

ARTEX

EXTRA

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Artex Access

Programs | Capacity | Expertise

Artex Analytics

Strategic Risk Analytics
Claims Analytics and Advocacy

Design and Management

Captive Design and Management
Operational Services Management

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New Web Site:

Have you visited our new site?

Our new site is easy to navigate and features all of our newly updated corporate information, brochures, newsletters, articles, white papers and educational webinar recordings. We have also begun to produce a series of short videos that provide insight into various risk topics and the corresponding Artex solution.

Visit our virtual offices at
artextrisk.com



Reality is a Figment of your Imagination!

(Market cycles can be, too)

Phillip C. Giles, CEBS

If you have ever read *Plato's Allegory of the Cave*, you may know that reality can differ greatly from one person to the next. People view things differently based on how a subject is presented and how they believe it is likely to affect them. *Reality* is an individual's perception, whereas *actuality* is what is in fact true. These elements can be the same or, at times, quite divergent; but either way, perception of actuality determines one's reality.

Insurance professionals have been conditioned to view the state of the market as being either *soft* or *hard* at any given time. The actual degree of firmness creates very different illusions of reality between insureds and underwriters. After nearly a decade of compressed underwriting and investment returns, the market has been showing signs of solidifying, albeit at glacial speed. *As market actually* shifts, so does its *relative reality* for insurance buyers and sellers.

Achieving a mutually agreeable pricing reality between insureds and underwriters can be onerous. Pricing that meets the adequacy expectations of both will be short-lived unless mutual risk interests can remain appropriately aligned during changing market conditions. While companies of all sizes are impacted by market fluctuations, commercial middle market employers are particularly susceptible to excessive volatility.

What if differing perceptions of market cycles became irrelevant?

For middle market insureds, coalescing into a harmonious reality with underwriters can be achieved by providing these insureds the same ability that larger firms have to stabilize the cost of risk on a long-term basis.

Group captives enable middle market employers to increase their underwriting credibility by collectively replicating the risk profile of a larger employer. Groups are also empowered with the control to select service providers, determine coverage levels, manage losses, direct the use of surplus, and, ultimately, share in the results - ideally generating bottom-line profit. Leveraging this combined strength helps mid-sized firms strategically balance *risk retention* and *risk transfer* to reduce the cost of risk and promotes long-term stability between insureds and underwriters.



Group Captives



Group captives are not new. This risk management tool has been effectively used for workers compensation, general liability and automobile liability exposures for decades. Artex is now about to launch its newest program, *Vantage*, a unique group risk-sharing program for medical stop loss coverage.

Many of our group captive programs were established more than 10 years ago - some more than 20 years ago - and have experience operating within different market cycles. These groups have maintained a long-term alignment with underwriters who share their vision and have delivered consistent levels of success for their members regardless of standard market reality. In short, they have demonstrated the ability to *perform well* in a soft market and to excel in a hard market - improving the risk reality for their members. *How's your view of reality?*

Artex is the difference between *bearing risk*, and *controlling risk*.

It's time to take control!



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INTRODUCING

Vantage



The Group Captive Solution for Medical Stop Loss Coverage

Artex Access Group Captive & Program Solutions

Group Captive Update

Ownership participation in a group captive can provide alternative risk transfer advantages to middle-market employers that would otherwise have few funding options. Group captives are an attractive and simple way to smooth the cyclical volatility of the standard insurance market.

Artex currently manages twelve different group captives accommodating a broad spectrum of industries, some

captives serving a specific industry classification while others serving multiple industries. **Artex advantage:** Decades of experience in the development and management of successful group captives.

Visit our website: artextrisk.com for comprehensive overviews of each program. Each group is an "open market" for qualified risks.



Milestone Insurance Program

Milestone is a group-owned captive, founded in 1995 to provide Workers Compensation, Automobile Liability and General Liability coverage to its owner-members. This program brought together a diverse group of companies that were seeking greater control of their insurance destiny. Today Milestone has 25 member companies representing more than \$25 million of premium. While operations may differ significantly between companies, one constant ties all of these entities together - a strong commitment to controlling risk and minimizing losses.

- Established: 1995
- Territory: National
- Issuing carrier: Old Republic Insurance Co. (Rated A, XI by A.M. Best Co.)
- Captive Domicile: Bermuda
- Lines of Business: WC, GL, and AL
- Preferred Premium Range: \$350,000 - \$3,000,000

Milestone is a heterogeneous program open to a broad range of classifications.



Harvest Insurance Program

Harvest was founded in 1991 to bring together companies active in the food industry that are seeking to assume greater control of their risk programs to achieve long-term stability. Through Harvest, member companies now control their insurance costs and are not subject to the cyclical volatility of the standard insurance market.

- Established : 1991
- Territory: National
- Issuing Carrier: Zurich North America (Rated A+ XV by A.M. Best Co.)
- Captive Domicile: Grand Cayman, BWI
- Lines of Business: AL, GL and WC (can be written together or separately)
- Minimum Captive Premium: \$500,000

Although Harvest is considered a homogeneous program, eligibility is broad and includes most food-related industry classifications. Dairy, bakery, restaurant, and food processing are representative of acceptable industries. Primary exclusions are meat packing and slaughterhouse operations. This program can also accommodate the fleet exposures of eligible risks.

What can be done about the rising cost of employer-sponsored health care?

Many companies are seeing annual increases of ten percent or more. This is unsustainable - and unnecessary.

According to a recent Towers Watson Survey, High Performing Companies (HPCs) consistently hold annual trend increases to about two percent. Projecting those increases against the typical increases over the next five years, these HPCs would have health care savings totaling \$1.2 million for every 100 employees.

Would you like to join them?

Vantage can help you become a HPC. Employers participating in **Vantage** gain more control over health care costs while maintaining the flexibility to provide a competitive benefits package.

Vantage blends the advantages of self-funding medical costs, stop loss insurance, the stability of a group captive, and successful risk management strategies. The combined strength of **Vantage** can help reduce health care costs, improve employee wellness, streamline health care delivery and achieve long-term stability.

For more information on **Vantage**, contact Michael Madden, Division Senior Vice President - Benefit Captives: mike_madden@artextrisk.com or 415.536.4018

Visit: artextrisk.com to download our "Catalog" brochure of Group Captives and Programs. For additional information, contact: artextrisprogrms@artextrisk.com or 630.694.5050

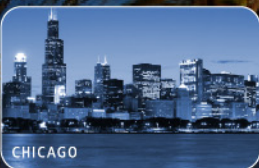
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UPCOMING CONFERENCES & EVENTS FOR 2012



VERMONT

Vermont Captive Insurance Asc:
Burlington, VT: August 7-9
www.vcia.org



CHICAGO

Captive Live USA:
Chicago, IL: September 10 - 12
www.captiveliveusa.com



HAWAII

Hawaii Captive Insurance Council
Forum: Hawaii: October 22 - 24
www.hawaiicaptives.com



GRAND CAYMAN

Cayman Captive Forum:
Grand Cayman:
November 27 - 29



FLORIDA

World Captive Conference:
Adventure, FL:
January 28 - 30, 2013

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Artex Access Bermuda Market Update

Bermuda Market Access

Known as *The World's Risk Capital*, Bermuda is home to one of the largest and most important insurance and reinsurance markets in the world. Supported by more than 40 carriers with capital greater than \$100 billion - this dynamic insurance market is able to provide creative, competitive, and highly rated capacity.

PRIMARY LINES OF BUSINESS AND EXPERTISE:

- Excess Casualty
- Healthcare Liability
- Professional Lines
- Property / Property CAT
- Punitive Damages Wraps
- Specialty Coverages



The Bermuda Market permits access only through properly authorized Bermuda brokers. All carriers used by Artex Risk Solutions (Bermuda) Ltd, maintain an, A.M. Bests rating of "A-" (Excellent) or higher.

Bermuda Market Product Feature:
By Carl Daley



EPLI Increasing in Importance

The U.S. Equal Employment Opportunity Commission (EEOC) recently reported that 2010 saw the largest number of employment related discrimination charges ever reported. Employment related lawsuits are on the rise, having totaled nearly 100,000 in 2010. That year also saw the largest punitive damage award in history for any class action employment discrimination case - a \$250 million judgment against a large pharmaceutical company. Fortunately such large awards are rare however the increases in both the frequency and severity of employment-related claims mean that it is time to review Employment Practices Insurance (EPLI) coverage.

EPLI provides protection against employee lawsuits, including claims of:

- Harassment (sexual or otherwise including hostile work environment)
- Discrimination
- Wrongful termination or treatment
- Retaliation (including retaliation against whistleblowers)
- Common law violations

The Bermuda market is considered the most progressive in offering EPLI coverage. Bermuda insurers typically include coverages not available from mainland U.S. carriers. There are currently thirteen Bermuda carriers collectively offering EPLI capacity of \$250 million.

Coverage is best suited for employers having more than 10,000 employees. Placement is available on a worldwide basis with no excluded industries.

- Flexible retention options: single or multi-plaintiff, retentions under \$1million available
- Claims reported policy
- Full Punitive and Exemplary Damages coverage included - no need for punitive wrap
- Fines and penalties coverage (where insurable under most favorable law)
- *Pay on behalf* of policy with *no duty to defend*
- Broad definition of "Employee", "Loss", "Retaliation" and "Wrongful Act"
- Automatic coverage of new subsidiaries with less than 5,000 employees
- Third party coverage included; no sublimit
- Flexible arbitration
- Bordereau reporting for certain claims
- 60 day post policy reporting of claims

There is no doubt that employment practices liability is a growing concern for all employers.

To learn more about this important coverage or how to access the dynamic Bermuda Insurance Market, contact: artexintermediaries@artextrisk.com or 441.294.4343



ARTEX XTRA

New Design and Management Capabilities Brochure is now available

Think of Artex Risk Solutions as the architect that helps insureds build dynamic and unique captive programs designed to manage their cost of risk more efficiently. We provide insureds the ability to unbundle each structural component so they can customize an insurance program that supports specific business and financial objectives.

Download our new brochure at artextrisk.com/brochures. For information on our captive design and management capabilities please contact: artexdesign@artextrisk.com or 802.922.9450

AEX Artex Exchange Educational Videos Available

Artex Exchange is a program designed for businesses with large deductible or self-insured workers compensation programs. While retaining risk lowers the cost of insurance, a business normally cannot reduce its expected loss volatility or take a loss reserve tax deduction for its retained risk. AEX can solve both problems!

We have recently produced three short introductory videos for Artex Exchange and added them to our web site. Each of these videos, as well as an educational webinar recording, may be accessed on the following Artex web site addresses:

AEX Introductory Videos:
www.artextrisk.com/brochures
AEX Educational webinar:
www.artextrisk.com/artexwebinar

Discover how the Artex Exchange can enhance your self-insured or large deductible program, contact: artexaex@artextrisk.com or 480.553.6227.

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Artex Design and Management

by Karl N. Huish



Fortress Insurance LLC

A Third Alternative for Small Captives

For many years, small captive (831b) owners were faced with a simple choice between an offshore captive and a domestic captive. Small offshore captives were less expensive to own because of actuarial and audit waivers, no premium tax, lower licensing fees and lower capitalization requirements. However, if the costs would have been equal, most owners would have preferred domestic captives because of their greater confidence in the U.S. legal system, concerns about "offshore" entities and lack of understanding regarding foreign domiciles.

In late 2010 another option emerged - the Delaware Series Business Unit captive. Fortress Insurance, LLC was established by Artex as a "Series LLC" (following Delaware series LLC legislation), permitting separate "series business units" (SBUs) to be established within a larger "core" captive.

Artex formed 12 Delaware SBUs in 2010, and 32 in 2011, so by year-end 2011 we had 44 separate SBUs operating within Fortress. Each SBU files a separate tax return and is treated as a separate insurance company for federal tax purposes, according to the guidelines established by the IRS.

Fortress is the largest SBU facility in Delaware and perhaps the largest domestic "cell" captive in the country. It is a robust facility that can handle just about any type of risk or captive. Fortress can be used for pools, 831(b) captives, larger captives, group captives, etc. Fortress itself assumes no risk - the risk is taken by each of the SBUs. The core is capitalized at the statutory \$250,000 amount.

Why is Fortress so popular?

1. Capital requirements for most Fortress SBUs will be \$100,000. In certain circumstances capital may be as low as \$25,000. This compares favorably to most domestic domiciles, which have a \$250,000 capital minimum.
2. A Fortress SBU will save approximately \$10,000-\$15,000 annually in comparison with other domestic captives. Savings come from reduced premium taxes, reduced audit and actuary costs, and reduced legal costs.
3. Formation can take just weeks rather than months.
4. Each SBU is treated as a standard, pure captive for investment flexibility and accounting. There is no sharing of risk between each SBU (although each SBU may participate in an external risk pool).
5. Delaware has a great reputation for good corporate governance.
6. Fortress is approved to write many types of risks, including: excess or reinsured workers compensation insurance, service contract and extended warranty, enterprise risk coverages, AL/GL, employee benefits, property, fiduciary/crime, D&O, E&O, risks specifically excluded or limited in standard commercial policies, business interruption (e.g., loss of key contract, loss of key supplier, loss of key employee and mechanical breakdown), cyber liability, collection risk, deductible reimbursement, pollution, product recall, and custom coverages.

While SBUs can be separately managed from any location, they are coordinated from Artex offices in Mesa, AZ. Though organized as an "LLC," Fortress is treated for tax purposes the same as all domestic captives, which are taxed as C corporations under subchapter L of the U.S. tax code.

Karl Huish is Division Senior Vice President - Microcaptive Strategy Leader for Artex. For additional information on Fortress or Artex's micro captive capabilities, contact: karl_huish@artextrisk.com or 480.553.6227

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Artex Risk Solutions holds periodic webinars which address a variety of alternative risk topics. To ensure that you are on our e-mail notification and subscription list, please send an e-mail to artexinfo@artex.com or register through our web site: artextrisk.com

WEBINARS:

Upcoming topics include:

- Benefit Captives
- Micro Captives 831(b)
- Strategic Risk Analysis
- Claims Advocacy
- Artex RiskExchange

And much more



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By Phillip C. Giles, CEBS



The 60-second Seminar:

PPACA, Self Funded Medical Plans and ERISA Preemption

Self-Funding and PPACA Implications

With the recent Supreme Court ratification of the Patient Protection and Affordability Care Act (PPACA), self-funding of health care benefits through group stop-loss captives is expected to gain in popularity, particularly for middle-market employers. Several states are, however, worried about the potential for adverse selection against newly mandated health insurance exchanges. The fear is that "good risk" employers, those having young, healthy employee populations, may elect to self-insure, thus diluting the "quality" within the risk pool for insurance exchanges. This has led the National Association of Insurance Commissioners (NAIC) as well as a few individual states to explore increased regulation of stop-loss insurance, including changes to the NAIC Stop-Loss Model Act. The most frequently discussed changes are increases to minimum specific deductibles – \$95,000 has been proposed in California – and minimum aggregate attachment points as high as 130% of expected claims. Assessment of self-funded plans on a per-participant (covered individual) basis is also likely to gain traction to help fund state insurance exchanges.

The Self-Insurance Institute of America, Inc. (SIIA) is currently planning an aggressive litigation strategy in response to anticipated state-level actions to increase the regulation of stop-loss attachments. The SIIA litigation strategy will be based largely on the preemption authority of the Employee Retirement Income Security Act (ERISA), outlined below, which dictates that individual states cannot impose regulations which have the affect of directly or indirectly regulating an employer's ability to self-fund.

Self-funding and ERISA Preemption:

When employee benefit plans are discussed, it is important to distinguish between the *benefit plan* and *health care insurance* as they are two very different items. The U.S. Department of Labor governs benefit plans via ERISA while individual states regulate insurance.

The *benefit plan* is the formally defined set of benefits provided by the employer to its employees. The employer is ultimately responsible for funding and providing the benefits, as defined by the plan, to employees. An employer can choose to self-fund the plan or purchase insurance (i.e., fully-insured) to transfer the financial risk. Whether self-insured or fully-insured, the benefit plan itself must be compliant with ERISA.

States do regulate *insurance*, but not employee benefit plans. Since states regulate insurance, they acquire the ability to regulate "fully-insured" benefit plans by dictating minimum coverage levels and policy provisions provided by insurance that might otherwise not be provided by a benefit plan. If an employer chooses to self-insure its benefit plan, the state has no regulatory authority as no insurance has been applied to the benefit plan.

Employers that self-insure a plan typically purchase stop-loss coverage to cap their claims frequency levels and severity exposure. States do regulate stop-loss insurance coverage but cannot do so at a level that affects the underlying benefit plan.

The ability of a self-funded benefit to preempt state insurance regulation is provided by ERISA through three interrelated clauses:

1. **Preemption Clause:** generally preempts any state laws that relate to the benefit plan.
2. **Saving Clause:** acknowledges that it is not the intent of the Preemption Clause to take away the state's right to generally regulate insurance
3. **Deemer Clause:** forbids the states to "deem" a self-insured employee benefit plan to be engaged in the business of insurance.

An ERISA plan is an actual legal entity (like a corporation or trust) separate from the employer. The three clauses protect private-

employer plans from any direct or indirect state regulation. The *Preemption Clause* excludes ERISA plans from regulation by state insurance laws, the *Saving Clause* recognizes (and preserves) the state's right to regulate insurance, and the *Deemer Clause* states that an ERISA plan itself can not be considered "insurance" and thus is not within the state's regulatory authority over insurance.

Attachment Anarchy

Stop-loss is a *follow-form* type of excess insurance that responds to the actual coverage provided by the benefit plan (via the plan document). States can regulate this coverage but, as per ERISA, not in such a way that directly or indirectly attempts to regulate the benefit plan itself.

As a general guideline, specific stop-loss deductibles set between 10%-15% of expected claims are considered suitable for most mid-sized self-insurers. SIIA contends that, by mandating minimum stop-loss attachments at higher than appropriate levels, states are attempting to indirectly regulate benefit plans, which conflicts with the sovereignty of ERISA. If the states are successful in promulgating minimum attachments to the aforementioned levels, it will significantly limit the ability of many employers with under 100 insured lives to self-insure.

Regardless of minimum attachment mandates, we expect individual self-insurance and the use of group captives to fund medical stop-loss exposure to continue to expand as the effects of PPACA take hold.

Artex will be tracking developments with the SIIA litigation and will provide periodic updates as they become available.

Phillip C. Giles, CEBS is Division Vice President - Marketing, and can be reached at phil_giles@artextrisk.com or 910.295.9800