WLS #IET Denny Eliason

Preserve Washington Employers' Ability to Protect Their Customers, Employees and Shareholders

REC Responsible Employers Coalition

PROBLEM

Current Washington law does not specifically define the legal status of captive insurers, as distinct from commercial insurers. This creates regulatory uncertainty.

In the absence of appropriately clear law, the Office of the Insurance Commissioner (OIC) has begun to apply existing commercial insurance law and premium taxation on the captive insurance subsidiaries of Washington-based corporations. Premium taxes are intended to fund state oversight of insurance companies that offer policies to the general public in order to protect consumers and ensure that those insurers can deliver on their promises. But captive insurers don't offer policies to the general public, and the state doesn't need to regulate a transaction between a company and its own subsidiary.

In trying to address this lack of clear legal authority, the OIC now is asking lawmakers to impose a new "self-procurement" tax on companies that buy insurance directly and to include captive insurers within the scope of that bill. Doing so would ignore the clear differences between captive insurers and commercial insurers.

Imposing a new tax on out-of-state captive insurers could create an incidence of double taxation for Washington-based employers to the extent that their captive insurance subsidiaries are already subject to applicable premium or similar taxes where those captive insurers are actually located.

The OIC's imposition of premium taxes on captive insurers has resulted in significant reductions in their usage by Washington corporations. As a result, rather than enhancing protection for individuals, the OIC tax proposals would create new risks because companies will find it more difficult – and sometimes prohibitively expensive – to utilize captive insurers in protecting their customers, employees and shareholders.

Without action this legislative session to exclude captive insurers from the scope of new OIC tax legislation, Washington corporations in all likelihood will no longer be able to use captive insurers as they seek to manage their risks prudently.

BACKGROUND

Captive insurers are used by Washington corporations as a prudent risk management strategy to protect their customers, employees and shareholders. Captive insurers do not publicly offer policies to or collect premiums from individuals or other businesses. They exist to provide coverage for their parent corporation and affiliates. As such, the insurer and the insured are one and the same.

Captive insurers provide protection against both everyday risks, such as consumer claims and workers' compensation claims, and extraordinary risks, such as natural disasters and terrorist attacks.

Captive insurers strengthen protections for customers, employees and shareholders. Because the parent corporation actually sets money aside to cover potential claims rather than simply making an accounting entry to reflect that potential cost, the captive insurer ensures that the money will be there if it's ever needed.

Many of the risks that captive insurers protect against are risks for which regular commercial insurance policies aren't available or would be prohibitively expensive to purchase, or that have huge deductibles.

SOLUTION

Enact new state legislation recognizing the important role that captive insurers play in providing protections for claims such as workers' compensation.

Clearly distinguish in statue between "traditional" commercial insurance providers and captive insurers, whose exclusive purpose is to insure the risks of a parent or affiliated company, for both regulatory and tax purposes.

Ensure that taxation does not become a barrier to the use of captive insurers as a prudent risk management strategy by Washington corporation

Coalition members are willing to pay a reasonable fee or tax based on their Washington risks in order to continue operating prudently.