* The COVID-19 pandemic has demonstrated just how unprepared our economy is for the sorts of widespread closures, social distancing requirements, and other public health safety considerations that are necessary to combat a global pandemic.
* In the insurance marketplace, much of the focus has been on business interruption losses. That’s crucial but far from the only line of coverage impacted by the pandemic. Challenges in securing event cancellation coverage, TV and film production coverages, and other contingency coverages continue to plague the marketplace, in addition to serious challenges in finding coverage for communicable disease-related losses in many commercial lines such as general liability.
* A RIMS survey has found that pandemic risk is now excluded or restricted on most lines of commercial property-casualty insurance, and where coverage is available it is often cost-prohibitive without government support.
* The insurance market disruption that has resulted from the current pandemic requires a public-private partnership to ensure that our economy is properly protected against pandemic risk going forward. The Maloney legislation is modeled on a similar public-private backstop that has enjoyed widespread support since its enactment -- namely, the Terrorism Risk Insurance Act (“TRIA”), adopted following the 9/11 terrorist attacks.
* The Pandemic Risk Insurance Act (“PRIA”) would create a federal backstop that ensures the availability of pandemic risk coverage in all critical commercial lines of insurance. Like TRIA, the bill would require insurers to offer coverage in return for a government indemnification of 95% of insured losses arising from any future pandemic that results in a public health emergency. Unlike TRIA, there is no “insurer deductible” nor would there be any post-event recoupment, although the program would begin to pay for itself after an initial “economic recovery period”.
* The bill is similar to current proposals by the insurance industry in that it establishes a parametric program for non-damage business interruption (“NDBI”) losses -- recognizing that rapid claims payment and minimal transaction costs are critical when the aggregation of losses are so high as in a pandemic. The bill also provides a pooling alternative for insurers that do not wish to directly underwrite primary NDBI coverage.
* The Maloney bill however also addresses the unavailability of coverage in other crucial lines of insurance such as event cancellation, production insurance and liability coverage for essential services.
* Ultimately, the bill would ensure availability of pandemic coverage while fostering the development of private reinsurance and capital market alternatives to reduce taxpayer exposure going forward.