

**WORKING TOGETHER:** OSHA shifting enforcement mindset toward cooperation - PAGE 8

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AUGUST 2017

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**LIABILITY  
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## TRAFFICKING NIGHTMARES

Hospitality industry accused  
of turning a blind eye to  
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Business Insurance is published by  
Business Insurance Holdings.



## COVER STORY

The hospitality industry must rethink its approach to service, privacy and security as it faces growing allegations that it's not doing enough to combat sex trafficking in hotels and motels. Even upscale enterprises are finding they are not immune from the trend and face growing liability concerns. **PAGE 16**

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The insurance industry has a larger role to play in climate-related resilience than just paying claims, says scientist Allie Goldstein. **PAGE 27**

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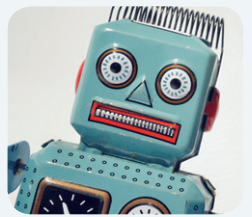
### ALBERT BENCHIMOL

Axis Capital Holdings Ltd. recently announced plans to acquire Lloyd's of London specialty insurer Novae Group P.L.C., as well as the formation of its own Lloyd's managing agent for syndicate 1686, bolstering its presence in the London market. President and CEO Albert Benchimol discusses the company's strategy of building positions of "relevance and scale" in specialty markets, along with other topics. **PAGE 14**



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Even robots can be accident-prone, as one model discovered when it literally took a dive. **PAGE 30**



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# Directors may feel the heat on climate issues

BY JUDY GREENWALD

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Climate change is not yet a major issue for directors and officers, but experts expect it to become one.

The most significant portent of this may be a climate change resolution approved by a majority of Irving, Texas-based Exxon Mobil Corp. shareholders earlier this year over the firm's opposition. A putative class action securities lawsuit has also been filed against the company over the issue.

Despite President Donald Trump's recent withdrawal from the Paris climate accord, the issue is widely expected to demand more of directors and officers' attention. This will be particularly true for companies that leave "carbon footprints," including oil and gas companies, coal companies, utilities, auto manufacturers and transportation firms.

But policyholders of all types also may be vulnerable to catastrophic damage to their properties that is the result of climate change, say observers. The issue also has a potentially significant impact for insurers in terms of their exposure to catastrophe-related claims and their own investment portfolios, experts say.

In addition to withdrawing from the Paris climate accord, President Trump, who has disparaged the concept of climate change, signed an executive order in March that seeks to curb the federal government's enforcement of climate change regulations. But experts expect any regulatory vacuum to be filled by other regulators, particularly state attorneys general.

Experts say there would be coverage under company D&O liability policies for securities class action litigation.

"When you combine the political motivations of the institutional investors and the (nongovernmental organizations) and



REUTERS

President Donald Trump, questioning temperature changes, announces his decision that the United States will withdraw from the landmark Paris climate agreement in the Rose Garden of the White House in June.

the litigation incentives of the plaintiff lawyers ... there's an opportunity for this to become more of an issue than it is now," said Kevin LaCroix, executive vice president of RT ProExec, a division of R-T Specialty L.L.C., in Beachwood, Ohio.

The most likely exposures are going to be disclosure-based claims, with allegations directors "did not disclose the likely impact of carbon emissions or climate change issues on the company's operation and profitability," said Dan A. Bailey, a member of Bailey Cavalieri L.L.C. in Columbus, Ohio.

For example, if a hurricane leads to unprecedented flooding that damages physical plants, causing a financial impact, questions will arise as to "how well could these have been foreseen, what disclosures should have been made," said Joseph Monteleone, senior counsel with Rivkin

Radler L.L.P. in Hackensack, New Jersey.

Meanwhile, increased activity by non-federal regulators "could get messy" for policyholders, said Rob Yellen, New York-based executive vice president of Willis Towers Watson P.L.C.'s FINEX North America. "States have their own environmental laws and they have their own environmental organizations," which means policyholders could find themselves fighting battles in many places as a situation moves away from strong central mechanisms, Mr. Yellen said.

The issue could affect insurers directly, experts say. "If climate change produces more extreme weather events, it could have significant implications for property insurers," said Mr. LaCroix.

The Kansas City, Missouri-based National Association of Insurance Commissioners "has been very active in

encouraging insurance companies to be more proactive in describing the impact on their financial health and performance from extreme weather events caused by climate change," he said.

Key Coleman, a Philadelphia-based director with accounting and advisory firm Marcum L.L.P., said the NAIC push in this area was initiated by the California Insurance Department when Insurance Commissioner Dave Jones requested not only that insurers disclose their carbon-associated investments, but also asked them to divest their coal investments.

"That was like a line in the sand," which was adopted by six states, Mr. Coleman said: California, Connecticut, Montana, New Mexico, New York and Washington.

Meanwhile, 12 Republican attorneys general and Kentucky Gov. Matt Bevin sent a letter to Mr. Jones in June threatening legal action over the initiative, calling it "misguided."

Climate-related shareholder litigation is likely to be covered by D&O insurance, say experts. "In many ways, it's a very conventional securities class action lawsuit," said Mr. LaCroix.

"I'd say that most companies have modified their D&O policy forms to ensure that coverage is clear in the event of such shareholder suits, notwithstanding the standard pollution exclusion language," said Peter M. Gillon, a partner with Pillsbury Winthrop Shaw Pittman L.L.P. in Washington. "To the extent a company has not made those modifications on their policies, they should be looking at that seriously now."

Referring to regulatory investigations, Sarah Downey, New York-based U.S. D&O product leader for Marsh L.L.C., said some policies provide broader preclaim inquiry coverage, but "that isn't always a given. You have to negotiate for it."

## PROACTIVE SHAREHOLDERS TAKE ON CLIMATE CHANGE

Exxon Mobil Corp. shareholders earlier this year approved a climate change-related resolution, and observers say others may follow.

In May, a majority of shareholders of Irving, Texas-based Exxon Mobil approved a nonbinding shareholder resolution, which had been opposed by the company, to disclose the impact on its business of compliance with global climate change guidelines.

Shareholders that supported the resolution included the Sacramento-based California Public Employees' Retirement system, the largest public pension plan in the United States with

more than \$300 billion in investments.

A CalPERS spokesman said the pension fund has filed 17 shareholder letters this year supporting climate risk reporting proposals with the U.S. Securities and Exchange Commission.

Separately, the New York and Massachusetts attorneys general are investigating the oil company's climate-related policies. New York Attorney General Eric Schneiderman labeled as a possible "sham" Exxon Mobil's method to assess the potential impacts of climate change policies on global energy demand.

Similar climate-related resolutions were approved earlier in May by shareholders

of Houston-based Occidental Petroleum Corp. and Allentown, Pennsylvania-based energy company PPL Corp.

Meanwhile, in November, a purported class action lawsuit was filed in U.S. District Court in Dallas in *Pedro Ramirez Jr. v. Exxon Mobil Corp. et al.* charging that Exxon's climate change policies have led its stock to be artificially inflated.

"There's no question that activist shareholders are looking at potential avenues for compelling their companies to take more affirmative steps to reduce their impact on climate changes or to reduce their carbon footprint," said Peter M. Gillon, a partner with Pillsbury

Winthrop Shaw Pittman L.L.P. in Washington, referring to that lawsuit.

Observers also pointed to San Ramon, California-based Chevron Corp.'s Feb. 23, 2016, 10-K financial report to the SEC, which states "increasing attention to climate change risk has resulted in an increased possibility of governmental investigations and, potentially, private litigation against the company."

Observers say this is the first time a major publicly-traded fossil fuel company has publicly admitted that investors' climate change lawsuits pose a risk to its profits.

Judy Greenwald



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## Interest in political risk coverage spikes

BY MATTHEW LERNER

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Capacity in the political risk and trade credit insurance market continues to grow, driven as much by capital deployment decisions by insurers as it is by political turmoil and global security and credit needs.

Political risk insurance has long offered protection against seizure of assets by foreign governments, and trade credit insurance protects sellers of goods against non-payment due to insolvency and political events, among other things.

Political and economic turmoil from Venezuela to the Crimea has sparked more interest in the products, although by the time a country reaches a crisis point, most insurers will have already withdrawn capacity for most risks in that nation.

For insurers, the increased interest in the coverages helps them diversify their risks.

“The political risk trade credit sector is viewed as substantially uncorrelated with the traditional property/casualty product suite,” said Dan Sussman, president of political risk and trade credit for Ironshore Inc. in New York. “As a result, that diversification is seen as attractive even though pricing dynamics are certainly not a hard-market scenario. They are adequate to allow underwriters to bring in revenue and earnings streams that fit very well in a multiline insurance platform.”

And political risk historically has been a profitable line of business, which makes it attractive to insurers operating in an overall



REUTERS

Protesters display an effigy of President Rodrigo Duterte during a march toward the Philippine Congress ahead of the president’s State of the Nation address in Quezon City in July. Political and economic turmoil worldwide has driven interest in political risk insurance.

soft property/casualty insurance market, said James Brache, Denver-based deputy managing director of credit and political risk for Zurich North America.

“The political risk market tends to be countercyclical to the property/casualty market,” said John Minor, director of crisis management and political risk for Aon Risk Solutions in Chicago. “So, when rates soften in the property/casualty market, a lot of that capital seeks a better return and ends up in the political risk market.”

Arthur J. Gallagher & Co.’s Report and Market Update: Credit and Political Risk

Insurance, published annually, pegs “total possible maximum per risk” market capacity for political risk and trade credit risk at \$2.9 billion as of January 2017, up 6.3% from the prior year.

“There has definitely been a dramatic increase in the general awareness of political risk and structured credit insurance,” Nick Ollerenshaw, executive director of structured credit and political risk for Arthur J. Gallagher in London, said via email. “So, we’re seeing a clear increase in both supply and demand, with the market’s maximum per risk capacity having more than tripled over the last 10 years.”

“There’s no question in the last two to three years there is more interest,” said Rafael Docavo-Malvezzi, senior vice president and global head of risk, political risk credit and bond for XL Insurance America Inc., a unit of XL Group Ltd. “Basically, geopolitical realities are more complex.”

“There continues to be pretty significant demand for political risk insurance from companies including banks, as well as corporates doing business in high-risk countries, companies involved with infrastruc-

ture projects, such as power, oil and gas, water concessions or other large capital projects in areas like sub-Saharan Africa, Middle East and certain Latin American countries,” said Mr. Minor.

Demand for coverage is also coming from companies with manufacturing facilities in markets such as Brazil, China, Russia and Vietnam, he said.

“There’s definitely been an uptick in the number of inquiries,” particularly over the past 12 months, although pricing remains soft, said Jamie Lee, head of political risk in the Americas for American International Group Inc. in New York.

Pricing remains soft, sources said. “There’s been a general downward trend year on year in pricing across our portfolio for the past three years,” said Mr. Sussman. “It’s been notable but not extremely material. We think the margin compression has slowed down, and we’ve seen broadly adequate pricing across our portfolio.”

The number of claims has increased over the past several years, however.

“We definitely have had over the past five to seven years more political violence claims than we had prior to that,” Mr. Brache said, adding that one of the largest political violence claims Zurich paid in recent years was “a couple of years ago” in the Ukraine when separatists damaged the assets of an insured.

AIG’s Ms. Lee said that despite recent headlines, market conditions are now favorable for companies seeking political risk and trade credit insurance, with terms extending out as long as 15 years in some cases.

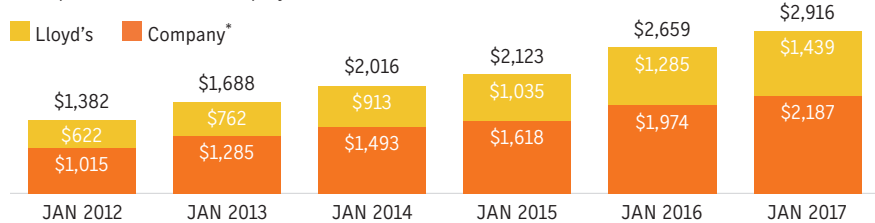
Some policyholders are looking for wider coverage. “Supply chains, I think, are looked at much more closely right now because of increased uncertainties on the global trade front,” said Mr. Minor. “We’re seeing a number of inquiries coming in just looking at supply chain issues.”

Others see opportunity in a market with room for further penetration.

“Our market only covers 10% of global trade and investment flows. The pie is there. So how do we get a bigger slice?” Mr. Docavo-Malvezzi said.

### AVAILABLE MARKET CAPACITY

Total possible maximum for project risks, in millions of dollars



\*Totals do not double count the Lloyd's of London and Company lines of Aspen, AWAC, Channel, Chubb, Endurance, Liberty, Markel, Starr, Tokio Marine HCC and XL Catlin that can be written via either their Lloyd's syndicate or company.  
Source: Arthur J. Gallagher London CPRI Market Update, January 2017

### CREDIT CONCERNS EMERGE FOR RETAIL SECTOR IN DEVELOPED ECONOMIES

The term political risk and trade credit insurance may conjure images of emerging markets, exotic locales and crisis situations, but stress can occur even in the most well-developed and peaceful economies and nations.

The retail sector, for example, is experiencing financial stress in some developed economies, raising

concerns over the credit profile of some companies in the sector.

In a June note following the bankruptcy filing of San Francisco-based The Gymboree Corp., Fitch Ratings Inc. in Chicago said retail difficulties would continue and listed several well-known retailers facing significant challenges, including J. Crew Group Inc. and Sears Holdings Corp.

“Though not a sector in which Ironshore is significantly involved, the retail sector throughout the developed world has gone through a significant review in light of the growth of online shopping,” said Dan Sussman, president of political risk and trade credit for Ironshore Inc. in New York. “You have a lot of concerns about retail in the U.S. and U.K.”

As with any sector that appears to display stress, some insurers are taking a harder look at retail risks.

“Retail is a bit of a dicey space to be in these days,” said James Brache, deputy managing director of credit and political risk for Zurich North America in Denver. “So, we are taking a more selective approach to that.”

Matthew Lerner

# Broker M&A surge continues

BY TIMOTHY J. CUNNINGHAM AND DANIEL P. MENZER

Announced and reported mergers and acquisitions for U.S. and Canadian insurance agents and brokers were up 10% during the second quarter of 2017 compared with the same period in 2016, at 135 vs. 122, but showed a decline compared with the first quarter of 2017, which had 185.

Despite the decrease from the first quarter of this year, M&A activity during the second quarter was still the second-most active quarterly period and was eight transactions more than the second quarter of 2015, the next highest period at 127 deals. The streak of 100-plus transactions per quarter now extends to 11 quarters in a row, with only one quarterly period prior to this streak with more than 100 deals announced, and that was from the end of 2012 before the capital gains tax rate increased.

On a rolling 12-month basis, the total number of announced transactions reached 539, up from 456 for all of 2016, an 18% increase, while the six-month total was 320 transactions compared with 237 last year.

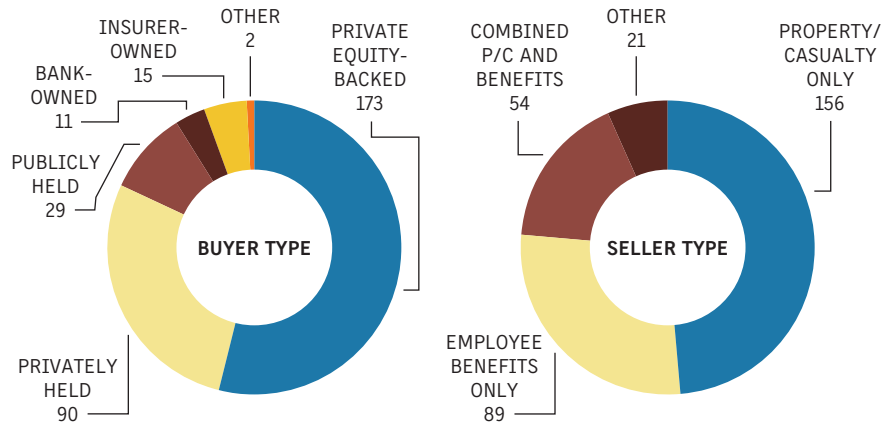
Through six months, Caledonia, Michigan-based Acrisure L.L.C. reported the most activity with 48 closed transactions, up from 28 last year. Alera Group, the newly formed private equity-backed firm based in Deerfield, Illinois, was second with 27 completed transactions, including 24 effective Jan. 1. Chicago-based Hub International Ltd. was third, completing 21 transactions, followed by Columbus, Ohio-based Broadstreet Partners Inc. and Chicago-based Arthur J. Gallagher & Co., both with 18 announced transactions. NFP Corp. was the only other buyer with double-digit transactions in 2017, finishing the first half with 10 announced deals, up from two during the first half of 2016.

Acrisure and Alera reported the biggest increases in the number of deals compared with the first six months of 2016, up by 20 and 27 deals respectively, recognizing that Alera was new in 2017. Also increasing by five or more transactions in 2017 were NFP, to 10 from two; Broadstreet, to 18 from 12; and Saskatoon, Saskatchewan-based newcomer Palliser Insurance Co. Ltd., to five from zero. There was only one firm experiencing a decrease of five or more transactions, with Lake Mary, Florida-based AssuredPartners Inc. down to 12 announced acquisitions from 17.

Private equity-backed buyers as a group accounted for 173, or 54%, of 2017's reported transactions compared with 116, or 49%, in 2016's first half, spread across 19 different buyers; this was somewhat distorted by the 24 Alera transactions.

## BUYERS AND SELLERS

Private equity-backed firms were the biggest buyers of insurance agencies and brokerages in the first half of 2017, while property/casualty-only firms were the biggest sellers.



Source: Optis Partners L.L.C.

## TOP BUYERS

Most acquisitive insurance agency and brokerage buyers in the U.S. and Canada in 2017 first half

Buyer	Company type	First half 2016	First half 2017
Acrisure L.L.C.	Private-equity backed	28	48
Alera Group	Private-equity backed	0	27
Hub International Ltd.	Private-equity backed	21	21
BroadStreet Partners Inc.	Private-equity backed	12	18
Arthur J. Gallagher & Co.	Publicly held	16	18

Source: Optis Partners L.L.C.

## TOP PUBLICLY HELD BUYERS

Most acquisitive publicly held brokerages in 2017 first half

Buyer	First half 2016	First half 2017
Arthur J. Gallagher & Co.	16	18
Brown & Brown Inc.	4	3
Marsh & McLennan Agency L.L.C.	3	4
CBIZ Benefits & Insurance Services Inc.	1	1
Jardine Lloyd Thompson Group P.L.C.	0	2

Source: Optis Partners L.L.C.

Privately owned brokerage acquisitions increased to 90 transactions and 66 unique buyers in 2017, up from 71 acquisitions from 58 separate buyers in the first half of 2016. This represents the highest six-month total of both the number of transactions and the number of unique buyers from the privately owned buyer group. Of the 90 private transactions in 2017, 11 firms completed multiple transactions totaling 35 deals, while the remaining 55 transactions were completed by 55 other firms. For the private equity-backed group, five deals came from firms with only one transaction, while the other 168 transactions were executed by 14 other buyers.

Eight of the top 10 buyers in 2017 were private equity-backed firms, with Gallagher and OneDigital as the two other firms in the top 10, although Atlanta-based OneDigital Health and Benefits will no longer be classified as privately owned after it was sold by Fidelity National Financial Inc. to private

equity-backed New Mountain Capital in June. This concentration of private equity-backed buyers in the top 10 list has been growing since we began tracking in 2008, when only four of the top 10 — Hub, USI Insurance Services L.L.C., Broadstreet Partners Inc. and Ascension Insurance Inc. — had private equity backing.

Property/casualty brokers continued to dominate the sell-side M&A landscape, with 156 of the 2017 transactions, followed by employee benefits brokers at 89. Agencies selling both property/casualty and employee benefits coverages saw 54 deals thus far in 2017, with 21 "other" transactions made up of managing general agents, third-party administrators and other seller formats. Aside from the "other" category, each of the seller segments registered their highest number of deals for any six-month period.

There were 23 firms reporting five or more transactions in the 12-month peri-

od ending June 30, up from 16 in 2016 and 17 in 2015, but the top 10 buyers in each of the past three years accounted for 53% of the total number of transactions. In 2008, the top 10 buyers only accounted for 42% of the total number of transactions, illustrating the increased concentration of buyer activity over the past 10 years.

In the second quarter of 2017, there were several significant transactions:

- Partners Specialty Group L.L.C., the ninth-largest wholesale firm, sold to AmWINS Group Inc. in April.
- Aon P.L.C. sold its human resources consulting division, Aon Hewitt, to Blackstone Group L.P. in May.
- Wells Fargo & Co. announced the sale of its commercial insurance business, Wells Fargo Insurance Services USA Inc., to USI in June.
- Fidelity National Financial sold its interest in OneDigital to New Mountain Capital in June.

There also were several large notable transactions that were announced or closed during the first quarter of 2017:

- Marsh & McLennan Agency acquired J. Smith Lanier & Co. (No. 30 on the *Business Insurance* ranking in 2016) in January.
- Keenan & Associates (No. 22 in 2016) was acquired by AssuredPartners in March.
- Capacity Group of Cos. (No. 39 in 2016) sold to EPIC in March.
- USI's private equity partner, Onex Corp., announced it would be selling its stake in USI to KKR & Co. L.P. and a Canadian pension fund in a transaction valued at over \$4 billion in March.
- NFP received a capital infusion of \$750 million from HPS Investment Partners to join Madison Dearborn Partners as the private equity sponsor.



Timothy J. Cunningham, left, and Daniel P. Menzer, right, are principals at Optis Partners L.L.C., a Chicago-based investment banking and financial consulting firm that serves the insurance distribution sector. Mr. Cunningham can be reached at 312-235-0081 or [cunningham@optisins.com](mailto:cunningham@optisins.com); Mr. Menzer can be reached at 630-520-0490 or [menzer@optisins.com](mailto:menzer@optisins.com).

## OSHA pursues employer collaboration

BY GLORIA GONZALEZ

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A long-established government program intended to encourage workplace safety is getting a facelift as the U.S. Occupational Safety and Health Administration appears to be seeking a more collaborative relationship with employers.

OSHA's Voluntary Protection Program turned 35 last month, and the agency is looking to reshape the VPP so it can grow, continue to highlight employers demonstrating safety and health excellence, including long-time participants, and leverage partner resources.

But some experts say this effort is likely to be challenged by an inherent distrust in the employer community after eight years of aggressive enforcement outside of the program under the Obama administration.

Employers that have implemented effective safety and health management systems and maintain injury and illness rates below national averages for their industries are eligible to join the program. Potential participants must undergo a rigorous on-site evaluation by OSHA inspectors and volunteer industry safety and health professionals. VPP participants are re-evaluated every three to five years and are exempt from regularly scheduled OSHA inspections, although they are still subject to inspections and citations related to complaints about hazards and must comply with reporting requirements for injuries.

Oshkosh, Wisconsin-based construction general contractor CR Meyer, which operates in the highly competitive pulp and paper industry, became the first contractor to achieve Star status in terms of injury and illness rates under the VPP in 2006 after participating in the VPP Challenge Pilot and Mobile Workforce Demonstration programs, which help employers take a proactive approach to occupational safety and health.

"I don't believe we need to reinvent the wheel all over again and think that we're going to make it better," said Fred Ride-



out, CR Meyer's risk management director. "It was pretty darn good when it was working. There was a lot of effort put into the model that they created, and it worked. Bring it back to life."

The program started in 1982 with 11 participants and peaked at 1,720 federal VPP participants in 2010. But it has declined every year since, according to OSHA.

Under the Obama administration, it appeared that the VPP was put on the back burner, as compliance assistance specialists shifted toward writing up potential hazards, Mr. Rideout said.

"When the emphasis changed from user-friendly to citations and issuing mon-

etary penalties and trying to effect behavioral change through penalties, the cooperation was diminished," he said. "Now, OSHA has to work hard to regain the trust that once was there with the compliance assistance specialists. They need to provide and support a system that welcomes people into the VPP process and gives the reassurance that it will be a worthwhile effort to undertake."

Concerns have also been raised about a 2013 OSHA policy memo that stated a VPP participant's status would be changed to inactive if a fatality or catastrophic incident triggered an enforcement inspection, and that the participant could lose VPP status if the inspection resulted in a fatal-

ity being deemed work-related, a willful violation or placement in OSHA's Severe Violator Enforcement Program.

"I'd be curious if the new administration would be taking a second look at that," said Avi Meyerstein, Washington-based partner with Husch Blackwell L.L.P. "For some companies, there was concern they have invested to be in the program, they've had a stellar safety record, and they might be at risk for being kicked out because of a single incident."

Employers skittish about participating cite the concern that OSHA will use the audits to impose citations and penalties.

"I think there is an inherent distrust in the construction industry about OSHA's true intentions," Trent Cotney, lawyer with his own firm of Trent Cotney P.A. and Tampa-based general counsel for the Florida Roofing & Sheet Metal Contractors Association, said during a public meeting in Washington last month. "To increase participation, one of the things OSHA needs to do is increase collaboration."

Some employers are concerned that the "government will come down harder" on VPP participants if they have a workplace incident, Mr. Meyerstein said.

"I haven't seen that," said Michael Maddox, executive director of the Falls Church, Virginia-based Voluntary Protection Programs Participants Association Inc. "They're not harder on VPP participants."

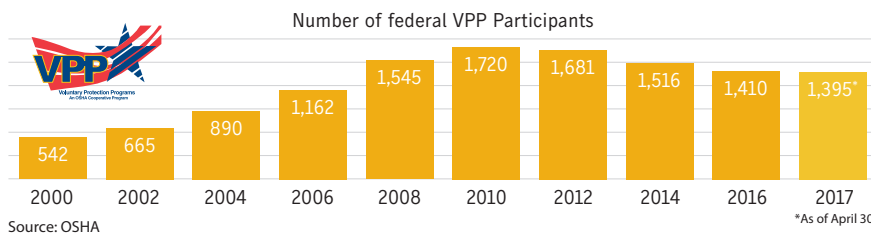
A key indicator of future direction for the VPP and other cooperative programs will be OSHA's ultimate budget funding, experts say. OSHA received \$68.4 million in compliance assistance funding in fiscal years 2015 and 2016, down from \$76.4 million in 2012, but a House Appropriations Committee proposal would fulfill the administration's request to raise that to \$72.4 million for fiscal year 2018.

Funding is critical because employers have been frustrated by lengthy wait times.

"The key to us is growing the program," Mr. Maddox said. "There's a big backlog of applications for new sites sitting there. It's critical to get these caught up."

### VPP BY THE NUMBERS

Voluntary Protection Program participation nearly tripled at the federal level under President George W. Bush, but participants declined under President Barack Obama.



## SAFETY AND HEALTH PROGRAM FACES CHALLENGES

A program that allows the U.S. Occupational Safety and Health Administration to tap industry expertise to help conduct safety inspections can be effective, but efforts to expand the list of volunteers will likely be limited since it's their employers and not the agency footing the bills.

The Special Government Employee Program was established in 1994 to allow industry employees who have worked at

Voluntary Protection Program-certified workplaces to work alongside OSHA during on-site evaluations of other program members or potential members. The program benefits OSHA by supplementing its on-site evaluation teams, but the participation of these volunteers is funded by their companies. Currently, there are about 1,500 licensed SGEs in the VPP, according to OSHA.

Michael Wood, administrator of the Oregon Occupational Safety and Health Division of the Department of Consumer and Business Services in Salem, said during a public meeting in Washington last month that he was initially skeptical of the SGE program but now supports it.

"It's ... been my experience that SGEs sometimes are a lot tougher graders than some of my compliance officers," he said.

Fred Rideout, risk management director for Oshkosh, Wisconsin-based CR Meyer, said it would be "tough" to try to increase SGE participation because they have full-time jobs and often wear multiple hats. Taking days or a week off to help with an audit at another company is a challenge, particularly because his company pays for his salary and hotel expenses, he said.

Gloria Gonzalez

**LUBA** (loo•bah)

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## Database tools battle opioid crisis

JOYCE FAMA KINWA

[jfamakinwa@businessinsurance.com](mailto:jfamakinwa@businessinsurance.com)

The opioid epidemic in workers compensation has placed a spotlight on prescription drug monitoring programs, which aim to track the prescribing and dispensing of controlled substances and prevent abusive tactics such as doctor hopping and pharmacy shopping.

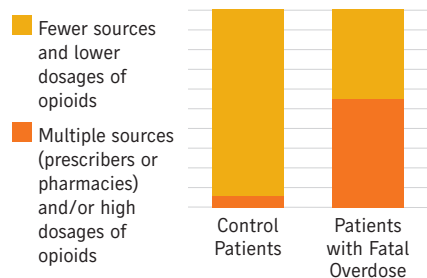
PDMPs are unique in that they can compile all controlled substance prescriptions, regardless of which pharmacy dispensed the prescription, who is issued the prescription or the source of payment, experts say. “They collect data from pharmacies, usually in a day or at most a week, and prescription databases allow prescribers and other users to see what patients have been prescribed in terms of controlled substances. ... They are very comprehensive databases that allow us to track and allow prescribers to see what their patients have been prescribed over the last few months and this is important because prescribers often don’t know what other prescribers have been giving their patients,” said Thomas Clark, Waltham, Massachusetts-based clearinghouse manager and senior research associate at The Prescription Drug Monitoring Program and Technical Assistance Center at Brandeis University.

In the United States, 49 states currently have operational PDMPs and last month Missouri Gov. Eric Greitens signed an executive order directing the Missouri Department of Health and Senior Services to create a prescription drug monitoring program. Prior to the executive order, Missouri was the only state that did not have a PDMP.

But a key challenge to creating a nationwide network of databases is that there is a lot of variation in each state’s regulatory language, said Dr. Dan Hunt, Lansing, Michigan-based corporate medical director at AF Group.

### OPIOID OVERDOSE DEATHS

Opioid overdose deaths are associated with multiple sources and/or high dosages.



Source: Shatterproof, Prescription Drug Monitoring Programs: Critical elements of effective state legislation, 2016



“Some states like Michigan allow more than just providers to have access, and in other states it’s just the providers (physicians, nurse and practitioners),” he said.

AF Group’s pharmacy team relies on access to PDMPs in helping injured workers — access that is available to them due to Michigan offering access to third-party carriers, he said. Tennessee and Arizona have similar regulatory language, he said.

Different studies have found a correlation between PDMPs and a decrease in the number of prescriptions or opioid-related deaths. A 2017 study by Cambridge, Massachusetts-based Workers Compensation Research Institute found a possible association between an increase in PDMP use and a reduction in frequency of opioid use among injured workers, but WCRI said it cannot claim causality or that these decreases were based solely on PDMPs.

Department of Health and Senior Services to create a prescription drug monitoring program. Prior to the executive order, Missouri was the only state that did not have a PDMP.

time. That requirement forces doctors to use these programs,” said Thomas Clark, Waltham, Massachusetts-based clearinghouse manager and senior research associate at The Prescription Drug Monitoring Program and Technical Assistance Center at Brandeis University.

According to a 2016 report by New York-based nonprofit organization Shatterproof, which is focused on addiction issues, only 14% of prescribers request patient information from their state PDMP prior to considering issuing a prescription for an opioid.

There is also a disconnect between states when it comes to information sharing. The National Association of Boards of Pharmacy’s PMP InterConnect attempts to link state PDMPs to share information. Currently, there are 43 states working with InterConnect.

“There is a large focus on scalability as well as interoperability or interconnectivity ... as more states create technically proficient platforms to store data and allow it to be accessed, used, reported etc. ... The next step beyond that is to share data across state lines,” said Mark Pew, Duluth, Georgia-based senior vice president of product development at Prium.

Mandated use of PDMPs could make a difference, according to experts. “That transparency where prescribers can see doctor hoping, pharmacy shopping, day supply etc., the doctors who are treating work comp patients are also going to be able to see that because they are mandated to access it,” Mr. Pew said. “That likely will change prescribing behavior. It has changed prescribing behavior in Florida, Tennessee, New York, Kentucky and all these states that have mandated the use of respective prescription drug monitoring programs. They have shown when they have mandated use, prescribing behavior changed.”

States that have a robust program along with PDMPs will see the most improvement, experts say.

“Robust means they have different formularies in place, they are asking providers to check their PDMPs, and they have prohibited prescribers from dispensing opioids without checking a PDMP,” said Reema Hammoud, Detroit-based director of clinical pharmacy at Sedgwick Claims Management Services Inc. “Different states have different rules in place, but the point is if a state has a really robust program, they have a little bit higher decrease in opioids compared to other states that just have a PDMP.”

### ENHANCEMENTS MAKE DRUG MONITORING TOOLS MORE ACCESSIBLE

States such as Massachusetts and New Hampshire have launched or enhanced already existing prescription drug monitoring programs, according to a 2016 Injured Workers Pharmacy report.

In 2016, Massachusetts spent \$6 million on upgrades, including a system that is easier for prescribers to access and launched the Massachusetts

Prescription Awareness Tool, the PDMP for Massachusetts.

“There are many ways to enhance a prescription drug monitoring program and states are engaged in a continuous process of enhancement. Massachusetts and some other states now require that prescribers look at PDMP data before prescribing opioids for the first

delegates other than prescribers to view PDMP data, visual updates, data summaries, and graphical displays of prescription information that would make it easier to use for the prescriber. It could also include prescribers being able to log in to their medical records and to access prescription data in the medical record.

Joyce Famakinwa

# States target effective treatment protocols for back injuries

BY KRISTEN BECKMAN  
AND JOYCE FAMAKINWA

As back injuries continue to be a top concern in workers compensation, states such as Ohio look to implement best practices that address long-term outcomes for injured workers.

A new rule from the Ohio Bureau of Workers' Compensation aims to discourage lumbar fusion surgery and the use of opioids for workers with lower back injuries. The rule requires that workers undergo at least 60 days of comprehensive conservative care, including physical therapy, chiropractic care, rest, anti-inflammatories, ice and other nonsurgical remedies, before considering surgical options.

Conditions that require immediate intervention, such as spinal fractures, tumors, infections and functional neurological deficits, are exceptions to the rule, the bureau said.

This is standard practice, according to Dr. Richard Deyo, Portland, Kaiser Permanente professor of evidence-based family medicine and professor of medicine at Oregon Health and Science University in Portland. Most clinicians would recommend a course of nonsurgical therapy for most patients with back pain prior to considering surgery, he said.

"The most common situation in work-related back pain is simply that patients have pain and often little in the way of actual neurological injury — usually not fractures of the spine, but simply back pain — and in that situation, it makes a lot of sense to try aggressive nonsurgical therapy first," Dr. Deyo said. "This is true for patients who have back pain alone, and even for patients who have a herniated disk in most cases. It's worth waiting that length of time because patients will improve over that length in time without surgery."

Employer groups such as The



Ohio Manufacturers' Association have expressed support for the rule, which in their view reinforces return to work and prevents potentially unnecessary surgical procedures.

"Our goal when it comes to the workers compensation system in Ohio is to make sure that our employees get the best medical treatment possible and get back to work as soon as possible," said Rob Brundrett, Columbus, Ohio-based director of public policy services for The Ohio Manufacturers' Association. "The rule change, speaking and working with the bureau ... their take is that this is best practices."

While Ohio's specific waiting period for spinal fusion surgery may be unique, other states have taken other steps to discourage a rush to surgery and to promote conservative treatments prior to allowing fusion surgery for lower back injuries.

Washington, which like Ohio is a monopoly workers comp state where employers must buy workers comp insurance from a state-operated insurance fund rather than private insurers, encourages conservative

care for back pain and injuries prior to authorizing lumbar fusion surgery except in cases of spinal fractures or dislocation, infection or deformities, according to guidelines published by the Washington State Department of Labor and Industries. Only after conservative care fails to improve symptoms does the agency allow lumbar fusion surgery.

The agency's spinal fusion guidelines note that more than half of Washington workers who received lumbar fusion surgery through the state's comp program reported that their pain and functional recovery were no better afterward, and that about two in three workers who received it remained disabled two years after surgery.

In 2016, Wyoming, another monopoly workers comp state, implemented a spine treatment protocol based on two spine studies sponsored by the Wyoming Legislature in 2011 and 2013. The protocol encourages six weeks of conservative treatment beginning within 48 hours of the injury, along with ongoing assessment of the patient's progress and

education of the injured worker. The protocol provides monetary incentives to both injured workers and providers for completing six weeks of conservative therapy and makes all treatment during the six-week protocol nonchargeable to employers.

The state's action on spinal fusion surgeries was developed because the state observed higher rates of back injuries, related surgeries and medical costs than in other states, in part because of a greater percentage of workers in energy, construction and physical job functions, according to the agency's website. The protocol is taken from evidence-based medical guidelines that show most back strains and sprains resolve within six weeks with conservative treatment.

Other states effectively require a waiting period by mandating physicians follow guidelines such as the Work Loss Data Institute's Official Disability Guidelines when treating patients for occupational injuries.

At least 14 states require physicians to follow mandatory guidelines that address treatment for lumbar spine injuries, said Barry Lipton, practice leader and senior actuary at the Boca Raton, Florida-based National Council on Compensation Insurance Inc.

Some of these mandatory guidelines effectively create a waiting period for surgery even where not explicitly stated, Mr. Lipton said. Texas, for example, requires doctors to wait up to four weeks before ordering X-rays or MRIs in routine back injury cases that don't raise red flags. Because this type of imaging would be required before a fusion surgery, a de facto waiting period is created, he said.

The idea behind imposing waiting periods for imaging is because most back injuries resolve on their own with conservative treatment and because imaging rarely changes prescribed treatment, Mr. Lipton said.

## TREATMENT OUTCOMES

Injured workers' response to various back pain treatments within two years

32%

chance of an injured worker no longer being disabled two years after lumbar fusion

26%

of back pain patients treated with fusion could return to work

67%

of workers that were treated nonsurgically could return to work

41%

increase in narcotic use in fused patients

76%

of fused patients continued narcotic use for over two years

Source: Ohio Bureau of Workers' Compensation

## 60-DAY WAIT UNLIKELY TO SPARK LAWSUITS AGAINST EMPLOYERS

Ohio's rule imposing a 60-day waiting period for lumbar fusion surgeries in workers compensation claims involving lower back injuries is unlikely to spur any legal challenges against the Ohio Bureau of Workers' Compensation or employers, legal experts say.

Ohio is a limited sovereign immunity state, which provides for tort liability in the event of negligent actions, but experts

say it would be difficult for injured workers to demonstrate that passage of a rule is negligent or actionable.

"In terms of liability, the key focus is whether during the 60-day comprehensive therapy period, the employee was injured or the lower back injury exacerbated as a result of the delay in fusion surgery," Sara Jodka, Columbus, Ohio-based of counsel for law firm Dickinson Wright P.L.L.C.,

said in an email.

She noted the delay could lengthen recovery time and keep employees out of work and in the state comp system longer than if they had surgery in the first place.

"At the end of the day though, the state and employer are already paying the medical bills and salary continuation as a result of the initial lower back injury, so it is difficult to see what additional claim the

employee could have," Ms. Jodka said.

Because employers are typically not part of the medical process, a claim against an employer stemming from delay of surgery under the rule is also unlikely, said Ms. Jodka. Although the state recognizes an employer intentional tort, it would be difficult for an injured employee to demonstrate intent on an employer's part under the rule.

Kristen Beckman

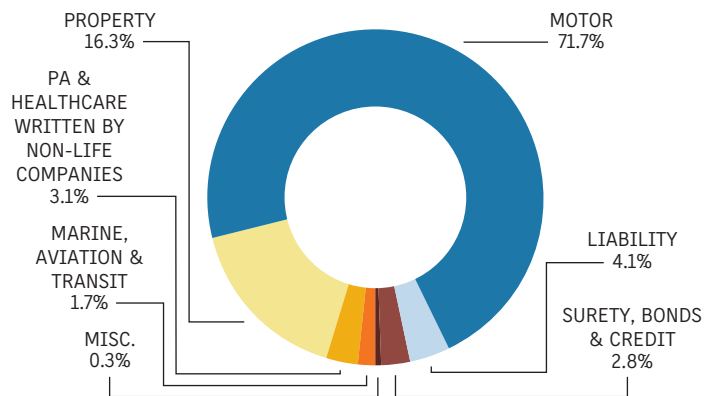
## PROFILE: ROMANIA

# 54

GLOBAL  
P/C MARKET  
RANKING

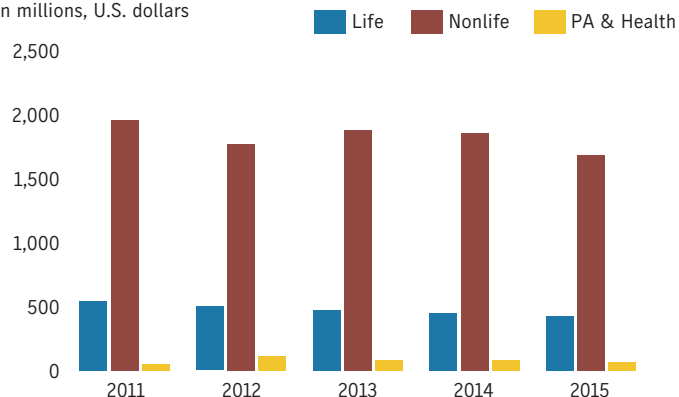
Romania had enjoyed robust growth after joining the European Union in 2007, but in 2009 and 2010 the effects of the global economic crisis led to two years of severe recession. Growth has resumed, however, aiding the insurance market. At the end of March 2016, there were 35 insurers authorized to operate in Romania: seven composites, 20 property/casualty and eight life. Major insurers are Vienna Insurance Group companies Asirom and Omniaisig, Allianz-Tiriac, Groupama and Euroins Romania. Romania is prone to both flood and earthquake, and the capital city of Bucharest lies in the most active seismic zone. Compulsory home insurance against earthquakes, landslides and floods is provided for by a natural disaster insurance pool.

### MARKET SHARE



### MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

### COMPULSORY INSURANCE

Several lines of insurance are compulsory, including:

- Auto third-party liability
- Directors and officers liability for managers of joint stock companies
- Air carriers' and aircraft operators' liability
- Nuclear liability
- Shipowners' liability against marine oil pollution
- Professional liability for doctors, nurses, dentists, hospitals, pharmacists, lawyers, insurance intermediaries, administrators, liquidators, notaries and accountants, alternative investment managers

### NONADMITTED

Non-EU insurers are not allowed to conduct insurance business in Romania without authorization. Romanian policyholders are allowed to place their insurance with nonadmitted insurers abroad. The only exception is compulsory auto third-party liability, which must be placed with an authorized insurer, and compulsory home insurance against earthquakes, landslides and floods which must be obtained via the Pool for Insurance against Natural Disasters. EU insurers may enter the market on a freedom of establishment or freedom of services basis.

### INTERMEDIARIES

The main distribution channels used to be direct sales and agents, but brokers have become dominant. Most commercial/industrial business is broker-controlled. At the end of 2015, there were 552 registered brokers, although this had been reduced to around 350 by the end of 2016, according to market sources.

### MARKET PRACTICE

There are no longer any tariff classes. Although a six-month cap was placed on auto third-party liability premiums commencing on Nov. 18, 2016, the premium cap ceased to apply on May 18, 2017, and Romania's financial supervisory authority will publish reference fees for a period of six months in order to provide a benchmark for consumers to compare their auto liability quotes from insurers.

### MARKET DEVELOPMENTS

Updated July 2017

- On Nov. 2, 2015, Law No 246/2015 on Insurers' Recovery and Resolution was adopted, setting out the early intervention measures and recovery and resolution tools available to the Romanian Financial Supervisory Authority, or ASF, when dealing with a financially weak or insolvent insurer. The law established the Insurers' Resolution Fund, to be managed by the Policyholder Guarantee Fund.
- Romania adopted the Solvency II directive through its passage of Law No 237/2015, dated Oct. 19, 2015, on Authorization and Supervision of Insurance and Reinsurance Business, which came into effect Jan. 1, 2016.
- Compulsory auto third-party liability is not subject to statutory tariffs but a temporary cap was introduced by the ASF on Oct. 11, 2016. It outlines the methodology of calculation of the maximum premium permitted for compulsory MTPL. The methodology was approved by the government, and the cap came into force beginning Nov. 18, 2016, for a period of six months. Since May 18, 2017, the cap has no longer been applicable.
- On July 24, 2015, Law No 213/2015 on the Policyholder Guarantee Fund was adopted. In addition to being a protection for insurance creditors against insurer insolvency, the fund can act as a special administrator or liquidator in the financial recovery procedure of insurers.



### AREA

# 91,699

square miles

### POPULATION

# 21.4

million

### MARKET CONCENTRATION

# 58.3%

market share of top five insurers

### 2017 GDP CHANGE (PROJECTED)

# 3.41%

## Wells Fargo sues Alliant for poaching sales executives

■ Alliant Insurance Services Inc. is using confidential information obtained during a failed bid for Wells Fargo Insurance Services USA Inc. to poach top sales executives, according to a lawsuit filed in July in Delaware's Court of Chancery.

The suit alleges that Alliant launched an "aggressive campaign" to hire insurance sales executives shortly after Wells Fargo & Co. agreed to sell the brokerage to USI Insurance Services L.L.C. in June. The sale is expected to close later this year.

"As a result of Alliant's actions, WFIS has already suffered and will continue to suffer irreparable harm to its business, revenues and employee retention at a uniquely vulnerable period of WFIS' corporate existence," said the complaint.

Alliant, which is based in Newport Beach, California, did not immediately respond to a request for comment.

WFIS is seeking an injunction to prevent Alliant from poaching its executives, disgorgement of any unjustified gains from the recruitment drive and unspecified damages.

Alliant joined the bidding for Wells Fargo Insurance Services earlier this year and signed a nondisclosure agreement, which prevented it from soliciting its staff for 18 months, according to the complaint.

Alliant had access to information about WFIS sales executives, their employment agreements and revenue generated by its 100 largest customers, among other details, according to the lawsuit.

Reuters

## NFL teams defeat lawsuit arguing comp exceptions

■ Three National Football League teams prevailed in a lawsuit brought by former players that alleged the teams intended to injure them by using medications to conceal their injuries and allow them to continue playing while injured.

The lawsuit argued that the underlying claims should be exceptions to workers compensation exclusivity because they were triggered by intentional acts by the teams, team doctors and trainers, according to documents in *Etopia Evans, et al. v. Arizona Cardinals Football Club L.L.C., et al.*

Former players Reggie Walker and Alphonso Carreker sued the San Diego Chargers, Denver Broncos and Green Bay Packers alleging the clubs misrepresented that they cared about and prioritized player health and safety when they actually prioritized getting players to return to play, even when injured, at the cost of their health

and safety. The three teams moved for summary judgment, saying the claims were barred by workers comp exclusive remedy.

Judge William Alsup, a judge in the U.S. District Court for the Northern District of California in San Francisco, dismissed the claims, saying the plaintiffs' attempts to prove the teams' actions triggered exceptions to workers comp exclusive remedy fell short.

"Although workers' compensation and collective bargaining remedies are not gold-plated remedies, they are at least remedies recognized under the law," the judge said. "The sweeping remedy sought herein by plaintiffs is not, on this record, available under the law."



## Court overturns \$43 million award in amputation case

■ A \$43.5 million jury award in a personal injury lawsuit against a subcontractor was overturned by a Texas appeals court, which found that workers compensation was the injured employee's exclusive remedy.

In 2013, Tyler Lee was a superintendent for a general contractor on a large-scale construction site in Houston where Bonner Springs, Kansas-based Berkel & Company Contractors Inc. was a subcontractor, according to court records in *Berkel & Company Contractors Inc. v. Tyler Lee and Leigh Ann Lee*.

While drilling a piling on the site, an auger operated by Berkel became stuck and attempts ordered by Berkel's superintendent to free the auger despite objections from both a foreman and a crane operator resulted in the crane's boom breaking and crashing to the ground. Leads attached to the falling boom struck Mr. Lee's left leg, severing it below the knee.

Mr. Lee recovered workers comp through his employer but sued Berkel in district court in Brazoria County, Texas, seeking additional recovery based on alle-

gations of negligence, gross negligence and intentional injury. A jury ruled in favor of Mr. Lee in 2015, awarding him \$35 million in actual damages and \$8.5 million in exemplary damages. Berkel appealed to the 14th Court of Appeals in Austin, Texas.

A three-judge panel of the appeals court overturned the jury decision and award. The panel determined there was no evidence that the superintendent intended to injure Mr. Lee or that his actions equated to a probability of injury to potential victims.

"Because there is no basis on which the claimant's recovery of common law damages can be sustained, we must reverse and render judgment that the claimant take nothing on his claims against the subcontractor," the court concluded.

## Insured vs. insured exclusion shields AIG unit

■ An American International Group Inc. unit is not obligated to provide a former medical equipment firm officer with indemnification and defense costs in connection with litigation filed against him by his former firm and its executives under the insured-versus-insured exclusion in the company's directors and officers liability coverage, says a New Jersey appeals court.

Michael Abboud, a former CEO and 40% owner of Staten Island, New York-based Monarch Medical PET Services L.L.C., which provides diagnostic imaging equipment, had first sued Monarch, four firm members and managers and a company officer, stating they had breached their fiduciary duty, among other charges, according to the ruling by the New Jersey Superior Court's appellate division in Trenton in *Michael Abboud v. National Union Fire Insurance Company of Pittsburgh, Pa.*

Counterclaims filed by defendants against Mr. Abboud included that he had engaged in self-dealing.

Mr. Abboud sought indemnity and defense costs for the counterclaims under the D&O section of Monarch's multicoverage policy, according to the ruling.

National Union, a unit of New York-based American International Group Inc., denied Mr. Abboud coverage based on an insured vs. insured exclusion within the coverage's D&O section.

On appeal, a three-judge panel of the state appeals court unanimously upheld the lower court's ruling. "There is nothing ambiguous, convoluted or opaque about this exclusion when interpreted in accord with the (policy's) definitional provisions," said the ruling.

"The claims raised against Abboud were brought by Monarch and five of its executives (whose status within the company Abboud does not contest). Therefore, the insured vs. insured exclusion bars these claims."

## DOCKET



### AMBIGUOUS EXCLUSION LANGUAGE LEAVES INSURER LIABLE

Evanston Insurance Co. must indemnify a policyholder in a personal injury lawsuit because of ambiguity in its employer's liability exclusion. Deerfield, Illinois-based Evanston denied coverage when an employee of an insured company was injured on the basis of the employer's liability exclusion in its commercial general liability policy. A three-judge panel of the 2nd U.S. Circuit Court of Appeals in New York upheld a lower court ruling stating the exclusion did not bar coverage and that the company was entitled to indemnification.

### LIBERTY WORKERS COMP POLICYHOLDER MUST PAY UP ON PREMIUMS

An employer that underestimated the number of high-risk employees on its payroll was ordered to pay \$3.64 million in additional workers compensation premiums, a federal appeals court ruled. Aviation ground services company Servisair L.L.C. contracted with Liberty Mutual Insurance Co. for a guaranteed cost insurance policy in which the final premium would be based on an audit of payroll classifications at the end of the policy period, but declined to pay additional premiums when an audit showed greater exposure to more expensive job classifications. The 5th U.S. Circuit Court of Appeals in New Orleans ordered Servisair to pay the additional premiums in Liberty's breach of contract lawsuit.

### EMPLOYER MUST FACE MEDICAL MARIJUANA CLAIM

An employer that fired a worker who tested positive for marijuana even though she was authorized to use it by her physician must face a claim of handicap discrimination. Cristina Barbuto was authorized to use marijuana, but her employer fired her after a drug test was positive for it. Ms. Barbuto filed handicap discrimination charges, which were initially dismissed, but that ruling was reversed by the Massachusetts Supreme Judicial Court.



Axis Capital Holdings Ltd., in Pembroke, Bermuda, recently announced plans to acquire Lloyd's of London specialty insurer Novae Group P.L.C. and the formation of its own Lloyd's managing agent for syndicate 1686, bolstering its presence in the London market. President and CEO Albert Benchimol recently spoke to *Business Insurance* Reporter Matthew Lerner about the company's strategy of building positions of "relevance and scale" in specialty markets, along with other topics. Edited excerpts follow.

## Albert Benchimol

AXIS CAPITAL HOLDINGS LTD.

**Q** The Novae acquisition — what was the compelling rationale? Why Novae, and why now?

**A** We are a specialty company, which means that in the markets that we choose to compete in, it's very important for us to have the appropriate scale, relevance, skill and portfolio. We've achieved that in many of our businesses, and we're doing a very good job of building that scale in London — in fact we're already up to over \$750 million dollars' worth of specialty insurance business in the London market. But we saw in the acquisition of Novae an opportunity to significantly accelerate the progress that we were making in the London market, and so we pursued it.

Why Novae and why now? I think it's a combination of a number of factors, but Novae, we found, was the right company with the right mix of business with the right talent that would fit very well as a kind of bolt-on acquisition to accelerate our London business. So we liked the portfolio, we liked the people, it's very complementary, we see there were some opportunities for synergies there. We believe that it is a good tactical and strategic step, but it also has immediate economic benefit in terms of a cushion to our earnings and our (return on investment).

And finally, with any acquisition you want to make sure that the execution risks are acceptable, and we felt that with Novae the alignment of the cultures and business was such that we felt very comfortable with the integration of Novae into Axis. So, it was just the right company at the right time.

**Q** How is the market right now? Reinsurance has been understandably soft, primary property/casualty is still soft, and sources tell me that if you pick and choose areas you get a very different view beyond that. What do you see?

**A** Look, I think it's fair to say that the markets are still very challenging, right? But, it really — it does depend on where you're competing and your position in the market. So I think you've

been reading the same things that I've been reading, and that is that the reinsurance market continues to be giving up some price, perhaps on a pace that is lower than it's been in the prior couple of years. We're certainly seeing pushback in the areas where people are looking for more ceding commission or broader terms and conditions, but it's still ending up at least for the moment in favor of the insurer versus the reinsurer except for a few areas — and I think certainly one area where you're seeing some real correction is in the U.K. motor business and the U.K. liability business.



I think on the insurance side, it's a reasonably competitive market, but there are still some areas where we're seeing positive price action, and again I think that where we find it's encouraging is that the pace of reduction in almost every single line it is less this year than it was last year, and we are starting to see some positive price actions in a number of lines and markets. For example, in the casualty markets in the U.S. we've had some ongoing price-positive price action now for over a year (to a) year and a half, and there are other areas where we're seeing some positive price action. So still challenging, but we are starting to see some signs in some areas of the price action.

**Q** Alternative capital: Is Axis increasing its operations?

**A** I would say that we've been active in the alternative capital markets for

over three years, maybe four years now, but it's certainly accelerated in 2016.

**Q** How so?

**A** Well, 2016 was a very important year for us. In partnership with the Blackstone Group, we launched Harrington Re, which is a separately capitalized company that has over \$600 million dollars of capital. We are matching especially long tail lines that are generated by Axis and that are invested through alternative investment strategies that are managed by Blackstone, and that is a separately capitalized company for whom we are producing premiums and we are getting a fee for doing that.

We also significantly increased our collateralized reinsurance facilities so that we can cede more risk to those collateralized reinsurance facilities. And just to give you an example, we're probably ceding close to 20% of our long-tail reinsurance book to our third-party capital partners. We are ceding close to half of our catastrophe book, of our gross catastrophe premium underwriting, to third-party capital. So third-party capital is now a meaningful partner in important lines of business that we are writing at Axis.

**Q** Where do you see opportunity geographically?

**A** In the last 12 months alone we will have increased our presence in Dubai, and we've opened up an office in Miami as a coverholder for Latin American business — we believe there's some very good growth opportunities there. We also recently closed on the acquisition of Aviabel, a specialty aviation company in Belgium. So we've been growing strategically in these areas because we're establishing the presence, the network and the resources for success in specialty lines in those markets. We certainly want to see growth in the European markets in terms of the London specialty market, and with the acquisition of Aviabel and the proposed acquisition of Novae, we obviously feel good about the growth opportunities for international specialty risks.

Novae, we found, was the right company with the right mix of business with the right talent that would fit very well as a kind of bolt-on acquisition to accelerate our London business.

# Cyber Summit 2017



## VIRTUAL RISK IS VERY REAL.

HOW PREPARED IS YOUR COMPANY FOR CYBER THREATS?

In the wake of recent ransomware attacks such as WannaCry and Petya, as well as costly economic predictions of future attacks, it's more important than ever to be on alert. The 2017 **Business Insurance & CLM Cyber Summit** is the only cyber conference specifically designed to arm risk managers with cutting-edge, actionable information.

Hear industry leaders and experts discuss topics on key developments in cyber risk management and coverage, such as data breach management, emerging developments and international privacy regulations. Network with other attendees and view product demos from vendors at the **Cyber Solutions Expo**. Walk away with the tools to optimize your cyber risk management program into high gear.



KEYNOTE

**Tracie Grella**

*Head of Professional Liability, Global Financial Lines*

AIG

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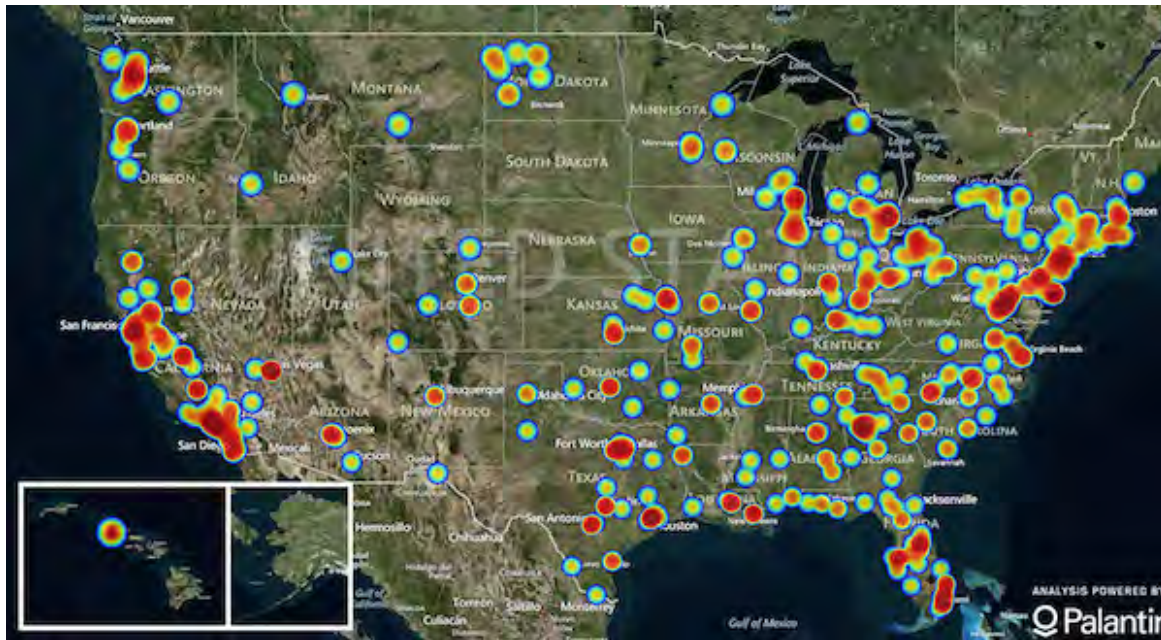
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# THE HOSPITALITY INDUSTRY'S LURKING LIABILITY

Sex trafficking's front line

BY LOUISE ESOLA  
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## HUMAN TRAFFICKING AND THE HOTEL INDUSTRY

**1,434**

cases identified between 2007 and 2015

**1,867**

victims and survivors identified between 2007 and 2015

**45%**

of victims are minors

Source: Polaris Project

**T**he hospitality industry must rethink its approach to service, privacy and security as it faces growing allegations that, at best, it's not doing enough to combat sex trafficking in hotels and motels.

At worst, lawsuits allege, some hotel employees are turning a blind eye as mostly girls and woman are virtually imprisoned on properties around the country and forced to work in the sex industry.

And it's not just run-down lodgings offering rooms by the hour on the seedier side of town that are being used by sex traffickers, legal and law enforcement experts say.

Global hospitality brands could be drawn into the litigation surrounding the activities taking place on their properties and face civil penalties and reputational damage, experts say, and new laws on the books or proposed in several states seek to make hotels directly liable for sex trafficking on their properties.

As a result, some in the industry are taking a proactive stance on fighting sex trafficking and training staff to spot and report suspicious activity. Housekeepers, front desk staff and room service are seen as being on the front lines of the fight against sex trafficking and need to be alert to the crimes taking place on their properties, experts say.

Unlike prostitution, sex trafficking transpires when a purveyor forces a victim into the lifestyle.

Any lodging facility, including the plush major city establishments, can be used by sex traffickers, said Cook County Sheriff Tom Dart in Chicago.

"It's everywhere," he said. "The common notion is it's all in the shady hotels and the rundown hotels near airports. ... You name a hotel and I guarantee we've made an arrest or we could."

Hotels are considered an ideal setting by sex trafficking purveyors, experts say.

Purveyors, who usually deal in cash, can easily move their enterprise from establishment to establishment, making it more difficult for law enforcement to

track them. In addition, hotels offer a high degree of anonymity and obscurity that comes from numerous entryways and, in the case of motels, doors that lead directly to parking lots.

"It's so radically moved from the streets to the internet and into every conceivable hotel," said Sheriff Dart, whose work fighting sex trafficking made national headlines when he went after the credit card companies for doing business with such websites as backpage.com, a notorious platform for traffickers to advertise their victims. "If you are running a hotel and have a bizarre notion that you are immune to this, you are out of your mind."

In Pennsylvania, which in 2014 revised its criminal code against human trafficking and other sex offenses to allow victims of sex trafficking to sue hotels, one of the first lawsuits against a hotel is currently in the courts: *M.B. and her guardian William A. Calandra, Esquire v. Roosevelt Inn L.L.C., Roosevelt Motor Inn Inc., UFVS Management Company L.L.C., and Yagel Patel*.

According to the lawsuit filed in March, a 17-year-old girl referred to as M.B. was walking around the hallways of a bargain hotel along a leafy, busy thoroughfare of working-class Philadelphia when she was 14 years old.

Scantly dressed, exhibiting fear and anxiety in her mannerisms, she was accompanied by an older man, the lawsuit claims.

For weeks at a time she lived in one of the rooms at the Roosevelt Inn, where a do-not-disturb sign dangled on the door-

knob for days, swatting away daily maid service, and along the hallways numerous men lingered.

Inside the room, boxes and torn wrappers of condoms poured out of unemptied wastebaskets, the lawsuit alleges.

The housekeepers, front desk clerks and managers of the motel allegedly knew M.B. was a victim of sex trafficking. And did nothing, the lawsuit alleges.

The federal government classifies the crime as a form of "modern-day slavery" that involves the use of force, fraud or coercion into the underground business of commercial sex.

*It's everywhere. The common notion is it's all in the shady hotels and the rundown hotels near airports. ... You name a hotel and I guarantee we've made an arrest or we could.*

Tom Dart,  
Cook County Sheriff

If a person is under 18, it's sex trafficking regardless of force, fraud or coercion, according to both federal and state laws, with all 50 states having laws on the books.

"We will hold this industry accountable for its profiting of this horrible, immoral, criminal activity," said M.B.'s attorney, Nadeem Bezar, of Kline & Specter P.C. in Philadelphia. "Bottom line is not only are you supposed to stop what you see plainly in front of you, but you are supposed to help prevent what you know of going on in your hallways, in your stairwells and in your rooms. ... This (lawsuit) is a wake-up call."

Mr. Bezar said those who sold M.B. were arrested, charged and sentenced.

The first of its kind in Pennsylvania, the scathing lawsuit against the Roosevelt Inn and its proprietors is not alone. Similar well-publicized lawsuits were filed in Alabama, Maryland and Texas in 2017.

"Right now we are on the forefront of this becoming a big issue," said Jason Riley, Chicago-based vice president and account executive within the real estate, hospitality and construction practice for Lockton Cos. L.L.C. "It is starting to get more attention in the media."

### Numbers tell the story

The Washington-based nonprofit Polaris Project, which works to combat and prevent modern-day slavery and human trafficking, has documented 1,434 cases of human trafficking in hotels and motels between 2007 and 2015, with 1,867 victims identified — 92% of the cases involving sex trafficking. Human trafficking is an umbrella term for all forms of slave labor.

A map of the United States provided by Polaris features small red splotches from coast to coast, representing cities and towns where such crimes have taken place in hotels.

Shea Rhodes, director of The Institute to Address Criminal Sexual Exploitation at the Villanova University School of Law in Villanova, Pennsylvania, asserts there are probably more because victims often don't identify themselves as such, she said.

According to Polaris, only 22% of the calls reporting trafficking in hotels and motels were made by victims self-reporting the crimes against them.

"Who is a sex trafficking victim who is going to be pimped out at hotel? Probably a teenager ... probably doesn't have

See **TRAFFICKING** next page



## TRAFFICKING

Continued from previous page

family, probably addicted to something deliberately or forced, because that's what traffickers do to keep them compliant," said Ms. Rhodes, whose experience with the crime goes back to her decade as an assistant district attorney for the City of Philadelphia.

"Traffickers or pimps have convinced these young adults that no one will ever believe them, that they are the throw-aways, that they are the trash," she said.

With awareness and outreach on the rise, the hotel industry should brace for additional lawsuits alleging they allowed sex trafficking on their properties, Ms. Rhodes said.

### A year of reckoning in the courts

In Houston on March 10, the same day a legal team in Philadelphia filed its lawsuit against Roosevelt Inn, a mother filed a lawsuit in Harris County District Court against Plainfield Inn, alleging the three-story motel in the city's southwest corner knew her 21-year-old daughter had been trafficked there. Last September, her daughter, Natalie Fisher, was found dead in a ditch less than 10 miles away from the hotel, where, the lawsuit alleges, the young woman had been exploited for two years.

A little more than two weeks earlier, on Feb. 22, the Circuit Court of Wicomico County, Maryland, saw four separate lawsuits filed by four Jane Does, all accusing America's Best Value Inn in Salisbury, Maryland, of knowing that they had been held there against their will

and were forced to perform sex acts with men who had been seen — by hotel staff and by customers writing reviews of the establishment on travel websites, reporting obvious signs of trafficking — in and around the hotel.

America's Best Value Inn, along with Vantage Hospitality Group Inc. and Subh Properties L.L.C., were named in the Maryland lawsuits, which list nearly every telltale sign of sex trafficking: the do-not-disturb signs, the forgoing of housekeeping services and the "extraordinary number of male individuals entering and exiting the rooms ... (the) signs of verbal and/or physical abuse, restraint and/or confinement."

*There are advocacy groups that are really pushing this issue, saying here are lists of red flags. If you knew these red flags were raised, it will be hard to argue that you did not know.*

Charles Spitz,  
Post & Schell P.C.

About a month earlier, Houston County Circuit Court in Alabama saw a similar filing against the Quality Inn in Dothan, Alabama, a small motel that is owned by the Rockville, Maryland-based parent company Choice Hotels International Inc., which is also named in the lawsuit.

The Alabama lawsuit asserts the defendants "conspired, enabled and/or otherwise worked together in a sex trafficking

venture in which (the woman) was victimized when she was just 17 years old."

In each of the cases, local law enforcement had been aware or made arrests — and ended up with convictions, in some cases — of the purveyors. Hotel defendants could not be reached for comment or said they would not comment on pending litigation when contacted by *Business Insurance*.

### An emerging risk

While civil liability for hotels is garnering the most attention, criminal liability, if an employee is found to be an accomplice in the crime, and reputational risk are other soft spots for the industry that could be facing an onslaught if more victims come forward, experts warn.

"Why the sudden shift? I think it is because, one, it is a hot-button issue and nobody wants to be known in the papers that there is trafficking in my hotel; and, two, there are laws in every state," said Charles Spitz, a Philadelphia attorney and co-chair of law firm Post & Schell P.C.'s hospitality and retail practice group. "There are advocacy groups that are really pushing this issue, saying here are lists of red flags. If you knew these red flags were raised, it will be hard to argue that you did not know."

Reputation risk is a big consideration for hotels, said Lance Ewing, executive vice president of global risk management and client services for Katy, Texas-based Cotton Holdings Inc. and a seasoned risk manager who previously worked for Caesars Entertainment Corp. and American International Group Inc.'s hospitality and real estate practice.

"It puts a black eye on your hotel and your brand," he said.

Currently, most hotel liability policies don't mention human trafficking, but they could, said Lockton's Mr. Riley.

"We haven't seen any cases against our clients, but if that starts to become more normal we will start to see more written exclusions or narrowing of coverage in liability policies," he said. "We are bringing this up to our hotel and hospitality clients."

Mar Brettmann, founder of Seattle-based Businesses Ending Slavery and Trafficking, said as a result of court cases and greater awareness, the hotel industry is slowly getting louder on the issue.

"What I keep hearing from businesses is that this creates risk," she said, adding another element to the mix: when the safety of other guests is at stake with traffickers — described by the federal government as both those who buy and sell forced sex with individuals — roaming hotel properties.

### See something, say something

Today, training is the best defense, according to experts.

"The way we counsel our hospitality client is ... training," said Mr. Spitz. "You can't bury your head in the sand. If it gets in front of a jury (and) you say didn't know ... it doesn't pass the smell test at all."

Gradually, more and more hotels are providing training to staff on how to identify sex trafficking, although training is not yet as widespread as it will likely be in the future, said Mr. Ewing.

"You will see that educational piece stepped up in hospitality," he said.

Mr. Riley called Bethesda, Maryland-based Marriott International Inc. the "biggest corporate flag out there" when it comes to providing training for hotel workers. Other chains contacted by *Business Insurance*, including Hilton Worldwide Holdings Inc., have programs in place.

Marriott owns several chains under the Starwood Hotels and Resorts Worldwide brand and Ritz Carlton L.L.C. The company's training program was developed in 2016 and consists of a 30-minute presentation "portal" offered online in 15 languages. It addresses employees in nearly every facet of the business, from housekeeping and room service to front desk and restaurant workers, and tells them what to look for.

According to clips of the presentation provided to *Business Insurance*, in-room staff are told to watch for clues such as: "Insists on little or no housekeeping ... Victim has little or no luggage ... Evidence of pornography ... Room is frequented by different men." Restaurant workers are told to watch for victims who are "dressed inappropriately" or are "seen with many older men."

The training also covers the protocol for reporting, encouraging employees to

notify managers when they see suspicious behavior. Managers are then directed to notify law enforcement. Sheriff Dart, who is familiar with Marriott's approach, called the program "fantastic."

Tu Rinsche, director of social impact and global responsibility at Marriott — a role created in 2016 — said the company made the training mandatory this year. Marriott wants to have 100% of its staff trained by the end of 2018 and over 100,000 associates worldwide had been trained as of July.

Ritz Carlton has 65% of its staff trained, according to a Marriott spokeswoman.

The program is now offered to members of the American Hotel & Lodging Association for a fee, with the money donated to advocacy groups, Ms. Rinsche said.

Meanwhile, other organizations — such as Polaris and the U.S. Department of Homeland Security — offer tips that can be posted in employee areas.

Craig Kalkut, vice president of government affairs for the Washington-based American Hotel & Lodging Association, said he hopes to see the training as standard practice in all hotels going forward.

#### A call to arms

Emerging laws could encourage the spread of the training.

Lincoln, Nebraska, Mayor Chris Butler in July called on the city's hotels and motels to begin training their staffs on identifying human trafficking. Earlier that month in Jacksonville, Florida, City Councilman Tommy Hazouri introduced a proposal to require hotels and restaurants to post signs that educate employees and customers alike on how to spot the crime.

Meanwhile, Connecticut is the only state that requires all lodging staff to be trained in identifying human trafficking, under An Act Concerning Human Trafficking law passed in 2016, which mandated that workers be trained by Oct. 1 of that same year.

The training in Connecticut is free and is the program developed by Marriott.

New York could be next, said New York Assemblywoman Amy Paulin, D-Scarsdale, who introduced legislation there in April and wants the bill passed by January 2018.

"We want to go where the girls are, we want to find them and help them," she said. "You have to go where they are, and they are at hotels and motels. The workers need to know what to look for."

Standing beside Assemblywoman Paulin when she introduced the legislation in April was Anneke Lucas, a slender, fair-skinned yoga instructor who lives

#### SIGNS OF HUMAN TRAFFICKING

- Individuals show signs of fear, anxiety, tension, submission and/or nervousness.
- Individuals show signs of physical abuse, restraint and/or confinement.
- Individuals exhibit evidence of verbal threats, emotional abuse and/or being treated in a demeaning way.
- Individuals show signs of malnourishment, poor hygiene, fatigue, sleep deprivation, untreated illness, injuries and/or unusual behavior.
- Individuals lack freedom of movement or are constantly monitored.
- Individuals avoid eye contact and interaction with others.
- Individuals have no control over or possession of money or identification.
- Individuals dress inappropriately for their age or have lower-quality clothing compared with others in their party.
- Individuals have few or no personal items, such as no luggage or other bags.
- Individuals appear to be with a significantly older "boyfriend" or in the company of older males.
- A group of girls appears to be traveling with an older female or male.
- A group of males or females have identical tattoos in similar locations, which may indicate "branding" by a trafficker.

Source: Hospitality Toolkit, U.S. Department of Homeland Security

in Brooklyn but was born and raised in Belgium — until she herself was trafficked from age 9 to 11, carted to different hotels in Europe by purveyors.

Ms. Lucas, now 54 years old, read about the Connecticut law in the newspaper last year and started a petition to bring the requirement to New York. She sees hotels as the prime spot to curb sex

trafficking, and, in an interview, recalled times from her past where someone could have done something to help her.

"If there were some people who had the awareness and were passionate, it could have made a difference for me," Ms. Lucas said. "Someone in the hotel, any of the people in the service positions, if one person had known."

75 years of...

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## LIABILITY INSURANCE REPORT

# No easy cure for pharma litigation woes

BY JUDY GREENWALD

[jgreenwald@businessinsurance.com](mailto:jgreenwald@businessinsurance.com)

### INSIDE

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Top 10 insurers for product liability and multiple perils, state-by-state premiums and more. **PAGE 25**

**P**harmaceutical manufacturers have long been viewed as a major source of liability exposure, and their risk profiles are getting more complex as they battle a range of liability issues on multiple fronts.

Allegations of overcharging, harmful drug side effects, lack of oversight of opioid distribution and accusations against brand name manufacturers by plaintiffs who have used only the generic versions of their drugs (see related story), have been made in various lawsuits.

In addition, pharmaceutical manufacturers have been the focus of regulatory actions related to the Foreign Corrupt Practices Act, while they also face litigation related to mergers and acquisitions, securities class actions and initial public offerings.

Meanwhile, they have also become a major focus of litigation funding firms, where plaintiffs tap into investment funds

to finance their cases.

“Plaintiffs continue to sue corporate parents unnecessarily and inappropriately” and the pharmaceutical sector “encounters it more than anyone else,” said Kara Kapke, a partner with Barnes & Thornburgh L.L.P. in Indianapolis.

Allegations of pharmaceutical companies overcharging for their products date

## BRAND-NAME DRUGMAKERS HELD LIABLE FOR HARM CAUSED BY GENERICS

**B**rand-name pharmaceutical manufacturers face the prospect of defending more suits for the alleged harmful effects of drugs they did not actually produce.

Plaintiffs who were allegedly harmed by generic drugs are suing original brand-name manufacturers because of U.S. Supreme Court decisions that have forestalled litigation against the generic pharmaceutical manufacturers.

Suing the brand-name manufacturers “is completely contrary to 50 years of product liability law, but plaintiffs are desperate,” said James M. Beck, a senior life sciences policy analyst with Reed

Smith L.L.P. in Philadelphia.

The U.S. Supreme Court’s 2011 ruling in *Pliva Inc. v. Messing* and its 2013 ruling in *Mutual Pharmaceutical Co. v. Bartlett* essentially protected generic manufacturers, which constitute about 80% of the market, from state law liability for injuries caused by their products.

The vast majority of the lawsuits against the brand-name manufacturers have been dismissed, say experts. But a California appeals court ruled in 2008’s *Conte v. Wyeth* that a name-brand pharmaceutical firm owed a duty of care to patients taking generic versions of its drug.

Then in 2016’s ruling in *T.H. v. Novar-*

*tis Pharmaceuticals*, a California appeals court, citing the *Conte* ruling, reinstated a case in which the San Carlos, California-based firm was charged with being liable for injuries allegedly caused by a generic version of its asthma drug, even though the company had sold its interests in the drug almost six years previously.

And in April, a jury in U.S. District Court in Chicago awarded \$3 million to the widow of an attorney who had committed suicide after taking a generic version of Paxil, a drug manufactured by the brand name manufacturer Brentford, England-based GlaxoSmithKline P.L.C.

Last year, the U.S. Food and Drug

Administration proposed a generic drug labeling rule that would have held generic drug companies responsible for updating their labels whenever new safety information was detected, but that apparently has been shelved by the Trump administration, observers say.

That means brand-name manufacturers are “likely to see more attempts to pin liability” on them by patients who took generic versions of their drugs and have no other recourse in the legal system now, said Jim Murdica, a partner with the Barnes & Thornburg L.L.P. law firm in Chicago.

Judy Greenwald

back several years. Recently, in April, plaintiffs sued Morgantown, West Virginia-based Mylan Specialty L.P. in U.S. District Court in Tacoma, Washington, in a putative class action over the price of its anti-allergy EpiPen, stating the company has increased its prices 17 times since it acquired the rights to market and distribute the drug in 2007.

Other well-established legal attacks on pharmaceutical companies include allegations that their drugs have harmful side effects.

For example, there have been upwards of 18,000 reported cases filed over blood thinner Xarelto, which has been blamed for causing heart-related issues, said Jim Walters, managing director, life sciences and chemical group at Aon Risk Solutions in Philadelphia.

The good news for pharmaceutical firms, he said, is that in June, in the first bellwether case, Leverkusen, Germany-based Bayer A.G., and New Brunswick, New Jersey-based Johnson & Johnson, which both produce Xarelto, were cleared by a New Orleans jury in connection with the 2015 death following a stroke of a woman who had taken the drug.

Another issue being watched is litigation over low testosterone medications, Mr. Walters said. Multidistrict litigation against several pharmaceutical manufacturers alleging testosterone replacement therapy causes cardiovascular injuries is in U.S. District Court in Chicago.

The opioid epidemic is a significant focus of litigation as well. According to an analysis by the Washington Post, as of last month, within the past year at least 25 states, cities and counties have filed civil cases against pharmaceutical manufacturers as well as the distributors and large drugstore chains that make up the \$13 billion a year opioid industry. The suits generally allege that the drugmakers are responsible for widespread problems with opioid addiction.

In July, Mallinckrodt L.L.C., one of the largest manufacturers of oxycodone, whose U.S. headquarters is in St. Louis, agreed to pay \$35 million to resolve allegations



**PHARMA LIABILITY**

Liability issues facing pharmaceutical companies include:

- Overcharging
- Specific drug-related litigation, including blood thinners and low testosterone medication
- Opioid-related litigation and regulation
- Talcum powder-related litigation
- Merger and acquisition activity
- Foreign Corrupt Practices Act
- Initial public offerings litigation
- Securities class actions
- Litigation by generic users against brand-name manufacturers

it failed to report suspicious drug orders, without admitting wrongdoing, according to the U.S. Department of Justice.

“Obviously, the opiate pain management area is one extremely challenging and big dilemma across the liability sector for the industry,” said Doug Carey, Norwalk, Connecticut-based US Life Sciences practices leader for Marsh L.L.C.

“It’s been a long-mountain issue,” but “the FDA is saying there’s no simple answer to reversing the epidemic,” Mr. Carey said.

Meanwhile, although talcum powder is not a medical product, pharmaceutical firms, which often produce it, have been the target of litigation filed by women charging the product has led to ovarian cancer, Mr. Walters said.

The largest defendant in these cases has been Johnson & Johnson, which has verdicts totaling more than \$300 million in liability awards, he said.

But he pointed to the Supreme Court’s June ruling in *Bristol-Myers Squibb Co. v. Superior Court of California, San Fran-*

*cisco County et al.*, which held plaintiffs must have an affiliation with a jurisdiction before filing litigation there.

It will “make it a lot more difficult for plaintiffs to venue shop, if you will, across the board,” said Mr. Walters, noting pharmaceutical manufacturers have been a particular focus of forum shoppers.

Experts say large pharmaceutical companies generally obtain liability coverage through captives or self-insurance, while there is a robust, competitive market for smaller firms, including generic manufacturers.

Mr. Walters said with regard to insurance, “It’s sort of a tale of two cities.” Pointing to large “mega” settlements over the past two decades, he said, “There’s never been that much capacity available in the marketplace.

“I think a lot of the large policyholders have increasingly absorbed more and more of their product liability risk to the point where they’re self-insuring the vast majority of that in many cases,” he said.

“But it’s still a robust market for small companies,” including for generic firms, he said.

Meanwhile, the many consolidations in the sector are “often a driver for litigation” when two public firms merge, said Jennifer Sharkey, Boston-based area executive vice president/Northeast regional director, management liability practice for Arthur J. Gallagher & Co.

According to London-based Evaluate Ltd., which provides analysis for the pharmaceutical and biotech industries, pharmaceutical deals’ average size in this year’s first half was \$1.44 billion.

The pharmaceutical sector’s initial public offerings are a frequent litigation target, Ms. Sharkey said. This is because IPOs are often developing a product that is in its early, clinical stages, and so are subject to stock price fluctuations, she said.

The FCPA is also an issue. In September 2016, for instance, Brentford, England-based GlaxoSmithKline P.L.C. agreed to pay \$20 million to settle U.S. Securities and Exchange Commission charges it violated the FCPA when its China-based subsidiaries engaged in pay-to-prescribe schemes to increase sales, according to the SEC.

Also in June, the U.S. District Court in Seattle refused to dismiss a putative securities fraud class action filed against Seattle-based Juno Therapeutics Inc. for allegedly “recklessly” failing to reveal patients were dying from the toxic side effects of its blood cancer drug in *In re Juno Therapeutics Inc.*

Pharmaceutical litigation has been particularly attractive to litigation funding, where third parties such as investment funds finance lawsuits rather than using the more common contingency-based agreements.

Jim Batson, investment manager and legal counsel for New York-based Bentham IMF, a litigation funding firm that focuses on commercial disputes, said it is important for litigation funding firms that “the defendant companies are able to satisfy” any judgments, and pharmaceutical firms “often fit that bill.”

# Terrorism liability exposures grow

BY MATTHEW LERNER

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Changes in the way terrorist acts are perpetrated, shifting the focus from achieving maximum property damage to a large human toll, are changing the calculus used when considering terrorism exposures.

Terrorist events in recent months in London involving van and knife attacks and a bombing outside an Ariana Grande concert in Manchester, England, targeted crowds of people and resulted in multiple deaths and injuries. A similar shift in terrorist targeting was apparent in attacks in the United States and France in 2015 and 2016.

While the stand-alone terrorism insurance market has largely focused on property exposures since the Sept. 11, 2001, terrorist attacks in New York and Washington, liability exposures have emerged as another source of concern, terrorism insurance experts say.

The relatively low limits available under many general liability policies may be insufficient to address potential liability from a terrorist attack, they say.

“There’s been a huge shift toward the liability side,” said Michelle Sansone, president of North American property and engineering for XL Insurance America Inc. in New York, a unit of XL Group Ltd. “Now, it’s more about how many people are involved,” she said, as opposed to inflicting property damage.

“There definitely has been a shift away from targeting government infrastructure or civil or military authority targets toward attacks on the general public,” said Mark Leverick, U.S. property terrorism leader for Aon Risk Solutions in New York. “There has been a general shift, and it does raise some interesting concepts around what it means for a client’s risk profile and protection.”



REUTERS

Investigators work the scene near the heavy truck that ran into a crowd at high speed, killing scores of bystanders who were celebrating Bastille Day on the Promenade des Anglais in Nice, France, in July 2016.

“We estimate there is probably \$500 million to \$700 million per risk stand-alone terrorism liability capacity in the market right now,” said Wendy Peters, executive vice president of Financial Solutions-terrorism and political violence for Willis Towers Watson P.L.C. in New York.

The shift in modes of attacks represents a new variable in the risk management equation.

“There will be a need to look at how you deal with your liability exposures,” said Mr. Leverick. “Your liability exposure in the U.S. may well be covered by your (general liability) program, but whether that’s

the right thing or the move that should be made in terms of your protection, your balance sheet and the ongoing costs of your GL program, is really industry and client specific.”

Covering terrorism liability exposures under a standalone policy can provide separate, added protection to policyholders that have a large self-insured retention or deductible on their general liability program, he said.

“Or you treat it like a catastrophe risk and you want to protect your general liability program from a shock loss, like some people silo off excess flood or have a separate

placement for California earthquake or Florida wind. Those are the things from a risk management point of view that one has to consider,” Mr. Leverick said.

Third-party terrorism liability coverage programs are purchased through the standalone terrorism insurance markets mainly in New York and London, said Tarique Nageer, terrorism placement and advisory practice leader for Marsh USA Inc., in New York.

“I’d say in the last year we’ve seen a heightened interest in these products,” he said.

The change in attack patterns create exposures for policyholders that had not

## ANTI-TERRORISM TECHNOLOGIES GAINED FEDERAL PROTECTIONS AFTER 9/11

When making strategic decisions about how to cope with potential liability exposures, companies should examine the protections offered by a federal law passed soon after the Sept. 11, 2001, terror attacks in New York and Washington, experts say.

The Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 provides unlimited liability protection and defenses to providers or manufacturers of anti-terrorism technologies or security platforms, according to Wendy

Peters, executive vice president of Financial Solutions-terrorism and political violence for Willis Towers Watson P.L.C. in New York.

“Many high-profile buildings and manufacturers benefit from the liabilities protections of this act,” Ms. Peters said.

The law, which was part of the Homeland Security Act of 2002, “was designed to encourage the development and deployment of

anti-terrorism products and programs by automatically conferring very broad limitations, caps and affirmative defenses for suits stemming from a terrorist act,” according to a fact sheet from Willis Towers Watson.

“Any company, that uses, sells, or otherwise provides technology, product or service to prevent, respond to, or recover from a terrorist event,” should apply for the program, according to the broker.

Examples of eligible technologies include: threat and vulnerability assessment services, detection systems, blast mitigation materials, screening services and sensors.

Once a product or service is approved by the department, any user is endowed with certain specific rights, including exclusive jurisdiction in federal court for all related suits against the applicant and protection from punitive damage claims, noncompensatory damage and prejudgment interest awards, which are all barred.

Matthew Lerner



previously been contemplated and gaps in coverage that brokers say they are working with insurers to address. One such area is in the transportation sector due to the use of vehicles in some recent attacks.

**“Think about the incidents in and around London Bridge, Westminster, the Manchester concert or at the Pulse Night Club in Orlando — the modes of attack which were utilized and potential liability. Companies need to continuously review their insurance coverages to gauge if they are sufficiently protected for losses.”**

Tarique Nageer,  
Marsh USA Inc.

“There has also been a focus on trucking risks and coverage gaps in liability policies,” said Ms. Peters “The stand-alone terrorism market has developed products designed to respond to the exposure

which results from a truck being appropriated and used in the commissioning of an attack, particularly if carrying chemical materials or nuclear waste.”

Another area getting more attention is the mass casualty scenario, as policyholders’ understanding of these risks may be evolving, said Ben Tucker, head of U.S. terrorism and political violence insurance for XL in New York. Research in support of a potential new product showed that while many large companies have “very large liability limits, both primary and excess,” the next layer down, single venue owners, for example, “have much lower limits,” he said.

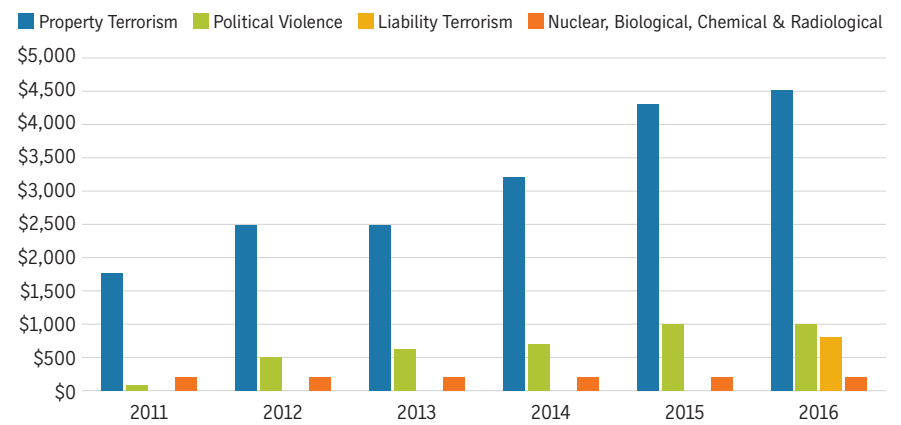
“Think about the incidents in and around London Bridge, Westminster, the Manchester concert or at the Pulse Night Club in Orlando — the modes of attack which were utilized and potential liability,” said Mr. Nageer of Marsh. “Companies need to continuously review their insurance coverages to gauge if they are sufficiently protected for losses not only from a property damage perspective, but also liability.”

Policyholders could be underinsured, finding themselves without sufficient limits to cover this evolving exposure, experts say.

“I think there is a segment of business in the U.S. that does not have adequate protection or the right coverage” to face a mass

## TERRORISM CAPACITY

In millions, U.S. dollars



Source: Willis Towers Watson Marketplace Realities 2017

casualty event, said Mr. Tucker of XL.

“It becomes a matter of limits,” said Jaime Vento, senior vice president and product line manager, global risk management, for XL Insurance America. “Our primary casualty GL policies typically have no more than \$5 million in limit, and we’re finding that accounts that have mass casualty exposure are questioning if they really have the protection they need.”

“Now it is becoming more and more obvious with the claims that happen — people are starting to realize that they don’t have enough limit and are reviewing

it,” said Ms. Sansone.

Insurers are also increasingly turning to specialized expertise, including for advice on their security protocols.

“There’s been a large increase in looking at partnering with consulting firms including public relations responses and security advice, as well as the insurers themselves looking at bringing expertise on board,” said Mr. Leverick. “There has been expansion in the available services clients can access and the partnering with other companies by insurers has allowed those services to become part of the offering.”

## THE NEW YORK WORKERS’ COMPENSATION BOARD (WCB)

has issued a Request for Information (RFI) regarding the potential transfer of liability from the Special Disability Fund, the Fund for Reopened Cases, the Uninsured Employers’ Fund, defaulted Group Self-Insured Trusts, and defaulted Self-Insured Employers.

The RFI seeks information from potential transferees such as insurers, reinsurers and other financial organizations, as well as from legal counsel, financial experts, brokers, actuaries, and any other experts with knowledge regarding such transactions.

Please see the WCB website for details.

[http://www.wcb.ny.gov/procurements/RFI\\_SDF/RFI\\_Special\\_Disability\\_Fund.jsp](http://www.wcb.ny.gov/procurements/RFI_SDF/RFI_Special_Disability_Fund.jsp)

**DEADLINE FOR SUBMISSIONS: SEPTEMBER 15, 2017**

# Losses mount from wrongful conviction suits

BY ROB LENIHAN

rlenihan@businessinsurance.com

**O**n Jan. 29, 2016, Teshome Campbell walked out of a prison a free man after serving 18 years for a murder he did not commit.

Last month, Mr. Campbell filed a lawsuit in Cook County Circuit Court against Illinois Gov. Bruce Rauner, Comptroller Susana Mendoza and Treasurer Michael Frerichs. He previously filed suit against the city of Champaign, Illinois, and six of its police officers, alleging the officers had coerced witnesses to falsely testify against him about his role in the fatal beating of a man on Christmas Day 1997.

Mr. Campbell is hardly alone in his experience. There were at least 166 exonerations in the United States last year for such crimes as murder, arson, robbery and child sexual abuse, according to the National Registry of Exonerations, which collects information about all known exonerations of innocent criminal defendants in the U.S. from 1989 to the present.

The registry, a project of the University of California Irvine Newkirk Center for Science & Society, the University of Michigan Law School and the Michigan State University College of Law, said 2016 was a record year for exonerations and the rate “has been increasing rapidly for several years” because of more attention being paid to wrongful prosecutions and an increasing number of innocence organizations reviewing cases.

For risk management and insurance professionals in the public entity sector, the issue of wrongful convictions raises questions about the extent of liability coverage purchased, records of past insurance programs and the question of when coverage is triggered, among other things.

Wrongful convictions can be costly. In 2014, the Illinois State Police agreed to pay \$40 million to the so-called Dixmoor Five who were arrested for a November 1991 murder and given lengthy prison sentences.



REUTERS

Luis Lorenzo Vargas appears in court during a hearing for his possible release in Los Angeles in November 2015. A judge recently overturned his sexual assault conviction, for which he spent 16 years in prison, after he was cleared by new DNA evidence.

In 2015, a federal appeals court ruled that a man who spent 22 years in prison after he was wrongly convicted of rape was entitled to \$18.5 million from the City of New York after he was wrongly convicted of rape.

Ben Eggert, a Washington-based partner with the law firm Wiley Rein L.L.P., said most courts considering the trigger issue have ruled that the inception of the criminal process, either the arrest or indictment of an individual, is when coverage is triggered — meaning that the insurer on the police liability or other liability policy at that time should pay the claim.

“They’re trying to figure out when the person was first injured in the legal sense so usually that’s when the local government formerly acts against the person,” Mr. Eggert said.

Mr. Eggert said the 7th U.S. Circuit Court of Appeals in Chicago had issued several opinions from 2010 to 2012 ruling that the date of exoneration would trigger

coverage. However, he said, other courts have not fallen in line with this position, and the time of arrest or indictment is the most frequently cited trigger date.

“Courts typically hold that the trigger of coverage is when the claimant was first injured, and that events taking place after the onset of injury are not relevant to the trigger analysis,” Mr. Eggert wrote in a 2016 white paper.

Wrongful conviction cases can go on for many years, insurance experts say, and they may reach back to insurers that no longer exist or to policies that don’t provide sufficient coverage for the compensation paid.

Mr. Eggert noted that wrongful conviction cases rarely go to a jury. As far as the big payouts, he noted that “while there are headline-grabbing jury awards, in practice the award may be far less.”

“With public entities, they’re buying style changes year to year based on their budget availability, and they also heavily rely on immunities,” said Sandra McFarland,

public entity specialist at Marsh L.L.C. in New York. “Some state entities to this day do not purchase insurance of any kind; they go bare for casualty and they heavily rely on their immunities. Some have sovereign immunity, which says basically they can do no wrong, and there are states that limit the amount of damages you can collect, and those vary a great deal.”

Ms. McFarland said that plaintiff attorneys will often seek to make the case a civil rights violation, where they expect to get a better settlement outside of the tort immunity of the state.

“Civil rights violations are generally brought under the federal jurisdiction, so the individual state immunities don’t apply,” she said.

Looking forward, Ms. McFarland said public entities should consider buying all their liability coverages from one insurer so that in the event of a claim, “you’re not having carriers conflicting with each other or trying to push the claim to someone else.”

“You’re going to have a definite conflict of interest if you have these coverages with different carriers,” she said, “because general liability and public official liability and law enforcement liability can all be purchased separately. Some people might go to a separate carrier because they have serious losses where the carrier wants to charge too much, so they’ll go elsewhere to get a better premium, but that’s not a good idea because you can definitely lose leverage in trying to manage your claim.”

John Chino, area senior vice president with Arthur J. Gallagher & Co. in Irvine, California, said many government entities are members of insurance pools.

“The pool has a contract with its member, and that contract is basically not affected by whether the pool has insurance or not,” Mr. Chino said.

The wrongful conviction settlements can be devastating for an insurance pool, Mr. Chino said, “because the way they operate, generally speaking, is relatively lean.”

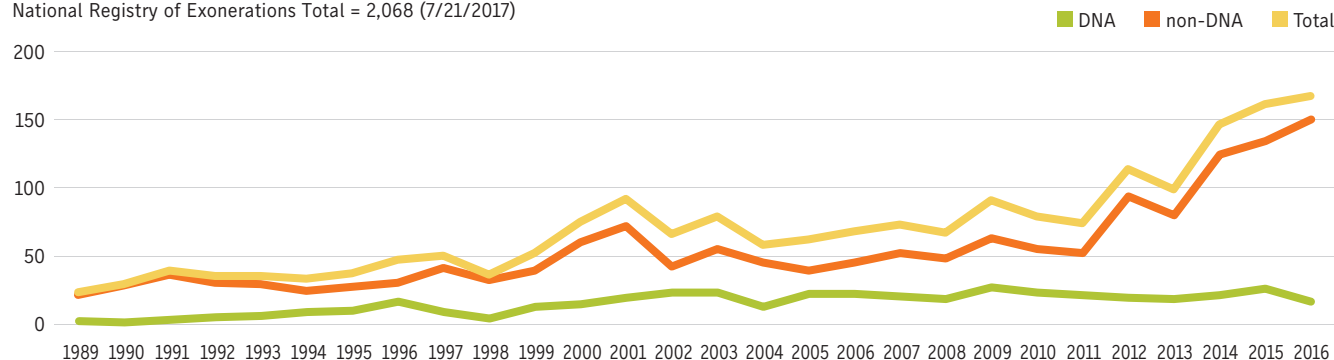
“The members are local governments,” he said. “Local governments can have some pretty severe financial issues, so it’s hard for them to justify keeping large reserves for a 15-year period, just to keep them on the books. It creates for the insurance pools ... something that keeps them up at night.”

As a result, Mr. Chino said, some insurance pools have increased their reserves in the event of a wrongful prosecution case.

“The smarter public entity pools have learned their lesson,” Mr. Chino said, “whether it’s happened to them or to a neighboring pool, and they’re bolstering their reserves for that reason, and they’re not releasing surplus maybe in a way they would’ve done years ago.”

## EXONERATIONS BY YEAR: DNA AND NON-DNA

National Registry of Exonerations Total = 2,068 (7/21/2017)



Sources: University of California Irvine Newkirk Center for Science & Society; University of Michigan Law School & Michigan State University College of Law

## LARGEST PRODUCT LIABILITY INSURERS

Ranked by 2016 direct premiums written in U.S. states and territories, in millions of dollars

Rank	Insurer	Direct premiums written	Direct premiums earned	Loss ratio	Market share
1	Chubb Ltd.	\$375.0	\$386.3	30.3%	10.9%
2	Liberty Mutual Holding Co. Inc.	\$167.9	\$171.4	64.1%	4.9%
3	Zurich Insurance Group Ltd.	\$164.6	\$184.6	19.9%	4.8%
4	Allianz S.E.	\$153.7	\$146.9	6.3%	4.5%
5	Travelers Cos. Inc.	\$153.2	\$155.7	27.5%	4.4%
6	Selective Insurance Group Inc.	\$130.5	\$128.0	37.7%	3.8%
7	American Financial Group Inc.	\$129.3	\$126.6	32.0%	3.7%
8	Hartford Financial Services Group Inc.	\$127.1	\$129.0	63.5%	3.7%
9	Argonaut Group Inc.	\$121.0	\$110.9	27.3%	3.5%
10	W.R. Berkley Corp.	\$120.8	\$116.9	34.1%	3.5%
11	Nationwide Mutual Insurance Co.	\$109.6	\$111.0	68.7%	3.2%
12	Cincinnati Financial Corp.	\$107.6	\$107.9	30.8%	3.1%
13	United Fire & Casualty Group	\$95.3	\$93.7	33.8%	2.8%
14	Fairfax Financial Holdings Ltd.	\$94.6	\$101.0	118.8%	2.7%
15	CNA Financial Corp.	\$79.0	\$77.4	N/A	2.3%
16	Tokio Marine Holdings Inc.	\$76.2	\$68.7	44.7%	2.2%
17	Arch Capital Group Ltd.	\$75.4	\$59.4	38.2%	2.2%
18	Markel Corp.	\$72.6	\$70.3	16.5%	2.1%
19	AmTrust Financial Services Inc.	\$67.7	\$68.2	96.7%	2.0%
20	James River Group Holdings Ltd.	\$56.0	\$54.5	28.5%	1.6%
	Top 20 total	\$2,477.1	\$2,468.4	N/A	71.7%
	Industry total	\$3,455.4	\$3,441.3	38.1%	100.0%

Source: National Association of Insurance Commissioners

## TOP STATES FOR PRODUCT LIABILITY INSURANCE

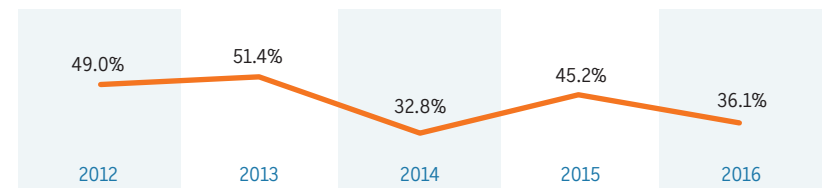
States with the most direct premiums written for product liability insurance in 2016

Rank	States	Direct premiums written
1	California	\$485,303,000
2	New York	\$294,620,000
3	Texas	\$274,194,000
4	Florida	\$215,734,000
5	New Jersey	\$195,797,000
6	Illinois	\$154,306,000
7	Pennsylvania	\$142,763,000
8	Ohio	\$107,089,000
9	Massachusetts	\$102,013,000
10	Michigan	\$90,951,000

Source: National Association of Insurance Commissioners

## PRODUCT LIABILITY INSURANCE LOSS RATIOS

Loss ratios for product liability insurance for U.S. states and territories, Canada and other areas, 2012-2016



Source: National Association of Insurance Commissioners

## LARGEST COMMERCIAL MULTIPLE PERILS INSURERS\*

Ranked by 2016 direct premiums written in U.S. states and territories, in millions of dollars

Rank	Insurer	Direct premiums written	Direct premiums earned	Loss ratio	Market share
1	Travelers Cos. Inc.	\$3,226.7	\$3,224.8	44.5%	8.1%
2	Nationwide Mutual Insurance Co.	\$2,566.8	\$2,588.5	53.5%	6.4%
3	Liberty Mutual Holding Co. Inc.	\$2,285.0	\$2,277.0	44.8%	5.7%
4	Chubb Ltd.	\$2,034.8	\$2,101.5	49.4%	5.1%
5	Tokio Marine Holdings Inc. Group	\$1,798.9	\$1,754.6	45.6%	4.5%
6	Hartford Financial Services Group Inc.	\$1,788.0	\$1,778.2	54.4%	4.5%
7	Farmers Insurance Group of Companies	\$1,603.6	\$1,612.9	50.6%	4.0%
8	State Farm	\$1,553.4	\$1,553.3	53.5%	3.9%
9	Cincinnati Financial Corp.	\$1,181.3	\$1,173.1	55.5%	3.0%
10	The Hanover Insurance Group Inc.	\$990.9	\$973.7	50.1%	2.5%
11	CNA Financial Corp.	\$971.1	\$981.3	40.0%	2.4%
12	Auto-Owners Insurance Co.	\$892.4	\$894.2	47.2%	2.2%
13	Erie Insurance Inc.	\$833.1	\$819.6	41.4%	2.1%
14	W.R. Berkley Corp.	\$706.8	\$693.9	51.6%	1.8%
15	Allstate Insurance Co.	\$663.2	\$673.5	55.7%	1.7%
16	Zurich Insurance Group Ltd.	\$647.7	\$694.6	55.1%	1.6%
17	QBE Insurance Group Ltd.	\$630.0	\$697.3	39.4%	1.6%
18	American International Group Inc.	\$592.6	\$653.6	61.6%	1.5%
19	Allianz S.E.	\$539.7	\$524.8	127.7%	1.4%
20	Church Mutual Insurance Co.	\$450.4	\$453.7	46.3%	1.1%
	Top 20 total	\$25,956.5	\$26,124.3	N/A	65.2%
	Industry total	\$39,833.6	\$39,767.1	50.7%	100.0%

\*Multiple perils policies package two or more insurance coverages protecting an enterprise from various property/casualty exposures. Source: National Association of Insurance Commissioners

## TOP STATES FOR COMMERCIAL MULTIPLE PERILS

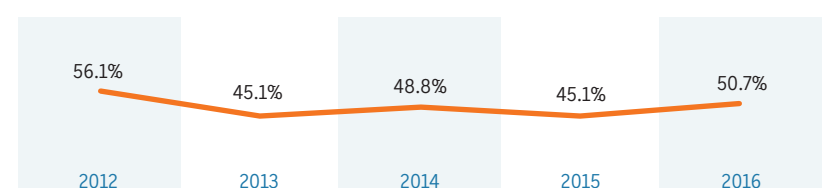
States with the most direct premiums written for commercial multiple perils insurance in 2016.

Rank	States	Direct premiums written
1	California	\$4,651,407,000
2	New York	\$3,772,530,000
3	Texas	\$2,662,647,000
4	Florida	\$2,141,135,000
5	Pennsylvania	\$1,728,326,000
6	Illinois	\$1,713,354,000
7	New Jersey	\$1,430,887,000
8	Ohio	\$1,246,903,000
9	Massachusetts	\$1,141,206,000
10	Michigan	\$1,076,839,000

Source: National Association of Insurance Commissioners

## COMMERCIAL MULTIPLE PERILS INSURANCE LOSS RATIOS

Loss ratios for commercial multiple perils insurance for U.S. states and territories, Canada and other areas, 2012-2016.



Source: National Association of Insurance Commissioners

COMMENTARY

## Lawsuit trends vex employers

**L**awsuit trends have been a mixed bag for business over the past few months. The first half of 2017 saw a record number of federal securities class actions, with traditional shareholder lawsuits and merger and acquisition claims up significantly.

On the product liability side, as we report on page 20, pharmaceutical companies remain a prime target for litigation as plaintiffs allege a wide variety of missteps by the deep-pocketed pharma sector. Decisions favoring plaintiffs in litigation seeking to hold brand-name drug manufacturers liable for generic versions of their drugs, which

they did not produce, and suits seeking to hold drug companies liable for opioid addiction are just a couple of worrying legal trends for the sector.

But in other areas, tort reform advocates and corporate defense lawyers have a fair amount to be pleased about.

In its recently ended term, the U.S. Supreme Court limited various types of forum shopping in three decisions it issued. The rulings generally

held that a company can't be sued in a state if it's not based there or an alleged injury did not take place there.

More generally, according to an analysis of data on tort lawsuit filings conducted by the Wall Street Journal last month, far fewer torts have been filed in recent years compared with the 1980s and 1990s — two in 1,000 people filed tort suits in 2015 compared with 10 in 1,000 in 1993. According to the analysis, there are various reasons for the sharp decline, including restrictions on bringing litigation, the increased cost of litigation and improved auto safety.

And amid all the confusion surrounding health care reform in recent months, the House of Representatives in June passed a bill that would cap noneconomic damages at \$250,000 in medical malpractice cases involving government programs. That's at the low end of caps imposed in many states, and such a measure would have a hard time getting through the Senate, but its albeit limited progress may encourage more reform efforts.

Attempts to find corporations responsible for actions they are at best tenuously linked to continue to unnecessarily take up court resources. And some lottery-level damage awards are understandably labeled "excessive."

There's a fine line between acting to unclog the courts and denying individuals their right to find powerful organizations accountable. Erring on the side of the individual should be the natural inclination in a free society; however, costs and resources must be considered, too.



**Gavin Souter**  
EDITOR

SCHILLERSTROM



VIEW FROM WASHINGTON

## LGBT consumer power

**T**he Trump administration has declared war on the LGBT community. Employers would be wise not to follow the administration's lead, given that they could be alienating a consumer base with significant buying power.

The U.S. Equal Employment Opportunity Commission was making great strides on protections for lesbian, gay, bisexual and transgender rights in the employment sector under the Obama administration, taking the position that Title VII of the 1964 Civil Rights Act protects workers against sexual orientation discrimination and rigorously defending that position in the courts. But the commission's valiant efforts are now being undercut in at least one major case by a fellow agency: the U.S. Department of Justice.

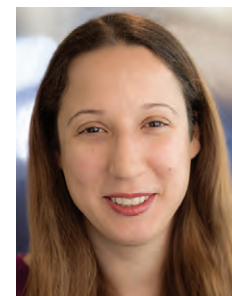
The department filed court papers last month in the 2nd U.S. Circuit Court of Appeals in New York arguing that Title VII does not cover workplace discrimination based on sexual orientation. The department's amicus brief was filed in an appeal of a case called *Zarda v. Altitude Express* in which a skydiver alleged he was discriminated against by his former employer after he disclosed that he was gay.

Major employers are firmly pushing back against the department's position. Firms such as Google Inc., Microsoft Corp., CBS Corp. and Viacom Inc. urged the court to rule that Title VII offers protections to gay employees. The companies rightly noted that bias against gay employees is widespread, citing the more than 40% of gay workers reporting harassment and other forms of discrimination in various studies.

It makes good business sense for employers to resist the Trump administration's position. A June survey by advertising agency Ogilvy & Mather revealed that nearly 65% of Americans believe that LGBT-inclusive brands or businesses are good for the economy. A 2016 report by Accenture Consulting noted that LGBT buying power is rising quickly and that

growth could exceed \$1 trillion by 2020.

News of the department's amicus brief came the same week of the Twitter-happy president's announcement via social media that transgender people would be banned from serving in the military — a decision that reportedly blindsided top military officials. President Donald Trump tweeted: "Our military must be focused on decisive and overwhelming victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail." But this wasn't about medical



**Gloria Gonzalez**  
DEPUTY EDITOR

costs or disruption. His decision was clearly aimed at appeasing his socially conservative base.

Some legislators in North Carolina and Texas are no better, passing or considering so-called "bathroom bills" to address a nonexistent threat to children by requiring transgender people to use bathrooms in public facilities corresponding with

their sex at birth. Corporations and organizations are using their economic muscle to resist these obviously discriminatory actions. North Carolina's law is estimated to cost the state at least \$3.7 billion by 2028, a number that should encourage legislators to focus more on creating jobs and helping their constituents achieve a decent standard of living.

I honestly don't believe I will ever understand why some people feel so threatened by members of the LGBT community that they advocate to enact and enforce laws to restrict their human rights, but it's critical for employers to use their collective might to push back.

# Beyond compensation: the insurance industry's role in climate resilience

**N**early 2,000 disclosures to a climate questionnaire issued last year by CDP, a London-based organization that works with shareholders and corporations to disclose greenhouse gas emissions, revealed that one in five companies rely on insurance as a part of their climate change risk management strategy, not just to compensate losses but also to guide investments in prevention and protection.

Private-sector strategies to continue operations and reduce financial losses in the face of intensifying storms, sweltering temperatures and pressured supply chains include a variety of process-driven and engineered measures, from strengthening relationships with partners to building flood barriers.

Insurers informed many of these strategies as companies in manufacturing, utilities, pharmaceuticals and others looked to their insurers as the thought leaders on climate risk and relied on their models for downscaled climate data. Coloplast A/S, a Danish pharmaceuticals company, relies on its property insurer FM Global as its “main assets safety advisor to identify and mitigate climate-related risks.” Praxair Inc., a chemicals company, also depends on its insurer for “rigorous standards based on their own scientific research and proven solutions that often go beyond national recommendations.”

Insurers’ assessments often lead to investments in more resilient infrastructure. Equinix Inc., a technology company, involves its insurer at the building design phase to incorporate climate projections into decisions about floor height, placement of storage tanks, maintenance schedules and more. Georg Fischer, a Swiss electrical equipment company, involved insurance expertise after its Traisen, Austria, production site flooded. The company decided to build dams and channels based on projections of intensifying rainfall events.

## Insurers’ responses to climate risks

For insurers, engaging on climate risk management is a business prerogative. More than half of the 42 insurance companies that publicly disclosed to CDP, formerly known as the Carbon Disclosure Project, said physical climate change impacts could result in increased operational costs; four reported that climate change could result in an “inability to do business.” MMI Holdings Ltd. puts it succinctly: “The risk is that the impact of climate change on claims will rise faster than expected and that premiums will not be adequate to cover the shortfall.”

So, what are insurers doing? The CDP

data reveals a range of responses, from hiring climate modelers to buying more reinsurance to diversifying geographies to withdrawing policy coverage from assets deemed too risky, such as those in certain coastal areas.

Many of these climate risk management strategies are focused on business continuity for the insurer itself. But given the fact that so many companies in other sectors look to insurers as the guiding light toward climate resilience, do insurers have an obligation — and an opportunity — to think about climate resilience more broadly?

There are several ways that insurers could expand their resilience strategies. They could directly incentivize adaptive measures among their customers through rate adjustments. For instance, Chubb Ltd. offers lower rates for clients that mitigate their exposure to storms by retrofitting buildings to comply with updated building codes, install hurricane shutters or relocate infrastructure away from coastlines and floodplains.

*Many ... climate risk management strategies are focused on business continuity for the insurer itself. But given the fact that so many companies in other sectors look to insurers as the guiding light toward climate resilience, do insurance companies have an obligation — and an opportunity — to think about climate resilience more broadly?*

Insurers could also work to close the protection gap, which refers to the fact that 70% of the economic losses from natural disasters over the past decade were uninsured. Parametric insurance models that offer a predetermined payment in the case of a triggering event such as a hurricane or drought are one way to expand insurance coverage in vulnerable areas. Lowering the barriers to entry regarding modeling could also help. The Oasis Loss Modeling Framework is working to do just that, with more than 40 corporate members committed to broadening the market for risk analytics and democratizing data.

## Thinking on a landscape scale

However, one of the most effective

things insurers could do is promote landscape-scale interventions that reduce climate risk for an entire coastline or city. Examples of this are hard to come by, but there are a few. Swiss insurer Helvetia has an initiative to plant at least 10,000 trees per year, recognizing that forests “are an important measure to safeguard against damage [from] rock falls, landslides, avalanches and mudslides.”

One Japanese insurer, Tokio Marine & Nichido Fire Insurance Co., quantified the risk reduction associated with its work (with partners) to plant 8,994 hectares of mangroves in nine Asia-Pacific countries since 1999. Although the company’s main goal was to offset the emissions of its business operations, a recent evaluation showed that the initiative provided disaster risk reduction to at least half a million people, valued at \$55.8 million; shoreline stabilization and erosion control provided an additional \$71.1 million in ecosystem services.

This evaluation echoes a growing body of evidence that nature-based solutions such as wetlands, mangroves and cloud forests have quantifiable resilience benefits. For example, mangrove belts of sufficient width can reduce flooding from tsunamis by up to 30% and cut wave height by up to 100%, according to the World Bank’s WAVES initiative.

Could actuaries one day reduce premiums for companies that protect coastal wetlands or upstream forests just as they adjust rates for engineered infrastructure such as flood barriers and hurricane shutters?

## Investing in nature

To do this, scientists will need to continue to improve understanding of the climate risk mitigation values of nature and translate those values into metrics that insurers can include in their risk modeling. There have been some efforts to do this, such as The Nature Conservancy’s work with Swiss Re to model the value of natural coastal defenses in the Gulf of Mexico. But it’s still early days.

In the meantime, perhaps the biggest impact insurers could have is through their investment portfolios, currently valued at \$30 trillion, or about a tenth of the value of the global financial markets. A 2015 analysis by the Asset Owners Disclosure Project found that out of 116 insurers with a combined \$15 trillion in invested assets, only 14 companies were protecting their portfolios from climate risk, investing just \$30 billion in low-carbon assets. If invested differently, this money could have a huge impact on climate resilience globally.

Beyond simply protecting their assets



Allie Goldstein is a scientist at Conservation International. She can be reached at 703-341-2508 or [agoldstein@conservation.org](mailto:agoldstein@conservation.org).

by, for instance, screening their portfolios for greenhouse gas emissions, insurers could actively invest in societal resilience by participating in the rapidly growing green bond market. Green bond issuance reached \$93.4 billion in 2016, a doubling from the previous year. Most of this investment has historically gone toward major infrastructure projects such as renewable energy or public transportation, but new pilots demonstrate how to use the green bond market to promote nature-based solutions to climate change.

With input from Conservation International and support from BHP Billiton, the International Finance Corporation recently issued a first-of-its-kind Forest Bond to finance a project that prevents deforestation in Kenya. Investors can choose to receive their return from the \$152 million bond in the form of cash, carbon credits, or a combination of the two. A similar bond model might work for an ecosystem that produces measurable resilience, such as a mangrove, with benefits flowing to investors in the form of volume of stormwater retained or wave height reduced — metrics that could be translated into dollar values of avoided losses.

These are investments that insurers could facilitate alongside other investors in the near-term. Such investments could then feed into a longer-term goal: to measure the effectiveness of ecosystem-based adaptation over time, informing insurers’ assumptions about how to appropriately adjust rates for companies that protect natural defenses.

## XL Catlin launches broader cyber risk policy

■ XL Group Ltd. has introduced a new policy form that offers coverage for data protection and privacy risks following a technology or cyber event.

CyberRiskConnect offers up to \$15 million in limits, and coverage is available on a primary or excess basis, according to the insurer, which does business as XL Catlin.

The coverage includes expanded coverage for all third-party insuring agreements for wrongful acts committed by rogue employees, outsourced providers and third parties for whose third party wrongful act an insured is legally responsible; business interruption coverage after a waiting period, with extra expense in excess of a dollar retention; an 18-month reimbursement period for losses arising from a data or cyber security breach; and an unlimited reimbursement period for business income loss.

There also is an expanded definition of “outsourced provider” to include any third party contracted to perform any business service on behalf of an insured company, XL Catlin said in a statement.

## Aon offers Uber drivers injury protection

■ Aon P.L.C. is collaborating with One Beacon Insurance Group to develop and offer driver injury protection for Uber Technologies Inc. drivers.

The driver injury protection is an occupational accident insurance program that safeguards drivers’ “earnings against unforeseen covered accidents,” Aon said in a statement. The product was designed around a usage-based pricing model “to better align with the flexible/variable schedules and related exposures of on-demand economy workers,” according to the statement.

## Hiscox offers security response coverage in US

■ Hiscox Ltd. has launched security response coverage designed to help U.S. policyholders of all sizes face terror, criminal and political violence threats.

Hiscox will partner with risk consultancy Control Risks Group Ltd. on the Security Incident Response product, already introduced in Europe, which is designed to “help businesses protect their people, operations, brand and reputation by complementing existing business security resources or, where necessary, acting as a stand-alone security function,” the Bermuda-based insurer said in a statement.

Perils addressed by the coverage include criminal, political, terrorism and political violence risks; kidnap, detention and



## Commercial drone policy takes flight

■ Munich Reinsurance America Inc. has launched a commercial drone insurance product for insurers and their small to medium-size policyholders, including law enforcement, security, photography and agricultural operations.

The endorsement provides bodily injury and property damage liability or personal injury liability coverage for drones under 55 pounds.

The drone liability endorsement can be attached to an existing commercial general liability insurance policy purchased through a participating insurer, the Princeton, New Jersey-based reinsurer said in a statement.

Limits up to \$1 million are available on all policies meeting the eligibility criteria, a Munich Re spokeswoman said in an email.

The endorsement can be customized based on insurers’ existing commercial lines policies and their policyholders’ needs. Claims are handled by the insurer, Munich Re said.

extortion risks; and information risks such as cyber threats, as well as resources to help businesses build preventive resilience programs.

## Management liability package for nonprofits

■ Hartford Financial Services Group Inc. is extending its management liability insurance program for private entities to include nonprofits.

Coverages in the program include: direc-

tors, officers and entity liability, employment practices, fiduciary liability, fidelity/ crime and kidnap and ransom/extortion.

Hartford said other coverage options available through the program include: crisis management public relations reimbursement, workplace violence expense, increased wage and hour claim defense coverage and expense coverage for cyber breaches.

The package offers \$10 million in limits.

The insurer said the coverage is available for trade and professional associations, chambers of commerce, libraries, foundations and charities, and museums, among others.

## Chubb launches practice for large transport risks

■ Chubb Ltd. has launched a multiline industry practice within its major accounts division for large transportation companies in the United States and Canada.

Chubb’s transportation industry practice offers a range of coverages and services for transportation firms with fleets of more than 500 units that are willing to use large retentions or deductibles, including truckers, bus operators, waste haulers, rental car companies, airlines, and manufacturers and distributors with large vehicle fleets, Chubb said in a statement.

David Brown has been appointed as executive vice president of the transportation industry practice, major accounts division. Based in New York, he previously was vice president and transportation practice leader for Chubb’s global casualty business unit, which he will continue to oversee as part of his expanded responsibilities.

## Willis Towers Watson unveils virtual workspace

■ Willis Towers Watson P.L.C. has launched vPlace, a virtual, actuarial workspace that brings the brokerage’s insurance software to the cloud.

The software-as-a-service platform is intended to reduce information technology costs and find more efficient ways to respond to business and regulatory pressures, the brokerage said in a statement. The online workspace is powered by Microsoft Azure.

The platform can accommodate a range of Willis Towers Watson’s risk and actuarial software products and other supplementary actuarial programs to enable them to work seamlessly together, the brokerage said.

The RiskAgility Financial Modeler risk management platform is the first of its actuarial software products to be hosted on vPlace. Other products scheduled to join over the coming year, Willis said.

## DEALS & MOVES

### Markel boosts underwriting with State National buy

Markel Corp. will acquire State National Companies Inc. in a transaction valued at about \$919 million.

The Richmond, Virginia-based insurer and reinsurer will acquire all of the outstanding shares of Bedford, Texas-based State National common stock for \$21 per share in cash, the companies said in a joint statement.

The transaction is expected to close in the fourth quarter of 2017.

### Axis Capital to acquire London rival Novae

Bermuda-based insurer and reinsurer Axis Capital Holdings Ltd. will buy Lloyd’s of London insurer Novae Group P.L.C. for \$604 million.

The combined business will have more than \$6 billion in gross written premium, Axis said in a statement. Novae reported £901 million (\$1.17 billion) in GWP in 2016, pretax profit of £23.7 million (\$30.7 million) and a 107% combined ratio.

Novae operates Lloyd’s syndicate 2007, and Axis operates syndicate 1686. The combined entity will have London market-related GWP of about \$2 billion.

### Lloyd’s firm Nexus buys US reinsurance agency

London-based Nexus Underwriting Management Ltd. has bought the personal accident treaty reinsurance business of managing general agency Zon Re USA L.L.C.

Terms of the deal were not disclosed. The Mt. Olive, New Jersey-based unit will be renamed Nexus Re, according to a Nexus statement.

In 2016, Zon Re produced gross written premium of \$14.3 million and revenue of \$3.77 million, according to a statement by B.P. Marsh & Partners P.L.C., which holds an 18.6% stake in Nexus and helped fund the deal.

### Generali sells Columbia business to Talanx

Generali Group has agreed to sell its insurance business in Columbia to German rival Talanx Group for about €30 million (\$34.5 million).

The property unit, Generali Colombia Seguros Generales S.A., and the life unit, Generali Colombia Vida Compañía de Seguros S.A., have combined premium volume of about €59 million (\$67.9 million) and pretax profit of about €2 million (\$2.3 million), according to a Talanx statement. They are based in Bogota.



### UP CLOSE

## William Stewart

**NEW JOB TITLE:** New York-based division president of Chubb Ltd.'s global cyber risk practice

**PREVIOUS POSITION:** Annapolis Junction, Maryland-based executive vice president and commercial cyber business lead for Booz Allen Hamilton Inc.

**GOALS FOR NEW POSITION:** My primary goal in joining Chubb is to help an industry-leading cyber insurance provider evolve its offerings and further strengthen its brand recognition in the marketplace. My background includes building programs for organizations that take cyber security very seriously and have done so for many years. These include Fortune 500 firms, as well as the (U.S. Department of Defense) and intelligence agencies ... I'm very impressed with the Chubb cyber team and the corporate leadership team, and believe we are well-positioned to achieve this goal.

**ON LEADERSHIP:** Listening, followed closely by leading by example.

**CHALLENGES FACING INDUSTRY:** There are many. (The) most pressing include: creating insurance products and services that keep pace with the rapidly evolving cyber threat landscape; maturing the underwriting of cyber risk; fully understanding aggregation potential; balancing the inevitable price vs. grade of service trade-off.

**CRYSTAL BALL:** I believe we are moving toward a much more compressive understanding of cyber and (information technology) risk that will further accelerate growth in the cyber insurance space and ensure we continue meeting the specific needs of our clients. In the early days of corporate security programs, it was very difficult to convince corporations to invest. Today things have shifted toward investment in proactive security programs that typically do reduce risk.

**FIRST INDUSTRY JOB:** Conducting a corporate security assessment and building a public key infrastructure (PKI) for a large New York bank.

**WHAT SURPRISED ME:** Having previously consulted to the government, I was surprised by the similarities in organizational dynamics. It was a good early lesson that people in large organizations tend to behave in similar ways.

**FAVORITE QUOTE:** "People might not get all they work for in this world, but they must certainly work for all they get." — Fredrick Douglas

**OUTSIDE THE INDUSTRY, A DREAM JOB:** Ski instructor

**HOBBIES:** Skiing, golf, hiking and biking

**PETS:** Dog. We have a 14-pound white Coton name Coconut that runs the place.

**THING MOST PEOPLE DON'T KNOW ABOUT ME:** I spent 22 years in the Army, mostly National Guard, and I enjoyed every minute of it.

**DON'T LEAVE THE HOUSE WITHOUT:** iPhone, protein bars, Bose noise cancellation headphones

**FAVORITE MEAL:** Oysters, softshell crabs and coleslaw, followed closely by rib-eye steak and baked potato.

**FAVORITE BOOK:** "Chesapeake," by James A. Michener

**ON MUSIC:** Spanish Mary, The New Basement Tapes, Rhiannon Giddens

**CAN'T-MISS TELEVISION SHOW:** "Game of Thrones"

**ON A SATURDAY AFTERNOON:** Watching one of our kids play a sport, relaxing around the house.

I believe we are moving toward a much more compressive understanding of cyber and IT risk that will further accelerate growth in the cyber insurance space.



**Ron Lockton** has been named president and CEO of Lockton Cos. L.L.C. He replaces Glenn Spencer, who resigned after three months in the job for personal reasons, the brokerage

said. Mr. Lockton was previously the brokerage's vice chairman. He is Chairman David Lockton's nephew and the son of founder Jack Lockton, who died in 2004. He is based in Kansas City, Missouri.



American International Group Inc. appointed **Seraina Macia** executive vice president and CEO of the insurer's planned technology subsidiary, Attune, which will focus on

automated underwriting. Previously, she was CEO of Hamilton USA, the U.S. platform of Hamilton Insurance Group Ltd., which is expected to be acquired by AIG in the fourth quarter of 2017. She is based in New York.



Marsh L.L.C. named former Goldman Sachs Group Inc. risk manager **Alex deLaricheliere** to lead its U.S. banking and capital markets practice in a newly created position. Prior to

joining Goldman Sachs, where he worked for 10 years, he was a financial institutions underwriter at Chubb Ltd. and, before that, at American International Group Inc. He is based in New York.



Zurich Insurance Group Ltd. named **Sierra Signorelli** chief underwriting officer for commercial insurance. Previously, she was global head of network partner practice for

American International Group Inc. She will be based in New York before relocating to Zurich, the insurer said in a statement.



**Peter Zaffino**, former CEO of Marsh L.L.C., joined American International Group Inc. as global chief operating officer effective Aug. 1. The move will reunite

Mr. Zaffino with Brian Duperreault, who previously headed Marsh & McLennan Cos. Inc., the brokerage firm's parent. Mr. Zaffino will be replaced as CEO of Marsh by John Doyle, who joined the brokerage as president last year.

SEE MORE ONLINE

Visit [www.businessinsurance.com/ComingsandGoings](http://www.businessinsurance.com/ComingsandGoings) for a full list of this month's personnel moves and promotions. Check our website daily for additional postings and sign up for the weekly email. *Business Insurance* would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired, or appointed senior-level executives to [editorial@businessinsurance.com](mailto:editorial@businessinsurance.com).

## OFFICE SECURITY ROBOT DROWNS IN FOUNTAIN



### Hobby Lobby in hot seat over artifacts

Crafters and home décor enthusiasts hoping to invoke early Middle Eastern culture in their living rooms and kitchens might have to shop elsewhere.

Oklahoma City-based Hobby Lobby Stores Inc. must forfeit thousands of artifacts poached from modern-day war-torn Iraq and pay a \$3 million fine to resolve a civil action brought by the U.S. Department of Justice, according to media reports.

Investigators said the company received the falsely labeled artifacts — ancient cuneiform writing tablets and clay bullae, or balls of clay with imprinted seals — from a supplier in the United Arab Emirates. The artifacts were then smuggled into the United States, according to media reports.

Dealers later mislabeled the shipments as “ceramics” and “samples” and illegally shipped them to Hobby Lobby stores, federal investigators told reporters.

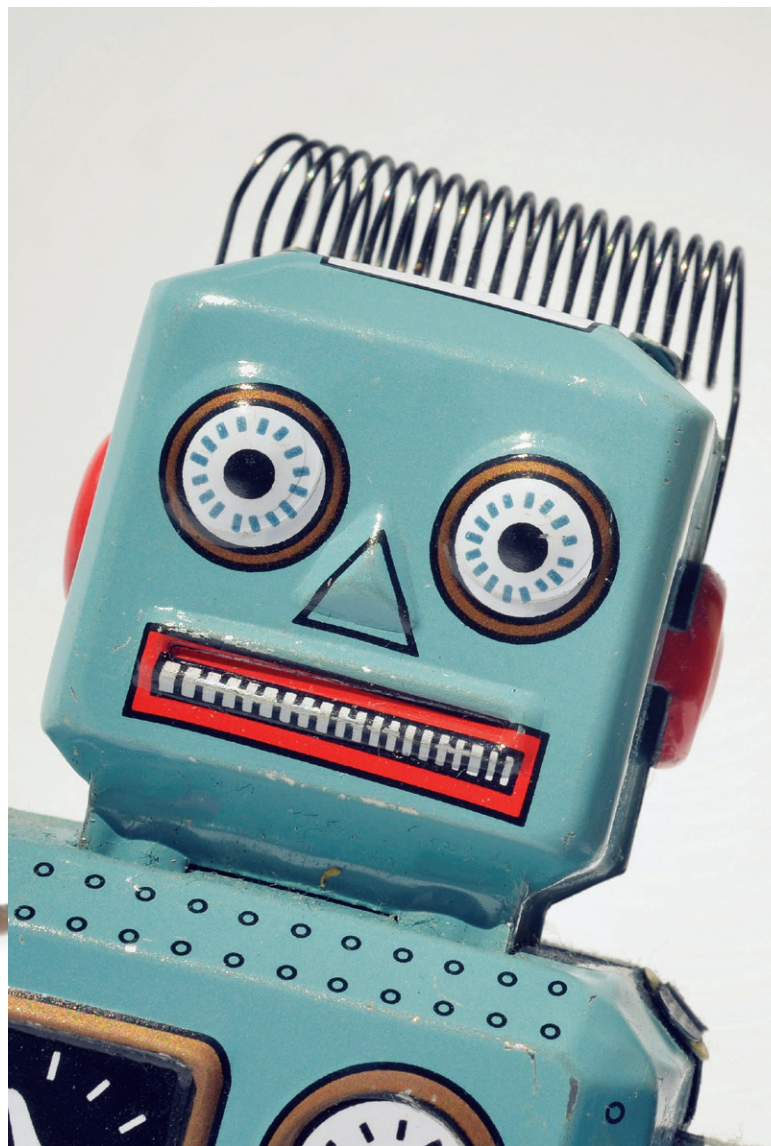


### Rats! Chipotle woes continue

New characters were introduced in Chipotle Mexican Grill Inc.’s food safety saga.

Rats fell from a ceiling at a Dallas location in July, according to media reports. Diners dropped their burritos and picked up their cellphone cameras to record rodents scurrying around the floor and climbing up the wall.

A Chipotle statement called it “an extremely isolated and rare incident.” But the company has grappled with E-Coli and other food safety issues.”



A 300-pound robot that used to patrol an office building in Washington, D.C., tumbled into a water fountain in July.

The K5 machine, developed by Silicon Valley startup Knightscope Inc., was put to work at the Washington Harbour complex in the Georgetown section of the city when it tumbled down several concrete steps and landed on its side in a few feet of water, according to the Huffington Post. Knightscope called the incident an “isolated event” and plans to replace the android, reported the Washington Post.

The company tweeted: “Security Robot, yes. Submarine robot, no. Got it.” Others in the Twittersphere made their own assessments of the mishap: “It’s OK security robot. It’s a stressful job, we’ve all been there,” quipped @SparkleOps.

“Have you thought about getting a lifeguard robot to keep the security robots from drowning (?),” wrote @bitterjoe.

### Falling ceiling prompts helmets

Innovation and improvisation in workplace safety have a team of office workers at a government building in India wearing motorcycle helmets at their desks, the *Hindustan Times* reported in July.



Plaster is reportedly falling off the ceiling in an old building in Bihar’s East Champaran district, and the building’s construction department

has deemed the building unfit for use. But authorities have found no alternate accommodation, the newspaper reported. Meanwhile, employees have taken to wearing helmets at work. A photograph accompanying the article shows workers at desks, in front of laptop computers, heads adorned with shiny, bulky motorcycle helmets.

“Even the block development officer has been forced to wear a helmet. The building construction department has already declared the structure ‘unfit,’ but no effort has been made to undertake repairs,” said Manoj Paswan, a village representative.



### 4-by-4 lumber doesn’t measure up

Two home-improvement stores are accused of selling 4-by-4 lumber that doesn’t measure up, according to parallel lawsuits filed in June against Eau Claire, Wisconsin-based Menards Inc. and Atlanta-based Home Depot.

The problem, according to lumber experts and carpenters quoted in media reports, is that they aren’t supposed to. The popular planks dubbed “4-by-4s” are actually about 3 ½ inches by 3 ½ inches.

“Anybody who’s in the trades or construction knows that,” said Tim Stich, a carpentry instructor at Milwaukee Area Technical College, to a USA Today reporter.

Both stores have called the \$5 million lawsuits bogus, according to USA Today.

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