

# MARSH

## Midwest Higher Education Compact (MHEC) 13<sup>th</sup> Annual Loss Control Workshop

### “Emerging Trends in Insurance and Litigation”



Jean Demchak, Managing Director,  
Global Education Leader, Marsh Inc.  
March 18, 2011

Leadership, Knowledge, Solutions...Worldwide.

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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

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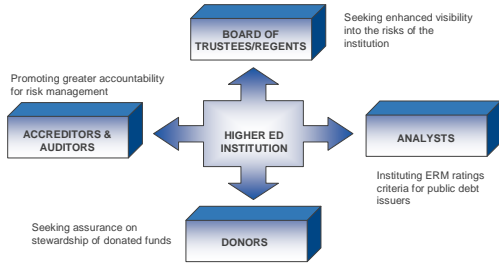
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### Why is ERM Important to Today's Colleges and Universities?



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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

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

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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



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## 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



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## 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



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## \*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\*

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|--------------------------|----------------------------------|
| ▪ 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"



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## 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"



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## 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



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## 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



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**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"




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**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




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**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




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## 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



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

*Ray Scheppach, Executive Director,  
National Governors Association*



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## Strategically Cut Costs

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



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## Improve Performance

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



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## 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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