Policies?

Event cancellation policies written on a broad “all-cause” basis should cover cancellations for unforeseen communicable disease outbreaks, such as the recent coronavirus outbreak, unless specifically excluded. While event cancellation policies sometimes contain infectious or communicable disease exclusions, which might preclude coverage for losses related to the COVID-19 coronavirus, many do not. Some policies may contain broadly worded “pandemic” exclusions, but these exclusions arguably would not apply, if at all, before the World Health Organization or the Centers for Disease Control and Prevention formally declares that a pandemic exists. Other event cancellation policies may bar coverage for certain types of diseases, but not others. For example, following the 2003 SARS outbreak, many insurers added specific “SARS” exclusions to event cancellation policies, but those exclusions should not apply to losses stemming from the recent COVID-19 coronavirus outbreak, despite similarities between the two viruses.¹

Additionally, some policies also contain government seizure or confiscation exclusions that some insurers might argue apply if an event was canceled due to a government quarantine. For example, one common event management policy exclusion purports to bar coverage for loss caused by “*seizure or destruction under quarantine* or customs regulations, confiscation, nationalization or requisition or destruction of or damage to property, by or under the order of any government or public or local authority, or the handling of contraband or the engaging in illicit trade or transportation.” However, it is difficult to see how this exclusion, which applies to the destruction of property, would bar coverage for canceled events following a quarantine.

Moreover, even if an event cancellation policy contains a communicable disease exclusion, a specific “SARS” exclusion, or a broad quarantine exclusion, the exclusion may not apply based upon the policy language and specific circumstances of the cancellation. Even if such an exclusion may appear applicable, that does not mean that the exclusion forecloses all coverage, particularly if there are other contributing causes that led to the cancellation of the event. Therefore, rather than relying on an insurer’s letter that analyzed coverage for a claim, it is important to closely review the specific policy at issue and to consult with experienced coverage counsel to determine the scope of coverage



and whether any cited exclusion even applies. Likewise, any company that is purchasing event cancellation coverage for events later this year should carefully review their policies with their brokers and coverage counsel to identify exclusions that might bar or limit coverage for COVID-19 coronavirus related losses and then to seek to remove or modify such exclusions.

KEY EARLY STEPS TO HELP MAXIMIZE RECOVERY FOR EVENT CANCELLATION LOSSES

Even before making a claim following an event cancellation, businesses should promptly and proactively assess and document their losses, evaluate their insurance coverage, and act to comply with any contractual conditions that are necessary to obtain coverage. The following is a summary of some essential steps that your business should take to maximize the value of its insurance following an event cancellation.

Provide Prompt Notice. Event cancellation policies frequently require that an insured notify the insurer “promptly,” “as soon as possible,” or “as soon as practicable” in the event of a loss. The effect of failure to provide notice in accordance with the policy terms varies among jurisdictions, but the consequences of failure to comply with notice provisions may be severe and preclude coverage. Event cancellation policies also often contain deadlines for providing a “sworn proof of loss” documenting the causes and value of the loss. It is important to know these deadlines from the outset and to seek extensions if necessary.

Collect and Preserve Evidence of Business Losses and Damages. It is important to record all costs, expenses, and damages for which you might seek coverage. To ensure full coverage for lost event revenue and extra expense, businesses should document their losses by maintaining proof of projected event revenues before and following the coronavirus outbreak.

Be Careful About Internal and External Communications Regarding the Loss. Businesses should be careful about what they say about what “caused” their losses and about the extent of insurance coverage in internal and external communications (including with brokers and insurers). If litigation over insurance coverage becomes necessary, insurers may gain access to internal communications such as emails and memoranda regarding a business’s claims for insurance. How the loss is characterized in such communications may be used in support of an insurer’s effort to deny coverage. Involving coverage counsel early on in these communications may ensure that they are protected as privileged in the event of litigation over coverage. Businesses also should identify a single point of contact or spokesperson for all communications with insurers.

Coordinate Mitigation Efforts With Insurers. Most event cancellation policies also include provisions which require the insured to mitigate losses associated with an event cancellation. While it is important to mitigate losses, it also is important to communicate with insurers regarding such efforts when possible. This will minimize the chance that the insurer will apply hind-sight to second-guess the reasonableness of the mitigation procedures that a business puts in place.

Engage Coverage Counsel. Event cancellation claims are often complex and event cancellation policies often contain potential coverage-defeating traps. Experienced coverage counsel is critical and will work with your brokers to ensure that you do not misstep on any conditions to coverage and can maximize the amount of insurance recovery for your loss.

We work closely with our clients and their risk managers to collect from their insurers for losses arising from event cancellation, property damage, business interruption, and supply chain disruption caused by unforeseen and catastrophic events, and have obtained billions of dollars in insurance recoveries for our policyholder clients, including substantial recoveries under event cancellation policies for entertainment businesses who initially received coverage denials from their insurers after canceling major events.



As the legal and practical issues related to 2019 Novel Coronavirus (COVID-19) continue to evolve, King & Spalding's Crisis Practice Coronavirus Task Force brings experience and judgment to help the c-suite, legal team and the Board address mounting business and legal issues. Our clients benefit from the experience of our Crisis Practice lawyers who have deep experience leveraging the firm's resources around the globe to routinely assist clients in incident response planning and live crisis management situations. We are also able to leverage relationships with premier global duty of care and crisis communications advisors to help our clients stay in front of today's unprecedented and rapidly unfolding developments.

ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,100 lawyers in 21 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising." View our [Privacy Notice](#).

ABU DHABI	BRUSSELS	DUBAI	HOUSTON	MOSCOW	RIYADH	SINGAPORE
ATLANTA	CHARLOTTE	FRANKFURT	LONDON	NEW YORK	SAN FRANCISCO	TOKYO
AUSTIN	CHICAGO	GENEVA	LOS ANGELES	PARIS	SILICON VALLEY	WASHINGTON, D.C.

¹ <https://www.sciencedaily.com/releases/2020/01/200131114755.htm>