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COVID-19 INFORMATIONAL MEMORANDUM FOR THE AAIS MULTISTATE ARTISANS PROGRAM

The purpose of this memorandum is to provide guidance under the AAIS Artisans Program (AP) in connection with issues arising out of or related to Coronavirus Disease 2019 (COVID-19). This memorandum is in response to member inquiries and calls from state regulators to address business interruption and other coverages impacted by the COVID-19 pandemic.

I. Disclaimer

This document does not constitute legal advice and should not be relied upon as such. This document is solely for informational purposes and should not be cited in support or as part of any particular claim resolution, coverage decision, or legal proceeding. AAIS and its staff are unable to provide claims-handling advice, both with respect to actual claims and those that are hypothetical in nature (including "how to cover it" inquiries). Each AAIS member company has the obligation and the authority to interpret policy language as it sees fit, in accordance with state and federal law.

AAIS recognizes that any determination of insurance coverage is highly fact-dependent and claim-specific. Most coverage decisions are incomplete before an actual claim is made. First-party claims and third-party allegations must be considered in the context of the policy language to determine whether coverage is available. As such, the following information is intended to assist member companies when considering coverage issues.

The forms, endorsements, and coverage issues discussed in this memorandum may be subject to adjustments required by regulatory authorities. Please consult [AAISdirect](#) for the specific forms and endorsement list and amendatory endorsement that apply to the state in which coverage was issued when considering the information provided herein.

II. COVID-19

Coronavirus disease, also known as COVID-19, is a severe respiratory illness caused by the novel coronavirus (Severe Acute Respiratory Syndrome Coronavirus 2 or "SARS-Cov-2") that was first detected in Wuhan, Hubei Province, China. SARS-Cov-2 is a rapidly spreading virus that can be transmitted between humans. The virus was first reported in the United States on January 21, 2020 with the first confirmed report of person-to-person spread in the United States on January 30, 2020. The first death in the United States as a result of the virus was reported on February 28, 2020. On March 11, 2020, the World Health Organization characterized the virus SARS-Cov-2 and the resulting illness COVID-19 as a pandemic.

Transmission of SARS-Cov-2 / COVID-19 most frequently occurs in situations of close contact, within about 6 feet, via respiratory droplets. Transmission to persons from contaminated surfaces or food has not yet been documented. The viability of the virus on surfaces is uncertain. However, there are indications based upon early research that the virus is detectable for up to 3 hours in the air, 4 hours on copper, 24 hours on cardboard, and up to 3 days on plastic and stainless steel.

The full impact of the SARS-Cov-2 / COVID-19 pandemic is not yet known. Multiple countries and localities have imposed travel restrictions, business and school closures, and shelter-in-place orders. Government responses have already caused significant disruptions in distribution chains and business operations and have contributed to numerous event cancellations. Consumers have been urged to self-quarantine or practice social distancing, leading to widespread panic followed by sharp decreases in economic activity. Many face-to-face businesses and service providers have been forced to limit hours or, in some cases, completely shut down.

First- and third-party claims stemming from SARS-Cov-2 / COVID-19 and its economic impact are anticipated to increase significantly as the pandemic evolves. Lawsuits have already been filed for instances of negligent exposure to the coronavirus and more will follow. Breach of contract claims are expected to arise from businesses unable to fulfill contractual terms due to diminished operations, staff, and output. First-party property claims concerning contaminated or spoiled property are likely. Similarly, related first-party business interruption claims for loss of income, supply chain fractures, necessary expenses, and civil authority orders will be made. This memorandum discusses the property and business interruption claims and how they may be considered under the AAIS Artisans Program.

III. Artisans Program

The Artisans Program offers coverage for over 60 classes of small- to medium-sized contractors. The Program includes one basic coverage form, AP-100, the Contractors Special Form. The form is structured much like a businessowners policy, with both liability and property coverages. However, only liability coverage is mandatory; property coverage is optional.

For more information on AP forms, coverages, structure, and features, refer to the following documents and resources available on [AAISdirect](#):

- [AP Program Page](#)
- [AP Multistate Manual](#)

IV. COVID-19 Coverage Considerations

The following sections highlight various coverage issues that may arise in connection with claims arising out of or related to the COVID-19 pandemic and set forth the responsive policy provisions, conditions, and exclusions. This is not intended to be an exhaustive list of coverage considerations. Additional policy provisions may apply depending on the context or allegations of a particular claim and jurisdictional precedent.

A. Virus Or Bacteria and Communicable Disease Exclusions

The Artisans Program contains three endorsements that may be immediately applicable to any COVID-19 claim analysis. The first endorsement is mandatory and precludes coverage for property damage. The second and third endorsement is optional but may apply to preclude coverage for liability claims.

i. *Virus Or Bacteria Exclusion*

The Artisans Program is subject to a mandatory Virus Or Bacteria Exclusion (AP 0365) applicable to all property coverages.

AP 0365 excludes coverage for loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness, or physical distress. This exclusion applies to, but is not limited to, any loss, cost, or expense as a result of:

- a. any contamination by any virus, bacterium, or other microorganism; or
- b. any denial of access to property because of any virus, bacterium, or other microorganism.

Coronavirus is a virus and, as such, would fall within the scope of this exclusion.

The multistate edition of AP 0365 is listed at the end of in this memorandum. A state-specific edition and/or amendatory provisions may apply. Please refer to the listings of forms and endorsements available on [AAISdirect](#) to determine which form edition is applicable and whether the Virus Or Bacteria Exclusion is altered for the state in which the policy was issued.

ii. *Communicable Disease Exclusions*

Endorsement AP 0853, Exclusion -- Communicable Disease, is an optional exclusion applicable to the Commercial Liability Coverages. This endorsement excludes coverage for "bodily injury", "property damage", "personal injury", or "advertising injury" that arises out of the actual or alleged transmission of a communicable disease by a person, an "insured's" property (including "products"), or the property of others in the care, custody, or control of an "insured".

AP 0853 excludes payment for any loss, cost, or expense arising out of any request, demand, or order that any "insured" or others test for, monitor, report, clean up, remove, contain, treat, detoxify, disinfect, sterilize, neutralize, or in any way respond to, assess the effects of, or eliminate a communicable disease or the conditions to which a communicable disease is attributed; or claim or suit by or on behalf of any governmental body or authority relating to testing for, monitoring, reporting, cleaning up, removing, containing, treating, detoxifying, disinfecting, sterilizing, neutralizing, or in any way responding to, assessing the effects of, or eliminating a communicable disease or the conditions to which a communicable disease is attributed.

Optional endorsement AP 0854, Exclusion -- Communicable Disease -- Limited Products Excepted is also available. The exclusion language in AP 0854 are similar to those in AP 0853. However, exclusion AP 0854 does not apply to "bodily injury" or "property damage" arising out of the actual or alleged transmission of a communicable disease by "products" intended for human or animal consumption or topical use.

The term communicable disease is not defined by the forms or elsewhere in the policy. Therefore, whether these exclusions would be deemed applicable to a COVID-19 claim and preclude coverage will depend upon the precedent law of the applicable jurisdiction. However, the Centers for Disease Control and Prevention (CDC) defines communicable disease as an illness caused by an infectious agent that occurs through the direct or indirect transmission of the infectious agent or its products from an infected individual or via an animal, or a vector on the inanimate environment to a susceptible animal or human host. Further, both the World Health Organization and the CDC have labeled COVID-19 as a communicable disease. It is therefore AAIS's understanding and position that the novel coronavirus SARS-Cov-2 causes the communicable disease COVID-19 and, thus, most COVID-19 AP Commercial Liability Coverage claims would be precluded in total pursuant to AP 0853 and, with limited products exempted, pursuant to AP 0854.

B. Commercial Liability Coverages

To the extent that a communicable disease endorsement is not attached to the policy, or does not otherwise preclude coverage, the following coverage considerations may apply.

The principal commercial liability coverages under the Artisans Program include: Coverage L -- Bodily Injury Liability / Property Damage Liability; Coverage M -- Medical Payments; Coverage N -- Products / Completed Work; Coverage O -- Fire Legal Liability; and Coverage P -- Personal Injury Liability / Advertising Injury Liability.

Coverage L provides coverage for "bodily injury" or "property damage" caused by an "occurrence" which takes place in the "coverage territory". COVID-19 may be considered a sickness or disease and may be caused by repeated exposure to contamination or may cause the loss of use of tangible property. Therefore, a COVID-19 claim may be subject to coverage if not otherwise excluded.

Coverage M pays medical expenses for "bodily injury" caused by an accident on premises the named "insured" owns or rents, on ways adjacent or next to premises the named "insured" owns or rents, or arising out of the named "insured's" operations. Accident is not a defined term. Therefore, the extent to which a COVID-19 claim may sufficiently plead the elements necessary to trigger Medical Payments coverage would be dependent on jurisdictional precedent and the specific facts alleged.

Coverage P provides coverage for "personal injury" arising out of an offense committed in the course of the named "insured's" business, excluding advertising, publishing, broadcasting, or telecasting done by the named "insured" or on the named "insured's" behalf; and "advertising injury" arising out of an offense committed in the course of advertising the named "insured's" goods, products, or services.

In addition to the optional communicable disease exclusion endorsements discussed above, commercial liability coverages subject to the following exclusions that may be applicable to a COVID-19 coverage analysis.

First, commercial liability coverage is excluded for "bodily injury", "property damage", "personal injury", or "advertising injury" liability which is assumed by the "insured" under a contract or an agreement. Accordingly, coverage may not be available for breach of contract claims based on COVID-19 disruptions.

Second, with limited exception, coverage is excluded for "bodily injury" or "property damage" arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of "pollutants". In addition, coverage is excluded for any loss, cost, or expense arising out of any request, demand, or order that any "insured" or others test for, monitor, clean up, detoxify, or in any way respond to or assess the effects of "pollutants", or claim or suit by or on behalf of any governmental authority relating to testing for, monitoring, cleaning up, detoxifying, neutralizing, or in any way responding to or assessing the effects of "pollutants."

The term "pollutants" means any solid, liquid, gaseous, thermal, or radioactive irritant or contaminant, including acids, alkalis, chemicals, fumes, smoke, soot, vapor, and waste. Most jurisdictions have strictly interpreted the definition of "pollutant". Therefore, the ultimate determination of whether "pollutant"-related exclusions could be applicable to COVID-19 claims will depend largely upon the precedent law of the relevant jurisdiction.

Third, coverage is specifically excluded for "property damage" to "products" if the damage arises out of the "products" or their parts. Similarly, coverage is excluded for "property damage" to property that has not been physically injured or destroyed, or to "impaired property", that arises out of a delay or failure to perform a contract by the named "insured" or one acting on the named "insured's" behalf, or a defect, deficiency, inadequacy, or unsafe condition in "your work" or "products". Physical injury is not defined by the policy. However, it is unlikely that a COVID-19 claim would allege physical injury or destruction. Therefore, to the extent a claim for "property damage" fails to allege physical injury or destruction coverage would be excluded.

Finally, under Coverage M, medical expenses for "bodily injury" to a person hired by or on behalf of any "insured" to do work for the "insured" or a tenant of an "insured" is excluded. Coverage is also excluded for medical expenses for "bodily injury" to a person injured on that part of the premises owned by or rented to the named "insured" that the person normally occupies. Finally, coverage is excluded for medical expenses for "bodily injury" to a person if benefits are provided or required to be provided under any workers' compensation, nonoccupational disability, occupational disease, or like law.

C. Property Coverages

The Artisans Program Property Coverages cover direct physical loss to property under Coverage A -- Buildings and Coverage B -- Business Personal Property caused by a covered peril.

The term "direct physical loss" is not defined under the policy. Whether a property has sustained direct physical loss will depend upon the facts of each claim. The question may largely depend upon whether a jurisdiction recognizes the loss of use of property to be sufficient evidence of direct physical loss. In several jurisdictions, such a finding would be contrary to precedent as they have required evidence of physical alteration of the property. Ultimately, jurisdictional precedent will determine whether a virus or possible contamination would qualify as direct physical loss.

Even if viral contamination does qualify as direct physical loss, the Virus Or Bacteria Exclusion endorsement (discussed above) would likely apply to preclude property coverage. However, if the Virus Or Bacteria Exclusion endorsement does not apply to the policy or is determined not to preclude coverage, it should be noted that the Property Coverages include several provisions and exclusions that may be relevant to a COVID-19 claim.

First, the Property Coverages include Pollutant Clean Up and Removal as an additional coverage. This additional coverage applies to the expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release, or escape of the "pollutants" is caused by a covered peril. Coverage includes the cost of testing, evaluating, observing, or recording the existence, level, or effects of "pollutants" only when the expense of extracting the "pollutants" is covered by this Additional Coverage. As noted previously, whether viral contamination qualifies as a "pollutant" will depend largely on jurisdictional precedent.

Second, Coverage C -- Loss Of Income provides coverage for loss of earnings and extra expenses during the "restoration period" when the named "insured's" normal business activities are necessarily interrupted by direct physical loss to real or personal property as a result of a covered peril during the policy period. This coverage applies only when the loss to real or personal property is at the described premises or in the open (or in vehicles) within 100 feet thereof. Coverage also applies only to loss of earnings and extra expenses incurred within 12 consecutive months after the date of direct physical loss or damage to property. As stated above, the term direct physical loss is not defined in the policy. Whether COVID-19 claims are deemed sufficient to establish necessary interruption by direct physical loss will depend upon the precedent law and facts of each claim.

Third, the Supplemental Loss of Income Coverages for Interruption By Civil Authority extends coverage to include loss while access to the described premises is specifically denied by an order of civil authority. This order must be a result of damage to property other than at the described premises and caused by a covered peril. This extension is limited to three consecutive weeks from the date of the order.

Fourth, the Supplemental Loss of Income Coverages also include a Period of Loss Extension. This coverage extension applies to cover loss from the date the property that incurred the loss is rebuilt, repaired, or replaced until the earlier of either 30 consecutive days or the date the named "insured's" business could reasonably resume normal business.

Fifth, Coverage A -- Buildings, Coverage B -- Business Personal Property, and Coverage C -- Loss of Income provide coverage for risks of direct physical loss unless the loss is limited or caused by a peril that is excluded. Civil Authority is an excluded peril that applies to preclude coverage loss caused by order of any civil authority, including seizure, confiscation, destruction, or quarantine of property. However, it should be noted that Supplemental Loss Of Income Coverage is provided for Interruption by Civil Authority, as discussed above.

Finally, even if viral contamination does qualify as a "pollutant" under the policy, the Property Coverages contain an Additional Exclusion for loss caused by the release, discharge, seepage, migration, dispersal, or escape of "pollutants" unless the release, discharge, seepage, migration, dispersal, or escape is caused by a "specified peril". Jurisdictional precedent will determine whether and to what extent this exclusion may apply to COVID-19 claims for property coverage.

D. Summary of Coverage Considerations

With respect to the Property Coverages, the Artisans Program explicitly excludes virus or bacteria related claims. It is AAIS's position that most virus-related losses and expenses are not generally covered under AP property coverage. Ultimately, coverage determinations are highly fact-dependent and claim-specific, which is why it is important for carriers to review pertinent policy language and the individual facts and circumstances presented by each claim before reaching a coverage decision.

E. Responsive Forms

Refer to the following forms and endorsements on [AAISdirect](#) in connection with the coverage issues discussed herein:

AP-100	Ed. 2.0	Contractors Special Policy
AP 0365	10 06	Virus Or Bacteria Exclusion
AP 0853	09 09	Exclusion -- Communicable Disease
AP 0854	09 09	Exclusion -- Communicable Disease -- Limited Products Excepted

V. Additional Resources

For additional COVID-19 guidance, coverage issues, and questions:

- Refer to [AAIS Bulletin No 20-0065](#);
- Visit <https://www.aaisonline.com/>;
- Follow AAIS GLC on [Twitter](#); or
- Email Joanne Burns (joanneb@AAISonline.com).