

2024 Issue 2

CAPTIVE INSURANCE UPDATE



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DEVELOPMENTS IN VERMONT

VCIA Roadshow

On March 27, 2024 the Vermont Captive Insurance Association (VCIA) held its biannual “Roadshow” educational event designed for prospective captive insurance companies. The Roadshow, which has been hosted in over 20 cities, was held in Burlington, Vermont for the first time in seven years. The event included a comprehensive introduction to captive insurance, presented by Zaw Win alongside Kim Frasca of Aon, and moderated by Sandy Bigglestone, Vermont’s Deputy Commissioner of Captive Insurance. The event was well attended and included a number of local students who were invited as part of an initiative to increase interest in the captive insurance industry in Vermont.

2024 Captive Legislation

On May 20, 2024, Governor Phil Scott signed Vermont’s annual captive “housekeeping” bill into law. The 2024 legislation includes the following notable provisions:

- Controlled Unaffiliated Entity. A “controlled unaffiliated entity” has been defined as any person or entity that is not in the corporate system of a participant and its affiliated companies, that has an existing contractual relationship with a participant or one of its affiliated companies, and whose risks are managed by a participant in accordance with standards established by the Vermont Department of Financial Regulation (the “DFR” or the “Department”).
- Conversion Into Protected Cell. Subject to the prior written approval of the DFR, a captive insurance company domiciled in Vermont may be converted into an unincorporated protected cell within a sponsored captive insurance company.
- Parametric Contracts. Captives continue to be authorized to utilize parametric contracts, but the definition of a parametric contract has been changed to leave open the question of whether or not a parametric contract is an insurance contract.

- Minimum Capital and Surplus; Letter of Credit. The minimum capital and surplus requirement for an agency captive insurance company has been reduced from not less than \$500,000.00 to not less than \$250,000.00.
- Fees Received From Reinsurers. Fees received by the Department from reinsurers who assume risk solely from captive insurance companies will no longer be deposited into the Captive Insurance Regulatory and Supervision Fund.
- Confidentiality. The provisions governing the confidentiality of information submitted by captive insurance companies to the DFR in connection with licensure, examinations and other activities have been amended to provide the DFR with additional protection and discretion.

2023 Vermont Formations

In 2023, the DFR licensed 38 new captives. As of mid-April 2024, the DFR has already licensed 18 more, bringing the total to 1339 licensed, of which 642 are active. The types of active captives as of March 31, 2024 break down as follows:

Pure	416
Risk Retention Group	83
Special Purpose Financial	37
Sponsored	64
Industrial Insured	19
Association	15
Branch	2
Affiliated Reinsurance Company	2
Agency	4

Notably, as of 2022, it has been reported that Vermont is the largest captive domicile in the world.

Aggregate Data

The aggregate amount of gross premium written by all Vermont captives for the year 2023 was \$30.6 Billion; total net written premium was \$25 Billion. Aggregate total capital and surplus as of December 31, 2023 was \$80 Billion and total assets were \$230.7 Billion. Total Vermont premium tax paid on 2023 gross written premiums was approximately \$33 Million.

FEDERAL ISSUES

IRS Proposed Regulation for 831(b) Captives Stalled

Although the IRS continues to shine a spotlight on the potential abuses of micro-captive insurance arrangements, it has not taken further action on its proposed rulemaking, which we covered in our [2023 Captive Insurance Update](#). It is not clear how or when the IRS will proceed with this matter.

IRS v Delaware: The Delaware Department of Insurance Loses Fight with IRS over Disclosure

We summarized the dispute between the Delaware Department of Insurance (the “DDOI”) and the IRS in our [Fall 2022 Captive Insurance Update](#). The dispute centered on a Delaware statute prohibiting disclosure by the DDOI of captive insurance licensing information unless the insurer consents to disclosure or such information is disclosed to another state insurance department or to a state or federal law enforcement agency and the department or agency agrees to hold the information as confidential. In this dispute the IRS had summonsed documents and would not agree to hold the information confidential. In a blow to the DDOI, in April 2023, the United States Court of Appeals for the Third Circuit held that the McCarran-Ferguson Act's antipreemption mandate did not apply to permit the DDOI to refuse to produce the summonsed documents. On November 30, 2023, the Supreme Court denied certiorari, meaning that the Third Circuit’s ruling against the DDOI stands.

OUR TEAM

Vermont is the leading U.S. domicile for captive insurers and risk retention groups (RRGs), and Downs Rachlin Martin has been at the forefront of the U.S. captive insurance industry for 30 years. Meet our team of dedicated captive lawyers.



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