



## Court raises a caution flag for 831(b)s

A recent ruling by a US district court in Texas sent a clear warning to certain segments of the captive insurance industry.

Micro captives that may be organised specifically to meet the requirements of section 831(b) of the Internal Revenue Code may need to recheck their priorities to ensure legitimate business purposes support their creation.

The court also ruled that premiums paid into a captive insurance company and then used to purchase offshore business protection policies did not have a legitimate business purpose, and instead were simply an estate planning strategy.

But captive manager JLT Towner feels that 831(b) captives—when structured and maintained properly—give smaller companies an opportunity to take advantage of insurance benefits large companies have long enjoyed.

The firm highlighted that while the court ruling doesn't

change these advantages, nor does it specifically target micro captives. It is a sign that the Internal Revenue Service is looking into captives that are designed primarily for estate planning, rather than insurance purposes.

The purpose of the statute is to promote the dedication of capital to insurance ventures, with the ultimate intent of having the insurer grow well past \$1.2 million in premiums so that it will eventually be taxed in parity with other insurers.

Thomas Stokes, managing principal and US consulting practice leader at JLT Towner, said: "Small captives with a valid business purpose and a solid insurance programme shouldn't have to worry too much about this ruling."

"Owners of poorly assembled or pre-packaged 831(b)s, however, may want to reexamine the way their captives are set up."

Stokes urges micro captives owners to revisit the underlying business rationale for establishing their captives. The key, he said, is to make sure the strategy and execution of these captives meet the established industry standards.

## HK switches it up to attract new business

Hong Kong's financial secretary, John Tsang, recently explained the government's plans to enhance the popularity of captive insurance business in the domicile.

Speaking at the Hong Kong Federation of Insurers's 25th anniversary gala dinner, Tsang said that the government is committed to enhancing Hong Kong's market quality and policyholder protection.

Tsang said: "We have been working closely with the insurance industry in taking forward a number of key initiatives, including setting up an independent insurance authority and establishing a policyholder protection fund. In addition to modernising our regulatory infrastructure, we must also innovate and explore new business opportunities.

**readmore p2**

## US captives forced to tighten their belts

Owners of US captive insurance companies tightened margins and used capital more efficiently in 2012, according to a new special report from A.M. Best.

Among A.M. Best's captive composite, the loss and loss-adjustment expense ratio decayed 5.7 points compared with 2011, due to the occurrence of mostly outsize property losses.

Underwriting expenses also decayed, with a 1.1 point increase in 2012 compared with 2011.

The resulting five-year combined ratio for the captive composite of 92.3 still compares extremely favourably with the commercial composite of 103.3.

**readmore p2**



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## HK switches it up to attract new business

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"In my budget in February this year, I proposed reducing the profits tax of the offshore insurance business of captive insurance companies by 50 percent."

It is hoped that the combined efforts will attract more enterprises to form captive insurance companies in Hong Kong, that will in turn promote the development of other related professional services including, accounting, actuarial, and legal services.

"With our thriving insurance sector, Hong Kong is an attractive location for captive insurance companies, especially for mainland companies which are interested in managing their risks through innovative means," added Tsang.

## US captives forced to tighten their belts

Continued from page 1

The captives' operating ratio over the same five-year period is tighter, with the captives generating a five-year operating ratio of 76.0 versus 88.5 for the commercial casualty composite.

"It is well known that captives' investment portfolios tend to be significantly more conservative; and therefore, less income generating, than typical investment portfolios for commercial casualty companies," said A.M. Best.

The captive companies analysed by A.M. Best were taken for a subset of more than 200 companies, of which more than 75 percent are currently rated. The companies range in size from \$2 million in surplus to more than \$3.5 billion.

The captive companies wrote (in size order) medical malpractice, general and auto liability, property, workers' compensation, inland marine and other lines.

## Kane launches new cat bond platform

Kane SAC has announced the issuance of \$9,523,770 series 1-2013 notes in conjunction with the launch of its note programme—the firm's new independent private catastrophe bond platform.

The series 1-2013 notes have been listed on the Bermuda Stock Exchange. This is the first time that a series of notes issued by a segregated accounts company have been listed on the stock exchange.

Kane SAC is a Bermuda exempted company registered as a Class 3 insurer and as a Class C insurer under the Insurance Act 1978. It is also registered as a segregated accounts company under the Segregated Accounts Companies Act 2000.

Robert Eastham, managing director of Kane Bermuda, said: "Our decision to list the notes on the [exchange] was due to investor demand and means that they are now available in a tradable format, which we feel will significantly heighten their overall value to the [investors]."

"We see this platform playing a key role in facilitating the flow of smaller transactions into the collateralised reinsurance sector. Our goal is to reduce both time to market and structuring costs by providing a very standardised and efficient means for investors to access reinsurance markets."

Greg Wojciechowski, president and CEO of the Bermuda Stock Exchange, said: "We are delighted to welcome the Kane SAC note programme to listing on the [exchange]. This vehicle list of almost 60 insurance linked securities that have chosen the [Bermuda exchange] as their listing venue of choice."

"The Kane SAC note programme is the first structure of its kind to list on the [exchange] and underscores the innovative nature of the Bermuda market and how it is evolving to adapt to the needs of its clients."

# CITINBRIEF



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## Flood Re exclusion could leave SMEs high and dry

The British Property Federation (BPF) has warned that under the current government flood insurance proposals thousands of small and medium-sized enterprises (SMEs) may not have access to affordable cover.

Earlier this year, the Association of British Insurers and the UK government agreed on the implementation of Flood Re—a not-for-profit insurance scheme to ensure that flood insurance remains widely affordable and available for residential property owners.

Flood Re offers home owners at high flood risk, who might otherwise struggle to find affordable insurance, cover at a set price. To fund this, all home insurers are subject to a levy of an average of £10.50 a year.

While the BPF welcomed the proposed Flood Re agreement, it believes that excluding SMEs from the proposals could lead to "large hikes in insurance premiums and even some premises becoming uninsurable".

According to the BPF, SMEs are generally more vulnerable to the effects of flooding compared to larger businesses that will have contingency plans and the negotiating strength to secure affordable insurance.

Liz Peace, chief executive of the BPF, said: "We appreciate priority has been given to ensuring the availability and affordability of flood insurance to the millions of homes across the country, but we are concerned SMEs find themselves excluded from the proposals."

"SMEs employ over 14 million people in the UK, and have already seen a marked increase in their property insurance premiums and excesses. Those in high risk areas will see the cost of their insurance increase considerably, and in some cases they may not be able to secure it at all unless the government extends Flood Re."

## Fitch rates Asian reinsurance market as next big thing

The robust development of insurance in Asia, coupled with good economic growth, has attracted global investor interest in the region, according to a report from Fitch Ratings.

The report, Asian Reinsurance Markets: Fall in Regional Natural Catastrophes; Huge Growth Potential, explains that many Asian markets—including the relatively untapped Chinese and Indonesian markets—have low insurance availability and offer good growth opportunities.

The contribution of Asian reinsurance premiums globally is low and not in line with population size and economic growth, suggesting a huge potential for growth.

According to the report, the frequency and severity of natural catastrophes has increased. But while Asia has been one of the worst hit regions, occurrences have lessened since 2011.

Fitch believes that the rising occurrence of natural catastrophes will heighten the awareness of the importance of reinsurance protection and risk management.

"This will prompt direct insurers to adopt appropriate risk transfer and capital preservation strategies, and reinsurers to press for higher premium rates that better reflect their claims experience," said the report.

"This will propel the growth of direct insurance and reinsurance businesses, supported by the increasing affluence and generally stable economic conditions in the Asian Markets."

Many reinsurers in the region have also started to tighten their underwriting conditions to exclude free catastrophe coverage and impose event limits on selected property policies in response to the unexpectedly massive losses arising from the Thai floods.

Fitch believes it is important for insurers to enhance their risk management practices and increase their catastrophe-modelling sophistication to better prepare for future disasters.

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The report explained: "Many industry players in markets such as Thailand and Indonesia have also started to look into developing a more comprehensive flood-risk statistical model for better risk assessment during the underwriting process."

Finally, the report highlights the positive evolution of the regions regulatory landscape in recent years.

According to Fitch, regulators in the region continue to enhance regulations to monitor adequacy of capital resources in an effort to contain unforeseen volatilities. This means direct insurers will continue to employ reinsurance as a means to transfer their underwriting risk and reduce the strain on capital requirements.

"Fitch is positive on the various regulatory initiatives that have been implemented to boost the overall financial health and transparency of the reinsurance market," said the report.

"These regulations are likely to propel the demand for technical expertise, risk transfer, and reinsurance capacity by direct insurers to meet the higher regulatory requirements."

Jurisdictions such as Thailand and South Korea have moved away from a one-size-fits-all solvency margin regime to a risk-based capital regulatory framework, added the report.

## Affordable care and cyber risk are top of the NRRA's list

Preparation for full implementation of the Affordable Care Act in 2014 and how to deal with the growing threat of cyber attacks are set to be hot topics at the National Risk Retention Association's (NRRA) annual conference in Washington DC.

Sanford Elsass, chairman of the NRRA, said: "More than half of the 250 risk retention groups (RRGs) operating today are in healthcare, so we'll devote major attention at the conference to the Affordable Care Act and its challenges to our industry."

"With cyber security looming as an issue for companies of all sizes, the conference programme will include a major session on how to guard against cyber attacks and what to do in case of a breach," added Elsass.

The conference will also feature NRRA's Amicus programme to defend RRGs in the courts when challenged by states that restrict RRG operations in violation of the federal Liability Risk Retention Act, that preempts most regulation of RRGs by states other than the state in which the RRG is licensed.

Joseph Deems, executive director of the NRRA,

said: "The amicus brief is an important tool in our arsenal. NRRA will provide the association's legal experience and expertise in using this tool to support companies under attack."

A host of other topics critical to RRG operations will be on the programme including contractual liability/stop loss; regulatory developments; outlook for the industry growth; reinsurance planning; and medicare/medicaid RAC audits.

The annual NNRA conference will be held between 1-3 October at the Ritz Carlton-Pentagon City.

## Energy captive is going strong

A.M. Best Europe has affirmed the financial strength rating of "A (Excellent)" and issuer credit rating of "a" of Eni Insurance Limited. The outlook for both ratings remains stable.

Eni Insurance is the sole captive of Eni S.p.A., an Italian multinational gas and oil company with operations in more than 80 countries.

The ratings reflect Eni Insurance's strong risk-adjusted capitalisation, its comprehensive reinsurance programme as well as its good, albeit relatively volatile, financial performance.

"Negative rating actions could occur if Eni Insurance's underwriting profitability were to trend negatively going forward and/or a

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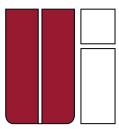


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significant deterioration of its risk-adjusted capitalisation were to occur linked to no evidence of support from Eni S.p.A to boost the latter," said A.M. Best Europe.

"In addition, if the captive's importance as a risk management tool were to be reduced within the group then negative ratings pressure would arise."

## RIMS emphasise the importance of TRIA

The Risk and Insurance Management Society (RIMS) has released a new executive report that highlights the importance of reauthorising the Terrorism Risk Insurance Act's (TRIA) to protect US businesses from the effects of terrorism.

Terrorism Risk Insurance Act: The Commercial Consumers's Perspective—authored by members of the RIMS external affairs committee—explores the evolution of TRIA and also highlights RIMS's official position in support of its reauthorisation.

The report is designed to educate risk professionals on the TRIA implementation process, ongoing initiatives set to strengthen the society's advocacy, as well as a section responding to opposing views of the programme.

"The challenge of predicting the extent of damages that could result from terrorism prevents insurers

from providing their clients with adequate and affordable insurance. This uncertainty has forced organisations to rely on TRIA to fulfill those coverage gaps," said RIMS board director Carolyn Snow.

"With no indication from government as to their plans for the future of TRIA, risk professionals and insurance providers will run into major roadblocks when developing suitable risk financing programmes, especially during the renewal process," added Snow.

Earlier this year the Self-Insurance Institute of America (SIIA) increased its lobbying efforts to push for passage of federal legislation to reauthorise TRIA.

As a result of meetings with key members of congress, the SIIA has learned that many are reluctant to support the reauthorisation, primarily due to increased scepticism of the federal government and its role in the private insurance marketplace.

## IUA forms political risk committee

The International Underwriting Association (IUA) has established a new London market political risk committee.

The committee is made up of underwriting and claims representatives from across the IUA's member companies and will meet regularly to discuss issues affecting political business risk.

Political risk is interpreted by the IUA as the probability of disruption of the operation of companies by political forces and events, whether they occur in individual host countries or the wider international environment.

It covers risks such as sovereign non-payment, exchange transfer, credit insurance, supply chain distribution, currency risk, legal and regulatory risk and government risk.

After its first meeting, the committee drew up a list of future work items including considering financial guarantees, redenomination of currencies, international sanctions, licensing requirements and taxation.

The committee will consider both technical underwriting and claims aspects of doing business across different jurisdiction and industries.

Chris Jones, IUA director of market services and secretary to the new committee, said: "In the past the IUA has tended to look at political risk issues across our wide range of underwriting and claims committees, through compliance practitioner networks and on an ad hoc [basis] with individual firms."

"Given the heightened political risks environment of recent years, however, it seemed appropriate to establish a dedicated group to focus on this class of business."

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## Growing gains

**Has Delaware managed to achieve its goal of becoming a leading captive location? CIT talks to industry experts to find out exactly how the state is progressing**

JENNA JONES REPORTS

Since its regulatory statute update in 2005, the state of Delaware has grown from a modest five captives to a staggering 608 regulated captive entities as of 30 July 2013.

In the words of Steve Kinion, director of the Bureau of Captive and Financial Insurance Products: "Delaware is the world's fastest growing captive domicile. [It] has over 570 active captives and is the world's 10th largest domicile and the 3rd largest US domicile. These captive insurers are in various types to include pure captives, series captives, risk retention groups, special purpose financial captives, and sponsored cell captives."

Richard Klumpp, president and CEO of Wilmington Trust, who was involved in revising the Delaware Captive Insurance Statute in 2005, explains that since the redrafting of the legislation, the domicile has grown significantly.

But, Klumpp clarifies: "The base upon which that statute was built—affording flexible yet solid regulation, a strong public-private partnership,

and ongoing support of the Delaware Captive Insurance Association—still exists today."

According to Klumpp, Delaware's insurance commissioner, Karen Weldin Stewart, is also a great help to the state, supporting the continued growth of the industry, including additions to staff.

"The Secretary of State's office, long a proponent of the Delaware Advantage, continues to aid our marketing efforts. Plus, the DCIA continues to put on successful networking events and has recently increased its advertising budget to broaden our reach."

Jeffrey Simpson, director of GF&M Law, believes that people interested in setting up a captive should consider Delaware as a potential domicile as it is an easy place to implement and operate "sophisticated transactional structures, whether captive insurance or otherwise".

Simpson continues: "Anyone considering forming a captive should consider Delaware

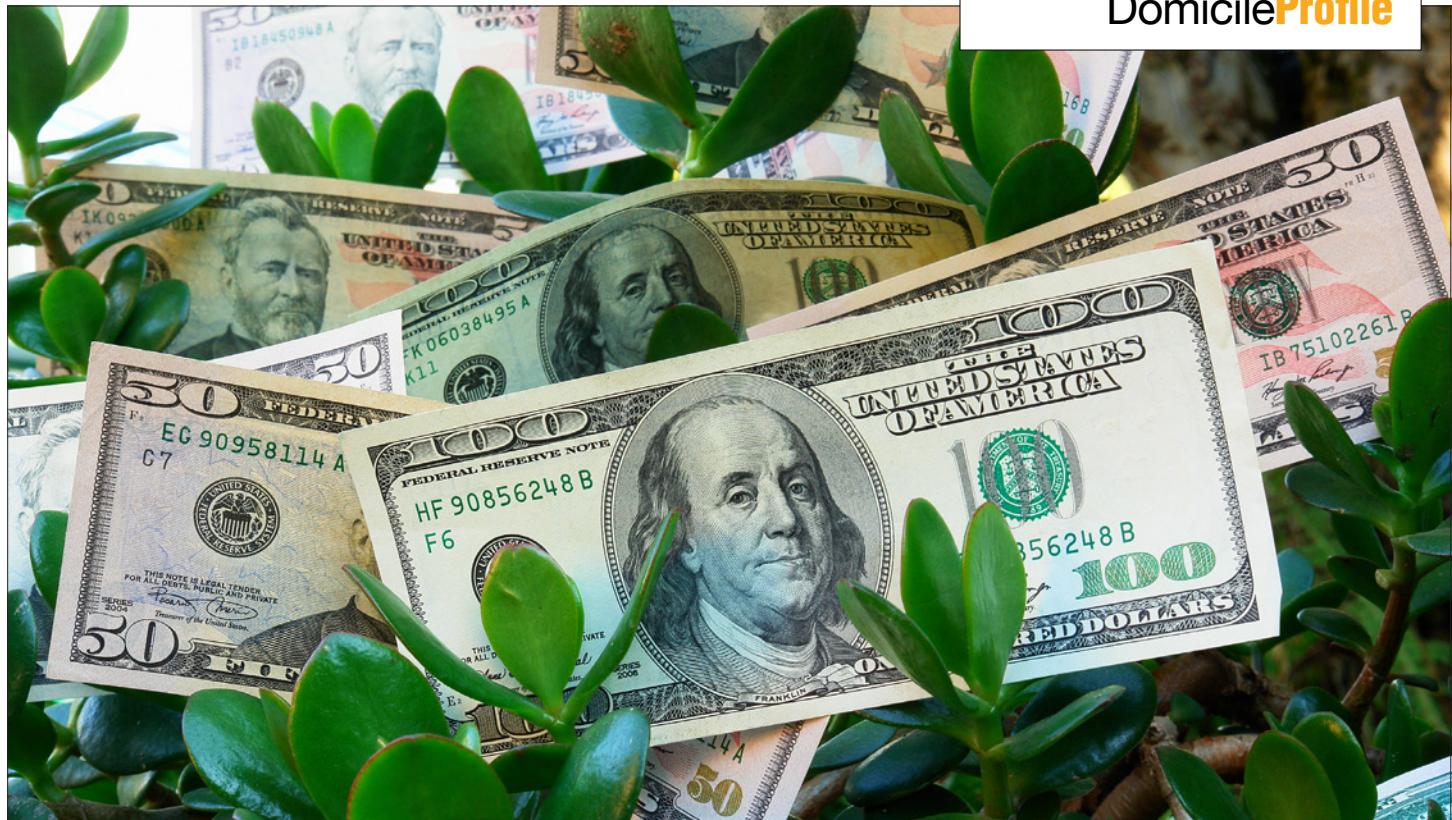
because of [its] cutting edge stature, accommodation and consultative regulators and deeply entrenched transactional infrastructure."

The growth that Delaware has witnessed of late is far from an accident, adds Simpson and is the result of a long history of public-private partnership in which industry and government work together to create an environment that is attractive to business.

### Doing it right

The tremendous growth in captive entities has been a great coup for the state. Klumpp explains that while the fast paced expansion hasn't come without its hiccups, Delaware has managed to maintain its consultative and flexible approach.

"I think one would be hard pressed to find an industry veteran who would not agree with Vermont's marketing slogan—'the gold standard of captive domiciles'—as they have defined the requirement for a fair and reliable regulatory en-



vironment. At the same time, it's clear that Delaware has plans to create an environment that's also ideal for captives," says Klumpp.

Simpson believes that Delaware's successful growth can also be attributed to the state's "excellent" regulatory staff and infrastructure.

"Delaware's captive regulators will consider any reasonable proposal and ... are open to new and creative designs. At the same time, they are not pushovers and are careful to protect policy-holders and ensure that captives operate within certain limits."

"Delaware regulators are also careful to consider the needs and conveniences of their captive citizens when refining or implementing policies and practices. They take pains to employ methods and set requirements that are reasonable, practical and helpful to their audience."

For Kinion, innovation has been the key to the state's continued success. He says: "I implemented a number of innovative measures not tried by other captive domiciles that ensured the responsible growth of Delaware's captive domicile. One measure was recommending to Commissioner Stewart to allow the licensing of the world's first series captive insurance company."

"This pioneering activity allows individual series, either formed under a Delaware limited liability company or statutory trust, to become captive insurers. Until the captive bureau allowed this form of captive insurer, no other captive domicile had even considered doing so. In only three years Delaware has licensed 370 series units."

When asked if growth has slowed down due to the influx of US states adopting captive laws, Klumpp declared that not to be the case in Delaware.

"Various states' translations of the US Dodd-Frank Act have caused us to add new domiciles to our feasibility studies; but on balance, the market continues to grow. So, even in light of other domiciles arriving on the scene, we have not observed a decrease in the percentage of deals that come to Delaware."

### Satisfying the citizens

Though many different types of captive reside in Delaware, Klumpp explains that Wilmington Trust SP Services (the captive management arm of Wilmington Trust) does not tend to target a particular client because of its industry or type.

He says: "Rather than targeting a particular niche or domicile, we prefer to look at each prospective client as an individual, and put together a programme specific to that client."

Simpson's firm, GF&M Law, work with every type of captive that can be licensed in Delaware, from pure captives through to risk retention groups. Series captives, as mentioned by Kinion, are by far the most popular in the state.

He adds: "[GF&M Law] work with dozens of these structures and hundreds of series formed within them. We have helped sponsors form series captives for first party enterprise risks, medical stop-loss and workers compensation, to name a few."

Kinion explains that while Delaware will always

cater for nearly all types of captives, it has managed to expertly educate itself in a particular type.

He says: "Captives formed to reinsure the XXX and AXXX excess reserve for term and universal life insurance policies have become an area of expertise for Delaware. As Delaware's chief captive regulator I believe that my captive bureau does a very good job in regulating these types of captives."

"We are firm, but fair in our approach. I have been, and will continue to be, very vocal in my defense of captive insurers in general, and specifically these life reinsurance captives, before the National Association of Insurance Commissioners."

Looking ahead, Kinion believes that the well-structured captive insurance industry has set the state up for the future. He explains that commissioner Stewart promised the citizens of Delaware a vibrant captive industry—and it seems she has managed to deliver on that promise.

"Today the captive insurance industry provides Delaware with revenue and economic opportunity," says Kinion, adding that the State of Delaware is a great choice of domicile for firms, as long as being an insurance company is of the utmost importance to them.

He says: "Captive insurers that satisfy the rules for risk transfer and have assuming risk as their core mission will find Delaware to be an advantageous domicile. Those promoters who wish to form captives whose primary mission is anything but being an insurance company, will find Delaware unwelcoming." CIT

# Charitable benefits

CIT tuned in to the latest Strategic Risk Solutions webinar to find out why a not-for-profit organisation should consider a captive

## JENNA JONES REPORTS

Strategic Risk Solutions's (SRS) most recent webinar, Captives for Tax Exempt Organisations, honed in on exactly why a tax exempt, or not-for-profit organisation, would decide on owning a captive insurance company.

The panel, moderated by Wayne Cowan, director of SRS in the Cayman Islands, included Tom Jones, partner at McDermott Will & Emery LLP, and Michael Hawkins, director or risk management at Fletcher Allen Health Care.

Jones kicked off the discussion by outlining exactly why a tax-exempt, not-for-profit organisation, such as a charity, would want to form a captive. He explained that the establishment of a captive can firstly help to stabilise and reduce the cost of risk, including claims payouts and legal defence costs.

The use of a captive also provides the organisation with customised terms of coverage and control over investment funds. But for Jones, a tax advisor, an important objective is to leverage off the parent company's tax-exempt status by avoiding or minimising 'unrelated business taxable income'.

Jones said: "If a charity or not for profit enters into a business activity there is a particular Internal Revenue Service (IRS) code sections that essentially mean they are treats it as a taxable businesses, and insurance is by nature a taxable business."

Jones explained that if a captive is only covering the risk of its tax-exempt parent and its employees then the domestic captive can obtain an IRS 'determination letter' granting it IRC 501 (c) (3) tax-exempt status as a charitable entity.

The captive does this by filing an IRS form 1023 with a description of its intended activities. Jones said that the 1023 form cannot include non-employed physicians or third parties if they constitute a substantial portion of the business.

Jones explained: "Thus, limited scope of captive activities if formed onshore, covering more than 10 percent unrelated parties, can cause all income of the domestic captive to become fully taxable applying the current 35 percent tax rate."

"If the percentage of unrelated business becomes substantial, ie, if the captive exceeds that percentage of premiums in an onshore captive, then that captive loses its tax exemptions and becomes completely taxable," added Jones.

He noted that "substantial" is not actually defined in the code or regulations, but most tax

advisers say in the 10 percent is the highest you should go with unrelated premiums.

So if a captive knows that it is only going to do related business, then the onshore captive structure would work well.

An offshore charitably owned captive is typically set up as a stock company because it will not go to the IRS for a tax exemption, according to Jones.

He said: "Offshore captives are not tax-exempt—so they can include non-employed physicians and unrelated policyholders up to 50 percent on premiums ... But unlike onshore captives, covering unrelated parties will generate some minor taxes but it does not taint the entire captive."

He cautioned, however, the offshore captive must not engage in business in the US. So, all captive meetings must be held, and all contracts signed, outside of the US.

This, Jones said, is the principle reason that most captives owned by tax-exempt hospitals are domiciled offshore. The big takeaway from the offshore option is that "offshore captives are able to write up to 50 percent unrelated business without becoming fully taxable".

For Jones, the non-insurance status for tax-exempt owners of offshore captives has many advantages. In his words: "Captives owned by tax exempt organisations do not want to be classified as insurance companies for federal tax purposes."

Advantages of non-insurance company status, according to Jones, include the avoidance of both federal excise tax and state direct placement taxes on premiums for related party business. Captives can also avoid the attribution of any unrelated business taxable income to its tax-exempt parent as there is no "insurance income" as defined for tax purposes.

"The majority of the offshore hospital captives are not insurance companies from a tax perspective, people always ask how this is possible as they issue policies, collect premiums etc. But the key thing to remember is that the tax law looks at the substance not the form of transactions ... Most captives owned by tax exempt organisations don't have sufficient risk distribution under IRS definitions to be treated as insurance companies."

To understand the workings of a not-for-profit organisations offshore captive, Fletcher Allen Health Care's Michael Hawkins explained the premise of his company's Bermuda-based captive, VMC Indemnity Company (VMCIC).

VMCIC, incorporated in Bermuda in June 1993, is a wholly owned subsidiary of Fletcher Allen Health Care—a university hospital and medical center based in Burlington, Vermont.

"VMCIC provides claims made coverage for our employees in the hospital. It covers professional liability and general liability of everyone employed by Fletcher Allen health care. The policy limits for the captive policy are \$5 million per occurrence and \$2 million per occurrence for the commercial general liability," said Hawkins.

Hawkins explained that a key incentive for developing a captive insurance company was the removal of the proverbial middleman.

"[Forming a captive was] a good way to manage our own destiny in terms of risk and being in control of our professional and general liability, which is what keeps hospital administrators awake at night."

Another benefit of the captive that Hawkins highlighted includes Fletcher Allen Health Care's increased level of control, and closer focus on internal review.

According to Hawkins, Fletcher Allen extends this level of control via in-house claims management, policy wording development, and its direct access to reinsurance capacity.

Fletcher Allen focuses on internal review through biannual claims review and a loss scorecard that compares actuarially projected losses to actual claims.

"The captive is [also] a good way for us to benchmark against our peers to see where we stand with regards to the severity and frequency of claims," added Hawkins.

Hawkins concluded that the captive has been very successful in its 20 years of existence.

"[Ultimately] it has been a way for the hospital to take control; it has also been a good way to engage the medical staff, who understand that it is their insurance company and that there is a direct benefit to them if it is successful in managing its claims." CIT

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## Game changers

The Reinsurance Association of America's president was the toast of the latest VCIA conference that also saw Dodd-Frank, shadow insurance and healthcare come under discussion. CIT was there

MARK DUGDALE REPORTS

Frank Nutter, who leads the Reinsurance Association of America, was the keynote speaker at the Vermont Captive Insurance Association's (VCIA's) annual conference in Burlington.

He focused his keynote speech on future trends that could affect captive, reinsurance and traditional insurance companies, and said that there is no "game changing" natural catastrophe on the horizon for reinsurers.

Reinsurers have dealt with severe natural catastrophes, like they did in 2011 when devastating earthquakes and weather-related catastrophes struck countries including New Zealand and Japan, with relative ease, according to Nutter.

The 2011 natural catastrophes—the cost of which was approximately \$380 billion, according to Munich Re—registered as "barely a blip" on reinsurers' balance sheets.

Reinsurers' enterprise risk management programmes and sensible pricing, among others, are why they can deal with such extreme losses, said Nutter, who concluded that a "game changing" natural catastrophe in the future is unlikely.

He added that a devastating terrorist attack in the future could affect reinsurers, although that too would probably not be "game changing".

Nutter also warned that the Terrorism Risk Insurance Act (TRIA), signed into US law in 2002 following 9/11, is set to expire at the end of 2014 and will "no longer be of benefit to captive insurers".

US Congress is considering changing the act ahead of it expiring and plans to hold a hearing on the subject in September.

Nutter urged captives and their service providers to attend or provide comments, but he added that "[US Congress doesn't] want to hear that it should be extended in its current form".

In a press meeting at the conference, it was revealed that Missouri and California are

rumoured to be the only US states collecting taxes under the Non-Admitted and Reinsurance Reform Act (NRRA).

David Provost of the Vermont Department of Financial Regulation, Daniel Towle of the state's Agency of Commerce and Community Development and Richard Smith of the VCIA discussed the much criticised provision of the US Dodd-Frank Act with gathered journalists.

The NRRA should only affect surplus lines and reinsurance, say its opponents, but some states have or are planning to interpret it differently.

If the NRRA is applied to captives, states will levy self-procurement taxes on 100 percent of the premiums paid to a captive by a 'home-state' policyholder that has material risks located outside of that state.

But captive advocates as well as two of Dodd-Frank's original architects have said explicitly that it should not apply to captives, and according to Towle and Provost, states are stepping back, with only Missouri and California thought to be collecting taxes from captives under the NRRA.

A legislative fix to the NRRA problem would be "ideal", said Towle, but it is unlikely that this will happen without pressure from the captive insurance industry.

Vermont has licensed 13 captives so far this year, Provost went on to say, with the state looking to license its 1000th before the end of 2013.

Towle said: "I'm very optimistic about what kind of year this is going to be."

The Vermont trio also commented on Benjamin Lawsky's call for a national moratorium on captive insurance transactions from the National Association of Insurance Commissioners (NAIC).

The New York State Department of Financial Services's superintendent issued a report in June

blasting New York-based insurers for hiding at least \$48 billion of 'shadow insurance' transactions in captive and reinsurance entities.

Provost said that "the entire NAIC was perturbed at Lawsky's report and comments", partly because it is the association's job to look at the issues that the financial services superintendent examined in his report.

Smith added: "[Shadow insurance is] a political ball he wants to bat around. [Lawsky's comments were] irresponsible—that's why it's maddening."

Healthcare was also under the microscope. One panel of experts said that risk managers need to "think outside the box" if they are going to design and implement effective return to work programmes that will keep down the cost of workers' compensation insurance.

Marilyn Blake of National Telecom Corporation, which is a part of an association captive domiciled in Vermont, and Mark Denevich of Verizon Communications were among the panellists discussing the management of medical costs.

Return to work programmes offer captives multiple benefits, including boosting the employee's morale and lowering the cost of workers' compensation insurance, but risk managers must "think outside the box" if they are going to do them correctly.

Employees will often not have the skills required to conduct work they have no experience of, while managers can be reluctant to oversee staff who are not working in their normal, or to their full, capacity.

Denevich said that "the real challenge is educating managers" because they often do not want employees on modified duty, but return to work programmes require "a multi-pronged approach" targeting both employee and manager to be successful. CIT

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## Industry appointments



Current chairman of Willis Re Australia, **Michael Harden**, has been appointed CEO of Willis Re Bermuda.

His experience in property and casualty reinsurance, as well as specialty accounts, will prove invaluable as he works with the team to expand the business on the island.

Harden began his career at Willis Re in London in 1976, working through the ranks to become a senior marine London market excess of loss broker, before leaving the company and moving to Australia in 1985.

In 1991, Harden re-joined the firm as a director at Willis Re Australia, becoming CEO in 2007 and chairman earlier this year.

In addition to his new role, Harden will remain non-executive chairman of Willis Re Australia.

Commenting on his appointment, Harden said: "This is a great opportunity. I look forward to beginning a new chapter in my career and embracing a new challenge."

"My focus will be to further enhance Willis Re's profile on the island, and build upon the team's current success."

John Cavanagh, global CEO of Willis Re, said: "Given Bermuda's special place within the global reinsurance network, it is crucial for Willis Re to constantly invest enhancing our client offering there."

"Harden has been key in building our Australian operation into one of our most preeminent reinsurance franchises, and so will play a crucial role in driving the development of our Bermuda team."



**Karin Landry** has been appointed to Fallon Community Health Plan's board of directors.

Landry has 25 years of experience in the healthcare, insurance, risk financing, and retirement and benefits industries. She is also a recognised leader in captive insurance strategy, benefits and finances.

Currently, Landry is managing partner at Spring Consulting Group in Boston.

Prior to joining Spring Group, Landry was president of Watson Wyatt Insurance & Financial Services for the US and a regional and local leader of Watson Wyatt's employee benefits practice.

Landry is a member of the Mathew Greenwald board, past-chairman of the board of the Captive Insurance Company Association, a member of the ERISA industry committee and an international liaison for the European Captive Insurance and Reinsurance Owners' Association.

**Harry Rodgers** has joined USA Risk Group as vice president of business development based in Baltimore, Maryland.

Rodgers will be responsible for developing, designing, and consulting for new alternative risk finance and transfer insurance business for the firm in all North American domiciles.

Prior to joining USA Risk Group, he spent two years at Kane Group as director of business development.

Rodgers also held roles at HSBC as director of business development and innovative risk management as a programme administrator and group captive developer.

Gary Osborne, president of USA Risk Group, said: "We look forward to [Rodgers] bringing a fresh perspective to USA Risk Group's business development efforts and are confident his breadth of experience will support our continued growth."



Marsh veteran, **Steve Kempsey**, has been appointed as the firm's new US casualty leader effective immediately.

Based in New York, Kempsey will be responsible for the oversight of Marsh's primary and excess casualty operations in the US, its international casualty practice, and its workers' compensation centre of excellence.

Kempsey succeeds Jonathan Zaffino, who was recently named president of Victor O. Schinnerer & Company.

Dean Kilsura, US risk practices and specialties leader, said: "[Kempsey's] extensive background in client service, leadership experience, and strong record of operational excellence make him the ideal candidate to lead our US casualty practice."

"The US casualty market—especially excess casualty and workers' compensation—remains challenging for many of our clients. Under [Kempsey's] leadership, Marsh will be well-positioned to continue to delivering industry-leading brokerage solutions that help our clients thrive."

Commenting on his new appointment, Kempsey

added: "Our clients today require innovative and effective solutions to tackle the [multiple] challenges and risks their companies face."

"By weaving together our traditional casualty placement and advisory expertise with our powerful global analytics platform and industry focus we are able to help our clients proactively manage the evolving risk landscape and ultimately their total cost of risk." **CIT**

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Published by Black Knight Media Ltd  
Provident House, 6-20 Burrell Row  
Beckenham, BR3 1AT, UK

Company reg: 0719464  
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