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In Touch
2017 PRIMARY INSURANCE MARKET OUTLOOK

Beefing Up Resilience
BY SEAN VAN ZYL

Waiver Saver
BY PETER VLAAR, DAVID OLEVSON & SABRINA LUCIBELLO

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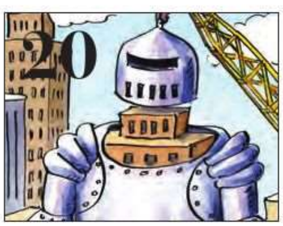

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Photo: Darren Greenwood

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Mark Day, recipient of the latest Donald M. Stuart Award, sees risk professionals increasingly becoming part of risk conversations early on. And that bodes well for being able to address not just existing risks, but emerging ones.
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EDITORIAL

Make-over Take-over

Ontario's plan to move forward with a new Financial Services Regulatory Authority (FSRA), in line with a recommendation made by members of a government-appointed panel, has generally been well-received.

The idea of a make-over for a body that, among other things, deals with the challenging, yet incredibly important, system for auto insurance is attractive, indeed.

It could hardly help but be the case in a province that, over the decades, has made everything from subtle contouring to obvious reworking an almost official past-time.

In mid-November, the Ontario government provided its assurances that it will table legislation to establish the initial parameters for the FSRA. The legislation establishing the body received first reading November 16.

Clearly, an update is in order. Technology, customers' ballooning expectations, changing distribution models and emergence of eager competitors (of all stripes) demand it so insurers can do what they need to do.

One big challenge — no doubt, there will be others — is how best to encourage confidence in the new body, while tempering expectations that all will be immediately righted like some promise of before-and-after bliss.

The government's view of what FSRA should provide is crystal clear: a more consumer-focused entity that improves "protections for consumers, investors and pension plan beneficiaries."

Encouraging, yes, but putting promise into practice will prove no small feat. That challenge is likely to be inflated even more given one thing the new body is meant to address: the rapid pace of technology change in step with customer expectations.

Keeping pace is clearly something the Ontario government has identified as necessary — in light of the FSRA mandate — and is being demanded by insurers and customers alike.

Still, it would be folly to think that even a well-conceived body, with the best of intentions, will always be able to move as quickly as customers will be demanding or new players proposing.

Responsiveness is crucial, true, but so is a long-term view of customer protection.

All that said, the first legislative step towards FSRA has been welcomed by insurers and brokers alike.

"An area of importance for automobile insurers will be the ability of the new regulator to modernize Ontario's rate regulation process; the current system stifles innovation and prevents the benefits of a competitive market from being fully realized," reports Insurance Bureau of Canada (IBC).

The Insurance Brokers Association of Ontario (IBAO) echoed the support, citing the "need for a nimble, consumer-focused, 21st-century regulator."

However, IBAO also advised against barrelling ahead. "Any move toward rate deregulation could have a significant impact on the insurance market and consumers in Ontario. It is imperative that further consultation on how this will be affected take place."

The FSRA "will be structured as a flexible, independent, financially self-sufficient, expertise-driven body well-equipped to be able to respond to rapid technological and market change," notes a recent briefing from Stikeman Elliott LLP. "The FSRA's revenues will be used exclusively for its own activities, thus fostering its independence, rather than being deposited in Ontario's Consolidated Revenue Fund."

Of course, more detail is needed to refine the new look and approach of the FSRA.

"The forthcoming regulations may provide additional clarity about some issues on which the panel did not take a strong position, notably whether and how the FSRA's auto insurance rate review and approval function will be insulated from political pressures," the briefing adds.

IBAO is "urging the government to move cautiously and consult widely with respect to auto rate regulation and other aspects" of panel recommendations. "We need to be at the table when changes are proposed and discussed prior to implementation," says association chief executive officer Colin Simpson.

Keeping pace is clearly something the Ontario government has identified as necessary — in light of the FSRA mandate — and is being demanded by insurers and customers alike.

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Regulation

ONTARIO TO ESTABLISH NEW FINANCIAL SERVICES REGULATORY AUTHORITY

The Ontario government plans to table legislation to establish the initial parameters for the Financial Services Regulatory Authority, an independent and flexible regulator of financial services and pensions meant to improve protections for consumers, investors and pension plan beneficiaries.

The move is in response to recommendations made by a panel, members of which were appointed by Ontario's Ministry of Finance. The panel reviewed mandates of the Financial Services Commission of Ontario, the Financial Services Tribunal and the Deposit Insurance Corporation of Ontario.

Insurance Bureau of Canada is encouraging the provincial government to quickly introduce enabling legislation.

"An area of importance for automobile insurers will be the ability of the new regulator to modernize Ontario's rate regulation process; the current system stifles innovation and prevents the benefits of a competitive market from being fully realized," the bureau adds.

ALBERTA SEEKS TO REDUCE HUMAN-CAUSED WILDFIRES

The Government of Alberta has introduced a bill that, if passed, would adopt measures aimed at reducing the number of wildfires caused by humans and enhancing firefighting operations.

Bill 24, the *Forest and Prairie Protection Amendment Act*, proposes amendments to the *Forest and Prairie Protection Act* that include strengthening penalties to help deter such high-risk activities as abandoning campfires or burning during fire bans; improving authority to stop actions that interfere with firefighting, including restricting drones; and designating March 1 as the official start of fire season to ensure that burning permit requirements are in place in a timely manner.

About 70% of wildfires over the last five years have been linked to human activity. In 2016, wildfire crews in the province fought 1,300-plus fires, including the Fort McMurray wildfire.

RIBO REVIEWS SPOT CHECK PROGRAM: HITCHLOCK

The Registered Insurance Brokers of Ontario (RIBO) has embarked on a major overhaul of its spot check program, with the twin goals of promoting better consumer protection and improved broker risk management, says Norma Hitchlock, RIBO's outgoing president.

The existing program, which involves visiting a brokerage every three to five years, has focused primarily "on compliance with its financial and trust fund requirements," Hitchlock noted during RIBO's recent 2016 Annual General Meeting.

"RIBO has commenced a comprehensive review to consider which broker 'conduct' requirements and expectations should also be reviewed during the 'spot check'," she said. The expanded review is "being rolled out as I speak today."

Canadian Market

ARAG LAUNCHES OPERATIONS IN CANADA

The family-owned ARAG Group is continuing to pursue its international expansion strategy with the recent launch of ARAG Services Corporation in Canada.

The new company will develop legal insurance products and manage underwriting, sales and marketing activities in the Canadian market while Brit Syndicate at Lloyd's will serve as the assigned risk carrier.

Initially, ARAG Services, headed by Canadian Peter Talcek, will operate in Ontario, British Columbia and Alberta.

BELAIRDIRECT OFFERING HOME, AUTO INSURANCE IN BRITISH COLUMBIA

Insurance company belairdirect is now offering home and auto insurance services in British Columbia.

Belairdirect and Canadian Direct Insurance (CDI) joined forces in 2015.

By leveraging CDI's local team, belairdirect's British Columbia customers will receive the same level of service and continue to work with the same local licensed insurance agents they have developed relationships with.

TOUGH INVESTMENT TIME FOR CANADIAN INSURERS: A.M. BEST ANALYSTS

Mergers and acquisitions (M&A) in the reinsurance sector sometimes involve carriers acquiring managing general agents, but M&A in Canada has mostly involved insurers trying to "beef up certain parts of their enterprise," analysts suggested during a recent A.M. Best Company briefing in Toronto.

Globally in reinsurance, "it is believed that M&A activity will continue," said Susan Molineux, senior financial analyst for A.M. Best.

"We might also see M&A activity in terms of buying underwriting teams," Molineux noted. "From a distribution perspective, the reinsurers are trying to get close to the customer."

For property and casualty firms, said Joel Silverthorn, senior financial analyst at A.M. Best, M&As are targeted "as companies try to beef up certain parts of their enterprise. They try to gain size in certain markets and they also try to get certain expertise by buying entities."

Risk

FORMER EMPLOYEE ACCESSED PERSONAL HEALTH INFORMATION

Manitoba Health, Seniors and Active Living reports a former employee inappropriately accessed the personal health information, including names, addresses and dates of birth, of 197 people.

An internal investigation showed "the former employee did not have access to personal health information in provincial databases that would include physician visits, diagnoses, medical billings, prescription drug records or hospitalizations."

The department is providing ongoing training to staff to ensure they are aware of their responsibilities to maintain the privacy of personal health information.

SOME INCREASED RISKS DEVELOPING IN SURETY SPACE: PANEL

The outlook for surety in Canada is healthy, but several developments are introducing increased risk that need to be properly managed, speakers suggested during the recent Toronto Risk and Insurance Education Forum in Toronto.

"More and more, your sophisticated owners are creating their own bond form, which significantly expands the risk profile for a surety," James MacLellan, a partner with Borden Ladner Gervais LLP, told session attendees.

"There is a push from certain owners to make certain parts of bonds on-demand," said Stuart Detsky, assistant vice president of surety and warranty claims for Trisura Guarantee Insurance Company. "I think we'll see this change over the next five to 10 years as more and more companies from outside of Canada come into Canada to do contracting."

Bonding companies "have made it easier these days to set up bond facilities for the smaller operator," explained Dan Calderhead, managing director and branch manager of the construction division at Jardine Lloyd Thompson Canada. The lower thresholds are "not a bad thing as long as it's handled responsibly."

Citing numbers from the Surety Association of Canada, Devon Maltby, field vice president of surety for Travelers Canada, said surety "has been growing and we expect it to continue to grow."

The resulting availability of capacity, Maltby noted, is one possible determinant "that can cause the next loss. Excess surety capacity can trigger a higher level of defaults going forward."

OTTAWA LAUNCHES FLOOD RISK AWARENESS CAMPAIGN

The federal government has launched a new public awareness campaign aimed at increasing Canadians' knowledge of flood risks.

The Flood Ready campaign provides an overview of overland flooding; flooding cost (more than $20 billion in damage between 2003 and 2012); a step-by-step guide on making properties and communities safer; ways to build flood-readiness into a property (like backwater valves or plugs for drains, toilets and other sewer connections); and community flood planning steps, tools and government programs.

CITY ISSUES PRELIMINARY FLOOD RISK MAPS

The City of Edmonton has released preliminary neighbourhood flood maps as part an ongoing flood mitigation assessment.

The city-wide assessment looked at 160 mature neighbourhoods, mostly built before 1989. Also, 33 industrial parks will be studied.

"The Edmonton of decades past had a much smaller population, with less demand on the system and experienced different, less severe rainstorms than we see today," says Chris Ward, the city's branch manager of utility services.

It is anticipated infrastructure upgrades will be required to deal with the increasing needs placed on the existing drainage system.

Administration staff is set to present alternatives to city council in 2017 Q2.

Claims

INSURED LOSS FOR FLOODS $108 MILLION TO DATE

Flooding affecting the Windsor and Tecumseh areas in southwestern Ontario is estimated to have caused almost $108 million in insured damage as of September 30, Insurance Bureau of Canada (IBC) reports, citing figures from Catastrophe Indices and Quantification Inc.

More than 6,000 home, auto and business claims were filed with insurers following the flood. Heavy rain fell during the night of September 28 and 29.

A state of emergency was declared September 29.

Reinsurance

MATTHEW COULD HAVE US$15 BILLION IMPACT ON U.S., CARIBBEAN: AON

Hurricane Matthew, which swept through the Caribbean and the United States, could cost as much as US$15 billion for both economies, reports Aon Benfield.

Total U.S. economic losses from Matthew were forecast to be as high as US$10 billion, while public and private insurance losses could possibly reach US$5 billion.

Matthew also caused economic damage of more than US$5 billion outside of the U.S., with Cuba (US$2.6 billion), Haiti (US$1.9 billion) and the Bahamas (US$600 million) accounting for most of that loss total.

In Canada, remnant moisture from the hurricane brought flooding rain and high winds to parts of Atlantic Canada.

Catastrophe Indices and Quantification Inc. released loss estimates in November that the floods could cause more than $100 million in insured damage.

Most damage was reported to have occurred in Nova Scotia. The storm stalled as it passed over the province and caused significant flooding on Cape Breton Island.

PROFILE

In Good Company

Angela Stelmakowich
Editor

Mark Day, recipient of the Donald M. Stuart Award, sees risk professionals increasingly becoming part of conversations early on.

Ah, the early 1980s — a thriving time in Alberta when employers scouted university and polytechnic campuses to find prospects with desirable education and skills.

Mark Day had some of those. "Alberta was booming, so a business education was sought after," says Day, a graduate of the business school at the Northern Alberta Institute of Technology.

He interviewed with several employers "and the insurance company was the first one that offered me a position," Day reports. "So, suddenly I was in the insurance industry."

It may not have been charted, but it proved the right course, serving as the start of what has become a 25-plus-year career in insurance and risk management.

It is a career that was recently recognized with what is widely regarded as Canada's highest risk management honour, the Donald M. Stuart Award, given each year by the Ontario chapter of the Risk and Insurance Management Society (RIMS).

Calling the experience humbling and special, "I've been fortunate to work with or discuss risk management issues with many of the other recipients," says Day, now the executive director of risk management and insurance for the Alberta government's Treasury Board and Finance.

"It sort of validates all the efforts and all the other extra-curricular things that you've been doing," Day says.

His list of volunteering for, promoting and supporting risk management is long.

Among other things, Day has served as president of the Northern Alberta chapter of RIMS (NARIMS) twice; was NARIMS representative on the National Education Sub-Committee of the Canadian Risk Management Council; served on the RIMS Canada Council; was instrumental in initiating the Canadian Risk Management (CRM) courses taught through the Faculty of Extension at the University of Alberta in Edmonton; was an instructor for the Insurance Institute of Canada; and was a member of the Grant MacEwan College Insurance and Risk Management Advisory Committee.

It is good to give, especially young students in university programs, "some exposure to the risk management field and not have them fall into it later on in their career," Day believes. "It's so critical to businesses to manage their risks properly and I think giving (students) opportunities in a post-secondary (setting), gives them one more option."

In his current role with the Alberta government, Day's responsibilities are again long: the overall delivery of risk management, risk control, risk financing and risk identification to all departments of government, most provincial corporations, all provincial committees, public and elected officials, and thousands of volunteers.

That variety may be one reason why risk management continues to be his career of choice. With services ranging from prisons to museums, parks and social agencies, the job is "trying to allow the government departments to achieve their business plan, knowing that they've got the backing of the risk management program," he suggests.

"I think it's the variety of what the provincial government does, but also the opportunities to volunteer on other projects," Day says, adding he has benefited from a dedicated team and management support that allows for creativity and innovation.

"We can really dig into what's going on in the province. We're not just reactive; we can put in programs to make a difference," he says.

"Our risk management vision is actually a government where all employees are risk-aware and smart risk-taking is encouraged and enabled," Day reports.

One way his office is trying to achieve that is through the new risk management champions program. It is a "way to reach out to all of our representatives, give them more support, enhance their roles internally so they can then become eyes and ears on the ground," he says.

> **That variety may be one reason why risk management continues to be his career of choice.**

ROAD TO NOW

A wider view is something Day believes he has cultivated over his career in risk management, which began in Alberta, travelled west to British Columbia for a time and then returned home.

Day worked at an insurer, where he was exposed, on the underwriting side, to auto, farm, commercial and personal lines; at the British Columbia government where he took part in further developing a risk management program; at the Alberta Liquor Control Board, where a risk management program

Photo: Darren Greenwood

was implemented from scratch; and two stints at the Alberta government, early on in his career and currently.

Day knew nothing about risk management during his first stint at the Alberta government; he also did not know he was joining one of the first dedicated risk management offices within a large organization, dating back to the early 1970s.

There for seven or eight years, "I was fortunate enough to learn risk management from some pretty senior and well-developed and innovative risk managers," he says.

Over the years, Day has seen things change. Noting that enterprise risk management was adopted by the Alberta government years ago, he suggests the resulting benefits are evident when his group now interacts with ministries and departments.

Three or four decades ago, the risks on C-suite radars were operational. But "operational risk management has been so well-handled over the past number of years by professional risk managers, those risks are now way down on the list," he says.

"There's an acceptance within the government that risks — like liability claims, property claims, automobile claims, those kinds of things — are being properly managed and they can turn their attention to the larger corporate risk these days," Day notes.

That is good news given how quickly the risk landscape is changing. Cyber risks, for example, are clearly now more prevalent. Citizens are not longer willing "to accept lapses, data breaches and that sort of thing," he says.

"I think risk managers will be bringing perspective to (cyber liability) in addition to the corporate policies and the information technology area," Day says, calling it "a widening area" in which risk professionals can get involved.

Cloud computing is another issue on which risk managers can provide input on risk allocation, risk-sharing and risk management, he says. "Risk management is evolving to the point where (risk professionals) are being considered for input and thoughts when these new programs are developed rather than reacting after the fact when something goes wrong."

Of course, being in Alberta, severe weather is an ongoing concern. But even with losses like Slave Lake, Fort McMurray and the 2013 floods, those experiences could, ultimately, prove significant gains.

The government, especially after the floods, "has really turned its eye, even more so, to mitigation," says Day.

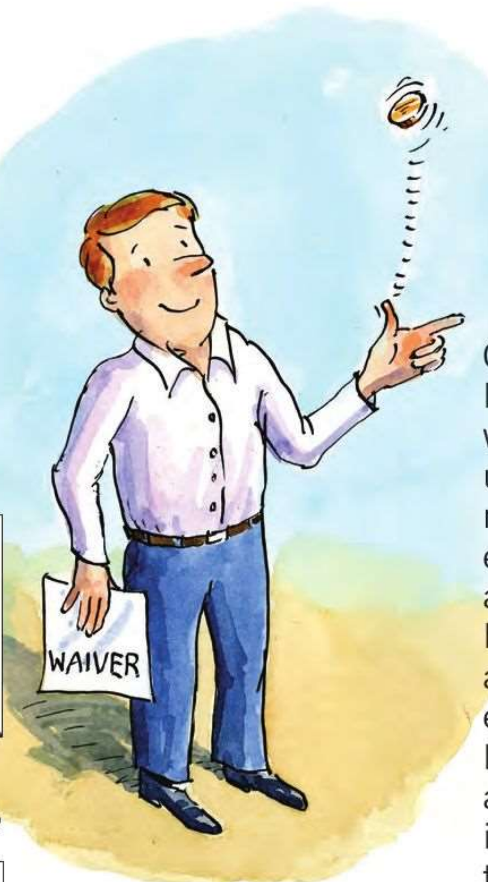
"We're crossing our fingers that 2017 will be boring, but I think the frequency of the natural disasters is something we need to keep on top of in order to do what we can and learn from how we responded in the past," he points out.

As part of Alberta's Assistant Deputy Minister Recovery Task Force, Day's involvement following Slave Lake and the 2013 flooding, has "probably been the most rewarding work that I've done — to see how the Government of Alberta was able to come together and assist not only the citizens, but the affected municipalities, towns and cities," he says.

Also gratifying, though, has been how risk management is increasingly being involved.

During the floods, right from start, "the government decided they wanted risk management at the table and I think that demonstrates how far risk managers, the perception within their organizations, has come," Day says.

Most large organizations have formal risk management programs. "I think they are increasingly going to be tapped in the future on some of the more emerging risk issues."



Parents Know Best?

Canada has no authoritative legal decision on parental waivers, which has created uncertainty over whether or not a properly drafted and duly executed waiver will serve as a complete bar to a claim. A New Brunswick case offers alternatives that might be employed until that gap in the law is filled, but businesses and insurers alike must factor into their liability risk analysis that parental waivers are unlikely to be enforceable.

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It is well-established in Canadian law that a properly drafted waiver of liability can serve as a full defence to a tort claim. This has been articulated by all levels of court, including the Supreme Court of Canada in *Crocker v. Sundance* and *Dyck v. Manitoba Snowmobile Association Inc.*, and is a principle relied upon daily by businesses (and their insurers) to protect themselves from exposure in lawsuits brought by their patrons and customers.

However, this principle does not have uniform application to all types of waivers, irrespective of whether or not the waiver was properly drafted and duly executed.

One type of waiver over which there remains a dark cloud of uncertainty regarding its enforceability is a waiver signed by a child and/or a parent/guardian on behalf of a child, attempting to bar the infant plaintiff from bringing an action arising from injuries sustained while a participant in an activity — typically a sporting activity. What are some practical alternatives that businesses can employ until that gap is filled?

The law in Canada is currently completely devoid of any authoritative decision on the issue of parental waivers, either federally or provincially.

The 2009 Supreme Court of British Columbia decision, *Wong v. Lok's Martial Arts Centre Inc.*, directly addressed the issue of the enforceability of a waiver, signed by a parent, in attempting to waive the rights of a child to advance a claim. The court, ultimately, determined that British Columbia's *Infants Act*, and not the common law, barred the enforceability of parental waivers.

The absence of a law on parental waivers is of particular concern for the countless businesses and organizations — including schools, recreational sport facilities and children's summer camps — that rely on these waivers in carrying out their regular activities. However, it appears that clarity may be forthcoming as indicated

Illustration by Joe Weissmann

in the 2016 decision of the Court of Queen's Bench of New Brunswick, *Dewitt v. Strang*.

In *Dewitt*, the plaintiff, Thomas Dewitt, a 15-year-old boy, was rendered a paraplegic while participating in a motocross event in Sackville, New Brunswick, hosted by the Canadian Motorsport Racing Corporation (CMRC).

To participate in the motocross event, participants below the age of 19, the participant's parent/guardian and a witness were required to sign a "Minor Participant Waiver." The waiver, which required the plaintiff to indicate his experience level and age, was signed by the plaintiff, his father and a witness, the owner of CMRC.

Unfortunately, the plaintiff was involved in a serious accident during the event and he was rendered a paraplegic. He commenced an action against a variety of defendants, including the Town of Sackville and CMRC, who all relied upon the waiver in their statement of defence. The plaintiff brought a motion seeking to strike the paragraph from the defendants' statement of defence that relied upon the waiver as a complete bar to the plaintiff's claim.

This motion required the court to determine whether or not the waiver signed by the plaintiff and his father was a complete bar to his right of action.

The plaintiff contended that such a defence was scandalous, frivolous or vexatious. Further, he submitted that the waiver was not enforceable because he was unable to enter into a binding contract as a minor and a waiver was merely a contract by another name.

The waiver specifically stated the following:

> I UNDERSTAND AND AGREE, on behalf of myself, my heirs, assigns, personal representative and next of kin, that my participation in any EVENTS is not permitted without my execution of this document. I hereby warrant and agree that:
>
> ...
>
> 3. I am 15 years of age.
>
> I HAVE READ AND UNDERSTAND THIS DOCUMENT AND I AM AWARE THAT BY SIGNING THIS ASSUMPTION AND ACKNOWLEDGMENT OF RISK I AND/OR MY PARENTS/GUARDIANS MAY SURRENDER CERTAIN LEGAL RIGHTS. I SIGN THIS DOCUMENT VOLUNTARILY AND WITHOUT INDUCEMENT.

The motions judge considered whether or not the defendants' position had a reasonable prospect of success, pursuant to the principle confirmed by the Supreme Court of Canada's ruling, *R. v. Imperial Tobacco Canada Ltd*.

The court noted that no law prevented the plaintiff from entering into the agreement with the defendants, which he did voluntarily with full awareness of the risk. Therefore, the court ultimately denied the plaintiff's motion to strike the paragraph of the statement of defence pleading the waiver, as the law was not definitive on the issue and there was, therefore, a reasonable prospect of success for the waiver defence at trial.

In considering the question of whether or not the waiver was a bar to the plaintiff's right of action, the court addressed the fact that neither party was able to find case law applicable to the facts of the case. *Wong* was considered for its similarities, but could not be relied upon because New Brunswick did not have a statute similar to British Columbia's *Infants Act*.

The court also considered a variety of secondary sources, including academic commentary on the issue. All of the commentary referred to by the court agreed that waivers restricting the rights of minors are invalid and unenforceable because contracts limiting the rights of children are invalid, whether signed by their parents or not, and it is a matter of public policy to protect minors' interests.

However, before dismissing the plaintiff's motion, the court discussed two alternatives to the parental waiver — a signed acknowledgment and an indemnity agreement — although it did not provide a judicial opinion with respect to the enforceability of these alternatives.

- Signed acknowledgment: The Law Reform Commission of British Columbia notes that a signed acknowledgment would not be considered an equivalent to a pre-tort waiver executed by an adult, but can be effective in obtaining evidence of acceptance of an inherent risk by a minor and/or their parent. It simply would require a minor and their parent or legal guardian signing a document which acknowledges that they recognize the inherent risk of an activity and are willing to assume them.
- Indemnity agreement: In a 2009 edition, the Manitoba Law Reform Commission explained that parents can indirectly restrict a minor's right of action against them by having their parent agree to indemnify the occupier for any legal costs or settlement payments made in favour of a child.

With respect to a signed acknowledgment, its application appears dubious. Indeed, the Law Reform Commission of British Columbia opined that an acknowledgement signed by a parent/guardian on behalf of a minor, recognizing the existence of inherent risks in a specific activity and assuming the risks of same, was tantamount to imposing on a minor the wrongful acts or omissions of another party (in this case, their parent/guardian). Any terms of a signed acknowledgement attempting to pursue that legal effect would not be enforceable as against a minor.

With respect to an indemnity agreement, the Law Reform Commission of British Columbia has stated, "The practice of extracting agreements from parents to indemnify operators in respect of legal actions on behalf of their children also contravenes the public policy of protecting minors' interests… If there is doubt about the unenforceability of such indemnities, it should be removed."

As such, it may very well be the case that such provisions would not be enforceable. Further, the potential success of a claim as against the parents/guardians, in accordance to the signed indemnity, would depend on their personal means, irrespective of the amount obtained by the minor.

The plaintiff in *Dewitt* appealed the motions judge's decision to the Court of Appeal of New Brunswick, the ruling of which was released on November 10, 2016.

In affirming the motions judge's decision and dismissing the appeal, the appeal court noted that absent any error of law, error in the application of the legal principles, or palpable and overriding error in the assessment of the evidence, the motions judge had discretion to dismiss the plaintiff's motion and to leave the determination of the legal issue as the enforceability of the waiver to the trial judge.

As there were no such errors, the Court of Appeal did not have the jurisdiction to interfere with the motions judge's decision.

While the enforceability of waivers as against minor plaintiffs is tenuous at best, the courts have not yet outright decided that such waivers will be unenforceable as a general rule. Despite this, *Dewitt* highlights the fact that the courts will not be quick to enforce a waiver of liability as against a minor, notwithstanding the fact that the minor and/or their parent/guardian executed the waiver.

It is anticipated that courts will be more reticent to enforce such waivers where the minor plaintiff is of a very young age and unable to execute such a waiver on his or her own or where only the parent/guardian executed the waiver. It appears that the courts are also considering other potential methods through which a defendant may seek to bar liability arising from an injured minor, although these methods have yet to prove successful in court.

This is not to say that there is no benefit in requiring the execution of waivers for activities undertaken by minors. The fact of a signed waiver can be used to establish that the risks of an activity were discussed.

However, businesses and insurers must take note that waivers signed by or on behalf of minors are unlikely to be enforceable in Canadian courts as a complete bar to a claim and must factor this into their liability risk analysis.

Opinion/Analysis

Pedal to the Metal

Steve Millstein
Senior Vice President, Sales and Business Development, Intelligent Mechatronic Systems Inc.

Automakers and auto insurers could be on a collision course over driving-related data that is becoming available because of advances in technology and customer demands for connectivity. Will these industries increasingly be at odds or will they be able to work together for the benefit of all?

Emerging trends in the auto manufacturer and auto insurer industries are having a profound and disruptive effect on both. For both automakers and original equipment manufacturers (OEMs), new technology trends — such as back-up cameras and self-parking options — autonomous vehicles, car-sharing and vehicle connectivity are changing the way people drive. In doing so, this is collectively transforming the entire property and casualty insurance industry.

Once permitted by regulators, technology disruptions such as these could lead to new products that create significant value for insurers and their customers.

The auto insurance industry side is evolving even faster. Financial and insurer-based technologies are reducing the barriers to entry and creating new, non-traditional insurers with disruptive business models.

These new approaches include digital insurers who are competing with the traditional brick-and-mortar establishments by selling direct to clients, without brokers or agents, and allowing individuals to buy insurance, for example, by day or by kilometre driven.

Consider, for example, how Uber's use of technology through apps lowered the barriers to entry and disrupted the taxi and ride-sharing industries. Through technology, the company was able to provide a taxi service, but at a lower cost.

The approach allowed for major process and

cost optimizations through digital smartphone-based technology and system integration. Uber used technology to pull through the demand, and enabled a service that was then demanded by consumers.

Although regulatory requirements were initially ignored, there have since been changes to rules at some provincial and municipal levels to help ensure appropriate insurance is in place, while also heeding customer demand.

Still, today, this type of business model is trending in p&c insurance with new competitors arriving on the scene and offering insurance based on entirely new business models using technology and analytics. The information gleaned from new data sources can provide insurers insight beyond just driving behaviour, helping them to better understand who their customers are and offering the possibility of expanding to lifestyle insurance services based on the digital information collected.

These expanded offerings, for example, might include home, health and even pet insurance.

Not only are these new insurers providing insurance options for consumers, they are scoring and pricing risks differently. This revolves around basing criteria on a broader set of factors, such as including lifestyle and vehicle health — collected via vehicle enablers and data exchange — rather than solely on traditional factors such as how far a vehicle is driven, vehicle make or, even, driver behaviour.

These changes are fuelling increasing consumer expectations in terms of what capabilities they expect from cars, including how they want to experience and pay for auto insurance.

Regulators, a group generally recognized as lagging when it comes to technology, have been forced to rethink how to regulate and adapt to consumer demand. In Canada regulators have been receptive to technologies that create value for the consumer, such as usage-based insurance and similar programs that are voluntary for the customer.

Furthermore, as cars become more connected by the automakers, there is an opportunity for insurers to extract valuable data and information from vehicles. Once a driver opts into a connected program, all the information extracted can be used by the insurer.

The information most sought after today includes driving patterns and driving behaviour.

However, access to the data and the desire of the automaker to control the flow may create a new battleground between OEMs and insurers. OEM motivation to control the data is not only driven by legitimate needs to protect access to the vehicle for safety reasons, but a desire to monetize the data itself wherever possible.

Well-informed and market-facing insurers realize that, if they wait too long, they will be forced to react to trends they had no hand in developing and that are unlikely to be to their advantage.

This likely is because automakers want a mechanism to replace the OEM subscription model — which includes embedded telematics paid for on a monthly basis by vehicle owners — to monetize revenue from these new sources. Monetizing driving and vehicle data gives OEMs a revenue stream that the subscription model never did.

What does this mean? This signifies a likely collision between these two industries. The convergence of these trends will disrupt the way insurers both think of and provide insurance.

But is it necessary that one of these behemoth industries must win while the other loses?

Not necessarily.

It is possible for these industries to be brought together on an equal footing, with value creation and benefits for both. Insurers need to seek and become equipped with the technology and enabled with new business models. Doing so, perhaps through partnerships, will allow them to take advantage of the trends and create a set of "standards" for how the industry will do business in the future.

By seizing that opportunity now, insurers may be able to get ahead of connected car trends and be in a better position to identify how the two industries can work together and mutually benefit.

The goal for the insurance industry must be to develop approaches, uses and technologies that can drive the industry — before OEMs reach critical mass. It is believed connectivity will help reach this critical mass in the next 10 to 15 years.

Beginning now, the insurance industry can start creating a *de facto* standard and business practice that can serve as a model for this market as it grows.

Well-informed and market-facing insurers realize that, if they wait too long, they will be forced to react to trends they had no hand in developing and that are unlikely to be to their advantage.

For an insurer, being proactive means doing the following:

- collect data from all vehicles through acceleration of vehicle connectivity using an assortment of after-market and in-vehicle technology data collection options;
- leverage available technology and business models that allow for beginning to collect data on a cost basis, identical to the future OEM model;
- determine the value of the data today, its format and its frequency before being told by others how the data will be distributed; and
- form strategic alliances and partner with OEMs to collect data from cars that are connected, perhaps providing OEMs a revenue stream today that creates goodwill in the early stages of this transition.

Recognizing the value of assistance and technology partnership may further enable both insurers and OEMs to thrive in new ways with mutually beneficial solutions in the transformative digital age.


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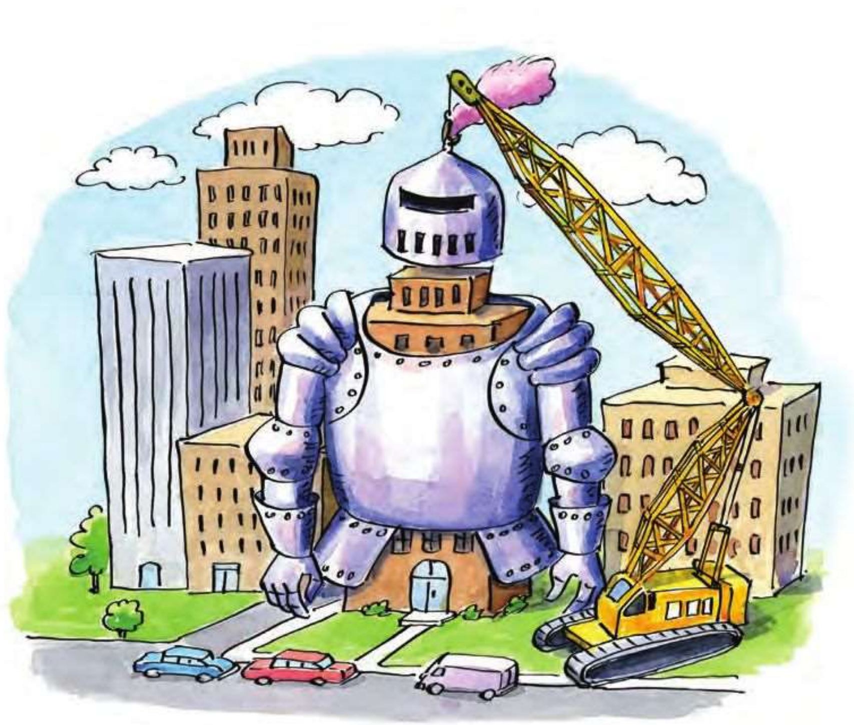


Protective Cover

Sean van Zyl
Freelance Writer

The role of capital markets in alternative risk transfer within the property and casualty insurance industry is not new. However, the development of sophisticated financial instruments continues to expand, with resilience bonds being the latest arrival in the catastrophic risk market.

The resilience bond — which first arrived on the public stage toward the end of last year — is the latest financial instrument in the property and casualty insurance industry's arsenal of alternative risk transfer (ART) mechanisms.

While no issue of resilience bonds has been made as yet, the conceptual structure of this new ART tool drew attention last December when global reinsurer Swiss Re — in conjunction with risk modelling company RMS, Goldman Sachs and the Rockefeller Foundation — produced the prototype of a resilience bond.

Resilience bonds seek to provide insurance benefits from infrastructure improvements and monetize the physical and financial risk reductions associated with investments in resilience systems, noted a joint statement at the time.

"We are confident that well-structured risk transfer mechanisms can both help communities recover more quickly from severe shocks and make them more resilient ahead of potential disasters," commented Judith Rodin, president of the Rockefeller Foundation.

Alex Kaplan, senior client manager for Swiss Re Global Partnerships, says he is hopeful for the future of resilience bonds. With the current abundance of global investment capital in search of new opportunities, coupled with the fact many cities are cash-strapped with regard to allocating funds for infrastructure risk mitigation, the concept of a resilience bond seems ideal for

Illustration by Joe Weissmann

all parties, Kaplan suggests.

The prime client/sponsor market for resilience bonds would be cities, mostly because of the underlying infrastructure project on which the bond is based being localized. The idea is to transfer the infrastructure project cost from taxpayers to the private sector (investors), Kaplan points out.

The complexity and multiple components associated with the issue of a resilience bond requires bringing a number of parties to the table, something that has hindered the actual issue of this form of bond to date, he suggests. Resilience bonds in concept "are still very much at a conversational stage; there is still a fair amount of work to do. But, a lot of people believe in the vision of this [resilience bonds]," Kaplan adds.

Asha Attoh-Okine, an associate director at credit rating agency A.M. Best Company, Inc., says he believes climate change and increasingly severe weather patterns necessitate the development of a cost-effective insurance solution that provides financial safety guards for both insurers and insureds. Should resilience bonds come to fruition, Attoh-Okine foresees this form of insurance and capital market mechanism as very viable.

"However, the risk modelling aspect is key to the structure of a resilience bond — it has to be measurable," he says.

PURE VERSUS HYBRID

In a nutshell, the "pure" version of a resilience bond is similar to the issue of standard government or corporate bonds, with the objective being to raise working capital.

Resilience bonds, however, are, in theory, structured to raise capital for specific infrastructure risk mitigation projects. As a result, the target sponsor (the entity under which the bond is issued) market is mainly cities and, possibly, other state/province bodies.

To be financially viable, the structuring of a resilience bond would likely involve a minimum capital issue in excess of US$30 million to US$40 million, which limits the number of possible sponsors, observes Greg Lowe, global head of resilience and sustainability at Aon plc.

To be financially viable, the structuring of a resilience bond would likely involve a minimum capital issue in excess of US$30 million to US$40 million, which limits the number of possible sponsors.

As an insurance financial instrument, a resilience bond is more likely to take the hybrid form of a capital bond combined with the more traditional structure of a Cat bond, Lowe explains.

In this respect, the resilience bond issued would involve the sponsor paying the bond issuer — the (re)insurance company — a premium less than the normal price based on the reduced risk associated with the infrastructure risk mitigation project. As protection against an unforeseen loss arises, the sponsor would also receive a contingent payment based on specific triggers being activated, Lowe notes.

Presumably, the main benefit for sponsors with regard to resilience bonds is what is referred to as the "resilience rebate," which is the margin saving on the insurance premium as a result of the risk mitigation project. For instance, if the standard insurance premium without the risk mitigation component amounted to $100, but then dropped to $90 as a result of the resilience bond issue, the sponsor would have achieved a premium rebate/deduction of 9%.

Ben Brookes, vice president of capital markets at RMS, says many of the concepts associated with a Cat bond and a resilience bond are similar.

"A Cat bond provides collateralized protection against catastrophic events, and are triggered by their occurrence," Brookes explains, while "a resilience bond introduces another concept — the planned reduction of risk over time through some sort of mitigation scheme, the benefits of which can be quantified and priced into the structure, resulting in a resilience rebate which can be put towards the cost of mitigation."

As such, in terms of its structure, a resilience bond conforms to the premise of "parametric insurance coverage," where a loss payout is based not on the actual value of a loss incurred, but on specific trigger(s) with the payout to the "insured" made by the bond investors via the issuer.

As the payout resulting from a catastrophe is not based on actual loss incurred, but, rather, a pre-set amount based on the bond's triggers, the settlement is far more rapid than traditional insurance coverage, Lowe reports.

Parametric insurance products fall under insurance-linked securities (ILS), which serve as a form of ART involving private sector financial investors. Since a claim payment depends on parametric triggers being activated, which can be easily determined, rather than an actual loss, which would have to be quantified, claims can be processed far more rapidly.

Typical Cat-related parametric triggers range from, say, hurricane wind speed to hurricane central minimum pressure, temperature, rainfall total and the geographical location of a storm, among others.

A Brookings Institute paper highlights the added value of resilience bonds over traditional insurance. "The idea is to link insurance coverage that public entities can already purchase — such as Cat bonds — with capital investments in resilience infrastructure systems," it notes. "This connection between insurance and infrastructure is important because just as life insurance doesn't actually make you physically healthier, Cat bonds do not reduce physical risks and only pay out when disasters strike."

COMPLEXITIES

Subject to the complexities associated with the concept of a resilience bond, there are significant questions remaining unanswered in determining whether or not this "new kid on the block" is eventually going to find its place in the ART Cat market. Probably the biggest challenge is how to quantify the

physical risk associated with a resilience bond in relation to its financial risk, Lowe points out.

The challenges associated with the resilience bond concept are significant, he suggests, the most obvious being whether or not cities would be able to afford the funding of infrastructure risk mitigation projects based on the premium rebate achieved.

For issuers and investors, there are questions on the table, Lowe says. How is the collateral component of the bond paid back? How would one structure the trigger layers? How long does it take to implement infrastructure projects?

"If you can make this [resilience bonds] work, it would be like hitting several birds with one stone," he says.

Oliver Horbelt, head of Capital Partners Americas at Munich Re, notes that, similar to Cat bonds and infrastructure financing projects, the design of a resilience bond has to be highly tailored.

However, Horbelt comments, the basic building blocks would have to involve risk transfer, rebates tied to risk reduction measures and a final design that considers the specific needs and circumstances of the affected community.

UPTAKE?

Horbelt says he believes that, should a resilience bond issue make it to market, this financial instrument will likely garner significant interest. Munich Re has already underwritten parametric insurance policies to fund rapid repair initiatives for a large city in the United States to protect against the economic disruption of a large earthquake, he reports.

"Although no [resilience] bonds have been placed as yet, conceptual discussions about preparing for large-loss events, by means of investment in infrastructure as well as pre-financing mechanisms such as insurance, are well-advanced," Horbelt reports.

Attoh-Okine is optimistic the resilience bond will make it onto the stage.

He is equally optimistic that demand for these risk mitigation financial instruments may expand from the public sector to embrace the private sector, particularly with regard to certain industries that are dependent on significant infrastructure

investment, such as energy companies.

Brookes's view is that there is already significant interest in the concept of resilience bonds from both the public and private sectors. He cites, for example, the Metropolitan Transportation Authority Cat bond that is triggered by storm surge measurements in the New York City area.

Adopting a more conservative stance, Kaplan says the introduction of Cat bonds took some time before the instruments became accepted by insureds and the investment markets. "I expect the same will apply to resilience bonds," he adds.

Still, Kaplan is hopeful of a growing awareness within both the public and private sectors for the need to address Cat risk reduction through resilience investment.

There is definitely discussion in the private sector regarding the application of Cat bonds, Lowe says, so it is not an inconceivable leap to expect similar interest in resilience bonds once these instruments have gained acceptance in the public sector. However, he suggests, most corporations/enterprises with large infrastructure overhead are more likely to tap into traditional insurance coverages and/or issue their own corporate bonds for project financing.

HOT Cargo

With the size of today's container ships, damage from a fire on a single container could result in a loss of millions of dollars. And cargo that is susceptible to spontaneous combustion, especially when not properly declared, can be especially risky.

Greg Meckbach
Associate Editor

Fires originating from containers within cargo ships are rare, but when they do happen, they can cost insurers tens of millions of dollars, marine insurance experts caution. Since hazardous or dangerous goods are a common cause of fires that do take place, there is a movement afoot to ensure shippers follow the *International Maritime Dangerous Goods Code*.

"Container fires on board vessels happen very rarely," notes Ruan Desouza, British Columbia-based branch manager for ClaimsPro, a unit of SCM Insurance Services Inc. However, "fires on board general cargo and bulk cargo ships are slightly more frequent," Desouza continues.

The extent of damage from a fire within a container on a container ship, at sea, "really depends on the commodity being subjected to the fire, the reach of the fire, and most importantly, if the salvors are able to reach the ship and able to contain the fire," explains Isabelle Therrien, vice president at Lloyd's managing general agent Falvey Cargo Underwriting.

"If it happens at a shipyard, where the ship is in dry dock and maintenance or repair work is being conducted, it is obviously easier to contain a fire than if the vessel is the middle of the ocean, as more firefighting equipment is readily available," says Therrien, who is also president of the Canadian Board of Marine Underwriters (CBMU).

Two fires over the past year "have fuelled concerns" from the International Union of Marine Insurance (IUMI). One fire was aboard *NNCI Arauco* this past September in Hamburg, Germany; four months earlier, a fire was caused by welding operations on the *Maersk Karachi*, notes a recent statement from IUMI.

"At sea, below-deck fires cannot be fought with water and so (carbon dioxide, CO_2) is used instead to displace the oxygen and extinguish the fire," Uwe-Peter Schieder, vice chairman of IUMI's loss prevention committee, says in the statement. "However, if the fire is burning within a container, the box will protect it from the CO_2 and so this method of firefighting is rarely successful."

Using CO_2 to contain a fire "is only good if there is a contained space," and that is normally below the deck, suggests Mike Wills, president of Eagle Underwriting Group Inc. and past CBMU president. "Anything above that would usually be fought by water."

Below deck, firefighting crews "have some added trouble in getting to the cargo," Wills reports. "You may need to dump a number of containers overboard to get to the container that's on fire before it spreads," he advises.

"Typically, hazardous material exacerbates the problem, but usually the requirement is for them to be shipped on deck," he explain.

One container ship fire occurred in August 2015 on the *Caroline Maersk*, a Danish ship built in 2000.

The firefighting equipment on board included tools that allowed fire crews to breach the containers, notes a report this past April from the Danish Maritime Accident Investigation Board. That equipment included, among other things, one spear for water, two spears for CO_2, one hammer and one cup drill.

"The contents of the container in which the fire originated were identified as charcoal for water pipes," the board reports. "An independent, third-party investigation indicated that self-heating of the charcoal tablets was most likely the direct cause of the fire."

In its report, the board points out that charcoal can react with oxygen in the air to produce heat, and if the heat is retained, the product can become hot enough to ignite.

Carbon pellets were the source of another container ship fire in 2001 off the coast of Nova Scotia. The Transportation Safety Board of Canada reports that on March 22, a fire broke out in a container on the Japanese cargo ship *Kitano*, which was *en route* from New York to Halifax.

One of the containers had activated carbon pellets, which are used for, among other things, desulphurization of gases and removal of acidic contaminants, the TSB investigation report states.

Although the vessel suffered only some superficial damage to the coating on the hatch cover in the way of the containers, containers had to be removed. "All but one suffered varying degrees of fire, smoke and water damage," the report points out.

A container with 14 115-kilogram drums and 288 44-kilogram open mesh bags of activated carbon pellets impregnated with potassium hydroxide (caustic potash) was jettisoned, but TSB notes that the source of ignition could not be determined.

Measuring 288 metres long, the TSB reports the *Kitano* had a cargo capacity of 3,618 TEUs (20-foot equivalent units).

But some ships today have a capacity of almost 20,000 TEUs, Therrien says.

"Because there are so many containers on board, it could be anywhere from damage to one container, which could have $1 million worth of cargo, to significant damage of tens of millions, or $100 million worth of damage to the cargo and the ship," Wills says. "Because the vessels are so big, there could be pretty catastrophic damage to the ship," he notes.

"As we get bigger ships, we will get larger losses," Wills says. "The potential of fire at sea is one of the most terrifying things that can happen on board."

With ships of 18,000 or more TEUs, there could be many fire-related costs, he points out. "You could have damage to surrounding cargo. You could have damage to the ship. You could also have general salvage costs and salvage costs to protect the vessel or to put the fire out or to throw containers overboard to prevent the spread," Wills reports.

"As we get bigger ships, we will get larger losses," Wills says. "The potential of fire at sea is one of the most terrifying things that can happen on board."

Desouza says that vessels normally carry protection and indemnity (P&I) insurance, as well as cargo insurance. P&I would normally respond to a fire caused by a collision or on-board welding, while cargo insurance would normally respond to a fire "caused by the cargo spontaneously heating due to its inherent properties," he explains.

"A fire on a container ship will definitely hit the marine insurance side of things, whether it is on the cargo side because there is cargo that is going to be damaged, the vessel owner side because the hull will be damaged or the P&I side for any harm the fire might have caused to the crew," Therrien says. "There are all sorts of different insurance implications to a fire at sea."

There is a "potential gap" if hazardous cargo catches fire "and there could be potential liability to the shipper for not declaring hazardous cargo," Wills cautions. "I have never seen it happen, but there is a potential exposure for the cargo owner if they don't declare the cargo as being hazardous," he notes.

Other than that, though, "your cargo policy or your ship policy would cover pretty much any loss that's out there."

The issue with container fires, "more often than not," is with dangerous or hazardous cargo, Desouza suggests.

"If the cargo is not properly packed or if non-compatible cargoes are stored in the same container, they can react during transit if the packages move about and spill over during rough seas," he goes on to say.

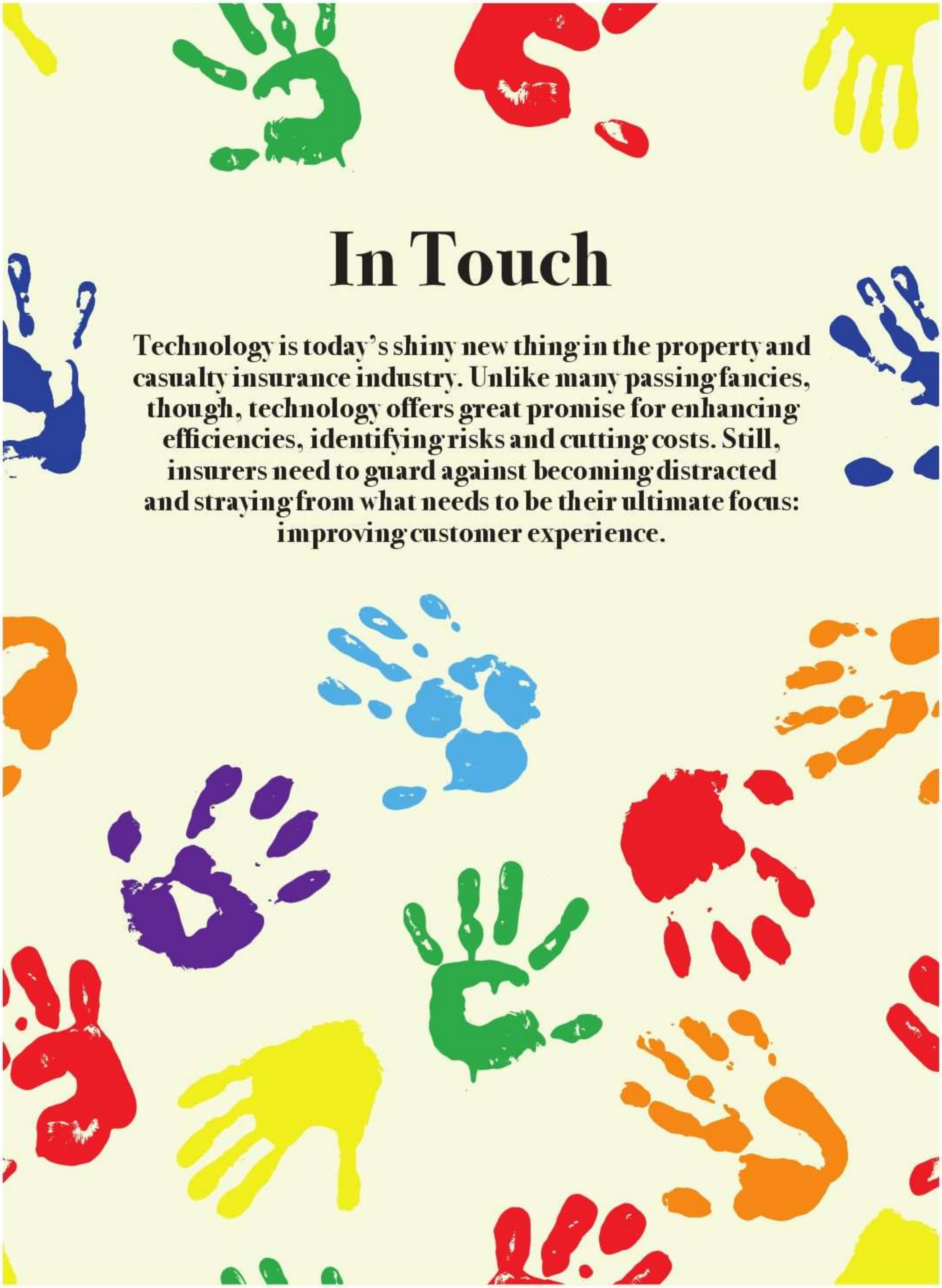
As an example, if dangerous cargo that is susceptible to self-heating or spontaneous combustion is stowed close to the engine room, bulkhead or on deck during the summer when it is hot and the sun is shining, "the temperature inside the container can get upward of 40 degrees (Celsius) and that source of heat could cause the cargo to react," Therrien points out.

"The real wild card is, how are shippers declaring the cargo?" she notes. "A lot of times, you will see fires at sea because of misdeclared cargo."

Freight forwarders and consolidation warehouses are often "not fully aware of the nature of the cargoes" inside containers, Desouza says. The International Maritime Dangerous Goods (IMDG) codes include classifications for hazardous cargoes — such as explosives, toxic or corrosive — and "require that the packages are properly labelled according to their dangerous goods class/type," he reports. "Proper packaging, labelling of the cargo and adequate securing are key to ensure safe carriage."

Modern vessels "have better fire suppression systems and arrangements, but that can only do so much if the cargo is not declared properly," Therrien warns.

"There is certainly a movement in the industry to ensure that all of the cargo is declared properly. It will happen at times that it is misdeclared and not shipped according to IMDG codes," she adds.



In Touch

Technology is today's shiny new thing in the property and casualty insurance industry. Unlike many passing fancies, though, technology offers great promise for enhancing efficiencies, identifying risks and cutting costs. Still, insurers need to guard against becoming distracted and straying from what needs to be their ultimate focus: improving customer experience.

Clearly, property and casualty insurance is about a whole lot more than technology. But the preoccupation with all things technology — relating to everything from customer demands to distribution, product offerings and more — has become a focus. The trick is to ensure that emphasis does not blur the final picture.

In fact, many primary insurers would surely suggest long-term competitiveness (perhaps even survival) may very well depend on the agility, adaptability and responsiveness of carriers.

That technology is driving change is hardly news; the accelerating pace at which change is unfolding and expectations developing may be. Failure to quickly adapt is sure to be a recipe for disappointment.

With ever-increasing demands by customers — clients who measure service by all companies that provide goods and services, not just insurers — insurance companies in Canada must view change as an opportunity. They must also recognize the importance of being nimble, understanding when changes can be pursued on their own or when forming partnerships is the more sensible and efficient tack.

Systems need to be in place, openness to change must be fully activated and ability to adjust underwriting, pricing and claims functions in step with client and customer demands must be available.

But amidst all this change, insurers who allow "efficiencies" to trump customer experience do so at their own peril. Client experience on par with services outside the insurance industry, no doubt, will become table stakes to ensure retention and foster lasting relationships.

Leveraging technology, transitioning from legacy systems, attracting high-performing talent, recognizing the importance of underwriting discipline, educating policyholders on natural catastrophe threats, communicating value proposition, incorporating data-based models for selection and pricing, learning from disasters and finding the right partners — these are all issues that need to be on Canada's p&c radar in the coming year.

Canadian Underwriter asked senior executives at primary insurance companies what they see as the key trends affecting the Canadian p&c market in 2017? Here is what they had to say, presented in alphabetical order by last name.

1 Jean-François Blais
President
Intact Insurance

By 2020, 6 billion people will have a smartphone. More than two-thirds of the world's population will be active mobile users and have a smartphone or supercomputer in their pockets. Millennials will make up half of the workforce and much of discretionary demand in the global economy.

This presents insurers with unique opportunities to do things differently for customers — by leveraging technology, telematics and big data to revolutionize underwriting, pricing and claims.

Today's digital reality allows companies to move quickly in response to changing consumer needs. While technology will continue to accelerate and enable the wave of change, as well as alter and drive the Canadian property and casualty landscape, the human element must not be overlooked — it is equally critical in transforming how insurers and brokers connect with customers and deliver an outstanding customer experience.

Insurance is, after all, about people, and it is a business built on trust and expertise. There are many opportunities for insurers and brokers to collaborate, especially on the digital front, to achieve synergy and cost-efficiency.

Broker support will continue to be fundamental in connecting customers with product offerings, building relationships, helping customers break down the complexity of insurance, and providing customers with trusted and professional advice on products that best suit their evolving needs.

The digital transformation, while crucial to delivering great and on-demand service, will be inadequate to create a superior customer experience without the human touch — the reassurance that someone is there for the customer when he needs it most, in good times and bad.

Ultimately, the winners in the digital age will be those who are able to leverage technology to enhance the customer touch points, listen to customers, understand their needs, make it easy for them and go beyond their expectations to deliver an outstanding customer experience that is second to none.

"The Web does not do complex well," argues The Guarantee's Alister Campbell. "Humans remain the best processors of complexity and the best solution-finders, having the ability as they do to think outside the black box. Trust is best engendered through human interaction."

2 Alister Campbell
President & Chief Executive Officer
The Guarantee

Disruption. Change.

Alarm bells are ringing everywhere insurers meet as an industry. Experts warn of impending this and that, and, apparently, Canada's insurance industry is at dire risk.

Of course, the experts may prove to be right. But to some at least, the environment that insurers face as an industry presents more opportunity than threat.

In a world of rapid change, more consumers and businesses will seek risk transfer solutions. More… not fewer.

In a world of rapidly evolving risk, more consumers and businesses will seek providers ready to support their increasing risk transfer needs. That means more prospects with increasing demand, not the opposite.

And in a world of heightened complexity, more consumers and businesses will seek advice from trusted intermediaries. Again, that means more prospects with more needs.

It is also important to remember that the Web does not do complex well, and some argue is becoming less trustworthy all the time. Humans remain the best processors of complexity and the best solution-finders, having the ability as they do to think outside the black box. Trust is best engendered through human interaction.

This is not to say that in order to win, the industry will not need to have a winning digital strategy. It is a given.

But at least in specialized risk transfer categories, the winning strategy will need to enable expert human underwriters to collaborate closely and effectively with expert brokers.

And while prospects and customers will welcome the efficiencies of digital transactions, those transactions will be predicated upon a relationship that will often have people at the initiation of that relationship and at many key touch points along the way.

Opportunity knocks.

3 Denis Dubois
President & Chief Operating Officer
Desjardins General Insurance Group

Canada's property and casualty insurance market has seen more change in the past two years than in the previous 20.

From telematics to quick-quoters, Airbnb and Uber, technology is trans-

forming every aspect of the business. With the exploding growth of the sharing economy, and with automated cars and the Internet of Things (IoT) on the horizon, the pace of change will only increase.

Perhaps the biggest impact of technology is how it has enabled a revolution in customer experience, as virtually every consumer industry now provides services that are quick, simple and hassle-free, but just as rich in terms of features and advice.

The challenge for insurers is to meet these changing customer expectations while managing the difficult transition from legacy systems to a seamless omni-channel model that includes digital and mobile options, as well as phone and in-person service and advice.

That being said, Canada's insurers have come a long way in a short time. Many companies are now using innovative digital technologies, analytics and available data to simplify and improve every aspect of the business, from marketing and sales to pricing, underwriting and claims management.

This trend will accelerate in 2017 as insurers continue to partner with "InsurTech" companies, targeting specific opportunities in various areas of the business. The cumulative effect of all these innovations will reshape how insurers meet the insurance needs of their customers.

Longer term, it is clear business models will evolve to focus more on building deep and lasting customer relationships. These will be based on value-added advice and a sophisticated and proactive approach to loss prevention using sensor technologies and more interactive and personalized communications.

It is also clear insurers need to buckle up for the onslaught of even more radical and rapid change heading their way.

4 John Hennessy

President & Chief Operating Officer
CNA Canada

Over the last few years, the property and casualty industry has clearly elevated the standard of the commercial insurance offering.


4


5

Evolving business models "will be based on value-added advice and a sophisticated and proactive approach to loss prevention using sensor technologies and more interactive and personalized communications," Denis Dubois of Desjardins General Insurance Group points out.

With 2017 on the horizon, the competitive Canadian landscape continues to sharpen as carriers and brokers focus on innovation of both product and processes, while concurrently lowering the cost of doing business.

This dynamic environment has created, and will continue to create, more value for customers. However, the advances in the industry in the last few years have come at a cost — like never before, carriers and brokers are witnessing greater pressure on colleagues, particularly those doing the heavy lifting at the various points of sale and service.

In addition, a significant challenge has emerged and it needs to be addressed by all participants. In order to fuel innovation and growth, carriers and brokers require more and deeper talent at every position.

This need is exacerbated by a gap that exists between a mature and skilled workforce, and the emerging talent of the Millennial generation.

The p&c marketplace demands more effective training for those new to the industry and for existing staff. Those in the industry must also create and advance a culture with the fabric and elasticity to retain and develop a high-performing, ambitious workforce.

As the baby boomer generation retires at an increasing rate, successfully recruiting new talent has become, and will continue to be, a critical element of success. This serious challenge requires focus and investment throughout the industry. No position is exempt from this threat.

Product and processes will continue to develop and distribution relationships are always table stakes to success. However, it will be the ability to attract and retain high-performing talent that will separate the successful companies from the vanquished.

Simply put, commercial insurance is a skill-based game and the best talent usually wins.

5 Ulrich Kadow

Chief Agent of Canada
Allianz Global Corporate & Specialty Americas

There continues to be pressure on insurance rates in the Canadian property and casualty market and this is expected to continue into 2017, although possibly in a moderated fashion.

The emergence of IT technology, in particular in the small commercial space, is also putting pressure on prices. Both of these factors will result in revenue and cost pressures for insurance companies and brokers.

On the claims side, there has been increased activity on natural catastrophes and this risk will continue to be on the rise in the coming year.

There has also been increased claims activity on the cyber front, driven by data breaches and hacking becoming more prevalent.

Opportunities exist where companies are facing new potential exposures or are growing due to market changes. Some examples of this trend include the cyber and drone insurance markets; globalization effects, which increase the demand for international insurance solutions; mergers and acquisitions activity, which requires representation and warranty coverage; and increased exports as a result of the low Canadian dollar, which may lead to growth in some industries.

The Canadian p&c insurance industry is responding with investment and innovation in growth areas and market opportunities, including cyber and drone insurance coverage.

As a whole, companies are improving in terms of providing a lean, cost-efficient and customer-centric approach towards product delivery. Those insurance carriers who exhibit underwriting excellence, proper risk selection and portfolio management will benefit the most in this market environment.

6 Patrick Lundy

President & Chief Executive Officer
Zurich Canada

Every year in early January, the Economic Club of Canada hosts its outlook breakfast in Toronto featuring the chief economists of the big banks discussing their projections on what they see for the year ahead. It seems certain that this group of analysts will once again point out that the Canadian economy is growing very slowly and no one should be looking for a dramatic uptick in 2017.

For the commercial insurance industry, this means the overall opportunity pool of insurable risk in the country remains challenged in some of the economy's slower-growing sectors and will be defined by fierce competition.

Carriers may look to "double down" and re-deploy their capital in other areas of the economy where growth is more promising.

"Carriers need to be evolving faster than ever before to keep up with changing customer demands and compete with new players and business models that have entered the commercial insurance space," Patrick Lundy of Zurich Canada maintains. "They need to leverage the latest technological innovations to re-invent how they transact business with their customers."

One potential consequence of this is that some carriers may choose to insure risk in industries where they believe there is growth opportunity, but where they may not have a track record of expertise. In this climate, brokers and customers need to be mindful of working with companies that can demonstrate they understand the risks and issues faced by a given industry and how to help manage those risks effectively.

At the same time, the value of a steady, long-term approach to industry segments does not mean that insurance companies can afford to stand still.

Carriers need to be evolving faster than ever before to keep up with changing customer demands and compete with new players and business models that have entered the commercial insurance space.

They need to leverage the latest technological innovations to re-invent how they transact business with their customers and be continuously updating their suite of products and services.

Successful insurers will need to use data to connect with their customers in a much deeper way. That means using data to not only make better underwriting decisions, but also to educate brokers and customers about risk and how to better manage it.

Insurance companies will need to continue capitalizing on innovations such as robotics and artificial intelligence to bring new products and solutions to market much faster than in the past, before those innovations are replicated by competitors.

7 Ellen Moore

President & Chief Executive Officer
Chubb Insurance Company of Canada

Canada remains a highly competitive and challenging insurance environment.

The property and casualty industry faces a number of hurdles as it enters 2017. The protracted soft commercial market has placed margins under pressure after multiple years of low investment yields, rising operating costs and loss development trends.

With significant excess global capital, the Canadian market continues to be very attractive for new entrants and insurer consolidation.

The impact of climate change and the threat of natural disasters must remain one of the industry's greatest concerns and areas of focus.

Insurers demonstrated their true purpose and sense of community by responding with urgency and compassion to the devastating Fort McMurray Wildfire.

Regulation at the federal and provincial levels continues to increase. Companies with significant exposure to the Ontario auto insurance market have seen results deteriorate as the government walks a political tightrope to get consumers the best balance between coverage and premium charged. Reform of the Ontario auto insurance market continues to be a work in progress.

To meet these challenges, insurers need to remain focused on underwriting discipline and profitable growth. Product development, introducing new offerings and reinvigorating others is also expected to be a key part of future success.

8 Sean Murphy

President
Lloyd's Canada

While many are still feeling the impacts of the Fort McMurray wildfires in Alberta, it seems fitting to think about how natural catastrophes will influence a disproportionate amount of Canadian property and casualty insurance losses going forward.

Some, including President-elect Donald Trump, debate the effects of climate change, but there is no denying the changes in weather patterns seen both in the Canadian market and around the world.

Whether rain, flood or tornado, the increased frequency and severity of natural disasters is going to present ever-more challenges to local economies.

Governments can control environmental policy and infrastructure spend to help mitigate the potential damages, but it will be up to insurance companies to take a more active role in educating policyholders regarding the increased frequency and severity of these disasters.

Governments would do well to reach out to the insurance industry and its various associations for their input on how to improve the robustness of city resilience in light of work and capital it has expended for years to help communities get back on their feet.

But natural disasters are not the only concern for the Canadian p&c market.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The increased frequency and severity of natural disasters will "present ever-more challenges to local economies," says Sean Murphy of Lloyd's Canada. "Governments can control environmental policy and infrastructure spend to help mitigate the potential damages, but it will be up to insurance companies to take a more active role in educating policyholders."

Man-made risks are a growing threat that cannot be ignored.

Cyber attacks have become so prevalent that most companies no longer wonder if they will get attacked, but rather when. Terrorism was once viewed as a threat for major cities, but lone wolves have proved impartial, thus giving the risk no geographic limits.

There is more to be done to mitigate the losses from cyber attacks and terror threats. The public and private sectors will need to work closely to develop measures to help mitigate such risks.

Natural catastrophes and man-made risks are rather visible; however, there are numerous risks that have not yet entered insurers' line of sight.

Autonomous vehicles, for example, are around the corner, but there is a litany of issues that insurers have not thought of yet, and the Canadian market will, no doubt, stand ready to address those challenges head on.

9 TOM REIKMAN

Senior Vice President &
Chief Operating Officer
Economical Insurance

Auto results are problematic in many parts of the country as the industry grapples with high claims ratios. Industry data for Q2 2016 shows that, on average, third-party liability claims ratio is running at 70%. The accident benefits (ABs) picture is even worse, with a total claims ratio for ABs of 107%.

In Alberta, third-party auto bodily injury claims costs — the average cost has risen 49% between 2011 and 2015 — are not sustainable. Poor performance will likely continue until the government takes measures to mitigate, if not contain, those costs.

Pair that with a poor comprehensive catastrophe loss cost experience fuelled by an increase in Cat frequency and severity.

Cat events impacting comprehensive auto coverage caused claims costs to rise 35% between 2005 and 2014, not to mention the losses in 2015 and 2016.

Currently, the Alberta government is undertaking a review of auto insurance to identify the issues and measures needed to resolve them.

In Ontario, ABs have not been performing well. After the first six months of 2016, the loss ratio is 109%, indicating the ongoing challenge with Ontario auto following the reforms on the tort side in 2015 and on the ABs side in 2016.

The good news is the provincial government recently announced an expert review to ascertain what costs can be driven out of the auto insurance system

to make it more affordable for consumers and to identify additional opportunities for reform.

The expectation is the review will show that despite the resources spent on medical rehabilitation and treatment, there is little evidence health outcomes have improved.

The review will also likely show the system is still prone to abuse and fraud by those who participate in the AB economy, the underlying causes that give rise to the high rate of disputes have not been addressed and the tort process for third-party liability issues is too slow and overly expensive.

The hope is that review recommendations in 2017 are acted upon with minimum delay.

The government must realize that notwithstanding the needed reforms that have been implemented over time, none have dealt with the root problems of Ontario auto. The system and the product are too complicated and the benefits too rich.

10 HEIDI SEVCIK

President & Chief Executive Officer
Gore Mutual Insurance Company

The property and casualty market is experiencing more change than ever before, covering a broad spectrum of challenge and opportunity.

New and emerging technology solutions, impacts of climate change, regulatory requirements and changing customer expectations are key drivers of these changes. The competitive environment has never been more dynamic.

Mergers and acquisitions are dramatically changing the competitive landscape of the broker channel, causing many brokerages to develop new and responsive business models.

Technology is being developed at a rapid pace as the industry tries to create attractive tools for busy, constantly connected consumers. They have little patience for long processes, are casually adept at cutting through marketing rhetoric, and want readily available, easy-to-use solutions that get them what they need quickly, no matter where they are.

"Generational purchasing behaviour is likely the biggest barrier to overcome. The youngest insurance-buying consumers want speed and mobility, the eldest like convenience, but still seek a personal touch, and the ones in the middle demand efficiency, but are not yet completely trusting of transactional apps," Heidi Sevcik of Gore Mutual Insurance Company notes.

Because of this, distribution is becoming one of the most important focal points for both insurance companies and brokers.

The race for the ideal tech delivery formula is certainly on, yet one of the biggest challenges is that it is hard to be all things to all people.

In a world where everyone — from one's children to one's grandparents — is online, generational purchasing behaviour is likely the biggest barrier to overcome.

The youngest insurance-buying consumers want speed and mobility, the eldest like convenience, but still seek a personal touch, and the ones in the middle demand efficiency, but are not yet completely trusting of transactional apps.

How does one cater to all these needs in a single solution?

There is one lens that seems to successfully unify the various generations: a company's value proposition. The current era of instant information has allowed people's awareness of broader, even global, issues to become more robust than ever before.

Consumers care about causes that impact their future and that of their children, and are increasingly concerned about what companies stand for. Aligning to their values may be the most direct route to gaining their attention and trust.

A company that delivers on customer service expectations and also remains true to its own values and overtly demonstrates them by taking actions that make a difference, may hold the most appeal for a caring, sophisticated insurance-buying public.

11 GREG SOMERVILLE

Chief Executive Officer
Aviva Canada Inc.

When thinking about what to say in a look ahead to 2017 and reflecting on what the view was a year ago, it always comes back to one thing — the customer. The property and casualty insurance industry needs to continually focus on customers' needs, preferences and ease of doing business.

This means looking at insurance offerings through a different lens. It is no longer about providing insurance solutions based on how the industry has been traditionally structured and what legacy systems will allow.

Putting customers first is about building propositions that are relevant to them, will add value to their lives, and will be delivered the way the customer wants. This will, undoubtedly, involve insurers and brokers upscaling their digital capabilities in order to respond to the ever-evolving customer needs.

It also means continued work as customer advocates with all levels of government is essential. The industry must address issues such as auto regulation, building codes and zones, damage mitigation, flood mapping and insurance fraud, to name a few.

Advocacy involves not accepting increased loss costs and passing these on to customers in the form of increased premiums, but acting on customers' behalf to take costs out of the system and offer the right protection at the right price.

The end result will be customers who take comfort in knowing they are covered and that their insurer and broker are acting in their best interests. A comfort gained from a simple, painless and easy-to-understand buying experience that instills confidence that, in the event of a claim, a great claims experience lies ahead.

"The approach taken by most in the industry has been to use data-based models for both selection and pricing, although the level of sophistication varies from insurer to insurer. The type of product available, and even the terminology in describing the perils covered, also varies from insurer to insurer," says the Ontario Mutual Insurance Association's John Taylor.

12 JOHN TAYLOR

President & Chief Executive Officer
Ontario Mutual Insurance Association

At this time last year, the more broadly based introduction of overland water coverage was anticipated, and in 2016 in Ontario, this came to pass.

The approach taken by most in the industry has been to use data-based models for both selection and pricing, although the level of sophistication varies from insurer to insurer. The type of product available, and even the terminology in describing the perils covered, also varies from insurer to insurer.

In 2017, the industry will likely see the continued refinement of the product and increased sophistication in the use of analytics in identifying risk categories.

Losses experienced to date in 2016 have not really provided any significant insight into how affordable overland water coverage will be in the long term.

Later in 2017, the industry may see some movement on availability and pricing, but only if a significant flood loss event occurs.

By late 2015, insurers were also starting to see upward pressure on Ontario automobile premiums due to adverse loss experience, and this has continued.

A report is due to the Minister of Finance in late 2016. If that report suggests a drastic reset of the system, insurers will be fully immersed in that proposal throughout 2017.

In addition, it is anticipated that the dawn of a new regulator in Ontario, the Financial Services Regulatory Authority, and the adjustment to that will require many changes in the current regulatory relationships.

In 2017, insurers can expect to see a continued appreciation of the risk associated with cyber activity. This touches virtually every element of personal, business and institutional lives.

The affluent society here in North America would appear to be a prime target for escalating cyber crime and this will result in an increase in demand for cyber risk mitigation strategies, such as insurance.

From a risk management standpoint, insurers are probably considering cyber risk as their single most prevalent enterprise risk, aside, possibly, from earthquake exposure.

13 MARTIN THOMPSON

President & Chief Executive Officer
RSA Canada

Though 2016 brought with it a new set of challenges, the property and casualty insurance industry also had to contend with some forces that have been in play for longer — including severe weather and the economic climate, to name a few.

In May 2016, Canada experienced the costliest disaster in its history with the Fort McMurray wildfires.

Like with any catastrophe, what is learned from it is an important step for insurers to better prepare for the next event. Fort McMurray emphasized the need for a well-co-ordinated effort

"Like with any catastrophe, what is learned from it is an important step for insurers to better prepare for the next event. Fort McMurray emphasized the need for a well-co-ordinated effort among insurers, brokers and the government to best serve those affected," says RSA Canada's Martin Thompson.

among insurers, brokers and the government to best serve those affected.

Customers' preferences are constantly evolving, creating a demand for brokers to adapt quickly to better serve their needs. This, in turn, is an opportunity for insurers to become more efficient and effective at servicing brokers, so that brokers are well-positioned to evolve with their customers.

Though customers seek convenience, they also want advice to help them make better decisions.

Brokers have an opportunity to maintain customer trust and to differentiate themselves from the direct channel through the value-added service they offer. In order to affirm the role of the broker as a trusted advisor, a continued investment in education and training is needed.

Equally important for insurers is to embrace digital innovation to engage with existing clients and attract new customers, in order to meet the growing consumer demand for 24/7 service.

Despite the challenges this year has brought, as insurers look ahead to 2017, the industry as a whole must continue to work closely with brokers as strategic partners.

Investments in areas such as technology, disaster planning and pricing strategy will also continue to help insurers brace for the changes that lie ahead in the new year.

14 SILVY WRIGHT

President & Chief Executive Officer
Northbridge Financial Corporation


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With the Canadian economy expected to grow at a moderate pace in 2017, achieving growth will remain a pressure point for insurers.

Winning the hearts of customers has become paramount in achieving that growth.

The first choice that people often make when buying insurance is to look for the counsel of a trusted advisor.

This particularly rings true in commercial lines, where consumer understanding of how to protect their businesses is limited. The more complex their needs, the more important finding the right broker becomes.

Brokers must do more to capitalize on this by delivering an exceptional experience for customers who need and value their service.

What does an exceptional customer experience look like? If there is one truth insurers and brokers must all take to heart, it is this: customers will continue to set the bar higher and higher for the industry as a whole.

When customers do business with insurers and brokers, they expect an experience that matches what they get elsewhere — from paying for their coffee with their smartphones in the morning to choosing exactly what they want to watch on TV at night.

They want fast and frictionless experiences and they want easy access to clear and engaging information that is tailored to the needs of their businesses.

In the race to innovate, many organizations lose sight of what matters most — the customer.

To be truly effective, the way in which insurers and brokers innovate must be deeply rooted in understanding their customers.

There is an abundance of innovative new ways to do business for organizations that are open to it.

Brokers are uniquely positioned in this environment, given their close relationships with customers, to make the most of this opportunity.

It is becoming increasingly important for brokers to work together with the right partners to deliver on an experience that defies industry.

No small feat, but if insurers and brokers leverage innovative solutions and deliver leading-edge service that customers value, customers will be their best advocates.

Exchanging Risk

Despite the upheaval in commodities prices and the volatile Canadian dollar, a recent study shows a quarter of polled Canadian financial executives have no foreign exchange risk management strategy. Unpredictability makes it difficult for businesses to plan, but implementing a well-conceived risk management plan is essential.

Laura Bobak
Research and Communications Manager, Financial Executives International Canada and the Canadian Financial Executives Research Foundation

There is a phenomenon among some companies that could be described as FX victim mentality. Some organizations with exposure to FX have simply done the corporate equivalent of throwing their hands in the air and letting fate take its course.

A recent study by the Canadian Financial Executives Research Foundation (CFERF), revealed that despite the upheaval in commodities prices and the volatile Canadian dollar, more than one in four Canadian financial executives surveyed have no foreign exchange (FX) risk management strategy in place and almost one-third have no plans to implement one anytime soon.

Yet, 66% of senior financial executives polled for the study, *Exploring Foreign Exchange Enterprise Risk Management in Canada*, rated FX risk management as important or extremely important to their companies. In addition, more than 60% reported it had become more critical in the past 12 months of volatility.

"It's important to have a well thought out risk management plan in place, so that when the time comes, you already have that framework in place and execute accordingly in a systematic way," says Laura Pacheco, vice president of research at CFERF, the research arm of Financial Executives International Canada.

The study, conducted in February and March, was based on the results of an online survey of 116 senior financial executives from across Canada.

Karl Schamotta, director of global product and market strategy – hedging solutions at Cambridge Global Payments, which sponsored the report, says leaving FX exposure to fate is a common approach among small to medium-sized enterprises (SMEs).

Findings show almost 20% of respondents from businesses with revenues between $25 million and $100 million did not even track FX exposure.

"People think that exchange rates mean revert. In other words, one year they are up and the next year they are down," Schamotta says.

But that is not the case. "The clear lesson of the last decade and a half is that exchange rates could rise for five to 10 years in a row, and then fall precipitously. There is no such thing as an average exchange rate that you can use."

Bank forecasts are the go-to resource for respondents when establishing FX rate budgets (61%),

Illustration by Joe Weissmann

a strategy Schamotta says is ineffective, followed by implied forward rates (25%) and hedged rates (20%).

Many do not realize that there are strategies available even to SMEs that can be used to smooth out volatility.

VOLATILITY DRIVEN BY POLITICAL SHIFTS, DIVERGING INTEREST RATES

"Globally, we have got the return of political risk," Schamotta says. "The major developed economies are acting like emerging economies," he notes, adding the recent election in the United States and Brexit in the United Kingdom generated volatility. Upcoming triggers include elections and other major political events in Italy, the U.K., France and Germany.

"There is considerable uncertainty about the path of economic policy in these areas and unpredictability around the balance of power, trade and financial flows between countries," Schamotta suggests.

This has been the case for Ajay Rao, chief financial officer (CFO) of Conros Corporation, a privately held manufacturer of shipping and office supplies in the Greater Toronto Area whose clients include the United States Postal Service.

"We have tried to naturally hedge by buying and selling in U.S. dollars. But when the business community reads that the Chinese currency is in trouble, there is an expectation on the part of retailers to pass on the benefit," Rao says.

"To a certain extent, it's not foreign exchange exposure that's creating challenges, it's a foreign exchange economic event that is impacting business — both payables and receivables," he says.

In terms of Canada's biggest trading partner, President-elect Donald Trump's protectionist policies are seen as potentially raising prices in the U.S. and that is raising interest rates, Schamotta says, adding the U.S. dollar and economy are detaching from the pack and moving strongly ahead.

"We have a Canadian economy that is struggling to adapt to a changed world," he argues. "We have depressed oil prices weighing on the Canadian dollar, with very little sign of a break," Schamotta says.

Oversupply in the global market and a lacklustre demand for crude oil will likely keep the market balanced, he suggests. Interest rate differentials are also weighing on the Loonie, with the Bank of Canada not in a position to raise rates quickly, he says.

The Canadian dollar has moved by almost 30 cents in the last two and half years, and Canadian companies are struggling to adapt, not just to cash flow unpredictability, but also to challenges to their economic models as well, says Schamotta. "The sheer unpredictability of the situation is raising risk and it is making it difficult for businesses to plan," he adds.

"We have seen a sharp uptick in emerging market volatility," Schamotta says. "Costs are dropping throughout the supply chain, but Canadian companies

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WHAT COMPANIES CAN DO

Given this grim landscape, many financial managers may feel there is not much they can do other than wait for conditions to improve. This is where the practices employed by large and small-to-medium companies differ, Schamotta says.

"That has big implications for how fast those smaller businesses can grow. If they continue to take that tactical or reactive approach, it will be difficult to catch up to companies in Canada, which have been deploying these strategies for a long time," he notes.

Many CFOs will argue that they can barely keep their heads above water managing other issues such as financial reporting, debt financing, cash flow, tax planning and, in some cases, human resources and IT.

But managing FX is critical since it has an impact on those very same priorities. "FX should often be a higher priority than it is," Schamotta contends, emphasizing that FX risk management needs to be a priority through the organization, not just for the finance team.

"A lot of people think they know foreign exchange, but they don't," Kenneth Kirk, chief financial officer of Sepro Mineral Systems Corp., said during a roundtable discussion. "We have many offices in a number of countries that

operate in volatile currencies and they don't have a clue about what impact the foreign exchange has on the company as a whole. So it's really trying to keep them educated and make sure that as an organization you are re-emphasizing your foreign exchange position."

Building a simple process for managing FX exposure and sticking to it allows organizations to avoid analyzing what has happened in the market from a day-to-day perspective, Schamotta says.

Once the process is broken down into simple steps, an organization can simply follow it. "Rather than throwing everything at the roulette wheel once a year, always running a process whenever you identify an exposure and hedging that relatively quickly is the secret to success."

Paul Jewer, executive vice president and chief financial officer of heavy equipment vendor Toromont Industries Ltd., says his company's input costs are in U.S. dollars and its products are priced in Canadian dollars. "The sharp movement has really led to sticker shock, which has caused some deferral," Jewer says.

"The key question that we have to ask ourselves is: Are things going to improve vis-à-vis the strengthening Canadian dollar? When you're sitting on $300 million worth of inventory, that's a pretty big exposure," he reports.

"For pure foreign exchange exposures, we try to eliminate all risks with rolling hedges and forward contracts," he adds.

To effectively manage FX risk, every company should have a policy document that sets out the following:

- how to analyze FX exposures;
- strategy for dealing with exposures; and
- how to execute strategy.

"For each of those stages, companies should map out procedures, time lines, vulnerabilities, any limits applicable to individuals or groups, and how things are going to be communicated throughout the organization," Schamotta says.

When it comes to estimating exposure to exchange rate changes, almost two-thirds of survey respondents reported they rely on cash flow forecasts, 36% use sensitivity analysis and 24% employ historical estimates.

THE TOP CHALLENGES TO MANAGING FOREIGN EXCHANGE RISK

WHAT INSURERS SHOULD LOOK FOR

Schamotta recommends underwriters assessing the FX risk of a company look at stability of cash flows over the last couple of years. "If you see large swings and they are related to FX, then you know that there is a problem there. If they are running very stable cash flows, then perhaps there is not a lot of risk there," he says.

"There is a huge segment of the Canadian corporate population that is not focusing much on managing FX exposure," Schamotta reports. "They are thinking that the fates will blow the way the fates blow. They are not thinking that they can take control of the exposures that they have."

On Good Behaviour

With holiday season fast approaching, a surge in online shopping cannot be far behind. But with online shopping comes increased risk of security breaches and fraud. Combining behavioural analytics, passive biometrics and traditional verification solutions could go a long way towards keeping those risks under wraps.

Robert Capps
Vice President of Business Development, NuData Security

That the trend towards online shopping continues to grow is no surprise. Three-quarters of the respondents to a survey from payment service provider Computop — issued in November and involving 1,900 consumers in the United States and the United Kingdom — reported they planned to shop online this holiday season. This is reflective of the shift in society towards more convenience when it comes to the shopping experience.

In a world that has more mobile devices than people, as reported by GSMA Intelligence in 2014, it is inevitable that consumers are driving merchants into the online world. Retailers face stiff competition for their dollars, and shoppers want to shop for goods and services on their own schedule, wherever they are, and using whatever payment options they choose.

CUSTOMER FRICTION = CUSTOMER LOSS

As part of the demand for better online shopping experiences, customers are increasingly fickle. Any friction in that experience will send customers to a competitor site, so retailers and service providers are challenged to provide great user experiences in the context of security risks and fraud. And the risks are high.

In all, 74% of respondents agreed and 45% strongly agreed they are concerned about security when disclosing their credit card and bank information online; 61% confirmed they have checked the liability policy of their preferred payment method provider or bank in the case of fraud, and 51% confirmed they did not have an insurance epolicy protecting them from liability in the case of credit card and/or banking fraud.

The survey found that when it comes to shopping at retailers that have recently experienced a data breach, 57% of respondents reported they would not shop with them, while 31% stated they strongly agree they would avoid that retailer.

Combine this with the fact that the value of false declines per year hit US$118 billion last year — more than 13 times the total amount lost annually to actual card fraud ($9 billion), notes research released in 2015 by Javelin.

Citing research from Javelin Advisory Services, MasterCard reported in early 2016 that "cardholders tend to change attitudes around the card and retailers; 39% abandon that card after a false decline, while a quarter decrease card usage. In addition, 32% say they plan to stop shopping at the retailer where they were declined."

BALANCE RISK AND USER EXPERIENCE

The downside of online shopping is that where there is increased activity, there is also increased risk, as shown by NuData's recently released *Cyber Risk Intelligence Report*. Analyzing data from 80 billion events, the report found high-risk transactions increased by 167% over the previous year, a statistic expected to continue to grow in the coming years.

All online organizations must balance the need to provide customers with good experiences that grow their bottom line, yet manage fraud costs in a threat-dense ecosystem where perpetrators have the advantages of time, adaptability and attack vectors. Organizations are increasingly targeted for cyber crime and theft, and left with the challenge of managing risk and resources simultaneously.

One of the ways organizations are seeking to strike this balance is to find more secure ways to determine the true identity of online users.

In past days, customers could present their identification to the insurance broker or bank in person, making identity verification relatively easy. Today's online world, however, is saddled with an unsecure username and password technology that was never designed to be very secure. Add to this that a lot of risk has been layered on top of an already shaky structure.

Usernames and passwords unlock everything from Snapchat to online insurance accounts, bank accounts and other high-value sites. The vulnerability of these systems has been known for some time because customers tend to use weak passwords (like link and 1234) on low-value and high-value sites alike.

Once these credentials are compromised in a breach and sold across the underground (aka Dark Web), this so-called "identity" is a fake that can compromise user accounts and wreak havoc with new account applications or worse.

On the other hand, one could argue that customers steadfastly refuse to take charge of their own online security. While security engineers bemoan this fact, customers are not totally to blame for a security infrastructure that was not designed for customer experience and that is, essentially, a bolt-on relic from the past.

BETTER AUTHENTICATION TESTS

When asked which security authentication features respondents would consider setting up for online purchases in the next 12 months, 35% said they would set up fingerprint IDs, 12% selected retina scans, 7% chose voice recognition and 2% opted for pay-by-selfie, Computop data shows. However, 41% of respondents pointed out they would not choose any of those options.

Many organizations are now considering adopting physical biometric approaches to identify customers by selfies, fingerprints and facial and retinal scans. While these technologies have a place in the authentication stream — and are definitely an improvement over the old username and password — they do have some drawbacks to consider.

Once these credentials are compromised in a breach and sold across the underground, this so-called "identity" is a fake that can compromise user accounts and wreak havoc with new account applications or worse.

Physical biometric authentication is not always situationally or culturally appropriate. For example, using voice recognition while in a meeting, or facial scans while at the theatre. In addition, some biometric data can be socially engineered, for example, as when it was reported German Chancellor Angela Merkel's photo was used to unlock an iris biometric test at a security conference.

Fingerprints can be stolen from doorknobs or glass, and high-resolution photos of faces can be taken from great distances and from high-definition video.

Additionally, customers will not be able to change their fingerprints, facial or retinal information should this data be stolen — and it is only a matter of time before these things are.

Once the data is stolen and sold on the Dark Web, the risk will persist over the person's lifetime. This adds even more risk to consumers who are already on the hook for many types of identity fraud.

Given that biometrics are being deployed for the most stringent of authentication tests, such as immigration and banking, it will make this biometric data very desirable to hackers. Aggressive attempts by hackers to capture this data should be anticipated.

ADVANCE OF BEHAVIOURAL BIOMETRICS

Advanced authentication models use behavioural biometrics in a layered approach to verify that the person accessing or applying for an account is who he or she purports to be. Solutions such as passive biometrics and behavioural analytics exist on a transparent layer, meaning it is unseen by both the customer and fraudsters, and requires zero interaction from the customer, while ensuring no personally identifiable data is stored.

For organizations seeking that balance between security and customer experience, these solutions are clearing a new green path for any organization wanting to win the battle of experience over risk.

How someone holds his or her device, the weight of key strokes and hundreds of other behavioural data points are used for verification. This is achieved by analyzing the behaviours observed in the session, whether or not it is consistent with the user's profile, and is consistent with how other well-intentioned humans behave in the same situation.

That means even if another person steals a device and tries to access an account with the valid credentials, or open a new one with a stolen identity, the technology will note that various biometric behaviours are not the same.

Combining behavioural analytics and passive biometrics with traditional verification solutions goes a long way towards ensuring fast and safe online interactions for customers, while fighting fraud and lowering risk for insurance companies online.

Sitting Pretty

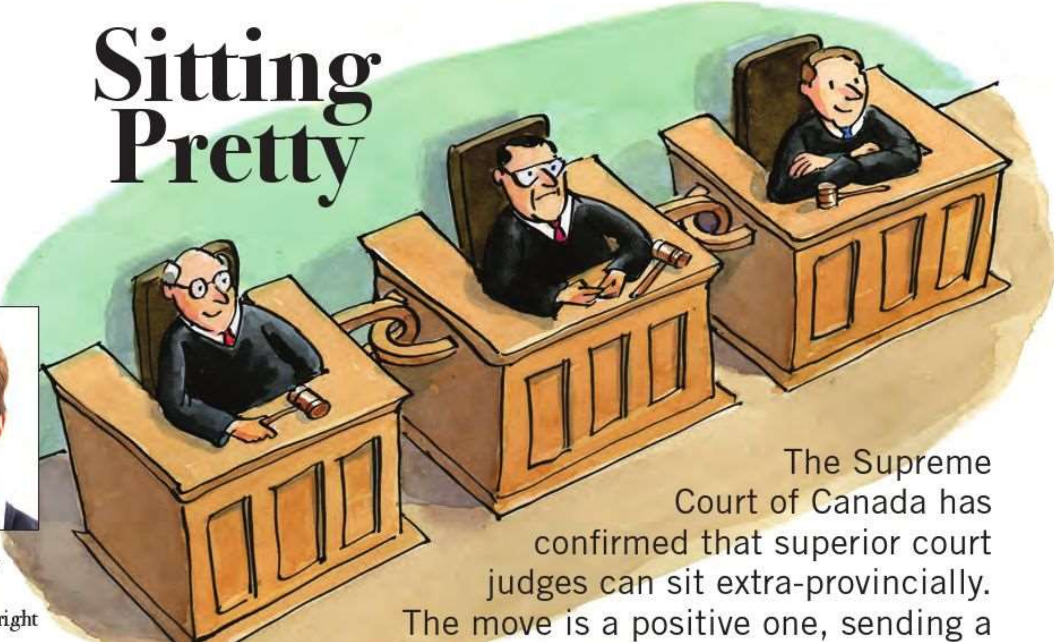

Illustration by Joe Weissmann

The Supreme Court of Canada has confirmed that superior court judges can sit extra-provincially. The move is a positive one, sending a signal that access to justice in the class action context is not illusory or superficial.

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On October 20, 2016, the Supreme Court of Canada released its decision in *Endean v. British Columbia*, in which it decided that superior court judges in national class actions have the power to hold hearings outside of their home provinces.

Canadian courts are increasingly called upon to grapple with the complex procedural challenges posed by multi-jurisdictional class actions that require some cohesion and co-ordination across the country while still respecting the constitutional limits of Canada's federal structure.

Endean resolved whether or not any legal barriers exist to prevent a superior court judge from holding a hearing in another province in the class actions context. The court's finding that a judge does have this power strikes a careful balance in managing the practical realities present in this type of litigation with the need to respect the history and jurisdiction of the superior courts.

BACKGROUND

The case concerned a national class action that arose from Canada's tainted blood scandal of the 1980s, where thousands of Canadians were infected by Hepatitis C as a result of exposure to tainted blood products. The effects of the scandal were national in scope, requiring co-ordination and co-operation among various stakeholders across the country in order to provide justice to those injured.

By 1999, a settlement had been reached that provided for the establishment of a $1.118 billion fund to compensate class members. The agreement called on superior courts in Ontario, British Columbia and Quebec to oversee, implement and enforce the disbursement of the funds.

It became clear that there would need to be co-ordination among the courts in each of the provinces when class counsel raised a question about entitlement to the funds by late claimants. In order to achieve this co-ordination, class counsel sought direction from the courts on whether or not the judges could sit in a single hearing to hear submissions.

Motion judges in each province answered in the affirmative. However, the decisions in Ontario and British Columbia were appealed and the issues were considered by the respective courts of appeal.

DECISIONS OF THE COURTS OF APPEAL

In 2016, the Court of Appeal for Ontario held in *Parsons v. Ontario* that superior court judges have the discretionary power to conduct hearings outside of Ontario because of their inherent authority and the absence of any applicable constitutional law, common law or statutory barriers.

Further, the majority of the court held that a video link to the home jurisdiction of the judge is mandatory in holding an extra-provincial hearing in order to satisfy the open court principle, a tenet of Canada's justice system that requires hearings be open to the public to ensure accountability and the fair administration of justice.

The dissenting judge on the video link issue determined a video link is not mandatory, reasoning that the open court principle is not inherently violated because the hearing will still be open to the public, the media would be free to attend and, in any case, the open court principle must be balanced against the needs of the administration of justice.

By contrast, British Columbia's Court of Appeal in *Endean v. British Columbia*, released in 2014, held that superior court judges could not sit outside their home provinces because this would be contrary to the common law.

Further, the court declined to modify the common law on the basis that there would be both policy and procedural concerns with a judge sitting extra-provincially, stating that this type of change would be best left in the hands of the legislature.

In particular, the court held the open court principle required that a hearing be held in British Columbia. However, the court accepted that it would be permissible for a judge to conduct a hearing in a British Columbia courtroom from outside the province by telephone, video conference or other means.

SUPREME COURT DECIDES

By the time the case made its way to the Supreme Court of Canada, all parties acknowledged that superior court judges who are implementing pan-national, class action settlements can sit outside their home provinces to hear and decide related motions. The remaining questions for the court to address were, first, what is the source of this authority and, second, what are the conditions under which such discretion should be exercised.

Justice Thomas Cromwell, writing for the majority, held that judges in Ontario and British Columbia have the statutory power to sit extra-provincially under the broadly worded Sections 12 of Ontario's *Class Proceedings Act* and British Columbia's *Class Proceedings Act*, which grant judges wide power to manage class proceedings to ensure a fair and expeditious resolution. In the case of provinces without similar legislation, the court held that these judges may be able to rely on their inherent jurisdiction.

One of the key issues considered was whether or not the exercise of this power would infringe upon the sovereignty of the provinces involved. In response, Justice Cromwell carefully limited the application of the holding of this case to circumstances where the judge has personal and subject-matter jurisdiction, where they are not using their coercive powers extra-provincially and where the hearing is not inconsistent with the law of the place where it is held.

Justice Cromwell held that in these circumstances, there is no intrusion upon sovereignty or the dignity of the courts in the second jurisdiction.

On the issue of whether or not a video link is a mandatory pre-condition to sitting extra-provincially, the court held that it is not. This issue mainly engaged

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questions about the scope of the open court principle and whether or not it requires a hearing to be open to the public in a specific province.

The majority of the court took a broader view of this principle, finding that the call for accessibility to courts is not typically concerned with whether or not a hearing is held within a specific province. Justice Andromache Karakatsanis and Justice Richard Wagner agreed that a video link is not mandatory, but argued that judges should consider based on the case before them whether or not the "educational and community-centric aspects of the open court principle" require that a video link be provided.

Lastly, the court accepted the following as some of the considerations that a judge should bear in mind when deciding to exercise the discretion to sit extra-provincially:

- whether sitting in the second province will impinge, or could be seen as impinging, the sovereignty of the second province;
- whether the costs of an out-of-province proceeding would outweigh the benefits, or *vice versa*; and
- whether any terms should be imposed on such a hearing, such as conditions for the payment of costs and whether or not a video link should be required.

The majority of the court found the call for accessibility to courts is not typically concerned with whether or not a hearing is held within a specific province.

INITIATIVES OF THE CLASS ACTIONS BAR

Outside of the courts, the class actions bar is also taking steps to address the need for greater co-ordination and harmonization among judges in national class proceedings.

Over the last six years, the Canadian Bar Association (CBA) National Class Actions Task Force has been working on judicial protocols related to managing various aspects of multi-jurisdictional class proceedings. The task force is led by leading members of the bar and the consultation papers produced are collaborative efforts that seek to combine the views of individuals and organizations with expertise on both sides of the bench.

In 2011, the CBA approved the task force's *Canadian Judicial Protocol for the Management of Multi-Jurisdictional Class Actions* as best practice. This protocol incorporates existing class action legislation and court rules. In addition, it provides guidelines for clearer notification obligations among class counsel involved in the same or similar proceedings in different provinces and puts in place a framework for the approval and administration of multi-provincial settlement orders.

The task force is currently studying the feasibility of developing a judicial protocol on the management of multi-jurisdictional class actions. *Endean* is welcome and timely as these discussions continue in the class actions bar.

The confirmation from the Supreme Court of Canada that superior court judges can sit extra-provincially is a positive one. It sends a signal that the judicial system is capable of meeting the evolving needs of the Canadian class action litigant and that access to justice in the class action context is not illusory or superficial.

UPCOMING EVENTS: FOR A COMPLETE LIST VISIT
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1 Travelers Canada has named Heather Masterson [1a] as its new president and chief executive officer. Masterson succeeds Duane Sanders [1b], "who has taken a senior leadership role in the company's largest business segment in the United States," notes a company press release. Masterson, who joined Travelers Canada in September 2015 as chief operating officer, was previously president and chief executive officer of Totten Insurance Group and has held several executive positions at Hub International Ltd.


1a


1b


2


6d


6e


6f

2 Kathy Boychuk [2] will take on the role of president and chief executive officer of Edmonton-based Peace Hills Insurance, effective next March. Boychuk will assume her new role after 24 years of service with Peace Hills Insurance, which is owned by Samson Cree First Nation. Having served as chief financial officer for eight years, she replaces Diane Brickner, who became president in 1990, retired last year and then came back as interim president. Brickner was initially succeeded as president and chief executive officer in January 2015 by Gene Paulsen, who retired this past October.

3 Toronto-based Moore-McLean Insurance Group Ltd. has acquired the assets of Markham, Ontario-based Hallmark Insurance Group and its family of companies. The firms have formed McLean Hallmark Insurance Group Ltd. and McLean Hallmark Financial Ltd. Daryn McLean [3], president and chief executive officer of Moore-McLean Insurance Group, will serve in the same roles for the new firm. Hallmark Insurance Group includes Hallmark Financial, Navigators Insurance and Ontario Underwriting Services; Moore-McLean has been family-owned and operated since its inception in 1975.

4 FirstOnSite Restoration recently announced three senior appointments in its Canadian operations. Al Sutherland has joined the firm as senior vice president and chief administrative officer; Kevin Clarke, a founding member of FirstOnSite Restoration, has moved into the newly created role of executive vice president, branch operations; and Jodi Getson, previously vice president of operations in Atlantic Canada, is now senior vice president, Atlantic Canada.

5 Co-operators General Insurance Company has reported a wholly owned subsidiary has purchased Assurance Aubin Insurance Brokers Ltd. "Current clients of the brokerage will be notified of the change in ownership and their existing insurance coverage will remain in effect with no changes to their premiums or coverage for the current term of their policies," notes The Co-operators. "As current policies expire, clients will be offered comparable policies from The Co-operators."

6 Jean-François Blais [6a], president of Intact Insurance, has been elected chair of the Insurance Institute of Canada's Board of Governors (BoG). The institute's 2016-2017 executive committee of the BoG also includes Lynn


3


6a


6b


6c


8


10a


10b


10c

Oldfield [6b], president and chief executive officer of AIG Insurance Company of Canada (deputy chair); Jeff Goy [6c], president and chief executive officer of Wawanesa Mutual Insurance Company (vice chair, governor at large); and Bob Tisdale [6d], president and chief operating officer of Pembridge and Pafco Insurance Companies (immediate past chair). Still at the institute, Silvy Wright [6e], president and chief executive officer of Northbridge Financial Corporation now has the Honorary Chartered Insurance Professional designation, while Ted Teterenko [6f], past director of urban service centre operations for Manitoba Public Insurance, has received the award of merit.

7 Brokerage InsureMy Ltd. and telematics provider Trak Global Group have reached a licensing agreement allowing InsureMy to "distribute products from the Trak/Carrot [Insurance] brand to maximize distribution points throughout Canada." Trak Global Group, based in the United Kingdom, provides the telematics for Carrot Insurance. Pending approval, New Driver, an app-based rewards program, will be modelled on the approach.

8 Jennifer Foster [8] has taken on duties as chief operating officer of SCM Health Solutions. Foster has previously held a number of senior positions, including with Hannam Fertility Centre.

9 Vancouver-based Vertical Insurance Group Ltd., owners of Shaw Sabey, Metrix, Core, Magnes, LMG and other retail insurance brokerage businesses, has acquired majority interest in the capital of brokerage Axis Insurance Managers Inc. in Vancouver. Alex Meier, president of Vertical Group, will serve as president of Axis Management.

10 Ken Tucker [10a] has completed his term as chair of the Restoration Contractors Organization of Canada (RCOC) and will be replaced by Will Cook [10b]. Kabir Shah [10c] will serve as the organization's new executive director. In addition to Cook and Chris Schmidt, other members of RCOC's 2017 Board of Directors are Glenn Woolfrey, Bill Dietz, Stephan Roy, Kevin Clarke, Frank Mirabelli and Craig Hogarth.

11 Excess Underwriting and Towerhill Insurance Underwriters Inc. has merged. Both coverholders at Lloyd's, the firms will serve broker partners as Excess Underwriting operated by Towerhill Insurance Underwriters Inc.

ClaimsPro's Specialty Risk Division (SRD) held a **Client Cocktail Event** on October 6, to introduce its Complex, Commercial & Industrial (CCI) unit. The mix and mingle gave guests an opportunity to learn more about CCI and meet key members of the SRD leadership team, while enjoying the ambience and cuisine of Aria Ristorante in downtown Toronto.















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Risk managers from across the country joined **RSA Canada** – in partnership with the **Schulich Executive Education Centre (SEEC), Schulich School of Business** – at their **first risk manager's seminar** on October 6. *Fast Forward: Navigating the Future of Risk Management* was designed to help inspire how risk managers approach their jobs and hone their leadership skills. Held in Toronto, the seminar was facilitated and instructed by leading risk-management advisor and legal counsel, Kenneth Jull, LLP.

GALLERY

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Lloyd's Canada held its **MGA Road Show – Toronto/GTA** on November 2 at Le Parc Conference & Banquet Centre in Thornhill, Ontario. The one-hour, RIBO-accredited lunchtime seminar attracted more than 100 brokers to hear short "TED Talks" from the following Lloyd's MGAs: Burns & Wilcox; Can-Sure; Eagle Underwriting; Red Rock Insurance; and SUM Insurance.

GALLERY

More than 1,000 attendees made their way through the exhibit hall to visit the 75-plus exhibitors during the **Insurance Brokers Association of Ontario's (IBAO) 96th Annual Convention and Exhibition,** held October 19 to 21 at the Sheraton Centre Toronto Hotel.

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Continued on Page 58…

GALLERY

... Continued from Page 57... **Exhibit Hall** at the **Insurance Brokers Association of Ontario's (IBAO) 96th Annual Convention and Exhibition,** held October 19 to 21.

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The **61st Annual Black Tie Dinner** of the **Toronto Insurance Conference (TIC)** was held November 3 at the Four Seasons Hotel in downtown Toronto. The event was attended by 300 people who enjoyed hearing the views of guest speaker, futurist and digital strategist, Jesse Hirsh. Hirsh owns and operates Metaviews Media Management Ltd., which focuses on research and consulting around new media business models, big data and the strategic use of social media. He is also co-founder of the Academy of the Impossible, a peer-to-peer, life-long learning facility.












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The property and casualty insurance community gathered for the **19th annual WICC Breakfast for Cancer**, held November 9 at the Fairmont Royal York Hotel in downtown Toronto. More than 400 industry professionals attended the sit-down breakfast and a live panel discussion covering such topics as individual cancer treatment practices in Canada, cancer research and funding. The featured panelists included Bobbie Goldie, cancer survivor and Chubb Canada employee; Dr. Kelly Fathers, senior manager of research communications for the Canadian Cancer Society; and Dr. Uri Tabori, scientist, clinician and a leader in childhood cancer research. The breakfast event chair, Barb Reddick, served as panel moderator.

Following the panel, WICC Ontario co-chairs, Ellen Moore and Marilyn Horrick, announced the award winners for the inaugural **WICC 20th Anniversary National Platinum Volunteer Awards**. Catherine "Cat" Pickell of Crawford & Company was presented with the Ontario Chapter award for her long-serving dedication to the WICC Ontario Gala event. Thanks and congratulations were also extended to the following award recipients in other chapters: WICC Alberta – Jim Sinclair of Guardian Insurance; WICC British Columbia – Debbie Demar of Marsh and Mary da Costa of The Guarantee; and WICC Quebec – Carole Morin of Travelers.

Jim Sinclair, WICC AB | Debbie Demar & Mary da Costa, WICC BC | Cat Pickell, WICC ON | Carole Morin, WICC QC


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