IN THIS ISSUE, WE

...examine current insurance market trends that point to lower rates in 2014 based on reported robust insurer financial results.

...look at the increased potential liability placed on all employers by the wave of new gun laws passed or under consideration by a number of states. These new laws place employers in a perplexing position as property ownership rights appear to be secondary to individual gun ownership rights based on recent court cases.

...spotlight the potential benefits of applying the Enterprise Risk Management review process to an organization, the impact of climate change on environmental liability, renters insurance program solutions, the need for crisis management planning, and the repeal of annual deductible limits for small group plans.

MARKET TRENDS UPDATE

The year 2013 saw the insurance industry enjoy one of its better years based on the following results:

- Net income for private P&C insurers was $63.8 billion in 2013, up $35.8 billion from 2012.1 Much of this improvement was due, in large part, to the $30.9 billion net gain on underwriting results.2
- The rate of return on surplus increased to 10.3%, the highest since 2007.3
- The combined ratio dropped to 96.1%, down from 102.9% in 2012.4
- Surplus grew 11% to close the year out at $653.3 billion.5
- Investment income grew as realized capital gains overcame weakness in fixed income returns. However, the industry’s net investment income of $47.4 billion6 is still lower than the peak of $55.1 billion reached in 2007.7

Despite low investment yields, bad weather and softening pricing, insurers are reporting strong earnings for the first quarter of this year. Travelers: a 17% rise in first quarter profits;8 Aspen: first quarter profits rose 31.2%;9 and AWAC: first quarter profits rose 11.3%.10 All also reported an improvement in their combined ratios.

A Financial Times article stated that “the wave of capital flowing into the reinsurance industry from investors such as pension funds is spreading into more areas of the reinsurance market helping primary insurers secure another sharp drop in the cost of reinsurance.”11 This phenomenon is explained in part by the fact that investors are seeking yield and non-correlated investments. The cost of reinsurance is a significant factor in determining the direction of rates. Recent reports from KBW12 and Barclays13 suggest that the cost of reinsurance could drop 10% or more. A report from Willis Re noted “reinsurance pricing has fallen across nearly all classes and geographies with reductions of up to 20%.”14
The favorable results experienced in 2013, the positive first quarter results for this year and improved recent reinsurance costs are all helping to reduce pricing. However, low yields, loss cost inflation, the belief that reserve releases will abate and the sense that catastrophe losses in 2014 will return to historical averages are part of the reason many insurers are maintaining a degree of pricing discipline.

We believe that the trend toward lower rates for most buyers will continue in 2014 as discussed in detail in our April 9, 2014 Marketplace Realities report, which can be found at http://www.willis.com/What_We_Think/Publications/. The following chart provides a summary of our rate expectations by line of coverage for 2014.
GUNS IN THE WORKPLACE – EMPLOYERS CAUGHT IN THE CROSSFIRE

The Bureau of Labor Statistics reported for 2012 that 688 workers were killed due to homicides and suicides. Shootings were the leading cause of death for both homicides (81%) and suicides (48%). A 2005 study of North Carolina workplaces found that “workplaces where guns were permitted were about five times as likely to experience a homicide as those where all weapons were prohibited.”

Twenty-two states have passed legislation preventing businesses from banning guns kept in employee vehicles in the company parking lot. Details vary by state, but employers are prohibited in most cases from:

- Asking if a firearm is present in a vehicle while parked on company property.
- Restricting access to company property based upon the presence of a weapon inside a vehicle.
- Terminating or discriminating against an employee (or job applicant) who legally carries a firearm in their vehicle.

The legislatures in a number of additional states are considering these “Bring Your Gun to Work Laws.”

These new gun laws appear to be in direct conflict with the general duty clause of the Occupational Safety and Health Act of 1970 (OSHA), which requires employers to provide a workplace that is “free from recognized hazards that are causing or likely to cause death or serious physical harm.” However, employers that have argued this point in the courts have so far been unsuccessful with respect to having firearms banned in their parking lots. The fact that OSHA has not established any standards to regulate firearms at private workplaces has been a key point noted by the courts in reaching their decisions to uphold the constitutional rights of individuals to transport or store firearms in their vehicles over private property owner rights to ban them.

This leaves employers potentially vulnerable to the following legal exposures:

- Citations under the Occupational Safety and Health Act’s general duty clause, even though there is no specific employer duty to prevent workplace violence.
- Workers’ compensation claim benefits where employees are deemed to be injured in the course of their employment under applicable state statutes.
- Third-party claims alleging negligent hiring, supervision and/or retention (these types of claims will focus on whether or not the employer should have known that an employee could have caused harm to others and, if so, whether or not the employer responded in a reasonable manner given the situation).

STEPS EMPLOYERS CAN TAKE TO PREVENT WORKPLACE VIOLENCE

- Conduct thorough pre-employment screening.
- Recognize the warning signs of violence.
- Create a policy that clearly states that any type of violent behavior in the workplace will lead to discipline and possible termination.
- Ban firearms from business premises and employer-owned or leased vehicles. Note: employers still have this right, even in those states that permit employee firearms in personal vehicles.
- Since employers are now on notice that employee vehicles may contain firearms, take additional steps to maintain security of the parking lot and vehicles.
- Establish response procedures in order for employees to know how and who to contact if they feel threatened in the workplace.
- Identify critical locations where violent incidents could occur, such as entrances and exits and train employees located there on the proper response if an employee or third party constitutes a threat.
- Establish a working relationship with local law enforcement and seek their input in the development of response procedures and coordination of activities if an event occurs.
- Educate, train and retrain annually all employees and supervisors on workplace violence policies and procedures.
- Establish employee assistance programs (EAP) to identify and help resolve employee problems before they escalate into violent behavior.
- Consult a local attorney with respect to the development of any policies and procedures as gun laws can vary significantly by state.
RESOURCES

The Federal Bureau of Investigation’s paper “Workplace Violence: Issues in Response” highlights findings from the collaboration of experts who looked at the latest thinking in prevention, threat assessment and management, crisis management, critical incident response, research, and legislation. It also offers common-sense recommendations for those in the position to do something about workplace violence.

The Department of Homeland Security (DHS) announced the availability of a new Independent Study Course: Active Shooter, What You Can Do (IS-907). This is a no-cost training course developed to provide the public with guidance on how to prepare for and respond to active shooter crisis situations. This new online training is available through the Federal Emergency Management Agency (FEMA) Emergency Management Institute (EMI) at http://training.fema.gov/EMIWeb/IS/IS907.asp.

Employers should continue to monitor the changing gun laws in the states in which they operate and be prepared to address what appears to be an increased duty of care placed on their organizations with respect to workplace violence.

For more information, contact Kevin C. Wilkes, Vice President, Midwest Regional Director, Risk Control Services, Security Practice Leader, Security Risk Consulting, Risk Control and Claim Advocacy Practice at +1 412 645 8531 or Direct: +1 412 645 8531 kevin.wilkes@willis.com.

ERM FOR REAL ESTATE ORGANIZATIONS

The recent economic crisis and real estate crash caught many companies off guard. Lack of awareness and preparation for major as well as show-stopper risks resulted in significant financial loss and, in some cases, bankruptcy.

Historically, firms with stronger risk oversight and risk management integrated into the business planning process are better prepared to withstand, or even gain competitive advantage, when a business or economic storm arises. How can this integration be achieved? Through a robust Enterprise Risk Management (ERM) Program.

ERM is a systematic process to identify, assess, communicate and manage risk across an organization. The best way to start an ERM program is thorough an initial enterprise-wide risk assessment and risk mitigation planning exercise.

The question that often arises is how to go about this in a way that minimizes time demands while still developing information that will really make a difference in reducing an organization’s risk.

While there are several process techniques for assessing risks, in our experience, the most effective method usually involves an interactive workshop of 15-25 participants comprised of executive, operational and functional leaders.

This method entails a comprehensive review of the organization’s financial and operational components, well before the workshop takes place. Coupled with input from external data sources, this is the foundation for developing a comprehensive list of potential risks material to the organization. Then, through use of an e-survey, this list is filtered down to the top 25 to 30 risks deemed the most relevant and serious to the firm.

During a one-day highly interactive workshop, each of these top risks is fully articulated, and the explicit future events that could trigger a loss as well as the current factors within the firm that increase its particular vulnerability to these events are defined. The final pieces of the risk articulation are the risk consequences and current risk controls. Once all these have been confirmed by consensus, the workshop team is then in a position to assign an informed Likelihood and Impact rating for each risk.
ERM for Real Estate Organizations continued from page 4

After the identification and assessment phase, this information is used to develop effective risk mitigation plans for the most critical risks. It is vitally important to make sure that risk mitigation actions agreed by the team are clear, practical and will directly reduce the likelihood, impact or both for each risk.

The result of the foregoing activities, when properly executed, is a comprehensive understanding of the most material and relevant risks facing the organization, along with the agreed steps to reduce those risks. This information can then be captured in a concise report including high impact graphic displays, such a Risk Register, Risk Map, Risk Distribution Chart and the specific Risk Mitigation Strategies for communication to key stakeholders.

After this initial assessment, most organizations focus on developing an ongoing ERM Program framework to ensure that the benefits of ERM are sustained and built into the organization’s business planning process.

ERM Success Factors: Like any business endeavor, there are factors that can spell the difference between a highly successful and a marginally successful ERM program. These include:

- Securing of visible board or C-suite support for the program
- Building the program incrementally, not trying to “boil the ocean”
- Aligning ERM with the business planning process; i.e., focusing on the risks that could prevent the firm from achieving strategic and/or growth objectives over a specified time horizon
- Employing assessment techniques that can also regularly churn up emerging and previously unforeseen risks
- Focusing participant time only on the risks that really matter

ERM Benefits: The benefits of a properly executed program are:

- Reduced performance volatility
- Identification of, and preparation against future crises
- Maintenance of (or reduction in) your firm’s cost of capital
- Compliance with governance and regulatory requirements
- The ability to more effectively capitalize on new opportunities

All combined, the net benefit of effective ERM is recognized in an increase of the organization’s value.

If you have questions or desire information regarding Willis’s proprietary ERM tools and processes, please contact Todd Williams – todd.williams@willis.com, Chrystie Howard – chrystina.howard@willis.com or Elizabeth Osgood – elizabeth.osgood@willis.com.

The Willis Global Solutions Consulting Group is a resource specializing in ERM, risk analytics/modeling and alternative risk finance.

ADAPTING TO CLIMATE CHANGE: ENVIRONMENTAL LIABILITY

Over the past several years, more and more companies have become increasingly aware of climate change issues and the necessity for sustainability/resiliency planning. This awareness comes in many forms but primarily centers on how their business might be affected financially (through legal liability, fines/penalties, government regulations, and financial disclosure requirements) or just simply public relations surrounding responsible corporate citizenship.

As industries begin to accept that climate change is a reality and take seriously its estimated path into the future, they are preparing for the potential impact, the importance of sustainability planning and facing that possibility that they may need to be prepared to pay a price on their carbon.

This is not isolated to major oil companies or large manufacturing entities that burn vast amounts of coal to generate energy (some companies that have already taken the initiative to consider sustainability planning include Microsoft, General Electric, Walt Disney, ConAgra Foods, Wells Fargo, DuPont, Duke Energy, Google and Delta Airlines.)
DROUGHTS AND HEAT WAVES

While most of the loss scenarios discussed above would be addressed under a pollution legal liability policy, other non-pollution-related environmental damages would not be covered. For example:

**Loss of Operating License**
A major soft drink company lost their lucrative operating license in India because of an exhaustion of water resources used as raw material.

**Supply Chain Disruption**
A major footwear and clothing manufacturer’s operation was disrupted because extreme weather hampered cotton growth (which as one of their primary raw materials).

From a risk-management perspective, all of these exposures affect a company’s business risk and, ultimately, how insurers may view them in terms of underwriting appetite, coverage, premium and limit for certain classes of risk.

While public policy and government intervention can help raise awareness and acceptance of its importance and address the climate change issue, it’s actual corporations that can make the most impact through their own individual greenhouse gas reduction and sustainability efforts to ensure their own business success and longevity.

Climate change will continue to be one of the top concerns facing businesses across the board. Therefore, adapting proper risk management strategies and loss control planning measures early on is key to any firm’s ongoing success.

We also invite you to visit our [website](#) for past publications or other information about environmental issues. For additional information please contact Anthony Wagar in our Environmental Practice at 212 915 7768 or [anthony.wagar@willis.com](mailto:anthony.wagar@willis.com).

STORM SURGE AND/OR FLOODING

Adverse weather events such as flooding, storm surges, droughts and heat waves could lead to unexpected clean-up costs and/or pollution legal liability issues. Here are a few real life examples:

**Historic/Pre-Existing Contamination**
Properties having historical or pre-existing contamination could be disturbed and, subsequently, carry pollutants to multiple locations resulting in the cross-contamination of various parts of the property and/or neighbouring properties.

**Landfills**
Heavy water infiltration can cause landslides carrying pollutants and/or contaminated waste water into nearby waterways or sensitive third-party receptor areas.

**Drums and Storage Tanks**
Drums containing hazardous waste and storage tanks containing oils and other chemicals could be raised and set afloat and damaged during transport from their original locations, thereby distributing pollutants downstream.

**Sewerage Authorities**
Sewerage authorities have limited storage and processing capacity; therefore, large unanticipated volumes of water could result in the overflow and/or release of raw untreated sewage.

**Mold Damage**
Mold can grow at alarming rates given proper moisture, temperature range and food source (cellulose based substrate) following a saturation event.

**“Green” Materials**
Many environmental insurers are now providing coverage which gives insureds an option to replace property with “green” materials following damage from pollutants; hence, further reducing their carbon footprint and addressing sustainability issues.

Many businesses experienced these scenarios during Superstorm Sandy, which resulted in costly remediation, bodily injury/property damage and staggering legal defense costs.
HOW A METH CLINIC IN LOUISVILLE CHANGED OUR VIEW OF RENTERS INSURANCE

Over two billion dollars is spent annually by renters who are required to have insurance as a condition of their tenancies. Research shows that the greatest benefactors of these requirements are the nation’s largest insurance companies and not the property owners requiring insurance. As a result of these findings, Effective Coverage has launched Renters Liability Pro, a solution for property owners with more than 5,000 units who want to take control of their tenant risk management requirements.

Many property owners who have traditional renters insurance programs are only now realizing that they are not achieving their original goals of significantly reducing the costs of tenant damages despite the notable investments in tracking compliance and the costs burdened by renters. While the exact cause of the low success varies by owner, common reasons include the inability to determine negligence after claims, increased costs for tracking compliance, policy cancellations for non-payment prior to occurrence of losses, and renters policies that exclude coverage. Studies citing an average annual recovery of just $9.51 per door for owners with a $25,000 commercial property insurance deductible is alarming given that the average renters insurance policy premium in 2011 was $187.

A methamphetamine operation run by a tenant in Louisville, Kentucky highlights the need for a new approach to funding damages arising from tenants. Not only did the property owner’s policy deny coverage for toxin remediation resulting from the drug production, but so too would the tenant’s renters policy if one had been in force. Even though the acts of the tenant caused significant damages, the owner was forced to pay for the remediation and other damages out of pocket.

Effective Coverage has added two very important components to a traditional renters insurance program. These components eliminate gaps in coverage such as the one described above, automate tracking and shift the benefits of requiring insurance from the insurance companies to the property owners.

1) **A managed additional interest certificate tracking and compliance platform for third-party policies.** Owners require residents to list the property as an additional interest with one unique mailing address that is managed by Effective Coverage. The additional interest status requires the insurance company to notify the appropriate party of all renewals, cancellations, reinstatements and policy changes.

2) **Owners incorporate an insurance exemption option that allows residents to pay a small monthly fee in lieu of maintaining renters insurance policies.** This program will alleviate all the findings detailed above and provide the owners with a significant reserve of funds to pay for damages or use as desired. The insurance exemption fee is neither insurance nor is it a damage deposit. The exemption program simply mitigates the risk that the property owner accepts when residents choose not to have insurance.

The table below illustrates the financial benefits from facilitating the insurance exemption option. However, other equally important benefits, including streamlined compliance, less work for leasing agents, automated compliance options, and lower out-of-pockets expenses to residents should also be considered.

<table>
<thead>
<tr>
<th>Example Unit Count</th>
<th>10,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exemption Charge</td>
<td>$8.00</td>
</tr>
<tr>
<td>Percent Enrollment</td>
<td>50%</td>
</tr>
<tr>
<td>Mgt. Fee Per</td>
<td>$1.00</td>
</tr>
<tr>
<td>Exemption Charge</td>
<td></td>
</tr>
<tr>
<td>Retained by Owner to Fund Losses</td>
<td>$420,000</td>
</tr>
</tbody>
</table>

To assist our clients seeking to implement or improve their resident risk management programs, Willis has allied with Effective Coverage, a specialist in tenant risk management solutions. To learn how this program may be implemented in your communities, contact your Willis Client Advocate® or Eric Narcisco, CEO of Effective Coverage, at 646 395 9888, narcisco@effectivecoverage.com.
2014 AND BEYOND: ARE YOU PREPARED? 
(NO, REALLY....ARE YOU PREPARED??)

As property owners or managers of risk, we know that sometimes, despite our best efforts, there is no avoiding the sudden, the tragic, or any of the many facets of risk. 2013 proved to be another year filled with many crises across the globe; from the world stage of Super Bowl XLVII and its major power outage to the deadly assault on a shopping mall in Kenya. These events and many others have made it painfully clear for 2014 and beyond... Those who fail to plan, plan to fail.

In today’s uncertain risk climate, any crisis can result in catastrophic losses for any organization: financial, operational, reputational or the loss of life. Superstorm Sandy, Typhoon Haiyan, and the horrible fire at the recently rebuilt boardwalk of the Jersey Shore have caused damages and losses well beyond that predicted.

Make this year, 2014, the year you ensure that your organization’s crisis management and emergency action plans have been reviewed, are current, effective, and have been rehearsed. The first time to reach for your plan or to test it should not be during an actual event, when you may discover it is outdated, missing a critical component, hasn’t been rehearsed or worse – doesn’t even exist.

Your resiliency, your ability to successfully manage and mitigate the impact of a crisis and return to a level of operational normalcy as well as the safety and protection of your stakeholders (employees, customers, tenants, investors, etc.) can often directly depend upon your organizational level of risk preparedness.

Why is this so important?

- Between 15% and 40 % of businesses fail after a man-made or natural disaster, according to the Insurance Information Institute. 23
- 40% – 60% of businesses without a crisis management plan never reopen after a significant incident, and the response for the first 10 days are critical to survival. 24
- According to IBM’s recent survey of 2,316 IT professionals, conducted by Ponemon Institute, respondents estimated a total cost of $19.6 million due to IT disruptions over the next 24 months. 25

- According to the 2013 Small Business Disaster Survey, 74% of small business owners don’t have a disaster recovery plan for their businesses. 26
- According to the 2011 study by security firm Symantec, 65% of U.S. businesses are located in areas affected by natural disasters. 27
- Companies that manage crises well tend to have a rise in shareholder value and market share. 28

Clearly, crisis management planning should be a primary strategic concern for the long-term success of any organization. It’s a very simple formula...

Good Crisis Management Planning + Good Execution = Good Risk Leadership and Organizational Sustainability!

Again, make this the year you ensure that your level of risk planning equals the level of your organizational preparedness. Accomplishing this one task can mean the difference between crisis recovery and organizational failure.

For more information, contact Kevin C. Wilkes, Vice President, Midwest Regional Director, Risk Control Services, Security Practice Leader, Security Risk Consulting, Risk Control and Claim Advocacy Practice at +1 412 645 8531 or Direct: 412 645 8531 kevin.wilkes@willis.com.
ANNUAL DEDUCTIBLE LIMITS FOR SMALL GROUP PLANS REPEALED

President Obama recently signed into law the “Protecting Access to Medicare Act of 2014.” While the legislation's primary purpose was to delay changes to the formula used to determine the amounts Medicare pays health care providers for services, it also contained provisions not directly related to Medicare. Of interest to small employers was the legislation’s elimination of the annual deductible limits imposed under the health care reform law. The Patient Protection and Affordable Care Act (PPACA) limited the annual deductibles of health plans offered in the small group insurance market, starting in 2014, to $2,000 for self-only coverage or $4,000 for coverage other than self-only coverage. This change should give small employers greater flexibility in designing the plans they offer to their employees.

A small group market plan is a plan with up to 100 employees on average, or up to 50 employees on average for those states that adopted that lower threshold. The Department of Health and Human Services (HHS) had interpreted this law as being limited to non-grandfathered insured small group market plans. This provision was not applicable to any employer-sponsored self-funded plan, grandfathered plan or insured large group market plan.

The repeal of the deductible limits is effective “as if included in the enactment” of PPACA, which means it is treated as if it had never been enacted. Please note that only the requirement under PPACA was repealed and that similar requirements under state law are not affected.

The Willis Human Capital Practice offers a broad array of Health Care Reform-related tools, publications and presentations. We invite you to click here to review the archive of available information.

Our site is updated regularly as new developments occur and new guidance published, so please check back often.

CONTACTS

For additional information on the topics discussed in this issue, or any others for which our Real Estate and Hotel Practice might provide assistance, please visit our website at willis.com.

Brian Ruane  
Director  
+1 212 915 7971  
brian.ruane@willis.com

Steve Sachs  
Director  
+1 410 964 5800  
steve.sachs@willis.com


Willis is an insurance consulting and brokerage firm. We are not attorneys and this publication is not to be considered legal advice. Please consult with your attorneys prior to incorporating any of our suggestions into an actual contract or agreement.