

MEMORANDUM

To: Members, House Committee on Small Business
From: Nydia M. Velázquez, Chairwoman
Date: May 21, 2020
Re: Committee Forum: “Business Interruption Coverage: Are Policyholders Being Left Behind?”

The Committee on Small Business will hold a bipartisan virtual forum to hear from business interruption insurance policyholders, policyholder advocates, and insurance industry advocates regarding business interruption policies in the COVID-19 era. The forum is scheduled to begin at **1:00 P.M. Eastern on Thursday, May 21 via webcast and dial-in (information to be provided)**. Members will have the opportunity to learn more about the issues policyholders have faced in making pandemic-related insurance claims, and will explore various proposed solutions. The panelists will be:

Panel:

- Chris Morrow, Owner, Northshire Bookstore, Manchester Center, VT & Saratoga Springs, NY
- Francisco Schlotterbeck, CEO, Maya Cinemas, Pasadena, CA
- Mark Shaker, Co-Founder, Stanley Marketplace, Aurora, CO
- John W. Houghtaling, II, Managing Partner, Gauthier Murphy & Houghtaling LLC, Metairie, LA
- Sean Kevelighan, President and CEO, Insurance Information Institute, New York, NY

Background

Business interruption insurance generally covers the loss of income a business may suffer after a disaster. Business interruption coverage may apply when the business is physically damaged by a disaster or has to re-build because of a disaster. A business interruption policy may be a separate policy the business owner purchases or may be included in their general insurance coverage.

Since the novel coronavirus and COVID-19 were declared a global pandemic, many states have issued stay-at-home orders, forcing small businesses to close their doors to slow the spread of the virus and disease. Those firms that have business interruption insurance policies have been trying to make insurance claims with only limited success. This is due largely to the fact that most business interruption insurance policies do not explicitly cover viral pandemics. However, there are also reports that businesses whose policies are silent as to pandemic coverage are still being denied.¹

As a result, some small business owners have turned to the courts for relief. For example, a Philadelphia-based restaurant has already filed a lawsuit in federal court asking the court to force its insurance carrier to cover financial losses incurred while it is closed due to the COVID-19

¹ CNBC, “Insurers are denying coronavirus claims. Restaurants are fighting back,” (Apr. 20, 2020), <https://www.cnbc.com/2020/04/20/insurers-are-denying-coronavirus-claims-restaurants-are-fighting-back.html>.

crisis.² Some of the litigation, such as a class action lawsuit brought by San Francisco-based clothing boutique Mudpie Inc., alleges that insurance companies are denying claims with little or no investigation, and without regard for the interest of policy holders.³

In light of this inability to access insurance payouts, proposals have been discussed to provide relief for small businesses with business interruption policies that do not cover pandemics.

Proposals

H.R. 6494

On April 14, Rep. Mike Thompson (D-CA) introduced H.R. 6494, the Business Interruption Insurance Coverage Act of 2020. The bill directs insurance companies to, in all its business interruption insurance policies, provide coverage for losses resulting from viral pandemics, forced closures by the federal, state, or local governments, or any power shut-off conducted for public safety purposes. The bill also nullifies any existing contractual provisions that exclude coverage for such losses.

Include Pandemics as part of the Terrorism Risk Insurance Act.

In the aftermath of 9/11, Congress enacted the Terrorism Risk Insurance Act (TRIA), which created a federal program that provides for a transparent system of shared public and private compensation for certain insured losses resulting from a certified act of terrorism. The original legislation also had the goals of protecting consumers by ensuring the availability and affordability of insurance for terrorism risks, and preserving state regulation of insurance. Though initially designed to sunset after three years, it has been extended numerous times. Some advocates have discussed prospectively amending TRIA so that it can cover losses from viral pandemics.

Conclusion

As the small business economy continues to struggle, Congress must continue to seek solutions that help entrepreneurs keep workers employed and maximize their chance of long-term survival. Many small businesses attempted to do so by purchasing business interruption insurance products. However, too many policyholders currently believe like they are being unfairly penalized by not having losses covered, despite taking the prudent step of purchasing business interruption insurance in the first place. This forum will give Members of the Committee the ability to hear from policyholders and interested stakeholders about this important issue impacting small businesses.

² The Philadelphia Inquirer, "South Philadelphia restaurant River Twice sues insurance company to cover coronavirus losses," (Apr. 23, 2020), <https://www.inquirer.com/health/coronavirus/coronavirus-business-interruption-insurance-claim-restaurant-river-twice-philadelphia-chef-20200413.html>.

³ Insurance Journal, "California Retailer Sues Travelers for Denied COVID-19 Business Interruption Claims," (May 12, 2020), <https://www.insurancejournal.com/news/west/2020/05/12/568343.htm>.