THE TEAM WITH THE BEST PLAYERS WINS……. Jack Welch

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The Captive Insurance World is Changing…..

By William York, VP of Marketing

More important, we believe it is changing in a **positive** way for most mid-market businesses. You might be raising your eyes and wondering why we at Independent Captive Associates are taking this position.

We believe the answer is obvious.

Let's start with the obvious and the look at what most pundits over look.

As reported in Business Insurance magazine last month...... There were 6,939 captives worldwide at the end of 2015. Onshore U.S. captives now represent 44.6% of the world's captive market.

This impressive number alone represents how far we have come over the last 15 years and why we believe the captive world is changing. Captive insurers, which large companies have long used to cover traditional risk such as commercial general liability and workers compensation, are being used more often by mid-sized companies looking to cover nontraditional risks.

One reason behind the increase in mid-market businesses using captives is that they have become aware of the risk transfer option, said David Snowball, Utah's Salt Lake City-based captive insurance director:

"Mid-sized businesses are getting to the point where they know about the benefits of captives, and they are taking advantage of that. This education has taken a little longer to get to the West, but it appears to be catching up", he said.

Now let's turn to the less obvious.

The IRS has again listed 831(b) captives on their "dirty dozen" list. This is the second year in a row that the IRS has taken this position. In our view, this is a desperate move to deflect the numerous failures that the IRS has faced in 2015.

In 2015, the IRS lost another major case in the U.S. Courts! This was the third major setback for the IRS in the U.S. Courts in the last two years. The last and most damaging case was filed under the title of **R.V.I. Guaranty Co., Ltd. & Subsidiaries, Petitioner vs Commissioner**. In light of this utter defeat by the IRS in this case, one would have thought that the IRS would have at least modified its language against captive insurance companies, no the IRS instead decided to again place captive insurance transactions on it's "dirty dozen" list!

Like 2015, this year's "dirty dozen" pronouncement intentionally obfuscates the relevant issues related to the developments in the captive insurance world and it is contradictory to both statutory law and case law.

After the failure of the IRS in the courts as stated above, both Congress and the President repudiated the IRS by expanding the tax deductible limits for premiums paid into an 831(b) captive. In December, under the tax extender act, section H.R. 34, they increased the annual premiums that can be paid in tax deductible premiums into an 831(b) captive from $1.2 mill to $2.2 million annually. This legislative action and R.V.I. court case clearly exemplifies the difference between the IRS and Legislative and Executive branches of our government. We believe the governmental collective action clearly provides the needed direction to the tax payers and mid-market businesses across the U.S.

As an independent advisor, it is obvious that the IRS does not understand the underlining value proposition. Stronger mid-market businesses enhance the economic climate, reduce government debt, increase jobs and help to build a more vibrant economy for the entire nation.

In addition, by adding captives to the "dirty dozen" list, the IRS does not provide meaningful guidelines or tests to assist taxpayers. Rather, in a show of borderline lawlessness, the IRS is using the 2016 "dirty dozen" publication to rehash supposed evidence of "abuse" that was explicitly shot down in 2015 by the U.S. Tax Court in the RVI Guaranty Case.

We believe, however, that the guidelines are becoming more defined.

We believe that the 42 States engaged in the formation of captive insurance companies are providing the guide lines that are being sought by the business community.

We believe the courts are also providing the guide lines in creating selective safe harbor provisions.

We believe the IRS does have a role. The IRS should continue to examine promoters, captives, captive managers, etc.

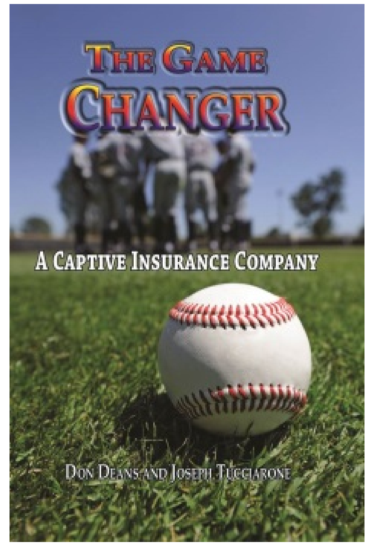
We also believe that enough is enough and the name calling that is so common in America today should stop.

The "dirty dozen" branding does little to help mid-market businesses but does more damage to business. The rhetoric is unnecessary.

Seventy (70) years of captive legislation and case law supported by strong State governments have made the picture clearer. In 2015, while operating under an IRS "dirty dozen" stigma, the number of captives formed in America grew 4.8%. We congratulate the 42 States with captive insurance legislation. They are working harder and taking aggressive steps to assist companies comply with the law when forming captive insurance companies. In the RVI Guaranty case, the U.S. courts clearly supported the states governments and reiterated to the IRS that insurance is controlled by the state governments.

Things are becoming clearer. We are more positive than at any previous time in history that we are operating on solid ground.

2015 also saw an explosion in captives being used in the employee benefits fields. This exciting development has been in the works for some time and will assist 831(b) captives meet the risk diversification guidelines out lined by congress under HR 34 and numerous other court cases.



To obtain a copy of The Game Changer, visit www.amazon.com or our website at www.independentcaptiveassociates.com.

2016 will be a strong year and as business advisors we should embrace and continue to work to develop strong captive insurance laws.

Companies should look to America as the leader!

What Is The ICA Difference?

The primary reason for forming a captive is ALWAYS risk management.

All risk management is Financial.

A financially strong captive is a more powerful risk management tool.

For more information on Healthcare Captives and the benfits, please contact us

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