

May 20, 2020

The Honorable Nydia M. Velázquez
Chairwoman
U.S. House Committee on Small Business
Washington, DC 20515

The Honorable Steve Chabot
Ranking Member
U.S. House Committee on Small Business
Washington, DC 20515

The Honorable Jason Crow
Chairman
Subcommittee on Innovation and
Workforce Development
U.S. House Committee on Small Business
Washington, DC 20515

The Honorable Troy Balderson
Ranking Member
Subcommittee on Innovation and
Workforce Development
U.S. House Committee on Small Business
Washington, DC 20515

Re: May 21, 2020 virtual forum on “Business Interruption Coverage: Are Policyholders Being Left Behind”

Dear Chairwoman Velázquez, Ranking Member Chabot, Subcommittee Chairman Crow, and Ranking Member Balderson:

On behalf of the National Association of Insurance Commissioners (NAIC),¹ we appreciate the opportunity to submit this letter to share the insurance regulatory perspective for the May 21, 2020 virtual forum on “Business Interruption Coverage: Are Policyholders Being Left Behind.” As the Coronavirus Disease 2019 (COVID-19) continues to wreak havoc on our economy and take a devastating personal toll on our nation, state insurance regulators are committed to working at the state and federal level to help mitigate its damaging impacts. We thank Congress for the funding it has provided states to date as well as giving states greater flexibility to protect consumers and deal with ever-changing market dynamics. State insurance regulators recognize the tremendous financial hardships facing small businesses during this time and appreciate the committee’s attention to hearing about their experiences with business interruption insurance.

At the outset, let there be no doubt it is the expectation of state insurance regulators that insurance companies honor their commitments and pay claims that are covered by insurance policies. However, commercial insurance policies can differ considerably to account for the unique risks and needs of policyholders, and the specific terms and conditions of the policy need to be reviewed. As with all insurance policies, it is important for policyholders to review their policy documents, contact their

¹ As part of our state-based system of insurance regulation in the United States, the NAIC provides expertise, data, and analysis for insurance commissioners to effectively regulate the industry and protect consumers. The U.S. standard-setting organization is governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. For more information, visit www.naic.org.

insurance agent or broker for assistance, and connect with their state department of insurance if they have questions.

The current COVID-19 crisis has highlighted that many existing business interruption (BI) policies have specific exclusions for viruses or other diseases, and coverage is generally only triggered by actual physical damage. Therefore, these policies were generally not designed or priced to provide coverage for claims arising from COVID-19. This is not surprising as insurance works well and remains affordable when a relatively small number of claims are spread across a broader group. It is therefore not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period. Historically, some limited BI coverage for viral pandemics has been available as a separate endorsement or part of a separate policy from certain carriers, but few businesses chose to purchase it. In fact, the insurance industry estimates that only about 30 – 40% of small businesses purchase any business interruption coverage at all.²

Recently, there have been efforts to legislatively apply business interruption coverage retroactively to claims based on COVID-19. Notwithstanding the potential legal obstacles associated with such proposals, the NAIC opposes such proposals and has serious concerns that requiring retroactive coverage of BI claims based on COVID-19 would pose significant risks to the solvency of insurance companies and could have systemic impacts on the industry as a whole and potentially the financial system. While the U.S. insurance sector remains strong, according to industry estimates, the potential business interruption exposure estimates ranged from \$255 billion to \$431 billion a month, which would easily deplete the industry's cash, capital, and surplus in a very short period and undermine their ability to pay claims for other perils that are currently covered.³ It is also important to keep in mind that many of the insurance companies providing commercial business interruption coverage also provide home, auto, or other insurance for individual consumers. Jeopardizing the solvency of these institutions could have a direct impact on the ability of consumers to get claims paid for storms, auto accidents, or other perils uncorrelated with COVID-19.

For our part, state insurance regulators, through the NAIC, recently developed and issued a data call to collect business interruption information from insurers.⁴ This data will assist state insurance regulators and others in understanding which insurers are writing applicable coverage, the size of the market, the extent of exclusions related to COVID-19, and claims and losses related to COVID-19. The data call will also regularly collect loss and claims data so that regulators can obtain a sense of how claims are developing and the extent of payments by insurers.

Further, the NAIC has developed a Coronavirus Resource Center with information regarding insurance policy types that could be triggered as a result of COVID-19, consumer information, as well as a database of state bulletins and alerts, which is updated twice a week, to help the public keep track of state insurance regulatory actions taken across the country to protect consumers and ensure market solvency.⁵ We are also engaging internationally with our supervisory colleagues, many of whom are struggling with the same issues relating to business interruption insurance, and coordinating with our federal agency partners.

² See Suzanne Barlyn, *U.S. insurers want taxpayers to back pandemic coverage for businesses*, Reuters (April 29, 2020), <https://www.reuters.com/article/health-coronavirus-insurance-pandemics/u-s-insurers-want-taxpayers-to-back-pandemic-coverage-for-businesses-idUSL2N2CF270>; See also *Fact Sheet: COVID-19 & Business Interruption*, American Property Casualty Insurance Association (April 8, 2020), <http://www.pciaa.net/docs/default-source/industry-issues/national-faq-4-8-2020.pdf>.

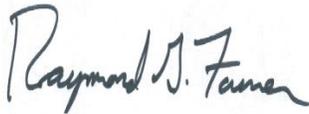
³ See *id.* *Fact Sheet: COVID-19 & Business Interruption* at <http://www.pciaa.net/docs/default-source/industry-issues/national-faq-4-8-2020.pdf>.

⁴ See *COVID-19 Property/Casualty Data Call*, NAIC, https://content.naic.org/industry_property_casualty_data_call.htm.

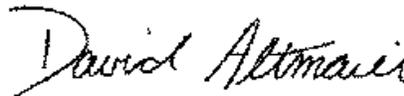
⁵ See *Coronavirus Resource Center*, NAIC, https://content.naic.org/naic_coronavirus_info.htm.

In conclusion, as state officials we are perhaps closer to small businesses than other financial regulators and see the impact this virus is having on our communities first-hand. We understand the financial stress that small businesses are under throughout this country and if they have valid claims for their insurers, we will make sure those claims are paid. But where there is no coverage, policymakers should not look to solve one type of financial crisis for small businesses by creating another for their insurers. Moving forward, if Congress believes that the business interruption insurance sector can play a vital role in addressing the policy challenges of future pandemics, we stand ready to work with Congress on such solutions. Thank you for your consideration of the regulatory perspective on these important issues.

Sincerely,



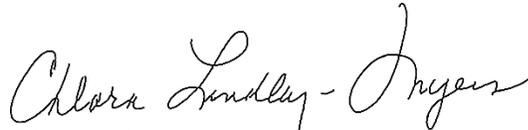
Raymond G. Farmer
NAIC President
Director
South Carolina Department of Insurance



David Altmaier
NAIC President-Elect
Commissioner
Florida Office of Insurance Regulation



Dean L. Cameron
NAIC Vice President
Director
Idaho Department of Insurance



Chlora Lindley-Myers
NAIC Secretary-Treasurer
Director
Missouri Department of Commerce and
Insurance



Michael F. Consedine
Chief Executive Officer
National Association of Insurance
Commissioners