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Sen. Travis Holdman, IN

April 17, 2020

The Honorable Tim Scott
104 Hart Senate Office Building
Washington, DC 20510

The Honorable Mike Crapo
239 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thom Tillis
113 Dirksen Senate Office Building
Washington, DC 20510

The Honorable M. Michael Rounds
502 Hart Senate Office Building
Washington, DC 20510

The Honorable Pat Toomey
248 Russell Senate Office Building
Washington, DC 20510

The Honorable Ben Sasse
107 Russell Senate Office Building
Washington, DC 20510

The Honorable David Perdue
455 Russell Senate Office Building
Washington, DC 20510

Re: Business Interruption Insurance and Coronavirus

Dear Senators Crapo, Perdue, Rounds, Sasse, Scott, Tillis and Toomey:

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

We at the National Council of Insurance Legislators (NCOIL) are reaching out to you in response to your April 10, 2020 letter to President Trump and Treasury Secretary Mnuchin regarding the issue of coverage for the coronavirus under the business interruption provisions in insurance policies. NCOIL has been closely following and communicating with a wide array of stakeholders on this issue, particularly with regard to the state legislative efforts mentioned in your letter which seek to enact business interruption coverage into existing policies despite an absence of the physical damage required in property policies as well as express exclusions for communicable diseases in those policies.



WEBSITE: www.ncoil.org



Sound Public Policy In 50 States For 50 Years

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.

NCOIL shares your concerns about such state legislation and has taken the position that such state legislation would not only be inadvisable for policy and economic reasons, but very likely unconstitutional as violating the Contract Clause within Article I of the United States Constitution, which prohibits the Legislature from impairing the obligation of contracts.

However, we do not concur with some of your letter's statements regarding a "TRIA-like solution for future pandemics" which we presume is in reference to a piece of discussion draft legislation titled the "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. We agree that "we must first solve the problems with the current pandemic before considering policies to address future ones" and therefore believe that enacting PRIA without further action would be misguided and ineffective since PRIA would only provide a backstop for insured losses after its passage.

Accordingly, we have advocated to your colleagues in the House that while it is likely that NCOIL will be supportive of PRIA, separate action is needed to deal with the crisis at hand. We believe that it is imperative that Congress also focus on those current, mounting uninsured losses that fall specifically within the communicable disease exclusion contained in business interruption and event cancellation policies, or otherwise fall outside those policies' protection.

Following the tragedy of 9/11/2001, Congress moved in a way that addressed both the immediate crisis and a prospective solution by enacting both TRIA and 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. Therefore, 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 suggest that legislation establishing the COVID Claims Fund be preemptive of any State efforts to mandate business interruption coverage for the virus for the reasons set forth above.

Accordingly, while we share your concerns regarding the state legislation introduced thus far on this issue, we urge you to reconsider your position on the viability of PRIA as an effective way to protect businesses, professionals, and associations when viewed in conjunction with a COVID Claims Fund. Enacting both measures would meet the goals of guarding against future harm related to a pandemic or outbreak of communicable disease, and helping those that have already been harmed by COVID-19.

While it is highly unusual for NCOIL, a fierce protector of the state-based system of insurance regulation, to ask for federal involvement in the insurance area, this issue is simply not something that can be done on a state-by-state basis.

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 Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510