

## WORKERS COMPENSATION

# SPECIALTY DRUGS DRIVE UP COMP COSTS

### New hepatitis C treatment puts focus on price, usage of medications

BY SHEENA HARRISON

With a new hepatitis C drug entering the market at a cost of \$1,000 a day and costs rising for other breakthrough pharmaceutical treatments, employers are seeing dramatic cost increases in workers compensation cases where the drugs are used.

"The cases are very rare but can be very expensive," said Dr. Teresa Bartlett, Troy, Mich.-based senior vice president of medical quality for Sedgwick Claims Management Services Inc.

The U.S. Food and Drug Administration granted approval last month to Sovaldi, a once-daily tablet prescribed to treat and cure hepatitis C. A 28-day supply of the pill carries a wholesale price of \$28,000, Foster City, Calif.-based Gilead Sciences Inc., maker of Sovaldi, said in a statement.

Experts expect Sovaldi to be used in workers comp cases for workers exposed to blood-



**SPECIALTY DRUG COSTS**

The average annual cost of specialty medications for an injured worker was \$2,206.66 in 2012. Average cost per prescription of specialty drugs used in workers compensation include:

Enoxaparin (anticoagulant)	<b>\$643.35</b>
Truvada (HIV treatment)	<b>\$738.33</b>
Orthovisc (osteoarthritis treatment)	<b>\$972.08</b>
Synvisc-One (osteoarthritis treatment)	<b>\$1,024.24</b>

Source: Express Scripts Inc.

See **DRUGS** page 28

## HEALTH CARE REFORM

# CFOs examine health care benefits through financial lens

BY JOANNE WOJCIK

Although the chief financial officer job in most organizations has been expanding as the cost of health care benefits consumes a growing portion of corporate budgets, health care reform is accelerating this evolution.

And as more CFOs become involved in benefits decision-

making, they are showing greater interest in pay-or-play financial modeling, health benefits experts say.

In some cases, benefits advisers also are discovering the need to dispel some common misconceptions CFOs have about the Patient Protection and Affordable Care Act, sometimes having to remind them why their compa-

nies have been offering health benefits in the first place.

Nancy Kelly, managing partner and human capital practice leader at Hanover Stone Partners L.L.C. in New York, likened the change that has been occurring in the CFO's role to the emergence of the chief risk officer role in organizations.

"Now that the talent market is

changing and is much more competitive, the CFOs have to become more involved in (the human resources) level so that they understand that simply taking the cost out of benefits isn't always the answer," Ms. Kelly said. "All of the executives have to cross borders. If you look at

See **CFO** page 28

## RISK MANAGEMENT

# Target strives to limit damage to reputation

### Data breach highlights exposures retailers face

BY RODD ZOLKOS

Reputational risk experts give Target Corp. qualified good marks on the company's response to its holiday shopping season data breach, but acknowledge the picture could change for the retailer as more details emerge.

Meanwhile, broad awareness of the potential risks to the reputation of a company's brand exposed by cyber security issues is growing in the retail industry. Some



## CYBER SECURITY

Read more on cyber security exposures

PAGE 3

experts even say such events could alter consumers' perceptions about the safety of e-commerce.

In the days and weeks since its breach, Target has communicated with the stakeholders that hold the key to its reputation, though the event has had

some discernable negative effect on its reputation, said Nir Kossovsky, CEO and director of Steel City Re, a Pittsburgh-based broker/adviser specializing in corporate reputation management and risk transfer.

"This is a firm that really has a chance to recoup that loss," Mr.

See **TARGET** page 26



## Q&A: JULIE ROCHMAN

Head of the Insurance Institute for Business and Home Safety speaks out about building codes

PAGE 22

## BENEFITS MANAGEMENT

As pension plans change, online retirement planning tools help engage workers

PAGE 8

## RESEARCH & DATA

Ranking of the 20 largest underwriters of directors and officers coverage

PAGE 20



## D&O LIABILITY RISKS LITIGATION DRIVER

Derivative shareholder lawsuits present D&O challenges; foreign shareholders filing D&O lawsuits in overseas courts; compensation rule could open new exposures; cyber risks pose big questions for executives.

PAGE 16

WE CAN TAILOR THAT  
COVERAGE FOR YOU.

Yes.



Berkshire Hathaway  
Specialty Insurance

CONTENTS

FEATURES

MID-MARKET



Social media: Web of risk

As companies expand their use of social media, few address the potential liability exposures that come with publishing.

6

COMMENTARY

A strong dose of reality



Now that the individual mandate has gone into effect, more and more people are facing a reality that

large employers have known for years — health care coverage does not come cheap.

12

OFF BEAT



Ceiling low for sleepy worker

A New Zealand man scored a wrongful termination ruling after he was fired for being caught napping in the ceiling of his office.

30

SECTIONS

INTERNATIONAL 10

OPINIONS 12

RESEARCH & DATA 20

MARKET PULSE 21

PEOPLE 22

OFF BEAT 30

NEWS

RISK MANAGEMENT

NEW RIMS PRESIDENT FOCUSES ON THE FUTURE

Long-range planning a top concern for 2014

BY RODD ZOLKOS

When asked about her goals as the 2014 president of the Risk & Insurance Management Society Inc., Carolyn M. Snow first mentions preparing the organization for the future, a task for which her professional background and previous work with the society should have her well positioned.

“My main objective is to establish a long-range plan for RIMS,” said Ms. Snow, director of risk management for Louisville, Ky.-based Humana Inc. “We’re calling it RIMS 2020 and we’ve set up a task force to look at what’s going to happen in the next five or six years and how RIMS can be best

positioned to respond to multiple changes in the industry, the environment — in everything, really.”

Ms. Snow has been a RIMS member for 14 years, serving on the organization’s board for seven years. She has previously served as the New York-based society’s treasurer, secretary and director of external affairs and is a member of RIMS Kentuckiana/Bluegrass chapter.

The new RIMS president also was recognized in 2009 as one of *Business Insurance’s* Women to Watch.

“Carolyn and I actually came onto the board together,” said Nowell R. Seaman, director of global risk management at Saskatoon, Saskatchewan-based Potash Corp. of Saskatchewan Inc. and RIMS 2014 corporate secretary. “Carolyn is a very experienced and knowledgeable risk manager.”

“She’s been involved with a lot of the strategies, the initiatives RIMS has been involved with over



CAROLYN M. SNOW

**Job:** director of risk management

**Employer:** Humana Inc., Louisville, Ky.

**Hometown:** Louisville

**Years in RIMS:** 14

those seven years,” including the strategic risk management program and its student program, said Daniel H. Kugler, assistant treasurer of risk management at Snap-on Inc. in Kenosha, Wis. “I think that provides her with an opportunity to have a pretty strong vision of where RIMS should go.”

Another element of her vision, Ms. Snow said, is continuing RIMS’ emphasis on developing young, emerging leaders. RIMS has had “incredible growth” in developing online educational forums for young risk managers, she said.

She and several other RIMS members also connect with risk management students through the Spencer Educational Foundation’s Risk Manager in Residence Program. Through the program, risk managers spend time at colleges and universities “to lecture and to

See SNOW page 25

REINSURANCE

Cedents win wider coverage at reinsurance renewals

BY SARAH VEYSEY

Many buyers secured improved terms and conditions, as well as rate reductions, for their reinsurance programs that renewed Jan. 1, but reinsurers rejected blanket changes to terms and conditions.

In many cases, sources said reinsurers did offer changes to hours or reinstatement clauses on a case-by-case basis.

A major feature of the just-completed reinsurance renewals was that most buyers were able to purchase customized “bespoke” contracts, said Nick Frankland, CEO of the Europe, Middle East and Africa operations of Guy Carpen-

ter & Co. L.L.C.

Some market sources say one of the top three reinsurance brokerages, Aon Benfield, a unit of London-based Aon P.L.C., reportedly attempted to encourage a core group of reinsurers to make blanket changes to the terms and conditions offered to buyers.

But Bryon Ehrhart, CEO of Aon Benfield Americas in Chicago, said no such move took place and the brokerage asked reinsurers to consider changes case by case.

“We never asked people to do anything other than underwrite individual accounts,” he said.

He said say, however, that Aon Benfield did “remind” the rein-

surance market that if it wished to differentiate itself from nontraditional capital that has flowed into the market, it needed to show its “value proposition” — not just by reducing rates, but by reducing rates in conjunction with improving terms and conditions.

Catastrophe bonds, for example, he said, do not include hours clauses, which limit the time claims can be included as part of a loss arising from a triggering event.

This is an area where, by offering more favorable conditions, traditional reinsurers could seek to differentiate themselves from non-

See TERMS page 25

CYBER RISKS

Insurers set to tighten cyber exclusions

BY MATT DUNNING

Against the backdrop of Target Corp.’s massive data breach last month, the looming implementation of new cyber liability exclusions under standardized commercial liability policy forms should prompt companies to thoroughly review their insurance programs.

The Insurance Services Office Inc.’s recent revisions of its standard commercial liability policy forms could leave many firms with substantial gaps in their coverage of losses stemming from data breaches, experts said last week.

Approved by insurance regulators in all but four U.S. states and territories and effective on or after May 1, ISO’s revisions are the latest indication of the insurance industry’s ongoing effort to eliminate coverage for damages resulting from malicious or accidental data breaches under commercial liability policies, insurance experts said.

In its filing, ISO said that its commercial general and umbrella liability forms were developed long before losses of electronic customer or corporate information were considered a widespread threat.

“Even when we introduced our commercial umbrella policy in 2000, data breaches and hacking still weren’t all that prevalent,” said Ron Beiderman, assistant vice president of ISO’s commercial casualty division in Jersey City, N.J. “As a result, coverages related to the access or disclosure of personal or confidential information weren’t

See CYBER page 25

DATA BREACHES AT A GLANCE



The average cost per organization, cost per record and number of records affected per data breach has declined since 2011.

Organizational cost	
2013	\$5.4 million
2012	\$5.5 million
2011	\$7.2 million
Compromised record cost	
2013	\$188
2012	\$194
2011	\$214
Records compromised	
2013	28,765
2012	28,349
2011	32,959

Source: Ponemon Institute L.L.C.

ONLINE  
FEATURES

RMS 2014

Registration open for 2014  
Risk Management Summit

Register now for the Risk Management Summit, to be held March 12-13 in New York.

www.BusinessInsurance.com/  
RMS2014

VIDEO



IN FOCUS: Target data breach

New weekly video examines Target's data breach and related risks.

www.BusinessInsurance.com/  
InFocus

VIRTUAL EVENT

Career Connection fair

Join us for our first career fair featuring insurance professionals and Gamma Iota Sigma, the risk management fraternity.

www.BusinessInsurance.com/  
CareerConnectionFair

WHITE PAPER

Medicare compliance



Learn how to deal with the evolving regulatory landscape for Medicare Secondary Payer compliance in

Business Insurance's latest white paper.

www.BusinessInsurance.com/  
MedicareSecondaryWP

**BUSINESS INSURANCE** (ISSN 0007-6864)  
Vol. 48, No. 2, is published biweekly by Crain Communications Inc., 150 N. Michigan Ave., Chicago, IL 60601-7620. Periodicals postage is paid at Chicago and at additional mailing offices.

**POSTMASTER:** Email address change to customerservice@businessinsurance.com or mail to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, MI 48207-2912. \$10 a copy and \$149 a year in the U.S. \$169 in Canada and Mexico (includes GST). All other countries, \$249 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850. GST No. 136760444. Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in USA. Copyright © 2014 by Crain Communications Inc.

NEWS

PROPERTY/CASUALTY INSURERS

PROMISING OUTLOOK  
FOR INSURANCE SECTOR

Industry execs point to recovery, manufacturing growth

BY MATTHEW LERNER

NEW YORK — A slowly improving economy and continued influx of capital will play major roles in the commercial property/casualty insurance industry this year, according to industry leaders and outside experts who spoke last week at the Insurance Information Institute Inc.'s Joint Industry Forum in New York.

Speakers on two panels, "A View From the Outside Looking In" and "A View From the Inside Looking Out," suggested there has been gradual improvement in the economy.

"I share the optimism about the U.S. economy. We see it in a lot of our businesses," said Peter Hancock, executive vice president of American International Group Inc. and CEO of AIG's property/casualty unit.

Kishore Pannavolu, president of Metropolitan Life Insurance Co., said, "I think we've made a very nice recovery in the past couple of years."

Others also saw bright spots. "Health care, energy and technol-



"I share the optimism about the U.S. economy. We see it in a lot of our businesses."

Peter Hancock, American International Group Inc.

ogy are all on an upward trajectory," said Daniel Glaser, president and CEO of Marsh & McLennan

Cos. Inc.

Franklin Montross, chairman and CEO of General Re Corp., said three trends — energy independence, the return of manufacturing to the United States, and the country being a technology leader — pointed to renewed economic strength.

Economic policy in the form of reduced purchasing of Treasury securities or "tapering" by the Federal Reserve should provide a modest boost to the insurance industry, speakers said. Last month, the Fed said in a statement that the U.S. economy is expanding at a moderate pace.

Speakers at the insurance forum perceived this as a positive sign. "I am optimistic about the P&C market," said John Huff, Missouri Insurance Department director and member of the Financial Stability Oversight Council. "I think we will see some investment yield change as tapering continues."

The continuing capital inflows from sources such as hedge funds, pension funds and endowments

See FORUM page 24

AGENTS & BROKERS

Brokers  
see many  
opportunities

Employee benefits, deals show promise for growth in 2014

BY MARK A. HOFMANN

Opportunities abound for insurance brokerages to achieve growth goals in 2014, brokers, analysts and consultants say.

Perhaps the biggest potential growth area for brokerages to exploit is employee benefits, particularly given the Patient Protection and Affordable Care Act's creation of uncertainty in the benefits area. But more traditional avenues of growth — an emphasis on expertise in a particular industry or market, or growing by acquisition — also hold the promise of rewards for brokers that approach them effectively, experts say.

Undergirding the opportunities is an uptick in the overall economy, they say.

"The generally improving economy should help middle-market brokers" because of the effect on their commissions, said Mark Dwelle, an insurance analyst at RBC Capital Markets, a unit of RBC Securities Inc. in Richmond, Va.

"The easiest source of growth is going to be from the fact that the economy appears to be growing slightly more quickly than it has for the past few years. If you have more stuff being insured, that increases premium volumes, and that increases commissions," said Meyer Shields, Baltimore-based managing director of equity research for property/casualty insurance at Keefe, Bruyette & Woods Inc.

Employee benefits is "an incredibly complicated endeavor right now, and that's no surprise because of the developing and sometimes changing regulatory environment," Mr. Shields said. The result is a combination of organic growth as big brokers pick up business from smaller competitors that can't keep up with changes and from smaller employee benefits brokers looking to sell to monetize the relationships they have, he said.

While Arthur J. Gallagher & Co. President, Chairman and CEO J. Patrick Gallagher Jr. has criticized the health care reform law as poor public policy, he also said the law

See BROKERS page 24

PROFESSIONAL LIABILITY

Prosecution for criminal negligence  
a wake-up call for architects

BY JUDY GREENWALD

The case of an architect sentenced to prison for installing an improper fireplace in his Hollywood Hills mansion in California that led to a firefighter's death sends a professional liability warning to other architects.

While prosecutions alleging criminal negligence on the part of an architect are rare, there is nevertheless a duty of care expected of the profession.

Experts say the case is unusual in that Gerhard Becker designed and supervised construction of and lived in the 12,000-square-foot house that prosecutors said included an indoor fireplace intended only for outdoor use.

A February 2011 blaze broke out in the fireplace. Fire spread to the roof, which collapsed and killed 61-year-old Los Angeles firefighter Glenn Allen.

Prosecutors charged Mr. Becker, a German citizen whose U.S. visa reportedly had expired, with involuntary manslaughter, in part because of allegedly mis-



AP PHOTO

Gerhard Becker designed the 12,000-square-foot house that prosecutors said included an indoor fireplace intended only for outdoor use.

leading city inspectors about the fireplace.

He pleaded no contest to the charge earlier this month and was sentenced to one year in prison. He is

See ARCHITECT page 27

**You have a passion  
for your business.**

**We have a passion  
for protecting it.**



You live for the challenge of managing risk and discovering opportunities no one else sees. You have a passion for your company. Liberty Mutual Insurance has a passion for protecting it. For more than 100 years, we've helped all types of businesses thrive. With coverages like general liability, property, and workers compensation, you'll get the peace of mind you need to focus on staying ahead of the competition. Talk to your agent or broker today about Liberty Mutual Insurance, or go to [libertymutualgroup.com/business](http://libertymutualgroup.com/business).



# SOCIAL MEDIA MARKETING EFFORTS CREATE WEB OF RISKS FOR MANY FIRMS

Midsize companies often underestimate breadth of liability exposures

BY MATT DUNNING

Mid-market companies continue to expand their use of social media, blogs and other web marketing tools, but few have adequately addressed the potential liability exposures with publishing content online.

In a June 2013 survey of senior leaders at mostly small and midsize companies conducted by Chicago-based Grant Thornton L.L.P., 68% of those polled said social media websites such as Facebook, Twitter and LinkedIn and content distribution platforms such as WordPress, Blogger, Pinterest and YouTube are important or critical to their company's corporate strategy. Sixty-six percent said their company's use of those platforms likely would increase during the next 12 months.

"It's changed pretty dramatically over the last five years, as more midsize companies embrace technology and information assets," said Kevin Kalinich, global practice leader for cyber and network risk at Chicago-based Aon Risk Solutions, a unit of Aon P.L.C. "The smarter midsize companies out there want to increase sales and decrease costs and, in order to do that, in many cases it means they're taking on an online presence."

The underlying problem, experts said, is that by posting content online,

companies of all types can expose themselves to specialized civil and regulatory liabilities that are typically the province of newspaper publishers, television broadcasters and other traditional media firms.

Experts said that base awareness of the risks associated with online social marketing strategies appears to be growing among mid-market executives and senior managers. Only 13% of senior leaders polled in Grant Thornton's 2013 survey said they did not think their company's social media content posed an appreciable risk to the organization, compared with 22% in 2011.

However, despite recent increases in risk awareness at the senior level, most small and midsize firms engaging in online marketing still have not taken the necessary steps to reduce their potential exposure to media liability claims. Only about one-third of executives participating in the Grant Thornton study said their company has a formal social media policy or provides training to employees tasked with managing corporate activities online; even fewer said their company regularly assesses its social media risks.

"Risk management training always winds up being a little bit more challenging for smaller and midsize firms because their resources and revenue

are limited," said Eric Seyfried, a New York-based senior vice president in Marsh Inc.'s media and miscellaneous professional liability practice. "But I would argue that with any consumer-facing or client-facing social media activity, there needs to be a clear demarcation as to how and where that training is going to come in."

Beyond the limitations of their financial and personnel resources, experts said one reason mid-market firms have been slow to develop comprehensive risk controls for their online marketing activities is their broad assumption that most claims arising from those activities would be covered under their commercial general liability policies.

However, experts said these general liability policy forms, including the industry standard form issued by Insurance Services Office Inc., are becoming more restrictive in their coverage of media and publishing liabilities.

ISO has been putting out "more and more exclusions and clarifications in their language when it comes to advertising and personal injury coverage under the standard general liability form," said Joanne Richardson, New York-based managing director of Hiscox Ltd.'s U.S. media and entertainment practice.

"They've clearly come to a point where they don't want the GL policy to be the go-to policy when it comes to media liability exposures, and they're trying to push them towards buying separate, stand-alone media liability policies," he said.

Even where mid-market companies have devoted some effort to mitigating liability exposures stemming from social media, experts said those efforts tend to ignore authorized activity carried out for marketing purposes and, instead, focus too narrowly on setting parameters for employees' individual use of social networking platforms.

"Companies are unfortunately spending more time addressing the 'rogue employee' scenario than they are on training their staff to properly represent the brand online," Adam Bialek, a New York-based partner and chair of Wilson Elser Moskowitz Edelman & Dicker L.L.P.'s intellectual property group. "As much as the company needs to establish guidelines for its employees in terms of their own personal use of social media, companies also need to establish guidelines for the staff members they designate to manage their corporate activity online."

## MEDIA MARKETING RISKS

Mid-market businesses explored more marketing opportunities via social media platforms in 2013, but relatively few implemented comprehensive risk controls.

Company's social media activity is critical to corporate strategies

68%

Company's social media usage will increase in the next 12 months

66%

Company has a formal social media policy

33%

Company performs social media risk assessments

18%

Company conducts social media training

36%

Source: Grant Thornton L.L.P. / Financial Executives Research Foundation Inc.

## NON-MEDIA COMPANIES FACE ARCANE RISKS

Regardless of the size of their audience, a company's online marketing materials could generate claims for a range of liabilities likely unfamiliar to most small and midsize firms outside of the publishing and broadcast industries.

Common forms of third-party injury claims can originate from competitors and consumers, and include allegations of defamation, libel, product disparagement, invasions of privacy, infliction of emotional distress and unfair trade practices, experts said.

"You don't have to be a media organization to have media exposures," said Meredith Schnur, a New York-based senior vice president and technology, privacy and network risk practice leader at Wells Fargo Insurance Services USA Inc. Even midsize companies with considerable experience marketing their brand via traditional outlets such as print or television ads often overlook potential liability exposures when it comes to online activities, she said.

"Whether it's social media or what they display on their corporate website, they don't equate that to the traditional media exposures related to their output in paper format," Ms. Schnur said.

Depending on the nature and origin of their content and how it is distributed, experts said companies engaging in online marketing also could be held liable for exceeding the scope of permitted use for photos, text, audio clips or other materials they post online, even if they previously licensed those materials for traditional advertising and marketing purposes.

Additionally, online materials gathered ad-hoc from third-party sources could infringe on copyrights and trademarks protected under federal or international laws.

"Oftentimes, companies assume that whatever they find on the Internet is free for use, and that's simply not the case," said Adam Bialek, a New York-based partner and chair of Wilson Elser Moskowitz Edelman & Dicker L.L.P.'s intellectual property group. "Even so-called royalty-free content typically has certain terms and conditions attached to its use, and that's something that gets overlooked quite a bit."

In addition, Mr. Bialek said smaller firms, particularly in industries that traditionally conduct very little business over the Internet, usually delegate the daily management of their online and social media activities to young, junior-level employees who lack the requisite compliance training and experience.

By Matt Dunning



# QBE Diversified

Expand your opportunities with a company that offers a diverse and specialized North American insurance portfolio, including Property & Casualty, Crop, Program & Specialty, Financial Services and Reinsurance.

At QBE, we have the resources, products and people to insure all types of risk, with a team of more than 6,000 employees in over 80 offices across the United States. We can provide the coverages to help turn possibilities into reality for all types of businesses across the middle market and large corporations. After all, challenges, goals and dreams are diversified—so your insurance options should be too.

For information visit [QBEdiversified.com](http://QBEdiversified.com)

 @QBENorthAmerica

Made possible by



## ONLINE RETIREMENT PLANNING TOOLS HELP GET WORKERS INVOLVED

New technology comes as firms move away from traditional pensions

BY BILL KENEALY

The ongoing shift from defined benefit retirement plans to defined contribution plans has helped spur an improved array of retirement planning tools for benefits managers.

Many tools are provided by employee benefits brokers.

“Most of the technology is driven by the record-keeping aspects of retirement plans,” said Christopher Reagan, Chicago-based senior managing director, practice leader of the retirement plan advisory unit of Mesirow Financial Holdings Inc.

To augment the record-keeping systems, many employee benefits brokers offer web-based tools that help retirement plan sponsors track variables such as employee salaries, account balances and demographic information, as well as model a variety of financial scenarios from that data.

Winfield Evens, Chicago-based director of outsourcing investment strategy at Aon Hewitt, said the human resources and benefits administration consultant recently unveiled a Web-based tool for its defined contribution record-keeping clients.

Known as DC Nexus, the tool acts as an exchange for plan sponsors to obtain pricing information on competing investment alternatives, including multiple investment vehicles and institutional fund options. The goal is to provide users with greater fee transparency and control over plan expenses, Mr. Evens said, noting that the tool makes use of both internal and external data and synthesizes it.

“We realized that there is an opportunity to take the information we have as a plan record keeper, where we are keeping track of individual account activity, and leverage that data for



“Half of the battle is getting people to take a vested interest in their own retirement plan.”

Andrew Yerre, Mercer L.L.C.

our clients,” Mr. Evens said.

Andrew Yerre, Norwood, Mass.-based partner and employee benefits administration leader at Mercer L.L.C., said the consultant provides two primary Web-based retirement planning tools to help plan sponsors better manage their defined contribution plans.

One of the tools, MyView, is a retirement adequacy modeling tool launched in 2009. Accessed through a secure website, MyView enables users to modify assumptions such as retirement age and rate of savings, and presents modeling results graphically in a dashboard setting. The tool also includes analytic functions that help plan sponsors discern engage-

ment levels among employees.

For example, plan sponsors can check to determine if workers regularly use the planning tools on the company’s website or if they use them only occasionally to check their 401(k) balance, he said.

“These tools can help you know how many people are participating and what they actually do on your website,” Mr. Yerre said.

Arresting visuals are at the heart of another retirement planning tool Mercer provides.

The site, *uncoverthenumbers.com*, uses aspects of “gamification,” such as quizzes to improve employee engagement, as well as video to help educate plan users. The purpose of the site is to get the ultimate users of retirement plans — workers — to think about the concept of retirement more often than the one time a year when they rebalance their 401(k) investment portfolio, Mr. Yerre said.

“It’s an engagement teaser,” he said. “Half of the battle is getting people to take a vested interest in their own retirement plan.”

Better technology is necessary given the complexity of the task facing employee benefits managers, Mr. Reagan said.

“Everybody is getting asked to do more with less as the plans are getting more complicated and staffs are not getting any larger,” he said.

Bill Kline, Raleigh-Durham, N.C.-based national practice leader of retirement services at Arthur J. Gallagher & Co., agreed that use of technology is imperative, but he also said brokers still need to fuse technology with a broader array of consulting services.

“Our role is to be an extension of their staff and help them size up record-keeping platforms and investment offerings to come up with the optimal offerings for plan participants,” Mr. Kline said.

### LIFE INSURERS ALSO ROLL OUT PLANNING TOOLS

Looking to differentiate their offerings through technology, life insurers are investing in retirement planning tools for plan sponsors.

Rob McIsaac, Raleigh-Durham, N.C.-based principal in the insurance practice at advisory firm Novarica L.L.C., said the increased use of Web-based technologies by retirement plan providers has led to higher levels of transparency in pricing and plan features.

“There has been a host of investments from plan providers in terms of portal capability,” Mr. McIsaac said. “They are now providing better and more actionable information for all participants in the value chain, so plan sponsors now have a much greater awareness of what costs are for competing alternatives from plan providers.”

Sue Fulshaw, Boston-based managing director of retirement plan product management at financial services firm TIAA-CREF Individual & Institutional Services L.L.C., said the company builds its own technology tools to help plan sponsors capture the information they need to understand how their employees are engaging with the retirement plan.

“Ultimately, we believe that our technology needs to support the plan sponsor’s objective,” Ms. Fulshaw said.

One example of this is a retirement planning site developed by TIAA-CREF, *www.myretirement.org*. While the site provides a hub of information for users, it also provides data the life insurer can analyze for the benefit of the plan sponsor, Ms. Fulshaw said.

“We leverage user information to get real-time feedback from participants to gauge how they are doing and then we can provide that information back to plan sponsors to help them figure employee needs from the plan,” Ms. Fulshaw said.

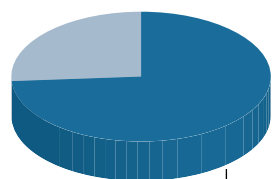
With user experience so critical, the company is investing substantially in the latest mobile and online technologies, she said.

Likewise, Christine Tucker, Los Angeles, Calif.-based vice president of marketing of the retirement solutions division for Pacific Life Insurance Co., said the company’s latest retirement planning tool, Tax Deferral Analyzer, was developed with computers and tablets in mind.

“The tool was developed using HTML5 technology so that it can be viewed from different devices,” Ms. Tucker said.

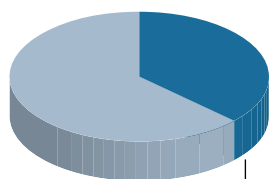
## ACCESS & PARTICIPATION

A majority of full-time workers have access to a retirement plan, but roughly half participate.



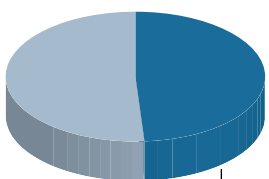
74%

of private sector full-time workers have access to a retirement plan.



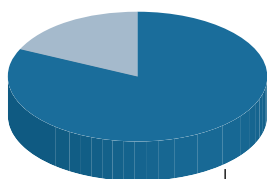
37%

of private sector part-time workers have access to a retirement plan.



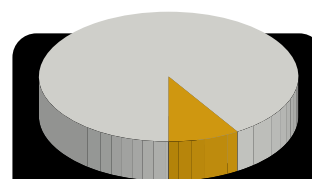
49%

of workers in small firms have access to a retirement plan.



82%

of workers in medium and large firms have access to a retirement plan.



9%

of all private sector employees participate in a retirement plan at work.

# SPECIAL REPORT: CYBER RISKS & LIABILITIES

Issue: February 17 | Advertising Closing: January 31



Cyber risks, and particularly data breaches, have become commonplace around the world. This special report will look at the current state of cyber risks and what risks managers can do to mitigate the risks. It also will update the state of the cyber insurance market, availability of coverage, types of coverage and innovative products being offered.

**DATA POSTER: Risk Managers Cyber Risk Concerns**

*Bonus Distribution: AAMGA Automation & Technology*

## **BUSINESS INSURANCE**

**WWW.BUSINESSINSURANCE.COM**

**CALL TO RESERVE YOUR ADVERTISING SPACE TODAY!**

Ron Kolgraf/Northeast/Canada/Bermuda (617) 261-8459  
Steve Middleton/Europe/Middle East/Africa +44 (0)7710 128 464  
Bob Murray/Mid-Atlantic/International 212-210-0136

Monique Murray/Southeast/Classifieds 212-210-0129  
Mary Pemberton/Midwest/West/Hawaii 303-898-4043  
Susan Stilwill/Ad Director 312-649-5224

Or email [advertising@businessinsurance.com](mailto:advertising@businessinsurance.com)



## Perils estimates \$929.6M insured loss from Xaver

■ Windstorm Xaver, which struck Dec. 5 and 6, caused an estimated €680 million (\$929.6 million) in insured damage in Western and Northern Europe, according to an initial loss estimate by Zurich-based Perils A.G. According to Perils, an independent organization that provides industrywide catastrophe insurance data, the majority of the losses occurred in Denmark, Germany, Norway, Sweden, the Netherlands and the United Kingdom. Perils said its market loss estimate is based on ultimate gross loss data as reported by primary insurance companies and excludes losses indemnified by government plans.

## RSA adopts new financial controls

■ RSA Insurance Group P.L.C. has adopted an outside consultant's recommendations to enhance the operational effectiveness of group-wide assurance processes and Irish financial controls in the wake of financial and claims irregularities totaling £72 million (\$118.2 million) the British insurer said. RSA also made public the findings of audits by PricewaterhouseCoopers L.L.P., KPMG L.L.P. and RSA's internal audit function into those irregularities, which were identified in Ireland in November. RSA said the PwC report makes a number of recommendations, including conducting a review into the verification of policy adherence, enhancing the clarity of control standards and effectiveness of local implementation, and improving the balance of trust, integrity and accountability with challenges and independent verification.

## Bermuda reinsurer to buy Tower Group

■ Tower Group International Ltd. said it will be sold to Bermuda-based ACP Re Ltd., a privately owned reinsurer, for \$172 million. ACP Re offered \$3 in cash for each Tower Group share. Tower's shares fell about 82% last year as the company repeatedly delayed filing second-quarter results and tripled its expected loss reserves. ACP Re is controlled by a trust established by the founder of AmTrust Financial Services Inc., National General Holdings Corp. and Maiden Holdings Ltd. Tower Group Chief Executive Michael Lee, who owns 4.2% of the company, has agreed to vote in favor of the merger.

Reuters

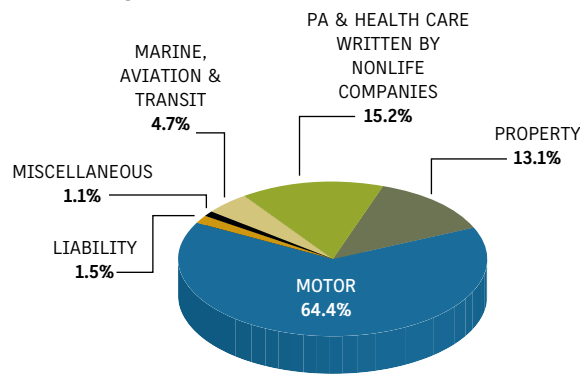
## PROFILE: MONTENEGRO

**\$73.6**  
MILLION

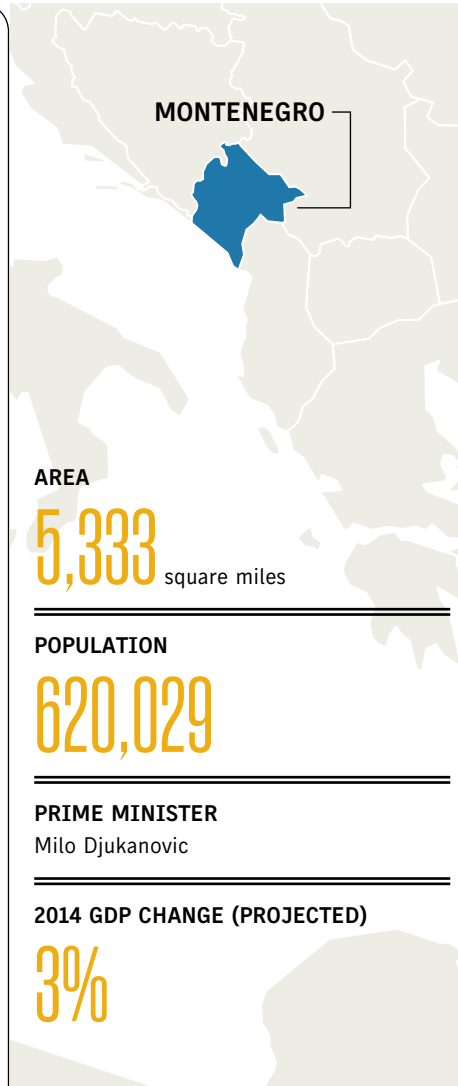
Situated in southeastern Europe on the Adriatic Coast of the Balkan Peninsula, Montenegro is one of the smallest insurance markets in Europe. The global financial crisis weakened the nation's economy, and the woes continued last summer when the country's largest single exporter, an aluminum firm, went bankrupt. The nation's property/casualty insurance sector comprises only five insurers. Lovcen Osiguranje A.D. dominates the market. It wrote 47.5% of total premiums in 2012.

◀ 2012 P/C gross premium

### MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



### MARKET DEVELOPMENTS

UPDATED  
NOVEMBER 2013

- In April 2013, insurance law was changed to allow individual insurance agents to sell competing products for only one insurance company.
- In July 2013, the value-added tax was increased from 17% to 19%.
- In August 2013, a 14-page rulebook made actuaries responsible for reviewing and approving virtually every financial aspect of an insurer's business.
- In August 2013, new regulations were implemented regarding the method to value the assets of insurers and determine insurers' liquidity.
- In August 2013, the Insurance Supervision Agency changed the solvency margin calculations dealing with premiums and claims for property/casualty insurers.

### COMPULSORY INSURANCE

- Third-party auto liability
- Aviation passenger liability
- Marine pollution liability
- Workers compensation
- Professional indemnity for insurance brokers and lawyers
- Travel agent insurance

### NONADMITTED

Nonadmitted insurance is not permitted in Montenegro because the law requires that insurance be bought from locally licensed insurers. There are exceptions, and they include aircraft and sea transportation insurance, property insurance for foreigners with a residence in the republic and indemnity coverage for insurance brokers doing business in Montenegro.

### INTERMEDIARIES

Agents and brokers must be licensed in Montenegro to place business, except for a limited number of insurance lines. Foreign brokers place the insurance products that are permitted by exception on a nonadmitted basis. Brokers selling nonadmitted coverage do not have to warn buyers that an insurer is not subject to local supervision.

### MARKET PRACTICE

Although Montenegrin law does not allow placement of nonadmitted insurance, it is not a criminal offense to buy insurance from a foreign insurer, and government authorities take a passive role in enforcement. Most large foreign investments are either insured by local insurers or fronted by them.

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

## JLT buys Hong Kong benefits broker

■ Jardine Lloyd Thompson Group P.L.C. has acquired Hong Kong-based brokerage Lambert Brothers Holdings Ltd., JLT announced. Terms of the deal were not disclosed. Lambert Brothers, an independent insurance and employee benefits brokerage specializing in construction and marine business, employs more than 40 staff and has a subsidiary in Thailand.

## Argo forms sidecar reinsurer

■ Hamilton, Bermuda-based Argo Group International Holdings Ltd. said it has established a new sidecar reinsurer for the 2014 accident year, Harambee Re Ltd., and has placed a series of three catastro-

phe bonds that will provide \$172 million of protection to its insurance and reinsurance subsidiaries through Loma Re Insurance (Bermuda) Ltd. The Loma bond program began Jan. 1 covering against U.S. hurricanes, earthquakes and convective storms and Canadian earthquakes for four years for Argo Group's participating U.S. insurance units, Argo Re, and Lloyd's Syndicate 1200.

## Aon Benfield places Australian cat bond

■ Aon Benfield Securities, the investment banking division of Aon Benfield, has placed a \$250 million catastrophe bond issued by special purpose insurer VenTerra Re Ltd. for Australian perils, Aon Benfield said. Bermuda-domiciled VenTerra Re Ltd. provides subsidiaries of Sydney-based QBE Insurance Group Ltd. with \$250

million of multiyear collateralized protection against U.S. and Australia earthquakes and Australia cyclones on an indemnity basis for a period of three years beginning Jan. 1, the first-ever catastrophe bond that has secured coverage for Australian perils for a primary insurance company on an indemnity basis, according to the statement.

## France fines Google over data privacy

■ France's data protection watchdog, CNIL, has fined Google Inc. 150,000 (\$203,820) after the U.S. search engine ignored a three-month ultimatum to bring its practices on tracking and storing user information in line with local law. At issue was the new approach to user data that Google began in March 2012, in which it consolidated its 60 privacy policies into one

and started combining data collected on individual users across its services, including YouTube, Gmail and social network Google+, giving users no means to opt out. A Google France spokesman told Reuters the company will take note of this decision and consider further action.

Reuters

## Dutch pension fund sells Fukushima stake

■ Dutch pension fund ABP said it has sold its stake in Tokyo Electric Power Co. after the operator of the wrecked Fukushima nuclear plant failed to respond to repeated requests to discuss public safety and environmental concerns. ABP, a fund for civil servants, is one of the biggest pension funds in the world with nearly 300 billion (\$408 billion) in investments. Harmen Geers, a spokesman for ABP,

said the fund's stake in Tepco was sold during the fourth quarter for an undisclosed amount. The stake was worth 18 million (\$24.5 million) at the end of the third quarter, according to ABP's quarterly statement of investments.

Reuters

## E.U. cyber agency urges power outage resilience

■ National regulatory authorities and electronic communications service providers should analyze the frequency and effect of network and service outages caused by power outages, the European Union's cyber security agency said in a report. The report by the Herkalion, Greece-based European Network and Information Security Agency also recommends that national regulatory authorities form liaisons with providers, energy regulators and other national regulatory authorities to "collect good practices that could be used to increase resilience against power cuts" to be considered as part of a cost-benefit analysis. Most national regulatory authorities in the European Union do not have suitable input to perform risk assessments that include power outages, according to the report based on an online survey and interviews.

## London insurers warn on rules duplication

■ Ensuring that work on international capital standards, such as those being undertaken by the International Association of Insurance Supervisors and the U.S. Financial Stability Board, does not duplicate existing rules or give rise to an additional layer of regulation is one of the top priorities for the London insurance market in 2014, the London-based International Underwriting Association said. Other challenges identified by the IUA include developing an effective understanding and relationship with the Prudential Regulation Authority and the Financial Conduct Authority, the two London-based regulators that between them took over aspects of regulations of the insurance industry from the now-defunct Financial Services Authority last year.

## Catlin Insurance opens Singapore branch

■ Catlin Insurance Co. Ltd., a unit of Hamilton, Bermuda-based Catlin Group Ltd., has opened a branch in Singapore to write specialty lines of direct insurance in Singapore and reinsurance

throughout the Asia-Pacific region, Catlin Group said. The new office began operations Jan. 1 after being granted a license by the Monetary Authority of Singapore in December. It will be managed by Catlin Singapore Pte. Ltd., Catlin's Singapore-based underwriting operation, Catlin Group said in a statement. While Catlin has been underwriting local and regional business from its Singapore office since 1999 on behalf of Catlin's syndicate 2003 at Lloyd's of London,

the new office will allow Catlin Singapore to write business on behalf of either the new branch or the Lloyd's syndicate, depending on broker or client preference, according to the statement.

## Danone to sue Fonterra over baby formula recall

■ French food group Groupe Danone S.A. said it will start legal

action against New Zealand dairy exporter Fonterra Co-operative Group Ltd. following a false alert that sparked the recall of infant formula. In a statement, Danone said it is initiating proceedings in the New Zealand High Court, as well as arbitration proceedings in Singapore to obtain compensation for the harm it has suffered. In August, Fonterra said it had found a potentially fatal ingredient contained in a range of products sold by a number of multinational com-

panies. After recalls were issued across nine countries including China and Malaysia, the food safety scare turned out to be a false alarm because the ingredient was found to contain a less harmful bacteria. Danone has said it is seeking full compensation for what it says were 350 million (\$476 million) in lost sales following the recall of its infant formula products in Asia and New Zealand.

Reuters

# RIISING TO MEET THE DEMANDS OF COMPLEX BROKERAGE.

As complex risks become increasingly difficult to place, the demands placed on you will only continue to rise. Burns & Wilcox Brokerage has evolved to meet these challenges with our expertise, experience and seamless access to global market centers.

Learn more at [burnsandwilcoxbrokerage.com](http://burnsandwilcoxbrokerage.com)



**Burns & Wilcox**  
B R O K E R A G E

EDITORIAL

## LAWMAKERS TOYING WITH PBGC PREMIUM

**N**early 40 years ago, Congress authorized the establishment of a federal pension insurance agency, the Pension Benefit Guaranty Corp. With a vital program in place, lawmakers regrettably have swung from one extreme to another.

By 1974, the need for the agency was obvious. There was one horror story after another about pension plan participants losing promised but unfunded benefits when their employers went out of business. The PBGC's mission was simple but crucial: It would guarantee and pay, up to certain limits, the pension benefits promised to workers and retirees when employers couldn't. In fiscal 2013, it paid about \$5.4 billion to participants in plans taken over by the agency.

To help pay for the benefits, employers with defined benefit pension plans pay a premium to the PBGC. Congress made a huge mistake in 1974 when it set an absurdly low premium level of \$1 for each participant an employer had in its pension plan.

There was no way premiums that low would cover the cost of benefits for which the agency would be liable. Soon enough, as the agency's deficit kept rising, Congress kept raising premiums. Just last month, Congress boosted them sharply. The base employer premium, now \$49 per pension plan participant, jumps to \$57 next year and \$64 in 2016. The additional premiums paid by employers with underfunded plans — now \$14 per \$1,000 of pension plan underfunding — leaps to \$24 per \$1,000 of plan underfunding in 2015 and \$29 in 2016.

But why lawmakers did so is puzzling. The agency did not ask for an increase, and its deficit, while considerable, declined in the past year. We suspect the real reason was due to gimmickry, with the funds being deemed a federal budget deficit offset rather than a new PBGC need for revenue.

If so, lawmakers need to know the consequences of their actions: If premiums keep rising, more employers will downsize or eliminate their pension plans, shrinking the PBGC's premium base, leading to more premium hikes and more folded plans. Ultimately, this program will collapse, a message employers need to deliver to lawmakers before it is too late.

LETTERS

### ANOTHER VIEW ON DIVERSITY

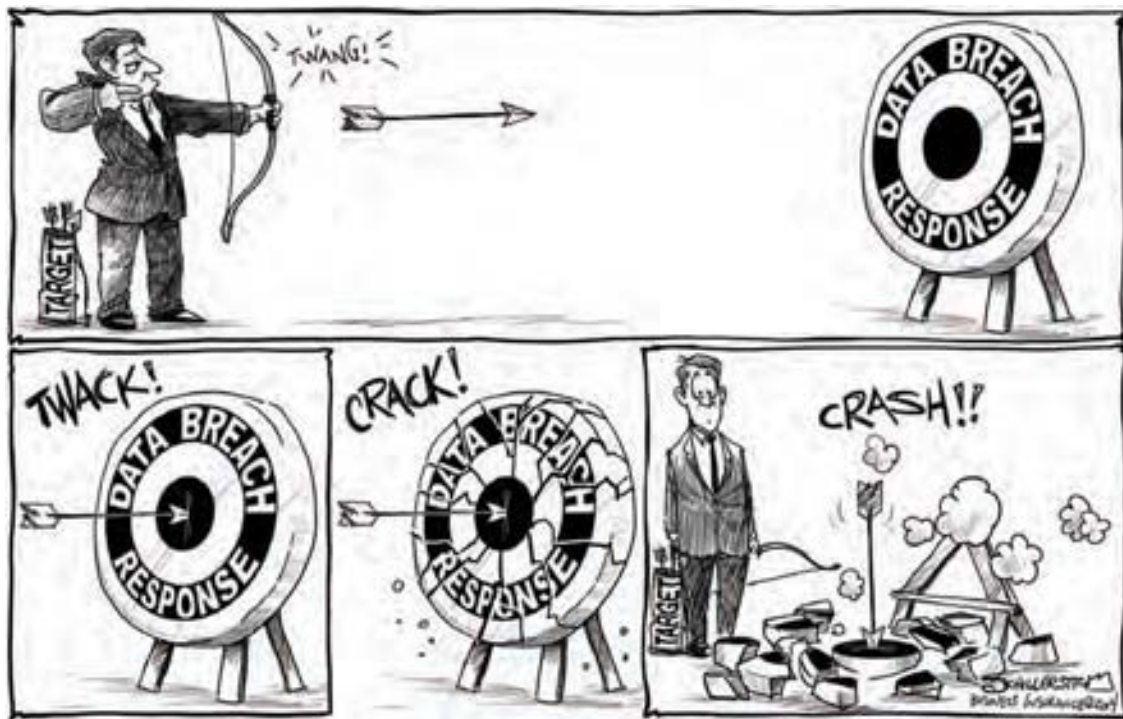
I was disappointed with the commentary in your Dec. 30 edition ("Gender diversity in insurance not just an issue for women"). It seemed confusing, misleading and unnecessarily negative.

I say confusing because it starts by mentioning a "shakeout" that has been taking place in the insurance industry. It does not describe this shakeout, other than to say it sounds like the writer thinks it is a bad thing; I have no idea. Is the writer saying women are leaving the insurance industry because of perceived discrimination?

I say misleading because I am tired of global statistics being cited

See **LETTERS** page 24

SCHILLERSTROM



COMMENTARY

## HEALTH CARE REFORM GETS STRONG DOSE OF REALITY

**N**ow that a key provision of the health care reform law—the individual mandate—has gone into effect, it's clear the grand hopes held by many of extending health care to tens of millions of previously uninsured is unlikely to be fulfilled in the way many people envisioned.

Not that the health care reform law, which President Barack Obama signed in 2010, was ever going to be a quick fix. Fundamentally, the law was focused on extending coverage via insurance rather than being an overhaul of the U.S. health care system.

But as individuals begin going to the insurance exchanges to buy coverage, they are finding out what employers have known for years — health insurance is not cheap.

Putting hypothetical numbers into the Kaiser Family Foundation's health insurance subsidy calculator shows just how much money people will have to pay for coverage. A 30-year-old earning \$25,000 a year buying single coverage would have to pay \$1,729 after a federal premium subsidy for a silver-level plan, which as the name indicates, is second-rate coverage compared with some group plans.

That figure may not sound like a large amount, but it equates to nearly 7% of the individual's annual income.

If the same individual earned \$35,000 a year, he or she would to pay \$2,877 a year for coverage, which equates to more than 8% of the individual's income.

Alternatively, people can pay a fine. The fine in 2014 is the greater of \$95 per family member, or 1% of family income, but not to exceed the cost of a bronze-level plan.



**GAVIN SOUTER**  
EDITOR

The difference between the fine vs. the cost of coverage via an exchange may not sound like a lot to an employee with a good salary and full coverage through his or her employer, but it's a significant chunk of money for young people, who are often still laden with college tuition debt, to pay in the current economic climate. And, as everybody in the world of insurance knows, it's imper-

ative that those young, infrequent users of health care services buy insurance if the system is to work.

Looking at those figures as the equivalent of a tax increase also shows the difficulties in successfully providing comprehensive health care coverage to U.S. residents. Even if the extra money coming out of their paychecks was classified as a tax, individuals in the United States would still pay less in tax than people in the United Kingdom, whose government-funded health system with its long waiting lists would be unacceptable to most insured individuals in the United States, and they would be paying much less than individuals in France, whose health care services are generally viewed as top-notch.

Health care funding in the United States is in the midst of a painful transition and the knock-on effect for key players in the system — insured employees, uninsured individuals and employers — will continue to play out.

**SPECIAL REPORT:**

# **EMERGING RISKS & SPECIALTY LINES**

**Issue: March 3 | Advertising Closing: February 14**

This special report will examine critical emerging risks and their implications for businesses, what insurance may or may not be available to mitigate such risks and steps organizations can take to protect themselves. From fracking to legalized marijuana, these new or expanding risks are challenging the specialty lines market.

Bonus distribution: Risk Management Summit,  
NAPSLO Mid-Year Forum, National Business  
Group on Health, Captive Insurance  
Companies Association

## **BUSINESS INSURANCE®**

**WWW.BUSINESSINSURANCE.COM**

**CALL TO RESERVE YOUR ADVERTISING SPACE TODAY!**

Ron Kolgraf/Northeast/Canada/Bermuda (617) 261-8459  
Steve Middleton/Europe/Middle East/Africa +44 (0)7710 128 464  
Bob Murray/Mid-Atlantic/International 212-210-0136

Monique Murray/Southeast/Classifieds 212-210-0129  
Mary Pemberton/Midwest/West/Hawaii 303-898-4043  
Susan Stilwill/Ad Director 312-649-5224

Or email [advertising@businessinsurance.com](mailto:advertising@businessinsurance.com)

BUSINESS INSURANCE



# RMS 2014

## RISK MANAGEMENT SUMMIT

INNOVATIVE IDEAS FOR THE RISKS OF TOMORROW

### Risk Management Summit Conference Agenda

Wednesday March 12, 2014

- 7:45 AM Registration and Networking Breakfast
- 8:15 AM Welcome Keynote Address
- 9:00 AM – 10:15 Session 1: Cyber Risks – Focus on Cloud Computing
- 10:15- 10:45 AM Coffee & Networking Break
- 10:45 – 12:00 PM Session 2: Global Coverage & Compliance – Are You Covered?
- 11:15 - 12:15 PM Keynote Speaker
- 12:00 -2:00 PM **Innovations Awards Luncheon**
- 2:15 – 3:15 PM Session 3: Alternative Capacity – New Options for Insurers and Risk Managers
- 3:15 – 3:30 PM Networking Break
- 3:30 – 4:45 PM Session 4: Roundtable discussions
- Roundtable 1: Emerging Markets
  - Roundtable 2: Alternative Risk Financing & Captives
  - Roundtable 3: Business Interruptions and Supply Chain Risk
  - Roundtable 4: Political Risk
  - Roundtable 5: Risk Management Tools & Tech
- 5:00 – 6:30 PM Cocktail Reception

Complimentary registration for Risk Managers; Chief Risk Officers/Vice President; Director, Enterprise Risk Management; Director, Risk & Insurance Management, etc. For more information visit [www.businessinsurance.com/RMS2014](http://www.businessinsurance.com/RMS2014)

New York Marriott Downtown  
85 West St, New York, NY 10006  
March 12 & 13, 2014

## Thursday March 13, 2014

- 8:00 – 8:45 AM    Networking - Coffee & Continental Breakfast
- 8:45 – 9:45 AM    Session 1: Building Blocks of a Strong Social Media Policy
- 9:45 – 10:45 AM    Session 2: Communications with the C-Suite: How to Get Their Attention
- 10:45 – 11:15 AM    Coffee & Networking Break
- 11:15 – 12:15 PM    Keynote Speaker - TBD
- 12:15 – 1:15 PM    Lunch & Dessert Served
- 1:15 – 2:15 PM    Session 3: Workplace Violence: The Risks & How to Mitigate Them
- 2:15 – 3:15 PM    Session 4: D & O Insurance – Developments that Effect Rates  
& Coverage
- 3:15 – 4:30 PM    Risk Managers Only Session
- 4:30 PM            Final Remarks & Close of Conference

---

### The Risk Management Summit Hosts the 2014 Innovation Awards

2014 Innovation Awards will be presented to honorees who have been chosen for excellence in creating products or services that are designed for and made available to professional risk managers that address one of more of the following risk management functions:

- Risk Identification
- Risk Assessment/Analysis
- Risk Control
- Risk Financing

**REGISTER TODAY: [www.etches.com/RMS2014](http://www.etches.com/RMS2014)**

**BUSINESS INSURANCE**  
[www.businessinsurance.com](http://www.businessinsurance.com)

SPECIAL  
REPORT

## D&amp;O Liability Risks

Foreign shareholders  
filing D&O lawsuits  
in courts overseas

PAGE 17

Compensation rule  
could open  
new exposures

PAGE 18

Cyber risks pose  
big uncertainty  
for executives

PAGE 18

# Litigation driver

Growing frequency of derivative shareholder suits presents D&O challenges

BY JUDY GREENWALD

**D**erivative shareholder lawsuits are a growing area of concern for companies, as plaintiff attorneys, somewhat stymied in filing class action lawsuits, consider other options, say observers.

However, one critical factor in the development of this type of litigation will be the U.S. Supreme Court's ruling in *Halliburton Co. and David Lesar v. Erica P. John Fund Inc., FKA Archdiocese of Milwaukee Supporting Fund Inc.*, which will affect how easily plaintiffs can file class action certification lawsuits (see related story).

Shareholder derivative lawsuits, unlike class action suits, are filed on the company's behalf, and any funds are put back into their coffers rather than going to shareholders, an important difference. They first gained popularity over the issue of options backdating, but merger and acquisition activity and executive compensation have since become a focus. Still, plaintiffs attorneys can earn substantial fees on these cases alleging that corporations are benefiting from bad behavior.

"As the Supreme Court has made it more difficult to successfully plead securities class actions," the plaintiffs bar has filed an increasing number of derivative suits, said Will Fahey, New York-based senior vice president in Zurich North America's management liability group. "We've seen an uptick in derivative suits over the past few years and would expect to continue to see" an increase in both frequency and severity.

"We're seeing a higher percentage of derivative litigation" following a securities class action litigation, 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. These lawsuits are also being filed in connection with regulatory exposures, such as Foreign Corrupt Practices Act fines and penalties.

"It's absolutely a real exposure for our clients and something we need to be concerned about, and something they should address within their insurance coverage," said Brenda Shelly, New York-based directors and

## FUTURE OF DERIVATIVE SUITS HANGS ON HIGH COURT RULING

**T**he appeal of filing derivative shareholder lawsuits in the future could hinge on the U.S. Supreme Court's eventual ruling in a class action case, observers say.

*Halliburton Co. and David Lesar v. Erica P. John Fund Inc., FKA Archdiocese of Milwaukee Supporting Fund Inc.* deals with the issue of how easily plaintiffs can obtain class action certification in cases in which they allege firms have misrepresented information to their detriment as investors. Arguments in the case are scheduled for March 5.

The focus of the case is the Supreme Court's 1988 ruling in *Basic Inc. v. Max Levinson*, in which the court endorsed the "fraud on the market presumption theory."

The theory says plaintiffs in

class actions do not have to demonstrate that each of the individual class members relied on the company's alleged misrepresentation of information.

It is based on the presumption that in an efficient marketplace, a company's share price reacts to all publicly available information about the company.

Experts say the *Basic* ruling has made it much easier for plaintiffs to file class action lawsuits.

"If the Supreme Court rules to overturn *Basic vs. Levinson* in that case, we'll unquestionably see a spike in derivative lawsuits after that," said Will Fahey, New York-based senior vice president in Zurich North America's management liability group.

By Judy Greenwald

officers practice leader for Marsh Inc.'s FINPRO unit.

The frequency of these cases, rather than their severity, makes them a "big driver," said Mr. Boughal. "The defendants are usually successful in having the case dismissed, but we are seeing a fair amount of small settlements."

Given the increased frequency, these claims can have an effect on the primary D&O insurer, he said. And occasionally there are large settlements.

For instance, in April 2013, a \$139 million settlement was reached in a shareholder derivative lawsuit filed on behalf of New York-based News Corp., which plaintiff attorneys claimed was the largest cash settlement ever

in such a lawsuit.

While such large settlements are still rare events, "they have been occurring a bit more often the last few years," perhaps providing an incentive to the plaintiffs bar, said Mr. Boughal.

"Generally the derivative suits may settle in a more expedient fashion and maybe for less money," but there are exceptions, Ms. Shelly said.

Ann Longmore, New York-based executive vice president of FINEX North America, a unit of Willis North America Inc., said one of the driving forces behind an uptick in derivative claims is that securities class actions can be filed only by shareholders who bought company stock, then sold it at a loss because of alleged misinformation or fraud.

Shareholders who held on to their stock cannot participate in this class action litigation, but they may participate in derivative lawsuits. The two types of claims against companies can be filed side by side, she said.

"If the Supreme Court rules in the defense's favor in *Halliburton*, there will be more derivative suits," said Steve Shappell, Denver-based managing director at Aon Risk Solutions' financial services group.

Such cases "don't make the plaintiffs wealthy," Mr. Shappell noted, because "all it does is put money back in corporate coffers." But they do pay plaintiff attorneys, who may receive corporate benefit awards ranging from a couple of hundred thousand dollars to millions, he said.

Derivative securities lawsuits "have been around a long time and will continue to be an issue that companies have to face," and that there will continue to be rare outlier settlements, Mr. Boughal said.

But observers say the best way to avoid and/or defend against such lawsuits is with strong corporate governance policies.

To prevent those lawsuits and reinforce to the plaintiffs bar the idea that "corporate America is not going to put up with" such claims, companies should continue to introduce "great" corporate governance procedures, Mr. Shappell said, and respond in a thorough manner when claims come in.

# Rise in foreign D&O lawsuits complicates risk management

BY JUDY GREENWALD

The number of directors and officers liability lawsuits filed by foreign shareholders in other countries, while still far smaller than the number filed in the United States, is expected to continue rising.

A key reason for the increase, some suggest, is the U.S. Supreme Court's 2010 ruling in *Morrison et al. v. National Australia Bank Ltd. et al.*, which held that foreign investors who bought non-U.S.-based companies' stock on foreign exchanges cannot sue in the United States (see related story).

This means multinational policyholders must deal with many different laws. Countries where D&O liability cases are most likely to be pursued include Australia, Canada and the Netherlands, experts say.

"We are seeing a rise in international claims generally in the management liability area," said Will Fahey, New York-based senior vice president in Zurich North America's management liability group. "We're also seeing our U.S. insureds incur claims from their international operations," he said.

The *Morrison* ruling was "the decision heard 'round the world,"

said Ann Longmore, New York-based executive vice president of FINEX North America, a unit of Willis North America Inc. It had a wide impact almost immediately, "with cases being tossed out of U.S. courts" within weeks, she said.

"The *Morrison* ruling was effectively a significant limitation on litigation where people in the U.S. could sue for causes of action that might more properly be brought in other countries," said Thomas M. Sheffield, senior vice president with Marsh Inc.'s FINPRO unit in New York.

"*Morrison* has encouraged litigants to be more experimental, and to try to see whether other alternatives can be pursued," said Kevin LaCroix, an attorney and executive vice president at RT ProExec, a division of R-T Specialty L.L.C. in Beachwood, Ohio.

"There were a lot of forces moving in that direction before *Morrison*," with efforts in Canada and Europe trying to make use of class actions, said Matthew W. Close, a partner with law firm O'Melveny & Myers L.L.P. in Los Angeles. "But those sorts of trends and developments and the globalization of litigation were given a real kick and jump-start as a result" of it.

## SETTING PRECEDENT

A key factor behind the trend toward increasing directors and officers liability litigation in countries outside the United States is the U.S. Supreme Court's 2010 ruling in *Robert Morrison et al. v. National Australia Bank Ltd.*, which involved Melbourne, Australia-based National Australia Bank's February 1998 acquisition of HomeSide Lending Inc., a Jacksonville, Fla.-based mortgage servicer.

National wrote down the value of HomeSide's assets by \$450 million in July 2001, and then by another \$1.75 billion in September of that year. Australian shareholders filed suit against both

companies and their officials.

The Supreme Court held in its unanimous ruling that the Securities Exchange Act's Section 10(b) anti-fraud provision "reaches the use of a manipulative or deceptive device or contrivance only in connection with the purchase or sale of a security listed on an American stock exchange, and the purchase or sale of any other security in the United States."

"This case involves no securities listed on a domestic exchange," said the court, in affirming dismissal of the petitioners' complaint by the 2nd U.S. Circuit Court of Appeals in New York.

By Judy Greenwald

U.S. companies are seeking to grow in China and other emerging markets where the government does not operate as it does here, and where the legal landscape is more uncertain, Mr. Fahey said. "I just think it's a reflection of the increased multinational risk profile

of U.S.-based insureds," he said.

But "we haven't seen extreme growth in securities claims in countries outside the United States," said Lee Lindsey, Denver-based senior vice president at Aon Risk Solutions' Financial Services Group. "In large part, I think, they

still don't have the same types of class actions in their civil laws that we have here in the United States, allowing class actions."

While some have class actions, "many of these are opt-in as opposed to opt-out," she said. In the former, plaintiffs must indicate they want to participate in the litigation and the default is exclusion; in the latter, potential class members are automatically included unless they indicate otherwise.

There has been a steady stream, not a flood, of opportunistic or innovative plaintiff lawyers seeking to pursue claims "that in the past would have been filed in the U.S. but now, because of *Morrison*, are being pursued outside the U.S.," Mr. LaCroix said.

"There's been a tremendous effort by a lot of investor groups and very talented plaintiffs lawyers to establish the ability to bring securities class action cases in Canada," Mr. Close said. "These cases are really battlegrounds to see how the law will be shaped."

The Netherlands, South Africa, and Australia have indicated they are open to securities class action claims, Ms. Lindsey said, though she doesn't expect to see tremendous growth any time soon.

## CAPTIVES IN THE GLOBAL ECONOMY

January  
29-31, 2014  
Turnberry Isle Miami  
Aventura, Florida

# WORLD CAPTIVE FORUM 2014

Last Chance  
to Register! \*

\*Registration  
closes 1/24/14

20 sessions designed to deliver expert advice and insights for new captive owners as well as advanced practitioners. The agenda also features a dedicated tracks on employee benefits through captives. Hear speakers from such companies as:

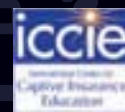
Alvarez & Marsal  
Aon Insurance Managers  
(Cayman) Ltd.  
Appleby  
Archer Daniels Midland  
Asociación Latinoamericana de  
Administradores  
de Riesgos y Seguros (ALARYS)  
BaylorScott&White Health Service  
Bingham Greenebaum Doil LLP  
Business Insurance

Caterpillar Inc.  
Community Hospital of the  
Monterrey Peninsula  
Deloitte Consulting  
Deutsche Post DHL  
Generali  
Granite Management Ltd.  
Groom Law Group  
International Paper Co.  
Johnson Lambert LLP  
Kirkway International Ltd.

Marsh  
McDermott Will & Emery LLP  
MetLife  
Michael Maglaras & Co.  
Mondelez  
Old American  
Parenteau Associates  
Peñoles  
R&Q Quest Management  
Services Ltd.  
R.C. Bigelow Inc.

Rueda & Barrera  
RWH Myers & Co. LLC  
Ryan LLC  
Safeway  
Saint Francis Hospital and  
Medical Center  
Saint Raphael Healthcare  
System Inc.  
SeQure Underwriters  
South Carolina Department of  
Insurance

Stanford University Medical Center  
State of Connecticut Insurance  
Department  
Sutherland, Asbill & Brennan  
TerraFirma  
The Coca Cola Company  
Towers Watson  
USA Risk  
Willis  
Xcel Energy inc.  
Zurich



Sessions  
Approved  
for ICClE CE  
Credit

[WWW.WORLDCAPTIVEFORUM.COM](http://WWW.WORLDCAPTIVEFORUM.COM)

Organized by: Business Insurance, R&Q Quest and Towers Watson

### Sponsors:

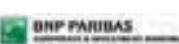
DIAMOND

PLATINUM

GOLD

SILVER

BRONZE



# EMPLOYERS GRAPPLE WITH REQUIREMENT AIMED AT CONTROLLING EXECUTIVE PAY

Dodd-Frank rule would compare CEO compensation with rank-and-file pay packages

BY MARK A. HOFMANN

**A** proposed regulation that would require corporations to disclose the ratio of the median total compensation of all company employees compared with that of the company's CEO could mean headaches for employers.

The requirement, which has yet to be finalized, appears as a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

The U.S. Securities and Exchange Commission's proposed regulation implementing the pay-ratio proposal would include seasonal, part-time and non-U.S. employees in the calculation of median employee compensation and take a broad view of what constitutes compensation.

There is no firm date for complying with the proposed rule, which was published in the Federal Reg-

## Efforts to define 'median' employee

**C**alculating total compensation for corporate CEOs is nothing new, since companies for years have reported information such as salaries, bonuses, equity awards and other forms of remuneration.

But adding rank-and-file employees to the calculation to determine median employee compensation is indeed something new, Eugene W. McDermott Jr., a partner in the Providence, R.I., office of Edwards Wildman Palmer L.L.P., said in an email.

Even though companies never have had to report compensation of rank-and-file employees

under existing rules, "not all of these things need to be taken into account in first identifying the median employee," said Mr. McDermott.

"So for example, it seems like a company could develop a reasonable method to identify the median that does not include pension benefits," he said. "If that company then identifies two equally paid workers as being at the median, but one participates in a pension and the other does not, the 'denominator' in the ratio could be very different depending on which employee is used, and the ratio could be very different."

By Mark A. Hofmann

ister last fall as the SEC sought comment on proposal.

"The proposed rules would give companies a fair amount of flexibility in identifying the median

employee. They could use SEC disclosure standards to calculate compensation, but they could also use payroll or tax records, or any other reasonable method, so long

as they apply it consistently," Eugene W. McDermott Jr., a partner in the Providence, R.I., office of Edwards Wildman Palmer L.L.P., said in an email.

"But once they identify that 'median' employee, they have to calculate the ratio using his or her total compensation under SEC reporting standards, using the same method used to report CEO, chief financial officer and other executive officer compensation," Mr. McDermott said. "That includes salaries, bonuses, the fair value of stock or option awards, incentive plan payments, increases in the present actuarial value of pension benefits, perquisites and all other compensation."

Coming to a conclusion about the effect of the proposed regulation would be "very premature," said Peter Taffae, managing director at wholesale brokerage Executive Perils Inc. in Los Angeles. But historically, he said, similar regulations have exposed corporations to greater vulnerability.

"There's a question of the level of compliance — the interpretation of

# Data breach litigation creates potential D&O exposure

Shareholder litigation, derivative lawsuits often follow reports of data leaks

BY BILL KENEALY

**W**hen it comes to liability risks for directors and officers, few present more uncertainty than cyber risk.

One certainty is that large data breaches will attract lawsuits against the compromised company, as shown by the recent travails of Target Corp.

Since Target acknowledged on Dec. 19 that up to 40 million credit and/or debit cards may have been compromised in a data breach, an estimated 40 lawsuits have been filed against the discount retailer thus far.

William Um, Los Angeles-based policyholder counsel at Hunton & Williams L.L.P., said the speed with which lawsuits were filed against Target is noteworthy. "The public notification of the breach came out in the morning, and a class action lawsuit was filed in Northern California the same day," he said.

Mr. Um said that while many companies now carry dedicated cyber attack coverage, data

breaches still affect directors and officers policies.

"Some of the first lawsuits that were brought against Target have brought allegations of general wrongful acts and negligence, which can impact entity coverage under D&O policies," he said.

While class action suits filed by aggrieved customers may represent the greatest threat in terms of severity, companies with data breaches now are increasingly subject to shareholder derivative lawsuits, said Ann Longmore, New York-based executive vice president of FINEX North America, a unit of Willis Group Holdings P.L.C.

Unlike previous class action lawsuits focused on the falling share prices of companies affected by the data breach, derivative lawsuits are filed in state courts, Ms. Longmore said. The laws regarding derivative suits make an insurer more likely to pay court awards or settlements under the Side A portion of the D&O policy than with a class action suit, she said.

"It's interesting that not all the

cyber risk D&O cases are now being brought as stock-drop cases," she said. "Now, a number are being filed as derivative actions. This changes the game significantly."

Moreover, the ongoing guidance from the U.S. Securities and Exchange Commission encouraging public companies to disclose all data breaches will likely add to the lawsuit trend, Ms. Longmore said.

"In this new environment with the SEC's focus on cyber breach disclosures, it's a very different world," she said.

Indeed, a class action lawsuit filed in Utah by five Target customers alleges negligence on the part of Target.

"If not for Target's negligent and wrongful breach of its duties owed to plaintiffs and class members, their personal information would not have been compromised," according to the lawsuit.

Allegations in the suit include: plaintiffs having their personal information compromised; incurring time and expenses in cancelling their debit and/credit cards;

## BIGGEST CYBER THREATS

Cyber security threats that organizations viewed as being the most significant they faced during the past 12 months.

Hackers	22%
Current, former employees	21%
Foreign countries	11%
Activist organizations, hactivists	5%
Organized crime	4%

Source: PricewaterhouseCoopers L.L.C.

activating new cards and re-establishing automatic payment authorizations from their new cards; and other economic and noneconomic damages, including irrecoverable losses due to unauthorized charges on their credit/debit cards.

Nonetheless, the success of such lawsuits is far from certain, Mr. Um said, adding that one problem

for plaintiffs in class action lawsuits against companies that have suffered data breaches is proving the breach has led to compensable damages.

"With the mass class action suits, you will find greater clarity sooner, because one of the great hurdles is that the plaintiffs have had trouble alleging compensable damages," Mr. Um said. "While the customer data may now be in the hands of people who have it, the question remains what has happened as a result of it. Trying to articulate compensable harm has been a struggle for the plaintiff lawyers."

Yet this advantage for companies defending themselves against cyber breach lawsuits may not persist, he said. "As plaintiffs get more shots at the apple, they are getting better at trying to allege compensable harm," he said.

As the legal and regulatory environment surrounding cyber attacks is changing, the nature of the threat continues to evolve.

Jerry Irvine, Chicago-based chief information officer at IT advisory

what comprehensive compliance is and, once that's decided, how to comply to reach that objective," Mr. Taffae said. "Time will tell, but the more general it is, the harder it's going to be to have comprehensive compliance. Anything less than comprehensive compliance means you're potentially vulnerable to litigation."

"My take is that there's still a lot to be determined in terms of how the rule will play out in its final adopted form, assuming the SEC adopts the rule," said Neil P. Casey, a partner at White & Williams L.L.P. in New York. He noted that companies have already expressed concern about the costs of complying with the rule.

"Coupled with that is whether it actually provides meaningful disclosure to investors," Mr. Casey said.

He also said that while the SEC has said it is trying to provide companies with flexibility in complying, which can be useful, "it can also lead to companies taking different approaches, so you may not have an apples-to-apples comparison even between companies that are in the same industry."

In addition, he said non-U.S. employees in the calculation could mean problems with foreign privacy laws.

Additionally, companies with a

firm Prescient Solutions, said even the most conscientious of firms will become increasingly vulnerable to data breaches as hackers continue to refine their attacks.

One reason that security professional and risk managers are disadvantaged relative to hackers is that affected companies are reluctant to share information about emerging breaches because of competitive and liability concerns, Mr. Irvine said.

"The potential for these vulnerabilities is so great because hackers can work together and share information to figure out what works," he said. "Because so many organizations keep information about data breaches to themselves, IT professionals don't always have that luxury."

Scott Schleicher, Washington-based underwriting manager for cyber risk at XL Insurance said that while D&O policies may help in the long run against lawsuits, many of the immediate, ancillary costs of cyber breaches are best handled by dedicated cyber risk policies.

"This is what cyber insurance does," Mr. Schleicher said. "It allows the company to not worry about the management of the claim. Cyber policies give insureds a path to run on when managing a data breach crisis."

large seasonal or part-time workforce will have to "confront the fact that the employee part of the ratio will be low, making the executive compensation part look high," said Kevin LaCroix, executive vice president of R-T Specialty L.L.C. in Beachwood, Ohio. "The companies that have a large non-U.S. employee base will have the same issue."

"The purpose of the proposed disclosure is to try to control exec-

utive compensation," but it might have the opposite effect, said Dan Bailey, member at Bailey Cavaliere L.L.C. in Columbus, Ohio. The pay ratio disclosure will allow shareholders and companies to better compare executive compensation at one company with another similar company, he said.

"CEOs and boards at most companies expect and want their CEO compensation to be above average, not below average, so the

more information you provide to allow companies to evaluate how they compare with other companies, the more likely companies will want increase their CEO compensation to compare favorably," Mr. Bailey said.

"There's nothing about disclosure itself that necessarily means more lawsuits — information is neutral," said Mr. LaCroix.

"My concern is that the same sequence of events will occur with

the pay ratio disclosure that we saw with the say-on-pay provision of Dodd-Frank. Companies that had negative shareholder votes, even though it was an advisory vote, had to deal with follow-on shareholder litigation," Mr. LaCroix said.

"There will be comparisons; and for those companies that are different, there will be shareholder concerns and possibly more shareholder litigation," he said.

**JOIN US IN LONDON**  
**IIS 50<sup>th</sup> ANNUAL SEMINAR**  
 Park Plaza Westminster Bridge Hotel • June 22 – 25, 2014

We invite you to the 50th anniversary of the IIS Annual Seminar in the exciting city of London! **THE must-attend global insurance conference.**

**THE IMPACT OF SCIENCE AND TECHNOLOGY ON THE INDUSTRY**

**TOPICS**

- ▶ Life Insurance in a Time of Rapid Technological Change
- ▶ Implications of Alternative Capital Sources in Reinsurance
- ▶ The Digital Insurer
- ▶ Advances in Science and Technology: Implications for the Industry
- ▶ Harnessing the Power of Big Data
- ▶ Regulation and Innovation: Can they coexist?

**SPEAKERS INCLUDE**

- ▶ **Albert Benchimol**  
CEO and President, Axis Re, Bermuda
- ▶ **Dominic Casserley**  
CEO, Willis Group, UK
- ▶ **Yoshihiro Kawai**  
Secretary General, IAIS, Switzerland
- ▶ **Denis Kessler**  
Chairman and CEO, SCOR, France
- ▶ **Barry Stowe**  
Chief Executive, Prudential Corp. Asia, Prudential Holding, Hong Kong
- ▶ **Nikolaus von Bomhard**  
Chairman of the Board of Management, Munich Re, Germany
- ▶ **Greig Woodring**  
President and CEO, Reinsurance Group of America, USA

**For 50 years we have inspired productive dialog towards the advancement of the industry and the London 2014 seminar promises to be exceptional!**



The IIS, founded in 1965, is the world's largest and most prestigious insurance industry organization, with members representing global insurance leaders, international regulatory authorities and worldwide insurance scholars from over 90 countries.

**REGISTER NOW: [www.IISonline.org/london](http://www.IISonline.org/london)**

## LARGEST D&O INSURERS

The 20 largest underwriters of directors and officers coverage ranked by 2012 direct premiums written.\*

Rank	Company	Direct premiums written	Direct losses incurred	Direct loss ratio	Market share
1	American International Group Inc.	\$844,074,508	\$302,911,069	38.0%	14.9%
2	XL Group P.L.C.	\$615,076,284	\$260,010,276	43.1%	10.8%
3	Chubb Corp.	\$588,287,002	\$163,082,173	26.5%	10.4%
4	HCC Insurance Holdings Inc.	\$338,468,033	\$191,765,865	53.9%	6.0%
5	The Travelers Cos. Inc.	\$332,469,586	\$134,869,604	39.9%	5.9%
6	Ace Ltd.	\$294,815,954	\$151,438,012	54.4%	5.2%
7	CNA Financial Corp.	\$256,198,430	\$96,857,868	41.1%	4.5%
8	Zurich Insurance Group Ltd.	\$228,303,853	\$241,852,846	107.3%	4.0%
9	Axis Capital Holdings Ltd.	\$212,209,507	\$112,827,209	53.7%	3.7%
10	Tokio Marine Holdings Inc.	\$208,270,865	\$153,133,846	74.1%	3.7%
11	American Financial Group Inc.	\$198,779,177	\$108,796,245	55.6%	3.5%
12	Alleghany Insurance Holdings L.L.C.	\$145,662,925	\$58,865,358	42.7%	2.6%
13	The Hartford Financial Services Group Inc.	\$137,442,447	\$176,831,559	102.2%	2.4%
14	Arch Capital Group Ltd.	\$136,065,914	\$74,170,718	53.2%	2.4%
15	W.R. Berkley Corp.	\$128,792,766	\$71,179,562	57.8%	2.3%
16	Liberty Mutual Holding Co. Inc.	\$102,825,971	\$26,394,049	26.0%	1.8%
17	Cincinnati Financial Corp.	\$77,759,148	\$33,144,848	44.0%	1.4%
18	Allied World Assurance Co. Holdings A.G.	\$76,280,009	\$39,193,484	52.1%	1.3%
19	ICI Mutual Insurance Co., a Risk Retention Group	\$74,861,134	\$20,492,245	26.9%	1.3%
20	Nationwide Mutual Insurance Co.	\$72,793,208	\$26,510,725	40.6%	1.3%

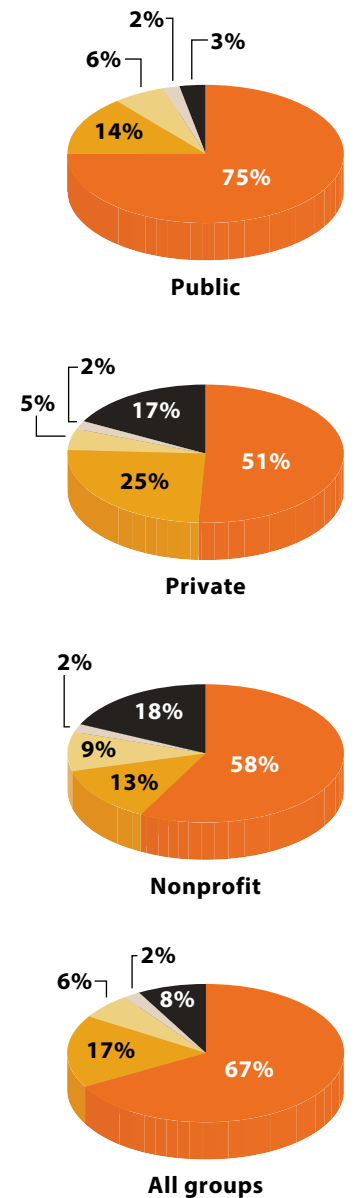
\*Includes all companies owned by parent

Source: National Association of Insurance Commissioners

## TYPE OF COVERAGE

Primary directors and officers liability insurance programs in 2012, by organization type

■ Side A, B and C
 ■ Other
 ■ Side A, B only
 ■ Not Sure
 ■ Side A only



Source: Towers Watson & Co.

## PRICING

Decreases in premiums for primary directors and officers liability insurance were more likely for publicly held companies than for private/nonprofit organizations in 2012 and 2011.

Public	2012	2011
Increased	29%	14%
Stayed the same	41%	23%
Decreased	29%	62%
Not sure	1%	1%

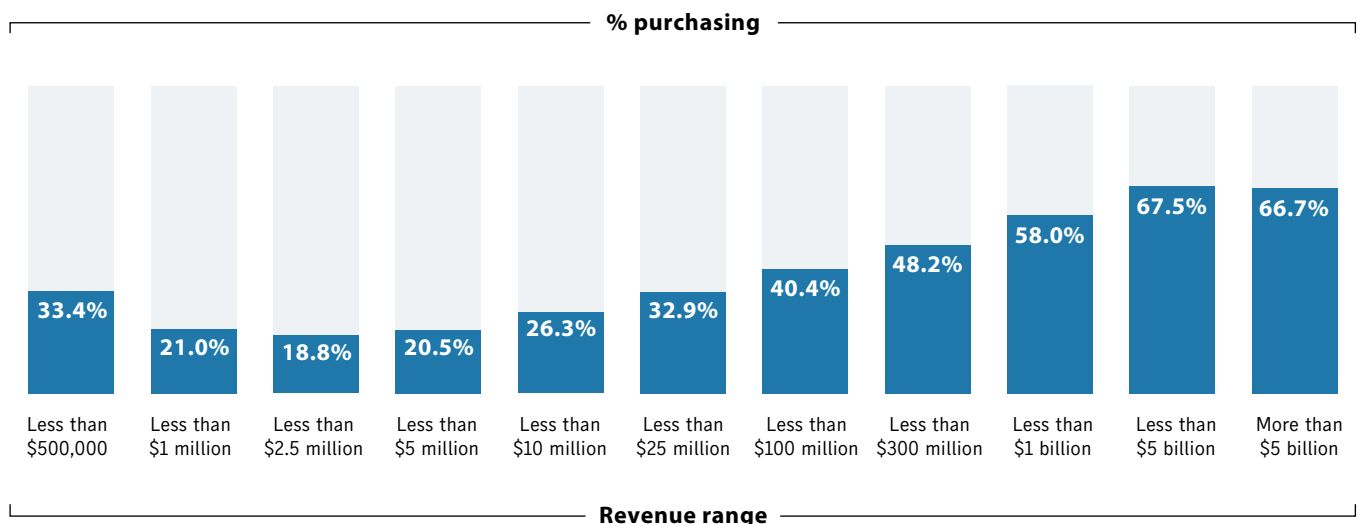
  

Private/nonprofit	2012	2011
Increased	41%	18%
Stayed the same	44%	46%
Decreased	12%	35%
Not sure	3%	1%

Source: Towers Watson & Co.

## POLICYHOLDERS

Directors and officers insurance penetration at private, nonprofit companies by revenue size



Source: Advisen Ltd.

## Ironshore backs U.S. firms' international exposures

Ironshore Inc.'s U.S. specialty casualty unit has launched an excess casualty product aimed at U.S.-based companies with overseas operational risk exposures.

The coverage, Ironshore International Connect, provides excess casualty coverage for U.S.-based companies' overseas operations on a locally admitted basis and is designed to comply with market rules and regulations, the Hamilton, Bermuda-based insurer said in a statement.

The product's terms and conditions are the same as for Ironshore's U.S. domestic excess liability program, the insurer said.

Limits up to \$50 million are available. "Compliance and regulatory guidelines in local markets worldwide can create a burden on U.S.-based companies to ensure that insurance coverage is compliant in addressing overseas operational risks," Tim McAuliffe, president of Ironshore's U.S. specialty casualty unit, said in the statement.

Ironshore is providing a solution that mirrors the existing U.S. excess casualty program to provide insureds with comprehensive, locally-admitted coverage, he said.

## Airmic aids newcomers to risk management

U.K. risk management association Airmic Ltd. has introduced a service intended to help newcomers to risk management.

The program, fastTrack, is for risk managers beginning their careers as well as experienced professionals, such as lawyers or other corporate officers, who take on risk management and insurance buying responsibilities, Airmic said in a statement.

The program includes an educational syllabus and social events, Airmic said.

Educational activities will include training about 10 aspects of insurance buying and risk management through a series of workshops run by Airmic partner companies, the association said.

More than 125 people already have signed up, Airmic said.

## Tokio Marine introduces freight liability product

Tokio Marine Europe Insurance Ltd. has launched a freight liability insurance product designed to meet the needs of companies in the freight and warehousing sectors in the United Kingdom.

The product provides worldwide liability coverage and is tailored for haulers, couriers, freight forwarders and warehouse companies, the insurer said in a statement.

It provides clients with tailored cover with flexible limits, according to the statement.

The liability insurance package can be extended to protect a company's equipment, such as containers, trailers and loading equipment, the insurer said.

It is supported with regional underwrit-



## Chubb Europe updates cover for tech firms

Chubb Insurance Co. of Europe S.E., a unit of Chubb Corp., has revised its MasterPackage insurance policy for technology companies.

The product is available in Europe.

The comprehensive first- and third-party policy is tailored for the needs of technology companies that design, install and supply software, hardware and hosting solutions, the insurer said in a statement.

Policy enhancements include coverage for contractually assumed privacy data breach expenses, disclosure of confidential information, pass-through fines and penalties, first-party privacy data breach expenses, first-party electronic threat expenses, first-party reward expenses, cyber attack and business interruption coverage, according to the statement.

The changes "significantly enhance the policy, while we have retained the core elements of our policy such as being contractual liability-based and providing cover for both technology companies' services and products," David Legassick, Chubb U.K. and Ireland technology insurance manager, said in the statement.

MasterPackage editions are tailored for European business sectors that include technology, law and high-precision metalworking, according to the statement.

ing throughout the U.K., according to the statement.

## Marsh facility covers habitational real estate

Marsh Inc. has launched a property insurance facility designed for people who own or live in multifamily properties.

The product was developed in response to the increasingly constricted habitational insurance market, the broker said in a statement.

Marsh's facility offers broad, competitive coverage terms and pricing for the risks associated with multifamily properties, including those in catastrophe-exposed areas, according to the statement.

"Recent high-severity events, coupled with a challenging economic environ-

ment and major updates to catastrophe models, have caused insurers to raise prices and tighten underwriting guidelines for habitational properties," Jeffrey S. Alpaugh, Marsh's global real estate practice leader, said in the statement.

"Multifamily is typically seen as a bright spot for real estate investors; however, the insurance market can be a real challenge for multifamily operators who are facing increasing premiums, higher retentions and certain capacity constraints," he said.

The facility is provided by London market capacity, the broker said.

## Private health exchange launches in Illinois

The Small Business Advocacy Council and nonprofit health insurer Land of Lincoln Mutual Health Insurance Co., both based in Chicago, have partnered to launch a private health insurance exchange intended for small businesses in Illinois.

Small Business Advocacy Council members can compare and purchase Land of Lincoln Health's individual and small-group health insurance offerings through the SBAC Private Exchange, the organization said in a statement.

"Health insurance costs have crippled the small-business community," Elliot Richardson, founder of the council, said in the statement.

"These costs have impacted the growth of small business and caused them to lose top talent because of the inability to cover employees."

"Land of Lincoln Health recognized the need for small businesses to have comprehensive, affordable insurance solutions to offer their employees," Dan Yunker, CEO of Land of Lincoln Health, said in the statement.

"The SBAC ... advocated for the creation of a health insurance (cooperative) in Illinois," Mr. Richardson said in the statement.

"Today we take aim at the rising cost of health care by launching the SBAC private exchange, featuring Land of Lincoln Health products."

Council members can access experts to guide them through the plan selection and implementation processes, according to the statement.

## National Interstate offers ambulance program

National Interstate Insurance Co. is offering insurance coverage for nonemergency and for-profit emergency ambulance transportation operations.

The insurer said it began accepting applications on Jan. 2 and that it plans to increase its producer network.

The package includes auto liability, auto physical damage, workers compensation, general liability, professional liability, property, inland marine and crime coverage, the insurer said in a statement.

With some restrictions, National Interstate is offering the coverage through independent appointed agents in all 50 U.S. states, the insurer said.

## DEALS & MOVES

### USI acquires Quintessential Advisors

USI Insurance Services L.L.C. has acquired Dayton, Ohio-based Quintessential Advisors Ltd., an independent broker specializing in insurance, investment and employee benefits for midsize firms.

Terms of the deal were not disclosed.

Thomas D. Cassady, regional CEO of USI's Cincinnati-based Midwest region, said the acquisition expands USI's employee benefits practice into the Dayton market.

Quintessential Advisors co-Partners Robert J. Corbett Jr. and Judith K. Williams will join USI, USI said in a statement.

Quintessential Advisors was formed in 1995.

USI Holdings Corp. was the 10th-largest broker of U.S. business according to *Business Insurance's* latest ranking.

### Hub International unit buys GNW-Evergreen

Hub International Insurance Services, California Operations, a unit of Chicago-based Hub International Ltd., has acquired Los Angeles-based broker GNW-Evergreen Insurance Services Inc.

GNW-Evergreen provides commercial, personal and employee benefits insurance to businesses and individuals, Hub said in a statement.

The Los Angeles brokerage specializes in niche commercial offerings for the entertainment, health care, professional services, real estate, technology, nonprofit, retail, and hospitality industries, according to the statement.

It also offers high-net-worth personal insurance programs, according to the statement.

Hub, which did not disclose terms of the deal, said it will open new offices in Encino, Calif., and Nashville, Tenn., using GNW-Evergreen operations.

"The acquisition of GNW-Evergreen represents Hub's interest in further growth in the Los Angeles area and entertainment industry," Hub California President Kirk Christ said in the statement.

Hub is the 11th-largest insurance broker of U.S. business, according to *Business Insurance's* latest ranking.

### Chicago's Insureon acquiring Insurance Noodle

Chicago-based Insureon, a major online insurance delivery platform for small businesses, has agreed to acquire Insurance Noodle, an online wholesale insurance broker.

Insurance Noodle is a unit of Willis Group Holdings P.L.C. The deal is expected to close later this month. Financial terms were not disclosed.

With the acquisition, Insureon will exceed \$100 million in total premium and give agents and brokers more access to insurers with top financial strength ratings.

"The acquisition will position Insureon to even better serve small business owners around the country," CEO Ted Devine said in a statement. "The acquisition reinforces the change that technology is enabling in the small commercial buying process."

Ralph Blust, CEO of Insurance Noodle, will retain his position and oversee wholesale operations. After the sale closes, the Insurance Noodle team will join Insureon in its Chicago office.

## BUILDING CODE ENFORCEMENT CRUCIAL TO STRUCTURE SAFETY

**Q** Did Superstorm Sandy spur renewed interest in establishing stronger building codes?

**A** Probably not as much as we would have liked. The Sandy zone affected several states, but the two that people seem to focus on when it comes to codes are New York and New Jersey. New Jersey actually had a strong building code regime in place. Newer structures that were built to the new codes performed pretty well in the face of Sandy's winds, but the storm surge was the problem. After Sandy, Gov. Chris Christie really focused on coastal flooding and flood maps and proper elevation.

New York is a little different story. New Jersey had a strong statewide building code in place. New York basically has two codes. There's a code for New York City and a code for the rest of the state. The challenge in New York is that so much of the building stock is old, so even if they update the code it won't affect those structures. What do you do with the existing building stock to make it more resilient? The good news is there are lots of conversations happening at both the New York City and

### Q & A

state level on just that issue.

**Q** What are the critical elements of a building code for commercial structures?

**A** Commercial structures are very different from residential structures. There are more engineering and construction requirements because they're public spaces. The overarching model code for commercial structures is the International Building Code or IBC. That code classifies structures by use and applies different requirements to each classification. Some of those have to do with structural

strength, including seismic provisions, wind and flood provisions, egress, ventilation and fire safety.

Commercial structure building codes are more readily accepted. The liability of commercial structures is much greater because you have many more people coming and going. There are also international existing building codes and there are system-specific codes.

The bottom line for me is that codes are a minimum standard for occupancy, the minimal legal level at which you can put people in the building or the minimum life-safety standard.

People shouldn't rely too much on codes when it comes to a decision on sheltering in place because the codes in general are designed to keep the building up long enough for safe evacuation.

**Q** What are the challenges facing advocates of stronger building codes?

**A** Enforcement is key. The presence of a code is a threshold. If the code isn't enforced, then the standard is essentially worthless. There is not uniform enforcement of codes in many states and in



**JULIE ROCHMAN**

**INSURANCE INSTITUTE FOR  
BUSINESS AND HOME SAFETY**

Julie Rochman is president and CEO of the Insurance Institute for Business and Home Safety in Tampa, Fla. Before joining IBHS in 2007, she held several property/casualty insurance industry positions, including senior vice president of the American Insurance Association. She recently spoke with *Business Insurance* Senior Editor Mark A. Hofmann about issues surrounding building codes. Edited excerpts follow.

other places. Even though the model codes might be adopted at the state level, they allow local opt-out or weakening amendments which reduce safety and undermine uniformity, which from an underwriting perspective is very important.

The process of enacting strong building codes is very complicated. The international model codes are on three-year cycles, and during those three years thousands of suggested improvements are brought forth. There is limited time for substantive discussion, and it is always the case in public

policy that it is easier to do nothing than to do something.

**Q** Is there organized opposition to enhancing building codes?

**A** I wouldn't say there is organized opposition but there are definitely stakeholders who will oppose adoption or enforcement of code provisions that they think will cost them more money. For example, if an existing product needs to be altered or discontinued because of new technical standards, then the manufacturer will oppose that.

### COMINGS & GOINGS

## UP CLOSE: R. DALE HALL

**SCHAUMBURG, ILL.-BASED MANAGING DIRECTOR OF RESEARCH**

Society of Actuaries

**PREVIOUS POSITION:** Bloomington, Ill.-based chief life/health actuary at Country Financial

**LOOKING FORWARD TO:** Working for a membership organization and working with a well-established, high-quality research department and expanding that further.

**GOALS FOR NEW POSITION:** I would like to increase the amount of data-driven in-house research. We've been doing studies over the decades. I would like to increase the frequency of those exponentially.

**CHALLENGES FACING INDUSTRY:** In the actuarial profession, we have a growing membership that gets more international all the time. The challenge is finding more ways to work with members we have all over the world.

**INDUSTRY OUTLOOK:** For the insurance industry in particular, I think the outlook is positive given we have just come through a harder economic cycle. But we've seen good financial strength for the industry. The insurance industry is now situated where it can still



provide strong solutions for clients.

**FIRST INDUSTRY JOB:** Actuarial analyst at agribusiness insurer Westfield Group in Westfield Center, Ohio. I went there from college.

**WHAT SURPRISED ME:** I knew that the actuarial profession dealt a lot with mortality, but I was quickly surprised how much broader the scope of insurance is, how much more finance and investment, and financial reporting and accounting were a part of working at an insurance company.

**ADVICE:** I would encourage someone entering the field to quickly and proactively build a strong network of peers. Our industry is not a place where you can retreat to a corner and solve the problems yourself. It takes a lot of networking and discussion.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** A sports broadcaster.

**HOBBIES:** Playing tennis.

### Professional Moves & Promotions

Visit [www.businessinsurance.com/ComingsandGoings](http://www.businessinsurance.com/ComingsandGoings) for a full list of this week's personnel moves and promotions. Check our website daily for additional postings and sign up for the weekly email.

#### BROKERS

Willis North America Inc.	Jeffrey Beneville
Arthur J. Gallagher & Co.	Brian Bries
Engle-Hambright & Davies Inc.	Jon K. Miles
Engle-Hambright & Davies Inc.	James Lewis
Engle-Hambright & Davies Inc.	Scott Radcliffe

#### INSURERS

FM Global	Chris Johnson
FM Global	Stefano Tranquillo
FM Global	Philip Johnson
Cameron Mutual Insurance Co.	Brad Fowler
Zurich North America	Dan Kleiman

#### REINSURERS

Munich Re North America	Travis Micucci
-------------------------	----------------

#### OTHER

Mercer L.L.C.	Chris Blair
Swett & Crawford Group Inc.	Ed Frackiewicz
Crawford & Co.	Bob Jones

*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: Kate Shepherd, *Business Insurance*, 150 N. Michigan Ave., Chicago, Ill. 60601-7524. [kshpherd@businessinsurance.com](mailto:kshpherd@businessinsurance.com).

# CLASSIFIEDS

To place your ad, contact Monique Murray 212.210.0129 E-mail: mmurray@BusinessInsurance.com  
 Business Insurance, Classified Department, 711 Third Ave., New York, NY 10017-4036  
 Call for details on print and internet advertising

## PUBLIC NOTICES

### LEGAL NOTICE

**IN THE MATTER OF THE LIQUIDATION OF  
 ATLANTIC MUTUAL INSURANCE COMPANY**  
 Supreme Court County of New York  
 Index No.: 402424/10

**NOTICE**

Pursuant to an order of the Supreme Court of the State of New York, County of New York, entered on April 27, 2011, the Superintendent of Insurance of the State of New York and his successors in office were appointed as liquidator ("Liquidator") of Atlantic Mutual Insurance Company ("Atlantic Mutual") and, as such, has been directed to take possession of Atlantic Mutual's property and liquidate its business and affairs pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Superintendent of Financial Services of the State of New York has now succeeded the Superintendent of Insurance as Liquidator of Atlantic Mutual. The Liquidator has, pursuant to Insurance Law Article 74, appointed Michael J. Casey, Acting Special Deputy Superintendent ("Acting Special Deputy"), as his agent to liquidate the business of Atlantic Mutual. The Acting Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038. The Liquidator has submitted to the Court an affirmation ("Affirmation") seeking an order: (i) establishing January 16, 2015 as the final bar date, the final date by which the Liquidator must actually receive in respect of any claim presented prior to December 15, 2013 (the "Bar Date" established in the proceeding by order of the Court entered on December 2, 2013) any and all evidence demonstrating (a) that such claim has been liquidated and (b) that there has been actual loss and/or payment in respect of such claim; and (ii) providing for such other and further relief as the Court may deem just and proper.

A hearing is scheduled on the Affirmation on the 11th day of February, 2014, before the Court at the Court-house, IAS Part 15, Courtroom 327, 80 Centre Street, New York, New York. If you wish to object to the relief sought, you must serve a written statement setting forth your objections and all supporting documentation upon the Liquidator and Clerk of the Court, at least seven days prior to the hearing. Service on the Liquidator shall be made by first class mail at the following address: Superintendent of Financial Services of the State of New York as Liquidator of Atlantic Mutual Insurance Company, 110 William Street, New York, New York 10038, Attention: General Counsel.

The Affirmation is available for inspection at the above address. In the event of any discrepancy between this notice and the documents submitted to Court, the documents control.

Requests for further information should be directed to the New York Liquidation Bureau, Creditor and Ancillary Operations Division, at (212) 341-6588.

Dated: January 9, 2014, Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York as Liquidator of Atlantic Mutual Company of New York.

## WANT THE BEST WAY TO BE SEEN AT RIMS BE IN THE OFFICIAL SHOW DAILY!

- 3 full days for one affordable price
- Distributed at registration and all through the exhibit hall
- PDF of each daily edition on the BusinessInsurance.com and by links in the daily coverage email and through RIMS conference App.



## BUSINESS INSURANCE

Call 212-210-0129 or email mmurray@businessinsurance.com

## Need to Publish a Legal Notice, Announcement, Help Wanted or RFP ?

Contact Monique Murray  
 at 212-210-0129

## MEDIA PARTNER



## Adapting with New Resilience

At the ABA Insurance Risk Management Forum, adapt to a changing insurance risk landscape with new resilience. Find out how to limit exposures to cyber crimes, social media threats and other new insurance exposures in a post Dodd-Frank world. Insurance risk experts will provide practical solutions you can put to work right away. Visit [aba.com/IRM](http://aba.com/IRM) for the full program and to register today.

### ABA Insurance Risk Management Forum

February 2-5, 2014  
 Hilton La Jolla Torrey Pines  
 San Diego, California



## TAKE FULL ADVANTAGE OF YOUR RESOURCES!

In Print . . .



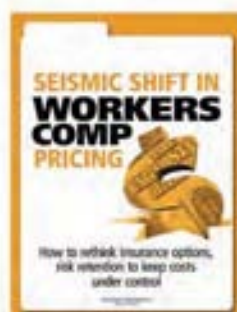
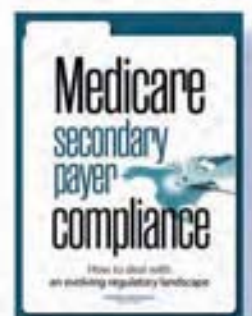
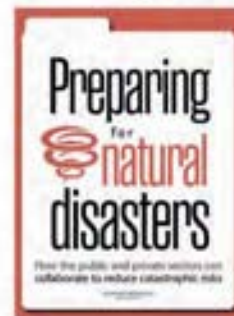
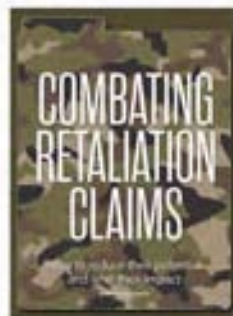
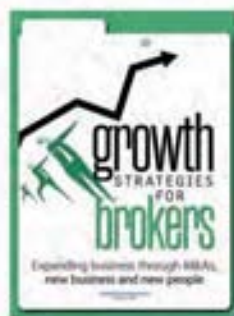
and Online



For more information  
 contact Monique Murray  
 at 212-210-0129 for details

## Insights to Solutions

White Papers to help you do  
 your job better everyday



Visit [www.businessinsurance.com/whitepapers](http://www.businessinsurance.com/whitepapers) to purchase these and other white papers.



### The Future of Healthcare: Preparing Providers for Impact of Affordable Care Act

Hear an expert panel discuss how best to prepare and respond to the changes coming from the Affordable Care Act.



This webinar, sponsored by Zurich, will explore a range of issues associated with how health care providers should prepare for the Affordable Care Act.

Register and watch today visit <http://mkto.businessinsurance.com/HC-Webinar-Register.html>

### Time to Get Active with Risk Reports

Hedge funds and fund managers operate in a fiercely competitive global marketplace with more stringent oversight and increased risk reporting.



In this on-demand webcast, learn how IBM Risk Analytics can help you gain an edge while

complying with increasingly stringent regulations, without the need to invest in an in-house deployment or fully hosted service. Register and watch today at <http://mkto.businessinsurance.com/IBM-RiskReports.html>

### Understanding and Managing the Risks Associated with Cloud Computing

A growing number of companies are moving to cloud computing to take advantage of the economies of scale it offers by allowing them to share computing resources with large cloud providers, rather than having to rely on their local servers.



This free one-hour webinar, sponsored by Aon, explores firms' vulnerability to hacking while in the cloud, and what they can do to insure their data's security.

Register and watch today at [http://mkto.businessinsurance.com/CloudRisks\\_Webinar.html](http://mkto.businessinsurance.com/CloudRisks_Webinar.html)

[www.businessinsurance.com/webinars](http://www.businessinsurance.com/webinars)

## LETTERS

Continued from page 12

without detail. The writer says only 5% of "leadership positions" are held by women. What is a leadership position — a CEO or other C-suite position? The writer also cites a statistic from the U.S. Bureau of Labor Statistics saying women make 62% of what men make, without clarifying that this includes all positions. I highly doubt that a female underwriter,

for example, is paid 62% of what her male counterparts make. The change to include more women is happening from the bottom up. Of course since senior positions are still more male than lower ones, the total dollars are still going to be male-skewed, but this is changing every day. This very issue of the magazine announced a woman being made the first female CEO of Lloyd's of London.

I could also do without the high schoolish references to men feeling "threatened" or shuddering at the thought of attending a

women's event, or being uncomfortable.

Both the insurance and hospitality industries should be proud of the leadership roles they are taking in bringing more opportunities for women. There are no problems with women's share of the insurance industry that a little more time will not cure. Thanks for the opportunity to respond.

Gus Napoli  
Vice president of risk management  
Host Hotels & Resorts Inc.

## BROKERS

Continued from page 4

is "the greatest thing that's happened to us. No client can understand it. The compliance issues are astronomical."

"We see people focusing their attention on the larger-group business" in life and health products, said Bobby Reagan, president and CEO of Reagan Consulting Inc. in Atlanta.

"We see good opportunities there, particularly for those firms that are on top of health care reform," Mr. Reagan said. Some employers will reduce the benefits they provide employees, which will give rise to opportunities to sell voluntary benefits such as disability, life and dental coverage, he said.

Brokers that have adopted a consultative role on the employee benefits side in navigating health care reform are seeing new business opportunities as well as opportunities to generate fees from delivering these value-added services, said Timothy J. Cunningham, managing director of Chicago-based investment banking and consulting firm Optis Partners L.L.C.

Lockton Cos L.L.C. expects its core health care business to grow in the 12% to 14% range this year, said Glenn Spencer, U.S. chief operating officer of the Kansas City, Mo.-based broker. Given the uncertainty surrounding health care reform, companies want to know what strategic issues they should be considering, he said.

"We see greater opportunities in advising companies on how to navigate this changing environment," said Jonathan Crystal, executive vice president and chief financial

officer of Crystal & Company in New York.

"A lot of our clients are in industries where there's genuinely a war for talent," said Charles Williamson, a Crystal executive vice president. Crystal helps them design benefits packages to help attract and retain top talent, he said.

While the health care reform law



### BENEFITTING FROM BENEFITS

The employee benefits area presents traditional insurance brokerages with more growth options. Specific opportunities include:

- Helping clients comply with the requirements of the Patient Protection and Affordable Care Act.
- Designing benefits to help clients attract and retain top talent.
- Selling voluntary benefits, such as dental insurance, to clients.

has helped focus attention on benefits as a growth area for brokers, more traditional avenues have not lost their luster.

For Crystal, "a much more aggressive geographic expansion" is part of the company's strategy, Mr. Williamson said.

The brokerage has offices in nine cities, but its business is concentrated in greater New York, he said.

"Most of our clients are middle-market and upper middle-market," he said. "From a macro point of view that is where a lot of businesses fall; it's a great growth area."

That includes pursuing niche markets such as financial institutions, construction and hospitality, he said.

Serving niche markets allows a broker to distinguish itself from competitors, yet only 32% of agencies recently surveyed by Marsh, Berry & Co. Inc. target niche areas, said John Wepler, president of the Willoughby, Ohio-based merger and acquisition firm.

A particularly underserved niche is the high-net-worth market, but other potential niches include ethnic groups, age groups and high-growth industries, Mr. Wepler said.

Brokers that have adopted a specialization or niche strategy are the ones that are probably going to generate the most organic growth, Mr. Cunningham said.

"Growth opportunity is everywhere you look," Mr. Gallagher said. "We're very focused on niches that we happen to be very, very good at. We've developed expertise; we're not just here to broker you insurance, we believe we can help you grow your business."

Brokers can continue to grow through mergers and acquisitions, Mr. Reagan said. For example, there will be opportunities to merge multiple firms should an agency want to enter a new market.

Last year was slow for deals, with little activity early in the year, Mr. Wepler said. "But going into 2014, there's a robust pipeline for the first and second quarters, and buyer demand has never been so strong," he said.

## FORUM

Continued from page 4

have the potential to re-shape the insurance industry, speakers said.

"I think the industry is in the midst of a fundamental shift," said Michael Sapnar, president and CEO of both Transatlantic Corp. and its Transatlantic Re subsidiary.

Jay Gelb, managing director at Barclay's Capital, warned of the

dangers of too much capital. "I think the industry is way overcapitalized," Mr. Gelb said.

Through the first nine months of 2013, the industry had \$624 billion of statutory capital, he said, up 6% from the end of 2012, and \$100 billion more than at the end of 2007.

"By the end of 2014, the industry could be overcapitalized by \$200 billion, which equals 30% overcapacity," Mr. Gelb said.

Matthew Mosher, senior vice president and chief rating officer

at A.M. Best Co. Inc., said putting that capital to use is the key.

Operational performance, and not capital, is what drives risk, Mr. Mosher said. "What are you doing with that capital? Are you chasing growth?" he said. Putting that capital to use on a new issue, like cyber security coverage, would be one productive way to deploy new funding, he said.

About 250 people attended the annual Joint Industry Forum at the Waldorf-Astoria Hotel.

# SNOW

Continued from page 3

teach and to talk about the real risk management worlds,” Ms. Snow said. “This year I’m going to Appalachian State.”

While the new RIMS president’s previous work in external affairs for the society involved largely U.S. issues, as president she plans to focus on international issues, too.

“We’ve really had some good growth internationally,” she said. “We have the new Australia chapter, we have a new Peru chapter. Some exciting things are happening there, and I want to continue that.”

Before joining Humana, Ms. Snow worked both with insurers and in brokerage. “I tell everyone I had the perfect background” for risk management, she said. “I was in underwriting and marketing — I was with Cigna and Fireman’s Fund — so I had a lot of contact with brokers. From there I was vice president of marketing at Aon, and there was an opportunity that came up at Humana at a time when Aon was consolidating offices.” She was offered an opportunity to transfer to another Aon office but chose to take the job with Humana, a major health insurer.

Ms. Snow said RIMS has helped her advance her risk management career in a variety of ways, from giving her the exposure that comes with being interviewed by national publications to educational opportunities.

“I think the single biggest thing for me is the networking, and just meeting risk managers in all kinds of fields,” Ms. Snow said. “I’ve yet to pick up the phone or send an email and ask any risk manager for help in any area and not get a positive response.” Ms. Snow’s risk management colleagues are looking forward to her sharing her skills and experience with the society as its new president.

“I think she’ll be a great president,” Mr. Kugler said. “She understands the board. She’s got a great relationship with the RIMS staff.”

“I’m excited about Carolyn’s term as president of RIMS,” said Janice Ochenkowski, managing director at Jones Lang LaSalle Inc. in Chicago, RIMS’ 2008 president and a member of the society’s board. “I think she will help move RIMS forward.”

# TERMS

Continued from page 3

traditional capacity providers, Mr. Ehrhart said.

Similarly, while catastrophe bonds do not include reinstatements, an important differentiator of traditional coverage, they also do not charge reinstatement premiums, he said.

Aon Benfield asked reinsurers to differentiate themselves by, in

many cases, making changes to the terms and conditions offered to buyers, he said, adding that the company made “material progress” on this front.

“We never expected universal moves,” he said. “This was done account by account.”

Changes to hours clauses and reinstatements were handled case by case, said James Vickers, chairman of Willis Re International, a reinsurance arm of Willis Group Holdings P.L.C., in London. But those alterations were not com-

monplace, and any attempt to introduce blanket changes to terms and conditions is “naïve,” he said.

Terms and conditions should be tailored to buyers’ exposures, Mr. Vickers said. If a buyer has significant exposure to events that may occur over a longer time, such as floods, then an extension of hours clauses would be deemed very valuable, he said. Whereas, for buyers whose exposures usually have shorter time frames, such as hurricanes, other terms and conditions may be more relevant, he said.

Typically, cedents primarily sought lower rates at the Jan. 1 renewals, said Guy Carpenter’s Mr. Frankland. While there were some instances of widening of hours clauses, this was done in a “pretty disciplined way,” he said.

Brokers were able to obtain significant improvements in terms and conditions for buyers at the renewal, according to Mike Schnur, a partner at TigerRisk Partners L.L.P. in Chicago.

“We believe the improvements were driven by the new capital entering the market. We found the new capital willing to support some very innovative and creative solutions we proposed for our clients,” he said.

“Further, the traditional markets have now recognized that they, too, need to be willing to consider ideas and products they might not have previously supported,” Mr. Schnur said.

One reinsurance buying source, who asked not to be named, said that while buyers welcome improved terms and conditions, such changes need to be relevant to a buyer’s exposures and, thus, blanket changes are not appropriate. Some buyers may prefer larger rate reductions over changes to terms and conditions, he said.

Most cedents “spend a significant amount of time crafting their contract wording to meet their specific needs,” said another reinsurance buying source, who also did not want to be identified. “They do not delegate that responsibility to the broker.”

## Keep eye on long-term relationships

**R**esponding to the ongoing influx of nontraditional capacity in the reinsurance market, traditional reinsurers stressed the importance of long-term relationships to retain business at the recent Jan. 1 renewals, sources say.

“Historical relationships continue to carry great significance for insurance companies as well as the additional expertise and capacity that the large, global reinsurers bring to the relationship,” investment analysts at Berenberg Bank said in a briefing note on the renewal period.

According to brokers, the note said, many reinsurance buyers — particularly outside the United States where the penetration of nontraditional capacity is less — largely continued to use traditional reinsurance capacity in their programs.

“It was clear that this was a year when relationships really counted,” said James Vickers, chairman of Willis Re International, a reinsurance arm of Willis Group Holdings P.L.C.

Traditional reinsurers had to compete not only

in areas where nontraditional capacity has begun to play a significant role, such as property catastrophe business, but also in other lines where that capacity sought to gain a foothold, Mr. Vickers said.

In those areas, reinsurers stressed to buyers the importance of long-term relationships, he said.

Traditional reinsurers focused heavily on the importance of relationships to defend their positions during the reinsurance renewals, said Nick Frankland, CEO of the Europe, Middle East and Africa operations of Guy Carpenter & Co. L.L.C. in London.

Traditional reinsurers played the “relationship card” in an effort to protect their positions at the renewal, said Mike Schnur, a partner at brokerage TigerRisk Partners L.L.P. in Chicago.

This was “sometimes successful, sometimes not,” he said.

By Sarah Veysey

# CYBER

Continued from page 3

really contemplated under these commercial liability policies.”

ISO’s revisions to its general liability policy form consist primarily of a mandatory exclusion of coverage for personal and advertising injury claims arising from the access or disclosure of confidential information.

In addition to third-party damage claims, the exclusion also eliminates coverage for costs associated with data breach notifications, credit monitoring, forensic investigations, public relations campaigns and other expenses typically incurred by companies when confidential data is willfully or accidentally accessed and/or disclosed.

“It’s essentially all of the crisis management costs that usually flow out of a data event,” said Roberta Anderson, a Pittsburgh-based partner at K&L Gates L.L.P. “Of course, the actual scope of the exclusion is going to need to be tested through the courts, so I think it will take a little while for the revision to make its way into policies.”

Importantly, the mandatory exclusion retains a provision ISO added to its general liability form in April 2013 for bodily injury claims arising from the loss of use or access, corruption or deletion

of electronic data.

One optional version of the exclusion available to insurers using ISO’s standard general liability form eliminates the exception for bodily injury claims, while a second optional version would apply only to personal and advertising injury claims, leaving the form’s existing language regarding coverage of bodily injury claims stemming from a data breach unchanged.

“Recognizing the fact that not all risks are the same, it made sense for us to put different options out there to address the variability of companies and the exposures that they have,” Mr. Beiderman said.

ISO also introduced an identical menu of exclusions under its commercial umbrella liability form and its commercial excess liability form, as well as optional exclusions under its owners and contractors protective liability and products/completed operations liability form.

Though it is not expressly addressed in ISO’s filing document, Mr. Beiderman said damages to tangible property resulting from a data breach likely would not be covered under any version of the revised standard GL form.

Similarly, property damage resulting from a data breach — regardless of its nature — likely would not be covered under a stand-alone cyber insurance policy, experts say. The ISO standard

property form only treats data breaches/cyber attacks as covered causes of loss under an optional, additional coverage endorsement for the restoration of a policyholder’s data that’s damaged, corrupted or destroyed in the cyber attack. That coverage only applies if the attack was a virus, harmful code or similar instruction introduced or enacted on a computer system and was designed to

age from the (general liability) revised form is a pretty clear indication that ISO doesn’t intend to cover it under a general liability policy,” Ms. Anderson said.

With the exception of several industry segments, studies indicate that purchasing stand-alone cyber and privacy liability insurance products has been consistently sluggish during the past three years, despite the rapid expansion of cyber liability exposures

However, given that the vast majority of general liability policies in the U.S. are written in part or in their entirety on ISO’s standard form, experts said the new and broadened data breach exclusions under that form in particular could trigger a significant boost in cyber insurance placements this year.

“The takeup rate for these kinds of policies tends to be higher within certain industries, particularly those that are heavily regulated, such as financial services, health care and technology,” said Catherine Mulligan a New York-based senior vice president at Zurich North America.

About 30% of companies bought some form of cyber liability coverage last year, according to a report by the Traverse City, Mich.-based Ponemon Institute L.L.C.

“It also tends to be more popular among larger companies with more than \$1 billion in revenue,” Ms. Mulligan said.



**HEAR INTERVIEW**  
Access Business Insurance’s interactive digital edition to hear Roberta Anderson of K&L Gates L.L.P. discuss new cyber liability exclusions under the Insurance Services Office Inc.’s standard CGL policy form.

destroy or damage any part of the system or disrupt its operation.

The potential gap in coverage for damage to physical property triggered by computer hacking, an accidental loss or corruption of data could be particularly troublesome for utility companies, transit systems and other large-scale industrial operations identified by the U.S. Department of Homeland Security as potential targets of cyber-terrorism.

“The omission of property dam-

## ADVERTISER

# INDEX

Issue of January 20

ADVERTISER	PAGE #
ACE	32
Berkshire Hathaway	2
Burns & Wilcox	11
Business Insurance	9, 13, 14, 24, 31
Florida State University	27
International Insurance Society	19
Liberty Mutual	5
QBE	7
World Captive Forum	17

# TARGET

Continued from page 1

Kossovsky said. “But it has not done a great job in communicating on the crisis management side. They left it open for others to control the story.”

In the face of such a crisis, best practices in the immediate response are to demonstrate transparency, expertise, commitment, follow-up and empathy with affected customers, said Daniel Diermeier, IBM professor of regulation and competitive practice in the department of managerial economics and decision sciences of Northwestern University’s Kellogg School of Management. “The key goal is to maintain or increase trust,” he said.

“To my mind, Target did some of that, but not all of that,” Mr. Diermeier said. “You have to do that quickly. Waiting until you know everything that happened often isn’t an option for companies.”

Target first acknowledged on Dec. 19 the data breach it experienced from Nov. 27 until Dec. 15, saying in a statement that the breach resulted in the theft of

about 40 million credit and debit card records. On Dec. 27, the company said its forensic investigation found that hackers also collected card users’ encrypted PIN data. On Jan. 10, the Minneapolis-based retailer said its investigation found that up to 70 million other records, including customer addresses and telephone numbers, had been stolen.

“Their response seemed pretty good and effective,” said Larry Walsh, vice chairman at the Alexandria, Va.-based Hawthorn Group L.C., a strategic communications consulting firm. “But it took a long time for them to get there.”

Since acknowledging the breach, Target has assured affected customers they’d have no liability for fraudulent charges. The third-largest U.S. retailer offered them one year of free credit monitoring and identity theft protection. The company also said last week it would testify before Congress in early February about the data breach.

As the investigation of the Target data breach continues, along with another one into a data breach that retailer Neiman Marcus acknowledged this month,



AP PHOTO

Target Corp. says about 40 million credit and debit card accounts may have been affected by a data breach during the holiday shopping season. The retailer carries \$100 million in cyber liability insurance, sources say.

retailer awareness is growing about the connection between cyber security and corporate reputation, experts say.

“The whole kind of data security area is emerging as — if not the main one — one of the more important drivers of reputational risk,” said Mr. Diermeier, who also is director of the Ford Motor Co. Center for Global Citizenship at Northwestern’s Kellogg School of Management. “The bigger you are, the more well known you are, the more likely you will find yourself in the spotlight.”

Tom Kellerman, managing director at Alvarez & Marsal Holdings L.L.C. in New York, said: “Now that we’re seeing a dramatic increase in reputational risk due to these events, the calculus has to change.”

Historically, retailers relied too much on encryption and firewalls and not enough on next-generation cyber security strategies, he said, including both forensic capabilities and advanced threat detection capabilities.

Mr. Kellerman and others also emphasized the need to develop and test incident response plans companies can deploy when they’ve suffered a reputation-threatening data breach.

“One of the things you can do aside from all of the things (retailers) are doing on the technology side and the security side ... is to prepare for the response,” said Tracy Knippenburg Gillis, global reputational risk and crisis management leader at Marsh Risk Consulting in New York. “That is really a huge difference in the way these things unfold, the reaction you see in the stakeholder groups.”

Organizations should exercise their response plans, identify who will be involved and what they’ll do, she said.

“There’s no reason to be waiting until the time comes,” Ms. Gillis said. “The faster you respond, the more accurate you are in your response, the better the outcome will be.”

“We’ve seen a real dollar-for-dollar correlation of managing a crisis well,” said Robert Parisi, network security and privacy practice leader at Marsh Inc. in New York. Reputational risk insurance can provide access to outside experts

something happened.”

With online communications and social media “the discretion, the ability to control (the story) is largely lost,” said Hawthorn Group’s Mr. Walsh, who advocates retailers and others handling large amounts of consumer information conduct data breach crisis drills at least once a year. Those who are prepared to act in real time will have the best chance of controlling the messages after a breach incident, he said.

Mr. Kossovsky said that the sort of mathematics applied to other risk exposures — weighing frequency and severity and determining “does the math justify the investment” — doesn’t apply as well to decisions that might affect reputation.

“That’s bad math when the risks are reputational,” he said, because it ignores important intangible factors.

“The reputation issues are really best understood through another kind of math called game theory,” Mr. Kossovsky said. “Your best decisions very much depend on how others are going to behave.”

Mr. Diermeier said the increased awareness of reputational risk “has to become operational. It has to become part of your way of thinking.”

A key question with potentially far-reaching implications is who consumers ultimately perceive as responsible for such a major data breach, said Kent Grayson, an associate professor of marketing at Northwestern’s Kellogg School. “One question you want to ask about trust is who gets blamed,” he said. In some instances it might not be the company involved in the event, but an institution.

“To what extent is Target going to be blamed for this vs. to what extent is electronic commerce going to be blamed as an institution?” Mr. Grayson said. “Who gets blamed; and if it’s not Target but it’s the institution of e-commerce, what are the implications of that?”



## DATA BREACH CRISIS MANAGEMENT

Keys to managing data breach reputational threats are:

- **Control** the message by being the first and primary source of information on the breach.
- **Prepare** to respond immediately in real time with a fully integrated incident response plan.
- **Treat** affected individuals like family with prompt notification, credit monitoring and identity repair services, customer call centers.
- **Include** data breach scenarios in crisis planning/response drills and exercises.
- **Review** risk transfer options.

Source: The Hawthorn Group L.C.

to help address such crises and help pay for their services, he said.

“You want to make sure that when an event occurs, you’re getting out there with the right information,” Mr. Parisi said. “Nothing is probably worse than getting out there saying nothing happened and then coming back and saying

## Target has \$100M in cyber cover, \$65M D&O: Sources

Target Corp., which last month had a massive data breach that exposed the credit and debit card information of some 70 million customers, has at least \$100 million of cyber insurance, including self-insured retentions, and \$65 million of directors and officers liability coverage, according to insurance industry sources.

These well-placed sources, who requested anonymity, said Minneapolis-based Target is self-insured for the first \$10 million of cyber coverage. On top of that, there’s additional cyber insurance through: \$15 million of excess coverage with Ace Ltd.; then a \$15 million layer with American International Group Inc.; a \$10 million layer with Bermuda-based Axis Capital Holdings Ltd.; another \$10 million coverage layer with AIG; then a quota share for the next \$40 million of cyber insurance divided among four unidentified insurers.

To protect against executive liability, the third-largest U.S. retailer has: a \$10 million self-insured retention; followed by \$25 million in primary D&O coverage with AIG; followed by an additional \$15 million of coverage with Ace; and then \$15 million of coverage with the Hartford, Conn.-based

based Travelers Cos. Inc.

On Dec. 19, Target said the data breach, during three weeks of the recent holiday shopping season, affected 40 million customers. Then on Jan. 10, the retailer said its investigation showed the breach was worse than anticipated and involved the theft of financial information of 70 million customers. That personal information, the retailer said, included PIN data embedded in customers’ credits cards.

Target said its customers will have no liability for fraudulent charges resulting from the data breach. The breach has triggered state and federal investigations, as well as several lawsuits against Target.

Target declined to comment on its cyber and D&O insurance coverage. A Travelers spokeswoman said in a statement the insurer cannot confirm whether anyone is a client. An Ace spokeswoman said in a statement: “As a matter of company policy and confidentiality, we do not comment on specific claim incidents and cannot confirm or deny coverage with any particular company.” AIG declined to comment. An Axis representative could not be reached for comment.

By Judy Greenwald

# ARCHITECT

Continued from page 4

to be deported after he has served his sentence.

During sentencing, Superior Court Judge Robert Perry said he thought city inspectors should have discovered the construction problems before allowing the home to be occupied.

Despite objecting to the relatively light sentence, the Los Angeles Fire Department said in a statement that the sentence still “sends a clear message and warning” to those who try to circumvent building and fire codes.

Experts say they have never before heard of an architect who engaged in the activities attributed to Mr. Becker.

“It’s an absolute outlier,” said Brian Sutter, a partner at Sugarman Law Firm L.L.P. in Buffalo, N.Y.

“It doesn’t happen very often that there’s a willful violation” involving an architect, said Brian K. Stewart, a partner at Collins, Collins Muir & Stewart L.L.P. in South Pasadena, Calif.

Experts say the case was unique in that Mr. Becker was not only the house’s architect but supervised its construction and was the owner, too.

Normally, there is “lots of blame to go around,” said Karen Enger, vice president and director of practice risk management at Lockton Cos. L.L.C. in Kansas City, Mo.

In most cases, architects accused of wrongdoing “just made a mistake and they didn’t do anything

intentionally,” said Bruce R. Demeter, Exton, Pa.-based vice president and design professional division leader for OneBeacon Professional Insurance, a unit of the OneBeacon Insurance Group.

“My sense is that the system worked just as it’s supposed to work in that the prosecution must have felt that his actions were criminal, rather than simply negligence,” Mr. Sutter said.

The case against Mr. Becker “goes well beyond simply a negligent design,” said James Schwartz, Boston-based U.S. architects and engineers focus group leader for Beazley P.L.C.

“This is the first time I’ve seen an architect get a prison sentence for doing something architectural and screwing up on it,” but “I suspect it’s not going to be the last time,” said Warren Sabo, a partner at Sabo & Zahn L.L.C. in Chicago.

“It’s a wake-up call,” said Reeder R. Fox, of counsel at Duane Morris L.L.P. in Philadelphia.

The case “raises the consciousness across the country” about architects’ potential liability, said Thomas M. Gambardella, a partner at Wilson Elser Moskowitz Edelman & Dicker L.L.P. in White Plains, N.Y.

“Municipalities may be more aggressive in looking to take action against design professionals should they find activity they believe is grossly negligent and possibly equating with criminal negligence,” Mr. Gambardella said. “It’s a subject that’s clearly being discussed across the country.”

“I wouldn’t say it’s so uncommon in the construction industry to cut

corners and circumvent certain guidelines, which is why there are provisions in insurance policies to protect insurers,” said Dan Gmelin, White Plains, N.Y.-based, senior vice president at Hiscox Ltd.

Policies include exclusions for malicious or illegal acts, said Robert Stanton, Chicago-based senior claim consultant with Willis North America Inc.’s construction and architects and engineers practice.

Errors and omissions insurance covers acts of negligence by architects.

“Architects, like other professionals, are held to what they call a standard of care; and when they violate that standard of care, they’re subject to civil lawsuits for negligence,” said Dan Knise, president and CEO of McLean, Va.-based brokerage Ames & Gough.

Typically, however, architects do not willfully violate their standard of care, he said.

Negligence “is a real exposure. Underwriters take it very seriously,” said Paul Dietrich, Bala Cynwyd, Pa.-based director and chief underwriting officer with RLI Insurance Co.’s professional services group.

Mr. Sabo said the roughly 100,000 architects in the United States “are like everybody else. There’s really good architects, and there are some that are really bad, and most are in the middle.

“As long as they stick to what they know and what they can research, and follow the building code minimums, and don’t try to skirt the law, they’re going to be OK,” he said.

“This case should at the very least serve the industry as a reminder that in performing professional services, the design professional can face criminal charges,” Mr. Demeter said.



Los Angeles firefighter Glenn Allen was killed in the 2011 blaze.

## Criminal charges against an architect a rarity, even in big building disasters

Charging architects with criminal liability for their work is a rarity.

“It’s very unusual for a professional to have violated his professional canons of ethics or anything else to the point of criminality,” said Reeder R. Fox, of counsel at Duane Morris L.L.P. in Philadelphia.

Some experts point to the July 1981 skywalk collapse during a tea dance at the Hyatt Regency hotel in Kansas City, Mo. Some 114 people were killed and more than 200 were wounded when bolts holding up skywalks gave way, bringing down more than 70 tons of concrete and steel.

There were no criminal charges, but the case reportedly resulted in about \$140 million in judgments.

Mr. Fox, who was involved in the litigation, said the case put a spotlight on the entire build-

“It’s very unusual for a professional to have violated his professional canons of ethics or anything else to the point of criminality,”

Reeder R. Fox,  
Duane Morris L.L.P.

ing process.

As a result, “I’m happy to say a lot of professionals got new guidance as to what to do to meet the standard of care, which was higher than everybody had been following up to that point,” he said.

In another well-known case, the roof of the Knickerbocker Theater in Washington collapsed during a January 1922 blizzard, killing 98 people.

Those criminally indicted in the deaths included the building’s architect, Reginald W. Geare.

Mr. Geare was exonerated after it was determined that the contractor had inserted steel beams supporting the roof only two inches into the walls, rather than the eight inches Mr. Geare specified.

But his career was ruined, and he committed suicide five years later.

By Judy Greenwald

## RESOURCE CENTER

### EDUCATION



**ONLINE RMI  
MASTER'S DEGREE**

- Take your knowledge and skills to the next level
- Earn our Top 10-ranked degree in under two years

**FLORIDA STATE UNIVERSITY**  
COLLEGE OF BUSINESS

[business.fsu.edu/OnlineRMI](http://business.fsu.edu/OnlineRMI)

Every student – regardless of location – pays the same price, plus applicable fees, for coursework.

## YOUR TARGET AUDIENCE IS HERE ...



## Where is your ad?

Call (212) 210-0129 to reserve your space.  
**BUSINESS INSURANCE®**

## BUSINESS INSURANCE MARKETPLACE.com

## MAXIMIZE YOUR EXPOSURE

With more than 160,000+ registered users to the website, *Business Insurance's* MARKETPLACE section allows you to list your products and services in an easy to search format, that can help influential executives easily find the information they need before they buy.

[www.businessinsurancemarketplace.com](http://www.businessinsurancemarketplace.com)

Call Today!

**212-210-0129**

and find out how affordable a Marketplace listing can be!



**BUSINESS INSURANCE**  
[www.businessinsurance.com](http://www.businessinsurance.com)

# DRUGS

Continued from page 1

borne pathogens, such as health care providers injured by used needles and first responders exposed to blood at accident scenes.

"I would be very surprised if we don't see it" in comp cases, said Phil Walls, chief clinical and compliance officer at Matrix Healthcare Services Inc., a Tampa, Fla.-based pharmacy benefit manager.

Definitions of what is considered a specialty drug differ, but they typically include prescriptions considered high-cost, treat chronic or complex medical conditions, and sometimes require special handling. The Centers for Medicare and Medicaid Services defines the cost threshold as at least \$600 a month. These drugs represent the biggest growth area in the pharmaceutical industry.

In addition to hepatitis risks faced by medical professionals, contact with blood also puts such workers at risk of HIV exposure, which is treated by specialty antiviral drugs such as Truvada and Kaletra, experts say.

Other occupational conditions sometimes are treated with specialty drugs, such as anticoagulants to prevent blood clots in beridden patients, injections for osteoarthritis knee pain and injectable antibiotics for chronic Lyme disease — something to which outdoor workers such as landscapers or park employees

could be exposed.

Specialty asthma treatments also can be prescribed for workers who deal with occupation-related respiratory conditions, such as black lung disease for coal miners, said Mark Pew, senior vice president of product development at Prium, a Duluth, Ga.-based medical management company.

While experts estimate that specialty drugs account for 1% of workers comp drug costs, Mr. Walls said they are becoming more prevalent.

The FDA approved 39 new medications in 2012, of which 25 fell into the specialty category, he said.

"We've gone from a period of years ago where no one had heard of specialty (medications) to it being the fastest-growing segment in pharmaceuticals today," Mr. Walls said. "So as that develops, more and more conditions will be treated by specialty" drugs.

## Costs rising

Specialty medications also are becoming costlier, said Tim Pokorney, Tempe, Ariz.-based vice president of clinical services for pharmacy benefit manager Express Scripts Inc. Such drugs cost 11 times more than traditional medications in 2013, compared with being nine times pricier than traditional medications in 2012, he said.

"Specialty medications, although holding great promise for improved health, continue to increase in cost," Mr. Pokorney said in a statement to *Business Insurance*.

Experts say employers can help

manage the cost of these costly prescriptions if they show up in workers comp claims.

Specialty prescriptions should be reviewed to make sure they are medically necessary, said Joseph Paduda, principal of Madison, Conn.-based consulting firm Health Strategy Associates L.L.C.

"You want to be very sure that the treatment is appropriate and that there's a solid clinical reason for that treatment," he said.

Employers can work with pharmacy benefit managers on cases involving specialty drugs to be aware of how much they cost and take advantage of volume discounts, experts say.

Sedgwick's Dr. Bartlett recommends that employers establish a workers comp medication formulary to specify drugs that are approved for use by injured workers. By leaving specialty drugs off the formulary, those medications would automatically be subject to review by case managers, clinical pharmacists or doctors who can determine if a medication is necessary and discuss treatment protocols with the claimant's treating physician, she said.

For medical conditions that can be cured, Mr. Paduda recommends having discussions with treating doctors about how long specialty drugs will be used for a patient and what alternatives will be used if the medication isn't effective.

Ask "what happens if this doesn't work, how do you know if it is working and what's the measurement process" for determining effectiveness, Mr. Paduda said.

Specialty medications

cost **11 times**

**more** than

traditional medications

**in 2013**, compared

with being **nine**

**times pricier**

than traditional

medications **in**

**2012.**



# CFO

Continued from page 1

enterprise risk management, that's the premise. They're all in it for the betterment of the corporation."

"Initially, everybody thought this was a compliance issue for HR," said Tracy Watts, national leader for health care reform at Mercer L.L.C. in Washington. "But then there are tax implications, filings, reporting and disclosure requirements, which starts to get finance, tax, legal and HR involved. What we're finding with ACA is it is a cross-organizational challenge. Multifunctional collaborations are needed in order to comply and thrive under the law."

Edward Waters, vice president and CFO at Merit Brass Co., a Cleveland-based manufacturer, said he spends "an inordinate amount of time on health care because it's become a major budget item. There is very little on our financial statement that goes up as much as health care."

He said because of an 11% health care cost increase in July 2013 and an additional 3% "line item" to cover the cost of complying with ACA, Merit Brass has found it necessary to increase employee cost-

sharing to 20% from 10% of annual premiums while simultaneously emphasizing wellness to improve employee health status.

"I'm much more involved in the wellness program," Mr. Waters said. "Our goal is to have happy employees, which is why we're focusing on keeping costs down

**"I've seen the models. We would save significant money. But we view our associates as essential to our business. We use benefits to attract and retain employees."**

Edward Waters,  
Merit Brass Co.

and wellness programs. We want them to be engaged in what our costs are."

"I've been aware of more CFO involvement with every one of my clients," said Tracy Perez, Denver-based vice president and account executive at Lockton Benefits, a division of Kansas City-based Lockton Cos. L.L.C. "Part of this is due to the ACA, the taxes, the fees and also the publicity, especially in

the last six months. CFOs are realizing they are going to be held accountable."

It is also because "annual cost increases have been taking up a bigger chunk of the corporate budget," she said. CFOs are exhibiting increased interest in the tax implications of certain benefits offerings, such as high-deductible health plans with health savings accounts, Ms. Perez said.

With greater CFO involvement, "there is also more of an appetite for pay or play," Ms. Perez said. "We have a bigger audience for our customized health reform financial modeler. They are interested in the cost and tax implications if they provide benefits versus the cost implications if they pay the penalty."

Alex Tolbert, founder of Bernard Health, a Nashville, Tenn.-based benefits broker and administrator, said "the CFO of one company is paying us to do the pay-or-play analysis because he doesn't trust his broker. Ultimately, all decisions are financial decisions. I have heard people say that you need to ask yourself why you offer health benefits in the first place. But it's not to attract or retain employees. It's because benefits are tax-free. ACA provides a greater incentive for individual insurance than for group insurance."

"I've seen the models. We would save significant money," Mr. Waters said. "But we view our associates as essential to our business. We use benefits to attract and retain employees."

## Consider effect on workers

While Mr. Waters of Merit Brass remains committed to offering benefits, many other "CFOs often need to be reminded by HR that they also need to look at the employee impact, even if the employer might be better off paying the penalty and discontinuing coverage," Ms. Perez said.

"Many of our early discussions around pay-or-play were with the CFO," Ms. Watts said. "CFOs are generally more interested in the pay strategy than anybody else" in an organization, she said. Similarly, "CFOs are very interested in knowing about the excise tax (on high-valued benefits) and finding out if projections show the organization is going to be at the threshold and what strategies can be used to mitigate that trend."

A CFO who "only looks at the numbers may miss the nuance of the impact on employees," said Joe Torella, president of the employee benefits division of Hub International Ltd. in New York. "The ACA has changed how companies think

about the value of health benefits, and the way they can be used to make people healthier, more productive and to attract the best talent," he said.

Perhaps the most common misconception that CFOs have about ACA is the belief that their companies need to make major changes to comply with the health care reform law, Ms. Perez said.

"But we find that most of the employer groups offering benefits already were close to ACA compliance, and there were just some very small tweaks needed," she said. As such, "we've been that calming voice" that many CFOs need to hear. "There are a lot of inaccuracies being reported out there," she said.

To more effectively communicate with CFOs, human resources managers and their benefits advisers are "having to use the language of the business," Ms. Kelly said. "That's as close to 'finance speak' as you can get. You have to speak their language."

Mr. Waters said he has "a very good working relationship" with Merit Brass' human resources manager. "I personally speak to our HR department every day. And I spend as much time as necessary trying to follow the act. If you don't, then you're not being responsible."

## Brown & Brown buying Wright Insurance for \$602.5M

■ Brown & Brown Inc., Daytona Beach, Fla., said it is acquiring Wright Insurance Group L.L.C., Uniondale, N.Y., for \$602.5 million. Wright is owned by management and Aquiline Capital Partners. The transaction is expected to close in April, subject to approvals, and will give Brown & Brown a “substantial presence” in the National Flood Insurance Program, the brokerage said in a statement. Wright management will remain in place and continue to operate from offices in Uniondale and Albany, N.Y., and St. Petersburg, Fla.

## Employers can expect more wage-and-hour litigation

■ Wage-and-hour claims have been the most predominant type of workplace class action pursued against employers and are expected to continue this year “with no end in sight,” according to Seyfarth Shaw L.L.P.’s 10th annual “Workplace Class Action Litigation Report.” In terms of risk management, the No. 1 compliance issue of 2014 has to be the manner and method by which employers compensate their employees, said Gerald L. Maatman Jr., the report’s author and a Chicago-based Seyfarth Shaw partner. Among other anticipated developments, class actions under the Employee Retirement Income Security Act “will continue to receive increased scrutiny at the class certification stage” in light of the U.S. Supreme Court’s ruling in *Wal-Mart Stores Inc. v. Dukes*, “potentially making it increasingly more difficult for plaintiffs to secure certification offers claims.”

## \$1.9 billion in catastrophe bonds closed in 2013 fourth quarter

■ Eight catastrophe bonds closed during the fourth quarter of 2013 with a total value of \$1.9 billion, according to Aon Benfield Securities’ “Insurance-Linked Securities Fourth Quarter 2013 Update” report. They were part of a total of \$3.5 billion in cat bonds issued across 16 transactions during the second half of 2013 and \$7.5 billion for the entire calendar year, Aon Benfield Securities said in a statement. The report also showed that as of Dec. 31, total catastrophe bond limits outstanding had reached \$20.3 billion, the highest level in insurance-linked securities market history.

## Clear goals, realistic estimates key to wellness programs: Study

■ Successful workplace wellness programs depend as much on clear-headed program objectives and cost estimates as they do on participation among employees, according to a multiyear study released by nonprofit research institute RAND Corp. that analyzed nine years’ worth of employee health care costs and wellness participation data supplied by Purchase, N.Y.-based PepsiCo Inc. The program’s performance from 2003 to 2011 revealed that most of the cost reductions were driven by participation in the disease management component, which focused on improving medication adherence and self-care knowledge for employees with at least one of 10 specific chronic conditions. Those initiatives generated a return of \$3.78 for every \$1 invested, the study said. By contrast, the study found that PepsiCo’s lifestyle management initiatives, which include

activities and educational programming on weight management, nutrition, fitness, stress management and quitting smoking, had no statistically significant effect on employees’ health care costs.

## Public health exchange enrollment up sharply

■ More than 2.1 million people enrolled in health insurance plans offered through public exchanges through December, the U.S. Department of Health and Human Services said. The count of 2,153,421 individuals who enrolled through Dec. 28 is close to six times more than the 364,682 individuals who had enrolled through the end of November, illustrating the progress HHS has made in overcoming difficulties with its *healthcare.gov* website.

## NFL concussion settlement not enough to cover claims: Judge

■ A federal judge has rejected the National Football League’s proposed \$765 million settlement of concussion-related liability claims, saying the amount seems inadequate to cover more than 20,000 retired professional football players who may have suffered brain injuries. In particular, U.S. District Court Judge Anita B. Brody said she is concerned that the \$675 million fund won’t be enough to cover “a 65-year lifespan for a settlement class of approximately 20,000 people.”

## Pension plans’ funded status best since 2007, Milliman says

■ The funding levels of pension plans sponsored by large publicly held U.S. employers rose in December, according to a Milliman Inc. survey. Defined benefit plans offered by the 100 U.S. employers with the largest pension programs were an average of 95.2% funded in December, up from 93.9% in November and 91.9% in October. During 2013, the plans’ funded ratio jumped to 95.2% from 77.2%, while plan underfunding dipped to \$72.87 billion from \$390.70 billion. That roughly \$318 billion improvement in plan funding was the biggest one-year gain in the 13 years Milliman has been conducting the analysis.

## Flood insurance rate reforms will be delayed by Congress

■ A provision in the omnibus appropriations bill approved by Congress last week will slow implementation of rate reforms to the National Flood Insurance Program. Under the Consolidated Appropriations Act of 2014 — H.R. 3547 — there will be a one-year delay in implementation of a provision in the Biggert-Waters Flood Insurance Reform Act of 2012 that phases in new rates for properties that have been remapped by the NFIP. Legislation that would delay rate adjustments for four years has been introduced in the Senate.

## Vermont licenses 29 captives in 2013

■ Vermont officials have reported licensing 29 new captives in 2013. The Vermont Captive Insurance Division reported that the captives licensed last year included 16 single-parent cap-

tives, two industrial insured captives, three risk retention groups, three sponsored captives and five special purpose financial insurers. Among the new captives, eight were formed by health care organizations, four by construction companies and three by parents in the transportation industry. Other sectors include education, insurance, finance, manufacturing, banking and securities, the statement said. Vermont’s number of active captives is now 588.

## Allied World names new president of North American operations

■ Allied World Assurance Co. Holdings A.G., based in Zug, Switzerland, has named Lou Iglesias president of Allied World North America. Currently president for Allied World’s U.S. property/casualty group, he will succeed Gordon Knight, who is retiring at the end of January, the insurer said in a statement. Before joining Allied World, Mr. Iglesias worked for 18 years for American International Group Inc. in various management positions, including as CEO for AIG’s commercial casualty division. In his new position, Mr. Iglesias will oversee profitability, production and distribution for all lines of business, including the property/casualty and professional lines books, according to the statement. He is based in New York.

## Willis North America, Willis U.K. restructured

■ Willis Group Holdings P.L.C. said it has revised the organizational structure of Willis North America Inc., the broker’s North American retail brokerage business, and has divided it into seven regions: Northeast, Atlantic, South, Midwest, West, California and Canada. The regional divisions will be supported by corresponding teams of national partners, the company said in a statement. Separately, Willis Group also said it has combined its global specialty insurance business with the Willis U.K. retail business. David Martin, the CEO of the U.K. retail business, will lead the newly combined business and report to Steve Hearn, deputy CEO of Willis Group.

## P/C insurance prices may have peaked, Barclays says

■ Commercial property/casualty insurance prices may have peaked, according to Barclays Capital Inc.’s most recent six-month buyers’ survey. The early 2014 survey of 75 risk managers showed commercial P/C prices expected to increase 1% from the same period last year, down from a 2% year-over-year increase expected in Barclays’ survey six months ago. Nearly all respondents characterized the P/C market as stable, according to Barclays, with property prices expected to be flat compared with anticipated 2% increases six months ago and buyers expecting 1% increases for liability lines, down from an expected 2% increase in the last survey.

## Texas proposes basing comp rates on NCCI manual

■ The Texas Department of Insurance said it is considering using the National Council on Compensation Insurance Inc.’s manual to base the state’s workers compensation rates and classifications. Boca Raton, Fla.-based NCCI is the comp rating agency for 34 states and the District of Columbia.

**Publisher:**  
Frank Quigley (Chicago)

**Associate Publisher/  
Online General Manager:**  
Paul D. Winston (Chicago)

**Editor:** Gavin Souter (Chicago)

**Editor-at-Large:**  
Jerry Geisel (Washington)

**Managing Editor:**  
Paul Bomberger (Chicago)

**Assistant Managing Editors:**  
Charmain Benton (Chicago);  
Aranya Tomseth (Chicago)

**Art Editor:** William Murphy (Chicago)

**Senior Editors:**

Judy Greenwald (San Jose);  
Mark A. Hofmann (Washington);  
Sarah Veysey (London);  
Joanne Wojcik (Denver);  
Roddy Zolkos (Chicago)

**Associate Editors:**  
Matt Dunning (New York);  
Sheena Harrison (Chicago);  
Bill Kenealy (Chicago);  
Matthew Lerner (New York)

**Copy Desk Chief:**  
Katherine Downing (Chicago)

**Editorial Assistant:**  
Kate Shepherd (Chicago)

**Director of Research:**  
Angelina Villarreal (Chicago)

**Editorial Cartoonist:**  
Roger Schillerstrom (Chicago)

**Advertising Sales Director:**  
Susan Stilwill (Chicago)

**Regional Sales Managers:**  
Ron Kolgraf (Boston); Robert B. Murray  
(New York); Mary Pemberton (Denver)

**Southeast & Classified  
Advertising Manager:**  
Monique Murray (New York)

**Sales Manager,  
Content Marketing Services**  
Fern Sheinman

**Production Manager:**  
J. Thomas Janka (Chicago)

**Director of Events and  
Brand Marketing:**  
Martha Donato (New York)

**Audience Marketing Director:**  
Michelle O’Malley (Chicago)

**Director of  
Demand Generation Services:**  
Par Gandhi (New York)

**Client Services, Project Manager:**  
Kathy L. Barnes (Chicago)

**Digital Product Manager:**  
Christina Kneitz (Chicago)

**Sales & Marketing Specialist:**  
Emily Stein (Chicago)

**EDITORIAL:** Chicago: 312-649-5200;  
Denver: 303-278-7444;  
London: 44-207-457-1400;  
New York: 212-210-0100;  
San Jose: 408-774-1500;  
Washington: 202-662-7200

**ADVERTISING:** Boston: 617-292-4856;  
Chicago: 312-649-5224;  
Denver: 303-898-4043;  
New York: 212-210-0136

**SUBSCRIPTIONS & SINGLE COPY SALES:**  
1-877-812-1587 (U.S. & Canada)  
1-313-446-0450 (All other locations)

*Business Insurance* is published by  
Crain Communications Inc.  
Crain Communications Inc. Board of Directors  
**Chairman:** Keith E. Crain  
**President:** Rance Crain  
**Treasurer:** Mary Kay Crain  
Cindi Crain

**Executive Vice President/Operations:**  
William A. Morrow

**Executive Vice President/  
Director of Strategic Operations:**  
Christopher Crain

**Senior Vice President/Group Publisher:**  
David Klein

**Vice President/Group Publisher:**  
Chris Battaglia

**Vice President/Production & Manufacturing:**  
Dave Kamis

**Chief Information Officer:**  
Anthony DiPonio

**G.D. Crain Jr.:** Founder (1885-1973)

**Mrs. G.D. Crain Jr.:** Chairman (1911-1996)

**Merrilee P. Crain:** Secretary (1942-2012)

**S.R. Bernstein:**  
Chairman-executive committee (1907-1993)



## Ceiling is low for sleepy worker

**A** New Zealand man who took sleeping on the job to new heights has scored a wrongful termination ruling against the employer that fired him after he was caught.

The New Zealand Employment Relations Authority declared that Auckland-based auto parts dealer Japanese Spares Ltd.'s dismissal of former deliveryman Francis Hudson was unjustified, according to a report by The New Zealand Herald.

The company fired Mr. Hudson last year after managers discovered him napping in a makeshift crawlspace he had carved into the ceiling of his office. But the authority ruled against the firm because managers never told Mr. Hudson he'd been caught sleeping or that his job was in jeopardy.

Japanese Spares was ordered to pay Mr. Hudson lost wages and additional compensation, according to the Herald.

## Woman jailed for U-Haul wreck scam

**A** 21-year-old California woman was sentenced this month to 300 days in jail for using a U-Haul truck to commit insurance fraud and getting caught red-handed through Facebook, the Sacramento County, Calif., District Attorney's office said.

Angelique Jones rented a U-Haul truck in 2011 and purposely collided it with a car owned by co-defendant Susan Lee. Ms. Jones and Ms. Lee, as well as two women who were inside of Ms. Lee's car during the collision and knew of the scheme, all filed bodily injury claims against U-Haul's un-named insurer.

The women denied knowing each other when questioned by the insurer. But the California Department of Insurance searched Ms. Jones' Facebook page and discovered one of Ms. Lee's passengers was Ms. Jones' mother and the mother-in-law of the two other women in the scheme. Ms. Jones' accomplices each pleaded guilty to felony insurance fraud and served 180 days.

## ABA FRANCHISE SCORES \$500 MILLION SETTLEMENT WITH NBA



AP PHOTO

Spirits of St. Louis basketball player Marvin Barnes, right, attempts a shot during a 1975 game.

**D**anny and Ozzie Silna have cashed out big in the recent settlement of a monetary dispute with the National Basketball Association dating back to the 1970s. The owners of one of the original American Basketball Association franchises, the Spirits of St. Louis, netted \$500 million in the settlement on top of \$300 million they had collected previously.

That's the better part of \$1 billion for never owning an NBA franchise.

In 1976, when the NBA absorbed four teams from the then-imploding ABA — the New York (now Brooklyn) Nets, the Denver Nuggets, the Indiana Pacers and the San Antonio Spurs — it offered a one-time payment of \$3 million to the owners of the two ABA teams not being taken: the Spirits and the Kentucky Colonels, whose owner took money.

But the Silna brothers balked, settling instead for a share of NBA "visual media" rights, the same deal given to the four teams joining the league.

The deal earlier this month settles all outstanding claims, including a suit brought last year seeking additional compensation due to media changes since 1976. The \$500 million will be financed through a private placement of notes by JPMorgan Chase & Co. and Merrill Lynch, three people with knowledge of the agreement told The New York Times.

*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.

## Wal-Mart manager fired after wild ride

**A** Wal-Mart manager whose efforts to thwart the theft of a pickup truck full of beer led to his taking a wild high-speed ride in the back of the truck has been fired over the incident.

News reports quoted a spokesman for Bentonville, Ark.-based Wal-Mart Stores Inc. as saying Mike Dawson, an assistant manager at a Titusville, Fla., Wal-Mart, violated company safety policy by placing himself in danger by climbing into the truck rather than taking down its license number. Mr. Dawson was subsequently fired.

Mr. Dawson reportedly said he had intended to only take down the license plate number of the two thieves he said were attempting to steal 12 cases of beer from the store Dec. 30, but jumped into the truck as it backed toward him, fearing he was going to be run over. A 15-mile ride at speeds of more than 90 mph followed until a motorist on his way to a shooting range came to his aid by drawing a gun on the pickup's driver and his accomplice. The truck's driver was charged with armed robbery, grand theft and kidnapping, reports said.

As for Mr. Dawson, the Wal-Mart spokesman cited his three previous perfect scores in company store safety training in justifying his firing for violating company safety policy. Apparently, he should have known better.



## Lloyd's covers Bitcoin 'cold' vault

**U**sers of digital currency Bitcoin now can stow their virtual cash in a storage vault that has insurance underwritten at Lloyd's of London.

Elliptic Vault is a service that uses so-called "deep cold storage" at a secure location and an offline server to store privately encrypted keys to Bitcoins.

Tom Robinson, a co-founder of Elliptic Vaults who has a doctorate in physics, told the British Broadcasting Corp. that secure storage of Bitcoins had been a major fear of people using the virtual currency.

He said finding an insurer to offer coverage for theft and loss for the storage facility was not an easy task. All transactions made using Bitcoins are irreversible and there is no way of retrieving the currency if it is lost.

In November, James Howells of Wales hit the headlines when he lost more than £4 million (\$6.6 million) after throwing away a hard drive that he forgot contained his Bitcoins.

The insurance covering Elliptic Vaults reportedly will issue payouts calculated using the Bitcoin to U.S. dollar exchange rate at the time a claim is made.



# Enhance your thought leadership role with sponsored webinars

Partner with **Business Insurance** to produce your webinar and position your company as a thought leader. BI Custom Media Group will work with you to present a custom webinar showcasing your expertise on topics of interest to the **Business Insurance** audience. Showcase your executives and deliver information to help your clients do their jobs better, and attract qualified leads for new business.

---

## AVAILABILITY

February 26	July 23
March 5	August 6
<del>March 19</del> <b>SOLD</b>	September 10
April 9	September 24
April 23	October 8
May 7	October 22
May 21	November 5
June 4	November 19
<del>June 18</del> <b>SOLD</b>	December 10
July 9	

---

**Business Insurance** promotional efforts ensuring the success of your webinar include:

- Targeted email blasts to focus on the desired audience for your webinar
- Multiple emails promoting registration to our qualified print and online audience
- Promotion of webinar online, on home page and relevant channel, as well as in channel email newsletters
- Listing in BI webinar print ad (space permitting)
- Receive a video file of your webinar after *businessinsurance.com* channel promotion ends, to display on your website. Hosting the link to the webinar on *businessinsurance.com* webinar page, [www.businessinsurance.com/webinars](http://www.businessinsurance.com/webinars), for 12 months



BI Custom Media Group can provide consultation and assessment of your needs and develop custom content that will generate sales. Call today to find out how.

Contact Paul Winston, Associate Publisher,  
at 312-649-5442 [pwinston@crain.com](mailto:pwinston@crain.com)





We are  insured.

Insurance for Directors & Officers | [acegroup.com/us](http://acegroup.com/us)

*What does it mean to be ACE insured?*

*It means our company, management team and board are protected by an AA- rated global insurer. ACE people truly understand the unique and complex risks facing a multinational company and go out of their way to help. With ACE's experience and global footprint, we are protected today and in the future – and wherever our business takes us. We can focus on our business knowing that ACE is there when we need them.*