



Dear Insurance Legislator

I hope this finds you well.

I wanted to reach out to you because we at the NCOIL national office have received a number of calls and communications about the legislative efforts in some states to legislate coverage for the coronavirus under the business interruption provisions in insurance policies, despite express exclusions for communicable diseases in those policies.

You know better than most that an insurance policy is a contract between two parties. The vast majority of such contracts that include business interruption coverage have the explicit exclusion mentioned above for interruptions caused by communicable diseases. Accordingly, the rates for these policies were determined with this risk expressly exempted.

My concern is that for legislatures to add such coverage after the fact would lead to a run on these companies, because virtually every business would have such a claim.

I 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.

Our goal in considering all this, full in the knowledge that this is not something vetted by any NCOIL committee, is staff's effort to craft something that will bring the relief so many legislators seek for business interruption claimants, while preventing any run on insurers.

I believe we can craft a process to ensure that claims are reviewed closely and, if they fall within the exclusion, utilize another mechanism for relief that would in some ways be similar to the process used for the claims funds established by state and federal governments in recent decades.

As just a first rough concept of a bill that would put in a claims fund mechanism to which businesses could turn after they had a Business Interruption denial that would (1) ensure insurer responsibility and contribution, (2) provide businesses and professionals business interruption relief, and (3) prevent a threat to insurer solvency, we offer the following for consideration.

The system could have three paths:

1) The claims administrator would be authorized to review the business interruption denial to see if it was consistent with the policy terms; if not then the insurer would be required to pay plus interest (This would provide insurers incentive to pay more frequently at time of claim).

2) For claims that fall outside category one, the claims administrator would determine if a reasonable insured would have thought at the time of purchase that the claim was one a business interruption policy would cover even though the policy language does not cover it. If so, these claims would be funded directly by the claims administrator from an account funded equally by 50% of a state's general fund, and 50% by a reduction in insurer's guaranty assessment premium tax credit. These numbers may of course vary state to state but the intent is to fund this category as equally as possible between a state's general fund and a reduction in guaranty assessment premium tax credit.

3) For claims that fall outside both categories one & two, but where the business claimant has suffered a cognizable business interruption loss, the claims administrator can make an award, but this has nothing to do with business interruption insurance, and thus would have to be fully funded by the state. (This is obviously a fully valid public policy decision for the legislature to make; perhaps you recover part of those awards from the opioid litigation funds or via reducing some future business tax credit on businesses receiving an award).

This proposal provides the relief sought by businesses and professionals, while spreading the pain of the cost. It does protect insurers from the immediate and dire effects of legislating coverage into their contracts where none exists, yet it does place a financial burden on them in categories one & two above. Meanwhile, non-insurer businesses and professionals also will bear a burden under the recoupment in category three.

Both NCOIL General Counsel Will Melofchik and I are available to discuss this proposal as well as any legislation related to insurance and the coronavirus.

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

Be well,

*Tom*