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28 October 2020 - **Issue 210**

Bridging the gap

Aon's Aidan Kelly explains that while the number of captives writing cyber risk is rising, there continues to be challenges around the quantification of risk for cyber exposures

Run-Off Insight

The run-off market is set to see increased interest in the next 12 months

Emerging Talent

Kait Chase, risk retention group manager at the North Carolina Department of Insurance

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In this issue

Reinsurance Collateral Trusts

The limitations and costs associated with traditional collateral options such as Letters of Credit have dramatically fueled the growth of alternative risk transfer strategies amongst insurers, reinsurers, captives and corporations. Fluid regulatory, financial and risk management environments demand lower-cost collateral solutions – solutions that afford maximum flexibility with minimal effort to set-up and maintain.

It's a need that has given tremendous traction to the insurance-linked securities (ILS) market and in particular the emergence of reinsurance collateral trusts.

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Judge dismisses court case against captive accused of violating ERISA

Judge Ann Donnelly of the Eastern District of New York has dismissed a court case involving HealthCap, the captive insurance company of Preferred Home Care of New York and Edison Home Health Care, where it was accused of violating the Employee Retirement Income Security Act (ERISA).

The plaintiffs, Mariya Kobryn, Ivan Kobryn and Ynes Gonzalez de Fuente, filed an amended complaint against Preferred Home Care of New York and Edison Home Health Care, alleging that it "misappropriated employee benefit plan assets" in violation of the New York Home Care Worker Wage Parity Act and ERISA.

Mariya Kobryn, Ivan Kobryn and Ynes Gonzalez de Fuente are certified home health aides employed by Preferred Home Care of New York and Edison Home Health Care.

Background

Under New York's Wage Parity Law, home health care workers must earn a 'minimum rate,' which consists of a cash portion and a benefit portion.

Employers may pay the benefits portion, which is set at $4.09 per hour in New York City and $3.22 per hour in Nassau, Suffolk, and Westchester Counties, in cash, or through "any combination of cash, health, education, or pension benefits; wage differentials; supplements in lieu of benefits; or compensated time off".

The defendants provided health benefits through a welfare benefit plan. The plan is a self-funded employee health benefit plan under ERISA, which means that Edison and Preferred fund a trust that pays the cost of covered medical claims.

The plan automatically enrolls employees and requires 20 percent coinsurance and copays of $15 to $40 with an out-of-pocket maximum of $6,600 for an individual and $13,200 for family coverage.

On 1 February 2016, the defendants' trust entered into an agreement with HealthCap in which HealthCap agreed to assume a 75 percent share of the plan's welfare benefit obligations.

However, the plaintiffs allege that this arrangement, in which they state as "a so-called captive insurance scheme, was designed to refund benefit dollars to the employer defendants".

The plaintiffs outlined to the court that "in a captive insurance scheme, the employer pays premiums to the captive insurer, which then uses the premiums to establish a reserve to pay covered medical claims".

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They added: "Meanwhile, the captive insurer invests the reserve amount and returns investment profits and excess premiums to the employer."

The plaintiffs alleged that this arrangement violates ERISA, and does not provide them with the benefits portion they are owed under the New York Wage Parity Law.

In addition, Mariya Kobryn, Ivan Kobryn and Ynes Gonzalez de Fuente alleged that while they are participants in this plan, they don't use it due to "high out-of-pocket costs" and "have had difficulty accessing benefits from it".

Kobryn also alleged that his healthcare provider informed him he was not covered for cataract or glaucoma surgery or prescription eye drops under the plan.

The plaintiffs argued that they have been harmed by the "wrongful use of plan assets for defendants' personal gain" because they were deprived of "their right to benefit exclusively from those plan assets...cash and/or benefits that they are owed... [and] legal and equitable rights to assets that are wrongfully being retained by defendants".

On 26 June 2019, the defendants moved to dismiss the action, arguing, in part, that the plaintiffs do not have constitutional standing to bring their claims under ERISA Sections 502(a)(2) or (a)(3).

Two days later, the Supreme Court granted certiorari to review Thole v. US Bank, in which the Eighth Circuit held that ERISA plan participants in an overfunded defined benefit plan do not have statutory standing to bring claims under ERISA Sections 502(a)(2) or (a)(3).

In its opinion granting certiorari, the Supreme Court directed the parties to brief and argue "[w]hether the petitioners have demonstrated Article III standing".

The defendants moved to stay this action pending the Supreme Court's decision on constitutional standing.

On 13 February 2020, Judge Donnelly granted the motion for the defendants to stay the action pending the then-Supreme Court's forthcoming decision in Thole v. US Bank.

Proceedings

In the recent case, the defendants used the Thole v US Bank Supreme Court case as their defence.

For the ERISA claim, in order to establish constitutional standing, the plaintiff must prove: "injury in fact, which must be (a) concrete and particularised, and (b) actual or imminent; a causal connection between the injury and the defendant's conduct; and that the injury is likely to be redressed by a favourable decision".

The defendants say that Thole requires dismissal of the plaintiffs' ERISA claims.

According to the defendants, "[w]inning or losing the ERISA claims will not increase plaintiffs' health benefits, and will not result in any money flowing to the plaintiffs as participants in the plan".

The plaintiffs responded stating that they are in a different position than the Thole plaintiffs because of their state law claim under New York's Wage Parity Law.

However, for the defendants' ERISA violations, the plaintiffs argue, they would have received additional benefits under the Wage Parity Law in the form of cash compensation or improved benefits.

If they prevail, Mariya Kobryn, Ivan Kobryn and Ynes Gonzalez de Fuente said they will receive tangible benefits because the defendants will have to return money to the plan.

Judge Donnelly ruled that she agreed "that Thole is dispositive".

She noted that as in Thole, the plaintiffs are participants in a form of defined benefit plan; plan participants are guaranteed certain health benefits, regardless of the plan's funding.

In addition, the judge stated that while the plaintiffs cite the plan's high out of pocket costs and accessibility issues, they do not claim that they were denied any of the healthcare benefits promised under the plan.

She explained that the plaintiffs have not alleged that plan management was "so egregious that it substantially increased the risk that the plan and the employer would fail and be unable to pay the participants' future pension benefits".

"In fact, the plaintiffs concede that the plan was overfunded by $22.8 million", the judge noted.

Judge Donnelly added: "The plaintiffs' ERISA claims are dismissed for lack of subject matter jurisdiction."

In addition, she declined to exercise jurisdiction over the plaintiff's Wage Parity Law claim, which arises under New York state law.

She stated: "Where a court dismisses all claims over which it has original jurisdiction, it may, in its discretion, decline to exercise supplemental jurisdiction over remaining claims."

In her conclusion, Judge Donnelly ordered the defendants motion to dismiss the case.

Oklahoma approves first insurance business transfer in US

The District Court of Oklahoma County has approved the Providence Washington Insurance Company (PWIC) to complete its insurance business transfer (IBT) plan.

The plan will transfer substantially all the insurance and reinsurance business underwritten by PWIC to Yosemite Insurance Company, an insurance company in Oklahoma.

The transfer will include the liabilities associated with those policies as well as $38.5 million from PWIC to Yosemite as consideration for assuming those liabilities. Both PWIC and Yosemite are wholly owned subsidiaries of Enstar Group.

Earlier this year, it was also announced that Enstar Group entered into a novation agreement with affiliates of ridesharing company Lyft and underwriting companies of Zurich North America.

The transfer process began in 2019 when PWIC filed its IBT plan with the Oklahoma Insurance Department.

The IBT plan, which was reviewed by an independent expert, the commissioner and department staff, includes financial documents, the independent expert's report and a proposed procedure for how the transaction will be communicated to policyholders and other interested parties.

Oklahoma Insurance Commissioner Glen Mulready approved the IBT plan and authorised PWIC to petition the District Court for approval.

The Oklahoma IBT law, which became effective in November 2018, closely mirrors Part VII Transfers of the Financial Services and Markets Act of 2000 in the UK, which has resulted in over 300 successful transfers during the past 20 years.

Commenting on the transfer Mulready said: "Completing the first IBT in the US is a huge milestone for Oklahoma and the Oklahoma Insurance Department."

He added: "This is a big step forward in transforming and invigorating the run-off market. We look forward to completing additional IBT's in the coming months."

‘Excellent’ ratings for Saudi Arabian Oil Company’s captive

A.M. Best has affirmed the financial strength rating of A (Excellent) and the long-term issuer credit rating of “a” of Stellar Insurance, a subsidiary of Saudi Arabian Oil Company (SAOC), based in Bermuda.

The outlook of these credit ratings is stable.

A.M. Best categorised its balance sheet strength as very strong, as well as its strong operating performance, neutral business profile and appropriate enterprise risk management (ERM).

Stellar’s balance sheet strength is underpinned by risk-adjusted capitalisation at the strongest level, as measured by Best’s Capital Adequacy Ratio (BCAR).

The captive’s risk-adjusted capitalisation is expected to remain at the strongest level, supported by low underwriting leverage, full earnings retention and a comprehensive reinsurance programme.

SAOC has strengthened Stellar’s capital position by allowing the captive to retain all profits generated since its incorporation in 2001.

The rating firm said this has enabled Stellar to increase its underwriting capacity gradually. Its capital requirements through the BCAR are driven largely by investment risk, as Stellar holds a significant proportion of assets in mutual funds that have varying liquidity and duration.

It was also noted that an offsetting balance sheet strength factor remains the captive’s reliance on reinsurance to provide high limit energy cover. However, the associated credit risk is mitigated by Stellar’s use of a diversified panel of financially strong reinsurers.

Stellar has reported strong operating results over the past five years, mainly driven by robust underwriting profits in the absence of large losses.

A.M. Best stated that they expect prospective performance to remain strong, “but it is subject to volatility due to the captive’s exposure to high severity, low-frequency losses in its energy programme”.

Stellar’s business profile and ERM assessment reflect the key role it plays in SAOC’s overall risk management framework.

As a single parent captive, its purpose is to provide financial risk transfer solutions for risks emanating from SAOC’s operations.

According to A.M. Best, Stellar’s portfolio of business is concentrated by the line of business, with the majority of premiums represented by energy onshore and offshore property risks, as well as by geography with approximately 96 percent of 2019 premiums associated with risks located in Saudi Arabia.

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LMG provides update on new trading opportunities to drive growth

The London Market Group (LMG) has provided an update on how it is working with the UK Government to seek new trading opportunities to drive the London market's next phase of growth.

As part of the progress, Sean McGovern, a new sponsor of the Government workstream, revealed that work is being done to maintain momentum with campaigns to promote market innovations and ensure that the UK Government positions the London Market as an attractive market for foreign investment.

McGovern said: "This includes our long-standing campaign to reintroduce an international competitiveness duty, fostering a domestic captive insurance market and taking advantage of the next phase of the Treasury's regulatory review and the financial services legislation which we expect to see next year."

Elsewhere, LMG said that in North America it is "playing a central role in influencing negotiations" between the UK and US after the group was asked to be part of the government's financial services expert trade advisory group (FS ETAG), which is advising HM Treasury and the Department for International Trade on US-UK negotiations".

LMG outlined how they are working with HM Treasury on a new regulatory arrangement for Swiss insurance which has secured support in parliament.

The report said LMG was invited by Rishi Sunak, chancellor of the Exchequer, to attend the virtual signing of the June statement committing both nations to negotiate a bilateral financial services agreement.

The group also joined the industry day of the financial dialogue in September to present their solutions to its Swiss counterparts. LMG explained that it was part of a trade delegation to Indonesia and Malaysia alongside William Russell, the Lord Mayor of London in order "to promote London's unique offer, meeting with Ministers, regulators and businesses".

The group also stated that it "continues to engage with in-country UK Government officials, members of parliament, the UK-Association of Southeast Asian Nations (ASEAN) business council and the British Chamber of Commerce".

LMG also noted its progress with Brazil, explaining that it is supplying the UK Government with "in-depth market analysis to support its engagement with Brazil to encourage greater market access for UK firms".

LMG member associations have been involved in the development of a Department for International Trade promotional document highlighting the recent regulatory changes in Brazil. In the Middle East and North Africa (MENA) LMG has helped promote the work of London Market firms that provide specialist Sharia-compliant cover, including the production of a promotional brochure.

Commenting on LMG progress so-far, McGovern said: "We've already enjoyed considerable influence in shaping UK trade policy on our target markets and succeeded in building confidence in the UK Government that the London market is a valuable partner in delivering its policy objectives, whether advising on the technical aspects of the negotiations or providing innovative solutions to deepen trade ties."

He continued: "We will continue to shape the government's approach to third-country trade through our membership of the FS ETAG and governmental and parliamentary activity, drawing attention to the London market as a major export industry that can support the UK Government's trading ambitions."

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Ratings affirmed for Marubeni Corporation's captive

A.M. Best has affirmed the financial strength rating (FSR) of A- (Excellent) and the long-term issuer credit rating (ICR) of "a-" of Marble Reinsurance Corporation (Marble Re), which is based in Micronesia.

The outlook of these credit ratings is stable.

A.M. Best categorised Marble Re's balance sheet strength as strong, as well as its strong operating performance, neutral business profile and appropriate enterprise risk management (ERM).

The company's balance sheet strength also benefits from its low underwriting leverage and conservative investment portfolio.

Although A.M. Best also noted that the company has "relatively high reinsurance dependency", the associated risk is mitigated by its well-diversified reinsurance panel that consists of reinsurers with good financial standing.

Marble Re's balance sheet strength is underpinned by risk-adjusted capitalisation, as measured by Best's Capital Adequacy Ratio, at the strongest level.

The captive is wholly owned by the Marubeni Corporation, which is one of the largest trading companies in Japan. The company benefits from its parent's broad business networks and trading activities and only insures and reinsures risks from affiliated and related companies within the Marubeni group.

A.M. Best highlighted: "As a single-parent captive, Marble Re is well-integrated within the group and benefits from the parent company's overall ERM practices."

The rating firm also outlined that the captive company has a track record of "favourable operating performance supported by a five-year average return-on-equity ratio of approximately 12 percent, driven mainly by stable investment income and very strong underwriting results".

Although the captive experienced a contraction in premium income during fiscal-year 2019, underwriting results remained favourable with a five-year average combined ratio under 60 percent.

In addition, the company has limited potential volatility arising from its underwriting portfolio by using a conservative reinsurance programme.

A.M. Best suggested that negative rating actions could occur if there is a material increase in risk appetite, which could potentially undermine Marble Re's profitability and capitalisation.

Aon and Goldman Sachs team up on captive insurer service

Aon has partnered with Goldman Sachs to establish a new investment service that seeks to make it easier for captive insurers to identify and access investments.

The new service combines Aon's strategic advice, fund research and execution services through its team of investment specialists and practitioners with a specially tailored investment platform provided by Goldman Sachs, using its liquidity solutions portal, Mosaic.

The partnership will see a one-stop-shop created for captives to manage their assets, from trading Aon-rated funds and viewing daily portfolio information, to automated reporting.

Following a launch in Ireland, Aon plans to make the service available in other markets globally.

The service, which will be provided by Aon's global investment practice, working alongside Aon's captive and insurance management Group (ACIM), will also help to advise captives on a broad range of investment opportunities and introduce captives to the platform as an avenue to access these opportunities.

At its launch on 1 October, a selection of Aon buy-rated mutual funds from four prominent fund managers was available on the platform, with further additions expected as the service expands.

Commenting on this new platform, Tim Currell, partner and head of insurance solutions, global investment at Aon, said: "We believe that there are some simple steps that captive insurers can take to improve their expected investment

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Construction industry shows increased interest in captives

An increasing number of construction companies have explored the option of a captive insurance company during the COVID-19 pandemic, according to CIC Services, a captive consulting firm.

CIC Services explained that the construction industry faces "numerous threats that can potentially disrupt or even bankrupt their business, or in other cases lead to revenue loss and layoffs".

Stats from MarketsandMarket 'COVID-19 impacts on the construction market by type, global forecast to 2021', showed that the construction industry is expected to see a decline this year with an expected drop from $11.2 trillion in 2019 to $10.6 trillion in 2020.

Although the industry shows signs of recovery in 2021, "not all companies will make it".

CIC Services stated that they have witnessed the trend of the construction industry turning to captives, as construction companies have made up a growing percentage of their client base.

Commenting on this trend, Randy Sadler, principal at CIC Services, said: "We went from having a small number of construction clients to construction companies making up our highest number of clients within an industry and that number continues to climb."

He explained: "Construction companies are uniquely suited to own their own captive insurance company. Commercial insurance is often riddled with exclusions that can lead to claims not being paid. Captive insurance fills those gaps and addresses the complex, evolving risks that members of the construction industry face. It's a robust strategy for companies that also creates a separate profit centre."

According to Sadler, one of the most important benefits of captive insurance for construction companies is the ability to find a new profit centre in payment and performance bonds or in subcontractor default insurance (or both).

However, Sadler noted that it's too late to insure against COVID-19, but owning a captive insurance company still proves beneficial.

"Captives can replace commercial insurance, insure enterprise risks, insure warranties, insure bonds, insure employee benefits or healthcare or any combination of these. They also provide a stronger business model, improved risk management, improved cost control, insurance profits, asset protection, asset accumulation and receive advantageous tax treatment. It's a no brainer," he concluded.

outcomes without increasing risk – and this new service gives them the means."

Currell noted: "Since the global downturn in 2008, we have seen some captives favour a low-risk approach to asset management, with some holding a significant portion of their assets in cash deposits. Given the prolonged low global interest rates over recent years, this has resulted, for some, in low or negative returns with assets potentially losing value in real terms. This challenging dynamic has been accentuated during the COVID-19 crisis."

He explained: "Captives could instead be diversifying into areas such as money-market funds or introducing other highly liquid assets. We know that deciding what to invest in and finding high-quality fund managers can be a challenge - most captives don't have in-house teams with significant resources or the expertise to do this. Complying with the reporting requirements for this kind of portfolio management and trading can also present a new operational burden."

Michael Siegel, global head of the insurance and liquidity asset management business at Goldman Sachs, added: "We are excited to partner with Aon and to provide a new range of asset management products from an array of asset managers to Aon's captive insurance client base. Market volatility has changed what firms invest in for cash management purposes and how firms invest. We look forward to working with Aon to bring technology solutions to the forefront of liquidity and other risk considerations."

ACIM works with captives with over $175 billion of assets globally, while Aon's global investment practice advises clients on more than $3.5 trillion of assets.

DARAG to sell non-legacy Italian business to NOBIS

DARAG Group has reached an agreement with NOBIS Compagnia di Assicurazioni (NOBIS) on the sale of the business from DARAG Italia S.p.A (DARAG Italia), subject to regulatory approval. On completion of the transaction, the relevant policies, distribution agreements and personnel dedicated to the active portfolio in Italy will be transferred to NOBIS.

The legacy acquirer also intends to retain operations in Italy through the establishment of an Italian branch of the firm's German risk carrier, DARAG Deutsche Versicherungs- und Rückversicherungs-AG. The branch will manage the existing Italian book in run-off and potential future legacy portfolios in the region.

DARAG Italia was formed in 2016 following the group's acquisition of ERGO Assicurazioni S.p.A. Following the acquisition, Tullio Ferrucci was named CEO of DARAG Italia in 2017.

The majority of DARAG Italia's portfolio consists of motor risks such as motor third-party liability, land vehicle hulls and marine third-party liability, and accident risks.

Tom Booth, CEO of DARAG Group, said: "The sale of our active Italian business is an illustration of our singular focus on legacy and our commitment to enhancing DARAG's operational efficiency.

"NOBIS is a well-regarded and secured insurance provider in Italy."

"It has been a pleasure to work with their professional team and we are confident that our clients will continue to receive high-quality support and services," he concluded."

Fleming Re acquires Sinclair

Fleming Re Holdings, a Bermuda-based class 3A insurance company, has acquired Sinclair Insurance Company (Sinclair), a Bermuda domiciled captive insurance company, subject to regulatory approval.

Sinclair was utilised to provide reinsurance to the primary insurers of certain casualty risks of affiliated companies.

The acquisition provides the shareholders of Sinclair with an exit solution allowing full legal finality, elimination of operating expenses, and a release of capital.

Working closely with the third party administrators and front companies, Fleming Re said it will continue to provide the same quality care and coverage.

Fleming Re CEO Eric Haller stated: "This transaction involves a captive with more complexity as the program historically underwent several commutations and novations. Fleming Re was able to achieve the client's goals with a transaction that was mutually beneficial."

Haller continued: "It was a pleasure working alongside Aon, who managed Sinclair, to bring about the successful close of this transaction. Fleming Re has a robust pipeline and several transactions that will be closing in the coming months."

Ciaran McCabe, vice president Aon Insurance Managers (Bermuda), added: "There is a vibrant legacy/run-off market in Bermuda and we have developed a comprehensive suite of finality solutions for our clients. In this instance, we worked extensively with our client, in collaboration with Fleming Re, to deliver a captive sale solution that provided legal finality and enabled the return of excess capital to its shareholders."

Time to re-evaluate

With insurers and reinsurers looking to take advantage of the hardening market and the ongoing effects of COVID-19 play out, the run-off market is set to see increased interest in the next 12 months

As more insurers and reinsurers are looking to take advantage of the hardening market, an increasing number of portfolios are being put up for sale.

Daniel Linden, CEO at DARAG North America, says the opportunity to "recycle capital and redeploy it towards increasingly profitable lines" is a key driver of this trend.

Despite the potential challenges presented by completing deals during the COVID-19 pandemic, PwC's Q2 2020 report for non-life insurance run-off deals showed that executed deals have remained relatively steady.

The report revealed that overall total estimated liabilities transacting dropped from \$2.1 billion in Q1 2020 to \$1.3 billion in Q2 2020.

During Q2, six different consolidators transacted, bringing the total number of active market acquirers during the year to 10.

Apart from one transaction where the purchaser has not been disclosed, the report highlighted that these were all established market participants these included R&Q, Ashbrooke, Riverstone, Enstar, Fleming Re and Quest.

Given the current market environment and opportunities in the sector, PwC said it expects to see some new entrants announce deals before the end of the year.

North America has proved to be the most active in terms of volume and value of deals, continuing recent trends, however, PwC suggested that the UK, within Lloyd's in particular, will see deal activity increase as the year progresses.

Carolyn Fahey, executive director of AIRROC, suggests that Asia Pacific will also grow as a market following some deal completions in the last two years.

Although 2020 figures (\$3.4 billion) are currently behind those of 2019 (\$5.4 billion) in terms of value, this year continues to be a strong transaction year and the volume of deals has outpaced the same period last year with 25 deals completed as of Q2 compared to 21 deals last year, according to the PwC report.

Affirming the increase in run-off and legacy business, Linden says he has seen a "significant increase" in activity on both the sell and buy-side of the business.

Linden explains: "We have had conversations with potential new cedants who have not historically conducted legacy transactions. New acquirers have also emerged, with the backing of investors."

He anticipates "a lively legacy market" in the final quarter of this year and the beginning of next year.

Captive market

In the captive market, as the economy emerges from the COVID-19 pandemic and government support gradually tapers off, corporates are taking stock of their capital and operational commitments and looking to refocus their resources on their core business.

Linden explains that some firms are exploring potential sales of their captive vehicles.

Run-off strategies can be employed in the captive markets in the same way that they are in the traditional market.

In the past run-off and finality transactions have in the past been viewed as a bad thing, however, Fahey suggests that they allow companies to free up capital and adapt and grow to continue to write new lines as needed by policyholders.

She says: "Runoff is a step in the natural process of a life cycle of a company, a strategic portfolio management tool. Runoff transactions enhance the capital efficiency of the insurance industry by allowing captives to shed business that simply no longer align with initial reasons for which the captive was created."

A company may wish to put its captive insurer into run-off for many reasons including but not limited to: duplication of captive services following merger and acquisition activity, desirable pricing in the commercial insurance market, geographical or line-of-business changes, regulatory changes that reduce the benefit to captive ownership or long term changes in group captive participants.

Matt Kunish, chief business development officer at Riverstone, explains that the run-off process starts with an initial meeting to explore the goals of the transaction, for both the seller and the buyer.

After the initial meeting, due diligence follows, entailing a full review of the seller's financial data and claims.

Lastly, possible structures and pricing options are presented to the seller based on the findings. A few different options include the transfer of liability such as a loss portfolio transfer, adverse development cover, insurance business transfer, or the sale of the whole captive.

According to Kunish, if the solution is acceptable, legal documents are negotiated and agreed, and regulatory approval is sought if needed.

He notes that once the transaction closes, capital/collateral may be released to the captive owner and ongoing expenses are eliminated.

The future run-off market

With effects of the COVID-19 pandemic expected to continue well into 2021 and the continuation of a hard market, Linden suggests that the increased demand for legacy solutions may not last, as the effects of the pandemic on the economy fade.

In short, Linden believes that there will be a period of increased supply and demand, but "these may both taper off towards the end of this period".

However, he does predict that more cedants will be putting portfolios out to market and expects new vendors will emerge over the next 12 months.

"We have already seen several new acquirers set up to match this increased demand; although, with a short track record and less expertise, they may struggle in an already-mature market," Linden says.

Also weighing in, Kunish notes that the pandemic will cause companies to re-evaluate their current business models and look to more effectively structure their risk profile.

Although forming a captive as an alternative risk transfer vehicle will continue to look more attractive over the next several months, Kunish says: "Unfortunately, with the current times being so financially demanding, I also expect existing companies to close or merge with others. In these situations, run-off providers can step in and help."

Fahey also predicts that the industry will see increased interest from captive owners and managers.

"There is potential for some new mass tort emerging risks in the industry — beyond the traditional issues of environmental and asbestos liabilities — that may serve as an impetus for 'lasering' out specific legacy liability reinsurance transactions."

She adds: "For example, recent adverse litigation around Talc, food additives, 'fracking', and other issues may spark companies with retained liabilities housed in captives, to explore creative ways to move these liabilities to counterparties to reduce the risk of these impacting the capital base of the captive."

In addition, AIRROC's Fahey believes that the interest in runoff will continue to grow on a broad basis within the insurance industry as a whole.

She also highlights the increased focus from the National Association of Insurance Commissioners (NAIC) and states enacting insurance business transfer (IBT) or division laws, will open up some new transaction options for insurers.

In mid-October this year, the District Court of Oklahoma County approved the insurance business transfer (IBT) plan in the US.

Discussing the IBT, Oklahoma Insurance Commissioner Glen Mulready, said: "This is a big step forward in transforming and invigorating the run-off market. We look forward to completing additional IBT's in the coming months."

The plan saw all the insurance and reinsurance business underwritten by Providence Washington Insurance Company, a wholly owned subsidiary of Enstar Group, transfer to Yosemite Insurance Company, an insurance company in Oklahoma.

Fahey explains: "Once we see a few of these transfers occur within these new laws, we believe that many others will avail themselves of these new options. The laws are based on long-standing practice that has been used for decades in Europe, especially in the UK."

Bridging the gap

Aon's Aidan Kelly discusses the cyber risks that companies are facing and how a captive can help provide specific coverage

What role can a captive play in assisting with cyber risks?

The risks faced by organisations from cyber risks continue to expand. Deployment of digital technologies across all facets of operations in an organisation brings greater risks and the commercial market coverages and capacity do not always meet client demand.

To bridge the gap between traditional risk transfer solutions and risk retention, a captive can act as a financing or funding mechanism. Engaging a captive as a fundamental cornerstone of how organisations tackle cyber risks can be considered and it can help maintain strategic control at an enterprise level rather than the response just being managed at an operational level, for example, forensics and disaster response teams.

What types of coverage around cyber risk are you seeing people use captives for?

In general, the use of captives to help protect against cyber-related losses are grouped around three categories: theft of money; loss of data; and disruption of operations.

The ability of a captive to potentially provide broader coverage and more specific loss triggers than the commercial market creates an opportunity generally to better manage the financial impact of a cyber event, a faster return to normalised operations through the prompt availability of funds from the captive and the ability to better interface with the information security functions in an organisation to develop an enterprise-wide response to a cyber event.

What has the COVID-19 pandemic highlighted to companies around cyber protection?

The pandemic quickly showed us that many businesses were simply underprepared to transition to a majority remote workforce in such a short space of time.

The need to continue to operate effectively needed to be balanced with implementing robust, secure technology to support data privacy and other business needs. As with all systems, it is only as strong as the users. Many employees lacked basic cyber training so were more vulnerable to cyber attacks and scams particularly as they were not operating in their usual office environment.

In addition to providing insurance coverage for these increased risks, a captive may encourage risk managers to consider how a captive can participate in a wider risk financing programme to provide funding for employee cyber awareness training as an example or support for the IS teams to help deploy better defence strategies against cyber-attacks and scams.

In a report in 2019, the number of captives retaining cyber risk was 3 percent. Do you see more firms writing in a cyber risk into their captives now?

Cyber risks continue to be a hot topic within the captive industry and are discussed across all industries.

While the number of captives writing cyber risk is rising albeit from a low base, there continues to be challenges around the quantification of risk for cyber exposures.

Challenges include identifying and mapping the cyber risk to the business and technology profile of the entire organisation; modelling the financial impact of a cyber event; and designing risk financing strategy to evaluate the viability of captive utilisation and determining whether the risk financing strategy reflects the complexity and materiality of the cyber exposure through appropriate limits and policy coverage.

These steps should be aligned across all functions within the organisation: executive leadership IT, legal and risk management. Such an aligned process embraces an enterprise wide, governance led approach that provides an opportunity for non-traditional stakeholders to create value in understanding and managing these risks using a captive.

There are two other dynamics or vectors for change here. The first is the continued rise in ransomware attacks, forcing many 'non-traditional' buyers to move from non-affirmative (silent) coverage to affirmative cyber coverage such as manufacturers, food, agriculture and beverages, heavy industry, extractive industry etc.

The second is the continued hardening of the market increasing the value of leveraging alternative risk transfer vehicles and captives.

How do you see cyber risk changing over the next 12 months?

In the period post-COVID-19, the increased deployment of remote access and cloud infrastructure will create more dependencies on IT service providers to keep businesses running. This will require risk managers to better understand vendor onboarding, vendor control environment, contract risk management philosophy and process, and insurance implications and solutions (i.e. dependant systems coverage and limits).

An increase in ransomware events will force many companies to think beyond 'data breach' to cyber triggered business interruption as a material enterprise risk.

This will drive investigation and innovation in business continuity management and cyber business interruption coverage.

The hardening marketplace, both with respect to the ability to access broad coverage, sufficient capacity, and the need for more technical underwriting by lead markets will force companies to consider more alternative risk transfer/captive utilisation.

While the number of captives writing cyber risk is rising albeit from a low base, there continues to be challenges around the quantification of risk for cyber exposures

Kait Chase

Risk retention group manager
North Carolina Department of Insurance

"I feel very lucky to have started my captive career at the DOI as I've had phenomenal influences internally within the captive insurance companies division"

Personal bio: *I'm a Pennsylvania native, having relocated to North Carolina five years ago. I love the warmer weather, as I'm able to spend more of the year outside without freezing – Raleigh is the perfect midpoint to beautiful beaches and the mountains. When I'm not spending time outside, I love to read and spoil my dog.*

Professional profile: *I graduated from Wilkes University with a Bachelor of Science in Accounting. Prior to working at the North Carolina Department of Insurance (NCDOI), I worked solely in public accounting, providing audit services to all types of entities from non-profits, governments, to both private and public companies.*

How did you end up in the captive industry?

As cliche as it sounds, I feel like the industry found me. As I was transitioning out of public accounting, my first role at the DOI was within the examination division, where my primary role was to assist with regulatory examinations of insurers. In addition, I was to aid with the analysis of the newly licensed risk retention groups. As the number of risk retention groups licensed in North Carolina grew, my focus shifted, and I became able to focus solely on captives and found my place at the DOI and within the captive industry.

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

So far my highlight has been the licensing of my first North Carolina risk retention group for which I was involved with the application from start to finish. Seeing the company grow from an idea to a fully formed insurer that is providing needed insurance to its policyholders has helped solidify why I enjoy this industry.

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

I feel very lucky to have started my captive career at the DOI as I've had phenomenal influences internally within the captive insurance companies division. I've based my career off of my colleagues, who consistently exhibit expansive technical knowledge, responsiveness, and dedication to the captive industry. Additionally, I find it difficult to select just one or two influences among the service providers and individuals I've worked within the industry, as I've worked with very committed individuals who continue to strive to serve the captive industry and make it a better industry as a whole.

What is your impression of the industry?

The captive industry is extremely interesting due to how quickly it evolves and adapts to changes. It was an industry formed to respond to a crisis and has shown itself to be resilient time and time again.

> *"The captive industry is extremely interesting due to how quickly it evolves and adapts to changes. It was an industry formed to respond to a crisis and has shown itself to be resilient time and time again"*

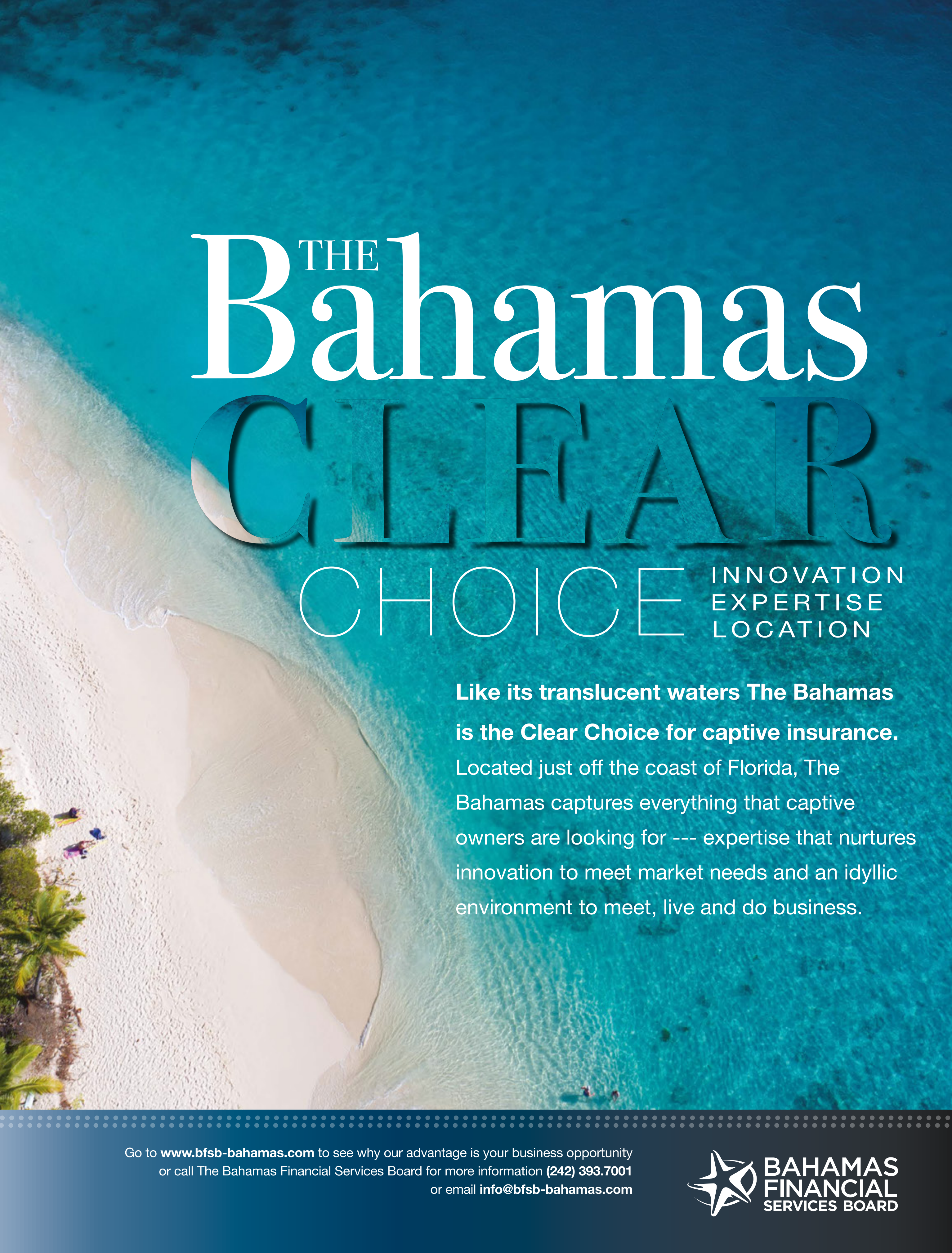
> "Kait is a key member of our captive regulatory team at the NCDOI. As our risk retention group analysis manager, Kait oversees the licensing and ongoing regulation of North Carolina-licensed risk retention groups. Kait possesses strong technical skills, which she developed through her prior experience as an auditor and subsequently, as an NCDOI financial examiner, before taking on her current regulatory role. Additionally, she is a self-starter, who excels due to her personal attributes and abilities including judgement and decision-making skills, initiative, and an independent work ethic. Kait is an asset to the NCDOI, and we are very fortunate to have her as a manager and member of the captive regulatory team."
>
> **Debbie Walker, senior deputy commissioner,**
> **North Carolina Department of Insurance**

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

As the captive industry offers so much to learn, I'd like to continue learning and evolving, along with the industry, in order to best serve it.

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

The first thing I can think of is from my personal experience. Having come to the captive industry with little prior captive knowledge, initially, I was hesitant; however, it was my most rewarding career move. So my only piece of advice would be if someone is considering a role in the industry, do it.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BAHAMAS FINANCIAL SERVICES BOARD

Jonathan Habart has been promoted to captive insurance section assistant director at the Tennessee Department of Commerce and Insurance (TDCI).

Having been with TDCI since 2016, Habart most recently served as a captive insurance specialist where he was responsible for monitoring, analysing and examining the financial status and regulatory compliance of captive insurance companies, among other duties.

He has been employed by the State of Tennessee since 2014 where he worked as an accountant for the Tennessee Department of Finance and Administration.

Belinda Fortman, director of the captive insurance division, who joined TDCI in late June, said: "Jonathan Habart's experience in the insurance division, his exemplary leadership skills and team approach will be invaluable to us in his new role and will contribute significantly to our goal of taking the captive division to the next level. We have an immensely talented team who will continue growing Tennessee's success."

Commenting on his promotion, Habart said: "I am thankful and thrilled by the opportunity to help Tennessee become the premier domicile in the US for captive insurance companies. Commissioner Hodgen Mainda and Fortman's confidence in me is empowering. I will work tirelessly in this role to help spur Tennessee to greater growth while ensuring a best-in-class regulatory environment."

TDCI also recently appointed Joshua Clark as the new director of business development for the insurance division.

John Ludlow is set to step down as CEO of Airmic, the association that represents UK risk and insurance professionals.

Ludlow has been CEO for nearly four years and will remain in his post until his successor is appointed in early 2021.

Airmic noted that this timing allows for a transition period and handover to take place in Q1 2021.

The succession process of appointing a new CEO is underway.

In 2020, Airmic made several new senior appointments, aimed at increasing the bench-strength of the secretariat and the programme it delivers and to allow for a smooth transition at the top.

Under Ludlow's leadership, Airmic has expanded into the enterprise risk management space and transformed its educational offering via the acclaimed professional journey which supports members throughout their entire career.

In recent months, Ludlow steered the association through the first phase of the pandemic, including delivering Airmic Fest, the first ever three-day digital conference for the UK risk profession.

Commenting on his departure, Ludlow said: "I am extremely proud of what Airmic has achieved in the past four years, none of which would have been possible without the fantastic support of our team, board, partners and – most importantly – our members."

Tracey Skinner, Airmic chair, added: "Airmic has grown enormously under John Ludlow's leadership and I would like to thank him for his tireless contribution to the development of the risk profession."

Skinner continued: "During his time, Airmic membership and partner numbers have increased and diversified, the secretariat team has grown and professionalised, our educational offering transformed and he has begun the important digitisation journey. We wish Ludlow all the best."

Ludlow noted that once he steps down, he plans to focus on his charitable non-executive director roles and to spend more time on his other interests and with his family.

Specialist legacy acquirer Compre has appointed Anson Aguiar as chief underwriting officer of Pallas Reinsurance Company (Pallas Re), Compre's recently-launched class 3A Bermudian reinsurer.

Aguiar joins Pallas Re from Randall & Quilter Investment Holdings (R&Q), where he served as senior vice president, legacy merger and acquisitions.

He brings 14 years of experience in the US casualty market, having spent much of his career at AIG.

Compre also announced the completion of its first US transaction.

Although specific details of the transaction were not disclosed, Compre revealed that it involved a ground-up loss portfolio transfer for risks underwritten in the last two years.

Tiger Risk was the broker on the transaction and Compre was advised by New York law firm Gerber Ciano Kelly Brady and PwC.

Will Bridger, Compre CEO, said: "I am delighted to announce these strategic milestones for Compre and particularly our Bermuda reinsurer, Pallas Re. We are extremely well-positioned to continue to grow our North American business at an exciting time for the market. With extensive US casualty experience, Anson Aguiar will be a tremendous asset in spearheading Compre's development in North America and bringing our highly credible and client-centric proposition to this important market," he added.