

# Locke Lord QuickStudy: Take Aways From The NAIC Special Session On COVID-19 (Public Portion)

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The National Association of Insurance Commissioners (“NAIC”) on Friday, March 20, 2020 held a Special Session on COVID-19. The session was broken into two parts: the first, open to the public call in the morning and second, a regulator only call in the afternoon. Regulators, consultants and trade groups presented during the public session and many issues were discussed. Below are the take aways that stood out for us; however, this is not intended to be an exhaustive list of issues discussed.

### Big Picture – Financial Solvency

Financial considerations and financial impact on the insurance industry was addressed. Some of the key questions raised were will some insurers have cash flow issues due to low interest rates? Will regulators permit relief from Risk Based Capital requirements?

- Scott White, the Virginia Insurance Commissioner and Chair of the NAIC Financial Condition (E) Committee, raised the following points:
  - Insurance regulators have few immediate concerns about the industry’s solvency, however, the longer it takes to “flatten the curve” concerns may increase;
  - The weakest carriers may have some issues – especially from the claims servicing perspective;
  - The Federal Government’s efforts to ease concerns are helping to reduce volatility in the markets;
  - There is a lot of cash available in the industry;
  - Less than 5% of insurers’ assets are in high risk investments, such as equities, while approximately 95% of insurers’ assets are in more stable investments;
  - Long term, however, low interest rates may have a negative impact on life insurer earnings;
- Insurance Information Institute (“III”) made the following points:
  - Guaranty funds are in place if necessary;
  - The property and casualty industry is financially strong and able to weather the crisis.

### Impact On Various Insurance Lines

Dr. Michel Leonard, Vice President and Senior Economist for III, briefed the Commissioners and attendees on the potential impact of the pandemic on various types of property and casualty coverage.

- He anticipated a *high impact* on workers’ compensation, as claims can be expected from healthcare workers, first responders, and people continuing to work in the transportation and retail sectors. III called for education and communication about current coverage.
- A *moderate impact* is anticipated to liability and directors and officers coverages, particularly in a few key

sectors: 1) healthcare and pharma; 2) entertainment, transportation and retail; and 3) manufacturing.

- As might be expected, Dr. Leonard anticipated a *low impact* on property and auto coverages, as property claims require physical damage and fewer vehicles on the road would result in fewer auto claims. Insurers in those lines likely will actually benefit from less claim activity, though they may be impacted short term by premium payment issues from customers.

## Key Issues By Line of Insurance

- Business Interruption / Trade Disruption is an area that will be tested.
  - Ill did not expect it would impact the industry's strong fundamentals. Policy terms including long waiting periods, high deductibles and co-insurance, and direct property loss requirements will act to limit exposure.
  - Business interruption coverage is different from terrorism risk insurance because it is much broader and impacts all jurisdictions unlike terrorism risk that only impacts certain jurisdictions or areas;
  - Regulators should be careful in considering any changes arising from the pandemic involving business interruption coverage because there will be more catastrophes in the future that will impact reserves;
  - American Property and Casualty Insurance Association ("APCIA") reported that it is working with the White House and predicts that there will be a Federal solution to the business interruption coverage issues.
- Cyber coverage is likely to be increasingly implicated as more workers work from home, both for the first time and for extended periods, opening more possibilities for system intrusions.
- Event Cancellation and Travel Insurance will be impacted, with exclusions present in many such policies reducing systemic exposure.
- Health Insurance
  - Michael Conway, Commissioner, Colorado Department of Insurance, suggested that health insurers and regulators will need to address billing issues that are sure to arise from patients with non-COVID-19 conditions that are transferred from one hospital to another, which may or may not be in network, out of necessity as the health care professionals coordinate efforts to most efficiently and effectively address the use of limited resources to meet the health care demands.
  - Special Enrollment Issues: How will individual market policies be impacted by small business owners/employers having to lay off workers? Will the policy provisions permit continued coverage under small group plans if the number of employees reduces? Will there be premium grace periods for small employers or individual policies? What are the regulators willing to do to keep those policies in-force?

## Requests and Concerns Expressed By the Trades

- On behalf of their members, Ill expressed concerns to regulators in three key areas: 1) lawsuits alleging policyholder negligence regarding COVID-19 exposure; 2) customers who incorrectly believe business interruption policies cover them; and 3) the impact of the crisis on the insurer's own employees.
- American Council of Life Insurers ("ACLI") requested that the insurance commissioners advocate to their respective governors that insurance be deemed "essential services" to allow insurers to continue operations as states and cities implement shelter in place orders.
- Representatives from ACLI, AHIP, and APCIA sectors requested that the NAIC and states coordinate data requests and provide uniformity across the states for essential data to foster efficient response while not taking away from the industry's efforts to address the COVID-19 issues and general business operations. President Ray Farmer intimated that this would be one of the issues taken up in the regulator only portion of the meeting.
- The trades also requested practical application of various regulatory requirements to allow and promote innovation by insurers to meet consumer needs during the COVID-19 crisis.
- A request was also made for flexibility in terms of timelines and deadlines for filings and responses to requests made by departments.

We anticipate that the NAIC will release information on the afternoon regulator-only session shortly as well as

additional guidance in the days and weeks ahead. We will provide additional insight as information becomes available.

Visit our [COVID-19 Resource Center](#) often for up-to-date information to help you stay informed of the legal issues related to COVID-19.

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