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Shapiro Sher was founded in 1972 with the mission of providing outstanding legal counsel for businesses of all sizes. Based in Baltimore, the firm is nationally recognized for its practices in business and real estate law, construction litigation, bankruptcy, and creditors' rights. For over four decades, the firm has provided invaluable representation to large corporations, emerging growth businesses, governments, non-profits, and individuals. Our real estate and construction attorneys are experienced in all aspects of acquisitions and dispositions of real property interests, development, leasing, and real estate finance.

David B. Applefeld heads Shapiro Sher's Construction and Real Estate Litigation Practice and represents developers, contractors, design professionals, and property owners throughout the Mid-Atlantic region and beyond. Mr. Applefeld has successfully litigated construction defect claims, landlord-tenant disputes, insurance coverage actions, mechanics' liens, and architectural and engineering professional negligence claims in all levels of state and federal courts, and before administrative agencies. Mr. Applefeld currently serves as Section Counsel to the Maryland State Bar Association's Construction Law Section, and has been nationally recognized by *The Best Lawyers in America*® in the area of construction litigation.

THE PANDEMIC RISK INSURANCE ACT OF 2020 GAINS INDUSTRY SUPPORT

By David B. Applefeld, Esquire

On April 20, 2020, several business trade organizations, including the Building Owners and Managers Association (BOMA) International, the National Restaurant Association, and the International Council of Shopping Centers (ICSC), sent a letter to Congress calling for the passage of the Pandemic Risk Insurance Act of 2020 (PRIA). The House Financial Services Committee, which oversees and makes recommendations on legislation relating to the insurance industry, is currently circulating the Act in discussion draft format.

PRIA is intended to create a reinsurance program for pandemics, similar to the Terrorism Risk Insurance Act (TRIA), which Congress passed in 2002 following the 9/11 terrorist attacks. The purpose of the legislation is to incentivize insurers to provide business interruption coverage for losses resulting from pandemics, such as the current coronavirus outbreak, by capping their exposure. If enacted, the legislation could apply retroactively and override virus and pandemic exclusions contained in insurance policies issued by participating insurers that are in place as of the effective date of the Act.

PRIA is in its early stages; however, proponents of the Act are advocating that the legislation backdate coverage to include Covid-19 losses. Some have suggested that PRIA could be combined with TRIA into a single act that would give insureds the opportunity to purchase both TRIA and PRIA coverage for a higher premium.

Subject to certain conditions, deductibles and caps, the program would cover insured losses arising from public health emergencies. In its current draft format, PRIA would require participating insurers to cover business interruption losses resulting from the outbreak of an infectious disease if the pandemic is declared an emergency by the President and certified by the Secretary of the Treasury (Secretary), who is charged with administering the program.

Under the proposed legislation, there is an aggregate per event deductible of \$250 million and an aggregate annual cap of \$500 billion. Once the aggregate insured losses exceed \$250 million, the Secretary would pay the Federal portion of the insured losses. As drafted, the Federal portion is currently 95% of the loss in excess of the applicable deductible.

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As an incentive to insurers to participate, there is a provision in the bill which would create a federal cause of action for property damage, personal injury, or death arising out of or resulting from a covered public health emergency. This new federal claim would preempt state law causes of action, and would be the exclusive remedy for such claims.

The proposed legislation is only in its early stages, but now has the support of the commercial real estate, hotel, and restaurant industries. Although Congress acted quickly in response to the pandemic by passing the Coronavirus Aid, Relief, and Economic Security Act, that legislation does not address insurance losses such as those which the proponents of PRIA now seek to tackle.

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