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Advisen Front Page News - Monday, March 23, 2020

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Insurers decline Congress' request to pay all COVID-19 business interruption losses

By Erin Ayers, Advisen

Pressure from federal lawmakers has ramped up for insurers to pay out on business interruption claims from small businesses shut down due to the coronavirus pandemic, but the insurance industry quickly rejected the idea.

“As the world community continues to navigate the impact and response of the declared global health emergency caused by COVID-19, we urge your member companies and brokers to make financial losses related to COVID-19 and other infectious disease-related losses part of their commercial business interruption coverage for policyholders,” wrote a bipartisan group of U.S. House representatives in a letter to the four national insurer and agent/broker associations on March 18.

The lawmakers acknowledged that business interruption cover typically requires a physical damage trigger or shutdown by a civil authority. Multiple officials nationwide have issued shelter-in-place orders, set curfews, and directed “nonessential” businesses to close to avoid spreading the virus.

The group of 18 lawmakers informed the insurance trade groups they would be “ready and willing to work with you on any future measures that might be necessary to see our country through this trying time.”

The letter prompted a quick “no” from the insurance associations.

“Business interruption policies do not, and were not designed to, provide coverage against communicable diseases such as COVID-19,” wrote the leadership of the American Property Casualty Insurance Association, the National Association of Mutual Insurance Companies, Council of Insurance Agents and Brokers, and the Independent Insurance Agents & Brokers of America. They said their memberships include many small businesses and employers grappling with the same issues as many businesses.

Instead, the crisis “will require federal assistance that provides funding directly to those American individuals and businesses most in need,” according to the leadership of the groups.

The vast majority of commercial property insurance policies contain not only direct physical damage, but also contain exclusions for viral/bacterial contamination due to the unpredictability of the risk.

The widespread business shutdowns, particularly in the hospitality industry, have prompted numerous questions and complaints about the limitations of business interruption coverage. One restaurant in New Orleans filed the first lawsuit asking for a declaratory judgment to compel Lloyd’s of London to pay business interruption losses. The policy in question is an all-risk policy that does not exclude losses due to “a virus or global pandemic,” according to the suit.

While business interruption claims may be limited, the insurance industry doubtless faces pandemic-related litigation and claims in multiple lines of business. A presentation given by Insurance Information Institute CEO Sean Kevelighan to the National Association of Insurance Commissioners (NAIC) cited significant exposure for workers compensation insurers covering hospitals and first responders, as well as for liability and directors and officers insurers covering healthcare, retail, pharmaceutical firms, and transportation companies. Kevelighan’s presentation cited moderate impacts on cyber risk and event cancellation coverage and highlighted the risk of lawsuits arising out of policyholder negligence with regards to the pandemic.

The COVID-19 pandemic has stimulated debate and discussion of the need for a federal reinsurance backstop, much like the Terrorism Risk Insurance Act (TRIA) or the National Flood Insurance Program (NFIP). Congresswoman Maxine Waters (D-CA) introduced a bill last week that include provisions for a Pandemic Risk Insurance Act that would function much like TRIA and cap total losses faced by the private insurance industry.

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