

Workshop W8

Wednesday, November 4, 1:30–3:00 p.m. and 3:30–5:00 p.m.

THE CAPTIVE DECISION: START TO FINISH

Presented by



Bruce J. Moldow
Executive Vice President/Chief Legal Officer
Moss & Associates, LLC



W. Scott Trethewey
Executive Vice President
Moss & Associates, LLC

Captive insurance companies offer contractors a number of benefits, including the opportunity to reduce price fluctuations in their insurance program and access to coverages that may not be available in the commercial insurance market. When the market begins to harden, the interest in captives always grows accordingly. However, captives are not the best solution for every contractor, and the decision to form a captive requires a thorough examination of the contractor's objectives, appetite for risk, funding capabilities, and more. Further, captives come in different forms and are not a "one-size-fits-all" commodity. This workshop walks through the decision-making process contractors should go through in evaluating whether and how to form a captive. Attendees will leave with practical resources and insights into this complicated process.



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Bruce J. Moldow
Executive Vice President/Chief Legal Officer
Moss & Associates, LLC

Mr. Moldow is copresenting Workshop W8, "The Captive Decision: Start to Finish," on Wednesday afternoon. He joined Moss & Associates in 2005 as Executive Vice President/Chief Legal Officer. He brings more than 20 years of industry experience to Moss. Prior to joining Moss, Mr. Moldow served as general counsel for Tyco/ADT Security Services, Centex Construction Group, and the Clark Construction Group.

Mr. Moldow earned a J.D. with honors from Georgetown University Law Center, and a B.S. in Accounting from the University of Maryland. He is a Certified Public Accountant and a member of the District of Columbia Bar and the Maryland Bar. He is also certified as Authorized House Counsel in Florida.

W. Scott Trethewey
Executive Vice President
Moss & Associates, LLC

Mr. Trethewey is copresenting Workshop W8, "The Captive Decision: Start to Finish," on Wednesday afternoon. He is an Executive Vice President with Moss & Associates and a member of the company's Executive Leadership Team. His responsibilities include oversight and management of Risk Management, Finance, Tax, and Loss Prevention. In addition to these primary responsibilities, Mr. Trethewey plays in an integral role in the organization's strategic initiatives.

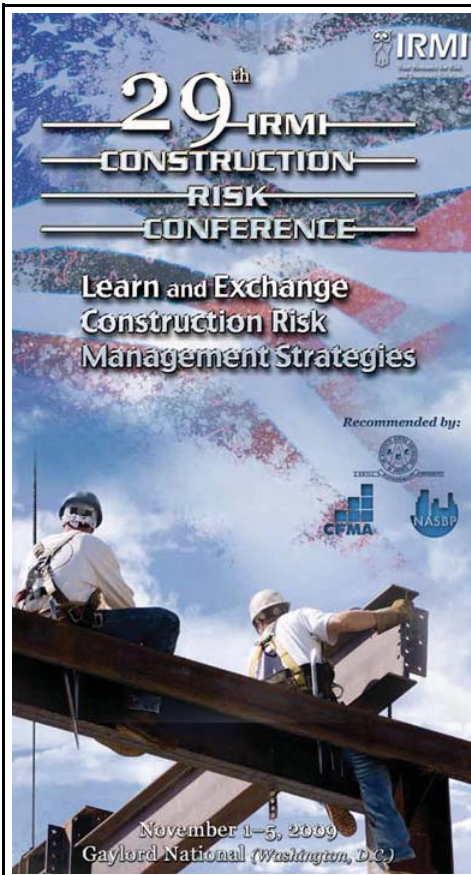
Mr. Trethewey joined Moss & Associates as Senior Vice President of Risk Management in July of 2005. During this time he had responsibility for Moss's risk management, surety, and insurance programs. In this capacity, he leveraged the relationships and knowledge gained during his 20 years of experience in the construction and risk management communities.

Prior to joining Moss, Mr. Trethewey spent 5 years with Centex Construction Group where he had overall responsibility for the company's initiatives in risk management, surety, and insurance. Before joining Centex, Mr. Trethewey spent 11 years with Willis where he held the title of Senior Vice President and was responsible for the Risk Management Practice Group in the Washington, D.C., region. Mr. Trethewey began his career in public accounting with the firm of Johnson, Lambert & Company.

Mr. Trethewey earned a B.B.A. in Accounting from the College of William and Mary. He is a member of the AGC Surety Bonding Committee, AGC Risk Management Committee, and the Design Build Institute of America's Risk Management, Insurance, and Safety Committee. From 2005 until 2008, Mr. Trethewey was the National Chair for the AGC's Risk Management Committee. Mr. Trethewey is a frequent speaker on a variety of topics at AGC, ABC, and IRMI events.

Notes

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.



The Captive Decision: Start to Finish

Presented By:

Bruce Moldow

*Executive Vice President/
Chief Legal Officer
Moss & Associates, LLC
Fort Lauderdale, FL*

Scott Trethewey

*Executive Vice President/
Risk Management & Finance
Moss & Associates, LLC
Fort Lauderdale, FL*

Workshop W8

Why should I stay?

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- I AM INTERESTING IN LEARNING ABOUT THE PROCESS OF FORMING A CAPTIVE INSURANCE COMPANY
- I AM INTERESTED IN POSSIBLY REDUCING MY DEPENDENCY ON THE COMMERCIAL INSURANCE MARKET
- I AM CURIOUS ABOUT THE POTENTIAL TAX ADVANTAGES ASSOCIATED WITH A CAPTIVE
- I HAVE A NEED TO DOCUMENT MY COST OF RISK TO THIRD PARTIES
- I NEED CE SO I'LL PUT UP WITH YOU GUYS

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Disclaimer

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(NORMALLY WE WOULD PUT THIS IN REALLY SMALL PRINT, BUT SEVERAL LEADING EYE PHYSICIANS HAVE ADVISED US TO STICK TO LARGER FONTS). WE'RE NOT LAWYERS. (OK, ONE OF US IS, BUT I DON'T REALLY PRACTICE ANYMORE AND WITHOUT PRACTICE...)

ALTHOUGH WE ASSUME THAT EVERYONE WILL UNDERSTAND THAT THE INFORMATION WE ARE PRESENTING WILL MAKE YOU WANT TO CALL AND HIRE US IMMEDIATELY, WE ARE ALREADY GAINFULLY EMPLOYED. SO HERE GOES:

1. THE INFORMATION IN THIS PRESENTATION IS NOT INTENDED TO CREATE AN ATTORNEY-CLIENT RELATIONSHIP. FRANKLY, YOU DON'T WANT IT TO DO SO EITHER. EVEN IF YOU ASK US QUESTIONS, THAT DOES NOT GIVE RISE TO AN ATTORNEY-CLIENT RELATIONSHIP EITHER. DON'T YOU FEEL BETTER NOW?
2. WE ARE NORMAL PEOPLE (SORT OF), WHICH MEANS WE DON'T DO TAX LAW. NOTHING IN THIS PRESENTATION REFERS TO OR MENTIONS TAX LAW. IF YOU HAVE A REAL TAX QUESTION, YOU'RE IN THE WRONG PLACE. FIND A TAX LAWYER. PREFERABLY ONE WITH A PERSONALITY. AGAIN, DON'T HOLD YOUR BREATH.
3. THE WORLD IS AN EVER-CHANGING PLACE, WHICH MEANS THAT CONTENT CAN BECOME OUTDATED QUICKLY. WHILE WE HOPE TO AVOID PRESENTING OUTDATED MATERIAL, WE CAN'T GUARANTEE THAT EVERYTHING IS TIMELY, SO DON'T RELY ON THE TIMELINESS OR ACCURACY OF THE INFORMATION. (ONLY A LAWYER WOULD PUT OUT INFORMATION TO IMPRESS YOU AND THEN SAY "DON'T RELY ON IT.")

SO THERE IT IS. WE'VE DONE THE LAWYERLY THING. AREN'T YOU GLAD WE GOT THAT OUT OF THE WAY. NOW BACK TO THE EXCITEMENT OF CAPTIVE INSURANCE COMPANIES.

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What is a Captive?

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- MANY DIFFERENT DEFINITIONS
- VARY DUE TO DIFFERENT WAYS CAPTIVES CAN BE STRUCTURED AND UTILIZED

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Captive Insurance Companies

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- **“WHOLLY OWNED SUBSIDIARIES CREATED TO PROVIDE INSURANCE TO THE PARENT COMPANIES.” (AICPA AUDIT AND ACCOUNTING GUIDES)**

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Captive Insurance Companies

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- **“A CAPTIVE INSURANCE COMPANY IS, IN A NUTSHELL, AN INSURANCE COMPANY FORMED BY A BUSINESS OWNER TO INSURE THE RISKS OF THE OPERATING BUSINESS. THE OPERATING BUSINESS PAYS PREMIUMS TO THE CAPTIVE, AND THE CAPTIVE INSURES THE RISKS OF THE OPERATING BUSINESS.” (ADKISSON: CAPTIVE INSURANCE COMPANIES)**

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Definition of Captive Insurance Company

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- **“A CAPTIVE INSURANCE COMPANY IS AN INSURANCE COMPANY THAT HAS BEEN SET UP TO PROVIDE COVERAGE AT A LOWER COST THAN AVAILABLE BY GOING THROUGH THE GENERAL INSURANCE MARKET. THE COMPANY’S STOCK IS CONTROLLED BY ONE INTEREST OR A GROUP OF RELATED INTERESTS SO AS TO PROVIDE COVERAGE FOR THEIR BUSINESS OPERATIONS. A CAPTIVE INSURANCE COMPANY MAY BE A NON-ADMITTED, NONRESIDENT, OR FOREIGN INSURER. SOMETIMES IT MAY PROVIDE REINSURANCE TO A SELF-INSURED OR A DOMESTIC COMPANY. (THE COMPLETE GLOSSARY OF INSURANCE)**

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Our Definition

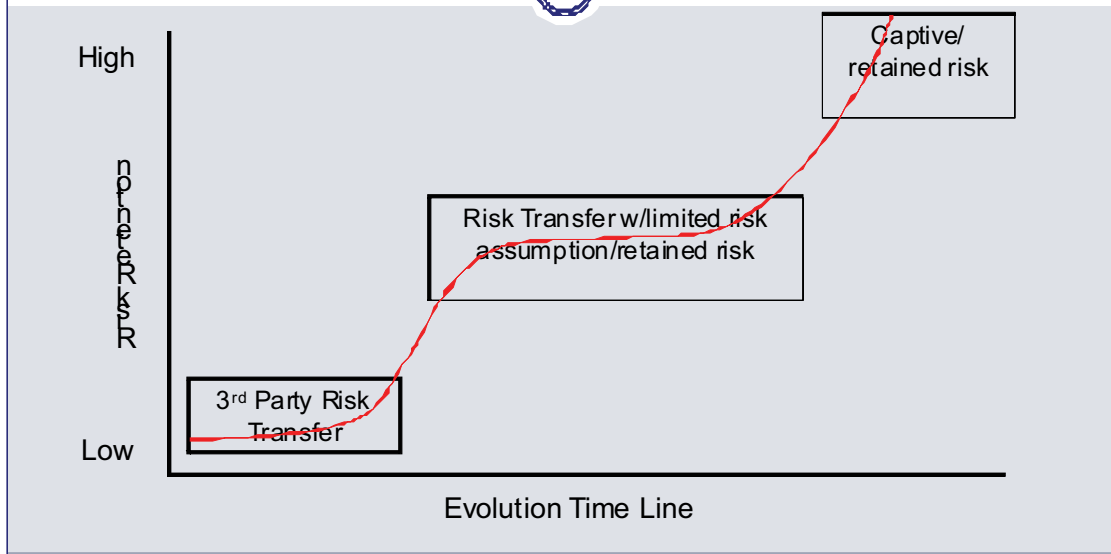
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- **A CAPTIVE IS A CLOSELY HELD INSURANCE COMPANY WHOSE BUSINESS IS PRIMARILY SUPPLIED BY AND/OR CONTROLLED BY ITS OWNERS...**
- **THAT OFFERS INSURANCE PRODUCTS OR REINSURANCE SUPPORT TO ITS OWNERS AS PRINCIPAL BENEFICIARIES...**
- **WHEREBY THE OWNERS AND POLICYHOLDERS ACTIVELY PARTICIPATE IN INFLUENCING UNDERWRITING, OPERATIONS AND INVESTMENT...**
- **THAT PROVIDES A FORM OF ALTERNATIVE RISK TRANSFER – ESSENTIALLY SELF INSURANCE WITH POSSIBLE LEGAL AND TAX BENEFITS ...**
- **AND IS INCORPORATED, REGULATED, CAPITALIZED AND ACCOUNTABLE.**

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Where Captives fit in Risk Financing?

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Types of Captives:

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- **SINGLE PARENT CAPTIVE** – IS AN INSURANCE OR REINSURANCE COMPANY FORMED PRIMARILY TO INSURE THE RISKS OF ITS NON-INSURANCE PARENT OR AFFILIATES.
- **GROUP CAPTIVE** – IS A COMPANY, JOINTLY OWNED BY A NUMBER OF COMPANIES, CREATED TO PROVIDE A VEHICLE TO MEET A COMMON INSURANCE NEED.
- **ASSOCIATION CAPTIVE** – IS A COMPANY OWNED BY A TRADE, INDUSTRY OR SERVICE GROUP FOR THE BENEFIT OF ITS MEMBERS.
- **AGENCY CAPTIVE** – IS A COMPANY OWNED BY AN INSURANCE AGENCY OR BROKERAGE FIRM SO THEY MAY REINSURE A PORTION OF THEIR CLIENTS' RISKS THROUGH THAT COMPANY.
- **RENT-A-CAPTIVE** – IS A COMPANY THAT PROVIDES "CAPTIVE" FACILITIES TO OTHERS FOR A FEE, WHILE PROTECTING ITSELF FROM LOSSES UNDER INDIVIDUAL PROGRAMS, WHICH ARE ALSO ISOLATED FROM LOSSES UNDER OTHER PROGRAMS WITHIN THE SAME COMPANY. THIS FACILITY IS OFTEN USED FOR PROGRAMS THAT ARE TOO SMALL TO JUSTIFY ESTABLISHING THEIR OWN CAPTIVE.
- **OTHERS**
 - Micro Captives/Mini Captives
 - Risk Retention Groups

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Pre-Feasibility Analysis

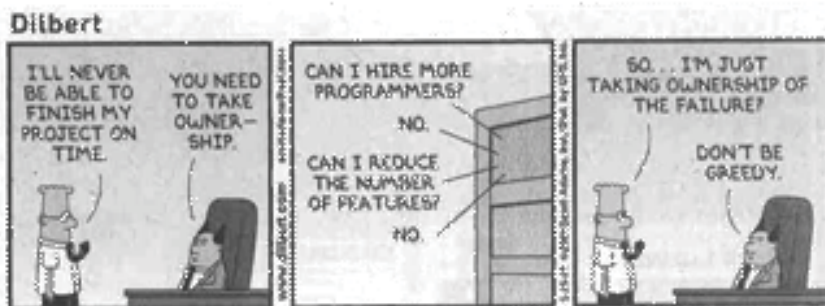
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- **BACK OF THE ENVELOPE ASSESSMENT**
- **THE VIEW FROM 30,000 FEET**



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Ownership?



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What were our Key Bets?

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- **IS THE CAPTIVE FEASIBLE? -- “CAN WE DO IT?”**
- **IS A CAPTIVE STRATEGY OPTIMAL FOR MOSS? – “SHOULD WE DO IT?”**
- **WHAT WILL IT TAKE TO GET IT DONE?**

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Where do you start?

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- **REQUEST FOR PROPOSAL**
 - Who do you invite?
 - What information should you share?
 - What process is utilized by each organization to determine the Feasibility of Captive Formation?
 - What is the process to formulate the Business Plan?
 - Does the organization have a formalized Implementation process?
 - Who is the Team? What are their qualifications and philosophy?
 - Are their clients satisfied? Who are their references?

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Where do you start?

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- **OTHER ISSUES:**
 - Disclosure of any 3rd party vendors used by your firm in the feasibility process (actuaries, investment managers, tax consultants, etc.).
 - Discussion of any issues that may impact other key 3rd party relationships maintained by Moss (Surety).
 - Identification of future insurance considerations and exposures to be included in the potential captive.
 - Fee Disclosure for Feasibility Study

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Now that you have a Partner, what's next?

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- **OBJECTIVES OF THE FEASIBILITY STUDY:**
 - What are the Organization's Objectives?
 - What Risk Financing Options are available?
 - What is the proposed Program Design?
 - Quantify the Economic Return (Quantitative Analysis)
 - Where should we domicile the Captive?
 - What are the Capitalization Requirements?
 - What are the anticipated annual costs?
 - Will we be able to achieve the desired tax benefits?
 - What is the optimal ownership structure?
 - How will prior year reserves be handled?
 - Where should Profits be Recognized?

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What are the Organization's Objectives?

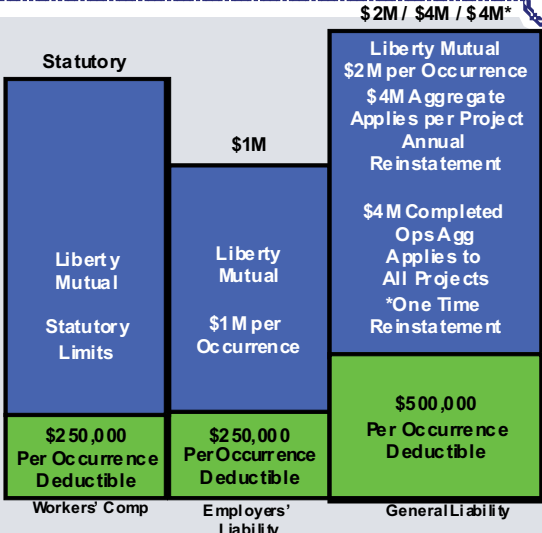
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- INCONSISTENCY IN COVERAGE TERMS AND CONDITIONS IN THE CONSTRUCTION INSURANCE MARKETPLACE
- LIMITED LIABILITY COMPANY (GAAP VS. TAX TREATMENT OF RESERVES)
- FISCALLY CONSERVATIVE
- LONG TAIL LIABILITIES (10 YEAR STATUTE OF REPOSE IN FLORIDA)
- COST PLUS CONTRACTS
- ALLOCATION OF RISK/SAFETY INCENTIVES
- FUTURE OPPORTUNITIES FOR EXPANDED LINES OF COVERAGE

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What is the proposed Program Design?

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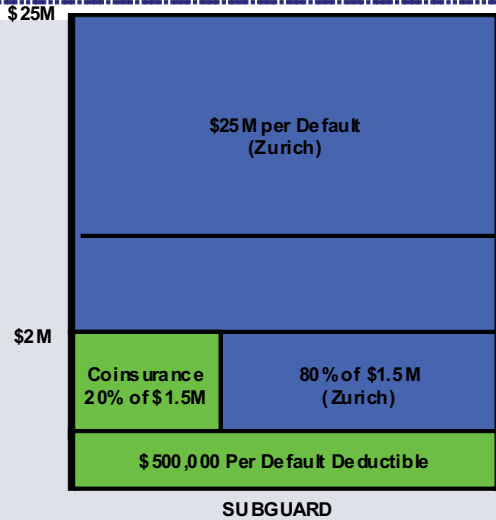


- 4 year CCIP program with Liberty Mutual effective 9/26/05 – 9/26/09
- Captive will issue policies with limits equal to Moss' Per Occurrence Deductibles
- Captive will insure Moss on a direct indemnification basis for losses within the company's deductibles.
- Maximum exposure to the captive will be capped via Liberty Mutual's program deductible aggregate
- Liberty Mutual loss picks utilized as basis of premium and loss reserves

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What is the proposed Program Design?

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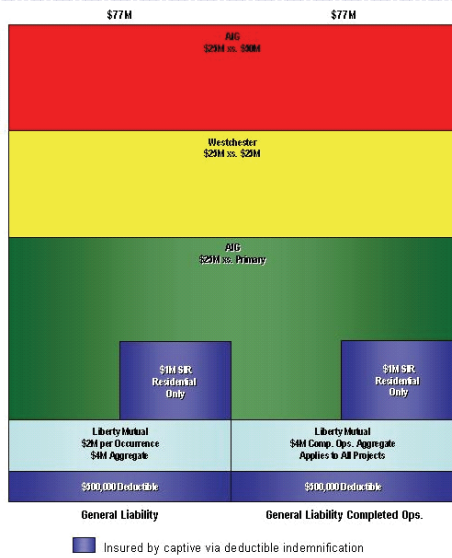
■ Insured by captive via deductible indemnification

- The Subguard program is a three year program with annual renewals that was initiated on 12/31/2004
- Captive will assume the deductible exposure from the inception of the program:
- Maximum exposure to the Captive will be capped via Zurich's 3 year program deductible aggregate.
- Subguard captive premiums will be based on annual program aggregate rates.
- Loss reserves based on industry data

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What is the proposed Program Design?

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■ Insured by captive via deductible indemnification

- Moss did not fund or accrue for the GL trailing SIR
- Funding in excess of CCIP aggregate may be used to fund the GL trailing SIR
- Potential to earn premium over 10 year exposure period / 80% of unearned premium reserve tax deductible
- The captive's premium and reserves dependant on actuarial assessment of exposure

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What is the proposed Program Design?

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Indemnification Structure Benefits

- Works best for Large Deductible Insured Programs
- Simplicity
 - Lower administration costs
 - Fewer transactions
- Independent structure
 - Current carrier, broker, self-insurance relationships undisturbed
 - Company decides whether or not to discontinue captive to Standard Insurer
- No Third Party Administrator necessary
- No reinsurance necessary (available, but not needed)
- Potentially less collateral compared to Fronted Captive arrangement
- Trade off reinsurance purchased "retail" through standard insurer for retentions
- Able to cap its risk equal to the standard deductible program

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Where should we domicile our Captive?

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- **ONSHORE VS. OFFSHORE?**
- **WHAT ARE THE CAPITALIZATION REQUIREMENTS?**
- **ARE THERE ANY TAX CONSEQUENCES ASSOCIATED WITH ONE DOMICILE VS. THE NEXT?**

- Capitalization Requirements
- Nexus Generating Issues

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Where should we domicile our Captive?

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DOMICILE	S CAROLINA	NEVADA	VERMONT	MONTANA	BERMUDA
Pure/Single Parent Capitalization	Statutory minimum Pure: \$250,000 Cash or LOC	Statutory minimum Pure: \$250,000 Cash or LOC	Statutory minimum Pure: \$250,000 Cash or LOC	Statutory minimum Pure: \$250,000 Cash or LOC	Minimums: Class I: \$120,000 Class II: \$250,000 Class III: \$1 million Class IV: \$100 million
Registration & Incorporation Expenses	\$200 for examining, investigating, and processing its application for license; \$300 Annual Fee	\$500 application fee \$300 registration fee Outside application est. \$4,000 Annual Fee \$100	\$200 application fee \$300 annual license fee \$3,200 actuarial review	\$200 application fee \$300 annual license fee	Incorporation expense: \$4,200 - \$9,000 (depending on amount of capital)
Tax Issues	Premium Tax: \$1-\$20M .40% \$5,000 Minimum \$100,000 Maximum	Premium Tax: \$1-\$20M .40% \$5,000 Minimum \$175,000 Maximum	Premium Tax: \$1-\$20M .38% \$7,500 Minimum \$200,000 Maximum	Premium Tax: \$1-\$20M .40% \$5,000 Minimum \$175,000 Maximum	No Premium Tax Income: exemption until 2016;
Reserve & Underwriting Requirements	Annual actuarial review of reserves required	Annual actuarial review of reserves required	Annual actuarial review of reserves required	Annual actuarial review of reserves required	Annual actuarial review of reserves required for Class II
Reporting Requirements	Annual Audited GAAP financial statement	Annual Audited GAAP financial statement	Annual Audited GAAP financial statement	Annual Audited GAAP financial statement	Annual Audited GAAP financial statement
Local Office Requirements	Maintain its principal place of business in this State and appoint a resident registered agent	Annual board of directors' meeting in Nevada; principal office in Nevada; use of local management company and lawyer; books and records must be kept in Nevada.	Office in Vermont; one directors' meeting in Vermont annually; use of resident agent required; financial records must be kept in Vermont.	All books, records, and other information necessary for a statutory examinations should be located in Montana.	Books, records should be located in Bermuda. Annual General Meeting via conference call permitted.
Estimated No. of Captives	122	58	542	12	987

What are the anticipated annual costs?

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- **START-UP COSTS:**
 - **Feasibility Study: \$25k to \$35k**
 - **Business Plan/Implementation: \$10k to \$15k**
- **ANNUAL CAPTIVE MANAGEMENT FEE: \$40K TO \$60K**
- **ANNUAL ASSURANCE:**
 - **Audit: \$10k to \$15k**
 - **Actuarial: \$10k to \$15k**
- **LEGAL & REGULATORY: \$10K TO \$15K**
- **PREMIUM TAXES**
- **CONSULTING FEES: ???**
- **OTHER EXPENSES: \$10K TO \$20K**

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Will we be able to achieve the desired tax benefits?

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- UNDER CERTAIN FACTS AND CIRCUMSTANCES, 'QUALIFY' THE CAPTIVE AS AN INSURANCE COMPANY FOR U.S. (& STATE) INCOME TAX PURPOSES.
- ALLOWS FOR THE ACCELERATED TAX BENEFITS AFFORDED TO INSURERS UNDER WHICH LOSSES (INCLUDING RESERVES) BECOME TAX DEDUCTIBLE 'AS INCURRED' VERSUS 'AS PAID'
- INSURANCE TRANSACTION MUST INCLUDE: "INSURANCE RISK", INSURANCE FORM, RISK TRANSFER/RISK DISTRIBUTION.
- RISK TRANSFER GENERALLY REQUIRES EITHER THE SIGNIFICANT UNDERWRITING OF UNRELATED RISKS IN THE CAPTIVE OR A CORPORATE HOLDING COMPANY STRUCTURE WHERE CAPTIVE AND INSURED SUBSIDIARIES ARE ARMS-LENGTH AFFILIATES.
- APPLICABILITY TO MOSS
 - Qualification of CCIP premium as 3rd party risk?
 - Qualification of Subguard premium as 3rd party risk?

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Will we be able to achieve the desired tax benefits?

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- **KEY TAX POINTS TO REMEMBER**
 - "Insurance" is not specifically defined in the tax law and therefore its meaning is derived (and will continue to evolve) mainly from case law and IRS pronouncements.
 - The critical elements of "insurance" are risk shifting and risk distribution. Risk shifting connotes the transfer of risk to a separate party. Risk distribution mandates that enough independent risks of unrelated parties be pooled to invoke the actuarial law of large numbers.

⇒ **IS THERE RISK SHIFTING AND RISK DISTRIBUTION?**

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Will we be able to achieve the desired tax benefits?

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▪ KEY TAX POINTS TO REMEMBER

- A long-standing tax maxim is that, absent extraordinary circumstances, each legal person (individual or entity) has an independent and separate identity, irrespective of who owns it or whom it owns.
- Notwithstanding the above maxim, the courts (although consistently denying it) generally have applied an "economic family" approach to determining existence of "insurance."
- But, writing as little as 30 percent (measured by net retained premiums) unrelated business may qualify the entire captive as a true "insurance company."

⇒ **IS THERE UNRELATED BUSINESS GREATER THAN 30 PERCENT OF NET RETAINED PREMIUMS?**

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Will we be able to achieve the desired tax benefits?

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▪ MISCELLANEOUS TAX CONSIDERATIONS: OTHER FACTORS CAN UNDERMINE A CAPTIVE'S STATUS AS A TRUE INSURANCE COMPANY:

- Undercapitalization or promise of additional capitalization of the captive
- Parental guarantees/comfort letters in favor of the captive
- Excessive use of "loan backs" of captive assets to its parent
- Captive policies that do not transfer risk, for example, because policy limits are certain to be exceeded (i.e., policies that are more like banking or deposit transactions than insurance contracts)

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What is the optimal ownership structure?

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- **UTILIZE SAME SHAREHOLDER STRUCTURE AS THE CONSTRUCTION COMPANY?**
- **EXPAND OWNERSHIP TO A HANDFUL OF KEY EXECUTIVES?**

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How will prior year reserves be handled?

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- **THE TRANSFER OF EXISTING LIABILITIES FROM A CORPORATE PARENT OR AFFILIATED OPERATING COMPANIES TO A CAPTIVE IS A STRAIGHTFORWARD AND COMMONPLACE TRANSACTION.**
- **FOR TAX, PURPOSES, THE CAPTIVE WILL NEED TO BE A “QUALIFIED” INSURER AND THE TRANSACTION, ITSELF, MUST CONTAIN TRUE ELEMENTS OF INSURANCE RISK AND FORM.**
- **A LOSS PORTFOLIO TRANSFER ON AN INDEMNIFICATION CONTRACT IS A REASONABLE, STRAIGHTFORWARD TRANSACTION WITH RESULTING TAX EFFICIENCIES DEPENDING ON THE DURATION OF PAYOUT AND INVESTMENT INCOME PROVIDED THROUGH THE CAPTIVE.**

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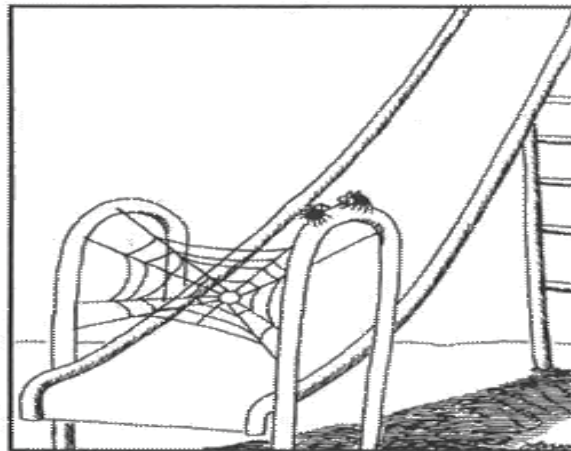
Where should Profits be Recognized?

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- DO YOU WANT A PROFITABLE CAPTIVE OR A “BREAK-EVEN” CAPTIVE?
- HOW DOES RECOGNITION OF PROFIT FIT WITH THE INCENTIVE COMPENSATION PROGRAM?
- ARE THERE ADDITIONAL TAX LIABILITIES (DOUBLE TAXATION) ASSOCIATED WITH RECOGNITION OF PROFITS IN THE CAPTIVE VS. THE CONSTRUCTION COMPANY?

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Kings!!!!



"If we pull this off, we'll eat like kings."

How should we do it?

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SUMMARY

- MOSS SHOULD INCORPORATE A WHOLLY OWNED, SINGLE-PARENT CAPTIVE INSURANCE SUBSIDIARY, INSTEAD OF PARTICIPATING IN A NON-OWNED 'RENT-A-CAPTIVE' OR SPONSORED CAPTIVE PROGRAM;
- THE CAPTIVE CONSOLIDATES WITH THE PARENT FOR FINANCIAL REPORTING (GAAP), BUT OPERATES USING INSURANCE ACCOUNTING STANDARDS AND METRICS;
- THE CAPTIVE SHOULD ISSUE DEDUCTIBLE "BUY DOWN" POLICIES TO MOSS. THE POLICIES SHOULD BE AGGREGATED ACCORDING TO OVERLYING INSURANCE TERMS AND CONDITIONS;
- THE CAPTIVE SHOULD CHOOSE A DOMESTIC DOMICILE THAT HAS FULLY DEVELOPED INSURANCE REGULATORY STRUCTURES, CAPTIVE SUPPORT INFRASTRUCTURES (ACCOUNTING, BANKING, LEGAL, ETC.), AND STABLE POLITICAL AND FINANCIAL SYSTEMS;
- CAPTIVE OWNERSHIP WILL BE CONSISTENT WITH MOSS & ASSOCIATES OWNERSHIP STRUCTURE;

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How should we do it?

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SUMMARY

- THE CAPTIVE SHOULD BE CAPITALIZED AT A RATIO OF 5:1 (20 CENTS ON EVERY PREMIUM DOLLAR) PREMIUM TO CAPITAL;
- THERE SHOULD BE NO FINANCIAL GUARANTEES OR HOLD HARMLESS AGREEMENTS BETWEEN THE CAPTIVE AND MOSS, NOR SHOULD THE CAPTIVE HAVE ANY LETTER OF CREDIT (LOC) HELD ON ITS BEHALF ISSUED IN THE NAME OF ANY OTHER MOSS CONCERN;
- THERE SHOULD BE NO DIRECT LOANS FROM THE CAPTIVE TO ITS DIRECT OR ULTIMATE PARENT; ANY LOANS OR OPERATING CASH FLOW 'ACCOMMODATIONS' FROM THE CAPTIVE TO OPERATING AFFILIATES SHOULD BE SHORT TERM (UNDER 270 DAYS), PERFECTED UNDER ARMS-LENGTH TERMS AND CONDITIONS, AT A RATE OF RETURN TO REFLECT THE CAPTIVE'S OPPORTUNITY COST OF RISK CAPITAL;
- THE PREMIUM SHOULD BE ACTUARIALLY DETERMINED; AND ALL RESERVE LEVELS SUPPORTED BY GENERALLY ACCEPTED ACTUARIAL METHODOLOGIES, RECOGNIZED AT EXPECTED ULTIMATE LEVELS FOR THE PER-OCCURRENCE LAYERS INSURED IN THE CAPTIVE, NET OF REINSURANCE, IF ANY.

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Is the Captive strategy optimal for Moss?

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- INCONSISTENCY IN COVERAGE TERMS AND CONDITIONS IN THE CONSTRUCTION INSURANCE MARKETPLACE
- LIMITED LIABILITY COMPANY (GAAP VS. TAX)
- FISCALLY CONSERVATIVE
- LONG TAIL LIABILITIES (10 YEAR STATUTE OF REPOSE)
- COST PLUS CONTRACTS
- ALLOCATION OF RISK/SAFETY INCENTIVES
- FUTURE OPPORTUNITIES FOR EXPANDED LINES OF COVERAGE

- ✓ Certainty of Coverage Terms & Conditions
- ✓ Tax Deductible Premiums
- ✓ Reserve Integrity
- ✓ Protection of Future Earnings
- ✓ Evidence of Cost
- ✓ Objective Quantification
- ✓ Builders Risk, Professional, Pollution & Others

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DILBERT



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It makes sense, now what?

ABC CONSTRUCTION, INC.
Captive Insurance Company
Implementation Work Plan
Projected Go Live Date: xx/xx/xx

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Task #	Project Phase	Functional Area	Task	Deliverable	Attach Documents	Task Champion	Required Completion Date
1	FEASIBILITY ANALYSIS	Risk Management	Issue signed engagement letter for consulting on captive project.	Execute Engagement Letter			
2	FEASIBILITY ANALYSIS	Executive/Risk Management/Tax	Proposed Captive Ownership	Excel Document/Tax Opinion			
3	FEASIBILITY ANALYSIS	Executive/Risk Management/Tax	Review findings on domicile selection and application process.	Domicile Recommendation and Captive Application			
4	FEASIBILITY ANALYSIS	Finance/Risk Management	Identify and address any financing issues related to capitalization of the Captive.	Meeting with Consultants			
5	IMPLEMENTATION	Risk Management	Engage Actuary.	Engagement Letter			
6	IMPLEMENTATION	Risk Management	Engage captive manager.	Engagement Letter			
7	IMPLEMENTATION	Legal/Risk Management	Engage legal counsel.	Engagement Letter			
8	IMPLEMENTATION	Finance/Risk Management	Engage outside treasury function to handle captive program design.	Engagement Letter			
9	IMPLEMENTATION	Legal/Risk Management	Determine if (and how many) other required legal entities ("Required Entities") need to be formed.	Legal and/or Tax Opinion			
10	IMPLEMENTATION	Finance/Risk Management	Finalize captive program design.	Final document design			
11	IMPLEMENTATION	Legal/Risk Management	Discuss implementation issues with outside legal counsel and any other impacted third parties.	Meeting with Consultants			

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Workshop W8

It makes sense, now what?

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- **ENGAGE BUSINESS PARTNERS**
 - Broker
 - Accountants
 - Actuary
 - Captive Manager
 - Legal Counsel
 - Bank
- **FINALIZE OWNERSHIP STRUCTURE**
- **FINALIZE CAPTIVE PROGRAM DESIGN**
- **CONFIRM NAME AVAILABILITY**
- **SELECT BOARD OF DIRECTORS AND OFFICERS**
- **COMPLETE BIOGRAPHICAL AFFIDAVITS FOR D&OS**
- **COMPLETE BIOGRAPHICAL AFFIDAVITS FOR SERVICE PROVIDERS**
- **DRAFT, REVIEW & FINALIZE ARTICLES OF INCORPORATION**
- **DRAFT, REVIEW & FINALIZE BY-LAWS**

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It makes sense, now what?

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- FILE FORM SS-4 (EIN)
- DRAFT POLICIES AND SAFETY MANUAL
- FINALIZE PREMIUMS AND RESERVES
- PREPARATION OF BUSINESS PLAN
- REVIEW LIST OF NEXUS CREATING ACTIVITIES
- PARTNER REVIEW AND APPROVAL OF BUSINESS PLAN
- SUBMISSION OF BUSINESS PLAN TO INSURANCE COMMISSIONER
- PRESENTATION OF BUSINESS PLAN TO INSURANCE COMMISSIONER
- THIRD PARTY REVIEW OF BUSINESS PLAN/RESPONSE TO QUESTIONS
- CAPITALIZE CAPTIVE
- ISSUE CAPTIVE STOCK TO SHAREHOLDERS
- DEVELOP PREMIUM NOTICES
- PAYMENT OF PREMIUMS
- HOLD FIRST SHAREHOLDER AND BOARD OF DIRECTOR MEETING IN DOMICILE

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Certificate of Authority
STATE OF NEVADA
DEPARTMENT OF BUSINESS & INDUSTRY
DIVISION OF INSURANCE
Carson City, Nevada

Nevada ID #: 97280
Title: PROVIDENCE INSURANCE, INC
Incorporated in the State of Nevada
Main office at: Carson City, Nevada
Having duly qualified, is hereby licensed to transact:

**** PURE ****

Insurance business within the State of Nevada will terminate at the request of the owner or suspended or revoked by the Commissioner of Insurance.

File at Carson City, Nevada this 11th day of November, 2006




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What have we done since 2006?

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- WE HAVE COMMENCED COVERAGE FOR A SECOND ROLLING CCIP IN PROVIDENCE.
- LOSS ACTIVITY ON A FULLY DEVELOPED BASIS IS RUNNING AT 25% OF EXPECTED LOSSES.
- PROVIDENCE SETTLED ITS FIRST SUBGUARD CLAIM.
- WITH THE EXCEPTION OF SURETY AND MANAGEMENT LIABILITY, PROVIDENCE IS NOW APPROVED TO PROVIDE DEDUCTIBLE “BUY DOWN” INSURANCE IN THE MOSS PORTFOLIO.
- PROVIDENCE HAS SUCCESSFULLY PROVIDED BUILDERS RISK “BUY DOWN” COVERAGE FOR TWO PROJECTS.
- PROVIDENCE IS APPROVED TO PROVIDE A WORKING LINE OF CREDIT FOR THE CONSTRUCTION COMPANY.

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Reflections on the process?

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- RELATIONSHIPS MATTER
- TRANSPARENCY OF THE PROCESS
- ACCURACY OF ASSUMPTIONS
- BUSINESS ORIENTATION OF ACTUARY
- IRS TAX PROVISIONS

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Notes

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.