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BIG SKY COUNTRY, SMALL TOWN FEELING

IN A BUSY US CAPTIVE MARKET, MONTANA'S PERSONABLE AND RELIABLE BUSINESS ENVIRONMENT HAS HELPED IT GROW INTO A MAJOR FORCE. THE INDUSTRY BACKS THIS "SMALL TOWN FEELING" TO HELP THAT GROWTH CONTINUE

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ith an area of 147,040 square miles, Montana is the fourth largest US state, but due to its population of around one million, it has the second lowest population density among US states.

It is perhaps unsurprising then that what makes 'Big Sky Country's' captive market unique is the "small town feeling" at the core of its industry.

"In Montana you get a quick response," explains John Huth, president of the Montana Captive Insurance Association (MCIA). "If you call me, I'll call you back—if you call the regulatory team, they'll get back to you right away—I think that small town feeling helps this industry a lot."

The responsiveness and relatability of the state's captive regulators, the Office of the Montana State Auditor Commissioner of Securities and Insurance (CSI) captive program, has helped the state grow into one of the US' biggest captive



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domiciles. Montana has licensed more than 500 captive insurance companies since it introduced its captive law in 2001, and at year-end 2018, there were 279 active captives licensed in the state.

MARKET

As with many captive domiciles, market conditions in the past two years have had a negative impact on Montana. The number of new captive formations fell year-on-year in both 2017 and 2018, accompanied by more captive dissolutions than formations. However, the feeling in the domicile remains optimistic.

There were 26 new captives licensed in Montana last year, and Patrick Hunter, CSI captive insurance program financial examiner/analyst, says the regulator is “definitely happy with the quality of cases we are seeing”. He adds: “Our numbers were slightly down but we love the cases we are seeing.”

Giving an industry perspective, Jessica Heil, senior program manager/office manager,

Innovative Captive Strategies, notes: “The market is holding steady right now. I don’t see huge growth, as far as our business is concerned, we are just holding steady. We have had a few new captive licenses but nothing like what we have seen in prior years.”

SBUS AND CELLS

One continued positive for Montana in recent years has been the growth in the number of series LLC and protected cell captives (PCCs). The series LLC structure, introduced in Montana in 2013, allows each series member or series business unit (SBU) to maintain separate assets while carrying out its own distinct captive operations.

For the last three years, formations of SBUs and PCCs have outpaced standalone captives by a ratio of at least two-to-one. Tal Redpath, CSI captive insurance program captive insurance examiner, suggests this rise in popularity, which has led to the number of PCCs and SBUs almost equal to standalone captives, is due to “the synergies and efficiencies they offer that standalone captives don’t”.

He says: “The captive managers that use Montana as a domicile a lot really like the SBU-captive structure. It means

their clients can get a better deal from service providers, like accountants, auditors and actuaries, and so I think the cost savings is a nice feature of the SBUs.” Heil notes that a large part of her company’s growth has been focused in the SBU space.

“That is something that is unique for Montana and where we have seen our growth,” she says. “Not necessarily focused in one industry but quite a bit of growth in the SBU space. They’re relatively





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simple to set up. Once you have one series licensed it is easy to add more SBUs. The statutes in Montana allow for lower capital requirements for SBUs which makes it also easier for the smaller captives to jump in and get started.”

REGULATOR

The SBU legislation is an example of how the flexibility and adaptability of the state regulator has been a key advantage for Montana.

Heil highlights the regulator as “what makes Montana a great domicile”. “The department is top notch,” she explains, “they’re very responsive and the captive statute provides the regulators that certain amount of flexibility.”

“You can call anytime and bounce ideas off them and they’re often involved in

coming up with creative solutions. They’re very captive friendly and very business friendly.”

Hunter says the department has taken a common sense approach to regulation by trying to be fair and flexible while keeping the bigger picture in mind. He explains: “We are certainly not afraid to turn away business. I think the managers that we have worked with for a number of years appreciate that fact, we are in this for the long run, we are not just in it to write business this year.”

Redpath adds: “I think people like us because we listen to them, we don’t look for a way to say no, we try to find a way to say yes. If there is a way to restructure something, we are going to find it.”

This practical approach has also meant the domicile’s captive law has been regularly updated to keep it up-to-date and so that it reflects the needs of the industry.

“Our legislature is incredibly open to passing legislation,” notes Huth, “we have never had any piece of legislation fail.” “We watch the industry to see changes that are made, and we are always trying to satisfy the needs of the industry here in the state.”



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An example of this is the changes made to the legislation to allow government sponsored captives to be formed in the domicile. Following interest in the structure from a number of parties, the law was changed to allow their formation three or four years ago. The first government sponsored captive was formed this year and it was a landmark moment for Montana.

Hunter comments: "One of our new formations this year is a large municipality-sponsored captive, which is pretty cool. It is the first one we've done and might've been one of the first ones across the US."

The legislature in Montana meets every two years, and with the current legislative session coming to a close, there have been minor changes made to the captive law. Flexibility was added to the letter of credit statute so that the federal reserve membership requirement was removed for banks, and some small updates have been made.

Redpath views the lack of any significant regulatory changes this year as a reflection of how well-positioned the captive industry is.

He explains: "Since our law passed in 2001, those of us here at the department, in conjunction with our Montana captive association, have continuously kept our law on par with the market and what other domiciles are doing so that we remain competitive. I think we haven't had to do a lot of major changes recently because we have done such a good job of keeping up in the past."

It is also a reflection of the close relationship between regulators and industry, which Huth, who ran the state captive insurance division between 2001 and 2007, says is one of the domicile's "strong selling points".

Dana Sheridan, Active Captive Management chief compliance officer and Acisure deputy general counsel, describes the relationship as "strong" and "healthy".

"It really does take a village to have a well-run and compliant captive," adds Sheridan, "and Montana regulators apply

consistent and clear rules to all captives they govern, uniting all their captives under a safe regulatory structure." "We are all grateful to have regulators such as those in Montana. It makes all of our jobs easier when there is consistency, efficiency, clarity and fairness in regulation."

OBSTACLES

The quality of the current regulators is currently a strength, but could, if progression planning is poorly handled, quickly become a weakness. Heil explains: "There has to be a focus on the future. We have such a great team in Montana as far as the regulators are concerned, but Tal Redpath, Steve Matthews, and Steve Mack are all looking toward retirement, so I think the immediate focus will be to groom that next generation of captive regulators to be as good as their predecessors."

Outside of the issue of future regulating talent, Redpath says the obstacles facing the domicile are no different to those facing many at the moment. He adds: "Micro captives have been under a lot of scrutiny, so formations are down, and retirements/dissolutions are up."

OUTLOOK

Amongst what has been a turbulent few years for the global captive market, confidence appears high in Montana that the domicile can continue to establish itself in what is becoming an extremely congested US captive market.

Heil suggests that the market will continue to reflect the current trends. She says: "Risk-retention groups (RRGs) may continue to fall off. We manage a few RRGs but we're seeing a trend where the smaller RRGs are.

They are finding it challenging to maintain a static membership and considering merging with larger insurance groups or ceasing insurance operations and going into run-off."

"I do think we'll continue to see growth in the series captive space. We have also had growth in employee benefits, and we're working on licensing a new SBU in the EB area."

Huth believes that the domicile is "well-positioned". "I think the future is looking good. There is an industry-wide downturn in the market in general but the prospects for Montana are good. I'm hoping we will see a little uptick in the number of captives but that depends on the market."

"When we came into the market in 2001, there were only about 16 or 17 domiciles, now there are close to 40. But, if you are looking to get something done, give us a shot and I think you'll be impressed with the overall environment and industry in Montana."

He returns to the concept of the domicile's "small town feeling" and the positive business environment that creates. "It's about the openness of people to do business and the positive regulatory atmosphere and environment." ■