

Minutes
Public Act 101-0640
Business Interruption Task Force Meeting #2
September 14, 2020
10:00-11:00pm
Locations:
CALL-IN ONLY
Call-in Information
Phone Number: 1-312-535-8110
Access Code: 1337463769#

I. Opening Comments

Erica Weyhenmeyer welcomed members and guests to the Business Interruption Task Force Meeting and thanked the members for volunteering their time and expertise for the duration of the meetings. She also stated the objective as outlined by the statute, which is to “Study the impacts of the COVID-19 pandemic on businesses and the need for changes to business interruption insurance policies based on those impacts, including recommendations for legislation.”

Erica noted that task force members, when answering questions from the public or media, are not authorized to speak on behalf of the task force. She stated that since this is an open meeting, if there are any members of the public or media present, they should be aware that if speaking with a task force member, any comments by the task force members do not represent the opinion of the task force. This distinction ensures the group is consulted before any formal communication is made on behalf of the task force. She also made clear that the task force does not intend to issue a public comment prior to the final report. The intent of this is to foster open dialogue as the group prepares recommendations. The final report will be the only public comment made by the task force.

She stated that the task force is designed to consider possible systemic issues with business interruption policies and will not be commenting on any pending legal action or complaints filed with the Department. If any guests at the meeting are an active party of a lawsuit, she asked they please be aware that this is a deliberative body intended to examine gaps in coverage offerings. Statements made by task force members as part of this review do not reflect legal analysis and are not intended to be used in any pending or future litigation.

Erica then went over guidelines related to the technological platform being used.

II. Introductions and Roll Call of Members/Guests

Erica asked members and guests to introduce themselves.

Members in attendance (alphabetically):

1. Saat Alety, Allstate
2. Chuck Feinen, State Farm
3. Norine K. Hammond, Representative
4. Napoleon Harris, III, Senator
5. Thaddeus Jones, Representative
6. Kevin Martin, Illinois Insurance Association
7. Andrew Perkins, National Association of Mutual Insurance Companies
8. Lauren Peters, Department of Insurance
9. Sue Rezin, Senator

10. Steve Schneider, American Property Casualty Insurance Association

Companies with an announced attendee (alphabetically):

1. Allstate
2. American Family
3. American Property Casualty Insurance Association (APCIA)
4. Century Insurance
5. Chubb
6. CNA Insurance
7. Country Financial
8. Horace Mann Insurance
9. Illinois Insurance Association
10. ISO
11. Liberty Mutual
12. Nationwide
13. Shaddock & Associates
14. Travelers
15. Bob Hartwig of University of South Carolina on behalf of AICPA
16. Zach Stamp
17. Zurich North America

III. Minutes Adoption

Representative Jones stated that Matt Young sent him an unwanted email. Representative Jones stated that people should announce themselves or state if they are recording the meeting. He asked that no one email him individually or send him unsolicited emails. Matt Young that spoke up and said that he was on the call and was not recording, nor had he recorded the previous meeting. Representative Jones said that he does not want to be party to a lawsuit and individuals should state their questions in the public comment section of the meetings. Representative Jones also requested that the Department of Insurance have legal counsel on the call. Erica confirmed that legal counsel was on the call.

Erica asked if there were any corrections to the draft minutes from last meeting. No corrections were suggested. Erica asked if there was a motion to accept the minutes. Representative Jones made a motion to accept the minutes. Chuck Feinen seconded the motion.

IV. Objectives

Erica restated the objective of the Task Force, which consistent with PA 101-0640, is to “Study the impacts of the COVID-19 pandemic on businesses and the need for changes to business interruption insurance policies based on those impacts, including recommendations for legislation.” A report on findings and recommendations is due to the Governor and General Assembly by December 31, 2020.

V. Update on NAIC Data Call on Business Interruption Insurance National & State specific

Erica gave an update on the National Association of Insurance Commissioners’ (NAIC) Update on Business Interruption Insurance Data Collection: This data call collected total commercial multiple peril premium breaking it out into business owner’s policies versus commercial multiple peril policies. Total premium for business income is separately reported.

National Data: (As reported by the P&C C Committee at the Summer National Meeting)

- i. Nearly 8 million commercial insurance policies include business interruption coverage. Of those, 90% were for small business, as defined as having 100 or fewer

employees; 8% for medium businesses; and 2% for large businesses, as defined as having more than 500 employees.

1. 83% of all policies included an exclusion for viral contamination, virus, disease or pandemic, and 98% of all policies had a requirement of physical loss. Small policyholders generally have a higher percentage of policies with exclusions.
2. Total sum of premium was \$44.2 billion, of that \$9.2b is Business Owners Policies, and \$35 billion is Commercial multiple peril.
 - a. Of this total premium 4.90% is specifically premium collected for business income coverage.

Illinois Data:

- i. Included in those national numbers is a little more than 355,000 commercial policies written in Illinois. 92% were for small business; and 7% for medium business with 1% for large.
 1. Total sum of premium \$2.3 billion, of that \$490 million is Business Owners Policies, and \$1.8 billion is Commercial Multiple Peril.
 - a. Similar to the national numbers, 4.04% of the total premium is collected for business income coverage.

A noticeable gap in this data is while we have a breakdown of number of policies for small/medium/large businesses it does not specifically tell us how much premium for business income is dedicated to each size.

VI. Brief 10-15 minute presentation by Dr. Bob Hartwig followed by discussion

Prior to the presentation, Erica noted that this task force may choose to invite a number of experts to present to the group over the course of these meetings. The presentations by experts should not be construed as the endorsement of the group of their views. This will allow the group to hear a broad array of perspectives. When recommending a speaker, a bio should be submitted to the group prior to the meeting the speaker is scheduled to present. Additionally, the Department will provide baseline questions for the speakers to address in their presentation to get the discussion started and task force members will have an opportunity to ask additional questions at the end. In an attempt to get things started here the list of questions for Dr. Hartwig to address.

- a. Core concept of insurance/contracts.
- b. What is business interruption insurance? What purpose does it serve?
- c. What does a business interruption policy cover?
- d. Viruses vs. voluntary or mandatory government orders.
- e. What is the history of virus or pandemic exclusions?

Dr. Hartwig works for the University of South Carolina and was speaking at the request of the AICPA. He stated that he spent 23 years in private industry prior to his previous job, most recently as the President of the Insurance Information Institute (III). He is a graduate of the University of Illinois.

He discussed how insurance operates and how it operates during a pandemic. He stated that business continuity risk, or business interruption, is fundamentally uninsurable in private industry.

He stated that insurance is loss pooling and distributing losses across the broader population. It only works if a small segment of the population suffers a loss at any one time. The ability to spread risk in a pandemic is severely compromised. He stated that not all risks are insurable and they never have been. He referenced Figure #1 in his white paper, which was previously distributed.

Dr. Hartwig addressed what business interruption insurance covers. It covers the reduction of income and the increase in expense as a result of a covered business interruption loss. The coverage is optional and must be purchased. To trigger the loss of business income, the interruption must be linked to the restoration period while business is suspended during repairs due to a direct physical loss. Loss must come from a covered cause of loss. A business interruption loss in the absence of a physical loss is never covered.

Since mid-2000's, approximately 2006, business interruption coverage included explicit exclusion for viruses, micro-organisms, and pandemics. Viral outbreaks have been and always will be uninsurable, even without an exclusion. Dr. Hartwig said this is really important. The reason being that there is no physical damage. The coronavirus does not result in direct physical damage.

Dr. Hartwig quoted the business losses per month for businesses with 100 or less employees and for businesses with up to 500 employees and compared that to the much smaller premium for the coverage. The losses dwarf the premium. He then compared the monthly losses to the policyholders' surplus for the property and casualty insurance industry and then to the portion of that surplus that is specific to commercial insurers. Potential business interruption losses are so large, they would threaten the solvency of the entire property and casualty insurance industry in just a few weeks or months.

In summary, Dr. Hartwig repeated that business interruption losses due to a pandemic are not insurable and can only be handled by the government.

Kevin Martin asked Dr. Hartwig if he was familiar with and could discuss what was going on at the federal level. Dr. Hartwig stated that a number of proposals had been put forth. He mentioned a program called Business Partnership Protection Program. It is managed by FEMA and is a disaster relief program. Under this program, insurers do not bear any of the risk, but rather facilitate getting cash in the hands of businesses. There is another proposal modeled after the terrorism act, but for pandemics. Both of these plans recognize that losses are so extraordinarily large that they cannot be managed through the private insurance sector.

Representative Jones wanted to know why Dr. Hartwig didn't reference SARS. Dr. Hartwig said that SARS also did not involve physical damage. SARS was much smaller in scale, but was the genesis for including exclusion clarification. He stated again though that these exclusions only reinforce what was already the case.

Representative Jones asked about triggers. If the pandemic leads to looting, are rioting and looting business interruption losses covered. He also asked if the Executive Order being in effect would trigger the coverage. Dr. Hartwig said the rioting/looting losses and pandemic closures are separate occurrences.

Representative Jones asked what solution Dr. Hartwig would suggest for Illinois, specifically in addition to federal solutions. And can we wait for a federal solution. Dr. Hartwig responded that losses of this magnitude simply cannot be financed by the private insurance industry. It will take time for a federal solution and it won't be perfect, but it is the best option.

VII. Structure of Meetings/Next Steps

The extension of the meeting time to 90 minutes was discussed. Representative Jones made the motion to extend future meetings to 90 minutes, Saat Alety seconded the motion.

Erica asked if there were any suggestions for future agenda items or additional speakers. Kevin Martin suggested that a summary of the status of potential federal solutions would be helpful, if there were

someone who could speak to that. Erica said she would reach out to the NAIC on this to see if someone from there would be willing to speak.

VIII. Comments

The meeting was opened for public comments. There were no comments.

IX. Adjourn

The Meeting adjourned at 11:02 AM