NW Insurance Council | NAMIC NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES | American Property Casualty Insurance Association INSURING AMERICA apci.org

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Dear Co-Chair Sen. Roblan, Co-Chair Rep. Holvey and Committee Members:

Thank you for your leadership and effort to provide assistance and services to Oregon's businesses, employees and families during this time of unprecedented disruption and uncertainty.

Like other states across the nation, Oregon, under the orders of Gov. Kate Brown, has closed restaurants and bars, and may be considering other business closures as well. This of course has a devastating impact on literally thousands of employers and tens of thousands of workers and their families across the state.

Insurance companies and agents are working hard to respond to policy and claims inquiries from our policyholders across the state. We want you to know that insurers stand ready to pay all legitimate claims for covered losses as they are reported. However, we must also remind legislators that longstanding provisions that have been a part of standard Business Owners and Commercial Property insurance policies over many years specifically exclude business interruption coverage if the loss is caused by virus or bacterial infections.

We are aware that some interests are calling for legislation to overturn this longstanding policy contract language *retroactively*, to require insurance companies to waive the virus exclusion and pay business interruption coverage to business owners affected by the Governor's order to close. Insurers would vigorously oppose such legislation. A similar bill was recently introduced in New Jersey. Legislators there have considered it, but have not passed it.

On behalf of our member companies, insurers that write the great majority of property & casualty insurance policies in force in Oregon, we would like to provide some background information for Oregon legislators to consider.

Business Interruption Coverage for business closed by civil authority

Standard commercial property policies (including business interruption) typically provide coverage for <u>physical damage</u> caused by things like fire, theft or closure of the business due to a covered disaster event, like a snow or wind storm, wildfire or ruptured natural gas line. Coverage is also available (though rarely purchased by businesses) for times when such disasters trigger an order from a civil authority – city, county, state or federal government – to close a business due to covered physical damage to the insured property. When such events occur, these policies typically cover loss of business income and some expenses but may also cover things like wages for employees, damage to business structures and loss of perishable foods or other inventory, and damage to or loss of furniture & equipment, up to the limits of the policy selected by the policyholder. Premiums for these policies vary by risk level, coverages and policy limits, deductibles and other factors disclosed and negotiated by the insurance company, the agent or broker and the policyholder.

Exclusions for virus/bacterial epidemics

Standard Business Owners Policies, or "BOPs" – as well as commercial auto and commercial umbrella policies – specifically **exclude** losses caused by communicable disease, including viruses and bacterial infections. These are longstanding policy exclusions; they are not new, nor have they been adopted specifically in response to the current COVID-19 pandemic. While there are policies or endorsements that may provide at least limited coverage for virus or bacteria-related illness, these are relatively rare in the insurance marketplace, and it is unlikely many business owners have purchased this additional coverage. During the present crisis, it may be difficult to find this coverage today, but as the spread of the illness is contained, policies/endorsements will likely become more available. Even where it is available, it is not possible to purchase the coverage today and apply it to current business closures (it would be the equivalent of purchasing auto insurance coverage after a collision has occurred).

The problems with retroactively "changing" policy provisions

In New Jersey, legislators have considered – but have not approved – legislation requiring "every policy of insurance insuring against loss or damage to property" to include the pandemic itself as a covered peril. Not only that, the legislation would apply *retroactively* and require that "loss of business or business interruption" from the pandemic would be covered by all property insurers even if someone did not purchase coverage for any loss of business itself. Insurers strongly oppose such proposals for several important reasons.

- Because the insurer and the policyholder have agreed in a contract that viruses are not covered, that means no premium has been collected by the insurance company to pay those claims. The policy purchased by each policyholder is priced to cover what it covers, not what it excludes. Unlike "localized" disasters, like fires or hail/wind/snow/rainstorms, the COVID-19 pandemic is a worldwide crisis that would bankrupt insurers if every business could file claims for damages for which no premiums have ever been paid. The other causes of loss – fires, theft, storms and other factors – still occur and must be paid by insurers under the terms of the policies in force; there is no "extra money" to pay claims resulting from excluded losses.
- Because requiring insurers to consider claims for business interruption would interfere with the ability for those same businesses to seek federal relief that is currently being offered on an expanded basis across the nation. As an example, a business seeking a Small Business Administration low-interest loan is required by that agency to exhaust all other potential sources of relief, including any available insurance recovery, BEFORE beginning the SBA loan process.
- Retroactively changing policy contracts between insurers and policyholders would be in direct conflict with the U.S. Constitution non-impairment clause designed to safeguard the integrity of contracts against unwarranted interference by the State. As a rule, contracts should not be tampered with by subsequent laws that change or modify the rights and obligations of the parties.

To be clear, our industry understands the urgency of helping businesses and individuals recover. Indeed, that is our business and we have strong contingency and catastrophe plans working now to deliver for our customers while protecting them and our employees in these challenging times. Nonetheless, what policies cover, the insured perils, are foundational to our industry's risk, products, pricing and stability. Changing laws to interfere in existing policies so that they include disease and virus outbreaks as insured perils over and above the physical damage to property from known risks like fire, wind and hail, would profoundly disrupt property insurance products and the property insurance marketplace in Oregon.

Retroactively rewriting insurance contracts creates significant solvency risks and could inflict long-term damage against consumers and businesses. Changing property insurance perils to cover a new disease peril retroactively is unprecedented. We have not seen legislation or regulation to retroactively change insured perils or contracts after the fact before; not after Hurricane Andrew, 9/11, Hurricane Katrina, Deepwater Horizon, H1N1, the Boston Marathon attack, California Wildfires or Superstorm Sandy. And consider, with the exception of the H1N1 virus, those disasters – costly and devastating as they were – were regionally localized. The present COVID-19 crisis is not local. It is not national. It is global. The cost impact of retroactively changing insurance policies cannot be overstated. It is not even possible to estimate it as the crisis continues to unfold.

What should owners of closed businesses do?

Chances are, most business owners policies in Oregon **exclude** coverage for the COVID-19 pandemic. But we still recommend business owners check with their insurance company, agent or broker to better understand their available coverage and see if they have any options for the present crisis or for future disasters. We are also aware that unprecedented efforts are now underway at both the federal and state level to provide relief to business owners, employees and their families. Business owners and policymakers need to examine these very sizeable programs before taking drastic actions to change contracts.

Oregon's insurance companies hold more than $6 billion in municipal bonds that support Oregon's economy. Property & Casualty Insurers pay $3 billion in claims to Oregon policyholders, remit $68 million in premium taxes to the state, along with a wide range of other state and local taxes, and employ more than 2000 Oregonians, with a total Oregon payroll of $156 million per year. We are members of every Oregon community and we are here, standing alongside our neighbors, through this crisis.

We appreciate the opportunity to share this information with you, and we stand ready to provide additional information at your request.

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