ART GALLERY FOR MARCH

Caught between two regulatory forces?
Csiszar calls ART an escape route

Risk management is now officially caught between a rock and a hard place. From one direction the federal government is gaining momentum toward a regulatory takeover that would scoop up insurance along with other financial services. And from the other direction the states are twisting their end of the vise toward a more costly, less competitive regulatory structure.

What's a poor, old (or even a rich, young) corporate risk manager to do? One suggestion comes from that paragon of entrepreneurial risk management, Ernst Csiszar, the former South Carolina insurance commissioner who later led the Property Casualty Insurers Association of America.

"Start thinking about captives and engage yourself with the alternative market," he told his audience at the recent "Insurance at the Crossroads" program at the Cayman Captive Forum. (Take a moment to pity those poor souls forced to defend themselves against harmful solar rays while the rest of us were luxuriating in the cool northern jet stream.)

Csiszar offered the ART world as a rare source of relief for risk managers caught up in the current federal frenzy of regulatory zeal. "You have to have a risk management function that really understands how the business works," he said.

Traditional insurance is headed toward "inevitable" federal supervision, said Csiszar who, by the way, would be a great candidate for insurance czar if that job were open – his name puts him halfway there already.

"Insurance has taken some real body punches," he said with characteristic colorful delivery. "And not just with AIG, the monolines and the soft market. We are in the midst of overt political intervention in business."

The former regulator went on to say that the fifty or so "edicts" issued by the federal government relating to financial services were only creating uncertainty and instability. "The biggest single problem in extracting ourselves from this situation is political interference," he said. "We are going to see federal supervision of this industry – it's inevitable."

The state side of the regulatory equation is not so easy to identify because it is dispersed through the 50 states plus the District of Columbia and various territories. *BestWire* reported industry comments that can be synthesized into a less-friendly political climate resulting from the Democrats' significant election gains.

(If trial lawyers and consumer groups can be equated with Democrats, we can expect the property/casualty markets to lose ground on issues such as credit-based insurance scoring, rate approvals and other issues.)

A representative of the National Association of Mutual Insurance Companies recently described the industry's strategy as "defense, defense, defense." He cited moves to restrict the use of consumer credit data in insurance scoring in Florida, Nevada, Delaware and Wisconsin among states that have seen an increase in foreclosures and job losses.

In December, for example, the U.S. Federal Trade Commission ordered nine of the largest homeowners insurers, representing 60% of the U.S. market, to submit information on how consumer credit records are used in their underwriting and rate setting models. It is assumed that the states' use of such data will encourage legislative bodies to begin reversing the "rate modernization" laws of recent years.

Also on insurers' radar is the new potential for "bad faith" legislation that could open the door for increased lawsuits and damages awards. Washington and Minnesota have both passed such laws and 16 other states have introduced legislation.

"Based on our analysis of the political climate, we expect the trial bar to aggressively push legislation in statehouses across the country that will create more opportunity to file lawsuits and inflate damage awards," said a representative of the Property Casualty Insurers Association.

In general, state governments struggling to balance budgets are predicted to increasingly look toward the insurance industry for additional revenues. "They will pick up every rock they can look under for taxes, fees and surcharges," an American Insurance Association representative said.

With pressure coming from both the federal and state government regulatory fronts, the "sweet spot" for reasonable, business-based risk management structures and decisions becomes increasingly narrow, and the role and rewards of ART grow relatively more prominent.

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