Lawmakers Continue to Pressure Insurers on Business Interruption

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Business Bulletin

Last week, our Business Bulletin outlined a number of ways in which the property casualty industry is being pressured by lawmakers to cover business interruption losses beyond the scope of their policy language, either from their own balance sheets or as facilitators of additional government recovery funding. As we suspected would be the case given the huge sums (and numbers of voters) involved, more and more parties have inserted themselves into the conversation and the path to conclusion continues to evolve and devolve simultaneously.

As we said in last week's bulletin, widespread support was gathering among insurer and policyholder trade associations for a "Business and Employee Continuity and Recovery Fund" to be included in the next phase of Federal relief, which was all but certain to be necessary since it was so likely that the $350 billion of Paycheck Protection Program ("PPP") funding in the CARES Act would be inadequate. Since that time, Republican leaders have called for an additional infusion of $250 billion directly into the PPP and many others have joined the fray with their own requests, which has complicated the future and timing of the Recovery Fund, and left the door open for additional competing proposals.

On April 13, United States Representative Mike Thompson (D-CA) floated his proposed "Business Interruption Insurance Coverage Act", which would force insurers to pay existing claims and would also go much further, compelling coverage by insurers both prospectively and retrospectively, including effectively nullifying every exclusion in every Business Interruption policy. As we noted in last week's bulletin, there is widespread skepticism that legislation which proposes to override private contracts like insurance policies would hold up to legal challenges. Additionally, we noted that the additional premiums that would be necessary to fund such extraordinarily broader coverage could well be unaffordable, especially for a business community trying to build a recovering economy.

Also on April 13, California insurance commissioner Ricardo Lara ordered insurance companies to return premiums for at least six lines of business, citing a reduced risk of loss due to shelter in place restrictions. The order covers partial or full refunds paid by consumers and businesses for at least the months of March and April, and may continue into May. Refunds are also required in "any other insurance line where the risk of loss has fallen substantially as a result of the COVID-19 pandemic," Lara's office said in the statement. Insurers are required to provide a premium credit, reduction, return of premium no later than August 2020. This most recent order follows Lara's previous request of at least a 60-day grace period for insureds to pay their premiums. The legality of issuing an order such as this seems likely to be challenged by the insurance industry and we expect to see and hear more on this in the days, not weeks, to come.

Simkiss & Block will continue to keep our eyes and ears open as there will likely be additional political pressure on the industry and will keep our clients apprised of any opportunities that may develop. Feel free to contact us for more information.