

**DEPARTMENT OF THE TREASURY  
FEDERAL INSURANCE OFFICE (FIO)  
FEDERAL ADVISORY COMMITTEE ON INSURANCE (FACI)**

**MINUTES – September 9, 2021**

The Federal Advisory Committee on Insurance (FACI) convened at 11:00 pm on 9 September 2021 via teleconference, with Dan Glaser, Chair, presiding.

In accordance with the Federal Advisory Committee Act, the meeting was open to the public.

**Committee Members Present**

DAN GLASER, Chair, Chief Executive Officer, Marsh & McLennan  
ERIC ANDERSEN, Co-President, Aon  
AMY BACH, Executive Director, United Policyholders  
BIRNY BIRNBAUM, Executive Director, Center for Economic Justice  
QUINCY BRANCH, Chief Executive Officer, Branch Benefits Consultants  
GREG CRABB, President & Chief Executive Officer, Amerisure  
BETH DWYER, Superintendent of Banking and Insurance, Rhode Island Insurance Division  
ROB FALZON, Vice Chair, Prudential  
LUCY FATO, Executive Vice President & General Counsel, AIG  
MATTHEW GENDRON, proxy for Beth Dwyer  
DOUG HELLER, Insurance Expert, Consumer Federation of America  
JIM KELLEHER, Executive Vice President & Chief Legal Officer, Liberty Mutual  
PETER KOCHENBURGER, Associate Clinical Professor of Law, University of Connecticut School of Law  
JULIE SPORE, Chief Risk Officer, Transamerica  
ANDREW STOLFI, Administrator, Oregon Division of Financial Regulation  
BETSY WARD, Chief Financial Officer & Chief Actuary, MassMutual

**Also Present**

ROBERT HARTWIG, Darla Moore School of Business, University of South Carolina  
ROBERT GORDON, Senior Vice President of Policy and Research, APCIA  
RAHUL PRABHAKAR, Deputy Assistant Secretary, Treasury's Office of Cybersecurity and Critical Infrastructure Protection  
MARTIN SOUTH, Marsh, U.S., and Canada

**Department of Treasury Staff Present**

STEVEN SEITZ, Director, Federal Insurance Office  
JIGAR GANDHI, Designated Federal Officer

At 11:00 a.m., Jigar Gandhi called the meeting to order and introduced himself as the new Designated Federal Official (DFO) for FACI and stated he looked forward to working with everyone. Mr. Gandhi then called roll and asked members to state if they are present or if another person is attending with the member's proxy.

The following members were present:

Chairman Glaser  
Birny Birnbaum  
Quincy Branch  
Greg Crabb  
Beth Dwyer  
Rob Falzon  
Lucy Fato  
Doug Heller  
James Kelleher  
Andrew Stolfi  
Betsy Ward  
Amy Bach

Ms. Dwyer stated that she was able to attend the meeting until Noon, at which point Mr. Matt Gendron became Ms. Dwyer's proxy. After calling roll, Mr. Gandhi stated that a quorum was achieved for the meeting.

Chairman Glaser welcomed everyone to the FACI meeting and reminded everyone to mute their lines unless speaking. In addition, he asked everyone to announce his/her name each time speaking to allow the transcriber to accurately record the contents of the meeting.

Chairman Glaser then announced the retirement of Mark Thresher and that he would be leaving the FACI. Chairman Glaser thanked Mark for his contributions to the FACI and wished him well in retirement. After Director Seitz's remarks, the meeting primarily focused on ransomware and the COVID-19 Subcommittee. Chairman Glaser then stated that the FACI will hear a presentation from Rahul Prabhakar, regarding the threats ransomware posed to the insurance sector. The FACI will then hear the final update from both work streams of the COVID-19 Subcommittee. The meeting will close with updates from the Availability Subcommittee, Protection Gap Subcommittee, and the International Subcommittee. Chairman Glaser then turned the meeting to Director Seitz for an update from FIO.

#### **Update on Federal Insurance Office Activities**

Director Seitz thanked Chairman Glaser and the FACI members for attending the meeting and the effort on the committee's work. Director Seitz thanked Mr. Thresher for his efforts on behalf of FACI over the years. Director Seitz stated that FIO continues to examine and consider many of the FACI's recommendations and looks forward to FACI's continued engagement.

Director Seitz began with a discussion of FIO's work on climate and that FIO intends to take a leadership role with respect to the insurance sector as it works to implement President Biden's executive order on climate-related financial risk. FIO's climate-related work will provide an insurance-specific focus within Treasury's broader climate work, including working with Treasury's climate hub. Director Seitz stated that FIO recently issued a request for information to solicit public input on FIO's future work on insurance sector climate-related financial risk. FIO intends to initially focus on the following three climate-related priorities:

1. Assessing climate-related issues or gaps in the supervision and regulation of insurers, including the potential impacts on U.S. financial stability.
2. Assessing the potential for major disruptions of private insurance coverage in U.S. markets that are particularly vulnerable to climate change impacts, also facilitating mitigation and resilience for

disaster.

3. Increasing FIO's engagement on climate-related issues and working to leverage the insurance sector's ability to help achieve climate-related goals.

Director Seitz noted that access to high quality, reliable, and consistent data will be necessary for accomplishing all three of FIO's climate-related priorities. FIO also plans to identify and issue recommendations on individual actions that can be taken by various insurance sector stakeholders to address climate related financial risk and facilitate the U.S. insurance sector's transition to a more sustainable future. FIO continues to engage with supervisors to tackle this important issue. Domestically, FIO's is engaging with the NAIC and state insurance regulators through their various work streams on climate-related topics. In addition, FIO also engages with the Securities and Exchange Commission and other members of the Financial Stability Oversight Council on climate-related risk. On the international front, FIO is very engaged on these issues at the IIS, the UN's Sustainable Insurance Forum, and the Organization of Economic Cooperation and Development. All these organizations are increasingly focused on climate-related issues. FIO also discusses climate-related issues with insurance authorities in the European Union and the EU-U.S. Insurance Project. FIO also looks forward to engaging with this Committee on these important issues.

Director Seitz stated that FIO hopes that the responses to the RFI will help FIO assess the implications of climate-related risk for the insurance sector. Questions have been segmented in the RFI under certain categories, including the executive order, FIO's initial climate-related priorities, climate-related data in FIO's data collection and data dissemination authorities, insurance supervision and regulation, insurance markets and mitigation resilience, and finally, engagement. FIO looks forward to ongoing engagement with the insurance sector and stakeholders on this important area and plans to reach out individually to members of this Committee about the RFI and work to develop next steps with FOCI's work in this area.

Next, Director Seitz provided an update on the request for information seeking input on FIO's future work related to monitoring the availability and affordability of automobile insurance. FIO received over 17 responses from various stakeholders, including consumer representatives, industry representatives, state insurance commissioners, state attorney general, and others. The FIO team is continuing to analyze the responses to the RFI and plans to provide additional information on those responses in its upcoming annual report. FIO recognizes that the Availability Subcommittee has spent considerable time on this issue, including receiving presentations from Treasury staff and other interested stakeholders. FIO will continue to prioritize this work in the private auto insurance sector and looks forward to continuing to engage with FOCI.

Director Seitz then moved to some international items at the IIS. The second year of the monitoring period for the Insurance Capital Standard is currently underway, with the data submission being due for the ICS and the AM data collections. The work on comparability is also ongoing at the IIS. The definition of comparable outcomes and the six high level principles were finalized and published in May. The IAIS has stated that it intends to publish a public consultation on these draft criteria in the fourth quarter of this year. FIO looks forward to continuing engagement with the FOCI Subcommittee in this area.

Director Seitz then discussed that the 2021 global monitoring exercise has returned to its primary purpose, and the IAIS has recently completed a two-year regular sector-wide monitoring and individual insured monitoring data exercise. Next year, the IAIS is still on course to complete the outstanding implementation assessment items and finalize those findings. FIO will continue to engage with members of the U.S. at the IIS on this work and are also mindful that FOCI has given us recommendations in this area.

Director Seitz finally discussed ransomware and that FIO is working to address insurance-related issues, in coordination with interagency partners and stakeholders across the industry. Ransomware poses a complex

challenge to both public and private sector organizations. The severity, frequency, effectiveness, and sophistication of ransomware attacks continues to increase across various sectors, and the global cost of ransomware attacks has significantly increased. The federal government has a significant interest in helping to understand and deter the threat posed by ransomware to the U.S. financial sector, critical infrastructure, and national security. FIO and Treasury's Office of Cybersecurity and Critical Infrastructure Protection are leading Treasury's engagement with the insurance industry on promoting resilience and improving disclosure in the private sector, working closely with DHS's Cybersecurity and Infrastructure Security Agency on these issues. FIO will continue to engage with the insurance industry on these topics and use existing forums, such as the FOCI, to better understand the challenges facing the insurance sector and the impact these attacks are having on the cyber insurance market.

At this time, Director Seitz concluded his overview of FIO's work and introduced Rahul Prabhakar. Mr. Prabhakar serves as the deputy assistant secretary for the Office of Cybersecurity and Critical Infrastructure Protection and recently joined Treasury. Director Seitz then turned the floor to Mr. Prabhakar.

### **Presentation and Discussion on Impact of Ransomware**

Mr. Prabhakar stated that he would begin by discussing the role of OCCIP, Office of Cybersecurity and Critical Infrastructure Protection. After this, he will discuss ransomware, which is a significant type of malicious cyber activity that affects sectors across the economy. OCCIP executes Treasury's responsibilities as the designated sector risk management agency for the financial services sector; the office is responsible for working with the private sector, the financial regulators, and with other federal agencies to identify and address risks to the operational resilience of the financial sector critical infrastructure. OCCIP has a statutory responsibility to:

1. Support sector risk management.
2. Assess sector risk.
3. Facilitate information sharing.
4. Support incident management.
5. Contribute to emergency preparedness efforts; and
6. Coordinate all work with the financial sector.

Mr. Prabhakar stated that OCCIP also works with international partners through the G7 Cyber Expert Group, and bilaterally on operational resilience matters. The insurance industry is an important part of this mission. Because the insurance industry is an important part of this mission, and in recognition of the importance of efficient risk transfer to the American economy and financial stability, the provision of insurance services has been designated by the Cybersecurity and Infrastructure Security Agency as one of several national critical functions within the financial sector.

Mr. Prabhakar stated that one of his top priorities is to expand OCCIP's capabilities with respect to identifying, assessing, and prioritizing operational risks and resilience across the sector, while continuing to drive improvements to existing programs and deepen the level of engagement across the public-private partnership. OCCIP plans to use this approach to address ransomware, which is a principal priority of the administration and the Treasury Department.

Mr. Prabhakar then stated that the Treasury's counter-ransomware strategy relies upon an effective public-private partnership. Financial institutions and their service providers, industry associations, and regulatory agencies all play a role in improving financial sector preparedness and resilience against a ransomware threat. The ability to effectively underwrite cybersecurity risk is a critical resilience concern. Concerns are increasing regarding the ability of insurers to gain enough insight into the true resilience of the insured to appropriately price their coverage. OCCIP understands that sometimes, when cyber insurers

do gain adequate insight, they may not like what they see. For risk transfer through an insurance coverage to be effective, insurers must better understand how firms are critically vulnerable to transfer attacks. Cyber insurers are strengthening their underwriting and certification standards; the industry has not been complacent in its approach. The frequency of ransomware attacks on U.S. businesses and individuals, and the cost of these attacks, have risen sharply in the last few years.

Mr. Prabhakar stated that, according to multiple security service providers, ransomware attack frequency is estimated to have doubled over the previous year. The Cybersecurity and Infrastructure Security Agency (CISA) reports that roughly \$350 million in ransom was paid to malicious cyber actors in 2020, which is a more than a 300 percent increase over the previous year. Treasury infers that some of that loss was indemnified by U.S. cyber insurance providers. Insurance companies also have not been immune to attack. In the second quarter of 2021, half of all ransomware attacks reported by financial sector firms were reported by insurance firms. From public information, OCCIP identified as many ransomware attacks in the second quarter of 2021 as it identified in all of 2020.

The most sophisticated ransomware attackers are aware that many of their victims will look to their insurers to cover their losses and are sizing their ransom demands accordingly. Mr. Prabhakar stated that stakeholders should consider how the underwriting process may need to adapt. The current process, when it involves static certification of controls by insurers, may not be sufficient to reduce risk to policy holders due to the speed with which ransomware threats evolve. The effects of ransomware evolution extend to all aspects of preparedness. Very quickly, analysis and guidance are circumvented over time by cyber criminals' adaptive techniques. To address these challenges, OCCIP seeks to work collaboratively across the public and private sectors to identify effective cyber hygiene and resilience practices to combat ransomware and the challenges firms face in implementing these practices. OCCIP views existing fora, such as the FOCI, the Financial and Banking Information Infrastructure Committee, the Financial Services Sector Coordinating Council, and the G-7 Cyber Expert Group as appropriate venues in which to have these discussions and collaborate on these efforts. Mr. Prabhakar stated that his goal is to foster collaborative exchanges with partners. Each partner brings unique information, expertise, and capabilities that can drive enhancements to the work we currently do and enable broader situational awareness of threats and vulnerabilities and risk assessments to the sector.

Mr. Prabhakar stated that Treasury has heard from insurers that stronger security and resilience controls among the insured correlate to positive outcomes; they don't think it is impossible to combat ransomware as a security threat. As OCCIP works with the CISA, the Financial and Banking Information and Infrastructure Committee, and others, to strengthen security standards and baselines, OCCIP intends to harmonize our efforts, which are never complete. Ransomware attackers very quickly become aware of any such effort and will alter approaches to adapt and continue predatory business models. To succeed, the public-private partnership must become more efficient in the analysis of adaptive cyber threats and in the identification and promulgation of best practices in preparedness and response.

Mr. Prabhakar stated that barriers to the efficiency of threat information sharing must be identified and removed along with maximizing availability of that information to analysts, while preserving the equities of victims, law enforcement, and other involved parties. This goal requires focused work across the partnership; OCCIP looks forward to discussing approaches in this venue and others. Mr. Prabhakar emphasized the criticality of information sharing and data exchange within and across the public-private partnership, which is the foundation that supports and enables all the activities across the shared mission to reduce risk and enhance resilience in the financial services sector. Eliminating barriers to threat information sharing and maximizing availability of information to analysts is imperative and a priority for Treasury and

the administration. Treasury applauds efforts by the industry to improve the situation, including better pooling of actuarial data, stronger partnerships with private sector incident responders, and appropriately sharing aggregated anonymized data with government partners. Industry efforts will help foster continuous improvement in cyber hygiene guidance and responsive analysis of evolving threats that can then be shared with the financial sector and the public.

The public-private partnership is a two-way street. Treasury will continue to work with interagency partners to share actionable information about ransomware through products that highlight ransomware variants, identify relevant indicators of compromise, and recommend defensive measures to protect against threat. OCCIP also seeks to improve incident reporting, which can enable government actions that disrupt ransomware actors and their ability to profit from perpetrating risk for attacks. Treasury can improve the utility of incident reporting by making it clearer why firms should report ransomware attacks, what information they should report, to whom they should report, and how that information will be used to improve cyber hygiene across industry. Mr. Prabhakar thanked the FOCI for the opportunity to speak and welcomed questions.

Chairman Glaser thanked Mr. Prabhakar for his presentation and stated that everyone on the FOCI call has concerns around cybersecurity, which is one of the highest risks, if not the highest risk that most companies are facing. In the insurance industry, a lot of the focus is how to serve clients and how does industry improve risk management and hygiene.

#### **Update from the Subcommittee on COVID-19 - Workstream #1 Update**

Chairman Glaser then turned to the Subcommittee on COVID-19 for its final report to FIO, starting with an update from the protection work stream. The FOCI will then vote on recommendations from the preparedness work stream. Questions will be taken at the end if time allows. Chairman Glaser reminded the FOCI that the protection work stream was charged with reviewing strategies to build resilience against future pandemics. Central to that theme is the role of data analytics and helping government and economies make informed decisions about protecting against future catastrophic events. The FOCI's goal was to provide FIO with as much information as possible to allow it to analyze and make informed decisions about the impact of the pandemic on the insurance marketplace. Many high-quality studies have been shared with the FOCI; Chairman Glaser then introduced Martin South, his colleague and the president of Marsh for the U.S. and Canada and asked him to provide a short summary on Marsh's most recent pandemic report.

Mr. South stated that he intended to lay out the case for insurability and the role for public-private partnership in the insurance industry. Mr. South stated that the Marsh report states that the insurance industry, as always, has played a role in dealing with huge volatility and highly difficult risks. The pandemic produced an unprecedented risk in terms of how it hit insurers, both on the asset side of the balance sheets and the breadth of it and the global reach of it. However, it's the size of the risk that makes this risk highly uninsurable in some respects. Marsh's argument is that by putting together a scheme that will bring together the government and the insurance marketplace, we can create a solution that will create greater resilience in the insurance industry and for society.

Mr. South explained the way the insurance industry responded to the issue and gave some numbers around the pandemic's insurance implications. While the COVID pandemic has remained uninsurable, ranges of claims exist in the insurance industry between \$30 and \$100 billion across all lines of coverage. Mr. South also stated that a huge amount of anxiety is being created with policy holders and with clients, given the enormous uncertainty of the range of claims. Insurers have asserted that no pandemic coverage exists in policies. In policies where coverage does exist, significant legal activity is still ongoing. Mr. South pointed out the IBNRs are the official reserves and are approximately \$20 billion. If the pandemic exists for many years, huge uncertainty will continue to exist. Marsh clients are seeing generally shrinking capacity across

the board where coverage was provided and uncertainty existed with narrowing coverage going forward, which intensifies underwriting scrutiny.

Mr. South explained in the property and business interruption area, sub-limits were applied in certain areas, with those claims being paid. In continuing litigation, some people asserting that viral infections were actual physical damage and different court interpretations are being laid out. In the general liability area, insurers are increasingly concerned about their liability for the spreading claims, which gives rise to the specter of additional stand-alone coverages for spreading disease. In workers' compensation, the main development has been the doctrine of rebuttable presumptions, where people that were injured at work in certain industries can just assume that they contracted that disease at work. Coverage for event cancellation, which once was freely available, has gone up by up to 400 percent, deductibles have increased, and event cancellation coverage is now becoming highly difficult to obtain. Many DNO claims are asserting that directors and officers should have been aware of the effects of the pandemic, the volatility of the share price, and of employment practices liabilities.

Mr. South continued that these factors are creating uncertainty and difficulty for Marsh clients. Marsh's argument is that if a solution were to be created which was able to pool the insurance industries to deal with the mechanics of an insurance solution to provide a policy language that could provide certainty that there is coverage and eliminate the risk of fraud, along with sharing that risk with the government in the way that insurance solutions were developed after the Great Fire of London or after 9/11, resiliency can begin to be built into the industry. In parallel, insurance risk management techniques and other ways of creating resilience would take root in industry. After 9/11, risk management techniques immediately apparent included providing security at buildings and enhanced security screening. As risk management techniques evolve and as data is generated and considered, the ability to create risk management solutions will all help us mitigate the risk going forward.

The benefits of modeling enable capturing pricing and developing solutions for pandemic. However, from a risk management standpoint, insurers are looking backwards and did not adequately gauge the likelihood of the pandemic occurring. Before the pandemic, take up rates were low. However, now take up to the product has increased. If insurers had been offering this product, significant increases in capital and returns in the insurance industry would have existed. Risk management techniques would improve, and the insurance industry would be able to absorb more of the risk. While predicting the nature of the next pandemic event is difficult, the occurrence of an event is likely, and the insurance industry will be prepared. The insurance industry has always had a role to deal with massive, unexpected events. Being prepared, combined with resilience, new risk management techniques, the right partnership will create much greater resilience in society, which will remove the burden and uncertainty to business owners. The infrastructure of the insurance industry, the claims paying, loss adjusting, risk management will be put in use. Claims will be paid quickly, greater certainty will exist, and fear will be removed from the system.

Mr. South stated that resilience will take time and support, but that Marsh does not take the view that pandemics are not insurable. While insuring a pandemic is a huge and difficult risk, the size of the balance sheet needs to absorb it. Even \$910 billion in surplus in the P&C industry is not nearly enough since most of that capital is committed. However, a share of the surplus could start to create risk tolerance. Marsh is not advocating for a specific solution in the insurance industry – Marsh is open to any ideas. Marsh does like the idea of a parametric solution, which removes uncertainty, so long as any solution contains anti-fraud preventions. Marsh would like to leverage the risk management expertise in the insurance industry and create certainty for its clients, so there's greater resilience for society going forward.

Chairman Glaser thanked Mr. South for his presentation asked Greg Crabb to introduce Robert Gordon of the American Property Casualty Insurance Association (APCIA) and Dr. Robert Hartwig. Mr. Gordon is currently APCIA's senior vice president for policy research and development and has over 30 years of

experience leading insurance policy issues, both for APCIA, as well as a senior committee counsel in the U.S. House of Representatives. Dr. Hartwig is a clinical associate professor of finance and director of the Risk and Uncertainty Management Center at the Darla Moore School of Business at the University of South Carolina. Dr. Hartwig was previously the president for the Insurance Information Institute. Mr. Gordon and Dr. Hartwig presented their recently released paper, Consumer Behavior, the Macro Economy and the Uninsurability of Pandemic-Related Business Income Losses.

Mr. Crabb noted that the subcommittee distributed two other papers, Improving the Availability and Affordability of Pandemic Risk Insurance from Rand and that Lloyd Dixon, from Rand, was on the call for any questions. Mr. Crabb also stated that all members of FOCI received the Pandemic Business Interruption Insurance work from John Ondrejko of the Committee on Capital Markets Regulation, who is also on the call for questions. At this time, Mr. Crabb turned the floor to Mr. Gordon and Dr. Hartwig.

Mr. Gordon stated that APCIA represents insurance underwriters, who are the people that would bear some of this risk, opposed to those selling it and asking others to bear it. Mr. Gordon stated that he has 30 years working on federal insurance issues, and that issues seem to arise when policymakers race to solutions before securing a consensus on the underlying problem to solve. None of the prospective pandemic proposals have gained traction, either domestically or globally, in part because the problems to be solved have many layers that have not been fully considered.

Mr. Gordon continued that many lessons have been learned about COVID-19. At the beginning of the pandemic, experts warned of the physical contamination risk, but the U.S. Center for Disease Control found that there is minimal COVID surface transmission risk. Consequently, surfaces without contagion for 24 hours do not even need to be cleaned, and COVID can be immediately eliminated, fixed from surfaces using soap and disinfectant. The CDC's findings underscore that no property damage from COVID has occurred. However, damages have resulted from transmission from human breathing in proximity. Next, most pandemic losses did not result from government shutdowns. Instead, losses resulted primarily from a plunge in consumer macroeconomic demand for in-person services. Several of the legislative proposals have provisions providing coverage for three months of business continuity losses, which was roughly the duration of the government closures, but the pandemic losses have now been going on for 18 months and counting. Many policymakers did not understand that business interruption insurance is a property policy. Business interruption insurance covers losses while businesses fix their physically damaged premises. However, the CDC has shown that COVID does not cause physical damage, and business interruption coverage has very little to do with the pandemic losses.

Mr. Gordon stated that some have compared pandemic losses to terrorism, specifically 9/11 and presented a graph that shows COVID-19 has caused trillions of dollars in losses, while the 9/11 losses and the global business interruption premiums are in the tens of billions, rather than trillions. Mr. Gordon continued that the issue is greater than insurance companies needing government assistance with their balance sheets; at least 13 different kinds of pandemic losses exist that require separate examination and solutions. In addition, no one size fits all approach exists. Worker support has been the biggest pandemic cost in most countries. Policymakers need to decide whether it's better to pay for employees to stay on the business payrolls, even if they're not working, and which groups of workers and industries to target. This issue is particularly important because we often hear about the importance of private insurance to encourage risk mitigation.

The primary way the businesses mitigated their losses during the pandemic was by terminating a near record number of employees, causing mass unemployment. Terminating employees is not the type of mitigation that aligns with public policy needs. Many businesses receiving government assistance used it to transition to a remote workforce, or they replaced in-person services with carryout and delivery. These shifts support making transition payments government loans, rather than indemnification payments from insurers. While



some pandemic losses are insurable, such as worker health impairment or liability. However, macroeconomic business support, which includes the employment assistance and the fiscal stimulus to stabilize against the shifts in consumer demand, is inherently a government responsibility. The insurance industry does not have the capacity and is not designed to address macroeconomic issues or when an entire business community suffering loss at the same time.

Dr. Hartwig's APCIA paper, related analysis by the National Bureau of Economic Research and by the University of Chicago fully established that COVID losses have primarily resulted from a plunge in macroeconomic consumer demand for in-person services. Some industries, like dry cleaners and airlines, were allowed to remain open, but suffered enormous losses. However, some industries that were completely locked down remained profitable. The gains and losses represent a shift in consumer demand, not any sort of property damage. The Hartwig, Gordon, Eisenhuth papers also include a comparison of the gross domestic product of the states that imposed lockdowns versus those that did not. The states with lockdowns had only slightly worse economic performance, like that of pre-pandemic - the civil authority orders were not the primary loss factors. Mr. Gordon then showed a graph that demonstrated that COVID losses were very unevenly distributed in the economy. The losses were concentrated overwhelmingly in the leisure and hospitality sectors. Leisure and hospitality sectors have a highly disproportionate number of low-wage and minority employees and have the greatest impact.

Mr. Gordon stated that he wanted to make three points, since over a dozen layers of losses exist and each needs to be separately considered. He does not advocate a one size fits all approach. The first point is that employment assistance is the most essential government program needed. Employee assistance can be targeted towards the most impacted sectors, with the most vulnerable workers. The macroeconomic federal stimulus protecting those workers and businesses against the plunge in consumer demand for interpersonal services is essential but has little to do with and is beyond the scope of property casualty insurance. At this point, Mr. Gordon transitioned to Dr. Hartwig to address uninsurability.

Dr. Hartwig stated that many organizations around the world have come to the same conclusion - that pandemic-related business income losses are not privately insurable. Dr. Hartwig cited the Wharton Center's recent study, which showed that correlations of 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 re-insurers. Pandemic-related losses can easily exceed the industry's capital surplus and premium resources. Estimates are that monthly business continuity losses in the U.S. are potentially 200 times greater than the \$4.5 billion that insurers collect monthly across all commercial property lines here in the United States. Business continuity losses for small businesses, alone, could completely consume the industry's entire capital base in about four months.

Adjusting these claims would take years. Dr. Hartwig then pointed out six major traditional criteria associated with insurability. He then moved to the need for information, which is the life blood of the insurance industry. Information allows the industry to see loss frequency and severity. Without information, the industry is not able to price pandemic risk. Losses need to be fortuitous - they need to be some sort of random element to them. However, decisions by government officials across the country about when, where and how to restrict movement and close businesses were intentional in nature. Also, highly correlated losses are a problem - most every business in the United States was impacted simultaneously, which is a difficult risk to bear. Even if insurance were available, it would likely not be affordable to most businesses.

Dr. Hartwig concluded that pandemic-related business income losses lie beyond the bounds of insurance in the private sector for multiple reasons, including Mr. Gordon's observation that such losses were largely the result of macroeconomic factors. Only the government, with its unique authority to tax, can shift and spread expenditures of risks of this magnitude over time. Dr. Hartwig then showed a slide that demonstrates

the magnitude of government relief needed, which is nearly \$6 trillion of government relief to date. This relief is many orders of magnitude beyond the financial resources of the property values to the insurance and re-insurance world.

Chairman Glaser thanked Mr. Gordon and Dr. Hartwig for their presentations. While they represent different views, each view is well supported. At this time, Chairman Glaser turned the presentation to the COVID-19 preparedness work stream.

### **Subcommittee on COVID-19 – Workstream #2 Update**

Betsy Ward reminded the FACI that, as the COVID-19 pandemic continued, the Preparedness Subcommittee reviewed a wide variety of actions taken to better serve consumers in these challenging circumstances. Challenges identified by our subcommittee related to adjusting to allow for more touchless business transactions, resource allocation to deal with both the change in operational capacity and new priorities, as well as companies responding to an influx of requests for extending payment grace periods and other individual policy changes. In response to COVID-19 and its unique wide-ranging implications, several states issued bulletins directing insurers to provide their policyholders who may be experiencing a financial hardship due to COVID with grace period relief to pay insurance premiums.

To facilitate a consistent and coordinated approach for premium relief, the COVID Preparedness Subcommittee has worked, over the last year and a half, to draft recommended premium relief principles that have remained outstanding due to lack of consensus amongst us, the FACI. The Subcommittee like to take one last shot at incorporating the FACI request to enhance our recommendations and remain inclusive of the varying perspectives that we have. The subcommittee has taken the advice and additional help from regulators and property casualty insurers who volunteered to contribute to the Preparedness Subcommittee. Ms. Ward thanked those members for their assistance. Ms. Ward stated that the subcommittee wants to facilitate consistent application in similar situations across states and territories for clarity to consumers and insurers, as well as efficiency in operational implementation. This will lead to appropriate pricing of premium relief in insurance and more transparency to consumers. The subcommittee considered two topics in these premium principles. First is attempting to define what we meant by state of emergency, which has continued to evolve. Many different types of emergencies exist where premium relief might be granted. Ms. Ward then presented a definition for “state of emergency,” which is a two-part proposal in the event of a national public emergency where widespread curtailment of normal business activity occurs. The subcommittee also included that the definition had been enhanced by including language that the definition is including, but not limited to, a pandemic like COVID-19.

Ms. Ward stated that Topic 2 relates to how to take the initial principles we had that were predominantly life insurance focused and edit them to incorporate property casualty. For the most part, it's incorporating the words property and casualty. We found that these principles do apply to life and property casualty, noting that we have premium payment relief for up to a total of 90 days. Some states have varied by the coverage because of the contract lengths. Rather than trying to be so specific and prescriptive, we inserted language stating up to 90 days. Many states determined that this may not be applicable in all situations. The subcommittee added a principle where if a premium is owed and a claim is paid during that period, that the claim payment would have the premium owed netted against it and the balance of the claim would be paid. Ms. Ward stated that the proposal may not be as comprehensive and detailed as some would like, but the proposal represents the subcommittee's attempt at describing premium relief principles, considering all the parties involved. Ms. Ward opened the floor for questions.

Chairman Glaser stated he intended to ask for a motion for the recommendation and then open the floor to discussion. Once discussion is complete, a vote can be taken. Chairman Glaser stated he will start with a voice vote. If the voice vote is not clear, a recorded vote will be taken. Chairman Glaser reminded everyone

that motions regarding major advice in the recommendations must pass by a two-third majority of votes cast. Other procedural motions require a simple majority. Members can make additional motions to amend the language in any of what Ms. Ward presented. During the discussion period, amendments can be proposed. Any amendment would be discussed and voted on before we resume discussion on the original motion. At this time, Chairman Glaser asked for a motion for FOCI to present this Recommendation of Principles to FOCI. Mr. Crabb offered a motion. Chairman Glaser stated that a second was not necessary and opened the floor to discussion.

Birny Birnbaum stated that the language in the proposal is fine, but the proposal is missing some language. Certain lines of insurance have experienced radical reductions in exposure, with the result that some lines of insurance had massive COVID windfall profits. This proposal must include providing premium relief for lines of business experiencing significant reduction in exposures to reflect such reduction in expected costs. Mr. Birnbaum stated that without this language, he could not support the proposal. Ms. Ward stated that Mr. Birnbaum's concern was discussed, but consensus could not be reached. The subcommittee wanted to have principles to propose, as a starting spot to FOCI, as opposed to having nothing to present.

Chairman Glaser asked Mr. Birnbaum if he wanted to propose an amendment. Mr. Birnbaum proposed an amendment on the screen for everyone's review. Ms. Ward asked Mr. Birnbaum where the language should be inserted to which Mr. Birnbaum stated somewhere under No. 1 at the beginning of the lettered items. Ms. Ward asked if Mr. Birnbaum wanted his language included in the definition of a state of emergency. Mr. Birnbaum stated that his amendment should be inserted in Topic 2.

Lucy Fato asked if the subcommittee considered how state insurance regulators would view this or if the NAIC had been consulted. Ms. Ward stated that the NAIC had not been consulted. However, regulators sit on the committee who are associated because they're NAIC insurance commissioners. Ms. Ward stated that the subcommittee has the chair of the C committee, who commented on this. However, the subcommittee does not have the specific NAIC endorsement of principles proposed by the subcommittee. The NAIC continues doing work but has not completed their work such that it could be incorporated.

Chairman Glaser asked for any further discussion of Mr. Birnbaum's amendment. Once discussion of Mr. Birnbaum's amendment is completed, the members will vote. Eric Anderson stated that Mr. Birnbaum's amendment is prospective in view and assumes it's the only factor that is driving profitability or price. Mr. Anderson stated that he struggles on how to execute it with the other factors that might create more of a challenging environment versus the reduced exposure. He further stated that the language assumes that a pandemic will lower the cost, and other factors may exist. Ms. Ward responded to Mr. Anderson that the subcommittee did have the input from not only property casualty insurers, but also the APRIA, who commented that when there is a reduction in exposure, that goes into the setting of premiums going forward. Ms. Ward stated that one of the issues discussed that 9/11 was a different form of a national emergency, with widespread disruption of business in many areas of the country. One issue with which the subcommittee struggled was how long a national emergency lasts.

Mr. Birnbaum requested to comment, and Chairman Glaser stated that he would have the last comment before the vote. Ms. Ward stated that at least two people have their hands up. Amy Bach stated that she had her hand up for the first presentation. Andrew Stolfi stated that discussions among commissioners and stakeholders have been occurring around this issue. States have taken different approaches with some requiring refunds, others requiring studies, others doing other things. Mr. Stolfi stated that he saw some benefit in addressing premium relief and that a potential compromise might be available, instead of ordering or requiring premium relief. The exact circumstances cannot be anticipated. Mr. Stolfi advocated inserting a requirement to study and explain when filing new rating, which would require an evaluation and explanation for the factor. The evaluation and explanation would detail how experience and other things

have factored into the rates and would ensure that the companies reviewed a situation and took that into account for their rates, including whether any refunds should be issued.

Chairman Glaser thanked Mr. Stolfi for his comment and turned to Doug Heller. Mr. Heller stated that the subcommittee discussed this issue extensively over the year. Mr. Heller stated that he is a proponent of what Mr. Birnbaum suggests. Mr. Heller stated that he does not believe that all insurers must give back a certain amount of premium relief, but something must happen with respect to premium relief. The subcommittee is only proposing premium relief, not providing for premium relief and the language has been amended to reflect this. Mr. Heller stated that Mr. Birnbaum's proposed language is not so prescriptive. Mr. Birnbaum's language states that during a situation such as a pandemic, where a dramatic change occurs to the exposure to risk of loss, premium relief is something that should be provided. FIO would be saying that these are parts of the overall response picture. Mr. Heller stated that how states implement this will be a way that the states can interact with their carriers. Mr. Heller continued that an overarching principle should be having a principle of providing relief when a drop in exposure occurs, as Mr. Birnbaum described.

Chairman Glaser then turned to Mr. Birnbaum for comment on his amendment. Mr. Birnbaum made four points:

1. The proposal contains principles. None of the items, including waiving late premium penalties, is requirements.
2. Second, most insurers did some form of premium relief. The concept that premium relief is a radical notion is belied by the fact that most insurers did this model.
3. Some confusion exists about current versus prospective. The issue is that current premiums, for example, in March 2020, became excessive because of dramatic changes from the assumptions underlying the development of the rates that were then enforced. The premium relief is for the current rates, not prospective rates.
4. The fourth point is that several factors go into the consideration of rates. Insurers developed the methodology in March of 2020 that was remarkably accurate, in terms of the need for personal auto premium relief. None of this requires extraordinary activity on the part of insurers. It does require regulators to start collecting more data than they have in the past, but they're doing that anyway for certain things associated with the pandemic.

Mr. Birnbaum stated that due to these four points, he asks the committee to endorse his amendment.

Chairman Glaser added that the language is not a procedural amendment, but a major amendment. Two thirds of votes cast would have to be in support of it. At this time, Chairman Glaser asked for a vote on Mr. Birnbaum's amendment and asked for a voice vote and a chorus of ayes was heard followed by a chorus of nays. Chairman Glaser asked Mr. Gandhi to perform a roll call vote. Mr. Gandhi added that proxy voting is not allowed on major items and that any proxies cannot vote.

Mr. Gandhi confirmed that the following individuals were not on the line initially: Superintendent Dwyer, Representative George Keiser, Sean McGovern, Vicky Schmidt, and Bill Wheeler. Mr. Gandhi stated that he would count the votes and that nine yes votes were needed for the amendment. Mr. Gandhi counted seven votes in favor of the amendment. The amendment failed.

Chairman Glaser then went back to the original motion and asked for any amendments to the original language that Ms. Ward shared. No comments were heard. Chairman Glaser asked for a voice vote with a chorus of ayes that were followed by a chorus of nays. Chairman Glaser stated that he believed the ayes had more than the nays and advocated that the motion pass. Mr. Gandhi stated that he would be more comfortable with a roll call vote.

Ms. Back asked if what the committee was voting on could be restated. Mr. Gandhi stated that the committee was voting on the originally proposed recommendations from the COVID-19 Subcommittee, Work Stream 2. Mr. Gandhi asked Ms. Ward to confirm. Ms. Ward confirmed Mr. Gandhi's understanding. Mr. Kochenburger asked if the language included the edits that appear in blue on his screen. Ms. Ward confirmed that the edits are included in the vote, and she kept the edits to show the changes for the committee.

Mr. Gandhi called roll and announced that the motion carried.

### **Update from the Subcommittee on the Availability of Insurance Products**

Chairman Glaser then moved to the availability subcommittee, which is co-chaired by Mr. Birnbaum and Mr. and George Keiser. Since Mr. Keiser was absent, Chairman Glaser asked Mr. Birnbaum to provide an update.

Mr. Birnbaum stated that the subcommittee met a couple of times since the last FOCI meeting. At the first meeting, the subcommittee discussed the auto insurance request for insurance from FIO with FIO staff. Among the issues discussed were FIO's capacity for data collection and analysis and how that might impact on some of the recommendations. At the second meeting, the subcommittee heard a presentation from a telematics vendor focusing on their efforts to analyze and remove racial bias in their telematics algorithms. The discussion revealed an example of structural racism affecting insurance. The vendor noted preliminary research that bad driving behaviors used in the algorithm were similar across different communities, including communities of color, despite disproportionate incidents of driving in pedestrian citations in communities of color reflecting disproportionate policing in communities of color.

Mr. Birnbaum stated that he wanted to alert the full Committee that HUD has proposed to revert its disparate impact rule from the one that was adopted a couple of years ago back to the one that was in force since 2013. The subcommittee will probably discuss the HUD rule in an upcoming meeting. Mr. Birnbaum stated that he hopes that FIO supports that effort and changes the recommendation in the prior Treasury report. Mr. Birnbaum concluded his report.

### **Subcommittee on FIO's International Work**

Chairman Glaser turned to the subcommittee on FIO's international work and asked Mr. Falzon to give an update. Mr. Falzon stated that the subcommittee did not meet over the summer. However, the subcommittee did identify in its last meeting that several pending and soon to be in the market requests for response information and commentary is coming from the IIS. Mr. Falzon stated that the subcommittee had indicated that it was important for FIO to remain engaged and to take the feedback and recommendations that the subcommittee had provided earlier. Three issues will be arising soon or are in the process of arising:

1. A public consultation on the Phase 2 work on liquidity metrics, which is part of a systemic risk assessment.
2. The consultation around the aggregation method, which is a part of integrating our U.S. group capital standard into that international framework. FIO and the subcommittee needs to pay particular attention to this work.
3. The latest installment on the global insurance market report, which covers a variety of things around climate, financial stability, and an assessment of insurers' exposure will be arriving soon.

Mr. Falzon stated that the subcommittee did provide some commentary in its last meeting around a report

coming out from the IAIS on the application paper on macro credential supervision. Essentially, all the commentary that the industry provided was ignored. The draft of that final version was substantially unchanged from its initial version. Ignoring industry commentary signifies the need for continued engagement. Without continued engagement, no progress will be made in ensuring that regulatory constructs are developed in the interest of making sure both economics and consumers are being appropriately considered.

### **Update from the Subcommittee on Addressing the Protection Gap Through Public-Private Partnerships and Other Mechanisms**

Chairman Glaser then turned to the Protection Gap Subcommittee and asked Ms. Bach for an update on the subcommittee's activities.

Ms. Bach stated that she chaired the subcommittee with Sean McGovern, who is not present. The subcommittee has not met in a while but has been making progress in responding to the charge that related to Senator Feinstein's letter to FIO specifically addressing the protection gaps in the California home insurance market related to wildfires. The entire FACI heard a presentation from Roy Wright. The subcommittee has had successes in responding to Senator Feinstein's charge. Joel Laucher, a member of Ms. Bach's team, presented to the subcommittee that after a year of work, the subcommittee has issued 13 recommendations for wildfire risk reduction standards. The subcommittee worked very closely with Mr. Wright and his team. Mr. Wright's entity has announced that they will be issuing their own standards. By the end of this year, the subcommittee will have made substantial progress in California in putting a set of standards into place that will facilitate mitigation and lead to insurance-related mitigation rewards. Ms. Bach added that Mr. McGovern's team has done good preliminary work on a draft of recommendations. The subcommittee will review the recommendations and give a report at the next FACI meeting.

### **Questions on the APCIA Presentation**

Chairman Glaser thanked Ms. Bach for her update and asked if anyone had questions or comments from the earlier presentations. Mr. Kochenburger asked Mr. Gordon if the numbers in terms of what the actual losses are, industry capability, and capital, does this calculate or include, for example, what the limits are for these policies, either the sublimits -- or if there's a separate sublimit for business interruption -- or their policy limits generally? Mr. Kochenburger added that a big difference exists between what the actual loss is and what, if covered, the specific policy limits are. Mr. Kochenburger asked if these factors included or not included in the evaluation. Mr. Gordon responded that the business interruption policies don't usually cover most of the losses because the losses do not cause physical damage. Mr. Gordon referenced the CDC finding that no or very minimal surface transmission risk exists. Mr. Gordon stated that he was not aware where people were contracting COVID from surfaces. The losses are resulting from a shift in consumer demand. Mr. Gordon stated that since the damage is not property damage, no coverage exists in most of the cases. Federal and state courts have been overwhelming upholding the no property damage principle.

Mr. Kochenburger stated that first coverage must be determined. The actionable loss is very interesting, whether it's actual loss or business loss and if it is covered or not covered. Mr. Kochenburger asked if the industry capital included limits and added that, assuming coverage, a business may have \$10 million worth of loss, but their property policy that includes BI may only cover \$500,000 or \$1 million. Mr. Kochenburger asked about the calculation and stated that the most relevant factor is not what the total loss is and whether the insurance industry can afford it, but, assuming coverage, applying the coverage limits in those policies would be the actual exposure.

Dr. Hartwig stated that the courts have ruled no coverage exists in most cases. If no physical actual loss or damage to covered property exists from a covered peril, you cannot trigger the business interruption loss

because of that.

Mr. Gordon asked if Mr. Kochenburger's question is whether insurance products that have limits could be designed, that the answer is yes. Products could be designed with limits, but the products would not cover the losses recently seen. Trillions of dollars of losses have occurred in the U.S. and tens of trillions of dollars of losses globally. Imagining any sort of insurance product that contains limits to make an appreciable dent in consumer losses is difficult.

Ms. Bach asked to be recognized and stated that the conversation was frustrating to her. Ms. Bach stated that she wanted to ask the same question that Mr. Kochenburger asked. She stated further that Mr. Gordon and Dr. Hartwig Peter are repeating the same kind of PR line that they've been saying from the beginning. Ms. Bach stated that she wants to know if Mr. Gordon and Dr. Hartwig are saying is that no 30-day period of restoration exists or that no policy limits on the business interruption policies that have been sold? Ms. Bach stated that everyone knows that the industry is very nervous. However, she stated that it is not true that no coverage exists; some claims are proceeding forward, some claims are being paid, and some of the lawsuits are proceeding forward. Ms. Bach advocated that the FOCI focus on the heart of the matter – the pandemic is not an uninsurable risk because hotel cancellation losses were paid prior to this version of the virus. Ms. Bach stated that Dr. Hartwig and Mr. Gordon espoused that no property damage occurred because nothing was broken. However, decades of case law state that air can be damaged. Ms. Bach asked what the numbers are in this circumstance in terms of the potential insured losses based on the policies that do not have virus exclusions.

Mr. Gordon responded that he and Dr. Hartwig wrote and discussed that at least 13 different layers of losses exist in pandemic situations. Some of the losses have insurance coverage, such as workers' compensation losses. The courts are currently considering several liability lawsuits. However, litigation involving business interruption insurance, around 90 percent of the motions to dismiss those filings have been granted by the courts. Courts have stated that without physical damage, the business interruption coverage cannot be paid. Policy limits could be applied on some future policies. An earlier presentation detailed a policy developed where a small number of policies were sold before the insurers discontinued the product. The industry quickly realized before the pandemic and before there were tens of trillions in losses, pandemic risk cannot be covered. The NAIC has stated that insurance only works when you have a very large pool of risk and a small number of people having losses, so that you can spread the losses within the large pool. With COVID-19, most of the 76 percent of the small businesses receiving PPP loans all had losses at the same time. Insurance is not typically well suited for this kind of global pandemic, where virtually every policy holder suffers significant losses at the same time for an extended period.

Chairman Glaser recognized Mr. Birnbaum who stated that he appreciated the work by the subcommittee and how to respond to the next pandemic. Mr. Birnbaum continued that he appreciates efforts looking at public-private partnerships to see where the insurance industry can contribute. Mr. Birnbaum stated that he is disappointed in the APCA straw man arguments, where they sort of throw their hands up and say this is just simply uninsurable. Their arguments are not valid. The question is not whether insurance could cover an event like a pandemic event. Insurance covers everything. All insurance specifies coverage limits. Property insurance providing full reimbursement of all losses for all perils does not exist. Coverage limits, exclusions, and deductibles exist. No reason exists that similar coverage limits, that facilitate underwriting, are not possible. Mr. Birnbaum stated that to argue that pandemics are uninsurable is ridiculous. Espousing that pandemics are not insurable tarnishes the insurance industry. For a trade association to state that a pandemic is uninsurable is not doing any service to the industry the association is supposed to represent. Examples of insurance covering losses resulting from government actions exist; a variety of lines of insurance exist to provide coverage specifically for government actions. A history of pandemics exists, and coverage was available. While most insureds did not opt for coverage, coverage was available.

Mr. Birnbaum continued that the next pandemic will not be like the current one. Businesses have transformed the way they conduct business, and insurers have learned what assistance is critical for businesses in what time frames. Pandemic coverage can be tailored to those situations and events. For those reasons, Mr. Birnbaum stated that he hopes that the industry will start working towards public-private partnerships and figuring out where insurance can fit. Mr. Birnbaum stated that talk regarding pandemics being uninsurable events needs to stop.

Chairman Glaser thanked Mr. Birnbaum for his comments. Chairman Glaser further stated that the committee had learned much from the COVID Subcommittee and hopes that the FOCI has provided a service to FIO in furthering the debate. Chairman Glaser mentioned that Mr. Birnbaum's point about the future holds true and different approaches will be presented. Many FOCI members are still enthusiastic about the notion of creating some PPP that provides and builds on resilience for any future type of event. Efforts along those lines are going to continue. No one expected the level of continued waves and vaccine hesitancy, which creates a lot of space for additional variants to develop. We are grappling with the current pandemic and are not focusing on the future pandemics. Chairman Glaser stated that he appreciates all the comments made and stated that validity exists on all sides. Further discussions must be had.

Mr. Crabb commented that two other papers, one from RAND and one from the Committee on Capital Markets Regulation, had been submitted for the committee's consideration. Mr. Crabb asked the membership to review those papers because the papers are independent review of what worked, what did not work, what should be considered when developing solutions for the next pandemic. Chairman Glaser thanked Mr. Crabb for his comment.

#### **New Business and Adjournment**

Chairman Glaser asked if anyone had any new business for consideration. Hearing nothing, Chairman Glaser adjourned the meeting and mentioned that the next meeting is December 2, 2021. Chairman Glaser thanked everyone for their time. The meeting concluded at 12:39 p.m.

A handwritten signature in dark ink, appearing to read 'Dan Glaser', written over a horizontal line.

Dan Glaser, Chair