



Quarterly Newsletter from Energy Insurance Services, Inc., Volume 6, Issue 1

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View on the Creek



Captive Optima



Congratulations Randy Martin!



EIS Financials & Operations



Save the Date

## View on the Creek – Welcome to 2022

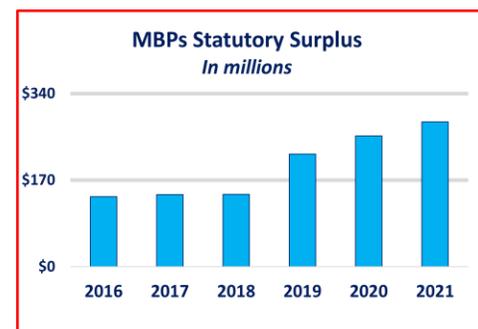
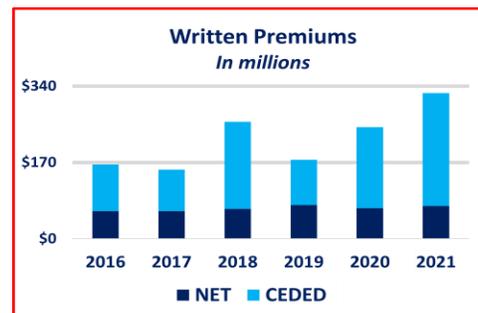


EIS and ECM finished 2021 with strong operational and financial performance. Below is a review of some of the high points discussed in the virtual EIM Risk Managers Information Meeting – State of the Company session.

Do not miss this edition's Captive Optima section. We touch on changes to regulations related to D&O insurance coverage in a captive and developments in the landscape and underwriting focus related to ESG claims for director and officers.

## EIS 2021 Highlights

- Management Fee Credits continued
- Leadership and staffing transitions
  - Transition of COO role
  - New Account Manager at ECM
- 2 new MBPs (cells) – total count at 19
- Policies issued up by 29% – 89 total active policies
  - MBPs prudently taking on more underwriting risk
  - Issued our fourth insurance policy backed by reinsurance supported by a new debt security
- Over 40 discussions with 18 EIM Members on captive utilization
- Premium written increased 30%
- Surplus increased 11%



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## Captive Optima – New possibilities for Director and Officer insurance?



Recent amendments in Delaware legislation authorize the use of a captive to cover non-indemnifiable director and officer (“D&O”) liabilities under certain conditions. These amendments to the Delaware General Corporations Law (“DGCL”) allow the use of a captive insurer to cover D&O liabilities whether or not the corporation has the power to indemnify them under the law. Thus, captives may now write Side A D&O coverage.

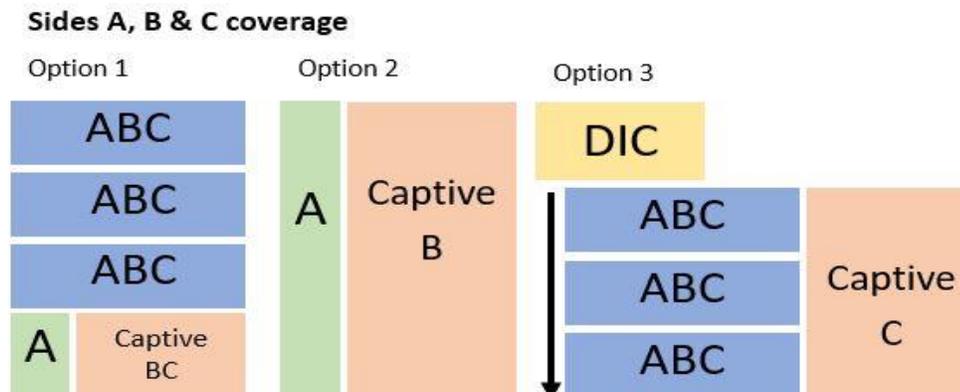
The change in the Delaware law is causing companies to ask *Should we run D&O through our captive?*

There are benefits to adding D&O insurance to an existing captive that already writes property, casualty, and other lines—namely, diversification of a captive’s risk. Captives are an excellent option when companies are faced with capacity and pricing challenges. D&O insurance is no exception.

D&O coverage is generally made up of three main insuring clauses summarized as follows:

- Side A: Insures wrongful acts of directors and officers when the company is not permitted to indemnify by the broader of applicable law or by-laws, due to bankruptcy, or refuses to indemnify.
- Side B: Reimburses the company for the indemnification it provides to the directors and officers for claims against them alleging covered wrongful acts.
- Side C: Insures the company itself for its own liability and, in the public company context, is usually limited to securities claims.

Historically, captive utilization has been primarily limited to Sides B and C coverages because providing Side A coverage through a captive creates the potential for conflicts to arise and raises questions surrounding bankruptcy and potential indemnification issues. EIS is currently writing D&O coverage in MBPs. Here are some graphical examples the role of captive coverage within a D&O program:



Market analysts are predicting that a majority of future D&O claims are going to come from ESG factors. There will more likely be claims against directors and officers for their errors and omissions in ESG activities, as opposed to claims arising out of share price issues and negligence. D&O insurers are increasingly scrutinizing companies’ ESG frameworks and asking more questions of risk managers and senior executives on ESG policies. Underwriters may view more favorably those companies that can respond to their concerns and demonstrate a focus on and commitment to ESG-related risks.

Aon’s Q4 2021 Global Markets Insight Report reveals that prices for D&O liability rose by 30%

The recent amendments to the Delaware legislation help resolve ambiguity as to whether companies can use their captives to write D&O coverage and allows captives to write Side A coverage. Also, the use of a segregated cell, such as those at EIS, could arguably be deemed more arms-length from the company and further support funding non-indemnifiable losses. Both these factors, along with market predictions of the increase in ESG-related D&O claims and the increase in pricing, support the idea that companies should review their current D&O coverage and evaluate if there are benefits to using their current captive/cell or establishing a new captive/cell to build a stronger D&O program.

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## Congratulations to Randy Martin!



We would like to congratulate Randy Martin on his retirement effective March 31, 2022.

Randy began his career in insurance and risk management with the Aetna Casualty & Surety company as a commercial property and liability underwriter immediately upon graduation from college. From there he held several positions with other large insurers and brokers. In 2000, he left Willis to assume a newly created role in the Risk & Insurance Department of American Electric Power (AEP). During the last half of his 16 years with AEP, he was the Managing Director of the Risk & Insurance Department. Throughout his time at AEP, he was highly engaged in the utilization of a protected cell within EIS.

In October 2015 upon his retirement from AEP, Randy assumed the current position he holds with Energy Insurance Services, Inc.

Randy was born and raised in West Virginia. He received his Bachelor of Science Degree in Business Administration majoring in Finance at West Virginia University.



- Randy has always championed the mutual concept and has been a great contributor to the EIM family. First, as a member company risk manager who supported EIM and EIS. Second, as a member and chair of EIM's Insurance Advisory Committee. And finally, as vice president and chief operating officer of EIS where he took the company to the next level in terms of technology advances, product development, and consistent MBP financial growth and stability. Under Randy's leadership, EIS stood as the preeminent captive insurer in the state of South Carolina. His experience, professionalism and vision will be greatly missed. All the best to Randy and the family as he embarks on a well-earned retirement. ~ Scott Goodell, retired CEO of EIM
- Randy's knowledge of risk management has been invaluable to the EIS team. Working alongside him over the past 6 and a half years has been a tremendous learning experience and a great pleasure for me. He will be missed, and I hope he catches lots of fish in retirement! ~ Kimberly Jenkins, ECM
- Randy is going to be profoundly missed by all at EIM. I have had the immense pleasure of working with him since he made the decision to join EIS. Randy brought with him years of experience and during this time I was fortunate enough to have him share this knowledge. He channeled his expertise every day to find ways he could help contribute to the EIM membership. Randy's work epitomized the mutual concept. A true selfless individual. I wish Randy the best of luck in retirement. Well deserved. ~ Jeff Tkacz, CFO of EIM
- Randy has been an invaluable member not only to the EIM team but the captive industry in South Carolina. It has been a true joy working with Randy at EIM and on the Board of the South Carolina Captive Insurance Association. He has been an amazing mentor and teacher during my time at EIM and in South Carolina. His extensive knowledge of the energy and insurance industries will be missed. I want to thank Randy for all his support and encouragement and wish him all the best in his retirement. ~ Megan Ogden, Controller of ECM
- Randy has provided so much to EIS during his tenure with us in South Carolina that it is easy to miss his contributions to EIS during his time on the EIM IAC and as the principal Executive responsible for AEP's mutual business program. As everyone knows, Randy is most generous with his time and energy to all but the quality that struck me over the years is Randy's curiosity and willingness to try new approaches to all facets of risk and captive management. Our best wishes to Randy and Tammy and their wonderful family. ~ Tobias Burke, CAO of ECM



Many of us have become great friends with Randy and Tammy throughout the years and we will certainly miss seeing them at future EIM and EIS events. Randy has promised he will keep in touch and provide updates on his travels, beautiful family and retirement adventures. You'll be sure to find him on a stream, casting his fly rod for trout.

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## EIS Financials



**Energy Insurance Services, Inc.  
General Account – Key Financial Data**

	As of December 31		
	2021		2020
<i>(In thousands)</i>	Actual	Budget	Actual
<b>Revenue</b>	<b>\$2,017</b>	<b>\$1,950</b>	<b>\$1,973</b>
<b>Expenses</b>	<b>\$1,834</b>	<b>\$1,855</b>	<b>\$1,720</b>
<b>Surplus</b>	<b>\$4,519</b>	<b>\$4,450</b>	<b>\$4,379</b>

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## Save the Date



**2022 Program Advisory  
Committee Meetings and General  
Conference**

**November 7-11  
The Sanctuary at  
Kiawah Island, South Carolina**

Our 2022 PAC Conference is scheduled for early November in Kiawah. Our signature event brings Program Advisory Committee members and professional associates together to meet and discuss their specific programs. Along with the PAC meetings, a General Session will cover several risk, insurance and captive topics. This is always a great networking opportunity for all program Participants to share ideas with each other and for EIM Members exploring captives and EIS.

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**EIS Mission Statement – “To provide a facility to meet EIM Members’ dynamic and specific business requirements for the placement and management of alternative risk solutions.”**

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