Subject: Giving Swine Flu for Christmas

Q. In the week following Thanksgiving, several of us in the office were talking about what we did for Thanksgiving. Everyone who attended a large family gathering commented on how concerned they were about swine flu. We all admitted to carrying Purell with us at all times, and sneaking in a “quick clean” every so often. This eventually led us to wonder about Christmas parties and so forth, and how insurance for a social host or a company would respond if people got swine flu while attending a holiday function they sponsored.

I guess it’s the “insurance curse” that no matter what the topic, we eventually start wondering about the insurance issues! But this seems pretty realistic. How do you think the Homeowners Policy or the CGL would respond for this?

A. I agree with you that we insurance people just can’t seem to “turn it off,” even over the Holidays! That’s so true! Here is how I see the coverages in Homeowners and CGL.

Homeowners

First, a quick look at the Section II: Coverage E – Personal Liability & Coverage F – Medical Payments to Others.

Coverage E – Personal Liability insuring agreement excerpt [emphasis added]:

If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" to which this coverage applies, we will:
1. Pay up to our limit of liability for the damages for which an "insured" is legally liable.
2. Provide a defense at our expense...

Definitions:
"Bodily injury" means bodily harm, sickness or disease, including required care, loss of services and death that results.
"Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:
   a. "Bodily injury"; or
   b. "Property damage".
Being found legally liable for one’s party guest contracting swine flu would probably be a difficult argument to successfully make in court. With so many exposure “opportunities” seemingly everywhere, a legal determination as to one specific source would be challenging. At the same time, the homeowner/host would have the benefit of a defense under Section II, and the policy would pay a claim (up to policy limits) if your insured was found legally liable (subject to exclusions – see below).

One advantage of Coverage F – Medical Payments, on the other hand, is that there is no requirement for legal liability – only that a covered type of medical expense occurred.

Coverage F – Medical Payments to Others insuring agreement excerpt:

*We will pay the necessary medical expenses that are incurred or medically ascertained within three years from the date of an accident causing "bodily injury". Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage does not apply to you or regular residents of your household except "residence employees". As to others, this coverage applies only:*

1. To a person on the "insured location" with the permission of an "insured";

Now for the bad news. The Homeowners Policy has an exclusion for communicable disease that applies to both Liability and Medical Payments [emphasis added]:

**Exclusions**
Coverage E – Personal Liability And Coverage F – Medical Payments To Others

Communicable Disease

"Bodily injury" or "property damage" which arises out of the transmission of a communicable disease by an "insured";

However, note that the exclusion only applies when an insured transmitted the disease. Therefore, if the party guest alleges that the insured homeowner – or any other “insured” under the Homeowners Policy (named insured and resident relatives) – transmitted the swine flu to them, the Homeowners Policy would exclude coverage under both Liability and Medical Payments. On the other hand, if your insured had some out of town guests staying with him over the holidays, and one of them was found to be the cause of a party guest contracting the swine flu, the exclusion would not apply.
Since so many businesses have a Christmas party or other type of Holiday party, the issue could arise in the commercial arena as well. Here is an excerpt from the insuring agreement for Coverage A – Bodily Injury and Property Damage Liability:

*We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages.*

I think the issues regarding the sustainability of a legal liability argument against a business for a party guest contracting swine flu are very similar to those raised in the Homeowners section above. And, as with Homeowners, the CGL also provides Medical Payments coverage. Excerpt:

a. *We will pay medical expenses as described below for "bodily injury" caused by an accident:*

   (1) On premises you own or rent;
   (2) On ways next to premises you own or rent; or
   (3) Because of your operations;
   provided that:
   
   (a) The accident takes place in the "coverage territory" and during the policy period;
   (b) The expenses are incurred and reported to us within one year of the date of the accident; and
   (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. *We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:*

   (1) First aid administered at the time of an accident;
   (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
   (3) Necessary ambulance, hospital, professional nursing and funeral services.

In the CGL, here is the definition of “bodily injury”:

*Section V – Definitions:*

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

In the CGL, there is no exclusion for the transmission of a communicable disease by an “insured,” as is found in the Homeowners Policy (discussed above). However, the CGL excludes both Liability and Medical Payments coverage for employees.
“while in the course of his or her employment or performing duties related to the conduct of your business.” Generally, this is a Workers Compensation coverage. However, whether or not attendance at a company Christmas party or other Holiday party is within the scope of the employee’s duties depends on a variety of factors, but it seems reasonable to assume that one or the other policies would provide coverage. Claims by non-employee guests would be covered under the CGL.

Lastly, your question raises another important issue about the broader impact of possible health pandemics, not only from swine flu, but from Avian Influenza (“bird flu”), SARS (Severe Acute Respiratory Syndrome), and others. The IIABA Virtual University (VU) has an excellent article titled, “Are You and Your Clients Ready for a Pandemic?” The article also includes 2 pages of links to various resources, including government agencies, health web sites, and some risk management and insurance web sites. You can link to the Virtual University directly from our web site: www.iiabl.com. Access to the VU is free to Members, although you’ll need to log on the first time and get a password and ID. It’s easy to do – just follow the brief instructions. If you already have a password and ID, here is the link to the article:
http://www.iiaba.net/VU/Lib/Bus/BS/HumanResources/WilsonFlu.htm

There is also an article on swine flu and the Homeowners Policy:
http://www.iiaba.net/eprise/main/VU/Lib/Ins/PL/Homeowners/WilsonSwineFlu.htm

By the way, the Virtual University has hundreds of excellent articles on all the major coverage lines, as well as on business information and technology. In addition, if you don’t see the information you’re looking for, the VU also has an “Ask An Expert” feature which allows you to submit a question to the VU faculty. The VU faculty consists of 50 or so of some of the top insurance people in the industry, so you will be able to get valuable feedback that can hopefully answer your questions.