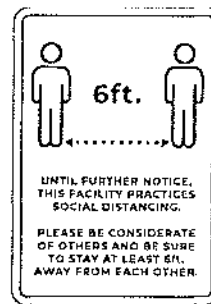
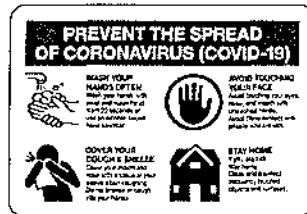
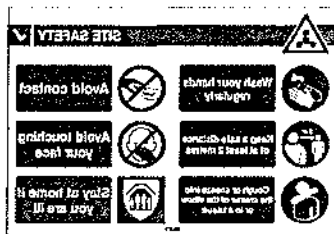
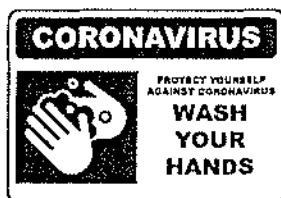


COVID-19 Swimming Pool Recommendations

1. **Post Information-** A sign should be displayed at the facility upon entrance to remind visitors on the necessary steps to prevent the spread of covid-19 that includes the following information:
 - a. Stay home if you are sick or do not feel well or have recently been exposed to someone who has covid-19.
 - b. Use social distancing and maintain 6-foot distance (2 arm's length between individuals in all areas of facility)
 - c. Cover coughs and sneezes with tissue and throw away
 - d. Wash hands often with soap and water for 20 seconds frequently.
 - e. Use hand sanitizer as necessary with at least 60% alcohol
 - f. Avoid touching eyes, nose, and mouth with unwashed hands.
 - g. A simple sign for social distance reminders throughout the facility:



2. **Maintain Restrooms-** Discuss with your janitorial on upkeep of the following restroom recommendations:
 - a. Toilets must be functional
 - b. Cleaned and disinfected regularly, particularly high touch surfaces as faucets, toilets, doorknobs, diaper stations, and light switches. Ensure safe and correct application of disinfectants and keep products away from children.
 - c. Regularly stocked with supplies for handwashing, including soap and materials for drying hands or hand sanitizer with at least 60% alcohol.
 - d. It IS highly recommended that the restrooms are disinfected daily.
 - e. A sign to remind visitors should be installed at the bathroom sinks. Examples below:



3. **Cleaning and Disinfection of Pool Area Surfaces-** Discuss with your janitorial on the upkeep of the following:
 - a. Cleaning and disinfecting frequently touched surfaces which include all handrails, lounge chairs, tabletops, water faucets, and showers. (It is recommended that this is done daily.)
 - b. Setting up a system so that furniture (for example, lounge chairs) that needs to be cleaned and disinfected is kept separate from already cleaned and disinfected furniture.
4. **Maintenance of Swimming Pools-** Discuss with your pool maintenance on upkeep of the following swimming pool recommendations:
 - a. Keep swimming pools properly cleaned and disinfected.
 - b. Proper operation, maintenance, and disinfection with chlorine or bromine
 - c. Maintain proper disinfectant levels of (1-10 parts per million free chlorine or 3-8 ppm bromine) and pH (7.2-8).
5. **Modified Facility Layouts & Guides-**
 - a. Changing deck layouts to ensure that in the standing and seating areas, individuals can remain at least 6 feet apart from those they don't live with.
 - b. Provide physical cues or guides (for example, lane lines in the water or chairs and tables on the deck) and visual cues (for example, tape on the decks, floors, or sidewalks) to ensure swimmers and guests stay 6 feet apart from those they don't live with.
6. **Mailer-** A Mailer should be sent out to the membership regarding reopening information and precautions that need to be continued. Recommend staying home as much as possible, face masks in facility use as necessary, and covid-19 prevention recommendations if they wish to use the pool area. Legal *should* review information due to liability with perhaps a statement of entering at own risk.

More information can be found here:

<https://www.cdc.gov/coronavirus/2019-ncov/community/parks-rec/aquatic-venues.html>



COVID 19 POWERPOINT OUTLINE

To be clear, we are not providing legal or management advice. Our main focus will be insurance coverage, the multiple scenarios of what one might expect to happen after filing a claim, and some thoughts moving forward.

Four Most Common Questions

1. What happens if we are sued *after* we open the facilities
2. What happens if we are sued for *not* opening the facilities?
3. Are we covered for loss of assessments/income?
4. Are we covered for worker's comp claims related to Covid-19?

Disclaimer-This is a quickly developing situation. The following information is subject to change. Coverage cannot be denied, nor granted in this format as each claim is unique and will rely on its own facts.

Important terms:

- Indemnify: To compensate an individual for an incurred injury.
- Duty to defend: An insurer's obligation to provide a legal defense.
- Reservation of Rights: an insurer's notification to an insured that coverage for a claim may not apply.

I. What happens if we are sued *after* we open the facilities?

General Liability

- A. In any liability claim, the insurance company will look to establish Legal Liability.

Some aspects to be identified are:

- The wrongdoer is found guilty of "Negligent Conduct" (meaning they breached a duty owed to the injured party)
- The injured party suffers actual damages
- The wrongdoer's "Negligent conduct" is the proximate cause of the injury or damage.

- B. What actions or inactions could possibly lead to legal liability arising out of the coronavirus?

A few ideas come to mind, but these are not all the possible scenarios:

- Allowing an employee who is **known** to be infected with the virus to continue working;
- Failure to adhere to required health and prevention guidelines.
- Remaining open following an order by a civil authority to close.

- C. Was There an Occurrence?

- As part of the question of an "occurrence," the injured party must prove that the virus was contracted at the HOA or arising from its operations. Given the specifics, this might be almost impossible

Will the insurance Company Indemnify and Defend?

- We don't know for sure yet... there are some hurdles.

Significant Exclusions

A. Expected or intended injury - If a reasonable person could or should expect the virus to spread because of actions taken or decisions made, this exclusion could apply.

- Example: Removal of pool fence causes a child to wander into the pool

B. *Key Exclusion: Mold and Microorganism includes viruses*

The enforceability of this exclusion might be in the wording of "Consumption."

Is a resident's use of Common Area considered "consumption"?

- The last line of this endorsement says that the exclusion does not apply to products which are consumed. This was added for the benefit of the restaurant industry in order to cover food borne illnesses.
- **However:** There was a claim in which a hotel patron got sick in the hotel spa. The attorney argued that he was "consuming" the product because it was paid for. Could the same argument be made that a dues paying member of an HOA is consuming the association amenities? Better yet, will a court buy it, thereby neutralizing the exclusion? We don't know yet.

Courts will need to decide.

C. Parallel with Legionnaire's

An HOA pool restroom tested positive for Legionnaire's and someone got sick. We expected to have this claim denied due to the virus exclusion, but it's actually being fully covered.

Why?

A Previous court decision convinced the insurance company that the exclusion would not hold in the case of with Legionnaire's.

Duty to Defend

- The good news: The Duty to Defend is broader than the duty to Indemnify.
- The bad news: If there's no possibility of coverage, the insurance company can still deny.

Important Term:

Declaratory Relief: Refers to a judgment of a court which determines the rights of parties without ordering anything be done or awarding damages. By seeking a *declaratory* judgment, the party making the request is seeking an official declaration of the status of a matter in controversy.

- A. One POSSIBLE path: flat out denial
- B. A second possible path: The Insurance Company defends as a precautionary measure...
Reservation of Rights is issued then a Declaratory Relief Action (DRA) is filed in order to have the court rule on the coverage.

These are difficult decisions that the insurance company will have to make, combined with legal actions that will normally take time. *This could result in the favor of the Association* as defense could be congruent while the process unfolds. Emphasis on the word COULD.

This scenario was laid out as a possible path by a high-level claims adjuster- of course it was hypothetical.

At this point, we don't know and we are absolutely not trying to spread false hope or doom and gloom. It's important to recognize that this is a developing situation and while there are significant hurdles, events such as court decisions could significantly change the landscape.

II. What happens if we are sued for *not* opening the facilities?

- A. Directors and Officers- Wrongful Acts
 - Most D&O policies do not have virus exclusions because they are already not covering Bodily Injury.
 - **However**, some Bodily Injury exclusions are so far reaching, they may have the ability to knock out anything remotely related to bodily injury.
- B. Possible suits for denying access to common areas?
 - Homeowners could argue that they are being denied access to common areas while paying dues.

Late breaking news: One insurance company has already added a COVID 19 exclusion to their D&O policy. This may be an aberration and it may be difficult for other companies to follow.

III. Are we covered for loss of assessment/income?

- Not Covered.
- Policy wording requires the unit owner to be displaced, which is the opposite of stay at home

IV. Are we covered for workers' comp claims related to Covid-19?

- Highly Likely- California is very friendly to the injured worker.
- **Example:** Newsome's Order regarding first responders. Also, California's notoriously low burden of proof for the injured worker.

V. Considerations for Board Members

- Consult with your attorney.
- Follow local municipalities, such as:
 - a. Consider proper signage in Common Areas; Signs “At your own risk.”
 - b. Possibly limit the number of people in Pool/Gym-Move equipment for ample space.
 - c. Sanitize more frequently.
- Monitor your vendor’s Workers’ Comp policies- Don’t inherit problems.
- Ask your current insurance agent for a written explanation of coverage.
- File the Claim!
- Encourage homeowners to carry loss assessment coverage- just in case.
- Get action plans from vendors as to how they are dealing with their employees that enter the HOA.

From: Candice Arrington <CandiceA@hoa-insurance.com>
Sent: Tuesday, May 12, 2020 11:43 AM
To: Nadine Bell <nadine@pernicanoirealty.com>
Subject: RE: Beacon Street COA

Hi Nadine,

Please see the carrier's response below. If the board were sued due to a claim related to COVID-19 we could file the claim with the D&O carrier but it would likely be denied. Most policies have these exclusions. The association needs to work with their local health department and any municipal, state or federal mandates that may be in place in regards to social distancing requirements in order to determine if opening any of their common amenities is permissible. We would also suggest you consult the HOA's attorney and be sure to abide by all county health and CDC requirements.

Thank you,

Candice Arrington
Senior Account Manager
LaBarre/Oksnee Insurance
Phone: (949) 588-0711 x 249
Fax: (949) 382-6048
CandiceA@hoa-insurance.com
Office Hours – Mon-Thurs/9:00 am to 5:00 pm, Friday/9:00 am to 4:00 pm

From: Bill DeRosa
Sent: Monday, May 11, 2020 7:10 PM
To: Candice Arrington <CandiceA@hoa-insurance.com>
Subject: RE: Beacon Street COAP -CAP016593-0218

Hi Candice,

Here is what the underwriter said:

I don't believe the policy would provide any type of coverage for claims arising from the pandemic. In addition to the to the bodily injury exclusion in section 4.1, we also have the pollution exclusion which also pertains to microbes. I have included the applicable sections below.

Section 4.1 of the Policy is hereby deleted in its entirety and replaced with the following:

4.1 based upon, arising from, or in any way related to:

(a) bodily injury, sickness, disease, death; or

(b) emotional distress, mental anguish; or

(c) damage to, destruction of, or loss of use of any tangible property;

provided, however, that part (b) of this exclusion shall not apply to any **Claim** brought by or on behalf of any **Third Person** or past, present or prospective **Insured Person** for an **Employment Practices Wrongful Act**;

4.7 based upon, arising from, or in any way related to the actual, alleged, or threatened discharge, dispersal, release or escape of **Pollutants, Fungi or Microbes**, or any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants, Fungi or Microbes**;

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23.15 "Microbes" means any non-fungal microorganisms or non-fungal colony-form organisms that causes infection or disease including but not limited to any spores, mycotoxins, odors or any other substances, products, or by products produced by, released by, or arising out of the current or past presence of microbes.

Bill DeRosa
Customer Service Representative
GIG INSURANCE GROUP
750 East Prospect Road
Fort Lauderdale, FL 33334
866.563.1771 toll free
954.563.1771 ext. 214
954.563.1775 fax
www.gigins.com

From: Candice Arrington <CandiceA@hoa-insurance.com>

Sent: Monday, May 11, 2020 8:53 PM

To: Bill DeRosa <bderosa@gigins.com>

Subject: FW: Beacon Street COAP -CAP016593-0218

Hi Bill,

Please see below – does Philadelphia's D&O provide coverage if the board were sued due to someone contracting coronavirus and alleging it was from one of the HOA's amenities?

Thank you,

Candice Arrington

Senior Account Manager

LaBarre/Oksnee Insurance

Phone: (949) 588-0711 x 249

Fax: (949) 382-6048

CandiceA@hoa-insurance.com

Office Hours – Mon-Thurs/9:00 am to 5:00 pm, Friday/9:00 am to 4:00 pm

From: Nadine Bell

Sent: Friday, May 08, 2020 3:39 PM

To: Leslie Ware <LeslieW@hoa-insurance.com>

Subject: Beacon Street OA Coverage Question

Hello Leslie,

Can you tell me if Beacon Street OA's insurance would cover the association and the Board if someone were to claim that they were infected at one of the Associations common area facilities, like jacuzzi, pool and restrooms. These amenities are not currently open, but we will need to look at reopening soon. If they are not currently covered what would the financial cost to the association look like?

Thank you,



Nadine Bell, CCAM

Community Association Manager

2851 Camino Del Rio So., Suite 230 | San Diego, CA 92108

O: 619-543-9400 ext. 5224 | F: 619-543-9625 | www.pernicanorealty.com

Stay connected with your community with our new app!

Pernicano Connect can send notifications for your HOA right to your phone!



Connect with us!

I hope that this communication finds you well!

Please be advised that due to the current health crisis, Pernicano Realty & Management will have limited staff in the office but will be working remotely from home during our regular business hours Monday – Friday, 8:00 am – 4:00 pm.

At times our phones will be on night mode and we will respond as we can. If there is an emergency, such as a flood, including irrigation, please contact our office at (619-543-9400) and press 0, and the Emergency staff will assist you.