



Viva la captives!

2022 ANNUAL CONFERENCE • JUNE 27-29, 2022 • THE COSMOPOLITAN OF LAS VEGAS • LAS VEGAS, NV

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THE POWER OF THE POOL

Tuesday, June 28 | 3:00 PM - 4:00 PM

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Agenda

- General Discussion about Pools
- Underwriting
- Legal

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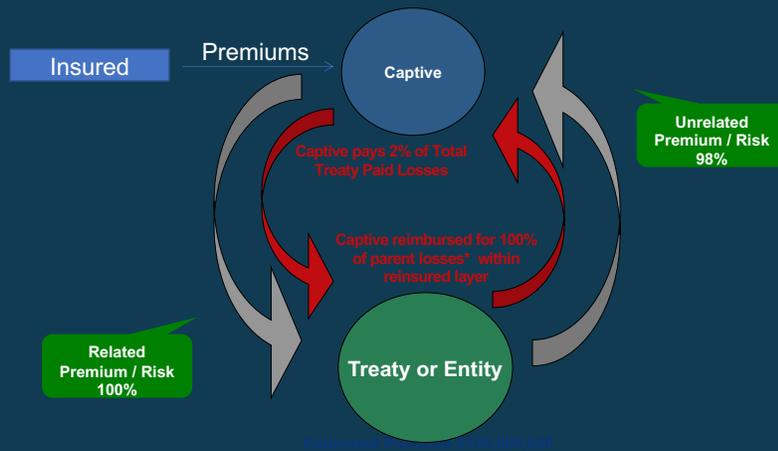
What Is a Captive Reinsurance Pool?

- Premium and Loss Swaps
- Why Participate
- Differences between large and small pools

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Pooling: How It Works



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Why Participate?

- Portfolio Effect
- Risk Diversification
- Creates Capacity
- Captive may gain insurance company tax status

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Pool Overview

- Large Captives
 - Frequency Risks
 - Treaty Arrangement
 - Similar Risks-Casualty Retentions
 - Low Limits-\$200,000
 - Generally Publically Traded
- Small Captives
 - Severity Risks
 - Entity Assumes and Cedes
 - Different Risks High Limits-\$1,000,000
 - Create Capacity
 - Generally Privately Held

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Pool Characteristics

- How is the program sold
- Admissions process
- Protection of the pool from bad risks
- Entry and exit process
- Claims handling

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Pool Characteristics

- Transparency VS confidentiality
- Financial monitoring of the pool participants
- Underwriting process
- Loss expectations
- Maximum participant liability

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Underwriting

Brandy Alderson

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Underwriting

- Exposure and Loss information
 - Loss information
 - Loss history (5 years or more)
 - Loss forecasts
 - Details of Loss Control and Safety

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Underwriting

- What is underwriting?
 - Quantifying and understanding risk

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Underwriting

- Captive information:
 - Financial condition including capitalization
 - Direct lines of business and reinsured limits proposed
 - Policy term
 - Forecasted changes to program or financial condition (i.e. planned loans or dividends)
- Insured information:
 - Current operations including products, services, facilities and subsidiaries
 - Planned changes to insured operation including acquisitions
 - Parent company financial condition

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Underwriting

- Exposure and Loss information:
 - Exposure related each line of coverage
 - Headcount
 - Auto Count
 - Revenue
 - Details of “high risk” exposure
 - Asbestos products/services
 - Nuclear products/services
 - Pharmaceutical products
 - Medical services

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Underwriting

- Exposure and Loss information
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 - Details of Loss Control and Safety

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Underwriting

- Policies:
 - Policy type
 - Policy period
 - Limits and Aggregate
 - Occurrence or Claims Made
 - Exclusions
 - Coverage Extensions
 - Retentions/Deductibles
 - Claims administration and claims reporting

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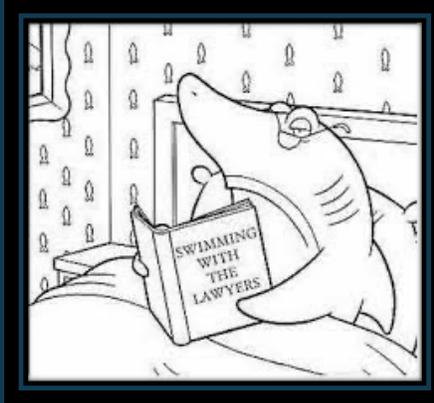
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The Importance of Legal Review

Marilyn S. Chappell

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Because no one calls a lawyer just to say “hi.”



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1. Drafting Your Pool Reinsurance Contract and Insurance Policies

Importance of Pool Reinsurance Contract Language

- ***Duty of utmost good faith*** - critical importance – owed by each member of the pool, before entering pool and in providing information about claims – basis for enforcement of requirements for pool.
- ***Link to underlying policies' requirements*** – important as basis for reimbursement requirement.

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1. Drafting Your Pool Reinsurance Contract and Insurance Policies

Importance of Insurance Policy Language

- ***Specific language*** – make sure you specifically describe what's intended to be covered and excluded, and conditions to be met to obtain coverage.
- ***Duty of initial incident reporting*** – include clear duty to initially report claims with as much information as available, with time limits from event.
- ***Duty to supplement reporting*** – include clear duty to update information for claims as further information received.

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1. Drafting Your Pool Reinsurance Contract and Insurance Policies

Importance of Insurance Policy Language

- ***Clearly define terms as intended*** – if you are not specific, you may get arguments on generalized insurance law principles that don't match your intent.
 - **Example: "claim"** – intent may be request for reimbursement of actually-occurred expenses; may get argument it means lesser requirement (such as "claim" used in claims-made professional liability policy).
 - **Example: "loss"** – intent may be defined, finite amount; may get argument it means something less well-established (such as "loss" used as potential claim for property damage in homeowners policies).

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2. Choice of State Law

Importance of Specifying Which State's Laws Apply

- *Can be extremely important in contract interpretation and claim handling issues*
 - **Example – belated notice to insurer of claim** – some states require insurers to prove they were prejudiced by late notice, others do not, or it may depend on specific policy language.

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3. Claim Handling

Consider Insurance “Bad Faith” Principles in Designing Your System

- State's laws differ. See point 2!
- ***Unfair Claims Settlement Practices Act***, basis for many states' laws – National Association of Insurance Commissioners, Model Laws, <https://content.naic.org/sites/default/files/inline-files/MDL-900.pdf>.

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3. Claim Handling

Claims Act prohibits:

- Failing to have *reasonable standards* for *prompt investigation* and *settlement* of claims.
- Failing to *acknowledge communications* with *reasonable promptness*.
- Refusing to pay claims without conducting a *reasonable investigation*.
- Failing to *affirm or deny coverage* of claims within *reasonable time* after investigation completed.
- Failing to *attempt to fairly settle claims in good faith*.

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In Summary

- Pooling, Quota Share Treaties and Risk Swaps are insurance
- Intelligent participation requires an investment of resources
- As of any point in time the actuaries are always wrong – The loss estimates will either be too high or too low. Given enough time, the highs and the lows will average to the estimate.

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Questions or Comments?



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