By Bruce Shutan

REACHING A CAPTIVE AUDIENCE

SIIA ADVANCES SUGGESTED CODE OF CONDUCT FOR CAPTIVE MANAGERS TO HELP POLICE PERFORMANCE, PROVIDE PROFESSIONAL BENCHMARKS AND RAISE CREDIBILITY IN THE EAGLE EYES OF STATE REGULATORS

Mindful of the rise in group captives and deeper scrutiny from state regulators and the IRS, SIIA's Captive Insurance Committee has taken concrete steps to help formalize these increasingly popular alternative risk transfer arrangements.

The hope is that state-based industry associations will adopt a professional code of conduct that the 21 committee members drafted last year and ensure it's adhered to by captive managers within their jurisdictions. The six-page document also serves as a due-diligence benchmark for the public at large to assess captive manager performance and means by which to gain credibility before state regulators.

Only one such regulator thus far is using it as a criterion for judging the acceptance of captive managers. Committee members would like to see others follow the lead of Michael Corbett, director of captive insurance for the state of Tennessee.

SIIA's code of conduct, which is posted on the group's website, includes five canons: integrity, conflicts of interest, confidentiality, advertising and practice management.

FILLING A VOICE ON SELF-REGULATION

"We felt there was this void within our industry from somewhat of a self-regulatory perspective," says John Capasso, president and CEO of Captive Planning Associates, LLC who chairs SIIA's Captive Insurance Committee, referencing similar efforts in the accounting and legal professions among others.

A driving force behind this initiative was to guide captive managers in the way they conduct their practices and better gauge what others may be doing to help them, he said. The thinking is that this, in turn, would make regulators' jobs much easier.

The captive committee sought to build a platform that would allow captive managers and service providers to band together and leverage SIIA as an effective lobbying resource, explains Jerry Messick, a member of the committee and CEO of Elevate Captives, which ensures that all of its captive clients become SIIA members. "In fact, we pay for that on their behalf," he adds. Many states have a "white list" of captive managers, he notes, also citing Delaware's advanced filing process for which certain captive managers qualify based on the quality of their filings.

Kevin Doherty, another member of the committee and partner in Dickinson Wright PLLC's Nashville office who is also president of the Tennessee Captive Insurance Association, describes the code of conduct as "a wish list, if you will, of how managers should act and respond to circumstances while doing their jobs. We did not set it up to be mandatory with an enforcement or punishment mechanism."

While integrity is obviously a necessary canon, Messick cites practice management as the centerpiece of this effort. He references being asked to review multiple captives whose insurance policies were never issued, nor was a feasibility study ever done, while others had no claims protocols. Conflicts of interest also arise when some whose primary focus is investment management are looking for a vehicle to manage assets and now consulting and creating what should be an insurance company.

"It's a little bit of the tail wagging the dog when in truth that investment management is just a component of the overall structure of the captive," Messick cautions.

MIRRORING OTHER SPECIALISTS

Considering how insurance agents in the life, accident, health or property and casualty areas must be licensed to sell those lines to the public, he believes captive managers shouldn't be treated any differently.

"I don't mind licensure," Messick says, acknowledging that he may be in the minority with that view. "This is my profession. When I started in the insurance business 35 years ago, I went out and got a license, and I still have a license today with insurance. And there's continuing education requirements that go along with that."

In a similar vein, he's well aware that the IRS has issues with policy forms or rates that go to develop captive premiums and doesn't mind going the extra mile to ensure compliance. Noting that there's already a regulatory process for that in every state involving submissions to rates bureaus, he admits "that's probably anathema to most managers and is a lot of work. But for those of us who are trying to do this the right way and are using all of the resources that we have available to us, including independent actuaries, that doesn't bother me."

Since most captive managers have other professional designations and Doherty surmises that the lion's share probably are also CPAs, SIIA's suggested canons mirror the conduct that's expected of them in other areas of expertise. "I'm an attorney governed by the bar in what I do," he notes. "Of course, actuaries are governed by the Actuarial Society with their own standards, and I think in all of those cases, we are sort of self-governed."

One related topic that the captive committee has frequently addressed is whether captive managers are prepared to create a self-governing organization like the bar or CPA Board of Accountancy. Doherty believes the captive industry does a good job of policing itself and, therefore, there's no need to regulate the profession. He adds that most conflicts involving captives occur outside the U.S. "in domiciles that are much more lax than any of the domestic domiciles would be."

INDUSTRY REACTION

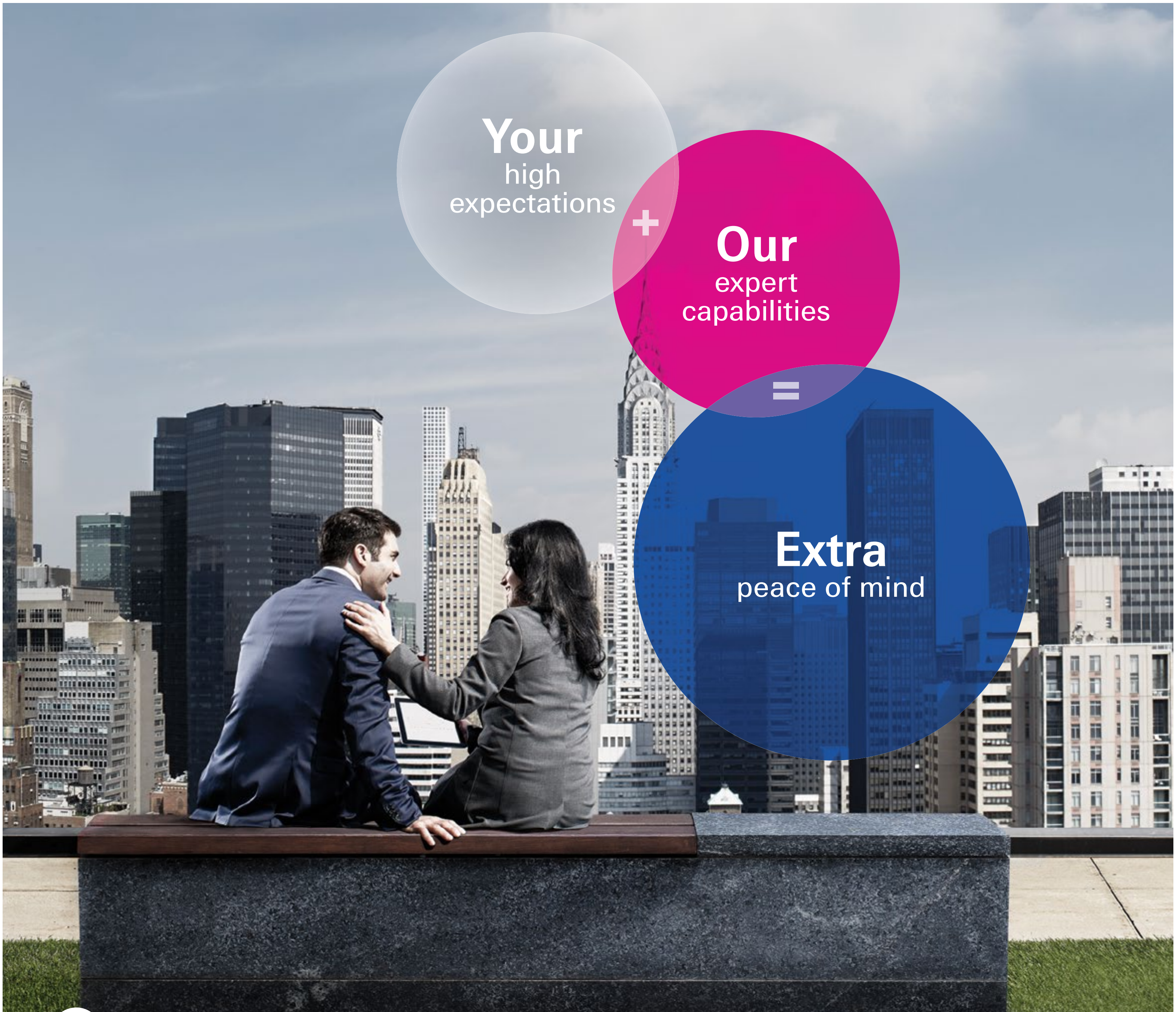
SIIA's code of conduct spurred a lively discussion among a panel of captive regulators at SIIA's national conference in San Francisco where John Talley, J.D., captive program manager for the Missouri Insurance Department, likened the idea to CPAs and other professionals abiding by their own industry practices. However, he stopped short of suggesting a need for regulation, citing licensing and enforcement challenges.

While Corbett was eager to embrace the code in Tennessee, Steve Kinion, director of the Delaware Captive Insurance Bureau, revealed during the panel discussion that he would not do so "because it is merely advisory only. I think it's nice if managers abide by that, but I harken back to the early 2000s when the Insurance Marketing Standards Association was trying to develop independent standards for insurance agent conduct. It never caught fire and that concept seemingly went away."

Capasso believes Corbett sought to strengthen the core of captive manager practices from underwriting to an accounting and reporting perspective. As such, "a domicile such as Tennessee is in a position to weed out some of the weaker cap managers or give them direction," he explains, adding that signatories to the code will be named.

Travis Wegkamp, captive insurance director for the Utah Insurance Department, considers the code "a great resource" that he would recommend all service providers do their best to adhere to, "but at the same time," he told fellow panelists, "I'm not really interested in licensing and regulating captive managers."

One of the industry's educational leaders welcomes the effort to hold captive managers more accountable for their actions. "I'm supportive of anyone that wants to tell people that they should be educated," says Mitch Cantor, executive director of the International Center for Captive Insurance Education (ICCIE), a 501(c)(3) organization operating for 16 years at the behest of the industry that provides educational courses online and two professional designations. "We obviously encourage everyone to be as highly educated as possible."



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NEXT STEPS

Meanwhile, the captive committee plans to spread the word about its suggested code of conduct at future industry conferences, including a panel discussion Doherty will lead at the Captive Insurance Companies Association's annual international conference in March. Messick also would like to solicit industry feedback on the code as it currently exists and see a second version released in the first quarter of 2020.

The reaction committee members have received about the code so far "has just been fantastic," according to Capasso. Most people wonder why it took so long to produce a code of conduct in the first place, he reports, but they're also curious about the goals moving forward. His stock response is to get "one domicile at a time" on board as part of an incremental approach that will leverage the involvement of committee members on the board of various state associations.

Messick, who describes the code of conduct as a starting point, reveals that it's "something we've actually been working on for quite a while." One caveat he noted is that it was never designed for SIIA to be a self-regulatory organization, describing the effort as just an opportunity to tighten industry standards.

Assessing the conduct of captive managers is becoming increasingly important as group captives grow in popularity. Most of the self-insured community may not realize the full power of captives, Messick opines. For example, these vehicles transcend reinsurance for workers' comp and medical stop-loss to include other lines.

"We're working on a lot of captives right now that have a component to the products that they sell like an extended warranty you might buy at Best Buy," he says. "A lot of the self-funded accounts that are members of SIIA are starting to learn that there's another avenue that they can tap into to secure and self-fund the other risk that they have that maybe they just didn't think about because group medical and work comp are two of the biggest lines on their P&L."

Noting the level of variation and complexity among captives, Doherty says it's critical to avoid one-size-fits-all rules or directives. "There's an expression in our industry: when you've seen one captive, you've seen one captive," he quips. "They're like snowflakes; they're all different." ■

Bruce Shutan is a Portland, Oregon-based freelance writer who has closely covered the employee benefits industry for more than 30 years.