

THE SOFT MARKET IS OVER

PROPERTY INSURANCE



**Reduction of
Market
Interest**

**Reduction of
Limits**

**Significant
Rate
Strengthening**

**Narrowing
Terms and
Conditions**

Significant reductions in capacity by key property market leaders | 2019 challenging year expected to continue in 2020

Contributing Factors

- CAT Losses – HIM: 2018 third worst year for US Insured CAT losses
- FM Global, AIG, Lloyds – significant capacity restriction and amendment to risk appetite
- Reduction in CAT exposure – driven by technical pricing and portfolio accumulation
- July 1 Treaty renewals were up 15% to 20%
- Most Challenging Areas – Convective Storm, Flood, California Wildfires
- 2019 CAT property rates with losses +15% to +50%
- Rate changes will vary significantly by renewal date in 2020

THE SOFT MARKET IS OVER

AUTO LIABILITY



**Shrinking
capacity**

**Reduction of
limits**

**Significant
Rate
Strengthening**

**Narrowing
Terms and
Conditions**

Auto is the worst performing line. | Frequency and severity has accelerated.

Contributing Frequency Factors

- **More Drivers / Utilization** – economic recovery & more jobs equates to more vehicles & increased mileage
- **Crash Rates** – cell phone usage & distractions means operators are driving worse
- **Public Road Infrastructure** – continues to deteriorate

Contributing Severity Factors

- **Driver Shortage** – leading to more inexperienced / underqualified operators driving more miles
- **Legal Climate** – plaintiff attorneys targeting Commercial Auto due to the potential large payoffs
- **Rising Medical Expenses and Advancements in Vehicle Technology**

THE SOFT MARKET IS OVER

UMBRELLA



Shrinking
Capacity

Reduction of
Limits

Significant
Rate
Strengthening

Narrowing
Terms and
Conditions

Frequency and severity has accelerated.

Contributing Factors

- Merger and Acquisition of Markets
- The plaintiff bar's use of "Reptile Theory" – shifting responsibility from employee & circumstances to the company
- Increased availability of data has fueled potential for plaintiff attorneys to aim for "Nuclear Verdicts"
- Societal shift on wanting companies and leaders to "pay" have resulted in increased punitive damages resulting in inflated case values
- Investor financed litigation
- Underwriters are requiring higher underlying Auto limits

TOUGHER TIMES AHEAD

WORKERS' COMP



**Journey
from Worst
to Best**

**Positive
Economic
Conditions**

**Rate Stable in
Most
Industries**

**Rate
Strengthening
in Certain
Jurisdictions**

Contributing Factors

- In 2018 the industry-reported combined ratio was 83%
- Direct written premium was flat
- Loss Costs Decreased
- Employment, wages, and payroll increased
- Investment gains on insurance transactions slipped a bit
- Economic factors contributed to a milder decrease in frequency
- Indemnity and Medical severity changes moderated
- Gain from operations increased
- Reserve deficiencies evaporated

IMPLICATIONS FOR RENEWALS

Timing Constraints

- Underwriters are overwhelmed with submission volume – for some 10 X normal
- Even initial quotes are coming down to the wire
- Underwriter bandwidth is low – getting multiple options is difficult

Underwriting Guidelines

- Constant change in guidelines and rate expectations
- Approval has shifted to more senior management
- Focusing on performance and addressing volatility in their book of business



Reduced Available Capacity

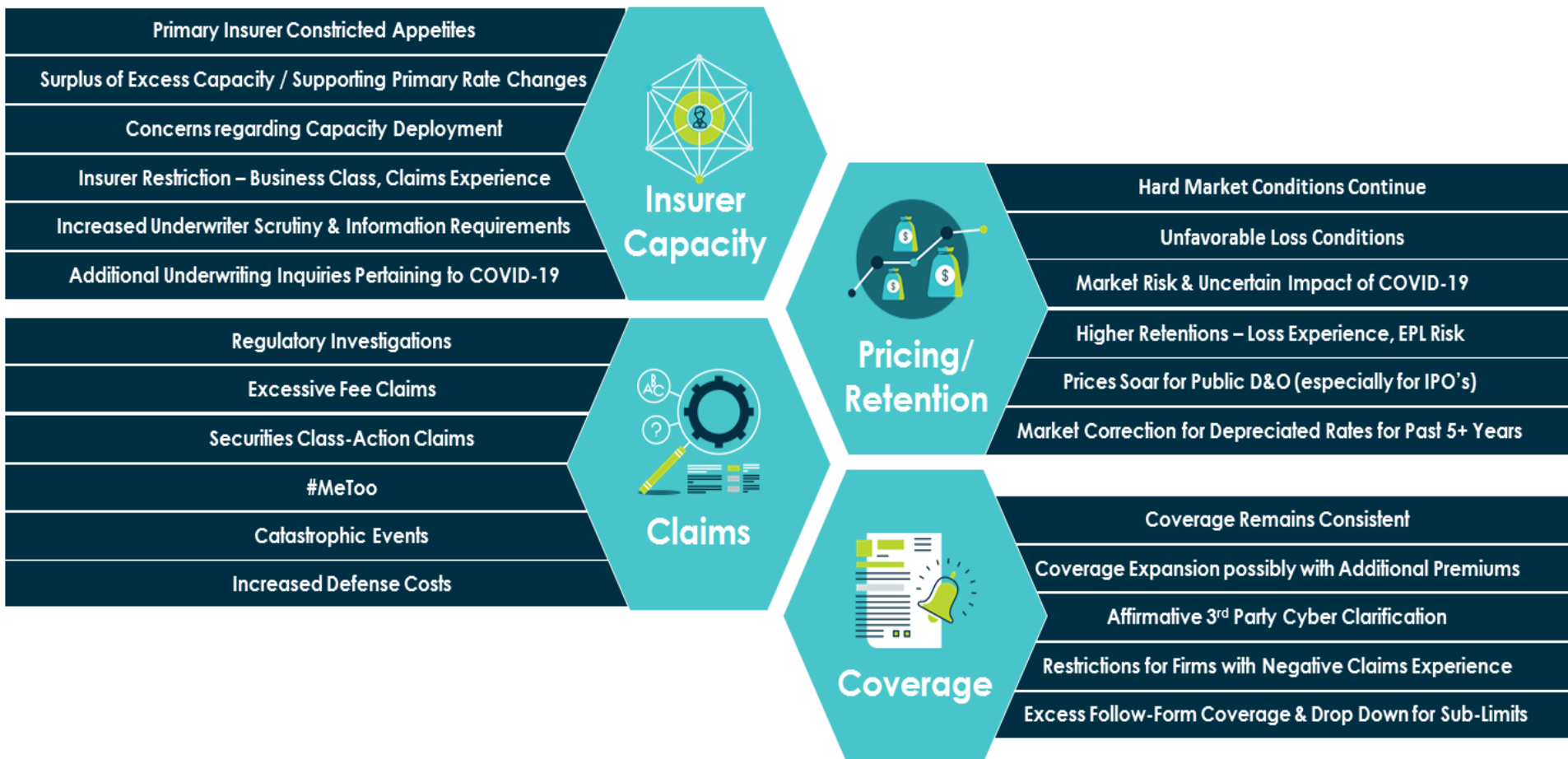
- Massive increases in volumes allows underwriters to be HIGHLY selective
- Large limit deals are difficult to place
- Deals with adverse loss experience are difficult to place
- Capacity is being priced and managed conservatively

Renewal Dynamics

- Renewals with incumbents are generally the most cost effective
- Accounts which must replace capacity that has withdrawn from the market are experiencing significant rate increases
- Accounts on multi year deals or below market deals are getting “right priced”

HARDEST MARKET...EVER?

D&O LIABILITY



CASE FILINGS

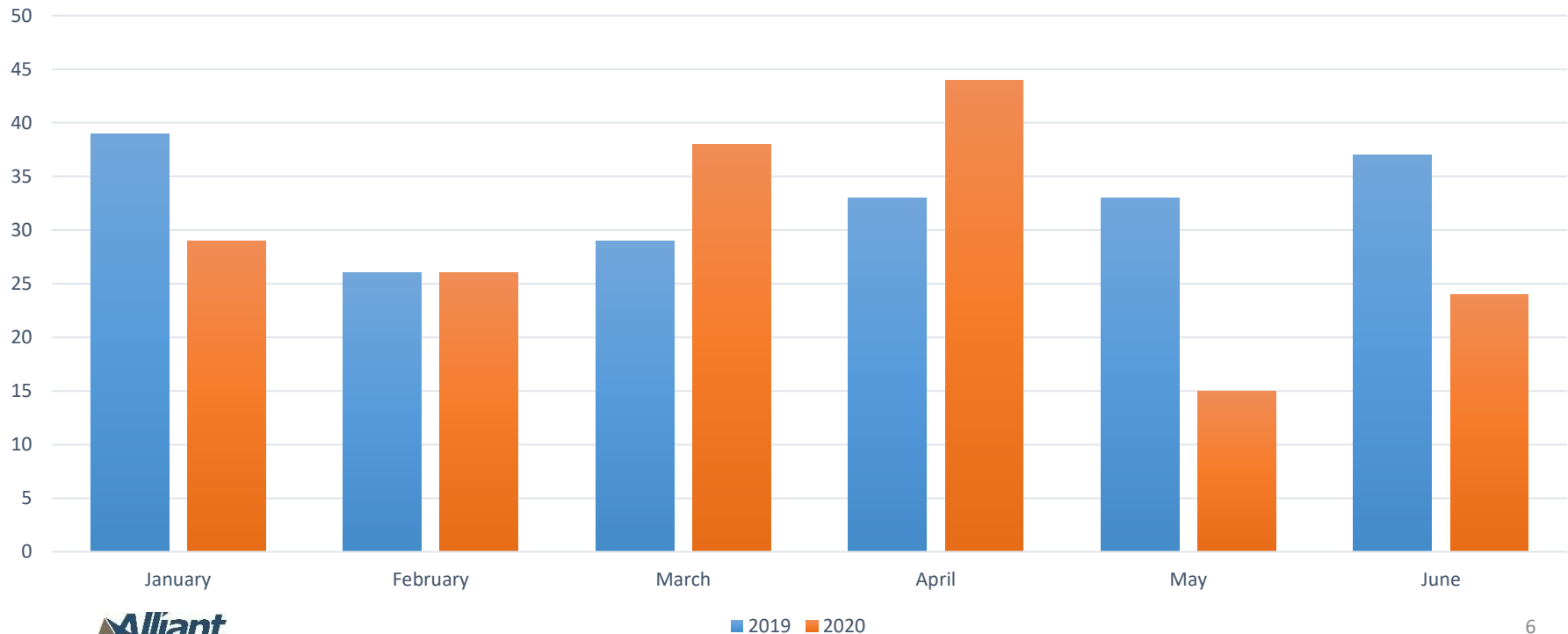
SECURITIES CLAIMS



197 cases in 2019 vs 176 in 2020
10.6% decrease for first half of year

14 total COVID cases in 2020
2 in March, 5 in April, 3 in May, 4 in June

Filings by Month

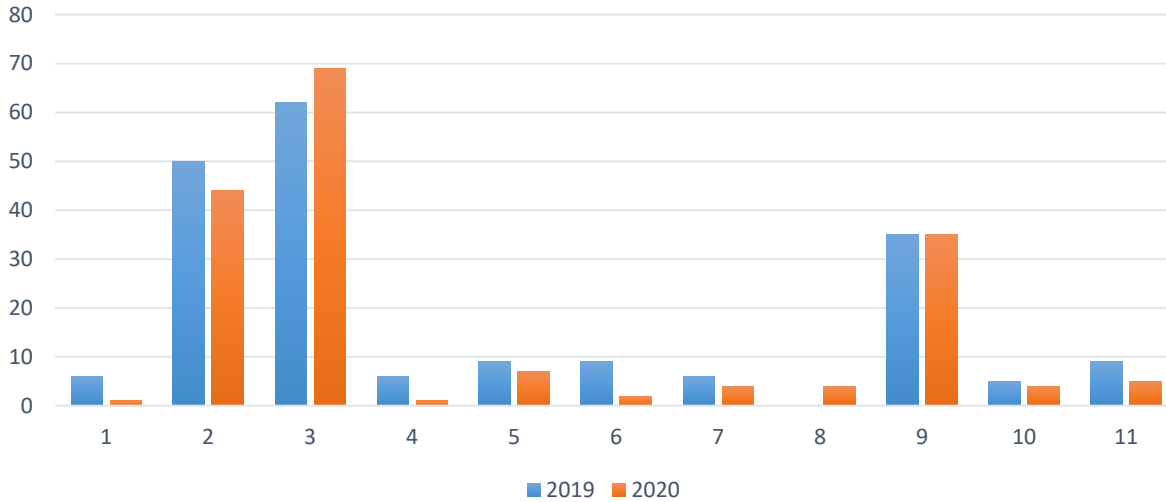


CASE FILINGS

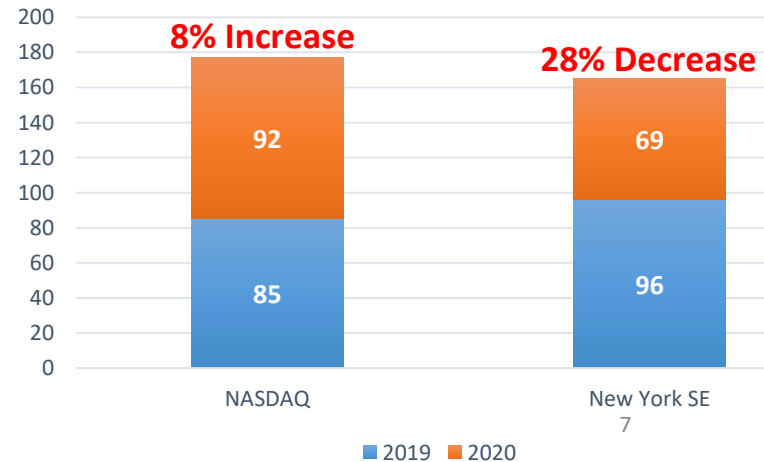
SECURITIES CLAIMS



Filings By Circuit



NASDAQ vs. NYSE Filings



THE SOFT MARKET IS OVER

EPL INSURANCE



**Changing
Marketplace**

**Reduction of
Limits**

**Premiums are
on the Rise**

**Coverage
Restrictions
Being Added**

Frequency and severity has accelerated.

Contributing Factors

- Capacity is tightening
- Economic downturns always see a rise in employment claims (e.g. wrongful termination, hostile work environment)
- Although federal enforcement is down, costs to defend employment claims are extreme
- Carriers are seeking higher premiums and retentions, with staggered retentions for some classes of employees or some jurisdictions

Emergent Causes of Loss

- Claims involving biometric information are hitting EPL policies
- Covid-related risk/"event driven litigation"
- #MeToo claims are still emerging
- Diversity and Equal Pay are hot issues

SOFT MARKET CONTINUING?

CYBER LIABILITY



Coverage Is
“Maturing”

Capacity Is
Plentiful

Additional
Underwriting
Scrutiny

Ransomware
Attacks
Dominate

Maturing product line. | Sustainability of current rate environment is questionable given large losses.

Contributing Factors

- Capacity is robust
- Sub-limits for coverages like forensics and regulatory fines have disappeared
- Coverage continues to evolve
- Underwriters are requesting additional information regarding BI and email compromise exposure
- Claims trends:
 - Global ransomware and cyber-extortion claims continue to hit insurers
 - Business email compromise claims and social engineering claims have increased in frequency
 - Advanced Persistent Threat (APT) events drive claims severity and influence appetite

Businesses are facing a number of potential insurance recovery scenarios from COVID-19:

- Property damage (contamination clean up)
 - Lost business income due to shuttering orders, difficulty in supply chain, or event cancellation
 - Extra expense incurred in connection with closing or limiting production or sales
 - Liability from claims resulting in defense and settlement and/or judgment costs
 - Employment, wages, and payroll increased
 - Loss incurred due to shareholder lawsuits
 - And many more
- Types of Insurance Coverage at Issue:
 - First-Party Property Insurance
 - Pollution Coverage
 - Event Cancellation
 - Comprehensive General Liability
 - Financial Lines (D&O, E&O, etc.).

Insurance for COVID-19 under First-Party Property Insurance Additional Coverages

- Business Interruption / Time Element Coverage
- Contingent Business Interruption
 - Loss of business due to physical loss or damage at customers or suppliers
- Extra Expense
 - The extra costs and expenses needed to carry on with business during interruption
- Civil Authority
 - Loss of business due to business closure by order of civil authority, may require physical loss or damage within a certain distance
- Ingress/Egress
 - Loss of business due to inability to enter or exit property, may require physical loss or damage within a certain distance

Special Coverage Extensions

- Communicable Disease Coverage
- Contamination/Pollution Coverage
- Facility-borne illness

COMMUNICABLE DISEASE RESPONSE	<p>USD 1,000,000 annual aggregate</p> <p>The Company's maximum limit of liability for INTERRUPTION BY COMMUNICABLE DISEASE and this coverage combined shall not exceed USD 1,000,000 annual aggregate.</p>
-------------------------------	--

E. INTERRUPTION BY COMMUNICABLE DISEASE

If a **location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **location** is limited, restricted or prohibited by:

- 1) an order of an authorized governmental agency regulating the actual not suspected presence of **communicable disease**; or

Insurance for COVID-19 under First-Party Property Insurance – Trigger of Coverage

Coverage Grant

- Trigger: “direct physical loss or damage”
- All risk or specific or “covered” peril?

PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Words and phrases that appear in quotation marks have special meaning. Refer to Section D., Definitions, in the Policy Conditions, Additional Provisions and Definitions Form.

A. COVERAGE

The Company will pay for **direct physical loss of or damage to Covered Property** caused by or resulting from a **Covered Cause of Loss**. Covered Causes of Loss means risks of direct physical loss unless the loss is excluded in Section D., Exclusions, limited in Section E., Limitations, or otherwise extended, excluded or limited in this Coverage Form, the Supplemental Coverage Declarations or by endorsement. The Company will also pay for Covered Costs and Expenses as described in Section B.2.

Insurance for COVID-19 under First-Party Property Insurance – “Physical Loss or Damage”

- Industry uniform position: No requisite “physical loss” or “physical damage” to property from COVID-19.
- Property uninhabitable or unusable for its intended use constitutes physical loss or damage
 - *Motorists Mut. Ins. Co. v. Hardinger*, 131 F. App’x 823, 826 (3d Cir. 2005) (e-coli had “reduced the use of the property to a substantial degree”)
 - *Gregory Packaging, Inc. v. Travelers Prop. Cas. Co. of Am.*, 2014 WL 6675934 (D.N.J. Nov. 25, 2014) (ammonia)
 - *Mellin v. N. Sec. Ins. Co.*, 115 A.3d 799 (N.H. 2015) (foul odor)
- Property itself not damaged yet, but conditions around it have deteriorated to the point that it cannot be used, damage imminent or inevitable
 - *Hughes v. Potomac Ins. Co. of D.C.*, 199 Cal. App. 2d 239 (1962) (sudden erosion)
 - *Murray v. State Farm Fire & Cas. Co.*, 509 S.E.2d 1 (W. Va. 1998) (rockfall)
 - *Port Auth. of N.Y. & N.J. v. Affiliated FM Ins. Co.*, 311 F.3d 226 (3d Cir. 2002) (asbestos)

Insurance for COVID-19 under First-Party Property Insurance – Exclusions

Insurance Services Office (ISO)

COMMERCIAL PROPERTY
CP 01 40 07 06

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.

However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.

Non-ISO

- D. This Policy excludes the following unless directly resulting from other physical damage not excluded by this Policy:
- 1) **contamination**, and any cost due to **contamination** including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy. If **contamination** due only to the actual not suspected presence of **contaminant(s)** directly results from other physical damage not excluded by this Policy, then only physical damage caused by such **contamination** may be insured. This exclusion D1 does not apply to radioactive contamination which is excluded elsewhere in this Policy.

Insurance for COVID-19 under First-Party Property Insurance – Current Litigation

- ***Friends of Devito v. Wolf*, No. 68 MM 2020 (Pa. Apr. 13, 2020)**
 - Pennsylvania Supreme Court upheld legality of governor’s emergency executive order finding outbreak involves “substantial damage to property, hardship, suffering or possible loss of life” akin to natural disaster.
- ***Manigold v. AXA Insurance* (Paris, May 22, 2020)**
 - French ruling that AXA state closure orders trigger business interruption losses restaurants.
- ***Social Life Magazine v. Sentinel Ins. Co.*, No. 20-cv-3311-VEC (S.D.N.Y. May 14, 2020)**
 - Magazine sought preliminary injunction requiring insurer to pay business interruption loss. Court denied motion, stated that insured could not show evidence of virus in office and thus no physical loss or damage.
- ***Gavrilides Mgmt. Co. v. Mich. Ins. Co.*, No. 20-258-CB-C30 (Mich. Cir. Ct. July 1, 2020)**
 - Eatery limited to take-out and delivery orders. Judge ruled from the bench no coverage for business interruption because Michigan law required direct physical loss or damage take a tangible form and somehow alter “the physical integrity of the [insured] property” and complaint said no confirmed cases of COVID-19 at restaurants.
- Dozens more dispositive motions have been briefed across the country and are pending.
- **Multidistrict Litigation – JPML hearing set for July 30, 2020, regarding the status of combining COVID-19 insurance coverage lawsuits. Industry has been against, and policyholders split.**

Insurance for COVID-19 under First-Party Property Insurance –State and Federal Legislation

STATE

- **Overriding virus exclusions, classifying coronavirus as physical loss or damage:**
 - LA House (858), LA Senate (477), PA Senate (1114, 1127).
- **Government-insurer partnership to pay claims:**
 - MA Senate (2888), NJ Assembly (3844), NY Assembly (10226), OH Assembly (589), PA House (2372), SC Assembly (1188)
- **Both:**
 - MA Senate (2888), NJ Assembly (3844), NY Assembly (10226), OH Assembly (589), PA House (2372), SC Assembly
- **Multiple states and municipalities issuing shutdown orders specifically stating that COVID-19 causes physical damage to property. See, e.g., Colorado, Nevada, Dallas County, Broward County, etc.**

FEDERAL

- **Business Continuity Protection Program**
 - Federal program for policyholders to buy revenue replacement coverage from insurers backed by federal government
- **Pandemic Risk Insurance Act of 2020 (“PRIA”)**
 - Based on Terrorism Risk Insurance Act (“TRIA”). Insurers that opt to participate in PRIA offer pandemic BI insurance, pay first \$250M of claims, claims over \$250M would be paid 95% by federal government, 5% by insurers
- **Liability Shield**
 - Heals Act legislation includes a five-year “liability shield” aimed at preventing businesses, universities, schools and hospitals from being sued over coronavirus-related damages.
 - Plaintiffs must prove both gross negligence and violation of state and local public health guidelines to successfully sue.

Contact:



Marc T. Ladd

Principal

212.402.9806

mladd@mckoolsmith.com