

ART GALLERY FOR APRIL

From California to DC It's all news of captives

By Allen Taft

Adopting the bicoastal culture last month, I was bobbing and weaving from CICA in the California desert to SIIA in the Washington swamp, all the while my news antenna picking up bulletins from there and elsewhere.

At CICA, the crowd seemed subdued by all the bad news, or maybe they were just taking up the laidback California pose. Everyone seemed to agree that business would be flat this year due to the lack of corporate enthusiasm for writing checks. Consensus was that President Obama has frozen us in place while everything else gets figured out.

BestWire summarized the squishy market as a period of transition to be followed next year by a hardening of professional lines that could nudge the formation of new captives in 2010.

And *Business Insurance* quoted a captive manager that there is plenty of interest in forming new captives but that lack of available capital is a major holdup. "Banks aren't giving out letters of credit freely," the manager said. "There's an awful lot of interest but capital and collateral are holding us back."

Meanwhile, here are some other dispatches I collected:

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In Montana, small captives will see their \$5,000 minimum premium tax prorated during the year they are licensed, quarter by quarter. Those licensed after April 1 will post \$3,750 and further \$1,250 reductions will occur for each subsequent quarter. The legislature's gift was the result of an initiative by the new state auditor's office with the support of the Montana Captive Insurance Association, according to John Jones of Billings, a SIIA board member.

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In Washington, there was a general stirring of the "tax haven police" in the Obama Administration and Congress. The administration's 2010 budget would include

“robust IRS tax compliance initiatives,” said the Huffington Post, to close perceived offshore tax loopholes and Senator Carl Levin (D-MI) has floated a bill with similar intent.

Longtime captive industry observer and author Roger Crombie dismissed any possible draconian effect of a “tax haven crackdown” on the Bermuda insurance industry in his *Royal Gazette* commentary. “Bermuda is not a tax haven,” he wrote, then repeated for emphasis: “Bermuda is not a tax haven.”

He reasoned that even in a time of tax enforcement, “Neither Britain nor the United States wants to damage the legitimate business operations of companies and individuals in Bermuda or anywhere else. You do not declare war on your allies.

“Probably, the Bermuda banks will be asked to operate to a different standard, as will banks around the world. Bermuda will cooperate with anyone when it comes to tax cheaters. The tiny benefit we earn is grossly outweighed by the reputational damage.”

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Vermont was quick to jump into any breach that a U.S. crackdown on offshore “tax havens” may cause, proposing one-time tax credits of \$7,500 to offset premium rates for new captives in 2009 and 2010. The proposal would also raise from 10% to 12% the portion of premium tax revenues the state can use for regulating and promoting the captive industry. The state offered similar incentives from 2001 to 2003, years of sharp captive growth.

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Writing in *National Underwriter Property & Casualty*, Karen Cutts reported a survey by her newsletter, *Risk Retention Reporter*, in which a majority of risk retention groups reported that nondomiciliary states are encroaching on the federal preemption provisions of the Liability Risk Retention Act (LRRA).

Encroachment was said to include unlawful interference such as improper assessment of fees, impermissible requests for information and requirements of regulatory review and approval for RRGs licensed by other states.

An example RRG that provides liability insurance coverage to truckers reported “New York, Minnesota and Florida will not allow RRGs (licensed elsewhere) to operate in their states. This seems to be a clear violation of the federal Risk Retention Act.”

This was timely for SIIA's Alternative Risk Transfer (ART) Committee, which used its time in Washington during the Legislative & Regulatory Conference to lobby members of Congress to strengthen federal preemption of the LRRRA and allow RRGs to write commercial property insurance.

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