



LEGAL COUNSEL

Working Group

May 12, 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 65 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

Despite a delayed return to Washington, the House of Representatives continues to legislate from afar. On May 12, Speaker Nancy Pelosi (D-CA) released draft text of the next coronavirus aid package (i.e., "CARES 2.0"). At over 1,800 pages and a cost of \$3 trillion, it has a little bit of everything. The bill addresses funding the government through September 30, 2020 and then some [e.g., 100% federal subsidies on COBRA, tweaks to the Paycheck Protection Program (PPP), significant state and local relief, a slew of tax credits for employee retention, the House-passed legislation that would offer safe harbors for banks and insurers to serve cannabis-related legitimate businesses and service providers that are operating lawfully in their respective states, etc.].

The draft legislation does not, however, contain any sort of liability protection or safe harbor—a major priority for Majority Leader Mitch McConnell (R-KY)—making its path in the Senate difficult at best. As Wood explained, at this point, Senate Republicans and the Trump administration want to digest the appropriated funds that they have spent already before increasing existing funding streams (or creating new ones). Though it faces an uphill battle in the Senate, the bill is expected to pass the House on May 15, 2020.

The Council is still processing the text but anticipate summaries on the [COVID-19 Resource Center](#) in the near future.

Beyond CARES 2.0, the Working Group also received updates from Wood, Kopperud and Bartlett on several current and future federal issues, including:

- The lasting power of the PPP (particularly given the recent infusion of funds from Congress and the fact that some businesses have opted to return their loan amounts);

- America's 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.);
- Funding opportunities from the Federal Reserve programs;
- Retrospective application of business interruption coverage;
- Movement on the Paycheck Guarantee Act (i.e., legislation that would reimburse companies for keeping employees on payroll during the pandemic); 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.

As with all things in Congress, the timing surrounding these developments remains entirely uncertain.

STATE UPDATES

The Council continues to communicate with state insurance regulators and legislators regarding COVID-19-related pain points for the industry. Most recently, we have seen states acting to establish state-specific liability shields. For instance, last week, Alabama and Pennsylvania issued executive actions to provide protection to all businesses or certain industries. An additional 13 states have introduced legislation that addresses similar liability protections. A few—like the Alabama proclamation—are broad in scope and apply to businesses operating during the pandemic. The vast majority, however, are much narrower and focus on a specific industry (e.g., PPE manufacturers, contractors, non-profits providing resources, etc.). Primarily, the liability protections extend to health/emergency services providers. This appears to be the case in the seven states (Alaska, D.C., Massachusetts, North Carolina, New Jersey, Utah and Wisconsin) that have enacted some form of liability protection in recent weeks.

Apart from this newer issue, other issues remain. For instance, California Governor Gavin Newsom issued an executive order creating a presumption of compensability for all employees exposed to COVID-19 under the states' workers' compensation laws. It remains to be seen how this will affect businesses and their decisions to reopen or remain closed. Beyond California, over 10 states have issued regulatory guidance. 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.

Beyond these issues, the Working Group also discussed The Council's outreach to regulators on other regulatory issues (e.g., premium grace periods, agency billing, eligibility issues, 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 other issues, including:

- The future NAIC schedule (and anticipated priorities for the foreseeable future);
- Mass solicitations to join class action lawsuits and appropriate responses; and
- Return to work issues.

The Council has rolled out a back-to-the-workplace webinar series and has posted a guidance document on operational sequencing for returning to work. The guidance is based on federal and state guidelines, lessons learned from international and domestic firms, and a host of other resources. It will be a living document, so be sure to check back regularly for revisions and updates.

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. The next call will take place on **May 27, 2020 at Noon ET**. Additional details are forthcoming, but if you have any questions in the meantime, please email John Fielding at john.fielding@ciab.com.