February 12, 2015

National Association of Insurance Commissioners  
EXECUTIVE (EX) COMMITTEE AND PLENARY

RE: Deferred Consideration of Adoption of  
NAIC Model Risk Retention Act Model “705”

Dear Commissioners:

OMS National Insurance Company, Risk Retention Group (“OMSNIC”), and its wholly-owned subsidiary, Fortress Insurance Company (“Fortress”), write professional liability insurance in all 50 states, including the District of Columbia. OMSNIC insures over 4,900 oral and maxillofacial surgeons, while Fortress insures over 14,000 dentists nationwide. As a member of the risk retention industry, OMSNIC is particularly concerned with the proposed changes to the NAIC Model Risk Retention Act “705” (“MDL 705”).

Revisions to MDL 705 were adopted by the NAIC in December 2011. One of the main revisions deals with corporate governance standards for risk retention groups. MDL 705 was previously exposed for a one-year public comment period, and the only comment letter reportedly received was from the California Department of Insurance, which was in favor of adding this model to the Part A “Accreditation Standards”. Since this public comment period, several parties in the risk retention industry have provided concern regarding the effect of the model.

The Financial Regulation Standards and Accreditation (F) Committee considered adoption of Model 705 at the 2014 Fall National Meeting. MDL 705 was brought to the Plenary Committee, where it was tabled for further discussion. One of the reasons for tabling the model was due to heightened industry and regulator concerns that MDL 705 produced ambiguous and unclear corporate governance standards for risk retention groups.

The industry’s current issues with MDL 705 deal with the disparity of treatment to risk retention groups and the state’s authority to accredit domestic companies. Various communications within the NAIC gave the impression MDL 705 had been adopted by the NAIC (F) Committee and the Plenary Committee. However, based on the discussion at the Plenary Committee at the 2014 Fall NAIC meeting, it is clear MDL 705 requires further industry input and review by the regulators.

It should also be noted MDL 705 is currently drafted with broader regulatory oversight of corporate governance standards than is provided in the NAIC Insurance Holding Company System Regulatory Act, Model “440” (“MDL 440”), as well as the rules and regulations
currently in place for licensed insurance companies. Already, there are an additional 45 provisions in MDL 705 applicable to risk retention groups outside of the existing four provisions currently listed in MDL 440, which is applicable to other property and casualty companies. This results in further disparity and competitive unfairness for risk retention groups. Furthermore, MDL 705 is contrary to the intent of Liability Risk Retention Act by subjecting risk retention groups to multiple state accreditation requirements.

Of particular concern to OMSNIC, is section 3(D)(1)(b)(iii) of MDL 705 defining a “Material Relation Standard” for determining the qualification of Independent Directors. Based on the proposed MDL 705, a risk retention group’s executive officer is prohibited from serving as a Director, while simultaneously, without any inherent conflicts, serving on the board of a subsidiary company inside the holding group. This restriction is contrary to the language of MDL 440 as such material relationships are not precluded for other property and casualty companies under that act.

OMSNIC recommends moving MDL 705 back to a study phase, to allow the industry and regulators ample opportunity to clarify the scope and any unintended ramifications of the act. OMSNIC appreciates the committee’s efforts in reviewing this matter and providing us with the opportunity to comment.

Sincerely,

William C. Passolt
President and CEO
OMS National Insurance Company, Risk Retention Group and Fortress Insurance Company