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Captive Insurance Industry Experts Continue to Weigh In on Nonadmitted and Reinsurance Reform Act: No Captive Insurance Impact

Montpelier, VT – The McIntyre White Paper Report on the new federal Nonadmitted and Reinsurance Reform Act (NRRA), part of the recently passed Dodd Frank Act, continues to garner agreement among captive insurance industry experts concluding that the law has no applicability to captive insurance. The white paper was prepared by the law firm of McIntyre and Lemon, PLLC of Washington, DC.

“The McIntyre Report gives a convincing explanation of why captive insurance is not part of NRRA,” said Tom Jones, partner with McDermott Will & Emery LLP in Chicago. “The intent of NRRA appears to have been solely on surplus lines and never meant to include captive insurance,” he added.

Skip Myers is the Managing Partner with Morris Manning & Martin, LLP in Washington, DC, “Although this legislation was intended by Congress to create uniformity in the surplus lines market, the actions of the states have had the opposite effect. The legislative history is clear that Congress never intended this legislation to affect any insurance other than surplus lines,” said Myers.

“There is considerable misinformation circulating regarding NRRA,” said Daniel Towle, Vermont’s Director of Financial Services. “Certain states are using this as an opportunity to try to domicile captives in their state. It is a disservice to the industry that some states are using this tactic in an attempt to leverage new business. We strongly recommend seeking factual documentation for such assertions to avoid costly and unnecessary consequences.”

As legal experts weigh in on NRRA, industry accountants are now voicing their professional assessment on the law’s application to captive insurance. “We don’t believe it applies to captive insurers. We are advising clients to sit tight as further guidance will be forthcoming,” said Gary Bowers, CPA, and Tax Partner with Johnson Lambert & Company

LLP. Bowers goes on to state, “Captives are not surplus lines writers, and we believe NRRA was intended to only affect surplus lines writers.”

“We concur with the reasoning and conclusion reached in the McIntyre White Paper that NRRA should not apply to captive insurance companies,” said Dan Kusaila, CPA, and Tax Partner with Saslow Lufkin & Buggy, LLP. “NRRA did not create any new taxes and we are recommending a wait and see approach to our clients,” said Kusaila.

The McIntyre White Paper went to great lengths to analyze Congressional legislative intent, concluding that the focus of the bill was for surplus lines of insurance. Based on this analysis and the language of the NRRA itself, the white paper concludes both that (1) captive insurers should not be subject to the NRRA’s nonadmitted insurance provisions because they are not placing nonadmitted insurance within the meaning of the NRRA and (2) the NRRA did not change the application of state independently procured insurance laws, nor should it restrict the collection of premium taxes paid for independently procured insurance to the “home state” of the insured, as it does for nonadmitted insurance. The white paper can be read in its entirety at www.VermontCaptive.com/DoddFrank.

A consortium of the Vermont Captive Insurance Association, the Captive Insurance Companies Association and the National Risk Retention Association also agreed with the McIntyre White Paper.

Captive insurance is a regulated form of self insurance that has existed since the 1960’s, and has been a part of the Vermont insurance industry since 1981, when Vermont passed the Special Insurer Act. Captive insurance companies are formed by companies or groups of companies as a form of alternative insurance to better manage their own risk. Captives are typically used for corporate lines of insurance such as property, general liability, products liability, or professional liability. Growth sectors of the captive insurance industry include securitization, professional medical malpractice coverage for doctors and hospitals, and the continued trend of small and mid-sized companies forming captive insurance companies.

For more information on Vermont’s captive industry, visit www.vermontcaptive.com or call Dan Towle at 802-828-5232 or email dan.towle@state.vt.us.