



SIIA'S CAPTIVE COMMITTEE STEPS UP FOR A CHALLENGING 2021

Written By Karrie Hyatt

Last year's, hardening market and pandemic challenges are bringing more businesses to the captive marketplace in search of alternatives to the traditional marketplace.

According to John R. Capasso, president and CEO of Captive Planning Associates, and the outgoing chair of SIIA's Captive Committee, "We've had one of the busiest years in five years. The hard market has opened people's minds to looking for alternatives. Brokers are being pushed by their clients to find alternatives. We're having discussions with potential clients on more complex captive structures. It's a whole different dynamic of the types of risk captive structures that we're being asked to design."

It's a dynamic time to be in the captive industry with many opportunities to show how flexible and responsive captives can be. However, with the IRS ramping up its audits of captives and aggressively pursuing court cases, captive owners and captive managers must make certain that captives are being used appropriately.

To support both newcomers and industry veterans alike, SIIA's Captive Committee has big plans in 2021 for educational outreach and for updating the Captive Managers Code of Conduct.

REACHING OUT THROUGH EDUCATIONAL OPPORTUNITIES

Two of the three agenda items on the Captive Committee's To-Do list involves education—both an educational campaign to highlight the value of captive insurance and continuing education on specific, specialized content about key topics.

The first part of the Captive Committee's educational campaign will be to work to educate those who are newer to the industry or who are just starting to look at what captives can offer.

“There is still a misconception out there about who should contemplate going into an alternative risk structure, like a captive,” said Capasso. “I think SIIA can be in the forefront to educate both those new to captives and those who've been around awhile.”

According to Harry Tipper, chief operating officer-insurance, CaptiveOne Advisors LLC, and Captive Committee Board member, “We've got two real thrusts for the year regarding captive education, and they both grow out of the fact that the pandemic has created a hardening of the marketplace. What that hardening means is that we've got a lot of people coming forward who are new to captives, not familiar with how they are used, and the variety of ways they can be used.”

“The Captive Committee is embracing a back-to-basics approach,” said Don McCully, founder of Medical Captive Underwriters and Captive Committee Board member. “There are a lot of people who have come into the business over the last ten years. The industry has not experienced a hard market in a long time. We need to remind and educate industry participants about a hard market and how it is different from the soft market we experienced for so long. We need to reach out and educate about what all captives can do, for large employers and middle market participants alike.”

McCully continued, “Part of the education process is to make sure that people know it's time to adapt their outlook. The market is hardening, you could see a 50% jump [in premium] tomorrow and have no options. Some captive owners might find that their captive isn't structured adequately to address those changes.”

Focusing on getting the correct information to those new to the captive arena is the



first step. The information will be about the value of captives and how to execute the concept. Tipper said, we want to “Get these new folks up and running. Get that kind of introductory information to the prospective owners and their trusted advisors.”

“It’s important to educate our clients and prospective clients,” said Capasso, “But it’s [also] important to educate the broker community. I think it’s incumbent upon us to continue to educate the brokers many of whom, quite frankly, don’t truly understand how captives enter the risk management equation.”

The Captive Committee also wants to focus on more advanced topics, going into detail to describe topics like risk distribution, funding for catastrophe losses, premium pricing, and distinguishing insurance versus business risk. The goal of focusing on this type of education will be to answer questions from those in the industry and in other constituencies, such as federal and state legislatures.

With many businesses still working remotely in 2021, due to the pandemic, face-to-face meetings are not going to be an option. The Captive Committee will have to rely heavily on virtual meeting platforms or web forums. According to Capasso, “We’ve talked about doing webinars and video conferencing. With the pandemic, people are now used to going on Zoom or Microsoft Teams or other online interactive formats. It won’t be as difficult in the future to set up virtual meetings and get people to participate join in.”

For the more advanced topics, content will likely be released via a combination of virtual meetings and written white papers. “The materials will vary by the audience, but the goal is to get good solid information out to the people that will benefit the most by it,” said Tipper.

UPDATING THE CODE OF CONDUCT

The third item that the Captive Committee wants to take on this year is a detailed update of the Captive Manager Code of Conduct. The committee first released the Code in 2019 in an effort to help guide captive managers to a high standard of ethical conduct and to help strengthen the reputation of the captive industry. The Captive Committee and SIIA sought to take a proactive approach to answer any questions about the validity and effectiveness of captives with the Code.

It was developed and released at a time when the IRS was first ramping up its attacks on 831(b) captives and was meant to be a living document—changing as the market and industry changed. While the document has been tweaked in the last two years, the Captive Committee now wants to give the document a more comprehensive update.

According to Tipper, “I want to make sure that when we review and, perhaps, modify the Code that we do it in the context of new court cases or other matters that have happened since the previous review. I want to look at those to see if we need to enhance or otherwise change a section of the existing Code or provide some sort of guidance.”



The committee wants to make sure the Code is answering the right questions—the questions that are being asked by captive managers and their clients. They want to establish a sturdy framework so that any captive manager can use the Code to guide them in conducting their business.

Committee members have to walk a fine line in order to create a document that can articulate the needs of their industry, yet not attempt to regulate it. As a trade association, regulation is not SIIA's job, but by creating the Code the association is working to offer guidance where needed and answer questions where there is confusion. "To me," said Tipper, "The purpose of the Code is to articulate custom and practice as opposed to standards of behavior."

There is some ongoing discussion within the committee about how far the Code of Conduct should go, with some members preferring a more general expression of how to conduct captive business and other members preferring the document to be more specific. However, each member of the Captive Committee wants to make sure that the document can answer any question about baseline standards for good management.

For Capasso, "I still think the Code of Conduct can be strengthened in areas regarding communication and captive manager procedures and protocols within our own industry. Then [from there] try to build some consistency in how we form and manage captives."

According to McCully, "We want to continue to grow and expand the captive manager code of conduct to suit all the needs of all the constituents who would rely on that document to make an informed decision." ■

Karrie Hyatt is a freelance writer who has been involved in the captive industry for more than ten years. More information about her work can be found at: www.karriehyatt.com.

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