



August 4, 2010

The Honorable Brett J. Barratt
Commissioner
Nevada Division of Insurance
788 Fairview Drive
Suite 300
Carson City, NV 89701

Dear Commissioner Barratt:

The Nevada Captive Insurance Association respectfully requests that the Nevada Division of Insurance reconsider its Findings of Fact, Conclusion of Law and Order of 7/13/2010 in the matter of Alliance of Nonprofits for Insurance, Risk Retention Group (ANI RRG). The Division's ruling in this matter precluded coverage issued by non-domiciliary state risk retention groups (RRG's) from satisfying the State's financial responsibilities standards for commercial auto. We submit that the decision is at odds with controlling federal law, will adversely affect insurance consumers, and will damage Nevada's reputation as a premier captive insurance company domicile.

On a legal basis the Division's ruling ignores the more recent and controlling federal court decision on the issue, National Warranty Insurance Company Risk Retention Group v. Greenfield, 24 F.SUPP.21096 (1998) which found after extensive analysis that Oregon's refusal to permit coverage issued by RRG's to satisfy the State's financial responsibility requirements had violated the non-discrimination provisions of the federal Liability Risk Retention Act (LRRRA). The U.S. 9th Circuit Court of Appeals rendering this decision includes the State of Nevada. The Division's ruling also ignores the federal court decision in Charter Risk Retention Group v. Rolka, 796 F.SUPP.154 (M.D. PA 192), which likewise found that a non-domiciliary state which precluded coverage issued by risk retention groups from satisfying a state's financial responsibility statute because RRGs were not licensed in the state, had violated the non-discrimination provisions of the LRRRA. Indeed, court costs were assessed against the state and awarded to the risk retention group based on the state's violation of the LRRRA.

While NCIA certainly appreciates potential solvency concerns which the Division may have, a broad brush preclusion of RRG's coverage being able to satisfy the State's financial responsibility requirements is clearly misdirected and dysfunctional. If the Division has concerns about a

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particular RRG's financial solvency, it has the authority under the LRRRA to obtain a judicial injunction to shut down such a RRG not only in Nevada but countrywide. Moreover, the Division's ruling makes no effort to analyze the financial strength of a RRG involved. The particular RRG involved is "A" rated and indeed may be stronger than some of Nevada's traditional licensed companies. Other states in the application of their financial responsibility statutes (Texas and California come to mind) take a RRG neutral stance, utilizing outside ratings and capital and surplus requirements, regardless of whether an insurer is a traditional company or a RRG.

Finally, we respectfully submit that this decision by the Division will tarnish its reputation as a pro-captive insurer domicile. Among its captive constituency, Nevada has a significant percentage of RRG's licensed in the State. Should other states follow Nevada's lead and similarly enact such discriminatory RRG financial responsibility standards, it will seriously and negatively impact the legislative underpinnings of the LRRRA and compromise the ability of all risk retention groups to operate on a multi-state basis. From a consumer prospective, policyholders of ANI RRG have been scrambling to find replacement commercial auto coverage as a result of the Division's decision, often at significantly higher premiums.

The Division's ruling, if not reconsidered, likely will be challenged on the solid legal basis previously discussed in Federal Court, thus further giving the Division as a leading captive domiciliary regulator further adverse publicity.

In conclusion, we urge the Division to reconsider its position on this matter not only for compelling legal reasons, but in the interests of Nevada as a leading captive domicile with a strong constituency of risk retention groups which would be adversely impacted if other states followed the Division's lead with a similar anti-risk retention group stance.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Wadhams". The signature is fluid and cursive, with a large initial "J" and "W".

James L. Wadhams
President/Chairman

JLW/bh