



# CRA Announcement

## Insurance Economics

CRA Charles River  
Associates

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### **CRA consultants assist government attorneys in criminal prosecution of fraudulent captive insurance scheme**

CRA consultants advised government attorneys in the successful prosecution relating to a fraudulent captive insurance scheme. In his July 12, 2017 decision in *United States of America v. Duane Crithfield and Stephen Donaldson, Sr.* Middle District of Florida, Case No. 8:13-cr-237-T-23TBM, US District Court Judge Steven D. Merryday specifically noted that **Professor David F. Babbel** “testified persuasively that the gross premium on a business-risk policy was ‘very high relative to the amount of coverage.’” Professor Babbel’s testimony was cited in seven additional places as support for specific findings of fact.

In the decision arising from a June 2016 bench trial, Judge Merryday found both defendants guilty on a count of conspiracy and two counts of willfully aiding the submission of a false and fraudulent income tax return. Professor Babbel, Senior Advisor to CRA, testified for the prosecution at the trial in Tampa, Florida. He was supported by **Mark Meyer** and Matthew Phillips of CRA’s Insurance Economics Practice.

The defendants in this case, Messrs. Crithfield and Donaldson, “promoted, marketed, and implemented” a “purportedly lawful, insurance-based tax shelter . . . which was actually a fraudulent mechanism to defeat the federal income tax.” Judge Merryday found “(1) that avoiding tax – rather than insuring against business risk – motivated the business owners to participate in the BPP and (2) that creating a profitable mechanism for the avoidance of taxes and not insuring clients against business risk motivated the defendants to create and implement the BPP.”

Prof. Babbel's testimony: (1) explained the insurance industry and the tax treatment of insurance premiums and benefits; (2) described in detail the risk shifting and risk distribution characteristics of the "Business Protection Policies" (BPPs) used in the scheme; (3) determined that the BPPs did not correspond to common and customary insurance coverage; (4) examined the overall structure of the BPP program to demonstrate that there was negligible, if any, transfer of business risk from the taxpayers' businesses to the "insurance" companies established by Messrs. Crithfield and Donaldson; and (5) revealed how the taxpayer participants paid millions of dollars in tax deductible premiums for their operating companies (and avoided paying 30% to 40% of that amount in taxes) but that about 85% of the dollar amount of those premiums made its way back into the pockets of the taxpayers.

This is the second time that Professor Babbel and consultants with CRA's Insurance Economics Practice assisted US attorneys in a bench trial related to this same fraudulent insurance scheme. In March 2013, Professor Babbel testified in the taxpayer civil trial *Salty Brine I, Ltd, et al. v. United States of America* matter (USDC, Northern District of Texas, Civil Action No. 5:10-CV-108-C (consolidated)). After hearing the testimony, including that of Prof. Babbel, US District Court Judge Sam R. Cummings found in his order dated May 16, 2013 that: (1) the BPP premiums did not qualify as business expenses for the taxpayer; (2) the BPP transactions were for tax and estate planning, not for trade or business; (3) the BPP payments were distributions, not expenses; (4) the BPP payments were not necessary because they did not cover risks, shift risks, or distribute risks; (5) the BPP transactions lacked economic substance; and (6) penalties applied.

To learn more about the CRA's expertise in captive risk insurance, or insurance and risk matters in general:

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