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JANUARY 2017

**SPECIAL  
REPORT**

**RISK  
MANAGEMENT  
TECHNOLOGY**

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## **NEW ERA UNFURLS**

What will a Trump presidency mean for the insurance sector?

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## COVER STORY

The inauguration of the 45th President of the United States later this month will have wide implications for the business world. We take a look at some of the critical areas affecting employers and insurers and try to ascertain how the campaign rhetoric of President-elect Donald Trump will translate into reality as he takes office with the support of a Republican Congress. **PAGE 18**

## INSIDE



## SPECIAL REPORT: RISK MANAGEMENT TECHNOLOGY

Risk management information systems are evolving as they try to keep pace with risk managers' needs, becoming more sophisticated as adoption of enterprise risk management and strategic risk management programs grows. **PAGE 22**

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### RISK MANAGEMENT

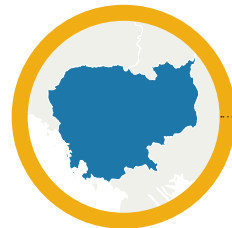
Investors are looking for more transparency from corporations on climate risk disclosure. **PAGE 4**

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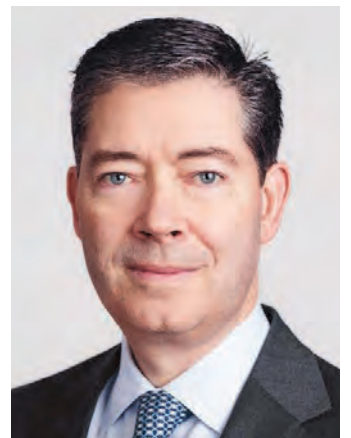
### PERSPECTIVES

William H. Walsh of Cozen O'Connor discusses the challenges facing the commercial use of drones on a wide scale. **PAGE 29**

### VIEW FROM THE TOP

### MIKE FOLEY

Mike Foley was named CEO North America for Zurich Insurance Group Ltd. last year when the global insurer announced a series of organizational changes. *Business Insurance* Editor Gavin Souter recently spoke with Mr. Foley at Zurich's new North American headquarters about how the changes at Zurich will affect the insurer's operations and its customers in the U.S. and worldwide. **PAGE 17**



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### OFF BEAT

Michael Jordan scores another victory as he prevails in a legal dispute over his name. **PAGE 34**



### CORRECTION

A profile of Women to Watch honoree Dawn D'Onofrio in the December issue misstated her company affiliation. She is chief underwriting officer and executive vice president of WKFC Underwriting Managers Inc., a unit of Ryan Specialty Group L.L.C.

## Clearing the air on climate risk disclosure

GLORIA GONZALEZ

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**C**orporations failing to disclose the risks that climate change poses to their operations and financial health will do so at their own peril as investors continue to pressure companies for transparency and regulators investigate whether a lack of or insufficient disclosure is harming investors.

When the CDP, formerly known as the Carbon Disclosure Project, first launched more than 15 years ago, climate disclosure was nonexistent, but the nonprofit organization now reports that about 5,800 companies representing close to 60% of global market capitalization disclose through it.

“Disclosure was once seen as a smaller or less central activity, whereas now it’s really become mainstream,” said Lance Pierce, New York-based president of CDP North America. “It’s something that investors increasingly expect to see because this type of information is important for the decisions that they make and their investment strategies.”

Investor pressure is a primary driver of the advances in climate risk disclosure, with shareholder resolutions playing an important role in compelling improvements on the disclosure front, experts say. About two out of three companies disclose emissions — a number that is likely to rise following early momentum in implementing the Paris climate agreement and the focus on disclosure due to the Task Force on Climate-related Financial Disclosures, which on Dec. 14 released a set of recommendations to guide companies in assessing the material risks climate change poses to their operations and develop plans to mitigate these risks. The recommendations cover four core elements: governance, strategy, risk management and targets.

But investors don’t just want simple disclosure — they expect in-depth disclosures that unveil important information such as company planning for severe weather events and other risk management initiatives, as well as whether companies are using science-based targets for emissions reductions, said Jim Coburn, senior manager of investor programs for Boston-based investor coalition Ceres. A CDP survey released in October found only 94 companies had publicly committed to science-based greenhouse gas reduction targets via the Science Based Targets Initiative.

“Disclosure for its own sake is important, but it doesn’t get to the whole picture,” Mr. Coburn said. “Is a company really a leader in managing risk and reducing emissions enough to have an impact?”



In 2010, the U.S. Securities and Exchange Commission issued interpretive guidance to clarify what publicly traded companies need to disclose to investors in terms of climate-related material effects on business operations, whether from new emissions management policies, the physical impacts of changing weather or business opportunities associated with clean energy expansion.

“The guidance was important because it was high-level SEC leadership articulating the importance of climate change, but that needs to be matched with the resources for the SEC staff who are actually going to be going out and implementing that policy,” said Jonas Kron, Portland, Oregon-based senior vice president and director of shareholder advocacy for Trillium Asset Management L.L.C.

“There may have been a disconnect there.”

However, the SEC’s interest in climate disclosures is likely to change with the new SEC chair under President-elect Donald Trump’s administration, experts say.

“It likely diminishes concerns about federal investigations and actions under the securities laws just given the realities of the next administration,” said Cameron Prell, counsel in the energy group with Crowell & Moring L.L.P. in Washington. “It also probably means that we’re not going to have any governmental action on further guidance as to what is and is not material for purposes of disclosing climate risk information.”

But states are acting to encourage or compel corporations to disclose climate risks to their operations or financial health, so that will keep up some pressure even in the absence of federal leadership, experts said (see related story).

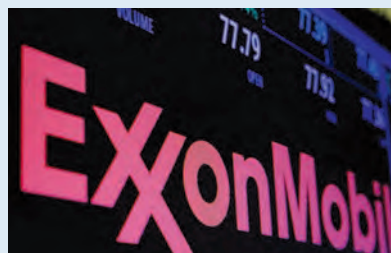
“Companies that are carbon-intensive or investors that have heavy carbon-intensive investments in their portfolios need to be at least aware of the trajectory of where the accounting standards and methodologies are, as well as the regulatory obligations,” Mr. Prell said. “More fundamentally, they should probably conduct at least a preliminary audit and stress test of some basic climate risk issues to evaluate what they have or have not done. They really need to get some transparency internally on this. That doesn’t mean that they’re going to be exposed to any regulatory obligations. It’s a prudence issue.”

### NEW YORK TAKES THE LEAD ON CLIMATE RISK TRANSPARENCY

**T**he New York attorney general’s investigation of Exxon Mobil Corp. may serve as a road map for how the state plans to probe companies that fail to adequately disclose critical information related to climate change.

In November 2015, New York Attorney General Eric Schneiderman’s office opened an investigation into possible financial fraud by the energy giant under the state’s Martin Act after news surfaced that the company conducted research on climate change and its direct and indirect effects, but failed to include the information in its financial statements to investors and the U.S. Securities and Exchange Commission.

“That’s an important development because state AGs can investigate securities fraud,” said Jim Coburn, senior manager of investor programs for Boston-based investor coalition Ceres. “If



the federal government is not doing that, it’s important for the states to step in. But it’s an inefficient way to get disclosure, because it’s the SEC’s job to do this.”

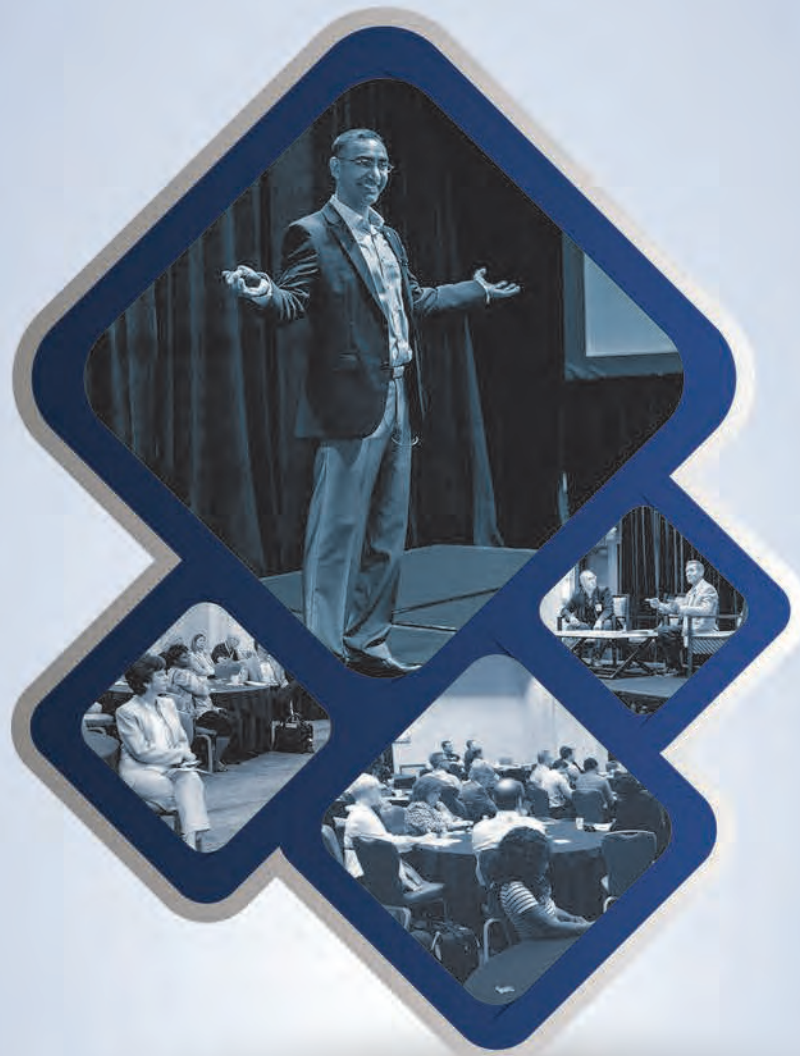
The Martin Act gives the state’s attorney general broad power and discretion to combat financial fraud, experts say. For example, a judge upheld a subpoena issued against outside auditor PricewaterhouseCoopers L.L.P. seeking documents related to the firm’s work with Exxon Mobil, which asserted accountant-client privilege in refusing to allow

PwC to comply with the subpoena.

“The Exxon case most notably could end up pushing the envelope in terms of defining a fiduciary duty to shareholders and regulatory obligation to report and integrate climate risk into business operations,” said Cameron Prell, counsel in the energy group with Crowell & Moring L.L.P. in Washington.

Exxon Mobil has fought back, suing both the New York attorney general and Massachusetts Attorney General Maura Tracy Healey, who announced her office was also investigating the company in March 2016 in U.S. District Court in Fort Worth, Texas, to block their requests for information. A Texas judge had ordered Ms. Healey to participate in a deposition in Texas before canceling the order on Dec. 12 without explanation.

Gloria Gonzalez



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## International regulatory standoff looms

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State insurance regulators are concerned about a lack of transparency in talks between federal officials and their European counterparts, as well as the implementation of new regulatory requirements in some European countries that are complicating January renewals for U.S. insurers and reinsurers and even costing them some business.

The latest round of covered agreement talks between the European Union and the United States ended in December without a final resolution. The Treasury Department's Federal Insurance Office and the Office of the U.S. Trade Representative are engaged with E.U. officials for a covered agreement — a mechanism established by the Dodd-Frank Wall Street Reform and Consumer Protection Act — to address the fact that the European Commission has not deemed the United States an equivalent jurisdiction, per the union's Solvency II directive outlining a risk-based capital regime for insurers and reinsurers in Europe.

"We have multiple concerns with the notion of a covered agreement, including the way it's being negotiated behind closed doors with little direct input from U.S. insurance regulators, and it could unnecessarily pre-empt state law," Julie Mix McPeak, commissioner of the Tennessee Department of Commerce and Insurance and the 2017 president-elect of the National Association of Insurance Commissioners, said at the organization's fall meeting in December.



REUTERS

President Barack Obama met with German Chancellor Angela Merkel in Berlin in November. The Obama administration is engaged in talks with Germany on insurance regulation.

Regulators vowed to be on the lookout for a potential eleventh-hour agreement by the Obama administration, but stakeholders urged the NAIC to be open to a covered agreement that achieves mutual recognition between the E.U. and U.S. regulatory regimes and could go a long way toward ensuring the uniformity needed by U.S.-based insurers and reinsurers doing business abroad.

It is "unfortunate" that some within the NAIC have taken a negative view of the covered agreement process, said Phillip Carson, associate general counsel and director of financial regulatory policy for

the American Insurance Association in Washington.

"We believe that they can work together, but they need mutual recognition of both," he said of the two regulatory systems. "We consider it an urgent matter."

"Nobody wins if this doesn't get resolved," said Robert Woody, senior counsel for policy for the Property Casualty Insurers Association of America in Washington.

Since Solvency II came into force last year, U.S. insurance regulators have received anecdotal reports that U.S. insurers and reinsurers have encountered discriminatory actions by several European jurisdictions,

which led to the NAIC's qualifying jurisdiction working group initiating a review of the actions (see related story).

For example, this year the German Federal Financial Supervisory Authority began restricting third-country insurance undertakings so that U.S. reinsurers can no longer operate on a cross-border basis without forming and capitalizing a branch or subsidiary in Germany.

Establishing a branch is "costly," Mr. Woody said. "It's not something European reinsurers have to do to do business here, so that makes the playing field a little uneven."

A similar requirement imposed in Belgium in mid-November is also creating regulatory uncertainty, said Tracey Wright Laws, senior vice president and general counsel of the Reinsurance Association of America in Washington. Jan. 1 renewals are being complicated because it is unclear what level of collateral U.S. reinsurers would be required to post to do business in the country or how they would even post collateral, she said.

"This is a huge problem for these companies," she said. "They risk losing the business in Belgium."

The United Kingdom's vote to leave the European Union could further complicate the international regulatory discussions if the U.K. and the E.U. cannot reach a comparable agreement on these issues, particularly since many domestic insurers and reinsurers operate in the E.U. through London, experts say.

"That's going to be a challenge," Mr. Carson said. "Brexit is definitely an issue for us."

## E.U. insurers may face U.S. retaliation

The National Association of Insurance Commissioners has vowed to examine regulatory actions taken by certain European countries seen as putting U.S. insurers and reinsurers at a competitive disadvantage.

In August, NAIC's reinsurance task force directed its qualified jurisdiction working group to study and report on E.U. member state implementation of Solvency II and whether any actions taken by them to date affected their statuses as qualified jurisdictions.

In January 2015, France, Germany, Ireland and the United Kingdom were all approved as qualified jurisdictions, which facilitates their eligibility as a certified reinsurer for collateral reduction purposes.

The working group is not engaged in

any formal review of their statuses, but it is examining whether their actions constitute a material change that could affect their statuses, Brett Barratt, deputy commissioner of the Utah Insurance Department and chair of the qualified jurisdiction working group, said at NAIC's fall meeting 2016 last month.

A November request for information about the effect of Solvency II implementation resulted in several respondents, including U.S. reinsurers, reporting that the actions of one or more of the four jurisdictions have already had a quantifiable negative effect on the capacity to do business in the European Union.

But many of these same respondents warned that termination of the qualified jurisdiction status may also have a negative

effect on reinsurance capacity in the U.S. marketplace, according to the working group's report.

However, multiple respondents stated that the actions taken by these four jurisdictions constitute a material change in circumstances and recommended that the qualified jurisdiction status should be terminated.

If the working group finds a jurisdiction is out of compliance, a jurisdiction's status could be placed on probation, suspended or revoked, Mr. Barratt said.

"Although it is too early to start talking about revoking the status as qualified jurisdictions, it is important to understand that there are potential consequences of such action," he said.

Gloria Gonzalez



# 2017 EVENTS CALENDAR



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## **\*Workers Comp Conference 2017**

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## **Diversity & Inclusion Institute Conference 2017**

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## **\*Construction Claims Conference 2017**

September 27-28, 2017 | San Diego

**Risk Management Summit 2017** | October 4, 2017 (exclusive event)  
**Expo / Innovation Awards / Crain Lifetime Achievement Award 2017** |  
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**Cyber Liability Summit 2017** | October 6, 2017  
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## New York takes tough stance on financial cyber security

BY JUDY GREENWALD

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Many financial institutions are preparing for implementation of the comprehensive cyber security regulation expected to be issued by the New York Department of Financial Services, but some entities, particularly smaller ones, may struggle with compliance.

The proposed New York regulation, which applies to banks, insurers and other financial services institutions, requires entities to establish and maintain a cyber security program to protect consumers and ensure the industry's safety.

Implementation was originally scheduled for Jan. 1, according to the proposal, with a 180-day transitional period, but a revised proposal was scheduled to be released late last month, to be followed by a 30-day comment period.

The proposal would require regulated financial institutions to establish a cyber security program, adopt a written cyber security policy and designate a chief information security officer, and has detailed provisions with respect to third-party vendors, among other provisions (see related story).

The larger institutions already have more resources and are better prepared to deal with it than those who are going to have to build additional infrastructures to provide monitoring and reporting and similar responses, said Jacqueline Geiger, managing director and financial institutions practice leader with Aon Risk Solutions in New York.

However, "There's a very low percentage who would say they are completely prepared," particularly with regard to the

regulation's more stringent requirements, she added.

"In terms of degree of difficulty, it's going to depend on the size and relative maturity of the covered entities," but even some of the larger banks or other financial institutions will have difficulty with some of its provisions, said Thomas Fuhrman, Washington-based global leader of cyber security consulting and advisory services at Marsh Risk Consulting.

"Many institutions are not ready for this," said Elizabeth K. Hinson, an associate with Nelson Mullins Riley & Scarborough L.L.P. in Columbia, South Carolina.

*The proposal would require financial institutions to establish a cyber security program, adopt a written policy and designate a CISO.*

"For example, this regulation requires report of a breach within 72 hours of the breach, and in order for this to happen a company needs to have in place a formalized instant response plan," Ms. Hinson said.

Gamelah Palagonia, senior vice president and cyber risk specialist with Willis North America in New York, called it "the most prescriptive regulation thus far."

"It absolutely outlines every step of the way for financial institutions" and is "pretty much in line" with the standards recommended by the National Institute of Standards and Technology, but "it will be expensive and complex for financial institutions to comply" with it, she said.

The regulation "contains some very specific demands that go beyond" other regulations, including those related to non-public information, where the terms are defined very broadly, said Ms. Hinson.

In fact, the requirement that firms hire chief information security officers has created a demand that has led, in some instances, to financial institutions paying their CISOs more than they do their CEOs, said Aaron K. Tantleff, a partner with Foley & Lardner L.L.P. in Chicago. "You can imagine how that goes over in an organization," he said.

Experts say the regulation is expected to be influential nationally.

Timothy J. Toohey, a partner with Greenberg Glusker Fields Claman & Machtinger L.L.P. in Los Angeles, said it appears "certain states are going to take a more proactive role regarding cyber issues and other issues."

And New York, where much of the financial services industry is based, "has a heavier stick in this particular area than a lot of other states could have," he said.

"It's likely that the New York set of regulations will be something of a road map" for other states, said Timothy Monahan, Washington-based claims counsel with Lockton Cos. L.L.C.'s financial services group.

Mr. Monahan said he does not anticipate the cyber rule will dramatically affect insurance.

"Many underwriters writing cyber security insurance for financial institutions are already asking a lot of questions about how they are addressing this issue and the type of procedures they have in place, similar to what New York has put into their regulation," he said.

## REGULATORY PROVISIONS

Major provisions of the proposed New York State Department of Financial Services' cyber security regulation as of late-December include:

- Financial institutions, which include banks and insurers, must establish a cyber security program and written policy.

- The cyber security policy must be reviewed by the institution's board of directors and approved by a senior officer at least annually.

- Financial institutions must designate a qualified chief information security officer, responsible for implementing, overseeing and enforcing its program and policy, who must file a report with the board of directors at least biannually.

- Each financial institution must have written policies with respect to information held by third-party vendors, and nonpublic information must be encrypted both while it is in transit and at rest.

- The institution must notify the Department of Financial Services' superintendent of a possible cyber security event no later than 72 hours after becoming aware of it.

- The cyber security program must maintain audit trail systems.

- Financial institutions must submit a certificate of compliance annually to the department's superintendent beginning Jan. 15, 2018.

- Smaller financial institutions, including those with fewer than 1,000 customers, are exempt.

Meanwhile, on the federal level, the Federal Reserve System's Board of Governors, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp. in October issued a joint advance notice of rule-making on cyber security for major financial institutions with at least \$50 billion in assets and are seeking comment by Jan. 17.

Observers say the proposed rule is more principles-based than the more detail-oriented New York regulation. They say it is unclear what effect the Trump administration will have on the proposed rule.

Judy Greenwald



## Weighing the benefits of bariatric surgery

BY LOUISE ESOLA

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The bottom line versus the waistline in workers compensation is becoming an all-too-familiar battle for experts who say the industry may be more willing to pay for bariatric surgery in order to remedy escalating comp claim costs associated with obesity.

“There are some situations where you might want to (pay for weight-loss surgery) as an employer,” said Kim Brown, Kansas City, Missouri-based vice president and senior claims consultant with Lockton Cos. L.L.C. “If a claim is to a point where nothing can happen until that person loses weight, if you are looking at a lifetime claim, you might say, ‘Let’s pony up for that one.’”

According to the U.S. Centers for Disease Control and Prevention, more than 36% of adults in the United States are considered obese, and the agency predicts that 42% of Americans adults will be obese by 2030. Medical experts have long associated health issues with obesity, including diabetes, heart disease, hypertension and more.

“This definitely has an impact on workers comp,” said Dr. Teresa Bartlett, Troy, Michigan-based vice president of medical quality at Sedgwick Claims Management Services Inc.

Dr. Bartlett cited a 2012 Duke University study that found obese workers filed twice the number of workers comp claims and lost 13 times more days of work when injured compared with workers who are not obese.

Other experts point to researchers at Johns Hopkins University in 2007 who studied data on 7,690 injured workers in aluminum manufacturing and found that 85% of them were overweight or obese.

An obesity diagnosis could prolong a workers comp claim by 55% compared with claims for injured workers who are not overweight, according to a study released in December by Newport Beach, California-based Harbor Health Systems, a division of One Call Care Management that manages workers comp medical provider networks. The analysis also found that surgery rates increased 140% when an injured worker was obese.

Harbor Health President Linda Lane said obesity “has to be addressed” if workers comp payers want to avoid lengthy and costly comp claims.

“If you are an employer looking at an individual and you are evaluating a course of care, this needs to be squarely in your line of sight,” she said.

The Boca Raton, Florida-based National

According to the U.S. Centers for Disease Control and Prevention, more than 36% of adults in the United States are considered obese, and the agency predicts that 42% of Americans adults will be obese by 2030.

Council on Compensation Insurance Inc. in 2012 found that claims with an obesity comorbidity have 81% higher lost-time costs compared with claims involving non-obese injured workers. That was the highest cost difference among all comorbidities studied by NCCI, including diabetes and hypertension.

Barry Lipton, practice leader and senior actuary with NCCI, said obesity is a cost driver in workers comp because some workers won’t heal from their injuries without losing weight.

Experts say an increasing number of doctors are recommending weight-loss surgery for obese injured workers, while judges are ruling that bariatric is compensable under comp claims.

Multiple sources put the price tag for bariatric surgery at \$23,000 with varying time for recovery and significant weight loss achieved within a year — barring no major complications.

Historically, employers and workers comp insurers have fought recommendations to pay for an injured worker’s bariatric surgery, Mr. Lipton said.

“The bariatric surgery is not a direct workers comp issue ... It usually becomes an issue because (a different) surgery is needed and can’t be done because someone is overweight,” he said.

Studying her own casework through Sedgwick, Dr. Bartlett found that workers comp claims managers approved payment for 19 bariatric surgeries in the past three years. However, she said, “For the most part it wasn’t willingly ... In the cases that we’ve paid for, there has been litigation and there’s no way out.”

Christina Bergman, Prescott, Wisconsin-based managing director for Aon Risk Solutions, said oftentimes an injured obese worker will gain more weight while at home recovering from an injury that won’t heal without weight loss.

The decision of whether to pay for bariatric surgery is part of a cost-benefit analysis that should be performed for comp claims, Ms. Bergman said.

“If they don’t have the bariatric surgery, will it get worse?” she said.

Dennis Tierney, New York-based director of workers compensation claims for Marsh L.L.C., said he thinks costs and savings “are going to drive the behavior” in relation to paying for bariatric surgery. But he said many employers and workers comp insurers are “not there yet” when it comes to willingly paying for the procedure.

“I think a lot of depends on the employer and the carrier, (and) it’s going to depend on how aggressively they want to pursue (closing the claim),” he said.



“The bariatric surgery is not a direct workers comp issue ... It usually becomes an issue because (a different) surgery is needed and can’t be done because someone is overweight.”

Barry Lipton  
NCCI

# Employers try a dose of kindness to encourage injured workers

BY LOUISE ESOLA

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**W**orkers compensation appears to be having a “Hallmark moment.”

In an effort to go from adversary to advocacy, experts see a growing trend for employers to initiate friendly conversation with injured workers who remain off the job. The gesture can prevent workers comp claimants from pursuing litigation and encourage them to return to work by improving morale.

One easy idea? Send a get-well card, experts say.

Michael Stack, Kennebunkport, Maine-based principal for workers comp consulting firm Amaxx L.L.C., calls it a “fundamental best practice” that has been around for years, yet is practiced among few employers. He hopes to see more catch on.

“The communication is so simple to do — and so simple not to do — that employers tend to miss the boat,” he said. “It is the most basic thing that can have the most impact on a claim.”

Most employers don’t initiate such warm communication with their injured employee outside of the official workers comp letters and forms issued after a comp claim is filed, experts say. By not sending along best wishes, employers might inadvertently launch a lengthier, more expensive claim for injured workers who already are experiencing pain, doctor visits, prescription drugs, missed work and more.

“A lot of people overlook the fact that people, when they are injured, that creates an amount of stress,” said Tim Colli, Nashville, Tennessee-based senior vice president of account management at third-party administrator Gallagher Bassett Services Inc.

Mr. Colli’s team in 2016 looked into the practice of friendly communication, which includes letters, cards, emails and phone calls to injured workers. Their informal analysis found that of 250 Gallagher Bassett clients, fewer than half of them are initiating this sort of friendly contact.

“(Communication) is making sure (the employee) understands that you are in touch, that you are still thinking about them, and that you are available to help ... This value of immediate contact is overlooked,” said, Mr. Colli, who advises clients who don’t keep in touch to start implementing a program that keeps the employer in contact with the employee.

Experts say some employers are confused about what to do and when, and what they are legally allowed to do — questions that can be asked of an employer’s own representation, who will know



the laws in each state. For the most part, a greeting card is not illegal, experts say.

A lack of friendly communication between employers and injured workers can have tangible effects on workers comp claim outcomes. A white paper released by Lockton Cos. L.L.C. in December found the word “fear” or related words to be found in 84% of notes taken by workers comp claims adjusters for claims with more than \$100,000 in costs.

A lack of “empathetic” communication

on the part of the employer, including supervisors, “drives the fear factor,” said Mark Moitoso, Kansas City, Missouri-based senior vice president and analytics practice leader for Lockton.

“We can see that absolute correlation with the (workers comp claim) costs,” he said.

Christina Bergman, Prescott, Wisconsin-based managing director for Aon Risk Solutions, said employer communications with injured workers often are full of legal

jargon and formalities.

“Some of (the letters), if I were an injured worker and I read this, I’d get an attorney,” she said.

A phone call from a supervisor can be “very critical” in allaying an injured worker’s fear and preventing a contentious claims process, Mr. Moitoso said.

That strategy has worked for Restore Rehabilitation L.L.C., a workers comp case management firm in Owings Mills, Maryland. President and founder Pam Anthony used her own knowledge of the workers comp system to create friendly communication policies for her own workforce, 78% of which are mobile, on-the-road case managers.

If someone is in a car accident or slips and falls, their supervisor calls them every day, Ms. Anthony said.

“We have a ‘kill them with kindness’ approach,” she said. “We want them to know your employer cares about you ... Being nice and making sure they are OK saves so much money that you couldn’t put a price on it.”

Gallagher Bassett’s Mr. Colli said a famous quote from author Maya Angelou comes to mind when he talks about the value of showing concern for injured workers: “People will forget what you did, but people will never forget how you made them feel.”



## Tennessee, Florida sustain opt-out momentum

BY LOUISE ESOLA

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The national discussion around workers compensation opt-out laws won't go away in 2017, despite a recent low point in the number of Texas workers comp nonsubscribers and the Oklahoma Supreme Court's decision in September to ax the state's alternative injury benefit law, according to comp experts.

A Tennessee insurance regulator said the state is gearing up for a third year of battling proposed opt-out legislation there. Meanwhile, a Florida lawmaker reportedly introduced a bill last month that would make it optional for employers to provide traditional workers comp coverage for their employees.

"We will see other attempts" at introducing workers comp opt-out in other states, said Greg McKenna, Itasca, Illinois-based vice president and counsel of governmental affairs at Gallagher Bassett Services Inc. "It is certainly an issue to watch in 2017."

Last month, the Texas Department of Insurance revealed that 22% of all companies in the state chose to opt out of traditional workers comp insurance in 2016, down 11 percentage points from 33% in 2014. The 2016 findings represent the lowest percentage of nonsubscribers in the nation's lone opt-out state since 1993, according to the department's biennial report.

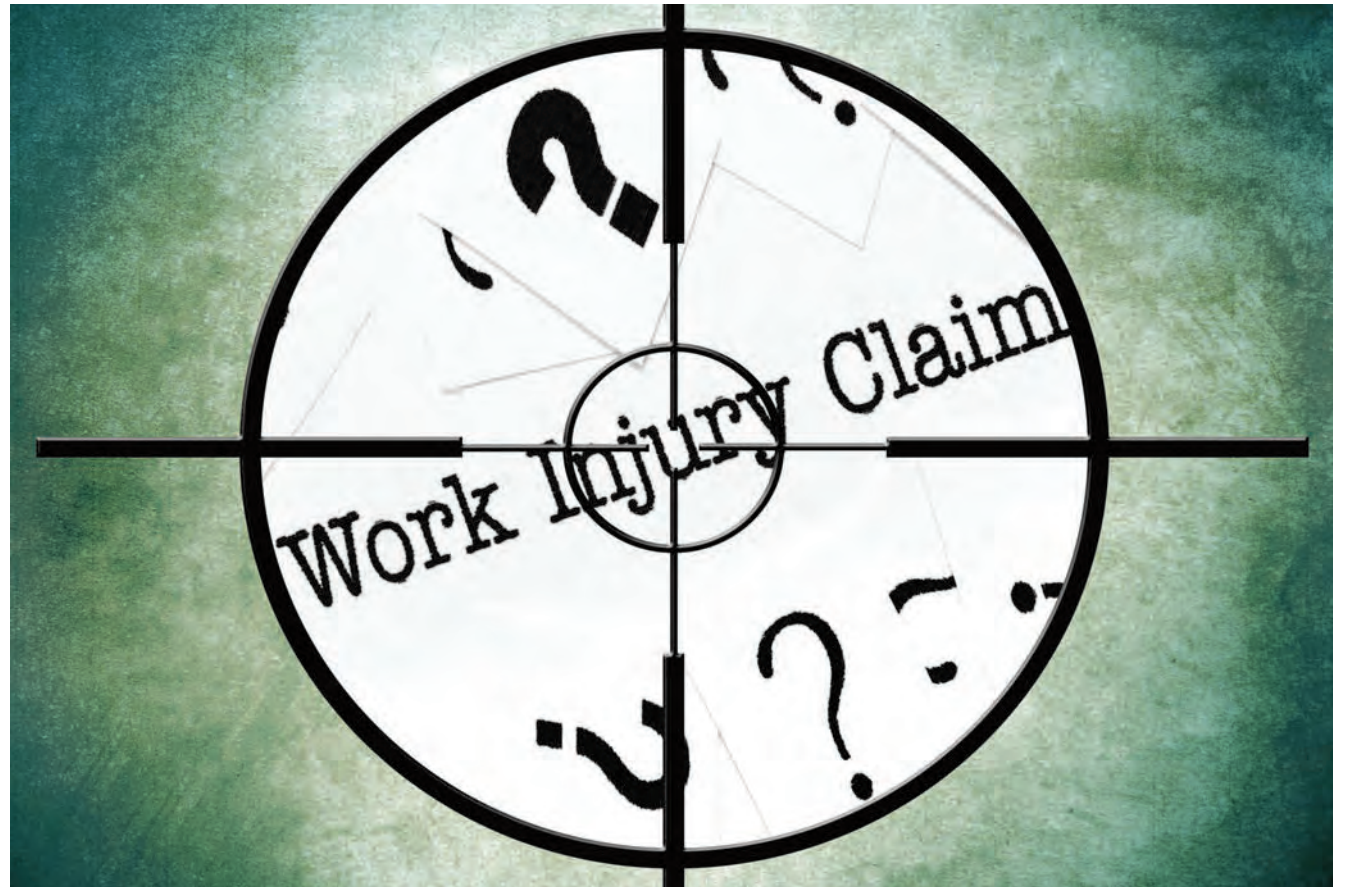
Texas regulators stated in the report that the new numbers show "employers believe the benefits of participating in the workers compensation system outweigh the costs of obtaining the coverage."

Employers that opt out of Texas' workers comp system can either provide alternative benefit plans for injured workers or forgo providing workers comp coverage or injury benefits. Companies that fail to provide comp coverage can face tort litigation from injured workers.

Fred Bosse, Austin, Texas-based vice president for state affairs of the southwest region for the American Insurance Association, said Texas is a very vibrant, competitive market for workers comp insurers, which could be contributing to employers purchasing comp insurance and driving down nonsubscription rates.

For instance, the Texas insurance department's report noted that workers comp rates have fallen in the state, "making workers compensation coverage more affordable for Texas employers." Employers paid an average of 96 cents in workers comp premiums per \$100 of payroll in 2014, down from \$1 in 2013 and a high of \$2.34 in 2003.

"Costs are down (and) medical care, closed formulary (use), access to medical



care has improved. Return-to-work numbers are good. Prices for the product are falling," Mr. Bosse said.

However, Bill Minick, president of Dallas-based PartnerSource, an alternative workers comp consulting unit of Arthur J. Gallagher Risk Management Services Inc., said large Texas employers continue to embrace nonsubscription. The department's report attributed declining nonsubscription this year primarily to smaller employers choosing to buy workers comp insurance.

"This new report indicates that medium and large employers remain committed to (alternatives to worker comp), which in our experience is a very viable way to provide good benefits coverage and safe workplaces," Mr. Minick said in a statement to Texas lawmakers in December.

The Texas report came three months after the Oklahoma Supreme Court declared that state's opt-out program to be unconstitutional. The Oklahoma Employee Injury Benefit Act, which became effective in February 2014, allowed employers to opt out of the state's comp system only if they provided an alternative benefit program for injured workers, and did not allow injured workers to sue their employers in tort.

Struggles for alternative workers comp programs in 2016 did not make opt-out any less attractive for proponents lobbying

other states to introduce similar laws in 2017, experts say.

"There's a cottage industry of people who advance the opt-out option," AIA's Mr. Bosse said.

Republican Florida state Rep. Cord Byrd reportedly is expected to propose a bill in 2017 that would allow employers to opt out of workers comp insurance.

That media report came out last month, which is also when Florida's workers comp advisory rates shot up 14.5%.

A.J. Donelson, public and government affairs officer with the Association for Responsible Alternatives to Workers Compensation in Richmond, Virginia, said he wouldn't be surprised to see other states consider various forms of opt-out legislation in 2017. He addressed opt-out programs last month during a panel discussion at the National Association of Insurance Commissioners fall meeting in Miami.

Tennessee is a likely hot spot for such discussion, according to a state insurance regulator.

"This issue has been sort of plaguing us in Tennessee for the last couple of legislative sessions and we anticipate it will ignite again," Tennessee Department of Commerce and Insurance Deputy Commissioner Chlora Lindley-Myers said during the NAIC discussion.

Gloria Gonzalez contributed to this report.

### TEXAS NONSUBSCRIPTION

- ▶ Texas remains the only state that allows employers to choose not to provide workers compensation insurance.
- ▶ In 2016, 22% of year-round private employers opted out of workers comp, compared with 33% in 2014.
- ▶ The 2016 opt-out findings represent the lowest percentage of nonsubscribers in the state since 1993.
- ▶ About 18% of Texas workers, or 1.8 million, worked for employers that opted out of the traditional workers comp system, down from 20% in 2014.
- ▶ Employers paid an average of 96 cents in workers comp premiums per \$100 of payroll in 2014, down from \$1 in 2013 and a high of \$2.34 in 2003.
- ▶ The nonfatal occupational injury and illness rate in Texas decreased to 2.3 injuries per 100 full-time employees in 2015, down from a rate of 2.4 injuries per 100 full-time employees in 2014 and 3.6 injuries per 100 full-time employees in 2005.

Source: Texas Department of Insurance Division of Workers' Compensation

# California's health care employers prepare for workplace violence rule

BY JOYCE FAMAKINWA

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The murder of Napa State Hospital psychiatric technician Donna Gross at the hands of a patient in October 2010 highlighted the danger health care workers routinely face in their jobs and has culminated in California adopting the first workplace violence prevention standard for health care workers in the United States.

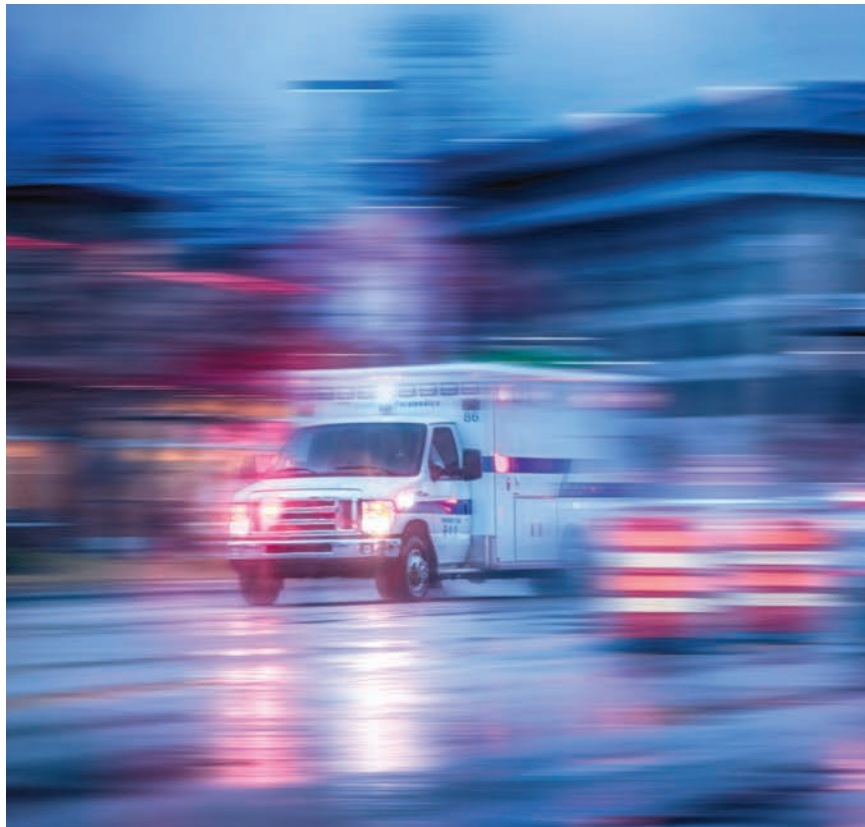
In October, the California Division of Occupational Safety and Health Administration Standards Board unanimously adopted the standard, which aims to reduce violent incidents and protect workers and will take effect April 1.

Under the Cal/OSHA standard, workplace violence is defined as "any act of violence or threat of violence that occurs at the work site."

The standard will require that health care employers create a violence prevention plan, keep a comprehensive record of violent incidents and provide workplace violence training. It applies to hospitals, home-based hospice, emergency medical services, emergency medical transport, drug treatment programs, and outpatient medical services to the incarcerated in correctional and detention settings.

"The health care industry is ... three times more likely to face incidents of workplace violence than other private sector industries," said Nick Smith, practice leader, security risk consulting at Willis Towers Watson P.L.C. in New York.

The regulation will drive further education and awareness that will "better protect health care workers, consumers, patients and anyone who touches the system," he added.



David Quezada, Los Angeles-based vice president of loss control for workers compensation insurer Employers Holdings Inc., said the standard was a "call for more comprehensive protection for health care workers."

Ms. Gross was strangled and robbed by a mentally ill patient while she was in a courtyard returning from a dinner break, according to a union newsletter. For Katherine Hughes, a registered nurse, member of the Service Employees International Union Local 121RN and labor specialist,

the effort to protect health care workers began after attending Ms. Gross' memorial rally and talking to other employees about the violence they are exposed to at work.

The organization started doing research around workplace violence and health care, including interviewing union members and participating in workplace violence prevention classes with experts from around the country.

"We came to the conclusion that we thought we had done as much as possible legislatively to address workplace violence

in health care, so we decided to petition the Cal/OSHA standards board directly in February 2014," Ms. Hughes said.

SEIU began attending Cal/OSHA meetings early 2014, where their members would share their personal experiences of workplace violence.

"Unfortunately, we have some really telling stories of how serious the injuries can be," she said. "A nurse was stabbed 12 or 13 times and she survived her injuries but ... she certainly wasn't the same person that she was before. The people we have talked to suffer a lot of post-traumatic stress on top of the physical injuries. We've had a lot cervical spine injuries, concussions that can cause ongoing health issues. I think no one really realized how serious and how prevalent violence in health care is."

The estimated injury rate for private-sector hospital workers hurt in workplace violence scenarios was 14.7 per 10,000 workers in 2013, according to a March report from the U.S. Government Accountability Office.

The workplace violence injury rate was estimated at 35.3 injuries per 10,000 nursing and residential care workers that same year. That's compared with a workplace violence injury rate of 2.8 per 10,000 workers for all private-sector jobs, the GAO said.

California health care employers are still at the beginning stages of implementing the standard in their workplaces, but Ms. Hughes said employee involvement is prevalent throughout the regulation.

"The front-line employees have to be part of the hazard assessment, they have to be a part of developing the plan because who better than the people working there who know what they need?" she said.

## FEDERAL SAFETY REGULATORS MAY FOLLOW STATE'S LEAD

The California Division of Occupational Safety and Health Administration Standards Board's approval of a workplace violence standard for health care workers is significant because it is the first of its kind and could become the template for a similar standard in other states or on a national level, experts say.

In 1999, the U.S. Occupational Safety and Health Administration published voluntary health care employer guidelines that were updated in 2014, but federal OSHA does not have a specific standard like the one in California that regulates workplace violence.

However, the federal agency may be working to change this, issuing a request for information in December on whether to propose a standard to prevent workplace violence in health care and social assistance settings. A public meeting is scheduled to take place on the issue this month in Washington.

The health care industry has already shown a desire to adopt the requirements laid out in the early versions of the California regulation, said Nick Smith, practice leader, security risk consulting at Willis Towers Watson P.L.C. based in New York.

"Primarily, it's been guided by OSHA under the general duty clause," he said.

The federal agency increased its work-

place violence inspections of health care employers from 11 in 2010 to 86 in 2014 and issued general duty clause citations in about 5% of cases, but the U.S. Government Accountability Office suggested OSHA consider additional action, including whether a standard is needed, in a March report.

While there is no federal standard designed to protect workers from violence, states such as Illinois, New York and New Jersey require employers to have a workplace violence prevention program, said David Quezada, Los Angeles-based vice president of loss control for workers compensation insurer Employers Holdings Inc.

Joyce Famakinwa



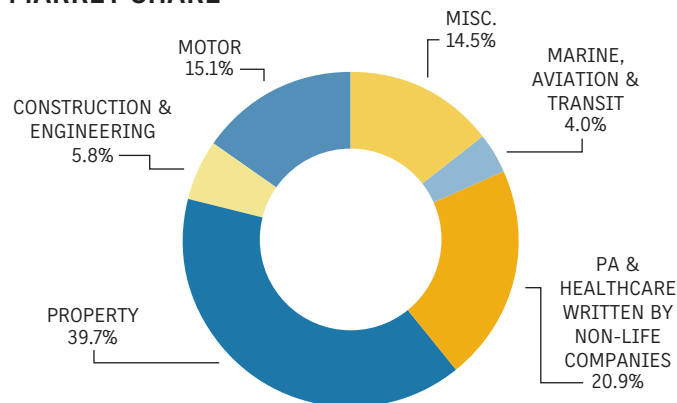
## PROFILE: CAMBODIA

# 146

GLOBAL  
P/C MARKET  
RANKING

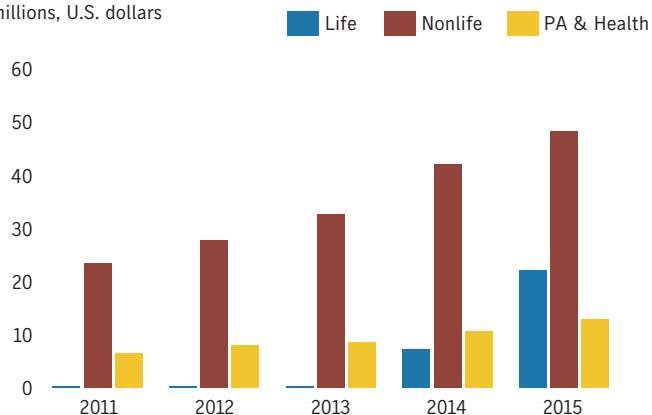
The insurance market in Cambodia is seeing a period of rapid expansion — far beyond the rate of gross domestic product growth — driven by the imposition in 2014 of a minimum fire tariff for risks up to \$10 million. Policyholders with sums insured approaching the \$10 million threshold are being encouraged to increase their coverage, possibly by the addition of a business interruption section under a package policy, to be eligible for competitive market rates, which are a fraction of tariff terms. Deliberate over-insurance is thus an issue. Auto liability insurance is expected to expand with the enactment of a law making third-party liability coverage compulsory.

### MARKET SHARE



### MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

### COMPULSORY INSURANCE

Various lines of insurance are compulsory, including:

- Auto third-party liability for commercial vehicles
- Construction insurance
- Passenger liability for public transport
- Professional indemnity for insurance brokers
- Shipowners' liability for oil pollution

### NONADMITTED

The 2014 insurance law states: "Insurance, which is beneficial to a natural person or legal entity ... may be purchased at an overseas insurance company." There are no stated exceptions, except to say that a nonadmitted insurance contract will be defined by a subdecree, which has yet to be issued.

### INTERMEDIARIES

Intermediaries are permitted to place business with nonadmitted insurers, although changes to and redefinition of what is exactly meant by the law are expected. It is expected that the provisions under the previous law will be replicated — which would mean that nonadmitted business would be barred, with the exception of marine cargo and aviation cargo — thus locally licensed intermediaries will be obliged to deal only with locally licensed insurers.

### MARKET PRACTICE

Nonadmitted placements are only an issue with foreign-owned interests, which would possibly seek coverage not available from local insurers. All companies in the market are always ready to front coverage when there is no readily available local coverage, or for which there is no automatic reinsurance capacity.



### AREA

# 69,884

square miles

### POPULATION

# 15.8

million

### MARKET CONCENTRATION

# 72.2%

market share of top 3 insurers

### 2016 GDP CHANGE (PROJECTED)

# 6.8%

### MARKET DEVELOPMENTS

Updated October 2016

- The Ministry of Economy and Finance has introduced nine subdecrees under the 2014 insurance law, which are still under discussion with the market before becoming effective. Otherwise, there have been no further developments following enactment of the law.
- The seventh property/casualty insurer in the market started operating in the third quarter of 2015 — People and Partners Insurance P.L.C.
- There are six new brokers operating in the market, in addition to Poe-Ma and A.G. Cambodia, the latter having converted from being an exclusive agent for Asia Insurance. The new players are a mixture of locally owned companies and subsidiaries or associates of foreign-owned brokers.
- International financial reporting standards are to be introduced for the 2019 financial year. Companies are gearing up already, either with information technology systems developed in-house or off-the-shelf solutions imported and amended for local use.
- The market is expected to continue to expand, not only through foreign direct investment for industrial and infrastructure projects, but also microfinance and microinsurance, the latter being sold increasingly by the growth of smartphone use.

Information provided by Axco Insurance Information Services.  
[www.axcoinfo.com](http://www.axcoinfo.com)



## Professional liability policy doesn't cover investment losses

■ Investment losses are not considered property and therefore are not covered by professional liability policies under New York insurance law, a state court said.

John Thomas Financial Inc., a New York-based Wall Street investment brokerage firm, was shut down by government regulators over numerous securities violations, according to a New York State Supreme Court ruling.

In 2012, John Thomas' parent company, ATB Holding L.L.C., was issued a broker-dealer professional liability policy by New York-based New York Marine and General Insurance Co. In 2014, following an arbitration proceeding, investor Todd Tuls reached a settlement agreement with John Thomas for \$650,000. He then filed suit, seeking payment of the award from New York Marine.

Justice Anil C. Singh of the State Supreme Court in New York, which is the state's second-highest court, granted New York Marine summary judgment dismissing the case. Among the reasons cited by the court is that New York insurance law precludes coverage for Mr. Tuls' losses if there has not been personal injury or property damage.

## Employers liable for asbestos exposure to workers' families

■ The California Supreme Court unanimously ruled that employers have a duty to prevent asbestos exposure from spreading to the families of their employees exposed to the contaminant.

Johnny Blaine Kesner Jr. was diagnosed with peritoneal mesothelioma in February 2011 and filed a lawsuit against defendants he believed were responsible for exposing him to asbestos, court records show. That included Camden, New Jersey-based Pneumo Abex L.L.C., which employed his uncle, George Kesner, who was exposed to asbestos fibers released in the manufacture of brake shoes.

Separately, the children of Lynne Haver,

who was diagnosed with mesothelioma in March 2008 and died in April 2009, filed a wrongful death and survival action alleging negligence, premises owner and contractor liability because they argued that Lynne's exposure to asbestos via former husband Mike Haver caused her cancer and death. Mr. Haver was employed by the Atchison, Topeka and Santa Fe Railway, a predecessor of Fort Worth, Texas-based BNSF Railway Co., from July 1972 through 1974, according to court documents.

The Havers and Mr. Kesner alleged that BNSF and Abex created a risk of harm to the household members of their employees by failing to exercise reasonable care in their use of asbestos-containing materials, according to court documents.

The California Supreme Court consolidated their cases, and ruled last month that an employer has a duty to members of an employee's household to prevent take-home asbestos exposure.



## Immigration status doesn't undermine workers comp claim

■ The Delaware Supreme Court ruled that being unable to return to work due to immigration status doesn't necessarily make an undocumented worker unemployable.

According to court records, Magdalena Guardado worked as a machine manager for Kenton, Delaware-based Roos Foods Inc. In 2010, Ms. Guardado injured her left wrist and received workers compensation total disability benefits.

Ms. Guardado came to the United States from El Salvador in 2004, is not a U.S. citizen and does not have credentials or documentation that would establish that she is legally able to work in the United States. But Roos Food filed a petition for a review to terminate Ms. Guardado's workers comp benefits, alleging that she could return to work, records show.

The Delaware Supreme Court said that Ms. Guardado's immigration status could not be used as the sole factor to consider if she is a displaced worker, and therefore eligible for continued comp benefits. The high court found that factors such as age, education and physical impairment must also be considered.

The court also said that Roos Foods must prove that work is available for Ms. Guardado if it seeks to discontinue her disability benefits based on her employability.



## Securities fraud suit against drugmaker reinstated

■ A U.S. appellate court has reinstated securities fraud charges against a pharmaceuticals company because its officers allegedly provided an optimistic report about a trial drug shortly after the U.S. Food and Drug Administration had expressed reservations about it.

In 2008, Cambridge, Massachusetts-based Ariad Pharmaceuticals Inc. began development of ponatinib, a drug designed to treat patients suffering from chronic myeloid leukemia, a cancer of the blood and bone marrow, according to a ruling by the 1st U.S. Circuit Court of Appeals in Boston.

In October 2012, the FDA sent an email to the company rejecting the company's proposed label for the drug because of inadequate safety disclosures, citing concerns including an 8% rate of "serious cardiovascular events," based on trial data.

But in December 2012, an investment bank published a report quoting company officers as stating they were optimistic about the drug's prospects for approval in the U.S. with a favorable label, according to the ruling.

The company announced it was suspending the drug's marketing and commercial distribution at the FDA's direction on Oct. 31, 2013. The stock market "reacted harshly," and investors sued the company and its officers, among others, on charges including securities fraud, according to the ruling. The U.S. District Court in Boston dismissed all charges in the case.

But a unanimous three-judge panel of the 1st Circuit reinstated securities fraud counts with respect to "one particular alleged misstatement" by Ariad.

"We have little difficulty concluding that disclosure of the FDA's concerns of the rate of serious cardiovascular events with respect to Ariad's leading product would have altered the total mix of information available to investors," the ruling said.

## DOCKET



### RETIRED FOOTBALL PLAYERS SUE NFL OVER HEAD TRAUMA

Thirty-eight former professional football players sued the National Football League for workers compensation due to chronic traumatic encephalopathy, a brain condition caused by repeated head trauma.

The players say their 32 former teams named in the lawsuit and the NFL "routinely failed to care for (their) repetitive head injuries during their careers in any medically competent or meaningful manner."

Among the plaintiffs in the suit are 49-year-old Dexter Carter, who played for the San Francisco 49ers and the New York Jets, and 39-year-old Corey Simon, who played for the Philadelphia Eagles.

### JOB APPLICANT'S AGE DISCRIMINATION SUIT REINSTATED

A federal appeals court has reinstated an age discrimination lawsuit filed by a job applicant who said he was not hired by a petroleum land management services company because of his age.

Phillip David Haskett, who was born in 1957, filed suit against Cinco Energy Management Group after it failed to hire him as a landman. He charged the company with violating the Age Discrimination in Employment Act. A U.S. District Court dismissed his claim, but the 5th U.S. Circuit Court of Appeals reversed that ruling.

### HOSPITAL'S CAPTIVE MUST COVER STAFFING AGENCY NURSE

A nurse provided by a staffing agency should be considered a hospital employee for purposes of insurance coverage, the 4th U.S. Circuit Court of Appeals ruled.

A former patient brought a medical malpractice action against a Maryland hospital and several doctors and nurses, one of them placed by a staffing agency. The 4th Circuit found that the hospital's captive insurer was responsible for paying a settlement in that nurse's malpractice case, rather than the staffing agency's insurer, because it controlled how she did her work.



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Mike Foley was named CEO North America for Zurich Insurance Group Ltd. last year when the global insurer announced a series of organizational changes aimed at simplifying its structure, reducing its costs and improving its results. He joined Zurich from McKinsey & Co. in 2006. Mr. Foley recently spoke with *Business Insurance* Editor Gavin Souter about how the changes at Zurich will affect the insurer's operations and its customers. Edited excerpts follow.

## Mike Foley

**Q** What do the changes at Zurich globally mean for the North American operations?

**A** One of the first things that (new Zurich Group CEO Mario Greco) did organizationally was to emphasize geography. So he named country CEOs so that the country CEO was responsible for all the activity within the country ... Later, in September, we announced that we were also going to have a global commercial unit, led by Jim Shea. The logic here is that when you look at the customers we serve and the value propositions that we offer and deliver, particularly in the commercial space, many of our customers are larger than a single country in terms of their exposures. And so, there's no way that you can say we're going to have a country leader and that's all we care about ... Some of those commercial risks will tend to be predominantly in-country and some of those will be multinational, but we do have a matrix that looks at both the commercial side and the country side.

In North America, we took our commercial markets unit, which was predominantly our core middle-market book — although we had some industry verticals like construction and health care that went up to very large sizes — and our global corporate book and we (merged that together effective Jan. 1) under one leader, Paul Horgan. He'll have a matrix to me and to Jim Shea. By doing that, we think we break down silos and say that in the marketplace now there's one business leader responsible for really every size risk. And then we still have our specialty products unit, which is led by Bryan Salvatore, and those two units comprise what we think of as commercial in North America.

And then we still have our alternative markets unit, which is our crop business and our direct markets business and all of our program business.

**Q** What does that mean for your large corporate customers? How will things be different for them?

**A** What it means for how we go to market is that it's simpler to access Zurich because you know if you have a special line that you'd go to our specialty products unit,

and that's how special lines are typically handled. But if you're any other customer, you don't have to worry about "am I global corporate customer or am I a commercial markets customer," you just come to Zurich through the brokerage channel and we find the place you land.

Also, whenever you create a dividing line, you run the risk of having white space and gaps. Prior to this move, there could be a customer that's an upper-middle-market sized customer but has a pretty complicated risk to address and might need a different property form or different property expertise than what we typically have in our standard middle-market space. If it worked perfectly, we'd find a way to get someone access to that expertise, but if you have two separate units it doesn't



always happen. Now that it's in one unit, we expect it to more seamlessly flow to whoever has the expertise.

Similarly, there's often fairly large customers that actually have pretty straightforward simple risks, and you run the risk that if someone's used to doing complex transactions, they might not pursue what could be a very attractive opportunity.

**Q** Over the past year, you've been reunderwriting and rebalancing your book. How is that progressing?

**A** I think we overemphasized it a year ago versus how it has felt and should be felt in the marketplace. There was a small percentage of our book — several

specific lines within North America — that we decided that we were going to exit, and those were transportation (long-haul trucking and some passenger transport services) and monolined boiler machinery, so very small lines of business and very focused lines of business as a percentage of our total book.

And then beyond that, we're really doing what we think everyone does all the time, which is looking at our renewal book and trying to make sure that we understand the accounts that we think are well-priced and well-positioned and good risks that we want to retain, and those accounts that are a little more challenged in terms of the premium that we're receiving for the risk that we're being asked to bear.

**Q** What's your view on the market?

**A** The market remains highly competitive. It's clearly one where I think the most recent industry rate monitors would show that industry rates on average are zero to very low single digits. That clearly varies by line of business, so property — and particularly larger layer property — is probably the most under pressure.

On the other side of the coin, auto is probably the line that people are consistently pointing to as needing and actually getting rate in the marketplace.

This does still feel different to me in this cycle ... with increased transparency and increased understanding. I think the well-positioned carriers can navigate through what is clearly a challenging market.

**Q** Zurich has recently constructed a new headquarters building in Schaumburg, Illinois. Is there any wider strategy behind that?

**A** It's a reaffirmation of a key part of the strategy, which is Zurich's commitment to North America. We've been here since 1912, and we've been in Chicagoland the whole time. This is a long-term lease and a long-term commitment to the marketplace, and one that I think says we're going to continue to build on our strong commercial leadership position and on our unique footprint of U.S. and Europe exposure and capabilities.

When you look at the customers we serve and the value propositions that we offer and deliver, particularly in the commercial space, many of our customers are larger than a single country in terms of their exposures. And so, there's no way that you can say we're going to have a country leader and that's all we care about.



# TRUMP PRESIDENCY TO USHER IN NEW ERA FOR RISK MANAGERS

From regulation to foreign policy,  
significant changes expected

“Now that the president-elect and his party are transitioning from electioneering to governing, they, like many political victors before them, are in some cases moderating the tone of their comments but in other cases sticking to their campaign rhetoric.”

**T**he unconventional presidential election campaign of Donald Trump yielded numerous policy pledges that could have direct and indirect effects on people and organizations in the business of managing risk.

Everything from financial regulation to international sanctions to health care reform was lambasted by the iconoclastic candidate.

Now that the president-elect and his party are transitioning from electioneering to governing, they — like many political victors before them — are in some cases moderating the tone of their comments, but in other cases sticking to their campaign rhetoric.

The cabinet and political appointments and nominations announced by the incoming administration also send mixed signals. In many cases, traditional conservatives are being put forward, but other appointees have less traditional backgrounds.

How the policy changes and appointments will affect risk management will be played out over the coming months and years, but in the following pages, as we await the inauguration of the 45th president of the United States later this month, we take a look at some of the key issues that concern risk managers and their insurance industry partners, and talk with industry experts about how they think the political and policy goals of the incoming Trump administration and the Republican-controlled Congress will change the business landscape.



## CORPORATE RULES MAY EASE

**D**espite President-elect Donald Trump's campaign promises to dismantle the Dodd-Frank Wall Street Reform and Consumer Protection Act, there are unlikely to be big differences in the U.S. Securities and Exchange Commission's activities under his administration, experts say.

“I wouldn't expect there will be major changes in the way the SEC goes about its enforcement program,” said Michael L. Hermsen, a partner with Mayer Brown L.L.P. in Chicago. “Oftentimes, the commissioners in the past have been unanimous or near-unanimous” with respect to SEC actions, despite party affiliation, he said.

The record \$4 billion-plus in disgorgement and penalties the agency collected in fiscal year 2016,

which was announced in October, may hold level or decrease slightly, said William G. Passannante, a shareholder with Anderson Kill P.C. in New York.

“There might be a slight course correction,” but the laws addressing securities fraud have been in place since the Depression, and “I don't think you're going to see too much of a significant change” in how the new SEC chair will approach enforcement, said Jimmy Fokas, a partner with Baker & Hostetler L.L.P. in New York.

In addition, there is unlikely to be significant change with respect to enforcement of the Foreign Corrupt Practices Act. “The consensus is, (President-elect Trump) will continue to enforce it,” said Kevin LaCroix, executive vice president

of RT ProExec, a division of R-T Specialty L.L.C. in Beachwood, Ohio.

However, there will be a focus on “more clear-cut violations” of the FCPA, said Mr. Hermsen. “You will see less sort of stretching to make new interpretations” of the law or efforts to expand how it is applied, he said. “Those are the types of situations where we may see a little bit of pullback.”

There may also be a pullback on the pay ratio rule adopted in 2015 pursuant to Dodd-Frank, which requires public companies to disclose the ratio of a CEO's compensation to its employees' median compensation, Mr. Hermsen said.

Mr. Passannante added that former SEC commissioner Paul Atkins, who is on President-elect Trump's transition team, has advocated requiring whistleblowers to first report to their own companies before approaching the SEC, which is not the case now.

Mr. Atkins has also advocated that the SEC focus its enforcement actions on individual bad actors rather than the company itself, Mr. Passannante said.

But experts say much remains unknown.

“The tea leaves are too hard to read right now,” said Michael E. Clark, special counsel with Duane Morris L.L.P. in Houston. Mr. Trump “is not a traditional Republican in any sense of the term.”

Judy Greenwald



## POLICY ON BIAS LAWSUITS TO VEER IN NEW DIRECTION

**E**mployers should expect incremental changes in how the U.S. Equal Employment Opportunity Commission operates once President-elect Donald Trump assumes office, but how much will change is unclear.

There will likely be policy-driven changes as Mr. Trump replaces commissioners whose terms have expired, said Gerald L. Maatman Jr., a partner with law firm Seyfarth Shaw L.L.P. in Chicago. But the career public servant attorneys who have been in place under the Bush, Clinton and Obama administrations and feel strongly about what they do “will not lose their jobs,” he said.

Still, “There could be a real slowdown or rollback” in the EEOC's strategic enforcement plan, said Richard B. Cohen, an attorney with FisherBroyles L.L.P. in New York.

The agency announced in October that its plan for fiscal years 2017-21, which continues to prioritize areas identified in its previous plan with some modifications, includes eliminating barriers in recruitment and hiring and protecting vulnerable workers, among other goals.

One possible move by a Trump administration would be changes to the EEO-1 report. Until now the annual survey has required company employment data to be categorized by race and ethnicity, gender and job category.

But a revised report to be first filed in March 2018 requires private employers with at least 100 workers to also report summary pay data.

EEOC Chair Jenny R. Yang has said collecting pay data is a significant step in addressing discriminatory pay practices, but many employers consider it onerous.

With the Trump administration and a Republican-held Congress holding the agency's purse strings, the EEOC may also focus more on systemic discrimination cases, rather than filing cases on behalf of only one or two plaintiffs, in order to use its resources more efficiently. But the EEOC may also reduce the number of systemic cases it files as well, say experts.

In addition, with David Lopez having left his post as EEOC general counsel last month, a new Trump-appointed general counsel may put a stop to the agency's regional offices' “more aggressive attempts to push the law in various directions,” said Frank C. Morris Jr., a member of Epstein Becker & Green P.C. in Washington.

The EEOC also may change its approach with respect to its stance that Title VII of the Civil Rights Act of 1964 applies to sexual orientation, said Paul C. Evans, a partner with Morgan, Lewis & Bockius L.L.P. in Philadelphia.

The Trump administration may also more actively investigate and pursue claims related to the outsourcing of jobs to foreign nationals and companies, he said.

Judy Greenwald

## DRUGS



## CRACKDOWN ON OPIOID ABUSE EXPECTED TO INTENSIFY

Experts believe President-elect Donald Trump is likely to back federal funding for state efforts to fight a growing epidemic of opioid addiction and overdoses.

“I think we will see significant statewide efforts supported by the president,” said Greg McKenna, Itasca, Illinois-based vice president and counsel of governmental affairs at Gallagher Bassett Services Inc.

The number of deaths from opioid overdoses surged 23% from 2014 to 2015, according to figures released by the U.S. Centers for Disease Control and Prevention in December. The CDC says at least

half of those deaths involved a legal prescription drug, and most of the hardest hit states were in the Rust Belt and Appalachia.

The 21st Century Cures Act, signed by President Barack Obama last month, earmarks upwards of \$1 billion for state programs that are fighting opioid addiction. Examples of state programs include prescription drug monitoring programs that track opioid-prescribing doctors and opioid addiction treatment programs.

Experts say the Trump administration could allow that federal funding to stand.

Mr. Trump is also expected to march ahead with campaign promises related to drug enforcement. That includes demanding that the U.S. Drug Enforcement Administration reduce the amount of prescription opioids that can be manufactured in the country and cracking down on doctors who frequently prescribe opioids, including physicians who prescribe opioids for injured workers under workers compensation claims.

Medical marijuana, which is also making its way into workers comp, could face a tough road under the new administration.

Jeff Sessions, President-elect Trump’s pick for U.S. attorney general, isn’t a fan of medical marijuana and could initiate a battle between the federal government, which classifies marijuana as an illegal substance, and the 28 individual states that now allow medical marijuana to be used, sources say.

“The marijuana industry is really scared of Jeff Sessions,” said Mark Pew, senior vice president of Prium, a Duluth Georgia-based medical cost management firm. “There is a significant concern that Sessions will follow through on his personal opinions.”

*Louise Esola*



## HEALTH CARE CHANGES EYED BY COMP SECTOR

One of the questions surrounding the new administration is what will happen to the health care reform law, which workers compensation experts have watched closely to determine if it would impact medical care for injured workers.

During his campaign, President-elect Donald Trump repeatedly stated that he would repeal the Affordable Care Act, which could leave an estimated 18 million people uninsured, according to the Center for Health and Economy, a nonpartisan research organization.

Mr. Trump seemingly has backed away from this position since the November election, however. According to media reports, he now plans to keep parts of the reform law, such as a provision that prevents insurers from denying coverage due to pre-existing conditions and another that allows parents to provide coverage for their children up to age 26.

Because of this shift, it may be too early to tell how workers comp could be affected if the ACA is repealed, said Steve Bennett, Washington-based associate general counsel for the American Insurance Association.

Experts say the ACA has not had much impact on workers comp medical care, despite initial concerns that it might affect the comp sector. For instance, some feared that doctors would bill more claims under workers comp if they were set to receive less money for the same medical services under the ACA.

“That actually didn’t happen,” said Tracey Burdick, Los Angeles-based senior vice president of risk control services at Lockton Cos. L.L.C.

“Overall, we did not find any impact on injured worker access to medical care from its introduction, so its repeal would likely not have an impact,” said Barry Lipton, Los Angeles-based practice leader and senior actuary for the National Council on Compensation Insurance Inc.

Experts say comp claim frequency could increase if the ACA is repealed since people who lose coverage might seek care under workers comp.

*Joyce Famakinwa*

“During his campaign, President-elect Donald Trump repeatedly stated that he would repeal the Affordable Care Act, which could leave an estimated 18 million people uninsured, according to the Center for Health and Economy.”

## SAFETY MAY SEE CHANGE IN FOCUS

The U.S. Occupational Safety and Health Administration has pursued an aggressive enforcement agenda against employers violating workplace safety laws under President Barack Obama, but that is likely to shift toward a more collaborative approach under President-elect Donald Trump.

“With respect to OSHA, I think we’ll see a movement going back to the balanced approach that was there when I was there,” said Edwin Foulke, an Atlanta-based partner at Fisher & Phillips L.L.P. and a former assistant secretary of labor for Occupational Safety and Health. “I really believe if you want to get to zero injuries and fatalities, compliance assistance is much more effective than enforcement.”



Late last month, Mr. Trump had not chosen a new head of OSHA, but his selection of Andrew Puzder, chief executive of Carpinteria, California-based fast-food chain CKE Restaurants Inc., as secretary of labor was praised by employer associations concerned about increases in regulation and denounced by employee representatives who fear a curtailment of the worker protections implemented over the past eight years.

Mr. Foulke, who served under

three different administrations, said he doesn’t see any conflicts of interest arising from the fact that Mr. Trump is a real estate developer and the construction industry is often a subject of regulation by the agency, because the president-elect will focus on setting the broad agenda rather than the specific details.

“I don’t see him saying, ‘Hey, that silica standard needs to be changed,’” he said. “He has more important things to do.”

*Gloria Gonzalez*

## FLOOD COVER OVERHAUL

Unlike previous years when the fate of the National Flood Insurance Program often was determined in a last-minute legislative scramble ahead of its pending expiration, the incoming U.S. Congress is expected to move quickly to reform and reauthorize the program, which is in debt to the tune of \$23 billion.

Overhauling the NFIP ahead of its September 2017 expiration is a priority for both Republicans and Democrats, including incoming Senate Minority Leader Chuck Schumer, D-N.Y., and the reform effort is expected to propel additional private-market participation in providing flood insurance, which will give homeowners and businesses more insurance options.

Industry stakeholders welcomed the December release of a set of draft principles by the House Financial Services Housing and Insurance Subcommittee that will serve as a starting point for the overhaul debate,



which they believe bodes well for NFIP reform as a priority for the new Congress.

Brooke Stringer, Washington-based government relations policy adviser for the National Association of Insurance Commissioners, said the organization “supports the growth of a state-regulated private flood insurance market to provide consumers an alternative to the NFIP.”

The NAIC also supports the Flood Insurance Market Parity and Modernization Act, which

was adopted by a 419-0 House vote in April, but did not see Senate action before adjournment.

“This is something we anticipate will be included in NFIP reauthorization,” she said of the bill, which clarifies that people who buy private flood insurance should receive the same treatment as those who purchase it through the NFIP if they’re trying to obtain federally backed mortgages that require flood insurance.

Gloria Gonzalez

## SUPPLY CHAIN



## SUPPLY CHAIN RISKS RISE

President-elect Donald Trump’s threats to scrub trade agreements and impose high tariffs against China and Mexico could disrupt industry supply chains, analysts say.

Paradoxically, U.S. domestic firms would face the most significant disruption if Mr. Trump delivers on his pledge to scrutinize U.S. trade deals, and enacts punitive tariffs, said Arun Pillai-Essex, Americas analyst at Bath, England-based global risk advisory firm Verisk Maplecroft.

“U.S. manufacturing is heavily reliant on access to inputs from major U.S. trading partners like China,” Mr. Pillai-Essex said in an email. “Any disruption or tit-for-tat small-scale trade dispute would hamper access to critical imports and raise business costs.”

Mr. Pillai-Essex noted that making it more difficult to access global inputs would embolden Asian and other international competitors of U.S. manufacturing, who would be free to access the supply chains of China or Mexico.

“For Trump to successfully apply major tariffs on trading partners, his administration would be forced to lodge cases with the (World Trade Organization),” Mr. Pillai-Essex added, “unless he takes the highly unlikely step of removing the U.S. out of the trade body’s jurisdiction.”

Mr. Pillai-Essex said the WTO’s role as an arbitrating body on trade issues should help reduce the Trump administration’s capacity to upend global supply chains. However, he said, in the extreme event of a U.S. withdrawal from the WTO, the adoption of mercantilism would introduce volatility into the global supply chain and act as a significant drag on business investment.

Bob Ferrari, Boston-based independent supply chain and B2B industry analyst and the founder and executive editor of the Supply Chain Matters blog, said in an email, “A Trump administration can well present added challenges for industry supply chains.”

“An overly protectionist policy by the United States could make U.S.-produced goods more expensive in foreign markets due to added tariffs,” Mr. Ferrari said in an email, “and that would have a potential reverse impact on manufacturing and supply chain related employment in the U.S.”

On the positive side, Mr. Ferrari continued, “maybe, maybe, we may see some Apple iPhones actually produced in the U.S., but more than likely via highly automated manufacturing.”

“From a business insurance lens,” he said, “the impacts could well translate to added supply chain risks and needs for even more dual-sourcing of components parts and finished goods manufacturing.”

Arash Azadegan, associate professor of supply chain management at Rutgers Business School in Newark, New Jersey, said “the underlying theme to a Trump presidency is on reversing the effects of open markets at the global scale through more protectionism.”

“Protectionism comes at the price of reduced efficiency across the supply chain,” Mr. Azadegan said in an email to *Business Insurance*.

Rob Lenihan



## INSURANCE FOR IRAN TRADE UNDER QUESTION, AGAIN

Insurers may have to contend once again with sanctions against Iran if President-elect Donald Trump goes through with his campaign promise to dismantle the Iran nuclear agreement, analysts say.

During the presidential campaign, Mr. Trump said his “No. 1 priority” would be scrapping what he called “the disastrous deal with Iran.” He later said he would not rip up the deal but vowed to vigorously monitor the agreement.

The agreement was negotiated

under President Barack Obama and would have Iran redesign, convert and reduce its nuclear facilities and accept the 1993 Additional Protocol program in order to lift all nuclear-related economic sanctions. This would free up tens of billions of dollars in oil revenue and frozen assets.

“If Donald Trump really cancels Iran’s nuclear deal, then Iran’s oil production will come under international restrictions once again and this will reduce its oil exports,” Gaurav Agnihotri, a Mumbai,

India-based mechanical engineer and writer who focuses on the oil and gas sector, said in an email. “However, this will be easier said than done as Trump will have to convince the United Nations and other world powers for the same.”

Richard Nephew, director of the economic statecraft, sanctions and energy markets program for the Center on Global Energy Policy at the Columbia University School of International and Public Affairs in New York, said in an email that if Mr. Trump “backs away from the nuclear deal with Iran (or takes steps that eventually lead it to fall apart, which is more likely), then, yes, insurers would likely again face the threat of sanctions from the United States.”

“The United States found sanctions threats on key services — banking, insurance, transportation — as effective, if not more so, than threats on specific trade goods,” Mr. Nephew said. “This could be reactivated if Trump fails to reauthorize sanctions waivers required under the deal (and the latest he’ll have to do this is May or July 2017) or if he decides that renewed sanctions are the right path.”

Rob Lenihan



## RISK MANAGEMENT TECHNOLOGY

# Work closely with IT to create best RMIS fit

BY JUDY GREENWALD

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### INSIDE

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When workers head to a jobsite, drones and wearables are likely to show up, too. **PAGE 25**

**K**ee the lines of communication open.

That is the basic advice offered by experts on how risk managers can work most effectively with their information technology departments, in regard to both purchasing risk management information systems and developing cyber policies.

They say the best path forward is created when risk managers and IT departments contribute their respective expertise in insurance and technology.

“There’s a tremendous opportunity to partner with your own IT department” in bringing the right expertise to selecting a risk management information system, said Patrick J. O’Neill, president of Redhand Advisors L.L.C., an Atlanta-based IT consulting firm.

“I have really good relations with our IT department,” said Gloria Brosius, Loveland, Colorado-based corporate risk manager at Pinnacle Agriculture Holdings L.L.C.

“It works very well for us to collaborate with them on various items. They know that I am there to help them,” said Ms. Brosius, who is on the New York-based Risk & Insurance Management Society Inc.’s board of directors.



## NOTHING BEATS HUMAN CONTACT WHEN SETTING UP TECHNOLOGY SYSTEMS

**R**isk managers should make at least their initial contact with their information technology departments face-to-face, experts recommend.

By doing so, “it seems to me it goes a lot smoother and the communication is improved,” said Bill Baker, Minneapolis-based national director of Arthur J. Gallagher & Co.’s Core360 risk management program.

“Risk managers could, and probably should, use internal IT resources to identify the specifications of the system to help test the proposed vendor, and help select the system that they’re going forward with,” said Richard S. Betterley, president of Sterling, Massachusetts-based Betterley Risk Consultants Inc.

“It’s unusual for a risk management department to have deep IT knowledge and skill,” and “you need those skills in order to understand whether you’re actually acquiring the best system for you,” Mr. Betterley said.

Make a wish list of what both risk management and IT want, then develop priorities as to what are the “must haves” vs. what “would be nice,” said Daniel C. Free, president and general

counsel at Indianapolis-based Insurance Audit & Inspection Co.

“Unfortunately, insurance causes people’s eyes to glaze over sometimes and not understand” its importance, said Mr. Betterley. It is “up to the risk manager to help the IT talent understand his interests and needs,” he said.

Get many people involved, Mr. Free suggested. “People are very knowledgeable in their area, and in many cases have differing opinions about what the best product is, and so it’s important to get as many people involved in the process as you can” to make the most well-supported decisions, said Mr. Free.

“Because everybody’s busy doing something else,” it is also important to start this process early, he said.

Keep up with the technology, said Neeraj Sahni, senior vice president and national cyber broker with Willis Towers Watson P.L.C. in New York.

Risk managers will be respected if they ask better questions “versus more generic questions,” he said. “They have to do their homework.”

*Judy Greenwald*

“Definitely start an informal dialogue about it,” said Ms. Brosius. “Sit down face to face with the director of IT” and “explain that you need their help to do your job appropriately and that you’re there to help them as well. It’s a give and take to understand what the exposures are and help them develop the best practices for the exposure that’s out there.”

Bill Baker, Minneapolis-based national director of Arthur J. Gallagher & Co.’s Core360 risk management program, said it is important for the risk manager to articulate how the IT department could help solve problems or challenges, and provide “some idea of how the end results might look like, which would help the IT department visualize what the risk manager is really trying to achieve.”

“One of the things that we see is that risk managers don’t take the time to meet with their IT folks ahead of time and sort of explain their business requirements,” said Robert Petrie, president and CEO of Chicago-based Origami Risk L.L.C., which develops risk management software.

“If they don’t do that, what the IT department might come back with is their default requirements, or must haves, and sometimes those are things that don’t match the business requirements,” said Mr. Petrie.

But there is more data sharing now, said Neeraj Sahni, senior vice president and national cyber broker with Willis Towers Watson P.L.C. in New York.

In the past, there had been some worry by IT personnel, who typically had less authority, that the risk manager, “would come in and take their jobs.” But today there is “more partnership and collaboration,” he said.

“When it comes to technology, you might have the IT organization actually run the procurement process” and use it “to help ask the right security questions,” said Randy Nornes, Chicago-based executive vice president with Aon Risk Solutions.

Michael Santulli, Newport Beach, California-based partner with ICA Risk Management Consultants, recommends that risk managers learn what software their IT departments are already using and proceed from there because you do not necessarily “want to come in and wipe the slate clean.”

It is also important that risk managers get to know their firm’s chief information security officers, which is a relatively new position in many companies, Mr. Nornes said.

“The CISO is really looking at the security of the organization, and so if the risk management team is going to implement a new system, you’re going to have to make sure you’re in compliance with the overall security requirements of the organization,” Mr. Nornes said.

But because the CISO is a new position for many organizations, he or she often “does not know who the risk manager is,” said Mr. Nornes. “They should get together” for coffee, he said.

Risk managers and their IT departments should also collaborate on issues such as privacy policies.

Pinnacle’s Ms. Brosius, for instance, said she works with her IT department on the company’s privacy policies, and collaborates with it in developing disaster recovery plans.

“It’s all part of an enterprise risk management program,” she said.

# RMIS evolution spurred by need

BY SEAN VAN ZYL

**R**isk managers are demanding more of the technology providers and systems they use as the field of risk management evolves.

Once content with risk management information systems that simply aided the claims process, many risk managers now are looking for off-the-shelf and customized solutions to help them implement more sophisticated programs that tackle enterprisewide risks.

Enterprise risk management has been touted for more than 20 years, but organizations historically were challenged regarding how to quantify the value vs. the cost of an ERM initiative. After all, how do you measure the value of avoiding a “risk” versus incurring an actual loss?

The answer to that question is now much closer at hand. The dramatic leap in online interactive technology since the turn of the century has changed the risk landscape. Many risk managers today not only see ERM as cost-effective, but believe that technology has enabled them to adopt proactive risk management.

As ERM has caught on, some risk managers now perceive the management of risk as providing a competitive edge to an enterprise.

A 2015 independent survey conducted by Queens University in Kingston, Ontario, and the Edinburgh Business School based on data collected by the New York-based Risk & Insurance Management Society Inc. from almost 25,000 participants across 60 countries suggests that enterprises that implement mature risk management programs have achieved a 25% market value premium — stock market value — to their competitors over the past five years.

The data used in the survey was compiled from the responses of risk managers having undertaken the RIMS Risk Maturity Model, a free risk assessment technology tool designed to determine the effectiveness of their risk management programs developed by Boston-based LogicManager Inc.

Risk management information systems have been used for decades. Steven Minsky, CEO of LogicManager, said “early risk management systems” were designed to manage insurance coverage and claims.

“RMIS really only manages the insurable risk, which accounts for about 10% of the risk facing most enterprises. Which is not to say that the other 90% of the inherent risk within the organization is not manageable through current ERM technology — the point of the latter is to mitigate risk events rather than report on losses already incurred,” Mr. Minsky said.

Mark Dorn, CEO of David Corp., a RMIS and ERM technology provider located in Wakefield, Massachusetts, said early forms of RMIS were basically claims management programs. However, RMIS technology has evolved, he said, with increased risk management analytical capabilities.

RMIS technology has advanced along with online technological development in terms of real-time access and third-party data storage, Mr. Dorn said.

“Everyone is drowning in data. Historically, RMIS programs have required a lot of reporting and data storage. We have developed the means to combine all data into one platform, which reduces data duplication and enables users to respond to risk triggers more quickly,” he said.

Robert Petrie, CEO of Origami Risk L.L.C. in Chicago, also believes that RMIS technology has come a long

See RMIS page 25

# Catastrophe modeling tools go mobile

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Smartphones make it easier than ever for risk managers to model in real time the threat of an approaching natural catastrophe, and the technology is evolving to model more gradual climate-related threats and feed better data into the mobile tools.

While the human contribution to climate change is a source of political debate, risk managers generally understand and accept that the warming climate is increasing the intensity and frequency of natural catastrophes and causing sea levels to rise, said Michael Brown, vice president and property department manager at Golden Bear Insurance Co. in Stockton, California.

Risk managers know they should mitigate the exposures where possible and buy insurance to cover the risks because “it’s the sort of thing you can’t afford to underestimate,” Mr. Brown said.

“The savvy risk managers are taking it into account, particularly if they’re dealing with coastal property,” he said.

Given this recognition, risk managers are increasingly turning to tools that can help them assess climate-related exposures — tools that can be easily utilized in the smartphone age such as SnapCAT, a mobile application that enables field engineers or consultants to gather and document windstorm, earthquake and flood primary and secondary exposures and allows for the quick and easy creation of detailed reports for risk managers, brokers and insurers.

FM Global clients can also utilize the mutual insurer’s MyRisk website, which provides risk managers a comprehensive overview of their entire property profiles — information that can be downloaded via a mobile application. The MyRisk Map Center allows risk managers to assess the potential impact of natural hazards on their locations in real time, factoring in details about their facilities such as engineering specifications.

“Clearly, risk managers are exhibiting an increased interest in the impact of climate change on natural catastrophes,” said Carl Solly, vice president, chief engineer for FM Global in Johnston, Rhode Island.

The tools enable risk managers to assess their exposures and become more sophis-



## FLORIDA SEA RISE PUTS HOUSING — AND INSURANCE — AT RISK

Catastrophe modeling paints a bleak future for South Florida — a future risk managers and the broader insurance industry must contend with, experts say. The National Oceanic and Atmospheric Administration forecasts a 2-foot sea rise by the 2048-2066 time frame, which would deplete freshwater resources and local sewage plants in Miami-Dade and Broward counties, Harold Wanless, chair of the geological sciences department at the University of Miami in Coral Gables, Florida, told attendees of the National Association of Insurance Commissioners in Miami last month.

The 4-foot rise projected by 2074-2099 would take out Miami International Airport, while a 6-foot rise projected for the 2093-2121 time frame could force much of the population out of the state. But these are conservative projections because they do not factor in accelerating elements speeding up the melting of polar ice in Greenland and Antarctica, meaning the “disastrous consequences of climate change” could materialize sooner than the models project, he said.

But the word clearly hasn’t gotten out yet, as more condominiums are being built in South Florida for a population that will have to flee the state and will not be able to sell their properties because of the inability to purchase insurance or long-term mortgages, Mr. Wanless said.

“I think the role of insurance and banking is to provide a transparent future,” he said. “If we aren’t careful, we’re going to blindside all the people of South Florida, and we’re going to send them out with nothing.”

Public-entity risk managers in South Florida are showing a growing awareness about climate risk, not just in relation to property damage, but also to tax revenue and other contingent losses, and are exploring risk mitigation and reinsurance solutions, said Deepak Badoni, co-founder and president of Ann Arbor, Michigan-based EigenRisk Inc.

“There’s a segment of the risk manager population that is obviously very directly impacted by climate change,” he said.

Gloria Gonzalez

ticated insurance buyers, experts say.

For example, risk managers can use their phones to assess risks and then

explore deductible buy-down products for large retention programs or uninsurable perils that are excluded in traditional

policies, according to officials with Ann Arbor, Michigan-based EigenRisk Inc. The company developed an analytics and risk modeling platform called EigenPrism that allows risk managers to run what-if scenarios by imposing a map of historical catastrophe exposures over a firm’s assets to assess risk exposures and provide insights that can be used in pricing negotiations.

Traditional modeling companies focus on catastrophic events such as hurricanes, but EigenPrism can also use National Oceanic and Atmospheric Administration information on rising sea levels to overlay a company’s exposures and allow risk managers to consider possible solutions, said co-founder and President Deepak Badoni.

In addition, risk managers can use the information to take action to mitigate risks, such as elevating a facility or investing in other risk and engineering controls, said Kristin Carrington, founder of Fort Myers Beach, Florida-based property risk consulting firm Carrington Risk Consulting L.L.C. and SnapCAT creator. The information can also inform decisions on whether to purchase a facility, she said.

“You can mitigate a lot of those things,” she said. “Sea level rise, if it’s permanent, that’s going to be a tough thing.”

But the technology must constantly evolve to more accurately model sea level rises, and the modeling becomes more effective as the quality of the data input into these models improves, experts say.

Superstorm Sandy is an example of models only being as good as the data entered into them. Flooding caused by the storm was worse than had been projected using Federal Emergency Management Agency information, they said.

“Even though we identified it, we didn’t anticipate the amount of water that occurred during Sandy just due to flood zone and map issues,” said Mike Martin, Boston-based executive vice president and general manager for Liberty Mutual Insurance Co. overseeing property coverage provided to large national and multinational buyers. “As good as technology is, we can always be surprised.”

“You can’t just go to this is what the model says,” he continued. “It’s really that human intervention and interaction that makes all the difference in planning for that really catastrophic event.”



Technology must constantly evolve to more accurately model sea level rises, and the modeling becomes more effective as the quality of the data input into these models improves, experts say.

# Tech innovations surround construction workers



BY ROB LENIHAN

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**W**hen construction workers head to a job site, they are increasingly encircled by technology.

The use of drones and wearable technology on building projects is expanding, insurance experts say, as construction companies use the devices to make the work safer, faster and more accurate.

"Drones are going like gangbusters," said James Boileau, construction segment director with Zurich North America in Edina, Minnesota. Additionally, he said, wearables are beginning to take hold as safety devices on construction sites.

"I'd say we're looking at less than 1% use of wearables," but last year more people became aware of the technology and "people are talking about it," he said.

Mr. Boileau said there is wearable technology that can track a worker's body temperature and heart beat or determine if a worker has fallen. In the event of an evacuation, he said, wearables can help determine if all the workers have escaped safely and they can also "make sure people aren't where they shouldn't be."

David Merker, senior vice president and aerospace Northeast manager for the Americas with Willis Towers Watson P.L.C. in New York, said "the construction industry without a doubt is leading the pack" in the use of drones.

"It's forcing everyone to think differently because of the data that's available, the type of operations and how readily available all this is for people to use instantly."

In response to the growth of drone use, the Federal Aviation Administration released rules for routine commercial use of small unmanned aircraft systems, which became effective Aug. 29. Among other things, the rules require drones to weigh less than 55 pounds, including the payload, and cannot exceed 100 miles per hour. Drone pilots must complete an aeronautics test and pass a background check.

"You're going to see a lot more companies jump into this," said John Babel, assistant vice president, senior risk engineering consultant with XL Group Ltd. in Denver, which does business as XL Catlin, "because companies in the past who have used a helicopter to gather information or data now will be able to do that at at least half the price and in less than a quarter of the time."

Mr. Babel said companies that use drones frequently may want to consider getting aviation insurance. Companies with existing aviation coverage may also

want to expand their existing aviation cover to include drones, he said.

Premiums will vary based on the drone types, payloads, use and operator experience, Mr. Babel said in a recent white paper, adding that insurance coverage of \$1 million in liability for a small commercial drone can run \$1,500 or less.

For companies that use drones in-house where it is not part of the core business, Mr. Babel said an endorsement can be attached to commercial general liability policies to override the aviation exclusion.

"This is going to be a very interesting time in the next year or two," Mr. Merker said, "because you've got nontraditional insurance policy buyers buying into aviation, you're having aviation having to deal with risk they've never had to traditionally deal with, which is privacy and cyber, and you've got to blend those together. And oh, by the way, you don't any have data on this yet."

Dan Gmelin, national architects and engineers product head for Hiscox Ltd. in New York, said once insurers "start seeing the use of drones year after year not bringing forth a dramatic increase in claims for the industry, they'll gain more comfort and then you'll see more affirmative coverages for drones."

And drones can improve safety, he said. "There are areas where it could be too dangerous or difficult for a person to go, just send a drone in to do the video surveillance or take photographs. Or if a person does have to go in, you can send a drone in to do reconnaissance and it can come back and show that person what they're getting into."

In addition to the FAA, state and local governments are passing their own drone ordinances.

"It's a patchwork of different standards," said Brendan Holt, an associate with the law firm Saxe Doernberger & Vita P.C., in Trumbull, Connecticut. "If your policy has language in it about getting enough coverage for anything that's considered a violation of an ordinance or a statute or a law and your drone use was not compliant with these very regionally specific laws, you might not have coverage for that reason alone."

Both drones and wearables share a common concern in the form of privacy and cyber security issues.

"The invasion of privacy will be unique," Mr. Merker said of drones, "and it's unique for aviation because aviation typically has not had to deal with that issue. You've now created a platform that is essentially a live sensor collecting information when and where it needs to and you've got to control that."

## RMIS

Continued from page 23

way from inception. "(RMIS) providers are now building additional functions into their programs, enabling users to manage risk on an enterprise-wide scale," Mr. Petrie said.

While customizing a RMIS program can prove costly, systems today tend to be highly configurable to accommodate different applications or needs. "We build in parameters/settings in terms of features and capabilities that are available to all users," he said.

The modern version of RMIS applications typically allow users to integrate data from across the enterprise, as well as that involving third-party vendors/suppliers, which allows risk managers to identify where losses may arise and take appropriate action, Mr. Petrie said.

As a result, enterprises should be able to reduce operating costs by about 5%, he said.

### Risk manager demands

Carol Fox, vice president of strategic initiatives at RIMS, said risk managers work closely with the IT departments.

"I encourage (risk managers) to sit down with their tech department to determine what capabilities can be achieved. You really need this tech input to avoid pitfalls," she said.

RMIS software solutions are designed to be a cost-effective alternative to custom made ERM technology, Ms. Fox said. And the technology is developing as RMIS providers include mobile applications for their products.

"The biggest change I see happening with regard to RMIS development is full mobility," she said.

John Phelps, a former RIMS president and director of business risk solutions at Blue Cross and Blue Shield of Florida Inc. in Jacksonville, Florida, said risk managers take care when choosing a RMIS as they are designed for a wide variety of users.

A RMIS can cost \$50,000 to more than \$100,000, so it's important to weigh the prospective benefits before making the investment, he said.

Mr. Phelps says every RMIS application has a "basic core" that any customization must be built around.

"I have looked at many (RMIS solutions), and there is no question you have to adapt them to serve your needs," he said.

In addition, risk managers may need to adapt their own internal processes to suit the RMIS, Mr. Phelps said.

"Unfortunately, this requires populating data fields in such a way to accommodate system needs regardless of how relevant that data is to your internal ERM process ... It's part of the price you pay to achieve the advantages of an interrelational database and reporting. RMIS works for those enterprises looking for broad-based reporting, interrelational logic, automated task management and predictive analysis as part of their ERM program," he added.

From a claims management perspective, RMIS technology has revolutionized the workplace, said Leonardo Selvaggi, claims manager of the County of Ventura in Ventura, California, "without the technology, we would be back in the 1980s with paper and pen."

Mr. Selvaggi estimates that the application of RMIS technology has reduced claim processing time by 75%. "The system does all the background processing, which has reduced claim processing by a day to a day and a half," he added.

There has been a huge jump ahead in RMIS technology over the past five years, said Jeff Simon, CEO of third-party claims administrator Pegasus Risk Management based in Modesto, California. RMIS technology has become more user-friendly, and the ability to drill down into claims data is a significant benefit in terms of addressing loss trends in a timely manner, he said.

# RMIS expands to keep pace with changes

BY ANDY TOH

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Risk management information systems have long been the primary tool of risk managers to help them measure and manage the risks of their organizations. But risk management has changed, becoming more sophisticated with the development of enterprise risk management and strategic risk management programs. Are these systems keeping pace with demand? How happy are risk managers with them? Do they do the jobs now required of them? Is there other technology that risk managers turn to supplement the RMIS they have?

To get insights into the penetration of RMIS usage among risk managers, *Business Insurance* conducted a survey of its readers in November 2016 and received 249 responses from respondents who indicated that they are insurance buyers/users. The base used in this report is the total answering each question from these 249 respondents.



Source: BI Survey

## RMIS USAGE

Current use of RMIS technology at organizations

Heavy	9.7%
Moderate	29.7%
Light	27.7%
Not a user	32.9%

Respondents indicated that their companies have been using RMIS for an average of 7.03 years.

More than 15 years	7.7%
10-15 years	23.2%
6-9 years	16.9%
3-5 years	25.4%
1-2 years	16.2%
Less than a year ago	10.6%

Of the respondents not using RMIS, the reason for not using are:

There is no budget for it	49.4%
Don't know enough about it to adopt/invest in it	46.9%
Current needs do not justify the expenses	44.4%
Don't know what capabilities it can offer to justify it	38.3%
Don't know what they are missing	27.2%
Don't have resources to implement	19.8%
No training/expertise to use the technology	18.5%
There are no users in the organization to use it	13.6%
Don't have the IT infrastructure/personnel to support it	13.6%
Don't have time to implement	9.9%
Nothing viable/cost-effective in the market to support needs	7.4%
Other	8.6%

Top 3 RMIS functionalities used

Incident reporting and claims management	77.8%
Renewals/data collection	39.6%
Policy management	22.2%
Premium allocation and calculation	18.1%
Enterprise risk management	18.1%
Contract/vendor management	13.2%
Asset management	12.5%
Risk financing	9.7%
Insurer ratings	0.7%
Other	6.3%
Don't know/not sure	3.5%

For the 67.1% net users of RMIS, no one RMIS provider dominates the market.

Marsh L.L.C.'s ClearSight	11.8%
Riskconnect Inc.	9.9%
Ventiv Technology Inc.'s RiskConsole	8.7%
Liberty Mutual Insurance Co.'s RiskTrac	8.7%
Origami Risk L.L.C.	8.1%
Crawford Risk Sciences Group Inc.'s Dimitri	6.8%
Computer Sciences Corp.'s Riskmaster	3.1%
In-house system/internally developed	3.1%
AIG's IntelliRisk	3.1%
Sentry	1.9%
Other	24.2%
None of the above	31.7%



## ACTIVITIES AND TASKS

Activities or tasks able to do today using RMIS technology software/platform that previously were unable to perform

Workers comp claims management and monitoring	44.8%
Produce detailed internal reports	37.8%
Improve risk analysis, risk assessments, quantifying risks	34.3%
Capture and analyze risk data	32.3%
Share information across organization	31.5%
Establish/improve overall in-house risk data/capturing capabilities	27.3%
Risk data analysis/risk data mining/modeling/forecasting/monitoring	25.9%
Establish benchmarks and metrics	25.9%
Risk and insurance management	24.5%
Insurance management (track changes, limits, coverage, etc.)	18.2%
Other	4.9%
None of the above	16.8%

What is the frequency of RMIS usage?

More than once a day	30.7%
Once a day	13.4%
2-4 days per week	26.0%
Less often than above	29.9%

## TRAINING

On average, respondents spent 5.11 hours training on RMIS.

0 hour	15.0%
1-2 hours	25.2%
3-4 hours	26.0%
5-7 hours	10.2%
About 1 day	11.8%
About 2 days	10.2%
More than 2 days	1.6%

## LEVEL OF SATISFACTION

Satisfaction with current RMIS technology at organization

Extremely satisfied	6.4%
Satisfied	36.6%
Neither satisfied nor dissatisfied	36.6%
Dissatisfied	15.5%
Extremely dissatisfied	4.9%

## TOP 5 RMIS LIKES

Top 5 things most liked about RMIS technology

Accessible online/web-based	56.2%
Low cost/cost effective	43.1%
Simple to use/user friendly	42.3%
Customizable for special/specific needs	41.6%
Single point of reference for tracking, repository and data extraction	37.2%
Adaptable/flexible for growing/future needs	36.5%
Reliable/timely	24.1%
Report writing	15.3%
Widely used/recognized in the market	10.9%
Customer support	9.5%
Training programs	0.7%
Other	3.6%
Don't know	12.4%

## TECHNOLOGY INVESTMENTS

Is there other technology to supplement the RMIS systems they have?

Yes	31.9%
No	52.8%
Don't know	15.3%

Is organization considering a change in RMIS technology in the next 12-24 months?

Yes	19.3%
No	60.0%
Don't know	20.7%

Organization's current investment in technology/software for risk management excluding human resources (average = \$113,417)

Less than \$10,000	22.9%
\$10,000 to \$19,999	8.3%
\$20,000 to \$29,999	6.4%
\$30,000 to \$39,999	2.3%
\$40,000 to \$49,999	2.8%
\$50,000 to \$74,999	5.0%
\$75,000 to \$99,999	4.1%
\$100,000 to \$149,999	6.9%
\$150,000 to \$199,999	2.8%
\$200,000 to \$249,999	2.3%
\$250,000 to \$299,999	3.7%
\$300,000 to \$399,999	0.9%
\$400,000 to \$499,999	0.9%
\$500,000 to \$749,999	1.4%
\$750,000 to \$999,999	0.9%
\$1 million to up to \$2 million	0.5%
More than \$2 million	0.5%
Not sure	27.4%

## RISKS AND CONCERNS

Top 5 risks organizations are most concerned about

Operational risks	69.5%
Legal risks	58.2%
Regulatory risks	54.6%
Data and cyber risks	51.8%
Company or brand reputation risks	38.2%

## TOP 5 RMIS DISLIKES

Top 5 things most disliked about RMIS technology

Analytics or forecasting abilities	26.1%
Lack of sophistication	23.9%
Complex/difficult to use	23.2%
Cost	22.5%
Not customization/flexible	22.5%
Lack of easy reporting functions and features	21.7%
Outdated	16.7%
Lack of training	14.5%
Customer support	13.8%
Processing speed	13.0%
Lack of easy access	12.3%
Other	8.7%
Don't know	19.6%

COMMENTARY

## Trade politics threatens supplies

**T**here are some high expectations ahead for the incoming administration.

Many people in the business world are optimistic that President-elect Donald Trump and the Republican Congress will take concrete actions that will create an environment that will yield positive results for corporations and their stakeholders.

In addition, many workers in the Rust Belt and elsewhere who voted for Mr. Trump will depend on him to deliver on his promise of higher-paying jobs.

The regulatory and policy changes he is likely to introduce are expected by many to create improved general economic conditions that will favor commerce, including the insurance industry.



**Gavin Souter**  
EDITOR

Last month, in announcing plans to buy Allied World Assurance Co. Holdings A.G., the CEO of Fairfax Financial Holdings Ltd., Prem Watsa, said the Trump administration has “the strong potential” to make the business climate in the U.S. “great again,” which would be a favorable development for insurers whose fortunes are largely tied to economic growth.

As Mr. Watsa has proved time and again over the years, he’s a savvy investor who knows market trends.

But as we report in the cover story of this issue, while the overall expectations for the insurance and risk management sector are that the president-elect will have a positive influence, there are clearly some negative risks, not the least of which is Mr. Trump’s view of international trade agreements and how that might affect supply chain risk for U.S. companies.

On the campaign trail, Mr. Trump was highly critical of trade agreements throughout the world and pledged to negotiate “fair trade deals” that would create jobs in the United States. And he threatened to use the blunt instrument of punitive tariffs on imports to achieve that goal.

While it’s tough to predict what those renegotiated deals might look like, international supply chains are a crucial component of the business strategy of U.S. companies, and weakening or cutting the links that create them will eat into profits and put jobs at risk. U.S. risk managers must hope that the agreements — and the renegotiation process itself — don’t jeopardize the complex supply chains that so many of their organizations rely on.

Of course, pre-election posturing often does not translate into post-election policy, so let’s hope that any changes in trade agreements reflect the reality of global economics.

SCHILLERSTROM



VIEW FROM WASHINGTON

## Climate change questions

**W**ill he or won’t he? That’s a question that applies to a lot of topics and will remain unanswered until President-elect Donald Trump takes the oath of office on Jan. 20. The subject I’m wondering about in particular is if Mr. Trump will withdraw the United States from the Paris climate agreement.

The December 2015 accord was a milestone event that some doubted was possible. The United Nations Framework Convention on Climate Change negotiations toward a potential solution to stave off the warming of the planet stalled for years due to bitter disputes over whether and how to mandate participation and who should pay for adaptation efforts in countries most vulnerable to climate change. But last year’s agreement on voluntary contributions aimed at holding the increase in the global average temperature to well below 2 °C above preindustrial levels was a breakthrough in every sense of the word.

This year’s talks in Marrakesh, Morocco, were rocked by the U.S. presidential election results, which introduced a layer of uncertainty and anxiety. But it also led other participating countries to express strong support and move forward on key procedural elements needed to fully implement the agreement.

Before the election, Mr. Trump said he doesn’t believe that climate change is real, accused China of making up climate change to make U.S. manufacturing noncompetitive and vowed to dismantle the agreement. He has since softened his tone, saying he would keep an open mind.

However, Mr. Trump’s selection of Oklahoma Attorney General Scott Pruitt as the new head of the U.S. Environmental Protection Agency does not bode well for continued efforts by the federal government to address climate change impacts. Mr.

Pruitt is a vocal opponent of current EPA efforts to restrain carbon emissions, even suing the agency over its Clean Power Plan — seen as a major contributor to the U.S. efforts to meet its Paris climate agreement reduction target.

Any effort by the Trump administration to withdraw from the agreement would take time and



**Gloria Gonzalez**  
DEPUTY EDITOR

could be met with resistance by other countries in the form of tariffs on U.S. goods — France has already threatened such action. And abandoning the Clean Power Plan is unlikely to reverse the trend away from fossil fuels toward cleaner forms of energy, with the boom in natural gas supplies making them more affordable than ever.

But risk managers can’t afford to get bogged down in the political debate over climate change and the human contribution, as more than one person in the industry has told me recently. They must move fast to make sure their properties are protected from impending natural catastrophes, as well as the more gradual threat posed by rising sea levels, and that their supply chains remain intact. And they must get extremely creative as properties in certain parts of the world become uninsurable because of climate impacts.

The question is will risk managers have an ally in Mr. Trump or will he hinder those efforts by abandoning the Clean Power Plan and withdrawing from the Paris climate agreement? We’ll know soon enough.

# Commercial use of drones could be grounded by costs



William H. Walsh is co-chair of the aviation industry practice group for the law firm Cozen O'Connor in Seattle and a former U.S. Air Force officer. He can be reached at [wwalsh@cozen.com](mailto:wwalsh@cozen.com) and 206-224-1296.

There is significant tension between the Federal Aviation Administration regulation for commercial drones and any conceivable economic model of a profitable retail drone delivery operation.

Ultimately, full automation may be required to realize that dream, which is a reality at odds with the current regulatory requirement of having a pilot in command of a drone. Efforts to achieve regulatory changes will draw the FAA's priority of aviation safety into some level of compromise with the financial priorities of commercial retail drone operators — a balance that could create significant risks for retail drone operators if those compromises go too far.

## Line of sight

In June 2016, after years of public comment, the FAA released the long-awaited Part 107 commercial drone regulation. The regulation reflects a cautious and preliminary approach to commercial drone operation. Among other things, the new regulation mandates that operations must occur during the day and that a pilot in command under "visual line of sight" conditions operate the drone, avoiding flying over humans. The regulation creates a remote pilot in command position but limits operation of a remote drone to one at a time.

Part 107 also creates a procedure for obtaining waivers from the regulations. However, the provisions specifically state that the VLOS requirements allowing operators to carry property for compensation or hire will not be waived. Furthermore, such carriage of property is limited to operations conducted within a confined area and in compliance with the operating restrictions of Part 107.

Any waivers, therefore, that the FAA may grant to the VLOS requirements under Part 107 would not allow the drone operation to transport property for compensation or hire beyond VLOS. Accordingly, the regulation does not, by itself, provide the necessary environment for retail drone operations, even accounting for the waiver process.

The absence of rules relating to overhead operations was not an oversight by the FAA. In early 2016, the FAA sought input from a variety of drone industry stakeholders "to consider recommendations for a performance-based standard that would allow micro (unmanned aircraft systems) to be operated over people."

The stakeholders — serving as the Micro Unmanned Aircraft Systems Aviation Rulemaking Committee, or ARC — included several companies and associations involved with the commercial use of drones in several different contexts.

The task force developed and proposed a framework for operations over human populations, which was published on

April 1, 2016. This included four "performance-based standards for the classification of UAS operated over people," each of which would permit an increased degree of operation over people subject to certain operating requirements.

Material to each category was an assessment of risk in light of probable failure modes. The "acceptable probability" of risk was measured in relation to the chances of an "(Abbreviated Injury Scale) level 3" injury — significant injury or death — caused by the impact of a falling drone. A drone operator would have to certify that its operations would not exceed a specified risk threshold. Categories 3 and 4 contemplated a maximum 30% chance of causing an AIS level 3 injury. In other words, significant injury was acknowledged as a calculated cost of operating drones over human beings.

## Safety concerns

These performance-based standards and their corresponding risk levels were not incorporated into Part 107 and implicit in the omission is the FAA's concern for safety. Indeed, Part 107 flatly precludes operation over human population. While the ARC standards were not incorporated, they do illustrate the type of analysis that will be required once commercial operators seek approval to operate over human populations. The necessity of calculating an "acceptable" risk of "significant injury or death" is an inescapable aspect of the analysis.

*An automated system that can monitor hundreds of deliveries at a time would prove to be the optimal model for a retail drone enterprise.*

Openly calculating the risk of significant harm to people should alarm anyone, especially those associated with aviation safety or corporate risk management. The standard for punitive damages in most jurisdictions requires a showing of knowing disregard for the safety of others. In attempting to meet that standard, it would be very helpful to plaintiffs lawyers to have risk assessment data and documentation that shows the defendant took a formulaic approach to calculating risk to humans and determined what it thought to be an acceptable range.

It should also be noted that data utilized for waiver applications would also be discoverable in any litigation relating to a drone accident. Risk assessments and investigations of any accidents related to testing operations will draw attention of those bringing such claims. Managing

that data and analyzing it properly — with appropriate consideration given to the risks to the public — will be critical to minimizing exposure in future litigation.

## The problem of economics

Nevertheless, the pressure to change the current regulatory scheme is largely economic.

Consider for a moment the costs associated with the delivery of a six-pack of beer by drone. Let's say that the item costs the customer \$15. Added to that cost might be some portion of an annual subscription fee for airborne delivery, such as Amazon's annual \$99 for its Prime services, raising the revenue allocated to that single delivery to something like \$20. Now consider the expenses an accountant would likely allocate to this single delivery flight, including the wholesale cost of the beer as well as some allocation of research and development, lobbying, administrative — for example, costs related to obtaining waivers — insurance, materials, inventory and other expenses that appropriately factor into net profit.

In order to make the process profitable, one has to substantially increase the volume of deliveries. Increasing a human pilot's monitoring burden to, say, dozens of flights would not only dramatically increase the risk of pilot error but it also would fail to remove the single most significant cost involved in the process: the pilot.

Seen in this light, it is not hard to understand the correlation between fully automated drone operations and profitability. An automated system that can monitor hundreds of deliveries at a time would over time prove to be the optimal model for a retail drone enterprise, even if there were some human oversight involved by a few employees. However, by doing so, it removes what the FAA would consider to be the bedrock of aviation safety: the pilot in command.

## Convenience at what price?

Steve Jobs once famously said the people "who are crazy enough to think that they can change the world, are the ones who do." Innovators are impatient with caution, and the retail drone industry is driven by innovators. However, when successful innovation entails risk to human health and welfare, caution is not only warranted, it is essential.

As we move toward the seeming inevitability of retail drone delivery, safety must continue to be of paramount concern. The issuance of Part 107 illustrates that the FAA remains committed to this principle, but the economics of retail drone operations will likely test that commitment going forward.

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## Liberty Mutual forms reinsurance sidecar

Liberty Mutual Insurance Co. has created its first reinsurance sidecar, which will reinsure catastrophe and specialty risks.

Bermuda-based Limestone Re Ltd., a newly formed segregated account company, will lead the transaction, which includes third-party investor capital.

The Limestone Capital Markets platform has \$160 million in investor capital and will write U.S. catastrophe risks and London market specialty business, a Liberty Mutual statement said.

The platform will have an initial placement of two years, which can be extended.

## QBE launches workers comp partnership

QBE North America, an operating division of QBE Insurance Group Ltd., has launched a program with Patriot National Inc. to write workers compensation and employers liability insurance policies for hospitality, health care, property management and manufacturing accounts.

Fort Lauderdale, Florida-based Patriot National will serve as program administrator with defined underwriting, claims administration and loss control authority on behalf of QBE, the company said in a statement.

The program will be available in 12 states, including Alabama, Arizona, Georgia, Illinois, Kansas, Missouri, North Carolina, South Carolina, South Dakota, Tennessee, Virginia and Vermont, according to the statement.

## Nurse triage software offered for comp sector

Managed care company Enspiri Solutions L.L.C. has launched a nurse triage software program geared toward the workers compensation industry.

The software is tailored for comp insurers, self-insured groups, third-party administrators and managed care customers, as well as personal health care nurse triage call centers entering the workers comp market, Phoenix-based Enspiri said in a statement.

Enspiri provides nurses and related services, allowing insurance companies to offer telephonic work injury triage services 24 hours a day, seven days a week.

## MedRisk unveils comp cost containment service

Medical service provider MedRisk Inc. said it is introducing a new product that



## XL offers anti-terrorism insurance policy

XL Group Ltd. said it is introducing coverage designed to respond to the impact of terrorism, an active assailant attack or the threat of an attack, with a total of \$60 million in capacity.

There are three components to the coverage — active assailant, loss of attraction and threat — the insurer said in a statement.

The active assailant coverage, which has \$35 million in capacity, is designed to respond when a physical attack results in injury to people at the affected location, business interruption and property damage. It covers medical and counseling expenses, damage to property and business interruption costs, as well as expenses for closure of premises, denial of access, relocation costs and public relations fees, XL said in the statement.

Loss of attraction and threat offer a combined \$25 million in capacity. The loss of attraction coverage responds when an attack occurs within 1 kilometer (0.62 mile) of the insured premise or at a pre-specified attraction, causing loss of profit without any property damage to the insured premises.

The threat coverage responds when the threat of a malicious act impacts the insured's operations. It provides business interruption and security cost, said the insurer in its statement.

aims to tackle workers compensation cost containment with improved technology to ensure accurate payment.

MedRisk said NexGen Advantage will use analytics and computer programs to examine a number of medical claim factors, including jurisdiction, bill type, facility and provider type, to identify and deliver a combination of strategies to ensure “accurate and fair” medical payment of individual bills, the King of Prussia, Pennsylvania-based firm said in a statement.

“NexGen leverages the buying power of a mega network with more than 900,000 providers ... (a) powerful data analytics system, and expert clinical intervention to capture additional savings after bill review,” Mary O’Donoghue, MedRisk’s chief product development officer, said in the statement.

## Analytics tool to reduce comp claim escalation

Clara analytics, a division of health care SaaS provider LeanTaaS Inc., has launched CATT, a cloud-based control tower that aims to help workers compensation claims teams reduce claim escalation.

CATT is an online tool that uses a series of algorithms and analytic models to isolate all open claims that need attention in real time, Santa Clara, California-based Clara analytics said in a statement. It then sends alerts and notifications to the claims teams, and results can be integrated into existing workflows.

“CATT is the air traffic controller ... to help focus their efforts and drive improved outcomes,” Jayant Lakshmi-kanthan, president of CLARA analytics, said in the statement.

## Endurance partners with Marsh on real estate risks

Endurance Global Risk Solutions, the large-account arm of specialty property/casualty insurer Endurance Specialty Holdings Ltd., and Marsh L.L.C. have launched a casualty insurance program for habitational real estate accounts.

The program is for owners and managers of multifamily properties, owners of managed real estate portfolios, and real estate investors.

The program covers workers compensation, general liability and auto risks, Pembroke, Bermuda-based Endurance said in a statement.

Additionally, the program includes first-dollar coverage, separate aggregate limits per location, and environmental/pollution coverage. Available limits include \$1 million each occurrence, \$2 million general aggregate, and \$1 million for personal and advertising injury coverage for any one person or organization. The minimum premium is \$250,000, according to Marsh.

## DEALS & MOVES

### Fairfax to buy Allied World in \$4.9 billion deal

Toronto-based insurance group Fairfax Financial Holdings Ltd. has agreed to buy Allied World Assurance Company Holdings A.G. for \$4.9 billion in cash and stock.

The deal is expected to close in the second quarter of 2017. Fairfax will pay owners of Zug, Switzerland-based Allied World \$54 per share — \$10 in cash and \$44 in Fairfax stock.

Boards of directors of both companies approved the deal. Allied World would operate “on a decentralized basis” within the Fairfax group, Prem Watsa, chief executive of Fairfax, said in a statement.

### Liberty Mutual to buy Ironshore for \$3 billion

Liberty Mutual Insurance Co. said it will buy Ironshore Inc. from Chinese conglomerate Fosun International Ltd. for about \$3 billion.

Hamilton, Bermuda-based Ironshore is a specialty and surplus lines insurer with gross premiums written of \$2.2 billion in 2015. The company has 800 employees located in 15 countries.

Ironshore is the sixth largest U.S.-based surplus lines insurer with \$1.01 billion in nonadmitted premiums, according to *Business Insurance’s* latest ranking. Liberty Mutual’s existing surplus lines operation, Liberty Insurance Surplus Corp., reported \$342.2 million in nonadmitted premiums in 2015.

Liberty Mutual will acquire a 100% ownership interest in Ironshore, and the transaction is expected to close in the first half of 2017, Liberty Mutual said in a statement. Kevin Kelley and the rest of the Ironshore management team will join Liberty Mutual, according to the statement.

### Marsh to acquire Brazilian mid-market broker

Marsh L.L.C. said that it has reached an agreement to acquire AD Corretora de Seguros.

Terms of the deal were not disclosed. Bauru, Brazil-based AD Corretora de Seguros is an insurance broker that specializes in mid-market business in the sugar refining, agri-business and infrastructure sectors. The brokerage has offices in Ribeirão Preto, Araçatuba and São Paulo, Marsh said in a statement.

“The acquisition of AD Corretora de Seguros further demonstrates Marsh’s commitment to expanding our footprint in Latin America, and Brazil in particular, to meet the evolving needs of businesses across the region,” Marsh President John Doyle said in the statement.

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Effective leaders surround themselves with a diversity of perspectives and thinking, and create an environment that allows the team to challenge the way things are done.

## UP CLOSE

### David Dwortz

**NEW JOB TITLE:** Boston-based president of Helmsman Management Services L.L.C., Liberty Mutual Holding Co. Inc.'s third-party claims administrator.

**PREVIOUS POSITION:** Boston-based senior vice president and manager of distribution for commercial insurance with Liberty Mutual Holding Co. Inc.

**LOOKING FORWARD TO:** The thing that has me the most excited is to get out and interact with our customers. My previous role was more of a corporate role, and this allows me to get out and closer to the customer ... and getting to know the team. There is an amazing amount of expertise and knowledge on the team, and I'm looking forward to learning from them.

**GOALS FOR NEW POSITION:** My primary goal is to continue to grow Helmsman. It's quietly grown into ... the fifth-largest TPA in the market. We really like this business, so for us that means eventually trying to get into a top-three position over time. Ultimately, that's my goal ... to take my experience and relationships and try to help continue to grow. In the more immediate term, it's to continue the journey that Helmsman's been on in terms of delivering a true TPA culture married with the resources of one of the largest insurers in the world.

**ON LEADERSHIP:** I think it's embracing diversity. Effective leaders surround themselves with a diversity of perspectives and thinking, and create an environment that allows the team to challenge the way things are done and challenge each other in a productive way that results in getting the best out of the team.

**CHALLENGES FACING INDUSTRY:** The industry faces no shortage of challenges, including how to efficiently deploy capital, attract the right mix of talent, adapt to change and differentiate your value in a mature market. The world is getting more complex, but many of these challenges are opportunities for the companies who can leverage their strengths, adapt to rapidly changing demands and attract and develop the talent for success. Technology will play a pivotal role in being able to thrive in the market.

**CRYSTAL BALL:** With the advances in technology, particularly cloud computing, and the increase in venture capital targeting insurance, the pace of change in our industry will be exponentially faster over the next several years. Again, technology will play a central role in driving change as well as the pace of that evolution. I'm not just talking about product changes, but potentially to the fundamental ways we as an industry serve our customers. It's going to be exciting to be a part of it.

**FIRST INDUSTRY JOB:** Auditor at Ernst & Young.

**ADVICE:** Don't wait for perfect solutions. Get out and try new ways to solve problems.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** Back country ski guide.

**THING MOST PEOPLE DON'T KNOW ABOUT ME:** When I was a kid, I played in a jazz band and had the opportunity to open a jazz festival for Buddy Rich ... one of the legends.

**FAVORITE BOOK:** Right now, I'm reading "The Boys in the Boat" by Daniel James Brown.

**ON A SATURDAY AFTERNOON:** I'm watching my kids in whatever activity they are involved in.

## ON THE MOVE



Specialty insurer Hiscox Ltd. announced that **Jeremy Pinchin**, CEO of Hiscox Re and ILS and Hiscox Bermuda, will return to London this year.

Mr. Pinchin, who worked in Bermuda for five years, will continue as Hiscox group claims director and as a member of the Hiscox executive committee. He will also join the board of Hiscox Special Risks.

XL Group Ltd., which does business as XL Catlin, has revamped the leadership of its reinsurance operations, with its London



reinsurance chief taking over leadership of its Bermuda reinsurance operations, among other moves.

The Bermuda-based insurer and reinsurer said that **Jonathan Gale**,

previously chief executive of its London reinsurance unit, has taken over as chief executive of its Bermuda reinsurance unit,

while **Rob Littlemore**, previously underwriting director of its London reinsurance unit, has replaced Mr. Gale.

Mr. Gale joined Catlin Group Ltd. in 2002 and held progressively senior underwriting roles before becoming chief executive of London reinsurance when XL bought Catlin in 2015.

Mr. Littlemore was named Catlin's head of reinsurance in London in 2008 and became XL Catlin's underwriting director of London reinsurance in May 2015.



Beecher Carlson Insurance Services L.L.C. has named Eugene, Oregon-based **Erin Lynch** president of its global energy practice.

Ms. Lynch will lead the production and service teams that specialize in risk financing solutions, Beecher Carlson said in a statement. Previously, Ms. Lynch was senior managing director of the global energy practice. She succeeds Robert Bothwell, who left the company last month.

Lloyd's of London insurer Brit Ltd. said **Matthew Wilson** has been appointed group CEO, effective Jan. 1, succeeding Mark Cloutier.

Mr. Wilson was appointed CEO of Brit Global Specialty in May 2008, became a member of the executive management committee in January 2009 and was appointed group deputy CEO in February 2015.

## SEE MORE ONLINE

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## Transit minister caught uninsured

Scotland's transport minister, Humza Yousaf, is telling fellow Scots to check their insurance paperwork before getting behind the wheel after he was caught driving without insurance in December, says a story in the Scottish Sun.

Mr. Yousaf told reporters he made an "honest mistake" after a routine roadside check revealed he was driving a friend's car when he was not insured to drive other vehicles. He blamed a paperwork mix-up related to the breakdown of his marriage for the "embarrassing" incident.

"I believed I was in possession of fully comprehensive insurance," he said. "Unfortunately, on investigation, it appears that following the breakup of my marriage and transfer of ownership of our car, I did not complete the process of taking over as the main policyholder." He is not contesting the violation, which "underlines the importance of being properly insured at all times," he said.

## Risk manager seeks advice

Used to doling out business advice, one risk manager turned to a popular advice columnist for his own conundrum.

"Jaded," a 34-year-old seeking a mid- to senior-level position, had a "wonderful panel interview with a billion-dollar health care company," said a December Ask Amy column. But the salary was too low, and when Jaded tried to negotiate, the recruiting manager "balked." Amy Dickinson shared the question with Brenda Wells, the Robert F. Bird Distinguished Professor of Risk and Insurance at East Carolina University, who said: "Risk managers are in the business of protecting profit and people. They could always tell an applicant they don't have the money to offer, but no reasonable employer should be offended at a respectful attempt to negotiate."



# Michael Jordan shows character in trademark fight



REUTERS

Former basketball great Michael Jordan prevailed in China's Supreme People's Court in a trademark lawsuit over the rights to his name written in Chinese characters.

China's highest court gave Michael Jordan his latest victory: trademark rights to his name written in Chinese characters.

The popular U.S. basketball player filed a trademark dispute in 2012 against Qiaodan Sports Co., which he had accused of building a brand around the Mandarin transliteration of his name, according to the New York Times.

December's verdict from the Supreme People's Court overturned a previous ruling by lower courts in Beijing that said Qiaodan could use the Chinese characters for Mr. Jordan on their sportswear.

The high-court decision said that Mr. Jordan owns the legal rights to the Chinese characters of the equivalent of his name. Experts have said the trademark dispute could set a precedent for foreign companies and celebrities pursuing similar cases in China, according to media reports.

## Cook ends cop's comp car caper

A Hingham, Massachusetts, police sergeant reportedly was convicted of insurance fraud after faking an accident that resulted in a workers compensation claim.

In July 2015, Sgt. Kris Phillips was on foot patrol when he phoned 911 to tell responders he was hit after walking behind a car backing out of a parking space, the Patriot Ledger newspaper reported. He claimed "significant injuries" from the accident and went on paid leave.

However, he was charged with filing false insurance claims and misleading a police investigation in relation to his comp claim, the paper said. The star witness at the December trial was a cook from a nearby restaurant who saw the officer wait until a driver began backing her car out of the parking space, then slap the car and pretend to fall to the ground.

The 20-year police veteran was sentenced to six months in jail and ordered to pay \$1,900 in restitution.



## Insurer takes hit if team falls short

Everybody loves to remember the time they spent \$500 on tickets to watch their favorite football team crush it in a Sunday night football blowout, but they'd rather forget it when their team loses.

GameHedge L.L.C., partnering with a sports insurer, is aiming to lessen the sting by offering a 50% refund on the price paid for tickets if a home team loses by a certain amount of points, according to a story on Techcrunch.com.

The unnamed insurer is "happy to underwrite this probability for a small fee, just like they underwrite other sports-related low-probability events like prize-winning half-court shots and holes-in-one," the post says.

To date, the largest 50% refund issued by the New York-based startup was \$3,300 for Game 4 of the 2016 World Series, where the Indians beat the Cubs 7-2.

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