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April 17, 2020

The Honorable Maxine Waters
Chair
House Financial Services Committee
2221 Rayburn House Office Building
Washington, DC 20515

The Honorable Carolyn B. Maloney
Chair
House Committee on Oversight and Reform
2308 Rayburn House Office Building
Washington, DC 20515

Re: Business Interruption Insurance and Coronavirus

Dear Chair Waters and Chair Maloney:

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

We at the National Council of Insurance Legislators (NCOIL)¹ are reaching out to you again regarding the issue of coverage for the coronavirus under the business interruption provisions in insurance policies. Specifically, we write now with regard to 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 understand that a discussion draft of PRIA has been circulated among your colleagues and certain media outlets and industry representatives. While we have not had the privilege of reviewing the discussion draft, it is our understanding from certain articles² that PRIA would operate entirely 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 the Terrorism Risk Insurance Act (TRIA) passed.

¹ As a reminder, 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.

² <https://insuranceinsider.com/articles/132591/us-lawmakers-float-500bn-pandemic-backstop-legislation>
<https://www.businessinsurance.com/article/20200409/NEWS06/912333968/Pandemic-Risk-Insurance-Act-business-interruption-backstop>



WEBSITE: www.ncoil.org



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As we noted in our March 30 letter to you, while it is likely that NCOIL will be supportive of PRIA, separate action is needed to deal with the crisis at hand. While PRIA would provide a backstop for insured losses after its passage, 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 would suggest that legislation establishing the COVID Claims Fund be preemptive of any State efforts to mandate business interruption coverage for the virus as we strongly believe that such efforts are not only inadvisable for policy and economic reasons, but very likely unconstitutional.

Accordingly, while the introduction of PRIA is a positive development to protect businesses, professionals, and associations from losses due to a future pandemic or outbreak of communicable disease, it is imperative that a COVID Claims Fund be enacted and set up so that those that have already been harmed by COVID-19 receive the help that they deserve.

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