January 27, 2020

The Honorable William Lacy Clay
Chairman
Subcommittee on Housing, Community Development, and Insurance
2129 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

Re: Hearing on January 29, 2020 Before the Subcommittee on Housing, Community Development and Insurance (H.R. 4523)

Dear Chairman Clay and Members of the Committee,

The undersigned organizations are writing to neither support nor oppose the bill but rather to clarify the record regarding H.R. 4523, the Nonprofit Property Protection Act. We ask that this letter be placed into the record of the hearing.

The undersigned are the three most prominent organizations in the captive insurance industry. Each has members which are risk retention groups ("RRGs"). The Captive Insurance Companies Association ("CICA") is non-domicile affiliated and represents captive insurers from numerous U.S. states and foreign domiciles. The Vermont Captive Insurance Association ("VCIA") represents captives and RRGs domiciled in Vermont, which has more RRGs than any other state. The National Risk Retention Association ("NRRA") exclusively represents the interests of RRGs regardless of domicile.

The opponents of H.R. 4523 have to a significant extent based their opposition on three concepts. The purpose of this letter is to show that those conclusions are incorrect and misleading.

1. "RRGs have historically had a higher insolvency rate when compared to admitted insurers." NAIC letter 10/23/19.

This is simply untrue. According to a study conducted by the Risk Retention Reporter, which uses data from A.M. Best for the period 1987 to 2017, RRGs had a yearly insolvency rate of 1.2% as opposed to 1.5% for the entire property casualty and life and health marketplace. *Risk Retention Reporter* (Oct. 2017) ("Trends in Risk Retention Group Insolvencies: RRGs Outperform Greater Property/Casualty Industry"). In brief, RRGs during this 30-year period were *less* likely to become insolvent than traditional carriers. It is noteworthy that the NAIC did not cite any authority for its conclusion.

2. "Allowing RRGs to expand the types of insurance products they can sell, while retaining lower regulatory standards than those placed on traditional commercial insurers, puts consumers at risk and creates and creates a competitive disadvantage for fully-regulated insurers." IIABA and NAMIC letter 10/7/19.

RRGs are subject to a different regulatory regime than traditional insurers, but that does not mean that the standard is "lower." RRG regulation is guided by the federal Liability Risk Retention Act ("LRRA"), 15 USC 3901, *et seq.*, which utilizes the concept of "lead state" regulation. The domicile regulator of an RRG is not preempted in any way by the federal law, 15 USC 3902(a)(1); however, non-domiciliary states are only allowed to enforce the state laws which are listed in Section 3901(a)(1)(A) – (I) plus those rights set forth in Section 3905. The assertion that this place "consumers at risk" is incorrect because a non-domiciliary state expressly has the authority to enforce its Unfair Trade Practices law and its Unfair Claims settlement law. 15 USC 3902(a)(1)(A) and (G). These two laws essentially cover all of market conduct.

If there is a concern about the financial status of an RRG, a non-domiciliary state has the express right to order an examination of the RRG so long as the commissioner of the RRG's domicile has not begun or refuses to initiate an examination, 15 USC 3902(a)(1)(E), and to bring an action in a court of competent jurisdiction to obtain an injunction if the RRG is in "hazardous financial condition" or is "financially impaired," 15 USC 3902(a)(1)(H). It is worth mentioning that the concept of "lead state regulation" is, and has been for many years, part of the financial regulatory scheme utilized by the states (under the auspices of the NAIC) where the state of domicile is the "lead state" in a financial examination and the other states rely upon that state. Moreover, the NAIC Standards of Accreditation regarding mandatory state laws and regulations apply to the states that charter and license RRGs and the implementation of these laws and regulations are overseen by the NAIC.

3. "Since RRGs are only required to be licensed in one state, they can choose to domicile their companies in states with the most favorable regulatory regime. Over 50% of the RRGs that would meet the requirements of the bill are domiciled in the state Vermont." Oppose H.R. 4523, The Nonprofit Property Protection Act (undated and unsigned).

Yes, an RRG can select its domicile on the basis of its view regarding which state has "the most favorable regulatory regime" A traditional insurer makes the same choice. The fact that so many RRGs have chosen the state (Vermont) with the largest and most experienced staff solely dedicated to regulating captives, including RRGs, indicates that the companies want to domicile in a state with strong regulatory oversight.

Sincerely yours,

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