

# LEXOLOGY

## The Insurance Industry's Claim of the "Uninsurability" of Pandemic Risks



USA September 23, 2020

The American Property Casualty Insurance Association ("APCIA") has recently published a paper entitled "Uninsurability of Mass Market Business Continuity Risks from Viral Pandemics."<sup>1</sup> This paper asserts that pandemic risks are "inherently uninsurable." It undoubtedly will be cited by insurers and their counsel in the battles over coverage for COVID-19 losses for the proposition that insurance simply does not, and cannot, cover such losses.

Insurers may argue that the paper provides an objective statement. But the credentials of its authors suggest that the paper really is insurance industry advocacy. Robert Hartig is identified as a Clinical Associate Professor at the University of South Carolina. However, he has a long association with the insurance industry, having been president of the Insurance Information Institute and previously working for Swiss Re. As for APCIA, it proclaims itself to be "the primary national trade association for home, auto, and business insurers."

We view the paper as an exercise in revisionist history that would make George Orwell and fans of *1984* proud. It ignores the facts that (1) the insurance industry promulgated a standard-form virus exclusion in 2006 to address things like pandemics, so insurers long have known how to exclude the risk if they want to do so, (2) there is no need for such an exclusion if the pandemic is inherently uninsurable, (3) insurers have long known of the risk of a pandemic and what it could cost them, with an insurance library hosting many articles warning of pandemics and their financial impact on the insurance industry, and (4) various insurers qualified their financial statements before this pandemic, noting that a pandemic could negatively impact their financial results, an unnecessary warning if pandemics are inherently uninsurable.

There also are many statements in the paper with which we disagree. For example:

Because insurers lack even the most basic information necessary to measure and price pandemic risk, pandemics remain largely uninsurable in the private sector.

In fact, as noted above, the insurance industry has had a lot of information—for years—about the nature and scope of pandemic risks. In fact, one insurance industry repository shows the

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<sup>1</sup> <http://www.pciaa.net/docs/default-source/default-document-library/apcia-white-paper-hartwig-gordon.pdf>.

proverbial “tip of the iceberg” about how much information was available to insurers regarding the risks of pandemics. The Insurance Library Association of Boston, founded in 1887, describes itself as “the leading resource for and provider of literature, information services, and quality professional education for the insurance industry and related interests.”<sup>2</sup> The Insurance Library Association states on its website:

The past 20 years has seen the rise of a number of pandemics. *Slate* recently published an article on what has been learned about treating them in that time. We thought it might be apt for us to take a look back and see what the insurance industry has learned as well.<sup>3</sup>

It then lists many of the publications and studies available to the insurance industry since at least early 2007, long before the current pandemic. None of these are mentioned in the APCIA paper.

Here’s one example of the information available to insurance industry before insurers issued most of the policies being called upon to pay for the losses associated with COVID-19. In March 2018, AIR, a company that works with insurers,<sup>4</sup> warned:

Even with today’s technology, a modern severe pandemic would cause substantive direct financial losses to the insurance community. In addition, indirect losses would be severe, most notably on the asset side of the balance sheet.<sup>5</sup>

Now that the insurers are being called to pay for losses that they could have excluded, and often tried to do so, they have adopted the mantra that this risk—which they predicted and considered and drafted some exclusionary language to try address more than 15 years ago—was never insurable in the first place. This is definitely a situation in which the history of their actions speaks louder than their post-pandemic words.

Every record has been destroyed or falsified, every book rewritten, every picture has been repainted, every statue and street building has been renamed, every date has been altered. And the process is continuing day by day and minute by minute. History has stopped. Nothing exists except an endless present in which the Party is always right.

George Orwell, 1984. This might work in Mr. Orwell’s fictional world. It should not work here.

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<sup>2</sup> <http://insurancelibrary.org/about-us/>.

<sup>3</sup> <http://insurancelibrary.org/pandemics-and-insurance/>.

<sup>4</sup> AIR describes itself as serving insurers, insurance brokers, and reinsurers. In describing its clients, it states: “More than 400 organizations across a variety of sectors—insurance and reinsurance, capital markets, public and private corporations, and governmental and non-governmental organizations—rely on AIR to assess and manage their extreme event risk.” It also says that its clients include Arch, CNA, Farmers, Gen Re, Sompco, and XL.

<sup>5</sup> AIR, “What the 1918 Flu Pandemic Can Teach Today’s Insurers” (Mar. 29, 2018), <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/>.

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