PANDEMIC RISK INSURANCE ACT

July 22, 2020
Zach Finn, AINS, ARM, MSM

Zach is Clinical Professor and Director of the Davey Risk Management & Insurance Program at the Butler University Lacy School of Business. Previously, he was Risk Manager for The J.M. Smucker Company in Orrville, Ohio, where he managed the Corporation’s risk management program, including global insurance program design and placement, successfully settled several large claims (largest $17M+) and oversaw insurance due diligence and integration for nine major mergers and acquisitions, including the $3.3 billion acquisition of Folgers Coffee.

Prior to joining Smucker, Zach worked in the Risk Management Departments at NCR Corporation in Dayton, OH and Hillenbrand Industries (Hill-Rom) in Batesville, IN (including a successful rotation as Hillenbrand’s benefits manager).

Zach has published articles on several topics, including Insurtech, product contamination and recall risk, protecting corporate goodwill and brand equity, enterprise risk management and risk management consulting.

Zach is co-inventor, co-founder, Chief Risk Officer and Chief Operating Officer of the world’s first Student-Run Captive Insurance Company, domiciled in Bermuda, and taught at Butler. A first of its kind innovation in experiential learning.

Zach received his B.S. in insurance and risk management from Indiana State University, M.S. in risk management and insurance from Florida State University, and the Associate in General Insurance (AINS) and Associate in Risk Management (ARM) professional designations from the American Institute for Chartered Property Casualty Underwriters.

Areas of Expertise:
• Risk Management
• Insurance
• InsurTech
• Captive Insurance
• Insurance Linked Securities
• Blockchain
• Employee Benefits
• Product Recall & Food Safety
• Supply Chain Risk Management
• Business Continuity
What is Risk Management?

1. **Exposure Identification & Measurement**
   - Exposures to Loss vs. Loss Exposures

2. Examine Feasibility of Alternative Techniques
   - Avoidance
   - Loss Prevention
   - Loss Control
   - Risk Transfer
   - Risk Financing

3. Select the Apparent Best Technique
4. Implement the Chosen Techniques
5. Manage, Monitor and Improve the Risk Program
6. Claims Management
Covid-19 is deadly, and so is keeping millions of people out of work

‘Instead of Coronavirus, the Hunger Will Kill Us.’ A Global Food Crisis Looms.

The world has never faced a hunger emergency like this, experts say. It could double the number of people facing acute hunger to 265 million by the end of this year.
BECAUSE: SHUTDOWN IS VERY POWERFUL MEDICINE
Exhibit: Farm to Fork Supply Chain
Graphic visualizing how business Interruption risk spreads in and breaks down supply chains and the economy. As one supply chain node fails, the effect is exponential. As layoffs build on one end of the economy, a wave can wash over the rest.
How Business Interruption (BI) Insurance Works

For BI insurance to apply, the following must occur:

- An interruption of operations
- Caused by property damage from a covered peril
- To property at locations or situations described in the policy
- Resulting in a loss of business income and/or extra expense

So is shutdown for a pandemic a "covered peril" or not?

- Answer: It Depends
INSURABILITY EXHIBIT: WHY FIRE IS AN INSURABLE RISK
<table>
<thead>
<tr>
<th>Requirements</th>
<th>Does the risk of fire satisfy the requirements?</th>
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<tbody>
<tr>
<td>1. Large number of exposure units</td>
<td>Yes. Numerous exposure units are present.</td>
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<tr>
<td>2. Accidental and unintentional loss</td>
<td>Yes. With the exception of arson, most fire losses are accidental and unintentional.</td>
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<td>3. Determinable and measurable loss</td>
<td>Yes. If there is disagreement over the amount paid, a property insurance policy has provisions for resolving disputes.</td>
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<td>4. No catastrophic loss</td>
<td>Yes. Although catastrophic fires have occurred, all exposure units normally do not burn at the same time.</td>
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<td>5. Calculable chance of loss</td>
<td>Yes. Chance of fire can be calculated, and the average severity of a fire loss can be estimated in advance.</td>
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<tr>
<td>6. Economically feasible premium</td>
<td>Yes. Premium rate per $100 of fire insurance is relatively low.</td>
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HOW RISK IS CURRENTLY SPREAD THROUGH THE ECONOMY
HOW I SEE COVID-19 IMPACTING THE INSURANCE INDUSTRY ECONOMIC RISK
CORONAVIRUS JOB LOSSES COULD TOTAL 47 MILLION, UNEMPLOYMENT RATE MAY HIT 32%, FED ESTIMATES
ECONOMIC RISK

• If all non-essential businesses had business interruption insurance, including payroll, covering Civil Authority for COVID-19 shutdown, how many jobs wouldn’t have been lost?

• What is the premium / revenue impact on the insurance industry for these drops in exposure base?

• To what extent will excluded BI losses drive individual insureds, trade associations, co-ops, Insurtech, etc. towards increased use of Captives, RRGs, Insurance Linked Securities, etc., disintermediating the legacy insurance industry?

• To what extent will new capital enter the market to provide coverage unencumbered by current losses &/or litigation?

• If covering virus losses can bring certainty to business & prevent (further) bankruptcies, what is that goodwill, revenue & investment impact to insurers?
HOW I SEE COVID-19 IMPACTING THE INSURANCE INDUSTRY
LEGAL RISK

• Petitions seeking business interruption coverage have been filed in several state courts & draft bills are circulating state legislatures Congress
• There are a multitude of varying Federal, State & Local Emergency Orders that may be used to try and trigger or justify BI or property claims
• RiskGenius estimates that roughly 80% of P&C commercial insurance policies will not have a virus or communicable disease coverage or exclusion clause. This means these policies could be read as being “silent” as to whether losses arising out of communicable disease would be covered.
• I believe the ISO EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA endorsement is itself silent regarding Property Damage
• Risk of past, present & future CGL claims for transmission on Premises; Aviation & Marine Liability for airlines & cruises, etc.
• Risk of WC Lost Time Claims & different jurisdictional responses
LEGAL RISK

Doctrine of Reasonable Expectations
• To what extent did insurers verify & ensure that all State P&C licensing exams were updated to properly cover virus, etc. exclusions after they were implemented?
• To what extent did insurers identify exclusions in advertising or direct consumers to review policies, and what additional efforts were made to educate agents & policyholders?
• Will this all be collectively viewed as reasonable given the political risk & environment?

Insurance Agent & Broker Errors & Omissions Exposure
• My insurance broker had me sign off on the existence of Pandemic Insurance & exclusions as far back as 2010. What is the exposure for agents who have not done this over the last decade? Does that duty/exposure differ for Admitted versus Excess & Surplus Lines?

Directors & Officers Liability Exposure
• What is the D&O exposure for firms without Risk Managers, Business Continuity Plans, Accurate (Contingent) Business Interruption Values, Supply Chain Mapping, verified and practiced pandemic preparedness plans, etc.?
America is Waiting for an (Unified) Answer from the Insurance Industry & Economy on Viruses & Pandemics
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2. Examine Feasibility of Alternative Techniques
   ✓ Avoidance
   ✓ Loss Prevention
   ✓ Loss Control
   ✓ Risk Transfer
   ✓ Risk Financing

3. Select the Apparent Best Technique

4. Implement the Chosen Techniques

5. Manage, Monitor and Improve the Risk Program

6. Claims Management
How Everyone Should be Thinking About Pandemic (Disaster) Preparedness & Response
WHO HAS/HAD PANDEMIC AND/OR VIRUS INSURANCE DEPENDS ON HOW THEY VIEWED/HANDED RISK MANAGEMENT
Insurance Buyer

- Individual or Business with Finite Resources & Expertise
- Uses Insurance to Cap Exposure to Known & Unknown Losses & Spread Cost of Risk via Manageable Premiums, i.e. Sleep at Night

Small – Mid Size Company

- May Wear Multiple Hats
- Aided by Knowledgeable Insurance Agents / Brokers
- Uses Risk Management Techniques to Insure Continued Insurability & Reduce Working Layer, i.e. High Freq./Low Severity Losses, i.e. Save Money

Large Company Risk Manager

- Deploys Advanced Risk Management Techniques to Reduce Premium Risk Loads by Reducing Exposure to High Severity / Low Freq. CAT Losses, i.e. Shift Overall Risk Profile
- Balances Insurance with other Forms of Risk Financing

Strategic / Enterprise / Monetized Risk Manager

- Strives for Operational Resilience, i.e. Ability to Prevent Disruptions from Occurring & Respond Quickly & Recover From Any Disruptions that Occur
- Strives for Holistic, Monetized, Risk & Opportunity Management
Avoidance + Preparedness Plan

Emergency Plan

Continuity Plan

Restoration Plan

The "Plan"
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3. **Select the Apparent Best Technique**
4. **Implement the Chosen Techniques**
5. **Mange, Monitor and Improve the Risk Program**
6. **Claims Management**
SOME VERY SMART BUTLER UNIVERSITY ALUMNI'S PRIOR WORK ON THE 2017 SPENCER-RIMS RISK MANAGEMENT CASE COMPETITION INSPIRED ME TO DEVELOP AN OUTLINE FOR THE PANDEMIC RISK INSURANCE ACT
Proposal forces insurance industry to cover massive coronavirus losses

Plan would treat the COVID-19 pandemic like an act of terrorism

Mr. Finn drafted a proposal for Congress based on a project created by four of his former students to address business losses from a theoretical cyberattack. The measure is modeled on the Terrorism Risk Insurance Act of 2002.

The proposal has the backing of House Financial Services Committee Chairwoman Maxine Waters, California Democrat.
GOOD PUBLIC / PRIVATE OPTIONS ARE BEING DEVELOPED & CONSIDERED FOR THE NEXT PANDEMIC...

BUT

Rep. Maloney Joins with Industry and Trade Association Leaders to Introduce the Pandemic Risk Insurance Act

May 26, 2020  |  Press Release

NEW YORK NY — Congresswoman Carolyn B. Maloney (D-NY), senior member of the House Financial Services Committee, today joined with various stakeholders to introduce H.R. 7011, the Pandemic Risk Insurance Act of 2020 (PRIA). This legislation will create the Pandemic Risk Reinsurance Program, a system of shared public and private compensation for business interruption losses resulting from future pandemics or public health emergencies.
A Better Way to Cover the Next Virus / Pandemic...
Government Backed Catastrophic Perils Coverage

TRIA: Terrorism

PRIA: Virus / Pandemic

NFIP: Flood

Cyber
WHY (PARTIALLY) COVERING COVID-19 SHUTDOWN LOSSES IS NECESSARY & THE RIGHT THING TO DO
Congress is open to passing legislation that the entire insurance industry supports.

The goal of retroactive pandemic coverage is to:

- Use it as a mechanism to pay some % of (admitted policy) business interruption claims for non-essential businesses & prevent ruinous policy litigation
- Instead of paying stimulus to employees at essential businesses, PPP, etc. those funds could have been used to bailout or backstop insurer payments under retroactive PRIA. The same is true of future Government stimulus efforts

A negotiated settlement with the Government could be less than potential cost of litigation, loss of premium, uncertainty, etc. from the status quo.

- If insurers come together & agree on a reasonable risk share with the Government, the industry could secure badly needed limitations of liability for other exposures such as CGL, Aviation, etc.
- Recognizes insurer culpability for inadequately training / licensing agents & educating consumers on virus, etc. exclusions
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<th>Line of Coverage</th>
<th>Admitted Business Interruption &amp; Extra Expense Policies</th>
<th>Aviation &amp; Commercial General Liability</th>
<th>Workers' Compensation Lost Time Claims</th>
<th>Medical Malpractice</th>
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<td><strong>No Federal or Private Payments Above USD $100 Billion</strong></td>
<td>Federal Government Copayment: 80% Federal Assistance Becomes Available after Individual Insurer Deductibles are paid</td>
<td>Waiver &amp; Statutory Limitation of Liability</td>
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<td><strong>20% of Prior Year Direct Earned Premium</strong></td>
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<td><strong>$250 Million</strong></td>
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<td><strong>60 Day Time Element Deductible: $862 Billion</strong> (American Property Casualty Insurance Association Estimate of $431B/Month)</td>
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