MANAGING REGULATORY RISK IN THE US - DLA PIPER

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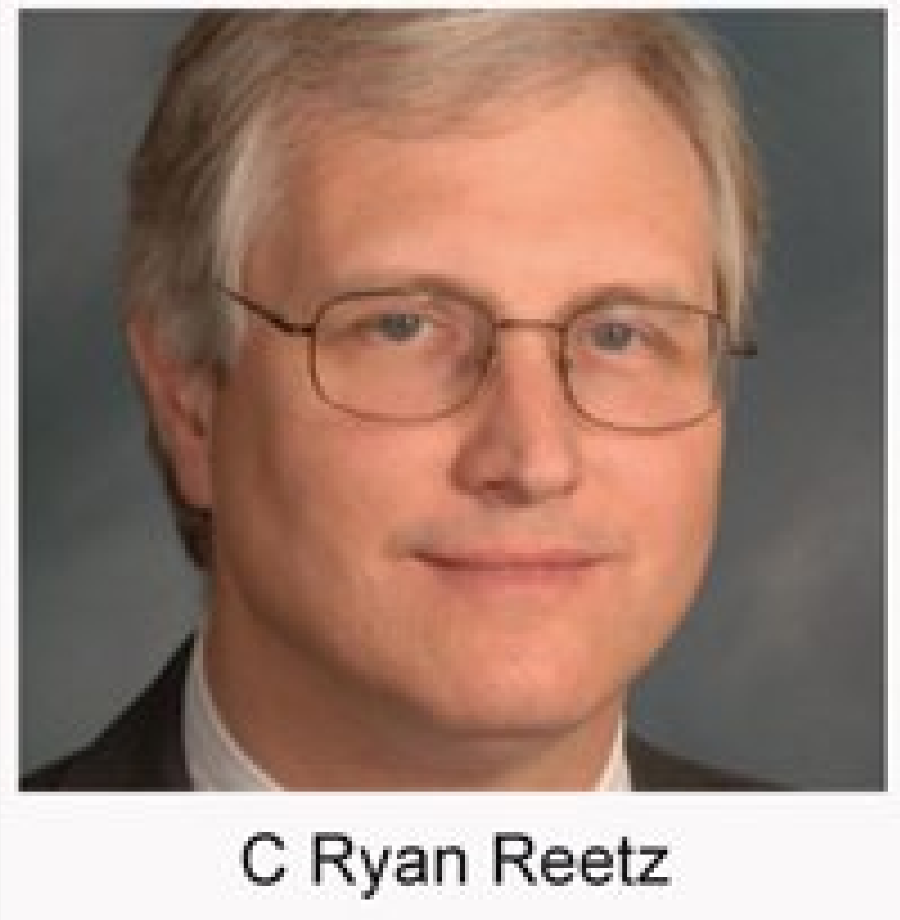

Category: Uncategorized

US risk management falls into three clear categories: insurance; legal and regulatory compliance; alongside good transactional management.

With tighter financial times, companies have to balance good coverage with limiting high insurance costs.

"What very large companies are doing is, in effect, partially self-insuring," says C Ryan Reetz, disputes Partner at DLA Piper in Miami.

"Companies are taking large deductibles and also using more complex policies, where the premium is adjusted accordingly in light of the loss experience."

The more heavily regulated the industry, the more significant the risks to be managed, and most tend to be regulated at a national or federal level, he says.

However, with 50 different state standards, companies must be aware of the varying types of regulation and the ways in which regulation can work, he says.

Regulatory compliance also impacts on the civil litigation system. “Violation of some regulations can provide a basis for liability, others can be evidence that a party has acted improperly, and in some cases it can be irrelevant. But it can have an effect on civil liability,” says Reetz.

As the US has a jury-based civil claims system, failure to comply can also affect liability decisions. “Banks right now are not very popular, and a bank’s lack of jury appeal is of tremendous concern for those litigators doing banking defence work,” says Pedro J Martinez-Fraga, who Co-ordinates the firm’s International Latin America Disputes practice.

To address cumbersome regulatory burdens, a company should establish a co-operative relationship with the regulator, lobby the legislator for a change in the law if necessary, use administrative procedures to try to change the regulation without changing the law, or fight over the application of the rules, they say.

“Good transactional management for clients would be to involve counsel in the business discussions of every deal, sign a dispute regulation agreement very early on, and be sure to document all of their dealings,” recommends Reetz.