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TSIB Talking Points

Special Bulletin

Liability Protections in Coronavirus Relief Legislation

Yesterday, the “SAFE TO WORK Act”, was introduced in the Senate which would provide substantial and comprehensive liability protection from coronavirus-related claims for businesses, educational institutions, nonprofit organizations, health care providers and employers.

The bill creates an exclusive federal cause of action for claims alleging that a plaintiff contracted COVID-19 from an exposure to the virus caused by a defendant. That cause of action would limit liability to certain narrow circumstances and preempt all state laws that would otherwise apply to such lawsuits.

The legislation would require a plaintiff asserting a coronavirus exposure claim to prove by clear and convincing evidence that:

- (a) The defendant business, educational institution or nonprofit organization did not make “reasonable efforts” to comply with applicable mandatory government health guidance;
- (b) The defendant engaged in gross negligence or willful misconduct;
- (c) Those wrongful actions actually exposed the plaintiff to the coronavirus; and
- (d) The exposure actually caused the plaintiff to contract the coronavirus.

For full article, please highlight link and open

https://www.jdsupra.com/legalnews/liability-protections-in-coronavirus-10652/?origin=CEG&utm_source=CEG&utm_medium=email&utm_campaign=CustomEmailDigest&utm_term=jds-article&utm_content=article-link

Global Natural Catastrophe Losses During H1 Ranged from \$68B to \$75B: Munich Re, Aon

Munich Re and Aon both issued reports this week on the economic and insurance costs of global natural catastrophes during the first half, which varied in magnitude by \$7 billion. Both companies agreed that a good portion of the higher insured losses were the result of severe weather disaster losses, mainly in North America. In total, severe thunderstorms in North America were responsible for \$27 billion of overall losses and for US\$20 billion of insured losses during the first half of the year. A record 10 individual thunderstorm-related events has more than US\$1 billion in economic losses in the United States alone during the first six months of the year, while Australia and Canada each dealt with severe hailstorms that prompted billion-dollar damage bills.

While these global natural catastrophes cannot 100% be attributable to climate change, data trends clearly shows that losses from severe thunderstorms, particularly in North America, are on the rise, largely as a result of population and exposure growth in suburban and exurban regions as well as increased property values and poor construction practices. This in addition to higher temperatures and greater humidity which favor development of weather patterns like these.

Both Munich Re and Aon warned of the peak of the Atlantic hurricane season and La Niña” weather conditions, which could exacerbate losses in the second half of 2020.

Munich Re said an above average hurricane season and a more extreme California wildfire season are possible in the second half of 2020, as a result of “La Niña” weather conditions.

For full article, please highlight link and open:

<https://www.insurancejournal.com/news/international/2020/07/24/576832.htm>

Excess liability Capacity shrinks as rates shoot up

The Umbrella/Excess Casualty market continues to remain challenging.

Pricing has hardened with average rate increases on excess towers was about 30% with some increases seeing triple digit increases.

Terms have also hardened with exclusions being added for sexual molestation claims as well as COVID-19 exclusions.

However, the most significant change is the change in the amount of capacity that is available in the market as it was widely accepted that the markets could easily support a tower with limits up to \$1.2 Billion.

As a result of the current market conditions, the largest achievable tower is now \$500 Million to \$600 Million.

Meaning that \$500 Million of capacity has exited the market.

For full article, please highlight link and open:

<https://www.businessinsurance.com/article/20200707/NEWS06/912335485/Excess-liability-capacity-shrinks-as-rates-shoot-up>

Nobody knows the Truffles I've Seen...

Judge says give me a break on Kit Kat Lawsuit.

For full article, please highlight link and open:

<https://www.businessinsurance.com/article/20200728/NEWS06/912335836/Judge-says-give-me-a-break-on-Kit-Kat-lawsuit-New-York-Hershey-white-chocolate-L>

9 positive things to come out of the coronavirus pandemic

As the death toll from the ongoing COVID-19 pandemic continues to rise, it's not easy to find reasons to be cheerful. However, life is not all doom and gloom. The coronavirus lockdown has brought with it a smorgasbord of side effects – and some of them are surprisingly positive.

Here are a few of the good things to come out of the coronavirus pandemic.

- Community Spirit and Generosity (free concerts from neighbors)
- The dogs of the world are very happy
- Library story time is making a comeback
- Pollution is down
- Access to Culture without having to travel
- Change in work habits
- More in touch with friends
- New hobbies
- Technology improving

For full article, please highlight link and open

<https://blog.powertofly.com/9-positive-things-to-come-out-of-the-coronavirus-covid-19s-silver-linings-2645547458.html>

9 Ways Businesses Will Change as a Result of COVID-19: A Risk Matrix

The COVID-19 Pandemic has altered the way that we do business. As we move towards controlling the virus, these changes will undoubtedly contribute to the way that business in the “new normal”.

To see this Infographic, please highlight link and open

<https://riskandinsurance.com/9-ways-businesses-will-change-as-a-result-of-covid-19/>

Claims Corner:

Deciphering new COVID-19 Case Law:

A Michigan trial court has recently decided one of the first Covid-19 Property cases. Several interesting things to note are:

- The court confirmed direct physical damage is required to trigger business interruption claims arising out of the Coronavirus.
- Physical restrictions preventing access does not constitute property damage.
- The pleadings admittedly stated the existence of the virus was not present on the premises.

The ruling of the trial court in Michigan is quite interesting in that it remained silent as to the virus exclusion contained in the policy. Rather, the decisions were made solely based on the four corners of the complaint. Simply stated, the complaint and only the allegations contained therein trigger an insurers' duty to defend. Outside influences even if applicable are not taken into consideration if it is not plainly stated in the complaint itself.

An insurance carrier when issuing a disclaimer will typically throw every exclusionary clause possible at an uncovered claim, the court solely responded to the complaint. Initially, this ruling could be construed as a victory for insurance carriers, though the complaint and testimony were weak at best. More skillfully crafted litigation is still pending and may have a differing outcome. If a class action or Plaintiff counsel can create ambiguity with regard to policy language, it will likely be construed in favor of the policy holder.

Meanwhile, in France a decision was rendered that AXA had to pay a restaurant owner virus related revenue losses. While the insurance carrier is appealing the decision case precedent is being set. Generali is seeking to make payments to insureds in the hospitality industry. All of these actions have a trickle effect over to the USA.

In the UK a trial is taking place to decide whether carriers should pay out pandemic related claims. The carriers involved, to name a few: are Hiscox, Ltd, Zurich Insurance Group, AG, RSA International and several others. Lloyds of London is estimating insurers could pay more than \$200 Billion in claims. To read more about these decisions please feel free to click the links below:

<https://www.goldbergsegalla.com/news-and-knowledge/knowledge/carrier-prevails-in-first-covid-19-business-interruption-ruling>

<https://www.claimsjournal.com/news/national/2020/07/29/298466.htm>

<https://www.insurancejournal.com/news/international/2020/05/26/569812.htm>

<https://www.carriermanagement.com/news/2020/07/20/209273.htm>

US contractor the first to use Opti-Clean Cube to fight pandemic

A top driving question faced by many businesses operating during this pandemic is: How do we maintain safety? The construction industry has been operating in some capacity – and much of the work was deemed essential. Safety measures were implemented such as: temperature checks, mask wearing, and social distancing when possible, but what else could be done to keep workers safe?

One contractor is utilizing the Xtreme Opti-Clean cube which is a mobile walk through structure produced in the US which sprays a dry mist solution to decontaminate individuals. The firm using this system requires employees to walk through this system upon entering and exiting the job site.

As this technology is developed and more widely utilized, insurance professionals will need to also think of potential insurance claims that can be triggered as a result. Some food for thought questions that will need to be asked:

Is there a contract for use of this cube? Who bears responsibility to cover this equipment? Will a carrier endorse it onto a policy? What happens in the event of an adverse reaction to an employee? Will there be pollution exclusions that apply? What if despite utilization of this equipment a Covid Outbreak occurs? Does that pose more or less exposure to the organization, did the safety measure provide a false sense of security?

As new technology evolves to improve site safety and reduce health risks to employees so will the need to provide adequate insurance coverage for these advances.

To read the article in its entirety click the link below:

<https://www.khl.com/international-construction/us-contractor-the-first-to-use-opti-clean-cube-to-fight-pandemic/145279.article?adredir=1>

Hackers are Targeting the Remote Workers Who Keep Your Lights On

One thing all criminals have in common is they all seek opportunity. Cyber criminals are no different and the current state of affairs yields such opportunity. Under the guise of quarantine and social distancing, corporations have moved from the traditional brick and mortar setting and into the homes of individuals to carry out daily business transactions. Many of the firewalls and safety measures that were in place had become more lax by necessity.

The key take away from this article is to ensure that clients have the proper cyber and crime coverages in place. These coverage forms can sometimes have overlapping coverage, or have coverage in force where another policy does not. It is important to know what products have been procured, review the language for applicability and keep the ear to the market place as both new products for insurability are developed as well as new potential exclusionary language as a result of claims practice.

This article highlights the potential of a grid or energy infrastructure being hacked. However, it is important to note that our clients are equally as vulnerable and in fact have recently experienced cyber breach.

Some key concepts to consider:

- Occurrence: Are multiple related breaches considered one occurrence?
- Review insuring agreements and understand verbiage regarding discovery and occurrence.
- Is there coverage for wired transfers? Are there differing limits for inside security breach vs outside security breach?
- Is there coverage to restore data and rebuild infrastructure, Data Breach Response and Crisis Management?
- Computer Fraud: Does the policy contain coverage? Is it applicable on Crime policy and Cyber?
- Is there business interruption coverage? Dependent Properties Coverage?

During times of uncertainty one thing can be certain, the insurance industry will be both reactive and pro-active to address the changing climate. To read the article in its entirety read below:

<https://www.claimsjournal.com/news/international/2020/07/30/298497.htm>