



Building a Stronger Voice for the Captive Industry: Advocacy Action Report

As the only global domicile-neutral captive insurance association, CICA leverages its neutral status to forge collaborative relationships and grow a stronger, more impactful voice for the captive industry. CICA has a long history of addressing industry issues. In recent years CICA expanded its advocacy efforts by actively monitoring emerging issues and regulatory changes in the U.S. and around the world so CICA and its advocacy partners can respond proactively to help mold laws and regulations affecting the captive industry.

One component of advocacy is tracking issues over time. The recap provided here outlines the efforts of CICA and its advocacy partners since 2005.

2018

- CICA submitted comments on the discussion draft Report 8-10 of the BEPS Action Plan (“Aligning Transfer Outcomes with Value Creation”), Working Party No. 6 (“WP6”) to reinforce that any new OECD guidance relating to captive insurance companies should not contradict certain fundamental accounting and insurance regulations already in place and adhered to by multinational companies.
- CICA updated its Information Statement Regarding Small Captives which was originally published August 17, 2015.

2017

- CICA submitted comments to the U.S. Environmental Protection Agency supporting the use of insurance provided by a captive or risk retention group to demonstrate financial responsibility in response to the proposed rule regarding Financial Responsibility Requirements under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry.
- CICA submitted comments jointly with VCIA and NRRRA opposing the the National Association of Insurance Commissioners (NAIC) proposal to collect expanded mid-year investment information. If the NAIC moves forward with their proposal the joint letter recommended that a small company exemption for those insurance companies, including RRGs, with premiums less than \$500 million be incorporated into the proposal.

2016

- CICA renewed its support of the Coalition for Competitive Insurance Rates and sent a letter to the US Senate Finance Committee opposing any effort to eliminate the business expense deductibility of reinsurance premiums paid to off-shore reinsurance entities.
- CICA signed on to a letter generated by the Mortgage Bankers Association asking Congress to direct the Federal Housing Finance Agency to withdraw its rule containing a blanket prohibition

on captives belonging to the Federal Home Loan Bank (FHLB), and asking it to adopt a new, more narrowly drawn rule.

2015

- CICA agreed to participate in the ECIROA led effort to work with regulators to define safe haven policy forms to use in multi-jurisdictional/cross-border insurance policies while complying with all local laws and regulations.
- CICA renewed its support for the “Coalition for Captive Insurance Clarity” and legislation to clarify that the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA 2010) was not intended to apply to captives.
- On May 7, 2015, CICA filed comments with the Internal Revenue Service concerning proposed Regulation IRS-2015-0015-0001 that would, in part, define “active conduct” of an insurance business to exclude the utilization of officers and employees of related entities and independent contractors. Although CICA believes that few, if any, CICA members will be directly affected if this regulation is finalized; the vast majority of captive insurance companies operate through the use of independent contractors to provide support services to their insurance business.
- CICA renewed its support of the Coalition for Competitive Insurance Rates and sent a letter to the US Senate Finance Committee opposing any effort to eliminate the business expense deductibility of reinsurance premiums paid to off-shore reinsurance entities.
- CICA continued its opposition to the FHFA’s efforts to prohibit captive membership in the Federal Home Loan Bank.

2014

- CICA opposed the Federal Housing Finance Agency’s efforts to adopt proposed regulations that would change the definition of “insurance company” in such a way as to create a blanket prohibition on Federal Home Loan Bank membership by captive insurance companies and phase out membership of existing captive members of the FHLB over a five year period.
- CICA spearheaded the captive industry effort opposing an proposal at the NAIC to define multi-state reinsurers in a vague way that could impose NAIC accreditation standards on most captive reinsurers. CICA worked with captive domicile associations, domicile captive regulators, domicile state insurance commissioners, and the NAIC to details the numerous problems with the proposal.
- CICA joined a coalition in successfully opposing a legislative budget proposal in New York State that would have taxed any captive insurance company writing any policies in the State of New York.
- CICA renewed its **support of the Coalition for Competitive Insurance Rates** and sent a letter to the US Senate Finance Committee opposing any effort to eliminate the business expense deductibility of reinsurance premiums paid to off-shore reinsurance entities.
- On January 15, 2014 CICA distributed a Request for Proposals to a number of potential academic partners to perform **research and draft a formal White Paper** on the captive insurance industry.
- The CICA Task Force on Transfer Pricing continues its work to draft **Best Practices Guidelines on Transfer Pricing**.

2013

- In April, 2013, CICA renewed its participation in the **Coalition for Competitive Insurance Rates**, the coalition opposing the so-called “Neal” Bill and its progeny.

- Also in April, 2013, CICA became aware of a proposed report from the Organization for Economic Cooperation (OECD) on “Base Erosion and Profit Shifting” that specifically referred to captive insurance companies as vehicles for tax avoidance.
 - On May 1, 2013 CICA and ECIROA (European Captive Insurer and Reinsurer Owners’ Association) **filed formal comments with the OECD** objecting to that characterization and asking to be heard on this issue. When no response was forthcoming, CICA sent a second letter to the OECD Secretary General, along with the OECD Heads in Germany and the United States.
 - **CICA and ECIROA are continuing their efforts** to provide guidance to the OECD on the true nature of the traditional captive insurance market in order to blunt or ameliorate the impact of the Base Erosion and Profit Shifting Report.
- On June 20, 2013, CICA sent a **letter to the President of the NAIC** commending him for rejecting the call of the New York Superintendent of Financial Services for a national moratorium on captive insurance transaction, and received a letter thanking CICA for its letter from the NAIC President dated August 15, 2013.
- In 2013 CICA was the organizing force behind the **Captive Association Leadership Council**, a broad based group of leaders from all captive associations who gathered at the 2013 CICA International Conference and by conference call on September 6, 2013. This group will meet regularly to discuss topics of mutual interest that cross domicile boundaries, including legislative and regulatory issues.
- In 2013 CICA formed a **Task Force** to draft a “Best Practices Guidelines for Transfer Pricing” in response to the OECD’s Report on Base Erosion and Profit Shifting.
- In 2013 CICA began the process of creating a White Paper on the captive insurance industry as additional **documentation for opposition to the OECD’s BEPS Report**.

2012

- On June 28, 2012 CICA **responded to the US Department of Labor’s Request for Information on Stop-Loss Insurance** with the position that stop-loss insurance is not “health insurance”, but rather, is indemnity insurance to cover the liability of an employer to pay the expense of their employees’ health care and that the use of captives for stop-loss create economic efficiency in the market.
- On August 27, 2012, CICA **provided comments to the FIO** in response to the FIO’s notice and request for comments on the U.S. and global reinsurance market. CICA’s comments were endorsed by the National Risk Retention Association, the Missouri Captive Insurance Association, the Montana Captive Insurance Association, the Nevada Captive Insurance Association, the South Carolina Captive Insurance Association, the Tennessee Captive Insurance Association, and the Vermont Captive Insurance Association.
- In the fall of 2012 CICA **engaged the services of Mike Mead** to track legislative and regulatory developments and to represent CICA at the NAIC.
- On November 15, 2012, CICA **provided comments to the NAIC** on the NAIC’s Discussion Draft White Paper on Captives and Special Purpose Vehicles.
- On December 13, 2012, **CICA formally joined the Clarity for Captive Insurance Coalition**, a group whose goal is to clarify that the Non-Admitted and Reinsurance Reform Act of 2010 was not intended to cover captive insurers, thereby ensuring no change in the tax treatment of captive insurance companies at the state level.

2011

- On March 28, 2011, CICA **filed formal comments with the Federal Housing Finance Agency** on proposed rule concerning the eligibility of captives for membership in the Federal Home Loan Bank.

2010

- In March of 2010, the CICA Board formally approved the **creation of a Legislative Advisory Committee**, along with a charge for the Committee, and began recruiting members of the Legislative Advisory Committee.

2009

- In April of 2009, CICA **engaged the services of Jim McIntyre** in Washington, DC to “monitor federal legislation and regulatory activity to determine whether any such proposals are of interest to the captive industry.” It is important to note that this engagement specifically excludes lobbying services, which would require a separate agreement.

2008

- In late 2007 and early 2008 CICA **mobilized and funded a strong opposition to the IRS Proposed Regulation on Consolidated Returns**
 - CICA formed the Coalition for Fairness to Captive Insurers (CFCI)
 - CICA and VCIA raised funds to support the Coalition’s effort
 - CFCI Developed both a technical legal response and a political strategy
 - CICA representatives met with representatives of the Department of Treasury and IRS
 - Dennis registered as a federal lobbyist
- CICA continued **support of efforts to support expansion of the Liability Risk Retention Act** in 2008 through the present
- CICA **reviewed and commented on IRS Revenue Ruling 2008-8**
- CICA **responded to IRS Notice 2008-19 on protected cell captives**
- CICA **joined the Coalition for Competitive Insurance Rates opposing the Neal Bill** in 2008
 - CICA continued its membership in Coalition for Competitive Insurance Rates in 2009, 2010, 2011, 2012 and 2013.

2007

- CICA **submitted comments on IRS Revenue Ruling 2007-47** on unavoidable obligations to remediate

2006

- CICA **joined the Coalition to Expand the Risk Retention Act** in 2006
- CICA **submitted formal comments in response to the 2006 FASB** invitation to comment on the bifurcation of insurance and reinsurance contracts for financial reporting

2005

- CICA **submitted formal comments in response to IRS Notice 2005-49:**
 - Whether cell captive arrangements constitute insurance for purposes of tax treatment
 - “loan backs” between related parties in a captive
 - Homogeneity in determining risk distribution

- Tax issues raised by transactions involving finite risk