



Terrence D. Delehanty
General Counsel and
Chief Legal Officer

July 15, 2005

Antitrust Modernization Commission
Attn: Public Comments
1120 G Street, N.W., Suite 810
Washington, D.C. 20005

Re: Public Comment on Immunities and Exemptions (McCarran-Ferguson Act, 15 U.S.C. §§ 1011-15)

Dear Commissioners:

NCCI Holdings, Inc. believes that the McCarran-Ferguson Act (the "Act") has provided substantial benefits to the insurance industry and the nation's economy and that the Act should remain in force without modification.

BACKGROUND

NCCI Holdings, Inc. operates as a not-for-profit corporation whose members include substantially all insurance carriers writing workers' compensation insurance in the United States, as well as numerous state funds. Through its subsidiary, National Council on Compensation, Inc. (collectively "NCCI"), NCCI studies workplace injuries and other national and state factors impacting workers compensation, provides analysis of industry trends, prepares recommendations for workers compensation rates and loss costs, and assesses the costs of proposed workers compensation legislation. It also provides a variety of data products to over nine hundred insurance companies and nearly forty state governments. NCCI works actively with state regulators, insurers, trade associations, and business, industry and labor coalitions to maintain a healthy workers compensation system and to reduce the frequency of employee injuries.

Since its passage in 1945, the Act has enhanced the ability of the insurance industry to work collectively through NCCI, resulting in substantial benefits for American businesses and the American economy.

The laws of every (or virtually every) state require employers to purchase workers compensation insurance or to self-insure in order to safeguard their employees. Employers thus need access to insurance markets with sufficient capacity to provide this legislatively mandated coverage. The Act promotes healthy insurance markets by permitting insurers of all sizes to participate in, and

avail themselves of, NCCI products and services that are vitally important to their writing of workers compensation insurance. This includes, by way of example, the collection and analysis of historic loss data, the determination of loss development factors for use in ratemaking, and the development of standard insurance policy forms. Many smaller and medium-sized carriers do not have the resources to create these products and services for themselves, and thus their ability to write workers compensation insurance could be reduced or curtailed in one or more states if changes in the Act impacted carriers' opportunity to participate in collective or joint activities. Even larger carriers, with substantial financial wherewithal, benefit from these activities, particularly in states where their own experience is insufficient to make meaningful assessments of rates and loss costs. These collective actions thus make it easier for employers to obtain workers compensation insurance.

The enhanced underwriting capacity facilitated by the Act has also had a positive impact on the premiums that employers pay for their workers compensation insurance. Increased capacity has resulted in more competition in the marketplace with greater options for employers seeking workers compensation insurance.

The following items are of primary concern regarding any modification or repeal of the McCarran-Ferguson Act:

- ***Trending. Access to aggregate industry loss data compiled regularly on a uniform basis, which takes into account how future movements of claim costs and premiums might diverge from historical levels based on payroll and premiums versus indemnity and medical costs, must be maintained so that insurers can accurately predict future costs.***

The Act has facilitated NCCI's work on loss development and trending, which are necessary steps in making rates or loss costs. While ratemaking starts with the accumulation and analysis of historical data on transactions that have already taken place, it cannot be concluded until experienced actuaries develop those losses by projecting their future magnitude and also by projecting future trends that are likely to impact losses. Collective efforts in loss development and trending enhance insurance capacity by enabling a broad range of insurers to offer policies for premiums that attempt to reflect future losses adequately. Use of the services of rating agencies also reduces the costs of meeting state regulatory requirements, making it possible for more carriers to offer coverage at lower prices.

- ***Experience Rating. A uniform, consistently administered method of determining a business's loss history must be protected in order to place maximum pressure on employers to maintain a high level of workplace safety and to ensure that safety-conscious insureds aren't forced to subsidize unsafe businesses.***

Tailoring filed rates and loss costs to the experience of individual insureds is also enhanced by the Act. In many states throughout the country, NCCI has filed and operates experience rating plans that are designed to adjust rates and loss costs to reflect the loss experience of employers (in comparison to the average experience of similarly situated businesses). These plans require carriers to have access, through NCCI, to historical information about employers, often during periods when they were insured by a competing insurer. NCCI has also developed scheduled

rating plans that are used, typically with large commercial insurance risks, to take into account a variety of specific factors in the pricing of their workers compensation insurance policies.

- ***Policy Forms. Standardized insurance policy forms and endorsements and guidelines for their use must be developed, prepared and used if consumers are to have the ability to shop competitively.***

The Act promotes the development of standardized insurance policy forms, which promotes competition and enhances consumer welfare. Standardized insurance forms enhance consumer choice by making it easier for employers to compare prices from different insurers without having to consider essential policy terms that might otherwise be written in complex, varying language. Standardized policy language also facilitates uniform judicial interpretation, thus reducing uncertainty and improving employers' ability to make decisions on insurance purchases. Standardization of forms also can reduce regulatory compliance costs, by minimizing duplicative regulatory review of numerous forms. More efficient regulatory review can often reduce delays in the introduction of new insurance products, to the ultimate benefit of employers purchasing workers compensation insurance.

- ***Residual Market. Joint activities are essential if the insurance industry is to provide a "safety net" for those, unable to secure coverage in the voluntary market yet must meet mandatory insurance requirements.***

The Act has contributed positively to the development of state created workers compensation insurance plans (sometimes referred to as the residual market or the assigned risk plan) for employers that are required by law to have workers compensation insurance but that are unavailable to purchase that coverage in the voluntary market. The Act facilitates the very existence of these workers compensation plans by enabling insurers to work collectively through NCCI to provide sufficient capacity in the residual market. The Act also facilitates the existence of the National Workers Compensation Reinsurance Pool, a reinsurance arrangement among participating insurers that reinsures on a pro rata basis policies issued in the residual market. This pooling arrangement limits the exposure of any single insurer and thus helps to make available coverage that no single insurer would be willing to assume alone.

- ***Law Evaluations. NCCI's collection and analyses of information on the cost impact that legislative or regulatory changes have on workers compensation is an important service that allows state legislators the opportunity to make informed choices when considering legislative changes.***

Government officials benefit from NCCI's services. NCCI regularly provides state legislators and insurance regulators with information about the potential impact of changes or proposed changes in state workers compensation laws. Many of these changes directly impact the amounts that injured workers are paid as a result of their being injured and/or missing time from their jobs. NCCI's ability to perform this vital service is dependent upon its ability to gather policy and claim data from insurers and state funds.

- ***Research. Insurers and organizations like NCCI must be allowed to work together to conduct valuable research on topics such as the causes and prevention of losses, the***

impact of benefit level changes on utilization of the system, and economic and social trends that affect the system.

SUMMARY

- According to state law, workers compensation is mandatory for all employers, with rare exception.
- State law dictates the terms of workers compensation benefits provided to employees.
- A workers compensation insurer is potentially subject to unlimited liability.

Modification or repeal of the Act would create uncertainty about the legal ramifications of collective or joint activities undertaken by the insurance industry. That uncertainty could jeopardize many of the benefits that American businesses and the American economy have realized as a result of the Act. The Act should not be repealed or modified.

Very truly yours,

A handwritten signature in black ink, appearing to read "Terrence D. Delehanty". The signature is written in a cursive style with a large, stylized initial "T".

Terrence D. Delehanty