



Wednesday, October 22
9:00 am-10:30 am

807 Insurance, Risk Management, and Captive Insurance Companies

Ellen R. Dunkin

Senior Vice President and Associate General Counsel
Crump Group, Inc.

Leonard J. Solfa

General Counsel and Chief Operating Officer
Moose International, Inc.

Pamela Williams

Executive Vice President and General Counsel
Sunburst Hospitality

Faculty Biographies

Ellen R. Dunkin

Ellen R. Dunkin is senior vice president and associate general counsel for Crump Group, Inc., the largest wholesale insurance distributor in the United States, and a leading U.S. provider of recordkeeping and support services to company-sponsored retirement plans, based in New York. At Crump, Ms. Dunkin provides advice on a wide range of corporate, finance, human resources, compliance and risk management related issues.

Prior to joining Crump, Ms. Dunkin was general counsel and director of government affairs of the Risk and Insurance Management Society, Inc. (RIMS) in New York, a non-profit professional association dedicated to advancing the practice of risk management. Before joining RIMS, Ms. Dunkin served as senior attorney at Marsh & McLennan Companies, where she provided counsel in the areas of securities regulation, mergers and acquisitions, executive compensation, and employee benefits. Previously, Ms. Dunkin was a corporate associate at Willkie Farr & Gallagher in New York.

Ms. Dunkin is a former Chair of ACC's Non-Profit Organizations Committee, and a member of the Committee on Small Law Departments. She served on the New York City Bar Association's Hurricane Katrina working group in 2005 and is a former member of its non-profit committee. Ms. Dunkin is a member of the Town of Mamaroneck (NY) Planning Board and previously served as president and director of the Mamaroneck Schools Foundation.

Ms. Dunkin received a BA from the University of New York at Albany and is a graduate of St. John's University School of Law.

Leonard J. Solfa

Leonard J. Solfa Jr. is the chief operating officer and general counsel for Moose International, Inc., in Mooseheart, IL. Moose International, Inc. is a non-profit fraternal membership organization, its main missions including the operation of a residential childcare program in Mooseheart, IL and a senior care facility in Orange Park, FL. Mr. Solfa's responsibilities include providing legal advice to the organization and managing the business aspects of all of the entities, including internal investments and acting as president of the captive insurance company Fraternal Insurance Company. In this position, Mr. Solfa responds to questions regarding litigation evaluation, captive insurance issues, and a variety of non-profit inquiries.

Prior to joining Moose International, Inc. Mr. Solfa served for eight years as in-house counsel for Allied Van Lines Incorporated in Naperville, IL. During his tenure at Allied, Mr. Solfa acted as litigation counsel in a variety of areas including transportation, litigation, person injury litigation, and employment litigation.

Mr. Solfa currently serves as chairman of the board of Diamond Marketing Solutions Incorporated, a direct mail corporation of national scope located in Bloomingdale, IL. In addition, Mr. Solfa does pro bono work for a variety of local charitable entities within the area of Fox Valley, IL.

Mr. Solfa received his BA and MA from the University of St. Thomas and is a graduate of DePaul University School of Law. He also holds a LLM in Health Care Law from DePaul University.

Pamela Williams

Pamela McKenzie Williams is the executive vice president, chief administrative officer, and general counsel for Sunburst Hospitality Corporation in Silver Spring, MD. Ms. Williams is responsible for rendering advice and counsel to the CEO, board of directors, and senior management on all corporate and capital market transactions, property acquisitions, and matters affecting the legal rights and obligations of the corporation and affiliated entities. She also oversees the activities of the finance, human resources, benefits, and risk management departments.

Prior to joining Sunburst, Ms. Williams was in private practice, concentrating her practice in bankruptcy and real estate development and acquisitions.



What is Risk Management?

There are many definitions of Enterprise Risk Management:

- *ERM is a process, effected by an entity's board of directors, management, and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, manage risks to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives.*

Committee of Sponsoring Organizations of the Treadway Commission (COSO 2004)



What is Risk Management cont'd?

- *ERM is a disciplined approach aligning strategy, processes, people, technology and knowledge to manage uncertainties as the enterprise creates value.*
KPMG
- *Enterprise Risk Management is the "company-wide, strategic process of assessing and responding to the collective risks that impact an organization's ability to maximize stakeholder value.*
AON



Common Terms and Definitions:

- Enterprise, company-wide
- Strategic process
- Identification, assessment of "risk" "uncertainties" "potential events"
- Response, management, mitigation
- Achievement of entity objectives, maximize stakeholder value



Categories of Risk:

- Financial risk – interest rate fluctuations, credit, liquidity, accounting and reporting
- Strategic risk – market structure, business plans, reputation, M&A
- Operational risk – fluctuations in quality, production levels, labor, and IT, damage to assets, earnings generating potential, etc.
- Legal & Compliance risk –failure to meet legal or regulatory requirements



Risk Management Basics:

- Holy Trinity of Risk Management (Risk Financing, Loss Control and Claims)
 - Risk Financing
 - Retained Risks
 - Current Expense
 - Unfunded Reserves
 - Funded Reserves
 - Borrowing
 - Single Parent Captive



Risk Management Basics cont'd:

- Loss Control (Management/Mitigation)
 - Any steps taken to prevent loss/minimize occurrence
 - Frequency
 - Severity

“Frequency breeds Severity”

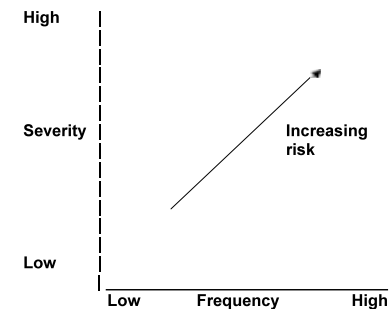


Risk Management Basics cont'd:

- Transferred Risks
 - Insurance
 - E.g., guaranteed cost, loss sensitive
 - Non-Insurance Contractual Transfer
 - Loss Portfolio Transfer
 - Indemnity Agreements
 - Hold Harmless Agreements



Risk Management Basics: a Risk Map





Risk Management Basics cont'd:

- Claims
 - Represents “Soft Costs” (Typically the driver in a company’s overall cost of risk)
 - Attracts senior management attention (PR, reputation, bad press, costs, etc.)
 - Legal Department generally best equipped to handle claims



Advanced Insurance Concepts & Alternative Risk Finance:

- **Captives:** a closely-held insurance company whose business is primarily supplied by and controlled by its owners.
 - Types:
 - Pure captives
 - Group captives



Advanced Insurance Concepts & Alternative Risk Finance:

- **Risk Retention Groups:**
 - Owner controlled insurance companies
 - Similar or related business activities
 - All or any portion of members exposures
 - Excluding first party coverages



Advanced Insurance Concepts & Alternative Risk Finance:

- **Finite Risk:** Financing concepts with well-defined risk transfer where insured funds major part of risk.
- **Integrated Risk Management:** Process whereby financial and operational risk are analyzed and treated in holistic manner, rather than separately.



Advanced Insurance Concepts & Alternative Risk Finance:

- **Multi-year Single Limit:** Combines several coverages under a single limit with an itemized self insured retention.
- **Dual or Multi-trigger programs:** Require two or more triggers to engage coverage.
- **Loss Portfolio Transfers:** Transfers incurred losses to third party.



Advanced Insurance Concepts & Alternative Risk Finance:

- **Weather Derivatives:** Helps reduce impact adverse weather may have on financial bottom line.
- **Capital Markets:** Developed to assist Fortune 500 and smaller companies manage full spectrum of business risks.



Captive Insurance and Non-Profits

Consideration and Domicile



What is Captive Insurance?

- Ownership by insured to cover risks of parent organization
- Coverage not generally available due to high premium or lack thereof
- Strategic Risk Management used to control the cost of insurance
- A form of Self- Insurance



Forms of Captive Insurance

- Pure Captive
- Group Captives
- Risk Retention Groups
- Association Groups



Why Form a Captive for a Non-Profit?

- Offer lower insurance costs, cash flow advantages, risk management control and access to reinsurance
- Larger captives act as independent insurance companies
- Efficiency of the model
- Most captive insurance is general liability, workers' compensation insurance, professional liability and medical malpractice
- Use of captives in developing strategic risk financing programs



Foreign vs. Domiciled Captive?

- Foreign – offshore captives – Bermuda, Cayman Islands, European captives
- Domestic Captives
 - Growth of domestic captive insurance companies
 - Now offering captives the same benefits they could derive from offshore
 - Should the non-profit form a domestic captive?



Foreign vs. Domiciled Captive? (cont.)

- Domestic Captives
 - Value to non-profits
 - Group coverage
 - Cost
 - Risk management controls
 - Common interests in insurability issues



Reasons for Insuring Non-Profits

- “Hard Markets”
- Uniformity of risk factors
- Insurance “instability”
- Direct access to reinsurance markets
- “Tailor-made coverage” to meet the needs of the non-profit or group of non-profits



The Non-Profits’ Insurance Alliance of California (NIAC)

- The first of the member companies of the Nonprofits Insurance Alliance Group
- Liability Crisis of the mid-1980’s
- Testimony of Pamela Davis before California Assembly in 1987:

“Between 1984 and 1986, general liability insurance premiums increased 200 percent or more for one out of four charitable nonprofit organizations in California. During the same period, insurance companies canceled or refused to renew the general liability policies of one out of five California charitable nonprofits. Some important human service programs, such as childcare, foster care, group homes and health services were forced to dramatically cut services or close because they couldn’t find affordable insurance.”



The Non-Profits’ Insurance Alliance of California (NIAC) (cont.)

- Mission of NIAC – service 501 (C)(3) tax-exempt nonprofit organizations in California
 - “...providing a stable source of reasonably priced liability insurance coverages tailored to the specialized needs of the non-profit sector, and to assist these organizations in the development and implementation of successful loss control and risk management programs.”
- Today: insures more than 5,500 non-profits and it has over \$128.9 million in assets
- Rated A by A.M. Best in 2004



The Non-Profits’ Insurance Alliance of California (NIAC) (cont.)

- 1999 – Davis started Alliance of Nonprofits for Insurance, Risk Retention Group (ANI-RRG) – received \$10 million in grants from David and Lucille Packard Foundation and the Bill and Melinda Gates Foundation.
- ANI-RRG serves over 2,000 nonprofits in 23 states
- Resources ANI-RRG offers to members
 - Members-only secure Website
 - D&O pre-termination consultation
 - Personnel handbook review
 - Driver training
 - Vehicle monitoring program
 - Educational booklets



Where do you Domicile and Why the Choice of Domicile?

- Domicile in favorable jurisdiction
- Captive treatment in jurisdiction
- Tax treatment
- Competitive Cost Structure
- Captive Managers – experience and ability to interface with insurance commissioner on regulatory and funding issues
- U.S. now competes favorably with markets in Bermuda, Europe, Guernsey, Luxembourg and Iceland
- Hawaii as a captive insurance market
- Nearly 60 sites to domicile a captive



Considerations for a Captive Insurance Company

- Risk(s) you seek to control
- Cost factors for local insurability
- Size of group for coverage
- Ability of subordinate entities to obtain comparable coverage at favorable rates
- The captive as a “profit center”



Industry Risk Report on Non-profits

- Activities: racetracks to reproductive counseling to men and women
- Risk exposures: property/casualty to interest and market risks inherent in managing investments in pension funds
- American Red Cross: liabilities for outstanding losses and incurred but not reported claims of \$91 million as of 6/30/2007



Industry Risk Report on Non-profits (cont.)

- National Rural Utilities Cooperative Finance Corp.
 - Held \$4.3 billion in notes of varying due dates – exposed to interest rate risk and fluidity risk
 - Lender to rural utility members and a significant borrower
- Planned Parenthood Federation of America, Inc.
 - Exposed to medical malpractice lawsuits
- Risk Strategies for Nonprofits



The Captive Concept

- A Roadmap to Success:
 - Internal Review/Planning
 - Management Collaboration
 - Risk Assessment
 - Internal Goal/Problem Evaluation
 - Insurance Risks



Characteristics of Successful Captives

- Sound Risk Management Program
- Full Understanding of Risk Exposures
- Properly Capitalized and Funded
- Aggressive Claim Management
- Partnership with Insurer/reinsurer



Step 1- Internal Review and Discussion

- Bring Everyone Together- GC,CFO,RM
- Review All Areas: Operational, Financial, Strategic and Hazard.
- Discuss Problem Areas
- Identify Goals and Objectives
- Establish Needs and Wants



Profit vs. Non-Profit

- Both are Similar in This Internal Review
- Note - Tax is not a factor for a non-profit but we may own a "for profit" venture
- Both - Different Subsidiaries to assist
- Both- Possible Third Party Business-clients/members



Example – Goals and Objectives

- Gain Greater **Control**
- Build in Long Term **Stability**
- **Reduce** Fixed Costs
- **Improve** Financial Management
- **Flexible** Program Design
- **Simplify** Insurance Arrangements



Example- Needs and Wants

- Reduce LOC Requirements
- Greater Control in Claim Management
- Be Financially Independent of Parent
- Partnership with Reinsurers
- Build Strong Internal Ties



Step 2- Identify Captive Coverage Need's

Example:

- Worker's Compensation
- General Liability
- Professional Liability
- Automobile Liability
- Property
- Specialty Needs – Liquor, EPL, Bonds, other.



Step 3- The Captive Insurance Structure

Example:

- Direct Write Captive -Onshore
- Reinsurance Arranged - GL/LL
- High Deductible/SIR- WC/AL
- Claims handled internally or with a TPA



Step 4- Identify Partners

- Legal
- Audit/Tax
- Captive Manager
- Broker/Consultant

Work as a Team!



Reminder -A Captive is NOT a Panacea

- You Cannot Hide Your Problems in a Captive!
- Be Honest with Your Risk Assessment



Going Forward

- Use Captive Meetings to Bring Senior Team together Two Times a year.
- Use Captive Meetings to Stay up on Organizational Changes and issues.
- Constantly Evaluate Risk vs. Claim Activity to Identify trends pro-actively.
- Annually Evaluate Funding and Captive Insurance Structure for Best Results.



Formation of Captives & Other Captive Insights



Is a Captive Right For You?

Does Your Corporation Have:

- Good Historical Loss Experience?
- Corporate Culture Willing to Take on Risk?
- Have a Unique and Difficult Insurance Risk?
- Have Significant Risk to a Terrorist Event?
- Have an Ability to Provide Insurance to Third Parties?
- Current Premiums in Excess of \$1M?



Analysis

Review Current Risk Program

- Engage Feasibility Study
 - Include Financial Modeling & Operations Review



The Process

Choose Domicile

- Domestic/Foreign

Meet with Regulators

Prepare License Application



The Process

Select Team & Enter Into Provider Agreement

- Captive Manager
- Actuary
- Local Legal Counsel
- Auditor and Tax Accountants
- Bank (Deposits/Letter of Credit)
- Resident Director
- TPA

Prepare Incorporation Documents



The Process

Prepare Business Plan

- Risks to be Insured
 - Explanation of Coverage Limits
- Expected Premium Income & Method of Calculation
- Organization Responsibility for Loss Prevention and Safety
- Drafts of Policies
- Accrual Feasibility Study
- 3-6 Year History of Loss
- Financial Projections
 - Expected and Adverse Scenario



The Process

Submit Application

- Capital Requirements Established

Receive Approval

Capitalize

- Fund Initial Reserves
- Place Letter of Credit

Begin Issuing Policies



Benefits of A Captive

- Ability to Design Your Own Insurance Program
- Not as Subject to Unpredictable Markets
- Costs Based on Your Own Results
- Access to Reinsurance Market
- More Control Over Claims, Loss Control
- Profits Stay with Your Company



Benefits of A Captive (Continued)

- Potential Tax Benefit
- Ability to Insure the Uninsurable or Uninsured
- Creative Third Party Insurance Solutions
- Allows Long-Term View of Insurance Costs



Potential Risks of A Captive

- Increased Administration and Annual Costs Associated with Maintaining Captive
- Increased Financial Capital Commitment
- Possibility of Losses Higher than Initial Capital Premiums
- Uncertainty of Regulatory Climate
- Changes in Accounting Practices



Costs

Formation:

Feasibility Study, Actuarial Feasibility Study, Aims-Formation/Application Fees, SC Department of Insurance Actuarial and Application Review, Consultant Fee, Legal Fees	\$124,600
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First Year Captive Costs:

Aims-Management Fees and Administrative Expenses, Audited Financial and Tax Preparation, Actuarial Opinion, Premium Taxes, Legal Expenses, DOI Annual License, Board of Directors Meeting, Bank Fees	\$92,300
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Total	\$216,900
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Based on Sunsure Assurance Costs for 2006/2007



Articles on Captives

- Risk Management Magazine, August 2008 issue: www.rmmagazine.com
- [A Captive World, Part I: The Basics](#) An honest risk assessment is a prerequisite for determining if a captive is right for you.
- [A Captive World, Part II: Disciplined Investment](#) Developing an effective captive investment portfolio requires a committed approach.
- [A Captive World, Part III: Q&A With Michael Lusk](#) Michael Lusk, chairman of the board of the Captive Insurance Companies Association, shares his thoughts on the industry.
- [A Captive World, Part IV: Risk Management's 4th Annual Captive Domicile Review](#)
As alternative risk financing becomes less alternative by the day, we examine the pros and cons of the world's Top 25 domiciles.