



MEMORANDUM

TO: Berks County State and Federal Delegation

FROM: Jim Gerlach, President & CEO, Greater Reading Chamber Alliance

DATE: May 7, 2020

RE: Limited COVID-19 Business Liability Protection

The Greater Reading Chamber Alliance represents nearly 1,000 member companies and organizations and their extremely valued and valuable employees. Our member companies are doing their best to serve the public interest, protect our communities and minimize harm to all during these uncertain times. As such, they have remained operational during times of remarkable legal uncertainty. They risk becoming the targets of coronavirus-related lawsuits that will ultimately do nothing to reduce the spread of this disease or address the suffering that Americans have endured because of it. Congress and the Pennsylvania Legislature must act to ensure that such misguided litigation does not derail our recovery.

Federal and state rules and guidance on how to operate during this crisis has and continues to evolve rapidly and at times have created legitimate confusion over even ordinarily simple tasks like cleaning a work site. Businesses reopening in the coming weeks will soon face these questions as well. In the face of such uncertainty, our members consistently strive to do the right thing, continually implementing new safety protocols to reduce the risk of transmission among employees and the public in response to updated guidance from the CDC, OSHA and state authorities. Companies doing their best to control the spread of this disease with the limited guidance available deserve legal protection. Congress and the PA Legislature should not allow good actors to be held liable for events beyond their control.

By providing limited and rational safe harbors for good actors, our legislators can help ensure that the critical needs of the American people are met during this time of crisis and enable the continued operation of critical infrastructure. Basic “Good Samaritan” provisions under the federal PREP Act, designed to address product and volunteer liability issues, have already enabled companies that may not normally produce protective equipment to do so to serve front line health care workers. Pennsylvania’s existing “Good Samaritan” laws that apply to medical professionals and citizens in medical good faith assistance situations as well as the Environmental Good Samaritan Act that allows for businesses to conduct or attempt environmental remediation without incurring excess liability are examples of where the state legislature identified the importance and the need to protect these altruistic activities. Governor Wolf’s actions to extend liability to health care professionals engaged in treating COVID-19 patients is a good start, but it does not go far enough. Both legislative bodies need to go further by expanding the scope of these provisions to protect manufacturers and businesses acting in legitimate good faith during these challenging times.

In addition, workplace provisions that recognize the value of modern safety regulation as a far better alternative to one-off lawsuits will give businesses of all kinds clearer expectations on how to manage a safe workplace. Temporarily suspending suits that threaten to shut down vital industries—including even health care providers—is a sensible step to ensure every everyone has access to basic life essentials without creating new shortages and exacerbating the crisis. Providing businesses with targeted and limited safe harbors during these difficult times is not the same as shielding companies from all liability. We are not seeking to protect bad actors that operate in reckless or intentional

disregard of available guidance on reducing the spread of COVID-19. Therefore, liability protections should be appropriately tailored and limited to the present emergency and a reasonable period of recovery and not protect against gross negligence or intentional misconduct.

We are all facing an unprecedented crisis, and our essential businesses are stepping up to provide for the critical needs of our people, despite incredible uncertainty and a constantly shifting environment. We look forward to working with members of our state and federal partners to put in place fair, sensible rules that protect businesses that have worked to keep safe and healthy during our response to this crisis and those that will soon get back to work as our country reopens and moves toward recovery and renewal.

CC: Commissioner Christian Leinbach
Commissioner Kevin Barnhardt
Commissioner Michael Rivera