



US LACROSSE - RPS BOLLINGER INSURANCE GUIDELINES FOR RESPONDING TO CORONAVIRUS

MAY 2020

The following information is intended to help US Lacrosse and its individual members, including member teams, leagues and events, in shedding light on USL's membership insurance as it relates to COVID-19. This document will also outline risk management steps to help you prepare for the next phases of post-COVID-19 operations. As always, Bollinger's staff is here to support you in the review and understanding of key insurance coverages and risk management procedures.

INSURANCE COVERAGES AND CONCERNS

Generally, insurance coverage for business losses due to pandemic is limited, if available at all. This overview will provide information on the specifics of the US Lacrosse member insurance plans, as well as outline general points regarding other coverages you may have in place beyond the scope of the USL member insurance program.

US LACROSSE MEMBER GENERAL LIABILITY INSURANCE

US Lacrosse provides General liability (GL) coverage to individual members, as well as to teams, leagues, and events who follow the 100% registered member guidelines. This coverage protects you from claims and lawsuits stemming from "**bodily injury**" and "**property damage**" to others. Liability for third-party bodily injury also includes exposure to harmful conditions, and failing to warn about or mitigate such conditions. Under the terms of the GL policy, bodily injury is defined as "bodily injury, sickness or disease sustained by a person."

This definition opens the door to the possibility of coverage for COVID-19 claims if, for example, people were to become infected at a game or event and file a lawsuit. As defined by the GL policy, bodily injury must be caused by "**an accidental occurrence**" in order to be covered. The policy expands on that definition to include "**repeated exposure to a harmful condition,**" but at this point, it is not certain whether GL policies will pick up any claims alleging COVID-19 exposure.



Many liability policies have exclusions for communicable disease or viruses, although **there is no such exclusion** under the US Lacrosse liability policies. The insurance marketplace is changing rapidly in this regard, and therefore, it is very likely that Communicable disease exclusions will soon be found on all policies in the near future.

With regard to US Lacrosse, it must be said that even with no current exclusion for communicable disease, **the absence of an exclusion does not provide an automatic grant of coverage**. When policies are "silent" on coverage issues, the response at claim time will be based on the allegations of the lawsuit, and how the carrier – or the court – determines how coverage applies. The current uncertainty on how to manage this catastrophic risk, as well as uncertainties with regard to how liability coverage will ultimately apply, makes it critical to **follow best practices from a risk management perspective** in order to maximize safety and minimize the threat of liability.

It is also important to follow governmental and regulatory guidelines. Defying these mandates in order to play could be considered an **"intentional act"** which may preclude you from coverage if a claim were to arise. Therefore, as you move through the gating criteria and into phases of return to play, adhere to governmental mandates, and follow return to play and resocialization guidelines to keep the health and safety of staff, members, and the public at the forefront of your new procedures.

Lastly, you should be aware that Congress is discussing legislation to prevent lawsuits related COVID-19 illness or death that may be filed against businesses. It could provide immunity to teams, leagues and events, for example, from claims alleging COVID-19 transmission or contact as a way to protect operations that have already been decimated economically by the pandemic. If it comes to pass, such legislation would make the question of coverage under the GL moot. We will continue to follow this thread closely.

US LACROSSE MEMBER BASE ACCIDENT AND CATASTROPHIC ACCIDENT INSURANCE

US Lacrosse provides two Accident policies (Base Accident and Catastrophic Accident) to cover accidental injuries to members. Both of these policies **exclude coverage for "bodily illness or disease,"** and therefore, would not cover COVID-19-related claims.

DIRECTORS & OFFICERS LIABILITY INSURANCE

Many teams, leagues and officials' associations purchase optional **Directors & Officers (D&O)** insurance through RPS Bollinger's program. The D&O policy provides coverage to organizations and their boards for **wrongful acts, errors and omissions and claims**



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relating to business decisions. In addition, the Employment Practices section of this policy covers claims arising out of **discrimination, eligibility matters, and wrongful hiring or firing.**

Organizations may start fielding lawsuits stemming from business decisions made during this crisis. Additionally, sports organizations may find themselves facing down claims of discrimination, such as suspending a coach or player based on suspicions of having the COVID-19 virus. Decisions made on team selection for championship play, or for athletes chosen for awards or scholarships once play resumes, could also give rise to discrimination claims.

It has been suggested that D&O and EPL carriers may try to deny claims stemming from COVID-19-related incidents, based on the **bodily injury exclusion** that is standard on these policies. As with most lawsuits, the individual circumstances of the claim or suit will determine whether coverage applies or not.

WORKERS' COMPENSATION INSURANCE

Lacrosse leagues and organizations who have a paid staff are required to provide workers' compensation (WC) insurance. Claims for COVID-19 under this policy will hinge on whether the **disease/illness is considered occupational.** In order to be compensable, the virus would have to be contracted during the course of employment, and caused by conditions specific to the employee's work. Various statutory rules come into play depending on the particular state of your operations. Note that many state WC rules exclude coverage for **"ordinary diseases of life"** (i.e., the common cold or flu), even if contracted on the job. Some states, like SC, specifically exclude coverage if an employee contracts a contagious disease from a co-worker.

We believe there will be extra scrutiny of COVID-19 claims by the insurance carriers, and therefore, clear documentation and timelines will be critical to validating claims. Since workers compensation is regulated state by state, and the response to claims from COVID-19 is currently in flux, it is wise to stay on top of the new regulations being enacted. A good single resource for state information is the National Council on Compensation Insurance's (NCCI's) Coronavirus fact page:

<https://www.ncci.com/Articles/Pages/Insights-Coronavirus-FAQs.aspx>



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PROPERTY INSURANCE/BUSINESS INTERRUPTION

Larger leagues who own property or a facility may purchase Property insurance. Standard property policies cover **physical loss or damage to covered property**, caused by an insured peril. **Contamination of property** at an insured's location may be construed as physical loss/damage in certain cases, but limitations or exclusions for pathogenic organisms, viruses, or disease (which are fairly common on property policies) would restrict coverage. **Business Interruption coverage** is making headlines during the pandemic because people assume that if they are shut down, the business interruption insurance will cover their fixed expenses.

To initiate business interruption coverage, however, the **loss must be triggered by specific causes of loss directly to the property** (wind, hail, fire, earthquake, etc.). The intent of Business Interruption is to provide a continued income stream if the insured's facility is shut down due to a covered loss. Claims arising from communicable disease or government shutdown as a result of the pandemic are not considered covered causes of loss, and therefore would not trigger the business interruption coverage. Business interruption extensions, such as contingent business income, civil authority, or denial of access, are also subject to the same coverage parameters outlined above, and must be caused by a covered peril.

Limited **coverage extensions for communicable or infectious disease** are offered on some property forms. The coverage extensions are usually sub-limited and narrow in scope, and these endorsements are rare in our Sports and Clubs Programs.

The debate continues within the insurance industry and the courts regarding the applicability of Business Interruption to COVID-19 claims. Numerous high-profile businesses have filed lawsuits against insurers following the denial of their claims. The insurance carriers' response is that rewriting the policy terms and coverages after the fact --by the courts-- will bankrupt the industry. The survival of small and large businesses is key to our economic recovery; however, having viable insurance carriers, and the safety net they provide to keep businesses running is of equal value. This will be a much-watched debate as we get back to the new norm.

EVENT CANCELLATION INSURANCE

Organizations sponsoring large events often purchase Event Cancellation insurance to cover their fixed costs or income should the event be postponed or cancelled. These



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policies have wide variations in coverage, making it difficult to speculate on the applicability of COVID-19 coverage in general terms.

Commonly, event cancellation claims arising out of "**Communicable Disease, Epidemic or Pandemic**" are excluded. Event cancellation that is purchased by sports and clubs is typically designed to insure for weather-related cancellation, non-appearance, and/or terrorism events. Due to the high cost of event cancellation, the causes of loss are usually narrowly defined, and are not intended to cover cancellation "for any reason."

At this time, getting **event cancellation for pandemic or COVID-19 exposures is not available**, whether in the standard insurance marketplace, or even from Lloyd's of London. This makes it difficult for event organizers to plan for the future or make decisions on upcoming events. The high profile of many canceled or postponed events is putting the need for event cancellation at the forefront, and we believe the insurance markets will respond with available coverage, whether on their own, or with the backing of governmental support, in the future.

The information contained herein is offered as insurance industry guidance and provided as an overview of current market risks and available coverages and is intended for discussion purposes only. This publication is not intended to offer legal advice or medical advice. General insurance descriptions contained herein do not include complete insurance policy definitions, terms, and/or conditions, and should not be relied on for coverage interpretation. Actual insurance policies must always be consulted for full coverage details and analysis. Insurance brokerage and related services to be provided by Arthur J. Gallagher Risk Management Services, Inc. (License No. 0D69293) and/or its affiliate, Risk Placement Services (License No. 100294602).



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PREPARING FOR RETURN TO PLAY

Now is the time to start updating your return-to-work (RTW) and return-to-play (RTP) guidelines. Teams, leagues, camps and events should consider incorporating the following steps into their procedures, in conjunction with the US Lacrosse Safe Return to Play protocols.

1. Let common sense take the lead

We don't have the luxury of time to research and test all options before we will be called on to act, to go back to work, to get teams back on the field, or to open up facilities to members. As such, we must be cautious and practical, protecting operations with solid risk management plans, and keeping the safety and well-being of staff, members, volunteers and families at the forefront of every decision.

2. Follow all governmental mandates and guidelines

Follow all federal, state and local guidelines with respect to getting back on the field or opening your facility to the public. Ensure that all gatherings fall within allowable size limits. There are no prizes for being the first team out on the field, or the first facility to open its doors. This is a good time to be conservative and make changes in phases so that you can catch any negative impacts early in order to avoid regrets in the future.

3. Set guidelines for PPE and screenings

Establish guidelines for required protective equipment within each constituent category (employee, coach, player, visitor, spectator, etc.). Determine who will be responsible for providing PPE and communicate that information early and clearly.

If you will be doing temperature screenings on staff, players or visitors, make sure that it is clearly communicated to anyone entering the premises. All constituents should be made aware that they may be asked to leave if they refuse a screening or show any signs of illness (regardless of any testing they may already have done).

4. Prepare your physical workspace and your facility

Review your physical workplace and your facility for potential points of transmission of infection like shared desks and phones, locker rooms, training areas, and other common spaces. Increase the frequency of facility cleanings (at a medical-grade level, if possible) and provide personal hygiene products like hand gel and antibacterial cleansers.

Establish rules about the maximum number of people allowed in common areas, cafes, and bathrooms, as well as in exterior public and spectator areas. Create a plan for how rules will be enforced. Eliminate communal food and beverage items and utensils from kitchen



and concession areas. Require staff and members/participants to bring their own clean water bottles and other needed items each day.

5. Promote good hygiene

Set up additional hand sanitizers or hand washing stations around the premises, with guidelines on how often people should wash/use sanitizers. For example, you may place sanitizing stations at each entry/exit and ask that everyone use them when entering and exiting the premises.

6. Communication

Once your organization has determined how return to play will be handled, it is important to communicate that strategy and its phases to all constituents – coaches, players, parents, officials, assigners and facilities. These changes represent a sizable undertaking for the smallest to the largest organizations, and therefore, communication with each area of the program is key to the overall effectiveness of these new protocols. Rely on US Lacrosse and partner organizations for best practices to share, as well as webinars and research that your organization and its members and volunteers can participate in, so that everyone is on the same page with regard to safety.

7. Update waiver language to include the risk of contagious disease

We recommend that teams, leagues, camps and events implement an additional waiver and release that addresses the risk of contracting communicable disease, including Coronavirus, while participating in team sports. If you cannot have a separate waiver, at least insert such language into your existing waiver. The purpose is to provide you with an extra line of defense in the event of a claim relating to COVID-19 or other disease. There is suggested waiver language in the US Lacrosse Safe Return to Play guidelines which you may forward to your attorney for further legal advice in this matter.



US LACROSSE FREQUENTLY ASKED QUESTIONS REGARDING COVID-19 AND INSURANCE

Q: If our state is still shut down, will coverage be provided if we play in another state that has lifted restrictions?

A: The insurance program for US Lacrosse has not changed with regard to how the Accident and General Liability coverages apply. If a US Lacrosse team, league or event is following the 100% membership guidelines, the member insurance will respond to lacrosse-related accident and liability claims in the same manner as it always has.

However, the US Lacrosse Insurance Program has no jurisdiction over decisions on return-to-play, or permission to travel to another state. Teams, leagues and events must follow the direction of federal, state and local authorities as to when play can begin in their town, in their state, or across state lines. US Lacrosse, in conjunction with leading authorities, will set recommendations for return-to-play protocols. We encourage you to follow these guidelines, while being aware that in uncertain times, insurance may not respond to COVID-19-related claims – especially if health and safety regulations have been defied or ignored.

Q: Is there coverage for COVID-19 under the US Lacrosse General Liability Policy?

A: The US Lacrosse member liability policy has no *exclusion* for Virus or Contagious Disease. However, **the absence of an exclusion does not provide an automatic grant of coverage**. When policies are "silent" on coverage issues, how they respond at claim time will be up to the insurance company's interpretation or a court's decision. General Liability policies were never designed to cover claims stemming from a pandemic, but in reality, the courts may force insurance companies to respond and provide a defense, depending on the specific accusations of the lawsuit.

Q: Are there liability risks associated with beginning to play lacrosse while the pandemic is not completely contained?

A: Yes. Because of the litigious nature of our society, organizations have to consider the possibility of being sued for COVID-19-related claims. While seemingly absurd from many



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angles, it is conceivable that US Lacrosse organizations could be held responsible or accused of negligence for the spread of the virus and its aftereffects. Such a case would be difficult to prove. But as we have seen in other liability claims, the merits of the case do not always determine the “winner.” Sometimes, the goal is simply to drag out a lawsuit, and rack up thousands of dollars in defense costs in the hope of convincing the insurer to settle. We hope that there will be some immunity for organizations and businesses against lawsuits claiming negligence with regard to alleged transmission of COVID-19, but these cases have not yet been tested in the courts.

We do know that until there is a vaccine, a treatment protocol and widespread availability of reliable antibody testing, it will be a while before there is a full return to sports as we know it. Until that time, we can only gradually phase in return to play, and do so in a manner that protects the health of participants and their families.

Therefore, organizations that do not follow federal, state and local guidelines with regard to quarantine, social distancing, or caps on maximum number of people allowed at gatherings, etc., will increase their risk of liability. This could be construed as an “intentional act” and could result in no coverage under the liability policy.

Q: Is there coverage for COVID-19 illness under the US Lacrosse Accident Policy?

A: No. The Accident and Catastrophic Accident policies are designed to cover accidental injuries only, and they exclude coverage for claims arising out of “illness, sickness and disease.”

Q: Should US Lacrosse member teams, leagues and events consider implementing a waiver for the risks associated with playing an organized group sport while COVID-19 remains a threat?

A: While we know that waivers are not always foolproof, particularly when signed on behalf of a minor, we do endorse implementing waiver language regarding the risks of contracting COVID-19 or any contagious illness during team sports. This waiver language can be inserted into your existing waiver or set up as a separate waiver for participants and parents to sign.



Q: Does the US Lacrosse member insurance plan provide coverage for virtual practices through social media or our team’s website?

A: If a US Lacrosse member participant is injured during a virtual training session, the US Lacrosse Accident policy will provide protection for that claim so long as the instruction is “live” and supervised. The injury will need to be verified by the coach or trainer, and the injured member would have to follow the standard accident claim process. No coverage is provided to non-members participating in on-line training.

Coverage under the US Lacrosse General Liability policy for virtual practices would depend on the specific allegations of the claim. The team/league sponsoring the training would have to follow the 100% member guidelines in order to be eligible for the USL liability coverage. Note that no Cyber Liability coverage is provided to US Lacrosse members, although it is available for purchase.

The information contained herein is offered as insurance industry guidance and provided as an overview of current market risks and available coverages and is intended for discussion purposes only. This publication is not intended to offer legal advice or medical advice. General insurance descriptions contained herein do not include complete insurance policy definitions, terms, and/or conditions, and should not be relied on for coverage interpretation. Actual insurance policies must always be consulted for full coverage details and analysis. Insurance brokerage and related services to be provided by Arthur J. Gallagher Risk Management Services, Inc. (License No. 0D69293) and/or its affiliate, Risk Placement Services (License No. 100294602).



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