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New Jersey Enacts Captive Insurance Company Legislation

On February 22, 2011, Governor Christie signed into law legislation that authorizes the creation of captive insurance companies in New Jersey. The legislation, which is modeled after Vermont's highly successful captive insurance law, takes effect May 22, 2011.

New Jersey joins 23 other states and the District of Columbia that permit the formation of captive insurance companies. Several states have experienced substantial growth in captive insurance company formation over the last several years. New Jersey's captive insurance law promotes both the formation of new captive insurance companies in the state as well as the redomestication to New Jersey of captives currently formed in other states. The legislation provides that the Commissioner of the New Jersey Department of Banking and Insurance may establish by regulation an expedited licensing process for existing out-of-state captives that seek a license to do business in New Jersey.

Properly structured captive insurance companies can provide significant advantages to parent companies or associations. These advantages include:

- Tax benefits and incentives;
- Access to wholesale reinsurance markets, including associated cost benefits;
- Ability to design coverage not available in the commercial market, such as terrorism coverage, or to tailor risk-distribution mechanisms to specific company needs;
- More efficient claims handling;
- Ability to generate underwriting profit and investment income;
- Ability to better manage fluctuations in the hard market/soft market cycle of commercial insurance; and
- Improved competitiveness by offering specific coverages to customers, vendors, or other constituents.

The New Jersey law permits captives to address a variety of risks, including life, health, annuities, indemnity, property and casualty, fidelity, guaranty and title. A New Jersey captive cannot take on private passenger automobile or homeowners risks.

The law contains a premium tax structure identical to Vermont's structure. On direct written premiums, the tax is:

- 0.38% on the first $20 million in premiums;
- 0.285% on the next $20 million;
- 0.19% on the next $20 million;
- 0.072% on premiums exceeding $60 million.

For reinsurance, the premium tax structure is:

- 0.214% on the first $20 million in assumed reinsurance premiums;
- 0.143% on the next $20 million;

- 0.048% on the next $20 million;
- 0.024% on premiums exceeding $60 million.

The law provides for a minimum annual premium tax of $7,500 and a cap on the annual premium tax of $200,000. For single-parent captives, the law mandates a minimum unimpaired paid-in capital and surplus requirement of $250,000. For association captives, the minimum is $750,000. For other types of captives, the minimum capital and surplus requirement is $500,000.

The law also contains detailed procedures for obtaining and maintaining a license to operate a captive in New Jersey. This includes a mandate that New Jersey captives employ an "appropriate number" of in-state professional service providers, such as attorneys, accountants, actuaries, captive managers, brokers, and third-party claims administrators.

Bressler, Amery & Ross, which recently was ranked by *U.S. News & World Reports* as one of only a few New Jersey law firms with a "Tier 1" insurance law practice, has considerable experience with out-of-state captive formation and regulation within the state. This spring, the Insurance Law and Tax Practice groups will host a breakfast seminar on the New Jersey captive law.

Questions regarding captives or the new law can be directed to Harry Baumgartner, Cynthia Borrelli and Susan Stryker. ■

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