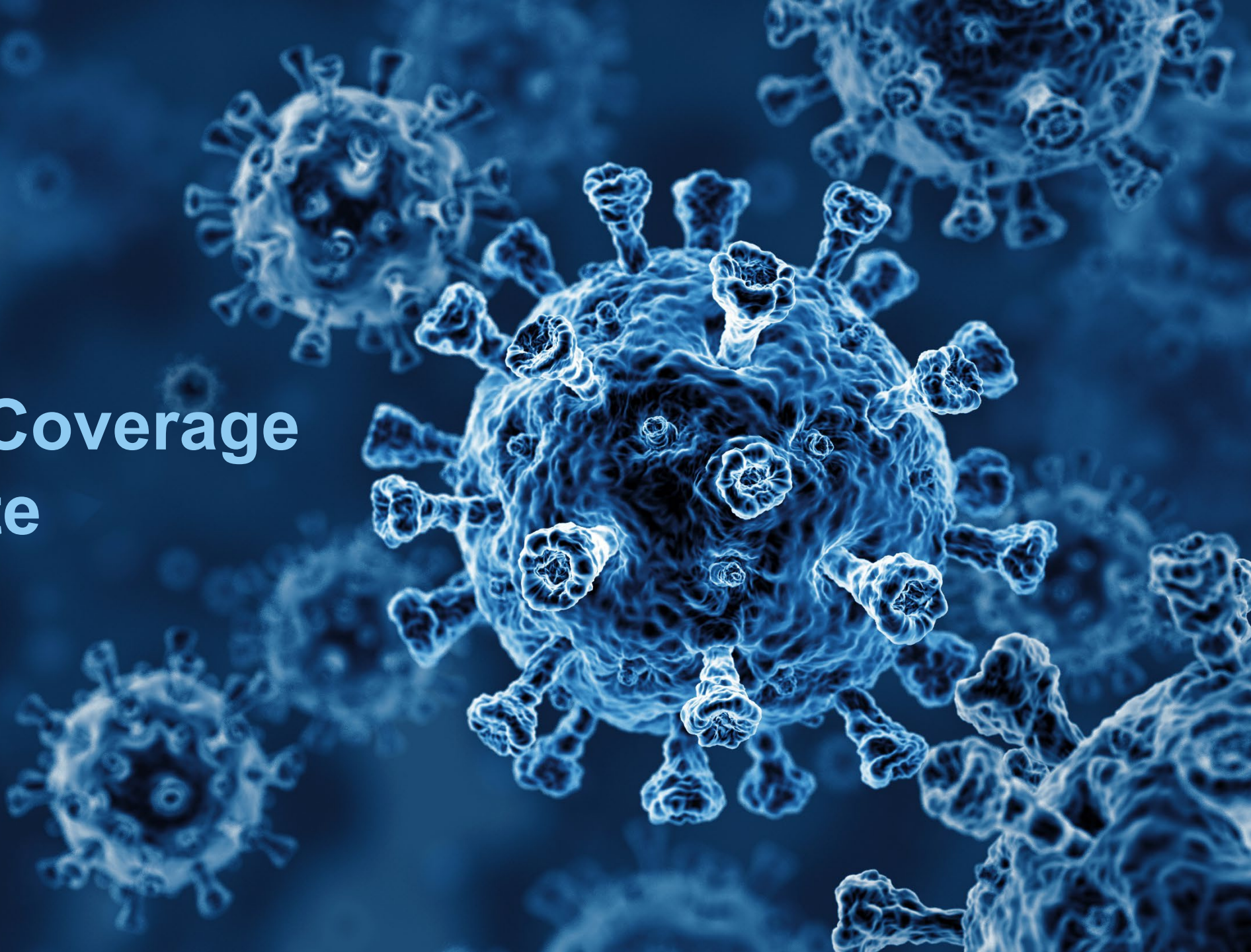




# COVID-19 Coverage P&C Update





**Please note that the following is intended to be used for general guidance purposes only — it is not intended to constitute legal advice, nor is it a dispositive position on coverage. Each claim is subject to review by the applicable insurer and coverage is dependent upon the terms and conditions of your specific insurance policy.**

# Agenda

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- Introductory Comments
- Insurance Coverage Line Discussions
  - Property
  - Casualty
  - Directors and Officers (D&O) Liability
  - Employment Practices Liability Insurance (EPLI)
- State and Federal Updates
- Insurer Solvency Discussion
- Business Continuity Concepts and Discussion
  - Current and Future State Considerations (NFP)
  - Organizational Resilience and Response (Deloitte CRG)
- Closing Comments

# COVID-19 continues to disrupt and impact the global and domestic business markets.

The rapidly developing situation has required businesses to quickly respond to protect their employees and customers. Due to this dynamic environment, many clients have requested information about potential coverage for losses related to COVID-19.





# Coverage Lines

## Speakers

Property

Casualty

D&O

EPLI

Claims/Loss Control

Sarah Sherman

Andy Lennox

Will Walker

Thomas Sheffield

Jeffrey Stagg

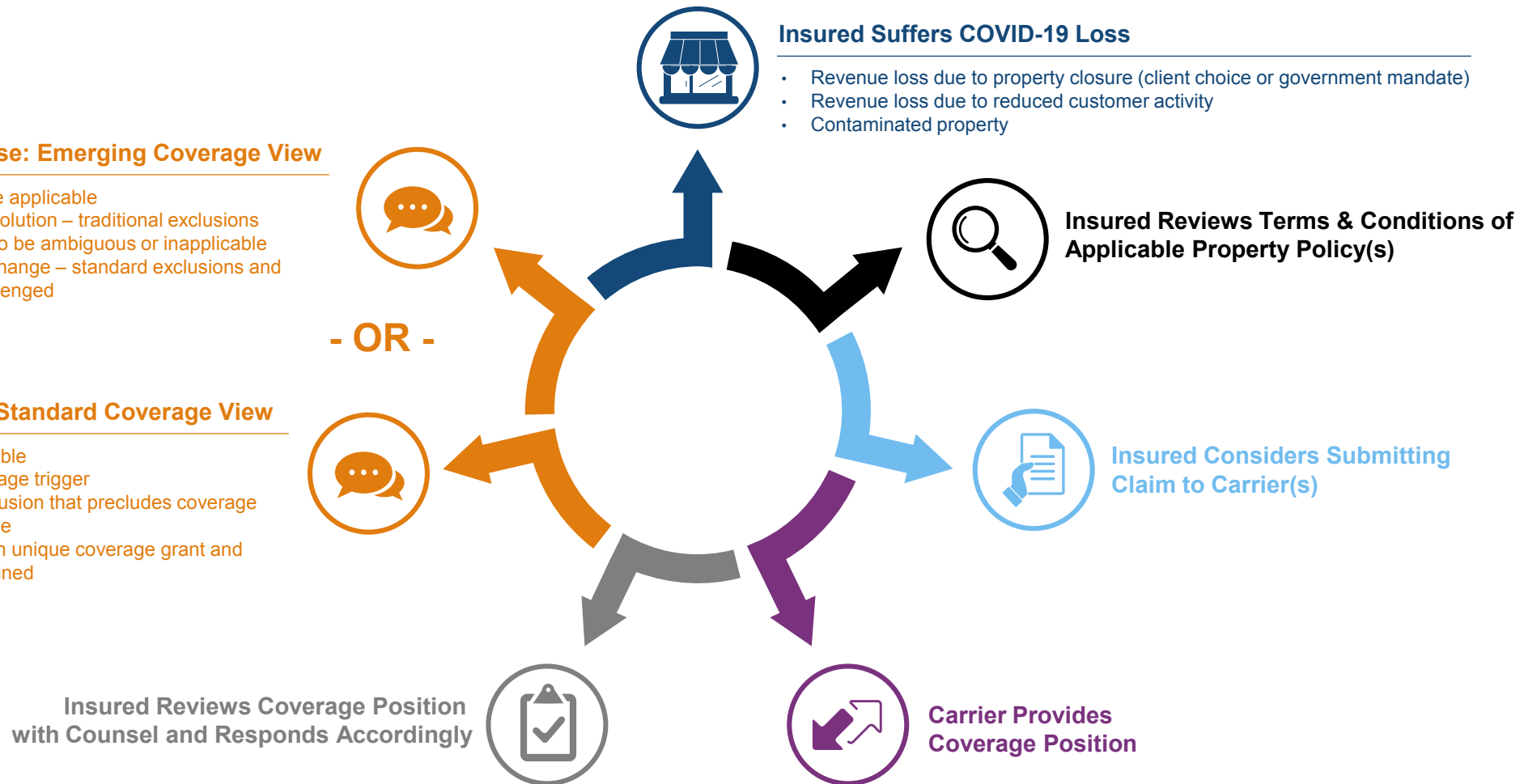
# Property

## Carrier Response: Emerging Coverage View

- Coverage may be applicable
  - Litigation resolution – traditional exclusions determined to be ambiguous or inapplicable
  - Legislative change – standard exclusions and triggers challenged

## Carrier Response: Standard Coverage View

- Coverage is inapplicable
  - No physical damage trigger
  - Carrier cites exclusion that precludes coverage
- Coverage is applicable
  - Coverage paid on unique coverage grant and actual loss sustained



# Casualty Overview

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## Commercial General Liability (CGL) Policy

- How might a CGL policy respond to COVID 19?



## Umbrella Liability Policy

- How might an Umbrella policy respond to COVID 19?

# General Liability – Business Invitee

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- Allegedly exposed to and/or contracted coronavirus as a result of ‘conditions’ at an insured premises.
- An insured’s negligence in maintaining its premises/ensuring it is safe for its invitees.
- Typical CGL coverage form, there \*could\* be coverage for such a claim.
- The most common CGL coverage form contains an Exclusion for BI, PD and P & AI claims arising from “Pollution”.
- Pollution is a defined term in the CGL coverage form and coronavirus (“virus”) should not fall in the CGL policy definition of “Pollution”.
- While there may be coverage, that does not equate to an insured being legally liable.
- Various Endorsements may change the definition of “Pollution” so as to include certain bacteria and/or viruses, as well as expand what the policy removes from coverage.
- There are “Virus” and/or “Bacteria” Endorsements/Exclusions that may be a part of any individual policy.



# Workers' Compensation – Three Questions

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## Workers' Compensation & Employers Liability Policy

- Is COVID-19 compensable under state workers compensation acts?
- A business has suspended operations due to COVID-19, but continues to pay employees, although they are at home and not working. Is this payroll included in the premium calculations for workers compensation?
- Is there any guidance regarding data reporting and claims coding related to COVID-19?

*One more perspective on how this develops over time.*



# Workers' Compensation – Compensable & Occupational Disease



- Varies between professions and jurisdictions.
- The general rule is, the illness or disease must be “occupational”, meaning that it arose out of and was in the course and scope of the employment; and, the illness or disease must arise out of or be caused by conditions particular to the work.
- Two prong test to determine whether or not an illness is an occupational disease: 1) Did it arise out of and was in the course and scope of the employment? 2) Did it arise out of or be caused by conditions particular to the work?
- It needs to be determined, was the worker any more susceptible to the virus because of their employment than they would have been in everyday life.
- The risk is inherent to the type of employment i.e. doctors, nurses, EMT, and others working in the health care, hospitality and retail industries as well as front line service providers. In these instances, coronavirus will be considered an occupational disease because of the increased exposure and would most likely be considered “compensable”.

# Directors and Officers (D&O) Liability

## PUBLIC COMPANY

Generally, public D&O policies are silent with respect pandemics.

Plaintiff firms and shareholders are closely monitoring stock performance and announcements related to a company's path forward during these unprecedented times.

Prior to COVID-19 the public company D&O markets were imposing significant rate increases and limit/capacity management.

As a result of COVID-19, the admitted and the excess and surplus lines markets are further tightening their underwriting guidelines and appetite.

To date there is no uniformity in approach to addressing COVID-19, but many carriers are adding communicable/ infectious disease exclusions to new and renewal quotations.

## PRIVATE COMPANY

Generally, private D&O policies are silent with respect pandemics.

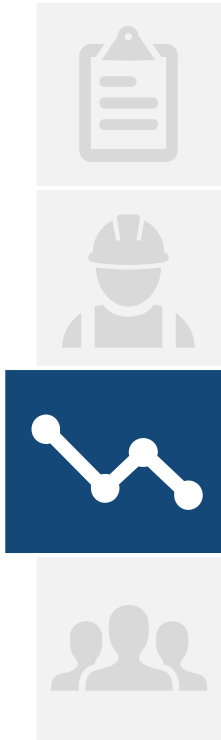
Prior to COVID-19 the private company D&O markets were imposing coverage restrictions/modification and modest rate increases.

As a result of COVID-19, it is becoming increasingly more difficult for the first time buyer of D&O insurance especially in the industry sectors that have been most impacted by COVID-19 ( i.e. biotech/life science, healthcare, and service industries).

To date there is no uniformity in approach to addressing COVID-19, but many carriers are adding Creditors/Bankruptcy Exclusions and Reduction In Force Exclusions to new and renewal quotations.

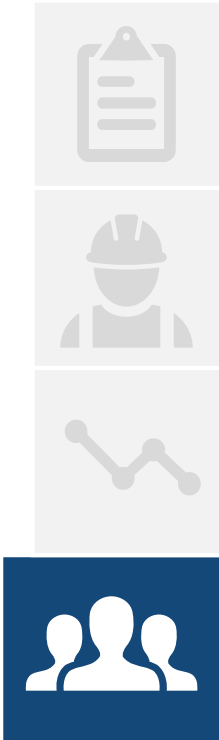
# Directors & Officers Liability – Potential Lawsuits

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- Both public and private companies are exposed.
- Brought by shareholders on behalf of the company.
- As a result of alleged mismanagement of the company or failure to act and/or disclose the financial impact of the crisis on their operations.
- Typically eligible for coverage under Directors & Officers Liability Insurance Policies, barring the applicability of any exclusions.
- Although coronavirus on its face may support the applicability of the bodily injury exclusion.

# Employment Practices Liability – Wrongful Termination



- Increase in claims of wrongful termination as a result of discrimination based on race or disability.
- Asian employee claims that she was wrongfully terminated as a result of prejudice against him/her because of the origin of the virus.
- Employee diagnosed with coronavirus claims that he was wrongfully terminated as a result of discrimination based on the disability.
- The disability being the coronavirus – The coronavirus has not yet been deemed a disability under the federal and state laws, but generally would be eligible for coverage under traditional Employment Practices Liability Insurance Policies.
- Employers would be provided coverage for defense costs and indemnification (settlement/judgment).
- Wage/Hour Issues – there are some limited coverage features available in the market for compensation of hourly employees, but real limitations in response to pandemic employment interruptions.
- Furloughed employees versus terminated employees and interruptions of compensation and benefits.





# Federal/State Updates

**Speaker**

Suzanne Spradley



# State Update – Premium Grace Periods

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## Premium Grace Periods

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- Some states have requested (or required) carriers to implement a grace period for individual and business policyholders to pay insurance premiums so that insurance policies are not canceled for nonpayment of premium.
- Grace periods apply to premiums due after coverage is secured.
- Terms of the issued policy are not modified otherwise; it does not equate to a forgiveness of the premium.
- Not all insurers are providing grace periods; others are limiting grace periods for certain segments of insureds.
- States that have issued request or directive – AL, AR, CA, CT, FL, GA, IN, KS, MD, MA, MO, OH, OK, OR, PA, NJ, NM, NY, SC, TN, TX, VA, WA, WV, WI

# State Update – Business Interruption Insurance

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## New Jersey Bill No. A-3844

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- Bill that would force insurers to cover business interruption losses related to the pandemic despite any exclusions in policies.
- Applies to insureds with fewer than 100 full time employees working at least 25 hours a week.
- Requires insurers that did not write first-party business interruption coverage at all to provide such coverage.
- Text of the Bill
  - [E]very policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption in force in this State on the effective date of this act, shall be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic, as provided in the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020 concerning the coronavirus disease 2019 pandemic.
- Bill is tabled currently. Expect significant legal challenges if this bill is passed.

# State Update – Business Interruption Insurance

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## Other State Proposals Introduced Last Week

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Bills would force insurers to cover business interruption losses related to the pandemic despite any exclusions in policies. Carriers may not deny a claim, even if the policy excludes viruses, and even if there is no physical damage.

- **New York A10226 & Ohio HB 589**
  - Insureds with less than 100 eligible employees (working 25+ hours) in force on the effective date of this act.
  - Insurers which pays claims hereunder may seek reimbursement by the department from funds collected.
  - Department will assess insurers and will distribute in proportion to net written premiums received (not to claims paid).
- **Massachusetts Executive SD 2888**
  - Carriers may not deny a claim, even if the policy excludes viruses, and even if there is no physical damage.
  - Insureds with less than 150 full-time equivalent employees.
  - Insurers may seek reimbursement from funds collected under insurance company assessment.

# Federal Update – Business Interruption Insurance

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## Congress

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- A bipartisan group of U.S. House members signed a letter asking insurer trade groups to recognize COVID-19 losses as included under policies' business interruption coverage.
- In response, four industry groups indicated that business interruption policies do not, and were not, designed to provide coverage against communicable diseases such as COVID-19.
- No federal bill has been introduced at this time, though discussions are ongoing.



# Federal Update – Business Interruption Insurance

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## Trade Industry Proposals – Various Proposals are Being Created

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One proposal by the American Property Casualty Insurance Association & the Reinsurance Association of America) creates a small business compensation fund (500 and under):

- Creates a federal financial facility under the jurisdiction of the IRS, funded by the federal government.
- Facility would process, validate and pay claims submitted by claimants.
- Claims criteria would include:
  - BI losses based on factors such as maintaining a working employee headcount, economic and financial impact or lost revenue; and
  - Employee indemnity and medical benefits resulting from COVID-19 virus for employees that would not be covered by workers compensation insurance.
- Commercial BI and WC insurers would facilitate claims submissions with the Facility.
- Small businesses without BI or WC insurance coverage would submit claims directly to the Facility.



# Insurer Solvency

**Speaker**

David Langman



# Insurer Solvency

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## U.S. P&C Insurers Face 'Limited Exposure' From Coronavirus

- March 13, 2020 – For the U.S. market, **Fitch** Ratings explains that the virus outbreak will unlikely have an “adverse impact on financial results reported by U.S. **P&C**.”

## Fitch Goes Negative on Property & Casualty Insurers Outlook Due to Coronavirus Concerns (March 23, 2020)

- US property/casualty (P&C) insurance sector outlook has been revised to negative from stable by Fitch Ratings. The revision is due to increased concerns over coronavirus (COVID-19), and related impacts on near term performance and the credit quality of insurers.

## Munich Re Reveals COVID-19 Hit

- Munich Re Withdraws Profit Guidance For 2020

# Insurer Solvency

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- A global pandemic of this magnitude could further stress-test the balance sheets, not only of our clients, but our insurers world-wide.
- There will be a sharp rise in payouts of claims for certain lines of coverage simultaneously, at a time where the industry is experiencing both ultra-loss interest rates and big investment losses. Falling yields require insurers to set aside more capital for future loss payments, putting some pressure on the insurer solvency ratios.
- The other side of this “equation” is insurers and reinsurers are (1) extremely well capitalized and (2) direct insured losses from the coronavirus outbreak are expected to be relatively low overall (?).
- Credit rating agencies perspectives’ are a significantly changing week to week and increasingly are proposing to re-evaluate insurers.



# Business Continuity

## Speakers

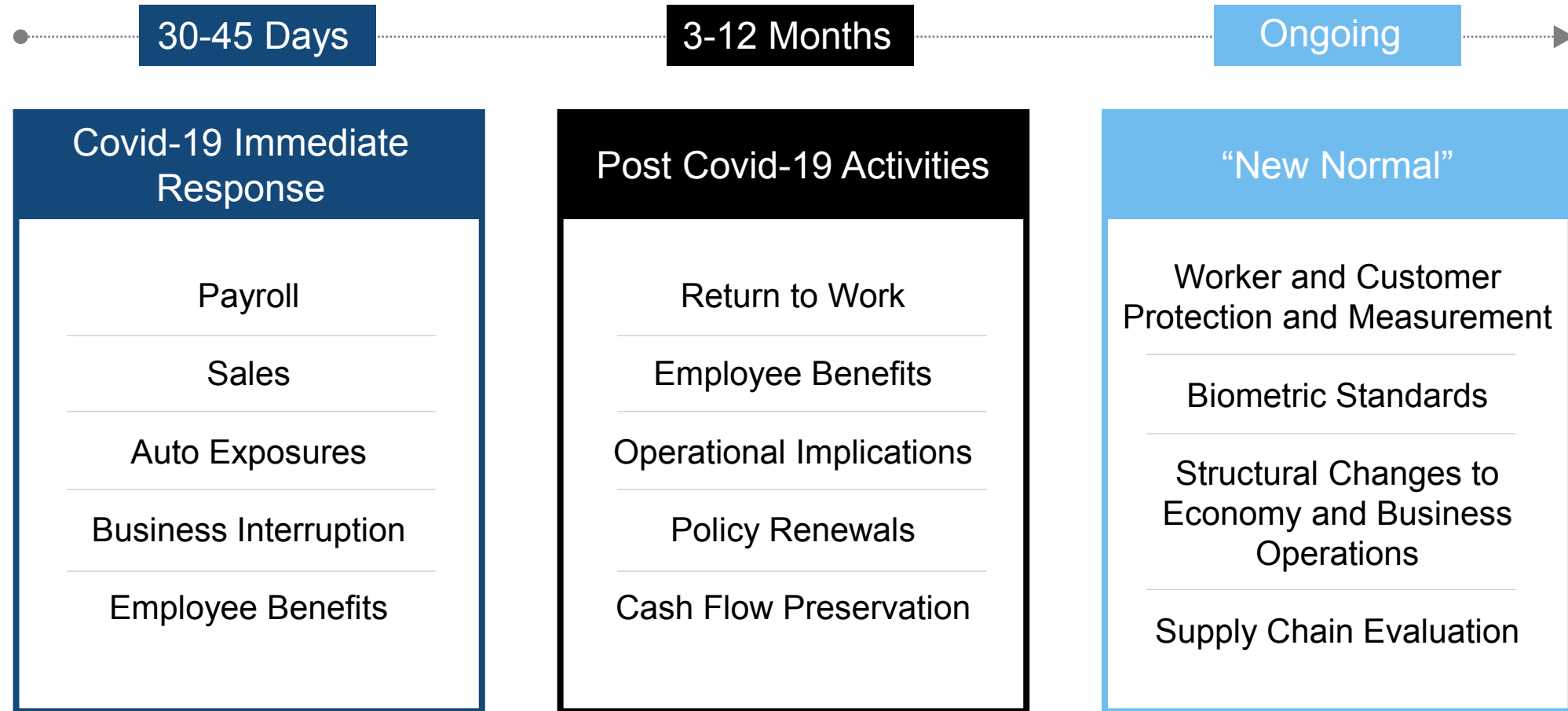
Doug Turk

Michael Epstein



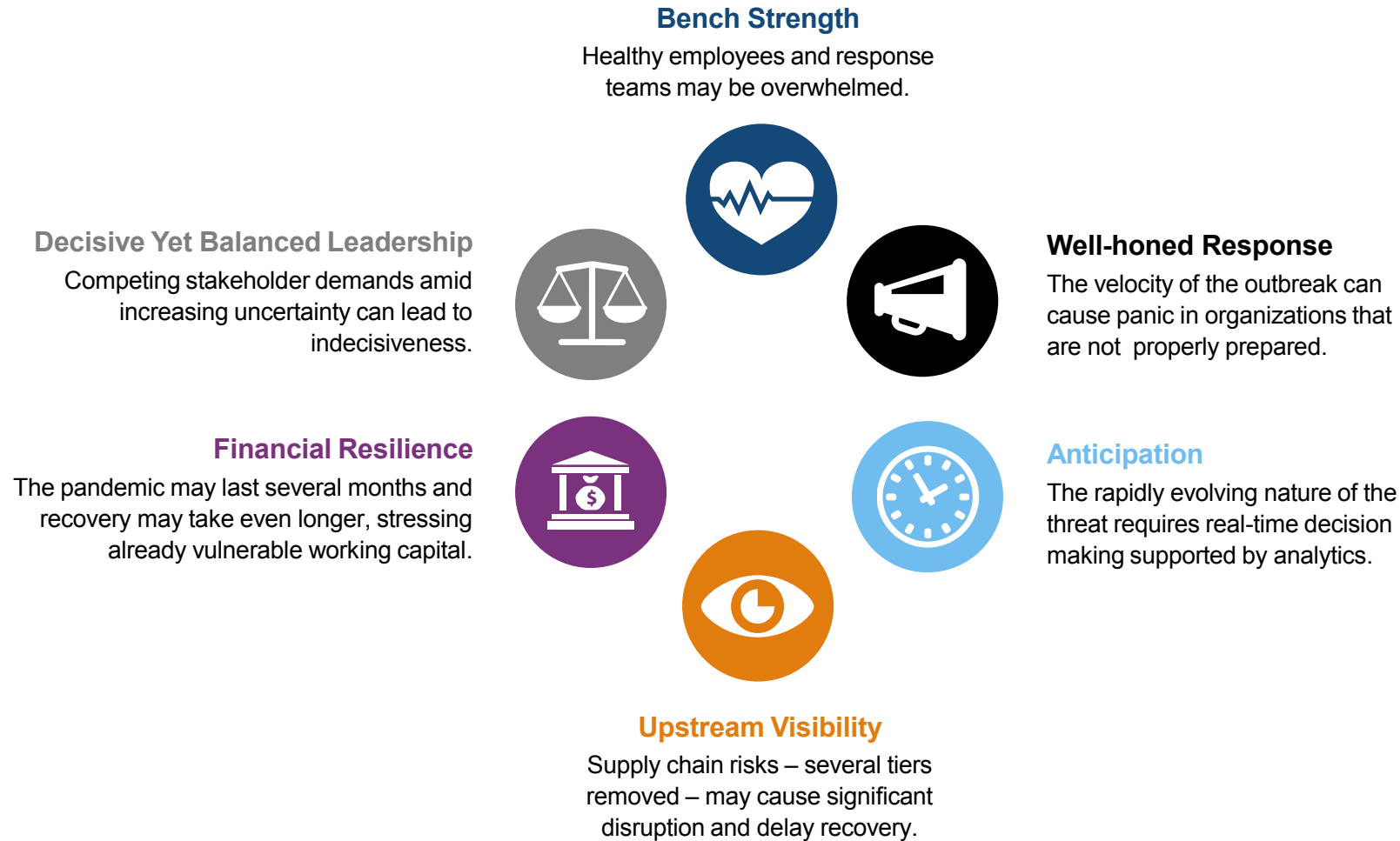


# Business Continuity Timeline



# Organizations Will Need to Demonstrate Important Capabilities to Manage Potential Pandemic Challenges

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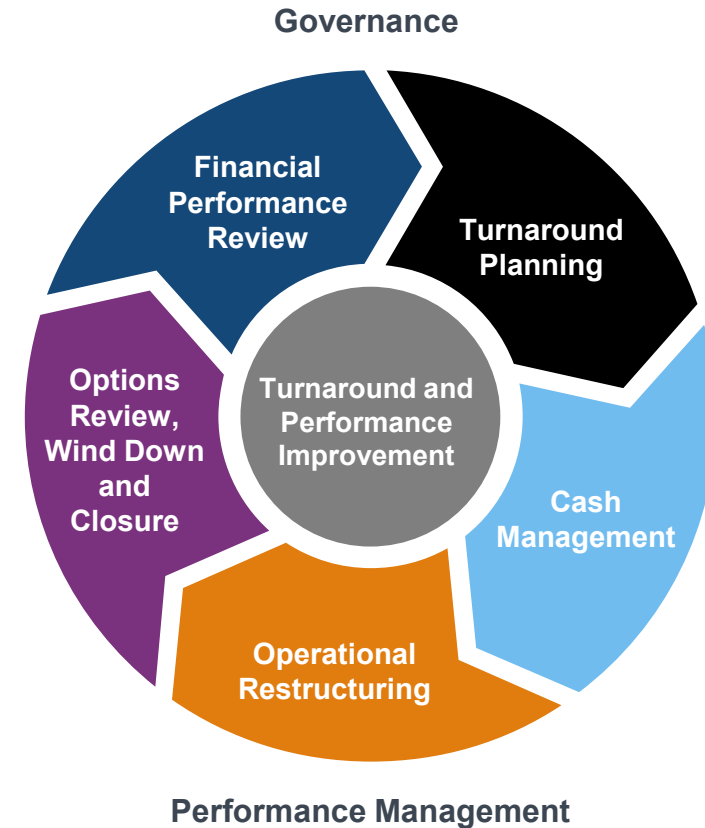


# Restructuring – Special Situations

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Helping stakeholders navigate the volatility and distress of COVID-19.

- 1 Liquidity Forecasting and Conservation
- 2 Controllable Cost and Supply Chain Mitigation
- 3 Employee Planning and Communication
- 4 Sensitivity Analysis and Scenario Planning
- 5 Stakeholder Ecosystem Transparency





# Closing Comments

**Speaker**

David Langman





# Thank you for participating.

For any questions, please contact [coronavirusclaims@nfp.com](mailto:coronavirusclaims@nfp.com).

