



# LEGAL COUNSEL

## Working Group

July 15, 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 60 of the insurance brokerage industry's top legal counsels. The virtual meeting was staffed by The Council's Associate General Counsel Gracie Gerlach, 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

As we inch closer to November, Wood, Kopperud, and Bartlett kicked off the discussion with prognostications about the presidential election, interpretations of the recent primary results, and what it all means for Congress. With some election forecasters warning of a [“Democratic tsunami”](#)—in which Democrats pick up seats in the House and the Senate changes hands—these next few months are crucial for Members of Congress and the candidates vying to represent their constituencies.

Yet there is still a great degree of uncertainty with respect to what the next COVID-19 relief package could contain. For weeks, the primary proposal on the table continues to be House Speaker Nancy Pelosi's (D-CA) HEROES Act (i.e., “CARES 2.0”), which passed the House on May 15, 2020. The legislation, however, faces an uphill battle in the Senate. Thus far, all signs point to Senate Majority Leader Mitch McConnell (R-KY) putting forth his own package that provides state and local aid, bolsters the PPP, and offers liability relief or some sort of safe harbor for businesses that opt to reopen (or were deemed essential under state and local stay-at-home orders) and do so in accordance with federal and state guidance. But, as with all things in Congress right now, there is substantial uncertainty about both the timetable and the cost.

Beyond the next relief package and the upcoming elections, the Working Group also received updates from Wood, Kopperud, and Bartlett on several current and future federal issues, including:

- The uphill battle that America's Recovery Fund will face in both chambers;
- The Council's work to stabilize the employer-sponsored market and secure COBRA subsidies;
- The Council's continued advocacy on the Commonsense Reporting Act; and
- The upcoming legislative calendar (e.g., funding, reauthorization of the National Flood Insurance Program, etc.).

## STATE UPDATES

Even as states pause or pull back their reopening efforts, there continues to be incremental movement on a host of state legislative issues. In recent weeks, the following bills have moved forward at the state level:

- Mississippi joined the list of states that have enacted broad liability protections, extending immunity for exposure to COVID-19 in the course of/through the provision of services to “person[s] . . . who . . . in good faith . . . follow applicable public health guidance;” and
- Utah enacted its second workers’ compensation-related bill, extending a presumption of compensability to first responders (e.g., health care facility employees, physicians, nursing home employees, pharmacy employees, etc.).

The California legislature is also scheduled to return for a special session, during which it is anticipated that one of the proposals establishing a presumption of compensability for certain workers will reach the governor’s desk. Whether he will sign it, however, remains an open question.

The Council will continue to monitor this activity, but for regular and recurring updates, please continue to use The Council’s [COVID-19 Resource Center](#)—including the legislative trackers on business interruption coverage and workers’ compensation, a legislative tracker on enacted civil liability protections, 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.

## NAIC

The NAIC will hold its Summer National Meeting in a virtual format. The tentative schedule is for the working groups to meet the week of July 27, followed by the task force meetings the week of August 3, and ending with the standing committee and executive committee meetings the week of August 10.

While we are still waiting for all of the agendas to post, The Council plans to continue its advocacy efforts related to educating regulators about the difficulties posed by rebating limitations and appointment requirements.

## MEMBER INFORMATION EXCHANGE/OTHER ISSUES

Members also spent time discussing other issues, including:

- The Biden-Sanders Joint Task Force proposal on health care and the implications given that it stops short of a Medicare-for-All system;
- Contract tracing software and its potential impact on liability;
- The recent business interruption decision out of Ingham County, Michigan which concluded—among other things—that the government’s denial of access to property did not establish a claim under a business interruption policy; and
- Interactions with state insurance regulators (i.e., whether there are delays, available accommodations, etc.).

**SEE YOU SOON!**

We anticipate the next call will take place on **August 26, 2020**. If you have any questions in the meantime, please email Gracie Gerlach at [gracie.gerlach@ciab.com](mailto:gracie.gerlach@ciab.com).