ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION
(602) 542-4242
(602) 255-2600
FAX: (602) 255-2617

March 4, 1992

John E. McPherson, Esq.
Barger & Wolen
530 West Sixth Street, Ninth Floor
Los Angeles, CA 90014

RE: California Rental Benefits Corporation
S-00061-NOAC
A.R.S. § 44-1801(22)

Dear Mr. McPherson:

On the basis of the facts set forth in your letter of February 20, 1992, and John L. Ingersoll's letter of December 17, 1991, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. As the interests do not constitute "securities" for purposes of the registration requirements of the Arizona Securities Act (the "Act"), the anti-fraud provisions of the Act would not be applicable. To the extent that the transaction does not take place as set forth in your letter, or a material change in circumstances causes these interests to be deemed "securities" for purposes of the Act, then such anti-fraud provisions would be applicable ab initio.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS
Director of Securities

DRH:JB

Attachment

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SHARON B. DONZIS
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HUGH J. CADDEN
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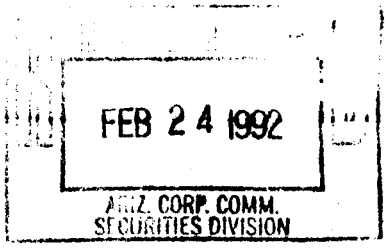
February 20, 1992

PLEASE REFER TO
OUR FILE NUMBER

08078-01



CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Attn: Jean Barry
Counsel

Re: California Rental Benefits Corporation
S-00061-NOAC

Dear Ms. Barry:

With respect to the above-referenced filing, I will respond to the issues raised in your letter to John L. Ingersoll dated January 23, 1992.[1]

1. There are no differences between the company's current offering of certificates and the 1987 offering.

2. The company anticipates that it will sell 25 certificates during the first year of the offering. The company further projects that it will sell a total of 50 certificates during the course of the offering.

3. Members are required to make a capital contribution in a face amount which is equal to 17% of the annual insurance premium charged to the member. It is estimated that the average annual premium will be $20,000; as such, the average certificate will be in the face amount of $3400.

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[1] Please note that all future correspondence on this matter should be sent to the undersigned, John E. McPherson.

It should be noted, however, that while the face amounts of the certificates will differ as a reflection of differences in the amount of the annual premium paid by members, the price paid by each member will still be calculated at 100 cents on the dollar.

4. The membership of the California Rental Association is composed of equipment rental businesses. The CRA has in depth, first-hand knowledge of the special risks faced and liabilities incurred by such businesses. In addition, the association knows the insurance needs of the rental equipment industry, and has closely studied and compared the rates charged by insurers of rental equipment businesses. Unlike traditional insurers, the association is better able to tailor its insurance program to the individual needs of its members and can better anticipate the future needs of those members.

5. All licenses currently required have been obtained from the Arizona Department of Insurance. The insurance is being underwritten by Industrial Indemnity Insurance Company, which company has been issued a Certificate of Authority from the Arizona Department of Insurance. Insurance is sold through a currently licensed non-resident broker, James C. Jenkins Insurance Services.

Finally, as you are aware, a portion of the coverage underwritten by Industrial Indemnity is being reinsured by California Rental Reinsurance Company, a Bermuda insurance company ("CRRC"). CRRC conducts all of its business operations in or from Bermuda and provides only reinsurance in the United States. As such, pursuant to Arizona insurance laws, CRRC is not required to be licensed by the Arizona Department of Insurance in order to provide reinsurance of Arizona risks.

If you have any additional questions about this filing, please do not hesitate to contact me at your earliest convenience.

Very truly yours,

JOHN E. MCPHERSON
For the Firm

JEM:vgv
cc: Debbie Byrne

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OF COUNSEL
ALLAN R. MOLTZEN
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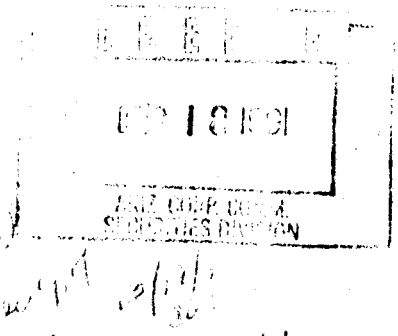
EDWARD LEVY

December 17, 1991

PLEASE REFER TO
OUR FILE NUMBER
8078-01

VIA FEDERAL EXPRESS

Ms. Sandra Forbes
Arizona Corporations Commission
1200 W. Washington
Phoenix, Arizona 85007



Re: Section 44-1801(22) of A.R.S.

Dear Ms. Forbes:

We represent the California Rental Benefits Corporation, a California domiciled mutual benefit corporation formed pursuant to the California Nonprofit Corporations Law.[1] The Corporation is a membership company with membership open only to members of the California Rental Association ("CRA"), which is also a nonprofit mutual benefit corporation. The members of CRA are companies or individuals engaged in the equipment rental business in Arizona, California, and other states.

Based upon the factual description and legal analysis set forth below, we request a letter indicating that the Securities Division of the Arizona Corporations Commission ("Commission") has concluded that membership interests in the Corporation do not constitute a security under the Section 44-1801(22) of the Arizona Revised Statutes, as amended ("A.R.S.").[2]

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[1] Set forth at §§ 7110, et seq. of the California Corporations Code.

[2] In a previous offering, the Office of the Chief Counsel of the Division of Corporate Finance of the Securities and Exchange Commission issued a no-action letter with respect to the Certificates described herein. For your convenience, we are including with this letter our previous letters to the SEC and their subsequent no-action letter.

FACTS

As illustrated in Exhibit "A", the Corporation is the holding company of California Rental Reinsurance Company, a Bermuda insurance company organized and wholly-owned by the Corporation. The purpose of the Corporation was to establish a liability insurance program for members of the CRA, which insurance is currently offered through CRRC. In conjunction with the operation of the liability insurance program, the Corporation expects to issue Non-Interest-Bearing Certificates of Contribution ("Certificates") to CRA members domiciled or residing in Arizona. The Certificates do not represent an ownership interest in the Corporation. Instead, the Certificates merely represent a member's capital contribution to the Corporation, which contribution is contingently repayable without interest.

Purchase of a Certificate is a requirement of membership in the Corporation. Fees for membership will be composed of two components: (1) the nonrecurring capital contribution, which is evidenced by the Certificate; and (2) annual dues of a nominal amount. Membership interests are nontransferable, non-bearing, and only enable the member to become eligible to participate in a liability insurance program capitalized through the Corporation.

Moreover, as permitted by statute, the member will not be entitled to receive any distribution or profits from the Corporation. California Corporations Code Section 7414. The Bylaws will provide that in the event of a dissolution of the Corporation, any surplus or appreciation will be distributed to the CRA as opposed to the members. Each member will be entitled the one vote pursuant to the Bylaws of the Corporation. If a member terminates his or her membership in the Corporation such terminated member will be entitled to repayment of his or her nonrecurring capital contribution without interest or gain, contingent only upon adequate surplus in the Corporation for such repayment.

Profits of CRRC, the Bermuda insurance company, are used to increase the capacity of the insurance company or to decrease the rates of insurance policies. The insurance company does not contemplate that profits will be paid to its parent (the Corporation) during operations. In the event of liquidation or dissolution of the Bermuda insurance company, any profit or gain will be distributed to the parent company. The Bylaws of the Corporation further provide that any surplus or appreciation must be distributed to the CRA as opposed to the members of the Corporation. The CRA would use any such profits for any lawful

purpose set forth in the Association's Bylaws. The CRA Bylaws provide that the purpose for which the CRA is organized is to promote the development, preservation, operation, maintenance, and general welfare of the rental industry.

The nonrecurring capital contribution of the membership interests will be used by the Corporation to further capitalize CRRC. The nominal dues will be used to defray operating costs of the Corporation. No profits or appreciation of the insurance company will inure to the benefit of members of the Corporation.

DISCUSSION

We do not believe that the membership interests to be offered by the Corporation would constitute a "security" as defined in Section 44-1801(22) of the A.R.S., as amended, and thus it is our opinion that the sale of such membership interests is not subject to the registration requirements of Section 44-1841 of the A.R.S.

Section 44-1801(22) of the A.R.S. defines "security" as follows:

> "'Security' means any note, stock, treasury stock, bond, commodity investment contract, commodity option, debenture, evidence of indebtedness, certificate of interest or participation in any profit sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferrable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, real property investment contract or, in general, any interest or instrument commonly known as a 'security'; or any certificate of interest or participation in temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing."

Since membership interests in a non-profit mutual benefit corporation are not enumerated as traditional class of security in Section 44-1801(22), our analysis must center around the question of whether such membership interests constitute "investment contracts," a term listed in the definition of

"security" in Section 44-1801(22), and which has come to be interpreted as the general or catch-all classification of interests or instruments which in substance, if not inform, are intended to be included within the definition of the term "security" and, thus, subject to regulation.

The United States Supreme Court first construed the term "security," as defined in the 1933 Act, in SEC V. C.M. Joiner Leasing Corp., 320 U.S. 344 (1943). In Joiner, the Court interpreted the broad definition of "security" in light of the evils that Congress intended the 1933 Act to eliminate. The Court indicated that the substance of a transaction controls, and not the particular form or name of the specific investment instrument involved in any particular case. In order to establish the speculative character of the transaction, the Court analyzed the terms of the seller's offer, the manner in which the contracts were distributed, and the economic inducements held out to prospective buyers.

Under the general approach laid out in Joiner, the Supreme Court first enunciated the judicial definition of "investment contract" in SEC v. W.J. Howey Co., 328 U.S. 293 (1946). Under the Howey, test, a transaction constitutes an investment contract when it involves "an investment of money in a common enterprise with profits to come solely from the efforts of others." 328 U.S. at 299.

Although the Supreme Court in Howey defined only an investment contract, it subsequently stated that the Howey economic realties test "embodies the essential attributes that run through all of the Court's decisions defining a security." United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 852 (1975).

The definition of "security" in Section 44-1801(22) of the A.R.S. is "patterned after, and is virtually identical to the federal statutory definition found at 15 U.S.C. § 77b." Daggett v. Jackie Fine Arts, 152 Ariz. 559 (Ct. App. Ariz. 1986). Because the state and federal definitions of the term "security" are virtually identical, Arizona courts look to federal interpretations of securities laws for guidance. Id. "Indeed, the test adopted by Arizona courts to determine whether a given transaction is an investment contract is the test established in S.E.C. v. W.J. Howey Co., 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244 (1946), defining investment contract pursuant to the federal statute." Jackie Fine Arts, supra. Since Arizona courts apply the same test as that set forth by the U.S. Supreme Court in

Howey, we will discuss the applicability of Howey to the Certificates.

The Howey test focuses on the economic realities of the transaction and defines an investment contract as a transaction where (1) an individual is led to invest money, (2) in a common enterprise, (3) with the expectation that he will earn a profit solely through the efforts of others. In applying the foregoing Howey test to the facts as stated above, we conclude that the membership interests do not constitute an investment contract under the Howey test.

The first element of the Howey test requires an "investment" of money. The membership fees and the capital contribution to be paid by members of the Corporation do not in any way represent an "investment." The membership interests are non-interest-bearing and nontransferable. Thus, the membership interests to not contain any investment attributes.

The second element of the Howey test is the requirement that investors have "an expectation of profits to come from the efforts of others." The capital contributions and membership dues to be paid by members of the Corporation do not include any expectation of profit.

The membership interests in the Corporation bear none of the profit-making attributes traditionally associated with securities. As stated above, the membership interests are absolutely nontransferable. In addition, although the membership interests may effectively be "redeemed" by a member who terminates its membership, or in the event of the dissolution of the Corporation, the Corporation will only repay to members the total capital contributions made the Corporation, without interest, gain, or profit, to the extent adequate surplus exists in the Corporation.

The Howey test does not provide the only method for evaluating each and every instrument created. The Supreme Court has also based some of its decision on the more general criteria of whether an instrument's "general character" in commerce places it within the ordinary concept of a security in light of Congress' stated interest. See Marine Bank v. Weaver, 455 U.S. 551 (1982).

In Marine Bank, the Court analyzed the "general character in commerce" of an instrument as it had first done in SEC v. C.M. Joiner Leasing Corp., 320 U.S. 344, 352-353 (1943) by addressing "the terms of the offer, the plan of distribution, and

the economic inducement held out to the prospect." In our case, the terms of the offer and the inducements held out to the purchaser are not those associated with securities. There is no interest feature nor are the membership interests freely transferable. In contrast, the fees for the membership interests will be comprised primarily of a capital contribution for the purpose of providing further capital to the Bermuda insurer.

An SEC No Action letter entitled Home Mortgage Access Holding Corp. (public availability date 7-25-84), CCH ¶ 77,652 (SEC Dec. 1984), addresses the investment criterion and the expectation of profits criterion in connection with the purchase of membership interests pursuant to the Howey test. In Home Mortgage, a holding company formed as a membership corporation issued nontransferable memberships requiring enrollment and annual renewal fees. In the event of voluntary terminations, members were entitled to a refund of total capital contributions, without interest or gain. The Commission staff stated it would not recommend enforcement action to the Commission in connection with the offering of membership interests and mortgage participations without registration on the theory that such memberships did not constitute securities. This letter further supports our view that the membership interests contemplated to be sold by the Corporation do not constitute securities within the meaning of Section 2(1) of the 1933 Act. As in Home Mortgage, the membership interest will be nontransferable and a member will only be entitled to receive his capital contribution, without interest or gain, in the event of termination of membership, to the extent adequate surplus exists in the Corporation.

An SEC No Action letter entitled California Society of Certified Public Accountants (public availability date 3-24-86) addresses an identical set of facts to those presented in this request. In such letter, the Commission staff stated that it would not recommend enforcement action to the Commission in connection with the offering of membership interests without registration based upon the fact that the members of the non-profit corporation would have no right to receive interest or dividends, the membership interests would bear no interest and would not be transferred, and upon dissolution or liquidation, any profits or appreciation of the insurance company would not be distributed to the holders of membership interests. As in California Society of Certified Public Accountants, the membership interests will not bear interest and will not be transferable. Moreover, the members of the Corporation will have no right to receive interest or dividends, and any profits of the insurance

company will not be distributed to holders of membership interests. Consequently, this letter supports our request for a no action position from the staff of the Commission.

CONCLUSION

A review of relevant authority supports our position that the membership interests to be offered by the Corporation do not constitute securities under Section 44-1801(22) of the A.R.S., and should not be subject to registration requirement of Section 44-1841 of the A.R.S.

We have enclosed with this letter a check in the amount of $200.00, made payable to the Arizona Corporations Commission. As established by Section 44-1861(L) of the A.R.S., this is the appropriate fee fro a no-action request.

If you have any questions regarding this request, or if you require any additional information, please call the undersigned at (213) 680-2800.

Very truly yours,

JOHN L. INGERSOLL
For the Firm

JLI:dmr

Enclosures: (1) $200.00 check
(2) Exhibit A
(3) Previous SEC correspondence

cc: S. Stuart Soldate