Friday, April 17, 2020

Your business is in the midst of the COVID-19 pandemic, applying for loans, revisiting your business model, and struggling to keep your employees retained and working remotely. You may be spending your time determining how the business will survive in the new normal. The renewal of your commercial policies of insurance may be the last thing on your mind.

Several state departments of insurance (DOIs) have issued notices regarding the cancellation or nonrenewal of personal and commercial policies of insurance that
may help you. The states in Jones Walker’s footprint fall into two camps. Some departments have very strict rules in place suspending the cancellation of insurance policies during this time. Other DOIs simply recommend that insurance companies work with policyholders to avoid cancellations for nonpayment. Below is a summary of the actions taken by several DOIs.

A. Louisiana: The Louisiana DOI has issued an “Emergency Rule” that applies to all types of insurance — life, auto, liability, fidelity, title, fire, crop, marine, homeowners, property and casualty, annuity, and surety. The Emergency Rule suspends any notice of cancellation, nonrenewal, or non-reinstatement that was in effect on March 12, 2020. So, if an insurer issued a notice of cancellation prior to March 12, 2020, with the cancellation effective after March 12, 2020, then such notice is void and will have to be reissued after the Emergency Rule expires.

Insurance companies may issue notices of cancellation for nonpayment during the pendency of the Emergency Rule. The period required by statute or the applicable policy will begin to run, but the policy cannot be canceled until after the Emergency Rule expires. Further, the only reason for cancellation while the Emergency Rule is in effect is for fraud or intentional misrepresentation on the part of the policyholder.

Importantly, in Louisiana, if your policy is up for renewal during the pendency of this Emergency Rule, then the policy “shall continue in full force and effect at the previously established premium under the expiration of Emergency Rule 40 ....” This would include surplus lines policies which are deregulated by the Department of Insurance. However, new policies of insurance issued on or after March 12, 2020, are not subject to the Emergency Rule.

Louisiana’s Emergency Rule provides that it does not excuse an insured from making premium payments. And any claim paid by the insurance company during the pendency of the Emergency Rule can be offset by the premiums due and owing from the insured.

B. Alabama, Florida, and Texas: These states have entered similar bulletins recommending that all insurance companies work with policyholders to avoid cancellation of all property, casualty, disability, accident, and health and life insurance policies. In general, these bulletins ask insurance companies to consider relaxing dates for premium payments, extending grace periods for payment, waiving late fees and penalties, and accepting payment plans with policyholders to avoid lapses in coverage. The import of these notices is that insurance companies should work with policyholders during this time of financial uncertainty.

C. Mississippi: The Mississippi DOI has adopted a hybrid approach. It has imposed a 60-day moratorium beginning on March 24, 2020, for any cancellation or nonrenewal of insurance policies. As under Louisiana’s Emergency Rule, insurance companies may issue cancellation notices during the moratorium, but such cancellations are not effective until after the moratorium has expired.

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