General Outlook

Health ministers denouncing belief in the effect of quarantine. Encouragement of the attendance of religious gatherings and touching of symbols. Suggestion that sauna sessions and vodka would stave off the viral spread. The decisions made by governments early in this crisis will have monumental impacts in every eventuality. As much can be said for the (re)insurance industry.

As the 1st of April renewal date approached, (re)insurers were thrust into deciding how best to respond to the Coronavirus crisis. Traditionally, the market has taken a measured and informed approach that related to the stance of the wider market and the advice of central market bodies. The imperative nature of this crisis has removed much of the timeframe usually allowed for quiet consideration. The Coronavirus outbreak has forced companies to think and act more independently and, in some instances, impulsively. Stephen Catlin voiced his frustration this week with the defensive and ill-thought through messaging from insurers to the public. He continued to stress that in such situations it is often more important to consider how your message is conveyed rather than its contents, suggesting that a severe lack of attention had been paid to delivery, to the detriment of the industry.

Uncertainty amongst policyholders has bred cynicism and distrust. In the United States of America, numbers of lawsuits are on the rise as more and more businesses battle to have their denied business interruption claims covered regardless of the nature of their policy wording. In some states, bills are being passed to override exclusionary language. This has unsettled market commentators both within and beyond the US, with a sense that this may be a precursor for more global action. Will this legislation spread, making the deployment of unilateral exclusionary language ultimately obsolete?

Market leaders have emphasised that with the exposure currently being unpriceable and unquantifiable, it is uninsurable. The Global Federation of Insurance Associations (GFIA) has issued a statement warning against forcing insurers into paying claims despite pandemic exclusions. Numerous market commentators have joined in voicing their concerns around the potential for industry destabilisation. Such a situation would compromise the industry’s ability to pay non-COVID claims that – governments would do well to remember – continue to occur, even through a pandemic.

Getting back onto the front foot, ahead of legislation, offering thoughtful real-time value will aid societal perception. All-state have announced a premium payback of $600m to their auto customers in April and May, stating, “together we will rebuild America after this pandemic”¹. Similarly, Geico are offering a 15% premium credit to all auto and motorcycle customers between April and October. Both of these examples reflect a reduction in exposure within the auto environment. With premium income levels set to decrease, insurers will have to choose their value offering wisely.

This week, we look to summarise the key events of the 1/4 renewal period, a summary of the most important and interesting of governmental legislation across the globe and finally a summary of the more seminal losses relating to the coronavirus outbreak.

COVID-19 Development

The coronavirus continues to spread throughout the world, with over 180 countries now having confirmed cases of the virus. Both reported cases and death tolls continue to rise – there are now more than 1.5m people infected worldwide, of which over 88,000 are reported to have died. At the time of writing, the US has the largest number of cases.

Exposure Watch

A&H Market Exposure

At present there does not appear to be any potential exposure on disability. However, as the disease develops and we understand its implications on certain individuals we may see some potential exposure on the Total and Temporary Disablement.

Underwriters are also more vigilant than ever of the threat of fraudulent claims at time like these, such as short-term disability policies where bad backs suddenly become a lot worse.

As with most lines at present, Underwriters are attempting to apply blanket exclusions across their book. However, there has been some success in removing the exclusions on sports disability coverage, albeit with a reduction in line size. Rates were rising slowly, but this will exacerbate that rise, particularly on poor performing classes and capacity risks.

Underwriters will still look to apply COVID exclusions for individuals with underlying health problems such as asthma, history of pneumonia and diabetes.

Contingency Exposure

Contingency is heavily affected with cancellations on tours, exhibitions and major sporting events. This would only covered if they have included the communicable disease extension. Losses involving the Olympics will be the rescheduling costs, whilst British Open and Wimbledon are cancelled for 2020. The market is currently in standstill as no events are greenlit as of yet.

Major events to have been cancelled/postponed include:

- Tokyo 2020 Olympics
- Wimbledon
- The Open Championship
- 2020 Premier League Season
- 2020 NBA Season
- Coachella 2020
- Glastonbury 2020
April 1st Reinsurance Renewals Overview

In response to the uncertainties posed by COVID-19, many reinsurers illustrated concern about the go-forward underwriting philosophy being employed. Reinsureds stressed that they “are focusing on bottom line profitability, rather than top line growth.” Implying that insurers will continue to be selective and considered in their underwriting approach, writing risks purely for the sake of boosting revenue figures will become more difficult as dollar net premium levels decrease. However, in some cases this justification was insufficient in providing comfort to reinsurers, ultimately resulting in some markets taking a more frugal stance on capacity deployment.

It is also important to note the influence of interest rate reductions at 1/4 – the FED rate has been cut to 0.25% in the US and the base rate in the UK is now only 0.1%. This has meant that both insurers and reinsurers are coming to terms with and enhanced reliance on pure underwriting profit. Reinsurers needed to see an enhanced margin on placements, leading to a push for increased rate, particularly in the Casualty market. In general, proportional treaties fared better than excess of loss.

Contract Wordings / Exclusionary Language

Much of the time spent on 1/4 renewals was focused on agreeing suitable language to accommodate any exposure posed by the Coronavirus. It is essential that insurers/syndicates are very careful in their approach when applying exclusionary language around COVID-19 to policies going forward. This is a situation that the FCA is closely monitoring – if insurers are enforcing these exclusions at a time of national crisis it could be held in negative regard and in the longer term may result in backlash.

We have seen extensive encouragement from market commentators for participants to be reasonable and adaptive in their navigation of the Coronavirus outbreak – presenting a progressive rather than protectionist stance will aid industry perception. To summarise some of the more thoughtful and interesting approaches and considerations to exclusionary language:

- Application of a condition precedent to liability, mandating that the insured must adhere to WHO/local health guidelines for there to be cover. If they are following guidelines any negligence exposure is limited/removed and this aligns insurers interest with what the government is trying to achieve – an intelligent and cooperative approach.
- A major Lloyd’s syndicate commented that they do not expect to see COVID-19 or similar exclusions such as insolvency on mainstream D&O policies. If they were to see such language, it is unlikely that they would deploy such an instrument as they intrinsically think it would be disingenuous to do so. If a risk required such restrictions, then they would simply refuse to participate.
- As mentioned in Edition 2, for treaties covering commercial property that were negotiated considerably in advance of 1st April, reinsurers were typically more lenient in respect of COVID-19 exclusions. However, for new policies and on renewal quotes received in the 11th hour, despite client pushback, the inclusion of COVID-19 exclusions was commonplace.

It is worth noting that within the subscription market, much of the exclusion language will be driven by placement leaders, with may preclude some markets from taking action.
US Legislation

Business Interruption

Several states are attempting to enforce legislation bills, which once approved would oblige insurers to pay out on business interruption claims. The states that have raised this legislation to some extent are New York (Draft Assembly Bill A10226), Ohio (House Bill 589), Massachusetts (proposed Bill SD 2888), Pennsylvania (House Bill 2372) and Louisiana (Senate Bill 477).

The bills look to provide retroactive business interruption coverage to claims from insureds arising out of the COVID-19 pandemic. At present the focus of this legislation is on small businesses, typically up to 100 employees. However, the proposed Louisiana Bill would provide a precedent, by becoming the broadest in scope as it does not cap the number of employees. Louisiana, also home to the first COVID19 coverage-based lawsuit, has proposed further language within the bill to require all insurance policies that cover business interruption to include a separate notification to insureds of all policy exclusions.

New Jersey planned to implement a similar bill (proposed Bill A-3844), however it has “held indefinitely” in order to allow the bill’s contents to be discussed by legislatures and private insurers.

The cost of such business interruption claims to insurers has the potential threaten the insurance industries solvency and long-term viability. As the American Property and Casualty Insurance Association warned that coronavirus losses could cost businesses with less than 500 employees in the US as much as USD 900BN per month. Alongside, potentially creating a dangerous precedent that a legally binding contract can be overturned.

A likely outcome looks to be a public-private partnership, where a US Federal government backstop allows insurers to claim some of the costs back from public funds.

Louisiana has proposed a state solution, with the creation of a Business Compensation Fund. Insurers would make contributions of the greater value of 80% of aggregated policy limits or USD50M. In doing so they would make themselves immune from claims of bad faith from insureds.

Healthcare

Federal Civil Immunity

To combat the current national emergency the Federal Government has passed the Public Readiness and Emergency Preparedness Act (PREP Act) this authorises the Secretary of the Department of Health & Human Services to declare limited civil immunity to “covered persons” for “covered countermeasures” with their discretion. Healthcare services do not come within the purview of the Declaration. Rather, the focus of the limited civil immunity is liability for developers and manufacturers of drug and devices designed to treat COVID-19.

The Act includes some critical definitions with regards to those that are included within this immunity. Both diagnosis and treatment do not appear to be within the ambit of the statute. The Families First Act has also extended the immunity to include the manufacture of surgical masks and other personal...
protective respiratory devices. The immunity is for negligence only and does not encompass gross forms of liability.

On March 27th, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law, this included Good Samaritan language to provide protections to Healthcare workers who are volunteering during the COVID response.

Unless a surge situation develops both nationally and on a much more severe scale, we would not anticipate a concerted effort to establish legislation to establish civil immunity for the treatment of COVID-19 patients from a Federal perspective.

State Civil Immunity
Due to the lack of nationwide legislature, states have been considering ways to extend liability protections for physicians and other health care professionals.

Health care providers in Maryland have been declared “immune from civil or criminal liability” for actions they take “in good faith” during a declared “catastrophic health emergency.” This statute would immunise clinicians following state-approved ventilator allocation protocols, “regardless of the negative consequences arising from the withdrawal of a patient’s ventilator.”

In New York, once enacted the Emergency Disaster Treatment Protection Act would protect hospitals, nursing homes, administrators, board members, physicians, nurses and other providers from civil and criminal responsibility for decisions or omissions occurring from March 7, when governor Andrew Cuomo declared an emergency. The legislation covers liability resulting from the care of individuals with and without COVID-19. It does not grant immunity in cases of “intentional criminal misconduct, gross negligence and other such acts.” But decisions and omission resulting from a resource or staffing shortage that cause harm will be covered under the legislation.
Looking to the International space, regulators have held back from enacting new legislation to force the hand of insurers, tending rather to offer guidance and advice. Such communications have emphasised the importance of the continued access to, servicing and fairness of insurance products. It is evident that insurers have been proactive in taking action ahead of regulators. A few key national summaries follow:

Australia – IAG, QBE, Suncorp and Allianz have released option for insureds to defer their premium payments for up to 6 months. This was approved by the Australian Competition and Consumer Commission (ACCC). This has struck fear into brokers as they consider the potential for cashflows to dry up. Clarity around how the 6 months’ worth of premium would then be paid has not yet been established. The move also includes promises to refund unused premiums for SME’s if they need to cancel their policies and offering immediate cash to insureds that suffered bushfire losses. Travel insurances have also been offered credit for any unused policies.

South Africa – the South African Insurance Association (SAIA) issued recommendations to policyholders experiencing financial difficulties to contact their broker or insurer, “who will do their utmost to assist customers in good standing”. The processing of claims will be limited to those that are deemed as ‘essential’ under the government regulation regarding essential services. Claims for repair or replacement of items or assets would be delayed until after the lockdown.

Singapore – Life Insurance Association Singapore (LIA) and General Insurance Association of Singapore (GIA) have reassured policyholders that the insurance service will remain available to them. But those that are facing financial difficulties should contact their insurers to discuss flexible premium instalment payments.

Denmark – state has announced capital relief for small to medium sized business in financial distress. This will come at least partially in the form of short-term credit risk insurance. We understand that similar discussions may be underway within The Netherlands and Germany.

Brazil – life and lenders covers offered by Itaú Seguros, Zurich Santander and BB Seguros will now cover losses from coronavirus despite specific exclusion of pandemics.

United Arab Emirates – Insurance Administration (IA) confirmation that without an explicit exclusion, all forms of health insurance would cover losses from viruses, including COVID-19.

India – Insurance Regulatory and Development Authority of India (IRDAI) has extended the deadline for pay life insurance premiums by 30 days.
W&I Insurance Focus

The W&I insurance market is one that has been greatly impacted by the spread of COVID-19, albeit in perhaps a different way relative to many other lines of business. Commercial property, medical malpractice, contingency and D&O insurers are among the stand-out lines of business that are concerned that as a result of COVID-19, they are going to face increased claims activity.

The W&I market shares in this concern in the near term, in particular on deals that closed in the months leading up to the coronavirus being declared a pandemic. The purchaser in these transactions will be quickly coming to terms with the fact that the asset they have purchased may not be resilient to the challenges that COVID-19 poses, and therefore will be feeling that they have overpaid. It is too late for the buyer to void the transaction as it has already been completed, therefore for those that have purchased W&I insurance, this will be one of their first port of calls to try and claim back a portion of the deal value. This is likely to substantially increase notifications to W&I underwriters, however there is likely to be negligible merit to these claims.

To mitigate against policy holders turning to their W&I provider for compensation in response to loss of value from COVID, there will likely be an increasing trend in deferred consideration in transactions.

Looking forward, the greater concern for W&I underwriters is that there is a declining trend in deal activity, particularly in EMEA and the US. In Q1 2020, global M&A deal activity was reported to be 25% lower than the same period last year, making it the lowest quarter in deal value since Q1 2016. Some major W&I underwriters are reporting reductions in submission flow upwards of 70% since the UK announced its lockdown measures.

There is widely regarded to be 2 main scenarios on how deal activity might respond to COVID-19:

<table>
<thead>
<tr>
<th>Scenario 1</th>
<th>Scenario 2</th>
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<td>It merely poses a timing issue. Transactions will not disappear but will only be postponed. Particularly given lower interest rates, the cost of borrowing will fall, and firm valuations will reduce, thus businesses will be more likely to invest in M&amp;A. Also, the market will likely be flooded by distressed assets, boosting deal volume further.</td>
<td>There is a financial crisis. Banks become more stringent in their lending and thus liquidity across the economy falls. One positive for the M&amp;A market here is that distressed assets will still be getting sold and purchasers will be buying higher limits on their W&amp;I policies due to greater uncertainty.</td>
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Notable Possible Loss Scenarios

**SCGM – Texas based Movie Theatre**

- A cinema and restaurant chain in Texas are suing Lloyd’s over losses incurred as a result of the coronavirus pandemic.
- The plaintiff is arguing that it bought additional coverage to protect against pandemic losses, and that SARS is named on the endorsement. The defendant is saying that as COVID-19 is not a named disease it is not covered.
- The deciding factor here is COVID-19’s relationship to SARS – the virus that causes the coronavirus is called SARS-CoV-2 and is a variant of SARS which first appeared in China in 2002, therefore the plaintiff believes they have sufficient coverage.

**Fox News**

- Fox News are reportedly preparing to be sued for spreading false information in relation to the coronavirus.
- Fox News is reputable for being a big supporter of the Trump administration, with a reported recently claiming that the coronavirus was simply “yet another attempt to impeach, demonize, and destroy the president.”
- The Washington League for Increased Transparency and Ethics (WASHLITE) has filed the first consumer-protection complaint naming Fox News among others as defendants.
- The suit claims the “defendants acted in bad faith to willfully and maliciously disseminate false information denying and minimizing the danger posed by the spread of the novel Coronavirus, or COVID-19, which is now recognized as an international pandemic.”

**Department of Corrections**

- A civil rights lawsuit has been filed, alleging that the Department of Corrections has failed to implement the necessary measures to prevent the spread of the coronavirus.
- 14 institutions housing over 14,000 inmates are included in the lawsuit.
- The suit is requesting the judge to mandate a social distance of 6 feet or more between all inmates. If this is not possible, then it is requested that cases are reviewed to reduce the number of prisoners in the facilities.

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Notable Possible Loss Scenarios continued...

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<th>United Air⁶</th>
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<td>- A United Air passenger is suing the airline for failing to issue a refund for cancelled flights.</td>
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<td>- This could be fairly seminal for the travel arena.</td>
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<td>- The case was filed in federal court in Chicago and relates to tickets that were purchased in January, to fly on 4th April 2020.</td>
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<td>- According to the plaintiff “United has engaged in unfair and deceptive conduct through its policy to issue refunds, limiting and forcing customers into a rebooked flight or travel voucher instead of returning their money”</td>
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<td>- The plaintiff was refused a $1500 refund, instead being offered the opportunity to rebook the flights at a later date or claim credit to use with the airline within a year.</td>
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