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Oklahoma's Parchment Guarantee

Two Oklahoma statutes point in opposite directions for a captive risk retention group, and seven years of enforcement built on the one a court later rejected still has not answered whether the company can pay its claims.

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Of course, just words on paper. What our Framers would have called a "parchment guarantee."

— Antonin Scalia

This paper, in its entirety, can be found at **https://southwestpolicy.com/sppi12**

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SOUTHWEST PUBLIC POLICY INSTITUTE

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EXECUTIVE SUMMARY

Oklahoma chartered its first domestic risk retention group in December 2017.[1] Universal Casualty Risk Retention Group, Inc. held two certificates of authority from that date — one as an association captive insurance company, one as a risk retention group — and Oklahoma law expressly contemplates being both at once.

Nearly three years of supervision, a suspension, an injunction, an interim assistant receivership, four administrative hearings, two Oklahoma County District Court actions and two related federal dockets later,[2] the state has produced a definitive answer to a question about which accounting standard applies, and no final adjudicated answer to the question the apparatus exists to answer: can this company pay its claims?

That asymmetry is the finding of this brief.

Six points frame our position

1. Two Oklahoma statutes point in opposite directions, and it took litigation to say which governs. The Captive Insurance Company Act directs a captive to report under generally accepted accounting principles unless the Commissioner approves another basis.[3] The Risk Retention Act directs every Oklahoma-chartered risk retention group to file an annual statement completed in accordance with the NAIC's Practices and Procedures Manual — and it does so "notwithstanding any other provision of law."[4] Universal holds both licenses. On July 8, 2025, an Oklahoma County district judge held the Captive Act controlled, finding that "the Commissioner should not have required Universal to use SAP for filing annual statements or for any other financial reports for the period 2017-2024."[5]

2. The court got past the override clause through the manual's own text. By its own terms the manual is to be "recognized and adhered to if not in conflict with state statutes and/or regulations, or when the state statutes and/or regulations are silent." The court read that as a deferral back to Oklahoma law, so that a statute pointing at the manual cannot, through the manual, displace a statute the manual itself declines to displace.[6] We note that the order's quotation of the Risk Retention Act begins after the "notwithstanding" clause, and does not take it up expressly.[7]

3. The operative rule lives somewhere the legislature cannot reach. Section 6454 does not name a dated edition of the manual. It points at the manual as it stands, published by a private association in Kansas City and revised on its publisher's schedule. When the manual changes, Oklahoma law has never said what, if anything, makes the change operative here.

4. The second ruling turned a construction dispute into an oversight question. Nine months later the same court found the hearing examiner's January 14, 2026 suspension order, entered in the Commissioner's name, "arbitrary and capricious and abusive discretion," and "an abuse of the Commissioner's discretion under these circumstances."[8] The Department argued the merits of the appeal for thirteen transcript pages, moved mid-argument to dismiss it as moot, and ultimately stipulated that the order was stricken. The court never reached the merits.[9]

5. One consequence is visible on the record; the other is not. Explaining why the examination had been converted to a targeted examination rather than

completed, counsel for the Commissioner told the court: “We are going to eat face in front of F Committee with the NAIC. Our accreditation will be on the line. We might lose it.”[10] An agency that faces accreditation consequences for missing an examination deadline, and no comparable consequence for misreading its own enabling statute, is operating under an asymmetry in where consequences fall.

6. Solvency remains unresolved, and five different things are routinely collapsed into it. The court found in July 2025 that it was “unclear” whether Universal is solvent under GAAP. The Department’s contract examiner concluded in June 2026 that it is insolvent. Universal’s counsel told the court the examination is not concluded until Universal responds and the Commissioner acts, and the record available to SPPI does not show how the Commissioner resolved it.[11]

Recommendation: The Oklahoma Legislature should say which reporting basis governs a captive insurance company operating as a risk retention group; adopt dated editions of privately published standards; make the terms and costs of accreditation legible to the members who are asked to accept them; establish a due process floor for instanter license actions; require annual reporting of what supervision and receivership cost the licensees subjected to them; and require a published solvency determination, on the lawful standard, for any company held in supervision beyond a fixed period. None of these requires taking a view on who was right in this dispute.

UNIVERSAL CASUALTY

A risk retention group is a state-chartered liability insurer operating inside a federal framework. The Liability Risk Retention Act of 1986 lets businesses facing similar liability exposures band together to insure one another. The entity is chartered and licensed as a liability insurer under the law of a single state; federal law then limits what other states may impose on it, subject to the registration, premium tax, unfair claims practices and related authority the Act preserves for nondomiciliary states.[12] The chartering state carries the prudential load for the whole footprint. That design is what makes a domiciliary regulator’s reading of its own statute consequential beyond its borders.

Universal Casualty Risk Retention Group, Inc. was Oklahoma’s first. Trade coverage in January 2018 described it as the first risk retention group domiciled in the state, formed to write garage keepers liability, general liability, auto liability and mechanics errors and omissions coverage for businesses in the automotive trades, with an initial target of four states.

The company's description of its own footprint is not consistent, and we report the inconsistency rather than resolve it. Press releases in March and May 2026 described Universal as licensed by Oklahoma for writing liability insurance in all fifty states and as operating nationwide. Its website, as of September 2026, describes something considerably narrower: a headline figure of six states, a passage naming California, Florida, Georgia, New Jersey, New York and Texas, and an "About" section stating that Oklahoma licenses it for writing liability insurance in seven states. Throughout, the company describes itself as founded in 2017, Oklahoma-domiciled, and structured as a captive association whose policyholders are required to join the association; its stated classes of business include new and used car dealerships, collision and repair shops, truck repair, towing, short-term auto rental, and auto leasing.[13]

Effective December 20, 2017, Oklahoma issued Universal two certificates of authority — one as an association captive insurance company, one as a risk retention group — each stating that it would be perpetual and automatically renewed each March 1 unless the company failed to qualify. The court later found that Universal is, and since that date has been, a captive insurance company doing business as a risk retention group under Oklahoma law. It noted that the captive certificate was inactive, but found no evidence that Universal had applied for a certificate of dormancy or that the captive certificate had ever been dissolved, vacated, or truly entered dormant status.[14]

That dual status is the origin of everything that follows.

The enforcement history began before the solvency dispute. In April 2022 the Department issued an order finding that Universal had violated the Insurance Holding Company System Act, and Universal paid a $61,500 fine. In July 2023 a hearing examiner assessed an additional $422,300 on the same statutory theory — $483,800 in total, on provisions Universal contends do not apply to a captive risk retention group.[15]

In October 2023 the Department placed Universal under supervision, having found that it failed the risk-based capital ratio required of an insurer reporting on a statutory accounting basis. In March 2024 the Department suspended Universal's certificate of authority instanter for hazardous financial condition. In May 2024 Universal and an affiliated agency sued the Commissioner and Department

Dec. 20, 2017	Both certificates of authority issued — association captive insurance company and risk retention group.
Apr. 2022	Department order and $61,500 fine, Insurance Holding Company System Act filings. Contested by Universal.
July 2023	Hearing Examiner Miller assesses $422,300 in additional fines on the same statutory theory. Contested by Universal.
Oct. 26, 2023	Emergency Order of Supervision Instanter, based on failure of the risk-based capital ratio applicable to a statutory-basis filer.
Mar. 26, 2024	Order of Suspension Instanter — hazardous financial condition (OID No. 24-0189-DIS).
May 2024	Universal and an affiliated agency sue the Commissioner and Department officials in federal court (E.D.N.Y.).
June 28, 2024	Department's ex parte application for receivership. Court enjoins Universal from transacting business and appoints Donna Wilson assistant receiver to marshal assets.
Feb. 26, 2025	Department notices a five-year financial examination.
May 6–8, 2025	Three-day evidentiary hearing before Judge Ogden. Suspension vacated and injunction dissolved from the bench, effective May 8.
July 8, 2025	Order filed memorializing the May 8 rulings: GAAP governs; supervisor removed; solvency left unresolved.
July 21–25, 2025	Request to enlarge the examination period relayed as denied two days later, per Universal's counsel with no substantive analysis.
Aug. 6, 2025	Second information request issued.
Aug. 22, 2025	Notice of administrative hearing — sixteen days later.
Sept.–Dec. 2025	Four hearings before an independent hearing examiner engaged by the Department.
Jan. 14, 2026	Administrative order suspending the risk retention group license effective February 1 and assessing $1,950 in hearing costs.
Apr. 13, 2026	Suspension vacated from the bench: arbitrary and capricious, an abuse of the Commissioner's discretion.
June 30, 2026	Contract examiner's targeted examination report delivered — concludes Universal is insolvent.
Aug. 3, 2026	Department stipulates the January 14 order is stricken. Court accepts the stipulation and finds the proceedings moot. Merits never reached.

officials in federal court in New York. In June 2024 the Department applied ex parte to the Oklahoma County District Court for a receiver; the court directed Universal to show cause, enjoined it from transacting any business, and appointed Donna Wilson assistant receiver to marshal the company's assets.[16]

Universal's answer throughout was that the Department was measuring it with the wrong instrument. It is a captive, it argued, and the Captive Insurance Company Act directs captives to report under generally accepted accounting principles absent the Commissioner's approval of another basis — and a company can fail one standard while passing the other. The Department's answer was that Universal is a multi-state insurer selling automobile liability coverage to third parties, subject to the same solvency rules as any other such carrier.[17]

That disagreement is what Judge Richard C. Ogden heard over three days in May 2025. It is also the disagreement that has driven every proceeding since.

STATUTORY

Oklahoma law expressly contemplates a company in Universal's position. Section 6470.6(A)(5) of Title 36 sets the capital standard for "captive insurance companies doing business as a risk retention group."[18] The statute does not treat the combination as anomalous. It names it.

That dual status is where the code forks.

The Captive Insurance Company Act provides that a captive "may not be required to make an annual report except as provided in the Oklahoma Captive Insurance Company Act," and directs reporting under generally accepted accounting principles unless the Commissioner approves an alternative basis. No such approval was sought or granted here. That last point matters and the brief will return to it: the Commissioner did not approve statutory accounting for Universal. He required it.

The Risk Retention Act points the other way, and points emphatically:

> "**Notwithstanding any other provision of law**, all risk retention groups chartered in this state shall file with the Insurance Department and the National

> Association of Insurance Commissioners an annual statement in a form prescribed by the Association … and completed in accordance with its instructions and the Practices and Procedures Manual of the Association."
>
> *36 O.S. § 6454(A)(2)4*

This is the part of the record most likely to be underestimated. A "notwithstanding any other provision of law" preamble is the ordinary drafting device for defeating the very canon the court applied — that a specific statute governs a general one. Whatever else can be said about the Department's position, it was not conjured from a manual. It was built on a statutory command that on its face claims priority over other Oklahoma law.

Neither the word "SAP" nor the phrase "statutory accounting principles" appears in § 6454. The Department's position was that the reference to the NAIC manual is a reference to statutory accounting, and that § 6470.10(E)(3) — which makes captives operating as risk retention groups subject to the Risk Retention Act — routed Universal back to that basis.[19]

So Oklahoma had two provisions, each capable of governing the same company, one of them carrying an override clause. A licensee reading the code in 2017 could not have told which controlled. Neither, on this record, could the Department. It took a three-day evidentiary hearing and two years of litigation to produce an answer.

Note also where the operative rule sits. It is not in the statute. It is in a manual the statute points at — and the statute points at the manual as it currently stands, without naming an edition or a date. That raises a question Oklahoma law has never answered: when the publisher revises the manual, does the revision become operative here, and if so, by what act of Oklahoma law? We do not claim a court has resolved that question. We claim the statute does not address it, and that the legislature can.

SEVEN YEARS

After a three-day evidentiary hearing in May 2025, Judge Ogden resolved the conflict against the Department. His order, filed July 8, 2025, is worth reading in the original, because the reasoning is not exotic. The court recited the settled rule that where a matter is addressed by two statutes — one specific and one general — the specific statute governs, and applied it.[20]

> "The Commissioner's argument that 36 Okla. Stat. § 6470.10(E)(3) and 36 Okla. Stat. § 6454 support the proposition that Universal is required to report under SAP is rejected because Oklahoma has a specific statute requiring captives such as Universal to report their financial condition under GAAP."
>
> *Order ¶ 13 · State ex rel. Mulready v. Universal Casualty RRG, Inc., No. CJ-2024-4147 (Okla. Cnty. Dist. Ct. July 8, 2025)*

The court then quoted the manual's own scope clause — the sentence the Department's reading had to overcome, and did not:

> "The NAIC Manual provides at page xx that 'the Manual is not intended to preempt states' legislative and regulatory authority. It is intended to establish a comprehensive basis of accounting recognized and adhered to **if not in conflict with state statutes and/or regulations, or when the state statutes and/or regulations are silent**.' In light of this, the NAIC Manual does not trump the Oklahoma Captive Insurance Company Act's clear and plain language requiring captives to file financial reports pursuant to GAAP."
>
> *Order ¶ 13*

And again at ¶ 14, on the Department's fallback argument: to the extent § 6470.10(E)(3) would require the court to consider the manual, "that manual defers back to existing Oklahoma state law," and the applicable law is found in the Captive Act, "so the terms of that statute govern."[21]

That is a coherent chain, and it supplies what is in effect an answer to the override clause: a statute that claims priority over other law still only requires what it points at, and what it points at declines to displace state statutes. But the order does not take the clause up expressly. Its quotation of § 6454(A)(2), at ¶ 11, begins at "file with the Insurance Department" and omits the opening words. Anyone relying on this ruling — the Department, the next licensee, a reviewing court — should know that.

The holding follows at ¶¶ 15–17. The Captive Act "speaks in plain and unambiguous terms" on the ability of a captive to operate as a risk retention group and to file under GAAP; Universal is such an entity and "is required to report its financial condition according to GAAP"; and then the finding that should concentrate legislative attention:

> "This Court finds that the Commissioner should not have required Universal to use SAP for filing annual statements or for any other financial reports for the period 2017-2024."
>
> *Order ¶ 17*

Seven years of filings, one supervision order, one suspension order and one receivership application, all resting on a reporting standard the court held the Department should not have required.

The same order dissolved the injunction and vacated the March 2024 suspension, both effective May 8, 2025, for reasons stated from the bench; directed the Commissioner to restore Universal's control over the marshaled assets and to notify the financial institutions previously contacted; and kept Universal under a supervision order the Commissioner was instructed to revisit and make "reasonable and a better fit for Universal's situation."[22]

It also removed the supervisor. Donna Wilson was ordered replaced and barred from any further role, on two grounds the order states plainly: a conflict of interest arising from her status as a defendant in Universal's pending federal action, and "questionable decision-making during her tenure as Supervisor of Universal."[23]

SUSPENSION

What happened next is the part that turns a statutory-construction dispute into an oversight question.

Within a week of the July 8 order, the Department pressed forward with the five-year financial examination it had noticed in February 2025 — while Universal remained under supervision and while the company was, in its counsel's words, still coming up for air. Universal asked the Commissioner to exercise the discretion § 6470.13 gives him to enlarge the examination period by up to two years. According to Universal's counsel, the request came back denied two days later, with no substantive analysis and no explanation.[24]

The Department's position was that a captive risk retention group does not get that discretion at all. The court rejected it: "the Court does not accept the opinion of OID that somehow or another a captive RRG doesn't have that same opportunity at the discretion of the Commissioner."[25] The Department's reading of its own enabling statute was rejected twice, on two different provisions, in two successive rulings.

A second information request went out August 6, 2025. Sixteen days later the Department issued a notice of hearing. Four hearings followed, in September, October, November and December, before an independent hearing examiner engaged by the Department.[26] On January 14, 2026, the examiner suspended Universal's risk retention group license effective February 1 and assessed $1,950 — not fines, as the Department was careful to note, but the costs of holding four hearings, two of them all-day. Universal paid, and has asked for the money back.[27]

The ground of the suspension matters. Section 309.3(B) makes refusal to comply the basis for suspending a license. The hearing examiner did not find refusal. He found that Universal had failed to produce records "timely and in a convenient manner."[28] The Department's own counsel described the distinction on the record without apparent discomfort: producing documents the weekend before a hearing is not convenient for the Department to review.

On April 13, 2026, Judge Ogden vacated the order from the bench:

> "The Court finds that the independent hearing examiner's order of January 14, 2026, is arbitrary and capricious and abusive discretion. And in the name of the Commissioner of OID, an abuse of the Commissioner's discretion under these circumstances."
>
> *Court's Ruling at 8*
> *Universal Casualty RRG, Inc. v. State ex rel. Mulready,*
> *No. CV-2026-245 (Okla. Cnty. Dist. Ct. Apr. 13, 2026)*

The court found the examiner's premise unsupported on the record: "There was no — there was no refusal. The only thing I've heard today in terms of evidence was attempts to comply. Reasonable attempts to comply."[29] It found by clear and convincing evidence that Universal had shown a likelihood of success on the merits, irreparable harm in being suspended again before any determination of insolvency under GAAP, a favorable balance of harm between Universal and the State, and — on the fourth factor — "no showing of harm to the public."[30]

The court also identified a timing problem that no adjustment of effort could have solved. On the Department's own argument, the 2024 audited GAAP financial report would have had to be filed before the court's July 2025 ruling that GAAP applied at all. "It's an impossibility," the court said. "Universal cannot be placed in a situation where it was impossible for them to comply. That was not the intention of this Court."[31]

THE APPEAL THAT ENDED

The merits appeal was argued on August 3, 2026. Counsel for the Commissioner argued the merits for some thirteen transcript pages, then raised a development: a targeted examination report had been delivered on June 30, and in his view that rendered the appeal moot. He moved to dismiss.

We report his explanation for the timing, because he gave one on the record and it is fair to include it. He had filed his brief on May 29; Universal's reply came June 8; the examination report issued June 30. "I hadn't thought about it," he told the court. "This is my fault." He raised the issue with opposing counsel the Thursday before the Monday hearing, four days before argument and thirty-four days after the event he said had mooted the case.[32]

Universal objected, arguing the timing was a ploy to avoid a second adverse determination from the court. The court did not resolve that dispute. It required something narrower and more durable: a written stipulation, signed and filed as an exhibit. After a recess, the Department stipulated that delivery of the targeted examination report on June 30, 2026 rendered the January 14, 2026 order stricken and the appeal moot as of that date. The court accepted the stipulation, found the proceedings moot, and never reached the merits.[33]

Universal preserved an application for costs and fees under 75 O.S. § 318(D)(2), which the court said it would take up separately.[34] Whether that application was granted is not in the record available to SPPI.

PARCHMENT

Testifying before the Senate Judiciary Committee on October 5, 2011, Justice Antonin Scalia made a point about written guarantees that has nothing to do with insurance and everything to do with this record. He told the committee he often asks law students what makes America a free country, and that they usually answer with the Bill of Rights. Then he tells them that if they think a bill of rights is what sets the country apart, they are crazy. Every banana republic has one. Every president-for-life has one. The Soviet Union's, he said, was much better than ours — it guaranteed not only speech and press but street demonstrations and protests, and promised that anyone caught suppressing criticism of the government would be called to account.[35]

> "Of course, just words on paper. What our Framers would have called a 'parchment guarantee.'"
>
> *Antonin Scalia*
> *Senate Committee on the Judiciary, Oct. 5, 2011*

The real constitution, Scalia went on, is not a bill. It is a structure — and a structure that does not prevent the concentration of power will not be rescued by the quality of the drafting.

The Captive Act's GAAP provision was on the books throughout the period the court addressed. So was the Risk Retention Act's override clause. Both said what they said, and they did not say the same thing. What the arrangement did not supply — and this is SPPI's argument, not a finding of any court — was a mechanism that surfaced the conflict and resolved it before it reached a courtroom.

The limits of that claim matter, and we state them. It does not mean the Department acted lawlessly. It resolved a genuine ambiguity in one direction; a court later resolved it in the other. The Department's reading was not frivolous, and the "notwithstanding" clause is the reason it was not. What is fairly laid at the legislature's door is that the ambiguity existed at all, that it persisted for seven years, and that the only available instrument for resolving it was litigation paid for by a licensee.

It would be easy, and wrong, to read this record as a story about one agency's bad stretch. Two features of it are structural, and both are fixable by statute.

THE RULE LIVES WHERE THE LEGISLATURE CANNOT REACH

When Oklahoma law points at a manual as it currently stands, the publisher of that manual holds the pen between legislative sessions. A revision can change what the Department applies to Oklahoma licensees with no corresponding act of Oklahoma law — no bill, no hearing, no fiscal note, no vote. We are not claiming a court has held that future revisions automatically bind Oklahoma licensees. We are pointing out that nothing in the statute says whether they do, and that nobody in this record could have said either.

This is not an argument against the substance of any NAIC standard. Uniform accounting across fifty jurisdictions is a public good, and the alternative — fifty bespoke reporting regimes — would serve no one. It is an argument about when a privately drafted revision becomes binding on an Oklahoma licensee, and about who decides.

WHERE THE CONSEQUENCES FALL

The clearest evidence of what was driving the Department's conduct came, unprompted, from its own counsel at the August 2026 hearing, explaining why the examination had been converted to a targeted examination rather than completed:

> "We are going to eat face in front of F Committee
> with the NAIC. Our accreditation will be on the line.
> We might lose it. We're expecting to get suspension."
>
> *Seth Coldiron, counsel for the Insurance Commissioner*
> *Tr. 60 (Aug. 3, 2026)*

Read that alongside the timeline: a discretionary extension denied in one line, a hearing noticed sixteen days after a document request, and an examination pressed forward while the company was under the Department's own supervision — a sequence Universal's counsel argued runs against the NAIC's own guidance, which she read as directing that a financial examination wait until a company exits court-ordered supervision.[36]

SPPI does not claim those decisions were made because of the accreditation review, and we do not have the evidence that would establish it. What the record establishes is narrower and still worth a committee's attention: the Department's counsel, unprompted and in open court, identified accreditation as what was at stake in how the examination concluded.

This is a question rather than a conclusion. An agency that faces accreditation consequences for missing an examination deadline, and no comparable consequence for misreading its own enabling statute, is operating under an asymmetry in where consequences fall. Whether that asymmetry affected any particular decision here is not something SPPI can establish from this record — and that is itself the point. The legislative questions are whether the asymmetry is visible to anyone outside the agency, whether it is weighed against the duty to follow Oklahoma statute, and who would know if it were not.

OKLAHOMA IS NOT ALONE IN ASKING

On June 18, 2026 the Government Accountability Office published National Association of Insurance Commissioners: Role with State Insurance Regulators and IRS Reporting Requirements. GAO found that since 1955 the NAIC has been excepted from filing Form 990, the annual information return most tax-exempt organizations file; according to NAIC documents, the IRS granted the exception on a determination that the NAIC is a wholly-owned instrumentality of the states, and reaffirmed it in 1999 when the NAIC reorganized and reapplied.[37]

GAO's findings cut both ways, and we report both directions. It found that the NAIC's publicly available documents include governance and financial information generally comparable to what Form 990 collects — revenues and expenses in its annual budget and audited financial statements, activities and membership structure in its annual reports and bylaws. It also found the public information less granular in specific places: the NAIC's conflict-of-interest policy describes disclosure requirements for members but not for key employees such as its chief executive officer, the NAIC did not publicly report compensation for key employees, and certain Form 990 items, including information related to fundraising and lobbying, were not in the public materials.[38]

A word on how accreditation is decided, because precision helps here. The Financial Regulation Standards and Accreditation (F) Committee holds open sessions on the development and revision of accreditation standards. Review of an individual state's accreditation is conducted in regulator-to-regulator session. It is the second category that matters for this record, and it is the second category we mean throughout.[39]

One state has addressed this by statute, and did so twenty-eight years ago. Michigan's 1998 Public Act 279 requires the NAIC to file an annual report with the state's insurance regulator and with the House and Senate standing committees on insurance issues. The fiscal report must disclose expenditures by major program, an audit opinion, the salaries and other compensation of the association's officers, the compensation of the five highest-paid professional and managerial employees, and the salary range of the rest. The report must also list each proposed or required NAIC standard — by name and version — that a state must enact, adopt or follow to receive or keep accredited status, with an explanation of how each standard benefits the public interest and why a less restrictive alternative would not accomplish the same end. A companion section directs the commissioner, in deciding whether to authorize payment of NAIC fees, to consider among other factors whether NAIC proceedings and decision making are open and publicly accessible.[40]

SPPI has identified no other state with comparable statutory provisions. We state that as the result of our own review rather than as a settled fact, and we would welcome correction. SPPI has published model legislation, free to adopt, that would put Oklahoma alongside Michigan.[41]

SOLVENCY

A brief that stopped at the last section would be a brief about a regulator. The record does not permit that, and a hearing will not permit it either.

But the solvency question has to be handled precisely, because five different things are routinely collapsed into one — and only one of them is a court finding.

WHAT THE COMPANY REPORTED

Universal's 2023 annual statement carried two tax bonds at $10 million and reported surplus as regards policyholders of $5,302,839. Its 2024 statement reported surplus of $4,954,993 and carried $7,410,070 as "shareholder assessments receivable." Reported net income was negative in each of the five years 2020 through 2024, totaling roughly $20.9 million in losses, and the Schedule P in the 2024 statement showed a loss-and-expense percentage of 192.0 for 2023 — losses and expenses running nearly twice earned premium.[42]

WHAT THE COMPANY'S OWN OFFICER ACKNOWLEDGED

Under examination in May 2025, Christopher Khan — Universal's corporate secretary and compliance officer, and the officer who signs the annual statements — testified to the following.[43]

AS REPORTED	AS BOOKED	WHAT THE SIGNING OFFICER TESTIFIED
Tax bonds carried on the 2023 annual statement	$10,000,000	The company's retained CPA valued three bonds with $15.5 million combined par value at $3.1 million. Never marketed, never sold. Owned by the chief executive personally and by an affiliated agency, not by Universal.
Effect of correcting that valuation on 2023 surplus	−$6,900,000	Agreed on the stand after a series of qualified answers. Asked whether he would consider that insolvent, the officer answered yes.
"Shareholder assessments receivable," 2024 annual statement	$7,410,070	Approved by board resolution March 11, 2024; a second assessment brought the 2024 total to $11.8 million. Never billed. The officer testified the company had never collected on a policyholder assessment.
Line item on the preliminary November 2024 balance sheet furnished to the assistant receiver	≈$29,000,000	The officer testified the figure is inaccurate and that the line probably should be zero, while declining to commit.

First, this was direct examination by *the State*. It is the Department's case, put to a company officer who agreed with it, not a neutral accounting. Second, the transcript available to SPPI is Volume I of three; the cross-examination, and the testimony of the Department's own witnesses and experts, are in volumes SPPI has not reviewed.

WHAT THE DEPARTMENT ALLEGED, AND WHAT ITS EXAMINER CONCLUDED

The Department's position from October 2023 forward was that Universal failed risk-based capital requirements and was in hazardous financial condition. On June 30, 2026 the contract examiner engaged by the Department filed a targeted examination report which, in the words of the Commissioner's counsel in open court, "does find them insolvent."[44]

SPPI has not reviewed that report. Universal has not conceded it. Its counsel told the court the examination is not concluded until Universal's response is filed and the Commissioner acts: under 36 O.S. § 309.4, Universal had twenty days to respond, after which the Commissioner decides whether to accept, reject or modify the report, or seek further information.[45] SPPI has not been able to determine what the Commissioner decided.

WHAT THE COURT ACTUALLY FOUND

On solvency, one sentence:

> "This Court finds that it is unclear whether, under GAAP principles, Universal is solvent. As a result, Universal should remain under supervision of the Commissioner …"
>
> *Order ¶ 18 (July 8, 2025)*

That is the whole of it. The court did not find Universal solvent. It did not find Universal insolvent. It did not adopt or reject any valuation of the bonds or the assessments. It found that it could not tell, and kept the company under supervision for that reason.

WHAT REMAINS UNRESOLVED

Whether the bonds are worth $10 million or $3.1 million. Whether an approved but uninvoiced assessment is an asset. Whether Universal, measured on the standard the court held applies, can pay its claims. None of these was resolved by the court, and no adjudicated determination of them appears anywhere in the public record located by SPPI.

The vocabulary for this kind of question is not new to insurance regulation. In 2013 the New York Department of Financial Services investigated all eighty life insurers based in the state and found that seventeen had used some form of parental guarantee to support collateral in reinsurance transactions totaling more than $48 billion. The report named the categories it found troubling. A "hollow asset" is one where an insurer counts an undrawn letter of credit as an asset rather than a real asset it actually holds, such as cash or a bond. In a "naked parental guarantee," a captive subsidiary obtains no letter of credit at all and simply promises that its parent would cover potential losses, "without identifying any specific, dedicated resources to pay for them."[46]

Those transactions were a different structure in a different line of business, and SPPI draws no equivalence between them and Universal's filings. The relevant point is narrower and older than this case: regulators have long distinguished between an asset a company holds and a promise it has been given. Here that distinction was never resolved.

THE ASYMMETRY

It is tempting to say that the capital was paper in the same way the rule was paper. The record does not support that, and this brief does not claim it. The rule was adjudicated: a court read two statutes and held that the Department had applied the wrong one for seven years. The court did not adjudicate the underlying capital question.

That asymmetry is the finding. Oklahoma built an apparatus to answer one question — can this company pay its claims? — and that apparatus ran from October 2023 to August 2026, through a supervision order, a suspension order, an injunction and an interim assistant receivership, four administrative hearings, two Oklahoma County District Court actions and two related federal dockets. On the company's account it held between $8 and $9 million of Universal's assets for roughly ten months, and the company lost about 92 percent of its shareholder members because it could not write policies.[47] It produced a definitive answer on which accounting standard applies and no final adjudicated answer on solvency.

That is the failure worth putting before a committee. Not that the Department was too aggressive or not aggressive enough, but that after nearly three years of proceedings nobody can say whether the policyholders this system exists to protect are protected.

LEGITIMACY

Our position is not that the Department was wrong about everything, or that Universal should have been left alone. Several of the Department's arguments are serious, are within its statutory remit, and deserve to be stated as its counsel stated them.

The Risk Retention Act claims priority on its face. Section 6454(A)(2) opens with "notwithstanding any other provision of law." Section 6454(A)(1) subjects a domestic risk retention group to the laws applicable to liability insurers chartered in the state, except as the Risk Retention Act provides otherwise. On that reading, a multi-state carrier selling automobile liability coverage to third parties is subject to risk-based capital and the Holding Company System Act regardless of the label on its second certificate.[48] The court rejected the accounting conclusion the Department drew. It did not hold the premise absurd, and the statutory text gave the Department something real to stand on.

Examinations are statutory, not discretionary. Section 6470.13(A) directs an examination every five years, conducted under 36 O.S. §§ 309.1 through 309.7. The Department's position was that the statute permits enlarging the scope of the examination period, not postponing its start, and that nothing in the insurance code suspends an examination because the company is in litigation with the Department.[49] Reasonable lawyers can disagree about that, and the court disagreed about the discretion question. But an examiner who lets a statutory deadline lapse is not exercising restraint; he is creating a different problem.

The production record was not clean. The Department's account is that the initial response deadline passed in April 2025 with no response, that an extension was negotiated to August 5, that documents arrived the weekend before the September hearing in a volume the chief financial examiner could not review in time, and that Information Request Number 1 was never completed.[50] Universal's answer — that it was 90 percent complete on that request, that the missing items were audited GAAP financials it could not generate itself, and that the audit had to come from an outside firm — is a good answer to part of that but not to all of it.[51]

The loss history invites hard questions. A regulator looking at five consecutive loss years, a Schedule P showing losses and expenses near twice earned premium, and an asset base that — on testimony the Department elicited from a company officer, and which SPPI has not independently verified — included bonds the company does not own and assessments it has never billed is not being officious by asking how the company intends to pay claims. That is the job.

A supervision order resting on any of these would be a supervisory decision. What this record does not contain is an adjudicated answer to the question those decisions were meant to resolve — and the reporting standard on which the earliest of them rested has been held to be the wrong one.

CONCLUSION

Oklahoma had two statutes. One told a captive to report under generally accepted accounting principles unless the Commissioner approved otherwise. One told a risk retention group, notwithstanding any other provision of law, to file in accordance with a manual published in Kansas City. Universal was both. The Department chose one reconciliation and applied it for seven years. In July 2025 a district judge chose the other.

That is an expensive way to answer a question the legislature could answer in a sentence. The expense was not the state's alone, and it was not principally the state's: it fell on a licensee whose assets were held, whose license was suspended twice, and whose membership largely left.

The narrow question this brief asks is not whether the NAIC is good or bad for insurance regulation. It is a more answerable one. When Oklahoma law incorporates a standard written by a private national association, and the statute doing the incorporating claims priority over other Oklahoma law, who decides what Oklahoma law requires — and how does anyone find out before it reaches a courtroom?

In this case the answer was: a judge, after three days of testimony and two years of litigation. That is a real answer. It is not a system.

The second question is harder and the record does not resolve it. An agency whose accreditation is reviewed in regulator-to-regulator session, and whose counsel says in open court that accreditation is on the line, is responding to an incentive the legislature has never examined and cannot currently see. We do not claim that incentive determined any decision here. We claim that a legislature which cannot see it has no way of knowing.

And the question the apparatus exists to answer is still open. A court said in July 2025 that it could not tell whether Universal is solvent. An examiner said in June 2026 that it is not. Nothing in the public record says how that was resolved. Nearly three years of supervision, suspension, injunction, receivership, four administrative hearings and four dockets produced a definitive answer about an accounting standard and no final answer about whether the policyholders are protected.

A rigorous solvency apparatus protects policyholders. A procedurally sound one protects everyone else too. Oklahoma is entitled to both, and it can have them by statute.

NOTES

1 Universal Casualty Risk Retention Group was reported at its formation as the first risk retention group domiciled in Oklahoma. “Inter and NYIADA form first RRG domiciled in Oklahoma,” *Captive International*, Jan. 15, 2018.

2 The proceedings counted here are two Oklahoma County District Court actions — No. CJ-2024-4147 (the Department’s receivership application) and No. CV-2026-245 (Universal’s petition for review) — and two federal dockets, an action filed by Universal and an affiliated agency in the Eastern District of New York and the removal and remand of the receivership action in the Western District of Oklahoma. The federal dockets are related to the state matters rather than independent controversies.

3 36 O.S. § 6470.11(A)–(B); Order ¶¶ 8–10. Subsection (A) provides that a captive “may not be required to make an annual report except as provided in the Oklahoma Captive Insurance Company Act.” Subsection (B) follows the widely adopted model text directing generally accepted accounting principles unless the Commissioner approves an alternative basis. Universal’s counsel described the section that way on the record, stating that GAAP is required unless the company applied for and received permission to use statutory or international accounting, and that no such permission was sought or given. Tr. 9.

4 36 O.S. § 6454(A)(2) (emphasis added). The section was added by Laws 1987, c. 157, § 4, and amended by Laws 2021, c. 314, § 2, eff. Nov. 1, 2021, and Laws 2022, c. 154, § 9, eff. Nov. 1, 2022.

5 Order ¶ 17, *State of Oklahoma ex rel. Glen Mulready, Insurance Commissioner v. Universal Casualty Risk Retention Group, Inc.*, No. CJ-2024-4147 (Okla. Cnty. Dist. Ct., filed July 8, 2025) (Ogden, J.) (hereinafter “Order”).

6 Order ¶ 13, quoting the *NAIC Accounting Practices and Procedures Manual*.

7 Order ¶ 11. The order’s quotation of § 6454(A)(2) begins at “file with the Insurance Department,” omitting the opening clause.

8 Court’s Ruling from the Hearing Had on the 13th Day of April, 2026, at 8, *Universal Casualty Risk Retention Group, Inc. v. State of Oklahoma ex rel. Glen Mulready*, No. CV-2026-245 (Okla. Cnty. Dist. Ct.) (Ogden, J.) (hereinafter “Apr. 13 Ruling”).

9 Transcript of Proceedings at 31–44, 57, 63, No. CV-2026-245 (Okla. Cnty. Dist. Ct. Aug. 3, 2026) (hereinafter “Tr.”). Counsel for the Commissioner argued the merits from Tr. 31 and moved to dismiss as moot at Tr. 44.

10 Tr. 60 (Coldiron).

11 Order ¶ 18; Tr. 44–45 (examination report “does find them insolvent”); Tr. 48, 58 (Universal’s position that the examination is not concluded until its response is filed and the Commissioner acts).

12 Liability Risk Retention Act of 1986, Pub. L. No. 99-563, codified at 15 U.S.C. §§ 3901–3906, amending the Product Liability Risk Retention Act of 1981. The Act defines a risk retention group as an entity chartered and licensed as a liability insurer under the law of a state, and preserves specified authority in nondomiciliary states, including registration, premium taxes, unfair claims settlement practices laws, and certain examination and hazardous-condition powers. See 15 U.S.C. §§ 3901(a)(4), 3902. Counsel referred to the Act at Tr. 14 by a different code citation; the correct codification is 15 U.S.C. §§ 3901–3906.

13 Universal Casualty Risk Retention Group, Inc., company website, accessed September 22, 2026 (headline figure of six states; “Who we are” naming California, Florida, Georgia, New Jersey, New York and Texas; “About” stating licensure “for writing liability insurance in seven states”; NAIC code 16286; quoting through Inter Insurance Agency, a New York-based managing general agency, in partnership with the New York Independent Automobile Dealers Association). Compare “Universal Casualty Risk Retention Group Proudly Sponsors RISE Professionals,” Mar. 20, 2026, and “Universal Casualty Risk Retention Group Accelerates National Growth Strategy,” May 23, 2026 (“licensed as a Risk Retention Group by the state of Oklahoma for writing liability insurance in all 50 states”; “operating nationwide”). The website also describes Universal as “federally chartered,” which is not correct as a matter of law; a risk retention group is chartered under state law. “Inter and NYIADA form first RRG domiciled in Oklahoma,” *Captive International*, Jan. 15, 2018 (initial footprint of four states).

14 Order ¶¶ 1–4.

15 Tr. 13 (April 2022 order and $61,500 fine; July 2023 hearing and $422,300 in fines, both contested by Universal as inapplicable to a captive risk retention group). The July 2023 assessment is also recited in the

Department's own public order: Oklahoma Insurance Department, Order of Suspension Instanter Due to Hazardous Financial Condition, No. 24-0189-DIS (Mar. 26, 2024), which likewise references the underlying supervision matter, No. 23-0535-SOL.

16 Order, preamble and ¶¶ 19–21; Tr. 14–15 (federal action filed in the Eastern District of New York; *ex parte* application and temporary restraining order).

17 Order ¶¶ 11–12 (the Commissioner's argument); Tr. 32–33 (Coldiron, describing Universal as a multistate insurer selling to third parties and therefore subject to risk-based capital and the Holding Company System Act).

18 36 O.S. § 6470.6(A)(5); Order ¶ 7.

19 Order ¶ 12; 36 O.S. § 6470.10(E)(3).

20 Order ¶¶ 5–6, citing *King v. State*, 1954 OK CR 47, 270 P.2d 370; *Ghoussoub v. Yammine*, 2022 OK 64, 518 P.3d 110; *Rogers v. Quiktrip Corp.*, 2010 OK 3, 230 P.3d 853.

21 Order ¶ 14.

22 Order ¶¶ 15–21 and decretal paragraphs.

23 Order ¶ 21.

24 Tr. 16–17 (July 15 and July 21 contacts; July 23 written request under 36 O.S. § 6470.13; July 25 denial relayed with "no substantive analysis"). The statute permits the Commissioner, on application and in his discretion, to enlarge the five-year period to seven. Apr. 13 Ruling at 7.

25 Apr. 13 Ruling at 7.

26 Tr. 18 (second information request Aug. 6, 2025; notice of hearing sixteen days later, Aug. 22, 2025); Tr. 41 (Coldiron, describing appearances at the September, October, November and December hearings); Tr. 56 (Coldiron, "the cost of the Hearing Examiner to hold four hearings, two of which were all-day hearings").

27 Tr. 23–24 (January 14, 2026 administrative order; suspension effective February 1; $1,950 in costs, at administrative record page 1660; payment made); Tr. 56 (Department's position that the assessment was costs rather than fines; Universal's request for return).

28 36 O.S. § 309.3(B); Tr. 21 (hearing examiner rejected the contention that Universal refused to participate); Tr. 35 (Coldiron: the examiner "did not find that Universal failed to produce records. He found that Universal failed to timely and in a convenient manner produce them").

29 Apr. 13 Ruling at 8, discussing 36 O.S. § 309.3(B) and 36 O.S. § 619.

30 Apr. 13 Ruling at 8–9.

31 Apr. 13 Ruling at 7.

32 Tr. 45 (Universal's account of a Thursday contact), 50 (Coldiron: brief filed May 29, reply June 8, examination report June 30, "I hadn't thought about it … This is my fault"). August 3, 2026 was a Monday; the preceding Thursday was July 30, four days earlier and thirty-four days after June 30.

33 Tr. 46–57 (mootness argument and recess), 57 (stipulation read into the record: delivery of the targeted financial examination report on June 30, 2026 "rendered the January 14th, 2026, administrative order suspending Petitioner's risk retention group license stricken, and therefore this appeal is moot as of June 30th, 2026"), 63 ("the Court accepts the stipulation and finds that these proceedings are in fact now moot"), 65 (stipulation marked as Court's Exhibit No. 1).

34 75 O.S. § 318(D)(2); Tr. 50, 55, 63.

35 Justice Antonin Scalia, testimony before the Senate Committee on the Judiciary, "Considering the Role of Judges Under the Constitution of the United States," Oct. 5, 2011, as printed in S. Doc. No. 114-12, Foreword.

36 Tr. 22, 25 (Universal's reading of NAIC guidance that a financial examination is not conducted while a company is under supervision, particularly court-ordered supervision, subject to extenuating circumstances); Tr. 41 (Department's response that no provision of the insurance code suspends an examination during litigation).

37 U.S. Government Accountability Office, *National Association of Insurance Commissioners: Role with State Insurance Regulators and IRS Reporting Requirements*, GAO-26-107956 (June 18, 2026), Highlights.

38 GAO-26-107956, Highlights (public documents "generally comparable" to Form 990 content; conflict-of-interest policy describes disclosure requirements for members but not for key employees such as the chief executive officer; compensation for key employees not publicly reported; fundraising and

lobbying information not included).

39 NAIC, "Accreditation," content.naic.org (describing the Financial Regulation Standards and Accreditation (F) Committee). The committee holds open sessions on the development and revision of accreditation standards; review of an individual state's accreditation is conducted in regulator-to-regulator session. Our point concerns the latter.

40 Mich. Comp. Laws §§ 500.476–500.479, added by 1998 Pub. Act 279. Section 500.478 prescribes the contents of the annual report and fiscal report, including officer compensation, the five highest professional and managerial salaries, the salary range of other professional and managerial employees, and a list of each proposed or required NAIC standard, by name and version, needed to receive or continue accredited status. Section 500.479(2)(g) directs consideration of whether NAIC proceedings and decision making are open and publicly accessible.

41 Southwest Public Policy Institute, *Model Legislation: NAIC Transparency and Accountability Act*, Aug. 28, 2026. See also Patrick M. Brenner, "How Did a Nonprofit Become America's Insurance Regulator?" *Wall Street Journal*, Aug. 28, 2026.

42 Universal Casualty Risk Retention Group, Inc., annual statements for 2023 and 2024, including Schedule P.

43 Transcript of Proceedings, May 6, 2025 (Vol. I of III), No. CJ-2024-4147 (Okla. Cnty. Dist. Ct.), Tr. 109–123 (tax bonds), 146–158 (shareholder assessments), 131–138 (November 2024 balance sheet).

44 Tr. 43–45 (Aug. 3, 2026). The report was prepared by Rick Buchwald of Examination Resources, the firm engaged by the Department to conduct the examination, and filed with the financial division on June 30, 2026; a modified report was subsequently reissued to correct a scrivener's error.

45 36 O.S. § 309.4; Tr. 48, 58.

46 New York State Department of Financial Services, *Shining a Light on Shadow Insurance: A Little-known Loophole That Puts Insurance Policyholders and Taxpayers at Greater Risk* (June 2013), at 3–5.

47 Tr. 16 (assets marshaled under the interim receivership), 26 (loss of approximately 92 percent of shareholder members, attributed to testimony in the administrative proceeding). Both figures are Universal's account. The injunction ran from June 28, 2024 to May 8, 2025.

48 36 O.S. § 6454(A)(1); Tr. 32–33.

49 36 O.S. § 6470.13(A); 36 O.S. §§ 309.1–309.7; Tr. 37–39, 41.

50 Tr. 34–35, 42 (Coldiron: initial response deadline of April 21, 2025 passed without response; extension negotiated to August 5; document production the weekend before the September hearing; Information Request Number 1 never fully completed).

51 Tr. 22 (examiner Buchwald's testimony that Universal was 90 percent complete on Information Request Number 1), 29 (Universal's position that it cannot generate its own audit opinion), 42 (Coldiron, describing the missing items as amended financial statements and supporting audit opinions).


H.R.500
IN THE HOUSE OF REPRESENTATIVES
A BILL
To amend the Internal Revenue Code of 1986 to increase the manufacturer limitation on the number of new quali-fied plug-in electric drive motor vehicles eligible for cred-it.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembl
A BILL
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.
This section may be cited as the "Floodplain Maps
Moratorium Act".