



November 19, 2018

VIA EMAIL – David.Provost@vermont.gov

NAIC RRG Working Group  
Attn: David Provost, Chairman  
Vermont Department of Banking, Insurance  
89 Main Street, Drawer 20  
Montpelier, VT 05602-3101

**Re: Request for RRG Working Group Input and Assistance  
With Respect to Non-Domiciliary State Registration Actions**

Dear Chairman Provost:

This letter is being written on behalf of the National Risk Retention Association (NRRA) to inform the RRG Working Group (Working Group) regarding the imposition of LRRRA-prohibited actions on RRGs and the abuse of the registration mechanism by non-domiciliary states. We are seeking the support and proactive attention of the NAIC to benefit the RRG industry as a whole and to achieve consistency in the ways in which our members are treated by all states.

The issues fall into two categories.

**Fees**

The imposition of state-mandated fees by non-domiciliary states is not permitted under the LRRRA.<sup>1</sup> RRGs are now paying over **\$770,000 per year** in fees being charged by a little more than half of all states.

The increasing number of states imposing fees is frankly a matter of great concern for RRGs. The cost of challenging these fees by an individual RRG is prohibitive, which effectively means that the RRG has no effective recourse.

**Registration**

Section 3902(d) of the LRRRA permits a non-domiciliary RRG to do business in a state immediately upon submitting to that state the information delineated in that section. The seminal federal court case on Risk Retention Groups, *Nat'l Risk Retention Ass'n v. Brown*, 927 F. Supp. 195 (M.D. La. 1996) confirms this position. There is no federal court decision to the contrary.

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<sup>1</sup> Under § 3902(a)(1)(B), a non-domiciliary state is permitted to assess a "tax," but is not allowed to assess a "fee." *Attorneys' Liability Assur. Society v. Fitzgerald*, 174 F. Supp. 2d 619 (W.D. Mich. 2001).

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NATIONAL RISK RETENTION ASSOCIATION

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Consistent with the lead-state regulatory scheme of the LRRRA, many states will promptly issue confirmation of an RRG's registration in the state upon their receipt of the requisite information mandated under the LRRRA and evidence of the RRG's licensure by its domiciliary regulator. Unfortunately, more states are imposing a "review" process not unlike that imposed on traditional licensed insurers (and in some cases the exact same procedure) when it comes to the registration filing for foreign RRGs. Not only are more states initiating so-called "review" procedures for RRG registration filings, an increasing number of states are routinely taking substantially longer to "review" registration filings.

Beyond the initial registration of a foreign RRG, some states impose an *ongoing* annual "registration renewal" filing submission or process (e.g., Alaska, California, Iowa, Massachusetts, Mississippi, North Carolina and North Dakota). California's RRG registration renewal form is five (5) pages long and is "reviewed" by the state insurance department for the RRG's continued registration.

All of the hurdles outlined above fall well outside the scope of permissible non-domiciliary state authority and run counter to the original premise of the LRRRA for the operation of an RRG. Rather than accepting the lead-state regulatory scheme for conducting business in non-domiciliary jurisdictions, many states, in effect, are attempting to second-guess the RRG's domicile.

These problems represent a serious concern to the RRG community. To date the NAIC utilizes its "accreditation" standards to assess how well *domiciliary* states regulate their RRGs, but does not consider the unlawful actions undertaken by *non-domiciliary* states against RRGs.

We would appreciate the opportunity to address these issues in detail and to respond to your inquiries. We would appreciate your placing this letter on the agenda for the next meeting of the Working Group.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Joseph E. Deems", is written over a horizontal line.

Joseph E. Deems  
Executive Director  
Chairman, Government Affairs  
National Risk Retention Association (NRRA)

cc by email: Sandy Bigglestone (sandy.bigglestone@vermont.gov)  
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