

# Raising the Bar for Captive Managers

July 15, 2020

Kevin M. Doherty, Member

Dickinson Wright, PLLC

[kdoherly@Dickinson-wright.com](mailto:kdoherly@Dickinson-wright.com)

(615) 974-2587 (cell)

**MONTANA CAPTIVE INSURANCE  
ASSOCIATION, INC.**

**15<sup>TH</sup> ANNUAL  
CONFERENCE**

1

## Background

- Who is responsible for captive corporate governance?
- Captive Owner
- Captive Manager
- Actuary
- CPAs
- Attorneys

**MONTANA CAPTIVE INSURANCE  
ASSOCIATION, INC.**

**15<sup>TH</sup> ANNUAL  
CONFERENCE**

2

## Responsibilities; Regulation of Service Providers

- Captive Owner ultimately responsible for all regulatory compliance
- Captive Owner usually transfers primary responsibility to Captive Manager by contract
- Captive Manager
  - Often a CPA, but no licensure required (although must be “approved” in most states)
- Actuaries
  - P/C actuaries must be certified by the Casualty Actuarial Society (CAS), which requires passing a series of exams
  - U.S. Qualification Standards enforced by CAS for members who issue Statements of Actuarial Opinion (SAO)
- CPAs
  - Must pass CPA exam and be licensed by a state
  - AICPA Code of Professional Conduct enforced by AICPA Prof. Ethics Executive Committee
- Attorneys
  - Must pass Bar exam and be licensed by a state
  - Code of Professional Responsibility enforced by State Bar Association or Ethics Commission

**MONTANA CAPTIVE INSURANCE  
ASSOCIATION, INC.**

**15<sup>TH</sup> ANNUAL  
CONFERENCE**

3

## Five Captive Responsibilities

1. *Regulatory Liaison* – someone must have primary responsibility to interact with the regulators and enforce compliance with regulations and business plan (usually the captive manager)
2. *Accounting and Financial Reporting* (CPA firm)
3. *Corporate Governance* (law firm advises; captive manager ensures compliance)
4. *Third Party Service Contracts* (captive manager)
5. *Insurance Operations, Underwriting and Claims* (captive manager)

**MONTANA CAPTIVE INSURANCE  
ASSOCIATION, INC.**

**15<sup>TH</sup> ANNUAL  
CONFERENCE**

4

## Background on Potential Regulation and Formation of SIIA Working Group

- Currently no formal requirements for managers other than “approval” by domicile
- While some regulators have considered formal requirements, there is not a strong movement at this time for formal regulation
- Could the captive industry develop voluntary standards?
- Would this help keep the regulators away, or entice them to get more involved?
- Who would enforce these standards?

**MONTANA CAPTIVE INSURANCE  
ASSOCIATION, INC.**

**15<sup>TH</sup> ANNUAL  
CONFERENCE**

5

## SIIA Captive Manager Code of Conduct

- Canon I. Integrity
- Canon II. Conflicts of Interest
- Canon III. Confidentiality
- Canon IV. Advertising
- Canon V. Practice Management

**MONTANA CAPTIVE INSURANCE  
ASSOCIATION, INC.**

**15<sup>TH</sup> ANNUAL  
CONFERENCE**

6

## SIIA Captive Manager Code of Conduct (cont.)

Canon I. Integrity

Managers should:

- foster integrity
- not willfully violate laws or regulations
- cooperate with regulators
- represent accurately their qualifications

**MONTANA CAPTIVE INSURANCE  
ASSOCIATION, INC.**

**15<sup>TH</sup> ANNUAL  
CONFERENCE**

7

## SIIA Captive Manager Code of Conduct (cont.)

Canon I. Integrity

Managers should (cont.):

- communicate with clients accurately and clearly
- use best efforts to gather all relevant facts
- avoid matters where they have limited qualifications
- be courteous, cooperative, truthful about other managers

**MONTANA CAPTIVE INSURANCE  
ASSOCIATION, INC.**

**15<sup>TH</sup> ANNUAL  
CONFERENCE**

8

## SIIA Captive Manager Code of Conduct (cont.)

### Canon II. Conflicts of Interest

Managers should:

- avoid conflicts of interest
- prevent a potential conflict from becoming an actual conflict
- disclose any actual conflicts and obtain written waiver
- always serve “best interests of client”

**MONTANA CAPTIVE INSURANCE  
ASSOCIATION, INC.**

**15<sup>TH</sup> ANNUAL  
CONFERENCE**

9

## SIIA Captive Manager Code of Conduct (cont.)

### Canon III. Confidentiality

Except when required by law, managers should:

- be faithful to the relationship of trust inherent  
in their relationship with existing and prospective clients

**MONTANA CAPTIVE INSURANCE  
ASSOCIATION, INC.**

**15<sup>TH</sup> ANNUAL  
CONFERENCE**

10

## SIIA Captive Manager Code of Conduct (cont.)

### Canon IV. Advertising

Managers should:

- be truthful in advertising their qualifications
- not seek to obtain clients by advertising or other forms of solicitation that is false, misleading, or deceptive.

**MONTANA CAPTIVE INSURANCE  
ASSOCIATION, INC.**

**15<sup>TH</sup> ANNUAL  
CONFERENCE**

11

## SIIA Captive Manager Code of Conduct (cont.)

### Canon V. Practice Management

Managers should follow prudent captive business practices, including:

- internal controls; operations manual
- ongoing communication among board, owners, manager, service providers, and regulators
- review of risk management goals and appointment of service providers annually
- regulatory compliance with all domicile filings

**MONTANA CAPTIVE INSURANCE  
ASSOCIATION, INC.**

**15<sup>TH</sup> ANNUAL  
CONFERENCE**

12

## SIIA Captive Manager Code of Conduct (cont.)

### Canon V. Practice Management (cont.)

Managers should follow reasonably prudent captive business practices, including (cont.):

- regular communication with regulators
- review of all insuring agreements annually
- appropriate financial procedures and tests
- adequate records retention policy
- signed, written agreement between manager and owner

**MONTANA CAPTIVE INSURANCE  
ASSOCIATION, INC.**

**15<sup>TH</sup> ANNUAL  
CONFERENCE**