



July 14, 2020

V. Prem Watsa
Chairman and CEO
Fairfax Financial Holdings
95 Wellington Street West
Suite 800
Toronto, Ontario, Canada
M5J 2N7

Re: Divesting from for-profit bail

Dear Mr. Watsa,

As you are aware, the United States has seen a historic wave of Black Lives Matter protests for racial justice in recent weeks focused on the killing of George Floyd and more broadly on racism in the criminal legal system.

We applaud your role as co-chair of the recently formed “Canadian Council of Business Leaders Against Anti-Black Systemic Racism” and your recent statement 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.”

Given this statement, it is surprising that your company, Fairfax Financial Holdings Ltd, 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.

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.

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.

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.

While Fairfax' global insurance peers like Tokio Marine Holdings, R&Q, and Endeavour Capital exited the bail insurance industry last year, Fairfax' 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 US 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."¹ 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 \$62,000 as recently as April 2020.² While the ACLU has 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 also 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."³
- "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.**"⁴ (emphasis added)

¹ <https://www.bailusa.net/help-fight-bail-reform-in-california/>

² Cal-Access profile for Californians for Safer Communities, accessed June 26, 2020.

³ <https://www.bailusa.net/about-us/a-message-from-our-president/>

⁴ <https://www.bailusa.net/about-us/a-message-from-our-president/>

As important as Fairfax and Crum & Forster are to the U.S. bail industry, bail insurance represents a tiny part of Fairfax' overall business. Bail insurance makes up less than one percent (0.94%) of Crum & Forster's net premiums written and much less (0.16%) of Fairfax Financial's overall net premiums written.⁵

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.

We would appreciate an opportunity to discuss this issue with you further. Please contact Udi Ofer at uofer@aclu.org or at [REDACTED] to schedule a call.

Sincerely,



Udi Ofer, ACLU



Scott Roberts, Color of Change

⁵ "Bail Bond Market Faces Legislative Headwinds," AM Best, May 11, 2020. Fairfax Financial 2019 Annual Report.