



The Daily Dish

A Contract Should Be A Contract

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Eakinomics: A Contract Should Be A Contract

As is his wont, the president strays far afield in his briefings about the coronavirus pandemic, including these [remarks](#) suggesting insurers should cover business losses due to the pandemic. They sure caught my attention.

As [detailed](#) by AAF's Thomas Wade, business interruption coverage is usually an add-on to property and casualty contracts that covers losses in the event of an interruption in business. The pandemic has certainly been *that*. Yet as Wade points out, “a business interruption event is usually defined as *physical* loss (perhaps destruction of merchandise) in response to a *physical* event (natural disasters or theft).” The coronavirus pandemic certainly should not qualify as such an event. Most business interruption contracts go further by explicitly containing an exclusion for losses due to a widespread viral disease like the pandemic.

One might wonder why property and casualty insurers would add such an explicit exclusion. Wade points out that this was “[a lesson learned](#) from the SARS epidemic,” when the courts forced insurers to pay millions in claims despite the fact that there was no physical event. Clearly there is reason to fear the same legal illogic in this moment.

But it is indefensible – or irresponsible or offensive or “words my editors took out” – for the president to suggest that insurers should pay for coronavirus losses not covered by an insurance policy. First, those losses are so large that they would halve in a single moment the reserves of the insurance industry, which would cease to exist. But the larger issue is that forcing insurers to recognize such claims as valid means that the contract is being re-written after the fact, “fundamentally assaulting constitutional contract law” in Wade’s words. Such legal niceties aside, the economic success of the United States has been built upon enforcing contracts and the rule of law. A step away from those principles is a step toward third-world status.