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# A challenging environment

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# In this issue

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# Industry reacts to IRS' latest micro captive 'scare tactics'

The Internal Revenue Service's (IRS) continued focus on 'abusive' micro captives, and its most recent statement "is a combination of past talking points that are meant to scare business owners utilising captives into exiting their captive structures, regardless of whether they are doing the right thing or not", according to Ryan Work, vice president of government relations, Self-Insurance Institute of America (SIIA).

In its most recent statement, the IRS said taxpayers should not assume they will be able to settle any transactions with the IRS or chief counsel on terms more favourable than the previously announced settlement offers.

The service also highlighted that any potential future settlement initiative that it considers will require additional concessions by the taxpayer.

Work explained that even after a number of congressional concerns around its timing and tactics, the IRS decided to flaunt the fact that it is "embarking on even more purposefully onerous and unnecessary requirements", despite the ongoing COVID-19 pandemic.

"The fact is that the IRS remains in group-think mode, whereby it refuses to spend time understanding what appropriate structures look like, instead falsely jumping to the conclusion that all captives are bad captives", Work said.

In March and July this year, the IRS issued letters to taxpayers who participated in a Notice 2016-66 transaction alerting them that IRS enforcement activity in this area will be expanding significantly and providing them with the opportunity to tell it if they've discontinued their participation in this transaction before the IRS initiates examinations.

However, the issued letters were not received well by the industry, with various captive insurance associations sharing concerns about the timing of the letter during the ongoing COVID-19 pandemic.

The associations, among others in the industry, requested the IRS withdraw the letter and suspend its audit activities of micro captives until the COVID-19 crisis is over and the economy is on the road to recovery.

Although the IRS did not suspend the letters, it did move the deadline from 4 May to 4 June 2020.

Work suggested that the IRS is better served utilising its resources more effectively so that US businesses using a legitimate section of the tax code can continue to do so under a national emergency and beyond, mitigating risks that are now more prevalent than ever.

While the IRS should go after truly abusive structures, Work noted that American business owners utilising legitimate captive structures, and managing those structures appropriately, "should not be scared into submission because the IRS is on a witch hunt, spreading its net far and wide until it stumbles upon what it's looking for".

Associations continue to support appropriate IRS actions to curb abusive practices, however, Richard Smith, president of the Vermont Captive Insurance Association, stated that it "objects to the unnecessary regulatory burdens being imposed on taxpayers".

Smith affirmed: "These taxpayers are being forced to comply with the Notice 2016-66 regardless of whether their captive insurance arrangement contained any of the characteristics of concern identified by the IRS."

Elsewhere, Peter Kranz, executive managing director, captive practice leader at Beecher Carlson, said there is "a lot to unpack with respect to the IRS' enforcement actions around captives".

A key issue is whether the IRS has the right to compel transaction disclosures. Although the bad structures need to be "cleaned up", Kranz suggested the IRS be less aggressive in its actions.

While there are a lot of people promulgating bad information and advice, there are also a large number of people giving strong, solid advice about captive structures which have nothing to do with making specific tax elections.

Kranz added: "With the IRS as aggressive as it is on the micro captive front, I wish they would just come out publicly and acknowledge that the majority of the captive industry is well run and captives are a valuable risk financing and management tool which has been dramatically highlighted by the firming, or hardening, insurance market and the COVID-19 pandemic."

The IRS suggested taxpayers "should seriously consider" exiting the transaction and not claiming deductions associated with micro captive transactions. ■

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For those taxpayers that do not exit the transaction and continue taking deductions, the IRS said it will disallow tax benefits from transactions that it determines to be "abusive".

The IRS noted that it may also require domestic captives to include premium payments in income and assert a withholding liability related to foreign captives.

Penalties will also be enforced as appropriate, including the strict liability penalty that applies to transactions that lack economic substance, according to the service.

The IRS also stated that it will "continue to litigate these abusive transactions in tax court".

## Why now?

Having recently won three tax court cases in a row, the IRS knows that it is presently at its point of maximum leverage over the industry, according to Sean King, principal, CIC Services.

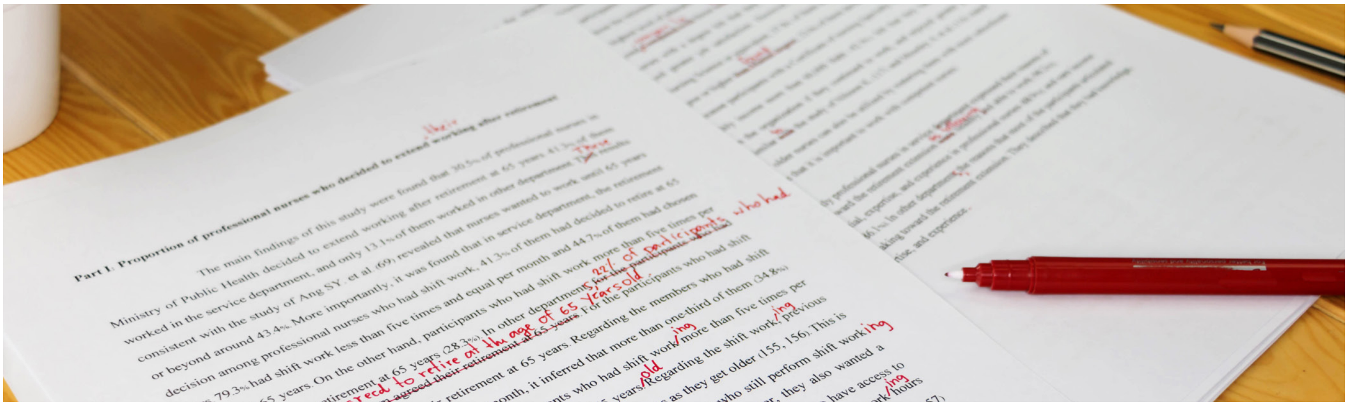
King said: "Hundreds of tax court cases are still pending, and the IRS knows that it will lose many of them. As it does, its leverage to extort settlements will be diminished."

"This explains the urgency and frequency of the IRS's pronouncements."

"The service wants to force as many settlements as quickly as it can before adverse precedent is set by the tax court, and it knows that its time to do that is limited", he added.

Although Ben Whitehouse, senior counsel at Butler Snow, said it's good advice for captive owners to seek independent advice about their tax positions, he highlighted that the IRS seems more inclined to try and scare all captive insurance participants out of the marketplace regardless of merit.

King reaffirmed this point and suggested the IRS' threat is "strategic rather than real. Demanding stricter settlements simply incentives even more taxpayers to take the IRS to court rather than to settle. And that's the very last thing the service wants."




# CICA reveals student essay contest topics

The Captive Insurance Companies Association (CICA) has selected the case study topics for the 2020 to 2021 essay contest for college insurance and risk management students.

The case studies include college student housing, classic auto sales and collision centres and State Dental Association.

Student teams will select one of three case study topics for the competition.

Case studies focus on developing strategies to help fictional organisations in real-world situations to develop captive solutions.

The essay contest, sponsored by Strategic Risk Solutions (SRS), will see students demonstrate how to establish a captive for their specific case study, select policy options, determine underwriting, pricing and more.

The college student housing subject will address property damage of their student rental properties college student housing wants to establish a captive and determine the best policies to offer for required renter's insurance for college students living in their buildings.

Meanwhile, the classic auto sales and collision centres topic will address the unique customer needs by establishing a captive and selling its customers' car insurance customised to the specific needs of classic car owners.

Finally, the State Dental Association option will provide cost-effective insurance options for its members whose businesses have been impacted by COVID-19, State Dental Association wants to offer insurance through a captive to help members and improve the association's bottom line.

Essay contest winners will receive cash prizes, the opportunity to present their winning papers at the CICA 2021 International Conference 14 to 16 March in Scottsdale, Arizona, and publication of their essays in Captive Insurance Times.

CICA invites two-person teams of college risk management and insurance students to describe how and why a captive insurance company could be used as a cost-effective means of alternative risk financing for emerging risks and their corresponding loss exposures.

Commenting on the study essay contest, Dan Towle, president of CICA, said: "In today's hard market, businesses are looking for every advantage, and this year's case studies reflect some of the creative opportunities to utilise captive insurance to manage risk and improve one's bottom line."

Towle explained: "Creating connections and finding mentors is also very important when you are first entering a new industry. We are pleased to again have SRS mentors working with and advising the students on these case study options."

Brady Young, CEO of SRS, added: "Part of engaging with future captive insurance professionals is helping them connect to the ways they can make a difference by helping businesses. Our real-world case studies CICA cover a variety of industries and situations where establishing a captive insurance company can be beneficial."

The 2019 to 2020 student essay contest winners were named as University of Southern California students Megan Moore and Natalie Kojababian.

Senior Moore and junior Kojababian proposed a group captive insurance solution to provide liability coverage for cannabis association members. ■

# ICCIE makes ACI maintenance programme more affordable

The International Center for Captive Insurance Education (ICCIE) has made changes to its ICCIE continuing education subscription programme and the ACI Alumni Network (AAN), making the maintenance of the Associate in Captive Insurance (ACI) designation more convenient and more affordable.

The captive insurance education centre has lowered the full-price cost of the continuing education subscription package from $1,100 to $850, which covers all 12 credits needed for the three-year ACI renewal window.

This can be broken up into either 12 webinar credits or one ICCIE course (5 to 9 credits) and enough webinars to complete the 12 credits.

ICCIE has also announced that the subscription can also be paid on an annual basis, at the rate of $350 per year. Under this plan, the graduate is entitled to one modular course or four webinars.

In addition, AAN membership will include a 50 percent discount on an unlimited number of modular courses, from 1 October.

Mitch Cantor, executive director of ICCIE, stated: "We want to do everything we can at ICCIE to make ACI maintenance both affordable and convenient, in recognition of the importance of this aspect of the designation."

"We look forward to having many of our ACI graduates take advantage of these new opportunities," he concluded.

In August, Captive Insurance Companies Association's president Dan Towle presented the association's annual $10,000 contribution to the ICCIE during it's virtual 'sweet 16' anniversary celebration. ■

## ARX Insurance joins MAXIS Global Benefits Network

Ukraine based ARX Insurance has become the latest insurer to join the MAXIS Global Benefits Network (MAXIS GBN). ARX, which provides life, disability and medical coverage to MAXIS GBN's multinational clients, has been operating in the insurance market for 26 years and is still experiencing growth.

ARX's parent, Canadian insurer Fairfax, acquired former MAXIS GBN member AXA Ukraine last year along with ARX itself, with both entities now operating under the ARX brand.

Andrei Peretyazhko, CEO at ARX, commented: "We are delighted to be part of the MAXIS network. MAXIS GBN provides market-leading, world-class solutions and member benefits, and we are proud to formalise this partnership in Ukraine. Being a leader in the market, ARX has always strived to improve its service and with this new partnership, we are pleased to be providing the best solutions to some of the biggest multinationals operating in the country," he added.

David Watts, director of member management at MAXIS GBN, noted: "It's great to have another strong partner in Ukraine and provide exceptional medical coverage to our multinational clients there. MAXIS GBN network members are all high-performing companies in their local markets and it's wonderful to be further expanding our global membership with an experienced market leader like ARX," he concluded.

Earlier this year, Colombia insurance provider AXA COLPATRIA joined MAXIS GBN, in order to provide medical coverage for the global benefits network's multinational clients in the country. ■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## A.M. Best upgrades Vermont-based RRG rating

A.M. Best has revised the outlooks to positive from stable and affirmed the financial strength rating of A- (Excellent) and the long-term issuer credit rating of "a-" of Community Hospital Alternative For Risk Transfer (CHART), a reciprocal risk retention group (RRG), based in Burlington, Vermont.

The ratings reflect CHART's balance sheet strength, which A.M. Best categorised as very strong, as well as its strong operating performance, limited business profile and appropriate enterprise risk management.

A.M. Best noted that the positive outlooks reflect the continued strengthening of CHART's balance sheet through strong operating results.

"After multiple years of net declines in membership, primarily due to merger and acquisition activity in the healthcare industry, the company's hospital member base has stabilised more recently," the rating firm said.

Member growth, which has been attributed to recently established relationships with independent agents and brokers, occurred last year and so far this year. A.M. Best suggested that hardening pricing conditions in the excess hospital professional liability insurance market should further increase CHART's value proposition to both current and prospective members.

"Key balance sheet metrics, including underwriting leverage ratios, Best's Capital Adequacy Ratio scores and its surplus size compare favourably with peers in the medical professional liability insurance industry that have higher balance sheet strength assessments," A.M. Best concluded. ■

# R&Q transacts loss portfolio transfer with Allianz SE

Randall & Quilter Investment Holdings (R&Q) has transacted a loss portfolio transfer with Allianz SE, with assistance from Black Forest Reinsurance Consulting (BFRC).

The reinsurance is being provided by R&Q's Maltese carrier, Accredited Insurance (Europe).

With this transaction, Allianz reaches economic finality of a third-party reinsurance portfolio that has no active client relationships and that was underwritten from 1976 onwards. It also encompasses the mutual interest to undertake an insurance business transfer of the portfolio to Accredited, subject to regulatory approvals.

Paul Corver, group head of merger and acquisitions at R&Q, explained: "We are delighted to have completed this loss portfolio transfer with the mutual intention to follow on with an insurance business transfer from Germany to Malta."

He continued: "We have assumed numerous portfolios of business from across Europe into our rated Maltese platform which provides complete finality to the cedent and the accompanying capital relief. We are very pleased to have executed this transaction with Allianz and once again it proves our capabilities to utilise our international team to provide full finality legacy solutions across the US and Europe."

"Our legacy pipeline across the group remains strong and we look forward to working closely with BFRC to conclude further Continental European legacy opportunities in the near future", he added. ■


# A challenging environment

## With increasing exposures and high claims in recent years, the current market environment is especially challenging for the D&O insurance sector

Directors and officers (D&O) of a company have the responsibility to lead and carry out the business of an organisation, avoiding conflicts of interest and exercise due diligence in managing the affairs of the business. However, failure to do this could expose D&Os to liability.

This is where D&O liability insurance comes into play. D&O coverage is payable to the directors and officers of a company, or to the organisation itself, as indemnification for losses or advancement of defence costs in the event an insured suffers such a loss as a result of a legal action brought for alleged wrongful acts in their capacity as directors and officers.

Within a captive D&O is typically fronted or placed as a deductible buy-down. Traditionally, a captive is deployed on primary retentions which serves to buffer the commercial market from attritional loss.

According to a survey conducted in August by Airmic, the UK association of risk and insurance professionals, a majority of respondents saw rates rise at least 50 percent for D&O, and almost 30 percent said prices had doubled.

Grant Maxwell, global head of alternative risk transfer at Allianz Global Corporate and Specialty (AGCS), states that with increasing exposures and high claims in the recent years, the current market environment is challenging for the D&O insurance sector in particular.

Maxwell suggests that available traditional coverage has reduced and premium rates have increased "significantly".

Several insurers have withdrawn from writing D&O in the London market, with the most recent example being Argo which was only announced on 16 September 2020.

Adrien Collovray, director of global captive advisory at Willis Towers Watson, says: "It can be very

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challenging to replace the capacity that those insurers previously offered, particularly, as this is combined with the remaining insurers reducing the size of the lines that they will offer for each risk."

Collovray explains that as a consequence, Willis Towers Watson is working with a lot of its clients to consider alternatives to the commercial insurance market, such as the use of captives, among other options.

Although some players have left the market, the D&O industry has welcomed Convex, which has provided welcome additional capacity. Meanwhile, Beazley announced, in the context of its recent capital raise, that they see D&O as a focus area.

Collovray reveals: "We are hearing similar comments from a number of other insurers and we are hopeful that 2021 will see further new entrants to the market."

D&O underwriting is influenced across a number of factors including the size and financial position of the company, the industries, geographies and jurisdictions they operate within.

Derek Bridgeman, managing director at Strategic Risk Solutions (SRS), states that insurers are looking, closer than ever, at liquidity, historical disclosures, business disruption, supply chain and other logistical problems.

Bridgeman says: "Changes to business plans need to be considered closely to assess if this is masking underlying issues."

"We are seeing both a significant lack of capacity, impacting certain sectors more severely, and pricing increases almost across the board. Captives can support D&O challenges but we need to ensure that conflict risks are removed, and counterparty risks are managed," he adds.

## COVID-19: accelerating the trend?

The COVID-19 pandemic is also expected to accelerate the increase of premium rates as a wave of insolvencies, as well as event-driven litigation, could be potential sources of D&O claims.

He explains: "To date, only a relatively small number of securities class action lawsuits has been filed in the US, including suits against cruise ship lines that suffered COVID-19 outbreaks."

"However, the pandemic could trigger further litigation against companies and their D&O, if perceived boards failed to prepare adequately for a pandemic or prolonged periods of reduced income," he adds.

Also seeing an increase in D&O coverage, Bridgeman suggests that while COVID-19 is a catalyst, it's not the driver.

He explains the driver is the lack of capacity and the increased pricing within the market.

"There are industry sectors that are really struggling to find capacity and so it's imperative that we work with these industries to find acceptable solutions to replace absent, or prohibitively expensive capacity," Bridgeman says.

Although it is not obvious that the pandemic in itself will have a direct impact on the use of captives, Angus Duncan, executive director, FINEX directors and officers at Willis Towers Watson, says the COVID-19 pandemic has spread at a time when the D&O market was already in "considerable turmoil and COVID-19 has only served to exacerbate that turmoil".

*"Captives can support D&O challenges but we need to ensure that conflict risks are removed, and counterparty risks are managed"*

It has affected certain industries more than others, Duncan notes which makes it more challenging for clients in those industries to obtain D&O insurance. He explains: "Therefore, those companies may be more likely to be interested in considering alternative options such as the use of captives."

## Writing D&O

Explaining how D&O liability is written, Duncan says that it is broken into three principal insurance covers: cover for claims and investigations involving a director which are not indemnified by the company (side A); cover for claims and investigations involving a director which are indemnified by the company (side B), and cover for securities claims against the company (side C).

Although he notes that the exact terminology varies from policy to policy.

*"In any such situation, the directors and officers will want to be sure that any decisions regarding claims handling and control are objective and independent from the company"*

Explaining how each of the sides work and which is the better option for captives, Bridgeman outlines that traditional logic is that side A coverage is unsuitable for a captive.

He states that side B and side C relate to corporate reimbursements and securities action and therefore traditionally aligned to a captive coverage.

"Historically we have seen captive placements on the side B/C coverage in order that the market is focused upon side A," according to Bridgeman.

With the current market conditions, he reveals there is an interest for D&O placements in cells which support an 'off-balance sheet' financing solution for side A risks.

Collovray suggests that Side A has the potential to be more problematic for inclusion in a captive.

He outlines three reasons for this which include: prohibition on indemnification, ring-fencing of assets and independence of claims handling.

Commenting on the prohibition on indemnification, Collovray explains that one of the main reasons for having side A insurance is that there are various types of liability which it is legally prohibited for a company to indemnify its directors (the rules vary between jurisdictions).

He states: "This prohibition (at least in English law) extends to group companies and there is, therefore, a concern that a wholly-owned captive, as a group company, could be in breach of this prohibition on indemnification in respect of side A."

On ring-fencing of assets, Collovray highlights that there is a concern that the assets of a wholly-owned subsidiary may be vulnerable to attack in the event that the company is insolvent.

He explains: "Where a wholly-owned captive is not fully capitalised and is instead reliant upon funding from the parent company, if the company is insolvent, this will affect its ability to meet its obligations to the captive at the very time that the company will be simultaneously unable to indemnify its directors. There is also a factor to be considered that where the claim is being brought on behalf of shareholders, it would be the company's capital that has funded the captive which in turn would then pay the claim (if it were successful), arguably providing no net benefit to shareholders," he adds.

He highlights that these two issues are the most challenging.

Collovray also reveals that Willis Towers Watson is exploring a possible solution making use of a protected cell company (PCC)/segregated account company (SAC).

However, he notes that this requires some additional mechanisms to make this effective and just the use of a PCC/SAC on its own would not be sufficient.

Finally, on the independence of claims handling, a significant issue for many D&Os is that they will not want decisions about whether their insurance should payout to be made by a captive that is owned by the company for which they work or which they serve as a non-executive director.

Collovray explains: "There is particularly a concern where the company is the one bringing the claim against the directors. However, it could also be a concern simply where a new regime is in place and the company no longer has the same relationship with the director."

"In any such situation, the directors and officers will want to be sure that any decisions regarding claims handling and control are objective and independent from the company," he adds.

"The last of these points is the easiest to deal with, as there are a number of fairly straightforward ways to ensure the independence of claims handling – such as having the insurance fronted by an independent insurance company and then reinsured into the captive, or appointing an independent claims handling company to manage the claims." ■

# A new face

**As he takes up his new role at the Tennessee Department of Commerce and Insurance, Joshua Clark discusses his plans to promote the state's captive sector**

## What plans are in place to help promote captive insurance within the state?

This year has certainly created some challenges for the traditional conference circuit and in-person meetings. However, it has also created some great opportunities for innovation.

Through a variety of techniques, both online and offline, our plan revolves around promoting two primary reasons to do business in Tennessee. First Tennessee's excellent geographic location being centrally located and close to the supermajority of the population in the US. Second, are the core values of the Tennessee captive section including expertise, customer service and innovation. Additionally, Nashville serves as one of the top travel and tourist destinations in the US.

It's an exciting time to be in Tennessee. Governor Bill Lee and Commissioner Hodgen Mainda fully support the captive industry and have put together a team, led by industry veteran Belinda Fortman, that encompasses unmatched expertise and is on par with any other domicile across the globe.

## What key trends are you seeing right now in Tennessee's captive space?

The hardening insurance market – combined with a pandemic – is causing businesses to take a closer look at their risks. It is not uncommon at the renewal of insurance policies for businesses to see significant increases in premium quotes across multiple lines of coverage. Therefore, risk managers and c-suites are seeking alternative solutions to better control costs while continuing to properly protect their lines of business.

Due to this activity, Tennessee continues to welcome the creation of new captives and captives moving to Tennessee from other states, as well as international domiciles. Additionally, we continue to see expansion, or organic growth, within captives already formed. This includes traditional and non-traditional coverages and stretches across multiple industry segments.

I credit the service providers, and the captive insurance industry in general, for being the leader in innovative ideas and solutions when it comes to supporting businesses here in the volunteer state, across our country and abroad.

## In February, Tennessee announced it licensed their 200th captive - how does Tennessee plan to keep increasing its captive figures?

We have continued to grow since reaching the 200 mark and I look forward to our continued captives expansion in the future. This is one outcome of our core values that ensure what's being



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promoted to the market continues to be the customer experience when they choose to create a captive within Tennessee.

Growth can only be supported with the proper system in place and through the expertise and leadership of our captive section director Belinda Fortman and Commissioner Mainda, we continue to raise the bar.

As our team grows, we are always finding solutions to improve our processes.

This will ensure that our customers continue to get the expert support they deserve and have come to expect when choosing Tennessee.

## What are the biggest challenges for the captive industry right now?

In the current market, there are several factors affecting the captive industry that all create unique challenges for c-suites and risk managers. Now is the time to have this conversation.

Prior to the pandemic, we started seeing the hardening of the market with premium increases occurring across nearly all lines of coverage. Additionally, the pandemic has caused many to re-evaluate not only their insurance programmes but their overall operating strategy. All this boils down to businesses seeking some form of certainty during very uncertain times.

The good news is the captive insurance industry is designed to do just that and the many amazing service providers across Tennessee and the country are primed and ready to help businesses navigate through these unprecedented times.

## Is Tennessee planning on making amendments to the existing captive law?

Tennessee is always evaluating opportunities to enhance its captive law to better support businesses and the industry. Discussions continue to be ongoing about what this may look like for 2021 and beyond.

However, to date, there is nothing publicly that we've announced.

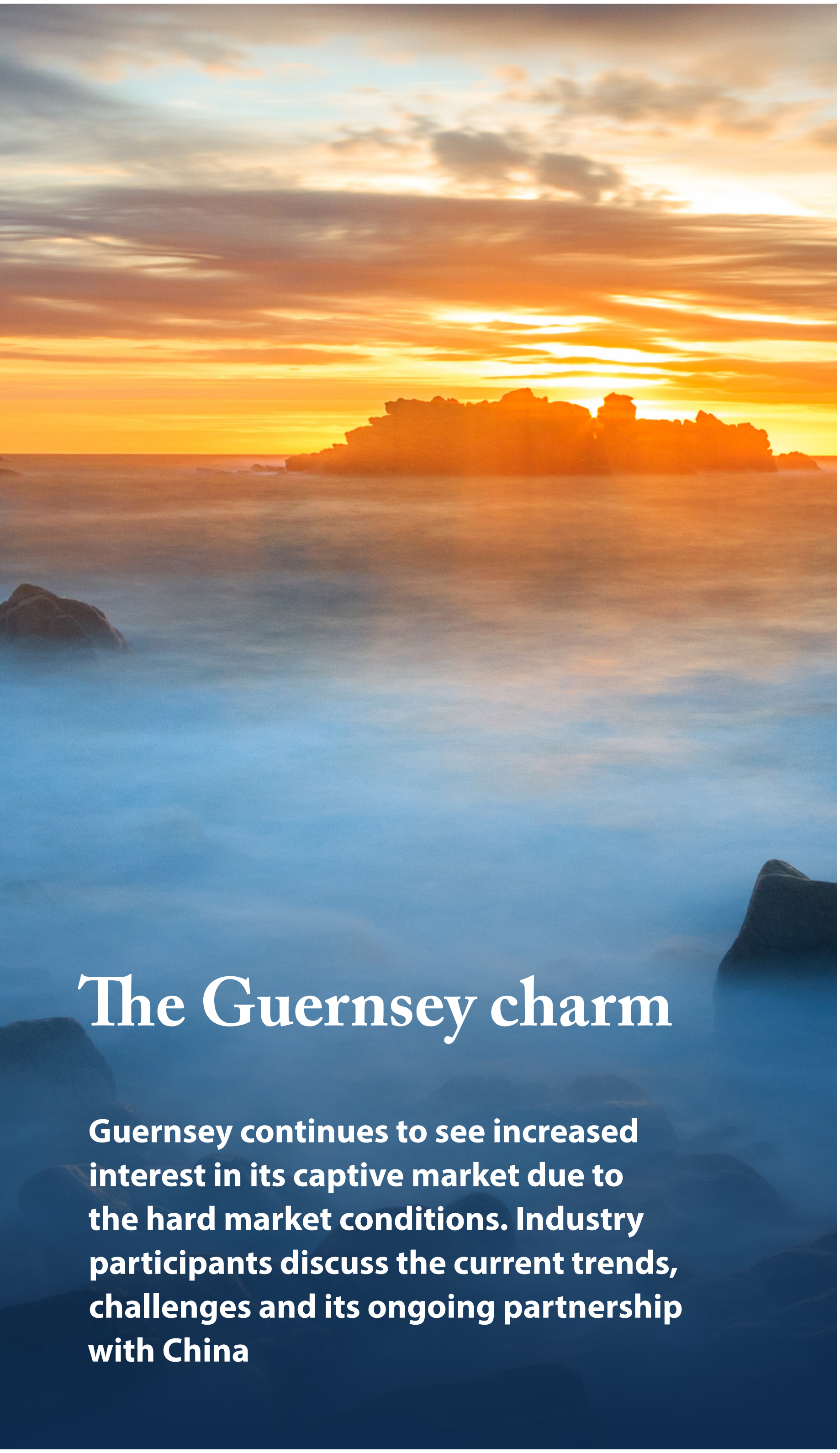
That said, we believe Tennessee is the best domicile in the country for captives and we remain committed to a business-friendly environment, a stable and predictable regulatory environment and a competitive and attractive place for captives to domicile.

## Finally, what will you be working on within the captive market in the next 12 months?

Focusing on our mission and casting a big vision. We have a great opportunity for outreach and education regarding Tennessee's captive regulatory environment and I will continue to partner with key stakeholders like the Tennessee Captive Insurance Association (TCIA), and others, to explore innovative ways to promote Tennessee as a top tier domicile domestically and internationally. ■

*"Tennessee is always evaluating opportunities to enhance its captive law to better support businesses and the industry"*

**Joshua Clark**
**Director of business development for the insurance division**
**Tennessee Department of Commerce and Insurance**



# The Guernsey charm

**Guernsey continues to see increased interest in its captive market due to the hard market conditions. Industry participants discuss the current trends, challenges and its ongoing partnership with China**

After registering 11 new structures last year — the best result since 2016 — Guernsey did also see 24 closures during the year, ending 2019 with a total of 305 captives.

The figures were said to reflect a fresh interest in captive from a change in market conditions as well as the confidence gained in Guernsey's whitelisting for economic substance from the EU.

Discussing the year so far, Rupert Pleasant, chief executive at Guernsey Finance, suggests that 2020 is looking "very positive" for Guernsey's captives sector.

Pleasant, who replaced Dominic Wheatley after he stepped down from his role in June, reveals that providers have already seen more formations than in 2019 and "the level of inquiries has been massive, almost too much to deal with".

With price increases and a hardening market, James Morris, head of UK insurance and captive banking at Barclays, says the bank is seeing corporates looking at their risk financing structures, and have focused their minds rather than turning their minds against investing capital.

While interest around captives had already increased at the start of the year, the spotlight was further placed on them in light of the COVID-19 pandemic.

Paul Marquand vice-president of Marsh Captive Solutions, notes that there will be an increase in captive formations as a result of the pandemic.

Most businesses have been impacted by the pandemic and new and existing clients are looking to reduce costs in line with reductions in revenue as well as fill gaps in coverage where the insurance market is imposing exclusions.

Marquand says: "By helping to control insurance costs captives are able to make a meaningful contribution in this area."

Meanwhile, Christina Bell, executive director and head of its insurance centre of excellence at Aon, believes COVID-19 is "likely to strengthen" (re) insurer's resolve for rate increases as the ripple effects are felt throughout the global economy and (re)insurance market for years to come.

She adds that this impact will continue to drive renewed interest in alternative risk financing structures, "especially where the scope of cover offered in the conventional market is reduced and company's look for new ways to manage the risk left on their balance sheets".

Peter Carter, head of the global captive practice at Willis Towers Watson Management Guernsey, explains while the hard market is generating lots of interest in how captives can help drive better leverage with carriers, this is balanced by other corporate priorities and pressures caused by the pandemic and consequent dramatic reduction in economic activity.

He says: "Captive owners looked to release or upstream surplus capital after the 2008 slump, and there is little fat left to help in this crisis."

With the continued hardening market, we are seeing increased interest in existing and new captives, and an increase in economic activity should extend and increase this interest.

Richard Paris-Smith, head of the Guernsey office at Willis Towers Watson, reveals that two clients who closed their captives have returned to discuss setting up new ones due to the current conditions. However, Pleasant says it's not necessarily the pandemic driving formations, he suggests the hard market is a big factor.

*"The uncertainty caused by the pandemic and Brexit is making it harder for potential captive owners to make the decision to invest in a captive vehicle at this time"*

He notes: "The uncertainty caused by the pandemic and Brexit is making it harder for potential captive owners to make the decision to invest in a captive vehicle at this time."

## Trends

Risks currently underwritten by Guernsey captives include employee benefits, employers' liability, marine and aviation risks, and terrorism.

However, new risks, such as emerging cyber risks, have been reaching main board agendas, according to Morris.

Meanwhile, market cover available in areas such as professional indemnity and supply chain risks has been hardening in terms of limits, terms and price.

Morris predicts that growth will come from the formation of new single-parent captives and group-type captives. He says: "We can expect to see the number of captives in the market grow significantly."

"The benefit of sponsored cell captives is that they provide an efficient solution for typically small to mid-size businesses, but are not restricted to those. Once a sponsored cell captive is set up, the turnaround time for adding cell business is relatively quick," he adds.

Elsewhere Marquand suggests a large portion of Marsh's new formation in Guernsey are for financial and professional lines.

He notes: "The current insurance market for these risks is challenging, with several insurers exiting, and those that remain are imposing rate increases."

There has also been increasing interest in commercial insurers. Marquand says, Guernsey, as a stable jurisdiction, is seen as "a credible and cost-effective alternative" to EU domiciles, particularly with the uncertainty around Brexit.

## Challenges

One of the biggest challenges for Guernsey, identified by Marquand, is for the island not to become complacent, particularly as Brexit creeps nearer.

The UK membership of the EU ended on 31 January 2020, which led to the beginning of a period of transitional arrangements, set to end on 31 December this year.

As the UK holds the potential to become Guernsey's biggest competitor, Marquand highlights the need for Guernsey to "protect its position as Europe's leading captive domicile".

Pleasant affirms the efforts from Guernsey to hold its current position. He says: "Guernsey will continue to maintain the current regulatory environment that has been honed over many years to ensure that it is appropriate to the need of captive owners while maintaining at the very least the minimum criteria for insurance regulation as set out in the core principles of the International Association of Insurance Supervisors (IAIS)."

Guernsey is currently home to a third of the European captives market, according to Morris and believes its whitelisted status by the EU and OECD for economic substance puts it in good stead to compete.

He adds: "It has domicile experience, a good regulator, innovation, the experience of managers and infrastructure, and good legislation and flexibility – so I believe these elements keep it competitive. Additionally, Guernsey is supported well by a good banking infrastructure."

Another challenge for Guernsey, which is seen across the whole sector, is the talent crisis within the captive insurance industry.

Marquand says the island must attract more "young and dynamic professionals into the industry".

"We must pass our experience and knowledge down to the next generation of leaders," he adds.

By embracing and investing in new technologies that help drive administration efficiencies and improve management information, Marquand explains "we will have a greater chance of attracting the brightest and best talent".

## Collaborations

Guernsey has made strides in its relationship with China in recent years, including signing a memorandum of understanding with Chinese authorities — an "essential step" for making progress in business in the country.

Last year, Guernsey Finance revealed that international co-operation agreements and

Guernsey's reputation in the market are helping to facilitate the growth of Guernsey captives with Chinese clients.

Pleasant commented on the relationship suggesting that Guernsey companies who have invested in China are seeing the benefits.

He explains: "There are opportunities for Guernsey in this market, and Guernsey has been recognised as the leading non-Asian captive domicile for the Asia market."

Establishing new business relationships with China can take time and the pace "inevitably slowed" during the pandemic, according to Marquand.

Bell echoes the above views, stating that there has been some early success in this area with some new formations but noted that as with entering any new market "it can be a long road and these relationships take time to develop".

She adds that development time is "something which is now harder than ever due to COVID-19 and our inability to travel out to the country".

## Future forecast

Looking at how Guernsey's captive market will develop, Pleasant said there is set to be growth in the number of licensees, in assets under management, in gross written premiums, and the types of cover written.

He also reveals that Guernsey is also working on a framework to develop a green kitemark for our insurance-linked securities and captive platforms to take a bigger stake in environmental, social and governance (ESG) issues. ■

# Elyssa Nagle

## Senior manager

## Johnson Lambert

**Personal bio:** I live in Colchester, Vermont with my husband, dog, cat, and one-month-old daughter. In my free time, I enjoy taking walks with my family, boating on Lake Champlain, and travelling to new cities.

My interests revolve around anything that involves spending quality time with my family and friends.

I also love listening to country music or getting lost in a suspense novel.

**Professional profile:** I graduated from Bryant University in 2012 with a degree in Business Administration, with a concentration in accounting and a minor in applied statistics. I became a certified public accountant in 2014. I have worked in the captive insurance industry as an auditor since 2013 when I took a job at Johnson Lambert in our Burlington, Vermont office. Since working at Johnson Lambert, I have worked on many different types of captive insurance clients, as well as other types of insurance clients. During this time, I completed an Associate of Captive Insurance designation from the International Center for Captive Insurance Education.

I am now a senior audit manager at Johnson Lambert. My role involves facilitating audits for many types of companies, including, but not limited to, pure captives, group captives, and risk retention groups. I also have prior experience auditing not-for-profits, governmental entities, and schools from when I worked at a small regional firm outside of Boston.

## How did you end up in the captive industry?

I began working for Johnson Lambert when I first moved back to Vermont after obtaining my degree. Johnson Lambert provides audit, tax and consulting services to insurance clients. Our Burlington, Vermont and Charleston, South Carolina offices specialise in working with captive insurance clients, as the industry is very prominent in both domiciles. I began working on captive insurance audits as an audit associate and have since worked with many different captive managers, owners, and other service providers in my role as a senior manager at Johnson Lambert.

## What has been your highlight in the captive industry so far?

A highlight of working in the captive insurance industry for me is getting to work with many different types of companies and using my knowledge of the industry to help clients solve problems.

Part of being in the captive space is working with parent companies in all different types of industries, so there is never a dull moment. It's exciting getting to meet with and work hands-on with parent companies, captive managers, investment managers, actuaries, third party administrators, and more, all for one captive client. As an auditor, I work directly with different service providers within the industry and have been able to form working relationships with them over the years. This is one thing that I think is unique to the industry, and also something I enjoy the most.

Additionally, in my role as an auditor, I am able to attend board meetings for many of my clients and am able to help them get ahead of upcoming accounting changes that will impact their captive.

Coming from a firm that specialises in insurance and does extensive training specific to captives, I'm able to help clients understand how upcoming accounting standards will impact their specific captive, as well as provide resources for how to implement these changes. Providing this type of service and working with clients in this way is something I enjoy the most about my career.

## What/who have been your influences in the captive industry?

My greatest influences in the industry are the people I work with that have helped me learn and grow my knowledge of captives. This includes the people within Johnson Lambert that I work with, but also the actuaries and captive managers that I work closely with.

Additionally, this past year I started working with a group of individuals that have formed the Vermont Captive Insurance Association emerging leaders group. This group of professionals was formed from all different types of roles and aspire to be the next group of leaders within the industry. I am inspired by the talent in this group and look forward to continuing to work more with these emerging leaders in the industry.

> "Elyssa has done a fantastic job leading our engagement teams, providing guidance and an outstanding level of service that our clients have grown to expect. We look forward to watching her grow into a leader for the captive insurance industry."
>
> **Josh Partlow, certified public accountant, partner at Johnson Lambert**

## What is your impression of the industry?

The captive industry is always evolving. Captive owners are creative individuals that are looking for new ways to manage different types of business risks they face. The industry encompasses many types of services providers that are crucial to the success of captives. It is an exciting industry to be a part of.

## What are your aspirations for your career in the captive industry?

I aspire to continue working in the audit and assurance practice serving captive clients. I'm always learning new things and looking for new ways to help provide great service to my clients. I aspire to be on the cutting edge of new things happening in the industry and hope to be looked at as a leader and trusted resource for clients as I continue in my career.

## What advice do you have for someone considering a role in the industry?

To someone considering a role in the industry, I would advise to soak in as much knowledge as you can at the beginning. The insurance space is unique and can be intimidating at first, but as long as you keep working and learning you will be successful. ■

## Brittany Nevins has been appointed as the new director captive insurance at the Vermont Department of Economic Development.

Responsible for the marketing and business development of Vermont's captive insurance industry, Nevins will work closely with the department of financial regulation and the Vermont Captive Insurance Association to continue to strengthen the state's reputation.

She replaces Ian Davis, Vermont's former director of financial services, who stepped down from the role in April to join People's United Bank.

Based in Texas for the last two years, Nevins served as the community and economic development specialist for Travis County, Texas, managing its property tax rebate programme for businesses that sought to develop in the Austin region.

Prior to that, she was a policy specialist for the Texas Health and Human Services Commission, where she provided support for a variety of agency regulatory programmes.

Commenting on her new role, Nevins said: "The captive insurance industry is a model for economic development in the state, bringing in clean, high paying jobs, significant tax revenue, and supports the tourism industry all at the same time."

"I'm humbled and thrilled to be coming back to my home state of Vermont to promote its best-in-class captive insurance status and help grow its presence and stature throughout the world," she added.

Deputy commissioner of captive insurance, Dave Provost commented: "We will hit the ground running and pick up right where we left off now that Brittany has filled the position. We are lucky to have her join the team."

Richard Smith, president of the Vermont captive insurance association (VCIA), added: "We are excited about Brittany Nevins's international experience as Vermont seeks to expand further into the Latin American markets." ■

## Kent Sullivan has resigned from his role as insurance commissioner of the Texas Department of Insurance (TDI) to return to the private sector.

Sullivan, who became head of the TDI in October 2017, has led a major modernisation effort in his three years at the agency.

The agency's modernisation push has led to faster service in complaint resolution and agent licensing, an increase in online licensing applications, and a major organisational restructuring.

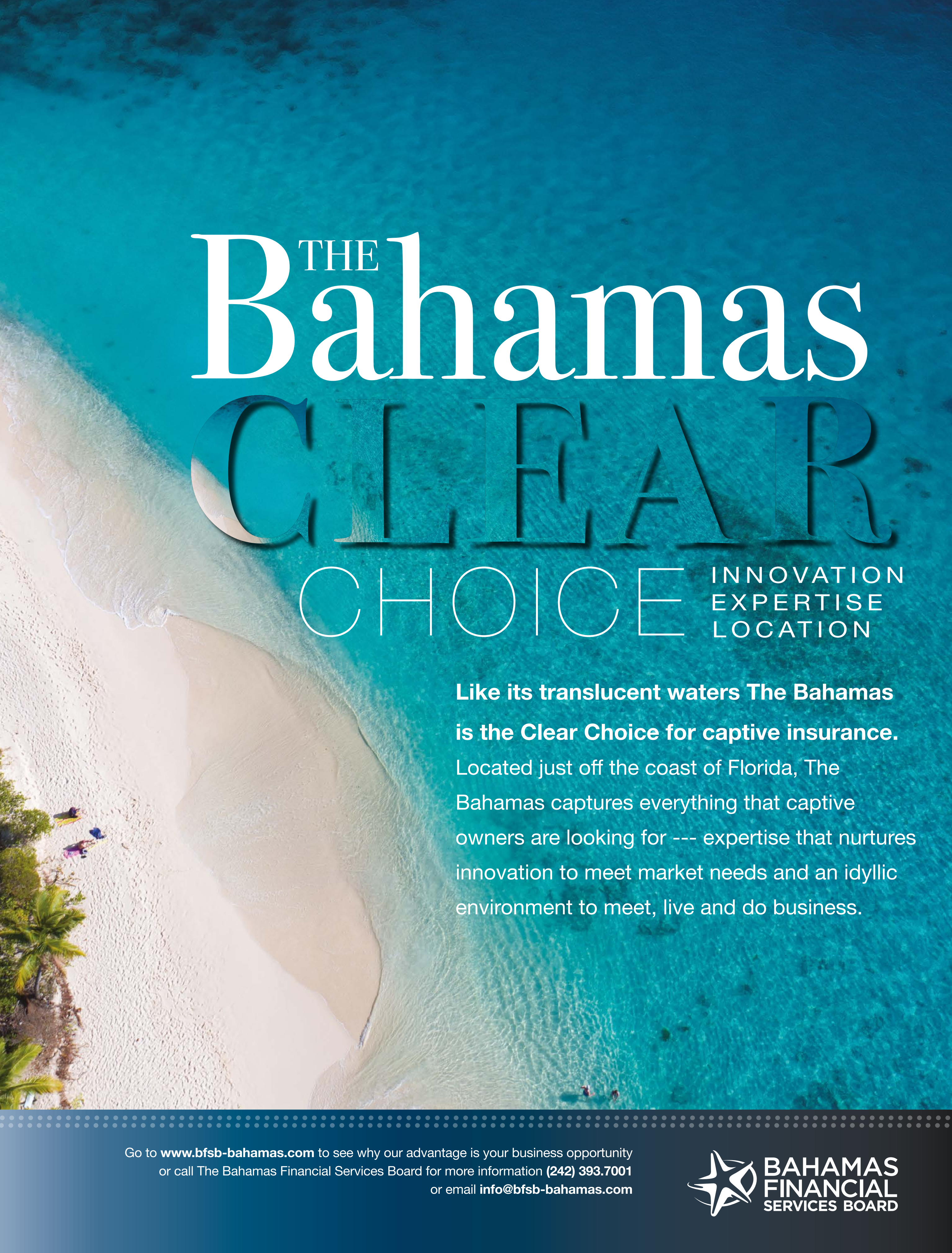
Sullivan has more than 35 years of legal experience and was a partner in several private law firms. Previously, he served as a justice on the Texas Court of Appeals, a state district court judge, and first assistant attorney general for the Texas Office of the Attorney General.

Commenting on his departure, Sullivan said: "Governor Greg Abbott asked me to lead this agency shortly after Hurricane Harvey ravaged the Texas coast, and I was happy to help out in a challenging time."

"TDI staff are sincerely committed to protecting consumers, and I'm proud of the work we've done to help them do their jobs more effectively," he added.

Governor Abbott said the Lone Star State is "grateful" to Sullivan for his leadership at the Texas Department of Insurance.

He added: "Under his tenure, TDI was responsible for protecting insurance consumers in the aftermath of Hurricane Harvey—the largest natural disaster in Texas history. The [state] is better today because of Sullivan's service, and I wish him well as he returns to private practice." ■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## Marsh has appointed Tamara Simpkins Franklin as chief digital, data, and analytics officer based in New York, effective 1 October.

Reporting to John Doyle, president and CEO of Marsh, Franklin will be responsible for designing and implementing digital technologies and enhancing the use of data and analytics to transform how Marsh supports and serves clients. She joins Marsh from IBM where she was most recently vice president of media and entertainment solutions, North America.

Franklin brings more than 25 years of experience leading digital transformations and defining strategies for large multinational organisations, including Scripps, Time Warner, and Motorola.

Commenting on her new role, Franklin said: "Marsh's commitment to giving clients access to advanced digital technology has greatly impressed me. I look forward to working with its talented team to use Marsh's substantial data and analytics capabilities to further build on its market-leading solutions."

Doyle said: "More than ever, our clients are looking to use the power of digital solutions to help them manage a rapidly-changing risk and insurance landscape, especially in light of the COVID-19 global pandemic. With her extensive experience driving digital transformation and developing digitally-enabled client solutions, Tamara Simpkins Franklin will help us achieve our goal of further digitising the client experience", he added. ■

## AXA XL has appointed Jonathan Salter as head of risk consulting.

In his new role, Salter will drive AXA XL risk consulting's strategy and value proposition globally, working closely with the firm's underwriting and claims teams.

Salter, who has more than 20 years of experience in risk consulting, is currently deputy CEO of AXA XL risk consulting, a role that he has held since 2018.

He will succeed Corinne Vitrac, who has moved to AXA Group as head of group property and casualty risk management.

Commenting on this promotion, Nancy Bewlay, global chief underwriting officer at AXA XL, said: "As the COVID-19 crisis continues to challenge the way companies operate, loss prevention has never been more important."

She continued: "Jonathan Salter's extensive experience, innovative approach and proven track record position him ideally to lead AXA XL Risk Consulting, which has, since March, been offering remote services, including site analysis. Our remote, tech-enabled capabilities have been extremely well received by clients and now form a key part of our product suite." ■


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