2026 Issue 2

CAPTIVE INSURANCE UPDATE

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DEVELOPMENTS IN VERMONT

2026 Captive Legislation

Every year, the legislative committee of the Vermont Captive Insurance Association (the "VCIA") and the Captive Insurance Division of the Vermont Department of Financial Regulation (the "DFR") work to improve Vermont's captive insurance laws. On March 24, 2026, Governor Scott signed the captive "housekeeping" bill sponsored by the VCIA and the DFR. The bill took effect on July 1, 2026, and includes the following notable provisions:

Loans and Investments Made by Risk Retention Groups: Language was added to clarify that a risk retention group may not make a loan to, or investment in, its members or affiliates of its members, excepting loans or investments in effect prior to January 1, 2026.

Report and Statement Requirements for Risk Retention Groups: Risk retention groups were formerly subject to certain reporting requirements under the general insurance statutes. Language was added to the captive statute to address specific annual and quarterly statements that risk retention groups are required to file with the National Association of Insurance Commissioners.

Certification Statements from Protected Cells: Within 30 days after commencing business, protected cells of a sponsored captive insurance company must file a statement with the Commissioner of the DFR certifying that the protected cell possessed the requisite capital prior to commencing business, including collateral in accordance with the protected cell's approved plan of operation.

Leadership at the Vermont Department of Financial Regulation

On January 28, 2026, the DFR announced that Governor Scott had appointed Christine Brown as the new Deputy Commissioner of the Captive Insurance Division of the DFR. Ms. Brown had been serving in that role in an acting capacity since the start of 2026. Ms. Brown joined the Captive Insurance Division in 2003 and most recently served as the director of the Captive Insurance Division.

2026 Guidance from the Vermont Department of Financial Regulation

The Captive Insurance Division of the DFR has issued two new guidance documents and a notification.

Credit for Reinsurance: In January, the DFR released guidance regarding credit for reinsurance. This guidance document (i) outlines certain diligence responsibilities of captives with respect to reinsurance counterparties; (ii) reminds captives that approval is required for business plan changes, including those related to ceding risks; and (iii) outlines filing requirements. The Captive Insurance Division will no longer publish a list of authorized reinsurers, however the DFR's Traditional Insurance Division will continue to publish a list of certified reinsurers and reinsurers domiciled in an approved or reciprocal jurisdiction. The DFR also provides a list of helpful links and resources, as well as a Q & A detailing the DFR's expectations for GAAP filers with respect to credit for reinsurance.

Business Plan Changes: In March, the DFR issued guidance to assist captives in preparing submissions related to proposed business plan changes. The guidance includes a detailed description of the information to be provided to the DFR, and is accompanied by an optional template that captives may use to supplement the narrative portion of their submissions.

Examination Reports: In July, the DFR issued a notification of revisions to the format and content of examination reports for all examinations, except for risk retention groups. The revised report format focuses on material findings, recommendations, and conclusions, while limiting inclusion of standard operational information and financial data that are often found within other filings and reports. The scope of examinations will remain the same.

2025 Vermont Formations

In 2025, the DFR licensed 51 new Vermont captives, bringing the total number of captives Vermont has licensed to 1413, of which 707 are currently licensed, and 677 are active. The types of currently licensed captives break down as follows:

Pure	477
Risk Retention Group	82
Sponsored	72
Special Purpose Financial	37
Industrial Insured	17
Association	14
Branch	4
Agency	2
Affiliated Reinsurance Company	2

Aggregate Data

The aggregate amount of gross premium written by all Vermont captives for the year 2025 was $36.3 Billion; total net written premium was $30.1 Billion. Aggregate total capital and surplus as of December 31, 2025, was $88.7 Billion and total assets were $243.6 Billion. Total Vermont premium tax paid on gross written premiums was approximately $36.4 Million.

FEDERAL DEVELOPMENTS

TRIA Reauthorization

The Terrorism Risk Insurance Act (TRIA) has been extended four times since first enacted in 2002. Most recently, in 2019, the Terrorism Risk Insurance Program (TRIP) was extended until December 31, 2027. H.R.7128, the TRIA Program Reauthorization Act of 2026, seeks to extend TRIP until December 31, 2034. Industry experts expect the bill to pass in the house and senate with strong support. It remains to be seen whether the final bill will include an increase to the insurer loss threshold, which is currently $5,000,000.

Challenges to IRS Final Rule Regarding 831(b) Micro-Captives

Last year we reported on several cases challenging the IRS's final rule (the "Final Rule") regarding 831(b) "micro-captives." Decisions have come down from U.S. District Courts, detailed below, and we will be monitoring appeals and a potential circuit split. The United States District Court for the Southern District of Texas ruled partly in favor of the plaintiffs in *Drake Plastics*, and the United States District Court for the Eastern District of Tennessee ruled in favor of the IRS in *CIC Services*, as did the United States District Court for the Northern District of Texas in *Ryan, LLC*.

On April 15, 2026, in *Drake Plastics Ltd. Co. et al. v. Internal Revenue Service et al.*, the United States District Court for the Southern District of Texas determined that the provisions of the Final Rule related to transactions of interest and listed transactions are severable and held the provision governing listed transactions unlawful. The Final Rule identified certain micro-captive insurance arrangements as either "listed transactions" or "transactions of interest," based on bright-line tests involving relationship, loss ratio, and financing factors. The court vacated the listed transaction provision, effective May 1, 2026, and remanded the issue to the IRS for further action.

The court ruled that the IRS "exceeded its statutory authority in designating micro-captive transactions as listed transactions because there was no finding, supported by the administrative record, that the majority of the transactions covered by [it] are to avoid or evade taxes." The court's reasoning turned on the stricter definition of listed transactions as compared to transactions of interest. On April 30, 2026, the Plaintiffs filed an appeal with respect to the court's upholding the IRS's designation of certain micro-captive transactions as transactions of interest. The IRS filed a notice of cross appeal on June 11, 2026.

In an earlier decision, on March 5, 2026, the United States District Court for the Eastern District of Tennessee upheld the Final Rule in *CIC Services, LLC v. Internal Revenue Service et al.*, granting the Government's motion for summary judgment and denying CIC's. The court ruled that the IRS had not exceeded its statutory authority in promulgating the Final Rule because the Final Rule does not threaten the tax benefits available to a captive that meets the eligibility requirements. Additionally, the court rejected CIC's argument that the Final Rule is arbitrary and capricious. In support of this conclusion, the court stated that the administrative record (which included recent tax court decisions favorable to the IRS) included adequate facts and data to support the IRS's conclusion that certain captive transactions can be used to escape tax liability. According to the court, this record provided a sufficient basis for the Final Rule. CIC filed a notice of appeal on March 17, 2026.

Ryan, LLC v. Internal Revenue Service et al., challenged the Final Rule in the United States District Court for the Northern District of Texas. In a November 5, 2025 Order, the court allowed *Ryan, LLC* to proceed on the sole issue of whether the Final Rule violates the Administrative Procedure Act on the grounds that it is arbitrary and capricious. On June 26, 2026, the court issued a decision in favor of the IRS. The court upheld the criteria in the Final Rule identifying micro-captive transactions of interest. The court noted that while the criteria may be overinclusive, they serve as reasonable indicators of potential tax avoidance and are not arbitrary or capricious. The court did not rule on the portion of the Final Rule related to listed transactions due to the decision in *Drake Plastics*. Ryan, LLC filed a notice of appeal on July 28, 2026.

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 40 years. Meet our team of dedicated captive lawyers:

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