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Potential COVID-19 business interruption insurance claims in context

May 2020

I. Introduction

In the United States, as in many other countries, the response to the COVID-19 pandemic has resulted in the shut-down of many businesses and disruption in many others. There is currently some uncertainty about the extent to which loss of income will be covered by business interruption insurance. A number of lawsuits have already been filed over business interruption coverage disputes between policyholders and insurers.[1] Insurers and trade groups have noted that pandemics are excluded in many current business interruption insurance policies and these policies were not designed to and do not provide coverage for diseases such as COVID-19. On March 18, 2020 members of Congress sent a letter to insurance industry associations urging them to work with insurance companies to "recognize financial loss due to COVID-19 as part of policyholders' business interruption coverage."[2] In addition, a number of state legislatures have proposed bills to require insurers to retroactively cover COVID-19 related business interruption losses even if such losses are not covered by the plain language of the insurance policy.[3]

Business interruption insurance typically provides coverage for lost income sustained when a covered event results in reduced operations or a closure of a business.[4] Business interruption insurance is usually included as part of a commercial property insurance policy, added to a business owner's policy, or included in a package (multiple peril) policy.[5] Many policies specify that there must be physical damage to the property from a covered peril in order to trigger coverage.[6] Insurance policies typically exclude coverage for communicable diseases such as COVID-19.[7] In 2006, ISO (Insurance Services Office) added an endorsement to its commercial property policy language called "Exclusion of Loss Due to Virus or Bacteria" stating "there is no coverage for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing

1 For example, a Chicago movie theater and a group of restaurants sued their insurance company for wrongful denial of "coverage for work interruptions resulting from a state-mandated shutdown of their businesses to help slow the spread of COVID-19." ("Restaurants, Theaters Want Coverage for COVID-19 Shutdown," Law360, March 30, 2020); a sports bar in Florida sued its insurance company for wrongful denial of coverage for the state-mandated closure of the business ("Florida Sports Bar Says Lloyd's Must Cover COVID-19 Closure," Law360, April 2, 2020), and a dental clinic in Illinois sued for wrongful denial of coverage over the loss of business suffered from the COVID-19 pandemic ("Dentist Sues Cincinnati Insurance Over Pandemic Coverage," Law360, April 8, 2020.)

2 Letter from Members of Congress to APCIA, NAMIC, IIABA, CIAB, dated March 18, 2020.

3 "COVID-19: States Attempt to Shift Economic Burden to Insurance Industry with New Legislation on Business Interruption Coverage," Schiff Hardin, April 9, 2020.

4 Business interruption insurance is also be referred to as business income insurance or business income coverage. See for example, the Insurance Risk Management Institute (IRMI) Glossary of Insurance and Risk Management Terms, Business Income Coverage entry, available at: https://www.irmi.com/term/insurance-definitions/business-income-coverage.

5 Insurance Information Institute, "Do I need business interruption insurance?", "Covering losses with business interruption insurance."

6 Insurance Information Institute, "Covering losses with business interruption insurance."

7 "NAIC Insurance Brief – COVID-19 and insurance" available at https://content.naic.org/sites/default/files/inline-files/Insurance%20Brief%20-%20Covid-19%20and%20Insurance.pdf

physical distress, illness or disease."[8] However, not all policies have this language and the extent to which a particular policy excludes the specific circumstances experienced by a business during the COVID-19 pandemic is a matter that is being litigated among many policyholders and insurers.

In this article, AlixPartners consultants Anne Gron and Georgi Tsvetkov provide context for assessing the scale of potential COVID-19 business interruption claims and relate the COVID-19 insurance experience to historical events in the insurance industry.

II. Insurance industry metrics for considering the scale of potential business interruption claims

The American Property Casualty Insurance Association, or APCIA, estimates that closure losses associated with COVID-19 for businesses with 100 or fewer employees are between $255 and $431 billion per month.[9] As of the end of April 2020, a number of states are halfway into the second month of various forms of restricted business activity and resident mobility. Using the APCIA estimate and assuming that business closures last a month and a half, then the potential claims from business interruption losses for small businesses would be $383- $647 billion.[10] The APCIA also estimates there is the potential for 30 million business interruption claims from small businesses.[11] In this section we look at insurance industry financials to put these estimates into perspective.

1. Property/casualty industry premiums and losses

The first metrics we consider are annual business interruption premiums and loss costs. Property/casualty insurance industry statistics do not report business interruption premiums and losses separately; they are typically included in commercial property policies. Many of the policies that cover business interruption insurance are reported in the commercial multiple peril category of insurance industry statistics.[12] These include business owners' policies and commercial package policies. As the names suggest, in addition to business interruption, these policies typically have other coverages such as damage to property by perils such as fire, wind damage, vandalism, smoke and liability from an accident at the business resulting in bodily injury or damage from a defective product. Thus, premiums and losses for commercial multiple peril policies overstate premiums and losses for business interruption only.

As shown in figure 1 below, in 2018, property/casualty insurers' net earned premiums for commercial multiple peril coverage was $37 billion, about 6% of the $603 billion aggregate net earned premiums by insurers for all property/casualty lines of business.[13] For additional context, the combined net earned premiums for commercial multiple peril policies and for other commercial property insurance (to which a business interruption rider might also be added) was $71 billion, about 12% of aggregate industry premiums.

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8 ISO Circular, "New endorsements filed to address exclusion of loss due to virus or bacteria," July 6, 2006. ISO is an advisory and information gathering organization to property/casualty insurers. As part of its advisory work, ISO develops and files policy language with state insurance departments that insurers can use in their products. (See, https://www.verisk.com/insurance/about/faq/#)

9 "APCIA Releases New Business Interruption Analysis," American Property Casualty Insurance Association, April 6, 2020.

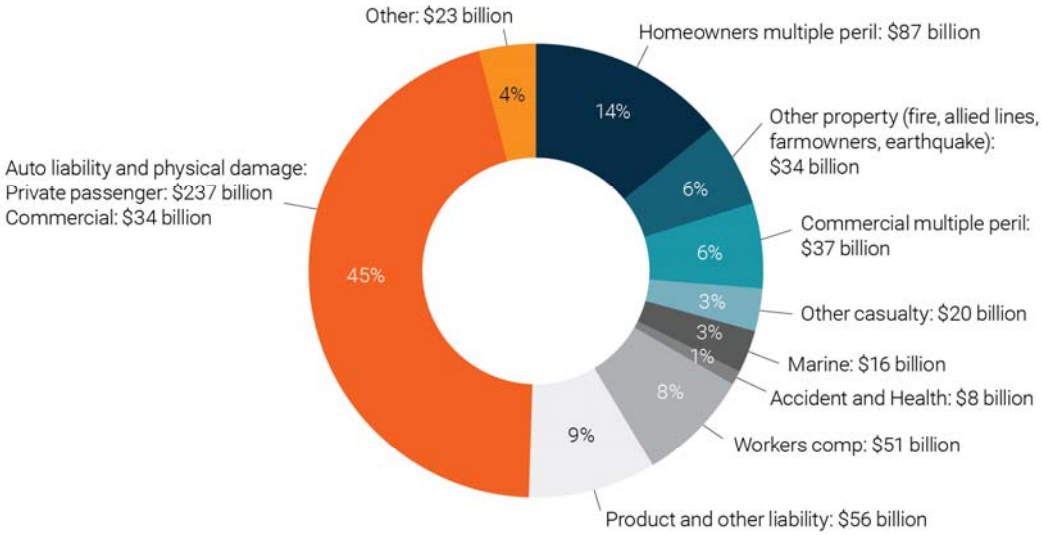
10 This estimate provides a benchmark of the magnitude of potential claims if the insurance industry were to cover most lost income from small business closures. Business closures and disruption are likely to continue beyond the period of this benchmark. The benchmark estimate does not consider the effect of deductibles, limits, coinsurance, or policy language.

11 "APCIA: Insurance Perspective on COVID-19," American Property Casualty Insurance Association, March 26, 2020.

12 See Insurance Information Institute, "Covering losses with business interruption insurance," available at https://www.iii.org/article/covering-losses-with-business-interruption-insurance and National Association of Insurance Commissioners, "Uniform Property & Casualty Product Coding Matrix," Effective January 1, 2017.

13 "NAIC Statistical Compilation of Annual Statement Information, for Property/Casualty Insurance Companies in 2018," NAIC, p. 22. Available at: https://www.naic.org/prod_serv_publications.htm. Earned premiums are the premiums from the business that is in-force during the accounting period.

FIGURE 1: COMBINED PROPERTY/CASUALTY INDUSTRY 2018 NET EARNED PREMIUMS BY LINE OF BUSINESS



Source: Data from NAIC Statistical Compilation of Annual Statement Information, for Property/Casualty Insurance Companies in 2018, pp. 22, 101. Available at: https://www.naic.org/prod_serv_publications.htm.

In terms of losses, the $21 billion in 2018 commercial multiple peril incurred losses were about 6% of the $368 billion aggregate industry incurred losses. Incurred losses are a measure of expected claims costs from insurance in place during the period.[14/15]

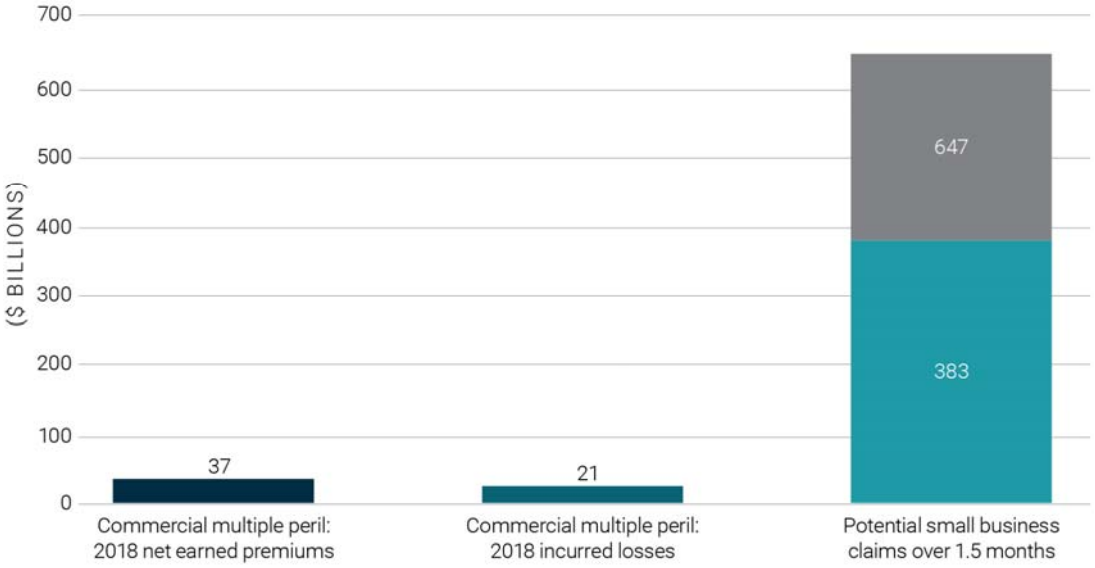
As discussed above, the APCIA's lower-end estimate of business interruption losses for a month and a half is $383 billion. This is about 10 times the 2018 annual net premiums earned and 18 times the 2018 annual incurred losses for all commercial multiple peril policies (figure 2a).[16] For the property/casualty industry, the $383 billion lower-end estimate is 63% of 2018 aggregate industry net earned premiums and 104% of 2018 aggregate industry incurred losses (figure 2b).

14 Incurred losses are losses paid plus the change in the loss reserve. The loss reserve is an estimate of payments for unpaid insurance claims. Therefore, incurred losses may reflect changes in expected losses on past business as well as expected losses for the business earned in the current accounting period.

15 "NAIC Statistical Compilation of Annual Statement Information, for Property/Casualty Insurance Companies in 2018," NAIC, p. 24. Available at: https://www.naic.org/prod_serv_publications.htm.

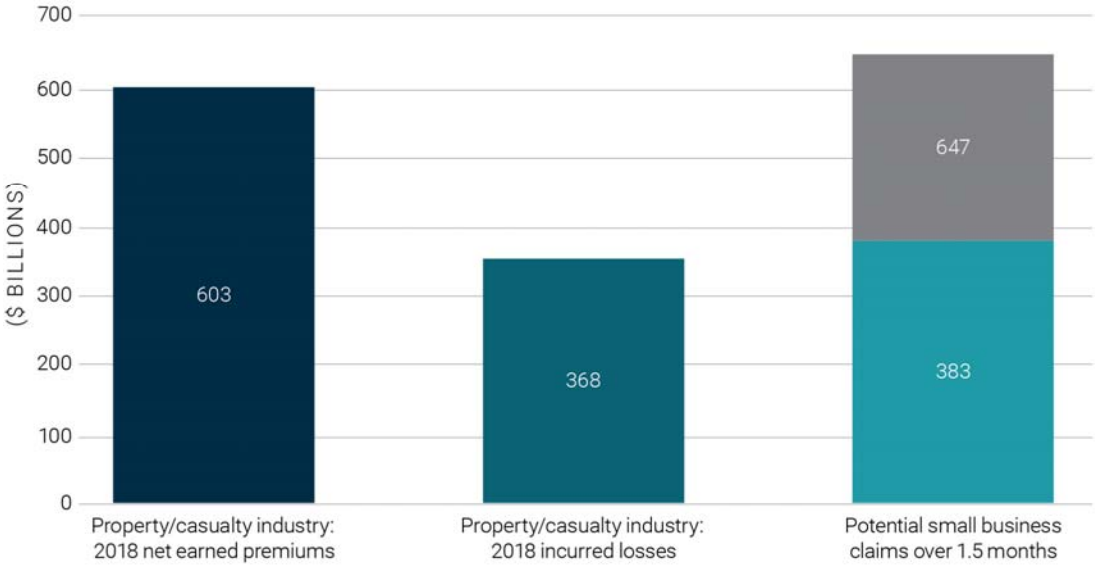
16 If one considers the combined premiums and incurred losses of commercial multiple peril and other commercial property lines of business ($71 billion in annual net premiums earned and $45 billion in annual incurred losses), the APCIA lower-end estimate of business interruption losses for a month and a half of $383 billion is about 5 times annual net premiums earned and 8 times annual incurred losses.

FIGURE 2A: POTENTIAL BUSINESS INTERRUPTION CLAIMS AND COMMERCIAL MULTIPLE PERIL PREMIUMS AND LOSSES



Source: Commercial multiple peril data from NAIC Statistical Compilation of Annual Statement Information, for Property/Casualty Insurance Companies in 2018, pp. 22, 24. Available at: https://www.naic.org/prod_serv_publications.htm. Potential business interruption claims from small businesses based on APCIA estimates for COVID-19 pandemic-related small business closure losses ("APCIA Releases New Business Interruption Analysis") April 6, 2020.

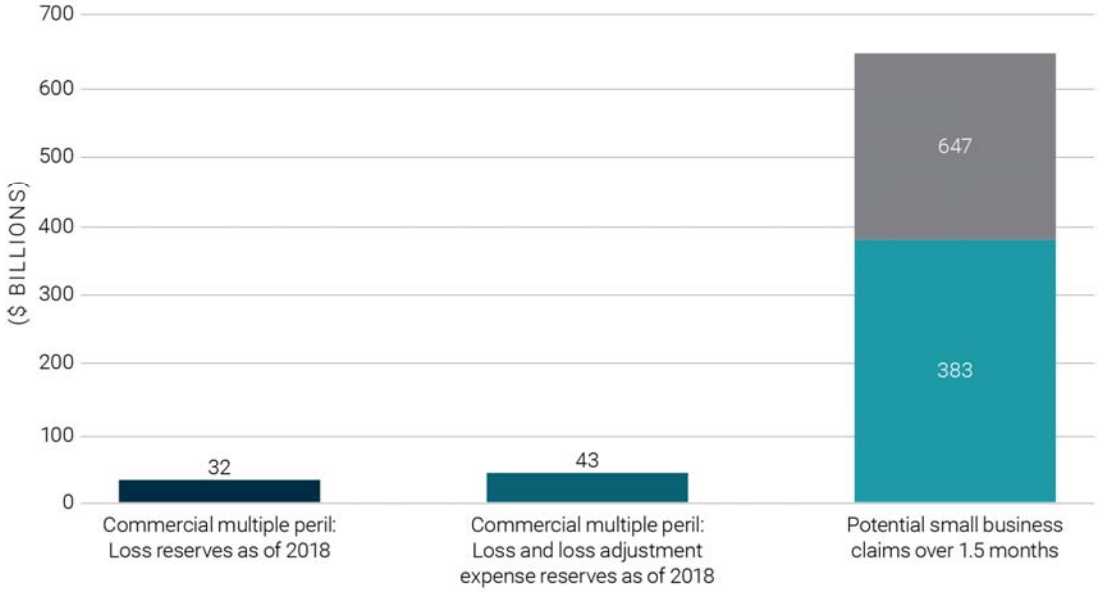
FIGURE 2B: POTENTIAL BUSINESS INTERRUPTION CLAIMS AND PROPERTY/CASUALTY INDUSTRY PREMIUMS AND LOSSES



Source: Property/Casualty insurance industry data from NAIC Statistical Compilation of Annual Statement Information, for Property/Casualty Insurance Companies in 2018, pp. 22, 24. Available at: https://www.naic.org/prod_serv_publications.htm. Potential business interruption claims from small businesses based on APCIA estimates for COVID-19 pandemic-related small business closure losses ("APCIA Releases New Business Interruption Analysis") April 6, 2020.

Another metric for comparison is the loss reserves, an estimate of losses from claims that have been incurred but not yet paid. The industry also reports reserves for loss adjustment expenses which are expenses for processing claims. At the end of 2018, the loss reserves for commercial multiple peril policies were $32 billion with an additional $11 billion in loss adjustment expense reserves.[17] The $383 billion lower-end estimate for potential business interruption claims is 12 times the commercial multiple peril loss reserves, and 9 times the combined loss and loss adjustment expense reserves (figure 3a).[18] For the property/casualty industry, the $383 billion estimate is 69% of aggregate industry loss reserves and 57% of aggregate industry loss and loss adjustment expense reserves (figure 3b).

FIGURE 3A: POTENTIAL BUSINESS INTERRUPTION CLAIMS AND COMMERCIAL MULTIPLE PERIL LOSS AND LOSS ADJUSTMENT EXPENSE RESERVES

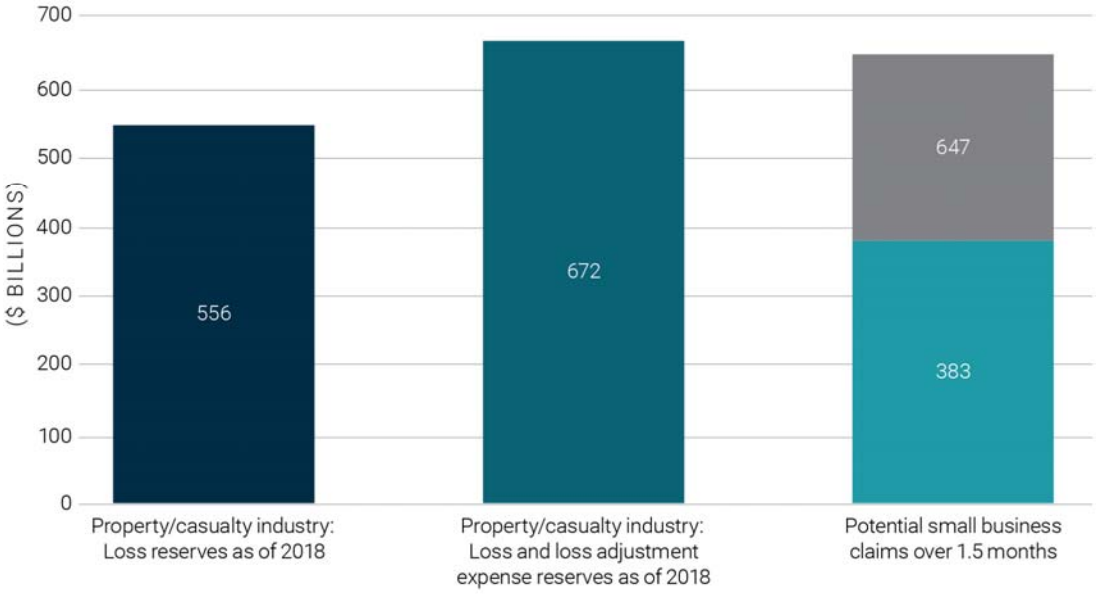


Source: Commercial multiple peril data from NAIC Statistical Compliation of Annual Statement Information, for Property Casualty Insurance Companies in 2018, p.25. Available at: https://www.naic.org/prod_serv_publications.htm. Potential business interruption claims from small businesses based on APCIA estimates for COVID-19 pandemic-related small business closure losses ("APCIA Releases New Business Interruption Analysis") April 6, 2020.

17 "NAIC Statistical Compilation of Annual Statement Information, for Property/Casualty Insurance Companies in 2018," NAIC, p. 24.

18 If one considers the combined unpaid loss and loss adjustment expense reserves of commercial multiple peril and other property lines of business ($53 billion in unpaid loss reserves and $66 billion in unpaid loss and loss adjustment expense reserves), the APCIA lower-end estimate of business interruption losses for a month and a half of $383 billion is about 7 times the unpaid loss reserves and almost 6 times the unpaid loss and loss adjustment expense reserves.

FIGURE 3B: POTENTIAL BUSINESS INTERRUPTION CLAIMS AND PROPERTY/CASUALTY INDUSTRY LOSS AND LOSS ADJUSTMENT EXPENSE RESERVES



Source: Property/Casualty insurance data from NAIC Statistical Compilation of Annual Statement Information, for Property/Casualty Insurance Companies in 2018, p. 25. Available at: https://www.naic.org/prod_serv_publications.htm. Potential business interruption claims from small businesses based on APCIA estimates for COVID-19 pandemic-related small business closure losses ("APCIA Releases New Business Interruption Analysis") April 6, 2020.

2. Property/casualty industry balance sheet

A look at the industry balance sheet provides additional context for the business interruption loss estimates. Table 1 below presents the balance sheet for the property/casualty industry at the end of 2018. At the time, the industry reported almost $2 trillion in assets, and $1.2 trillion in liabilities.[19] The largest liabilities are loss reserves for estimated unpaid losses, and unearned premium reserves, for premium obligations that would be returned to policyholders if policies are cancelled.[20] These categories, plus loss adjustment expense reserves, comprise the majority of industry liabilities and correspond to 48% of industry assets. Surplus, which is a measure of equity in the insurance industry, was $779 billion, 39% of total industry assets.

The $383 billion lower-end estimate of potential business interruption losses over a month and a half period is 49% of the industry's total surplus. Surplus is the cushion that helps insurers meet their obligations to policyholders and aggregate property/casualty industry surplus supports all property/casualty lines of business, not just business interruption. For example, surplus is available to help pay claims should asset values decline or should actual losses exceed expectations because of increased claim frequency or increased costs per claim. Surplus also helps insurers meet their obligations when large natural catastrophes occur.

19 "NAIC Statistical Compilation of Annual Statement Information, for Property/Casualty Insurance Companies in 2018," NAIC, pp. 5, 13.
20 This discussion abstracts from acquisition costs that are included in the unearned premium reserve.

TABLE 1: COMBINED PROPERTY/CASUALTY INDUSTRY STATUTORY BALANCE SHEET AS OF 2018

	Amounts (in $ billions)	Percent of total
Net admitted assets		
Cash, cash equivalents, and short-term investments	104	5%
Bonds	1,052	53%
Stocks	400	20%
Mortgage loans and real estate	35	2%
Other receivables, derivatives, and investments	147	7%
Subtotal: cash and invested assets	**1,738**	**88%**
Other assets	241	12%
Total net admitted assets	**1,979**	**100%**
Liabilities and surplus		
Loss reserves	556	28%
Loss adjustment expense reserves	115	6%
Unearned premiums	276	14%
Other liabilities	252	13%
Total liabilities	**1,200**	**61%**
Surplus	**779**	**39%**
Total liabilities and surplus	**1,979**	**100%**

Source: NAIC Statistical Compilation of Annual Statement Information for Property/Casualty Insurance Companies in 2018, pp. 5, 13.

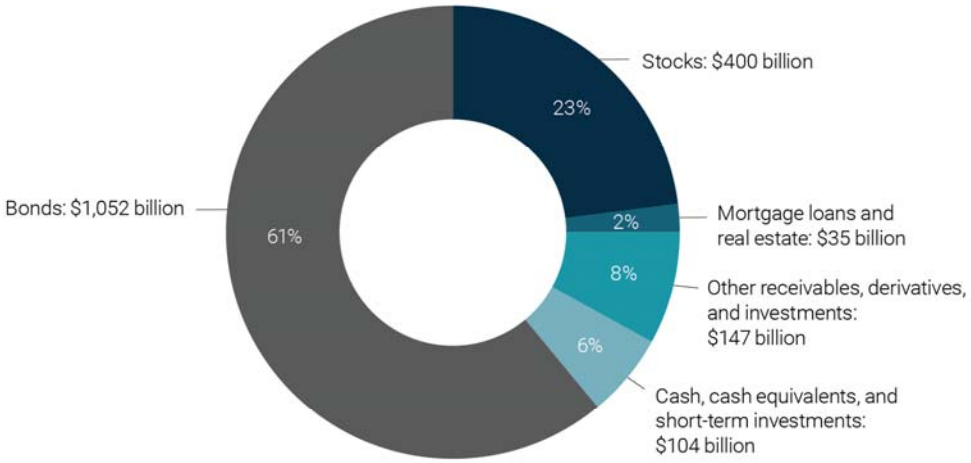
3. Processing and paying potential business interruption claims

Payment of this level of potential business interruption claims would also require unprecedented claims processing capacity and asset liquidation. The APCIA estimates that there could be more than 30 million claims which is 10 times the record 3 million catastrophe claims processed during the 2005 hurricane season when Hurricanes Katrina, Rita, and Wilma occurred.[21] As another comparison, property/casualty insurers reported about 14 million total commercial multiple peril claims over the ten years from 2009 through 2018.[22]

Paying the claims would also require liquidity at a time when financial markets are showing strains. Figure 4a shows the composition of investments available to the insurance industry for paying claims. It shows the industry has $104 billion in highly liquid assets such as cash and short-term investments as of the end of 2018. Those assets are generally held to meet insurer's expected short-term liquidity needs. The majority of industry's investments are in long-term bonds ($1,052 billion) and stocks ($400 billion). Figure 4b provides additional detail on investments in long-term bonds. The largest category, accounting for 42% of bonds is "other debt" which primarily includes corporate debt. "Securities issued by states, territories and political subdivisions in the US," such as municipal bonds, comprises the second largest category (27% of bonds). US Treasuries comprise 11% of the bond portfolio. Insurers would likely need to make significant asset sales if they need to pay claims of the magnitude suggested by the APCIA estimate. These asset sales would need to be made at a time when both equity and bond prices may be under pressure because of the economic disruption from COVID-19.

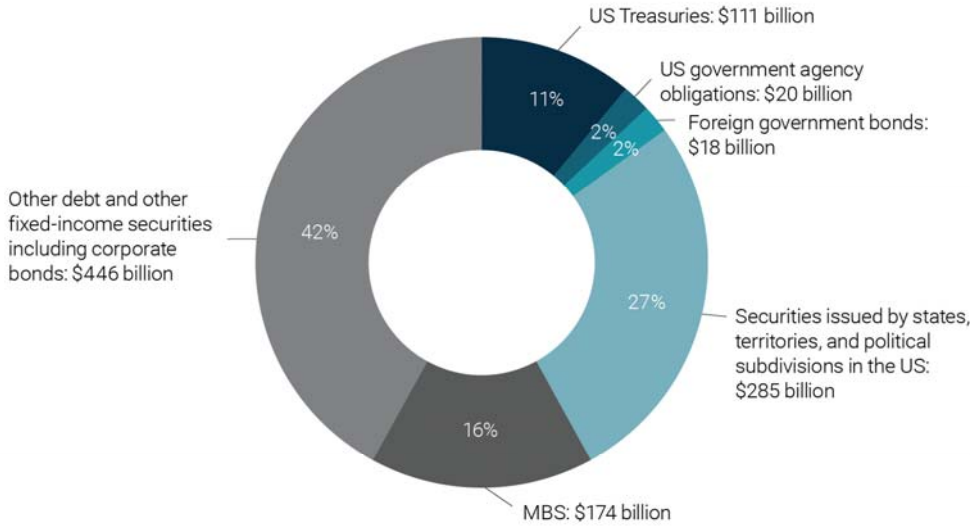
21 "APCIA: Insurance Perspective on COVID-19," American Property Casualty Insurance Association, dated March 26, 2020.
22 "NAIC Statistical Compilation of Annual Statement Information, for Property/Casualty Insurance Companies in 2018," NAIC, p. 48.

FIGURE 4A: COMBINED PROPERTY/CASUALTY INDUSTRY CASH AND INVESTMENTS AS OF 2018



Source: Data from NAIC Statistical Compilation of Annual Statement Information, for Property/Casualty Insurance Companies in 2018, p. 5. Available at: https://www.naic.org/prod_serv_publications.htm

FIGURE 4B: COMBINED PROPERTY/CASUALTY INDUSTRY INVESTMENTS IN BONDS AS OF 2018



Source: Data from NAIC Statistical Compilation of Annual Statement Information, for Property/Casualty Insurance Companies in 2018, p. 29. Available at: https://www.naic.org/prod_serv_publications.htm.
As noted by the NAIC, these numbers are derived from individual filings and may not sum to the industry aggregate.

III. Historical events to consider: SARS epidemic, 9/11 terrorist attacks, asbestos claims

Insurance industry experience with catastrophes and unexpected payments provides further context for the current situation. Informative examples include the insurance industry response after the Severe Acute Respiratory Syndrome (SARS) epidemic, US Government intervention following 9/11 terrorist attacks, and the insurance industry experience with exposure to asbestos claims. Each example provides insight relevant for current events; however, none had the scale of economic impact and the compressed timing of potential claims and payments that would be expected to occur with the COVID-19 pandemic.

A. Industry response to the SARS epidemic

SARS first appeared in Guangdong province of China in November 2002 and spread to other areas of China and a number of other countries.[23] The epidemic lasted from November 2002 through July 2003 and resulted in over 8,400 cases and over 800 deaths.[24] Like COVID-19, SARS is caused by a coronavirus and there was little initial knowledge of how the virus spread and the illness it caused.

Communities responded with instituting quarantines, shutting schools, and restricting travel in order to limit the spread.[25] These actions, and other responses, resulted in a rapid decline in local economic activity with particular impact on travel-related services.[26]

The SARS experience revealed the potentially high economic costs of the actions local governments and communities take to limit the spread of a virus. Before this event, a common way to think about the cost of an epidemic was in terms of the costs of hospitalization and medical care (direct costs) and the cost of the foregone productivity from morbidity, disability, and premature death.[27] The SARS experience demonstrated the potential magnitude of the economic costs from steps taken to prevent pandemic spread and the potential for simultaneous impact in a number of economies. The estimated global macroeconomic impact of the SARS epidemic ranges from $30 to $100 billion.[28]

23 Pomfret, John, "WHO Lifts Warning on Travel to Beijing: China Credits Party for Stopping SARS," The Washington Post, June 25, 2003.
24 "Cumulative Number of Reported Probable Cases of SARS", The World Health Organization (WHO) (https://www.who.int/csr/sars/country/2003_07_11/en/).
25 For example, it was reported that "[a]t the height of the epidemic..., more than 1 million people left Beijing, and stores, restaurants and hotels shut down all over town. ...Economists issued dire predictions about a downturn in China." The WHO issued travel advisories for parts of mainland China, Taiwan, Hong Kong, and Toronto. Pomfret, John, "WHO Lifts Warning on Travel to Beijing: China Credits Party for Stopping SARS," The Washington Post, June 25, 2003. During parts of the epidemic, schools were closed in Beijing and many businesses closed or had employees work from home. Pomfret, John, "Thousands Flee Beijing, Fearing SARS; Schools Are Closed As Toll in Capital Rises to 35 Dead," The Washington Post, April 24, 2003.
26 For example, in April of 2003 the WTO predicted that "global trade would probably stagnate" and initial estimates of "the cost of the virus to the region range[d] from $10 billion to $30 billion." Tourism and travel were particularly affected. Struck, Doug, "Virus Takes Toll on Asian Dynamos; Economic Growth Projections Sag as SARS Crisis Slows Business and Tourist Travel," The Washington Post, April 26, 2003.
27 Brahmbhatt, Milan, and Arindam Dutta, "On SARS Type Economic Effects during Infectious Disease Outbreaks," The World Bank: East Asia and Pacific Region Chief Economist's Office, Policy Research Working Paper no. 4466, January 2008, p. 2.
28 Green, Meg. "Insurers Brace for Coronavirus to Spread from China," Best's Insurance News, January 29, 2020. The World Bank estimated the economic cost at $54 billion (Yang, Jing, "Why Many Businesses Will Be on the Hook for Coronavirus Losses," Dow Jones NewsWires, February 24, 2020).

The SARS experience showed that pandemic-related business interruption losses are difficult for the insurance industry to cover because they are highly correlated (they tend to happen to most policyholders at once or they do not happen at all).[29] Many industry practitioners refer to such highly correlated risks as uninsurable by the private sector.[30] In the COVID-19 pandemic, business closures and disruptions have occurred for numerous businesses simultaneously across many industries and geographies. Highly correlated risks are more difficult to insure because actual losses will tend to be very high or quite low making them difficult to accurately predict. Moreover, if the insurer charges each business owner a premium close to their expected pandemic-related business interruption loss, actual claims will tend to be substantially lower or substantially higher than the premiums collected. In order to be assured of having collected sufficient premiums to pay claims when a pandemic does occur, an insurer would need to charge a premium substantially greater than the expected loss. However, businesses may not want to purchase the insurance at that premium.

These issues illustrate some reasons why highly correlated risks are difficult to insure. After the SARS epidemic, ISO developed policy language excluding losses caused by virus or bacteria from business interruption coverage, and many insurance policies adopted that or similar language.[31]

B. US Government intervention in insurance markets following the 9/11 terrorist attacks

The economic impact of the September 11, 2001 terrorist attacks has been estimated to be between $35 billion and $109 billion and insurers paid out $32.5 billion in insurance claims.[32] At the time, it was the largest claims payout for a single event. Insurers and reinsurers reacted to these losses and the increased terrorism risk by limiting available coverage for airline ground damage and acts of terrorism in commercial policies putting businesses at risk of breaching loan covenants.[33] In response, to facilitate the continued provision of terrorism insurance, Congress created the federal terrorism reinsurance program known as Terrorism Risk Insurance Act (TRIA). This government intervention in insurance markets appears to have served as a template for a draft bill in the US Congress (the Pandemic Risk Insurance Act of 2020) which aims to develop an insurance framework for addressing pandemic business interruption risk.[34]

TRIA was initially passed in 2002 and has been renewed several times with some program modifications. The program was aimed at increasing the private insurance industry's willingness and ability to cover terrorism risk.[35] TRIA required insurers to offer coverage for terrorism risk to commercial buyers. The program then limited insurers' exposure from terrorism events by capping losses an insurer would pay based on a formula.[36] When

29 Natural catastrophes such as hurricanes and earthquakes also have positively correlated risks. Private insurance markets have had difficulties providing coverage for large natural catastrophe losses; but in the case of natural catastrophes it is possible to diversify geographically. A pandemic does not allow for the same degree of geographic diversification.

30 For example, Insurance Information Institute, "Fact Sheet: Understanding Business Interruption Insurance and Pandemics," available at https://www.iii.org/sites/default/files/docs/pdf/business_interruption_101_041320_2.pdf

31 Frankel, Todd C, "Insurers knew the damage a viral pandemic could wreak on businesses. So they excluded coverage," The Washington Post, April 3, 2020.

32 Estimated economic impact is in 2006 dollars, see Rose, Adam Z. and Blomberg, Brock S., "Editor's Introduction to the Economic Impacts of the September 11, 2001, Terrorist Attacks," (2009, Peace Economics Peace Science and Public Policy, volume 15, issue 2, p. 5). For insurance payouts see Insurance Information Institute, "9/11: the Tenth Anniversary," available at https://www.iii.org/article/9-11-the-tenth-anniversary.

33 See Gron, Anne, and Alan Sykes, "Terrorism and Insurance Markets: A Role for the Government as Insurer?" Indiana Law Review, February 2003.

34 Wilkinson, Claire, "Proposed backstop would cover pandemic business interruption," Business Insurance, April 9, 2020.

35 United States Government Accountability Office, "Terrorism Risk Insurance: Market Challenges May Exist for Current Structure and Alternative Approaches," January 2017, GAO-17-62.

36 United States Government Accountability Office, "Terrorism Risk Insurance: Market Challenges May Exist for Current Structure and Alternative Approaches," January 2017, GAO-17-62, pp. 6-10.

aggregate insurance industry losses from a terrorism event exceeded a specified threshold, insurers would be reimbursed for a share of losses once a deductible had been met. The federal government could recoup amounts it paid on terrorism losses in subsequent periods by charging a surcharge on eligible commercial premiums when certain conditions were met.

A program like TRIA can be used to encourage private insurance to write pandemic-related business interruption coverage in the future by providing a backstop to limit exposure. However, the private industry coverage will be limited by the federal backstop and, as we are seeing with the COVID-19 pandemic, the industry may need to develop capacity to process a very large number of claims in a pandemic situation. In addition, while such a program might address future pandemics, it is unlikely to address current business income losses related to COVID-19.

C. Insurance industry exposure to asbestos claims

Insurers' experience with asbestos claims is an example of coverage provided by the insurance industry beyond what was anticipated when the policies were sold. It is relevant to the current situation if, either due to legislation or to contract interpretation by courts, insurers end up paying business interruption claims in circumstances that insurers thought had been contractually excluded.

Plaintiffs injured by exposure to asbestos have sued asbestos manufacturers, manufacturers of products containing asbestos, and others. These corporations (and at times their bankruptcy estates) have looked to their insurers to cover claims. The litigation between plaintiffs, corporations, and insurers has been complex and has resulted in legal doctrines specific to asbestos litigation.[37] A number of rulings, such as allowing a single plaintiff to claim under many insurance policies for one injury and interpreting products liability policies as "premises liability" policies, have expanded insurers' liability for asbestos claims.[38] Asbestos liabilities have contributed to insurer insolvencies and liquidations.[39] The overall approach to compensating asbestos-related injury compensation (of which insurance is only one component) has been criticized for costly litigation, and there have been allegations of fraud associated with claims and administration of asbestos trusts that have been set up to pay claims.[40]

The insurance industry has already paid or reserved for about $90 billion in asbestos-related claims and expenses and the ultimate payments are projected to be about $100 billion.[41] Although the insurance industry has been largely able to fund the ultimate estimate of losses and expenses that were generally unanticipated when the policies were priced, asbestos claims have contributed to financial distress and insolvencies. Moreover, these ultimate asbestos liabilities are a fraction of the potential exposure from COVID-19 business interruption claims and they have come to light over a period of decades, not months.

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37 See, Carroll, Stephen J., Deborah Hensler, Jennifer Gross, Elizabeth M. Sloss, Matthias Schonlau, Allan Abrahamse, and J. Scott Ashwood, "Asbestos Litigation," Rand Institute for Civil Justice, 2005, pp. xx- xxviii, chapter 3; and see White, Michelle, "Asbestos and the Future of Mass Torts," Journal of Economic Perspectives, vol 18 no. 2, Spring 2004, pp. 193-194.

38 These rulings increase the limits that an insurer or a group of insurers might pay. Insurance policies specify coverage limits in order to limit the insurer's potential exposure to claims. These limits are used in pricing the policies. Allowing the same injury to collect from multiple insurance policies increases the amount an insurer may pay for a single injury by increasing available coverage limits. In addition, in contrast to product liability policies which typically have aggregate payment limits, "premises policies—which were intended for perils such as fire and hurricanes—have only a coverage limit for each occurrence. If each asbestos claim is treated as a separate occurrence, then insurers effectively have unlimited liability." (internal citations omitted) White, Michelle, "Asbestos and the Future of Mass Torts," Journal of Economic Perspectives, vol 18 no. 2, Spring 2004, p. 194.

39 White, Michelle, "Asbestos and the Future of Mass Torts," Journal of Economic Perspectives, vol 18 no. 2, Spring 2004, p. 183.

40 White, Michelle, "Asbestos and the Future of Mass Torts," Journal of Economic Perspectives, vol 18 no. 2, Spring 2004, p. 187

41 A.M. Best, "Best's Market Segment Report: Asbestos and Environmental Payouts Continue to Outpace Incurred Losses," October 17, 2019.

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