



## **SCCIA & Groundbreaking Captive Insurance Industry Coalition Submit Arguments to U.S. Supreme Court**

July 23 – As part of an unprecedented captive insurance industry coalition, the South Carolina Captive Insurance Association has joined with nearly two dozen captive insurance organizations to file an amicus brief before the U.S. Supreme Court in the case of *CIC Services LLC v. IRS* (“CIC”). This broad industry coalition is comprised of 23 leading national, state and territorial captive domicile associations, including: Alabama, Arizona, the Captive Insurance Company Association (CICA), Connecticut, Delaware, the District of Columbia, Georgia, Hawaii, Kentucky, Missouri, Montana, Nevada, New Jersey, North Carolina, Oklahoma, Puerto Rico, the Self-Insurance Institute of America, Inc. (SIIA), South Carolina, Tennessee, Texas, Utah, the U.S. Virgin Islands and Vermont.

This diverse coalition formed with the goal of demonstrating through an amicus brief to the U.S. Supreme Court the broader concerns of the larger captive insurance industry with recent actions by the Internal Revenue Service (‘IRS’). While the SCCIA and larger industry continue to support appropriate IRS actions to curb abusive practices, it objects to the unnecessary regulatory burdens being imposed on taxpayers without a formal rulemaking or appeal process, contrary to law and Congressional intent. While the CIC case is specific to captive insurance companies electing under IRC 831(b), the adverse actions of the IRS are of concern to both the broader captive insurance industry and business entities in general.

At the center of the case is the argument that the IRS overreached in its authority in issuing Notice 2016-66 (‘the Notice’), namely that taxpayers such as CIC could face criminal penalties if forced to violate the law in order to obtain judicial review of the regulatory mandate. The Notice imposes requirements and potential penalties on owners, advisors and managers who participate in certain captive transactions, going back up to 10 years. These taxpayers are being forced to comply with the Notice regardless of whether their captive insurance arrangement contained any of the characteristics of concern identified by the IRS, and were offered no meaningful opportunity to provide comment or feedback prior to the Notice’s immediate implementation in 2016, nor the ability to appeal the filing requirements until paying a penalty. The time, effort and cost to collect, prepare and file all the forms required by the Notice is estimated to average 62 hours per form at a cost of nearly \$10,000 per filing, well above the 10.16 hours for recordkeeping and 6.25 hours for preparation estimated by the IRS.

The coalition amicus brief, submitted by Kevin M. Doherty and Tony D. Greer of Dickinson Wright, PLLC, focuses on three key arguments at issue in the CIC case:

1. First, that the Court should consider the heavy regulatory burden and harm being caused to taxpayers, namely the captive insurance industry. The Notice requires taxpayers to report duplicative information and imposes an undue financial burden to small- and medium- sized businesses, all for little to no benefit to the IRS. These requirements have come at a tremendous cost to taxpayers.



2. Second, the Administrative Procedures Act (“APA”) requires federal agencies to allow for a meaningful opportunity for public comment on proposed rules. The industry brief argues that the IRS did not comply with the APA, rather issuing the Notice without offering public comment and review. Despite the lack of a formal comment and review process, coalition members nonetheless provided comments to the IRS that went unheeded.
3. Third, the coalition argues that the Anti-Injunction Act (“AIA”) prohibition on preventing challenges to the IRS should not extend to reporting requirement, such as are imposed by the Notice.

The South Carolina Captive Association, representing captive professionals and captives domiciled in South Carolina, is pleased to be part of this broad and important industry coalition. SCCIA President Gary Osborne commented, “The SCCIA is pleased to seize this opportunity to contribute once again to the development and growth of the captive industry. In filing this amicus brief with the U.S. Supreme Court, we are joining with our industry colleagues across the country to demonstrate both the importance of captive insurance as a needed risk management tool for American business owners, as well as the unnecessary and overburdensome regulatory actions that stifle that growth and opportunity.”

Coalition members look forward to the U.S. Supreme Court hearing this case during the upcoming session, set to begin in October.

A link to the [full coalition brief can be found here](#).

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