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Agents Report Surprisingly Smooth Transition to Remote Work

Agents Discuss Lessons Learned as They Look to Reopen Safely

Despite a few initial setup challenges, the transition of independent insurance agency operations and employees from being onsite to working remotely from home went remarkably well, according to six independent insurance agents from Connecticut and New York. They took part in a webinar about their agencies' handling of the COVID-19 pandemic that was offered by the Independent Insurance Agents of Connecticut (IIAC) in conjunction with Big "I" New York.

The agents took a variety of approaches to handling the pandemic, but they all closed their offices to clients, vendors and carrier representatives and found creative ways to handle phone calls and mail. Some agencies, like Shoff Darby Insurance Agency in Trumbull, Conn., were already set up to work from home. Its biggest challenges were figuring out how to best handle the mail and the phones at the reception desks. One receptionist took an office phone to her apartment to have calls forwarded there, and she went into the office three times a week to open and scan the mail. "It worked out really well for us," said Melissa Gatto, senior vice president and operations director.

Abbate Insurance Associates in New Haven, Conn., moved everyone offsite

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Determining the Role of Insurance in the Age of COVID-19

BOSTON — There has been much discussion lately about the role of property-casualty insurance in relation to pandemics as COVID-19 focused attention on insurance coverage issues at both the state and federal levels. Various legislative bills have been filed and litigation is expected to rise. The Insurance Library held a webinar of industry experts offering their thoughts on whether and how the insurance industry should be part of the solution to the problem that pandemics present.

The moderator of the discussion was Erin Ayers, senior editor at Advisen and former editor of **The Standard**. She was joined by panelists R. J. Lehmann, cofounder of the R Street Institute, and William C. Wilson Jr., CPCU, ARM, AIM, AAM, founder of InsuranceCommentary.com and former associate vice president of education and research at the Independent Insurance Agents and Brokers of America.

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Determining the Role of Insurance in the Age of COVID-19

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Many commercial insureds have voiced their frustration that pandemics are considered "uninsurable" by the insurance industry. Wilson explained that the reason why hits at the very essence of insurance. "It's the many paying for the losses of the few — not the many paying for the losses of the many."

Lehmann agreed that pandemics are extremely problematic in terms of risk selection because they "hit every geography and every sector. [Insurers] can't diversify away from the risk." Although specialty products could potentially insure certain parts of a pandemic, with COVID-19 "half the global economy shut down overnight. It will always be impossible to cover for that."

Expected Litigation

Businesses that have filed claims under business interruption insurance policies are finding that there is no coverage for COVID-19-related income losses from the perspective of the insurers. Insureds are challenging their insurers' claim denials.

As states begin to reopen their economies, Wilson expects to see other lawsuits as well, such as those stemming from commercial general liability (CGL) and professional liability, including errors and omissions, and directors and officers. Although Wilson expects the courts to rule that there is no coverage, he acknowledged that "you never know what will happen in the trial courts."

The Virus Exclusion: In talking with agents, Wilson estimated that as many as 70% to 80% of insureds have a virus or bacteria exclusion under their business property coverage. These exclusions directly state that the insurer will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease. "Just because there isn't a specific exclusion doesn't mean that it's covered," added Wilson.

Orders of Civil Authority: The majority of companies use ISO contract language in their business insurance policies. For there to be coverage for orders of civil authority, two conditions must be met. "Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property;" and the action of civil authority is "taken in response to dangerous physical conditions resulting from the damage or continuation of the covered cause of loss that caused the damage …"

In reading the contract language, Wilson said he does not see any coverage. "Businessowners can access their properties. People can walk and drive down the street. To me, that wording is material."

In addition, Wilson argued that the business closures were ordered to "prevent the spread of the virus from person to person" not as a result of damaged property.

A Federal Reinsurance Backstop

The Pandemic Risk Insurance Act of 2020 (PRIA), **H.R. 7011**, was introduced on May 26th. The act would mandate that insurance companies offering business interruption insurance policies must cover losses incurred due to pandemics, and it would establish a Pandemic Risk Reinsurance Program within the Department of the Treasury under which private insurance carriers and the federal government would share the responsibility to pay claims for covered losses. It would apply to any "outbreak of infectious disease or pandemic" on or after January 1, 2021, that prompts an emergency declaration under the Public Health Service Act and is certified as a public health emergency.

Ayers asked the panelists their thoughts on whether government insurance programs really work. The R Street Institute has been critical of many government insurance programs in the past, including those for flood and terrorism, believing that they misprice risk and create moral hazard. However, Lehmann thinks that although flawed, PRIA has merit.

The National Flood Insurance Program (NFIP) has borrowed heavily from taxpayers and provides incentives to build in areas that are environmentally prone to flooding, according to Lehmann. Although PRIA has similarities to NFIP, it lacks moral hazard. "I don't know what businesses could have done to avoid the pandemic. Moved out of highly dense cities?," asked Lehmann.

While PRIA has some insurance industry support, many in the market say pandemic differs too dramatically from terrorism risk to be resolved with a similar mechanism.

The fundamental difference between the Terrorism Risk Insurance Act (TRIA) and PRIA is that TRIA has large industry retention. The insurance industry is obligated to pay back funds over time. With PRIA, the industry would retain $250 million in damages, while the government would retain $750 million.

"If there was another pandemic, [PRIA] would trigger immediately with the government taking the bulk of the loss. I don't think contributing $250 million is enough to say that it is a public/private partnership," said Lehmann.

A pandemic is not a good risk to align with a traditional risk-based insurance program because it revolves around public health, according to Lehmann. Fundamentally, he said the insurance industry wants the riskiest businesses to be paying more for insurance coverage. With a pandemic, the problem is reversed.

"We want businesses in the midst of a pandemic to have incentive not to fight a shutdown. If businesses had a safety net available to them, so it wasn't a death sentence to shut down, they would be less likely to fight," and viral transmissions could decrease. It would provide an incentive for businesses to reduce their risk.

> *"The insurance industry does not have the funds to do what only the government can do. Even though floods affect big areas, they're limited. It's the same with terrorist acts. With a pandemic, it affects everybody almost simultaneously.*
> *— William C. Wilson Jr.*

"Staying open by any means necessary is not what we want from a public health perspective," said Lehmann.

For Wilson, one major issue is that the federal government misunderstands the insurance industry, thinking the reserves are akin to "money sitting in a bank vault." In reality, the insurance industry does not have the funds to "do what only the government can do. Even though floods affect big areas, they're limited. It's the same with terrorist acts. With a pandemic, it affects everybody almost simultaneously."

Insurance Industry Involvement

If the federal backstop is meant to be a safety net that businesses need, the question remains what level of involvement should the insurance industry have. Should its role be administrative? Valuation? Risk mitigation?

Lehmann thinks the industry should be involved with distribution because of its network of carriers, agents and brokers. He could see reinsurers potentially taking some risk off of the government. However, Lehmann remains skeptical of the industry's ability to adjust all of the claims, particularly in light of the toll Hurricane Katrina had — and that was on a much smaller scale than a pandemic would be.

The industry "can't scale up to deal with the people they'd need. The trigger has to be moving in the direction of parametric insurance," he said.

Two federal bills — the "Never Again" Small Business Protection Act (**H.R. 6497**) and the Business Interruption Insurance Coverage Act of 2020 (**H.R. 6494**) — would force payouts on business interruption claims and are considered problematic by the industry.

The danger in these types of bills is that the industry would need "tens of thousands of consultants" and adjusters. "Anyone who's ever adjusted business income knows it's technically complex ... It needs to be a separate, dramatically simplified product that doesn't get involved with profit calculations. The insurance industry could develop the products, but it doesn't have the trillions of dollars needed for pandemics or countrywide catastrophes," cautioned Wilson.

As a result, carriers would pull back from offering business income coverage, added Lehmann.

State Legislation

Several states have introduced legislation to compel insurers to pay pandemic-related business interruption claims, including Louisiana, Massachusetts, New Jersey, New York, Ohio, Pennsylvania and South Carolina. All of the bills focus on "small" businesses, ranging from employee counts of 100 to 250 or as defined by the Small Business Administration. While some of these bills have been shelved, others are still active.

Ayers noted that both legal observers and the insurance industry have cited conflict with the contracts clause of the U.S. Constitution. Is this an issue that could or should be solved by states?

States do a good job of creating the "rules of the road" for insurance, but because they have to have balanced budgets, they cannot borrow funds in the way the federal government can, noted Lehmann. "States are already under incredible pressure due to lost sales revenue. It would be a pretty catastrophic thing to have to leave it to [them] to have to respond with a program when they're under incredible budget pressure," he said.

Wilson does not think much will come of the state legislation, particularly the retroactive bills. "States aren't in a position to handle this."

Extending Workers Comp Coverage and Offering Personal Auto Rebates

As the pandemic has unfolded, many states expanded presumption of coverage for workers compensation to first responders and medical personnel and additionally offered rebates to personal auto customers. Both Lehmann and Wilson called those decisions appropriate.

"The rebates were a good PR move and were warranted. People aren't driving as much, so they can justify it," said Wilson.

Lehmann noted that in a public health emergency, it is essential to ensure there are enough people working on the front lines. However, he thinks any moves to expand further could be problematic because it can be difficult to determine whether the virus was transmitted at a workplace.

Perception Versus Reality

The pandemic has garnered negative headlines for insurers as they have denied COVID-19 claims. Although the industry is at a disadvantage under these circumstances, Lehmann reiterated the importance of remembering that the general public simply does not understand contract language. "Insurers are doing about as well as they can in trying to establish their position, but it's not a fair fight."

Wilson has been critical of the industry for the way it presents itself to consumers for a number of years. He dislikes how major carriers advertise, focusing on price rather than coverage and making light of claim situations.

"There's nothing funny about insurance. We're spending billions on frivolous advertising and missing out on the opportunity to explain to people what insurance is really about. I don't know what the solution is, but I wish we could make people understand that commerce would be impossible without the insurance industry. We're too often looked at as the bad guys. We're the good guys, and we don't tell that story." ■