

COPYRIGHT RISK: Big verdicts make media liability insurers wary - PAGE 4

BUSINESS INSURANCE®

www.businessinsurance.com

SEPTEMBER 2017

**SPECIAL
REPORT**

**EXCESS &
SURPLUS
LINES
MARKET**

PAGE 22

BARCELONA
I ❤️

TERROR TARGETS

Attacks on crowds prompt rethink
on protection strategies

PAGE 18

partner
RESPONSIVE
ENERGIZED
TO INNOVATE
certainty.
EXPERIENCE
team
IN LOCKSTEP WITH
LONG TERM
UNENCUMBERED

At Berkshire Hathaway Specialty Insurance, certainty comes from who we are and how we operate. We combine the strength of a top-rated balance sheet with a worldwide team of professionals who have excellent credentials, capabilities and character. So you can count on us for stable capacity, creative solutions, and promises fulfilled, year after year.



Berkshire Hathaway
Specialty Insurance®

Asheville | Atlanta | Boston | Chicago | Houston | Indianapolis | Irvine
Los Angeles | New York | San Francisco | San Ramon | Seattle | Stevens Point
Auckland | Brisbane | Dublin | Düsseldorf | Hong Kong | Kuala Lumpur
London | Macau | Melbourne | Singapore | Sydney | Toronto

CEO
Adam Potter

PUBLISHER
Peter Oxner
(Chicago)
poxner@businessinsurance.com

EDITOR
Gavin Souter
(Chicago)
gsouter@businessinsurance.com

DEPUTY EDITOR
Gloria Gonzalez
(Washington)
ggonzalez@businessinsurance.com

SENIOR REPORTER
Judy Greenwald
(San Jose)
jgreenwald@businessinsurance.com

REPORTER
Louise Esola
(New Orleans)
lesola@businessinsurance.com

REPORTER
Joyce Famakinwa
(Chicago)
jfamakinwa@businessinsurance.com

REPORTER
Rob Lenihan
(New York)
rlenihan@businessinsurance.com

REPORTER
Matthew Lerner
(New York)
mlerner@businessinsurance.com

COPY CHIEF
Katherine Downing
(Chicago)
kdowning@businessinsurance.com

COPY EDITOR
Kristen Beckman
(Denver)
kbeckman@businessinsurance.com

ART DIRECTOR
Jeremy Werling
(Cincinnati)
jwerling@businessinsurance.com

DIRECTOR OF RESEARCH,
PLANNING AND INSIGHTS
Andy Toh
(Chicago)
atoh@businessinsurance.com

MAJOR ACCOUNTS DIRECTOR -
MIDWEST & WESTERN U.S.
Keith Kenner
(Chicago)
kkenner@businessinsurance.com

MAJOR ACCOUNTS DIRECTOR -
NORTHEASTERN U.S. & INTERNATIONAL
Ron Kolgraf
(Boston)
rkolgraf@businessinsurance.com

HEAD OF SALES - EVENTS &
WORKERS COMPENSATION MAGAZINE
Jeremy Campbell
(Cincinnati)
jcampbell@businessinsurance.com

HEAD OF EVENT PROGRAMMING
Joanne Wojcik
(Denver)
jwojcik@businessinsurance.com

DIGITAL OPERATIONS MANAGER
Kate Lichnerska
(Chicago)
klichnerska@businessinsurance.com

MARKETING MANAGER
Katie Kett
(Chicago)
kkett@businessinsurance.com

REPRINT SALES MANAGER
Lauren Melesio
(New York)
lmelesio@businessinsurance.com

SUBSCRIPTIONS & SINGLE COPY SALES
membership@businessinsurance.com
312-300-4127

Business Insurance is published by
Business Insurance Holdings.



INSIDE



PERSPECTIVES

As the marijuana industry grows, insurers must adapt to meet the sector's needs, says Cozen O'Connor's Stephen Pate. **PAGE 33**

LEGAL BRIEFS

Recent court opinions **PAGE 15**

OPINIONS

Captive owners should take note of recent tax ruling **PAGE 32**

MARKET PULSE

Products, deals and more **PAGE 34**

PEOPLE

Insurance industry moves **PAGE 36**

SPECIAL REPORT: EXCESS & SURPLUS LINES

Ample market capacity suppresses E&S pricing; flood risks pique insurer interest; FEMA's reinsurance pilot program; 3-D manufacturing risks; research and data on wholesale brokers, surplus lines insurers and state premiums. **PAGE 22**

NEWS ANALYSIS

FOR BREAKING NEWS
COVERAGE, VISIT

businessinsurance.com



RISK MANAGEMENT

Copyright infringement lawsuits highlight the "blurred lines" of intellectual property laws. **PAGE 4**

WORKERS COMP

A look at the connections between ethnicity, chronic health conditions and workers compensation costs. **PAGE 10**

INTERNATIONAL

Norway's economy is small, but its property/casualty insurance market is well-developed. **PAGE 14**

VIEW FROM THE TOP

ALAN JAY KAUFMAN

Alan Jay Kaufman is chairman, president and CEO of H.W. Kaufman Financial Group. One of the largest intermediaries in the U.S. excess and surplus lines market, privately held Kaufman has grown organically and through acquisitions over the past several years. Mr. Kaufman discusses the outlook for the market and what actions the insurance sector needs to take to solve the ongoing problem of attracting talent. **PAGE 16**



OFF BEAT

Money can buy a high-end match-making service, but not necessarily love. **PAGE 38**



Copyright rulings extend liability risks

BY GLORIA GONZALEZ

ggonzalez@businessinsurance.com

The lines are being blurred when it comes to infringement of copyrighted music, as musicians turn to the courts to defend their art and large verdicts garner major media and insurer attention.

Companies need to implement clear risk management procedures to ensure they are not inadvertently or maliciously using copyrighted music, with insurance policies providing the last line of defense against such claims.

Marvin Gaye's family emerged victorious, at least temporarily, in a case involving a song called "Blurred Lines" by Robin Thicke, Pharrell Williams and T.I., which a jury in March 2015 decided infringed on the late Mr. Gaye's "Got to Give It Up." The verdict has been appealed to the 9th U.S. Circuit Court of Appeals in San Francisco, with oral arguments scheduled for Oct. 6, but a lower court judge awarded \$5.4 million in damages and 50% of future song royalties to the Gaye family. The decision generated significant backlash because the infringement finding was based on the songs having the same "feel" or "groove," which the "Blurred Lines" artists argued does not constitute infringement.

"I think that dispute really does a very good job of summarizing the state of copyright infringement actions, particularly in the case of music infringement," said Coe Ramsey, an entertainment lawyer with Brooks, Pierce, McLendon, Humphrey & Leonard L.L.P. in Raleigh, North Carolina. "There really couldn't be a better song title at issue in that case."

More than 200 musicians urged



REUTERS

Nona Gaye, second from left, daughter of late soul singer Marvin Gaye, and lawyer Richard Busch, front right, speak to the media outside a Los Angeles court in March 2015. Mr. Gaye's heirs won a \$7.4 million judgment against recording stars Robin Thicke and Pharrell Williams, whom a jury found plagiarized the Motown artist in the creation of their hit single "Blurred Lines."

the appellate court in an amicus brief filed last year to overturn the verdict, arguing it threatened to punish songwriters for creating new music inspired by previous work.

"If something as subjective as vibe and influence could be used to determine copyright infringement took place, it certainly wouldn't encourage that creativity and that development of music," said Shannon Groeber, Philadelphia-based senior vice president for JLT Specialty USA, a unit of Jardine Lloyd Thompson Group P.L.C.

Claims of copyright infringement in the music sector tend to fall into two areas: failure to secure the correct — or any — license; and accusations the music is similar to an existing piece — a difficult claim to adjudicate because it requires a complex and often subjective analysis of alleged similarities, experts say.

The fair use doctrine can be used to defend against claims of copyright infringement if the use of copyrighted material is done for a transformative purpose, said Joy Butler, attorney and author of "The Permission Seeker's Guide Through the Legal Jungle." But a 2013 opinion from the 2nd U.S. Circuit Court of Appeals in New York made the distinction between a transformative use that is protected and a derivative use that is not a lot murkier, she said.

In *Cariou v. Prince*, the court found that reliance on fair use does not require any comment on the original work. Instead, fair use can exist when the work alters the original with new expression, meaning or message.

The fair use defense could apply in nonprofit education, newsgathering or social commentary as outlined in the Copyright Act, Ms. Butler said. "The tricky thing with fair use

is there is no bright line rule. Even if your particular use falls into one of those areas, it doesn't necessarily guarantee that it will be found to be fair use. But it is a very helpful component in evaluation."

The potential exposure is heightened by the ease of obtaining and sharing copyrighted content via the internet and social media, she said.

"But just because you can copy and paste something from online and put it into your print ad or put it on your social media site doesn't mean you should and doesn't mean it won't have consequences," she said.

Because music copyright infringement claims are often difficult to defend and the verdicts can be expensive, especially if the infringing music or use has garnered significant revenue, the insurance market for such exposures can be challenging.

"For pure music risks, some are quite difficult to place and can be quite expensive," said Angela Weaver, London-based media liability underwriter/media specialist for Beazley P.L.C. "This is borne out by the size and the complexity of the claims. Consequently, the market is no wider than it was five or 10 years ago. Insurers remain cautious."

A risk management step is to have professionals vet the music to try to eliminate the potential for infringement, but this has its limitations.

"The difficulty here for any risk manager ... is that there is such a large library of music, it's hard to cross-check a new song against every potential influence or song, especially if the court is going to expand what copyright infringement means in the music space," said Anthony Dragone, claim advocate with Willis Towers Watson P.L.C.'s FINEX claims and legal group in New York.

LEGAL DISCORD

A major spike occurred in the number of cases filed alleging copyright infringement in the music sector in 2016, with at least 35 lawsuits filed this decade against high-profile musical artists such as Beyoncé, Justin Bieber, Ariana Grande, Kendrick Lamar, Demi Lovato, Ed Sheeran, Justin Timberlake and Kanye West. But most disputes are settled before trial.

2017

4 CASES

2016

20 CASES

2015

5 CASES

2014

1 CASE

2013

1 CASE

2012

3 CASES

2011

1 CASE

Source: The Columbia Law School and the University of Southern California Gould School of Law's Music Copyright Infringement Resource

SOCIAL MEDIA INCREASES INFRINGEMENT RISK FOR PHOTOGRAPHS

Using a photograph taken by someone else, particularly one that is distributed via social media, is a perilous path, as social media personality Khloé Kardashian recently discovered when she was slapped with a copyright infringement lawsuit.

Ms. Kardashian was sued for copyright infringement in California Central District Court in Los Angeles in April by a photography firm that alleges she used a photo it owned on her Instagram account without obtaining the proper permissions.

This type of lawsuit is becoming more

frequent as the internet and social media have made it easier to find and distribute photographs, copyright infringement experts say.

The first layer of protection is the Digital Millennium Copyright Act, which was implemented in 1998, and provides safe harbor provisions for websites such as YouTube and Facebook that host content, legal experts say. Once these companies are notified that their sites are hosting copyrighted material, they must follow processes to remove the offending material

as promptly as possible. If they fail to do so, they could lose safe harbor protection.

A critical risk management step is for companies to make sure their marketing, advertising and other uses of photography are done only after securing the appropriate licenses, experts say. If companies are caught using copyrighted images, they will at minimum pay retrospective license fees, but they also can be sued for damages.

"The expense almost always is in the defense," said Deanna Cook, Denver-based claims consultant with Lockton Cos. L.L.C.

"I've seen photography copyright cases go above \$10 million as far as defense costs, but the actual settlements usually aren't that big."

"Companies need to have very clear policies that prohibit snagging and using images and other content on the internet," said Coe Ramsey, an entertainment lawyer with Brooks, Pierce, McLendon, Humphrey & Leonard L.L.P. in Raleigh, North Carolina. "That's dangerous — you don't want to be doing that."

Gloria Gonzalez



If you can think it, we'll
think of a way
to insure it.



At Lexington Insurance, our solutions have to be as original—and daring—as the ideas we insure. After all, for over 50 years we've taken on the risks that others won't. Introducing insurance innovations that make the world safer for people. And for companies. To see our innovation timeline, go to www.lexingtoninsurance.com/50years

Lexington Insurance Company, an AIG company, is the leading U.S.-based surplus lines insurer.

AIG is the marketing name for the worldwide property-casualty, life and retirement, and general insurance operations of American International Group, Inc. For additional information, please visit www.aig.com. Products and services are written or provided by subsidiaries or affiliates of American International Group, Inc. Not all products and services are available in every jurisdiction, and insurance coverage is governed by actual policy language. Certain products and services may be provided by independent third parties. Insurance products may be distributed through affiliated or unaffiliated entities. Surplus lines insurers do not generally participate in state guaranty funds and insureds are therefore not protected by such funds.

Conviction inquiry laws stymie firms

BY JUDY GREENWALD

jgreenwald@businessinsurance.com

Ban the box” laws requiring employers to delay asking about applicants’ conviction history until far along in the job application process have gained momentum at the state and local levels and are leaving employers to face a variety of potential liability issues, say experts.

These range from fines that could be levied against them under the Fair Credit Reporting Act in connection with improper forms, to potential litigation surrounding the criteria used in determining which criminal convictions justify withdrawing job offers.

Twenty-nine states and more than 150 cities and counties have adopted these rules, say observers.

In their “purest” form, ban the box laws say “when you can ask on an application form, or during an application process or interview, about criminal conviction history,” said Stephen R. Woods, a shareholder with Ogletree, Deakin, Nash, Smoak & Stewart P.C. in Greenville, South Carolina.

Although the rules vary, “the latest point in the process” when they apply is when a conditional job offer has been made, he said. “Once you get to that stage,” with few exceptions, the laws no longer apply.

Experts say employers must keep on top of these regulations to avoid liability. These ordinances “all differ in their remedies, so depending on where the employer is located, they could be faced with a simple slap on the wrist or they could receive monetary penalties ranging from \$100 to several thousand dollars,” said Jennifer Mora, senior counsel for Seyfarth Shaw L.L.P. in Los Angeles.

“And then several laws allow for private right of action,” which permits job applicants to file suit and obtain emotional distress and other compensatory damages and economic loss for employers’ failure to comply, Ms. Mora said. “They are definitely not laws that should be ignored.”

“Employers are getting hit in some of the riskier jurisdictions” including New York City, which has “been aggressive recently” on this issue, and the District of Columbia, she added.



The process “has become so overwhelming for the employer” in places such as New York that some “might be afraid to obtain a background check,” although they are exposing themselves to liability if they do not, said Christina A. Stoneburner, a partner with Fox Rothschild L.L.P. in Morristown, New Jersey.

New York’s Fair Chance Act, which took effect in October 2015 and is considered among the tougher laws, requires employers who deny an applicant a job because of a criminal record to explain why in writing and give the employee the opportunity to discuss the issue or correct any wrong information.

Ban the box rules create “a situation where an employer can walk into a risk by asking questions when they think they’ve done everything just right,” but in fact have violated local law, said David J. Woolf, a partner with Drinker Biddle & Reath L.L.P. in Philadelphia.

Another issue facing employers is the criteria they use to disqualify applicants who have a criminal conviction, say observers.

“That’s the area that’s getting more attention, and that’s the area that’s getting more litigation,” Mr. Woolf said.

Observers note that guidance from the U.S. Equal Employment Opportunity Commission says

employers should use the criteria of whether a crime is “job-related and consistent with business necessity.”

Experts say no one would argue against an employer not hiring someone as an accountant who has been convicted of embezzlement. But many other cases are less clear-cut.

One example would be an applicant with an 8-year-old conviction of driving while intoxicated “and the employer says, ‘I don’t want anyone with any conviction working here. It shows disrespect for the law,’” Mr. Woolf said.

And what if the crime is a 20-year-old conviction for showing a fake ID while in college? While there are black-and-white issues, “there’s a lot of gray” as well in connection with this issue, he said.

“I have had a case where someone who had a conviction for selling drugs,” including its manufacture and distribution, “was looking for a job in a warehouse that supplied a lot of drugs,” he said.

“You would think” that the employer would be justified in not hiring that individual, “but a state agency ruled otherwise,” he said. “The state took the view it was too old or he had been rehabilitated,” Mr. Woolf said.

While the employer ultimately prevailed on the issue in court, “it was a case that should never have gotten to first base,” said Mr. Woolf, who would not provide additional details.

“It’s good policy to be able to articulate why a specific criminal conviction prohibits someone from working in a specific position,” said Kimberly F. Seten, a partner with Constangy, Brooks, Smith & Prophete L.L.P. in Kansas City, Missouri.

Meanwhile, Indiana has approved legislation that bans its political subdivisions from enacting “ban the box” restrictions for private employers, noted Pamela Q. Devata, a partner with Seyfarth Shaw in Chicago.

Indiana Gov. Eric Holcomb has signed an executive order excluding criminal history questions from state employment job applications.

Ms. Devata said a bill comparable to Indiana’s has failed to pass the Texas Legislature, and so far no other states have followed Indiana’s example.



CALIFORNIA BANS THE BOX

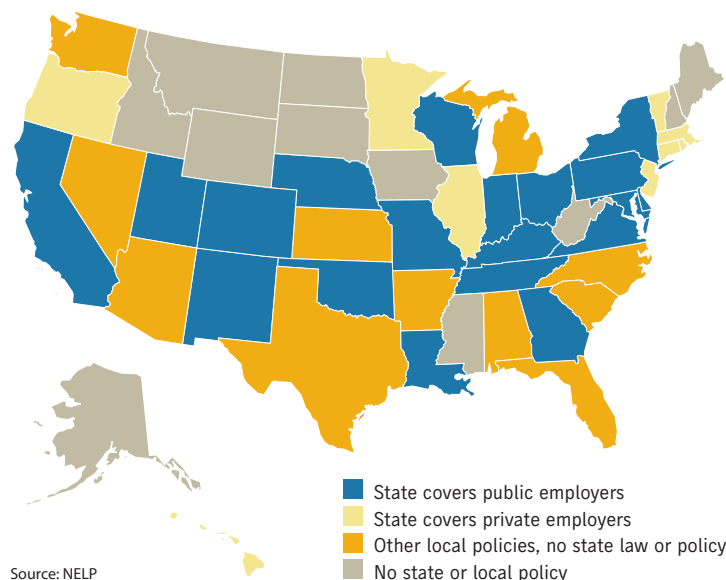
California’s new ban the box regulation went into effect in July and includes the following provisions:

- Employers are prohibited from seeking or considering criminal history information when making employment decisions where an arrest did not result in conviction, was sealed or expunged, or was for a nonfelony conviction for possession of marijuana that is more than 2 years old.
- Employers are also subject to local laws, including a San Francisco law that prohibits them from considering a conviction in the juvenile justice system or convictions that are more than 7 years old.
- Criminal convictions that have an adverse impact on individuals protected by gender, race and national origin must be considered.
- A policy must consider the nature and gravity of the offense or conduct; the time that has passed since the offense; and the nature of the job held or sought. The policy must also be “appropriately tailored to the job.”
- Employers must conduct an “individualized assessment” of those excluded by the conviction screen.
- Before an employer takes an adverse action based on a criminal conviction, he must give the affected individual notice of this and a “reasonable opportunity” to present evidence the information is factually inaccurate, in which case it cannot be considered in the employment decision.
- Even if an employer can demonstrate its criminal background policy is job-related and consistent with business necessity, adversely affected employees can still prevail if they can demonstrate there is a “less discriminatory policy or practice that serves the employer’s goals” such as a “more narrowly targeted list of convictions.”

Source: California Fair Employment & Housing Council

STATE AND MUNICIPAL LAWS

Now 29 states and over 150 cities and counties have taken steps to remove barriers to employment for qualified workers with records. Nine states, the District of Columbia, and 14 cities and counties extend their fair-chance hiring policies to local private employers.





Allied World is pleased to announce that we are now part of Fairfax Financial Holdings Limited.

Since our founding in 2001, Allied World has grown into a market-leading specialty re/insurance company with worldwide presence. We are now part of a global organization with \$57 billion in invested assets and \$21 billion in capital, a collective group that is the 7th largest North American insurer with a strong global reach, and a top 5 business in the Excess & Surplus lines market within the U.S., with approximately 12,000 employees and operations spanning nearly 24 global brands.

On behalf of everyone at Allied World, we appreciate your business and support as we deliver on our brand promise of being a global specialty re/insurer offering world-class service. We are confident our new relationship will serve you well.

To learn more about Allied World, please visit www.awac.com.

\$57B
INVESTED
ASSETS

\$21B
IN CAPITAL

TOP 5
BUSINESS IN THE EXCESS
& SURPLUS LINES MARKET
WITHIN THE U.S.

QUICK FACTS

7TH LARGEST
NORTH AMERICAN
INSURER WITH A STRONG
GLOBAL REACH

APPROXIMATELY
12,000
EMPLOYEES STRONG

OPERATIONS
SPANNING NEARLY
**24 GLOBAL
BRANDS**

WHERE CREATIVE SOLUTIONS
TAKE SHAPE

*Figures as of 3.31.2017; proforma including Allied World.

This information is provided as a general overview for agents and brokers. Coverage will be underwritten by an insurance subsidiary of Allied World Assurance Company Holdings, AG ("Allied World") or by Allied World Syndicate 2232. All of Allied World's rated insurance subsidiaries currently carry an A.M. Best rating of "A (Excellent)" and our Lloyd's Syndicate is rated "A+ (Strong)" by Standard & Poor's and "AA- (Very Strong)" by Fitch Ratings. Coverage is only offered through licensed agents and surplus lines brokers. Actual coverage may vary and is subject to policy language as issued. Risk Management services are provided or arranged through AWAC Services Company, a member company of Allied World. © Allied World Assurance Company Holdings, AG. All rights reserved. July 2017.

Internet of things creates web of hacker risks

BY ROB LENIHAN

rlenihan@businessinsurance.com

While the internet of things was intended to make life easier by connecting everyday objects to the internet, enabling them to send and receive data, experts warn that it is also giving new opportunities to hackers.

A bipartisan bill introduced into the U.S. Senate on Aug. 1 — S. 1691, the Internet of Things (IoT) Cybersecurity Improvement Act of 2017 — would require vendors that provide internet-connected equipment to the U.S. government to ensure their products are patchable and conform to industry security standards. It would also prohibit vendors from supplying devices that have unchangeable passwords or possess known security vulnerabilities.

“The legislation is an important step in raising awareness and accountability for internet of things manufacturers,” said Tracie Grella, global head of cyber risk insurance for American International Group Inc. in New York. “It’s focused on manufacturers that are supplying to the federal government, but that’s a great step because the requirements and security controls could trickle down to all their products which are available for the private sector and consumers.”

Jason Krauss, cyber/errors and omissions thought and product leader for Willis Towers Watson P.L.C.’s FINEX North America in New York, said the bill “is significant because it underscores just how big of a threat IoT device security vulnerabilities can be to organizations of all sizes.”

Ryan Gibney, Northeast cyber technology practice leader for Lockton Cos. L.L.C. in New York, said that “the overarching issue with regard to the internet of things is that these are day-to-day consumer products that are not being built with secu-



rity in mind.”

“They’re being built with overall usability and not security, so I think this (bill) is a positive step, especially with regard to equipment that’s going to be provided to the government,” he said.

The list of consumer products connected to the internet of things is getting longer and includes such items as baby monitors and surveillance cameras. Stamford, Connecticut-based research firm Gartner Inc. forecasts that 8.4 billion connected things will be in use worldwide in 2017, up 31% from 2016, and will reach 20.4 billion by 2020.

In July, news accounts described how hackers tried to steal data from an unnamed North American casino through a fish tank that had been connected to the internet to feed the fish and keep their environment comfortable. Although extra security had been set up on the fish tank, hackers still managed to compromise the tank to send

data to a device in Finland before the threat was discovered and stopped.

“The internet of things really broadened the attack surface for cyber hackers,” said Matthew McCabe, New York-based senior vice president with Marsh L.L.C.’s cyber security practice. “At one point, it was attacking the network, but now every device that you’re used to seeing in a home or business seemingly can be attached to the internet for purposes of efficiency or convenience. But all these create new points of vulnerability. We’re trying to do security catch-up at this point, and it’s hard to do catch-up because the genie’s already out of the bottle.”

Companies must have an inventory of all the internet of things technology that’s deployed, know the right controls, apply patches and update their default passwords, Ms. Grella said.

“We’re starting to see more customized language specific to IoT policies, but cyber

insurance policies provide coverage for a number of different risk factors related to IoT,” she said.

Ms. Grella added that “IoT devices can be compromised and shut down, which results in business interruption exposure for organizations using IoT devices. Cyber insurance provides coverage for that business interruption, the cyber attack.”

Most forms of cyber insurance on the market provide coverage for such exposures as liability to a third party, economic losses as a result of business or network interruption, or an extortion demand in a ransomware incident, Mr. Krauss said.

“Stand-alone cyber insurance is the perfect product for the risk associated with these devices,” Mr. Krauss said. “It’s a pretty broad product, and there are a number of insuring agreements associated with this product.”

Insurance coverage depends on the consequence of the attack, Mr. McCabe said. If the cyber compromise against an IoT device results in a physical outcome such as an explosion or fire, then very likely a property or casualty coverage would respond. However, he said, if the outcome is an outage of the network or compromised confidential data, a cyber insurance policy would respond.

A cyber specialist policy will provide coverage for first-party costs associated with investigating the breach and managing the notification of the event, Mr. Gibney said. The policy will also provide liability and regulatory coverage related to breaches.

However, Mr. Gibney said cyber exposures continue to change, and the market is evolving with regard to addressing a cyber event that causes physical damage and ensuing business interruption. Solutions are available in the traditional property/casualty market, as well as specialist marketplace to address this growing exposure, he said.

NAIC CYBER SECURITY MODEL LAW HEWS TO NEW YORK STATE’S STANDARD

The National Association of Insurance Commissioners is moving closer to adopting an Insurance Data Security Model Law that closely follows New York’s cyber security regulation, which took effect in March.

The model law, the sixth version of which was adopted by the Cybersecurity Working Group and Innovation and Technology task force at the NAIC’s summer meeting in Philadelphia in August, establishes industry standards for data security that will apply to a broad range of parties, including insurers, agents and brokers.

Organizations will be required to have a written information security program for protecting sensitive data, including incident response and data recovery plans to demonstrate their preparedness for cyber events. Companies will have to certify compliance annually to their state insurance commissioners and notify commissioners of data breaches within 72 hours of a cyber security event.

The American Insurance Association was pleased the adopted model law is risk-based and consistent with New York’s cyber security law, said Angela Gleason, AIA’s senior counsel in Washington.

“A lot of companies are already implementing New York, and to have to do something that is different is just not good for consumers or licensees,” she said.

The biggest change was the removal of consumer notification elements featured in previous versions, Ms. Gleason said.

Ceding insurers with a direct contractual relationship with affected consumers shall fulfill the consumer notification requirements imposed under a state’s breach notification law, according to the adopted version.

The model law will advance to the

NAIC’s Executive Committee and Plenary during its Fall 2017 National Meeting in December, with adoption likely despite the objections of states such as Utah.

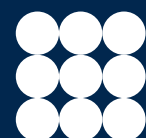
NAIC adoption would be followed by consideration by state legislatures, which would “look remiss if they didn’t address” the cyber threat, said Jean Connolly, Cleveland-based managing director of PricewaterhouseCooper L.L.P.’s national professional services group. “I just think this one has more forward momentum than lots of other model laws that some might say are just more regulation.”

Gloria Gonzalez

JENCAP

HOLDINGS LLC

JenCap Holdings, LLC - The road to a premier wholesale insurance distribution platform delivering innovative solutions to independent retail brokers and agents.



SPECIAL RISKS
a JenCap Holdings Company

WWW.JENCAPHOLDINGS.COM

Comp sector slow on diversity trends

BY JOYCE FAMAKINWA

jfamakinwa@businessinsurance.com

The changing demographics of the U.S. workforce raise questions about how the workers compensation industry can adapt to provide care for a diverse population of injured workers.

While diversity remains a topic that is prevalent when it comes to inclusion in employee populations, experts say the workers comp industry has been slow to consider changes to address these differences.

More people of color and of different cultures and ethnicities have entered the U.S. workforce. The U.S. Department of Labor projects that minorities will rise from one in every four Americans to almost one in every two by 2050, including an increase in the Asian, Pacific Islander and Hispanic populations.

"The big thing that is important to understand is that the amount of people of color are increasing in the United States," said Ericka DeBruce, Memphis, Tennessee-based vice president, engagement, inclusion and social responsibility at Sedgwick Claims Management Services Inc. "This is important because when we are talking about employees and workers compensation, the dynamics of that has changed. We need to think about the differences of the people we are trying to serve and not administering a 'one size fits all' way of doing things."

Health care disparities when it comes to race and ethnicity are important, experts say. African American and Latino people receive care that is 40% worse than white Americans, according to a report from the Rockville, Maryland-based Agency for Healthcare and Research Quality.

Language barriers can contribute to health disparities, and expanding the amount of resources for injured workers that speak other languages is key, experts say.

"I know that a lot of organizations have English and Spanish, but we are finding that Mandarin (and) French Creole are languages that are starting to become requested from employers," Ms. DeBruce said. "It's a lot, but it's all about preparation and getting our colleagues prepared."

Currently, there are no major studies that have looked at the direct correlation between ethnicity and workers comp costs, but experts say there are indirect correlations between chronic health, ethnicity and the ability to heal. Chronic health conditions and their connections to ethnicity are important for workers comp costs. For example, Latino and African American populations have a higher prevalence of diabetes, according to the Centers for Disease Control and Prevention.



"When we are looking at the workforce for manufacturing, construction and a lot of other hard physical labor jobs, these groups make up a large part of those employee populations, certainly not 100%, but those populations tend to be more diverse," said Alexandra Leone, Chicago-based assistant vice president of workforce productivity at Hub International Ltd.

"When you have a workers compensation claim where someone needs surgery, it can be something simple like an employee twisted his knee and needs a meniscal repair, which is a straightforward and inexpensive surgery where he could be back on his feet in a week or two, working full duty within a month or six weeks," said Ms. Leone. "But if that employee has diabetes, now we have to get them cleared by their endocrinologist before they are able to have the surgery, to make sure that the blood sugar levels are appropriate to be able to withstand surgery. After the surgery diabetes ... can really delay the progress of an employee because if your blood sugar is not in control, then you're going to have a hard time in physical therapy or participating in other treatments."

Conditions like heart disease and high blood pressure are prevalent among African American populations and can affect their overall ability to heal and recover. Being aware of these chronic health conditions can affect return to work and claims costs, said Ms. Leone.

Addressing these populations of injured workers will require the workers comp industry to look at nuances of race and ethnicity, according to experts.

"We haven't necessarily prepared our workforce (claims handlers) for those changes," said Ms. DeBruce. "When we see those types of demographic changes, not only is it happening just from a race perspective, but what I'm finding interesting is also ethnic diversity (country of origin). So, there are some differences

between African American and white, but when you start looking at the ethnic diversity amongst black individuals: African American, Haitian, Caribbean, Bahamian. We are starting to see that some of the trends that we associate with race aren't really working anymore. It's really happening across more of an ethnic divide," she said.

Employers, third-party claims administrators and workers comp insurers can begin implementing "cultural competency" into claims management best practices by hiring people from cultural backgrounds that make up the incoming worker population, according to experts.

"When businesses and TPAs really match up the cultural needs within their book of business ... it's going to save time, paperwork and produce higher employee engagement," said Christina Lincicome, Salem, Oregon-based director of diversity and inclusion at SAIF Corp., Oregon's state-chartered workers comp insurer.

RACIAL HEALTH DISPARITIES COSTS

\$35 BILLION

in excess health care expenditures

\$10 BILLION

in illness-related lost productivity

\$200 BILLION

in premature deaths

Source: The Cost of Racial Disparities in Health Care, Harvard Business Review, 2015, John Z. Ayanian, MD

LANGUAGE BARRIERS

Language barriers can be a potential obstacle to injured workers getting the care they need, with many U.S. residents in major metropolitan areas primarily speaking languages other than English in their homes.

NEW YORK METRO AREA

- At least 192 languages are spoken at home.
- 38% speak a language other than English at home.

LOS ANGELES METRO AREA

- At least 185 languages are spoken at home.
- 54% speak a language other than English at home.

CHICAGO METRO AREA

- At least 153 languages are spoken at home.
- 29% speak a language other than English at home.

DALLAS METRO AREA

- At least 156 languages are spoken at home.
- 30% speak a language other than English at home.

HOUSTON METRO AREA

- At least 145 languages are spoken at home.
- 37% speak a language other than English at home.

WASHINGTON METRO AREA

- At least 168 languages are spoken at home.
- 26% speak a language other than English at home.

MIAMI METRO AREA

- At least 128 languages are spoken at home.
- 51% speak a language other than English at home.

ATLANTA METRO AREA

- At least 146 languages are spoken at home.
- 17% speak a language other than English at home.

BOSTON METRO AREA

- At least 138 languages are spoken at home.
- 23% speak a language other than English at home.

SAN FRANCISCO METRO AREA

- At least 163 languages are spoken at home.
- 40% speak a language other than English at home.

Source: U.S. Census Bureau, 2009-2013

"If you are not understood and you don't feel like you have a voice at the table, imagine the amount of time and the emotional response," said Ms. Lincicome. "Most people don't go out and cause an injury. ... When individuals have injuries it disrupts every aspect of their lives. When they are not understood based on cultural background, they really feel isolated ... and it could affect healing time and costs. In addition, there is a community element: 'Why should I pay attention to this insurance company who doesn't even value having someone speak my language or understand my culture?'"

"Being able to in that initial contact understand the injured worker's dynamic ... being sensitive to people's desires, to have their health needs met in unconventional ways. It's having an understanding for what people are thinking, what their background is and applying what you can to the claims adjusting process," said Amy Newton, Denver-based assistant vice president of claims for Pinnacle Assurance.

Delivering the Exceptional.

We've been one of the best in the workers' compensation industry for more than a century. And we're still not slowing down. Our technology is earning patents, our innovations are reducing fraud and our research is shaping the industry.

Visit AFGroupInsurance.com and discover how we're delivering exceptional care, service and insurance solutions for today... and tomorrow.



AF Group

Individual focus. Collective strength.

AFGROUPINSURANCE.COM



AccidentFund
Insurance Company of America



UnitedHeartland



CompWest



ThirdCoast
Underwriters

Doctors keep dispensing despite reforms

BY LOUISE ESOLA

lesola@businessinsurance.com

States that enacted reforms to rein in the high cost of drugs dispensed by physicians to injured workers face an uphill battle as some doctors find loopholes in the regulations.

These loopholes mean that workers compensation prescription costs remain stagnant or are rising in some states, leading to calls for additional restrictions on physician dispensing, experts say.

Take the case of cyclobenzaprine, a common muscle relaxer that had been on the market since late 2011 and usually prescribed in 5-milligram and 10-milligram doses. In the arena of injured workers, it's among the most commonly prescribed medications, data shows.

The drug fell under price-control regulations in some states that aimed to reduce the cost-per-pill at the doctor's office, historically much costlier — as high as five times the cost — than what is packaged at a retail pharmacy.

Enter cyclobenzaprine's new strength in late 2011: 7.5 milligrams.

The new strength fell outside the scope of the pricing regulations, meaning doctors could prescribe it and still collect at the higher price.

That's what happened in Florida by 2014, where researchers with the Cambridge, Massachusetts-based Workers Compensation Research Institute found that 41% of the physician-dispensed cyclobenzaprine prescriptions were for the 7.5-milligram strength, per the institute's most recent examination of the trend.

The new strength is seen by some as a benefit to those who found the weaker dose ineffective and the 10 milligrams too strong, said Fred Ganjian, Burbank, California-based director of sales and marketing at BRP Pharmaceuticals at Bryant Ranch Prepack Inc., which helps physicians dispense medications directly to patients.

"I have doctors saying that 150 milligrams (of tramadol) works better," he said of another medication — an extended-release painkiller — whose latest strength



FREQUENCY AND COST OF PHYSICIAN PRESCRIBING IN THE TOP FIVE HIGH-COST REFORM STATES

State	Percentage of Rx dispensed by doctors	Percentage of total Rx costs
Illinois	44%	64%
Florida	44%	58%
California	44%	54%
Pennsylvania	33%	51%
Maryland	38%	40%

Source: Workers Compensation Research Institute, 2014 data

also falls outside the scope of pricing reforms on the traditional, lower 50-milligram strength of tramadol.

As of June 2017, 22 states have parameters for physician dispensing, with most of the reforms targeting repackaged wholesale pricing of certain drugs and strengths. Eight states, including Texas, do not allow the practice of physician dispensing.

While the new strengths are seen as progress for patients, others suggest something more sinister is at play.

Dongchun Wang, author of the WCRI's latest study highlighting the newer, more expensive strengths of existing drugs, said doctors lost income with state reforms. She acknowledged that in some cases the

newer doses can be prescribed as a convenience to a patient who had been cutting pills in half. But that's not always the scenario, she added.

"Some of the physician dispensers are trying to dispense in a way that they can maintain their income (by way of) new strengths of the drugs," she said. "(Pharmaceutical companies) provided a vehicle to dispense those new strengths. ... By doing this, doctors can bypass the new rules," added Ms. Wang, whose study was released in July.

Attempts to reach several pharmaceutical firms were unsuccessful. The Washington-based Pharmaceutical Research and Manufacturers of America, which represents biopharmaceutical research companies, declined an interview.

The WCRI study found that three states — California, Florida and Illinois — saw no reduction in the physician share of prescription costs despite a considerable reduction in the frequency of physician dispensing. Other states saw minimal change.

Ms. Wang and other researchers analyzed data from 2011 to 2014 for 26 states and found physicians dispensed fewer prescriptions after states enacted reforms that regulated the prices for drugs dispensed by physicians. Yet physician dispensing was still common in post-reform states, with

California, Florida, Illinois, Maryland and Pennsylvania still seeing a large portion — 54% to 64% — of pharmaceutical costs coming from doctors who dispense drugs.

Richard Victor, Boston-based senior fellow at the Sedgwick Institute and former president of the WCRI, said the reforms were "well intended" but fell short of the goals of reducing costs because "whatever the price regulations do there will be other ways to get around it."

"The underlying problem here is (doctors) are facing a conflict of interest ... the more they dispense the more (money) they receive," he said. "There's creativity in the supply chain. ... It's clear that regulating prices is readily evaded by the supply chain."

Mr. Victor added that opioids dispensed out of the doctor's office led to "unnecessary prescribing. Some patients are harmed by physician dispensing."

Other workers comp experts shared in the frustration of gaining control of drug costs and maintaining better control of what is prescribed.

"Pharma is looking to increase their revenue; physicians are looking to increase their revenue," said Silvia Sacalis, a Tampa, Florida-based licensed pharmacist and vice president of clinical services for Healthsystems L.L.C., who questions any doctor who prescribes a stronger dose of medication that can be dispensed at a higher cost in their office. "Where's the 'do-no-harm'?"

"It's a pure-profit motive," said Joe Paduda, Skaneateles, New York-based president of CompPharma L.L.C., who has spoken out against the practice. He said the answer is for states to mandate better control of where injured workers can obtain prescriptions.

"The single most powerful thing states can do would be to allow employers to direct injured workers to use contracted pharmacies," he said.

Mr. Victor agrees, with reservations. "That's one of the options (yet) that's not an easy thing to get enacted," he said. "Worker advocates feel very strongly about patients' freedom to choose doctors and pharmacies that they prefer."

STATES FIGHT LONG BATTLE TO CURB PRESCRIPTION COSTS

The practice of patients getting their prescriptions filled at their doctors' offices fell under scrutiny more than a decade ago, as workers compensation payers noticed how the medications were costing significantly more than what was doled out at a traditional pharmacy.

The Cambridge, Massachusetts-based Workers Compensation Research Institute

has estimated some medications were costing upwards of five times the cost of a pill dispensed at a pharmacy.

Enter the era of reform.

By 2007, several states had initiated reforms mostly targeting what a doctor could be paid for repackaging a drug. By 2017, 22 states had made the leap to reform how much a doctor could collect.

To date, eight states do not allow the practice of physician dispensing.

In Illinois, for example, prescription reimbursement rates are set to match the average wholesale price, or AWP, often a benchmark for pharmacy reimbursements — a change also seen in other states, including Pennsylvania, Georgia, Florida, Nevada and Michigan.

In Florida, doctors are also prohibited from dispensing certain kinds of opioids. Pennsylvania doctors are limited on quantities of drugs they can dispense.

Meanwhile, California put medications on a pharmacy fee schedule. Kansas requires doctors to gain a preauthorization to dispense any drug.

Louise Esola

Dated safety rule up for debate

BY KRISTEN BECKMAN

kbeckman@businessinsurance.com

A frequently cited U.S. Occupational Safety and Health Administration rule up for review highlights intersecting themes of politics, safety best practices and technology outpacing regulation.

OSHA's lockout/tagout regulation, 1910.147, requires energy sources on machinery to be locked out so workers can safely service and maintain equipment. The regulation, adopted in 1989, was based largely on a standard written 10 years earlier by the American National Standards Institute.

Lockout and tagout procedures were developed to protect workers tasked with servicing or maintaining machinery that could suddenly start and potentially hurt or kill workers. Using lockout procedures, workers physically lock energy sources with a padlock and hold the key in their pocket while performing work on the machine so that it can't be started while they are working on it. Tagout uses tags attached to the energy source as a warning to others not to start the machine while the tag is in place.

The lockout/tagout regulation is annually one of OSHA's top 10 most cited workplace safety violations and is one of the most difficult OSHA regulations for companies to comply with, experts say. That's because a complete lockout of machinery is often infeasible due to production limitations, or impossible because power is needed to perform the maintenance task.

In addition, technology has produced machinery that now can automatically interrupt power when gates and guards are opened, much like washing machine agitators are now designed to automatically stop when the machine lid is opened, said Lawrence Halprin, Washington-based partner with law firm Keller and Heckman L.L.P.

Whether such machinery still needs to be manually locked out when technology has created a potentially more reliable safety mechanism prompted both ANSI and OSHA to consider updates to their lockout/tagout requirements.

Last year, ANSI overhauled its lockout/tagout standard for the first time in almost two decades, doubling the information included in previous versions and incorporating a recognition that sophisticated machine guarding can out-



weigh the practice of traditional lockout procedures in some cases, said Todd Grover, global senior manager of applied safety solutions at Oak Creek, Wisconsin-based Master Lock Co. and an ANSI lockout/tagout committee member. In addition, ANSI Z244.1 includes a large focus on alternative methods that permit partial lockout when justification and risk analyses indicate a complete lockout is not necessary to allow machines to be safely serviced.

Alternatives to locking out can include putting a machine into maintenance mode or slowing its pace to reduce the chance of a worker getting hurt, said Jim Schuster, CEO of Arvada, Colorado-based Martin Technical Inc., which provides industrial safety services and consulting for machine, lockout/tagout and electrical safety.

OSHA action

Early in the life of OSHA's lockout/tagout regulation, an exception was added for minor servicing — such as changing a drill bit, clearing a jam or adjusting a mold — that might have to be done periodically throughout a typical day but would not require an entire machine to be locked out and production interrupted to safely perform the task, according to Mr. Halprin.

But the regulation has remained largely unchanged since it was initially adopted despite technology advances. Efforts to modify and update it remain on the agency's agenda, although momentum on changes introduced during the Obama administration was halted earlier this year under a broader regulatory freeze ordered by President Donald Trump.

LOCKOUT/TAGOUT CITATIONS

OSHA's control of hazardous energy (lockout/tagout) standard is one of the most frequently cited violations resulting from workplace safety investigations. Between October 2015 and September 2016, lockout/tagout violations ranked fifth among the top 10 most frequently cited violations behind fall protection, general industry standard, scaffolding and respiratory protection.

Number of lockout/tagout citations

3,289

Number of inspections

1,813

Total assessed penalties

\$16,527,691

Source: U.S. Occupational Safety and Health Administration

Eric Conn, chair of the workplace safety practice group at Washington-based law firm Conn Maciel Carey L.L.P., said the two OSHA initiatives on the agenda to modify the regulation are diametrically opposed. Under the Obama administration, the agency began an effort under Standards Improvement Project 4 to fix minor, noncontroversial issues in several existing regulations, including the lockout/tagout regulation. These issues typically include correcting typos, eliminating redundancies and clarifying vague language, he said.

In the most recent SIP process, OSHA proposed to remove the term "unexpected energization" from the lockout/tagout regula-

tion in what Mr. Conn calls an abuse of the SIP process. The proposal, he said, is an attempt to overrule a 2015 federal court opinion in *Secretary of Labor v. General Motors Corp., Delco Chassis Division* in which willful lockout/tagout violations were overturned because the court said alarms and flashing lights provided sufficient warning of a machine starting up and removed the risk of unexpected energization.

Removing the reference to unexpected energization could potentially open employers up to more citations, said Mr. Conn, noting the change is likely to be finalized in the next year.

"From my perspective, this change would reduce employer flexibility in addressing machine hazards," said Mr. Conn. "It's eliminating one really well-established method of addressing hazardous energy, which is effective forewarning before the machine starts."

Also on OSHA's agenda in the pre-rule phase is an effort to modernize the lockout/tagout regulation to allow employers to take advantage of modern technology and energy controls that will not result in full de-energization and would be an effective way to control hazardous energy, Mr. Conn said.

"I think OSHA does recognize this is a very hard standard for them to enforce, and they don't want to penalize companies for practicing progressive safety strategies that technically conflict with regulations but nonetheless protect workers very effectively," Mr. Grover said. "It's a very hard standard to comply with from a regulatory standpoint. It sets up expectations without a good method to comply with the regulations, and that is why the OSHA regulation is so frequently cited as a problem companies have."

OSHA intends to publish a Request for Information in April about potential updates to the standard and will consider modernizing the rule to include updates to the consensus standards.

"This administration and its inclination not to write new rules makes it a perfect time to fix old regulations," said Mr. Halprin. "The technology has advanced so much that the current approach is backward, unproductive, causes some resentment, causes disparity. I'm optimistic sometime next year they will get to it."

EMPLOYERS MUST HEED CURRENT EQUIPMENT LOCKING, TAGGING MANDATES

Lockout/tagout rules apply in numerous workplaces, and most employers need to be aware of them, according to experts.

Any business that has machinery with two or more energy sources is required to have a lockout procedure for that equipment. That can include air conditioning units, boilers, air handling equipment and lifts, said Jim Schuster, CEO of Arvada, Colorado-based Martin Technical Inc.

"Sometimes the facility support equipment is overlooked, but it is just as dangerous because people don't see the inherent danger," he said. "Equipment with large rotating blades — everybody knows that could be dangerous. But with a simple air conditioning unit, the hazards may not be apparent."

In addition, Mr. Schuster said lockout/tagout risk assessments can be used to lower workers compensation and general liability premiums. In Colorado, for example, companies can save up to 10% on their workers comp premiums if a proper lockout/tagout risk assessment is completed on machinery, he said.

While technology has rendered lockout/tagout rules antiquated and unnecessary in some ways, they are not yet obsolete, said Matthew Deffebach, Houston-based partner at law firm Haynes and Boone L.L.P. Many small companies still operate older equipment that doesn't have interlocks or circuit controls to protect workers, and lockout/tagout procedures are still necessary in those cases, he said.

Kristen Beckman

PROFILE: NORWAY

24

GLOBAL
P/C MARKET
RANKING

Norway's economy is small, but its considerable oil and gas resources make it one of the richest countries in the world by GDP per capita. Largely deregulated, the Norwegian property/casualty insurance market is well-developed and offers a broad range of products. The market is divided into two main elements: domestic business, which is essentially nonmarine, and international business, including marine hull, energy, and protection and indemnity coverage. There were 59 property/casualty insurers operating as of 2017, the leaders being Gjensidige Forsikring ASA, If Skadeforsikring NUF, Tryg A/S and SpareBank 1 B.V. Insurance against natural perils is automatic and is covered by a pool run by the country's insurance association. Windstorm is considered to be the greatest potential natural hazard.

MARKET SHARE

PA & HEALTHCARE WRITTEN
BY NON-LIFE COMPANIES

MARINE,
AVIATION &
TRANSIT
1.4%

MISC.
2.9%

LIABILITY
2.8%

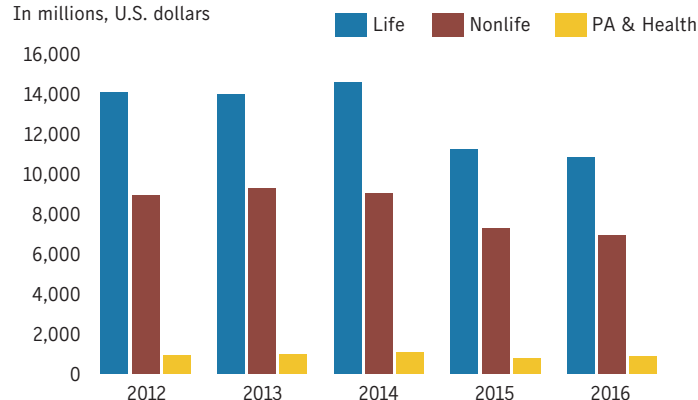
WORKERS COMP
& EMPLOYERS
LIABILITY
7.8%

PROPERTY
34.4%

MOTOR
37.3%

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 bodily injury
- Workers compensation
- Third-party liability for pharmaceutical laboratories
- Third-party liability for cable car and ski lift operators
- Professional indemnity for medical practitioners, insurance brokers, auditors and chemists

NONADMITTED

Unauthorized insurers cannot carry on insurance activity in Norway. However, with some exceptions, there is nothing in the law that indicates that insurance must be purchased from authorized insurers. This is generally interpreted to mean that insurers can issue policies from abroad with exceptions if approached by a buyer and/or an intermediary.

INTERMEDIARIES

Insurance brokers or agents are required to be authorized to do insurance business. Intermediaries are allowed to place business with nonadmitted insurers. There are no restrictions on intermediaries in negotiating an insurance contract with insurers that are not authorized in Norway as long as the insurance is related to commercial and not personal lines.

MARKET PRACTICE

There is nothing to prevent an insurance buyer from obtaining cover outside Norway on a nonadmitted basis, but in practice most industrial/commercial risks are placed with local insurers.

MARKET DEVELOPMENTS

Updated June 2017

- The latest version of the Law on Financial Activity issued in April 2015 is the principal mechanism for implementing the European Union's Solvency II directive from January 2016. Otherwise there has been no recent new legislation relating to insurance.
- In 2016, the Norwegian insurance market reported extremely good results. A good level of investment income and the lowest loss ratio for many years — 66.4%, attributed to another mild winter — produced another record year.
- Industrial/commercial insurance saw some very large losses totaling over \$172 million in 2012, but few, if any, major claims have been reported since then. In 2017, there was relative stability in rates, but some reductions could be achieved for good accounts.
- The year 2012 saw fairly significant natural perils losses, but 2013 was far worse, with final losses for the year estimated at \$255 million; 2014 was much improved but still saw higher-than-usual loss activity. These claims were borne by the Norwegian Natural Perils Pool. August 2016 saw heavy rainfall over the south central Ostlandet region, causing damage costing over \$59 million.
- In 2014, the property market reported a record number of claims caused by lightning strikes, twice the previous high. Two notable conflagration losses hit Norwegian insurers in early 2014, with major fires at Laerdal and Flatanger costing about \$56 million in total. Three large fires hit the old part of Bergen in 2015, causing substantial damage to its wooden structures.



AREA

125,050

square miles

POPULATION

5.25

million

MARKET CONCENTRATION

75.2%

market share of top five insurers

2017 GDP CHANGE (PROJECTED)

0.7%

Microcaptive owner loses in key tax litigation

■ A U.S. Tax Court judge handed a victory to the Internal Revenue Service last month in a closely watched case involving an 831(b) captive insurer.

In *Benyamin Avrahami and Orna Avrahami v. Commissioner of Internal Revenue*, the IRS alleged that the 831(b) captive for a jewelry business in Phoenix that ostensibly covered insurance risks charged unrealistic premiums and did not meet risk distribution requirements for captives.

Benyamin and Orna Avrahami set up an 831(b) captive in St. Kitts called Feedback Insurance Co. Ltd. in 2007 to cover their three jewelry stores and three shopping centers. In 2006, they spent a little more than \$150,000 insuring the stores, but the insurance premium paid was more than \$1.1 million by 2009 and more than \$1.3 million in 2010, with the vast majority of the premium being paid to Feedback, which was wholly owned by Ms. Avrahami, according to the ruling.

“With money flooding in and none going back out to pay claims, Feedback accumulated a surplus of more than \$3.8 million by the end of 2010, \$1.7 million of which ended up back in the Avrahams’ bank account — as loans and loan repayments, say the Avrahams; as distributions, says the Commissioner,” the ruling states.

In the ruling, Judge Mark V. Holmes found: “Although Feedback was organized and regulated as an insurance company, paid the claims filed against it, and met the minimal capitalization requirements of St. Kitts, these insurance-like traits cannot overcome its other failings. It was not operated like an insurance company, it issued policies with unclear and contradictory terms, and it charged wholly unreasonable premiums.”

Injuries sustained in suicide attempt are compensable

■ A federal appeals court ruled a man who shot himself due to anguish over injuries suffered on the job is entitled to workers compensation benefits for the injuries he sustained during his suicide attempt.

William Kealoha worked as a ship laborer in 2001 for Ewa Beach, Hawaii-based Leeward Marine Inc. when he fell from a barge and landed on a steel floor. He filed a workers comp claim under the Longshore and Harbor Workers’ Compensation Act.

In 2003, Mr. Kealoha shot himself in the head in a suicide attempt that he said was a result of his earlier injuries and litigation over that claim. He sought workers comp benefits for the injuries he sustained during

his suicide attempt.

An administrative law judge and the U.S. Department of Labor’s Benefits Review Board disagreed about whether Mr. Kealoha’s suicide attempt was a natural and unavoidable result of his on-the-job injury, and the 9th U.S. Circuit Court of Appeals remanded the case after compensation was barred. The ALJ then awarded benefits to Mr. Kealoha under the Longshore Act, and the Benefits Review Board affirmed.

Leeward Marine and its insurer, Hawaii Employers’ Mutual Insurance Co. Inc., appealed the decision to the 9th Circuit, where a three-judge panel ruled that the board correctly affirmed the ALJ’s decision to award benefits to Mr. Kealoha.



Pollution exclusion shields Travelers in death-related suit

■ A Travelers Cos. Inc. unit is not obligated to provide coverage in an incident in which carbon monoxide that flowed from a recreational fishing boat’s engine killed two men and injured a third because of its policy’s pollution exclusion, says a federal appeals court, in affirming a lower court ruling.

Three men were aboard a fishing boat that had been sold by Baudette, Minnesota-based Rainy River Marine Inc., according to the ruling by the 8th U.S. Circuit Court of Appeals in St. Louis. An exhaust pipe became disconnected from the engine, causing carbon monoxide gas to collect in the engine compartment. When the men opened the engine compartment, carbon monoxide flowed into the wheelhouse, rendering one man unconscious and killing the other two men.

The man who survived sued Rainy River in state court seeking damages for his injuries. Rainy River held a marine general liability insurance policy from Hartford, Connecticut-based Travelers unit Travelers Property Casualty Co. of America that required the insurer to pay damages resulting from bodily injury.

The policy included a pollution exclusion for injuries “arising out of” the “seepage,

discharge, dispersal, disposal or dumping, release, migration, emission, spillage, escape or leakage” of pollutants into the “atmosphere.”

Travelers then sued, seeking a declaration the policy did not cover injuries because of the pollution exclusion. The District Court granted Travelers summary judgment, which a three-judge appeals court panel unanimously upheld.

“The pollution exclusion is not limited to liability arising out of an initial ‘release’ of pollutant or a ‘dispersal’ or ‘migration’ of the pollutant from an original source,” the ruling said.

Lloyd’s syndicate wins dispute over settlement

■ A settlement agreement that called for a Lloyd’s of London syndicate to pay for a \$5.1 million settlement in a dispute involving a claims management firm and an insurance agency, in which the syndicate was not involved, was “collusive and distorts the adversarial process,” a federal appeals court ruled.

Lloyd’s syndicate Novae Corporate Underwriting Ltd. issued an insurance policy to Toronto-based Fairfax Financial Holdings Ltd., parent company of Birmingham, Alabama-based Cunningham Lindsey Claims Management Inc., that had a \$1 million retention and covered both Fairfax and Cunningham, according to the ruling by the 7th U.S. Circuit Court of Appeals in Chicago in *Diane M. Hendricks and Hendricks Holding Company Inc. v. Novae Corporate Underwriting Ltd.*

While insured by Novae, Cunningham entered an agreement with Westchester, Illinois-based American Patriot Insurance Agency Inc. to provide claims-handling services for insurance products marketed to roofing contractors, according to the ruling.

In December 2004, American Patriot and Ms. Hendricks, a shareholder, sued Cunningham in Texas state court, alleging Cunningham had made misrepresentations and negligently handled claims resulting in unwarranted or underpriced policy renewals. Six years later, while the Texas litigation was still ongoing, American Patriot filed for bankruptcy.

In 2012, Cunningham, Ms. Hendricks and American Patriot’s bankruptcy trustee reached a settlement agreement that included a \$5.12 million judgment against Cunningham. Ms. Hendricks and American Patriot’s bankruptcy trustee then sued Novae in U.S. District Court in Chicago, which held that the settlement agreement was neither enforceable nor binding against Novae.

A three-judge appeals court panel unanimously agreed. The “settlement-and-assignment distorted the litigation incentives of the parties,” said the ruling.

DOCKET



DISNEY SETTLES BEEF PRODUCTS’ ‘PINK SLIME’ CASE

Walt Disney Co. paid \$177 million, in addition to insurance recoveries, to settle the closely watched “pink slime” defamation case against its ABC network by Beef Products Inc. BPI sued American Broadcasting Cos. in 2012 for \$5.7 billion, saying it and reporter Jim Avila defamed the company by using the “pink slime” tag in reference to its beef products. Disney reported the settlement of the litigation in a footnote to its financial report, saying it was seeking additional insurance proceeds to recover its cash payment.

Reuters

MANUFACTURER CAN’T RECOVER SPOOFING EMAIL LOSSES

A manufacturer that lost \$800,000 when it fell victim to “spoofing” emails cannot recover under the computer fraud provision of its insurance policy because it was not a “direct” loss “directly caused” by the use of any computer, says a federal court ruling. Grass Lake Michigan-based American Tooling Center Inc. filed a claim with its insurer, Travelers Cos. Inc., after it mistakenly transferred funds to a bank account it thought belonged to a vendor. Travelers denied coverage, and the District Court agreed, saying intervening events between receipt of fraudulent emails and transfer of funds preclude a finding of direct loss caused by the use of any computer.

J&J ORDERED TO PAY \$417 MILLION IN TALC TRIAL

A Los Angeles Superior Court jury ordered Johnson & Johnson to pay \$417 million to a woman who claimed she developed ovarian cancer after using its talc-based products, the largest verdict yet in lawsuits alleging J&J failed to adequately warn consumers about the cancer risks of those products. The verdict included \$70 million in compensatory damages and \$347 million in punitive damages.

Reuters



Alan Jay Kaufman is chairman, president and CEO of H.W. Kaufman Financial Group, the Farmington Hills, Michigan-based parent company of wholesaler and underwriting manager Burns & Wilcox Ltd. and other surplus lines and specialty firms. One of the largest intermediaries in the U.S. excess and surplus lines market, privately held Kaufman has grown organically and through acquisitions over the past several years. Mr. Kaufman recently spoke with *Business Insurance* Editor Gavin Souter about the outlook for the market and what actions the insurance sector needs to take to solve the ongoing problem of attracting talent. Edited excerpts follow.

Alan Jay Kaufman

H.W. KAUFMAN FINANCIAL GROUP

Q What's the outlook for the market?

A I think pricing is going to stay as is, and if the market is flat, that will be good. We haven't seen a lot of decline, but we certainly haven't seen an uptick in all areas, and my prediction is that through the end of 2018 the rates will stay as they are, and in some cases they may even go down.

Q What effect does this sustained low-rate environment have on the market?

A The strong will survive, and the weak will not be able to weather the storm because the margins are becoming thinner. Last year, people were hoping that it would remain flat, but it really didn't — we've seen declines this year. Some retail and wholesale brokers will have to throw in the towel because the cost of debt service or the cost of operation can't be supported. That's one of the reasons why we've had an increased amount of acquisitions.

Q You've been involved in some acquisitions recently; what differences have the deals made?

A The acquisitions brought great talent on all dimensions. They brought expertise that we can continue to build on, they brought youth in many cases, and that's the most important thing for us. The actual book of business and relationships with retail brokers are great, but the talent is the most important thing. The first thing we look at is the talent base. We're a private company, so we are thinking long term.

Q There's a lot of private equity money in the industry. Could you see a time when you'd be looking for your firm to be acquired?

A No. We've never used private equity money. All the acquisitions that we've made have been internally financed, so we are very capable of expanding through the smallest acquisitions to the largest acquisitions. There's no reason for us to use private equity or other sources. We've been relatively conservative and prudent in our acquisition activities, and more of our growth comes from organic growth than from acquisitions. There are so many

companies competing for acquisitions, driving up the multiples, that we've passed on some acquisitions.

Q Are you looking to expand your international operations?

A Yes. There's a lot of talent in the London market, and we are always looking at teams of people or other opportunities, whether it be in London or outside the U.K. We do business in 65 countries, so we are looking to expand our reach and expand our talent.



Q Cyber has been a growth area for several years, but in what other areas do you see opportunities for growth?

A It's not a new area, but allied medical is a large area for us and for the industry. Health care and related fields is a strong area in the United States, particularly with the aging population. Another area where we want to grow is construction. With both our binding capabilities, our reach in London and other places of the world, and of course our brokerage, we compete handsomely, and we think that area will continue to grow. I think the government is way behind on infrastructure in the United States, and there will be a significant amount put into construction, so it will be a good area for us and for our industry.

Q In terms of the wholesale market, it's changed quite a lot over the past dozen years with large retailers divesting wholesalers. Do you see other significant changes?

A The conflict of dealing on one side of the table as a retailer and the other side of the table as a wholesaler still exists, so I think there will be more divestiture. I also think from a business perspective there will be more divestiture because for some retailers that own wholesalers, the wholesale operation is not producing the results; and with the headaches of the conflicts, they may decide to sell their specialty wholesale operations. We are looking closely at that as opportunities for us.

Q Given the need for new talent, what do you think companies can do to attract talent?

A The average age in our industry is about 54 years, and when we looked at that happening in our company, we made a concerted attempt to change that. So the average at our company now is 40, and we're still concerned. Talent to me is the No. 1 issue facing the insurance industry, and the industry has not done enough about it — the industry complains about it, they recognize that it's an issue, but they haven't done enough about it.

The top universities and the best business schools, for the most part, do not have insurance offered in the schools, so a student graduating from that university has never been exposed to insurance, and consequently the student is likely not going to have an interest in interviewing with insurance companies or insurance brokers. The opportunities for students to be educated at insurance industry companies is limited, which is one of the reasons a number of years ago we started the Kaufman Institute, because we thought it would be a competitive advantage for us, and it has been.

Also, my wife and I endowed a professorship in insurance at Michigan State University, where the business school did not have an insurance class. This fall there will be three classes taught, and that will change the future. That's only a starting point, but until universities have the wherewithal to have insurance classes, you won't have a flood of students knocking on the doors. The insurance industry must recognize that's one way to do it. It can't just be by talk, it has to be by action, and that means putting money on the table.

Talent to me is the No. 1 issue facing the insurance industry, and the industry has not done enough about it — the industry complains about it, they recognize it's an issue, but they haven't done enough about it.

More Than Just Another National MGA.



SCU is a nationally leading MGA that helps to put the power of our extensive resources to bear for your agency. Of course we have the coverages, market access and quick service you need, but we're also dedicated to helping you grow your business. Our underwriters and brokers place you first and work towards developing a relationship to last the ebbs and flow of business.

Coverages and Products

SCU has over 70 insurance products including commercial, personal, professional and transportation lines. We're experts in specialty coverages providing extensive knowledge of the marketplace. SCU has the coverages and products your clients need.

Market Access and Intelligence

SCU has access to over 100 markets and the backing of one of the nation's largest insurance wholesalers, CRC Group. Our network of 300 producers share intelligence on markets and relationships to provide you better solutions, more often.

Service and Responsiveness

SCU provides quick quote, bind & policy issuance with quotes turned in just 24 Hours. Our brokers and underwriters are located within your region to provide you better service and the local expertise you need to deliver for your clients.



Learn More at SCUI.com

CRC Group | CRC | CRC Swett | SCU | JH Blades | TAPCO | CRC Programs

©2017 SCU is a division of and operates under the licenses of CRC Insurance Services, Inc., CRC of California Insurance Services, CA Lic No 0778135.

INSURERS REACT TO CHANGING TERROR THREAT

Active assailant coverage
responds to mass casualty losses

BARCELONA
I ❤️

BY MATTHEW LERNER
mlerner@businessinsurance.com

The recent surge in terrorist attacks in Europe and North America seeking to inflict mass casualties rather than property damage has led to a nascent market for active assailant coverage, bringing with it a host of advisory and consulting services to help commercial policyholders address the threat.

Policies providing protection against exposures such as bodily injury, business interruption and property damage are taking hold in the market, with ancillary services aimed at reducing the risk of attacks and responding to the events when they take place.

Insurers offering the coverage take differing approaches, but each partners with an external firm to offer some level of related added service, such as post-incident communications, counseling services, crisis management and training.

"Training your employees to be aware and prepared can reduce the risk of an incident occurring," said Regan J. Rychetsky, Austin, Texas-based loss control manager for York Pooling, a unit of York Risk Services Group Inc., and formerly the director of HHS enterprise risk management and safety for the Texas Health and Human Services System.

"I think training is absolutely critical," said Cindy Stevenson, superintendent of the

Boulder Valley School System who previously served as the Jefferson County, Colorado, superintendent for 12 years, retiring in 2014.

Ms. Stevenson was deputy superintendent in Jefferson County at the time when a mass shooting event occurred at Columbine High School in the Jefferson County Public Schools on April 20, 1999. The state of Colorado subsequently mandated that every school have a safety plan.

“Businesses may or may not have the expertise to deal with crisis response and business continuity plans,” said James Dover, New York-based senior vice president for war and sabotage at Ironshore Inc., a Liberty Mutual Insurance Co. unit. “We need to be out of the gate as soon as our insured calls. We feel that having a plan and having someone to help you execute that plan is vital. It goes hand in hand with having indemnification.”

Rising toll

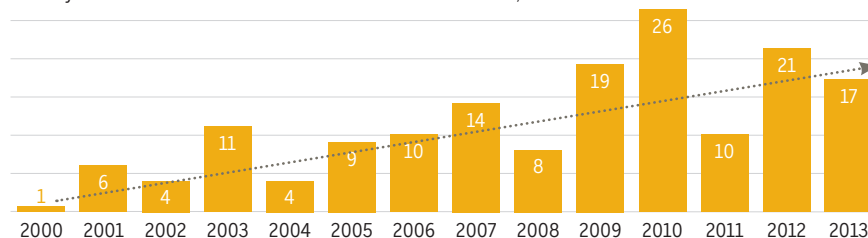
Recent mass casualty events — such as when a van plowed into a crowd in Barcelona killing 13 and injuring more than 130 last month; bomb, knife and van attacks in London and Manchester, England, earlier this year; the July 2016 truck attack in Nice, France, which killed 86 and injured 458; shootings in San Bernardino, California, in December 2015, and at the Pulse Nightclub in Orlando, Florida, in June 2016 — have brought the issue to the forefront and caught the attention of insurers, policyholders and others in related fields.

“We’d identified these types of event were starting to happen, smaller events in which there was a greater focus on human impact and psychological impact,” said Ben Tucker, New York-based head of U.S. terrorism and political violence insurance for XL Group P.L.C., which does business as XL Catlin, adding that such events carried with them the potential for lost income due to business interruption and reputational damage.

“We had a couple of events which res-

ACTIVE SHOOTER INCIDENTS

A study of 160 active shooter incidents in the United States, 2000-2013



Source: Federal Bureau of Investigation, 2014

ACTIVE SHOOTER CASUALTIES

A study of 160 active shooter incidents in the United States, 2000-2013



Source: Federal Bureau of Investigation, 2014

onated with us,” Mr. Dover said, citing specifically the San Bernardino and Pulse Nightclub shootings.

“The mass casualty events are the ones everyone is looking at,” said Wendy Peters, executive vice president of financial solutions-terrorism and political violence for Willis Towers Watson P.L.C. in New York, adding that the brokerage is “actively binding” policies but has yet to see any claims.

Coverages differ

Insurers seeking to meet the rising chorus of questions from policyholders have taken different approaches to the market.

Beazley P.L.C. launched its product in February 2016, writing business via a consortium with other Lloyd’s of London syndicates, said Chris Parker, political violence kidnap and ransom underwriter, political accident and contingency, at Beazley in London (see related story).

Beazley uses a ratings model that incor-

porates variables such as location, crime rates, number of shootings, types of educational institutions, and even student-to-teacher ratios, said Mr. Parker, and the insurer uses a broad definition of weapons in its policy wording that ranges far beyond firearms.

The coverage includes a response element, which is a major draw for potential policyholders.

“That’s why we decided this was going to be an integral part of our offering,” said Mr. Parker. “A lot of people welcome the independent company coming in to give them advice,” he said, adding that some clients ask about the response element independently of the coverage.

Beazley’s response partner, Roswell, Georgia-based Firestorm Solution L.L.C., provides clients with risk mitigation consultancy as well as incident response. “They’ve got the bandwidth to deal with a big crisis,” Mr. Parker said. “They’re very good at putting an action plan in place to make the risk better. And if an event

occurs, clients have a telephone number they can call on the policy.”

XL Catlin launched its Active Shooter coverage in February 2016, the result of two years’ development, said Ben Tucker, head of U.S. terrorism and political violence insurance for XL Catlin in New York.

Available worldwide, limits are up to \$35 million per risk, Mr. Tucker said. Originally developed for three clients — it’s first policyholder was a financial services firm — bindings have increased, with XL Catlin U.S. writing some 20 contracts in 2016 and 45 to date in 2017, Mr. Tucker said, and submissions up about 100% over a year ago.

Again, risk consulting and mitigation services are an important element of the coverage.

“Clients were not just interested in buying insurance for this,” Mr. Tucker said. “They themselves recognize there is a need for preincident consulting to prepare them for these types of events.”

XL Catlin engaged S-RM Intelligence and Risk Consulting Ltd. in London, which also has offices in New York and elsewhere.

Such support includes an active assailant workshop, according to Christopher White, director of security services within S-RM’s risk management business unit in London. The firm also offers two online training tools, one aimed at upper management and the other at general employees, and a physical location security assessment can be provided, he said.

Hiscox Ltd. launched its active shooter coverage in October 2016, and it has been updated since “to respond to what has happened in the world since last year, in particular, the two vehicle attacks on pedestrians in London and the knife attack on London Bridge,” said Jennifer Rubin, vice president for war, terrorism and political violence for Hiscox in New York.

“Brokers and insureds have come back asking if those types of events could be included in an active shooter product, so

See **ASSAILANT** next page

PROFESSIONAL GROUPS OFFER ACTIVE SHOOTER SECURITY PROTOCOLS

Standards and protocols developed to address safety and security issues that can be applied to active shooter threats are available for organizations to tap.

Some of the standards were established for public entities such as schools. The public entities are usually governed by boards or some central authority that can establish standards and coordinate activities among a given group or membership.

There are additional guidelines available for private industry and other entities.

Guidelines and standardization can be “great and helpful” in helping organizations manage exposures, said Nicholas Smith, security risk consulting practice leader at Willis Towers Watson P.L.C. in New York, including those

provided by ASIS International. “I view any of these sorts of professional continued minimum standards and requirements to be useful in guiding clients.”

“I think the guidelines that are out there now are good. I think there are a lot of good curriculum available to employers,” from which to choose depending on the specifics of the business or enterprise, said Regan J. Rychetsky, former director of HHS enterprise risk management and safety for the Texas Health and Human Services System.

In that position, Mr. Rychetsky was responsible for risk management, safety, workers compensation, workplace violence programs, insurance, business continuity coordination and emergency management safety for five state agencies and

approximately 54,000 employees statewide and had oversight responsibilities for 23 direct care facilities. He is now loss control manager with York Pooling, a unit of York Risk Services Group Inc. in Austin, Texas. He is also a past president of the Public Risk Insurance Management Association.

There are many information and training resources available in the public domain, Mr. Rychetsky said.

For example, the Federal Emergency Management Association, through its Emergency Management Institute, offers an independent online study course, “Active Shooter: What Can You Do?” The U.S. Department of Homeland Security offers an information card online featuring the “Run, Hide, Fight” protocol. And “Avoid, Deny, Defend,”

which was developed by the Advanced Law Enforcement Rapid Response Training Center at Texas State University, can also be accessed online.

Still more such resources are under development for both the educational and private sectors.

The University of Alabama has partnered with Roswell, Georgia-based crisis management firm Firestorm Solutions L.L.C. to compile training materials for state schools, which can then be more widely distributed to businesses, said Harry Rhulen, Denver-based president of Novume Solutions Inc. and founder of Firestorm, which was acquired by Novume predecessor KeyStone Solutions, Chantilly, Virginia, in January.

Matthew Lerner

COVER STORY

ASSAILANT

Continued from previous page

we have now broadened our definition of an attack to include knives and vehicles in addition to guns,” said Ms. Rubin.

The move to broaden the definition was finalized in August. Coverage include business interruption in addition to property.

“This is a first-party financial indemnity product, so we aren’t going down the road of insuring any liability,” Ms. Rubin said. “What we have decided to do is provide the business interruption coverage based on the time the business is out due to an attack. Our policy would respond to the lost income and of course any property damage.”

Pricing varies widely based on risk exposure.

“The pricing will be indicative of an insured’s exposure,” Ms. Rubin said. “A relatively small business with a small annual revenue number is likely to pay a minimum premium of \$2,500 per \$1 million of limit, and then it goes up from there based on the revenue that they are generating.”

“We have seen some very large hospital systems in the Southeast with a good revenue stream from elective surgery interested in coverage, and those are the folks wanting to buy limits in excess of \$10 million. And depending on what their annual revenue looks like, premium could be \$50,000 or more,” Ms. Rubin said.

Added services

Hiscox has partnered with public relations firm Weber Shandwick Inc. in New York for post-incident support and response, with the company on retainer.

Weber Shandwick “will work directly with insureds, to hold their hand post-event and help them get through media relations, employee communications, setting up services such as counseling for employees, even arranging added security for a physical site,” Ms. Rubin said.

As with other such products, the support services have generated strong interest among clients.

“It’s a huge draw,” Ms. Rubin said of the post-incident support, “especially for insureds which don’t already have a company on retainer to help them with this.”

“The immediate response services ... include media consulting, post event counseling services — that all comes with the program,” said Ms. Peters of Willis Towers Watson.

Ironshore Inc. handles active shooter coverage as an add-on to its stand alone terrorism coverage, said Mr. Dover of Ironshore.

“We typically add it on with additional premium and sublimits within the overall terrorism policy,” he said.

Ironshore’s active shooter coverage was

launched in September 2016 along with its crisis management response service, which is provided to all stand-alone terrorism policyholders, regardless of whether they purchase the active shooter coverage. Ironshore’s crisis management partner is proprietary, Mr. Dover said.

Combining the response and consulting services into their programs has helped insurers appeal to potential pol-

icyholders, sources said.

“There were no products out there that were actually addressing the crisis management aspect of this, so, it was good for us to actually have the opportunity to offer those consolidated services into a single program, the risk transfer as well as the crisis management services,” Ms. Peters said. “I think a lot of companies value the idea of having that panic button to push in the event of an emergency. Obviously, that’s

a very important part of their program.”

The inspections and security input provided by some of the insurers’ partners also can be an important preventive tool.

“Many acts could be reduced or outright avoided by recognizing behavior in the workplace or operational surveillance ahead of time,” said Nicholas Smith, practice leader of security risk consulting at Willis Towers Watson in New York.

“I know a lot of people in risk manage-

IT TAKES A FINE POINT TO MASTER THE DETAILS

At RSG Underwriting Managers, our underwriters approach each risk with the knowledge, skill, precision and innovation needed to fit our client’s needs. Learn more about our underwriting facilities at ryansg.com/RSGUM.



RSGUM

RSG UNDERWRITING MANAGERS

RYANSG.COM/RSGUM

ment are looking for that preventive physical security solution, and training for what to do in an emergency, and those are helpful, but prevention is just as important,” said Scott Murphy, retired superintendent of the Littleton Public School District in Colorado, who was in that position during a shooting incident at Arapahoe High School in December 2013.

“It’s a balance between the two,” Mr. Murphy added.

MASS CASUALTY EVENTS SPUR PRODUCT DEVELOPMENT

The specialty active shooter insurance market has grown and evolved over the past 18 months as mass casualty events continue to plague a growing list of cities worldwide.

Beazley P.L.C. is providing liability coverage while Hiscox Ltd., Ironshore Inc. and XL Group Ltd., which does business as XL Catlin, are writing property cover with business interruption. The policies are triggered by an event, and a policyholder

does not have to suffer property damage to make a claim.

Beazley launched its product in February 2016, writing business via a consortium with other Lloyd’s of London syndicates managed by Talbot Underwriting Ltd. and Liberty Specialty Markets, said Chris Parker, political violence kidnap and ransom underwriter, political accident and contingency, at Beazley in London.

Maximum capacity is \$20 million per

risk, and all underwriting and pricing is done by Beazley, which binds on behalf of the other syndicates. The insurer uses a broad definition of weapons, ranging far beyond firearms, and its policy can even be triggered by the brandishing of a weapon without the completion of an attack or bodily injury or property damage.

XL Catlin launched its active shooter coverage in February 2016, the result of two years’ development, according to Ben Tucker, head of U.S. terrorism and political violence insurance for the insurer in New York.

Available worldwide, it is written through XL Catlin’s Lloyd’s syndicate, as well as in foreign markets including Singapore and Australia, and it is written in the U.S. on a surplus lines basis. Limits up to \$35 million per risk are available, Mr. Tucker said.

Hiscox launched its active shooter product in October 2016 and recently broadened its definition of attack in August to include knife and vehicle attacks.

Limits are based on individual clients and submissions, but Hiscox “has the appetite to go up to a \$50 million maximum,” said Jennifer Rubin, vice president for war, terrorism and political violence for Hiscox in New York. The policy is available in the U.S. and Europe, including the United Kingdom, and is written on a surplus lines basis through Hiscox’s Lloyd’s syndicate, Ms. Rubin said.

The Hiscox policy does not have a property damage trigger, so a policyholder can be compensated if it suffers lost business due to an attack on an adjoining business, for example. Coverage also includes a loss of attraction cover, allowing a claim if there was business and income lost due to a police cordon and investigation or other lack of egress or access, Ms. Rubin said.

Ironshore’s active shooter coverage was launched in September 2016 along with the company’s Terrorism Crises 360° crises management response service, which is provided to all clients of the company’s stand-alone terrorism coverage.

The product is written on nonadmitted paper, and policyholders electing the active shooter add-on typically buy limits in the \$1 million to \$5 million range, mainly to cover the cost of business interruption and expenses such as temporary office or work facilities, said James Dover, New York-based senior vice president for war and sabotage at Ironshore Inc., a Liberty Mutual Insurance Co.

Ironshore follows the U.S. government/Department of Homeland Security definition of an active shooter situation, which is “an individual or group of people actively engaged in killing or attempting to kill people in a confined or populated area,” according to Mr. Dover. The company does not seek to define the weapon or mode of attack, he added.

Matthew Lerner



Solutions for Mergers & Acquisitions,
Uncertain Tax and Litigation



Small-to-middle market private and
non-profit management liability



Solutions for Architects, Engineers and
Landscape Architects



Enterprise Solutions for
Complex Cyber Risks



Upstream and Midstream
Oil and Gas Solutions



Solutions for Mergers & Acquisitions
in Europe



Coverage for Transportation, Specialty
Property and Casualty Exposures



Pharmaceuticals, Medical Devices,
Biotechnology and Supplements



Property and Casualty Coverage with
a focus on renewable energy



Professional Liability solutions including
D&O and Management Liability



Professional Liability solutions including
D&O and Management Liability



Insurance and Risk Mitigation for
Yachts and Cargo



Professional and General Liability for
large Healthcare Facilities



US and International Management Liability



Solutions for Complex Construction and
Commercial Property



Professional Lines for Cyber, Media, MPL and
Insurance Agents and Brokers



Marine and Offshore Energy
Insurance Specialists



Commercial and Complex
Property Solutions



E&S Property and
General Liability Solutions

RSG Underwriting Managers, LLC, is a Delaware series limited liability company and a subsidiary of Ryan Specialty Group, LLC, specializing in underwriting management and other services for insurance products distributed through agents and brokers. In California: RSG Insurance Services, LLC, Lic. #0E50879. © 2017 Ryan Specialty Group, LLC

EXCESS & SURPLUS LINES

Ample capacity keeps E&S rates down

BY JUDY GREENWALD

jgreenwald@businessinsurance.com

INSIDE

- ▶ **FLOOD RISKS ATTRACT MARKET**
Private insurers and reinsurers are considering taking on more flood risks. **PAGE 24**
- ▶ **3-D MANUFACTURING RISKS**
As 3-D manufacturing becomes more prevalent, liability becomes more difficult to pinpoint. **PAGE 26**
- ▶ **SURPLUS LINES & WHOLESALERS**
Top 10 U.S.-based surplus lines insurers and wholesale brokers, state premiums trends and more. **PAGE 27**

It is still a buyer's market for excess and surplus lines, with significant capacity and continuing rate declines — although there have been rate hikes in select lines — say experts, who generally predict the overall soft market will continue for the foreseeable future.

Cyber continues to be a “hot” product line, along with representation and warranties coverage (see related story).

Meanwhile, merger and acquisition activity in the sector is expected to continue, say experts (see related story).

“There’s still quite a bit of capacity, and the lack of significant (catastrophe) activity or losses has really helped to keep the capacity high and put a downward pressure on rates,” said Kyle Sliwerski, San Francisco-based senior vice president for the Western region for Lockton Cos. L.L.C.

The E&S market is “weak, but kind of

bumping along the bottom,” said Hank Haldeman, president of Anaheim, California-based G.J. Sullivan Co., an excess and surplus lines broker.

“You do see continuing competition on rates, but a lot more discussion of holding the line and looking more granularly at where more rate is needed and where less rate can be taken,” he said.

Despite the soft market, “there’s not an irrational level of competition that I’ve

Specialty lines evolving

Cyber liability insurance and representation and warranties coverages are among the “hot topics” continuing to attract excess and surplus lines market participants’ attention, experts say.

“Cyber is very hot. That’s the number one thing people are talking about,” said James Drinkwater, property/casualty brokerage division president of AmWINS Group Inc. in New York.

“There’s plenty of entrants into that marketplace and the wording for the coverage varies widely by company,” he said.

Ten years ago, few people bought cyber insurance, said Christopher Cavallaro, CEO at Jericho, New York-based wholesaler ARC Excess & Surplus L.L.C.

Today, 40% to 45% of companies buy some of that coverage, “and that’s a growing number,” said Mr. Cavallaro, who estimates it is a \$4 billion product.

Cyber is a “burgeoning new exposure bringing new buyers into the market,” said Bruce Kessler, Alpharetta, Georgia-based division president at Ace Westchester Surplus Lines Insurance Co., a unit of Chubb Ltd.

“There’s clearly a need for the product as exposures grow. We will see a big growth within that in the wholesale space as new buyers come in,” he said.

“We are seeing many of our partner client companies, particularly in the delegated authority arena, asking us to help develop a cyber product, which we are engaged in doing,” said David W. Schraeder, Houston-based senior vice president of the custom accounts division at Hartford Steam Boiler Inspection & Insurance Co., a unit of Munich Reinsurance Co.

“The cyber world is in a continuous state of creativity because the losses

and exposures continue to evolve and change,” so policy forms and terms and conditions “are in a constant stage of being created and manuscripted,” said Timothy W. Turner, Chicago-based president and CEO of R-T Specialty L.L.C., a division of Ryan Specialty Group L.L.C.

Andy Swenson, New York-based head of Zurich Wholesale and Surplus, a unit of Zurich Insurance Group Ltd., said he has seen a broadening of cyber coverage, including for system failure and social engineering, “blending coverages together in ways they haven’t been before.”

HOT E&S PRODUCTS

Lines that have received significant attention include:

- Cyber
- Representation and warranties
- Driverless cars
- Drones
- Medical and recreational marijuana
- Gig economy risks

Cyber insurance remains largely an E&S product, say experts. Many policyholders have to buy it on a nonadmitted basis because they need flexibility to incorporate certain wordings and do not have that ability in the admitted market, said Mr. Cavallaro.

Another “hot” product, although not new, is representation and warranties insurance, which protects against breaches of the representations and other assertions in purchase agreements.

Jeffrey Cowhey, New York-based co-founder and president of Ambridge Partners L.L.C., a transactional insurance managing general underwriter, said the product has become increas-

ingly popular over the past five to 10 years, driven largely by private equity investors. “It breeds a measure of comfort and familiarity,” he said.

Hank Haldeman, president of Anaheim, California-based G.J. Sullivan Co., an excess and surplus lines broker, said medical and recreational marijuana use, and how to insure it, are topics of discussion as well.

“There’s lots of speculation of what will happen when we get to the point of full legalization of recreational marijuana use in California, because of how big a state it is,” he said.

“Right now, we’re in the process of watching the state, trying to figure out exactly how it’s going to regulate it, and the nonadmitted market is watching that very, very closely,” Mr. Haldeman said.

Eric Blecker, Hartford, Connecticut-based president of Northfield Solutions, a unit of Travelers Cos. Inc., said one promising area of potential new products involves creative solutions to “peer-to-peer sharing economy risks” associated with the gig economy.

These would include, for instance, the risks associated with gig employers renting out office space. “What are the exposures?” he asked.

Another example would be insurance for the extension of ride-sharing arrangements beyond taxi-like services to transportation of goods or animals. For example, transportation of horses, where one party has a horse and another a trailer.

There is also lot of discussion about autonomous vehicles and how they will affect insurance, “although that’s off in the future,” said Mr. Haldeman, adding there has also been continuing market discussion about coverage for drones.

Judy Greenwald

seen in previous soft cycles,” said John Edack, San Francisco-based senior executive vice president of E&S casualty for Arch Capital Group Ltd.’s U.S. insurance group.

“I still see a fairly judicious use of limits,” while “critical terms and conditions remain stable. We’re not seeing multi-year deals. They’re very rare,” he said.

In the environmental insurance market, “Each carrier is what I call picking their spots,” both in terms of industry sector and the type of product where they want to be competitive, said Marcel Ricciardelli, Philadelphia-based senior vice president of the casualty-environmental and engineering division at Allied World Assurance Co. (U.S.) Inc.

In the management and professional liability space, “Rates have come down, probably on average, depending on the product,” between 4% and 7%, but

“have gone up in certain areas,” as well, including construction and energy casualty, said Christopher J. Cavallaro, CEO of Jericho, New York-based wholesaler ARC Excess & Surplus L.L.C.

“There are some firming niches,” including trucking, New York construction and long-term care, where there has been adverse development, said Timothy W. Turner, Chicago-based president, and CEO of R-T Specialty L.L.C., a division of Ryan Specialty Group L.L.C.

The soft market is expected to continue, say observers. “Rates will continue to be soft, probably through a good part of next year,” absent any major climate-related events such as a huge hurricane or terrorist attack that causes irreparable harm and damage to the industry, Mr. Cavallaro said.

At that point, though, “underwriters will start to run cash flow negative in

many product lines,” and at the “very least” stop rate reductions, he predicted.

Mr. Haldeman said, however, that “we are seeing California, which is pretty much a bellwether state,” reporting an uptick in premiums, “which generally is a harbinger of a tightening market, or at least an indication of business is moving from admitted to nonadmitted.”

Meanwhile, experts generally say standard lines’ encroachment into the E&S space is no more than what can be expected in the soft market.

“It always occurs in a softening market,” although “the standard markets have gotten much better at understanding their data” and what they want to target, said David W. Schraeder, Houston-based senior vice president of the custom accounts division at Hartford Steam Boiler Inspection & Insurance Co., a unit of Munich Reinsurance Co.

M&A DEALS KEEP ROLLING IN

Consolidation has been a major factor in the excess and surplus lines market, and mergers and acquisitions are expected to continue, experts say.

“We’re at an historical high point in M&A, so there’s more firms for sale in the specialty E&S arena than there ever has been,” said Timothy W. Turner, Chicago-based president and CEO of R-T Specialty L.L.C., a division of Ryan Specialty Group L.L.C.

The consolidation is driven by product distribution and the change in buying trends, he said. “Retailers are buying E&S solutions from fewer wholesalers and (managing general agencies). They’re consolidating their use of intermediaries.”

In August, wholesaler U.S. Risk Insurance Group, L.L.C. said it had acquired Dallas-based B&H Risk Services, Inc. In April, New York-based AmWINS Group Inc. announced a definitive agreement to acquire Partners Specialty Group L.L.C., based in Stamford, Connecticut.

Other deals include the acquisition of Manhasset, New York-based NIF Group, a managing general agency, by New York-based JenCap Holders L.L.C., a specialty insurance distributor, which was announced in December.

In addition, in July, JenCap said it had agreed to acquire Sterling Heights, Michigan-based Specialty Risk Facilities Inc., a managing general agency/contract binding authority and wholesale insurance brokerage. And Toronto-based Allied World Assurance Co. Holdings A.G.’s acquisition by Toronto-based Fairfax Financial Holdings Ltd. was completed in July.

“We have got a couple of transactions that we’re working on right now, but there’s always opportunity,” said James Drinkwater, AmWINS’ property/casualty brokerage division president.

“Our focus has been the small-business space because there’s plenty of opportunity in small business for a broker that is going to strive for greater efficiency” using technology, he said.

“You don’t yet see any major changes in the supply/demand equation, so the fact you have fewer distributors of that insurance capital has not yet resulted in changes in price, but it may over time,” said David J. Bresnahan, Boston-based executive vice president of Berkshire Hathaway Specialty Insurance Co.

“You’ve got to think there’s a lot of uncertainty as a result of all of these acquisitions that you didn’t have a year ago,” he added. “Nothing seems terribly broken, but people are left to wonder what it all means.”

“Some customers are trying to get ahead of it and taking a little bit of control over what’s happening” and “looking at their options, and trying to evaluate whether that particular company is more or less likely to be around in a year,” or bought up by somebody else, Mr. Bresnahan said.

More activity is expected, say experts.

“There’s a lot of private equity money, which is behind a number of wholesale entities” that are looking for additional opportunities to expand, said John Edack, San Francisco-based senior executive vice president of E&S casualty for Arch Capital Group Ltd.’s U.S. insurance group.

Judy Greenwald

Market ready to offer flood coverage as NFIP awaits reauthorization

BY GLORIA GONZALEZ

ggonzalez@businessinsurance.com

Pivate insurers and reinsurers are eager to take on more U.S. flood risk in their portfolios, especially if Congress can reauthorize the National Flood Insurance Program in a way that allows for expanded private-sector participation.

"The private capital markets today are very excited about flood, clearly more so than they ever have been," said John Dickson, president of NFS Edge Insurance Agency Inc., an affiliate of Aon National Flood Services, in Kalispell, Montana. "They're looking to match the risk with their businesses and see how it meshes with other catastrophe programs they write. For example, for insurers heavy in the windstorm markets, particularly in the Gulf and south Atlantic coast, it's a little difficult for them to fit hurricane-driven flood into their portfolios, but they're very interested in looking at flood in other parts of the country."

Legislative proposals introduced in the U.S. House of Representatives and Senate ahead of a pending Sept. 30 expiration would extend the program five or six years, with growing expectation for a short-term "as is" reauthorization to give legislators more time to reach consensus on a bill that can pass both bodies.

However, the Risk & Insurance Management Society Inc. is trying to impress on legislators the importance of reauthorization prior to the expiration.

A failure to do so would be "extremely devastating" because many mortgages, leases and other agreements specifically require an NFIP policy and force people to "breach contracts through no fault of their own," said Elizabeth Guimaraes, chair of the RIMS External Affairs Committee and director of risk management for Nova Southeastern University in Fort Lauderdale, Florida.

A program lapse would also leave commercial and residential insurance buyers vulnerable to a catastrophic event for which they would be uncovered, she said.

"As an owner of one of those policies, I'm now having to come up with \$500,000, and that's not an easy thing for everyone," Ms. Guimaraes said, referring to the NFIP's form offering commercial policyholders coverage for building or personal property up to \$500,000. "And that's only if it's one building. If you've got multiple buildings, you're really stuck."

The private sector has voiced overall support for reauthorization, but stakeholders favor provisions featured in bills adopted by the House Financial Services Committee in June.

The House reform package included the bipartisan Flood Insurance Market Parity and Modernization Act, which clarifies that people who



REUTERS

Volunteers put sandbags around a house in Gurnee, Illinois, after heavy rains caused flooding in July.

buy private flood insurance should receive the same treatment as those who purchase it through the NFIP if they're trying to obtain federally backed mortgages that require flood insurance. Absent this clarification, lenders have been confused about what private coverage can be accepted for mandatory purchase requirements.

"That clarification needs to happen so people aren't hurt by virtue of joining the private

"The private capital markets today are very excited about flood, clearly more so than they ever have been. They're looking to match the risk with their businesses and see how it meshes with other catastrophe programs they write."

John Dickson,
NFS Edge Insurance Agency Inc.

market," said Janet Bordonaro, flood underwriting manager for Flood Advantage Partners, a member of managing general underwriter and wholesale broker Advanced E&S Group, based in Bonita Springs, Florida.

The bill specifies that consumers who choose to leave the NFIP to purchase private insurance won't lose continuous coverage status if they have either an NFIP or private policy, which stakeholders say is critical to ensuring consumers aren't unfairly penalized for shopping for better policy options in the private market.

The reform package would also eliminate the noncompete clause, meaning elimination of the regulatory restriction that currently prevents insurers participating in the NFIP's Write Your Own program from selling both NFIP and private flood insurance policies.

"It is critical that the Write Your Owns are able to offer it," said Keri Kish, director of government relations for the Wholesale and Specialty Insurance Association in Kansas City, Missouri. "If those insurance companies participating as Write Your Owns are unable to participate in the private market with private market solutions, then you can't fully develop that market."

A more contentious bill would require the use

PRIVATE FLOOD MARKET VS. NFIP

The U.S. primary insurance market for flood, excluding those insurers writing and servicing policies on behalf of the National Flood Insurance Program that are barred from writing private market policies, underwrites policies for commercial properties and high-end homes in excess of what the NFIP would cover. But the size of the private market currently pales in comparison with the government program in terms of direct written premiums in 2016.

PRIVATE MARKET
\$356.6 MILLION

NFIP
\$3.3 BILLION

Source: S&P Global Ratings Inc. report: U.S. Flood Insurance: Does The Growth Opportunity Exist?

of replacement cost value in determining premium rates for coverage under the National Flood Insurance Act, with the bill passing the House committee in June on a 34-25 vote.

"We think that's an important provision in bringing the NFIP along the glide path to premium adequacy," said Tim Brockett, senior vice president and manager of strategic products for Munich Reinsurance America Inc. based in Princeton, New Jersey. "The private market is only going to come in in a big way if the private market feels it can make some money on the business. The rates have to be adequate."

But there are concerns private insurers will "cherry-pick" the most attractive risks, leaving the NFIP saddled with the responsibility of covering the riskier properties and locations.

"It's not (cherry-picking) because the

markets that they want to write are sometimes the most challenging and risky markets, because that's where the premium is," Ms. Bordonaro said. "They can take out some of the higher-risk structures and place it privately and still save the consumers money."

And the Alexandria, Virginia-based National Association of Professional Insurance Agents objected in June to a proposal by the House committee to reduce the reimbursement rate for Write Your Own insurers to 27.9% from 30.9%.

Ms. Bordonaro suggested any decrease in the Write Your Own insurers' compensation structure only occur on policy renewals rather than new policies.

"It is a very high-commissioned business—I'm not going to say it's not, but it's also one of the most difficult policies for agents to write, explain, sell properly," she said.

Insurers have new technology and data sources allowing them to take a more granular look at flood risk, which may benefit some buyers who receive lower rates, and they can insure risks not typically covered by the NFIP. A new program launched last month by ISO, a unit of Jersey City, New Jersey-based Verisk Analytics Inc., enables insurers to set their own limits and provide optional coverage for typically uncovered risks such as property damage to basements and business interruption.

"There's ample capacity available to write flood in the United States just sitting there waiting to be deployed," said Tom Dawson, a New York-based partner and co-chair of the insurance regulatory and transactional team at law firm Drinker Biddle & Reath L.L.P. "It's not a pipe dream."

FEMA's reinsurance pilot program offers public-private example

Legislative proposals to reform the National Flood Insurance Program explicitly support the use of risk transfer tools, which private-market stakeholders say is critical to expanding their participation in covering flood risk and ensuring there is not a repeat of 2005, when losses related to several major hurricanes helped put the program in debt to the tune of \$24.6 billion.

The Federal Emergency Management Agency piloted a reinsurance program for 2016 and secured a new placement effective Jan. 1, 2017, through Jan. 1, 2018, through a consortium of 25 reinsurers arranged through Guy Carpenter & Co. L.L.C.

Under the agreement, the reinsurers indemnify FEMA for flood claims on an occurrence basis. The layer is structured to cover 26% of losses between \$4 billion and \$8 billion. A combined total of \$1 billion of the NFIP's flood risk was transferred to the private reinsurance market through this agreement. The reinsurance brokerage is already in discussions with FEMA and preparing for a renewed placement effective Jan. 1 that could involve additional reinsurers.

The risk transfer section of the Senate Banking Committee's proposal would clarify that the FEMA administrator may use risk transfer tools other than traditional reinsurance, including catastrophe bonds, collateralized reinsurance, resilience bonds and other insurance-linked securities.

"If they want to truly get a robust reinsurance program in place, they are going to have to access all forms of capital that



REUTERS

The Federal Emergency Management Agency in Washington has piloted a reinsurance program through a consortium of 25 reinsurers that have agreed to indemnify the agency for flood claims on an occurrence basis.

can support reinsurance transactions," said Jake Clark, New York-based managing director and leader of Guy Carpenter's public-sector practice in North America.

Munich Reinsurance America Inc. participated in the current agreement and sees opportunity for expanding the reinsurance program.

"The more data that the NFIP can share with reinsurers, the more interest they'll get from the market, and certainly the more transparent they can be, the better," said Tim Brockett, senior vice president and manager of strategic products within Munich Re's reinsurance division in Princeton, New Jersey.

"In terms of expanding that program, there are options there," he said. "Right

now, it attaches at a pretty high attachment point and it really is going to pick up tail events, larger events. The NFIP probably could use something that addresses some of the frequency issues that they've had. Reinsurance can be a method to help do that. For that to happen, reinsurers are going to have to get more comfortable with flood models, and flood models are going to have to come further along in terms of the ability to provide a probabilistic flood estimate. But the fact that something was placed Jan. 1 and that there was a lot of interest in the marketplace, the importance of that can't be overstated. It was a great start."

Gloria Gonzalez

CLASSIFIED

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT CR- 2017-004051
IN THE MATTER OF:
KX REINSURANCE COMPANY LIMITED
 -and-
OX REINSURANCE COMPANY LIMITED
 -and-
CATALINA LONDON LIMITED
 -and-
PART VII OF THE FINANCIAL SERVICES AND MARKETS ACT 2000
TRANSFER OF INSURANCE BUSINESS

NOTICE IS HEREBY GIVEN that, by application dated 20 July 2017, KX Reinsurance Company Limited (formerly known as The Maltese Cross Insurance Company Limited, Lombard Insurance Company (U.K.) Limited, Lombard Insurance (U.K.) P.L.C., Lombard Elizabethan Insurance plc, Lombard Continental Insurance plc, Lombard Continental Insurance Limited and Continental Management Services Limited) and OX Reinsurance Company Limited (formerly known as Storebrand Insurance Company (U.K.) Limited, Uni Storebrand Insurance Company (UK) Limited and Oslo Reinsurance Company (UK) Limited) (the "Transferors"), applied to the High Court of Justice of England and Wales for, amongst other things, an order under Section 111(1) of the Financial Services & Markets Act 2000 (the "Act") sanctioning an insurance business transfer scheme (the "Scheme") providing for the transfer of insurance and reinsurance business (comprising policies, assets and liabilities) to Catalina London Limited (the "Transferee") and for an order making provision under Section 112 of the Act.

The business included in the proposed transfer comprises all of the insurance and reinsurance business underwritten or assumed (in whole or in part) whether by way of portfolio transfer or otherwise, by the Transferors.

If you are in any doubt as to whether your insurance policy is included in the proposed transfer please contact the parties at the contact details set out below.

Copies of a report on the terms of the Scheme prepared by an independent expert in accordance with section 109 of the Act (the "Scheme Report") and copies of a statement setting out the terms of the Scheme and containing a summary of the Scheme Report may be obtained, free of charge, by contacting Catalina London Limited at 18 Mansell Street, London E1 8AA Ref: Ian Grottick Email: IanGrottick@CatalinaRe.com Telephone: 44 (0)20 7265 5026 or may be downloaded from the website <http://catalinalondon.co.uk/PartVII.html>

Anyone who has questions regarding the proposed transfer or who requires any further information regarding the transfer may also contact Catalina London Limited at the above address and reference.

The application will be heard on 17 November 2017 before a Judge of the Chancery Division of the High Court at The Rolls Building, 7 Rolls Buildings, Fetter Lane, London, EC4A 3NL, United Kingdom. Any person (including an employee of the Transferors or the Transferee) who alleges that he or she would be adversely affected by the carrying out of the Scheme is entitled to:

- 1 make representations in writing;
- 2 appear at the hearing and make representations in person; or
- 3 instruct a barrister or solicitor advocate to appear at the hearing and make representations on his/her behalf.

If you intend to appear at the hearing in person, or to instruct someone to appear on your behalf, you are requested to give notice of your intention to do so in writing, setting out the reasons why you believe you may be adversely affected.

You are requested but not required to send such notice, or if you are not intending to appear in person or by your legal representative, any written representations that you may have, to Catalina London Limited at the address provided above or to Benwin Leighton Paisner LLP, Adelaide House, London Bridge, London, EC4R 9HA (Ref: Geraldine Quirk). Please provide such notice or such written representations by close of business on 10 November 2017.

If the Scheme is sanctioned by the Court, it will result in the transfer of all the contracts, property, assets and liabilities of the Transferors to the Transferee, notwithstanding that a person would otherwise be entitled to terminate, modify, acquire or claim an interest or right or to treat an interest or right as terminated or modified as a result of the transfer of business effected by the Scheme. Any such right will only be enforceable to the extent the order of the Court makes provision to that effect.

Benwin Leighton Paisner LLP, Adelaide House, London Bridge, London, EC4R 9HA Solicitors to the Transferor and the Transferee (Ref: Geraldine Quirk).

Manufacturing risks expand to 3-D

BY ROB LENIHAN

rlenihan@businessinsurance.com

The use of 3-D printing technology is changing the way things are made and making manufacturing risks more complex.

While conventional insurance policies cover 3-D printing risks, the process adds cyber and industrial espionage exposures to the manufacturing process, changes the nature of business interruption risks and clouds liability issues, experts say.

The process, where 3-D printers deposit material in successive layers to create a physical object from a digital file, dates back to the 1980s. The use of the devices, however, is expanding rapidly. Fort Collins, Colorado-based consultancy Wohlers Associates Inc. said in its 2017 report that the 3-D printing industry grew to nearly \$6.1 billion in 2016 and is forecast to grow to more than \$26 billion by 2022.

The process involves making a physical object from a three-dimensional digital model, usually by laying down many thin layers of a material in succession.

The printers use a variety of materials, such as epoxy resins, titanium, steel, wax and polycarbonate. They have been used by the aerospace, consumer electronics, defense and medical industries.

"3-D printing has been around for a while," said Tom Srail, Cleveland-based technology, media and telecom industry leader at Willis Towers Watson P.L.C., "but the technology continues, as most technologies do, to innovate and leapfrog itself."

Mr. Srail said 3-D printing is widely used to build prototypes for various products.

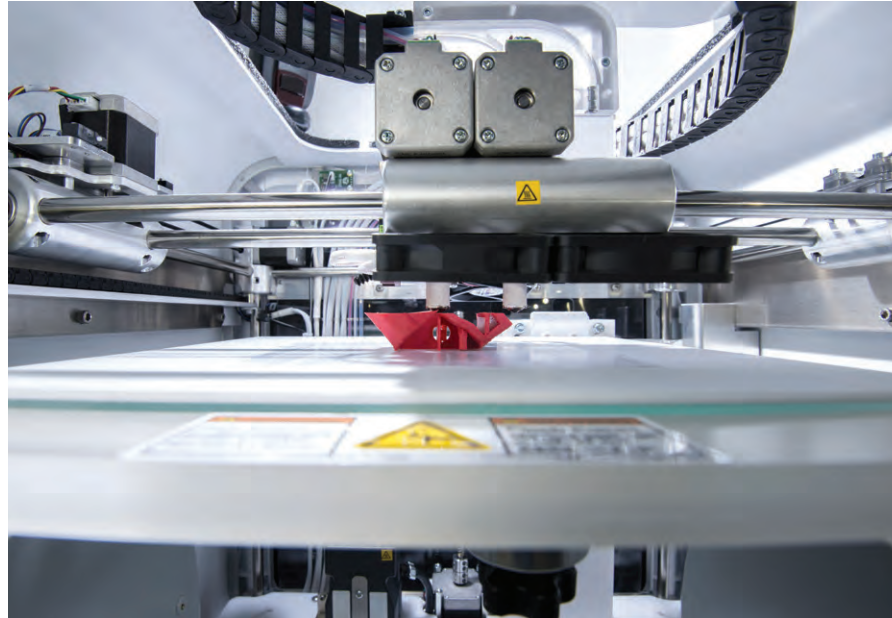
"What used to take a long time to build and tool and design to even do prototypes — a new cellphone, a new microchip, a new part or device or widget — you can really fast-forward that time frame," he said.

While manufacturers using 3-D printing are exposed to traditional risks, such as bodily injury and property damage, the use of the technology can change the nature of the risks, he said, noting that stealing from a company now is "as simple as hijacking a computer file."

"You have everything you need to know to do an identical knockoff of that part," he said. "There's a lot to lose, and it's much easier to lose it."

Cindy Slubowski, head of manufacturing for Zurich North America in Schaumburg, Illinois, said that 3-D printing is moving quickly into a traditional manufacturing environment.

"It touches every industry," she said. "Construction companies are using it for everything from prototyping angles and how buildings are constructed to actually



constructing buildings with 3-D printed materials. Health care industries using bio printing. It is advancing quickly as new materials come on board."

Ms. Slubowski said manufacturers may overlook potential risks as they hurry to seize the new business opportunity.

"So if you think about a traditional manufacturer and a business interruption risk," she said, "he could have supply chain issues, a catastrophic event, his machine goes down, whatever. Now when you introduce the technology that's associated with 3-D printing, all of a sudden he opens himself up to a cyber attack that holds his machine and his process ransom."

She added that "it's the same business

3-D GROWTH

- The 3-D printing industry grew to nearly \$6.1 billion in revenue in 2016 and is forecast to grow to more than \$26 billion by 2022.
- The compound annual growth rate of worldwide revenues produced by 3-D printing products and services over the past 28 years totaled 25.9%.
- Ninety-seven manufacturers produced and sold industrial additive manufacturing systems in 2016, up from 62 companies in 2015 and 49 in 2014.

Source: Wohlers Associates Inc. 2017 report

interruption concept, but it hits the manufacturer from a different perspective."

William Mauro, director of commercial casualty, product development at ISO, a unit of Verisk Analytics Inc. in Jersey City, New Jersey, said "the assembly line concept that Henry Ford introduced for us may go away, and a single printer may be able to actually create component parts and put them all together."

3-D printing, like many emerging risks,

Mr. Mauro said, may be a new technology, but some of the perils associated with it — such as fire, counterfeiting, hacking and reputation risk — are not necessarily new to insurers.

"The insurance industry has ways of handling these types of perils where it's not so much of a jump to say new technology now is going to impact me in a new way, here are the perils I'm expecting, and I know how to deal with those," he said. "I can price fire damage, and I can do things like that on my normal book of business, now I need to get some consideration for 3-D printers."

Bob Weireter, New York-based senior treaty underwriter and vice president with Swiss Re Ltd., said one of the most critical risk issues "is determining who is at fault when something goes wrong."

This process, he said, requires evaluation of the software designer, the 3-D printer manufacturer, whoever made the materials that the 3-D printed product is made from, who operates the printer that produces the product and who puts it into the stream of commerce.

"This chain of custody is much clearer for products made in a traditional manufacturing setting," Mr. Weireter said, "but can be quite confusing for 3-D printed products. It is not clear where the 'manufacturing' occurs in 3-D printing, so allocation of liability is expected to be challenging."

Long-term durability of the 3-D printed product is another issue, he said, and while there is a good sense of this for products made by traditional methods, more time is needed to assess the durability of 3-D printed products in real use.

"There is a lot of research being done on this, but more time is needed to draw firm conclusions," Mr. Weireter said.

INSURERS MUST ADAPT TO KEEP PACE WITH WIDER 3-D ADOPTION

In September 2015, Alcoa Inc. announced plans to spend \$60 million to expand a research and development center to include the development of methods and materials for additive manufacturing — 3-D printing.

"Alcoa is investing in the next generation of 3-D printing for aerospace and beyond," the company's former chairman and CEO, Klaus Kleinfeld, said in a statement at the time.

Fort Collins, Colorado-based consultancy Wohlers Associates Inc., which tracks the growth of the 3-D printing sector, said that investment is important for the growth of 3-D printing. The firm's 2017 report showed that the additive manufacturing industry has continued to grow over the past seven years after a decline in 2009.

"A lot of new technology at the entry point is usually priced very high, and as the technology develops and evolves, the price usually does come down," said William Mauro, director of commercial casualty, product development at ISO, a unit of Verisk Analytics Inc. in Jersey City, New Jersey. "I think we're seeing that effect inside the 3-D printer now, which will lead to more widespread adoption, which I think makes this relevant for the insurance industry. Because when one company uses a 3-D printer to do something, that's one; when 1 million do it, that's a different story."

Bob Weireter, New York-based senior treaty underwriter and vice president at Swiss Re Ltd., said "underwriters need to follow the technology and ask more questions."

"Claims professionals need to recognize when a loss may be attributed, in whole or in part, to a 3-D printing application, to provide this feedback to underwriters," he said. "Risk engineers need to keep up with emerging developments and uses for this technology and notify underwriters."

Rob Lenihan



LARGEST U.S.-BASED SURPLUS LINES INSURERS

Ranked by 2016 nonadmitted direct written premiums

Rank	Company/principal officer	2016 nonadmitted direct premiums	Percent change	2016 gross premiums	Percent change	2016 net income
1	Lexington Insurance Co. Boston www.lexingtoninsurance.com Jeremy Johnson, president/CEO	\$3,072,090,784	(18.8%)	\$10,212,270,466	(11.7%)	\$246,358,586
2	Nationwide Excess and Surplus ¹ Scottsdale, Arizona www.nationwideexcessandsurplus.com Steve Rasmussen, CEO	\$1,677,321,986	(3.3%)	\$4,065,113,303	2.7%	\$18,796,309
3	Chubb Ltd. ² Philadelphia www.chubb.com John J. Lupica, chairman/president	\$1,486,045,491	(8.4%)	\$1,602,076,786	(7.9%)	\$35,536,063
4	AEGIS (Associated Electric & Gas Insurance Services Inc.) East Rutherford, New Jersey www.aegislink.com Owen M. Ryan, president/CEO	\$1,236,475,000	(1.1%)	\$1,236,475,000	(1.1%)	\$112,115,000
5	Markel Corp. Glen Allen, Virginia www.markelcorp.com Thomas S. Gayner and Richard R. Whitt III, co-CEOs	\$1,234,126,766	5.2%	\$1,622,499,453	2.1%	\$172,576,876
6	Liberty Mutual Holding Co. Inc. ³ Boston www.libertymutual.com Kevin Kelley, CEO	\$1,206,000,000	0.2%	\$40,776,000,000	3.0%	\$1,069,000,000
7	Steadfast Insurance Co. Schaumburg, Illinois www.zurichna.com Nancy D. Mueller, president	\$1,075,923,941	(2.9%)	\$1,242,748,315	(4.5%)	\$6,500,975
8	Indian Harbor Insurance Co. Stamford, Connecticut www.xlgroun.com Michael S. McGavick, CEO	\$928,755,594	16.6%	\$963,418,901	17.1%	\$1,030,170
9	National Fire & Marine Insurance Co. Omaha, Nebraska www.nationalindemnity.com Donald F. Wurster, president	\$901,676,070	24.8%	\$957,989,169	12.2%	\$919,002,268
10	AIG Specialty Insurance Co. New York www.aig.com Robert S. Schimek, chairman/executive vice president	\$724,617,049	(22.2%)	\$725,118,050	(22.2%)	\$1,486,126

¹ Formerly Scottsdale Insurance Co. and Western Heritage Insurance Co.; ² Includes Westchester Surplus Lines Insurance Co., Illinois Union Insurance Co., Chubb Custom Insurance Co. and Executive Risk Specialty Insurance Co.; ³ Acquired Ironshore Specialty Insurance Co.

Source: *BI* survey

NET INCOME

Top surplus lines insurers, ranked by 2016 net income

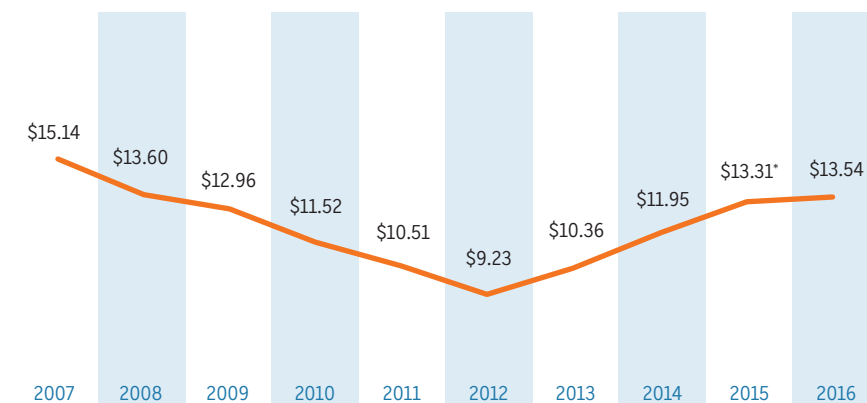
Rank	Company	Net income 2016
1	Liberty Mutual Holding Co. Inc. ¹	\$1,069,000,000
2	National Fire & Marine Insurance Co.	\$919,002,268
3	Lexington Insurance Co.	\$246,358,586
4	AIG Europe Ltd.	\$196,475,000
5	RSUI Indemnity Co.	\$175,216,797
6	Markel Corp.	\$172,576,876
7	AEGIS (Associated Electric & Gas Insurance Services Inc.)	\$112,115,000
8	The Cincinnati Specialty Underwriters Insurance Co.	\$56,836,612
9	Energy Insurance Mutual Ltd.	\$55,920,568
10	Chubb Ltd. ²	\$35,536,063

¹ Acquired Ironshore Specialty Insurance Co.; ² Includes Westchester Surplus Lines Insurance Co., Illinois Union Insurance Co., Chubb Custom Insurance Co. and Executive Risk Specialty Insurance Co.

Source: *BI* survey

PREMIUM TRENDS

Nonadmitted direct premiums of the top 10 U.S.-based surplus lines insurers, in billions of dollars



* Restated

Source: *BI* survey

SPECIAL REPORT

LARGEST PROPERTY/CASUALTY WHOLESALERS

Ranked by 2016 wholesale premium volume from property/casualty placements*

ranked by 2016 wholesale premium volume from property/casualty placements							PERCENTAGE OF TOTAL BUSINESS				
Rank	Company/principal officer	2016 premium volume	Percent change	2016 gross revenues	Percent change	Percent surplus lines	Underwriting manager	Wholesale broker	MGA	Lloyd's of London coverholder	Wholesale employees
1	AmWINS Group Inc. Charlotte, North Carolina www.amwins.com M. Steven DeCarlo, CEO	\$9,902,159,750	7.7%	\$890,000,000	10.6%	63.0%	0%	77.7%	17.3%	5.0%	4,227
2	CRC Insurance Services Inc. Birmingham, Alabama www.crcgoupins.com Dave Obenauer, CEO	\$7,366,873,768	(4.1%)	\$899,861,000	(2.4%)	32.0%	2.0%	79.0%	12.0%	7.0%	3,393
3	Ryan Specialty Group L.L.C. Chicago www.ryansg.com Patrick G. Ryan, founder/chairman/CEO	\$5,132,000,000	16.6%	\$451,000,000	17.8%	78.0%	0%	82.0%	18.0%	0%	935
4	All Risks Ltd. Hunt Valley, Maryland www.allrisks.com Nicholas Cortezi, CEO	\$1,534,000,000	10.4%	\$152,000,000	16.0%	67.0%	5.0%	55.0%	35.0%	5.0%	896
5	Brown & Riding Insurance Services Inc. Los Angeles www.browncandriding.com Chris Brown, chairman; Jeff Rodriguez, president/CEO	\$655,702,672	21.2%	\$52,370,751	17.1%	70.3%	0%	96.8%	3.2%	0%	164
6	Worldwide Facilities L.L.C. Los Angeles www.wwfi.com Davis Moore, CEO	\$649,372,030	21.3%**	\$56,842,662	20.6%**	71.0%	2.0%	96%	1.0%	1.0%	284
7	U.S. Risk Insurance Group L.L.C. Dallas www.usrisk.com Randall G. Goss, chairman/CEO	\$640,000,000	1.0%	\$60,500,000	2.5%	75.0%	13.0%	62.0%	17.0%	8.0%	300
8	ARC Excess & Surplus L.L.C. Jericho, New York www.arcbrokers.com Christopher J. Cavallaro, CEO	\$632,000,000	1.1%	\$61,000,000	1.7%	25.0%	5.0%	90.0%	5.0%	0%	192
9	Program Brokerage Corp. New York www.programbrokerage.com Paul Collins, president/CEO	\$374,500,000	(3.5%)	\$30,400,000	(4.7%)	28.0%	0%	56%	44%	0%	103
10	RIC Insurance General Agency Inc. Santa Rosa, California www.ric-ins.com Gary Kitchen, president/CEO	\$220,000,000	9.5%	\$33,500,000	1.6%	10.0%	0%	90%	10%	0%	N/A

* Companies deriving more than 50% of their premium volume from wholesale brokerages; ** Restated; N/A = Not available.

Source: *BI* survey

TOP BROKERS WITH WHOLESALE BUSINESS¹

Ranked by 2016 wholesale revenue including property/casualty

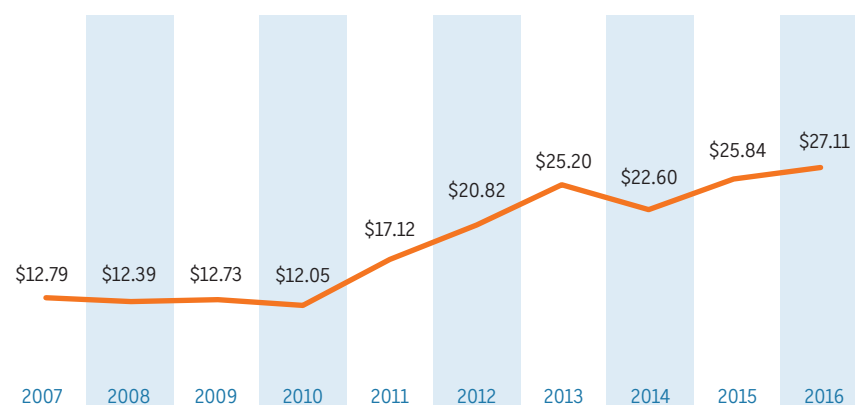
Rank	Company	Total wholesale revenue
1	BB&T Insurance Holdings Inc.	\$914,451,000
2	Arthur J. Gallagher & Co.	\$555,296,000
3	Willis Towers Watson P.L.C.	\$349,000,000
4	Brown & Brown Inc.	\$208,782,099
5	RKH Specialty ²	\$196,116,528
6	Jardine Lloyd Thompson Group P.L.C. ³	\$119,792,270
7	Alliant Insurance Services Inc.	\$115,334,853
8	Hub International Ltd.	\$74,900,000
9	Integro Group Holdings L.P.	\$60,906,000
10	Lockton Cos. L.L.C.	\$51,292,000

¹ Brokers deriving less than 50.0% of revenue from wholesale brokerage business; ² British pound = \$1.3015; ³ British pound = \$1.2337

Source: *BI* survey

PREMIUM TRENDS

Written premiums of the top 10 property/casualty wholesalers, in billions of dollars



Source: *BI* survey

OUR MISSION STATEMENT IS QUITE SIMPLE.

OUT-EXECUTE.

If your client has a complex risk situation, you don't have to go it alone. Our specialty risk professionals have deep experience with the toughest risk placements. We not only design creative solutions for all size accounts but repeatedly out-execute the competition. Contact your RT Specialist at www.rtspecialty.com.



RTspecialty.com

R-T Specialty, LLC (RT), a subsidiary of Ryan Specialty Group, LLC, provides wholesale brokerage and other services to agents and brokers. RT is a Delaware limited liability company based in Illinois. As a wholesale broker, RT does not solicit insurance from the public. Some products may only be available in certain states, and some products may only be available from surplus lines insurers. In California: R-T Specialty Insurance Services, LLC License #0G97516. © 2017 Ryan Specialty Group, LLC

SPECIAL REPORT

LARGEST MGAS/UNDERWRITING MANAGERS/LLOYD'S COVERHOLDERS

Ranked by 2016 wholesale premium volume from property/casualty placements*

Rank	Company/principal officer	2016 premium volume	Percent change	2016 gross revenues	Percent change	Percent surplus lines	PERCENTAGE OF TOTAL BUSINESS				Employees
							Underwriting manager	MGA	Wholesale broker	Lloyd's of London coverholder	
1	Risk Placement Services Inc. Rolling Meadows, Illinois www.rpsins.com Joel Cavaness, president	\$3,200,000,000	3.2%	\$285,000,000	7.5%	58.0%	0%	56.0%	40.0%	4.0%	1,400
2	Burns & Wilcox Ltd. Farmington Hills, Michigan www.burnsandwilcox.com Alan J. Kaufman, chairman/president/CEO	\$1,500,000,000	7.1%	\$365,000,000	7.4%	70.0%	6.3%	52.2%	35.5%	6.0%	1,400
3	AmRisc L.L.C. Houston www.amrisc.com Dan Peed, president/CEO	\$835,807,481	(11.1%)	\$100,000,000	(22.1%)	70.0%	30.0%	46.0%	0%	24.0%	160
4	Victor O. Schinnerer & Co. Inc. Chevy Chase, Maryland www.schinnerer.com Chris Schaper, CEO	\$658,200,000	(2.6%)	\$91,000,000 ¹	(2.2%) ¹	5.0% ¹	95.0% ¹	0% ¹	5.0% ¹	0% ¹	374 ¹
5	Appalachian Underwriters Inc. Oak Ridge, Tennessee www.appund.com Bob Arowood, principal/president	\$458,000,000	2.9%	\$45,300,000	4.4%	25.0%	10.0%	75.0%	10.0%	5.0%	372
6	Johnson & Johnson Inc. Mount Pleasant, South Carolina www.jjins.com Francis Johnson, president	\$415,801,846	4.8%	\$49,561,274	10.1%	87.8%	0%	80.0%	20.0%	0%	281
7	K&K Insurance Group Inc. Fort Wayne, Indiana www.kandkinsurance.com Todd Bixler, president/CEO	\$344,000,000	8.5%	\$71,500,000	7.0%	5.0%	0%	98.0%	2.0%	0%	269
8	The Sullivan Group-Wholesale Operations Los Angeles www.gjs.com Gerald J. Sullivan, chairman	\$187,250,000	1.2%	\$19,800,000	(6.7%)	31.0%	55.0%	8.0%	34.0%	3.0%	124
9	Midlands Management Corp. Oklahoma City www.midlandsmgt.com Charles C. Caldwell, president/CEO	\$159,000,000	8.9%	\$31,000,000	(1.0%)	13.0%	6.0%	77.0%	10.0%	7.0%	97
10	DMI Insurance Services Inc. Morgan Hill, California www.dmi-insurance.com Susan Matlock, president	\$18,000,000	(0.4%)	\$2,696,000	1.5%	0%	0%	95.0%	5.0%	0%	19

* Companies that derive more than 50% of their wholesale premium from acting as a managing general agent, underwriting manager or Lloyd's of London coverholder; ¹ BI estimate

Source: BI survey

MANAGING GENERAL AGENTS

Ranked by percentage of MGA business

Rank	Company	Percent
1	K&K Insurance Group Inc.	98.0%
2	DMI Insurance Services Inc.	95.0%
3	Roush Insurance Services Inc.	87.0%
4	Johnson & Johnson Inc.	80.0%
5	Midlands Management Corp.	77.0%

Source: BI survey

UNDERWRITING MANAGERS*

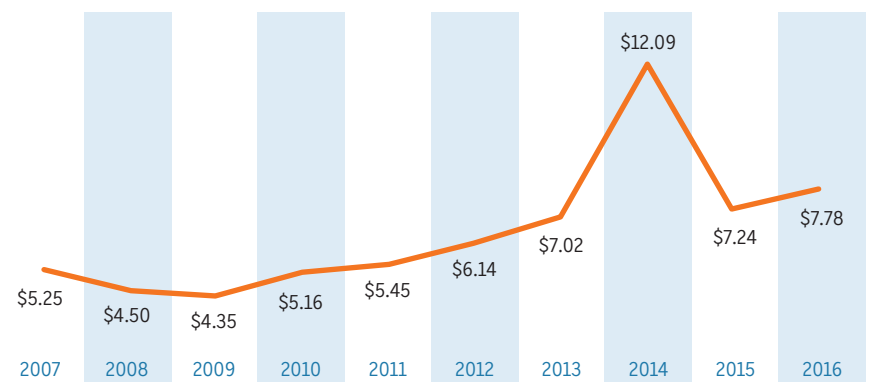
Ranked by percentage of underwriting business

Rank	Company	Percent
1	The Sullivan Group-Wholesale Operations	55.0%
2	AmRisc L.L.C.	30.0%
3	Appalachian Underwriters Inc.	10.0%
4	Burns & Wilcox Ltd.	6.3%
5	Midlands Management Corp.	6.0%

* Based on data submitted to BI survey.

PREMIUM TRENDS

Written premium of the top 10 MGAs/underwriting managers, in billions of dollars



Source: BI survey

SURPLUS LINES PREMIUMS AND TAXES BY STATE

GROSS SURPLUS LINES PREMIUMS WRITTEN					SURPLUS LINES TAXES COLLECTED			
State	2016	2015	2014	Percent change 2015-2016	2016	2015	2014	Percent change 2015-2016
Alabama	\$552,136,816	\$529,781,483	\$508,572,450	4.2%	\$33,128,209	\$31,786,889	\$30,514,347	4.2%
Alaska	\$121,584,290	\$126,125,687*	\$123,132,135*	(3.6%)	\$2,851,032	\$2,748,280*	\$2,741,782*	3.7%
Arizona	\$479,178,389	\$468,024,912	\$436,350,098	2.4%	\$14,337,712	\$14,040,720	\$13,350,098	2.1%
Arkansas	\$230,561,548	\$324,906,755	\$237,589,204*	(29.0%)	\$9,478,787	\$13,274,780	\$9,721,181*	(28.6%)
California	\$8,224,646,079	\$6,899,284,249	\$5,990,700,000	19.2%	\$194,667,290	\$187,360,243	\$179,721,000	3.9%
Colorado	\$749,831,484	\$726,165,497	\$695,542,853	3.3%	\$22,484,706	\$22,252,166	\$20,926,133	1.0%
Connecticut	\$552,251,455	\$535,632,400	\$528,506,095	3.1%	\$21,243,071	\$19,785,628	\$19,131,860	7.4%
Delaware	\$119,821,426	\$106,906,815	\$82,744,496	12.1%	\$3,292,200	\$3,018,650	\$1,846,053	9.1%
District of Columbia	\$244,825,700	\$244,154,550	\$176,911,450	0.3%	\$4,896,514	\$4,883,091	\$3,538,229	0.3%
Florida	\$4,952,069,475	\$4,925,363,936	\$4,645,971,550	0.5%	\$221,328,699	\$219,925,912	\$202,322,157	0.6%
Georgia	\$1,087,401,500	\$1,039,320,000	\$1,003,775,000	4.6%	\$43,496,060	\$41,572,065	\$40,151,017	4.6%
Hawaii	\$252,947,315	\$231,063,042	\$231,604,679	9.5%	\$11,824,667	\$10,785,054	\$10,839,099	9.6%
Idaho	\$101,540,780	\$89,473,352	\$78,808,465	13.5%	\$1,523,136	\$1,342,217	\$1,184,870	13.5%
Illinois	\$1,406,230,582	\$1,419,185,539	\$1,238,447,967	(0.9%)	\$49,220,427	\$50,088,586	\$43,343,399	(1.7%)
Indiana	\$475,302,934	\$473,829,128	\$508,214,759	0.3%	\$13,201,863	\$11,845,728	\$12,732,710	11.4%
Iowa	\$278,889,405	\$286,627,389	\$232,180,603	(2.7%)	\$2,813,766	\$2,866,274	\$2,338,091	(1.8%)
Kansas	\$213,592,694	\$181,604,041	\$169,358,645	17.6%	\$12,815,562	\$10,896,242	\$10,161,519	17.6%
Kentucky	\$205,876,088	\$211,654,000	\$182,149,435	(2.7%)	\$5,836,494	\$5,898,443	\$5,416,252	(1.1%)
Louisiana	\$1,381,204,530	\$1,370,015,209	\$1,443,801,998	0.8%	\$66,988,420	\$68,053,440	\$72,190,101	(1.6%)
Maine	\$99,557,303	\$98,986,607	\$95,104,899	0.6%	\$2,817,007	\$2,800,263	\$2,708,615	0.6%
Maryland	\$460,900,000	\$498,827,000	\$489,123,221	(7.6%)	\$13,800,000	\$14,189,551	\$13,920,482	(2.7%)
Massachusetts	\$952,588,612	\$907,889,972	\$799,191,981	4.9%	\$34,603,153	\$33,698,590	\$30,367,890	2.7%
Michigan	N/A	N/A	\$598,386,766	N/A	N/A	N/A	\$14,930,248	N/A
Minnesota	\$450,474,952	\$499,762,610	\$456,427,598	(9.9%)	\$13,514,249	\$14,678,880	\$13,692,828	(7.9%)
Mississippi	\$386,394,622	\$361,485,253	\$361,404,772	6.9%	\$15,455,746	\$14,459,977	\$14,456,628	6.9%
Missouri	\$626,326,093	\$624,256,928	\$606,183,387	0.3%	\$30,246,945	\$29,583,186	\$28,678,925	2.2%
Montana	\$91,385,114	\$92,250,410	\$78,202,003	(0.9%)	\$2,482,641	\$2,503,101	\$2,117,761	(0.8%)
Nebraska	\$152,681,405	\$154,733,750	\$151,718,002	(1.3%)	\$4,651,861	\$4,708,355	\$4,636,453	(1.2%)
Nevada	\$273,554,702	\$277,092,960	\$261,700,000	(1.3%)	\$9,698,878	\$9,698,780	\$9,159,500	0%
New Hampshire	\$91,753,557	\$90,487,883	\$84,197,257	1.4%	\$2,774,755	\$2,718,761	\$2,559,050	2.1%
New Jersey	\$1,614,000,000	\$1,710,000,000	\$1,633,000,000	(5.6%)	\$74,700,000	\$79,800,000	\$76,200,000	(6.4%)
New Mexico	\$99,519,603	\$94,252,573	\$111,143,040	5.6%	\$3,254,256	\$2,987,137	\$2,983,228	8.9%
New York	\$3,722,049,094	\$3,631,188,335	\$3,403,068,313	2.5%	\$130,918,163	\$128,016,334	\$119,694,062	2.3%
North Carolina	\$625,743,574	\$666,300,305	\$683,033,350	(6.1%)	\$30,138,908	\$33,319,357	\$34,166,515	(9.5%)
North Dakota	\$94,909,006	\$108,380,312	\$96,062,147	(12.4%)	\$1,664,134	\$1,933,832	\$2,056,774	(13.9%)
Ohio	\$747,769,843	\$743,848,462	\$773,889,851	0.5%	\$36,918,651	\$36,676,051	\$37,632,583	0.7%
Oklahoma	\$362,346,261	\$380,404,454	\$378,966,203	(4.7%)	\$22,824,267	\$33,660,603	\$36,784,376	(32.2%)
Oregon	\$328,371,000	\$331,000,000	\$283,900,000	(0.8%)	\$7,552,274	\$7,616,291	\$6,529,700	(0.8%)
Pennsylvania	\$1,214,814,770	N/A	\$1,080,998,160	N/A	\$35,678,418	N/A	\$31,724,400	N/A
Rhode Island	\$165,936,756	N/A	N/A	N/A	\$5,797,715	N/A	N/A	N/A
South Carolina	\$391,583,570	\$622,852,611	\$354,711,957	(37.1%)	\$37,401,305	\$37,256,863	\$22,520,331	0.4%
South Dakota	\$58,299,190	\$52,463,317	\$48,875,142	11.1%	\$1,485,902	\$1,338,266	\$1,247,445	11.0%
Tennessee	\$588,268,696	\$592,283,882	\$587,976,828	(0.7%)	\$36,550,106	\$28,637,365	\$29,088,906	27.6%
Texas	\$5,285,175,657	\$5,203,842,877	\$5,279,208,099	1.6%	\$248,418,647	\$243,382,176	\$244,493,194	2.1%
Utah	\$227,830,130	\$225,616,905	\$213,338,251	1.0%	\$9,005,848	\$9,202,763	\$7,973,838	(2.1%)
Vermont	\$65,786,498	\$49,543,242	\$47,338,671	32.8%	\$1,379,419	\$1,716,488	\$923,104	(19.6%)
Virginia	N/A	\$665,890,969	\$635,511,018	N/A	N/A	\$14,983,121	\$14,071,065	N/A
Washington	\$824,711,115	\$763,244,526	\$735,165,879	8.1%	\$16,497,189	\$15,264,992	\$14,703,314	8.1%
West Virginia	\$113,466,694	\$103,056,142	\$85,954,100	10.1%	\$4,347,534	\$3,920,694	\$3,438,164	10.9%
Wisconsin	\$340,910,728	\$330,188,013	\$318,873,609	3.2%	\$10,227,322	\$9,908,175	\$9,566,208	3.2%
Wyoming	\$55,949,966	\$58,866,806	\$58,156,915	(5.0%)	\$1,805,105	\$1,862,150	\$2,079,877	(3.1%)

* Restated. N/A = Not available.

Source: BI/ survey

COMMENTARY

Tax ruling should rouse captives

If you own a captive insurer and have a spare couple of hours, you might want to read the U.S. Tax Court ruling in the *Avrahami* case. Not that the 105-page decision will, as you might imagine, be a cure for insomnia; rather, it should serve as a wake-up call to captive owners who don't have a disciplined approach to captive management.

The long-awaited ruling, which came down late last month, focuses on microcaptives that elect to be taxed under Section 831(b) of the Internal Revenue Code and are taxed only on their investment income, not their underwriting income.

In the *Avrahami* case, owners of a family business in Phoenix set up an 831(b) captive in St. Kitts and ran it for several years before it caught the eye of the IRS. According to the court ruling, the premiums the owners paid for insurance more than quadrupled after they set up the captive; the captive made some large loans to the Avrahams, including one for a real estate deal made in their children's names; and the captive only started paying claims after the IRS audit began.



Gavin Souter
EDITOR

831(b) captives have come under a lot of suspicion over the past several years as their numbers have exploded. While the structures are useful ways for smaller companies to enter the captive arena, some observers, including the IRS, suggest they are frequently used as estate-planning devices rather than as alternative risk transfer vehicles.

It would be easy to write off the *Avrahami* ruling as a case that affects only small-time enterprises, but that would be a mistake. The IRS has for decades battled with captive owners in the courts. Sometimes the IRS has won, and sometimes the captive owners have won, but any case where a captive, regardless of size, is ruled to have been a tax shelter rather than an insurance company must go down in the loss column for owners.

Looking through the ruling, there are many examples given by the judge — who is due to rule in other significant captive cases — that illustrate his thinking on captive issues, and there are key lessons for captive owners.

No. 1 is don't charge excessive premiums. The numbers in the *Avrahami* case may look egregiously out of line, but owners of larger captives that are used to covering high-severity losses should make sure they can justify the premiums they charge. No. 2 is pay claims. Again, captives structured to cover low-frequency risks may have to consider this issue. And No. 3 is be careful with loan-backs. Captive owners have become increasingly creative with the way they structure loans to parent companies, but that creativity should be kept in check.

One ruling on microcaptives should not unduly disturb owners with well-designed alternative transfer vehicles, but they should still sit up and take notice rather than hit the snooze button on captive compliance.

SCHILLERSTROM



VIEW FROM WASHINGTON

Political to-do list grows

August is typically a sleepy time in Washington, with legislators and their staffs spending time at home during the congressional recess.

Too bad that wasn't true this year.

Even though Congress was in recess, there were plenty of fireworks in the D.C. area last month, some of them lit by President Donald Trump, who repeatedly bashed the leaders of his own party for their inability to further the Republican agenda. Senate Majority Leader Mitch McConnell lit his own fireworks when he questioned Mr. Trump's understanding of the challenges and realities of governing.

In a tweet sent after news reports of the president's deteriorating relationship with Mr. McConnell, the president said his only problem with the senator was that after hearing about repealing and replacing President Obama's signature health care law for seven years, he failed to do so. But the president is becoming increasingly isolated from members of his own party because of such attacks and Republican legislators are also feeling more emboldened to criticize their own president, as seen by Mr. McConnell's comments and the Republicans lining up to condemn the president's contention that "both sides" were to blame for the horrific tragedy in Charlottesville, Virginia. This animosity could get in the way of Republicans pushing forward with their agenda when they return in September.

Congress is going to have a lot on its plate when it gets back to work after the Labor Day holiday, including a bill to continue funding the government beyond Sept. 30 and a necessary vote to increase the debt ceiling.

Reauthorizing and revamping the National Flood Insurance Program ahead of its pending Sept. 30

expiration is one of those critical items. It's looking more and more likely Congress will kick the proverbial can down the road on the NFIP with a short-term "as is" extension to give legislators more time to reach some level of consensus on a reauthorization bill.

The good news for the NFIP is that there is bipartisan agreement on the need for the program and recognition of the significant disruption that would be created in the insurance and real estate markets if Congress fails to act. There is even some



Gloria Gonzalez
DEPUTY EDITOR

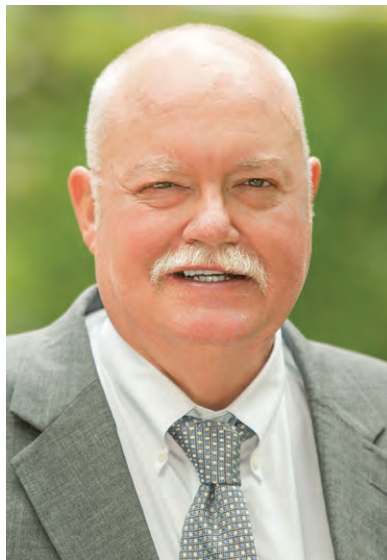
consensus on particular provisions, including one that would protect consumers from being penalized for shopping for a better deal on the private insurance market.

The bad news for the NFIP is that there is still major disagreement on other proposals to fix the program. Rep Maxine Waters, D-Calif., ranking member of the House Financial Services Committee, has implored her colleagues to forgive the program's massive \$24.6 billion debt — a plea that apparently fell on deaf ears, as it was not included in the reform package adopted by the committee in June.

But unlike with health care reform, any political differences of opinions existing in relation to the NFIP should not keep Congress from moving forward with a well-crafted, bipartisan reform package that prevents the program from falling further into debt.

Recess is over. It's time to get back to work.

No longer stuck in the weeds: Marijuana insurance moves into the mainstream



Stephen Pate is a member of Cozen O'Connor's global insurance department in Houston. He can be reached at 832-214-3957 and spate@cozen.com

Medical marijuana is now legal in 29 states and the District of Columbia. Eight states and the District of Columbia now have legalized marijuana for recreational use. Recent polls indicate 61% of Americans believe marijuana should be legalized.

In light of these legalizations and the new attitude, policyholders, agents and insurers have been reconsidering the insurability of marijuana-based industries in the United States. Today, the trend is to allow them to be insured. Many insurers see the marijuana industry as no different than any other. In fact, many insurers believe the risk posed by the marijuana industry is similar to the risk posed by the alcohol industry and believe that both should be insured in a similar manner.

For many years, marijuana was illegal. Thus, simply put, any insurance of marijuana growing or selling operations was considered uninsurable because of policy provisions relating to illegal operations or the public policy against insuring illegal actions. Sometimes this public policy was expressed statutorily, in that a state law made it clear that an insured could have no insurable interest in a property if it was an illegal interest. As recently as 2012, case law expressed this in regard to marijuana. In *Tracy v. USAA Casualty Insurance Co.*, heard in federal district court in Honolulu, Barbara Tracy had marijuana plants stolen from her property. She filed a claim with USAA, which denied her claim on the grounds that she lacked an insurable interest. USAA referred to the following Hawaii statute which stated: "No contract of insurance on property or of any interest therein or arising therefrom shall be enforceable except for the benefit of persons having an insurable interest in the property insured. Insurable interest means any lawful and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction or pecuniary damage."

USAA argued that since marijuana was illegal under federal law, marijuana plants could not be insured. The plants were not lawful, and there was no insurable interest. The insurer never mentioned state law. The court agreed, and denied Ms. Tracy recovery. But this was 2012, not 1962. The *Tracy v. USAA* case raised howls of protest. In response to the Tracy decision, in Oregon, where medical marijuana was legal, a statute was passed that specifically stated that no contract would be unenforceable on the basis that the manufacture, distribution, dispensing, possessing or use of marijuana was prohibited by federal law. Washington, on the other hand, made marijuana legal.

Here is the problem: if marijuana is lawful under state law then, at least under state

law, it should be insurable. However, if marijuana is still classified as a banned controlled substance under the federal Controlled Substances Act, insurers could still use illegality as a defense. Still, it will be less likely today to be successful.

The "Cole Memo" of 2013, which was issued by the Obama administration's Justice Department led many to believe that federal marijuana laws would not be enforced in states that had legalized marijuana use. The memo hinted that as long as these states took steps to regulate possession, prohibit trafficking across state lines and keep marijuana away from minors, the federal government would leave marijuana alone. In effect, marijuana was legal on the federal level. That would seem to cure all problems regarding insurability. Now, however, a new administration has threatened enforcement of federal drug laws concerning marijuana. While it remains to be seen whether this enforcement will be carried out, could this once again change the game?

One particular area to be examined is whether there can be coverage for any raid and seizure conducted by the federal government in a location where marijuana is legal under state law but where the federal government is enforcing federal law. To date, this has not been the subject of a claim, but new enforcement actions could bring this about.

Probably not for insurance industry purposes because many agents and brokers are now insuring risks with full knowledge that they are insuring the marijuana industry. This waives any illegality defense. The 2016 *The Green Earth Wellness Center L.L.C. v. Atain Specialty Insurance Co.* case in a federal district court in Denver addresses this issue. Green Earth operated a retail medical marijuana dispensary and a growing facility. A wildfire damaged its operation. The insurer sought to deny coverage on many grounds, one of which was that the policy was void on public policy grounds because the subject of the risk was illegal marijuana. The court disagreed, stating that the insurer knew what the risk involved when it entered into the policy.

Moreover, it appears that no state insurance regulatory authority has prohibited issuing insurance to the marijuana industry. It appears that most American insurers now

indeed do so. There is a notable holdout: Lloyd's of London has instructed its syndicates to not write the industry because marijuana is still listed as a scheduled drug under federal law. This is a minority position and is likely to change.

Regarding first-party coverage, it appears that marijuana industries are being insured under the same forms as any other industry. There are some unique aspects, however — not as to the forms, but regarding the business. The "grow" operation is intense, needing ventilation controls, irrigation systems and special lamps. Damage to these systems can be costly. It has been suggested that since marijuana is a lucrative business that business interruption limits be kept at a high level because the potential for lost profits is great. Since marijuana is highly desirable, the risk of theft will be high, leading to a need for theft insurance with increased limits. Moreover, large amounts of cash are usually on hand at marijuana dispensaries, leading to a greater risk of robbery and more expensive coverage.

Commercial general liability insurance will also be needed and, as stated, will be directly comparable to CGL policies obtained by the alcohol industry. A major risk would be dram shop liability cases. No state has yet imputed vicarious liability to a marijuana business for an injury caused by a person to whom the business sold marijuana. However, there seems to be no logical reason why an attempt to impose this type of liability will not occur. Failure-to-warn claims will also probably occur, alleging a business failed to communicate the hazards of marijuana to a purchaser or end user. One particular area to be examined is whether there can be coverage for any raid and seizure conducted by the federal government in a location where marijuana is legal under state law but where the federal government is enforcing federal law. To date, this has not been the subject of a claim, but new enforcement actions could bring this about.

Inland marine insurance is one area where special forms are arising. The transport of marijuana is highly regulated. Once again, the highly lucrative nature of the product being transported makes its carriers a tempting target. There are now specialized clauses insuring cannabis transport, requiring strict security procedures, such as transport of cannabis only in armored vehicles, two drivers in vehicles at all times and strict criminal background checks for all drivers. Moreover, with some exceptions, the vehicles must only transport cannabis.

In sum, what was until a few years ago a completely "outlaw" business is becoming normalized. The process is not finished, and may proceed by fits and starts. But rest assured, the marijuana industry is being accepted by the insurance industry.

Reimbursement risk for hospitals covered

■ Marsh L.L.C. and Ironshore Inc. are offering insurance to hospitals to cover the risk of potential reductions in Medicare reimbursements under the Centers for Medicare and Medicaid Services' Hospital Readmissions Reduction Program.

The HRRP requires that CMS reduce payments to acute care hospitals that have an excessive number of patients with certain conditions return within 30 days of their discharge, Marsh and Ironshore said in a joint statement. In fiscal year 2018, CMS reported it will withhold \$564 million in reimbursements from nearly 2,600 hospitals, according to the statement.

The Medicare Readmission Reduction policy, which is underwritten by Ironshore and available exclusively from Marsh, provides limits of up to a 3% reduction in annual Medicare revenue subject to the HRRP, according to the statement.

Keenan offers program for emergency response

■ Keenan & Associates, a Torrance, California, brokerage and consultant, has launched an emergency response and training program called Incident Management Ready, or IMReady.

IMReady encompasses products and services designed to help prepare its clients for a disaster or mass casualty event, such as an active assailant situation, Keenan said in a statement.

In addition to preparedness and response training, the product includes post-event management, facility design and layout review, including site-specific questions and issues.

"This unique program provides those answers and a greater level of security, for both the participants and the public that they serve," Eric Preston, vice president, loss control services for Keenan, said in the statement.

Ironshore sets up cyber claims team

■ Ironshore Inc. is launching a computer emergency response team, or CERT, to manage cyber claims across all product lines.

CERT-Ironshore will be a dedicated computer response team of cyber claims coordinators representing each specialty lines division, the New York-based insurer said in a statement. The new unit will give policyholders a single point of contact for cyber risk claim coordination and collaboration, according to the statement.

PRODUCTS & SERVICES



ISO offers commercial flood insurance program

■ ISO, a unit of Jersey City, New Jersey-based Verisk Analytics Inc., has launched a commercial flood insurance policy that can insure risks not typically covered by the National Flood Insurance Program.

The program enables insurers to set their own coverage limits and provide optional cover for risks not typically covered by the NFIP, including certain types of property damage to basements, business interruption and costs to comply with building code changes, ISO said in a statement.

Insurers can use the program to provide a primary flood policy or a flood policy providing coverage that is excess of the NFIP.

The coverage can be based on actual cash value or replacement cost value, with loss costs based on models developed by Verisk's AIR Worldwide catastrophe modeling unit and from ISO data.

Howard Panensky will serve as director of CERT-Ironshore, reporting to Mike Mitrovic, Ironshore's global claims officer. Mr. Panensky was previously the assistant vice president of claims, cyber and crime, at Ironshore Insurance, a Liberty Mutual Company, according to the Plantation, Florida-based CLM Alliance, where Mr. Panensky is a fellow and serves on the group's Cyber Liability Committee.

XL launches construction GL-only wrap policy

■ XL Group Ltd.'s North America construction business is introducing GL Only Plus, a general liability-only wrap policy.

The GL Only Plus program was designed for large construction projects that typically range between \$250 million and \$5 billion in construction value, according to the statement. It is admitted and will be available on a retail basis.

Limits are flexible, with the ability to go up to \$5 million on select projects, an XL spokeswoman said in an email.

Typical wrap policies, also known as owner controlled insurance programs, include multiple coverages such as workers compensation, general liability, excess liability, pollution liability, professional liability, builder's risk and possibly others, depending on the project, the insurer said in a statement.

French credit insurer offers US surety services

■ Trade credit insurer Euler Hermes S.A. is launching surety services in its Americas region, including the U.S., Canada and Brazil.

The company will focus on contract and commercial surety with products including performance and payment bonds, Paris-based Euler Hermes said in a statement. It will partner with surety agents and brokers to provide bid, payment, performance, supply and maintenance bonds for midsize to large contractors, and commercial surety bonds for compliance with local and state law or federal regulations.

Euler Hermes is certified through the U.S. Department of the Treasury's Listing of Approved Sureties and has a global surety team of over 150 employees, according to the statement.

SRS launches European captive unit in Ireland

■ Strategic Risk Solutions Inc. is launching Strategic Risk Solutions Europe in Dublin to serve U.S. and European multinational captive insurance owners operating in Europe.

Stuart King is joining SRS Europe as managing director and co-founder, Concord, Massachusetts-based SRS said in a statement. Based in London, he will oversee the startup phase and lead the risk consulting business, providing risk finance advisory services and identifying insurtech opportunities. Previously, he worked at Renevatio Ltd., a London-based advisory firm that he founded in 2013. He is also a co-founder of the Blockchain Association of Ireland.

DEALS & MOVES

Hub stake sale being explored: Sources

Hellman & Friedman L.L.C. is exploring the sale of a stake in Hub International Ltd. in a deal that could value the brokerage from \$6 billion to \$7 billion, people familiar with the matter said.

The move follows Hellman & Friedman's acquisition of Hub four years ago from Apax Partners L.L.P. for \$4.4 billion. Several private equity firms, sovereign wealth funds and public pension funds are considering an investment in Hub, one source said.

Reuters

Gallagher buys Canadian broker

Arthur J. Gallagher & Co. has acquired Canadian retail insurance broker GPL Assurance Inc. Terms of the deal were not disclosed.

GPL, based in Montreal and Laval, Quebec, specializes in construction, technology and health sciences, Gallagher said in a statement.

GPL President and CEO Louis-Thom as Labbé and his associates will continue to operate in their current locations under Stephen Bryant, head of Gallagher's Canadian brokerage operations.

Aon to buy Dutch brokerage

Aon Groep Nederland B.V. is acquiring brokerage Unirobe Meeüs Groep B.V. from Aegon N.V. for €295 million (\$347.3 million).

The deal is expected to close in the fourth quarter, Rotterdam-based Aon Groep Nederland said in a statement.

Unirobe Meeüs Groep has more than 1,300 employees, an Aon spokeswoman said in an email.

Schinnerer to acquire property MGA ICAT

Underwriting manager Schinnerer Group, a unit of Marsh & McLennan Cos. Inc., has agreed to acquire International Catastrophe Insurance Managers L.L.C. from Bermuda-based insurer and reinsurer Paraline Group Ltd.

Terms of the deal were not disclosed. ICAT has more than 200 employees and manages about \$300 million in premium volume, a Schinnerer spokeswoman said. It operates in all U.S. states adjacent to the Gulf Coast, Atlantic Coast and Hawaii, and offers coverage in all states that carry a material exposure to earthquake events, Chevy Chase, Maryland-based Schinnerer said in a statement.



The Complete Wholesale Solution for Brokerage, Binding, & Programs

- For large, complex accounts to small business, and niche programs, at Westchester, we have you covered.
- Exceptional coverage, superior underwriting & award winning technology platforms*.

To learn more visit: www.westchester.com

Insurance provided by Westchester Fire Insurance Company and its U.S. based Chubb underwriting company affiliates. Chubb is the marketing name used to refer to subsidiaries of Chubb Limited providing insurance and related services. For a list of these subsidiaries, please visit our website at chubb.com. All products may not be available in all states and surplus lines products can only be offered through licensed surplus lines producers. This communication contains product summaries only. Coverage is subject to the language of the policies as actually issued.
©2017 08/2017

*2016 Recipient of the Celent Model Insurer Award.



Enjoy what you do, have an open mind toward learning every day from your job; this is an exciting industry to build a career that is professionally rewarding.

UP CLOSE

Krishnan Ethirajan

NEW JOB TITLE: New York- and London-based chief operating officer, Ironshore International, a unit of Ironshore Inc.

PREVIOUS POSITION: New York-based chief operations officer, IronServe Inc., a unit of Ironshore Inc.

LOOKING FORWARD TO: Supporting the growth objectives of the company through efficient and scaleable operations.

GOALS FOR NEW POSITION: Building a scalable and expense efficient global platform that will allow Ironshore to be nimble and react quickly to market opportunities that contribute to profitable growth.

ON LEADERSHIP: Lead by example; treat every interaction with colleagues as a learning experience. I like to practice what I preach.

CHALLENGES FACING INDUSTRY: Soft market and interest-rate environment continue to be a challenge. Lack of will to challenge status quo, especially as it relates to antiquated middle- and back-office processes and operating models.

CRYSTAL BALL: New entrants like Ironshore are challenging the status quo and are able to react quickly to market needs with an efficient structure. While there is a major focus on insurtech as a panacea, management should not get caught up in technology buzzwords and thereby throw money at inefficient underlying data and processes. In my view, those insurers that are focusing first on standardizing the global operating model, including legacy bespoke processes and data, and then investing in insurtech solutions are likely to emerge as leaders.

ADVICE: Enjoy what you do, have an open mind toward learning every day from your job; this is an exciting industry to build a career that is professionally rewarding.

FAVORITE QUOTE: "Only the paranoid survive." — Andy Grove

OUTSIDE THE INDUSTRY, A DREAM JOB: Teaching — visual neurophysiology and brain plasticity.

HOBBIES: Running — a wannabe marathon runner.

PETS: My yellow lab, Zoe.

THING MOST PEOPLE DON'T KNOW ABOUT ME: I studied electrical engineering and visual neurophysiology and worked on understanding brain functions in primates. So I spent most of my time in graduate school with my friend Radar — a rhesus monkey!

BIGGEST OBSTACLE FOR WORK/LIFE BALANCE: It's all in our mind. If you enjoy what you do, there is a natural work/life balance.

CORPORATE IMPROVEMENT: A focused effort on mentoring young insurance professionals and creating a work environment that caters to millennial and Gen Y/Z, etc. It would be great if we can build data sciences, analytics and modeling curriculum in schools.

WHEN I RETIRE: Move to New Zealand, sell home-grown produce at a farmer's market. I like to teach, and would get involved in nonprofit work in India.

ON A SATURDAY AFTERNOON: Hammock! Spend time with my daughters and watch "SpongeBob Square Pants."

MONDAYS: Monday is just an extension of Friday. I get an early start.

ON THE MOVE



Willis Towers Watson P.L.C. named former PricewaterhouseCoopers L.L.C. executive **Michael J. Burwell** to succeed Roger Millay as chief financial officer when he retires

on Oct. 2. Mr. Burwell worked at PricewaterhouseCoopers for 31 years, most recently as a partner. He will split his time between London and Arlington, Virginia.



Travelers Cos. Inc. elected CEO **Alan D. Schnitzer** to the additional role of chairman, succeeding John H. Dasburg, who will become independent lead

director. In a statement, Mr. Dasburg said that "during this time of unprecedented change for the insurance industry, the board believes that the company and its shareholders are best served by combining the roles of chairman and CEO."



The Navigators Group Inc. named **James L. Rhyner** president of the Navigators Pro division of Navigators Management Co., its U.S. underwriting operation. Based in Iselin, New

Jersey, Mr. Rhyner will lead Navigators' U.S. directors and officers liability and errors and omissions businesses, Stamford, Connecticut-based Navigators said. Previously, he was senior vice president of professional liability at Chubb Ltd.



Liberty Specialty Markets, a unit of Liberty Mutual Holding Co. Inc., named **Matthew Moore**, formerly group chief underwriting officer, as president

and managing director, replacing Nick Metcalf. The London-based insurer and reinsurer said the move had been planned for several years. Mr. Moore, based in London, joined Liberty in 2002.



Swiss Re Corporate Solutions Ltd., a division of Swiss Re Ltd., named **Jonathan Cole** to head its new global unit for contingency and sports personal accident business.

Based in New York, Mr. Cole works with a team of underwriters in London and New York, Swiss Re Corporate Solutions said. Most recently, he led the North American contingency team.

SEE MORE ONLINE

Visit 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.

BUSINESS INSURANCE® is coming to New York next month!

OCTOBER 5-6

BUSINESS INSURANCE® Innovation Summit & Awards

October 5, 2017 | Sheraton New York Times Square



This high-level, half-day conference will address emerging trends and innovations in risk management and commercial insurance. Topics include wearable technologies, risk management program resilience, and big data & analytics. The program concludes with an awards luncheon and presentation of the **2017 Innovation Awards**, the **2017 Risk Management Team of the Year** and the **2017 Crain Lifetime Achievement Award**.

REGISTER AND LEARN ABOUT THE WINNERS, AGENDA & MORE:
businessinsurance.com/conference/innovation | [#BI_Innovation](https://twitter.com/BI_Innovation)

PROGRAM
SPONSORS:



sedgwick
caring counts

BUSINESS INSURANCE® | CLM Cyber Summit

October 5-6, 2017 | Sheraton New York Times Square



This comprehensive, educational summit kicks off with a **Cyber Solutions Expo**, followed by a full day of content presented by our industry expert speakers. Interactive sessions will address essential cyber coverage topics as well as the risks, exposures and development of claim activity and trends in areas specific to data & network security and privacy & social media.

REGISTER AND LEARN MORE:
businessinsurance.com/conference/cyber | [#BICLM_Cyber](https://twitter.com/BICLM_Cyber)

GOLD
SPONSOR:



Empower Results®

SPONSORSHIP OPPORTUNITIES
Jeremy Campbell
jcampbell@businessinsurance.com

SPEAKING OPPORTUNITIES
Joanne Wojcik
jwojcik@businessinsurance.com

Registration is complimentary for risk managers.



Sweet beverage purchase turns sour

Walgreens is sinning against the latest sin tax over sugary beverages in Chicagoland, according to a class action lawsuit filed in August that accuses the retailer of charging the sweetened beverage tax on unsweetened drinks.

Vince De Leon, a Schaumburg, Illinois, resident, purchased a case of Dasani Tropical Pineapple Sparkling Water on Aug. 4 — two days after the new tax went into effect in Cook County — and says he was illegally taxed, according to the Chicago Sun-Times.

Less than a week later, he filed the lawsuit in Cook County Circuit Court on behalf of himself and anyone who has paid the new tax on an unsweetened drink at any Walgreens in Cook County, the newspaper reported. The lawsuit accuses Deerfield, Illinois-based Walgreen Co. of violating the Illinois Consumer Fraud and Deceptive Business Practices Act.

Fidget spinners spark concerns

Intended to relieve anxiety, fidget spinners are reportedly catching fire — and one law firm is looking for plaintiffs for a class action lawsuit against the gadget's creators.

"Fidget spinners, trendy novelty gadgets that were originally marketed as a treatment for anxiety and ADHD, have been reported to catch fire while charging and choke kids who accidentally swallow them," claims Washington-based law firm Schmidt & Clark L.L.P. in its call for clients.

In two cases reported in Newsweek in June, the spinners' batteries overheated while plugged into outlets, and when they caught on fire, the toys melted and burned the surfaces they were sitting on.

"He noticed that it burst into flames and he just started screaming," said one mother of her son's spinner.



EXECUTIVE CAN'T BUY LOVE, BUT CAN SUE



A former QVC e-commerce executive took her matchmaker to court after a string of bad courtships — and won an undisclosed settlement.

Darlene Daggett — West Chester, Pennsylvania-based QVC's president for U.S. commerce between 2002 and 2007 — alleged she paid \$150,000 to Kelleher International L.L.C., a dating service for high-profile executives, to be introduced to wealthy eligible bachelors from around the world, the Philadelphia Inquirer reported in August.

Instead, she got: a disgraced New York Supreme Court judge; a man who passed out from a heart ailment on their first date; and one potential paramour who purportedly told her he was waiting on his terminally ill wife to die before re-entering the dating pool, according to the newspaper.

"Kelleher's 'highly screened' matches for Daggett included men who were married, mentally unstable, physically ill, pathological liars, serial Lotharios, stalkers, convicted felons, and men unwilling or unable to travel and/or the subject of professional sanctions," stated the lawsuit, filed in federal court in Philadelphia on Aug. 3.

Both parties agreed to settle within hours of the filing, according to the newspaper.

Insurance never takes a vacation

A traveler marveling at the sights in Athens, Greece, was distracted by a group of women in bikinis and walked into a bus shelter, breaking his nose.

And his travel insurer paid his hospital bill, according to the Telegraph's list of quirky travel claims.

Others include:

- Two children on beach in Cornwall, England, buried a video camera in the sand so it wouldn't be stolen while they went swimming, then forgot where they buried it — and their insurer paid.
- A couple in Malaysia returned to their hotel to find that monkeys had allegedly stolen their clothes and scattered them across the neighboring rainforest. New clothes, courtesy of their travel insurer.



Crocs loses footing in the patent war

The future of comfortable and colorful Crocs footwear could be growing painful and dim after the company mired itself in the war against copycat rivals.

The company announced it is closing 160 of its retail stores and is facing a new blow from the U.S. Patent and Trademark Office, which rejected the company's argument for patent protection, according to an article in the New York Post in August.

The government agency said the Boulder, Colorado, company's design is not original and that a second company had applied for a similar design patent a year before Crocs Inc., the article stated. The fight between Crocs and Las Vegas-based Dawgs USA Inc., one rival selling the shoes at a fraction of the price, dates back to 2006 and escalated this year when Dawgs accused its rival of corporate sabotage and of copying one of its own designs, a Z-strap sandal.



IN THE WEEDS?

WSIA members take the guessing out of the game. Choose a WSIA member to help you deliver cost-effective, innovative solutions for specialty and nonstandard insurance risks. So cost-effective, in fact, that a recent Conning analysis of distribution costs concludes that wholesale distribution does not increase the cost of the transaction to the insured. Count on WSIA members to create expertly tailored insurance solutions.

 Find a WSIA member at wsia.org



AAMGA and NAPSLO have merged to create the new **Wholesale & Specialty Insurance Association (WSIA)**, serving the entirety of the wholesale, specialty and surplus lines industry.

10,300 units produced daily.
11 production line managers.
8 critical quality control measures.
1 well-oiled manufacturing plant.

BETTER UNDERSTOOD



BETTER PROTECTED™

***Tailored coverage as
unique as your business.***

As the **#1 preferred business insurer,*** we listen carefully to your unique needs and tailor coverage and services to fit them. To learn more, talk to your broker or visit libertymutualgroup.com/businessprotected.



Commercial Auto

|

General Liability

|

Property

|

Workers Compensation

*Based on 2016 survey of business insurance buyers on preference of national carriers sold via independent agents.
© 2017 Liberty Mutual Insurance. Insurance underwritten by Liberty Mutual Insurance Co., Boston, MA, or its affiliates or subsidiaries.