

House Committee on Financial Services
Subcommittee on Housing, Community Development and Insurance
November 19, 2020

Rep. Lacy Clay, Subcommittee Chairman
Rep. Steven Stivers, Subcommittee Ranking Member

“Insuring against a Pandemic: Challenges and Solutions for Policyholders and Insurers”

Witness List

Ann Cantrell, Owner, Annie’s Blue Ribbon General Store, on behalf of the National Retail Federation

John Doyle, President & Chief Executive Officer, Marsh

Brian Kuhlmann, Chief Corporate Counsel, Shelter Insurance, on behalf of APCIA and NAMIC

Michelle Melendez McLaughlin, Chief Underwriting Officer, Chubb North America

R.J. Lehmann, Executive Editor and Senior Fellow, International Center for Law and Economics

Opening Statements

Rep. Clay (D-MO)

- The harmful effects of the pandemic on small businesses, like restaurants, cannot be overstated.
- Most insurance policies have exclusions for pandemics, which are likely to be upheld in court.
 - The possibility of even suing is unlikely for most small businesses due to litigation costs.
- Any solution will need effective buy-in from industry and must deal with the conundrum posed by the fact that many of the business interruption insurance cases being adjudicated have been dismissed because of a lack of direct physical loss or damage.
- Industry could work with business owners and consumer groups to devise a type of umbrella policy for which a business pays a suitable premium and is insured for everything.
 - The current system is rife with confusion and complexity.
- A small business owner should not need a battalion of lawyers to handle their insurance claims after faithfully paying their premium.

Rep. Stivers (R-OH)

- The solutions that we are going to discuss today are about preparing for the next pandemic.
- Any product that we put forward must have meaningful support from both parties.
- Republicans are committed to working in a bipartisan way, but we cannot start with a preconceived outcome.
- Some colleagues may focus on the existing framework in place for the Terrorism Risk Insurance Act, but the scale and scope of a pandemic is far larger than a terrorist attack.
 - We must understand the nature of the problem and the issues confronting businesses.
- The pandemic has proved disastrous for one-time large events as well, and any solution that we address must look at event cancellation. This is not currently in the proposed legislation.

Rep. Waters (D-CA)

- When COVID-19 hit in March, small businesses were devastated.
- They have been largely unable to rely on business interruption insurance policies to cover losses.
- Many of these businesses may permanently close if the government does not respond.
- Looking forward to discussing the various paths forward.

Rep. McHenry (R-NC)

- Appreciate Rep. Maloney's work on this issue and putting a marker down to prepare for future pandemics. It is a good first step for this legislation.
 - I think we can come to a bipartisan agreement to help small businesses.
- Need to look at solutions that incentivize participation, are scalable, that harness the power of our state-by-state regulatory environment, and are similar to PPP.

Rep. Maloney (D-NY)

- After 9/11, we couldn't build anything in New York because insurance companies would not insure any property against terrorist attacks.
 - TRIA successfully unlocked the market and got the economy moving again.
- We are trying to do the same thing through the Pandemic Risk Insurance Act.
- Entire industries have been upended by COVID-19 and they have no way to protect themselves from future pandemic-related losses.
- We cannot continue to expose our economy and small businesses to this level of risk.
- We should be proactive and develop a long-term solution, and PRIA is a starting point for a forward-looking, public-private, risk-sharing partnership to provide a federal backstop for business interruption policies that include coverage for pandemics.
- PRIA would create a totally voluntary program for insurers and policy holders.

Witness Statements**Ms. Cantrell**

- The National Retail Federation has partnered with Congresswoman Carolyn Maloney, the sponsor of the Pandemic Risk Insurance Act.
- Retail sales and jobs have been devastated by the pandemic.
- When COVID-19 hit I called my insurance broker and quickly learned that viruses and pandemics were excluded from policies like mine years ago.
- We fortunately received a PPP loan, but were still closed for over three months, missing some really big holiday selling for us through Easter and Mother's Day.
- PRIA should be passed as soon as possible to prepare for future pandemics.
- In the meantime, Congress should provide some type of relief to businesses that were forced to close by government mandate.
- NRF is a member of the Business Continuity Coalition (BCC).
- BCC seeks not only widespread availability and affordability of nondamage business interruption insurance coverage, but also restoration and expansion of pandemic coverage in other lines.
 - That includes event cancellation, movie/TV production insurance, employment practices liability, and other lines that have been hard hit by Covid-19.

Mr. Doyle

- Marsh is the world's leading insurance broker and risk advisor.
- We believe that a public-private partnership is the best option for a pandemic risk solution.
- There are compelling reasons to act now:
 - Accelerate the economic recovery by reducing uncertainty; provide financial protection against future pandemics; and bend the risk curve for future pandemics.
- We use the five principles when thinking about how to create a workable solution.
- **Risk Mitigation and Resilience:** How should the scheme's design embed measures to encourage resilience in the community.
- **Funding Model:** A public private partnership could facilitate increased private market participation over time with the appropriate level of industry commitment
- **Scope of Coverage:** Should coverage be compulsory to offer, and should it be compulsory at some level to purchase.
- **Distribution and Operating Model:** A solution must contemplate the infrastructure required to operate the scheme on an ongoing basis, and the technology necessary to meet its objectives.
- **Claims Process:** A solution must include a well-defined trigger that defines relevant thresholds and specifies how and when claims are paid.
- The last several months have demonstrated that traditional insurance solutions do not fully provide businesses with the protections they need against the enormous costs of a pandemic.
- We need insurers, backed by the federal government, to write pandemic insurance policies, and for brokers to contribute our risk knowledge and infrastructure.

Ms. McLaughlin

- Recognizing the insurance industry's risk-taking role, Chubb has proposed a public-private partnership that can be implemented before the next pandemic.
- Any pandemic solution will require substantial involvement of the federal government, but the industry can play a meaningful role in providing future pandemic risk coverage.
- Our proposal has two elements:
 - A program for small businesses that provides an immediate cash infusion when a pandemic is declared; and a separate voluntary program for medium and large businesses with losses paid through the existing industry claims adjudication process.
- The first provides coverage for up to three months of payroll, plus other expenses such as rent/utilities. Claims are based on a pre-determined amount and paid automatically when the program is triggered.
- The second creates "Pan Re," a federal reinsurance facility for businesses with more than 500 employees. Private insurance companies would write pandemic policies at market terms and retain some portion of the risk. The rest would be reinsured to Pan Re, which would be paid adequate risk for providing coverage.
- Our proposal builds around five key attributes:
 - Provides a meaningful role for the industry to share pandemic risk with the government.
 - Recognizes the immediate needs of small business.
 - Provides affordability and choice for small businesses, with strong incentives to purchase coverage and timely claim payments in crisis.
 - Provides effective incentives for broad participation by the insurance industry.
 - Is fiscally responsible.

Mr. Lehmann

- I agree that the pandemic has highlighted a massive protection gap in commercial insurance products, and that the problem almost certainly calls for a governmental solution.
- I am not sure if insurance is the best means to accomplish the public policy goals in question.
- There may be a role for the federal government to support business interruption, but you should understand the limits of that approach.
 - Only about a third of businesses have business interruptions, and less than a third would buy pandemic business interruptions.
 - PRIA would not end claims disputes, which still need to show damage to the property.
- Would a pandemic claim require a shutdown?
 - The initial wave of business closures did not come as a result of mandated shutdowns; they were in response to customers choosing to stay home.
- The best argument for a public-private partnership is that insurers can help policy holders to mitigate risk. But what risk?
 - The risk that you would be trying to reduce is a business shutdown, but in a pandemic we want businesses to shut down.
 - Businesses need a safety net so that they can shut down and still survive.
- You do not want this to be a risk-based program.
- This shouldn't be just an insurance industry program, but should also involve banks and payroll processors to help market it.
- BCPP idea of a parametric trigger is much better to get the money out as quickly as possible.
- My recommendation is to take your time, recognize that ad hoc solutions might be best, get help to businesses, workers, and communities who need it right now, and don't legislate for the next pandemic while we are still in the current one.

Mr. Kuhlmann

- We must understand that not every risk is insurable, and pandemics fall into this category of uninsurable risks.
 - It is impossible to diversify pandemic risk and spread losses across different groups.
- Thus, an alternative mechanism will be necessary to protect businesses from future pandemics.
 - This mechanism should be focused on providing real, efficient, and effective financial assistance to all American businesses and nonprofits.
- Our industry's risk expertise and infrastructure can help with pandemic solutions, even if we cannot shoulder the direct financial burden of pandemic losses.
- Our proposal is the Business Continuity Protection Plan (BCPP):
 - It is modeled loosely after the War Damages Insurance Corporation (WDIC) during WWII, and would provide a straightforward revenue replacement solution for businesses and nonprofits of all sizes.
 - It would set up a program at the US Treasury to administer a federally subsidized revenue replacement product that is available to any business in the US.
 - Businesses could purchase up to three months of protection for up to 80 percent of payroll, benefits, and other necessary expenses.
 - The program would have a "parametric" trigger.
 - Pricing for the BCPP product would be federally subsidized, so the cost could be made more affordable and thus encourage a high take-up rate.

Member Statements/Questions and Answers

Rep. Clay (D-MO)

- 184,000 business interruption claims have been made during COVID-19 pandemic, and less than 1% have been paid out.
- Are pandemics and terrorism events comparable enough to use the TRIA model when crafting affordable coverage for pandemics?
 - **Kuhlmann:** I don't think it is an acceptable model. Terrorism risk is very different than pandemic risk, because it is often localized to a specific region. During a pandemic, claims would have to be paid out simultaneously throughout the country.
- Are there ways we could strengthen the TRIA model to use it for pandemics?
 - **Kuhlmann:** I think it is a very different risk and you can't base it off of TRIA. I think the product would be unaffordable as well.

Rep. Stivers (R-OH)

- Currently version of PRIA caps liability at \$750 billion, and assuming we had to shut down the economy for two months, who would be responsible for anything above that cap?
 - **Doyle:** We applaud Rep. Maloney's proposal, but it has limitations. We would need to find a way to scale up that capacity.
- Isn't it true that above that \$750 billion insurance companies would be on the hook?
 - **Doyle:** I think that's right, or they would be reluctant to participate in the first place.
- I don't think insurance companies would be interested in participating in the model we are discussing today.
- We can cap the liability of each individual insurance company at some small level and then grow it overtime, but I don't think we can truly make this an insurable risk.

Rep. Velazquez (D-NY)

- If we had a PRIA program in place last spring, do you think you would have been able to withstand the economic downturn caused by the pandemic?
 - **Cantrell:** Absolutely.
- Why do you believe pandemic business interruption is uninsurable risk, and how would the Business Continuity Protection Plan work?
 - **Kuhlmann:** I think it is uninsurable because you would have millions of claims throughout the country at the same time. BCPP would be a federally subsidized program with a parametric trigger that would be affordable for businesses.

Rep. Posey (R-FL)

- This is another government program to do what the market won't do on its own.
 - We want a program to insure business losses, and do so at premiums that cannot possibly cover the payouts for such losses.
- Is there any economic justification to subsidize insurance for business interruptions due to a pandemic, but not to do so for interruptions due to a financial crisis?
 - **Lehmann:** I can see why there is a role for government assistance in both cases, but whether there is a need to create an insurance program is less clear to me. Most companies won't even have a business interruption policy, and that money would be better spent directly aiding businesses.

- There is no existing market for pandemic insurance, and we cannot try to force something that is uninsurable into a TRIA model.
 - **Kuhlmann:** I think even if it is voluntary you would not have a great take up among insurance companies, and it would become more expensive.
- Wouldn't it be just as effective to integrate business loss assistance into the Stafford Act along with cost sharing?
 - **Lehmann:** A good argument could be made that the pandemic is more like a public catastrophe than it is like an economic assistance program. The Stafford Act is a way to at least respond to the public closures that are ordered.

Rep. Cleaver (D-MO)

- Is the FIO effectively evaluating the tolerance of the insurance market?
 - **Lehmann:** I am not aware of FIO conducting any research, but I think it would be wise to direct them to examine the question of availability of coverage for business interruption and other insurance coverages.
- We are examining with this program without the data.
 - **McLaughlin:** We have the data for our own company, and we are trying to create a program where insurers can have some skin in the game but with guardrails.
 - **Kuhlmann:** I believe the NAIC is also trying to gather some data and we support that.
- We need data so everyone can understand this issue before we vote on anything.

Rep. Zeldin (R-NY)

- It is vital that Congress comes together again and pass an additional round of PPP funding to help business weather any government-placed restrictions.
- It is also important that we start thinking about ways to have liquidity measures ready and in place to assist small businesses with any future pandemics.
- What would be the difficulties with using a claims-based process?
 - **Kuhlmann:** Using a claims-based process would require specialized adjusters who are handling these claims, and it is almost a form of forensic accounting that would be necessary to evaluate them. It won't be as timely as needed, and will be expensive.
- There are other specialized insurance products out there, such as production insurance or event cancellation insurance.
- Is there a role for the federal government to play to help these markets regain insurance coverage?
 - **McLaughlin:** Our proposal is meant to address Main Street America, but the framework could certainly be expanded to include the other types of coverage you mentioned.

Rep. Green (D-TX)

- Would it have been beneficial to have a notice/disclosure about what your insurance covered?
 - **Cantrell:** I think disclosure would be great because I was not reading the fine print to know exactly what is or is not covered.

Rep. Kustoff (R-TN)

- If PRIA or BCPP was inexistence and you had to litigate your claim, what would be the impact on your business?
 - **Cantrell:** I don't have those resources, so I have never considered litigation.
- My point is that you need claims to be paid very quickly in order to be helpful for your business.

- What would be the challenges in establishing and running a new PRIA program?
 - **Lehmann:** Public health is a local matter for the most part, so that would take quite a bit of work.

Rep. Maloney (D-NY)

- A broad consensus has emerged, supported by research from Marsh and proposals like Chubb's, that pandemic risk is insurable with an appropriate federal backstop.
- Why must any federal program include a federal backstop?
 - **Doyle:** Pandemics are global by nature and the economic consequences are beyond the risk-bearing capacity of insurers, but many insurers want to have constructive dialogues about the industry's role. We should also be looking to change the outcome of the next pandemic, because shutting down businesses is not an ideal future state.
- Why is risk sharing necessary for any federal program?
 - **McLaughlin:** We feel it is incredibly important for the industry to play a role in any solution, because our knowledge and experience could help drive better behavior.
- My bill is just a marker, a draft to be improved upon. I am open to all suggestions.

Rep. Rose (R-TN)

- COVID-19 pandemic and government mandated shutdowns have devastated businesses.
- PPP allowed businesses to keep their doors open and their staff on the payroll.
- Any legislation we approve must be bipartisan, have input for stakeholders, and be voluntary.
- Setting aside whether the structure of PRIA would even work, it could lead to incredibly high cost of coverage.
 - **Lehmann:** I don't imagine many original property and casualty insurers would be interested in participating, as the administrative costs would be pretty large.
- What would happen if insurers who did choose to participate made insurance unaffordable for small businesses?
 - **Lehmann:** Given the cost of administering it, coverage would likely be very expensive. If it were risk based, you'd expect indoor businesses to have more expensive coverage so they would probably opt not to buy it.
- Why would the insurance model not be an effective way to get aid to businesses?
 - **Lehmann:** The first part is just take-up because business interruption is not that common, but the other side is that most of the loss is not an insurance claim. "Business is bad" insurance doesn't exist.

Rep. Steil (R-WI)

- Insurance is regulated at the state level. Have all 50 states allowed exclusions for pandemics in their policies?
 - **Lehmann:** Yes, the virus exclusion dates to SARS.
- Is there a market demand that is driving us forward on pandemic coverage at a national level?
 - **Lehmann:** I have heard that lenders may be looking at it, but I don't have evidence that it is a common requirement.
- Are there other instances you can think of where a government/political actor would control a triggering event, and how has that played out as it relates to moral hazard?
 - **Lehmann:** The only real comparison is TRIA. Usually events are defined, and you don't need the government to decide what is a triggering event.

Rep. Lawson (D-FL)

- Given the challenges that private insurance faces in providing business interruption and even cancellation insurance, do you believe that some type of governmental backstop program may be necessary if pandemic risk insurance is ever going to be widely available?
 - **Lehmann:** We all agree that the private market alone is not going to cover a risk like a global pandemic.
 - **Doyle:** We need a program that covers this risk going forward, and we need it to be structured in a way that encourages participation, is subsidized by the government, has a quick/simple trigger, and has the right incentives to bend the risk curve over time.

Rep. Gooden (R-TX)

- Can you comment on the idea of a mandate for insurers? Would that work?
 - **Lehmann:** The upside of a mandate is that business owners would all have coverage. But if you add the cost, would businesses still buy business interruption insurance?
- Should Congress wait until after the pandemic is finished to worry about long term solutions?
 - **Doyle:** The market for pandemic insurance was limited prior to COVID, and it is more limited today. We have to act quickly to ensure economic recovery.

Rep. Waters (D-CA)

- The largest industry trade groups have argued that pandemics cannot be insured, instead placing the risk and responsibility solely on the federal government.
 - **McLaughlin:** The federal government shouldn't be entirely on the hook. The insurance industry has a role to play as well, but we need guardrails to protect our balance sheets.

Rep. Hollingsworth (R-IN)

- Forcing insurers to pay out claims for which they did not collect premiums is a terrible idea.
- This would violate the basic principles of contract law.
- "Government involvement" refers to one of two things:
 - Trying to reduce the very high premiums that pandemic insurance would cost.
 - The absorption of the massive contemporaneous losses that would occur.
- I think this whole hearing is about a lot of bad ideas that are masked under good economic policy or masked under insurance, but aren't actually either.

Rep. Gonzalez (R-OH)

- I agree with Mr. Hollingsworth.
- Does anybody believe this is an insurable risk?
 - **Lehmann:** There are risks within the pandemic that are insurable, but it is not possible for the industry at the macro level to insure the entire pandemic.
- We should focus on navigating through this pandemic, and then review how our programs worked and any adjustments we should make in the future.

Rep. Timmons (R-SC)

- I don't believe PRIA is a realistic solution.
- Terrorist attacks and pandemics are totally different in size, duration, and cost.
- Congress must act immediately to confront the current crisis by funding more PPP.

Rep. Axne (D-IA)

- None of the proposals we are discussing today would be retroactive and cover COVID-19 losses.
- What kind of premiums would we be talking about relevant to current BI insurance?
 - **Doyle:** I am suggesting that we develop a program that encourages participation, with federal subsidies. What is missing today are the social benefits of insurance, and we can mitigate the future impact of pandemics on our economy if the private market, federal government, and policy holders work together.
- That is hard to do without an estimate about the premiums or subsidies that would be needed.
- I want to make sure that we don't raise costs for businesses so much that insurance is unaffordable.