

## STATUTE OF LIMITATIONS CHANGES

Lawmakers in seven states have changed statutes of limitations retroactively to allow civil lawsuits over sexual abuse of children.

Window legislation*	Civil liability retroactively extended
California	2003 only
Connecticut	claimants to age 48
Delaware	2007-2009
Massachusetts	claimants to age 53
Hawaii	2012-2014; 2014-2016
Guam	2011-2013
Minnesota	2013-2016

\*Statute of limitations waived for a defined period.  
Source: Marci A. Hamilton, Benjamin N. Cardozo School of Law, Yeshiva University

## LIABILITY & LITIGATION

### Minnesota law puts pressure on archdiocese

Extended filing window allows more abuse suits

BY DOUGLAS McLEOD

A 2013 Minnesota law easing the state's statute of limitations on sexual abuse claims has led to a barrage of claims against a Minnesota Catholic archdiocese and renewed concerns among institutions nationwide about the potential effect of such laws.

The Archdiocese of Saint Paul and Minneapolis recently filed suit against its liability insurers dating back to 1952 for coverage of claims arising since Minnesota opened a three-year "window" for those with previously time-barred abuse claims. With more than a year

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## CYBER RISK

### TARGET'S BREACH LIABILITIES CONTINUE TO MOUNT

One year later, judge rules for credit card issuers



AP PHOTO

BY JUDY GREENWALD

A federal judge's refusal to dismiss litigation brought by credit card issuers against Target Corp. in the wake of 2013's massive data breach is significant and could influence other courts to hold retailers liable in similar cases.

However, there are elements of this lawsuit that are specific to the Minneapolis-based discount retailer and would not apply to other breach cases, experts say.

Court papers in the litigation filed by the financial institutions, which are seeking class action status, say they

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## BREACH COSTS

Target Corp.'s Nov. 27-Dec. 27, 2013, data breach affecting about 40 million credit and debit accounts and the personal information of up to 70 million people has been costly. To date, costs have included:

- \$248 million in cumulative expenses, offset by \$90 million in insurance recoveries
- Weaker-than-expected U.S. sales following announcement of the breach
- More than 100 lawsuits filed, with state and federal investigations underway

Source: U.S. Securities and Exchange Commission filings as of mid-November

## WORKERS COMPENSATION

### TRIA inaction could cost comp buyers

Premiums to increase if Congress fails to act

BY STEPHANIE GOLDBERG

If the federal terrorism reinsurance backstop program isn't reauthorized during the first quarter of 2015, employers renewing their workers compensation coverage could be forced to the residual markets and face significant premium increases.

Established by the Terrorism Risk Insurance Act in 2002 following the Sept. 11, 2001, U.S. terrorist attacks, the program expired Dec. 31 due to objections in the Senate, surprising and dismaying insurers and buyers.

While many industry experts expect TRIA will be reauthorized by the new Congress that convenes Jan. 6, workers comp insurers and reinsurers are keeping quiet as they evaluate what risks they would underwrite without the backstop safety net, experts said.

"The market is still operating under the presumption that TRIA is going to be reauthorized in January," said Robert Hartwig, president of the New York-based Insurance Information Institute. "If we get to the middle of February and there's still no reauthorization, that becomes a game changer."

Though uncommon, some insurers are including language in workers comp policies that would

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## Q&A: RICK ROBERTS

Incoming RIMS president discusses his leadership plans and upcoming challenges.

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New Congress should make reauthorization of the terrorism backstop program top priority.

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Research on workplace safety measures and perceptions of their effectiveness.

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## WORKPLACE SAFETY

Employers combine technology with worker feedback to avoid injuries; women's work gear needs proper fit; drug and behavioral testing have important place in safety regimens; Ebola teaches important safety lessons.

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WHATMATTERSMOST

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**IN BRIEF**

**Chinese conglomerate buys Meadowbrook for \$433 million**

In the first full purchase of a U.S. insurer by a Chinese company, Fosun International Ltd. has acquired Southfield, Michigan-based property/casualty insurer Meadowbrook Insurance Group Inc. for \$433 million. Fosun has been on a \$4 billion buying spree; plus other news in brief. **8**

**PERSPECTIVES**

**The ADA beyond ergonomics**



Employers are used to thinking of ergonomic accommodations under the Americans with Disabilities Act, but an ADA leave of absence is also considered an accommodation, says Kevin Curry of Reed Group Ltd. **13**

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A series earthquakes in the region around Florence, Italy, have officials scrambling to protect Michelangelo's David; plus other quirky news. **30**

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**AVIATION**

**LATEST AVIATION DISASTER COULD FORCE RATES HIGHER**

Allianz covered all three major 2014 plane losses



AP PHOTO

Indonesian Air Force personnel took part in recovery efforts last week after AirAsia Flight QZ8501 disappeared over the Java Sea carrying 162 people. The jetliner's insured value is about \$47 million.

BY MATTHEW LERNER

The third major commercial aviation disaster of 2014, all of which were reinsured by Allianz S.E., could ultimately result in higher insurance rates.

Wreckage and bodies were found last week in the Java Sea from AirAsia Bhd. flight QZ8501, which dropped off radar Dec. 27 during bad weather on its

way from Indonesia to Singapore with 155 passengers and seven crew members aboard.

And while the insured value of the aircraft is about \$47 million, liability losses will push the total loss beyond that for Germany-based Allianz, the lead reinsurer for the flight.

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**REINSURANCE**

**Record cat bond year may signal future growth**

BY MATTHEW LERNER

Record issuance of property/casualty catastrophe bonds in 2014 has put players and observers in a bullish mood about the alternative risk transfer market's prospects for 2015 and beyond.

While the final tally had yet to be calculated last week, Aon Benfield Securities' mid-December issuance of the \$375 million Nakama Re Ltd. bond to cover Japanese earthquake risks pushed through the \$8 billion barrier to \$8.7 billion, surpassing the previous record \$7.86 billion in 2007.

"2014 was exciting because on



the nonlife side it was a record-setting year for cat bond issuance and the capital markets, both with

respect to insurance-linked securities and more broadly, and that is causing people to think going forward that a lot more might be possible," said Bill Dubinsky, head of ILS at Willis Capital Markets & Advisory in New York.

A mid-October note from the Willis unit said 2014 was on track for total cat bond sales of between \$8 billion and \$9 billion.

"We as a firm have been very bullish about the amount of capital that's going to continue to flowing into the sector, so I think this more or less substantiates what we have been saying," said Paul Schultz,

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**HEALTH CARE BENEFITS**

**Health cost increases keep slowing**

Drug costs, economic growth may end trend

BY KAREN PALLARITO

U.S. health care spending grew 3.6% in 2013, capping a five-year stretch of historically low growth, the Centers for Medicare and Medicaid Services said in December.

That's good news for health care payers, but is the slowdown — which was the smallest increase since 1960 — sustainable?

What we're seeing is "a slowing down of what was perhaps unsustainable" increases in the cost of health care, said Elise Gould, senior economist and director of health policy research at the Economic Policy Institute, a Washington-based think tank.

Health care spending rose at or below 4.1% per year from 2009 through 2013, CMS reported in the journal Health Affairs in December. That's a far cry from the double-digit spikes of the late 1980s and early 1990s and the high-single-digit increases of the early 2000s.

Still, increases in health care spending outpaced the U.S. inflation rate of 1.3% for the 12 months that ended in November.

"We've talked about it being a new normal, that the days of double-digit inflation are unlikely to return soon" for health care prices, said Mike Thompson, New York-based principal and health care practice leader at PricewaterhouseCoopers L.L.P.

Mr. Thompson said the growing consumerism movement, hastened by the Patient Protection and Affordable Care Act's upcoming 2018 excise tax on high-cost health plans, will factor into controlling future health spending.

Charles Roehrig, vice president and director of the Center for Sustainable Health Spending, a research arm of Ann Arbor, Michigan-based nonprofit health care consultant Altarum Institute, said sluggish growth in health care prices and other effects of the recession were key contributors to the five-year slowdown in health care spending.

He noted that the ACA's productivity adjustment factor to ratchet down Medicare payment rates to

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ONLINE FEATURES

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VIDEO: IN FOCUS



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NEWS

BENEFITS LEGISLATION & REGULATION

PROPOSED RULES REQUIRE MORE CLARITY ON BENEFITS

Abortion and other coverages need to be spelled out

BY JERRY GEISEL

Employers would have to state clearly whether or not their health plans pay for abortion services among other requirements under health care reform law rules issued last week.

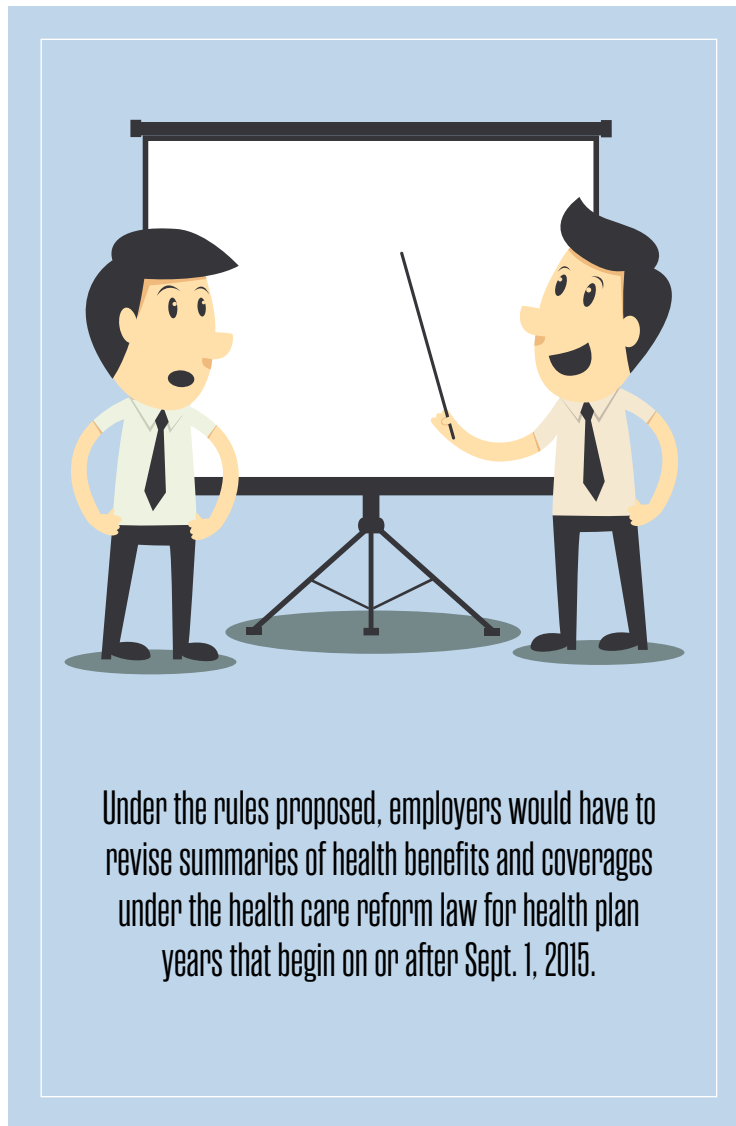
Under the rules proposed by the Health and Human Services, Labor and Treasury departments, employers would have to revise what are known as summaries of health benefits and coverage, or SBCs, under the Patient Protection and Affordable Care Act for health plan years that begin on or after Sept. 1, 2015.

“That is not a lot of extra time, but it should be sufficient time” for employers to make the necessary changes, said Gretchen Young, senior vice president of health policy at the ERISA Industry Committee in Washington.

Like the current summaries, employers must give examples of how coverage applies in two specific situations: having a baby and managing Type 2 diabetes.

The proposed rules issued last week would add a third example: a foot fracture with an emergency room visit. “This example is proposed as a health problem that most individuals could experience,

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Under the rules proposed, employers would have to revise summaries of health benefits and coverages under the health care reform law for health plan years that begin on or after Sept. 1, 2015.

CYBER RISKS

Cat modelers turn attention to cyber exposures

BY BILL KENEALY

In the wake of major cyber breaches that defined 2014, technologies to help risk managers, brokers and insurers better assess and model cyber risks are in their infancy.

While insurers and risk managers have long had detailed third-party models to help them gauge probable maximum losses for perils such as hurricanes and earthquakes, functional models for cyber crime are in their building stages.

“What we will see more of in 2015 is cyber risk modeling more similar to the catastrophe modeling

“What we will see more of in 2015 is cyber risk modeling more similar to the catastrophe modeling done for property insurance.”

John Farley, Hub International Ltd.

done for property insurance,” said John Farley, New York-based vice president and cyber risk practice leader at broker Hub International Ltd.

Andrew Coburn, Cambridge, England-based vice president of

catastrophe research at Risk Management Solutions Inc., said the catastrophe modeler is working with clients in a development capacity rather than releasing a general model. RMS is helping those clients standardize the manner in which they capture cyber insurance exposure data and better assess their probable maximum losses from cyber events.

“The principles of cyber catastrophe modeling are similar to other catastrophe models, such as hurricane, but they are not spatial or geographical in impact,” Mr. Coburn said in referring to cyber

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INTERNATIONAL

European capital rules may drive M&As

Insurers consider future as Solvency II looms

BY SARAH VEYSEY

As insurers and reinsurers across Europe make their final preparations for Solvency II, the introduction of the long-awaited risk-based capital rules may spark merger and acquisition activity.

While many insurers and reinsurers are well-prepared for the new regime, which will come into force in 2016, those that find aspects of the rules too onerous could become takeover targets, experts say.

“Over the coming year, the re-energizing of Solvency II will see insurance firms weighing the expense against the benefits of compliance in the lead-up to 2016 implementation,” London-based accountancy firm Moore Stephens L.L.P. said in a December note.

At the end of November, the European Insurance and Occupational Pensions Authority, the Frankfurt, Germany-based supervisor of insurers and reinsurers in Europe, released the results of a “stress test” of companies’ readiness for Solvency II and said the insurance sector was “in general sufficiently capitalized in Solvency II terms.”

But experts say there is still work to be done for many companies to ensure they are ready for the regime, which will be phased in in stages beginning Jan. 1, 2016.

“Significant change lies ahead for Europe’s insurers in 2015. After 15 years in development, the industry faces an intensive — and critical — period of final preparations for Solvency II implementation on Jan. 1, 2016,” Standard & Poor’s Corp. said in a report on European insurers in December.

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KEY DATES FOR SOLVENCY II IN 2015

- **Beginning in January**, insurers will be required to submit their annual returns for 2014 under Solvency II formats.
- **In February**, the European Insurance and Occupational Pensions Authority will publish technical guidelines for implementation of certain aspects of Solvency II.
- **On March 31**, Solvency II will be transposed into national law in E.U. member countries.

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WHAT MATTERS MOST

# TRIA EXPIRATION ADDS UNCERTAINTY TO PROPERTY INSURANCE MARKET

But most buyers enjoy soft market during Jan.1 renewals

BY MARK A. HOFMANN

Until late last month, the commercial property market was a buyers' market unlike any that had recently been seen during the year-end renewals.

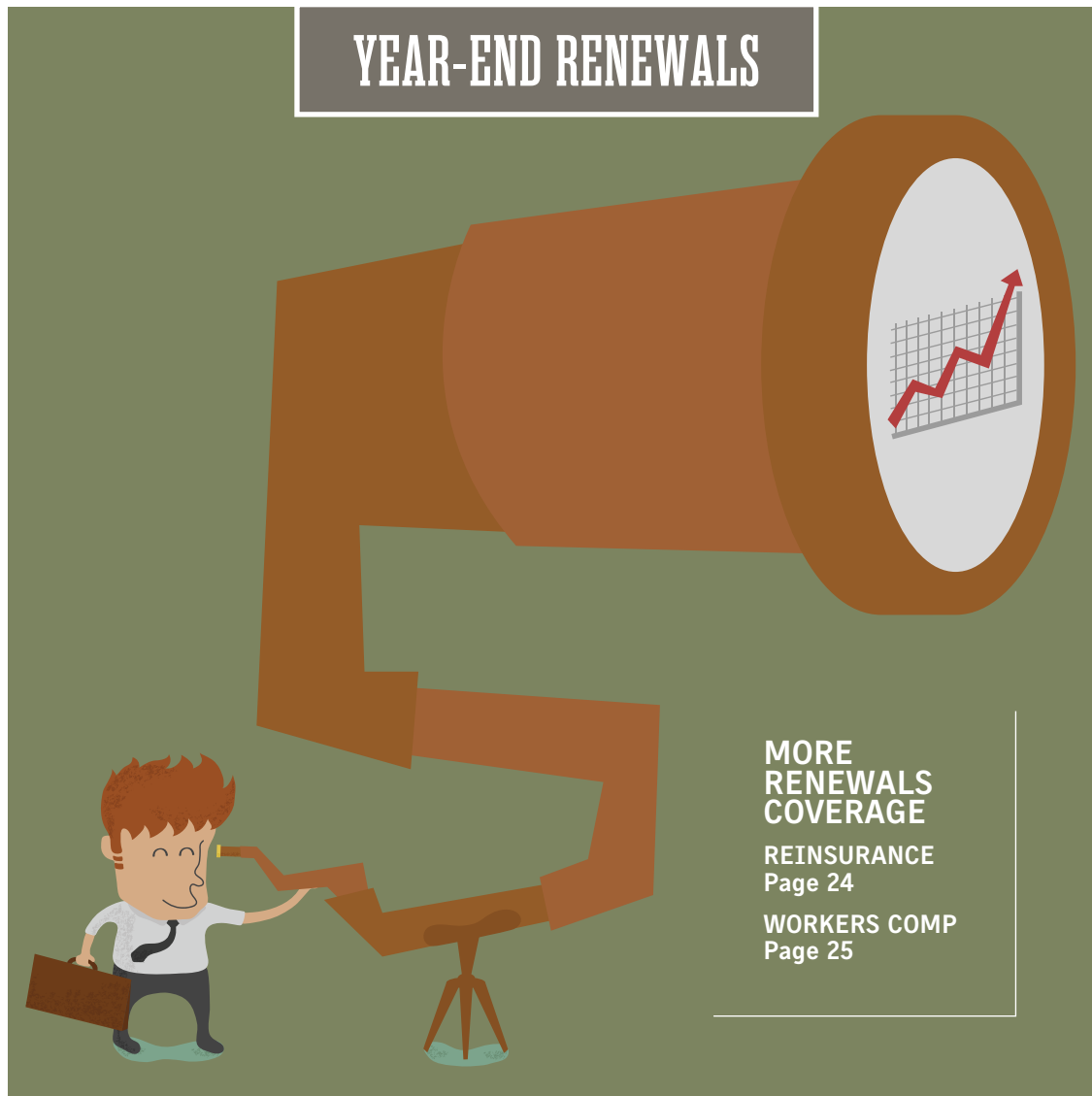
A combination of abundant capacity, cheap reinsurance and a relatively benign catastrophe environment continued to drive rates down. On average, rates were down by the mid-single digits and showing no sign of increasing anytime soon.

But that was before the Senate failed to extend the federal government's terrorism insurance backstop program before its Dec. 31 sunset. That raised questions about whether insurers would continue to offer the coverage, questions that are still being sorted out.

"The biggest issue is what the insurers will do," said Duncan Ellis, national property practice leader at Marsh L.L.C. in New York. He said some insurers "were looking at the program as (being) nice to have but were underwriting their book while making decisions" irrespective of the existence of the program. Others wrote terrorism with the understanding that the program would be in

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PROPERTY



YEAR-END RENEWALS

MORE RENEWALS COVERAGE

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## D&O market competitive

Primary pricing may increase, but ample excess capacity in place

BY JUDY GREENWALD

The directors and officers liability insurance market remains a buyers' market, with competitive prices and ample capacity.

While primary pricing may be hardening somewhat, it is being offset by continued softness in the excess layers, observers say. Many estimate there is more than \$1 billion in available capacity, and absent an unforeseen event, this situation is unlikely to dramatically change for the foreseeable future.

Observers also note that there are some relatively new players in the market, which has contributed to its softness.

"We're still definitely in a buyers' market," said Brenda Shelly, New York-based D&O practice leader for Marsh L.L.C.'s FINPRO unit.

Rates on programs are decreasing overall. "We're seeing signs that could accelerate as we head into 2015," said Phil Norton, Chicago-based president of Arthur J. Gallagher & Co.'s D&O professional liability division. "The market seems to be shifting and getting more competitive on both primary and excess."

"Competition over the last few months has been on the uptick, with new entrants making a significant push to gain a material foothold into the D&O market," said Steve Boughal, New York-based vice president and chief underwriting officer of Hartford Financial Products, a unit of The Hartford Financial Services Group Inc. "That's creating some pricing pressure."

"There might be small pockets of industries that have tougher times," but generally the market is very competitive, said Andy Doherty, New York-based executive vice president, for Willis North America Inc.'s FINEX unit.

Smaller biotech companies, for instance, are having more difficulty than other industry sectors getting placements that are competitive. They eventually do so, "but it's a struggle," Mr. Doherty said.

John Phelps, director of business risk solutions at Jacksonville, Florida-based Blue Cross Blue Shield of Florida Inc., whose D&O

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## Liability rate increases slow as more insurers vie for business

BY MATTHEW LERNER

The commercial liability insurance market remains competitive going into Jan. 1 renewals, with most experts forecasting low single-digit increases amid increasing insurer competition.

However, pricing depends on the line of business as well as the history of the

In addition, the market was jolted last month when the U.S. Senate's inaction allowed the federal terrorism reinsurance backstop to expire, setting off a wave of last-minute placements. Construction and real estate accounts were expected to be the most affected by the expiration.

Still, "some accounts might get

an above-average increase, some may get below-average; it could even be a negative, depending on the characteristics of the risk," said Greg Massey, New York-based senior vice president and head of casualty at Zurich North America.

Accounts with a more proactive approach to risk engineering and safety management will likely see rates that are better than average, he said.

"Primary insurance pricing continues to go up, however, at a lower rate," said Taoufik Gharib, New York-based director of financial services ratings for North American insurance at Standard & Poor's Corp.

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Construction and real estate accounts were expected to be the most affected by the expiration of the federal terrorism backstop.

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## China's Fosun enters U.S. market with \$433M Meadowbrook buy

Chinese conglomerate Fosun International Ltd. is making its first foray into the U.S. insurance market, buying property/casualty insurer Meadowbrook Insurance Group Inc. in a deal that it said would help it secure funds for further acquisitions. The deal, the latest in a buying spree by Fosun that has seen it spend more than \$4 billion in two years, would also be the first full purchase of a U.S. insurer by a Chinese company and comes as the Beijing government encourages local firms to extend their reach beyond emerging markets to Western financial firms. Fosun, owned by billionaire businessman Guo Guangchang, said in an exchange filing it would buy Meadowbrook for about \$433 million. The cash deal of \$8.65 per share represents a 24% premium over Meadowbrook's closing price on Dec. 29, the companies added. The deal is expected to close in the second half of 2015. Meadowbrook will maintain its headquarters in Southfield, Michigan, operating under the Meadowbrook brand name.

Reuters

## \$39M settlement reached in fatal Indiana stage collapse

Kenneth J. Allen Law Group has negotiated a \$39 million settlement with 19 of the 20 defendants sued after a fatal Indiana State Fair stage collapse. The Chicago-based firm said the \$39 million will be added to \$11 million previously paid out by the State of Indiana to resolve the claims arising from the seven deaths and more than 58 injuries caused by the Aug. 13, 2011, accident. An engineering report released in 2012 concluded that inadequate lateral support caused the stage roof and scaffolding set up for a performance at the fair by the country music duo Sugarland to collapse. In addition to the members of Sugarland, defendants in the lawsuit included Greenfield, Indiana-based Mid-America Sound Corp.; Indianapolis-based Lucas Entertainment Group L.L.C. and Live 360 Group; and Beverly Hills, California-based Live Nation Touring (USA) Inc. The lawsuit is pending against Indianapolis, Indiana-based ESG Security Inc., which declined the settlement offer, and is expected to go to trial in 2015.

## Robert Lindemann to retire from CNA Commercial

Robert Lindemann retired as president and chief operating officer of CNA Commercial on Dec. 31, CNA Financial Corp. said. Dave Rutkowski, senior vice president of commercial underwriting, will assume Mr. Lindemann's responsibilities until a replacement is named, the Chicago-based insurer said. Mr. Lindemann joined CNA as president and chief operating officer in 2009. "Bob is among the most respected underwriters and leaders in the commercial insurance industry," CNA Chairman and CEO Thomas F. Motamed said in a statement.

## Enrollment hits nearly 6.5 million in federal health exchange

Nearly 6.5 million individuals signed up for health insurance plans through the federal exchange during the first six weeks of the 2015 open enrollment through Dec. 26, the U.S. Department of Health and Human Services

said. That number is sharply higher than in the prior-year period, when around 1.2 million individuals had enrolled by the end of 2013. Separately, HHS reported that as of Dec. 15, 87% of enrollees in the 37 states in which the federal government operates exchanges were eligible for health care reform law subsidies to offset plan premiums, up from 80% during a similar 2014 open enrollment period. Those subsidies are available to those earning up to 400% of the federal poverty level, which comes to \$46,680 for an individual or \$95,400 for a family of four.

## Zurich North America names head of group captive insurance

Zurich North America has named Terry McCafferty as head of group captives in the company's programs and direct markets division, effective Feb. 1. Mr. McCafferty replaces Rod DeMaso, who recently became director of technical underwriting for Zurich Product Underwriting, Zurich North America said in a statement. Based in Schaumburg, Illinois, Mr. McCafferty will manage the company's group captives business, which includes member-owned, agency and association captives, according to the statement. Most recently, Mr. McCafferty was chief operating officer for Zurich North America's programs and direct markets, according to the statement.

## Federal judge dismisses NFL players' painkiller suit

A federal judge has dismissed a class action lawsuit from a group of high-profile former National Football League players who say the league negligently provided them with potentially addictive painkillers during their careers despite long-term health risks. Judge William Alsup said "player injuries loom as a serious and inevitable evil" in the NFL, but that player injuries and health concerns are handled by individual NFL teams and under the league's collective bargaining agreements, according to an order filed in U.S. District Court in San Francisco. "Where health and safety are concerned, the (collective bargaining agreements) have allocated specific responsibilities to the (teams) — but not to the league," the order reads. "By implication, this is tantamount to an agreement that the league has no oversight responsibility on these subjects. It would be reasonable to place all responsibility at the (team) level, for that level is where the play-or-not-play decisions are made, where the medical records are kept, and where players have daily contact with doctors." The lawsuit, filed May 20, includes eight named plaintiffs, including Hall of Fame defensive end Richard Dent and his former teammate, quarterback Jim McMahon, and 500 unidentified plaintiffs, according to court filings.

## Express Scripts presses for discounts on drug prices

Express Scripts, the largest manager of prescription drug plans for U.S. employers, is taking an increasingly aggressive stance in price negotiations with pharmaceutical companies after winning discounts on medications with a strategy introduced last year. Late last month, Express Scripts said it lined up a cheaper price for AbbVie Inc.'s newly approved hepatitis C treatment and, in most cases, will no longer cover Gilead Sciences Inc.'s rival treatments after trying for nearly a year to win a deeper discount. The move was viewed by Wall Street

as a sign that other major biotechnology players, including Amgen Inc. and Biogen Inc., will face steeper U.S. pricing pressure from insurers. The second largest U.S. pharmacy benefits manager, CVS Health Corp., has said it will exclude 95 prescription products from its reimbursement list next year, up from 72 in 2014.

Reuters

## Feds sue Chicago schools over pregnancy bias

The U.S. Department of Justice has filed a lawsuit against the Chicago Board of Education, alleging that the board discriminated against pregnant teachers at an elementary school. Filed in U.S. District Court in Chicago, the lawsuit states that starting in 2009, teachers at Chicago's Scammon Elementary School were subjected to adverse personnel actions, including termination in some instances, after they announced their pregnancies. The school's actions violated Title VII of the Civil Rights Act of 1964, the lawsuit states. The lawsuit was filed after a joint investigation between the Justice Department's civil rights division and the U.S. Equal Employment Opportunity Commission.

## Supreme Court sets March date to hear exchange subsidy case

The U.S. Supreme Court has scheduled oral arguments in *King v. Burwell* for March 4, a court spokesperson confirmed. The question in the case is whether the language of the Patient Protection and Affordable Care Act allows consumers to receive premium tax credits in states that have not established their own health care exchanges and instead are relying on HealthCare.gov. One part of the law says the tax credits are available only to people who enrolled "through an exchange established by the state." Those backing the lawsuit say that language shows that people in states without their own exchanges shouldn't be able to get the tax credits. But the Obama administration argues that the law's clear intention was to offer subsidies and expand coverage to people in every state, and that other sections of the law indicate that subsidies are available to people in states served by the federal exchange.

Modern Healthcare

## Jury rules for manufacturer in asbestos death case

A jury in Oakland, California, ruled in favor of building materials manufacturer CertainTeed Corp. in a case over whether the company's asbestos pipes caused a man's death from lung cancer. The plaintiffs claimed that Valley Forge, Pennsylvania-based CertainTeed was responsible for the death of a plumber who used the company's products. The jury determined that the company wasn't negligent and that its products were not a substantial factor in causing the lung cancer of the man, who was a pipe and cigar smoker exposed to secondhand smoke as a child. The attorney for the defense, Chris Wood of McKenna Long & Aldridge L.L.P., told the jury that CertainTeed had properly informed customers how to handle the pipes. "The verdict shows that reasonable people are willing to listen to evidence that product manufacturers can do the right thing to protect users," Mr. Wood said in a statement. "After all, they need to sell safe products to keep making sales. It is up to informed employers to enforce safety for their employees."

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## India PM orders insurance reforms

Indian Prime Minister Narendra Modi has resorted to a rarely used executive decree to implement insurance reforms, displaying his resolve to revamp Asia's third-largest economy despite political opposition in parliament. The move came after opposition parties did not allow a vote on the measures in the upper house of parliament, demanding that the Indian leader first rein in Hindu hardliners who are pushing a partisan agenda. Under the order, foreign firms can increase their participation in insurance joint ventures to 49% from 26%, a potential lifeline for a sector starved of capital and squeezed by regulations. Shashwat Sharma, a partner at consultant KPMG L.L.P., said the move will draw up to \$4 billion of new investments into the sector. "It will bring in a lot of confidence and people waiting for it would start thinking through it," he said. But not every foreign investor is expected to immediately start committing fresh funds as the executive order has to be approved by parliament within six weeks of the opening of the next session — scheduled for the start of February — to become a formal law.

Reuters

## Windstorm Dirk losses upped to \$513.6M: Perils

Windstorm Dirk, which affected parts of the United Kingdom and France Dec. 23-25, 2013, caused insured property losses of €420 million (\$513.6 million), according to Zurich-based catastrophe loss data company Perils A.G. in its fourth and final estimate for losses from the storm. The €420 million (\$513.6 million) estimate is an increase on Perils' third estimate of €370 million (\$452.5 million), which was released in June. The windstorm caused widespread damage across areas of southern England and northern France.

## Catlin sells investment in auto service

Catlin Insurance Co. Ltd., a subsidiary of Hamilton, Bermuda-based Catlin Group Ltd. has agreed to sell its investment in Box Innovation Group Ltd. a personalized auto insurance service that trades as Insure the Box, to Aioi Nissay Dowa Insurance Co. of Europe Ltd., for €85 million (\$132.8 million). Catlin expects to distribute to its shareholders any surplus capital arising from its divest-

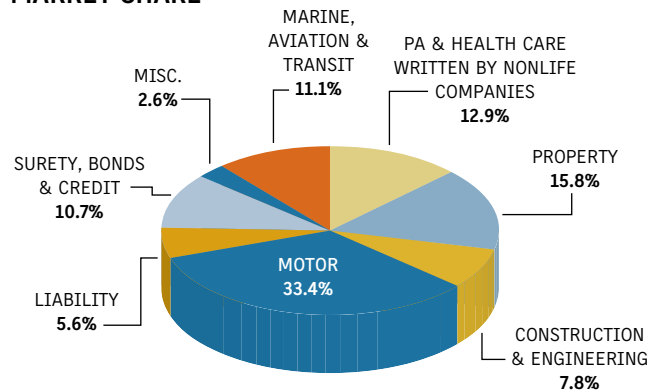
## PROFILE: ECUADOR

**\$1.5 BILLION**

Ecuador is one of the smaller insurance markets in South America, and much of the market consists of government-owned risks with state businesses making up about 40% of the insured market. In 2014, the insurance market regulator publicly stated that the market had too many insurers. The number of insurers is expected to fall, as many companies are expected to struggle to meet recently increased capital requirements.

◀ 2013 P/C gross premiums

### MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

### COMPULSORY INSURANCE

- Aviation passenger liability
- Professional liability for insurance intermediaries
- Fire insurance for condominiums
- Marine cargo for imports
- Auto personal accident
- Shipowners liability for oil pollution

### NONADMITTED

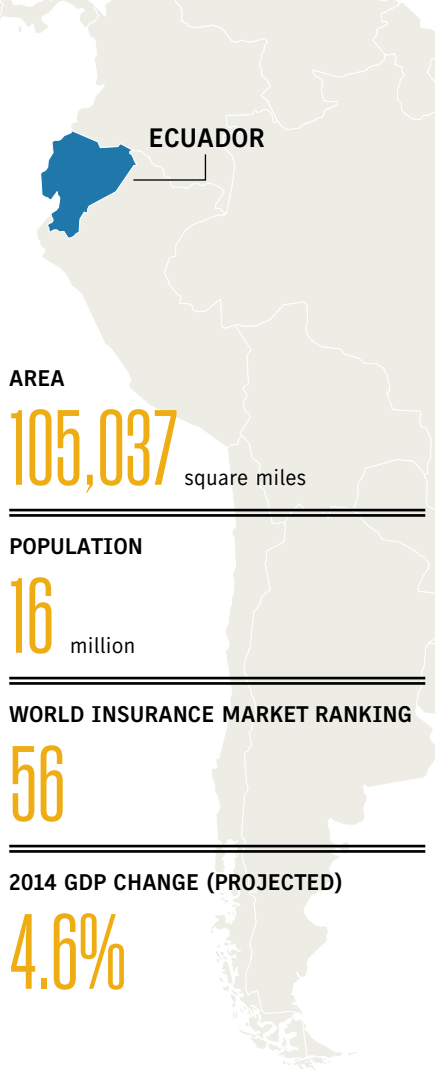
Nonadmitted insurance is not permitted in Ecuador because the law provides that insurance must be purchased from locally authorized insurers, with the exception of property owned abroad and liabilities that may be incurred overseas. If coverage for other risks is not available in Ecuador, special dispensation can be sought from the regulator to place risks overseas.

### INTERMEDIARIES

Insurance agents and brokers must be authorized to conduct business in Ecuador. Intermediaries are not allowed to place business with nonadmitted insurers, except where permission has been granted by the regulator. The general insurance law specifically states that the sole activity of an intermediary must be to place insurance with locally authorized insurers.

### MARKET PRACTICE

Despite prohibitions, there is some abuse of the regulations on nonadmitted insurance; more life and health lines than property/casualty. Fronting may be used to obtain overseas capacity for large risks.



### MARKET DEVELOPMENTS

UPDATED DECEMBER 2014

- On Sept. 12, 2014, new legislation known as the 2014 Monetary and Financial Code took effect. While only a small part of the regulations cover insurance, the measure is expected to have a major effect on the insurance and banking sectors in Ecuador.
- The code separates the regulation of banking and insurance and transfers the regulation of insurance to a renamed regulator, the Superintendency of Companies, Securities and Insurance.
- New capital requirements impose minimum capital of \$8 million for insurers and \$13 million for reinsurers.
- In 2011, tax on insurance remittances outside of Ecuador was increased to 5%. More recently, tax authorities have insisted that insurers must pay tax on premiums ceded, whereas prior to 2014 the tax had been paid on premiums after commission and claims payments. If the authorities refuse to change their approach, insurers could face a significant reduction in profits.

ment of Gibraltar-based BIGL, subject to board approval. Details of any distribution will be announced following board consideration. Catlin said in a statement that "after detailed evaluation (it) determined the time is right to exit the investment and allow BIGL to find the right partner for the next phase of its development."

## Japan Post IPO to include insurance listing

Plans for an initial public offering for state-owned Japan Post Holdings Co. Ltd., one of the world's biggest financial institutions, will include separate listings of its insurance and bank units, sources familiar with the matter said. Japan's government has been working on the IPO to raise as much as 4 trillion yen (\$33.6 billion) in several tranches for areas dev-

astated by the 2011 earthquake and tsunami, but the structure of the listing has so far been unclear. The government has said it expects to raise 1 trillion yen (\$8.4 billion) in the first round of sales, basing its assumption on the results of share offers of state-owned companies in the past. "This is the biggest bank in Japan, and in that sense the IPO will have some appeal. The insurance unit is also the biggest insurance firm in Japan," said Masayuki Otani, chief market analyst at Securities Japan. According to the Nikkei business daily, the government plans to list 10% of outstanding shares for each of the three companies: Japan Post Holdings, Japan Post Bank Co. Ltd. and Japan Post Insurance Co. Ltd. The Japan Post group has about 13.8 trillion yen (\$115.9 billion) in net assets. The bank unit's recurring profit in the last financial year fell 5% to 565 billion yen (\$4.7 billion)

while the insurance unit's recurring profit declined 12% to 463.5 billion yen (\$3.9 billion).

Reuters

## Bermuda insurers meet Solvency II criteria

A report from the European Insurance and Occupational Pensions Authority has endorsed key aspects of Bermuda's commercial insurance and reinsurance regulatory regime as meeting the criteria of Solvency II, the Bermuda Monetary Authority said. Solvency II is a set of risk-based capital rules slated for introduction in Europe in 2016. "Equivalence with the Solvency II Directive is of the utmost importance for Bermuda," said Jeremy Cox, CEO of the Bermuda Monetary Authority, in a statement. "This designation ensures that Bermuda's commer-

cial insurers may continue to transact business within the E.U."

## Amlin acquires \$200M reinsurance coverage

Amlin P.L.C. has acquired reinsurance coverage of up to \$200 million for U.S. named storm, U.S. earthquake and European windstorm perils via a Bermuda-based special purpose insurer, Tramline Re II Ltd. London-based Amlin said that the special purpose vehicle would, in turn, place a \$200 million catastrophe bond. The deal gives the insurer and reinsurer fully collateralized protection for a four-year period starting Jan. 1. The coverage attaches on an index loss basis equivalent to \$500 million. The reinsurance replaces a previous Tramline Re coverage which was placed in 2010 and expired Dec. 31.

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

## RIMS 2015 PRESIDENT DISCUSSES GOALS, KEY RISKS

**Q** As you start your one-year term as president of RIMS, what goals have you set for your tenure?

**A** What we are looking to do as we go forward is to build off of the past couple years. We have adopted a more strategic focus for the board at RIMS. A primary goal is to strengthen RIMS' networks, specifically our international network as we have become more global. We have added a few new international chapters in the last few years and forged great relationships with a number of risk management groups around the world. The professional development programs that we have developed are being asked for in South America, Australia and the Far East.

Another focus is helping rising risk professionals. We have had a strong focus on students over the years with the Spencer Educational Foundation, but we now want to extend this to anybody that is new to the risk management profession, such as people coming over from insurance companies or the brokerage industry.

A third focus is to take a look at our internal networks and

### Q&A

improve the efficiency of RIMS as an organization. We want to make sure our committees are aligned with our mission and vision. We'll have a meeting in January with all the committee chairs and vice chairs to align everything for 2015 and beyond. We want to be more nimble as an organization and be able to pounce on opportunities that come our way.

**Q** In your estimation, what were the defining risk management challenges of 2014?

**A** The No. 1 issue was cyber security. Just looking internally at my own organization, our informa-

tion technology director has logs of all the people trying to penetrate our security walls, and the number of hits is just incredible.

Another big challenge for risk managers was how to get more involved in the strategic processes of their companies. How do you get your risk management programs in front of the key decision makers and enhance their information so they can make better decisions for the company?

**Q** What emerging risk management challenges do you see for 2015?

**A** Obviously, a key concern is how we deal with terrorism. TRIA is something that has to be done.

Another big challenge is that as companies keep growing globally how do we as risk managers stay aware of all the different risks they face as we move into new countries.

Another legislative concern is reinsurance tax. This is something that could have a negative effect on capacity, pricing and the availability of coverage.

**Q** Ensign-Bickford is a diversified company. What challenges does



**RICK ROBERTS**

**ENSIGN-BICKFORD  
INDUSTRIES INC.**

Rick Roberts is the director of risk management and employee benefits at Ensign-Bickford Industries Inc. in Simsbury, Connecticut. He was appointed the 2015 president of the Risk and Insurance Management Society Inc. He recently spoke with *Business Insurance* Associate Editor Bill Kenealy about his leadership plans for RIMS and key risk management challenges. Edited excerpts follow.

**that present for you as a risk manager?**

**A** We have four such unique businesses, so it is a challenge when you are putting together a corporate insurance program. Also, we keep evolving and will often drop or add a business. An insurer that is great for our aerospace or defense businesses may not want to have anything to do with a chemical business or vice versa.

**Q** Given your background in risk management, what advice would you give a young risk manager?

**A** Risk managers are great at working together. We can meet and discuss risk in a way that doesn't reveal secrets or impair anything that happens within our companies. As a RIMS member, you can always find people to interact with if facing a certain challenge so you don't always have to reinvent the wheel.

Also, I'd say that your education does not stop when you leave college and have your degree in hand. You'll be getting a new education every six months with all the changes that are occurring and what you will need to know to stay on top of things.

### COMINGS & GOINGS

## UP CLOSE: JONATHAN MORGAN

**LONDON-BASED BUSINESS DEVELOPMENT MANAGER**

Ascent Underwriting L.L.P.

**PREVIOUS POSITION:** London-based managing director for Lime Underwriting

**LOOKING FORWARD TO:** Working for an established managing general agent with an excellent reputation in the insurance market, with strong broker relationships and a current portfolio of cutting-edge products.

**GOALS FOR NEW POSITION:** To contribute as a key member of the Ascent team, to help build, profile and position Ascent Underwriting as a leading MGA, specializing in emerging and professional risks.

**CHALLENGES FACING INDUSTRY:** The last decade or so has seen a flood of new capacity into the insurance market. The challenge for insurers and brokers alike is to ensure that the purchase of insurance does not become purely a commodity practice. As professional organizations, we maintain the ability to provide our clients with added value, whether it be in terms of service, quality of product or differentiators.

**INDUSTRY OUTLOOK:** In my view there will be little



change. It will remain a buyers' market for the foreseeable future. Good for the clients.

**FIRST INDUSTRY JOB:** Account executive at British National Insurance Co. Ltd., for three months before they went bust. I then worked for Continental Re (U.K.) in London in the same role before moving into the underwriting room.

**ADVICE:** Be open-minded, ask questions and always make time to take a step back and evaluate how you are perceived by others.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** Easy: professional golfer. I maintain a handicap of 10 even though I am far too busy working to play more than a few rounds a year.

**THING MOST PEOPLE DON'T KNOW ABOUT ME:** I can play the piano, oboe, and guitar — a well-kept secret.

**WHEN I RETIRE:** I'm looking forward to spending more time with my family and allowing my wife to caddy for me on the Senior golf tour.

### Professional Moves & Promotions

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*Business Insurance* would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to: Shelby Livingston, *Business Insurance*, 150 N. Michigan Ave., Chicago, Ill. 60601-7524. [slivingston@businessinsurance.com](mailto:slivingston@businessinsurance.com).

EDITORIAL

## PENSION DEAL YIELDS HOPE

**J**ust as it appeared that congressional Republicans and Democrats had given up on working together, last month's approval of legislation to prevent the certain collapse of the federal insurance system protecting benefits of millions of multiemployer pension plan participants gives hope that bipartisanship is not dead in Washington.

Rep. John Kline, R-Minn., the conservative chairman of the House Education and the Workforce Committee, and Rep. George Miller, D-Calif., the committee's ranking minority member and one of House of Representatives' more liberal members, put their differences aside to fashion a multiemployer pension plan insurance agreement that was included in a broader spending bill that lawmakers passed last month.

The catalyst for that bipartisanship was a November report by the Pension Benefit Guaranty Corp. that the agency's deficit in its multiemployer insurance program leaped five-fold in just one year to more than \$42 billion.

The situation was so bleak that the PBGC projected a 90% certainty that in a little more than a decade its multiemployer insurance program agency would run out of money and be unable to pay guaranteed benefits to participants in insolvent plans.

Plan trustees will be allowed to cut participants' benefits if plans' ratio of retirees to active participants hit certain levels or if a plan becomes significantly underfunded.

But, participants will not be left high and dry. Benefits for participants age 80 and older cannot be cut.

And no matter what, benefits earned by participants in financially troubled plans cannot be reduced to less than 110% of the amount — currently about \$13,000 — guaranteed by the PBGC.

To be sure, some participants could see their benefits cut due to the new law. But had Congress done nothing, more plans surely would have gone broke, with that huge benefit burden ultimately bankrupting the PBGC and resulting in participants receiving a lot less.

We hope that lawmakers' bipartisanship to prevent a disaster in the multiemployer pension plan benefit arena is just the start of a new congressional efforts to work together to fashion agreements on other needed legislation, such as changes to the health care reform law.

Given that neither party has a monopoly on good or, for that matter, bad ideas, we believe that the best legislative results can be achieved when Republicans and Democrats bridge differences and find that elusive middle ground.

*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

## CONGRESSIONAL AGENDA LOOKS MIGHTY FAMILIAR

**W**hen the new Congress convenes this month members may be forgiven if some of the agenda they face looks an awful lot like the one that greeted the last Congress two years ago.

One of the first things that lawmakers should deal with is reauthorization of the federal terrorism insurance backstop program. This was supposed to be a slam dunk in the last Congress. The Senate passed a bill last summer that would have extended the program for seven years; the House Financial Services Committee approved a bill that would have extended it for five years.

Last month, the House overwhelmingly passed a bill that would have extended the program for six years. That's called a compromise — an admittedly dirty word to some on Capitol Hill. But a funny thing — funny in the sense of close to inexplicable rather than ha-ha — happened in the Senate. Because of the Senate's sometimes arcane rules, one senator — a senator who happened to be retiring at that — was able to block the reauthorization because he objected to a provision that he said offended state's rights. The Senate adjourned without taking up the bill and the federal terrorism insurance program expired last week.

Congress ought to move on this quickly, just as House leaders have indicated they will. The bill, which has the added attraction of creating a National Association of Registered Agents & Brokers, enjoyed broad support in the old Congress, and there's no reason to think that won't be the case in the new. Sure, there will be posturing and complaints from both the far left and far right about corporate welfare, but in the end,



**MARK A. HOFMANN**

SENIOR EDITOR

proponents should be able to make the arguments that the program bolsters national economic security and get the measure to the president's desk early in this year.

National security in the form of cybersecurity also is an issue left over from the last Congress. The cyber attack on Sony Pictures Entertainment Inc. underscored the serious nature of

cybersecurity. That's particularly true if it involves state actors or hackers in the pay of states, and the administration has said that all signs point in North Korea being behind the attack. But Congress has yet to approve legislation that would allow the public and private sectors to more readily share information about cyber threats.

The cyber assault on Sony adds urgency to crafting a legislative response that enhances public/private coordination of information regarding attacks. Unfortunately, the most forceful advocate of such an approach — former Rep. Mike Rogers, R-Mich. — did not seek re-election. Somebody will have to take up the cause and do so quickly.

These are just two issues the last Congress failed to settle. Given the events of the past few weeks, the sooner lawmakers do so now, the better. Delay is a luxury that we can ill afford.

# ADA accommodations go beyond cubicle, ergonomic adjustments

Employers are used to thinking of ergonomic accommodations under the Americans with Disabilities Act, but an ADA leave of absence is also considered an accommodation. Kevin Curry, national practice leader and senior vice president of sales and marketing at Reed Group Ltd., offers guidance for firms to evaluate employee requests for such leave, as well as how to comply with their obligations under the law.

The Americans with Disabilities Act requires employers to provide reasonable accommodations to enable employees with physical or mental disabilities to perform the essential functions of their jobs.

Usually when employers think of an accommodation, it's in the context of ergonomic equipment or adjustments to an employee's workspace. Workplace accommodations, however, represent only one type of accommodation. A leave of absence also can be an accommodation.

An ADA "absence" is time off granted to allow an employee with a disability to return to work. This absence is on top of any other job-protected leave that's already exhausted.

Penalties can be severe for employers who don't properly consider leave as an accommodation before terminating an employee who can't return from work after an absence, but the guidance from the U.S. Equal Employment Opportunity Commission and various court decisions is vague. As a result, many employers are uncertain of their obligations under the law.

## Three tests for leave accommodations

The EEOC and the courts haven't yet provided an effective accommodation evaluation process for employers to follow. Employers need to use repeatable standards for evaluating whether an accommodation would be ADA-compliant. Here are three simple accommodation tests that can be applied to each employee absence during the ADA interactive process:

**Accommodation test 1:** Is the requested leave of absence a "reasonable" accommodation?

An employer must engage in the interactive process at the exhaustion of a job-protected absence to determine if additional leave can be offered as a reasonable accommodation.

According to the EEOC, a reasonable accommodation is simply one that is plausible or appears feasible. To determine feasibility, employers must consider a number of factors, including the length of the leave, frequency and unpredictability of any intermittent absences, and the flexibility of the employee's scheduled return-to-work date.

Unfortunately, there are very few solid rules when it comes to determining whether leave is a reasonable accommodation, or for how long a

leave may last and still be considered reasonable.

Several cases have suggested two guidelines that employers may follow:

1. An employer can expect an employee to provide an estimated return to work date. Return to work in this case means the resumption of the employee's essential duties. Without an end date, an employer is not expected to be able to determine whether the accommodation is reasonable.

2. The leave request must assure an employer that an employee can perform the essential functions of his or her position in the "near future." Because near future is not defined, employers are advised to use the three accommodation tests as a guide.

As employers work through this stage of the interactive process, remember that the EEOC considers it reasonable for an employer to modify its employment policies to accommodate an employee's impairment. This may include modifying "no-fault" or other leave or attendance policies so employees aren't terminated automatically, if they cannot return to work after the period defined in the employer's leave policy. In fact, the failure to do so has resulted in multimillion-dollar consent decrees.

The good news is the EEOC doesn't expect employers to offer paid leave as a reasonable accommodation. An important point, though, is that an employer cannot discriminate or treat a disabled employee differently than other employees. So if the employer offers paid leave or other benefits during leave to other similar employees, then those same leaves or benefits need to be extended to the disabled employee.

Allowing the employee to use paid leave accrued under vacation or paid time off plans during a leave is a reasonable accommodation. If the employee's accrued paid time off is not sufficient to cover the entire leave requested, it's perfectly fine for the remainder of the leave to be unpaid.

**Accommodation test 2:** Is the leave of absence accommodation effective?

The accommodation must enable the employee to perform the essential functions of his or her job. An employer must decide whether leave is an effective accommodation by considering several factors:

- The nature of the employee's disability and limitations.

- The anticipated duration of the leave.
- The employee's position, including essential and marginal functions.
- What purpose the leave will serve to enable an employee to return to work to perform his or her essential functions.
- The likelihood that the employee will be able to perform his or her essential functions at the end of the leave.
- The success or failure of past accommodations attempted for the employee.
- Other accommodations such as ergonomic adjustments, schedule changes, reasonable changes to job descriptions for an employee.

The answers to most of these questions are straightforward, but need to be considered as a whole to determine whether or not the accommodation can be considered effective.

**Accommodation test 3:** Does the requested leave impose an undue hardship on the employer or its operations?

The EEOC defines undue hardship as a "significant difficulty or expense" resulting from a potential accommodation.

Significant financial difficulty refers to the cost of providing the accommodation. Significant operational difficulty means an accommodation that's unduly extensive, substantial or disruptive, or that would fundamentally alter the nature of the business operation. Employers also have to take into account their own size and ability to absorb the effect of an employee accommodation.

No EEOC rules specify how long a leave of absence needs to be before it constitutes an undue hardship. As with the other accommodation tests, employers need to review each employee's situation — and the potential effect of each accommodation option — individually during the interactive process.

## Documentation to prove compliance

When considering whether the leave accommodation is an undue hardship, it's essential for an employer to collect and document facts and evidence, and to be specific and systematic with the undue-hardship analysis.

Leaves of absence that are erratic, unscheduled, indefinite and/or unpredictable are not considered reasonable.

Employers can find themselves in a difficult spot when it comes to leave accommodations under the ADA. On the one hand, the rules governing leave accommodations are sparse and sometimes confusing. On the other hand, the EEOC is actively investigating employers who are not in compliance with leave accommodation rules — and the penalties for getting it wrong can be punishing.

The three accommodation tests can help employers stay on the right side of the law — but remember, the answers uncovered may be subjective. Work through the process systematically and always document, document, document.



Kevin Curry is national practice leader and senior vice president of sales and marketing at the Reed Group Ltd. He is a recognized expert in absence and disability management. He can be reached at [KCurry@reedgroup.com](mailto:KCurry@reedgroup.com) and 303-407-0690.

SPECIAL REPORT

Workplace Safety Trends

One size doesn't fit all with women's protective gear

PAGE 18

Drug and behavioral testing key parts of prevention program

PAGE 19

Hospitals improve training protocols after Ebola cases

PAGE 20

# Valuing safety at work

Employers combine technology with worker feedback to avoid injuries



BY STEPHANIE GOLDBERG

Companies are creating safer work environments by allowing employees to report mistakes and potential dangers without retribution, as well as using techniques that promote safety as a value rather than an obligation.

Nonpunitive, close-call reporting systems, which have been successfully utilized by the airline and health care industries for at least a decade, are becoming increasingly popular in manufacturing, construction and other industries, safety experts say.

Since it's easy to recognize unsafe sit-

uations, such as a worker who's not wearing personal protective equipment, some companies have turned their safety programs into "the tool they use to document inefficiencies," said Trish Ennis, Denver-based president of the American Society of Safety Engineers and senior risk control consultant at Willis North America Inc.

Using safety as a disciplinary tool can prevent companies from becoming learning organizations, which is why implementing a nonpunitive, close-call reporting system is considered a best practice among many safety professionals, Ms. Ennis said.

More employers are starting to under-

stand there's a difference between consequence and discipline. Depending on the situation, she said, workers who've identified near misses might be invited to partake in devising the solution, and workers who've made mistakes might be asked to complete additional training.

A close-call reporting system functions like a "suggestion box on steroids," said Debbie Hersman, president and CEO of the National Safety Council in Itasca, Illinois. "You have a process by which you deal with input (from employees) and you also communicate back out to the employees what happened and what

See REPORTING page 18

## SAFE WORKPLACES

Safety professionals suggest these best practices.

- **Implement** a nonpunitive, close-call reporting system.
- **Use** a mobile device to communicate with worksites for instant feedback.
- **Highlight** what went right, as well as what went wrong.
- **Document** the condition of a worksite to improve conditions.
- **Allow** company locations to create unique safety programs.
- **Promote** safety as a value rather than as an obligation.

# HEALTH AND SAFETY AT WORK

Ensure employee health, safety and welfare

1

Appoint qualified health and safety advisors

4



Perform regular safety and employee health risk assessments

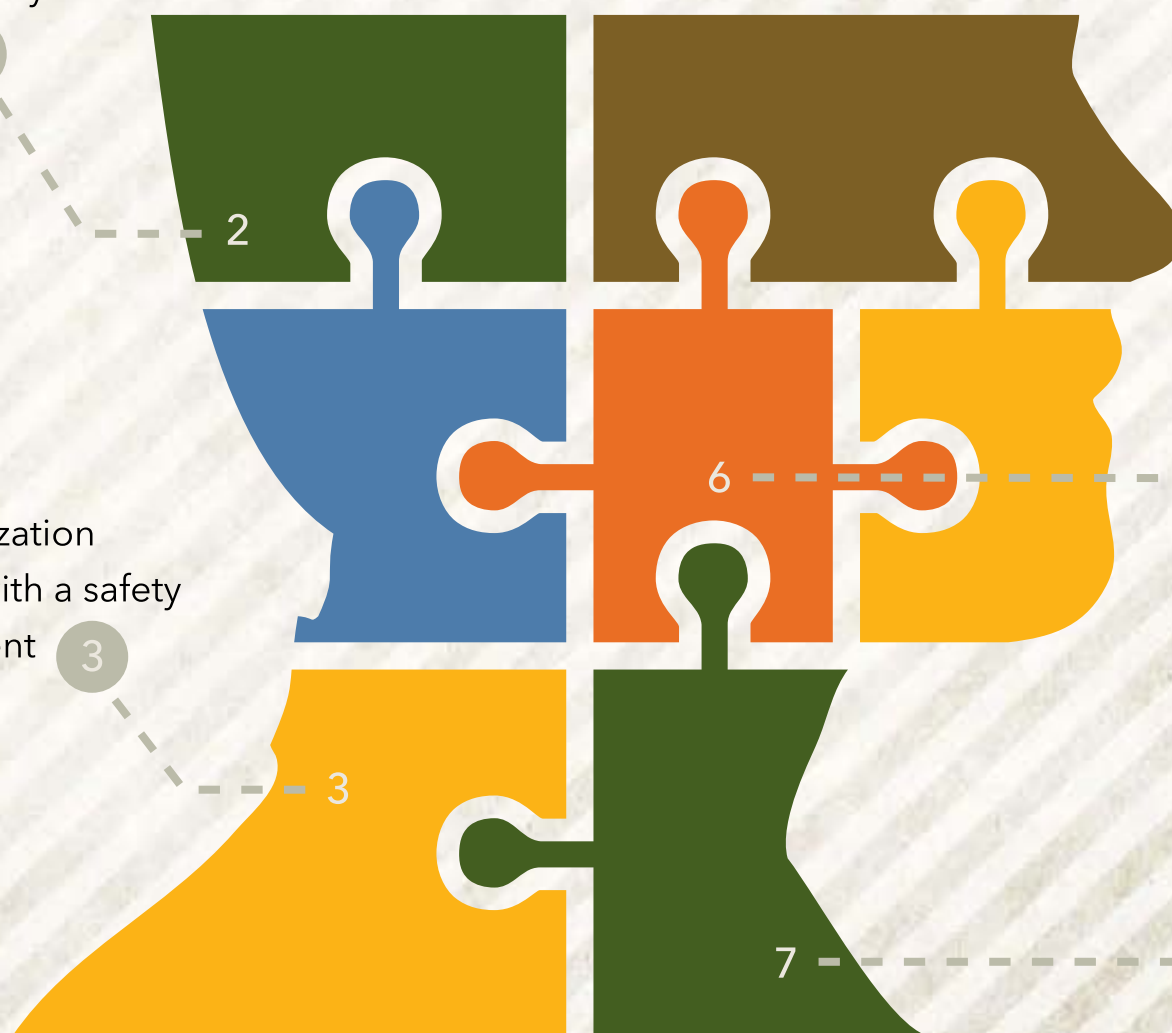
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Implement and review safety measures

2

Address all safety risks and concerns

6



Protect organization and workers with a safety policy statement

3

Provide safety education, training and supervision

7

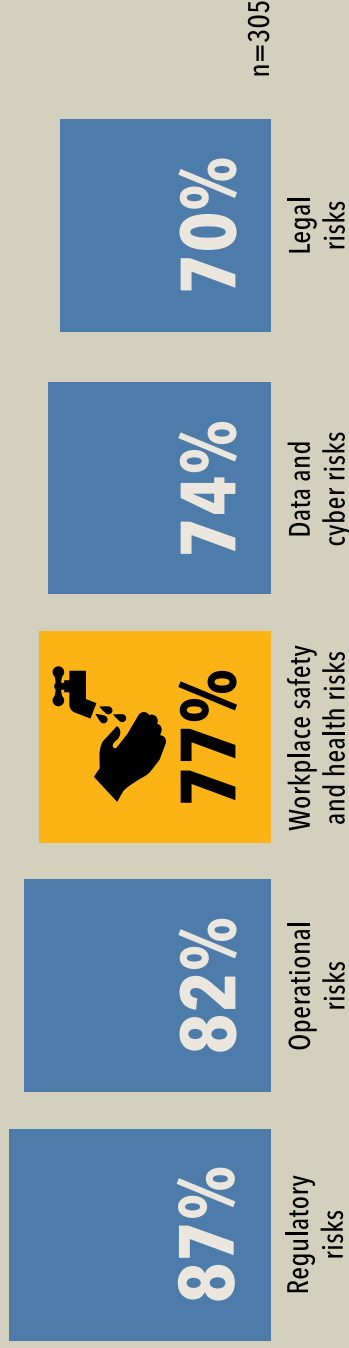
## SAFETY AT WORK:

In October and November 2014, *Business Insurance* conducted an online survey of readers about employee safety and health at work practices. A total of 305 individuals working in areas such as risk management, human resources, safety, general management and compliance participated in this survey. Only those familiar with their company's employee safety and/or health at work practices completed the survey.

## KEY CONCERN ACROSS COMPANIES

### TOP 5 RISKS COMPANIES CURRENTLY MEASURE/MONITOR

SAFETY AT WORK IS AMONG THE TOP RISKS COMPANIES MONITOR. FOR COMPANIES WITH 500 OR MORE EMPLOYEES, WORKPLACE SAFETY IS AT THE TOP.



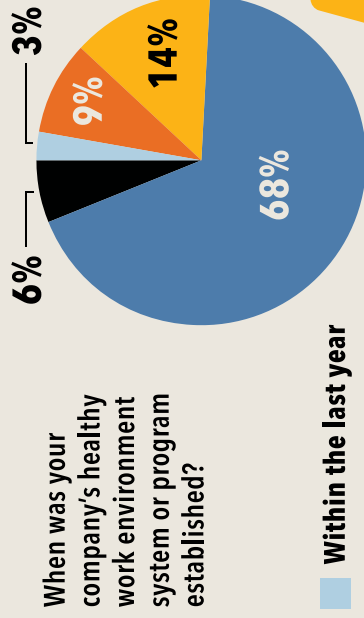
### TOP REASONS FOR ESTABLISHING A SAFETY PROGRAM

- To attract and retain employees
- To comply with state regulation
- To lower other insurance expenses
- To be eligible for a workers compensation premium reduction



### SAFETY PROGRAM TENURE

When was your company's healthy work environment system or program established?



- Within the last year
- Within the last 2 years
- More than 2 but less than 5 years ago
- More than 5 years ago
- Do not know/not sure

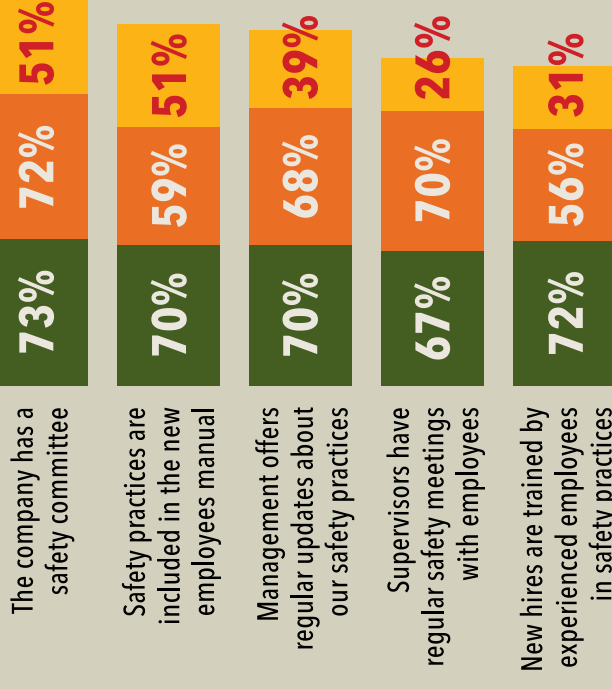
Base: Company has a safety/health program n=247

### SAFETY PROGRAM PREVALENCE

### TOP 5 SAFETY PRACTICES

Which of the following, if any, are part of your company's safety procedures?\*

% OF WHITE-COLLAR WORKERS



\* Multiple responses  
Red = Statistically significantly lower

### TOP 5 SAFETY CONCERNS

Which of the following, if any, are safety concerns in your company?\*

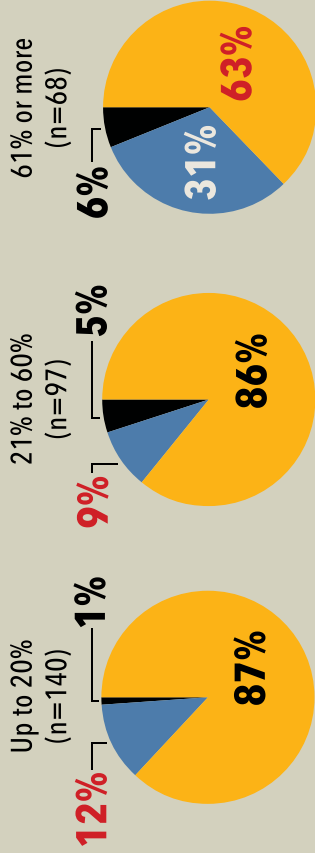




Does your company have a system or program in place for managing employee safety and a healthy work environment?

- Yes
- No
- Do not know/not sure

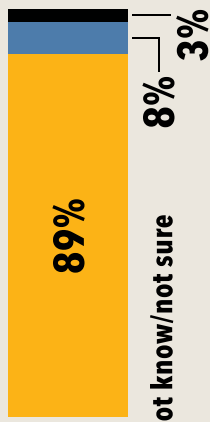
**Red** = Statistically significantly lower



## SAFETY EQUIPMENT

Is safety equipment provided to employees working in areas where workplace safety is a concern?

- Yes
- No
- Do not know/not sure



n=305

## OVERALL EFFECTIVENESS

Overall effectiveness of your organization's workplace safety and health practices in achieving desired outcomes.

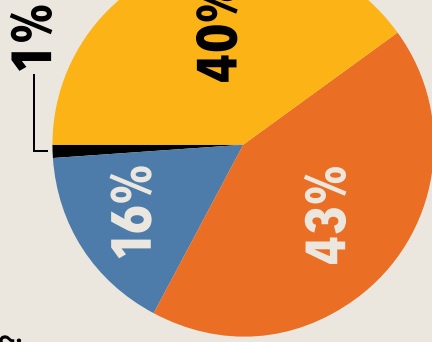


n=305

## THE WORKPLACE SAFETY AND HEALTH ROLE

Does your company have a person designated as the head of workplace safety and health?

- Yes, and this is his/her main responsibility
- Yes, but he/she is also in charge of other areas
- No
- Do not know/not sure

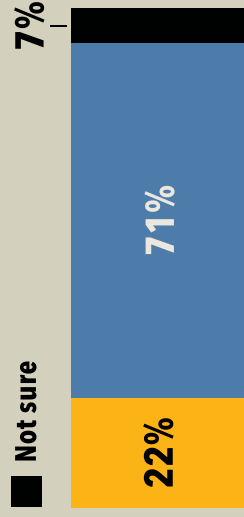


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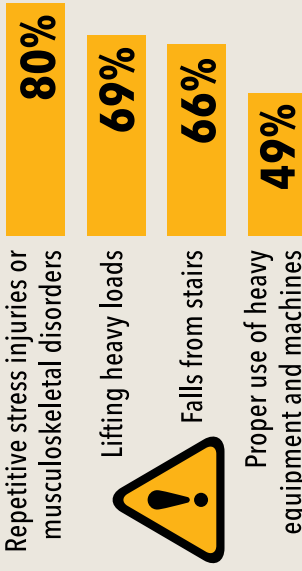
## COMPANY APPROACH

How would you describe your company's approach to workplace safety and health practices?

- **Reactive:** Reviewed/changed only as a result of an accident or close call
- **Proactive:** Always looking for ways to improve workplace safety and health
- **Not sure**



n=305



\* Multiple responses

n=305

## TOP 5 SAFETY RESOURCES

Which of the following, if any, does your company use to evaluate workplace safety practices and procedures?\*

- 65%** Material safety data sheets (MSDS)
- 63%** OSHA website
- 59%** Programs/procedures used by others in industry
- 51%** Consultants such as safety experts and industrial hygienists



**49%** Review of safety manuals for all equipment

\* Multiple responses

n=305

## RISK MANAGEMENT & WORKPLACE SAFETY

What is the relationship in your company between risk management and workplace safety/health?

- **No relationship**
- **Some relationship**
- **Strong relationship, risk management is involved in evaluating workplace safety/health issues**
- **Do not know/not sure**



n=305

# REPORTING

Continued from page 14

changed. That's a really important part."

Mike Porter, director of global environmental, health and safety at Goodyear Tire & Rubber Co. in Akron, Ohio, said giving workers the option to remain anonymous is especially important when it comes to collecting behavioral-based safety observations.

"If you were observing me, and you wanted to remain anonymous, you have the right," Mr. Porter said. "Or you can put your name in there, and you'll get immediate feedback."

TJ Lyons, construction safety manager for global construction and environmental services firm Gilbane Federal in New York, said he remembers walking around a worksite 10 years ago with his then-boss when the man bent down and cut a cord that was not supposed to be laying on the ground, rather than just telling the worker how to fix it.

Mr. Lyons said he reminds workers that his program is a construc-

defend, depending on the situation."

However, technology can lead to privacy concerns, Ms. Ennis said. And companies that use safety as a disciplinary tool will likely "find that people are less willing to use technology to increase (safety)," she said.

There are plenty of safety techniques that don't utilize technology, experts say.

Once a company with multiple locations has outlined the basic properties of its safety philosophy, they might consider letting each facility find its own ways to support it, said Dan Kugler, director of the Center for Insurance and Risk Management at the University of Wisconsin Oshkosh.

It can be done through an incentive program or team meetings, said Mr. Kugler, the former assistant treasurer of risk management at Snap-on Inc., which he said practiced a "top down, bottom up" approach to safety.

In addition to receiving support from corporate risk management and safety, and other facilities, each Snap-on location had the opportunity to design and implement its own safety program that

## GOODYEAR VALUES SAFETY

**G**oodyear Tire & Rubber Co.'s "No One Gets Hurt" safety program aims to empower workers and treat safety as a company value rather than something to check off a to-do list.

The initiative has evolved since it was conceived in 2005 to include key programs, such as "Target Zero," which encourages its more than 60,000 employees to strive for zero injuries and incidents by reporting unsafe conditions, behaviors and near misses, said Mike Porter, director of global environmental, health and safety at Goodyear in Akron, Ohio.

More importantly than encouraging workers to submit a report, "we empower associates to correct that near miss," Mr. Porter said. "If someone sees something lying on the floor, before someone trips on it ... if you have the ability to pick it up, you should pick it up."

Other programs include regional campaigns like Goodyear Indonesia's "Hero on the Go," which encourages workers to also practice safe behaviors at home and protect the environment. And Goodyear plants in Latin America have a campaign called "Lightning Stop."

What that means is, "if I have a machine that's not responding right, I'm going to pause for a moment and get that fixed because my personal safety is such a value to me, I'm not going to allow that (machine) to put me at risk," Mr. Porter said. "There are certain things when it comes to safety that will not be compromised when it becomes a value."

Mr. Porter said Goodyear credits its global safety initiative and regional safety programs with a 74.5% reduction in companywide worker injury rates since 2008.

"That translates into thousands of fewer people requiring medical attention ... so it brings a lot of joy to families and less pain and suffering," Mr. Porter said.

By Stephanie Goldberg

rather than a priority, Mr. Porter said. That shift is evident at a facility in Brazil, which displays large-scale posters of workers' family members, he said.

The posters are there to remind workers why they show up every day — to provide for their families — and that "we want them to go home safe at the end of the day," Mr. Porter said.

## Insist on proper fit for women's work gear

BY STEPHANIE GOLDBERG

**E**mployers should pay closer attention to the fit of personal protective equipment, as more women find work in safety-sensitive industries.

The number of women — as well as men — in construction dropped during the recession in 2008, "but it's on the way back up again," said Carol Schmeidler, manager of general safety and industrial hygiene programs for the department of environmental health and safety at the University at Buffalo, The State University of New York in Buffalo, New York. Ms. Schmeidler also wrote a chapter about women in construction for the 2014 textbook, *Construction Safety Management and Engineering*.

Of the 9.3 million people working in construction in 2013, about 840,000 — or 9.1% — were women, according to the most recent data from the U.S. Bureau of Labor Statistics.

Since more women are working in industries that require employees to wear personal protective equipment has spurred a larger discussion about ill-fitting gear, experts say.

While protective shoes are relatively easy to get in women's sizes today, coveralls and tools that are sized for smaller hands can be more difficult to find.

"There are some (glove) lines now that come in extra small, but imagine using tools with gloves that are too big for you," Ms. Schmeidler said. "The risk of hitting yourself or getting a glove caught in something is huge."

Safety glasses and hard hats also need to be sized because, if safety equipment isn't comfortable, it's going to be modified or not worn at all, experts say.

For example, people with smaller ear canals need smaller ear plugs, Ms. Schmeidler said. Workers tend to cut foam ear plugs in half if they're too big, but that means they're not "provid-

ing the degree of protection that they should," she said.

While some employers might be unaware that equipment doesn't offer maximum protection when it's ill-fitting, others could be ordering a large quantity of similar sizes to save money, experts say, adding that not designating sizes could hurt employers and their workers.

Jeremy Bethancourt, director of safety, health and training for LeBlanc Building Co. Inc. in Scottsdale, Arizona, said he uses unisex fall-protection harnesses that range in size to fit all of his workers.

"I have a middle ground of what fits, and then when I have one that fits one way or the other, I'll just order (another size)," he said. "If it doesn't fit right, they're not going to use it, and it's not going to work correctly for them."

Pants and sleeves that are too long are a tricky problem to fix on most worksites; if they're not rolled up, they create a tripping hazard, but if they are rolled up, they're not providing protection to parts of the arms and legs, experts say.

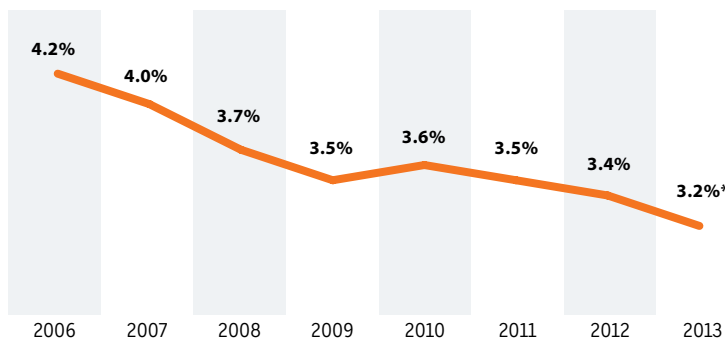
And it's not just women who have trouble with ill-fitting personal protective equipment, said Trish Ennis, Denver-based president of the Des Plaines, Illinois-based American Society of Safety Engineers and senior risk control consultant with Willis North America Inc. "It's anyone who falls outside the parameters of what we consider to be the average physique," she said.

Ms. Schmeidler, who recommends personal protective equipment for staff members at the University at Buffalo, said she's never found it difficult to make a case for properly fitting gear, but that's probably not the norm.

"It's not that we have unlimited resources," Ms. Schmeidler said. "But we certainly have a varied population of workers in our facilities department and on campus that wear different sizes."

## WORKPLACE FATALITIES

Rate of fatal work injuries, 2006-2013, per 100,000 full-time equivalent workers<sup>1</sup>



\*Data for 2013 are preliminary; all other years are revised and final.  
1 Rate is based on full-time workers working 40 hours per week, 50 weeks per year.

Source: U.S. Bureau of Labor Statistics

tive one by always highlighting things that are done correctly, as well as what's wrong or unsafe. And when people ask what he's up to as he makes his rounds, he replies, "Just saving lives."

In addition to positive reinforcement, Mr. Lyons said he makes work environments safer by using technology.

If someone on a site inspection has a question about whether something is safe, he or she can send visuals using a tablet, "and I can make the determination from 5,000 miles away without guessing like I would on the telephone," he said.

Another safety technique is using small video cameras to document worksite conditions, Ms. Ennis said.

"For example, a contractor doing work on a highway project can drive the project in the morning with their GoPro (camera), and that will document the condition of the work zone prior to work starting," she said, adding that footage can be used "to improve or to

addressed the company's safety philosophy, Mr. Kugler said.

Sometimes, safety has to be about spending now and saving later. That's the philosophy at Scottsdale, Arizona-based LeBlanc Building Co. Inc.

Something as small as making sure extra safety glasses are available for workers who've scratched their lenses makes a huge difference in the long run, said Jeremy Bethancourt, director of safety, health and training for the commercial/residential contractor.

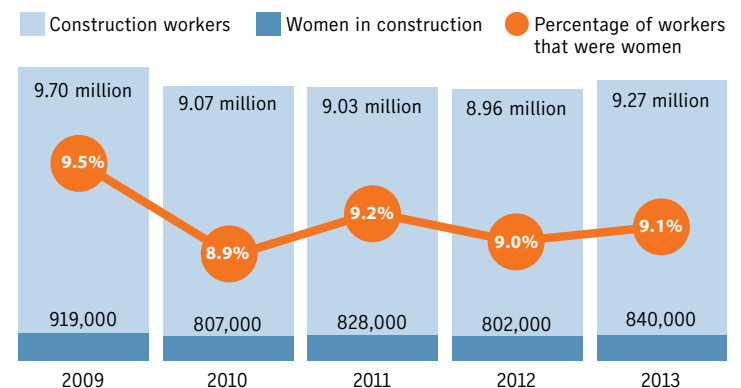
It can get expensive, but "it's important for them to know we really are going to be there to support them with everything they need," he said, adding that such gestures also help with motivating workers to be safe.

Mr. Porter said Goodyear also encourages its plants to communicate and promote the company's "No One Gets Hurt" safety initiative the way that's best for each location.

For about two years, the company has considered safety a value

## WOMEN IN CONSTRUCTION

Of the 9.3 million people working in construction in 2013, about 840,000, or 9.1%, were women. The number of females in construction peaked in 2009.



Source: U.S. Bureau of Labor Statistics



# Drug and behavioral testing should be part of broad safety regimen

Experts say a successful program starts and ends with robust employee assistance program

BY BILL KENEALY

While implementing a drug-testing and monitoring program can provide a variety of benefits for employers, those firms looking to improve safety in the workplace need to keep in mind the strengths and limits of the practice.

Indeed, workplace drug testing has been common for decades, but quantifying drug testing's effect on safety is difficult.

"It's been difficult to accumulate hard facts about a causal relationship," said Donna Smith, St. Petersburg, Florida-based program development and regulatory compliance officer for employment drug screening provider EDPM Inc.

Evren Esen, Washington-based director of survey programs for the Society for Human Resource Management, said her research indicates the most direct evidence for the efficacy of drug testing is improvements in areas such as absenteeism and worker productivity.

"Based on our results, we do see that it has had an impact," Ms. Esen said. "For example, 19% of the HR professionals we surveyed say they saw an increase in worker productivity after the implementation of a drug-testing program."

Scott Collins, Denver-based director of risk management and insurance at Digital First Media, said that while the safety risk presented by inebriated workers is self-evident, companies need to carefully craft a drug-testing regimen to make sure it fits the particular needs of their businesses.

"From a drug use standpoint, it really depends on the industry you are in," Mr. Collins said. "So an office worker using drugs may not be as productive, but they are probably not a huge safety risk, whereas an impaired crane operator is a whole other ball of wax."

In addition to considering the type of work employees perform, a risk manager also should perform careful cost/benefit analysis of a drug-testing program, Mr. Collins said. For example, while implementing a program may

save a company on workers compensation premiums, those savings could be more than offset by costs related to the program.

"There will be costs for testing, implementation and maintenance, not to mention the cost of turnover and of hiring," he said.

Keith Rosenblum, Kansas City, Missouri-based senior strategist for workers compensation for Lockton Cos. L.L.C., said that in addition to drug testing, employers should consider less costly methods such as personality-based, integrity testing for employees, noting that many applicants completing integrity tests will self-disclose undesirable behaviors such as on-the-job illicit drug use.

"Sometimes some interventions are so simple that people are afraid to use them," Mr. Rosenblum said. "You have to think as an employer what you are trying to achieve."

Elsewhere, advances in drug-testing technology have enabled companies to become more tactical in how they approach drug testing, Ms. Smith said. Where an

energy company may have once tested a large group of employees and waited days for the results to come back from a lab, increasingly predictive oral tests can yield real-time results.

"One area where accuracy has improved is the sensitivity of reagents used on instant tests of urine or oral fluids," she said. "These tests are especially helpful for quickly screening workers on their way to a safety critical job such as an oil platform or a construction site."

Dee Mason, Columbus, Ohio-based founder and CEO of drug-free workplace program adviser Working Partners Systems Inc., said the need for drug testing is more acute than ever to maintain a safe workplace given the well-documented surge in prescription drug and opioid abuse in recent years.

"We are really having a problem with prescription drugs," Ms. Mason said. "There are nearly double the number of people abusing prescription drugs as (are abusing) cocaine, heroin, hallucinogens and inhalants combined."

Nonetheless, companies looking to expand the panel of substances they test employees for need to exercise caution, said Josephine Elizabeth Kenney, senior vice president of compliance/senior compliance counsel at Atlanta, Georgia-based employee background screening and analytics firm First Advantage. The Drug Testing Advisory Board of the Substance Abuse and Mental Health Services Administration is now considering the inclusion of Schedule II synthetic opioids such as oxycodone and hydrocodone to the influential mandatory guidelines for the Federal Workplace Drug testing Programs.

"The problem with expanding on your own right now is that there are no acknowledged best practices for dealing with drugs beyond traditional opiates such as opium," Ms. Kenney said. "DTAB is looking at how to manage synthetics, and until it decides, you will have medical review issues."

However, companies that focus too narrowly on drug testing risk missing out on the bigger picture of workplace safety.

"Drug testing in and of itself is just a step in a process," Ms. Mason said. "You really need to have education and awareness. If workers understand that the testing is part of workplace safety program you won't have as much of a backlash."

Likewise, Ms. Kenney said a robust employee assistance program aimed at helping employees with addiction issues was essential.

"A successful workplace prevention program begins and ends with a good EAP program," she said.

## OHIO FIRM GETS RESULTS FROM TESTING

The concepts of safety and a drug-free workplace are intertwined at Columbus, Ohio-based commercial construction company Elford Inc. The company began its drug-testing program in 1992, said Colleen Rains, Elford's director of human resources.

"We were an early adopter because we knew it was the right thing to do," Ms. Rains said, noting that the program has three primary goals. "One purpose is to provide a safe workplace for employees, subcontractors and visitors. Another is to have a productive workforce. Lastly, we want to provide helping services for anybody who raises their hand, voluntarily or involuntarily, that wants to be clean and sober."

Accordingly, the 160-employee company drugs tests every employee in the first two weeks of employment and also uses post-accident reasonable suspicion testing.

"Some places choose to only put certain parts of their workforce in a drug-free workplace program, but everybody in our organization from the CEO to college interns are subject to this program," she said.

Elford's program follows Substance Abuse and Mental Health Services Administration protocols and test for separate substances, Ms. Rains said, noting that the company uses a medical review officer that takes a look at any test result that has any narcotic.

For example, the review officer can help the company confirm whether use of a prescription drug is legitimate, she said.

"If the employee has a prescription and a level in their system that corresponds to the correct dose, the company will get a negative test result," she said. "However, if the individual is taking somebody else's meds or overusing that drug, the MRO (medical review officer) will report a positive result."

The company's drug-testing program contributed to a safer work environment, Ms. Rains said, noting that Elford won a first place National Construction Safety Excellence Award in 2013 from The Associated General Contractors of America.

By Bill Kenealy

# HEALTH CARE PROFESSIONALS LEARNED VALUABLE SAFETY LESSONS FROM EBOLA CASES

Hospitals adopt protocols that will aid them treating infectious-disease patients

BY SHEENA HARRISON

**H**ospital risk management and safety professionals say their health care systems have strengthened safety procedures and implemented specialized training in the wake of recent Ebola cases in the United States, in order to protect hospital workers who may need to treat other potentially deadly pathogens.

Strategies include working with dedicated teams of health care professionals to undergo training that would help reduce the chance of infection, and rigorous practice in donning and doffing personal protective equipment to ensure that such gear can be removed without spreading disease.

"I can't imagine an organization that didn't start drilling with their emergency management teams," said Rebecca Havlisch, vice president of business health with Phoenix-based Banner Health System, which has more than 39,000 employees at 25 hospitals and other medical facilities in seven states.

Heightened safety procedures could be helpful in protecting health systems from costly workers compensation claims that could result if a health care worker contracted Ebola or other serious communicable illness in the future, experts say.

"I think we all need to realize that there's going to be some type of emerging infectious disease on the horizon," said Lauri Laudano, network safety officer with Seton Healthcare Family in Austin, Texas. "It may not be Ebola, it might be something else ... and we just always need to stay prepared."

Seton has nearly 13,000 employees at 11 hospitals and three health care clinics in Texas. The health care system began strategizing how to protect its patients and employees from Ebola, after two nurses at Texas Health Presbyterian Hospital in Dallas tested positive for the virus in October while treating an infected man who later died.

"That was a bit scary for us, since we really didn't know how the nurse was infected who was caring for that patient in Dallas," Ms. Laudano said, regarding Texas

Health Presbyterian which isn't a Seton-owned hospital. "So we were second guessing our (personal protective equipment) practices and whether we were really fully protected."

The system sent email communications to all of its associates on safety procedures they should be aware of, and implemented computer-based training for select groups of hospital employees — such as those in the emergency room — who would be most likely to come in contact with a patient who might have Ebola, Ms. Laudano said.

A smaller set of emergency room staff and other medical workers attended hands-on training that included practice on how to safely put on and remove protective gear that included full face masks, she said.

Additionally, the system took precautions such as treating Ebola as an airborne pathogen — even though Seton medical experts know that the virus isn't transmitted via air — in order to add another layer of safety protocols that could protect patients and employees against any type of disease.

Ms. Havlisch of Banner Health said the hospital's facilities in the Phoenix area and northern Colorado also drilled employees on the proper way to don and doff protective gear. Banner Health recruited staff members across a number of disciplines — such as nursing, intensive care and infectious disease specialists — to participate in a SWAT team that would be highly trained in treating Ebola patients and could be mobilized to various Banner Health facilities.

Training a select group of medical workers allowed Banner Health to make sure the SWAT team had comprehensive training rather than providing more limited training to a wider group of employees, Ms. Havlisch said.

"We didn't think we could get the level of experience that we wanted ... by training thousands of nurses (compared with) training a couple hundred first responders and 50 or 60 (employees) on our SWAT team," she said.

Banner Health's two-week SWAT team training was modified in the middle of the course to



AP PHOTO

A custom bio-containment unit for potential Ebola cases was built last fall separately from the main buildings at Mount Sinai Hospital in New York and can house up to three patients.

implement tightened protective gear guidelines that were introduced by the U.S. Centers for Disease Control and Prevention in the midst of the Ebola scare last year.

In an October statement, the CDC said medical facilities needed to ensure that all health care providers "practice numerous times to make sure they understand how to appropriately use" personal protective equipment. That led Banner Health team members to repeatedly practice using personal protection equipment.

"We know that the more you do something the better you get at it," Ms. Havlisch said.

In addition to keeping health care workers safe, such protection can help employers avoid paying "significant" medical expenses associated with treating an employee for Ebola or another infectious serious illness under a workers comp claim, said Christopher Flatt, managing director and leader of Marsh L.L.C.'s Workers' Compensation Center of Excellence in New York.

"If something is contracted in the course and scope of employment and it's particular to their indus-

try, it's likely that there would be workers comp coverage," Mr. Flatt said.

Avoiding such risks can be especially important in the workers comp market, since some workers comp insurers are seeking ways to exclude Ebola-related claims in light of last fall's Ebola cases, said Mark Zwickel, executive vice president of Pacific operations for Lockton Cos. L.L.C. in Los Angeles.

"One of the carriers, as part of their underwriting criteria, asked a question in the form of a warranty that they would not treat anyone with Ebola," Mr. Zwickel said.

Experts say safety precautions taken during last year's Ebola virus cases in the United States likely have prepared hospitals to better handle potential outbreaks that could come down the line.

"It raised our awareness," Ms. Laudano said. "Hospitals can sometimes slip into complacency with training programs and preparedness programs when you're not actually responding to that kind of event. So I'd say it was a wake-up call that we needed to ensure our programs are sustainable, even if we don't see Ebola for 10 more years."

## SAFELY TREATING EBOLA PATIENTS

The U.S. Centers for Disease Control and Prevention has a series of safety guidelines for health care workers who are treating suspected or confirmed Ebola patients.

- Evaluate whether a patient has traveled to a region, primarily Africa, where Ebola has spread or has had contact with someone with Ebola in the last 21 days, as well as whether that person is showing signs of illness.
- Isolate a patient in a private room who has symptoms and recent exposure to Ebola.
- Notify appropriate staff and public health authorities about a patient's potential need for Ebola treatment.
- Wear personal protective equipment while caring for Ebola patients.
- Limit the number of health care workers who enter a patient's room, and only perform necessary tests and procedures.
- Follow CDC guidelines for cleaning, disinfecting and managing waste.

Source: Centers for Disease Control and Prevention

## Guy Carpenter updates online risk modeling tool

Reinsurance broker Guy Carpenter & Co. L.L.C. has released an updated version of its reserve risk modeling tool, MetaRisk Reserve.

MetaRisk Reserve 4.0 offers a simplified Web interface and updated statistical methods, Guy Carpenter said in a statement.

The tool's Web interface allows users to work with multiple lines of business in a single workbook, as well as multiple reserve models in a single line of business, according to the statement.

Additionally, the tool's statistical methods, which allow users to calculate reserve risk while measuring trends in inflation, have been upgraded to allow users to remove anomalies from data, a spokeswoman for the reinsurance intermediary said.

"This new release furthers our commitment to developing a broad spectrum of economic capital modeling solutions, which enables insurers of all types and sizes to more effectively assess key risks, benchmark risk profiles, allocate capital, meet regulatory and rating agency requirements and strategize for the future," Steve White, chief actuary and head of enterprise analytics for Guy Carpenter, said in the statement.

## XL offers cover for risks from CBRN weapons

XL Group P.L.C. has launched a liability insurance product covering chemical, biological, radiological and nuclear weapons events.

The policy offers limits of up to \$25 million and is sold through XL's Lloyd's of London syndicate 1209, a spokeswoman for XL said.

The policy, which aims to address the potential damage and interruption to businesses by chemical, biological, radiological and nuclear weapons, is triggered if the act is committed with malicious intent, regardless of who committed it, according to a statement released late last month.

Further, the policy covers affected customers regardless of their distance from the site of the attack, according to the statement.

## Dallas Trucking offers small fleet insurance

Commercial vehicle and trucking insurance broker Dallas Trucking Insurance, a unit of Las Vegas-based broker GLG Inc., announced it is offering small fleet insurance for owners with two to 20 vehicles.

The policy offers limits of up to \$5 million, a spokesman for the Dallas-based broker said.

Premiums are determined by the number of vehicles included in the policy and the coverage terms and limits chosen by the customers, according to a statement announcing the policy.

Dallas Trucking Insurance also provides general liability, collision, physical damage, cargo, trailer, and excess and



## Genex offers Ebola guidelines for comp

Managed care services provider Genex Services L.L.C. said it has developed workers compensation-specific clinical guidelines for treating Ebola and the related Marburg virus from an injured worker's perspective.

The guidelines, "Hemorrhagic Fever Viruses: Ebola and Marburg," are designed to help case managers, employers and physician advisers understand the diseases and their treatment process, recognize early warning signs and set return-to-work goals for infected workers, according to Genex officials.

The guidelines combine information from the World Health Organization, the U.S. Centers for Disease Control and Prevention, clinical research and actual experience, and put it into a workers comp context to address

questions that arise when a worker becomes infected, such as "What treatments are appropriate? When is isolation appropriate? What rehabilitation is necessary? What precautions to take after (the infected worker) is treated and after they return to work?" said Dallas-based Dr. Maury Guzik, Genex branch manager and physician adviser who led the development of the guidelines.

"All of those various areas are looked at from the focus of the injured worker. What can they expect, what can their employers expect, what can we expect from the medical field, and what needs to be done to give the best experience?" Dr. Guzik said.

Wayne, Pennsylvania-based Genex plans to make the guidelines available for customers in January.

umbrella liability coverage, according to the company's website.

## Barbican approved for Lloyd's syndicate

Barbican Insurance Group has received approval to set up a special purpose syndicate at Lloyd's of London.

London-based Barbican announced that syndicate 6120 began underwriting a whole account quota share reinsurance contract of Barbican's multiline syndicate 1955 starting Jan. 1.

Syndicate 6120 is capitalized by funds from Credit Suisse Group A.G.'s insurance linked securities team and will have

capacity of £40 million (\$62.5 million) for its first year of operation, Barbican said in a statement.

The syndicate will be managed by Barbican Managing Agency Ltd., it said.

"The establishment of special purpose syndicate 6120 boosts the ability of syndicate 1955 to take further advantage of the multiple opportunities for profitable growth that we see across our underwriting divisions," said David Reeves, group CEO of Barbican, in the statement.

"We are very pleased with the level of support which we have received from the funds managed by the Credit Suisse ILS team and look forward to developing this strategic partnership further," he added.

## DEALS & MOVES

### Forensic engineering firm PT&C acquires competitor LWG Consulting

Forensic engineering services provider PT&C Forensics Inc., which does business as PT&C Forensic Consulting Services P.A., has acquired Northbrook, Illinois-based firm LWG Consulting Inc.

A spokeswoman for Atlanta-based PT&C declined to comment on the terms of the deal.

LWG provides equipment damage assessment, equipment restoration services, and accident investigation and failure analysis services to the property/casualty insurance industry and attorneys, PT&C, a unit of Atlanta-based Engle Martin & Associates Inc., said in a statement.

The combined company will do business as PT&C/LWG Forensic Consulting Services.

### Deere to sell crop insurance business to Farmers Mutual

Deere & Co. said it has reached a definitive agreement to sell its crop insurance business to West Des Moines, Iowa-based Farmers Mutual Hail Insurance Co. of Iowa.

Terms of the agreement, which is subject to regulatory approval, were not disclosed.

Moline, Illinois-based Deere is selling both its John Deere Insurance Co. and John Deere Risk Protection Inc. operating entities, which together make up its Johnston, Iowa-based John Deere Crop Insurance unit. Closing is expected in the first quarter of 2015.

Deere, which operates in 39 states, has an estimated \$432 million in 2014 gross written premiums in crop insurance, while Farmers Mutual, which operates in 15 states, has an estimated \$532 million.

### New York Life retirement services being acquired by John Hancock

New York Life Investment Management will sell its New York Life Retirement Plan Services business, excluding the stable value business, to John Hancock Financial, an NYLIM spokeswoman said.

The deal is expected to close in the first half of 2015. Terms of the transaction were not disclosed.

John Hancock will merge New York Life's business with John Hancock Retirement Plan Services. The combined business will cover 55,000 retirement plans and more than 2.5 million participants.

This acquisition will increase John Hancock's defined contribution plan assets under administration by about \$50 billion to \$135 billion.

### OneBeacon completes sale of nonspecialty runoff business

Hamilton, Bermuda-based OneBeacon Insurance Group Ltd. has closed the previously announced sale of its runoff business to an affiliate of Hamilton, Bermuda-based Armour Group Holdings Ltd.

The deal, which was announced in October of 2012, was held up due to regulatory approvals. The sale includes the transfer of legal entities that contain the assets, liabilities and capital supporting the runoff business, as well some staff and office space.

When announcing the deal in 2012, OneBeacon CEO Mike Miller said the sale would hasten the transition to a pure specialty company.

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WHAT MATTERS MOST

# PROPERTY

Continued from page 6

effect and thus had the “ultimate backstop,” he said.

“So the question is what will those carriers do going forward?” said Mr. Ellis, adding that insurers that wrote terrorism coverage while relying on the fact the backstop was in place “may decide to no longer do so.”

“The underwriters are still making decisions as to their individual positions, and I will tell you that there is no uniformity of thought or action as of right now,” said Alexandra Glickman, area vice chairman of Arthur J. Gallagher Risk Management Services Inc. in Glendale, California.

“The process right now is to identify any policies that may have a sunset trigger so that appropriate capacity can be matched to the exposure,” she said. “Fortunately, there is terrorism capacity, but it isn’t endless.”

Otherwise, the market is “very competitive,” said Randy Schreitmuller, vice president and manager of broker relations at Johnston, Rhode Island-based FM Global. “There’s plenty of capacity. Mother Nature has been fairly kind and on her best behavior, and balance sheets are strong. It’s probably going to be another good year for insurance buyers.”

“I found it to be a favorable market,” said Al Gorski, chief risk officer for the Orange County Transportation Authority in Orange, California. He noted that the authority’s property program covers buses that are insured as property when they’re parked in the bus spaces. “That’s a little trickier for some of the carriers to deal with,” he said. Still, he called the market competitive, noting that the authority received a rate decrease of 5% including the buses when it renewed its program on Dec. 1. “We were able to change some deductibles and some sublimits as well,” he said.

The year’s relatively low catastrophe losses are also helping temper the market.

“The quiet storm season appears to have a positive impact on the



LEONARD ZHUKOVSKY/SHUTTERSTOCK.COM

An event even larger than 2012’s Superstorm Sandy would be needed to harden the commercial property market, some say.

## ONLY A MAJOR CATASTROPHE WOULD TURN MARKET

**W**hat would it take to turn the current buyer-friendly commercial property market?

According to market observers, any single event would have to cause more insured damage than any other event previously recorded.

“You’re going to have to have a single event of more than \$50 billion to move the needle — and no one wants to see that,” said Alexandra Glickman, area vice chairman of Arthur J. Gallagher Risk Management Services Inc. in Glendale, California.

David Finnis, national property practice leader with Willis North America Inc. in Atlanta, noted that as early as the September 2013 Rendez-Vous de Septembre reinsurance meeting in Monte Carlo, Monaco, reinsurance executives thought a \$50 billion

event would be required to change things. “We’ve never had a \$50 billion event — it’s never happened,” he said.

Rick Miller, the Boston-based national property practice leader for Aon P.L.C.’s Aon Risk Solutions, thought that even a \$50 billion insured loss might not be a large enough single event to change the situation.

“We had Superstorm Sandy, which was a significant event, but for the industry it could be a \$100 billion type of event,” he said. “That said, the industry has a lot of surplus right now,” said Mr. Miller. “Events seem now to be short-term corrections.”

By way of comparison, the costliest insured man-made disaster was the Sept. 11, 2001, terrorist attack on New York, which caused more than \$25 billion in insured damage.

By Mark A. Hofmann

property market,” Carolyn Snow, director of risk management of Humana Inc. in Louisville, Kentucky, in an email.

“We were offered a two-year rate guarantee, subject to loss ratio, with significant rate reduction and coverage improvements. More importantly, we got concessions

on wind zones in the upper East Coast area, which will help us achieve a bigger premium reduction in the DIC market,” said Ms. Snow who was also the 2014 president of the Risk & Insurance Management Society Inc..

Rates are “definitely down,” said Rick Miller, national property

practice leader for Aon Risk Solutions in Boston. He said Aon tracks its data by quarters, and rates for the third quarter of 2014 were down 7.4% on average.

“That’s pretty consistent with what we saw” in the second quarter, he said. “A year ago, we were still seeing rates going down.”

“We still see a negative rate environment for the foreseeable future probably flat to down 10% in 2015,” Mr. Miller said.

“It’s still very much of a buyers’ market like 2013 was,” said Marsh’s Mr. Ellis, “Rates are on the average down this year again over 2013; it’s high single digits, 9% to 10% on the average.”

“Barring any major issue or major catastrophe, we’re going to see continuation of favorable terms and conditions,” he said.

“I think we’re definitely continuing to see the downward trend that began in 2013,” said Patrick Daley, head of property at Zurich North America in Schaumburg, Illinois.

He said that a couple of factors are affecting those increases.

“We continue to see commercial insurers announcing good results, with combined ratios in the 90s, partially supported by a relatively benign catastrophe year,” Mr. Daley said. “There’s a record amount of surplus in the marketplace, as well, and the soft reinsurance market, which is continuing to support more significant rate decreases,” he said.

“It seems everybody keeps adding more capacity to this market, and that’s the last thing this market needs from the standpoint of calming it down a little bit,” said David Finnis, national property practice leader with Willis North America Inc. in Atlanta.

Willis is predicting on average up to 15% rate decreases, with “high attractive accounts” probably experiencing more, he said.

“For FM Global, we have a membership credit going right now, and that gives us a bit of benevolent tail wind,” FM Global’s Mr. Schreitmuller said. “It’s a \$465 million credit that’s being returned to our clients, and that is on average probably about an 11% credit being applied at renewal. It varies by account tenure.”



“The quiet storm season appears to have a positive impact on the property market. We were offered a two-year rate guarantee, subject to loss ratio, with significant rate reduction and coverage improvements. More importantly, we got concessions on wind zones in the upper East Coast area, which will help us achieve a bigger premium reduction in the DIC market.”

Carolyn Snow,  
Humana Inc.

# LIABILITY

Continued from page 6

Commercial liability rate increases during 2014 were about 2% to 3% in aggregate, said Mr. Gharib, “but if you track those rates monthly or quarterly, they’ve been declining.”

“In many cases, we are still seeing positive rate traction for our (insurer) clients,” said David Dee, Princeton, New Jersey-based head of casualty underwriting for national clients at Munich Re America. “In some cases on the largest accounts, we’re seeing

some rate cuts, but across the board, there is still a very small but positive rate traction” for primary insurers.

Mr. Massey agreed rates in general look to increase in the low to mid-single digits for the January renewals but said there will be differentiation depending on the types of risks and loss history.

Improved analytics and more robust data are allowing insurers to more precisely price risk for each client, leading to greater rate differentiation, he said.

Account size is one point of potential differentiation, experts say.

Midsized accounts are likely to see

flat renewals after three years of rate increases, said Pam Ferrandino, New York-based national casualty practice leader of placement at Willis North America Inc.

“We expect the rate trend for middle-market (accounts) to shift and put us in a flat range,” Ms. Ferrandino said.

While larger accounts still will see single-digit pricing hikes, “by no means are those increases looking like those we were seeing a couple of years ago,” she said.

Increased competition in 2014 came from workers compensation insurers diversifying into other lines of business to improve their combined ratios, she said. That

“generated competition, and competition often results in lower pricing,” Ms. Ferrandino said.

“The primary general liability marketplace remains very competitive and has been so throughout the year” said Peter Wilson, New York-based CEO of Axis Insurance Co.

“The reality is that the market remains robust. Clearly, there are instances where prices have firmed for individual insureds, but there are equally others that are softer,” Mr. Wilson said.

Amid this highly competitive market, some clients are bringing new challenges to the table for insurers.

“We are seeing more and more requests for international” general liability coverage from U.S.-based firms and overseas companies doing business in North America, said Mr. Massey.

“Cyber is the big new product that everybody is talking about now,” said Jason Porter, New York-based director of financial services ratings for North American insurance at S&P.

“It’s the new growing exposure, so obviously it’s an opportunity for growth, but it’s being approached rather cautiously by most companies because the understanding of the risk and the loss history are not very mature,” he said.

# Alternative capital spreads keeping down reinsurance rates

BY SARAH VEYSEY

An abundance of capacity, boosted by nontraditional capital, meant that most reinsurance buyers were able to achieve rate reductions at the Jan. 1 renewals.

While rates for U.S. property catastrophe business fell by double digits in many cases, the influence of alternative capital also spread to other lines of business and geographical areas, sources say.

And experts add that many cedents were able to take advantage of the competitive marketplace to secure attractive terms and conditions or long-term deals.

An analysis by investment bank Keefe Bruyette & Woods Inc. in December predicted rates likely would fall for most reinsurance lines at the Jan. 1 renewal, while property catastrophe rates would echo the double-digit reductions seen at the midyear 2014 renewals.

Reinsurance pricing likely will remain under pressure during 2015 in the absence of any major catastrophic events, rating agency A.M. Best Co. Inc.

noted in a report.

There is a current supply-and-demand imbalance for reinsurance since there is plentiful capacity at a time when many cedents are consolidating their reinsurance purchase among fewer players, said Mark Button, a senior director at Standard & Poor's Corp. in London.

Rates for U.S. property catastrophe business began to fall at the midyear in 2014, and this began to spill over into other lines during the Jan. 1 renewal period, said Roman Lechner, senior economist at Swiss Re Ltd., during a presentation of a Swiss Re report.

The increased level of competition has had a depressing effect on rates for U.S. property catastrophe coverage, said Martin Stephenson, managing director for reinsurance at CGNMB L.L.P. — formerly Cooper Gay & Co. Ltd. — in London.

Alternative capital is now spreading its involvement wider than such areas as industry loss warranties into sectors where it competes more directly with tradi-

tional reinsurance companies, he said, and its penetration “is across all classes and territories, not just U.S. property cat.”

An increasing commoditization of property catastrophe coverage means that many underwriters are switching their focus to noncommoditized specialty areas, said Mike Krefta, chief underwriting officer at Hiscox Re, the reinsurance division of Hiscox Ltd. in London.

While price was an issue in renewal discussions, many buyers were more preoccupied with ensuring they had meaningful coverage, Mr. Krefta said.

While the impact of the alternative capital is most directly felt in U.S. property catastrophe business, there is an overspill into other lines and areas because the same markets that underwrite U.S. property catastrophe business usually will underwrite peak zone risks in other geographies or other lines of coverage, said David Flandro, New York-based global head of strategic advisory at JLT Towers Re, the reinsurance unit of Jardine Lloyd Thompson Group P.L.C.

For many property coverages, the terms and conditions that buy-



REINSURANCE

## TRIA'S IMPACT EXPECTED IN PRIMARY MARKET

The nonrenewal of the U.S. Terrorism Risk Insurance Program Reauthorization Act of 2007 is likely to have a disruptive effect on many primary insurance buyers, according to sources.

Many reinsurance buyers had been increasing their retentions and taking larger co-participations for terrorism, according to Bryon Ehrhart, CEO of Aon Benfield Americas.

If the act had passed, then many reinsurance buyers would have continued with that strategy, he said.

There has been a significant and fairly inexpensive private market for terrorism reinsurance coverage in recent years, Mr. Ehrhart said, and many clients have added that to their programs.

By Sarah Veysey

ers were able to achieve during the recent round of renewals were greatly expanded, Mr. Flandro said. Cedents were able to purchase multiyear deals and coverage with extended hours clauses, for example, he explained.

“Reinsurers are being forced to be extra creative and come up with new and interesting ways to cover the risk — and that can be really good for buyers,” he said.

In Europe, there were significant rate decreases on some business, notably property catastrophe, and

Jan. 1 renewals saw a continuation of the softening rates already noted at midyear renewals, said Dirk Spenner, head of Europe North, East & Central at Willis Re, a unit of Willis Group Holdings P.L.C., in London.

There were significant rate reductions for many cedents, and buyers also were able to obtain favorable terms on issues such as reinstatement programs and hours clauses.

“It is a market where the buyer has choice,” he said, “and can really maximize product features against a given price.”

One notable trend at the Jan. 1 renewal was for buyers to seek long-term deals, Alkis Tsimaratos, London-based regional director and head of Europe West at Willis Re. Buyers are keen to “lock in the price” and stabilize their reinsurance spending, he explained.

For Asian business that renewed at Jan. 1, there was sufficient capacity available, and many buyers experienced rate reductions, according to James Beedle, senior managing director of Willis Re Asia in Singapore.

While alternative capital has not been deployed widely outside of Australia and Japan, buyers in Asia have seen the indirect result of the influx of that capital reflected in traditional reinsurers defending their market shares in Asia.

The result of this principally is being seen in short-tail lines, he said, but also in casualty, accident and health and specialty classes.

## D&O

Continued from page 6

insurance renews in February, said one D&O issue of concern is cyber risks. D&O insurance is “being seen as a second bite at the apple” by plaintiff attorneys, and D&O coverage “is in play for the cyber exposures,” said Mr. Phelps, who was 2013 president of the Risk & Insurance Management Society Inc.

“To date, the claims environment has been mostly favorable,” Mr. Boughal said. “There are a few large claims that have surfaced that will give some ill-positioned carriers some pain, but for the most part the marketplace is faring relatively well based on the current inventory of D&O claims.”

“There aren’t systemic issues in the claims inventory, and there’s nothing foreseeable (with regards to that) on the short-term horizon,” he said. “Primary pricing may be plus or minus a few percentage points, depending upon the account. The lower excess layers are seeing some pricing pressure,” with lower rate decreases of up to 5%, while the higher excess layers may be seeing pricing decreases in the 5% to 10% range, he said.

Christopher Casper, Chicago-

## NEW PLAYERS JOCKEY FOR PLACE IN D&O ARENA

Observers say some relative newcomers to the directors and officers liability insurance market are contributing to the soft market, although none are charged with acting irresponsibly.

Observers point particularly to units of Omaha, Nebraska-based Berkshire Hathaway Inc., Bermuda-based Hiscox Ltd. and Sydney-based QBE Insurance Group Ltd.

“There seems to be a renewed energy” among some insurers with respect to writing D&O insurance depending on the account, said Christopher Casper, Chicago-based senior vice president for Lockton Cos. L.L.C.

Mr. Casper said Berkshire Hathaway is “interested in large portions on an excess capacity” basis, which is having an impact in the excess market. A company spokesman could not be reached for comment on that claim.

Bertrand Spunberg, New York-based executive risks practice leader for Hiscox USA, said despite his firm being identified as being relatively new to the D&O market, it first entered it in 2009 and is now focusing in the U.S. on private and nonprofit business, particularly employers with 50-500 employees.

In April, New York-based QBE North America, a unit of QBE Insurance Group, announced its expansion into the management liability and professional lines arena with the launch of three new products for public and private commercial companies and financial institutions and nonprofit businesses. A spokesman could not be reached for comment.

By Judy Greenwald

based senior vice president for Lockton Cos. L.L.C., said primary markets are “usually trying to get between 5% and 10%” in rate hikes,

although “most of the primary placements are coming in close to flat.” But because of competition in the excess market, rates overall

are flat or even down about 5%.

Brian Wanat, New York-based CEO for the U.S. financial services group at Aon Risk Solutions, said rates in the primary market are tighter because “you’re closer to the fire” in terms of the risk.

In addition, many claims involve legal fees, and those are more likely covered by the primary policies. Furthermore, the excess business has been profitable for most insurers, he said.

### Private company D&O

Observers say buyers of private and nonprofit D&O insurance are also facing a soft market. Rates in that segment, however, are “going up just a little bit more,” in part because the policy forms are a little bit broader, including entity coverage, and some also include a duty to defend, Mr. Wanat said.

Mr. Norton said that segment of the market may still be seeing some firmness, perhaps because private companies buy lower limits and may buy only a primary layer, so they are not affected by the decreases in the excess layers.

Making a distinction between the private and nonprofit sectors, Mr. Boughal said “you’re still seeing some single-digit rate increases” in the private segment. “In the nonprofit D&O world, you’re see-

ing flat pricing for the most part.”

Bertrand Spunberg, New York-based executive risks practice leader for Hiscox USA, said this segment of the market has a “split personality.”

For those parts of the market that are less profitable, including California, or are in more challenging classes of businesses, insurers are increasing retentions and pushing rates.

But insurers are charging less for accounts deemed more profitable and are being “extremely competitive and broadening terms quite aggressively,” he said.

Timothy Crowley, director at Crystal & Company, said the U.S. Supreme Court’s ruling in *Halliburton Co. v. Erica P. John Fund Inc.*, in which the high court ruled corporate defendants must be given the opportunity to show their actions did not affect the stock price of a publicly traded company before a class is certified, did not have a significant impact on the D&O market.

“We’re probably still going to need one or two other seismic claims frequency and claims developments to really shake up the market,” he said.

“We don’t see the market changing that much over the next couple of years,” Mr. Wanat said. “We continue to see it being very much a buyers’ market.”

# Workers comp premium increases moderate at year-end renewals

Market competition bouncing back after peak losses of 2011-12

BY SHEENA HARRISON

Workers compensation pricing has been relatively moderate for upcoming policy renewals despite uncertainty about how the comp market will be affected by the expiration of the federal terrorism backstop, observers say.

Sources from Arthur J. Gallagher & Co., Marsh L.L.C., Lockton Cos. L.L.C. and Willis North America Inc. say employers in the midst of renewing their workers comp policies for early 2015 typically are seeing either no pricing changes or rate increases between 3% and 5%.

“What we’ve started now seeing is some of the rate backing down,” said Pam Ferrandino, executive vice president and casualty practice leader at Willis North America in New York.

John Liston, Tampa, Florida-based managing director of insurance and risk management and leader of Gallagher’s workers comp practice, said that in a review of 25 recent workers comp renewals, 17 accounts saw rate decreases for 2015, seven had rate increases, and one policy had no pricing change.

The National Council on Compensation

Insurance Inc. reported in November that private workers comp insurers are expected to have an aggregate combined ratio of 96% for 2014, a number that has fallen steadily since reaching 115% in 2010 and 2011.

While insurers pushed for higher workers comp rate increases during unprofitable years, Mr. Liston said insurers seem to be moderating their pricing for accounts that are seen as favorable risks now that the workers comp line is seeing improved financial performance.

“Today on good business or average business, they’re fighting to keep” those accounts, Mr. Liston said.

In addition to moderate pricing, sources also say that insurers are becoming more lenient on credit and collateral requirements for workers comp renewals. For instance, Mr. Liston noted that one workers comp insurer dropped its minimum deductible to \$100,000 for a 2015 policy, down from \$250,000 this year.

Insurers are “being much more discreet because I think they’ve kind of healed themselves,” he said.

The favorable workers comp rate environment hasn’t reached all employers, however. Michael Liebowitz, senior director of insurance and enterprise risk management with New York University in New York, said the school’s workers comp premiums increased 30% when it renewed its policy on Sept. 1.

Mr. Liebowitz said the university’s workers comp insurer, which he declined to identify, had assured him in prerenewal meetings that NYU could expect to see a “competitive” rate for 2015. However, he said he was informed of the 30% policy rate hike about two weeks before renewal, when it was too late for the university to shop around with other insurers.

“They turned to me and said, ‘In two years, we don’t like the development in a handful of cases, so therefore we’re going to raise your premium,’” said Mr. Liebowitz, who said the university has 15,000 employees and a fully insured, guaranteed cost workers comp program. The school has worked with its current workers comp insurer for about 14 years, and Mr. Liebowitz said NYU plans to

change insurers next year.

Despite NYU’s experience, Willis’ Ms. Ferrandino said the workers comp market is showing a “robust” appetite for “national accounts or accounts with large retentions.”

“There’s increased competition on really most classes of business, particularly in the lower-hazard risks, and there is a significant amount of competition on loss-sensitive (accounts) or on accounts that are able to make a higher deductible,” said Christopher Flatt, managing director and leader of Marsh’s Workers’ Compensation Center of Excellence in New York

In order to position themselves as attractive risks in the current workers comp market, sources say companies should be prepared to show they have good loss experience and that they are actively utilizing safety programs that can reduce workplace accidents and workers comp claims.

“More insurers will preinspect or interview a client before quoting than have typically taken place in the past,” said Mark Zwickel, executive vice president of Pacific operations for Lockton in Los Angeles.



WORKERS COMP

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WHATMATTERSMOST



# HEALTH

Continued from page 3

hospitals is having a wider effect because commercial payers are following Medicare's lead and negotiating lower rates, too.

A broader move to value-based contracting, which rewards providers for efficiency and outcomes, also could be a factor, Mr. Thompson said.

"I think some health systems are anticipating that's where it's going and they need to start turning the ship now," he said.

At the same time, prescription drug expenditures are pulling health care spending higher. Retail drug spending rose 2.5% in 2013 vs. 0.5% in 2012, CMS reported. Year-over-year price growth jumped 5% in 2009 and has varied widely over the five-year period.

With fewer brand-name medications going generic and the blockbuster hepatitis C drug Sovaldi expected to ring up \$10 billion to \$11 billion in 2014 sales, prescription drug spending alone "is driv-

ing the rate of increase in national health expenditures up a few tenths of a percent," Mr. Roehrig said.

Analysts already see an uptick in spending in the near term. The U.S. Census Bureau's Quarterly Services Survey, for example, found that health care spending increased 5.4% in the third quarter of 2014 vs. the same three-month period in 2013. And through the first nine months of 2014, health spending rose 5% compared to a 3.6% growth rate for all of 2013.

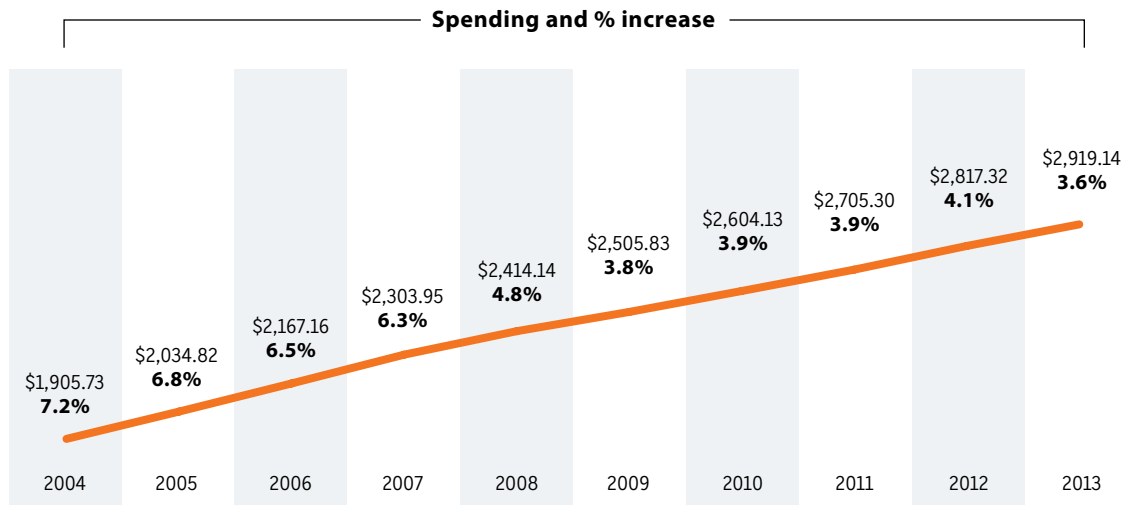
George Miller, a fellow at the Altarum Institute, said a gradually improving economy and more people using their new coverage under ACA are "certainly putting upward pressure on spending."

The longer-term pace of health care spending depends on factors that include how quickly the economy recovers, whether inflation returns and if the health care reform law remains intact as Republicans take control of Congress, analysts said.

In a separate analysis in the September issue of Health Affairs, CMS actuaries predicted health

# HEALTH CARE COSTS

U.S. health care spending, which jumped at double-digit rates from 1964-1984 and 1988-1990, posted a 3.6% increase in 2013 for the smallest percentage gain since 1960 (in billions of dollars).



Source: Centers for Medicare and Medicaid Services

care spending will increase an average of 6% per year between 2015 and 2023, fueled by ACA coverage expansions, economic growth and an aging population.

Benefit managers planning for

2016 and beyond welcomed news of the 2013 deceleration in spending but continue to wrestle with cost issues, said Karen Marlo, a Washington-based vice president at the National Business Group on

Health.

Their thinking is "that's great, but I still have to control costs for my company; my CEO still wants me to bring health care costs down," Ms. Marlo said.



AP PHOTO

An Indonesian Navy airman scanned for signs of AirAsia flight 8501 off Bangka Island last week. The third major airline disaster of 2014 may lead to reduced capacity and higher rates in the aviation insurance market.

# AIRASIA

Continued from page 3

"We can confirm that Allianz Global Corporate & Specialty U.K. is the lead reinsurer for AirAsia (for aviation hull and liability insurance)," Allianz said in a statement. "We stand by to support our client as fully and quickly as possible, working in conjunction with the insurance broker and our co-reinsurers."

The airline's broker, London-based Jardine Lloyd Thompson Group P.L.C., was "providing every assistance as is appropriate in these distressing circumstances," a JLT spokeswoman said.

This latest commercial aviation loss adds to the March disappear-

ance of Malaysia Airlines flight MH370 and the July 2014 downing of Malaysia Airlines flight MH17. Allianz also is the lead reinsurer of both Malaysia Airlines flights.

Allianz declined to comment beyond its statement, but an aviation broker said the AirAsia loss may affect the market.

"It definitely impacts the sector in a year in which we've already seen some major losses," said Peter Schmitz, New York-based CEO of global aviation specialty at Aon Risk Solutions.

The crash increased the number of fatalities of commercial airline passengers to more than 660 for 2014 compared with 265 in 2013.

The insured value of the AirAsia jet, an Airbus A320-200, is roughly \$47 million, said Mr. Schmitz, but liability losses could be much high-

er and will take time to materialize.

"As we go into 2015, the AirAsia loss will develop and we'll get a better feel for how significant the liability side of this loss is. Liability losses take time to develop, and reserves are set, and it's too early to have a reserve set on this particular loss," he said.

Roughly three-quarters of the world's commercial airlines renew their coverage in the fourth quarter, but rates "have not jumped to the magnitude that one might expect given the number and size of losses in 2014," Mr. Schmitz said of fourth-quarter renewals that ranged from flat to 10% higher.

Going into 2015, however, the AirAsia loss could lead insurers to reduce capacity, and reduced capacity could put upward pressure on rates, Mr. Schmitz said.

# ILS

Continued from page 3

CEO of Aon Benfield Securities in Chicago.

Catastrophe bonds, most of which covered U.S. risks such as earthquakes and severe thunderstorms in 2014, also covered Japanese earthquakes and European windstorms.

One observer said the market's performance could be a harbinger for further growth.

"We are not surprised at all," said Jeff Mohrenweiser, senior director with Fitch Ratings Inc. in Chicago. "We would think that we could see another \$6 billion to \$8 billion in issuance in 2015, possibly even going as high as \$10 billion" amid ongoing strong demand.

Helping to drive 2015 is about \$6 billion in cat bonds that will mature during the year, Mr. Schultz said.

"There are a substantial amount of catastrophe bonds that are maturing in 2015, which we believe will be reinvested," he said. "So in addition to normal cash flows available to be deployed into the sector, there is a good amount of cash which will be recycled within the sector."

"We'll see a lot of rollover where those bonds will get reinvested back into the market," Mr. Mohrenweiser said.

While rates the cat bonds pay investors have declined somewhat as the market has become more competitive, returns still are strong enough to attract investors and stimulate market growth, experts say.

"It's still better than what you can get for other short-term investments," said Gary Martucci, a director at Standard & Poor's

Corp. in New York.

"While there is still great opportunity, and we see growth, the returns investors have been able to achieve have declined. So some investors at the margin are disappointed in the sense that they'd rather have more, but seem happy for the most part in the returns they've achieved," Willis Capital's Mr. Dubinsky said.

"On a relative basis to other asset strategies into which investors can deploy capital, this is still one of the more attractive sectors for return on investment," Aon Benfield's Mr. Schultz said.

Larger deal sizes could help drive growth into 2015 and beyond, as could the introduction of additional perils into a market dominated by U.S. wind exposures.

"We are definitely seeing a trend toward larger transactions," Mr. Schultz said.

"What we are expecting if not next year then over the next couple of years is the introduction of additional perils not typically covered by catastrophe bonds," said S&P's Mr. Martucci, citing earthquakes in China, New Zealand and Chile as well as U.S. floods as potential additional perils covered by cat bonds.

**HEAR INTERVIEW**

Access Business Insurance's interactive digital edition to hear Jeff Mohrenweiser, senior director at Fitch Ratings Inc., discuss the ILS market and its 2015 outlook and trends with Business Insurance Associate Editor Matthew Lerner.

# Clergy abuse cases lead to few wins for Catholic dioceses in coverage disputes

Liability insurers have paid only a fraction of U.S. Catholic dioceses' costs in clergy abuse cases, and coverage disputes have mirrored those in other types of latent injury cases.

Insurers have argued, for example, that policies' "expected and intended" exclusions bar coverage where diocesan officials knew of abusive conduct — often for years — and did little to stop it. In an early ruling on the issue, the 8th U.S. Circuit Court of Appeals found in 1996 that Interstate Fire & Casualty Co. was not liable for claims against the Diocese of Winona, Minnesota, because of "overwhelming evidence that the diocese knew or should have known" of a priest's recurring abusive behavior.

Insurers won similar rulings from a Wisconsin appeals court against the Archdiocese of Milwaukee in 2010 and from an Illinois appeals court against a Chicago Jesuit

society in 2013.

Legal wrangles have also arisen over the number of occurrences in clergy abuse cases and the allocation of losses among the decades of policies potentially involved.

"There's a real variance of law (between jurisdictions) on the number of occurrences," said Scott N. Godes, a partner with Barnes & Thornburg L.L.P. in Washington.

Because liability policies before the mid-1980s typically contained no aggregate limit, primary insurers have maintained that each abuser — rather than each abuse victim — represents a separate occurrence, thus pushing a larger share of losses to excess insurers, observed Jim Dorion, Chicago-based global practice leader for complex liability and risk services with Marsh Risk Consulting, a unit of Marsh L.L.C.

The "general default" position in most cases, though, is that each victim represents

a separate occurrence, Mr. Dorion said.

The fact that abuse cases can reach as far back as the 1950s also means that evidence of an organization's coverage can be lost. A federal bankruptcy judge ruled in 2009, for example, that the Diocese of Fairbanks, Alaska, couldn't recover losses from Continental Insurance Co. because it had no evidence of the terms of policies issued in the 1970s.

While insurers have won some legal battles, most have ultimately negotiated settlements of clergy abuse claims. The settlements have fallen far short of Catholic dioceses' actual losses, though. For the decade ending in 2003, dioceses paid a total of \$2.35 billion in abuse cases but recovered only 34%, or about \$800 million, from insurers, according to the U.S. Conference of Catholic Bishops.

By Douglas McLeod

waiving statutes of limitations for periods of one to three years, have been enacted in five U.S. jurisdictions: California, Delaware, Guam, Hawaii and Minnesota. Hawaii, which created a two-year window in 2012, renewed it for two more years last year.

The laws are needed to redress unfair treatment of abuse victims shut out of court by antiquated time limits, argues Ms. Hamilton, who supports statute of limitations reforms.

But they have also produced floods of claims, huge liability exposure for insurers and strenuous opposition from religious and other nonprofit groups.

California's one-year window in 2003 triggered roughly 1,000 claims, most against Catholic dioceses, and led to the Los Angeles Archdiocese's record \$660 million settlement of abuse claims in 2007.

With the Minnesota window open until 2016, insurers "don't know what to expect and neither does anybody else," said Mr. Chopko, a policyholder attorney. "You don't know whether you're defending 10 suits or 100 or 1,000 because you have a year and a half to go."

Some organizations — including religious and educational institutions — are "sitting on lists of people" who would likely become claimants if statutes are extended in other states, Marsh's Mr. Dorion said.

"A certain number of institutions are acutely concerned about where amendments to statutes of limitations might be going," he said. "Sometimes, that is their best and only defense."

Opponents have halted legislative action in several states. Bills creating a one-year window in New York, for example, have failed in the state Senate every year for the past five years after passing the state Assembly, Ms. Hamilton said.

California Gov. Jerry Brown in September vetoed a measure that would have raised the allowable age of childhood abuse claimants to 40 from 28.

Efforts to expand statutes of limitations, though, will continue: A Georgia legislator has already introduced a bill for the state's 2015 session to allow plaintiffs up to age 53 to file childhood abuse claims, a 30-year extension of the current limit.

## CLERGY

Continued from page 1

before the window closes, the archdiocese has said the growing cost of dealing with the claims may force it to seek bankruptcy protection.

Minnesota is the fifth U.S. jurisdiction to enact a temporary waiver of the statute of limitation for abuse claims, and similar legislation continues to be introduced in several other states.

"Window" legislation and other retroactive extensions of statutes of limitations are a major concern for institutions that care for children, experts say.

"It's not just the (Catholic) church, it's educational institutions, day care and child care providers," said Jim Dorion, Chicago-based global practice leader for complex liability and risk services with Marsh Risk Consulting, a unit of Marsh L.L.C.

"Institutions have to pay attention in every legislative session to these proposals," said Mark E.

## INCOMPLETE COVERAGE

Insurance has paid only part of Roman Catholic dioceses' costs in clergy abuse cases.

Year	Costs* (in millions)	% covered by insurance
2004	\$139.6	32%
2005	\$445.7	49%
2006	\$333.0	27%
2007	\$498.7	34%
2008	\$376.2	38%
2009	\$104.4	34%
2010	\$123.7	27%
2011	\$108.7	27%
2012	\$113.0	18%
2013	\$109.0	21%
<b>Total</b>	<b>\$2,351.9</b>	<b>34%</b>

\*Includes settlements, therapy for victims, support for offenders, attorneys fees and other expenses. Does not include \$393 million in 2004-2013 costs to nondiocesan Catholic religious institutes.

Source: U.S. Conference of Catholic Bishops

Chopko, a partner with Stradley Ronon Stevens & Young L.L.P. in Washington and a former general counsel for the U.S. Conference of Catholic Bishops. "Any open-ended liability at today's (verdict or settlement) valuations will drive an

institution into bankruptcy."

Minnesota's window statute, the Child Victims Act, went into effect in May 2013 and will run for three years. Since the change in the law, the St. Paul archdiocese has been hit with 20 lawsuits and numerous additional notices of claim, and expects more claims before the window period expires, the archdiocese said in a lawsuit filed in November 2014 in U.S. District Court in St. Paul against nearly two dozen insurers. They include Fireman's Fund Insurance Co., Travelers Casualty & Surety Co., American Home Assurance Co., Lloyd's of London underwriters and several London market companies.

The insurers — which issued primary and excess general liability policies between 1952 and 1986 — have denied coverage on several grounds, including that there were no "occurrences" under the policies because the alleged abuse was expected or intended by the archdiocese and that there was no bodily injury to victims. The dispute echoes coverage issues raised in many previous clergy abuse cases.

While the archdiocese said it is seeking a "global resolution" to abuse allegations that would rely on insurer contributions, it also reported a \$9.1 million operating loss for fiscal 2014 and said it may seek bankruptcy protection to deal with the claims.

Before the clergy abuse scandal erupted in the 1980s — costing Catholic dioceses more than \$2.3 billion to date — most states required plaintiffs to bring childhood abuse claims within a few years of turning 18. In recent years, though, about one-third of the states have extended or eliminated civil statutes of limitations for childhood abuse, said to Marci A. Hamilton, a professor at Yeshiva University's Benjamin N. Cardozo School of Law in New York.

Many states, for instance, enacted "discovery" rules under which the statute of limitations clock doesn't start ticking until a plaintiff realizes he or she was harmed by childhood abuse. Connecticut and Massachusetts have retroactively allowed plaintiffs up to age 48 and 53, respectively, to file claims, Ms. Hamilton noted.

Window laws, retroactively

## SOLVENCY

Continued from page 4

Rob Jones, managing director at S&P in London, said the reporting requirements of Solvency II may be particularly burdensome for smaller companies and could add to "the consolidation drivers in the marketplace."

Solvency II and other solvency standard changes around the world are likely to result in "a significant increase in aggregate capital requirements," Mr. Jones said

during a presentation in London last month, "which may force smaller insurers to consolidate."

Larger insurers are likely to benefit from diversification when their capital charges are calculated under Solvency II, London-based Fitch Ratings Ltd. senior director Clara Hughes said in a report.

But although the rules will take account of an insurer's size under the so-called principle of proportionality, "we believe the sharp increase in costs associated with Solvency II will be a greater burden for smaller firms, which are also likely to be less well-pre-

pared," the Fitch report said.

While there is still time for companies to change their business models and restructure ahead of the rules' implementation, many will be "vulnerable to takeover, and some may prefer that option," the report said.

"A trend that has been more talked about than actioned is the sale of assets in response to the changing capital requirements of Solvency II — in particular around runoff," said London-based law firm Clyde & Co. L.L.P. in a December report on mergers and acquisition activity in Europe.

"Despite this, many market respondents remain optimistic that there will be increased deal flow in this area — particularly in France and Germany — in the next few years," the Clyde report said.

"The combination of a date for the implementation of Solvency II, as well as changes to local market regulations and the expansion of activity from the mature legacy market in London into mainland Europe is likely to stimulate future activity," according to the report.

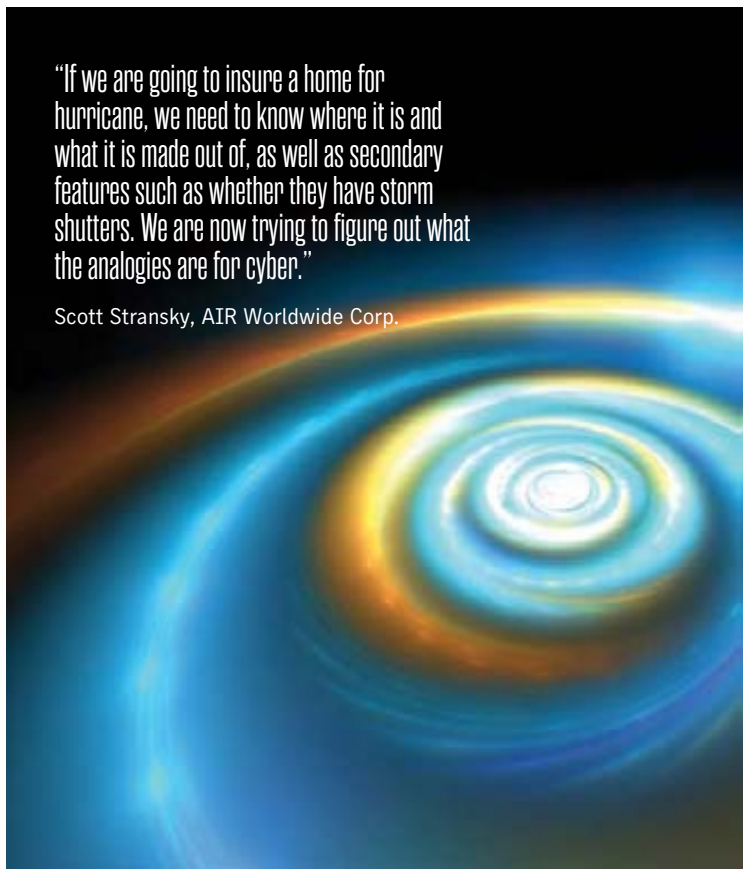
Sheena Harrison contributed to this report.

Solvency II and other solvency standard changes around the world are likely to result in "a significant increase in aggregate capital requirements, which may force smaller insurers to consolidate."

Rob Jones, Standard & Poor's Corp.

"If we are going to insure a home for hurricane, we need to know where it is and what it is made out of, as well as secondary features such as whether they have storm shutters. We are now trying to figure out what the analogies are for cyber."

Scott Stransky, AIR Worldwide Corp.



## MODEL

Continued from page 4

crimes' potential global effects.

Scott Stransky, Boston-based manager and principal scientist at AIR Worldwide Corp, said the modeler is developing one for cyber risks.

Finding enough relevant data to populate a model can be a challenge, Mr. Stransky said. While much of the historical data used in storm models is publicly available through governmental agencies, much of the most useful data on cyber risks is held by private companies that do not divulge it or bury it in financial filings, he said.

"One issue with cyber is collecting historical data," he said.

Moreover, determining what information to collect is a challenge for modelers.

"If we are going to insure a home for hurricane, we need to know where it is and what it is made out of, as well as secondary features such as whether they have storm shutters," Mr. Stransky said. "We are now trying to figure out what the analogies are for cyber."

Another challenge is the rapidly evolving nature of cyber threats that makes using historical data alone problematic, said Alex Krutov, New York-based president of Navigation Advisors L.L.C. and a fellow of the Casualty Actuarial Society.

"Scarcity and unreliability of historical data are often seen as the main problem in pricing cyber insurance," he said. "However, even if there were a large volume of cyber loss data collected over a number of years, it is unlikely that this data, by itself and used in the traditional way, would have significant predictive value."

Aside from comprehensive catastrophe models, other firms are working to help companies and their insurers better under-

stand specific aspects of cyber risks.

Steven Tabacek, Spokane, Washington-based CEO and co-founder of CXOWare Inc., said the quantitative risk software provider's cloud-based offering, RiskCalibrator, helps quantify cyber security risk in financial terms. The tool is intended to help risk managers and other buyers determine how much cyber insurance to buy as well as where to focus cyber risk mitigation efforts, he said.

"Before you put a risk mitigation budget in place, you have to figure out which corporate assets have the highest loss exposure, understand the threats and realize where you have control deficiencies," Mr. Tabacek said. "You also have to prioritize effectively to choose the most cost-effective solutions; so without a quantitative analysis, you really can't begin to optimize your risk management efforts."

Matthew McCabe, New York-based senior vice president of the network and privacy practice at Marsh USA Inc., said the brokerage unveiled a cyber breach modeling tool last June that uses historical breach information paired with a company's internal data to predict the probability and financial outcomes of cyber crimes and better calculate how much insurance is necessary.

"There's always a need for better data when quantifying risk," he said. "With cyber being a relatively new exposure, it just took a number of years of these events occurring for there to be a statistical basis to provide this analysis."

While Marsh's offering, Cyber IDEAL, is currently focused solely on data privacy exposure, Mr. McCabe said it is to be adapted to address a broader range of cyber exposures, including business interruption costs.

"Everybody would love to see better modeling around business interruption," Mr. McCabe said.

## COMP

Continued from page 1

allow them to rescind coverage for companies that have large concentrations of workers in "high-risk, Tier 1 cities" such as New York and San Francisco if TRIA isn't extended, Mr. Hartwig said.

Workers comp pricing also will spike in such areas, but "it will be muted initially," he said.

It seems insurers are prepared to honor workers comp policies with effective dates through March, said Tim DeSett, executive vice president of risk practices at Lockton Cos. L.L.C. in Kansas City, Missouri.

Some insurers "have their own filed endorsements, which they used to say, 'This is how much premium we are charging for terrorism risk,'" said Pam Ferrandino, executive vice president and casualty practice leader at Willis North America Inc. in New York.

Such endorsements allow insurers to adjust their pricing down the road, she said.

Since terrorism coverage can't be excluded from workers comp policies in any state, insurers will look to limit any potential losses, sources said.

"I've heard from some carriers that they're trying ... to issue a nonrenewal notice for the entire account only so they can carve out the states where they have concentration," Ms. Ferrandino said. In other words, they'd cancel a company's nationwide account and "issue a renewal term on an all-other-states basis."

If TRIA hasn't been reauthorized

by February, sources said some employers could have trouble renewing or purchasing traditional workers comp coverage and be forced into residual markets, known as the insurers of last resort.

The cost of residual market coverage could be "considerably higher," according to a 2014 Rand Corp. report, which said 32 states and the District of Columbia have assigned risk pools, and 14 states direct all residual market business to competitive state funds.

While the Rand report said a nationwide estimate of residual market costs was not available, it did note that the Illinois Workers' Compensation Commission advised employers that premiums are 45% more in the residual market than the traditional market.

In addition, state workers comp funds could see their market share increase "significantly" as employers are denied coverage in the standard market, said Bruce Wood, Washington-based vice president and associate general counsel at the American Insurance Association.

"So if companies are forced into higher markets or residual markets, then laying off people becomes an option they would have to face," said Carolyn Snow, Louisville, Kentucky-based director of risk management at Humana Inc.

TRIA's expiration didn't affect workers comp rates for Kelly Services Inc., which renewed its workers comp coverage with Ace Ltd. effective Jan. 1, said Gary Pearce, vice president of risk management group at the Troy, Michigan-based temporary staffing firm.

Mr. Pearce said Kelly Services is a more desirable risk since workers aren't concentrated in one high-risk area, but also said the company would be hit if TRIA is not reauthorized.

"Our employees are the first ones to be laid off," Mr. Pearce said. "So to the extent that there's a deficient insurance backstop, that could hurt employment."

Insurers also could be adversely affected, Mr. Wood said.

Workers comp insurers that leave the voluntary market to avoid terrorism losses still could be assigned to cover such risks in the residual markets for various states, he said.

"In that sense, there is nowhere to run and nowhere to hide," Mr. Wood said.

Self-insured employers have unique concerns, since excess workers comp insurers can exclude terrorism risks from their policies, except in New York and Florida, Ms. Ferrandino said.

"To the extent that TRIA expiration reduces insurers' willingness to provide these alternatives to traditional (workers comp) coverage, self-insurance may become more difficult," according to the Rand report.

Ms. Snow said Humana, which funds its comp coverage through its captive insurer, had not yet heard from its excess insurers following TRIA's expiration.

"The markets have just been really quiet," Ms. Snow said. "I suspect it's because they expect action in the first quarter, but it's kind of been surprising how quiet (insurers and reinsurers) have been. ... Everything at this point is speculation."

## SBC

Continued from page 4

whereas having a baby and Type 2 diabetes affect a subset of the population," HHS, Labor and Treasury said in the proposal.

Richard Stover, a principal at Buck Consultants at Xerox in Secaucus, New Jersey, said that would require employers to update the benefits summaries they provide to employees.

The rules also would require employers to make it clear whether or not coverage is provided for abortion services.

"Explicit disclosure of abortion coverage would be required," said Barbara McGeoch, a principal at Mercer L.L.C. in Washington.

The SBCs would have to state whether or not a plan provides minimum essential coverage and minimum value, which the reform law broadly defines as paying for 60% of covered services.

In addition, following earlier guidance, the proposed rules say separate SBCs would not be required for flexible spending accounts, health savings accounts and health reimbursement arrangements integrated with



medical plans, nor would they be required for stand-alone dental and vision care plans.

As is currently the case, employers do not have to provide employees with paper summaries for every plan in which new employees are eligible to enroll. Instead, employers can provide a website on which to view them.

For employees already enrolled

in a health plan, employers would have to provide an online SBC only for the plan in which the employee is covered, with electronic links to other available plans.

Plan participants also have the right to request paper copies of SBCs.

The deadline for submitting comments on the proposed rules is March 2.



*“It’s really a significant opinion because, frankly, there’s very little case law on what the relationship is between a retailer and the banks that ultimately issue the cards.”*

Michelle A. Reed,  
Akin Gump Strauss Hauer & Feld L.L.P.

## TARGET

Continued from page 1

have suffered unspecified “substantial out-of-pocket losses” stemming from the 2013 breach.

The Target breach, which cost the company more than \$140 million through Nov. 1, 2014, and exposed 110 million customers’ payment card numbers, thrust the danger of cyber breaches into the national limelight a year ago.

In his Dec. 2 ruling, Judge Paul A. Magnuson of the U.S. District Court in St. Paul, Minnesota, refused to dismiss the litigation and said plaintiffs can proceed with charges, including negligence, against the retailer.

“At this preliminary stage of the litigation, plaintiffs have plausibly (pleaded) a general negligence case,” according to the memorandum Judge Magnuson issued. “Although the third-party hackers’ activities caused harm, Target played a key role in allowing the harm to occur.

“Indeed, plaintiffs’ allegation that Target purposely disabled the security features that would have prevented the harm is itself sufficient to plead a direct negligence case,” Judge Magnuson wrote.

Litigation filed by consumers in connection with the data breach case also have been consolidated, albeit separately, in Judge Magnuson’s court. However, experts say his ruling in the financial institutions case does not provide an insight into how he is likely to rule in that case because different legal issues are involved.

The next major steps in the litigation process will be discovery and, if Target is unsuccessful in having the case dismissed, possi-

bly class certification of the financial institutions.

The ruling essentially holds that, based on the pleadings to date, Target was responsible for the damages the hackers caused even though there was no direct, contractual relationship between the retailer and the credit card issuers.

Judge Magnuson concluded “that there can be a direct duty between the issuing banks and the retailer, and that lets them get over this motion to dismiss hurdle,” said Joshua P. Gunneman, a partner at law firm Rogers & Hardin L.L.P. in Atlanta.

In the absence of a contractual relationship, the judge focuses on “a very traditional legal theory, which is negligence, to impose liability on the company that is hacked,” said Peter S. Selvin, an attorney with Troy Gould P.C. in Los Angeles.

“It’s really a significant opinion because, frankly, there’s very little case law on what the relationship is between a retailer and the banks that ultimately issue the cards,” said Michelle A. Reed, a partner with Akin Gump Strauss Hauer & Feld L.L.P. in Dallas.

Although Target had claimed it did not have a significant enough relationship with the banks to be liable for the data breach, the judge “essentially circumvented that whole analysis” and held this was a direct negligence case, Ms. Reed said.

She said that “from a legal standpoint it shouldn’t matter”; in fact the larger the breach “the more likely the court will find some kind of harm that is not just speculative resulting from the data breach.”

Brian T. Himmel, a partner with Reed Smith L.L.P. in Pittsburgh, said with all the retailer data

breaches that have occurred over this past year, the ruling opens the window to new liability exposure for retailers.

While there will not be as immediate an effect, he said financial institutions may get “a little relief” from their underwriters on this issue if the judge’s view is eventually supported by the appellate court or by courts in other jurisdictions.

He added, however, that the litigation is still only at the motion to dismiss stage, “so we’re a long ways away from being able to assess” the case’s effect.

### Ruling may be case-specific

Meanwhile, attorneys say that at least to some extent, the judge’s ruling is based on the particular facts of the case, and that it may not be widely applicable in other

jurisdictions.

Barry Goheen, a partner with law firm King & Spalding L.L.P. in Atlanta, said the judge based his ruling in part on a Minnesota law, the Plastic Card Security Act, which forbids retaining credit card information for more than 48 hours after the transaction is authorized, and not all states have comparable statutes.

Ms. Reed said the ruling underscores the need for retailers to “be prepared ahead of time and make sure they have a proper incident response plan” in place and appropriate lines of authority so there is an immediate response when a red flag appears.

The more reasonable steps retailers take — and document — to protect consumer data, “the more likely they are to survive a conduct-based challenge,” Mr. Gunneman said.

## Financial institutions’ success likely will not affect consumer lawsuit

Observers say the favorable ruling in financial institutions’ Target Corp.’s data breach case will likely have no bearing on consumers’ likely success in pleading their own case because different legal issues are involved.

Litigation filed by consumers in the case has been consolidated in U.S. District Court in St. Paul, Minnesota, along with the parallel litigation filed by the financial institutions, but is being considered separately.

“The first rule of attack in almost all consumer data breach allegations” is whether the consumers suffered an injury, and that was not an issue in the

banks’ case, where there was no question of this, said Barry Goheen, a partner with law firm King & Spalding L.L.P. in Atlanta.

But it is a question in the consumer case. Experts say based on other courts’ rulings in other data breach litigation, consumer plaintiffs may have a harder time than the financial institutions in surviving a motion to dismiss, because they will have to establish they were harmed by the breach.

Most courts have said the risk of harm “is not an actual harm,” said Gary A. Kibel, a partner with law firm Davis & Gilbert L.L.P. in New York.

By Judy Greenwald

Most courts have said the risk of harm “is not an actual harm.”

Gary A. Kibel,  
Davis & Gilbert L.L.P.



## Mayonnaise giant cracks, drops suit

**Y**ou can't make an omelette without breaking a few eggs. But you can, it seems, make mayonnaise.

If, like legendary film director Alfred Hitchcock, you suffer from ovophobia — fear of eggs — you will be relieved to learn that mayonnaise giant Hellmann's has dropped a lawsuit against a rival California firm that manufactures egg-free mayonnaise.

It was an intellectual property dispute that could have ended up with one side or the other having egg on their face.

Hellmann's, a unit of Anglo-Dutch Unilever Group, had filed suit against San Francisco-based Hampton Creek which makes Just Mayo — an egg-free version of the condiment.

Hellmann's claimed that the U.S. Food and Drug Administration defines mayonnaise as containing "one or more egg yolks" and accused Hampton Creek of false advertising and of stealing its market share.

But last week Hellmann's dropped the suit and urged Hampton Creek to take steps to change its labeling, according to news reports.

## Funeral director buried in legal trouble

**A**ccording to the proverb, there is nothing certain in life except for death and taxes. But an insurance fraudster in South Australia who attempted to exploit one of these certainties by faking the deaths of his clients recently was caught out.

Funeral director Robin George Knight admitted to making 199 false claims to insurers to access prepaid funeral bonds that only pay out in the event of the client's death.

He was rumbled, however, when one of the insurers contacted one woman about her deceased mother only to discover she was very much alive.

In the Holden Hill Magistrates court in Adelaide, Mr. Knight admitted amending old medical certificates to make it appear that his clients had died and to faking the signature of his business partner, the Adelaide Advertiser reported.

Mr. Knight admitted to 22 counts of deception and one count of attempting deception and was granted bail pending a further court appearance. Mr. Knight, who said he had committed the fraud to keep his business afloat, told media outside the court that business owners should swallow their pride and admit when things are not going well.

## TEMBLORS HAVE ITALIAN GOVERNMENT QUAKING OVER 'DAVID'



MALGORZATA KISTRYN/SHUTTERSTOCK.COM

**T**he Italian government is doing some catastrophe risk modeling when it comes to one of the world's most beloved works of art. A recent series of damaging December earthquakes in the region around Florence, Italy, have officials scrambling to protect Michelangelo's famed statue of David, according to media reports.

The BBC reports the Italian government plans to spend almost a quarter million dollars to construct a new quake-resistant plinth for the precious piece and hopes to have it in place within the year.

Last spring, Italian media reports said officials had found microcracks in the top-heavy statue's ankles, leading to speculation that the masterpiece might be moved for its own protection. The recent temblors have intensified those concerns.

"A masterpiece like 'David' must not be left to any risk," Italy's culture minister, Dario Franceschini, told the BBC.

"David," carved between 1501 and 1504, has stood in seismic Florence for more than 500 years.

*Business Insurance* isn't all business all the time, and we know you're not either. So visit [www.businessinsurance.com](http://www.businessinsurance.com) for more Off Beat stories and monthly photo galleries featuring the best of the weirdest news about insurance, fraud, liability issues and related topics that make people and companies do funny, silly and strange things.

## Birthday risks include too much fun

**D**espite the potential for presents and cake, birthdays aren't always happy occasions, according to a new study.

Important occasions, such as holidays and birthdays, might affect the timing of death, according to the study by University of Chicago researcher Pablo Peña.

"A Not So Happy Day After All: Excess Death Rates on Birthdays in the U.S.," which will publish in the February 2015 issue of *Social Science & Medicine*, found that the average excess death rate on birthdays is 6.7%.

"People deviate from their usual behavior on or around those occasions," the study states. "They travel more, host or attend parties, consume different foods, drink alcohol, have more physical activity, gather with more people, etc."

According to the study, excess death rates on birthdays are higher among people between the ages of 20 and 29, especially on weekends.

People in that age range have an average excess death rate reaching 25.4%, and they show "the largest differences between average excess death rates on weekend birthdays and weekday birthdays," the study states.

Mr. Peña said he was studying other age-related patterns when he first noticed the spikes in deaths.

The study analyzed records from the U.S. Social Security Administration for more than 25 million people who died between 1998 and 2011.



AP PHOTO/AS MEDIA

A crane fell on a roof after a botched proposal in Amsterdam.

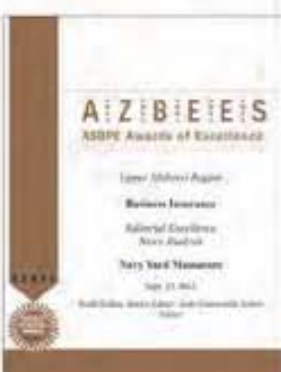
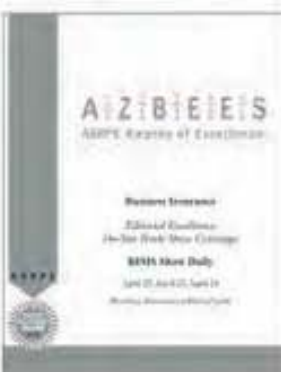
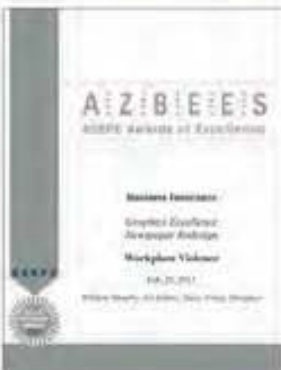
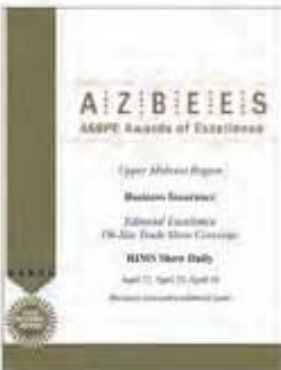
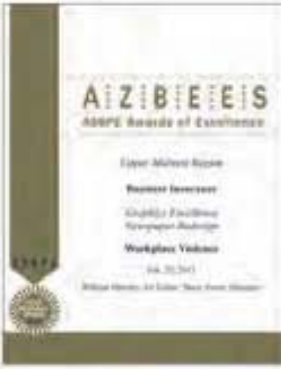
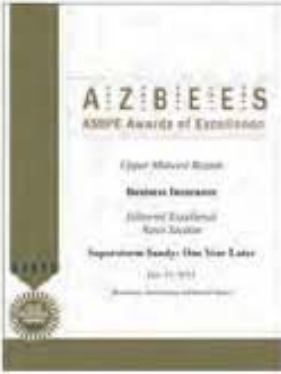
## Machinery mishap can't stop love

**W**hile some people fall head over heels in love, a man in Amsterdam toppled over in a construction crane while attempting an extreme wedding proposal.

According to local media reports, the unidentified lover had planned to descend in front of his girlfriend's bedroom window while sitting on the crane, play her a song and pop the question.

Instead, the crane toppled over and crashed onto the roof of a neighboring apartment in his girlfriend's row house in the town of IJsselstein, the Netherlands.

Fortunately, no one was injured in the accident. The groom-to-be jumped to safety while his girlfriend accepted his proposal, according to local Dutch media.



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