

ART COLUMN FOR AUGUST

Thank You, Mr. Roberts

By Dick Goff

Joining the ladies over on the left side of the bench, Chief Justice John Roberts was the savior of illegitimacy when he joined the liberal coalition to uphold the Affordable Care Act and send the country further along a dark spiral of increasing costs and government substituting itself for our doctors.

One wonders if Mr. Roberts will sustain his new membership in the Court's left wing over time and future judicial decisions. In an inside-out scenario worthy of "Alice in Wonderland," he has attempted to prove he can take the politics out of jurisprudence by swapping one ideology for another.

Unknowingly, however, he and his Court majority have done self-insurance and alternative risk transfer a great service. Now we don't have to sit around and wait to see what will happen, and we can boldly rally employers to put their benefit plans into the safekeeping of ERISA and ART funding structures.

Since the ACA was passed a couple of years ago I have chafed at the resulting environment of indecision as our industry and many employers have drifted along from one headline to another and one court action to another.

At times it has seemed as though everyone in our country has resembled a giant herd of deer caught in the headlights of Obamacare, transfixed by the threat but unable to escape it.

In the time-honored tradition of plagiarism, we rip off the line everyone remembers from their typing lesson: Now is the time for all good men to come to the aid of their country.

Every TPA, MGU, stop-loss insurer and captive manager may now fearlessly work with employers of all sizes of companies to save them from the costs and dictates of the traditional health insurance industry. My SIIA colleague Andrew Cavenagh posted on LinkedIn: "I think the ruling is a positive thing from the perspective of benefits group

captives...the worst outcome for this niche would have been if the entire bill had been thrown out, as many employers would revert back to the (habit) of sitting and watching.”

But here’s the nub of the issue: No employer should change its benefit plan because of Obamacare’s success or failure. They should do it because it’s the right thing for themselves and their employees and dependents. Now the realization that all elements of the ACA will take effect in 2014 can be a powerful stimulus to action.

All evidence points to the fact that self-insurance costs less than traditional health insurance and provides more. It provides more flexibility in benefits when state mandates are taken out of the equation and it provides more control because self-insurers own their own claims data and are free to design preventive programs that will improve the health of their employees.

Obamacare will continue to be resisted by Republicans and many independent voters. And I will go on record right now that the first wave of “taxes” on individuals penalizing them for not buying health insurance will put the whole mess back into the courts and Mr. Roberts will have another crack at it. People can’t sue for relief of a tax until it is collected. But once the coercive tax kicks in, watch the briefs fly!

But we don’t have to worry about any of that. What we have to worry about is the attacks by state and federal government on self-insurance quite separate from Obamacare.

State insurance regulators as marshaled by the National Association of Insurance Commissioners are salivating at the prospect of issuing draconian new rules for benefits stop-loss policies. And the Obama Administration’s Treasury Dept./IRS is circling stop-loss insurance with the apparent intention of making it “health insurance” despite a dozen federal court rulings to the contrary. If that happens, conventional self-insurance will be mortally injured. That’s a good reason for every SIIA member to support the organization’s government relations and legal defense funding efforts.

ART will play a greater role in the future, as new excess loss structures for employee benefit plans are required. I have written before that self-insurance combined with captives can maintain employers’ independent control quite beyond the capacity of government interference.

Now the time is right to follow through on that promise.

Dick Goff is managing member of The Taft Companies LLC, a captive insurance management firm and Bermuda broker at dick@taftcos.com.