TxCIA
Texas Captive Insurance Association

2023 Annual Conference

Texas Captives: Empowering Texas Business

Building a Captive Employee Benefit Program

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Overall Market Trends

- Growing appetite
- Third-party risk
- Diversification of risk in captive
- Connect Risk Management and HR/Employee Benefits Departments
- ERISA
    - US Life, Disability and Voluntary Benefits
    - DOL approval required
- Non ERISA
    - Medical Stop-Loss
    - International Employee Benefits

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The Benefits of Adding Benefits to your Captive

- Cost savings and improved cash flow
    - Increase cost certainty and support budgeting
    - Reduce operating costs
- Control in underwriting and funding
- Flexibility in terms and conditions
- Better claims management
- Improve in access to data
- Support ESG initiatives
    - Social – Diversity, Equity and Inclusion

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ERISA Overview

Is the Employee Benefit Subject to ERISA?

- Life, Disability, Retiree Medical and Qualified Retirement Plans are subject to ERISA § 3(1)
- ERISA covers a plan, fund or program having the following characteristics:
  - Established or maintained by an employer or employee organization
  - Purpose of providing benefits to participants or beneficiaries, through the purchase of insurance or otherwise

ERISA Overview

What is a Prohibited Transaction ("PT")?

- Two kinds of PT's under ERISA:
  - PT between a plan and party-in-interest ("PI") — ERISA §406(a)
    - PI is:
      - Employer who sponsors employee benefit plans
      - Captive more than 50% owned by employer
  - PT involving fiduciary self-dealing — ERISA §406(b)
- Using a wholly owned captive would most likely be a PT

Significant penalties will apply if PT exists

ERISA Overview

Types of Prohibited Transaction Exemptions (“PTE”)

- Statutory
- Class
- Individual
  - Columbia Energy (2000)
  - Comcast (2022)
  - Phillips 66 (2022)

DOL Critical Success Factors

- Licensed by a U.S. domicile to conduct insurance transactions including reinsurance transactions involving employee benefits
- The Plan will pay no more than adequate consideration for the insurance contracts
- No reinsurance commissions will be paid by the Plan with respect to the direct sale of such contracts or the reinsurance thereof
- There will be immediate and objectively determined benefits to the Plan’s participants and beneficiaries – benefit enhancements
- A majority of plan savings will be shared with employees
- The Plan will only contract with insurer(s) with a rating of A or better from A.M. Best Company, or another equivalent rating from another rating agency
- An Independent Fiduciary analyzes the transaction and renders an opinion that the requirements above have been complied with

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What Are Benefits Under Focus

Relevant Revenue Rulings on Risk Distribution

- Revenue Ruling 92-93 concluded that certain employee benefits program, specifically life insurance (and disability) written in a captive is unrelated business (third party) since it is insurance for the employees and their beneficiaries and not for the company
  - This Revenue Ruling provides a clear path for considering life and disability benefits to be third party business
- Covid-19 resulted in organizations having to restructure employee benefit programs and captives are becoming a mainstay of long term strategies

Other Benefits to Consider

- Medical Stop-Loss
- International Benefits
- Voluntary Benefits
- Pensions

Program	Potential Savings (Percent of Frictional Costs)
Life Insurance	15% to 35%
Retiree Medical	10% to 25%
Disability	15% to 35%
Multinational Benefits	15% to 25%
Medical Stop Loss	5% to 25%

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Questions?

THANK YOU!

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