



WHY EIM?
page 2-4

*ADDRESSING MARIJUANA
USE IN THE WORKPLACE*
page 5-6

*EIM RECOGNIZES
RETIRING BOARD MEMBER,
DARRYL BRADFORD*
page 7

*EIM RECOGNIZES
RETIRING BOARD MEMBER,
JOE RIGBY*
page 8



*CONGRATULATIONS ON
STAFF ANNIVERSARIES*
page 9

*2017 EIS ANNUAL PAC
CONFERENCE UPDATE*
page 10-11



RMIM ANNOUNCEMENT
page 11

FINANCIAL REPORT
page 12



EIM senior managers regularly reach out to our Member Companies to better understand their risk management needs and to reinforce the value proposition associated with EIM membership. Through this process we are continually reminded that the historical factors that prompted EIM's creation are as relevant today as they were when EIM was formed in 1986. Three overriding factors—capital efficiency, resiliency and stability—set EIM apart from other insurers, and have enabled EIM to effectively meet Member Company risk management needs for more than three decades.

Capital Efficiency

EIM enjoys a number of competitive advantages that benefit our Members. Foremost of these is the efficient use of capital. As an excess insurer with a minimum attachment of at least \$25 million, EIM can prudently invest premiums in a more diversified fashion than underlying carriers. This enables EIM to place a sizable portion of its portfolio into higher returning asset classes. The end result is that EIM's investment portfolio, on average, returns more than twice the return seen by underlying carriers. Equally important, EIM's excess position allows the company to hold premium (and earn investment income) for a longer time period, further enhancing returns on the investment portfolio.

Moreover, as a follow form excess insurer, EIM operates with a low expense ratio, which has averaged less than 10% for decades. It is not unusual to see underlying carriers with expense ratios more than two or three times that of EIM. This lower expense ratio translates into a lower cost of capital which is passed directly to our Member Companies in the form of competitive premium rates, responsive claim payments, and consistent distributions.

Equally important is the fact that EIM's excess of loss risk profile enables the company to obtain more competitive pricing on its reinsurance purchasing. The lower cost of reinsurance reduces net operating expenses and, again, translates into lower excess insurance premium charged to our Member Companies.

Overall, EIM's efficient use of capital results in lower premiums, higher investment returns and enhanced claims payment capabilities.

(continued on page 3)

WHY EIM?

page 2-4

**ADDRESSING MARIJUANA
USE IN THE WORKPLACE**

page 5-6

**EIM RECOGNIZES
RETIRING BOARD MEMBER,
DARRYL BRADFORD**

page 7

**EIM RECOGNIZES
RETIRING BOARD MEMBER,
JOE RIGBY**

page 8

**CONGRATULATIONS ON
STAFF ANNIVERSARIES**

page 9

**2017 EIS ANNUAL PAC
CONFERENCE UPDATE**

page 10-11

RMIM ANNOUNCEMENT

page 11

FINANCIAL REPORT

page 12

(continued from page 2)

Resiliency

In addition to capital efficiency, EIM's excess position enables it to better withstand and more quickly recover from extreme underwriting and/or investment events. History proved this fact when, in 2008, the insurance industry experienced unprecedented investment and underwriting losses. EIM saw its investment portfolio drop by 22%, or nearly \$180 million, in a year where its net loss ratio was 134%. The overall impact of these two occurrences was a 35% drop in EIM's surplus from \$667 million to \$467 million.

Many companies, including a large number of primary insurers, saw their credit ratings lowered following the 2008 investment market downturn. Some were forced to quickly reposition their investment portfolios, liquidating equity investments at a loss while seeking the safe harbor of fixed income instruments. When equities began their recovery in late 2009 (and as they have continued to recover through 2017), these companies missed the market upswing.

For those forced to jettison equities in favor of fixed income instruments, the specter of unfavorable underwriting results loomed large, forcing them to also rely heavily on reinsurance—purchasing

greater limits at lower attachment points—all in an effort to forestall any further surplus deterioration.

With the repositioned investment portfolio and heavy reliance on reinsurance partners, many primary insurers missed the stock market recovery, while ceding a disproportionate share of underwriting profits to reinsurers. Both of these factors suppressed recovery, greatly extending the time period needed to return capital and surplus back to pre-2008 levels.

In contrast, EIM retained its investment portfolio intact (particularly its equity positions) despite the 2008 market plunge, reaping the benefits of Wall Street's rebound that has steadily continued over the last eight years. Additionally, EIM was able to maintain its existing reinsurance program, prudently protecting downside risk while remaining positioned to retain profits from strong underwriting years. These factors enabled EIM to grow

surplus, on average, by more than 15% a year between 2009 and 2016, rising from \$467 million in 2009 to just over \$1 billion at year-end 2016. Equally significant is the fact that EIM maintained its A.M. Best rating of "A" throughout this recovery period.



(continued on page 4)

WHY EIM?
page 2-4

**ADDRESSING MARIJUANA
USE IN THE WORKPLACE**
page 5-6

**EIM RECOGNIZES
RETIRING BOARD MEMBER,
DARRYL BRADFORD**
page 7

**EIM RECOGNIZES
RETIRING BOARD MEMBER,
JOE RIGBY**
page 8

**CONGRATULATIONS ON
STAFF ANNIVERSARIES**
page 9

**2017 EIS ANNUAL PAC
CONFERENCE UPDATE**
page 10-11

RMIM ANNOUNCEMENT
page 11

FINANCIAL REPORT
page 12

(continued from page 3)



In short, EIM's unique market position enables it to not only weather extreme results on both the underwriting and investment fronts, but to quickly recover from such events without the need to reposition its investment portfolio or heavily rely on reinsurance. While others struggled, EIM rebounded quickly, primarily because of the advantages attendant to its excess of loss risk profile.

Stability

Capital efficiency and resiliency underpin a stable operating platform from which to provide consistent pricing, meaningful limits, reliable coverage terms and conditions, and prompt claim payments. EIM premium increases have averaged only 2-4% over the last eight years, while product offerings, limits, and coverage terms and conditions have remained constant. In addition,

more than \$1.5 billion of EIM's \$2.5 billion inception-to-date gross claim payments have been paid since 2008. Furthermore, EIM has provided regular annual Member Company distributions (\$103 million since 2012), and either enhanced existing coverages or offered new forms of coverage if and when needed by risk managers. The latter is evidenced by the introduction of cyber coverage in 2014.

Simply stated, EIM is uniquely positioned to anticipate, respond to and fulfill our Member Company evolving risk management needs. Capital efficiency, resiliency to tail events and stability over the long term are all compelling answers to the question, "Why EIM?"

For more information contact:
Scott Goodell, President and Chief
Executive Officer, at sgoodell@eimltd.com



WHY EIM?
page 2-4

**ADDRESSING MARIJUANA
USE IN THE WORKPLACE**
page 5-6

**EIM RECOGNIZES
RETIRING BOARD MEMBER,
DARRYL BRADFORD**
page 7

**EIM RECOGNIZES
RETIRING BOARD MEMBER,
JOE RIGBY**
page 8

**CONGRATULATIONS ON
STAFF ANNIVERSARIES**
page 9

**2017 EIS ANNUAL PAC
CONFERENCE UPDATE**
page 10-11

RMIM ANNOUNCEMENT
page 11

FINANCIAL REPORT
page 12



The landscape regarding marijuana in the United States is constantly changing. Usage is higher, public opinion is shifting, and state law continues to evolve. What do

these changes mean for EIM member companies?

State Law Changes. The past twenty years have seen significant legal changes regarding marijuana—not in the federal law, where marijuana and its cannabinoids remain illegal in any amount and for any purpose under Schedule I of the Controlled Substances Act. The legal changes have all taken place at the state level.

California became the first state to authorize medical marijuana in 1996. Since then, state laws have continued to evolve. As of this writing, all but four (4) states have authorized some circumstances where marijuana or low THC products are legal.

- Medical marijuana is legal in comprehensive programs in twenty-nine (29) states, plus D.C., Guam, and Puerto Rico;
- Low THC products, also known as CBD, are legal for more limited medical use in seventeen (17) states; and
- Included in the states mentioned above are eight (8) states plus D.C. where adult “recreational” use of marijuana is legal and twenty-two (22) states where possession of small amounts of marijuana is decriminalized.

Marijuana in the Workplace. In many cases, employers concerned about how to deal with marijuana use by employees can rely on the existing framework governing alcohol use by employees. Alcohol has been legal in most jurisdictions since the repeal of Prohibition in 1933. Even though alcohol is a legal intoxicant, most employers have successfully navigated the waters concerning its use by employees. With one notable exception discussed below, marijuana legalization generally does not require employers to radically change their existing approach to managing workplace safety issues, creating and enforcing substance abuse policies, or addressing concerns about liability to third parties for actions of an impaired employee. However, because the law is changing so rapidly in this area, employers are advised to review their existing policies and procedures frequently and to keep abreast of legal changes.

Medical marijuana requires special consideration. Unlike alcohol, medical marijuana is prescribed by medical professionals, often to alleviate the symptoms of specific diseases or conditions, or to alleviate the side effects of other drugs used to treat such diseases or conditions. In this regard, an employer’s instincts may be to look for guidance from their existing policies regarding employees’ use of legally prescribed opiates and opioids. Many state laws, either explicitly or by judicial interpretation, will support this approach. For example, Florida’s recently enacted law authorizing medical marijuana explicitly states:

This section does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy. This section does not require an employer to accommodate the medical use of marijuana in any workplace or any employee working while under the influence of marijuana. This section does not create a cause of action against an employer for

(continued on page 6)

WHY EIM?

page 2-4

*ADDRESSING MARIJUANA
USE IN THE WORKPLACE*

page 5-6

*EIM RECOGNIZES
RETIRING BOARD MEMBER,
DARRYL BRADFORD*

page 7

*EIM RECOGNIZES
RETIRING BOARD MEMBER,
JOE RIGBY*

page 8

*CONGRATULATIONS ON
STAFF ANNIVERSARIES*

page 9

*2017 EIS ANNUAL PAC
CONFERENCE UPDATE*

page 10-11

RMIM ANNOUNCEMENT

page 11

FINANCIAL REPORT

page 12

(continued from page 5)

wrongful discharge or discrimination. Marijuana, as defined in this section, is not reimbursable under chapter 440 [the “Workers’ Compensation Law”].

FLA. STAT. § 381.986(15).

In other states, including California, Colorado, Montana, New Mexico, Oregon and Washington, courts have upheld an employer’s right to discipline and/or terminate employees for testing positive for or admitting to marijuana use.

An Exception to Consider. Not all states have taken this approach, however. Currently, nine (9) states have medical marijuana laws that provide specific protection from adverse employment actions for individuals authorized to use medical marijuana. These states are Arizona, Connecticut, Delaware, Illinois, Maine, Nevada, New York, Minnesota and Rhode Island. Recent cases have affirmed the viability of wrongful termination lawsuits on this basis, including *Callaghan v. Darlington Fabrics and the Moore Co.*, 2017 WL 2321181 (R.I. Super. 2017).

What about workplace safety? This is a likely concern for EIM members whose employees may be working hands-on with electricity and natural gas, or the systems that control them. How do the states with medical marijuana workplace protection laws deal with this issue? The *Callaghan* case cited above provides some insight, as the employer in that case raised workplace safety as a reason why the workplace protection law should not apply. The court refused to allow this defense under the facts of that case, noting that Rhode Island law elsewhere prohibits any person from performing “any task under the influence of marijuana when doing so would constitute negligence or professional malpractice.” *Callaghan*, 2017 WL 2321181 at *9 (citing R.I. Gen. Laws § 21-28.6-7(a)(1)). In other words, a Rhode Island

company cannot refuse to hire or terminate a medical marijuana user solely for the reason that they are a medical marijuana user. The same company, however, would not “have to tolerate” an employee who “came to work under the influence and [was] unable to perform his or her duties in a competent manner.” *Id.*

The Rhode Island approach puts employers in a difficult position. It requires them to carry the burden of proving that the employee, (1) is under the influence of medical marijuana while at work and, (2) as such, is unable to perform the employee’s duties at the level of care that someone of ordinary prudence would exercise under the same circumstances. Rhode Island’s neighbor, Connecticut, meanwhile, only requires an employer to prove that the employee is under the influence while at work. See Conn. Gen. Stat. § 21a-408a(b)(2).

Conclusion. The patchwork of conflicting laws and rapidly changing law in this area means that employers will need to remain vigilant in their monitoring of the law and nimble in adapting policies that will react to the changes. Unfortunately, employers can also expect additional litigation as the boundaries to the issues cited above get further defined.

Editors

Forrest L. Strachan, PJM Interconnection



Kevin R. Wolff, EIM General Counsel and Secretary



WHY EIM?

page 2-4

ADDRESSING MARIJUANA
USE IN THE WORKPLACE

page 5-6

EIM RECOGNIZES
RETIRING BOARD MEMBER,
DARRYL BRADFORD

page 7

EIM RECOGNIZES
RETIRING BOARD MEMBER,
JOE RIGBY

page 8

CONGRATULATIONS ON
STAFF ANNIVERSARIES

page 9

2017 EIS ANNUAL PAC
CONFERENCE UPDATE

page 10-11

RMIM ANNOUNCEMENT

page 11

FINANCIAL REPORT

page 12





Darryl Bradford
**Retired Executive Vice President
and General Counsel
Exelon Corporation**

Darryl Bradford was appointed to the EIM Board in January, 2011, and elected in May of the same year. Since then, he has watched EIM institutionalize many of its business processes and procedures.

In addition, Darryl's influence and experience has extended to numerous EIM committees, including Audit, Claims, Nominating and Strategic Planning. He has also served as a past Chair

of the Claims Committee and currently serves as Chair of the Audit Committee.

During Darryl's tenure on the EIM Board, we have greatly benefitted from his wealth of experience—most of it gained from numerous key roles held with Exelon Corporation and its subsidiaries. Just prior to his recent retirement in January, 2017, Darryl served as Exelon's Executive Vice President and General Counsel.

Exelon is now the leading U.S. competitive energy provider with approximately \$40 billion in annual revenues. In total, Exelon's

utilities deliver electricity and natural gas to approximately 10 million customers in central Maryland (BGE), Northern Illinois (ComEd), Southeastern Pennsylvania (PECO), the District of Columbia and Northern Maryland (Pepco), Delaware and Eastern Maryland (Delmarva), and Southern New Jersey (Atlantic City Electric).

Regarding his service on the EIM Board, Darryl explains, "I have enjoyed watching EIM mature with a constant focus on how to improve member services. It has done this by institutionalizing many business processes and procedures with specific metrics to hold management accountable." As an integral member of the Board, Darryl has helped EIM improve services, grow member surplus to over one billion dollars and deliver consistent annual distributions to our members.

Since his recent retirement from Exelon, Darryl has traveled to Ireland, Mexico and on safari in Africa. He plans to visit Portugal and England in the coming year. In between travels, Darryl spends his time at the gym and enjoying his new baby granddaughter, born in December, 2017.

Please join us in thanking Darryl for his valuable contributions to the EIM Board. We wish him a wonderful and rewarding retirement.

WHY EIM?

page 2-4

*ADDRESSING MARIJUANA
USE IN THE WORKPLACE*

page 5-6

*EIM RECOGNIZES
RETIRING BOARD MEMBER,
DARRYL BRADFORD*

page 7

*EIM RECOGNIZES
RETIRING BOARD MEMBER,
JOE RIGBY*

page 8

*CONGRATULATIONS ON
STAFF ANNIVERSARIES*

page 9

*2017 EIS ANNUAL PAC
CONFERENCE UPDATE*

page 10-11

RMIM ANNOUNCEMENT

page 11

FINANCIAL REPORT

page 12



Joseph M. Rigby

**Retired Chairman,
President and CEO
Pepco Holdings, Inc.**

Since his appointment in November, 2010, and election in May, 2011, Joe Rigby has played an instrumental role on the EIM Board. Joe ends his tenure having served and/or chaired several EIM Board committees. These include past service on the Claims and Investment Committees, as well as recent service on the Audit, Nominating and Strategic Planning Committees. In addition, Joe has chaired the

Nominating, Reinsurance and Strategic Planning Committees over the years.

EIM has benefited immensely from Joe's vast energy and longtime accounting experience. His distinguished career spans 37 years with Pepco Holdings, Inc. (PHI), where he recently retired as the company's Chairman, President and CEO. During his time there, Joe was responsible for overseeing the day-to-day operations of utility service to roughly 1.9 million customers in Washington, D.C., suburban Maryland, Southern New Jersey and the Delmarva Peninsula.

Beginning in March, 2008, Joe was elected Executive Vice President and Chief Operating Officer for Pepco with additional responsibility

over the competitive energy business, Conectiv Energy and Pepco Energy Services. A year later, he was elected President and CEO. In May, 2009, Joe became the company's Chairman of the Board.

On the education front, Joe holds a Bachelor of Science degree in Accounting from Rutgers University—where he now serves on the Board of Governors—and an MBA from Monmouth University.

When asked about his service to the EIM Board, Joe says, "Serving on the board of an organization that plays such a key role in the energy industry is a great honor."

He also fondly recalls working with and getting to know EIM's many outstanding people and his fellow colleagues on the Board. "As with anything in life, it is the relationships you make along the way that create lasting memories. I have been blessed to have played a small role for an organization that provides such an important value to its members."

EIM is equally honored for Joe's dedication to our Board. We are grateful for his vast contributions and wish him all the best in his retirement. Joe plans to travel and spend time with his wife, kids and grandkids.

WHY EIM?

page 2-4

*ADDRESSING MARIJUANA
USE IN THE WORKPLACE*

page 5-6

*EIM RECOGNIZES
RETIRING BOARD MEMBER,
DARRYL BRADFORD*

page 7

*EIM RECOGNIZES
RETIRING BOARD MEMBER,
JOE RIGBY*

page 8

*CONGRATULATIONS ON
STAFF ANNIVERSARIES*

page 9

*2017 EIS ANNUAL PAC
CONFERENCE UPDATE*

page 10-11

RMIM ANNOUNCEMENT

page 11

FINANCIAL REPORT

page 12

CONGRATULATIONS TO JANE MURPHY AND BYRON WHITMAN ON THEIR STAFF ANNIVERSARIES



Jane Murphy
Office Manager/Event
Planner

Jane Murphy recently celebrated 20 years with EIM. Jane joined the organization in October, 1997, as a receptionist, and now serves as Office Manager and Event Planner. Her current responsibilities include correspondence between the building management and EIM, assisting with claims, and the planning of all Board of Director meetings, Insurance Advisory Committee meetings and the EIM Risk Managers Information Meeting held in February.

Before joining EIM, Jane worked for Hercules Tire & Rubber Company in Findlay, Ohio as an executive secretary. She then headed to Tampa for a position with the National Association of Credit Management. Eventually, Jane found her way to EIM where, as she sees it, “I get to work with great people doing what I love to do.” She is particularly proud of overseeing the entire remodel of the EIM office suite.

In her free time, Jane enjoys relaxing with her husband, Clayton, and their two black labs at their lake house. She also trains for marathons and half marathons, which may explain her ability to go the distance while running the EIM office for the past 20 years.



Byron Whitman
Controller

Byron Whitman just completed his first five years with EIM. Byron started as Accounting Manager in 2012, then steadily worked his way up to his current position as Controller. He’s now responsible for tax and regulatory compliance, capital modeling and reserves analysis, as well as accounts payable.

Additionally, Byron serves as liaison for EIM’s annual audit process. His ad hoc projects include transitioning our document management system to ImageRight, driving the enterprise risk management process and assisting in analysis of EIS and ECM accounts.

Prior to joining the EIM team, Byron had obtained a Master’s Degree in Accounting from the University of South Florida, and gained valuable accounting experience at KPMG and The AAA Auto Club Group. He deftly juggles the various tasks sent his way, while still managing to spend quality time with his wife and two kids, and running, just in case he decides to give into peer pressure from the Office Manager to compete in a marathon.

WHY EIM?

page 2-4

*ADDRESSING MARIJUANA
USE IN THE WORKPLACE*

page 5-6

*EIM RECOGNIZES
RETIRING BOARD MEMBER,
DARRYL BRADFORD*

page 7

*EIM RECOGNIZES
RETIRING BOARD MEMBER,
JOE RIGBY*

page 8

*CONGRATULATIONS ON
STAFF ANNIVERSARIES*

page 9

*2017 EIS ANNUAL PAC
CONFERENCE UPDATE*

page 10-11

RMIM ANNOUNCEMENT

page 11

FINANCIAL REPORT

page 12



Energy Insurance Services, Inc. (EIS) held its 2017 Annual Program Advisory Committee (PAC) Conference in late October at the Hyatt House Hotel in Charleston, South Carolina. We had a record attendance of 96.

The highlight of the conference was dinner Tuesday evening at the Lowndes Grove Plantation, as we celebrated EIS's 25th anniversary on the banks of the Ashley River. During the evening, we honored several of our EIM Member Companies that have continuously conducted business with EIS for over twenty years. The companies honored were FirstEnergy, AEP, DTE, SCANA, CMS, Xcel, OGE, ONEOK and OneGas.

It is not uncommon for utility and energy services companies to have enjoyed long term relationships with mutual insurers. EIS was established by EIM 25 years ago to address risk issues faced by EIM Member Company risk managers. These companies represent those that were involved in the formation of EIS and its earliest Participants. The insurance and benefit staffs, past and present, of these Members have distinguished

themselves by utilizing alternative risk financing to realize unique and sustainable cost saving solutions over a substantial period of time.

Several very special guests were recognized for their professional contributions to EIS: Gerry Hayes, retired Partner at Baker McKenzie; Robert Schmid, retired EIS COO; and Karin Landry of Spring Consulting. We also recognized Margaret Walsh, retired Benefits Director, OGE for her work as chair of MBP 15; Roger Olsen, Director Corporate Insurance, DTE; and Cathy Hundley, Principal Analyst, AEP for their vision and contributions to EIS through their companies' participation over the years.

The purpose of the annual conference is threefold:

1. Conduct PAC meetings for active Mutual Business Programs (MBPs) to review underwriting and investment performance, operational activities, future direction and utilization of the program.
2. Provide presentations by subject matter experts on current risk issues and the captive insurance arena.
3. Provide a networking opportunity for the PAC representatives, service providers and other constituents, including investment managers, reinsurers, intermediaries, bankers, legal representatives, auditors and South Carolina regulators.

This year's presentation topics were consistent with the issues discussed at recent domestic and international captive conferences. These topics included cyber risk, medical stop loss and reputation risk. From an operational perspective, attendees heard about captive optimization. The captive tax update covered the emerging development of what constitutes risk distribution

(continued on page 11)

WHY EIM?

page 2-4

ADDRESSING MARIJUANA USE IN THE WORKPLACE

page 5-6

EIM RECOGNIZES RETIRING BOARD MEMBER, DARRYL BRADFORD

page 7

EIM RECOGNIZES RETIRING BOARD MEMBER, JOE RIGBY

page 8

CONGRATULATIONS ON STAFF ANNIVERSARIES

page 9

2017 EIS ANNUAL PAC CONFERENCE UPDATE

page 10-11

RMIM ANNOUNCEMENT

page 11

FINANCIAL REPORT

page 12

(continued from page 10)

and its implications of additional efficiency within a captive insurer. Slide decks from the Roundtable and General Sessions are posted on our website.

Beyond the business and information sessions, our attendees enjoyed networking in the comfortable environs of the best hospitality Charleston offers. Planned activities included golfing at Wild Dunes Harbor Course, touring historic Charleston by carriage, a culinary walking tour and kayaking on Shem Creek at the mouth of Charleston harbor.

Taniyka Ragland is now planning our 2018 conference. Details and dates will be forthcoming.

EIS, a subsidiary of EIM, is a sponsored captive insurer licensed in South Carolina. Our captive manager, Energy Captive Management, LLC, is also a subsidiary of EIM. EIS Participants are EIM Members that have elected to alternatively finance risk by insuring and reinsuring risk via a contractual arrangement with EIS in a protected cell. Our protected cells are referred to as Mutual Business Programs (MBP).

Inquiries regarding EIS should be directed to Randy Martin, Vice President - Chief Operating Officer, at rmartin@eimltd.com



THE 2018 ANNUAL EIM RISK MANAGERS INFORMATION MEETING

DATE: February 25-27, 2018

LOCATION: Hyatt Regency, Grand Cypress, Orlando

Exciting News...Energy Insurance Mutual has an official app. With the app you can view all the details of the upcoming meeting, get up to the minute updates and enjoy communicating with colleagues.

1. Go to your device app store, search for Energy Insurance Mutual and download.
2. Select the 2018 RMIM event and join.
3. Sign up with your email address and the password is **insurance**.
4. Take a moment to create your profile.
5. Enjoy!

Should you have any questions or problems, please do not hesitate to contact Taniyka Ragland (tragland@eimltd.com) or Katie Imm (kimm@eimltd.com).

Looking forward to a great meeting! See you in Orlando.

WHY EIM?

page 2-4

ADDRESSING MARIJUANA USE IN THE WORKPLACE

page 5-6

EIM RECOGNIZES RETIRING BOARD MEMBER, DARRYL BRADFORD

page 7

EIM RECOGNIZES RETIRING BOARD MEMBER, JOE RIGBY

page 8

CONGRATULATIONS ON STAFF ANNIVERSARIES

page 9

2017 EIS ANNUAL PAC CONFERENCE UPDATE

page 10-11

RMIM ANNOUNCEMENT

page 11

FINANCIAL REPORT

page 12



Q3 2017 FINANCIAL REPORT

Balance Sheets

(Expressed in Thousands of U.S. Dollars)

	<u>09/30/2017</u>	<u>12/31/2016</u>
Assets		
Investments	\$ 1,576,889	\$ 1,515,197
Cash and cash equivalents	61,975	39,696
Reinsurance recoverables on losses	265,423	354,487
Prepaid reinsurance premiums	31,175	39,444
Premiums receivable	7,630	8,186
Income taxes recoverable	-	726
Other assets	837	1,361
Total assets	<u>\$ 1,943,929</u>	<u>\$ 1,959,097</u>
Liabilities and policyholders' surplus		
Reserves for losses and loss adjustment expenses	\$ 568,158	\$ 673,877
Unearned premiums	115,703	121,825
Reinsurance premiums payable and funds held	9,212	8,574
Net deferred tax liability	93,611	72,365
Policyholder distributions payable	-	25,000
Borrowings on line of credit	-	16,500
Accounts payable and accrued expenses	11,149	12,589
Income taxes payable	7,059	-
Total liabilities	<u>804,892</u>	<u>930,730</u>
Members' account balance	937,261	861,300
Accumulated other comprehensive income	201,776	167,067
Total policyholders' surplus	<u>1,139,037</u>	<u>1,028,367</u>
Total liabilities and policyholders' surplus	<u>\$ 1,943,929</u>	<u>\$ 1,959,097</u>

Statements of Income and Comprehensive Income

(Expressed in Thousands of U.S. Dollars)

	<u>09/30/2017</u>	<u>09/30/2016</u>
Underwriting revenue		
Net premiums earned	\$ 103,655	\$ 106,705
Other underwriting income	1,807	1,808
Total underwriting income	<u>105,462</u>	<u>108,513</u>
Underwriting expenses		
Net losses and loss adjustment expenses	37,215	70,851
Policy acquisition costs	1,462	1,768
Administrative expenses	7,610	7,700
Total underwriting expense	<u>46,287</u>	<u>80,319</u>
Income from underwriting	59,175	28,194
Investment income	46,695	45,120
Income before policyholders' distribution and income taxes	105,870	73,314
Policyholder distribution	-	-
Income before income taxes	105,870	73,314
Income tax expense	29,909	19,921
Net income	<u>75,961</u>	<u>53,393</u>
Other comprehensive income	34,709	19,402
Comprehensive income	<u>\$ 110,670</u>	<u>\$ 72,795</u>

EIM's Members Report is electronically published four times per year. Comments, questions, and suggested subjects from Members are sincerely welcomed.

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