

RPS Bollinger Insurance COVID-19 Questions & Answers

MAY 2020

The following information is intended to help sports organizations understand insurance as it relates to COVID-19. As always, Bollinger's staff is here to support you in the review and understanding of key insurance coverages.

FREQUENTLY ASKED QUESTIONS REGARDING COVID-19 AND INSURANCE

Q: If our state is still shut down, will coverage be provided if we play in another state that has lifted restrictions?

A: The RPS Bollinger sports insurance program has not changed with regard to how the accident and general liability coverages apply. If an insured holds an activity, the insurance program will respond to sports-related accident and liability claims in the same manner as it always has.

However, RPS Bollinger and its carrier partners have no jurisdiction over decisions on return-to-play, or permission to travel to another state. Sports organizations and their members must follow the direction of federal, state and local authorities as to when play can begin in their town, in their state, or across state lines. We encourage all sports organizations to follow these guidelines, while being aware that in uncertain times, insurance may not respond to COVID-19-related claims – especially if health and safety regulations have been defied or ignored.

Q: Is there coverage for COVID-19 under the general liability policy?

A: Depending on when you purchased liability insurance in the RPS Bollinger sports insurance program, your policy may or may not have a communicable disease exclusion. Most policies purchased prior to 2018 do not have the exclusion. However, even if your policy does not have an exclusion, **the absence of an exclusion does not provide an automatic grant of coverage**. When policies are "silent" on coverage issues, how they respond at claim time will be up to the insurance company's interpretation or a court's decision. General liability policies were never designed to cover claims stemming from a pandemic.

Q: Are there liability risks associated with beginning to play while the pandemic is not completely contained?

A: Yes. Because of the litigious nature of our society, organizations have to consider the possibility of being sued for COVID-19-related claims. While seemingly absurd from many angles (assumed risk, tracking and tracing, the fact that the state reopened, etc.), it is conceivable that a sports organization could be held responsible or accused of negligence for the spread of the virus and its

aftereffects. Such a case would be difficult to prove. But as we have seen in other liability claims, the merits of the case do not always determine whether it is presented. We hope that there will be some immunity for organizations and businesses against lawsuits claiming negligence with regard alleged transmission of COVID-19, but these cases have not yet been tested in the courts.

We do know that until there is a vaccine, a treatment protocol and widespread availability of reliable antibody testing, it will be a while before there is a full return to sports as we know it.

Therefore, organizations that do not follow federal, state and local guidelines with regard to quarantine, social distancing, or caps on maximum number of people allowed at gatherings, etc., will increase their risk of liability. A failure to comply with guidelines could be construed as an “intentional act” and could result in no coverage under the liability policy.

Q: Is there coverage for COVID-19 illness under the accident policy?

A: No. The Accident policy is designed to cover accidental sports injuries only, and they exclude coverage for claims arising out of “illness, sickness and disease.”

Q: Should sports organizations consider implementing a waiver for the risks associated with playing an organized group sport while COVID-19 remains a threat?

A: While we know that waivers are not always foolproof, particularly when signed on behalf of a minor, we do endorse implementing waiver language regarding the risks of contracting COVID-19 or any contagious illness during team sports. This waiver language can be inserted into your existing waiver or set up as a separate waiver for participants and parents to sign.

Q: Does the RPS Bollinger sports insurance program provide coverage for virtual practices through social media or our team’s website?

A: If a member of your sports organization is injured during a virtual training session, the RPS Bollinger accident policy will provide protection for that claim so long as the instruction is “live” and supervised. The injury will need to be verified by the organization as having taken place during a sponsored activity, and the injured member would have to follow the standard accident claim process. No coverage is provided to non-members participating in on-line training.

Coverage under the general Liability policy for virtual practices would depend on the specific allegations of the claim.

The information contained herein is offered as insurance industry general information and provided as an overview of current market risks and available coverages and is intended for discussion purposes only. This publication is not intended to offer legal advice or medical advice. General insurance descriptions contained herein do not include complete insurance policy definitions, terms, and/or conditions, and should not be relied on for coverage interpretation. Actual insurance policies must always be consulted for full coverage details and analysis.