

Welcome to the Management Liability Insights Conference!



Welcoming Remarks



David Bradford
President, Research & Editorial Division
Adviser

Leading the way to smarter and more efficient risk and insurance communities, Advisen delivers:

- the right information into
- the right hands at
- the right time

to *power* performance.

Thank you to our Sponsors

OneBeacon
MANAGEMENT LIABILITY



Arthur J. Gallagher & Co.



For the Management Liability Community

For more information about subscriptions
contact Jim Delaney at jdelaney@adviser.com

Opening Remarks



Phil Norton
Vice Chairman, Midwest Region
Arthur J. Gallagher
2015 Conference Chair



ADVISSEN
Insurance Intelligence



Management Liability Practice

Advisen D&O Conference

May 19, 2015

Phil Norton, Ph.D.

Vice Chairman | Managing Director
Gallagher Management Liability
Practice

Phil_Norton@ajg.com

312.803.7429

Lag Kills

Lag ~~Kills~~

can be Good?!!

Capacity is Important

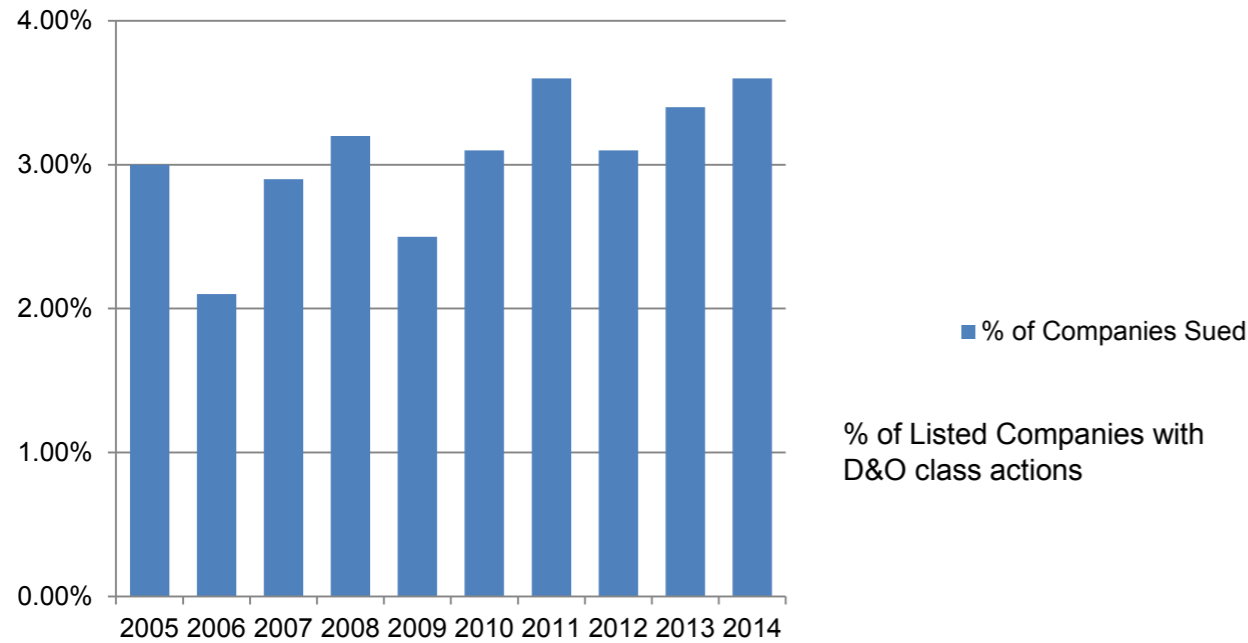
Capacity ~~is Important~~
RULES !!!

Types of Capacity to Consider

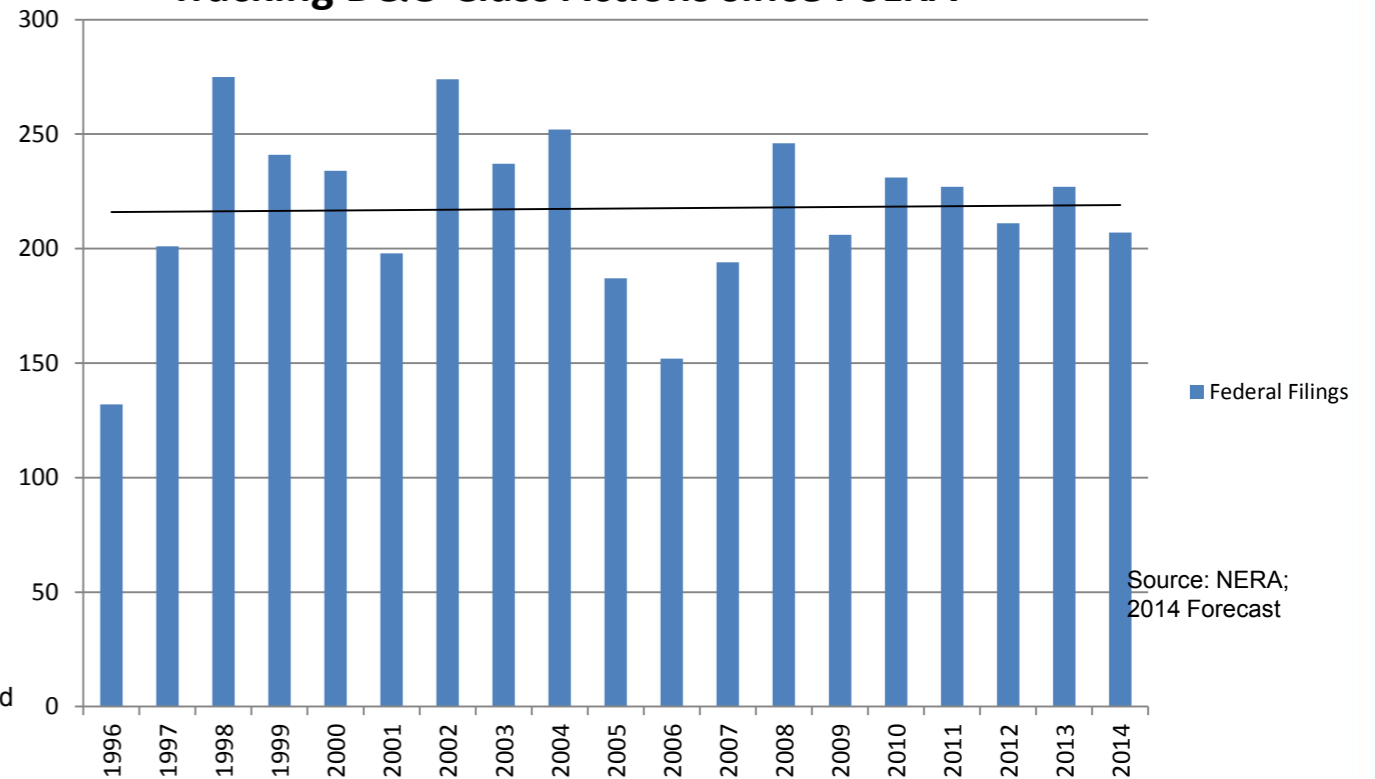
- Classic Capacity
- Newer Capacity
- Rejuvenated Capacity
- Evolving Capacity
- Niche Capacity
- Impaired Capacity – just kidding!
- The Capacity of the D&O Plaintiffs bar in terms of D&O class actions per year

D&O Frequency – Improving?

Tracking Relative Frequency of D&O Class Action Lawsuits

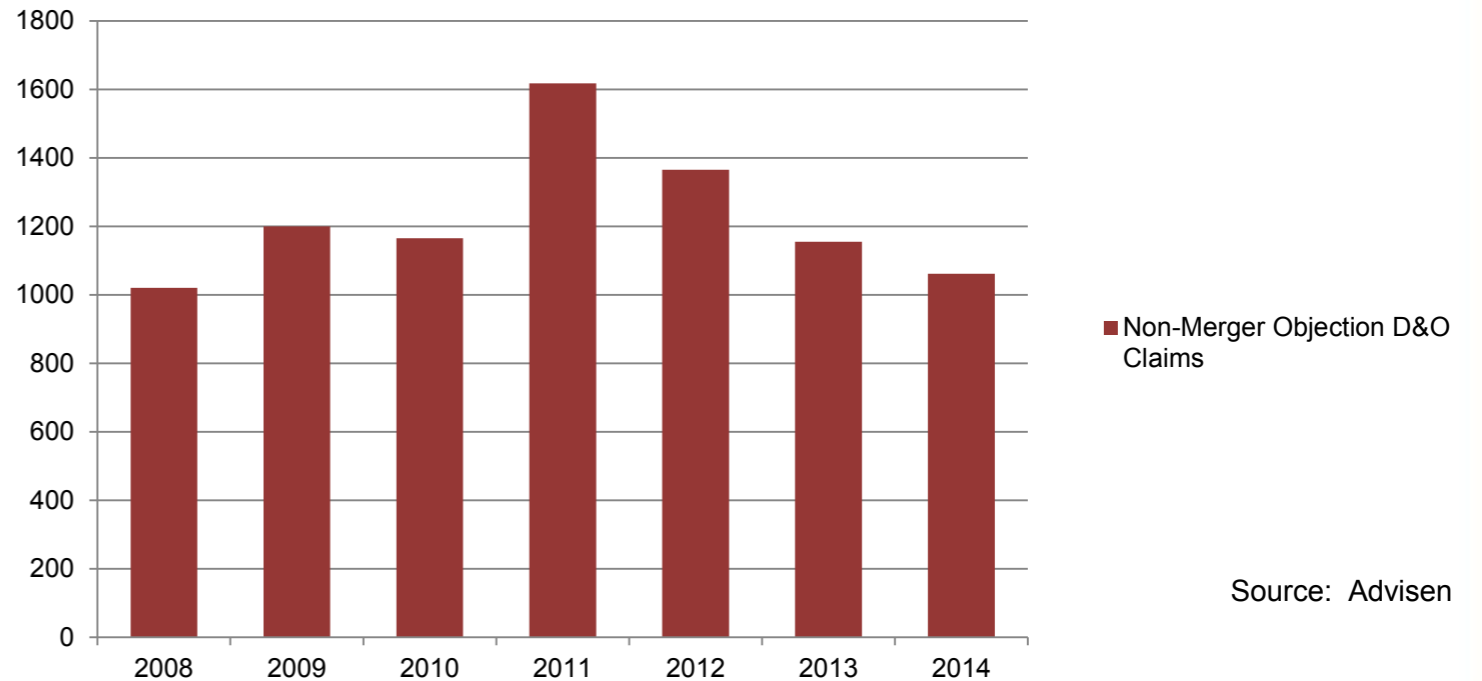


Tracking D&O Class Actions since PSLRA



Source: NERA; 2014 Forecast

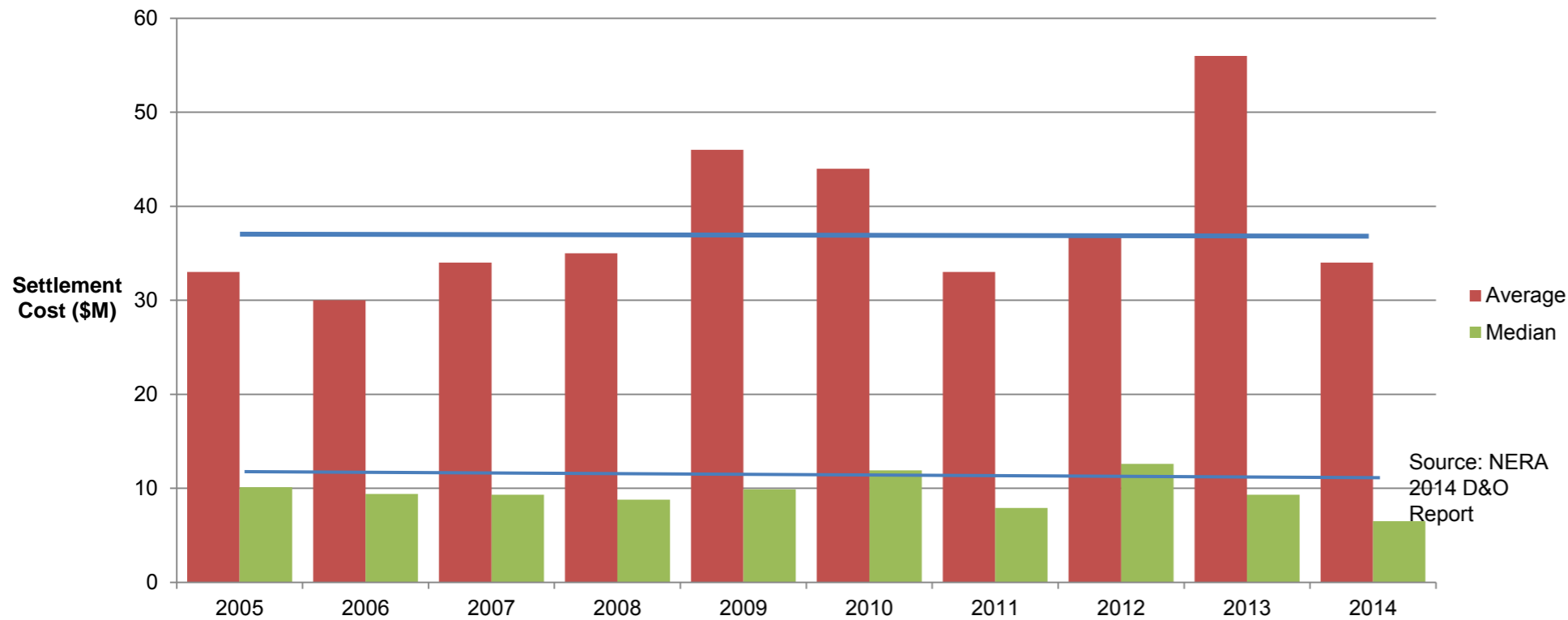
Tracking Total D&O Actions w/o M-O



Source: Advisen

Is big money frequency flat? Are D&O claims on an overall basis flat – or actually decreasing?

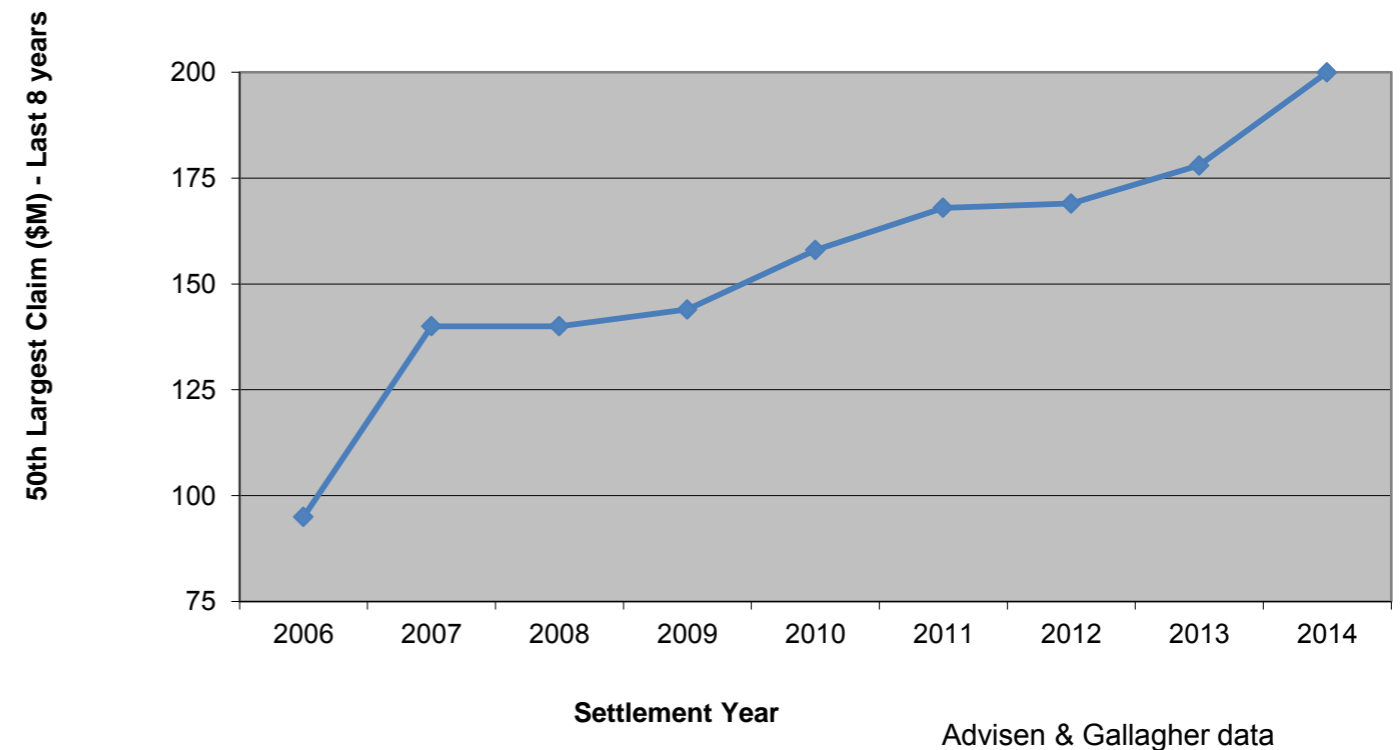
Comparing Avg D&O Settlements to Median Cost



Are D&O
Severity
Increases
Abating?

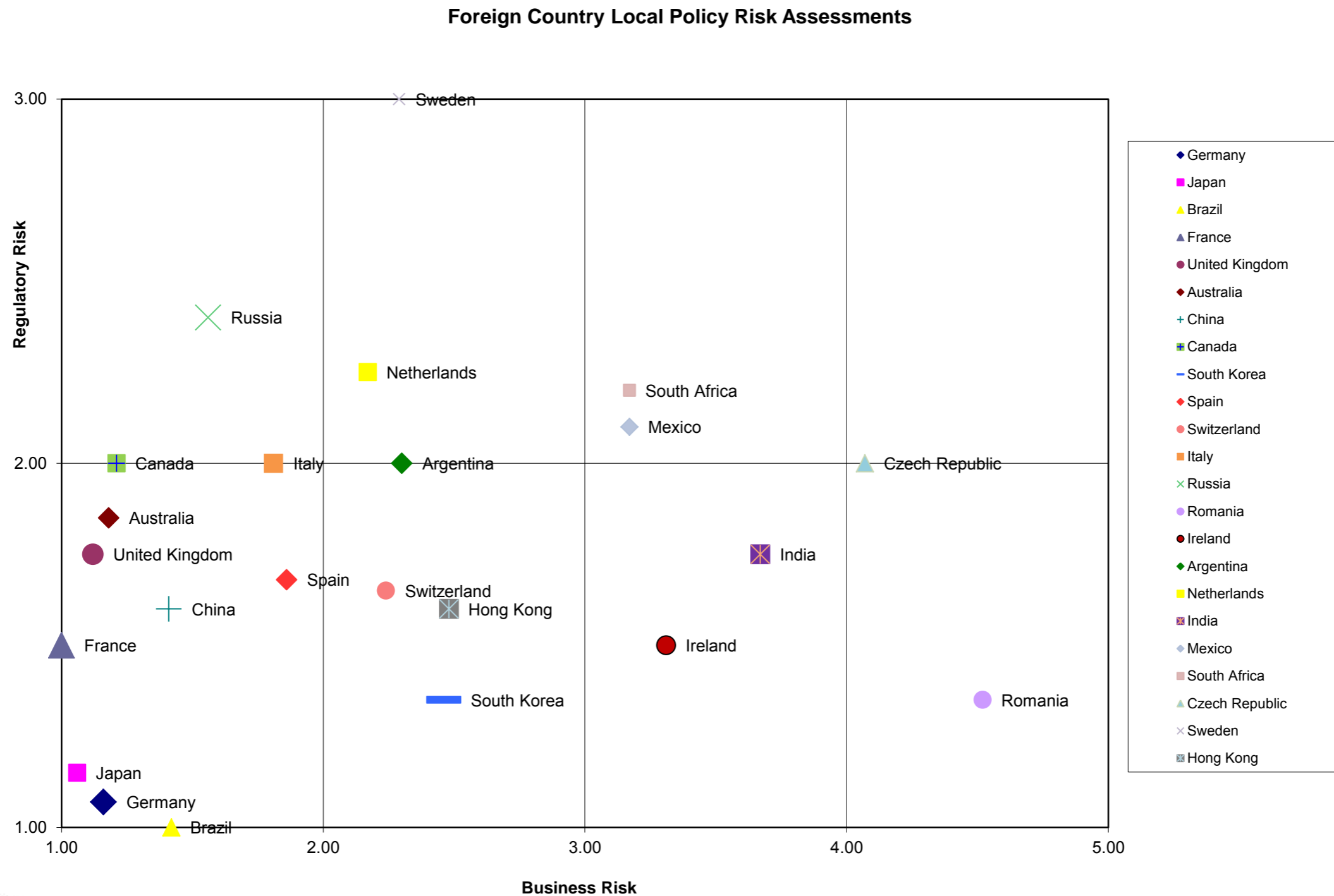
So what's the deal with D&O Severity? Are we seeing a lag affect from settlement of Credit Crisis Claims that are about done now, replaced by M&A claims of unknown value? Good News?

D&O Mega Claim Severity - rising or about to show improvement?

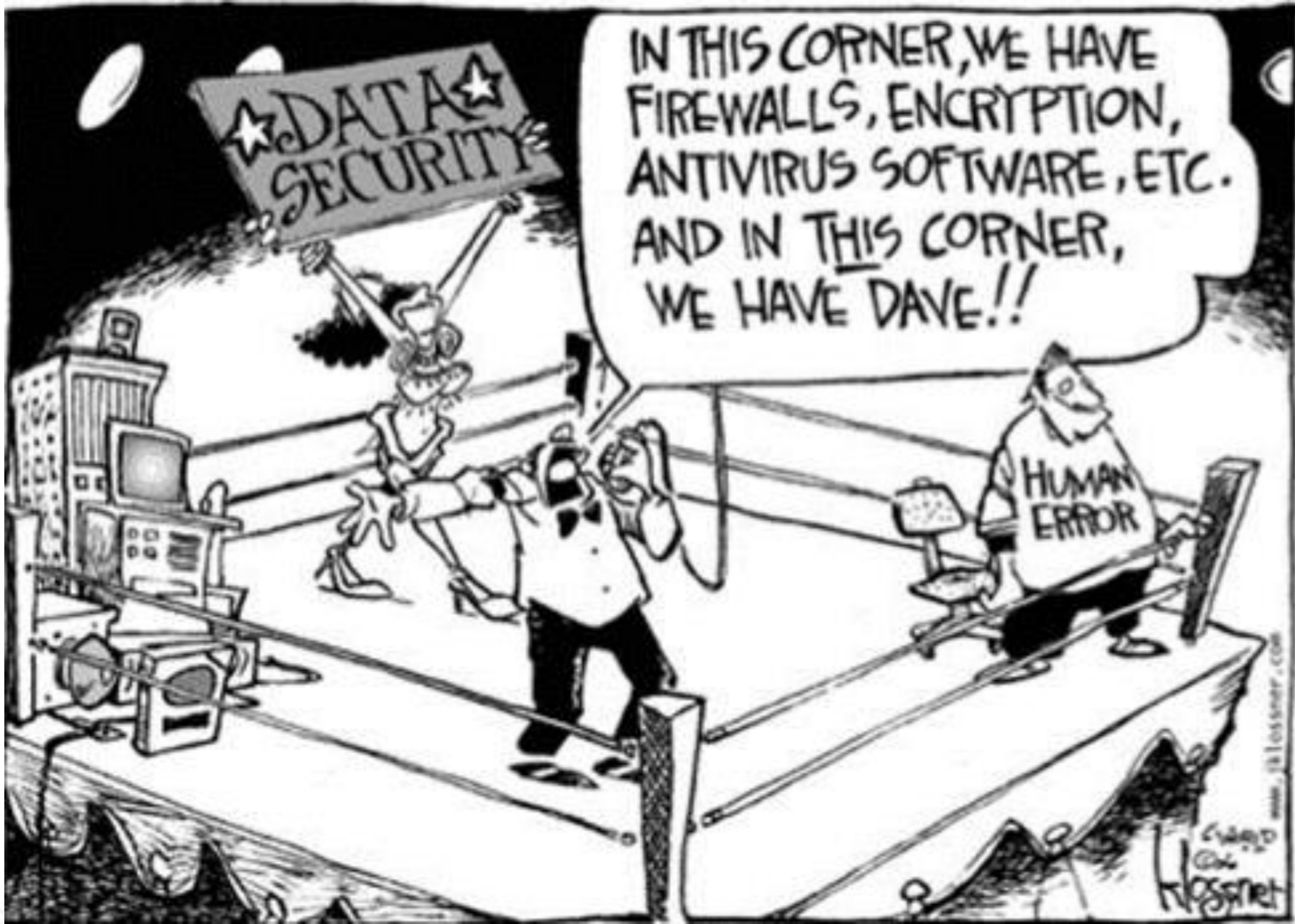


Foreign Local D&O Placements Will Not Be Discussed

- Ok – at least not on purpose, but you never know what is really emerging ...



Cyber Risk Mitigation is Emerging – Even for D&O



Keynote Address



Michael Rice

Chief Executive Officer of the U.S. Specialty Division
JLT

The Headlines from the Executive Risk Network



Rebecca Bole

SVP, Research & Editorial Division
Adviser



For the Management Liability Community

The Headlines from the Executive Risk Network are available to members of the Executive Risk Network only.

For more information about subscriptions contact Jim Delaney at jdelaney@adviser.com

D&O Issues for 2015



D&O Issues for 2015



Wayne Borgeest
Partner, Kaufman Borgeest & Ryan LLP
Moderator

D&O Issues for 2015

- **Wayne Borgeest**, Partner, Kaufman Borgeest & Ryan (Moderator)
- **Lynn Ambrose**, Client Services Executive, Hylant
- **John Burkhart**, SVP, Head of Public Company Management Liability, QBE
- **David Kistenbroker**, Partner, Dechert LLP

D&O Issues for 2015



Break

Coming up - “EPLI”



@Advisen

Thank you to our Sponsors

OneBeacon
MANAGEMENT LIABILITY



Arthur J. Gallagher & Co.

EPLI



EPLI



Stacy Paquet
SVP, Management Liability
OneBeacon Professional Insurance
Moderator



ADVISEN:
Employment Practices
Liability

Management Liability Insights Conference
Allegro Hotel - Chicago 05.19.15

Speakers

- **Stacy Paquet**, Senior Vice President, Management Liability, OneBeacon Insurance Group (Moderator)
- **Gina Cornick**, Vice President, AIG
- **Thomas Deer**, Lawyer, Ogletree Deakins
- **Laura Zaroski, Esq.**, VP of Management, Professional & Cyber Liability, Socius Insurance Services

Agenda

- Key Changes in EPLI marketplace in the last 2 years
- Frequent sources of EPLI claims, including Illinois specific exposures
- EEOC's Impact and Focus Areas
- Other Developing EPLI Exposures
- EPLI Buying and Coverage Trends
- Top 5 EPLI Tips for Risk Managers

EPLI Marketplace Shifts

- Pricing increases
- Retention increases
- Capacity/Underwriting changes

Pricing--Hardening Market

- Hard markets are defined by rising prices and decreased availability
 - Challenging venues
 - Major cities
 - Specific Sector/Industries



Pricing--Retention Trends

- Pressure to increase retentions
 - Carriers losing D&O market share from increased competition now targeting EPL to replace lost revenues,
 - Venue and industry dictate.
 - Split retention for class/mass actions and California claims has been a workable compromise.
 - Separate retentions for high wage earners (professionals – doctors, lawyers, etc.)

Underwriting & Capacity

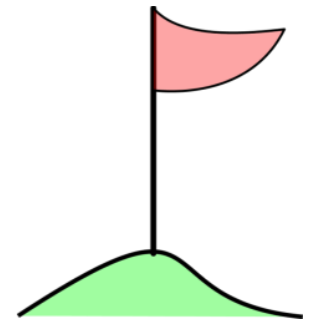
- Venue
- Size
- Loss History
- Industry-- Challenging Risk Classes

Underwriting-- Industry



- Challenging Risk Classes

- Real estate accounts
- Healthcare accounts
- Restaurant/retail
- Car dealerships
- Sports and athletic associations
- High rate of non exempt employees
- Country Clubs
- Educational Institutions



Claims Trends

- Typical EPL Claims
- Fee Shifting
- Counsel Selection
- Late Reporting/Notice
- Settlement
- Illinois Specific Trends



Claims Trends—Typical Claims

- Claims from Employees
 - Wrongful termination
 - Harassment
 - Discrimination
 - Wage & Hour Claims
 - Over 50% of all Employment claims have a wage & hour component.
 - Retaliation / Whistleblower
- Claims from others
 - 3rd party coverage (harassment & discrimination from non-employees)

Claim Trends - Fee Shifting:

- Usually most significant component of settlement expenses in single plaintiff cases
- Drives Settlement (cost benefit analysis)
- Can be most expensive part of claim (Ex. ADA claims)



Claims Trends - Late Claim Reporting

- Timely reporting of a claim is a condition precedent to coverage.
- Many employers don't realize that a demand letter or an e-mail can be a "claim".
- Many employers hope to resolve the matter inexpensively or informally directly with the claimant.
- Still other employers hope to resolve the matter at the administrative level on their own.

Claim Trends—Oldies But Goodies

- Choice of counsel and defense counsel rates.
- Consent to handling EEOC charges in-house.



Claim Trends – Illinois

- IL Human Rights Act – Pregnancy Accommodation
- IL “Ban the Box”

Behind the Scenes at the EEOC

- What's Hot? Strategic Enforcement Plan of 2012-2016
 - Nationwide Charges and Claims Investigation
 - Systemic Discrimination
 - Other Areas of Focus for the EEOC



EEOC—What's Hot

Fiscal Year 2014 (ended Sept. 30, 2014):

Every year 200,000 individuals contact the EEOC about filing a charge of discrimination

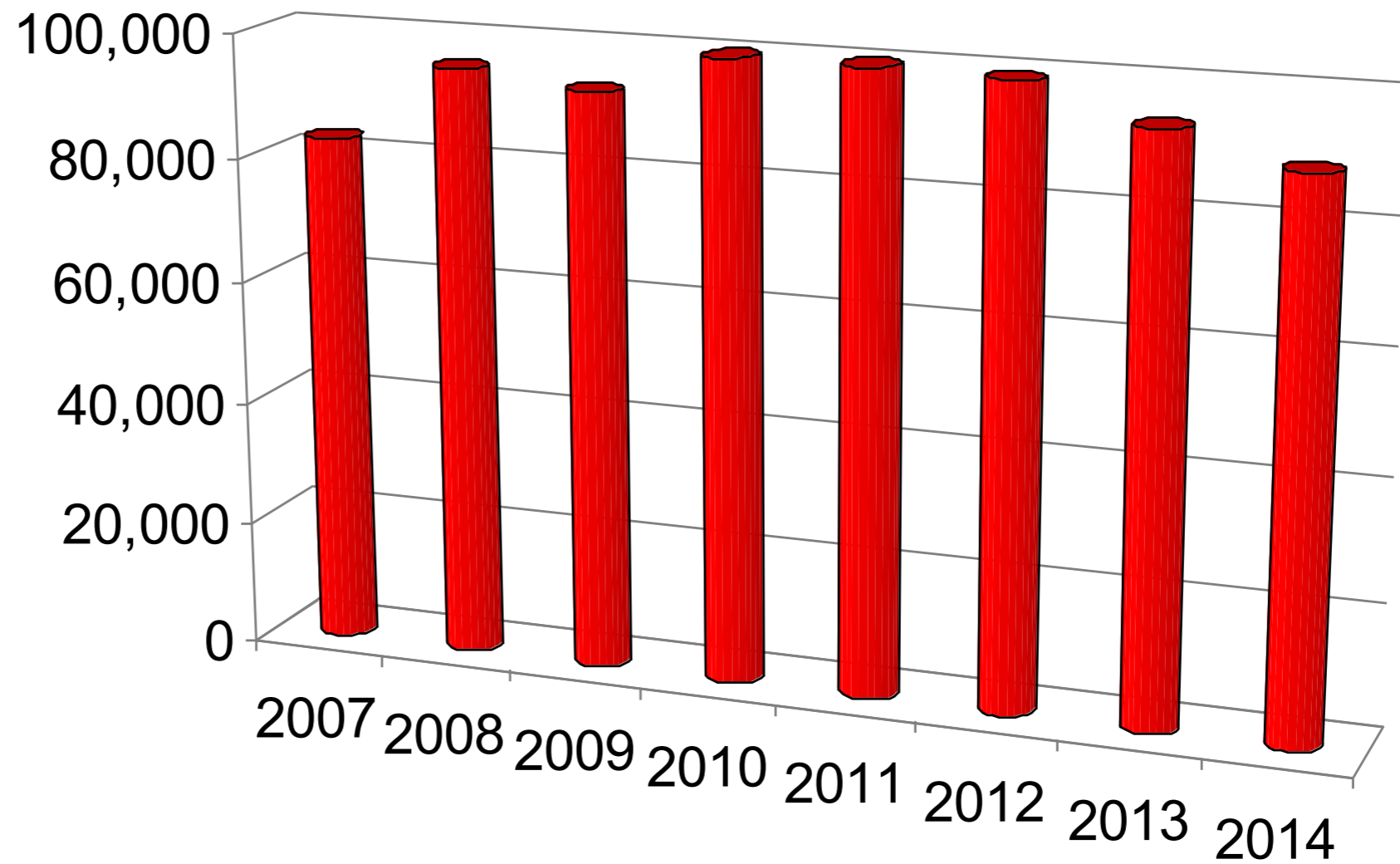
88,778 new EEOC Charges filed

- Down 5,000 from FY2013
- **Down from high of 99,900 in FY2010, 11, and 12**

87,442 Pending Charges resolved

EEOC—What's Hot

EEOC Charges Nationwide by FY



EEOC – What's Hot

Fiscal Year 2014 (ended Sept. 30, 2014):

Claim Investigation process

The EEOC is developing systems that will allow the ability to check status of charge on-line, upload documents, provide on-line scheduling of meetings with investigators, and transform the existing paper process into a fully digital charge system.

These technology projects will reduce calls and wait times for charging parties and respondents seeking information, and will reduce agency staff time on administrative tasks.



EEOC – What's Hot

Other Areas of Focus for the EEOC:

- Confidentiality clauses in severance agreements
- Background Checks/Credit checks
- Wellness plans
- Religious Attire in the workplace
- Low wage earners
- Interns



Impact of the NLRB

- Ambush elections
- Handbooks/policies
- Joint Employment/Franchisors

Buying Trends

- Who's buying EPLI?
- Limits, Terms and Options Available
- Retentions
- Coverage offerings
- Risk management services

Coverage Trends

- Wage & Hour
- Immigration
- Social Media
- Employee Privacy
- Cyber Endorsement
- Bullying



Coverage--Immigration

- **IRCA: Immigration Reform and Control Act of 1986**
 - Required employers to attest to their employees' immigration status;
 - Made it illegal to hire or recruit illegal immigrants knowingly
 - Coverage: Sublimit available?



Coverage--Social Media

- Social Media Endorsement or coverage under EPLI form?
- Impact of the National Labor Relations Board:
 - Social media policies should be narrowly tailored
 - Review employer policies and procedures that “chill” protected concerted activity under Sec. 7
 - Look closely at whether the employer’s policies violate the NLRA

Coverage--Employee Privacy & Cyberliability

- Employee Privacy
- Cyberliability endorsements
 - Coverages:
 - Third party claims made for damages
 - First party loss – forensic investigation
 - Breach Mitigation Expense – notification & credit monitoring
 - Electronic Media Liability coverage



Coverage--Bullying

- Bullying statutes introduced in 28 states-
none in effect
 - Workplace Bullying Institute
- California new law effective January 1,
2015–AB2053
 - Employers in CA with greater than 50
workers must include lessons on anti-
workplace bullying during state mandated
sexual harassment training for supervisors
every 2 years.

S T O P
cyberbullying

Tips for Risk Managers

- **Back to the Basics**
 - Handbooks/Policies
 - Training (ADA/FMLA/Harassment)
 - Wage Statements/Pay Practices
 - Worker Classification
 - Contingent Workers/Joint Employment

EPLI



Emerging Risks Ahead to 2025



Emerging Risks - Ahead to 2025



Tony Galban

SVP & Global D&O Product Manager,
CSI Underwriting, Chubb
Moderator

Emerging Risks - Ahead to 2025

- **Tony Galban**, SVP & Global D&O Product Manager, CSI Underwriting, Chubb (Moderator)
- **Dan Fortin**, SVP, Executive & Professional Lines, Berkshire Hathaway
- **Carolyn Rosenberg**, Partner, Reed Smith LLP
- **Kathy Schroeder**, Sr. Director, Global Risk Management, Office Depot, Inc.
- **Greg Spore**, Managing Director, Marsh FINPRO

Emerging Risks - Ahead to 2025



Closing Remarks & Lunch



Thank you to our Sponsors

OneBeacon
MANAGEMENT LIABILITY



Arthur J. Gallagher & Co.