

# COVID-19 – A National Problem in Search of a National Solution

AS MANY PEOPLE MISTAKENLY LOOKED TOWARD BUSINESS INTERRUPTION INSURANCE TO SAVE THE ECONOMY FROM THE IMPACTS OF COVID-19, NAMIC HAS BEEN BUSY LETTING POLICYMAKERS KNOW WHY PANDEMICS ARE UNINSURABLE.

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As the COVID-19 pandemic has taken the country into uncharted territory, the reactions have been equally off the charts as lawmakers and regulators grasp for some way, any way, to help the citizens and businesses in their states. While the desire to help is understandable, the unfortunate target of their hoped-for solutions has been property/casualty insurers.

Regulators across the country have issued a virtual avalanche of bulletins and orders that have pressed insurers to help struggling policyholders in myriad ways. Legislators jumped into the fray as well. Their focus is business interruption insurance, which was widely seen as the way to save businesses during many states' stay-at-home orders. But business interruption insurance does not cover communicable diseases such as COVID-19.

That didn't stop legislators from trying to make it cover a pandemic. Several states — Louisiana, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and South Carolina — and Washington, D.C. moved rapidly toward legislation designed to force carriers to retroactively cover COVID-19 losses under business interruption policies.

*The NAMIC advocacy team pushed for a full rejection of this concept, explaining to policymakers that not only is such legislation unconstitutional, it would devastate the insurance market. Erin Collins, NAMIC's vice president of state affairs, says it has been an uphill battle to get lawmakers to understand the true impact.*

"I told legislators that in Massachusetts alone, we estimated mandated business interruption coverage for pandemics to cost between three billion dollars and seven-and-a-half billion dollars per month," Collins says. "If we extrapolate these figures for each state, it's pretty clear that a pandemic is simply not an insurable event and is

not contemplated or covered in the typical insurance contract. But that didn't stop some legislators from pushing insurers to provide the 'magic bullet' to save local economies."

Collins notes that in early April, Louisiana introduced three business interruption measures in a single day. At the same time, NAMIC and its trade partners met with two Wisconsin legislators who aimed to introduce legislation to mandate coverage. They ultimately shifted tactics after hearing the projected impact on the industry. A New Jersey bill seemed stagnant on the Assembly floor at press time, but leadership vowed to reinvigorate it should Congress not move quickly to provide small-business economic relief. Given the uncertainties of the effectiveness of virus response efforts, many states at press time were contemplating special summer legislative sessions dedicated to COVID-19 issues.

Not to be outdone by the states, Congress experienced a similar reflex when a bipartisan group of lawmakers wrote the industry to inquire if business interruption policies would cover COVID-19 losses. As with the states, the response from NAMIC and others was to educate legislators about how seeking business interruption coverage would



go against the Constitution, rewrite already-agreed-upon contracts, and endanger the industry and policyholders by depleting the funds held to pay covered claims for business interruption and other lines of business. Estimates, based on the number of small businesses and the assumption that only some would file reasonable claims, projected that the entire industry surplus would be drained after only a few months, just in time for hurricane season and peak times for wildfires and other extreme weather.

NAMIC has argued that the sheer scale of the pandemic makes it impossible for the insurance industry, or any industry for that matter, to save the day. By late March, Congress had already passed the CARES Act, a \$2.3 trillion economic rescue package, the largest in the nation's history, with the goal of providing direct funding for Americans and forgivable loans for small businesses to maintain payroll during the crisis. That federal response is how it should be, according to **Jimi Grande**, NAMIC's senior vice president of government affairs.

*"The widespread scope and scale of the guaranteed economic losses resulting from COVID-19 mean the losses are going to hit everyone at virtually the same time," Grande says. "This kind of all-encompassing event is precisely what a federal government is built for. The bottom line is this: COVID-19 is a national problem and it requires a national solution."*

On April 24, President Donald Trump signed into law a follow-up aid package of nearly \$500 billion to extend help for businesses. Yet, as lawmakers looked to help Americans through the current pandemic, others began contemplating how we can prepare for the next outbreak and protect the economy from a similar nationwide halt.

One proposal is the concept of a federal backstop for pandemics, similar to the recently reauthorized Terrorism Risk Insurance Program. In fact, an early draft of the proposal used language directly from the legislation creating TRIP. The proposal picked up a degree of support from at least one well-known brokerage firm, but NAMIC raised significant questions about the appropriateness of such a system for pandemics and the potentially serious negative impact such a system could have on the marketplace.

While the concept seems simple and proponents argue that it limits potential losses for the industry, it fails to recognize the same fundamental issue that earlier "solutions" ignored, namely that pandemics are uninsurable events for which risk simply cannot be spread. In terrorism events, losses may be extreme, but they are also focused and localized. With COVID-19, the loss has been seen in nearly every community across the country. There's no ability to spread a risk, because there's nowhere to spread it. As such, a pandemic backstop would at best be an added layer

of bureaucracy for businesses affected by a pandemic and a significant potential loss for companies. At worst, it could lead to numerous insurers, particularly smaller companies, risking insolvency or being pushed from the marketplace.

NAMIC continues to work toward practical solutions to the crisis and has joined with members of the policyholder community to support the establishment of a direct-aid fund similar to the one established after 9/11. The COVID-19 Business and Employee Continuity and Recovery Fund would be administered independently of any industry and provide direct relief swiftly and efficiently to businesses affected by the slowdown. 

