captive insurance times

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CIC Services and Ryan lose battle against IRS

Captive manager CIC Services and Texas-based tax firm Ryan have lost their battle with the Internal Revenue Service (IRS) after a Tennessee judge dismissed their case.

In the ruling, handed down at the US District Court for the Eastern District of Tennessee, Judge Travis McDonough granted the IRS's motion to dismiss. He explained that a ruling in CIC and Ryan's favour would "restrain the IRS's assessment or collection of taxes".

In a statement, CIC Services said: "While the decision is not surprising in light of the court's previous denial of our request for an injunction, it is still disappointing."

CIC and Ryan's requested injunction operates "as a challenge to both the reporting requirement and the penalty or tax imposed for failure to comply with the reporting requirement".

Sean King, principal at CIC Services, called the decision "especially disappointing" in light of a recent ruling by the United States District Court for the Western District of Texas in the Chamber of Commerce v IRS case, which went the opposite way.

King said: "Addressing the identical issue present in our case and using the same legal reasoning articulated in our briefs, the court concluded that the Chamber of Commerce's lawsuit was not barred by the Anti-Injunction Act."

He explained that two different judges have examined the identical issue and come to "contradictory conclusions".

King said: "Unfortunately, we were on the losing side of one of those opinions. We are considering our options."

In their initial complaint, CIC and Ryan had accused the IRS of unfairly labelling them as tax avoiders in Notice 2016-66 on captive insurance companies.

They requested for an injunction to delay the IRS's Notice 2016-66 for micro captives.

The IRS's notice expressed concern that micro-captive transactions had the potential for tax avoidance or evasion.

It had demanded "persons entering into these transactions on or after 2 November 2006 must disclose the transaction to the IRS".

The notice also forced taxpayers and material advisors "to file a disclosure statement regarding these transactions prior to 30 January 2017, and that persons who fail to make required disclosures 'may be subject to . . . penalty'".

CIC and Ryan said that the notice constitutes a "legislative-type rule" that "fails to comply with mandatory notice-and-comment requirements under the Administrative Procedures Act", and requested a preliminary injunction that would stop the IRS from enforcing the notice's requirements. However, in April, the court denied CIC and Ryan's request for an injunction.

In August, the US Tax Court backed the IRS in a dispute with Benyamin and Orna Avrahami over their micro captive, Feedback.

Judge Mark Holmes ruled that payments made to the Avrahamis by their micro captive fell outside of the scope of certain tax elections. Holmes said that the pooling entity was not a bona fide insurance company and that the captive did not operate like an insurance company because it issued policies with unclear and contradictory terms, as well as charging unreasonable premiums.

In recent years, the IRS has increased its scrutiny and audits of micro captives in the belief that small businesses are using them to insure against improbable risks that they never pay claims on, and that the surplus returns to the business owners or heirs with little to no tax.

Allianz Global Corporate & Specialty explores blockchain for captives

Allianz Global Corporate & Specialty (AGCS) has implemented a blockchain prototype for a global captive insurance programme, intended to improve the efficiency of international corporate insurance transactions.

The prototype is intended to show how transactions can be accelerated and simplified, including cash transfers between countries, through a convenient user interface and information tracking.

The AGCS Allianz Risk Transfer (ART) business paired up with EY and digital agency Ginetta to create the solution for a long-standing, but as yet un-named, global client.

In addition, ART has partnered with Citi Treasury and Trade Solutions, which will provide the payment processing services for the prototype.

The prototype uses blockchain technology to automatically connect all parties involved in the captive insurance programme, creating a distributed ledger of record transactions and data entries, and sharing any changes across users in real time.

Distributed ledger technology allows for more transparency, efficiency and security when sharing information, and in business processing and transaction reporting. It also makes for improved reliability and auditability.

Built on the Hyperledger Fabric 1.0 blockchain framework, the prototype focuses on professional indemnity and property insurance policies, and in particular addresses annual policy renewals, premium payments and claims submission and settlement.

Yann Krattiger, principal at ART, said: “Our captive insurance blockchain prototype demonstrates that regular transactions and cash transfer between fronting insurers and clients can be significantly accelerated and simplified.”

He added: “Automated processing replaces the exchange of thousands of emails and massive data files.”

EY project manager Isabella Brom commented: “The captive insurance blockchain prototype is a prime example of EY’s approach on co-innovating with our clients. It allowed us to demonstrate and trial the power of distribution and decentralisation in the transformation of the insurance industry, using the Hyperledger Fabric Composer toolset to achieve fast and flexible prototype results.”

“The project deepened our and our client’s understanding of how applied blockchain technology will not only fundamentally change insurance as we know it but also create new business models.”

This is not Allianz’s first foray into blockchain technology. In June last year, ART successfully tested the use of blockchain technology in transacting a natural catastrophe swap.

Sun Life and Pareto team up on group captive solution

Sun Life has partnered with Pareto Captive Services to establish a new stop-loss group captive solution, Legend Re.

The new captive has been set up to reduce claims volatility for small and medium self-funded employers, or fully insured employers transitioning to self-funding.

Legend Re will be available for 1 January 2018 policy-effective dates.

Pareto is currently working with over 70 potential member clients interested in joining the Legend Re captive.

Karin James, assistant vice president of stop-loss business development at Sun Life, suggested that Pareto brokers have also expressed great interest and enthusiasm in Legend Re.

Research conducted by Sun Life showed that four out of 10 fully-insured employers would consider switching to self-funding and, of those, 70 percent would consider using a captive solution when switching.

According to James, the objective of these market research initiatives was to attempt to size the market opportunity around fully-insured conversions, along with getting a true understanding of drivers and barriers to converting, allowing us to better serve broker and employer clients by delivering meaningful solutions.

The research revealed that by 2020, there is the potential for 35,000 new self-funded employers.

James said: “As you can imagine, a key driver for self funding is cost savings, while the key barriers include the ‘unknown’ around claims volatility and financial risk.”

The research also found that around eight of 10 brokers expect at least one of their clients to utilise a captive in the future.

Legend Re will provide its company members access to Pareto’s formation and management of the captive programme expertise, along with Sun Life’s stop-loss product and services as the fronting stop-loss carrier.

James explained that a group stop-loss captive provides a mechanism for employers who are looking to self-fund, but are concerned with the potential financial impact due to claims volatility.

She said: “With a group stop-loss captive, an employer can band together with other like-minded employers to pool or share a layer of their self-funded risk, thus reducing volatility and overall cost. The employer members of a group stop-loss captive tend to focus on access to data to implement health programmes to improve overall experience of the shared risk layer.”

Andrew Cavenagh, managing director of Pareto Captive, added: “Working with Sun Life as our stop-loss fronting carrier partner on this new programme brings added value to both organisations’ services.”

“Captives make self-funding more accessible for small and medium-sized employers, so it is important to offer a strong stop-loss option that will give those employers the risk protection they need once they’ve chosen to self-fund.”

Captives in Paradise Papers furore

The captive insurance industry has, for the first time, been implicated in the so-called Paradise Papers.

Micky Arison, chair of cruise ship operator Carnival Corporation and managing general partner of basketball team Miami HEAT, was identified in one of the leaked documents as a director of Bermuda-based captive insurer Trident Insurance Company.

Arison has come under fire, with sceptics suggesting that Carnival is using the captive as a means to lower its tax bill.

The Bermuda Business Development Agency (BDA) has since released a video in response to the Paradise Papers, saying: "Bermuda is a world leader in global compliance and tax transparency, in fact, Bermuda actively participates in over 100 international treaty partnerships promoting information sharing."

It went on: "Bermuda is no place to hide money. We strictly enforce rules to report financial information and share this with global tax authorities."

The video then reinforced that the domicile is "transparent, cooperative [and] compliant".

In 2015, Trident was inducted into Bermuda's Captive Hall of Fame.

The Paradise Papers are a set of documents originally leaked to a German newspaper, which detail confidential information about wealthy individuals and companies allegedly using legal loopholes to move assets to offshore domiciles.

Although the majority of the schemes are legal, high-profile public figures and brands including the British royal family, Apple and Formula 1 driver Lewis Hamilton have since been accused of tax avoidance.

Some of the domiciles in question are prominent captive insurance hubs.

Carnival has responded to a request for comment. The BDA has also not responded regarding the captive industry specifically.

Eurobase's synergy2 to support Sigurd's captive operations

Sigurd Rück AG (Sigurd), the captive of Saipem domiciled in Switzerland, has selected Eurobase Insurance Solutions's synergy2 to support its captive operations.

Sigurd selected to partner with Eurobase in October this year.

Synergy2 is a web-based solution that manages the full life cycle of a company's insurance operations.

The Synergy2 platform provides client management, underwriting, claims, accounting and reporting.

Joe Locke, CEO of Eurobase Insurance Solutions, commented: “We are pleased to welcome Sigurd to our growing community of captive organisations and look forward to working with the team and forging a strong long-term relationship.”

CICA and Butler University partner for development programme

The Captive Insurance Companies Association (CICA) and the Davey Risk Management and Insurance Program at Butler University have formed a new professional development partnership.

The partnership will allow students to learn about the depth and variety of career opportunities in captive insurance. It will also provide captive leaders an insight on how to attract young professionals to start a career in the market.

As part of the programme, CICA will sponsor several Butler students to attend the 2018 CICA International Conference to help them learn from and network with a range of industry leaders.

Attendees of the conference will also get to learn from Butler students and their professor on using captives and experiential learning to recruit and train millennials.

CICA industry leaders will feature as guest speakers in the Butler University risk management programme.

Dan Towle, president of CICA, said: “We know our industry is facing a looming talent crisis as more insurance professionals retire in the next few years.”

“We need to think creatively about how to help our industry leaders connect with and engage top talent. Our partnership with Butler provides a great opportunity to do this.”

Zach Finn, clinical professor and director of the Davey Risk Management & Insurance Programme at Butler University added: “CICA and Butler’s Risk Management and Insurance Program share the goal of giving students and young adults exposure to industry opportunities.”

“By providing Butler students with attendance to the annual CICA Conference, we’re partnering to fulfil this goal in granting access to captive experts, future employment opportunities, and inspiration around captive risk management careers.”

CICA launched its own mentorship programme in September to prepare students for a career in the captive insurance industry.

The programme provides opportunities for professionals of all levels of experience to build their career skills and be a part of a movement to develop future captive industry professionals among millennials.

The Volunteer State

Tennessee's governor, commissioner, general assembly and business community have all worked together to create 'explosive growth' in the state's captive insurance industry. Julie Mix McPeak explains more

The captive insurance market in Tennessee continues its evolution by building on the successes and synergies created over the previous six years.

Six years ago, Tennessee's captive insurance market was virtually non-existent. Back in 2011, Tennessee had only two captive insurers. Seeing an opportunity to improve Tennessee's future, governor Bill Haslam and Tennessee Department of Commerce and Insurance commissioner Julie Mix McPeak reinvigorated the industry by rewriting the state's captive insurance statute.

As a result, Tennessee witnessed explosive growth. The state now ranks among the most attractive domiciles for captive companies. The state has 550 risk-bearing entities representing over $1 billion in annual premium. The latest annual survey of Tennessee captive insurance professionals shows that the captive insurance sector generated an economic impact of over $692 million during 2016 in the state, representing an increase of 59 percent compared to 2015.

Change didn't happen overnight, or without teamwork, but by working together, the governor, the commissioner, the general assembly and the business community (represented by the Tennessee Captive Insurance Association) reinvented Tennessee as a domicile of choice.

For example, there is ever-increasing concern with the optics of domicile selection. As a result, Tennessee decided to make it extremely cost effective for offshore captives to redomesticate onshore. In 2016, the statute was changed to allow for a one-year tax holiday for all offshore captives redomesticating to Tennessee. This provided a no-cost solution for domestic corporations wishing to bring offshore captives home. So far, Tennessee has seen offshore captives returning to Tennessee from Cayman, Bermuda and Nevis.

It is important to note some of the attributes that continue to make Tennessee an excellent location for captive insurance companies. Having learned from other domiciles, it is clear that owners and captive managers are all looking for expediency. We have found that owners are looking for a location that has all the necessary service providers available to establish a captive and make its ongoing management as easy as possible.

With Nashville, captive owners find a great city to fly in and out of, along with captive management, actuarial, accounting, and financial expertise all located here. Coupled with easy access to the state's captive regulatory section, also located in Nashville, this makes for a nearly seamless opportunity to get the most done in a short period of time.

Speaking of the state's regulatory section, it is worth noting that, alongside our desire to provide timely and efficient regulations, we also understand that captive insurance companies have a cost component. In particular, after a captive, with audited financials, has been in place for five years, the statute requires the captive section to perform an examination. Most domiciles farm out these examinations to third-party examination firms, which significantly drives up costs. Recognising this, Tennessee's captive section is committed to performing all examinations in house for those captives that have been performing annual audits.

Tennessee hasn't been content to rest on its laurels. Three new recently-created rules continue to modernise captive insurance in Tennessee and set the Volunteer State apart from other US domiciles.

First, Tennessee will allow individual protected cells to go dormant and later to be restarted. Second, new captives and cell companies will no longer be required to be audited if they were formed in the last quarter of a year, thus representing cost savings for the captives and cell companies. Finally, a full financial exam will not be required where specific limited questions have arisen about the operation of a captive company. These new rules take effect 21 December 2017. CIT

Julie Mix McPeak
Commissioner
Tennessee Department of Commerce and Insurance

Healthcare: thoughts and opportunities for the future

Looking ahead to 2018, Phillip Giles of QBE North America predicts continued uncertainty for the healthcare reform

It's been said that the only things certain in life are death and taxes. I'm pretty sure that continued uncertainty for healthcare reform could be a legitimate addition to that list—at least through 2018. The unrelenting directional discord emanating from the District of Columbia has led many employers, especially mid-sized, to continually seek alternative avenues to ameliorate long-term stability for healthcare benefit delivery to employees.

The ability to mitigate, if not eliminate, regulatory uncertainty has been a primary driver for the tremendous expansion in employer self-funding and, as of coalescing consequence, the use of captives for medical stop-loss. Self-funded health plans also have the unique ability to customise benefit provisions and implement strategic initiatives for controlling risk and reducing claims costs.

The combination of streamlined regulatory administration, more efficient plan design and effective risk management can return significant savings to a properly-structured self-funded plan. Captive participation in the medical stop-loss that supports a self-insured plan can amplify the benefits derived from self-funding alone.

The majority of self-funded market growth has come from employers having less than 500 employees, with even larger growth percentage coming from employers with fewer than 250 employees. For employers of this size, the ability to retain risk and achieve significant cost stability from a self-funded health plan becomes more difficult on a stand-alone basis. Over the past decade, group medical stop-loss captives have been effectively used to provide these smaller employers with enhanced ability to optimise the effectiveness of their self-funded healthcare plans. This is accomplished by providing a grouping of mid-market employers with access to the same alternative risk transfer techniques employed by much larger organisations to promote increased underwriting predictability, spread risk, and attain leveraged cost savings from related service providers.

It is important to understand that the primary objective of group medical stop-loss captives is to attain long-term stability in the overall cost of healthcare delivery to employees; not to simply reduce the price of medical stop-loss insurance. The only way to reduce cost of insurance is to more efficiently reduce exposure to the risk itself.

Quod Erat Demonstrandum: What needed to be proven has been demonstrated.

With nearly a decade of progressively increasing experience as a mainstream industry segment, most group medical stop-loss captives have proven to deliver a significant level of performance success by effectively managing and broadly diffusing risk. Even though medical stop-loss, by nature, is not a 'pooled product', the concepts of pooled underwriting can be applied to a unified group of self-funded employers that are participating as reinsurers of a shared medical stop-loss portfolio. The increased engagement among a grouping of like-minded employers provides the platform for innovation in plan design, proactive risk control and cost mitigation initiatives. Plan designs that utilise more efficient provider networks or referenced-based pricing, or encourage more effective consumerism will contribute to significant plan savings.

Proactive risk mitigation such as direct provider delivery, centres of excellence for significant medical conditions, and alternative treatment venues are all techniques that are increasingly being used by self-insured employers and medical stop-loss captives. Such initiatives encourage long-term medical stop-loss pricing stability for the captive and help generate underwriting surplus that can be strategically deployed in any number of ways to further expand plan benefits or reduce costs. It is not unusual for well-run group captives to generate savings reaching double-digit percentages for their members.

Looking forward: opportunities for 2018 and beyond

Continued regulatory and healthcare economic uncertainty is expected to drive self-funded healthcare and increase the use of group captives for medical stop-loss. There are several opportunities for group captive market expansion that I am particularly bullish on:

Homogenous industry verticals: being industry-specific in their composition, these groups can be smaller, as the underlying risk and underwriting profile is similar.

The required size to achieve an appropriate spread of risk is not as great as in heterogeneous groups. Group captives are especially effective when formed by closely-aligned groups of like-minded employers within the same industry. Energy; food and beverage distribution; hospital and healthcare; higher education; hospitality; transportation; and manufacturing are examples of industry–specific niches served by tightly contained group captives.

Large brokers that have industry practice groups can sponsor captives for existing clients within specific industry niches. Proprietary industry-specific captives can provide an effective differentiator, for both the client (enhanced employee benefit potential) and brokerage (account protection, performance and persistency), within highly competitive markets. Opportunities exist for industry-specific trade associations sponsoring a group captive as a benefit for closely tied and engaged membership.

Risk retention groups (RRGs): RRGs are actually a form of homogenous group captives. RRGs are authorised by the Federal Liability Risk Retention Act to cover only liability risks, however, the potential exists for groups of employers participating in RRGs to form a parallel group captive for medical stop-loss coverage.

Since the membership of an RRG is already familiar with group risk sharing and captive participation, formation of a separate medical stop-loss captive comprised of similar membership should work well. Top industry segments within RRGs include: healthcare, public entity, education, manufacturing, transportation, and property development. Existing property and casualty group captives can also be good candidates for the formation of separate group medical stop-loss captives comprised of parallel membership.

High-performance group captives: these can be either heterogeneous or homogenous in terms of industry composition.

As its name would imply, a high-performance captive would be open only to established self-insurers with a consistent track record of exceeding specific performance benchmarks. A grouping of high-performing self-insurers can further enhance the ability to hedge market and claims volatility, reduce plan expenses, and produce increased surplus margin advantages to members. As with other forms of group captives, these are most likely to be formed by large brokers, third-party administrators or associations having a large pool of existing self-funded clients.

The average individual member size within homogeneous industry and high-performance groups tends to be larger than in the more ubiquitous heterogeneous ‘open-market’ groups. I have seen well-defined and well-managed homogenous and high-performance groups with as few as three employer members and 1,500 lives. A typical average may be 10 to 12 employer members with a 500-life average member size. Some can have 25 to 50 members, accommodating a size range of 100 to 1,500 lives. As with any group captive arrangement, size is not the primary qualifier.

Success is truly predicated on the quality and engagement levels of the membership. A more discerning approach to membership selectivity and more active risk management engagement of members is likely to yield superior performance results. CIT

“Regulatory uncertainty has been a primary driver for the tremendous expansion in employer self-funding and, as of coalescing consequence, the use of captives for medical stop-loss”

Phillip Giles, vice president for sales and marketing, QBE North America

Tucking-into Cayman

After Artex's acquisition of Chandler Insurance Management, David McManus explains that the company is set for continued expansion both organically and through acquisition

What were the reasons behind the Chandler Insurance Management acquisition?

Chandler is a great example of what we refer to as a 'tuck-in' merger. This is where we attract smaller teams, or individuals, to become part of our team in an existing domicile, bringing on their clients and associates.

Chandler has been in this business for almost 30 years. The company has a very stable, high-quality client list, many of which have licences dating back to the 1980s and 90s. Accounts like this have proven their loyalty and worth and as CEO Steve Butler began to think about succession planning, he in turn wanted to ensure continuity of service and long-term security for his valued clients. A merger with Artex immediately achieves that, but also provides access to a deeper platform of services available through our scale and broader geographic reach.

How will Artex benefit from the acquisition? And how will it expand the company's captive capabilities?

Along with the great book of business, Artex acquires Butler and Beverly Hodkin's knowledge, expertise and market relationships, adding depth and scale to our talent pool.

Artex now has over 100 captive clients in Cayman, which represents a wealth of knowledge across a wide range of industries and multiple lines of business, ensuring that we continue to build the resources necessary to empower our clients and prospects around the world.

As part of the acquisition, Butler and Hodkin joined the captive team in Cayman. Butler is joining as client services director, while Hodkin will assume a senior account manager role. Both will primarily work on existing Chandler business, but will also contribute to the overall growth of our Cayman operation through their support of our new business development activities.

In 2016, Artex acquired Kane Insurance Management, also domiciled in Grand Cayman. What is it that attracts you to that domicile?

Very few domiciles have been around as long as Cayman. They continue to innovate, but have never diluted their focus on captives. They have a particularly deep understanding of group captives through which they drive healthy annual growth not evident within the publication of new captive formation numbers.

Artex is a leader in the group captive business and Cayman's prudent, but creative, approach to capitalisation was decisive in choosing to domicile our newest group captive, Command, there in 2016. Beyond groups, Cayman continues to be an important domicile for new Artex captives and we expect to be responsible for around 20 percent of the new licences issued in Cayman in 2017.

This is evidence of the great relationship that our experienced team on the island have with their professional counterparts in Cayman Island Monetary Authority. Chandler's strong reputation built through Steve Butler and Beverly Hodkin can only enhance that relationship.

Looking ahead to 2018, what plans do you have for your captive offerings? Are you planning any expansions?

Artex will continue to expand both organically and through acquisition. Organically, we bring hundreds of new captive customers to the industry each year through the growth of our group captives, the wide variety of cell captives we offer in multiple domiciles and the formation of new single parent captives. From an acquisition point of view, we're looking at opportunities to expand geographically in Northern and Central Europe and Asia-Pacific regions, but also hope to do many more 'tuck-ins' in existing domiciles of the size and quality of Chandler. CIT

"From an acquisition point of view, we're looking at opportunities to expand geographically in Northern and Central Europe and Asia-Pacific regions"

David McManus, president and CEO, Artex

Crystal ball

Predicting when interest rates will change is difficult, which is even more reason to maintain a disciplined approach to your investments, according to Stephen Nedwicki of Comerica Bank

A well-defined investment philosophy may help your captive navigate the unpredictable ups and downs of the financial markets. History shows that it is difficult to predict when interest rates will change and when markets will rise or fall, which is even more reason to maintain a disciplined approach to your investments.

Fixed-income investments and interest rates

For seven years, from December 2008 to December 2015, the carnage from the financial crisis and the great recession caused the federal funds rate to remain in a historically low trading range of 0 percent to 0.25 percent. The Federal Reserve Bank began signaling that it would raise the discount rate as early as 2012. This caused many investors to shun bonds, only to miss out on strong bond performance through the second quarter of 2016. Bonds did, however, lose value during Q2 2016 as interest rates eventually rose. Bond prices recovered in early 2017 as interest rates declined once again.

With justification in hand (for example, a falling unemployment rate and gradually rising inflation), the Fed implemented an interest rate increase in December 2015. Since then, the Fed has followed up with three additional rate increases in December 2016, March 2017, and June 2017. The target trading range for federal funds is now 1 percent to 1.25 percent.

From a historical perspective, here is some useful information concerning the federal funds rate (for periods ending 31 August 2017):

- 5-year average: 0.274 percent
- 10-year average: 0.495 percent
- 20-year average: 2.135 percent
- 10-year average leading up to the beginning of the Financial Crisis (Aug 1997 to Aug 2007): 3.75 percent

As these numbers show, we remain in a historically low-interest rate environment. Despite the possibility of future federal funds rate increases, your investment manager should continue to manage your portfolio based on the stated investment policy and avoid interest rate or duration bets.

A conservative captive insurance fixed-income portfolio may hold investment grade corporate bonds, US Treasury and agency bonds, and municipal bonds. Maturities are typically matched with the anticipated payout of claims to avoid having to sell a bond before its maturity date and possibly incur a realised loss if interest rates rise.

It is also worth noting that having an allocation to US treasuries, US agency and municipal bonds could have a positive impact on the pricing for letters of credit received from your bank. Your investment manager should be aware of any pricing advantages available to your captive based on the make-up of your portfolio.

Equities and economic expansions

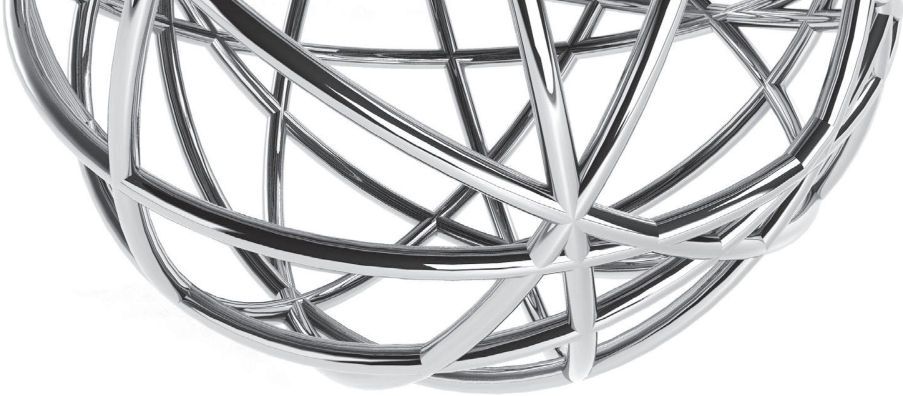
If your captive is mature, with a surplus to invest, your investment manager may be able to add stocks to the investment mix. Of course, there is additional risk with equities, however, stocks provide diversification and opportunity for growth, since equities have historically out-performed bonds over the long term. Since the end of World War II, despite the current events of the day, the ever-changing economic and political landscape, and various market corrections, the US economy has managed to overcome it all and the equity markets have moved higher time and again. Here are some examples:

- The turbulent 1960s saw the second-largest economic expansion in history over 106 months, from February 1961 to December 1969.

- In the 70s, the Vietnam War ended, and the US lived through Watergate, the OPEC oil embargo, the death of Elvis, and two economic expansions spanning 36 months (November 1970 to November 1973); and 58 months (March of 1975 to January of 1980).

- In the 80s, we experienced double-digit inflation, the failure of Continental Illinois National Bank and Trust, a stock market crash on Black Monday, the marriage of Lady Diana Spencer and Prince Charles, and a 92-month economic expansion from December of 1982 to July of 1990.

- The longest economic expansion of 120 months occurred from March 1991 to March 2001. During that timeframe, there was Operation Desert Storm, the beginning of the internet, Russia defaulting on its debt (and Vladimir Putin becoming acting president of Russia), the 'Asian contagion' currency devaluations, and the repeal of the Glass-Steagall Act, allowing banks to operate as both commercial and investment banks.



- After the 9/11 terrorist attacks, a 73-month economic expansion began that ended in December 2007, the beginning of the Great Recession. In September 2008, Lehman Brothers filed for bankruptcy, triggering a global banking crisis; economists, investors, consumers, and politicians all feared we were on the verge of the next Great Depression. The Dow Jones Industrial Average dropped to its modern low of 6,469 on 6 March 2009 (54 percent from its peak of 14,164 on 9 October 2007).

- The US economy remains on track for an ongoing moderate expansion through 2018. If that turns out to be the case, by the end of 2018, this will be the second-longest economic expansion in US history, although still a few months short of the record 120 months from March 1991 to March 2001.

Portfolio management

Investment professionals should add value by deeply understanding their near-term and long-term goals; clearly articulating the investment firm's philosophy and process; developing and maintaining the investment plan; and assisting in understanding the investment strategy.

Three basic principles should be the foundation of any investment management philosophy. The investment professional hired to manage the captive insurance company portfolio should be driven to act in the captive's best interest as a prudent steward of the investments; believe in a goal-oriented approach to meet the objectives of capital preservation, cash flow, yield, and performance; and provide a well-disciplined, consistent and repeatable process over time.

Best interest

An investment professional should be willing to act as a fiduciary over the investment portfolio. Investments should be selected based on the stated needs of the client. The firm should be committed to an open, long-term approach to investing. Its mission should be to act as a prudent steward of investments. Managing investments is highly complex.

An integral component to the execution of your investment strategy is an understanding that the investment firm is acting in your best interest.

Goal oriented

The investment professional should utilise a goals-based approach with a clear understanding of the captive's objectives and tolerance for market volatility. A written investment policy statement (IPS) is essential to establish the structure of the investment portfolio. If an IPS does not exist, the investment manager should be able to assist the captive with developing one. The IPS serves as a road map toward the investment goals and provides information on the approved asset classes, target allocations, and any restrictions placed on the captive by either banks providing letters of credit or the beneficiary of the Regulation 114 trust agreement.

Disciplined, consistent, repeatable

Discipline, consistency, and a repeatable process are key to investing. These are core elements to ensure that the impacts of emotion and reaction are removed from the investment process. Your investment manager should incur only as much risk as is necessary to achieve your objectives. During negative market cycles, your investment manager should maintain a disciplined and consistent approach to avoid the temptation to time when to enter or exit individual investments, asset classes or markets.

When your investment manager is working in your best interest and to achieve your goals, and has a disciplined investment philosophy, your portfolio will be able to navigate the inevitable swings of the financial markets. CIT

Stephen Nedwicki
Vice president
Comerica Bank

Business Risks v Insurance Risks

Dana Hentges Sheridan, general counsel and chief compliance officer at Active Captive Management, provides insight into the differences between business risks and insurance risks

Though the Internal Revenue Code defines what an insurer is, it is silent with regard to what is an insurance contact. Over the years, in various advisories or memoranda, the Internal Revenue Service (IRS) has consistently asserted the position that a contract is not an insurance contract if it covers only what the service defines as "business risk." In the context of whether there is insurance for federal income taxation purposes, best practices in policy drafting would thus generally dictate that those writing policy contracts for captives should be mindful of how the service defines insurance versus business risk. The answer to the question of what the service thinks is a "business risk" preliminarily starts with how to define "insurance risk."

What is an insurance risk?

An insurance transaction must involve the insurance risk of the insured that is transferred to the insurance company. For example, in AMERCO v Commissioner of IRS, 979 F.2d 162 (1992) and Helvering v LeGierse, 61 S.Ct. 646 (1941).

Caselaw consistently defines insurance risk as "contractual security against possible anticipated loss", as referenced in Epmeier v US, 199 F.2d 508, 509-510 (7th Circuit 1952). But, the risk transferred must be of an economic loss, as shown in Allied Fidelity Corporation v Commissioner, 572 F.2d 1190, 1193 (7th Circuit 1978).

In determining whether a risk is an insurable one, courts have long held that the risk must be fortuitous—see Commissioner v Treganowan, 183 F.2d 288, 290-91 (2d Cir. 1950). Fortuity, used as a noun, means a chance happening or event.

There is generally a three-prong test for what constitutes insurance for federal tax purposes. Under this test, to qualify as an insurance transaction, there must be an insurance risk; risk shifting and risk distribution; and insurance in its commonly accepted sense. AMERCO, supra. This article first focuses on defining the concept the service refers to as "business" risk and then discusses insurance in its commonly accepted sense in the context of how to write insurance policy contracts that cover insurance, and not business, risk.

The service's general position on business risk

Below is a brief highlight reel of certain positions taken by the service. This is not meant to be all inclusive, but rather, just focuses on a few cases or decisions with interesting fact patterns or conclusions.

In determining whether a risk is insurable or whether it is an uninsurable business or investment risk, the service has consistently taken the position that insurance contracts must protect against economic loss only. In other words, the service believes that certain types of risk are not insurable because they don't involve economic loss. In this regard, the service has attempted to define certain contract risks as business or investment risks and in so doing, has held that the contract transaction at issue was not an insurance transaction and thus the contract wasn't an insurance policy and the company issuing the disputed contract wasn't an insurance company for federal income taxation purposes. For example, an overbroad application of Helvering v LeGierse, supra has been used by the service time and again to stand for the proposition that investment or business risks of an insured can never be insurance risks. Since Helvering was decided, the service has continued to whittle away at the concept of insurance risk, in an effort to further define its view of what is an uninsurable business risk.

Besides investment risk, another area where the service has found there is not insurance risk is in contracts that have a service component. In this context, if the service component to a contract governs over the contract's offering of protection against economic loss, the service has found that this kind of contract is to be treated as a "services," and not "insurance," contract. In Revenue Ruling 68-27, 1968 WL 15297, the service held that when the taxpayer provided preventative medical care services "to various groups and individuals who prepay the contract price at fixed monthly rates," that this was "predominately a normal business risk of an organisation engaged in furnishing medical services on a fixed-price basis" and thus there wasn't an insurance risk. One can understand the service's viewpoint here given that there were fixed costs and such expected and finite costs might well set the cost of the risk so clearly that one could argue fortuity has been compromised.

In general counsel memorandum 39146, chief counsel opined on the tax treatment for a taxpayer that wanted to enter into certain warranty agreements. 1984 WL 264895. In exchange for a fee, the taxpayer planned to enter into "a master warranty agreement with builders of frame buildings agreeing to assume a portion of their warranty liability exposure for inherent defects." Ultimately then, the taxpayer would issue a five year joint warranty in the name of the purchaser and the builder. In the event of loss due to a covered event, like damage from wind, snow, sleet or ice, the taxpayer/warrantor would pay the builder its out of pocket expenses incurred in repairing the damage, or if the insured builder was no longer in business, the taxpayer/warrantor would repair or replace the covered property. The chief counsel held that the warranty contracts at issue covered only business and not insurance risk because the warranty only protected against defects in the manufacturing process, which the builder controlled and thus there was no "outside peril" or fortuitous type loss.

However, while it's true that an insured may have control over a process or the insured may even expect a loss or loss related expense of some form, the fact of the loss happening can nonetheless be fortuitous when that insured does not know the exact timing, place or cost of any risk that actually manifests in a loss. Even a controlled process can still present risk. Things can always happen that are unexpected and outside of the

> **If a commercial carrier would cover a risk, but declines to do so for its own reasons, why couldn't a captive step in and cover that risk? If it's an insurance risk to the commercial market, it would also be an insurance risk to the captive market**

Dana Hentges Sheridan
General counsel and chief compliance officer
Active Captive Management

control of a person or entity who is charged with evaluating or managing a risk. And it's also possible that an insured might be expecting some risk to ultimately manifest in loss, but that doesn't necessarily mean that the insured has any control over when the loss will happen or what is the order of magnitude it might reach. Moreover, many commercial insurance policies cover claims stemming from risk or loss within the insured's control, including product recall, professional liability, and auto liability, to name a few.

In fact, the service has consistently suggested that proving insurance risk can be done by comparison to what the commercial market will insure. Logically, this position should include coverages presently available from admitted, surplus lines, and specialty carriers worldwide, as well as coverages previously made available but from which the commercial market has withdrawn. The commercial market has considered certain contingencies, perils and classes of damages to be insurance risks, but has nonetheless declined to cover them through the use of narrow insuring clauses, certain definitions, and exclusions contained in their policies. The point here is that if the commercial market would cover something as an insurance risk or decline to cover something as an insurance risk, then a captive should be able to cover those risks as well.

Holding in a similar manner, chief counsel also issued advice in the form of determining that a proposed group captive design to cover decommission costs for nuclear power plants presented contractual coverage for business, and not insurance, risk and thus the contracts proposed did not amount to insurance for federal income taxation purposes. See IRS CCA 200629028. In this case, it was stipulated that the nuclear power plants would have to be decommissioned in the future, there were estimates as to the decommission dates, and there were projected costs for decommissioning. Chief counsel opined that "when a nuclear power plant is placed in operation, it is inevitable that the licensee will incur the cost of decommissioning the plant when operation ceases. The obligation to decommission has attached therefore no hazard or fortuity as to the occurrence of decommissioning… The licensee does not bear the risk of whether decommissioning will occur—that is inevitable."

So, again, the service held that because the taxpayer had some semblance of knowledge relative to a risk and some idea that the risk was indeed going to manifest in some way down the line, that these facts meant there was no fortuity and thus no insurance risk.

In a 2015 chief counsel advisory, counsel held that when a group of taxpayers entered into a contract with an affiliated insurance company where the taxpayer/insureds would receive payments under the contract if their earnings suffered because of currency fluctuations, this arrangement did not constitute insurance for federal income taxation purposes. See IRS CCA 20151102.

But, currency fluctuations are absolutely not within the control of the insured and the insured has no way of knowing exactly what they will be, when they will happen, or how any such fluctuations will impact the business.

While it's true that the taxpayer group here was indeed expecting some form of currency fluctuation to impact its business at some point, that doesn't mean that the group knew the exact extent of any such fluctuation's impact on its business or how much loss it would cause.

Fortuitous loss caused by currency fluctuations outside of the control of the insured is an economic loss to the insured. Moreover, diminished value, or loss caused by diminished value, is insurable in many contexts, including but not limited to the context presented by the more recent decision in R.V.I. Guaranty Company, Ltd. v Commissioner of Internal Revenue, 145 T.C. No. 9 (September 15, 2015).

R.V.I. was an important decision to the captive industry (even though it did not involve a captive) in that it holds that certain residual value contracts were insurance for federal income tax purposes. R.V.I. issued contracts to insureds that leased assets or financed leases, where the insureds were leasing companies, manufacturers, and financial institutions. The insured assets were vehicles, commercial real estate, and commercial equipment. The residual value contracts insured against the risk that the insured assets would decline more rapidly in value than expected so that the asset value at lease termination would be much less than originally contemplated at the time of leasing. The way these contracts worked is that if the asset's actual value was less at the end of the lease than the insured value, R.V.I. would pay the difference under the policy. So, the loss compensated under the policy was the difference between actual value and insured value.

But, in a Technical Advice Memorandum, the service concluded that residual value insurance policies weren't insurance contracts because they managed losses that were substantially certain to occur. The service felt that the policies did not constitute insurance because in its view, the lessors were purchasing protection against market decline risk and this kind of risk is investment, and not insurance, risk. However, the court disagreed, finding that the policies covered an insurance risk because there was no expectation that the asset value at lease end could ever increase beyond the insured value, and while it's true that the lessor's business model is premised upon the fact that assets will decline in value (thus the lessor was expecting loss of some variety), the policies are nonetheless protecting against risk that undefined losses will interfere with the company's business model.

The evaluation of insurance risk should be undertaken from a fortuity standpoint and not necessarily from the standpoint of determining an insured's "control" over economic loss. After all, there is a pretty fine line between an economic loss and a business loss if control is going to be the differentiating factor. However, there is a very clear line between fortuitous and non-fortuitous risk or a foreseeable versus an unforeseeable event. If an insured knows of a loss at the time of contracting for insurance, it's not covered. Intentional conduct that leads to losses can preclude coverage for a claim. A risk for which the insured has some semblance of control should be covered as long as that risk manifested with fortuity, and the insured had no way of knowing exactly how or when or what would be the cost of the risk, as it ultimately manifests in a claim circumstance.

Best practices in policy drafting: writing coverage for fortuitous, insurable risk

Policy contracts are written in a very specific way, using standard policy drafting conventions common to the insurance industry. Prolific use of over-generalised boilerplate policy language where the policy contract does not follow the flow of a traditional insurance policy format could be suggestive of a problematic policy contract. Captive best practices dictate that a captive insurer does not deviate too far from the traditional course when it comes to policy drafting.

In other words, captives should follow policy drafting rules and convention that applies to their traditional brethren.

In general, all insurance contracts contain the following:

- The policy starts with a declarations page which identifies the policy number, named insured, the insurer, the type of policy, the policy limit, any applicable deductible or self insured retention, the period of the coverage, whether or not there is any retroactive date, and the premium.

- A key component to any insurance policy is the insuring agreement. The provisions that make up a policy's insuring agreement are used to describe the nature of the coverage and what is the covered peril, location or risk.

- The definitions section of a policy provides definitions of key terms and phrases used throughout the policy. Defined terms are typically in bold or are highlighted in some other manner in the policy itself so that anyone reading the policy will know that the term has been defined in the coverage.

- Exclusions to a policy reduce or eliminate coverage. They describe risk, locations, perils, property, or a type of claim, injury or damage that would not be covered under the policy.

- Policy conditions are those terms and provisions that govern conduct. They detail the duties and obligations required of the insured in order to qualify for coverage. These provisions include notice provisions and cooperation provisions.

- Endorsements are additional documents that are attached to a policy form that alter or modify the coverage provided in the form. They can delete or modify terms and provisions that exist in the form, and can expand or contract provisions in the policy form, or they can add new clauses to the policy altogether.

In evaluating captive insurance policies or programmes, the service routinely looks to the commercial market as a role model. The commercial insurance market considers certain contingencies, perils, and types of damages as insurance risks, but nonetheless will decline to cover those insurance risks through the use of narrow insuring clauses, definitions, and exclusions contained in their policies. Captives have been used to fill in these gaps left by the commercial market. If a commercial carrier would cover a risk, but declines to do so for its own reasons (it's leaving the market for that risk, the risk of the particular insured would likely mean that the commercial carrier won't make underwriting profit goals given the insured's claim history and so on), why couldn't a captive step in and cover that risk? If it's an insurance risk to the commercial market, it would also be an insurance risk to the captive market. **CIT**

The aftermath

Alan Fine of Brown Smith Wallace explains how the industry should proceed after the Avrahami court case ruling

In August, the US Tax Court released its decision in the Avrahami case. The ruling marked the first case, which involved a captive that had made the election to be taxed solely on investment income under Section 831(b), also referred to as the micro captive strategy. For the reasons discussed below, the Tax Court ruled in favour of the Internal Revenue Service (IRS).

About the Avrahamis

In this case, the taxpayers owned jewellery stores and shopping centres. They created a captive insurance company in St. Kitts, from which additional insurance was purchased. They also purchased terrorism insurance from an unrelated insurance company, Pan American, also domiciled in St. Kitts.

The taxpayers' captive then reinsured risks from other participants in the pool with the taxpayers' captive in an effort to obtain risk distribution. The taxpayers' risks accounted for approximately 70 percent of the captive's total risks, with the reinsured risks accounting for the remaining 30 percent.

A significant portion of the captive's assets, approximately 65 percent, consisted of loans to a related party entity owned by the taxpayer's children.

Of particular note is that the children all testified that they had no prior knowledge of their ownership in the entity. Under the terms of the loan agreements, no principal or interest payments were due for a 10-year period. Neither the taxpayers nor the captive manager sought regulatory approval for making these loans.

The IRS's position was that the premiums paid by the taxpayers to the captive were not deductible, because the arrangements lacked all four criteria necessary to be considered insurance for Federal income tax purposes, specifically:

- The policies covered risks not considered to be insurance risks
- The overall arrangement lacked the requisite distribution of risk
- The arrangement failed to shift risks from the insureds due to the pricing of the underlying risks
- The arrangements failed to follow the commonly-accepted notions of insurance

As the Tax Court agreed with the IRS that the arrangements failed to appropriately distribute risks and that the arrangements failed to respect the commonly accepted notions of insurance, as discussed below, the court deemed it unnecessary to rule on the other two criteria.

Risk distribution

The Tax Court determined that the taxpayers' captive and overall arrangement lacked risk distribution. In reaching this conclusion, it was determined that Pan American did not qualify as an insurance company for Federal income tax purposes for the following reasons:

- Pan American's flow of funds was viewed as circular without any economic substance (a point disputed by the industry)
- The premium pricing was unacceptably excessive for the risks being insured
- It was questioned whether Pan American had the ability to pay claims
- The compensation mechanism for Pan American did not follow the industry standard
- The risks being insured were speculative at best, covering terrorism events in cities with populations of less than 1.5 million—had the taxpayers tried to submit a claim it would have been denied as they lived in Phoenix, which has a population well in excess of 1.5 million

As Pan American failed to qualify as an insurance company, it was determined that there were no unrelated insureds, and the three or four entities owned by the taxpayers insured by their captive were insufficient to properly distribute risk.

Commonly accepted notions of insurance

The Tax Court also found that the taxpayers' captive failed to operate as an insurance company. In reaching this conclusion the court found the following factors problematic:

- 65 percent of the captive's assets were in the form of illiquid investments that "only an unthinking insurance company would make". The loans made to the related party entities called for neither interest nor principal payments for 10 years after entering into the loans

- No approval was sought from the Department of Insurance for the aforementioned loans
- The actuary's explanations of the premium pricing structure were "often incomprehensible" and resulted in premiums that were "utterly unreasonable"
- The taxpayers made no claims until the IRS examination began
- Once claims were made, there was insufficient enforcement of policy terms (for example, claims were approved on 15 April 2013 for policies that expired on 15 December 2012)

As the taxpayers' captive lacked risk distribution and was not operated in accordance with the commonly-accepted notions of insurance, the Tax Court ruled in favour of the IRS, denying the taxpayers' deductions for the premiums paid to the captive.

How should taxpayers proceed now?

Between the Avrahami decision and additional scrutiny of the micro captive strategy by the IRS, many are concerned about their participation/involvement. In the past several months we have been asked many times how those using the micro captive strategy should proceed.

Our consistent response is that, if there is a legitimate, not-tax business reason for utilising the captive, and the captive is properly run, there is no reason to change direction.

We do believe it is prudent to review current captive operations in light of the Tax Court findings in Avrahami. First, the non-tax business reason should be well documented and pressure tested to determine whether it will withstand IRS scrutiny. An example would be taxpayers purchasing insurance from their captive for coverage that is unavailable in the marketplace. In Avrahami, the Tax Court pointed to some duplication of coverages between that purchased in the commercial marketplace and purchased from the captive.

It is also imperative that the regulatory nature of the captive entity be respected. This includes submitting for regulatory approval for changes in the captive's business plan, certain investments (especially when making loans to related parties), or making distributions to the captive's owners. It is also important to make sure the captive has sufficient capital and liquidity to be able to address claims as they may come due.

This would also be a good time to review the captive's premium pricing. A certified actuary should be part of the process in order to ensure that sound, actuarial principles are part of the pricing model. Where applicable, premiums should be consistent with those obtainable in the commercial marketplace. It's critically important to make sure that premiums are not calculated simply to reach the premium limitation of Section 831(b). If a captive has several years without significant claims activity, this may support a reduction in the pricing. In summary, the pricing should be commensurate with the risk taken on by the captive.

The policies written by captives need to be comparable to those offered by commercial carriers and need to cover real rather than illusory risks.

Avrahami provides a clear reminder that a captive's processes for handling claims should be documented and followed. If the insureds have losses, they should be submitted to the captive within the timeframe specified in the policies, rather than being borne by the insureds. Late claims or claims otherwise not covered by the policies should not be paid by the captive.

It is also prudent to ensure that the captive has an investment policy statement, which is approved by the regulators and adhered to. The policy should ensure that the investments are conservative enough to provide sufficient liquidity in the event of significant claims.

It's likely that the IRS will continue its scrutiny of micro captives for the foreseeable future. Nevertheless, the micro captive strategy remains viable, but now more than ever it is important to make sure it's being done correctly. CIT

"It's likely that the IRS will continue its scrutiny of micro captives for the foreseeable future. Nevertheless, the micro captive strategy remains viable, but now more than ever it is important to make sure it's being done correctly"

Alan Fine, partner, Brown Smith Wallace

Stay tuned

Jay Branum of the South Carolina Department of Insurance teases “very positive and exciting developments” for the state’s captive industry next year

Could you describe the current captive insurance industry in South Carolina and, coming to the end of the year, are you experiencing a lot of activity in terms of captive formations?

While we have seen our share of new captive applications this year, the overall level of new formation activity has not been as robust as it was in 2014 and 2015. Things have certainly picked up in the last few weeks, however, to the point where every three to four days we receive a call or email from a captive manager about a new application, which the manager hopes to complete in time for us to perform our due diligence and issue a licence and approval to write by the end of the year. The fact that these calls are becoming more frequent is indicative of the usual end-of-year pressure that people feel about projects they've been thinking about for some time and which are geared to a calendar year renewal cycle. Captive owners and their advisors realise that if they want a captive that is fully licensed and authorised to do business by 1 January, it's time to get serious about completing the application and getting it into our hands so that we can do our job properly and conscientiously, as well as expeditiously.

When is the cut-off for the applications to be ready for the 1 January?

We haven't established one for this year. Once or twice in the past four years we let people know around mid- to late-November that we were establishing a soft cut-off date for applications for which a 1 January or prior license date is desired. In those instances, we have informed the captive community that, although we would endeavour to do our very best to process all applications within the timeframes requested, we could not provide any firm assurance that we could complete our application review in time to issue a licence by 31 December, unless a full and complete application was in our hands by the 5 or 6 December at the latest.

We will once again defer a decision about this until around the last week of November, at which time we will take stock of what is in our pipeline, including the expectations of the prospective captive owners and managers regarding a license date, and make a determination as to what message we need to communicate to the captive community.

Sometimes we receive applications that are incomplete, or which raise issues, that need to be clarified before we can move forward. We also refer relevant portions of every application to outside actuaries for an independent review. These additional steps can introduce a degree of uncertainty into the timing of the process on our end, and we want people to be aware of this, as we wish to avoid giving assurances that particular circumstances might prevent us from being able to meet. Fortunately, we have been able to get very supportive and quick turnaround from the outside actuaries that we engage for these reviews, and I anticipate that will be the case again in the closing weeks of this year.

What's the leading sector in terms of figures for captives?

The parent companies of South Carolina captives come from a very broad range of industries. With that kind of range and diversity, there is no disproportionate concentration in one or two industries that would unbalance the overall portfolio. We see everything from Fortune 100 energy companies and manufacturers to large medical practice and hospital groups, to property management and development companies, to contractors, retailers, big transportation companies, to major financial institutions and more. This means that we're not dependent on one or two industrial sectors and the types of exposures that characterise those particular industries. Nor are we dependent upon a continuing stream of applications from small privately-held companies looking to form captives that can take advantage of the tax election under Section 831(b) of the US Tax Code. While we do have some 831(b) captives in our book, they comprise a distinct minority of our captive licensees, and certainly do not define who we are as a domicile.

Have there been any new regulatory updates in South Carolina?

In collaboration with the South Carolina Captive Insurance Association, as well as just within the captive division of the South Carolina Department of Insurance, we have a couple of exciting new initiatives in the works, but it is a bit premature for me to describe them even in general terms, much less to talk about them in specific detail.

I'm hoping that once we get well into Q1 2018, we will have made sufficient progress on these initiatives that we can pull the curtain back and share some details about what I'm referring to, but I can tell you that they will be very positive and exciting developments for this domicile. We hope and expect that those initiatives will bear fruit for us in H1 2018, but the time is not ripe for me to get into any details, so stay tuned.

With new developments in the pipeline, do you hear a lot of feedback from the association, and does that help you work towards those developments?

Yes, as a matter of fact we have quarterly update meetings with the leadership of the state captive association (SCCIA), the most recent of which was at the beginning of November. These give us the opportunity to identify the initiatives we are pursuing, either separately or together, and to look ahead to things we need to put some energy and effort behind. In other words, it helps us prioritise and align our efforts and deploy our respective resources to best effect. It's a very healthy and necessary process, as between the association and the department, we share information readily with each other, and are very transparent about our plans and activities, while at the same time we in the department continue to adhere strictly to our confidentiality obligations and other overarching duties as solvency regulators. **CIT**

Going Green

Chris Kramer discusses his new role at Green Mountain plans for the company’s expansion and opportunities it can offer existing and potential clients

What are you responsible for in your new role at Green Mountain Sponsored Insurance Company?

As the managing director, my primary responsibility is to lead the expansion plans of Green Mountain, which includes sales, marketing and client fulfillment. While Green Mountain has been successful since it was formed in 2012, I plan to leverage our independence, experience and servicing capabilities to add more cells in the coming years.

What opportunities does Green Mountain offer to clients and potential clients?

As an onshore sponsored captive located in Vermont, Green Mountain provides clients with easy and cost-effective access to a stable and secure captive facility. Green Mountain has done a wide variety of captive programmes, such as casualty, property, and employee benefits, for both single entities and groups, and is open to support any type of sound captive programme.

As year-end quickly approaches, Green Mountain's ability to implement programmes faster than the time it takes to set up a standalone captive will be attractive to some clients.

Lastly, we are excited about the ability to support agency captive programmes for retail and wholesale firms, now that Vermont has expanded its law to allow such programmes.

How do you expect Green Mountain to expand over the next 12 months? Are there any plans in place?

Over the past six months I have been working with Green Mountain's board to develop a strategic marketing initiative that is going to build the Green Mountain brand and implement a focused marketing effort that leverages our collective relationships.

We rolled out the Green Mountain website in August, and to help our brokerage partners and prospects recall our brand, we've started to use the tag line 'Go Captive. Go Green'. The new tag line helps make it easy to remember us.

What trends are you seeing in the US captive industry?

Generally speaking, the biggest trend is really not a trend—captives continue to be used in the US despite an enduring soft commercial market. Aside from that, we are witnessing a surge in using captives for medical stop-loss plans, particularly for groups of mid-sized employers.

I find this trend similar to the growth of commercial lines group captives, which trace their beginnings to the late 1970s and early 80s. In both cases, there was a disruption in the insurance marketplace.

We expect the rise in the popularity of medical stop-loss captives to continue. Pushing that growth are benefit brokers, carriers and diversified insurance intermediaries. We are also seeing an increase in interest around agency captives, for both employee benefits and commercials lines. On the other hand, the interest level in small captives seems to have eased up, given the Internal Revenue Service's intense efforts to quell the growth of this segment of the market.

What challenges do you think are the biggest concern in the US captive industry?

Finding and nurturing new talent into the insurance and captive industry is a big challenge. Insurance is not sexy nor is it a career that most people think of pursuing, however, I do believe we can attract talent by promoting our industry as one that rewards entrepreneurs, especially when integrating the use of technology, predictive analytics and paradigm changes. Like one of my favourite books states: "Sacred Cows make the Best Burgers."

The author Robert Kriegel explains that just because we "always did it that way" we shouldn't keep on doing it. What better example than Lemonade, the peer-to peer risk-sharing business model that is changing how personal insurance is provided.

Why did Green Mountain domicile in Vermont? And how does the state differ from other domiciles?

Green Mountain was purposely designed to be a turnkey captive insurance alternative for organisations looking for an onshore captive solution.

While Vermont is credited with being the first US captive domicile passing protected cell captive insurance legislation in 1999, there were other domiciles with similar cell legislation by the time Green Mountain was incorporated in 2012.

However, by selecting Vermont, clients of Green Mountain would also be the beneficiaries of the state's highly commended governance and regulatory environment.

Vermont has experienced regulators, and staff could help Green Mountain in meeting the needs of different owners and a range of captive structures so often presented in a cell captive format. **CIT**

"Finding and nurturing new talent into the insurance and captive industry is a big challenge. Insurance is not sexy nor is it a career that most people think of pursuing, however, I do believe we can attract talent by promoting our industry"

Chris Kramer, managing director, Green Mountain Sponsored Captive Insurance Company

Chubb has promoted Barry Beard as head of global services and complex multinational UK and Ireland.

With 20 years of insurance industry experience, Beard is moving from his current role as head of credit management for Chubb's European, Eurasia and Africa, and Asia Pacific divisions.

In his new role, Beard will lead and manage Chubb's multinational network and services for the UK and Ireland and be responsible for helping clients deal with complex multinational captive programmes.

He will report directly to Suresh Krishnan, head of global accounts division Chubb Europe.

Zurich North America has appointed David Putz to head up its alternative markets sector, effective 1 January 2018.

Putz, who currently serves as head of direct markets and programmes at Zurich, will assume the role currently held by Kathleen Savio, who will become CEO of Zurich's North America business.

In his new role, Putz will report directly to Savio.

The company's alternative markets sector is comprised of four units: direct markets, programmes, group captives and crop.

RMC Group has promoted Jessica Homan to captive administrator manager.

Homan has worked at RMC Group since 2010, and most recently served as senior accountant for the corporate finance department.

In her new role, Homan will be managing the day-to-day operations of the captive insurance department, including the set-up and organisation of captives, attending board meetings and administering the claims adjudication process.

Homan commented: "I am so excited to take on this new role in the captive department. Since RMC became a player in the captive industry I have wanted to be part of it. I firmly believe that a smart business owner with substantial risk should have a captive insurance company."

QBE North America has welcomed Matt Keeping as its new regional executive.

Keeping, who will be based in New York, will be accountable for the eastern region's profitable growth across the company's specialised insurance business portfolio, as well as the development of its agent and broker relationships in the region.

He will also oversee business planning and collaborate with underwriting and claims leadership to deliver better end-to-end risk management solutions for clients. CIT

captive insurance times

Acting Editor: Stephanie Palmer-Derrien
stephaniepalmer@blackknightmedialtd.com
+44 (0)203 750 6019

Deputy Editor: Becky Butcher
beckybutcher@blackknightmedialtd.com
+44 (0)203 750 6018

Junior Reporter: Lorella Fava
lorellafava@blackknightmedialtd.com
+44 (0) 203 750 6022

Editorial Assistant: Jenna Lomax
jennalomax@blackknightmedialtd.com
+44 (0) 203 750 6018

Associate Publisher/Designer: John Savage
johnsavage@captiveinsurancetimes.com
+44 (0)203 750 6021

Publisher: Justin Lawson
justinlawson@captiveinsurancetimes.com
+44 (0)203 750 6028

Marketing Director: Steve Lafferty
design@securitieslendingtimes.com
+44 (0)203 750 6021

Office Manager: Chelsea Bowles
accounts@securitieslendingtimes.com
+44 (0)203 750 6020

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Black Knight Media Ltd
Provident House
6-20 Burrell Row
Beckenham
BR3 1AT, UK

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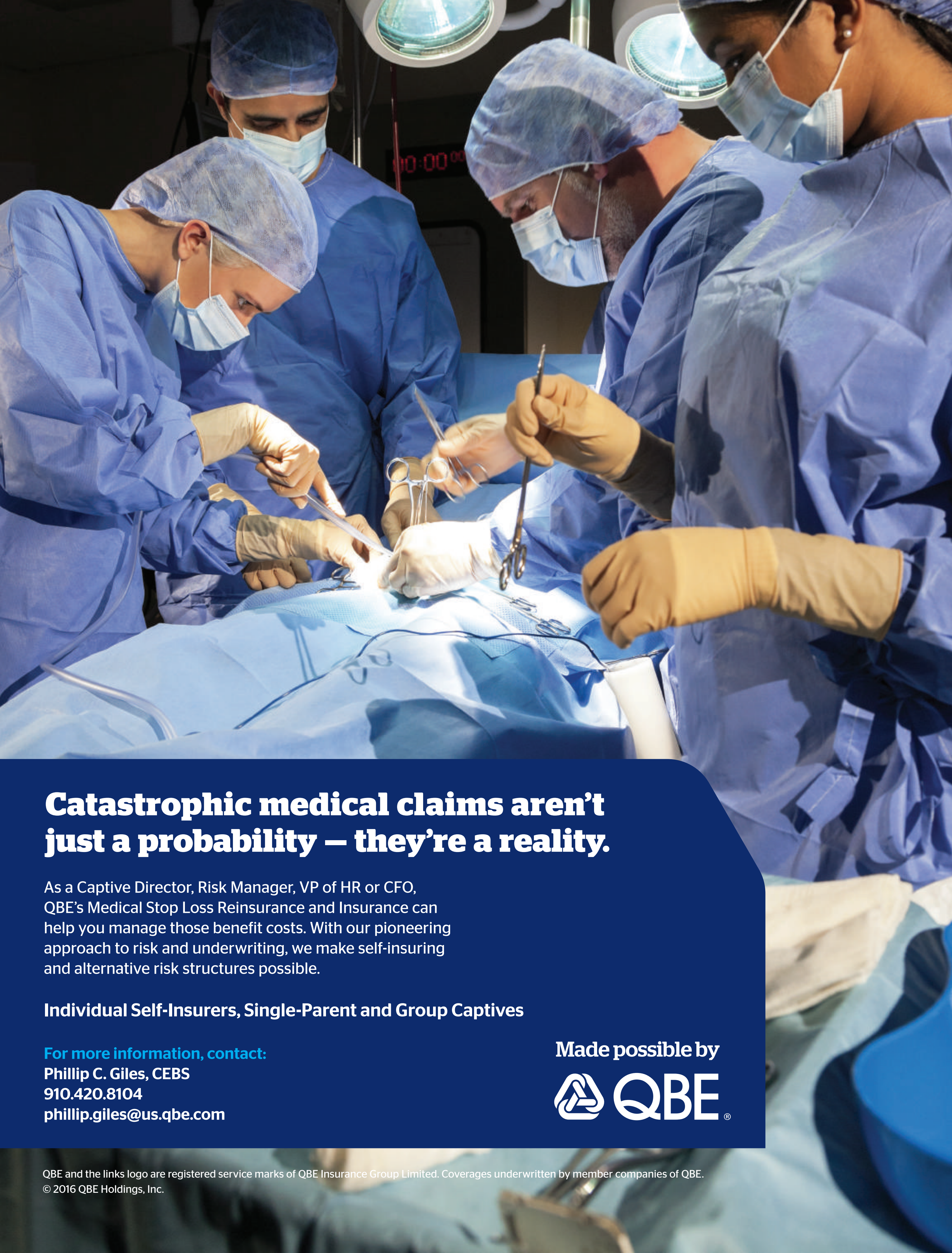
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Individual Self-Insurers, Single-Parent and Group Captives
For more information, contact:
Phillip C. Giles, CEBS
910.420.8104
phillip.giles@us.qbe.com
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