Juror Perceptions: Business Interruption Insurance and the Covid-19 Pandemic

Emily McDonald, PhD
Jury Consultant

BLOOM strategic consulting

Business Interruption insurance is typically intended to compensate the policy holder for loss of income during the period of time necessary to repair physical damage to the property. BI may also entitle the policy owner to recover other expenses that would not have been incurred during the ordinary course of business. As BI lawsuits related to Covid-19 are filed across the nation, the jury is still out as to whether the virus itself or the threat of contamination can or will be sufficient to trigger business income coverage or alternatively, civil authority coverage.

In May 2020, Bloom Strategic Consulting conducted a survey among 101 Dallas area, jury eligible citizens to assess verdict orientation in a simulated business interruption (BI) case. The purpose of the survey was to analyze current perceptions of business interruption insurance coverage for losses related to the Covid-19 pandemic as well as perceptions of "physical loss" and "damage or destruction" concerning the virus. Participants read a vignette detailing a fictitious lawsuit. This narrative introduced the Plaintiff, a small business owner of a children's boutique in Dallas. The Defendant was described as the insurance company that issued Plaintiff a generically worded business interruption policy insuring the property. The narrative detailed a synopsis of events including the following: (1) Plaintiff filed a claim for business interruption for losses due to the pandemic, (2) Defendant assigned an adjustor to investigate the claim, and (3) Defendant subsequently denied the claim. The Defendant claimed the reason for denial of coverage was that the policy issued to Plaintiff does not cover losses related to the Covid-19 pandemic. The narrative included substantive parts of the Dallas County Stay Home, Stay Safe Order as well as policy language concerning the business interruption policy at issue in the case. Survey respondents then answered a series of questions related to verdict orientation, perceptions of government's response to the pandemic, government aid to the poor, and the manner in which Covid-19 has affected their own daily lives. Tables of association follow an overview of the study findings.

# Initial Leanings Following Case Narrative

Initial leanings indicated 60% of survey respondents slanted toward the Plaintiff to a greater degree than the Defendant after reading the case narrative. This included 25% who leaned strongly in favor of the Plaintiff, 19% who reported leaning somewhat in favor of Plaintiff, and 17% who leaned slightly in favor of the Plaintiff. Among the 40% who leaned in favor of the Defendant, 17% leaned slightly in favor, 12% leaned somewhat in favor, and 10% leaned strongly in favor of the Defendant.

In a case like this, would you tend to lean...

Strongly in favor of Plaintiff	Somewhat in favor of Plaintiff	Slightly in favor of Plaintiff	Slightly in favor of Defendant	Somewhat in favor of Defendant	Strongly in favor of Defendant
25%	19%	17%	17%	12%	10%
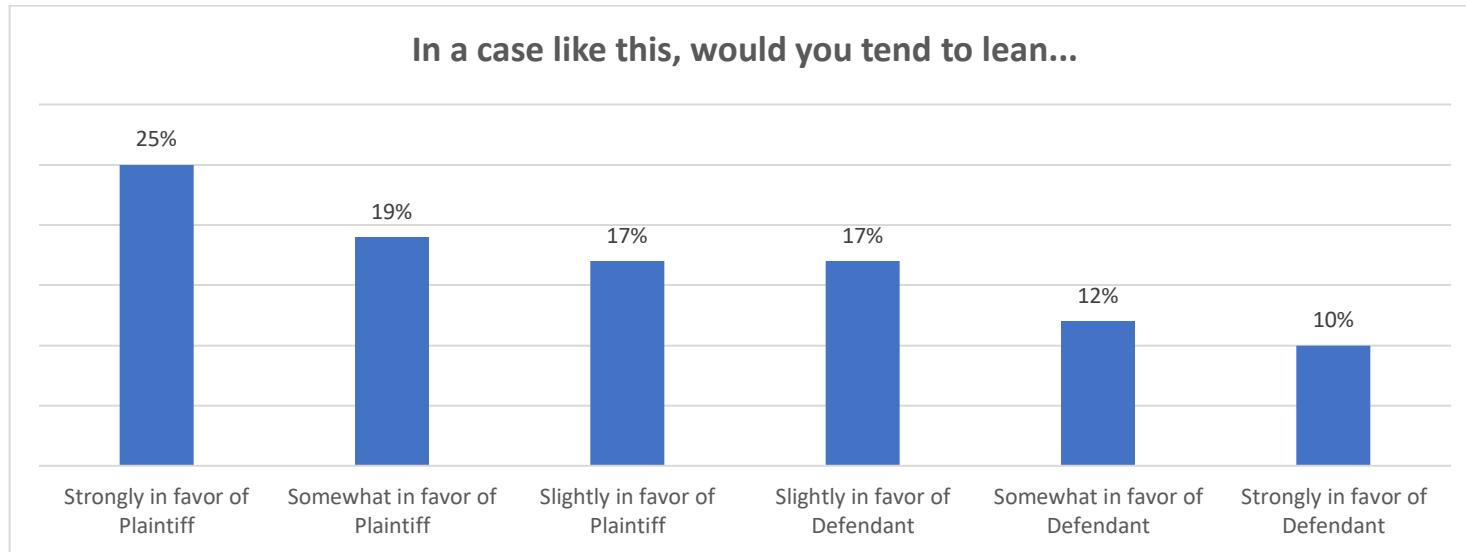
Overall, the survey revealed survey participants split down the middle as to whether the business interruption policy covered losses related to the pandemic. The same pattern of responses was found when participants were asked whether the Covid-19 virus caused a physical loss to the business. When asked whether the virus caused damage or destruction to the business (the trigger insurance companies are likely to require before claim approval), a substantial majority of the potential jurors surveyed responded that the virus did not cause damage or destruction. Almost 75% of the survey determined the virus didn't cause damage, while approximately 25% believed the virus had caused damage to the store. Further, although 51% of respondents determined the policy did not cover losses related to the pandemic, 56% of respondents concluded the insurance company wrongfully denied Plaintiff's claim for business interruption. In brief, the voting patterns elucidated that potential jurors may define physical loss in terms of economic loss, yet the majority were unwilling to conclude that the virus itself caused damage or destruction to the business. Moreover, there was a fair amount of sympathy for the Plaintiff expressed by the almost 60% of respondents who believed the Defendant insurance company was wrong to deny coverage to the Plaintiff.
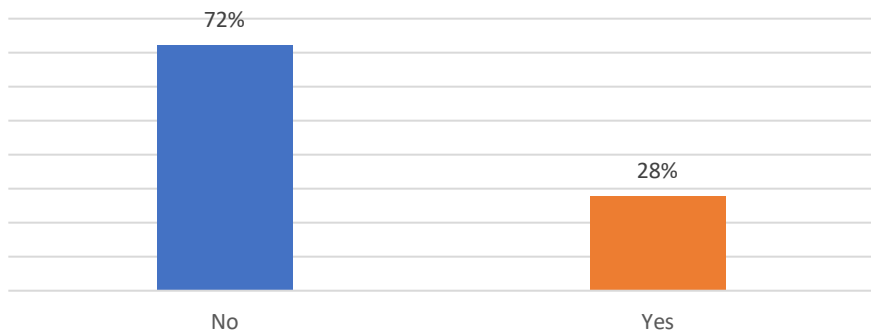
Verdict Summary

## Question 1: Does the business interruption policy owned by Plaintiff cover losses related to the Covid-19 pandemic?

51%	49%
No	Yes
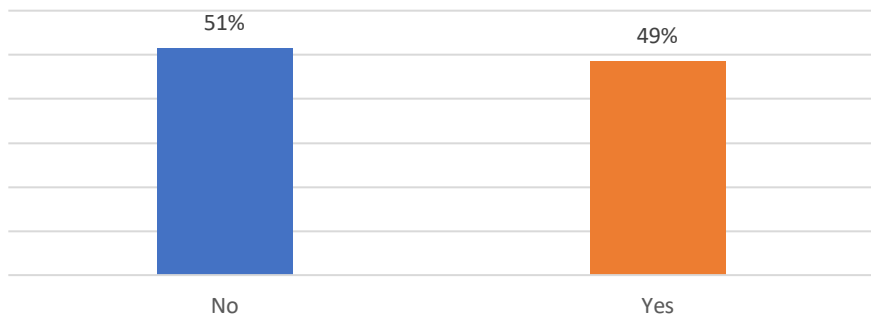
Question 2: Did the virus cause physical loss to the insured property?

51%	49%
No	Yes
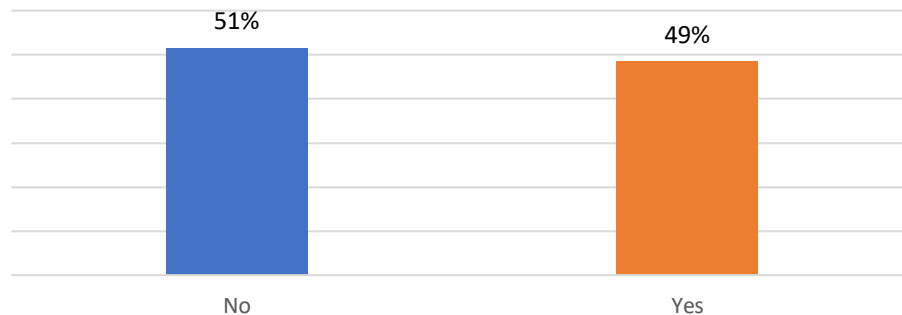
Question 3: Did the virus cause damage or distruction to the insured property?

72%	28%
No	Yes

Question 4: Did the insurance company wrongly deny Plaintiff's claim for business interruption losses?

44%	56%
No	Yes
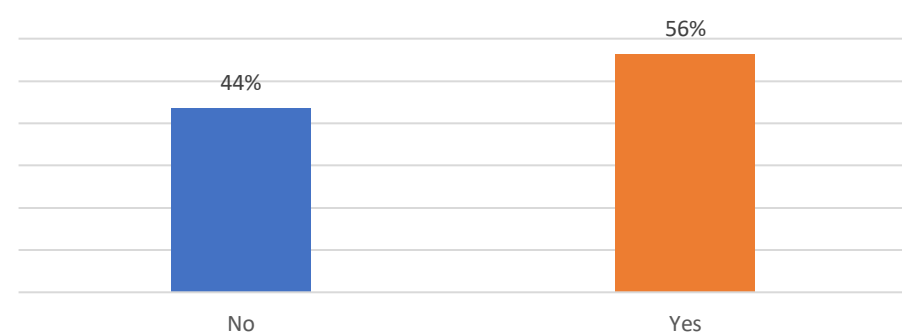
Method of Analysis

Respondents answered questions designed to collect: (1) verdict orientation, (2) demographic data, (3) attitudes toward government assistance to the poor, (4) perceptions about the degree to which the pandemic affected daily life, (5) personal assessments of government's response to the pandemic, and (6) individual ratings about the job large corporations are doing in reacting to the virus. Participant responses were aggregated by response category and compared to voting patterns of the sample at large. To do this we controlled variables by individual response to two verdict questions. Question 1: Does the BI policy owned by Plaintiff cover losses related to the Covid-19 pandemic. (COVERAGE) Question 2: Did the virus cause damage or destruction to insured's property. (CAUSE). In short, we wanted to identify which attitudes, opinions, and experiences might be useful in predicting voter orientation on Defendant's liability for coverage and Plaintiff's claim that the virus caused damage and/or destruction to her boutique.

Demographic Data

Survey participants were recruited to mirror what is typically observed in terms of gender, age, race/ethnicity, education, income, and political affiliation, if any. Participants further also provided answers as to whether they had ever been a juror in a criminal or civil case, and if so, how many times they had severed as a juror. The variables that presented with the most significant differences related to verdict orientation were age, gender, income, and education.

When correlated with the verdict on COVERAGE, several patterns were observed. Recall from above that the total sample voted 51% Yes and 49% no. Respondents over age 55 more frequently determined the policy did not cover losses related to the pandemic. Survey participants with a technical or trade school education and those who attended college, but did not earn a college degree, were also more likely to find the policy did not cover the losses related to the pandemic. When verdict orientation was controlled by income level, the data revealed that those who earned $25K or less, $35K-49,999, and those who earned over $125K were more likely to find the policy did not cover losses related to the pandemic. It was interesting to note that those in the highest and lowest income level brackets were more likely to find no coverage. Participants in the $25K-34,999 were more likely to find the policy did covered losses related to Covid-19. Finally, males more likely to find the policy covered losses related to the pandemic while females were more likely to find the policy did not cover such losses.

Participant responses were correlated by the verdicts on CAUSE in order to identify demographic differences among those who answered Yes and those who answered No. The total sample voted 72% No and 28% Yes. When controlling for age, respondents between the ages of 18-34 were more likely to conclude that the virus caused damage or destruction to Plaintiff's property. Further those in the lowest (under $25K) and highest (over $125k) category of annual income were more likely to determine that the virus caused damage or destruction to the store. Men were also more likely than women to determine the virus caused damage or destruction to Plaintiff's store.

The tables below further define the degree of these associations.

Attitudes Toward Government Assistance to the Poor

Before reading the lawsuit vignette, respondents were asked to provide the degree to which they agreed with a series of question about government aid to the poor. The tables below summarize the answers given by the sample as a whole.

Poor people today have it hard because government benefits don't go far enough to help them live decently.

Agree	Disagree	Strongly Agree	Strongly Disagree
48%	32%	18%	3%

Government aid to the poor does more harm than good by making people too dependent upon governmental assistance.

Agree	Disagree	Strongly Agree	Strongly Disagree
22%	57%	7%	14%

Poor people today have it easy because they can get benefits without doing anything in return.

Agree	Disagree	Strongly Agree	Strongly Disagree
56%	26%	14%	4%

Government aid to the poor does more good than harm because people can't get out of poverty until their needs are met.

Agree	Disagree	Strongly Agree	Strongly Disagree
56%	26%	14%	4%

Those who strongly disagreed that government aid does more good than harm, were more likely to determine the policy didn't cover the pandemic. Those who strongly disagreed that poor people have it easy these days because they can get government benefits without doing anything in return, also answered yes to the coverage question more frequently. Finally, those who strongly agreed that poor people today have it hard because government benefits don't go far enough to help them live decently determined the policy did cover business losses associated with the pandemic.

When attitudes toward the poor were correlated with determinations about whether the virus caused damage to the property, those who strongly agreed that government aid does more good than harm more frequently determined the virus caused damage. Finally, all of those who strongly disagreed that the poor have it hard these days determined the virus did not damage the property. It should be noted that there were a small number of respondents in the strongly disagree category.

The tables below further depict these observed associations.

Degree to which the Pandemic Has Affected Daily Life

How much has Covid-19 affected your daily life?
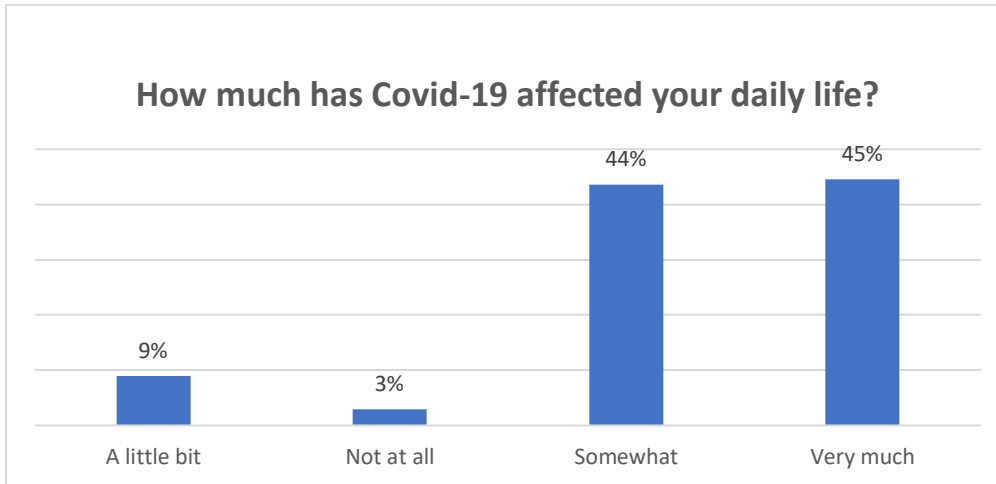
The vast majority of the survey respondents reported that Covid-19 has somewhat or very much affected their daily lives. Those who answered very much, were more likely to determine that the virus caused damage to the Plaintiff's store.

In what way has Covid-19 MOST affected your life?
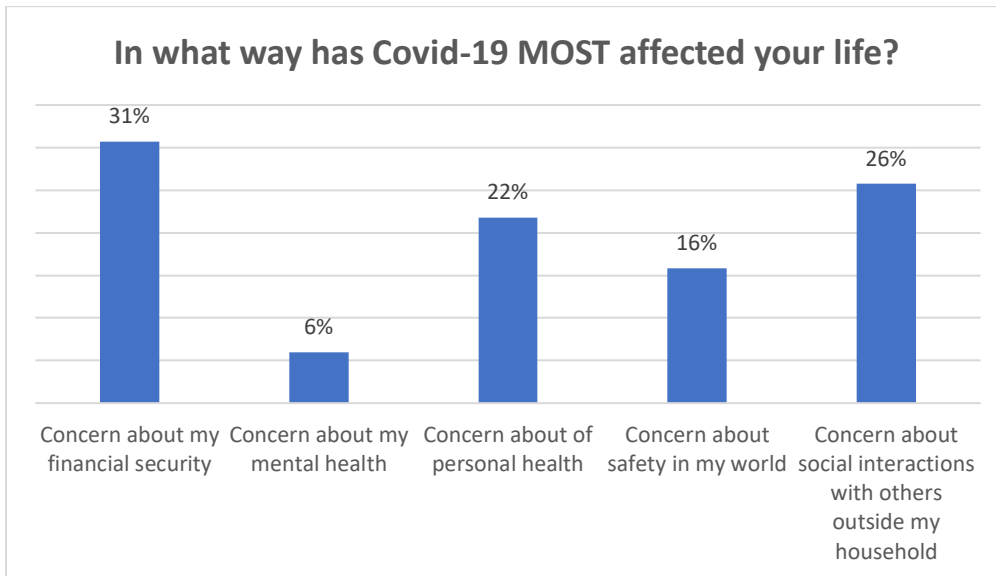
Participants reported concerns about my financial security most frequently as the way the pandemic has most affected their lives. This was followed by concerns about interactions with others outside my household, and concerns about personal health. While none of these categories resulted in a meaningful verdict determination, it is meaningful to appreciate that participants were concerned about finances and likely feeling isolated due to limited social interactions with those outside of their household.

How concerned are you that you or someone you know will be infected with Covid-19?

Category	Percentage
Very concerned	47%
Somewhat concerned	24%
A little bit concerned	20%
Not concerned at all	10%
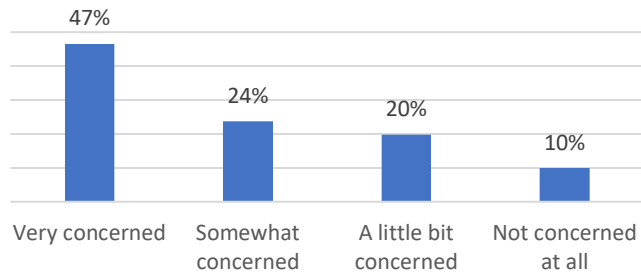
Almost half (47%) of survey participants were *very concerned* that they or someone they know will be infected with Covid-19. Results comparing voting patterns on the coverage claim among those very concerned about infection mirrored the sample at large. About half believed the policy covered losses related to COVID-19, and half did not. Those who reported being somewhat concerned were more likely to believe the policy covered losses, while those who were a little bit concerned or not at all concerned were more likely to find no coverage. Further, over twice as many of those most concerned about infection determined that the virus did not cause damage or destruction to the Plaintiff's business.

Have you or anyone close to you gotten the virus?

Category	Percentage
No	83%
Not sure	4%
Yes	13%
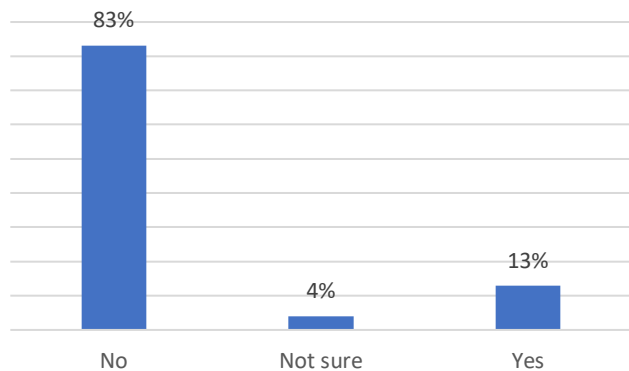
Less than 15% of respondents reported that they or someone close to them has been infected with the virus. Those who answered yes were more likely to also find that the virus caused damage to the Plaintiff's business.

Which of the following best represents your opinion regarding masks and/or facial coverings?

78% — Masks are important to the public health

23% — Masks are important to keep me from getting the virus

11% — Its wrong for anyone to tell me to wear a mask
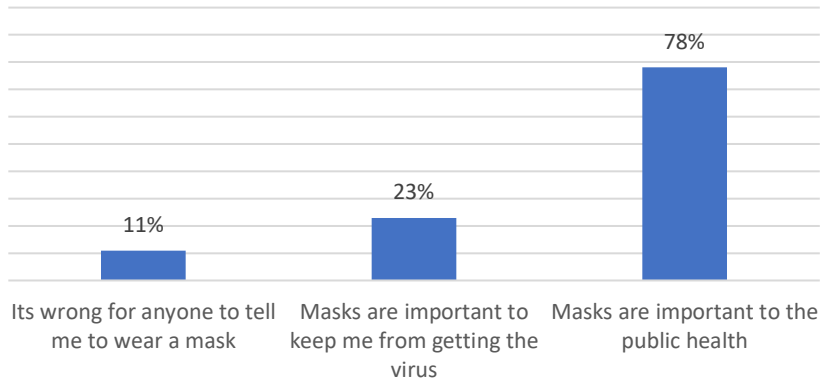
Among those surveyed, 11% reported the opinion that was wrong for anyone to them to wear a mask. Interestingly, this group was more likely to find the virus caused damage to Plaintiff's store. The vast majority believed that masks are important to the public health. Further, 23% believed masks were important to keep them from getting the virus. This group was more likely to believe the policy covered Covid-19.

What is your level of comfort in dining at an indoor restuarant in the next two weeks?

- 16% — Very comfortable
- 23% — Somewhat comfortable
- 61% — Not at all comfortable
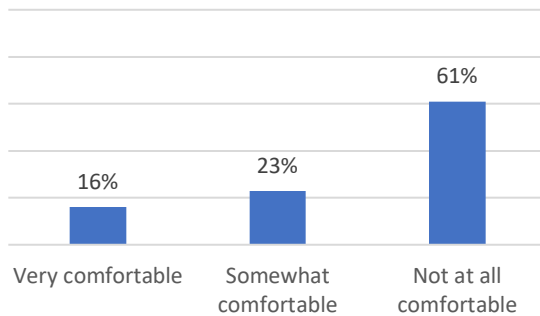
What is your level of comfort in shopping at an indoor retail establishment in the next two weeks?

- 21% — Very comfortable
- 37% — Somewhat comfortable
- 42% — Not at all comfortable

Which best describes you these days?

- 9% — Living normally
- 24% — Still going out, but careful
- 64% — Only going out when I have to
- 3% — Not leaving home at all
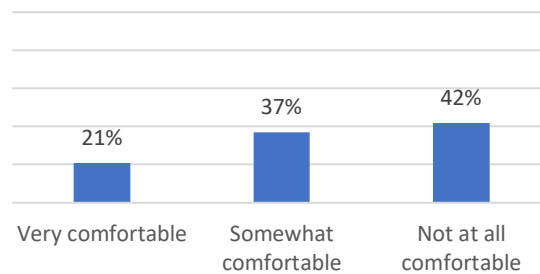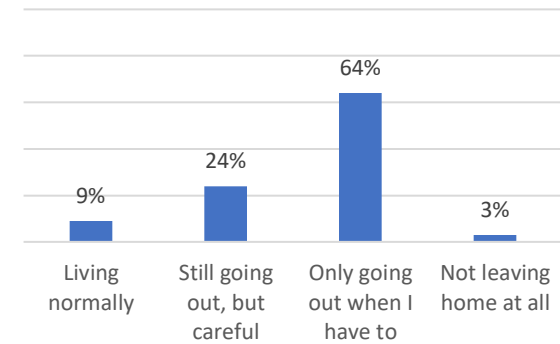
It is interesting to note that most of those surveyed were still reticent about dining indoors and shopping at indoor retail establishments. A greater percentage of respondents were more uncomfortable dining indoors than shopping in indoor retail establishments. Further, the majority of respondents reported only going out when they had to. A greater percentage of those living normally and not leaving home at all were more likely to believe the policy covered the virus

Government's Response to the Pandemic

How confident are you in the government's ability to control the Covid-19?

6%	26%	26%	40%
Very confident	Somewhat confident	A little bit confident	Not confident at all

How confident are you in your own ability to control how Covid-19 will affect your life?

30%	47%	19%	4%
Very confident	Somewhat confident	A little bit confident	Not confident at all
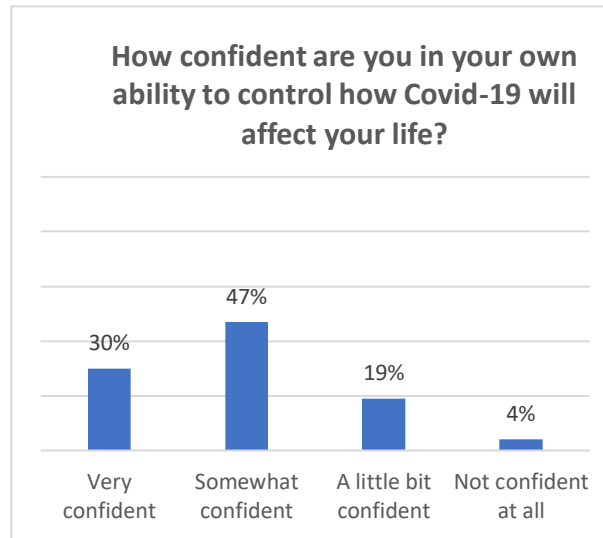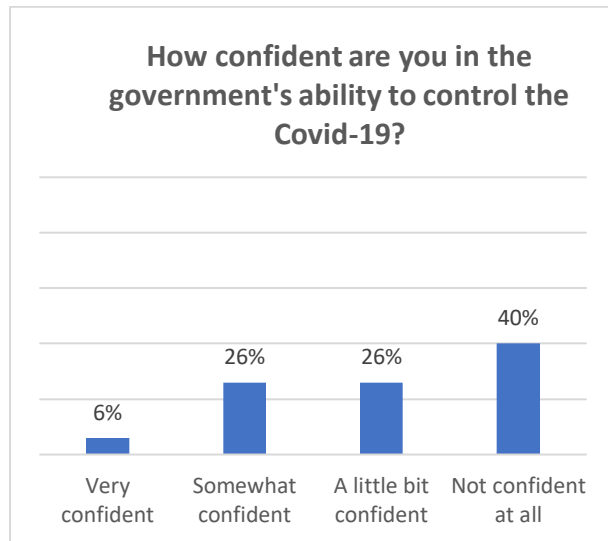
Overall, respondents were not confident in the government's ability to control the virus, and significantly more confident in their own ability to control the way Covid-19 will affect their own lives. This attitude mirrors a more general trend in the public's trust of authority in general. People today tend to be more confident in their own abilities and instincts rather than trusting of those identified as authority. Those who were very confident in government's ability to control the pandemic were more likely to believe that the policy covered losses related to the pandemic.

Do you approve or disapprove of the way President Trump is handling the response to COVID-19?

37%	63%
Approve	Disapprove

Do you approve or disapprove of the way Govenor Abbott is handling the re-opening of business in Texas?

40%	60%
Approve	Disapprove

Do you approve or disapprove of the way Dallas Judge Jenkins is handling the reopening of business in Dallas?

65%	35%
Approve	Disapprove
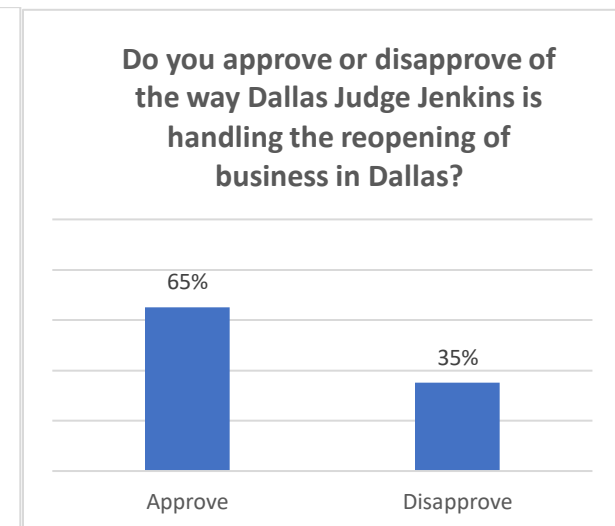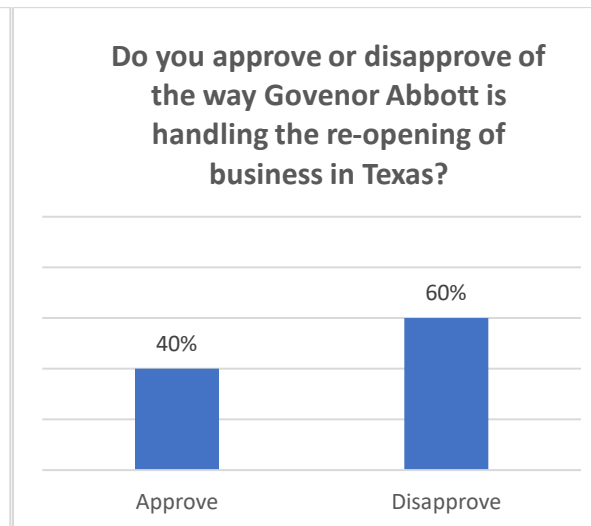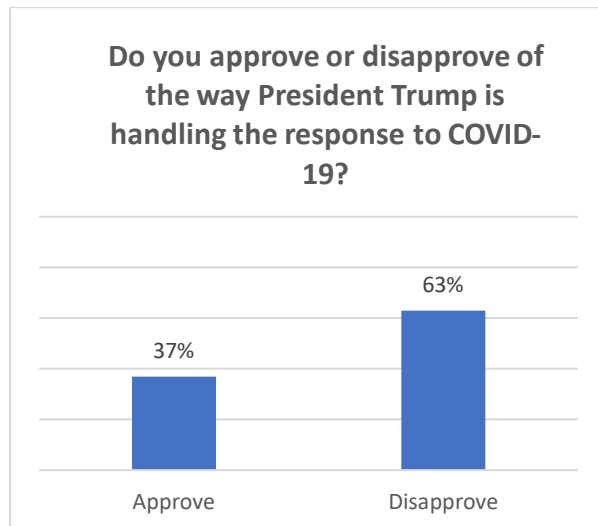
Respondents were more confident in local government's response to the pandemic and re-opening of business than they were of national or state level leadership. Opinions related to government approval of handling the response to the pandemic or reopening of business did not correlate in a meaningful way with verdict orientation.

Corporate Response to the Pandemic

How do you rate the job large corporations are doing in reacting to COVID-19?

Excellent	Good	Fair	Poor
12%	38%	42%	8%

How do you rate the job large corporations are doing in making the work place safe for employees?

Excellent	Good	Fair	Poor
10%	32%	45%	13%
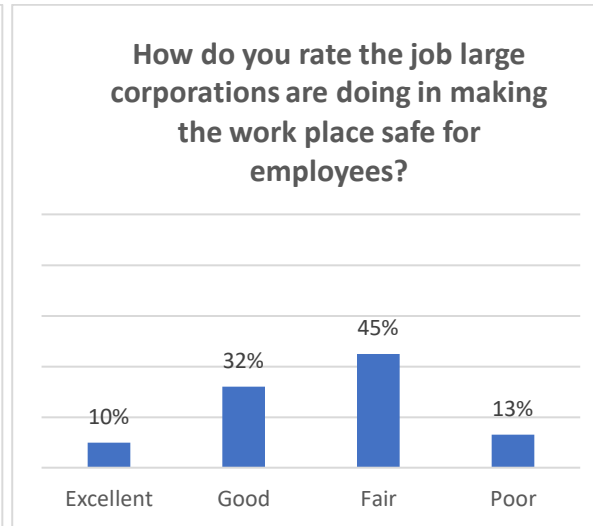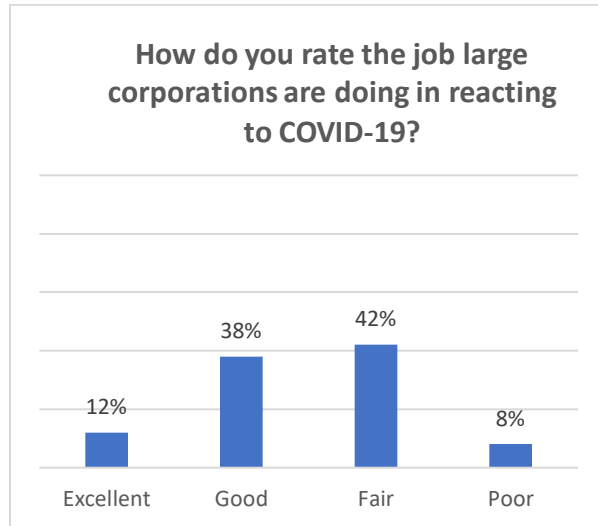
The public is watching and listening to the response of large corporations, and their interpretation for how well corporations are reacting the pandemic and making the workplace safe for employees is meaningful to verdict orientations. Those who believed corporations are doing an excellent job in reacting to the virus were more likely to find the policy did not cover Covid-19 related losses, yet this same group was more likely to believe the virus caused damage to the property. Those who believed large corporations are doing an excellent job making the workplace safe were more likely to agree that the virus caused damage to the property. This group may be blaming the virus as opposed to the business.

Measures of Association and Verdict Orientation

The tables below describe which variables were found to be associated with verdict orientation. This determination was based on controlling for a particular demographic characteristic, opinion, or attitude and measuring the frequencies of votes for the question of coverage (COVERAGE) and whether the virus caused damage or destruction to the Plaintiff's store (CAUSE). The total vote for the sample on these two variables was as follows:

COVERAGE

No	Yes
51%	49%

CAUSE

No	Yes
72%	28%
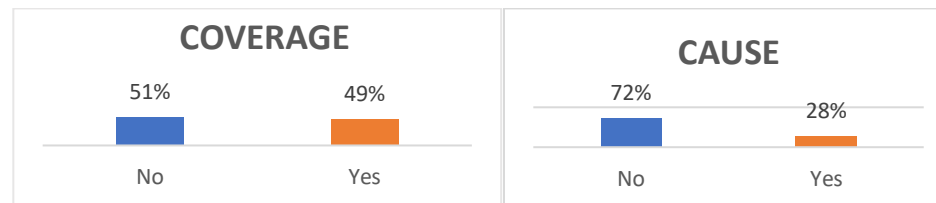
DEMOGRAPHIC CORRELATIONS

GENDER

Men more frequently voted that the BI policy covered the coronovirus pandemic than did women.

No 36% / Yes 64% — Male	No 59% / Yes 41% — Female

Men were more likely to conclude that the virus caused damage or destruction to insured's property.

No 58% / Yes 42% — Male	No 79% / Yes 21% — Female
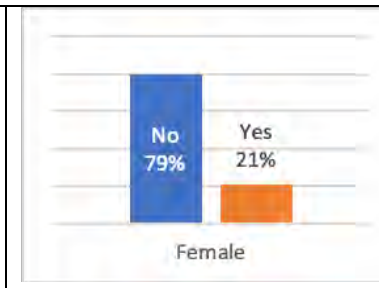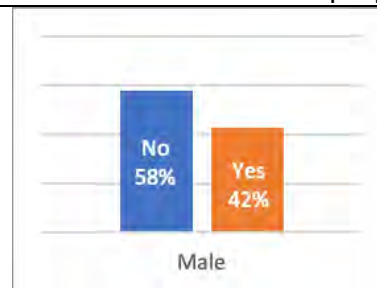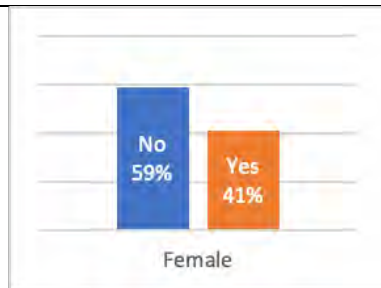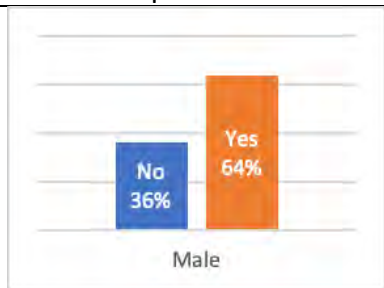
AGE

Respondents over age 55 were more frequently voted that the policy did not cover losses related to the pandemic

No 59% / Yes 41% — 55-64	No 67% / Yes 33% — 65 +

Respondents under age 34 more frequently voted that the virus caused damage to insured's property

No 50% / Yes 50% — 18-24	No 56% / Yes 44% — 25-34
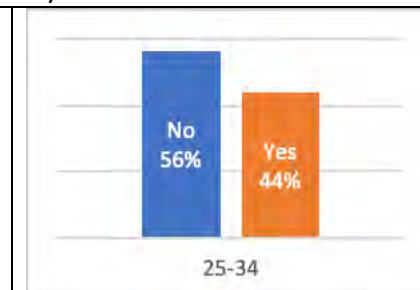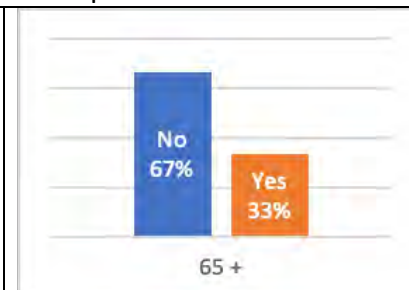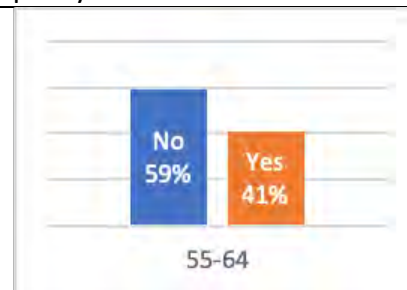
EDUCATION

Those with some college and technical/ trade school educations were more likely to find the policy did not cover losses related to Covid-19.

No 66% / Yes 34% — Some College	No 67% / Yes 33% — Technical or Trade School
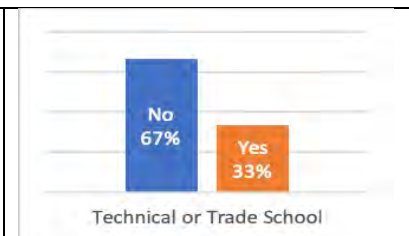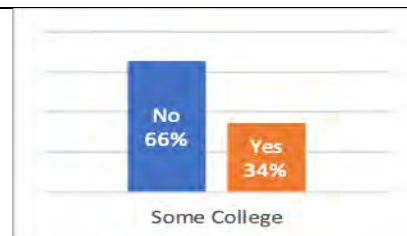
- There were no meaningful differences in terms of education in the determination of whether the virus caused damage to insured's property.

INCOME			
Those who earned less than $25K, $35-49,999 and over $125K more frequently voted that the policy did not cover losses related to the pandemic. Those who earned $25-34,999 were significantly more likely to find that the policy did cover Covid-19 related losses.		Respondents who earned $35-49,999 and $75-99,999 more frequently voted that the virus did not cause damage to the property. Those in the lowest and highest income earning groups more frequently reported that the virus caused damage to the insured's store.	

Less than $25K — No 71%, Yes 29%

$35-49,999K — No 68%, Yes 32%

$35-49,999K — No 84%, Yes 16%

$75K-99,999K — No 82%, Yes 18%

Over $125K — No 67%, Yes 33%

$25-34,999K — Yes 71%, No 29%

Less than $25K — No 57%, Yes 43%

Over $125K — No 50%, Yes 50%

RACE/ETHNICITY			

Asian/ Asian-American — No 60%, Yes 40%
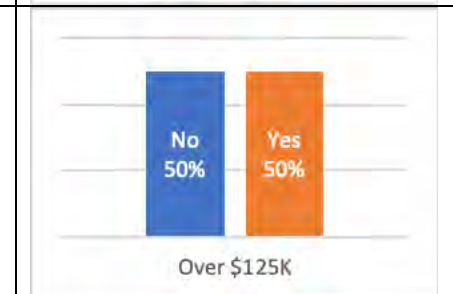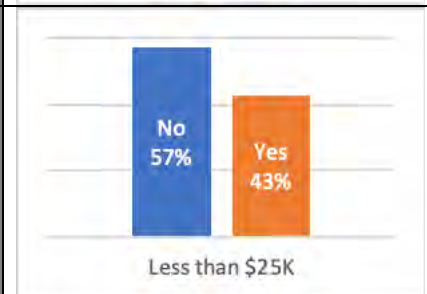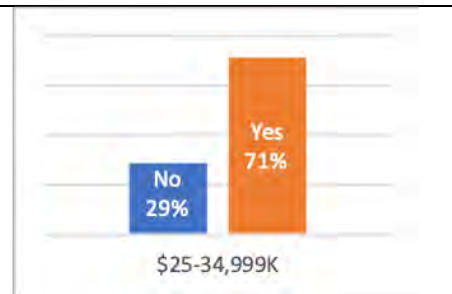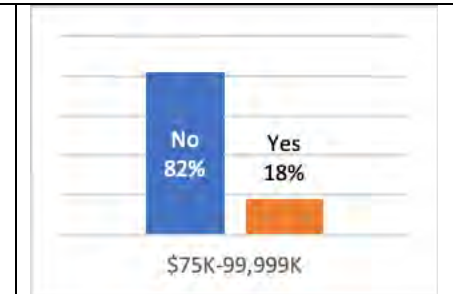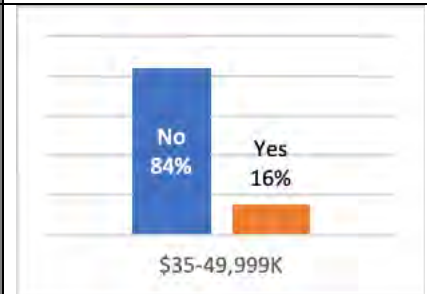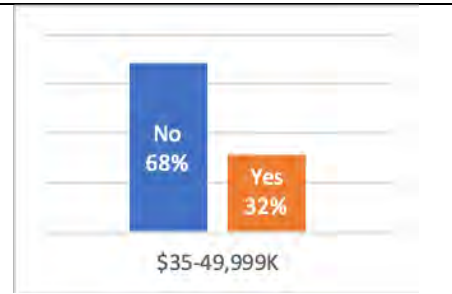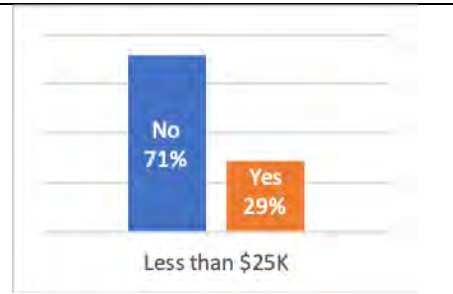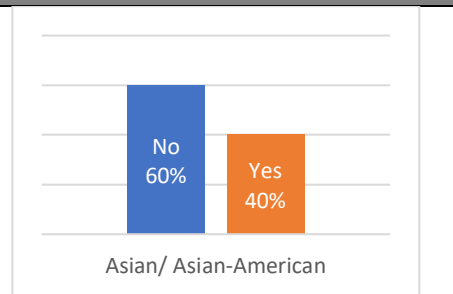
Asian Americans more frequently determined that the policy did not cover losses related to Covid-19. Among the groups who identifed as White, Latino, African-American, the vote was more evenly distrubuted between Yes and No.

Hispanic/ Latino — No 57%, Yes 43%
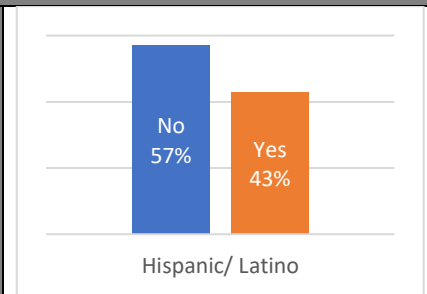
Latinos determined that virus caused damage to the Plaintiff's store more frequently than did other racial/ethnic groups. The other racial groups more closely approximated the 73% No, 28% Yes sample total vote.

POLITICAL PARTY AFFILIATION

No 62% Yes 38%
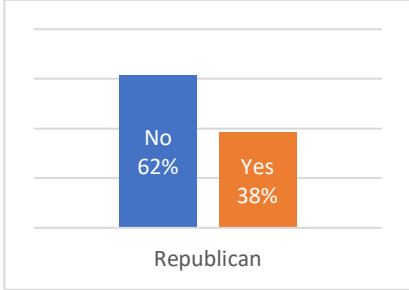
Republican

Respondents registered to vote as Republicans more frequently determined the policy did not cover losses related to COVID-19 than did those registered to vote as Democrat, Indepenent, or Other.

No 81% 19%
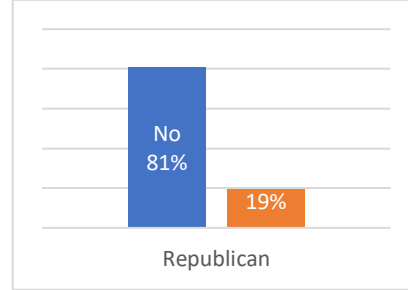
Republican

Republicans were less likely to determine that the virus caused damage to Plaintiff's property than were those affiliated with other political parties.

GOVERNMENT AID TO THE POOR

COVERAGE	CAUSE

Government aid to the poor does more GOOD than HARM because people can't get out of poverty until their needs are met.
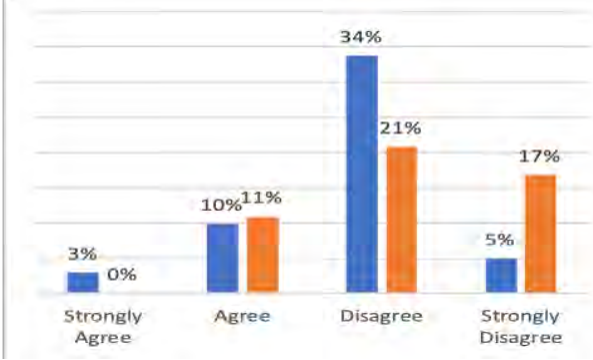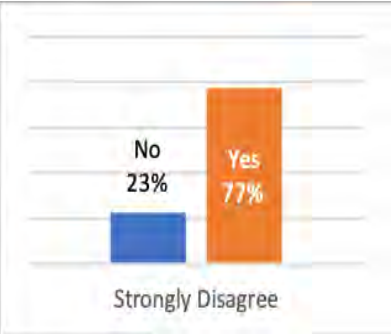
Government aid to the poor does more GOOD than HARM because people can't get out of poverty until their needs are met.
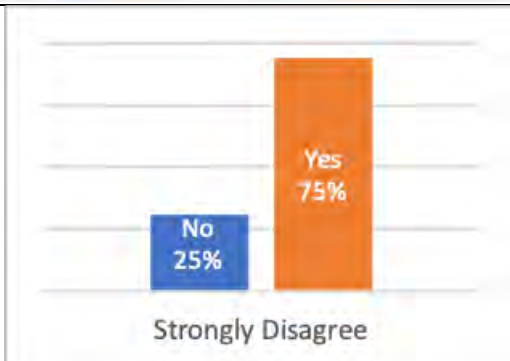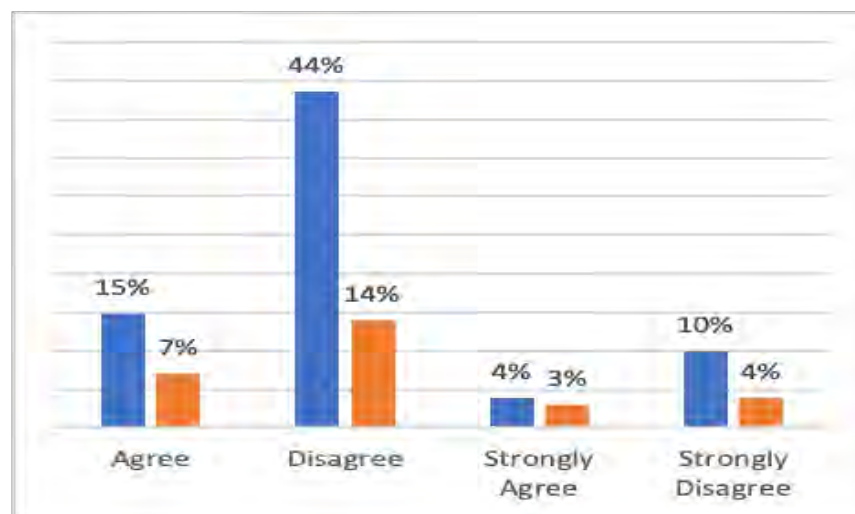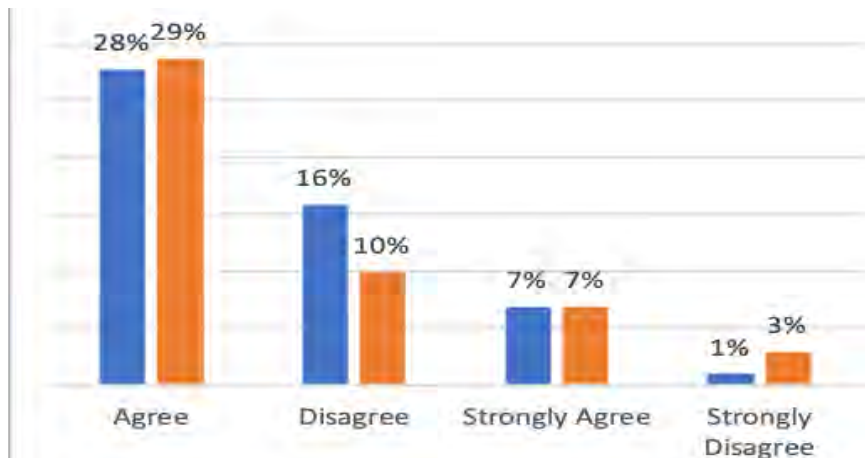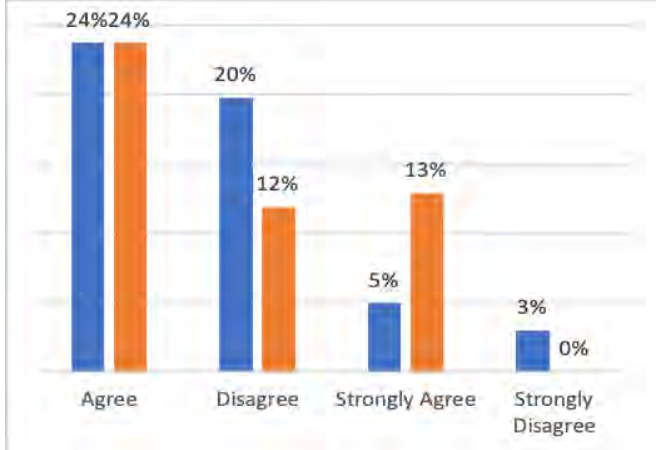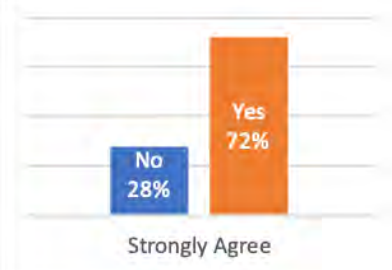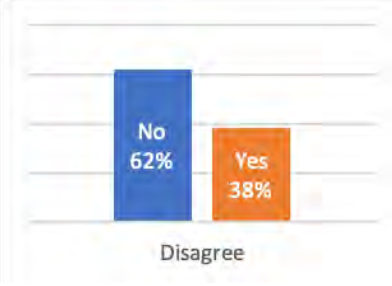
When correlated with the verdicts on coverage, those who strongly disagreed were approximately 25% more likely to find the policy covered losses related to COVID-19.
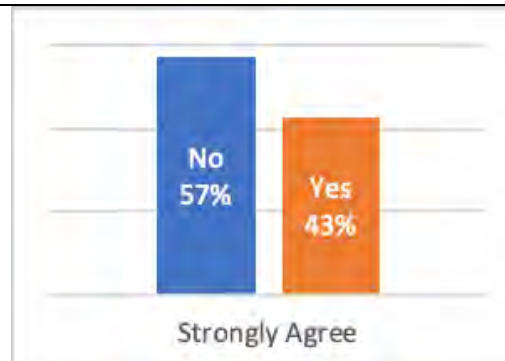
When correlated with verdicts on whether the virus caused damage or destruction to insured's property, those who strongly agreed were 15% more likely to determine that the virus caused damage.

COVERAGE	Perception of Benefit Recipients
Poor people today have it easy because they can get government benefits without doing anything in return.	▪ Those who strongly disagreed were 28% more likely to conclude the policy covered COVID-19 losses.

CAUSE	Perception of Benefit Recipients
Poor people today have it hard because government benefits don't go far enough to help them live	▪ Those who strongly agree were 28% more likely to find the policy covered COVID-19 losses.
	▪ Those who disagreed where 11% more likely to find the policy did not cover COVID-19 losses.

CAUSE	Perception of Benefit Recipients
	▪ 100% of those who disagreed determined the virus did not cause damage. It should be noted that there were a small number of respondents in this group.

EFFECT OF COVID ON INDIVIDUAL LIVES

COVERAGE	Degree to which participants are leaving home these days
Which of the following best describes you these days?	▪ Those who have continued to live normally, coming and going as usual during active Stay at Home Orders, were 27% more likely to find the policy covered COVID-19 losses.
	▪ 100% of those who reported that they were not leaving home at all believed the policy covered COVID-19.

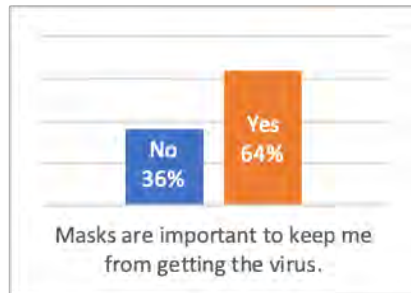| CAUSE	Degree to which participants are leaving home these days
Which of the following best describes you these days? 	 ▪ Those who have continued to live normally, coming and going as usual during active Stay at Home Orders, were 16% more likely to conclude the virus caused damage.
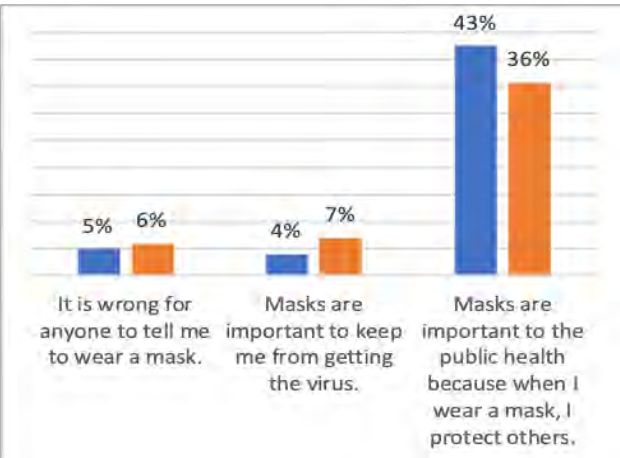
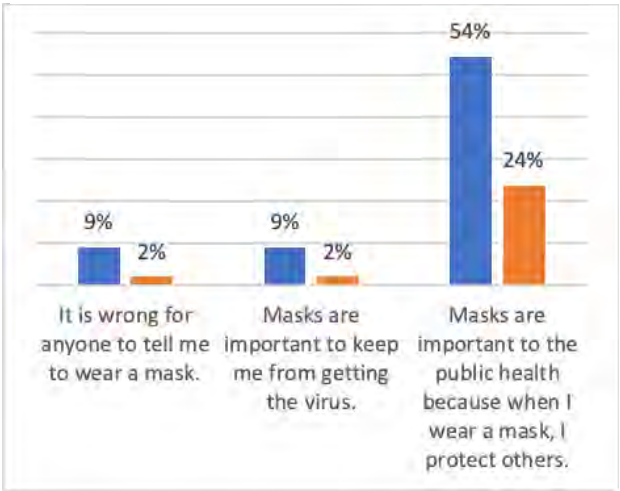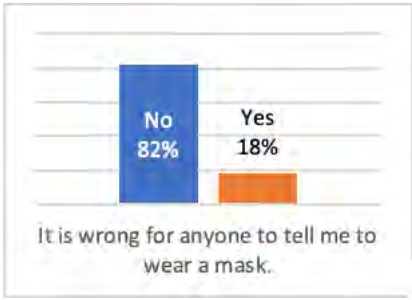| COVERAGE	Wearing Masks
Which of the following best represents your opinion? 	 ▪ Those who believed wearing a mask would keep them from getting the virus were 13% more likely to find the policy covered COVID-19.

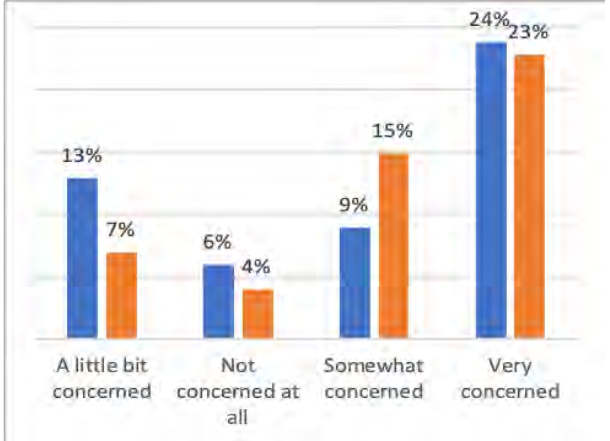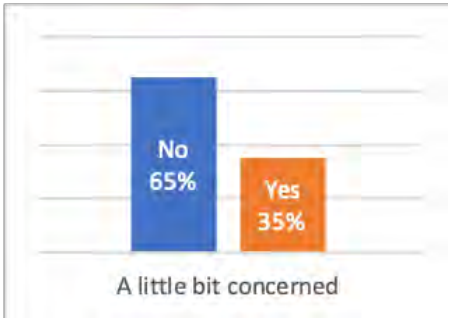| CAUSE	Wearing Masks
Which of the following best represents your opinion? 54% 24% 9% 9% 2% 2% It is wrong for anyone to tell me to wear a mask. / Masks are important to keep me from getting the virus. / Masks are important to the public health because when I wear a mask, I protect others.	No 82% Yes 18% It is wrong for anyone to tell me to wear a mask. ▪ Those who believed it is wrong for anyone to tell them they must wear a mask during the pandemic were 10% more likely to conclude the virus did not cause damage or destruction to insured's property.
COVERAGE	Concern of infection
How concerned are you that you or someone you know will be infected with the Covid-19? 24% 23% 15% 13% 7% 6% 4% 9% A little bit concerned / Not concerned at all / Somewhat concerned / Very concerned	No 65% Yes 35% A little bit concerned ▪ Those who were a little bit concerned of infection, were 14% more likely to find the policy did not cover losses related to Covid-19.

CAUSE	Concern of infection

How concerned are you that you or someone you know will be infected with the Covid-19?
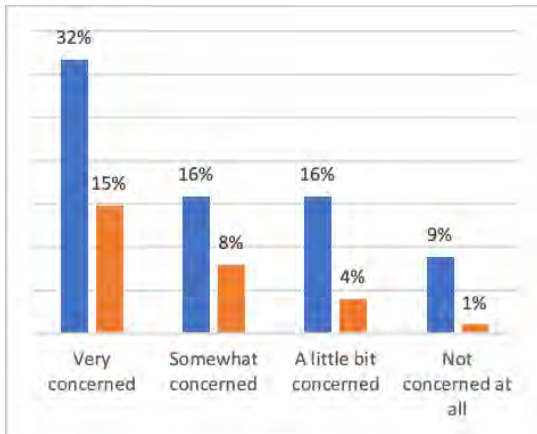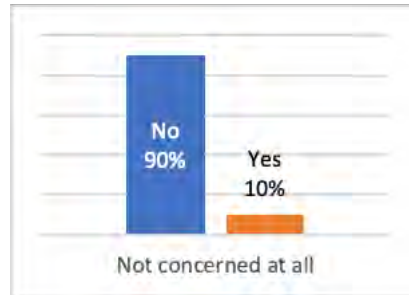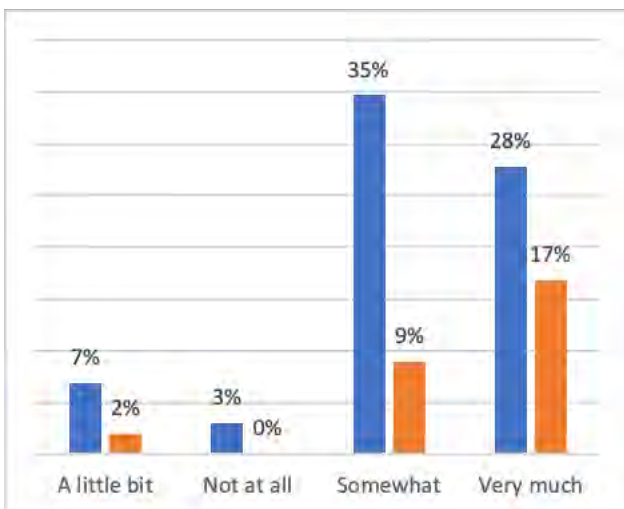

- Those who were not at all concerned about infection were 18% more likely to believe the virus did not cause damage to the property.
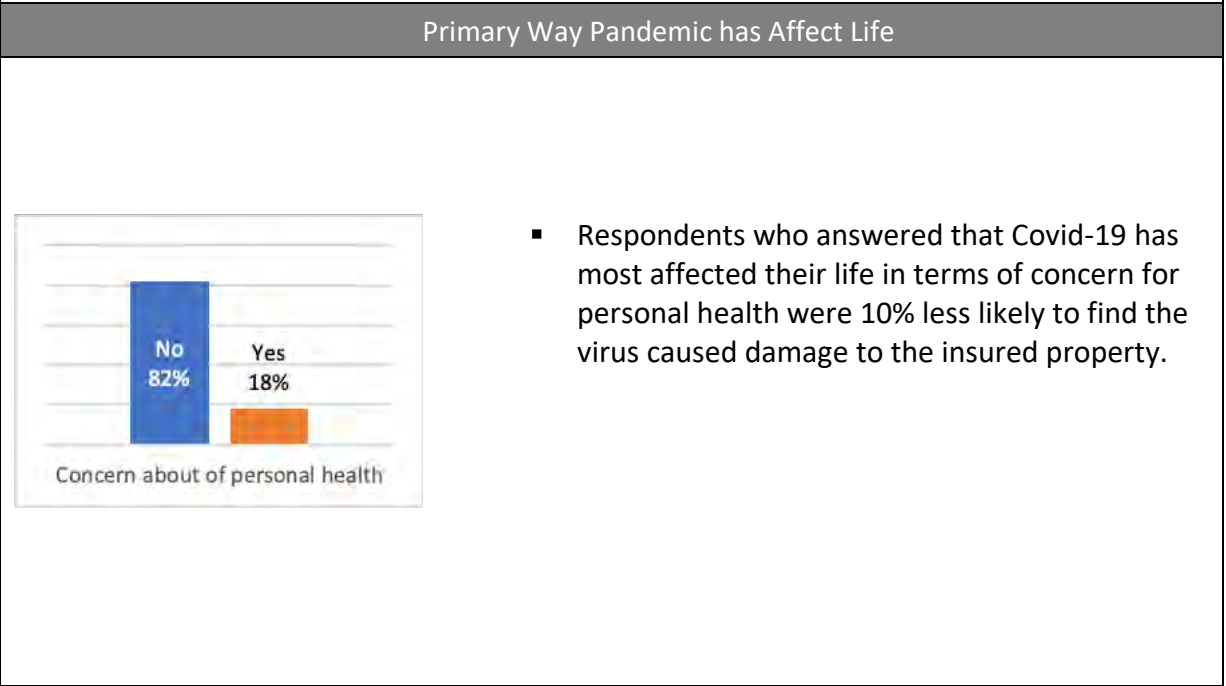
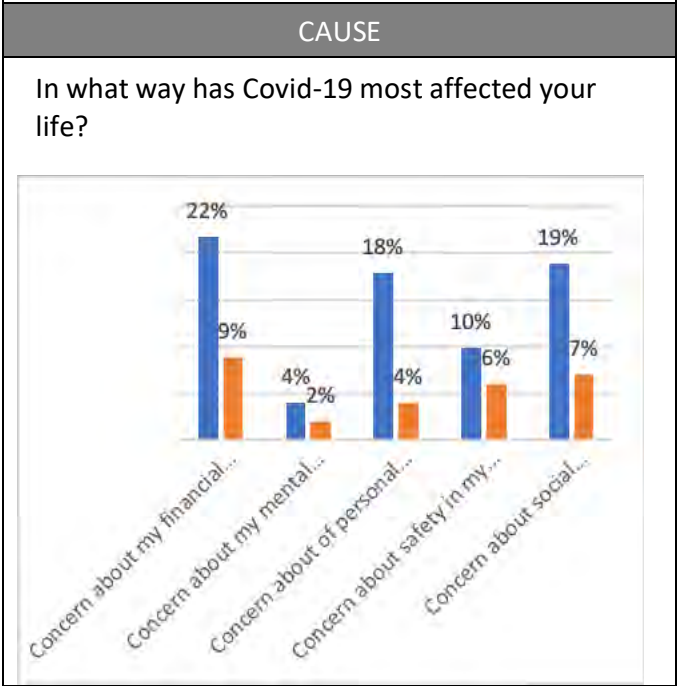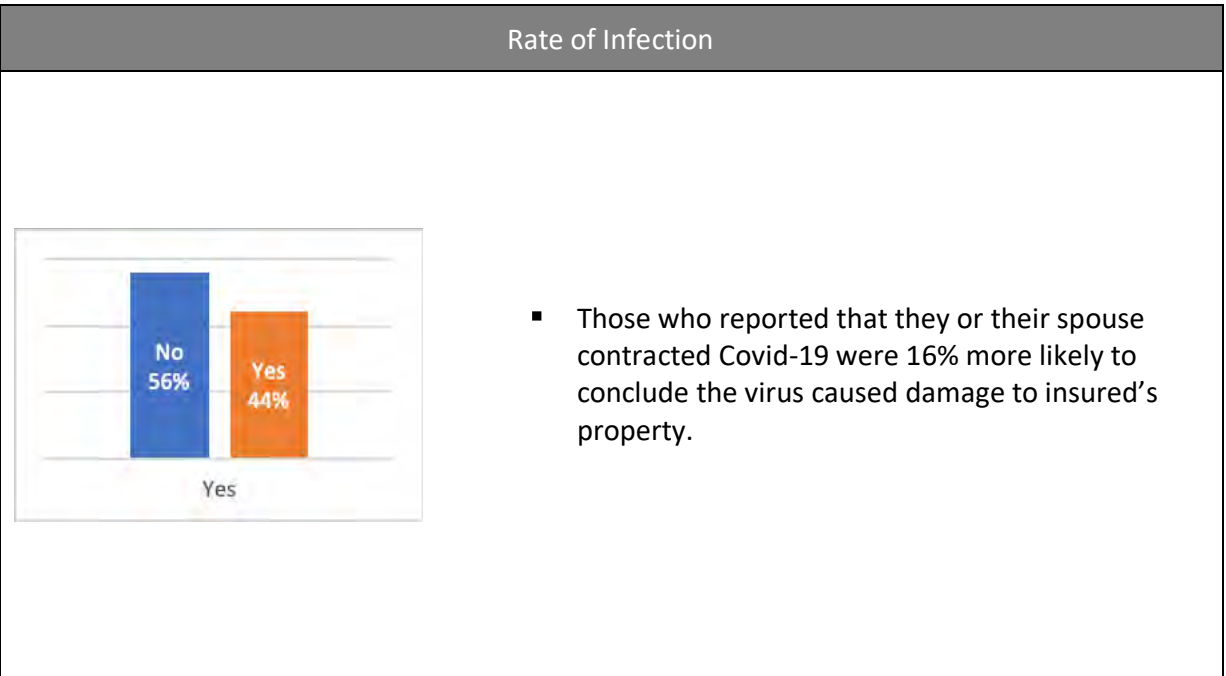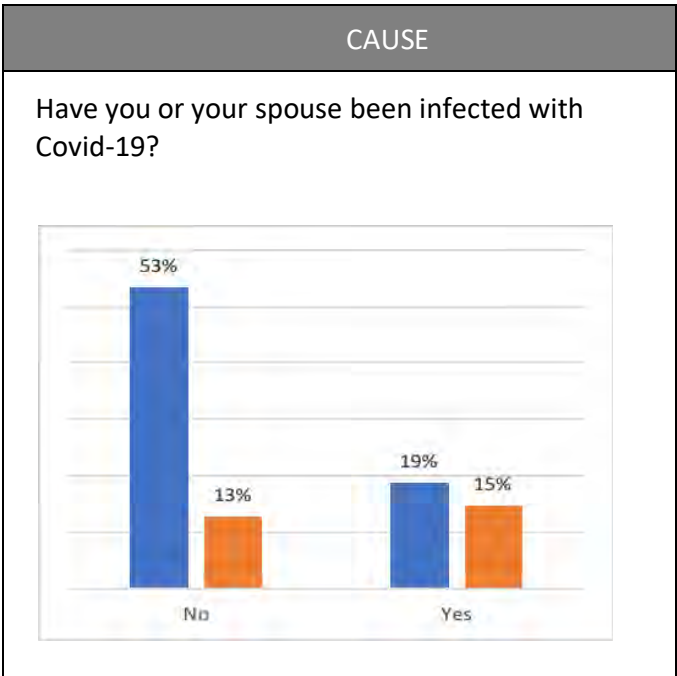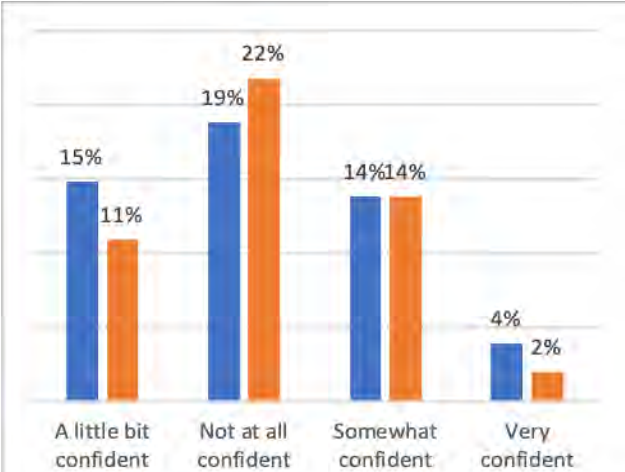| CAUSE	Effect of Covid-19 on Life

How much has coronavirus disrupted your life?

- Those who reported Covid-19 had very much affected their life were 10% more likely to conclude the virus caused damage to insured's property.

CAUSE	Rate of Infection
Have you or your spouse been infected with Covid-19?	• Those who reported that they or their spouse contracted Covid-19 were 16% more likely to conclude the virus caused damage to insured's property.
CAUSE	Primary Way Pandemic has Affect Life
In what way has Covid-19 most affected your life?	• Respondents who answered that Covid-19 has most affected their life in terms of concern for personal health were 10% less likely to find the virus caused damage to the insured property.

GOVERNMENT

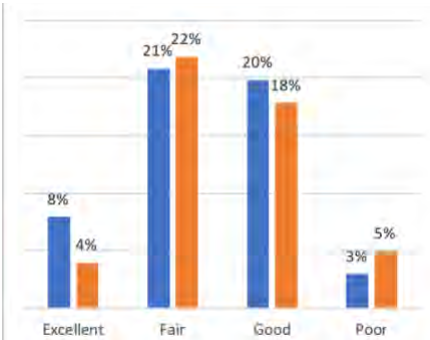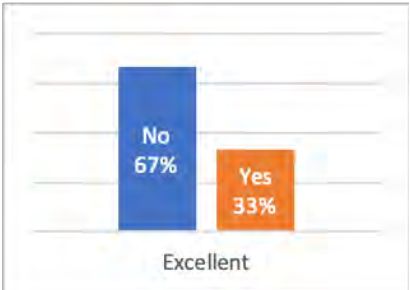| COVERAGE	Government's ability to control pandemic
How confident are you of the government's ability to control the Covid-19 pandemic?	■ Those who were very confident in the government's ability to control the pandemic were 16% more likely than the total vote to find the policy did not cover losses related to COVID-19.
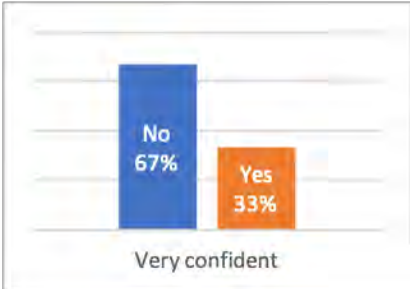
LARGE CORPORATIONS

COVERAGE	Corporate Response in Reacting to Pandemic
How do you rate the job large corporations are doing in reacting to Covid-19?	■ Those who rating the job corporations are doing in reacting to Covid-19 as excellent were 16% more likely to find that the policy didn't cover losses related to the virus.

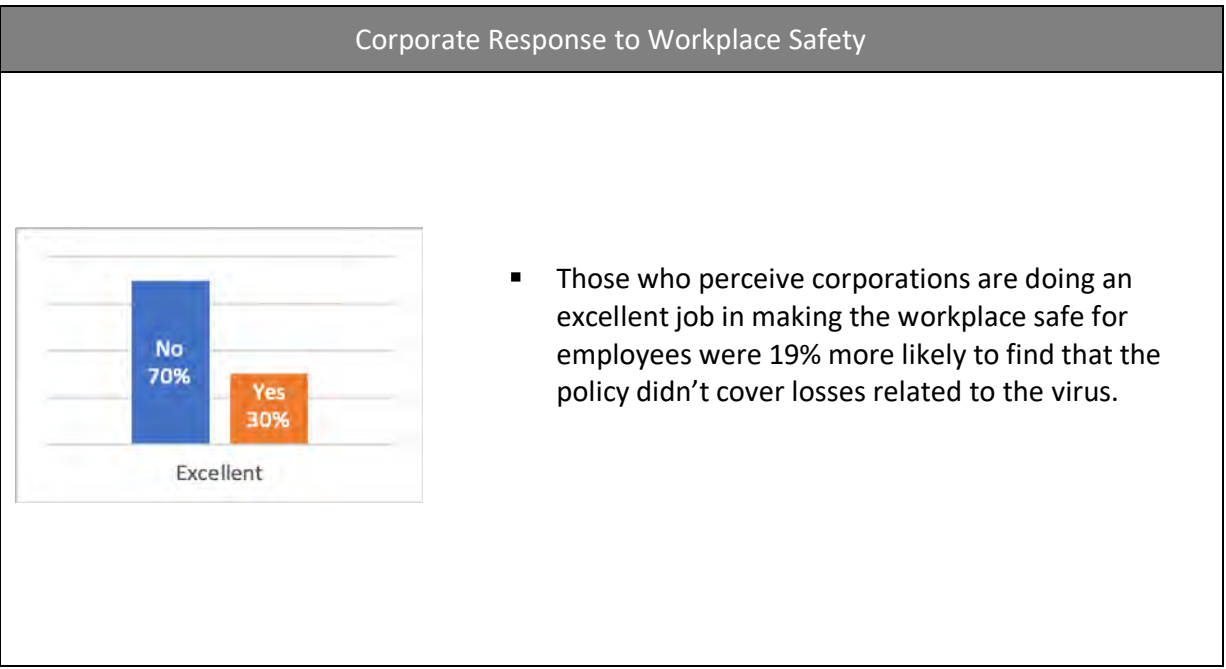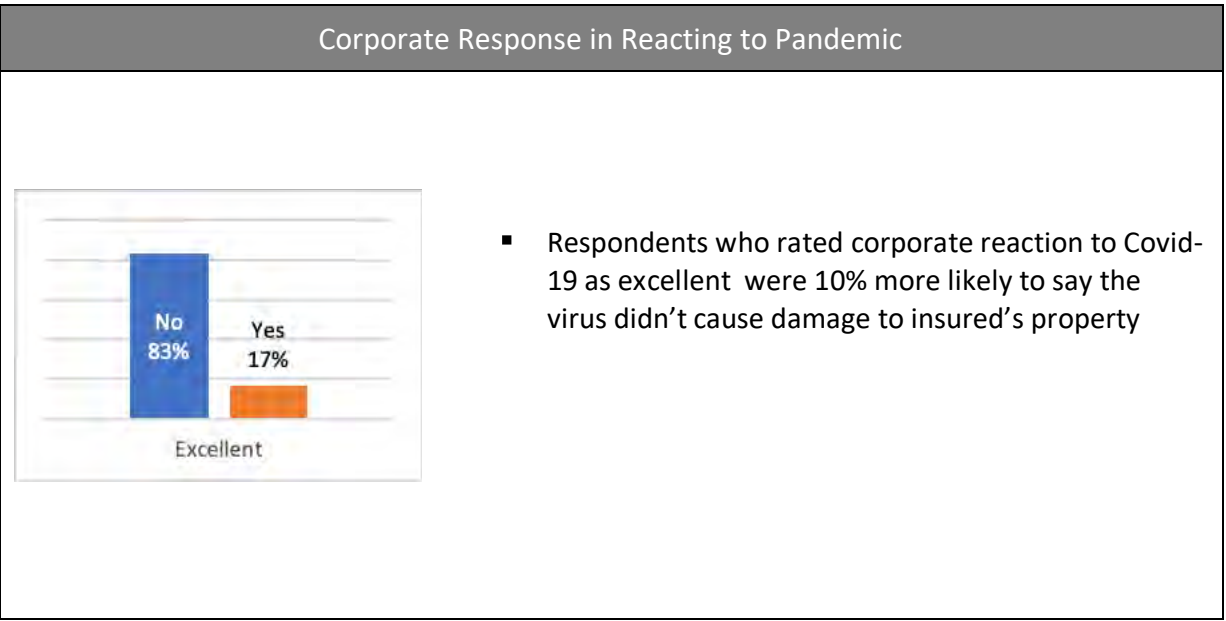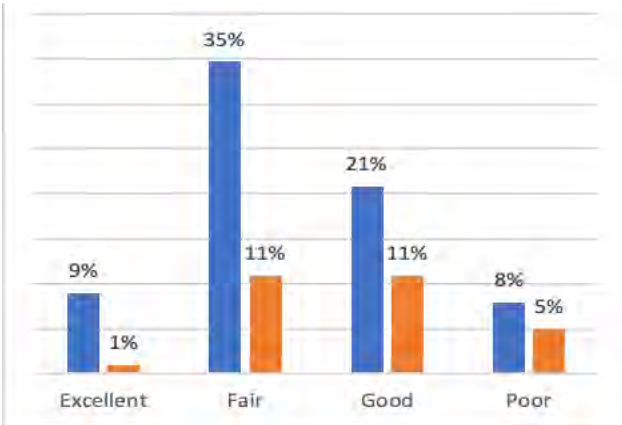| CAUSE	Corporate Response in Reacting to Pandemic
How do you rate the job large corporations are doing in reacting to Covid-19?	■ Respondents who rated corporate reaction to Covid-19 as excellent were 10% more likely to say the virus didn't cause damage to insured's property

COVERAGE	Corporate Response to Workplace Safety
How do you rate the job large corporations are doing in making the workplace safe for employees?	■ Those who perceive corporations are doing an excellent job in making the workplace safe for employees were 19% more likely to find that the policy didn't cover losses related to the virus.

CAUSE	Corporate Response to Workplace Safety
How do you rate the job large corporations are doing in making the workplace safe for employees?	Those who rating the job large corporations are doing in making the workplace safe for employees as excellent were 18% more likely to say the virus didn't cause damage to insured's property