

# THE TEAM WITH THE BEST PLAYERS

WINS..... Jack Welch

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## UNDERSTANDING THE FACTS

By William York, VP of Marketing



Things don't always look like they appear!

President Donald Trump would refer to what's happening in the media to the Captive Insurance industry as – **Fake News!**

An article I recently reviewed, written by Jay Adkisson, Esq. of Riser Adkisson Law Firm and published in *Captive Insurance Company*, demonstrates this point.

Jay analyzed a recent court case in which the IRS claimed it had won in a recent court case against a Captive Insurance Company. This followed two other so called victories. In all three cases things weren't what they appeared to be. In light of this continued rhetoric in the press, I wanted to highlight the true issues related to this recent case ..... **Syzygy Insurance Company.**

As I reviewed the facts it occurred to me that this case was reminiscent of the scenario of the "bumbling bandits". Frankly, the judge in this case did not have to wade into the risk-distribution or risk shifting swamps as the facts

surrounding the operations of **Syzygy Insurance Company** were so shoddy that any hopes of the captive arrangement passing muster were utterly absurd.

As with the other two cases ..... **Avrahami** and **Reserve Mechanical**, the so-called evidence clearly showed that the underwriters were pulling their numbers from the thin air. Imagine a situation where the premium numbers were round, bore no resemblance to commercial premiums and there was no supporting documentation as to how the premium amounts were arrived at. The entire transaction resembled a fairytale – **Fake News!** Not only did the premium numbers prove to be selected at random, but the policies suffered from sophomoric defects. Example: there was an excess policy issued for a policy that did not exist.

While the materials presented show a wanton disregard for any sort of reality, the testimony of the Captive owner was similar to committing "haricari" on the witness stand when testifying. The Captive owner actually admitted to not tendering over \$100,000 in claims, asserting he was too busy to make the claims. Further, when the Captive Management Company responded that the Captive needed to decrease premiums because of "no" claims the Captive owner actually fired the Captive Manager and stated that if the premiums were lowered the **Captive Tax Shelter** that the owner desired would not perform as the Captive owner wanted it to.

**THE TAKEAWAY ..... if it looks like a duck, if it walks like a duck, if it quacks like a duck ..... it is a duck.**

The media has been shouting from the mountain tops ..... Another victory for the IRS. The point that should be made is that thoughtful leadership must recognize that anything less than a true arm's length transaction to arrive at coverage and premiums will not pass muster.

Moreover, there must be adequate documentation for each and every policy ..... Premiums must be defensible ... Premiums must reflect reality ... Captives must look and act like real insurance companies.

I believe the bottom line for all legitimate professionals working in the Captive space is that the Captive is not a tax shelter and if designed and operated as a tax shelter will lose in tax court. Tax Shelter captives and real captives are incompatible concepts. **Claims will become reality; risk management views will be adjusted and excess accumulated surplus will strengthen and protect businesses.** Captives have supported business growth since the 1950's and were a reaction to inadequate coverage and runaway costs of the 1980's.



Be responsible and learn from the actions of many companies who have realized that by formalizing self-insurance they can achieve greater efficiencies. Avoid the **Fake News!** Alternative risk strategies now represent 57% of all insurance in force worldwide and 90% of all Fortune 500 Companies own their own captive. The change from strictly commercial insurance to captive insurance is happening because responsible businesses demand it!

**It is real and it is disrupting the traditional liability insurance marketplace.**

Captive Insurance Companies are created to provide a level of risk management not possible in today's commercial insurance market. Our innovative risk management team will deliver a strategy that understands and exhibits an in-depth knowledge of the workings of every Captive Insurance Company.

**Call Independent Captive Associates, LLC to learn how to get started.**

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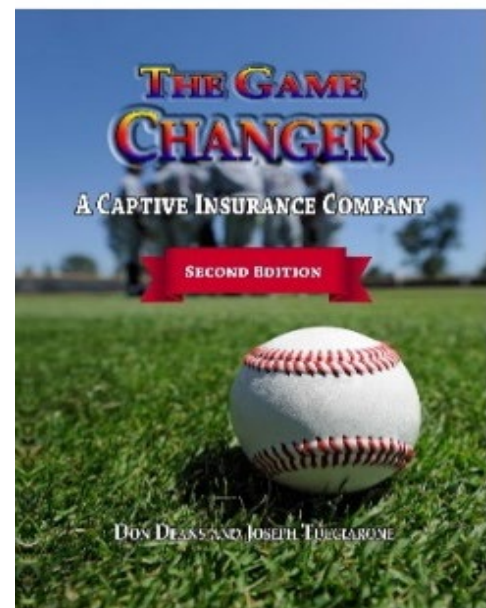
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