

Is This the Year Clarity Returns to the Captive Insurance Market?

Burlington, VT (March 4, 2013) – After a year in which risk retention groups fought their annual battle against states’ discriminatory practices and some big-name pure captives transferred domiciles within the U.S. due to tax concerns, will next year provide some clarity concerning the issues stoking these trends?

The elephant in the room is the applicability to captives of the Nonadmitted and Reinsurance Reform Act (NRRRA), which is part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Last year, some big-name captives switched domiciles to states where their parent companies’ headquarters resided, assumedly, in part, to avoid paying self-procurement taxes in multiple states.

“The lack of clarity on this issue will continue to cause uncertainty among captives,” says Len Crouse, a Partner with JLT Towner and former Vermont captive regulator. “If there is cause for optimism, it’s that the chorus of former and current Congressional leaders is growing louder, saying that NRRRA was never meant to include captive insurance.” Additional, captive insurance law firm Anderson Kill & Olick just released a paper concluding that NRRRA was not intended to apply to captive insurers.

While some single-parent captives switched domestic domiciles last year, the number of new formations also grew. Utah, with its specialization in small 831(b) captives, added 68 new captives, and Delaware recorded 59 new formations. Montana added 34, Vermont recorded 32 and South Carolina had 12 new captives. At year-end, South Carolina also named Ray G. Farmer its new Director of Insurance, the department overseeing the captive insurance division. Farmer restated that captive insurance will be high on his agenda.

RRGs were also active last year, with 18 new entities established and 13 retired. Nevada, in the news as it fights a long court battle with a Vermont RRG, led the way with five new formations and three retired. Additional fees charged and regulations imposed by some states in an attempt to limit or even prohibit RRG business in their domiciles continue to be issues that have defied resolution to date.

“I’m optimistic the National Risk Retention Association’s efforts will eventually help clear up these disputes and strengthen federal law,” says Crouse, also a member of the Government Affairs Committee of the Association. “The RRG industry is strong and deserves fair treatment from all domiciles.”

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