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April 17, 2020

The Honorable Pramila Jayapal
1510 Longworth House Office Building
Washington, DC 20515

Re: Business Interruption Insurance and Coronavirus

Dear Congresswoman Jayapal:

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 the April 13, 2020 letter you sent to a group of insurance chief executives 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 state legislative efforts 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.

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.

We appreciate the time and effort you have dedicated to this very important issue and we want to offer NCOIL as a resource moving forward. We have attached to this correspondence the letters previously written to your colleagues on this issue and we urge you to review them as you await the information you requested from the insurance chief executives in your April 13 letter.

As you will see in more detail upon reviewing our letters, NCOIL has stressed that it is important to remember that an insurance policy is a contract between two parties and the vast majority of



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such contracts that include business interruption coverage have an explicit exclusion 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.

While unusual for NCOIL, a fierce protector of the state-based system of insurance regulation, to ask for federal involvement in the insurance area, we have advocated to your colleagues to suggest a federal claims fund in the model of the 9/11 Victims Compensation Fund (VCF) for these claims that fall outside the four corners of their insurance contracts since this issue is simply not something that can be done on a state-by-state basis. We also have noted that while the VCF needed to establish a claims adjudication process, that would not be necessary here because a COVID-19 Business Interruption & Cancellation Claims Fund (COVID Claims Fund) could utilize the claims processing acumen of the insurance industry to validate the claims for payment.

We also suggest that legislation establishing the COVID Claims Fund be preemptive of any State efforts to mandate business interruption coverage for the virus since such legislation would be inadvisable for the policy and economic reasons set forth above, and also very likely unconstitutional.

Lastly, we note that the 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 is a positive development. However, the COVID Claims Fund is of paramount importance since the Fund deals with the uninsured losses that fall specifically within the communicable disease exclusion contained in business interruption and event cancellation policies. 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 TRIA passed. Accordingly, both the COVID Claims Fund and PRIA are needed to guard against future harm related to a pandemic or outbreak of communicable disease, and help those that have already been harmed by COVID-19.

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 Jerry Nadler
Chair
House Judiciary Committee
2132 Rayburn House Office Building
Washington, DC 20515