REAL ESTATE AND HOTEL PRACTICE

Willis VIEWS

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FACING THE FUTURE

While change is constant, how it plays out is often anything but consistent. The Willis Real Estate and Hotel Practice will continue to not only stay abreast of change but understand it and work to anticipate it in order to help you navigate the inconsistencies and provide you with the answer to the most important question, "So what does that mean to my business?" In 2011, we made the information you need easily accessible and comprehensive in our robust client online resource portals for multifamily properties and hotels, and in 2012 we will add client portals for commercial office and industrial spaces, and shopping centers.

If there are subjects you would like to see addressed in future issues, please contact Brian Ruane or Steve Sachs.

MARKET TRENDS UPDATE

MARKET IN TRANSITION PHASE – PRICES UP FOR SOME, NOT ALL

Much like the weather, rates and the direction they are headed is a fairly constant source of discussion. It is clear to us that insurance carriers are scrutinizing their books of business and intend to obtain premium levels commensurate with exposure. This means rate increases for some (not all), particularly those accounts with adverse loss experience and/or risks with exposure in areas subject to natural catastrophes.

What is driving this market in transition?

1. 2011 had an unprecedented number of natural catastrophes, globally. The total insured amount was the highest on record, exceeding $100 billion in losses.
2. Investment income was relatively low for insurers in this low interest rate environment. The yield for the industry was 3.9%.
3. The combined ratio in 2011 grew to 108.2%, up from 102. 7% in 2010 and net income dropped 40.3% year over year.
4. After many quarters of consistent reserve releases into their bottom lines, many insurers, according to some industry

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analysts, will cease this practice. We are seeing some carriers add to reserves, particularly for Workers' Compensation.

5. Workers' Compensation, the largest single line for insurers, has a projected combined ratio of 115% for 2011. According to a report by S&P, "Signs point to unprofitable years ahead for Workers Compensation" and they are "uncertain if the pace of rate increases will be sustainable and if they will cover increasing claim costs," particularly related to rising medical and pharmaceutical benefits.[1] Workers' Compensation has, historically, been a difficult line for insurers. It has been profitable only three times in the past 20 years.

As a result of these factors AM Best reported, "The long term reversal of soft prices has arrived." Their report cited an increase of 3.9% in net premium for the industry in 2011, the first increase since 2004.[2]

Others who follow the industry are reporting similar findings. *National Underwriter* reports that "2011 came to a close with firm evidence the soft market has ended."[3] *Market Scout,* which tracks rate direction, stated, "The average rate rose 1% in December marking the 2nd consecutive month of rate increases. For purposes of comparison it is worth noting that in January 2011 rates were declining by 5 percent."

Insurers are seeing the impact of the changing market in their results. Travelers reported, "The rates on the business we are writing is up significantly in the past six months."[4] Chubb stated, "The company was able to secure an average rate increase of 6% for commercial lines."[5]

The reinsurance market, which has a strong impact on the direction of rates, is, according to a report in *Business Insurance,* "firming especially for catastrophe perils."[6]

Many risk managers and financial executives who are facing property renewals have significant concerns about the availability and pricing of coverage. This concern was expressed in a report prepared by *The Independent,* an international coalition of insurance brokers and risk management service firms.

What should be done to manage these macro forces and obtain the optimal result in this market in transition phase of the highly cyclical insurance industry? We recommend that you:

1. Begin the renewal process early. Meet with the underwriter, if possible, to address any concerns they may have and to try, with your broker, to determine the direction of rates for the renewal as early as possible.
2. Consider, if appropriate, accessing alternative markets. This includes markets in London, Europe and Bermuda.
3. Provide as much information as possible, including primary and secondary building characteristics. The new RMS 11 catastrophe model is having, for some, an impact on the direction of rates. You should comply with all reasonable loss control recommendations and partner with your broker and underwriter in taking whatever steps necessary and prudent to control the cost of risk.
4. Review the status of all open claims and loss reserves to ensure they are accurately set. If you sustained a loss that may have an impact on the premium, explain, where appropriate, any measures taken to prevent a reoccurrence.

While some will see rate increases on specific lines of coverage, some companies will not need to absorb these price increases. The industry has ample surplus and we have seen cases where underwriters will compete aggressively for well managed accounts with favorable loss experience and a focus on risk mitigation and loss prevention. The news is not bad for all companies.

SECTOR REVIEW, MANAGING CHANGE

There are many macro economic forces and changes in the way we work, shop, store goods, live and travel that are having profound consequences for the real estate industry. These changes are against a backdrop of economic forces which have reduced demand for real estate across all sectors and have put pressure on the bottom line.

We understand the role we play in assisting our real estate and hotel clients in responding to these changing forces by helping them

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identify and mitigate risk and control their insurance costs.

Below, we review each of the five sectors, where they stand in the first quarter of 2012, and discuss both the headwinds and tailwinds that could buffet each sector.

OFFICE

The recession took its toll on this sector. Between 2008 and 2010 the amount of space used by businesses was down 137 million square feet. This drop in demand was caused by the recession and loss of jobs and exacerbated by the trend toward a smaller amount of space required per employee. Henry Chamberlain, the president of BOMA, stated, "Because of increasing use of technology like iPads, employees do not need quite as much office space."[7] This trend is likely to continue regardless of the state of the economy and is a mega trend that all owners of office space will need to contend with.

The sector has, however, been posting consistent signs of recovery with the national vacancy percentage falling 30 basis points to finish the year at 17.3%. Rents rose modestly in 2011 and now average $27.97 per square foot.[8]

The recovery has been somewhat uneven with strong results – recovery in such cities New York, Washington, Boston and San Francisco – and bigger challenges in secondary and tertiary markets, particularly suburban office space where the vacancy percentage is over 20% in many places.

One concern is that many office leases, which generally run for five to seven years, were signed at the height of the market, when rents were at their highest and vacancy low. Many leases will need to be renegotiated in 2012. The concern for owners is that they may need to offer reduced rates to retain these tenants.

Many feel the recovery will be aided by the fact that relatively little development has occurred in the past five years, reducing the inventory of space available for lease. From a historical perspective, during the period 1999 to 2003, over 100 million square feet of office space was developed annually. From 2004 to 2008 this number dropped to an annual rate of 49 million square feet, and last year it dropped to only 12 million square feet.

RETAIL

Owing to its reliance on the consumer, the retail real estate sector suffered as much or more than any part of the real estate industry, taking a direct hit from the high unemployment rate and subsequent bankruptcy of many retailers. From 2008 to 2010 retailers vacated 31.6 million square feet of space.

The retail real estate sector continues its slow recovery from the ravages of the recession. The vacancy percentage at malls in the top 80 markets was down to 9.2% as of December 2011 from 9.4% in September 2011. While a sure sign of improvement, it is still significantly higher than the rate of 5.5% in December 2007. Rents rose slightly, finishing the year at $38.92 per square foot.

The results for shopping centers were somewhat more challenging. The vacancy percentage for this class of retail space improved modestly ending the year at 11%, with rents rising 0.1% to $19.40 per square foot.

The impact of online shopping is beginning to takes its toll on this sector. Online sales represent only 8% of total sales but are growing four times faster than sales made in stores. This has also, to some

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degree, reduced the demand for space by existing retailers. For example, the average lease for Best Buy is now 33, 000 square feet compared to 2007, when it averaged 40,000 square feet.

Development, as in the other real estate sectors, is at historically low levels. The amount of new space opened last year was the lowest in 31 years. This should aid in the recovery.

HOTEL

We attended the American Lodging Investment Summit in Los Angeles in January. The mood of hoteliers was generally upbeat. While industry fundamentals are improving, they are climbing a wall of worry. The concern is that even though all of the key performance metrics are improving, macro economic forces could derail the recovery.

According to Smith Travel Research, RevPar reached its highest level in three years in January rising 8.2% from January 2010 to reach $61.38.[9]

An article in *Hotel Business* quoted TravelClick, which stated that RevPar, Occupancy and ADR will rise by 6.8%, 4.8% and 4.0% in 2012, signaling that a robust recovery may occur. These improving numbers have, to some extent, been aided by the return of the business traveler, who accounts for between 65 and 75% of the demand for hotel rooms.[10]

The number of hotel rooms opened in the past two years and under development are at historically low levels, suggesting the recovery could gain momentum and accelerate as demand continues to rise and the increase in supply is muted.

INDUSTRIAL

The industrial sector is enjoying improved results for several reasons. Trade, both imports and exports, is gaining strength from an improving economy. The demand for large spaces (over 500,000 square feet) is increasing particularly fast, and the trend toward shipping to lower-cost fulfillment centers in lieu of higher-cost retail space as online shopping increases, all contribute to a greater demand for industrial space.

The industry results reflect the increasing demand. The vacancy percentage dropped 80 basis points, year over year, to 10% as of December 2011. Rents, however, showed little movement ending the year at $5.05 per square foot. Many expect this number to rise in 2012 due to an increase in demand for space and, as in all the other real estate sectors, relatively little new development.

MULTIFAMILY

Profound changes are having a positive impact on the multifamily industry. Doug Bibby, the president of the National Multi Housing Council, stated, "We are seeing a surging demand for rental housing and a preference for apartments, providing a great growth opportunity."[11]

Demographic trends are favoring the industry as immigration, an increase in household formations coming out of the recession and the "echo boom" all contribute to an increased demand for rental housing. These factors combined with a reduction in the percentage of single-family home ownership create a strong demand for rental properties.

The apartment vacancy rate dropped to 5.2% as of December 2011, down from 6.6% in December 2010 and 8.0% December 2009. These improving results have been fueled by a general dearth of new supply. According to an article in the *Wall Street Journal,* "little construction and surging demand created a shortfall of 2.5 million apartment units the largest shortfall in 50 years."[12] We note a trend toward development of multifamily units and are working with many of our clients to support them in this effort.

We will continue to study the trends and changes in the real estate industry and develop the appropriate risk management programs to respond skillfully to these changes.

UPDATE ON ASHRAE 188P

The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) is working on developing a new standard entitled *Prevention of Legionellosis Associated with Building Water Systems,* but commonly referred to as 188P. Its development is following the American National Standards Institute (ANSI) guidelines and the ASHRAE intends it to be adopted by ANSI. 188P has been in development since July 2010 and underwent its first public review in November 2010.

ASHRAE has long taken an active leadership role in the development of standards and best practices aimed at ensuring the quality and safety of the living and work environment. Some of the motivation for the development of this standard arose from the numbers.

- An estimated 120,000 people have died in the U.S. since the cause of this disease was determined some 30 years ago.
- Officially reported incidence rates of this disease have tripled in the last decade.
- The direct health care cost of a single legionellosis case is approximately $34,000.
- The largest jury award so far for gross negligence in a non-fatal case of legionellosis was $193 million.

We have been following this ASHRAE committee's standard development work closely. While this standard has not yet been adopted, we believe the proposed standard is to be considered for adoption by ASHRAE at their late January 2012 technical committee meeting and that a final version of the 188P standard may be released this year.

The standard as currently proposed will require the building owner or manager to develop and implement a hazard analysis and critical control point plan (HACCP) if certain identified hazards exist. An HACCP plan will require a risk management team that includes at least one person who understands the building water systems and must be developed on a building-specific basis. These plans will need to address such issues as:

- Maintenance procedures for each potable and utility device identified in flow diagrams
- The checking and disinfecting before commissioning any new system
- Safe restart procedures after a drained shutdown or any unplanned loss of energy
- Treatment following water supply interruptions or breaks in the water piping system
- Methods and frequency of temperature measurements in water heaters and distribution systems

While ASHRAE and ANSI standards do not automatically have the power of law, they do establish "best practice" guidelines, which can impact a building owner or manager in two ways:

- These best practices can be used in litigation to demonstrate possible negligence.
- The first place a regulatory body looks in the adoption of a new law is to the existing standards, such as ANSI.

We suggest that all building owners and facility managers watch for the release of the final version of the ASHRAE 188P standard and become familiar with the best practices outlined therein. This standard when released will be available through ASHRAE website **www.ASHRAE.org.** It will assist clients in minimizing the potential for legionellosis in buildings they own or manage and their associated liability exposure.

For more information contact your Willis Client Advocate® or **Thomas F. Pegg,** CIC, Deputy Technical Director Casualty Risk Control Services, Strategic Outcomes Practice – Claim & Risk Control at 412 645 8583 or **tom.pegg@willis.com.**

Willis' Strategic Outcomes Practice delivers claim, risk control, safety and data analytic consulting services. Click **here** to learn more.

CHECKING ON BACKGROUNDS

Many employers do background checks on current employees and job applicants. A background check can be a simple and effective screening tool in a market flooded with job seekers. At the same time, they can be troublesome if all of the rules regarding background checks are not followed. Unfortunately, many employers do not realize that they must comply with the Fair Credit Reporting Act (FCRA) whenever obtaining a background report prepared by a reporting agency.

The FCRA imposes a number of requirements on employers that wish to investigate applicants for employment through the use of consumer credit reports or criminal records checks. This law requires the employer to advise the applicant in writing that a background check will be conducted, obtain the applicant's written authorization to obtain the records and notify the applicant that a poor credit history or conviction will not automatically result in disqualification from employment.

Furthermore, employers should not be fooled into thinking that the FCRA is only applicable to background checks on credit. The law is applicable whenever an employer obtains a report concerning the individual's credit, character, reputation, personal characteristics or mode of living. Background checks most familiar to employers include criminal and civil records, credit reports and driving records.

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Below are summaries of some key steps an employer must take to ensure compliance with the FCRA.

- Disclose in writing in a stand-alone document to the employee that he or she will be the subject of a background report as part of the employment process.
- Obtain the employee's signed authorization to prepare the background report. FCRA permits this authorization to be combined with the written disclosure.
- Upon receipt of the reporting agency's background report, review and determine whether any adverse actions will be taken based on the report:
  - Adverse actions can include not hiring an applicant, not promoting an employee, not retaining an employee or any other action which has a negative impact on an individual's employment.
  - If an adverse action is considered, provide a pre-adverse action notice informing the employee that the employer is considering adverse action based on the background report.

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- Provide the employee with a copy of the background report, a copy of the FCRA document entitled "A Summary of Your Rights under the Fair Credit Reporting Act" and a reasonable period of time to dispute the information in the report.

An employee may contact the reporting agency to dispute any information in the background report. The reporting agency is responsible for re-investigating any disputed items and issuing an updated report to both the employer and employee.

Once an updated report is issued, an employer must again review the updated report before making a final employment decision. If the employer determines that an adverse action is still appropriate, the employer must send a notice of adverse action to the employee. In it, the notice must state: (1) that the adverse action is based on information in the background report; (2) that the reporting agency did not make the adverse decision and does not know the basis for the decision; (3) the name, address, and toll free number of the reporting agency; and (4) that the employee has the right to obtain another free copy of the background report within the next 60 days.

The FCRA's rules are only applicable when an employer uses a reporting agency for background checks. Thus, an employer who performs background checks on its own is not affected by the FCRA rules.

Additional information on the FCRA rules governing employee background reports can be found at the Federal Trade Commission's **website.**

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

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

THE PERILS OF PARKING

How many thrillers have we watched where the killer stalks their next victim in the catacombs of a dark and isolated parking garage? The suspense builds as the attacker creeps closer and closer...and then...well, you know the rest.

If our actions were solely dictated by the movies, many of us perhaps would never venture into a parking garage. However, sometimes our perceptions can become our reality, real or not. The truth is, while parking structures and parking lots can be considered "at-risk" areas, the Hollywood images of these locations are many times exaggerated and not so grim. Even so, crime is still one of the primary safety threats in parking areas and therefore, the importance of security in a parking area can not be overstated. Just one incident inside a parking garage can have a devastating impact in terms of both physical harm to the victim and financial and reputational cost to the owner.

In fact, a study conducted by Liability Consultants, Inc. revealed that in more than 1000 premises liability lawsuits between 1992 and 2001, almost one-third of the cases resulted from a murder, rape, robbery or assault inside a parking lot or garage. These parking locations were found in office buildings, hotels, apartment complexes, shopping centers, etc. Additionally, the study also found that jury awards or pre-trial

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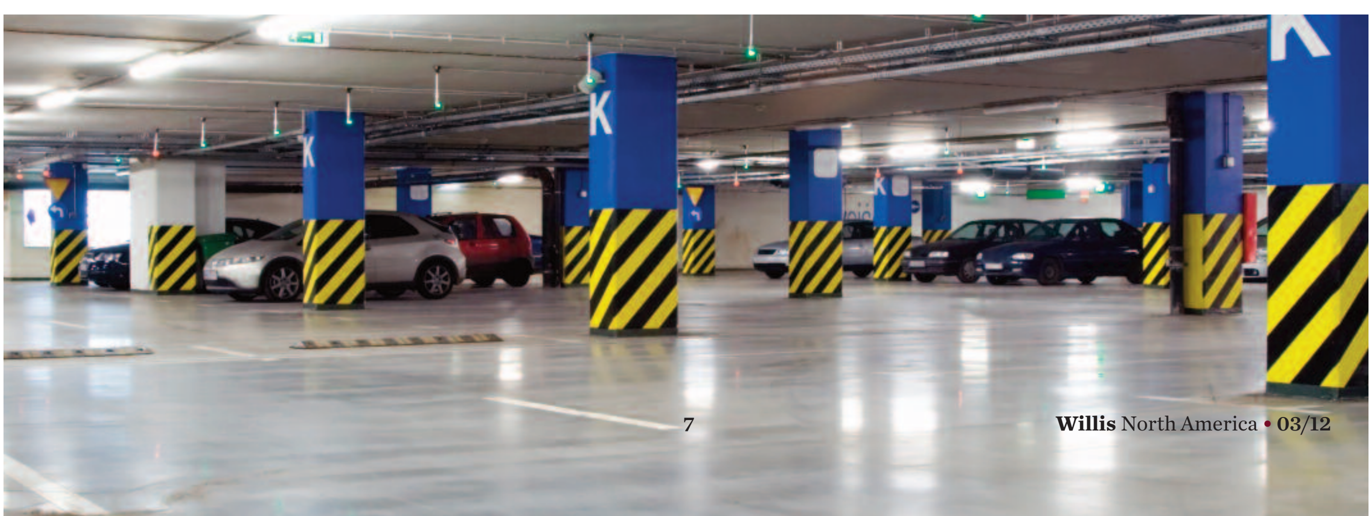

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settlements in these lawsuits averaged between $1 million (for assaults) and $2.75 million (for homicides).

So, how do owners provide a "reasonable" level of protection to those (visitors, patrons, shoppers, tenets, lease holders, parking attendants, etc.) who frequent these areas and how can they better protect themselves from this liability exposure?

- **VULNERABILITY ASSESSMENTS** The first step towards parking area security is to conduct a vulnerability assessment. The "who, why, what, when, where and how" questions. This process will provide you with a detailed evaluation of your current parking security strengths and weaknesses and a clear vision on what steps to take to mitigate areas of elevated risk.

- **LIGHTING** Effective security lighting has proven to be one of the best deterrents to crime. Lighting levels in garages are addressed in detail in the **Illumination Engineering Society of North America** (IESNA G-1-03) handbook.

The guidelines generally recommend lighting levels of 5-to-6 foot-candles in gathering areas such as stairs, elevators and ramps. Walkways around garages should be 5 foot-candles. A minimum of 3 foot-candles should be used in open parking lots, such as in retail shopping areas as well as in parking lots for hotels, motels and apartment buildings.

- **SURVEILLANCE** CCTV cameras should be placed in areas with constant light (daylight or luminaries) to provide proper illumination of the camera images. Low-light cameras can be used, but they are more expensive and can also represent an admission that lighting conditions in that particular area may be poor.

  Cameras should be placed in locations to achieve an unobstructed view of the surveillance area. Avoid trees, landscaping, parking columns, walls or other barriers. On surface parking lots, cameras should have good lines of sight and cover as much ground as possible. The cameras should be protected within dark polycarbonate domes. Cameras with this feature are less likely to be tampered with or vandalized. The dark domes also help to obscure where the cameras are directed.

  CCTV systems in parking facilities should be monitored in real time; failure to do so can give rise to potential liability for the owners. CCTV systems deployed within parking areas can create an expectation of increased security and protection for patrons. If a security-related incident were to occur, the victim may believe that emergency assistance would be forthcoming in a timely fashion. However, if cameras are not monitored "live" and are only utilized for recording purposes for later review or investigations, prominent signage should state this to avoid a false sense of security in the minds of the facility's users.

- **SIGNAGE** In addition to intuitive directional instruction signage to areas, levels, exits, shuttle stops, etc., security information should also be posted. Such signage should include messages about no trespassing, no loitering, area under surveillance, emergency assistance, escorts provided upon request and area patrolled, among others. Where applicable, this signage should be prominently posted throughout the area.

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This also serves as a deterrent and helps to create the "perception of detection" in the minds of would-be wrongdoers.

- **EMERGENCY CALL STATIONS** Panic-button call boxes can also be strategically placed throughout parking areas to allow patrons to quickly summon assistance or draw attention during an emergency situation. These stations should also be integrated with the facility's video surveillance system, allowing cameras to swing into action and focus on the station once activated.

  These stations when fitted with speakers and microphones can detect the screams or shouts of persons in distress. The systems are also useful for communicating with people who are observed walking through a parking area without an identifiable destination or purpose. Security personal can ask if they are lost or in need of some other type of assistance. Again, this type of polite inquiry can serve to warn questionable individuals that they are being observed.

- **PARTNERSHIPS** Owners should continually seek to enhance and leverage their relationships with both their patrons and local law enforcement. Owners should explore methods to educate their clientele on the benefits of safe parking practices and encourage them to report unsafe parking conditions or suspicious persons or vehicles in the area. Using emergency notification systems to send alerts, text messages, or emails to a registered patron's cell phone, PDA or email account can be beneficial to report an emergency or hazardous condition and to regularly communicate safety information or new offerings and happenings/events at the facility.

Additionally, a close working relationship with local law enforcement can increase levels of information sharing and cooperation regarding investigations as well as additional police patrols in the area.

By putting all of these elements together owners can take a significant step towards creating a safer and more secure parking environment for those who use these "at-risk" areas. As a result, patrons who feel safe and enjoy a secure parking experience due to security precautions implemented throughout the parking area will likely continue to use and recommend this particular parking facility to others.

Unfortunately, security and safety problems remain common in parking locations because many of these areas were not designed with security in mind. While it is true that no level of security is absolute and that creating a secure environment can be costly, the cost of inaction can be infinitely greater.

Sources: **www.security-expert.org/parkinglots.htm;**
"Major Developments in Premises Security Liability III," by Norman D. Bates Esq., pub. Liability Consultants, Inc., ©2004
liabilityconsultants.com/publications.html

For more information contact **Kevin C. Wilkes,** Practice Leader, Willis Security Risk Consulting, Strategic Outcomes Practice at 412 645 853 or **kevin.wilkes@willis.com.**

BUSINESS CONTINUITY MANAGEMENT

Disasters can occur from natural causes, human error or criminal activity; virtually every organization has a genuine exposure to catastrophe. Whatever the threat to your assets, a current, detailed and flexible plan will allow your organization to survive.

Although there are many approaches an organization can take to create and implement a business continuity management program, several common elements will ensure that your plans will work; specifically, a risk assessment, a business impact analysis (BIA) and developing procedures for emergency response and operations.

RISK ASSESSMENT

Your first step should be a risk assessment. This will identify the types of hazards you believe have the greatest potential (probability) of occurring which will, in turn, impact your ability to perform critical business functions – often resulting in a significant loss of business and income. Furthermore, a risk assessment will identify threats that require specific emergency response procedures or

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unique mitigation/risk transfer strategies. At a minimum, your risk analysis is designed to include exposure identification and evaluation for:

- Natural Hazards (e.g., hurricane, flood, freezing/ice, earthquake)
- Fires and Explosions (e.g., fixed and transient combustibles, housekeeping)
- Utility Failure (e.g., gas, steam, electric, voice/data, water, sewer)
- Transportation Accident (e.g., motor vehicles, aircraft, rail, pipeline)
- Intentional Hazards (e.g., fraud, strike or labor dispute, criminal activity, product defect or contamination)

BUSINESS IMPACT ANALYSIS

The business impact analysis (BIA) determines the impact a disaster or long-term service interruption will have should it occur.

This component involves development of long-term actions designed to bring operations back to pre-disaster levels as quickly and effectively as possible. Your focus is to restore the critical business functions rather than individual buildings or facilities, although in some cases, the two may be the same. The actions captured as part of the BIA process will point toward the agreed upon alternative recovery strategy that could include, for example, using any remaining sister locations as recovery sites, or developing alternate alliances.

Criteria you should consider to determine the criticality of a particular function within each business unit include:

- Financial impacts
- Operational impacts
- Customer impacts
- Employee morale

We suggest you use/develop a BIA questionnaire to ascertain business requirements for recovery. The questionnaire will use corporate recovery objectives as a basis for evaluating time and resource recovery requirements. The questionnaire is designed to capture:

- Recovery time frames
- Critical activities
- Recovery resources (staffing, equipment, technology, etc.)
- Recovery strategies for business relocations and transfer (may involve shifting of business and operational activities as well as curtailment of activities)
- Vital records (paper and electronic)
- Interdependencies (internal, external) to ensure end-to-end process recovery times

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The recovery time objective (RTO) is the measure of time in which you need to return a specific critical business function in order to meet internal and external customer demands before substantial loss occurs. You should establish an RTO for each of your critical business functions that support the delivery of goods and services to your internal and external clients.

Once you have completed the risk assessment and the BIA, these two elements will essentially determine your current ability to meet your customers' service demands.

EMERGENCY RESPONSE AND OPERATIONS

Emergency response is typically the component most often addressed in disaster planning. It involves immediate first-hour reaction to events, such as injury, fire, flood, chemical spill and the like. If not already developed, most organizations need to develop a corporate crisis management team including an emergency response strategy, a chain of command, and assigned roles and responsibilities of personnel (including back-up personnel).

We suggest the creation of an emergency operation center (EOC), which is a physical (or in some cases a virtual) facility capable of supporting continuity, response and recovery operations. The EOC is a facility where the major decisions affecting continuity, response and recovery are made and a place for leaders of the emergency response and business continuity teams to assemble.

When developing your crisis management team, we suggest using an incident command system designed to integrate a combination of facilities, equipment, personnel, procedures and communications operating within a common organizational structure.

CONCLUSION

A business continuity management program is a strategic plan designed to be an integral component of an organization's corporate culture. It has to be demonstrated that it enhances the bottom line by protecting share value and an organization's competitiveness. A business continuity management program can do this by looking at such important aspects as process availability, integrity, quality, and the strength and depth of the particular processes. It should look at the impact these processes will have if a catastrophe were to occur and just how things are going to operate. The key is reviewing and improving the design and development of the process so that minor mistakes, and possibly even major ones, can be mitigated or eliminated.

For more information, contact **David H. Gluckman,** ARM, CBCP, CFPS, Senior Vice President, Strategic Outcomes Practice at 973 829 2920 or **gluckman_da@willis.com.**

ELECTROMAGNETIC FIELDS: MORE THAN JUST AN EYE SORE

- Are any of the properties you own, operate, lease or manage near power lines? Substations? Transformers? How close is too close?
- Concerned about third-party lawsuits and/or legal defense associated with pollutants?
- Is there a better way to address the risk?

Electro magnetic fields (EMFs) are areas of energy that surround any electrical device (i.e., with electric fields being produced by voltage and magnetic fields being produced by current). Essentially, EMFs are produced wherever electricity is used. They are produced by a variety of sources with the larger and more obvious ones being power lines, substations and transformers. However, there are some less obvious sources, such as electrical wiring, computers, electric blankets and clocks, appliances and cell phones.

Public health and toxic tort liabilities concerns surrounding EMFs have become contentious among utility companies, regulatory agencies, land owners and other affected stakeholders. While many studies have produced varying (and sometimes contradictory) results, many epidemiological studies suggest a possible human carcinogenic link in a classification group similar to, say – formaldehyde, DDT, dioxins and PCBs.

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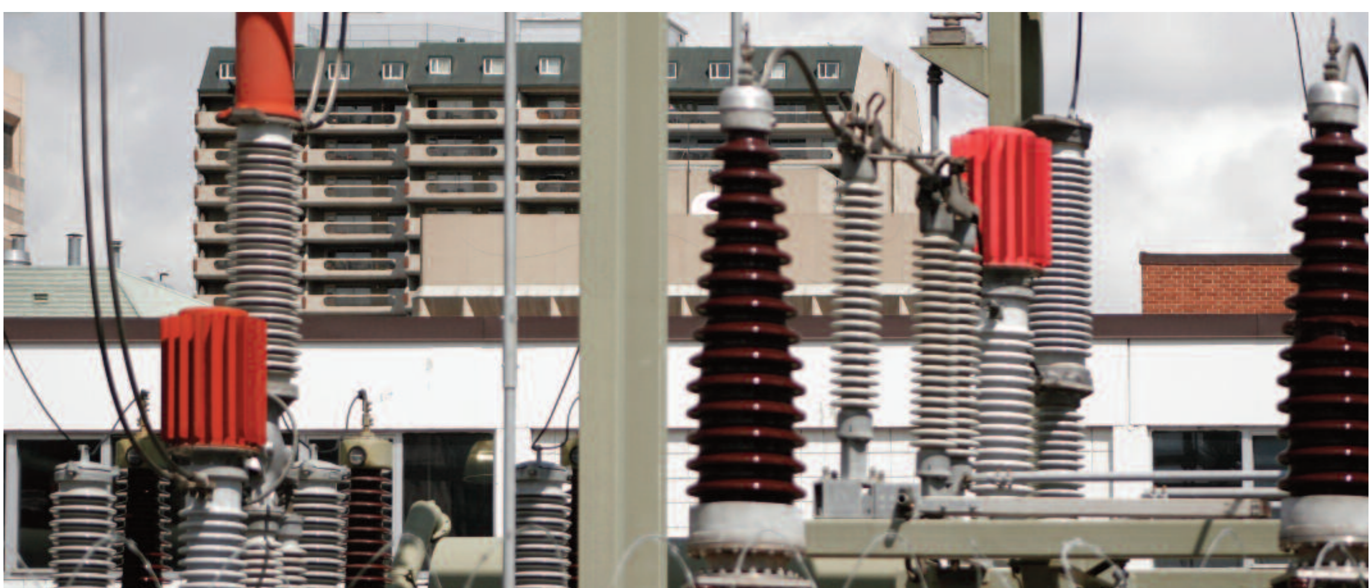
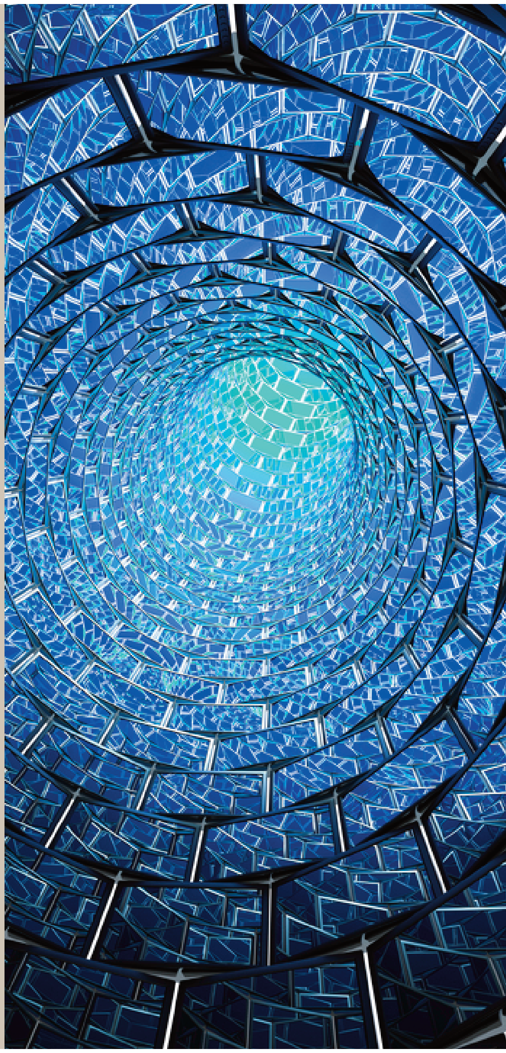
The more predominate exposures from an ownership and insurance perspective would appear to be 1) defending against any bodily injury claims brought by third parties, such as tenants or any other third parties and 2) third-party property damage claims vis-à-vis "diminution in property value" by a neighboring property owner alleging EMF emissions from a client's property (e.g., the property is worth less in value now because of the presence of EMFs nearby since the general public believes the exposure to be dangerous and, therefore, less valuable). There have been numerous lawsuits and much litigation activity involving EMFs – *San Diego Gas & Elec. Co v. Daley; Florida Power & Light Co. v. Jennings; Dunlap v. Loup River Public Power District,* to name a few. In the case of *San Diego Gas & Elec. Co v. Daley,* the jury awarded the property owner $190,000 for condemned property and $1,035,000 for the diminished value to the remaining property. Actual Bodily Injury lawsuits to date have had limited success since scientific evidence has not established a "definitive" link between exposure and health problems, such as cancer. However, a 2007 Swiss Re study concluded that it can be expected that plaintiffs will win suits dealing with the EMF issue (particularly since science and epidemiological studies continue to advance and suggest a direct health link) in which the legal defense costs can be staggering.

The health effect of EMFs, of course, can vary based upon the different levels of exposures and can be tempered by distance from the source and any shielding in the area. From a public health perspective, complete avoidance would be ideal and appears to be the best measure; however, it's not a very realistic option considering that these sources appear to be all around us everyday. From an insurance perspective, when considering the potential legal and toxic tort implications, a layer of defense against EMF liabilities and exposures could be found through an environmental insurance product. Among other coverage grants being provided, these environmental policies cover third-party bodily injury and property damage claims and legal defense associated with EMFs. Many carriers have EMF coverage built directly into their form via their definition of "Pollutants" (e.g.,…any solid, liquid, gaseous or thermal pollutant, irritant or contaminant including but not limited to…smoke, vapors, toxic chemicals, hazardous substances… *electromagnetic fields*…"). And, most environmental policies include "diminished third-party property value" in their definition of "property damage."

Owning, buying or selling a property with EMFs nearby can turn into a financial disaster – particularly as more science and studies further demonstrate rising health concerns in addition to potential diminution in value claims. Those in the real estate industry are faced daily with many risk management challenges, environmental exposures being just one of them; however, there are various insurance solutions to help transfer the risk. For more information please contact **Anthony Wagar** in the Willis Environmental Practice at 212 915 7768 or **anthony.wagar@willis.com**.





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CONTACTS

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

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