REINSURANCE ASSOCIATION OF AMERICA

The Reinsurance Association of America is the leading trade association of property and casualty reinsurers doing business in the United States. RAA believes efforts to retroactively impose business interruption coverage would have long lasting harmful effects on the insurance industry.

What is business interruption insurance coverage and how does it work?

- Business interruption insurance covers financial losses (e.g., lost income, operating expenses) when a business can't function because of physical damage to a commercial property (e.g., a fire in a restaurant kitchen).

- It is typically an add-on coverage to a commercial property, commercial multi-peril or business owner's policy.

- Pandemics are generally not covered by traditional business interruption policies. Some insurers do sell an endorsement to provide pandemic coverage in certain situations.

Forcing insurers to make pandemic coverage retroactive is problematic - Why?

- Mandating retroactive pandemic coverage for which no premium was paid could result in catastrophic results for the industry, including insurer insolvencies. APCIA completed an analysis showing that monthly business interruption losses for pandemics for just US small businesses (there are over 30 million)[1] ranges from $54 billion to $383 billion.

- Based on available information, close to 40% overall, and less than 30% of small, commercial consumers purchase business interruption insurance coverage. Therefore, legislation retroactively amending existing business interruption insurance policies may only impact a fraction of the affected business community.

- If the government forces private insurers to retroactively cover COVID-19 claims that are not part of policies, it could not only jeopardize insurers' solvency but reduce their resources to pay for other claims (e.g. spring storm season, accidents, fire, floods, and other catastrophes). Hurricane season is just around the corner (June 1 – November 30), which may create further demand on insurers.

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[1] U.S. Small Business Administration, Small Business Profile. The SBA uses a "size standards" formula to define small businesses that varies by industry. Click here for more information.

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- Businesses will be reluctant to buy pandemic coverage in the future. Those businesses which purchased pandemic coverage will have paid premium for no valid reason, since coverage has been forced onto their policy by law.

- Insurers may be reluctant to offer pandemic coverage options in the future if the government mandates it be covered without contractual obligation. It could also change how insurers look at business interruption coverage.

- Bills retroactively mandating pandemic coverage may create impediments to small businesses securing federal disaster relief. Under most federal disaster relief programs, an applicant must certify that they have exhausted all other financial assistance options, including insurance, prior to seeking relief. While federal legislation, such as the RAA-supported CARES Act, is a step in the right direction, we remain concerned that unintended consequences from mandating pandemic coverage will delay a business' ability to obtain help from government relief programs.

- Reinsurers remain financially ready to meet obligations for which they have contracted, and for which primary insurers have contracted with their policyholders. We use that term "contracted" intentionally – when we start to look at potential exposures for retroactively mandated coverages, the financial picture changes for both commercial insurers and reinsurers.

- The National Association of Insurance Commissioners (NAIC) "caution[s] against and oppose proposals that would require insurers to retroactively pay unfunded COVID-19 business interruption claims that insurance policies do not currently cover."[2]

- Further, the NAIC advises "Business interruption policies were generally not designed or priced to provide coverage against communicable diseases, such as COVID-19 and therefore include exclusions for that risk. Insurance works well and remains affordable when a relatively small number of claims are spread across a broader group, and therefore it is not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period. While the U.S. insurance sector remains strong, if insurance companies are required to cover such claims, such an action would create substantial solvency risks for the sector, significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing."[3]

- The National Council of Insurance Legislators (NCOIL) advises "Our concern is that for legislatures or Congress to add such coverage after the fact would lead to a run on these

[2] NAIC Statement, March 25, 2020
[3] Id.

companies, because virtually every business would have such a claim and there are no reserves at all to pay them."[4]

- NCOIL leadership adds "We understand that professionals and businesses will be facing unprecedented, dire economic challenges; however, we cannot compound the damage to the broader economy by forcing insurers to pay claims for which they did not contract. To do so could destabilize these insurers and render them unable to pay claims for which they did accept the risk, and did rate & reserve. This could jeopardize the solvency of any number of insurers."[5]

- Some proposals tout an idea that insurers should act as claims administrators, fronting the money for business interruption claims caused by "government decree." Such proposals are highly problematic, because:

    - Insurers lack the surplus to front the money to pay such claims, even if the federal government would eventually reimburse them.

    - Insurers have raised concerns that limited claims adjuster resources would be overwhelmed by the massive amount of business interruption claims generated by such a nationwide program, which is in addition to their typical claim volume.

    - Such a program would inevitably cause delays in claims handling and payment for policyholders who do have valid and covered claims under their policies. This could lead to litigation against insurers who in good faith are trying to respond to a massive increase in claims volume.

    - It would create a bad precedent, in which insurers would simply be expected to make up front payments for uncovered claims.

- Retroactively changing coverage, aside from being unconstitutional, will:

    - diminish the state's reputation for upholding contracts, adding additional risk to insurers;

    - weaken insurers' balance sheets;

    - challenge their ability to address all other risks, catastrophic and routine;

[4] Letter from NCOIL to the Hon. Nydia M. Velazquez, Member of Congress, dated March 25, 2020
[5] Id.

    - force insurers to treat retroactive mandates as a new peril for which insurers must rate.

What are the best solutions moving forward?

- The RAA, along with other national insurance trade associations, supported passage of the Coronavirus Aid, Relief, and Economic Security (CARES) Act as a necessary step to address the challenges associated with the COVID-19 pandemic.

- Additionally, the RAA also supports creating the COVID-19 Business and Employee Continuity and Recovery Fund. The Fund would be funded by the federal government and under the authority of a special Fund Administrator. The Fund would help businesses retain and rehire employees, maintain worker benefits and meet operating expense obligations.

- The RAA welcomes an active dialogue between the insurance industry, state and federal legislators on long-term proposals to address pandemic risks.

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