



ELECTRICAL EMPLOYERS SELF INSURANCE SAFETY PLAN

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April 8, 2020

Via Certified Mail, Return Receipt Requested

White House

Attention: Honorable Donald Trump

1600 Pennsylvania Avenue NW

Washington, D.C. 20500

Re: Extension of the Terrorism Risk Insurance Act and Creation of a Victim's Compensation Fund in Response to COVID-19

Dear President Trump:

On behalf of Electrical Employers Self Insurance Safety Plan ("EESISP"), the largest workers' compensation group self-insured trust in the State of New York, we write to request the Administration's assistance, as well as assistance from our local, state and federally elected representatives, in responding to the current COVID-19 pandemic. In particular, we request (1) that the Terrorism Risk Insurance Act of 2002 ("TRIA") be extended to include pandemics, such as COVID-19; (2) that the provisions of TRIA be extended to apply to self-insured trusts, such as EESISP; and (3) that a federal COVID-19 Victim Compensation Fund ("Victim Fund") be created and/or included as part of any future COVID-19 relief legislation. As of today's date, COVID-19 has infected over 350,000 individuals in the United States and resulted in the loss of over 10,000 American lives, including many essential workers; and the Administration's projections paint an even more dreadful picture. If the requested measures are not taken the financial fallout to EESISP, similarly situated entities and the workers they protect, will be dire.

EESISP is a not-for-profit self-insured trust providing both statutory and collectively bargained supplemental benefits to injured electricians in the New York City area. EESISP was the first group self-insured trust established in New York, authorized by the New York Workers' Compensation Board in 1967, and has operated continuously since that time without interruption. Since opening its doors, EESISP has been providing workers' compensation coverage and disability benefits to thousands of New York electrical workers every year.

As you are aware, New York is currently the epicenter of COVID-19, where thousands of workers, including electrical workers, have been—and will likely continue to be—exposed to the coronavirus while performing their occupational duties. Although EESISP has always protected injured workers in the electrical industry, recent proposals¹ to treat COVID-19 as a presumptive occupational disease in workers' compensation law are inadequate and would have a devastating financial impact on insurers and self-insured trusts, including EESISP. The COVID-19 pandemic has created financial exposure to front line insurance entities that are underwriters of risk that could not be reasonably foreseen. Accordingly, EESISP's current premium rates, and those charged in the past, do not incorporate future benefit costs related to COVID-19 exposures. Without federal assistance, insurers across the board will likely go bankrupt and/or refuse to participate in certain markets and States in the future.

In light of the foregoing, EESISP requests that the Administration extend TRIA to include pandemics, and under Section 103(f) of TRIA,² explicitly apply its provisions to self-insured trusts. Pandemics, like terrorism, have disastrous tolls on human life and cannot reasonably be anticipated to be (re)insured. By extending TRIA and including self-insured trusts, the federal government will be providing critical coverage for such a once-in-a-lifetime tragedy as the one we are presently experiencing, and providing a necessary backstop to insurers and self-insured trusts, including EESISP.

Even with the extension of TRIA, this catastrophe's financial impact on insuring entities will likely rival, if not exceed, that of the September 11th terrorist attacks. In the upcoming weeks and months, insurance entities across the nation will face thousands of claims for death benefits. While some insurers may accept these claims, other carriers and employers will have little choice but to contest and litigate them. And because multiple jurisdictions (not only New York) will be handling COVID-19 death claims, without federal intervention there will likely be a patchwork response to such claims that will pose challenges even greater than those associated with September 11th.

Consequently, we also implore this Administration to create a Victim Compensation Fund, with an initial appropriation in an amount to be determined and administered by the September 11th Victim Compensation Fund (VCF), with procedures adopted by the VCF. The Victim Fund would allow the family of any qualifying worker who dies as a result from COVID-19 to file a claim for death benefits, subject to a maximum dollar cap to be determined, and such a claim shall be afforded a presumption that COVID-19 is related to the decedent's work duties.

¹ New York State is contemplating a proposal that would make COVID-19 a presumptive occupational disease for Workers' Compensation benefits for businesses defined as "essential" by the Governor's emergency COVID-19 Executive Orders. Electrical workers are considered "essential" under these Executive Orders.

² Section 103(f) provides: "The Secretary may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of this title as appropriate, to other classes or types of captive insurers and other self-insurance arrangement by municipalities and other entities (such as workers' compensation self-insurance programs and State workers' compensation reinsurance pools), but only if such application is determined before the occurrence of an act of terrorism in which such an entity incurs an insured loss and all of the provisions of this title are applied comparably to such entities."


Submitted claims would be reviewed and processed by the VCF and be paid within 90 days, subject to reasonable analysis and adjustment by the VCF. Finally, the creation of the Victim Fund would not preclude any family from filing a separate death benefit claim with their respective workers' compensation agency, which may accept or deny the claim according to the laws of such jurisdiction and the facts of the case. By creating this Victim Fund, the federal government would be getting ahead of a potentially crippling economic issue and providing a reliable mechanism for families devastated by COVID-19 to file death benefit claims, guaranteed prompt payment of said claims, and—perhaps most importantly—provide formal recognition that a deceased worker had given his/her life in the national fight against the pandemic.

We appreciate that the Administration has been working tirelessly to mitigate the effects of the COVID-19 pandemic and continues to look for ways to help the country get through these unprecedented and challenging times. We know that the Administration will continue this important work and will seek to heal the nation. Extending existing insurance mechanisms to include entities like EESISP will contribute to that goal by allowing EESISP to continue its good work of protecting and economically providing for New York's electrical workers during their most vulnerable and needing time. We also know that while the measures suggested herein involve federal action, New York State is uniquely positioned to champion such measures given that it is the current epicenter of the pandemic, and its prior roll in the September 11th disasters. We thus also encourage New York State to join with us and support these proposals.

EESISP stands ready to lend its expertise and assistance, and would welcome participation in any task force that may be established to address these issues of nationwide concern. We thank you for your time and consideration.

Respectfully submitted,

ELECTRICAL EMPLOYERS SELF INSURANCE SAFETY PLAN



By: _____
Ciro J. Lupo
Chairman

cc: Charles E. Schumer, U.S. Senator for the State of New York
Kirsten Gillibrand, U.S. Senator for the State of New York
Andrew Cuomo, Governor of the State of New York
Carl Heastie, Speaker of the New York State Assembly
Andrea Stewart-Cousins, President and Majority Leader of the New York State Senate
Mitch McConnell, Majority Leader for the United States Senate
Nancy Pelosi, Speaker of the United States House of Representatives
Letitia James, Esq., Attorney General of the State of New York
Linda A. Lacewell, Superintendent of the New York State Department of Financial Services
Clarissa M. Rodriguez, Chair of the New York Workers Compensation Board

Toby Ann Stavisky, New York State Senator
Rory I. Lancman, City Council Member for the 24th District, New York
Grace Ming, U.S. House of Representatives, 6th Congressional District, New York
Financial Stability Oversight Council
Steven R. Mnuchin, Secretary of the Treasury
Steven Seitz, Director of the Federal Insurance Office