



OFFICE OF  
INSURANCE COMMISSIONER

July 7, 2008

Kevin McCarty, Insurance Commissioner  
Florida Department of Financial Services  
Office of Insurance Regulation  
200 East Gaines Street, Rm 101  
Tallahassee, Florida 32399-0301

Dear Commissioner ~~McCarty~~ <sup>Kevin</sup>:

I have just read Commissioner Thabault's June 16<sup>th</sup> comment letter on the Medical Professional Liability Closed Claim Reporting Model Law. Her letter, as well as Utah's supporting comments (sent in a memo to the NAIC's casualty actuary, Kris DeFrain, on June 24) make me wonder whether it is best to proceed with the Plenary vote on the model law.

Although I am still a strong supporter of the model law, I am concerned that the issue Vermont has raised will create unnecessary opposition to the model in Plenary. Vermont's letter does, in fact, raise the possibility of a jurisdictional issue with respect to pure captives, based on the U.S. Supreme Court ruling in *State Board of Insurance et al. v. Todd Shipyards Corporation*. This ruling was not considered when the model was being drafted at the task force level.

Vermont, however, recommends an additional sub-paragraph, which would treat captives differently from other types of insuring entities. I don't believe that's the right thing to do. When jurisdictional issues are raised, the model law should provide for dealing with all types of insuring entities in the same way. The simplest way to address Vermont's concern would be to add the word "captive" to the lists in Sec. 4A(4)(a) and 4A(4)(b), so that each list reads as follows:

... any self-insurer, risk retention group, captive or unauthorized insurer ...

Might it not be better to give the Property and Casualty Insurance (C) Committee time to make this change, and then bring the model back to Plenary in September? Please feel free to call me at (360) 725-7100, or Lee Barclay at (360) 725-7115, if you'd like to discuss this further.

Thanks for considering this.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Kreidler".

Mike Kreidler  
Insurance Commissioner

cc: John M. Purple, Chief Actuary, State of Connecticut Insurance Department  
Lee Barclay, Senior Actuary, Washington State Insurance Commissioner's Office