

Fairness or Justice: Prospective Jurors' Views on Business Interruption Insurance During the COVID-19 Pandemic

Daniel Wolfe, J.D., Ph.D.

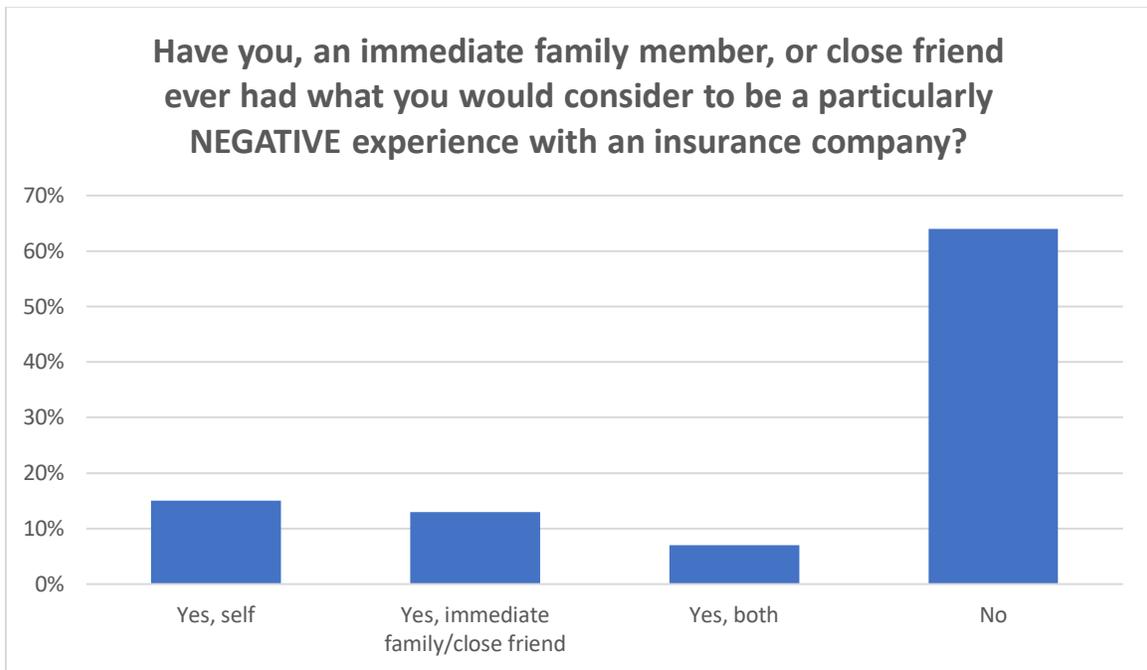
Senior Director of Jury Consulting (Magna Legal Services)

As part of an ongoing effort to examine the impact of the COVID-19 pandemic on prospective jurors' attitudes and beliefs, Magna Legal Services has been conducting a series of nationwide surveys to assess these evolving changes and shifts in perceptions in this Brave New World. Since the beginning of the pandemic in mid-March of this year, we have collected responses from nearly 4,000 jury-eligible adults to a variety of topics, including jurors' propensity to show up for jury duty, social and financial impact on individuals as well as corporations, perceptions of industry specific corporations, as well as the impact of pandemic on jurors' verdict and damages propensities in civil cases.

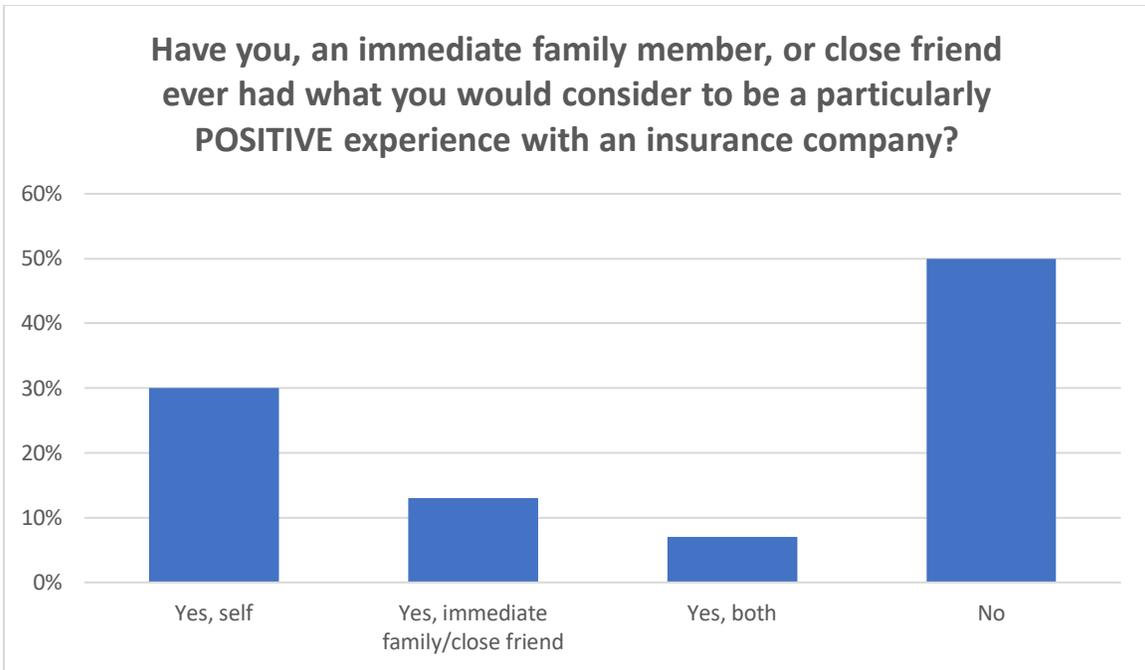
One area of particular interest that has become a burgeoning hotbed of nationwide litigation efforts has been in commercial insurance coverage litigation related to business interruption insurance claims. It is not uncommon for us to hear from clients that if they represent an insurance company it is almost next to impossible to get a fair trial based on a commonly held belief that "jurors hate insurance companies." Our experience over the years has demonstrated that most jury-eligible adults have had neutral to positive experiences with experiences with insurance companies, most notably in the areas of health, auto, and homeowner insurance claims. Notwithstanding the occasional parade of horrors with insurance claims that some prospective jurors lament, rarely do we see the level of insurrection from jurors that overrides their sense of fairness and justice in any particular case. That being said, we have seen

demonstrable shifts in prospective jurors' willingness to be compassionate as a result of the ongoing pandemic.

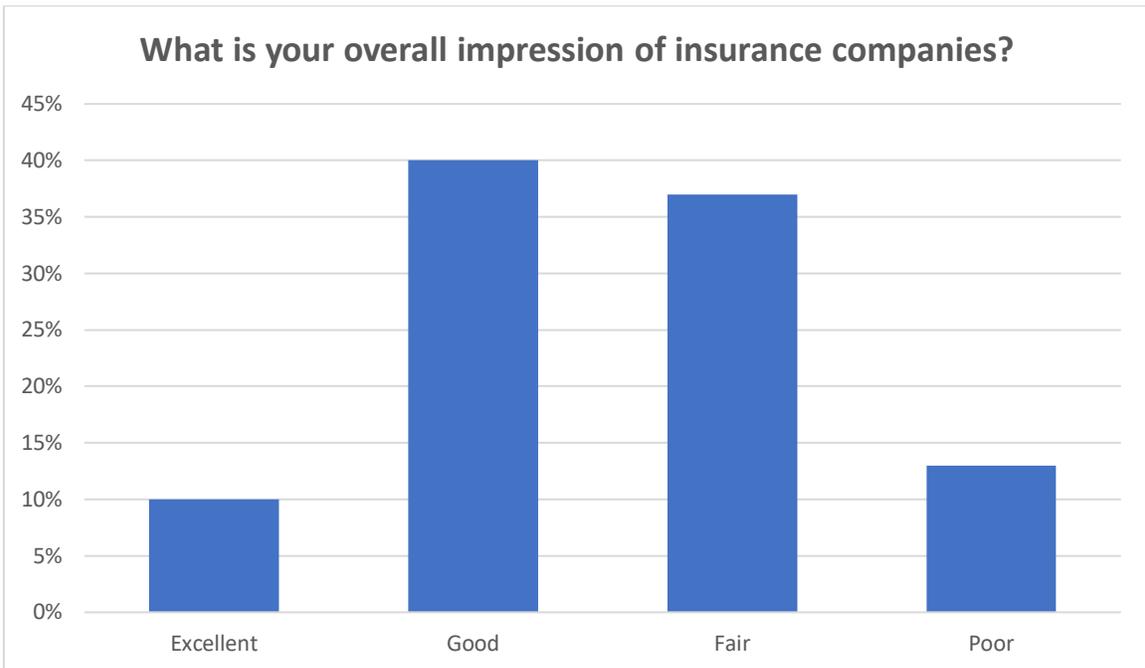
In our most recent survey of 500 jury-eligible adults nationwide, we inquired as to prospective jurors' experiences and general views of insurance companies. Less than one-quarter of the respondents reported that they personally, and/or immediate family members or close friends, have had what they consider to be a particularly negative experience with an insurance company.



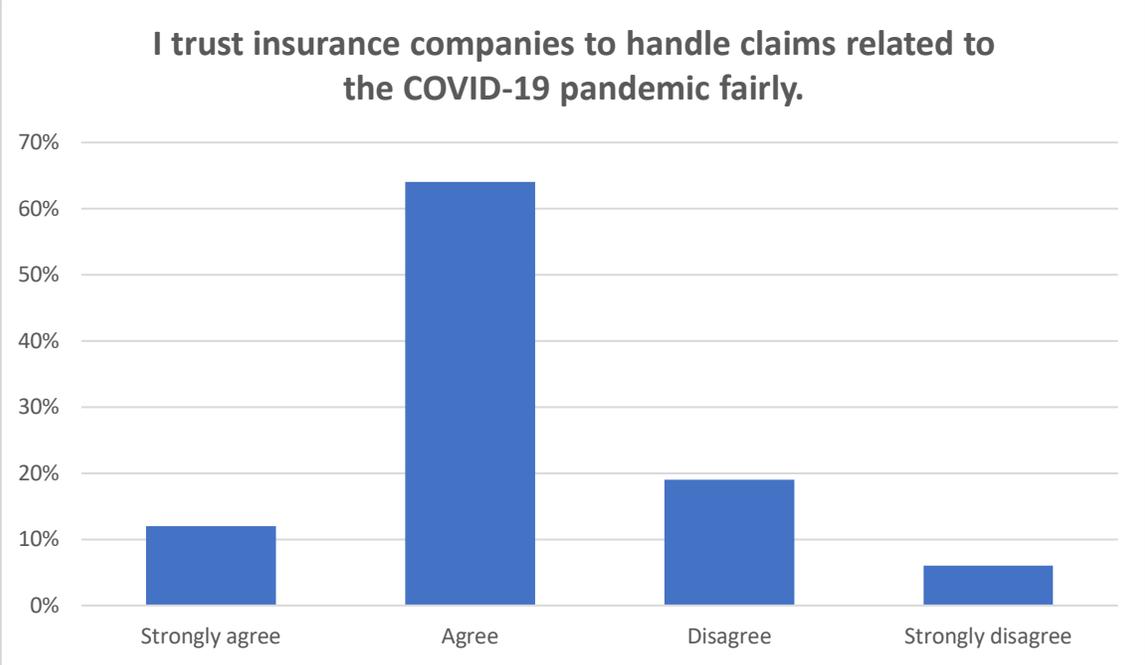
Alternatively, nearly 40% of the respondents reported that they personally, and/or immediate family members or close friends, have had what they considered to be a particularly positive experience with an insurance company.



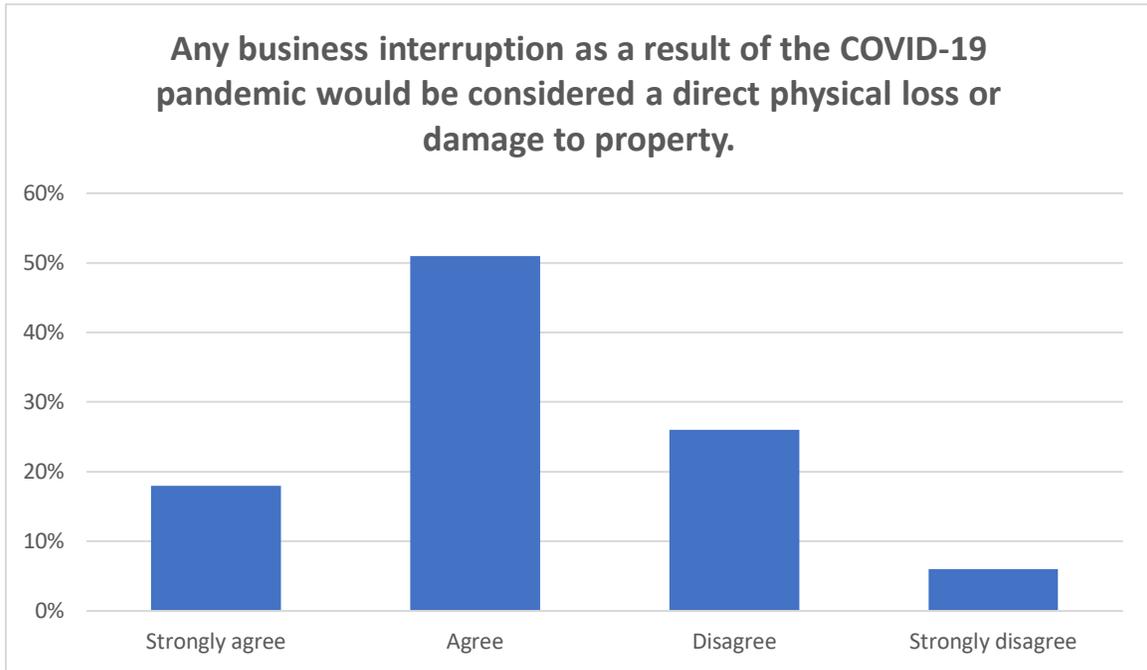
Overall, only 13% of the respondents rated their opinions of insurance companies as “poor,” with 50% of the respondents expressing a “good” or “excellent” opinion of insurance companies.



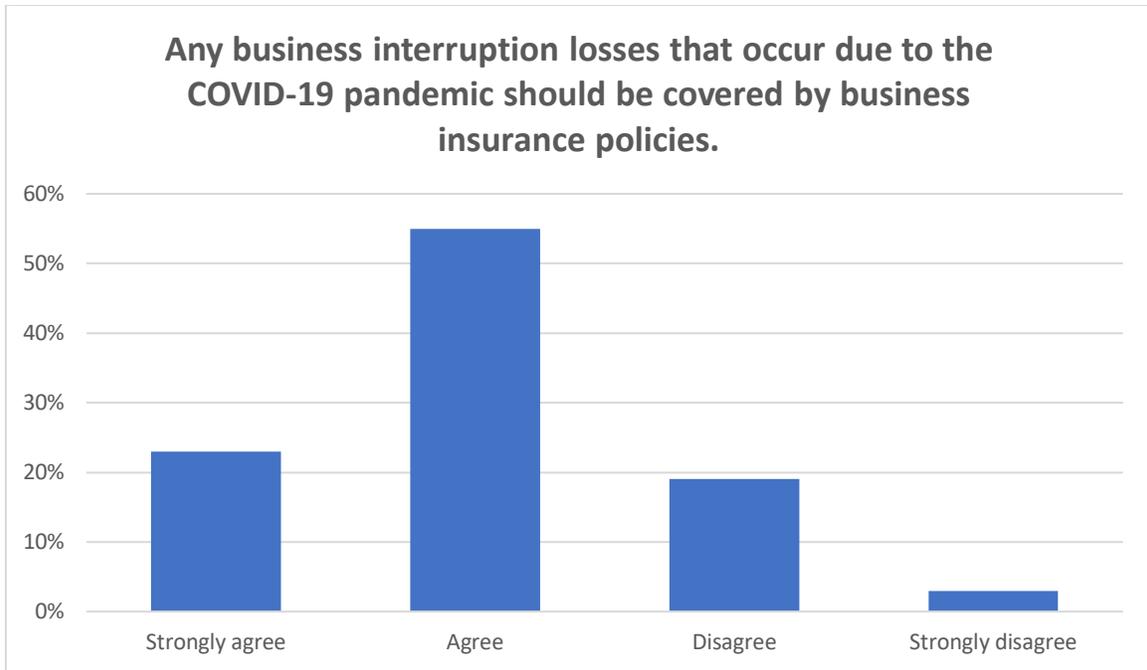
Furthermore, three-quarters of those surveyed indicated they trust insurance companies to handle their needs fairly. More importantly, there was a similar response rate when respondents were asked about the proclivities of insurance companies handling claims related to the COVID-19 pandemic fairly.



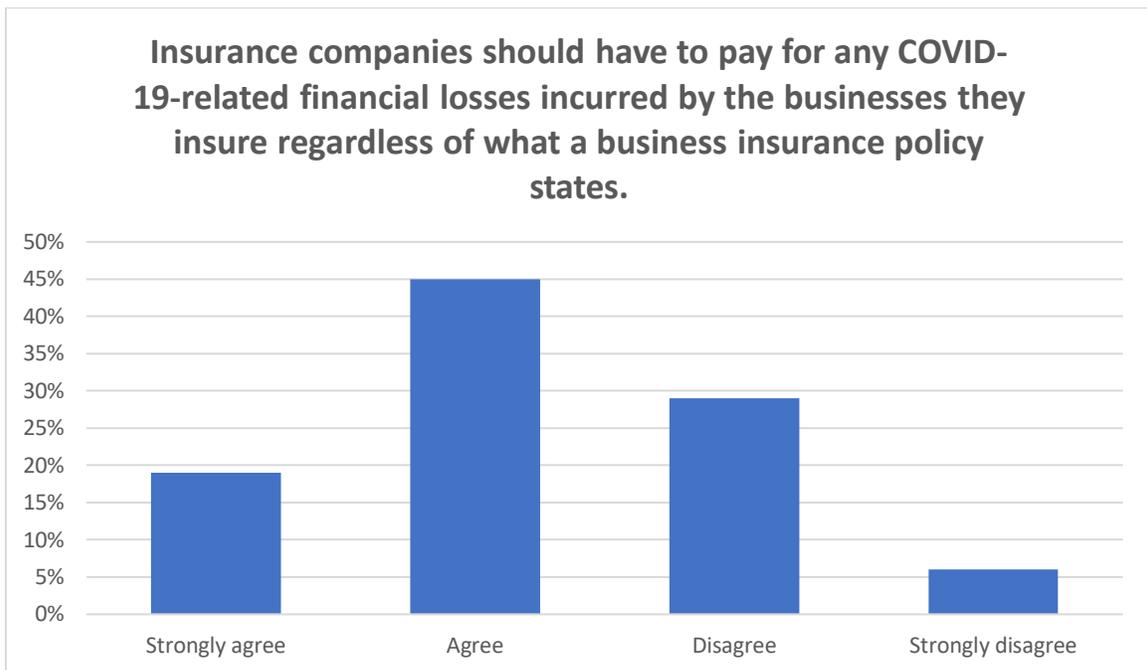
More specifically, we asked our respondents to consider the following information regarding insurance coverage for business interruptions. Respondents were informed that business owners may file claims requesting their insurance companies pay for income they lost due to the interruption of their business operations during the COVID-19 pandemic. Moreover, most business insurance policies contain language that states coverage is limited to business interruptions that are caused by direct physical loss or damage to the property. With the benefit of this information, nearly 70% of the individuals surveyed agreed that any business interruption as a result of COVID-19 pandemic would be considered a direct physical loss or damage to property.



Surprisingly, nearly 80% of the respondents concluded that any business interruption losses that occur due to the COVID-19 pandemic should be covered by business insurance policies. These results suggest possible a Robinhood Effect: consumers simply want businesses in general, and small businesses in particular, to remain viable as a result of the devastating financial impact of the COVID-19 pandemic.



And nearly two-thirds of the respondents believe insurance companies should have to pay for any COVID-19-related financial losses incurred by businesses they insure regardless of what a business insurance policy states.



Arguably, jurors' visceral responses to these issues as demonstrated here may not necessarily be congruent with their decisions in an actual trial where they have the benefit of both sides' arguments and the full panoply of evidence. Notwithstanding this ostensible limitation to the generalizability of these results, these findings do demonstrate the willingness of prospective jurors to seek a resolution based on the perceived fairness and equity of the parties involved. This is also undergirded by the belief that insurance companies will have the financial wherewithal to weather the COVID-19 pandemic storm, and, therefore, would have the resources to "do the right thing" in paying for business interruption losses experienced by businesses that have been devastated by the fallout from the pandemic. Respectively, it will be imperative to assess these personal experiences during voir dire given that some of these jurors' reactions to these specific issues may be counter-intuitive based on their personal experiences.

If you have any questions regarding Magna's COVID-19 research or would like to discuss your case with Dr. Daniel Wolfe, please reach out to Jessica Gimbel Carnes at 267-815-1602 or JGimbel@MagnaLS.com.