

COMMITMENTS TO ANTI-RACISM RING HOLLOW

Fairfax Financial is the Last Big Insurance
Holdout in the Dying Bail Industry

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INTRODUCTION

The United States has seen a historic wave of Black Lives Matter protests for racial justice in recent months. These protests have focused on the killings of George Floyd, Breonna Taylor, and many other Black people at the hands of police — but they’ve also condemned structural racism in this country more broadly.

As the U.S. and countries around the world confront systemic racism, the criminal legal system stands out as the obvious place to start. For years, the ACLU and Color Of Change have exposed the for-profit bail system — which exists only in the U.S. and the Philippines — as a major driver of mass incarceration and of racial disparities within the system.

The for-profit bail industry in this country has been propped up by an insurance industry, which takes a cut of each commercial bail bond and is one of the leading funders of opposition to reform. There is a growing movement calling on these companies to divest, and in the last two years, three of the largest companies have exited the for-profit bail industry: Tokio Marine

Group, Randall & Quilter (R&Q), and Endeavour Capital. But Fairfax Financial — a Canada-based global financial conglomerate that took in more than \$21 billion in revenue last year — has gone in the opposite direction, buying up many of these bail underwriters and expanding to become by far the biggest insurer profiting from for-profit bail.

Fairfax Financial Chairman and CEO Prem Watsa stepped forward this year as a leader to address anti-Black racism in the Canadian business ecosystem. This commitment is necessary and laudable. Mr. Watsa’s statements, however, ring hollow in the face of his company’s expanding investment in for-profit bail, which disproportionately impacts Black and Brown



communities, trapping many in cycles of debt, while leaving others trapped in jail because they are poor.

Further, the company's support and political spending on for-profit bail risks undermining Fairfax's reputation and business. In recent years, Fairfax subsidiaries have spent more than \$500,000 fighting bail reform, all while exposure of the predatory practices and harmful impacts of money bail have led dozens of jurisdictions to reduce reliance on cash bail. Yet bail is a tiny part of Fairfax's insurance business (0.16 percent of Fairfax Financial's overall net premiums written), and is a shrinking industry with substantial reputational risk for the company and its subsidiaries.



One of Fairfax Financial's guiding principles, according to the company's website, is that "Honesty and integrity are essential in all our relationships and will never be compromised." However, selling bail bonds can earn you two years in prison on a charge equivalent to bribing a juror, and is considered an obstruction of justice in Canada, where the company is based. Fairfax's expanding investments in, and political spending to support the for-profit bail industry, which disproportionately harms Black and Brown communities, calls into question the company's integrity, especially in light of its recent commitments to address anti-Black racism.

To address systemic racism, Fairfax Financial should shut down its bail insurance business and stop funding anti-bail reform efforts.

THE FOR-PROFIT BAIL INDUSTRY TRAPS PEOPLE IN A CYCLE OF DEBT

Over the past few decades, the number of Americans held in jail or incarcerated in prison has swelled significantly. At any given time, hundreds of thousands of people are detained in jail, even though they are innocent in the eyes of the law. They are detained before trial, many because they cannot afford money bail:¹ courts have told them they can return home if they have the resources to secure their release, but more often than not, they simply can't afford the cost. This crisis has become so severe that one in five people incarcerated in the United States today are pretrial detainees who have not been convicted of a crime.²

When people cannot afford bail, they often turn to a for-profit bail bond company, which can secure their release for a nonrefundable fee. Even if the person who purchases a bail bond is found not guilty or the case against them is dropped, they and their loved ones still owe money to the bail bond company. Bail bond contracts are exploitative and often filled with vague and unspecified fees and onerous restrictions. The U.S. is one of only two countries in the world with a for-profit bail bond industry, with roughly 15,000 bail agents.³ In 2017, the industry was valued at \$2 billion.

FOR-PROFIT BAIL DISPROPORTIONATELY HARMS PEOPLE OF COLOR

The for-profit bail system in the U.S., backed by insurers like Fairfax Financial's Crum & Forster, disproportionately impacts Black people and communities of color. People in these communities are much more likely than their white counterparts to be arrested due to racist policing and prosecution, as well as systemic inequity and bias more broadly. For

BALTIMORE SUN PROFILES FAIRFAX

In 2016, The Baltimore Sun profiled Rafiq Shaw, a 31-year-old Black man who was arrested in error when he had the bad luck to be walking by right as the police were getting ready for a raid.

Over his protests, the police dragged Shaw into the house they intended to raid, where a woman inside told the officers she had no idea who he was. The officers pushed him onto a couch and went through his pockets, finding the keys to his mother's car, parked nearby.

The police claimed to have found a gun in Shaw's mother's car and arrested him. Police had no evidence, such as fingerprints, to prove the gun was Shaw's. He didn't even have a key to the glove compartment; the cops had to smash it open. At trial, the jury found Shaw innocent after less than a half an hour of deliberation.

But Shaw is still paying for the crime he never committed. He's on the hook for the \$10,000 his family agreed to pay the bail bondsman to get him out of jail two days after his arrest.

In Shaw's case, the district court commissioner who handled his arraignment set bail at \$100,000. His fiancée and his mother scraped together what they had, and Shaw cleaned out his meager savings. They gave it all to their bail bondsman, who agreed to bail Shaw out for a fee of 10 percent, or \$10,000. Shaw and his family said they paid the bondsman about \$2,000 up front, with a promise to pay \$100 a week until the amount was paid in full. Shaw earns \$10.15 an hour installing trailer hitches for U-Haul.

"I'll be paying for a long time," he told The Baltimore Sun. "Like forever."

Crum & Forster Insurance, owned by Fairfax Financial, is the company that backed the bail bond in Shaw's case, and is profiting from that \$10,000 that Shaw has continued to pay back despite being wrongfully arrested.⁸

example, Black and white adults use drugs at similar rates, but a Black adult is 2.5 times more likely to be arrested for drug possession.⁴ Once in jail, Black people are more likely to remain incarcerated while awaiting trial.⁵

Bail amounts assigned to Black men average 35 percent higher than those for white men, even when controlling for the seriousness of the offense.⁶

For-profit bail bonds extract millions of dollars from their customers, particularly from low-income communities of color. For example, The New York Times reported, "over a five-year span, Maryland families paid more than \$256 million in nonrefundable

bail premiums, according to a report by the state's Office of the Public Defender. More than \$75 million of that was paid in cases resolved with no finding of guilt, and the vast majority of it was paid by Black families."⁷

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THE INSURERS BEHIND THE BAIL INDUSTRY

The face of the bail industry is the storefront small bail bond companies lining the streets near courthouses. Familiar from TV and movies, they often sport neon signs and catchy slogans. Largely hidden is the role that insurance companies play.

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Behind the scenes, insurance companies like Fairfax Financial subsidiary Crum & Forster take a cut of nearly every bail premium paid. There are as many as 15,000 bail bond businesses across the U.S., but just a few insurance companies back the vast majority of these bonds.

Bail insurers have shaped the industry to protect their profits. While the industry touts the risk of forfeiting bail as the primary incentive for performance, bail insurance companies put the responsibility for losses onto the bail agents – who in turn put binding guarantees for payment onto families.

In the midst of growing negative publicity and reforms limiting money bail by prosecutors, courts, regulators, and legislators, the two other publicly-traded global insurance giants involved in bail left the industry entirely in 2019. Last year, following a multi-year campaign, the private equity owner of the largest U.S. bail bond company and its surety also exited the bail surety business, leaving Fairfax the only major global financial company still entangled in the increasingly isolated bail industry.

The ACLU has successfully sued bail insurers⁹ for their role precipitating a cycle of abuse for individuals who rely on commercial bail bonds agents to secure their freedom, only to be subjected to invasive, onerous, and often violent conditions upon release.¹⁰

FAIRFAX FINANCIAL'S INVESTMENT IN BAIL

Fairfax Financial is a global conglomerate that is active in several countries. Fairfax wrote more than \$17.5 billion in gross insurance premiums in 2019 and generated more than \$2 billion in profit that year.¹¹

While Fairfax Financial has invested in the bail industry for years, through a series of recent acquisitions, Fairfax subsidiary Crum & Forster has become the largest bail insurer in the world. Fairfax acquired New Jersey-based Crum & Forster in 1998. The company has been active as a bail insurer since at least 2001.¹²

Last year, Fairfax substantially expanded its presence in the bail insurance industry by acquiring the bail business of Accredited Surety and Casualty Company, part of global insurance group Randall & Quilter,¹³ as well as the bail business of Japan-based Tokio Marine Group.¹⁴ On Crum & Forster's "Bail USA" website,



THE BAIL USA WEBSITE

Crum & Forster Senior Vice President Michael Ziemer notes that “his vision of creating the largest bail organization in the nation came to fruition in April 2019 when Crum & Forster purchased Bail USA, Inc. and acquired the bail portfolio from Accredited Surety and Casualty.”¹⁵

The combined companies wrote \$252 million in direct insurance premiums in 2019, according to insurance ratings agency A.M. Best, making it the largest bail insurer in the world.¹⁶

It is notable that Fairfax Financial doubled down on the bail insurance industry as its global peers were exiting, and as the civil rights community identified for-profit cash bail as one of the main drivers of mass incarceration and racial inequality in the United States.

FAIRFAX’S FIGHT AGAINST BAIL REFORM

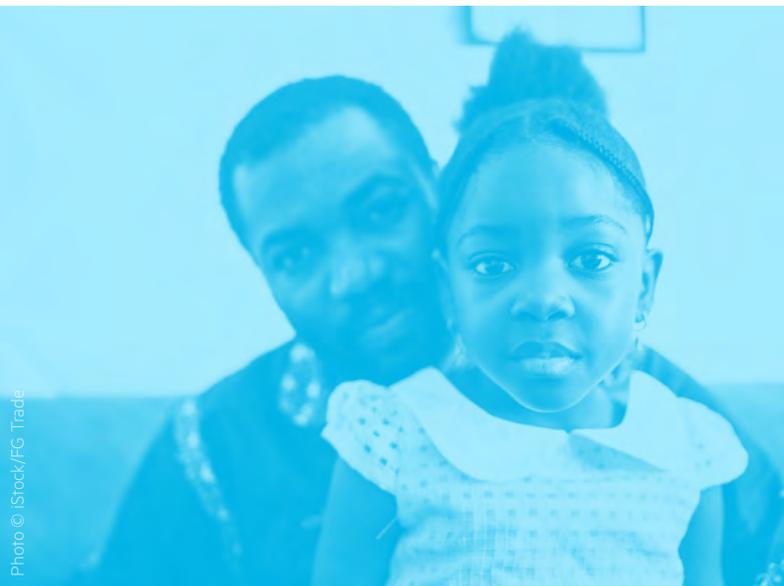
Among its core values, Fairfax Financial notes that “We are results oriented – not political.”¹⁷ Yet Fairfax Financial subsidiary Crum & Forster has not only spent heavily to expand its presence in the U.S. bail industry, it has also spent heavily to fight back against efforts to reform or end for-profit bail.

For example, Crum & Forster’s Bail USA website features a “Fight Bail Reform” page that calls on readers to “Help Fight Bail Reform in California,” and matches donations to the committee established to try to preserve for-profit bail in California.¹⁸ Crum & Forster affiliates United States Fire Insurance Company, Accredited Surety & Casualty, and Bail USA have spent more than \$500,000 to roll back bail reform in California, including a contribution as recently as October 2020.¹⁹ While the ACLU and Color Of Change also had serious concerns with the bail reform legislation passed in California and its potential to result in more pretrial detention and racial disparities in the state, Crum & Forster and the bail industry spent heavily to maintain the status quo protecting their bottom line.

Crum & Forster’s Bail USA website features a letter from Crum & Forster Senior Vice President Michael Ziemer to the company’s bail agents, in which he notes:

- “Our commitment to the Bail Industry is unwavering and our financial strength will provide you the security of knowing you are with the company that can weather the storms our industry is facing.”²⁰
- “Crum & Forster believes in the Bail Business and feel we are positioning all of us, agents and staff alike, to be at the forefront of the Industry **when the black cloud of bail reform is finally lifted and we can all get back to business as usual.**”²¹
- Crum & Forster boasts of being a “major Contributor in support of the Bail Industry”²²

In addition, Crum & Forster has also contributed hundreds of thousands of dollars to trade associations such as the American Bail Coalition (ABC).²³ ABC represents the interests of bail insurers and has been working to expand the bail industry, protect insurers from responsibility, and fight reform since 1992. In recent years, it has been increasing its activity and funding, with contributions tripling to nearly \$1.2 million from 2012 to 2014. Executive Director Jeffrey Clayton says of ABC’s role in policy-setting that affects the bail industry, “If it gets wheels, we will get involved.” ABC has spent decades lobbying, writing



laws, and showing up nationwide at local hearings, in statehouses, through right-wing, pro-privatization group ALEC, and in the media. The reach of the ABC into legislatures — and therefore the reach of the bail industry — is far beyond what the trade association’s small size would suggest.

FAIRFAX HAS NOT RESPONDED TO REPEATED OUTREACH FROM ELECTED OFFICIALS AND CIVIL RIGHTS ADVOCATES REGARDING ITS INVESTMENTS IN BAIL

While Fairfax Financial has substantially expanded its presence in the bail industry and spent heavily to fight bail reform in recent years, it has not responded to repeated attempts at outreach from elected officials and civil rights advocates.

For example, in April 2018 U.S. Senators Cory Booker and Sherrod Brown sent letters to Fairfax Financial and Crum & Forster asking the firm a series of questions about its investments in the bail industry.

“Every year, bail bond agents across the country are estimated to bring in more than \$2 billion dollars from bond premiums and fees,” the Senators wrote in the letter. “As a result of these costs, consumers in the bail industry frequently find themselves trapped in a cycle of debt and fees related to their payments, often for long after the original charges with the courts have been resolved. In light of these disclosures, we are concerned that many of our nation’s insurance companies may be pursuing profits at the expense of economic security for vulnerable families and the goals of public safety.”²⁴

In 2019, the ACLU sent a letter to Fairfax raising concern with the company’s investment in the bail industry:

“Every year in the United States, millions of people are forced to pay cash bail after an arrest or have no way to return home while fighting their case. This is despite the fact that they are presumed innocent and have not been convicted of a crime. To avoid being incarcerated

while their cases go through the courts (which can sometimes take months or even years), people who cannot afford to post the bail amount have no choice but to take out a loan from a for-profit bail bonds company, including paying that company a non-refundable fee. The financial burden of this fee harms individuals, families, and whole communities. What’s more, it disproportionately affects Black, Latinx, and low-income communities.”²⁵

The ACLU’s letter to Fairfax asked the company to exit its investments in the bail bond and bail surety industries.

Most recently, in July 2020, the ACLU and Color Of Change reached out to Fairfax Financial again regarding its investment in the bail industry, noting:

“If you truly believe that the time for passing the buck is over and that you have a responsibility to take meaningful steps to end anti-Black systemic racism, then Fairfax Financial and Crum & Forster will halt their efforts to fight bail reform and exit the bail insurance industry.”²⁶

Despite multiple attempts at outreach over the past years, Fairfax Financial just responded to the concerns raised by the ACLU, Color Of Change, and elected officials like Senator Booker in January, 2021. Representatives from the company reaffirmed its commitment to anti-Black racism, but avoided committing to divestment from the bail industry.

FAIRFAX’S INVESTMENT IN FOR-PROFIT BAIL RISKS ITS BUSINESS REPUTATION ON A SHRINKING INDUSTRY

Fairfax leadership’s choice to expand its presence in bail ties the firm’s reputation to an industry that is increasingly a public pariah. In recent years, major media coverage in outlets such as The New York Times and the Los Angeles Times²⁷ have dramatically exposed how the industry relies upon extortion, conspiracy, and other illegal practices in order to stay alive. In May 2018, Facebook and Google banned all bail bond companies from purchasing advertising space on

their platforms to protect users from the predatory industry.²⁸

As important as Fairfax and Crum & Forster are to the U.S. bail industry, bail insurance represents a tiny part of Fairfax's overall insurance business. Bail insurance makes up less than one percent (0.94 percent) of Crum & Forster's net premiums written and much less (0.16 percent) of Fairfax Financial's net premiums written.²⁹

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The bail-bond industry is under intense pressure as more states virtually wipe out cash bail and financial firms look for an exit from an increasingly controversial profit center in the criminal justice system.”

— THE WALL STREET JOURNAL FEB. 2020

Given recent trends, Fairfax is unlikely to see growth in its bail insurance business. The bail industry, facing reform proposals which would eliminate or dramatically shrink the industry in several states, has seen business decline in recent years. Many counties have begun to eliminate cash bail for low-level offenses.³⁰

In 2018, a report by insurance rating agency A.M. Best asked whether 2017 was the “tipping point” for the bail bonds industry, writing:

“The potential for disruption stemming from bail bond reform remains a significant negative to the surety market's bail bond insurance segment. A.M. Best believes legislative, regulatory, and market forces are presenting a number of serious challenges to the bail bond industry, and in particular, to the long-term viability of insurers for which bail bond insurance constitutes a substantial portion of their portfolio.”³¹

In Feb. 2020, The Wall Street Journal reported: “The bail-bond industry is under intense pressure as more

states virtually wipe out cash bail and financial firms look for an exit from an increasingly controversial profit center in the criminal justice system.”³²

The Journal remarked on the exodus from bail by Fairfax's global peers: “The decisions to exit bail-bond companies come as the industry enters a period of decline. The amount of bail bonds written fell about 10 percent to just over \$14 billion in 2018, according to an analysis of industry data by insurance-ratings firm A.M. Best Co. From 2009 through 2016 the industry grew by about 25 percent, but more recently it experienced two straight years of declines.”³³

The COVID-19 pandemic has only exacerbated these declines, as local authorities have reduced jail populations to reduce density and curb the spread of the coronavirus.³⁴

Fairfax's role as the largest actor in the for-profit bail industry creates substantial reputational risk for the company. Fairfax holds dozens of insurance companies around the world, and owns public facing brands like restaurant chains, liquor brands, and retailers, especially in its home market Canada, where for-profit bail is illegal.³⁵

BAIL INVESTMENTS UNDERMINE PREM WATSA'S LEADERSHIP ON ANTI-BLACK RACISM

Since recent protests of and growing public concern with systemic racism in the U.S. and around the world following the police killings of George Floyd, Breonna Taylor, and many other people, Fairfax Financial Chairman and CEO Prem Watsa has taken a leadership role in a growing effort to address systemic racism in Canadian companies, including his own.

Watsa serves as co-chair of the recently formed “Canadian Council of Business Leaders Against Anti-Black Systemic Racism,” stating that: “[t]he time for passing the buck is over. As business leaders in



Canada, we have a responsibility to not only recognize that anti-Black systemic racism exists in this country but also take meaningful steps to end it.”

Watsa also participated in a CEO roundtable at the BlackNorth Initiative Inaugural Summit on July 20, 2020, where he reiterated the need to address anti-Black systemic racism, saying “I just think it is inappropriate that this continues any further, and all of us, from a business standpoint, we want to eradicate racism against Blacks.”³⁶

Watsa also spoke of addressing racism at his company, saying, “It is really nice for the leadership of your company to say ‘We will not tolerate racism. If we catch anyone being racist, there will be consequences.’”³⁷

Watsa continued, “At your company you should talk about the fact that there is racism, and how you can eliminate it.”³⁸

After making these comments, Watsa sought to address racism at Fairfax Financial, signing the BlackNorth Initiative pledge and forming a “Black Initiatives Action Committee” at the Fairfax corporate level. On Fairfax’s Aug. 20, 2020 earnings conference call, Watsa noted: “We have now formed a Black initiatives action committee at the Fairfax level, made up of individuals across our insurance and reinsurance companies to discuss these issues openly and to create more opportunities for people from the black community and all minorities within our company. Needless to say, racism will not be tolerated in our company.”³⁹

TO FIGHT ANTI-BLACK RACISM, FAIRFAX SHOULD CEASE FUNDING OPPOSITION TO BAIL REFORM AND SHUT DOWN ITS BAIL BUSINESS

Prem Watsa’s and Fairfax’s leadership to address anti-Black racism is commendable, but the commitment means little unless they’re willing to take a bold stance and divest from the predatory for-profit bail industry. The bail industry disproportionately impacts Black people and other communities of color, trapping some in cycles of debt while leaving others trapped in jail because they are poor, exacerbating systemic racism in the criminal legal system.

Fairfax Financial’s continued profit from the bail industry is directly contrary to its commitment to address anti-Black systemic racism. As Prem Watsa said, Fairfax Financial should not tolerate racism.

As such, Fairfax and Crum & Forster should immediately cease funding efforts opposed to bail reform, leave the American Bail Coalition, and shut down its bail insurance business.

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