

NY Times On The New Shadow Insurance System

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Nick Shaxson has done amazing work on the Treasure Islands book and the [Treasure Islands website](#). This comes from it, with permission, and shows that the mainstream media reinforces much of what Nick, I and the Tax Justice Network have been saying for a long time:

Treasure Islands took some trouble to explain how small U.S. states such as Delaware were serving essentially as offshore centres within the United States, offering secrecy and lax regulation of various kinds. Well, a new and excellent [New York Times story](#), about the captive insurance industry, fits the Treasure Islands so closely as to be almost spooky.

I will explain a bit more about captive insurance later, but first, I will note various sentences which will, for readers of Treasure Islands, ring bells immediately. This one is a ring-dinger:

“the states are offering a refuge from other states’ insurance rules,”

which screams ‘offshore’ — as does the article’s headline itself

“Seeking Business, States Loosen Insurance Rules”

And the first couple of lines:

Companies looking to do business in secret once had to travel to places like the Cayman Islands or Bermuda. Today, all it takes is a trip to Vermont.

Ding ding! There’s also another twist to the article, which again dovetails with Treasure Islands’ exploration of Delaware:

This has given rise to concern that a shadow insurance industry is emerging, with less regulation and more potential debt than policyholders know, raising the possibility that some companies will find themselves without enough money to pay future claims. Critics say this is much like the shadow banking system that contributed to the financial

crisis.

The article highlights Vermont as the leading state jurisdiction for captive insurance; the Vermont captive insurance agency [explains](#) the attraction:

The regulatory environment in the State of Vermont is proactive and responsive.. . ([there is](#)) a flexible and open regulatory approach

That ticks another Treasure Islands box. We don't have to worry about pesky democratic accountability to the people who might be affected by these laws — you come to us with the laws you want, and we'll write the the laws you need. We will be a law-making machine, at your (private) service. Oh, and then there's Vermont Captive's " [team](#) " of four members, including "Governor Peter Shumlin." It doesn't make it clear what exactly his role is in promoting the captive insurance industry in Vermont, but it does look rather cosy. Tick another Treasure Islands box there. The captured state.

Now onto the subject of what the captive insurance industry is up to. At its simplest, it happens when a company (let's say an oil company, for instance) sets up its own in-house insurance company to insure itself, and only itself. (Now it may seem odd to do this, raising the question of who pays up when the parent company gets into catastrophic trouble, but there are ways to use financial markets to do this.)

Historically, companies have set up captive insurance subsidiaries offshore. [Wikipedia](#) runs through a rogue's gallery of jurisdictions where this stuff happens:

Belize, Bermuda, The Cayman Islands, Ireland, Guernsey, Luxembourg, Barbados, Malta, Singapore, Anguilla, the British Virgin Islands, the Qatar Financial Centre Authority and Dubai International Financial Centre. All (except Qatar) are on this list.

And the reasons for setting them up vary. It continues:

Several offshore jurisdictions have lower capitalization requirements, which may allow captives to be set up with less initial investment and lower reserves.

Tick the Treasure Islands box. Relax financial regulations, don't worry about build-ups of risks, and watch the money roll in. And this goes back to the NYT article, highlighting the hidden risks building up, and the potential for the emerge of a "shadow insurance system" that could pose similar risks to the shadow banking system.

Then there's a story about [Frederic Reiss](#) of Ohio who helped open up Bermuda as a captive insurance destination in the 1960s. One of his key reasons for choosing Bermuda was

"its position as a British Dependent Territory, which removed risks and uncertainties"

The British Spiderweb, as Treasure Islands explores in huge detail.

But there is another reason why this industry started off: tax. The basic principles are very simple: you can play what are called " [transfer pricing](#) " games. Here's how it might work, in principle.

Big Oily, a firm headquartered in the U.S., sets up a captive insurance subsidiary in Bermuda. Big Oily Bermuda insures Big Oily U.S., and charges vast premiums to Big Oily U.S. These premiums mean that Big Oily Bermuda is massively profitable. But because it is in Bermuda, it pays no tax on those profits. Meanwhile, Big Oily U.S. offsets those massive insurance premiums against its U.S. tax bill.

Hey presto! A big tax bill has disappeared. (Note that nobody has made anything better or more efficient here. All that has happened is a big transfer away from taxpayers to Big Oily's shareholders.)

Anyway, these two main attractions — lax regulation, and tax shenanigans — meant that companies dived into the business of captive insurance.

Now 'onshore' countries saw what was happening on transfer pricing, and began to take countermeasures. They began to rule that those set up simply for tax purposes were simply shams (see page 6 of [this document](#), for illustration) and were disallowed. And so the business became more complex, and the tax factor became just one of several reasons that companies cite for setting up captives today. Some reasons are more reputable than others.

The NYT story notes that U.S. states like Vermont or Delaware have broadened the definition of captives so that even insurance companies can create them. It is this in particular that creates the possibility of a shadow insurance industry, which is outside the purview of normal insurance regulation. The insurance company Aetna, for example, saved itself \$150m by going to Vermont where it could hold lower reserves than its home state of Connecticut required. And it noted that:

Three weeks after Aetna's deal closed, the company announced it was increasing its dividend fifteenfold.

And there's something else:

State regulators normally require insurance companies to make available reams of detailed information. . . . But not if the insurer relies on a captive. The new state laws make the audited financial statements of the captives confidential.

This, then, is a simple formula that will be familiar to students of the latest financial crisis. In essence: money (\$150m in this case) was transferred to Aetna shareholders — but with a quid pro quo: greater risk in the system — and more opacity.

Some states, to their credit, have shunned these Wild-West approaches to insurance regulation. California is a case in point:

"We are concerned about systems that usher in less robust financial security and oversight," said Dave Jones, the California insurance commissioner.

Good for them.

Then there's a whole story about AIG on [page 2](#) of the NYT story, which is worth reading. All in the same vein.

As I say, the similarities with what I describe in Treasure Islands are spooky. It all fits my definition of a tax haven, or secrecy jurisdiction:

A place that seeks to attract business by offering politically stable facilities to help people or entities get around the rules, laws and regulations of jurisdictions elsewhere.

Indeed.