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March 25, 2020

The Honorable Nydia M. Velazquez
Chair
House Committee on Small Business
2302 Rayburn House Office Building
Washington, DC 20515

Re: Business Interruption Insurance and Coronavirus

Dear Chair Velazquez and Members of Congress:

We hope this finds you well in this national and indeed global health emergency.

We are reaching out to you because of your interest in the issue of coverage for the coronavirus under the business interruption provisions in insurance policies, as expressed in your March 18, 2020 letter to a number of insurance trade association Chief Executive Officers. We at the National Council of Insurance Legislators (NCOIL) have received a number of communications about this issue, including legislative efforts in states to enact such coverage into existing policies despite express exclusions for communicable diseases in those policies. Such state legislation would violate the Contract Clause within Article I of the United States Constitution, which prohibits the Legislature from impairing the obligation of contracts.

As you may know, NCOIL is a national legislative organization comprised principally of legislators serving on State insurance and financial institutions committees around the nation. NCOIL writes Model Laws in insurance and financial services, works to both preserve the State jurisdiction over insurance as established by the McCarran-Ferguson Act seventy-five years ago and to serve as an educational forum for public policy makers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making State policy when it comes to insurance and educate State legislators on current and longstanding insurance issues.

It is important to remember that an insurance policy is a contract between two parties. The vast majority of such contracts that include business interruption coverage have this explicit exclusion



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mentioned above for interruptions caused by communicable diseases. Accordingly, the rates for these policies were determined with this risk expressly excepted, and companies did not reserve for such claims.

Our concern is that for legislatures or Congress to add such coverage after the fact would lead to a run on these companies, because virtually every business would have such a claim and there are no reserves at all to pay them.

We understand that professionals and businesses will be facing unprecedented, dire economic challenges; however, we cannot compound the damage to the broader economy by forcing insurers to pay claims for which they did not contract. To do so could destabilize these insurers and render them unable to pay claims for which they did accept the risk, and did rate & reserve. This could jeopardize the solvency of any number of insurers.

Typically, NCOIL reaches out to urge Congress to abstain from action in the insurance area due to the jurisdiction granted the States under the McCarran-Ferguson Act; however, this truly is a time of national and global emergency that calls out for Congressional action and a federal, national solution. Thus, we write to you today to suggest an alternative, one that will both bring relief to professional and business claimants while also maintaining insurance company solvency so they can pay the claims for which they did reserve.

Following the tragedy of 9/11/2001, Congress enacted the Air Transportation Safety and System Stabilization Act and included within it the Victims Compensation Fund (VCF). We urge a similar solution now for the legion of businesses & professionals who are suffering from unprecedented costs from the interruption of their businesses as well as the many associations who have had to cancel their events, virtually all of whom have an exclusion in their business interruption and event cancellation policies for communicable diseases.

In the VCF it was necessary to construct an entire claims adjudication process. We believe this can be avoided for the current emergency. The reason is that these claims, while contractually excluded, are not novel; they are the very type of claims that U.S. insurers have been adjudicating for over a century. Accordingly, we suggest that a Congressional Act creating a COVID-19 Business Interruption & Cancellation Claims Fund (COVID Claims Fund) incorporate the usage of the insurance industry's claims processing systems to handle claims processing for the Fund in order to ensure all claims are validated prior to payment, removing any that do not meet the established criteria. We also would suggest that legislation establishing the COVID Claims Fund be preemptive of any State efforts to mandate business interruption coverage for the virus, for the constitutional reason discussed above.

We are aware of the proposed "Pandemic Risk Insurance Act of 2020" (PRIA) which would create the Pandemic Risk Insurance Program (PRIP) to provide a federal backstop for insured pandemic losses. While we have not yet completed an exhaustive analysis of PRIA, we note that it is based on the Terrorism Risk Insurance Act (TRIA, now TRIPRA), which NCOIL does support. Accordingly, we believe it is likely that NCOIL will be supportive of PRIA.

However, we do note that PRIA would provide a backstop for insured losses. The losses for which we believe the COVID Claims Fund is necessary are uninsured losses because they fall

specifically within the communicable disease exclusion contained in business interruption and event cancellation policies. PRIA though would operate prospectively, enabling businesses, professionals and associations to procure pandemic coverage in the future because insurers will not exclude it once a federal backstop is in place, much like terrorism insurance became available once TRIA passed.

Our goal in coming to you with this recommendation is to craft something that will bring the relief you, and so many legislators, seek for business interruption and cancellation claimants, while preventing any run on insurers or threat to insurer solvency.

Either of us or NCOIL General Counsel Will Melofchik are available to discuss this proposal at your convenience.

Please accept our best wishes as you continue to do the people's business in the Capitol.

Be well,



Matt Lehman
Majority Leader
Indiana House of Representatives
NCOIL President



Tom Considine
Chief Executive Officer
NCOIL

CC: The Honorable Andy Kim, Member of Congress
The Honorable Brian Fitzpatrick, Member of Congress
The Honorable Grace Napolitano, Member of Congress
The Honorable Marc Veasey, Member of Congress
The Honorable Scott H. Peters, Member of Congress
The Honorable Alcee L. Hastings, Member of Congress
The Honorable Max Rose, Member of Congress
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The Honorable Bruce Westerman, Member of Congress