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**Groundbreaking Captive Insurance Industry Coalition  
Submits Arguments to U.S. Supreme Court**

***Tennessee Plaintiff***

July 22 – As part of an unprecedented captive insurance industry coalition, the Tennessee Captive Insurance Association, Inc. (TCIA) 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'). CIC Services, a member of the TCIA, is a Knoxville, TN-based captive manager, helping small-and medium-sized business in the captive space. The Brief was drafted by TCIA President Kevin Doherty and TCIA Government Relations Committee Co-Chair Tony Greer. 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.

Captive insurance is a highly regulated form of self-insurance that has existed for over 50 years, allowing companies, or groups of companies, to better manage their own risk. In fact, nearly 5,000 captive insurance companies and related cells are domiciled in and regulated by at least 35 States. Captive insurance is a common risk management tool utilized by a wide range of public, private and not-for-profit entities, including colleges and universities, Fortune 500 companies, local businesses, hospitals, and religious and community organizations. Captive insurance covers an equally diverse and important set of business risk profiles, from property, general liability and products liability, workers compensation and medical stop-loss, to business and supply chain interruption.

This diverse coalition was 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') and in support of the CIC Services case. While the industry continues 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.

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 they 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 focuses on three key arguments at issue in the CIC case. 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.

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 issued 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.

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 Tennessee Captive Insurance Association, representing over 200 captives and 400 related cells domiciled in Tennessee, is pleased to be part of this broad and important industry coalition. TCIA President Kevin Doherty commented, "I was pleased to be able to represent TCIA and its members in this project, and it was a particular honor to be asked to lead the coalition and draft the brief along with Tony Greer of my law firm. We were thrilled that virtually every captive insurance association in the country decided to join in this important effort, and it was gratifying to work with all of them and have the opportunity to educate the Supreme Court about the importance of captive insurance as a risk management tool for businesses of all sizes throughout

our country and the unnecessarily burdensome effects of regulatory requirements that hinder good business practices.”

Coalition members look forward to the U.S. Supreme Court hearing this case during the upcoming session, beginning in October, and appreciate the opportunity to file an Amicus Brief to the Court. It is important to note that while this case is specific to captive insurance companies electing under IRC 831(b), the unnecessary and overly broad regulatory actions of the IRS are of concern to both the broader captive insurance industry and U.S. businesses in general.

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

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About the Tennessee Captive Insurance Association (TCIA): TCIA is a community of captive industry experts, owners and service providers engaged in advocacy, communication and education, committed to a strong captive insurance industry in Tennessee since 2011. Visit [www.tncaptives.org](http://www.tncaptives.org) for TCIA information and news. Follow #TCIA on Facebook, Twitter and LinkedIn.

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