

S. HRG. 117-579

EXAMINING FRAMEWORKS TO ADDRESS FUTURE PANDEMIC RISK

HEARING

BEFORE THE

SUBCOMMITTEE ON SECURITIES, INSURANCE, AND INVESTMENT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

ON

EXAMINING HOW WE CAN BETTER PREPARE OURSELVES FOR
PANDEMIC CHALLENGES IN THE FUTURE

JULY 22, 2021

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



Available at: <https://www.govinfo.gov/>

U.S. GOVERNMENT PUBLISHING OFFICE

50-790 PDF

WASHINGTON : 2023

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THURSDAY, JULY 22, 2021

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON SECURITIES, INSURANCE, AND
INVESTMENT,
Washington, DC.

The Subcommittee met at 10:02 a.m., via Webex and in room 538, Dirksen Senate Office Building, Hon. Robert Menendez, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF CHAIRMAN ROBERT MENENDEZ

Chairman MENENDEZ. This hearing of the Subcommittee on Securities, Insurance, and Investment will come to order. Thank you all for joining us. We are very honored to have the Chairman of the full Committee joining us as well, and working with Senator Scott on issues that we both care about before the Committee. And we appreciate our colleagues being here as well.

Just for a few housekeeping details. This hearing is in a hybrid format. Our Members are in-person, but we will have witnesses testifying both in-person and by video. For those joining remotely, a few reminders.

Once you start speaking, there will be a slight delay before you are displayed on the screen. To minimize background noise, please click the Mute button until it is your turn to speak or ask questions. You should all have one box on your screens labeled Clock that will show how much time is remaining. And if there is a technology issue, we will move to the next witness until it is resolved. Now to the hearing at hand.

Thanks to the Biden administration and the American Rescue Plan, the country is well on our way to defeating COVID-19 and restoring the promise of our economy. We put shots in arms, money in pockets, and provided billions of dollars in relief to hard-hit businesses. However, we still have a lot of work to do. The pandemic has exacted a heavy toll, and we owe it to the more than 600,000 mothers, fathers, sons, and daughters lost to COVID-19 to examine how we can better prepare ourselves for similar challenges in the future.

I know that imagining another public health crisis of this magnitude is an unpleasant exercise. However, in today's interconnected world, the question of the next pandemic is not "if" but "when."

This pandemic unleashed havoc throughout our economy. Across the country, businesses suffered massive losses as a result of stay-at-home orders and other containment measures necessary to slow the spread of COVID-19. During the height of the pandemic, 74 percent of all small businesses reported falling revenues from the previous week, and small business ownership dropped by 22 percent.

In a State like New Jersey that was particularly hard hit at the onset of the crisis, 92 percent of small businesses experienced revenue losses and 41 percent temporarily closed. These losses were particularly concentrated in minority communities and in certain industries, such as restaurants, leisure, and hospitality.

Most small businesses were not able to obtain relief through their insurance policies. The National Association of Insurance Commissioners found that of the eight million businesses with commercial insurance policies that included business interruption coverage, 83 percent also included a clause excluding claims from viral contamination, disease, or pandemic. Unsurprisingly, 82 percent of claims have been closed without payment.

Businesses instead relied on Federal programs. In New Jersey alone, 84 percent of small business owners applied to the Paycheck Protection Program (PPP) and 58 percent applied for Economic Injury Disaster Loans. These statistics suggest that our national insurance system was ill-prepared to cover the losses incurred by businesses in this crisis. Therefore, I believe it is the duty of Congress to analyze how we can better insulate businesses and their workers from such losses in the future.

My hope is that this hearing will be the first of many discussions on the lessons we can learn from the pandemic and how we can build a stronger, better-prepared, and more resilient economy.

A robust debate on this topic has already begun in the business and insurance communities. Today will feature testimony on potential frameworks to manage and mitigate financial losses that may arise from future pandemics. One of the topics we will need to address is the basic question of insurability, either by public or private entities, of pandemic-related businesses losses. We must determine the extent to which businesses, private insurance providers, and the Federal Government are able to share the risk of losses due to a pandemic.

We will also examine a number of pandemic risk insurance proposals and frameworks put forward by business coalitions and the insurance industry in the wake of this crisis. Each presents different ideas on how much risk is borne by the private sector versus the Federal Government, and the approach to paying claims.

So I look forward to hearing from today's witnesses about the merits and challenges of the various plans. Your insights will help Congress grapple with the challenge of better preparing our economy for future pandemics and taking steps to ensure our businesses are not as vulnerable to economic shocks as they were to COVID-19.

Thank you to all the witnesses who will be appearing, and I look forward to your testimony.

With that let me recognize my friend, the Ranking Member, Senator Scott.

OPENING STATEMENT OF SENATOR TIM SCOTT

Senator SCOTT. Thank you, Mr. Chairman. Thank you for holding this very important hearing for us to do more research on the important ways that we can handle the next pandemic, as you said, not “if” we are going to have another one but “when” we have another one, are we going to be more resilient and better prepared? And I think the answer will be yes, and hopefully, in part, because of the hearing that we are having today under your leadership. So I just truly appreciate that.

Early in 2020, our country was in the midst of an unprecedented economic boon, brought to us by progrowth policies. Under the previous administration we saw unemployment rates at 3.5 percent, the lowest in more than a half a century. We saw the lowest unemployment rate for African Americans, the lowest unemployment rate for Hispanics, a 70-year low for women, and our nation was actually booming. The strongest economy in decades. No one could have ever foreseen, however, the global pandemic that would change all of that in a matter of weeks.

The onset of the COVID-19 emergency had a rapid and severe impact on the physical and economic health of our country. The early months of the crisis were a time of exceptional economic hardship for so many families, individuals, and small businesses.

In my home State of South Carolina, our thriving tourism and hospitality industries were especially hit hard. Hotels that were used to 70 or 80 percent occupancy went down to 3 percent, 4 percent, month after month after month, trying to hold on to their employees, hold on to their businesses, and keep hope that somehow, some way, things would get better.

Fortunately, Congress acted quickly to pass the CARES Act, putting much-needed cash directly into the hands of American workers, their families, and providing rapid relief to small businesses and helping to stabilize our markets, and frankly, the entire economy.

The CARES Act specifically created the Paycheck Protection Program to provide struggling small businesses and their employees financial assistance that would allow them to weather the storm and maintain their employer-employee relationship they had. Congress, on nearly a unanimous basis, chose the PPP as the appropriate approach to quickly getting cash, Federal assistance, into the hands of small businesses, rather than attempting to retroactively change business interruption insurance contracts that do not cover pandemics, virus—a choice I wholeheartedly support.

Now, over a year removed from the early frantic days of COVID-19, Congress has the opportunity to learn from this experience as we begin to consider what steps should be taken to address future pandemics.

During this hearing, I look forward to hearing more about several items—the insurability, either public or private entities, and what pandemic-related business offices should look like; pandemic risk insurance proposals and frameworks that have been proposed in Congress, or by the private stakeholders; the challenges for businesses, insurance carriers, taxpayers, and State and Federal Governments associated with implementing any of these approaches to pandemic risk insurance; and whether or not implementing a Fed-

eral pandemic risk insurance program in the United States would prevent any long-term economic risks or affect the country's global competitiveness.

I appreciate all of the witnesses that we have today, and, Mr. Chairman, I look forward to continuing this hearing.

Chairman MENENDEZ. Thank you, Senator Scott. Let me recognize the distinguished Chairman of the full Committee, Senator Brown, for his comments.

OPENING STATEMENT OF CHAIRMAN SHERROD BROWN

Chairman BROWN. Thank you, Mr. Chairman, Senator Menendez, and my remarks will be brief. I appreciate you doing this. This is the first hearing of the Subcommittee that Senator Menendez and Senator Scott have conducted, and I thank them both. This Committee is committed—the full Committee is committed to empowering subcommittee Chairs, and Bob Menendez obviously has been a star on this Committee overall, and on the full Committee, and has done really yeoman's work on his subcommittees too, and this is an example today.

The pandemic has claimed the lives of more than 600,000 Americans. Although we have made great progress, as the Chairman said, getting shots in arms, we are experiencing surges in areas across the Nation that have low uptakes in vaccination rates. It is important that we continue to provide families with the resources they need to protect themselves and their loved ones, both medical resources, like the vaccines that will save their lives, and also economic resources, as the economy continues to fully recover.

While we hope to avoid, and must work to prevent, a future pandemic, we do need to be prepared, of course. This Subcommittee is working in a bipartisan way to explore solutions to the economic challenges a future pandemic would bring.

I have heard from small business owners, in Ohio and across the country, who thought the business interruption coverage included in their insurance policy would help them navigate the pandemic. Then, their insurance companies too often told them the complex forms that they signed did not actually offer them the protection that they thought they had been promised. Insurers have pointed out that if those policies covered the effects of the pandemic, the industry itself might have collapsed.

I have also heard from organized labor that union members are losing out on jobs because studios are moving production overseas due to the lack of a pandemic risk insurance solution.

And we know how hard this has been on the families across the country, most importantly, that depend on those jobs to put food on the table and to pay their mortgage and rent.

I look forward to working with colleagues of both parties—Senator Scott, Senator Menendez, Senators Hagerty and Tillis, and Warnock—that have been here, to discuss this issue and come up with a solution to better prepare our economy for the inevitability—as Senator Scott said, the inevitability of a future pandemic.

Thank you, Chairman Menendez.

Chairman MENENDEZ. Thank you. Let us turn to our witnesses, and thank you all for joining us today. Testifying will be the New

Jersey small business owner, Adenah Bayoh. Ms. Bayoh owns several IHOPs, which makes her my favorite witness today—with all due respect to the rest of you. It is my favorite breakfast place, which definitely makes her, as I said, my favorite witness. She also has an incredible story to share;

Evan Greenberg, Chief Executive Officer of Chubb, who brings 45 years of experience in the insurance industry to today's hearing;

Dr. Robert Hartwig, Director of the University of South Carolina's Center for Risk and Uncertainty Management, a clinical associate professor who studies the insurance industry;

Charles Landgraf, senior counsel at Arnold & Porter, who has over three decades of experience in insurance, legislative initiatives, and brings vast technical expertise to the discussion;

Martin South, President of Marsh U.S. and Canada, with more than 30 years in the insurance industry. Mr. South brings industry experience and expertise to the issue of insuring pandemic-related risks; and

Robert Gordon, Senior Vice President of Policy, Research and International for the American Property Casualty Insurance Association, who has extensive experience in insurance Government policy.

So we have a star-studded cast. We appreciate your attendance. We look forward to our discussions with you.

We ask our witnesses to honor and remember the 5-minute rule in order for us to have a conversation with you, in terms of your oral testimony. Without objection, your full statements will be included in the record. And I also remind our colleagues that we have a 5-minute rule too, which I hope to stick to closely in order to get through everybody an opportunity.

So with that, Ms. Bayoh, please begin your statement.

**STATEMENT OF ADENAH BAYOH, IHOP FRANCHISEE AND
PRESIDENT AND CEO, ADENAH BAYOH AND COMPANIES**

Ms. BAYOH. Chairman Menendez, Ranking Member Scott, and Subcommittee Members, thank you for the invitation to testify. I am a restaurant owner several times over. I am an IHOP franchisee, cofounder of Cornbread Farm To Soul, Founder of Urban Vegan, and the President and CEO of Adenah Bayoh and Companies. I am also a member of the National Restaurant Association and the New Jersey Restaurant and Hospitality Association.

I am fortunate to have lived the American dream, immigrating to the U.S. at the age of 13, escaping a civil war in my native country of Liberia. After high school I earned a college degree in business management. I then worked in banking and began purchasing multifamily homes as investments. Subsequently, I left banking to build my own business with a focus of empowering and transforming disadvantaged communities.

Inspired by my grandmother, who owned a restaurant in Liberia, I used my real estate investment profits to open an IHOP in Irvington, New Jersey. At age 29, I was the youngest IHOP franchisee in the nation. The location quickly became the fastest-growing in the Northeast and it remains one of the top grossing in the region.

Pre-COVID, I employed 229 employees. I am guided by a commitment to service and continuous investment in my staff, training new hires with valuable life skills that extend throughout life and future careers.

I have been honored to receive many accolades over my career. For instance, being named as one of the TOP 50 Women in Business by NJBIZ, New Jersey, appointed to the Federal Reserve Bank of New York Advisory Council, and making the *Ebony* Power 100 list.

Despite all of my hard-earned successes, everything crashed in March of last year, when restaurants were among the first to shut down. I had business interruption insurance with Liberty Mutual and Chubb Insurance, intended to cover 12 months of lost business income, if my business was to ever be shut down. I paid annually an average of \$275,000 in insurance premiums. When the pandemic hit, and the Governor ordered my businesses to close, I was shocked that my insurance company and coverage was not there for me. Viruses and pandemic were excluded from my policy.

At the outset of the crisis, despite mandatory shutdown, I made the courageous decision to pay my employees, including single mothers, their average weekly pay, whether they worked or not, so that they could put food on the table until Government programs could fill in the gaps. I was nearly bankrupted by this, but I have no regrets. I had to make the difficult decision to close three newly build stores in Pennsylvania and lay off 16 persons due to those closures. Some of my restaurants were averaging 50 percent of their revenue at some point during this pandemic. Yet we tried to continue to help our communities. We gave away almost 10,000 free pancakes, fed essential workers in need, including overnight nursing staff that could not get food because their cafeteria was closed. We gave out free lunches to school children.

This pandemic significantly showed the shortcomings in our country's preparedness. I support the National Restaurant Association, Business Continuity Coalition call to create a Pandemic Risk Insurance, modeled after terrorism risk insurance enacted after 9/11.

A solution is needed now, a solution that ensures that businesses and employees, especially ones in black and brown communities like mine, are prepared for future pandemics. Now is the time for a solution.

Thank you for the opportunity to testify. I would be more than happy to take any questions.

Chairman MENENDEZ. Well, thank you very much, Ms. Bayoh. You have an inspiring story, and you even have met within the 5 minutes, so you set the tone for everybody else. So thank you very much.

With that we will turn to Mr. Greenberg of Chubb.

STATEMENT OF EVAN G. GREENBERG, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CHUBB

Mr. GREENBERG. Good morning Chairman Menendez, Ranking Member Scott, and Members of the Subcommittee. I am Evan Greenberg, Chairman and CEO of Chubb. Thank you for inviting

me to discuss pandemic risk and a public-private partnership that leverages insurance infrastructure and risk sharing.

COVID-19's toll in lives and harm to the U.S. and global economy has been catastrophic. We should, in my judgment, take the lessons learned to improve our health response capabilities to future pandemics. We can also lessen the economic blow by building a financial backstop that is triggered when economic activity is disrupted. To this purpose, the insurance industry can play an important role in partnership with the Federal Government.

Pandemics, unlike other catastrophes such as earthquakes, hurricanes, and floods are not limited to a specific geography or time period, and can affect entire economies and most of the population at the same time. This results in losses so great that the event is uninsurable for business interruption coverage by the insurance sector alone.

COVID-19-related business interruption losses in the U.S. far exceed the total capital of the U.S. property and casualty industry. The industry simply does not have the wherewithal to broadly assume such risk. Our balance sheets are finite and the risk for all intents and purposes is infinite.

To address COVID's economic damage, Congress enacted assistance programs totaling trillions of dollars. While these programs have been largely successful, their ad hoc nature can lead to inefficiencies, delays, and uncertainties.

There may be a better way forward—a public-private partnership between the insurance industry and the Federal Government to provide business interruption protection. Combining the insurance industry's risk insight and experience with the Government's balance sheet provides the foundation for an affordable, efficient, liquidity backstop for small businesses and a market-based program for larger businesses. A public-private partnership would provide greater certainty to businesses so they can keep employees on the payroll and pay their bills. Ultimately, private sector participation will encourage the development of direct and secondary markets, which can reduce the Government's financial burden over time.

Any pandemic insurance program should distinguish the unique needs of small businesses from medium and large ones. Small businesses are generally at much greater immediate risk because they have more limited financial resources and risk management capabilities.

Chubb has proposed a program recognizing the need for small business rapid liquidity, providing predictable, efficient, and prompt payment. The elements of such a program include, in the first instance, Government subsidization of the premium charged to small businesses to ensure affordability and participation. In the event of a pandemic that results in small business closure, insurers would participate in the first wave of losses, up to a certain amount. To accomplish this, the insurance industry would receive an adequate rate for its portion of the risk, and the Government would assume the cost of the tail risk.

For medium and large businesses, a market-oriented approach is more appropriate. Given their greater financial resources, they should not need subsidization of premiums. Under this plan, the Government would establish a reinsurance facility, solely to cover

business interruption pandemic risk for medium and large businesses, for an appropriate price. Private insurance companies could write policies at market terms, retain a portion of the risk, then re-insure the rest through the Government facility.

Our proposed framework builds on these concepts. Depending on the severity of a future pandemic, this may only turn out to be a partial solution. However, it is a robust, fiscally responsible plan, and I welcome the opportunity to discuss it further with you. I look forward to your questions.

Chairman MENENDEZ. Thank you very much. Dr. Hartwig.

STATEMENT OF ROBERT HARTWIG, PROFESSOR OF INSURANCE AND FINANCE AND DIRECTOR OF THE RISK AND UNCERTAINTY MANAGEMENT CENTER, UNIVERSITY OF SOUTH CAROLINA

Mr. HARTWIG. Thank you, Chairman Menendez, Ranking Member Scott, and Members of the Subcommittee. My name is Robert Hartwig and I am a Professor of Risk Management Insurance and Finance at the University of South Carolina, and serve as the university's Director for its Risk and Uncertainty Management Center. I have been asked by the Committee to provide testimony describing the challenges related to the insurability of pandemic risk and to discuss potential public policy approaches to future pandemics.

As has already been discussed on a number of occasions so far in this hearing, the COVID-19 pandemic's twin tolls on human health and the global economy are among the greatest in history. As of mid-2021, the virus had claimed more than 600,000 lives in the United States alone, along with 33 million confirmed cases. The economic toll of COVID itself has been similarly tragic.

In my written testimony, Figures 1, 2, and 3, if you would like to refer to those, make clear that the signature economic consequence of the pandemic was a massive and abrupt collapse in economic activity. Real GDP in the United States plunged by nearly one-third during the second quarter of 2020, while unemployment soared to nearly 15 percent, reflecting the loss of some 22 million jobs.

The ensuing rapid collapse in aggregate demand, measured in trillions of dollars, led to a precipitous decline in income for millions of families and businesses alike, small businesses in particular. Business income losses at the height of the pandemic were estimated to be as much as \$1 trillion per month.

It is important to note that disruptions to business income due to changes in the macroeconomic environment, such as occurred during the COVID recession, have never been privately insured, for multiple reasons. Those reasons are summarized in Figure 6 of my written testimony, which describes the traditional criteria necessary for insurability.

Foremost among these factors, with respect to COVID, is the simple fact that the magnitude of such losses is simply too large. Consider, for example, that the estimated \$1 trillion in monthly business income losses is 200 times the \$4.5 billion commercial insurers collect each month in property insurance premiums, on average.

Business income coverage has never been intended to function as an extension of Government macroeconomic stabilization policy. Business income insurance is an optional coverage, available to businesses purchasing commercial property insurance. Payments are triggered if, and only if, there is direct physical loss or damage to insured property from a covered cause of loss. Overwhelmingly, courts have rejected the assertion that business income losses arising during the pandemic were covered, citing the lack of direct physical loss or damage to covered property.

During the early months of the pandemic, however, a number of proposals that would involve the participation of private insurers in future pandemics were introduced. Among the best known are the Business Continuity Protection Program, or BCPP, and the Pandemic Risk Insurance Program, or PRIA. The BCPP, very quickly, would use the commercial insurance industry's plumbing, if you would, to provide up to 80 percent of 3 months' worth of revenue, though insurers themselves would bear no actual risk. On the other end of the spectrum, under PRIA, insurers would be required to bear nearly \$50 billion in losses for events reaching the \$750 billion program cap.

Notably, neither program would compel businesses to purchase coverage, raising serious doubts about the ultimate effectiveness of such programs, as well as others.

So while the benefits and costs of all program proposals should be evaluated, a more fundamental question to ask is whether any such program is needed at all. Bearing in mind that all of the pandemic insurance frameworks currently under consideration were developed during the very early months of the pandemic, it is worth considering their prospective utility, given the benefit of hindsight and nearly 18 months of experience in managing the pandemic.

A reasonable assessment is that no program is needed, and I make this assessment based on numerous observations detailed in my written testimony related to the unquestionable success of existing, expanded, and new public policy approaches adopted during COVID and the complexity and the cost of any pandemic insurance program to be implemented. For example, massive fiscal stimulus in the form of \$5.7 trillion in pandemic relief to date, coupled with the Fed's extraordinary efforts to keep interest rates low, have succeeded in delivering very substantial assistance to consumers, businesses, and entire industries. GDP growth has surged since the third quarter of 2020, and the unemployment rate has fallen precipitously.

The question is, therefore, this. Given the observed public policy successes to date, would the implementation of any of the current proposed pandemic programs lead to a discernably superior outcome for businesses, or the economy overall?

In conclusion, the experience of COVID has reinforced the generally accepted view that large-scale business income losses arising from pandemics are uninsurable in the private sector. Such losses are driven largely by shifts in aggregate demand and consumer behavior, not actual property damage. Moreover, given nearly 18 months of experience with COVID, it is clear that repeated, aggressive application of targeted yet flexible relief, in the form of fiscal

and monetary stimulus, has been effective in countering many of the most severe negative economic consequences associated with the pandemic.

Consequently, the value of instituting a potentially costly, inflexible, and untested pandemic risk insurance program at the current time can be reasonably questioned.

Thank you for the opportunity to testify before the Committee, and I look forward to responding to your questions.

Chairman MENENDEZ. Thank you. Mr. Landgraf.

**STATEMENT OF L. CHARLES LANDGRAF, ARNOLD & PORTER,
ON BEHALF OF THE BUSINESS CONTINUITY COALITION**

Mr. LANDGRAF. Thank you, Chairman Menendez, Ranking Member Scott, and Subcommittee Members. I am Charles Landgraf of Arnold & Porter, appearing today on behalf of the Business Continuity Coalition.

We agree with Mr. Greenberg that now is the time to establish a public-private partnership to address the protection gap that has been exposed, and indeed exacerbated, by the pandemic.

As both the Chairman and Senator Brown have noted, business interruption proved elusive, but I also want to focus today on coverage in other lines of insurance that have either been withdrawn or restricted going forward, that were previously available. Our Business Continuity Coalition brings an important voice, indeed many voices, to this policy discussion. The coalition currently—and it is growing—consists of 44 trade associations and major companies across many sectors of the economy, representing, we think, more than 70 million jobs, from health care and dining and hospitality, the two largest employment sectors in the private economy, as well as home building, manufacturing, construction, finance, real estate, media, film, entertainment, professional sports, and professional services, just to name a few.

We understand that Governments are still dealing with recovery from the pandemic, but we believe that this is, nevertheless, the right time to repair and improve the protection fabric to the economy for those jobs. We are seeking to restore good-quality insurance, if I can call it that, that meets the needs of the real economy and ultimately probably represents a more authentic and understandable alignment of expectations between businesses and insurers.

Take two examples in our coalition: restaurants and film and TV. You have heard from Mrs. Bayoh about her insurance needs at the time and going forward that are not being met by the insurance industry. The restaurant sector alone is still down 1.3 million jobs since the pandemic, and insurance is undoubtedly one of the holdbacks to that business.

Our written statement provides dramatic evidence of the continuing lack of insurance jeopardizes film finance, for example, especially independent productions. Many have been lost for good. Many are going offshore, as Senator Brown noted. The U.K. has a Restart program that specifically responds to the withdrawal of insurance, and frankly, in the film and TV production industry, no insurance, no financing. Canada, Australia, and other countries

have similar programs that are attracting what had been U.S. productions, to their shores.

There are many other examples that we could provide in other sectors of the real impediments and frictions that lack of insurance represent to a recovery. Some, including witnesses today, contend that pandemics are not insurable. What this really means is that pandemics are not fully insurable without some Government support. We heartily agree with Mr. Greenberg's formulation on this, that a public-private partnership is the answer. We know that pandemics are complex. We know that meaningful protection will require a public-private partnership.

We would like to point out that in our written submission there are a number of surveys of different sectors of the economy. Overwhelmingly, business policyholders want to buy insurance, not get a Government benefit. We need to have a workable insurance program. The real question is now to do this. There is plenty of evidence of successful public-private partnerships throughout history, U.S. and globally. We have included many in our written submission. We think TRIA is the most important and most relevant here.

We applaud the serious proposal by Chubb and by APCIA. These are serious proposals on business interruption insurance. We want to emphasize that there are other insurance lines that have also been impacted, and we think those need to be part of a proposal. It would be ironic if essential businesses that did not shut down, that shouldered through the pandemic, cannot get their insurance needs met. They have insurance needs just like business interruption, only they are different, and we need to include those.

In the figurative minute before the pandemic struck there was no doubt, among the insurance industry or policymakers, that every percentage reduction of uninsured losses in the economy reaps multiple benefits in GDP and financial, physical, and cultural resilience. We need to get back to that kind of thinking and devise a program. Narrowing that protection gap will not be a silver bullet for national resilience, but doing so, however, is an indispensable ingredient to a full recovery.

Thank you very much.

Chairman MENENDEZ. Thank you. Mr. South, who will be with us virtually.

STATEMENT OF MARTIN SOUTH, PRESIDENT, UNITED STATES AND CANADA DIVISION, MARSH

Mr. SOUTH. Mr. Chairman, Ranking Member Scott, and Members of the Committee, I am Martin South, President of Marsh's U.S. and Canada Division. We are privileged to provide insurance brokerage and risk advisory services to nearly 170,000 businesses, nonprofit organizations, and public entities in the United States and Canada. Thank you for the opportunity to join you today.

COVID-19 has affected every one of us, personally and professionally. Although the pandemic is first and foremost a human tragedy, we are deeply concerned about its impact on the global economy and on our clients. Our role as an insurance broker is first and foremost to be an advocate for our policyholders, our clients.

Marsh McLennan's expertise in pandemic far precedes COVID-19. For nearly two decades we have partnered with the World Eco-

conomic Forum to produce the Global Risk Report, which has long warned of pandemic risk. We helped the World Bank structure its first-ever pandemic risk bonds in 2017. In 2018, we developed an innovative insurance product called PathogenRX, to provide pandemic business interruption coverage to certain industries. And we are collaborating with international organizations to help mitigate the risk from vaccination programs for lower-income countries and regions.

We have engaged in discussions with 40 Governments worldwide since the start of the pandemic, and we have found clear interest for Government solutions at the country or regional level. We believe it is imperative to use our collective global experience from COVID-19 to help build stronger and more resilient economies ahead of the next pandemic.

I would like to summarize my written statement in three main points. First, the pandemic has created recovery and resilience challenges for businesses, Governments, and insurance marketplace. These issues must be addressed to effectively manage for a future pandemic.

We have seen, over the past year, that property and liability insurance policies are severely limited in their ability to respond to pandemic-related losses. The magnitude of global economic losses, the difficulty in predicting what actions Governments will take to contain infectious disease, and the potential for rapid, drastic changes in consumer demand make pandemic risk impossible for insurers and reinsurers to assume without Government backing. Many insurers are now broadly excluding coverage for pandemic risk from all policies, and are expected to continue doing so in the future.

Second, notwithstanding the challenges, we believe parts of the pandemic risk are insurable, just like the catastrophic risks presented by wildfire, earthquake, hurricane, and cyberattacks. Insurance plays a vital role in the U.S. and global economies. Without it, businesses across industries of all sizes would be unable to start new ventures, create jobs, and grow to their full potential. Congress should leverage the deep expertise of the risk and insurance industry to create a program that uses what we learned from COVID-19 to help protect us against the next pandemic. With support from the Government and the right economic incentives for insurers and policyholders, insurance will carry out its traditional role of mitigating risk. The right risk program will spur new technologies and ways of working to chip away at the enormous losses associated with pandemics. That, in turn, will help make pandemic risk more manageable, enabling our economy to build the resilience it needs.

Finally, and most importantly, we need to use what we learned from this experience to create an effective and efficient public-private partnership and build back stronger. There are many examples of Governments and the private sector coming together to manage catastrophic risks, from the fire brigades after the Great Fire of London in 1666 to the Department of Homeland Security and the Terrorism Risk Insurance Act in the aftermath of 9/11. In short, the insurance industry and the Government have a long,

successful track record of partnering to enhance risk management techniques and increase society's resilience.

Although pandemics have occurred many times, COVID-19's economic impact has been on a different magnitude. The potential severity of future pandemics once again calls on Government action to create the public-private partner program.

Marsh McLennan believes that now is the time for a solution that leverages the insurance expertise and infrastructure that is already in place, a solution that allows for insurers, reinsurers, and other capital providers to play a limited but crucial role, a solution that will yield stronger and more effective protection for policyholders and for the country.

My colleagues and I stand ready to help the Committee with its work. Thank you for the time and opportunity to advocate on behalf of our clients.

Chairman MENENDEZ. Thank you. Mr. Gordon, who is with us virtually, as well.

**STATEMENT OF ROBERT GORDON, SENIOR VICE PRESIDENT
FOR POLICY, RESEARCH AND INTERNATIONAL, AMERICAN
PROPERTY CASUALTY INSURANCE ASSOCIATION**

Mr. GORDON. Chairman Menendez, Ranking Member Scott, and Members of the Subcommittee, I am Robert Gordon with the American Property Casualty Insurance Association, the primary national property casualty trade association.

My favorite quote, often attributed to Einstein, is, "If I had an hour to save the world I would spend 55 minutes understanding the problem and 5 minutes debating solutions." APCIA very much appreciates the Subcommittee's leadership in working to understand the potential impacts of future pandemics.

Insurers are in the business of managing risk and we always seek to provide risk management solutions for consumers. But not every risk has an insurance solution. APCIA and globally, the Geneva Association has underscored that pandemic business continuity risk was never possible, nor intended to be covered by the private sector.

The National Association of Insurance Commissioners, the State insurance regulators, told Congress at the beginning of the pandemic that "insurance works well and remains affordable when a relatively small number of claims are spread across a broader group. It is therefore not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time, for an extended period."

The domestic and global insurance underwriters and our regulators are stating very clearly, and nearly unanimously, that pandemic business continuity risk is not something suited for insurance. Insurance does believe we can be a resource as risk management experts. We have learned several lessons from our COVID research that might provide helpful background for the Subcommittee's analysis of the problems to be solved.

It is now clear that most COVID economic losses have resulted from a plunge in macroeconomic consumer demand for in-person services, not from Government-imposed shutdowns or restrictions.

My written testimony summarizes APCIA's extensive analysis comparing States and countries that had strict lockdowns, no lockdowns, and partial lockdowns. Their economic performance has been largely comparable. Government closures had only a minor impact on losses. Even businesses designated as essential and allowed to remain open, and reliant on in-person services, suffered enormous losses as consumers exercised very rational decisions to avoid commercial activity that risked human transmission of COVID.

Most of the discussions trying to force an insurance solution onto pandemics have focused on business interruption insurance, but business interruption insurance does not cover declines in consumer demand. It only covers operating losses a policyholder suffers while physically damaged property is being repaired. Research by the CDC has now proven that the risk of COVID transmission via surface contact is extremely low, less than 1 in 10,000, and COVID can be easily and quickly cleaned. COVID-19 does not cause property damage and thus has no connection to business interruption insurance, which is a property policy.

Also important is that pandemic losses have been highly concentrated in the in-person service sector, particularly leisure and hospitality, disproportionately harming vulnerable minority and women business owners and low-income workers, like Ms. Bayoh.

The critical distinction is not small versus big business but rather which sectors and workers are the most vulnerable that the Government can most efficiently and effectively protect. While our current focus is on helping analyze the problems to be solved, in the spring of 2020, APCIA, NAMIC, and the Big I developed the Business Continuity Protection Program, which recognizes the inherent uninsurability of business continuity pandemic losses but offers the industry's help in a servicing role. The BCPP was conceptualized as how to improve the Paycheck Protection Act, the PPP, if it could have been established in advance, with the benefit of hindsight.

Regarding some of the earlier testimony, I hope the Subcommittee will not fall prey to attempts to conflate pandemic risks with terrorism. I was the congressional committee staff who developed the initial TRIA program with our members, and Senators, pandemics are not like terrorism. The 9/11 planes damaged only two locations, lasted one morning, causing only \$27.5 billion in insured losses.

COVID-19 has impacted the entire world for over 18 months, causing \$28 trillion in losses. Only an extremely small fraction of businesses had losses and claims in 9/11, whereas Chairman Menendez cited 82 percent of New Jersey businesses applying for relief. Even with a backstop, the private industry could not settle claims for 82 percent of businesses simultaneously.

Yes, insurers provide some event cancellation coverage without pandemic exclusions, but after billions of dollars in losses and excessive premiums it is no longer widely provided. But widespread coverage for pandemic economic downturns and declines in consumer demand has never existed in the private sector, and despite the proposals today, State regulators and nearly all underwriters are warning insurance is not well suited for that risk.

APCIA appreciates the opportunity to work with the Subcommittee to understand the problems to be solved. We hope the lessons learned can be useful in designing tailored, affordable, and flexible solutions, but avoiding creating a multitrillion-dollar, long-term Government program that forces insurers to broadly cover their commercial contracts' pandemic risk that most cannot responsibly provide and will harm the underlying markets.

Thank you.

Chairman MENENDEZ. Well, thank you all. We will start a round of questions, and I will start myself.

So I gather from this testimony, Mr. Hartwig and Mr. Gordon, that it is your view that the appropriate response right now is for Congress to do nothing and just wait for the next pandemic to strike, and we will deal with it then.

Mr. HARTWIG. Sir, what I would argue, in fact, is that Congress has actually been doing quite a good job with respect to responding to the pandemic, and that through the six programs that you and Congress have approved to date, providing nearly \$6 trillion in relief to millions of American families and millions of businesses across the United States, has had an extraordinary favorable impact. And I would argue, as an economist, if you were to try to see if any of the programs that have been proposed today, would they move the needle in some sort of way with respect to some net measurable aggregate benefit to the business community or to the economy overall, I do not think that that benefit would necessarily be discernable.

I would also add—

Chairman MENENDEZ. But we did that on the fly, right? So we did in a way where we were trying to figure out what was the best response. I am not sure that it would not have been more efficient if we had prepared for the possibility and thought about what that might mean.

Mr. HARTWIG. And you do have exactly that opportunity today, to think about ways in which fiscal and monetary policy can be adapted in ways that could perhaps make the next pandemic, which could be decades from now, potentially more efficient. But even through the six programs that you have approved to date, there have been tweaks to the PPP and other programs that have made those programs more efficient. So Congress has demonstrated extraordinary flexibility in its design of the programs that have existed so far, and those have all inured to the benefit of businesses.

Chairman MENENDEZ. Mr. Gordon, your answer to that question?

Mr. GORDON. Yes. Thank you, Mr. Chairman. I would agree with Dr. Hartwig. I think Congress has exhibited great leadership, including this Subcommittee. The programs developed have had an enormous beneficial effect. In fact, the CRS, Congressional Research Service, just issued a report the other week showing how the U.S. intervention measures have helped our economy recover much more than other foreign countries that they compared to.

Congress and your Subcommittee are also doing exactly the right thing, analyzing the crisis to understand the problems to be solved. We hope to help inform that effort. And then APCIA very much supports examining the Paycheck Protection Act, the PPP, and how it can be improved, and that was the basis of our proposal is ex-

panding the PPP, establishing it in advance with the hindsight of what we know. And that may include the distribution roles in the private sector, but ultimately, Mr. Chairman, as you said, when you have over 82 percent of the businesses all applying for relief at the same time, that is not the kind of risk that the private industry can bear and settle all those claims simultaneously.

Chairman MENENDEZ. OK. I have to be honest with you. I heard echoes of this when we were dealing with the question after September 11th, as a Member of this Committee, about terrorism risk insurance. And I was told at that time that the industry should not play a role in it because it was an uninsurable set of circumstances.

So I appreciate—you cited a magnitude that is global. I am only interested in the United States, which reduces the magnitude, obviously, of what we are talking about. Still very significant.

So Mr. Landgraf and Mr. Greenberg, you seem to have a different view. So why are you convinced that an insurance-based solution, with a Government backstop, obviously, is realistic, given the concerns that we just heard? Mr. Greenberg.

Mr. GREENBERG. I would make a couple of observations. First, catastrophes, when they occur, are of all different sizes. We are looking at the most extreme right now in COVID-19 when we think about pandemic. We have experienced pandemics on a fairly regular basis over the last 50, 100 years, and longer, and they are of varying sizes, number one.

Number two, shutting entire economy down for an extended period of time and spending the kind of trillions of dollars we have spent as a way of managing pandemic is not a future solution, and it is something that we have to think about. We have to have much better health care response early on and learn from this. Our ability in PPE, our ability with masking early and social distancing, coming to grips with the notion of digitally tracing and isolating, those are ways of restricting the time we need to be shut down. If we can restrict the time then we restrict the overall amount that the economy suffers, and the length of time it suffers. A private partnership solution may not be a total solution in insurance, but it is a more appropriate solution than the one where the economy is shut down for 18 months or potentially longer.

Chairman MENENDEZ. Mr. Landgraf, and then I will turn to Senator Scott.

Mr. LANDGRAF. I do not know that I could have said it any better than Mr. Greenberg. I completely agree with his remarks here. I would also echo what you said about 9/11, which looks isolated and contained today, but immediately after 9/11 it looked like a systemic and all-pervasive risk, and the insurance industry reaction was one of uninsurability, which has proved not to be the case with a public-private partnership.

I think we are also a little bit of a straw man talking about business interruption. As important as it is, and it is absolutely essential, and we think that the Chubb plan hits on most of the important parts, we are not convinced necessarily that there should be a hard cliff between small and medium-size in numbers. But I think those are the kinds of things we can discuss. We understand the capping benefits for large and medium-sized businesses on

business interruption. It is all the other lines, lines where there was clearly coverage as of March 2020, other lines of insurance—professional liability, general liability, employment practices liability. For essential businesses that continued to operate are now being told that going forward they do not have that coverage.

Those lines of business did not have across-the-board claims, and yet there is a withdrawal from them. We are not blaming the insurance industry. We are saying with a public-private partnership and a backstop that we can preserve and restore, and maybe even improve, those lines of business in the ways that Mr. Greenberg is suggesting, I think, as we learn how to deal with pandemics of different sizes. Thank you very much.

Chairman MENENDEZ. Thank you. Senator Scott.

Senator SCOTT. Thank you, Mr. Chairman, and I am sure that you all are aware of the fact that I spent some years in the insurance business with an Allstate franchise. And I would say that leaving the insurance business was a blessing in many ways, and now I know why. I tell you, this is a fascinating conversation. I have been on this topic of insurance for the last several months, working on reinsurance from a police liability and a municipal liability perspective.

Mr. South, Marsh is with us virtually, and I will say that Kevin Bryant has been providing me some assistance in understanding and appreciating the challenges of reinsurance, comparatively speaking is a sliver, a literal sliver, and it is incredibly expensive and really hard to see how we work that out. But it something that we have been working on.

Let me just say a few things about where we are and get you all to respond, and Dr. Hartwig, I will have a specific question for you. As a part of the insurance industry back in the days of Hurricane Andrew, had Hurricane Andrew just shifted a little more inland it would have essentially bankrupted State Farm, Allstate, nationwide, just on its impact on the coastal States.

I think about the fact that I just did some quick research. The total premiums paid for property and casualty insurance in America in 2019, was \$633 billion. We just heard that the business impact, under COVID-19, was \$1 trillion a month. The fact that we are having a conversation where the insurance industry is willing to lean in at all is a fascinating conversation to be a part of. Certainly understanding and appreciating the backdrop, the backstop, frankly, of some federally backed program makes it tenable to be a part of that conversation. But literally, we are talking about numbers that are so massive that it is hard to digest quickly.

We think about the Paycheck Protection Program, which was providing 16, 20 weeks of payroll and overheard for that same period of time, costing \$800 billion. So for literally 16 and 20 weeks of business insurance, we are talking about a sum total that exceeds every single penny brought in for every single risk exposure in the entire insurance industry in our nation.

So with that as a backdrop, Dr. Hartwig, would you just walk me through those criteria that are typically used for insurability, and how that differs from this conversation that we are having about a pandemic risk exposure?

Mr. HARTWIG. Sure. Thank you, Senator. And those numbers that you just cited illustrate the point. One of the criteria, for instance, the one I cited as being first or foremost, is the fact that in my chart, which would be number four, no ruinous catastrophic losses. So clearly whether we are talking about the fact, as Mr. Greenberg cited, that business income interruption losses exceed the total capacity of capital in the entire industry, or the premiums collected, I mean, it is very, very clear there.

But we have also heard testimony that described a number of the other criteria that make it very difficult, such as a large number of exposure units. So what do I mean by that? Typically when we think about insurance we have the losses of the few are paid for by the premiums of the many. When we are talking about pandemic, essentially every business was affected nearly simultaneously. That is completely anathema to what insurance has always been throughout its nearly 2,000-year history.

If you look at some of the other criteria—and I will not want to run through all of them—but when we look at sudden or accidental losses, we can look at Hurricane Andrew as kind of an act of God, an act of nature. We have good data on how frequently these events occur and the paths that they typically take, much better than we did at the time of Hurricane Andrew.

But at the same time, when we are looking at pandemics, the decisions as to whether to close a business or not, which business would be deemed to be essential, how long they must be closed, when they can reopen, and at what percentage, these are decisions that are not made by Mother Nature. These are made by thousands of individuals all across the United States. This is a virtual impossibility for the insurance industry to anticipate these sorts of actions. In fact, it is an impossibility.

So I could go on down the list, but I am mindful of the time here. The reality of it is, it is not just about the dollars. It is about the aggregate type of knowledge we need in order to appropriately underwrite this risk is simply not available to the industry.

Senator SCOTT. Thank you, Dr. Hartwig, and Chairman, thank you for the extra minute or so. Let me just see if I could sum of what you just said, because I am a simpleton. If every insured in the Nation has an event where the insurance company has to pay out for every single insured at the same time, and the event is 100 times more than the insurance premiums coming in from every single insured, it is kind of hard to insure it.

Mr. HARTWIG. Exactly. Insurers' aggregate exposure is much, much larger than the actual premiums that they take in.

Senator SCOTT. I just wanted to make sure I was right. So when we were talking about the \$4.5 billion coming in for business interruption, for a \$1 trillion monthly claim, that is kind of hard to pay.

Mr. HARTWIG. That is impossible.

Senator SCOTT. OK. I just wanted to make sure.

Mr. Greenberg, just a quick question on the Federal role in a backdrop that might make the thing that we see, at least I see, as impossible, possible, it would be the ability to cost share with a level of certainty or a finite number on the front end, so that we could literally shift some of the burden away from the Government, away from taxpayers to insurance policyholders and insurance com-

panies. And so you would need some blend that gave you the type of certainty and predictability that an actuary could come to a conclusion that this premium helps us absorb enough of that to be in the business. Is that accurate?

Mr. GREENBERG. It is accurate, but I would recharacterize it for a second, Senator.

Senator SCOTT. Yes.

Mr. GREENBERG. What we are describing, and I described and Mr. Hartwig described, is that the tail risk, the size of the event is such that it overwhelms the insurance industry. It is uninsurable. If you chopped the tail, and the Government takes that tail risk—and you have to decide if that makes any sense—then the insurance industry can actually participate.

And, by the way, the notion of insurability and what is not, well, I point you to cyberinsurance today, where the insurance industry actively underwrites cyberinsurance. Think about the fortuity around cyberattacks. Think of the interconnectivity of everything digitally. Think that there is another risk that has a catastrophic nature to it, that has no time limit and geographic bound, yet the insurance industry is growing in the cyberbusiness pretty quickly.

So the notion that we cannot touch pandemic if the Government shares the tail is unrealistic to me.

Senator SCOTT. Thank you. I appreciate you allowing me to have a little more time. This is a very interesting and important conversation, so I look forward to continuing it. Thank you.

Chairman MENENDEZ. Absolutely. Senator Moran.

Senator MORAN. Chairman, thank you, and thank you to our witnesses. I will start with Mr. Greenberg.

We have talked about this. Multiple levels, entities of Government can establish a shutdown. We have seen that occur in the pandemic. Is there any relationship—is there a cause and effect here for those entities, therefore, because if there is private pandemic insurance programs that they would be less likely to lift the shutdown?

Mr. GREENBERG. The moral hazard, it is a good debate among all good-thinking people about this. The program, as we envisioned it, would require three levels of Government to determine whether coverage would be paid. The CDC would have to declare, the Federal Government would have to declare, and then the States themselves would have to declare a shutdown, so that businesses could not make individual decisions and you restrict and limit the moral hazard substantially.

Is it perfect and can it be refined? That is up for discussion.

Senator MORAN. I am pleased to know that it is part of the discussion. Thank you. And nice to know that people of good minds ask questions like that. Thank you.

Mr. Hartwig, prior to COVID-19, only one other health emergency had been declared due to a pandemic, and that was the Zika virus. At the same time, cyberthreats to American consumers, as Mr. Greenberg mentioned in his response to Senator Scott, they have grown in both frequency and in severity. Would it be a better use of private capital to focus on insuring against the increasing threat of cyberattacks?

Mr. HARTWIG. I do not think that I am in a position to make that determination for Mr. Greenberg or any other CEO in the insurance industry. I think that they have their pulse on the data. They understand the frequency of the losses they are seeing. They understand the severity, in other words, the costs of the losses they are seeing. And from that they are able to develop a rate. And it is definitely true that there is potentially some systemic nature to cyberrisk in the sense that the internet connects us all, to some extent.

At the same time, I think that the industry has been tiptoeing very slowly into the cybermarket, although the pace of growth has certainly picked up, for about the last 20 years or so, and we are learning by doing. But I think it would be naive of us to think that here we are, 20 years maybe, 25 years into the internet era to think we know all there is to know with respect to cyberrisk. I think we are at the very, very tip of the knowledge iceberg on this particular issue, and I think we will likely experience massive cyberattacks in the future that potentially produce significant insurance losses. But presumably Chubb and others are very, very cautiously underwriting this risk based on the data they have, with their hundreds of thousands of customers right now, and believe that they are pricing that product appropriately and there is reinsurance available for those products in the world today.

So I do not think that they are overexposing themselves, but I think that they are learning by doing, and they understand this is a risk that businesses necessarily do need to mitigate.

And, by the way, I do not want to get too far into the weeds, but while you do hear a lot about enormous cyberattacks and millions of dollars, potentially, being paid out, the majority of attacks are of a much, much smaller nature, affecting a small business here or a small business there, and the losses tend to be fairly limited.

Senator MORAN. Thank you. Let me talk to Mr. Gordon. Mr. Gordon, during the course of this pandemic we have seen a number of major events disrupted—college basketball, March Madness tournaments, to the Summer Olympics in Tokyo. In many cases, event cancellation has resembled business interruption, with event organizers facing millions in losses when major festivals and sporting events have been suddenly canceled or postponed.

One notable exception that I am aware of, an entity that did have coverage was Wimbledon tennis tournament, which paid premiums to prepare for a pandemic for 20 years and was able to collect a \$141 million payout. What was unique about Wimbledon's situation, and would it be possible to create a national program for participants that emulate Wimbledon, and do you think that business interruption coverage could feasibly be offered if separated from event cancellation coverage?

Mr. GORDON. Thank you, Senator, and insurance did provide some cancellation coverage insurance globally for very discrete events, that included some pandemic risks, but subsequently suffered losses that were many times the global premiums collected. So our members have estimated that the global annual event cancellation premiums may have been between \$250 and \$600 million from 2019 to 2020, whereas the losses were between \$3.5 to \$6.5 billion, and that number could grow significantly if the Tokyo Sum-

mer Olympics are canceled. Because those event cancellation losses were so great, most new coverage excludes communicable diseases, both insurance and reinsurance, and even the underlying market has temporarily contracted. It is unclear to what extent those markets will return, which is why APCIA has expressed support for addressing event cancellation in our BCPP.

I would note, however, we have received a lot of tough questions from Members of Congress about what events should receive taxpayer support—Trade shows? Kennedy Center balls? Sporting events? Political rallies? A lot of tough policy questions, and APCIA is very happy to help work out the mechanics with the Subcommittee, but we would need more guidance from policymakers about your subsidization priorities and which activities and losses the Federal Government wants to protect.

Chairman MENENDEZ. Thank you.

Senator MORAN. Mr. Gordon, thank you. Mr. Chairman, thank you.

Chairman MENENDEZ. Thank you. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. Mr. Chairman, I, too, like IHOP, and I am conflicted between IHOP and Waffle House, a spicy poblano omelet at Waffle House and the sausage, cheese, and jalapeno omelet at IHOP.

Chairman MENENDEZ. Come to New Jersey and I will take you to Ms. Bayoh's IHOP.

Senator TILLIS. But the reason I mentioned that—

Senator SCOTT. Is that an invitation for two?

Chairman MENENDEZ. Absolutely.

Senator TILLIS. —both of those restaurants have something in common. Both of them are about two miles from my house. The IHOP, after the pandemic, has closed permanently. The Waffle House has closed, and now they want to reopen but they do not have employees to come back, so they have got a “Closed, Now Hiring” sign. I mean, that is real evidence of the impact of the pandemic. Those were thriving restaurants just a year-and-a-half ago.

Mr. Chair, I have to agree with you. Mr. Hartwig, I am sympathetic to some of the things that you have said, but I see us coming up with a solution that certainly not PRIA, because PRIA is just basically TRIA with a few words substituted. It is because I want insurance against future \$6 trillion debt payments. We have added \$6 trillion, and Senator Menendez and Senator Scott know that we actually did very well with the Paycheck Protection Program. But it was by no means perfect, and it is going to be subject to whatever the composition is of Congress should we have another pandemic. And I want a more systematic approach that not only helps businesses recover and respond but also does not have the Federal Government carrying risk.

Can you imagine, for example, if you do the reading that I do on gain-of-function research for viruses, we may not be in a 50-year or 100-year cycle for pandemics anymore. We may very well be in 10-year, 5-year cycles, should the next pandemic actually be intentional. There are still questions about the last pandemic.

So I think we have got to think more about how we have a back-stop ourselves in terms of trillions of dollars going out the door

every 5 or 10 years, with my grandchildren in place to have to pay it back.

So, Mr. Greenberg, it is good to see you again. I wanted to build on a question that Senator Moran asked. But, you know, the working group that my staff has been involved in is more of a parametric approach to how we would go about providing some sort of a construct for pandemic risk insurance. Can you give me an idea of what you think are the leading thoughts on triggering events? And I also want to talk a little bit more about—you were talking about three levels, at the Federal and State level. One of the things I am concerned with is the disparity of decisions that could be made by elected officials, and how do you actually deal with that risk, you know, one that is forward leaning, the other one—I could see vast differences across our diverse and wonderful country.

So after you get through the metrics, tell me a little bit about how do you manage that risk.

Mr. GREENBERG. Senator, I do not have a perfect answer to that, and I am not going to try to create one. But I am going to return to one thing that I feel fundamentally, in a strong way, and that is if we do not come up with a way of managing pandemic by not having, as a health care response, not simply shutting down the economy for extended periods of time, then we are going to continue to have events of this size with this kind of damage.

And, you know, frankly, I think it is a Government issue to wrestle the social questions around enforceability nationwide, and it is a State-versus-Federal question about masking, about digitally tracing and isolating and how we deal with this notion of individual rights and freedom in health crisis. I would be much more disciplined about that and stricter about that.

My God, you cannot decide what degrees you cook chicken at because we have said that, you know, for health reasons it has got to be cooked at 160 or 180 degrees. Well, that is not an impact on your individual rights, and I think we have to come to grips with that in pandemic to keep it smaller.

The moral hazard—look, under the parametric plan that we have come up with, where it is both two Federal agencies and then the State, there may be more clever ways than that to reduce the moral hazard, but right now we think it is pretty balanced, if you do something as well about national standards around health response, the balance of the two together.

Senator TILLIS. Mr. Chairman, may I ask Ms. Bayoh a question?

Ms. Bayoh, are you there?

Ms. BAYOH. I am here.

Senator TILLIS. Just a couple of questions. Did you apply for and receive a Paycheck Protection loan?

Ms. BAYOH. Yes. The first run of Paycheck Protection I went through, I think, three or four banks to find one that could get me a home. And I think Paycheck Protection was great, but it was a challenge, particularly to neighborhoods that I come from.

Senator TILLIS. I expected that answer, and to me it is another reason why we have to come up with a systematic approach. In my State of North Carolina, we handled hundreds of cases of businesses that were trying to navigate the program that we stood up in a matter of weeks, which is, again, we need the leverage of the

insurance industry to have one number to call, one process to follow in order to do this on a more systematic basis. Because the next time we do Paycheck Protection, if we had to do it again, it would probably be different. The numbers would be different. The choices would be different. So we need to provide, I think, more certainty.

And the final thing—Mr. Chair, thank you for your indulgence—is we also have to learn how the world has changed and how the U.S. economy has changed, because a part of what we have to expect from businesses are what are your resiliency plans? If I go to back IHOP and Waffle House, they are dine-in establishments, largely, with some takeout. Now I am seeing different business models there.

The risks will be different because if the businesses, in the same way that they are becoming more resilient with respect to cyberattacks, which affect what you would ultimately offer as a business product, we have also got to communicate what are best practices, how can you better prepare for this business disruption, because that, too, will ultimately reduce the risk and the ultimate cost for another business disruption.

I have a lot more questions for you that I am not going to ask, but we will submit some questions for the record, and we look forward to continuing to participate in the working group.

Thank you for holding this hearing, Mr. Chair.

Chairman MENENDEZ. Thank you, and thank you for your thoughtful comments.

We are going to extend a little bit because since not as many members appeared and we have a tremendous wealth of talent in front of us that we want to take advantage of.

Let me first ask unanimous consent to submit letter for the record with reference to the topic at hand. Without objection, so ordered.

Chairman MENENDEZ. Senator Scott.

Senator SCOTT. Thank you, Mr. Chairman. I only have one quick question. One of the things that Senator Moran was leaning into that I think is very important is the ability to collect premiums before an event and have the time to plan for what could possibly happen, whether it is a decade or 20 years, whatever that global pandemic risk looks like.

I know that my car insurance—and I like to, once again, keep it as simple as possible—my car insurance, I pay premiums and I certainly hope and pray that I never have to use those premiums. And so I pay them for several years, and then if there is an incident, you pay them out. And so when we think about those numbers that I was mentioning earlier, we have \$633 billion of premium coming in, \$1 trillion a month claim, with a tail, so covered by the Federal Government or some backstop, there should be a way to collect enough premium, hopefully in advance of an incident, in order to participate in the conversation, where we are shifting responsibility from taxpayers to policyholders who are making the right decision to participate, hopefully far enough in advance to keep the insurance companies in play.

Is that a fair, simple assessment of what we are hoping to do, based on the backdrop and the tail coverage, Mr. Greenberg?

Mr. GREENBERG. Senator, it is. That is a fair description, and I would add just one more refinement to it. That is why you start at a certain place of insurance company participation, how much the industry will take, and let it grow over time so that there is a balance that if, unfortunately, it happens earlier, and you have not had a chance to collect that much, OK, we have limited it. It is still a risk——

Senator SCOTT. Yes.

Mr. GREENBERG. ——but we have limited it, to a degree. That risk grows as we have had a longer period.

Senator SCOTT. Exactly. Sir?

Mr. HARTWIG. I will just make one quick comment. You talked about the need to take in an adequate amount of premium. Well, to the extent that clearly rates would have to be much higher in the future than they are today, to accommodate this sort of risk, so the question is what would be the appropriate level of subsidy that would have to come from the Government each and every year? That subsidy would probably be an extraordinary sum.

And to the extent that you allow the rate to reflect what the market will bear, what the true actuarial risk is, to the extent that that rises, the demand for the product will fall, just like for any other products. And we see this in the National Flood Insurance Program, for instances, to the extent that the cost of flood insurance offered to the NFIP is going up, we see take-up rates going down, despite people seeing floods around them on a daily basis.

And so the unfortunate part—if we look at earthquake risk in California, it has been, what, 25-some years since the last major earthquake in California, and today we have only about 10 or 12 percent of homeowners actually with that coverage.

Senator SCOTT. Before we go to the final witness present and my time runs out I do think that the Flood Insurance Program is the reason why I raised the question in premiums collected versus benefits paid out or claims paid out. We think about the fact that in the flood insurance market we actually have about three States carrying the overall load for the entire nation. So whether it is Louisiana, Florida, and South Carolina, \$4 out of \$10 dollars of premium only come from those places. If we had a program where we had every single policyholder paying some portion for an extended period of time, those who decide they are going to have the insurance, that could create a different bucket of resources, and you would still have to limit the exposure, and the exposure to the insurance industry would grow over time, based on the number of years, go from the 2020 pandemic to hopefully the 2080 pandemic. I may or may not still be here then. Likely not.

Anyways, that is the kind of conversation that I think we need to have in the second hearing that we are going to host, because I hope that we have another one of these sometime later this year.

I will give my last 45 seconds to the——

Mr. GORDON. Senator Scott, may I respond to your earlier question as well? This is Robert Gordon, a virtual witness.

Senator SCOTT. Mr. Gordon, yes.

Mr. GORDON. If I may, great questions and certainly that is why APCIA has supported creating Government programs to address

the pandemic like improving the PPP with the advantage of hindsight.

But the Senators have indicated that they are hoping to protect against \$6 trillion in debt relief that was recently provided. A data call last year by the National Association of Insurance Commissioners found only \$2.5 billion in annual business interruption premiums compared to that \$6 trillion figure. The Geneva Association and APCIA have similar studies, and found it would take over 150 years to collect enough premiums to pay those losses. Even just adjusting the claims of potentially tens of millions of businesses simultaneously would make the cost prohibitive, even with some sort of backstop.

So this is on a scale, as Dr. Hartwig mentioned earlier, not really conducive to the industry, and that is why the insurance regulators almost all of the underwriters have said this is not a well-matched risk, but we do support a Government program addressing these problems.

Chairman MENENDEZ. Thank you. We always support the Governments solving the problem.

Mr. Greenberg, I saw you—

Senator SCOTT. Not always.

Chairman MENENDEZ. Senator Scott corrected me. Not always. But in any event, I find that those who are not in Government are always looking for the Government to solve the problem.

But Mr. Greenberg, I saw you shaking your head before when there was a discussion of flood insurance and whatnot, and I have one or two other questions for you as well.

Mr. GREENBERG. I wanted to offer a different mental model than flood insurance. I would say crop insurance. Crop insurance was created during the Great Depression, when the drought was terrible—to keep bread under a buck a loaf. And it was the idea to incent farmers and protect them so that they could keep their farms open.

Over 60 percent, I think maybe it is closer to 80 percent, of farmers buy crop insurance. The premium is actuarially determined as far as the part that insurers keep. The Government subsidizes the premiums so that farmers buy it widely.

So I would offer a different model than simply flood insurance, which I agree is a broken program.

Chairman MENENDEZ. Ms. Bayoh, you responded to Senator Tillis about your experience with PPP. I am not surprised. If another pandemic hit, would you feel confident that Congress would respond quickly and effectively to the needs of businesses like yours?

Ms. BAYOH. So I think that is a two-part answer for that, Senator Menendez. I think what I am really concerned about is that not having anything in place disproportionately puts us at the beck and call of uncertainty, right? When PPP came out, unfortunately for me, the bank I was banking with did not participate at the time in the PPP program, so I was literally left at the mercy of some bank that I did not bank with, asking around, “Can you accept my PPP application?” And we all know the problems that black and brown community face when it came to the Paycheck Protection

Program. A lot of businesses, they did not fit their mold. It was very difficult.

And despite the PPP, I know businesses that will not see another year due to this pandemic, and what I think is that we need assurance. We are not asking for help here. I think we are asking for what we need. And our humanity, as business owners, I hear the stories from my counterparts all of the time, the cries, the loss of income, the loss of business, the loss of generation of wealth. That is the thing that we live with, and I hope that I am not sitting here, the next pandemic, hoping for another PPP.

Chairman MENENDEZ. Mr. Greenberg, let me ask you. The professor suggested that the industry is tiptoeing into cyberinsurance. Is that your experience?

Mr. GREENBERG. No, it is not my experience. Cyber is maybe the fastest-growing line of insurance today. Do not hold me exactly to the numbers, but to give you a general sense, cyberinsurance, you know, let us say 5 years ago, was maybe a \$1 billion market, and it is about a \$5 billion market today, in terms of premium. It is growing. It is growing rapidly.

Chairman MENENDEZ. And part of what one can do in the industry is determine what are the underwriting elements of any insurance, so, therefore, further mitigate both the risk and also the actions of the insured, by directing them in a certain path. Is that a fair statement?

Mr. GREENBERG. It is a fair statement, and cyber is a good example of it. It is evolving quickly, and not to digress too much but the risk environment is changing rapidly in cyber. It is another discussion we could have. It is becoming far more hostile. You see it visibly. We probably see it even more visibly in terms of both frequency and severity of loss, and where loss is coming from.

And at the same time, society is digitizing, so the interconnection and the concentration of exposure is growing rapidly. Insurers are learning quickly, and we are adjusting both the kinds of coverages we give and the services we provide to help incent that kind of behavior around risk management that you are describing.

Chairman MENENDEZ. One last question. One of the benefits of a pandemic risk insurance program could be that it incentivizes businesses to internalize some of the lessons that we have learned over the past 18 months, for example, how to practice social distancing, better hygiene practices, remote work contingencies, changing business models to serve customers in safer ways, and so on. And often these practices can benefit not only society overall but it can mitigate the cost.

Mr. South, how does Marsh account for these benefits in your proposal, and how do you look at premiums looked at, also based on the risk level of the specific business?

Mr. SOUTH. Senator, I think it is a very good point. I think, you know, if you listen to what Mr. Greenberg said, one, you would leave the insurance industry with a portion of the risk they can absorb. Second, you have got to charge a premium for the bid that is retained that is reasonable for that, and then the Government needs to decide on the subsidy for the tail risk.

I think a critical element, as you said, is what Governments and what businesses will learn about what worked during the pan-

demic, what are the issues that you have to deal with, from a risk management standpoint going forward, and make sure that those four elements come together in the future. And as people learn, as models become more sophisticated, as you are able to predict which pandemics travel fast, which ones do not, which ones are infectious, which prevents the measures you can take, and there is this partnership between Government and businesses where you are both figuring out when to lock down, what pathogens are important, which ones you have to react to immediately, and memorialize those and keep those, those risk management techniques are typically what, over time, creates a new market base, creates new technologies to mitigate risk.

And I think that is a fundamental part of it. You create a vibrant business community, focused on risk management, and bring that together, if you have something that will help sort of mitigate a future pandemic, when it happens, in a better way than just hoping and praying that you can write a check again.

Chairman MENENDEZ. Mr. Landgraf, one last question. Would your coalition support premiums based on risk level of a specific business?

Mr. LANDGRAF. Thank you, Senator, and I wanted to echo the most immediate remarks by Mr. South and Mr. Greenberg, that I think the insurance industry has a really positive and important role here to play that the surveys of our risk managers and policyholders show that overwhelmingly they want to work with the insurance industry to help shape those risks and improve risk mitigation through an insurance program, not just a Government loan program.

Would they support risk-based premiums? I think the answer is yes, over time. In our proposal, we had proposed something called an economic recovery period. It would be a pause on the charge by the Government for the reinsurance, you know, for the premium, for the backstop, but over time we would support phasing that in. Certainly, under our proposal, as with TRIA, the insurance industry, subject to State regulation of insurance, would be free to price the risk that they retain within the program, either on market terms or through State rate regulation. We are not seeking to avoid that, but to pay the insurance industry for that risk retention.

Chairman MENENDEZ. Right. Well, seeing no other Members, that concludes the questioning for today's hearing, examining how to address pandemic risk. I would say I appreciate the spirit in which several of you have come, in terms of thinking about what role does the insurance industry play. As I have told other industries at other times, just saying no and not being part of the solution is not a particularly good strategy, because what you will end up with is a legislative response that you were not involved in effecting, and it may not be as good and it may not be as effective as we would have if you all participated in it. So I appreciate that.

Today's hearing is the Subcommittee's first step toward preparing our economy for the next pandemic. I look forward to working with all of you here today, as well as other stakeholders not present, and my Senate colleagues on a path forward. My staff may be reaching out to you to solicit more detailed information and dis-

cuss next steps to tackle pandemic risk and fortify our economy. I would appreciate your help and your insights in that regard.

For Senators who wish to submit questions for the record, those questions are due to the Committee by the close of business Thursday, July 29. To all of the witnesses, that you may get some of those questions, we certainly would appreciate your response to it so that we can have a fully informed record. And with the thanks of the Committee, this hearing is adjourned.

[Whereupon, at 11:34 a.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF CHAIRMAN ROBERT MENENDEZ

This hearing of the Senate Subcommittee on Securities, Insurance, and Investment will come to order. Thank you all for joining us.

This hearing is in a hybrid format. Our Members are in in-person, but we will have witnesses testifying both in-person and by video. For those joining remotely, a few reminders:

- Once you start speaking, there will be a slight delay before you are displayed on the screen.
- To minimize background noise, please click the mute button until it is your turn to speak or ask questions.
- You should all have one box on your screens labeled “clock” that will show how much time is remaining.
- If there is a technology issue, we will move to the next witness until it is resolved.

Thanks to the Biden administration and the American Rescue Plan, the country is well on its way to defeating COVID-19 and restoring the promise of our economy.

We put shots in arms, money in pockets, and provided billions of dollars in relief to hard-hit businesses. However, we still have a lot of work to do. The pandemic has exacted a heavy toll, and we owe it to the more than 600,000 mothers, fathers, sons and daughters lost to COVID-19 to examine how we can better prepare ourselves for similar challenges in the future.

I know that imagining another public health crisis of this magnitude is an unpleasant exercise. However, in today’s interconnected world, the question of the next pandemic is not “if,” but “when.”

This pandemic unleashed havoc throughout our economy. Across the country, businesses suffered massive losses as a result of stay-at-home orders and other containment measures necessary to slow the spread of COVID-19. During the height of the pandemic, 74 percent of all small businesses reported falling revenues from the previous week,¹ and small business ownership dropped by 22 percent.²

In a State like New Jersey that was particularly hard hit at the onset of this crisis, 92 percent of small businesses experienced revenue losses and 41 percent temporarily closed.³ These losses were particularly concentrated in minority communities and in certain industries, such as restaurants and leisure and hospitality.

Most small businesses were not able to obtain relief through their insurance policies.

The National Association of Insurance Commissioners found that of the eight million businesses with commercial insurance policies that included business interruption coverage, 83 percent also included a clause excluding claims from viral contamination, disease, or pandemic. Unsurprisingly, 82 percent of claims have been closed without payment.⁴

Businesses instead relied on Federal programs. In New Jersey alone, 84 percent of small business owners applied to the Paycheck Protection Program (PPP) and 58 percent applied for Economic Injury Disaster Loans (EIDL).

These statistics suggest our national insurance system was ill-prepared to cover the losses incurred by businesses in this crisis. Therefore, it is the duty of Congress to analyze how we can better insulate businesses and their workers from such losses in the future.

My hope is that this hearing will be the first of many discussions on the lessons we can learn from the pandemic and how we can build a stronger, better-prepared and more resilient economy.

A robust debate on this topic has already begun in the business and insurance communities. Today will feature testimony on potential frameworks to manage and mitigate financial losses that may arise from future pandemics. One of the topics we will need to address is the basic question of insurability, either by public or private entities, of pandemic-related businesses losses. We must determine the extent

¹U.S. Census Bureau, Small Business Pulse Survey, June 24, 2021, at <https://portal.census.gov/pulse/data/>.

²<https://www.newyorkfed.org/medialibrary/media/smallbusiness/DoubleJeopardy-COVID19andBlackOwnedBusinesses>

³<https://www.philadelphiafed.org/-/media/frbp/assets/community-development/articles/sbcs-nj-insights.pdf>

⁴National Association of Insurance Commissioners Letter to Congress on Insuring Against a Pandemic: Challenges and Solutions for Policyholders and Insurers, November 18, 2020, at <https://content.naic.org/sites/default/files/inline-files/>.

to which businesses, private insurance providers, and the Federal Government are able to share the risk of losses due to a pandemic.

We will also examine a number of pandemic risk insurance proposals and frameworks put forward by business coalitions and the insurance industry in the wake of this crisis. Each presents different ideas on how much risk is borne by the private sector versus the Federal Government, and the approach to paying claims.

I look forward to hearing from today's witnesses about the merits and challenges of the various plans. Your insights will help Congress grapple with the challenge of better preparing our economy for future pandemics and taking steps to ensure our businesses are not as vulnerable to economic shocks as they were to COVID-19.

Thank you to all the witnesses for appearing, and I look forward to your testimony. With that I recognize Ranking Member Scott and then Chair Brown for their remarks.

PREPARED STATEMENT OF SENATOR TIM SCOTT

In early spring of last year, our country was in the midst of an unprecedented economic boom as the progrowth policies put in place over the previous 4 years fueled robust job creation and helped hard-working Americans hold on to more of their own paychecks.

The U.S. unemployment rate hit the lowest level in half a century (3.5 percent), average hourly earnings were on the rise, and the overall poverty rate reached a historic low (10.5 percent).

The U.S. economy was the strongest it has ever been, and strengthening every day.

No one could have foreseen the global pandemic that would change all of that in a matter of weeks.

The onset of the COVID-19 emergency had a rapid and severe impact on the physical and economic health of our country.

The early months of the crisis were a time of exceptional economic hardship for many small businesses, families, and individuals.

In my home State of South Carolina, our thriving tourism and hospitality industries were especially hard hit.

Fortunately, Congress acted quickly to pass the CARES Act, putting much needed cash directly into the hands of American workers and families, providing rapid relief to small businesses, and helping to stabilize our markets and the economy.

The CARES Act specifically created the Paycheck Protection Program (PPP) to provide struggling small businesses and their employees financial assistance as they weathered pandemic-related temporary closures or reduced service availability.

Congress chose the PPP as the appropriate approach to quickly get Federal aid into the hands of small businesses, rather than attempting to retroactively change business interruption (BI) insurance contracts that do not cover pandemics and viruses—a choice I support wholeheartedly.

Now, over a year removed from the early, frantic days of the COVID-19 pandemic, Congress has the opportunity to learn from this experience as we begin to consider what steps should be taken to address future pandemic risk.

During this hearing, I look forward to hearing more about: the insurability, either by public or private entities, of pandemic-related businesses losses; pandemic risk insurance proposals and frameworks that have been proposed in Congress or by private sector stakeholders; the challenges for businesses, insurance carriers, taxpayers, and State and Federal Governments associated with implementing any of these approaches to pandemic risk insurance; and whether not implementing a Federal pandemic risk insurance program in the United States would present any long-term economic risks or affect the country's global competitiveness.

I appreciate all of today's witnesses for joining the Subcommittee this morning to examine this very important issue and look forward to our discussions.

PREPARED STATEMENT OF CHAIRMAN SHERROD BROWN

This is the first Securities, Insurance, and Investment Subcommittee hearing—thank you Chairman Menendez and Ranking Member Scott for holding this hearing and thanks to the witnesses for being here today.

The COVID-19 pandemic has claimed the lives of more than 600,000 Americans. Although we have made great progress getting shots in arms, we are experiencing surges in areas across the Nation that have low uptakes in vaccination rates. It's important that we continue to provide families with the resources they need to pro-

tect themselves and their loved ones—both medical resources, like the vaccines that will save their lives, and also economic resources, as the economy continues to fully recover.

While we all hope to avoid—and must work to prevent—a future pandemic, we do need to be prepared. I am glad this Subcommittee is working in a bipartisan way to explore solutions to the economic challenges a future pandemic would bring.

I've heard from small business owners who thought the business interruption coverage included in their insurance policy would help them navigate the pandemic. Then, their insurance companies told them the complex forms that they signed didn't actually offer them the protection they expected. And, insurers have pointed out that if those policies covered the effects of the pandemic, the industry might have collapsed.

I've also heard from organized labor that union members are losing out on jobs, because studios are moving production overseas due to the lack of a pandemic risk insurance solution.

And we know how hard this has been on the families across the country that depend on those jobs to put food on the table and to pay their mortgage and rent.

I look forward to working with my colleagues of both parties as we continue to discuss this issue and come up with a solution to better prepare our economy for the inevitability of a future pandemic.

PREPARED STATEMENT OF ADENAH BAYOH

IHOP FRANCHISEE, PRESIDENT AND CEO OF ADENAH BAYOH AND COMPANIES

JULY 22, 2021

Chairman Menendez, Ranking Member Scott, and Subcommittee Members: Thank you for the invitation to testify on this critical issue from the policyholder, small business owner perspective. I am a restaurant owner several times over—an IHOP franchisee of 15 years, cofounder of Cornbread Farm To Soul, founder of Urban Vegan and the President and CEO of Adenah Bayoh and Companies. I am also a member of the National Restaurant Association and the New Jersey Restaurant and Hospitality Association, which have made finding a legislative solution to future pandemic risks a key priority.

I am fortunate to have lived the American dream. At age 13, I escaped the civil war in my native country of Liberia and immigrated to the United States. I began my career as an entrepreneur at an early age. After attending public high school in Newark, New Jersey, and putting myself through college where I earned a degree in business management, I secured a job in banking and began purchasing multi-family homes as investments. Following the financial success of these investments, I left my banking position to concentrate on building my own business with a focus on transforming and empowering disadvantaged communities.

Inspired by my grandmother, who owned a restaurant in Liberia, I used the profits generated from my real estate investments to open an IHOP in Irvington, New Jersey. When I cut the ribbon on my first IHOP location at age 29, I was the youngest IHOP franchisee in the country.

By 2010, this location became the fastest growing in the Northeast and it remains one of the top grossing in the region.

Pre-COVID, I employed 229 employees and am currently trying to rebuild my workforce but, like other employers, I am facing labor shortage challenges. Yet, I remain guided by a commitment to service and continuous investment in my staff. I believe in training new hires with valuable life skills that apply beyond their work in the restaurant, extending throughout their lives and future careers.

In March 2014, I was honored as one of the TOP 50 Women in Business by the publication *NJBIZ* and was the cover story in its March 24th issue. In January 2015, I was appointed to the Federal Reserve Bank of New York Advisory Council on Small Business and Agriculture. One of my proudest accomplishments was in December 2015 when I was named to *Ebony Magazine's* Power 100 list alongside such luminaries as former U.S. Attorney General Loretta Lynch and Oscar winning actress Viola Davis.

Despite all of my hard-earned successes, everything came crashing down in March of last year, when restaurants were among the first businesses to shut down.

I had business interruption insurance with Chubb and Liberty Mutual. It was to cover 12 months of actual loss of business income, if something ever happened to my business and I needed to shut down. I paid annually an average of \$ 275,000.00 in insurance premiums.

When the pandemic hit, I immediately contacted my insurance company. My broker advised me that viruses and pandemics were excluded from insurance policies like mine and although I was ordered to close most of my businesses by the Governor, there would be no relief from my insurance company. I was shocked to find that my insurance coverage was not there for me when I needed help the most. This harsh reality soon set in. I began trying desperately to figure out how to cover my financial obligations and, most importantly, how to take care of the people who rely on me to feed their families. At the outset of the crisis, I struggled to continue paying my employees from proceeds generated by the business given the mandated shutdown and the fear that gripped the dining public in those early days. Nevertheless, I made a courageous decision for the first month of the statewide shutdown to continue paying my employees despite the precarious situation. I agreed to pay all my employees their average weekly pay whether they worked or not. I did this to ensure that my staff, including single mothers, could put food on the table. Although I was unable to fully resume normal business operations, I felt a duty to help our valued team members until Government programs could fill the gap. As an owner of several restaurants, I was nearly bankrupted by this, but I have no regrets.

Like so many others in the restaurant and foodservice industry, my life's work was decimated by the COVID-19 pandemic. My restaurant sales and jobs were devastated by this crisis. I had to make the hard decision to close 3 newly built stores in Pennsylvania and lay off 16 persons due to these closures. I have seen some of my restaurants on average lose 50 percent of their revenue at some point during this pandemic. The hardest part of this crisis was not just seeing the impact on my restaurants and my businesses but the impact within the communities in which I operate. Yet, I continued to do my part. We gave away almost 10,000 free pancakes, we fed essential workers, we gave free lunch to school children and fed overnight nursing staff who were unable to get dinner due to cafeteria shutdowns. The most heartfelt part of all of this was seeing some of my employees volunteer to help feed and assist the communities in which they live and work.

Mr. Chairman, notwithstanding the devastating impacts of the pandemic, I remain optimistic and enthusiastic about our future recovery and growth, but the road to recovery will be long and complicated. The magnitude of the COVID-19 pandemic's financial and social impacts has exposed significant shortcomings and vulnerabilities in our country's preparedness to deal with catastrophic events of this scale, which includes gaps in insurance protection for losses from business interruption.

I agreed to participate in this hearing today because I understand that Pandemic Risk Insurance is a viable solution that would cover future pandemics to allow continuity in Main Street businesses especially Black and Brown communities like mine. A program like this should be enacted into law, as soon as possible, because we don't know for certain when the next pandemic will come. We certainly didn't see COVID-19 coming.

I would like to note that the National Restaurant Association, is a member of the Business Continuity Coalition (BCC). The BCC is advocating for the development of a public-private partnership, with the right incentives for all parties, to mitigate the future economic impact of pandemics. Such a Federal program would help businesses obtain affordable insurance coverage for pandemics, modeled upon the terrorism risk insurance program that Congress put in place after 9/11 when businesses could not obtain coverage for acts of terrorism.

This country needs a Pandemic Risk Insurance Program to ensure that Main Street businesses and employees have certainty and continuity in the ability to navigate the impact of a future pandemic. I defer to the experts on the panel regarding the technicalities, but from a small business owner's perspective any Federal backstop should support not only nondamage business interruption coverage but also other pandemic impacted lines of insurance, such as event cancellation, workers compensation, and general and employment practices liability insurance. These lines may need to be supported by a robust backstop even for a recurrence of COVID-19. The time is now for solution.

Mr. Chairman and Ranking Member, thank you again for the opportunity to testify. I am happy to answer any questions you or other Members of the Committee may have.

PREPARED STATEMENT OF EVAN G. GREENBERG

CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CHUBB

JULY 22, 2021

About Chubb

Good morning Chairman Menendez, Ranking Member Scott, and Members of the Subcommittee. I am Evan Greenberg, the Chairman and Chief Executive Officer of Chubb. Thank you for inviting me to speak to you today regarding pandemic risk and our perspective on ways to create a public-private partnership that leverages the insurance industry's existing infrastructure and includes risk sharing by the industry.

We are all deeply saddened by the devastating and deadly effect of COVID-19; the toll in lives and the harm to the global economy has been catastrophic. Thankfully, the vaccines are extraordinarily effective and are the key to ultimately ending the pandemic, or better said, controlling what is now an endemic. To continue the progress against COVID-19, more must be done to rapidly increase global vaccine distribution and overcome vaccine reluctance. Even as this battle continues, we must take the lessons learned from this pandemic and act now to protect people and their livelihoods from future pandemics. There is much that we can do to protect lives, including stockpiling PPE, implementing mask protocols and social distancing early on, requiring widespread testing and tracing, and developing new treatment protocols and medicines. There is also much that we can do to lessen the economic blow by building the financial backstops now that can be immediately triggered when economic activity is suddenly disrupted. To this purpose, we believe that the insurance industry can play an important role in partnership with the Federal Government to blunt the economic impact of future pandemics by keeping businesses solvent and people employed.

Chubb is the world's largest publicly traded property and casualty insurer and the largest commercial insurer in the United States. With operations in 54 countries and territories, Chubb provides commercial and personal property and casualty insurance, personal accident and supplemental health insurance, and reinsurance to a diverse group of clients. Chubb has more than \$192 billion in assets and wrote \$41 billion of premiums in 2020. The U.S. accounts for approximately 60 percent of Chubb's premium. Chubb employs 31,000 people worldwide, with approximately 15,000 of those employees in the 44 branches around the United States. Chubb's core operating insurance companies maintain financial strength ratings of AA from Standard & Poor's and A++ from A.M. Best. Chubb Limited, the parent company of Chubb, is listed on the New York Stock Exchange (NYSE: CB) and is a component of the S&P 500 index.

Before addressing how pandemic risk should be handled going forward, I would like to take a moment to talk about Chubb's response to the current pandemic. Throughout this challenging and heartbreaking time, we at Chubb have worked diligently to address the needs and concerns of our employees, customers, and community.

At the very beginning of the crisis, we instituted a no-layoff policy to provide all our employees with peace of mind knowing their jobs and benefits are secure during this time of uncertainty, and we immediately established work-from-home protocols to keep our colleagues—and our communities—safe. We are pleased to report that all Chubb offices in the U.S. are now reopened on a flexible schedule to accommodate each employee's individual circumstances, and with appropriate practices in place to ensure health safety and comply with applicable Federal, State, and local rules. Throughout the crisis, we also have offered a series of programs to help employees with their emotional well-being.

I am proud of the way our Chubb family has come through the crisis, and proud of the way we have been able to continue to serve our customers despite the challenges that we have all faced. We know many of our policyholders are suffering and we are doing all we can to support their needs. In addition to incurring \$1.4 billion in COVID-19 claims-related charges, we have:

- extended payment terms to commercial customers recognizing cash flow pressures;
- provided a premium credit for auto policyholders in the U.S., recognizing their reduced driving exposures;
- supported our U.S. small business clients with premium reductions for their reduced exposures, i.e., payroll; and
- supported our small commercial customers by providing health care workers and first responders with gift cards redeemable at our customers' businesses.

More broadly, Chubb continues to be a dedicated global citizen. At the outset of the crisis, we committed \$10 million to pandemic relief efforts globally, including providing emergency medical equipment and supplies to health care facilities in the very early days of the pandemic, and helping the hungry and vulnerable through community food banks. As the recovery phase continues, the Chubb Foundation has committed an additional \$2 million in funds to help those affected in the U.S. and around the world, including \$500,000 to provide emergency medical equipment and supplies through the American India Foundation (AIF). Chubb has also worked to facilitate global vaccine distribution through a collaboration with the World Health Organization (WHO) and Gavi, the Vaccine Alliance, to ensure that insurance coverage is secured for a no-fault vaccine injury compensation program. Through this support, the program offers eligible individuals in 92 lower-income countries a fast, fair, and transparent process to receive compensation for rare but serious adverse events associated with COVID-19 vaccines distributed through COVAX, the global mechanism for procurement and distribution of COVID-19 vaccines.

The Nature of Pandemic Risk

Some risks, like fender benders or a tree falling on a garage, happen frequently but do not cause significant damage. Other risks are relatively infrequent—like hurricane—but can cause greater damage. By grouping many policyholders together, based on the likelihood and severity of different types of risks, insurers can offer protection at affordable and fair premiums. In this way, insurers pool risk on the assumption that only a comparatively small number of policy holders will suffer a loss in a given period. If insurers anticipated much greater losses, then the premiums would be unaffordable either because the frequency of events causing loss to many increased or because the severity of loss increased. If you expected every house to burn down in a given period, then the cost of insurance for each policyholder must be at least the price of replacing their house.

Some risks are like every house burning down at the same time and are simply too great to be insurable—the potential losses would greatly exceed the financial wherewithal of individual insurers and the entire industry given the industry's finite amount of capital. This is what we face with pandemic risk—virtually unlimited risk on steroids. Pandemics, unlike other catastrophes such as earthquakes, hurricanes, floods and even terrorism are not limited to a specific geography, time period, or risk class, but instead can affect entire economies, almost every business, and most of the population at the same time, resulting in losses so great that the event is uninsurable by the insurance sector alone. The industry has not and could not charge an adequate premium to cover such a risk, and more important, the industry does not have the balance sheet capacity to do so. Our balance sheets are finite and the risk, for all intents and purposes, is infinite. Insurance regulators and the industry have recognized this fact and that is why business interruption coverage against a pandemic has not been broadly available.

While the industry could not take on the risk of a national or global economic shutdown caused by a pandemic, there are a variety of coverages that have responded to certain COVID-19 related claims where such risk was contemplated under the policy and where insurers were paid an appropriate risk adjusted premium. These claims cover losses affecting individual lives such as workers compensation claims, accident and health claims, and travel claims. They also include certain specifically identified business interruption claims like claims from the entertainment industry for event cancellation, such as Broadway shows and film production. In addition, there are liability claims for medical malpractice related to COVID-19 treatment, and claims against directors and officers.

Insuring Future Pandemics Through a Public-Private Partnership

The COVID-19 pandemic has brought to the surface once again a protection gap: massive economic losses that are not covered by any existing Government program and that are not insurable in the private market. Congress sought to fill the gap by enacting assistance programs totaling trillions of dollars, including hundreds of billions of dollars for small businesses. While these programs have been largely successful, with businesses of all sizes securing loans and grants to stay afloat, the ad hoc nature of these well-intended relief efforts is not a formula for future success. It is not difficult to see how quickly assembled Government programs could lead to inefficiencies, delays, and uncertainty, as well as real and perceived unfairness in distribution. One unfortunate result of the uncertainty of relief is that small businesses cannot wait for help—they immediately lay off workers, creating huge unemployment spikes. That is a critical distinction between an ad-hoc Government response and the certainty of an insurance program with known payouts and existing claims processes.

If the Government and society agree that we need to support businesses, workers and the economy to stay afloat during future pandemics, Chubb believes there may be a better way forward: (1) take action now to reduce the scope of pandemic loss in the future and (2) build a public-private partnership between the insurance industry and the Federal Government to provide economic protection for this reduced loss. In insurance parlance, we need to reduce the size of the tail risk first and then provide an efficient mechanism for the Government to backstop that risk, which is too big for the industry to assume on its own. This encourages a private market to develop for pandemic relief and business interruption insurance.

On reducing loss, we have learned much over the last 18 months about how to prepare for and respond to pandemics. This knowledge has been hard won—in hospital wards, in laboratories, in the trial and error of Government and private efforts to battle the pandemic. We need to take this knowledge and develop plans and resources to lessen the health and economic costs of future pandemics. We can save lives and we can limit the extended, widespread social and economic shutdowns we are continuing to see in this pandemic by implementing the proven measures that reduce contagion and improve health outcomes. Some of the measures are now obvious—require masks at the first sign of pandemic threat; institute testing and tracing to isolate carriers; stockpile sufficient quantities of PPE and essential medical equipment so that our health care providers can more efficiently and safely treat patients. Some measures require ongoing private and Government support including the development of more effective antiviral drugs and other therapeutics.

With effective leadership and resource commitment, we can be better prepared for the next pandemic so that the limits on social and economic activity will not be as extensive as they have been for COVID-19. If we are successful in this way, then the economic loss may be substantially lessened and the burden on Governments to provide economic relief may be reduced.

Of course, even if we can substantially improve our pandemic preparation and response, future pandemics will likely cause economic losses far beyond the capacity of the insurance industry. However, the industry can assume some exposure to pandemic risk and make coverage more widely available if the Government limits our liability by assuming the tail risk. Indeed, private-sector risk-taking brings an added measure of discipline to pricing and claims management. Pandemic risk can be priced, using the industry's insight, to determine a fair premium for the exposure. The premium charge associated with the risk incentivizes businesses and insurers to create better risk management tools and strategies. In addition, insurance expertise can bring fraud detection and additional mitigation. In short, Chubb strongly believes that the insurance industry can play a more meaningful role in providing future pandemic risk coverage that would protect U.S. businesses small to large. We should not merely act as administrators of a Government program as some have suggested—that diminishes us as an industry and our role in risk mitigation.

A solution that commits insurance industry capital also provides an opportunity for the insurance industry to increase over time the amount of risk we take, as direct and secondary markets develop, thus helping to reduce the Government's financial burden.

We note that other types of risk were once thought to be uninsurable, but now, with the Government playing a role, private coverage capacity has become available: terrorism, which was considered uninsurable after 9/11, has seen the development of an insurance market thanks to the Terrorism Risk Insurance Program; and even the National Flood Insurance Program, for all its challenges, along with improvements in technology, has helped spawn a small but growing private flood insurance market.

Recognizing the importance of the insurance industry's risk-taking role, Chubb has proposed a framework for a public-private partnership to provide financial support for future pandemics. Our proposal would provide greater certainty to businesses so that they can keep employees on the payroll, pay their bills, and withstand the economic disruptions like those caused by COVID-19. I am not going to go into the details of our proposal today, but I would like to briefly address several elements that we believe are essential for any successful public-private pandemic partnership.

Any pandemic risk insurance program should consider the unique needs of small businesses and how their exposure to a pandemic differs from that of medium and large businesses. The fallout from the COVID-19 pandemic has shown us that pandemics do not impact all businesses equally. When the economy shuts down, small businesses are generally at much greater immediate financial risk than larger businesses and may face immediate closure because they have more limited finan-

cial resources, less liquidity, and less access to capital, credit, and risk-management mechanisms than larger businesses.

The cornerstone of our pandemic risk insurance program, therefore, recognizes the need for rapid liquidity for small businesses. The key elements of such a program should include, in the first instance, Government subsidization of the premium charged to small businesses to ensure affordability and wide participation. In the event of a pandemic that results in losses to small businesses, insurers would participate in the first wave of losses up to a certain amount and the balance of the insured loss would be paid by the Government. To accomplish this, the insurance industry would receive an adequate risk adjusted rate for its portion of the risk and the Government would absorb the cost of its portion of the risk. Industry risk sharing provides insurers with an appropriate risk-adjusted price for exposing their capital, with the Government assuming the extensive tail risk. Then when businesses shut down and loss occurs in a pandemic, the insurance industry can provide predictable, efficient and prompt payment of losses.

Although purchase of coverage by small businesses should not be required, businesses that choose not to purchase coverage should not be eligible for future Government pandemic assistance. Finally, to facilitate quick claims payments, the coverage should be based on predefined and packaged limits and triggers, and payments should be made automatically based upon the triggering event without requiring adjustment of individual claims—this will ensure help gets to small businesses quickly.

For medium and large businesses, we believe that a market-oriented approach is more appropriate and desirable. Medium and large businesses generally have more financial resources and options than smaller businesses; it makes sense for these businesses to pay an appropriate risk adjusted price to insurers for their exposure and to the Government for the use of the Federal balance sheet and assumption of the tail risk. This program would be voluntary and would provide partial coverage for pandemic losses for the businesses that chose to participate.

This can be effectively and efficiently accomplished with a partnership between the private sector and the Government where both parties take risk. The Government could establish a reinsurance facility solely to cover pandemic risk for medium and large businesses that would accept risks at commercial terms at a fair, risk-adjusted price. Private insurance companies that choose to sell such coverage could write pandemic business interruption policies at market terms and retain some portion of the risk, subject to their balance sheet wherewithal, reinsuring the rest along with a premium payment to a Federal reinsurance facility. The Government gets paid for the use of its balance sheet.

Our proposed framework builds on these ideas, and addresses the details, including program limits, policy limits, industry share, claims payment, and distribution. It is a robust plan, fiscally responsible and I would welcome the opportunity to discuss it with you in more detail at the appropriate time.

Conclusion

In conclusion, we can be better prepared for the next pandemic by acting now to limit the health and economic consequences of such a catastrophe. We know what needs to be done to prevent the widespread shutdowns that have had such devastating economic consequences. We also know what can be done to provide prompt financial support to keep businesses solvent and employees off the unemployment rolls. The insurance industry cannot provide that support on its own, but as outlined above, a public-private pandemic insurance program can do so. Combining the insurance industry's risk insight and experience with the Government's balance sheet capability to take on pandemic tail risk provides the foundation for an affordable, efficient liquidity backstop for small businesses and a market-based program for larger businesses.

There are a number of proposals that have been suggested by policymakers, policyholder groups, and industry players—including Chubb—to address the pandemic protection gap. The proposals differ in important ways, but several of them include the essential elements of a public-private partnership, industry risk-taking, and the needs of small businesses. We hope these proposals encourage dialog and provide ideas for addressing the devastating effects that future pandemics could have on the lives and livelihoods of so many. I appreciate your interest in our views, and I look forward to working with you and the other stakeholders as your work on this critical issue continues.

PREPARED STATEMENT OF ROBERT HARTWIG
PROFESSOR OF INSURANCE AND FINANCE AND DIRECTOR OF THE RISK AND
UNCERTAINTY MANAGEMENT CENTER, UNIVERSITY OF SOUTH CAROLINA
 JULY 22, 2021

Thank you, Chairman Menendez, Ranking Member Scott and members of the Committee.

My name is Robert Hartwig and I am a Professor of Risk Management, Insurance and Finance at the University of South Carolina's Darla Moore School of Business. I also serve as Director of the School's Risk and Uncertainty Management Center.¹ Prior to joining USC, I spent 23 years in the property/casualty insurance and reinsurance industries, the last decade of that as President and Economist of the Insurance Information Institute, an international property/casualty insurance trade association based in New York City. During that time, I have had the opportunity to work on wide variety of issues related to the industry's exposure to catastrophic loss and its financial performance during periods of economic uncertainty. I've also had the pleasure of testifying before this Committee on a number of past occasions.

I have been asked by the Committee to provide testimony on the impacts of the COVID-19 pandemic, challenges related to the insurability of pandemic risk and to discuss public policy approaches to future pandemics as well potential consequences of those approaches. For the purposes of my testimony, I will address the following issues:

- (i) The scale, scope and complexity of pandemic risk;
- (ii) The parameters and limits to insurability as they apply to pandemic risk;
- (iii) The unique and essential role of government in managing pandemic risk;
- (iv) Critical distinctions between private insurance and public policy responses to managing pandemic risks;
- (v) Provide an analysis of solutions for managing pandemic risk

Overview: The Scale, Scope and Complexity of Pandemic Risk

The COVID-19 pandemic's twin tolls on human health and the global economy are among the greatest in history. As of mid-2021, the virus had claimed nearly four million lives worldwide and sickened upwards of 180 million, according to the World

¹ Contact information: Tel: (803) 777-6782; Email: robert.hartwig@moore.sc.edu.

Health Organization.² Included within this grim tally are more than 600,000 deaths in the United States alone, and a total of 33 million confirmed cases.³ Yet despite the epic nature of this tragedy, the public health crisis precipitated by the COVID-19 pandemic was brought to heel by a singular solution—the rapid development, distribution and mass administration of vaccines on a planetary scale. In contrast, the solution to many of the ongoing economic dislocations precipitated by the pandemic remains uncertain, elusive and politically fraught despite trillions of dollars in fiscal and monetary stimulus.

Scale

Figure 1 and Figure 2 make clear that the signature economic consequence of the COVID-19 pandemic was a massive and abrupt collapse in economic activity. Real GDP in the United States plunged by nearly one-third during the second quarter of 2020, with spending by consumers (who account for nearly 70 percent of GDP) driving the majority of that drop. Likewise, business investment, which accounts for nearly 20 percent of GDP, simultaneously plummeted by nearly 30 percent. The snarling of global supply chains amid the pandemic and a worldwide recession also led to a sharp drop in net exports. Indeed, the only major component of GDP to grow amid the economic collapse during the first half of 2020 was government spending. In short, COVID delivered a severe macroeconomic shock, triggering economic shockwaves that reverberate to this day—unemployment, business insolvencies, supply chain disruptions, asset price volatility and inflation to name just a few.

COVID-19's economic losses were obviously not bounded by national borders nor by the calendar. With the global economy shrinking by 3.3 percent in 2020, the International Monetary Fund has estimated that COVID-19's global economic toll will reach many trillions of dollars.^{4,5} Looking ahead, science tells us that pandemic risks are intensifying as globalization and urbanization proceed apace, potentially costing as much as \$23.5 trillion over the next 30 years.⁶ In short, costly future pandemics are a certainty. It is also a certainty that the macroeconomic consequences of pandemics are not privately insurable. For example, a one-third decline in GDP on an annualized basis equates to approximately \$7 trillion in

² World Health Organization Coronavirus Dashboard, accessed June 21, 2021 at: <https://covid19.who.int/>.

³ Centers for Disease Control and Prevention as of June 30, 2021.

⁴ International Monetary Fund. *World Economic Outlook* (April 2021). Accessed at: <https://www.imf.org/external/datamapper/datasets/WEO>

⁵ International Monetary Fund. "The Great Lockdown: Worst Economic Downturn Since the Great Depression," April 14, 2020, accessed at: <https://blogs.imf.org/2020/04/14/the-great-lockdown-worst-economic-downturn-since-the-great-depression/>

⁶ Hilsenrath, J. "Global Viral Outbreaks Like Coronavirus, Once Rare, Will Become More Common." *Wall Street Journal*, March 6, 2020.

economic activity. The figure is nearly eight times larger than the policyholder surplus (capital) backing the entire U.S. property-casualty insurance industry.

Beyond GDP: Peeling the Onion of Pandemic Economics

GDP provides an excellent aggregate measure of the dollar magnitude of COVID's impact on the economy. The data confirm that the pandemic pushed American families and businesses to radically and rapidly reduce spending by trillions of dollars. But each dollar not spent represents a loss of income to another family or business elsewhere in the economy. The true economic pain from COVID is most acutely felt in terms of this collapse in income. As such, optimal public policy responses will seek to target such disruptions, providing relief to affected wage earners and businesses while simultaneously stabilizing and supporting aggregate demand in the macroeconomy. Macroeconomic stabilization policy has always been the domain of federal government. The delineation between the role of government and private insurers is discussed in more detail later in this testimony, with a special focus on disruptions in business income. Consider for the moment, however, that potential economy-wide business interruption losses at the height of the pandemic were estimated at as much as \$1 trillion per month—a sum that is more than 200 times the \$4.5 billion in monthly premium collected for all commercial property lines of insurance.

Viewed broadly, it is clear that there are many “layers” of pandemic loss, many of which each require specific public policy solutions. Included among the most critical layers of loss are:

- Mass unemployment and wage loss→Household cashflow losses
- Structural unemployment and skill loss/mismatch
- Business cash flow loss/interruptions
- Solvency threats for business and households
- Liability losses
- Worker health and safety losses
- Financial market losses
- Supply chain disruptions and ensuing losses
- Inflation and the loss of purchasing power
- Mortality and morbidity (health)-related losses
- Contingency losses (e.g., event cancellation)
- Travel disruption
- Widening income inequality

Several of the key layers of loss are discussed below:

Worker Income and Unemployment

According to the U.S. Bureau of Labor Statistics, wages and salaries paid to nonfarm workers fell by \$617 billion in Q2 2020, a plunge of 6.5 percent, the largest single quarterly drop since the federal government began collecting this statistic in 1947.⁷ Similarly, U.S. Bureau of Economic Analysis data show that real personal income less transfer payments (such as stimulus checks) fell by \$1.2 trillion or 9.1 percent on an annualized basis early in the pandemic. This unprecedented drop in wages, salaries and income is a direct consequence of soaring unemployment—which skyrocketed from 3.5 percent in February 2020 to 14.8 percent just two months later (Figure 3), reflecting the loss of some 22.4 million jobs, 6.8 million of which have yet to be recovered as of June 2021.⁸ Clearly, provisions for addressing mass unemployment and the ensuing loss of income are critical components of any comprehensive public policy response to future pandemics. Indeed, most advanced economies have long-standing social insurance schemes in place to manage unemployment risks. These programs, supplemented by additional targeted resources during the COVID-19 pandemic, generally performed well, providing tens of millions of affected workers with income sufficient to cover their basic financial needs.

Business Income

Business income was also materially impacted by COVID. Potential business income losses at the height of the pandemic were estimated to be as much as \$1 trillion per month (Figure 4), reflecting primarily the massive and sudden drop off in consumer spending as well as the inability to spend because of mandated closures and other legal restrictions.⁹ It is worth noting that small businesses bore a disproportionate share of the business income losses. Businesses with fewer than 500 employees were estimated to have potentially sustained income losses between \$393 billion and \$668 billion per month early in the pandemic.¹⁰ As with the loss of worker income due to mass unemployment, addressing the loss of business income in future pandemics is necessarily a priority.

Business Income Losses: Consumer Decisions to Disengage from Commerce

⁷ U.S. Bureau of Economic Analysis; Federal Reserve Bank of St. Louis. Data are on an annualized basis. Accessed July 14, 2021 at: <https://fred.stlouisfed.org/series/WASCUR>.

⁸ U.S. Bureau of Labor Statistics. Accessed July 14, 2021 at: <https://data.bls.gov/cgi-bin/survey/most>.

⁹ Hartwig, R. and Gordon, R., "Uninsurability of Mass Market Business Continuity Risks from Viral Pandemics," American Property Casualty Insurance Association, June 2020. Accessed at: <https://www.usriskcenter.com/presentations/uninsurability-of-mass-market-business-continuity-risks-from-viral-pandemics/>.

¹⁰ American Property Casualty Insurance Association estimate (April 2020).

Public policy solutions designed to address business income loss from pandemics must recognize the particularly nuanced nature of this category of loss. A National Bureau of Economic Research study found that small businesses and their owners experienced unprecedented disruptions of up to a 40 percent drop in revenues and consumption in the early phases of the COVID-19 pandemic, and through May 2020 the majority of the average decline is found to be due to nationwide factors rather than local infection rates and state-level policies like shelter in place orders.¹¹ In other words, a substantial share of the income loss experienced by businesses was associated with factors that transcended state borders, such as fear of contracting COVID-19.

This finding is consistent with additional research suggesting that the “vast majority” of the reduction in consumer visits to businesses was driven by voluntary decisions by consumers to “disengage from commerce,” not—as is commonly presumed—government-imposed restrictions on activity.¹² Specifically, consumer visits to business fell by 60 percent during the first few months of the pandemic, yet only 7 percent of the decline is attributable to legal restrictions. Crucially, though the shutdown orders had little aggregate impact, they did have a significant effect on “reallocating consumer visits from ‘nonessential’ to ‘essential’ businesses.” As an example, restaurants and bars (which were universally deemed as ‘nonessential’) experienced a decline of nearly 30 percent in consumer visits, while non-restaurant food and beverage stores benefitted from a 27 percent increase in visits.

These important research findings have very important public policy implications in terms of how future pandemic relief programs should be designed to provide maximum support to business, small businesses in particular. Moreover, these same findings—which suggest that much of the income loss sustained by small businesses in particular was the result of avoidance behaviors by consumers—combined with the sheer magnitude of losses discussed in the previous section, provide insights on the practical impossibility of privately insuring against shifts in the macroeconomic activity, particularly with respect to collapses in aggregate demand that adversely impact business income.

The practical impossibility of privately insuring against business income losses arising from pandemics is explored in more detail in the next section, which

¹¹ National Bureau of Economic Research, NBER Working Paper Series, *Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID-19 Pandemic*, Olivia S. Kim, Jonathan A. Parker, Antoinette Schoar, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3739648.

¹² Goolsbee, A. and Syverson, C. 2021. *Fear, Lockdown, and Diversion: Comparing Drivers of Pandemic Economic Decline 2020*. Journal of Public Economics. 193 (104311).

provides a detailed discussion of the generally accepted criteria that define insurability.

The Role of Government and the Bounds of Insurability

Financing Pandemic Losses: What Makes Government Unique?

That government must play the lead role in combating the large-scale economic dislocations arising from pandemics is clear, with the private sector playing many critical supporting roles. Government involvement is required not only because the cost of mitigating against the economic consequences of pandemics is measured in the trillions of dollars, far exceeding the resources of private industry, but also because of government's unique ability to tax, borrow and spread costs and risk across time. During the early weeks and months of the pandemic, Congress fulfilled this duty, passing legislation providing \$2.4 trillion in emergency pandemic relief by the end of March 2020 (Figure 5). Within one year of the pandemic's onset in the United States, Congress had passed six major relief bills, providing more than \$5.7 trillion in pandemic aid to American families and business owners. Virtually all of this spending is financed through borrowing on a scale unimaginable on the private sector. Between 2019:Q4 and 2021:Q1, the total public debt of the federal government grew by \$4.93 trillion, an increase of 21.3 percent.¹³ Only government—with its unique authority to tax—can shift and spread expenditures of this magnitude over time.

Challenges to the Insurability of Pandemic Risks: The Case of Business Income

Insuring against business continuity losses from pandemics poses a particular set of challenges to insurers that collectively render the risk uninsurable in private insurance markets on a large scale. Potential losses can easily exceed the industry's capital, surplus and premium resources, posing a systemic risk to the industry and the overall economy. Because virtually all businesses may sustain losses simultaneously and continuously over the span of many months, the ability to spread risk—a function essential to the smooth operation of insurance markets—is severely compromised. Frequency and severity of losses cannot be precisely modeled because of a lack of historical data, creating an insurmountable obstacle to accurate pricing. Further, business income-related pandemic losses are correlated with both financial market losses and other insurance losses, so insurers cannot mitigate pandemic-related business continuity losses through

¹³ U.S. Department of the Treasury; Federal Reserve Bank of St. Louis. Accessed July 13, 2021 at: <https://fred.stlouisfed.org/graph/?id=GFDEBTN>. Over the same period, public debt as a share of GDP increased from 106.7 percent to 127.5 percent.

diversification. Fear of additional economic losses from COVID-19 variants continues to cause financial market turmoil to this day.¹⁴ Consequently, it is unlikely that private insurance markets will be able to offer affordable, widely-available commercial insurance products that insure against business continuity risks from pandemics. Comprehensive government programs designed to directly address large scale business continuity losses from pandemic are necessary to address this risk prospectively and could, over time, potentially encourage the innovation of limited specialized pandemic coverages by private insurers and reinsurers.

Business Continuity Coverage: Purpose and Function

It is critical to note that business income coverage is not today and has never been intended to function as an extension of government macroeconomic stabilization policy. Simply stated, business income insurance is an optional coverage available to businesses purchasing commercial property insurance, the terms of which are dictated by very precise and legally binding contract language. Specifically, business income payments are triggered if and only if there is direct physical loss of or damage to insured property *and* such loss or damage is caused by a covered cause of loss.¹⁵ During the early stages of the pandemic, misunderstandings on the part of some businessowners—and confusion sown by some plaintiff attorneys—led to thousands of lawsuits against insurers contending that the loss of income suffered by businesses was covered under such policies. Overwhelmingly, courts have rejected these arguments, citing the lack of direct physical loss or damage to covered property. It is worth noting that even prior to the pandemic, the vast majority of business income policies included explicit virus exclusions. Such coverage was not priced and no premium was collected for it.

Why Pandemic Risks Are Inherently Uninsurable

Pandemic risk differs significantly from other types of disasters such as hurricanes, tornadoes and wildfires. Each of these natural disasters impacts a limited number of policyholders for a limited period of time. The property and business continuity losses associated with hurricanes, for example, are largely a coastal phenomenon with damaging winds typically dissipating over the span of hours. In contrast, business continuity losses arising from pandemics, by definition, have the potential to impact virtually all policyholders, irrespective of location and nearly simultaneously, with losses continuing over the span of months or even years. The resulting accumulation of losses of the many (rather than the few) prevents the

¹⁴On July 19, 2021, the Dow Jones Industrial Average tumbled 725 points (2.1%), the largest drop since October 2020, while simultaneously the yield on the 10-year U.S. Treasury note fell to 1.181%, its lowest close since February 2021. See Hirtenstein, A., "Bond Yields Sink to February Lows as Growth Fears Mount," *Wall Street Journal*, accessed July 19, 2021 at: <https://www.wsj.com/articles/bond-yields-sink-to-february-lows-as-growth-fears-mount-11626701771>.

¹⁵ ISO Business Income (and Extra Expense) Coverage form CP 00 30 04 02.

pooling and redistribution of those losses, as essentially all policyholders are impacted. Stated differently, pandemic risk cannot be spread, shared or diversified across policyholders. Given the characteristics of pandemic losses and their financial impact on world economies, insurers and reinsurers will likely have no alternative but to continue to be unable to provide coverage for virtually all future pandemic exposures from insurance policies and reinsurance treaties.¹⁶ These financial and underwriting obstacles underscore the near impossibility of commercially insuring pandemic risk.

A growing body of research confirms what insurers already knew—that pandemic risks are, in general, not commercially insurable. Examples include:

- A May 2021 report from the Wharton Risk Center asserts that *“The scale, correlations, and complexity of pandemic risk, as evidenced by ongoing COVID-19 losses, far exceeds traditional parameters that define the concept of insurability for private insurers and reinsurers...”*¹⁷
- An April 2021 study by the Geneva Association, concludes that *“Pandemic business continuity risk was, in general, never possible nor intended to be covered by the private-sector insurance market.”*¹⁸
- A September 2020 in the Geneva Risk and Insurance Review examines the virtually non-existent history of pandemic insurance products, finding that *“...unlike other economically destructive natural phenomena such as hurricanes, earthquakes and wildfires, the losses from which are substantively financed by private insurers, very little private insurance exists to manage the financial consequences of pandemic risk. Indeed, very few products have ever been brought to market by private property-casualty insurers.”*¹⁹

¹⁶ Insurers may exclude coverage for viral pandemics either by adopting an exclusion endorsement or by not specifically identifying viral pandemics as covered exposures within the “four corners” of the insurance contract. Irrespective of the presence of an exclusion for viral pandemics, the principle that an exposure outside the description of covered risks still applies.

¹⁷ Kunreuther, H. and Schupp, J., “Framework for Evaluating the Role of Insurance in Managing Risk of Future Pandemics,” Wharton Risk Center, University of Pennsylvania, May 2021.

¹⁸ Schanz, K., “Public-Private Solutions to Pandemic Risk: Opportunities, Challenges and Trade-Offs,” The Geneva Association, April 2021. Accessed at:

https://www.genevaassociation.org/sites/default/files/research-topics-document-type/pdf_public/pandemic_risks_report_web.pdf

¹⁹ Hartwig, R., Niehaus, G. and Qiu, J. 2020. *Insurance for Economic Losses Caused by Pandemics*. Geneva Risk and Insurance Review. 45 (2).

Criteria for Insurability

The insurability of risk traditionally rests upon six criteria, summarized in Figure 6 and listed below:²⁰

- i. A risk must consist of a large number of exposure units so that the losses of the few can be distributed across the entire population of policyholders.
- ii. Losses must be accidental/random and unintentional in nature.
- iii. Losses must be determinable and measurable, enabling accurate and timely adjustment.
- iv. Losses cannot be exceedingly catastrophic or financially ruinous to the risk pool as a whole.
- v. The probability of loss must be calculable, which is necessary for the proper modeling and pricing of risk.
- vi. The premium charged by insurers to transfer the risk of loss must be economically affordable.

The inability of a risk to meet one or more of these criteria reduces or eliminates its insurability. Pandemic risk violates all six criteria. In technical terms, the violation of these criteria prevents the pooling and redistribution of the losses of the few across the many. In terms of business continuity risk specifically, pandemics produce risks that are undiversifiable, unquantifiable, potentially ruinous, unaffordable and—importantly—intentionally created.

Figure 6 makes clear that the extreme uncertainty associated with pandemic events is inconsistent with several of the basic requirements of insurability. Pandemics are infrequent events of unknown duration and severity. Current estimates of COVID-19's economic impact vary by trillions of dollars, while estimates of potential insured losses vary by billions of dollars. Actuarial models used to estimate claim frequency and severity, establish claim reserves and determine premiums rely heavily on historical data, which is essentially non-existent in the context of pandemics. Because insurers lack even the most basic information necessary to measure and price pandemic risk, pandemics remain largely uninsurable in the private sector.

²⁰ Rejda, G. and M. McNamara. (2017). *Principles of Risk Management and Insurance*. (13th edition). Pearson.

While the ultimate economic and insured losses for COVID-19 will remain uncertain for years to come, there is universal agreement that those costs are extremely high largely because pandemics threaten virtually all members of the risk pool (i.e., all businesses) simultaneously. As noted in Figure 6, if the probability of a claim is near certainty, the premium charged will be unaffordably high—likely approaching or even exceeding the expected loss itself.

Insurability also requires that the risk be fortuitous in nature. Fortuity implies that losses are accidental or random and unintentional. While pandemics are naturally occurring events, decisions to close millions of businesses and severely restrict the movement of people are intentional and deliberate, resulting in trillions of dollars in economic loss. Likewise, the decision by consumers to withdraw from economic activity based on fear of contracting disease is an individual choice. Insurers can only assume that governments and consumers will make similar decisions during future pandemic events (including severe outbreaks of COVID-19 variants). Likewise, decisions by state and local governments on when and how to reopen their economies and by millions of individual business owners and customers about when and how to reengage in economic activity are also deliberate. These deliberate decisions account for the majority of economic losses arising from the COVID-19 pandemic. In other words, virtually none of the business income losses sustained during the pandemic were the result of direct physical loss or damage to property from a covered cause of loss. Unless business income losses are triggered as such, the losses are beyond the scope of business interruption policies and are not covered.

Government's Role

Society has a vested interest in mitigating and compensating pandemic losses and a private market alone cannot provide sufficient insurance coverage. During COVID-19, governments around the world actively provided significant financial resources to businesses and individuals, with the intent to protect employment, income and to avoid bankruptcies. Additional aid in the form of monetary stimulus was applied in order to maintain financial market stability, ensure access to credit and keep interest rates low. Of course, not all government actions adopted during COVID were successful, nor will all be suitable to pandemics in the indeterminate future. The next section outlines four general approaches available to government to facilitate and support the sharing of pandemic risk. That is followed by a summary of several programs proposed during the COVID-19 pandemic to address future pandemic risks. The section concludes with review of challenges each program is likely to face and a broader questioning of the utility of such programs given the success of tradition government macroeconomic stabilization programs.

Four General Approaches to Government Involvement²¹

1. Provide Post-Event Aid: Under this approach, government essentially reacts to a pandemic event as it is occurring and allocates resources to the entities affected by the pandemic. The necessary funds are borrowed, which essentially places the cost burden on current and future taxpayers. Most governments around the world managed the COVID-19 pandemic using the post-event aid approach.
2. Provide Reinsurance: Prior to a pandemic event, a government could provide reinsurance to private insurers that sell primary pandemic coverage to businesses. The reinsurance coverage would be for losses above a designated threshold and would have a designated limit and might contain a co-share provision. The government reinsurer would reimburse insurers based on the terms of the reinsurance contract. Although the government reinsurer could have accumulated some resources during periods without an event, a major pandemic would likely require significant government borrowing with tax payments to support the debt.
3. Provide Insurance: The government could provide voluntary insurance coverage directly to those who are exposed to pandemic risk. The government insurer would collect premiums and be authorized to borrow funds in case a pandemic occurs prior to accumulation of sufficient premiums. This approach would require the government to either create the organizational structure to market the insurance directly to insureds or pay commissions to existing marketing entities in the private insurance industry.
4. Provide Social Insurance: With a social insurance scheme, many or all entities would be required to participate, which entitles the entities to receive benefits contingent on an event. Typically, participants would be required to make pre-event payments, usually in the form of a tax. An administrative system would be needed to process and pay the contingent benefits. Benefits paid from a social insurance system and pre-event payments typically would increase with potential losses, but they could be capped at a relatively modest level of potential losses. The typical goal would be to provide modest coverage for a broad spectrum of population. Unemployment insurance in the U.S. is a familiar example of a social insurance mechanism that played an important role during the COVID-19 pandemic.

²¹ See footnote 18.

Recent Proposed Approaches

A number of specific pandemic insurance solutions involving the participation of private insurers (and reinsurers) were introduced during the pandemic. While none have been implemented, they remain a subject of active discussion within the insurance industry and government.

Business Continuity Protection Program (BCPP): The BCPP is among the best-known proposals to emerge during the pandemic and currently has the widest acceptance within the insurance industry. The program would provide businesses with reimbursement of up to 80% of three months revenue. Because the BCPP involves no retention of risk by insurers it is not an insurance product. Instead, commercial insurers would utilize their existing "plumbing" and serve in an administrative capacity. Taxpayers would ultimately bear all losses incurred above accumulated premiums. Coverage is triggered parametrically and payouts determined formulaically, eliminating the need for individual claims adjusting.

Pandemic Risk Insurance Program (PRIA): Inspired by the existing Terrorism Risk Insurance Program (TRIA) implemented after 9/11, PRIA is perhaps the best-known proposal that would require risk bearing on the part of private insurers. Through a combination of retentions, deductibles and co-sharing of losses, insurers have a maximum annual potential exposure of approximately \$50 billion. Losses beyond those retained by insurers are borne by the program (taxpayers) up to the program cap of \$750 billion. A traditional claims adjustment process is used to determine the value of claim payouts. Coverage is triggered by declaration of a public health emergency by the HHS Secretary in response to a pandemic or infectious disease outbreak.

The BCPP and PRIA represent two of the better-known frameworks that would provide for the participation of private insurers in future pandemics. Each potentially provides relief to businesses whose revenues are adversely impacted by those pandemics. Yet no program is without shortcomings. For example, the experience of the COVID-19 pandemic since March 2020, clearly suggests that business income losses can persist far longer than the three months protection provided under the BCPP. In addition, the BCPP's parametric trigger implies that even businesses experiencing zero actual loss of revenue (or even an increase in revenue) would receive compensation, assuming the business purchased coverage. In the case of PRIA, business income losses could easily (and greatly) exceed the program's \$750 billion. Moreover, the program's use of a traditional claims adjustment process could result in millions of claims being filed nearly simultaneously, overwhelming the ability of insurers to adjust them in a timely manner. Participation is another huge unknown. Under both the BCPP and PRIA, the purchase of insurance by businesses is optional. Unless the price of the

insurance is heavily subsidized, it is likely that many—and perhaps most—businesses will forego coverage, especially if business owners believe that other forms of federal aid will become available to them (a well-known problem known as “moral hazard”).

Evaluating the Benefit of Pandemic Risk Insurance Programs

Each of the several pandemic risk insurance programs proposals developed since should be evaluated to assess which would maximize benefits to business affected by future pandemics while minimizing impacts on taxpayers. A more fundamental question to ask is whether any such program is needed at all. Bearing in mind that all of the pandemic insurance frameworks currently under discussion were developed during the very early months of the pandemic, it is worth considering their utility given the benefit of hindsight and nearly 18 months experience in managing the COVID-19 pandemic. A reasonable answer is that no program is needed. This assertion is based on the following observations, most of which were not apparent when current proposals were introduced during the early months of the pandemic:

- Massive fiscal stimulus in the form of \$5.7 trillion in pandemic relief during the first year of the pandemic has succeeded in delivering significant aid to consumers, businesses and entire industries. GDP growth during the second quarter of 2020 surged 33.4 percent. Strong growth has continued into 2021 (see Figure 1) with solid growth forecast for 2022. Likewise, the nation’s unemployment has fallen precipitously, from a peak of 14.8 percent in April 2020 to 5.9 percent in June 2021.
- Aggressive monetary policy has been used in tandem with swiftly implemented, targeted fiscal policies. The potent combination of fiscal and monetary policy both lessened the severity of the economic crisis precipitated by the pandemic and hastened the recovery. Businesses and consumers were provided with significant income support through numerous new, existing and expanded programs. At the same time, businesses and consumer were able to take advantage of lower financing costs driven by the Fed’s unprecedented efforts to keep both short and longer-term interest rates low.
- The government’s public policy approach to the pandemic was not static. Across the six different stimulus packages approved by Congress, adjustments have been made to enhance the performance of various programs based on lessons learned. Likewise, the Fed’s policies have

been tweaked to the benefit of consumers and businesses while also promoting stability in financial markets. Indeed, since losing nearly one-third of its value in March 2020, the S&P 500 has moved sharply upward, reaching a new record high by year-end 2020 and multiple new records so far in 2021.

All of this and much more was accomplished without any federal pandemic insurance program in place. These observations raise doubt as to the utility of any of the proposed pandemic insurance programs. These questions run beyond the fundamental fact that pandemic risk, in general, is not privately insurable.

- Would implementation of any of the currently proposed pandemic insurance programs provide a discernable benefit to businesses beyond those attainable through the aggressive application of targeted fiscal and monetary policies?
- Would implementation of any of the currently proposed pandemic insurance programs provide a discernable benefit to the overall economy beyond those attainable through the aggressive application of targeted fiscal and monetary policies?
- Would the added cost and complexity of an additional relief program, unfamiliar to businesses and insurers alike, be outweighed by the benefits provided?
- What impact would program cost and complexity have on take-up rates?
- How effective would a program be when businesses are not required to participate? Initial participation rates can be expected to be low and would likely fall over the extended period of time until the next major pandemic strikes—a span potentially measured in decades.
- Would the implementation of programs that require insurers to bear pandemic risk adversely impact the price and/or availability or other lines of commercial insurance?
- Should the fact that private insurers have never exhibited any significant interest in underwriting pandemic risk—viewing it as generally uninsurable—be taken into account when considering adoption of a pandemic risk program?

- If existing government programs can be adjusted to reflect the experience of COVID, enhancing their value to consumers, businesses and the overall economy, should those efforts take precedence over efforts to implement an entirely new, untested and inflexible pandemic risk insurance program?

Summary

Large-scale losses arising from pandemics represent an uninsurable category of risk for the private property-casualty insurance industry. The magnitude of potential losses greatly exceeds the claims paying resources of the industry while a lack of historical data impairs the ability of insurers to precisely model the frequency and severity of losses and determine premiums. This problem is exacerbated by the fact that the majority of pandemic losses are driven not by random events, but by the deliberate actions of thousands of public policymakers (who make decisions related to restrictions on economic activity) as well as hundreds of millions of individual consumers and businesses (who make decisions affecting the degree to which they will engage in economic activity during a pandemic). The macroeconomic consequences of these actions are not insurable and potentially pose a systemic risk to the industry as a whole and the economy broadly. Large-scale pandemic risks, which are capable of contributing to significant adverse shifts in economic growth, income and employment are therefore appropriately managed through the application of government policy.

Despite the fact that the generally accepted view is that large-scale pandemic losses are uninsurable in the private sector, a question that has arisen since the beginning of the pandemic is how government should structure a program that would foster the participation of private insurance industry in the management of pandemic risks. Numerous structures were proposed during the first few months of the pandemic and remain under consideration. However, given nearly 18 months experience with COVID, it is clear that the repeated, aggressive application of targeted yet flexible relief in the form of both fiscal and monetary stimulus has been effective in countering many of the most severe negative economic consequences associated with the pandemic. Consequently, the value of instituting a potentially costly, untested pandemic risk insurance program at the current time can reasonably be questioned.

Thank you for the opportunity to testify before the Committee today. I would be happy to respond to any questions you may have.

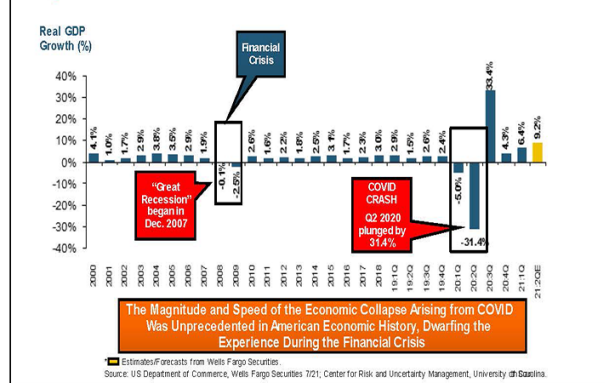
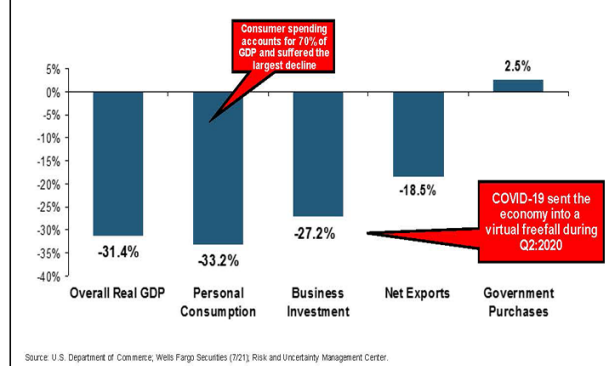
Figure 1: US Real GDP Growth: 2000 – Q2:2021**Figure 2: Change in Major Components of Real GDP: Q2:2020 (Peak Quarter of COVID-19 Impact)**

Figure 3: Unemployment Rate: Jan. 2020 – June 2021

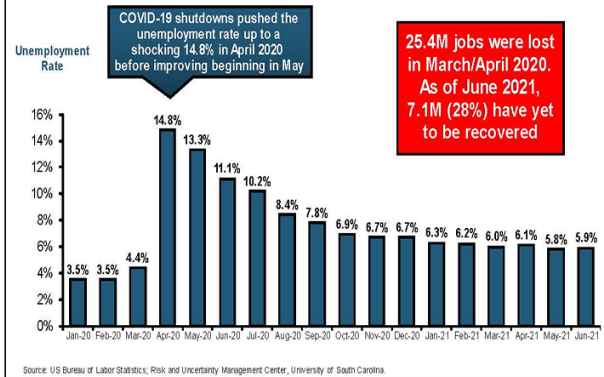


Fig. 4: Estimated Monthly U.S. Business Interruption Coronavirus Losses for Small Business—Potential Range (<100 Employees; \$Bill)

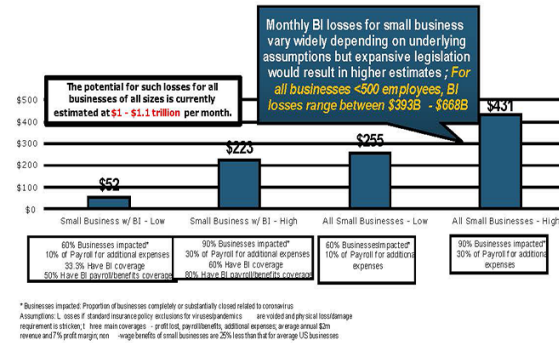
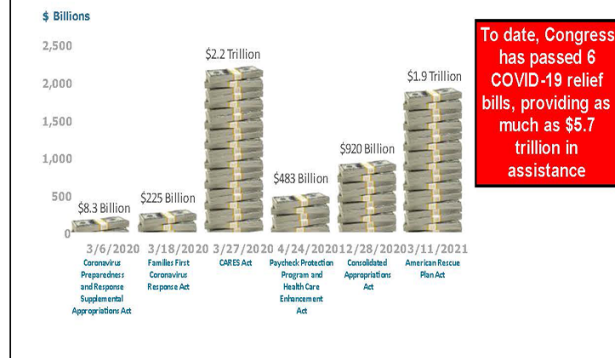
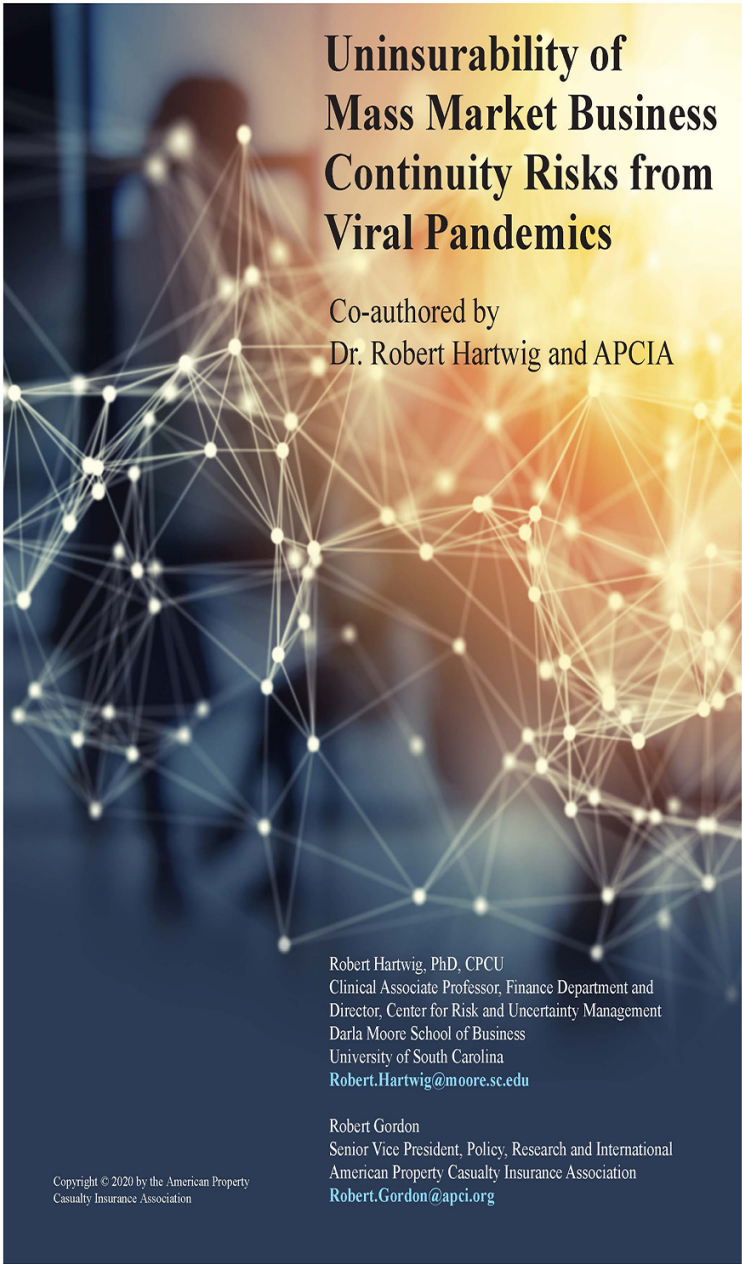


Figure 5: COVID-19 Stimulus Plans**Figure 6: Pandemic - An Insurable Risk?**

Requirements of an Insurable Risk	Requirement Met? Yes/No
1. Large number of exposure units	No. While millions of individual businesses suffered business continuity losses arising from the COVID-19 pandemic, the pandemic's effects were global in scale and nearly simultaneous in scope, effectively reducing the number of exposure units to one—the business sector collectively.
2. Accidental/Random and unintentional loss	No. Pandemics are natural phenomena but the decisions by thousands of policymakers at all levels of government to close millions of businesses and restrict the movement of people was intentional.
3. Determinable and measurable loss	No. For insurers to determine losses, the scale and scope of losses for any given risk must be estimable. Business continuity losses from COVID-19, estimates for which remain highly uncertain and range into the trillions of dollars, are indeterminable due to their dependence on decisions made by thousands of policymakers at all levels of government, the pace at which consumers and businesses reengage in the economy and epidemiological developments.
4. No (ruinous) catastrophic loss	No. Unlike traditional catastrophe risks, pandemics by definition threaten all or most of the members of the risk pool simultaneously. The rapid aggregation of losses is destabilizing and potentially ruinous, threatening the solvency of individual insurers and the industry as a whole.
5. Calculable chance of loss	No. Pandemics have occurred throughout history but the policy response to COVID-19 is without precedent. Insurers traditionally rely on historical loss information and trends to estimate the frequency and severity (cost) for risks they insure. No such historical data exists for the policy response associated with the COVID-19 pandemic, hence premiums cannot be determined.
6. Economically feasible premium	No. Because pandemics by definition threaten all or most of the members of the risk pool simultaneously, the probability of loss is close to certainty. The high probability of loss combined with high claim severities necessarily lead to premiums that can approach or even exceed the cost of the claim itself.



Uninsurability of Mass Market Business Continuity Risks from Viral Pandemics

Co-authored by
Dr. Robert Hartwig and APCIA

Robert Hartwig, PhD, CPCU
Clinical Associate Professor, Finance Department and
Director, Center for Risk and Uncertainty Management
Darla Moore School of Business
University of South Carolina
Robert.Hartwig@moore.sc.edu

Robert Gordon
Senior Vice President, Policy, Research and International
American Property Casualty Insurance Association
Robert.Gordon@apci.org

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UNINSURABILITY OF MASS MARKET BUSINESS CONTINUITY RISKS FROM VIRAL PANDEMICS

I. Executive Summary

The concept of insurance is both ancient and intuitive. People and institutions have for millennia understood that the losses of the unfortunate few could be “pooled” and distributed across the broader population, most of whom have sustained no loss, resulting in tangible benefits to society as a whole. The ability to both pool and redistribute fortuitous loss is the very essence of insurance.

Today, the combined capital resources of the nation’s nearly 3,000 property casualty insurers provide risk protection for approximately \$100 trillion in insurable exposure. Yet, even as the financial consequences of countless risks are insured, some risks—particularly those where the ability to pool and redistribute loss is compromised—defy insurability. The business continuity losses associated with pandemics are one such risk.

Insuring against business continuity losses from pandemics poses a particular set of challenges to insurers that collectively render the risk uninsurable in private insurance markets on a large scale. Potential losses can easily exceed the industry’s capital, surplus and premium resources, posing a systemic risk to the industry and the overall economy. Because virtually all businesses may sustain losses simultaneously and continuously over the span of many months, the ability to spread risk—a function essential to the smooth operation of insurance markets—is severely compromised. Frequency and severity of losses cannot be precisely modeled because of a lack of historical data, creating an insurmountable obstacle to accurate pricing. Further, business income-related pandemic losses are correlated with both financial market losses and other insurance losses, so insurers cannot mitigate pandemic-related business continuity losses through diversification. Consequently, it is unlikely that private insurance markets will be able to offer affordable, widely-available commercial insurance products that insure against business continuity risks from pandemics. Comprehensive government programs designed to directly address large scale business continuity losses from pandemic are necessary to address this risk prospectively and could, over time, potentially encourage the innovation of limited specialized pandemic coverages by private insurers and reinsurers.

II. Why Pandemic Risks Are Inherently Uninsurable

Pandemic risk differs significantly from other types of disasters such as hurricanes, tornados and wildfires. Each of these natural disasters impacts a limited number of policyholders for a limited period of time. The property and business continuity losses associated with hurricanes, for example, are largely a coastal phenomenon with damaging winds typically dissipating over the span of hours. In contrast, business continuity losses arising from pandemics, by definition, have the potential to impact virtually all policyholders, irrespective of location and nearly simultaneously, with losses continuing over the span of months or even years. The resulting accumulation of losses of the many (rather than the few) prevents the pooling and redistribution of those losses, as essentially all policyholders are impacted. Stated differently, pandemic risk cannot be spread, shared or diversified across policyholders. Given the characteristics of pandemic

losses and their financial impact on world economies, insurers and reinsurers will likely have no alternative but to continue to be unable to provide coverage for virtually all future pandemic exposures from insurance policies and reinsurance treaties.¹ These financial and underwriting obstacles underscore the near impossibility of commercially insuring pandemic risk. Indeed, science tells us that pandemic risks are intensifying as globalization and urbanization proceed apace, potentially costing as much as \$23.5 trillion over the next 30 years.²

The insurability of risk traditionally rests upon six criteria, summarized in Figure 1 and listed below:³

- i. A risk must consist of a large number of exposure units so that the losses of the few can be distributed across the entire population of policyholders.
- ii. Losses must be accidental/random and unintentional in nature.
- iii. Losses must be determinable and measurable, enabling accurate and timely adjustment.
- iv. Losses cannot be exceedingly catastrophic or financially ruinous to the risk pool as a whole.
- v. The probability of loss must be calculable, necessary for the proper modeling and pricing of risk.
- vi. The premium charged by insurers to transfer the risk of loss must be economically affordable.

The inability of a risk to meet one or more of these criteria reduces or eliminates its insurability. Pandemic risk violates all six criteria. In technical terms, the violation of these criteria prevents the pooling and redistribution of the losses of the few across the many. In terms of business continuity risk specifically, pandemics produce risks that are undiversifiable, unquantifiable, potentially ruinous, unaffordable and—importantly—intentionally created.

Figure 1 makes clear that the extreme uncertainty associated with pandemic events is inconsistent with several of the basic requirements of insurability. Pandemics are infrequent events of unknown duration and severity. Current estimates of COVID-19's economic impact vary by trillions of dollars, while estimates of potential insured losses vary by tens of billions of dollars. Actuarial models used to estimate claim frequency and severity, establish claim reserves and determine premiums rely heavily on historical data, which is essentially non-existent in the context of pandemics. Because insurers lack even the most basic information necessary to measure and price pandemic risk, pandemics remain largely uninsurable in the private sector.

¹ Insurers may exclude coverage for viral pandemics either by adopting an exclusion endorsement or by not specifically identifying viral pandemics as covered exposures within the “four corners” of the insurance contract. Irrespective of the presence of an exclusion for viral pandemics, the principle that an exposure outside the description of covered risks is excluded still applies.

² Hilsenrath, J. “Global Viral Outbreaks Like Coronavirus, Once Rare, Will Become More Common.” *Wall Street Journal*, 6 March 2020.

³ Rejda, G. and M. McNamara. (2017). *Principles of Risk Management and Insurance*. (13th edition). Pearson.

While the ultimate economic and insured losses for COVID-19 will remain uncertain for many months, if not years, to come, there is universal agreement that those costs are extremely high largely because pandemics threaten virtually all members of the risk pool (i.e., all businesses) simultaneously. As noted in Figure 1, if the probability of a claim is near certainty, the premium charged will be unaffordably high—likely approaching or even exceeding the expected loss itself.

Insurability also requires that the risk be fortuitous in nature. Fortuity implies that losses are accidental or random and unintentional. While pandemics are naturally occurring events, decisions to close millions of businesses and severely restrict the movement of people are intentional and deliberate, resulting in trillions of dollars in economic loss. Insurers can only assume that governments will make similar decisions during future pandemic events. Likewise, decisions by state and local governments on when and how to reopen their economies and by millions of individual business owners and customers about when and how to reengage in economic activity are also deliberate. These deliberate decisions account for the majority of economic losses arising from the COVID-19 pandemic.

III. **Systemic Risk, Insurance and COVID-19**

Beyond these six traditional criteria, the COVID-19 pandemic has made apparent two additional risk-related considerations. First, pandemic risk is systemic in nature, meaning that its destabilizing impacts extend throughout the entire economy and cannot be diversified away through private insurance. The magnitude of COVID-19 economic loss is so large that any meaningful commitment of insurance industry capital would be solvency-threatening to insurers, but insignificant to the problem of remediating business interruption losses. Second, legislative efforts to require insurers to retroactively cover excluded business continuity losses represent a systemic risk for the U.S. property casualty insurance industry. The same is true for legislation that would compel insurers to cover these same risks prospectively. Because such legislation, whether written on a retrospective or prospective basis, threatens to exhaust the industry's \$800 billion capital base within the span of months, mass insurer insolvencies would be inevitable, likely culminating in the financial collapse of the property casualty industry.

Importantly, only a fraction (significantly less than half) of the industry's total capital is associated with insurers that actually offer business interruption coverage, with the majority of capital backing risks underwritten by insurers protecting homes, vehicles, injured workers and countless liability exposures. This fact suggests that the amount of capital available to finance pandemic-driven business continuity losses is far less than commonly assumed and that losses would become instantaneously destabilizing to commercial insurers and the overall economy.

Property casualty insurers currently underwrite an estimated \$100 trillion in potential loss exposure throughout the U.S. economy, a sum equal to 4.5 times U.S. gross domestic product (GDP), assuring that the economic shockwaves of this collapse would be instantaneously transmitted to the broader U.S. economy, amplifying the multi-trillion dollar systemic shocks already present.

IV. Pandemics, Business Continuity Losses and Insurer Solvency

Global COVID-19 economic losses are estimated at some \$9 trillion.⁴ In the United States, GDP could shrink by 38 percent during the second quarter of 2020 according to the Congressional Budget Office, equating to more than \$8 trillion in lost economic output on an annualized basis.⁵ Business continuity losses account for a substantial share of that loss. The American Property Casualty Insurance Association (APCIA) estimates that one month's business continuity losses related to COVID-19 for all United States businesses (without regard to whether the business purchased business interruption coverage, as has been proposed in some states) totals approximately \$1 trillion per month, which exceeds the current total property casualty industry capital and surplus of approximately \$800 billion. The industry's surplus represents capital insurers are legally required to hold to ensure funds are available to pay current and future claims. Limiting this analysis to businesses with fewer than 100 employees produces monthly business continuity losses of \$255 billion to \$431 billion per month—and \$393 billion to \$668 billion per month for businesses with fewer than 500 employees (Figure 2). Stated differently, the \$800 billion capital and surplus that the industry has accumulated over the course of more than a century could be exhausted in a matter of weeks.

Even if business continuity losses are limited to small businesses (i.e., those with fewer than 100 employees) that actually purchase insurance coverage for business interruption, estimated losses are in the range of \$52 billion to \$223 billion per month, implying the exhaustion of the industry's capital and surplus in as few as 3.6 months.

Potential business continuity losses arising from COVID-19 not only threaten to rapidly deplete the industry's capital and surplus—but would dwarf premium collected. Monthly business continuity losses of \$1 trillion dollars, for example, are more than 200 times the \$4.5 billion in monthly premium collected for all commercial property lines (fire, allied lines, and commercial multiple peril non-liability). Note that premiums for business interruption coverage, which are not specifically reported, are only a fraction of this overall commercial property premium amount. Hence the true multiple is much larger.

The massive gap between potential business continuity losses on the one hand and the industry's capital base and premium income on the other, again underscores the uninsurable nature of pandemic risks and demonstrates why these risks are not included in, and are often additionally explicitly excluded from, in-force commercial property policies providing business interruption coverage. Providing private market insurance coverage for pandemic-caused business continuity losses would require multiple times the capital and surplus of the entire property casualty insurance industry. Given these numbers, no private insurance coverage could be provided on an affordable basis for the mass market.

Any fair assessment of the insurability of business continuity losses from viral pandemics for the mass market must also take into account that insurers depend on the strength of the broader

⁴ International Monetary Fund. "The Great Lockdown: Worst Economic Downturn Since the Great Depression, 14 April 2020, accessed at: <https://blogs.imf.org/2020/04/14/the-great-lockdown-worst-economic-downturn-since-the-great-depression/>.

⁵ Congressional Budget Office. *Interim Economic Projections for 2020 and 2021*, (May 2020), accessed at: www.cbo.gov/publication/56351.

economy to pay claims of all kinds. COVID-19's impact on United States property casualty insurers includes expected (non-business continuity) insured losses of \$40 billion to \$80 billion.

The experience of COVID-19 also reveals that the economic shocks associated with pandemics are highly correlated with declines in asset prices. Financial market volatility amid the pandemic led to an estimated \$87 billion loss in property casualty surplus from investment declines during the first quarter of 2020. Gross premium income is also expected to decrease as United States GDP plunges sharply in the second quarter of the year.

V. **Conclusion**

Business continuity losses arising from widespread viral risks represent an uninsurable risk for the private property casualty insurance industry. The magnitude of potential losses exceeds the claims paying resources of the industry while a lack of historical data impairs the ability of insurers to precisely model the frequency and severity of losses and determine premiums. This problem is exacerbated by the fact that the majority of business continuity losses are driven not by random events, but by the unprecedented and deliberate actions of thousands of public policymakers. The consequences of these actions are not insurable and potentially pose a systemic risk to the industry as a whole and the economy broadly.

The experience of COVID-19 suggests that apart from highly specialized, niche products, it is unlikely that business continuity coverage for pandemic risks can be provided to the mass market by private insurers. The ability to pool and redistribute losses within the private insurance sector is severely compromised. Consequently, any solution involving the financing of pandemic-driven business continuity losses will necessarily require widespread government protection, which could, in turn, encourage increased innovation of specialized products by private insurers and reinsurers.

Figure 1. Pandemic - An Insurable Risk?

Requirements of an Insurable Risk	Requirement Met? Yes/No
1. Large number of exposure units	No. While millions of individual businesses suffered business continuity losses arising from the COVID-19 pandemic, the pandemic's effects were global in scale and nearly simultaneous in scope, effectively reducing the number of exposure units to one—the business sector collectively.
2. Accidental/Random and unintentional loss	No. Pandemics are natural phenomena but the decisions by thousands of policymakers at all levels of government to close millions of businesses and restrict the movement of people was intentional.
3. Determinable and measurable loss	No. For insurers to determine losses, the scale and scope of losses for any given risk must be estimable. Business continuity losses from COVID-19, estimates for which remain highly uncertain and range into the trillions of dollars, are indeterminable due to their dependence on decisions made by thousands of policymakers at all levels of government, the pace at which consumers and businesses reengage in the economy and epidemiological developments.
4. No (ruinous) catastrophic loss	No. Unlike traditional catastrophe risks, pandemics by definition threaten all or most of the members of the risk pool simultaneously. The rapid aggregation of losses is destabilizing and potentially ruinous, threatening the solvency of individual insurers and the industry as a whole.
5. Calculable chance of loss	No. Pandemics have occurred throughout history but the policy response to COVID-19 is without precedent. Insurers traditionally rely on historical loss information and trends to estimate the frequency and severity (cost) for risks they insure. No such historical data exists for the policy response associated with the COVID-19 pandemic, hence premiums cannot be determined.
6. Economically feasible premium	No. Because pandemics by definition threaten all or most of the members of the risk pool simultaneously, the probability of loss is close to certainty. The high probability of loss combined with high claim severities necessarily lead to premiums that can approach or even exceed the cost of the claim itself.

Figure 2. Potential Monthly Business Interruption Losses for Small and Small-to-Medium-Size Enterprises



Sources: APOA using publicly available data sources including Bureau of Labor Statistics, Insurance Services (Verisk Analytics, Inc.), Houston Chronicle, S&P Global Market Intelligence, and other published reports.

PREPARED STATEMENT OF L. CHARLES LANDGRAF
ARNOLD & PORTER, ON BEHALF OF THE BUSINESS CONTINUITY COALITION

JULY 22, 2021

Chairman Menendez, Ranking Member Scott, and Members of the Subcommittee, thank you for inviting me to testify today. My name is L. Charles Landgraf. I am a Senior Counsel in the law firm of Arnold & Porter in Washington, DC. I am appearing today on behalf of the Business Continuity Coalition which we serve as counsel.

The Business Continuity Coalition (the “Coalition” or “BCC”) consists presently of 44 trade associations and major companies in dozens of industries, a membership that represents most sectors of the economy and more than 70 million workers, from health care and dining/hospitality—the two largest employment sectors in the economy—to manufacturing, construction, finance, real estate, media and film, live entertainment, professional sports, and professional services, to name some of the sectors represented by the Coalition. A full list of member organizations as of this date appears at the end of this statement, but the Coalition continues to expand and the most up-to-date list of members can always be found at the BCC website here.

Executive Summary

BCC believes that a public-private backstop program for pandemic risk insurance, similar to the Terrorism Risk Insurance Act (TRIA) program enacted the year following the 9/11 attacks, is urgently need. Attached to this statement is a detailed section-by-section description of the BCC Recommended Proposal, which like TRIA consists of a general “make-available” requirement on insurers applicable to all relevant lines of commercial property and casualty lines of insurance and, like TRIA, an equally broad Federal reinsurance backstop. The BCC Recommended Proposal includes important differences from TRIA in other respects, chiefly to respond to insurers’ expressed concerns about aggregation of risk and also to ensure program continuity (along the lines of the program administered by the Federal Crop Insurance Corporation). Like the insurer-backed proposals being discussed today, the BCC proposal would include a parametric¹ revenue-replacement benefit, which if widely purchased could be a more efficient, presold alternative to last year’s Paycheck Protection Program (PPP). But again, the BCC proposal also would restore and solidify the pandemic coverage in other commercial property and casualty lines of insurance which are so crucial to a modern advanced economy. A program such as outlined here is necessary to achieving a recovery—and growth beyond recovery—that is as robust and inclusive as America deserves.

An Acute, Urgent, and Continuing Problem

BCC was launched last year to develop a public/private program with policy-makers and stakeholders to respond to the insurance market disruption resulting from the COVID-19 pandemic, in hopes of limiting further economic damage that would result from continued unavailability of pandemic or communicable disease coverage in commercial property and casualty lines of insurance.

Closures and shutdowns caused by COVID-19 last year of course had massive impacts on business activity and employment, not to mention all of our lives in myriad ways. These closures/shutdowns brought immediate focus on the “business interruption” insurance which many American businesses—small, medium and large—had purchased to protect basic operating revenue needs in times of disruption. It also brought into relief the disagreement between insurers and policyholders over whether a pandemic infection constituted “physical damage” necessary to trigger coverage under many of those business interruption policies.

Other witnesses today will outline proposals for addressing that basic gap in business interruption insurance coverage with Government support. BCC is genuinely grateful for the substantial care and effort that has been put into those insurance industry proposals for business interruption coverage. Something similar to those offers is certainly an essential element of any solution to the insurance crisis that the economy is facing.

But I am here today to tell you that the problem—and therefore the solution—is broader than just the business interruption line of insurance. For one thing, many sectors of the economy operate in a manner or patterns where a traditional business interruption policy—which assumes a more or less continuous operation through a

¹ According to the National Association of Insurance Commissioners (NAIC), “[t]he term parametric insurance describes a type of insurance contract that insures a policyholder against the occurrence of a specific event by paying a set amount based on the magnitude of the event, as opposed to the magnitude of the losses in a traditional indemnity policy.”

calendar year—is not suitable. Many industries such as live entertainment, broadcast, media and film production, conventions and trade association meetings, all depend instead (or in addition to) upon various forms of contingency insurance—including for example, event cancellation, production package, essential elements, and key man insurance—rather than a business interruption policy which, as we have all learned in the past 16 months, is inextricably tied to an insured physical location.

Event cancellation coverage is especially critical for the nonprofit association community. In December 2020, the American Society of Association Executives’ (ASAE) Research Foundation surveyed nonprofit association executives to examine the financial, programmatic and organizational impact of COVID-19. Of note, 79 percent of respondents reported no coverage available last year for event cancellation and only 3 percent reported being able to secure future coverage that includes communicable diseases.

Beyond the whole class of such contingency policies, all businesses and organizations have other insurance needs besides business interruption, such as general liability, employment practices liability, professional indemnity (including medical professional liability), excess liability and directors & officers (D&O) liability insurance.

It would, for example, be ironic if any legislative response provided no relief for the “essential services” that during last year’s lockdown continued to operate in food services, distribution, health care, assisted living, transportation, manufacturing and so many other sectors (that are represented in our Coalition). Their insurance needs in lines of coverage other than business interruption were greater, not less, than before. And that is true going forward. Only the BCC proposal addresses these needs.

It is no exaggeration to say that the U.S. property and casualty insurance industry has had a “full allergic reaction” to pandemic risk or indeed all communicable disease risk. You will hear today that the insurance industry did not insure the pandemic risk—based largely on “physical damage” limitation in business interruption policies. But those other lines of insurance that we just mentioned often did not exclude infection disease from their coverage. It is only since the onset of the COVID-19 pandemic that the U.S. insurance industry has moved—almost universally, it seems—to exclude pandemic or infectious disease from coverage in these other commercial insurance policies. The insurance sector’s reaction resembles their immediate reaction to exclude terrorism across the board following the September 11th terrorist attacks.

Widespread Withdrawal and Unavailability of Coverage—The RIMS and NRA Surveys

We are unaware of any systematic review by either the National Association of Insurance Commissioners (NAIC) or the Treasury Department’s Federal Insurance Office (FIO) to quantify or catalogue the apparently pervasive imposition of pandemic exclusions by insurers.² However, we do have solid buyer-side evidence on the state of the market.

The Risk Management Society, or RIMS, the leading global professional society of risk managers and corporate insurance buyers—RIMS is in our BCC coalition—has a membership of over 10,000 risk management professionals and represents more than 3,500 industrial, service, nonprofit, charitable, and Government entities throughout the world. At year-end, RIMS conducted a survey of its U.S. membership to measure the impact of the pandemic on the insurance market for commercial lines of insurance. Some key take-aways from that survey:

- Survey represents viewpoints from all sectors of the U.S. economy
- Insurers generally require physical damage to trigger business interruption (BI) insurance—a difficult threshold for pandemic losses; BI claims have been generally denied or limited
- 98 percent of risk managers say that pandemic BI coverage is now unavailable in the marketplace

² At the September 29th meeting of the Treasury Department’s Federal Advisory Committee on Insurance (FACI), an insurance industry expert testified that insurers had begun during 2020 to seek approval from State regulators for “near-absolute communicable disease exclusions” but that “many of those filings” were “not being approved” by State regulators. See presentation of Robert P. Hartwig to Federal Advisory Committee on Insurance, September 29, 2020, particularly slide 19 (accessed July 15, 2021, at <https://home.treasury.gov/system/files/311/FACI-Presentation-Hartwig-9-20.pdf>).

- Pandemics also are excluded or restricted on most other lines of property-casualty insurance
- Insurance premiums in most commercial lines continue to significantly rise
- In the few instances and lines where pandemic coverage might be available, cost would be prohibitive without Government support
- Almost 80 percent of risk managers are interested in a Government-supported product for pandemic insurance that meets the needs of both small and large businesses
- Over 90 percent would prefer to purchase pandemic insurance through their broker or agent
- COVID-19 has changed business risk profiles, particularly with employer, operational, financial, cyber, and supply chain risks

Even more recently, the National Restaurant Association (NRA) conducted a survey of 1,500 restaurant operators April 1 to 9, 2021, to assess the usage and availability of business interruption (BI) insurance in particular in the restaurant industry. A majority of restaurant operators continue to buy BI insurance (to answer the question would risk be sufficiently spread) but only one percent (1 percent) of restaurant operators report being able to find pandemic insurance coverage since March 2020. Ninety-one percent (91 percent) of operators say they have not found pandemic coverage since March 2020 (8 percent were not sure).

Similar to the RIMS findings, nearly 8 in 10 restaurant operators in the NRA survey say they would be interested in a Government-supported insurance product for pandemic-related business interruption. In an open-ended question in this survey (which focused on BI), new pandemic or communicable disease exclusions to general liability and other business owner package (BOP) policies were frequently cited as a continuing problem.

Illustrative Sector—Impact of Pandemic and Insurance Unavailability on U.S. Feature Film Production

To take another example of industry impact from the lack of insurance, consider the production of films in the United States. Feature film production in the United States increased steadily over the years 2016–2019. Over those 4 years, an average of 651 feature films were completed annually in the U.S. with the total reaching 681 and 676 in 2018 and 2019 respectively. In 2020, the bottom fell out for U.S. film producers with just 302 films completed and the production of an estimated 393 films was halted, delayed until 2021 or later, or moved outside of the United States.

Most States allowed film production to resume in mid-2020 (subject to strict safety requirements). However, since March 2020, customary insurance coverage for losses from communicable diseases during production no longer is offered; multi-million dollar productions may be halted completely if a key cast member falls ill. Without that insurance coverage, independent producers—responsible for 70 percent of U.S. feature film production—struggle to obtain adequate production financing. Major studios face similar difficult investment decisions as their long term insurers and reinsurers demand the same exclusions. This factor contributes significantly to the industry's delayed return to full speed. To put it bluntly—"no insurance, no financing." Other countries have recognized this and have acted promptly. Leading countries which represent alternative production locations created pandemic gap funding to offset insurance exclusions as well as other industry support programs, and have successfully attracted many productions that were previously scheduled for U.S. locations. Thus, many of the film productions mentioned above as deferred or delayed may have been permanently lost to the United States. Both the Motion Picture Association and the Independent Film & Television Association are members of BCC and support the BCC legislative proposal.

What Is Needed

We are not unsympathetic to the insurance sector's concerns about aggregation of risk, although there has been no public evidence of widespread insurance claims losses in any lines other than business interruption (mostly denied anyway) and perhaps event cancellation, nor any solvency concerns reported by rating agencies arising from the exposure the industry did hold before moving to prospective exclusions last year. We also understand that there has been a tightening of terms in global reinsurance markets—that's a factor but not an answer.

Today, pandemic risk is probably the largest unhedged risk exposure in the U.S. economy. Commercial insurance is an important component to an efficient and vibrant advanced economy. Indeed, businesses often distinguish between developed and less developed economies globally by contrasting the degree to which the latter

protect against risk through insurance risk-shifting mechanisms (policymakers' so-called "protection gap").

Leaving this massive risk unhedged in response to the first significant event in a century should not and does not satisfy anyone, including an insurance sector that wants to remain relevant. A precedent for Government involvement in insurance markets exists for a broad range of risks where private markets fail to provide the economy with the coverage it needs. These include terrorism (TRIA), flood (NFIP), and crop risk (FCIC)—as well as other less immediate examples such as—

- War (enemy attack) risk (e.g., War Damage Corporation during World War II);
- Current aviation and maritime war risk programs;
- Nuclear liability risk for commercial power production (e.g., Price–Anderson Act); and
- Political risk insurance for U.S. direct foreign investment (e.g., U.S. International Development Finance Corporation (DFC)).

In fact, the program established by the Terrorism Risk Insurance Act (TRIA), enacted the year following the 9/11 attacks, represents an effective public–private partnership model that could be adapted for pandemic risk. Based on the economic challenges posed by the current pandemic, a public–private backstop program—similar to TRIA—is urgently needed for pandemic risk to help many sectors of the economy recover and move forward.

All of the impacted lines of insurance, not just business interruption, need to be supported with both a "make-available" mandate and a robust Federal backstop for the private insurers making the insurance available. As the recent study by the RAND Corporation recognizes, this component of the BCC proposal, which expands coverage beyond the revenue replacement to address various additional costs or liabilities that firms could face during a pandemic, is "potentially an important part of overall strategy to increase business resilience to pandemic risk."³ During at least a 5-year economic recovery period (subject to reset if the pandemic recurs), the Federal backstop should be provided without charge (as is the case with TRIA) to ensure affordability and maximum take-up, and the economic resiliency that will foster.

As recognized by the proposals currently offered today, the business interruption line of insurance needs a special rule given the particular gap exposed by the COVID–19 crisis. That is, the insurance product needs to be both for non-physical-damage business interruption (NDBI)⁴ and provided on a parametric basis, tailored to meet specialized industry needs, which may be the only way to ensure widespread, rapid delivery of assistance to America's businesses in future pandemic crises. Liquidity to meet these rapid pay-outs should be guaranteed. Insurers can be given an option to satisfy their availability duty by supporting a joint underwriting facility which would itself have a Federal backstop. Maximum utilization of global reinsurance capacity and capital markets should also be encouraged. Long-term program continuity is paramount given the time horizon needed for financing this risk.

Recommendations for Program Features

There is more detail in the attached section-by-section description of the BCC Recommended Proposal, but conceptually the Business Continuity Coalition urges the design of any pandemic risk insurance program adhere to the following principles:

1. Scope: Any Federal backstop should support not only NDBI coverage but also other pandemic impacted lines of insurance, such as event cancellation, workers compensation, production or cast insurance (for film and TV productions), and general and employment practices liability insurance. These lines may need to be supported by a robust backstop even for a recurrence of COVID–19.
2. Private Insurer Utilization: Insurers should be included in any pandemic insurance program to involve a number of current industry advantages: (1) determine appropriate premiums to reduce taxpayer outlays; (2) use existing claims-paying infrastructure to pay claims; and (3) leverage insurer expertise in risk

³*Improving the Availability and Affordability of Pandemic Risk Insurance: Projected Performance of Proposed Programs*, by Lloyd Dixon and Jamie Morikawa, The RAND Corporation (June 2021), at p. 17.

⁴As a general matter, standard business interruption policies include a condition of coverage that suspension of business "must be caused by direct physical loss or damage to property" at the insured premises. While the exact extent of "direct physical loss" as it relates to COVID–19 is the subject of litigation, any physical impact caused by the virus has not typically been sufficient to sustain a claim in many jurisdictions.

mitigation to help businesses understand how they can reduce pandemic risk, comply with imposed requirements, and get their businesses up and running expeditiously.

3. **Availability:** Eligible insurers should be required either to share some portion of the risk in the primary NDBI coverage layer or to support other covered lines of insurance as a condition of being permitted to sell any Government-supported NDBI coverage. Any pandemic program must properly balance the need to ensure participation with the reality that insurers cannot take on too much uncertain exposure.
4. **Affordability:** Premiums for the program should not aim to cover full program costs. During an initial economic recovery period, the backstop should be without premium, after which the Government should charge at least some premium for the risk it bears, but policymakers should not expect premiums to cover the full cost of the program. Premium levels should be set to result in widespread take-up. Cost recovery should be premised on 50+ years.
5. **Solution Must Meet Needs of Businesses of All Sizes:** TRIA should be the template for both availability and backstop, although there are important differences to the pandemic peril that must be reflected in final design. However, the NDBI benefit and the general availability requirements should avoid an arbitrary headcount cliff (e.g., 500 employees), just as the backstop should avoid “deductibles” or coshares tied to volume rather than risk exposure.
6. **Rapid Claims Payment/Minimum Transaction Costs:** Any primary NDBI program should be structured as parametric coverage, which would be triggered by defined external conditions (i.e., national health declaration + State/local action affecting specified business categories) without recourse to usual proof-of-loss; although use of proceeds might be audited. A Federal Reserve liquidity facility should be authorized to ensure rapid pay-outs.
7. **Pooling Alternative for Offer of NDBI Coverage:** Insurers that do not wish to underwrite the primary NDBI coverage directly should be given the option to support a joint underwriting facility for that coverage which would also enjoy the Federal backstop support.
8. **Stop-Loss As Well As Quota-Share Protection:** Federal reinsurance protection for both NDBI primary program and for other covered lines should be offered, on an optional paid basis, in the form of stop-loss protection in addition to the coshare element, given the potentially extreme cumulative risk of pandemic losses.
9. **Utilization of Reinsurance and Capital Markets:** The Federal program should, like NFIP, be encouraged to foster development and use of private reinsurance markets as well as capital markets’ alternative risk-transfer mechanism to further reduce or protect taxpayer exposure.
10. **Continuity:** A Federal pandemic risk insurance program should be administered by a Federal entity housed within the Department of Treasury with continuous existence, such as the World War II-era WDC (later wound-down) or the Federal Crop Insurance Corporation.

Conclusion

On behalf of the Business Continuity Coalition and its members, I am grateful for the opportunity to testify and look forward to answering any questions that the Subcommittee may have regarding this testimony or the BCC Recommended Proposal. We stand ready to assist this Subcommittee and all Members of Congress and the Administration in developing a pandemic risk insurance program.

We urge Congress to move expeditiously to pass bipartisan legislation that creates a public-private insurance solution consistent with the principles offered above to share the financial risk of losses related to pandemics. This urgent task is an essential precondition to the prompt recovery of this nation’s economy, and going forward will help protect jobs and reduce economic damage from further pandemics.



**Pandemic Risk Insurance Act
Business Continuity Coalition Proposal**

Section-by-Section Description

March 2021

A bill to establish a Pandemic Risk Reinsurance Program, and for other purposes.

Section 1. Short Title.

Pandemic Risk Insurance Act of 2021.

Section 2. Purpose.

This section outlines the purpose of the bill, which is to establish a Federal program that provides for a transparent system of shared public and private compensation for property and casualty insurance losses resulting from a declared pandemic or outbreak of communicable disease emergency, including losses caused by government-mandated shutdowns, in order to:

- Protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for losses resulting from such pandemic or outbreak of a communicable or infectious disease and related government mandated shutdowns;
- Help businesses to maintain continuity in the event of a government mandated shutdown so that they can continue to pay employees, protect jobs and make rent and loan payments; and
- Allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses while preserving State insurance regulation and consumer protections.

Section 3. Definitions.

This section defines key terms in the bill, including:

- Covered public health emergency, defined as any outbreak of infectious disease or pandemic for which the HHS Secretary determines is a public health emergency due to a significant outbreak of infectious disease and that is certified by the Treasury Secretary as a covered public health emergency;

1875 I Street, NW, Ste 500
Washington, D.C. 20006-5413
ph: 202-739-9400 fax: 202-739-9401

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- Affiliate, defined as any entity that controls, or is controlled by, or is under common control with the insurer;
- Business interruption insurance, defined as commercial lines of property and casualty insurance coverage or other non-property contingent business interruption insurance provided for losses resulting from periods of suspended business operations;
- Commercial property insurance, defined as property insurance which indemnifies an owner or user of property for loss or damage of the property;
- Control, defined as an entity that either (1) directly or indirectly or acting through other persons owns, controls, or has power to vote 25% of more of any class of voting securities of the other entity, (2) controls the election of a majority or the directors or trustees of the other entity, or (3) the Treasury Secretary determines controls the other entity;
- Corporation, defined as the Federal Pandemic Insurance Corporation established under Section 4 of this Act;
- Department, define as the Department of Treasury;
- Economic recovery period, defined as the period beginning on the date of enactment of the Act and ending December 31 of the fifth year following enactment, with a provision to reset the period;
- Event, defined as one of the specified events or productions in the Act;
- Event cancellation insurance, defined as insurance that indemnifies an insured for losses as a consequence of cancellation, abandonment, delay, or rescheduling of an event or the unavailability of an essential element of an event (e.g., principal speaker, performer, covered key talent, cast members);
- Insured loss, defined as any loss resulting from an outbreak of infectious disease or pandemic for which a covered public health emergency is certified that is covered by primary or excess property and casualty insurance that occurs within the U.S. and during the effective period of the covered public health emergency;
- Insurer, defined as any entity or affiliate that receives direct earned premiums for any commercial property and casualty insurance coverage (subject to exceptions); meets any additional criteria prescribed by the Treasury Secretary; and is (1) licensed or admitted to engage in the business of providing primary or excess insurance in a state, (2) not licensed

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 ph: 202-739-9400 fax: 202-739-9401

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or admitted but eligible as a surplus line carrier according to NAIC, (3) approved for the purpose

- of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity, (4) a State residual market insurance entity or State workers' compensation fund, or (5) any other entity described in Section 4(f);
- NAIC, defined as the National Association of Insurance Commissioners;
- Parametric insurance facility, defined as a non-assessable joint underwriting association or pool approved by the Treasury Secretary to provide parametric non-damage business interruption insurance;
- Parametric non-damage business interruption insurance, define as insurance that provides 90 days' fixed costs and payroll and is triggered upon a covered public health emergency certification and a closure order by the relevant State that is applicable to the policyholder's NAICS code;
- Participating insurer, defined as an insurer participating in the parametric insurance facility under this Act;
- Person, defined as any individual, business or nonprofit entity, trust or estate, or a State or political subdivision of a governmental unit;
- Program, defined as the Pandemic Risk Reinsurance Program;
- Property and casualty insurance, defined as commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, commercial general liability, directors and officers liability, and event cancellation insurance (subject to several exceptions);
- Secretary, defined as the Secretary of the Treasury;
- State, defined as a U.S. state, D.C., Puerto Rico, Northern Mariana Islands, American Samoa, Guam, each of the U.S. Virgin Islands, and any territory of possession of the U.S.; and
- United States, defined as the several States.

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Section 4. Establishment of Federal Pandemic Insurance Corporation.

[Reserved]

Section 5. Pandemic Risk Reinsurance Program.

This section establishes the Pandemic Risk Reinsurance Program (PRRP) within the Department of the Treasury. It outlines the PRRP's structure, parameters, and provisions as follows:

- Authorizes the Secretary of the Treasury to administer the PRRP;
- Establishes mandatory participation in the PRRP for insurers;
- Mandates insurers make available, in all their property and casualty insurance policies, coverage for insured losses related to covered public health emergencies;
- Mandates insurers make available, in all their commercial property insurance policies, parametric non-damage business interruption insurance coverage for insured losses or, in the alternative, arrange for the parametric non-damage business interruption insurance coverage to be made available by either an affiliate or a parametric insurance facility;
- Once the PRRP has been established, provides the Federal share of compensation is equal to 95% of insured losses with no program cap per event (public health emergency) nor an annual cap for Federal compensation;
- Permits the Treasury Secretary to provide, for a premium, an insurer or parametric insurance facility with additional stop-loss protection for insured losses;
- Clarifies the Act does not prohibit insurers or parametric insurance facilities from purchasing reinsurance coverage in the private markets to reduce insurer retention or co-share;
- Establishes that, during the economic recovery period, no premium will be charged to insurers or parametric insurance facilities for the Federal quota share reinsurance protection provided by the PRRP, and the economic recovery period resets if a national public health emergency occurs within five-year period; provides the Secretary authority to prescribe a rating plan for the quota share reinsurance; and
- Directs the Treasury Secretary to establish a line of credit facility with the Federal Reserve Bank of New York, accessible by insurers and parametric insurance facilities, to facilitate prompt payment of the Federal share of insured losses.

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Section 6. General Authority and Administration of Claims.

This section establishes the Treasury Secretary has authority to investigate and audit claims, prescribe regulations and procedures, and issue interim final rules or procedures (including discretionary recoupment of Federal compensation under the PRRP).

This section also establishes the Treasury Secretary will require insurers to submit information relating to property and casualty insurance coverage resulting from covered public health emergencies. The Secretary must submit reports to Congress annually on the PRRP.

Section 7. Preemption and Nullification of Pre-Existing Exclusions.

This section clarifies that for insurers, exclusions in a contract for property and casualty insurance in effect on the date of enactment of the Act that specifically exclude losses covered under the PRRP are void. Any state approval of those exclusions is preempted unless the exclusion can meet certain criteria like written approval from the policyholder.

Section 8. Preservation Provisions.

This section establishes that nothing in the Act shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any insurer or other person, except:

- As specifically provided in this Act;
- That the definition of "covered public health emergency" in section 3 is the exclusive definition of that term for purposes of compensation under this Act, preempting any inconsistent State provisions;
- That until December 31, 2021, rates and forms for property and casualty insurance covered by the Act and filed with any State shall not be subject to prior approval or a waiting period under any State law (although a State retains the ability to invalidate a rate as excessive, inadequate, or unfairly discriminatory); and
- That for the duration of the PRRP, relevant books and records of any insurer must be provided to the Treasury Secretary upon request, notwithstanding State laws prohibiting or limiting access.

This section clarifies that nothing in the Act alters, amends, or expands the terms under existing reinsurance agreements.

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**Section 9. Study and Analyses.**

This section requires the Treasury Secretary to conduct a study on the effectiveness of the PRRP, the likely capacity of the property and casualty insurance industry to offer insurance for risk of public health emergencies after termination of the PRRP, and the availability and affordability of such insurance for various policyholders.

This section also requires the President's Working Group on Financial Markets, in consultation with NAIC and other stakeholders, to perform an ongoing analysis of the long-term availability and affordability of insurance for risk of public health emergencies.

This section also requires the Comptroller General to conduct a study to determine whether there are specific markets in the U.S. with unique capacity constraints on the amount of property and casualty insurance available.

Finally, this section requires the Treasury Secretary to conduct a study of small insurers participating in the PRRP and identify any competitive challenges small insurers face in the property and casualty insurance marketplace.

PREPARED STATEMENT OF MARTIN SOUTH
PRESIDENT, UNITED STATES AND CANADA DIVISION, MARSH

JULY 22, 2021

Subcommittee Chairman Menendez, Ranking Member Scott, and Members of the Senate Banking Committee, my name is Martin South and I am President of Marsh's United States and Canada Division. We have the privilege of providing insurance brokerage and advisory services to over 168,000 businesses, nonprofit organizations, and public entities in the United States and Canada and being the insurance brokerage and risk advisory business of Marsh McLennan. Thank you for the opportunity to appear before you today to share Marsh McLennan's unique perspective on the need for a public-private partnership to insure pandemic risk.

As the world's leading professional services firm in the areas of risk, strategy, and people, Marsh McLennan has expertise in pandemic risk, dating back before COVID-19. We have a longstanding involvement with the World Economic Forum's annual Global Risks Report, which has long warned of the likelihood and potentially high impact of a global pandemic. In 2017, our company helped the World Bank structure the first-ever pandemic risk bonds. In 2018, Marsh developed an innovative insurance product, called PathogenRX, to provide pandemic business interruption coverage for key industries including aviation, construction, gaming, hospitality, retail, and tourism. In addition to helping clients through the current pandemic, we are also collaborating with international organizations to help mitigate the risk from vaccination programs for lower income countries and regions.

The COVID-19 pandemic has affected every one of us, personally and professionally. And while the pandemic is first and foremost a human tragedy, we are deeply concerned about its impact on the global economy and on our clients. Helping clients manage risk is our core business, and today we are here to give voice to them. I'd like to emphasize that point: Our role as an insurance broker is, first and foremost, to be an advocate for policyholders, our clients.

Pandemics are by definition global, which means that clients and insurers cannot diversify against them in the way that they might with catastrophe risks that are local or regional. And the stakes for policyholders regarding pandemic risk are high—this includes businesses of all sizes and in all sectors, educational institutions, nonprofit organizations, public entities, and more.

Section One: A Global Perspective

With about 76,000 colleagues in over 130 countries, we bring to these discussions a global perspective from key economic sectors, including higher education, hospitality, health care, and energy, to name a few. Our specialists' professional knowledge of these industries, backed by Marsh McLennan's data, can be leveraged to help define new solutions for emerging and systemic risks.

The pandemic has reversed much of the economic progress made globally following the 2008 financial crisis.

Recent estimates from the International Monetary Fund (IMF) show that, in 2020, GDP fell by 3.3 percent globally and 3.5 percent in the United States. The IMF projects that growth will rebound in 2021 and 2022. Still, output in many countries will remain below pre-COVID-19 projections into late 2022, according to the Organization for Economic Cooperation and Development (OECD). This year, Marsh co-sponsored with the OECD a conference that addressed the challenges and solutions regarding insurability of pandemic risk, and the potential role of public-private partnerships. A report based on the conference is included in our written remarks today.

Examining Frameworks To Address Future Pandemic Risk

According to the World Bank, the pandemic has pushed more than 100 million people into extreme poverty, and the number of people facing food insecurity has more than doubled. Three decades of progress against poverty are gone.

As the largest global insurance broker, our work with policyholders and insurers gives us a unique perspective into the role of insurance in a pandemic solution. Through the course of the COVID-19 pandemic, we have been engaged in discussions with about 40 Governments globally.

There is clear interest in many regions for Government involvement in solutions at the country, or even regional, level. This is especially the case in Europe, for example in France, Germany, and the U.K. The European Commission is considering the feasibility of an EU-level solution. However, many countries are still grappling with third and fourth waves of COVID-19, which has meant that even some ongoing projects around establishing public-private partnerships have been put on hold until the pandemic recedes. That said, we expect conversations to continue in the

near future, with support from many policyholder groups, insurers, and reinsurers to find a long-term solution.

Many Governments—including in the U.S.—have offered unprecedented financial support to businesses and their employees through wage subsidies, tax deferrals, and guarantees. But it has come at a heavy cost. By the end of 2020, debt-to-GDP ratios in OECD countries will have risen approximately 20 percent since 2019—in many countries, reaching the highest debt levels in decades.

Moreover, despite this assistance, the cumulative effects of Government lockdowns, social distancing requirements, and changes in consumer behavior have led to significant declines in revenue for businesses across multiple sectors. For some industries, the pandemic will have long-term implications.

Marsh serves clients of all sizes, including thousands of small and medium-sized enterprises. Policyholders from these smaller businesses have been heavily impacted by COVID-19 and they're vocal about the need for a long-term solution.

Section Two: Role of Insurance

Insurance plays a vital role in the U.S. and global economies; without it businesses of all sizes, across industries, would be unable to start new ventures, hire new employees, or manage risk and grow to their full potential. The pandemic has created recovery and resilience challenges for businesses, Governments, and insurers—issues that must be addressed to effectively manage a future pandemic. On the insurance side, we've seen over the last year that property and liability policies are severely limited in their ability to respond to pandemic-related losses.

Commercial insurance coverage typically responds to losses caused by natural catastrophes, such as earthquakes and hurricanes, and a range of business risks, from employee injuries to product liability and more. Although pandemics have occurred before, the economic impact of COVID-19 has been of a different magnitude, in part due to how interconnected people, businesses, and economies have become in the past few decades.

Examining Frameworks To Address Future Pandemic Risk

These interconnections facilitated the rapid, global spread of the virus in a relatively short time. And that, in turn, led Governments and businesses alike to take actions to slow the spread. The ripple effects of doing so cascaded throughout companies, supply chains, and the global economy.

While some specialty insurance policies purchased before 2020 may include coverage for pandemic risk, most policies do not explicitly provide such coverage. Insurers, generally, hold the position that property, casualty, and other insurance policies are designed to cover losses suffered by individual insureds, but not for the aggregate economic impacts from a pandemic, such as extended lockdowns of large communities or entire countries.

Through the end of the second quarter of 2021—about 16 months since the World Health Organization declared COVID-19 a pandemic—Marsh had received tens of thousands of pandemic-related claims notifications from clients around the world, including in the following coverage areas:

- Property and business interruption account for the majority of claims notifications with most in the U.K. and Ireland.
- Workers' compensation accounts for the second largest number of claims mostly from the U.S. and Continental Europe.
- Casualty, apart from workers' compensation.
- Travel/personal accident notifications predominantly from the U.K. and Ireland.
- Financial and professional lines claims were the lowest type of claim submitted.

Section Three: Impact on the Availability and Affordability of Insurance

The magnitude of global economic losses, the difficulty in predicting what actions Governments will take to contain infectious disease, and the potential for rapid, drastic changes in consumer demand make pandemic risk impossible for insurers and reinsurers to assume by themselves.

As you will see in the next infographic based on Marsh's data, COVID-19 has had a significant effect on the commercial markets (see Figure 1). Many insurers are now broadly excluding coverage for pandemic risk from their policies, and they're generally expected to continue doing so in the future.

But they have been paying out claims throughout the pandemic. Recent analysis by Artemis notes that COVID-19 losses and IBNR reserves reported by major insurance and reinsurance companies have risen significantly during the first quarter of 2021, with the total pandemic loss reported now nearing \$38 billion.

Figure 1. How COVID-19 has impacted insurance markets.

COVID-19's Effect on Commercial Insurance Markets

Continuing uncertainty about global losses from COVID-19 is contributing to challenges for commercial insurance buyers. Through the end of the second quarter of 2021, Marsh received nearly 29,000 pandemic-related claims notifications from our clients around the world.

Driven by preexisting market factors and other trends, insurers continue to:

-  Restrict capacity — the amount of coverage made available to policyholders — and raise prices.
-  Exclude communicable disease coverage and tighten relevant policy language, terms, and conditions.
-  Scrutinize risks in industries such as retail, healthcare, higher education, hospitality, restaurants, real estate, and public entity.

Property and Business Interruption

NEARLY
15K claims reported by Marsh clients globally through June 2021.

Many claims are pending, and insurers are requiring extensive documentation — which is often lengthening the claims process.

Event Cancellation

MORE THAN
25% reduction in market capacity over the last two years, accelerated by the pandemic.

8 leading insurers have exited the market since mid-2018 — including 5 since the pandemic began — with more departures expected.

Casualty/Workers' Compensation

24 states have introduced workers' compensation laws and regulations, including some that shift the burden of proof from employees to employers for claims in select occupations.

Although underwriting approaches differ, many liability insurers remain concerned about perceived third-party exposures associated with the pandemic.

Directors and Officers Liability

15% increase* in pricing for public companies each month (March 2020 through May 2021).
OR MORE

Many insurers are narrowing coverage terms, including adding exclusions and taking away prior enhancements.

Employment Practices Liability

MORE THAN
2.7K employment suits related to COVID-19 through June 2021.

With litigation and claims on the rise, many insurers are restricting capacity for certain risks.

A Public-Private Pandemic Risk Solution Is Needed NOW

Commercial insurers alone cannot fully provide businesses with pandemic risk protection. A public-private partnership can:

-  Enhance market capacity and coverage.
-  Create incentives for government, insurers, and businesses to mitigate pandemic risk.
-  Build resilience to future pandemics.

To learn more, read Marsh's report on the need for a [pandemic risk protection solution](#).

*Average year-over-year total program pricing changes recorded each month.
Sources: Marsh, Oliver Wyman, Fisher Phillips LLC.

Let me spend a few minutes looking at specific coverage areas and the impact the pandemic has had on them.

Property/Business Interruption

Perhaps the most contentious area of insurance related to the pandemic involves business interruption coverage, or BI coverage. This is typically one of the greatest areas of need for policyholders in a disaster. Put simply, this is the coverage that policyholders seek from their property insurance for financial losses incurred due to a natural disaster or a catastrophe such as a fire, a hurricane, or an earthquake.

Generally, property insurance policies are triggered by insured physical loss or damage. Since the pandemic began, many companies have filed first-party property and BI claims—most notably, due to business interruption caused by the action of a civil authority. Policyholders have argued that their BI policy language should respond to shutdowns and closures as mandated by several States and municipalities in the U.S., and other governmental authorities elsewhere.

A growing number of such claims are now the subject of litigation in various courts and countries. Through early June, approximately 1,500 COVID-19 coverage lawsuits were pending in U.S. State and Federal courts, according to a Marsh review of several sources, including the University of Pennsylvania's Covid Coverage Litigation Tracker.

To date, the results of these claims filings have varied:

- A relatively small number of claims—typically submitted by companies seeking recovery under specific sublimited coverage extensions—have been adjusted and paid.
- In some cases, insurers have issued reservation of rights letters, made requests for information to aid in their investigations, and proceeded with the measurement of claims.
- In other cases, insurers have denied claims due to absence of a physical damage trigger and the invocation of pollution/contamination and virus exclusions and other policy language.

General Liability and Umbrella/Excess

To date, general liability (GL) and umbrella/excess claims related to the pandemic—for example, alleging that a customer, client, or other third party was exposed to COVID-19 on an insured company's premises—have not been prevalent. In large part, this is due to the difficulty in definitively proving such exposure and that the company's negligence contributed to it.

That said, insurers have expressed some concern that casualty claims could develop in the future. Depending on the jurisdiction and the details of how a specific policy is written, litigation could potentially be filed as much as 3 years after the alleged exposure.

As a result, insurers have sought to add COVID-19 or communicable disease exclusions to their policies, particularly for insureds in hospitality and other select industries. In some industries—for example, restaurants—policyholders have been concerned that language proposed by insurers has been overly broad. They worry that it could be interpreted as restricting essential coverage for foodborne illnesses and other perils that would not have the widespread impact of a pandemic or epidemic. Marsh has generally made progress in amending such language.

Examining Frameworks To Address Future Pandemic Risk

Workers' Compensation

In March 2020, as the coronavirus was rapidly spreading, many insurers were concerned about its potential impact on workers' compensation.

More than a year into the pandemic, these initial worries have proven to be unfounded. The reality is that the average COVID-19 claim is for a lower amount than the typical workers' compensation claim. Moreover, COVID-19 claims have generally been clustered in a handful of industries, such as health care and food and beverage manufacturing.

The pandemic highlights how difficult it can be to determine compensability amid a public health crisis—mainly because individuals can be exposed both in the workplace and outside of it.

Amid this challenging environment, a number of States have taken action. As of early June, 24 States, along with the District of Columbia and Puerto Rico, have introduced laws and regulations dictating how workers' compensation coverage will respond to COVID-19 cases.

Workers' compensation capacity may be limited going forward for some types of employers, such as health care organizations and first responders. Employers in-

dustries where employees often work in close quarters—for example, food and beverage manufacturing—may also face challenges.

Event Cancellation

Capacity for event cancellation insurance continues to decline. By our estimates, capacity has fallen more than 30 percent compared to before the pandemic. It appears that insurance market capacity will not return to prepandemic levels anytime soon.

Pricing for coverage has doubled or even tripled for some event cancellation buyers, while deductibles have increased by as much as 400 percent depending on the nature and location of the events to be insured.

Moreover, while communicable disease coverage was generally available—and affordable—before the pandemic, it is now widely unavailable and is expected to be extremely difficult to include in event cancellation policies going forward.

Management Liability

COVID-19 has compounded a number of challenges that were already mounting before the pandemic in directors and officers liability, commonly known as D&O, and in employment practices liability, or EPL. Financial pressures on insurers have been exacerbated by the pandemic, leading to significant increases in pricing over the last 15 months.

This is particularly the case for D&O, which has seen a 15 percent or higher increase, on average, in pricing since the pandemic began. In addition, many insurers are narrowing coverage terms.

Examining Frameworks To Address Future Pandemic Risk

As of early July, workers had filed nearly 2,800 COVID-19-related employment litigation suits in U.S. Federal and State courts, according to Fisher Phillips' COVID-19 Employment Litigation Tracker. Nearly a quarter of these have targeted health care entities.

To date, however, pandemic-related restrictions on D&O and EPL coverage have not been commonplace. Still, insurers are scrutinizing their risks and probing prospective insureds about their responses to COVID-19.

Section Four: Public-Private Partnership

The complex nature of pandemic risk means that we need strong, national pandemic management. This requires insurers, backed by the Federal Government, to write pandemic insurance policies and brokers to contribute our risk knowledge and infrastructure. Widespread pandemic coverage would see the insurance sector play an integral role in preparedness and resiliency ahead of future outbreaks.

Marsh McLennan has supported the development of numerous global public-private partnerships, so we have firsthand knowledge about how private capital can lead to smarter and better long-term outcomes when incorporated into a solution. Ultimately, we want to support the Committee in its quest to develop a workable solution for all policyholders.

The key to building a more proactive and agile response to the next pandemic will be an insurance and risk management partnership that helps facilitate coverage, aligns the needs of insurance buyers and insurers, and incentivizes preparedness, mitigation, and resilience.

Recent history provides examples of just how this has been accomplished in other areas. A range of risk-pooling models—from pure private partnerships to State-financed funds for noninsurable risks—can be used to address difficult risks (see Figure 2).

Figure 2. How a pandemic public-private partnership could be structured.



That said, at Marsh McLennan, we believe that parts of pandemic risk are indeed insurable, but not without significant Government support. The global nature and timing of pandemics means that there is not enough capacity in the industry to take on the risk unless there is a public-private partnership that engages the full credit and support provided by a Government backstop.

Consider that there was about \$910 billion of surplus in the insurance market at the end of 2020. But the surplus is largely committed to support other risks, while COVID-19 will end up costing in the trillions of dollars. However, the insurance industry's ability to take some level of risk, build surplus, handle claims, encourage risk mitigation and promote resilience can be of real value in a public-private solution.

Marsh is not promoting a specific solution. We are advocating for a public-private partnership that will accelerate economic recovery by leveraging the insurance expertise and infrastructure that is already in place to reduce uncertainty. We are advocating for a solution that allows insurers, reinsurers, and other capital providers to play a limited but valuable role. Insurance creates the right economic incentives to drive change in society.

There are many past examples of how Governments and the private sector have come together to reduce risk and restore insurability, whether it be the establishment of fire brigades after the Great Fire of London of 1666 or the passage of the Terrorism Risk Insurance Act, and the creation of the Department of Homeland Security to coordinate security and intelligence responses to terrorism risk in the aftermath of September 11.

If we create the right economic incentives for insurers, policyholders, and the Government, insurance can serve its traditional function of mitigating risk. Over time, the right risk program can spur new technologies, ways of working, services, insurance products, and processes to ultimately chip away at the enormous losses associated with pandemics. That, in turn, can help make pandemic risk more manageable and enable our economy to build the necessary resilience it needs for the future.

There is some optimism that improvements in preparedness and response could reduce the impact of future pandemics, and that the challenges to insurability of pandemic-related business interruption losses can ultimately be overcome.

As you can see in Figure 3, there are a number of existing risk pooling structures here in the U.S., and a variety of Government-backed pools in other countries. At Marsh McLennan, we have been a party to the formation and ongoing support of

most of these facilities around the world and understand the rationale as to why and how each of them have been structured and how they help policyholders.

Figure 3. What we can learn from current risk pooling models.

Key Learning	Selected Examples
Significant loss events or changes in how risks are modeled can lead to market-wide capacity withdrawal.	TRIA was passed in 2002 following a widespread withdrawal of commercial terrorism cover by reinsurers after the September 11, 2001, terrorist attacks. Flood Re was developed to provide affordable flood risk cover to the approximately 3% of UK homeowners living in high flood risk areas. Industrywide improvements in flood risk modeling had made coverage unaffordable for this cohort.
Extreme risks typically require some form of government backstop.	Government treasuries are the insurer of last resort on multiple loss sharing schemes. For example, the US National Flood Insurance Program (NFIP), the UK's Pool Re, and France's CCR Cat Nat and Gestion de l'Assurance et de la Réassurance des risques Attentats et actes de Terrorisme (GAREAT) have unlimited guarantees. TRIA, the Australian Reinsurance Pool Corporation (ARPC), Germany's Extremus, and the Netherlands' Nederlandse Herverzekeringsmaatschappij voor Terrorismeschaden (NHT) have limited guarantees.
Public-private partnerships provide credibility and can be structured to gradually shift risk to the private sector.	The US government's terrorism backstop enabled insurers to access affordable reinsurance for terrorism coverage. Over time, federal reinsurance participation in the program has fallen from 90% in 2002 to 80% in 2020, while insurer deductibles have risen from 7% of premium in 2002 to 20% in 2020. Insurer retentions have also increased, from \$5 million in 2002 to \$200 million in 2020. The UK government's backing of Pool Re similarly enabled insurers to access affordable terrorism reinsurance. Over time, the Pool Re fund grew and private reinsurer confidence was restored, to the point that £2.4 billion of reinsurance cover is now purchased. As a result, a loss fund of approximately £10 billion (including member retentions) sits between the consumer and the government needing to step in.
Programs can be used to incentivize the adoption of preventive measures.	Eligibility for the US flood risk program, NFIP, requires communities to adopt and enforce strict floodplain ordinances and offers premium discounts for outstanding performance. While there is no direct requirement for risk mitigation by Pool Re stakeholders, premium discounts of up to 7.5% are available for insureds that proactively undertake such initiatives. The US crop insurance industry supports continued agronomic research to determine how farmers can best incorporate risk management best practices in their operations and the impact those practices may have on insured crops. The US SAFETY Act of 2002 was created to spur the adoption of improved security measures by offering to limit liability of companies providing anti-terrorism products and services for qualified vendors. Similar policies, coupled with a robust public-private insurance market, could incentivize private sector adoption of prophylactic measures to drive down exposures. Flood Re is intended as a temporary solution to be phased out by 2039. As such, the government has committed to major investments in preventive measures, while Flood Re has prompted insurers to work to enhance their understanding, mapping, and modeling of flood risk and their collection of data for improved underwriting.

Conclusion

In summary, the high level of interconnectivity that defines the world today brings many benefits. However, it also sets the stage for more frequent epidemics and pandemics, which can have enormous social and economic consequences. If we fail to address the lessons learned from COVID-19 with regard to risk management and insurance, then businesses, nonprofits, and public entities alike will have even less coverage available to them than prior to March 2020, and will be even more in need of Government assistance in the next pandemic.

There is still much work to be done, and many people are still struggling with the ongoing effects of COVID-19. But there is also hope and optimism that we have reached a turning point.

As we continue to manage our way through the current pandemic, we need to prepare for the potential that another one will emerge. We need to help companies—our clients and others—plan an effective corporate response to future epidemics and pandemics.

The complexity of pandemic risk calls for close cooperation by the public and private sectors in managing its impacts. The key to building a more proactive and agile response to the next pandemic will be an insurance and risk management partnership with the Government that helps facilitate coverage, aligns the desires of both insurers and policyholders, and requires mitigation practices. An efficient and effective pandemic insurance program will accelerate recovery and build resilience.

Appendix A

1. OECD: Addressing the Protection Gap for Pandemic Risk: Setting the Scene (<https://www.oecd.org/finance/insurance/addressing-protection-gap-pandemic-risk.htm>)

2. OECD: Addressing the Protection Gap for Pandemic Risk: Finding a Way Forward—Conference Outcomes (<https://www.oecd.org/finance/insurance/addressing-protection-gap-pandemic-risk.htm>)

3. Note: Marsh will be releasing a pandemic report in the coming weeks, and will send to the Committee once completed.

PREPARED STATEMENT OF ROBERT GORDON
SENIOR VICE PRESIDENT FOR POLICY, RESEARCH AND INTERNATIONAL, AMERICAN
PROPERTY, CASUALTY INSURANCE ASSOCIATION
 JULY 22, 2021

Testimony
 of
 Robert M. Gordon
 Senior Vice President, Policy Research and International
 American Property Casualty Insurance Association (APCIA)
 Subcommittee on Securities Insurance and Investment
 Senate Committee on Banking, Housing and Urban Affairs
 Examining Frameworks to Address Future Pandemic Risk

Thursday, July 22, 2021

Chairman Menendez, Ranking Member Scott, and members of the Subcommittee, I am Robert Gordon, Senior Vice President for Policy, Research, and International at the American Property Casualty Insurance Association (APCIA). APCIA is the primary trade association for home, auto, and business insurers. For 150 years, we have promoted the viability of private competition for the benefit of consumers and insurers. APCIA members represent all sizes, structures, and regions – protecting families, communities, and businesses in the U.S. and across the globe.

APCIA appreciates the members of the Subcommittee's willingness to begin to fully examine, analyze, understand, identify, and articulate the economic threats posed by COVID-19. APCIA conducted an extensive analysis of the economic impact of COVID-19 to help policymakers understand and identify the problems that need to be addressed and to support our consumers and policyholders. APCIA identified at least fourteen different layers of important economic losses that resulted from COVID-19, including record unemployment, cash flow needs for transitioning businesses, solvency threats from plunging demand for in-person services, impacts from government restrictions, supply chain losses, and various health and mortality losses.

APCIA also identified several initial uncertainties about the impact of COVID, and theories that experts (including us in some cases) got wrong initially, where ground-breaking scientific and economic research have since provided a clearer understanding. The most notable discovery from this research is that COVID-19 related economic losses were concentrated in the leisure and hospitality sectors (comprised disproportionately of low-wage women and minority workers), primarily as a result of a plunge in macroeconomic consumer demand for in-person services, rather than directly a result of government closure mandates or property damage.

Pandemic mass market business continuity risks are inherently uninsurable and do not meet essential criteria for insurance.¹ Accordingly, coverage for most business continuity losses due to pandemics are not included in general commercial property insurance. Business interruption insurance is a property coverage designed to help businesses remain viable while physically damaged property is repaired. COVID-19 has not been found to cause physical damage - as federal courts have repeatedly affirmed – and COVID-19 losses have not been covered under most business interruption policies.

¹ See APCIA, "Uninsurability of Mass Market Business Continuity Risks from Viral Pandemics", Hartwig and Gordon (2020).

There are many critical COVID-19 problems for policymakers to solve, and APCIA has helped develop proposals to address some of those concerns. But ultimately, COVID-19 losses are both multi-layered and concentrated in specific sectors, suggesting the need for a series of flexible government solutions that can be specifically tailored and adjusted as the next pandemic evolves, rather than trying to force a broad-brushed, one-size-fits-all solution.

We commend the Subcommittee for its interest in finding solutions that protect the nation's economy from the next pandemic crisis. But we hope the Subcommittee will start by creating the right predicate foundation, fully investigating the problems to be solved, and evaluating the lessons learned over the last year and a half. No consensus has developed in any country on prospective pandemic protections, in large part because markets and governments jumped forward with proposals before achieving a common consensus understanding of the vulnerabilities that most need to be addressed.

Overview of the Economic Impact of COVID-19

The COVID-19 pandemic is fundamentally different from any other catastrophe the world has suffered. More than four million people have died from COVID-19.² More than 190 million people have become ill³, and 175 million became impoverished or undernourished.⁴ An equivalent of 255 million full-time jobs were lost,⁵ with the United States unemployment in March of 2020 exploding to 14.7%, the worst employment period since the 1930's Great Depression and the most severe of any major OECD country.⁶ Global GDP in 2020 plunged 7% below expected levels, with governments providing a record \$16 trillion of relief,⁷ business revenue losses exceeding \$1.7 trillion a month,⁸ and expected lost economic output over five years estimated to be \$28 trillion.⁹ In 2020, the highest share of economies around the world contracted simultaneously since 1870.¹⁰ And while our domestic economy has partly recovered, domestic and worldwide COVID-19 infections are currently increasing,¹¹ meaning that this pandemic crisis has had a continuing duration of at least 16 months and counting since it was first announced by the World Health Organization (WHO) and the U.S. Centers for Disease Control and Prevention (CDC).¹² To put these numbers in perspective vis-à-vis the insurance industry, monthly premiums for business interruption insurance across the entire world are only \$2.5 billion, or 0.00147 of the monthly lost business revenues and 0.000156 of the needed COVID-19 government relief provided to date.¹³ The

² Congressional Research Service (CRS), *Global Economic Effects of COVID-19*, July 9, 2021, p. 1.

³ Worldometer, <https://www.worldometers.info/coronavirus/>.

⁴ CRS, Summary and p. 13.

⁵ CRS, p. 7.

⁶ CRS, pp. 10-11, and p. 33.

⁷ Brookings Global Working paper #158, *Social and economic impact of COVID-19*, June 2021, pp. 1-2.

⁸ OECD estimates for one month of strict confinement measures, OECD (2021), *Addressing the Protection Gap for Pandemic Risk: Setting the Scene*, www.oecd.org/finance/insurance/addressing-protection-gap-pandemic-risk.htm.

⁹ International Monetary Fund (IMF), <https://blogs.imf.org/2020/10/13/a-long-uneven-and-uncertain-ascent/>.

¹⁰ The World Bank Group, <https://blogs.worldbank.org/opendata/understanding-depth-2020-global-recession-5-charts>.

¹¹ BBC, <https://www.bbc.com/news/world-51235105>.

¹² U.S. Department of Health & Human Services, Centers for Disease Control and Prevention, [https://www.cdc.gov/media/releases/2020/p0117-coronavirus-screening.html#:~:text=Starting%20January%2017%2C%202020%2C%20travelers,Los%20Angeles%20\(LAX\)%20airports](https://www.cdc.gov/media/releases/2020/p0117-coronavirus-screening.html#:~:text=Starting%20January%2017%2C%202020%2C%20travelers,Los%20Angeles%20(LAX)%20airports).

¹³ APCIA calculations based on Geneva Association estimates of global BI premiums, OECD estimates of monthly losses, and Brookings estimates of government support provided.

tragic 9-11 attacks combined caused \$27.58 billion of insured losses in 2021 dollars, or 0.000985 of the expected economic losses for COVID-19.¹⁴

The long-term economic impact of COVID-19 could ultimately be much worse than currently expected. The WHO just last week warned that:

*[D]espite national, regional, and global efforts, the pandemic is nowhere near finished. The pandemic continues to evolve with four variants of concern dominating global epidemiology. The Committee recognised the strong likelihood for the emergence and global spread of new and possibly more dangerous variants of concern that may be even more challenging to control.*¹⁵

The long-term health costs of COVID-19 are also unknown, with even 1 in 10 COVID-19 patients with mild symptoms still suffering at least one moderate to severe symptom eight months later.¹⁶ Thousands of COVID-19 lawsuits have already been filed that could further increase losses, with the number of lawsuits more than doubling in the first half of 2021 compared to all of 2020.¹⁷ Estimates for COVID-related insurance payments in just the home, auto, and business sector range from at least \$30-60 billion¹⁸ making COVID-19 likely to be the first or second worst insured loss in history.

Multiple Layers of COVID-19 Economic Impacts / Problems to Solve

At the onset of the pandemic, the macroeconomic focus was primarily on government shutdowns.¹⁹ However, as the pandemic evolved, economic losses in many sectors continued long past required closures and morphed into multiple layers of national vulnerabilities that created significant socio-economic concern for policymakers. APCI has identified at least fourteen different manifestations of economic losses caused by the pandemic:

- Employment losses and dislocation
- Financial market declines
- Fiscal budget deficits
- Transitional expenses to remote or socially-distanced workplace
- Macroeconomic demand shifts
- Direct losses from government closures
- Supply chain losses
- Trade losses
- Mortality losses
- Healthcare costs
- Worker healthcare payments
- Private debt payment relief
- Liability losses
- Event cancellation/production stoppage

Government solutions to these evolving loss vulnerabilities have taken several different forms. For example, the United States provided trillions of dollars in fiscal relief, including the CARES Act (tax rebates to families, expanded unemployment benefits, loan guarantees through the Federal Reserve,

¹⁴ APCI calculations based on the Insurance Information Institute estimates of 9-11 insured losses, the U.S. Bureau of Labor Statistics CPI Inflation Calculator, and the IMF estimates of global economic losses.

¹⁵ World Health Organization, [https://www.who.int/news/item/15-07-2021-statement-on-the-eighth-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-coronavirus-disease-\(covid-19\)-pandemic](https://www.who.int/news/item/15-07-2021-statement-on-the-eighth-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-coronavirus-disease-(covid-19)-pandemic).

¹⁶ <https://directorsblog.nih.gov/tag/long-haulers/>.

¹⁷ JD Supra LLC, <https://www.jdsupra.com/legalnews/coronavirus-lawsuits-more-than-double-3975643/>.

¹⁸ Swiss Re Institute, sigma, *World insurance: the recovery gains pace*, No. 3/2021.

¹⁹ See The Brookings Institution, <https://www.brookings.edu/blog/up-front/2020/03/23/covid-19-and-the-u-s-economy-faq-on-the-economic-impact-policy-response/> ("The core problem the economy faces is not a lack of liquidity, but a temporary halt of activity due to health restrictions"); and CRS, *COVID-19: State and Local Shutdown Orders and Exemptions for Critical Infrastructure*, <https://crsreports.congress.gov/product/pdf/IN/IN11284>.

forgivable loans to small businesses, and transfers to state and local governments), the Paycheck Protection Program (loans for small businesses), executive orders (providing student loan payment relief and deferring taxes), and the American Rescue Plan (providing additional unemployment benefits, direct stimulus payments, and aid to state and local governments).²⁰ The Federal Reserve provided additional trillions of dollars in various forms of liquidity and quantitative easing as well as a Main Street Lending Program.²¹ Total federal legislative economic appropriated relief to date is approximately \$5.5 trillion.

Role of Insurance

Insurers are in the business of managing risk, so we always seek to provide protection solutions for consumers when feasible. Insurers in the pandemic have provided over \$14 billion in auto insurance refunds,²² flexible payment solutions, waivers of late fees, paused certain cancellation of coverage, and suspended personal auto exclusions for restaurant employees who transitioned to meal delivery services and used their personal auto policy as coverage.²³ But insurers can only commit capital responsibly if we can accurately model the frequency and severity of a risk and adequately diversify potential solvency exposures – which is not feasible with respect to the widespread economic consequences of a global pandemic.

When the first COVID-19 pandemic wave peaked in March 2020, the previous Administration reached out to several of the financial sectors, including the insurance industry and APCA, to explore potential mechanisms for providing relief. Congress and the Administration ultimately decided to provide commercial relief in part through the banks and other approved lending institutions in the form of potentially forgivable loans.²⁴ Most businesses have ready access to bank accounts and equivalent products and can conduct transactions on an expedited basis. In contrast, many small businesses do not have insurance²⁵ and commercial insurance claims can take several months to reach final settlement. Many countries ultimately followed the same approach as the United States in utilizing the banking sector to distribute expedited financial pandemic relief.²⁶ For example, the United Kingdom created the Coronavirus Business Interruption Loan Scheme. Japan provided low interest loans and guarantees through both government and private lenders.²⁷ APCA is unaware of any major government providing

²⁰ International Monetary Fund, <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#U>.

²¹ CRS, pp. 68-70.

²² Insurance Information Institute, <https://www.iii.org/insuranceindustryblog/insurers-respond-to-covid-19-6-05-2020/>.

²³ APCA, <https://www.apci.org/media/news-releases/release/60055/>.

²⁴ Federal Register, Small Business Administration, 85 FR 20811, 13 CFR Part 120, [Docket No. SBA-2020-0015], RIN 3245-AH34, <https://www.federalregister.gov/documents/2020/04/15/2020-07672/business-loan-program-temporary-changes-paycheck-protection-program>.

²⁵ See Next Insurance, Inc., <https://www.nextinsurance.com/blog/small-business-insurance-report/> (“44% of Small Businesses Have Never Had Insurance”); Key Media, Insurance Business America, <https://www.insurancebusinessmag.com/us/news/breaking-news/why-dont-small-businesses-buy-insurance-90123.aspx> (“Only 28% of respondents have a business owner’s policy (bundle of general liability insurance commercial property insurance), and even fewer respondents reported carrying several other common small business insurance policies”); Wells Media Group, Inc., Insurance Journal, <https://www.insurancejournal.com/news/national/2015/09/02/380367.htm> (“66% of Small Businesses Lack Business Interruption Coverage”).

²⁶ See International Monetary Fund, <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19> (summarizing countries’ COVID-19 policy responses).

²⁷ See Financial Services Agency, <https://www.fsa.go.jp/en/ordinary/coronavirus202001/press.html>, and KPMG International, <https://home.kpmg/xx/en/home/insights/2020/04/japan-government-and-institution-measures-in-response-to-covid.html>.

federal relief through the private insurance industry, with specific pandemic insurance proposals rejected in Switzerland, France, and in several U.S. states.

The National Association of Insurance Commissioners (NAIC), which represents insurance regulators in the United States, issued a statement to Congress at the beginning of the March 2020 peak stating that,

Insurance works well and remains affordable when a relatively small number of claims are spread across a broader group, and therefore it is not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period. While the U.S. insurance sector remains strong, if insurance companies are required to cover such claims, such an action would create substantial solvency risks for the sector, significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing.²⁸

APCIA and my fellow witness on today's panel, Dr. Robert Hartwig, coauthored a paper analyzing the insurability, or lack thereof, for pandemics affirming the NAIC's assessment, and concluding that,

Business continuity losses arising from widespread viral risks represent an uninsurable risk for the private property casualty insurance industry. The magnitude of potential losses exceeds the claims paying resources of the industry while a lack of historical data impairs the ability of insurers to precisely model the frequency and severity of losses and determine premiums. This problem is exacerbated by the fact that the majority of business continuity losses are driven not by random events, but by the unprecedented and deliberate actions of thousands of public policymakers. The consequences of these actions are not insurable and potentially pose a systemic risk to the industry as a whole and the economy broadly.²⁹

Understanding Pandemic Losses – What Many Experts Got Wrong

APCIA spent the last seven months analyzing the economic impact of COVID-19, including reviewing many of our initial assumptions and those of other pandemic analysts. APCIA hopes that policymakers will thoroughly review which assumptions have changed and how our understanding of this pandemic has evolved as part of understanding the underlying problems to be solved.

COVID-19 Infections Result from Human Transmission Not Surface Contact and COVID-19 Infected Surfaces Can Be Easily Cleaned

In March 2020, an initial study cited by the National Institutes of Health (NIH) found that COVID-19 can

²⁸ National Association of Insurance Commissioners, *NAIC Statement on Congressional Action Relating to COVID-19*, https://content.naic.org/article/statement_naic_statement_congressional_action_relating_covid19.htm.

²⁹ See APCIA, *Uninsurability of Mass Market Business Continuity Risks from Viral Pandemics*, p. 5, https://www.ncsl.org/documents/econ/APCIA_Hartwig_Gordon_White_Paper.pdf; and Geneva Association, *Public-Private Solutions to Pandemic Risk Opportunities, challenges and trade-offs*, https://www.genevaassociation.org/sites/default/files/research-topics-document-type/pdf_public/pandemic_solutions-report_final.pdf ("Pandemic business continuity risk was, in general, never possible nor intended to be covered by the private sector."); and National Bureau of Economic Research, *EVALUATING THE ROLE OF INSURANCE IN MANAGING RISK OF FUTURE PANDEMICS*, Kunreuther and Schupp, https://www.nber.org/system/files/working_papers/w28968/w28968.pdf ("The scale, correlations, and complexity of pandemic risk, as evidenced by ongoing COVID-19 losses, far exceed traditional parameters that define the concept of insurability for private insurers and reinsurers.").

be detected on certain surfaces for up to three days. The NIH stated that “[t]he findings emphasize the importance of hand washing and disinfecting frequently touched surfaces to protect against infection.”³⁰ Later that month, the WHO echoed that “Coronavirus disease... also spreads when a person touches a surface or object that has the virus on it, then touches their eyes, nose, or mouth.”³¹ Fast forward a year to the announcement by the Centers for Disease Control (CDC) and Prevention that,

*Quantitative microbial risk assessment (QMRA) studies have been conducted to understand and characterize the relative risk of SARS-CoV-2 fomite transmission and evaluate the need for and effectiveness of prevention measures to reduce risk. Findings of these studies suggest that the risk of SARS-CoV-2 infection via the fomite transmission route is low, and generally less than 1 in 10,000, which means that each contact with a contaminated surface has less than a 1 in 10,000 chance of causing an infection.*³²

Numerous subsequent studies have confirmed the CDC’s findings. For example, a recent study by the Department of Aviation Medicine found that “fomite spread may not be a significant means of transmission for severe acute respiratory syndrome coronavirus 2 in real-world operational scenarios.”³³ A review of COVID-19 studies by Professor Emanuel Goldman of Rutgers University found that “the chance of transmission through inanimate surfaces is very small, and only in instances where an infected person coughs or sneezes on the surface, and someone else touches that surface soon after the cough or sneeze (within 1–2 hours).”³⁴

The updated scientific facts that COVID-19 damages result from human transmission rather than surface contact (fomites) have significant implications for insurance. Most of the efforts to force insurance to morph into a macroeconomic stabilizer for lost commercial revenues have focused on business interruption insurance. But business interruption insurance is a property coverage that only provides potential coverage where there is a “direct physical loss” or damage to property, such as the destruction of property by fire or tornado. This coverage is intended to tide businesses over while they repair the

³⁰ National Institutes of Health, *Study suggests new coronavirus may remain on surfaces for days*, <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days>.

³¹ World Health Organization, *How it spreads*, Coronavirus Update 20, https://www.who.int/docs/default-source/coronaviruse/risk-comms-updates/update-20-epi-win-covid-19.pdf?sfvrsn=5e0b2d74_2.

³² Centers for Disease Control and Prevention, *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html>.

³³ Oxford University Press, *Military Medicine*, Volume 186, Issue 7-8, July-August 2021, Pages e832–e835, <https://academic.oup.com/milmed/article/186/7-8/e832/6040078>.

³⁴ National Center for Biotechnology Information, U.S. National Library of Medicine, Goldman, *Exaggerated risk of transmission of COVID-19 by fomites*, *The Lancet. Infectious diseases* vol. 20,8 (2020): 892-893. doi:10.1016/S1473-3099(20)30561-2, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7333993/>; see also Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/videos/partner-calls/when-to-clean/when-to-clean-transcript.docx> (The CDC suggests that “hygiene theater or putting on a show of cleaning and disinfecting... to give people a [false] sense of security” could be harmful.).

damage.³⁵ It does not cover, and was never intended to cover, business interruption losses unrelated to physical property damage.

The CDC's findings underscore that COVID-19 does not cause physical damage to property -- a recognition repeatedly upheld in federal courts. Furthermore, the CDC found that "cleaning with soap or detergent should be enough to further reduce the relatively low transmission risk" of surface transmission and that "the risk of infection from entering a space where a person with COVID-19 has been is low after 24 hours".³⁶ These findings suggest that any physical contamination can be easily cleaned or will quickly dissipate over time (before the end of the waiting period for coverage on most business interruption insurance policies). Many business interruption policies also include a separate "belt and suspenders" viral exclusion further walling off coverage for pandemics.³⁷

Government Shutdowns Were Not the Primary Driver of the Economic Impact of the Pandemic

Between March 17 and April 3, 2020, governors of 34 states mandated statewide closures of non-essential businesses. The Wall Street Journal subsequently argued:

*In response to the novel and deadly coronavirus, many governments deployed draconian tactics never used in modern times: severe and broad restrictions on daily activity that helped send the world into its deepest peacetime slump since the Great Depression.... Despite this steep price, few policy makers felt they had a choice, seeing the economic crisis as a side effect of the health crisis. They ordered nonessential businesses closed and told people to stay home, all without the extensive analysis of benefits and risks that usually precedes a new medical treatment.*³⁸

Other publications similarly argued that "Lockdowns Had Largest Impact in Destroying Economic Activity".³⁹

However, APCIA's research and analysis demonstrates that while government closures did have a negative economic impact, they were not the primary driver of economic losses from COVID-19. APCIA compared both foreign countries with varying degrees of lockdown severity and U.S. states with different lockdown approaches and found that COVID-related economic losses were primarily a result of a plunge in macroeconomic consumer demand for in-person services. The economic impacts of COVID-19 had a similar pattern in states or countries with severe and lengthy shutdown orders and in those

³⁵ See Marsh LLC, <https://www.marsh.com/us/insights/research/business-insurance.html> ("Business interruption coverage protects against an actual loss sustained by an insured as a result of direct physical loss or damage to the insured's property by a peril not otherwise excluded from the policy.").

³⁶ Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html>.

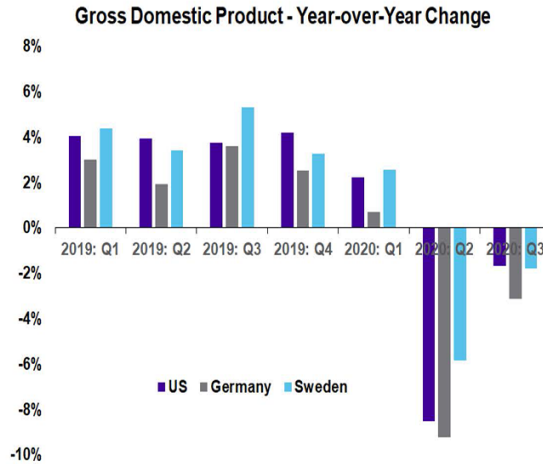
³⁷ See National Association of Insurance Commissioners, COVID-19 PROPERTY & CASUALTY INSURANCE BUSINESS INTERRUPTION DATA CALL - PART 1 | PREMIUMS AND POLICY INFORMATION - JUNE 2020, <https://content.naic.org/sites/default/files/inline-files/COVID-19%20BI%20Nat%27%20Aggregates.pdf> (98% of small business interruption policies have a physical loss requirement while another 83% additionally have a specific viral exclusion).

³⁸ The Wall Street Journal, *New Thinking on Covid Lockdowns: They're Overly Blunt and Costly*, 1p, August, 24, 2020, <https://www.wsj.com/articles/covid-lockdowns-economy-pandemic-recession-business-shutdown-sweden-coronavirus-11598281419>.

³⁹ Foundation for Economic Education, *Study: Lockdowns Had Largest Impact in Destroying Economic Activity*, <https://fee.org/articles/study-lockdowns-had-largest-impact-in-destroying-economic-activity/>.

where shutdown orders were much more limited and were not spread evenly across various commercial sectors but concentrated in sectors generally involving retail close human contact.

For example, APCIA analyzed the year-over-year changes in GDP and consumption expenditures in the U.S., Germany, and Sweden during the COVID-19 pandemic. Unlike the rest of Europe, Sweden resisted going into lockdown. In contrast, Germany imposed extensive strict shutdown orders. In the United States, there was a mixed response, with many states issuing stay-at-home orders, while others did not. The chart below shows that following the government lockdowns, Germany suffered the worst initial economic drop while Sweden suffered the least. But the overall losses and declines between Q1 and Q2 were very similar, and by the third quarter the U.S. had slightly less economic decline than Sweden, despite ongoing lockdowns in several U.S. states and counties.

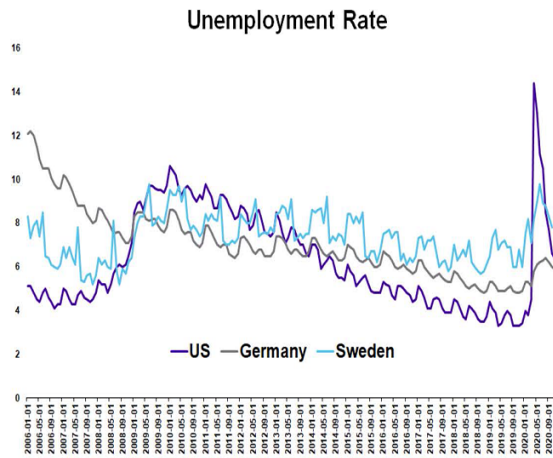


Source: St. Louis Federal Reserve.

The example of Sweden illustrates that even though the government did not order non-essential businesses to close, the economy experienced a significant economic downturn similar to the ones in the US and Germany where much or all of the non-essential economy was closed because of government orders and restrictions. While some small differences may be attributable to differences in shutdown policies, government orders alone were not responsible for the decline in both consumer spending and GDP. Consumer consumption patterns in the three countries demonstrated a similar synchronicity.

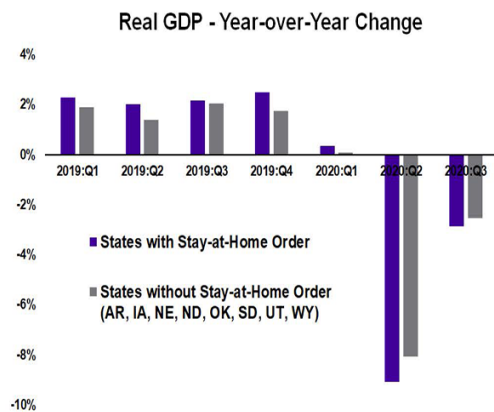
Unemployment patterns for the three economies followed a similar pattern, spiking in all three countries and remaining well above pre-pandemic levels. Notably, unemployment in the US spiked significantly more than the other countries, while German unemployment increased the least, despite

the stricter lockdown. While many of these differences may be attributable to the differences in unemployment systems, employment protection measures, and fiscal stimulus, government orders alone were clearly not the driving force behind global decreases in GDP and employment during the pandemic.



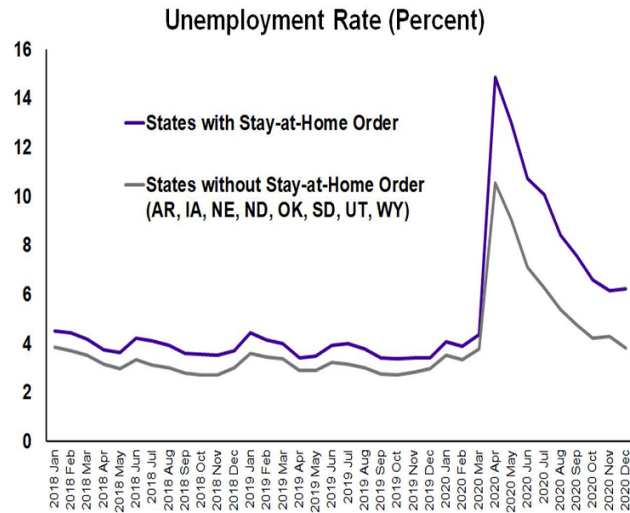
Source: St. Louis Federal Reserve.

The same overall pattern is found for GDP and unemployment shifts among the states despite contrasting decisions regarding government closures to protect from the transmission of COVID-19. As the following chart shows, the loss in GDP in the eight states that did not issue stay-at-home orders was only slightly less than for the states that required business closures.



Source: St. Louis Federal Reserve; USA Today.

Unemployment spiked both in states with and without stay-at-home orders at the height of the pandemic. Notably, unemployment was on average 0.7 percentage points higher before the pandemic in states that later issued stay-at-home orders. All stay-at-home orders have since been lifted, but in states in which initial stay-at-home orders were issued, unemployment was 3.1 percentage points higher as of December 2020.

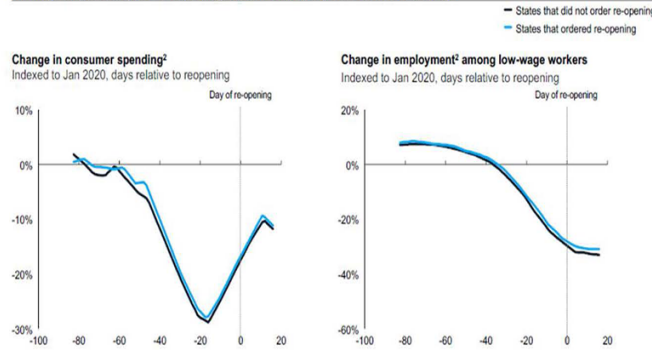


Source: St. Louis Federal Reserve.

Finally, for states that were closed at some point in the pandemic the following chart shows economic activity measured by consumer spending and employment numbers shows that the timing of any reopening decisions had very little impact on the levels of spending or employment.

Similar economic behavior regardless of reopening strategies

Average impact of typical reopening efforts on aggregate economic activity¹



1. Based on analysis of 20 states that issued partial reopening orders on or before May 4. For each reopening date (April 20, 24, 27 and May 1, 4), the trajectory of spending in states that issued reopening orders was compared to a group of 13 control states that did not issue reopening orders until after May 10.

2. Consumer spending represented by credit and debit spending data from Affinity Solutions; employment figures represented by Earnin, Indeed, and Homebase.

Source: McKinsey & Company.

Even many businesses that were considered “essential” and allowed to remain open suffered deep drops in consumer demand. For example, hotels were considered essential and, typically, not required by governments to close. And yet 2020 was the worst year on record for the U.S. hotel industry, with only a 44% occupancy rate for the year.⁴⁰ Hotel average occupancy for 2020 was even lower in Canada (33.1%), Europe (33.1%), and Central/South America (30.0%).⁴¹ Similarly, dry cleaners have generally been designated as an essential business and allowed to remain open during government COVID-19 lockdowns but have suffered severe losses and bankruptcies despite being allowed to remain open.⁴²

While government orders and restrictions have had an impact on business continuity losses, drops and shifts in consumer demand are responsible for the primary reduction in spending, GDP, and employment.

A University of Chicago study similarly found only minor aggregate impact from government shutdown orders. Of the 60-percentage point drop measured in retail visits during the pandemic, only 7-8 percentage points arose directly from government lockdowns and sheltering orders.⁴³ The remaining drop in consumer demand arose from a fear of contracting the virus.

⁴⁰ CoStar Realty Information, Inc., STR, *STR: 2020 officially the worst year on record for U.S. hotels*, <https://str.com/press-release/str-2020-officially-worst-year-on-record-for-us-hotels>.

⁴¹ [https://str.com/data-insights/news/press-releases?field_region=All&coverage\[min\]=1900-07-18%2019%3A40%3A29&coverage\[max\]=2100-07-18%2019%3A40%3A29&page=8](https://str.com/data-insights/news/press-releases?field_region=All&coverage[min]=1900-07-18%2019%3A40%3A29&coverage[max]=2100-07-18%2019%3A40%3A29&page=8).

⁴² See The Spokesman-Review, *Dry cleaners struggle to recover business lost in pandemic*, July 4, 2021, <https://www.spokesman.com/stories/2021/jul/04/dry-cleaners-struggle-to-recover-business-lost-in/>.

⁴³ Becker Friedman Institute for Economics at the University of Chicago, *Fear, Lockdown, and Diversion: Comparing Drivers of Pandemic Economic Decline 2020*, Austan Goolsbee and Chad Syverson, Working Paper: <https://bfi.uchicago.edu/working-paper/2020-80/> and Research Update: <https://bfi.uchicago.edu/insight/research-update-drivers-of-economic-decline/>.

The implications for prospective pandemic protection programs are significant. Stabilization of macroeconomic shifts in consumer demand is generally a federal government responsibility, often through various monetary and fiscal policy tools. There are no mass market insurance products, however, that provide protection against declines in macroeconomic consumer demand, nor would such protection meet the criteria for insurability. Even when operating losses result from government orders that impair business activities, business interruption insurance does not apply unless the order is the direct result of direct physical loss or damage to property.⁴⁴ Government closures have been designed to prevent human transmission of COVID-19. There have been no widespread incidents of property damage, particularly given the extremely low surface contamination risk, the ease of cleaning COVID-19, and the rapid dissipation of COVID-19, which falls well within most business interruption waiting periods.

The Duration of Economic Losses Has Been Much Longer Than Hoped

When the first wave of COVID-19 peaked in the United States in March 2020, no one knew how long the economic losses would continue.⁴⁵ Researchers from the Center for Infectious Disease Research and Policy (CIDRAP) presented three scenarios: 1) the first wave of the coronavirus would last through spring followed by a series of repetitive smaller waves; 2) a first wave in the spring followed by a larger wave in the fall or winter of 2020, with smaller waves in 2021; and 3) the spring wave would be followed by a “slow burn” with regional variances.⁴⁶ While the second scenario may have been the most accurate, many experts thought that the pandemic economic losses would coincide with stay-at-home orders temporarily shutting down major portions of the economy. According to the US Department of Health and Human Services’ Centers for Disease Control and Prevention, the first state stay-at-home order was issued by California on March 19, 2020 (Puerto Rico was the first territory on March 15), with 42 states and territories ultimately locking down, all but eight ending their orders by May 31, 2020.⁴⁷

Some early projections for COVID-19 economic losses focused on the roughly three months of government shut down as the period for which relief needed to be provided. In fact, as discussed in the previous section, because the economic losses from COVID-19 were not primarily caused by the government shutdowns, such losses have continued in several sectors well into 2021. For example, while airlines were deemed an essential business and allowed to remain open, by April 2020 the number of passengers flying dropped by 92%, and by the end of the year domestic traffic was still down 50% while international traffic had fallen by 74% globally.⁴⁸

⁴⁴ Marsh LLC, <https://www.marsh.com/us/insights/research/business-insurance.html>.

⁴⁵ See for example Yale School of Medicine, <https://medicine.yale.edu/news-article/covid-19-is-here-now-how-long-will-it-last/> (suggesting COVID-19 might last “months rather than weeks”).

⁴⁶ Center for Infectious Disease Research and Policy (CIDRAP), *COVID-19: The CIDRAP Viewpoint*, p.6, https://www.cidrap.umn.edu/sites/default/files/public/downloads/cidrap-covid19-viewpoint-part1_0.pdf.

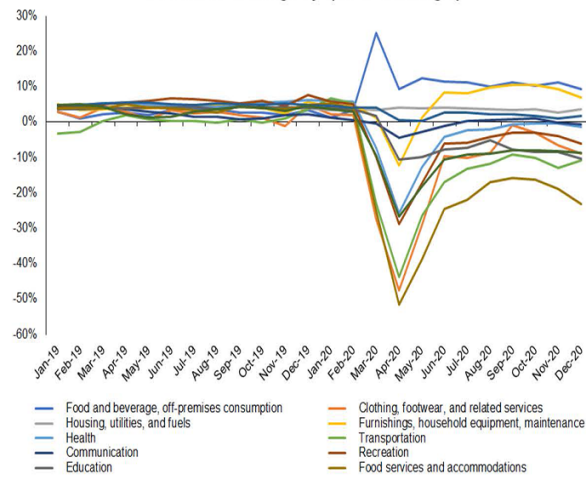
⁴⁷ Centers for Disease Control and Prevention, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6935a2.htm>; Most jurisdictions issued multiple orders during the early months of the pandemic. Alaska was the first state to end its stay-at-home order on April 24. Six jurisdictions did not issue a stay-at-home order or advisory. “Timing of State and Territorial Stay-at-Home Orders and Changes in Population Movement - United States, March 1-May 31, 2020, Center for Disease Control website. School closings also followed these orders and were considered short term. For example, California schools were initially shuttered for a period of two to four weeks. “Schools shut down in massive numbers across California amid coronavirus concerns,” Richard Cano and Jocelyn Wiener, March 13, 2020, California Matters website.

⁴⁸ United Nations, *Air travel down 60%, as airline industry losses top \$370 billion: ICAO*, <https://news.un.org/en/story/2021/01/1082302>.

Pandemic Losses Were Concentrated in Specific Sectors with Greater Harmful Impact to Minorities

Many of the initial past and prospective pandemic relief program proposals were extremely broad brush, applying to all economic sectors, in part to expedite relief and in part because it was unclear how the pandemic would evolve and which business sectors would be able to adapt. As COVID-19 losses have unfolded, it is now clear that the primary losses have been borne by businesses providing in-person services. The hospitality industry (food services and accommodations) has arguably been impacted most by the pandemic, even as economies are increasingly reopening.

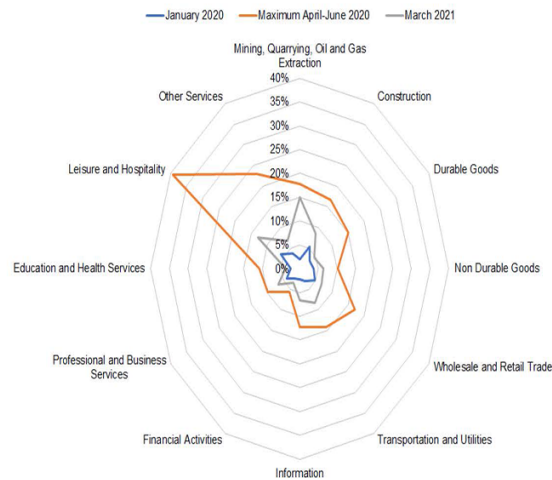
Personal Consumption Expenditures by Product Category (YoY Change)



Source: Bureau of Economic Analysis.

For most other sectors of the economy, there was an initial effect of the pandemic, but these sectors have been recovering rapidly and have either caught up to pre-pandemic activity levels or already surpassed them. The leisure and hospitality sector also suffered the greatest unemployment, peaking at roughly 40%. The following illustration shows unemployment rates by sector before the pandemic, at the height of the pandemic between March and June, and as of March 2021. While unemployment spiked in all sectors at the height of the pandemic, leisure and hospitality, as well as retail were affected disproportionately. In contrast, unemployment has almost returned to its pre-pandemic level in sectors such as education and health services, and financial services.

Unemployment Rates by Sector



Source: Bureau of Labor Statistics.

COVID-19 also had disproportionate impacts on racial minorities. While the number of active business owners in the United States dropped by 22% between February and April 2020, African-American owned active businesses dropped 41%, Latinx by 32%, and Asian business owner activity by 26%.⁴⁹ Women and People of Color are disproportionately represented in the leisure and hospitality sector (that suffered the greatest losses and unemployment).⁵⁰ Within the worst-hit sectors, workers in the lowest average wage and lowest average hour occupations (such as leisure and hospitality) were hit the worst.⁵¹

The implication for prospective pandemic solutions is that policymakers may wish to consider whether proposals should be tailored and targeted towards the sectors most impacted by pandemics -- those

⁴⁹ National Center for Biotechnology Information, U.S. National Library of Medicine, Fairlie R., *The impact of COVID-19 on small business owners: Evidence from the first 3 months after widespread social-distancing restrictions*, Journal of economics & management strategy, 10.1111/jems.12400. 27 Aug. 2020, doi:10.1111/jems.12400, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7461311/>.

⁵⁰ U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, HOUSEHOLD DATA, ANNUAL AVERAGES, 18. Employed persons by detailed industry, sex, race, and Hispanic or Latino ethnicity, <https://www.bls.gov/cps/cpsaat18.htm>.

⁵¹ Economic Policy Institute, *Low-wage, low-hours workers were hit hardest in the COVID-19 recession*, <https://www.epi.org/publication/swa-2020-employment-report/>; see also Florida State University News, *FSU study finds tourism industry pays lowest wages nationwide*, <https://news.fsu.edu/news/business-law-policy/2019/08/08/fsu-study-finds-tourism-industry-pays-lowest-wages-nationwide/> (Leisure and hospitality average weekly wages are \$311 vs. the U.S. average of \$710).

most vulnerable to a macroeconomic plunge in consumer demand for in-person services – which are also the sectors with the greatest number of low-wage earners (resulting in the greatest impact for each dollar of taxpayer support).

Business Continuity Protection Program (BCPP)

APCIA, the National Association of Mutual Insurance Companies (NAMIC) and the Independent Insurance Agents and Brokers of America (“the Big I”), in May 2020 proposed a new federal program to address prospective pandemic risk entitled the Business Continuity Protection Program (BCPP). The BCPP’s goal is to bolster the country’s economic resilience by providing timely and efficient financial protection and payroll support to impacted businesses in the event of a future declared public health emergency and a state-ordered business shutdown.

Under the proposal, the program would provide revenue replacement assistance to businesses, which could purchase up to three months of protection for up to 80% of payroll, benefits, and other necessary expenses. With so many Main Street businesses in crisis from the current pandemic, we have heard repeatedly from risk managers and the business community that this product must be affordable to achieve high take-up rates. Therefore, pricing for the product would be heavily subsidized.

There would be a simple, one-page electronic application which would establish eligibility for potential future revenue replacement payments based on historic revenue shown on previous tax returns.

The program would have a “parametric” trigger. Unlike the traditional insurance claims adjustment process, the parametric trigger would provide payments automatically upon the occurrence of certain events. Businesses would be required to establish up front what their likely revenue losses would be but would not have claims adjusted post-event. This greatly speeds the process of getting payments into the hands of businesses to provide immediate viability payments to protect businesses and ensure economic resiliency.

While APCIA still maintains that the basis of the BCPP remains the best of the proposals to establish a prospective pandemic protection program, we accept that our proposal (along with all of the others) will need to be updated in order to account for the lessons that we continue to learn from COVID-19.

For example, it would be impossible for the insurance industry to adjust millions or potentially tens of millions of business interruption insurance claims simultaneously in a future national pandemic – particularly since business interruption adjustment requires highly specialized forensic accountants. The BCPP addressed that limitation by adopting a parametric trigger designed to provide such payments based on a governmental action, i.e. a Presidential viral emergency declaration and a state-mandated closure. However, it is now apparent that significant COVID-19 losses occurred even in states and countries without government closures, suggesting that the trigger perhaps needs to be more related to precipitous declines in consumer demand for particular sectors.

Under the BCPP, revenue replacement assistance would be available to any interested firm in the U.S. All for-profit and not-for-profit entities are eligible without regard to size. The product would be distributed to businesses via state-regulated insurers, agents, and brokers. Businesses electing not to participate would be required to affirmatively opt out in writing and would certify their understanding that opting out bars them from eligibility for any federal assistance in the event of a pandemic-related shutdown. This feature is designed to encourage businesses to buy the product, thus providing greater protection to the economy as a whole and reducing federal disaster relief costs.

A second “excess” program could provide optional government assisted insurance coverage to businesses for losses not covered by the BCPP (i.e., risks other than business interruption). The precise lines of business to be included are still being discussed but would likely include event cancellation coverage. The excess program would also contemplate traditional state-regulated insurance products, with the risk being carried on insurers’ books but with a substantial federal backstop. For example: A restaurant with several locations could buy the 80% coverage under the BCPP and then purchase excess coverage through the private market for either a longer period of time beyond the three months contemplated in the program or for the remaining 20% not paid under the BCPP.

The insurance industry would be heavily involved in providing the BCPP product. In addition to playing a role in distributing the product to businesses by leveraging the industry’s existing infrastructure, insurers that chose to participate would also bear a portion of the risk for the excess program. Commercial reinsurers could also potentially provide reinsurance protection to the federal government to protect its obligations under the program. The BCPP can be further adjusted over time to incorporate additional private sector participation if capital providers become more open to allocating capital to broader communicable disease risks.

An analysis by the RAND Corporation of the various insurance-centric proposals concluded that the BCPP is the only proposal that would achieve a majority take-up rate and perform best for both small and large businesses “in terms of affordability, efficacy, and efficiency.” The Committee on Capital Markets Regulation came to a similar conclusion after comparing the proposals, suggesting that “the best course for policymakers may be to (i) establish a modest BCPP program to be quickly triggered at the onset of a pandemic; and (ii) supply any further government support as necessary through enhanced versions of the PPP and MSLP.”

Again, while we acknowledge that some of the lessons learned over the past year may require some reconsideration and amendment to certain aspects of the proposal, APCIA, NAMIC and the Big I continue to support the BCPP and believe that it contains many elements that are worthy of the careful consideration of lawmakers as they debate potential solutions to minimizing the economic impact of future pandemics.

Take-Aways and Conclusions

Global pandemics are uninsurable, and therefore, private insurance is not the answer to protecting against future economic downturns from pandemics. Nor has private insurance ever been used to provide a national employment support system for pandemic economic downturns.

Before considering future pandemic risk solutions, insurers urge policymakers to fully identify, analyze, and understand the specific pandemic problems that need to be solved. The vulnerabilities laid bare by the pandemic are both much broader than business continuity losses, but also much narrower in that pandemic losses have been very concentrated in certain sectors, particularly those reliant on providing in-person services that could exacerbate the risk of human viral transmission. One of the largest economic and social pandemic vulnerabilities is worker protection. Unemployment in the United States (and numerous other countries) during the pandemic spiked to the worst level since the Great Depression and worker payments comprised a very significant percentage of the COVID-related economic losses as many businesses mitigated their pandemic economic exposure by laying off employees. Women and minorities were particularly harmed by these terminations. While employment

levels have significantly recovered since the initial pandemic peak, it is unclear how much lasting residual dislocation will remain.

While the United States has been devastated by the ongoing pandemic, our country has also been able to economically recover much faster than many other regions around the world. Government economic support programs clearly had a positive impact. APCIA, NAMIC, and the Big-I designed the BCPP proposal in part by considering the lessons learned about the Paycheck Protection Program (PPP) and thinking through what improvements could be made to the PPP if the program could be established in advance with the advantage of hindsight. Congress was also able to adjust the relief provided through various government programs as lessons were learned during the current ongoing pandemic. That would not be as possible in a private insurance program where contracts are typically locked in for a year and are constitutionally protected from retroactive changes.

While private insurance is not a functional match to address most of the pandemic vulnerabilities and economic losses triggered by the spread of COVID-19, APCIA appreciates the opportunity to work with members of the Subcommittee to analyze and understand the current crisis and lessons learned, and to help identify and articulate the numerous problems and vulnerabilities that could be addressed. We thank the Subcommittee for holding this important hearing.

**RESPONSES TO WRITTEN QUESTIONS OF
CHAIRMAN MENENDEZ FROM ADENAH BAYOH**

Q.1. What would it mean to your business, your employees, and your community to have a safety net, be it an insurance product or Government program, that would cover payroll and other expenses next time we're faced with a pandemic or even a harsh 3rd wave of COVID?

A.1. Participation in a public-private pandemic risk insurance program that is both accessible and affordable would provide a level of confidence and assurance to myself and other small business owners across the country that there is a program in place to manage the risk of the pandemic or future pandemics. This would allow managers, workers, investors, and employers alike to confidently pursue economic activity and business operations without fear that those efforts will wipeout or diminish in the face of a future pandemic.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR SINEMA
FROM ADENAH BAYOH**

Q.1. At the beginning of the pandemic, what were the immediate financial needs that you had to meet, and what did it feel like to carry that burden?

A.1. The immediate need was to make sure that all my employees were well and able to keep food on their tables and a roof over their heads. This is when I made the decision to continue paying my employees as if they were still working in the restaurants.

Q.2. Were you able to benefit from the PPP? How long did it take you to receive your funding, and did you encounter delays or bureaucracy?

A.2. Yes, I benefited from PPP; however, we were rejected by banks that we do not do banking with. It was definitely not a quick or easy process. After so many rejections, we finally found a bank willing to help; however, there were still many channels we had to go through to finally receive the funds 2–3 months later.

Q.3. I know you made a decision early on that you would keep as many of your employees on payroll as possible. I think that is admirable. Why did you make that decision, and what did that mean to your employees and their families?

A.3. I made this decision because the number one priority during the shutdown was to make sure that my employees were able to keep food on the table and a roof over their heads.

Q.4. I am leading a group of Democrats and Republicans that are designing a partnership that would allow you to purchase affordable private insurance to support your business in a future pandemic. Would you want to purchase this coverage?

A.4. Yes, but only if it is accessible and affordable.

Q.5. And if so, what would be the essential expenses that you would need covered?

A.5. Payroll and operating expenses.

Q.6. When you think about insurance as a small business owner, what does that mean to you?

A.6. Insurance is an essential tool for hedging risk that allows a small business owner to pursue his or her dreams and create jobs.

Q.7. What is the role of the insurer in helping your business succeed and create jobs?

A.7. Insurers add value for small policyholders not only by pooling the risk but by also bringing expertise to the policyholder to help improve business practices for mitigation and to help shape the financial product to meet his/her particular needs. It also provides security to future employees who know that in time of need our insurance company will protect their job security by providing funds to them if some tragedy strikes again which causes another state-wide shutdown.

Q.8. What would it mean to you to have insurance and know those essential expenses were covered?

A.8. As a small business owner, the ability to participate in a pandemic risk insurance program that is both accessible and affordable would provide me with a level of confidence and assurance that my business would survive a future pandemic and my employees would be protected.

Q.9. What would that enable you to focus your time and energy on?

A.9. It would enable me to grow my business, create jobs, and continue to donate my time and assistance to helping the communities that we serve.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR HAGERTY FROM ADENAH BAYOH

Q.1. We heard testimony comparing pandemic risk insurance to a number of existing federally supported insurance programs. As pandemic risk insurance is debated and considered, what are the top lessons that we can carry over from other insurance programs to a program that covers pandemic risk?

A.1. Programs which leverage both expertise and risk-taking capacity of the private insurance industry have generally been the most successful.

Flexibility in coverage design is essential in a complex economy where insurance needs vary widely by industry and sector.

Q.2. One of the key successes of the Paycheck Protection Program was the speed with which private sector lenders distributed hundreds of billions of emergency funds to millions of struggling small businesses all across America during the height of the pandemic in 2020. Many small businesses faced working capital constraints that made getting emergency funds quickly critical to their survival. As pandemic risk insurance is debated and considered, what design features can help ensure that under insurance that covers pandemic risks, claims are paid out as expeditiously as possible?

A.2. The private insurance industry can be extraordinarily efficient in distributing claims payments following a catastrophe. For example, the response to every major hurricane demonstrates this effi-

ciency. Certainly insurers, more than bankers, are geared to exactly that sort of claim payment scenario. The issue here is not the distribution of loss payments, rather it is the ability of the insurance industry's capacity and willingness to underwrite this type of risk going forward.

As the BCC recommends a successful program (in a major pandemic resulting in lock-down or reduced business activity situation) would need to utilize a parametric style product in order to process initial claim payments on a timely basis without prior proof of loss. Accordingly, the BCC incorporates the parametric policy feature in its proposal.

**RESPONSES TO WRITTEN QUESTIONS OF
CHAIRMAN MENENDEZ FROM EVAN G. GREENBERG**

Q.1. Chubb's proposal consists of two elements—a program for small businesses that would provide an immediate payment when a pandemic is declared and then an indemnity-based plan for medium and large businesses, which you define as businesses with over 500 employees.

Can you elaborate on why you propose a differentiated approach for small businesses versus larger ones?

A.1. The COVID-19 pandemic has shown us that pandemics do not impact all businesses equally. When the economy shuts down, small businesses are generally at much greater financial risk than larger businesses and may face immediate closure because they have more limited financial resources, less liquidity, and less access to capital, credit, and risk-management mechanisms than larger businesses. Small businesses, therefore, require different types and levels of assistance to survive a pandemic. Chubb's proposal would provide small businesses with resources to cover up to 3 months of payroll and other expenses with parametric claims payments distributed quickly after the declaration of a pandemic.

For medium and large businesses, a market-oriented approach is more appropriate. Medium and large businesses generally have more financial resources and options than smaller businesses; it makes sense for these businesses to pay an appropriate risk adjusted price to insurers for their exposure and to the Government for the use of the Federal balance sheet and assumption of the tail risk.

Q.2. Why did you set the dividing line at 500 employees?

A.2. A critical component of the Chubb proposal is addressing the differing needs of small businesses vs. medium/large businesses. Therefore, the Chubb proposal distinguishes small businesses from medium/large businesses as mentioned above. The 500-employee cut-off is the figure the Labor Department uses to define SMEs and was used in the PPP program. Another factor is insurance buying sophistication. Many insureds with over 500 employees also employ risk managers as part of their finance teams to help manage their insurance buying.

Q.3. Are there other metrics we should consider if we pursue a tiered approach to a pandemic risk insurance program?

A.3. Our proposal distinguishes between small businesses and medium and large businesses. We have also made suggestions regarding when a policy would be triggered, but Congress could explore appropriate triggers to ensure payments are made solely to those in need to reduce the moral hazard.

Q.4. One effect we clearly saw from this pandemic is that not all industries were affected equally.

Are there certain lines of insurance or industries that will see cost increases or capacity retrenchment if Congress does not establish a prospective pandemic risk insurance program?

A.4. Typically following an event of this magnitude insurance markets respond by altering terms and conditions and limiting capacity. Business interruption, event cancellation and film production insurance lines have produced some of the largest Covid-related losses for the industry. As insurers have reassessed their risk tolerance, many have reduced their coverage or exited markets altogether. Coverage for these lines, therefore, has become generally less available and less affordable.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SCOTT FROM EVAN G. GREENBERG

Q.1. Even though the U.S. has turned the corner on its recovery, it's important to remember that the pandemic is still ongoing and each month brings a wealth of new data and insight to consider. For this reason, I'm hesitant for Congress to rush to put a permanent pandemic solution in place when the story is still only half written.

Since Chubb initially released its pandemic risk framework last summer, how has the changing recovery landscape influenced your perspective on the way that those policies and programs should be structured?

A.1. The COVID-19 pandemic has lasted longer than many of us assumed in the spring of 2020, and we have learned a great deal about how a pandemic of this magnitude affects the economy. We should take the lessons learned from this pandemic to better manage the risk going forward. Managing a pandemic by shutting an entire economy down for an extended period of time and spending trillions of dollars with no foresight or planning is not a solution for addressing similar crises in the future, but we have learned from this experience. We can restrict the time and extent of shutdowns with a much better health care response early on, manufacture and use of PPE, masking and social distancing, and coming to grips with the notion of digital contact tracing and isolating, for example. If we can restrict the time the economy is shut down, then we restrict the overall amount that the economy suffers and the cost.

Q.2. With continued influx of new information related to the impact of COVID-19 emergency and subsequent recovery, does your organization still strongly believe in the necessity of a formal federally backstopped insurance program?

A.2. We believe a public-private pandemic insurance program would be beneficial in helping to address some of the economic dev-

astation caused by pandemics and the business closures that Governments mandate to fight the spread of the disease. Even if it is not a total solution, a public-private partnership that creates a workable and effective pandemic risk insurance program is better than an ad hoc approach that relies on shutting down the economy for months at a time.

Q.3. If so, can you discuss the specific benefits that a public-private approach—broadly speaking—would afford policyholders, participating carriers, and taxpayers relative to the preservation of the existing environment?

A.3. Insurance industry involvement would help assess and absorb pandemic business interruption risk onto its balance sheet, taking some, albeit a limited amount, of the financial burden off the Government; encourage risk mitigation and provide risk management tools to businesses; and use its administrative infrastructure for policy issuance, premium collection, and claim settlement. Chubb's program would combine the insurance industry's risk insight and experience with the Government's balance sheet, providing the foundation for an affordable, efficient, liquidity backstop for small businesses and a market-based program for larger businesses. A public-private partnership would provide greater certainty to businesses so they can keep employees on the payroll and pay their bills. Ultimately, private sector participation will encourage the development of direct and secondary markets, which can reduce the Government's financial burden over time. The Federal Government's role would be to assume the tail risk, thus enabling the private sector to limit its financial exposure. Without that, pandemic risk is uninsurable by the private sector because of the potential magnitude of the loss.

Even if it is not a total solution, a public-private partnership that creates a workable and effective pandemic risk insurance program is a huge improvement over an ad hoc approach that relies on shutting down the economy for months at a time.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SINEMA FROM EVAN G. GREENBERG

Q.1. What is the purpose of insurance? And what value do insurers add to the small businesses and major employers with whom they do business?

A.1. The purpose of insurance is to reduce financial uncertainty for individuals and businesses and make accidental loss manageable. Businesses, Governments, nonprofits, and individuals (policyholders) pay premium to an insurance company to protect them from various types of financial loss when a specific event, covered by the insurance policy, occurs. This insurance protection helps spread the risk and makes financial losses more affordable. This is done by pooling the risks of many individuals and business entities and transferring them to an insurance company with the expectation that all losses do not occur at the same time. In some cases, insurance is required by the Government or by others you are doing business with or buying services from.

Q.2. Why should addressing gaps in insurance coverage be an important priority for businesses of all sizes?

A.2. Coverage gaps expose businesses to risk of loss that can cause significant financial harm. Depending upon the type of risk, and the financial exposure, the gap in coverage could be catastrophic, resulting in bankruptcy or closure. Insurance provides a mechanism to help plan for and mitigate some of those risks.

Q.3. How do you assess the current state of the commercial insurance market? To what extent did the pandemic cause or accelerate hardening in the market, and why?

A.3. Commercial property and casualty insurance is currently experiencing “hard” or firming market conditions where rates are increasing for most lines of business. Rates are approaching or in some cases have reached a state of adequacy for insurers to achieve a reasonable risk-adjusted rate of return after many years of inadequate price conditions. The firming conditions have been brought on by increased losses from a more hostile loss environment, a heightened perception of risk and, again, many years of inadequate pricing of insurance due to competitive market conditions. Losses related to the global pandemic, which the industry estimates will exceed \$80B or more and will be the single largest loss event in history, have contributed to the hard market.

Q.4. Notwithstanding explicit exclusions of pandemic-related damages, do you assess that insurance coverage for business interruption, event cancellation, and film production is more or less available than it was prior to March 2020? Do you assess that these lines of insurance coverage are more or less affordable? Please elaborate and justify your response.

A.4. Business interruption, event cancellation and film production insurance lines have produced some of the largest Covid-related losses for the industry. As insurers have reassessed their risk tolerance, many have reduced their coverage or exited markets altogether. Coverage for these lines, therefore, has become more limited and more expensive.

Q.5. Assuming a particular line of insurance can be written, why is it important for insurers to bear some level of risk in public-private partnerships?

A.5. Private sector participation can be helpful to assess the amount and extent of pandemic losses, enabling better understanding of the risk and the cost to policyholders. In addition, the private sector can absorb pandemic business interruption risk onto its balance sheet, taking some, albeit a limited amount, of the financial burden off the Government. Further, by pricing risk appropriately, the insurance industry encourages risk mitigation by policyholders, who will take steps to reduce their risk to reduce premiums. The industry may also provide policyholders with risk management tools for the same reason.

Q.6. How do risk management incentives change for insurance companies when they are required to bear some level of risk as part of a particular insurance program, in contrast to insurance programs in which they would bear no risk at all? What implica-

tions would this have in ensuring effective program administration and reducing waste, fraud, and abuse?

A.6. Chubb believes that the insurance industry can play a meaningful role in providing future pandemic risk coverage that would protect U.S. businesses small to large. We should not merely act as administrators of a Government program as some have suggested—that diminishes us as an industry and our role in risk mitigation. Risk mitigation is critical to limiting the size and scope of losses. Additionally, when an organization has a financial interest, they may be a better steward of funds and utilize existing fraud teams to help reduce instances of abuse.

Q.7. Setting aside existing litigation, do you believe as a policy matter that business interruption insurance can or should cover pandemic-related damages? Why or why not?

A.7. Pandemics are not limited to a specific geography, time period, or risk class, but instead can affect entire economies, almost every business, and most of the population at the same time, resulting in losses so great that the event is uninsurable by the insurance sector alone. The industry has not and could not charge an adequate premium to cover such a risk, and more important, the industry does not have the balance sheet capacity to do so. Our balance sheets are finite and the risk, for all intents and purposes, is infinite. Insurance regulators and the industry have recognized this fact and that is why business interruption coverage against a pandemic has not been broadly available. The only way pandemics can be covered is under a public-private partnership, whereby the Government assumes the tail risk, thus enabling the private sector to limit its financial exposure.

Q.8. There is concern that an inability to obtain adequate business interruption, event cancellation, and film production insurance could result in significant off-shoring of U.S.-based film production. If you do not believe these lines of coverage should cover pandemic-related damages, how would you propose to address this issue and prevent off-shoring and loss of U.S. jobs?

A.8. This is a broader issue than insurance coverage and defer to the affected industries to comment as to whether Congress should address the effect of pandemics on off-shoring of industries, as some other countries have done.

Q.9. How does your company's support of a public-private partnership to respond to future pandemics align with your company's values, mission, and belief in the power of insurance?

A.9. Chubb's mission is to provide superior client value. We serve our policyholders not only through careful underwriting and pricing, and fair claims payment, but by working with them to help them get the coverage they need and mitigate risk where possible. Certain circumstances, like pandemics are too difficult for the private market to handle on its own, therefore the industry would need to the Federal Government to assume a portion of the risk. Participation in a public-private partnership for pandemic risk falls right within that mission.

Q.10. Suppose Congress were to establish a public-private partnership to respond to future pandemics, in which participating insur-

ers were responsible for program administration. A future pandemic may require insurers to rapidly scale up personnel, including claims adjusters and customer service representatives, to respond to a sudden and large volume of requests. What would be your plan to respond to this challenge, and how would you ensure effective program administration and sufficient capacity under difficult and fluid circumstances?

A.10. An important feature of the BIP (small business plan) in Chubb's proposal is the parametric claims payment, which would utilize technology to facilitate claims payments. This parametric approach would not need individual claims adjustment because it will pay automatically when key triggers are met.

Insurers have the institutional knowledge and capacity to also manage claims for catastrophic events, including a large volume of claims and large complex claims. This provides us with the experience necessary to manage claims for medium and large business in connection with PanRe, which would utilize a traditional claims adjustment process.

Q.11. Do you believe insurers can play a role in reducing the severity of pandemics by providing incentives for businesses to take appropriate mitigation measures?

A.11. Yes. That is one of the core benefits of our proposal. For example, there is a short waiting period in the Chubb program prior to claims payments; this is designed to encourage mitigation. For larger businesses, proper pricing of risk encourages risk mitigation by policyholders, who will take steps to help reduce their risk to reduce premiums.

Q.12. Your testimony speaks to the importance of identifying a pandemic risk-sharing solution for small businesses, a priority I share. Specifically, you indicate insurers would "participate in the first wave of losses up to a certain amount and the balance of the insured loss would be paid by the Government. To accomplish this, the insurance industry would receive an adequate risk adjusted rate for its portion of the risk and the Government would absorb the cost of its portion of the risk." What steps should policymakers take to determine the adequate risk adjusted rate?

A.12. When Chubb put together our proposal, our starting point was a single rate based on the payroll period being covered and a potential multiplier to reflect additional business expense.

Insurers can assist with modeling and determine pricing depending on specific parameters. It's important to note that insurance rates are currently regulated under State insurance law. The States require that rates are not "excessive, inadequate, or unfairly discriminatory." To that end, most insurance rates are filed with the State insurance departments, which review the proposed rates for compliance with the law.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR HAGERTY FROM EVAN G. GREENBERG

Q.1. We heard testimony comparing pandemic risk insurance to a number of existing federally supported insurance programs. As pandemic risk insurance is debated and considered, what are the

top lessons that we can carry over from other insurance programs to a program that covers pandemic risk?

A.1. While none of the current Federal programs (NFIP program, crop insurance or TRIA) are perfect, each provides policyholders and the insurance markets certainty and stability, as well as assisting with affordability and availability of insurance where otherwise there would be limited coverage or high prices.

Q.2. One of the key successes of the Paycheck Protection Program was the speed with which private sector lenders distributed hundreds of billions of emergency funds to millions of struggling small businesses all across America during the height of the pandemic in 2020. Many small businesses faced working capital constraints that made getting emergency funds quickly critical to their survival. As pandemic risk insurance is debated and considered, what design features can help ensure that under insurance that covers pandemic risks, claims are paid out as expeditiously as possible?

A.2. Our proposal is designed specifically to address the liquidity needs of small businesses. As noted in Chubb's testimony, the COVID-19 pandemic has shown us that when the economy shuts down, small businesses are generally at much greater financial risk than larger businesses and may face immediate closure because they have more limited financial resources, less liquidity, and less access to capital, credit, and risk-management mechanisms than larger businesses. Small businesses, therefore, require different types and levels of assistance to survive a pandemic. That is why our proposal would create the Pandemic Business Interruption Program for small businesses. The BIP would provide small businesses with an immediate infusion of cash (after a short waiting period designed to encourage some level of mitigation) after the declaration of a pandemic. The amount of the claims payment would be based on preset multiples of payroll (up to 3 months) at the time of policy purchase and paid according to a simple parametric structure, which would eliminate the need for complex and time-consuming adjustment of individual claims. With the BIP, therefore, small businesses know in advance they have cash to cover payroll and other expenses to maintain businesses in the event of a shut-down, and they get that cash quickly.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SINEMA FROM ROBERT HARTWIG

Q.1. What is the purpose of insurance? And what value do insurers add to the small businesses and major employers with whom they do business?

A.1. The purpose of insurance is to pool, spread, and diversify risk so that the losses of the few are paid by the premiums of the many. Small businesses are vulnerable to innumerable risks that can potentially lead to material adverse economic consequences, some large enough to destroy the business itself. Appropriate types of insurance with adequate limits of coverage can greatly reduce the likelihood that businesses will suffer significant adverse financial consequences from many of these risks.

Q.2. Why should addressing gaps in insurance coverage be an important priority for businesses of all sizes?

A.2. Gaps in coverage can lead to serious or irrevocable financial harm to businesses—up to and including the bankruptcy of the business. Eliminating gaps immediately upon identification is critical. For example, a business that discovers it does not have flood coverage after a hurricane watch or warning is announced may not be able to purchase the coverage at all until after the storm has passed. The same is true for cybercoverage and insurance for many other types of risk.

Q.3. How do you assess the current state of the commercial insurance market? To what extent did the pandemic cause or accelerate hardening in the market, and why?

A.3. The commercial insurance market today can generally be characterized as “firm” or “hard.” This implies that rates are generally rising and terms and conditions for coverage are generally narrowing. That said, coverage for the vast majority of risks is available, in the limits needed, albeit at a higher premium and with programs potentially requiring the participation of more insurers than in the past. The pandemic had a mixed impact on the commercial insurance market. Concern over litigation led to a tightening of the business interruption market and workers compensation insurers have paid hundreds of millions of dollars in claims for workers sickened, quarantining or dying from COVID if contracted in an occupational context. At the same time, there were fewer occupational injuries overall due to widespread closures and there were fewer motor vehicle accidents involving commercial vehicles, especially during the early stages of COVID, as driving activity was reduced. The pandemic also led the Federal Reserve to sharply reduce interest rates, lowering the return on insurer invested assets. All else equal, lower interest rates imply less investment income—and less investment income, all else equal, implies higher insurance premiums (as less investment income is available to pay claims).

Q.4. Notwithstanding explicit exclusions of pandemic-related damages, do you assess that insurance coverage for business interruption, event cancellation, and film production is more or less available than it was prior to March 2020? Do you assess that these lines of insurance coverage are more or less affordable? Please elaborate and justify your response.

A.4. Business interruption (BI) coverage is just as available today as it was before the pandemic—for the types of risk it has always been intended to cover. Specifically, there is ample capacity for BI losses stemming from direct physical loss or damage to covered property from a covered cause of loss (e.g., fire, wind, theft, etc.). As detailed in my testimony, BI losses stemming from reduced demand not arising from direct physical loss or damage to insured property have never been covered. To the extent BI coverage is more expensive today than prior to the pandemic, the increase in costs is largely attributable to record or near-record catastrophe losses in the United States over the past several years. Event cancellation and coverage for film production are arguably less available today—or are more expensive—than prior to the pandemic.

That said, many live performance events are resuming across the United States, as is domestic film production. It is likely that both industries will need to make material investments in risk management (e.g., mandating vaccines for those who work on sets/mandating vaccines and/or masks for concertgoers) in order to reduce risk and increase the insurability of this category of risk. The attached *Wall Street Journal* article (published 7/29/21) provides some sense of the urgent need for the most basic of risk management in the film industry.¹ As COVID recedes and sound risk management practices become the norm, more insurance capacity will flow into this market.

Q.5. Assuming a particular line of insurance can be written, why is it important for insurers to bear some level of risk in public-private partnerships?

A.5. My testimony summarizes the criteria necessary for the insurability of risk. Business interruption (BI) losses from pandemic events violate all those criteria and are, in my assessment, uninsurable in the private sector. Generically, public-private partnerships can be designed with varying levels of risk sharing on the part of insurers—from zero risk to a significant share of the risk. Assuming that the risk can actually be underwritten (i.e., criteria outlined in my testimony are satisfied) and that the Government allows actuarially sound rates to be charged, then a sharing of loss between Government and private insurers can lead to an efficient outcome. Efficiency implies that, over time, there is minimal burden on taxpayers, insurers can earn a risk appropriate rate of return and adequate capacity is available in the marketplace. An efficient market also implies that there is an alignment of incentives such that insurers price to risk, providing policyholders with incentives to mitigate against loss. Ultimately, policyholders benefit from reduced losses, insurers benefit from lower claim payouts and taxpayers benefit from reduced exposure to loss.

Q.6. How do risk management incentives change for insurance companies when they are required to bear some level of risk as part of a particular insurance program, in contrast to insurance programs in which they would bear no risk at all? What implications would this have in ensuring effective program administration and reducing waste, fraud, and abuse?

A.6. The answer to this question is partially addressed in my response to Question 5. For risks that meet the criteria for insurability, and which are priced in an actuarially sound manner, significant incentives to promote risk mitigation can be implemented. The “efficient outcome” referred to in my response to Question 5 also implies that policyholders, insurers and Government have a mutual interest in effective program administration and minimizing waste, fraud, and abuse.

Q.7. Setting aside existing litigation, do you believe as a policy matter that business interruption insurance can or should cover pandemic-related damages? Why or why not?

¹ Flint, J., and Watson, R., “Hollywood Productions Halted as COVID-19 Emerges on Sets Again”, *Wall Street Journal*, July 29, 2021. Accessed August 5, 2021, at: <https://www.wsj.com/articles/hollywood-productions-halted-as-COVID-19-emerges-on-sets-again-11627551001?page=1>.

A.7. As stated in my testimony business interruption losses arising from pandemics are fundamentally uninsurable in the private insurance sector. Forcing insurers to provide a product that for sound business reasons (e.g., the threat of insolvency from massive losses) they themselves have determined not to bring to market would create a systemic risk within the commercial insurance sector, potentially resulting in less coverage and higher prices for tradition BI risks and broadly increasing the threat of insolvency. Also as stated in my testimony, BI is designed to provide coverage if and only if there is direct physical loss or damage to covered property from a covered cause of loss. Insurers have asserted and courts have affirmed that COVID-19 does not meet this condition. In addition, because much of the loss of income to businesses was due to the fact that consumers simply withdrew from commerce, the problem is more fundamentally related to changes in demand in the macro-economy. Stabilization policies designed to mitigate the impact of economic downturns are now and have always been the exclusive domain of Government. The appropriate policy response is the application of fiscal and monetary policy, not an obligation that private insurers bring a new insurance product to the market.

Q.8. There is concern that an inability to obtain adequate business interruption, event cancellation, and film production insurance could result in significant off-shoring of U.S.-based film production. If you do not believe these lines of coverage should cover pandemic-related damages, how would you propose to address this issue and prevent off-shoring and loss of U.S. jobs?

A.8. As noted in my response to Question 4, many live performance events are resuming across the United States, as is domestic film production. While disruptions will continue for some time, it's important to understand that disruptions exist around the world, not just in the United States. Hence, offshoring of production would not solve the problem. The solution to both reducing disruptions in production and restoring lost insurance capacity will be driven by the implementation of—and stringent adherence to—sound risk management practices. Film producers will need to make material investments in risk management (e.g., mandating vaccines for those who work on sets) in order to reduce risk and increase the insurability of this type of risk. The attached *Wall Street Journal* article (also referred to in my response to Question 4) provides some sense of the urgent need for the most basic of risk management in the film industry. According to the article, “uncertainty over vaccination protocols” is one of several factors disrupting film production. The National Executive Director of the Screen Actors Guild is quoted in the same article stating that “For people who don’t have a legitimate religious or medical reason for exemption, they’re simply going to have to make a decision for themselves whether they wish to work for that employer who has a mandatory vaccination policy.” As COVID recedes and sound risk management practices are more widely adopted, additional insurance capacity will flow into this market.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR HAGERTY
FROM ROBERT HARTWIG**

Q.1. We heard testimony comparing pandemic risk insurance to a number of existing federally supported insurance programs. As pandemic risk insurance is debated and considered, what are the top lessons that we can carry over from other insurance programs to a program that covers pandemic risk?

A.1. The primary lesson to be learned is that any program that does to not price risk on an actuarially sound basis will likely become a burden on the taxpayer and will do little to encourage mitigation against risk. Though there have been some recent reforms, this has been the case for more than 60 years for the National Flood Insurance Program (NFIP). The NFIP has run up enormous taxpayer funded deficits while also providing insufficient incentives to discourage development in flood-prone areas and/or encourage mitigation.

Q.2. One of the key successes of the Paycheck Protection Program was the speed with which private sector lenders distributed hundreds of billions of emergency funds to millions of struggling small businesses all across America during the height of the pandemic in 2020. Many small businesses faced working capital constraints that made getting emergency funds quickly critical to their survival. As pandemic risk insurance is debated and considered, what design features can help ensure that under insurance that covers pandemic risks, claims are paid out as expeditiously as possible?

A.2. I testified that after analyzing the efficacy of established, new and expanded Government programs employed to combat the negative economic consequences of the COVID-19 pandemic, the PPP can be considered reasonably successful at delivering large sums of relief rapidly. Though adjustments can and should be made to the PPP (e.g., expanding the network of banks through which PPP funds can be accessed), virtually every small business in America was eligible to participate. For an insurance program to be similarly successful, virtual all American small businesses would need to participate and pay a risk-appropriate premium—likely for many years, if not decades. It is likely that initial take-up rates for such coverage will be modest-to-low, with take-up rates diminishing each successive year. In other words, as COVID-19 recedes into history, fewer businesses will purchase coverage—viewing the likelihood of another pandemic occurring anytime soon as remote. Take-up rates could be increased by (i) making the purchase of such coverage mandatory, or (ii) subsidizing the premium. The former is likely to be unpopular with the business community while (ii) will impose an ongoing cost to taxpayers. Take-up rates will also be reduced by “moral hazard” effects. In this context, moral hazard refers to the perception or belief by business owners that Federal aid will be forthcoming irrespective of their insurance purchase decision. That belief will deter the purchase of insurance.

**RESPONSES TO WRITTEN QUESTIONS OF
CHAIRMAN MENENDEZ FROM L. CHARLES LANDGRAF**

Q.1. There's clearly a divergence between those who believe we need an insurance-based product and those who believe the Federal Government is better placed to provide these services.

From a policyholder perspective, why does the Business Continuity Coalition prefer a public-private insurance solution instead of an entirely Government aid program even though both may be able to provide the same amount of financial relief to a business?

Why not suggest Congress make PPP permanent?

A.1. The Business Continuity Coalition urges Congress to enact a public-private insurance solution instead of an entirely Government aid program to address pandemic risk protection going forward. There are several compelling reasons to favor a public private insurance solution over a purely Government aid program. Indeed, at its best a Government aid program would address only one aspect of the multidimensional protection gap that has been exposed, and in important ways exacerbated, by the COVID-19 pandemic. On the other hand, a public private insurance program, modeled in key respects on the Terrorism Risk Insurance Program (TRIA), would provide the flexibility for insurers and their business policyholders to fashion insurance coverage solutions to address specific needs of particular industry sectors and business. Reasons why a public-private insurance solution is preferable to an entirely Government aid program:

1. The Government-only revenue-replacement proposals (e.g., APCIA/NAMIC "BCPP") might provide relatively rapid parametric pay-outs of a limited benefit in the next pandemic but such proposals
 - assume a year-on-year reference period which does not fit new, growing, or project-specific enterprises which have their own risk-protection needs (esp. event cancellation, film and television production, and others);
 - in other ways are more rigid than insurer-to-customer policy formation;
 - fail to marshal any private risk capital; and
 - do nothing to address the new lack of pandemic coverage in other lines of insurance such as general liability (GL), D&O, and employment practices liability (EPL), or the need for capacity support in mandated lines such as workers compensation (WC).
2. Business owners and nonprofits overwhelmingly would prefer to have present insurance products to protect their ongoing operations rather than access to a future Government benefit. In a response to a membership survey earlier this year by the Risk & Insurance Management Society, over 90 percent of responding risk managers said they would prefer to purchase pandemic insurance through their broker or agent. Many larger businesses and nonprofits will need to build additional layers of protection above any Government-defined benefit. This would be facilitated and more likely to provide appropriate

protection if the underlying layer itself is an insurance policy rather than a Government benefit entitlement.

3. The most successful Government-supported property-casualty insurance programs have generally been structured as private insurance with Government reinsurance or tail protection such as TRIA, the Federal Crop Insurance Program (FCIP) and even the WW II-era War Damage Corporation (WDC), which initially provided Government-backed “enemy attack” insurance but very quickly evolved into a public–private risk-sharing arrangement. It is important to utilize not only the insurance sector’s distribution and claims handling skills but also their knowledge and skill in risk analysis and underwriting expertise. Both Chubb and Zurich have been eloquent in their articulation of the substantive contribution which the insurance sector can bring to address this problem and why that only is effective if they also participate in the risk sharing.
4. Permanence, or at least indefinite or long-term duration, is desirable—indeed essential—for this insurance program. The Federal Crop Insurance Corporation and the Commodity Credit Corporation are current examples of successful long-term programs on which a Pandemic Reinsurance Corporation could be modelled.

Q.2. The Business Continuity Coalition’s proposal is the only proposal that was discussed at the hearing that would require insurance companies to participate in the program.

Why do you believe mandatory participation is necessary?

A.2. Private property casualty insurers similarly did not initially offer or want mandatory participation in what became the TRIA program following September 11th. However, the mandatory participation element of that program was soon accepted by both insurers and their State solvency supervisors and the very high take-up rates which continue to be obtained nearly 20 years later are a testament to the success of that mandatory feature and serve to widely distribute that risk as well as keep the insurance industry engaged in the management of that systemic risk to the benefit of society as a whole. The insurance sector’s response to the pandemic risk has been characterized by market observers as a “full allergic reaction” to the peril, including precipitous withdrawal from lines of coverage (e.g., GL, EPL, D&O) where large-scale pandemic-related losses have not been reported (unlike the disputed business-interruption line). To achieve market stabilization, as was achieved for terrorism risk insurance after an initial precipitous withdrawal in 2001–2, requires a similar approach here. Initial take-up rates, which are critical to risk distribution and program success, would not be achieved (for lack of access) without mandatory offers from insurers. It should be kept in mind that the mandatory participation being proposed here is at most a “soft” mandate, in that it only requires an insurer to offer to cover the peril within a policy (in a relevant line of business) that the insurer is otherwise already proposing to issue. It does not mandate an offer where there is no policy relationship. The insurer and policyholder (and intermediary) remain free in most respects to shape the coverage and to agree,

subject to State regulation, the pricing. TRIA proved the model's soundness. Indeed, the mandate which BCC propose here is even "softer" than TRIA's because insurers would be given an option to avoid direct coverage by alternatively supporting a nonrecourse joint underwriting facility (similar to the California Earthquake Authority).

Q.3. One issue we'd need to address in any solution is how to ensure a pandemic insurance product is accessible and affordably priced so that we have widespread adoption among the business community. That could help balance the risk pool to ensure that the program could cover losses that may be restricted to one part of the country or perhaps a particular industry where social distancing or other preventative measures are hard to implement.

What are your estimates of take-up under your proposals?

What is the minimum take-up rate that would be needed to cover the claims your plans envision?

A.3. BCC agrees that accessibility and affordability are critical to widespread adoption by the business community. The TRIA-styled mandatory offer (see above discussion) is intended to ensure accessibility. BCC has not proposed any form of price control or regulation at this time. As with TRIA, BCC proposes that State rate supervision (or not) remain in place, subject to any transition rule to enable insurers to comply with the offer mandates promptly. Affordability is addressed through the substantial reinsurance support to be provided by the Federal Government (95 percent, or more if the insurer also applies for stop loss-protection). BCC proposes that the Federal reinsurance be provided to property-casualty insurers (and joint underwriting facilities) without cost at least for an initial "economic recovery period" (5-years subject to reset) to allow further analysis of the forward-looking pandemic risk and economic modelling in the affected lines of insurance. The surveys by RIMS and other BCC member association reflect a widespread and comprehensive interest in purchasing coverage across industries and sectors of the economy. We would be pleased to remain in touch with the Committee as BCC collects more data and if possible, secures modelling for the potential take-up rates.

Q.4. One effect we clearly saw from this pandemic is that not all industries were affected equally.

Are there certain lines of insurance or industries that will see cost increases or capacity retrenchment if Congress does not establish a prospective pandemic risk insurance program?

A.4. BCC believes that there has already been retrenchment, indeed withdrawal, from the pandemic (or viral infection/communicable disease) risk virtually across the board in commercial property and casualty lines of insurance except where prohibited by State law (e.g., mandatory coverage in workers compensation). According to the RIMS survey cited above, 98 percent of responding risk managers reported that pandemic coverage is simply unavailable in the marketplace. And this is not only in the business interruption line but also most liability lines as well as contingency lines of insurance such as event cancellation and film and television production packages. Where limited coverage is still available, surveys by RIMS, the National Restaurant Association, NAM,

and other BCC members, as well as the market reports by insurance brokerage firms and rating agencies—show that terms of coverage have tightened, limits have been reduced, deductibles raised as well as significant price increases experienced. For example, as early as April 2020, D&O insurers were reacting, in an already hard market with an “almost unprecedented” imposition of more restrictive terms, cuts in capacity and rate increases.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR SCOTT
FROM L. CHARLES LANDGRAF**

Q.1. Even though the U.S. has turned the corner on its recovery, it's important to remember that the pandemic is still ongoing and each month brings a wealth of new data and insight to consider. For this reason, I'm hesitant for Congress to rush to put a permanent pandemic solution in place when the story is still only half written.

Since BCC initially released its pandemic risk framework last summer, how has the changing recovery landscape influenced your perspective on the way that those policies and programs should be structured?

A.1. TRIA was enacted without Congress having any detailed modelling or fine-tuned estimates of the worst-case cost of the program that was being authorized. Similarly, Congress should not now fail to act because models and detailed estimates of hypotheticals are not yet available. Many benefits of the proposal—immediate economic stimulus through business confidence—will never be realized unless the program is enacted, yet most of the supposed costs of covering insured losses of this or a future pandemic will fall on Government no matter what.

Q.2. With continued influx of new information related to the impact of COVID-19 emergency and subsequent recovery, does your organization still strongly believe in the necessity of a formal federally backstopped insurance program?

A.2. Yes, as the economy struggles to recover, addressing the protection gap is more urgent than ever. The insurance industry did not wait to withdraw coverage in many lines that were insured for this peril prior to march 2020. BCC members do not intend to imperil insurers' solvency—our risk managers need insurers to be strong and willing to cover many other risks in addition to virus/communicable disease, but policyholders do not have the luxury of saying, “let's wait and study.” Had policy terms and conditions been frozen while study was underway that might have been acceptable but the response to the peril has been unilateral withdrawal by many insurers, not by policyholders. Protestations of “uninsurable”—even in lines of business that have not produced significant losses to date—sound similar to the reaction to terrorism risk immediately after 9/11 and before enactment of TRIA. The public policy response needs to be the same and as prompt again.

Q.3. If so, can you discuss the specific benefits that a public-private approach—broadly speaking—would afford policyholders, par-

ticipating carriers, and taxpayers relative to the preservation of the existing environment?

A.3. The economy operates more efficiently when well-protected, by insurance, against fortuity. That’s the essential premise of commercial property-casualty insurance, and BCC members certainly agree. Immediately prior to the onset of COVID–19, much of the U.S. insurance industry’s advocacy centered around advancing public policy initiatives to close, both domestically and abroad, the so-called “protection gap,” that is, the difference between total losses and insured losses, or alternatively, the difference between the amount of insurance that is economically beneficial and the amount of insurance actually purchased. See “Addressing the Protection Gap: Through Public/Private Partnerships & Other Mechanisms”, Subcommittee Presentation to the Federal Advisory Committee on Insurance, December 2019 Meeting, slide 3 for definition. As insurance industry thought leaders have so often and so well put it:

The protection gap, or those uninsured losses, is a global problem and affects emerging nations and developed countries alike. The problem . . . is that properties and *economies with high insurance penetration recover much more quickly after a natural disaster* than properties that rely on Governments for their recovery. (Emphasis added.)

Economies with high insurance penetration recover much more quickly than [those] that rely on Governments for their recovery. This maxim did not become inoperative as a result of the pandemic. It is more true than ever before. And even though the above quote refers to “natural disasters” (including, we argue, virus), it is clear that the insurance industry’s protection gap advocacy has always embraced a wide array of systemic and catastrophic risks to be addressed through public/private partnership (collaborating to close the protection gap), including cybersecurity, food crises, adverse consequences of technological advances, and “rising chronic disease.” See, e.g., the “Global Macro Risk Map Interdependencies” (slide 3) here (Brazil, 2019).

Again, in April 2018, the insurance industry-funded Geneva Association issued “Understanding and Addressing Global Insurance Protection Gaps,” where it offered an “updated quantification of insurance protection gaps in the areas of natural catastrophe, cyber, health care and pension risk,” and “potential remedies,” including “multistakeholder efforts” such as “public–private partnerships (PPs).” Moreover, OECD earlier this year effectively recognized the applicability of this “protection gap” policy logic: “Responding to the COVID–19 and Pandemic Protection Gap in Insurance,” March 2021. The OECD paper is particularly useful in cataloguing initiatives in other developed countries.

The benefits of “high insurance penetration” would be manifold in the case of the pandemic risk insurance program recommended by BCC. As with TRIA, the most immediate and tangible benefit is likely to not payment of claims—we hope there is no pandemic recurrence in the nearterm—but rather the unquestioned boost to economic recovery that comes from properly risk-protected decision-making in the economy. On a microeconomic level, TV and movie production that currently is stalled (or going overseas) for lack of

financing for lack of insurance, would resume. Insurers, with the solvency protection afforded by the program, would remain relevant to customers and would be better positioned to meet rather than withdraw from customer risk management needs and, indeed, to collaborate on customer risk management strategies. Chubb CEO Evan Greenberg recognized as much in his testimony in the Subcommittee's July 22 hearing.

Taxpayers would benefit in at least two ways: (1) the underwriting process that would be supported by this public-private partnership inevitably would involve risk mitigation and shaping through underwriting terms and conditions; and (2) keeping the insurance industry engaged means that, should there be future triggering events, some of the losses will be borne by the insurance industry's balance sheet, whereas if they continue to make a wholesale retreat from the risk, all or a greater proportion of future losses would be borne by taxpayer programs such as PPP or other emergency responses.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR SINEMA
FROM L. CHARLES LANDGRAF**

Q.1. What is the purpose of insurance? And what value do insurers add to the small businesses and major employers with whom they do business?

A.1. In a modern economy, commercial property and casualty insurance is one of the essential tools for hedging risk that allows economic players (investors, managers, workers, professionals) to pursue economic activity and commitment with a measure of confidence that fortuity—which itself cannot be entirely eliminated—will not wipeout the value or fruits of that endeavor. Traditional insurance is distinguished from some other hedging devices by its attention to terms and conditions which encourage risk-management by the insured while also avoiding moral hazard. Insurers add value for policyholders small and large not only by sharing (pooling) the risk of fortuity but by also bringing expertise to the customer to help improve business practices for mitigation and to help shape the financial product to meet the customer's particular needs. Unlike other hedging devices, insurance also often avoids or counters correlation with other market risks. When significant gaps emerge in the protection available through insurance, each of these benefits of the insurance mechanism is undermined. That is the present situation to an "almost unprecedented" degree.

Q.2. Why should addressing gaps in insurance coverage be an important priority for businesses of all sizes?

A.2. As the insurance industry itself has long argued, high insurance penetration is correlated closely with economic development and prosperity. The best insured societies are the most economically and technically advanced and tend to be the wealthiest. Significant gaps between asset value or business activity level on the one hand and levels of insurance coverage on the other hand tend to increase economic uncertainty and impair confident or even rational decision-making in the economy. Stark examples were provided immediately following 9/11 when many construction projects

in major metropolitan areas were frozen for lack of financing because the terrorism risk could not be covered. We believe similar examples are or will emerge with respect to the lack of pandemic risk insurance imposing a drag on economic activity. That's already abundantly clear in the case of canceled trade shows and annual meetings, the live entertainment industry, and as previously mentioned, TV and movie productions that are not being financed specifically because the production insurance is unavailable. The lodging and hospitality sectors have been especially hard hit not only by business downturn but also the inability to plan and ramp up because of the unavailability of protection in several lines of insurance. Risk managers from major manufacturers have shared with Committee staff company-specific examples of missing pandemic coverage in GL, EPL, and D&O policies adversely impacting production capacity and operating plans.

Q.3. How do you assess the current state of the commercial insurance market? To what extent did the pandemic cause or accelerate hardening in the market, and why?

A.3. We believe that among the hearing's witnesses, Marsh's Martin South will be best positioned to provide the most comprehensive data on the current market conditions. However, the surveys conducted by several BCC member organizations, as well as myriad anecdotal reports from risk managers and insurance buyers, both large and small, within our coalition confirm the extreme dysfunction of the insurance market for pandemic risk insurance as well as the overall hard market conditions which have resulted in a significant diminution of available limits for many lines of liability insurance even without any coverage of pandemic risk, at the same time that rates have substantially risen and other coverage terms been tightened. In some cases, e.g., media production packages, the exclusion of pandemic risk together with other limitations have made the insurance so inadequate that traditional financiers of such production projects, no longer confident that the production can go to completion, are unwilling to provide financing.

Q.4. Notwithstanding explicit exclusions of pandemic-related damages, do you assess that insurance coverage for business interruption, event cancellation, and film production is more or less available than it was prior to March 2020? Do you assess that these lines of insurance coverage are more or less affordable? Please elaborate and justify your response.

A.4. Dramatically less available. The degree to which business interruption policies covered the pandemic-related cessation of business is of course a matter of dispute. However, prior to March 2020, event cancellation, film production and other forms of contingency insurance were routinely quoted by underwriters with specific inclusion (sometimes as an option) of viral infection/communicable disease coverage. In other variations on such contingency policies, it was not specifically excluded or addressed. Now most such policies explicitly carry an explicit viral/pandemic exclusion with no option to buy-back. Even without that coverage, the remaining limits are often reduced and the rate (price) is higher than before March 2020.

Q.5. Assuming a particular line of insurance can be written, why is it important for insurers to bear some level of risk in public-private partnerships?

A.5. The most successful Government-supported insurance programs have been those that included some level of risk-taking by the private insurance industry. In answers above, we have mentioned the examples of TRIA, FCIC, and WDC. To that can be added the Price-Anderson Act program for commercial nuclear power industry which involves a commercial liability policy (on mandate policy form) with an upper layer of mutualized indemnity and Government excess commitment. In each of these programs, private insurers have incentives to practice disciplined underwriting and to bring risk-mitigation and management expertise to their customers. In some of these programs the terms and conditions of the original insurance coverage is left to the private parties to shape with the benefit of the Government backstop enhancing the feasibility but not dictating the specific coverage.

Q.6. How do risk management incentives change for insurance companies when they are required to bear some level of risk as part of a particular insurance program, in contrast to insurance programs in which they would bear no risk at all? What implications would this have in ensuring effective program administration and reducing waste, fraud, and abuse?

A.6. If the insurer shares in the profit or loss of the business being issued through it, it will have real incentive to underwrite responsibly—and responsively to the customer—and to similarly manage claims. It is worth noting that even the “enemy attack” program administered by the War Damage Corporation during World War II—a supposedly “uninsurable war-on-land risk”—was within a few months of inception quickly converted to a shared risk program in which the participating private insurers were required to take a 10 percent share of both the risk of loss and profit under the WDC program.

Q.7. Setting aside existing litigation, do you believe as a policy matter that business interruption insurance can or should cover pandemic-related damages? Why or why not?

A.7. Yes. There is no inherent reason for exclusion. We understand the underwriter’s desire to have a nexus between the insured property location and the business activity or revenue being insured against in the BI coverage. For one thing, the underwriter presumably understands the location and therefore to some extent scope of activity connected to the property. The historical “physical damage” condition was intended to ensure there was actually an interruption related to the property. However, the availability (prepandemic) of contingent business interruption coverage—for supply chain problems beyond the property owners location or control, shows that there is no inherent reason why the BI must be conditioned upon physical damage at that location. So long as the triggering conditions are sufficiently well-defined to allow proper underwriting, physical damage need not be an inherent condition. The various parametric proposals under current discussion would substitute a tight definition of lock-down or other interruption of activity for physical damage.

Q.8. There is concern that an inability to obtain adequate business interruption, event cancellation, and film production insurance could result in significant off-shoring of U.S.-based film production. If you do not believe these lines of coverage should cover pandemic-related damages, how would you propose to address this issue and prevent off-shoring and loss of U.S. jobs?

A.8. BCC believes that business interruption, event cancellation, and film production insurance should cover pandemic-related damages, and indeed did so in many cases prior to March 2020. Some other jurisdictions, such as the U.K., Australia, and Canada, have been more proactive in providing interim Government-supported insurance coverage or equivalent security to film and television production since the initial crisis last year. As a result U.S. media jobs and related employment have been lost, not simply had deferred, as productions moved elsewhere.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR HAGERTY
FROM L. CHARLES LANDGRAF**

Q.1. We heard testimony comparing pandemic risk insurance to a number of existing federally supported insurance programs. As pandemic risk insurance is debated and considered, what are the top lessons that we can carry over from other insurance programs to a program that covers pandemic risk?

A.1. Some of the key lessons:

- Programs which leverage both expertise and risk-taking capacity (i.e., skin in the game) of the private insurance industry have generally been the most successful, such as TRIA, FCIC, and WDC (see above).
- Flexibility in coverage design is essential in a complex economy where insurance needs vary widely by industry and sector; the TRIA model which backstops all relevant lines of coverage but which leaves it to the contracting parties to cover the peril under their other bilateral “terms and conditions” should be utilized.
- Something like the Federal Crop Insurance Program’s menu of risk-retention options for insurers may be appropriate for industry buy-in; in the BCC proposal we also add a CEA-style joint underwriting option to expand the risk appetite or aversions) addressed.
- When private insurers are involved and have an economic stake in the program, they have the ability to incentivize and audit policyholders’ own engagement in risk management, such as the highly successful safety protocols developed and deployed by the film and television industry and unions. Something like the post-9/11 SAFETY Act program for development of technology and best practices could be fostered with insurance sector involvement.

Q.2. One of the key successes of the Paycheck Protection Program was the speed with which private sector lenders distributed hundreds of billions of emergency funds to millions of struggling small businesses all across America during the height of the pandemic in

2020. Many small businesses faced working capital constraints that made getting emergency funds quickly critical to their survival. As pandemic risk insurance is debated and considered, what design features can help ensure that under insurance that covers pandemic risks, claims are paid out as expeditiously as possible?

A.2. The private insurance industry can be extraordinarily swift and efficient in distributing claims payments following a catastrophe. The response to every major hurricane demonstrates this. Certainly insurers, more than bankers, are geared to exactly that sort of claim payment scenario. The issue here is not the ability of the insurance industry to function efficiently as a rapidresponse distributor of loss payments—that is their expertise if not their *raison d’être*. The only issue here is their capacity/willingness to underwrite this risk going forward and restore the semblance of protection and “high insurance penetration” on which a modern economy so clearly depends—in advance of the payment incident.

Under the BCC proposal, for lines of coverage other than non-damage business interruption (NDBI), traditional claims-handling processes are likely to be sufficient to provide appropriately prompt claims payout. With respect to the NDBI line of coverage, a successful program (with high take-up rate) in a major pandemic resulting in lock-down or reduced business activity would need to utilize a parametric style product, at least for the base policy, in order to process initial claim payments on a timely basis without prior proof of loss. Accordingly, the BCC proposal incorporates the parametric policy features common to the Chubb, Zurich, and BCPP proposals. We do not believe there is any substantial disagreement on that aspect of the needed legislation.

RESPONSES TO WRITTEN QUESTIONS FROM MARTIN SOUTH

Questions for Mr. Martin South, President, United States & Canada Division, Marsh

From Chairman Robert Menendez:

Q1: *One issue we'd need to address in any solution is how to ensure a pandemic insurance product is accessible and affordably priced so that we have widespread adoption among the business community. That could help balance the risk pool to ensure that the program could cover losses that may be restricted to one part of the country or perhaps a particular industry where social distancing or other preventative measures are hard to implement.*

What are your estimates of take-up under your proposals?

Answer:

As with any insurance product, take-up will depend upon its affordability, on the lines of insurance coverage in the program, and on the needs of individual insureds. Much will depend on what a final program looks like. For example, will it specify which lines of insurance are to be covered? Or perhaps the program would be less prescriptive, allowing individual organizations to — within limits — use funds as they deem necessary to their recovery.

Q2: *What is the minimum take-up rate that would be needed to cover the claims your plans envision?*

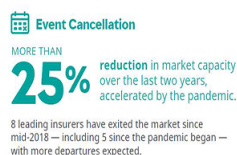
Answer:

Again, take-up will depend upon affordability and other factors, such as coverage and the needs of individual insureds.

Q3: *One effect we clearly saw from this pandemic is that not all industries were affected equally. Are there certain lines of insurance or industries that will see cost increases or capacity retrenchment if Congress does not establish a prospective pandemic risk insurance program?*

Answer:

While it is difficult to forecast whether certain lines of insurance or industries will see cost increases or capacity retrenchment if Congress does not establish a prospective pandemic risk insurance program, we can look at the insurance lines and industries that have been heavily impacted to date. Insurance lines that were especially affected in terms of capacity reduction and exclusions have been property/business interruption (BI) and event cancellation.



Pandemic coverage is not available in the current marketplace, as we are seeing exclusions for non-physical damage on virtually all of the property policies that we are placing in the US.

As far as industries, entertainment and events, and aviation were particularly affected.

Questions for Mr. Martin South, President, United States & Canada Division, Marsh

Property/Business Interruption

Generally, property insurance policies are triggered by insured physical loss or damage. Many policies include business interruption (BI) or other time element coverage with various extensions, including for interruption by civil authority, ingress/egress, attraction or leader property, or contingent business interruption/extra expense. The language in these policies and extensions can vary significantly.

Since the pandemic began, a number of first-party property and BI claims have been filed by companies seeking coverage under these provisions — most notably, the interruption by civil authority extension. Policyholders have argued that such an extension should respond to the shutdowns and closures as mandated by several states and municipalities.

The results of these claims filings have varied:

- A relatively small number of claims — typically submitted by companies seeking recovery under specific sublimated coverage extensions — have been adjusted and paid.
- In some cases, insurers have issued reservation of rights letters, made requests for information to aid in their investigations, and proceeded with the measurement of claims.
- Insurers have denied claims, citing a variety of reasons. These include the asserted absence of a physical damage trigger and the invocation of pollution/contamination and virus exclusions and other policy language.

Through mid-July 2021, nearly 2,000 COVID-19 coverage lawsuits had been filed in state and federal courts, according to the University of Pennsylvania's [Covid Coverage Litigation Tracker](#). Many of these suits remain unresolved.

Broadly speaking, decisions to date address policyholders' allegations that the virus that causes COVID-19 — or related government shutdown orders on their own — constitutes "direct physical loss of or damage to property." Some courts have ruled that applicable laws require tangible or structural damage to property and that the actual or suspected presence of the virus that causes COVID-19 cannot satisfy that requirement.

Other courts, however, have indicated that allegations of "loss of use" of the property may be sufficient to trigger coverage. Some rulings have also relied on the presence or absence of a virus exclusion in the policy.

Overall property capacity has rebounded to some degree in recent months from the initial shock of COVID-19 — and the cumulative effects of mounting natural catastrophe losses since 2017. Still, communicable disease coverage remains restricted.

Although such coverage is available in some rare cases, most property and BI insurers have added communicable disease exclusions to policies they have written over the last 12 months. Insurers are expected to continue to push for the exclusion of communicable disease coverage in property and BI policies even after the threat of COVID-19 recedes.

Questions for Mr. Martin South, President, United States & Canada Division, Marsh

Event Cancellation / Entertainment Companies

Capacity for event cancellation continues to decline amid the pandemic. By Marsh estimates, capacity has fallen more than 30% compared to its size prior to COVID-19 as a number of large underwriters have exited the market. Some insurers have entered the market during that time period, but the capacity they have added does not come close to replacing what has left — and it appears that market capacity will not return to pre-pandemic levels anytime soon.

Deductibles and pricing are also on the rise. Although deductibles were historically not required to write coverage for small to midsize outdoor events prior to the pandemic, deductibles of 10% to 20% of insured sums are now standard. Coverage for indoor events is available without such deductibles, but pricing for such events has, in most cases, doubled.

Moreover, while communicable disease coverage was generally available and affordable prior to the pandemic, it is currently widely unavailable and is expected to be extremely difficult to include in event cancellation policies going forward.

Aviation

Prior to the pandemic, pricing for aviation insurance was already firming, as years of losses exceeding premiums and puncturing reinsurance layers. The pandemic exacerbated pressures on insurers, contributing to additional rises in pricing. Airlines and others have faced some claims during the pandemic — notably, suits filed by airline passengers alleging exposure to COVID-19 during flights.

Over the last 18 months, some insurers have withdrawn from the class or reduced their offered capacity. As premium levels have risen, new carriers have entered the market and existing insurers have expanded their capacity again, helping to spur competition.

With insurers uncertain about depressed premium levels associated with COVID-19, a significant development amid the pandemic — particularly for airline insurance buyers — is the imposition of minimum premiums, which were not required by insurers prior to the pandemic. Some insurers have also attempted to introduce communicable disease exclusions in aviation policies, but they have met significant resistance from buyers.

From Ranking Member Tim Scott:

Q1: *Even though the U.S. has turned the corner on its recovery, it's important to remember that the pandemic is still ongoing and each month brings a wealth of new data and insight to consider. For this reason, I'm hesitant for Congress to rush to put a permanent pandemic solution in place when the story is still only half written.*

Since many of the prominent public and private sector pandemic risk frameworks were first released last summer, how has the changing recovery landscape influenced your perspective on the way that those policies and programs should be structured?

Questions for Mr. Martin South, President, United States & Canada Division, Marsh

Answer:

Through ongoing discussion with insurers and clients since the pandemic began, the points they have emphasized regarding the program structure include the following:

From a client perspective:

- **Claims:** Rapid payment during crisis.
- **Coverage:** Business continuance.
- **Affordability:** Clients are highly price sensitive beyond 4% to 5% rate on line (ROL).
- **Accessibility:** Solution must meet needs of businesses of all sizes.
- **Bending the risk curve:** The structure of a PPP should develop advanced risk management guidelines to incentivize proactive risk mitigation.

From insurer perspective, the following challenges must be addressed:

- **Exposure and values:** Strong correlation between pandemic risk exposure and asset values—pandemic exposure impacts both sides of an insurer's balance sheet.
- **Capital Support:** The capital supporting insurers' assumption of risk is presently committed to critical risk areas including fire, severe convective storm, hurricane, earthquake, wildfire, terrorism, and general liability. Initially, insurers' capital commitment to a pandemic risk solution will need to be modest until the insurance sector has time to build capital to assume pandemic risk. Given the enormity of this systemic risk, the insurance sector's capital commitment will always be a fraction (<10%) of the required facility size.
- **Credit risk:** Insurers face credit risk if they pay claims from their balance sheets without immediate government reimbursement. Pooled funding for government backstop could also exhaust program limits.
- **Public policy:** (Note this section comes from a Wharton School issue brief.) Dovetailing a pandemic risk program with public policy responses and objectives for future pandemics
- The public policy objectives associated with the risk of future pandemics that fall outside of the purview of property and casualty insurers but may have an impact on the amount of BI loss or the larger economic consequences of BI such as:
 - Assisting employees temporarily laid off, through programs such as expanded unemployment insurance.
 - Developing and enforcing a coherent framework of federal and state regulations and restrictions to reduce the spread of the pandemic that promise to reduce costs to insurers and businesses from the pandemic. These measures include:
 - Shelter-in-place requirements.
 - Closing businesses and other activities (for example, entertainment) to reduce contagion.
 - Social distancing requirements.
 - Wearing masks and engaging in other protective measures.

Questions for Mr. Martin South, President, United States & Canada Division, Marsh

- **Volume of claims:** The trigger structure/coverage should be clear and transparent in order to ensure quick and timely payments with minimal friction cost.
- **Fraud risk:** Insurers are concerned with being liable for fraudulent policyholder behavior.

Q2: *With continued influx of new information related to the impact of COVID-19 emergency and subsequent recovery, does your organization still strongly believe in the necessity of a formal federally-backstopped insurance program?*

Answer:

Yes. We are seeing diminishing coverage options for policyholders to protect against pandemic, across all industries. The exclusion of go-forward pandemic coverage, specifically in BI and event cancellation, has resulted in diminishing insurance hedges for the most vulnerable industries. (See the answer to following question for more detail on the benefits of an insurance backstop.)

Q3: *If so, can you discuss the specific benefits that a public-private approach - broadly speaking - would afford policyholders, participating carriers, and taxpayers relative to the preservation of the existing environment?*

Answer:

Approach to Risk

From a broad perspective, the public-private approach brings the potential benefits of a more systematic approach to risk.

Beyond their role in issuing and administering pandemic insurance policies in a new marketplace facilitated by a federally backed program and reimbursing policyholders for claims following losses, insurers can play a critical role in developing and encouraging the adoption of pandemic loss reduction measures.

The insurance industry has a strong track record of helping businesses of all sizes mitigate critical risks, including natural catastrophes, workplace hazards, cyber threats, and more. That institutional knowledge and expertise can be put to use to similarly help businesses understand and manage pandemic risk.

Specifically, insurers — in concert with insurance brokers and other advisors — can help businesses:

- **Use data to better understand their critical risks.** COVID-19 has made clear that many businesses have not fully contemplated the range of effects that an outbreak, epidemic, or pandemic can have on their people and operations, critical infrastructure, and governments. Greater investment by the insurance industry in data collection and modeling tools can help insurers, brokers, and businesses to anticipate and quantify potential risks.

Questions for Mr. Martin South, President, United States & Canada Division, Marsh

- **Obtain insurance coverage to meet their unique needs.** Ideally, insurers will not offer one-size-fits-all coverage solutions to prospective buyers. As with insurance coverage made available via the federal Terrorism Risk Insurance Program, buyers should be able to customize the pandemic insurance policies they purchase — for example, selecting specific infectious disease risks to insure and adjusting limits to meet their risk tolerance and other preferences.
- **Enact practices to prevent pandemic-related losses.** Insurance buyers seek to mitigate critical risks through superior building techniques, workplace safety programs, cybersecurity programs, and other measures. Insurers reward policyholders that can demonstrate their commitment to such processes in the form of more favorable pricing and terms and conditions. A federally backed pandemic risk insurance program that encourages improvements in health and safety practices can yield similar benefits.

National Readiness

Another broad benefit of a public-private approach involves the facilitation of national readiness.

While the private sector can and should learn lessons from the current COVID-19 crisis in order to better prepare for the next pandemic event, governments at all levels can do much to help manage and mitigate current and future pandemic risk.

COVID-19 has highlighted the need for federal, state, and local governments — in conjunction with national and global health organizations — to focus on three areas in order to build economic resilience and national readiness:

- **Preparedness.** Federal, state, and local governments must stockpile more equipment, including ventilators, masks, and other types of PPE that have become incredibly valuable commodities for some communities. Crisis response plans are also key, provided they are updated now, to reflect lessons learned from COVID-19 and regularly tested through tabletop exercises and other means. Governments can also encourage and facilitate data-sharing efforts by both the private and public sectors, which can aid preparedness and response efforts.
- **Mitigation.** Mitigation steps — including social distancing, handwashing, wearing masks, and more — are largely the responsibility of individuals. Governments can support these efforts by providing guidance and education to people and businesses about how they can prevent or slow the spread of the disease. Governments can also facilitate mitigation by providing guidance on how to protect essential workers during a pandemic or epidemic.
- **Insurance.** While commercial insurers excel at allowing businesses, public entities, and nonprofit organizations to transfer the risks related to natural hazards and other critical risks, a pandemic could result in virtually unlimited losses — which, today, are largely uninsured. Historically, insurance coverage for the risks related to infectious disease has been limited or available only at a high cost. And public entities have relied largely on Federal Emergency Management Agency disaster funds or ad hoc funding measures to mitigate financial losses. A federal backstop can facilitate the creation of a viable insurance market that can offer affordable coverage for businesses, public entities, and nonprofits and provide crucial peace of mind to businesses.

Questions for Mr. Martin South, President, United States & Canada Division, Marsh

From Senator Kyrsten Sinema:

Q1: *What is the purpose of insurance? And what value do insurers add to the small businesses and major employers with whom they do business?*

Answer:

Insurance plays a vital role in the US and global economies; without it businesses across industries and of all sizes would be unable to start new ventures, hire new employees, or manage risk and grow to their full potential. The insurance industry has a strong track record of helping businesses of all sizes mitigate critical risks, including natural catastrophes, workplace hazards, cyber threats, and more. That institutional knowledge and expertise can be used to help businesses understand and manage pandemic risk.

Importantly, researchers have found that places with higher insurance penetration recover faster after disasters. This is a key finding from the comprehensive report "Optimizing Disaster Recovery – The role of insurance capital in improving economic resilience" from the Cambridge University Centre for Risk Studies (CCRS) and insurer AXA XL recently published. They assessed the impact of re/insurance on the speed and quality of recovery following climate disasters and earthquakes. Specifically, they evaluated an extensive dataset about 103 natural catastrophes that occurred over the last 30 years in countries across the world, including mature and developing economies. Their analysis confirmed the hypothesis that insurance positively impacts the speed and quality of disaster response and recovery efforts.

Q2: *Why should addressing gaps in insurance coverage be an important priority for businesses of all sizes?*

Answer:

Insurance policies are contracts that provide coverage under specific terms and conditions, unique to each policy. Businesses typically use several types of policy to cover a range of potential risks and exposures. In order to avoid potential negative surprises, the entire insurance program should be reviewed to ensure that the perils an insured wants and intends to cover are actually covered and have not fallen into a "gap" in coverage.

Q3: *How do you assess the current state of the commercial insurance market? To what extent did the pandemic cause or accelerate hardening in the market, and why?*

Answer:

Global commercial insurance prices increased on average 15% in the second quarter of 2021, according to the Marsh [Global Insurance Market Index](#), a proprietary measure of global commercial insurance premium pricing change at renewal, representing the world's major commercial insurance

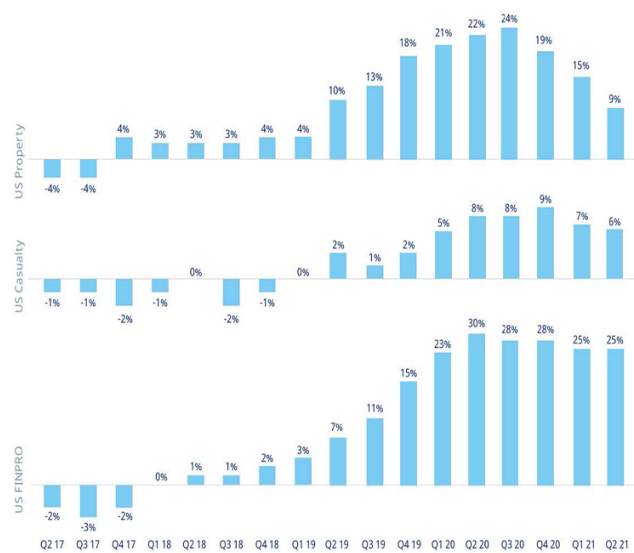
Questions for Mr. Martin South, President, United States & Canada Division, Marsh

markets and comprising nearly 90% of Marsh's premium. It's the 15th consecutive quarter of rate increases in the global commercial insurance market. It also marks the third consecutive quarter to show a fall in the average rate of increase and follows year-on-year average increases of 18% in the first quarter and 22% in the fourth quarter of 2020.

In the US, the average rate of increase slowed for the third consecutive quarter, to 12%, and appears to have plateaued. Average property insurance pricing increases in the US continued a trend from the first quarter, slowing each month, from an 18% increase in January to 7% in June. Clients with significant losses, poor risk quality, or significant exposure to catastrophe (CAT) perils experienced above average increases; the market deteriorated for clients heavily exposed to wildfire. Financial and professional lines pricing in the US increased an average of 25% in the quarter, with D&O pricing up 15%, which was less than the 27% year-over-year increase in the previous quarter.

Although the pandemic certainly contributed to pricing pressure in some areas, it has not been the sole, or even primary, driver of current market conditions.

US composite insurance pricing change — by major coverage line



Source: Marsh Specialty and Global Placement

Questions for Mr. Martin South, President, United States & Canada Division, Marsh

Q4: *Notwithstanding explicit exclusions of pandemic-related damages, do you assess that insurance coverage for business interruption, event cancellation, and film production is more or less available than it was prior to March 2020? Do you assess that these lines of insurance coverage are more or less affordable? Please elaborate and justify your response.*

Answer:

Event cancellation coverage and capacity are still available, with the exception of communicable disease coverage (there is one market writing it, but the scope is extremely narrow and it is extremely expensive).

The difference in capacity availability relates to location and time of year in respects to outdoor event risks. Any large multi-day event outdoors in the Midwest, South, or East comes with increased rates, increased deductibles, and capacity constraints.

Rates for indoor events have gone up 25% to 35%; outdoor rates have increased 100% to 200% in some cases, with deductibles increased by 50% to 100%.

Q5: *Assuming a particular line of insurance can be written, why is it important for insurers to bear some level of risk in public-private partnerships?*

Answer:

As we mentioned earlier, private capital at risk creates the right incentives for insurers to engage in modeling, setting risk-adjusted premium, and continuous innovation. Over time, if the program is structured effectively with the right incentives to mitigate the risk, we would anticipate a gradual transfer of an increasing stake in this risk to the private sector.

Beyond their role in issuing and administering pandemic insurance policies in a new marketplace facilitated by a federally backed program and reimbursing policyholders for claims following losses, insurers can play a critical role in developing and encouraging the adoption of pandemic loss reduction measures.

The insurance industry has a strong track record of helping businesses of all sizes mitigate critical risks, including natural catastrophes, workplace hazards, cyber threats, and more. That institutional knowledge and expertise can be put to use to similarly help businesses understand and manage pandemic risk.

Specifically, insurers — in concert with insurance brokers and other advisors — can help businesses:

- **Use data to better understand their critical risks.** COVID-19 has made clear that many businesses have not fully contemplated the range of effects that an outbreak, epidemic, or pandemic can have on their people and operations, critical infrastructure, and governments. Greater investment by the insurance industry in data collection and modeling tools can help insurers, brokers, and businesses to anticipate and quantify potential risks.

Questions for Mr. Martin South, President, United States & Canada Division, Marsh

- **Enact practices to prevent pandemic-related losses.** Insurance buyers seek to mitigate critical risks through superior building techniques, workplace safety programs, cybersecurity programs, and other measures. Insurers reward policyholders that can demonstrate their commitment to such processes in the form of more favorable pricing and terms and conditions. A federally backed pandemic risk insurance program that encourages improvements in health and safety practices can yield similar benefits.

Q6: *How do risk management incentives change for insurance companies when they are required to bear some level of risk as part of a particular insurance program, in contrast to insurance programs in which they would bear no risk at all? What implications would this have in ensuring effective program administration and reducing waste, fraud, and abuse?*

Answer:

Private capital at risk creates the right incentives for insurers to engage in modeling, setting risk-adjusted premium, and continuous innovation. Furthermore, over time, if the program is structured effectively with the right incentives to mitigate the risk, we anticipate private insurers to take a gradually increasing stake in this risk. Insurers will need time to capitalize behind pandemics, as they have largely excluded the peril from policies and therefore have not accrued premium to support claims.

Insurers are experts at administering policies and processing claims; we expect that expertise to be relevant for creating a pandemic risk program. Maximizing efficiencies to reduce waste, fraud, and abuse can be achieved through a collaborative approach where all stakeholders work to build a cohesive program.

Q7: *Setting aside existing litigation, do you believe as a policy matter that business interruption insurance can or should cover pandemic-related damages? Why or why not?*

Answer:

Yes. Businesses should have the option to hedge against BI losses with insurance, however the potential losses are too great for the private sector alone to bear.

Q8: *There is concern that an inability to obtain adequate business interruption, event cancellation, and film production insurance could result in significant off-shoring of U.S.-based film production. If you do not believe these lines of coverage should cover pandemic-related damages, how would you propose to address this issue and prevent off-shoring and loss of U.S. jobs?*

Answer:

We believe these lines of coverage should be included in scope for pandemic-related damages.

Questions for Mr. Martin South, President, United States & Canada Division, Marsh

Specific to film production, capacity has diminished significantly, and we are seeing:

- No civil authority coverage for infectious disease* going forward.
- Underwriting thresholds have risen so making it more challenging for smaller budget films.
- Two carriers for midsize film have left the market.
- Previous insurer that was writing substantial limits cut capacity by more than half, making it more challenging to obtain needed limits.
- Loss-free clients are seeing 20% to 60% increases, and exclusion of all infectious disease.
- Accounts with losses are seeing 100% and higher increases.

As films begin to ramp up production, we anticipate more changes



Building pandemic resilience through public-private partnership

KEEP THIS FAR APART →

September 2021

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Foreword

In 2021, we've seen a remarkable change from just a year prior. The proliferation of vaccines and other developments have helped facilitate the reopening of businesses and easing of some restrictions in many countries. Once again, people are living their lives, businesses are earning revenues, and economies are recovering. Still, challenges remain. The delta variant of the coronavirus is spreading in many regions, including parts of the US. And none of us will forget the effects — both personal and professional — of the last 18 months.

As the world's leading insurance broker and risk advisor, our core mission is to help our clients manage risk. The value we deliver to clients — insurance policyholders — includes acting as an advocate on their behalf. In that capacity, we believe a public-private partnership is essential to containing the effects of the next pandemic or epidemic.

COVID-19 has simultaneously demonstrated the importance of insurance coverage to businesses — and to the US and global economies — and its limited ability to respond to the effects of major public health crises. While some specialty insurance policies purchased before 2020 may have

included coverage for pandemic risk, most policies do not explicitly provide such coverage.

Insurers, generally, hold the position that property, casualty, and other insurance policies are designed to cover losses suffered by individual insureds, but not for the aggregate economic impacts from a pandemic, such as extended lockdowns of large communities or entire countries.

The bottom line: Existing insurance solutions — and insurers alone — cannot fully protect businesses from the potentially sizable losses they could incur during the next pandemic or epidemic. Instead, given the complex nature of pandemic risk, a strong public-private partnership is required to effectively manage it.

Although Marsh is not promoting a specific solution, we are advocating for a public-private partnership which has the financial support and backing of the United States government. Many businesses and other organizations share our view that such a partnership can help build resilience, reduce uncertainty, and accelerate economic recovery by leveraging the insurance expertise and infrastructure already in place.

From the establishment of fire brigades after the Great Fire of London of 1666 to the creation of the Terrorism Risk Insurance Program after 9/11, governments and the private sector have come together many times before to reduce risk and restore insurability. A similar venture today between the government, insurers, and businesses — backed by lessons learned to date and loss data from Marsh and others — can help facilitate pandemic coverage, align the needs of insurance buyers and insurers, and incentivize preparedness, mitigation, and resilience.

These actions can enable a more proactive and agile response to the next public health crisis. And it can help make pandemic risk more manageable and enable our economy to build the resilience it needs for the future.



John Doyle
President and CEO, Marsh





Executive summary

COVID-19 is far from the first infectious disease to become a pandemic. But many of the effects of 2020 and 2021 have been unprecedented. More than 4.4 million people have died worldwide as a result of COVID-19, and more than 200 million cases have been confirmed. In addition, much of the economic progress made in the years since the 2008 financial crisis has been reversed in just 18 months.

Although the US and global economies are growing again, output in many countries is expected to remain below pre-COVID-19 levels for some time. The pandemic has contributed to substantial revenue drops for businesses, and will likely have long-term implications for several industries.

Among the pandemic's various economic effects has been a sizable impact on insurance markets and coverage. Despite what ultimately may turn out to be substantial COVID-19 claims payouts from insurers, policyholders have often found little comfort in property and liability policies.

Insurers are ready and willing to provide coverage in property, casualty, and other policies for losses suffered by individual insureds. But most policies do not provide explicit coverage for pandemic risk. And insurers have asserted in discussions with policyholders — and, at times, in litigation — that these policies are not designed to protect against the broader economic implications of pandemics.

Across many insurance lines, capacity is shrinking, terms and conditions are narrowing, and underwriting scrutiny

is intensifying. Going forward, insurers are expected to continue to broadly exclude coverage for pandemic risk.

These far-reaching impacts have made clear that commercial insurers alone cannot fully protect businesses from a pandemic's effects. Pandemic risk, however, can be insured through a strong, government-backed framework.

A public-private partnership to establish a pandemic reinsurance program can offer substantial benefits, including helping to limit private sector risk. It can also take many forms and draw on valuable lessons learned from the creation of various existing risk pooling mechanisms designed to insure flooding, extreme weather, terrorism, and other previously difficult-to-insure risks.

Such a solution will be crucial to containing the financial effects of a future pandemic. But it's also vital that insurers, the private sector, and the government learn lessons from COVID-19 and work together to improve resilience and bend the pandemic risk curve.

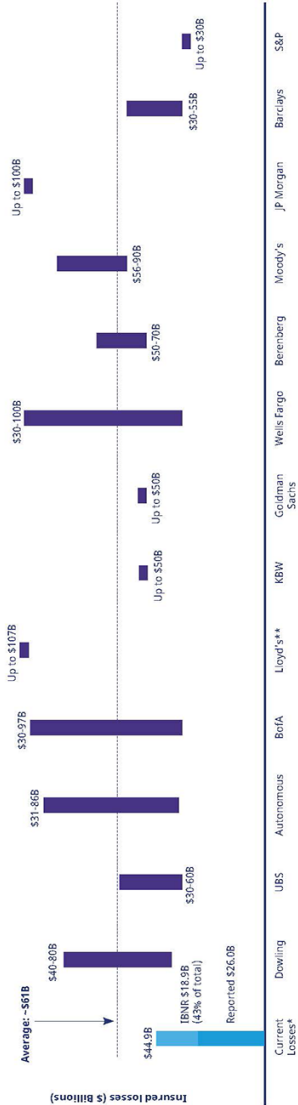
Still, it's especially crucial that we take action on a pandemic risk framework now. By working together, the public and private sectors can facilitate an efficient and effective insurance program that will accelerate recovery and build resilience amid the next pandemic.

The pandemic’s insurance implications

Commercial insurance coverage typically responds to losses caused by natural catastrophes, such as earthquakes and hurricanes, and a range of business risks, from employee injuries to product liability and more. Although pandemics have occurred before, the economic impact of COVID-19 has been of a different magnitude, in part due to how interconnected people, businesses, and economies have become in the past few decades.

While insurers’ losses from COVID-19 totaled less than \$50 billion as of August 2021, according to a Guy Carpenter analysis, projections on the pandemic’s ultimate cost have varied significantly. Some estimates have topped \$100 billion, which would exceed total losses from Hurricane Katrina (see Figure 1).

O1| Estimates of insured COVID-19 losses have varied significantly.

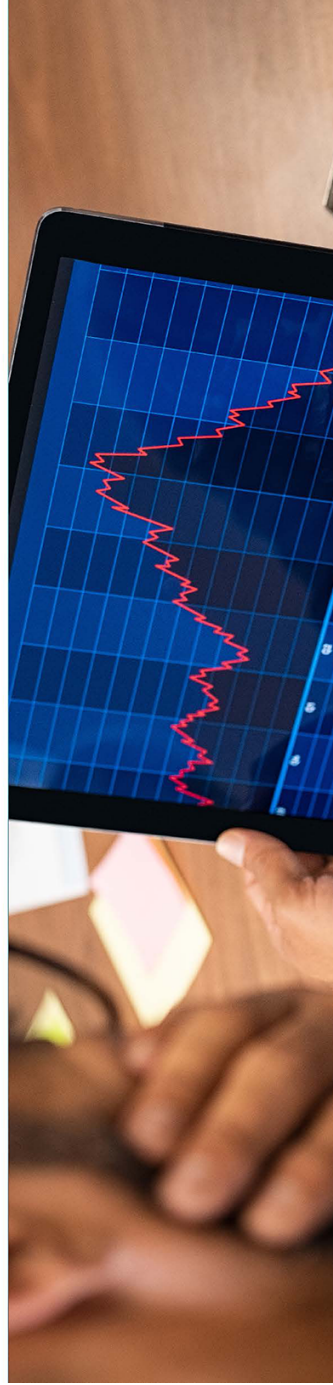


Source: Guy Carpenter analysis, Dowling, Autonomous Research, Barclays, Bank of America, KBW, UBS, Lloyd's, Wells Fargo, Goldman Sachs, Berenberg, Moody's, and JP Morgan; updated as of August 17, 2021.
*Represents consolidated COVID-19 losses tracked by Guy Carpenter's Business Intelligence team as of August 17, 2021, accounting for end of period foreign exchange rates.
**Lloyd's estimate is for underwriting losses from COVID-19, including claims and anticipated lower profits due to lower premiums.

These losses, however, represent only a fraction of the enormous economic loss caused by the pandemic — a fact which has already posed recovery and resilience challenges for businesses, governments, and insurers, and will be of chief concern in the event of a future pandemic or epidemic. Moreover, it's become apparent since the start of 2020 that property and liability policies are severely limited in their ability to respond to pandemic-related losses.

Although some specialty policies purchased prior to 2020 may include coverage for pandemic risk, it is not explicitly covered under the vast majority of policies. Insurers have generally taken the position that property, casualty, and other policies are designed to respond to losses suffered by individual insureds — but not to the aggregate economic impacts that a pandemic can present, including extended lockdowns of large communities or even entire countries.

Given the specific and extensive effects of COVID-19 to date, insurers have begun to broadly exclude pandemic risk from many policy types, and are expected to continue to do so going forward. The sheer magnitude of simultaneous losses around the world, difficulty in predicting governments' actions aimed at containing infectious disease, and possibility of drastic changes in consumer demand — potentially overnight — make pandemic risk impossible for insurers and reinsurers to assume by themselves.



PROPERTY/BUSINESS INTERRUPTION

Generally, property insurance policies are triggered by insured physical loss or damage. Many policies include business interruption (BI) or other time element coverage with various extensions, including for interruption by civil authority, ingress/egress, attraction or leader property, or contingent business interruption/extra expense. The language in these policies and extensions can vary significantly.

Since the pandemic began, a number of first-party property and BI claims have been filed by companies seeking coverage under these provisions — most notably, the interruption by civil authority extension. Policyholders have argued that such an extension should respond to the shutdowns and closures as mandated by several states and municipalities.

The results of these claims filings have varied:

- A relatively small number of claims — typically submitted by companies seeking recovery under specific sublimited coverage extensions — have been adjusted and paid.
- In some cases, insurers have issued reservation of rights letters, made requests for information to aid in their investigations, and proceeded with the measurement of claims.
- Insurers have denied claims, citing a variety of reasons. These include the asserted absence of a physical damage trigger and the invocation of pollution/contamination and virus exclusions and other policy language.

Through July 26, 2021, nearly 2,000 COVID-19 coverage lawsuits had been filed in state and federal courts, according to the University of Pennsylvania's Covid Coverage Litigation Tracker. Many of these suits remain unresolved.

Broadly speaking, decisions to date address policyholders' allegations that the virus that causes COVID-19 — or related government shutdown orders on their own — constitutes "direct physical loss of or damage to property." Some courts have ruled that applicable laws require tangible or structural damage to property and that the actual or suspected presence of the virus that causes COVID-19 cannot satisfy that requirement.

Other courts, however, have indicated that allegations of "loss of use" of the property may be sufficient to trigger coverage. Some rulings have also relied on the presence or absence of a virus exclusion in the policy.

Overall property capacity has rebounded to some degree in recent months from the initial shock of COVID-19 — and the cumulative effects of mounting natural catastrophe losses since 2017. Still, communicable disease coverage remains restricted.

Although such coverage is available in some rare cases, most property and BI insurers have added communicable disease exclusions to policies they have written over the last 12 months. Insurers are expected to continue to push for the exclusion of communicable disease coverage in property and BI policies even after the threat of COVID-19 recedes.





The bottom line: Existing insurance solutions — and insurers alone — cannot fully protect business from the potentially sizeable losses they could incur during the next pandemic or epidemic.



GENERAL LIABILITY AND UMBRELLA/EXCESS

To date, general liability (GL) and umbrella/excess claims related to the pandemic — for example, alleging that a customer, client, or other third party was exposed to COVID-19 on an insured company's premises — have not been overly prevalent.

That said, insurers have expressed some concern that casualty claims could develop in the future. Depending on the jurisdiction and whether a policy is written on an occurrence basis — meaning that the policy responds to any damage or injury that takes place during the policy period, regardless of when the claim is made — litigation could be filed well after the alleged exposure or injury.

As a result, some insurers have sought to add COVID-19 or communicable disease exclusions to their policies, particularly for insureds in hospitality and other select industries. Insureds and their brokers have, at times, been able to negotiate removal of such exclusions, albeit sometimes at a price. Such exclusions have been more difficult to avoid in the excess and surplus lines market.

In some industries — for example, restaurants — policyholders have been concerned that language proposed by insurers has been overly broad, and could be interpreted as restricting essential coverage for foodborne illnesses and other perils that would not have the widespread impact of a pandemic or epidemic. In some instances, policyholders and their advisors have been able to amend such language.

In the absence of another pandemic in the next several years, insurers' worries may be eased before communicable disease restrictions become a more common feature within casualty policies. This would be especially true if buyers and brokers continue to push back on potential restrictions.

The scientific community, however, has warned that pandemics and epidemics are likely to occur with greater frequency in the future. Another public health crisis not long after COVID-19 could prompt a firmer stance on exclusionary policy wording, significant reductions in capacity, and other harsh responses from underwriters. An important factor in determining market capacity will be how reinsurers react to future health crises.

For now, underwriters are applying greater scrutiny to all GL and umbrella/excess risks, both in the context of the pandemic and more broadly. During the extended soft market period that existed until early 2019, insureds would often be able to secure favorable pricing and terms even without detailed responses to underwriting questionnaires.

In the current market, which already began to firm well in advance of COVID-19, that is no longer the case. Even those companies that provide highly detailed responses can still face challenging renewals given insurers' focus on long-term profitability and market conditions.

WORKERS' COMPENSATION

In March 2020, as the coronavirus was rapidly spreading, many insurers were concerned about its potential impact on workers' compensation. The expectation was that the virus would lead to an increase in communicable disease claims costs and a decline in "core" workers' compensation claims costs, especially as many employees shifted to remote work and others stopped working completely.

More than a year into the pandemic, insurers' initial fears have proven to be overstated. The reality is that the average COVID-19 claim is lower than the typical "core" workers' compensation claim. Moreover, COVID-19 claims have generally been clustered in a handful of industries, such as healthcare and food and beverage manufacturing.

COVID-19, meanwhile, has highlighted how difficult it can be to determine compensability amid a public health crisis — mainly because individuals can be exposed both in and out of the workplace.

Workers in industries deemed "essential" — including healthcare, public safety, retail, food service, transportation, and hospitality — are among those with a higher likelihood of exposure. But healthcare professionals, for example, can be infected via exposure not only to patients but to coworkers, family members, neighbors, and strangers. In turn, these workers can infect other members of these groups.

Amid this challenging environment, a number of states have taken action. To date, roughly half of all states have introduced laws and regulations dictating how workers'

compensation coverage will respond to COVID-19 cases, according to Oliver Wyman research. A number of these actions create "rebuttable presumptions" that employees in certain professions — for example, first responders — who contract COVID-19 have been infected while working.

Whether a specific case is compensable will be determined by the facts established during an investigation of the claim, as well as the governing law in the jurisdiction where the claim is reported. Additionally, since there is no single "test" that can prove whether an illness or disease is compensable, it may ultimately come down to a decision by a court or state workers' compensation board.

Employers are required in nearly all states to purchase workers' compensation insurance. But unlike other forms of coverage, insurers cannot explicitly exclude occupational illnesses as a result of communicable diseases from their workers' compensation policies.

Insurers, however, have sought to limit their exposure — notably, by eliminating "same communicable disease" endorsements. These endorsements, which were widely available prior to the pandemic, provided financial protection to employers by aggregating or batching individual claims with the same underlying cause.

Insurers can also choose not to underwrite certain employers if they perceive their communicable disease coverage as being too significant. At the height of the pandemic, for example, many insurers shied away from writing workers' compensation for healthcare organizations.

Workers' compensation capacity may be limited going forward for some types of employers — chiefly, healthcare organizations and first responders. Employers in industries

where employees often work in close quarters — for example, hospitality and food and beverage manufacturing — may face challenges without properly documenting their protocols for providing safe work environments.

EVENT CANCELLATION

Capacity for event cancellation continues to decline amid the pandemic. By Marsh estimates, capacity has fallen more than 30% compared to its size prior to COVID-19 as a number of large underwriters have exited the market. Some insurers have entered the market during that time period, but the capacity they have added does not come close to replacing what has left — and it appears that market capacity will not return to pre-pandemic levels anytime soon.

Deductibles and pricing are also on the rise. Although deductibles were not required to write coverage for small to midsize outdoor events prior to the pandemic, deductibles of 10% to 20% of insured sums are now standard. Coverage for indoor events is available without such deductibles, but pricing for such events has, in most cases, doubled.

Moreover, while communicable disease coverage was generally available and affordable prior to the pandemic, it is currently widely unavailable and is expected to be extremely difficult to include in event cancellation policies going forward. That said, some select insurers have been able to craft limited communicable disease coverage for film productions where all cast and crew members have been vaccinated and sequestered in "bubbles" to limit COVID-19 exposure.

MANAGEMENT LIABILITY

COVID-19 has compounded the numerous challenges already mounting for management liability lines prior to the pandemic. These challenges included increases in claims frequency and severity stemming from the #MeToo movement, an uptick over historical levels in event-driven litigation brought by public company shareholders, and lawsuits in both federal and state courts against companies engaging in initial public offerings.

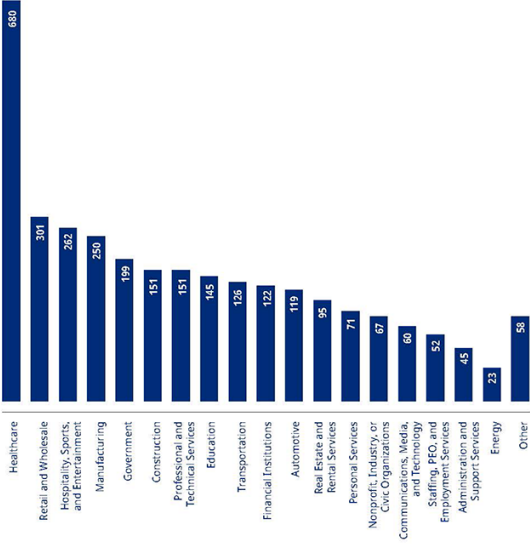
Financial pressures on insurers have only been exacerbated by the pandemic, resulting in many buyers seeing significant increases in pricing and retentions over the last 24 months, particularly for directors and officers liability (D&O) — and, more recently, employment practices liability (EPL).

D&O underwriters have been concerned about the potential effect of COVID-19 on distressed companies and those in industries that have faced significant challenges amid the pandemic. Those concerns, however, have moderated somewhat since the early days of the pandemic.

The pandemic has sparked a limited number of securities claims, including some related to its economic impact — primarily targeting consumer-reliant industries, such as hospitality and tourism — and an alleged failure of company leadership to adequately address workplace safety concerns. Life sciences companies developing vaccines, testing technologies, and personal protective equipment (PPE) have also been susceptible to claims.

As of August 19, 2021, workers had filed more than 3,000 COVID-19-related employment lawsuits in federal and state courts, according to Fisher Phillips' COVID-19 Employment Litigation Tracker. Healthcare entities were the most frequent targets in these cases, accounting for more than one-fifth of all suits (see Figure 2).

02| Healthcare organizations have been the most frequent target of COVID-19 employment suits filed to date.



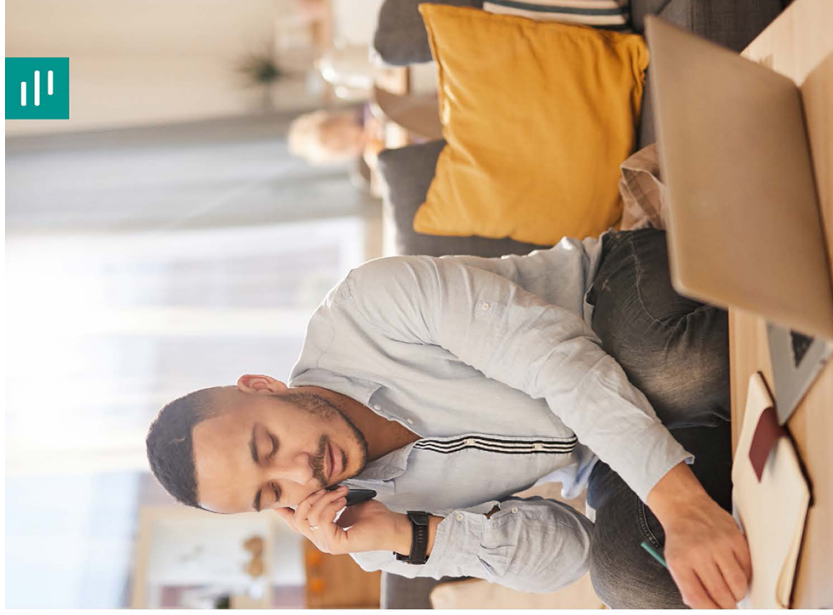
Source: Fisher Phillips, data as of August 19, 2021

Among other claims, these suits have often alleged that employers:

- Retaliated — in the form of wrongful terminations, demotions, and other adverse employment actions — against employees who have made leave requests or spoken up about their employers' failure to promote safe and healthy working environments.
- Discriminated against employees in protected classes in decisions regarding layoffs, furloughs, and resumption of work.
- Failed to properly track time amid the transition to remote working models.

To date, however, pandemic-related coverage restrictions on D&O and EPL policies have not been commonplace. Although some insurers have added COVID-19 and reduction in force exclusions to their EPL policies for certain insureds, coverage has generally not been eroded during the pandemic.

Still, insurers are scrutinizing their risks and probing prospective insureds about their responses to COVID-19. EPL insurers, in particular, are asking employers about reductions in force during the pandemic — which could give rise to future claims — and expect insureds to consult with outside counsel in making these critical business decisions. Insurers are also closely monitoring potential vaccine mandates and employers' plans to return employees to workplaces in 2021 and beyond.



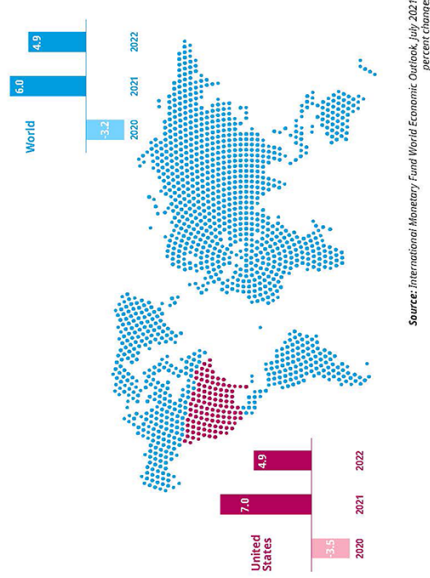
COVID-19's economic and industry effects

Although the development and distribution of vaccines in recent months has been a cause for optimism, the COVID-19 pandemic's effects on people and economies remain severe. As of August 23, 2021, more than 200 million COVID-19 cases had been confirmed globally, resulting in 4.4 million deaths, including more than 600,000 in the U.S., according to the World Health Organization (WHO). The pandemic has also reversed much of the economic progress made in the years since the 2008 financial crisis.

In 2020, GDP is estimated to have fallen by 3.2% globally and 3.5% in the U.S., according to International Monetary Fund's (IMF) World Economic Outlook for July 2021. The IMF projects that growth will rebound in 2021 and 2022 (see Figure 3), but output in many countries is expected to remain below pre-COVID-19 projections through at least 2022, according to the Organization for Economic Cooperation and Development (OECD).

Amid the pandemic, nearly 100 million people globally have been thrust into extreme poverty, according to the World Bank; food insecurity is also growing. This represents the undoing of three decades of progress in poverty reduction and equality.

03| The global economy is expected to rebound in 2021 and 2022, but contracted significantly in 2020.





04| The pandemic has contributed to a sharp rise in debt-to-GDP ratios in OECD countries.



While governments in many countries — including the US — have offered unprecedented financial support to businesses and their employees through wage subsidies, tax deferrals, and guarantees, it has come at a heavy cost. Debt-to-GDP ratios in OECD countries are projected to have risen 23% in 2020 and are forecast to rise an additional 5% in 2021 (see Figure 4). In many countries, debt levels have reached their highest level in decades, and the pandemic's impact on government debt has surpassed even that of the 2008 financial crisis.

Moreover, despite this assistance, the cumulative effects of government lockdowns, social distancing requirements, and changes in consumer behavior have led to significant declines in revenue for businesses across multiple sectors. And while some parts of the economy have done well, there will be long-term implications for many industries, whether they have innovated to overcome the pandemic's challenges or are still encumbered by them.

RETAIL AND RESTAURANTS

COVID-19 brought significant pain to the retail and restaurant industries. In 2020, more retailers declared bankruptcy than in any year since 2009, according to financial advisory firm BDO. The National Restaurant Association, meanwhile, reported in December 2020 that more than 110,000 establishments were closed permanently or long-term as a result of the pandemic.

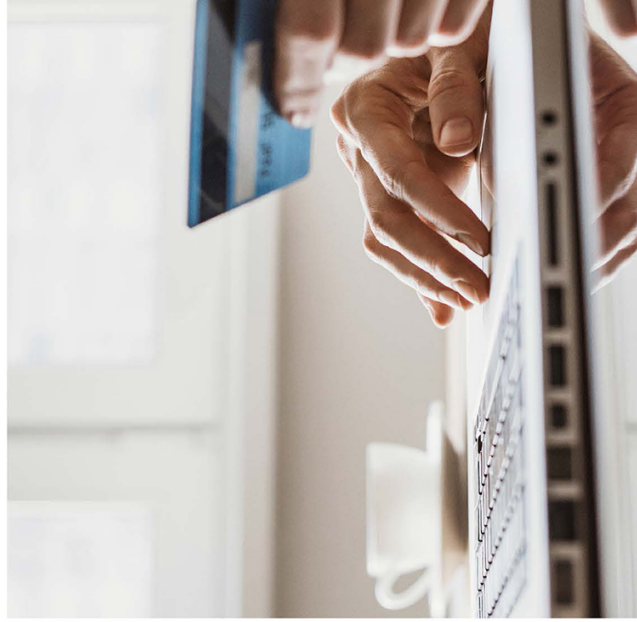
The industry, however, is poised to bounce back as pandemic restrictions are lifted and consumer confidence grows. The National Retail Federation now forecasts that retail sales will grow by double digits in 2021.

Still, COVID-19 will have a long reach for retailers and restaurants. And like its impact on other sectors, the pandemic accelerated a number of already developing trends.

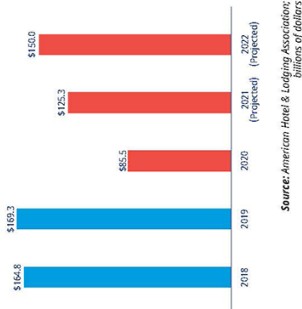
The most notable of these shifts has been the adoption of omnichannel marketing models. Online ordering coupled with delivery and in-store pickup options that were once value-adds are now absolute essentials, and have been embraced by consumers. Even as shoppers and diners continue to physically return to stores and restaurants, they will likely expect these options to remain available long after the pandemic ends.

Going forward, organizations will need to contend with potential demographic changes brought about by the pandemic, including an anticipated move by many people away from large cities. Although cities will remain population hubs, retailers and restaurants will need to consider the effects of exurban population growth on their employees, customers, and operations. Effective fleet optimization plans will be crucial.

Meanwhile, the pandemic and other recent events that have had an outsized effect on the sector have highlighted the need to build greater resilience to a number of threats, including civil unrest, natural catastrophes, and ransomware and other cyber threats. In many organizations, these events have elevated the role of risk management and demonstrated its value.



Q5| **Hotel room revenue has fallen sharply amid the pandemic and is projected to still be below pre-pandemic levels in 2022.**



REAL ESTATE AND HOSPITALITY

Even before the pandemic, the real estate industry was in the midst of massive change. Commercial tenants were exploring smaller footprints as they moved to remote and hybrid working models. E-commerce was threatening brick-and-mortar retail stores, calling into question the viability of traditional shopping centers. And homeowners and residential tenants were increasingly seeking multifamily properties that offered amenities and value-added features.

COVID-19 has accelerated many of these shifts, but tempered others. While there may have been opportunities in the short- and long-term for some — including investments in industrial properties and warehouses — revenue for the sector has been down since early 2020. And significant uncertainty remains for the industry overall.

Hospitality, meanwhile, has suffered from a profound drop in occupancy rates over the last year. Although leisure travel is slowly picking up, business travel is not expected to return to 2019 levels until 2022 at the earliest, according to the American Hotel & Lodging Association (AHLA). Many employers now recognize the value of teleconferencing tools and employees' desire to reduce the time they spend commuting and traveling. Some industry observers have suggested that business travel activity may never return to pre-pandemic levels.

Moreover, overall hotel occupancy for 2021 is projected to be 10% below 2019 levels, according to the AHLA. While this a smaller drop in occupancy rates than earlier projections, the AHLA noted in a recent report that "the hotel industry's road to recovery is long and uneven, with urban markets disproportionately impacted."

Meanwhile, US hotels are expected to generate \$125.3 in room revenue in 2021, according to the AHLA. Although this is a substantial improvement from 2020, it is still more than \$40 billion below 2019 levels (see Figure 5).

Labor shortages also represent a challenge for the industry. In June 2021, the unemployment rate for the hotel industry was 17.6%, according to the US Bureau of Labor Statistics; by comparison, the restaurant industry's unemployment rate for the same period was 10.1%. In the early days of the pandemic, hotels were forced to conduct mass layoffs; while some workers have returned as occupancy has slowly picked up, many have sought more stable employment in other sectors. Hotel chains, meanwhile, have historically recruited seasonal employees from other countries via temporary worker visas, but the pandemic has made finding such workers difficult. The AHLA estimates that one in five hotel jobs will not return by the end of 2021.



CONSTRUCTION

COVID-19 has posed numerous challenges for the construction industry. Globally, projects have been delayed or cancelled and many regions have experienced extended shutdowns, often because of the inability to easily move foreign workers or deliver critical path components. For contractors, pressures on liquidity have also been increasingly common. Supply chains have been disrupted, and companies have faced often severe shortages, delays, and inflated costs for materials, labor, and equipment.

Generally, the construction industry has proven resilient amid the disruption caused by the pandemic. Companies reacted quickly during the early days of the crisis, with those that were able to redirect resources and rely on stronger cash positions faring the best. In many regions, construction sites have remained open, with contractors showing agility and innovation in managing safety and pragmatism in working with owners to best manage the various pandemic-related effects.

While COVID-19 alone has not yet had a significant impact on the commercial insurance market for construction companies, broader factors continue to affect capacity, pricing, and the availability of cover. It is, however, still too early to predict the pandemic's wider effect on reinsurers, which may cause disruption for primary insurers and insurance buyers.

Overall claims volume as a result of the pandemic has been limited, with some companies filing delay in startup claims, most notably out of the UK. For COVID-19 — and the lockdowns imposed by governments to combat it — to trigger cover under insurance policies, construction companies must typically demonstrate physical damage, which has proven challenging. As is becoming increasingly common across many insurance lines, construction insurers are looking to incorporate exclusionary language related to communicable disease in many policies.

The pandemic will likely drive some lasting changes for the industry, both good and bad. Post-pandemic, many companies are likely to focus more on supply chain resilience and contractual risk allocation. Many safety enhancements introduced over the last 18 months are expected to become best practices for the industry. Labor trends will shift, with offsite personnel increasingly working from home and the shortage of skilled workers potentially driving greater diversity in the future construction workforce.

While less impacted than some industries, COVID-19 has had serious consequences for construction. The industry has proven adaptable and learned many valuable lessons that will help it become even more resilient amid the next pandemic, although significant risk will undoubtedly remain.

HIGHER EDUCATION

Most colleges and universities have resumed on-campus learning, with hybrid teaching models remaining in effect in many cases. But a number of institutions are wary of emerging COVID-19 variants. With the possibility of new lockdown orders looming, many schools are reevaluating their approach to opening classrooms in the fall.

Vaccination questions have been especially pressing for schools. Some institutions are mandating that students and/or faculty are vaccinated before returning to campus, while others have chosen not to; several schools' choices have been limited by the laws in their jurisdictions. In some cases, students or faculty have questioned or pushed back on varying standards and requirements for the two populations.

Meanwhile, the technology challenges for faculty and students, along with an increase in ransomware attacks, have heightened cyber risks for schools and created new expectations around cyber hygiene controls. In addition, some students and parents have sued, claiming that online learning represented a denial of the education they were promised. While many institutions are mindful of these challenges, remote learning appears likely to continue in some form even after the pandemic.

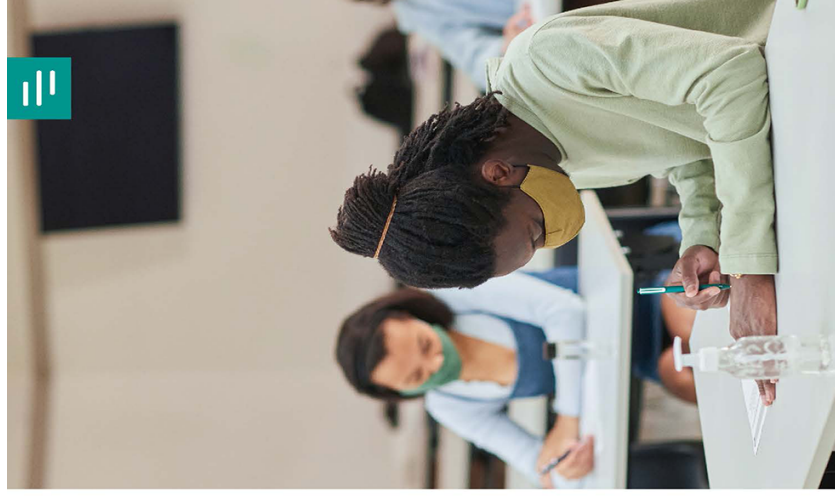
Institutions continue to feel the effect of economic losses as tuition, housing, sporting events, summer programs, and other sources of revenue have

been depressed. The lack of property and business interruption coverage for communicable disease has had significant financial effects on schools, some of which have total insured values that reach into the hundreds of millions of dollars.

Although some travel bans have been lifted, American schools' access to foreign students remains limited — notably, from China. The reported plans of the Biden administration to require that foreign visitors be fully vaccinated could further complicate schools' efforts to attract foreign students.

Amid the rise of variants, many colleges and universities are concerned that state and federal governments will again take over their campuses for various pandemic mitigation purposes. These include establishing mass testing and vaccination centers and housing patients who cannot be accommodated by hospitals.

Legislation and funding measures have provided some relief to higher education institutions. But the economic pain from COVID-19 will not immediately dissipate. It may be years before students from China and elsewhere — who have been welcomed by schools in Canada, Australia, and Europe even amid the pandemic — return to the US in large numbers. Many schools have already been forced to pursue mergers and acquisitions in order to survive.





HEALTHCARE

Perhaps no industry felt the brunt of the pandemic to the extent that healthcare did. Hospitals and other providers — particularly in the early days of the pandemic — were overwhelmed by the rapid spread of COVID-19 across the country and a surge of patients as a result.

In many communities, COVID-19 patient numbers have since subsided in a meaningful way. But providers are still feeling the effects of that initial surge and, more recently, the emergence of COVID-19 variants.

The onset of the pandemic led to the deferral of many elective procedures, including some that are necessary to treat serious conditions. According to Strata Decision Technology, 55% fewer Americans sought care in hospitals in March and April 2020 than in the same period in 2019.

The postponement of elective procedures — which are far more lucrative than COVID-19 care — was a significant blow to fee-for-service providers. Value-based care providers, by contrast, have historically seen less volatility in their cash flows, and generally fared better amid the COVID-19 patient surge last year. That dynamic may flip in 2021 as elective procedures resume, but could be challenged as hospital beds fill up and cautious behaviors resume due to the spread of COVID-19 variants.

The pandemic is expected to drive lasting changes for the industry. Healthcare providers' interest in predictive analytics and artificial intelligence has only grown amid the pandemic. Previously skeptical consumers, meanwhile, have become accustomed to using telemedicine solutions, which are likely to become more prevalent going forward.

Then there's COVID-19's effects on the healthcare workforce, which was already aging and shrinking prior to the pandemic. The events of 2020 will likely lead to more healthcare professionals burning out. Many older practitioners have already chosen to retire in the last year, with more expected to join them in the coming months, while others have pursued career changes.

All of this provides important context as the battle against the COVID-19 pandemic continues and the threat of future pandemics remains ever-present. While healthcare providers are better prepared today for a global health crisis than they were 18 months ago, a resurgence of COVID-19 variants or a similar pandemic could bring significant economic pain — and loss of life.

AVIATION

From airlines to aerospace manufacturers, there remains an inextricable link between the aviation industry and the global economy. The pain of the pandemic has had an indelible impact on aviation companies.

After five years of growth and profitability through 2019, airlines saw a sharp reversal in 2020. Amid a dramatic drop in air passenger demand, the airline industry lost an estimated \$126.4 billion in 2020, according to the International Air Transport Association (IATA). The IATA forecasts additional losses of \$47.7 billion in 2021, and uncertainty for the industry is likely to last at least until 2023 as airlines seek to rebuild their customer bases.

The impact on airlines has also had downstream effects for manufacturers. As demand for air travel fell, many aircraft were placed into storage, with some passenger planes being converted to freighters. Airlines have also cancelled or deferred new plane orders, creating an inventory logjam for manufacturers. The coming years will likely see more aircraft delivered than produced — an unusual state for the manufacturing sector.

COVID-19, meanwhile, has had significant effects on the insurance marketplace. Prior to the pandemic, pricing for aviation insurance was already firming, as years of losses exceeded premiums and punctured reinsurance layers. The pandemic exacerbated pressures on insurers, contributing to additional rises in pricing. Airlines and others have faced some claims during the pandemic — notably, suits filed by airline passengers alleging exposure to COVID-19 during flights.

Over the last 18 months, some insurers have withdrawn from the class or reduced their offered capacity. As premium levels have risen, new carriers have entered the market and existing insurers have expanded their capacity again, helping to spur competition.

With insurers uncertain about depressed premium levels associated with COVID-19, a significant development amid the pandemic — particularly for airline insurance buyers — is the imposition of minimum premiums, which were not required by insurers prior to the pandemic. Some insurers have also attempted to introduce communicable disease exclusions in aviation policies, but they have met significant resistance from buyers.

In spite of these difficulties, the aviation industry has risen to the challenge of the pandemic. As they had during previous times of crisis, including the aftermath of September 11, 2001, aviation companies have demonstrated their ability to be adaptable, innovative, and resilient in the face of adversity. The industry is adjusting to new realities as it seeks to return to stable growth, and adopting new strategies to cope with uncertainties and manage the continuing effects of COVID-19.

Nevertheless, aviation companies face significant challenges and potentially lasting changes. The pandemic will force many airlines to substantially alter their fleets. Supply chains may present headaches for airlines and manufacturers alike. And a projected long-term reduction in labor supply will raise many questions for the industry.





MARINE

Maritime companies with robust operations are generally managing the pandemic well as more and more goods are being shipped. But costs and freight rates are increasing, while shipping capacity is down. And as demand for shipping services increases, access to competent and reliable employees is critical.

More broadly, the pandemic is helping to reshape the sector. In a short amount of time, the distribution of cargo has shifted from B2B to B2C. The logistics industry has expanded, and control of supply chains has become even more crucial, something that is not likely to change in the near future.

COVID-19 itself has had a limited effect on the marine insurance marketplace. While capacity in other lines has been shrinking, it has grown in marine hull and cargo, which has benefited from relatively limited claims activity. Still, exclusionary language is becoming commonplace in marine cargo policies.

The pandemic has also presented a number of other challenges for marine-based businesses. One of the most significant has been ship crew repatriation, which has been complicated by travel restrictions imposed by several countries.

Another is disruptions to supply chains as a result of port delays and limited supply of freight space. Many supply chains are fragile and lack resilience, and ship owners and cargo shippers are concerned about the industry's vulnerability to a future large-scale shock event.

The case for a public-private partnership

COVID-19 has made clear that traditional solutions offered by the commercial insurance market alone cannot fully protect businesses from the enormous and far-reaching effects of pandemics. While pandemic insurance has long existed, its cost and the perceived low likelihood of an event has meant that it has rarely been purchased. And the number of other insurance policies that explicitly exclude pandemic risk is only growing.

The bottom line is that while insurers and reinsurers want to provide coverage for pandemic risks, some in the industry believe that they are uninsurable. But are they correct?

Our view is that they are not. Pandemic risks can be insured — but only through a strong, government-backed pandemic risk management framework.

A NEW PANDEMIC RISK SOLUTION

A public-private partnership to establish a pandemic reinsurance program can offer substantial benefits. And it's especially crucial now — before the next pandemic.

A pandemic risk insurance facility can help limit — but not eliminate — private sector risk, providing critical assurances to lenders and equity markets and helping to accelerate economic recovery. It can also absorb much of the initial shock of a future pandemic, enabling businesses to retain employees, meet financial obligations through the peak of uncertainty and continue innovating.

Amid the pandemic, lawmakers in the US and globally are exploring a number of public-private risk pooling models. These include the Pandemic Risk Insurance Act of 2020, introduced in the US House of Representatives in May 2020, which proposes to establish a pandemic risk reinsurance program within the Treasury Department, which would provide compensation to insurers that incur losses as a result of pandemic-related coverage.

More recently, the US Senate Banking Committee examined the issue during a hearing on July 22, 2021. Martin South, President of Marsh's US and Canada Division, testified that absent a public-private partnership that engages the full credit and support provided by a government backstop, the global nature of pandemics means the insurance industry cannot take on the risk.

There are many past examples of how governments and the private sector have come together to reduce risk and restore insurability. The Great Fire of London in 1666, for example, led to the creation of fire brigades. Two decades ago, Congress passed the Terrorism Risk Insurance Act and created the Department of Homeland Security to coordinate security and intelligence responses to terrorism risk in the aftermath of September 11.

"Over time, the right risk program can spur new technologies, ways of working, services, insurance products, and processes to ultimately chip away at the enormous losses associated with pandemics, which can help make pandemic risk more manageable and enable our economy to build the necessary resilience it needs for the future," South said.

Risk pooling options and precedents

A public-private insurance/reinsurance mechanism for pandemic risk can be developed in several ways, ranging from pure private partnerships to state-financed funds for non-insurable risks (see Figure 6).

06| A public-private insurance/reinsurance mechanism could be developed in several ways.



Relevant options for managing pandemic risk

Given their global nature, pandemics are unlikely to offer insurers and reinsurers any diversification. Some form of public support will likely be required to enable viable insurance and reinsurance markets.

In creating a new pandemic risk solution, policymakers can look to existing risk pooling schemes from around the world for models. Such mechanisms — which serve to mitigate risks that are often considered difficult to insure, including flooding, extreme weather damage to crops, and terrorism — can yield valuable lessons for the public and private sectors (see Figure 7).

07| Existing public-private partnerships can offer several lessons to participants.

Significant loss events or changes in how risks are modeled can prompt governments to require some form of capacity wind-down.	Launched in 2016, Flood Re was developed to provide affordable flood risk cover to the approximately 3% of UK homeowners living in areas with high flood risk. Industrywide improvements in flood risk modeling had made the market for flood insurance more competitive, but it remained difficult for homeowners in high-risk areas to obtain coverage. Following a widespread withdrawal of commercial terrorism cover by reinsurers after the September 11, 2001, attacks.
Extreme risks typically require some form of government backstop.	Government treasuries are the insurer of last resort on a number of loss-sharing schemes. The US National Flood Insurance Program (NFIP) and the UK's Flood Re, for example, have unlimited guarantees; TRIP and the Australian Reinsurance Pool Corporation (ARPC) have limited guarantees.
Public-private partnerships provide credibility and can be structured to be used to incentivize preventive measures.	The US and UK governments' backing of TRIP and Flood Re, respectively, has enabled commercial insurers to access affordable terrorism reinsurance. Over time, the Flood Re fund grew and private reinsurer confidence was restored, to the point that £2.4 billion of reinsurance cover is now purchased. In the US, the Terrorism Risk Insurance Program (TRIP) was established following a widespread withdrawal of commercial terrorism cover by reinsurers after the September 11, 2001, attacks. The US and UK governments' backing of TRIP and Flood Re, respectively, has enabled commercial insurers to access affordable terrorism reinsurance. Over time, the Flood Re fund grew and private reinsurer confidence was restored, to the point that £2.4 billion of reinsurance cover is now purchased. In the US, the Terrorism Risk Insurance Program (TRIP) was established following a widespread withdrawal of commercial terrorism cover by reinsurers after the September 11, 2001, attacks.
Programs can be used to incentivize preventive measures.	To be eligible for the NFIP, communities are required to adopt and enforce strict floodplain ordinances and offers premium discounts for outstanding flood risk management practices. Similarly, Flood Re requires participating insurers to commit to major investments in preventive measures. The program has also incentivized insurers to work to better understand, map, and model flood risk.

The US crop insurance industry supports continued agronomic research and extension services to help farmers adopt risk management practices in their operations and the impact those practices may have on insured crops.

The US SAFETY Act of 2002, meanwhile, was created to spur the adoption of improved security measures by limiting liability of companies providing anti-terrorism products and services for qualified vendors. Similar policies, such as the UK's Terrorism Risk Insurance Act 2015, have been adopted in other countries to encourage the private sector adoption of prophylactic measures to drive down exposures.

Building pandemic resilience

A public-private partnership to backstop pandemic risk will be crucial to containing the financial effects of a future pandemic. But it is by no means the only way businesses and governments can manage the risks presented by communicable diseases. Insurers, the private sector, and the government can work together to improve resilience at the organizational and national levels, and to bend the pandemic risk curve.

A SYSTEMATIC APPROACH TO RISK

Beyond their role in issuing and administering pandemic insurance policies in a new marketplace facilitated by a federally backed program and reimbursing policyholders for claims following losses, insurers can play a critical role in developing and encouraging the adoption of pandemic loss reduction measures.

The insurance industry has a strong track record of helping businesses of all sizes mitigate critical risks, including natural catastrophes, workplace hazards, cyber threats, and more. That institutional knowledge and expertise can similarly help businesses understand and manage pandemic risk.

Specifically, insurers — in concert with insurance brokers and other advisors — can help businesses:

- **Use data to better understand their critical risks.** COVID-19 has made clear that many businesses have not fully contemplated the range of effects that an outbreak, epidemic, or pandemic can have on their people and operations, critical infrastructure, and governments. Greater investment by the insurance industry in data collection and modeling tools can help insurers, brokers, and businesses to anticipate and quantify potential risks.
- **Obtain insurance coverage to meet their unique needs.** Ideally, insurers will not offer one-size-fits-all coverage solutions to prospective buyers. As with insurance coverage made available via the Federal Terrorism Risk Insurance Program, buyers should be able to customize the pandemic insurance policies they purchase — for example, selecting specific infectious disease risks to insure and adjusting limits to meet their risk tolerance and other preferences.



Broad industry support for a pandemic risk solution

From construction, real estate, healthcare, finance, and manufacturing to sports, arts and entertainment, hospitality, and retail, a wide range of companies have publicly expressed support for a government-backed pandemic risk solution.

The Business Continuity Coalition (BCC), which advocates for a public-private partnership, was formed in October 2020 with the intent to “limit future economic damage from pandemics and other national emergencies that cause business interruptions.” The BCC’s members include Live Nation, Marriott International, the National Football League, Sony Pictures Entertainment, and a number of industry trade groups.

L. Charles Landgraf, senior counsel at the law firm Arnold & Porter, appeared on behalf of the BCC at the Senate’s recent hearing on a potential pandemic risk framework. Landgraf testified that a public-private partnership “is an essential precondition to the prompt recovery of this nation’s economy, and going forward will help protect jobs and reduce economic damage from further pandemics.”

Other BCC members have similarly urged Congress to take action. These include:

- The National Retail Federation, which has called for a federally backed solution to “provide a mechanism for immediate and predictable economic recovery should the nation face another pandemic — even one of lesser magnitude — in the future.”
- The National Restaurant Association, which notes that the “social nature” of restaurants “is making it impossible for them to find the insurance they need to protect against pandemic losses. Without this public-private insurance backstop, the nation’s second largest private-sector employer will struggle to recover or grow.”
- RIMS, the risk management society, whose members include 10,000 risk professionals in more than 60 countries. The pandemic, RIMS CEO Mary Roth said, “has taught business leaders many valuable lessons, most importantly, the need for insurance solutions to protect assets, employees and keep their enterprises up-and-running amidst a health crisis.”



- **Enact practices to prevent pandemic-related losses.** Insurance buyers seek to mitigate critical risks through superior building techniques, workplace safety programs, cybersecurity programs, and other measures. Insurers reward policyholders that can demonstrate their commitment to such processes in the form of more favorable pricing and terms and conditions. A federally backed pandemic risk insurance program that encourages improvements in health and safety practices can yield similar benefits.

NATIONAL READINESS

While the private sector can and should learn lessons from the COVID-19 crisis to better prepare for the next pandemic event, governments at all levels can do much to help manage and mitigate current and future pandemic risk.

COVID-19 has highlighted the need for federal, state, and local governments — in conjunction with national and global health organizations — to focus on three areas in order to build economic resilience and national readiness:

- **Preparedness.** Federal, state, and local governments must stockpile more equipment, including ventilators, masks, and other types of PPE that have become incredibly valuable commodities for some communities. Crisis response plans are also key, provided they are updated now, to reflect recent lessons learned, and regularly tested through tabletop exercises and other means. Governments can also encourage and facilitate data-sharing efforts by both the private and public sectors, which can aid preparedness and response efforts.
- **Mitigation.** Mitigation steps — including social distancing, handwashing, wearing masks, and more — are largely the responsibility of individuals. Governments can support these efforts by providing guidance and education to people and businesses about how they can prevent or slow the spread of the disease. Governments can facilitate mitigation by providing guidance on how to protect essential workers during a pandemic or epidemic.
- **Insurance.** While commercial insurers excel at allowing businesses, public entities, and nonprofit organizations to transfer the risks related to natural hazards and other critical risks, a pandemic could result in virtually unlimited losses — which, today, are largely uninsured. Historically, insurance coverage for the risks related to infectious disease has been limited or available only at a high cost. And public entities have relied largely on Federal Emergency Management Agency disaster funds or ad hoc funding measures to mitigate financial losses. A federal backstop can facilitate the creation of a viable insurance market that can offer affordable coverage for businesses, public entities, and nonprofits and provide crucial peace of mind to businesses.

THE PRIVATE SECTOR'S JOURNEY TO RESILIENCE

The private sector was largely caught off guard by COVID-19. The immense costs dictate that in a post-COVID-19 world, governments, shareholders, lenders, and ratings agencies will request — and, in some cases, require — that businesses develop a clear view of their pandemic risk exposure and document their mitigation plans.

Results from Marsh's recent *Risk Resilience Diagnostic* survey of nearly 1,000 businesses' approach to six critical risk areas — including pandemic risk — indicate that traditional resilience measures are not necessarily suitable when contemplating pandemic risk management strategies and immediate response actions. Now, more than ever, organizations require a forward-thinking approach to risk management, one that will help drive preparedness and build resilience.

The path to becoming more resilient will be different for every company, but the journey involves four common steps and behaviors:

1

Anticipating the unexpected. During the COVID-19 pandemic, even organizations with robust business continuity plans struggled because they failed to fully anticipate the extent of its impacts. Only 25% of respondents to Marsh's survey use scenario-based modeling across their enterprise or comprehensively to evaluate the potential impact of emerging risks.

2

Integrating risk and strategy. Connecting risks to long-term strategy can help organizations move forward and mitigate their financial exposure, reputational damage, business interruption, and other losses. Yet only 25% of organizations fully take this important step.

Resilient organizations typically align through a collaborative process, and seek expert help in assessing their preparedness. Without this collaboration and counsel, organizations will often struggle to anticipate risks, which will impair their ability to develop effective response plans.

3

Avoiding misperceptions about preparedness. An accurate perception of preparedness is vital to managing any critical risk, as a false sense of security can halt an organization in its tracks.

The consequences of not being prepared can be severe. History has shown that organizations' fortunes can unravel quickly following a shock event. Their options to manage an event may dwindle as circumstances spiral, as they did for many banks during the 2008 financial crisis, and more recently with the hospitality and travel industry during the pandemic.

4

Measuring what matters. Applying metrics consistently is a stumbling block for many. For risks that survey respondents rate as important or highly important, we would expect to find organizations conducting modeling and forecasting at correspondingly high rates. But only a minority do so, and most of those perform modeling and forecasting only in select areas.

Protecting people

A vital component of any pandemic risk infrastructure going forward is protecting the health of employees, customers, and other third parties, and to help limit potential disruptions to employees' lives and accelerate and ease their return to work following future stay-at-home periods.

Among other actions, safety and risk professionals — working with health officials, HR staff, and others — should focus on:

- **Proactive local screening.** Epidemics and pandemics often start small, but can quickly grow. To mitigate risk and maximize containment, businesses must be able to detect disease patterns at the local level and on site. Techniques such as big data analytics and computational epidemiology can help organizations model, understand, and control the diffusion of disease. Analyzing trends in news reports and on social media, for example, can help spot the emergence of an epidemic before any formal declaration from the WHO or other health authorities.
- **Locating employees and contact tracing.** COVID-19 has made clear how important it is for businesses to be able to quickly locate employees and conduct rigorous contact tracing, both of which are core disease control measures and key strategies for slowing or preventing the spread of disease. While widespread monitoring will inevitably raise concerns about privacy, businesses will need to consider the tradeoffs from both a humanitarian and economic perspective.
- **Digital health and telemedicine.** If not in use already, these tools can help employers help their employees reduce their physical exposure to healthcare and hospital settings. This can support efforts to slow the spread of viruses, bacteria, and other pathogens in the workplace and the larger community.
- **Mental health and employee engagement.** Businesses need healthy, emotionally sound, and engaged employees in order to be productive. Efforts should be made to ensure connectivity — at formal and informal levels — between employees and with management if a pandemic forces social distancing. Organizations should also ensure employees have access to mental health resources and provide leaders with training to recognize and act upon mental health concerns.



A focus on data

COVID-19 will have several important legacies, including shining a spotlight on the need for organizations to become more resilient and adept at managing fast-moving events, including public health crises.

An outbreak can quickly become an epidemic, which can just as quickly become a pandemic. That means it's vital that risk professionals, senior leaders, and others have access to accurate and robust data to track the progress of a health crisis, forecast future developments, and make smarter decisions related to people and operations. And with local and country changes constantly evolving, it's just as important that they are able to weed through a glut of information and misinformation about public health threats to make smarter and more informed decisions.

Marsh is committed to helping our clients use data to better understand pandemic risk and make more informed decisions. Our COVID-19 Dashboard — designed specifically for risk professionals — provides a single place for organizations to monitor COVID-19 developments globally.

Marsh's dashboard incorporates data from a variety of leading sources around the world, including Johns Hopkins University's COVID-19 data Repository, the Atlantic's COVID-19 Tracking Project Data Repository, Our World in Data's COVID-19 Dataset, and Healthdata.gov. Users can glean insights on both COVID-19 case trends and vaccination rates.

The dashboard enables users to track and monitor COVID-19 hotspots at varying levels — down to the county level in the US. This can provide risk professionals, senior executives, and other stakeholders with snapshots of the state of the pandemic and answer critical questions. For example:

- Are cases, hospitalizations, and deaths trending up or down in the areas where our clients, suppliers, and employees live and work?
- Where and when can our employees safely travel?
- Are regional vaccination rates high enough to send employees back to the office?

As the COVID-19 pandemic continues, and businesses face the prospect of more frequent and severe public health crises post-COVID-19, access to such monitoring tools is crucial. While monitoring epidemics and pandemics has historically proven challenging, Marsh's COVID-19 Dashboard and other emerging tools can yield more accurate views of public health threats to enable more informed decisions.

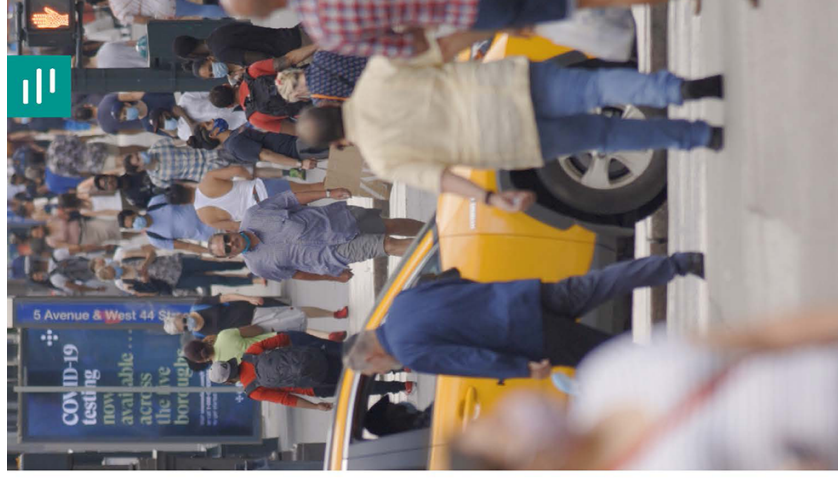
Working together to manage pandemic risk

After facing enormous and often unprecedented challenges over the past 18 months, there is now hope and optimism that we have reached a turning point in the COVID-19 pandemic despite the rise of variants. Still, significant work remains to manage the crisis, and people, businesses, governments, and economies must all keep an eye on future threats.

As we contend with the possibility of more frequent — and potentially deadlier and more costly — epidemics and pandemics in the future, it is crucial that governments and organizations be ready. COVID-19 has provided a number of important lessons on how we can all better prepare and plan for such threats, and ultimately become more resilient to them.

Insurance coverage can play an important role in facilitating our recovery from the next major public health crisis. Insurers, however, cannot maintain a viable commercial market — one that can meet the needs of insurance buyers — on their own. And absent effective and competitively priced insurance coverage for pandemic risks, the demands on governments amid a future event may surpass those seen during the COVID-19 crisis.

The complexity of pandemic risk calls for close cooperation by the public and private sectors in managing its impacts. The key to building a more proactive and agile response to the next pandemic will be an insurance and risk management partnership with government that helps facilitate coverage, aligns the desires of both insurers and policyholders, and requires mitigation practices. Such an efficient and effective pandemic insurance program will accelerate recovery and build resilience.





About Marsh

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Questions for Mr. Martin South, President, United States & Canada Division, Marsh

From Senator Bill Hagerty

Q1: *We heard testimony comparing pandemic risk insurance to a number of existing federally supported insurance programs. As pandemic risk insurance is debated and considered, what are the top lessons that we can carry over from other insurance programs to a program that covers pandemic risk?*

Answer:

Lessons from other insurance programs that can be carried over include:

- Like other risks covered by such programs, the complexity of pandemic risk calls for close cooperation by the public and private sectors in managing its impacts.
- The key to building a more proactive and agile response is to have an insurance and risk management partnership that helps facilitate coverage, aligns the desires of both insurers and policyholders, and requires mitigation practices.
- Simplicity of the trigger is an important lesson learned from other programs.
- An effective risk program can spur new technologies, ways of working, services, insurance products, and processes to ultimately chip away at potentially enormous losses.
- An effective program can help make the risk more manageable, accelerate recovery, and enable our economy to build needed resilience for the future.
- The size and scope of potential losses are too great for the private sector alone to bear, the industry needs the financial support of the US government to create a meaningful solution.

Q2: *One of the key successes of the Paycheck Protection Program was the speed with which private sector lenders distributed hundreds of billions of emergency funds to millions of struggling small businesses all across America during the height of the pandemic in 2020. Many small businesses faced working capital constraints that made getting emergency funds quickly critical to their survival. As pandemic risk insurance is debated and considered, what design features can help ensure that under insurance that covers pandemic risks, claims are paid out as expeditiously as possible?*

Answer:

To meet the aim of paying claims out expeditiously, a solution must include a well-defined trigger that defines relevant thresholds and specifies how and when claims are paid.

Many people in the insurance industry believe pandemic risk is best managed through a standalone policy using what is known as a parametric trigger, which is index-based with a predetermined payout mechanism that triggers according to predefined parameters. The policy would provide a predetermined fixed limit, which would cover essential operating expenses, such as wages and/or rents for a period of one to three months following a governmental order to shut down business or a stay at home order.

**RESPONSES TO WRITTEN QUESTIONS OF
CHAIRMAN MENENDEZ FROM ROBERT GORDON**

Q.1. APCIA, NAMIC, and Big I have proposed having the Business Continuity Protection Program run by FEMA.

Can you elaborate on why you think FEMA is the best agency to implement a program like this?

A.1. FEMA was originally identified to lead the BCPP in light of its experience with administering disaster aid and recovery programs. However, shortly after the public release in May 2020, the BCPP was amended to have the Department of the Treasury administer the program. The Treasury Department is where most programs that delivered financial aid to businesses during the recent pandemic were located. Additionally, Treasury is able to coordinate with the IRS to conduct verifications and audits as needed to account for the proper use of funds. The Treasury Department can build on its experience in providing emergency economic assistance and stimulus in supporting this program.

Q.2. What kind of talent and resources would an agency need to run a program like this? Actuaries with expertise in pandemics?

A.2. The Department would need considerable expertise in a range of fields to manage an economic relief and stimulus program of this scale and scope. Initially, a liaison between the private administrators and sellers of the product would need to be established. Computer technology staff (e.g., programmers, analysts) would be key since the idea is to automate the administration of such a program to the greatest extent possible to handle millions of transactions simultaneously when the program is triggered. Additionally, the Department would need assistance making calculations to ensure it meets the goals established by policymakers regarding take-up rates and affordable pricing (e.g., financial analysts).

Q.3. The Business Continuity Protection Program seems like a modified version of the Paycheck Protection Program (PPP), with insurers playing the role of lending institutions and FEMA the role of the Small Business Administration (SBA).

What lessons did APCIA take from the PPP roll-out, mistakes made, and feedback from small businesses into the Business Continuity Protection Program framework?

A.3. The PPP program had many successes including getting needed funds to businesses in order to tide them over until consumer demand and activity began to resume. Setting up the BCPP in advance of a pandemic allows policymakers to take the positive outcomes learned from the PPP and make them better. Targeting certain industries (i.e., travel and leisure and/or hospitality) will allow for assistance to be provided to those who would be most affected by the effects of the individual pandemic. Preplanning through the BCPP allows the program administration to include checks and balances to reduce fraud and abuse.

Q.4. One issue we'd need to address in any solution is how to ensure a pandemic insurance product is accessible and affordably priced so that we have widespread adoption among the business community. That could help balance the risk pool to ensure that the program could cover losses that may be restricted to one part

of the country or perhaps a particular industry where social distancing or other preventative measures are hard to implement.

What are your estimates of take-up under your proposals?

A.4. The BCPP is designed with the flexibility to achieve the targeted take-up rates established by policymakers, with the program able to provide relief to businesses no matter the take-up rates. The nimbleness of the BCPP in providing policymakers a mechanism to achieve their desired take-up rates is one of the central and attractive features of the proposal.

Q.5. What is the minimum take-up rate that would be needed to cover the claims your plans envision?

A.5. Because the BCPP is a Government program that is based on flexibility to allow for benefits no matter the take-up rates, there is no minimum take-up rate needed for participating businesses to receive relief from economic losses to future pandemics. However, the BCPP is designed to achieve the take-up rate goals of policymakers to protect the economy and reduce the need for postdisaster assistance; it is not intended to be actuarially self-supporting, which would render the product unaffordable.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SCOTT FROM ROBERT GORDON

Q.1. Even though the U.S. has turned the corner on its recovery, it's important to remember that the pandemic is still ongoing, and each month brings a wealth of new data and insight to consider. For this reason, I'm hesitant for Congress to rush to put a permanent pandemic solution in place when the story is still only half written.

Since APCIA initially released its pandemic risk framework last summer, how has the changing recovery landscape influenced your perspective on the way that those policies and programs should be structured?

A.1. There have been many lessons learned since the beginning of the COVID-19 crisis as the global crisis stretched far beyond widespread expectations and the full impact on the economy became apparent. In fact, the full economic, health and societal impacts are continuing to evolve. As we approach the eighteenth month of the declared pandemic, it is apparent that economic losses are primarily caused by a plunge and shifts in consumer demand for in-person services, not physical damage to premises or by Government-ordered closures. Losses have been highly concentrated in certain sectors, such as leisure, hospitality, food services, and transportation—creating harm disproportionately to minorities, women, and low-income workers and business owners. Federal Government relief and fiscal stimulus have been extremely successful in stabilizing the economy. Building on and improving current Government programs that can be flexible and adjusted in the next pandemic will provide much more efficient and effective protection.

Based on the lessons learned to date, the BCPP framework is a program that would address the needs of participating businesses by getting relief and stimulus funding to their hands promptly.

In July, 2021, the Committee on Capital Markets Regulation (CCMR) stated that “the most effective pandemic insurance scheme may be to: (i) establish a modest BCPP program that offers immediate relief at the onset of a pandemic; and (ii) supply any further Government support as necessary through a more streamlined version of the PPP and a more generous version of the MSLP employed in 2020.” (Committee on Capital Markets Regulation, Pandemic Business Interruption Insurance, July, 2021, accessed at: <https://www.capmksreg.org/wp-content/uploads/2021/07/CCMR-Pandemic-Insurance-07.01.2021.pdf>)

Similar to the CCMR analysis, Rand Corporation also completed a study in 2021 which concludes that “for small and medium-sized firms, the Business Continuity Protection Program approach performs best in terms of affordability, efficacy, and efficiency . . . For large firms, the Business Continuity Protection Program also performs best in terms of affordability, efficacy, and efficiency.” (Dixon L., Morikawa J., Improving the Availability and Affordability of Pandemic Risk Insurance, 2021, Rand Corporation, accessed at: <https://www.rand.org/pubs/research—reports/RRA1223-1.html>)

Q.2. With continued influx of new information related to the impact of COVID–19 emergency and subsequent recovery, does your organization still strongly believe in the necessity of a formal federally backstopped insurance program?

A.2. Pandemic mass market business continuity risks are inherently uninsurable. Insurers are in the business of managing risk, so companies always seek to provide protection solutions for consumers when feasible. However, insurers can only commit capital responsibly if they can accurately model the frequency and severity of a risk and adequately diversify potential solvency exposures—which is not feasible with respect to the widespread economic consequences of a global pandemic. Addressing macroeconomics is the role of Government. Policymakers can preplan to provide economic relief or postevent on an ad hoc basis as has been done successfully in the current crisis.

Q.3. If so, can you discuss the specific benefits that a public–private approach—broadly speaking—would afford policyholders, participating carriers, and taxpayers relative to the preservation of the existing environment?

A.3. A public/private approach will not work as the insurance industry is not equipped to provide coverage for pandemics. The appropriate response to an economic downturn and preservation of the existing economic environment during a pandemic is a nimble and efficient economic relief and stimulus program, as envisioned in the BCPP proposal.

The issues affecting businesses are multifaceted and one solution will not fit all businesses in any effort to stabilize the economy. There will likely be multiple layers of losses resulting from a pandemic. As we see from the current pandemic, these include record unemployment in particular industries, cash flow crises for transitioning businesses, solvency threats from plunging demand for in-person services, new costs and shifts in business models due to Government restrictions, and supply chain dislocations and losses. There are also specific types of pandemic risks and losses

that are particularly suited to a Government relief program, these include sickness and mortality, liability losses, event cancellation, entertainment production, key person losses, worker health, and travel disruption.

While the negative effects of the plunge in consumer demand for in-person services had a broad and disruptive impact on economic activity, there were two industries most notably impacted by the downturn: hospitality/leisure and traditional retail establishments, such as clothing stores. (Source: Bureau of Labor Statistics.) Much of the unemployment spike is attributed to these industries. Other industries were also impacted, either because they were part of the supply chain for the hospitality/retail or wholesale/retail businesses, or they were nevertheless impacted by the unanticipated change in consumer behavior. There were some industries that were able to respond to the shifts in consumer needs and maintain their levels of profitability. Some industries even managed to grow during the pandemic.

A primary form of loss mitigation for businesses was through employee layoffs and furloughs. As seen by the initial and ongoing Federal response to the pandemic, it is a primary policy goal of the Federal Government to avoid economic dislocation for those workers and to return those workers to payrolls promptly. The BCPP serves this central Government policy goal by seeking to encourage employers to maintain employee payrolls.

The BCPP is a Government-centered solution that would use a parametric trigger to provide timely, effective, and affordable Government relief for business continuity losses. The BCPP is the only U.S. proposal with broad insurance industry support. Participation would be voluntary for businesses and insurers. The Government would subsidize the program sufficiently to encourage adequate take-up rates, protecting 80 percent of payroll and operating expenses for a business for up to 3 months. The insurance industry would provide distribution, education, and loss control expertise. The BCPP also has special provisions for a private-public backstop that could grow over time to provide excess coverage.

The BCPP would assist businesses in temporarily keeping workers on employer payrolls, thereby keeping them off the unemployment rolls and thus facilitating a more rapid transition to recovery. Those employees would maintain their purchasing power, pay their rent and utilities, and buy food and other necessities, thus reducing the demand for additional Government assistance. Similarly, businesses would be able to pay their operating expenses including rent or mortgage, utilities, and suppliers. The Government would be able to decide which economic sectors need the program's support, offering targeted assistance that would be impactful.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SINEMA FROM ROBERT GORDON

Q.1. What is the purpose of insurance? And what value do insurers add to the small businesses and major employers with whom they do business?

A.1. Insurance protects individuals, families, and businesses against financial harm from liability, property, and casualty risks.

Insurance companies are unique businesses in that they protect their customers—unrelated policyholders—with a promise to pay in the future in the event of an insured loss. That promise to pay is supported by the capital of the insurance company and subject to strict regulation at State and country levels.

The insurance industry is divided into two major segments: property and casualty (P/C), also known as general insurance or nonlife, particularly outside the United States, and life/health. Broadly speaking, property/casualty policies cover homes, autos and businesses; life/health insurers sell life, long-term care and disability insurance, annuities and health insurance. U.S. insurers submit financial statements to State regulators using statutory accounting principles.

While insurance provides several vital benefits to businesses, the purpose of insurance is not to provide financial protections for every risk. In fact, many forms of risk are not able to be insured. With insurance fundamentally based on the ability to spread risk amongst differing risk profile groups, not every risk is intended or meant to be insured. For example, the National Association of Insurance Commissioners (NAIC) stated in March of 2020 that,

Insurance works well and remains affordable when a relatively small number of claims are spread across a broader group, and therefore it is not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period. While the U.S. insurance sector remains strong, if insurance companies are required to cover such claims, such an action would create substantial solvency risks for the sector, significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing. (National Association of Insurance Commissioners, NAIC Statement on Congressional Action Relating to COVID-19, <https://content.naic.org/article/statement-naic-statement-congressional-action-relating-covid19.htm>)

Q.2. Why should addressing gaps in insurance coverage be an important priority for businesses of all sizes?

A.2. Businesses face a plethora of ongoing, evolving, and emerging risks, only a fraction of which are typically covered by insurance. For example, private insurance does not generally provide protection against macroeconomic events, such as economic downturns, technological obsolescence or shifts in consumer demand such as evidenced as the primary form of loss in the current COVID-19 pandemic. Private insurance typically is available for individualized perils, such as natural disasters that hit a particular region or the liability incurred by a particular company for covered perils. Insurance companies, agents, and brokers can help companies and their risk managers explore what insurance coverages might be available for insurable risks and what specific policies include as covered perils.

Q.3. How do you assess the current state of the commercial insurance market? To what extent did the pandemic cause or accelerate hardening in the market, and why?

A.3. The commercial insurance market remains robust and competitive. Businesses have routinely been found to be able to purchase relevant commercial insurance for privately insurable risks in an affordable manner. The insurance industry exists to protect their business customers during their time of need. That said, the current market is experiencing firming rates due to rising loss costs as well as rebounding demand for insurance products in 2021 resulting from a steadily improving economy coming out of the crisis stage of COVID-19. There has also been an increased adoption and broadening of exclusions for communicable diseases in many primary and reinsurance policies. This trend is explained in “Consumer Behavior, the Macroeconomy, and the Uninsurability of Pandemic-Related Business Income Losses”, published September, 2021. (Hartwig, R., Gordon, R., Eisenhuth, R., “Consumer Behavior, the Macroeconomy, and the Uninsurability of Pandemic-Related Business Income Losses”, American Property Casualty Insurance Association, September, 2021, accessed at: <https://www.ncsl.org/documents/econ/APCIA-Hartwig-Gordon-White-Paper.pdf>)

Commercial insurance operates as a global marketplace and the pandemic caused global losses, which included a significant drop in policyholder surplus. Based on current loss data and projections, COVID-19 will be the largest loss event in history, even with communicable disease losses not being covered in policies such as business interruption. Additionally, many of the long-term impacts of the current pandemic are still unknown. Because of this, the COVID-19 pandemic has played a role in the hardening of the commercial insurance market. If commercial insurers were to be required to take on more economic risk associated with future pandemics, the impact seen from COVID-19 would pale in comparison to the constriction and hardening that would be seen due to serious solvency risks to the industry at large.

Q.4. Notwithstanding explicit exclusions of pandemic-related damages, do you assess that insurance coverage for business interruption, event cancellation, and film production is more or less available than it was prior to March 2020? Do you assess that these lines of insurance coverage are more or less affordable? Please elaborate and justify your response.

A.4. Commercial insurance and reinsurance rates have been rising significantly across the globe for several years, with particular recent increases in lines such as cyber and property catastrophe insurance. Insurance rates are being heavily impacted by spiking inflation, supply chain bottlenecks, structural labor deficiencies, and other factors. Insurance capital is also being pressured by increasing climate change related exposures. Business interruption insurance is broadly available, although rates have increased and, in some cases, underwriting standards have tightened. Industry statistics are not readily available for the event cancellation insurance marketplace or performance insurance for film production, but those market are clearly in transition with some hardening and a few market exits, although partially offset by new entrants and capital.

APCIA produces biannual reports on property-casualty industry financial operating trends and has produced recent whitepapers analyzing insurance input inflation trends that we would be happy to provide. We would also be pleased to provide informal updates on the event cancellation insurance marketplace, which is undergoing significant transition, particularly with the unknown trajectory of the current pandemic and emerging coronavirus variants.

Q.5. Assuming a particular line of insurance can be written, why is it important for insurers to bear some level of risk in public-private partnerships?

A.5. Imposing pandemic risk responsibility on insurers through a public-private partnership will be extremely harmful to the industry and the overall business community. Forcing insurers to offer the coverage that is inestimable will result in limited availability of any product, unaffordability to businesses, and an undermining of the industry's ability to cover other risks. It will lead to withdrawal from markets and solvency risks for insurers. Dr. Robert Hartwig and I have published two papers discussing the uninsurability in the private market of mass market pandemic business continuity risk that provide more explanation, "Uninsurability of Mass Market Business Continuity Risks from Viral Pandemics and Consumer Behavior, the Macroeconomy, and the Uninsurability of Pandemic-Related Business Income Losses". (Hartwig, R. and Gordon, R., "Uninsurability of Mass Market Business Continuity Risks from Viral Pandemics", American Property Casualty Insurance Association, June 2020. Accessed at: <http://www.pciaa.net/docs/default-source/default-document-library/apcia-white-paper-hartwig-gordon.pdf>. Hartwig, R., Gordon, R., Eisenhuth, R., "Consumer Behavior, the Macroeconomy, and the Uninsurability of Pandemic-Related Business Income Losses", American Property Casualty Insurance Association, September, 2021, accessed at: <https://www.ncsl.org/documents/econ/APCIA-Hartwig-Gordon-White-Paper.pdf>)

Q.6. How do risk management incentives change for insurance companies when they are required to bear some level of risk as part of a particular insurance program, in contrast to insurance programs in which they would bear no risk at all? What implications would this have in ensuring effective program administration and reducing waste, fraud, and abuse?

A.6. In a Government program, policymakers establish the goals and program incentives, such as maintaining employment. Private sector goals may not align. For example, during the current COVID-19 pandemic, some private sector experts stated that the most effective mitigating factor that businesses could implement is preventing or significantly limiting direct human interaction. For businesses, the simplest means of addressing this issue was to lay off employees, which is not a positive public policy goal sought by anyone, including insurers. This dilemma highlights that traditional mitigation efforts undertaken by the private sector and insurance industry may not support economic stabilization and other public policy goals in the case of a pandemic.

Q.7. Setting aside existing litigation, do you believe as a policy matter that business interruption insurance can or should cover pandemic-related damages? Why or why not?

A.7. Business interruption insurance is a commercial property coverage that only provides coverage where there is an impact on operations due to direct physical loss from a covered peril or damage to property, such as the destruction of property by fire or tornado. This coverage is intended to protect businesses while they repair the damage. It does not cover, and was never intended to cover, business interruption losses unrelated to physical property damage. Businesses across the country rely on the specific protection provided under these policies as they recover from devastating disasters and unfortunately circumstances. To have these policies cover pandemic-related damages would significantly limit the availability of the underlying and current protections provided, leaving countless businesses financially unprotected.

Q.8. There is concern that an inability to obtain adequate business interruption, event cancellation, and film production insurance could result in significant off-shoring of U.S.-based film production. If you do not believe these lines of coverage should cover pandemic-related damages, how would you propose to address this issue and prevent off-shoring and loss of U.S. jobs?

A.8. If the Government decides that protecting the film production industry is a priority, the insurance industry is prepared to help the Government to help design policies to support this goal. The BCPP provides the Government with a mechanism to accommodate the film production industry, both in the primary layer of protection provided by the Government; and through the public-private partnership allowed in secondary layers of excess protection.

The film and television industry and the theatrical industry have been especially impacted by the pandemic along with other industries, such as hospitality and leisure. The pandemic is disrupting theatrical performances and film and television production sets all over the world, not just in the United States. This is important as the exclusion of communicable diseases in business interruption, event cancellation, and film production insurance policies is also not limited to only the United States. While other countries are similarly looking to address these issues through Government programs, production companies will likely find coverage for these efforts even outside of the United States hard to obtain.

It is important to note however, that the film, television, and stage production industry is among the leaders in responding to the health crisis that we have seen as a result of COVID-19. The Screen Actors Guild has agreed to support producers' risk management practices on sets in order to reduce/eliminate COVID-19 among actors and set workers. Individual companies such as Netflix have implemented a mandatory vaccination policy for anyone in close proximity to actors before, during and after performances or production activities. By adhering to strict risk mitigation techniques such as these, the production companies have, and will continue to, effectively lower their loss exposures to potential insurers. (*WSJ* 7/30/2021)

Theatrical performance disruption and production interruption insurance continues to be available in the marketplace, although insurers are not underwriting pandemic exposures due in part to the lack of reinsurance currently available for those exposures.

The event cancellation insurance market has seen some companies withdraw but others enter the market. Coverage is available; however, capacity has been reduced due to pandemic-related claims, which are now excluded from coverage. (*Business Insurance*, June 1, 2021)

Q.9. The American Property Casualty Insurance Association, the National Association of Mutual Insurance Companies, and the Independent Insurance Agents and Brokers of America jointly proposed establishing the Business Continuity Protection Program (BCPP). The program would require coverage to be purchased at least 90 days prior to a Presidential declaration of a public health emergency, which would automatically trigger revenue replacement assistance. What moral hazard is addressed by this 90-day requirement? Is there precedent in other lines of insurance that would suggest that 90 days is appropriate to avert moral hazard?

A.9. The 90-day requirement in the BCPP was included to prevent “adverse selection”, which is where only those who immediately need the protection purchase the insurance. This requirement also would encourage long term participation in the program and ensure and assist in the prompt payment under the program.

Policymakers may decide that 90 days participation by businesses is too long or too short to prevent abuse and gaming of the system. Some waiting period may be necessary, however, to prevent businesses from purchasing the protection at the last possible moment. APCIA would be pleased to provide examples of existing Government protection programs with waiting periods.

Q.10. In response to COVID-19, former President Donald Trump declared a public health emergency on March 25, 2020, which under the BCPP would trigger assistance to all participants nationally. Assuming 100 percent participation in the BCPP on March 25, 2020, approximately how much would this program have cost the Federal Government before accounting for collected premiums?

A.10. The BCPP allows for targeted and tailored assistance to be provided based on the impact to specific business sectors and based on the coverage amounts elected to be purchased by the individual businesses. In other words, the cost to the Federal Government depends on how broadly policymakers apply the program safety net.

Under the BCPP, it would be up to Federal policymakers and the program administrator to determine in advance how much coverage to extend to which sectors. Over the past 18 months, Congress has provided \$5.7 trillion in pandemic relief and fiscal stimulus with additional relief still needed and being considered. Roughly \$483 billion in essential relief was provided through the Paycheck Protection Program (PPP) and Health Care Enhancement Act, although overall business continuity losses were certainly much greater. APCIA strongly supports the trillions of dollars in macroeconomic stabilization provided by Congress and the Administration and has suggested the BCPP as one approach to improv-

ing the PPP by establishing the program in advance of the next pandemic.

Q.11. In designing the BCPP, what assumptions did you make in pricing coverage? Can you provide examples of approximately how much coverage could cost for a typical small business?

A.11. The BCPP is structured to begin with policymakers establishing a desired take-up rate for businesses purchasing protection. This desired take-up rate would then dictate the pricing and corresponding Government subsidization needed to make the protection affordable enough to be achieved.

When the BCPP was designed, it was assumed that the program's administrator would determine rates based on each participant's anticipated expenses and the percentage of assistance a business is seeking. Some basic modeling, using a variety of assumptions, and considering significant Federal Government subsidies put the cost at 1–2 percent of the protection amount purchased.

Example: Assume a business's payroll, benefits, and operating expenses are \$300,000 per month, for total exposure of \$900,000 (3 months). Also, assume the business owner wants 80 percent coverage = \$720,000. A 2 percent annual cost will be \$14,400, and 1 percent will be \$7,200.

Example: Assume a business's payroll, benefits, and operating expenses are \$90,000 per month, for total exposure of \$270,000 (3 months). Also, assume the business owner wants 80 percent coverage = \$216,000. A 2 percent annual cost will be \$4,320, and 1 percent will be \$2,160.

Example: Assume a business's payroll, benefits, and operating expenses are \$300,000 per month, for total exposure of \$900,000 (3 months). Also, assume the business owner wants 50 percent coverage = \$450,000. A 2 percent annual cost will be \$9,000, and 1 percent will be \$4,500.

Q.12. How does this cost of coverage under the BCPP align with a typical small business's willingness to pay for such coverage?

A.12. The BCPP is designed to meet Government's desire for affordability and an adequate take-up rate. The cost of the program to small businesses will need to be analyzed to determine what pricing level will achieve desired take up rates, and thus the corresponding level of Government subsidy needed to be provided.

Q.13. In designing the BCPP and in modeling overall cost, what expenses were considered operating expenses?

A.13. The BCPP provides significant flexibility to the program administrator to adjust pricing based on the established public policy goals. Assumptions are made that "operating costs" are that part of the reimbursable expenses to businesses under the program. These would ultimately be determined by the program administrator, however, for discussion purposes the operating expenses considered would be profit/loss statement line items such as rent, utilities, taxes, license fees, other necessary professional fees, maintenance and repairs, insurance, and other costs directly related to running the business. Nonoperating costs not reimbursable under the program may include amortization, depreciation, interest ex-

pense, and any other costs indirectly related to the business's operations.

Q.14. Under the BCPP, what solution would you suggest for new businesses who purchase coverage outside the 90-day window and are therefore eligible for revenue replacement assistance but do not yet have a tax return on file with the IRS?

A.14. The administrator is provided flexibility to accommodate new businesses that wish to enroll in the program. For example, a new business could be required to provide their pro forma, which provides the date of establishment, their expected revenues and expenses, that could be audited following payment.

Q.15. Under the BCPP, if a business certified they would “use [. . .] any funds received for retaining employees and paying necessary operating expenses and that they will follow applicable Federal pandemic guidance” and then acted in contravention to that certification, what legal consequences or recourse would there be?

A.15. The program administrator would establish processes to audit how distributed funds are used and set rules and regulations regarding return of unused funds or penalties for improperly used funds. Any participating business found to have knowingly defrauded the program would be subject to stringent penalties. The program administrator is granted claw back authority to require the return of benefits not applied by the business to allowable expense categories. Under 18 U.S.C. Section 1001, it is a felony to make a “false statement” to an agent or agency of the Federal Government in connection with a Federal matter; and the legal consequences or recourse available under this statute would presumably be fully applicable to false statements made under the BCPP.

Q.16. Under the BCPP, if a business certified they would “follow applicable Federal pandemic guidance” as required by the program and then were found to have acted in contravention to that certification, what legal consequences or recourse would there be?

A.16. As stated above, false statements involving a Federal matter can be felony offenses.

Q.17. Under the BCPP, if a business attested that relief assistance would “be used to retain employees and keep the business viable” as required by the program and then were found to have acted in contravention to that attestation, what legal consequences or recourse would there be?

A.17. Participants would pledge to use benefits only for permissible expenses. The program administrator would establish processes to audit how funds were used and set rules regarding return of funds or penalties for improperly used funds. Any participating businesses found to have knowingly defrauded the program will be subject to stringent penalties, including potential removal from the program, criminal penalties, and financial repercussions. The program administrator should be granted claw back authority to require the return of benefits not applied to allowable expense categories. As stated above, false statements involving a Federal matter can be felony offenses.

Q.18. The BCPP would give FEMA the authority to consider purchasing reinsurance from payments received. Why is this option important in designing lines of insurance coverage with substantial Federal Government involvement?

A.18. Shortly after the initial presentation of the BCPP in 2020, the proposal was amended to have an Administrator run the program within the Department of the Treasury. To the extent there will be a desire in the private sector to insure pandemic risks, it will likely occur in the reinsurance market, due to the more global nature of reinsurance and the ability to spread risk not only over more diverse geographic areas but over different lines of risk and extended period of years. Reinsurance and other financial instruments such as catastrophe bonds or insurance linked securities would allow Treasury to lessen and offload some of the financial burdens of a Government pandemic response program to the private sector which would in turn could lower the costs to both participating businesses and the general taxpayers.

Q.19. Why do you believe FEMA is the appropriate agency to administer the BCPP?

A.19. FEMA was originally identified to lead this program in light of its experience with administering disaster aid and recovery programs; however, shortly after the public release in May 2020, the BCPP was amended to have the Department of the Treasury administer the program. The Treasury Department is where most programs that delivered financial aid to businesses during the recent pandemic were located. Additionally, Treasury is able to coordinate with the IRS to conduct verifications and audits as needed to account for the proper use of funds. The Treasury Department can build on its experience in providing emergency economic assistance and stimulus in supporting this program.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR HAGERTY FROM ROBERT GORDON

Q.1. We heard testimony comparing pandemic risk insurance to a number of existing federally supported insurance programs. As pandemic risk insurance is debated and considered, what are the top lessons that we can carry over from other insurance programs to a program that covers pandemic risk?

A.1. Insurers are in the business of managing risks and always seek to provide risk management solutions to consumers. However, not every risk has an insurance solution. Pandemic business continuity risks were never contemplated nor ever intended to be covered by the private sector. Insurance works well when a small number of claims are spread across a broad population of risks. Therefore, a global pandemic is not suited to cover virtually all policyholders who have suffered significant losses at the same time for a significant period.

It has been suggested that terrorism risk is similar to pandemic risk. These comparisons are inaccurate as pandemic risks are fundamentally different than terrorism risks. If pandemic insurance legislation modeled after the Terrorism Risk Insurance Act (TRIA) were enacted, the Government would likely fail to address the eco-

conomic issues caused by pandemics. Prior to the September 11th, 2001 terrorist attacks, most commercial insurance did not exclude coverage for losses resulting from terrorism and therefore most losses were covered. Therefore, TRIA was enacted into law to normalize and sustain the terrorism insurance markets that effectively already existed but began to constrict. Conversely, there has never been an insurance market for widespread economic losses due to pandemics. Additionally, unlike TRIA where a concentrated risk can be spread across policyholders and thus made affordable (and sometimes even offered at no cost), pandemics impact all businesses, making the cost prohibitively high for small businesses and, in many instances, larger organizations as well. Using a TRIA structure that was never intended to create a new insurance market would not be appropriate to create an insurance market for a risk that is fundamentally uninsurable. The National Association of Insurance Commissioners (NAIC) stated in March of 2020 that, Insurance works well and remains affordable when a relatively small number of claims are spread across a broader group, and therefore it is not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period. While the U.S. insurance sector remains strong, if insurance companies are required to cover such claims, such an action would create substantial solvency risks for the sector, significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing. (National Association of Insurance Commissioners, NAIC Statement on Congressional Action Relating to COVID-19, <https://content.naic.org/article/statement-naic-statement-congressional-action-relating-covid19.htm>)

Q.2. One of the key successes of the Paycheck Protection Program was the speed with which private sector lenders distributed hundreds of billions of emergency funds to millions of struggling small businesses all across America during the height of the pandemic in 2020. Many small businesses faced working capital constraints that made getting emergency funds quickly critical to their survival. As pandemic risk insurance is debated and considered, what design features can help ensure that under insurance that covers pandemic risks, claims are paid out as expeditiously as possible?

A.2. Pandemics are inherently uninsurable, and therefore a program based on the traditional insurance structure would not be effective. A response to a plunge in macroeconomic activity and subsequent relief to affected businesses and workers is the role of the Government. However, while an insurance model would not be appropriate, insurers do believe that we could provide added benefits in administering, specifically in the distribution context, a Government response program.

Building on the success of the quick distribution of funds under the PPP, the BCPP provides automatic relief through a parametric trigger with no claims adjustment required. A State considering a closure would ask the President to make a viral emergency declaration and relief could be targeted to impacted industries and jurisdictions. The Presidential declaration would specify which types of

businesses are partly or fully closed (using business categorization under the North American Industry Classification System (NAICS). For example, the President could indicate that restaurants are 50 percent closed, and they would receive $\frac{1}{2}$ payments without having to prove direct losses. The program is designed to encourage businesses to adjust their business model or delivery systems in address impacted portions of their operations.

However, in order for this automated distribution of funds to work, it will require substantial preidentification and coding of the participants within the program. That is where we believe that insurers, through our ongoing engagement with our commercial and small businesses, could be helpful.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

LETTER FROM THE COUNCIL



July 21, 2021

Chairman Robert Menendez
Securities, Insurance, and Investment Subcommittee
The United States Senate
Washington, DC 20510

Ranking Member Tim Scott
Securities, Insurance, and Investment Subcommittee
The United States Senate
Washington, DC 20510

Dear Chairman Menendez and Ranking Member Scott,

We write you today in advance of the hearing in the Senate Banking Committee Subcommittee on Securities, Insurance, and Investment titled "Examining Frameworks to Address Future Pandemic Risk." As the country recovers a global pandemic that we know was unpredictable and caught our economy flat footed, we know how important our role is in preparing our economy against the next pandemic.

The Council represents the largest and most successful employee benefits and property/casualty agencies and brokerage firms. Council member firms annually place more than \$300 billion in commercial insurance business in the United States and abroad. In fact, they place 90 percent of all U.S. insurance products and services and they administer billions of dollars in employee benefits. Council members conduct business in some 30,000 locations and employ upward of 350,000 people worldwide, specializing in a wide range of insurance products and risk management services for business, industry, government, and the public.

The Council thanks you for your efforts and leadership in attempting to build a prospective program that would mitigate the economic disruption from another pandemic. We fully understand concerns about the bandwidth and practicality of any insurer "skin in the game" of underwriting pandemic risks, even if the federal government is backstopping the overwhelming majority of any such risk. But as brokers for more than 90 percent of all business insurance clients, we generally associate ourselves with the views of the Business Continuity Coalition. As you know, this policyholder alliance represents major industry sectors, and is an extension of the very successful partnership that has represented the business community through multiple iterations of the Terrorism Risk Insurance Program.

Many details of any public/private pandemic risk program will have to be fully explored in this legislative process. We respect the many voices within our industry sector advocating differing paths toward protecting American businesses from another financial calamity of a

pandemic. But we lean in toward a core belief that the existing mechanisms of the commercial insurance industry – brokers, risk managers, claims adjusters, insurers and reinsurers – should be deployed in any ultimate congressional effort to achieve such protection.

To that end, The Council of Insurance Agents & Brokers supports a prospective federal pandemic program by outlining a set of “guiding principles” as follows:

- The Council supports establishment of a federal forward-looking risk transfer solution to address future pandemic scenarios like COVID-19. If or when another global pandemic of this magnitude occurs, we strongly favor having a program already in place with no new enactment of law required.
- Several different models exist or have existed to address risk transfers and consumer protections in times of widespread losses and massive social and economic disruption, including the Terrorism Risk Insurance Act (2002), National Flood Insurance Act (1968), Price-Anderson Act (1957), War Damage Insurance Act (1942), and the War Risk Insurance Act (1914).
- Any solution put in place to address future pandemics deserves careful study and stakeholder engagement, and should not be based on an assumption that any one model from the past is wholesale appropriate for, or transferable to, this very different set of risks and circumstances.
- The Council is uniquely positioned to help advise on insurance-related aspects of any forward-looking federal solution, and would welcome the opportunity to participate in those discussions as a policy is formulated.

Thank you for your leadership on this critical issue. We stand ready to support your efforts. If you have any questions, please feel free to reach out to Joel Wood at (202) 662-4430 or Joel.Wood@ciab.com, or Joel Kopperud at (202) 662-4311 or joel.kopperud@ciab.com.

Thank you,



Ken A. Crerar, President and CEO

LETTER FROM NAIC



July 22, 2021

The Honorable Robert Menendez
Chairman
Subcommittee on Securities, Insurance,
and Investment
U.S. Senate Committee on Banking, Housing,
and Urban Affairs
Washington, DC 20510

The Honorable Tim Scott
Ranking Member
Subcommittee on Securities, Insurance,
and Investment
U.S. Senate Committee on Banking, Housing,
and Urban Affairs
Washington, DC 20510

Re: July 22, 2021 hearing on “Examining Frameworks to Address Future Pandemic Risk”

Dear Chairman Menendez and Ranking Member Scott:

On behalf of the National Association of Insurance Commissioners (NAIC),¹ we appreciate the opportunity to submit this letter for the July 22, 2021 hearing on “Examining Frameworks to Address Future Pandemic Risk.” We appreciate the subcommittee’s attention to exploring the issues around the impact of pandemic risk and the roles the federal government, insurers, and businesses can potentially play to help alleviate that risk.

The risk of a pandemic is difficult to insure and state insurance regulators have seen evidence that demonstrates the insurance industry is not able to take on a substantial portion of this risk on their own. State insurance regulators, through the NAIC, issued a data call to collect business interruption (BI) information from insurers to understand which insurers are writing applicable coverage, the size of the market, the extent of exclusions related to COVID-19, and claims and losses related to COVID-19. The information collected includes data from 230 insurance groups writing coverage for business interruption including the top 50 commercial carriers, who alone represent over 80% of the market. Results show that nearly 8 million commercial insurance policies include business interruption coverage. Of that amount, 90% were for small businesses, defined as having 100 or fewer employees; 8% for medium businesses, defined as having 101-500 employees, and 2% for large businesses, defined as having 501 or more employees. Significantly, 83% of all policies included an exclusion for viral contamination, virus, disease,

¹ As part of our state-based system of insurance regulation in the United States, the NAIC provides expertise, data, and analysis for insurance commissioners to effectively regulate the industry and protect consumers. The U.S. standard-setting organization is governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. For more information, visit www.naic.org.

Washington, DC 444 North Capitol Street NW, Suite 700, Washington, DC 20001-1509 p | 202 471 3990 f | 816 460 7493

Kansas City 1100 Walnut Street NW, Suite 1500, Kansas City, MO 64106-2197 p | 816 842 3600 f | 816 783 8175

New York One New York Plaza, Suite 4210, New York, NY 20004 p | 212 398 9000 f | 212 382 4207

www.naic.org

or pandemic and 98% of all policies had a requirement for physical loss. This is not surprising as insurance works well and remains affordable when a relatively small number of claims are spread across a broader group. It is therefore not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period.

The data also indicates that approximately 200,000 claims have been submitted by policyholders seeking lost income benefits under business interruption coverage with less than 2% of claims having been closed with payment, and nearly 86% of claims having been closed without payment due to no coverage under the policy. We recognize that the pandemic has caused massive disruptions to businesses, and it is the expectation of state insurance regulators that insurance companies honor their commitments by paying claims that are covered by insurance policies. However, as we indicated in our March 2020 statement to Congress,² the NAIC opposes proposals to apply BI coverage retroactively to uncovered claims based on COVID-19 and has serious concerns that requiring retroactive coverage would pose significant risks to the solvency of insurers and potentially systemic impacts to the sector and financial system as a whole.

The data clearly illustrates insurers are largely unwilling or unable to underwrite the risk of a pandemic, creating an enormous coverage gap for American businesses and subsequent liability for American taxpayers. Going forward, Congress should consider proposals that depending on structure could limit taxpayer exposure to the economic consequences of the next pandemic without jeopardizing the solvency of the insurance industry. Therefore, the NAIC supports establishing a federal mechanism to help ensure widespread availability of business interruption insurance for pandemic risks. We understand there are several proposals to establish such a program, including legislation in the last Congress by Congresswoman Maloney (H.R. 7011), and proposals from industry and policyholders. While the NAIC does not have a position on any of the specific proposals at this time, to the extent the insurance sector or insurance contracts are the vehicles used to address such risks, it is critical that any legislative solution be designed in a manner that does not undermine state insurance regulatory authorities to protect insurance consumers and ensure the solvency of the industry. It also must not jeopardize the financial condition of insurance companies or affect their ability to pay other types of claims. Finally, any solution should be affordable to policyholders to ensure adequate take up rates, but also reduce the overall taxpayer exposure to risks from a pandemic.

In conclusion, as state officials, we are perhaps closer to the consumers and businesses impacted by this pandemic than any other primary financial regulator. We are on the front lines assisting consumers with policy questions and talking to businesses about their concerns. We are committed to do all that we can to support our communities and remain committed to continuing to work with our federal, state, and local partners to help our country address the devastating health and economic impacts of COVID-19. Thank you for considering the state insurance regulatory perspective.

² https://content.naic.org/article/statement_naic_statement_congressional_action_relating_covid_19.htm

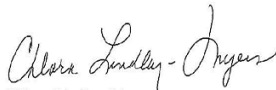
Sincerely,



David Altmaier
NAIC President
Commissioner
Florida Office of Insurance Regulation



Dean L. Cameron
NAIC President-Elect
Director
Idaho Department of Insurance



Chlora Lindley-Myers
NAIC Vice President
Director
Missouri Department of Commerce and Insurance



Andrew N. Mais (He/Him/His)
NAIC Secretary-Treasurer
Commissioner
Connecticut Insurance Department



Michael F. Considine
Chief Executive Officer
National Association of Insurance
Commissioners

STATEMENT OF NAMIC

Comments of the National Association of Mutual Insurance Companies
Examining Frameworks to Address Future Pandemic Risk
 July 22, 2021

Page 2

The National Association of Mutual Insurance Companies (NAMIC) is pleased to provide comments to the U.S. Senate Committee on Banking, Housing, and Urban Affairs Subcommittee on Securities, Insurance, and Investment on frameworks to address future pandemic risk.

NAMIC is the largest property/casualty insurance trade group with a diverse membership of more than 1,400 local, regional, and national member companies, including seven of the top 10 property/casualty insurers in the United States. NAMIC members lead the personal lines sector representing 66 percent of the homeowner's insurance market and 53 percent of the auto market. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

Introduction

The unprecedented economic impact of the COVID-19 global pandemic and accompanying government responses raised many important and difficult questions about appropriate and practical financial preparations for a future pandemic, many of which this committee will examine today. More than 330 calendar days passed between the Department of Health and Human Services' initial declaration of a public health emergency and the first vaccine emergency use authorization by the Food and Drug Administration. During that span, millions of Americans were forced to close their businesses for a period of time with an uncertain future. Those that were able to reopen subsequently found themselves navigating new virtual and hybrid environments while also attempting to comply with shifting guidance and safety mandates, often accompanied by significant costs and dramatically reduced demand for in-person services.

Insurers were not immune to these challenges. Throughout the past year and a half, NAMIC members found ways to continue their core operations serving policyholders without missing a beat in the face of government mandated shutdowns, pandemic uncertainty, a historic storm season, record wildfire losses, and civil unrest. They contributed thousands of hours of agent and staff volunteer time to charities, led collections for understocked local food pantries, and developed new grace periods for policyholders who fell behind on premium payments. As a whole, the insurance industry voluntarily returned more than \$14 billion of premium to policyholders due to reduced driving during COVID. The mutual insurance industry has a long history of stepping up for policyholders when times are toughest, and we look forward to partnering with Congress to find ways to mitigate the impact of any future pandemics.

While the insurance industry believes that preparation and a viable plan for a future pandemic is critical, it is important to establish at the outset that not every risk has an insurance solution. We believe that in the case of pandemics, only the federal government is in a position to truly absorb the financial risk associated with a

business continuity product. Further, any discussion of a mechanism for mitigating economic damage resulting from a future pandemic must be centered on helping businesses by providing the critical resources necessary to retain employees, fulfill existing obligations, and survive the crisis.

Foundational Problem: Pandemic Risk is Uninsurable in the Private Market

Insurers are in the business of providing consumers peace of mind by developing risk solutions for insurable risks. Unfortunately, the reality is that global pandemic risk is fundamentally uninsurable in private markets. Private risk transfer mechanisms simply cannot adequately address the economic fallout from a viral outbreak – this was true before COVID-19 and remains the case as we continue to emerge from the pandemic. It is important to keep in mind that insurance is a mechanism for risk *distribution*, protecting policyholders against isolated and fortuitous events. Distribution or spreading of risk is simply not possible when losses from a risk pool are catastrophic, concurrent, and certain. Unfortunately, these are the exact conditions created by a pandemic, where losses are not only all taking place at the same time but are also affecting the majority of businesses and individuals indiscriminately and across geographic boundaries.

More specifically, pandemic related losses are not bound by the characteristics insurance contracts are created to address: they are not due to chance, they are not isolated, they are not fortuitous, and they are not capable of being accurately underwritten because of the uncertainty they create. The entirety of the nation's insurance industry is not capable of covering the economic costs inflicted by a pandemic, even if the indemnification expenses for insurers in a future pandemic are limited by a contemplated federal backstop. In sum, the potential losses from a pandemic:

1. Are too widespread, severe, and ongoing to adequately diversify;
2. Are too correlated with other simultaneous catastrophic and financial exposures;
3. Cannot be accurately modeled for predictive and actuarial purposes;
4. Cannot be adjusted and paid in a timely manner under any current existing mechanism; and
5. Could only be covered at an extreme cost, prohibitive to the vast majority of potential purchasers.

All of these factors contribute to the fact that the private insurance market is not the right mechanism for a pandemic response program.

Structural Problem: Business Interruption Insurance is the Wrong Mechanism

In particular, creating a program that would simply backstop business interruption insurance offerings would not serve to protect and preserve the broader U.S. economy during the next pandemic. While it may seem logical to use existing business interruption coverage methods and systems as a vehicle for addressing future pandemics, we believe tying a national pandemic emergency response to these coverages would be problematic and highly disruptive to all the products and policyholders involved. Any envisioned convenience

of business interruption insurance as a tool for offsetting pandemic risk is immediately undercut by its complexity, specificity, and low take-up rate, among other things. Further, given the uninsurable nature of a pandemic, the costs of even coverage up to a proposed backstop would be high, likely to the point of being prohibitive for businesses, particularly small businesses.

Although there is some level of standardization in business owner policy contract language, there is no one-size-fits-all business interruption insurance policy provision, so any discussion of the mechanism must rely on generalizations. Business interruption provisions, which are usually not sold as stand-alone coverage, run the gamut from “all risk” to highly manuscripted coverages full of detailed and negotiated exclusions, making any analysis of even the current market challenging. Typical business interruption provisions include physical damage requirements, numerous exclusions, time period limitations, and negotiated caps on payment as part of complex and lengthy terms and conditions. The variable nature and purpose of the existing business interruption coverage structure would make it nearly impossible to provide meaningful and prompt relief to a business given the likely long duration of closures. Instead, a well-intentioned attempt to force a square peg into a round hole will create more problems than it solves by adding layers of cost, time, and complexity that would be unhelpful in keeping coverages affordable and payments expeditious in a crisis, when they are needed most. Further, business interruption policies based on some trigger such as government mandated closures of businesses would not have solved the problem for businesses in states which did not order shutdowns during COVID-19, but still saw catastrophic economic damage simply from decreased demand for in-person services.

Operational Problems: Costs, Take-up, Speed, Process, and Uncertainty

As much as insurers are interested in developing solutions for risk, pandemics present unique challenges not only from foundational and structural perspectives, but from an operational one as well. For insurers to provide meaningful protection, costs to potential policyholders would have to be extremely high in order to provide coverage without risking large scale insolvencies under state law. This, in turn, would likely limit the take-up rate by the businesses, especially those most in need of financial protection from a future pandemic.

What became clear throughout the response to COVID-19 was that businesses needed resources quickly. The existing private insurance mechanism is not well suited for speedy payouts on such a massive scale. The greatest number of claims insurers have ever adjusted at one time is approximately 3 million following Hurricane Katrina, which spread across numerous personal and commercial insurance lines. A pandemic would mean tens of millions of complex, geographically widespread claims at the exact same time. Millions of small businesses cannot afford to wait for lengthy processes to play out around certifications, forensic investigations, caps, and reimbursement ratios.

Ultimately, what insurers and policyholders all fear most is uncertainty. Any genuine solution for future pandemics cannot leave uncertainty regarding liability protections, races to close by governments, races to file by policyholders, or reimbursement caps that discourage participation in any sort of federal program.

Pandemics are not Terrorism

There may also be an understandable instinct among policymakers to equate the risks posed by a future pandemic to those posed by a future terrorist attack. While somewhat intuitive, such an approach will not work because from an insurance perspective, terrorism and pandemics pose starkly different insurability challenges. Where a terrorist act generally occurs in a specific location, pandemics are, by their very nature without geographic boundaries – thus, the scale, scope, and longevity of losses is simply not comparable. Terrorist acts are also limited events that are finite, determinable, and of limited correlation; meanwhile pandemics involve viruses that mutate, come in waves, and whose duration is completely unknown until it is over, causing massive financial losses across all sectors. Terrorist acts also cause quantifiable physical damage to property, intentionally caused by humans. Pandemics on the other hand, are natural perils that do not cause lingering physical damage to surfaces and can be killed with relative ease by cleaning with disinfectants. Finally, the paucity of useful historical data regarding the scope and scale of pandemic losses makes predicting and modeling future pandemic risk on a global economy scale virtually impossible.

Questions to Address When Considering a Pandemic Risk Solution

To the extent that Congress decides to consider a forward-looking solution in this space, there are many critical questions that must be addressed:

- Is a risk-based mechanism truly viable, even with Federal support in the form of a backstop?
- How to account for businesses of different sizes?
- How to account for businesses who rely on in-person consumers, as well as ensuring there is no unjust enrichment for businesses that did not see a drop-off in demand, or even saw an increase in sales during pandemic restrictions?
- How to account for those businesses that still suffered financially due to the pandemic but did not have government mandated closures in place?
- How to account for ongoing businesses as opposed to one-time events?
- What will the ultimate cost of such a program be?
- Would a complex insurance program really provide better and more efficient relief in a crisis, compared with a program like the Paycheck Protection Program?
- How will policymakers handle businesses that do not purchase financial protection from future pandemics? How will they address this moral hazard?

- How to protect against fraud and abuse by malicious actors or businesses receiving benefits from other government programs?

Any Future Solution Should be Focused on Protecting Main Street America

While many businesses were successfully able to pivot operations into remote and virtual environments over the past year and a half, millions of cash-strapped businesses along main streets across the US struggled or closed. Future solutions must take into consideration the reality that businesses need immediate financial relief to provide economic certainty and peace of mind. Additionally, future solutions must also be realistic about accessibility, affordability, and take-up rates. A substantial number of businesses decline to purchase business insurance coverage as is – consultants at McKinsey estimate that 40% of sole proprietors carry no insurance. Even fewer businesses are likely to purchase coverage if it comes with additional costs for pandemic coverage.

One Alternative Solution

In the summer of 2020, in concert with the American Property Casualty Insurance Association and the Independent Insurance Agents & Brokers of America, NAMIC developed a proposal called the Business Continuity Protection Program (BCPP), modeled after the War Damages Insurance Corporation, created by Congress during World War II. Collectively, we understood the need for a practical, efficient, and effective solution that could provide immediate financial relief to businesses in the event of a future pandemic, and the need for the insurance industry to contribute its knowledge and expertise to solving many of the challenges outlined above.

The BCPP as originally envisioned would have created a potential solution for pandemic risk where no private market exists, using the financial strength of the federal government and leveraging the distribution network of the property/casualty insurance industry to provide immediate financial relief, economic certainty, and peace of mind to business owners all across the country. The proposal would create a federal revenue replacement product, available and affordable (through a subsidized fee structure) to any firm in the US or US territories filling out a simple application with easy-to-understand options for purchasing up to three (3) months of up to 80% revenue replacement to assist with payroll, benefits, rent, or other allowable categories set by the program, with subsequent annual and post-event audits to promote accountability and root out fraud.

While we still support the principles of such a program, we acknowledge that it was developed in the midst of the chaotic pandemic response and only contemplated three months of business revenue replacement. We would still be supportive of such a government pandemic program moving forward, assuming concerns about access, effectiveness, and incentives can be addressed.

Conclusion

As the National Association of Insurance Commissioners has stated, "Insurance works well and remains affordable when a relatively small number of claims are spread across a broader group, and therefore it is not typically well-suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period." NAMIC agrees with the NAIC, and we stand ready to work with this committee to better understand the challenges associated with creating an insurance-based prospective pandemic program going forward.

STATEMENT OF PIA



STATEMENT BEFORE THE U.S. SENATE COMMITTEE ON BANKING, HOUSING
AND URBAN AFFAIRS SUBCOMMITTEE ON SECURITIES, INSURANCE AND
INVESTMENT FOR A HEARING ON EXAMINING FRAMEWORKS TO ADDRESS
FUTURE PANDEMIC RISK

July 22, 2021

Founded in 1931, the National Association of Professional Insurance Agents (PIA) is a national trade association that represents independent insurance agencies and their employees. PIA members sell and service all kinds of insurance but specialize in coverage of automobiles, homes, and businesses. PIA represents independent insurance agents in all 50 states, Puerto Rico, and the District of Columbia.

Independent insurance agencies play a particularly important role in delivering insurance products to commercial businesses, large and small, throughout the U.S. The COVID-19 virus wreaked havoc on ordinary life and devastated our economy. During this difficult time, independent agents stepped up, as they always do in a crisis, to offer as much help as they could to their clients.

PIA supports policy proposals that will help its members and the small business community at large maintain liquidity and solvency as we emerge from these tumultuous economic times. During the pandemic, we urged Congress to provide relief for small businesses. As the economic crisis posed by the COVID-19 pandemic recedes, we appreciate the Subcommittee's attention to the potential economic consequences of a future pandemic, and we will continue to seek out policies that meet the needs of small businesses as the recovery progresses.

PIA's Guiding Principles for a Policy Governing Future Pandemics

- **Utilization of Public-Private Partnership:** If the Senate considers a legislative solution to a future pandemic, PIA views a government backstop in the form of a public-private partnership as the best possible method of providing commercial policyholders with coverage for pandemics.
- **Affordability for Small Businesses:** A legislative solution must be affordable for businesses of all sizes, including small businesses.

- **Deployment of Existing Insurance Framework:** PIA members prefer to work within the framework of the insurance industry. We favor proposals that use the existing insurance framework over those that would require insurance agents to deliver a non-insurance product to consumers.
- **Focus on the Future:** Proposals should be future focused. They should allow businesses to properly budget for pandemic risk protection and make considered, informed decisions about their participation in any federal program. We strongly oppose any proposal that would retroactively rewrite existing contracts containing business interruption (BI) exclusions.

Public-Private Partnership

A public-private partnership is essential to ensuring that a future pandemic does not result in economic disaster for small businesses. In the past, similar steps have been taken to create markets for flood and terrorism risk insurance and, while it would be challenging, the insurance community can create similar products for pandemics, but only if the industry has access to a public-private partnership.

Without a federal government backstop, it is unclear that insurers could provide coverage for losses resulting from pandemics. With such a backstop, losses that arise out of future pandemics could, perhaps, be insurable. The creation of a private market for a new group of products could strengthen the entire industry. PIA's long-term objective is for the private industry to provide insurance products that cover pandemics.

Pandemics are unpredictable in both frequency and severity. Carriers may be reluctant to offer coverage in circumstances in which they are unable to gauge the potential impact on industry surplus. However, along with insurance agents, carriers are well-suited to assist in the claims process after a loss occurs, and the presence of a government backstop could provide sufficient financial scaffolding to allow carriers to offer coverage that includes pandemics. A public-private partnership could provide the insurance industry with the financial support it needs to safely underwrite this unique risk.

PIA supports a framework built on a public-private partnership that utilizes the existing insurance framework and provides businesses with a realistic option for protecting themselves from the economic consequences of a potential future pandemic.

Affordability for Small Businesses

Any proposal must be affordable for small businesses. Policymakers should offer businesses of all sizes a way to avoid the economic disaster a future pandemic could cause. Many policy proposals offered last year that would have provided pandemic BI coverage would have also increased the cost for all kinds of BI coverage for small businesses. Proposals that increase the cost of BI coverage without offering offsetting savings will price out small businesses, making the purchase of BI coverage further out of reach.

Utilization of Existing Insurance Framework

PIA's members prefer to work within the framework of the insurance industry. Any proposal should utilize the existing insurance framework. Proposals that would require insurance agents to deliver a non-insurance product to consumers undermine the power of the agent salesforce. Independent agents represent the needs of their policyholders to insurers; they explain the intricacies of policy features and limitations and act as an intermediary between consumers and carriers. When agents are forced to sell non-insurance products, it can compromise their credibility and erode their relationships with their clients.

A public-private partnership that utilizes the existing insurance framework could, over time, help to cultivate the development of a private market that operates independently of the federal government.

Focused on the Future

Any proposal should be focused on the future so that businesses can budget for it and make informed decisions about participating. We strongly oppose any proposal that would retroactively rewrite existing contracts containing BI exclusions.

The business community requires assistance to thrive in the aftermath of the COVID-19 pandemic. One typical source of such assistance is BI coverage, which allows businesses to file insurance claims for (typically physical) losses resulting from interruptions to their ordinary course of business. BI coverage is routinely available to businesses that are forced to close because of physical damage sustained in a hurricane or tornado, for example. However, most BI coverages exclude losses caused by intangible conditions like viruses or gas leaks.

One troubling suggestion proposed last year in state legislatures and the U.S. Congress was to require insurers to retroactively recognize financial losses triggered by the coronavirus outbreak as part of their policyholders' BI coverage, even in policies where such coverage was contractually excluded. If adopted in the future, such a proposal would override existing BI exclusions and force carriers to cover losses associated with government-mandated closures and shelter-in-place orders arising from a pandemic, even where the affected policies were written, sold, and purchased with the opposite expectation by everyone involved. Such a proposal would essentially override the exclusion for losses due to viruses and eliminate (often statutory) requirements that losses be a direct result of damage to or loss of physical property.

Insurance policies are priced and sold based on the likelihood of the policyholder experiencing a covered loss, the risk of which is calculated by actuaries and underwriters. Moreover, commercial insurance policies are contracts entered into by businesspeople with extensive background knowledge and experience on both sides. Legislators should not have the power to rewrite private contracts. The unanticipated consequences of such a proposal would harm everyone involved and would create additional financial instability and uncertainty at a time of extraordinary economic turbulence.

Most importantly, retroactive BI would leave many small businesses behind, because many small businesses do not have business interruption coverage at all. As such, using retroactive BI to help businesses stay afloat during a pandemic would not have helped many of the small businesses that struggled because of COVID-19. Pursuing a retroactive BI proposal will artificially create winners and losers within the small business community. Any policy intended to protect businesses from the economic harm of a future pandemic should be focused on the future.

Conclusion

PIA believes a public-private partnership is the best way to protect businesses from the economic harm of a future pandemic. Independent insurance agents prefer to work within the framework of insurance; for that reason, we favor a policy that will provide an insurance solution to this problem. PIA and its members look forward to continuing to work with policymakers on this important issue.

LETTER FROM ICSC



July 22, 2021

Senator Robert Menendez
United States Senate
Chairman
Subcommittee on Securities, Insurance, & Investment
Washington, DC 20510

Senator Tim Scott
United States Senate
Ranking Member
Subcommittee on Securities, Insurance, & Investment
Washington, DC 20510

Chairman Menendez and Senator Scott:

On behalf of the approximately 50,000 members of ICSC, thank you for conducting today's hearing entitled "Examining Frameworks to Address Future Pandemic Risk." We hope that this hearing will serve to advance the creation of a prospective federal pandemic risk program.

ICSC is a member organization for the advancement of the Marketplaces Industry that supports our members in their vital roles as community builders, career developers, job creators and economy drivers. Our members include property owners, developers, financial institutions, professional service providers and, importantly, marketplace tenants such as retailers, restaurants, gyms, child care providers, health care and wellness centers. These businesses comprise an essential part of every city, town and village across the country, with small businesses representing nearly 70 percent of marketplace tenants.

The Marketplaces Industry is an essential component of American communities, with an estimated \$6.7 trillion of annual pre-COVID consumer activity produced by the retail, food & beverage, entertainment and consumer service industries occurring within America's marketplaces, and nearly 1 out of 4 American jobs retail related. Approximately \$400 billion of all state and local taxes supporting schools, public safety resources and infrastructure was generated by our industry in 2019.

ICSC believes that the federal government has an important role to play in the management of pandemic risk and business continuity. Closures and shutdowns caused by COVID-19 have significantly impacted the employees and operations of consumer-facing businesses across the country and our members seek to responsibly manage the risk from the impacts of future public health and safety closures.

Most ICSC members thought that they were appropriately insured for a major business interruption, including a pandemic, only to be told by their insurance carrier that the terms of their insurance policy did not cover business interruption caused by public health closures. Further, many of our members have been unable to access federal COVID-19 economic support, and those who did receive funds found that federal pandemic programs underprioritized their largest financial obligation, commercial rent. Although the vast majority of retail real estate operators provided rent forgiveness or deferral to their tenants in order to keep businesses in place, marketplace owners were limited by their debt obligations. It will take several years for the full impact of the COVID-19 shutdowns to be unwound.

Looking forward, businesses are attempting to obtain pandemic insurance coverage to responsibly plan for the future. Based on discussions with industry risk managers, private insurance markets are limiting pandemic related coverage across several lines of insurance or have increased premiums exorbitantly. There is no confidence that private insurance will be able or willing to meet the pandemic risk needs of our members in the coming years.



As a member of the Business Continuity Coalition (BCC), ICSC supports the BCC's testimony for today's hearing and the proposal to create a public-private insurance backstop program that could serve as a more efficient, pre-sold alternative to last year's Paycheck Protection Program (PPP), providing a parametric revenue replacement for community-based businesses. The BCC proposal also would restore and solidify pandemic coverage in other commercial property and casualty lines of insurance which are so crucial to investment, job creation and safe business operations.

As we continue to recover from COVID-19 and its variants, ICSC urges Congress to move swiftly to create a federal pandemic risk program. Without this risk infrastructure, the consumer-serving businesses like those we represent, will be left with significant unhedged financial exposure, jeopardizing their ability to provide essential goods and services to our communities and compromising their fiduciary responsibility to investors, which include many life insurance and pension funds.

Thank you again for your attention to this matter.

Sincerely,

Tom McGee

President & CEO

ICSC

1251 Avenue of the Americas, 45th floor
New York, NY 10020-1104
+1 844 728 ICSC (US/Canada Toll Free)
+1 646 728 3800 (Worldwide)

ICSC.com

STATEMENT OF IIABA



Independent Insurance Agents
& Brokers of America

Statement for the Record
Submitted to the Senate Committee on Banking, Housing, and Urban Affairs
Subcommittee on Securities, Insurance, and Investment

“Examining Frameworks to Address Future Pandemic Risk”

July 22, 2021

Founded in 1896, the Independent Insurance Agents & Brokers of America (IIABA or the Big “i”) is the nation’s oldest and largest association of independent insurance agents and brokers, representing more than 25,000 agency locations united under the Trusted Choice brand. Trusted Choice independent agents offer consumers all types of insurance—property, casualty, life, health, employee benefit plans and retirement products—from a variety of insurance companies. Independent agents sell nearly 80 percent of all commercial lines insurance policies in the United States, and our expertise and experience with businesses and the commercial marketplace affords our membership a distinct perspective with which to speak on the topic of insuring businesses against a pandemic.

The businesses and nonprofit organizations our members serve have been impacted by the COVID-19 pandemic in distressing and sometimes heartbreaking ways, and IIABA welcomes and greatly appreciates the subcommittee’s examination of how to better prepare our country’s economy against future pandemics. The world now recognizes that events of this nature can indeed occur, and we need to prepare for the possible occurrence of similar outbreaks in the future. As the United States hopefully enters the tail end of the current COVID-19 pandemic, the discussion among policymakers, the business community, the insurance industry, and other stakeholders about how to address future pandemics has appropriately begun. IIABA looks forward to assisting your efforts.

The challenge with addressing pandemic risk is that these events possess unique characteristics and can have a global reach. They are unlike other types of risks that the insurance industry and private marketplace are typically able to address. As many experts and observers have noted, pandemics can produce an immense magnitude of potential financial losses, do not allow for the spreading of such risk in traditional ways, and make it challenging for the insurance industry to provide coverage to the millions of

businesses and nonprofit entities in the United States. The simple and unfortunate reality is that the risk we are confronting is unique and anomalous and will require a prospective solution all its own. We can learn lessons and incorporate elements from past experiences with other risks, but there are no off-the-shelf public policy solutions.

IIABA believes any proposal for addressing future pandemics should satisfy the four principles outlined below:

- First, any legislative solution must effectively meet the needs of the businesses we serve. Any action taken should ensure that businesses and other enterprises can receive timely financial assistance when their operations are disrupted as a result of a pandemic that rises to the level of a public health emergency. This type of financial protection program needs to be as efficient and seamless as possible.
- Second, any prospective solution should provide an active and relevant role for the insurance industry in the delivery of assistance for business consumers (a perspective shared by a growing universe of policymakers and industries). Businesses and nonprofit organizations look to their insurance agents to help them address and protect against risk, and any conversation about whether an entity is protected against a particular risk is almost certainly and most appropriately going to come up as part of the insurance placement process and in conversations between an owner and their agent. The product that may ultimately be developed to respond to pandemic risks may not be an insurance product, but our members want a solution that can fill the gap that traditional insurance is unable to fill and enable insurance agents to help their clients weather future pandemics.
- Third, given the unique nature of pandemic risk, it is essential that the federal government bear all or nearly all of the financial responsibility for business losses associated with COVID-19-like events. The insurance industry is simply unable to cover these potential losses due to their magnitude. Certain insurers may be willing to assume very small and precise portions of the risk but requiring the marketplace generally to assume this risk would be troubling.
- Fourth, the product or program designed to fill this protection gap must reflect the unique nature of pandemics. Among other things, this means the product must be parametric in nature and obviate the need for traditional claims adjustment. Financial assistance to businesses should be based on their existing payroll, expenses, and other factors and should begin to flow when clearly defined triggers are satisfied. Traditional claims adjustment in this sort of instance would be overwhelming and impractical and would unnecessarily delay much-needed payments to businesses.

One proposal that satisfies these high-level principles is the Business Continuity Protection Program (BCPP). This proposal would establish a voluntary federal program through the Treasury Department delivered by the private market. The program would

allow for the purchase of revenue replacement assistance for business interruption caused by a viral pandemic or other epidemic infectious disease that have been federally declared as public health emergencies. The Big "I" welcomes the opportunity to discuss this proposal should you have any questions.

While IIABA sees potential in the BCPP concept, we should also note that there may be other meaningful proposals that satisfy the principles outlined above and those proposals deserve serious consideration as well.

IIABA is excited to work with the Committee on this critical issue and hopes the information above provides helpful insight into how all parties can come to the table to create a pandemic risk program. IIABA is thankful for your consideration of our views.