



American Insurance Association



National Association of Independent Insurers



February 28, 2002

Hand Delivery via Messenger

Hon. Timothy J. Muris
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Determination Filing by Vermont Department of Banking, Insurance, Securities and Health Care Administration ("BISHCA") under Section 507 of Gramm-Leach-Bliley Act
Date of Filing: November 21, 2001

Dear Chairman Muris:

The American Council of Life Insurers, American Insurance Association, National Association of Mutual Insurance Companies, Alliance of American Insurers, and National Association of Independent Insurers (collectively "the Insurance Trades") respectfully request the Federal Trade Commission ("Commission") to defer action on the above-referenced determination filing made by BISHCA. The filing was made pursuant to Section 507 of the Gramm-Leach-Bliley Act ("GLBA" or "Act"), 15 U.S.C. § 6807.

BISHCA requests the Commission to make a Section 507 determination whether certain regulations and law in Vermont afford greater protection than provided under GLBA's privacy provisions and the regulations accompanying that Act. The privacy statute upon which BISHCA relies is 8 V.S.A. § 10201 *et seq.* This statute applies to the banking industry, not to the insurance industry or to the securities industry. However, the regulations promulgated by BISHCA using 8 V.S.A. § 10201 *et seq.* are directed by BISHCA to apply to the banking industry (B-2001-01) and to the securities industry (S-2001-01) and insurance industry (IH-2001-01). Those regulations are among those that BISHCA has submitted to the Commission for a Section 507 determination.

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On January 30, 2002, the Insurance Trades filed a complaint in Vermont state court challenging the insurance industry regulation (IH-2001-01). The Complaint seeks a declaratory judgment that the insurance industry regulation exceeds the statutory authority of BISHCA, is arbitrary, capricious, and contrary to the intent of the Vermont Legislature, and, that it violates the Vermont Constitution. The Insurance Trades seek permanent injunctive relief in the lawsuit. We enclose a copy of the complaint.

Some background on the regulatory review process in Vermont is worth noting. The Vermont Legislative Committee on Administrative Rules ("Committee") reviews regulations promulgated by, among other government agencies, BISHCA. The Committee then votes to approve or to disapprove proposed regulations. There are 8 members of the Committee; a majority requires 5 votes. The Committee's review of the 3 privacy regulations proposed by BISHCA concluded on October 31, 2001. On that day, however, only 7 members of the Committee were present. A motion made to reject the regulations based on lack of statutory authority was taken with 4 votes favoring rejection of the regulations on this ground and 3 votes not favoring rejection of the regulations. Because a Committee majority of 5 votes on this motion was not achieved, that position was not officially recorded. Similarly, a motion made to accept the regulations failed, with 3 votes for and 4 votes against. Thus, the official record of the Committee shows that the regulations promulgated by BISHCA were neither supported nor rejected by the Committee, but the majority of Committee members present for the review voted to reject those regulations for lack of authority to promulgate them.

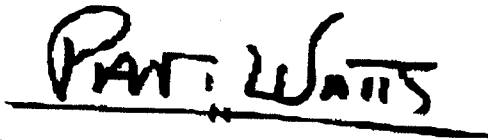
With the litigation pending in Vermont state court, and a record in Vermont indicating a definitive lack of support for the insurance regulation promulgated by BISHCA, a Commission decision on the determination filing made by BISHCA would be premature at this point in time. Therefore, we request that the Commission decline to issue a determination with respect to BISHCA's regulations or hold the petition in abeyance pending the outcome of the lawsuit and an opportunity for the Insurance Trades to file further comments.

However, in the event the Commission decides to rule on the determination filing, the Insurance Trades respectfully request the opportunity for additional comment on the substance of the insurance regulation and the actions by BISHCA.

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The Insurance Trades are non-profit trade associations representing hundreds of member insurance companies, which engage in the business of insurance in Vermont. Member companies of the Insurance Trades write many different lines of insurance: life, disability income, long-term care, and, property and casualty. We appreciate the Commission's attention on this important matter and offer to answer any questions or to provide additional information as the Commission deems necessary.

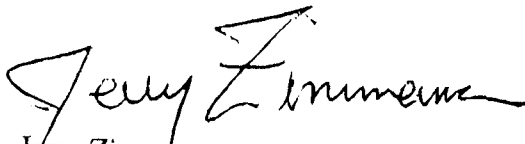
Cordially,



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cc: Jacqueline Hughes, Esq. - BISHCA
Robert B. Hemley, Esq. - Gravel and Shea (counsel for the Insurance Trades in Vermont)

/encl.

STATE OF VERMONT
WASHINGTON COUNTY, SS.

WASHINGTON SUPERIOR COURT
Docket No:

2002 JAN 30 A 10:59
561-02 WNW

AMERICAN COUNCIL OF LIFE INSURERS,
AMERICAN INSURANCE ASSOCIATION,
NATIONAL ASSOCIATION OF MUTUAL
INSURANCE COMPANIES, ALLIANCE
OF AMERICAN INSURERS, and NATIONAL
ASSOCIATION OF INDEPENDENT
INSURERS,

Plaintiffs

v.

VERMONT DEPARTMENT OF BANKING,
INSURANCE, SECURITIES, AND
HEALTHCARE ADMINISTRATION
and ELIZABETH R. COSTLE, in her capacity
as Commissioner of Vermont Department of
Banking, Insurance, Securities and
Healthcare Administration,

Defendants

COMPLAINT

Plaintiffs, American Council of Life Insurers ("ACLI"), American Insurance Association ("ALA"), National Association of Mutual Insurance Companies ("NAMIC"), Alliance of American Insurers ("Alliance"), and National Association of Independent Insurers ("NAII") by and through their attorneys, Gravel and Shea, hereby complain against Defendants, the Vermont Department of Banking, Insurance, Securities and Healthcare Administration (the "Department") and Elizabeth R. Costle, in her capacity as Commissioner of the Vermont Department of Banking, Insurance, Securities and Healthcare Administration (the "Commissioner"), and allege

GRAVEL AND SHEA follows:
ATTORNEYS AT LAW
P. O. Box 369
WASHINGTON, VERMONT
85492-0369

INTRODUCTION

1. Plaintiffs seek a declaratory judgment under 12 V.S.A § § 4711 *et seq.* that Regulation IH-2001-01, as promulgated by the Department and enforced by the Commissioner, exceeds the statutory authority provided by 8 V.S.A §§ 10 and 15 to make such rules; is arbitrary, capricious, and contrary to the intent of the Vermont Legislature; and violates Chapter II § 5 of the Vermont Constitution. Plaintiffs also seek permanent injunctive relief.

PARTIES

2. Plaintiff ACLI is a private non-profit life insurance trade association whose members include life insurers operating in Vermont and all other United State insurance regulatory jurisdictions.

3. Plaintiff AIA is a private non-profit property and casualty insurance trade association whose members include property and casualty insurers operating in Vermont and all other United State insurance regulatory jurisdictions.

4. Plaintiff NAMIC is a private non-profit property and casualty insurance trade association whose members include property and casualty insurers operating in Vermont and all other United State insurance regulatory jurisdictions.

5. Plaintiff Alliance is a private non-profit property and casualty insurance trade association whose members include property and casualty insurers operating in Vermont and all other United State insurance regulatory jurisdictions.

6. Plaintiff NAII is a private non-profit property and casualty insurance trade association whose members include property and casualty insurers operating in the fifty states and the District of Columbia, as well as Vermont.
7. The Department is an administrative agency created by the executive branch, and is the agency that promulgated Regulation IH-2001-01.
8. The Commissioner is charged with enforcing Regulation IH-2001-01.
9. All of Plaintiffs' members that do business in Vermont are subject to Regulation IH-2001-01 and have a common interest in seeking to avoid its application or enforcement. They suffer immediate or threatened injury as a result of the promulgated Regulation IH-2001-01.
10. Plaintiffs are bringing this action on behalf of their affected members, and any remedy awarded by this Court will inure to the benefit of those members.

FACTS

11. The Department regulates and monitors certain activities of the banking, insurance, securities and healthcare industries in the State of Vermont.
12. Defendant Costle is the Commissioner of the Department and is sued in that capacity.
13. The Department has certain general authority to promulgate rules and regulations governing the insurance industry as set forth in 8 V.S.A. §§ 10 and 15.
14. The Department promulgated Regulation IH-2001-01 on or about November 17, 2001. The mandatory compliance date for all licensees under Parts 3 and 4 of

Title 8 of Vermont Statutes Annotated (the "Licensees"), including Plaintiffs' members who do business in Vermont, is February 15, 2002.

15. Regulation IH-2001-01's stated purpose is to "govern the treatment of nonpublic personal financial information and nonpublic health information about individuals by all licensees under Parts 3 and 4 of Title 8 V.S.A.," including Plaintiffs' members who do business in Vermont.

16. The Vermont Legislative Committee on Administrative Rules (the "Committee") concluded its review of Regulation IH-2001-01 on October 31, 2001.

17. Four out of seven members of the Committee voted to object to Regulation IH-2001-01 on the grounds that it exceeds the authority of the Department.

18. Regulation IH-2001-01 did not receive majority support from the Committee.

19. There is no statutory authority for the promulgation of Regulation IH-2001-01.

20. Regulation IH-2001-01 is arbitrary and capricious.

21. Regulation IH-2001-01 is contrary to the intent of the Vermont Legislature.

22. Regulation IH-2001-01 requires all Licensees, including Plaintiffs' members who do business in Vermont, to alter their forms, procedures, and policies in a manner which is or may be inconsistent with those of the forty-nine other states and the District of Columbia.

**COUNT I - DECLARATORY JUDGMENT FOR
INVALIDATION OF REGULATION IH-2001-01**

23. Plaintiffs repeat the allegations contained in Paragraphs 1 through 22 of this Complaint, as if set forth in full herein.

24. The Department promulgated Regulation IH-2001-01 on November 17, 2001.

25. The Commissioner is charged with enforcing Regulation IH-2001-01.
26. Regulation IH-2001-01 states that it requires all Licensees, including Plaintiffs' members who do business in Vermont, "to provide notice to individuals about its privacy policies and practices; [d]escribes the conditions under which a [L]icensee may disclose nonpublic personal financial and health information to nonaffiliated third parties; and [r]equires [L]icensees to obtain consumer consent prior to disclosing that information," subject to certain exceptions.
27. There is no Vermont statute that authorizes Defendants to regulate the disclosure of nonpublic personal financial information by the insurance industry in the manner set forth in Regulation IH-2001-01.
28. Other than 8 V.S.A. § 4724(20), which concerns HIV-related tests, there is no Vermont statute that authorizes Defendants to regulate the disclosure of nonpublic personal health information by the insurance industry in the manner set forth in Regulation IH-2001-01.
29. In promulgating Regulation IH-2001-01, Defendants have exceeded the statutory authority given to the Department and the Commissioner under 8 V.S.A. §§ 10 and 15.
30. Regulation IH-2001-01 is arbitrary and capricious.
31. Regulation IH-2001-01 is contrary to the intent of the Vermont Legislature.
32. As a direct and proximate cause of the actions of Defendants, Plaintiffs' members have sustained and will sustain monetary and competitive harm.

**COUNT II - DECLARATORY JUDGMENT
FOR VIOLATION OF VERMONT CONSTITUTION**

33. Plaintiffs repeat the allegations contained in Paragraphs 1 through 32 of this Complaint as if set forth in full herein.

34. Chapter II, Section 5 of the Vermont Constitution states: "The Legislative, Executive, and Judiciary departments, shall be separate and distinct, so that neither exercises the powers properly belonging to the others."

35. Chapter II, Section 2 of the Vermont Constitution states: "The Supreme legislative power shall be exercised by a Senate and a House of Representatives."

36. The Vermont Legislature may confer upon administrative agencies the power to promulgate rules and regulations to enforce the laws enacted by the Vermont Legislature.

37. In promulgating Regulation IH-2001-01, Defendants exceeded the authority given to the Department and the Commissioner by the Vermont Legislature.

38. In promulgating Regulation IH-2001-01, Defendants have violated Chapter 11, Section 5 of the Vermont Constitution.

39. As a direct and proximate cause of Defendants' actions, Plaintiffs' members have sustained and will sustain monetary and competitive harm.

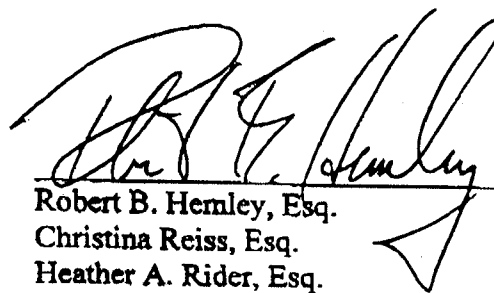
COUNT III - PERMANENT INJUNCTIVE RELIEF

40. Plaintiffs repeat the allegations contained in Paragraphs 1 through 39 of this complaint, as if set forth in full within.

41. Enforcement of Regulation IH-2001-01 will cause Plaintiffs' members to suffer ongoing harm that cannot be compensated by money damages and permanent injunctive relief is appropriate.

WHEREFORE, Plaintiffs seek a declaratory judgment that Regulation IH- 2001-01, as promulgated by the Vermont Department of Banking, Insurance, Securities and Healthcare Administration, and enforced by Elizabeth R. Costle, Commissioner, exceeds the statutory authority given to the Department by 8 V.S.A §§ 10 and 15 to make such rules; is arbitrary, capricious, and contrary to the intent of the Vermont Legislature; and violates Chapter II § 5 of the Vermont Constitution. Plaintiffs also seek permanent injunctive relief and ask this Court to enjoin Defendants from enforcing Regulation IH-2001-01. Plaintiffs respectfully request that this Court grant to Plaintiffs attorneys' fees, costs, and such other and further relief, legal or equitable, to which Plaintiffs may be entitled in this Court's discretion.

Dated: Burlington, Vermont
January 30, 2002



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