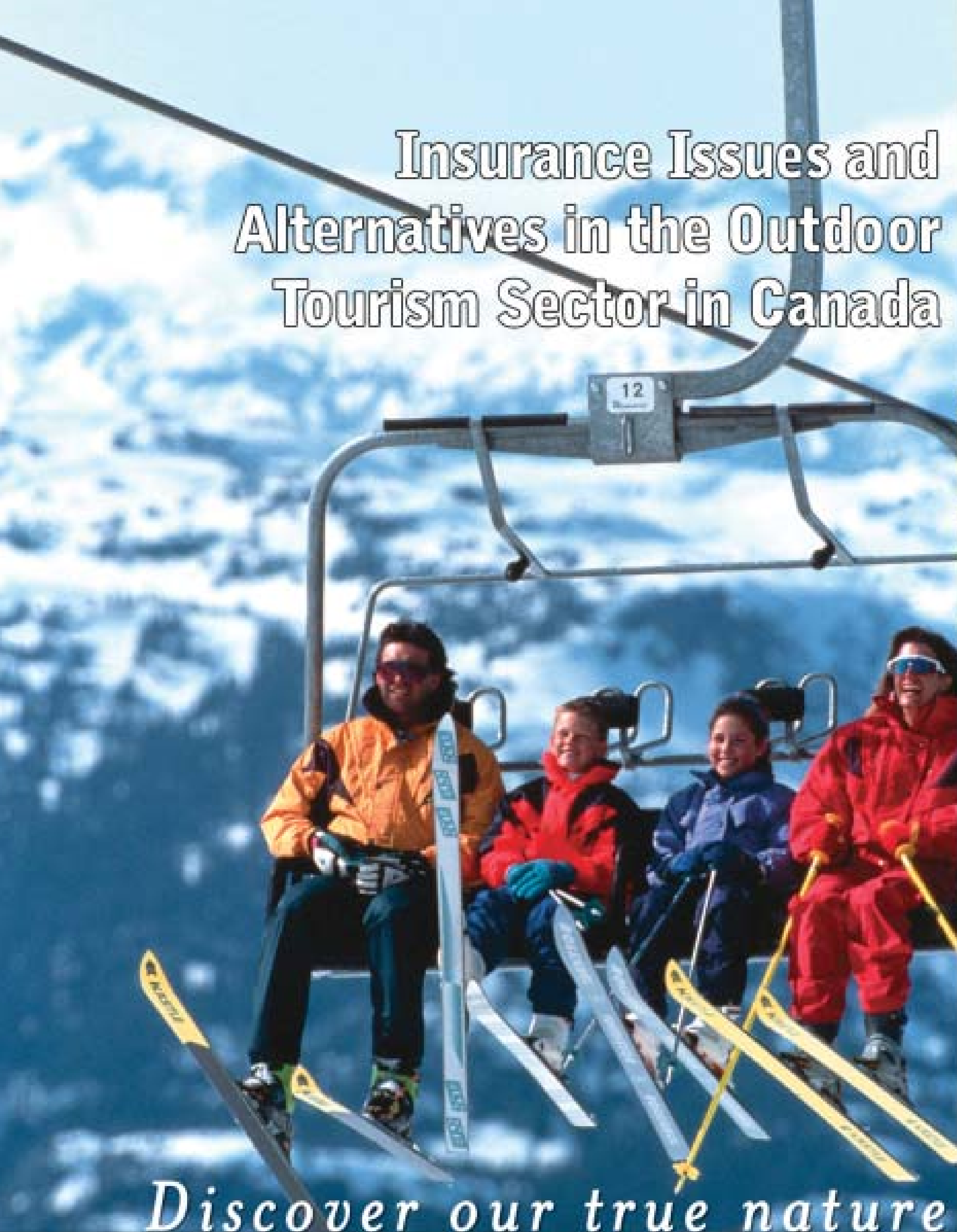
Insurance Issues and Alternatives in the Outdoor Tourism Sector in Canada



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Executive Summary

Insurance is a crucial component of the risk management process within an outdoor tourism organization. Unfortunately, insurance is also one of the most challenging portfolios to manage. Recent developments in the insurance industry and the general downturn in the global economy have contributed to an “insurance crisis” in the outdoor tourism sector.

Most of the insurance issues faced by the outdoor tourism sector are caused by factors outside the sector’s control. The insurance industry is the middle of a worldwide hard market cycle which has been caused by a combination of high claim costs, low investment returns, unforeseen catastrophic events (the September 11 terrorist attacks), and lingering environmental claims (asbestos and mold). This has resulted in a situation where insurers have a decreased capacity to underwrite (reduced supply) in a market of high demand. Insurers are forced to underwrite risks that provide high returns and little risks.

Outdoor tourism operators are facing increased premiums and reduced or unavailable coverage. Although it appears that the insurance market is showing signs of stabilizing, outdoor tourism operators are likely to observe difficult insurance conditions for the foreseeable future. Much of the insurance industry’s recovery depends on stock markets, profitability, and the general economy.

The characteristics of the outdoor tourism sector make efforts to establish a positive relationship with the insurance industry a challenge. The outdoor tourism sector in Canada is not as well organized as other sectors. It is comprised of a very eclectic group of businesses and experiences that lack sector-wide operational and risk management standards. Insurers see this sector as a less desirable and riskier class of business.

There are many alternatives to the traditional insurance purchasing process available to the outdoor tourism sector. Other industries have been successful in using alternative insurance vehicles such as captive insurance companies, reciprocal insurance exchanges, and group insurance purchasing programs. Unfortunately, it would be challenging or nearly impossible to implement some of these vehicles in the outdoor tourism sector. The most commonly mentioned alternative is to pool resources and develop a national group insurance purchasing program for outdoor tourism operators. This remains a complex proposition. Jurisdictions in the U.S., Australia, and New Zealand have combined insurance solutions with non-insurance initiatives such as legislative reforms, accident compensation schemes, and government intervention.

Long-term solutions to the insurance crisis are achievable and desirable. Any solutions and initiatives will necessitate the coordinated efforts of outdoor tourism associations, businesses, and governments.

Summary of Options for Action

The following summarized recommendations are taken from section 12 of this document.

1. Coordinate insurance-related initiatives at the national level.
2. Create a national outdoor tourism organization to undertake insurance, risk management, and legal issues initiatives.
3. Investigate the feasibility of a national group insurance purchasing program.
4. Involve existing tourism organizations in the coordination and support of these national initiatives.
5. Combine and coordinate insurance related initiatives and non-insurance solutions.
6. Approach insurance-related issues as sector development and economic development issues.
7. Involve the insurance sector in all insurance and related initiatives.
8. Consider the creation and adoption of national risk management standards.
9. List and describe the different sport and activity certification schemes available in Canada.
10. Work with territorial, provincial, and federal ministries and agencies on the insurance issues facing the sector with a view to finding alternatives to the traditional insurance requirements.
11. Create a national task force to deal with the sector's insurance issues.
12. Organize a national workshop/forum on the insurance issue facing outdoor tourism operators.
13. Seek support from governments and non-government organisations to coordinate the development stages of a national insurance purchasing program.
14. Train tourism operators to package and present their risk management plans and insurance portfolios to insurers.
15. Undertake further research on the feasibility of legislative reform initiatives.

1.0 Introduction

The insurance portfolio is one of the most important portfolios to manage in an outdoor tourism business. Unfortunately, it is also one of the most challenging portfolios to manage. Insurance is a necessary component of any outdoor tourism operation's overall risk management strategy and planning.

Recent developments such as the hardening of the insurance marketplace, the downturn in the global economy, and the decline in world travel have all contributed to exasperate outdoor tourism business operators.

There is much evidence to suggest that insurance is currently the single most pressing and tenuous business issue for many outdoor tourism operators. Frequently during the research phase of this project, the term "crisis" was used to describe the current insurance situation in the outdoor tourism sector. There are also suggestions that the current insurance situation is forcing businesses to operate without insurance and forcing some businesses to cease operations completely.

Additionally, outdoor tourism business operators are often frustrated by a lack of relevant insurance resources, a lack of their own understanding of the insurance industry, and a lack of outdoor tourism expertise within the insurance industry.

Operators generally feel unsupported by territorial, provincial, or federal governments.

1.1 Report format

Although this document is written with the purpose of addressing issues as they affect private outdoor tourism operators, much of the content is also applicable to non-profit organizations, camps, outdoor recreation programs, and any organization involved with sports and recreational activities in the outdoors. Most of these organizations are having insurance difficulties that are very similar to those encountered by the adventure and ecotourism sector.

For the purpose of simplicity, the term outdoor tourism will be used throughout this report.

1.2 Terms of reference

The original intention of this project was to develop a general guide for the development of group insurance purchasing programs. However, it quickly became clear that 1) the group insurance options available to outdoor tourism operators were limited, 2) other issues needed to be assessed, 3) new information which became available needed to be mentioned, and 4) the new information obtained affected the original purpose of this report. The focus, therefore, has been modified to reflect the need to develop a broader type of group insurance program that could be implemented nationally.

Alternative insurance strategies and concepts are available to alleviate some of the insurance purchasing difficulties encountered by the outdoor tourism sector. The main goal of this report is to advise the outdoor tourism sector on the alternative insurance purchasing options available and to suggest some options for action.

The pooling of resources to facilitate purchase insurance in group insurance purchasing programs is successfully achieved by many different industries and business sectors. In order to determine that group insurance programs are a needed and feasible option, it is necessary to analyse the following:

- What is the state of the current insurance marketplace and why?
- What impact is the current insurance marketplace having on the outdoor tourism sector?
- What are some of the non-traditional insurance tools, concepts, and strategies available?
- What other non-insurance options are available in response to the current state of the insurance marketplace?
- What have other jurisdictions done to manage their own insurance issues as they pertain to the outdoor tourism sector?
- What programs and initiatives already exist and how successful are they?

1.3 Report methodology

The content of this report is a summary of the information obtained through the following:

- Interviews with outdoor tourism operators across Canada
- Interviews with insurance underwriters, brokers and consultants from different regions of Canada and the U.S.
- Interviews with consultants and risk management experts
- Interviews with outdoor tourism and non-outdoor tourism association representatives
- Review and analysis of literature, articles, publications and web sites pertinent to this project
- Review of existing outdoor tourism non-outdoor tourism adventure insurance programs in Canada and the U.S.
- Written communications received from outdoor tourism operators

A significant amount of information obtained through interviews pertains to existing insurance programs. This information is not for the public domain and has been generalized in order to protect its privacy.

2.0 The Current State of the Insurance Marketplace

The property and casualty insurance marketplace is in the middle of a hard market cycle. P&C stands for property and casualty insurance and generally refers to insurance products other than life insurance and personal accident. A hard market refers to a market where underwriting practices become more stringent, premiums are on the increase, and coverage becomes more restrictive. A similar hard market was experienced in the mid 1980s and it became known as the "liability crisis." The mid 1980s hard market was followed by a soft market that lasted until 2000. Some insurance experts are already predicting the soft market that will follow this present hard market (International Risk Management Institute, 2002). Many have indicated that the present hard market is worse than the one encountered in the mid 1980s.

Unfortunately, insurance cycles are often affected by circumstances that are beyond the control of and totally independent to the insured's business or sector.

2.1 The causes of the current hard insurance market

- The insurance market was showing hardening trends as early as 2000 when insurers started to increase insurance premiums. Competition had driven prices down and premiums were not covering claim costs (Kiehl, 2002).
- By the middle of 2001, most insurers saw their return on investments start to drop significantly. Investments returns represent a significant portion of an insurer's revenues and often offset underwriting losses. An underwriting loss occurs when the cost of claim payments and associated administrative expenses are greater than the premiums generated to cover these losses. The opposite would be an underwriting gain. For example, for each year after 1978, the property and casualty insurers of Canada have suffered underwriting losses. These losses have been offset by investment income.

Table 1: Comparison of underwriting results and investment income of Canadian P&C insurers since 1984 ($000,000)

YEAR	UNDERWRITING LOSS OF CANADIAN P&C INSURERS IN $ MILLION	INVESTMENT GAIN OF CANADIAN P&C INSURERS IN $ MILLION
1984	(823)	1,247
1985	(1,131)	1,342
1986	(498)	1,500
1987	(486)	1,696
1988	(751)	1,933
1989	(1,346)	2,310
1990	(1,234)	2,363
1991	(4,421)	2,548
1992	(1,375)	2,505
1993	(1,351)	2,671
1994	(1,027)	2,061
1995	(631)	2,508
1996	(517)	3,111
1997	(421)	3,324
1998	(1,366)	2,864
1999	(1,027)	2,543
2000	(1,614)	3,251
2001	(2,155)	2,762

Source: *Insurance Bureau of Canada, based on data from Statistics Canada and AM Best Canada's WinTRAC*

Note: *The left column contains the collective underwriting results of the 240 P&C insurers in Canada since 1984. The right column contains the collective investment income of the same insurers.*

- The events of September 11, 2001, accelerated the coming of a hard market by creating the largest one-day catastrophic insurance claim in history (Aon Corporation, 2003). The total insurable losses are expected to be well over $40 billion.
- The collapse of Enron, Worldcom, Arthur Anderson, the continuing bear stock market, high jury awards and medical malpractice lawsuits (especially in the U.S.) combined to negatively affect insurers' profitability.
- Because of the principle of insurance (sharing the loss of a few among the many), a general increase in claims and losses from any sector or geographic location will influence the premiums of most insured (the clients). This is especially true when the losses are caused by large claims, catastrophic events, landmark court settlements, or repetitive events. For example, large environmental, asbestos, toxic mold, and tobacco-related claims are severely impacting insurers' revenues and financial strength (Insurance Information Institute, 2003. *Mold and….*) One company alone is facing 300,000 asbestos claims (Cauchi, 2003). The Insurance Information Institute (2003, April. *Hot Topics…*) states that asbestos claims could cost the US insurance industry $65 billion dollars, more than the September 11 attacks. Although most business sectors are not even remotely involved with asbestos, it is likely that all business sectors will bear some of the costs. (Insurance Information Institute, 2003. *Asbestos…*).

- Re-insurers have been severely impacted by the September 11 losses, the downturn in the stock markets, and other large claims. (Re-insurers are insurance companies that provide insurance to insurers.) Most insurance companies spread their own risks by purchasing insurance through re-insurance companies.
- The September terrorism attacks in New York wiped out about 25% of the world's overall reinsurance supply (Moreau, 2002). Re-insurers have restricted their underwriting and increased their premiums to insurers. These increases are subsequently passed down to the consumer.
- Insurers have seen the costs of claims continue to increase. Increases due to inflation, court settlements, and legal fees have all contributed to the insurers' lack of profitability. Since liability insurance policies cover legal defence costs, a rise in the number of claims whether successful or not will impact insurance premiums. In many cases the cost of legal defence will be greater than the cost of the settlement itself.

2.2 The consequences on insurers

The timing and severity of the September 11 events have combined with already negative underwriting results, plummeting stock markets, record low interest rates, skyrocketing cost of claims, and record low profits to create what can only be characterized as "the perfect storm."

- In 2001 and 2002 many insurers suffered record underwriting losses and record low return on equity. In fact, in 2002, the smallest of Canada's Big Five banks earned 4.5 times more profits than the 240 P&C insurers combined (McGillivray, 2003).
- Insurers cannot count on investment income to increase profits or to compensate for underwriting losses. Therefore, they reduce their risks (restricting coverage, increasing deductibles, offering lower limits) and augment income through increased premiums.
- Insurers are more likely to become more careful about their underwriting, as they cannot count on investment income to compensate for softer underwriting practices. Insurers are likely to retrench and focus on more traditional sectors or sectors for which they have built a certain expertise.
- An insurer's capacity to provide insurance coverage is directly proportional to its equity and assets. As equity/asset values decrease so does the capacity for insurers to provide coverage. In other words, the marketplace supply of insurance will decrease when equity/asset values decrease. Insurance companies are regulated by various levels of government. These regulations impose restrictions on the amount of insurance coverage and premium volume an insurance company can underwrite given its equity/asset situation. Much like any other marketplace, when supply decreases, prices increase.
- Another factor that affects an insurer's capacity to insure is its ability to reinsure part of the risks through a reinsurance company. When this reinsurance becomes more restrictive, more expensive or unavailable, the primary insurer will pass these reductions and increases to the consumer. In many cases the insurer will decide not to cover certain risks at all.
- Many insurers have seen the financial rating assigned to them by rating agencies lowered, further impacting their ability to recover financially (McGillivray, 2003).
- The insurers' combined ratio has been negatively affected and steadily climbing (the combined ratio measures the percentage of each dollar of premium spent on claims and expenses). For example, a combined ratio of 125% would mean that for each dollar of premium 1.25 dollars is spent on claims and expenses. The results for 2002 indicate that Canadian P&C insurers had an industry-wide combined ratio of 105.8% (McGillivray, 2003).

- There is a growing list of risks that are becoming undesirable and/or uninsurable in the eyes of the insurers (International Risk Management Institute, 2002). For outdoor tourism operators this list includes activities that are perceived to be too risky (such as climbing, mountaineering) or activities that are related to recent claims or events (backcountry skiing and the 2002 avalanche fatalities).

2.3 The impact of the current insurance marketplace on the outdoor tourism sector

The current hard insurance market has spared no one, especially in regards to commercial insurance. This hard market and its impacts are global and have affected all industries and sectors. Businesses in Canada, the U.S., and Australia have all been severely affected. In Canada, Quebec is the only province where the effects of this hard cycle have been somewhat less severe (Insurance Bureau of Canada, 2002. *Perspective*).

The impact on the outdoor tourism sector has been especially noticeable and severe. In many regions of Canada it is being called a crisis. Many outdoor tourism experiences are difficult and expensive to insure at best of times. Furthermore, rates were under-priced and kept quite low in the recent competitive insurance marketplace, which makes the recent increases seem even more dramatic.

- Outdoor tourism operators are victims of a combination of dramatic premium increases, reduction in insurance availability, and reduction in coverage.
- There is more demand than supply. Although insurance for outdoor tourism operators can be purchased through many insurance brokers across the country, there are less than a handful of insurers that will actually underwrite this type of business.
- Liability insurance is the insurance line that has seen the most significant increases. Liability insurance is also the most important coverage needed by the majority of outdoor tourism operators. General liability insurance is the third most dangerous line of insurance for an insurer behind earthquake insurance and medical malpractice insurance (Hartwig, 2002. *Liability…*).
- Almost every single operator has seen increases in their insurance premiums. In many cases the increases are well over 100% with many operators reporting increases of 200 to 500%. In extreme cases, the increases are even higher. The exception is Quebec where the provincial adventure and ecotourism operators' association's insurance program predicts increases of only 15%.
- It is almost impossible for outdoor tourism operators not to find insurance but some particular portfolios or groups are more difficult to insure. The result might be very expensive insurance coverage with reduced limits and conditions. This is the case with some snow sport and climbing operators in Western Canada.
- Larger operators are not affected as severely as smaller operators. Besides the fact that they can afford higher premiums, large operators often employ dedicated risk management staff, have better liability release documents (waivers) and can afford to train and certify their employees. Large operators are often seen as more desirable businesses by insurers.
- Based on many conversations with outdoor tourism operators and a number of e-mail discussions, it appears that a growing number of businesses have indicated that they will be operating without insurance or be forced to cease operating if they cannot find affordable insurance.[1]

[1] It is difficult to quantify the number of operators without insurance. Many fear that they will not obtain coverage or lose coverage. Operators will not openly admit they operate without insurance.

- Some operators and associations have been forced to purchase insurance coverage though non-admitted or non-licensed insurers. Non-admitted and non-licensed insurers are usually foreign insurers that do not have to meet the same strict financial regulations that licensed insurers do. Typically, insurance purchased through a licensed broker will be with a licensed insurer.
- Most operators are on their own as there is no national, collective voice addressing the insurance issue.
- Neither government organizations and agencies nor lending institutions are aware of the severity of insurance difficulties faced by outdoor tourism operators; if they are aware, they are often less than empathetic.
- The hard insurance market happens to coincide with what appears to be a general slowdown in tourism. Outdoor tourism operators are affected by the slow economy, the recent war in Iraq, the recent SARS outbreak, West Nile virus, and mad cow disease.
- Insurers have very little interest in the outdoor tourism sector. It is a sector that insurers do not understand well and is generally seen as too risky for the amount of premium it generates. Consequently, insurers have made the business decision not to pursue the outdoor tourism sector.
- The insurance issue is putting some outdoor tourism operators at a competitive and financial disadvantage with other tourism sectors or with outdoor tourism businesses located in other countries.

3.0 Why Outdoor Tourism Operators Need to Purchase Insurance

Although most businesses purchase insurance for reasons such as peace of mind, to cover bank loans, and to protect employees and clients, other reasons make insurance a necessity for outdoor tourism operators.

- The nature of the activities

  Because of the risk of injury to participants associated with many of the outdoor tourism experiences, and because of the legal avenues and remedies available to participants, it is not reasonable to expect business owners and operators to assume such risks without insurance.

- Statutory requirement

  In certain circumstances, carrying insurance coverage is required by law, such as proposed by the *Marine Liability Act* (MLA). The Yukon has introduced a compulsory liability insurance requirement as part of a licensing system for wilderness tourism operators.

- Access to land

  Many land managers require operators to carry insurance as part of their contractual land access agreements or permitting system. This is often the case when operating in municipal, provincial, and national parks, as well as Crown and private land.

- Industry partners

  Insurance is often required by trade partners such as wholesalers, travel agencies, and tour operators.

- Protection of business and assets

  Many outdoor tourism operators have accumulated significant assets and equity. The physical and financial assets must be protected through property and liability insurance. In a legal system that does not offer special protection to outdoor tourism operators, insurance is a necessity.

4.0 The Marine Liability Act

The *Marine Liability Act* (MLA) is federal legislation administered by Transport Canada. Although the MLA's intent is primarily to regulate shipping, it also encompasses any commercial marine activity that involves the transportation of passengers in a vessel on navigable water. The definition of vessel includes such things as whitewater rafts, canoes, kayaks, fishing boats, and any other type of vessel used for commercial purposes. Navigable water includes lakes, rivers, creeks, and oceans (Kennedy, 2002).

Commercial outdoor tourism operators offering water activities as well as brokers and insurers should become familiar with the MLA and its content. Information on the MLA can be obtained from Transport Canada's web site at www.tc.gc.ca.

5.0 The Outlook

It appears that the insurance market could start to stabilise during 2003. This does not necessarily mean that rates will stop increasing, but that rate increases might moderate. A recent survey of the American Council of Insurance Agents and Brokers (CIAB) mentions that rate increases had moderated and were averaging 20% in the first three months of 2003. The CIAB also mentions that some types of lines, notably liability insurance, still saw significant rate increases (Hofmann, 2003). It appears that the easing of the hard insurance market will start in 2003 in the U.S. and possibly be followed by Canada in 2004. This recovery depends on whether or not insurers will be able to increase their investment income through higher interest rates and a stronger stock market.

Insurers are also looking to improve their combined ratios and trying to realise underwriting gains. The combined ratios improved in 2002 and are expected to come down again in 2003. The combined ratio of Canadian P&C insurers has gone from 110.1% in 2001, to 105.8% in 2002 (McGillivray, 2003). The improvement is still far from a profit-making scenario for the next year or two (Insurance Bureau of Canada, 2002. *Recovery…*).

It is not likely that the outdoor tourism sector will see significant improvements in the insurance situation for at least another 12 to 24 months. In general, the premium increases should moderate somewhat, but some operators will still see sharp increases.

Insurance remains a cyclical industry. There have been nine insurance cycles since 1950 that lasted from four to seven years. Like any other industry, when profits are high the marketplace attracts more players. Supply then increases which creates a competitive environment that drives the prices down. As competition intensifies, profits and surplus decline until a major event drives players out of the market, reducing supply and increasing prices, and bringing the next hard market.

Although it offers no comfort to outdoor tourism businesses currently facing dramatic insurance premium increases, softer market conditions will eventually return.

6.0 Outdoor Tourism Sector Issues that Affect the Insurability of the Sector

A number of issues and characteristics specific to the outdoor tourism sector create challenges that affect its relationship with the insurance industry and its being a desirable portfolio for insurers. Any solutions presented and recommendations made to assist the outdoor tourism sector in regards to insurance matters must take these industry issues and characteristics into consideration.

The level of organization of the outdoor tourism sector

The level of organization of the outdoor tourism sector is not as advanced and sophisticated as other industries. Some provinces have an outdoor tourism association while others don't. There is no national voice to represent the outdoor tourism sector in Canada. Although some tourism associations like the Tourism Industry Association of Canada (TIAC) have taken the outdoor tourism sector under their wing for a few specific issues, the outdoor tourism sector needs to organize itself nationally in regards to issues such as insurance.

There are an increasing number of regional associations, cooperative groups and other small organizations being formed. Although these organizations provide significant benefits for their members, they can be counterproductive if each organization tries to develop programs and initiatives in isolation from other organizations.

A document entitled *"The adventure and ecotourism sectors of Canada: Issues relating to organization and collaboration"* by Maurice Couture (a consultant from Quebec), provides an overview of the sector's level of organization and collaboration. The research reveals that although many associations exist, the majority is made up of enthusiasts/practitioners and guides/instructors involved in various disciplines. Associations representing businesses are less prominent, if not absent, from some provinces and territories. Additionally, there is not a national association providing representation and a collective approach. The study also reveals that the sector primarily consists of very small businesses that are often isolated and self-reliant and that these businesses cannot individually address many of the challenges that confront them. One of the main challenges identified is client safety and risk management and, more specifically, the issues of liability insurance (Couture, n.d.).

Other industries are far more successful in their dealing with insurers because of their level of organization.

Inadequate underwriting information

Information is crucial to the insurance transaction. The outdoor tourism- related information available to insurers is often insufficient and inadequate. The ongoing debate has been "whose job is it to collect, analyse, present, and maintain this information?" One side argues that it is the insurer's duty while the other argues that it is the industry's duty. Insurers have very little interest in gathering information behalf of the outdoor tourism sector. It is therefore obvious that if the outdoor tourism sector wants to improve its position with the insurance industry it must start playing the "insurance game." In other words, the outdoor tourism sector must provide underwriting information and convince insurers with organized facts, numbers and historical data regarding the real insurability of the risks and hazards of their sector.

Remoteness of operations

Many outdoor tourism operations are located in remote wilderness settings that are difficult to access and are without high levels of fire protection services. Insuring property in those locations is often problematic and expensive. Insurers know that any losses will be large ones.

Lack of homogeneity

The outdoor tourism sector covers a wide spectrum of activities with a wide variety of associated risks and hazards. For an insurer, underwriting such a broad spectrum of activities is complicated and problematic. Not often do insurers have the necessary expertise, and it is not worthwhile for them to obtain it because of the investment needed compared to the return expected. For example, underwriting a rafting operation is quite different than underwriting a backcountry ski operation. The standards, activity risks, training, and certification of employees differ between these activities. Furthermore, underwriting a rafting operation in Western Canada can be different from underwriting one in Eastern Canada because river morphology, remoteness, water temperature, guide training/certification, and standards might be different in one part of the country than another.

Lack of uniform activity-specific and operational standards

There is very little uniformity in national activity or operational standards. Standards vary from province to province and even within an activity itself. For example, two or three different provincial associations or a national association can certify a canoe guide. In British Columbia there are two official sanctioning bodies for sea kayaking guide training and certification. The Association of Canadian Mountain Guides (ACMG) is the official sanctioning body for mountain guides in Canada, but several provinces have their own rock climbing certification programs. Although the quality of each association or certifying body might be equivalent to another, these differences create confusion and add to the unattractiveness of the outdoor tourism sector from the insurer's perspective.

The same can be said about operational, risk management and emergency preparedness standards. There is no uniformity. Different businesses operate at different standards. It becomes clear to an insurer that a lack of incidents and claims is not necessarily the result of risk management excellence.

Almost all insurance experts cited the lack of a broad-based safety and risk management certification process as an obstacle to a better relationship with the insurance industry.

Insufficient understanding of the insurance industry by the outdoor tourism sector

A great number of outdoor tourism operators do not understand how the insurance marketplace functions and by what forces it is influenced. The larger and more experienced operators appear to have a better understanding, but overall, there is a general sense of frustration and a negative perception of the insurance industry.

Many of the available tourism-related insurance resources do not specifically address concerns of outdoor tourism business operators. Additionally, the few tourism insurance resources developed to date tend to be tailored to larger-sized corporations that are not a majority in the outdoor tourism sector.

The manner in which the outdoor tourism sector presents itself and its insurance portfolios to the insurance industry lacks the sophistication level necessary to build favorable relationships. An outdoor tourism operator was recently quoted as saying that "insurers don't understand that in this industry (outdoor tourism) accidents happen and that's a fact of life." Insurers don't think this way, and comments like these are the reason insurers will not get involved with the adventure sector.

The relationship between the outdoor tourism sector and the insurance industry could be explained using the following analogy. It could be said that the outdoor tourism sector has been "convicted without trial" by the insurance industry—convicted of being an unattractive sector that offers too much risk for too little premium. It is up to the outdoor tourism sector to appeal this conviction and provide the necessary evidence that will ultimately change this ruling.

Lack of knowledge of the outdoor tourism sector by the insurance industry

There is very little outdoor tourism expertise within the insurance industry. Most insurers have a very superficial understanding of the outdoor tourism sector—how it works, its importance, and the potential it offers. The underwriting of an outdoor tourism business by an insurer is often quite unsophisticated and is guided by the extent of the insurer's expertise in the particular activity, sport, or sector. An insurer will likely decline a business operating in an activity in which the insurer's prior knowledge and expertise is limited. Even insurers and brokers that cater specifically to the outdoor tourism sector lack in-depth knowledge and expertise.

Insurance brokers, who play a crucial role in the insurance purchasing process, are sometimes responsible for the failure to obtain coverage for their clients. An insurer commented that he had been approached by five different brokers regarding the same outdoor tourism business and that the five brokers had done a very "poor job" of presenting the business to the insurer. In the insurer's words, "the adventure business would have been considered for coverage had it been presented differently."

Image and perception of the outdoor tourism sector

For insurers, perception is reality. Insurers don't get much factual underwriting information from the outdoor tourism sector itself; information comes from general information sources such as in-house underwriting data, the media, and publications. Many outdoor tourism activities are perceived as risky, dangerous, and extreme. The media sells this image and thrives on catastrophic events. Insurers will often lump outdoor tourism businesses into one category regardless of whether it is a good business or not. For example, the avalanche incidents of the 2002–03 winter season received national and international media attention. As a result, insurers are likely to decline any business remotely involved to ski touring and backcountry skiing even though these incidents might not produce a single insurance claim.

The small and micro outdoor tourism businesses

Many outdoor tourism businesses are operated as a side business or complementary to another business. These "micro businesses," which are often operated from the home, do not generate enough revenues to be able to afford insurance coverage. This is not an insurance issue but a business issue. Insurance pricing is not based on what the insured can afford to pay.

7.0 Alternatives to Traditional Insurance Purchasing

Many alternatives to the traditional insurance purchasing process are available. Although definitions vary from one source to another, these alternative methods fall under what is commonly know as ART—alternative risk transfer or alternative risk financing. ART can be defined as anything that differs from the traditional method of individually purchasing insurance from an insurer via an agent or a broker. In other words, ART is the use of non-traditional methods to finance an organization's property and liability losses.

Although it is not the mandate or intent to offer an in-depth analysis of ART vehicles, it is necessary to provide an overview of some of the more common vehicles available. Many of the ART vehicles are quite sophisticated and possibly out of reach of the outdoor tourism sector, but some of them need to be explored.

The popularity of ART vehicles is increasing. It is expected that by the end of 2003, 50% of the commercial market will be insured through the global alternate risk transfer market. A study conducted by the reinsurance company Swiss Re reveals that self-insurance, pools, and risk retention groups are for the most part a U.S. concept, as opposed to captives, which are a global phenomenon (Insurance Information Institute, 2003. *Captives…*). A U.S. study states that 50% of large corporations, 20% of medium corporations and 5% of small businesses participate in alternative insurance markets. The popularity of ART vehicles increased significantly since the liability insurance crisis in the mid 1980s, especially in the U.S.

The findings of this report indicate that some ART vehicles would be out of the reach of many outdoor tourism businesses.

7.1 Main vehicles of alternate risk transfer (ART)

7.1.1 Self-insurance

Self-insurance is the retention of loss obligations by an organization. Self-insurance is different than non-insurance by the fact that an expense will be accounted for, and that loss reserves will be established. Losses like fires and thefts are treated as regular business expenses. Self-insurance can be achieved by completely assuming all risks and losses through a planned process or by purchasing insurance to cover catastrophic losses. An organization will decide how much risk to absorb and might buy insurance for the excess amount. Self-insurance can be done individually or by combining a number of companies together to pool resources and expertise. Some jurisdictions will have specific self-insurance regulations. Self-insurance is better suited for frequent small losses rather than infrequent large losses.

Advantages of self-insurance

- Increased control over losses.
- No insurance premium for the self-insured component.
- Enhanced insurability of the business. This is due to the fact that a portion of the risks will be self-insured which makes the business more attractive to an insurance company.

Disadvantages of self-insurance

- The inability to comply with government and other regulatory insurance requirements, for example, providing proof of insurance to land managers.
- It is necessary to have the financial means to absorb a portion or the totality of the business risks.

7.1.2 Captive insurance company

A captive insurance company is an insurance company that is owned and operated by the corporation it insures. A captive insurance company is considered a subsidiary of the parent company. For example, a large manufacturing company ABC might opt to form its own insurance company XYZ to insure some or all the loss exposures to ABC. In return, XYZ might purchase reinsurance to spread the risk of large losses. It is possible that a few parent companies will get together to from their own captive insurance company. Captive insurance companies are located in a jurisdiction that permits captives. Parent companies often locate their captive in a province, state, or country that offers favourable regulatory conditions. In Canada, very few provinces have developed specific captive legislation. British Columbia has its own *Insurance Captive Company Act* (British Columbia Ministry of Finance, 2001). Bermuda, the Cayman Islands, and Vermont are popular locales because of their captive-friendly regulations. The captive insurance industry represents approximately 10% of the global commercial insurance market (The Insurance Advisory Board, 2003). Legislation regarding captives varies from one jurisdiction to another.

Many of the captive insurance companies are managed through specialized management companies that will handle the management of the insurance company on behalf of the parent company.

One of the issues with captives is that the captive insurance company is normally not recognized as a licensed insurer outside its home province or state. For example, if the captive insurer is located in British Columbia, it will not be recognized as a licensed insurer in other Canadian provinces. In order to sell insurance in other jurisdictions, captive insurers will be “fronted” by licensed insurers. This means that licensed insurers will represent the captive and issue insurance policies outside the captive’s domicile. The licensed insurer will then reinsure the risk back to the captive insurance company. This is called “fronting.” Canadian captives with U.S. exposures (doing business in the U.S.) would have to go through the same process, as they would not be recognized as being licensed insurers in the U.S.

The different types of captives

A *Pure or Single Parent Captive insurance company* insures the risks of one organization (the parent company) and its affiliated entities. A single parent captive should only be considered if the existing insurance premiums of the parent company are quite considerable. Some experts mention $750,000 as a minimum premium, some even more.

An *Association Captive insurance company* insures the collective risks of the association’s members and their affiliated entities (British Columbia Ministry of Finance, 2001). There is no minimum amount of premium necessary for an individual operator to participate in an association captive although the total volume of premium the captive generates should be quite substantial.

The *Sophisticated Insured Captive insurance company* is a type of captive that covers a group of insured that have no relationships with one another except for their participation in the captive (British Columbia Ministry of Finance, 2001).

Rent-a-captive insurance companies are for companies not large enough to consider starting their own captives. The rent-a-captive charges a fee to participants and may also return some of the investment income to participants. The insured essentially rents the services of a captive insurance company.

There are approximately 4000 captive insurance companies worldwide. Most of them belong to a single parent company (Srinivas, n.d.).

7.1.3 Risk retention group

In the mid1980s, liability insurance became increasingly difficult to purchase in Canada and the U.S. In many cases, coverage was either unaffordable or unavailable at any price. In the U.S., Congress responded by enacting the Liability Risk Retention Act (LRRA) of 1986, allowing similar businesses, institutions, professional groups, government bodies, and other organizations to form risk retention groups or risk purchasing groups.

Risk retention groups are similar to captive insurance companies in that they act as the liability insurance carrier for their members. Risk retention groups usually organize as mutuals, stock companies, cooperative insurance companies, or inter-insurance associations or exchanges also known as reciprocals (reciprocal insurance groups are discussed in the next section). Comparatively, risk-purchasing groups are groups of insurance buyers who purchase their liability coverage from an insurance company. The primary purpose of risk retention groups is assuming and spreading liability risk exposure of its group members (The Insurance Advisory Board, 2003). Pure risk retention groups remain mostly an American phenomenon.

Members of a risk retention group are usually engaged in similar (homogenous) activities or similar types of exposure. Risk retention groups are exempt from many laws, rules, and regulations that usually apply to insurance companies.

Risk retention groups have gained popularity in the last two years. This is mostly due to the difficult insurance market conditions. Although the popularity of risk retention groups has increased, they remain much less popular than risk purchasing groups. Starting and operating a risk retention group is much more complicated that starting and operating a risk-purchasing group. As of August 27, 2003, for example, there are 117 risk retention groups compared to 674 risk purchasing groups registered through the LRRA in the U.S. (*Risk Retention Reporter*, 2003).

Advantages of captives and risk retention groups

- Flexible legislation for captives—for example, very little or no policy rating requirements and solvency ratios. Solvency ratios are the amount of risk undertaken compared to the insurer's equity and assets. Solvency ratios are usually imposed and monitored by government departments.
- Greater control over the volatility of the insurance market, premiums, coverage and claims.
- Greater control over cash flow as the premium payments to the captive insurer can be planned to better suit the financial needs of the parent organization.
- Tax advantages as well as investment income to the parent organization.
- Access to re-insurance markets. By having direct access to re-insurance markets, captives may be able to negotiate better conditions.
- Reward for good loss experience. The benefits of a good claims experience can be passed directly to the parent organization.

- Better service provided by the captive to the parent organization.
- An underwriting profit. The captive insurer might generate underwriting profits that will directly benefit the parent organization.
- Tailor-made insurance policies developed for the parent organization.
- The risk management process jointly developed between the captive and the parent organization.
- Decreased reliance on traditional commercial insurance.
- Coverage on risks that would be uninsurable on traditional insurance markets.
- A source of revenue for an association in the case of an association captive.

Disadvantages of captives and risk retention groups

- The need for significant amounts of capital.
- Lower rate of return on funds invested in the captive than funds invested in the main business of the parent corporation.
- Exposure to potential losses.
- The need for the parent company to finance and operate an insurance company.
- Higher cost. While the captive might provide better rates than traditional insurers in a hard market, it is possible that the captive will be more expensive than traditional insurers in a soft market.
- Being subject to some of the same market conditions that affect traditional insurers.
- The need for a long-term commitment by the parent organization or the association.
- No benefit to captives and risk retention groups from funds and programs that would protect insureds if the insurance company became insolvent.
- There is a possibility of many larges losses at the same time or during a short time span.
- Difficulty purchasing property insurance in some cases if it is separated from the liability insurance coverage (splitting the premium between two insurers).

7.1.4 Reciprocal insurance exchanges

A Reciprocal Insurance Exchange (reciprocal) is a type of risk retention group. It is also a form of self-insurance. A reciprocal is an unincorporated non-profit group or pool of organizations that contract with each other to spread the risks and losses inherent to their activities (reciprocal agreements of indemnity). The reciprocal operates much like an insurance company: it will issue insurance policies, charge premiums, and pay for claims. The reciprocal will also usually purchase reinsurance. An attorney-in-fact (a person legally designated to transact business and execute documents on behalf of another person) manages the day-to-day insurance functions of the reciprocal (www.investerwords.com). A committee comprised of members of the reciprocal supervises the attorney-in-fact and the financial operations of the reciprocal (Johnson, n.d.). When claims exceed premiums collected, the reciprocal members (called subscribers) contribute to the payment according to a pre-arranged formula (Municipal Insurance Association of British Columbia). Members of a reciprocal are usually required to commit to a certain number of years and required to share in any net losses.

Profits and losses are distributed to, or absorbed by the members in the proportion equal to their participation to the pool. Profits can also be accumulated and kept as reserve for catastrophic losses. Reciprocals resemble cooperatives. Reciprocals are usually initiated and operated by groups of large organizations or groups of homogenous organizations like municipalities, hydroelectric commissions, school boards, universities, and hospitals. Examples of existing reciprocal groups in Canada are The Municipal Insurance Association of British Columbia (MIA), the Ontario Municipal Exchange, The Canadian Petroleum Insurance Exchange, and The Canadian Universities Reciprocal Insurance Exchange (CURIE).

Reciprocals are usually subject to provincial and or federal legislation and might be required to carry a minimum amount of cash as a reserve for claims.

Advantages of reciprocals

- Flexibility with respect to structure and governance. Reciprocals can set their own rules and regulations (by-laws).
- Low operating costs. Insurance broker commissions are reduced or eliminated.
- High level of expertise in the group's area of operation.
- Broader coverage provided by the reciprocal than what the individual members could obtain on the traditional insurance market.
- Risk management program development and implementation by the reciprocal for its members.
- Direct access to reinsurers.
- Tax advantages.
- One goal—to meet the need of its members. All members are allowed to vote.
- Premium stabilization and reduction (Municipal Insurance Association of British Columbia).

Disadvantages of reciprocals

- Not being able to accept all that want to subscribe. It can become exclusive.
- All losses and claims shared by members (subscribers). One member's claims can adversely affect the rest of the group.
- Individual businesses potentially exposed to large payouts.
- Need a significant volume of insurance premium to be feasible.
- Require expertise. Must generate more revenues than expenses much like operating an insurance company.
- Require significant amount of financial and non-financial resources to start.

7.1.5 Risk purchasing group

For the purpose of this discussion, risk-purchasing groups will include insurance pools, affinity groups and group insurance purchasing programs. All of these risk-purchasing groups use the law of large numbers. A risk-purchasing group is a group of insureds that join together to purchase insurance (often liability insurance) from one or more insurance companies. This is basically collective insurance buying. Members of risk purchasing groups are usually engaged in businesses and risks that are similar in nature or that belong to a specific sector. The main difference between a risk retention group and a risk purchasing group is that the risk retention group retains risks through the insurance company that was created while the risk purchasing group transfers risks to an outside insurer. Risk retention group members must also provide the capital to start the company while the risk-purchasing group members don't (except for costs associated with the initial stages of creating the group program).

Risk purchasing groups come in various forms. Some groups will purchase insurance directly from the insurer without going through a broker or agent, while other groups will purchase through one or more insurance brokers/agents. Some insurance programs will issue a master insurance policy for the whole group and issue insurance certificates for each individual business. Other programs will issue a separate insurance policy for each group member.

The participation in a risk-purchasing group can be voluntary or mandatory. Some groups have decided that any and all businesses that want to be part of an association must also take part in the group insurance program or have made it a mandatory component of their professional association.

There are dozens of risk purchasing groups in Canada. They are much more popular than other forms of ART because of the relative ease of start up compared to other options—little capital is needed, and they are available to any size of business.

7.1.6 Organization and management of risk purchasing groups

Risk purchasing groups can be developed, organized, and managed by insurers, brokers, associations and groups, independent consulting firms, or a combination of these. Risk purchasing groups have historically been formed by insurance professionals as result of an identified business opportunity.

Certain advantages and disadvantages exist from the group/insured's point of view.

Group programs managed by the insurer: Insurers will develop specialty insurance programs for certain classes of business and offer the programs to groups, associations, and businesses directly or through its network of insurance brokers. The insurer controls the program. The advantages are that the insurer bears all the cost starting, administrating, and marketing the program. Some of administrating and marketing might sometimes be shared with groups and associations involved. The disadvantages are that the insurer has most, if not all, of the control. The insurer can unilaterally decide to cancel the program for various reasons. Additionally, the underwriting, actuarial, and claim information will most likely remain with the insurer, leaving the risk-purchasing group with very little information when looking for an alternative insurer.

Group programs managed by the broker: Brokers will develop specialty programs and find insurers to underwrite the program. The broker can sell the program directly to group members or though other brokers who act as sub-brokers. The broker who sells through other brokers is often known as a Wholesale Broker (WB). The WB will generally give the sub-broker a commission. The advantages are similar to that of the insurer except that the broker will have access to more than one insurer. This will enable the broker to involve more than one insurer in the group insurance program, to find the insurer(s) that offer the best coverage/pricing or to find an alternative insurer if an insurer decides to pull out of the program. The disadvantages are also similar to that of the insurer as most of the control and information resides with the broker.

Group programs managed by the group: Groups and associations will develop insurance programs for their members or businesses of a given sector. The disadvantage is that the onus of developing, organizing, and managing the insurance programs is on the group itself. The group can, however, obtain the assistance of insurers, brokers and consultants. The advantage is that the group controls the program and the information. The group can "shop around" for the best coverage and pricing and work with the insurer to develop other service components such as risk management, loss prevention, education, and claims management. Although the group will have control over the program, the group remains somewhat at the mercy of the insurer.

Advantages of risk purchasing groups

- The main advantages are that favorable rates, rate stability, higher limits, and tailor-made, broader coverage can be negotiated on behalf of the group members.
- In some cases forming a group is the only way to obtain any insurance coverage at all.
- Risk purchasing groups can customize their insurance pricing to fit their industry or sector needs. For example, having different policy start dates can accommodate the seasonality of businesses.
- Risk purchasing groups don’t operate an insurance company therefore don’t have to raise capital or arrange reinsurance.
- Smaller operators can benefit from advantages usually available only to large businesses.
- The pooling of resources and expertise can be used to develop loss prevention and risk management programs.
- Risk purchasing groups are much less expensive and complicated to form than other types of alternative vehicles.
- Because the start-up is less complicated, risk-purchasing groups can be operational in a shorter period of time.
- For the insurer, dealing with a group makes results more predictable, provides a larger pool of information to gather actuarial data and provides economies of scale.
- The insurer will become more knowledgeable and build expertise about the sector and its activities. This expertise will be used for underwriting and claims management.
- Group insurance program members will be less affected by the insurance market cycles (Amini and Parsons, n.d.).

Disadvantages of risk purchasing groups

- The entire group’s premiums might be affected by the claims of one member or one specific activity.
- If the insurance program suddenly ceases to operate it is possible that hundreds of businesses will find themselves without insurance simultaneously.
- The group insurance plan might not be the best option for some operators.
- Groups are often not all-inclusive and will be unable to accommodate all types of businesses or businesses with poor risk management or claims records.

8.0 Alternative Insurance Options and Compatibility with the Outdoor Tourism Sector

The outdoor tourism sector in Canada is comprised of thousands of mostly small- to medium-sized businesses. According to a 1999 survey of 825 outdoor tourism operators conducted by Statistics Canada for the Canadian Tourism Commission (CTC), 48% of the outdoor tourism businesses earn less than $50,000 in gross revenue and the median gross revenue per operator is $65,000.[2] The operators earning less than $50,000 (48% of the industry) generated 3.1% of total industry revenues while those operators earning more than $500,000 (7.4% of the industry) generated 68.7% of the total industry revenues (Statistics Canada, 2001).

In 1999, the average operator had been in business for 11 years while 42.5% had been in business for over 9 years. This means that a majority of operators did not experience the last hard insurance market of the mid 1980s. In fact, these operators have only experienced what has been one of the longest soft insurance market cycles. For many outdoor tourism operators, this hard insurance cycle is their first exposure to the realities of the insurance world.

Many of the potential alternative insurance options available will offer challenges if they are to be implemented in the outdoor tourism sector. Although no one can say that it is impossible for the outdoor tourism sector to contemplate alternative insurance vehicles, an analysis and an understanding of the outdoor tourism sector leads to the conclusion that some of the options will be problematic, and some might not be feasible at all.

Feedback from insurance experts interviewed on the various alternative insurance vehicles available has been quite consistent throughout this project. Most agreed that some options would be much more challenging than others. Many have mentioned that some options would be difficult to implement.

8.1 Self-insurance

Self-insurance as explained in section 7.1.1 is not seen as a viable option for the outdoor tourism sector. This option would see operators individually self-insure. The outdoor tourism sector is mostly comprised of small operators that do not have the financial resources to self-insure and/or absorb high deductibles. Additionally, self-insured operators would be unable to meet many of the insurance requirements outlined in section 7.

8.2 Captive insurance, risk retention groups, and reciprocals

These alternative risk transfer and finance vehicles are far more sophisticated than the traditional methods of purchasing insurance. Large sums of capital, special expertise, and a long-term commitment are necessary. Captives, risk retention groups, and reciprocals are vehicles that are usually used by large organizations or sophisticated groups of organizations. Although not impossible, most, if not all, of the experts interviewed have agreed that these vehicles would present virtually insurmountable challenges in order to be implemented in the outdoor tourism sector.

[2] This survey was conducted in 1999. Some of the information may be different in 2003.

8.3 Risk purchasing groups

According to the experts, the risk purchasing group concept appears to be the most feasible and desirable option for the outdoor tourism sector. Although risk-purchasing groups offer many benefits, there are significant challenges in starting and managing a large-scale group program.

By all indications, the most feasible risk purchasing group option would be to develop a national insurance purchasing program for the outdoor tourism sector. Sections 12 and 13 further discuss this option.

8.3.1 Existing outdoor tourism insurance programs

Many outdoor tourism businesses and professional associations have identified insurance as one of the most pressing issues (in many cases the most pressing issue), but few have been able to develop solutions for their members. Those associations that have been able to develop insurance tools for their members have done so with risk purchasing group programs. Insurers and brokers have for the most part, developed the insurance programs in Canada. Most of these programs are quite small compared to programs that exist in other industries.

Most of the existing programs are outlined in the Database of Insurance Providers found on the CTC's web site at:
http://ftp.canadatourism.com/ctxUploads/en_publications/InsuranceServiceProviders.pdf

Associations representing guides and outfitters as well as fishing and hunting resorts have been more successful than other groups in the outdoor tourism sector in developing group insurance programs for their members. This is largely due to the fact that these associations have existed for a long period of time, they are more homogenous, and they are not perceived being as risky by the insurance industry.

One of the best examples of a program for outdoor tourism in Canada is the one offered by the adventure and ecotourism operators' association of Quebec—Aventure Écotourisme Québec. The association and an insurance broker jointly developed this program. It has existed for seven years. The program offers liability insurance limits of up to $5 million. The program was recently renewed for a one-year term with premium increases of only 10 to 15%. Although this program has been adopted by a significant percentage of the Quebec operators, many larger operators have opted to remain with their own independent insurance providers.

What remains unproven with many of the smaller existing insurance programs is how well insurers will react in the event of large or catastrophic loss. Many of the smaller group programs might not generate a sufficient enough premium base to survive large losses.

Associations such as the Canada West Ski Area Association (CWSAA), which is the representative body for the ski areas and heli- and snowcat operations of British Columbia, Yukon, Alberta, Saskatchewan, and Manitoba, have been successful at pooling their resources to develop industry-wide risk management standards and liability waivers. The CWSAA has also been successful at lobbying governments for special legislation (the B.C. Alpine Ski Policy) and to obtain adequate insurance coverage for its members (www.cwsaa.org). Insurers are especially pleased with the effort that has gone into the risk management standards and the liability waivers, according to Bill Dunlop, an insurance broker.

8.3.2 Issues and considerations in forming a group insurance purchasing program or a group self-insurance program

Need for a critical mass of premium volume in a timely fashion.

Although there is no minimum premium volume needed to start a group insurance program, many insurers won't be interested unless it is fairly substantial. A larger volume of premium is better. A large premium volume will be attractive to a greater number of insurers and will translate into more favorable conditions and rates. More importantly, a larger pool of money will be able to withstand large or catastrophic claims. Some insurers have indicated that a minimum premium volume of $500,000 to $1 million is needed to spark interest in an outdoor tourism insurance program. More than $1 million in premium would likely attract more interest from insurers.

One of the issues for insurers is how long it will take to reach a critical volume of premium. The danger is that the insurer will be exposed to a large claim before reaching a critical mass of premium volume.

In the case of a self-insurance program like a reciprocal, a large volume of premium is necessary because the premiums will be used to pay for things such as claims, claims expenses, and administration of the exchange. The larger the premium base, the less likely the members of the reciprocal will have to assume the burden of a deficit.

Source of initial resources.

Developing a group insurance program is an endeavor that will necessitate a significant amount of time, resources, and coordination.

A self-insurance program would necessitate specialized expertise that goes beyond traditional brokers and insurers.

Number of businesses willing or likely to join the group program.

There will be a need to know how many businesses will potentially participate in a group insurance program.

Realistic claims, pricing, and revenue projections.

Potential insurers will need to know what potential premium volume and claims the group program might generate. It will be challenging to obtain this information from outdoor tourism operators.

Types of insurance that would be written through the group program.

Some programs are only created to provide a certain type of insurance coverage, the most common being liability insurance. A group insurance program that provides a larger spectrum of insurance coverage and products would better serve the outdoor tourism sector and is also likely to provide the insurer with a larger volume of premium.

The need to share business information.

Outdoor tourism operators will need to share business information such as revenues, description of business operations, risk management and emergency response plans, and claims history. It is important that this business information remain confidential by those managing the insurance program

Compliance with the underwriting guidelines.

Operators will have to comply with underwriting regulations and selection criteria. A group purchasing insurance program or self-insurance program might not cover every outdoor tourism activity and every operator. Standards and requirements higher than those of existing insurance providers may be imposed.

Effect of claims on operators in the group.

The principle of insurance and especially group insurance is that the many will pay for the losses of the few. Because of the nature of the activities and risks involved in outdoor tourism, the potential exists for a small operator to negatively affect the premium of the entire group. In a self-insurance situation this means that the rest of the group might have to pay their share of claims in addition to the original policy premium.

Potential of a broad program.

A program that is geographically broad and that caters to many types of outdoor tourism activities and businesses offers more potential for the following reasons:

1. It has the potential to generate enough revenues to be self-sufficient.
2. It will capture a larger audience thus a larger volume of premiums.
3. The risks will be spread across many activities.
4. The program will be able to absorb larger losses.
5. The program will be able to develop risk management and loss prevention initiatives for specific activity sectors.
6. A higher volume of premium might influence insurers to underwrite activities that were previously prohibited.

Challenges of a broad program.

A program that caters to many different types of outdoor tourism activities occurring across the country will present challenges for the following reasons:

1. Underwriting an eclectic group of businesses that range from horseback riding to rock climbing is complicated.
2. The insurance provider might not desire some activities. Consequently, leaving activities out might defeat the purpose of a group insurance program all together.

Willingness of operators to make a long-term commitment to a group insurance purchasing program.

Insurers will be less interested in developing a program if there is no commitment from the outdoor tourism operators. If operators join the program solely for the purpose of reducing their insurance premiums in the short term, it is likely that the same operators will leave the group insurance program as soon as another less expensive option arises.

Willingness of operators to make a financial contribution to a group insurance purchasing program.

Who will finance the start-up? Are outdoor tourism operators willing to financially support such an initiative?

Inclusiveness of insurance purchasing program. Ability to cover all operators.

It is possible that operators who do not meet minimum underwriting standards or that have a poor claim history will not be accepted in the program or charged higher premiums. In those cases the insurance program becomes similar to insurance products offered through regular insurance companies. Additionally, some operators might not find advantages in a group program.

Group management.

There needs to be an entity that will initiate and manage the group insurance program. This can be the role of an existing organization or one can be created specifically for this purpose.

Cross-border issues.

The program must be setup in such a way that it becomes available in all provinces and territories. There are rules regarding the sale of insurance products across provinces.

Impact on existing insurance programs and associations.

Some associations with existing group insurance programs have mentioned that they worry about losing members if a more advantageous insurance program is available. Access to an insurance program is often a major draw that attracts membership.

9.0 Non-Insurance Options Available

The following options arise out of the consultation process undertaken for this report. The options are not in any order of importance or priority. Although many of these options were not part of the original intent of this report, they are worth considering. Most of the options suggested are briefly described below. Many of these options would need to be studied in greater depth if they were seriously considered as possible solutions.

A note of caution

The options outlined below are only described briefly. This description does not constitute a legal assessment. Legal advice should be sought before making any statements regarding the validity, feasibility and effectiveness of these options.

9.1 Status quo

This option favors no specific action and trusts that the insurance crisis will resolve itself and that the outdoor tourism sector will be able to manage the insurance issues without any outside assistance. The current hard insurance market is neither the first one nor is it the last. It is likely that higher premiums will return insurers to a profitable situation that will in turn attract new entrants, increase capacity, cause more competition, and reduce premiums. Until this happens, it is likely that some operators will have to cease to operate because of unavailable coverage or higher insurance costs. The same thing is happening in other industries and business sectors.

9.2 Eliminating or lowering insurance requirements

It has been suggested that the liability insurance requirements imposed on outdoor tourism operators by governments, land managers, and other organizations and entities be eliminated or lowered. The option to completely eliminate insurance requirements is very seldom preferred because of the potentially severe consequences.

Lowering insurance requirements might offer some benefits. For example, land managers could require that operators carry $250,000 of liability insurance instead of $1 million typically required (most provinces in Canada only require a minimum of $200,000 for third party liability automobile insurance) (Insurance Bureau of Canada, 2002, *Facts of…*). Reducing the amount of insurance required might entice some insurers to move in and cater to the outdoor tourism sector, but it is not certain that insurance premiums would go down significantly.

The premiums might not go down for a few reasons:

1. Many of the smaller operators which are paying the insurer’s minimum premium might still be subject to that minimum premium with the lower insurance limits.
2. The lower $250,000 layer of a $1 million insurance policy is the most expensive layer, as most claims will fall under this amount. The premium reduction might be marginal.
3. Many operators will choose to purchase higher limits for peace of mind and for the protection of assets and business equity.

Operating without insurance or with reduced insurance could be a riskier proposition and needs to be carefully assessed.

9.3 Government intervention

Territorial, provincial and federal governments could get involved in a variety of ways by:

- Providing financial and non-financial resources for the development and implementation of a national insurance purchasing group specific to the outdoor tourism sector.
- Providing reinsurance to insurance companies in order to reduce the risks undertaken by first line insurers.
- Providing direct insurance through 1) the creation of a government owned insurance company, or 2) through existing provincial government insurance programs.
- Making representations to insurance companies in order to influence them into entering the outdoor tourism sector and developing programs specifically for outdoor tourism operators.
- Developing an accident compensation scheme similar to the one in New Zealand (see section 10) where participants would get automatic accident compensation in exchange for giving up the right to pursue legal action in a civil court. Operators and/or participants would pay a premium to finance the accident scheme.
- Developing and formalizing the education and certification of operators in regards to insurance matters and risk management standards and practices specific to the outdoor tourism sector.
- Making legislative changes to offer the outdoor tourism sector a better legal climate. This could also make the sector more attractive to insurers.

9.4 Legislative reform

This option favors modifying existing laws and statutes or bringing new special purpose laws and statutes that would support the outdoor tourism sector. The outdoor tourism sector is affected by legislation that is specific to an activity/sport (federal river rafting regulations), specific to an entire sector (the MLA), or affects the whole industry (tort law, contract law). Activity- and sector-specific legislation is usually well received by insurers, as this type of legislation generally tends to improve, impose, or legitimize higher activity and/or industry standards.

Effective reform might improve the insurability of the outdoor tourism sector as a whole. A study released in January 2003 by the Pennsylvania Medical Society's Health Services Institute reveals that there is a correlation between legislated reforms and the cost of liability insurance. The study shows that between 1995 and 1998 increases in general liability insurance loss costs rose 11.5% in states that enacted reforms compared to 64% in states without reforms (Insurance Information Institute, 2003, *Hot Topics…*). On the other hand, some studies also suggest that tort reform undertaken in the U.S. has not been effective in lowering insurance premiums. For example, a report from the Centre for Justice Democracy entitled "Premium Deceit: The Failure of Tort Reform to Cut Insurance Prices," mentions that insurance prices are influenced by the insurance industry's cycles and not tort reform (Hunter and Doroshow, 1999).

Nonetheless, some jurisdictions have decided to support their outdoor tourism sector by implementing statutory changes. Section 10 describes what some other jurisdictions have accomplished to deal with some of the legal and insurance issues related to outdoor tourism. There is no guarantee that these statutory changes will automatically translate into a better insurance marketplace for outdoor tourism operators.

10.0 Initiatives Undertaken in Other Jurisdictions

This section gives a sample of what some other jurisdictions have done to assist their outdoor tourism sector. The initiatives undertaken are not all directed at the insurance issue, but many initiatives will nonetheless have a positive impact on the insurability of the outdoor tourism sector.

10.1 United States

Colorado

On May 14, 2003, Colorado Senate Bill 253 was signed into law by the state governor. The bill, which was passed with a majority of 34 to 1, allows parents to waive a minor's right to sue. In other words, parents can sign liability waivers on behalf of their minor children and those waivers will be legally binding in the eyes of the law. Although Colorado is the first state to legislate this, courts in California, Connecticut, Massachusetts, Ohio, and Wisconsin also support parental waiver of a minor's rights. It is believed that other states will follow Colorado's lead and develop similar legislation (Gilliland, 2003. *Co Law Lets Parents…*).

This bill might lessen the legal burden placed on outdoor tourism operators when working with minors. It will also help the insurability of operators that cater to minors. Historically, many insurers have shied away from providing coverage to outdoor tourism operators that deal with minors.

Alaska

The Alaska legislature recently passed Senate Bill 175 relating to civil liability for inherent risks in sports or recreational activities. This bill is designed to provide outdoor tourism and recreational activity providers with some protection from unnecessary litigation. The bill explicitly recognizes that:

1. All sports or recreational activities contain inherent risks that provide challenge and excitement.
2. Participants should accept the inherent risks in those sports and activities as well as be responsible for injuries resulting from the inherent risks.
3. The state has a legitimate interest in maintaining the economic viability of these sports and activities by discouraging injury claims resulting from the inherent risks.
4. Providers of such sports and activities should not have to alter the challenge and excitement of these sports and activities by controlling inherent risks.
5. The liability of providers of such sport and activities should be limited to negligence that is not associated with the inherent risks of those sports and activities.

The bill defines inherent risks as "dangers and or conditions that are characteristic of, intrinsic to, or an integral part of a sport or recreational activity." Activities and operations such as boxing, sparing wrestling and ski areas are excluded from this bill (Alaska Legislature, 2003).

Pennsylvania, Vermont and Wyoming have also implemented inherent risk legislation (Gilliland, 2003. *Alaska Outfitters…*).

10.2 New Zealand

New Zealand has taken a unique approach regarding personal injuries and civil litigation. The country has developed a state-operated accident compensation system where most types of personal injuries will be automatically covered by the public system regardless of fault or blame. In return, those who suffer personal injuries are barred from seeking compensation through civil litigation. This accident compensation system was not specifically developed for outdoor tourism but encompasses outdoor tourism by default. The system applies to any type of injuries caused by an accident at work, on the roads, at home or during an outdoor tourism activity. The no-fault component ensures that the injured person will receive compensation regardless of whether it was the fault of the injured party or another party. This means that participants who get injured during an outdoor tourism activity will be compensated by the state and will be unable to bring a civil lawsuit against the operator. There are a few exceptions. Claims for exemplary or punitive damages may be pursued. Claims for some forms of medical misadventure and for nervous shock/mental injury may be pursued. These claims are a rare occurrence and there is virtually no civil liability for most personal injuries in New Zealand. The highest punitive amount awarded by a court in New Zealand is NZ $85,000 (McVeagh, n.d.).

10.3 Australia

Australia has been hit exceptionally hard by the current state of the insurance marketplace. In particular, the Australian outdoor tourism sector has been subject to insurance issues that are much more difficult than those encountered here in Canada. The second largest insurer in Australia, the HIH Group, collapsed in March 2001; this was followed by the withdrawal of SLE Worldwide from the tourism market. SLE covered 95% of the outdoor tourism and high-risk activity operators. In fact, SLE was the underwriter for the Victoria Tourism Operators Association's (VTOA) liability insurance scheme (Victoria Tourism Operators Association, 2001). The collapse of the HIH Group and the withdrawal of SLE suddenly deprived hundreds of outdoor tourism operators of any insurance and sent them simultaneously looking for coverage in an already shrinking and difficult insurance marketplace. This resulted in many outdoor tourism businesses operating without insurance or having to cease operations because of premium increases or coverage unavailability. A survey conducted by the Office of Regulation Reform revealed that premium increases were not linked to claims (Office of Regulation Reform, 2002).

As a result of the insurance issues facing the outdoor tourism sector, many associations in collaboration with territorial, state and the federal governments have embarked in a series of initiatives such as:

- *Consultancy:* Assessing the industry needs and available options.
- *Risk management support:* Developing risk management tools, resources and industry wide practices.
- *Industry standards:* Developing industry wide minimum activity standards.
- *Insurance price monitoring:* Ensuring that if measures are taken to assist insurers, the insurance industry will follow through with premium savings.
- *Law reforms:* Proposing and/or enacting by different levels of governments a variety of legislative reforms. Some of the proposed reforms include the "Wrong and Other Acts (Public Liability Reform) Bill 2002," the "Adventure Activities Protection Bill 2002," the "Limitations of Activities (Amendment) Act 2002" and the "Trade Practices Amendment (Liability for Recreational Services) Bill 2002" (Russell Kennedy Solicitors, n.d.). These reforms are at various stages of the legislative process.

Of particular interest is the proposal to amend the *Trade Practices Act* to allow providers of recreational activities to limit their liability by enabling participants to assume the inherent risks and allow them to waive their rights to sue (Lander and Rogers, 2003). More recently, on May 20, 2003, the Victorian government introduced a tort reform package specifically designed to address insurance issues. The package will include things such as limits and thresholds for damages sought, changes to the statues of limitations, and proportionate liability for claims. There are also proposals to introduce legislation that will determine the circumstances when a professional or trade person has been negligent (Victoria Government, 2003). A variety of other reforms are underway or proposed (Lander and Rogers, 2003).

- *Group insurance schemes:* Industry associations and governments working together to initiate risk purchasing groups and insurance pools.
- *Funding:* Governments providing funding for the implementation of risk management initiatives (Kiehl, 2002; see also Queensland Government, 2002).

11.0 Observations

1. Unfortunately, there are no quick and easy solutions to the insurance issues affecting the outdoor tourism sector. Many of the possible solutions will have to be phased in and might take months and years to be fully realized.
2. It will take a significant amount of energy, resources, and time to get from where the outdoor tourism sector is now to where it needs to be. It is unlikely that one particular initiative will solve all of the insurance issues of the outdoor tourism sector. It will take combining a number of initiatives and steps to achieve a long-term solution.
3. It is unlikely that the outdoor sector will be able to achieve a long-term solution without the help of associations, territorial, provincial, and federal governments. It is unrealistic to expect operators and organizations to volunteer their time and money to an issue as complex as the insurance one.
4. This insurance "crisis" is felt by operators across the country and has the potential to bring the outdoor tourism sector together through a common cause.
5. There is a possibility that if the insurance market softens (improvement in prices and conditions), outdoor tourism operators will become less interested and committed to the insurance issue. A long-term solution should still be sought since it is likely that other insurance crises will occur in the future.

12.0 Options for Action

The following suggested courses of action are presented in support of pursuing a long term solution to the outdoor tourism sector's insurance issues. The end result should assist in building the sector's profile as a desirable class of business to the insurance sector.

1. Create insurance-related initiatives at the national level. Fragmented and uncoordinated initiatives will be much less effective.
2. Create a national outdoor tourism organization to undertake insurance, risk management, and legal initiatives.
3. Investigate the feasibility of a national group insurance purchasing program
4. Involve existing tourism organizations in the coordination and support of these national initiatives.
5. Combine and coordinate insurance-related initiatives and non-insurance solutions such as legislative reforms and other industry and government initiatives.
6. Approach insurance-related issues as sector development and economic development issues.
7. Involve the insurance sector in all insurance and related initiatives.
8. Consider the creation and adoption of national risk management standards.
9. List and describe the different sport and activity certification schemes available in Canada. This listing should be made available to both the insurance industry and the outdoor tourism industry.
10. Work with territorial, provincial, and federal ministries and agencies on the insurance issues facing the sector, with a view to finding alternatives to the traditional insurance requirements.
11. Create a national task force to deal with the sector's insurance issues. The task force should be comprised of representatives from the outdoor tourism sector, governments, the insurance industry, and representatives of other relevant organizations.
12. Organize a national workshop/forum on the insurance issue facing outdoor tourism operators. Representatives of provincial, regional, and activity-specific outdoor tourism associations and organizations, relevant government agencies, and experts in the insurance and legal fields should attend this workshop.

    The workshop/forum objective would be to assess the willingness of the industry to participate in a national insurance initiative.

    Workshop/forum topics may include the following:

    a. Summary of the current insurance situation.
    b. Possible solutions.
    c. Risk purchasing groups.
    d. Self-insurance programs.
    e. Benefits and limitations of these programs.
    f. How to get an outdoor tourism insurance program organized.
    g. Who should participate?

h. If mandatory participation should be considered.
i. Who should have the mandate to set it up?
j. Who will be responsible to manage it?
k. Where we go from here.
l. Developing a strategy to initiate the process of creating an entity responsible for insurance, legal and risk management issues of the outdoor tourism sector in Canada.

13. Seek support from government and non-government organizations to coordinate the developmental stages of a national insurance purchasing program.
14. Train tourism operators to package and present their risk management plans and insurance portfolio to insurers.
15. Undertake further research on the feasibility of legislative reform initiatives (such as capping damages claims, special legislation for outdoor tourism, accident compensation schemes).

13.0 Starting a National Group Insurance Program for the Outdoor Tourism Sector

In order to be successful, the development and management of a national insurance program for the outdoor tourism sector should do the following:

1. Involve those parties who understand the outdoor tourism sector and the activities themselves.
2. Be practical, realizable, and have a reasonable timeframe.
3. Be offered nationally.
4. Demonstrate a national insurance program to be profitable, with a sufficiently large premium volume and good claim history.
5. Be able to accept all classes of business as long as they operate according to established industry standards.
6. Be able to decline risks with undesirable claims records or poor risk management and loss prevention practices.
7. Be proactive and prepare to meet insurer requirements and restrictions as well as prepare comprehensive applications.
8. Resolve insurance issues in the short term but be part of a long-term strategy.
9. Ensure continuity of outdoor tourism operations and the strength of the industry.
10. Ensure the preservation and protection of physical, financial, and human assets.
11. Reduce the cost of insurance over the long term.
12. Enable the outdoor tourism sector to have control over the group insurance purchasing program.
13. Increase the underwriting information specific to the outdoor tourism sector.

14.0 Summary

The outdoor tourism sector is definitely in the midst of yet another insurance crisis. Unfortunately there are no quick and easy solutions. What makes the outdoor tourism sector dynamic, exciting, and different (such as small independent operators, diverse businesses and activities, large geographic spread in remote areas) also makes the sector inefficient in its dealings with insurers and limits the possible solutions. Additionally, many of the factors that affect the well being of insurance companies are unrelated to outdoor tourism. An increase in the profitability of insurers through a stronger stock market and higher premiums might provide some relief for the outdoor tourism sector.

This is probably not the last insurance crisis to affect the outdoor tourism sector. Therefore, every attempt should be made to find a permanent long-term insurance solution (if one is possible). Organizations and sectors that have gone through the process of establishing long-term insurance solutions after the mid 1980s insurance crisis appear to be weathering the present crisis with much less hardship.

Many have commented that they expect governments to get involved, as outdoor tourism has now become a major economic driver in many communities. Additionally, any initiatives regarding insurance, risk management and activity standards should be national in order to pool resources and to avoid having different systems and standards across the country.

The reality is that insurance will probably remain a difficult and expensive proposition for the outdoor tourism sector. This report will, hopefully, open the discussion on coordinating resources and efforts to successfully address and manage current and future insurance matters.

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