

Politicians Target Insurance Contracts

Lawmakers want them to pay out even when coverage doesn't apply

By [The Editorial Board](#)

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Government shutdowns are wreaking widespread economic havoc, and now lawmakers are desperate for cash to shore up businesses that may have no choice other than to close. Some suggest that insurers should pick up the tab, but without a federal backstop this will generate more long-term economic damage.

Many insurers offer protection against the interruption of business as part of property insurance. When a storm, fire or other misfortune damages property, these policies allow businesses to seek reimbursement for lost profits and expenses like payroll or rent. But interruption insurance doesn't usually cover disruptions caused by a pandemic.

In the aftermath of the SARS epidemic, most insurers excluded coverage of losses due to viruses or bacteria, and state regulators signed off on this exclusion. But last week 18 Congress Members signed a letter calling on insurers to “help sustain America’s businesses through these turbulent times, keep their doors open, and retain employees on the payroll.”

Earlier this month New Jersey Assemblyman Roy Freiman, a Democrat, introduced a bill that would retroactively rewrite interruption coverage contracts and force insurers to foot some losses for any policyholder with fewer than 100 full-time employees. Mr. Freiman says he doesn't know if he has the legal authority to do this, but he says he doesn't care.

He has thus far held the bill from a final vote and asked insurers to “come back with solutions and actions that you're going to take on this issue.” This reminds us of former Gov. Chris Christie's demand that Horizon Blue Cross Blue Shield cough up hundreds of millions of dollars from its reserves for state opioid costs—or else. And since Mr. Freiman's bill was introduced, lawmakers in Ohio and Massachusetts have drafted similar legislation.

Small businesses need relief since they've essentially been forced by the government to shut down. But interruption coverage is intended to indemnify businesses for losses due to property damage, not losses in customers. Leaning on insurers to pay businesses for the coronavirus

would only make sense if the federal government or states backstopped insurers—effectively administering bailouts through the insurance industry.

The political temptation will be to simply raid and redistribute insurer cash reserves, transferring losses from one business to another. Premiums for all businesses would go up in the future. Business insurance premiums have already been surging due to a tort epidemic and an extended period of low government interest rates that have reduced their investment returns.

If business-interruption insurance can be stretched and exclusions nullified during a crisis, insurers will conclude that this product is not worth the risk and will eliminate the coverage. This pandemic will pass, but businesses may find themselves more exposed during the next flood, wildfire or hurricane.

The rule of law and contracts are crucial in a free society, especially in times of uncertainty when it is a restraint on bad policies driven by panic. If lawmakers invalidate contracts in a rush for cash, they will compound the harm from the virus.