

INSURANCE ISSUES FOR DIRECTORS DURING COVID-19

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In the era of COVID-19, Directors and Officers will have questions related to potential claims and insurance in place to protect them. This webinar is co-hosted by Gowling WLG and BFL CANADA Insurance Services. Leading authorities from various regions of the country will explore the legal and insurance issues that are arising at an unprecedented rate in these challenging times.

Topics include:

- COVID-19 impacts on D&O/EPL insurance business
- Directors' and officers' liability and insurance
- Employment practices liability insurance
- COVID-19 related D&O claims in the US and possibly coming to Canada
- Notices and disclosure to investors and stakeholders
- The outcome of claims issued in previous pandemics
- Effects on insurers and insurance renewals

Transcript

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INSURANCE ISSUES FOR DIRECTORS

Belinda: So it looks like we have a critical number of registrants joining us. Thanks very much for tuning in today for a presentation on insurance issues for directors and officers during COVID-19. There is no doubt that these are, not just unprecedented, but unsettling times for all. Not least for directors whose organizations, customers, suppliers have all been impacted by the COVID-19 shutdowns. We are hopeful that you will gain some useful information from this presentation. If you have any questions over the course of the presentation please just go to the Q&A icon at the bottom of your screen and submit your questions. We will do our best to answer them either over the course of this presentation or we have also set aside time at the end of the presentation to deal with questions. My name is Belinda Bain. I'm a partner in the litigation department in Gowling WLG's Toronto office and I head up our national insurance professional liability group. I'm also joined by Alison Gray, of Gowling's Calgary office, who is a commercial litigator focusing her practice on directors and officer's liability. If we could just see the next slide.

Gowling WLG is a global full service law firm with 1,400 professionals and 19 offices worldwide. We focus on key global sectors, including energy, financial services, life services, natural resources, infrastructure, real estate and tech and provide a top tier suite of legal services on handling conflicts, corporate transactions and high stakes litigation to maximizing and protecting intellectual property assets and insuring regulatory compliance. Also joining us is Roger Hacala, who heads up the BFL's national financial and professional services group. I'll invite Roger to tell us a little bit more about BFL.

Roger: Thank you, Belinda. As Belinda said, and thank you for Gowling's inviting BFL to actually partake in this presentation as well. Great to be able to do a joint presentation like this on such a relevant topic when we're right in the midst of it as well. As Belinda said, I'm the national practice leader for financial and professional services, residing in our Toronto office. Just a bit about BFL, we are now over 850 employees across Canada with over 19 offices now, doing business coast to coast but also on a global basis as well. With that, we are the single largest employee owned insurance brokerage that resides nationally. Next slide, please.

Belinda: We do wish to point out that the presentation today is not intended as legal advice. It's a high level overview of select issues only. The COVID situation is fluid and changing on a daily basis. For specific advice we urge you to consult with legal counsel or your insurance representative. Next slide, please. The topics for today include the commercial impacts of COVID-19 and also select coverages, which may be triggered, including D&O, EPL and cyber. Given the breadth of insurance issues we won't be able to cover them all off and hence the more focused approach to our presentation today. We'll be talking about triggers of coverage as well as exclusions and limitations. We'll talk a bit about notice and disclosure obligations. We'll also let you know about some COVID related cases, which have already been commenced, and provide you our thoughts on others which we think are likely to come. Finally, give you a sense of what's going on in the insurance market, both from the perspective of insurers and insurance.

Roger: Just to set the stage with respect to what's happening in business. Pretty much the world, overnight, changed. As soon as a pandemic that was actually called by the World Health Organization, COVID-19 just turned the world on it's ear, more or less, including our industries overall too. The change in the business really was a challenge for a lot of companies to deal with. Immediately we saw the remote work force having to be set up and established to be able to actually deal with these changes. The biggest thing was how our business is going to continue and what sustainability their operations going to be because of such an impact, which is on a global scale. Then it was companies determining how to continue their operations and some of them we've already seen. It hasn't been possible. We've seen that there've been a number of companies that have already shuttered the operations and we're not done yet. As much as there's government relief being offered it's still a matter of what the sustainability of these operations are. Leading up to this with the economic impact, it was also the lack of supplies that were all ready coming into North America, before the pandemic even arrived. On top of that, now we've got the issue of not receiving enough surgical masks, gowns and a number of other things to help deal with the pandemic. The questions that a lot of employers have, and a lot of corporations have, is how they are supposed to meet the customer's needs? If they are being told, and there's an emergency declaration that they cannot open their doors, what does it mean to their business and the sustainability of that platform? And of course, this leads to how does a company deal with potential cash flows that they've got and obligations that they've got as well? It's not just impacting them. It's also the downstream effect. There are customers who are no longer buying from them as well suddenly has a huge impediment to their business. Despite that we've also seen a successful shift in some operations with some manufacturers. They've already switched to manufacturing masks, gowns, ventilators, things that are now supporting the pandemic situation that we

are in right now. So it's fantastic to see that even through this companies have managed to still set the businesses up to be sustainable, in some respects, and those that are able to step in to actually help out the greater good. As we were saying, Belinda had said about which coverages could possibly be triggered. We identified directors and officers liability, employment practices liability and cyber liability insurance. This isn't discounting the fact that things like property and business interruptions, specifically, are things that the insurance community's been struggling with as well, and that our clients are concerned with it at the same time. With that, as Belinda said, we'll be focusing on these for just the specifics of this presentation.

Belinda: From the perspective of D&O liability insurance, this is to provide protection to directors and officers in connection with claims brought against them, in connection with decisions that they have made on behalf of the corporation. D&O policies, by and large, are bespoke There's no standardized wording. That being said, most of the insuring agreements within the directors and officers liability policy, require the insurer to pay loss that the insured is legally obligated to pay as a result of the claim first made against the insured during the policy period for a wrongful act. Generally speaking, loss will include, not just damages and judgments, also settlements, interests and usually legal costs. The claim includes a written demand, as well as civil or criminal judicial proceeding, and in most cases will also include regulatory proceedings. So in terms of wrongful acts, which will trigger the insuring agreement under a director and officer's liability policy, typical wording will include alleged errors, omissions, misstatement, neglect or breach of duty, while acting as a director or officer. This brings in to play both breach of duty from a negligence perspective as well as a potential breach of fiduciary duty on the director to act in the best interests of the corporation. While it's still relatively early days, in terms of understanding the full impact of COVID-19, we do anticipate that there'll be a variety of different triggers for D&O coverage.

Roger: Some of these triggers that we expect to come to light are similar things like allegations of failure to fulfill judiciary duty. What should have the company done in preparation for such a pandemic? We already briefly mentioned potential economic fallout. But this is going to the point of bankruptcies that we expect could possibly happen as well. Creditor issues, as well, be another one. Determining who gets paid first. If it is a bankruptcy situation that is going to be one of the things that will come about. Of course, statutory obligations as well. Taxes, earned wages, those types of statutory obligations that directors are going to be held liable for in the event of something happening. Of course, supply chain distribution. The fall out that will fall out from that. How are you meeting the demands of your customers if you're not able to perform your operations?

How is it that it could be allegations are being brought against the directors and officers in that capacity? Of course, depending on the situation of individuals going to work or not, from a regulatory investigation standpoint, post COVID-19 issues may arise. What have you done to protect your employees adequately? What is that you have or have not done in that situation? What about those individuals that were in different situations where they were essential services and then switched to non-essential services, or they showed up to work at the wrong time when there was already declared a state of emergency? Next slide, please.

Oh, Belinda, you're back.

Belinda: Yeah. I apologize for that technical issue. Thank you, Roger, for jumping in. So, Roger's outlined the situations which we foresee could go arise, triggering coverage under the D&O. There are, of course, a number of inclusions under most D&O policies that we see could come into play, with respect to the COVID landscape. First, and interestingly, is the pollution exclusion. While wording varies, policy to policy, some pollution exclusions will exclude claims, based upon or arising out of the release or dispersal of pollutants, including specific contaminants, some of which include the word virus. Depending on how these COVID claims are structured that might be an inclusion that comes into play. Another potentially relevant exclusion under D&O policies is the bodily injury exclusion. A lot of D&O policies exclude losses for bodily injury, sickness and disease. This we see could come into play if it's alleged that there was negligence in failing to properly plan for, or respond, to COVID-19 leading to infections of third parties. Also, of potential relevance is the intentional conduct exclusion. So most D&O policies contain an intentional, or deliberate, acts exclusion. The one thing to bear in mind though is that most of the policies require the insurer to have acted criminally, fraudulently, dishonestly or maliciously. So that's a really high bar. As well, the intentional conduct exclusion typically only takes effect if, and when, the policy holder has actually been judged liable or culpable. There also is a professional services exclusion under most D&O policies. This could come into play with COVID related claims in certain affected industries such as health care or life sciences. As well, and of note, is the insurer versus insured exclusion contained in many D&O policies. This will have implications as there may well, and almost certainly will be unfortunately, a cascade of bankruptcies as a result of COVID-19 and certainly there will be claims asserted against directors and officers by trustees and receivers and others in the context of the bankruptcy, bringing into play the insurer versus insured exclusion. There are also other insurance exclusions in D&O and we can see types of claims which may bring into play other coverage lines, such as CGO. How each policy will respond, whether primary, excess or be of some sort of shared arrangement, will depend on the

specifics of the claim and also, as well, on the particular wording of the other insurance clauses within the respective policies. There is speculation that the insurance market may develop a COVID-19 exclusion moving forward and we'll talk about that in a little bit later in the presentation.

In addition to the application of policy exclusions, another thing to bear in mind is that coverage under D&O policies may be limited by the application of some limits, which are placed on the amount available for defense and indemnity with respect to particular coverage and particular coverage extensions. By way of example, there may be some limits applicable to crisis management costs as well as to reputational risk. Given the significant disruption to the workplace we've already seen, including mass layoffs, it's obvious that employment practices liability insurance will also play a significant role in the COVID insurance landscape. EPL provides coverage, obviously, for employment related claims. Similar insuring agreement, in terms of structure, to a D&O policy. The insuring agreement under EPL typically states that the insurer will pay any loss from a claim first made against the insurer during the policy period arising out of a wrongful act. The definitions of loss and claim are typically very similar to those contained in D&O policies and which I've already spoken about. In terms of wrongful act, under an EPL policy, there's usually quite a shopping list that can qualify as a wrongful act. For purposes of what's likely to be triggered in terms of EPL claims coming out of COVID, typically wrongful acts under an EPL policy include wrongful dismissal and termination, discrimination, breach of statutory duties, invasion of privacy and infliction of emotional distress. Next slide, please.

Typical exclusions under EPL policy include statutory obligations which would include statutory notice and severance obligations, workers compensation, that sort of thing, as well as personal injury other than emotional distress and mental anguish. The way that the EPL policy is structured, however, is that each of these exclusions generally contains an exception for defense costs, such that cost of defending the claim will be borne by the insurer but not, for example, the actual underlying statutory obligation itself. In terms of practical triggers we see, in the COVID world for EPL, there's the downsizing of the workforce that is happening already in terms of permanent and temporary layoffs, and unfortunately is predicted to continue, certainly over the remainder of the month of April and possible forwards. There may be allegations of not providing a safe work environment that will bring into relevance, obligations under the Occupation Health and Safety Act. There may be issues with respect to non-essential workers continuing to work during this declared state of emergency, as well as essential workers being declared non-essential. There may be questions raised as to whether or not terminations were handled

appropriately by employers. As well, we can see that there might be discrimination claims, premised on claims made by specific groups of employees, who may feel they were targeted in a COVID response based on their race or national origin. So, in addition to D&O and EPL we are going to talk a little bit today about cyber coverage, and one of the unfortunate implications of the transition to remote working for thousands and thousands of workers who have never worked remotely before, has been an increased risk of cyber attack and cyber losses. There's the potential for hardware and software failure, the loss of portable devices, the use of unsecured WiFi, there most definitely is an elevated risk of hacking attacks. There have been examples, specifically, with respect to phishing with links to information on COVID, which gives an entree to hackers to enter into systems and cause damage.

So, cyber insurance has an important role to play. Cyber can take the form of a stand-alone policy. It may also be seen as an endorsement to a D&O or E&O policy. Typically, cyber policies are divided into first party and third party coverage. The most expensive, from a financial point of view, are the first party losses experience by an organization itself. These include coverage for data breach response, for ransomware and cyber extortion, also may provide business interruption. There are, frequently, coverages for crisis response, including the availability of breach coaches to help companies through what to do when they have experienced a cyber attack. Many of the policies also include coverage for regulatory defense costs and fines. In terms of the third party coverage, this is designed to respond to claims brought by third parties as a result of a cyber event, and those might include the organization's clients or even other third parties who are impacted as a result of a cyber event. Those claims might relate to direct losses, by the customer or client, as a result of the breach. It may take the form of invasion of privacy claims or even client losses resulting from the inability to access systems. It's important to bear in mind that most cyber insurance offer a great deal of the way of value added services, such as network security testing and assistance in terms of third party vendors, to help companies, not only in the event of a loss, but more importantly in mitigating against loss in the first place.

Roger: If I may just chime in here for a minute. Imagine this, your entire workforce is suddenly working remotely and now you've got a ransomware attack where you're not able to actually access your systems because of something be infiltrated into your system. If your entire systems are encrypted this is where your ransomware coverage is going to be paramount and the advisory service that Belinda had mentioned. We've seen this with clients, not even in this situation where we've got the immediate work from workforce, but just in companies where their lines of business have been shutdown.

Where they've had to figure out how to negotiate. How to get blockchain and how to actually deal with that. Now we're in more of a critical state because of that, just because of the remote workforce we've got, and the way that business is being conducted. As a company, you really can't afford to have that type of a situation and not know what to do, and the time of having to put together an incident response plan to that. This is paramount where we've seen so many different allegations that are out there right now, and it goes beyond that as far as other areas as well, where we certainly are seeing the increased impacts that you can read on a daily basis.

Belinda: Thanks, Roger, and to pick up on your example, clearly illustrating that the upfront mitigation and preparedness is really important, in addition to the coverages that may be available, when a loss will inevitably happen. Next slide. Cyber policies have somewhat similar exclusions to those that we've spoken about. There are exclusions for bankruptcy, similar exclusion to insurer versus insured and pollution exclusions. Unique to cyber policies may be failure of transmission lines, which given the increased volume on various providers at the moment, may come into play. Limitations under a cyber policy are similar to those under D&O and EPL in that some of the coverages might be sub-limited in that there will be a lesser amount available for defense and indemnity, then the entire aggregate value of the policy. It is important, if you are either renewing or entering into a new cyber policy, to make sure you understand what sub-limits may apply, so that you can determine whether or not you're adequately covered for any particular types of claims that can arise, and certainly a broker can assist you in assessing that. With that, the background with respect to D&O and EPL, I'll turn it over to Roger and he's going to talk a little bit about things to think about when communicating with insurers.

Roger: Thank you, Belinda. I think this is an interesting time because communication has to be done in a different way from what would usually be done. As far as having face to face meetings, be able to go visit sites, if it's a manufacturing or the type of premises exposure, other types of organizations that are more online, it's quite a bit different as far as how that may be. Financial services, for instance, where it's really truly an office exposure. Not so much on the manufacturing or facilities side. But, of course this raises a number of questions, and depending on what you've been paying attention to in the news, you would see there's a lot of questions about what insurers do need to know right now. The biggest thing from a client standpoint is be transparent and timely. It's a matter of communicating with your broker, often, to make sure that that information is being shared. When you're in doubt, pick up the phone, make a phone call, send an email and share that information so we can then share it with the insurers as soon as possible. You do not want to get into a situation, a because there's a lot of confusion out there right now over

things like what's happening with your premises if they're vacant for more than 30 days, just as an example. If there is any change in the operations, a shift of focus, again let them know. Is it considered to be a material change in the operations or not? It's not necessarily your best interest for you to be the one who's determining that. Let the insurer be the one who's actually opining on that, to give the final say as far as that, with respect to the change and potential coverage or exposure because of it. Share the positive. Right now, there are a lot of companies hurting from a cash flow standpoint, but there's also financial relief that is being given as well. If you have a change in your bank that covenants which is going to give your relief over the duration for the next 6 months, possibly or until year end even, that's fantastic. These are the types of things that are good news stories in a challenging situation right now. Those are all things worth sharing as well. Not just at the time of renewal but even throughout the annual term of a policy. It's important to keep these things in mind in communicating. It's relevant to also talk about the go forward plan of the operations. How is the business going to be sustainable and share that plan. If you've already talked about what your disaster recovery plan is going to be, your work around solutions, all of that is worth sharing as well. We are seeing, insurers are already asking questions, whether it's mid-term or on renewal. Specific to D&O, they're asking has there been layoffs. They want to know. Air Canada, benched 18,000 employees to just say we cannot employ you right now because we're not flying. That type of thing is extreme, however, there are a number of companies that have had to worry about permanent layoffs that are not even unionized. Has there been a material impact on the revenue of the customer? We're seeing insurers asking this as well. Again, they want to know about the sustainability of the operations. Their concern from that standpoint is will this become a bankruptcy risk? As much of a negative impact that may be, or message it is to deliver on that side, they're trying to figure out how to underwrite front precedent times right now. Again, it comes back to the change in operations. These are all common things that we are seeing that they're now questioning. Next slide, please. With that I'll turn it over to Alison.

Alison: Thanks, Roger. We're going to talk a bit now about what directors and officers need to be keeping in mind as they're navigating this pandemic. Directors and officers have a general duty to keep apprised of all the material information they need to make certain decisions with respect to the business, and related to that, is a duty to keep certain stakeholders apprised of the pandemic's impact on the business. So what are the kind of things that stakeholders need to be apprised of? From a business perspective they need to be kept up to speed on how it is that COVID-19 is impacting the business. Not just currently but potentially into the future. The finances of the company, will there be impact on customers, employees, the supply chain and so on. It's also important to give

some information to stakeholders about crisis response plans. Was there one in advance? Was it implemented? Did one get created to respond to COVID-19? Did any changes or modifications to that plan have to be made in order to respond to the crisis in a timely manner? From an employment perspective, not only is it important to keep updated on the impact on the business, but looking at how that impacts employees which can relate to a return to work plan. Whether that's for employees that have been laid or have gone from full time to part time or who've had to transition to working at home, what is the plan to transition them back into the office? Will that plan have to be done in piecemeal, gradually, in order to keep employees, and potentially customers and members of the public, safe? Next slide, please.

For cyber incidents, what we're really talking about is data breaches. When there's data breaches communication is absolutely paramount. Some of the things that stakeholders will want to know is what steps did the company take to prevent data breaches. Did they train employees? This is especially important, as we've had a number of companies have to transition to people working at home, where there may be some more vulnerability to data breaches. Again, incident response plans are important. How was it implemented? Was there anything that the company was able to do to mitigate the breach, for those whose data was affected? Breach coaches can be help in this circumstance because they can help with the messaging. They can also help figuring out what steps can be taken in order to try and mitigate any damage to customers or clients whose data has been obtained by a third party. Next slide, please.

As stated, public and private directors and officers are subject to the same fiduciary obligations and duty of care. The duty of care generally is just to act diligently, make reasonable business decisions, and to make sure they're keeping up to date on all material information relevant to COVID-19, and how that might impact the business. The fiduciary duty requires a company to act in the best interest of the company. But there's also this other obligation which is they must consider the interests of certain stakeholders, like employees, creditors, other shareholders, when they're making those business decisions. For public officers and directors there are additional obligations that have been imposed by securities regulation. These largely focus on public disclosure and what needs to be disclosed in what circumstances. In the context of this pandemic, one of the things that will be important for directors and officers, is to look back on any forward looking information that has been disclosed to the public. It may be that this prior guidance needs to be updated. It may need to be withdrawn entirely or just modified in the context of COVID-19. It is important that this disclosure be as specific as possible and focused on the specific impact that the COVID-19 pandemic may be having on this specific business.

So there shouldn't be a reliance on general language. For example, something like the company expects there may be a financial impact due to the pandemic. There should be an attempt to try and make it as specific as possible to the company and, when there's going to be a change in that previously disclosed earning guidance, there should be some discussion on the events and circumstances that led to the decision to change that guidance, including a discussion of the assumptions that are no longer valid given the pandemic circumstances. Next slide, please.

Associated with public disclosure is the requirement to disclose any events that have a material impact on the company. A material is generally anything that might influence somebody's decision to buy, sell or hold shares in the company. When looking at whether there needs to be some kind of update to the market with respect to COVID-19, the officers and directors want to be assessing any kind of material risks, and any potential impact of those risks on the company, and to do it periodically. Things are changing quickly, and information is coming in quick and fast, and so there may be a need to update periodically as things change and the risks assessment has changed, with respect to the company. Like with the forward looking information, it's important that any public disclosure identifies specific risks. So not just generalizing about risks that are associated with the pandemic, but specific risks that affect the company specifically, and how it is that COVID-19 is impacting the business. Generally speaking, securities regulation has said that where there's an external development that's impacting a company, that isn't necessarily a material change that needs to be disclosed to the public. However, securities regulators have said that in certain circumstances, if that external event might have a disproportionate impact on a company, or it may have a specific impact on the company, then that might need to be disclosed. So for example, if you're company has a part of its supply chain located in China, or it receives products from China, the impact of COVID-19 on the Chinese economy may be something that you need to disclose to the public as part of your market updates. Next slide, please.

What claims do we think that we could see? We are fairly certain that we will see class action law suits because history tells us this is what often happens when there's a downturn in the economy. This is largely, again we'll be focused on disclosure, and whether or not management has disclosed properly the impact of COVID-19 on the financial picture of the company. We may also see law suits from clients. Maybe members of the public, employees, that alleged that they were somehow exposed to COVID-19 unnecessarily. There may be some litigation arising out of data breaches. So breach of privacy or a breach of personal information. Also, as noted previously, there are some statutory obligations that directors and officers need to be aware of that they can be

personally liable from. Usually it's in the insolvency context. So things like unpaid wages, unpaid withholding taxes but these are things that people need to be aware of. There also may be some liability arising out of occupational health and safety. There are some contexts within which directors can be personally liable for that. There also may be investigations related to bylaw infractions or infractions of various public health orders. From an employment practices standpoint we think that there'll likely be claims in the layoff context and, also, in the health and safety context. Again, employees being subject to some kind of unnecessary risk to their health, either because they're asked to continue to work when they are not deemed to be an essential service, or in the context where they are an essential service but the company has not put in enough safeguards for them such that they may be at an unnecessary risk for contracting COVID-19. Next slide, please.

Is there anything to be alarmed from past pandemics? The case that's most often cited is a case from the Ebola epidemic that occurred in about 2014 to 2016, and you may recall that during that period of time a few people, about a dozen in the United States, ended up contracting Ebola. There was a company called iBio that made certain public representations. The CEO went on television and made certain representations about the fact that the company was involved in a possible cure for Ebola, which turned out to be false. As a result the share price plunged, and all the people that had invested in the company thinking that it was developing this great cure for Ebola, lost a lot of money. So this, again, is a class action that is focused on public disclosure and what was represented by the company to the public that induced them to purchase shares. In this case, the company ended up settling for about 1.9 million dollar US, with its shareholders. Next slide, please.

Not surprisingly we have already seen a number of class actions filed in Canada and the United States arising out of COVID-19. In the D&O context we've seen two class actions that involve public disclosure, the Inovio case, the allegations there are that the CEO made inaccurate and misleading statements with respect to the development of a COVID-19 vaccine. Then of course, once this was revealed to be false, the share price quickly tanked and a bunch of shareholders lost money. The Norwegian Cruise Lines case is interesting because this is likely going to be the most common class action filed. This really relates to what information Norwegian Cruise Lines gave to the public with respect to the impact of COVID-19 on its business. The allegation is that they specifically misled the public in order to induce them to continue to purchase cruise packages. But it could be that at the time that the disclosure was made, the company decided that they were going to take a cautious outlook, or they didn't have enough information to be able to actually predict what might happen with respect to its business and COVID-19. We know now the

impact was quite devastating but it could be that the company, at the time, didn't realize or didn't have enough information. So, making sure that public information is consistently updated and is as accurate as possible, will be important as we move forward in this pandemic. Other class actions have been focused on breach of contract so the failure to provide refunds, either for sporting events, concert tickets, airline tickets, gym memberships, negligence, the failure to warn, exposing employees, customers, members of the public to unnecessary risk of infection. We've now seen a few in the insurance industry. In Canada, a class action was recently launched with respect to a complaint that insurers have not been issuing business interruption coverage. In the US, there has been a class action launched complaining that insurers have not allowed business interruption claims. Going forward we expect that there will be a number of class actions, specifically in the D&O context, around that public disclosure on how it is that COVID-19 has been affecting a business. I will now turn it back over to Roger to provide some more insight from the insurer's perspective.

Roger: Thanks, Alison. Of course that leads us perfectly into what effect does this have on insurers. Well, as Belinda had mentioned earlier, insurers are concerned of what's coming next and where the claims are going to be coming from as well. I think that there is a lot of uncertainty on this, but we are seeing just what the knock on effect is expected to be, based on the facts that we expect bankruptcies to be part of the case, then DL claims are going to be coming through because of that. So insurers are already asking the question about where these claims are going to be coming through. Alison had already talked about some of those areas as well. It's a great context to be able to take a look at and see where that may have an impact. In early discussions with insurers though, that certainly is their concern on that side. Employment practices, liability as well. The concern there is will there be downsizing exclusions that are put on policies going forward. Something that we don't often see unless there is the expectation by an insurer to see the downsizing of the employment force. That may be something which comes out of this. Right now, insurers overall are trying to figure out how to underwrite against the risks, and if that's even possible. It's too early to really see what the full impact is going to be and the magnitude as far as where losses may come from. Overall, it's having a significant impact on the industry and we are being faced with unprecedented times and exposures, that may or may not be covered based on what we're talking about for business interruption, a prime example. There is a lot of dialogue around it and there's nothing 100% certain as far as where that is. Bottom line is that we find that the insurers are really trying to adopt and adapt quickly. Whether it's around premium relief. Whether it's around what they are going to be doing in changing their underwriting standards, initial questions that they're asking, those are all things that are coming into play as far as what

we'll see over the next while. Next slide, please.

So, the big question, what does it mean for upcoming insurance renewals? Well, we wish we knew exactly what it meant. It is a moving target. It's changing on a daily basis, to be very honest, and when we talk to different insurance companies we are not getting the same answers from two insurance companies that will come up with the same thing for us. What we have seen already though is that some insurers, when it comes to D&O, are not entertaining new business in what's already a hard market. By that, it means that we've already seen rates increased. We've seen limits of liability that have been restricted. We've seen insurers trying to preserve their capital base by changing the way that they're underwriting business. This just exacerbates that with COVID-19 and, potentially, some insurers are already tightening up the strings as far as what they're going to be doing for providing quotes on new business, and what they may be doing on renewals as well with potential restrictions of coverage. What we do find is that the disclosure of material change in operations, that has a material impact on the business, certainly does matter. We want to know that is put out there to the insurers right away, as I mentioned before. The question is will insurers incorporate a COVID-19 exclusion on any and all policies? This is something that we don't know when that will happen, if it will happen, but then the other part is what impact will it have? Right now, we are wondering, will insurers provide as is renewal terms. Or are they going to look at charging for potential or future risks where they haven't even seen the claims come through as of yet? Ideally, they would be reactionary when it comes to that with increasing their reserves based on where they see claims coming from. Again, keeping it in the D&O context specifically, it's going to be too early to tell. These are longer tail claims in a lot of situations when it come to how those claims arise. What we have seen for certain lines of business, and the early indicator is, that some reinsurers have already incorporated COVID-19, or contagion exclusion, on specific policies. Not necessarily D&O, but if it's on a treaty that's reinsuring the frontline insurance company, will it impact multiple lines of insurance?

Getting a definitive approach on business interruption. Just removing that ambiguity in policy language. There is a number of insurers out there that were talking about when it comes back to why there's the Merchant Law firm class action that's being launched. These are all things that we may see if they're standardization of language around things like this as far as what the approach may be. Next slide, please.

With that, what we're going to do is we've got Adam, who's been pulling a number of your questions that have been coming in. So what we'll do is we'll now be addressing some of your questions.

Adam: Thanks, Roger. I think the two that we have flagged are specific to EPL, and very similar, which relate to if a company, of the board of directors, is fined by the Province for having work completed that was not deemed essential, would that be typically covered under a wrongful act? Then, similar extension of that question, does the exposure change if the employees and the work is deemed essential or non-essential, and those employees being allowed to work on site for those? I'll leave that with you for a second, Roger, and then I have one more question for Belinda after that.

Roger: Okay. Actually I was going to turn the first portion of that over to Belinda based on the wrongful act.

Belinda: Right. I think, in terms of how these policies work, whether or not something is a wrongful act may not be the actual answer to the entire question. A breach of duty would be a wrongful act. I think there's no question that it should fall within the definition of wrongful act. The question then is whether there are any exclusions that might apply. Certainly as we've talked about, none of these policies are bespoke and the wording can vary. Certainly the intentional act exclusion is one here that might come into play. Then over to you, Roger, for the rest of that piece.

Roger: One of my first thoughts on this is depending on the statement of claim, the allegations that have been made, even based on the policy language, how broad it is, it may actually provide coverage on a defense cost basis just based on what Belinda was mentioning earlier, until there's final adjudication made. Whether these individuals are actually found guilty, or not, in their conduct as far as how it was. The other part of this too is to keep in mind that there is a form of regulatory coverage under the policy as well. So, could that possibly be a trigger of coverage of where it would actually respond. I know it's a bit of a gray answer, but it's one of those things where it will depend on what the allegation is that's coming in, and where that allegation is being made from as well.

Belinda: Yes, I agree with that entirely.

Adam: Okay. Then the other question we had flagged may be a question more directed to an employee of ... group but I think the question is if the employees are asking to go to a place of work, an office where it has been closed by the employer, should they be signing a release acknowledging the measures in place and their symptoms and that sort of thing.

Belinda: I think that is a very much an employment law based question and I would be happy to direct the individual who's asked that question to our very capable employment law lawyers who would be able to provide a response to that.

Adam: Then finally, this has been asked a few times so I'll just mention that the slides, and the webinar recording, will be made available as soon as we can get it all up and distributed. They will be available for folks that attended, and across the Gowling and BFL platforms, in the coming days.

Belinda: Thank you all for joining us. As Adam has indicated we will put this presentation up on both the Gowling and BFL websites. Please look for that, share it and if you have any questions in the meantime, either I, Alison or Roger would be happy to hear from you. Thanks very much, everyone.

Roger: Thank you.

Alison: Thank you.

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