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RICHARD S. STAUB, ESQ.
Nevada State Bar No.: 904
P.O. Box 392
Carson City, NV 89702
(775)882-6888
Attorney for Defendants

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Shirley E. Longjumeau
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA INSURANCE GUARANTY ASSOCIATION, a non-profit unincorporated Nevada entity,

Plaintiff,

vs.

Case No.: A517123
Dept. No. IV

NEVADA AUTOMOTIVE NETWORK, a Nevada Self-Insured Group, **NEVADA TRANSPORTATION NETWORK**, a Nevada Self-Insured Group, and **DOE CORPORATIONS I-X**,

Hearing Date: 12-4-06

Hearing Time: 9:00 am.

Defendants.

REPLY TO RESPONSE TO MOTION FOR SUMMARY JUDGMENT (NRCP 56)

COMES NOW, Defendants, NEVADA AUTOMOTIVE NETWORK, and the NEVADA TRANSPORTATION NETWORK, hereinafter "NAN" and "NTN", respectively, by and through their attorney, RICHARD S. STAUB, ESQ., and replies to Plaintiff's Response to Defendant's Motion for Summary Judgement, pursuant to NRCP 56.

This Motion is made and based upon the attached Memorandum of Points and

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1 Authorities, the exhibits included herein, and all the papers and pleadings on file in this action.

2 DATED this 28th day of November, 2006.

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Nevada State Bar No.: 904
P. O. Box 392
Carson City, NV 89702
Attorney for Defendants

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POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiff, the Nevada Insurance Guaranty Association, hereinafter "NIGA", filed their Response to Defendant's Motion for Summary Judgment on November 13, 2006. Defendants, the Nevada Auto Network Self Insured Group and Nevada Transportation Network Self Insured Group, hereinafter "NAN" and "NTN", respectively, hereby reply to said Response.

While NAN and NTN believe that the arguments made in their Motion for Summary Judgment and Opposition to Plaintiff's Motion sufficiently argue their position in this matter, a few clarifications are in order to assure this Court is fully aware of the parties' position in the subject action.

II. ARGUMENT.

NAN and NTN agree with Plaintiff's statement that the Nevada Legislature has failed to provide key definitions in the NIGA which gives rise to the subject action. Certainly, if such definitions were codified in the Nevada Revised Statutes, we would not be before this Court herein. NAN and NTN would make the following clarifications in reply to Plaintiff's Response.

Plaintiff first argues that while NAN and NTN may not issue "contracts of insurance", certainly, the agreement between NAN and NTN with their member/employers has all the elements of an insurance contract. Regardless of the argument, it is undisputed that neither association issues any "contract of insurance" to its member/employers. Plaintiff's offer not document to this Court which appears to be a contract of insurance issues by NAN or NTN. NAN and NTN has not and cannot provide this Court with a contract of insurance simply because none exists. Each employer submits an application to become a member of the association, and upon executing and joint and several liability agreement and approval of the Commissioner of

1 Insurance, is issued a certificate of qualification as a member of the association. There is no
2 agreement between NAN or NTN and it's members other than what is represented in their By-laws
3 which are approved by the Commissioner of Insurance.
4

5 Plaintiff next argues that NAN and NTN has existence. NAN and NTN would agree
6 however, not as a legal entity such as an insurance company. It should be made clear that NAN
7 and NTN are non-profit, unincorporated associations composed of five or more employers that has
8 been issued a certificate by the Commissioner. See NRS 616A.050. Their existence is sole by
9 statute and as certified by the Commissioner of Insurance. Further, the statutory scheme regarding
10 NAN and NTN are strictly controlled by NRS 616B.350 to 616B.446. A simple analogy or
11 comparison cannot be made or assumed regarding the existence of NAN or NTN and that of an
12 insurance company authorized to do business in Nevada. More importantly, it must also be
13 pointed out that the associations are never the entity which is named in regulatory matters or claim
14 disputes, it is always the individual member/employers. Why is that? The answer is simple. The
15 associations have very limited existence and it is the member/employers who are held ultimately
16 response just as single self insured employers.
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19 Plaintiff next argues that the assessments collected by NAN and NTN are more or less
20 "premiums". While such a conclusion can easily be drawn, why did the Nevada Legislature
21 specifically use the term "assessments". Why did the Commissioner of Insurance, who was deeply
22 involved when the association statutes were enacted, agree with the use of this term. NAN and
23 NTN submit that the use of the term "assessment" lends credence to it's argument that they are not
24 insurers. Insurers collect premiums, association do and cannot under Nevada law.
25

26 Plaintiff next argues that NAN and NTN are "insurers" and relies on a definition contained
27 in the **Nevada Industrial Insurance Act**, (NIIA) Chapter 616A to 616D, found at NRS
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1 616A.270. NAN and NTN disagree that such a simplistic conclusion can be drawn. NAN and
2 NTN contend that this definition has no application under the NIGA. This definition is strictly for
3 the purposes and statutory convenience of the NIIA. Throughout the NIIA the term insurer
4 appears. The statutory structure was simplified by the generic use of the term "insurer" by make it
5 applicable to the entities which provide the industrial benefits thereunder. NRS 616A.270 defines
6 single self insured employers, public and private associations and private carriers as insurer under
7 the act. NAN and NTN contend that act to be only the NIIA. This definition has no application to
8 the **Nevada Insurance Code**, Title 57 of the NRS, and NRS 687A which addresses the NIGA.
9 The definition of an "insurer" for the purposes of the Nevada Insurance Code is found at NRS
10 679A.100. NAN and NTN have clearly argued that under that definition, neither is an insurer.
11 Again, NAN and NTN submit that such a simplistic conclusion, although convenient to Plaintiff's
12 argument, can be drawn. *See In Re Mission Insurance Company, Levi Strauss & Co. V. New*
13 *Mexico Property & Casualty Insurance Guaranty Assoc., 816 P.2d 502, 505 (N.M. 1991),*
14 (wherein the New Mexico Court held self-insured employer was not an insurer under similar
15 definition of "insurer"); and NRS 679A.112 which defines a contract of insurance as:

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19 "Policy" means the written contract of or written agreement for or effecting insurance, by
20 whatever name called, and includes all clauses, riders, endorsements and papers which are
21 a part thereof. (Added to NRS by 1981, 1141)"

22 NAN and NTN do not issue any such contracts to it's employer/members.

23 Plaintiff next argues that a revision to the NIGA which would have expressly declared
24 NAN's and NTN's claims as covered under the NIGA, and which was considered and not adopted
25 by the 2005 Legislature, lends credence to the Legislature's intent to treat associations as insurers.
26 However, Plaintiff's statement that the Legislature expressly "rejected" this amendment is not
27 correct. The amendment was not rejected, it was simply never acted upon by the Legislature
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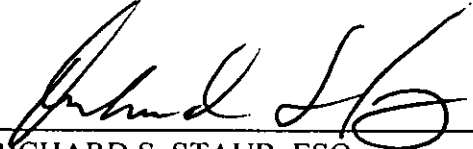
1 before the session ended.

2 The remainder of Plaintiff's arguments have been adequately addressed in NAN's and
3 NTN's Motion and Opposition. Additional argument is not necessary here.

4
5 **III. CONCLUSION**

6 Based upon the facts presented herein, the NAN and NTN are entitled to the appropriate
7 declarations from this Court which will require the NIGA to honor its statutory obligation to the
8 insureds of Reliance and pay the claims submitted by the NAN and NTN. For the reasons stated
9 herein, the NAN and NTN are entitled to summary judgment as prayed herein.
10

11 DATED this 28~~th~~ day of November, 2006.

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19 Attorney for Defendants
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CERTIFICATE OF SERVICE

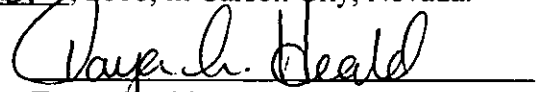
Pursuant to NRCP 5(b), I hereby certify that I am an employee of RICHARD S. STAUB, ESQ., on this date, I deposited for delivery with RENO/CARSON MESSENGER SERVICE, and/or the U.S. Postal Service, in Carson City, Nevada, a true and correct copy of the foregoing, REPLY TO RESPONSE TO MOTION FOR SUMMARY JUDGMENT, addressed to:

James H. Randall, Esq.
Michael k. Wall, Esq.
G. Asa Ginapp, Esq.
HUTCHINSON & STEFFEN, LLC
Peccole Professional Park
10080 W. West Alta Dr. #200
Las Vegas, Nv. 89145

I am familiar with the firms practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelope addressed as stated above will be deposited today with the United States Postal Service, or submitted for delivery, in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 29th day of November, 2006, in Carson City, Nevada.



Tonya Heald