

Coronavirus and COVID-19

Impact on Business

With the COVID-19 Coronavirus outbreak now impacting seemingly every corner of the global economy, companies are beginning to recognize the impact it can have on their operations and ultimately their financial performance and flexibility. What began primarily as a supply chain concern for companies has quickly expanded into a number of important areas. Given the associated business and/or legal risks, many companies are now including reference to Coronavirus (“CV”) in the “risk factors” section of their public filings. And those that have not yet done so are most likely considering the addition of such disclosure to upcoming filings.

Coronavirus and D&O Litigation

As is the case with any company risk factor, the potential exists for D&O litigation to arise based on an alleged misstatement or omission relating to the disclosure. In the current environment of heightened D&O claim levels, caused in part by the fairly recent development known as “event driven” litigation, we would not be surprised to see D&O litigation relating to the CV outbreak. In fact, on March 12, 2020, the first such claim was filed against Norwegian Cruise Line Holdings Ltd.

Preparing for the D&O Insurance Renewal

Because of the potential for D&O litigation relating to this pandemic (and now the existence of at least one D&O claim), we expect D&O underwriters to factor the risk of CV into their underwriting assessment of each insured company. As a result, we recommend companies be prepared to address CV and the impact it is expected to have on the business in advance of any upcoming D&O insurance renewal. As with any other company risk factor, providing favorable feedback and

showing that the company has a proactive plan in place for minimizing risk will provide comfort to underwriters and have a positive impact on renewal terms. Following are several CV-related questions that have been asked by D&O underwriters and that companies should be prepared to address:

- **What impact do you expect CV to have on the business?**
- **Is a temporary or permanent reduction in headcount expected based on CV and its impact on the business?**
- **Has the company closed any locations? If so, what is the expected impact to the business and/or financials?**
- **Has the company undertaken financial stress testing in response to CV and the potential for long-term implications?**
- **Are any travel restrictions in place? If so, do you expect them to have a material impact on results?**
- **Is the company adequately prepared and able to accommodate employees working remotely, particularly with respect to IT functions and controls?**
- **If the company expects CV to impact its supply chain, what is the assessment of current inventory levels and the ability to meet ongoing demand? Discuss any backup options that might exist.**
- **Will corporate guidance be impacted as a result of CV?**
- **Has CV contributed to an increase in revenue expectations? If so, please discuss.**
- **Is the company considering any M&A or financing that could be delayed or terminated as a result of CV?**
- **Is the company in compliance with SEC disclosure guidelines or will changes need to be made? Are any third parties being utilized for this assessment?**
- **Does the company expect to request (or has the company requested) an extension from the SEC to file audited financials?**
- **Any expected changes to the company’s insider trading policy?**

It remains to be seen how this will all play out. In the meantime, any company going through a D&O renewal should be prepared to address CV and the impact on its business.

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