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Federal CARES program picks up a big chunk of business interruption - by Frank Licata

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Recovery for Companies With 500 or Fewer Employees

Of the five action fronts we highlighted on March 25 (below), the federal security/stimulus package has been signed into law.

Companies of up to 500 employees can recover a large portion if not most of what would be covered under commercial Business Interruption (BI) insurance.

BI covers the following elements:

- Net Income (profit)
- Continuing Expenses such as payroll, rent, utilities, insurance premiums, interest on loans
- Extra Expenses the company would not have otherwise incurred for the “period of restoration,” the time it takes to restore the damaged property to its original condition.

The federal program covers ALL the above for a period of 21/2 months. (There is a reduction in the benefit applied to individual employees making over \$100,000 per year).

Called CARES (Coronavirus Aid, Relief, and Economic Security Act) full text, the Small Business Assistance segment includes the Paycheck Protection Program. It is this Paycheck Protection Program that provides the recovery we’re discussing.

The program is being rolled out through the SBA to many lenders, even ones that were not in the SBA program before. We suggest you contact your regular bank to obtain details on the application process. Banks are saying the applications should be available this week.

There are also many other provisions in the CARES act including loans and other relief for larger companies.

Should We Still Pursue BI Insurance?

The parts of loss still not covered by the federal program are:

1. Net Income
2. Continuing Expenses, if any, other than the six categories identified above
3. Loss that continues beyond the two and a half month period
4. Extra Expenses such as cleanup costs

These potential recoveries would be offset by the legal costs involved in obtaining the coverage from your insurer. If there is some breakthrough in this area, we will bring it to you.

What We Said on March 25:

We provided the original background for the coverage question on March 18 .

We are formulating a general strategy for our clients to pursue in order to obtain business interruption coverage (in one form or another). Each specific case will depend on individual circumstances, of course.

The situation is still extremely fluid, but it is starting to become a little clearer as to possible directions. Here are the factors that will determine strategy:

Business Interruption insurance — this is carried by businesses to replace lost net income, to pay continuing expenses such as payroll, and to pay extra expenses necessary to try to stay in business. Insurers have said the Coronavirus does not trigger the coverage.

State legislation — three state have bills in their legislature to invoke emergency powers to have insurers pay under Business Interruption: New Jersey, Ohio and Massachusetts. Pennsylvania is discussing such a position.

The federal security/stimulus package — As of today at 3:00 pm it appears about to be signed into law. This will address payroll, the largest component of business interruption loss under commercial insurance. To the extent payroll is covered by the relief program, this assumes much of the loss which would have been insured. We wait to see the details and timing of the program.

Other federal or state relief packages — these will also factor in to the equation in a similar way.

Insurance litigation — as mentioned in the March 18 post, litigation will ensue and the number of cases will be record setting. In the normal course, it would take years for this option to bear fruit. However, the enormous pressure being exerted against the industry from all sides may force settlements. Settlements would come much sooner.

The Evolving Outlook

What was completely murky a week ago, is becoming a bit more clear by the day. We will be in a position soon to advise on various routes to recovery. Stand by.

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