

ART column for December

A fable of lemmings and men

By Dick Goff

You know the plight of the lemmings, the small Arctic critters that are genetically compelled to commit suicide by jumping off oceanside cliffs. If the fall doesn't kill them, they swim out to sea until they tire and drown – certainly one of nature's more extreme solutions to overpopulation.

Now apparently a lemming-like compulsion has been detected among larger creatures that walk on two legs and wear pinstriped suits with Gucci loafers. Their habitat is state insurance regulatory offices.

While no actual deaths have been traced to members of the *homo regulatoris* class from this practice, they certainly appear to be working against their own interests, a behavior often associated with professional suicide. Some have put aside their concerns for a robust state-regulated insurance industry by prostrating themselves on the altar of federal domination.

That's the only way I can describe the current trend among state regulators who carelessly damage the interests of their own states' employers and employee/dependent populations by damning self-insured benefit programs in favor of Obamacare's health care exchanges.

It's reasonable to me that the logical result of this trend would be final federal assumption of national health care, ending much of state insurance regulation, not to mention many regulators' jobs.

Currently it appears that the only people who remain enthused about Obamacare are the state regulators who are following each other off a cliff of their own making. That free fall takes the form of state legislation that limits employers' access to reasonable levels of stop-loss insurance, which enables them to limit their loss cost dollar amount while self-insuring their employee groups.

California – long famed as the left coast bastion of government interference – recently passed the law that requires minimum \$65,000 attachment points for self-insurance programs. You can expect other states to follow suit. They will ignore the facts researched by the University of Chicago that self-insured coverage would cost about 25 percent less per individual than Affordable Care Act (ACA) small-group exchanges. “Damn the truth, full speed ahead,” they say with Admiral Farragut-like bravado.

Meanwhile the District of Columbia insurance department has made it known that no captive insurance company offering medical stop-loss coverage is welcome there. The regulator who manages captives in DC said this move is to protect the District’s efforts to encourage people to buy health insurance through the exchange it set up under the ACA by eliminating competition from self-insured plans.

The Montana insurance department has said it will no longer accept license applications from risk retention groups (RRG) seeking to provide medical liability coverage. The captive regulator there said the state has gone down that road before and it hadn’t gone well but, in truth, was not because of good governance but from pure politics.

A little-known fact providing context is that Montana a couple of years ago caved under pressure by California to not intervene on behalf of the successful Montana-licensed RRG that was providing medical plan liability insurance to a group of California businesses to the distinct benefit of those businesses and their employees. California hadn’t found a way to stop that program other than through two separate lawsuits and its deeper pockets won the legal battle against it.

Sad to say, these developments and others to be expected are probably the beginning of the end for the RRG movement. If states can prevent them from writing medical stop-loss coverage, who’s to say they won’t prevent other liability coverage as well.

SUBHED But wait, there’s hope

A different kind of captive program may provide the defense to this problem for employers who self-insure their benefit plans. It could be borrowed from the P&C world

in the form of a “deductible reimbursement collar” which would reimburse employers for a certain portion of their self-insured retention.

Taking California as an example, a \$30,000 reimbursement collar would bring the effective self-insurance stop-loss attachment point to a more reasonable level of \$35,000 instead of the California-mandated \$65,000.

Such a P&C captive insurance policy would not appear in any benefits plan documents and would be totally invisible to state regulators.

Once again: ART to the rescue!

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