

# Bermuda Captive Seminars 2011



**November 15, 2011**

**Toronto, Canada**

# Introductions

## Moderator:

- Beverley Todd, Executive Vice President, JLT Insurance Management (Bermuda) Ltd.

## Speakers:

- Susan Lane, Senior Vice President, Aon Insurance Managers (Bermuda) Ltd.
- Shelby Weldon, Director of Insurance, Bermuda Monetary Authority
- Kevin Klippenstein, CFO, Parrish and Heimbecker, Limited
- Paul Leighton, Analyst/Captive Advisory, Corporate Protection Group
- Jason Carne, Partner, Insurance, KPMG in Bermuda
- Nicolas P. Warren, Senior Vice President, Marsh IAS Management Services (Bermuda) Ltd.

**Susan Lane, Senior Vice President  
Aon Insurance Managers (Bermuda) Ltd.**

**November 15, 2011**

**Toronto, Canada**

# Introduction

- Structure
  - What is a Captive?
  - Types of Captives
- Historical Development
- Global Captive Domiciles
- Why form a Captive?

# Structure – What is a Captive?

An *insurance* company  
that provides insurance *to* and is  
*controlled* by its owners.

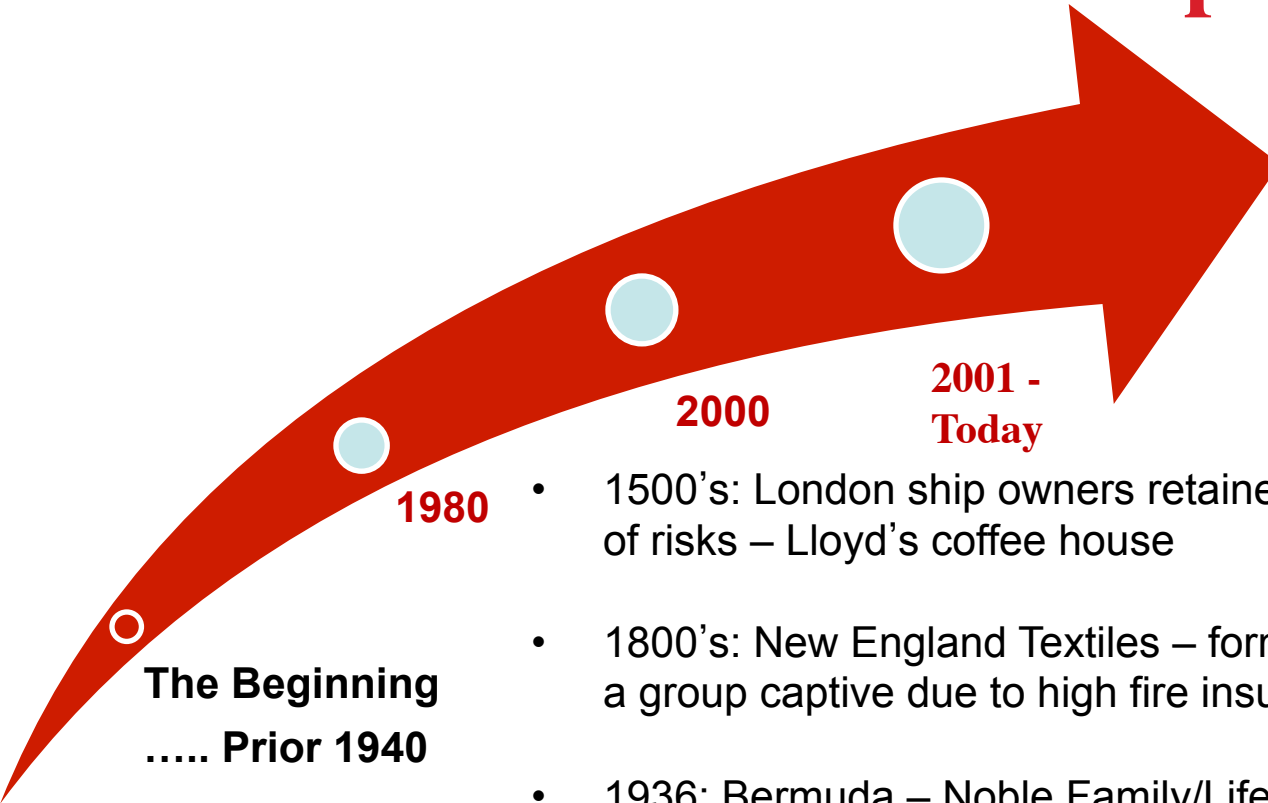
# Structure – What is a Captive?

- Insurance subsidiary of commercial/financial company, or a consortium or an association of individuals
- Formed to primarily insure, or reinsure the risks of its parent, or of a number of parties with risks in common or unrelated risk
- Usually formed in a specialized environment or “domicile” – “onshore” or “offshore”

# Structure – Types of Captives

- Single Parent (Pure)
- Multi-owner (Group) or Association
- Protected or Segregated Cell Captive (PCC, SPC, SAC) – any of the above
- Long Term
- Special Purpose Insurer

# Historical Development



**The Beginning  
..... Prior 1940**

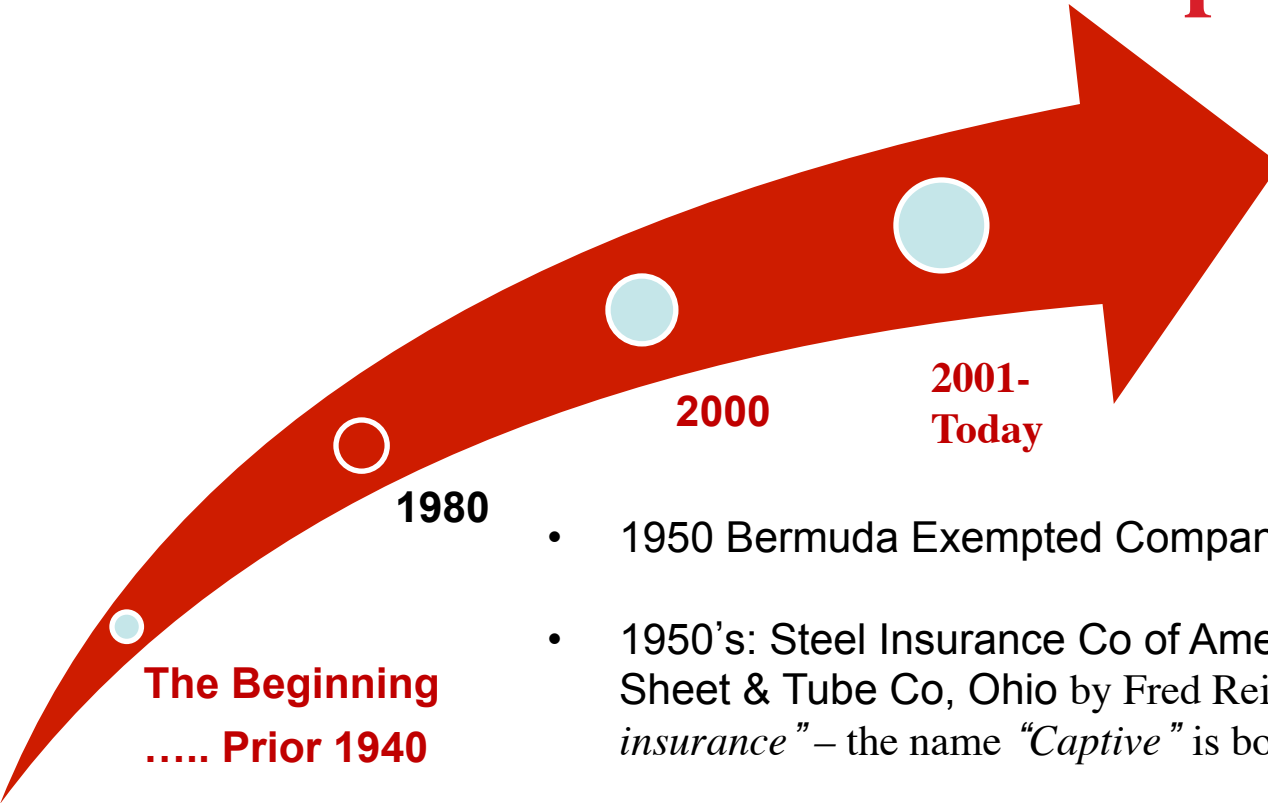
**1980**

- 1500's: London ship owners retained, shared & transferred cost of risks – Lloyd's coffee house
- 1800's: New England Textiles – formed Factory Mutual System, a group captive due to high fire insurance rates
- 1936: Bermuda – Noble Family/Lifesavers Candy formed Elbon – recognized offshore benefits to Parent Co to shelter non-US earnings
- 1939: World War II

**2000**

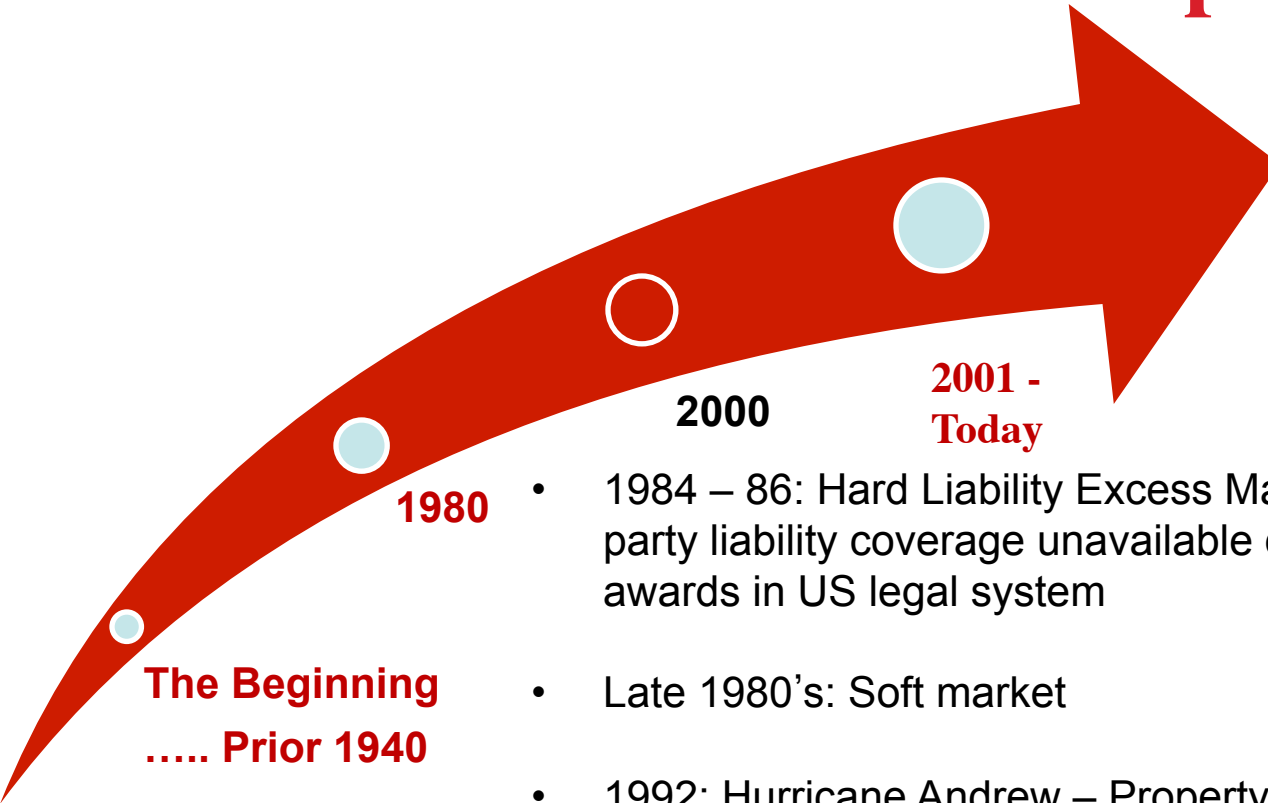
**2001 -  
Today**

# Historical Development



- 1950 Bermuda Exempted Company Act
- 1950's: Steel Insurance Co of America set up for Youngstown Sheet & Tube Co, Ohio by Fred Reiss *"the father of captive insurance"* – the name *"Captive"* is born
- 1962: International Risk Management set up in Bermuda
- 1970: Companies (Incorporation By Registration) Act
- 1978: Insurance Act & regulations

# Historical Development



**The Beginning  
..... Prior 1940**

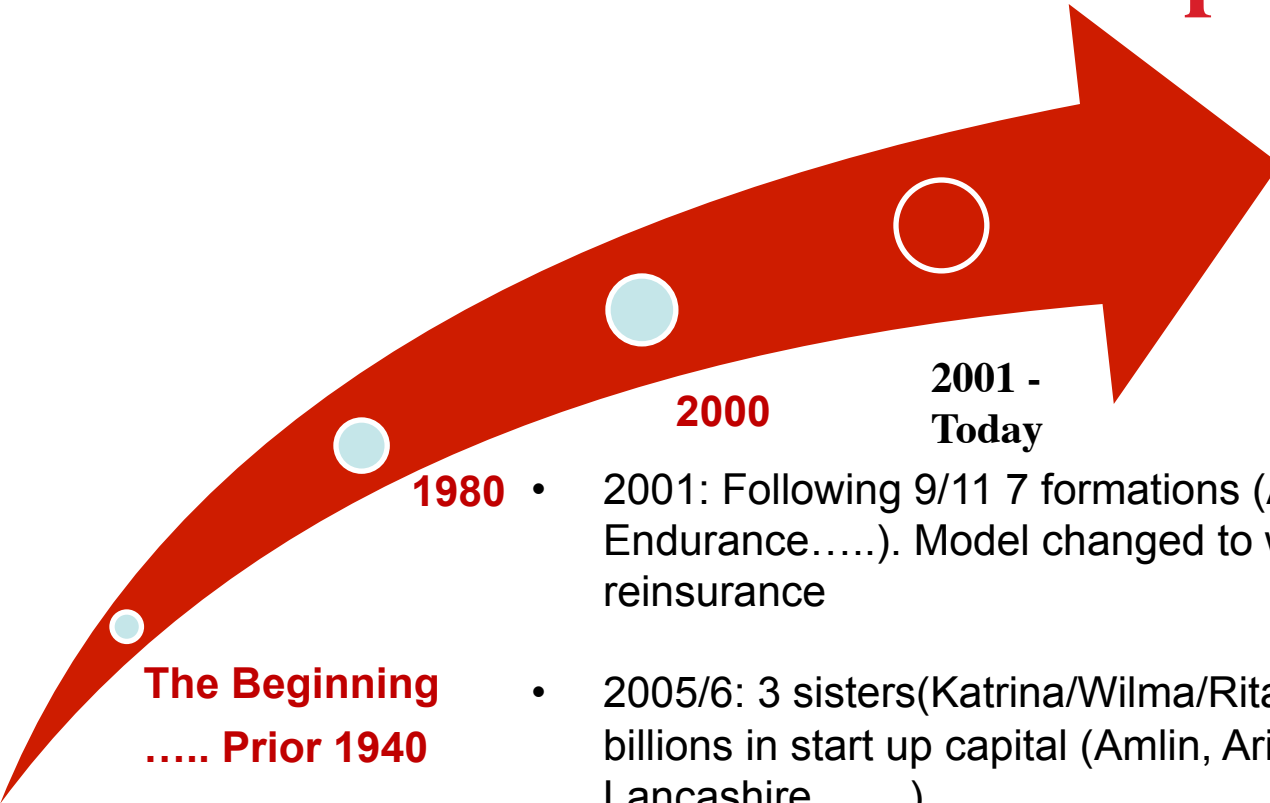
**1980**

- 1984 – 86: Hard Liability Excess Market. ACE & XL formed – 3<sup>rd</sup> party liability coverage unavailable due to punitive damages awards in US legal system
- Late 1980's: Soft market
- 1992: Hurricane Andrew – Property/Cat cover dried up – Bermuda took off with new formations and acquisitions
- 2000: Segregated Accts. Company Act (2002 & 2004 Amendment Acts)

**2000**

**2001 -  
Today**

# Historical Development



- 2001: Following 9/11 7 formations (AWAC, AXIS, Endurance.....). Model changed to writing both insurance and reinsurance
- 2005/6: 3 sisters(Katrina/Wilma/Rita) formations supplied billions in start up capital (Amlin, Ariel Re, Flagstone., Hiscox, Lancashire .....
- 2010: Over 50 global domiciles
- 2010: 5,617 captives

# Global Captive Domiciles

## 2010

|                  |     |
|------------------|-----|
| ● Bermuda        | 845 |
| ● Cayman         | 738 |
| ● Vermont        | 572 |
| ● Guernsey       | 341 |
| ● Anguilla       | 252 |
| ● Luxembourg     | 244 |
| ● Barbados       | 242 |
| ● BVI            | 219 |
| ● Turks & Caicos | 211 |

# Source of Global Business

- *Only 47% of the world's 1,500 largest companies own a captive ("Global 1500 – a captive insight" Aon)*

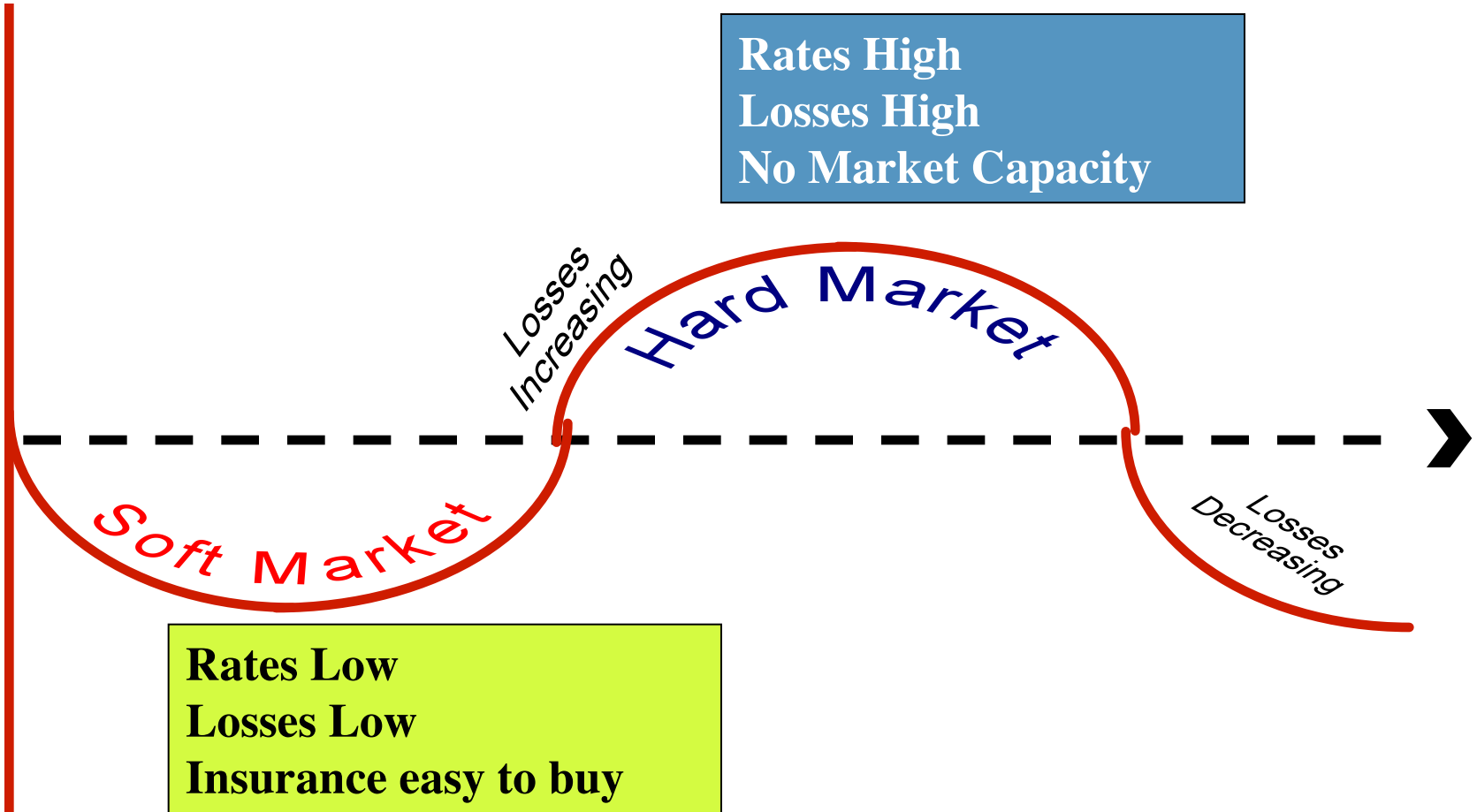
## *Traditional Markets*

- United Kingdom
- United States
- Europe

## *Emerging Markets*

- Canada
- Far East
- South America

# Understanding the Market



# When Does A Captive Make Sense

- Commitment of senior management
- Insurance programs of significant premium size
- Good loss experience
- Degree of loss control capability
- Clearly defined objectives
- Significant lag between loss occurrence and payment dates
- Level of risk retention determined
- Co-operation of direct & reinsurance markets
- Possible tax benefits

# Why Form A Captive?

- Reduce the Total Cost of Risk
- Risk Management Reward & Focus
- Direct Reinsurance Market Access
- Additional Capacity
- Flexibility in Program Design
- “Uninsurable” Risk
- Profit Centre
- Information and Control

# **Shelby Weldon, Director of Insurance Bermuda Monetary Authority**

**November 15, 2011**

**Toronto, Canada**

# Bermuda Monetary Authority (“BMA”)

- Integrated regulator of the financial services sector in Bermuda.
- Established in 1969.
- Independent of Bermuda government but accountable to it.
- Risk based financial regulations that applies to the supervision of Bermuda’s banks, trust companies, investment businesses and insurance companies.
- Leading role in developing international standards and cooperation among financial services supervisors
- Member of International Association of Insurance Supervisors (“IAIS”)
- Tax information and exchange agreement (“TIEA”) regulation is not within the remit of the BMA.

# TIEA Administration

- Minister of Finance has responsibility for signing TIEAs and receiving requests.
- Dedicated unit at the Ministry of Finance – Treaty Unit.
  - Negotiates TIEAs & associated economic development agreements
  - Responds to TIEA requests
  - Responds to annual summary assessments and policy reviews conducted by UK and OECD.

# Memorandum of Understanding

- MOU signed in August 2008 with The Office of the Superintendent of Financial Institutions (“OSFI”) in Canada.
- Formalizes the basis for consultation, cooperation, coordination between BMA and OSFI
- Covers procedures for requesting and providing investigative assistance where appropriate.

# Bermuda Regulation

- Bermuda has a diversified portfolio of insurers.
- Appropriate supervision over diversified portfolio achieved through:
  - Risk based approach
  - Thoughtful application of regulatory provisions consistent with nature, scale and complexity in business.
  - Proportionality
- Not a one size fits all approach to regulation. Various licence categories support this.
- Insurance regulation at BMA split into Licensing, Authorisations, and Complex Institutions.

# BMA Service Standards – 2011 Targets

- Application to incorporate Company
  - Can have a same day response.
- Application for insurance licence
  - Can be done concurrently to incorporation.
  - Complete applications received by 5pm on Monday will be reviewed and responded to on Friday:
    - Approval
    - Deferral
    - Declination
- Final registration and insurance licensing
  - Upon approval of application and receipt of all documentation approval for registration can take 3 business days.

# The Move to Bermuda

- **Introduction:**
  - Regulatory comparison - Bermuda vs. Barbados
  - How to migrate your business into Bermuda
    - Portfolio transfer
    - Discontinuance
    - Incorporate a new insurance company
  - Some practical consequences and considerations to consider before moving residence

# Regulatory Comparison

- Bermuda is considered a mature jurisdiction in terms of regulation
  - Introduction of Solvency II has necessitated material changes to regulation in Bermuda
    - Code of Conduct
  - HOWEVER, regulation of captives remains largely unchanged
- Balanced against Bermuda's significant and sophisticated infrastructure and service community (lawyer, accountants, insurance managers etc..)
- BMA has global credibility and standing

# Regulatory Comparison

|   | BERMUDA  | BARBADOS  |
|---|--|---|
| <b>Insurance Regulation and Legislation</b>   | The Insurance Act 1978 (as amended)<br>The Insurance Accounts Regulations 1980 (as amended)<br>Insurance Returns and Solvency Regulations 1980 (as amended)<br>The Companies Act 1981 (as amended)   | The Insurance Act 1996-32, as amended 2004<br>Exempted Insurance Act, 308A, as amended 2001 and 2004<br>Exempt Insurance (Delegation of Functions)<br>Exempt Insurance (Forms and Fees)<br>Exempt Insurance (Tax concessions)<br>Exempt Insurance (Holding companies)<br>The Companies Regulations<br>The Companies Act 1982  |
| <b>Number of Captives</b>                     | Approximately 845 captives (2010)  | Over 220 captives (2010)  |
| <b>Regulatory Agency</b>                      | The Bermuda Monetary Authority ("BMA")   | Ministry of Finance – Supervisor of Insurance ("SOI")   |
| <b>Classes of Captive Insurance Companies</b> | <p><b>Class 1:</b> Pure captives, or companies which write coverage for a group of affiliates.</p> <p><b>Class 2:</b> Insurers owned by unrelated shareholders who insure the risks of any of those shareholders or their affiliates. These insurers may also insure business which, in the opinion of the regulator, is connected with the operations of the shareholders or their affiliates. These are, essentially, association captives and agency captives, which may write a maximum of 20% third party business. Class 2 also includes certain pure or group captives which write a maximum of 20% third party business.</p> <p><b>Class 3:</b> Insures whose percentage of unrelated business is between 20% and 50% of net premiums.</p> | <p>Exempted Insurance Company (EIC): an international insurer which only insures risks located outside of Barbados, where the premium is paid from outside of Barbados.</p> <p>Qualifying Insurance Company (QIC): an international insurer was no more than 10% of its gross revenue from insurance premiums originates from within the Caribbean Single Market and Economy. QICs can be newly-formed insurers or branch insurers registered under the Insurance Act, or an insurer previously registered as an EIC.</p> |

# Regulatory Comparison

|                                   |  |  |
|-----------------------------------|--|--|
| <b>Share Capital Requirements</b> | Classes 1, 2, 3 must have an authorized, issued and fully paid share capital of at least \$120,000;  | Minimum paid in capital for all types of international insurers of US\$125,000 (Bdos\$250,000). Additional surplus may be required based on the amount and type of business.   |
| <b>Solvency Ratios</b>            | <p>There are minimum solvency margins for Classes 1, 2 and 3 insurers, where the general business assets of an insurer must exceed its general business liabilities by the greater of:</p> <p>1) <b><u>Capital Test</u></b></p> <ul style="list-style-type: none"> <li>• Class 1 - \$120,000;</li> <li>• Class 2 - \$250,000;</li> <li>• Class 3 - \$1,000,000.</li> </ul> <p>2) <b><u>Premium Test</u></b></p> <p>For Classes 1, 2 or 3, where net premiums written in a given year do not exceed \$6 million, the solvency margin is 20% of net premiums written. For premiums written in excess of \$6 million, the solvency margin is \$1.2 million plus 10% of the excess for Classes 1 and 2, and 15% of the excess for Class 3. For Classes 1, 2 and 3, "net premiums written" means the net amount, after deductions of any premiums ceded by the insurer for reinsurance, of the premiums written by that insurer during that year in respect of its general business.</p> <p>3) <b><u>Loss Reserve Test</u></b></p> <p>This test applies the relevant percentage to the insurer's provisions for losses and loss expenses and other general business insurance reserves (lines 17 and 18, respectively, of the statutory balance sheet). The relevant percentage for this test varies by Class: for Classes 1 and 2 it is 10% and for Class 3 it is 15%.</p> | <p>1. Year 1, minimum paid in capital for all types of international insurers: US\$125,000. Additional surplus may be required based on the amount and type of business written.</p> <p>2. Year 2 forward, General Business Solvency Ratios:</p> <ul style="list-style-type: none"> <li>- US\$125,000 if premium written (net of reinsurance) is less than US\$750,000</li> <li>- A minimum capital of 20% of net premium, if net premium is between US\$750,000 and \$5,000,000</li> <li>- If net premium in the preceding year is greater than US\$5,000,000 minimum, capital is US\$1,000,000 plus 10% of the amount of premium above the US\$ 5,000,000 minimum</li> </ul> <p>3. Capital can be cash or a valid and irrevocable letter of credit drawn on or confirmed by an approved bank</p> <p>4. Admitted assets for purposes of solvency compliance include deferred acquisition costs, irrevocable Letters of Credit drawn or confirmed by a bank licensed in Barbados and inter-company receivables, if approved by the Supervisor.</p> <p>5. For segregated accounts companies, the assets attributable to a variable life insurance contract will not be counted as an asset of the insurer, for purposes of calculating solvency compliance.</p> |

# Regulatory Comparison

|                                      |  |  |
|--------------------------------------|--|--|
| <b>Incorporation Fee</b>             | Incorporation fee: BD\$ 269  | Incorporation fee: Government fee of US\$ 400  |
| <b>Application Fee</b>               | Application fee: BD\$ 580  | Application fee: US\$ 425 to be registered as an International Business Company (IBC)  |
| <b>Professional Fee</b>              | Approximately US\$15,000 total   | Approximately US\$15,000 total   |
|                                      |  | Government fee approximately US\$1,520   |
| <b>Annual Insurance Business Fee</b> | <p><b><i>Class of Insurer and Type of Business</i></b></p> <p>Class 1 (general business only)      \$971<br/>           Class 2 (general business only)      \$2,200<br/>           Class 3    \$12,000</p>  | All captives are subject to an annual fee of US\$10,000. This fee was recently increased in 2009 from US\$2,500.   |
| <b>Taxation</b>                      | Under Bermuda law, insurance companies are not required to pay taxes in Bermuda on either income or capital gains. They can apply to obtain a certificate of tax exemption from the Registrar of Companies under the provisions of the Exempted Undertakings Tax Protection Act 1966, as amended. Companies can apply for an assurance that they will be tax exempt from paying taxes on income or profits until 2035. | <p><b>EICs</b> are subject to 0% taxation on its taxable income for its first 15 years.</p> <p>At the end of the 15 years an EIC is taxed at a rate of 2% on the first US\$125,000 of taxable income and at a rate of 0% in respect of all other taxable income in excess of US\$125,000.</p> <p><b>QICs</b> fall under the domestic tax legislation. The general corporation tax rate in Barbados is 25%, but a QIC is entitled to a foreign currency earnings credit of up to 93%, effectively reducing the tax rate to 1.75%.</p> |

# Regulatory Comparison

|   |  |  |
|---|--|--|
| <p><b>Domicile Presence And Service Providers</b></p> | <p>Under the Insurance Act 1978 every insurer must maintain a principle office in Bermuda and appoint a principle representative in Bermuda.</p> <p>Required:</p> <p>Principal Representative (approved by the BMA)<br/>         Auditor (approved by the BMA)<br/>         Loss Reserve Specialist (exception Class 1 insurers) (approved by the BMA)<br/>         Actuary (long-term insurers) (approved by the BMA)</p> | <p>An international insurer must appoint a registered agent within Barbados, use a Barbados licensed insurance manager, and maintain copies of corporate, underwriting and financial records in Barbados.</p> <p>Required:</p> <p>Registered Office<br/>         Insurance Manager (must be licensed by the SOI)<br/>         Resident Representative (must report to the SOI)<br/>         Auditor (approved by the SOI)</p>  |
| <p><b>Statutory Filing Requirements</b></p>           | <p>Under the Insurance Act 1978 every insurer to prepare annual statutory financial statements and a statutory financial return to the BMA. It should be noted that Class 1 insurers only are required to file a statutory financial return.</p>   | <p>International insurers are required to file audited statements with the SOI. Long term (life) insurers must annually file an actuarial certificate of adequacy of reserves. If the liabilities of a general business insurer are more than 200% of its equity, an actuarial review to determine adequacy of reserves is required.</p> <p>The SOI must be notified within 30 days of a change in Directors, and a filing of all changes in Directors and Officers will also be made with the Registrar of Companies.</p> |

**Kevin Klippenstein, CFO**  
**Parrish and Heimbecker, Limited**

**November 15, 2011**

**Toronto, Canada**

# Parrish and Heimbecker, Limited

- Introduction:
  - Parrish & Heimbecker
- Strategic Evaluation:
  - Why a captive was considered?
- Domicile:
  - Why Bermuda?

# **Paul Leighton, Analyst/Captive Advisory Corporate Protection Group**

**November 15, 2011**

**Toronto, Canada**

# Who has taken advantage of a Captive Program?

| <u>Type</u>                   | <u>Benefit</u>                            |
|-------------------------------|---|
| Fabrication Company           | Known claims activity                     |
| Franchisee Structured Company | Collective, Best in class                 |
| Big Risks (Mines/Airlines)    | Retention and access to specialty markets |
| Others                        | Bonding, Warranty, Credit, Political Risk |

**“The Time To Repair The Roof Is When The Sun Is Shining”**

John F. Kennedy

# Bermuda Now

- One of the largest insurance and reinsurance centers in the world
- Competitive manager market – (fees on par with other domiciles)
- Mature and knowledgeable service providers
- Specific legislation to address Cell Captives

# Cell Captives

Can be owned by parent, insurer, or others and be 'rented' to 3<sup>rd</sup> parties. Also known as:

- Segregated Account Companies – Bermuda (Birthplace) and Barbados
- Segregated Portfolio Companies – Cayman, BVI
- Protected Cell Companies – Guernsey, Isle of Man
- Sponsored Cell Companies – US (DC is exception, no carrier required)

# Cell Captives Advantages

- Minimal security
- Fast
- Segmentation
- Shared costs
- Lower fees
- Capital protected by legislation from impact by other Cell members

# OSFI Impact

- No Standard Reinsurance Trust Agreements
- Minimal Standards for Collateral Requirements
- Best Practices approach to Capital/Assets for unauthorized reinsurance

# Structured Captive Support Process

- Strategic Approach
- Risk Identification Cost Benefit Analysis
- Establish Structure and Services
- Profit Protection and Monitoring

# Jason Carne, Partner KPMG Bermuda

November 15, 2011

Toronto, Canada

# TIEA

What is a TIEA?

- A bilateral agreement to provide assistance in tax matters through an exchange of information to assist two countries in administering, enforcing, and collecting their respective taxes
- Driven by the Organization for Economic Co-operation and Development (“OECD”)
- The Bermuda Government has entered into 27 TIEAs to date

# Importance of TIEA to Bermuda

- Demonstrates at an international level Bermuda's commitment to financial transparency and international regulatory standards that match those of other major developed countries
- Builds on Bermuda's good reputation for being an appropriately regulated domicile of choice
- Levels the playing field from a tax perspective

# Statistics

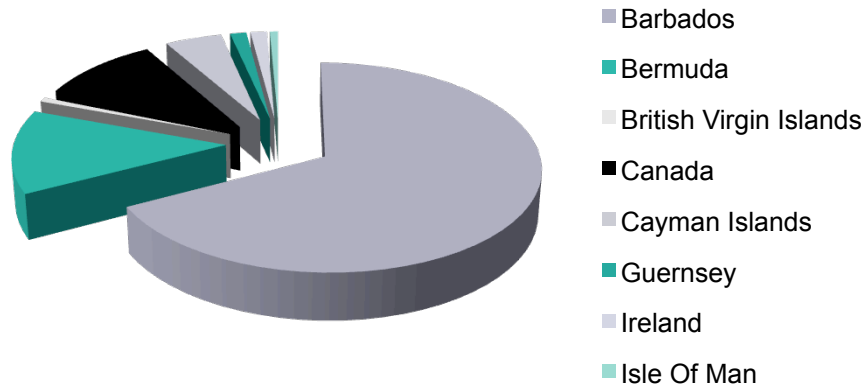
## Bermuda Insurance Statistics 2009

|                | <b>Number of Insurers</b> | <b>Assets (2009)</b> | <b>Gross Premiums (2009)</b> |
|----------------|---------------------------|----------------------|------------------------------|
| Canadian       | 27                        | \$9,553,458,000      | \$239,755,000                |
| Total Insurers | 1,348                     | \$496,051,351,000    | \$119,757,317,000            |

# Captive Insurance – *The Opportunity*

Implementation of the TIEA between Canada and Bermuda, plus others expected going forward, widens viable captive domiciles for Canadian companies. Traditionally Canadian companies have selected Barbados primarily due to the double tax treaty between the countries. The Bermuda TIEA can provide similar benefits as a double tax treaty.

## Canadian captives by domicile



Source: A.M. Best captive data  
2008

We believe there are currently a low level of Canadian companies with captive operations compared with other markets such as the USA and UK. With increased choice of captive domiciles viable for Canadian companies we believe a significant opportunity exists for Canadian companies to establish a captive or re-evaluate the domicile of any current captive.

# Who Might Benefit?

- Most Canadian groups should evaluate forming a captive if there is sufficient critical mass. Potential beneficiaries would include the following:
  - Canadian multinational company
  - Profitable in foreign jurisdiction
  - Business operations give rise to risks which require some form of insurance
  - Business risks may be currently self-insured or insured by an independent insurance company
  - Looking to take risk management procedures to the next level
  - Have risks that are difficult to cover in the commercial market

# What are some of the questions to ask?

## Treasury

- How much capital do I need and where should I hold it?
- What form should the capital take?
- How can I efficiently redeploy profits?

## Structuring

- Where should I domicile a captive?
- How do I structure an offshore captive
- Should I use a Protected Cell Company?

## International Tax Considerations

- What are the tax implications of the desired structure?
- Will the premiums suffer premium taxes?
- Are premiums tax-deductible
- Will the structure give rise to withholding tax implications?
- Will the undistributed profits of the captive be taxed in the hands of the owners?
- What are the transfer pricing implications?

## Operational

- Would my risk management strategy benefit from having a captive?
- How do I run my captive?
- How do I use my captive to control costs and reduce the cost of buying (re)insurance?
- What insurance related services can I provide?

## Regulatory

- How are captive insurance companies regulated?
- How can I avoid a unduly burdensome regulation?
- Are there any regulatory restrictions on writing captive business?

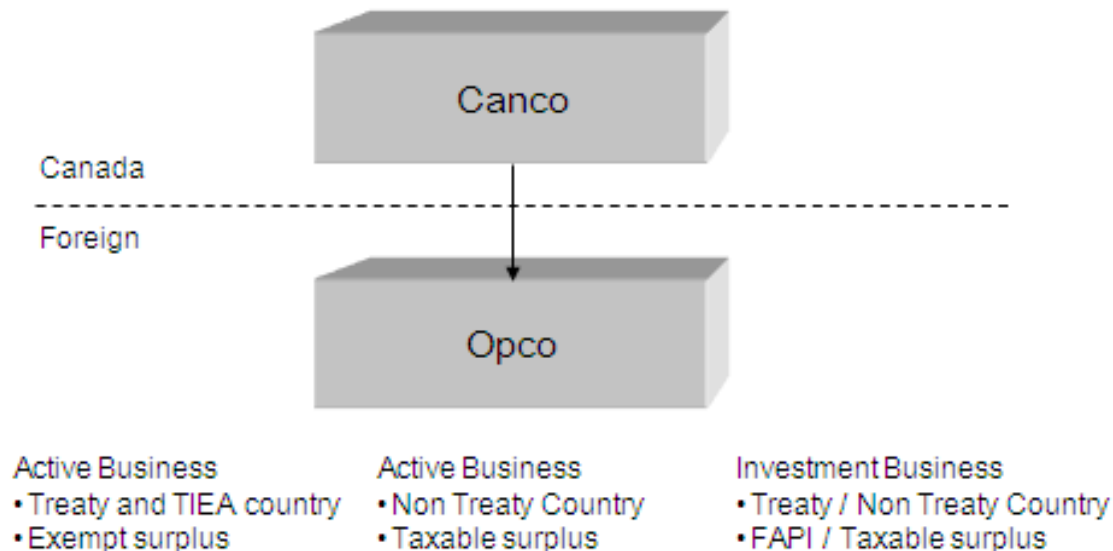
# Canadian Tax Regime

- **Foreign Affiliate**

- Exempt Surplus
- Taxable Surplus

- **Controlled Foreign Affiliate**

- Exempt Surplus
- Taxable Surplus / FAPI



# Tax Information and Exchange Agreements

- 2007 Federal budget
  - tax benefits for Canadian multinationals in respect of dividends received from corporations resident in countries that do not have a tax convention with Canada but sign a TIEA.
- Exempt Surplus
  - corporation resident in a TIEA country considered to be resident in a Treaty country.
- TIEA
  - sets out a framework for exchanging information between countries to help administer and enforce its tax laws.

# Current Status of TIEAs

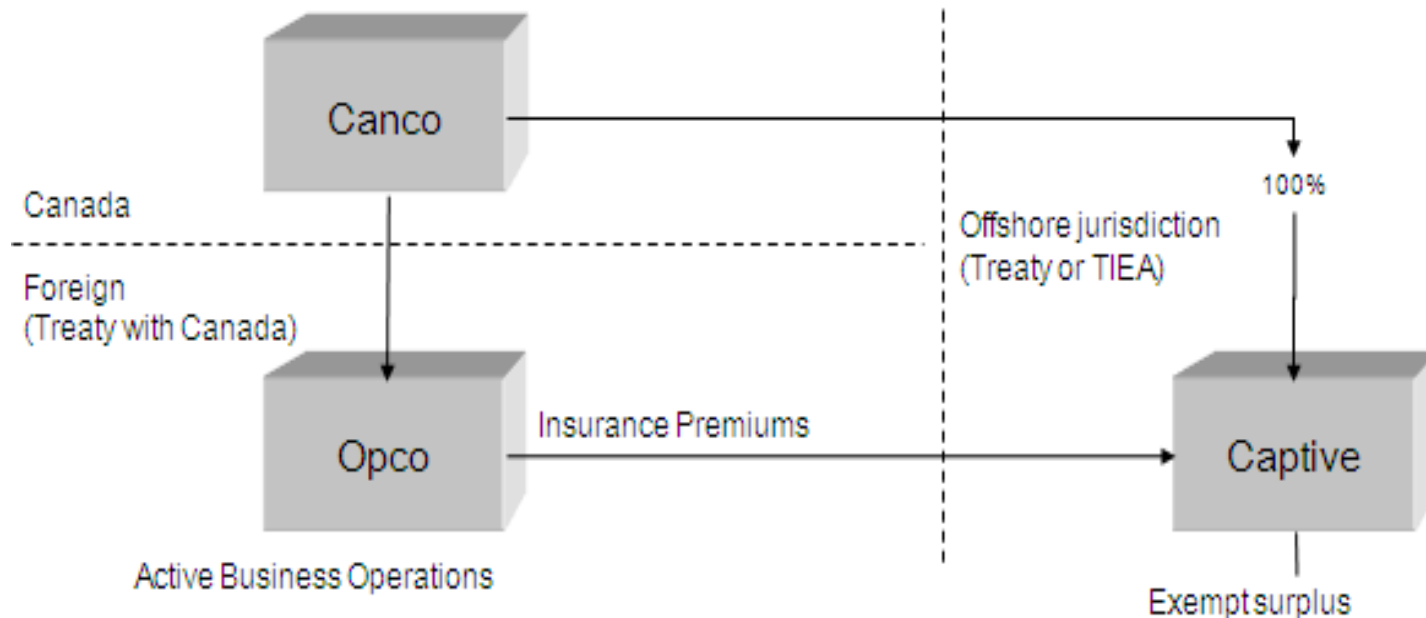
|   | Jurisdiction                     | Date                    |                  |
|---|----------------------------------|-------------------------|------------------|
| In Force                                      | Bermuda <sup>(2)</sup>           | June 2, 2011            |                  |
|   | Bonaire <sup>(1,4)</sup>         | January 1, 2011         |                  |
|   | Cayman Islands <sup>(2)</sup>    | June 2, 2011            |                  |
|   | Curacao <sup>(1,4)</sup>         | January 1, 2011         |                  |
|   | Saba <sup>(1,4)</sup>            | January 1, 2011         |                  |
|   | Saint Eustatius <sup>(1,4)</sup> | January 1, 2011         |                  |
|   | Saint Maarten <sup>(1,4)</sup>   | January 1, 2011         |                  |
|   | Signed                           | Anguilla <sup>(2)</sup> | October 28, 2010 |
|   |                                  | Bahamas <sup>(2)</sup>  | June 17, 2010    |
|   |                                  | Costa Rica              | August, 2011     |
| Dominica <sup>(2)</sup>                       |                                  | June 29, 2010           |                  |
| Guernsey <sup>(2)</sup>                       |                                  | January 19, 2011        |                  |
| Isle of Man <sup>(2)</sup>                    |                                  | January 17, 2011        |                  |
| Jersey <sup>(2)</sup>                         |                                  | January 12, 2011        |                  |
| Saint Lucia <sup>(2)</sup>                    |                                  | June 18, 2010           |                  |
| San Marino <sup>(2)</sup>                     |                                  | October 27, 2010        |                  |
| St. Kitts and Nevis <sup>(2)</sup>            |                                  | June 14, 2010           |                  |
| St. Vincent and the Grenadines <sup>(2)</sup> | June 22, 2010                    |                         |                  |
| Turks and Caicos <sup>(2)</sup>               | June 22, 2010                    |                         |                  |

|              | Jurisdiction           | Date              |
|--------------|------------------------|-------------------|
| Negotiations | Antigua and Barbuda    | November 16, 2010 |
| Commenced    | Aruba                  | May 25, 2009      |
|              | Bahrain                | June 29, 2009     |
|              | Belize                 | June 26, 2010     |
|              | British Virgin Islands | December 6, 2005  |
|              | Brunei                 | May 13, 2010      |
|              | Cook Islands           | August 15, 2010   |
|              | Gibraltar              | May 14, 2009      |
|              | Grenada                | November 27, 2010 |
|              | Liberia                | February 23, 2010 |
|              | Liechtenstein          | July 6, 2010      |
|              | Montserrat             | December 3, 2010  |
|              | Uruguay                | March 4, 2011     |
|              | Vanuatu                | July 21, 2010     |

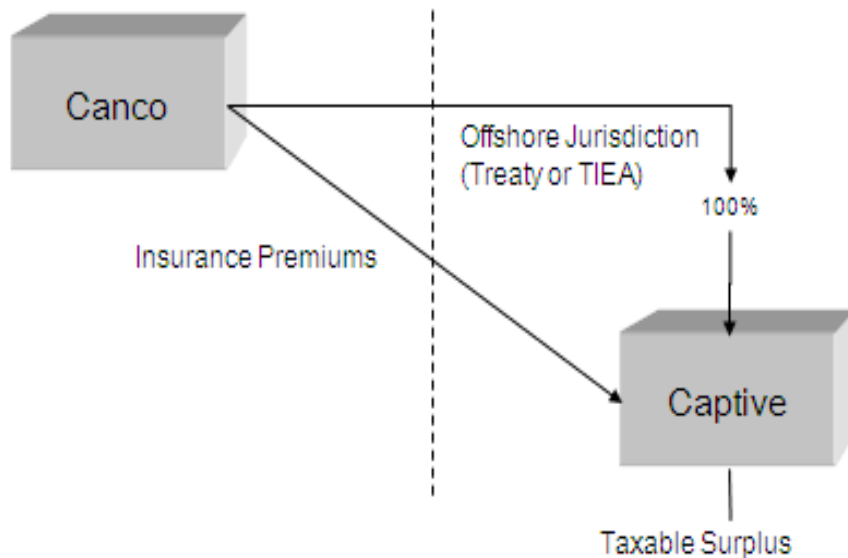
#### Notes:

1. Bonaire, Curacao, Saba, Saint Eustatius and Saint Maarten were formerly the Netherlands Antilles, which ceased to exist on October 10, 2010. However, the TIEA between Canada and the Kingdom of the Netherlands in respect of the Netherlands Antilles, will continue to apply to all five jurisdictions.
2. Taxes covered by these agreements – taxes on income, capital, and on goods and services imposed or administered by the Government of Canada
3. Taxes covered by these agreements – Taxes on income or on capital imposed or administered by the Government of Canada

# Foreign risks – Recharacterization Rule



# Canadian Risks – FAPI



- Result
  - Deduction in Canco
  - No recharacterization rule
  - FAPI
  - Income tax deferral

# Canadian Risks – FAPI

## Example:

|                     |                     |
|---------------------|---------------------|
| Premium Income      | \$10,000,000        |
| Qualifying Reserves | <u>(9,000,000)</u>  |
| Income / FAPI       | <u>\$ 1,000,000</u> |

## Cash accumulation in Captive

- Portfolio investments
- Interest bearing loan back to Canadian related party
  - Interest paid to Captive will be subject to withholding tax and will result in FAPA
  - Loan normally denominated in CDN dollars
  - New upstream loan rule in August 19, 2011 draft foreign affiliate legislation.
  - Will there be an exception?

# Other Tax Considerations

- **Excise Tax**
  - 10% Federal Excise tax for unlicensed insurance
  - Watch insurance arranged through a foreign broker
  - Exemption process where insurance not otherwise available
  - Use of Fronting arrangements
- **Provincial Premium Tax**
  - 3 to 4.5% provincial premium tax on all Canadian insurers
  - Consider in fronting arrangements
  - Many provinces also have unlicensed insurer premium tax
- **Transfer Pricing**
  - Deductibility must be supported by arm's length principles
- **Mind and Management**

# Location of Risk

- **Analysis of :**
  - I. Canadian risks: BC or Offshore
  - II. US risks: Offshore
  - III. Other Foreign risks: Offshore
- **Selection Factors**
  - Cost/Ease of operation (including fronting fees, excise and premium taxes)
  - Tax Benefits
  - Ability to Redeploy capital
  - Regulatory requirements

# Location of Risk

## Non-Canadian Risks

- Can utilize an offshore jurisdiction
- Consider foreign jurisdiction tax rules and regulatory requirements
- Active business recharacterization rules

# Summary

- **Summary – Initial Assessment and Feasibility Study**
  - Identification of risks, existing policies and self insured
  - Accounting implications: Recognition of benefits/reporting of liabilities
  - Deductibility of premiums, subsection 18(9) for Canadian risks
  - Determination of reserves and deductibility
  - Foreign affiliate rules and Canadian versus foreign risks
  - Treaty issues/TIEA
  - Regulatory issues including investment options and capitalization
  - Repatriation considerations
  - Excise Taxes, Premium taxes, Fronting Fees
  - Operating considerations
  - Cost/benefit analysis/comparison

# Checklist

## ➤ Tax

- Canadian and Foreign Domestic Tax
- International Tax
- Ruling Requests
- Transfer Pricing
- Indirect Tax
- Excise Tax
- Premium Taxes

## ➤ Pre incorporation analysis

- Captive feasibility study
- Domicile selection
- Regulatory Review

## ➤ Actuarial

- Actuarial analysis of claim and premium reserves
- Actuarial pricing of exposures
- Financial Modeling

## ➤ Incorporation

- Captive design and structure, inc. risk management structure, compliance procedures, program design etc
- Preparation and submission of business plans
- Project management with local law firms for the statutory incorporation in selected jurisdiction

## ➤ Accounting / Audit Considerations

## ➤ Financial Statement Reporting

## ➤ Follow-up

- Periodic Tune-up / compliance testing
- Capitalization and Repatriation Planning
- Captive Restructuring

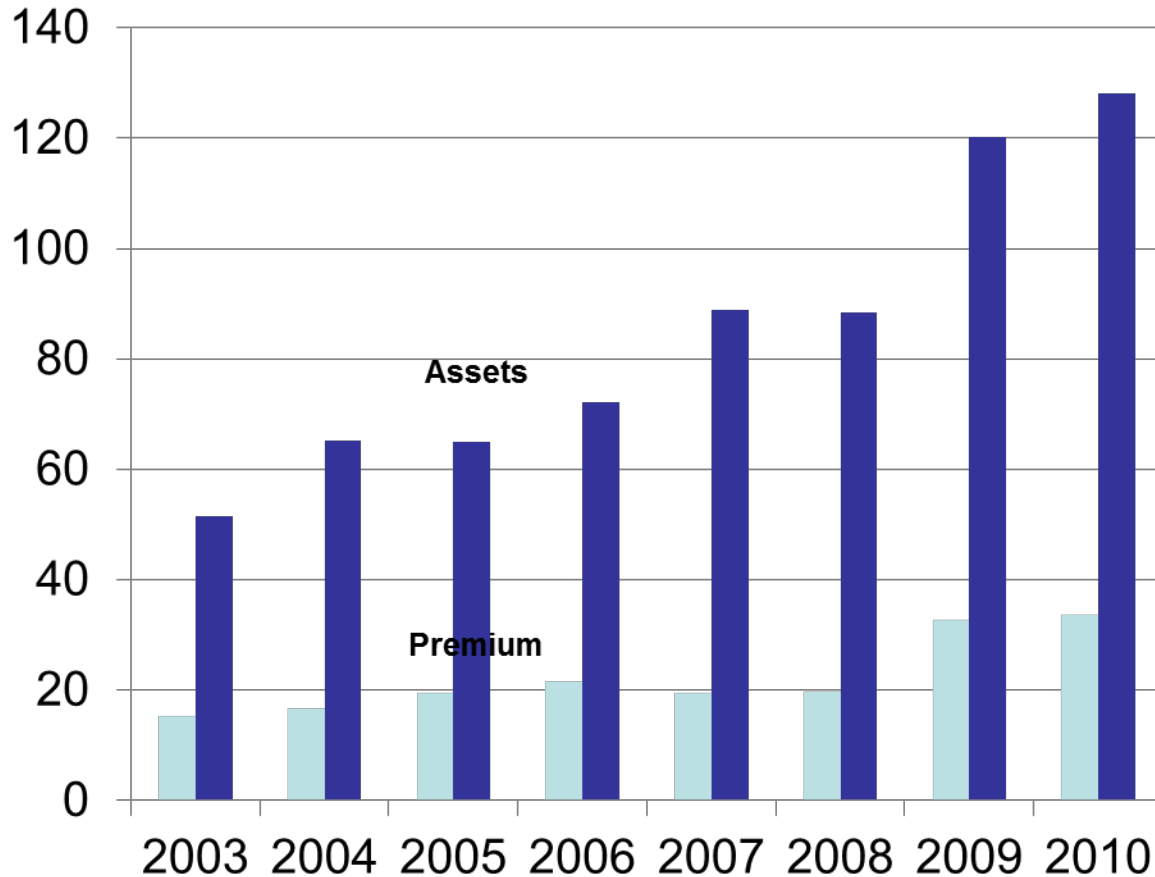
**Nicholas Warren, Senior Vice President  
Marsh IAS Management (Bermuda) Ltd.**

**November 15, 2011**

**Toronto, Canada**

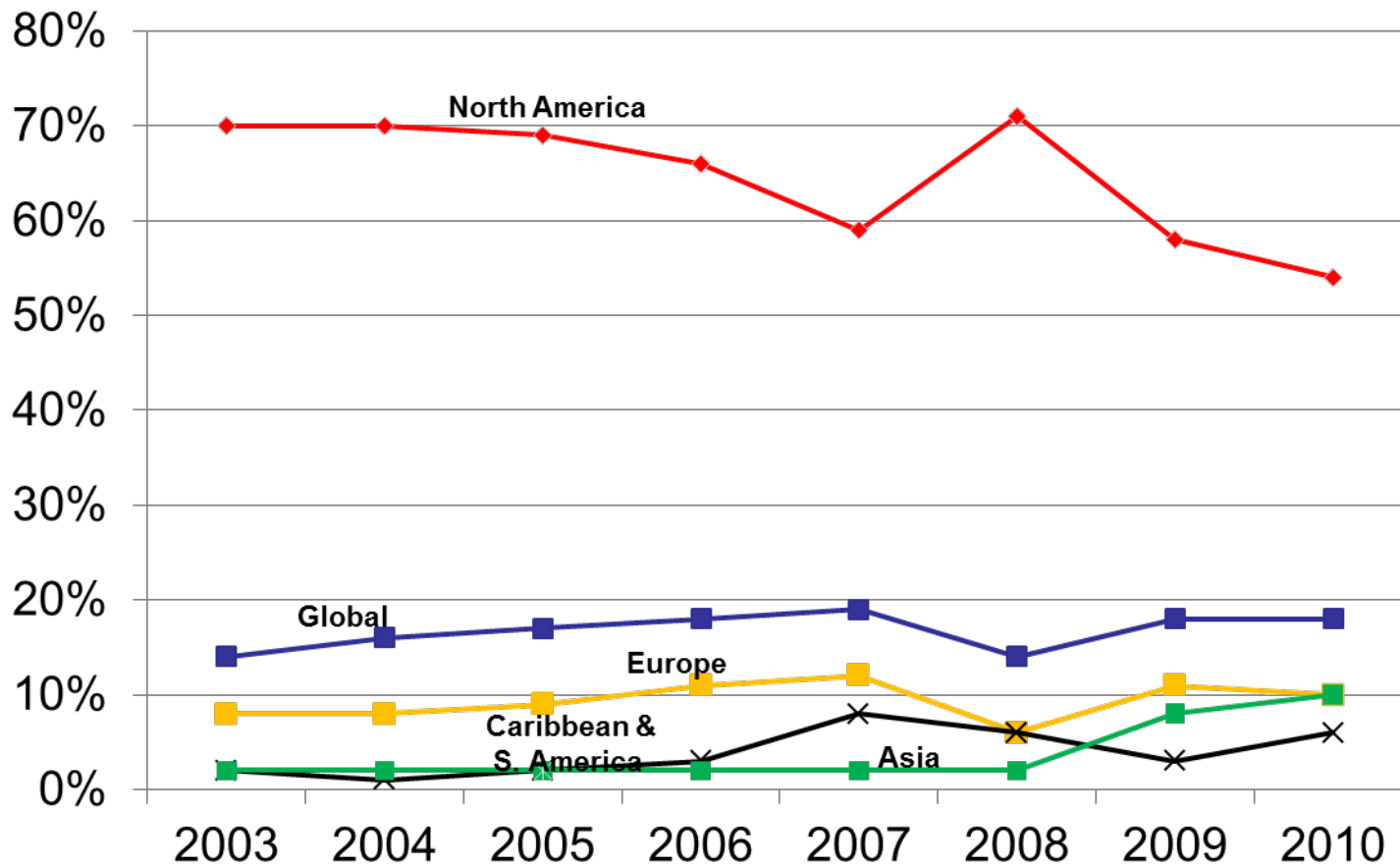
# Bermuda Market Figures (\$ billions)

## 2003 - 2010



Source: Statutory filings & the Annual Market Survey for Captives 2010

# Trends in Risk Assumption



Source: Annual Market Survey Captives

# Industry of Parent Company (%)

|                          |    |                                   |    |
|--------------------------|----|-----------------------------------|----|
| Health Care              | 12 | Aviation & Aerospace              | 4  |
| Manufacturing            | 9  | Real Estate                       | 4  |
| Energy                   | 6  | Technology & Telecom              | 2  |
| Financial Institutions   | 6  | Chemicals                         | 2  |
| Retail                   | 5  | Hospitality & Gaming              | 1  |
| Construction             | 5  | Power & Utilities                 | 1  |
| Transportation           | 4  | Sciences                          | 1  |
| Business Services        | 4  | Sports and<br>Entertainment Media | 1  |
| Automotive               | 4  | All Other                         | 24 |
| Mining, Metals, Forestry | 4  |                                   |    |

Source: Annual Market Survey Captives

# Total Premiums by Industry (% share)

|                          |    |                        |    |
|--------------------------|----|------------------------|----|
| Energy                   | 19 | Automotive             | 3  |
| Technology & Telecom     | 12 | Construction           | 2  |
| Retail                   | 11 | Real Estate            | 1  |
| Financial Institutions   | 8  | Hospitality & Gaming   | 1  |
| Business Services        | 7  | Chemicals              | <1 |
| Health Care              | 7  | Sports & Entertainment | <1 |
|                          |    | Media                  |    |
| Transportation           | 6  | Sciences               | <1 |
| Manufacturing            | 4  | Power & Utilities      | <1 |
| Aviation and Aerospace   | 4  | All Other              | 13 |
| Mining, Metals, Forestry | 3  |                        |    |

Source: Annual Market Survey Captives

# Property Lines

(All Property Business = 100%)

|   |    |
|---|----|
| Property Damage and Business Interruption | 46 |
| All Risk to Equipment                     | 30 |
| Marine Hull and Cargo                     | 9  |
| Product Warranty                          | 4  |
| Credit Risk                               | 3  |
| Aviation Hull and Cargo                   | 3  |
| Offshore Energy Physical Damage           | 3  |
| All Other Property Lines                  | 3  |

Source: Annual Market Survey Captives

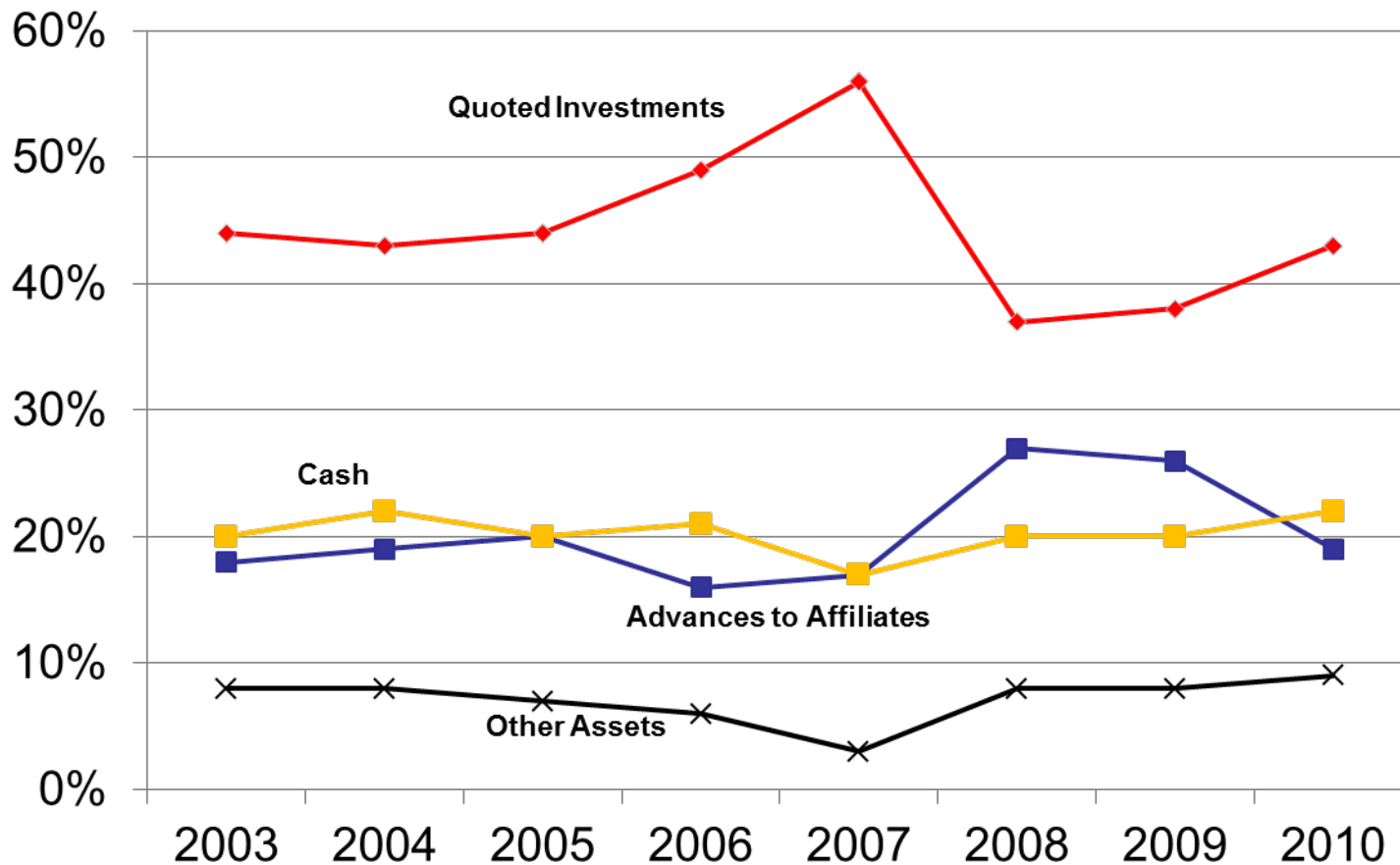
# Casualty Lines

(All Casualty Business = 100%)

|                                |    |
|--------------------------------|----|
| Workers Compensation           | 29 |
| General Liability              | 27 |
| Professional Liability (other) | 25 |
| Auto Liability                 | 7  |
| Medical Malpractice            | 4  |
| A&H (General)                  | 4  |
| Aviation Liability             | 2  |
| All Other Casualty Lines       | 1  |
| Umbrella                       | 1  |
| Marine Liability               | 1  |

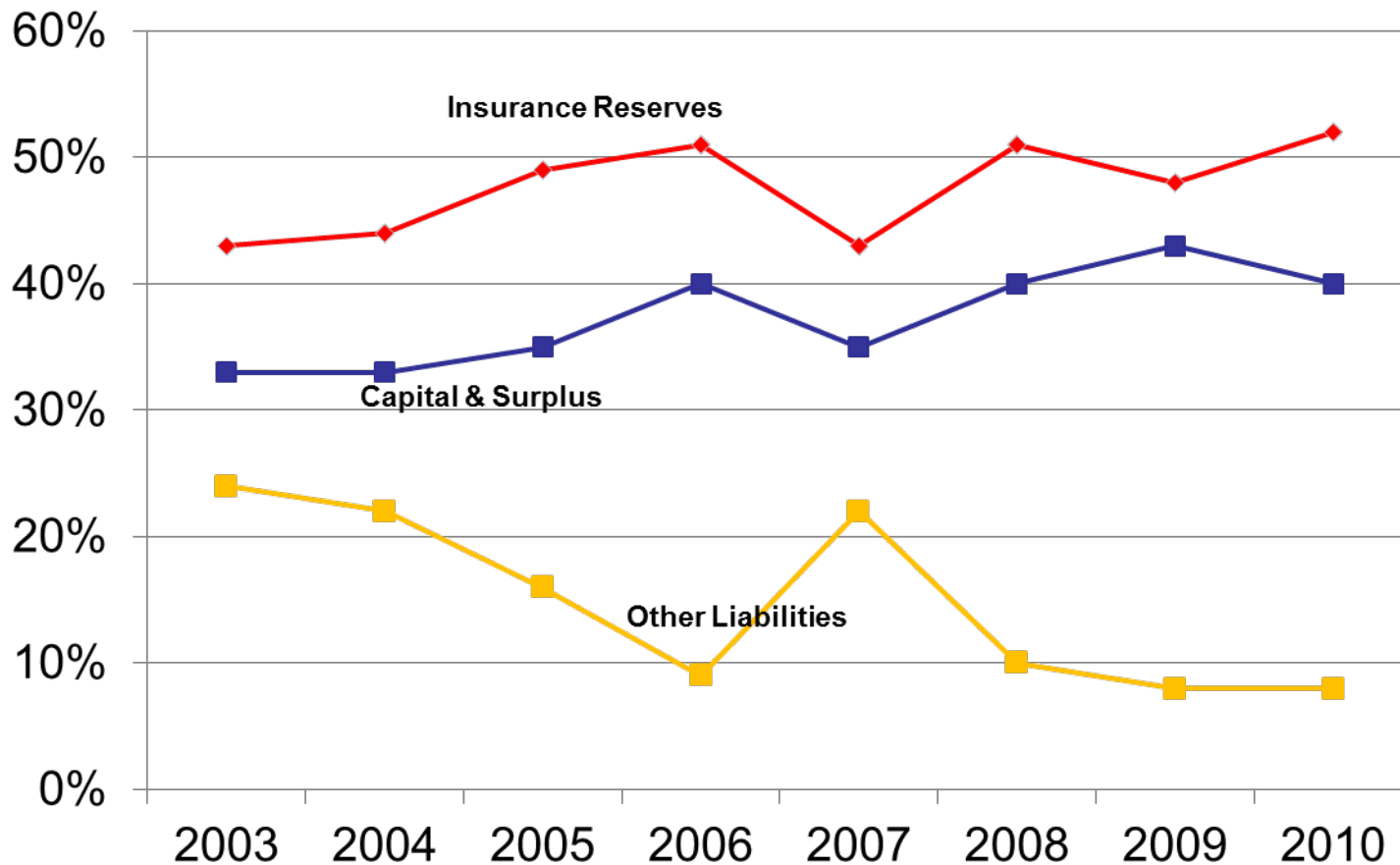
Source: Annual Market Survey Captives

# Trends in Asset Composition



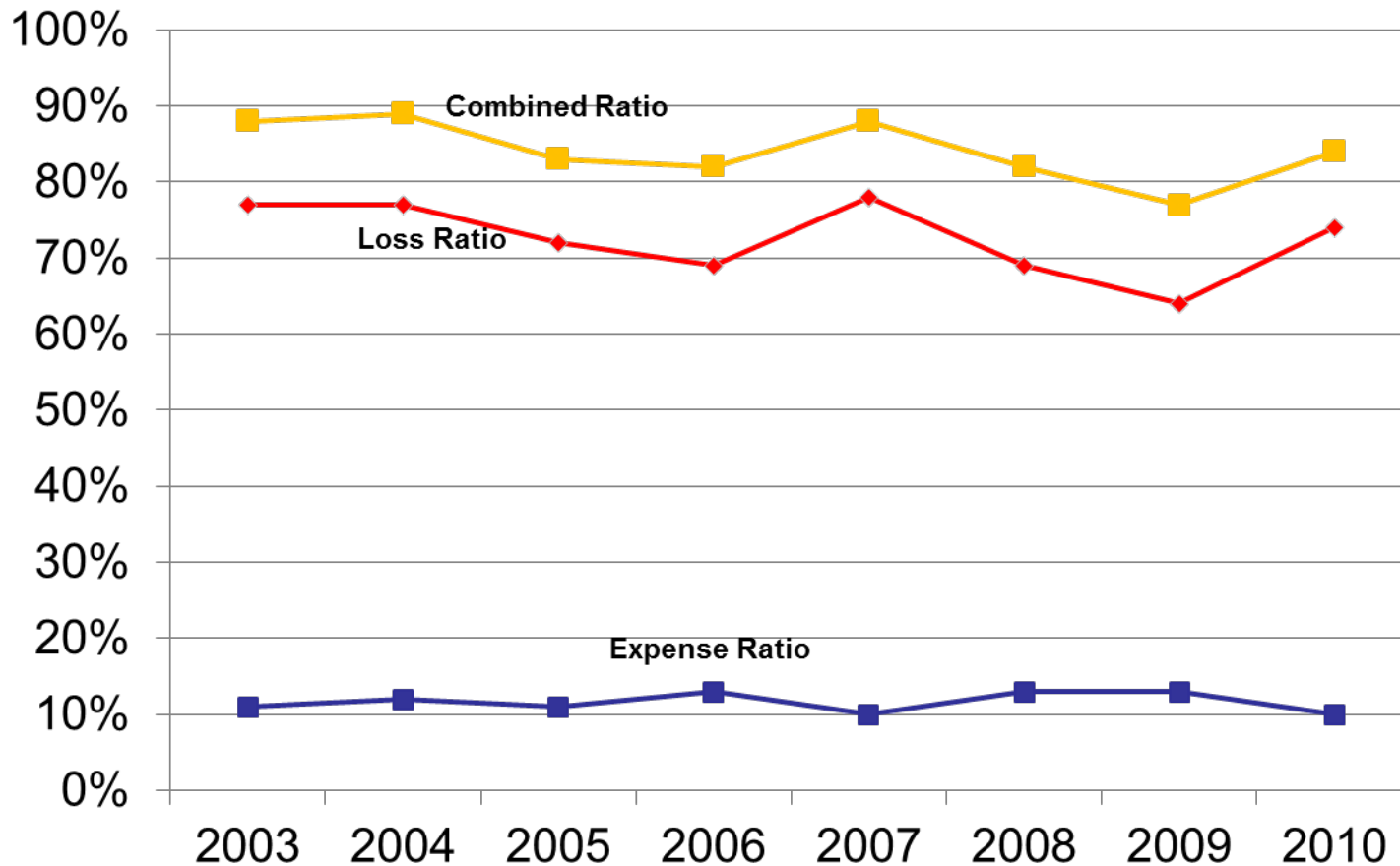
Source: Annual Market Survey Captives

# Trends in Liability Composition



Source: Annual Market Survey Captives

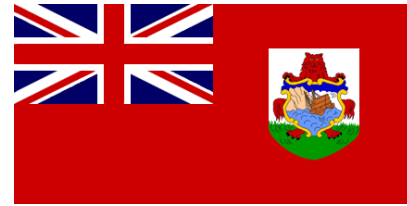
# Trends in Profitability Ratios



Source: Annual Market Survey Captives

# Why Bermuda?

- Easily accessible from Canada
- One stop shop – access to insurance and reinsurance markets
- Depth and quality of infrastructure
- Robust yet flexible regulatory environment
- Segregated Accounts & SPI Legislation
- No Income or Capital taxes
- Tax Information exchange agreement (TIEA) effective July 1, 2011



# PLAN AHEAD

November 15, 2011

Toronto, Canada

# Appendix

## Biographies of Panelists

November 15, 2011

Toronto, Canada

# **Beverley Todd, Executive Vice President JLT Insurance Management (Bermuda) Ltd.**

Beverley Todd joined the JLT group in July 2000 and is Executive Vice President and Partner within JLT's captive management and consulting unit. Beverley's responsibilities include office management, Account Executive oversight of captive insurance clients, business development and working on insurance consulting projects. These projects range from captive feasibility studies, incorporation and establishment of new insurance companies and ad hoc projects for the development of existing captive companies.

Beverley is a member of the Chartered Institute of Management Accountants of England and Wales, and is additionally a Chartered Property Casualty Underwriter. She brings with her over 18 years of insurance experience, both in the London and Bermuda insurance markets, previously working for International Risk Management (Bermuda) Ltd. and Aetna in London.

# **Susan Lane, Senior Vice President Aon Insurance Managers (Bermuda) Ltd.**

Susan Lane joined Aon Global Insurance Managers (Bermuda) in March 2008 as a Vice President with responsibility for business development, and was promoted to Senior Vice President in April 2010.

Susan started her career in captive insurance in 2000 when she joined Kensington Management Company, Ltd, a captive management company in the Cayman Islands. Susan started as an Account Executive managing a portfolio of large group captive accounts. During her time at Kensington Susan was promoted to Vice President.

In January 2005 Susan relocated to Bermuda and joined Arthur J. Gallagher Management (Bermuda) Ltd. as Vice President of Client Services leading the captive management department and captive business development strategies.

Prior to working in the captive insurance industry Susan qualified as Chartered Accountant and is an Associate of the Chartered Institute of Accountants in Ireland.

# Shelby Weldon, Director of Insurance Bermuda Monetary Authority

Shelby Weldon is the Director of Licensing & Authorizations at the Bermuda Monetary Authority (“the Authority”). The Authority is the financial services agency in Bermuda responsible for the regulation and supervision of all Banks, Trust, Investment and Insurance companies. Mr. Weldon is responsible for the day-to-day management of team of seasoned professionals charged with reviewing and approving all applications for licensing across all of Bermuda’s financial services. In addition the team reviews and approves various applications from the insurance industry including but not limited to modification of statutory accounting regulations, approval of services providers, review of statutory financial returns and regulator to regulator interaction.

Prior to joining the Bermuda Monetary Authority Mr. Weldon was the Inspector of Companies at the Registrar of Companies Department, a unit under the Ministry of Finance. When the responsibility for insurance regulation was removed from the civil service and the Ministry of Finance and transferred to the Bermuda Monetary Authority, Shelby took up the post of Assistant Director with the Authority. In 2005 he was promoted to his current post and is now a member of the BMA executive.

Mr. Weldon has over twenty years experience in Bermuda’s international insurance market. He began his career as an auditor with Arthur Andersen (Bermuda) in 1986 and subsequently moved into captive management, working for Alexander Insurance Managers (AON) and Johnson & Higgins between 1990 -1995. In 1995 Shelby moved to the regulatory environment, starting as a Technical Officer at the Registrar of Companies Department. After a brief assignment as the Senior Accountant in the Department of Social Insurance during 2000, Shelby returned to the Registrar of Companies Department to assume the post of Inspector of Companies.

Born in Bermuda, Shelby traveled abroad to further his education, graduating from Howard University in Washington DC in 1986 with a Bachelors in Business Administration. He qualified as a Certified Public Accountant in 1988.

# Kevin L. Klippenstein, Chief Financial Officer Parrish and Heimbecker, Limited

Kevin is a Canadian Chartered Accountant who articulated with PWC in Winnipeg and Toronto. After his career in public practice Kevin spent two years at Air Canada on the team managing a \$100m IT implementation and then created a chain of 15 restaurants which he operated with two partners. It was during this time that his hair turned grey.

Kevin has been CFO at Parrish & Heimbecker, Limited for the past 12 years. During this time Kevin and his wife Deneen had 3 daughters – and his hair turned white.

P&H is a privately owned, Canadian corporation with significant operations in grain handling and trading, flour and feed milling and turkey farming and processing. With revenues of approximately \$2B P&H is a significant player in the Canadian Ag sector and with over 100 physical facilities, a large number of trucks and the risks related with food safety P&H has insurance needs which are substantial and complex. This is why P&H set up an insurance captive in Bermuda as of May 1, 2011.

# Paul Leighton, Analyst/Captive Advisory Corporate Protection Group

Paul specializes in strategic process analysis, business operations and administration at the Corporate Protection Group.

Prior to his affiliation with Corporate Protection Group, Paul held various executive positions within Willis Canada and Aon Reed Stenhouse. Paul's international insurance experience coupled with his long term involvement in Captive management and reinsurance marketing provides clients with detailed operational solutions and performance excellence, delivering quantifiable bottom line results.

Paul is licensed with the Registered Insurance Brokers of Ontario.

# Jason Carne, Partner KPMG in Bermuda

Jason Carne has been with KPMG in Bermuda since 1992 and was promoted to partner in 1998.

Jason focuses on the reinsurance industry where he has gained a wide variety of experience through his involvement in audits and advisory projects for both commercial and captive enterprises. This work has given him significant experience in the field of International Financial Reporting Standards, U.S. GAAP and SEC Reporting requirements, including Sarbanes-Oxley related work and more recently Solvency II and regulatory related work. Jason's advisory experience also includes captive feasibility and formation work.

Jason is married with two young children who keep him young and active! Jason's other interests include sports, travel and reading.

# **Nicholas P. Warren, Senior Vice President Marsh IAS Management Services (Bermuda) Ltd.**

Mr. Warren has spent over 30 years in the insurance and investment sectors in Bermuda and currently serves as Senior Vice President of Marsh IAS Management Services, an insurance management company. His previous appointments include being President and CEO of the SDI Group from 2000 to 2004, an investment operation and holding various positions in the Argus Group between 1986 and 1999. He was vice president of Marsh & McLennan – Insurance Management Company between 1983 and 1986.

He is currently a director of a number of insurance, reinsurance and investment companies in Bermuda. His past non-executive directorships include being Vice Chairman of Omega Insurance Holdings limited, an insurance group traded on the London Stock Exchange.

Mr. Warren is a member of the Institute of Chartered Accountants in England and Wales having been admitted as an Associate in 1978 and as a Fellow in 1985. He holds an Honours degree in Economics and Politics from the University of London.