

Decision 01-07-021 July 12, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of Nonprofits' Insurance Alliance of California for Modification of Resolution 18351 to Adopt General Order 160-A for Approval of Liability Insurance Issued By Insurance Pooling Arrangements Authorized Under California Corporations Code, § 50051.1 as Adequate Protection Against Liability.

Application 00-03-063
(Filed March 23, 2000)

O P I N I O N

Background

On March 23, 2000, the Nonprofits' Insurance Alliance of California (NIAC) filed this application. NIAC seeks a determination that the liability coverage provided to its members is adequate evidence of liability protection required by § 4001¹ and General Order (GO) 160-A for "not-for-hire" private carriers. NIAC is not a California licensed insurer, *per se*, as is required by GO 160-A.

On June 15, 2000, the assigned Administrative Law Judge held a prehearing conference. The applicant submitted an appearance. No other party appeared. The applicant stated that the application was complete, and requested expeditious *ex parte* treatment of the application. There are no protests.

Need for Hearing

On June 19, 2000, the Assigned Commissioner issued a ruling finding that no hearing was necessary. Pursuant to Rule 6.6, Article 2.5 of the Commission's Rules of Practice and Procedures ceased to apply to this proceeding as of that date.

¹ All citations are to the Public Utilities Code unless otherwise indicated.

Description of Applicant

In 1986, California Corporations Code Section 5005.1 was enacted for the purpose of giving nonprofit corporations the ability to create their own sources of affordable liability insurance. NIAC is a liability insurance pool organized under Section 5005.1. It has been in existence since 1988 and is incorporated as a tax-exempt, public benefit nonprofit corporation, owned and governed by its nonprofit member-insureds. In 1997, federal tax law was changed to enable NIAC's own federal exemption as a 501(c)(3) organization. NIAC is also exempt from income tax under Section 23701z of the California Revenue and Taxation Code, which was amended in 1997 to clarify NIAC's exemption.

NIAC's members number more than 2,000 California nonprofit organizations operating throughout the state, representing approximately one of every 10 active California nonprofits. They are primarily small, grassroots 501(c)(3) tax-exempt nonprofits, offering a wide range of services throughout the state. NIAC provides a variety of broad liability insurance products tailored to the specific needs of nonprofits. This includes coverage for general liability, directors and officers' liability, auto liability, and others. Examples of NIAC's members include: Child Assault Prevention Training Center of California, Jewish Welfare Federation of Fresno, Kings County United Way, and the Bakersfield SPCA.

Requested Relief

Many NIAC members are "not-for-hire" private carriers, who are required to register with the Commission pursuant to § 4001, *et seq.* Some NIAC members provide transportation services incidental to the operation of youth camps and thus are required to register as private carriers with the Commission per § 5353(n). Registration with the Commission requires proof of liability insurance. NIAC states that some members have encountered, and may encounter in the future, difficulty in obtaining registration because their liability insurance from NIAC is not written by a California licensed insurer, *per se*, as required by GO 160-A. NIAC's function is uniquely that of an insurer, however,

without holding an insurer's Certificate of Authority. NIAC seeks the Commission's recognition of the liability insurance carried by its members so that they may register with the Commission as "not-for-hire" private carriers, if necessary, and as organizations providing transportation services incidental to the operation of youth camps.

Certificate of Insurance

Section 4010 requires that a private carrier of passengers file with the Commission:

[E]vidence of a currently effective certificate of insurance or a surety bond evidencing protection against liability imposed by law for the payment of damages for personal injury to, or death of, any person or property damage, or both.

The Commission's GO 160-A, adopted December 17, 1998, defines the type of insurance required by the Commission. Under subpart (3) of that order:

The protection required under Section (1) hereof shall be evidenced by the deposit with the Public Utilities Commission, covering each vehicle used or to be used in conducting the operation of each such vehicle carrier, of the appropriate

Commission-authorized certificate of bodily injury liability and property damage liability insurance issued by a company licensed to write such insurance in the State of California, or by nonadmitted insurers subject to Sections 1763 and 1765.1 of the Insurance Code, or of an original bond or surety company licensed to write surety bonds in the State of California.

NIAC, however, was formed and is operated in accordance with Section 5005.1 of the California Corporations Code. California corporations formed and operating under Section 5005.1 may provide insurance against tort liability, so long as they form a pooling arrangement with other corporations:

The insurance authorized pursuant to this section only be available to an authorized corporation where that corporation has joined with two or more other authorized corporations in an arrangement providing for the pooling of self-insured claims or losses. *The pooling arrangement shall not be considered insurance nor be subject to regulation under the Insurance Code* (California Corp. Code § 5005.1(b)). (Emphasis added.)

NIAC is unique in the sense that it exists for the purpose of providing insurance to nonprofits by the pooling of premium contributions, and yet it is not, pursuant to state law, licensed, nor regulated, as an insurance company by the Department of Insurance.

Nonprofit corporations, such as NIAC, which hold property for charitable purposes, are regulated by the Attorney General:

A corporation holding assets in charitable trust is subject at all times to examination by the Attorney General, on behalf of the state, to ascertain to what extent, if at all, it has failed or is failing to comply with trusts it has assumed. In case of any such failure the Attorney General, in the name of the state, may institute against any person or persons the proceedings necessary to correct the failure. (California Corp. Code § 7240.)

NIAC's formation and other specified corporate matters are regulated by the Corporations Code. However, NIAC is regulated by the Attorney General since it is formed as a charitable, nonprofit corporation, holding property for charitable purposes.

NIAC, therefore, requested that the Commission approve the liability coverage provided to NIAC's members as adequate evidence of liability protection under Section 4010 and pursuant to GO 160-A.

Financial Resources and Operational History of NIAC

NIAC's application stated that in 1998, NIAC's net income was \$1,400,078, which was all retained to increase NIAC's surplus to \$6,465,024 at the end of the year. NIAC's surplus is a combination of members' equity of \$5,165,024 and subordinated debt of \$1,300,000. In 1998, NIAC's net written premium was \$9,572,773. During its 10 years of operation, NIAC has increased its surplus from \$1,300,000 to \$6,465,024. By the end of 1999, NIAC expected its surplus to exceed \$8,000,000. NIAC's 1997 and 1998 consolidated balance sheets are Attachment A to this decision.

NIAC further stated that since its inception in 1989, NIAC has handled 3,433 claims. Of these claims, 80% are closed. The vast majority of open claims are small auto claims that resolve in a few months or less. Only 30 claims remain open that are sizeable enough to have been reported to reinsurers for possible participation. Only seven of those claims are auto-related. NIAC routinely surveys member-insureds regarding their satisfaction with each claim.

NIAC's application stated that in its normal course of business, it also reinsures with other companies to limit NIAC's loss on large claims. During 1998, NIAC retained the first \$100,000 of each claim (including defense and indemnity). During 1999, NIAC retained the first \$150,000 of each claim (including defense and indemnity). Above \$150,000 to policy limits, NIAC is reinsured by General Reinsurance and by Swiss Reinsurance.

Discussion

In Resolution TL 18877, adopted December 17, 1998, we adopted GO 160-A. Subsection (1) of GO 160-A specifies the liability insurance required for all private carriers of passengers² (as defined in § 4005):

For the payment of damages for bodily injury to, or death of, one person in any one accident in the amount of at least fifteen thousand dollars (\$15,000); and subject to the limit for one person, in the amount of at least thirty thousand dollars (\$30,000) for bodily injury to, or death of, two or more persons in any one accident; and for injury to or destruction of property of others in the amount of at least five thousand dollars (\$5,000) for any one accident.

We further defined the source of such liability insurance as:

The protection required under Section (1) hereof shall be evidenced by the deposit with the Public Utilities Commission, covering each vehicle used or to be used in conducting the operation of each such private carrier, of the appropriate Commission-authorized certificate of bodily injury liability and property damage liability insurance issued by a company licensed to write such insurance in the State of California, or by nonadmitted insurers subject to Sections 1763 and 1765.1 of the Insurance Code, or of an original bond of a surety company licensed to write surety bonds in the State of California. (GO 160-A(3), emphasis added.)

The statute that authorizes NIAC to provide insurance pooling arrangements states:

(a) Except for a liability which may be insured against pursuant to Division 4 (commencing with Section 3200) of the Labor Code, an authorized corporation may do any of the following:

(1) Insure itself against all or any part of any tort liability.

² GO 160-A also prescribes higher liability limits for transportation service incidental to the operation of a youth camp.

- (2) Insure any employee of the corporation against all or any part of his or her liability for injury resulting from an act or omission in the scope of employment.
 - (3) Insure any board member, officer, or volunteer of the corporation against any liability that may arise from any act or omission in the scope of participation with the corporation.
 - (4) Insure itself against any loss arising from physical damage to motor vehicles owned or operated by the corporation.
- (b) The insurance authorized pursuant to this section shall only be available to an authorized corporation where that corporation has joined with two or more other authorized corporations in an arrangement providing for the pooling of self-insured claims or losses. The pooling arrangement shall not be considered insurance nor be subject to regulation under the Insurance Code.

- (c) Nothing in this section shall be construed to authorize a corporation organized pursuant to this division to pay for, or to insure, contract, or provide for payment for, any part of a claim or judgment against an employee of the corporation for punitive or exemplary damages.
- (d) Any insurance pool established pursuant to this section shall have initial pooled resources of not less than two hundred fifty thousand dollars (\$250,000).
- (e) All participating corporations in any pool established pursuant to this section must agree to pay premiums or make other mandatory financial contributions or commitments necessary to ensure a financially sound risk pool.
- (f) For the purpose of this section, an authorized “corporation” means any corporation that meets all of the following criteria:
 - (1) Is organized chiefly to provide or fund health or human services, but does not include a hospital.
 - (2) Is exempt from taxation under paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code.

(Corporations Code, § 5005.1.)

Corporations Code § 5005.1(a)(4) authorizes NIAC to issue the very form of liability insurance GO 160-A requires of private carriers of passengers. Unfortunately, for purposes of GO 160-A, Corporations Code § 5005.1(b) also specifically provides that the coverage is not “insurance” and is not regulated under the Insurance Code. Thus, the coverage available from NIAC pursuant to Corporations Code § 5005.1 does not meet the definitional requirements of GO 160-A.

The Legislature has recently amended the Vehicle Code to resolve a similar inconsistency between the Vehicle Code and Corporations Code § 5005.1. Vehicle Code § 4000.37 mandates that when renewing a motor vehicle registration, the Department of Motor Vehicles (DMV) must require each applicant to submit documentation of

insurance or other form of financial responsibility. Prior to its recent amendment, Vehicle Code § 4000.37 limited the DMV to accepting automobile liability coverage from companies regulated by the Insurance Code. Effective January 2, 2001, Vehicle Code § 4000.37 is amended to add subsection (a)(4)(C):

(C) An evidence form that indicates coverage is provided by a charitable risk pool operating under Section 5005.1 of the Corporations Code, if the registered owner of the vehicle is a nonprofit organization that is exempt from taxation under paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code. The evidence form shall include:

- (1) The name and address of the vehicle owner or fleet operator.
- (2) The name and address of the charitable risk pool providing the policy for the vehicle.
- (3) The policy number, and the effective date and expiration date of the policy.
- (4) A statement from the charitable risk pool that the policy meets the requirements of subdivision (b) of Section 16054.2.

As amended, Vehicle Code § 4000.37 directs the DMV to accept automobile insurance policies issued by NIAC, and any other Corporation Code § 5005.1 entity. Thus, the Legislature has determined that automobile insurance, in the proper amounts, issued by NIAC is equivalent to that issued by companies regulated by the Insurance Code.

Applicant requests that we determine that it is equivalent to a “company licensed to write such [liability] insurance in the State of California.” Based on the recently adopted amendment to Vehicle Code § 4000.37, the requirements imposed on NIAC by Corporations Code § 5005.1, and NIAC’s financial state, we will grant NIAC’s request.

As quoted above, Corporations Code § 5005.1 requires an insurance pool to: (1) be composed of two or more corporations, (2) have an initial pool of resources of \$250,000 or more, and (3) require members to pay premiums necessary to “ensure a financially sound risk pool.”

NIAC's application shows that it meets these requirements. In fact, NIAC has a sizable \$6 million surplus, which is currently increasing each year. Moreover, NIAC only covers the first \$150,000 of each incident and obtains "re-insurance" coverage for losses above that amount.

While granting this application, we will impose certain conditions on NIAC in order to protect the public. First, since the maximum liability limit under GO 160-A is \$5,000,000³ in any one accident, we will require NIAC to notify the Director of the Rail Safety and Carriers Division (RSCD) in writing (1) if its reserve amount falls below \$5,000,000, or (2) if there is any change in the amount covered by NIAC (from \$150,000), or any other change in its present reinsurance coverage arrangement.

³ General liability limits applicable to transportation service incidental to the operation of a youth camp are a maximum of \$1,500,000, plus general umbrella limits of \$3,500,000, for a total of \$5,000,000. (GO 160-A, paragraph (2)(a)).

Comments on Draft Decision

Although this matter is uncontested, we have imposed conditions on the grant of authority. Thus, the draft decision is subject to public review and comment prior to issuance. On June 28, 2001, the draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(2) and Rule 77.7 of the Rules of Practice and Procedure. Applicant agreed to shorten the 30-day public review and comment period. Accordingly, comments were due to be filed on July 5, 2001.

Applicant served its comments on time but inadvertently failed to submit them for filing. With the permission of Assistant Chief Administrative Law Judge Steven Kotz, Applicant filed and personally served its amended comments on July 10. In response to Applicant's amended comments, we (1) clarify the decision to refer consistently to surplus (the draft decision sometimes used "reserve" instead of "surplus"), and (2) modify Ordering Paragraph 3 such that NIAC reports annually on July 1 of each year to the Director of RCSD any change in its reinsurance arrangements.

Finding of Fact

1. Some NIAC members provide transportation services incidental to the operation of youth camps and thus are required to register as private carriers with the Commission pursuant to Public Utilities Code § 5353(n).

2. Some NIAC members have had difficulty registering with the Commission because their liability insurance is not written by a California licensed insurer as required by GO 160-A.

3. NIAC provides insurance to nonprofits by the pooling of premium contributions; in doing so, it is not an "insurance company" regulated by the Department of Insurance, but rather is regulated by the Attorney General as a charitable, nonprofit corporation, pursuant to § 5005.1 of the Corporations Code.

4. NIAC's application includes detail about its current financial resources and its recent claims handling history; this information indicates that above \$150,000 liability

coverage in any one accident, NIAC is reinsured by General Reinsurance and Swiss Reinsurance.

5. NIAC's current \$6,000,000 surplus exceeds the \$5,000,000 maximum that could be required to protect the public under GO 160-A.

6. It is appropriate for the Commission to monitor NIAC's reserve and reinsurance arrangements to ensure the protection of the public.

Conclusions of Law

1. As recently amended, Vehicle Code § 4000.37 directs the DMV to accept automobile insurance policies issued by NIAC, and any other Corporations Code § 5005.1 entity; thus, the Legislature has determined that automobile insurance, in the proper amounts, issued by NIAC is equivalent to that issued by companies regulated under the Insurance Code.

2. NIAC is substantially equivalent to "a company licensed to write such [liability] insurance in the State of California" as used in GO 160-A.

3. The Commission staff should be directed to accept proof of coverage from NIAC as complying with GO 160-A, subject to the conditions imposed in this order.

O R D E R

Therefore, **IT IS ORDERED** that:

1. Proof of liability coverage in no less than the required amounts from Nonprofits' Insurance Alliance of California (NIAC) shall be accepted as complying with General Order 160-A.

2. NIAC shall notify the Director of Commission's Rail Safety and Carriers Division (RSCD) in writing within 10 days, if its surplus falls below \$5,000,000.

3. NIAC shall notify the Director of RSCD, in writing, annually on July 1 of each year of any change in the amount of each claim covered by NIAC (\$150,000), or any other change in its present reinsurance coverage arrangement.

4. This proceeding is closed.

This order is effective today.

Dated July 12, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

(See formal files for Attachment A.)