

March 24, 2022

Wes Hall
Co-Chair
Canadian Council of Business Leaders Against Anti-Black Systemic Racism
BlackNorth Initiative
130 King St W Suite 2950,
Toronto, ON
M5X 1K6

Re: Prem Watsa, Bail Insurance, and Anti-Black Systemic Racism

Dear Mr. Hall,

We read with enthusiasm the BlackNorth Initiative's June 10, 2021 update on its accomplishments over the past year and your statement that "One year in, we continue and will continue to push corporate leaders in our nation to take meaningful action to end anti-Black systemic racism."

It is in that spirit that we ask the BlackNorth Initiative to turn its attention to Fairfax Financial and its role in maintaining the for-profit bail system in the United States, a significant driver of anti-Black systemic racism that helps keep tens of thousands of Black Americans incarcerated on a daily basis.¹

As you know, Fairfax Financial Chairman and CEO Prem Watsa serves as a co-chair of the BlackNorth Initiative.

Fairfax Financial Holdings Limited is the largest investor in the predatory bail bond and bail insurance industry in the United States, which disproportionately impacts communities of color, prolonging incarceration for those who cannot afford bail and trapping others in cycles of debt.

Earlier this year we released the enclosed report, "[Commitments to Anti-Racism Ring Hollow: Fairfax Financial is the Last Insurance Holdout in the Dying Bail Industry.](#)" which looks at Fairfax's role in the U.S. bail industry and its efforts to fight reforms of the criminal legal system.

Fairfax Financial subsidiary Crum & Forster is the largest bail insurance company in the United States. In addition, it has and continues to spend heavily to fight efforts to reform the U.S. bail system.

¹ "[Jail Inmates in 2019.](#)" Bureau of Justice Statistics. March 2021.

Over the past few decades, the number of people incarcerated in jails in the United States has swelled, contributing significantly to the nation's mass incarceration crisis. On any given day, hundreds of thousands of people are in jail even though they have not been convicted of a crime. They are detained before trial, many because they cannot afford cash bail. Courts have told them they can return home if they post money bail to secure their release, but they simply can't afford the cost of freedom. 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

The for-profit bail system in the U.S. and bail insurers like Fairfax Financial's Crum & Forster disproportionately impact communities of color, who — due to racism, social exclusion, and aggressive police practices — are much more likely than their white counterparts to be arrested in the first place and once arrested, are more likely to be incarcerated while awaiting trial. Bail amounts assigned to Black men average 35 percent higher than those for white men, even when controlling for the seriousness of the offense.³

While Fairfax's global insurance peers like Tokio Marine Holdings, R&Q, and Endeavour Capital exited the bail insurance industry in the last few years, Fairfax's Crum & Forster substantially increased its role, buying out its rivals' bail insurance businesses.

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 asks them to donate to the committee established to try to roll back bail reform in California. The website notes that "Crum & Forster/Bail USA is matching our agent contributions up to \$500,000."⁴ Crum & Forster affiliates United States Fire Insurance Company, Accredited Surety & Casualty, and Bail USA have spent more than \$450,000 to roll back bail reform in California, including a contribution of \$50,000 as recently as October 2020.⁵ While the ACLU had concerns regarding bail reform in California and its potential to result in more pretrial detention in the state, Crum & Forster seems to be concerned solely about the impact these reforms will have on their bottom line.

Crum & Forster's Bail USA website until recently featured a letter from Crum & Forster Senior Vice President Michael Ziemer to the company's bail agents, in which he noted:

² https://law.yale.edu/sites/default/files/area/workshop/leo/leo16_yang.pdf

³ Shawn D. Bushway and Jonah B. Gelbach, "Testing for Racial Discrimination in Bail Setting Using Nonparametric Estimation of a Parametric Model" (2011)

⁴ <https://www.bailusa.net/help-fight-bail-reform-in-california/>

⁵ Cal-Access profile for Californians for Safer Communities, accessed June 26, 2020.

- “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.”⁶
- “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.**”⁷ (emphasis added)

Fairfax Financial’s Crum & Forster reported in 2020 that it was an “active member of the American Bail Coalition” and a “Major Contributor in support of the Bail Industry.”⁸

The American Bail Coalition is the main industry-sponsored lobby group that actively fights bail reform efforts around the United States. A recent Reuters article, [“U.S. bail-bond insurers spend big to keep defendants paying.”](#) highlighted the American Bail Coalition’s actions and the role of bail insurers like Fairfax Financial’s Crum & Forster in fighting efforts to reform the criminal legal system around the US.⁹

Michael Ziemer of Crum & Forster has served on the American Bail Coalition board and Crum & Forster remains an active member of the organization.¹⁰

As important as Fairfax and Crum & Forster are to the U.S. bail industry, bail insurance represents a tiny part of Fairfax’s overall 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 overall net premiums written.¹¹

Mr. Watsa has previously said “[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.”

We have reached out to Mr. Watsa multiple times over the past two years regarding Fairfax Financial’s and Crum & Forster’s role in the bail insurance industry and to efforts to fight reform of the U.S. criminal legal system, yet Fairfax Financial has taken no steps to exit the bail industry in the United States.

When we met with representatives of Fairfax Financial earlier this year, they took the position that legislative and judicial change (i.e. not action by corporations like Fairfax) is necessary to reform pretrial detention in the United States. Yet Fairfax Financial-owned Crum & Forster has spent heavily to oppose reforms and continues to

⁶ <https://web.archive.org/web/20200806071856/https://www.bailusa.net/about-us/a-message-from-our-president/>

⁷ <https://web.archive.org/web/20200806071856/https://www.bailusa.net/about-us/a-message-from-our-president/>

⁸ <https://www.cfins.com/wp-content/uploads/2020/06/Bail-2020.06.02.pdf>

⁹ [“U.S. bail-bond insurers spend big to keep defendants paying.” Reuters, Mar 26, 2021.](#)

¹⁰ [“States are trying to change a system that keeps poor people in jail. The bail industry is blocking them.” CNN, Aug 30, 2019.](#)

¹⁰ [American Bail Coalition Form 990, 2018.](https://ambailcoalition.org/our-team/) <https://ambailcoalition.org/our-team/>

¹¹ “Bail Bond Market Faces Legislative Headwinds,” AM Best, May 11, 2020. Fairfax Financial 2019 Annual Report.

fund and support organizations like the American Bail Coalition that fight criminal legal system reforms at every step.

Bail insurance companies like Fairfax Financial-owned Crum & Forster help keep tens of thousands of Black Americans incarcerated on a daily basis. Pretrial detention can lead to lost jobs and dramatic disruptions for families, compounding the effects of systemic racism.

Given the BlackNorth Initiative's commitment to push corporate leaders to take meaningful action to end anti-Black systemic racism, we believe the Initiative should focus on Prem Watsa and Fairfax Financial.

We believe the BlackNorth Initiative should ask Prem Watsa and Fairfax Financial to exit the for-profit bail industry, withdraw its membership from the American Bail Coalition, and cease funding efforts to oppose bail reform.

We would appreciate an opportunity to discuss this issue with you further. Please contact Tara Stutsman at tstutsman@aclu.org to schedule a call.

Sincerely,

Handwritten signature of Udi Ofer in black ink.

Udi Ofer, ACLU

Handwritten signature of Scott Roberts in black ink.

Scott Roberts, Color of Change

CC: BlackNorth Initiative Directors