

## E-ALERT | Insurance

March 18, 2011

### INSURANCE COVERAGE FOR LOSSES FROM THE JAPANESE EARTHQUAKE AND TSUNAMI

The earthquake-related devastation in Japan has made a deep impression on all of us, and it may have a significant financial impact on many companies. We write to remind our clients to be alert to the potential for insurance coverage for losses they may incur as a consequence of the Japanese earthquake and the resulting tsunami.

#### SUMMARY OF COVERAGE ISSUES

Most corporate insurance policies cover not only direct physical damage to property caused by natural disasters, but also “Business Interruption” (“BI”) losses: that is, the lost income and extra expense resulting from that property damage. In addition, many corporate policies provide “Contingent Business Interruption” (“CBI”) coverage. This coverage protects against the business interruption and extra expense losses that the policyholder incurs from damage, not to its own property, but to the property of an upstream supplier of materials or a downstream purchaser of the policyholder’s goods or services. Thus, a company that itself has no operations in Japan may nonetheless have a CBI insurance claim if it suffers loss because of damage that others have suffered there.

Corporate policyholders should also be mindful that various covered losses, including BI or CBI losses, can arise out of the loss or impairment of information technology, communications equipment or services, electricity or other utility services resulting from the earthquake or tsunami.

In some cases, insurance companies may argue that losses arising from the Japanese earthquake and tsunami fall within certain exclusions, including those for “earth movement,” “flood” and, potentially, the “nuclear hazard.” Many insurance policies, however, cover earthquake losses by endorsement with specific sublimits relating to earthquakes in Japan; and flood losses may be similarly covered by endorsement. In some policies, BI or CBI losses are not subject to such sublimits but only to the general limits of the policies. Furthermore, most “earth movement,” “flood” and “nuclear” exclusions contain exceptions for specified covered losses such as fires or explosions that ensue from the excluded events, thus permitting coverage for property damage and related revenue loss and extra expense caused by such “ensuing loss.”

#### KEY STEPS TO PRESERVE COVERAGE

Taking the following steps now can make it significantly easier to preserve the full value of BI or CBI insurance later:

- Review all potentially applicable insurance policies, including specialty cyber insurance policies as well as more conventional BI and CBI coverages.

- Notify your insurance companies of potentially covered losses. Some policies – especially those containing “time-element” provisions – contain strict time limits for notice, which should be reviewed carefully.
- Institute accounting controls to identify and track lost revenue or extra expenses resulting from the earthquake or tsunami.
- Consider consulting counsel as appropriate. For example, BI and CBI coverages need to be evaluated in the context of a substantial body of case law, and insurers may well seek to interpret the new cyber insurance policy forms in ways that would limit or exclude coverage.

## COVINGTON’S PREMIER COVERAGE PRACTICE

Covington has broad and deep experience with the types of claims described above. For over 30 years, we have been at the forefront in helping policyholders recover insurance for first party property and business interruption claims, as well as other claims covering the full spectrum of insured losses. Covington’s insurance practice group was rated in 2010 as the best policyholder coverage practice in the nation by *Chambers USA, Legal 500* and *PLC*. We also received in 2010 the *Chambers USA* Award for Excellence in Insurance, which is awarded annually to a single U.S. policyholder firm. A recent edition of *Chambers USA* described our practice as “the ‘gold standard’ for policyholder work.” We also have the largest coverage practice in the nation according to Business Insurance, with over 100 lawyers active in this practice in Washington, D.C., California, New York and London. Finally, we represent only policyholders, not insurance companies, in coverage disputes; thus no conflicts limitations encumber our pursuit of successful results for our policyholder clients.

We stand ready to assist you with any questions you may have on preserving and pursuing your insurance protection for the losses stemming from the Japanese earthquake.

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If you have any questions concerning the material discussed in this client alert, please contact any of the following members of our insurance practice group:

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