

TMG Alternative Risk Digest—May 2011

Beginning with this issue, The Towner Management Group will periodically consolidate the latest developments in the alternative risk and captive insurance markets in digest form to keep our clients and friends informed. More information, of course, is available through other communications and by talking with TMG's captive management professionals directly.

NAIC

The RRG working group for the National Association of Insurance Commissioners issued wording that would extend corporate governance rules to RRGs' boards of directors via a proposed amendment to the Model Risk Retention Act. Currently, only the CEO and captive manager of an RRG were obligated to report any non-compliance to its domiciliary regulators. The proposed amendment was available for comment 30 days from introduction after the NAIC's spring meeting.

NRRA

The National Risk Retention Association continued its stalwart defense of RRGs and their right to do business in non-domiciliary states. In February, the association requested a federal court order that would prevent the Nevada Insurance Department from restricting the rights of a Vermont-based risk retention group writing auto liability insurance in Nevada. This prohibition violates the Liability Risk Retention Act (LRRRA) of 1986.

New Jersey

The NRRA also wrote a letter to New Jersey Governor Chris Christie in late March, advising the state's top executive leader that Assembly Bill 1471 violated the LRRRA by requiring RRGs of taxicab owners to acquire auto liability insurance from the state guaranty association, contrary to the federal prohibition against this. In mid-May, Governor Christie signaled his agreement with the NRRA's position, sending the bill back to the Assembly to strike the provision from it. He added that the provision as initially written would ultimately result in higher auto insurance rates for taxicab drivers that would ultimately be passed on to consumers.

Nevada

Although Nevada's insurance department is mired in a legal battle with the Vermont RRG, as mentioned earlier, the state's Insurance Commissioner, Brett Barratt, rejected a proposal to impose desk-audit fees on RRGs that would violate the LRRRA. Nevada previously chose to assess the added fees, but the NRRA argued that desk-audit fees were prohibited by federal law. The LRRRA does allow states to levy a premium tax.

Vermont

Continuing the initiatives that have made it the premier U.S. domicile, the Vermont legislature updated its captive insurance laws with H. 438, which awaits signature from Governor Peter Shumlin. The bill makes permanent a first-year tax credit for new Vermont captives, newly allows incorporated protected cell companies and gives Vermont's insurance commissioner discretion to approve or disallow sponsors of cells. The latter provision eliminates what some believe were restrictions on sponsors. Previously, the domicile allowed only contract-created cells.

On a separate note, Vermont licensed seven new captives in the first quarter, its strongest growth in years.

Florida

The state's dormant captive insurance industry may receive a jolt if legislation introduced in both chambers of Florida's legislature advances. The two bills would liberalize the domicile's requirements for current captives, lower required surplus and capital levels, and allow other types of captives not included in current law.

Washington, D.C.

William P. White was named Washington, D.C.'s Acting Commissioner of the Department of Insurance, Securities and Banking (DISB). The new commissioner is a captive insurance industry veteran.

On the federal level, we continue to monitor federal proposals to limit the tax deductibility of reinsurance premiums paid by U.S.-based, foreign-owned insurers to non-U.S.-based affiliates. These and other financial and regulatory reform specifics are not set in stone and would need to pass through both chambers of Congress, which isn't a certainty. In any event, this remains a back-burner issue for now.

To learn how more about how these and other developments may affect your risk management efforts, feel free to contact us via the information provided below. Towner Management offers independent, full-service management to alternative risk financing entities in the U.S. and worldwide.