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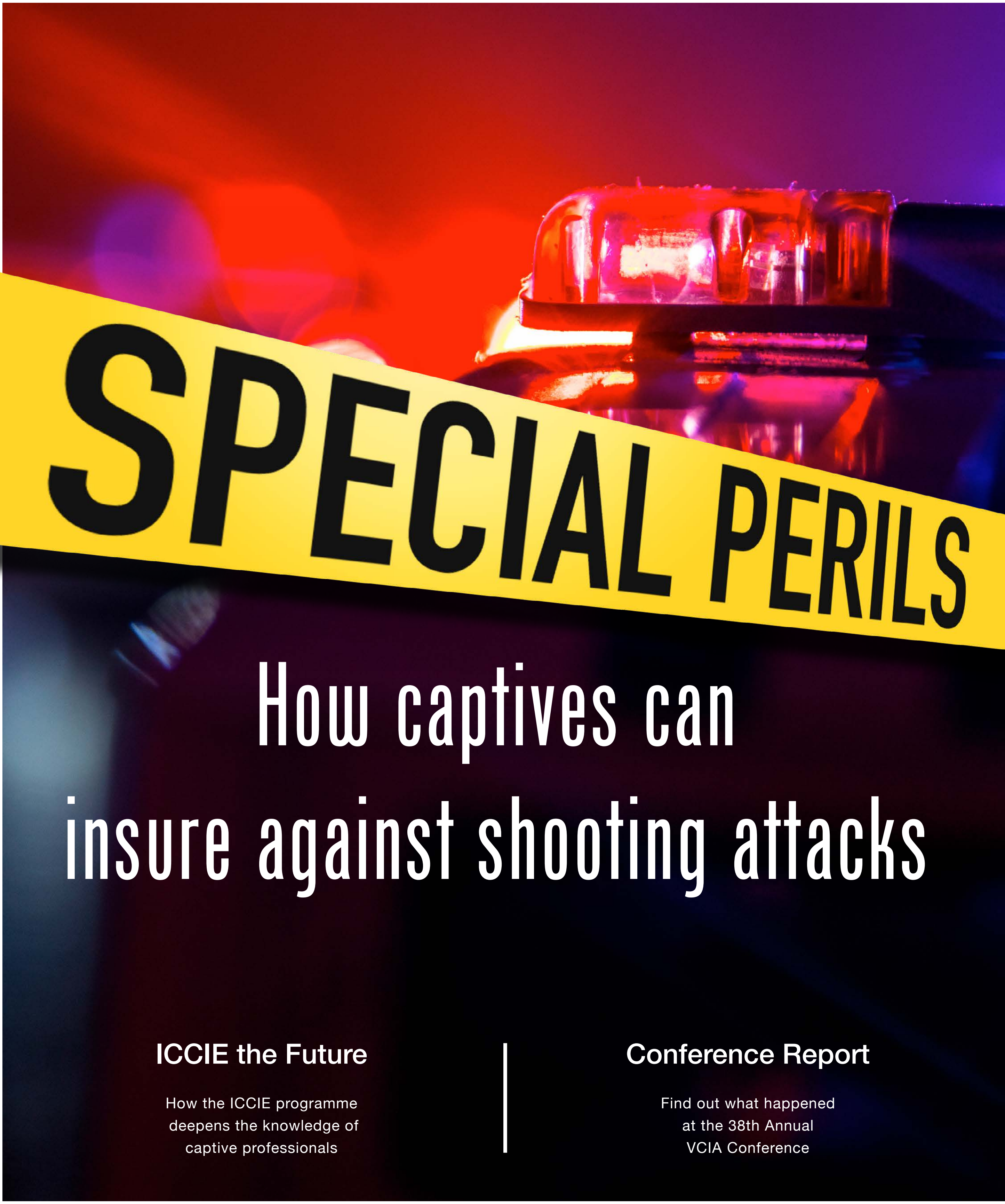

SPECIAL PERILS

How captives can insure against shooting attacks

ICCIE the Future

How the ICCIE programme deepens the knowledge of captive professionals

Conference Report

Find out what happened at the 38th Annual VCIA Conference

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Conference Special - Issue 180

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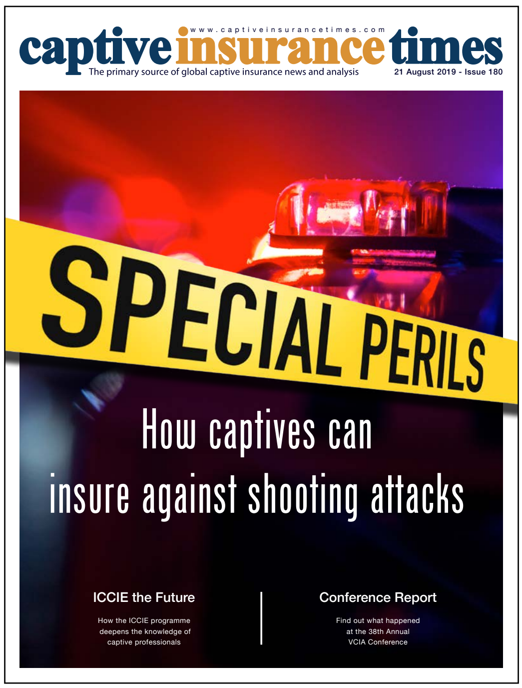

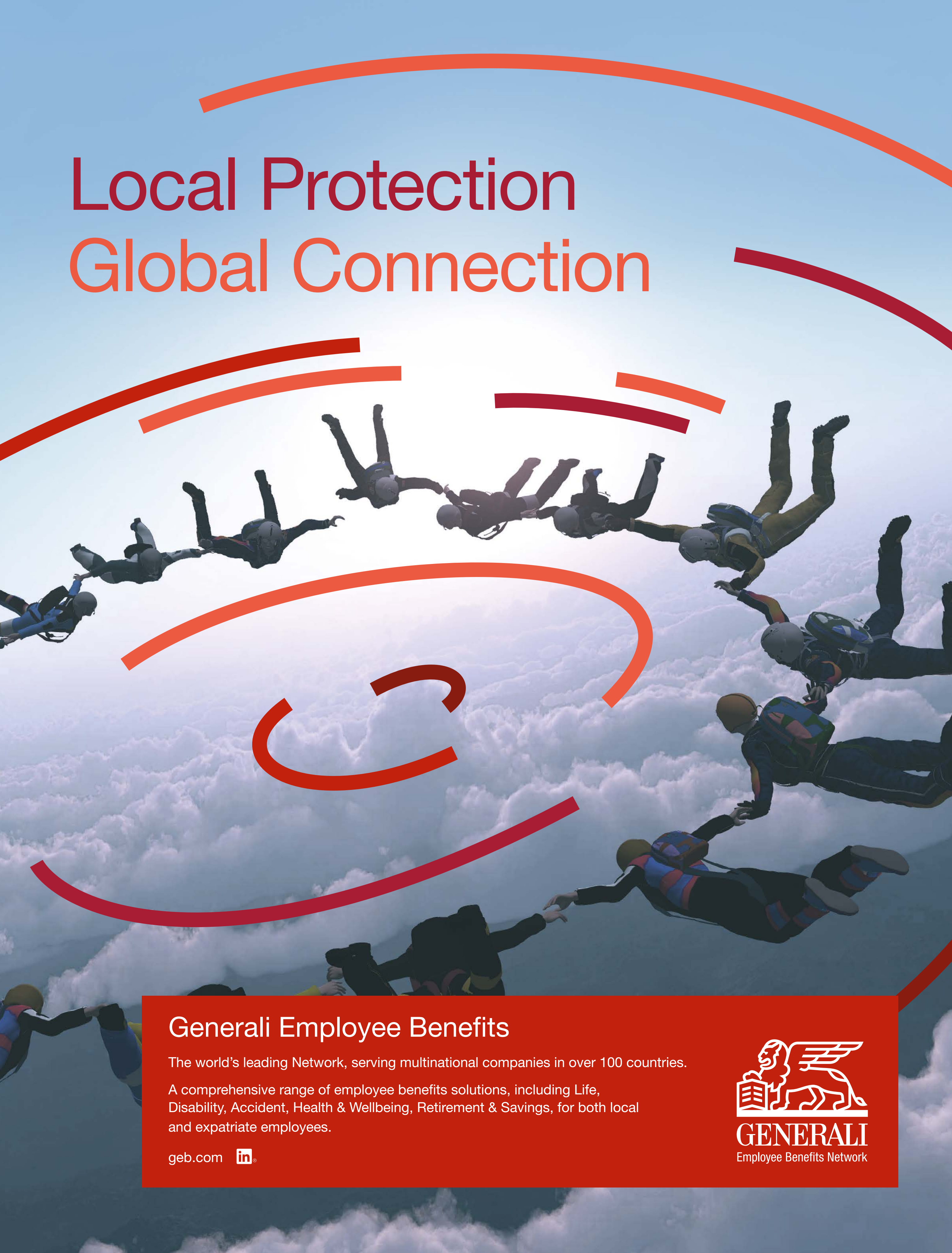
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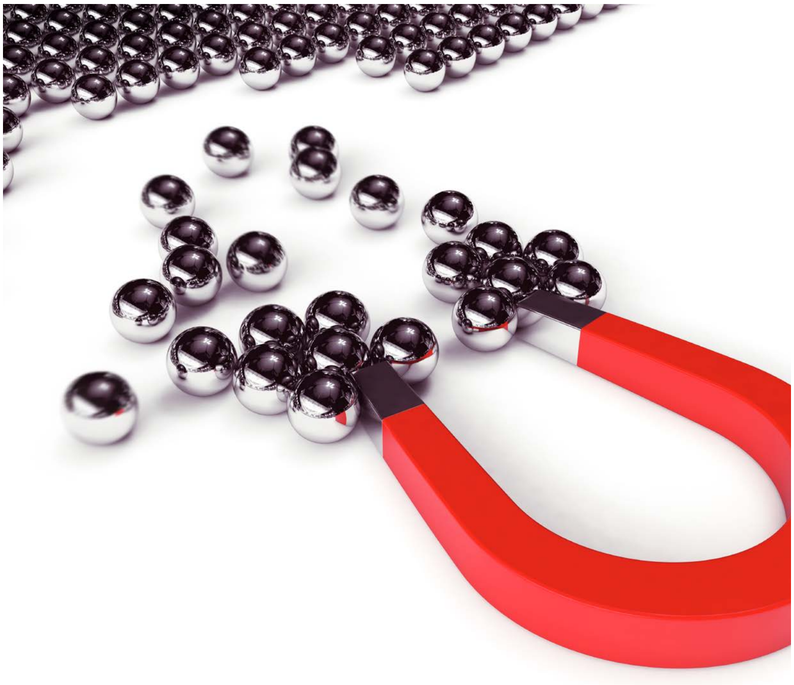


Artex granted motion to dismiss class action lawsuit

Artex Risk Solutions and other captive insurance providers have secured a victory in a class action lawsuit at the US District Court for the District of Arizona—Phoenix Division.

A group of defendants, including Artex, Arthur J. Gallagher & Co, TSA Holdings and Tribeca Strategic Advisors, were accused of a widespread captive insurance "conspiracy".

Plaintiffs Dimitri Shivkov et al contended that the companies' had devised a conspiracy to promote and sell tax-advantaged captive strategies that were viewed as illegal, according to the Internal Revenue Service (IRS), which disallowed the offered tax benefits.

Shivkov and others who entered into captive agreements with the named defendants brought several claims, including breach of fiduciary duty, negligent misrepresentation, disgorgement, and civil conspiracy.

However, all agreements signed by the plaintiffs included an 'arbitration clause' stipulating that any dispute between the relevant parties that could not be resolved through Arizona mediation would be arbitrated by the American Arbitration Association.

Furthermore, the agreements also included a 'Limitation of Liability', which details that "Artex shall have no liability to [the plaintiffs] for any losses, claims, demands, damages, liabilities, costs or expenses arising from [...] this agreement".

Therefore, Artex argued that the claims should be arbitrated individually under this clause; because all claims in this lawsuit are barred by the Arbitration Clause, individual arbitration would inevitably lead to a dismissal of the action.

Shivkov argued against individual arbitration on the basis that the clause was unenforceable because: Artex breached their fiduciary duty; the Arbitration Clause is both "substantively and procedurally unconscionable"; the terms of the clause are beyond reasonable expectations' and the clause was terminated along with the agreements.

Senior US district judge Stephen McNamee delivered the court order to grant Artex's renewed joint motion to compel individual arbitrations, thus dismissing the action in its entirety as all claims in the suit are barred by the aforementioned Arbitration Clause. ■

Two insurers redomicile from Malta to Gibraltar

Bray Insurance Company and Caversham Insurance Company have both redomiciled from Malta to Gibraltar.

Bray Insurance Company was established in Malta in 2008 but ceased its operations on 12 June this year, authorised by the Malta Financial Services Authority (MSFA).

Caversham Insurance Company was incorporated in 2005 but the company was ceased to be authorised by the MFSA on 16 April 2019. The MFSA stated: "This surrender is entirely voluntary and does not arise as a result of any regulatory action taken by the MFSA but is due to a decision taken by the shareholders of the Company to re-domicile the Company to Gibraltar."

While the circumstances surrounding the UK's exit from the EU, or whether it will actually happen, remain uncertain there has been significant traffic between Malta and Gibraltar in preparation for Brexit.

Following Brexit, Gibraltar will retain access to the UK market but will lose access to the EU market, while Malta will lose access to the UK market but retain access to the EU market–which has led to traffic between the two as companies look to secure access to their required markets post-Brexit.

The industry has also seen insurers move the opposite direction. In May, Premium Insurance Company relocated to Malta from Gibraltar as part of its Brexit preparations.

Nigel Feetham, partner at Hassans International Law Firm, described this movement of insurers as a "two-way Brexit strategy". ■

R&Q provides legacy reinsurance for Bermuda captive

R&Q has issued a loss portfolio transfer reinsurance covering workers' compensation, product, auto and general liability risks.

The coverage was written by R&Q's wholly-owned Accredited Surety and Casualty Company for the benefit of a Bermuda-domiciled captive.

The reinsurance was part of a larger transaction involving the scale of one of the parent company's business units to a strategic buyer.

Ken Randall, executive chairman of R&Q, explained: "We are thrilled to have been able to provide an exit solution to our client's legacy liabilities and facilitate the sale of one its largest business units."

Randall added: "This deal demonstrates the value loss portfolio transfers may provide in the context of evaluating and executing strategic acquisitions. We are pleased that R&Q continues to be a market of choice for such transactions." ■

CICA launches new educational task force for women

The Captive Insurance Companies Association (CICA) has launched Amplify Women, a task force focused on offering women opportunities for education, networking and influence in the captive insurance industry.

Insurance industry studies show women make up over 60 percent of the work-force in the industry, but when it comes to officers and other senior-level positions those numbers drop below 20 percent.

CICA's Amplify Women will focus on representing women in educational opportunities, such as speaking at conferences, publishing articles, teaching and academic partnerships.

They are also addressing opportunities for influence such as serving on captive association and industry boards. Developing in-person and online networking opportunities will be another core component of their efforts.

Dan Towle, CICA president, said: "As we look at developing future leaders to replace the many senior-level individuals in the captive industry who are retiring, it is a perfect time to encourage and support women leaders."

He added: "We've been making changes to the CICA conference for several years starting with our professional development track. In our 2020 call for presentations, we increased our emphasis on having speakers diverse in gender, race/ethnicity, location and employment, as well as diversity in thought and opinion." ■

Use of captives on the rise in Labuan

Risk management in the form of self-insurance or captives in on the rise, due to it being an overall cost-efficient and customisable risk-mitigating tool, according to Danial Mah Abdullah, director general of Labuan Financial Services Association (Labuan FSA).

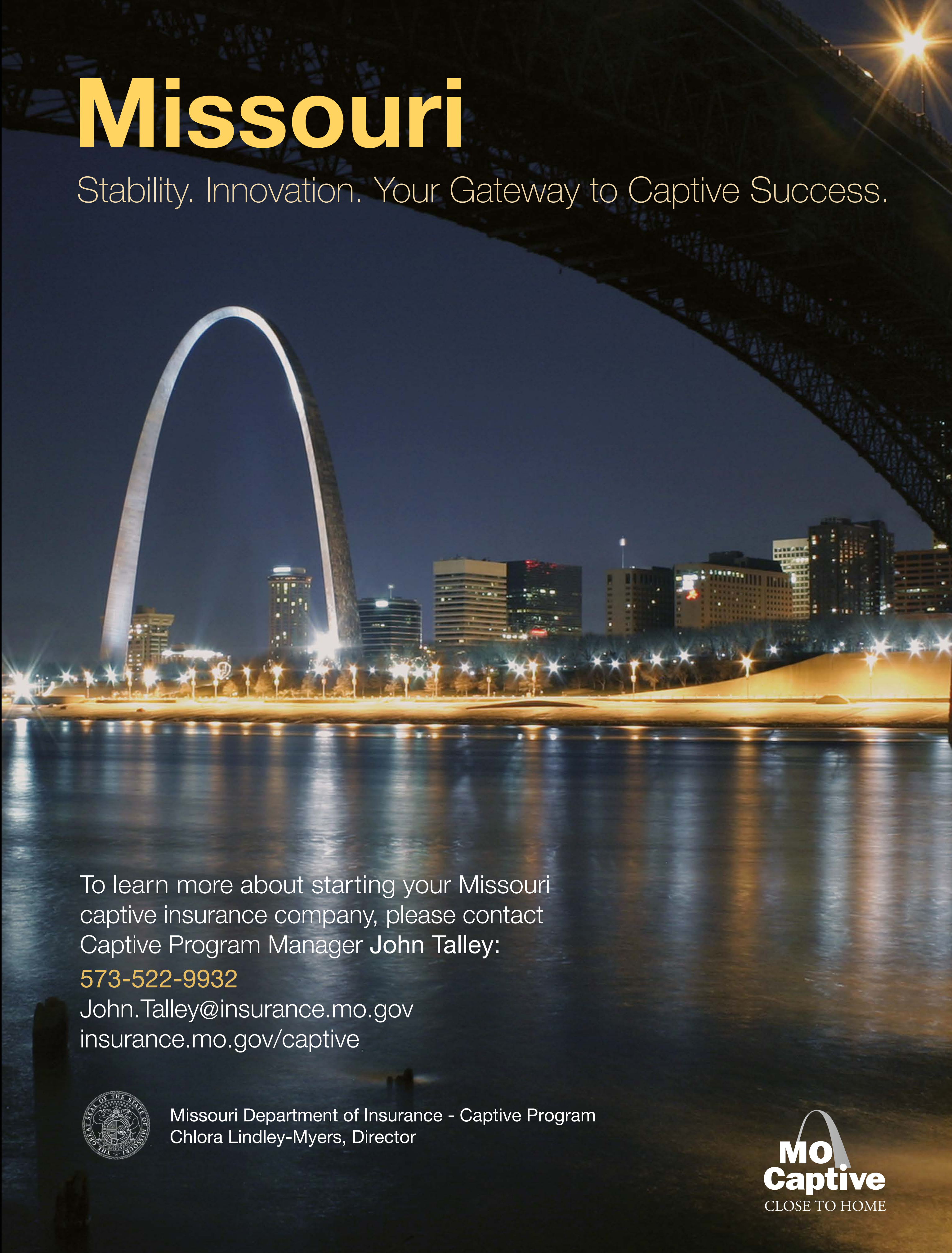
Mah, speaking at the launch of the Labuan International Business and Financial Centre (Labuan IBFC) and Swiss Re Corporate Solutions's event, explained that captives remain a "vital business segment" in Labuan IBFC, being the "leading jurisdiction in Asia for captive formations compared to other jurisdictions in the region such as Singapore and Hong Kong".

He suggested that the leadership has continued into this year after four new captives were approved in Labuan IBFC between January and June, totalling 51 captives registered in the jurisdiction as of June this year.

The new captives represent a growth of 8.5 percent year-on-year and are "significant when contrasted with the fact that for the whole of last year, six captives were approved".

Also speaking at the event, Andre Martin, head of innovative risk solutions the Asia Pacific at Swiss Re Corporate Solutions, said it was great to share more on the benefits captives can bring to organisations as a comprehensive risk financing strategy. Martin added: "Today, we see a rise in demand for captive insurance across the region including Malaysia and expect this to increase as the risk management function advances and the corporate landscape evolves."

"We look forward to continuing working with customers to provide solutions in the captive space and are encouraged by the interest in alternative risk transfer solutions from this event." ■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Vermont leads captive insurance trade mission to Mexico

The Vermont Captive Insurance Association (VCIA) will send a delegation of government, regulatory and industry representatives to Mexico to highlight the state's captive insurance industry.

In collaboration with the US Commercial Service, the trade and promotion arm of the US Department of Commerce's International Trade Administration, the delegation will lead captive insurance educational forums hosted in Mexico City the week of 23 March 2020.

The educational forums will include participants from Vermont's captive industry and feature informative panel discussions, educational content and networking opportunities designed for Latin American insurance and risk management professionals interested in forming a captive insurance company.

Ian Davis, director of financial services, said: "The goal of this trade mission is to increase awareness of Vermont as the leading US domicile for captive insurance and highlight our state's mutually beneficial trade relationship with Mexico."

"We look forward to meeting with corporate leaders, industry executives and prospective captive owners from across Latin America during the educational forums and related engagements."

David Provost, deputy commissioner of captive insurance in Vermont, added: "There is a growing interest in captives among insurance and risk professionals in Latin America. Our aim is to help ensure that the captive concept is well understood and communicated, including the benefits of being in a reputable onshore jurisdiction like Vermont."

Rich Smith, president of the VCIA, commented: "We have a number of captives that do business in Mexico and Latin America. As the captive market in the region continues to grow, we want to make sure those companies know Vermont is open for business." ■

CIC Services launches Knox Reinsurance

CIC Services has launched a new reinsurance pool for property and casualty coverages.

The new pool, Knox Reinsurance Company, is licensed and regulated by the North Carolina Department of Insurance. It is designed to cater to small- and mid-market businesses by offering more stable underwriting results.

Knox Re will provide stabilised long-term costs, simpler administrative processes and greater control over insurance programmes as a whole.

It is available to a wide variety of industries and trade classes to allow a range of portfolios to enter the captive space.

Nate Reznicek, director of operations at CIC Services, commented: “Access to appropriate risk distribution and collateral has long been a sticking point for captives looking to write more traditional lines of coverage.”

He added: “With the formation of Knox Re, our best in class clients are now able to easily access A+ carrier programmes, take risks, and retain underwriting profit in their property and casualty coverages.”

Reznicek concluded: “Knox Re also provides great benefit to our carrier and broker partners. Our strict underwriting methodology helps ensure that our carrier partners and client advisors can have great comfort in the quality of the captive participants, their underlying risk management practices, and repeatable underwriting results.” ■

AmTrust victory over alleged breach of reinsurance agreement

AmTrust North America has secured a victory against Signify Insurance in a dispute at the US District Court for the Southern District of New York, alleging breach of their reinsurance agreement.

AmTrust contended that Signify, a Bermuda captive company formed by temporary staffing agency Employers HR, breached their reinsurance agreement by failing to provide the required collateral.

In response, Signify filed six counterclaims against AmTrust and its underwriters, Technology Insurance Company and Security National Insurance Company, claiming that the agreement had lapsed.

In March 2016, AmTrust provided Signify with a 2016-2017 Captive Insurance Proposal, outlining the terms and geographic scope of the policies it would provide to Employers HR, as well as the terms on which Signify would reinsure those policies.

The interdependent captive reinsurance agreement stipulated that Signify would be required to provide “required security” in the form of collateral amounting to $4.4 million, while AmTrust would be required to hand over net ceded premium (NCP) and issue monthly reports.

Provisions of the reinsurance agreement meant that Signify were liable to provide required security until all reinsurance policies had been closed.

AmTrust terminated the reinsurance agreement in November 2016, and contended that Signify failed to provide its collateral due on 1 December 2016, amounting $2 million.

Signify’s counterclaims were sixfold, with the first and second regarding a declaration of termination and rescindment of the reinsurance agreement, respectively.

The third counterclaim argued AmTrust be ordered to return letters of credit, while the fourth counterclaim contended that AmTrust breached the reinsurance agreement by failing to provide $11.7 million in NCP and the fifth counterclaim argued AmTrust must pay the owed NCP.

The sixth counterclaim argued that AmTrust and its underwriters had failed to adequately underwrite and issue new policies for Employers HR.

The district court concluded by granting AmTrust’s motion to dismiss the first and second counterclaims.

In addition, the court denied the third, fourth and fifth counterclaims, as well as denying Signify’s motion to dismiss AmTrust’s claims for breach of contract and declaratory judgment. ■

A.M Best affirms MLM Group rating

A.M. Best has revised the outlook to positive from stable and affirmed the financial strength rating of A- (Excellent) and the long-term issuer credit rating of "a-" of Minnesota Lawyers Mutual Insurance Company (MN) and MLM Risk Retention Group (MLM Group).

The ratings reflect MLM Group's balance sheet strength, which A.M. Best categorises as strongest, as well as its marginal operating performance, neutral business profile and appropriate enterprise risk management (ERM).

The positive outlook reflects MLM Group's improved operating performance resulting from the implementation of several initiatives designed to reduce underwriting volatility and improve rate adequacy.

MLM Group has maintained high policyholder retention levels despite strong competition due to its commitment to members of the legal profession, knowledge of the legal environment and the payment of policyholder dividends.

Risk-adjusted capitalisation remains strongest mostly due to conservative underwriting leverage measures and loss reserving practices, although policyholder surplus growth has been tempered by the payment of policyholder dividends.

MLM Group's business profile is neutral due to its good geographic spread of risk, as the business is written in over fifteen states. However, there is a concentration of underwriting risk in the legal professional liability line of business.

The group's ERM is appropriate, as capabilities are in line with the moderate risk profile. ■

Willis Re reports ILS market Q2 2019 figures

The insurance-linked securities (ILS) market has experienced a year-on-year decline of $4 billion in Q2 2019, according to Willis Re Securities.

In its report, 'ILS Market Update', Willis Re Securities cited a further decrease in the number of transactions under the total transaction value.

Similar to Q1 2019, the market saw a somewhat monopoly by US wind-focused deals, with $650 million of coverage spread across three catastrophe bonds, and $1.04 billion for multi-peril protection—$300 million of which was derived from the US Federal Emergency Management Agency reinsuring the National Flood Insurance Program.

The report found that loss creep continued to affect the ILS market but at a "substantially reduced rate".

In Q2 2018, cat bond losses from 2017 events, such as hurricane Harvey, California wildfires and the Chiapas earthquake, totalled around $755 million, while in Q2 2019 this loss creep figure stood at $1 billion.

This year-on-year increase of 40 percent is currently being monitored and subsequently accommodated by the market.

William Dubinsky, managing director and head of ILS at Willis Re Securities, commented: "Things are slowly returning to a more normal ILS environment, but relationships will still matter over the next six months if cedants are to get the protection they need at sensible pricing, terms, and conditions."

He continued: "The contracting ILS market required cedants to look elsewhere for capacity during the recent renewals."

"Those with at least some relationship-based treaties with long-established reinsurance partners on their books found it easier to plug the gaps, relative to those who buy reinsurance on a purely transactional basis."

Dubinsky concluded: "That is likely to be the case for the balance of the year at least."

"Both approaches have merits, however, and the ideal balance will be different for each reinsurance buyer." ■

Those who can do, teach

Celebrating 15 years of the ICCIE programme, Mitch Cantor talks about how it helps captive professionals deepen their knowledge and what the future of captive insurance looks like

What is the aim of ICCIE?

ICCIE is the official education program of the captive insurance industry. It is a 501c3 that was created by the industry.

As such, ICCIE's sole mission is to create and offer online courses for the captive industry and to provide the industry's professional designation, the ACI: Associate in Captive Insurance, and the more recently-developed CCI: Certificate in Captive Insurance (a step-designation which requires about half the number of courses as the ACI).

Recognising the above, ICCIE's goal is to maintain high-quality educational opportunities for captive professionals at an affordable cost. This being the case, we get extensive feedback from board and committee members on course and webinar topics. Fortunately, we have a terrific group of subject matter advisors and experts who give us lots of feedback and help us develop the sessions and materials we need.

If there are any holes in our curriculum, we need to know about it, so I would encourage all captive professionals to visit our website (www.iccie.org) and examine our course offerings. We would love to hear from people about any ideas they have that might help us better serve the captive industry.

Similarly, if there are subject matter experts who wish to contribute to ICCIE with their expertise, we are always looking to expand the breadth of our faculty. Because we offer both ongoing courses and 'hot topic' webinars, there is room for a great number of voices among our captive experts.

Of course, it is also a goal of ours to find knowledgeable captive expertise among many domiciles, both domestic and international.

Those interested in teaching can contact me directly at mcantor@iccie.org. All instructors are vetted through our curriculum committee, which meets and makes such determinations on a regular basis.

Are you finding there's a growing interest in captive insurance from the younger generation?

It's honestly hard to say from where we sit. Since we primarily cater to full-time working professionals, people usually come to us after they've already been introduced to the captive world.

That being said, we are trying to work our curriculum into several college and university risk management programs. While this is a slow process, we have seen some interest from programme managers, so that signals an uptick in interest in providing education for a younger crowd.

Certainly, there is a much greater understanding and awareness of the captive world among risk management professionals, and that mostly likely will work its way down to the lower ranks where new people are coming into the RM industry. From that perspective, new people entering the risk management field can't help but be more exposed to captive insurance as an option.

The real test will be in the next few years as so many risk management professionals retire. It will be interesting to see if the great numbers of vacancies in the field will spur

"The future of the captive industry is very bright, from all the indications I can see"

Mitch Cantor
Executive director, ICCIE

new and more innovative ways of attracting new captive professionals. For our part, we are constantly asking the younger people in our programmes and courses, what we can do to make the programme more attractive and accessible to people just entering the workforce.

How long have the ICCIE's scholarships been running? Are there any conclusions to be drawn about the state of talent in the industry?

ICCIE scholarships have been in place since our launch in 2004. We always have applicants, and that's a good sign that education and a high level of professional competency is valued in the industry.

At the same time, we would love to host many more scholarships and see all of our opportunities draw much more attention than they typically do. We have been looking at many different kinds of scholarship opportunities and ways we can partner with both domicile organisations, captive owners and service providers as scholarship sponsors. But everyone is so busy servicing the current needs of the industry it sometimes makes it difficult to get peoples' attention to look at future opportunities to grow the industry.

Looking on the bright side, however, I think it's fair to say that every one of our scholarship recipients, upon enrolling in our courses, has recognised the great value in what we have to offer. I have to believe that the cumulative goodwill provided by that perception of value will, eventually, lead to many more people enrolling in ICCIE and many more people looking at scholarship opportunities (and, I hope, more scholarship opportunities created, as well).

Check back in ten years, and I'll let you know the answer.

How do you view the future of captive insurance and what can be done to ensure talented people are moving into the captive industry?

The future of the captive industry is very bright, from all the indications I can see. Everyone is working at top capacity, and there continues to be more and more captive formations. There will be a little cannibalisation as some of the newer domiciles reclaim the occasional captive with a home-based parent. But it seems that the idea that "captives are another tool in the risk management toolbox" is clearly here to stay.

As to the second part of the question, that's trickier. The captive industry has the same challenge that the rest of the financial services sector faces: massive retirements in the next few years.

Fortunately, through a number of industry initiatives, captives are becoming a bit more visible in the insurance world, and, hopefully, as more people see the captive industry and the opportunities it affords, the more successful it will be in attracting new entrants into the field.

At the same time, those in the industries that serve captives are already looking to adjust their modes of operation to accommodate millennials (more flexible working conditions, schedules and more). Like all business segments, the captive and risk management industries need to cater to the new world instead of the old. But I'm both hopeful and confident that the captive world will meet the challenge.

Reinsurance Collateral Trusts

The limitations and costs associated with traditional collateral options such as Letters of Credit have dramatically fueled the growth of alternative risk transfer strategies amongst insurers, reinsurers, captives and corporations. Fluid regulatory, financial and risk management environments demand lower-cost collateral solutions – solutions that afford maximum flexibility with minimal effort to set-up and maintain.

It's a need that has given tremendous traction to the insurance-linked securities (ILS) market and in particular the emergence of reinsurance collateral trusts.

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Special perils: how captives can insure against shooting attacks

A.M. Best discusses the growing marketplace demand and gap in general liability policies that has led the emergence of captive insurance in active assailant insurance coverage

The captive insurance industry has seen a new offering of traditional named perils coverage for a new risk category: active assailant attacks. But what are they, and how can businesses, schools and institutions protect themselves?

From an insurance perspective, an active assailant attack is defined as a premeditated attack by an armed person or persons, who causes serious bodily injury or death to individuals or groups.

Despite the fact that the most reported events are school shootings, the term 'active assailant' can refer to a number of scenarios; as the report 'Insurers Create New Types of Coverage for Mass Shooting Attacks' by A.M. Best points out. These attacks are not limited to a particular "location, institution, industry, state or motive", while weapons can vary from firearms to knives, explosives and corrosive substances.

In its report, A.M. Best cites statistics from the FBI and the Advances Law Enforcement Rapid Response Training (ALERRT) programme, which found that the most frequent locations for active shooter incidents are educational institutions (52 percent), shopping malls (34 percent) and residential property (26 percent).

Generally, it is difficult to gather statistics on active assailant attacks because there is little discernible difference between an active shooter and a simple criminal act. This is because the definitions of these incidents varies between the organisations that track them, including the FBI, Homeland Security, the Gun Violence Archives and the Mass Shooting Tracker.

As Vicky Riggs, financial analyst at A.M. Best, notes, "according to the US Homeland Security definition, an individual assailant actively engages in killing, or attempting to kill, people confined in a populated area with no pattern or selection of victims".

However, active assailant attacks distinctly differ from traditional acts of terrorism from an insurance perspective because they are not motivated by ideological, political or religious factors, and instead tend to be for personal or psychological reasons.

For this reason, active assailant incidents are not covered by traditional terrorism insurance coverage, which includes property policies that are designed to handle the physical damages of the attack, as well as business interruption, whether direct or collateral.

Active shooter attacks are also neither specifically included nor excluded from commercial general liability policies. These insurers that carry specific exclusions may offer limited first-party cover with contingencies.

David Blades, senior financial analyst at A.M. Best, highlights that "insureds are now realising that their general liability and property coverages do not cover active shooter incidents."

He continues: "Insureds believed active shooters fell under terrorism cover, but it does not. Therefore, the gap in general liability policies as well as the recent influx of demand are the main factors behind this new category of risks."

Increased demand has arisen from an increase in the number of active shootings in the US since 2000; in its report, A.M. Best cites FBI figures of 250 such incidents between 2000 and 2017. Furthermore, FBI statistics indicate an increase in the average number of school shootings per year, from 6.7 between 2000 and 2006 to 16.4 between 2007 and 2013, to 22 between 2014 and 2017.

In particular, the shooting at Marjory Stoneman Douglas High School in Parkland, Florida, in January 2018 was an important catalyst for the adoption of active assailant policies, with seven South Florida school districts purchasing $3 million worth of coverage in its aftermath.

Other organisations that have implemented this new named perils coverage include Liberty Mutual, Church Mutual, EMC Insurance and Alliant Insurance.

As A.M. Best's report stipulates, these "businesses, schools, churches and other types of organisations have a duty to maintain a safe environment for employees, customers, students, parishioners and other visitors".

The report continues, "specialised, named perils active assailant policies are helping risk managers deliver the responses that their organisations need".

Previous named perils policies include storm risk, employment practices liability and cyber risk.

A.M. Best also highlights the solution available to schools that sees them pool their liability exposure with other schools, such as the New York Schools Insurance Reciprocal, which was issued by A.M. Best.

Active assailant insurance policies typically cover first-party physical damage to insured property, such as the expenses to tear down, close or relocate a building, or security upgrades, as well as business interruption.

They also provide legal liability coverage for insureds that are obligated to pay for damages if they failed to meet a standard of duty of care to customers, employees or the general public.

Claims expenses included in active assailant policies range from medical expenses and psychological counselling to funeral expenses. Furthermore, coverage extends to brand rehabilitation expenses caused by loss of attraction, as neighbourhoods, schools or brands may face stigmatisation following an attack.

However, Riggs points out that policy coverage "will vary from company to company", while they sometimes exclude certain provisions, such as casualties above a threshold limit, employees, vehicles or mental anguish.

Unlike a traditional general liability policy, active assailant insurance policies include specific pre- and post-event services.

Pre-attack crisis management services include pre-incident security vulnerability assessments, training modules, and preparedness seminars, which explore both physical security measures and mental health training.

"Specialised, named perils active assailant policies are helping risk managers deliver the responses that their organisations need"

Post-incident crisis management services include event responders, counselling services, and social media coverage and coordination.

Blades affirms that, all too often, "general liability policies fall short of active assailant policies as they may not cover all bills in the aftermath that typically follow a violent incident, including risk assessment prior to an event, crisis management services and reconstruction".

As A.M. Best notes in its report, no crisis management procedures can wholly prepare an educational or corporate entity for an active assailant attack; however, implementation of such provisions can certainly "ease some of the burdens", particularly in psychological terms.

Captivating the next generation

Celebrating its 38th Annual conference in Burlington, Vermont, the VCIA event focused on how the industry should address the talent crisis and the tools that can be used to attract the next generation

This year's Vermont Captive Insurance Association (VCIA) conference focused largely on the current talent crisis in the insurance industry. Although there is currently a lack of interest from the younger generation, it was positive to see that a lot of young interns were in attendance at the conference.

A panel that consisted of Troy LePage, senior internal audit manager of HAI Group, Zach Finn, professor and director of Butler University, Susan Molineux, associate director, A.M. Best, Rachel Libowitz, senior associate, CapVisor Associate, discussed the next generation of captive leaders.

LePage said that research shows only 4 percent of college students currently consider going into the insurance sector—which is not good news considering a large number of the current industry are due to retire in the coming years.

Finn explained that there are two sides to the talent crisis—supply and demand. Reflecting on the demand side, he said: "We have 295,000 positions that need to be filled by 2020 to 2022, that's a lot of people that we need to attract to the insurance industry."

Speaking about the lack of insurance degrees, he explained: "It's not that you have to have an insurance and risk degree to be a great insurance professional but if you can only replace a baby boomer with half a Gen X-er, we need a faster way to onboard this talent, and an insurance and risk management degree is really the best way to do that."

While discussing the lack of insurance professionals, Finn added that the industry needs to create an awareness of how the insurance sector plays an important role in the economy.

At another session addressing the lack of young talent entering the industry, panellists discussed the benefits of a captive and how it can be used as a tool to attract a new generation.

Dan Kusaila, partner at Crowe, said that although there is a "big need for employment, and our talent pool coming out of university will not even entertain it".

When students were asked why they didn't want to entertain the insurance industry, they described it as "old and boring" and "not technology-driven and not sexy enough for them". Other reasons included being "not innovative enough".

Kusaila said that even though there is only a 1 percent unemployment rate in the insurance industry, "we need to think outside the box and start thinking about how we can help our own organisations".

He said: "Firms need to think how a captive can help in other ways that have not been thought of before and it could be a win-win for the captive as well as the employees."

Anne Marie Towle, executive vice president at Marsh, noted that retaining talent in any organisation can be challenging.

However, she suggested coverages that could be offered to an employee through a captive include cell phone insurance, wedding coverage, student loans, home warranties, trip insurance and pet insurance, among others.

When doing research, it was found that 89 percent of millennials would prioritise benefits over a pay rise. Kusaila said: "They value the benefits more than they do the cash, they value lifestyle, they value family more than being in the office." However, it's not just for the younger generation, Towle suggested a captive could cover other benefits to suit the older generation.

Kusaila said it doesn't matter on the size of the captive, "the sky is the limit, have a think about what the law will let you do, what will the business let you do, and the attitude towards the captive".

Talking tax

During the annual tax update session, a panel, which included Tom Jones, senior counsel, McDermott Will & Emery; Chaz Lavelle, partner, Bingham Greenebaum; Bruce Wright, partner, Eversheds Sutherland, discussed the issues around the Internal Revenue Services (IRS) court cases against section 831(b) captives.

One of the big problems in the Syzygy's v Commissioner of Internal Revenue case was when the premiums decreased, the taxpayer switched captive managers, which according to Lavelle, "is what the court was concerned about".

Lavelle explained the court was also concerned about "the precise determination of the premiums, they also said the captive manager did not testify on exactly why the pooling entity would have been a good entity for federal tax purposes".

He said that "you can't use the risks that were assumed from the pooling entity in returning your risk distribution".

The audience was asked if they thought the pooling entity has to be an insurance company for tax purposes, for the captive to count risks assumed from it for risk distribution purposes.

Although the majority of the audience answered yes, Lavelle said it is "irrelevant" whether or not the pooling entity is a valid insurance company.

He explained that "risk distribution is determined by whether it is assuming the risks of unrelated people and it seems to be irrelevant whether or not those risks come directly from the insured or from an entity that is an insurance company that does qualify as an insurance company for tax purposes or an entity that doesn't qualify as it has an obligation to pay a third party when a contingency occurs, that to me is an unrelated business".

In the tax court decision, Judge Ruwe found that the arrangement between captive insurer Syzygy, its parent company High Tank and Manufacturing, and its fronting carriers, were not insurance transactions, meaning the Syzygy's section 831(b) election is invalid and it must recognise the premiums it received as income.

Judge Ruwe, therefore, ruled that the captive's fronting carriers were not bona fide insurance companies and therefore

Syzygy did not distribute risk and did not accomplish sufficient risk distribution for federal income tax purposes through the fronting carriers.

He found that the arrangement between Syzygy and its fronting carriers "looks suspiciously like a circular flow of funds" and that the fact that the captive owner sought higher premiums led the court to believe "that the contracts were not at arm's-length but were aimed at increasing deductions".

Lavelle said captives should go the "extra mile" and that "it's not hard to follow the tasks the courts provided".

He added: "In today's world, captives are in a hard market with the Internal Revenue Service and courts."

A mission to Mexico

During the conference, VCIA also revealed that they will be sending a delegation of government, regulatory and industry representatives to Mexico in 2020, to highlight the state's captive insurance industry.

In collaboration with the US Commercial Service, the trade and promotion arm of the US Department of Commerce's International Trade Administration, the delegation will lead captive insurance educational forums hosted in Mexico City the week of 23 March 2020.

The educational forums will include participants from Vermont's captive industry and feature informative panel discussions, educational content and networking opportunities designed for Latin American insurance and risk management professionals interested in forming a captive insurance company.

Ian Davis, director of financial services, said: "The goal of this trade mission is to increase awareness of Vermont as the leading US domicile for captive insurance and highlight our state's mutually beneficial trade relationship with Mexico."

"We look forward to meeting with corporate leaders, industry executives and prospective captive owners from across Latin America during the educational forums and related engagements."

David Provost, deputy commissioner of captive insurance in Vermont, added: "There is a growing interest in captives among insurance and risk professionals in Latin America."

"Our aim is to help ensure that the captive concept is well understood and communicated, including the benefits of being in a reputable onshore jurisdiction like Vermont."

Rich Smith, president of the VCIA, commented: "We have a number of captives that do business in Mexico and Latin America."

"As the captive market in the region continues to grow, we want to make sure those companies know Vermont is open for business."

Industry recognition

At the event, the annual awards ceremony to honour active members of the captive sector saw Len Crouse, a former Vermont captive regulator, and now a partner at JLT Towner, being presented with the honorary member award.

Ed Koral, a specialist leader at Deloitte Actuarial & Insurance Solution Group, was given the captive crusader award.

The industry service award went to Chaz Lavelle, a partner at Bingham Greenbaum Doll, where he started at as an associate back in 1977.

Lavelle said: "The captive industry is a great industry, I was very thrilled to get the award for service to the market but hundreds of people deserve recognition for the service they give and the roles they play."

He added that whether those in the industry "are sitting on committees, doing board work, lobbying legislators, working with regulators to get best practices or sharing their knowledge by speaking on panels or otherwise writing articles" they all contribute in one way or another. ■


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The latest moves in the captive industry

Fidelis Insurance has promoted Simon Crone to chief underwriting officer of Fidelis Insurance Ireland DAC (FIID), with immediate effect.

Crone will report to Robert Kelly, who was recently appointed CEO of FIID. Kelly joined Fidelis last year having previously worked at PartnerRe Ireland Insurance DAC where he served as chief financial officer, head of external reporting Europe and group International Financial Reporting Standards.

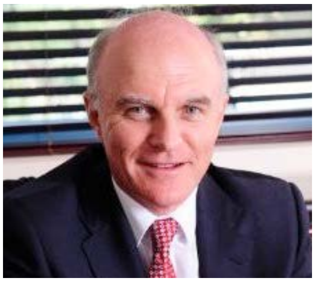
Robert Kelly, CEO and CFO of FIID, said: "I am pleased to have Simon Crone join me on the board and look forward to working together to grow our continental business."

Richard Brindle, chairman and group CEO and group chief underwriting officer of Fidelis, commented: "Both Crone and Robert Kelly have proven their business acumen and expertise since joining Fidelis, and I am pleased to confirm their appointments to these roles."

He added: "I'd also like to thank Colm Lyons, departing CEO and chief underwriting officer of FIID, for the successful establishment of our Dublin office, and wish him all the best in his future endeavours."

"Fidelis' Dublin office provides certainty to our clients and brokers that we will continue to operate in the EEA irrespective of Brexit, and that there will be continuity of service on our agreements.

This is an important part of our business strategy, ensuring that we can continue to grow our continental book, particularly in speciality and bespoke insurance." ■



Paul Scrivener and Rob Humphries have joined Conyers Dill & Pearman from Solomon Harris.

Scrivener joins as an independent consultant, while Humphries joins as of counsel.

Scrivener is an insurance and reinsurance professional with a particular focus on captive insurance.

He started working at Solomon Harris as a partner in 1998 before moving to an independent consultant role in March 2017.

Humphries has experience working in the Cayman Islands insurance industry handling a broad range of insurance and reinsurance work including mergers and acquisitions, complicated group captive formations, and ongoing regulatory advice.

In his most recent role, he served as managing associate at Solomon Harris, based in the Cayman Islands.

In July, Solomon Harris rebranded as Bedell Cristin after a merger that was completed in October last year. ■

AXA XL had promoted Megan Kempe and hired Nick Pascall and Conor Gaffney within its London reinsurance team.

Kempe joined XL Re in Bermuda in 2004 as a catastrophe model analyst. She re-joined XL Re in 2009 as an associate underwriter and was later promoted to vice president.

Pascall has worked in London, Bermuda and Chicago and has 27 years experience in international re/insurance.

He began his career as a treaty underwriter at CNA Re in 1992, and has since held senior roles at Catlin Underwriting Agencies and American Safety Re. Recently, he worked as head of Casualty Reinsurance at Hiscox Re in London.

Gaffney has nearly 15 years' experience in the re/insurance industry, he began his career as a reinsurance pricing actuary at Imagine Group, and has held senior actuarial roles at AmTrust International Underwriters and PwC.

Recently, he held the role of head of Reinsurance Underwriting at Greenlight Reinsurance Ireland in Dublin. ■

Michael Maglaras is stepping down as superintendent of Connecticut Crumbling Foundations Solutions Indemnity Company (CFSIC).

According to a source close to the captive, Maglaras stepping down will be a "very orderly" process.

The CFSIC is a non-profit captive that was step up in 2017 to tackle crumbling foundations in homes in the northeast side of the State of Connecticut.

The 'crumbling foundation' homes were built using concrete made from stone aggregate mined from a quarry containing pyrrhotite, which resulted in cracks forming in the foundations of many of these structures, decades after they were constructed.

The non-profit captive aimed to use its available resources to adjust and pay claims for the rebuilding of as many pyrrhotite-affected home foundations as those resources will permit. Recently, Kevin and Aisling McCloskeys were the first homeowners to have their property to be fixed using the captive after they received a grant of $175,000.

On 12 August, CFSIC revealed that 22 families have now been returned to their homes with new foundations, with an estimated 25 more to be back in their homes before the middle of September.

However, the non-profit captive is lacking in funding, the CFSIC has stated it aims to lobby the state and federal governments.

In July, Connecticut governor Ned Lamont signed into law a bill that will make several changes to the CFSIC's enabling legislation.

The newly signed bill will allow certified home inspectors to audit certain building foundations and to require appraisal management companies to compensate appraisers fairly.

CFSIC said the changes will permit them to serve more homeowners that are affected, particularly those owning condominiums and planned unit developments. ■