Defending Liberty Pursuing Justice

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February 27, 2017

The Honorable Bob Goodlatte
Chair, House Committee of the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Tom Marino
Chair, House Subcommittee on Regulatory Reform, Commercial and Antitrust Law
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers Jr.
Ranking Member, House Committee of the Judiciary
United States House of Representatives
2142 Rayburn House Office Building
Washington, DC 20515

The Honorable David Cicilline
Ranking Member, House Subcommittee on Regulatory Reform, Commercial and Antitrust Law
United States House of Representatives
2142 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte, Ranking Member Conyers, Subcommittee Chairman Marino, and Subcommittee Ranking Member Cicilline,

I am pleased to advise you of a Policy that the American Bar Association adopted in the attached Report No. 107. Passed by the House of Delegates of the American Bar Association with respect to the McCarran Ferguson Act. In pertinent part, the Resolution provides as follows:

B. THE MCCARRAN-FERGUSON ACT.

(1) The current McCarran-Ferguson exemption to the antitrust laws should be repealed and replaced with legislation containing the following features:

(1) Insurers should be made subject to general antitrust laws but provided with authorization to engage in specified cooperative activity that is shown to not unreasonably restrain competition in the industry.

(2) Insurers should be authorized to cooperate in the collection and dissemination of past loss experience data so long as those activities do not unreasonably restrain competition but should not be authorized to cooperate in the construction of advisory rates or the projection of loss experience into the future in such a manner as to interfere with competitive pricing.

(3) Insurers should be authorized to cooperate to develop standardized policy forms in order to simplify consumer understanding, enhance price competition and support data collection efforts, but state regulators should be given authority to guard against the use of standardized forms to unreasonably limit choices available in the market.

(4) Insurers should be authorized to participate in voluntary joint underwriting agreements and in connection with such agreements to cooperate with each other in making rates, policy forms, and other essential insurance functions so long as these activities do not unreasonably restrain competition.

(5) Insurers participating in residual market mechanisms should be authorized in connection with such activity to cooperate in making rates, policy forms, and other essential insurance functions so long as the residual market mechanism is approved by and subject to the active supervision of a state regulatory agency.

(6) Insurers should be authorized to engage in such other collective activities that Congress specifically finds do not unreasonably restrain competition in insurance markets.

(7) State regulation of insurance rates should not exempt insurers from the antitrust laws under the state action doctrine, except as specified in Recommendation B.1(1) to B.1(6). Other non-rate regulation by a state should not exempt insurers from the antitrust laws unless that regulation satisfies the requirements of the state action doctrine and the regulation is shown to not unreasonably restrain competition.

(2) States should retain the authority to regulate the business of insurance. The federal government should defer to state regulation except in those unusual circumstances where the regulatory objective can only be effectively accomplished through federal involvement.

We hope you find this policy to be helpful in your deliberations. Please do not hesitate to contact me if you have any questions.

Sincerely yours,

William MacLeod

Bill MacLeod

Attachment