

Attention seeker

With a marked increase in captive formations in recent months, the Delaware Insurance Department is confident its new captive bureau will bring companies flocking to the domicile

by **Gavin Bradshaw**

The creation of the Delaware Series Limited Liability Company (LLC) captive concept and the licensing of the first such vehicle in the domicile in January this year gave a strong indication of the direction Delaware intends to take its burgeoning captive industry.

The fanfare surrounding the event suggests the vehicle will be Delaware's flagship in its mission to build up the jurisdiction as a captive domicile. The implication is that the domicile has a credible alternative to the cell captive that will save owners some premium tax dollars and can be brought to market quickly and efficiently.

"It's definitely created a buzz," says Richard Klumpp, president and CEO of Wilmington Trust Captive Management Services in Delaware and president of the Delaware Captive Insurance Association (DCIA). "There are a lot of people thinking about it, because each 'cell' is just a series of the LLC at the top so there is only one premium tax charge for the entire structure."

Steve Kinion, director of Delaware's captive bureau admits this aspect of the

Series LLC captive is a direct attempt to compete with both on- and offshore domiciles. "Yes, I believe this gives us tax parity," he says. "We don't mandate minimum capital or surplus requirement for each individual cell. It is set based upon the risk or exposure of the individual series."

More recently, House Bill 314 (HB-314), after being passed unanimously by the House in the Delaware General Assembly and with only one 'no' vote in the Senate, was signed into law by Governor Jack A Markell on 3 May. This legislation adds provisions to Chapter 69, Title 18 of the Delaware Code for licensing agency captives and branch captives.

"The General Assembly is very supportive of business development efforts and the state government in Delaware views captive insurance as a real opportunity," says Mike Teichman, a director with Delaware law firm Parkowski Guerke & Swayze.

As head of the DCIA's legislative committee, Teichman was instrumental in bringing the bill to Senate majority leader Patricia Blevins and in helping to steer HB-314 through the legislature.

Spelling it out

While Delaware's special purpose captive (SPC) provision essentially allows the commissioner to waive any statutory requirement for agency or branch captives in order to licence companies, in practice, says Kinion, the department has spent a lot of time explaining to prospective captive owners how agency/branch captives could be licensed as SPCs. "It became apparent to us last year that we had to conform our laws to the language of the captive insurance industry," he says.

"In terms of marketing the domicile it's obviously much better to have them spelled out in the statutes," agrees Teichman. In addition, says Delaware Insurance Commissioner Karen Weldin Stewart, the continuing interest in funding employee benefit risk through a captive was a key factor in introducing the new categories.

"The concept of the employee benefits captive was actually something I campaigned on when running for insurance commissioner, which is really what was behind why we wanted to push more on the branch captives," she says.

Stewart was also behind the creation

June 2005: Statutory revisions to captive law enacted, under Commissioner Matt Denn.

July 2007: Further amendment made to captive law.

15 January 2010: Delaware announces 20% growth in captive formations in 2009

25 January 2010: Delaware licenses first Serial LLC captive company, managed by Strategic Risk Solutions

2005 2006

2007 2008

2009

JAN 2010

MAY 2010

August 2006: William White brought in as captive administrator.

July 2009: William P White departs, having been contracted as captive programme administrator. New captive revenue department announced by Commissioner Karen Weldin Stewart, the Bureau of Captive and Financial Insurance Products

3 May 2010: HB-314 signed into law by Governor Jack A Markell, adding provisions for the licensing of agency and branch captives

DELAWARE CAPTIVES: 57

Captive premium written (year-end 2009): \$237m

Captive premium tax: Direct premium 0.2%; assumed premium 0.1%. Minimum premium tax – \$5,000; maximum premium tax – \$200,000 (\$125,000 direct; \$75,000 assumed).

Legislation: Title 18: Insurance Code – Chapter 69

Regulator: Steve Kinion, director, Bureau of Captive and Financial Insurance Products, Delaware Insurance Department

Minimum capitalisation or surplus: Pure – \$250,000; association – \$750,000; industrial insured – \$500,000; RRG – \$1m; agency – \$250,000; branch – \$250,000; sponsored – \$500,000; special purpose – \$250,000; SPFC – sponsored – \$500,000, non-sponsored – \$250,000

Fees: Licence application – \$200; licence processing – \$3,000; re-licensing – \$300

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of the Bureau of Captive and Financial Insurance Products, a new organisation within the Department of Insurance, following the departure of captive consultant William P White from the captive administrator role in July 2009.

In the first six months of its existence, the Bureau licensed eight new captive companies – a decent growth rate of 20%. The total number of new captives has since grown to 15, with five more in the pipeline, according to Kinion.

Captive contractors

Delaware has a history of using contractors to staff its captive department. White, a former District of Columbia captive director, was brought into the department in August 2006 and is credited with hav-

ing bumped up the number of captives in Delaware from five to 42. White was replaced by Steve Kinion, previously a senior advisor to the commissioner.

Kinion’s appointment has come under attack from what the Democrat-led department has described as ‘Republican bloggers’ for his annual remuneration of US\$200,000 of Insurance Department funds, as well as the fact that he is based in Illinois.

“The fees are not secret, we published that information a year ago,” says Elliott Jacobson, chief of staff for the Delaware Insurance Department. He argues that Stewart, Weldin and other Democrat officials have been unfairly targeted by bloggers from Republican non-profit thinktank the Caesar Rodney Institute.

“It has launched a campaign to attack a

number of elected officials from the Democratic party, with a complete disregard for the truth and the facts,” says Jacobson, adding: “It is all politically driven.”

Commissioner Stewart has been strident in her defence of Kinion’s appointment, publishing a riposte in the Delaware press citing his “extensive knowledge and experience working in the insurance industry”.

“Steve has a very broad base of experience with insurance generally, not just captives,” agrees Teichman. “We’re certainly happy with Steve and everything he has done.” Klumpp is also upbeat about Kinion’s credentials, arguing that his experience with medical programmes makes him a ‘natural fit’ for a domicile that is experiencing a growing interest in, and formations of, medical stop-loss captive programmes.

According to Jacobson the consultancy model for the captive bureau is one that is both economical and the best fit for Delaware. “We’re sort of like a startup, where you need a lot of entrepreneurial talent who have both the skill and the will – and who know how to both regulate and attract business,” he says.

When the captive statute was re-written in 2005, Delaware’s secretary of state apportioned funds for a captive director, but no state employees were mandated at the time. The department has recently started to add state employees and intends to employ full-time analysts, but the latter roles are currently filled by contractors.

“The state seems more interested in having consultants rather than employees because we are trying to shrink government,” says Stewart. “I don’t foresee them changing that over the next three years.”

In five years, she says, it may be that Delaware will choose to engage more ‘upper-echelon’ state employees. However, she adds: “The problem you run into is how we get the talent of people like Steve Kinion and Edmund Ianni (Delaware’s director of strategic development), who would be paid less than what the governor and I are being paid.”

Teichman certainly views the continued use of contractors as the way forward for Delaware in the near term. “The Department chose the same model as in 2006 when Bill White was brought in on a consultative basis,” he says. “Bring in someone with a fair amount of name recognition within the insurance industry and regulatory circles to give us a boost.”

Klumpp agrees with the benefits of this approach. “It would be great to have the stability of Vermont with a Len Crouse type on staff,” he says. “But we’re very happy with where we are today and we could not have done it without the people we have had so far.” **CR**