ART COLUMN FOR JULY

New benefits captives may be the treasure at the rainbow's end

The pot 'o gold at the end of the rainbow for employee benefits self-insurers has long been an alternative risk transfer scenario that would pass muster with the Department of Labor. Gradually during recent years, the DOL has opened its doors to captives.

Our antennae have picked up two examples of currently forming benefits captives that, when all buttoned up, may stimulate a mass migration toward the ARTside among benefits self-insurers.

Both of the companies now under construction apply an ART element in a different way, and each could provide important strategic advantages to their owners. Here's the grapevine skinny on them:

#1: New kind of MEWA

Of course, the multiple employer welfare association (MEWA) became a pariah among state regulators because of some early and uncommon failures. But the form had an irresistible attraction as a primitive association health plan. SIIA and others have been proposing federally-enabled AHPs to Congress since the Clinton administration, with no success. If this idea works it would produce a *de facto* multi-state association health plan that wouldn't require government approval, neither federal nor state.

This new structure appears to be a conventionally fully-insured employee group health plan by a traditional health insurance company. But rather than holding all the risk, the issuing carrier would reinsure a prudent percentage of risk to a captive owned by a group benefits trust sponsored by a trade or professional association – whose members' employees would be covered. The traditional insurance company will issue individual employer group medical policies and may or may not provide administration and claims services.

Setting up each plan's trust in its own incorporated segregated cell will apparently satisfy the DOL's requirement of a nonprohibitive transaction as commingling of plan assets will be prevented.

Our source on this deal reported that this is the first such multi-employer plan presented to the DOL and that the agency responded enthusiastically about the innovative approach for a middle market benefits program.

The lesson is that small to midsize employers and employer groups can find creatively structured benefits captives that have to date been attempted only by major corporations.

#2: New kind of stop-loss

In this example a large TPA has formed a captive insurance company that will allow its clients to participate in the specific and aggregate excess coverage of their self-insured employee health plans. As a coalition of self-insured ERISA plans, this structure doesn't require DOL review.

The captive will serve as an excess coverage pool in a layer of additional risk, while the conventional stop-loss policy will be pushed up to a higher attachment point. When profitable, the captive will distribute surplus paid premium back to the owners of the captive.

In addition to the pooled layer of health benefits risk, the captive will set up incorporated segregated cells to provide their members with long-term disability, dental, group life and perhaps other coverages under the same pooling concept for each line.

Each employer's program will function as a separate ERISA plan, the difference being the potentially profitable layer of risk covered by the captive, and with the protection of conventional stop-loss insurance for catastrophic claims.

These examples support the idea that ART is the creative, pioneering wing of the insurance industry, and that it is just now beginning to gain momentum toward an unlimited future.

Allen Taft is founder and president of The Taft Companies, captive brokers and managers in Bermuda and many U.S. domestic captive domiciles. He may be reached at wataft@hughes.net.