Newsletter

IN THIS ISSUE

PAGE 1
NO INSURANCE ON VESSEL OPERATED ILLEGALLY

PAGE 2
FIRM AND INDUSTRY NEWS

PAGE 4
DID YOU KNOW?

PAGE 6
BANKRUPTCY V. FEDERAL COURT IN REM

PAGE 10
DEVELOPMENTS IN AIR CARGO SECURITY

PAGE 11
INSURANCE INDUSTRY & CYBER RISKS

PAGE 14
CONTEST

NO INSURANCE ON VESSEL OPERATED ILLEGALLY

Facts

On July 11, 2010, Paul Heffernan crashed his motorboat into a dock, tragically killing himself and injuring his passenger. The coroner's report indicated a blood/alcohol level of .277 more than three times over the legal limit. The injured passenger sued the estate. The operator's insurer refused to defend the estate or to indemnify the estate for the injuries to the passenger.

The court was asked by the estate to determine if the insurer had a duty to defend the claim brought by the passenger and whether the insurer was required to indemnify the estate against any liability that might be imposed with respect to the boating accident. (*1)

Duty to Defend

The particular policy had no clause requiring the insurer to defend. The Court held that "There is no duty to defend because no such contractual obligation is set out in this particular policy. The insurer's duty to defend is a creation of contract and must be specified in the insuring agreement."

The Court made this finding on the duty to defend despite the fact that there was a clause in the policy in the "Protection and Indemnity" section that referred to a "duty to settle or defend." That section provided:

> *Limit of Liability*. We will pay up to our limit of liability for any one occurrence. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. Our duty to settle or defend ends when the limit of liability is exhausted.

FIRM AND INDUSTRY NEWS

- **Charles Hammond** will be joining the Fernandes Hearn team as an associate lawyer on July 6th, 2015. Charles has practiced civil litigation with a mid size firm in Toronto since his call to the Ontario bar in 2013.

- **Louis Amato-Gauci** and **Gordon Hearn** will be representing the Firm at the Annual Summer Executive Meeting of the **Transportation Lawyers Association** in Madison, Wisconsin on July 31 and August 1st.

- **Canadian Board of Marine Underwriters** Montreal Golf Tournament, Golf des Illes, Boucherville Quebec, August 19th, 2015.

- **12th International Marine Claims Conference** will take place in Malahide, Co. Dublin 23 to 25 September 2015.

- **2015 Canadian Transport Lawyers Association Annual Conference** will take place in Kelowna, British Columbia 1-3 October 2015

- **2015 Surface Transportation Summit** will take place on October 14, 2015 in Mississauga Ontario.

- **Fort Lauderdale Mariners Club 26th Annual Marine Seminar** will be taking place November 3-4, 2015, in Fort Lauderdale Florida.

The Court was of the view that this provision did not oblige the insurer to defend every action. The language was clear that the insurer would only defend a claim or suit where in its determination it was appropriate to do so. The judge took comfort in his finding by stating that even if he was wrong on this interpretation, he would still conclude that there was no duty to defend because, on the facts of the case, there was no duty to indemnify.

Duty to Indemnify

The policy had a provision that provided that the insurer would not be liable if the vessel was operated illegally or used for any illicit or prohibited trade or transportation. The court noted that under the *Criminal Code* it is a criminal offence under s. 253(1)(b) to operate a vessel having a blood alcohol level of more than .08. The insurer denied coverage because the deceased operator had a blood/alcohol level of .277 while operating the motor boat and the insured vessel was thus being "operated illegally."

The Court looked at the broad language of the policy exclusion and gave its views that not all breaches of a statute would result in an exclusion. The Court stated (*3):

> One can imagine a boating accident situation where the owner of the vessel is found to be in breach of a boating regulation that is unrelated to the actual operation of the boat. For example, a breach of a regulation requiring the lettering on the hull to be a specific size or colour. No reasonable insured would think that the boat was being "operated illegally" at the time of the accident just because there was a technical breach of the lettering regulation and no reasonable judge would deny coverage in those circumstances.

The Court found that this was not the case in the current situation. The motorboat was actually being operated by a driver whose blood/alcohol level was well over .08. "No insured would reasonably believe that insurance coverage would be available in a case of drunk driving and there is no public policy reason to suggest otherwise." (*4)

The Court found that the insurer did not have any duty to indemnify the estate.

Rui Fernandes

Endnotes
(*1) *Heffernan v. Lloyd's Canada* 2015 ONSC 853.
(*2) R.S.C. 1985 c. C-46.
(*3) *Heffernan* at paragraph 9.
(*4) *Heffernan* at paragraph 11.

2. Did You Know?

Marine

Introducing the Great Lakes Seaway Partnership

On June 9, 2015, the American Great Lakes Ports Association in partnership with the Lake Carriers' Association, Fednav Limited, and the Saint Lawrence Seaway Development Corporation announced that they have jointly sponsored a new bi-national public affairs programme called The Great Lakes Seaway Partnership. This partnership of American and Canadian maritime organizations is intended to educate the public about the benefits of commercial shipping in the Great Lakes Seaway region. There will be an education-focused communications programme, sponsored research, and close working ties with the media, policy makers, community groups, allied industries and environmental stakeholders. The associated website features sections dedicated to the programme's three key messages – Economy, Environment, and Safety – as well as facts and figures about the eight Great Lakes states and two Canadian provinces as well as providing the latest news about ports, shipping companies and industry associations and programmes. (*1)

Rail

Lac Megantic Compensation Fund – US firm contributes $110 million

World Fuel Services Corporation, an American global fuel logistics company and its affiliates and former joint ventures, announced on June 8, 2015, that it will contribute US$110 million to a compensation fund established to compensate parties who suffered losses as a result of the Lac Megantic derailment on July 6, 2013. There will also be assignment of certain claims against third parties. It has entered into a settlement agreement with the trustee for the U.S. bankruptcy estate of Montreal, Maine & Atlantic Railway Ltd., Montreal, Maine and Atlantic Canada Co. (MMAC), and the monitor in MMAC's Canadian bankruptcy to resolve claims arising out of the train derailment. The terms of the settlement agreement are subject to approval by the creditors and courts involved in the U.S. and Canadian bankruptcies and the funds are expected to come primarily from insurance. The compensation fund now has contributions of approximately $345 million. (*2)

Road

Trucker gets stuck in tanker

A truck driver in Fort Erie Ontario had to be rescued in May 2015 from the inside of the holding tank of the transport truck that he was driving. The truck was parked at the Flying J Truck Stop and the trucker used his cell phone to call his dispatch, which in turn called 911. Apparently, the truck driver climbed inside the holding tank but the hatch closed behind him on its own. A ladder was lowered to the trucker, who emerged unscathed. Fortunately, he was not carrying hazardous materials. No explanation for his adventure has been reported. (*3)

Air

Transportation Safety Board Preliminary Report: Jet crash short of Halifax runway in March 2015 had no mechanical problems

An Air Canada passenger jet crashed about 200 metres short of a Halifax airport runway on March 29 2015. According to the Transportation Safety Board's preliminary report released on June 15, 2015, there were no mechanical problems with the jet and that the Airbus 320-200 was correctly configured for landing, its air speed was consistent with a normal approach and there were no mechanical deficiencies with its engines, flight controls, landing gear and navigation systems. The report did confirm poor weather conditions with the wind gusting at 48 kilometres per hour from the north-northwest, forward visibility at 1,600 metres amidst snow and drifting snow and vertical visibility above the ground at just 91 metres. The flight-data

recorder and cockpit voice recorder have been examined, but pilot training, experience and human performance aspects are still to be considered in this ongoing investigation. Further review will include production of an animation of the flight profile, completion of a site survey illustration, examination of key aircraft components and review of cabin crashworthiness and passenger evacuation procedures. There are a number of class action lawsuits that have been commenced against Air Canada for personal injuries arising out the crash. (*4)

Kim E. Stoll

Endnotes

(*1) Sourced from canadianshipper.com
(*2) Sourced from canadianunderwriter.ca
(*3) Sourced from The Ottawa Sun
(*4) Sourced from canadianunderwriter.ca

3. When Worlds Collide: Federal Court *in rem* Maritime Claim Preempted by Quebec Superior Court Bankruptcy Proceeding

LF Centennial Ptd. Ltd. ("LF Centennial") commenced an action *in rem* in the Federal Court of Canada against shipments of garments stowed in (or that had been stowed in) sixty ocean containers. (*1) Each of the sixty containers was named as a defendant. As stated by the court in this decision:

> *"This appeal brings to the fore complex issues relating to the interplay between the law of bankruptcy and maritime law, as well as the relationship between the jurisdiction of this Court in matters of admiralty and the jurisdiction of provincial superior courts in matters of bankruptcy and insolvency".*

Matter History and the Federal Court Proceeding

LF Centennial acts as a buying agent for garment retailers. Mexx Canada Company ("Mexx") is a clothing retailer who purchased a significant amount of garments through LF Centennial. Mexx defaulted on various payments owing to LF Centennial. LF Centennial commenced it's *in rem* action – whereby, through the Federal Court process, it obtained the issuance of a warrant on December 23, 2015 for the arrest of the shipments – totaling 155,000 garments that Mexx had purchased from suppliers based in Europe, China, Bangladesh and India. LF Centennial asserted its claim on the basis that, as an unpaid seller, it was exercising a right to stop the goods in transit. (*2) The essence of the *in rem* action involves the enforcement of a claim against certain maritime property providing the plaintiff with security for its claim pending the actual trial adjudication.

On January 5, 2015, LF Centennial and Mexx reached an agreement on terms for the arrested cargo to be released from arrest. The parties reached a 'bail' agreement allowing Mexx to ship the garments to its stores to sell them, in return for which Mexx agreed to deposit into an escrow account the proceeds of the sale of the garments up to a certain amount. The proceeds realized would then stand as bail – for LF Centennial's purposes being security for its claim - without prejudice to the parties' respective rights. In this regard Mexx agreed to the arrangement without any admission that the Federal Court had jurisdiction over the matter or that LF Centennial was entitled to arrest the garments.

The Bankruptcy and Proceedings in the Quebec Superior Court

In the meantime there had been legal proceedings of a different nature in a different court. On December 3, 2014 – prior to the issuance of the arrest warrant for the garments -- Mexx had filed a "Notice of Intention to Make a Proposal" ("NOI") pursuant to the *Bankruptcy and Insolvency Act* (*3). The NOI mechanism starts the process whereby a person or company can obtain 'creditor protection' with a view to devising a plan to contend with oppressive debt loads (that meet certain criteria) in the hope that affairs can be restructured without bankruptcy proceedings. The approach involves the filing of a "proposal" for creditors, which, if approved, can stave off the bankruptcy process.

Immediately after the filing of the NOI, Mexx commenced restructuring proceedings before the Quebec Superior Court. The NOI filing provided Mexx the benefit of the stay of proceedings set out at section 69 of the *Bankruptcy and Insolvency Act*. Generally speaking, section 69 prohibits a creditor from commencing or continuing any action or proceedings for the recovery of a debt owed against a party filing an NOI. In the course of these events, Richter Advisory Group Inc. ("Richter") was appointed as the trustee to the Mexx insolvency proceeding. Further, on December 16, 2014, Mexx successfully applied to the Quebec Court to extend the time to file the "proposal" and for permission for Mexx to liquidate certain inventory and equipment for proceeds to be factored into the eventual proposal for creditors.

The Dispute and the Unraveling of the Arrest of the Cargo

On January 6, 2015, Mexx and LF Centennial appeared before the Quebec Superior Court and informed the Court of the arrest and the agreement for the release of the containers. On the consent of the parties LF Centennial then agreed to release all the cargo from arrest.

Mexx and Richter then appeared in the Federal Court action as "intervenors" seeking to quash the arrests and to strike the *in rem* action by asserting the existence of the insolvency proceedings before the Quebec Superior Court. The intervenors also asserted that the Federal Court lacked jurisdiction over the claim, and also sought the dismissal of the action on the basis that it was an abuse of process of the court.

The Federal Court Prothonotary hearing the matter accepted Mexx's submissions that the Plaintiff knew, at the time it commenced the Federal Court proceedings, that Mexx was the owner of the garments and, by virtue of the above mentioned 'stay' that came with the filing of the NOI, and the plaintiff had no right to institute its *in rem* claim without first obtaining permission of the Quebec Court, which it did not do. The Prothonotary also found that the Plaintiff and its counsel knew or ought to have known of the NOI failed to disclose the existence of the restructuring proceedings in the Quebec Court when it applied to the Federal Court for the arrest of the garments.

In the result, the Prothonotary "granted aid" to the Quebec Court, as requested by the intervenors, ordering that (i) the Plaintiff respect the stay and other related orders from the Quebec Court, (ii) that the Federal Court action itself be "stayed", discharging the arrest of the garments and (iii) declaring that Mexx could remove from escrow any of the proceeds deposited pursuant to the aforementioned bail agreement.

While not central to his decision, the Prothonotary also commented that, even if he had not granted the above orders, he would have considered striking the Federal Court claim on the basis that the Federal Court lacked jurisdiction over the claim on the basis that the claim did not arise from a contract for the carriage of goods or for the use of or hire of a ship, but simply concerned an alleged breach of a contract for the sale of goods. By extension, with such a finding, the arrest warrants should not have been issued in the first place by the Federal Court. (*4).

LF Centennial Appeals

On appeal to a judge of the Federal Court, LF Centennial challenged the ruling that the Federal Court action be stayed and that the security from the arrests be dissolved because LF Centennial did not apply to the Quebec Court for permission to exercise its "stoppage in transit" rights. LF Centennial also challenged the suggestion that the Federal Court did not have jurisdiction over the claim. The appeal court addressed both issues.

1) Should the Federal Court action been stayed?

The judge on the appeal first took into consideration s. 188(2) of the *Federal Courts Act* (*5) which provides as follows:

> *All courts and the officers of all courts shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of one court seeking aid, with a request to another court, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court that made the request or the court to which the request is made could exercise in regard to similar matters within its jurisdiction.*

Simply put – the Federal Court, by its own enabling legislation, is to recognize and cooperate with legitimate bankruptcy

proceedings pending in another court. The judge accordingly found that the Prothonotary was correct in staying the *in rem* action, as this was necessary to give effect to the stay in effect by virtue of the NOI filed in the Quebec proceedings. The judge found that the plaintiff had had no right to institute the *in rem* action without first obtaining permission of the Quebec Court (*6) and that, absent such leave, the Federal Court action was necessarily ineffective.

2) Does the Federal Court have jurisdiction over the matter?

LF Centennial submitted that its cause of action for stoppage in transit of cargo carried pursuant to multimodal bills of lading fell within the maritime jurisdiction of the Federal Court. As noted by the judge, while the relevant grant of subject matter jurisdiction (*7) "*must be read purposively, it cannot be stretched indefinitely*". The judge found that the plaintiff's claim did not arise out of a contract for the carriage of goods or for the use or hire of a ship, but flowed exclusively from contracts of sale. These contracts could not be interpreted as having anything to do with the carriage of the garments. The judge ratified the Prothonotary's commentary on point, noting that "… *it would be an impermissible, unwarranted and unconstitutional extension of this Court's jurisdiction over maritime and admiralty law to deal with such a matter*".

Counsel for the plaintiff unsuccessfully tried to substantiate a connection between its claim and maritime law, citing the fact that all of the arrests were made on cargo that was shipped by sea. The court refused to accept this as amounting to any such required connection, noting that most of the garments were already in storage in warehouses far removed from any port having already been delivered to Mexx when the arrests took place. The court also noted that most of the garments were no longer in the hands of any carriers or in the course of transit when the arrests were carried out.

Counsel for the plaintiff also asserted that stoppage of goods in transit is a remedy recognized by maritime law. While being in agreement on this point, the judge cited this as immaterial in the current case, as there were no such rights for the plaintiff to exercise, it appearing that the carriage of the garments had already ended – with delivery taking place, and the shipper thereby giving up possession – by the time that the arrests were effected. The court also noted that, in any event, the mere existence of a remedy does not determine whether a court has jurisdiction: *"...the remedy is the accessory, not the principal*". In the absence of any evidence to the contrary, any rights that the plaintiff may have had as an unpaid vendor fell within the rubric of "property and civil rights" not falling within the Federal Court jurisdiction. The court noted that such a claim should have been exercised before the Quebec Superior Court, having jurisdiction over such claims. (*8)

Conclusion

On the basis of the foregoing, the Federal Court action was dismissed and all of the garments were released from arrest.

This case illustrates the complexity that often comes with litigation strategy: which court to sue in? Do proceedings elsewhere somehow affect which rights can be asserted, and *when* and *how* such rights can be advanced? This case also illustrates that, while the *in rem* arrest remedy may be advantageous if not aggressive (being a mechanism that generally speaking is not available in the other courts), caution must be employed in embarking on such a course.

Gordon Hearn

Endnotes

(*1) 2015 FC 214

(*2) Also referred to as *stoppage in transitu*, being the act by which an unpaid vendor of goods stops the progress of the goods and resumes possession of them, while they are in the course of transit from the vendor to the

purchaser, but not yet actually delivered to the latter.

(*3) R.S.C. 1985 c. B-3

(*4) The Federal Court is a court of limited "subject matter" jurisdiction. Only certain claims may be brought in the Federal Court. One such series of claims relates to the court's admiralty jurisdiction, upon which is found the *in rem* remedy. The Court does not have jurisdiction over simple debt matters such as that arising from the purchase of goods.

(*5) R.S.C. 1985, c. F-7

(*6) Section 69.5 of the Bankruptcy and Insolvency Act provides that a creditor who is affected by the effect of the stay order that comes with the filing of an NOI may apply to the court for a declaration that the stay does not operate in respect of that creditor or person.

(*7) *Federal Courts Act*, s. 22(2)

(*8) The Quebec Superior Court, as for the 'Superior Courts' of the other provinces, has what is referred to as 'inherent jurisdiction', whereby the court can adjudicate all claims coming before it (with the exception of a limited list of types of claims that, as fixed by statute, must be specifically brought before a certain court).

4. Critical Developments in Air Cargo Security in Canada

In 2014, the World Bank promoted Canada to 12th position in its global Logistic Performance Index (LPI) rankings, up from 14th in the 2010 and 2012 evaluations, but still down from 10th place in 2007. Efficient and reliable logistics services are critical to supply chains that feed the national economy. While Canada outperforms many nations, it continues to languish as compared to leading Northern European economies, Singapore, Japan and, importantly, the United States, which prior to 2012 was ranked below Canada.

One major initiative that may boost Canada's performance is continued investment in and enhancement of the Air Cargo Security Program (the "Program"). The Program, which is today in effect pursuant to the *Canadian Aviation Security Regulations, 2012,* represents a regulatory framework designed to meet the dual and potentially competing interests of maximal security of air cargo and optimized logistics services efficiency.

The Program has assisted in serving these goals, yet further improvements are both possible and attainable. Transport Canada has conducted stakeholder consultation and has formally announced its intention to overhaul the current framework, with a rolling implementation from Fall, 2015 through Fall, 2016.

While the details of the updates are yet to be revealed, there are two seismic changes, which will affect how logistics service providers will handle air cargo in Canada. Such changes will create supply chain efficiencies facilitating logistics service providers to better meet their clients' expectations and needs.

Known Consignor Status

Shippers will now be able to apply for accreditation to perform in-house screening services of cargo. Currently, screening must be performed by either an Air Carrier or by a Regulated Agent, to whom the goods were tendered by the shipper. The Regulated Agent must then provide the goods to a Certified Agent for carriage functions to deliver the post-screened goods to an Air Carrier.

The amended Regulations will provide for a new category of participant labeled as a "Known Consignor". The Known Consignor will, upon accreditation by Transport Canada, be able to sidestep the Regulated Agent by rigorously screening packages to be tendered for transportation by air itself. The Known Consignor will then be able to tender the screened cargo directly to a Certified Agent, who will then provide the secured goods to an Air Carrier thereby maintaining the uninterrupted secure chain of custody. Whereas attainment of Known Consignor status will require significant investment for shippers to bring their practices and facilities in line with the requisite standards to ensure the integrity of air cargo, these costs will be alleviated in the long term by the cost savings by obviating the stoppage at a Regulated Agent. Bottlenecking will also be reduced at airports and at Regulated Agents, improving the shipper's supply chain efficiency.

Authorized Cargo Administrator

Another new participant category will be "Authorized Cargo Administrator". This status will have to be attained by third party logistics service providers who direct the movement of secure cargo without coming into contact with the goods. The obtainment of accreditation will be key to the competitiveness of logistics service providers participating in the air cargo market.

It is critical that industry players remain abreast of these developments internally and discuss these with their shipper clients. Early movement by shippers and other stakeholders will undoubtedly be rewarded as all participants adapt to this new environment and the accreditation process will almost certainly become inundated with certification requests.

Mark Glynn

5. The Growing Regulatory Requirements for the Insurance Industry to Protect Consumers from Cyber-Security Risks

The insurance industry in Canada and globally is faced with growing regulatory requirements to protect the personally identifiable information of insurance industry consumers from cyber-security risks.

The mounting regulation in this area addresses the fact that threats to cyber-security are growing rapidly, most notably from cybercrime and online industrial espionage. (*1) A recent report by the Centre for Strategic and International Studies estimates that the annual global cost of digital crime is roughly $400 billion USD. (*2)

The United States' NAIC Guidelines:

The *National Association of Insurance Commissioners* (the "NAIC") is the United States' standard-setting and regulatory support association in the field of insurance. Members of the NAIC regulate the conduct of insurance companies and agents in their respective jurisdictions across the United States. (*3)

The NAIC recently released a set of industry values entitled, "Principles for Effective Cybersecurity: Insurance Regulatory Guidelines" (the "NAIC Guidelines"), which establishes principles that aim to protect the personally identifiable information of insurance industry consumers from cyber-security risks.

The NAIC Guidelines include security principles such as:

- Principle 1: State insurance regulators have a responsibility to ensure that personally identifiable consumer information held by insurers, producers and other regulated entities is protected from cyber-security risks. Additionally, state insurance regulators should mandate that these entities have systems in place to alert consumers in a timely manner in the event of a cyber security breach. State insurance regulators should collaborate with insurers, insurance producers and the federal government to achieve a consistent, coordinated approach;
- Principle 2: Confidential and/or personally identifiable consumer information data that is collected, stored and transferred inside or outside of an insurer's, insurance producer's or other regulated entity's network should be appropriately safeguarded;
- Principle 5: Regulatory guidance must be risk-based and must consider the resources of the insurer or insurance producer, with the caveat that a minimum set of cyber-security standards must be in place for all insurers and insurance producers that are physically connected to the Internet and/or other public data networks, regardless of size and scope of operations;
- Principle 8: Insurers, insurance producers, other regulated entities and state insurance regulators should take appropriate steps to ensure that third parties and service providers have controls in place to protect personally identifiable information;
- Principle 10: Information technology internal audit findings that present a material risk to an insurer should be reviewed with the insurer's board of directors or appropriate committee thereof; and
- Principle 12: Periodic and timely training, paired with an assessment, for employees of insurers and insurance producers, as well as other regulated entities and other third parties, regarding cyber-security issues is essential. (*4)

Canada's OFSI Memorandum:

In Canada, the Office of the Superintendent of Financial Institutions ("OSFI") is an independent agency of the Government of Canada reporting to the Minister of Finance, being the sole regulator of banks, and the primary regulator of insurance

companies, trust companies, loan companies, and pension plans in Canada. (*5)

In Canada, the OFSI released a memorandum enunciating a set of cyber-security principles for federally regulated financial institutions on October 28, 2013 entitled, *Cyber Security Self-Assessment Guidance* (the "OFSI Memorandum"). The OFSI Memorandum states that:

> *The increasing frequency and sophistication of recent cyber-attacks has resulted in an elevated risk profile for many organizations around the world… Cyber security is growing in importance due to factors such as the continued and increasing reliance on technology, the interconnectedness of the financial sector, as well as the critical role that federally regulated financial institutions … play in the overall economy. OSFI thus expects [federally regulated financial institution] Senior Management to review cyber risk management policies and practices to ensure that they remain appropriate and effective in light of changing circumstances and risks.* (*6)

The OFSI suggests that the OFSI Memorandum is to be used as a template for the self-assessment activities of federally regulated financial institutions to assess their current level of preparedness, and to develop and maintain effective cyber-security practices.

The OFSI Memorandum includes security principles such as:

- Item 1.3: The federally regulated financial institution has a centrally managed group of cyber-security specialists that is responsible for threat intelligence, threat management and incident response;
- Item 1.8: Cyber-security training is provided to new and existing employees;
- Item 2.1: The federally regulated financial institution has a process to conduct regular and comprehensive cyber risk assessments that consider people (i.e. employees, customers and other external parties), processes, data, technology across all its business lines and geographies;
- Item 4.21: The federally regulated financial institution has the ability to automatically detect and block unauthorised network access (e.g. including wired, wireless and remote access); and
- Item 6.21: A Senior Management committee has been established that is dedicated to the issue of cyber risk, or an alternative Senior Management committee has adequate time devoted to the discussion of the implementation of the cyber-security framework. (*7)

The OFSI Memorandum can be viewed as informing the applicable standard of care required by Canadian federally regulated insurers and producers in the context of cyber-security. It remains to be seen whether the NAIC Guidelines will also have an impact on Canadian law and/or Canadian regulation in the future.

Tara Cassidy

Endnotes

(*1) "A special report on cyber-security: Defending the Digital Frontier", The Economist, Martin Giles, http://www.economist.com/news/special-report/21606416-companies-markets-and-countries-are-increasingly-under-attack-cyber-criminals, (June 25, 2015)
(*2) "Net Losses: Estimating the Global Cost of Cybercrime", Center for Strategic and International Studies, June 2014 http://www.mcafee.com/us/resources/reports/rp-economic-impact-cybercrime2.pdf, (June 25, 2015)
(*3) "Principles for Effective Cybersecurity: Insurance Regulatory Guidance," *National Association of Insurance Commissioners*, www.naic.org/index_about.htm, (June 18, 2015)
(*4) "Principles for Effective Cybersecurity: Insurance Regulatory Guidance," *National Association of Insurance Commissioners*, http://www.naic.org/documents/

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(*5) Office of the Superintendent of Financial Institutions, http://www.osfi-bsif.gc.ca/eng/pages/default.aspx, (June 25, 2015)
(*6) "Cyber Security Self-Assessment Guidance," Office of the Superintendent of Financial Institutions, http://www.osfi-bsif.gc.ca/eng/fi-if/in-ai/pages/cbrsk.aspx, (June 18, 2015)
(*7) "Cyber Security Self-Assessment Guidance," Office of the Superintendent of Financial Institutions, http://www.osfi-bsif.gc.ca/eng/fi-if/in-ai/pages/cbrsk.aspx, (June 18, 2015)

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CONTEST

This month we are giving away a prize - Ticket for attendance at our 2016 seminar January 2016 for the name of the terminal shown in photograph on page 5 with the yellow material or the mountain in photo 9. Email your answer to info@fernandeshearn.com with a subject line "Newsletter contest". First response with the correct answer wins.