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90-418A

14001454 10/14/16

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Business Insurance is published by  
Business Insurance Holdings.



## COVER STORY

The drinking water crisis in Flint, Michigan, highlighted what's at stake when public entities take decisions that affect large populations. Often self-insured for these huge exposures, cities and states need to rely heavily on process management to keep tabs on powerful officials and curb their own liabilities. When those systems fail the results can be tragic. **PAGE 28**

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Broadspire Services Inc. is an Atlanta-based unit of Crawford & Co., a third-party administrator that provides workers compensation and liability claim and medical management services. Broadspire President and CEO Danielle Lisenbey speaks with *Business Insurance* Reporter Joyce Famakinwa about trends in the workers comp market, the opioid epidemic and how Broadspire is helping treat workers with opioid addiction. **PAGE 16**



### OFF BEAT

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# Sexual orientation cases test bias laws

BY JUDY GREENWALD

jgreenwald@businessinsurance.com

Civil rights law has long protected people against discrimination based on race, religion or gender, but now lawsuits are testing whether those protections can be extended to cover sexual orientation.

And federal courts in several jurisdictions are struggling with the issue of whether Title VII of the Civil Rights Act of 1964 protects gay and lesbian employees from workplace bias.

Recent court rulings indicate that at least some members of the judiciary would like to see Title VII protections, which already provides protection for those who do not conform to gender stereotypes, extended to sexual orientation.

But they have been stymied by the literal wording of Title VII, which was enacted in 1964 and does not specifically cite gays, the absence of a U.S. Supreme Court ruling on the issue and Congress' failure to successfully address it through legislation.

Meanwhile, many state and local laws already extend civil rights protection to gay people, and many employers have been proactive on this issue.

In a July 28 ruling in *Kimberly Hively v. Ivy Tech Community College, South Bend*, a three-judge panel of the 7th U.S. Circuit Court of Appeals in Chicago said it was obligated to affirm a lower court ruling that Ms. Hively, a lesbian college instructor, could not successfully make a claim for sexual orientation discrimination under Title VII because it was beyond the statute's scope.

But the ruling indicated it was time for either Congress or the U.S. Supreme Court to address this issue (see related story).

Then, in what experts say was a rare move, the 7th Circuit in October agreed to vacate that ruling and rehear the case en banc.

"This is the first time that a court has agreed to take a second look at the issue," and it "looks as though they're going to take a hard look at it, one way or another," said Johanna G. Zelman, a partner with Ford-Harrison L.L.P. in Hartford, Connecticut.

However, "It's unlikely they would have taken it at all" if they were to affirm sexual orientation is not covered by Title VII, said Paul E. Starkman, a member of law firm Clark Hill P.L.C. in Chicago.

In another case in June, 128 congressional Democrats filed a rare amicus brief in a case now being considered by the 2nd U.S. Circuit Court of Appeals in New York, *Matthew Christiansen v. Omnicom Group Inc. et al.*, in which a gay employee charged his employer with discrimination



under Title VII. The brief urges the court to rule the law prohibits sexual orientation discrimination.

Meanwhile, as the 7th Circuit notes in its original ruling, in 2015 the U.S. Equal Employment Opportunity Commission held in *Baldwin v. Foxx* that federal employees were protected under Title VII from sexual orientation discrimination.

Experts also point out that while the Supreme Court held in 2015 that same-sex marriage is legal, the law still does not protect discrimination against sexual orientation.

"The law really can't exist long" under these circumstances, said Mark I. Schickman, a partner with Freeland Cooper & Foreman L.L.P. in San Francisco.

Experts add that as long ago as its 1989 ruling in *Price Waterhouse v. Hopkins*, the Supreme Court ruled gender stereotyping, which are fixed ideas about men's and women's characteristics and how they should behave, is sex discrimination.

But to date the court has failed to take what many consider a small, further step and rule sexual orientation discrimination is unlawful as well.

"It doesn't make any sense the way things are right now," said Richard B. Cohen, a partner with FisherBroyles L.L.P. in New York.

Many experts say they believe that ultimately, through either judicial ruling or federal legislation, sexual orientation discrimination will become illegal.

"I do see the protection being extended, if not in the near future, then in the midterm," said Martha J. Zackin, a partner with Bello/Welsh L.L.P. in Boston.

Meanwhile, "My advice to business has always been, 'Don't do it,'" said Beau Howard, a partner with Freed Howard L.L.C. in Atlanta, on discriminating based on sexual orientation.

"One, it makes you look awful; and two, you're going to run afoul of some law even if Title VII doesn't apply."

## COURTS MULL REACH OF CIVIL RIGHTS LAW

At least three appellate courts are expected to rule on the issue of whether Title VII of the Civil Rights Act of 1964 protects against sexual orientation discrimination.

In July, a three-judge panel of the 7th U.S. Circuit Court of Appeals in Chicago said in its ruling in *Kimberly Hively v. Ivy Tech Community College, South Bend* that it was "beyond the scope" of Title VII to extend protection against sexual orientation discriminations.

The case was filed by a lesbian part-time adjunct professor at Ivy Tech Community College in South Bend, Indiana. Ms. Hively claimed the college had refused to interview her for any of the six full-time positions for which she applied over a five-year period because of sexual orientation discrimination. In October, the 7th Circuit agreed to hear the case en banc and vacated the ruling. Oral arguments are scheduled for Nov. 30.

*Matthew Christiansen v. Omnicom Group Inc. et al.* is now before the 2nd U.S. Circuit Court of Appeals in New York. Mr. Christiansen had filed suit against his employer, New York-based DDB Worldwide Communications Group Inc., charging harassment by a supervisor in violation of Title VII, among other charges. The U.S. District Court in New York granted Omnicom summary judgment dismissing the case in March.

A rare amicus brief filed by 128 congressional Democrats has asked the appeals court to extend Title VII's protection to sexual orientation discrimination. The case is scheduled to be heard in January.

The 11th U.S. Circuit Court of Appeals in Atlanta is considering *Jameka K. Evans v. Georgia Regional Hospital et al.*, a case filed by a former hospital security guard who said she was targeted for termination because of her perceived homosexuality. The U.S. District Court in Savannah, Georgia, dismissed the case in October 2015. Oral arguments in Ms. Evans' appeal are scheduled for Dec. 15.

Judy Greenwald

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## Employers to work overtime on legal defense

BY JUDY GREENWALD

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Employers should brace themselves for more litigation from unhappy employees and regulators as a result of a U.S. Department of Labor rule, effective Dec. 1, that doubles the salary threshold at which white-collar workers are entitled to overtime pay.

The new threshold is \$913 a week, or \$47,476 annually for a full-time employee, compared with the current \$455 a week or \$23,660 annually (see related story).

Experts say possible responses to the rule include raising workers' salaries so they are exempt from overtime, moving workers from exempt to nonexempt status, and/or reducing hours.

Regardless of what employers do, however, most experts say more regulatory action and litigation should be expected because of the rule.

There were 19,322 Fair Labor Standards Act-related lawsuits filed in federal courts for the 12 months ended Sept. 30, 2015, which was a 7.5% increase from the comparable period ending Sept. 30, 2011, according to the U.S. District Court system.

FLSA litigation "has been hot for a long time, and there will be many new opportunities with this new rule for employers to make mistakes that could result in class and collective actions," said Robin E. Shea, a partner at Constangy, Brooks, Smith & Prophete L.L.P. in Winston-Salem, North Carolina.

"They'll have this whole new group of employees who used to be exempt who aren't exempt anymore," said Ms. Shea. There is also the potential to inaccurately track employee's time, she said.

Travel rules, for instance, including calls made in the car on the way to work, "which are confusing anyway and have never been an issue with exempt employees" may now become an issue with nonexempt employees, said Ms. Shea.



**4.2  
MILLION**

Number of new workers eligible for overtime pay

Wayne Imrie, London-based management liability underwriter at Beazley P.L.C., said, "It could also end up driving more traditional" employment practices liability claims if the reclassifications, for instance, disproportionately affect employees within a certain age band. It could also increase litigation by disgruntled employees if it reduces their benefits, said Mr. Imrie.

The federal rule may also conflict with states, which have their own exemption rules, said John E. Thompson, a partner with Fisher Phillips L.L.P. in Atlanta.

Furthermore, "The labor department has been aggressive in recent years" in pursuing these cases, and there is no reason to believe it will not continue to do so, said Jesse Panuccio, a partner with Foley & Lardner L.L.P. in Miami. This will be especially true the first year as businesses

adjust, he said.

Experts universally recommend employers conduct wage-and-hour audits immediately. Act preventively, "before you get a complaint, or you have somebody from the DOL conducting an investigation," said Emily S. Borna, a principal with Jackson Lewis P.C. in Atlanta.

"You have to take a close look at what your people are actually doing, not just what their position title is, or even their job description, to determine if the exemption really applies," Ms. Borna said.

Employers must also make sure both their employees and their supervisors "have the right mentality," said Ms. Shea. Somebody who had been exempt, and was used to taking whatever time needed to get the job done, for instance, now must stop at 5 p.m. and not look at any email until the next morning, which may be a

difficult adjustment for both workers and their supervisors, she said.

Adjusting for this will take time and require frequent interactions between supervisors and employees and frequent reinforcement, she said.

How employers communicate any changes they make in response to the rule is important, said Mr. Thompson.

"There are many ways to convey that to a workforce, some of which are better than others," but "there are no magic words," he said. Employers must tailor their message to their workforce, he said.

One thing employers should not do, though, is "buy into the proposition" and assume that what they hear others within their industry are doing in response to the law is okay, said Mr. Thompson. "There's a lot of that kind of thinking going on right now," he said.

### LABOR RULE GREATLY INCREASES NUMBER OF WORKERS ELIGIBLE FOR OVERTIME

The U.S. Department of Labor's new overtime rule, which updates the Fair Labor Standards Act and takes effect Dec. 1, extends the right to overtime pay to an estimated 4.2 million workers who are currently exempt.

It also strengthens existing overtime protections for an additional 5.7 million white-collar workers and 3.2 million salaried blue-collar workers whose entitlement to overtime will no longer

rely on an application of the duties test.

The major change under the rule is that it increases the standard salary level for full-time salaried workers who are exempt from overtime to \$913 per week, or \$47,476 annually, up from \$455 per week, or \$23,660 annually.

The final rule also includes a mechanism to automatically update the standard salary level requirement every three years.

The law has generated significant opposition. Both the Washington-based U.S. Chamber of Commerce on behalf of more than 50 other groups, and Nevada Attorney General Adam Paul Laxalt on behalf of a coalition of 21 states, have filed litigation in U.S. District Court in Sherman, Texas, challenging the rule's implementation.

Legislation has also been introduced in Congress to block its implementation.

This includes H.R. 6094, introduced by Rep. Tim Walberg, R-Mich., which passed the house on Sept. 28. The bill would postpone the rule's implementation until June 1, 2017.

Experts point out, however, that even if such legislation were to pass Congress, President Barack Obama has indicated he would veto it, and not enough votes are expected to overcome that veto.

Judy Greenwald



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## Insurers, reinsurers weather lower pricing

BY GAVIN SOUTER  
AND ROB LENIHAN

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DALLAS — Primary insurers will likely see flat or, at most, moderate increases at year-end reinsurance renewals, but reinsurers warn that they may have reached the bottom of the market.

While reinsurance capacity remains plentiful and, so far in 2016, catastrophe losses have been light, some liability insurers have announced reserve increases, prior-year reserve releases are slowing and some lines of coverage, such as auto liability, are seeing increased claims severity.

Several reinsurers say they think those developments may signal a change in the yearslong soft market for reinsurance; however, others say competition remains intense as nontraditional capital providers continue to show interest in the sector.

“I think the reinsurance market, as far as what’s happening, is probably not going to change dramatically,” said Jim Bradshaw, CEO of Willis Re North America. “I think probably we’ll see some deceleration of rate decreases, kind of more of the same. Overall, it’s going to be more of the same. I don’t see any dramatic changes on the horizon. There’s just a lot of excess capacity in the market now.”

He was speaking during an interview at the Property Casualty Insurers Association of America’s annual conference in Dallas late last month. Insurers, reinsurers and reinsurance brokers attend the conference and hold numerous individual meetings to discuss reinsurance renewals.

Keith Wolfe, Armonk, New York-based president of U.S. property/casualty-regional and national at Swiss Reinsurance America Corp., said rate declines in the reinsurance sector are unsustainable. How-

ever, he said Swiss Re is still looking to expand its business.

“One of the things we’re focused on is how we can basically create new spend in the reinsurance space to address part of this problem,” he said. “We’d much rather go with much more creative and innovative ideas to create new opportunities as opposed to fight over the ones in place that everyone looks at a little bit differently, more aggressively than we do.”

For example, expanding into areas such as flood and earthquake cover, where insurance uptake is still low compared with other risks, is an opportunity for the reinsurance sector, Mr. Wolfe said.

“Switching away from catastrophe perils,” he added, “I think there’s a huge opportunity for us to look at the entrepreneurs from outside the insurance industry looking to bring new ideas into our space.”

“I don’t think the reinsurance market will get any softer,” said Christopher Buse, senior vice president and manager of casualty treaty reinsurance for XL Group Ltd. in Stamford, Connecticut.

The market expectation is that casualty rates will be flat, with the possibility of some moderate increases, during year-end renewals, he said.

While capacity remains plentiful, some reserve increases announced in the past several weeks may signal increased pressure on casualty insurers, Mr. Buse said.

The property reinsurance sector remains competitive. Although Texas hailstorm losses hit some reinsurers and catastrophe bond issuers earlier this year, 2016 has generally seen light catastrophe losses. The property reinsurance sector remains flush with capacity, as it has seen an influx of alternative capital from pension funds and other investors over the past several years.

With depressed property reinsurance rates, primary property insurers may be



MICHAEL MARCOTTE

Steven Levy

the next sector to see an influx of alternative capital entering the market, according to Steven Levy, president of reinsurance at Princeton, New Jersey-based Munich Reinsurance America Inc.

Alternative capital investments in the reinsurance sector have slowed over the past two years as traditional reinsurance rates have fallen, Mr. Levy said during a panel discussion at PCI. However, “something I think we are going to see more of is alternative capital competing more directly with primary insurers ... the primary prop-

Although Texas hailstorm losses hit some reinsurers and catastrophe bond issuers earlier this year, 2016 has generally seen light catastrophe losses.

erty space is a much bigger opportunity space for alternative capital,” Mr. Levy said.

One source of competition for the traditional insurance and reinsurance sector that will likely not grow is hedge fund reinsurance, he said. Over the past few years, several hedge funds have set up reinsurance arms that seek to use less conservative investment strategies than are usually used in the reinsurance sector.

Most hedge funds over the past couple of years have generated subpar investment results, so “that’s hardly justification for a reinsurance business model where you have above-average combined ratios,” Mr. Levy said.

“I do think it’s a little too early to ring the death knell of hedge fund reinsurers, but it wouldn’t shock me if we are ringing that bell three to five years from now,” he said.



MICHAEL MARCOTTE

Jim Bradshaw

## Interest from Asia could drive M&As

DALLAS – Merger activity in the insurance and reinsurance sector has been quiet this year compared with the blockbuster mergers announced in 2015 of XL Group P.L.C. and Catlin Group Ltd. and Ace Ltd.’s merger with Chubb Corp., but activity is picking up.

Most recently, Japanese insurer Sompo Holdings Inc. last month announced that it was buying Bermuda-based Endurance Specialty Holdings Ltd. for \$6.3 billion.

Several executives meeting at the Property Casualty Insurers Association of America conference in Dallas

last month said they expect to see more interest from Asia in U.S. insurers and reinsurers.

While 2016 had been relatively quiet on the M&A front, “it’s starting to pick up now,” said Jim Bradshaw, CEO of Willis Re North America in New York.

“The Asian markets have a lower cost of capital and a longer term for investment horizon,” he said, “so we expect the Asian market to be very active in the U.S.”

Chinese insurers find the U.S. attractive because it is a heavily regulated, Mr. Bradshaw said.

“It’s kind of a safe place for them to put their money, and I think they take a long-term perspective in terms of the return on their investment. Combine all those factors together, it makes it very conducive to M&A,” he said.

However, the number of transactions that have occurred over the past four or five years has limited the pool of attractive acquisition targets, said Keith Wolfe, president of U.S. property/casualty-regional and national at Swiss Reinsurance America Corp. in Armonk, New York.

Rob Lenihan

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## Surfing social media to fight comp fraud

BY SHEENA HARRISON

sharrison@businessinsurance.com

CHICAGO — Social media posts by unsuspecting workers compensation and liability claimants can provide a wealth of evidence for insurance fraud investigators, but the online investigations need to be conducted quickly and ethically, experts say.

Workers claiming disability payments gift investigators evidence when they post photos of themselves being fit and active on Facebook, for example, but only if the images are shared publicly, they say.

Christopher E. Curl, president of Batavia, Illinois-based consulting firm C.E.C. Group L.L.C., said he has seen major employers use social media to their advantage in claims management. One large grocery chain he has worked with conducts social media research for auto and general liability claims, while he knows another employer that researches social media profiles for all workers comp lost-time claims.

“It’s just another way to fight insurance fraud,” Mr. Curl said.

Mr. Curl and others discussed the value of social media in claim investigations during a panel presentation at the Chicagoland Risk Forum, hosted late last month by the Chicago and Mid-Illinois chapters of the Risk & Insurance Management Society Inc.

Robert Johnson, Chicago-based managing partner with consulting firm Solomon Group L.L.C., said social media investigations can be particularly helpful in determining how much to reserve for workers comp and liability claim costs.

For instance, he discussed an investigation where a workers comp claimant who claimed to be permanently and totally disabled was discovered through social media to be working a side job as an exotic dancer named “Romeo.” That information decreased the value of the man’s workers comp claim “tremendously,” said Mr. Johnson, who is also a partner and chief diversity and inclusion officer with the Quintairos, Prieto, Wood & Boyer P.A. law firm in Chicago.

“Anything you can do to get a more accurate view of what the exposure is (can be) valuable,” he said.

By using specialized social media investigation software, it’s possible to find out a person’s address, phone number and their relatives or associates by indexing sites such as Facebook, Twitter, Instagram and YouTube, said Lou Vittorio Jr., Naperville, Illinois-based assistant vice president with Frasco Investigative Services.

Social media users may not always make such information publicly available, Mr.



### SOCIAL MEDIA USE

A 2015 report from the Pew Research Center shows that 65% of all American adults use social media sites, and the percentage is higher for younger adults.

Age group	Percent social media users
18 to 29	90%
30 to 49	77%
50 to 64	51%
65 and older	35%

Source: Pew Research Center

Vittorio said. However, by researching the profiles of a claimant’s family and friends, investigators usually can find pictures and other information that has been publicly shared about the claimant.

“We’re going to go into those profiles and typically we’ll find one or more are public, and we’ll find information on that subject,” said Mr. Vittorio, who said investigators at his firm may spend up to three hours on such investigations.

Geofencing also is a powerful tool for social media investigations, Mr. Vittorio said. The practice involves using GPS or radio frequency identification to identify geographical boundaries within software.

With geofencing, Mr. Vittorio said investigators can search for public social media posts that were uploaded within a certain distance of an incident.

For example, bystanders might share video or photos of a car accident on social media. Mr. Vittorio said investigators working on insurance claims related to that accident can search for any publicly shared posts that were uploaded within a geographic range set by geofencing.

“A lot of times, we can find potential witnesses,” he said.

While social media can provide valuable information to prove insurance fraud or abuse, investigators need to be sure that they conduct such research appropriately, Mr. Johnson said. He said investigators should not try to “friend” or connect with claimants they are researching on social media.

“You want to make sure you’re acting in an ethical way and not trying to go around any privacy settings they have,” Mr. Johnson said.

Michael Airdo, a partner with law firm Kopon Airdo L.L.C. in Chicago, said every company looking to control workers comp and litigation claim costs should use social media research to their advantage.

Companies should index information on claimants’ social media profiles as soon as possible after a claim is filed — before the person can edit their social media presence, Mr. Airdo said.

“Once this person has the value of having a conversation with his or her lawyer, that information disappears,” he said.

“We’re going to go into those profiles and typically we’ll find one or more are public, and we’ll find information on that subject.”

Lou Vittorio Jr.,  
Frasco Investigative Services

## TEAM EFFORT ON CARE NEEDED

Medical providers treating injured workers for workers compensation and group health care purposes must better coordinate with each other to prevent drug interactions that can harm their patients, experts say.

“The most effective solution is for everyone in the care team to take an interest in the patient, with the benefits and the risk departments better communicating,” said Silvia Sacalis, Tampa, Florida-based vice president of clinical services for Healthsystems L.L.C. “There’s a firewall a lot of times. They don’t talk to each other.”

Dr. Sacalis said electronic medical records are helping to coordinate care among the various doctors that treat patients, but such records are years away from universal adoption.

“The most effective solution is for everyone in the care team to take an interest in the patient, with the benefits and the risk departments better communicating.”

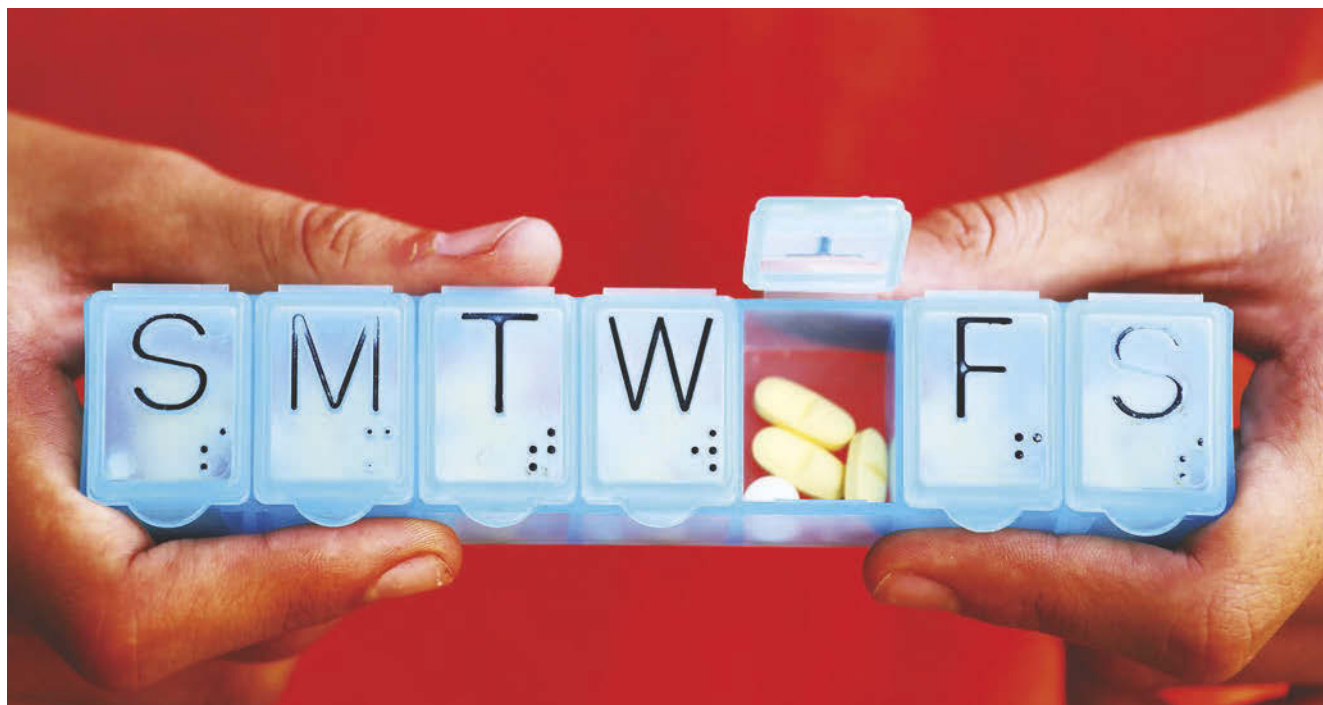
Silvia Sacalis, Healthsystems L.L.C.

Privacy issues also are a hurdle, she said. The Health Insurance Portability and Accountability Act requires patients records to be kept confidential in the group health realm; but in workers comp, an injured worker’s medical condition can be shared with the employer.

Better coordination could be on the horizon, said Dr. Theresa Bartlett, Troy, Michigan-based vice president of medical quality at Sedgwick Claims Management Services Inc. “I think there’s a great opportunity for large employers to definitely partner and integrate with pharmacy benefit managers,” she said. “We are getting a little bit of interest in that from clients.”

Tom Ryan, New York-based market research leader for Marsh L.L.C.’s Workers’ Compensation Center of Excellence, said Marsh relies on a nurse case manager to catch up with an injured worker after they leave the hospital — a follow-up that can help the patient sift through the medications they are taking.

Louise Esola



# Mismatched drug combinations put injured workers at risk

BY LOUISE ESOLA  
lesola@businessinsurance.com

What’s lurking in an injured worker’s medicine cabinet is gaining more attention as experts are discovering that prescription medications, over-the-counter drugs, vitamins and even herbal supplements can complicate or prolong a workers compensation claim.

In worst-case scenarios, dangerous drug interactions can kill a patient, as has been the case with benzodiazepines and opioids — a lethal combination that has garnered much media attention with a string of celebrity deaths and a new black box warning by the U.S. Food and Drug Administration.

“There is a big problem with combinations of medications,” said Dr. Theresa Bartlett, Troy, Michigan-based vice president of medical quality at Sedgwick Claims Management Services Inc. “It can be multiple prescribers or over-the-counter medications they don’t share with (a treating physician) that can cause adverse events.”

It can be common for patients to use several prescription and over-the-counter drugs, a situation known as polypharmacy. Experts say problems arise when injured workers and other patients fail to share a complete list of their medications with their treating physician — whether unintentionally or to purposely avoid stigma, such as if they’re taking antidepressants or anxiety drugs.

Tom Ryan, New York-based market research leader for Marsh L.L.C.’s Workers’ Compensation Center of Excellence, said people may forget to tell their doctor about a medication when they’re dealing

with a barrage of paperwork in the initial stages of treatments.

“They might be overwhelmed from the injury, so they may not be the best historian on the medications they might be taking,” he said, adding that it’s not uncommon to see workers take as many as six drugs prior to injury, as many as half of them are over the counter.

Most employers and insurers partner with pharmacy benefit managers and medical management companies that provide services to help fill in gaps with the coordination of care for comp claimants. But even then, experts say there are holes when a patient doesn’t think to mention a drug that they regularly take.

“At the end of the day, you are injured (so) it’s harder to think about these things,” said Dr. Melissa Burke, Hartford, Connecticut-based national pharmacy director for Travelers Cos. Inc.

This is true especially with medicines purchased over the counter, said Sylvia Sacalis, Tampa, Florida-based vice president of clinical services with Healthsystems L.L.C. Sometimes it’s a matter of an injured worker taking ibuprofen or acetaminophen every day for another condition or ailment, which could react adversely with prescription painkillers.

“Giving patients the benefit of the doubt, sometimes they just don’t know,” said Dr. Sacalis. “They don’t know a vitamin can interact (with a drug), They don’t know an herbal supplement can interact, creams and orals can interact ... I think there’s just a lack of knowledge.”

One drug that can complicate a workers comp claim is the popular cholesterol drug Lipitor. Dr. Sacalis said research

shows Lipitor use can cause soft-tissue pain. A study published in The Journal of the American Medical Association in April 2016 found that as many as 10% of patients taking statins — Lipitor is one of them — have experienced muscle pain, weakness or cramping.

If an injured worker is prescribed that drug prior to their injury and, months later, is still experiencing pain, Dr. Sacalis said the person’s workers comp physician often has to wonder: Is the pain caused by Lipitor or the worker’s injury?

“In severe cases, Lipitor can cause myalgia,” said Dr. Mary Reaston, Carlsbad, California-based chief science officer and founder of Emerge Diagnostics Inc., a company that tests soft-tissue injuries.

Dr. Reaston called the combinations of drug treatments — over-the-counter and prescription and oftentimes undisclosed — a “tremendous problem” in workers comp. Doctors “may be missing the boat; the worker might not have an injury but a side effect of their medication,” said Dr. Reaston, adding employers need to get more involved in workers comp medical treatment with improved pharmacy management practices and more coordination with group health.

Dr. Sacalis said she believes at the heart of the problem is the time a physician spends with an injured worker and that the worker is not looked at “as a whole person” with pre-existing conditions, comorbidities, and a penchant for taking vitamins. “In the (medical) climate today, (physicians) are just strapped for time,” she said. “They are swamped ... But behind the scenes of a claim or medical record is a human. These aren’t injured workers. They are people.”

## States succeed in efforts to cut comp costs

BY JOYCE FAMA KINWA

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

While California, New York and New Jersey continue to be the most expensive states for workers compensation, according to a closely watched biennial study, observers say improved comp insurer performance and lower claim costs have driven down national workers comp premium rates.

The Oregon Department of Consumer and Business Services issues its ranking of workers comp premium rates for 50 states and Washington every other year.

This year's ranking, published last month, is based on workers comp rates in effect as of Jan. 1, 2016, and shows a national median workers comp premium rate of \$1.84 per \$100 of payroll for this year. That compares with a national median of \$1.85 per \$100 of payroll in Oregon's 2014 study.

Study co-authors Chris Day, senior research analyst for the Oregon Department of Consumer and Business Services, and Mike Manley, the department's research coordinator, said the study does not monitor market conditions that contribute to changes in state premium rates.

However, Peter Burton, senior division executive of state relations with the Boca Raton, Florida-based National Council on Compensation Insurance Inc., said an improving workers comp market nationwide likely contributed to a small decline in the national median workers comp premium rate.

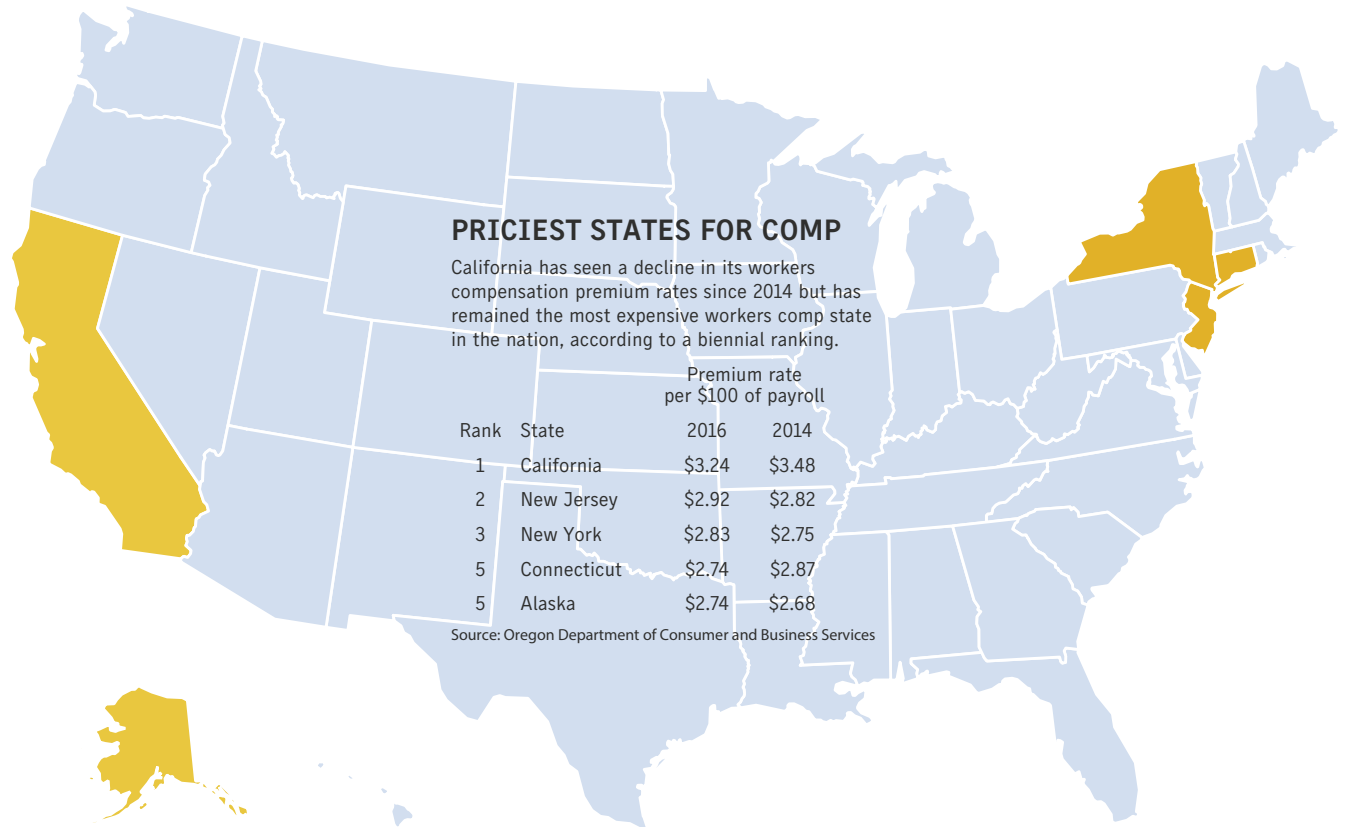
"In the aggregate, we have seen recent underwriting gains, which have been driven by increased premium volume, lower claim frequency and the modification of the costs associated with medical and indemnity claims," Mr. Burton said.

The Oregon study reported that California's 2016 workers comp premium rate was \$3.24 per \$100 of payroll, making it the most expensive state in the study. New Jersey came in second at a rate of \$2.92 per \$100 of payroll this year, while New York was in third place with a rate of \$2.83 per \$100 of payroll.

California, New Jersey and New York were ranked No. 1, No. 3 and No. 4, respectively, in Oregon's 2014 study.

Dave Bellusci, executive vice president and chief actuary for the California Workers' Compensation Insurance Rating Bureau, said California has several factors, including costs related to defending and administering workers comp claims, that lend themselves to its top rank in the Oregon study.

"California has a high frequency of permanent disability claims, (and) medical



costs tend to be fairly high in California," Mr. Bellusci said. "And from what we've seen, it's not so much the intensity of medical (costs) early on; it's that the claims stay open longer and the medical process continues longer."

Mr. Bellusci noted that California has seen a slight drop in premium rates due to workers comp medical reforms under Senate Bill 863, which he said drove down medical costs in the state.

S.B. 863, which passed in 2012, included such reforms as an independent review process for medical treatment and billing disputes, fee schedules for home health care, language interpretation and other comp-related services, and fees for lien filings.

North Dakota, Indiana and Arkansas were the states with the least expensive workers comp premium rates, keeping their same rankings from 2014, according to the Oregon study. North Dakota had a premium rate of 89 cents per \$100 of payroll this year, while Indiana's rate was \$1.05 and Arkansas' was \$1.06.

Pam Ferrandino, former executive vice president and senior principal with the national casualty broking team at Willis Towers Watson P.L.C., said lower-cost states tend to have a mix of industries that aren't as costly to cover under workers

comp.

"Whether it is a mix of who their workforces are or what they are doing well with in their comp system, the cost of the system just doesn't bear the same operational expense as in other states," she said.

While NCCI has no official stance on the Oregon workers comp ranking, Mr. Burton said states pay close attention to the rankings each year.

"Historically, states like Connecticut and New York, which have been cited as having high premiums, have taken exception," he said. "These states think the Oregon study is not representative of their (worker) classification environment. And to the contrary, states having low premium rankings believe they have low-cost systems and have a positive environment to attract business to their state."

While states may hope to land among the less expensive states in the Oregon study, co-author Mr. Manley said states should watch the national median rate rather than their individual rankings to get a fuller picture of the workers comp market.

For states in the middle of the ranking, it "doesn't take a big change in rates in relation to other states to bounce their rank value around quite a bit," Mr. Manley said, noting that most state premium rates were within 10% of the national rate.

North Dakota, Indiana and Arkansas were the states with the least expensive workers comp premium rates, keeping their same rankings from 2014, according to the Oregon study. North Dakota had a premium rate of 89 cents per \$100 of payroll this year, while Indiana's rate was \$1.05 and Arkansas' was \$1.06.

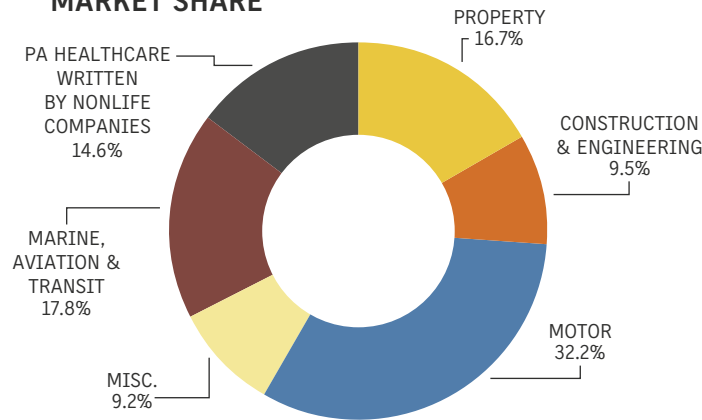
## PROFILE: EGYPT

# 62

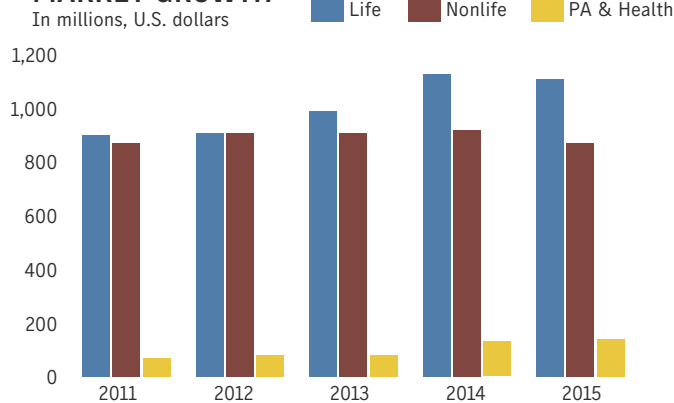
GLOBAL  
P/C MARKET  
RANKING

The Egyptian property/casualty insurance market is underdeveloped, reflecting the state of its economy and its large but generally poor population. Egypt, however, has a sizeable middle class and some industry, and the insurance sector continues to develop slowly. As Egypt is the largest non-OPEC oil producer and the second-largest gas producer in Africa, the country benefits from some significant investments in the energy industry. The overall market is regarded as one of great potential and has attracted several foreign insurers over the past decade; in 2015 and 2016 several insurers entered or were planning to enter the market.

### MARKET SHARE



### MARKET GROWTH



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

### COMPULSORY INSURANCE

- Various lines of insurance are compulsory, including:
- Auto third-party liability for bodily injury
- Personal accident for railway passengers
- Aviation third-party liability
- Third-party liability for operating elevators
- Professional liability for insurance and reinsurance intermediaries

### NONADMITTED

Nonadmitted insurance is not permitted in Egypt because the law provides that insurance must be purchased from locally authorized insurers, with some exceptions for risks that cannot be covered by local insurers. The law is silent on the freedom of buyers and/or intermediaries to purchase personal accident and private medical insurance outside the country.

### INTERMEDIARIES

All intermediaries must be authorized by the insurance supervisor to carry on insurance business in Egypt. Intermediaries are not allowed to place property/casualty business with nonadmitted insurers, except in those cases where nonadmitted insurance is authorized. Intermediaries involved in nonadmitted placements must be registered with the supervisor. Brokers involved in nonadmitted placements do not have to warn buyers that their insurer is not subject to local supervision.

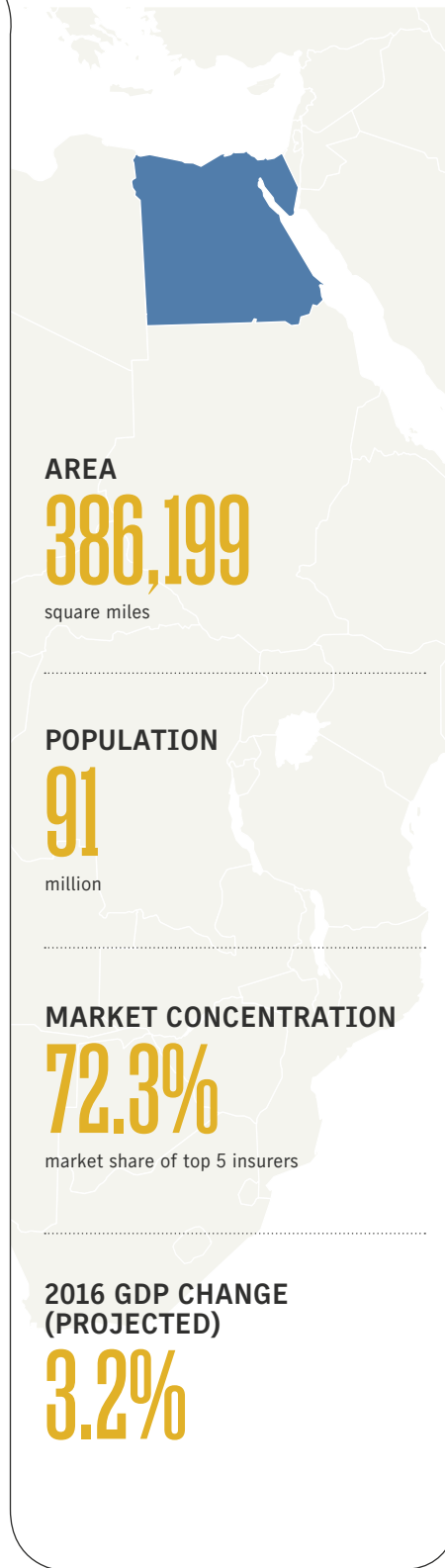
### MARKET PRACTICE

The law is generally respected, but there may be some cases where liabilities are covered under a multinational insurance program. If any such cases were covered under multinational programs, it might be that no claim would be submitted or paid locally, so that the supervisor would not be aware of any such insurance arrangements. Some use is made of fronting.

### MARKET DEVELOPMENTS

Updated September 2016

- An important review of insurance legislation has been underway for some time and will result in a new insurance law once it has gone through the relevant legislative process. The draft new insurance law could be approved by parliament in time for its introduction on Jan. 1, 2017.
- Implementation of the Egyptian Financial Supervisory Authority's new guidelines on the reinsurance of Egyptian insurers came into full effect on Jan. 1, 2016.
- Economic growth has stimulated development of the insurance market, with recovery starting in the 2014-15 fiscal year as the government increased spending on infrastructure projects. The recovery has, however, been affected by problems businesses have had in obtaining foreign currency. To try to resolve the situation, the government allowed the Egyptian pound to devalue in March 2016.
- While Egypt does not have particularly significant earthquake or windstorm exposure, there have been several rainfall-related flood claims in Sinai, which have caused extensive damage and insured losses. As a result, the establishment of a natural perils pool is under more serious consideration.
- There has been talk of establishing another national reinsurer, but market observers doubt that a new reinsurer will ever become operational.



Information provided by Axco  
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## Broker noncompete agreements ruled 'valid, enforceable'

■ Brown & Brown Inc. obtained a temporary injunction against a rival broker that hired several of its former employees, with a state judge ruling that employment agreements prohibiting their move to a rival for two years after they left Brown & Brown were "valid and enforceable."

Daytona Beach, Florida-based Brown & Brown had charged that eight of its employees had been hired by Lake Mary, Florida-based AssuredPartners Inc. in violation of their employment agreements, according to a temporary injunction filed late last month in Volusia County Circuit Court in Daytona Beach, Florida, in *Brown & Brown Inc. v. AssuredPartners Inc. et al.* The employees left Brown & Brown and joined AssuredPartners in May, according to a spokesman for Brown & Brown's law firm, Chicago-based Freeborn & Peters L.L.P.

"Brown & Brown has a legitimate business interest in the restrictive covenants contained within the employment agreements which includes protecting its relationships with its customer and protecting its confidential information," said Judge Dennis Craig in his ruling.

These restrictive covenants state the employees, who signed employment agreement in years ranging from 1997 through 2015 cannot work for another company in the insurance business for two years after termination of their Brown & Brown employment, nor disclose confidential information, according to the ruling.

"Brown & Brown has demonstrated a substantial likelihood of success on the merits, irreparable harm and the unavailability of an adequate remedy at law" because the loss of its customers "cannot be monetized, the threatened injury to Brown & Brown outweighs any potential harm to the defendants upon whom this injunction will be issued," says the ruling.

The temporary injunction prohibits the defendants from "further breaching the restrictive covenants" and calls for the defendants to divest themselves of former Brown & Brown customers, unless doing so would cause the customers harm.

Mark King, Brown & Brown's chief litigation counsel, said the next step in the litigation would be a trial on the case's merits and then possibly a permanent injunction and the award of damages. Mr. King said these cases are difficult to initiate, but "Brown & Brown has always been very diligent in protecting its confidential information and its remaining teammates, as well as the interests of our customers."

AssuredPartners said in a statement: "We disagree with the ruling and are reviewing it to determine our next course of action as AssuredPartners intends to vigorously

defend its position. There was no finding that the former Brown & Brown employees solicited any of their former customers. AssuredPartners has and continues to stand ready to pay fair market value for those accounts that elected to follow their trusted agents who left Brown & Brown and joined AssuredPartners. Payment for accounts that follow a broker is a customary practice in the industry."

## Longtime grocery clerk's disability suit reinstated

■ A divided federal appeals court has reinstated a disability discrimination lawsuit filed by a 38-year grocery clerk who was terminated after one incident when it was learned he could not lift heavy boxes because of a back impairment.

Kenneth W. Camp had worked for Bi-Lo L.L.C., a unit of Jacksonville, Florida-based Southeastern Grocers L.L.C., or its predecessors, for nearly four decades when a store director, arriving at the end of a shift in 2012, first learned two co-workers at the store in Chattanooga, Tennessee, had been helping him lift heavy stock



because of the scoliosis he had suffered since he was a teenager, according to the ruling in *Kenneth W. Camp v. Bi-Lo L.L.C.* by the 6th U.S. Circuit Court of Appeals in Cincinnati.

A job description, which was created more than 30 years after Mr. Camp began working at Bi-Lo, said a store clerk must be able to lift at least 20 pounds "constantly" and 20 to 60 pounds "frequently," according to the ruling. A doctor concluded Mr. Camp could only safely lift 35 pounds, and he was terminated in October 2012.

Mr. Camp filed suit on charges including violation of the Americans with Disabilities Act and the Age Discrimination in Employment Act. The U.S. District Court in Chattanooga granted Bi-Lo summary judgment dismissing the case on the basis Mr. Camp was unable to perform an essential job function.

However, the head store clerk testified that heavy lifting was not an essential function of Mr. Camp's job, said the 2-1 ruling by a panel of the 6th Circuit. Furthermore, the company did not submit evidence that heavy lifting was a significant percentage of the job requirement.

"This is not a case involving a firefight-

er, nurse, police officer or a military person where the inability to lift a 'required' weight could put an innocent person's life at risk or cause 'undue hardship,'" said the ruling in quoting an earlier case.

The dissenting opinion said letting workers informally cover for a fellow worker's disability "should not serve as a basis for forcing an employer to continue such an accommodation once the disability is discovered to interfere with operations."

## State Farm off the hook for grocery store's cyber breach

■ An Alabama grocer is not entitled to insurance coverage for a cyber breach under marine inland endorsements to its property and liability policy, says a federal court ruling in a coverage dispute.

Camp's Grocery Inc., which operates a grocery store in Hokes Bluff, Alabama, was sued along with its franchiser, Keene, New Hampshire-based Piggly Wiggly L.L.C., by three credit unions that charged Camp's is liable for losses they sustained following a cyber hack suffered by the grocer, according to the ruling by the U.S. District Court in Birmingham, Alabama, in *Camp's Grocery Inc. v. State Farm Fire & Casualty Co.*

Camp's then filed suit seeking a declaratory judgment that State Farm, a unit of Bloomington, Illinois-based State Farm Mutual Automobile Insurance Co., was obligated to defend and indemnify it. Among its arguments, Camp's said it had coverage under the inland marine endorsements to its property and liability policy.

The court agreed with State Farm that it had no coverage. There is no language in either endorsement "whereby State Farm promises to 'defend' or 'indemnify' the insured, whether in regard to claims involving computer equipment, electronic data, or anything else for that matter," said the ruling. Rather, the general insuring agreement of one of the endorsements provides payment for "accidental direct physical loss" to computer equipment and removable data storage media.

"Such promises to pay the insured's 'direct loss' unambiguously afford first-party coverage only and do not impose a duty to defend or indemnify the insured against legal claims for harm allegedly suffered by others, as in third-party coverage," said the ruling by Magistrate Judge John E. Ott in granting State Farm's motion for summary judgment.

Commenting on the ruling, Michael S. Levine, Washington-based counsel at Hunton & Williams L.L.P., said, "Legacy policies just don't cover all of the cyber-type exposures that are out there, and as insurers become more attuned to the types of losses and the types of risks, they're becoming more savvy in their arguments."

## DOCKET



### NURSE'S BENEFITS REVERSED AFTER RETURN TO WORK

The Mississippi Supreme Court reversed a state workers compensation commission ruling that awarded workers compensation benefits to a nurse who suffered an injury on the job, returned to work for seven months and was then fired for other causes. The court found Linda Mitchell's return to Hudspeth Regional Center in Whitefield, Mississippi, after hurting her back in a fall created a "rebuttable presumption" that she suffered no loss in wage-earning capacity.

### TRUCKER TRAINEE DUE COMP BENEFITS FOR BURNT FEET

The Arkansas Court of Appeals awarded workers compensation benefits to a truck driver in training whose feet landed in a crockpot full of hot water upon waking up after Van Buren, Arkansas-based USA Trucks Inc. and third-party administrator Broadspire Services Inc. rejected his claim. James Jarrell "had advanced his employer's interest" when he was instructed to sleep in the truck, and therefore was injured in the course of his work, the court said.

### SOFTWARE FIRM MUST FACE RETALIATION SUIT

The 2nd U.S. Circuit Court of Appeals upheld dismissal of discrimination charges filed by a fired software firm employee but reinstated his retaliation charges. Howard Vogel claimed he suffered bias because of not being Indian and was then treated harshly after going to New York-based CA Inc.'s human resources department, testifying his supervisor said his performance was irrelevant during a performance review.

# Awards & Leadership Conference

DECEMBER 12-13, 2016  
GRAND HYATT, NEW YORK

## REGISTRATION IS OPEN!

*Business Insurance* invites you to join us as we celebrate the top 25 women in the commercial insurance industry at the **2016 Women to Watch Awards & Leadership Conference**. This event is open to all members of the insurance and benefits industries, including past honorees and colleagues. Our featured speakers will share their inspiring professional experiences and provide tactical career advice to attendees.

### AGENDA SUMMARY:

#### Monday December 12

2 p.m. – 5:30 p.m. Pre-Conference Workshop  
(by The Alliance of Women in Workers' Compensation)

5:30 p.m. – 7 p.m. Cocktail Reception & Book Signing (all attendees receive a copy of *Words of Wisdom* from Women to Watch)

#### Tuesday December 13

7 a.m. – 8 a.m. Registration & Continental Breakfast

8 a.m. – 12:30 p.m. Leadership Conference

12:30 p.m. – 2:15 p.m. Awards Luncheon

CONFERENCE OPENING KEYNOTE  
**The Ceiling Crashers: C-Suites, State Capitol Domes and Beyond**



**Kim Reynolds**  
Lt. Governor,  
State of Iowa

During Lt. Governor Kim Reynolds' keynote address she will share insights for encouraging women to run for public office and how to forge public-private partnerships to support female leaders at all levels.

AWARDS LUNCHEON KEYNOTE  
**Gutsy, Gritty Strategies for Women: A Manifesto for Success**



**Kate White**  
Author & Speaker

In her keynote, leadership expert and bestselling author Kate White will share her candid, no-holds barred tips and behind-the-scenes stories of celebrities and C-suite gurus, inspiring women to become the architects of their careers and their success.

REGISTER, VIEW FULL AGENDA & MORE:

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WOMEN  
TO WATCH

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Sponsoring the Event:

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Broadspire Services Inc. is an Atlanta-based unit of Crawford & Co., a third-party administrator that provides workers compensation and liability claim and medical management services. Broadspire President and CEO Danielle Lisenbey spoke recently with *Business Insurance* Reporter Joyce Famakinwa about trends in the workers comp market, the opioid epidemic and how Broadspire is helping treat workers with opioid addiction. Edited excerpts follow.

## Danielle Lisenbey

### Q What are some trends you are seeing in the workers compensation market?

**A** It appears that the labor market has been holding steady. And because the workers compensation market is extensively tied to the labor market, it's a trend that has been interesting to watch. From a claims administrative perspective, underwriting has had strong results since 2011, with premiums growing for five years in a row. In response, companies and organizations have sought to offset some of those increases that they're seeing from a total loss cost package.

Claim frequency appears to be trending down, while medical costs severity still appears to be on the rise. But as medical costs continue to rise from a total health care perspective, workers compensation is also continuing to experience those trends as well.

### Q What are some of the biggest challenges that Broadspire is facing right now?

**A** Getting millennials or that early career group interested in our industry is definitely a challenge. Getting clients to understand the overarching issue, that there are a lot of baby boomers retiring, and we need to bring that next generation into the fold.

### Q Have there been outreach plans to recruit younger people at Broadspire?

**A** We started partnering with an organization called GradStaff that will bring graduates in through kind of a temp model, and we tied it into a program we called Claim Specialists. We also started an internship program where we bring in (college) freshmen and sophomores to try to get them early before they even know what they want to do when they graduate, and they come back year after year at summers and Christmas breaks, and they work with us in various departments. And then it's also doing the tours at the colleges. And I'm not talking just with the risk management majors. We really have to go after liberal arts, criminal justice,

business management (and) marketing majors who might not quite know what industry they fit in and introduce to them our industry.

### Q What are some of the biggest challenges in the TPA space right now?

**A** It's the traditional thinking. We need to make sure our clients understand that we have to evolve. TPAs have to evolve. The cost structure is just going to continue to go up, and so we have to mitigate some of that cost structure to be able to pass some of the savings to our clients. And that's doing things through technology, and that's doing things from a digital perspective, mobile, all that kind of good stuff. I think



that's a challenge for all of us, that we need to evolve as fast as technology's evolving.

### Q What are clients struggling with when it comes to managing their claims, and why?

**A** The biggest struggle we're seeing is with risk management groups getting a lot of pressure from their organizations to do more with less. In response, they are having to either be more creative or become more reliant on their carrier or claim partners. Large risk management departments are becoming a thing of the past and need to become more data-centric.

### Q How is the opioid epidemic affecting people in terms of workers comp? How is Broadspire helping treat workers with addiction?

**A** The opioid epidemic is something that is not going away any time soon. It continues to be a growing trend and is something that we need to keep our eyes on. There currently is no evidence of any long-term opioid therapy achieving and sustaining pain relief. In response, Broadspire has implemented a comprehensive program called CAMP — Comprehensive Assessment and Management of Pain — which has an opioid component or narcotic intervention component, because there's more to it than just the opioids. Other components include chronic pain, different drug monitoring tools and cognitive behavior therapy. Overall, CAMP can attack things from a different angle or multiple angles, depending on the injured worker and what they're going through. We quickly figured out that a single-threaded approach just doesn't work.

### Q Is there more that can be done with regard to keeping costs down for injured workers?

**A** I think earlier intervention is still key — knowing the psychosocial makeup of the injured worker to help really facilitate what the right service is at the right time. Using data on an individual level of the injured worker to identify any trends, to help better customize any kind of programs. I think we're all quickly learning that it's not one size fits all, either, so you've got to make things very flexible within the programs and things that we offer to customize to the injured worker. And when you do that, you do see the cost reduction.

And then some simple things around customer service: I think if we all did a better job around just how we handled the injured worker from a servicing perspective, we can mitigate some of those litigious-type components that would normally maybe not happen or do happen too frequently because of how they're treated.

Getting millennials or that early career group interested in our industry is definitely a challenge. Getting clients to understand the overarching issue, that there are a lot of baby boomers retiring, and we need to bring that next generation into the fold.



# Cyber Security 2016

## BUSINESS INSURANCE®

Risk managers and commercial insurance buyers are purchasing more cyber insurance to cover this rapidly growing risk. They also are making more claims on that coverage, according to a survey by *Business Insurance*.



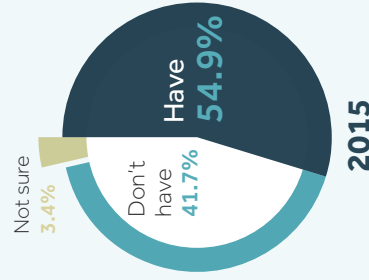
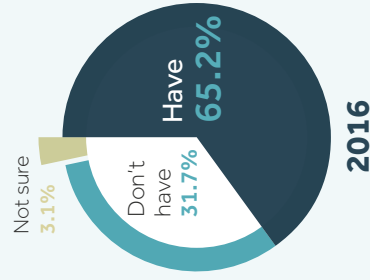
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# Cyber Security 2016

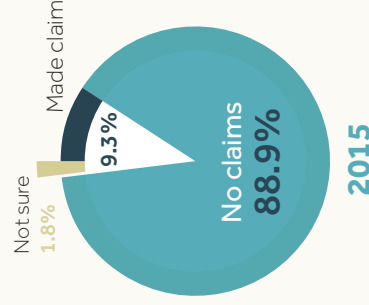
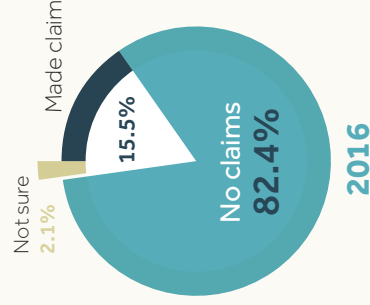
In a May online survey of 239 risk managers or commercial insurance buyers, roughly half said they have increased investment in cyber security measures, yet most do not know which cyber security framework their organization uses. The same survey of 528 nonbuyers—including 265 insurance brokers, 144 insurers and 119 service providers—found they also expect buyers to increase their cyber security investments, but nonbuyers estimate that less than half of their clients have implemented various measures to prevent and respond to cyber incidents. This latest *Business Insurance* survey follows up on a similar survey last year.

## CYBER INSURANCE — UPTAKE + CLAIMS

### CYBER COVERAGE



### CYBER CLAIMS



## PROACTIVE APPROACH

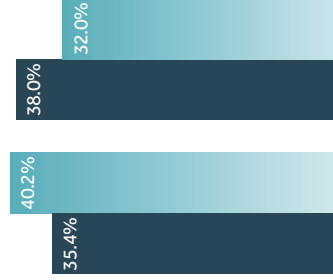
Although being vigilant is still important, companies are spending more on proactive steps to manage their cyber exposures.

2016 rank	2015 rank	Risk management strategies	2016
1	3	Employee security awareness training program	56.3%
2	1	Active monitoring and analysis of information security	53.1%
3	5	<b>Cyber insurance</b>	<b>43.2%</b>
4	2	Data loss prevention tools	42.7%
5	7	Vulnerability scanning tools	42.7%
6	4	Tools to discover unauthorized access	42.2%
7	6	Malicious code detection tools	41.7%
8	8	Unauthorized use or access monitoring tools	41.1%
9	9	Threat assessments	38.5%
10	11	Incident management response process	27.6%
11	14	Patch management tools	26.6%
12	10	Mobile malware detection	24.0%
13	13	Privileged user access	20.3%
14	15	Role-based access controls	18.8%
15	12	Encryption of smartphones	14.6%
16	16	Account provisioning	6.3%
17	17	Other	4.7%
18	18	None of the above	3.1%

## BUYERS' PERSPECTIVE

Confidence by risk managers and commercial insurance buyers in their organization's ability to manage cyber risks has deteriorated somewhat in the past year, but they remain confident about their organization's current management of cyber risks.

### CONFIDENCE LEVELS 2016 vs 2015



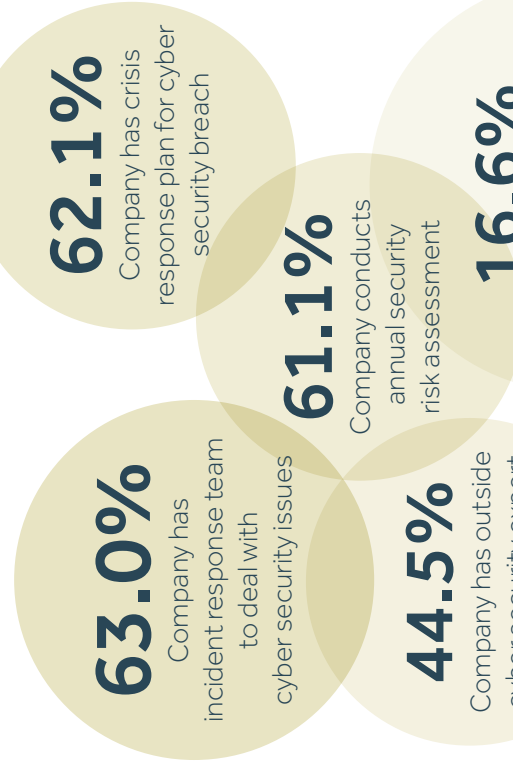
## RECENT ADDITION

More than half of companies first purchased cyber coverage in the past three years. More than half of insurers, brokers and related service providers began offering cyber products to clients in the past three years.

	BUYERS	NONBUYERS
2016	12.0%	6.4%
2015	22.0%	16.5%
2014	22.0%	20.2%
2013	11.0%	7.8%
2012	10.0%	4.6%
2011	7.0%	2.3%
2010	6.0%	4.6%
Before 2010	9.0%	16.1%
Not sure	1.0%	21.6%

## INTERNAL CONTROLS

The vast majority of companies have established a cyber incident response team and crisis response plan and conduct an annual risk assessment.





## GREATEST CONCERNS

Two of the top three threats risk managers and buyers see to their company's technology and information security systems are cyber exposures from outsiders and insiders. Operational risks are third.



**57.8%** Employees manipulating data or system undetected

**41.1%** Operational risks or natural disasters

**28.6%** Terrorists penetrating system to destroy information

**20.3%** Employees or other authorized users stealing trade secrets

**14.6%** Other countries penetrating U.S. systems to commit espionage

**12.5%** Competitors penetrating systems to commit corporate espionage

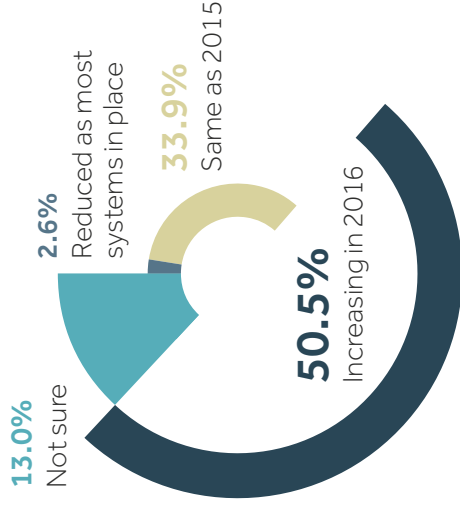
**8.9%** Other

**0.5%** None of the above

## SECURITY SYSTEM INVESTMENT

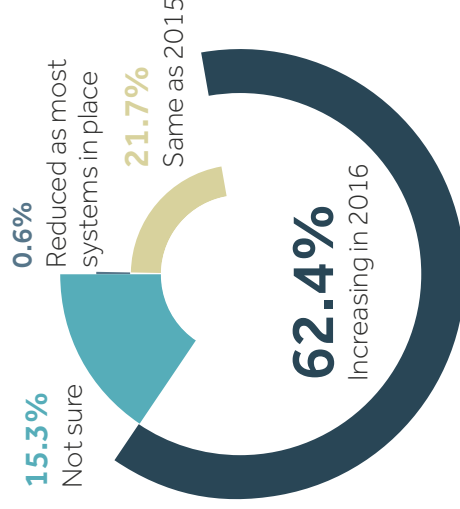
### BUYERS

Half of risk managers and insurance buyers expect greater investment in company security system hardware and software, consulting, monitoring and insurance this year.



### NONBUYERS

Three of five nonbuyers expect their clients to increase their investment in company cyber security systems this year.



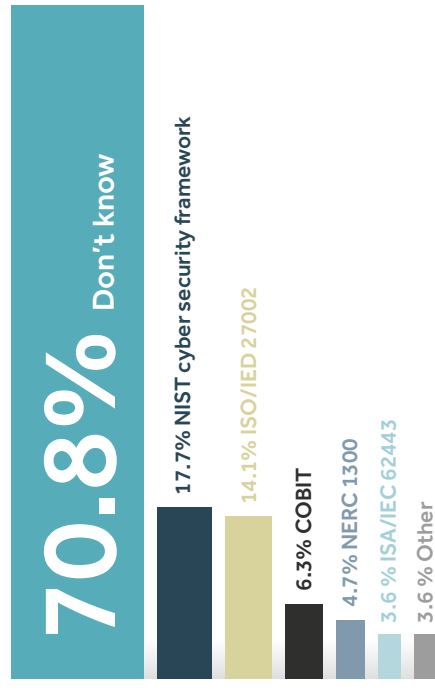
cyber security expert help identify risks

**8.1%** None of the above

Company prepares cyber risk disclosures in response to guidance from the U.S. Securities and Exchange Commission

## FRAMEWORKS USED

The vast majority of risk managers and cyber insurance buyers do not know what cyber security framework their company uses.



## SECURITY SYSTEM SPENDING

### BUYERS

Risk managers and insurance buyers expect average spending of **\$1.9 MILLION** this year on improving company security systems.

### NONBUYERS

Nonbuyers expect clients to spend an average of **\$1.4 MILLION** this year on improving company security systems, which includes hardware, software, consulting, monitoring and insurance.



# ANYONE CONCERNED ABOUT THE THREAT OF CYBER CRIME, LET'S TALK.

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## CYBER LIABILITY

# Cyber insurers expand coverage, cut prices

BY JUDY GREENWALD

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

**T**he cyber insurance business is robust, with healthy competition, broader coverages and more capacity, experts say. Furthermore, with no major recent data breaches, rates are going down in at least some cases by as much as 5% after a period of hardening rates resulting from well-publicized data breaches. There is generally around \$400 million in capacity available, they say, although larger towers are being created.

Experts also note that new entrants in the market, which include Lloyd's of London syndicates, domestic and Bermuda insurers, and managing general agencies, often enter the market at the excess layers, which is relatively more competitive than the primary layers.

Business interruption coverage, while presenting some challenging underwriting issues, is readily available, while there

is more interest in offering coverage for cyber-related property and casualty losses, or the internet of things (see story next page).

The segment continues to attract new buyers, with little if any naïve capacity, most experts say. In general, the coverage remains heavily manuscripted and is

See **RATES** next page

### INSIDE

#### ▶ DATA HOARDERS BEWARE

Firms can limit their cyber exposures by only collecting the personal information they really need. **PAGE 22**

#### ▶ REGULATORS SCRUTINIZE INSURERS

The NAIC prepares to impose tighter security requirements on the insurance sector. **PAGE 24**

#### ▶ EVERYTHING'S A CYBER RISK

As the internet of things expands, insurance policies of all kinds will need to cover cyber risks. **PAGE 26**

## BUSINESS INTERRUPTION EXPOSURES COVERED UNDER MANY CYBER POLICIES

**B**usiness interruption coverage for cyber-related incidents is readily available as part of a cyber insurance policy, experts say.

This could include basic business interruption coverage, as well as contingent business interruption coverage, which covers business interruption caused by a third party such as a cloud vendor.

Also available is systems failure coverage, when there is a system failure that is not necessarily attributable to a breach, such as an electrical failure.

Cyber-related business interruption coverage is “really the No. 1 concern of our clients across all industries,” said Stephanie Snyder, Chicago-based senior vice president with Aon Professional Risk Solutions.

Christian Hoffman, national practice leader of

Aon Risk Solutions’ financial services group in New York, said that where previously business interruption had been offered on a sublimit basis, policyholders can now obtain full policy limits and less strict waiting periods before the coverage is effective, while contingent coverage is no longer limited just to technology vendors.

Experts say one potential problem for insurers with respect to contingent business interruption coverage is the danger of an accumulation of risk.

“One significant cloud service provider or other service provider having a loss could trigger loss across a significant portion of the book of business,” said Nicholas Economidis, Philadelphia-based underwriter of professional liability and specialty lines at Beazley P.L.C.

Judy Greenwald

## RATES

Continued from previous page

expected to remain so for the foreseeable future.

The market continues to be robust, with a “tremendous amount” of investment dollars going to cyber-related insurance as well as cyber analytics, cyber data and cyber security, said Shawn Ram, San Francisco-based executive managing director, Western regional manager and national technology practice leader at Crystal & Company.

“After a couple of years of some volatility in terms of rates and capacity, there is now a lot of stability,” said Christian Hoffman, national practice leader of Aon Risk Solutions’ financial services group in New York, although pricing is “fact-specific,” he said.

“We’re seeing decreases in some areas, but they are decreases against a hardening we saw a couple of years ago,” which was driven by data breaches, said Robert Parisi, managing director and national cyber product leader at Marsh L.L.C. in New York. “It still hasn’t softened back to what it was five, six years ago,” but clients are getting broader coverage, he said.

“There’s a lot of pressure on smaller businesses and medium-sized business for sure,” said Adam Cottini, managing director of insurance and risk management in North America at Arthur J. Gallagher & Co. in New York. “On the larger-sized business,

there is some rate pressure, but not for every class of business.”

Capacity is readily available, particularly for large buyers, said Tim Francis, Hartford, Connecticut-based president and enterprise cyber lead at Travelers Cos. Inc., adding that “\$50 million is becoming \$100 million, and \$100 million is becoming \$200 million.”

Typically, insurers are willing to deploy no more than \$10 million in capacity at a time, said Emily Lowe, Boston-based vice president, FINEX North America for Willis Towers Watson P.L.C. A total of \$350 million to \$400 million in capacity is readily available, said Ms. Lowe, who added that she has seen \$500 million programs as well.

There is little naïve capacity, say most experts. Insurers who want to deploy capacity, but do not have the talent or aptitude to do so, are partnering with insurers that are well-versed and understand the business, Mr. Cottini said.

“No one is coming in and aggressively writing primary for the average market,” said Dena Cusick, Charlotte, North Carolina-based national technology, privacy and network risk practice leader at Wells Fargo Insurance Services USA Inc.’s professional risk practice.

However, Ben Beeson, Washington-based cyber risk practice leader at Lockton Cos. L.L.C., said the large amount of capital that has come into the market this year “may raise an eyebrow to some people because there’s still a lack of actuarial data and still a big prob-

lem to be resolved” with respect to risk aggregation and “how best to tackle that.”

“Some might argue that we’re in a bit of a bubble again” and that a major loss will lead to a correction, Mr. Beeson said.

Meanwhile, this year is the first “that the market really started to understand that our clients are facing cyber risk issues broader than data,” including the internet of things, which gives rise to broader consequences, including bodily injury and property damage, said Mr. Beeson. For instance, a cyber attack using internet-connected devices led to dozens of major websites becoming unavailable last month.

Experts say they expect the coverage to remain largely manuscripted, at least for the near term.

Dave Molitano, Boston-based senior vice president and a cyber liability underwriter for OneBeacon Insurance Group Ltd., said he can foresee terms and conditions becoming more standardized, but “everyone using the same form is a long way off.”

“There’s still a lot of manuscripting. I don’t think that’s going to go away,” Mr. Parisi said.

But enhancements first negotiated for large risks are now filtering down and becoming standard coverages in the middle market and Main Street types of risk, he said.

There are also now many first-time buyers from a growing number of different industries, and it is less common to hear of household names that do not have the coverage, said Travelers’ Mr. Francis.

## Digital clutter exposes firms to security risks

BY LOUISE ESOLA  
leesola@businessinsurance.com

**I**f you don’t have it, you can’t lose it.

That’s the word from cyber security experts who say businesses and organizations need to start looking at what information they collect and store, and rethink whether they need the information to begin with.

“If you are collecting information that is not part of your business purpose, you really need to ask yourself, ‘Why am I collecting this and why am I keeping this?’” said Samantha Levine, Denver-based assistant vice president with Aon Risk Solutions’ financial services group.

She gave the example of a mom-and-pop business collecting names and addresses, which fall under personally identifiable information — and thus can fall subject to data breach laws.

“A lot of companies have gotten into the problem where they asked for stuff they didn’t need, didn’t want, or shouldn’t have had,” said Robert Parisi, New York-based cyber product leader for Marsh L.L.C., adding that collecting unnecessary data happens “more often than you would hope.”

Experts say that some industries can’t get around collect-



ing personal data — banks, for instance. But other entities can rethink the way they do business to avoid spending the extra money it will cost to protect the data and the money it will cost in the event of a data breach, said David Leigh, Manassas, Virginia-based president of the cyber risk firm Rofori Corp.

Mr. Leigh said he likes to give the example of his dentist’s office, which has access to credit card information and addresses — information the office needs to do business — and has started taking photographs of patients.

“They do this so everybody who works there can know who I am,” he said. “They like to say, ‘Hi David’ when I walk in ... in the interest of being friendly. I think they are intending to mean well, but they don’t have an understanding of the consequences and the risk.”

He said he is working on talking to the person running the office, and that this is just one small office doing business as usual in a cyber security climate that has gotten more dangerous.

“I think companies should be moving away from (collecting data) if they can,” he said. “It is in your interest to collect as little information as possible.”

While names and addresses are targets of identity theft, the golden ticket is the Social Security number, experts say.

“If a company is asking for a Social Security number, that’s a big red flag,” said Raj Chaudhary, Chicago-based partner and global leader of cyber security solutions with accounting and consulting firm Crowe Horwath L.L.P.

He said certain industries are better off than others in grappling with data collection and storage — weeding out what’s needed and what isn’t.

Most nationwide retailers, for example, have stopped offering paper credit card applications to customers and instead rely on electronic keypads when applying for store credit, thus eliminating the need for a clerk to see the person’s information.

See **COLLECTION** page 24



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# Insurer security practices eyed

BY GLORIA GONZALEZ

ggonzalez@businessinsurance.com

U.S. regulators are trying to mandate that insurers take more aggressive action to protect consumer data from cyber attacks, but experts question whether requirements are too onerous and fail to resolve the problem of inconsistent state laws and regulations.

The cyber security task force of the National Association of Insurance Commissioners in August released an updated draft Insurance Data Security Model Law that will likely be on the NAIC's agenda for consideration and possible approval at its fall national meeting in Miami in December.

The model law would establish standards for data security and investigation and notification of a data breach and would apply to licensees, which include not just insurers, but agents, brokers and other

parties. It would require these organizations to create a comprehensive written information security program that details the administrative, technical and physical safeguards for protecting personal information. It would also require a licensee's board of directors to approve and oversee implementation of the program and compliance with the law.

NAIC's intention in developing this model law is to establish more uniformity across state laws and regulations, but that objective is somewhat undermined by the fact that the draft specifically states that it does not supersede existing state laws or regulations, experts say.

Currently, 47 states and the District of Columbia have varying requirements for breach notification, so the Property Casualty Insurers Association of America is supportive of the concept of a model law that achieves uniformity. But this draft merely layers requirements on top

and does not pre-empt them, said Robert Woody, PCT's senior counsel for policy in Washington.

"If you're not going to achieve uniformity, then our view is there's no point in doing it at all because you already have state laws on the books that address this," he said. "That's a major point of contention."

The current draft has a very broad definition of personal information requiring protection and removed a "substantial harm" trigger for breach notification, meaning there's no requirement to focus on breaches that would lead to identify theft or fraud issues, experts say.

The revised draft also reduces the time licensees have to notify regulators of a data breach from five business days to three, which may not be enough time for companies still trying to figure out the answers to basic questions such as how the breach occurred — answers regulators will want — said Theodore Augustinos, a Hartford, Connecticut-based partner with Locke Lord L.L.P.

"It is an admirable and much-needed effort, but it does have some flaws, and I think the industry has been very vigilant and helpful in pointing out some of those flaws, and I would hope that the NAIC responds to those concerns," he said.

The NAIC's model law isn't as stringent as New York state's recently proposed regulations, experts say.

In September, the New York State Department of Financial Services released for public comment a draft of its Cybersecurity Requirements for Financial Services Companies regulation.

The stringency of New York's regulations has raised concerns because insurers, if they cannot segregate New York customer data from common platforms, will essentially be forced to comply with the most onerous regulations and apply that across the United States, barring significantly higher costs in doing so, said Jeff Taft, a Washington-based partner in Mayer Brown L.L.P.'s financial services regulatory and enforcement and cyber security and data privacy practices.

The New York draft regulation — set to take effect Jan. 1, 2017 — would require that a chief information security officer be appointed and report at least biannually on cyber security issues to the board of directors or its equivalent, but a February 2015 report by the department showed that only 14% of insurer CEOs receive monthly briefings on information security.

"That is a significant elevation of the attention that boards need to focus on this issue," said Christopher Boehning, a New York-based partner with Paul, Weiss, Rifkind, Wharton & Garrison L.L.P.

But health systems, Mr. Chaudhary said, are "eight to 10 ten years behind protecting information compared to banks," which are heavily regulated.

"There hasn't been much policing and no enforcement action" for health systems, he said.

He and others, including Ms. Levine of Aon, believe a national identification number is something the medical community ought to consider, given the prevalence and continuing adoption of electronic health records.

"Is that a good end goal? Yes," said Mrs. Levine, adding that the medical community is likely years away from adopting a system that uses a number other than a Social Security number to identify a patient.

Mr. Chaudhary's advice is to collect fewer numbers; the last four or five digits of a patient's Social Security number, for example. He said the stakes are high for hospitals who don't better protect the data.

Health systems are "eight to 10 ten years behind protecting information compared to banks," which are heavily regulated. "There hasn't been much policing and no enforcement action" for health systems.

Raj Chaudhary, Crowe Horwath L.L.P.

\$483.2M  
\$933M

The stand-alone cyber security insurance market totaled about \$483.2 million, while the NAIC estimated that \$933 million in premium was written for the coverage as part of package policies.

## CYBER MARKET PREMIUM HITS \$1.4 BILLION AND COUNTING

The National Association of Insurance Commissioners recently published a major report to try to quantify the size of the cyber insurance market, but it is missing a key piece of the puzzle.

In 2015, the market for cyber coverage was more than \$1.4 billion in direct written premium, according to the report on the Cybersecurity Insurance Coverage Supplement published in August.

The stand-alone cyber security insurance market totaled about \$483.2 million, while the NAIC estimated that \$933 million in premium was written for the coverage as part of package policies.

However, the report is missing information on the amount of premium written by alien surplus lines

insurers — those insurers domiciled in other countries who are unlicensed in the 56 NAIC member jurisdictions and thus not required to file the supplement as part of their annual statements.

NAIC staff said it believes that these insurers may be responsible for significant premium writings, particularly for stand-alone cyber security insurance policies, and has recommended that the surplus lines task force consider requesting this information be provided as a condition for continued listing on the Quarterly Listing of Alien Insurers.

The request is expected to be on the agenda for consideration and possible approval at NAIC's December meeting in Miami.

Gloria Gonzalez

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# Connected coverage needed for internet of things

BY JUDY GREENWALD

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There is increasing interest in coverage for bodily injury and property damage caused by cyber-related risk, which is likely to evolve into blended policies that combine elements of both cyber and more traditional property/casualty coverages.

The term “internet of things” is generally used when referring to everyday consumer items that can use networks to send and receive data, and is often referred to from a products liability perspective. This cyber security issue also more widely applies to the danger of, for instance, breaches of the electric grid.

A recent example was an October cyber attack, in which internet-connected devices were used to render dozens of major websites unavailable. The Department of Homeland Security said it is aware of one type of malware potentially used in the incident, called Mirai, which compromises internet of things devices such as surveillance cameras and entertainment systems.

The department said in a statement last month that its National Cybersecurity and Communications Integration center is working with law enforcement, the private sector and the research community to develop ways to mitigate risks from Mirai and other malware.

Cyber security is “a rising concern as more and more products move to an online environment,” said Gamelah Palagonia, senior vice president for the cyber and errors and omissions team for Willis Towers Watson P.L.C. in New York. “There needs to be a blending of the policy forms for the kind of losses than can be expected in the future.”

In July, American International Group Inc. introduced CyberEdge Plus, a stand-alone policy designed to provide primary insurance protection for a broad range of cyber risks including property damage, bodily injury, business interruption and product liability.

Experts predict an increasing emphasis on this issue. “The good news is, the market is starting to appreciate these areas of risk and is starting to step up to address them,” including with difference-in-conditions coverage, said Ben Beeson, Washington-based cyber risk practice leader at Lockton Cos. L.L.C.

Insurers are also adding insuring agreements to cyber

insurance policies that will cover property damage and bodily injury, he said.

“We need to come up with a creative hybrid” that provides coverage for property damage and bodily injury, said Dena Cusick, Charlotte, North Carolina-based national technology, privacy and network risk practice adviser at Wells Fargo Insurance Services USA Inc.’s professional risk practice. “It’s still a work in progress.”

“We need to build cyber-specific solutions where we’re combining traditional cyber coverages with traditional property/casualty coverage, where we’re coming up with a single perils solution” where the peril is a cyber attack, said Zach Scheublein, New York-based vice president with Aon Risk Solutions’ financial services group.

It is going to “take little bit of time to see the evolution of this particular risk transfer solution,” said Mr. Scheublein. Traditional property underwriters and traditional cyber underwriters all have their own underwriting appetites “and it’s a matter of getting those two silos cooperating and coming up with better solutions in the marketplace,” he said.

Experts say policyholders and their brokers must ensure there is no gap between their cyber and property or general liability coverages that leaves businesses without coverage.

If there is a gap, it becomes a question of convincing the general liability underwriter to modify the policy’s language so there is coverage, or looking at the cyber policy to see if coverage can be provided, said Adam Cottini, managing director of insurance and risk management in North America at Arthur J. Gallagher & Co. in New York. The situation is fluid “and there’s no consistency at the moment,” he said.

However, Steve Bridges, senior vice president of JLT Specialty Insurance Services Inc. in Chicago, said the more common problem is that the risk is covered twice, with slightly different terms such as cyber having a shorter waiting period for coverage to kick in and a different retention than the property policy. The challenge is selecting the policy that works best for a particular situation, Mr. Bridges said.

Meanwhile, Ms. Palagonia said not enough thought is being given to the threat a cyber event could pose to the electric grid. “Frankly, it’s very scary,” she said.



## AUTOMATION DRIVES NEW CYBER RISKS

Increasing attention is being paid to the future issue of insuring driverless vehicles.

Observers point to the U.S. Department of Transportation’s Vehicle Performance Guidance for Automated Vehicles, issued in September, which outlines best practices for the safe design, development and testing of automated vehicles.

Its 15-point safety assessment cites approaches to guarding against vehicle hacking risks, along with outlining privacy considerations and protections for users.

“Most insurers are having those conversations” about insuring driverless cars, said Tim Francis, Hartford, Connecticut-based president and enterprise cyber lead at Travelers Cos. Inc.

Although the scenario could still be decades away, experts say that liability for accidents may largely shift from drivers to manufacturers and their suppliers once driverless cars come into wide use.

Mike Stankard, Detroit-based automotive practice leader for Aon Risk Solutions, said the potential risks created by driverless cars include:

- Direct hacking of the vehicle for someone intending to take over its control

- Hacking information being sent to the vehicle, such as in situations where four cars are at the different corners of an intersection, where there must be communication between the autonomous vehicles

- Hacking into vehicle updates being sent to the vehicle when the car may be sitting in the driver’s garage

- Hacking into private and personal information, including credit card data

“The good news is, the market is starting to appreciate these areas of risk and is starting to step up to address them.”

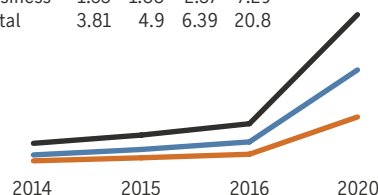
Ben Beeson,  
Lockton Cos. L.L.C.

## Internet of things

### UNITS INSTALLED BY CATEGORY

Estimated in billions of units

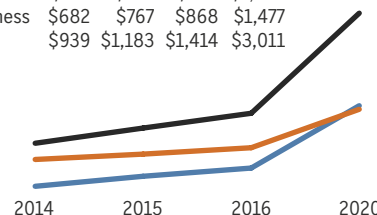
Category	2014	2015	2016	2020
Consumer	2.28	3.02	4.02	13.51
Business	1.53	1.88	2.37	7.29
Total	3.81	4.9	6.39	20.8



### SPENDING BY CATEGORY

Estimated in billions of dollars

Category	2014	2015	2016	2020
Consumer	\$257	\$416	\$546	\$1,534
Business	\$682	\$767	\$868	\$1,477
Total	\$939	\$1,183	\$1,414	\$3,011



Source: Gartner (November 2015)

Judy Greenwald

# Who is the A+ rated insurer with a growing appetite that writes more than 1,001 different classes of business?


Alternative Risk  
Transfer  
Aviation  
Cargo  
Energy  
Engineering &  
Construction  
Entertainment  
Farm & Ranch  
Financial Lines  
Highly Protected Risk  
Hull & Marine  
Liabilities  
International Solutions  
Liability  
Marine  
Middle Market  
Package & Small  
Business  
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A woman walks toward a hearing room where the House Oversight Committee was taking testimony on safe drinking water in Flint, Michigan, in Washington.

REUTERS



FLINT  
LIVES  
MATTER

## FLINT LEARNS TOUGH LESSON IN RISK MANAGEMENT

City faces fallout from  
public health crisis  
over water supply

BY GLORIA GONZALEZ

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

**T**he drinking water crisis in Flint, Michigan, shines a bright light on the risks that public-sector entities take when they self-insure their exposures and make decisions based on their limited budgets.

And the hard-won risk management lessons learned by the local and state authorities in Michigan should serve as warning to numerous other municipalities in the United States.

In April 2014, the city of Flint switched from purchasing treated water from Detroit Water and Sewerage to sourcing and treating its water supply from the Flint River, according to an October report by the U.S. Environmental Protection Agency.

Flint's treatment of the new drinking water source did not include a process for reducing the corrosion of lead-containing pipes and connections, which allowed lead to leach into the drinking water. After the switch, some of the nearly 100,000 resident customers of the city's community water system reported water color and odor problems to the EPA, with the public health risk

escalating in February 2015 as indications of lead were identified in the drinking water supply.

Young children who drank the water supplied by the Flint River, without appropriate corrosion control measures, had blood-lead levels that were significantly higher than when the Detroit water system was the supply source, according to the results of an investigation by the Centers for Disease Control and Prevention released in June (see box, page 31).

“Fundamentally what occurred in Flint was there was a change, and the health implications of that change were not embedded into any of the planning processes,” said Jamie Bartram, director of the Water Institute at the Gillings School of Global Public Health at the University of North Carolina at Chapel Hill.

“In principle, I would assume that if there’s going to be a major change to a major public service, there ought to be some moment to reflect on whether that change is going to be beneficial, neutral or detrimental, and that did not occur. And the fact it didn’t occur worries me because it seems to be a gap in the organizational setup,” he said.

#### Who’s at fault?

The Flint water crisis has led to state and federal emergency declarations; criminal indictments against officials for misconduct in office, tampering with evidence and treatment and monitoring violations of the Michigan Safe Drinking Water Act; and a flood of litigation against the city, the state of Michigan, the U.S. EPA and engineering companies that advised government officials about the switch.

“They’re trying to get their hands in any pots they can because it’s not typically easy to get a lot of money recouped through municipalities or state entities,” said Justin Maack, an account executive in the public entity and education practice at Assurance Agency Ltd. based in Schaumburg, Illinois.

“They definitely want to pull the state in because the state has a lot more funds than just the smaller local municipalities. Private companies might have some more assets that you can get your hands on,” he said.

The city has been named in lawsuits because it was responsible for operating the Flint water plant, but the state also has responsibility because the governor appointed the emergency managers who decided to switch the water supply without exercising due diligence, said Trachelle Young, of Trachelle C. Young & Associates P.L.L.C. in Flint, who is one of the lawyers representing the more than 6,600 plaintiffs to date.

“They didn’t do their homework and they made decisions based on financial outcomes,” she said. “We believe the city has some culpability, the state has some culpability, and the EPA has some culpability.”

A March report by the Flint water advisory task force placed primary responsibility for what happened with the state government because of the role the state-appointed emergency managers played in making the switch to the Flint River and the failures of the Michigan Department of Environmental Quality.

Although Michigan Gov. Rick Snyder took full responsibility for the water crisis during his State of the State address in

January, Michigan has invoked the sovereign immunity defense, meaning that it would be immune from civil litigation under most circumstances.

However, there is a gross negligence exception that could apply in the Flint situation because the emergency managers allegedly failed to do due diligence in ordering the switch, and the criminal indictments allege that state officials may have intentionally misled the public and altered or manipulated water quality test-

**“They didn’t do their homework and they made decisions based on financial outcomes. We believe the city has some culpability, the state has some culpability, and the EPA has some culpability.”**

Trachelle Young,  
Trachelle C. Young & Associates P.L.L.C.

ing to demonstrate compliance with the Safe Drinking Water Act, according to legal experts.

“There was ill intent but also, we believe, outright fraud,” Ms. Young said.

In late October, a Michigan state court judge refused to dismiss parts of a lawsuit filed by Flint residents against Gov. Snyder and several state agencies that alleged they made arbitrary decisions to switch the water supply source despite knowledge of the danger and intentionally concealed

data and made false statements to try to downplay the health dangers posed by using Flint’s tap water, according to court documents.

“Such conduct on the part of the state actors, and especially the allegedly intentional poisoning of the water users of Flint, if true, may be fairly characterized as being so outrageous as to be ‘truly conscience shocking,’” Court of Claims Judge Mark Boonstra said in his ruling.

#### Insurance or no insurance?

Both the city of Flint and the state of Michigan are generally self-insured, and a spokesman for the state said via email he was unaware of any insurance policies maintained by the state or whether the state had previously considered buying insurance that would have covered costs related to the Flint water crisis.

Even if the city and state had secured insurance coverage, it is questionable whether standard general liability or property policies would cover bodily injury or property claims arising out of the Flint water contamination situation, experts say.

“Those exposures are real for public entities — and specifically municipalities — and that particular line of coverage is important and almost always excluded under a normal general liability policy,” said Ryan Isaacs, Grand Rapids, Michigan-based area president for Arthur J. Gallagher & Co.

However, there could be exceptions based on the specific wording of the policy, said Jared Zola, a New York-based partner in the policyholder-only insurance cover-

See **FLINT** next page



REUTERS

Although Michigan Gov. Rick Snyder took full responsibility for the water crisis during his State of the State address in January, Michigan has invoked the sovereign immunity defense, meaning that it would be immune from civil litigation under most circumstances.

# Crisis highlights inadequate process

The water crisis in Flint, Michigan, would have been “completely avoidable” if those in charge of making the decision to switch the supply source had listened to their experts rather than making the call based on money, experts say.

In Flint’s case, state-appointed emergency managers ordered and oversaw a switch in the city’s drinking water supply and allegedly ignored a warning from a plant engineer that the city was unprepared for the change, according to government emails being used in criminal prosecutions against some of the officials.

“I think the main thing is to have qualified people in place to make decisions about how you match the water source with the system that you have to deliver a safe and reliable supply,” said Richard Glick, a partner with Davis Wright Tremaine L.L.P. in Portland, Oregon.

“I think that’s where the failure was in Flint. You had people that were not qualified making decisions on switching water supplies without making adjustments, and you ended up with that disaster — a completely avoidable disaster in my view.”

“Risk managers have to figure out how to believe the folks whose job it is to do the work to protect public health,” said Jeffrey Haynes, Troy, Michigan-based shareholder with Beier Howlett P.C.

The Flint situation demonstrates a perfect storm when it comes to a risk management crisis because it features several “outrage factors” such as the catastrophic effect the switch had on the drinking water supply, the impact on children’s health from drinking lead-contaminated water and the lack of control residents had because they could do nothing more than switch to drinking bottled

water, said Judy Selby, managing director at consultant BDO USA L.L.P. in Stamford, Connecticut.

Ideally, organizations would have an enterprisewide or holistic approach to dealing with risks that includes proactively identifying and planning for risks when possible, but it’s unclear whether an exposure such as the one in Flint could have been proactively identified by a risk manager specifically, she said.

“That makes it really, really hard on the risk manager when these types of things just emerge, something that people have never seen before,” Ms. Selby said. “For risks that you can kind of anticipate and risks that you can’t anticipate, having good processes in place to deal with risks after the fact is so important, especially a communications plan.”

Gloria Gonzalez

## FLINT

Continued from previous page

age practice at Blank Rome L.L.P.

If, for example, the acidity of the water caused corrosion of the pipes and they needed to be replaced, the ability to invoke the pollution exclusion would depend on the policy language.

“The insurance is fascinating because every commercial property and commercial general liability insurance policy has some version of a pollution exclusion in it,” he said.

“It seems to be everyone’s first reaction to assume that a pollution exclusion would bar coverage under a traditional property or general liability policy. Policyholders would be well-served to take a really close look at that before they reach that conclusion,” he said.

In addition, bodily injury coverage could have come into play given the elevated lead levels in the blood.

“I think it would be an uphill battle to find bodily injury coverage from lead exposure in a traditional CGL policy,” Mr. Zola said. “But pollution legal liability policies certainly do have the option of providing that coverage.”

The Flint crisis has prompted conversations with public entity risk managers and their brokers about insurance options that could exist to address such a risk, namely policies that cover or include coverage for contaminated drinking water, Mr. Isaacs said.

“Pollution or contamination is a real exposure for public entities, especially for those that are supplying drinking water to the community,” he said. “There are a number of different ways contaminations can occur. These entities need to be regu-



REUTERS

In April 2014, the city of Flint, Michigan, switched from purchasing treated water from Detroit Water and Sewerage to sourcing and treating its water supply from the Flint River.

larly testing the infrastructure, the quality level of the drinking water, and evaluating the overall pollution and contamination risks that could be present. The last part of that is are they willing to accept that risk or do they think there is value in transferring that risk to an insurer?”

This is particularly important with public entities that have limited resources

and likely do not set aside money in their general funds for unbudgeted litigation expenses, according to Arthur J. Gallagher’s Mr. Isaacs.

“We have seen from Flint that costs can be substantial,” he said. “Pollution or contamination itself is typically not a frequency issue. It is a severity issue. Typically, when these claims do occur, they tend to

be large.”

It is unclear what the ultimate costs of the Flint water crisis will be, but Gov. Snyder asked for and received \$28 million from the state legislature earlier this year — in addition to the \$9 million in supplemental aid last October — partly to pay for Flint to return to Detroit Water and Sewerage. He stressed that the January appeal would not

be the final budget request for Flint and followed that up in February with a \$195 million request for the fiscal year 2017 budget to address the water crisis.

### Beyond Flint

The federal Safe Drinking Water Act went into effect in 1974 to protect public drinking water supplies in the United States by empowering the EPA to set standards for drinking water quality and partner with states to implement technical and financial programs to ensure safe drinking water supplies.

The law has effectively decreased the number of instances of compromised drinking water supplies, experts say.

“The U.S. overall has done a good job of reducing detected outbreaks,” the Gillings School’s Mr. Bartram said.

However, the U.S. regulatory approach differs from that in other countries, where regulators are increasingly emphasizing preventing contamination over detection and response to contamination, Mr. Bartram said.

“In the U.S., the regulatory approach that has been taken has focused on identifying specific contaminants and monitoring them,” Mr. Bartram said. “It’s quite self-evident that that’s not an optimal system. Contamination has to occur before you can detect it, so you expose people to bad things before you can do anything remedial.”

The U.S. regulatory system encourages suppliers to conduct the minimum required testing, he said.

“I find the U.S. one of the most difficult countries to do water and health work in because many suppliers are frightened of finding out they have a problem, and that impedes inquisitiveness and exploration,” Mr. Bartram said.

“There is very limited incentive to go looking for problems,” he said. “You could contrast that with the duty-of-care risk management approach, which would require that if you have reasonable suspicion, you really need to follow up.”

And the aging water infrastructure in the United States means that lead contamination and other potential issues could sneak up on communities.

“It would not surprise me if there were other communities that had lead in drinking water problems,” said Richard Glick, a partner with Davis Wright Tremaine L.L.P. in Portland, Oregon.

A March estimate by Chicago-based Fitch Ratings Inc. pegged the cost of replacing all lead service lines in the entire U.S. water sector in the range of a few billion dollars to \$50 billion.

“It’s a very serious public health issue, not only for Flint,” Mr. Isaacs said. “I believe it’s an infrastructure issue for much of the United States. I think the problem and the issue that was presented in Flint is very real, and I think it’s one that a lot of other jurisdictions and geographies can learn from and hopefully be proactive about.”



REUTERS

Flint, Michigan, is struggling with the effects of lead-poisoned drinking water. Above, a fountain at the city’s Northwestern High School. Below, Flint resident Mari Copeny, 8, waits to enter a hearing room where Michigan Gov. Rick Snyder and U.S. Environmental Protection Agency Administrator Gina McCarthy testified before the House Oversight Committee about the city’s drinking water.



## POLLUTED WATER UPPED LEAD LEVELS

An investigation by the U.S. Centers for Disease Control and Prevention showed that children in the Flint, Michigan, area had significantly higher lead levels in their blood while the community’s water supply source was switched to the polluted Flint River.

The study, which was released in June, analyzed 9,422 blood-lead tests received by 7,306 children ages 6 and younger and showed that their lead levels stabilized once the water supply source was switched back to Detroit Water and Sewerage.

Lead exposure is a major risk for children given their smaller body volumes and the fact that lead cannot be removed from the nervous system once deposited, studies show.

In addition, a deadly outbreak of Legionnaires’ disease in Genesee County is suspected by independent experts of being partially linked to the switch to the Flint River water supply. In 2014 and 2015, the county experienced 12 deaths and 91 total cases of Legionnaires’ disease, with 55% of those individuals exposed at a Flint hospital served by the municipal water system, according to the Michigan Department of Health and Human Services.

Gloria Gonzalez

COMMENTARY

## Internet of things pushes insurers

**L**ove it or hate it, the biggest shopping season of the year is about to start, and it raises some not-so-tangential insurance concerns.

As many shoppers know, Cyber Monday is at least as, if not more, popular than Black Friday nowadays and will likely grow in importance as the day to snag deals in the runup to the holidays.

Rather than face the stampede of rival bargain-hunters in physical stores the day after Thanksgiving, many people are content to wait out the weekend and click or tap their way through online stores in the comfort of their own homes or offices three days later.



**Gavin Souter**  
EDITOR

And the goods they are piling up in their virtual shopping baskets are increasingly likely to be as connected as the computers and smartphones they are using to rack up their electronic credit card bills. Consumer goods ranging from Barbie dolls to refrigerators can connect to the internet to make life more entertaining and more convenient.

Far beyond the home, industrial control systems and electric grids are even more dependent on internet connections, which of course makes them vulnerable to attack.

The pervasive — or maybe invasive — reach of the internet in our lives is exposing organizations and individuals to risks that may or may not be covered by insurance. Insurers have taken steps over the past several years to exclude certain cyber-related exposures from standard property/casualty policies as they seek to avoid risks they had not priced into the policies and carve out a separate line of business in the form of cyber liability insurance.

The problem is that the so-called internet of things has rapidly evolved over just the past 18 months, and exclusions written a couple of years ago aimed at excluding data breach response costs could limit coverage for bodily injuries and property damage resulting from hacked everyday devices.

The introduction of driverless vehicles will raise more concerns. A cyber exclusion for physical damage or third-party liability for a car driven by a computer is as absurd as excluding death as a claims trigger for a life insurance policy.

Fortunately, insurers are developing coverages that integrate wider cyber protections, but they need to move quickly and get ahead of the buying public.

SCHILLERSTROM



VIEW FROM WASHINGTON

## Vacancy leaves high court tied up in knots over ties

**T**ies are bad for baseball, and they're bad for the United States Supreme Court.

The baseball gods smiled down on the long-suffering fans of the Chicago Cubs and, to a lesser extent, the Cleveland Indians, with both teams finally getting back to the World Series. While the Cubs prevailed, they did so at Cleveland's stadium.

That's because the American League team had home-field advantage — a legacy of the controversial 2002 Major League Baseball All-Star game that ended in a tie. After that debacle, the league implemented a rule awarding home-field advantage in the World Series to the team winning the All-Star game that year, giving the teams a concrete incentive to play for victory.

It's too bad there are no court gods to intervene on behalf of the U.S. Supreme Court, which has been short a justice since the February death of Antonin Scalia. Republicans controlling Congress have refused to fulfill their constitutional obligations and vote on President Barack Obama's undoubtedly qualified nominee, Merrick Garland, chief judge of the U.S. Court of Appeals for the District of Columbia Circuit, somehow having the nerve to espouse a theory that the appointment should be left up to the next president, a theory with no basis in the U.S. Constitution.

Understandably, having only eight sitting justices has made the court skittish about taking on cases that could split them right down the middle. But it hasn't shied completely away from controversy. Last month it agreed to hear a case involving 17-year-old transgender student Gavin Grimm.

In *G.G. v. Gloucester County School Board*, the American Civil Liberties Union sued the school board on behalf of Mr. Grimm, arguing that the board's decision to deny him the use of a bathroom

that conforms with his gender identity violates Title IX of the U.S. Education Amendments of 1972, which bans sex discrimination by schools. A district court dismissed the Title IX complaint, but it was reversed on appeal.



**Gloria Gonzalez**  
SENIOR EDITOR

The court will also take on a key employment practices case involving the U.S. Equal Employment Opportunity Commission and the scope of its subpoena power.

The case, *McLane Co. v. EEOC*, stems from the agency's investigation of a sex discrimination charge filed by a former worker who was terminated after she failed to pass a strength test three times after returning from maternity leave.

The EEOC issued a subpoena after the company refused to provide information about employee terminations related to the test and personally identifiable information such as Social Security numbers. A lower court held that some of the information sought was not relevant to the EEOC's investigation, a decision partly reversed on appeal.

The Supreme Court will now decide if a district court's determination on whether to enforce an agency subpoena should be reviewed "de novo," meaning without deference to the lower court's determination. The case has important implications for employers who are investigated by the EEOC.

I'm rooting for the Supreme Court to get back to full strength as quickly as possible after the election so the justices can focus on deciding critical cases without visions of potential ties dancing in their heads.

# Collecting on insurance after the storm hits



Linda D. Kornfeld is a partner with the insurance recovery and litigation practice at Kasowitz Benson Torres & Friedman L.L.P. and managing partner of the firm's Los Angeles office. She can be contacted at [lkornfeld@kasowitz.com](mailto:lkornfeld@kasowitz.com).

As Hurricane Matthew barreled toward Florida, property damage and lost business income projections were at Superstorm Sandy proportions. As the storm progressed, its trajectory and strength diminished and so too did the expected damage. While the damage projections were reduced from \$15 billion before the storm to somewhere between \$3 billion and \$8 billion but still calculating, the losses suffered are clearly still substantial.

Southeastern homes, businesses, highways, agricultural fields, and other property experienced physical damage. Businesses that were not damaged lost, and are continuing to lose, profits because they had no power for days, and road closures and other transportation interruptions prevented customer and supplier access. And, the storm-related losses are in their nascent stage of calculation.

Thus, just as with Sandy and other storms both before and since, insurance will be a critical resource in responding to Matthew and its aftermath. Below are issues businesses should consider to increase the likelihood of a successful insurance recovery.

## Lessons learned

Much can be learned from coverage disputes that ensued after Hurricane Katrina, Superstorm Sandy and other storm events. Top of the list is the question of causation—did business losses result from “flood,” “wind,” “storm surge,” “wind-driven rain,” a “named storm” or something else? Some property policies exclude flood losses altogether. Others may include a narrow sublimit and/or high deductible for flood damage, but not for other causes of water-related damage such as wind or storm surge.

In addition, many policies that restrict flood coverage include a policy definition of the term that may expand or narrow applicable coverage. At the outset of the insurance claim, it is critical to understand the cause of water-related damage to determine the scope of available coverage.

Policy language and the facts should be scrutinized to determine how best to present the insurance claim to protect the policyholder's coverage. For example, much of the recent press regarding Hurricane Matthew has focused on the flooding in North and South Carolina. And when speaking with insurance adjusters, it may be easy to use the term “flood” as shorthand for the nature of the damage suffered (water damage). However, the policy at issue may, by way of example, exclude or significantly restrict coverage for flood but not for damages resulting from a named storm (such as Matthew).

Or if damaged property is close to the coast and the water damage stemmed from storm surge, that fact also could have significant coverage implications. In these sce-

narios, the policyholder will benefit from understanding at the outset the facts that best support coverage, and communications with insurers should pursue the claim consistent with those facts.

## Scope of coverage

For many businesses, Matthew-related losses will extend beyond the expense of repairing physical damage to buildings and will also include lost profits, amounts spent to clean up facilities and remove debris, and expenses incurred to mitigate losses and continue business operations. Multiple issues should be considered in deciding the scope of coverage for such losses.

For example, property policies frequently cover lost profits when business facilities are not physically damaged but nevertheless operate below capacity, or not at all, because customers, shipments and/or employees cannot reach a facility due to damaged highways; customers or suppliers in the area suffered damage and are operating at diminished capacity; or power outages prevent normal operations. In such circumstances, policyholders should review, for example, their ingress/egress, civil authority, contingent business interruption and service interruption coverages to determine available coverage.

In addition, flood damage typically does not include just water damage, but also can result in expenses to remove mold, dirt and possible contaminants from buildings and equipment. Such cleanup expenses can be costly but, depending upon the scope of a businesses' debris removal coverage, may be entirely covered. Moreover, depending upon applicable policy language, coverage sublimits can be stacked. For example, some policies cover cleanup expenditures under a separate debris removal sublimit even if the debris resulted from flood, which may have its own coverage limit.

Many property policies also cover amounts spent before the storm to mitigate damage. Amounts spent to sandbag property, safeguard documents and equipment, and procure alternative operating facilities during the storm all may be covered as prestorm mitigation expenditures, which in some instances may have a separate coverage sublimit.

Again, a careful review of policy language and the facts will assist policyholders in determining how best to pursue and maximize an insurance recovery.

## Document, document, document

While policyholders are reviewing their policy language and the facts of their loss to determine potentially available avenues to coverage, they also should immediately document their claim. As soon as possible, a team should be dedicated to keeping records of all expenses incurred as a result

of the storm, including those incurred to address property damage, pre- and post-storm mitigation efforts, increased expenses and reduced profits.

If possible, historical financial data and prestorm budgets or projections should be preserved to help later evaluate the financial impact on profits.

In addition, once the potentially available coverages are determined, losses and expenditures should be allocated to coverage “buckets” to assist in determining total insured losses and the impact on policy deductibles and sublimits. If reasonably possible, advance insurer approval of loss evaluation approaches and necessary expenditures should be obtained and, if not, and again to the extent is it reasonably possible to do so, careful records should be maintained regarding expenditures made and reasons for the expenditures to reduce potential future insurer disputes. Careful documentation of a claim as expenses are incurred and damage is evaluated can be helpful to a smooth insurance recovery.

## Protecting information

While a policyholder is evaluating coverage and the nature and extent of damages with the assistance of its broker, accountants and other retained consultants, it should consider methods to protect internal evaluations, including drafts of reports and other documents related to the loss. Involving internal or external counsel in the process at the outset can allow for a fulsome evaluation in a privileged setting.

## Potential pitfalls

Property policies typically include procedural provisions that many insurers will argue provide a complete defense to coverage if not strictly followed. For example, these policies often include time frames within which notice of a claim, a signed and sworn proof of loss, and litigation should be provided or filed. Moreover, some policies often contain provisions regarding insurer “consent” to certain expenditures in response to a claim. Where reasonable to do so, and depending upon the applicable facts, policyholders should consider seeking the insurer's written agreement to modify applicable policy conditions, as necessary.

## Choice of law

If an insurance policy does not contain a choice of law provision, more than one state's law may apply to an insurance claim. The law of different states may have different consequences on whether coverage applies. Policyholders thus should consider and evaluate choice of law issues from the outset, and pursue their claim in a manner that best protects their ability to rely upon favorable law.

## Tokio Marine extends marine cover options

New York-based Tokio Marine America, a subsidiary of Tokio Marine Holdings Inc., said it is extending its U.S. product offering to include marine hull and marine liability coverage, in addition to its existing marine cargo line.

The coverage will be offered in partnership with Continental Underwriters, a managing general agency for Tokio Marine HCC, Tokio Marine America's sister company, the insurer said in a statement.

TMA's hull and liability policies will be written on Tokio Marine HCC admitted paper as part of TMA's strategy to work with other Tokio Marine U.S. subsidiaries. TMA's recent rebranding to Tokio Marine America from Tokio Marine Management is part of this strategy, TMA said.

TMA's ocean marine product offers a range of commercial marine coverages including hull and machinery, maritime employer's liability, protection and indemnity and marine liabilities including but not limited to marine general liability.

## ESIS launches service for comp claims

ESIS Inc., Chubb Ltd.'s risk management solutions division, has launched Alternative Markets, a claims service that will focus on workers compensation.

The practice will focus on casualty risks placed in the nontraditional market and provide access to claim service professionals, medical cost containment, data analytics, catastrophe and crisis management, and return-to-work programs, ESIS said in a statement.

Phoenix-based ESIS Assistant Vice President Vickie Betancourt will lead the practice, ESIS said in the statement.

## Schinnerer expands builders risk policy

Underwriting manager Victor O. Schinnerer & Co. said has expanded its builders risk program to include coverage for commercial construction and commercial and residential remodeling.

Builder Risk provides coverage for property during construction. The expanded program is offered through Navigators Insurance Co.

In addition to the standard policy form, 16 additional coverages are built in, including debris removal, ordinance of law, expediting expenses, soft costs and pollutant clean up and removal.

Minimum premiums start at \$400, Chevy Chase, Maryland-based Schinnerer said in a statement.

An online broker portal will provide



## Policy covers gaps between cyber, fidelity

Willis Towers Watson P.L.C. introduced a product that provides financial institutions with coverage for social engineering losses.

Willis' CyFi, or "cyber insurance and fidelity," policy addresses coverage gaps between cyber insurance policies and fidelity bonds.

Currently, neither cyber insurance policies nor fidelity policies "singularly cover the scope of losses associated with social engineering claims, and thus, critical areas of exposure are not adequately protected," Willis said in a statement.

CyFi bridges this gap by providing institutions with additional capacity that sits above an insurance program's existing attachment points for individual primary cyber and fidelity placements, the brokerage said. The product also aims to fill gaps in coverage that exist on a primary basis, such as losses arising from social engineering; theft of confidential data; a narrow definition of computer systems; mechanical failures or program design errors; and cyber terrorism.

There are up to \$100 million in limits available under the coverage, according to a Willis Towers Watson spokeswoman.

access to brokers who can quote and issue a policy, according to the statement.

## AIG ups limits for terror cover

American International Group Inc. has raised its property terrorism insurance limits globally to \$1 billion.

The larger capacity is available to policyholders separately or as expanded limits within AIG's large limits property insurance policy, which offers policyholders with all-risk coverage limits up to \$2.5 billion per occurrence.

AIG's prior limit for property terrorism insurance was \$250 million, including in high-concentration risk areas in major urban central business districts. In many larger cities, typically classified as Tier 1 terrorism risks, there is limited capacity for clients seeking terrorism coverage, AIG said.

AIG said it will rely on its data analytics and risk engineering capabilities, including new and proprietary terrorism risk engineering services, as well as enhanced risk selection tools.

"Demand from our clients for better protection against this risk has been strong," George Stratts, AIG's president of property and special risks, said in a statement.

## Chubb cyber policy uses age-old model

Chubb Ltd. said it has introduced a new model for underwriting cyber insurance that is intended to simplify and improve cyber and privacy risks assessments and is based on a methodology that has been used effectively by property underwriters for nearly 300 years.

Russ Cohen, Chubb's Philadelphia-based director of cyber/privacy services, said in an advisory that property underwriters have long used the construction, occupancy, protection and exposure — or COPE — methodology.

Under the Cyber COPE methodology, the acronym now stands for components, as in number of endpoints and network connections; organization, referring to factors including the policyholder's industry and quality of information technology and security-related policies; protection, including data retention policies, firewalls, monitoring and incident response readiness policies; and exposure, including political or criminal motivation, types of outsourcing and types and amount of sensitive information.

In property insurance, "The COPE methodology has been effective because it uses simple, straightforward questions to gather both objective and subjective data to more accurately assess risk," states the advisory.

Likewise, Cyber COPE "has been designed to be simple to use and to provide the right balance of objectivity for the underwriter," states the advisory.

Chubb says in the advisory that Cyber COPE was first leveraged as the basis for the insurance application for its Global Cyber Facility, which offers up to \$100 million in primary capacity in a single policy purchase.

## DEALS & MOVES

### AIG sells European, LatAm units to Fairfax

American International Group Inc. entered agreements to sell businesses in Europe and South America to Toronto-based Fairfax Financial Holdings Ltd. for about \$240 million in cash.

AIG will sell its local commercial and consumer insurance operations in Argentina, Chile, Colombia, Uruguay, Venezuela and Turkey, the insurer said in a statement.

Fairfax will also acquire renewal rights for the portfolio of local business written by AIG's Central and Eastern European operations in Bulgaria, Czech Republic, Hungary, Poland, Romania, and Slovakia.

### Broker expands with wholesaler acquisition

Private broker Venbrook Group L.L.C. purchased Manalapan, New Jersey-based wholesaler Brooks Insurance Group.

Terms of the deal were not disclosed.

Brooks Insurance manages over \$125 million in premium business and employs between 35 and 40 people, a Venbrook spokeswoman said. The purchase was made following \$42 million debt capital raise from Madison Capital Funding, a unit of New York Life Insurance Co. Venbrook will use the remaining funds for more acquisitions, the spokeswoman said.

### Acrisure announces management-led buyout

Acrisure L.L.C. signed a definitive agreement for a management-led buyout led by Greg Williams, its CEO and co-founder, and a consortium of minority investors.

Terms of the deal were not disclosed.

The group is acquiring control of the Grand Rapids-based broker from Genstar Capital, which acquired it in 2013. Since then, Acrisure said in a statement, it has acquired over 138 brokerages. Its brokerage revenue was \$410.7 million in 2015 compared with \$29.7 million in 2012, according to *Business Insurance* research.

### Swiss Re expands operations in Brazil

Swiss Re Corporate Solutions Ltd. inked a deal with Bradesco Seguros S.A. to take on the Brazilian insurer's commercial large-risk business. The São Paulo-based unit of Bradesco Group will contribute its commercial large-risk portfolio to Swiss Re Corporate Solutions Brasil Seguros S.A. and will take a 40% equity stake in the Swiss Re unit, while Swiss Re Corporate Solutions will retain a 60% stake, Swiss Re said in a statement.



### UP CLOSE

## Marc Fuhrman

**NEW JOB TITLE:** Los Angeles-based national relationship manager at Burns & Wilcox Brokerage, a Kaufman Financial Group company.

**PREVIOUS POSITION:** Los Angeles-based senior vice president of national agency relations at CRC Insurance Services Inc.

**LOOKING FORWARD TO:** I'm excited about the fact that Kaufman owns their own carrier, which is a game changer as far as I'm concerned, because no other wholesaler has that ability to go to their own carrier ... and go in and say, "Hey, let's try and create something for these retailers."

**ON LEADERSHIP:** Not talking about it, but action — leadership by action.

**CHALLENGES FACING INDUSTRY:** I think the biggest challenge facing the industry is the capacity issue. There is just way too much capacity, and it has to do with the fact that interest rates are so low. A new market comes into play every day, and it makes it more challenging for the wholesaler because rates continue to slip and a lot of standard markets are doing things that only wholesalers used to do in the past. I don't see much of that changing, because I don't think interest rates are going up that dramatically any time soon.

**CRYSTAL BALL:** People are specializing in certain types of business in certain verticals and becoming experts.

**WHAT SURPRISED ME:** I thought it was odd that you would have one wholesaler dealing with the same carrier and another wholesaler dealing with same carrier, only (with) a different underwriter, and they would come up with different quotes.

**ADVICE:** Specialize. Pick something and specialize in that, and be persistent.

**FAVORITE QUOTE:** "Don't wish it were easier, make yourself better."

**OUTSIDE THE INDUSTRY, A DREAM JOB:** I love sports, so something to do with sports, working with athletes, helping them perform better, would be a dream job for me.

**HOBBIES:** Exercise, working out, biking and chilling out with my family.

**PETS:** We have three dogs.

**THING MOST PEOPLE DON'T KNOW ABOUT ME:** I tried my hand at acting and standup comedy a long time ago.

**DON'T LEAVE THE HOUSE WITHOUT:** My phone, my gym bag and my morning coffee. Don't leave the house without a good attitude.

**BIGGEST OBSTACLE FOR WORK-LIFE BALANCE:** Being able to manage your time.

**WHEN I RETIRE:** I don't know if I will ever retire. I always want to stay vibrant and active in something. Retirement for me will not be doing nothing. I think I will always have my hand in something.

**FAVORITE MEAL:** Salad. I try to eat as healthy as possible.

**FAVORITE BOOK:** Any Lee Child Jack Reacher novel.

**CAN'T-MISS TELEVISION SHOW:** "Breaking Bad"

I don't know if I will ever retire. I always want to stay vibrant and active in something. Retirement for me will not be doing nothing. I think I will always have my hand in something.



**Dominic Casserley**, president and deputy CEO of Willis Towers Watson P.L.C., will leave the company when his employment agreement ends Dec. 31. Mr. Casserley joined

the former Willis Group Holdings P.L.C. in January 2013 as CEO, a position he held until January 2016, when Willis and Towers Watson & Co. merged and he took on his present position.

Meanwhile, Willis also announced that **Tim Wright**, head of corporate risks and broking, is leaving the brokerage and will be replaced by Todd Jones, who was previously co-head of North America.



Lockton Cos. L.L.C. has named Kansas City, Missouri-based **Peter Clune** as its next U.S. president and chief operating officer, effective May 1, 2017.

Mr. Clune will succeed Glenn Spencer, who was named president and CEO of Lockton's global operations effective on the same date, succeeding John Lumelleau, who is retiring.



Aon Risk Solutions named former FBI official **James C. Trainor**, who most recently led the cyber division at FBI headquarters, as senior vice president in its

cyber solutions group. New York-based Mr. Trainor will help shape Aon's overall cyber strategy.



Hylant Group Inc. named **Debbie Fischer** to the newly created position of vice president and property/casualty service leader. Previously she was vice president of client services. Toledo,

Ohio-based Ms. Fischer will support Hylant service initiatives, including its client engagement strategy.



The Navigators Group Inc. has named New York-based **Cindy Hunter** senior vice president in its claims department. She will be responsible for management of primary,

excess, environmental, life sciences, auto and property claims.

Previously, Ms. Hunter was global head of environmental claims at American International Group Inc.

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## Brand uses Force to protect copyright

Use this name you cannot. Lucasfilm Ltd. L.L.C., owned by the Walt Disney Co., told an Oakland, California, businessman just that earlier this year in the form of a failed cease letter. The entertainment empire is now using the force of its copyright for all things Star Wars to sue the owner of Lightsaber Academy for infringement.

The complaint, filed in U.S. District Court in San Francisco in October, contests defendant Michael Brown's use of the terms "lightsaber" and "Jedi" for his martial arts school. The school advertises instruction in lightsaber skills and stage combat on its website. The complaint also lists Mr. Brown's other business entities: New York Jedi and Thrills and Skills, all advertising instruction in Star Wars-themed combat techniques.

The complaint illustrates how Brown's logos, used on uniforms and Web sites, are too similar to the official Jedi Order logo.

## Starbucks wins in bong suit

There will be less confusion for marijuana smokers who also happen to enjoy Starbucks signature iced beverages.

This after a U.S. District judge in late October ruled in favor of Starbucks Corp. in a trademark and copyright infringement lawsuit that found that an Oregon designer created a spoof glass bong that too closely resembled Starbucks' style for its popular Frappuccino, according to a ruling out of the Central District of California in Los Angeles.

The suit was filed in June over Oregon artist James Landgroff's creation: a marijuana smoking device with a Christmas-green straw in a glass vessel with a logo that reads "Dabuccino" in white block letters around a long-haired goddess, all similar to Starbucks'.



# FUNKY RHYTHMS CAUSE PROBLEMS FOR BRUNO MARS



Bruno Mars

Bruno Mars and his song-writing collaborator are facing another copyright infringement lawsuit.

This time, the 1980s band Collage is claiming the Grammy award-winning song "Uptown Funk" sounds too much like its 1983 tune "Young Girls."

Performers Bruno Mars and Mark Ronson, along with their record labels and other collaborators, are named in the lawsuit, according to the Internet music news site Pitchfork.com.

The complaint, which Pitchfork reviewed, states: "Upon information and belief, many of the main instrumental attributes and themes of 'Uptown Funk' are deliberately and clearly copied from 'Young Girls,' including, but not limited to, the distinct funky specifically noted and timed consistent guitar riffs present throughout the compositions, virtually if not identical bass notes and sequence, rhythm, structure, crescendo of horns and synthesizers rendering the compositions almost indistinguishable if played over each other and strikingly similar if played in consecutively."

The latest suit targeting the 2014 song is similar to one filed by The Gap Band last year, in which the vintage funk band was awarded songwriting credits after citing similarities between "Uptown Funk" and its 1979 hit "Oops Up Side Your Head."

Earlier this year, another group claimed that "Uptown Funk" infringed on their song, too. The Sequence argued that Mr. Mars and Mr. Ronson copied their 1979 song "Funk You Up." The band, however, did not bring a lawsuit.

## KFC advertising ruffles feathers

A \$20 bucket of Kentucky Fried Chicken could cost the fast food giant \$20 million dollars if a 64-year-old widow can get a court to see things her way: The bucket is half empty.



According to a lawsuit filed in New York's Supreme Court in Dutchess County in October, Anna Wurtzburger expected her order to mimic the advertisement: a family feast-sized bucket overflowing with crispy chicken.

"I came home and said, 'Where's the chicken?' I thought I was going to have a couple of meals," she told The New York Post. "They say it feeds the whole family ... You get half a bucket!"

Ms. Wurtzburger told the Post she received two gift certificates but that KFC said it wouldn't change their advertising practices, which her lawsuit states are in violation of business law in New York.

KFC called the lawsuit "meritless."



## Peanuts spokesdog laid off by insurer

Hopefully Snoopy took advantage of one of MetLife Inc.'s retirement plans.

The 148-year-old insurance company in October terminated the "Peanuts" cartoon dog's 31-year employment as marketing mascot, ending its estimated \$10 million- to \$15 million-a-year contract.

According to the Wall Street Journal, the insurer plans to sell its life, dental and other products mostly to corporate clients in the future and will no longer need the famous character to appeal to individual U.S. consumers.

The new logo will feature MetLife's name in revised black and blue typeface along with a new green "M" symbol. The company told the Journal that it could "take a while" to remove Snoopy from its marketing materials, which include notepads, business cards and a flying blimp.

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