

## **ADOPTION DISRUPTION INSURANCE: A POLICY THAT AMERICA IS NOT READY TO ADOPT**

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*Insurance and adoption seem like two ideas that can co-exist and mingle with one another. Yet, how have only a few people even ever heard of the term adoption insurance? Adoption is a market that seems fairly constant as there will always be a sizeable number of Americans interested in going through the process. There also seems to be little risk, especially since adoption disruption for domestic adoptions here in the United States occur at very low rates. So where did the miscommunication occur when adoption insurance finally was created? Who is to blame for the failure of the pioneered adoption disruption insurance? Is it possible to see adoption disruption insurance, like the one created by Philadelphia Insurance Company, in the United States any time soon?*

*Well, most people might think adoption and insurance are two words that do not fit together. Not surprisingly, the two have only recently overlapped. The Omnibus Budget Reconciliation Act of 1993 (OBRA-93) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), for example, were created with provisions that allowed adopted*

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*children to be insured underneath the adopting parents' health insurance. These new laws mandated health insurance companies, which already provided employer-sponsored health insurance plans that covered dependent children, to allow adopted children to be included in those policies as if they were no different than biological children. But these types of laws seem to be the extend of how much the two words will ever overlap.*

*One might think that the low rates of adoption disruption in America combined with the sometimes unbearable costs to adopt would bring about an avenue for insurance companies to mold a viable adoption disruption policy. But these two factors only describe a small portion of the factors that are involved in going through with an adoption. One of the major factors to those pursuing adoption is privacy. Insurance companies, like Philadelphia Insurance, might contend that their overlooking of the privacy factor deemed to be fatal to their attempt at creating an adoption disruption policy. But why is privacy such an important factor?*

*Some of the reason privacy remains so important is because a few high-profile adoption terminations brought about a large amount of public disapproval for the families who terminated their adoptions. Thus, potential adopting parents are less willing to tell insurance companies, or anyone really, that their adoption fell through because of them.*

*Currently, former adoption disruption policies are mostly unknown to the public as many individuals, adopting parents and non-adopting persons alike, do not know such policies exist. It seems that, based on insurance companies' last attempt to bring about interest in the policy, for years to come people will only view adoption disruption insurance as a myth.*

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## INTRODUCTION

Adoption is a wonderful and beautiful thing. It is a process whereby a couple or individual choose to take in, love, cherish, and treat another child from someone else as if they were a member of their own biological family. It is an opportunity for children who have been abandoned, neglected, or lost amidst a collection of personal dilemmas by their birth mother, birth parents, or biological family to find a place where they can be given a chance to love and be loved, to grow, and to dream. It is also an opportunity for those who would not be able to have a child naturally due to biological factors, such as infertility, or have not been

successful in having a child by other means to start or to add to their family. But as beautiful and wonderful as adoption is, it does not always come to fruition once a couple, family, or individual set out to go through with it.

Adoption disruption and adoption dissolution are the two overarching major reasons adoptions fall through. Adoption disruption is used to describe an adoption that is terminated after the child is placed in his or her new adopted home but before the adoption is legally finalized.<sup>2</sup> On the other hand, adoption dissolution is used to describe an adoption process in which the child has been placed in his or her new adopted home and the adoption has been legally finalized but the legal relationship, or guardianship, has been severed, either voluntarily or involuntarily.<sup>3</sup> Both, however, result in the adopted child being returned to, or possibly entered into, foster care or even placement with new adoptive parents.<sup>4</sup> However, since American adoption insurance policies focus on adoption disruption, so will this article.<sup>5</sup>

Adoption disruption can occur for many reasons. A primary reason why adoption disruption occurs is because, despite often intense and meticulous screenings on possible future adopting parents, the adopting parents had or have unrealistic expectations of the child or themselves. This can be due to the child having developmental or psychological issues that the parents were not fully informed of during the adoption process and recognize they cannot handle. In fact many adopted persons lack the ability to find or look at the family genetic and medical history records of the child they intend to adopt at the child's birth.<sup>6</sup> This information is critical to the diagnosis and treatment of genetically based medical and psychological conditions of a person.<sup>7</sup> Upon discovering the seriousness of

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<sup>2</sup> U.S. DEP'T OF HEALTH AND HUMAN SERV., CHILD WELFARE INFO. GATEWAY, ADOPTION DISRUPTION AND DISSOLUTION 1 (June 2012) [hereinafter CHILD WELFARE INFO. GATEWAY].

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Telephone Interview with Laurie Goldheim, President, AdoptionAttorneys.com (Nov. 13, 2014).

<sup>6</sup> See Evan B. Donaldson, *For the Records II: An Examination of the History and Impact of Adult Adoptee Access to Original Birth Certificates*, DONALDSON ADOPTION INST., July 2010, available at [http://adoptioninstitute.org/old/publications/7\\_14\\_2010\\_ForTheRecondsII.pdf](http://adoptioninstitute.org/old/publications/7_14_2010_ForTheRecondsII.pdf) (explaining how the lack of medical and genetic records can cause a multitude of issues not only for adopted children but also those adopting them).

<sup>7</sup> *Id.*

these developmental issues or psychological issues, newly adopting parents may realize that they are unable to connect to the child or that they are unable to mentally, physically, or even financially make the required adjustments of parenting the adopted child.<sup>8</sup>

This realization can occur before the adoption is finalized but can also occur months, even years, after the adoption is completely legalized.<sup>9</sup> There is also the unfortunate reality that sometimes the adopted child and the adopted parent just do not get along. Therefore, in considering the best interest of all parties, the adoption is terminated. Adoption disruptions and adoption dissolutions are despairing but it doesn't mean that they are deserving of the extremely harsh and negative stigmatism that can be associated with them.

Although, adoption disruptions and dissolutions are saddening, especially if the child is sent back to a run-down or impoverished orphanage or a non-welcoming foster home. But they can also be beneficial for the child if he or she is able to, and desires to be, reunited with his or her biological parents. However, a few very high-profile disruptions and dissolutions have tarnished the options in the minds of many Americans and, in effect, turning a great deal of potential parents away from the idea and opportunity of adopting.

The first high-profile adoption disruption/dissolution reached the public on February 10, 2000 when CBS News' *48 Hours* told the story of Jesse and Crystal Money titled "The Perfect Child".<sup>10</sup> The Moneys were a loving couple from the Atlanta area who had adopted a nine-year-old Russian girl. Ultimately the couple returned the girl, given the pseudonym Samantha, back to the orphanage in Moscow because the child had severe reactive attachment disorder, was mentally disabled, and often angry and destructive.<sup>11</sup> The Moneys could no longer pay for the psychiatric care and

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<sup>8</sup> CHILD WELFARE INFO. GATEWAY, *supra* note 2, at 3 – 5, 7.

<sup>9</sup> See U.S. DEP'T OF HEALTH AND HUMAN SERV., CHILD WELFARE INFO. GATEWAY, IMPACT OF ADOPTION ON ADOPTED PERSONS (Aug. 2013) (describing the impact of adoption on adopted children while also briefly explaining some of the difficulties that adoptive parents may face post-adoption).

<sup>10</sup> *48 Hours: The Perfect Child* (CBS News television broadcast Feb. 10, 2010).

<sup>11</sup> *Id.* There was even one incident where Samantha, after threatening to kill the Money's two-year-old son Joshua, recklessly held the child over a thirty-foot deck. After this incident the Moneys had to send their son to live with his grandmother in Texas until they had returned from sending Samantha back to Moscow for fear of Joshua being severally injured. Walter Goodman, *Television Review; An Adoption Dream Turns Nightmarish*, N.Y. TIMES, (Feb. 10, 2010),

could no longer risk the safety of their son so they tried to find a new family for her in America.<sup>12</sup> However, when the Moneys were unsuccessful in finding her a new family, due to Samantha's psychological and mental issues, they brought her to a psychiatric hospital in Russia and surrendered their adoption rights.<sup>13</sup> Watching Samantha, an innocent child just looking for a loving home, being sent back and abandoned is extremely powerful but what is equally powerful, if not more powerful, are the words of the *48 Hours* reporter Troy Roberts. Roberts summed up the negative stigma when he stated that Samantha was abandoned because she had been deemed to be "defective merchandise" to the Americans who adopted her.<sup>14</sup>

It should be to no surprise that stories like the Moneys' and other stories of similar nature – some not even from the United States – have brought about an extremely critical eye on those couples or individuals who resort to adoption disruption and adoption dissolution.<sup>15</sup> This stigmatism is causing individuals and couples to shy away from adoption for fear that the process might not succeed and adoption disruption or dissolution might have to become an unfortunate reality for them. However, these incidents are rarities among the overall population of adopting parents and should not be the lens to look at these avenues with.

This article attempts to clarify the history that adoption and insurance share. It also tries to acknowledge the failures of the short-lived adoption disruption insurance policy and why they occurred while also trying to predict whether or not those failures can be corrected or altered. Part I of this article intends to discuss how society and insurance have interacted in the realm of adoption in the past by primarily looking at the

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available at <http://www.nytimes.com/2000/02/10/arts/television-review-an-adoption-dream-turns-nightmarish.html>.

<sup>12</sup> *48 Hours*, *supra* note 10.

<sup>13</sup> *Id.* Samantha was unaware that the parents were bringing her to a hospital back in Russia. The television program makes the viewer very aware of this, only furthering the negative stigma that adoption dissolution is tasteless and cruel.

<sup>14</sup> Goodman, *supra* note 11.

<sup>15</sup> See Clifford J. Levy, *Russia Calls for Halt on U.S. Adoptions*, N.Y. TIMES, April 10, 2010, at A1 (describing how an American woman in Tennessee sent her adopted seven-year-old son back to Moscow by himself with a typewritten note stating that the boy was violent and a danger to her and her family so she no longer wanted him); see also Ciara Dwyer, *The Curious Case of Tristan Dowse*, INDEPENDENT, (Aug. 2, 2009), <http://www.independent.ie/life/family/mothers-babies/the-curious-case-of-tristan-dowse-26512267.html> (recounting the story of an Irish family who adopted an Indonesian boy only to later abandon him at an orphanage in Indonesia after the adoption "hadn't worked out").

way health insurance evolved to apply to society's demands for adoption during the 1990s. Part II aims to look at how society and insurance are currently interacting in the realm of adoption. This section of the article plans to look at a particular adoption disruption insurance policy underwritten by the Philadelphia Insurance Company and why it failed in what would seem like a healthy market. In looking at the particular insurance policy this article hopes to examine some of the demographics of who is adopting children, who is being adopted, what is the state of adoption insurance, who is aware of adoption insurance or that it even exists, and lastly how, if at all, adoption insurance reacted to or changed the current day market for adoption. Finally Part III will discuss the possibility of adoption insurance being rejuvenated and revived in America in the near future. Specifically, this section will look at the attitude that adopting parents have towards the notion of adoption insurance and the attitude of insurance underwriters and brokers in trying to bring back an adoption policy in the future. Ultimately, the attitudes of society have control over the future of the adoption and adoption insurance market just as they did in the 1990s. So even though today there remains to be optimal statistics to fuel the idea and possibility of adoption insurance to exist, it is the people's desire not to have the institutional creation of adoption insurance that trumps.

## I. THE RELATIONSHIP OF THE ADOPTING COMMUNITY & INSURANCE IN THE PAST

Prior to the 1990s health insurance under general employers did not cover adopted children nor did they cover adopted children who were adopted with preexisting conditions.<sup>16</sup> However, discrimination against adopted children by health insurers is officially prohibited today due to a variety of federal and state legislation. Two of the biggest federal laws to shape the background and foundation between the relationship of adoption and insurance are the Omnibus Budget Reconciliation Act (OBRA-93) of 1993 and the Health Insurance Portability and Accountability Act (HIPAA) of 1996. These two pieces of federal legislation are the first two major acts that really put the tensions that were rising between adoption and insurance into the public eye.

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<sup>16</sup> Mark T. McDermott, *It's the Law: Health Insurance for Adopted Children*, ADOPTIVE FAMILIES MAG., March/April 2002, at 55.

In the years leading up to the passage of OBRA-93 the situation for parents trying to find health insurance for an adopted child worsened. The reason is because a greater number of employers and insurers decreased their risks by dropping or limiting coverage for groups like adopted children or families with adopted children.<sup>17</sup> Two of the most significant problems prior to OBRA-93 was that insurance companies were often not willing to insure an adopted child until the adoption was final, which took sometimes several years to finalize the adoption, and that most insurance companies would not cover children with preexisting conditions.<sup>18</sup>

Before passage of the OBRA-93 amendment, the decision by a health care provider to offer coverage for an adopted child from the beginning of placement to after finalization of the adoption was discretionary on the part of the provider.<sup>19</sup> This meant that families wanting to adopt had to often pay for the medical treatment of the adopted child, and sometimes the biological mother, out of pocket. Such expenses could be outrageously high and extremely burdensome if the child did indeed have a preexisting condition such as an illness, mental handicap, or a physical disability.

Organizations like the Adoptive Families of America (AFA), a non-profit organization that was focused on collecting information about and on adoptive families and the problems/successes they had, decided that they were going to show lawmakers that the dilemmas imposed by insurance companies in the 1980s and early 90s were making it extremely difficult for future parents to adopt and for those with adopted children to finance their adoptions.<sup>20</sup> It was clear that help was needed because there was an apparent discrimination by the insurance companies against parents of adopted children and the adopted children themselves.<sup>21</sup>

The AFA had collected dozens of stories on American families who were financially crippled from insurance companies' unwillingness to insure their adopted children, especially the children who had special needs.<sup>22</sup> These stories include one of a Minnesota family who had to pay

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<sup>17</sup> Steve Humerickhouse, *The 1993 Amendment to ERISA: The Cure for an Adoptive Family Problem*, 6 LOY. CONSUMER L. REV. 12, 12 (1993).

<sup>18</sup> *Id.* at 13.

<sup>19</sup> *Will Health Insurance Cover an Adopted Child?*, PERS. HEALTH INS., <http://www.personalhealthinsurance.com/will-health-insurance-cover-an-adopted-child/> (last visited Nov. 22, 2014) [hereinafter *Will Health Insurance Cover*].

<sup>20</sup> Humerickhouse, *supra* note 17, at 13.

<sup>21</sup> *Will Health Insurance Cover*, *supra* note 19.

<sup>22</sup> Humerickhouse, *supra* note 17, at 14. There was a file on a family from Ohio who had six adopted children and in order to receive health care coverage for

approximately \$200,000 a year for a foster-child with a severe disability because their labor union plan refused to cover the child.<sup>23</sup> The family argued for health insurance coverage for the child if they were to finalize the adoption and no insurance company was willing to cover the not-yet-adopted child, which inevitably led to the family sending the child back into a foster home.<sup>24</sup> Due to stories like those reported by the AFA and a societal demand for legislation that OBRA-93 was put into legislation and signed by President Clinton on August 10, 1993.<sup>25</sup>

OBRA-93 was significant for adoption advocates because it amended the Employee Retirement Income Security Act (ERISA) of 1974 to require group-employee health plans to provide coverage for adopted children as if they were the employee's biological children.<sup>26</sup> OBRA-93 also prohibited insurance carriers from limiting coverage of adopted children because the child was adopted with preexisting conditions.<sup>27</sup> But as great as OBRA-93 was, it was limited because the changes only applied to employers subject to ERISA, which did not cover government employers with employee sponsored plans.<sup>28</sup> The solution to this was HIPAA and its amendments to ERISA and its extensions of OBRA-93.

Before HIPAA but after OBRA-93 there were still several issues. Government employees were not able to obtain the same coverage for their adopted children from their insurance policies as were their private sector counterparts. OBRA-93 also allowed for adopted children to be denied coverage if the employee, who was the adopted parent of the child, did not enroll the child during the "open enrollment" period at work.<sup>29</sup> This had the potential to force adopting parents to wait almost a year to get their adopted child onto their health insurance coverage. Although one year might not

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them, because their health insurer did not, the father had to get an agreement from his boss that his employer would pay him no more than \$15,480 a year in order for their family to become eligible for Medicaid.

<sup>23</sup> *Id.* at 13.

<sup>24</sup> *Id.*

<sup>25</sup> *Will Health Insurance Cover*, *supra* note 19.

<sup>26</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, 374-78 (1993) [hereinafter OBRA-93]; McDermott, *supra* note 16, at 55.

<sup>27</sup> *Id.*

<sup>28</sup> McDermott, *supra* note 16, at 55. These federal regulations only apply to employer-sponsored plans and therefore do not effect individual plans because those are regulated by the individual states.

<sup>29</sup> *Will Health Insurance Cover*, *supra* note 19 ("[Open enrollment] is a time period, usually around six weeks long, which occurs once a year and in which employees can make changes to their healthcare plans.").

sound like a completely debilitating factor, it definitely was for families with special needs children.<sup>30</sup>

Another issue that hampered the effectiveness of adoption reform was that even if individual states made significant strides in state insurance law it did not aid an employee, who is an adopting parent, when they moved to another state or were transferred to another state by his or her employer.<sup>31</sup> In fact, by the time HIPAA was signed in the summer of 1996, forty-four states had enacted laws limiting the duration of pre-existing condition coverage exclusions for private health care plans.<sup>32</sup> However, the adopting community once again put pressure on the federal legislature to enact change to both private and public sector employment-insurance policies.<sup>33</sup> Constituents all across the country demanded continual reform to the ERISA and OBRA-93 legislative acts and they made sure their respective members of Congress heard their expectations, frustrations, and desires about availability and portability of insurance for adopted children.<sup>34</sup>

Once again it was the month of August that the adoption community saw change at the federal level. But this time it was on August 21, 1996 that President Bill Clinton signed and enacted HIPAA.<sup>35</sup> This piece of legislation amended ERISA, in part, through its extension of OBRA-93. It extended the prohibition against discriminatory limitations by insurance carriers on adopted children, including those with preexisting conditions, to government employees.<sup>36</sup> This resulted in health insurance becoming available for adopted children of employees covered by group health plans, including government positions, the moment those families

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<sup>30</sup> Humerickhouse, *supra* note 17, at 13 (describing how the lack of coverage for a special needs foster-child forced a Minnesota couple to pay \$200,000 a year which resulted in the incompletion of the adoption).

<sup>31</sup> Colleen E. Medial, *HIPAA and its Related Legislation: A New Role for ERISA in the Regulation of Private Health Care Plans?*, 65 TENN. L. REV. 485, 496 (1998).

<sup>32</sup> *Id.* at 497.

<sup>33</sup> *Id.* One Senate report on the issue stated that approximately eighty-one million Americans were suffering from preexisting medical conditions in 1995. See S. REP. No. 104-156, at 3 (1995).

<sup>34</sup> Brian K. Atchinson & Daniel M. Fox, *The Politics of the Health Insurance Portability and Accountability Act*, 16 HEALTH AFF. 146, 148 (1997).

<sup>35</sup> Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996).

<sup>36</sup> Atchinson, *supra* note 34, at 147.

assume financial responsibility for the adopted child.<sup>37</sup> HIPAA specifically “prohibit[ed] the imposition of pre-existing condition coverage exclusions, irrespective of the individual’s lack of prior creditable coverage [for] adopted children under age eighteen enrolled in the plan within thirty days of adoption or placement for adoption.”<sup>38</sup>

It seems fair to say that the impact of OBRA-93 and HIPAA were absolutely positive in terms of providing a way for adopting parents the ability to have their adopted, or soon-to-be adopted, child(ren) insured under their health care coverage. But now what needs to be analyzed is whether or not those two acts and the increase of insurance coverage for adoption resulted in an increase of adoptions. Society was impacting the insurance industry by demanding more and using their congressman to make that change.<sup>39</sup> But was insurance reform impacting society? Was the increase in coverage creating an increase in adoptions? The number of variables required to make a reliable and definite correlation are probably too vast. However, statistics show that the insurance reform was probably a factor that helped spur the increase in adoptions.

In 1992, the year before OBRA-93 was enacted, 127,441 children were adopted in the United States.<sup>40</sup> This is a large increase from 1986 when approximately 104,000 children were adopted.<sup>41</sup> That jump of over twenty-thousand children adopted in a year is significant considering that roughly during the same time period the number of women placing their children for adoption in the United States declined.<sup>42</sup> There was also a

<sup>37</sup> McDermott, *supra* note 16, at 55.

<sup>38</sup> Medial, *supra* note 31, at 499; 29 U.S.C.A. § 1181(d)(2).

<sup>39</sup> Atchinson, *supra* note 34, at 148.

<sup>40</sup> Nat’l Adoption Info. Clearinghouse, *Numbers and Trends*, ADOPTION.COM, <http://statistics.adoption.com/information/adoption-statistics-numbers-trends.html> (last visited Nov. 16, 2014) (referencing statistics from V. Flango & C. Flango, *The Flow of Adoption Information from the States*, NAT’L CTR. FOR STATE CTS. (1994)).

<sup>41</sup> C.A. Bachrach et al., *On the Path to Adoption: Adoption Seeking in the U.S.*, 53 J. MARRIAGE & THE FAMILY 705, 705–18 (1991).

<sup>42</sup> See Kristin A. Moore et al., BEGINNING TOO SOON: ADOLESCENT SEXUAL BEHAVIOR, PREGNANCY, AND PARENTHOOD 6 (1995) (noting that the total number of children being placed up for adoption had decreased and that was partly because only two-percent of unmarried women at any age placed their children in adoption by 1992); see also C.A. Bachrach et al., *Relinquishment of Premarital Births: Evidence From the National Survey Data*, FAMILY PLANNING PERSPECTIVES, 24, 27–32, 48 (1992) (indicating that the decline in numbers of women placing their children for adoption is primarily due to the declining numbers of white women

drastic increase in international adoptions. In 1992, there were over 6,500 international adoptions into the United States.<sup>43</sup> That number more than doubled by 1997 when over 13,600 children were adopted internationally and brought into the United States.<sup>44</sup>

Looking at the national statistics it is difficult to determine whether or not the insurance companies increase in coverage is responsible for the increase in adoption but it appears that it was society's demand for post-adoption services and support was the catalyst for changes in insurance.<sup>45</sup> In fact the increase of adoption was so rapid in the 1990s that scholars felt policy makers needed to "recognize the long-term commitments to the [adopted] children" that adopting parents were making because "each adoption is also an extended financial commitment of adoption assistance resources."<sup>46</sup> Insurance had already been shown to be one of those important resources to make sure adoptions prevailed and avoided disruption or dissolution.<sup>47</sup> Again, although this is not conclusive it does show the adopting community's power to create change and that the change they create, such as that through legislation, can be extremely impactful on the growth of adoption in the United States.

Now even though adoption dissolution and adoption disruptions were not well reported at the time – not that they are well reported today

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placing their children for adoption since minority women placing children in adoption has relatively remained the same from the mid-1980s to early 1990s).

<sup>43</sup> Nat'l Adoption Info. Clearinghouse, *supra* note 40 (indicating that 6,536 children were adopted internationally in 1992).

<sup>44</sup> *Id.* (showing that 13,620 children in 1997 according to the U.S. Department of State).

<sup>45</sup> Fred H. Wulczyn & Kristin Brunner Hislop, *Topic #2: Growth in the Adoption Population*, Issue Papers on Foster Care and Adoption 17 (2002), available at [http://www.chapinhall.org/sites/default/files/old\\_reports/89.pdf](http://www.chapinhall.org/sites/default/files/old_reports/89.pdf).

<sup>46</sup> *Id.* at 18. The quote mostly was in reference to government funded adoption assistance; welfare. However, scholars Wulczyn and Hislop reference and show that in the 1990s and even early 2000s adoption was increasing at a rate where it was hard for policy makers to recognize the complexities and long-terms needs of the adopted children and adopting parents. It makes perfect sense to relay this comparison to that of the insurance companies and their policy underwriters since it seemed apparent they were reacting to society in the OBRA-93 and HIPAA legislative acts of the period as well.

<sup>47</sup> This is seen with the Minnesota family who was forced to return their child back to foster care due to the enormous insurance payments required to take care of their adopted child with a preexisting condition. Humerickhouse, *supra* note 17, at 13.

either – there were still statistics gathered on how many adoptions were failing. In 1998 it was discovered that over eighty percent of adoptions did not disrupt before the adoption was finalized and that over ninety-eight percent of adoptions that were finalized and legalized did not terminate.<sup>48</sup> Throughout the 1990s adoption displacement and dissolution rates constantly remained between six and twelve percent,<sup>49</sup> with the higher end applying to older children and the lower end to infants.<sup>50</sup> Plus, there was a slight improvement from the mid-1980s to mid-1990s in the decreasing overall number of adoption disruptions in the United States.<sup>51</sup> Whether or not this is a result of the insurance reform is unknown. However, all of the statistical data and the history of the creations of OBRA and extensions through HIPAA do show us two important things.

The first is that the adopting community and the general society as a whole have the ability to make significant laws and policies that not only shape the market of insurance but also the market and process of adoption. If the adopting community believes there is a serious issue that infringes on their ability to adopt or to raise their adopted child(ren) then they will come together and pursue change. However, there has yet to be a public demand for adoption insurance. Does this mean that the adopting community does not believe there is a need for it or a desire for it? Or is the adopting community trying to tell us something else?

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<sup>48</sup> See Victor K. Groza & Karen F. Rosenberg, CLINICAL AND PRACTICE ISSUES IN ADOPTION: BRIDGING THE GAP BETWEEN ADOPTEES PLACED AS INFANTS AND AS OLDER CHILDREN 2–9 (1998) (discussing the adoption population, the adoption process, and the issues that can and often do lead to disruption and dissolution of the adoption).

<sup>49</sup> R. M. Goerge et al., *Adoption Disruption and Displacement: The Illinois Child Welfare System, 1976–94* (U. Chi. Chapin Hall Ctr. for Children, Discussion Paper CS-35, 1995).

<sup>50</sup> See generally Groza, *supra* note 48, at 2, 15 (noting how it is more likely to see adoption disruptions and dissolutions in older children than infants); see also Marianne Berry & Richard P. Barth, *Adoption and Disruption: Rates, Risks, and Responses* (1988) (finding that less than one percent of infant adoptions disrupt but for children at ages twelve to eighteen the disruption rate increases to over fourteen percent); Kathy S. Stolley, *Statistics on Adoption in the United States*, 3 FUTURE OF CHILDREN: ADOPTION 26, 31–32 (1993) (explaining that placements of older children and children with histories of previous placements and longer stays in the foster care system are more likely to disrupt).

<sup>51</sup> Trudy Festinger, *Adoption Disruption: Rates, Correlates, and Service Needs*, CHILD WELFARE FOR THE 21ST CENTURY: A HANDBOOK OF PRACTICES, POLICIES, AND PROGRAMS 452–468 (G.P. Mallon & P.M. Hess eds., 2d ed. 2005).

Second, the past statistical information shows us that there was no major change in the percentage of adoptions that were disrupted over the concerned period of major insurance reform. Therefore, it is possible to conceive that the reason adoption disruption insurance has yet to flourish or even stay afloat in the U.S. insurance market is because adoption disruption is not considered to be a risk worth insuring. However, in order to see how important these two factors are in concluding whether or not adoption disruption insurance can become a sustainable policy in the near future, it is critical to look at how the adopting community has viewed one of the major attempts at bringing adoption disruption insurance to life.

## II. THE RELATIONSHIP OF THE ADOPTING COMMUNITY & INSURANCE TODAY

The crossroads between society and insurance, in the realm of adoption, are slightly different from what they were like back in the 1980s and 1990s. However, insurance reform has continued to yield to society when it comes to making the first moves and demands of how to shape the relationship between adoption and insurance.

The current state of adoption today seems fairly optimistic considering that people all over the country still want to adopt and give children a home even though the economy has not been as strong as it was in the 1990s when adoption was on the rise. In 1997, the Evan B. Donaldson Adoption Institute conducted a benchmark survey of over 1,500 adults to examine public attitudes toward adopted children, adopting parents, and the process of adoption itself.<sup>52</sup> That survey showed that about six in ten Americans, in 1997, had at least some personal experience with adoption and a third of those Americans surveyed had considered adopting a child at least somewhat seriously.<sup>53</sup> Just like in 1997, today about thirty percent of Americans have considered adopting a child and that includes about thirty-six percent of married women.<sup>54</sup> However, the pure number of children adopted doesn't always reflect this optimism.

Looking at the last decade of adoption statistics one would see that the pure number of children being adopted in the United States has

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<sup>52</sup> Princeton Survey Research Assocs., *Benchmark Adoption Survey: Report on the Findings*, EVAN B. DONALDSON ADOPTION INST. (1997).

<sup>53</sup> *Id.* at 14.

<sup>54</sup> CHILD WELFARE INFORMATION GATEWAY, PERSONS SEEKING TO ADOPT 2 (Feb. 2011) ("In 2002 there were 18.5 million women ages 18-44 who had ever considered adoption. . . . and 12.8 million women who had ever been married.").

decreased.<sup>55</sup> But even with the decreasing numbers the “proportion of adoptions to all exits from foster care has been very consistent, at approximately twenty-one percent since the 2009 financial year.”<sup>56</sup> This should rejuvenate hopes of an adoption insurance market because it shows that even though the numbers are declining it is not because people do not want to adopt. In fact, the decreasing number in total adoptions makes perfect sense considering that the overall number of children in foster homes continues to decrease as evidenced by the number of children waiting to be adopted declining from 135,000 in the 2006 financial year to 102,000 in the 2013 financial year.<sup>57</sup> The continual trend of adoption shows that the market for adoptions is a constant and sizeable one. But with such a sizeable and constant market present in the arena of adoption the real question becomes, “how does insurance get involved?” Or even more importantly, “how come I’ve never heard of adoption insurance before?”

Well, today there are two basic avenues that individuals can use insurance to aid them in the financial planning of adoption. Adoption insurance can help prevent excessive financial loss if the adoption fails and the insurance can also help cover some of the expenses of an adoption, such as adoption-related fees.<sup>58</sup> The two avenues are not mutually exclusive and in fact often synonymous. Many adoption experts regard adoption disruption and adoption dissolution insurance as just falling under the overarching idea of “adoption insurance”.<sup>59</sup>

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<sup>55</sup> U.S. Children’s Bureau, *Trends in Foster Care and Adoption: FFY 2002 – FFY 2013*, U.S. DEP’T OF HEALTH & HUMAN SERV. 1, 3 (July 21, 2014), available at [http://www.acf.hhs.gov/sites/default/files/cb/trends\\_fostercare\\_adoption2013.pdf](http://www.acf.hhs.gov/sites/default/files/cb/trends_fostercare_adoption2013.pdf) (showing that the number of foster home adoptions in 2002 were 51,000 and in 2013 the number decreased to fewer than 51,000).

<sup>56</sup> *Id.* at 3.

<sup>57</sup> *Id.* (“The last decade showed a decline in the numbers of children in foster care . . . [albeit that] financial year 2013 shows a slight increase over the prior year from 397,000 children in American foster homes in [the] 2012 financial year to 402,000 in [the] 2013 financial year.”).

<sup>58</sup> *Adoption & Insurance: Adoption Disruption Insurance*, ADOPTION.COM, available at <http://insurance.adoption.com/>; Anna Glendenning, *Adoption Insurance*, FAMILIES.COM, available at <http://www.families.com/blog/adoption-insurance>.

<sup>59</sup> Telephone Interview with Goldheim, *supra* note 5; Telephone Interview with Charles Daniels, Commercial Broker for Rose & Kiernan, Inc. (Nov. 24, 2014).

But the intersection of insurance and adoption in this regard is very different than the way the two interacting in the 1990s with the OBRA-93 and HIPAA legislation. In the 1990s the issue was getting adopted children, especially those with preexisting conditions, covered underneath their adopted parent's employer-based health insurance.<sup>60</sup> However, in 2006 when the National Adoption Foundation approached the insurance broker Rose & Kiernan, Inc., as their exclusive managing general underwriter and endorser, and the Philadelphia Insurance Company, as a fellow insurance underwriter, with the idea for adoption disruption insurance they were focused on insuring Americans from the devastating financial loss that came with domestic adoptions being disrupted.<sup>61</sup>

The National Adoption Foundation was established by Norman and Judy Goldberg in 1994, a year after they adopted their daughter, because they wanted to "do something for families who wanted to adopt but lacked the necessary financial resources."<sup>62</sup> Once again it was the American people that began the conversation of bringing adoption into the insurance realm, as they desired to solve some of the adoption procedure's most concerning issues. The Goldbergs' daughter impacted them so much that the jovial adopters wanted to do more. But now it was the insurance companies', not the legislators', chance to react to this desire of the people and attempt to transform it into a reality.

When the National Adoption Foundation and Rose & Kiernan first began discussing what the Adoption Disruption Insurance policy would entail, they were going off statistics that Mr. Goldberg had provided.<sup>63</sup>

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<sup>60</sup> See generally Humerickhouse, *supra* note 17 (describing the issues that adopting parents had with finalizing an adoption or maintaining the financial burden brought on through a finalized adoption prior to OBRA-93 and HIPAA in 1996).

<sup>61</sup> Letter from Sean L. Hickey, Sr. V.P. of Rose & Kiernan, Inc., to Philadelphia Ins. Co. (2005) (on file with author).

<sup>62</sup> Maureen Hogan, *Foundation Provides Financial Support to Adoptive Families*, 6 FOSTERING PERSPECTIVES (2001), available at [http://www.fosteringperspectives.org/fp\\_vol6no1/foundation\\_provides\\_financial\\_support.htm](http://www.fosteringperspectives.org/fp_vol6no1/foundation_provides_financial_support.htm). The National Adoption Foundation was and is a non-profit organization that provided support to families trying to adopt or families who finalized an adoption by distributing direct grants as well as offering low-interest, unsecured home equity loans and a low interest credit card program

<sup>63</sup> See Letter from Hickey, *supra* note 61 (stating that "Mr. Goldberg ha[d] provided . . . some benchmark statistics" through several surveys that he conducted through a "comprehensive network of adoption agencies and attorneys" and the National Adoption Foundation's Database).

Based on surveys conducted by the National Adoption Foundation and its network of adoption agencies and attorneys the company analyzed that the “domestic non-completion ratio [of adoptions, also known as the rate of domestic adoption disruptions,] has ranged between 2.7% to 3.9% annually [and is] significantly higher with foreign adoption.”<sup>64</sup> It further calculated that with about 250,000 domestic adoptions occurring every year that “conservatively” three to six thousand policies could be sold a year.<sup>65</sup>

The premise of the policy was to insure the cost of domestic adoptions only, covering the cost of minor enhancement coverages such as indemnifying the adopting parents for expenses paid to the birth mother or paid on her behalf after the adoption had been disrupted.<sup>66</sup> Many scholars of the time, including professor Richard Barth from the University of North Carolina and the parties involved in drafting the policy, held the same view of domestic adoption disruption, such that they believed “the best prediction for any adoption is that it will not disrupt [because] [t]he base rates of disruptions are so low and the precision of the disruption predictions so modest, that the most scientific prediction is that any individual adoption will succeed.”<sup>67</sup> With such a low disruption rate, a sizeable and constant market, and the belief that society really wanted the creation of such a policy, Rose & Kiernan accepted the proposition by Mr. Norman Goldberg and the first national adoption disruption policy was set in motion.

With the agreement between the parties made, the policy moved forward. The Philadelphia Insurance Company policy gave adopting parents the option of either a \$25,000 or \$30,000 limit of liability, which

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.* There is no information in the letter to indicate where the 250,000 domestic adoptions a year came from. It does mention that the National Adoption Foundation averaged about six thousand hits a day, therefore, it may be safe to assume that this type of information was at one point in time located on the non-profit organization’s website. NATIONAL ADOPTION FOUNDATION, <https://fundyouradoption.org/> (last visited Nov. 23, 2014) (searching the website there appears to be no database of any indication that in 2004, ‘05 or ‘06 the domestic adoption rate was 250,000 a year). In fact, a Philadelphia newspaper wrote that in 2006 researchers actually found that about 135,000 children were adopted each year in the United States. Jeff Gammage, *A New Face and Profile Emerge on Adoption*, PHILA. INQUIRER, Nov. 19, 2006, at A2 (sourcing the Evan B. Donaldson Adoption Inst.).

<sup>66</sup> Letter from Hickey, *supra* note 61.

<sup>67</sup> Richard P. Barth, *Risks and Rates of Adoption Disruption*, 3 ADOPTION FACTBOOK 381, 385 (1999).

included a \$10,000 sublimit for attorney fees and advertising expenses, and a \$1,000 or \$2,500 deductible.<sup>68</sup> It was predicted that the policy would gross in anywhere from \$7,500,000 to \$15,000,000 per year if the parties could “jointly consult and build a national business and strategic marketing plan” for their newly created policy/product.<sup>69</sup> But in coming up with the final details of this policy the partnership between Rose & Kiernan and the National Adoption Foundation sent out a survey, created by AIG Product Development,<sup>70</sup> to dozens of adoption agencies and adoption attorneys across the country so that they could “create a policy that would most meet the needs of adoptive parents.”<sup>71</sup>

The policy was inevitably made from the results of the survey with the belief that the adoption agencies and adoption attorneys would know adopting parents and their desires, expectations, and worries as well as the trend of the adoption market.<sup>72</sup> Forty-two of the survey recipients responded to Norman Goldberg’s letter and completed AIG Product Development’s questionnaire; answering a total of fifteen broad questions ranging from the age of the adoption agencies’ and adoption attorneys’ clients, adopting parents, to the average price of the agencies’ or firm’s fees to help complete an adoption.<sup>73</sup> Results from the survey showed a variety of things that national surveys by adoption researchers had missed or omitted in the past because of the uniqueness of the questions being asked in this insurance survey.<sup>74</sup>

One of the questions that was asked in the survey was “Annually, what percent of parents at your agency/firm complete each process of the adoption?” and then broke it down to the three steps in the adoption process; submission of the adoption application, approval for adoption, and lastly the legal finalization of the adoption.<sup>75</sup> Thirty-six of the forty-two participants in the survey replied that seventy-six to one hundred percent of their clients were approved for adoption but then only eight participants

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<sup>68</sup> *Adoption Disruption Protection Plus Insurance Application*, PHILA. INS. COS. (June 2006) [hereinafter ADI Policy].

<sup>69</sup> Letter from Hickey, *supra* note 61.

<sup>70</sup> Letter from Norman Goldberg, Pres. & Founder of the Nat’l Adoption Found., to Charles Daniels, Rose & Kiernan broker (2004) (on file with author).

<sup>71</sup> Letter from Norman Goldberg, Pres. & Founder of the Nat’l Adoption Found., to survey recipients (2004) (on file with author).

<sup>72</sup> Telephone Interview with Daniels, *supra* note 59.

<sup>73</sup> Charles Daniels, *Adoption Protection Coverage Survey Results* (Jan. 2005)(on file with author).

<sup>74</sup> Telephone Interview with Daniels, *supra* note 59.

<sup>75</sup> Daniels survey, *supra* note 73 (referencing question two).

replied that same rate applied to their clients' adoptions being legally finalized.<sup>76</sup> On that same note, thirty participants responded that their clients' adoptions only saw their adoptions legally finalized at about fifty-one to seventy-five percent;<sup>77</sup> a number that would indicate domestic adoption disruptions were occurring much higher than they were in actuality.<sup>78</sup>

The survey also went into what were the additional costs that adopting parents were taking on when their adoptions disrupted and what the estimated range of those expenses would be;<sup>79</sup> questions that had never been asked of the adoption community before.<sup>80</sup> The results to those answers indicated that the most prominent expenses lost in the disruption of an adoption were the fees the adopting parents would pay for the birthmother, mostly medical, and those fees ranged up to four thousand dollars.<sup>81</sup> Attorney fees, which were estimated to range up to four thousand dollars as well, were considered the second-most likely fee for adopting parents to incur if the adoption were to be disrupted.<sup>82</sup> But what is most interesting about the results to this question is that over thirty percent of the participants responded that adopting parents whose adoption was disrupted did not incur any additional costs.<sup>83</sup> What is equally as important, if not more important, as the fees that families incur from a disrupted adoption are the circumstances in which those fees or expenses would be reimbursed and what types of fees and/or expenses would then be reimbursed.<sup>84</sup>

<sup>76</sup> *Id.* (examining the answers to question two).

<sup>77</sup> *Id.*

<sup>78</sup> See J.F. Coakley & J.D. Berrick, *Research Review: In a Rush to Permanency: Preventing Adoption Disruption*, 13 CHILD & FAMILY SOCIAL WORK 101, 101–12 (2008) (indicating that the rate of adoption disruptions ranges from about six to eleven percent). It is possible that the reason behind the difference in the rates of adoption disruption from the AIG survey and the national survey is because the AIG survey was focused on private adoptions whereas the national surveys most likely took into count all adoptions whether made through a private firm/agency or made through a government organization.

<sup>79</sup> Daniels survey, *supra* note 73 (referencing question 4).

<sup>80</sup> *Id.* (stating that when Rose & Kiernan looked for already published research results on questions like this, back in 2005, they could find nothing).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* Thirteen of the forty-two participants selected 'None' as their answer to question four indicating that there were no application fees, home study fees, agency fees, advertising fees, birthmother fees, attorney fees, or post-placement supervision costs that had to be incurred by the unfortunate adopting parents.

<sup>84</sup> Telephone Interview with Goldheim, *supra* note 5.

The nation-wide survey showed that over a quarter of adoption agencies or firms would not reimburse adopting parents any fee or expense that they might have incurred from an adoption disruption.<sup>85</sup> Of the remaining seventy-five percent of the survey respondents, about forty percent of them revealed that they would reimburse fees if the adopting parent were to die but did not feel there was an inclination to reimburse fees or expenses for adoptions that were terminated for a variety of other reasons such as pregnancy of the adopting parents, a change of heart by the birthmother, or serious illness or injury to an adopting parent.<sup>86</sup> But even in those particular scenarios that would warrant a reimbursement of fees and/or expenses by an adoption agency or attorney, the actual fees or expenses that would be reimbursed were limited. The most agreed upon fee or expense being reimbursed was for post placement supervision expenses; but even that had just over a third of the participants willing to reimburse such expenses.<sup>87</sup> With such limited reimbursements available for adopting families from adoption agencies and adoption attorneys the real questions became “how much would an insurance policy remedy this?” Furthermore, if there was a need for a remedy to the way agencies and attorneys were handling the adoption procedure fallbacks, how could an insurance company help remedy these concerns?<sup>88</sup>

The answers to these sorts of questions became the foundation to whether or not Rose & Kiernan continued to pursue the proposal of Norm Goldberg as these questions were specifically in the survey to try and analyze whether society desired an insurance policy or would be receptive

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<sup>85</sup> Daniels survey, *supra* note 73 (referring to question 5).

<sup>86</sup> *Id.* According to the results for question four, none of the responding adoption agencies or adoption attorneys believed that the pregnancy of the adopting parents warranted a reimbursement for fees or expenses, three would reimburse if the birth mother changes her mind, one if the biological father or biological grandparents of the child challenged the adoption, five for reimbursing adoptions that disrupted because of serious illness or injury of the adopting parent, and one respondent replied they would reimburse an adopting parent if the adoption failed because of an illness or injury of a significant family member.

<sup>87</sup> *Id.* (showing in question six that only fifteen participants were willing to reimburse, in the event of an adoption being disrupted, the expenses of post placement supervision).

<sup>88</sup> Telephone Interview with Goldheim, *supra* note 5 (“If an insurance company were to create a policy it would be important that the insurance was going to do more for the [adopting parents] than what the agencies and attorneys were already doing.”).

to one.<sup>89</sup> These results, if truly an accurate representation of the attitude of the adopting community, indicated that society would not only be interested in an adoption disruption policy but that they were indeed looking for it. The survey results showed that ninety-five percent of the respondents were regularly asked about how to protect lost expenses due to an adoption disruption or dissolution from adopting parents, ninety-five percent of adoption agencies and adoption attorneys believed an insurance policy protecting expenses due to adoption disruption or dissolution would be beneficial to adopting parents, and ninety-five percent of the respondents were unaware of there being a product out in the open market that would reimburse certain expenses in the situation of an adoption being terminated.<sup>90</sup> But with all of the survey results and all of the collectible adoption statistics indicating that an adoption disruption policy would be potentially lucrative and successful, why or how did the Philadelphia Insurance Company's *Adoption Disruption Protection Plus Insurance* policy fail?<sup>91</sup> The answer to this question is best summed up by the various people that make up the adopting community.

One couple, a couple who adopted children internationally in the 1990s and considered adopting a third child domestically from Connecticut in 2002, believes that the reason something like the Philadelphia Insurance Company's adoption disruption insurance never took off is because the policy was not well advertised.<sup>92</sup> The couple noted that when they were considering adoption this type of insurance did not exist but that "if it did [they] would have known about it" because, as they put it, "when you're looking to adopt children you always ask questions of friends, family,

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<sup>89</sup> Telephone Interview with Daniels, *supra* note 59 ("[W]e needed to know whether or not the adoption community would be receptive to an insurance policy and the last few questions of our survey aimed to help us with that. . . . [T]he first few questions were there to really help us set the values and limits of our policy but the [last few] questions were there to get a pulse on [society's desire] for our policy.").

<sup>90</sup> Daniels survey, *supra* note 73 (referring to the survey results for questions nine through twelve).

<sup>91</sup> Telephone Interview with Daniels, *supra* note 59 ("[T]he adoption disruption insurance policy was pulled from Philadelphia Insurance Companies after a little over a year.").

<sup>92</sup> Interview with G--- & L---, Adopting Parents from Hartford, Conn., in Hartford, Conn. (Oct. 21, 2014). This couple requested that their names not be released in this article as they wanted to aid in answering questions regarding their experience and understanding of adoption but desired to maintain their anonymity for personal reasons.

coworkers, or whomever you know has gone through the process successfully and you research as much as you can. . . . Adoption [unlike childbearing] isn't natural so you tend to find yourself doing research on how to get the process started because it's not like you just go to the local store and ask for a child."<sup>93</sup>

Charles Daniels, a commercial broker for Rose & Kiernan, Inc. and the man who lead the underwriting of Philadelphia Insurance Company's *Adoption Disruption Protection Plus Insurance* policy, argued that, although the policy probably could have been marketed and advertised more, the policy had a great deal of exposure and advertisement. He explained that the policy was heavily endorsed by the National Adoption Foundation, which at the time had one of the largest adoption websites on the web,<sup>94</sup> and the endorsement by twenty-four adoption attorneys, who hailed from eighteen different states and the nation's capital,<sup>95</sup> as well as a dozen or two adoption agencies and organizations across the nation.<sup>96</sup> So if it wasn't advertisement what could have it been to cause the quick dropping of the policy by the Philadelphia Insurance Company?

Laurie Goldheim, the president of AdoptionAttorneys.com, argued that the reason adoption insurance most likely failed is because of a combination of the premium, low risk for disruption in an infant birthmother adoption, and the history of adoptions being done without the need of insurance.<sup>97</sup> She emphasized the amount of research that individuals pursuing adoption often take,<sup>98</sup> explaining that most adopting

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<sup>93</sup> *Id.*

<sup>94</sup> Daniels acknowledged that he no longer had any statistical proof to show that the National Adoption Foundation website was once one of the leading sites for adopting parents available. However, he did state that Rose & Kiernan would not have agreed to underwrite such a policy nor would Phila. Ins. Co. had been willing to put forward the insurance policy if they did not believe in the power and pull of the organization and Mr. Goldberg. Letter from Hickey, *supra* note 61 (“[Goldberg’s] website averages 6,000 hits per day!”). Daniels also acknowledges that the National Adoption Foundation has significantly downsized and its network shrunken since the death of Mr. Goldberg. The current National Adoption Foundation website can be seen at <https://naf.fundly.com/>.

<sup>95</sup> Letter from Norman Goldberg, Pres. & Founder of the Nat’l Adoption Found., to Geoff Green, Rose & Kiernan, Inc. (Jan. 19, 2005) (on file with author).

<sup>96</sup> Telephone Interview with Daniels, *supra* note 59.

<sup>97</sup> Telephone Interview with Goldheim, *supra* note 5.

<sup>98</sup> Rainbow Kids Magazine describes the research and planning efforts of a couple in their pursuit of adopting a seven-year-old girl from China. Janice Sisneski, *Adoption Disruption: When Love Isn't Enough*, RAINBOW KIDS MAG.

parents will save up for years in order to afford an adoption and therefore have already come to grips with the financial sacrifice that the endeavor requires.<sup>99</sup> This combined with the low risk of an adoption actually disrupting,<sup>100</sup> makes adopting parents feel the risk is so low that it is worth foregoing acquiring insurance and simply proceed with the adoption process, which was what had been done for decades, was and is often an easy choice, “a no-brainer.”<sup>101</sup>

Again Daniels argued against the idea that the premiums were the issue. He reasoned that because adopting parents had saved up for months or years to adopt that they were more than willing to spend the one thousand dollar or two-and-a-half thousand dollar premium that the Philadelphia Insurance Company adoption disruption policy required.<sup>102</sup> The adoption disruption protection policy that Daniels and his colleagues underwrote does include a \$10,000 sublimit for attorney or adoption agency fees,<sup>103</sup> which is a significant amount to be reimbursed considering that a majority of adoption agencies and attorneys charge more than \$15,000 for their services.<sup>104</sup> Also the full amount of the policy could reimburse a family up to \$30,000 if the right circumstances fit within their policy.<sup>105</sup> This is a substantial amount of money to get back but it still did not entice or convince adopting parents to invest in the adoption disruption policy. Again the question here is why?

Daniels believes that the reason the adoption disruption policy failed is because the adopting community is just not ready for it. He emphasized that in his experience with the adoption policy and in his conversations with his friends, whom have adopted, he found that

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(Jan. 1, 2006), <http://www.rainbowkids.com/adoption-stories/adoption-disruption-when-love-isn-t-enough-456> (“[The adopting parents] had been on adoption e-mail lists, talk[ed] to other parents of older adoptees for almost a year . . . They felt prepared by these families and also by their supportive adoption agency’s educational programs [that] they had participated in.”).

<sup>99</sup> Telephone Interview with Goldheim, *supra* note 5.

<sup>100</sup> See Coakley, *supra* note 78, at 104.

<sup>101</sup> Telephone Interview with Goldheim, *supra* note 5.

<sup>102</sup> Telephone Interview with Daniels, *supra* note 59.

<sup>103</sup> *ADI policy*, *supra* note 68.

<sup>104</sup> Daniels survey, *supra* note 73 (referencing question fifteen where thirty-two of the forty-two participants responded that their average agency/firm fees were north of fifteen thousand dollars).

<sup>105</sup> *ADI policy*, *supra* note 68.

“adoption is a private thing and that’s how people in the adoption community want to keep it. . . . [E]specially if the adoption fails.”<sup>106</sup>

Echoing this sentiment was the adopting couple from Hartford. When asked if adoption disruption had impacted them, the couple had admitted that they themselves had faced adoption disruption.<sup>107</sup> The couple also explained that throughout the entire adoption process only a select group of family members, friends, and co-workers they could trust knew that the couple was even trying to adopt.<sup>108</sup> When the adoption was finally terminated, due to the birth mother deciding to keep the child shortly after the child’s birth, the adopting couple was devastated. They explained their feelings at the time of the disruption as such:

When we came home from [abroad]<sup>109</sup>, without the little girl we expected to adopt, all we could think of was [that] our chance to be parents was taken away from us. . . . We didn’t care about the financial loss because at the time there was no insurance and we had made plans financially to save up for the adoption and for [the beginning of] taking care of a child. It was also something we didn’t talk about, even our close siblings and parents knew to give us space. . . . [W]e just didn’t want to talk about it.<sup>110</sup>

Such emotion and mental anguish is taxing upon a person and can really wither them down. The mere thought of having to discuss such a personal issue with an insurance company, broker, or any stranger seems frustrating and aggravating. When the Hartford couple was asked about whether or not they would have brought their adoption disruption to an insurance company for reimbursement – in the hypothetical that they had a policy like the one Philadelphia Insurance Company marketed – the couple said “absolutely not” because the potential of getting a few thousand

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<sup>106</sup> Telephone Interview with Daniels, *supra* note 59.

<sup>107</sup> Interview with G--- & L---, *supra* note 92 (recounting that in the 1980s their international adoption was disrupted because the birth-mother decided to keep her child after it was born).

<sup>108</sup> *Id.*

<sup>109</sup> The country from which the couple attempted to adopt a child was stricken from their comment in order to maintain the anonymous nature of their identity as the two children they adopted a few years later were from the same country.

<sup>110</sup> Interview with G--- & L---, *supra* note 92.

dollars back was not worth the agony and frustration filing the claim and telling, probably arguing, their story to a stranger for months.<sup>111</sup>

So maybe Daniels was correct in that the pure private nature of adoption is the reason why the insurance policy that the National Adoption Foundation teamed up with Rose & Kiernan to create failed. Or maybe it was a combination of the various facts prior mentioned? Although exactly what caused the Philadelphia Insurance Company policy to fail is unknown, it does not mean that one cannot predict whether or not such a policy can be revived and reinstated into the market today. But if Daniels was correct in his assessment that the private nature of adoption was the major reason for the failure of the adoption disruption policy in the mid-2000s, then it would seem fair to say that such a policy would not be able to flourish today either.

### III. IS IT LIKELY ADOPTION DISRUPTION INSURANCE WILL BE REVIVED IN THE FUTURE?

Although adoption disruption insurance did not succeed in prior years it does not necessarily mean it will fail again. In fact, one of the biggest dilemmas and concerns of adoption professionals is that the recent trends and initiatives to increase the number of adoptions, while also decreasing the time needed to finalize an adoption, might increase the number of future adoption disruptions and dissolutions in the country.<sup>112</sup> Thus the question becomes, is the fear of an increase in adoption disruptions enough of a concern to reinvigorate insurance companies to look into a new adoption disruption policy? Is it possible to look at what may have been the cause of the Philadelphia Insurance Company's adoption disruption policy's downfall and try to guess whether or not those issues could be remedied?

Now it is possible that the Philadelphia Insurance Company did not market their policy well enough and adopting parents who would have been

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<sup>111</sup> *Id.* The couple admitted that they had no idea what the situation would have been like if they had insurance because the thought of adoption insurance would have been seen as ridiculous in the 1980s. However, the husband explained that he had been in a car accident and the retelling of that story over and over again to a stranger from the insurance company was awfully irritating. He mentioned that he thought he was being judged the entire time even though he knew he was in the right. But by the time the husband was able to collect the money owed him by the insurance company after years of arguing back and forth about particular details he said that the "money wasn't worth the frustration."

<sup>112</sup> CHILD WELFARE INFO. GATEWAY, *supra* note 2, at 7.

interested did not look to invest in the insurance simply because they knew nothing of it. Or maybe their policy was not inclusive enough to the adopting community and the restrictions to the coverage alienated a majority of the community who would have actually been interested in the policy.

The disruption policy that Charles Daniels managed the underwriting for had a very limited number of adoption disruptions that it would actually cover. In order to qualify for the adoption disruption insurance the adopting couple would have to be solely looking to adopt a child that was under two years of age, adopted from within the United States, and an adoption that occurred between the birth-mother and the adopting parents; adoption from foster homes did not qualify.<sup>113</sup> Not only that, but the circumstances leading to the adoption disruption would be limited to covering situations where the birth mother decided to keep the child, the birth father challenged the adoption, or due to the death of an adopting parent.<sup>114</sup> When both of these requirements are met the insurance will indemnify, to the agreed upon amount, expenses paid to the birth mother or paid on the birth mother's behalf but only if the reimbursable expenses were incurred while the policy was in effect but before the birth mother or birth parents announced their intention to keep the child.<sup>115</sup> The problem with this type of policy, as mentioned in the previous section, is that these particular adoptions have an extremely low likelihood of an actual disruption occurring.

The fact that this policy was only geared to birthmother adoptions was the first problem since seventy-one percent of domestic adopting parents look to adopt from foster care.<sup>116</sup> Echoing this fact is Joselyn Benoit, a Program Social Worker at the UConn Health Center's Adoption Assistance Program (AAP) in Farmington, Connecticut.<sup>117</sup> Ms. Benoit

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<sup>113</sup> *ADI Policy*, *supra* note 68; Letter from Hickey, *supra* note 61; Telephone Interview with Daniels, *supra* note 59.

<sup>114</sup> *ADI Policy*, *supra* note 68; Telephone Interview with Daniels, *supra* note 59.

<sup>115</sup> Letter from Hickey, *supra* note 61 (adding that coverage typically included medical care, living expenses necessary for the birth process, counseling expenses of the birth mother on both the birth and adoption process, and travel expense needed to arrange the adoption). Adoption Assistance Program, University of Connecticut Health Center,

<sup>116</sup> CHILD WELFARE INFO. GATEWAY, *supra* note 2, at 3.

<sup>117</sup> Telephone Interview with Joselyn Benoit, Program Social Worker at Univ. of Conn. Health Center Adoption Assistance Program (Dec. 18, 2014). Information available at <http://aap.uhc.edu/contact/index.html>.

noted that children adopted through the Department of Children and Families (DCF) is much more common than private domestic adoptions primarily because of the fact that the state has various financial incentives to adopt children through such programs.<sup>118</sup> Also, with the enactment of the American Taxpayer Relief Act of 2012 (ATRA), taxpayers that adopt children through DCF “can receive a federal tax credit for qualified adoption expenses [and can] exclude from their income adoption expenses that were paid [for] by an employer.”<sup>119</sup> Therefore, people who truly want to adopt can do so in a manner that alleviates many of the stresses that exist in domestic private adoptions with adoption agencies.

Ms. Benoit, who worked at the private adoption agency Wide Horizons For Children<sup>120</sup> prior to her time with the UConn Health Center’s AAP, explained that because most families adopt from state foster homes and state adoption services like DCF, it “does not make sense [for them] to pay for an [adoption] insurance plan on an adoption that they will be paid for.”<sup>121</sup> She further commented that with such a low-risk, if any, of a financial loss in these types of adoptions (currently the majority of adoptions), it makes “absolutely no sense for [potential adopting parents] to even consider investing in something like adoption [disruption] insurance.”<sup>122</sup>

However, even if the policy were recreated and opened up to foster care adoptions, it seems unlikely that it would bring about a resurgence of

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<sup>118</sup> Such programs include the Dept. of Children and Families’ subsidized guardianship program. ADOPTION ASSISTANCE PROGRAM BROCHURE (2014), available at [http://aap.uchc.edu/services/pdfs/aap\\_brochure.pdf](http://aap.uchc.edu/services/pdfs/aap_brochure.pdf). There are also Financial and Medical subsidies and even College Assistance/Post Secondary Education assistance. Post Adoption Services, CONNECTICUT FOSTER ADOPT (Jul. 7, 2015, 2:10:19 PM), <http://www.ctfosteradopt.com/fosteradopt/cwp/view.asp?a=3795&Q=447946>.

<sup>119</sup> STAFF OF S. COMM. ON FIN., 112TH CONG., SUMMARY OF PROVISION IN THE AMERICAN TAXPAYER RELIEF ACT OF 2012: PRELIMINARY (Comm. Print 2013). The adoption tax credit is a one-time credit per child and if a person has received their adoption tax credit for an adoption, then they cannot apply for an additional adoption tax credit in future years. Federal Adoption Tax Credit, NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN (Oct. 2014), <http://www.nacac.org/taxcredit/taxcredit.html>.

<sup>120</sup> The homepage for Wide Horizons for Children can be found at <https://www.whfc.org/>.

<sup>121</sup> Interview with Benoit, *supra* note 126 (referring to the fact that the state has various tax incentives and financial aid incentives for families who do adopt for free-of-charge services).

<sup>122</sup> *Id.*

interest due to the low risk of disruption of infant adoptions and the low cost of adopting children from foster homes.<sup>123</sup> Then there is the possibility of opening up the policy to international adoptions and marketing it to the largest group of adopting parents probably interested in adoption.<sup>124</sup> However, insurance companies have stated that they are not interested in opening up an adoption policy to international adoptions due to the higher rate of unpredictability and termination.<sup>125</sup>

But even if they did, statistics show that international adoption disruptions are not significantly any more of a risk than domestic ones.<sup>126</sup> Plus, international adoptions tend to cost on average over \$28,800,<sup>127</sup> whereas most domestic adoption expenses cost less than \$5,000.<sup>128</sup> The increased cost might cause adopting parent(s) to look more seriously at a hypothetical adoption insurance. However, the low risk might cause them to forego insurance for international adoptions in the same manner that they would have foregone the insurance in a domestic adoption.

Furthermore, survey numbers reveal that the cost of adoption and the concern of disruption are no longer top priorities in adopting

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<sup>123</sup> See Harris Interactive, INC. & Evan B. Donaldson Adoption Institute, National Adoption Attitude Survey 4 (2002) (explaining that although eighty-two percent of adoption-considering Americans fear the birth parents will want to try and regain custody once the adoption is complete, the actual rate of that happening is extremely low). Page four of the article explains that people who believe adoptions in the United States could be very expensive are unaware of how low the cost in foster care adoption is.

<sup>124</sup> Interview with G--- & L---, *supra* note 92 (acknowledging that from the 1980s to today that “it’s always been known [to people seeking adoption] that international adoptions carry more [of a] risk” than domestic adoptions of failing).

<sup>125</sup> Telephone interview with Daniels, *supra* note 59 (“[D]ealing with adoptions in every state requires enough [of an insurance company’s] resources to keep up to date with what each and every state determines is the length of time a birthmother’s right to cancel an adoption is. . . . [Insurance companies] won’t spend the money or resources to accompany a global market that isn’t even producing at a national or regional level.”).

<sup>126</sup> U.S. DEP’T OF STATE, FY 2013 ANNUAL REPORT ON INTERCOUNTRY ADOPTION 3, 5 (2014) (showing that out of 7,094 international adoptions that took place in the 2013 financial year only six were disrupted).

<sup>127</sup> *Id.* at 1 (calculating the median cost for all international adoption services to be \$28,845.85).

<sup>128</sup> Adoption USA, *National Survey of Adoptive Parents*, DEP’T OF HEALTH & HUMAN SERVS. (April 19, 2013) (revealing that fifty-five percent of domestic adoptions cost \$5,000 or less and that ninety-three percent of international adoptions cost more than \$10,000).

communities today.<sup>129</sup> It seems safe to say that, based on the presumption that families who are adopting have already financially prepared themselves,<sup>130</sup> adopting parents are more willing to take a gamble on the low risk than invest another few thousand dollars on an insurance that most likely won't apply to them or won't be needed.<sup>131</sup> It was this same thinking that possibly caused the Philadelphia Insurance Company's adoption disruption to fail over seven years ago. But, based on the firm belief that the adoption disruption insurance's downfall was significantly, if not solely, on the premise that adoption is too personal and private of a matter to become marketed by adoption companies appropriately, the question becomes: Does this same attitude of personal privacy still trump other concerns and issues of adoption for adopting parents?

A grandmother of an adopted child attempted to address this issue when she retold the story of how her daughter almost didn't adopt because she was so afraid of the social stigmatism that could be attached to her if she failed to make the adoption work.<sup>132</sup> She explained that her daughter had seen a story "about a woman in Tennessee who sent her adopted child back to Russia by himself because so she no longer wanted him"<sup>133</sup> and how the media was being extremely critical of her even though the child was extremely violent, and the daughter became very afraid of "adopting a child she was unsure of."<sup>134</sup> It is this same sort of stigmatism and public

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<sup>129</sup> HARRIS INTERACTIVE, INC., *supra* note 123, at 28 (showing that only 7% of the 1,416 adopting parents surveyed were concerned with the cost/affordability of adoption and only 5% were concerned with adoption disruption).

<sup>130</sup> Interview with G--- & L---, *supra* note 92 (discussing how their desire to adopt forced them to save up funds for quite some time knowing the financial burden that the adoption process could put on them and how they, like many looking to adopt, are well aware of that burden far before the actual adoption).

<sup>131</sup> Interview with Goldheim, *supra* note 5 (explaining that for most domestic adoptions the expenses, or at least the ones that would be most likely to be reimbursed, are about as much as the premium for the insurance and therefore it just becomes a "pointless wash" if used).

<sup>132</sup> Interview with L--- & W---, Grandparents of Adopted Child, from Manchester, Conn., in Hartford, Conn. (Nov. 21, 2014).

<sup>133</sup> See Levy, *supra* note 15, at A1 (describing the Tennessee woman who sent her seven year-old son back to Moscow with just a type-written note).

<sup>134</sup> Interview with L--- & W---, *supra* note 132. The grandparents clarified that when they said "child she was unsure of" that they meant a child she had not done all of the research on or could not get all of the research she wanted, like medical records, on. Apparently the child that the grandparents' daughter ended up adopting in 2012 was an infant from a state foster home and not from overseas like the daughter originally thought she would do.

scorn that Daniels believed was a critical reason for the failings of the adoption disruption insurance policy he underwrote.<sup>135</sup>

In the United States a disrupted adoption still holds a particular stigma, one that views it as “a shameful act of abandonment and a failure on all those involved in the adoption process.”<sup>136</sup> Remembering the feelings of G--- and L---, when their adoption disrupted, and their unwillingness to talk about it with anyone makes more sense considering that “[f]eelings run very high and manic for many parents . . . and the reality of [losing] a very real child” is often very “crushing.”<sup>137</sup> Adoption is and always has been a private matter and the very idea of possibly having to disclose a lot of information about adoption to a stranger can be very daunting.<sup>138</sup> This holds even more truth considering the very strong stigma that the public and media has had on the issue in the past. Thus, the possibility of disclosing this information to an insurance claim handler could possibly internalize the shame.<sup>139</sup> Now there is no statistical data on this issue regarding the willingness to obtain an adoption insurance policy but it seems that adopting parents are indeed describing a strong desire to keep their adoptions private, especially if one were to end up with the adoption being terminated, just as Daniels described.<sup>140</sup>

So maybe if the insurance companies were willing to expand their market efforts more people would flock toward these kinds of adoption disruption policies. Maybe if the disruption policies were expanded to more than just birthmother adoptions and more than just domestic adoptions then more people would be interested in not just looking up the disruption policy but actually investing in it. Or maybe if more people are educated about the realities of adoption and how “disruption may be the best thing for both the child and the adoptive parents” in that terminations of adoption are not always deserving of such a negative stigmatism,<sup>141</sup> then maybe adopting parents will be more willing to open up about their

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<sup>135</sup> Telephone Interview with Daniels, *supra* note 59.

<sup>136</sup> *Sisneski*, *supra* note 98.

<sup>137</sup> *Id.*

<sup>138</sup> See *supra* note 111 (describing an adoptive parent’s response to the hypothetical situation of reporting a claim of adoption disruption to an insurance claim handler)

<sup>139</sup> *Sisneski*, *supra* note 98 (writing that for adopting parents adoption disruption remains to be horrifying and the possibility of being considered the one to disrupt the adoption can bring about an “unspeakable shame”).

<sup>140</sup> Telephone Interview with Daniels, *supra* note 59.

<sup>141</sup> *Sisneski*, *supra* note 98.

adoptions and in doing so will be able to work with insurance companies to create a policy that is more fitting to the adoption community's needs.

But looking forward there are many things that need to be done before any of these questions can be answered. For one, there needs to be more national studies on adoption disruptions and/or dissolutions by reputable government agencies, surveyors, scholars, or adoption agencies. Without statistics on what the most recent trends and facts are it is difficult to analyze whether or not the adoption market is once again able to align with insurance in establishing a stable market for an adoption policy. Second there needs to be nationwide surveys and questionnaires to specifically and directly target adopting parents on whether or not they would be not only interested in but would actually invest in something like Philadelphia Insurance Company's 2006 adoption disruption policy. Unfortunately, the survey that the National Adoption Foundation distributed and recorded did not target the actual adopters and maybe that is why the statistics received from that survey were so deceptive of the market's interest in the policy.<sup>142</sup>

This article may be the first of its kind to explore the intersection between adoption and insurance but hopefully it is not the last. The adoption market is statistically a market that reads "compatible" with the insurance market. But for whatever reason the adoption insurance policies find themselves to be more like an enigma in their relationship to adoption than a partner with the stable market. Hopefully, one day efforts will be taken to solve this puzzle and in doing so will create a policy that encourages potential adopting couples, who are on the fence, to adopt. The basic principle behind adoption is that every child deserves a home, a loving home, and the people who give them that . . . well, those people deserve to know that society has their back and supports them in such endeavors. Insurance companies can become another support and help avail future potential adopters of their fears and in the process avail children of their fears of being family-less. Now wouldn't that be something worth striving for.

## CONCLUSION

Insurance companies have the ability to create a policy that aligns perfectly with the needs and desires of society. Likewise, society has the ability to create, influence, and eliminate a market regardless of what

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<sup>142</sup> *ADI Policy*, *supra* note 68; Telephone Interview with Daniels, *supra* note 59.

statistics may indicate otherwise. In the case of adoption disruption insurance and the adoption market, all the statistics and observations the National Adoption Foundation, Rose & Kiernan, Inc., and the Philadelphia Insurance Company gathered and examined indicated that such a policy would be successful but clearly history and modern society have shown that not to be the case.

It is possible that because the adoption market relies so heavily on the human element that statistics cannot appropriately measure the market's profitability or desire in terms of creating or sustaining adoption disruption insurance. Those who are preparing to adopt seem to do the research and they seem to know what the statistics are saying about adoption before they undergo the process. Therefore, most adopting parents are already saving up for the financial commitment required to adopt children and have prepared themselves, at least, for the financial loss that might ensue upon termination of the adoption. Especially with statistics showing that pretty much all adoptions are finalized without an issue, it seems adopting parents are more willing to take the chance without the concrete safeguard of an adoption disruption insurance policy.

Regardless of the financial side of adoption, it appears that it is truly the emotional and mental effects of an adoption being disrupted that cannot be completely prepared for and cannot be remedied through an insurance plan. This combined with the still strong social stigmatism of those who have "terminated" an adoption causes those who actually face an adoption disruption not want to disclose it, let alone deal with an insurance company for possibly months or years arguing, possibly in court, whether or not their adoption disruption circumstances qualify them for financial reimbursement.

Therefore, it appears that, at least at this time to the adopting community, the private and personal aspect of adoption remains and will remain more important than the need to get financial reimbursement for fees and expenses dispersed if an adoption is disrupted. Maybe in the future when more accurate information and statistics about adoption, disruptions, dissolutions, and those processes become more readily available, the attitude of the adopting community will change. But until then, it seems adoption disruption insurance will have to wait to make use of the constant and ever-present adoption market that exists in America. However, what is certain is that adoption was, is, and will forever remain to be a BEAUTIFUL thing.