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Lawyer Insights

Examining Event Cancellation Coverage As COVID Lingers

By Jorge Aviles and Andrea DeField
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The ongoing COVID-19 pandemic and resulting supply chain issues have caused several major event organizers to cancel or postpone concerts, sporting events and awards shows, as well as other large-scale events.

For example, Adele put on hold her much-anticipated Las Vegas residency, originally due to start on Jan. 21, over delivery delays and COVID-19 diagnoses among her team; both the NBA and the NFL rescheduled major games in December of last year, with the NFL citing "medical advice" after "seeing a new, highly transmissible form of the virus"; and the Grammys postponed its Jan. 31 awards show in Los Angeles to take place on April 3 in Las Vegas.

The cancellations and postponements of these types of events often have major financial effects on its organizers and producers. In an extreme example, the unprecedented postponement of the 2020 Summer Olympic Games in Tokyo because of the COVID-19 pandemic is reported to have cost upwards of $3 billion.

Given the risk of substantial losses following the cancellation of big events, businesses should know that they can tap into event cancellation insurance to mitigate and protect against these risks. Here, we explore event cancellation risks and how policyholders can use insurance to mitigate those risks.

Some Notable Examples of Event Cancellation Risks Covered by Insurance

The multimillion-dollar event cancellation coverage payouts received by the organizers of two high-profile sports events — March Madness and Wimbledon — following the cancellation of their 2020 tournaments during the pandemic show how important it is to obtain proper coverage.

Because of COVID-19, the NCAA cancelled its annual men's March Madness basketball tournament for 2020, which had been poised to bring in more than $800 million. The NCAA's loss, however, was offset by a $270 million insurance payout following the tournament's cancellation, one of the largest pandemic-related payouts in all of sports.

The NCAA insurance policies at issue covered a sum roughly equivalent to the tournament's ticket sales, and about one-third of its media rights. The NCAA had reportedly paid a little more than $2 million in premiums for the $270 million in event cancellation coverage, a premium in line with the industry's standard.

The NCAA's insurance program spanned multiple policies and included communicable disease and pandemic coverage. The fact that the policies at issue contained coverage grants for risks such as COVID-19 was probably a key factor in the NCAA's ability to obtain coverage.

Similarly, the All England Lawn Tennis and Croquet Club's decision to cancel the 2020 Wimbledon tournament led to a reported loss of about $160 million in media rights, $151 million in sponsorships, and more than $52 million in tickets sales. Wimbledon, however, managed to offset these losses following an insurance payout of $141 million.

Wimbledon's organizers reportedly paid a $2 million annual premium for the insurance at issue. Wimbledon recovered for its event cancellation related to COVID-19 because its policy was updated in 2002 to include an infectious disease clause following the worldwide SARS outbreak.

The March Madness and Wimbledon examples show how event cancellation coverage can be an important lifeline to offset the multimillion-dollar losses that often follow the cancellation of large-scale events.

Specialty Event Cancellation Coverage

Contrary to general liability insurance coverage — which protects against third-party bodily injury or property damage claims — event cancellation insurance is an elective, specialty-type insurance coverage designed to protect a policyholder's loss of revenue and expenses following the cancellation, postponement, curtailment, relocation or abandonment of an event for reasons outside the policyholder's control.

For there to be coverage under an event cancellation policy, there must first be a triggering cause covered under the policy. Some event cancellation policies are written as so-called all-cause or all-risk policies. These policies provide coverage for any cause that is not specifically excluded by the policy.

Often, these policies can protect against, for instance: severe weather conditions, denial of access, venue unavailability, threats, acts of terrorism, earthquakes, wildfires, labor strikes, active shooting and the nonappearance of a key individual — e.g., the death or illness of a headlining performer.

Other event cancellation policies, however, provide more limited coverage and are written to insure event cancellations or postponements following a narrow set of causes, which are typically listed within the policy.

Generally, event cancellation insurance provides coverage for, among other things, lost revenue, or amounts paid to reimburse ticket holders, vendors or other third parties because of the canceled or postponed event.

Coverage is also potentially available for other extra expenses, out-of-pocket or unexpected costs, lost advertising, lost ticket sales, or other contractual obligations or costs incurred because of a canceled or postponed event. In addition, some event cancellation policies protect businesses from liability in case someone injures themselves or damages the venue's property.

Event cancellation policies often cover all occurrences within the policy period, including the months before the event — e.g., a tornado destroying an arena a month before a scheduled concert.

Further, as with all types of insurance policies, the premiums for event cancellation policies vary depending on the risk. For event cancellation policies, the premiums typically factor in the revenue or expense at issue, event type, dates, location of the event and scope of coverage required.

Potential Coverage Issues

Although event cancellation policies typically provide broad coverage, businesses must be wary of certain obstacles insurers may raise in trying to avoid paying claims.

Insurers might seek to disclaim or limit coverage for various purported reasons, including: alleged nondisclosure at the policy-application stage, failure to satisfy certain conditions after the loss, application of policy exclusions, timely notice, or questions about whether an event was canceled for a covered cause of loss.

For instance, insurance companies have denied coverage for event cancellations during the COVID-19 pandemic arguing, in part, that the proximate cause of the policyholder's loss was the pandemic — a communicable disease excluded by the policies — and not the government orders prohibiting large gatherings, a covered cause of loss under the policies.

COVID-19 is now being excluded from new event cancellation insurance policies. Before the pandemic, event cancellation insurance policies generally contained explicit coverage buy-backs for losses from communicable disease. The policyholders paid an extra, specifically identified premium to remove any exclusion for communicable disease from these policies.

Those policies typically covered a specified amount of net profit and included additional coverages for costs of remedial action, future marketing expenses, etc., beyond that specified amount of coverage. Nonetheless, because of COVID-19, policyholders who bought event cancellation coverage after April 2020 may be subject to broad exclusions for losses related to COVID-19.

Event Cancellation Coverage for COVID-19 and Communicable Disease

While most major markets now exclude claims arising from COVID-19 and communicable disease, there might still be ways to obtain coverage for some of these risks, including through joint public- and private-sector-backed efforts.

In the U.S., the Pandemic Risk Insurance Act bill — still pending in Congress — provides for the creation of the Pandemic Risk Reinsurance Program, a system of shared public and private compensation for business interruption losses resulting from future pandemics or public health emergencies.

Other countries have already implemented similar measures. The British government, for example, worked with specialist insurance market Lloyd's of London and its syndicates, including Beazley, Hiscox and Munich Re, for event organizers to buy extra insurance against cancellation due to government COVID-19 restrictions, with the British government acting as reinsurer.

Similarly, last December, the Victorian government in Australia launched a 12-month scheme, which offers coverage for creative, sporting, business and community events with revenue or costs ranging from $20,000 to $10 million. The policies will provide a 100% payout if cancellation is forced because of public health orders from certain government authorities, and cover 50% of the declared value of the event if health restrictions reduce event capacity.

Steps to Secure Coverage

If an event is canceled or postponed, policyholders must know that they could have a claim for coverage to protect against the resultant losses and extra costs. To secure coverage, policyholders are well-advised to:

- Review the event cancellation policy at issue for potential coverages — as well as all other insurance policies that might provide coverage;
- Provide immediate notice of the potential event cancellation claim to all applicable insurers; and
- Keep detailed, up-to-date accounting records of all losses and costs at issue, including lost revenue and profits, as well as extra expenses.

Takeaways

Even the most well-planned and expensive event can be canceled or postponed due to many unforeseeable causes. Event cancellation insurance is a risk-management tool that can protect businesses of all sizes from financial losses and added costs that accompany event cancellation or postponement.

Given these risks, policyholders must understand how to manage the unique risks associated with event cancellation or postponement and have a plan to maximize their coverage options if a loss occurs.

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