



LEGAL COUNSEL

Working Group

April 29, 2020

EXECUTIVE SUMMARY

The Council of Insurance Agents & Brokers' Legal Counsel Working Group convened a virtual meeting to discuss federal and state actions undertaken in response to the novel coronavirus (COVID-19).

The Working Group was chaired by Working Group Chair Andy Impastato, Vice President, Insurance Counsel and Director of Industry Affairs for BXS Insurance, and was attended by over 80 of the insurance brokerage industry's top legal counsels. The virtual meeting was staffed by The Council's General Counsel John Fielding, Chief Legal Officer Scott Sinder, Senior Vice President of Government Affairs Joel Wood, Vice President of Government Affairs Joel Kopperud, and Director of Government Affairs Blaire Bartlett.

FEDERAL UPDATES

What will a socially-distanced Congress look like? It looks like we'll see next week. After several weeks of quiet, the halls of Congress are about to get a bit louder with the Senate poised to return to Washington on May 4, 2020. The House, on the other hand, has decided to delay its return but hopes to come back "very soon."

Though there are logistical concerns as to how Congress plans to operate in the COVID-19 era, the biggest questions surround issues of policy. The Working Group received updates from Wood, Kopperud, and Bartlett on several current and future federal issues, including:

- The uncertainty around what the next level of liquidity relief/recovery could look like;
- The future of funding for the Small Business Administration's Paycheck Protection Loan Program (PPP), particularly given concerns about undeserving businesses (e.g., publicly traded restaurant groups) capitalizing on their eligibility to the detriment of small businesses;
- Whether a different type of federal facility could be established to fill in the gaps created by the PPP;
- The path forward for state and local aid;
- Establishment of a liability shield, the extent to which the Administration can act unilaterally in extending liability immunity, and how such a shield would interact with existing coverages like workers' compensation;
- Retrospective application of business interruption coverage to the insurance industry;
- The proposed recovery fund (i.e., a fund modeled after the 9/11 Victim Compensation Fund to ensure continuity and promote recovery of struggling

businesses that would involve—among other things—voluntary participation by insurers, brokers, third-party administrators, loss adjusters, etc.); and

- The path forward for a prospective solution for future pandemics (i.e., a Pandemic Risk Insurance Program (PRIA) floated by Representative Carolyn Maloney (D-NY)) that mirrors the framework of the Terrorism Risk Insurance Program; The Council's pending feedback on the proposal; and clarification that the ultimate goal is to get all interested parties to come to the table and develop a proposal that is feasible for the industry.

As both Wood and Kopperud noted, at this point, the timing surrounding these developments remains entirely uncertain.

Additionally, both Kopperud and Bartlett requested feedback from Working Group members. Kopperud highlighted the ongoing congressional activity to address issues in the benefits space (e.g., COBRA subsidies, implications of high unemployment on migration from employer-sponsored coverage to Medicaid or the exchanges, HSA expansion, subsidies for employer plans, etc.). Bartlett sought feedback from Working Group members, hoping to compile a list of compliance items/concerns for members (e.g., 1095 reporting, Form 5500 filings, 226-J responses, flexibility for individual coverage health reimbursement arrangements, etc.). If Working Group members have any additional feedback on either of these issues, please email Joel Kopperud at joel.kopperud@ciab.com and Blaire Bartlett at blaire.bartlett@ciab.com, respectively.

STATE UPDATES

State insurance regulators and legislators have continued to introduce pain points for the industry in recent weeks. For instance, over 10 states have issued regulatory guidance creating a presumption of compensability for certain employees exposed to COVID-19 under the states' workers' compensation laws. Another 10 or so states have introduced legislation on the topic, with four states—Alaska, Minnesota, Utah, and Wisconsin—having enacted language establishing such a presumption of compensability. In both the regulatory and legislative developments, the relevant employees to whom the presumption applies are typically emergency responders and health care providers (though the degree of specificity varies from state to state).

These efforts haven't been successful in all states. Last week, the Illinois Workers Compensation Commission rescinded its emergency rule establishing a presumption of compensability for "front-line" workers (e.g., first responders, health care workers, grocery and pharmacy clerks, funeral service employees, etc.). Nonetheless, concerns remain that states—particularly California, at the moment—will continue to issue regulatory orders creating broad presumptions.

Beyond these issues, the Working Group also discussed The Council's outreach to regulators:

- In states that have issued mandatory premium forbearance/grace period guidance on the agency billing issue (i.e., the requirement in some contracts that brokerage

firms handle the billing for clients) to communicate that, in situations where the producer is the intermediary, the producer should not be held responsible for the premium payment;

- To clarify whether certain states intended to impose eligibility requirements under their premium forbearance/grace period guidance (e.g., requiring application to individuals and small businesses that have suffered financially because of COVID-19); and
- To highlight the grassroots issues of concern for Council members (e.g., wet signatures, administrative staff limitations, etc.).

Please continue to use The Council's [COVID-19 Resource Center](#)—including the legislative trackers on business interruption coverage and workers' compensation, the state premium forbearance tracker, the state insurance regulatory tracker, and the broader regulatory tracker—as a source of the recent and pending developments at the state level.

MEMBER INFORMATION EXCHANGE/OTHER ISSUES

Members also spent time discussing return to work issues, including:

- Liability exposure;
- Difficulties presented by testing and treatment of a returning workforce;
- The timeline for a vaccine; and
- Uncertainty created by the Occupational Safety and Health Administration in its recent statements.

The Council is getting ready to rollout a back to work webinar series and working to put together best practices on operational sequencing for returning to work. As we receive sample guidance from other companies, we will be sure to share it with the Working Group. More to come, so stay tuned.

SEE YOU SOON!

As we all continue to adjust to the new normal, we will be arranging regular conference calls for the Legal Counsel Working Group. We anticipate the next call will take place on **May 13, 2020**. Additional details are forthcoming, but if you have any questions in the meantime, please email John Fielding at john.fielding@ciab.com.