

The Joy of Ownership

(The following story is total fiction – except for the parts that aren't)

Congratulations! You just won tens of millions in the lottery, and after 20+ years in the [claims/underwriting/actuarial/program/brokerage/other – pick one] side of the insurance business,

requirements for product pricing and reserve development. But unless you cross over into another realm of the business, you cannot fully appreciate the scope of the regulatory net over the industry.

biographical affidavit you had completed years before when you became a VP of your former employer. You quickly learned, however, that the affidavit was simply the starting point and the tip of the regulatory iceberg complete with its own traps and pitfalls.

After submitting your updated affidavit, the company's counsel contacts you to make sure you answered all the questions completely. In particular, they noted that you answered "no" to question 15: ". . . has any company or entity for which you were an officer or director, . . . (b) had its permit, license, or certificate of authority . . . subjected to any judicial, administrative, regulatory, or disciplinary action . . . ?" or "(c) been placed on probation or had a fine levied against it or against its permit, license, or certificate of authority in any civil, criminal, administrative, regulatory, or disciplinary action?" Upon questioning by counsel you are reminded that your former employer had had various regulatory and disciplinary events occur over the 20+ years with the company. You did not think these events, particularly those matters occurring 10 to 15 years ago, were anything other than irrelevant routine matters. Counsel points out that there are no time limits on the requested information, and advises you that failure to fully vet these matters in your affidavit could be considered evidence of your "untrustworthiness" jeopardizing approval of your ownership. After considerable back and forth with your former employer, you manage to put together details of your former employer's regulatory "history" of fines and penalty from time immemorial.

Next came the revelation that as a "controlling person" you are required to provide detailed audited financial statements. Some states allow individuals to provide a CPA "compilation" rather than a full audit, but only upon showing that submitting certified statements would be a hardship for you. After consulting with your accountant, who laughed at your



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you can now retire from active participation in the business. Your good friend, the CEO of a modest sized p/c company in your state, has been pestering you about his ambitious business plan, which you actually think is a pretty solid plan based on your own expertise in the business. All the company needs to implement its plan is new capital, and you determine this is a great opportunity to put some of your recent winnings to work in a business you actually know something about – to actually have an ownership interest in an insurance company. You tell your friend you're in for \$X million and to let you know where to send the check. Your friend expresses his deep appreciation for your commitment but adds that the company's counsel will be in touch about the next steps. You are about to enter the regulatory twilight zone!

Most people in the insurance business only experience the rules and regulations applying to their corner of the business, but few ever see the awesome blanket of regulation on the business as a whole. Underwriters, for example, know the requirements for issuing, endorsing or cancelling contracts; claims people know the rules relating to the review, payment or rejection of claims; and actuaries know the

Which is what happened to you when you sought to become the owner of a small piece of an insurance company!

Soon you hear from the company's lawyers, who advise you that they are in the process of preparing a "Form A" filing with the regulators and need certain information from you. As an insurance professional, you are familiar with the statutory and regulatory provisions applying to your area of expertise, but have never heard of a "Form A" filing. You quickly learned that your investment involved the acquisition of more than 10 percent of the company, and therefore it was deemed to be a "change in control" of the company requiring regulatory approval. The "Form A" reference is to Form A to the NAIC model holding company regulations regarding, among other things, acquisition of control of an insurer.

Holding company regulations? What has this transaction got to do with holding companies? You're just a regular guy with some (well, lots of) free cash seeking to buy a minority interest in a local insurance company. Oh well, how bad could it be? After all, the company lawyers were doing the heavy lifting on the application. All you had to do was provide certain information starting with updating the form of

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request to do a “quick and dirty” audit, you agree on an exorbitant fee for preparing a certified compilation. However, before asking counsel to make the necessary submission seeking permission from the regulators, you raise several options with company’s counsel suggested by your accountant:

reduce your proposed investment in

the company to less than 10 percent;

make the investment jointly with your spouse so that neither are a 10 percent owner; or

claim that as a passive investor who will not be an active participant in the company’s business you are not a controlling person.

Counsel – politely – informs you that without your full investment, the company cannot ensure that its business plan can be achieved; splitting the investment with

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your spouse will not take you out of the definition of control; and claiming that you are not a controlling person will require filing a request for determination that would be nearly as onerous as the application for approval without any assurance of acceptance by the regulators.

Counsel thanks you for the information that you have submitted so far, but also advises that after submission of the full Form A filing, the regulators are likely to come back with questions, comments and requests for additional information. Counsel cannot provide any assurances of how long the process will take, or what additional information may be required from you.

After taking a couple of aspirin for your growing headache, you call your friend and tell him in your best “Shark Tank” bravado, “I’m out!” You end up buying an interest in a local saloon, where at least you know that upon closing of the purchase, you can get some comfort from inventory. [A]

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