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Source: Insurance Europe survey

INTERNATIONAL

Long-awaited Solvency II rules launch in E.U.

Most insurers expect to be ready

BY SARAH VEYSEY

Most insurers across Europe will meet the long-awaited Solvency II risk-based capital requirements that come into force this month but it's still unclear whether the rules will change their long-term strategies.

Smaller and midsize insurers may be forced to merge to survive under the new regime or pull out of some lines of business, some industry experts say.

The rules are designed to protect insurance buyers and reduce the risk of insurers and reinsurers going bust.

Solvency II has "the end goal of protecting the interests of policyholders" and the "long-term solvability" of insurance companies, said Alberto Minali, chief financial officer of Trieste, Italy-based Assicurazioni Generali S.p.A.

Solvency II "is intended to

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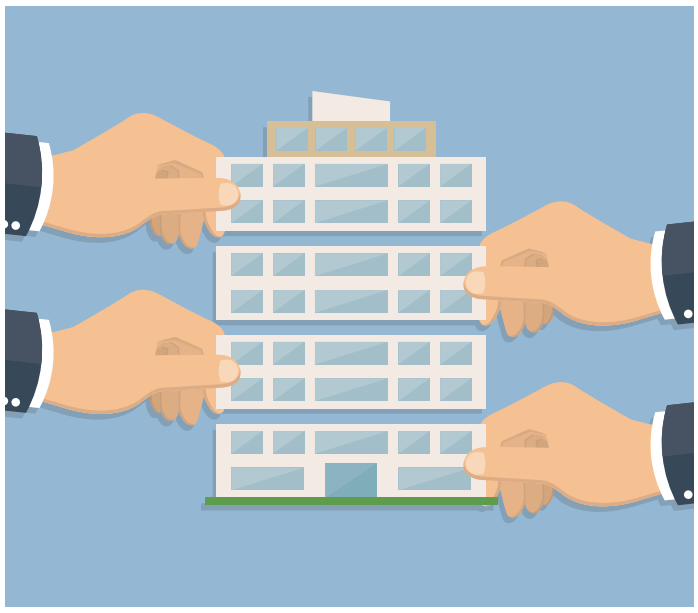
MERGERS & ACQUISITIONS

HEALTH INSURER MEGAMERGERS NOT ALL WRAPPED UP

Federal scrutiny could trump shareholder votes



BY SHELBY LIVINGSTON

Ramped-up antitrust scrutiny may present mergers involving four of the largest national health insurers with greater roadblocks.

Deals linking Aetna Inc. and Humana Inc., as well as Anthem Inc. and Cigna Corp., have ignited a debate over megamergers and the reduced competition, increased insurance prices and diminished health plan quality some critics say consolidation would bring.

But while shareholders for each of the companies have given the deals the green light and their CEOs maintain confidence in closing by the second half of 2016, experts say the transactions are far from a sure thing.

"This is not a slam dunk in either direction," said Barak Richman, a professor of antitrust law and health care policy at Duke Univer-

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HEALTH INSURER MERGERS

Anthem Inc./Cigna Corp.

- $54 billion deal announced in July
- Would create the nation's largest publicly traded health insurer by medical membership, covering an estimated 53 million people.

Aetna Inc./Humana Inc.

- $37 billion deal announced in July
- Would create the nation's second-largest U.S. health insurer by total membership and revenue.

Centene Corp./ Health Net Inc.

- $6.3 billion deal announced in July
- Would create the largest provider of Medicare coverage with more than 10 million members across the country.

Source: *BI* reports

WORKPLACE SAFETY

OSHA flexes its regulatory muscle

Current leader redirects agency's efforts

BY GLORIA GONZALEZ

Aggressive is the adjective most often used to describe the U.S. Occupational Safety and Health Administration these days, partly due to perceived efforts to blame employers for workplace safety accidents, but the agency gets praise for providing tools and resources to help employers stay on the right side of the law.

Safety and health experts have noticed an evolution in the agency's regulatory and enforcement policies and practices in recent years, coinciding with the elevation of David Michaels to assistant secretary of labor for occupational safety and health in December 2009.

"Secretary Michaels is passionate about employee health and safety and has been both very progressive and aggressive," Valerie Butera, a Washington-based member of the labor and employment practice of Epstein Becker & Green P.C., said of the longest-serving assistant secretary in OSHA's history. "OSHA has authority over almost every employer in the country, and they're using it now."

For example, the agency is more actively relying on the Occupational Safety and Health Act's general duty clause to cite industries for

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President of Association of California Insurance Companies discusses state formulary

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People remember the predictions you get wrong, not the ones you get right

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The IRS is giving employers additional time to file health care law-mandated reports.

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NEWSPAPER

HEALTH CARE REFORM UPDATE

Business groups keep up the pressure on the Cadillac tax; regulations coming on deductibles and nondiscrimination; birth control mandate heads to Supreme Court; more employers are opting for high-deductible health plans.

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NEWS

WORKERS COMPENSATION

Responsibility for employees injured while traveling for work can be murky

BY STEPHANIE GOLDBERG

Recent workers compensation cases involving traveling employees highlight the need for employers to implement clear and specific travel policies.

Travel cases are known to "turn on little nuances and facts," said Robert Turner, senior attorney and shareholder at The Silvera Firm in Dallas. But a travel policy that clearly defines what activities are considered work-related and what aren't can help employers minimize potential exposures, he added.

In one, *Barbara Pinkus v. Hartford Casualty Insurance Co.*, a Texas appellate court ruled in November that JVL Ventures L.L.C. employee Ron Pinkus, who died from injuries he sustained in a car accident while out of town on business, was not within the course and scope of his employment because he was driving to meet his son for dinner at the time.

Though Mr. Pinkus' transportation, lodging and reasonable meal expenses were covered by JVL Ventures, according to its travel expense policy, his "activity at the time of his injury did not originate in and was not in furtherance of his employer's business affairs," court records show.

More often than not, claims by traveling workers that have to do with eating are covered under workers comp, but such cases "require a much different level of critical analysis than if someone

slipped and fell walking down the hall in their office," said Edward Canavan, Riverside, California-based vice president of workers compensation practice and compliance at Sedgwick Claims Management Services Inc.

Several recent cases that address traveling workers have focused on what a worker was doing when he or she was injured, Mr. Turner said.

Mr. Turner said most of his cases are won because an injury "relate(s) to or originate(s) in the employer's business and occur(s) in the furtherance of the affairs of the employer," not because of exclusions such as "dual-purpose travel."

Though Mrs. Pinkus argued that her husband was engaged in dual-purpose travel at the time of his accident, as the overall purpose of his trip was in the furtherance of his employer's affairs, he wasn't considered to be in the course and scope of his employment, so there was no need to discuss the exclusion, records show.

Sources said it's unlikely that the decision would be overturned on appeal.

Employees whose jobs extend beyond a single workplace, such as truckers and sales representatives, are more likely to get injured while traveling, sources added.

Such cases are common in Texas, with people in the oil industry working at remote locations, Mr. Turner said, adding that his office usually handles six to 12 traveling worker cases at any time.

On the other hand, Albert B. Randall Jr., Baltimore-based principal at law firm Franklin & Prokopik P.C., said his practice doesn't see many cases involving traveling workers, but those he does see "create a fair amount of appeals because there are some interesting issues at stake."

Travel policies become especially important in cases involving employer-provided transportation, which is a common exception to the "going and coming" rule that states employees injured while commuting to or from work generally aren't entitled to workers comp, sources said.

Since employees are often seen as doing employers a favor by traveling for work, "it's difficult for the employer to impose too many restrictions on what the employee (can do) off the clock," Mr. Randall said. What employers sometimes do "is simply have general parameters on what's expected of the employee," which practically leaves "it up to the court system as to determining what is compensable."

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WORKPLACE SAFETY

Truckers hope safety upgrades reflect on premiums

BY DONNA MAHONEY

Using electronic logging devices to record drivers' time on the road also will allow the trucking industry to track fleet performance.

Some industry members see this improving safety and savings, but others are not so sure."We haven't heard yet from insurers that they'll change underwriting — and it's too early to know — but from experience in this industry, when technologies ultimately result in improved safety, the insurance companies recognize that and the fleets ultimately benefit," said Dave Osiecki, the Arlington, Virginia-based executive vice president and chief of national advocacy at the American Trucking Associations.

The new rule, issued Dec. 10 by the U.S. Department of Transportation, requires bus and truck drivers to use electronic logging devices, instead of paper logs, to track their driving time by Dec. 18, 2017, or by Dec. 16, 2019, for those already using an automatic onboard recording device, or AOBRD.

An AOBRD installed before the ELD compliance date is considered "grandfathered." Drivers and carriers may continue to use an AOBRD instead of an ELD for a period of four years from the publication of the final rule. However, an AOBRD that has been updated and meets the standards for an ELD, including certification registration on the Federal Motor Carrier Safety Administration website, is not considered a grandfathered AOBRD but rather an ELD.

The rule aims to discourage drivers from staying on the road too long, which is known to contribute to

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RISK MANAGEMENT

Little urgency expected in Congress

Flood insurance program not expiring until 2017

BY MARK A. HOFMANN

There looks to be a limited risk management-related agenda at the congressional level this year.

That's not because of the relative merits of issues such as reauthorization of the National Flood Insurance Program or dealing with international insurance regulatory initiatives. Rather, it's the political reality of national elections and a short legislative calendar.

"We have to be realistic about a presidential election year, particularly one like this one with divided Congress and administration," said Joel Wood, senior vice president of the Council of Insurance Agents and Brokers in Washington. "I do not believe there will be a vast agenda."

But for Mr. Wood and others, there still could be significant actions on both the legislative and regulatory fronts.

Observers expect a congressional discussion about international insurance regulatory efforts, and perhaps some movement on allowing certain risk retention groups to offer property coverage.

Perhaps the biggest risk management-related issue will be laying the groundwork for the reauthorization of the NFIP, which is slated to expire Sept. 30, 2017.

There will be "a lot of motion and maybe some action" on NFIP reauthorization, said Nat Wienecke, senior vice president in the Property Casualty Insurers Association of America's Washington office. The program will be the subject of a series of hearings in 2016.

There will be "basically a yearlong conversation," he said. "I don't expect legislation to be introduced.

"We're already seeing preparation by all the major stakeholders in NFIP," said Mr. Wood. "Barring any major flood event, we still are going to see a very significant battle on this."

He said House Financial Services Committee Chairman Jeb Hensarling, R-Texas, and Senate Banking, Housing and Urban Affairs Committee Chairman Richard Shelby, R-Ala., "will light themselves on fire before they lift the borrowing

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PROPERTY/CASUALTY INSURERS

PROPERTY INSURANCE PRICING CONTINUES TO SOFTEN

Even catastrophe-exposed accounts see discounts

BY MARK A. HOFMANN

The current year-end property insurance renewal season looks a lot like last year's, except even better for risk managers.

Rates continue to decrease — sometimes by double digits — from an already low level. A paucity of major catastrophes, abundant capacity and cheap reinsurance have kept prices down.

And some observers say rate reductions have accelerated as competition heats up for attractive accounts.

"We're seeing the pace of decreases increase," said Mike Turner, executive vice president of FM Global in Johnston, Rhode Island. "Last year, they were probably down zero to 3%, and now we're probably seeing a pretty consistent move toward 5% reductions."

In some cases, commercial buyers enjoyed even larger rate decreases.

"We expected downward pressure but I don't think the market overall anticipated such substantial decreases," said Alexandra Glickman, area vice chairman of Arthur J. Gallagher Risk Management Services Inc. in Glendale, California.

Ms. Glickman said she has seen rate decreases of anywhere from 8% to 18%, adding, "That's a big swing."

AP PHOTO

A quarter-point increase in interest rates announced by the Federal Reserve last month is not expected to lead to significant increases in investment income for insurers.

There are "a lot of rate reductions between 10% and 15%, including cat-exposed accounts," said Dave Finnis, national property practice leader at Willis North America Inc. in Atlanta. "If a client wants to get aggressive and oversubscribe their program, they can really drive an equation that's far north of that," with reductions of more than 20% "not unheard of."

"In the third quarter, the average rate reduction was about 8.5%," said Rick Miller, national property practice leader at Aon Risk Solutions in Boston. "We had 40% of our clients who saw a greater than 10% rate reduction for property, and 65% saw greater than 5% decrease, with 80% overall seeing a decrease."

"This shows up more in the shared and layers space than it does into the single carrier space," said Mr. Miller. "Single carrier business tends to be little more consistent over market cycles."

Even catastrophe-exposed accounts are being offered competitive rates, say observers.

"It's always tougher putting together wind-exposed or quake-

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WORKERS COMPENSATION

With falling rates, market favors buyers

BY SHEENA HARRISON

Employers are seeing flat or lower workers compensation policy pricing as insurers work to hang onto profitable accounts during the 2016 renewal season.

Additionally, sources say insurers are offering incentives such as relaxed collateral terms and safety program assistance to keep existing customers and prevent them from shopping their accounts in a competitive comp market.

Sources at Marsh L.L.C., Aon Risk Solutions, Lockton Cos. L.L.C. and Willis North America Inc. say most employers are seeing 2016 workers comp rates that are flat to down as much as 5%.

"It's definitely a buyers' market right now," said Christopher Flatt, managing director and leader of Marsh's Workers' Compensation Center of Excellence in New York. "There's lots of competition. I think what's driving it is just the fact that insurers want to hold onto their business."

"The market for comp right now, I would say, is still fairly soft," said Pamela Ferrandino, national casualty practice leader at Willis in New York. "We're not seeing the rate increases we've seen in prior years, and we're getting pretty close to flat."

However, some companies are seeing rate increases of up to 5%. Price hikes generally have been limited to companies with recent increases in workers comp claim frequency or severity, experts say.

"The vast majority of the people that saw rate increases were people that had adverse loss experience year-on-year," said Stephen Hackenburg, chief broking officer at Aon's national casualty practice in New York.

Mark Moitoso, senior vice president and analytics practice leader at Lockton in Boston, said a competitive workers comp market is

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LIABILITY

Pricing for liability cover is stable

Market capacity remains adequate

BY MATTHEW LERNER

The Jan. 1 liability renewals market appears to be just a bit softer than last year with policyholders generally happy with their treatment as insurers move to secure key renewals, according to sources.

That is, things are little changed from a year ago.

"At Dec. 31, 2014, the industry saw single-digit rate increases," said David Perez, executive vice president and general manager, national insurance specialty, for Liberty Mutual Insurance Co. in Boston.

"Now, the industry is getting flat to low single-digit increases," said Mr. Perez. "It's a difference of a few points but nothing significant."

But not everyone is seeing increases.

"What we're seeing is the market is flat to slightly down," said Pamela Ferrandino, national casualty practice leader at Willis North America Inc. in New York.

She added that there have not been any great changes in terms and conditions.

For most insurers, "probably around flat is going to be the norm," for general liability, said Dan Aronson, U.S. primary casualty placement leader at Marsh L.L.C. in New York.

But the stagnant market is welcomed by policyholders.

"We found the market seemed to have adequate capacity and actually very competitive rates compared to what we had seen about three years ago when we last did our marketing," said Marti Dickman, vice president, risk management, for ADS Waste Holdings Inc., Ponte Vedra, Florida, the fifth largest solid waste company and largest privately owned nonhazardous solid waste management company in the United States.

"We were able to renew with flat retentions and overall found that it was a good renewal process," said Ms. Dickman, adding "our last renewal process we did not have the same success that we had this year."

She said this year the company did a complete marketing of its insurance program, as it does

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DIRECTORS & OFFICERS

Intense competition could further soften D&O market

'Too many fishermen' fuel ongoing rate decreases

BY JUDY GREENWALD

With continued excess capacity in the directors and officers liability market, insurance buyers are still enjoying flat or lower renewals, a trend that is expected to continue next year.

Some observers believe competition may well be exacerbated by merger and acquisition activity and other recent turmoil in the market, including the departure of several key American International Group Inc. executives, among other developments.

While primary layers are generally flat to slightly down, competition is more intense in excess D&O layers, with rate decreases of more than 30% in some cases. FINEX North America, a unit of Willis Group Holdings P.L.C., estimates that next year rate changes overall in primary and excess layers will range from 5% down to 5% up.

The market is "really split between the primary players and the excess players," said Kevin Lacroix, executive vice president of RT ProExec, a division of R-T Specialty L.L.C. in Beachwood, Ohio.

"The primary players are relatively flat, but there's a lot of competition in the excess layers, particularly the higher excess layers and the Side A (difference in conditions) layer, so an individual may overall see savings. It's really a result of competition in the upper layers," said Mr. LaCroix who estimated that overall program rates are decreasing between 5% and 10%.

Joe Carter, vice president of business development at United Educators Insurance, a Reciprocal Risk Retention Group in Bethesda, Maryland, said while primary D&O rates are anywhere from flat to the high single digit increases, "there's so much capacity and worldwide capital that rates continue to come down" in the excess layers.

There are just "too many fishermen, too many boats, too many lines in the water," said Brian Wanat, New York-based CEO of the U.S. financial services group at Aon Risk Solutions.

Other brokers agreed.

"It's still a buyers' market, very much so," with plenty of capacity and soft rates, said Brenda Shelly, New York-based directors and officers product leader at Marsh L.L.C.'s FINPRO practice.

Over the past six months, the "vast majority" of Wells Fargo clients have seen improved terms and conditions with "some fairly significant price erosion," said Simon Hodge, professional risk national practice leader at Wells Fargo Insurance Services USA in Atlanta. He said buyers of public company D&O coverage are renewing with rate reductions of about 5-10%.

And broader coverage is available.

Observers said there is more sublimit capacity available for investigative costs associated with derivative demands, in cases where there is a demand on the board of directors to investigate a possible wrongdoing. Observers say primary insurers typically offer up to $250,000 in coverage for this.

It is "quite common" now for excess insurers to drop down to provide limits over what is provided by primary insurers, said Mr. Hodge.

Experts say there may also be more coverage for the investigation of corporations by regulators, either through separate policies or through endorsements and additional premium.

"There's a greater willingness of underwriters to open up the D&O contract to include investigation costs associated with regulatory investigations," Mr. Hodge said.

Ms. Shelly added, however, she cannot say "every endorsement does exactly what it's supposed to do," so buyers should "be very careful."

The soft market is likely to continue at least through 2016. "There's no reason to believe there's going to be a dramatic change in the marketplace next year," said Rob Yellen, New York-based executive vice president of Willis' FINEX North America.

Meanwhile, with class action claims down 20% over the past two years, claims severity is likely to

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MANAGEMENT SHAKEUPS, MERGERS CREATE OPPORTUNITY

Insurance industry consolidation and turmoil in the executive ranks of some insurers could result in an even softer directors and officers liability insurance market as displaced underwriters find new capital to back them, say observers.

Ace Ltd.'s merger with Chubb Corp. and changes at American International Group Inc. and Zurich Insurance Group Ltd. could ultimately lead to more competition in the sector, they say.

AIG, a major D&O insurer, announced plans to cut its executive ranks by more than 20% and Zurich saw several senior executives leave last year.

Whenever there is displacement in the industry, individuals will go to another facility, "and the barriers to entry are just so low, basically all you need is someone to back you with capital," said Brian Wanat, New York-based CEO of the U.S. financial services group at Aon Risk Solutions.

The changes in the industry put more talented people into the market "and those talented people are landing in places that allow them to create new capacity," said Rob Yellen, New York-based executive vice president of FINEX North America, a unit of Willis Group Holdings P.L.C.

In addition, particularly with the Ace-Chubb merger, "you may have customers who think they have too much limits with one company, so they may spread the risk around," although it is too early at this point to clearly tell "how that shakes out," said James Auden, managing director of insurance at Fitch Ratings Inc. in Chicago.

By Judy Greenwald

REINSURANCE

Global rates continue to fall, but those in North America stabilizing

BY SARAH VEYSEY

Reinsurance rates continued to fall at the Jan. 1 renewals, although in many cases the pace of those declines slowed compared with previous renewals.

But while rate reductions for U.S. property catastrophe excess-of-loss programs have slowed, reinsurance rates in other areas have continued to fall more sharply, sources say.

"We have seen rates fall at the Jan. 1 renewal in many classes, but broadly in line with what we expected and at a slower rate of decline than in previous renewals," said Greg Hendrick, Stamford, Connecticut-based CEO of reinsurance at XL Catlin. "The market remains competitive across many classes of business with the international market remaining more competitive than in the United States."

Rates continued to fall at the Jan. 1 renewal, but the pace of those declines has slowed down greatly, according to Mike Krefta, London-based chief underwriting officer at Hiscox Re, the reinsurance arm of Hiscox Ltd.

"In North America especially, the brakes have been applied," he said.

But elsewhere rate reductions have continued, he said, pointing out that Hiscox Re now has its smallest-ever reinsurance book in Europe because it has pulled out of many areas where rate reductions were deemed to be too large.

Sources said that reinsurance rates in the U.S. Midwest, for example, were falling by single-digit percentages, rather than the double-digit declines seen at previous renewals.

For example, said one source who asked not be named, non-loss-affected property catastrophe business in the Midwest experienced rate reductions of about 8% to 10% on average.

While the reinsurance market remains competitive, in some areas rates appear to be "reaching a floor," according to Mr. Hendrick.

"Certain placements that have pushed for large rate decreases or significant broadening of terms have come back into the market at an increased price," he said.

"The continued improvement in analytics and modeling has contributed to greater discipline in the marketplace," Mr. Hendrick added.

There has been some stabilization in rates in some areas, said Mr. Hendrick, notably loss-hit programs and particularly marine and energy business and treaties that suffered losses in U.S. winter storms in 2015, he said.

U.S. casualty rates also have remained "relatively flat" over the year, he said.

But outside of the United States, rates continue to fall fairly rapidly, sources said.

"Despite the signs of price stabilization in peak property catastrophe zones at the June and July 2015 renewals, the hopeful forecasts for a 'softening in the softening' at the 1 January 2016 renewal season have proved illusory in all but a few cases," James Vickers, London-based chairman of Willis Re, the reinsurance brokerage arm of Willis Group Holdings P.L.C., said in an email.

"In the United States, there are signs that the pace of softening is declining on high-layer property catastrophe excess of loss rates. Outside of North America, however, the pace of softening is not reducing," Mr. Vickers said.

"In the main this is due to the different ILS dynamics within these two regions," he said.

"The ILS markets have had a much bigger impact on pricing in the United States than internationally," Mr. Vickers said. "And with ILS business models not allowing the same degree of flexibility through diversification that the traditional reinsurers enjoy, ILS markets on the whole are taking a more disciplined approach to pricing now and in some cases reducing their capacity."

"This in turn has allowed for some respite for the traditional reinsurers in the

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IRS extends deadlines for reporting health insurance

■ The IRS is giving employers additional time to file health care reform law-mandated coverage reports. The deadline for employers to electronically file the so-called 1094 forms for 2015, which provide coverage information to the IRS, was extended to June 30, 2016, from March 31, while nonelectronic form reporting was delayed to May 31 from Feb. 29. In addition, the deadline for furnishing employees with 1095 coverage forms for 2015 was extended to March 31 from Feb. 1. The IRS said it decided to delay filing deadlines for employers, insurers and others health plan coverage providers after it determined that providers needed "additional time to adapt and implement systems to gather, analyze and report this information."

Facebook must face class actions over IPO

■ A federal judge has certified two shareholder class actions accusing Facebook Inc. of hiding concerns about its growth forecasts before the social media company's May 2012 initial public offering. U.S. District Judge Robert Sweet in Manhattan said retail and institutional investors who claimed to lose money from buying Facebook shares at inflated prices in connection with the $16 billion IPO may pursue their respective claims as groups. The decision is dated Dec. 11 but had been kept under seal, which Judge Sweet lifted in an order made public last week. Other Facebook defendants include Chief Executive Mark Zuckerberg, Chief Operating Officer Sheryl Sandberg and other officials. Facebook is appealing the class certifications, which the Menlo Park, California-based company said are "without merit" and conflict with "well-settled" precedent.

Reuters

North Texas hardest hit during Christmas weekend tornadoes

■ The huge storm system that cut a wide swath across the U.S. over the Christmas weekend hit North Texas hardest, with at least nine tornadoes damaging as many as 1,450 structures, catastrophe modeling firm AIR Worldwide said. The biggest storm, an EF-3 with winds gusting between 136 and 165 mph, hit Rowlett, Texas, before strengthening to an EF-4 storm with winds of 166-200 mph and leaving a 13-mile path of destruction through the Dallas suburb of Garland. Texas Gov. Greg Abbott has declared Collin, Dallas, Ellis and Rockwall counties disaster areas.

Fed rate hike incremental, but insurers brace for more

■ After the widely expected quarter-point interest rate hike from the Federal Reserve in December, insurance industry observers are waiting to see how aggressively the Fed moves in 2016. "Fed rate hikes next year are likely to be surprisingly rapid, given the declining unemployment rate and rising wages," Kurt Karl, chief economist for Swiss Re Ltd. in Zurich, said in an email. While the Federal Funds target rate increase was expected, "how further rate hikes affect credit fundamentals and the longer end of the yield curve is still to be determined," Fitch Ratings Inc. said in a research note. The initial decision to raise interest rates 0.25%, however, is expected to have limited immediate effect on the insurance sector. The near-term impact is too "incremental" and uncertain for insurers to begin making pricing changes, according Cliff Gallant, San Francisco-based analyst for Nomura Securities International Inc. Further, even given the increase, interest rates remain historically low, according to Moody's Investors Service Inc. "The low interest rate environment relative to historical levels will continue to pressure insurers' profitability," Moody's said in a report.

Microcaptive tax-free limits rising to $2 million annually

■ The amount of money that microcaptives can elect to have be free of federal taxes has nearly doubled under tax extension legislation recently approved by Congress and signed into law by President Barack Obama. Captive insurers formed under Section 831(b) of the Internal Revenue Code now can avoid taxation on up to $2 million in premiums per year, up from the current $1.2 million, effective for 2017. Such captives, typically used by family-owned businesses and small to midsize employers, generally meet the IRS' tax-exempt requirement if no more than 20% of either net written premiums or direct written premiums, whichever is greater, are attributable to any one policyholder in a taxable year, according to the legislation passed and approved last week. "That's for group captives, like farming mutual insurance companies, where if you have at least five members you are all set," said J. Scot Kirkpatrick, Atlanta-based leader of the trusts and estates practice at law firm Chamberlain, Hrdlicka, White, Williams & Aughtry, adding that the higher premium limit essentially reflects inflation.

Florida high court won't review comp system's constitutionality

■ The Florida Supreme Court will not review a case that questions whether workers compensation is an adequate exclusive remedy for injured workers, declining to accept jurisdiction for *State of Florida v. Florida Workers' Advocates et al.* In June, a three-judge panel from Florida's 3rd District Court of Appeal unanimously reversed Miami-Dade Circuit Court Judge Jorge Cueto's August 2014 ruling in the case, in which he declared the state's workers comp system unconstitutional because changes made to it mean it no longer provides "an adequate exclusive replacement remedy" in place of common-law torts, according to court records. However, the Florida appeals court judges declined to rule on the constitutionality of exclusive remedy, saying that intervening plaintiffs in the case, including Florida Workers' Advocates and the Workers' Injury Law and Advocacy Group, lacked standing to challenge the constitutionality of the Florida statute that establishes workers comp as exclusive remedy, records show. The case originally involved injured farm worker Julio Cortes and his employer, Velda Farms L.L.C.

McDonald's charged by EEOC for canceling on deaf job-seeker

■ McDonald's Corp. has been charged with disability discrimination by the U.S. Equal Employment Opportunity Commission for refusing to provide a sign language interpreter for a deaf employee candidate. Ricky Washington, who is deaf, applied online for a job at a McDonald's restaurant in Belton, Missouri, in June 2012. When the Belton restaurant manager learned Mr. Washington needed a sign language interpreter for his job interview, she canceled the interview and never rescheduled it. Mr. Washington indicated on his application that he attended Kansas School for the Deaf and that he also had previous job experience working as a cook and clean-up team member at a McDonald's restaurant in Louisiana in 2009. The EEOC charged Oak Brook, Illinois-based McDonald's Corp. and McDonald's Restaurants of Missouri Inc. in U.S. District Court in Kansas City, Missouri, with violating the Americans with Disabilities Act by refusing to accommodate and hire a deaf applicant.

Zurich North America forms captive insurer in Vermont

■ Zurich North America has chosen Vermont to be the domicile for a newly sponsored cell captive insurance company, according to the Vermont Department of Financial Regulation. The Zurich captive, Hoplite Reinsurance Co. of Vermont, is Vermont's 1,052nd license, the department said in a statement. Currently, Vermont has 592 licensed captives, with multiple applications in process, Dan Towle, the state's Burlington, Vermont-based director of financial services, said in an email.

Shipowners insurance rates could rise 2% in 2016

■ Protection and indemnity clubs want to achieve an average of 2% increases in premium, but shipowners with good records can look forward to reductions in premiums for P&I insurance at the 2016 renewals, according to a report by Willis Group Holdings P.L.C. The International Group of P&I clubs market has announced an average general increase of 2%, with some clubs going over and under, according to Willis' Protection & Indemnity 2015/16 Market Review. But Willis said "it is almost certain, however, that market forces will prevail, and lower actual renewal results will be widely achieved. In the continuing challenging shipping market, we expect ship owning members to be pressing for the lowest renewal proposals in the 2016 renewals."

Workers comp claim costs lower when employers choose doctor

■ The average medical cost per workers compensation claim is lower in states where employers can choose an injured worker's initial treating health care provider, according to a study published in the latest issue of the Journal of Occupational and Environmental Medicine. In states where employers can choose the initial treating provider for employees with low back pain, average medical costs were $308 lower than in states where injured workers are allowed to choose, according to "Length of Disability and Medical Costs in Low Back Pain," sponsored by the Liberty Mutual Research Institute for Safety. After controlling for variables such as age, the study found that average medical costs per case ranged from $1,211 in New York to $4,514 in Texas, and length of disability ranged from 19 days in Missouri to 69 days in Texas. The study was compiled using more than 59,000 lower back pain claims between 2002 and 2008 from 49 jurisdictions, including Washington, D.C., and excluding North Dakota and Wyoming due to an insufficient number of cases.

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U.K. insurers take hit from December floods

Widespread flooding in the United Kingdom in December likely will result in insured losses of between £1 billion and £1.5 billion ($1.48 billion and $2.23 billion), accountancy firm KPMG L.L.P. said. London-based KPMG said that economic losses from December's floods could reach as much as £5.8 billion ($8.60 billion). Flooding had been particularly severe in the north of England.

Greece's Eurobank sells insurance unit to Fairfax

Greek lender Eurobank, has agreed to sell an 80% stake in its Eurolife ERB insurance subsidiary to Canada's Fairfax Financial Holdings Ltd. for €316 million ($345 million). Toronto-based investment holding firm Fairfax, led by contrarian investor Prem Watsa, already owns a 17% stake in the Greek bank after participating in a new recapitalization round in November. The cash deal is in line with Eurobank's strategy of slowly exiting from non-banking operations to focus on core banking. It also complies with a restructuring plan approved by the European Commission. Eurobank will retain a 20% stake in Eurolife, The deal, subject to regulatory approvals, is expected to be completed before the end of the third quarter of 2016.

Reuters

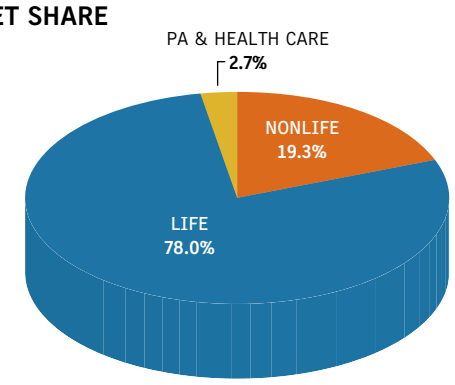
PROFILE: MACAU

$24.5 MILLION

◀ 2014 P/C gross premiums

Susceptible to typhoons and floods, Macau faces bigger issues with its relationship to the Peoples Republic of China. As a special administrative region, it has administrative autonomy but only until 2049, and a Chinese crackdown on corruption has severely curtailed the number of high-rolling gamblers patronizing the region's 52 casinos and plunged Macau into recession. The projected 5% gain in GPD in 2016 comes on the heels of a 21% decline in 2015. Continued economic strife threatens property/casualty demand.

MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

AREA

7 square miles

POPULATION

636,200

GLOBAL P/C MARKET RANKING

102

2016 GDP CHANGE (PROJECTED)

5%

MARKET DEVELOPMENTS

UPDATED OCT. 2015

- As amended in June, the Employees' Compensation Insurance Ordinance extends commuting cover to any conveyance other than public transport while a cyclone warning signal of 8 or more, denoting gale-force winds, is in effect.
- An overhaul of the workers compensation tariff — undertaken in 2013 to create a classification for casino workers — is not expected to yield sufficient data to be effective until 2021.
- Upon completion of the last major casino developments in 2016-17, Macau will no longer be a significant market for construction all risks insurance.
- Pending since 2014, a Medical Malpractice Bill would raise medical standards and introduce objective measures to identify and compensate medical errors through the establishment of a Medical Error Evaluation Committee.

COMPULSORY INSURANCE

- Motor third-party liability
- Workers compensation
- Professional indemnity for travel agents and lawyers
- Public liability for advertising displays
- Third-party liability for pleasure vessels

NONADMITTED

Unauthorized insurers cannot carry on insurance activity in Macau, because the law states that insurance must be purchased from insurers authorized by the Monetary Authority of Macau (AMCM). The AMCM, however, can authorize foreign placement of risk that authorized insurers can't or won't place.

INTERMEDIARIES

Agents and brokers have to be authorized by the AMCM to do business in Macau. Registered brokers cannot place business with nonadmitted insurers except for risk that local insurers can't or won't place.

MARKET PRACTICE

Policies for buyers who contract with nonadmitted insurers abroad are not legally enforceable. Though some foreign investors simply ignore this, most foreign investments are insured in Macau or fronted. Unauthorized insurers can face penalties of up to two years in prison.

Information provided by Axco Insurance Information Services. **www.axcoinfo.com**

London market rates to soften further

Double-digit rate reductions may continue to vex the London market's insurers and reinsurers, according to PricewaterhouseCoopers L.L.P.'s London Market 2016 Outlook report, which surveyed more than 30 London market participants. "As insurers approach the 1 January 2016 renewal season, PwC's research shows a number of London Market participants anticipate further premium rate reductions of greater than 10% across some lines," said the report. "For the energy classes, the experience has been particularly acute for property-related covers with actual risk adjusted rate reductions of 15% across onshore and offshore risks in 2015 — despite a number of large losses in the offshore sector during the year," PricewaterhouseCoopers said. "Within property reinsurance, talk of rates 'bottoming out' earlier in 2015 appear to have been premature," said the report. "The pressure on rates in the property reinsurance and energy classes is forcing some reinsurers to redeploy capital towards casualty reinsurance despite anticipated average risk-adjusted rate reductions in this sector of 7% in 2016."

Liberty Mutual writing property cover in Spain

A division of Liberty Mutual Holding Co. Inc. has started to write property insurance business from Madrid. London-based Tokio Marine Kiln Group Ltd. confirmed in a statement that it has appointed London-based Liberty Specialty Markets of Liberty Mutual Insurance Group to provide renewal terms on all expiring policies in its non-Japanese portfolio written in Spain, effective Jan. 1, with Tokio running off policies for the rest of the year. Liberty Specialty Markets hired Tokio's senior underwriting and risk management team in Madrid for continuity of service to brokers and clients, allowing Tokio to consolidate operations in the country and focus on Japanese business from its Barcelona office, according to the statement.

Global disasters cost insurers $32B in 2015

Catastrophes in 2015 proved more deadly than the previous year, although the total cost to the insurance industry is likely to be 8.6% lower at $32 billion, Swiss Re Ltd. said in its annual sigma report on expected global insured losses. About 26,000 people died from disasters in 2015, the company said, more than double the fatalities counted in 2014, with the greatest loss of life caused by the 7.8 magnitude earthquake in Nepal that killed 9,000 and destroyed half a million homes. Record temperatures saw over 5,000 deaths from extreme heat last summer in India, Pakistan, Europe, North Africa and the Middle East. Swiss Re said the port explosion in China is expected to cost more than any other event this year. "The explosions at the Port of Tianjin in China are expected to lead to the year's biggest insured loss, and the biggest man-made insured loss in Asia ever," it said.

Reuters

Hack attacks, data law boost E.U. cyber demand

New European legislation on data privacy is helping push up regional demand for cyber insurance, industry specialists say, after companies such as TalkTalk Telecom Group P.L.C. and Experian P.L.C. were affected by hackers in 2015. The European Union agreed in December to change fragmented data protection laws, forcing companies to report breaches likely to harm individuals to national authorities within 72 hours. Up until now, insurers say, many European companies have swept the issue under the carpet and shown little interest in cyber cover. But anticipation of the European law has already boosted demand, according to Paul Bantick, technology, media & business services U.K. focus group leader at insurer Beazley P.L.C. "We have seen clients buying policies because they know that this is coming," Mr. Bantick said. "Breaches are going to get more expensive, they are going to get more complex and they (clients) want insurers to help with both of those issues."

Reuters

INSURANCE GROUP PRESIDENT DISCUSSES CALIFORNIA FORMULARY

MARK SEKTNAN

ASSOCIATION OF CALIFORNIA INSURANCE COMPANIES

Mark Sektnan, president of the Sacramento-based Association of California Insurance Companies, says a workers compensation prescription formulary approved in October will be an important tool in preventing unnecessary dispensing of narcotic painkillers to injured workers in the state. In an interview with *Business Insurance* Associate Editor Sheena Harrison, he also discussed how California's 2012 workers compensation reforms have played out and the significance of California lawsuits against "on-demand economy" companies. Edited excerpts follow.

Q What are your thoughts on the new workers comp prescription drug formulary recently adopted in California? How will it help California employers and insurers with workers comp prescription drug management?

A Experience in both Texas and Washington shows that a formulary is an important tool to ensure injured workers receive the appropriate medications. A formulary can also be helpful in addressing one of the biggest issues facing workers compensation, and society in general: the overprescribing of opioids. The California Division of Workers' Compensation has said that in the development of the formulary, the first element to consider is whether the drug is appropriate, and the second element would be to look at the cost. The formulary should be designed to provide the most appropriate medicine at the most efficient price.

Q How closely are you watching the employee misclassification lawsuits that have been filed in California against companies such as Uber Technologies Inc., Lyft Inc. and Amazon.com Inc.? If such companies have to begin classifying their affiliates as employees, how would that affect the "sharing economy"?

A We are watching these lawsuits very carefully. While the potential impact of having these individuals classified as employees may be significant, it is unclear what the impact would be on the overall sharing economy.

Q How has S.B. 863 played out in California this year, and how will it affect the California comp system in 2016?

A Recent studies, as well as California Insurance Commissioner Dave Jones' recent action to reduce the workers comp pure premium advisory rate for 2016, continue to show that S.B. 863 is continuing to save employers money. These trends should continue as the system gains experience with some of the reforms in S.B. 863. That includes independent bill review, which is just starting to be used.

Q What other insurance industry issues will be in focus for California next year?

A Plaintiffs' attorneys are going to continue to push for changes in the underinsured motorist statute and for increasing minimum financial responsibility limits for auto insurance. About 30% of California drivers purchase a minimum limits policy, so an increase in the limits will increase premiums for people least able to afford it, which could increase California's uninsured motorist rate.

Q The California Workers' Compensation Insurance Rating Bureau says that workers comp claim frequency continues to rise in the Los Angeles basin, despite a downward trend in other areas of the state. Any thoughts on why?

A The California Senate Labor and Industrial Relations Committee recently heard testimony that suggested costs may be higher in Los Angeles due to the ethnic makeup of the population, the differing workplaces of the L.A. economy and a higher involvement of applicant attorneys. The California Applicant Attorneys Association testified that the greater Los Angeles area is home to 7.8 million Latinos, many of whom work in higher risk jobs, such as construction, and suffer a disproportionate number of workplace injuries and deaths ... The greater Los Angeles area also generates over 86% of new liens filed in the last four years, according to the WCIRB. Attorneys are involved in over 58% of claims in Southern California vs. 41% of claims involving attorneys in the remainder of the state.

COMINGS & GOINGS

UP CLOSE: TIM LIEB

SEATTLE-BASED OFFICE BUSINESS LEADER FOR HEALTH AND BENEFITS IN THE PACIFIC NORTHWEST

Mercer L.L.C.

PREVIOUS POSITION: Vice president of client management at Aetna Inc.

LOOKING FORWARD TO: Supporting our clients and teams to deliver the solutions necessary to meet the challenges our clients face.

GOALS FOR NEW POSITION: Overall, support the Mercer team to ensure we meet or exceed our clients' expectations. As a service organization, our clients' satisfaction is the No. 1 goal and what keeps the lights on. As an organization, that comes down to retaining our clients and adding new clients, which begins and ends with the Mercer team.

CHALLENGES FACING INDUSTRY: Attraction and retention of talent, generational needs and desire for personalization, health care costs ... and the regulatory landscape.

INDUSTRY OUTLOOK: The industry will be going through a major adaptation phase. To a great extent, our programs and solutions have been more one-size-fits-all, and that is changing rapidly. It is requiring a shift in how we support our clients and the solutions they will need to deploy to meet demands on personalization.

FIRST INDUSTRY JOB: Customer service representative at John Hancock Mutual Life Insurance Co. in Atlanta.

WHAT SURPRISED ME: The impact health care issues have on a family. At some point in everyone's career, they should be in a customer service role and learn to handle issues.

ADVICE: Figure out what truly makes you happy and pursue it. As a society, we often give the reasons why you cannot achieve your goals versus how to achieve them. Your career is just one component of your happiness.

OUTSIDE THE INDUSTRY, A DREAM JOB: Public relations role for the Seattle Seahawks.

HOBBIES: Mountain biking and supporting my kids in their sports. My hobbies are really their hobbies.

Professional Moves & Promotions

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EDITORIAL

CONGRESS MUST ADDRESS FLOOD RISKS

It may be a new year, but Congress shouldn't waste time in tackling an old subject — extending the National Flood Insurance Program. While the NFIP doesn't expire until September 2017, reauthorization of the debt-plagued program has proved to be extremely contentious in recent years.

In the past, some lawmakers have tried to expand the program to include wind coverage, a politically attractive yet fiscally unsound idea given both the NFIP's extreme indebtedness and the existence of a private market. Others have proposed killing the program altogether, which would leave millions of property owners — including some commercial enterprises — without cover and without a private market to which to turn.

The result has been legislative gridlock, or worse. The program was allowed to lapse many times, even though it was reinstated retroactively. Attempts to place it on a more actuarially sound basis through rate increases and other efforts won approval, only to be rolled back as reforms foundered on political shoals.

Any reauthorization will have to include reforms such as aligning rates more closely with risks, even though such changes may be politically unpalatable for some lawmakers. But given the history of the NFIP and the tremendous debt it has run up in the past decade or so, serious debate is necessary.

Starting a serious discussion on the program's future sooner rather than later is particularly important given the congressional calendar. This is a presidential election year in which all members of the House of Representatives will stand for re-election, as will one-third of the Senate.

The official legislative calendar is short, and no doubt many lawmakers would like it to be even shorter so they have more time to make their cases to the voters back home.

Ideally, reauthorization discussions should start now and include not only examination of the program's actuarial underpinnings, but also the possibility of a greater role for the private insurance market. The reinsurance market has made clear that it would be willing to become involved in the U.S. flood marketplace.

September 2017 looks like a long way in the future. But given the demands of this election year, it's not so far away that the deadline for extending the NFIP can or should be ignored. That would be a shortsighted approach to a problem that demands a long-term solution.

Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters.

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SCHILLERSTROM

COMMENTARY

SOME SAFER BETS IN RISK, BENEFIT MANAGEMENT PREDICTIONS

GAVIN SOUTER
EDITOR

Making predictions is a tough game to play. People have a tendency to remember the ones you get wrong rather than the ones you get right — everyone remembers that the Chicago Tribune's political analyst, with some help from pollsters, got Dewey Defeats Truman wrong in 1948 but not that he correctly predicted four out of five of the previous elections.

More recently, the CIA has been subjected to some ribbing for predictions it made in 2000 about what the world would look like in 2015. Thankfully, its prediction that AIDS and famine would lead to population declines in Africa was off the mark, and the continent's population has grown significantly. It also suggested that a unified Korea could become a regional power in Asia, but that had not happened when we closed out the year last week — at least not before this column went to press.

In other areas it made the right call — the transformational power of the Internet and the increasing environmental problems of developing nations. While hindsight is 20/20, it's fair to say that the agency was not exactly chancing its arm with some of its other correct predictions — the world's population would grow and people would live longer.

Being the cautious type, I'm more comfortable with safer bets, which is why when it comes to the core areas that *Business Insurance* covers, I'm going for the more predictable predictions.

First off, risk managers are going to continue to enjoy a buyers market. Insurers are well-capitalized after years of low catastrophe losses, many are posting underwriting profits, reinsurance is cheap and plentiful. About the only events that could change the direction of pricing would be a colossal insured catastrophe or massive consolidation in the sector. While it's impossible to rule out a mega-loss, the consolidation trend we are witnessing has not yet reached the point where sellers of insurance are in the ascendancy.

On the workers comp and safety front, employers will face increased scrutiny and citations from the U.S. Occupational Safety and Health Administration. As we report on page 1, OSHA has become increasingly aggressive in its pursuit of employers whom it deems to have unsafe working environments. And it is much more willing to use the full range of its powers to pursue employers.

On benefits, I'm willing to go out a little further on the limb and predict that the Cadillac tax will be repealed. It may not happen in 2016, but the delay in applying the tax that was approved last year coupled with the departure of President Barack Obama after the next election may signal the end of the measure, which was included in the health care reform law, the president's signature law. Opponents have successfully unraveled the argument for the tax, and it is opposed by many businesses that wield clout.

If I'm wrong on any of this, there's always next year.

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Solid cyber risk management depends on good defense metrics

Cyber security is vital for corporations and individuals alike, but its practice is hamstrung by a lack of effective data, loose monitoring and impediments to sharing the data that does exist. Sean Connors, vice president of cyber security at System Soft Technologies L.L.C., talks about the issues and offers strategies for overcoming them.

Actuaries employed by cyber security insurers face significant challenges in accessing accurate and relevant data, largely because there's not enough to perform generalized linear modeling, a specialized class of nonlinear models that use linear methods.

A major reason is a lack of historical data on cyber security incidents because of their relative newness. And the data that does exist typically consists of only reported incidents (many go unreported) and network noise (which includes attack attempts).

Then, there's the unwillingness of companies to share incident data in an industry that has quickly become highly regulated, driven by large government fines for noncompliance.

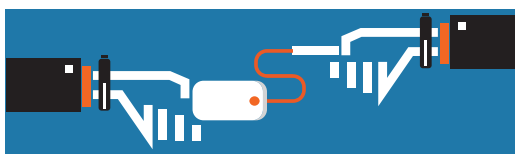
Incidents and attempts

Generalized linear modeling requires vast amounts of data, referred to as Big Data, collected by recording network traffic to and from IP addresses (the internet protocol used to route information to websites and devices). This data, collected over the last few years, is growing exponentially and is made available to defense companies for analysis. This network data, used to do forensics on incidents and real-time analysis to attempt to prevent attacks, is gathered mostly from "front facing" websites, those accessible to the public, and inadequately protected internal networks. This leaves out copying of files/data via USB or anything that happens on your local area network or PCI networks (for merchant credit cards), which are mostly hidden.

Aiding in data collection are large networks of honeypots (fake servers posing as companies with a weakened defense) to capture attacks for analysis. Like they do for bears, honeypots attract malware to identify it and learn how it works. Then, a "fingerprint" is made and passed to the shared database of malware and viruses.

Incident modeling problems

The 2013 attack on the payment systems at Target Corp. stores is one example of the complexity of the issue. Hackers accessed the data of more than 70 million shoppers, a breach that has generated nearly $150 million in total losses for the retailer. But looking at the cyber "noise" at Wal-Mart Stores Inc. at the same time as the Target breach sheds little light on the latter. Incident modeling at the time put Wal-Mart at a higher risk because it has more suppliers, adjusted for size. But what Wal-Mart didn't have was the rogue supplier suspected of opening the door at Target.



Because cyber security encompasses a wide framework — hardware, software, people, communication, infrastructure — measurements boil down to a people issue.

Home break-in

Such complexity is another reason cyber security is not as easily modeled as "hard" risks such as home invasion.

Using incidents to determine the risk or likelihood of a home break-in, you would check incidents by area, like the blog SpotCrime does.

If you were to use defenses for risk assessment, you would check:

- Security systems or applications: deadbolt door locks, burglar alarms, closed-circuit video surveillance
- Network: gated neighborhood, location, who is coming and going
- Awareness: training residents to turn on an alarm when they leave or sleep
- Forensics: checking for suspicious activity and vulnerability
- Internal defenses: a watchdog, interior door locks, a safe.

Defenses

Similarly, a large number of cyber security solutions providers offer a wide range of defenses, with varied degrees of effectiveness. Most companies use multiple products such as firewalls, application patching (ongoing software updates that don't require a system shutdown) and networking with endpoint security products including smartphones, tablets, bar code readers and point-of-sale terminals, the devices compromised in the Target breach. Some use training courses, and many scan for malware and viruses. Forensics is a growing discipline with many cyber security solutions providers delivering solutions using available big data.

All are guided by core functions of the National Institute of Standards and Technology, an agency of the U.S. Department of Commerce: identify, protect, detect, respond and recover. For example, the first step — identification — requires the following types of measurements.

What is measured and how

Because cyber security encompasses a wide framework — hardware, software, people, communication, infrastructure — measurements boil down to a people issue.

The basic methodology is based on a Capability Maturity Model, traditionally used in software development, by inspecting the level and effectiveness of the defenses against data loss, hacking, viruses, phishing and such within a company's IT infrastructure.

They are set out in the Cybersecurity 5 Layout, or CS5L, assessment tool:

- Application security (software systems)
- Network security (communications)
- Security awareness (people, capabilities, procedures)
- Internal defense (malware and virus scanning, policies, controls)
- Forensics (investigation and real-time monitoring)

Layouts, defenses, defense sectors and background are measured using Capability Maturity Modeling to determine a standard process that insurance actuaries can use to identify risk areas and set premiums.

Set up as a tool for cyber security risk auditors, the process begins with a cyber ID issued through a secure system managed by regulatory bodies. Auditors assign people to oversee each area to be monitored — self-optimizing, managed, defined and measured, repeatable and initial — and manage them to determine a score.

This process will create defense-based data for cyber risk assessments, which is more potent than incident data.

Conclusion

It seems obvious to measure defenses rather than incidents using big data, and in doing so a measurement process evolves that provides real data for risk analysis.

The road forward is to measure companies and their suppliers with an all-inclusive standardized process that holds a path to capability maturity. This will give insurers a score, much like a credit score, to quantify cyber risk.

Sean Connors is vice president of cyber security at System Soft Technologies L.L.C., which provides IT consulting and solutions. He can be reached at *sean.c@sstech.us* or 727-723-0801, ext. 337.

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SPECIAL REPORT

Health Care Reform Update

Regulations coming on deductibles, nondiscrimination
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Contraceptive mandate heads to Supreme Court
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More employers choose to adopt high-deductible plans
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Private health care exchanges compared
PAGE 19

Business groups keep pressure on Cadillac tax

Growing support in Congress for repeal could tip scales in 2016

BY JERRY GEISEL

Congressional support to repeal the widely criticized Cadillac tax on costly health plans is growing, but the outcome of that drive is far from certain.

Both the House and Senate passed budget legislation last year including a provision to repeal the 40% excise tax on that part of group health care plan premiums that exceed $10,200 for single coverage and $27,500 for family coverage. In fact, the Senate, as part of the broader budget legislation, approved repealing the tax mandated by the Patient Protection and Affordable Care Act on a largely bipartisan 90-10 vote.

While the repeal action did not become law, lawmakers did ultimately approve a two-year delay in the tax, now scheduled to go into effect in 2020, as full repeal efforts continue.

"Between the delay in the excise tax until 2020 and the Senate 90-10 vote to repeal the tax, it's likely that we'll see attempts (in 2016) to repeal with bipartisan support," said Amy Bergner, a managing director at PricewaterhouseCoopers L.L.P. in Washington.

"We should have some good momentum going into 2016, particularly after the strong Senate 90-10 vote," said Gretchen Young, senior vice president of health policy at the ERISA Industry Committee in Washington. "We will continue to fight for repeal. We will not give up."

But passing repeal legislation is still far from certain.

"Right now, it is hard call to make," said Brian

See **CADILLAC** page 16

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- **Managing M&A Risks: When 1 + 1 Doesn't Equal 2**
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- **How to Practice Good Cyber Hygiene**
- **Opting Out: Workers' Compensation System Alternatives**
- **Risk Engineering Success Stories**
- **Business Continuity: Securing Supply Chains**
- **Creative Uses for Captives**
- **Risk Managers-Only Closed-Door Session**
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SPECIAL REPORT

CADILLAC TAX DELAY BUYS TIME FOR IRS TO RETRENCH ON DIVISIVE ISSUE

But nondiscrimination rules update, out-of-pocket maximums loom

BY JERRY GEISEL

The last major congressional action of 2015 —passage of a massive tax and government spending measure — could delay government regulators issuing the last major rule under the health care reform law.

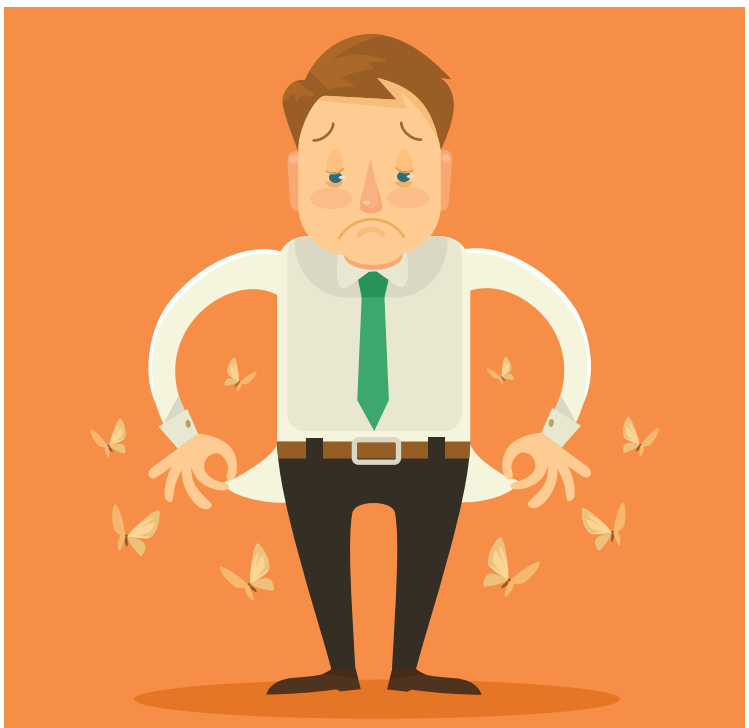
The spending measure includes a provision that delays the effective date of the Patient Protection and Affordable Care Act's so-called Cadillac tax from 2018 to 2020.

Under that provision, staunchly opposed by employers and unions, a 40% excise tax is to be imposed on the portion of group health plan premiums that exceed $10,200 for single coverage and $27,500 for family coverage.

While it had been widely expected that federal regulators would propose Cadillac tax rules during the first half of 2016, the two-year delay has eased the pressure on regulators and led some to say the excise tax may ultimately be repealed.

"It certainly gives the IRS more time if they choose to take it or if they think the tax will be repealed," said Steve Wojcik, vice president of public policy at the National Business Group on Health in Washington.

"It is possible that the IRS will take some extra time," said Amy Bergner, a managing director at PricewaterhouseCoopers L.L.P. in Washington. But, "there may still be a desire to propose and/or finalize rules before the 2016 elections."



While business groups have maintained that the health care reform law does not impose a so-called "embedded" cost limit, regulators have disagreed.

Others say, however, the rules could be issued this year.

"If the Obama administration feels it can provide significant regulatory relief from the tax, it might issue the rules in order to slow down the repeal effort," said James Klein, president of the American Benefits Council in Washington.

On the other hand, Mr. Klein said, if the administration feels it "cannot provide much relief, or are not inclined to, then they might leave it to the next administration to complete rules."

Employers have raised numerous questions about what is to be included in calculating plan costs subject to the excise tax.

For example, it isn't clear whether the costs of on-site employer health clinics are to be included in the calculation. There also is uncertainty on whether contributions to health savings accounts should be included or whether the excise tax trigger can be adjusted to reflect geographical differences in health costs.

"These are questions that employers need clear guidance on," said Barbara McGeoch, a principal at Mercer L.L.C. in Washington.

Guidance also is needed on an ACA nondiscrimination provision for insured health plans, a requirement that will not go into effect until rules are finalized.

"There are no hints from regulators when the rules will be issued," Ms. Bergner said.

"There is no urgency" on regulators' part, said Gretchen Young, senior vice president of health policy at the ERISA Industry Committee in Washington.

When regulators do issue nondiscrimination rules for insured plans, they also may update decades-old nondiscrimination rules for self-insured plans, some say.

Regulators this year also could formalize guidance issued last year limiting how much in out-of-pocket expenses employers with high-deductible health plans can require employees to pick up.

Under the May 2015 guidance from the departments of Health and Human Services, Labor and Treasury, the maximum out-of-pocket expenses employers can require employees to pay will be $6,850 for single coverage and $13,700 for family coverage when the rules go into effect in 2016.

In addition, the guidance added a new, potentially costly requirement for employers, which will be limited to $6,850 the maximum out-of-pocket expense any one person with family coverage can be required to pay.

While business groups have maintained that the health care reform law does not impose a so-called "embedded" cost limit, regulators have disagreed.

That embedded limit "prevents consumers from being penalized for purchasing family coverage rather than self-only coverage," Kevin Counihan, CEO of the health insurance marketplace at HHS, wrote to several business groups after the guidance was issued.

There are low expectations that the guidance will be altered and the requirement could be "formalized in the form of regulations," said Sharon Cohen, a principal at Buck Consultants at Xerox in Washington.

CADILLAC

Continued from page 14

Marcotte, president and CEO of the Washington-based National Business Group on Health.

"I don't underestimate the challenge we face. We have a lot of work ahead of us," said James Klein, president of the American Benefits Council in Washington.

One obstacle is opposition from the Obama administration. While White House Press Secretary Josh Earnest has said the administration would consider changes to the excise tax, he ruled out repeal and said the tax will achieve important objectives.

Among other things, Mr. Earnest said the excise tax gives employers a strong financial incentive to make their health care plans more efficient, with employees benefiting as employers boost their wages to help offset benefit cuts.

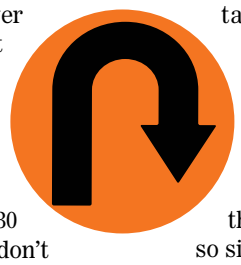
That higher wage assumption is part of a Congressional Budget Office estimate that the excise tax would generate $87 billion in federal revenue between 2018 and 2025 to help fund premium subsidies for the lower-income uninsured to buy coverage in public health insurance exchanges.

But that assumption is "far-fetched from our perspective," said Steve Wojick, the NBGH's vice president of public policy in Washington.

"I have not heard of one employer who will do that. That is just not going to happen," Mr. Klein said.

Benefit experts also expect lawmakers to take another look at amending an ACA provision that defines full-time employees as working at least an average of 30 hours per week. Employers that don't offer coverage to at least 95% of their full-time employees could be liable for a $2,160 penalty per employee in 2016.

While the House a year ago approved legislation to bump the full-time definition to 40 hours per week, the Senate failed to take up the proposal due to opposition from Democrats.



"Senate Democrats held together in opposition to that change. That stopped it cold," said Geoff Manville, a principal at Mercer L.L.C. in Washington. "There was a concern that the coverage expansion goals of the ACA would not be met if the definition of a full-time employee was moved up to 40 hours per week."

"While it is possible lawmakers will take another look at the 30-hour rule, possibly the time for altering that definition may have come and gone," Ms. Bergner said.

If Congress in 2016 does approve legislation repealing portions of the ACA, it would be the fifth time lawmakers have done so since the Affordable Care Act was passed in 2010.

The first was in 2011, when Congress approved repealing an ACA provision that would have required employers to offer low-wage employees company-paid vouchers to buy coverage in public health insurance exchanges.

Also, in 2011, lawmakers repealed a requirement that employers doing more than $600 in business with a corporate vendor furnish Form 1099 statements.

In 2013 with Obama administration support, Congress passed legislation to repeal a provision that would have established a voluntary federal long-long term care insurance program. Administration officials feared the voluntary program would result in adverse selection, sending premiums higher and higher.

Then late last year, as part of a broader measure, Congress passed legislation repealing an ACA provision requiring employers with at least 200 employees to automatically enroll workers who do not respond when asked to select a group health plan offered by their employer.

The driving force behind the bipartisan move, experts say, was the $8 billion in additional revenue, as estimated by the Congressional Budget Office, that would be generated by repealing auto enrollment. Fewer people in employer plans reduce employers' costs, thus increasing employers' taxable income.

High court to take on religious nonprofit groups' challenge to ACA contraceptive mandate

BY SHELBY LIVINGSTON

Oral arguments will lead the U.S. Supreme Court to resolve nonprofit religious organizations' challenge of the health care reform law's contraceptive mandate.

The cases are part of a string of litigation challenging the Patient Protection and Affordable Care Act provision that requires employers to cover prescription contraceptives as part of their benefit plans.

The organizations, mainly Christian colleges and charities, argue that the ACA violates their rights under the U.S. Religious Freedom Restoration Act by forcing them to provide birth control coverage, which they argue is immoral — even with an accommodation where they can pass the obligation to their health insurer or third-party administrator. The religious nonprofits argue that even the accommodation violates their rights, and they want to be exempted from the rule, an option now available only to churches.

A September ruling in *Heartland Christian College et al.* finally opened a split compared with seven other appeals courts, when a three-judge panel of the 8th U.S. Circuit Court of Appeals in St. Louis struck down the ACA requirement.

"That they themselves do not have to arrange or pay for objectionable contraceptive coverage is not determinative of whether the required or forbidden act is or is not religiously offensive," the 8th Circuit ruled.

In October, the U.S. Justice Department reversed its stance and asked the Supreme Court to hear *Roman Catholic Archbishop of Washington et al. v. Sylvia Burwell et al.*, in which the appeals court sided with six others in ruling that the requirement did not put an undue burden on the religious nonprofits.

The Supreme Court consolidated the seven cases in November with oral arguments set for the spring.

"Whatever the court discerns … whether they discern it on a very technical matter or if they take a broader position on the status of the Religious Freedom Restoration Act, it could have a significant impact down the road," said Karen McLeese, Kansas City, Missouri-based vice president of employee benefit regulatory affairs at CBIZ Inc.

OTHER SUITS SEEKING TO DERAIL HEALTH CARE REFORM

Maria De Lourdes Parra Marin v. Dave & Buster's Inc., Dave & Buster's Entertainment Inc.

Type: ERISA Section 510 challenge

Status: Pending in the U.S. District Court for the Southern District of New York

A proposed class action against sports bar chain Dave & Buster's may shed light on whether employers can reduce or limit their employees' hours to avoid paying for health coverage for those who work 30 or more hours a week.

The suit brought on behalf of 10,000 workers last May against Dallas-based Dave & Buster's in U.S. District Court of the Southern District of New York alleges the sports bar chain began reducing employee hours in June 2013 to avoid ACA-related costs, resulting in workers losing their health insurance or being offered inferior plans.

The case, which is novel in the context of the health reform law, will "shed a little more light on how far employers can go" to reduce workers' hours to cut costs, said Hrishi Shah, a Chicago-based associate at law firm Franczek Radelet P.C.

At issue is Section 510 of the Employee Retirement Income Security Act of 1974, which prohibits employers from interfering with an employee's right to collect benefits.

Previous lawsuits under Section 510 that proved an employer fired an employee right before being vested in the pension plan or fired a worker who has high medical claims have been successful, but there is no precedent for the Dave & Buster's case, Mr. Shah said.

While few employers have cut the number of workers to avoid paying for health insurance for full-time workers, more have reduced hours to avoid the 30-hour threshold.

According to a Society for Human Resource Management survey in March 2015, 14% of employers already reduced part-time employee hours and 6% planned to do so. Two percent of employers already reduced full-time employee hours, and 2% planned to do so. Only 5% of employers had already reduced or planned to reduce the total number of employees because of the ACA requirement, according to SHRM.

It's "a little riskier" for an employer to "take someone who had health coverage by virtue of working over 30 hours and then (bring) them back down under 30 so that they lose health coverage that they had," Mr. Shah said.

"This is sort of unprecedented territory. The outcome of this case is going to be pretty huge," he said.

By Shelby Livingston

Matt Sissel v. Department of Health and Human Services

Type: Origination clause challenge

Status: Petition to appeal pending in the U.S. Supreme Court

A lawsuit against the U.S. Department of Health and Human Services could be a death sentence for the ACA if it succeeds.

The case, brought by Washington artist Matt Sissel, alleges that the ACA originated in the U.S. Senate and not in the U.S. House of Representatives, violating the origination clause of the U.S. Constitution that stipulates all revenue-raising bills must originate in the House.

"If this were to succeed, it would be devastating," said M. Miller Baker, a partner at McDermott Will & Emery L.L.P. in Washington.

The U.S. Court of Appeals for the District of Columbia Circuit in July 2014 upheld a lower court ruling that said the ACA was not meant to raise revenue, but instead was meant to "overhaul the nation's health insurance market." In that case, the origination clause would not apply.

Mr. Sissel asked the appeals court for a rehearing en banc, and the court denied the request in August. He asked the Supreme Court in October to hear the appeal; the court has not ruled on the request.

Another case, *Steven F. Hotze et al. v. Burwell et al.*, which is pending in the 5th U.S. Circuit Court of Appeals in New Orleans, makes the same argument. The court dismissed that suit as well, saying he had no standing to sue. Mr. Hotze has asked for a rehearing.

While the case could be devastating if it succeeds, Mr. Miller said it has little chance of success. First, the 5th Circuit has narrowly construed the origination clause, and second, the ACA did technically originate in the House, even though the Senate "gutted the original" bill and replaced it with the law we have today, he said.

By Shelby Livingston

U.S. House of Representatives v. Burwell

Type: Cost-sharing challenge

Status: Pending in the U.S. District Court for the District of Columbia

A suit brought by House Republicans could render the cost of health insurance unaffordable for ACA plan enrollees.

The Republican-backed suit filed in November 2014 raises two key claims.

It alleges that the U.S. Health and Human Services and the Treasury departments have spent billions of dollars that have not been appropriated by Congress to support the ACA. Namely, the suit argues that HHS and Treasury illegally reimbursed health insurers required by the ACA to reduce low-income plan members' out-of-pocket costs.

The suit also argues that HHS illegally delayed enactment of the ACA.

If the challenge were to succeed, "it would be a significant blow to the ACA, but it would not be fatal," said M. Miller Baker, a partner at McDermott Will & Emery L.L.P. in Washington.

Eliminating the insurer subsidies would result in unaffordable coverage costs, experts say.

In September, U.S. District Judge Rosemary Collyer ruled that the House has standing to sue over the billions spent without congressional appropriation. In October, the judge denied the Obama administration's request to immediately appeal to the U.S. Court of Appeals for the District of Columbia Circuit.

"Defendants will have a chance to make their argument to the Court of Appeals; the only question is whether they may do so now," Judge Collyer wrote in the October order.

Judge Collyer set the final deadline for briefs on Jan. 18, and oral arguments will follow.

By Shelby Livingston

CONTRACEPTIVE 7

The U.S. Supreme Court on Nov. 6 accepted seven cases challenging the Affordable Care Act's contraceptive mandate. Briefs are due by March 11.

Roman Catholic Archbishop of Washington et al. v. Sylvia Burwell et al.

What: Archdiocese of Washington and other Catholic nonprofits

Background: In January 2013, the U.S. District Court for the District of Columbia dismissed the case. The U.S. Court of Appeals for the District of Columbia Circuit consolidated the case with *Priests for Life v. U.S. Department of Health and Human Services*, and in November 2014 rejected all petitioners' claims. In May 2015, it denied a request for a rehearing en banc.

Priests for Life v. U.S. Department of Health and Human Services

What: Staten Island, New York-based Catholic organization that works to end abortion

Background: The U.S. District Court for the District of Columbia in December 2013 denied an injunction sought by Priests for Life. In November 2014, the U.S. Court of Appeals for the District of Columbia Circuit dismissed the case and denied an en banc rehearing in May 2015.

Zubik v. Burwell

Who: Rev. David A. Zubik, Bishop of the Catholic Diocese of Pittsburgh

Background: In December 2013, the U.S. District Court for the Western District of Pennsylvania granted a permanent injunction against the mandate, but the 3rd U.S. Circuit Court of Appeals reversed it in February 2015. It rejected an en banc rehearing in March 2015.

Geneva College v. Burwell

What: Christian college in Beaver Falls, Pennsylvania

Background: The 3rd U.S. Circuit Court of Appeals in February 2015 reversed a decision from the U.S. District Court for the Western District of Pennsylvania granting a preliminary injunction against the ACA rule.

Little Sisters of the Poor Home for the Aged v. Burwell

What: Denver-based nonprofit organization of Roman Catholic nuns

Background: The U.S. District Court for the District of Colorado in December 2013 denied the Little Sisters of the Poor's motion for a preliminary injunction. In July 2015, the 10th U.S. Circuit Court of Appeals ruled Little Sisters of the Poor must comply with the mandate.

Southern Nazarene University v. Burwell

What: Bethany, Oklahoma-based private Christian university

Background: The U.S. District Court for the District of Oklahoma in December 2013 granted the university a preliminary injunction. The 10th U.S. Circuit Court of Appeals in July 2015 overturned the injunction.

East Texas Baptist University v. Burwell

What: Marshall, Texas-based private Christian university

Background: In December 2013, the U.S. District Court for the Southern District of Texas granted the university's request for a preliminary injunction against the mandate. The 5th U.S. Circuit Court of Appeals reversed the ruling in June 2015.

SPECIAL REPORT

If PPOs and HMOs continue, "we're going to see increased deductibles, (and) we're going to see reduced coinsurance rates. In other words, they are going to put more on the employee."

Bruce Elliott, Society for Human Resource Management

HIGH-DEDUCTIBLE HEALTH PLANS SURGE IN POPULARITY

Employers nudge workers away from traditional plans to avoid Cadillac tax

BY SHELBY LIVINGSTON

To stem ever-escalating group health plan costs and avoid the hotly debated Cadillac tax, employers have escalated adoption of high-deductible health plans, which may mean preferred provider organization and health maintenance organization plans are on their way out.

Employers last year continued to tweak their group plan designs as growth in health costs, plus the pressure of the 40% excise tax, made changes a priority.

But even with the fear of the Cadillac tax, employers have steered clear of sweeping measures.

"Because there's been relatively modest (health care cost) trend year over year, employers have not done drastic things with plan design, with or without the Affordable Care Act," said David Fortosis, Chicago-based senior vice president and health care consultant at Aon Hewitt.

Health care costs increased 3.2% in 2015 after employers made plan design changes, down from 4.4% in 2014, Aon Hewitt said in a November survey. That's the lowest increase recorded since Aon Hewitt began tracking the data in 1996.

Many employers are waiting to see whether the Cadillac tax, now delayed until 2020, will be repealed before making major design changes, sources said.

Employers most often have been "tweaking" their plan designs, Mr. Fortosis said.

Still, small adjustments can lead to big savings, sources said. And shifting costs to employees is an obvious starting point to limit rising costs.

"More employers are adding the high-deductible plan option, and more employers are creating stronger financial incentives for employees to enroll in that plan," said Ed Kaplan, national health practice leader at The Segal Group Inc. in New York. HDHPs "tend to lower claim costs so that you either avoid the tax or push out the potential tax liability several years."

"More employers are adding the high-deductible plan option, and more employers are creating stronger financial incentives for employees to enroll in that plan."

Ed Kaplan, The Segal Group Inc.

The National Business Group on Health pegs the percentage of large employers planning to offer a consumer-driven health plan in 2016 at 83% and more than one-third intend that CDHP to be the only option, according to an August survey.

To illustrate, the medical cost per employee enrolled in a CDHP linked to a health savings account averages $9,228 compared with $11,212 for PPOs and $11,248 for HMOs, Mercer L.L.C. said in a November survey.

Employers also are charging more to cover employee's spouses, and interest is growing in self-funding health coverage, experts say. The trend does not bode well for conventional PPOs and HMOs, some say.

Bruce Elliott, Alexandria, Virginia-based manager of compensation and benefits at the Society for Human Resource Management, said traditional PPOs with low deductibles could eventually "could go the way of the dodo" bird.

If PPOs and HMOs continue, "we're going to see increased deductibles, (and) we're going to see reduced coinsurance rates. In other words, they are going to put more on the employee," he said.

"It depends on the industry you're talking about," said Segal's Mr. Kaplan. In retail, where salaries are lower and turnover is higher, workers may be moved into lower-cost plans. But in industries with richer benefits, such as the public sector, workers "want a rich option," he said.

Sometimes employees make the choice.

At Tamarac, Florida-based City Furniture Inc., 80% of workers are in an HDHP linked to a health reimbursement arrangement, said Janet Wincko, City Furniture's vice president of employee benefits. Only 20% remain in the firm's HMO, which is extremely pricey, Ms. Wincko said.

Also hanging in the balance is the fate of HSAs and HRAs. Without them, employees would shoulder the entire deductible and be more likely to skimp on necessary care, and employers would not be as attractive to prospective workers.

"If (employers) are approaching the Cadillac tax thresholds, the low-hanging fruit is the HSA, which is upsetting because that's the way (employers) are offsetting the high deductible," said Brian Marcotte, president of the NBGH in Washington.

Employer and employee pretax contributions to HSAs, HRAs and flexible spending accounts are to be included in the Cadillac tax calculation.

According to the NBGH survey, 58% of employers will contribute a predetermined amount to each plan participant's HSA and 59% will do so for those enrolled in HRAs in 2016.

Those accounts are "the easiest thing for the employer to eliminate if they're either going to trigger the tax or if it's looking like it's getting close," said Riverside, California-based Sibyl Bogardus, Hub International Ltd.'s chief compliance officer for the Western region. While only pretax contributions are counted now, she said post-tax employer contributions "may be pulled in to that calculation as well" in the future.

And while private exchanges haven't seen the uptake initially predicted, interest continues to climb.

According to Mercer's November study, 6% of large employers already use a private exchange for active employees or will by next year's open enrollment, a 50% increase from the year before. Furthermore, 27% of large employers are considering switching to a private exchange in the next five years.

Much of the movement depends on the future of the Cadillac tax, sources said.

CUTTING OUT SPOUSES TO SAVE ON COSTS

Among plan design tweaks becoming more common are surcharges for spouses who are able to obtain coverage from their own employers.

Surcharges and even exclusions are "levers we've seen a lot of employers take a look at," especially if "there are a lot of spouses on (the employer's) high claimants report," said Michael Booth, president of Westmont, Illinois-based Axion RMS Ltd.

It's a strategy the United Parcel Service Inc. undertook in 2013, when it quit offering health insurance to spouses who could obtain coverage from their own employers, citing the health care reform law and rising premiums as its motives.

Since then, more employers have followed suit.

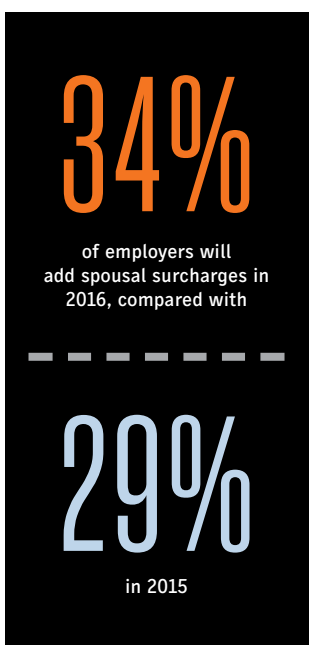
Thirty-four percent of employers will add spousal surcharges in 2016, compared with 29% in 2015, according to the National Business Group on Health. Only 4% will exclude spouses from the plan if similar coverage is available to them.

For middle-market and small employers, interest is growing in self-funding their health plans.

Employers want to be self-funded "because of the data that is available to them that enables them to put together … a strategic action plan for the next five years," said Luke Barnett, practice leader and employee benefits consultant at Chicago-based firm Connor & Gallagher Insurance Services Inc.

Fully insured employers "get very little data about how your employees are using your plan" and "little info about the efficiency of your premium dollar," he said.

By Shelby Livingston



MAJOR PRIVATE EXCHANGE PLAYERS

Four major consultants widely cited as setting the industry standard for private insurance exchange platforms have seen more than 40% growth in the past year.

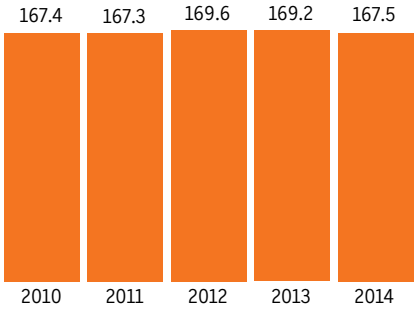
Company	Aon Hewitt			Xerox HR Consulting			Mercer L.L.C.			Towers Watson & Co.		
Exchange name(s)	Aon Active Health Exchange Aon Retiree Health Exchange			RightOpt – active solution RightOpt – retiree solution			Mercer Marketplace			OneExchange		
Year	2015	2014	% increase (decrease)	2015	2014	% increase (decrease)	2015	2014	% increase (decrease)	FY2015	FY2014	% increase (decrease)
Enrollment	1,200,000	750,000	60%	1,000,000	700,000	43%	1,470,000	1,035,000	42%	1,170,000[4]	730,000[4]	60%
Active participants and dependents	850,000	600,000	42%	900,000[1]	625,000	44%	1,400,000	975,000	44%	320,000	127,000	152%
Retirees	350,000	150,000	133%	100,000[2]	75,000	33%	70,000	60,000	17%	840,000	600,000	40%
Notes	Companies that went through their second-year renewal in the Aon Active Health Exchange in 2015 had average annual health cost increases of 2.6%, compared with industry data reflecting the average for large U.S. companies with comparable plan designs of 6.5% to 8%. Voluntary participation in health savings accounts more than doubled in 2015, with an average contribution of about $2,100.			Clients using the RightOpt private insurance exchange from Xerox HR Consulting are seeing an average year-over-year decrease in claim cost per employee of 3.7%[3] compared with the national average increase of 5% to 8%.			Second-year savings for the initial client group resulted in an average 1.5% medical cost increase in year two, well below the 4.6% average increase, according to Mercer's National Survey of Employer-Sponsored Health Plans.			Spending on full-time active employee health insurance for 2015 was projected to grow by 1.8%, a rate very close to the consumer price index and lower than historical and projected health benefit cost increases.		
Year of inception	2013			2013 for plan year 2014			2014			2014		
Target employer size	Jumbo and large (500+)			Jumbo (3,000+)			Small (100-500), midmarket (501-5,000) and jumbo (5,000+) employees			Midsize (50-199), large (200-999) and jumbo (1,000+)		
Market served	Individual Medicare, group active, pre-65 retiree			Individual Medicare, group active, pre-65 retiree			Individual Medicare, group active, pre-65 retiree			Individual Medicare, group active, pre-65 retiree		
Defined benefit vs. defined contribution	Defined contribution			Defined contribution and defined benefit			Defined contribution and defined benefit			Defined contribution and defined benefit		
Self-funded or fully insured	Self-funded for actives, fully insured for other populations			Self-funded or fully insured			Self-funded or fully insured			Self-funded or fully insured		
Exchange approach	■ Insurers can participate in any of 22 geographic regions but cannot choose employer groups and must guarantee issue to all employees in the region (active exchange only). ■ Conducts episodic risk adjustment, where each employer and employee is given a risk score (fully insured, active exchange only).			■ Multiple insurers used across the U.S., but a single insurer by geography. ■ One insurer chosen based on unit costs, quality and network breadth to provide seven standardized plans in each of its 300 geographical areas. ■ Employers choose which of seven plans to offer. ■ High-performance networks introduced for plan year 2016. ■ Focus on overall health and well-being of members by providing year-round tools, resources and decision support.			■ Works with each employer to model costs and benefits of each approach. ■ Employers choose insurers, and insurers can decline to participate in certain employer groups.			■ Works with each employer to model the costs and benefits of each approach ■ Employers choose insurers.		
Example participants (year joined)	Tesla Motors Inc. (2015), Hilton Worldwide Holdings Inc. (2015), Walgreen Co. (2014), Sears Holdings Corp. (2013), Darden Corp. (2013)			Energizer (2016), Edgewell (2016), SPX (2016), AMN Health (2015), Panera Bread Co. (2015), Arby's Restaurant Group Inc. (2014), Bob Evans Farms L.L.C. (2014), Church & Dwight Co. Inc. (2014), Domino's Pizza Inc. (2014), Ovation Brands Inc. (2014), Xerox (2014)			Petco Animal Supplies Inc. (2014), DineEquity Inc. (2014), Kinder Morgan Inc. (2014)			Starwood Hotels & Resorts Worldwide Inc. (2015), Time Inc. (2015), Envision Healthcare Co. (2014), GameStop Corp. (2014)		

1 Includes part-time and non-benefit eligible. 2 Includes pre-65 retirees. 3 Updated results will be available in January 2016. 4 Total enrollment that includes OneExchange active group, Medicare and pre-65 retiree and part-time populations.

Source: *BI* survey

EMPLOYER-SPONSORED COVERAGE

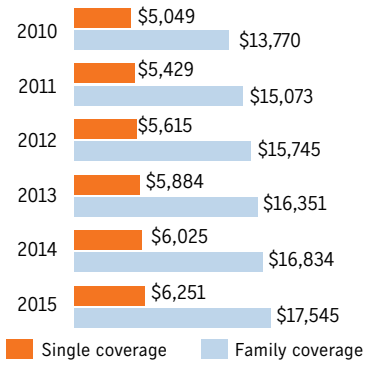
The number of people enrolled in employer-sponsored health plans has been fairly stable in recent years, in millions.



Source: U.S. Centers for Medicare and Medicaid Services

COSTS

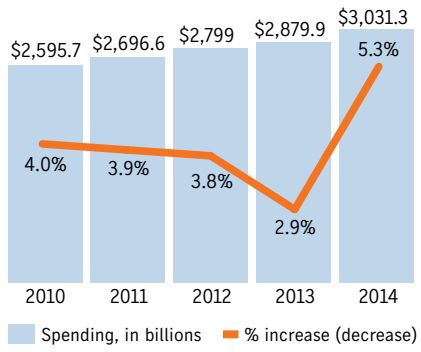
Average single-only and family coverage health insurance premiums increased 4% in 2015.



Source: Kaiser Family Foundation/Health Research and Educational Trust

NATIONAL SPENDING

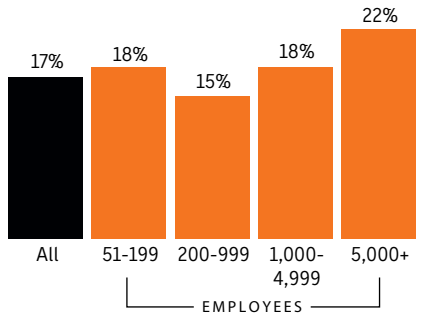
U.S. health care spending increased 5.3% in 2014, the latest data available, to reach $3.0 trillion, or $9,523 per person.



Source: U.S. Centers for Medicare and Medicaid Services

CONSIDERING AN EXCHANGE

Percent of firms considering offering health benefits through a private health insurance exchange, by size of firm.



Source: Kaiser Family Foundation/Health Research and Educational Trust

MARKET PULSE

Fronting provider focuses on cover commercial lines

Commercial insurance fronting provider Clear Blue Financial Holdings L.L.C. has launched with two fully licensed fronting insurers capitalized at $65 million, according to the company's chief executive.

"We have made ourselves available to write any line of business," said Clear Blue President and CEO Jerome Breslin, a former senior vice president and reinsurance executive at Bank of America Corp.

"Our focus has more to do with quality of the risk rather than the line of business," he said. "We're a bit agnostic about having opinions of lines of business. There's really only one line of business that we're probably not as interested in writing out of the gate, and that's workers compensation."

Clear Blue acquired Peoria, Illinois-based RLI Indemnity Co. and Raleigh, North Carolina-based Maiden Specialty Insurance Co. in November as pure shells. The two specialty insurers will serve as growth platforms for Clear Blue's operations, Clear Blue said in a statement Dec. 15.

RLI Indemnity has been renamed Clear Blue Insurance Co. and will be the business' licensed admitted insurer, while Maiden Specialty Insurance has been renamed Clear Blue Specialty Insurance Co. and will be the company's licensed nonadmitted insurer.

Mr. Breslin said the companies are capitalized with $65 million in surplus on a pooled basis. Backed by New York-based private equity firm Pine Brook Partners, they will begin serving clients immediately.

Clear Blue Financial Holdings is a San Juan, Puerto Rico-based holding company. The insurance companies are based in Charlotte, North Carolina, along with Mr. Breslin.

Gallagher, Chinese broker partner launch reinsurer

Arthur J. Gallagher, the international division of Arthur J. Gallagher & Co., has launched Jiang Tai Re with partner Jiang Tai Insurance Brokers Co. Ltd.

Jiang Tai Re is a Shanghai-based reinsurance brokerage. Frank Lu, president of Jiang Tai Insurance Brokers, will lead the team. Arthur J. Gallagher's specialist reinsurance partner, Capsicum Re, will service and support the team on treaty and facultative business, Gallagher said in a statement.

Jiang Tai Re aims to help Chinese enterprises operating overseas expand internationally and establish Shanghai as a regional reinsurance center, according to the statement.

"The partnership model of Jiang Tai Re is built on a powerful combination of Gallagher's technical expertise, which is driving the creation of new and specialist reinsurance and risk solutions, and Jiang Tai's extensive local relationships with clients that are keen to invest and expand beyond China," Mr. Lu said in the statement. "We believe Jiang Tai Re is well-placed to assist the government in its efforts to build a more diversified insurance market and sophisticated risk management system for catastrophe, agricultural and retirement programs through its professional actuarial and reinsurance services. We are very excited by the potential."

PRODUCTS & SERVICES

Service provides medical bill negotiation

Health care expense management company CoPatient Inc. has launched new offerings for employers and health plans that aim to reduce overall health care costs.

They include employer-sponsored medical bill negotiation and out-of-network claims management, CoPatient said in a statement. Employers can offer their employees protection from out-of-pocket costs and billing errors through CoPatient's subscription-based medical bill negotiation service.

"CoPatient has worked with thousands of consumers to manage medical bills, and many employers wanted to sponsor our service for their employees without requiring the employees to pay a fee. We've rolled out this subscription model in direct response to that need," Tom Torre, CEO of CoPatient, said in the statement.

Swiss insurer forms crisis management division

Allied World Assurance Co. Holdings A.G. has launched a global crisis management division comprising structured trade credit, political risk, multibuyer trade credit and product recall.

The crisis management division will offer coverage that helps organizations prepare for and recover from issues that can threaten a brand, reputation, finances and operations, Zug, Switzerland-based Allied World said in the statement.

The division will be led by Executive Vice President Todd Germano. Bill Mullan is senior vice president and chief credit officer, and Nick Hedley and Kent Paisley are senior vice presidents, according to the statement.

"We have made a significant investment in building this comprehensive crisis management platform, which will be led by four industry veterans with extensive expertise in their sectors. The risk landscape is dynamic and continually evolving, and through this new group, we will offer solutions-based underwriting for an optimal level of customization," Mr. Germano said in the statement.

XL Catlin boosts aviation limits

XL Catlin Inc.'s North America aviation insurance business has increased its aircraft hull and liability limits.

This expansion includes XL Catlin's aircraft products liability and general liability offerings and aims to accommodate companies with aviation risks in the U.S. and Canada looking to use one insurer, the company said in a statement.

XL Catlin's aircraft hull policy limits have gone up to $75 million from $50 million, while liability limits have increased to $750 million from $500 million, according to the statement.

"These new expanded limits aim to effectively address the exposures and insurance requirements of an extended client base for us," Eric Donofrio, XL Catlin's chief underwriting officer for aerospace in the Americas, said in the statement.

"These new limits were prompted by our increased global capacity at XL Catlin and our desire to better serve a niche of the aviation market, especially corporate aircraft fleets that tend to seek a set amount of limits from one carrier," Paul Tuhy, chief underwriting officer for global aerospace, said in an email.

DEALS & MOVES

Integro Insurance Brokers buys London entertainment brokerage

Integro Insurance Brokers Holdings Ltd., a unit of Integro Ltd., has acquired London-based entertainment and sports brokerage Entertainment Insurance Partners Ltd., New York-based Integro announced.

Terms of the deal were not disclosed.

EIP provides insurance and risk management services to artists, promoters, venues and productions across the world. It has offices in London, Los Angeles, Nashville, New York and Atlanta, and last year handled insurance premium volume of more than £100 million ($153.3 million), Integro said in a statement.

EIP employs about 150 people, Integro said, and the acquisition takes Integro's head count to more than 1,000.

Zurich to buy U.S. crop insurer in deal worth $1 billion

Zurich Insurance Group Ltd. will pay up to $1.05 billion to buy a U.S. agricultural crop insurer from Wells Fargo & Co., the Swiss company said.

Zurich will buy Rural Community Insurance Services for $675 million, plus excess capital at the date of closing, an amount now estimated at up to $375 million.

Wells Fargo had previously launched an auction for RCIS, with about $2.1 billion in gross written premiums in 2014, after it piled up losses related to extreme weather in recent years, analysts said.

RCIS insures one in six U.S. farmers, Zurich said, providing risk management for more than 130 crops on more than 90 million acres, roughly nine times the land area of Switzerland.

The deal is expected to close by the end of the first quarter of 2016, Zurich said.

Reuters

Lockton Brazil picks up broker in Sao Paulo

Lockton Cos. L.L.C. said that Lockton Brazil has acquired São Paulo-based VIS Corretora de Seguros e Beneficios Ltda.

The deal takes effect in January. Terms were not disclosed.

VIS is a consulting insurance brokerage and benefits adviser that provides risk consulting.

"We saw in VIS, a client-centric culture and dynamic management team, which will complement our strategy and further strengthen our expertise in the local market," Tony Gusmão, CEO of Lockton Brazil, said in a statement.

New England insurance agency adds Boston-based firm

Cross Insurance, an agency subsidiary of Cross Financial Corp. based in Bangor, Maine, has acquired Boston-based Knapp Schenck & Co.

Terms of the deal were not disclosed.

Knapp Schenck is a regional property/casualty insurance agency that focuses on commercial and residential real estate ownership, management and development, construction, manufacturing, distributors and wholesalers, nonprofit organizations, municipalities and private schools, Cross said in a statement. Knapp Schenck will keep its name and staff.

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INVITATION TO NEGOTIATE

INVITATION TO NEGOTIATE STATE BOARD OF ADMINISTRATION OF FLORIDA

The State Board of Administration of Florida (SBA) is soliciting competitive responses from parties interested in offering reinsurance intermediary services to the Florida Hurricane Catastrophe Fund (FHCF). The Invitation to Negotiate (ITN) will be available on January 4, 2016, and may be obtained from the FHCF website at www.sbafla.com/fhcf under "Announcements." The deadline for submitting responses is 2:00 p.m. ET on January 26, 2016. The SBA reserves the right to reject any or all competitive proposals and to cancel any ITNs.

LEGAL NOTICE

NOTICE OF THE CLAIMS BAR DATE FOR RELIANCE INSURANCE COMPANY IN LIQUIDATION

The Liquidator of Reliance Insurance Company is providing this Notice in compliance with the Order of the Commonwealth Court of Pennsylvania issued on December 22, 2015 ("Claims Bar Date Order"). In that Order the Commonwealth Court established a date ("Claims Bar Date") by which all claims against the following companies must be filed with the Liquidator or be forever barred from sharing in any distribution of assets: Reliance Insurance Company, Reliance National Indemnity Company, Reliance National Insurance Company, United Pacific Insurance Company, Reliance Direct Company, Reliance Surety Company, Reliance Universal Insurance Company, United Pacific Insurance Company of New York and Reliance Insurance Company of Illinois.

The CLAIMS BAR DATE is MARCH 31, 2016.

You may view, download, or print a copy of the Claims Bar Date Order by accessing the Reliance Documents website at www.reliancedocuments.com, and choosing the link for the Claims Bar Date Order. If you do not have access to the internet or if for any reason you are unable to view, download, or print the Claims Bar Date Order from the Reliance Documents website, you may contact Reliance as follows and request that a copy of the Claims Bar Date Order be mailed to you: **by mail:** Liquidator-Claims Bar Date Order, Reliance Insurance Company (In Liquidation), P.O. Box 7757, Philadelphia, PA 19101, or Three Parkway, 5th Floor, Philadelphia, PA 19102; **by telephone**: (215) 864-4000 or **by fax:** (215)-864-4010 or **by email**: Liquidator@relianceinsurance.com.

The Proof of Claim ("POC") form and information about filing a POC are also available at www.reliancedocuments.com by clicking on the link for POC Information.

LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF PROFESSIONAL LIABILITY INSURANCE COMPANY OF AMERICA
Supreme Court County of New York
Index No.: 400986/10
NOTICE

The Superintendent of Financial Services of the State of New York as liquidator ("Liquidator") of Professional Liability Insurance Company of America ("PLICA") has taken possession of PLICA's property and is liquidating its business and affairs pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Liquidator has appointed Scott D. Fischer, Special Deputy Superintendent ("Special Deputy"), as his agent to liquidate the business of PLICA. The Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038. The Liquidator has submitted to the Court an application for an order: (i) approving the Liquidator's Report on the Status of the Liquidation of PLICA and the financial transactions delineated therein; (ii) authorizing the continued payment of administrative expenses; and (iii) providing the Liquidator such other and further relief as the Court deems appropriate and just.

A hearing on written submission is scheduled on the application on the 8th day of February, 2016 ("Return Date"), at 930 a.m., at the Courthouse, IAS Motion Submission Part, 60 Centre Street, Room 130, in the County, City and State of New York. If you wish to object to the Liquidator's Report, you must serve a written statement setting forth your objections and all supporting documentation ("Answering Papers") upon the Liquidator at least seven days prior to the Return Date. Service on the Liquidator shall be made by first class mail at the following address:

Superintendent of Financial Services of the State of New York as Liquidator of Professional Liability Insurance Company of America, 110 William Street, New York, New York 10038, Attention: General Counsel

You must also file copies of the Answering Papers and an affidavit of service with the Court at IAS Motion Submission Part at the Courthouse located at 60 Centre Street, Room 130, New York, New York on or before the Return Date.

The Affirmation and Report are available on the Internet web page maintained by the New York Liquidation Bureau at http://www.nylb.org. In the event of any discrepancy between this notice and the documents submitted to Court, the documents control.

Requests for further information should be directed to the New York Liquidation Bureau, Creditor and Ancillary Operations Division, at (212) 341-6241.

Dated: November 25, 2015. Shirin Emami, Acting Superintendent of Financial Services of the State of New York as Liquidator of Professional Liability Insurance Company of America

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WHATMATTERSMOST

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PROPERTY

Continued from page 4

exposed programs, but generally speaking, those have seen a lot of competition," said Mr. Miller.

"I still see the price of wind capacity to be fairly soft," said Joe Tinetti, head of property for global corporate with Zurich North America in New York. He said there is competitive pricing on both Florida and Texas wind exposures.

"It was deja vu all over again, to quote or misquote Yogi Berra," said Carolyn Snow, director of risk management at Humana Inc. in Louisville, Kentucky, of her experience in the property market during the current renewal season. "It was a replay of last year — it was stable, it was quiet, it was easy."

Ms. Snow said because of the lack of catastrophes, "it's been really good for the risk management insurance buyers, and it's really good for the companies."

Capacity hasn't been a problem, either.

"You can't swing a dead cat and not find strong reliable capacity," said Ms. Glickman.

"There's a significant amount of capacity in the marketplace," said Mr. Tinetti. He said reinsurance availability, alternative capital and strong balance sheets all point to a continuing soft market. But, he added, "I do think there's a point where rates have to stabilize to make up for investment income slippage." A quarter point increase in interest rates announced by the Federal Reserve last month is not expected to lead to significant increases in investment income for insurers.

Mr. Finnis said that other than habitational exposures, it's hard to find an occupancy that isn't enjoying lowered rates. And "if there is a geography that's hard, I can't think of it," he added.

Any rate increases are account specific. For example, some real estate companies probably picked up hail and winter storm losses in general across the industry, said Mike Martin, executive vice president and national property general manager at Liberty Mutual Insurance Co. in Boston. "If you get unlucky and picked up disproportionate share of losses, you pick up some rate increases."

The European market has actually stabilized in terms of pricing, because it never really had an uptick post-disaster like with 2012's Superstorm Sandy, said FM Global's Mr. Turner. "They're coming off several years of softness, so I think that market is flat."

Looking forward, Ms. Glickman said rate decreases are likely to continue, but the pace of the declines may slow.

"Assuming that the market does not suffer any catastrophic losses, we anticipate there will be slight decreases. But we're starting to see some stability," she said.

"In general, we are seeing some stabilization in the rate reductions," said Zurich's Mr. Tinetti. "We're entering the third year of rate reductions. The rate of the reduction has moderated a bit — we've seen that in the past couple months. It's hard to say whether this is a trend or just the mix of business we're seeing this time of year."

> "You can't swing a dead cat and not find strong reliable capacity."
>
> Alexandra Glickman,
> Arthur J. Gallagher Risk
> Management Services Inc.

MAJOR EVENT NEEDED TO DISRUPT PRICING STATUS QUO

What would it take to turn the commercial property insurance market, which is now in its third year of rate cuts?

Maybe more than just a single event, according to observers.

"It's going to take a major unexpected event or events to change the market," said Joe Tinetti, Zurich North America's New York-based head of property for global corporate in North America.

And how big would that event or series of events need to be?

"We're calling for an event we've never seen," such as an "outrageous California" earthquake or a direct hit on Miami by a Category 5 hurricane, said Dave Finnis, national property practice leader at Willis North America Inc. in Atlanta.

"The markets that pay that loss have to take corrective action against a market loss that hadn't been experience before," he said.

He said that underwriters that don't pay for the loss, should it happen, "will see that as an opportunity to pounce," which in turn would temper any increase from the market.

Mr. Finnis said that an event that occurred outside of the property insurance market could also change the marketplace.

"Something that really takes a hit on the balance sheets of all the companies, like a huge cyber event," he said.

Hedge fund activity is driving the cheap reinsurance available to the property insurance market, said Mike Martin, executive vice president and general manager of national insurance property at Liberty Mutual Insurance Co. in Boston. He said if the hedge funds decide to put their money into other investments, the hedge fund money would disappear.

By Mark A. Hofmann

LIABILITY

Continued from page 4

every two to three years.

"I was hopeful we would see a turn in the results, but I was more pleased with what we did achieve not just in terms of rates and retentions but also in some of the flexibility in terms and conditions and coverages. Overall, we were very pleased."

"Rates are becoming more competitive," said Eric Spalsbury, director of risk management at Stanley Steemer International Inc. in Dublin, Ohio, due to factors including excess capacity and capital.

"That being said, we do expect some premiums to rise as a result of other drivers," said Mr. Spalsbury. "The recovering economy is resulting in an improving business environment. With an upsurge of business come head count and revenue increases, which are key contributors to the premium equation. This is palatable, as long as profits increase commensurately."

Verizon Communications Inc. just renewed its financial products coverages and found the market flat to slightly down, said David Cammarata, assistant treasurer in charge of risk management for the telecommunications services company and a *Business Insurance* 2015 Risk Manager of the Year Honor Roll® member.

"We were able to achieve some relatively moderate improvements in terms and conditions," said Mr. Cammarata.

"Carriers are becoming much more proactive on their renewals — they're trying to lock them up earlier," said Mr. Perez. "Incumbents are really trying to maximize their incumbent position more than they have historically.

"You're trying to find out what it will take to renew the account more quickly. It could be terms and conditions, it could be price, it could be on the service side," said Mr. Perez. "Understanding what the customer wants in order to renew ahead of schedule is a growing trend."

"Insurers want to hold on to their renewals, so they're going to try to lock up renewals early," said Mr. Aronson. "So, they're probably going to have to, on a case-by-case basis, give a reduction to prevent a marketing effort."

He further described the renewals as a buyers' market. "For many insureds, it's not a challenging renewal environment," said Mr. Aronson.

One hot-button issue in the January renewals cycle is cyber coverage and where it will fit into the liability program.

"It has been a major topic of conversation at most renewals regardless of the exposure," which can be anywhere — including construction, consumer goods, retail and financial services — said Jessica Cullen, senior vice president for Arthur J. Gallagher & Co. in Itasca, Illinois. "We do find cyber exposures creeping into the general liability world."

Answers to the question of where general liability cover leaves off and monoline cyber picks up in cases involving bodily injury or property damage are being sought and definitive solutions pursued, she said.

"It's an evolution, and we are definitely seeing a need to manuscript language," said Ms. Cullen, as the industry works to eliminate coverage gaps with comprehensive, seamless policies

Mr. Aronson sees pricing in lines including workers compensation remaining "a bit down overall" and auto liability pricing "probably is going to be up a little bit," he said.

According to Willis' casualty market pulse from November 2015, large accounts averaged a 0.5% decline in worker's comp renewal rates through the third quarter 2015 while middle-market accounts were up an average of 0.2%.

COMP

Continued from page 4

prompting insurers to look for ways to keep policyholders that are considered safe risks. By reducing rates, he said insurers hope to prevent employers from seeing what other insurers have to offer.

"They know if an account does go into the marketplace that more than likely they're going to have to give up more price (cuts) to retain it," Mr. Moitoso said.

In addition to reducing prices, Ms. Ferrandino said, insurers continue to soften their collateral requirements for well-qualified buyers. She said more workers comp insurers are allowing employers to post surety bonds in place of letters of credit to secure portions of their comp policy deductibles. Sureties are less costly than letters of credit.

While the collateral trend began last year, Ms. Ferrandino said more insurers now are willing to accept sureties as collateral.

"Probably 90% of the carriers are accepting surety for upwards of 50% of the collateral needs for many clients," she said.

Freeport, Maine-based retailer L.L. Bean Inc., which is fully insured for workers comp by Maine Employers' Mutual Insurance Co., has received loss control and safety assistance from the insurer as an incentive to renew its policy, said Deborah R. Roy, director of health, safety and wellness at L.L. Bean.

The outdoor clothing retailer has about 10,000 employees during the holidays and about 5,000 employees during the rest of the year. Portland, Maine-based Maine Employers' has provided safety training and audits for L.L. Bean's employees as the retailer has worked to open more stores nationwide, Ms. Roy said.

Ms. Roy said she believes L.L. Bean's internal safety efforts, such as having a team of certified safety professionals on staff, have helped the comp insurer see L.L. Bean as an attractive risk.

"They really work with us to look at where they can add value," said Ms. Roy, who plans to renew L.L. Bean's workers comp policy with Maine Employers' in March.

Workers comp capacity has been "plentiful," said Mr. Flatt and other experts. But they note that companies with a significant concentration of employees in major cities such as New York or Los Angeles may have more difficulty finding coverage.

Employers concentrated in urban centers had difficulty securing workers comp coverage in 2014 and in early 2015 as the federal terrorism backstop expired at the end of 2014. The expiration worried comp insurers, since terrorism claims can't be excluded from workers comp coverage.

While President Barack Obama signed a bill a year ago extending the backstop through 2020, Aon's Mr. Hackenburg said some companies in urban areas have continued to experience tightening of the comp market. "They still struggle to find a lot of competition for their business," he said.

Employers shopping for workers comp coverage can position themselves to take advantage of the competitive market by implementing safety programs and cost management practices that reduce comp claim exposures, Lockton's Mr. Moitoso said. "Having documented, executed loss prevention and claim management protocols and procedures are absolutely critical," he said.

REINSURANCE

Continued from page 6

United States, but the effect for the international markets in comparison has been minimal. For the specialty and casualty markets globally, we have not seen much relief either," he added.

A moderation of the flow of capital coming into the market has been one factor that has led to a slowdown in rate reductions, said David Flandro, global head of analytics at JLT Re, the reinsurance brokerage arm of Jardine Lloyd Thompson Group P.L.C., in New York.

He said that while new capital continues to enter the marketplace, the pace of that entry has slowed, which is one "marginal" factor affecting rates for reinsurance coverage.

The rate of entry of capital market capacity into the reinsurance market has slowed in comparison with the previous year, noted Kurt Karl, Zurich-based chief economist at Swiss Re Ltd.

This is in part because investors can see more attractive returns elsewhere, but also because most of those investors that are interested in the reinsurance market already are participating, he said.

The exceptionally benign year for catastrophe losses means that it is difficult for reinsurance to make the argument that rates must be raised, Mr. Flandro noted.

Many large reinsurance buyers have continued to consolidate their programs in order to benefit from economies of scale, said Mr. Krefta, and so are buying fewer contracts with higher limits.

And some midsize specialist cedents also have begun to adopt this strategy, Mr. Krefta noted.

While many large cedents in recent years have been buying their reinsurance centrally, reducing the number of reinsurers on their panels and increasing their retentions, some larger players have started to buck this trend and are buying coverage on a regional basis once more because of the very low rates they are able to secure in some territories, said one source who asked not to be named.

The very low rates available in some areas mean that reinsurance buying can become an arbitrage, and ceding more reinsurance can begin to make sense, the source explained.

"The underlying trends of retaining more and consolidating reinsurer panels are still there, but there are signs that some companies are recycling savings into buying more reinsurance," said Willis Re's Mr. Vickers.

Mr. Hendrick said XL Catlin has "a number of clients that have increased retentions or dropped treaties altogether that are now returning to the market to explore protection beneath current retentions, either with a new underlying layer or an aggregate cover."

For those clients that have decided to assume a higher net retention, "we are seeing increased interest in purchasing facultative buy down covers on individual risks," he added.

"We have not seen a rush to restructure programs, as clients are navigating changing regulations, particularly in Europe with Solvency II, and rating agency approaches," said Mr. Hendrick. "We do expect additional demand throughout 2016 and beyond as clients fully assess and react to the new rules and regulations."

There has been an uptick in interest in buying adverse development covers, either as capital release for companies that consider themselves to be over-reserved or as capital relief for those companies that believe they are under-reserved, said Mr. Flandro.

D&O

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decline, said Phil Norton, Chicago-based president of Arthur J. Gallagher & Co.'s professional liability division.

Marc London, New York-based head of Beazley P.L.C.'s U.S. management liability team, said he expects that more buyers will move insurers next year in search of more competitive rates.

Another factor that could affect the D&O market is greater regulatory emphasis on individual directors and officers. In September, for instance, Deputy Attorney General Sally Quillian Yates unveiled a new policy that called on federal prosecutors to hold individuals more accountable and requires firms to turn over information about culpable individuals in return for credit for their assistance in a probe.

"That may change the paradigm in enforcement and investigation of risk" that the D&O policy addresses, Mr. Yellen said.

Some experts say also that aggregation of risk among insurers that offer both D&O and cyber coverage may become an issue. "You'll see more questions" on this issue next year, Jason Jones, Washington-based senior vice president with Lockton Cos. L.L.C., predicted.

"Underwriters are perhaps thinking a little bit more about that, and how a cyber event could create multiple losses," under both D&O and cyber policies, Mr. Hodge said.

WISH LIST

Continued from page 3

limits in the absence of significant actuarially sound reform" of the program.

Related to the NFIP is legislation that would promote predisaster mitigation efforts rather than post-catastrophe relief.

"We've been calling on Congress to create a national mitigation investment strategy. I think we'll see a package introduced that is a good first step" in dedicating more resources to be spent predisaster, said Jimi Grande, senior vice president of the National Association of Mutual Insurance Cos. Washington office.

Mr. Wood said allowing RRGs to write property coverage "may go somewhere."

But Charles Symington, senior vice president of the Alexandria, Virginia-based Independent Insurance Agents & Brokers of America, said his group opposes such a move for RRGs, which now are limited to liability coverage.

"There's no marketplace crisis, and we think it's bad public policy in light of the very light regulation RRGs have compared to traditional insurers," he said.

The New York-based Risk & Insurance Management Society Inc. wishes to block another legislative effort. That's an attempt disallow the deduction for excess nontaxed reinsurance premiums paid to affiliates. Rep. Richard Neal, D-Mass., has introduced legislation in the past to make the change, which is backed by the Obama administration.

"The legislation has come and gone over the years, and we continue to be opposed to it," said Janice Ochenkowski, a former RIMS president and now chair of the risk management group's external affairs committee. "We're concerned it might gain some traction in this shortened year."

Several observers believe Congress may address the issue of international insurance regulation during this shortened legislative year.

"We're seeing very strong signs of congressional actions to rebalance some of the international and domestic actions on insurance regulations," said Dave Snyder, a PCI vice president. His colleague, Mr. Wienecke, said concerns about international standards being imposed on U.S. insurers are "as bipartisan as they can be."

On the regulatory side, "the work by the Federal Reserve on domestic group capital standards has to get done," said Leigh Ann Pusey, president and CEO of the American Insurance Association in Washington.

"There is an expectation that the Fed will begin a process and put out a rule for comment," she said. "It needs to get done before any global insurance capital standard is finalized."

Also of concern to agents and brokers on the regulatory side is implementation of the National Association of Registered Agents & Brokers, which is to streamline licensing procedures for nonresident agents, said Mr. Symington. President Barack Obama has yet to nominate members to the board.

"We're hopeful that early next year we'll have some names put forth for Senate consideration so they can start the real work, a lot of foundational work. First and foremost, we have to get the right people on that board," Mr. Symington said.

LOGGING

Continued from page 3

accidents. It's estimated to save 26 lives and prevent 562 injuries from commercial truck crashes a year, according to the federal agency.

"Look at Tracy Morgan. He was hit by a driver who was driving too long and was tired," Abraham S. Levine, chief operating officer of Lisle, Illinois-based VisTracks Inc., said of the 2014 crash in which the comedian was seriously injured and another passenger was killed when a Wal-Mart Stores Inc. truck hit their limousine in New Jersey. "The insurance industry would have to pay out on these kind of incidents."

"The ELD has the capability to provide significant amounts of engine information that will not only allow you to make sure your fleet is being driven correctly and optimally, but you can also measure if it is being driven illegally," said Mr. Levine, whose company provides DOT-compliant software applications for companies that use ELDs to monitor driver hours, track vehicles and other compliance metrics. "For example, speed alerts can be programmed in and if the vehicle is driven over a certain speed it will send an alert to the home office.

"You can see how you can get a lot of financial, legal, as well as insurance benefits in monitoring to see if your drivers are doing the right thing," Mr. Levine said.

The Department of Transportation estimates requiring ELDs will result in annual net savings of more than $1 billion, largely from reducing the required paperwork.

Mr. Osiecki said he sees similar efficiencies.

HEAR INTERVIEW

Visit *Business Insurance*'s multimedia Web page to hear Scott Grenerth, Grain Valley, Missouri-based regulatory affairs director of the Owner-Operator Independent Drivers Association, discuss electronic logging with *Business Insurance* Staff Reporter Donna Mahoney.

"Companies that have already adopted these devices figured out that they can better plan their loads and the drivers can better plan their day and their routes," he said. "It is a tool to enhance productivity and efficiency, but it won't happen right away; there's a productivity loss initially until fleets figure it out."

Steve Bojan, Milwaukee-based vice president of fleet risk services at Hub International Ltd., agreed ELDs will make route planning critical but said he expects some challenges as ELD use makes tracking hours more rigid.

"There is not the fudge time that there was in the past under the manual tracking system," he said. "This makes route planning by drivers more important if they need to find a place to park for a layover or to be near a customer for an early delivery."

One challenge has already come from the Owner-Operator Independent Drivers Association, which represents the interests of small-business trucking professionals and professional truck drivers and on Dec. 11, the day after the new mandate was announced, filed a lawsuit over the new regulation in the 7th U.S. Circuit Court of Appeals in Chicago.

Scott Grenerth, Grain Valley, Missouri-based regulatory affairs director for the association, said it is concerned the ELD mandate won't protect drivers from harassment despite a clause to that effect.

"If you use it as a fleet management tool, it can be used to push drivers to maximize every hour available to drive," he said. "That is not a safety tool, when it can be used for the exact opposite purpose. This does not translate to an automatic safety benefit."

Still, Mr. Bojan said he sees the benefit of the additional data.

"Many of the ELD/telematics vendors provide a large amount of data on driver safety performance," he said in an email. "This goes significantly beyond hours of service. Many of the systems provide key safety metrics such as hard-braking events, rapid-acceleration events, vehicle-upset events and speed limit-violation events."

But other insurers wouldn't go so far as to predict underwriting changes.

"In general, I would not expect a change in the way that insurance policies are written," Michael Gramm, Chicago-based head of business lines for trucking company insurance at XL Catlin, said in an email. "What I do expect is that electronic logs will reduce the number of fatigued drivers on America's roads."

The rule, which will affect about 3 million drivers, according to the Department of Transportation, includes those coming into the U.S. from Canada and Mexico.

Continued from page 1

ensure a uniform and high level of policyholder protection, giving customers confidence in insurance products," said Hugh Savill, director of regulation at the London-based Association of British Insurers. "Solvency II will also modernize supervision across the European Union, shifting focus from solely compliance and capital to include the evaluation of insurers' risk profiles, risk management and improved reporting and transparency," he said.

The new European Union capital rules, which were initially framed in 2009, replace solvency rules that had been in place since 1973. The Solvency II Directive, which has been delayed and criticized over the past seven years, marks a major change in the way insurers will assess their capital needs.

Beginning this month, insurers and reinsurers in all 28 E.U. member states will be subject to harmonized regulation that will focus on their risk profiles, risk management and governance.

Solvency II has three so-called pillars that cover risk-based capital, governance and reporting.

Large captives that handle risks of their parent companies — and not compulsory third-party insurance coverages — will adopt Solvency II under the so-called principle of proportionality, which will mean certain sections of the rules are simplified.

The Brussels-based Federation of European Risk Management Associations said that discussions between the captive industry and European regulators would continue even after the implementation of Solvency II to ensure that the rules are not too onerous for captives.

While many local country regulators have imposed the rules to their most stringent extent — so called gold-plating — many insurers believe the new code has led to improvements in governance, risk monitoring and data quality.

Sources said some national regulators are expected to use lower levels of interest rates for insurers to calculate their liabilities than required by the Solvency II rules, which may make liabilities appear larger, while other regulators are expected to require more disclosure than required by the rules.

According to a survey by Insurance Europe, the Brussels-based association of European insurance companies, many insurers and reinsurers believe that they are ready for the new rules that cover risk-based capital, governance and reporting.

During November, Insurance Europe surveyed insurers and reinsurers representing about 92% of premium volume in Europe about their readiness for Solvency II. A spokesman for the organization declined to give many details but said a "very large percentage" of insurers and reinsurers feel completely confident they are ready.

More than two-thirds — 68% — of respondents to the survey said they believe that their principal regulator had gold-plated the rules and that many had imposed last-minute additional requirements.

"I would like to stress that Solvency II is already an extremely conservative and extensive regime. It is, therefore, important — especially at this late point — to limit additional requirements and conservative interpretations," said Igotz Aubin, head of prudential regulation at Insurance Europe, in a statement.

Any additional regulations will have time to evolve, however. The European insurance regulator, the Frankfurt, Germany-based European Insurance and Occupational Pensions Authority, said in early December that "in light of current differences of supervisory cultures and practices," insurance regulators would have a further five years to fully harmonize practices across the European Union.

Meanwhile, rating agency A.M. Best Co. Inc. said it does not expect to take any rating actions as a direct result of the introduction of Solvency II, despite the tougher capital requirements.

Catherine Thomas, an analyst at Best in London, said it was highly unlikely that any European insurers and reinsurers that the agency rates will be in breach of the rules' minimum capital requirement when Solvency II comes into force in January.

Under Solvency II, insurers and reinsurers also must comply with a solvency capital requirement, which is of a higher level than the minimum capital requirement.

Breach of the solvency capital requirement would result in intervention by the regulator and the insurer in question being required to boost its funds or reduce its risk profile, while breach of the minimum capital requirement would likely lead to the insurer losing its license, Best said in a report.

During the past few months, regulators across Europe have been granting approval to many of the internal models that most larger insurers and reinsurers will use for their Solvency II capital calculations.

Those insurers and reinsurers that do not apply to have an internal model approved, or whose model is not approved, will be required to use a standard formula. The standard formula comprises models for market risk, health insurance, default risk, life insurance, nonlife insurance and intangible risks, and is calculated to a 99.5% confidence level over a one-year period.

"The ability to use an internal model to calculate the solvency capital requirement is particularly important to companies for which the standard formula does not appropriately reflect their risk profile," Best said.

According to Jim Richard, U.K. Solvency II leader at PricewaterhouseCoopers L.L.P. in London, internal model approval gives insurers and reinsurers not only "the certainty of optimal capital requirements" but also reputational benefits.

Internal model approval demonstrates that regulators are satisfied with a company's own risk-based capital management, experts say.

"I would like to stress that Solvency II is already an extremely conservative and extensive regime. It is, therefore, important — especially at this late point — to limit additional requirements and conservative interpretations."

Igotz Aubin, Insurance Europe

Once firms have their model approved, insurers and reinsurers will need to update those models regularly, he said.

The announcement earlier this month by the London-based Prudential Regulation Authority that 19 U.K. insurers had had their internal models approved is a "major step towards clarity of those insurers' capital positions," Fitch Ratings Ltd. said in a statement.

"As Solvency II positions become clear, insurers will have their regulatory capital strength — or weakness — confirmed," Fitch said.

"We believe this clarity will trigger some M&A, as stronger insurers acquire or merge with weaker ones facing capital shortfalls," the rating agency said.

According to Yannis Samothrakis, a partner at law firm Clyde & Co. L.L.P. in Paris, the introduction of Solvency II may result in an increase in runoff deals in Europe.

Many smaller or midsize insurers and reinsurers likely will reassess their business models in the light of the new rules, which may result in some selling off certain books of legacy business, he said.

U.S. hopes to reach agreement with E.U. on equivalent standards for insurers, reinsurers

U.S. negotiators stand a reasonable chance of winning agreement with the European Union on so-called "covered agreements" that could lessen the burden on U.S. insurers and reinsurers doing business there, according to some observers.

The U.S. Treasury Department and the Office of the U.S. Trade Representative informed Congress late last month that the United States intends to initiate negotiations with the E.U. regarding a covered agreement, defined in letters to key lawmakers as a "written bilateral or unilateral agreement regarding prudential measures with respect to the business of insurance or reinsurance."

The letters said that a covered agreement with the E.U. "would level the regulatory playing field for U.S.-based insurers and reinsurers operating there and further confirm that the existing U.S. insurance regulatory system serves the goals of insurance sector oversight, policyholder protection and national and global financial security."

Of particular importance is the relation of a covered agreement to Solvency II, the E.U. insurance regulatory framework that took effect Jan. 1.

"Through negotiating a covered agreement, Treasury and the USTR will seek to ensure that U.S. insurers and reinsurers will be permitted to operate in the E.U. on the same regulatory terms as insurers and reinsurers domiciled in the E.U. in jurisdictions deemed equivalent under Solvency II," Anne Wall, assistant Treasury secretary for legislative affairs, and Mike Harney, assistant U.S. trade representative for congressional affairs, said in the letter.

There is concern that U.S. insurers and reinsurers would be forced to meet heightened capital and collateral requirements if the state-based U.S. regulatory system is not deemed equivalent to that of the E.U.

The letter did not give any timetable for the negotiations. Nevertheless, some observers think the effort will succeed.

"I think there's a pretty decent chance they'll go through with this," said Matthew Gaul, a partner in the New York office of international law firm Dentons U.S. L.L.P. and a former New York insurance regulator.

"Equivalency is the biggest piece," he said. "There's an issue for U.S. insurers with operations in the E.U. in how they'll be treated under Solvency II when there's no way to knit together the two regulatory structures they'll be operating under."

Tracey Laws, senior vice president and general counsel of the Washington-based Reinsurance Association of America, noted in an email that even before Solvency II took effect, U.S.-based companies had begun to experience burdensome requirements because the U.S. insurance regulatory system has not been deemed "equivalent" by the European Union.

"The RAA is hopeful that a covered agreement can achieve equivalence for the U.S. on reinsurance and group supervision, thereby putting U.S.-based companies on a more competitive footing with their European counterparts," she wrote.

The American Insurance Association also hailed the possibility of a covered agreement.

"The U.S.-E.U. relationship is very important to U.S. insurers, and we view the coverage agreement as a vehicle to help resolve some of the issues between those two regulatory jurisdictions," said AIA President and CEO Leigh Ann Pusey.

"I think 2016 is the year for the covered agreement if it's going to happen," she said.

"We want to preserve the open trans-Atlantic insurance market through an agreement that is essentially mutual recognition," Dave Snyder, a vice president in the Property Casualty Insurers Association of America's Washington office, said in an email. "For the negotiations to be successful here, U.S. negotiators should avoid positions that trigger unnecessary controversy in areas such as group supervision.

"Since the U.S. has taken a major step, it is critical that Europe reciprocate and provide U.S. companies doing business in Europe temporary equivalence or at least a sufficient standstill or grace period," he added. "That is also fair, as Europe has deemed the U.S. regulatory system equivalent for the benefit of their companies doing business here."

One insurance representative saw potentially positive and negative effects in the covered agreement.

"The instrument that is a covered agreement is new, is broad and sweeping in its potential authority, and can be fraught with dangerous pre-emptions" of state insurance regulations, said Jimi Grande, senior vice president in the Washington office of the National Association of Mutual Insurance Companies. "But if used properly, it can also solve some regulatory issues."

By Mark A. Hofmann

OSHA

Continued from page 1

violations where there is no specific standard, such as ergonomics, workplace violence and heat stress/illness hazards.

The clause requires employers to furnish employees with a place of employment free of recognized hazards likely to or causing serious physical injury or death. The clause has been the fourth-most cited standard for severe injury reports triggered by new reporting requirements effective Jan. 1, 2015, with 175 violations issued in the first nine months of 2015, according to OSHA.

"I would characterize the agency's enforcement effort as becoming increasingly aggressive," said Meagan Noel Newman, a Chicago-based partner and co-chair of the environmental, safety and toxic torts practice group at Seyfarth Shaw L.L.P.

A widely reported recent use of the general duty clause was OSHA's citation of Orlando, Florida-based SeaWorld Parks & Entertainment Inc. following the 2010 death of trainer Dawn Brancheau, who was pulled into a pool by a killer whale — citations the U.S. Circuit Court of Appeals for the District of Columbia upheld in 2014.

"We use that clause when there is no standard that's directly applicable, but there's a clear hazard," Mr. Michaels said.

The agency is trying to dispel the notion that worker carelessness drives workplace injuries, Mr. Michaels said at a recent meeting of the National Advisory Committee on Occupational Safety and Health. Some employers fail to recognize that the lack of machine guarding may have caused an injury, he said.

"There is an instinctive blame-the-worker mentality that we must combat," he said. "If you spend a lot of time telling employees, 'Don't make a mistake,' you won't have a good safety program."

But Ms. Newman said OSHA's rhetoric and enforcement policies signal the agency's stance that any injury is the result of a safety and health violation without recognizing that some workplace accidents are just that: accidents.

"Not only is that legally false, it's just logically false," she said.

While companies traditionally view OSHA as a hindrance, OSHA does not inspect employers that are doing what they should from a workplace safety perspective, said Robert Cartwright Jr., Exton, Pennsylvania-based safety and health manager for Bridgestone Retail Operations L.L.C. and treasurer of the Risk & Insurance Management Society Inc.

OSHA can be very helpful to employers that want good, cost-effective safety programs built with the cooperation of all employees, from management to field operations, he said.

"OSHA is not always the bad guy," Mr. Cartwright said.

The agency has a free, on-site program for small to medium-size employers in which consultants help them identify workplace hazards and offer compliance guidance without fear that the process will result in citations or penalties.

"I do think OSHA's made a lot of progress over the years, particularly on the education component," said Patrick McCarthy, a partner at Day Pitney L.L.P. in Parsippany, New Jersey.

When enforcement is needed, OSHA will use penalties set to significantly increase next year to discourage employers from seeing workplace accidents as a cost of doing business.

"For those employers who refuse to abate their hazards and put their workers in danger, we have stronger tools to encourage them to abate hazards," Mr. Michaels said.

In addition, OSHA revamped its enforcement weighting system in October to shift the focus away from the overall number of inspections to more complex sites, such as oil refineries, where the inspections could take months, Mr. Michaels said.

"In the past, we expected area offices to do a certain number of inspections," he said. "That system discouraged taking on those complex inspections. This will allow our area offices to better use their resources and focus them on those establishments that require the long, sort of intensive, inspections."

A key risk management action is to document all workplace safety training, as well as any discipline or corrective actions for employees who violate safety and health policies and procedures.

"If it's not documented, (OSHA is) probably going to assume that the training didn't take place," said Chris Retter, vice president and risk control manager for IMA of Kansas Inc., a unit of IMA Inc. in Wichita, Kansas.

Employers should identify and immediately correct easy hazards such as lack of machine guarding or blocked exits — a typical plain-sight violation that allows an inspector to expand the inquiry, Epstein Becker's Ms. Butera said.

"Don't just sit by idly and wait for OSHA to come," she said.

GENERAL DUTY CLAUSE

In the first nine months after the U.S. Occupational Safety and Health Administration's revised rule for reporting serious injuries and illnesses took effect on Jan. 1, the general duty clause was the fourth-most cited standard for issued violations.

Rank	Standard
1	Machine guarding, general requirements
2	Lockout/tagout to disable machines while servicing
3	Reporting requirements for work-related incidents
4	Occupational Safety and Health Act's general duty clause
5	Powered industrial trucks
6	Personal protective equipment
7	Mechanical power-transmission apparatus
8	Construction, general requirements
9	Fall protection
10	Electrical, wiring methods

Source: U.S. Occupational Safety and Health Administration

HEALTH

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sity School of Law in Durham, North Carolina.

In recent years, antitrust enforcement has seemingly increased, though some experts say that could be a result of more large-scale mergers being proposed, likely due to a stronger economy.

According to a March report by law firm Gibson Dunn & Crutcher L.L.P., the rate at which federal agencies investigate mergers and acquisitions is growing, and 2015 could be a "banner year for DOJ's merger enforcement efforts," the report states.

According to the report, between 2006 and 2008, antitrust enforcement agencies brought an average 34 merger enforcement actions per year. That number rose to 41 on average annually between 2010 and 2012. The agencies challenged 38 mergers in 2013. Gibson Dunn expects that 2014 data will show the agencies "continue to challenge transactions at a relatively high rate," the report states.

The Department of Justice, which is reviewing the Aetna-Humana and Anthem-Cigna mergers, has in recent months blocked large-scale deals between companies in the manufacturing sector.

Most recently, General Electric Co. and AB Electrolux in December called off a deal that would bring together two leading kitchen appliance makers. Earlier that month, Tri-Union Seafoods L.L.C., doing business as Chicken of the Sea International, and Bumble Bee Foods L.L.C. abandoned a deal that would combine the second- and third-largest canned tuna sellers in the country.

The Justice Department objected to both, citing reduced competition, which the agency said could lead to higher prices for consumers.

Justice also in 2015 investigated highly publicized deals between Comcast Corp. and Time Warner Cable Inc. and AT&T Inc. and DirecTV L.L.C., among others. While AT&T and DirecTV completed their merger in July, Comcast and Time Warner in April called theirs off over the Justice Department concerns.

Still, according to Mr. Richman, "you cannot say past is prologue."

Each merger is "highly context dependent," he said. Whether a merger is approved will "depend very deeply on the nature of competition, the nature of the industry, (and) how easy entry is," among other factors. Mergers "all vary enormously."

Even so, the Justice track record for health insurance mergers seems to show a clear pattern. The department has challenged seven mergers in the past, and only one was blocked while the others proceeded after certain divestitures, a department spokesman said.

The current deals, however, are "much bigger," Mr. Richman said. Plus, "we're learning a little bit more from those other mergers, and there's better data now on the consequences of concentration."

Studies show that increased consolidation in the health insurance industry leads to higher premiums for consumers, according to testimony by Leemore S. Dafny, a former regulator and now a professor at the Kellogg School of Management at Northwestern University in Evanston, Illinois, before the U.S. Senate subcommittee on health insurance industry consolidation in September.

Such was the case when Aetna merged with Prudential HealthCare in 1999, according to a 2012 study co-authored by Ms. Dafny.

The study found that large group premiums grew about 7%, or $200 per person, between 1998 and 2006 because of increased market concentration following the merger.

"It all comes down to the numbers," said Thomas Greaney, an antitrust expert formerly with the Justice Department's antitrust division who is now co-director of the Center for Health Law Studies at Saint Louis University School of Law. Antitrust regulators will slice the data in different ways — among geographic and product lines — and they will "probably find overlaps in a substantial number of places. Then it's a matter of how many divestitures would satisfy (them)," Mr. Greaney said.

A September analysis by the American Medical Association found that the two megamergers would slash competition in up to 154 metropolitan areas in 23 states.

And divestitures don't solve all the problems, sources say. One of the biggest hurdles is finding another insurer that's a "suitable replacement" in the markets in which the merging insurers divest operations. "It can be a little problematic," Mr. Greaney said.

Further complicating things is the states' role in approving the mergers.

This "isn't just a ballgame" for the Justice Department, explained David Balto, a Washington-based antitrust lawyer and former policy director for the Federal Trade Commission. State insurance commissioners will be reviewing the mergers and will likely take a "tough stance," Mr. Balto said.

After December public hearings in Florida on the mergers, a coalition of nine consumer groups and unions there penned a letter Dec. 16 to the state's Insurance Commissioner Kevin McCarty raising concerns over the effects of the proposed consolidation on the state's health insurance markets.

"Scholarly evidence suggests that consumers will see limited to no benefits and instead will face higher costs, less innovation and potentially lower quality of care," the letter states.

Most sources said it's unclear what the Justice Department will decide to do. It is likely to be a long negotiation process, and if negotiations fall apart, the health insurers may go to court with the department to force a decision or they could call the deals off.

Mr. Balto sees the Justice Department going "to court to block the mergers. And that's the right answer."

Mr. Richman, however, said it could go either way. "This is not an administration that challenges everything, and it's been criticized for challenging both too much and not enough," he said.

TRAVEL

Continued from page 3

Traveling employees provide a unique challenge for risk managers since they have little control over the work environment, Mr. Canavan said. For example, if a flight attendant on a layover checks into a hotel, the risk manager doesn't know whether there are special hazards in the room, he said.

What risk managers can do is make sure workers are aware of the typical kinds of injuries, such as fatigued driving among truckers, Mr. Canavan said. It's also possible to minimize exposures by clearly defining job duties, so workers know personal errands might not be in the course and scope of their employment, he added.

Employers should also find out what activities are likely to be considered within the course and scope of employment, sources said. A lot of times it's about whether an "activity was a significant enough deviation from the overall purpose of the trip to make it noncompensable," Mr. Randall said.

In addition to clearly stating in a travel policy that all company policies apply whether in the office or on the road, many employers include a rule about not using mobile devices while driving, said Edwin Zalewski, human resources professional at J. J. Keller & Associates Inc. in Neenah, Wisconsin.

OFF BEAT ;-)

Contributing: Gloria Gonzalez, Judy Greenwald, Sheena Harrison, Donna Mahoney, Dave Roknic

AP PHOTO

A 747 of disputed lineage is parked at Kuala Lumpur's airport in December.

Cargo firm claims 'abandoned' 747s

It's tough to imagine a company — or its insurers — mislaying three jumbo jets worth millions of dollars, but that scenario is playing out in Malaysia.

Kuala Lumpur International Airport has had three abandoned Boeing planes taking up space on its tarmac for more than five years.

The airport operator, Malaysia Airports Holdings Bhd. placed an ad in the local newspaper requesting that the Boeing 747-200F planes be claimed.

The three aircraft were parked at the airport in mid-2010 and their ownership paper trail has been tortuous, but Malaysian cargo carrier Splunk n' Dash Sdn. Bhd. has stepped forward claiming it has proof of ownership.

Splunk n' Dash, doing business as Swift Air Cargo, claims in a news release that it has been in contact airport authorities since June and was mystified by authorities' actions.

"The owner of the (3) B747's parked at KLIA is Swift Air Cargo, and Swift has not abandoned the aircraft!" the release states, noting the company possesses ownership documents and "very much has not forgotten its (3) B747's parked at KLIA!"

Agency owner loves job, backs out of sale

While merger mania was in full swing during 2015, at least one agency owner didn't take the money and run in December.

During a month-long delay in closing a deal, Wichita, Kansas-based M&M Insurance Associates owner Jim Newhouse, 85, got cold feet. He was set to sell his agency to Parsons, Kansas-based Wood-Dulohery Insurance Inc. but ultimately thought otherwise.

"I don't have anything to do if I don't come to work," Mr. Newhouse told The Wichita Eagle newspaper. "I don't golf. I don't gamble. ... I come to work, and I enjoy it."

He told the newspaper that he broke the news to Wood-Dulohery management in person. "I went down to their office, and I told them I was sorry, I just couldn't sell it," Mr. Newhouse said.

"I may be 85, but I don't feel like I'm 85, and I'm not ready to retire," Mr. Newhouse told the Eagle.

LAW-ABIDING DRIVERLESS CARS GET NO RESPECT

AP PHOTO

Google's self-driving vehicles are not only cute, it turns out that they are also very polite.

It's not your imagination — people can be bad drivers. Self-driving cars designed to reduce accidents on the road are racking up a crash rate double that of human drivers because the self-driving vehicles obey traffic laws such as speed limits all the time while their human counterparts do not.

"It's a constant debate inside our group," Raj Rajkumar, co-director of the General Motors-Carnegie Mellon Autonomous Driving Collaborative Research Lab in Pittsburgh, told Bloomberg. "And we have basically decided to stick to the speed limit. But when you go out and drive the speed limit on the highway, pretty much everybody on the road is just zipping past you. And I would be one of those people."

Google Inc. cars have been in 17 minor crashes in 2 million miles of testing and account for most of the reported accidents, according to a study by the University of Michigan's Transportation Research Institute in Ann Arbor, Michigan. But these accidents are never their fault as the self-driving cars are usually hit from behind by inattentive or aggressive human drivers, according to the study.

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Bum fraud charges spawn run for office

A North Carolina construction company owner previously accused of insurance fraud is now seeking a job as head of the state's insurance department.

Ronald Pierce (below) owns Charlotte, North Carolina-based Clear Choice Construction L.L.C., according to his campaign website. The North Carolina Department of Insurance charged him last year with 108 counts of obtaining property by false pretense, alleging that he inflated hail damage repair estimates to homeowners and received $450,000 in fraudulent claim payments from the insurers, according to a statement from the department.

The charges were dismissed due to insufficient evidence, the Charlotte Observer newspaper said in a recent report. Mr. Pierce now has channeled his ire from facing the dropped charges to run for North Carolina insurance commissioner in the state's 2016 election.

"These charges were a direct result of my many complaint letters to the North Carolina Department of Insurance and the Attorney General's Office demanding an investigation into these insurance companies and the people at the Department of Insurance," Mr. Pierce said of the dropped charges on his campaign website. "There was no investigation into my complaints against the insurance companies. The only thing that got investigated was me."

Fighting drone risks with drones

Risk managers worried about drones being used against their companies for industrial espionage or other nefarious purposes might consider the "it takes a thief to catch a thief" strategy being planned by the Tokyo police department.

According to news reports, a "net-wielding interceptor" drone will reportedly be used to hunt down and snare rogue drones.

The interceptor drone carries a 3-meter-by-2-meter net that will take to the sky after an unlawful drone has been spotted, according to one report. Police officers on the ground will use loudspeakers in an attempt to warn the drone's controller to leave the area.

This follows the uproar that occurred earlier this year when a man landed a drone on the Japanese prime minister's residence.

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