The Human Factor

Employee well-being as important as following regulations

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As they discussed issues of liability regarding people, products and insurance, one thing became clear to attendees at the seventh Annual CSP Leadership, Liability & Crisis Prevention Forum in Louisville, Ky.: Be prepared for the unexpected.

No one could have predicted Katrina or its aftermath—not only the effect on the city's infrastructure, but also the effect it had on people like Jimmy.

The Louisiana man saved seven people during the hurricane, pulling flood victims onto his boat. An eighth person was spotted. Jimmy tried to save him, but could not.

"Jimmy was a hero," said Bob VandePol, president of Crisis Care Network, at the forum. But Jimmy, haunted by the trauma of the one he couldn't save, began suffering emotionally. He couldn't sleep, couldn't concentrate and was suffering from what VandePol called "Katrina Brain." "How do we first help Jimmy as a person, as a dad, as a husband, as a neighbor, as a member of a bowling league or church—whatever it might be? How do we help him stay at work? How do we help him get rid of Katrina Brain so that he can be effective in his role?"

VandePol's story was clear: Retailers must not look at employees merely as cogs carrying out store operations, but as human beings whose emotions and emotional well-being cannot be ignored, especially after a tragedy.

The human factor, he pointed out with interest, seemed lacking within corporate strategies until Sept. 11, 2001. A Google search on crisis management prior to that date would have revealed 11 pages of sites about information technology and other infrastructure issues, before any mention of people. "After Sept. 11," he said, "people

The Bottom Line

- Take care of your employees in times of crisis in order to better take care of your customers and your business.
- Retailers can protect themselves by staying on top of product-liability regulations.
- Make sure you understand the components of insurance, as well as your options.

Attendees of the 7th Annual CSP Leadership, Liability & Crisis Prevention Forum in Louisville, Ky.:

RETAILERS

Jeff Morris
Alon USA

Rothel Bullock
Bullock Oil Co.

Debbie Drozd
Circle K Midwest

Stephen Seymour
Country Fair/United Refining Co.

Jeff Warnick
Fabulous Freddy's Car Wash

David Smith
Family Dollar Stores

Ira Morris Jr.
Faw Cos.

Robert Forsyth
FKG Oil Co.

Lance Farlow
Holmes Oil Co. Inc.

Sheri Stevens
Huck's Convenience Stores

Jeff Wrobel
Kwik Trip Inc.

Nancy Couch
Maverik Inc.

Walter Vance
Midwest Petroleum Co.

David Ridings
Murphy USA

Michael Zielinski
Royal Buying Group Inc.

Cynthia Aguirre
Susser Holdings Corp.

David Bridgers, Shelly Gibson
Thorntons Inc.

Kim Lamping, Neal Schuckman
United Dairy Farmers

Mark Orff
Village Pantry LLC

Cheryl Lanoye
Wilson Farms Inc.

SPONSORS, SPEAKERS AND GUESTS

Steve Burkhart, Patrick Cordle, Ron Weingarten
BIC Corp.

Edward Stopher
Boehl Stopher & Graves LLP

Robert VandePol
Crisis Care Network

Matt Lauck
Emerson Climate Technologies

David Baker
Law Offices of David H. Baker LLC

Curtis Smith
Medcor Inc.

Bill Poche
Tempur-Pedic International Inc.

Robert Shine
Zurich Financial Services Group

ADDING IT UP: Curtis Smith of Medcor breaks down the potential costs of workers' compensation claims.

became much more aware that your business continuity doesn't really happen unless you take care of your people as well."

VandePol offered the acronym ACT (acknowledge, communicate and transition) to assist leaders in helping their employees after a tragedy:

Acknowledge. Acknowledge what happened, deliver information with sensitivity, acknowledge the impact and appreciate a wide range of reactions. "It demonstrates leadership strength, aligns you with them and gives a platform for going forward together," he said.

Communicate. Communicate competence and compassion, summarize what has happened and present objective and credible information. "You can be compassionate and competent at the same time. And one, you lead your people and take care of people; that's the bottom line. That's the right thing to do. Two, you help people move toward productivity much faster," he said.

Transition. "Never leave people stuck; transition to a future focus," VandePol said. "Always point people in a direction so they know where to go.

"Whether you're here because you care about the bottom line, or you're here because you care about your people, I think those two objectives go hand in hand," he said.

"It goes back to [the fact that] your name's on it, so you're responsible."

STEVE BURKHART
BIC Corp.

VandePol's message was one of several critical communications during the three-day forum, sponsored by BIC Corp., Emerson Climate Technologies and Medcor. In addition to insights on taking care of people, the forum provided a look into protecting the bottom line while staying current on regulations and insurance information.

Regulation and Profit

One message, delivered by Steve Burkhart, vice president and assistant general counsel of Shelton, Conn.-based BIC, was particularly alarming. Retailers not up to date on the latest regulations face more than a simple fine: They could go to jail.

According to Burkhart, as more products are manufactured overseas, consumers have turned to local retailers and distributors for such lawsuits, with jail time a potential outcome. (Nearly half of all consumer products sold in the United States are imported, with 42% coming from China.)

He cautioned that understanding liability is particularly important as c-store retailers turn to private-label products to enhance their brand, provide consumers with lower cost products and increase traffic. "But it goes back to [the fact that] your name's on it, so you're responsible. And the consumer's going to identify it with you," he said.

So be prepared, Burkhart said, identifying several critical steps: Control purchasing up front; require proof of compliance to standards and regulations, dealing only with reputable and financially responsible manufacturers and distributors; and obtain indemnity and sufficient insurance coverage from highly rated companies.

"Maybe you can't have a plan for everything, but it's just the process of planning that prepares you for whatever happens," he said. "One of the outcomes of doing the planning is you get the message out to your team."

Another key is stay abreast of regulations. According to David Baker, president of the Law Offices of David H. Baker LLC in Washington, D.C., some recently passed regulations requiring retailer attention involve lead, phthalates (chemicals used to soften plastics) and toys.

Since 1976, lead in surface coatings and total lead per component have been limited to 600 parts per million (PPM). But in a matter of weeks, on Aug. 14, lead in surface coatings will drop to 90 PPM and total lead will drop to 300 PPM. An additional requirement for third-party laboratory testing has been stayed until Feb. 10, 2010. According to Baker, products would need to be grounded up to test for total lead by weight.

"You can imagine how expensive that is to do, which is really why it was stayed—because nobody could do it. There weren't enough laboratories, there wasn't enough money and, of course, think about the timing," he said.

For phthalates, there is some science that backs the concern that they can cause reproductive harm, he said. Toys and child-care articles are subject to less than 0.1% standard for three phthalates: DEHP, DBP and BBP. Toys that can be placed in the mouth and child-care articles also are subject to an interim ban on three other phthalates: DINP, DIDP and DnOP. "This is a big deal, because nobody anticipated that phthalates would be added," he said.

"I'm sure there's no one in this room that is a retailer that is compliant with all of these," Baker said. Down the road, there also will likely be less variety and fewer products because of the cost of testing, he said.

Minding Food

Foodservice is another area fraught with rules. Matt Lauck, marketing director of Emerson Climate Technologies, pointed out that the U.S. Food and Drug Administration is reviewing food code guidelines, with a renewed focus on time/temperature control for product safety. Updates are expected later this year.

Lauck acknowledged that many of the conference attendees had foodservice programs. "It's not surprising, since it's a great revenue generator for you, with a lot of margin in it. [It's] the right way to set yourself apart from some of the competition and draw in new customers," he said.

However, he said, "I think the problem with that is there's a whole other side of things you have to deal with in terms of the risk exposure that you bring on yourself.

"If you've got too many defrost cycles going on, not enough refrigeration going on, people overloading cases, it's probably going to affect your product quality. It's probably also going to have an impact on energy cost and potentially your maintenance costs."

Lauck suggested using an integrated control system like Emerson's offering, which helps monitor refrigeration and can be used remotely. Such systems can also reduce energy expenditure, no small feat because energy costs have increased nearly 25% in the past eight years. "You see very quickly that convenience stores, from a per-square-foot basis, use a lot of energy. They use more than any of our other customers," he said.

A typical 3,000-square-foot convenience store spends $53,000 in refrigeration a year and $17,000 in HVAC. An integrated control system could net a retailer savings of more than $14,000 per store annually, he said.

CAPTIVE AUDIENCE: Rob Forsyth of FKG Oil explained the ins and outs of insurance captives to attendees, calling a captive a "better mousetrap."

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MATT LAUCK
Emerson Climate Technologies

Insurance Insights

With more than 5.7 million claims last year costing U.S. businesses $80 billion, Curtis Smith, executive vice president of McHenry, Ill.-based Medcor Inc., said it was difficult for him to understand why people wouldn't take the "vaccine for claims" that his company offers. Medcor intervenes at the moment an injury occurs to determine the severity and the best course of action. Smith therefore decided to look at the insurance market to gain a more comprehensive understanding of workers' compensation claims.

Two of the side effects of workers' compensation claims are price

Learn From the Past

While the hope certainly is that neither of these items from recent history repeats itself, lessons can be learned from both the positive way the Alon Oil refinery explosion was handled and the pitfalls in preventing the Standard Gravure shootings.

Alon Oil Refinery Explosion

Jeff Morris, CEO of Alon Oil, was on vacation with his family on Feb. 18, 2008, when he heard that there had been an explosion at his company's Big Spring, Texas, oil refinery.

He quickly sprang into action, chartering a plane to assess the damages and contacting the insurance company to start the process, human resources to deal with the community and the information technology (IT) group to develop a place to work and deal with employees, customers and the community. Because the explosion happened on President's Day, the office building was empty. And plant workers were also spared, due to following their training, according to Morris. "They did what they should do, not what they want to do. What they should do is leave in a situation like this to protect themselves," he said.

He had the chartered plane do two passes over the refinery. "Fortunately, I could see we had something there to work with." In a town of 20,000 people, Alon paid 27% of the tax basis; knowing for certain that there were no fatalities, he knew what the first question would be: Are you going to rebuild? And $425 million and 2.2 million man hours later, that's just what the company did, thanks in part to Morris' efforts.

Alon's turnaround showed the importance of communication. By 4 p.m. the refinery had an 800 number set up for questions or concerns. By 8 p.m., four insurance adjusters were on site. And counselors were also available that night for anyone who needed help dealing with the explosion. Morris also communicated openly with OSHA, providing complete access to employees, and ended up with only $16,000 in fines. Employees, concerned about their jobs, were told that they could show up for work the next morning, thanks to the efforts of the IT department. And customers were contacted and told that their contracts would be honored, with Alon paying any additional freight charges. Morris also made sure to meet with one of the adjusters, which may be one of the reasons that the company received a full payout within only 10 months. "The most critical thing was to convince him that we were going to come back. He had come convinced that we were done, and I convinced him that we had a plan," he said.

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increases and margin erosion, he said: "There's no question that if you end up settling a multimillion-dollar claim that some of that money is coming off margins." Smith said the average cost per claim has gone up 200%, which is "way more than medical inflation, which is way more than normal inflation." But the frequency of claims has been declining 3.5% every year for a decade. "What that means is that preventative things that employers are doing—safety, automation and slip-resistant shoes—are working," he said.

The typical medical-only claim ranges from $2,000 to $9,000, with a lost-time case ranging anywhere from $8,000 to $20,000 on average, he said. And Smith's breakdown of medical bills showed that "everybody is taking a slice of the pie along the road," such as medical cost management, scanning and digitizing of the bill, preliminary bill review, advanced bill review, PPO fees, out of network fees, etc. So what's an employer to do? "The things that you can control as an owner, an employer or operator are the things that go on in your store," he said. "The best financial outcome is to not have a claim."

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>
> **DAVID BAKER**
> *Law Offices of David H. Baker LLC*

Rob Forsyth of Belleville, Ill.-based FKG Oil spoke of an alternative to the traditional insurance schematic. Insurance captives provide insurance to and are controlled by their owners. He has been a part of the Archway Insurance Ltd. captive for the past 12 years and calls the concept a "better mousetrap." The group—which handles workers' compensation, automobile and general liability insurance—has 80 members. "The big deal about captives, in a nutshell, is that I fund my own losses. There's a little bit of risk sharing going on, but if there wasn't a bit of risk sharing, it wouldn't be an insurance product," he said.

A third-party actuary looks very carefully at loss history and determines how much money a company should set aside to fund losses. Spending less in claims than the actuary's prediction, either by preventing the accidents to begin with or by handling the claims well, means he can basically collect that premium money back, plus interest.

For someone who's interested in more traditional insurance, however, Robert Shine, executive vice president of Zurich Financial Services Group, explained about insurance cycles. A "hard market," he explained, is when prices are going up; "soft market" means there's a lot of competition and

Learn From the Past

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Standard Gravure Shootings

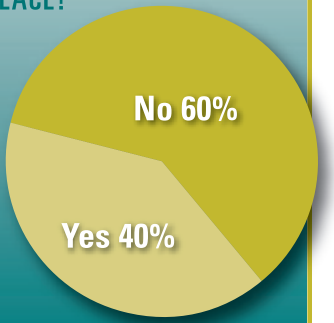
Edward Stopher, attorney at law for Louisville-based Boehl Stopher & Graves LLP, spoke with attendees about a lawsuit in which he defended Eli Lilly and Co., manufacturer of Prozac, after 47-year-old Joseph Wesbecker killed eight people, injured 12 and committed suicide at his workplace while on Prozac. The shootings at Louisville-based Standard Gravure, a printing company, occurred on an "otherwise peaceful sunny ordinary September morning," according to Stopher. And he said the media missed the real message by focusing on Prozac. (The jury decided 9-3 in Eli Lilly's favor.) "And the real message was that there were lots of indicators that this was going to occur. And that good sense and judgment would have prevailed."

Among the missed signals were Wesbecker's frequent threats to come into the plant and kill people. He threatened several employees individually and even brought a gun to work one day. He showed a co-worker a handwritten list of seven or eight names of people he planned to kill. He bragged about loading a model airplane with explosives and flying it into the building. He also purchased an AK-47, two days after another killer had used the same weapon to gun down schoolchildren in Stockton, Calif. He even told his best friend at work about his intentions to kill everybody in the plant, who then reported it—without serious action being taken.

"The old saying that if they threatened it they won't do it is not at all reliable. Threats and disclosures of plans to commit mass murder always or nearly always precede such events," Stopher said. Another lesson is that the plant should have suspected that criminal conduct was more than just a possibility. The plant's video camera had not been operational over the previous seven years. And Wesbecker was allowed to come in every month to pick up a disability check, despite his frequent threats. "Why not mail him the check?" Stopher said. He also said a public-address system could have warned employees during the 45-minute shooting spree.

"Most assuredly, we can't prevent these events from occurring in totality. It simply can't be done," he said. "However, there is some reasonable level of precaution or security that I think might have something to do with possibly delay, dulling or making it a little more difficult. And perhaps it might not have occurred."

HAS THERE EVER BEEN AN INCIDENT OF VIOLENCE AT YOUR WORKPLACE?



Source: Kraft/CSP Daily News Poll. Based on 105 respondents.

prices are going down: "Right now we're down toward the bottom of the cycle, a soft cycle. Prices have been going down for five years."

Evaluations

Shine, whose background is in product liability, offered some suggestions for evaluating insurance companies, in addition to looking at their financial strength through financial rating companies such as Moody's and Standard & Poor's.

Investment strategies. "If you read through financial reports, and if you're good at doing that, you can probably figure out where they've got their money invested and how conservative or aggressive they are," Shine said. "The more aggressive they are, the more money they can make, but if they are more conservative, there's less risk involved."

Underwriting strategy. Shine suggested asking why a company is in your market.

Experience in product and industry segments. There are people who get into an industry for a period of time, and then get out. "I would talk to the broker about your company's history, and if this is something they have a lot of expertise in," he said.

Availability of services. Some companies do a better job than others and that part of your premium goes to that capability, Shine said.

Claims reputation. "You should ask, 'Have you had a client who's had a claim with this company?' " he said. "I think it's very important for you to really understand the claims capabilities and claims philosophy."

Shine also had some suggestions for beginning discussions with a company. Periods of heavy activity should be explained; perhaps your company didn't have procedures in place, or is working through some issues. "If you don't address your own issues or [aren't] being honest with them about it, they're thinking you're not telling them the bad stories or, even worse, [that] you're not telling them because you don't understand yourself," he said.

From there, it's time to make the purchase decision. Some things to ask yourself are how important price is, whether you're looking for a long-term relationship and which components (e.g. financial stability, underwriting stability, claims and loss control) are more important than price. ■