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Midwest Higher Education Compact (MHEC) 13th Annual Loss Control Workshop

“Emerging Trends in Insurance and Litigation”



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Global Risk Landscape

- Shock to the global financial system and world economy brought a period of appraisal and adjustment
- Dramatic impact on level of recognition that global risks are:
 - tightly interconnected, and
 - shocks / vulnerabilities are truly global,
 - even if impact and response can still differ at the “local” level
- Increase in interconnections among risks means a higher level of systemic risk than ever before.
 - Greater need for an integrated and more systemic approach to risk management.
 - While sudden shocks can have a huge impact, often the biggest risks may be from slow failures or creeping risks
- Enterprise Risk Management – increase in scrutiny
 - Banking
 - Insurance
 - Reinsurance
 - Rating Agency



Institutional Responses to the Challenges

- **Enterprise Risk Management**
 - Myths about Process
 - Cost of Risk Model

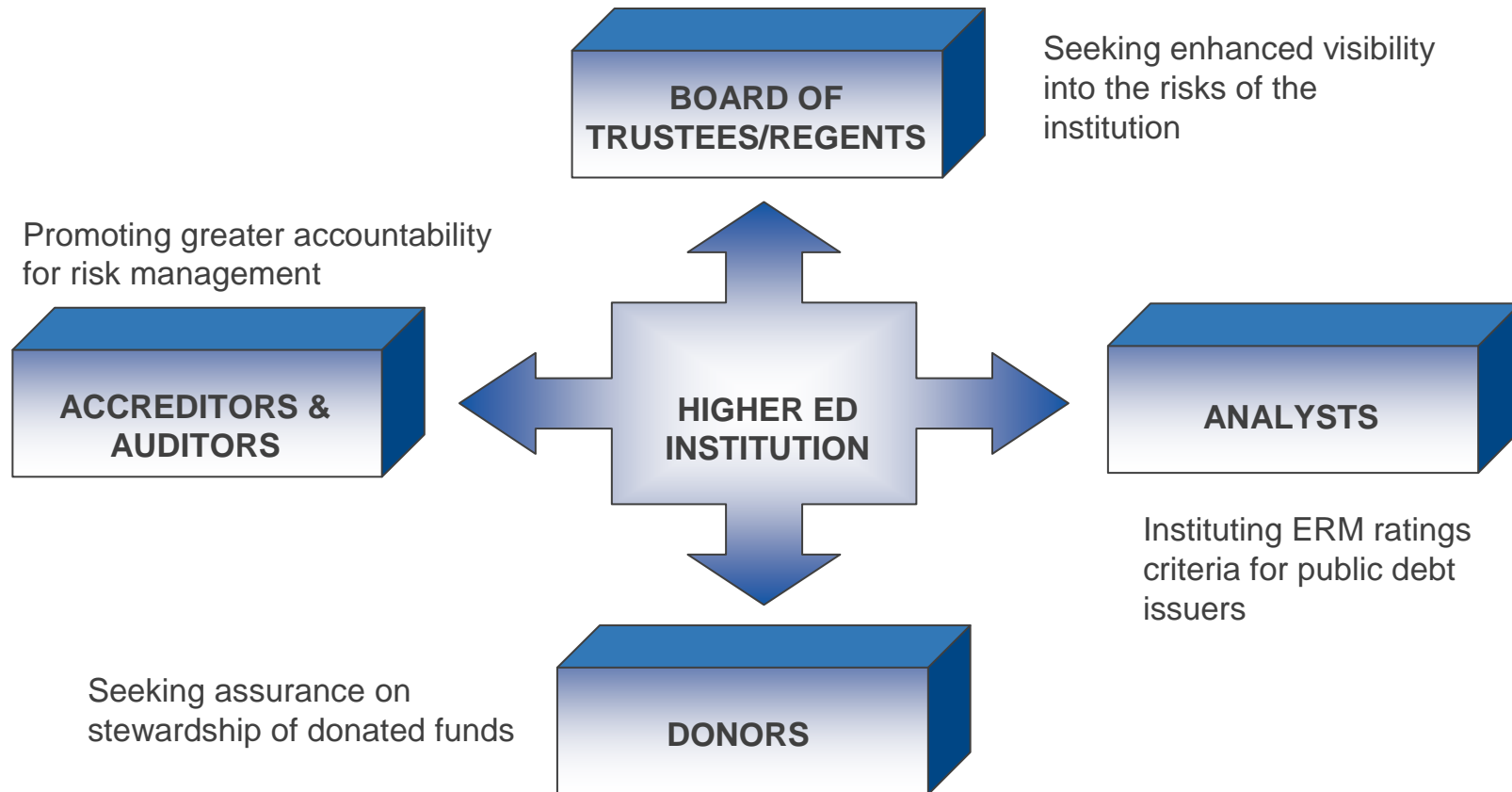
- **Emerging areas of Accountability**
 - Increase in unfunded mandates
 - Expectation of senior management
 - Fiduciary Response

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Why is ERM Important to Today's Colleges and Universities?



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*ERM Utilization in Higher Education?

- **60% of respondents do not use comprehensive, strategic risk assessment to identify major risks to mission success**
- **Less than 50% said they “mostly agree” with this statement:**
 - **“Board members and senior administrators actively engage in discussions regarding institutional risks.”**
- **5% of respondents have exemplary practices for management of major risks to mission success.**

*The State of Enterprise Risk Management at Colleges and Universities Today, AGB and United Educators

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ERM: Best Practices*

- Define risk broadly
- Recognize both the opportunities and downsides of risk
- Develop a culture of evaluating and identifying risk at multiple levels
- Look at the total cost of risk
- Boards and presidents should collaborate

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Historical Overview of Claims Driving Litigation

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Historical Overview of Claims: 1985-2000

- **1990's: The Decade of Employment Practices Liability**
 - ADA celebrated 20 years
- **Athletics Took a Dive**
 - Long-term medical costs
- **Alcohol Emerging as a Critical Influence**
 - Sexual assault
 - Student on student violence
- **Premises and Operation**



Historical Overview of Claims: 1985-2000

- **Research & Development**
- **Environment Protection Agency -- A Love Fest?**
 - Wave of attention brought severe fines
- **International “Sleepers”**
 - Accountability?
- **Breach of Contract**
 - Adjunct faculty
 - Tuitions / Fee lawsuits



Web-Related Claims

- **2005-06: Emergence of claim activity**
- **Patents, trademarks and copyrights**
 - **Royalties: HE vs. Pharmaceutical**
 - **3 suits ranged \$3M – \$65M**
- **2010 – 80% of Americans online**
 - **Deadly combination with lack of civility**
 - **“Reality” shows direct impact on millennials**
 - **Physical risks transcend the internet**



*Claims Review 1985-2010

FREQUENCY

- Slip, trips and falls
- Sports, athletics
- Medical malpractice
- Employment Practices Liability
- Vehicle

SEVERITY

- Sports, athletics
- Slips, trips and falls
- Employment Practices Liability
- Research / medical
- Alcohol-related

*Marsh Education Practice Large Loss Exhibit

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Large Losses in 2010*

▪ Discrimination	\$ 450,000 to \$ 3.6 Million
▪ Retaliation	\$ 362,000 to \$ 362,000
▪ Financial Matters	\$ 500,000 to \$ 38 Million
▪ Negligence	\$ 375,000 to \$ 14.6 Million
▪ Breach of Contract	\$ 1.2 Million to \$ 7.8 Million
▪ Fraud	\$ 2.3 Million
▪ Abuse	\$ 5 Million
▪ Sexual Abuse & Assault	\$ 250,000 to \$ 3 Million

*United Educators “Large Loss Report 2010”



Large Losses in 2010* continued

- **Molestation** **\$1.5 Million**
- **Whistle Blower** **\$ 5.2 Million**
- **Harassment** **\$ 280,000 to \$ 1.25 Million**
- **Termination** **\$ 425,000 to \$ 517,000**
- **Transportation** **\$ 550,000 to \$2.7 Million**
- **Civil Rights** **\$ 610,000**
- **Hiring and Firing** **\$ 600,000 to \$1.2 Million**

***United Educators “Large Loss Report 2010”**



Failure to Educate: K-12

- **Individuals with Disabilities Education Act (IDEA)**
 - Purpose to assure that all children with disabilities have available to them Free Appropriate Public Education (FAPE)
 - Disabled children must be provided with an Individual Education Plan (IEP)
- **Alleged failure to provide FAPE & IEP**
 - IDEA provides for administrative remedies including compensatory education and attorney fees



Economic Impact on Loss Trends?

- In 2010 many organizations braced for significant increases due to:
 - unprecedented layoffs;
 - significant employee-friendly United States Supreme Court decisions; employment-related legislation; and
 - an overall increase in discrimination charge filings with the Equal Employment Opportunity Commission (EEOC).
- Trends in EEOC:
 - Racial discrimination / retaliation
 - Gender discrimination
 - Age discrimination
 - Sexual harassment



Large Losses 2009 vs. 2010

Equal Employment Opportunity Commission (EEOC)*

EEOC Cases Settled Range	2009	2010
\$250,000 to \$500,000	16	15
\$550,000 to \$ 1 Million	3	6
\$ 1.1 Million to \$ 11.9 Million	8	5

*United Educators “Large Loss Report 2009 and 2010”



Liability Claim Trends

- **General Liability** -- Degree of difficulty increasing:
 - Increasing consumerism and notion that institution “guarantees” safety, etc.
 - Erosion of notions of personal responsibility
 - More cases that implicate principle and institutional reputation
 - More cases where liability is questionable or where it requires expansion of traditional concepts of legal duty

- **Educators Legal Liability**
 - Expansion into cyber space
 - Privacy, bullying, harassment, stalking
 - Economic impact on layoffs,
 - Program cutbacks and closures
 - Federal regulatory expansion of ADA, etc.
 - E-discovery a concern



International Claim Trends

- **Internationalization as core strategy**
- **International Travel / Study Abroad**
 - **Spans several coverage areas, for example**
 - **Automobile**
 - **Workers Compensation**
 - **Property**
 - **Kidnap & Ransom**
 - **Employment Practices Liability**
 - **Student Health**
 - **Crisis management & business continuity**
 - **Compliance: Sponsored program / research**
 - **Mental health issues (student / faculty)**
 - **Complexities of foreign law**



2011 Going Forward

- **Student Mental Health / Suicide**
- **Contractual Liability**
- **Workplace violence**
- **Societal issues**

- **Property**
 - **Green Buildings**
 - **Distressed properties**
 - **Forced operation due to budget constraints**
 - **Subcontractor Default**
 - **Deferred maintenance**



“Today’s seemingly bleak budget environment is the new normal.”

*Ray Scheppach, Executive Director,
National Governors Association*



Strategically Cut Costs

- **Reduce borrowing costs**
- **Energy savings**
- **Faculty/staff tuition waivers**
- **Subsidies for intercollegiate athletics**



Improve Performance

- **Change programs into lower cost models**
- **Consolidate programs in lower cost areas**
- **Reduce course offerings**



Reinvest in Transformative Change

- **New tenure track hires – level of associate professor**
- **Create alternative career paths for teaching-centered promotions**
- **Redesign core curriculum to focus on learning outcomes not seat time**
- **Increase work-place, accelerated, on-line learning opportunities**



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