22 Years of Advocacy for Risk Retention Groups & Purchasing Groups

NRRA
NATIONAL RISK RETENTION ASSOCIATION

NRRA's Accomplishments

For the past 22 years, the National Risk Retention Association ("NRRA") has consistently lived up to its mission to be a dedicated and proactive advocate for risk retention groups ("RRGs") and purchasing groups ("PGs"), by pursuing its goal to ensure that the rights afforded RRGs and PGs under the Liability Risk retention Act ("LRRA") would not be infringed upon.

During the last two years, NRRA's efforts have had an impact on the outcome of several issues affecting RRGs, such as states' assessment of fees, RRG and PG registration requirements, the definition of liability coverages as defined in the LRRA, as well as RRG structure and capitalization. NRRA also remains very involved in the activities of the NAIC RRG task force and working group to ensure that RRGs have an independent voice before the NAIC. NRRA's input has made a significant difference in the crafting of the RRG governance standards, accreditation standards, credit for reinsurance standards and other RRG-related issues on the NAIC's agenda.

Below is a recap of just a few of NRRA's accomplishments over the past two years, followed by highlights of NRRA's major successes over the years.

California: Auto Dealers RRG vs. Poizner. In February 2008 NRRA filed an amicus brief supporting Auto Dealers RRG's position in this lawsuit that stemmed from the issuance of a cease and desist order by the California Department of Insurance ("CA DOI") in an attempt to prevent Auto Dealers RRG from writing its stop loss policies covering excess expenses of its members' self-funded employee health plans. The major issues arising from this case include (1) the role and limits of authority of the non-domiciliary state regulator, particularly its authority to determine whether an RRG qualifies as such under the Risk Retention Act, (2) whether "liability" as defined under the LRRA was intended to include contractual liability (California has argued for some time that only tort-based liability is permissible under the LRRA), and (3) the ability of a non-domiciliary state to take administrative action against RRGs, when the LRRA requires states to bring actions in a "court of competent jurisdiction." A major victory was achieved on March 7, 2008, when the judge issued a preliminary injunction prohibiting the CA DOI from enforcing the cease and desist order.

Expansion of the LRRA: NRRA has been a leader in the ongoing efforts to introduce legislation since 2003. H.R. 5792, the Increasing Insurance Coverage Options for Consumers Act of 2008 was introduced on April 17, 2008. The bill proposed to expand the LRRA to include the authority for RRGs to write commercial property coverage. NRRA has been actively involved in discussions with House staff members to promote changes to this bill for the benefit of the RRG overall industry. On July 9, 2008 a Managers Amendment to the bill was passed by the House Subcommittee, reflecting several changes, the most significant of which included (1) a modified and improved definition of commercial property insurance, (2) deletion the provision regarding RRG state guaranty funds, and (3) the addition of appointing the U.S. Comptroller General's

office to investigate non-domiciliary states' abuse of authority with respect to risk retention groups and to propose legislative solutions that would preserve RRGs' rights under the LRRA. H.R. 5792 did not pass the 110th Congress. NRRA is actively promoting similar legislation in the 111th Congress.

The NRRA response to Financial Services Reform: NRRA has formed the "Coalition" subcommittee of Government Affairs which has undertaken the project of raising funds and allies to promote NRRA's proactive campaign to effectuate legislative changes to the LRRA in the coming years.

Inconsistent Income Tax Treatment for RRGs: NRRA has also created, for the first time, its own "Tax Group" subcommittee of Government Affairs. Comprised of a select group of volunteer Captive Managers, CPAs and attorneys, this Committee has identified the states where there is unequal or inconsistent income tax requirements imposed upon RRGs and is developing a plan to attempt to change some of those policies.

Louisiana: Louisiana attempted to assess a $1,000 financial regulation fee on RRGs. Upon being contacted by NRRA and individual RRG representatives, Louisiana withdrew the requirement and formally confirmed in writing that the $1,000 fee would not be imposed on RRGs.

Connecticut: Raised Bill 168, which proposed a prohibition on RRGs from writing contractual liability policies backing service contract business, was recommitted, effectively killing the bill for the current legislative session, largely due to protests raised by NRRA and the Service Contract Industry Council.

Missouri: The Missouri Department of Insurance issued a proposed rule that would have established requirements regarding performance of a service contract provider's obligations to contract holders. Interpretation of the proposed rule conflicted with the LRRA because it required that a reimbursement insurance policy be issued by an insurer holding a valid certificate of authority. Upon receiving communication from NRRA, Missouri changed the requirement to refer to an insurer authorized to transact insurance in the state, which does not conflict with the LRRA.

Massachusetts: The Massachusetts Department of Insurance attempted to impose new re-registration requirements on RRGs, including biographical affidavits of officers and directors, submission of the NAIC Uniform Certificate of Authority Application ("UCAA") and assessment of a re-registration fee. NRRA's efforts resulted in retraction of the UCAA requirement. Further, Massachusetts has not attempted to take any enforcement action against RRGs that refused to file biographical affidavits.

Kentucky: Following its 2008 Legislative Session, the state of Kentucky imposed a $200 "Assessment" for Administrative Costs upon RRGs as foreign insurers pursuant to KRS 91A.0812. Following its receipt of a letter from a very active NRRA Government Affairs Member, citing to legal precedence established by the NRRA-sponsored case law, Kentucky reversed itself and determined that RRGs should be exempt from the assessment.

NRRA's Successful History

1992
Charter Risk Retention Insurance Company v. Rolka. When the laws of Pennsylvania challenged the right of a risk retention group insuring limousine companies to operate in that state, NRRA filed an amicus brief supporting the right of the insurance carrier to operate. The court found that NRRA position was correct and held that federal law preempts the law of the state.

1993
Mears Transportation Group v. State of Florida. NRRA filed a brief supporting the proposition that a state could not require a risk retention group to require that a class of business could purchase insurance only from a company which participated in the state insurance guaranty fund.

1994
Preferred Physicians Mutual Risk Retention Group v. Patacki. The State of New York provided free excess insurance coverage of $1,000,000 to doctors insured with New York licensed insurers. NRRA joined with Preferred in challenging this as the group was not licensed in New York thereby in effect creating indirect state regulation.

1997
National Risk Retention Association v. Brown. The State of Louisiana required that any risk retention group have at least $5,000,000 in capital and surplus, file a bond or funds of $100,000 with the State, and submit a detailed plan of operation annually together with a fee of $1,000 to be allowed to operate. Joining with three risk retention groups, NRRA challenged these requirements as the state's actions were preempted by the LRRA. In prevailing, NRRA established that the federal law did preempt such state requirements.

1998
Opthalmic Mutual Insurance Company v. Musser. NRRA joined with Opthalmic in challenging a Wisconsin law which required health-care providers to prove financial responsibility by carrying insurance obtained from an insurer licensed in the state.

2000
National Warranty Insurance Company v. Greenfield. The State of Oregon's law required that reimbursement insurance policies covering the liability of certain service contracts be written with an "authorized" insurer in the state. This requirement barred risk retention groups from selling this coverage in the state. Joining with National Warranty, NRRA challenged the law and won a major victory in establishing that such a requirement was discriminatory and in violation of the LRRA and the preemption of federal law.

2001
Attorney's Liability Assurance Society, Inc., and Housing Authority RRG, Inc., v. Frank M. Fitzgerald, in his official capacity as Commissioner of the Office of Financial and Insurance Services for the State of Michigan.

The State of Michigan imposed a fee on risk retention groups which was referred to as a tax, but was determined to be a regulatory fee and was therefore barred by the Liability Risk Retention Act. In addition, the Court held that the employee-related coverages issued by the two risk

retention groups are not barred by the Risk Retention Act. The Court accepted the arguments put forward by ALAS, HARRG and NRRA that the statutory language only excludes risk retention groups from writing workers compensation coverages.

NRRA can share a piece of the credit for this victory. United States District Judge Enslen relied substantially on the precedent created by NRRA in its Louisiana litigation, National Risk Retention Association v. Brown, affirmed without opinion, and also cited the amicus curiae brief submitted by NRRA in this proceeding.

In addition, the Court invited the plaintiffs to submit requests for reimbursement of their legal fees pursuant to Sections 1983 and 1988 of Title 42 of the United States Code. The court relied on the Oregon risk retention litigation, National Warranty Ins. Co. v. Greenfield, to support this ruling on fee reimbursement.

2002

In 2002, NRRA started a multiyear campaign to seek to expand the Liability Risk Retention Act to permit risk retention groups to offer coverage other than commercial liability and, in particular, commercial property coverage. NRRA initiated the formation of a group that became known as the Council for Expanding the Risk Retention Act ("CERRA"). CERRA included representatives from consumer organizations, real estate interests, housing authorities, captive domicile associations, a state legislator organization, and others. Over 30 organizations joined the effort.

NRRA counsel and members developed position papers, drafted legislation, wrote opinion pieces, and made numerous visits to Congressional and Senatorial offices. NRRA was able to obtain support from various insurance trade publications and trade associations. An amendment was proposed to the Terrorism Risk Insurance Act, but was not successful, as it was ruled not germane by the Senate parliamentarian. Amending the Liability Risk Retention Act was placed on the agenda of the House Financial Services Committee, where it remains today.

2003

In 2003, NRRA lead a successful effort to educate and persuade the NAIC that it should not pass a resolution opposing the expansion of the Liability Risk Retention Act. The effort involved numerous meetings and the presentation of testimony to explain the beneficial role of risk retention groups in the commercial liability market and the relative safety and security of risk retention groups. The NAIC did not take an adversarial position, as a result.

In 2003, The U.S. Department of Housing and Urban Development issued a rule which caused health care facilities with professional liability insurance from captives not rated at least B-double-plus from A.M. Best (and, in some cases, licensed in each state where risks are covered) to be disqualified from obtaining HUD-backed financing. This rule blocked a large number of health care facilities—perhaps a majority—from obtaining this desirable federally-backed financing. NRRA worked with a coalition to get HUD to change this rule and filed comments as part of the federal rule making process. The revised rules permitted rating from Demotech, a rating service that was more responsive to captives.

2004
NRRA began the process of gathering information to respond to the inquiries of the Government Accountability Office, which had been charged by the Chairman of the House Financial Services Committee with preparing a study of the operation of risk retention groups and their effect on the marketplace. NRRA provided information to the GAO, which helped to establish the positive impact of risk retention groups on the commercial liability market. NRRA provided extensive documentation regarding problems with numerous states. NRRA also continued its advocacy role with the NAIC.

2005
NRRA organized and implemented a response to the GAO Report, which had both positive and negative implications for risk retention groups. NRRA has provided extensive follow-up information to both federal and state authorities. NRRA presented testimony at NAIC meetings, prepared position papers, had numerous meetings with state regulators, and otherwise continued its advocacy.

2006
Washington State Responds positively to NRRA's concerns. In a letter dated September 8, 2006, to NRRA's legal counsel, the Office of the Insurance Commissioner of Washington State indicated that it had decided to start using the NAIC registration form for RRGs not domiciled in that state. NRRA had previously written to the Commissioner to object to language in the Washington form that required the applicant to agree that it was not registered until it had received notification from the Commissioner's Office.

ABOUT NRRA:

The National Risk Retention Association (NRRA) is the voice of risk retention group and purchasing group liability insurance programs. NRRA is dedicated to the successful development, education and promotion of U.S. domiciled alternatives to traditional liability insurance and provides a forum for the country's most knowledgeable individuals in risk retention insurance to exchange valuable and timely information. NRRA fulfills its mission through education, communication, government relations, and judicial advocacy. For more information about NRRA, visit www.nrra-usa.org, call us at 800-999-4505, or email NRRA President, Jennifer Williamson at jennifer@nrra-usa.org.