

FLOOD LOSSES

Three of the five largest loss years in the National Flood Insurance Program occurred since 2005. Since 1978*, the five largest flood loss years were:

Year	Amount
2005	\$17.74 billion
2008	\$3.47 billion
2011	\$1.85 billion
1995	\$1.30 billion
2001	\$1.28 billion

*Latest available data 2011
Source: Federal Emergency Management Agency

CATASTROPHES

Time to end federal flood cover?

Congress to consider privatizing NFIP

BY MARK A. HOFMANN

Privatizing the National Flood Insurance Program could mean higher rates but better coverage for flood insurance policyholders, market observers say.

They also say that any privatization of the debt-ridden program, which was reauthorized for five years last year, would have to be phased in after considerable discussion to avoid market disruption. The program came under increased scrutiny as losses from Superstorm Sandy mounted. During the House debate over financial relief for Sandy victims this

See **NFIP** page 32

RISK MANAGEMENT

LIABILITY LIKELY LIMITED FOR DREAMLINER GROUNDING

Boeing contract agreements may cap losses



AP PHOTO

BY MIKE TSIKOUDAKIS

Insurance losses resulting from a federal regulator's rare move to ground Boeing Co.'s entire 787 Dreamliner fleet over battery-related problems will likely be limited by customer sales agreements and low limits for grounding liability exposures.

The Federal Aviation Administration ordered the 50 jets in the new fleet, which uses a design that includes lighter materials to improve fuel efficiency, grounded on Jan. 17, after two incidents raised concerns about the aircraft's lithium-ion battery system.

While the cause of the problems with the batteries remains unclear and it is not known when the Dreamliners will return to service, aviation insurers are not expecting large losses as a result of the FAA grounding.

Boeing's potential liability for the global grounding of its long-anticipated jet fleet is limited by purchase sales agreements that exclude or limit the Chicago-based aircraft maker's liability, aviation insurance industry experts said.

See **BOEING** page 30

WORKERS COMPENSATION

Stand-alone excess comp under pressure

Higher attachments, prices make some rethink self-insurance

BY ROBERTO CENICEROS

The stand-alone, excess workers compensation market is presenting significant challenges for some buyers, as insurers demand higher attachment points and higher prices.

California regulators, for instance, require self-insured groups to purchase the insurance to cover claims that exceed \$500,000, said Duke Niedringhaus, an excess workers comp specialist and vice president at broker J.W. Terrill Inc. in Chesterfield, Mo.

The requirement means employers can't increase their comp attachment point to reduce their insurance costs.

"That really puts pressure on the rate, in which case you can see some really significant increases to hold that \$500,000 retention," said Mr. Niedringhaus, who also is workers comp committee chair for the Self-Insurance Institute of America Inc.

A risk manager for a large, self-insured employer in New York said meeting the state's statutory limits has become a concern for buyers.

"My guess is you will find plenty of concerns out there," said the risk manager, who asked not to be

See **EXCESS** page 29

BOEING DREAMLINER

Total orders:

848

Planes in production:

799

Planes delivered and grounded:

50

787-8 cost per jet:

\$206.8 MILLION

787-9 cost per jet:

\$243.6 MILLION

Biggest customer order:

American International Group Inc.'s Los Angeles-based unit, International Lease Finance Corp.

74 JETS

Jets with lithium-ion battery failures:

2

Airlines affected: Japan Airlines, All Nippon Airways
Sources: Boeing Co., media reports

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RISK IN FOCUS



EXECUTIVE RISKS

D&O RISKS LINE UP AGAINST FIRMS

Professional liability market not expected to soften; companies assess Dodd-Frank effects on D&O policies; merger deals usually bring shareholder suits; crowd funding adds to D&O liabilities.

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01/28/13

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NEWS

MERGERS & ACQUISITIONS

Busy year ahead expected for broker mergers, acquisitions

Consolidation likely to focus on smaller firms

BY BILL KENEALY

Although unlikely to match the number of mergers and acquisitions in 2012, experts expect another busy year of deal-making in the insurance brokerage sector.

The broad economic, market and demographic factors that have catalyzed deals in the past few years remain in place. And one additional impetus to deals in 2012, pending changes in the tax treatment of capital gains, will be less of a factor in 2013, said Timothy J. Cunningham, managing director of Chicago-based Optis Partners L.L.C., an investment banking and financial consulting firm serving insurance intermediaries.

"The last quarter of 2012 was really big," he said. "Deal activity in 2013 will be down a little bit from 2012, but it will still be an active year."

Dave Simmons, Hartford, Conn.-based director at Deloitte Tax LLP, and the national leader of Deloitte's insurance mergers and acquisitions services, said there will continue to be strong activity in the broker M&A space, but the average size of the deals will be smaller.

"When you look over the past five or six years, there's been so much activity that a lot of the larger regional broker firms have been bought up," Mr. Simmons said. "So that consolidation means that acquisition activity will go down a level to the smaller regional brokers."

Thomas Doran, Atlanta-based

A DECADE OF DEALS

Number of mergers and acquisitions of U.S. insurance brokers, 2003-2013*.

2003	189
2004	229
2005	201
2006	218
2007	254
2008	288
2009	177
2010	224
2011	288
2012	294
2013	20*

*Through mid-January
Source: SNL Financial L.C.



principal at Reagan Consulting Inc., said the fragmented, bottom-heavy nature of the brokerage industry ensures more deals. "The universe of small agencies creates an opportunity for aggregators," he said.

Mr. Doran said the influx of new, acquisition-minded brokerages with financial backing of private equity firms will spur deal-making.

"Brokerage is a cash-flow intensive industry," he said. "It lends itself to the private business

model, so there is no shortage of new brokerage firms trying to establish themselves."

Mr. Cunningham agreed that private equity-backed brokerages are acquisitive by nature because investors are expecting their capital to be put to use.

"New entrants to the market have to make a mark," he said. "They may have to pay a premium to make sellers take notice."

Indicative of the trend of new brokerages that make acquisitive growth a core competency is Lake Mary, Fla.-based AssuredPartners Inc., which began acquiring brokerages in 2011 and was ranked the 15th largest broker of U.S. business in *Business Insurance's* 2012 rankings.

AssuredPartners Chairman and CEO Jim Henderson, who previously was vice chairman and chief operating officer of Daytona Beach, Fla.-based Brown & Brown Inc., said his firm focused on acquiring middle-market retail property/casualty brokerages and agencies that are seeking to monetize assets and gain access to capital. Mr. Henderson credited the company's decentralized operating model, which enables acquired agencies to retain local leadership while helping AssuredPartners rapidly gain a foothold in the market.

"We tend to do best with those that change the least," he said, adding that positive word-of-mouth from acquired agencies also has helped surmount the challenge of being new to the marketplace.

LIABILITY & LITIGATION

Generic drug liability ruling raises concerns

BY JUDY GREENWALD

An Alabama Supreme Court ruling that says brand-name drug makers can be held liable for injuries caused by drugs produced by generic manufacturers could have a significant effect on other pharmaceutical cases, and even on product liability litigation not pharmaceutical related, legal experts say.

Others dismiss the importance of the Jan. 11 ruling in *Wyeth Inc. et al. v. Danny Weeks and Vicki Weeks*, stating it was issued by a noninfluential court, and is an outlier ruling that is contrary to the overwhelming majority of other decisions on the issue.

The underlying case involved a patient who developed tardive dyskinesia, a condition that causes involuntary movements, after his long-term use of the prescription heartburn drug metoclopramide, a generic form of the brand-name drug Reglan that was produced by Wyeth Inc. Wyeth has since been acquired by New York-based Pfizer Inc.

Experts say the Alabama ruling reflects two conflicting issues. On one hand, it may be unfair for brand name manufacturers to be held liable for a drug they never

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LIABILITY & LITIGATION

European religious bias case sets bar for employers

BY SARAH VEYSEY

Employers with operations in Europe must balance their employees' right to demonstrate their religious beliefs against the rights of others and corporate objectives, as a result of a landmark ruling by the European Court of Human Rights.

In *Nadia Eweida & Others v. the United Kingdom*, the court ruled that a workplace dress code that prevented an airline check-in clerk from wearing a visible crucifix violated her right to express religious



AP PHOTO

Nadia Eweida won a religious discrimination case.

belief, although wearing a cross is not an express requirement of the Christian faith.

However, in three other cases heard with *Eweida* involving Christian beliefs, only one of which also was based on wearing a religious symbol on the job, the court ruled that employers' policies did not breach the European Convention on Human Rights.

Ms. Eweida, a Coptic Christian, was employed as a check-in clerk by British Airways P.L.C., which sent her home without pay in 2006 for refusing to remove a crucifix.

At the time, British Airways'

See **BRITISH** page 28

GENERIC LIABILITY

Other courts have issued differing rulings on generic drug liability:

Foster v. American Home Products Corp. 1994, 4th U.S. Circuit: a brand name manufacturer is not liable for injuries from another manufacturer's generic product.

Conte v. Wyeth Inc. 2008, California appellate court: a brand name drug maker can be liable for injuries caused by another manufacturer's generic version.

Wyeth v. Levine. 2009, U.S. Supreme Court: Federal Drug Administration-approved label did not provide Wyeth with a defense to failure-to-warn claim.

PLIVA Inc. v. Mensing. 2011, U.S. Supreme Court: Generic drug makers are not liable for injuries because their warning label must identical to the branded drug.

By Judy Greenwald

01/28/13

ONLINE
FEATURES

SOLUTION ARC

Attaining risk management
nirvana

Gaps in public entities' and municipalities' risk management often are exposed in a catastrophe. www.BusinessInsurance.com/RMNirvanaArc

VIDEO



Broker Beat

Business Insurance sits down with William Gallagher Associates. www.BusinessInsurance.com/Video

RMS 2013

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The 2013 *Business Insurance* Risk Management Summit will be held March 5-6 at the Westin Grand Central in New York. www.BusinessInsurance.com/RiskSummit

WHITE PAPER

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NEWS

RISK MANAGEMENT

PUBLIC ENTITIES SEE OBSTACLES
IN DISASTER PLANNING

Risk managers find solutions despite tight budgets

BY MIKE TSIKOUDAKIS

Superstorm Sandy's devastation puts disaster and emergency response plans front and center for public entity risk managers across the United States.

With limited resources and tightened budgets, public entity risk managers work with federal, state and local resources — and their communities — to address specific geographic risks and prepare for the next disaster.

The state of Washington, which has diverse natural catastrophe risks, from volcanoes and earthquakes to tsunamis and lahars, uses the Federal Emergency Management Agency's National Incident Management System to streamline its emergency response to easily interact with federal resources in the event of a disaster, said Drew Zavatsky, section manager for the loss prevention program in the risk management division for the Washington State Department of Enterprise Services in Olympia, Wash.

The threat of a major disaster is none too real for Washington. "Our risk of a major earthquake like Japan ... is at 40%," Mr. Zavatsky said. "We're actually overdue."

FEMA's emergency response system helps discern timing for critical city functions to be up and running in the first hours and days after an event and helps facilitate efficient



AP PHOTO

Last year's Waldo Canyon fire near Colorado Springs was one of several natural catastrophes that threatened states and cities.

interaction with federal resources.

"As you lay that out, it helps you prioritize that we absolutely have to assure that anything that could lead to an additional catastrophe is under control," Mr. Zavatsky said. "One thing that 9/11 taught was that if we all speak different languages, it adds critical delay in assuring that the right service gets to the right person at the right time."

According to the National Commission on Terrorist Attacks Upon the United States report on the Sep. 11, 2001, terrorist attacks, New York responders and city officials

experienced several breakdowns of communication.

"Always an issue after a disaster — we found this, too — is communicating effectively internally, and communication always seems to be something that we can improve on," said Bret Waters, emergency management director for the city of Colorado Springs, Colo.

Around 32,000 residents were evacuated in El Paso County, Colo., and Colorado Springs because of last year's Waldo Canyon fire, which started in June and burned

See **STORMS** page 28CITIES, STATES
HIT HARD
BY RATE HIKES

BY MIKE TSIKOUDAKIS

Increasing insurance premiums for disaster-related coverages pose significant challenges for public entity risk managers.

But strong insurer-broker relationships, along with effective loss-prevention efforts, can help public entity risk managers navigate the complex insurance coverages after a large-scale disaster, experts say.

Donna James-Spruce, risk manager for the city of Corpus Christi, Texas, uses the National Flood Insurance Program and also purchases excess flood and wind insurance, she said.

"We're trying to get the maximum coverage for the best value and that's a challenge, especially for cities and counties and school districts," Ms. James-Spruce said.

While the city, which is perched on the Gulf of Mexico, maintains good loss experiences, Sandy and other weather-related events around the world have put pressure on premiums, Ms. James-Spruce said.

"When you're hit with ... an increase in your premium, then you have to either pay it, which most of us don't have that kind of money in our budget, or you have to start carving away at your program. As a risk manager, that's so hard to do," she said.

"Insurance solutions in a disaster can be pretty difficult," said Mary Breighner, Cincinnati-based vice president and global practice leader of FM Global's public entities, health care and education unit. Insurers are very aware and

See **INSURANCE** page 28

PROPERTY/CASUALTY INSURERS

Long-term changes needed to survive future catastrophes

Superstorm Sandy taught industry important lessons, insurance executives say

BY MATT DUNNING

NEW YORK — While property/casualty insurers' short-term responses to Superstorm Sandy have been marked by financial resiliency and generally efficient claims management, experts acknowledged long-term changes are needed to protect the industry from future catastrophes.

During panel discussions at the 2013 Property/Casualty Joint Industry Forum in New York this

month, experts credited the preemptive dispersal of personnel and resources to affected areas for the industry's relative success in managing the estimated 1.4 million claims filed by residential and commercial policyholders in the days and weeks after Sandy.

"With any event like this, it's about the personnel you put on the ground, the systems you set up and the planning you're able to do in advance with your clients," said Jeffrey Bowman, president and

CEO of Atlanta-based Crawford & Co., at the conference. Mr. Bowman added that Crawford & Co. had closed as many as 70% of the more than 40,000 Sandy-related claims it had received as of Dec. 31.

"With Sandy, we were dealing with 16 states that were impacted, and we had close to 600 adjusters working with insurers to process claims," he said.

Financially speaking, panelists said property/casualty insurers seem to have withstood the esti-

mated \$25 billion in insured losses caused by the storm, thanks in large part to diversification strategies among the industry's biggest firms. As of Sept. 30, 2012 — a month prior to the storm's landfall in New York and New Jersey — the industry had amassed a \$583.5 billion policyholder surplus, according to the Insurance Information Institute Inc.

"For the most part, we're not see-

See **FORUM** page 28



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WORKERS COMP CHANGES LOOM AS STATES CONSIDER REFORMS

Sandy Hook shooting may spur comp review in Connecticut

BY SHEENA HARRISON

After last month's Sandy Hook Elementary School shooting in Newtown, Conn., the state is expected to weigh whether to expand the presumption of workers compensation coverage to first responders who suffer psychological trauma.

The Connecticut discussion is one of several legislative issues nationwide that experts say could impact the workers comp landscape for 2013.

Connecticut workers comp law does not cover mental health claims that do not have a corresponding physical injury, according to the Connecticut Workers' Compensation Commission. The Connecticut General Assembly is expected to consider a bill this month that would expand benefits for first responders that weren't injured but need counseling.

Though some first responders did not suffer physical injuries in the Newtown tragedy, workers comp case law still may allow them to receive coverage for their psychological injuries outside of any reforms, said Bruce Wood, Washington-based associate general counsel and director of workers compensation for the American Insurance Association.

The shootings could be proven to be a direct cause for the first responders' mental conditions and allow them to receive benefits

even without Connecticut passing new legislation, Mr. Wood said.

"That may, under some workers compensation jurisprudence, qualify as a physical event, even though there wasn't a physical injury to the first responder himself," he said.

Coverage for mental health claims is part of several workers comp reforms that could be on the



Connecticut workers comp law does not cover mental health claims that do not have a corresponding physical injury.

table for Connecticut this year, said Peter Burton, Wayne, Pa.-based senior division executive for state relations for NCCI Holdings Inc.

The state is working to deal with workers comp rates that have increased for four consecutive years, Mr. Burton said. Connecticut also had the second-highest workers comp premium rate nationwide in 2012, according to a

biennial study conducted by the Oregon Department of Consumer and Business Services.

Workers comp coverage presumption is an issue that public employers nationwide are watching out for in regard to first responders, said Dan Hurley, senior director of risk management and safety at Norfolk, Va., Public Schools and president of the Public Risk Management Association.

"There's been some movement by public safety unions ... to include things such as cancer, to presume that if I have cancer that it must have come from employment," Mr. Hurley said. "Another one is communicable diseases, where your first responders or police are on the scene (and) you presume that whatever they got came from work."

In Oklahoma, proponents of an "opt-out" workers comp system are expected to revive their efforts this year after a similar measure was defeated by the Oklahoma House of Representatives last April.

The bill would have established an alternative workers comp system that lets certain employers exempt themselves from the state system. The plan would require employers opting out to establish a substitute plan — including medical, disability and death benefits for injured workers — that meets Employee Retirement Income Security Act requirements.

"We strongly oppose opt-out," Mr. Wood said.

The Oklahoma opt-out bill was supported by retailers such as Oklahoma City-based Hobby Lobby Stores Inc. and Seattle-based Nordstrom Inc.

California employers and insurers are starting to see the implementation of sweeping workers comp reforms passed by the state in September. Most will see costs go up in the short term because an increase in permanent disability benefits took effect Jan. 1, said Mark Sektnan, president of the Sacramento, Calif.-based Association of California Insurance Cos.

The state has begun to implement reforms that aim to reduce some workers comp system costs, such as new fee schedules and an independent medical review process meant to quickly resolve medical treatment disputes.

Though the changes are expected to limit rising comp costs this year in California, Mr. Sektnan said it will take years to determine the full effect of last year's reforms.

"We hope that the reforms will flatten the curve of what are necessary cost increases over the next couple years," he said. "Without the reforms, costs would have gone up a lot higher. With the reforms, we hope they'll go up a little less. We don't want anybody to have the impression that costs are actually going to go down, because that's not likely to happen."

SMART Act may speed comp claims

The recently passed Strengthening Medicare and Repaying Taxpayers Act could help speed the settlement of workers compensation claims in 2013, industry observers say.

H.R. 1845 was signed into law by President Barack Obama this month after being approved by Congress in the last week of December. The bill's passage was supported by members of the Risk & Insurance Management Society Inc., said Carolyn M. Snow, board liaison to the External Affairs Committee for New York-based RIMS.

The bill contains portions of H.R. 1063, the SMART Act, which aims to simplify the process of reimbursing the Centers for Medicare and Medicaid Services. CMS holds insurers and self-insured employers responsible to pay for a Medicare beneficiary's medical treatment related to workers compensation or liability cases.

SMART Act supporters say the bill will help the settlement of claims by requiring CMS to issue its final demand for reimbursement prior to a workers comp or liability settlement agreement. It also establishes a minimum threshold for settlements in which CMS can seek Medicare reimbursement, and includes a three-year statute of limitations for CMS to seek reimbursement from a settled claim.

"I think it will make the (settlement) process just move more smoothly," said Ms. Snow, who is the Louisville, Ky.-based director of risk management for Humana Inc. "It eliminates a lot of the busy-work, if you will, and it gives the companies more confidence in their settlements."

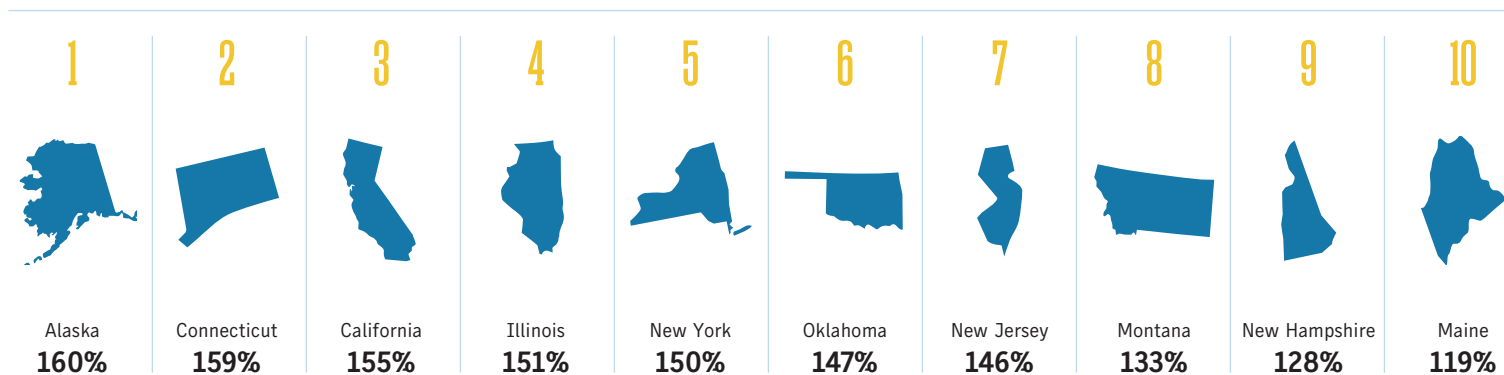
Jay Fahrer, Washington-based government relations director for the Self-Insurance Institute of American Inc., said the SMART Act will help insurers and self-insureds to know how much money should be paid to CMS for reimbursement at the time of settlement, rather than waiting for CMS to send a bill before a claim is closed.

"I think that (SIIA members) spent a lot of time trying to figure that out, but there was also sort of the threat or the fear of noncompliance with coming up with the wrong total," Mr. Fahrer said. "I think that part of the new law is very appreciated by the plans."

By Sheena Harrison

CLIMBING COMP COSTS

States with the highest workers compensation premium rates in 2012, according to the Oregon Department of Consumer and Business Services. The rankings are based on a median pure premium rate of \$1.88 per \$100 of payroll.



Source: 2012 Oregon Workers' Compensation Premium Rate Ranking Summary



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**Ron Walton, Executive Director, Risk Management
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SAME-SEX MARRIAGE RULINGS MAY CHANGE BENEFITS OFFERINGS

Supreme Court considers challenges to federal, state laws

BY MATT DUNNING

This year, the U.S. Supreme Court will consider constitutional challenges to a pair of anti-gay marriage laws that legal experts say could have broad implications for employer-sponsored benefit plans.

A decision to overturn either the federal Defense of Marriage Act of 1996 or the 2008 California state constitutional amendment outlawing same-sex marriage, which is commonly known as Proposition 8, or both, could affect the availability of employer-sponsored dependent benefits for thousands of same-sex couples.

Oral arguments in both cases will begin in late March, and the court could issue its rulings as early as June.

“Both the court’s ruling and, perhaps more importantly, its rationale for reaching its decision are what will really make the difference in determining what the ripple effect of these cases will be at the state level,” said Jennifer Kraft, a Chicago-based partner at Seyfarth Shaw L.L.P.

Depending on the court’s ruling, an overturn of DOMA likely would relieve administrative burdens for thousands of employers who already extend benefits to their employees’ same-sex spouses and domestic partners, experts said, and could compel thousands more in certain states to begin offering benefits to same-sex couples.

Today, private and local public employers may voluntarily extend certain dependent benefits to same-sex couples (see charts below). But unlike their heterosexual counterparts, gay and lesbian couples are required under DOMA to pay federal taxes on those benefits. Additionally, the

Employee Retirement Income Security Act — which governs most employment benefit plans — contains numerous regulations that are subject to DOMA’s restrictive definition of marriage.

For employers providing dependent benefits to same-sex couples, the disparity in treatment under the tax code, ERISA and other related federal statutes translates to unnecessary layers of complexity in the administration of their benefit plans.

“The way the law is written now, there’s

“If the court decides that the definition of marriage is not a matter for federal legislation, and that it ought to be left to the states, then I think we’re going to remain in a situation where we have a lot of variation, as we do today.”

Jennifer Kraft, Seyfarth Shaw L.L.P.

an extra administrative step or two that they have to go through to provide those benefits,” said Jay Kirschbaum, St. Louis-based practice leader of Willis North America Inc.’s national legal and research group. “If the court were to strike the law down, it would probably make those employers’ lives easier, if only from an administrative point of view.”

A judicial rebuke of DOMA also could affect many employers that previously have declined to offer benefits to same-sex couples, experts said. ERISA’s anti-discrimination provisions dictate that while

employers are not necessarily required to provide group health insurance benefits to employees or their spouses, any group health benefits they offer must be available to “all similarly situated individuals.”

Without DOMA to provide an overriding federal definition of a “spouse,” most employers’ plans would default to their domicile state’s definition. Therefore, experts said, private employers that provide spousal benefits to opposite-sex couples through plans domiciled in states that recognize same-sex marital rights could be compelled to extend equal benefits to legally joined gay couples.

“If the court decides that the definition of marriage is not a matter for federal legislation, and that it ought to be left to the states, then I think we’re going to remain in a situation where we have a lot of variation, as we do today,” Ms. Kraft said.

Less clear are the effects an overturn of DOMA would have on public employers in states that do not recognize same-sex unions, experts said. Even if the Supreme Court rules broadly that legally joined same-sex couples are owed the heightened level of constitutional protection prescribed by the 2nd U.S. Circuit Court of Appeals’ decision in the DOMA case, it is uncertain how such a ruling would affect benefits provided by state and municipal employers.

“Overturning DOMA would not, by itself, force states to legally sanctify same-sex unions, but it could call into question state laws that prevent the extension of state-level marriage benefits to legally recognized same-sex couples,” said Benet Pine, a New York-based shareholder at Anderson Kill & Olick P.C.

The practical implications of a decision overturning California’s Proposition 8 amendment likely would be more limited for employers, depending on the scope and language of the court’s ruling. If the court does uphold the 9th U.S. Circuit Court of Appeals’ decision to invalidate the amendment, experts said it is probable that such a ruling would apply only to California, and would have no legal bearing on similar statutes outlawing gay marriage in 37 other states.

However unlikely, the court could strike the amendment down under the broadest possible interpretation of the 9th Circuit’s decision, which would threaten gay marriage bans in other states, if not nullify them outright.

“The Supreme Court likes to rule as narrowly as possible,” Mr. Pine said. “They tend not to issue open-ended rulings that can be interpreted more broadly than they intend them to be.”

Key cases before high court

UNITED STATES V. EDITH WINDSOR

In October, the 2nd U.S. Circuit Court of Appeals in New York ruled that the Defense of Marriage Act violates the 14th Amendment to the U.S. constitution because it unfairly denies legally joined same-sex couples rights and benefits afforded to legal opposite-sex unions. The law also prohibits federal employees from enrolling same-sex spouses and domestic partners in their employer-sponsored health and retirement benefit plans.

The challenge to the law was brought to the U.S. District Court for the Southern District of New York in 2010 by Edith Windsor, who was served with a \$363,000 tax bill for the property she inherited after her partner died in 2009. Under DOMA, she would have been exempt from the tax had she been in a heterosexual marriage.

Significantly, the 2nd Circuit’s majority opinion applied for the first time a substantially greater level of constitutional protection for legally recognized gay couples that requires defenders of a presumably discriminatory law to provide evidence that it serves an important government interest — instead of merely a rational public policy basis — as justification for the law’s discriminatory effects.



DENNIS HOLLINGSWORTH ET AL. V. KRISTIN M. PERRY ET AL.

Shortly after a 2008 ruling by the Supreme Court of the State of California declaring that same-sex couples had a fundamental right to obtain the same state marriage licenses available to opposite-sex couples, voters approved the Proposition 8 ballot initiative amending the California Constitution to define marriage as the union of one man and one woman, thus overriding the court’s decision.

Months later, two same-sex couples — including Kristin Perry — sued California in U.S. District Court for the Northern District of California over the amendment after being denied state marriage licenses. However, no officers of the state’s government offered to defend the amendment’s constitutional merits. Dennis Hollingsworth and several other original sponsors of Proposition 8 volunteered and later were certified to defend the statute on behalf of California voters.

In February, the 9th U.S. Circuit Court of Appeals upheld a lower court’s ruling that the Proposition 8 statute violated the 14th Amendment to the U.S. Constitution by stripping same-sex couples of their court-mandated right to enter into legal marriages.

By Matt Dunning

MORE DOMESTIC PARTNER BENEFITS

A range of surveys tracking employer-sponsored benefit trends indicate that the percentage of midsize and large employers that offer some form of domestic partnership benefits has increased substantially since 2008.

NATIONAL SURVEY OF EMPLOYER-SPONSORED HEALTH PLANS, MERCER L.L.C.

Year	Percent offering domestic partner benefits
2012	47%
2008	34%

ANNUAL EMPLOYER HEALTH BENEFITS SURVEY, HENRY J. KAISER FAMILY FOUNDATION

Year	Percent offering domestic partner benefits
2012	39%
2008	32%

FORTUNE 500 COMPANIES, HUMAN RIGHTS CAMPAIGN

Year	Percent offering domestic partner benefits
2012	62%
2008	57%

IN MEMORY OF OUR BELOVED
COLLEAGUE AND FRIEND, ROBERT LALA.



Our deepest sympathies go out to his family. He will be sorely missed.



U.K. Aon employees defer bonus to minimize tax hit

■ Insurance brokerage Aon P.L.C. has enabled about 250 employees to defer bonus payments until the new tax year, when a lower rate of income tax for top earners will come into effect in the United Kingdom. On April 6, 2013, the highest rate of income tax in the United Kingdom will fall to 45% of gross pay from 50%. “Qualifying U.K. employees were given the option of deferring payment of their 2012 bonuses from March to April 2013. Approximately 250 employees, 4% of the U.K. employee base, elected this option,” Aon said in a statement. Last year, Aon relocated its headquarters from Chicago to London in a move it said would give it greater access to emerging markets, among other things.

S&P names key risks for global insurers

■ Continued low interest rates and changing regulation present key risks for global insurers, according to a report by Standard & Poor’s Corp. Insurers are facing an “accumulation of risks,” S&P said. Continued low interest rates adversely affect insurers’ credit quality and challenges business models, according to S&P. Changes in regulation create uncertainty, but could prove to be either positive or negative for insurers as they play out, S&P said. It noted that the low-interest-rate environment has led property/casualty and life insurers to reprice products. But for property/casualty insurers, low interest rates could present some benefits because the lack of investment income will result in a focus on making an underwriting profit, the report said.

European Parliament OKs credit rating agency rules

■ The European Parliament approved rules on the way credit rating agencies rate companies’ financial strength and states’ debts. The rules, which have provisional approval from the European Council, would enable investors to sue rating agencies for negligence if, for example, a rating relied on by an investor was issued outside of the published calendar of agreed dates for ratings, among other things. The rules state that ratings should not seek to influence state policies and that rating agencies must not advocate policy changes, among other things.

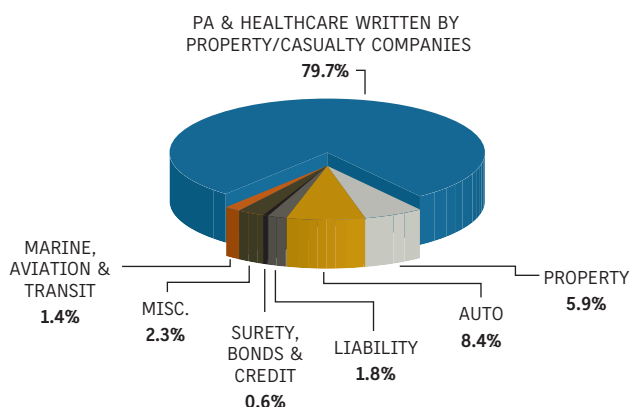
PROFILE: NETHERLANDS

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The insurance market in the Netherlands has stagnated over the past several years due to the recession in Europe. Property/casualty gross premiums fell by 4.1% in 2011, the latest year for which figures are available. Gross premiums fell in every line of business except marine, aviation and transit. In addition, the number of property/casualty insurers has declined due to mergers and acquisitions and market withdrawals.

◀ Number of property/casualty insurers

MARKET SHARE PROPERTY/CASUALTY PREMIUM SPLIT FOR 2011



COMPULSORY INSURANCE

- Aircraft liability
- Health insurance
- Auto third-party liability
- Nuclear liability
- Marine oil pollution
- Clinical trials
- Professional indemnity for accountants, insurance brokers, lawyers and notaries
- Various other lines.

NONADMITTED

Unauthorized insurers cannot carry on insurance activity in the Netherlands, but there is no requirement that insurance be purchased only from locally authorized insurers. The law is generally interpreted to mean that insurers can issue policies from outside the Netherlands if approached by a buyer or broker.

FREEDOM OF SERVICES

Under European Union legislation, an insurer with its head office in an E.U. country or other European Economic Area countries may provide insurance in the Netherlands without having an office in the country. Nonadmitted regulations apply only to insurers outside the E.E.A.

MARKET PENETRATION

Market insurance premiums as a percentage of gross domestic product at 11.9% is relatively high compared with other countries in the region.

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



POPULATION

16.73 Million

AREA

16,033 Square miles

ALTITUDE

24% of the land is below sea level

ECONOMIC GROWTH

1.3% Estimated for 2013

MARKET DEVELOPMENTS

UPDATED DECEMBER 2012

- The insurance premium tax rate for the Netherlands increased from 9.7% to 21% on Jan. 1, 2013. About €940 million (\$1.25 billion) in additional tax revenue is expected to be generated by the change, which applies to all policies incepting and renewing after Jan. 1.
- After several years of continuous declines from 2006 to 2010, premium rates stabilized in 2011 and 2012 in most major classes. Competition in the market remains intense.
- In the context of deteriorating loss ratios in 2009 and 2010, and after a warning from the De Nederlandsche Bank in 2010 that it would conduct investigations into the adequacy of auto insurance rates, auto insurance premium rates in the market increased in 2011 by 6% to 7%.
- As the market has increasingly opted to replace the payment of broker commissions with the quoting of net rates by insurers, leaving brokers to negotiate intermediary remuneration with their clients, there has been an ongoing reduction in the numbers of small brokers in the market, the latter having closed or merged.

P&I clubs up retentions for reinsurance cover

■ The International Group of P&I Clubs made several changes to its reinsurance contract to offset rising reinsurance premiums. The International Group, whose 13 members are some of the largest protection and indemnity marine insurance clubs, announced that individual clubs’ retentions will increase to \$9 million for the 2013-2014 policy year from \$8 million for the 2012-2013 policy year. P&I insurance typically renews on Feb. 20 each year.

Brazil urged to ease market access

■ A group of insurance trade organizations are calling on Brazil to ease market access for foreign

insurance and reinsurance companies. The group, which includes the American Insurance Association, Association of Bermuda Insurers & Reinsurers, the Property Casualty Insurers Association of America, and the Reinsurance Association of America, cite a recent report from the International Monetary Fund that recommends that Brazil should improve its compliance with the insurance core principles issued by the International Association of Insurance Supervisors.

Allianz reinsurance unit licensed in Brazil

■ Allianz Global Corporate & Specialty A.G., a unit of Allianz S.E., has established Allianz Global Corporate & Specialty Resseguros Brasil S.A. to enter the South American reinsurance market. The new entity, also known as AGCS Brazil, received regulatory

approval from Brazil’s Superintendência de Seguros Privados last month, and has opened two offices in Rio de Janeiro and São Paulo.

Bermuda firms withstand catastrophe hits: Fitch

■ Insurers and reinsurers in Bermuda withstood another year of sizeable catastrophe losses in 2012 thanks to strong capitalization and good risk management, according to Fitch Ratings Ltd. The rating agency said that while Superstorm Sandy will affect Bermuda insurers and reinsurers’ fourth-quarter earnings, the 17 publicly traded insurers and reinsurers with operations in Bermuda that Fitch follows likely will post a combined ratio for the year of about 95%, compared with 107.1% for 2011. Recent information suggests that rates for property coverage have remained stable, while

some lines saw rate increases after Sandy.

Bermuda, Cayman license new insurers, captives

■ The Bermuda Monetary Authority licensed 53 new insurers in 2012, including 27 special-purpose insurers. The formations also included four Class 1 insurers, two Class 2 insurers, six Class 3 insurers and four Class 3A insurers. Bermuda captive insurance companies typically are licensed as Class 1, 2, 3, 3A or 3B companies. Meanwhile, The Cayman Islands Monetary Authority reported receiving 67 applications for new licenses in 2012, with the remainder scheduled for approval this year.



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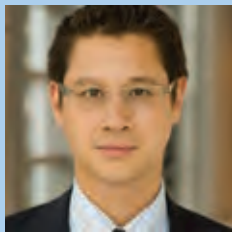
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"The End of Cheap China: Economic and Cultural Trends that will Disrupt the World," and columnist for Bloomberg BusinessWeek on business in China.



RON INSANA

Ron Insana is a contributor to CNBC and MSNBC, where he discusses the most pressing economic and market issues of the day. He also delivers The Market Scoreboard Report to

radio stations around the country. He has authored four books on Wall Street and is a highly regarded lecturer on domestic and global economics, financial markets and economic policy issues.

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EMERGING MARKETS

With political upheavals and social unrest in a wide range of countries and continued suppression in others, international and multinational companies face challenges when protecting their investments, assets and people. This session will look at the risks that companies face in situations such as the Arab Spring, rioting in Greece or complying with Chinese government requirements and explore how to address those risks.

CLOUD COMPUTING

Cloud computing offers opportunities for efficiency and cost savings but can introduce a host of risks in areas such as information security, reputation, business interruption, jurisdictional issues and regulation and compliance. This session will focus on the nature of the exposures associated with cloud computing services and how to address the risks looking at such mitigation areas as risk management, contractual issues and insurance coverage options.

REPUTATIONAL RISK

Reputational damage can have a dramatic impact on a company's value, perhaps even threatening its survival, while social media and web-based communications have increased the risks while dramatically reducing the time to respond to reputational threats. This session will examine some of the sources of reputational risk as well as strategies for managing them and best practices for dealing with reputation threatening events when they occur.

MERGERS & ACQUISITIONS

When companies unite the benefits are always highlighted but the risks are often understated, especially in international acquisitions. This session will examine what risk managers need to consider when their company buys or merges with another entity including: inherited liabilities, insurance program restructuring and merging different risk management cultures.

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EDITORIAL

GENERIC DRUG LIABILITY ISSUE NEEDS ACTION

The Alabama Supreme Court's ruling in *Wyeth Inc. v. Weeks* that says brand name drug makers can be held liable for injuries caused by drugs produced by generic manufacturers presents a quandary. In the case, a patient who had taken only generic forms of the heartburn drug Reglan and developed a muscular disorder, sued the brand name manufacturer, contending Wyeth had a duty to warn the physician treating Danny Weeks and his wife about the risks associated with the drug's long-term use.

Litigation against generic drug manufacturers, though, is pre-empted by the U.S. Supreme Court's 2011 ruling in *PLIVA Inc. v. Mensing*, in which the high court held generic drug makers cannot be held liable in these cases because they are required to use a warning label identical to what's approved for the brand name manufacturer.

This left the Alabama Supreme Court with the unpalatable choice between finding the brand name manufacturer liable, or leaving Mr. and Ms. Weeks without any possibility of compensation for their suffering. The court chose the latter, although it remains one of only a handful of courts to rule this way.

We are left with a situation, on one hand, in which brand name manufacturers are not only being found liable for the harm caused by a drug they never made, but in many cases they are losing profits to the generic drug makers. On the other hand, they were the ones to develop the allegedly dangerous drug to begin with. And it seems only fair that patients who suffer from this terrible condition should have some recourse.

What to do? Fortunately, just as this is not a black-or-white issue, a black-or-white solution is not necessarily called for. In other words, it seems only right that the brand name and generic drug manufacturers should contribute to a solution in cases where it can be established their drugs caused harm.

This is an issue that Congress should address, perhaps by developing some sort of formula, under which the brand name and generic drug makers each assume some liability.

Only then, we believe, can justice truly be served.

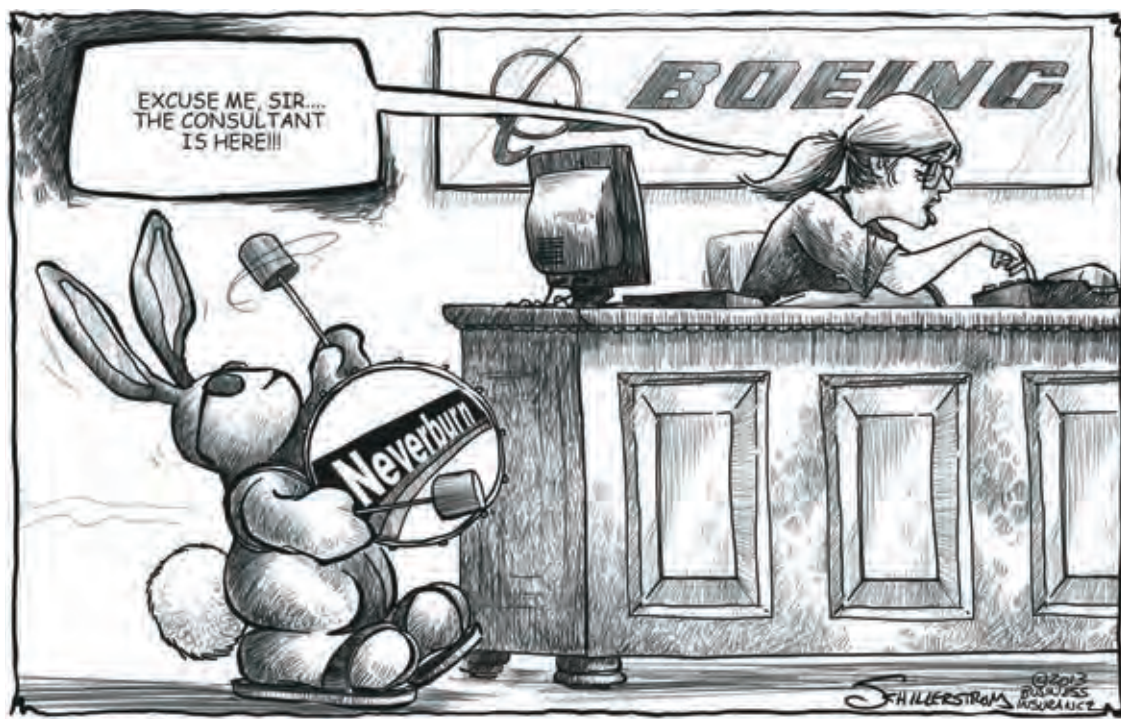
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SCHILLERSTROM



COMMENTARY

STATE-CONTROLLED INSURERS MAY POSE SYSTEMIC RISK

The debate over exactly what constitutes a systemically important financial institution subject to heightened regulatory oversight has been going on since the financial crisis of 2008 broke.

A key question has been whether property/casualty insurance companies can present a systemic risk to the economy as a whole. Most property/casualty insurers and the trade associations that represent them have argued persuasively that the very nature of property/casualty insurers precludes them from presenting such a risk.

As regulators consider exactly which institutions present a systemic risk under the Dodd-Frank Wall Street Reform and Consumer Protection Act, they ought to consider the comments recently sent to the International Association of Insurance Supervisors by the Washington-based R Street Institute.

R Street is a free market-oriented nonprofit that doesn't shy away from offering provocative solutions to public policy issues, including financial regulation and environmental affairs. In its comments, R Street notes that private insurers aren't the only players in the property/casualty insurance market. State-controlled entities such as Florida's Citizens Property Insurance Corp. and others also provide coverage.

In the comment, R Street senior fellow R.J. Lehmann noted that the IAIS considers "interconnectedness" as one of the two most important factors used to access the systemic importance of an insurer.

"The typical post-catastrophe funding mechanisms of large U.S. residual market entities must raise concerns about interconnectedness," he wrote. "Rather than setting aside actuarially appropriate reserves to



MARK A. HOFMANN

SENIOR EDITOR

prepare for the risks they take on, entities like Florida Citizens rely on post-event borrowing as a source of liquidity after a major event. The loans taken out by these entities are then to be serviced over time using funds raised by assessments on private market insurers, which are then typically passed on to consumers."

Mr. Lehmann said the case for closer regulatory over-

sight of these entities "is bolstered by the potential for regulatory conflicts of interest" and noted that, in some states, the state-controlled entities are overseen by the same regulators who oversee private insurers.

The impact the failure of a state-controlled insurer might have on the national or international economy as a whole hasn't received the attention it demands in the debate over what constitutes a SIFI. By definition, any large government-controlled or -sponsored financial institution presents real issues of interconnectedness; just look at what happened at Fannie Mae.

Subjecting government-controlled insurers to heightened regulatory oversight could increase those entities' costs of doing business. That could mean some additional costs for policyholders and taxpayers. But ignoring the potential for damage done by a state enterprise when determining what is a SIFI ultimately could lead to a considerably costlier bailout by the public should such an insurer fail.

RISK IN FOCUS

Executive Risks

M&A announcements
almost guarantee
shareholder lawsuits

PAGE 14

Companies assess
effects of Dodd-Frank
on D&O policies

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Crowd funding
adds to firms'
D&O liabilities

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Professional liability
market not expected
to soften soon

PAGE 18

D&O risks line up against firms



Regulatory issues, evolving litigation trends add to corporate liabilities

BY JUDY GREENWALD

Insider trading, “opt-out” litigation, Libor-related lawsuits and Federal Deposit Insurance Corp.-initiated actions are among the “hot-button” litigation and regulatory issues on the horizon for corporations, say experts surveying the directors and officers liability coverage landscape.

Insider trading is a popular issue for the U.S. Securities and Exchange Commission and “increasingly a hot button for governments around the world,” although as recently as a few years ago it was exclusively a U.S. issue, said Ann Longmore, New York-based executive vice president at

FINEX North America, a unit of Willis North America Inc.

If there are a sufficient number of shares involved, “the SEC is picking it up” and prosecuting, seeking disgorgement — which refers to funds that must be repaid — fines and penalties, as well as questioning firms’ general counsels as to what they have been doing “to prevent this kind of trading at their organization,” said Ms. Longmore.

She said insider trading is “not yet a significant proportion of all litigation brought by the SEC, but they are now tracking it separately from their other lines, indicating at least in their minds it is something worth

separate consideration.” Certainly, this is an issue that can become “very messy, very sensitive,” as well as costly for firms, Ms. Longmore said.

However, litigation concerning options backdating has cooled (see story, page 14).

Experts say they are seeing an increase in opt-out litigation by large institutional investors. They “are opting out of the settlement agreements because they think if they go it alone, they can get a bigger recovery, a more substantial recovery,” said Mary-Pat Cormier, a partner with law firm Edwards Wildman Palmer L.L.P. in Boston.

See **LITIGATION** next page

NAMED DEFENDANTS

Top bank officials primarily were accused in Federal Deposit Insurance Corp. filings related to failed institutions during the fourth quarter of 2012. A majority of new filings also named outside and inside directors. In order of frequency, top executives named were:

- CEOs
- Chief credit officers
- Chief loan officers
- Chief operating officers
- Chief financial officers
- Chief banking officers

Source: Cornerstone Research Inc.

Mergers, acquisitions almost always trigger shareholder lawsuits over pricing

BY JUDY GREENWALD

KEYS TO HANDLING M&A LAWSUITS

Firms that announce a merger or acquisition almost always find a headache to go along with it: lawsuits by shareholders of the acquired company seeking more information or claiming the price is too low.

Observers say because of pressure to complete these deals, these merger objection cases are generally settled relatively quickly, with companies often providing additional information, sometimes changing terms of the deal and almost always paying plaintiffs attorneys amounts that often are substantial.

However, most settlements (see story, page 15) do not involve compensation to the plaintiff shareholders themselves, experts say.

These are high-frequency, low-severity claims. But the frequency problem has reached the point where many directors and officers

There is little that firms can do to avoid merger objection lawsuits, although they may be able to minimize their impact.

Carl E. Metzger, a partner with law firm Goodwin Procter L.L.P. in Boston, said, "We certainly do advise clients when they are going through these transactions about the litigation risk, but it's not as if there's any silver-bullet solution that will entirely eliminate that risk."

However, David W. Steuber, a partner with law firm Jones Day in Los Angeles, suggested that firms make sure their processes are thorough in terms of conducting due diligence and vetting the sale, that "you have all the right consultants, and the disclosure is as detailed as possible."

Firms also should determine in advance if there

are potential conflicts of interest, said Gary W. Kubek, a partner with law firm Debevoise & Plimpton L.L.P. in New York. He suggested that once a lawsuit is filed, companies should issue a "document hold notice" to "make sure plaintiffs cannot have the benefit of being able to show documents were destroyed."

Observers say it is not unusual for lawsuits to be filed in multiple jurisdictions, in which case defendants may seek to have the lawsuits consolidated in a more favorable jurisdiction. In that case, "at least the defense is not fractured," said Ann Longmore, New York-based executive vice president of FINEX North America, a unit of Willis North America Inc.

By Judy Greenwald

Research, 91% of deals valued at more than \$100 million sparked an M&A lawsuit. Merger objection cases accounted for 31% of all federal filings in 2010, according to a report issued by New York-based consulting firm NERA Economic Consulting.

"The M&A suits are really bedeviling both corporate America and their D&O carriers," said Ann Longmore, New York-based executive vice president of FINEX North America, a unit of Willis North America Inc.

"It's created a cottage industry of plaintiffs attorneys looking to file a quick-strike lawsuit" and enhance their revenue streams, said Trevor Howard, New York-based senior vice president of U.S. management liability for Liberty International Underwriters.

Plaintiffs firms often move quickly. A report by NERA, for instance, said that at 7 a.m. on Sept. 12, 2011, Irvine, Calif.-based

liability primary insurers are seeking separate, higher deductibles for these M&A suits that in some cases amount to multiples of the general D&O policies' self-insured reten-

tions.

Unfortunately, say many observers, there is relatively little, if anything, that companies can do to avoid these lawsuits (see story

above). But providing as much information as possible initially may minimize their impact.

According to a March 2012 study by Boston-based Cornerstone

LITIGATION

Continued from previous page

This also makes things difficult for D&O insurers, because this additional litigation may not produce the one thing they hope for, which is a final settlement of the litigation, said Kevin LaCroix, an attorney and executive vice president of RT ProExec, a division of R-T Specialty L.L.C., in Beachwood, Ohio. "It creates a complicated dynamic that intro-

duces possible inefficiencies and could increase costs" for defense and the overall costs of litigation, he said.

Another possible issue is FDIC litigation against failed banks, said Mr. LaCroix.

According to a December study by Cornerstone Research Inc., the FDIC filed 23 lawsuits against directors and officers of failed financial institutions in 2012, compared with 16 in 2011 and just two in 2010.

Trevor Howard, New York-based senior vice president of U.S. management liability for Liberty International Underwriters, said

Libor-related litigation — which has already led to fines that include a \$1.5 billion fine against Swiss bank UBS A.G. as investigations continue — also is a concern.

"There's plenty of potential exposure remaining from this scandal, particularly in the form of securities class action suits, although it is questionable how much of this will be covered by D&O insurance," he said.

Brenda Shelly, New York-based D&O practice leader for Marsh Inc.'s FINPRO unit, said another possible hot button is litigation

associated with the SEC's Rule 10b5-1, which allows corporate executives to set up a trading plan for selling stocks they own. "They were designed to give insiders a way to trade at regular intervals irrespective of what may be going on with the company," she said.

The problem, though, is "there isn't a lot of regulation around these plans in terms of enforcement," Ms. Shelly said. "Since the plans aren't regulated, or required to be filed or disclosed, it results in a lack of transparency and transparency is certainly a big issue these days. Shareholders may not even know if executives have a trading plan in place," she said.

Carl E. Metzger, a partner with Goodwin Procter L.L.P. in Boston, said there is "heightened concern" about the Foreign Corrupt Practices Act "and how that might impact directors and officers liability and corporate liability."

"The idea behind the act is to create a level, fair playing field for all U.S. companies that are doing business abroad and to help discourage any kind of business improprieties," said Mr. Metzger. "The problem is the law has been written very broadly" so "companies can potentially run afoul of the FCPA when no bribe was intended."

For instance, paying the travel and entertainment costs of a government regulator with which a company did business "could be problematic," he said.

"The U.S. government has certainly made clear that they are looking to enforce these rules with increased vigor," Mr. Metzger said.

Meanwhile, Joseph P. Monteleone, a partner with Tressler L.L.P. in New York, warned, "There's always something in any given year that nobody anticipated at the beginning of the year."

COOLING OFF

Hot-button issues come and go.

One no-longer-hot issue is litigation concerning options backdating, said Carl E. Metzger, a partner with law firm Goodwin Procter L.L.P. in Boston.

This involves the practice of backdating when an option is granted to a time when the stock traded at a lower level,

which can result in an immediate profit to the executive who exercises it.

"It was a practice that occurred at a time when the stock market was very hot," and its practice and the claims arising from it "have largely gone away," Mr. Metzger said.

By Judy Greenwald



Few merger objection suits make it to court

Most companies choose to settle and move on

Broadcom Corp. announced its \$3.7 billion purchase of Santa Clara, Calif.-based NetLogic Microsystems Inc.; and at 10:18 a.m. the same day, a plaintiffs law firm announced it was investigating whether NetLogic had breached its fiduciary duty in agreeing to the sale.

Other law firms' announcements quickly followed. Four days later, two lawsuits were filed. Both eventually were settled, for terms that included \$795,000 in attorneys' fees for one of the lawsuits, according to NERA.

Plaintiff attorneys' fees in these cases of between \$200,000 and \$800,000 "are not unusual," said Ms. Longmore.

These lawsuits are "low-hanging fruit," said Joseph P. Monteleone, a partner with law firm Tressler L.L.P. in Chicago. "It is very easy for even a minimally qualified plaintiff to file one of these suits."

Most, but not all, merger objection litigation is settled, say observers. These cases tend to be settled "because people want peace," said Steve Shappell, Denver-based managing director of Aon Risk Solutions' financial services group.

However, there are cases where "our clients look at this, and say, 'We're not going to pay blood money,'" said David W. Steuber, a partner with law firm Jones Day in Los Angeles. Meanwhile, "more and more courts are beginning to recognize that many of these are quite legitimate and well-done deals, and they're perhaps less inclined to permit (the lawsuits) to proceed."

However, in Delaware, where many of these cases have been filed, judges have said in speeches that "there is a problem" with the way merger objection lawsuits are working, but "they haven't taken steps at least in their decisions to really rein it in," said Geoffrey Etherington, a partner with law firm Edwards Wildman Palmer L.L.P. in New York. But there have been some situations where judges have refused settlements for attorneys fees, stating they are too high, he said.

Barring any legislative approach, which is not expected, there is no apparent end in sight to these cases, though, experts say.

In response to the issue, insurers are seeking separate retentions for merger objection cases.



Trevor Howard, New York-based senior vice president of U.S. management liability for Liberty International Underwriters, said these are "quickly becoming the norm," particularly for small to medium-sized companies. He noted that in many cases, larger companies' retentions are high enough so that these split retentions are not necessary.

By Judy Greenwald

"More and more courts are beginning to recognize that many of these are quite legitimate and well-done deals, and they're perhaps less inclined to permit (the lawsuits) to proceed."

David W. Steuber,
Jones Day

face of
uncertainty



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COMPANIES STILL WORKING ON DODD-FRANK LIABILITY ASSESSMENTS

New obligations likely to create larger exposures

BY JUDY GREENWALD

Even with all its regulations not yet implemented, the complex 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act poses significant challenges for companies.

Trevor Howard, senior vice president, U.S. management liability for Liberty International Underwriters in New York, said the issue of Dodd-Frank's impact remains unsettled.

"There still is a multitude of rules that need to be drafted," so a "true assessment of the act on the (directors and officers liability insurance) marketplace is pretty far down the horizon," Mr. Howard said.

"We're still sorting through it," said Peter Taffae, a D&O insurance expert at Los Angeles-based wholesale brokerage Executive Perils Inc. "It's still being tested out."

Two significant issues resulting

from Dodd-Frank are its clawback and "say-on-pay" provisions (see story at right).

Its whistle-blower provisions pose additional risks for firms (see story below).

However, Michael O'Connell, New York-based director of Aon Risk Solutions' Financial Institutions Practice in New York, said

while "Dodd-Frank doesn't create any new causes of action against directors and officers," when looking at its provisions concerning executive compensation, corporate governance and whistle-blowers, "there are new obligations that really drive shareholder expectations and potentially lead to heightened exposures."

For Aon's clients, this means "added scrutiny of the structure and breadth of covers they have under their D&O liability policies," he said.

"Dodd-Frank imposes, among other things, a requirement on companies to develop an overall risk management plan and identify those areas where there is enterprise risk," said Neal R. Pearson, a partner with law firm Edwards Wildman Palmer L.L.P. in New York.

This means firms need "to become far more keenly sensitive to enterprise risk as a whole than they were before," he said.

Jack Flug, New York-based managing director with Marsh Inc.'s FINPRO unit, said Dodd-Frank also provides heightened regulatory powers to investigate directors and officers which, unlike investigations of the firms themselves, would be covered under D&O policies and increase underwriters' cost.

TOP WHISTLE-BLOWER STATES

Whistle-blowers made nearly 2,700 complaints related to the Dodd-Frank Wall Street Reform and Consumer Protection Act during fiscal 2012, 83.5% of the total originating in the United States and its territories. The states with the most complaints filed were:



Source: U.S. Securities & Exchange Commission

State	Complaints	State	Complaints
California	435	Illinois	99
New York	246	Pennsylvania	90
Florida	202	Massachusetts	70
Texas	159	North Carolina	67
New Jersey	102	Arizona	67
Washington	102		



Shareholders gain more power with new rules

Clawback, 'say on pay' provisions significant for executives

Two particularly significant parts of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act are its clawback and "say-on-pay" provisions, say experts.

Kevin LaCroix, an attorney and executive vice president of RT ProExec, a division of R-T Specialty, based in Beachwood, Ohio, said the clawback provision in the 2002 Sarbanes-Oxley Act related to enforcement actions against CEOs and chief financial officers for bonus compensation stemming from restatements made because of wrongdoing.

Under Dodd-Frank, this provision has been expanded so enforcement action can be taken even in cases where there "is no suggestion" the CEO or CFO "was involved in, or had awareness of the wrongdoing that resulted in the restatement, so it's been somewhat controversial."

Furthermore, said Mr. LaCroix, the Dodd-Frank clawback provision increases the company officials who can be subject to it beyond the CEO and CFO and extends the period it is applicable from one year to three.

Trevor Howard, senior vice president, U.S. management liability, for Liberty International Underwriters in New York, said, "Obviously, anyone who is an executive officer should be concerned" there is a "mechanism in place where potentially their compensation can be clawed back."

Jack Flug, New York-based managing director in Marsh Inc.'s FINPRO unit, said under Dodd-Frank, shareholders have greater power on the "say on pay" or executive compensation issue. "There's a possibility that, in the future, we'll see more activity from a litigation standpoint against companies in that arena," he said.

Mr. Flug said, "We've had some interest from clients," as to whether the brokerage knows defense firms that are expert on this issue, "although it is such a new area, little specialized expertise has developed to date."

By Judy Greenwald

New breed of bounty hunters expected

Observers say the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act's whistle-blower provisions are particularly problematic for firms.

Kevin LaCroix, an attorney and executive vice president of RT ProExec, a division of R-T Specialty, based in Beachwood, Ohio, said under rules adopted by the Securities and Exchange Commission in 2011, whistle-blowers are entitled to an award of 10% to 30% of the monetary sanctions collected in actions brought by the oversight agency if they exceed \$1 million.

The bounty program has been "slow to get off the ground," with just one award of \$50,000 granted last year, said Mr. LaCroix. However, he pointed out that in its annual report to Congress in November, the SEC has posted 143 "Notices of Covered Action for enforcement judgment and orders," which could ultimately result in additional bounties.

The suggestion, "reading between the lines," is "we're going to see a lot more bounty payments," Mr. LaCroix said.

Meanwhile, the SEC has received more than 3,000 phone tips to its whistle-blower office (see chart above). "The first time somebody scores big on these, it's just going to bring people out of the woodwork," said Mr. LaCroix. According to the SEC, as

of November, there was \$453.4 million in the whistle-blower fund.

Trevor Howard, New York-based senior vice president, U.S. management liability for Liberty International Underwriters, said, "Once you see large payouts made because of a whistle-blower, the publicity is going to drive more people to go directly to the SEC, rather than their own companies first."

Jack Flug, New York-based managing director at Marsh Inc.'s FINPRO unit, said companies "need to revisit some of the language issues in their policies to make sure," if there are whistle-blowers, "certain coverage exclusions may not be triggered."

Meanwhile, many plaintiffs firms have set up procedures to help whistle-blowers claim awards. In addition to helping whistle-blowers win a bounty, this also could lead to securities class actions lawsuits or other litigation. It is a "potentially fruitful area," from the plaintiffs attorneys' perspective, said Mr. LaCroix.

Furthermore, "You can credibly imagine a situation where somebody might try to use the whistle-blower provision to his own advantage," including disgruntled employees, said Carl E. Metzger, a partner with law firm Goodwin Procter L.L.P. in Boston.

By Judy Greenwald

"Once you see large payouts made because of a whistle-blower, the publicity is going to drive more people to go directly to the SEC, rather than their own companies first."

Trevor Howard,
Liberty International
Underwriters

CROWD FUNDING ADDS D&O RISKS FOR SMALL FIRMS

JOBES Act streamlines small business' capital-raising, but SEC rules still unclear

BY DOUGLAS MCLEOD

Crowd funding promises to be a handy capital-raising tool for small companies, but the extent to which they take advantage of it remains as unclear as the liabilities they and their executives may incur in the process, experts say.

The Jumpstart Our Business Startups Act, signed into law by President Barack Obama last year, aims to streamline regulatory burdens for small companies by allowing them to sell securities over the Internet that are exempt from the registration requirements of the Securities Act of 1933.

The sales can't exceed \$1 million in any 12-month period and must be conducted through Web portals registered with the U.S. Securities and Exchange Commission, according to the law, which imposes several other limitations (see box at right).

The JOBS Act also raises the maximum number of shareholders a private company may have before triggering SEC registration

requirements to 2,000 from 500, potentially broadening the shareholder base of private firms (see story below).

The SEC missed its Dec. 31, 2012, deadline for setting rules that will govern the crowd funding law, though, and the practice remains illegal. Without those rules, several insurers say, it's difficult to gauge the potential impact on the private company directors and officers liability insurance market.

Nevertheless, crowd funding carries potentially new risks for small companies, market observers say.

For example, while financial disclosure requirements are lighter for crowd funding than for a full-fledged initial public offering — which must be registered with the SEC — companies selling shares through an Internet portal still must provide varying levels of financial information depending on the size of the offering.

The JOBS Act makes companies and their directors and officers liable for any material misstatements or omissions in crowd-fund-

ed offerings.

"That's a significant potential liability," said Kevin M. LaCroix, executive vice president with RT ProExec, the management liability intermediary division of R-T Specialty L.L.C. in Beachwood, Ohio.

Small companies in particular may sell stock to investors before they have the accounting and internal controls in place to manage disclosure and other obligations, said Shawna M. Nolan, senior vice president and head of management liability product underwriting with Zurich North America in New York.

The reduced disclosure requirements for crowd funding also may lead to honest misunderstandings between issuers and investors about a company's plans and operations, leading to securities claims, Ms. Nolan said.

Even with protections built into the law and its regulations, sales of securities over the Internet to small, unsophisticated investors likely will produce cases of fraud, with company executives using the money they raise for unintended purposes, observers agree.

Fraud losses are likely to be infrequent but severe, said Phil Norton, president of the professional liability practice with Arthur J. Gallagher Risk Management Services Inc. in Itasca, Ill.

Mr. Norton said he doesn't expect

fraud to be a widespread problem, but the circumstances of crowd funding — limited disclosure, Internet distribution, small shareholders — could allow a fraud to go on racking up losses over a longer period before it's discovered.

D&O coverage for crowd funding exposures, and their impact on the D&O market, remain uncertain.

Most private-company D&O policies exclude coverage for public securities offerings, but the language of the exclusions varies widely from policy to policy.

Some, for example, exclude only initial public offerings, meaning that crowd funding wouldn't trigger the exclusion, Mr. LaCroix said.

Others exclude liabilities related to specific laws, such as the 1933 Securities Act or the Securities Exchange Act of 1934, said Chicago-based Shelley Norman, head of private-company and nonprofit management liability in the U.S. and Canada for American International Group Inc.

Ms. Norman said it's unclear whether crowd funding is a public offering that would trigger policy exclusions.

Insurers generally have not reacted to the JOBS Act by specifically excluding crowd funding exposures or tightening terms or conditions, several sources said, and it could be some time before any market impact is felt.

JOBES Act exemptions for private companies

The JOBS Act grants private companies an exemption to securities registration rules, allowing them to raise up to \$1 million per year through Internet stock offerings. The crowd funding provision imposes restrictions on issuing companies and on the Web portals offering shares.

An issuer must provide investors and the U.S. Securities and Exchange Commission with:

- Names of its directors and officers.
- A copy of its business plan and a description of how the proceeds of the offering will be used.
- Financial information that varies depending on the size of the offering. For stock sales up to \$100,000, a company must provide its most recent tax return and a financial statement certified by its principal executive officer; for offerings between \$100,000 and \$500,000, a financial statement reviewed by an independent public accountant; and for those over \$500,000, an audited financial statement.

Web portals offering shares:

- Must be registered with the SEC and a national securities association, such as the Financial Industry Regulatory Authority.
- May not offer investment advice, solicit sales or purchases of securities on their sites, compensate employees based on sales, or hold or manage investor funds or securities.

SHAREHOLDER LAWSUITS LIKELY

The Jumpstart Our Business Startups Act will allow privately held companies to raise more capital by expanding their shareholder bases, but it also will expose them to more shareholder litigation, management liability experts say.

The JOBS Act, signed into law last year, allows private firms to have up to 2,000 shareholders before they must register with the U.S. Securities and Exchange Commission, an increase from the previous level of 500.

The provision is intended to allow small companies to grow larger before deciding whether to take on the expense and regulatory burdens of a public stock offering.

From a management liability perspective, though, the change could give a private company "a very different kind of risk profile," said Kevin M. LaCroix, executive vice president with RT ProExec, the management liability insurance intermediary division of R-T Specialty L.L.C. in Beachwood, Ohio.

In more closely held companies, the smaller number of stockholders tend to be closer to the firm's principals and are more prone to look for solutions to disputes that don't involve litigation, he said.

At 2,000 shareholders, though, a private company

begins to take on some of the characteristics of a public company, including its vulnerability to legal disputes, he said.

"If you have that many shareholders, you could have a class action, and it wouldn't even be a listed company," Mr. LaCroix said.

Traditional class action plaintiff law firms may not take on these smaller cases. But the JOBS Act could create a "cottage industry" among smaller plaintiffs firms, further increasing the litigation risk, said Shawna M. Nolan, senior vice president and head of management liability product underwriting with Zurich North America in New York.

Small cases brought by plaintiff lawyers who are not experts in securities law can generate significant defense costs, said Shelley Norman, Chicago-based head of private-company and nonprofit management liability in the U.S. and Canada for American International Group Inc.

"You can spend a lot of time and money defending cases that are not well-pleaded," she said.

The SEC missed its year-end 2012 deadline for issuing regulations implementing the JOBS Act, and its provisions do not go into effect until those rules are finalized.

By Douglas McLeod



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HARD MARKET EXPECTED TO CONTINUE FOR PROFESSIONAL LIABILITY COVERAGE

International debt problems, claims frequency keep rates from falling

BY RUSS BANHAM

While the economy has recovered somewhat from the financial crisis, the effect on professional liability coverage remains far-reaching and is not expected to soften for several years.

That's the consensus of a handful of lawyers, brokers and insurers specializing in professional liability challenges confronting embattled lines such as mortgage brokers, financial advisers and real estate agents.

Litigation concerning Chinese reverse merger firms has resulted in insurers pricing them out of the market (see story below).

"Even though the fiscal cliff has been avoided, we still have serious, lingering questions around the debt burden in the eurozone and the debt ceiling in the United States, and their impact on the professional lines business," said Carl Bach III, London-based president of NavPro Europe, a unit of New York-based The Navigators Group Inc.

"We've seen high claims frequency affecting several professions since the crisis," Mr. Bach said, "but not high severity, which could potentially follow."

Other professional lines experts expressed similar views, noting a significant increase in claims against some lawyers.

Kim Noble, senior vice president of the lawyers and real estate professional liability

CHINESE REVERSE MERGER LITIGATION

Federal filings against companies domiciled in China and those with principal executive offices in China, 2008 through mid-2012.



*First half

Source: NERA Economic Consulting

ty practice at OneBeacon Professional Insurance in Farmington, Conn., a unit of OneBeacon Insurance Group Ltd., cited increased claims activity against lawyers specializing in real estate, collections, foreclosures and probate.

"Whenever monies are lost in a transaction or in a litigated matter, it's a natural outgrowth to blame the lawyers," Ms. Noble said. "We've certainly seen an uptick in the number of claims since late 2008, and I don't think we've seen the last of them. Even with the economy improving, I suspect we haven't seen the conclusion of this."

"I don't think we're close to an end game yet for financial institutions liability," said Bruce Campbell, a shareholder at Dallas-based law firm Campbell & Chadwick P.C. "The (Federal Deposit Insurance Corp.)

has a three-year statute of limitations to bring claims against directors and officers, lawyers and accountants" and other white-collar professionals. "We're still seeing a pretty big bubble working its way through the system. If we go into a recession, the likelihood is for more bank failures, which would not bode well for bank professionals and the professions serving them."

Since 2008, 470 banks have failed in the United States, far less than the 2,300 savings and loans that failed in the late 1980s and early 1990s. But, Michael O'Connell, managing director and financial institutions practice leader at Aon Risk Solutions, said the situation actually is worse from a litigation standpoint.

"As of October 2012, the FDIC had authorized litigation against 665 directors and

officers of 80 failed financial institutions," Mr. O'Connell said. "The pace and pattern of claims likely to be brought against directors, officers, accountants, appraisers and advisers appears to be an accelerating trend, that will continue throughout 2013 and beyond."

Professional liability lines tend to have long tails from a claims perspective and are typically written on a claims-made basis, "which means we still have a ways to go," he said.

From a primary insurance market standpoint, Mr. O'Connell said pricing for D&O and other professional lines was up about 4.5% at recent renewals, although excess market pricing moderated the impact.

On the other hand, Ms. Noble said professional liability rates for lawyers and real estate professionals have increased.

"We're seeing a lot of lawyers with their first claim coming to us for risk management resources," she said.

Mr. Campbell agreed, noting that attorneys who handle collection-type issues for financial institutions are experiencing "pretty sizable" premium increases. "This has nothing to do with the FDIC, but with lenders owed money that hire the attorneys to bring a claim against the creditor, only to receive a claim back for violating the Fair Debt Collection Practices Act," he said. "These days, everyone is looking for somebody else to pay."

Companies involved in Chinese reverse mergers can't find coverage

China-based companies that engaged in reverse mergers to list on U.S. stock exchanges and access investor capital have been priced out of the professional lines insurance market.

The industry response is not surprising: Many of the companies, and the Chinese affiliates of the accounting firms servicing them, are under investigation by the U.S. Securities and Exchange Commission for potential fraud against U.S. investors.

In December, the SEC charged a New Jersey-based consultant with defrauding investors in the Chinese companies for which he helped arrange reverse mergers – the acquisition of a private operating company by a publicly held shell firm.

"There has been an explosion of securities class actions against Chinese firms: about 60 from 2010 to 2012," said Will Fahey, New York-based senior vice president in the management liability group at Zurich North America. "That's a huge number and it has made it very difficult for U.S. carriers to insure any Chinese companies involved in a reverse merger, of which there are quite a few."

According to the Public Company Accounting Oversight Board, from January 2007 to March 2010, 159 companies from China accessed U.S. capital markets through a reverse merger.

"Any Chinese company looking to list (on an exchange) in the U.S. would be priced very, very high for (directors and officers liability) insurance and other professional liability lines," Mr. Fahey said.

"It's extremely difficult for these firms to find available insurance capacity, given the number of claims that are rolling in," said Carl Bach III, president of broker NavPro Europe in London, a unit of New York-based The Navigators Group Inc.

"There are no large blocks of capacity being put out there for these types of companies, even though the D&O settlements to date have been small, around \$5 million, on average. Such cases are complicated for the plaintiff bar, due to the difficult discovery process of obtaining documents in China."

Mr. Bach said the paucity of cover is a factor in leading the companies to delist and go private in China. "Close to 50 companies have

published their intentions to delist," he said. "This is a wake-up call for Chinese companies trading on U.S. exchanges."

While the number of federal securities filings exploded leading up to 2012, the number of cases "dropped dramatically" during the first half of last year, according to NERA Economic Consulting (see chart above).

Now, these lawsuits "seem to have run their course," said Joseph P. Monteleone, a partner with Tressler L.L.P. in New York.

Brian Wanat, New York-based national practice leader of Aon Risk Solutions' financial services group, agreed.

"It certainly was sort of a last-year phenomenon, and I'm sure the plaintiff's attorneys will move on and find the next great opportunity here," he said.

On the bright side, the issue has not adversely affected the overall D&O market, Mr. Fahey said. "The D&O market has matured quite a bit, and we are able to underwrite around this sector," he said. "A Chinese firm having claims doesn't mean a manufacturer in Illinois will be punished."

By Russ Banham and Judy Greenwald

"There has been an explosion of securities class actions against Chinese firms: about 60 from 2010 to 2012."

Will Fahey,
Zurich North America

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Learn more about what makes South Carolina the ideal domicile for your captive insurance program at www.doi.sc.gov.

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Delaware is the world's fastest growing captive domicile. Insurance Commissioner Karen Weldin Stewart formed the Bureau of Captive and Financial Insurance Products in July 2009. At that time Delaware had only 38 captive insurers, even though the state had a captive statute has been in existence since 1984. She appointed Steve Kinion as the bureau's first and only director, and charged him to responsibly make Delaware a leading captive domicile. Today Delaware boasts over 500 captive insurers. These insurers are in various types to include pure captives, series captives, risk retention groups, special purpose financial captives, and sponsored cell captives. Delaware's growth is partially attributable to the Delaware Advantage, an initiative which merges the globally recognized attributes of Delaware business and corporate laws with alternative risk transfer. For example, in 2009 Delaware became the first domicile in the world to license the series LLC captive. In 1996 the Delaware General Assembly codified the series LLC and statutory trust laws. Similar to a cell structure, a series structure permits the ring-fencing of assets and liabilities. This ensures the certainty that the liabilities of one series



**Insurance Commissioner
Karen Weldin Stewart**

will not affect the others. After observing how the mutual fund industry uses series to separate different types of funds, the captive bureau decided to make series available for captive insurance.

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CAPTIVE FACTS:

In 2012 Delaware added:

- 59 captives
- 1 cell
- 179 series units

The total number of licenses issued for risk bearing captives as of 2012 will be:

- 212 captive companies
- 12 protected cells
- 364 series units

The total number of captive licenses issued will be 588.

Active license numbers are:

- 190 active companies
- 11 protected cells
- 358 series units

The total active captive entity count is 559.

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 302-577-5280
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Delaware: The First State is the First Choice for Captives.

Meet Steve Kinion, Delaware's Captive Director

Delaware's captive team is unrivaled in the industry. It is led by Steve Kinion, an 18-year insurance veteran. Mr. Kinion's insurance career ranges from serving as a regulator to private law practice to the boardroom. He worked for Farmers Insurance Group and has served on the boards of directors of two property & casualty insurance companies. His health care experience includes serving five years on the board of directors of the Illinois Comprehensive Health Insurance Plan, and serving as chairman of the Oklahoma Health High Risk Pool for eight years. This background enables him to understand insurance from the executive level. A person who believes in service to his country, Steve is a judge advocate in the U.S. Army Reserve, holding the rank of lieutenant colonel.

Steve began his work with captive insurance in 1995. Through his experience and leadership abilities, he leads both the captive bureau and National Association of Insurance Commissioners on various matters related to captive insurers. Steve serves on internal department task forces created by Delaware Insurance



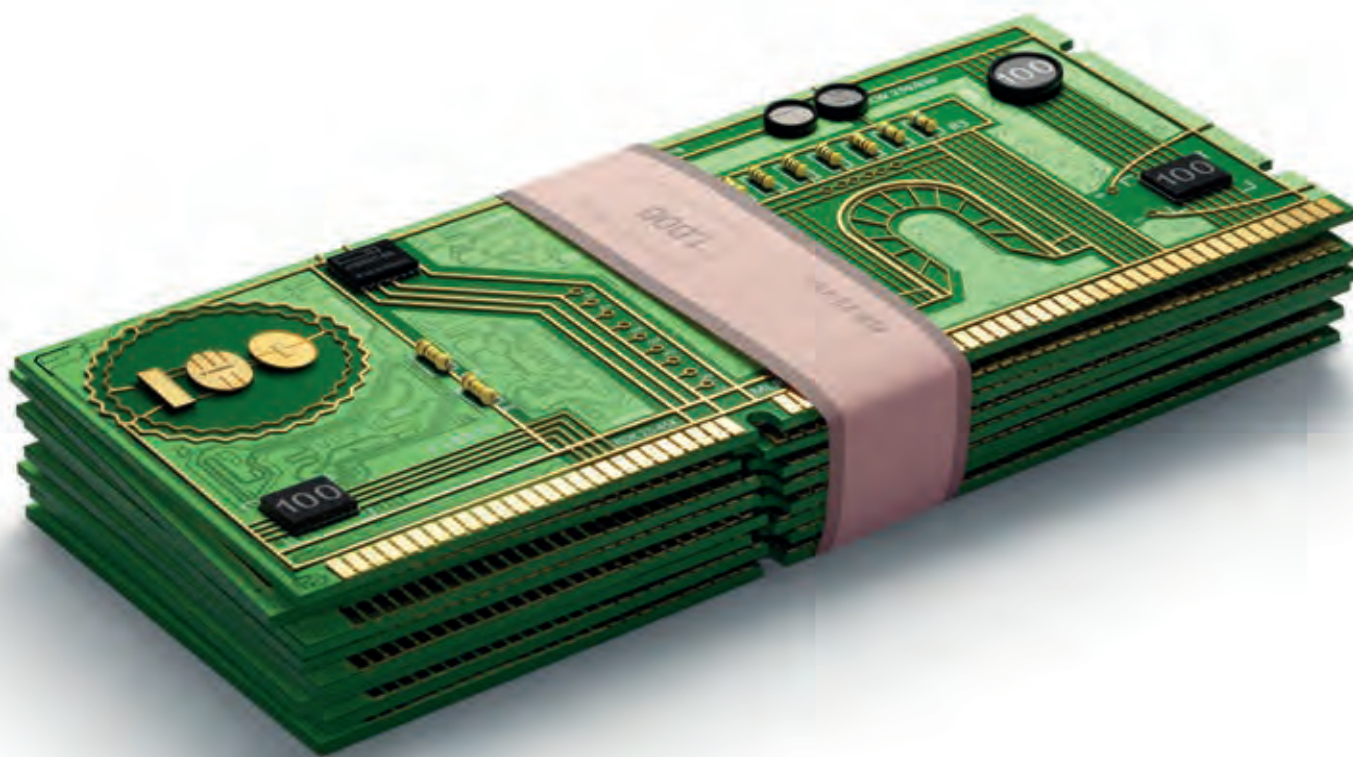
**Steve Kinion
Delaware Captive Director**

Commissioner Stewart including the derivatives task force. He chairs the internal task force that is addressing insurers taking loans from the Federal Home Loan Bank system. For NAIC matters, he actively participates in the NAIC's captive and special purpose vehicles subgroup, and is leading the effort to rewrite the risk purchasing group portion of the NAIC Risk Retention and Purchasing Group Handbook.

Since becoming captive director in July 2009, Steve has fulfilled Commissioner Stewart's goal of making Delaware a top tier captive domicile. Starting with 38 captive insurers, he and his captive team now boast over 500 captive insurers domiciled in Delaware.

Today Delaware is in the top five of U.S. captive domiciles. His experience with regulating captive insurers ranges from very small captives having less than \$500,000 of annual premium, to those with annual premium measured in the hundreds of millions.

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FINANCIAL INSTITUTIONS ADAPT TO CHANGES

Q What is the most important risk management issue that financial institutions face in 2013?

A One of the largest risks that they face is the evolving scope and complexity of regulatory reform. Post-financial crisis, there's been an enormous amount of change in terms of regulations and regulatory bodies. We've had new regulations in the way of Dodd-Frank, for example, where the rules are yet to be written.

We have new regulatory bodies such as the Consumer Financial Protection Board that is just now starting to come out with its rule makings. From a D&O and professional liability standpoint, there's still a great degree of uncertainty.

Q With the new regulatory framework in mind, are underwriters making any changes in the way they approach financial institution risks?

A They're not really changing terms and conditions of the actual contracts, generally speaking. What we've been seeing as the insurers have come through the

Q&A

financial crisis is them managing their limits exposed to the financial institutions. So if they had \$25 million up in D&O or professional liability capacity, they maybe brought it down to \$15 million. If they had \$50 million, maybe they brought it down to \$30 million.

They've also raised deductibles, probably more on the professional liability side than the D&O side. And right out of the financial crisis, we saw a really quick hardening of the market and then it sort of stabilized. Then the last couple of years, rates have actually come

down a bit and now we're seeing rates creeping up again.

Underwriters have become much more discriminating. A few insurers stopped writing professional liability lines altogether for financial institutions.

There's also more in-depth underwriting of financial institutions: their financial performance, their capital and liquidity adequacy, their capital plan and deployment strategy, looking at how they're handling litigation.

And as a result of what happened in the credit crisis, underwriters are asking how do financial institutions respond in terms of governance and compliance activities. The other thing that underwriters are doing is they're much more sensitive to systemic risks.

Q What has been the response of financial institutions? How have they changed their risk management approach?

A They've spent an enormous amount of money on adding to staff both in the compliance and technology areas so that they can



TRIPP SHEEHAN
MARSH INC.

Tripp Sheehan recently was appointed U.S. financial institutions practice leader for Marsh Inc. A 19-year veteran with the brokerage, Boston-based Mr. Sheehan has held various roles in Marsh's financial and professional liability practice. He recently spoke with *Business Insurance* Editor Gavin Souter about risk management issues facing financial institutions. Edited excerpts follow.

get a better oversight of the risks of the firm. They've spent a lot of time and money in developing better risk dashboards so that they can get a more holistic view of the risks that the firm faces.

Anecdotally, I hear in talking with clients that while they still use models to evaluate risk, they also have done an increasing amount of scenario analysis. What I've heard from a number of clients is that the models were proved to be fallible in the financial crisis and needed to be stress tested better. So, there's more robust stress testing of the models and scenario analysis being done.

While boards always paid attention to risk, I think they have a much keener interest in risk oversight in the firm now than they ever have before. And with that focus from the top, that tends to flow down in to the firm. So underwriters look to hear the tone at the top and get an understanding of what the line of sight is in terms of risk oversight all the way down into the organization. They don't expect the board to be managing risk on a day-to-day basis, but they expect them to be challenging management on their assumptions and making sure they have the tools to identify problems.

COMINGS & GOINGS

UP CLOSE: TOM PHELAN

TOWSON, MD.-BASED PRESIDENT OF THE AMERICAN ASSOCIATION OF STATE COMPENSATION INSURANCE FUNDS

CONCURRENT POSITION: President and CEO of the Injured Workers Insurance Fund

LOOKING FORWARD TO: It's a great opportunity to network with other people, share ideas (and) collaborate on issues that affect people's lives.

GOALS FOR NEW POSITION: The biggest thing is to keep all the members actively engaged and to keep the members up to date on issues that affect all of us.

CHALLENGES FACING INDUSTRY: One of the biggest issues is use of opiate drugs in the use of workers compensation claims. These people get addicted to these drugs. Prescription drugs are causing more deaths than things like cocaine and heroin. Our role is different than the private sector. We are really concerned about the safety of people.

INDUSTRY OUTLOOK: A lot of people are developing analytics that help identify claimant outcomes and how to help a claimant come back to work, and where to focus resources. The big wave coming forward is going to be in



insurance and technology. We are going to be embracing more technology.

OUTSIDE THE INDUSTRY, A DREAM JOB: Working at Walt Disney World. When I was a kid I wanted to own an amusement park.

HOBBIES: I like to exercise. I love to travel. I love things that involve real estate, whether it involves building something, buying something or renting something.

CAN'T-MISS TELEVISION SHOW: "Modern Family." It takes on the spin that it's not traditional family. It's a modern family. It has a lot of humor to it, and it has a lot of love in it. At the end of the day, you are all in it together.

FAVORITE MEAL: Anything at McDonald's is a good meal.

ON A SATURDAY AFTERNOON: Probably something in the yard or fixing something in the house. I also like to spend time with my family.

Professional Moves & Promotions

Visit 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.

INSURERS

Equinox Global Ltd.	Henning Siess
ACE Group Holdings Inc.	Benoît Chasseguet

BROKERS

Marsh Inc.	Brenda Shelly
Sterling Ascend Insurance Resources	James Eldredge
Lockton Cos. L.L.C.	Ty Carter

REINSURANCE

Guy Carpenter & Co. L.L.C.	Andrew Beecroft
Guy Carpenter & Co. L.L.C.	Paul Rayner

OTHER

Mercer L.L.C.	David Weissner
Mercer L.L.C.	Karen Hutcheson
Drinker Biddle & Reath L.L.P.	Elda Beylerian Feldman
PricewaterhouseCoopers L.L.P.	Jonathan Howe
MedRisk Inc.	Michael Ryan
Adelson Testan Brundo & Jimenez	Geoffrey C. Curreri

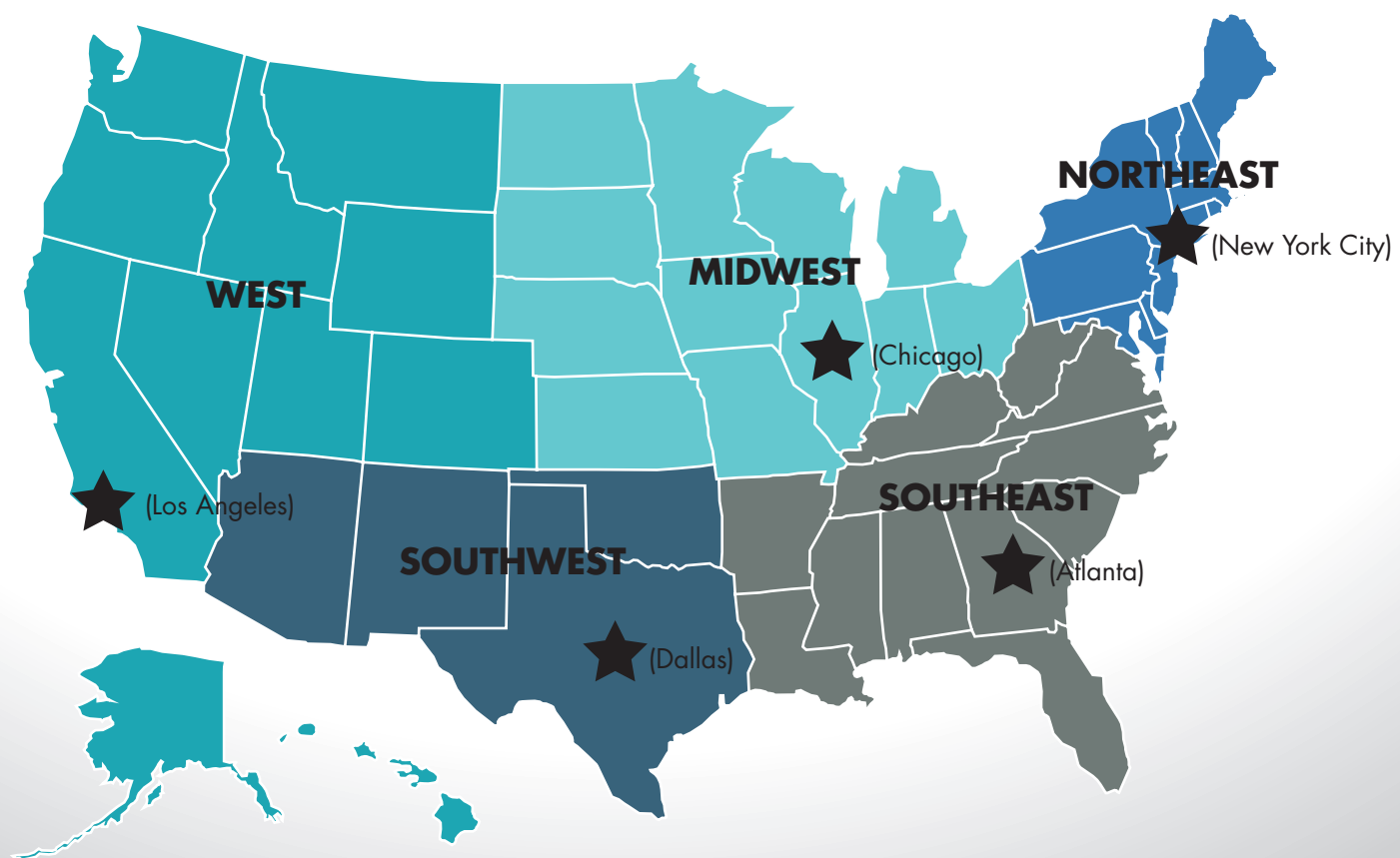
Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to: Anna Gaynor, *Business Insurance*, 150 N. Michigan Ave., Chicago, Ill. 60601-7524.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

***Business Insurance* announces its first ever 40 Under 40 Regional Broker Leaders Award Program!**

2013 **BUSINESS INSURANCE®** **FORTY** **UNDER** REGIONAL BROKER LEADERS

Do you want to recognize an outstanding Broker?

Nominations for this important event will open in mid-January, and will be accepted from five regions of the U.S.: **Northeast; Midwest; West; Southwest; and Southeast.**



**Visit www.BusinessInsurance.com/40Under40
to obtain your 40 Under 40 Nomination Form today!**

For more information about how you can nominate a broker as a 40 Under 40 Regional Broker Leader, please contact **Gavin Souter**, Editor, at gsouter@BusinessInsurance.com.

For additional details about the regional events and how you can participate, please contact **Martha Donato**, Director of Events and Brand Marketing, at mdonato@BusinessInsurance.com.

After a thorough review by a panel of senior editors at Business Insurance, who will consider various criteria, including recent professional achievements, influence on the marketplace and contributions to their community, eight (8) Brokers will be identified in each region, and the results will be announced on-line prior to the event date for each region – and a compilation of all 40 of the award winners will be in the Oct. 7, 2013 issue of Business Insurance. Honorees are selected from nominations submitted by readers of Business Insurance, and they must be age 40 or under at the time of their nomination. A series of regional receptions will be held in celebration of the achievements of the broker leaders.

Presented by:
BUSINESS INSURANCE®

Allied World enhances excess casualty cover

Allied World Bermuda has launched a package of five enhancements to its excess casualty products.

Called Constellation, the suite is added to follow-form occurrence policies issued by its Bermuda division, said parent Allied World Assurance Co. Holdings A.G.

The excess casualty enhancements include affirmative punitive damages; defense, assistance and cooperation provision; payment of loss provision; and business continuity protection. The suite also offers comprehensive protection against punitive damages in the follow-form occurrence market to fill coverage gaps in traditional excess towers.

For more information, contact Mike Hoffmann, chief underwriting officer for Bermuda and international insurance, at 441-278-5525 or michael.hoffmann@awac.com; or Patrick Kenahan, vice president of excess casualty, at 441-278-5517 or patrick.kenahan@awac.com.

Marsh offers program for wage-and-hour risks

Marsh Inc. has rolled out coverage for wage-and-hour risks.

Called the Marsh Wage and Hour Preferred Solution, the coverage reimburses companies for defense costs, settlements and judgments for claims or violations of the Fair Labor Standards Act or similar state and local laws, a Marsh statement said.

The policy offers up to \$100 million in coverage and is tailored for organizations with more than 4,000 employees. Marsh did not disclose the insurer for the program.

Consultant Mercer L.L.C. also provides a wage-and-hour risk management toolkit to help identify possible exposure areas.

For more information, contact Adeola Adele, employment practices liability

PRODUCTS & SERVICES

Argo sidecar offers insurance

Argo Group International Holdings Ltd. has established a sidecar that will write reinsurance and insurance business this year.

The sidecar, Harambee Re 2013-1 Ltd., is the first established by Hamilton, Bermuda-based Argo and will provide about 5% of premium volume for property portfolios of two of Argo's core businesses: reinsurance operation Argo Re and excess and surplus lines company Colony Specialty.

"Harambee Re enables us to grow the size of two of our core businesses without adding materially to the group's exposure to the volatility associated with U.S. earthquakes and hurricanes," said Mark E. Watson III, president and CEO of Argo, in a statement.

insurance product leader, at adeola.i.adele@marsh.com or 212-345-1724.

Integro, Verisk partner on cargo theft prevention

Integro Ltd. has partnered with Verisk Crime Analytics to offer cargo theft pre-

vention tools to certain Integro domestic U.S. clients.

Called CargoNet, the program provides coordinated incident communications recovery support and deterrence measures to help prevent theft and increase chances of recovery, Verisk Crime Analytics, a division of Verisk Analytics Inc., said in a statement.

The database and information-sharing system includes a theft alert system, crime trend analysis and 24-hour support during law enforcement investigations.

The membership is available to Integro's logistics liability program clients at no additional cost, Verisk Crime Analytics said in the statement.

For more information, contact Philip DiChiara, trade and logistics practice leader at Integro, at 212-295-5730 or philip.dichiara@integrogroupp.com.

Beazley revamps website for architects, engineers

Beazley P.L.C. has redesigned its architects and engineers risk management website to offer additional tools and materials to its policyholders and appointed brokers.

The Web portal includes webinars, an interactive map offering case information regarding state statutes and courts' interpretation of laws affecting liabilities and exposures, and a toolkit offering materials for brokers to present risk management educational sessions for buyers, the insurer said.

"Good risk management is not only protection against hugely expensive and time-consuming professional liability claims, but can also be an important source of competitive advantage," said James Schwartz, Beazley's U.S. A&E focus group leader.

For more information about the website, contact Colleen Palmer at colleen.palmer@beazley.com.

DEALS & MOVES

Ryan Specialty unit partners with Aspen

Chicago-based Ryan Specialty Group L.L.C.'s ThinkRisk Underwriting Agency L.L.C. has entered into an underwriting partnership with Aspen U.S. Insurance, a unit of Hamilton, Bermuda-based Aspen Insurance Holdings Ltd.

Under terms of the deal, managing general underwriter ThinkRisk will convert its existing converging risk program to Aspen, Ryan Specialty said in a statement. The partnership will focus on providing specialized errors and omissions coverage necessitated by emerging media risks.

"The convergence of media, technology and privacy exposures across a wide range of diverse industries requires particular underwriting expertise," Ryan Specialty Chairman Patrick G. Ryan said in the statement.

Hub International moves headquarters

Hub International Ltd. has moved its corporate headquarters to a new Chicago location.

The offices are home to Hub's executive management team and other corporate employees, the brokerage said in a statement.

The new corporate headquarters address is 300 N. LaSalle St., 17th Floor, Chicago, Ill. 60654.

Hub's Midwest operations remain at 55 E. Jackson Blvd.

All office phone numbers are same.

Hub was the world's 10th-largest insurance broker in the 2012 *Business Insurance* ranking.

USI buys St. Louis-based middle-market brokers

Briarcliff Manor, N.Y.-based USI Insurance Services has acquired Welsch Flatness & Lutz Inc. and Construction Insurance Partners L.L.C., two middle-market insurance brokers based in St. Louis.

Terms of the transactions were not disclosed.

Welsch Flatness & Lutz provides a wide-ranging portfolio of insurance services including commercial property/casualty coverage, surety bonds, employee benefits and private client solutions. Construction Insurance Partners is a full-service wrap-up broker specializing in owner-controlled and contractor-controlled insurance programs for the construction industry.

Thomas D. Cassady, USI's regional CEO for the Midwest, said the acquisition also will accelerate USI's expansion in the Midwest.

Insurance standards organizations merge under ACORD name

Insurance industry standards organization ACORD said it will merge with the Data Interchange Standards Association, a Falls Church, Va.-based developer of cross-industry electronic business interchange standards.

The two organizations will consolidate under the name of Pearl River, N.Y.-based ACORD and work to develop data interchange standards common to insurance companies and organizations in other sectors such as health care, transportation, finance and government, the groups said in a joint announcement.

Analytics help risk managers, TPAs in many industries

TECHNOLOGY

HOW DOES IT WORK?



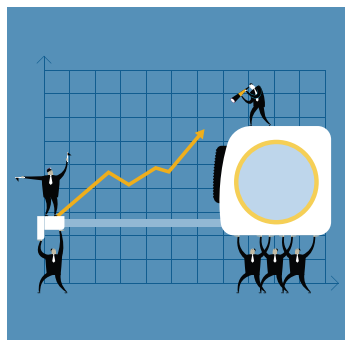
BILL KENEALY

BY BILL KENEALY

While analytics has begun to augment the work of underwriters, claims professionals and actuaries, it now is helping risk managers and third-party administrators across industries gain insights and achieve new efficiencies.

This trend is evident in updated analytics and data-enrich offerings from providers of risk management information systems.

For example, the risk management information system available from Glencoe, Ill.-based Origami Risk L.L.C. includes analytics and dashboards, as well as reporting and analysis tools designed to work alongside the software's traditional



reporting module.

The product also features tools that enable it to import data from multiple sources at different times.

San Francisco-based David Corp. recently updated its long-standing risk management information system product, NavRisk, with existing business intelligence modules from Walldorf,

Germany-based SAP A.G.

Mary-Margaret Dale, director of marketing at David Corp., said by integrating SAP BusinessObjects solutions into the NavRisk platform, users can access reporting and management dashboards directly from the platform.

"People have so much information, but they are starving for ways to make sense of it and make business decisions based on it," she said, noting that the configurable, drag-and-drop nature of the interface is intended to make the offering less intimidating to nontechnical users.

"We want to push data to business users and make it accessible to them without having to rely on their technical team to do that work for them to deliver the data," Ms. Dale said.

RESEARCH & DATA

TOP 25 U.S. DIRECTORS AND OFFICERS
LIABILITY INSURERS*

* Includes all companies owned by parent

Ranked by 2011 direct premiums written

Rank	Company	2011 direct written premiums	2011 direct losses incurred	2011 direct loss ratio	2011 market share
1	American International Group Inc.	\$745,713,320	\$450,021,725	56.3%	14.4%
2	Chubb Corp.	\$615,161,344	\$180,421,478	27.8%	11.9%
3	XL Group P.L.C.	\$567,645,929	\$224,253,623	38.9%	11.0%
4	Travelers Cos. Inc.	\$335,152,626	\$195,583,295	56.7%	6.5%
5	HCC Insurance Holdings Inc.	\$307,945,768	\$148,530,917	45.3%	6.0%
6	Ace Ltd.	\$262,927,993	\$140,056,809	53.1%	5.1%
7	Zurich Insurance Co. Ltd.	\$223,781,473	\$205,203,855	84.4%	4.3%
8	CNA Financial Corp.	\$219,383,684	\$141,494,223	68.2%	4.3%
9	Tokio Marine Holdings Inc.	\$208,202,715	\$142,452,501	69.6%	4.0%
10	Axis Capital Holdings Ltd.	\$198,796,964	\$115,179,280	54.9%	3.9%
11	American Financial Group Inc.	\$189,976,919	\$59,974,108	32.4%	3.7%
12	Alleghany Insurance Holdings L.L.C.	\$130,504,527	\$33,206,923	26.0%	2.5%
13	W.R. Berkley Corp.	\$114,820,300	\$63,213,221	56.6%	2.2%
14	Liberty Mutual Holding Co. Inc.	\$111,849,122	\$48,194,742	41.7%	2.2%
15	ICI Mutual Insurance Co., a Risk Retention Group	\$78,619,276	\$0	0.0%	1.5%
16	Allied World Assurance Holdings A.G.	\$73,890,076	\$34,601,200	45.0%	1.4%
17	Cincinnati Financial Corp.	\$72,966,650	\$39,108,819	55.9%	1.4%
18	Arch Capital Group Ltd.	\$70,817,473	\$43,357,010	55.8%	1.4%
19	Old Republic International Corp.	\$59,810,606	\$32,937,807	51.6%	1.2%
20	Nationwide Mutual Insurance Co.	\$59,728,036	\$22,017,654	41.5%	1.2%
21	Berkshire Hathaway Inc.	\$55,167,199	\$2,096,317	3.7%	1.1%
22	The Hartford Financial Services Group Inc.	\$51,433,097	\$35,559,445	67.8%	1.0%
23	Fairfax Financial Holdings Ltd.	\$50,133,806	\$36,879,574	77.1%	1.0%
24	Starr Cos.	\$46,764,265	\$15,284,679	41.4%	0.9%
25	The Navigators Group Inc.	\$43,129,571	\$24,907,276	44.9%	0.8%
Total		\$5,167,203,452	\$2,588,249,372	48.9%	94.7%

Source: 2012 Director and Officer Insurance Report, National Association of Insurance Commissioners

STORMS

Continued from page 4

more than 18,000 acres and 345 homes, resulting in two deaths.

Among blizzards and nasty winter weather conditions, wildfires are a significant risk in Colorado Springs, as 25% of residents live in wildland-urban interface areas, Mr. Waters said.

Colorado Springs researches historical effects of previous disasters while understanding the ever-changing city landscape when designing its disaster plans, he said.

Prior to the Waldo Canyon fire, Colorado Springs mobilized citizens to conduct drills in the areas where the fire occurred. Such drills go over evacuation process-

es, staging areas, and fire and police departments' procedures, he said.

With more than 50 schools, plants, warehouses and garages, Norfolk, Va., public school district faces considerable wind and flooding risks, said Dan Hurley, senior director of risk management and safety for the school district.

The City of Norfolk has an emergency operations center, which holds monthly planning meetings. The meetings include many of the city's important agencies and liaisons from the community.

The center also holds neighborhood meetings to educate community members about evacuations, flooding areas and shelters, Mr. Hurley said.

"There's more communication now" through online communica-

tion systems that send necessary emails, updated website information and a geographic information system program that plots real-time street closures and damages, "so you can get a global perspective of what's going on in the whole city," Mr. Hurley said.

When creating disaster plans, public entity risk managers and emergency officials must go beyond location risk, said Frank Russo, New York-based managing director of Aon P.L.C.'s global risk consulting unit.

"While an area's natural disaster profile can be fairly obvious, weather still has the potential to surprise and intensify, as was the case with Sandy, which melded with other storm-fronts to become a much more dangerous event," Mr. Russo said.

Tools such as catastrophe modeling and other software that blend historical analysis, meteorology reports and other data points can sharpen a public entity's overall risk, he said.

Disaster and emergency response plans must consistently be updated and kept fluid, experts say.

Such plans "should always be considered a work in progress," said Mary Breighner, Cincinnati-based vice president and global practice leader of FM Global's public entities, health care and education unit.

Anytime there's a loss, even if it's outside a public entity's jurisdiction, disaster recovery teams should come together and review the facts of the disaster and whether the particular event was adequately addressed in the plan.

INSURANCE

Continued from page 4

concerned about the aggregation of exposures in any one area, Ms. Breighner said.

Such risks are predictable risks, which are difficult to insure, Ms. Breighner said. "So large deductibles are going to be pretty common," she said.

There also are uninsured consequences of loss, particularly if business interruption insurance coverage is not purchased, along with excluded coverages such as mold damage, she said.

Risk managers should focus on loss prevention that, among other things, focuses on protecting property, which in turn will increase available capacity in the insurance marketplace and result in better rates, Ms. Breighner said.

As part of planning, public entities should work with their underwriters before a disaster occurs, said Frank Russo, New York-based managing director of Aon P.L.C.'s global risk consulting unit.

"If and when a disaster occurs, an adjuster's time and attention is limited, especially in a regional disaster," he said. "Those adjusters and public entities who already know each other can quickly get to work and speed up recovery."

Dan Hurley, senior director of risk management for Norfolk, Va., public school district also has policies through the nation's flood insurance program, some of which won't cover all of the district's schools, he said.

"Our property carrier, as well as our broker, helps identify which schools (NFIP) won't cover for basic flood coverage," Mr. Hurley said. "We actually have to obtain a policy separately for those particular buildings."

"The frustrating part about the initial flood policies is that you have to buy per structure," he said. For example, one school with multiple structures requires a policy for each, all of which need to be renewed annually.

Rising premiums and higher wind deductibles are "going to be a challenge," Mr. Hurley said. "Our budgets were already submitted back in December and if you have a July renewal, you're trying to forecast ... basically two years instead of one."

BRITISH

Continued from page 3

uniform policy required women to wear a high-necked shirt and scarf with no visible jewelry. The uniform had to cover any item an employee was required to wear on religious grounds and, if that was not possible, approval to wear was required.

Ms. Eweida was offered administrative work that did not require a uniform or customer contact. In 2007, she returned to her job after British Airways updated its uniform code allowing employees to display symbols of faith or charity.

In 2008, an employment tribunal found that the airline did not discriminate against Ms. Eweida, saying that wearing a visible cross was not a requirement of Christianity. In 2010, the U.K. Supreme Court refused to hear the case.

But this month, the European Court of Human Rights ruled that "a fair balance had not been struck between ... her desire to manifest her religious belief and to be able to communicate that belief to others, and ... her employer's wish to project a certain corporate image."

The court ruled that the airline failed sufficiently to protect Ms. Eweida's right to religious freedom and ordered British Airways to pay her €2,000 (\$2,664) in damages and €30,000 (\$39,963) in costs.

As a result of the ruling, employ-

Other religious bias cases heard

The European Court of Human Rights heard three other cases in conjunction with *Nadia Eweida & Others v. the United Kingdom* in which the court rejected the claims of practicing Christians who alleged their religious freedoms were violated.

In the case most similar to *Eweida*, nurse Shirley Chaplin was moved to a temporary desk job in 2009 by her employer, the Royal Devon and Exeter NHS Trust Hospital, after she refused to remove a crucifix that she wore on a chain. Her tempo-

rary job ceased in 2010.

The health care employer said dangling jewelry was not allowed because of health and safety concerns. The European Court of Human Rights ruled that, while the importance to Ms. Chaplin of being able to wear a cross to demonstrate her faith "weighed heavily in the balance," the reason her employer asked her to remove the cross "was inherently more important" than the reasons for which Ms. Eweida was asked to remove her crucifix.

By Sarah Veysey

ers with operations in the United Kingdom or elsewhere in Europe may revisit their uniform codes, legal experts said.

"Employers are advised to revisit policies such as uniform and dress codes to check their justification of practices which might prevent employees manifesting their religious beliefs," said Emma Bartlett, a partner in the employment group at London-based law firm Speechly Bircham L.L.P.

"Employers will be obliged to accommodate reasonable requests relating to uniforms which do not impact the rights of others," said

Claire Dawson, an employment lawyer at Slater & Gordon (U.K.) L.L.P. in London. "This is something many employers already do."

The ruling shows that the court believes that the right to religious freedom does not "trump" other human rights, said Rachel Dineley, an employment partner at DAC Beachcroft L.L.P. in London. But employers must try to resolve such cases when a conflict arises, she said.

One important element of the Strasbourg court's decision is that it was sufficient for Ms. Eweida to demonstrate that her rights as an

individual had been breached, Ms. Dineley said. The previous U.K. rulings in her case dismissed her claim in part because she could not show that a group of people were disadvantaged by British Airways' previous uniform policy.

The court's decision "suggests that any genuine manifestation of religious belief should be protected, even if it is not shared by others," said Tom Heys, a legal analyst at Lewis Silkin L.L.P. in London.

The judgment "demonstrates that preventing an action on the basis that the action is not a mandatory requirement of their belief — as has been one of the approaches in the U.K. courts — is the wrong approach," said Tim Forrer, a barrister at Blake Laphorn Solicitors in Southampton. "The action only needs to be 'intimately linked' to the religion," he said. "Employers must strike a careful balance between the rights of their employees and any policies that tend to conflict with them."

Companies in the United States with 15 employees or more must adhere to the religious freedom protections in the U.S. Constitution and the Civil Rights Act, which are comparable to those in the European Convention on Human Rights, Ms. Dineley said. But U.S. employers with operations in Europe may wish to study *Eweida* and revisit their dress codes, if they wish to adopt a common approach across their multinational businesses.

FORUM

Continued from page 4

ing a lot of rating movement because most companies managed this event fairly well and were able to diversify themselves enough that the storm didn't have any major impact on their financial strength," said Matthew Mosher, senior vice president and chief rating officer at New York-based A.M. Best Co. Inc.

How the property/casualty industry responds to Sandy in the longer term remains to be seen. Panelists

said Sandy's pummeling of the Northeast region exposed a stark need among insurers and their clients to adapt their catastrophe risk management strategies.

Adjustments to pricing, policy limits and deductibles for damage caused by named storms are likely to occur, panelists said. Additionally, greater attention should be paid to the concentration and interconnectivity of catastrophe risk in densely populated areas, risk management and insurance education for policyholders and the implementation of risk mitigation measures in order to stem the rising tide of catastrophe losses in

the U.S. and worldwide.

Although it was not as powerful as recent hurricanes — Sandy was below the threshold of hurricane strength when it made landfall — the storm was among the costliest in U.S. history, due in large part to the region's high concentration of residents and businesses.

"The exposures in these very densely populated areas are going to need to be rethought," said Michael McGavick, CEO of XL Group P.L.C. "I think when you have that much interconnectivity of risk on both the commercial side and the personal lines side, it's something that our industry is real-

ly going to have to think hard about, because that density problem is only going to get worse."

The region's density also has added layers of complexity to business interruption claims resulting from the storm, as well as exposed an overall lack of risk and coverage comprehension among business owners seeking to recover lost income, panelists said.

"Particularly in an area of such great density, the impact on small and midsized businesses was pretty pronounced, and many of these business owners had little to no comprehension about whether or not they were covered," said Liam

McGee, chairman and CEO of Hartford, Conn.-based The Hartford Financial Services Group Inc.

Not all of the potential solutions lie within the purview of the insurance industry, panelists said. Legislators and administrators at all levels of government can help reduce the risk of catastrophe losses by adopting and implementing policies designed to fortify properties against wind damage and water infiltration.

Approximately 228 people attended this year's Property/Casualty Joint Industry Forum on Jan. 15. Next year's Forum will be held Jan. 14, 2014, in New York.

EXCESS: Prices, attachments hit comp

Continued from page 1

identified because he did not have corporate permission to speak to a reporter.

New York accounts face unusual circumstances, though, as insurers are concerned about risk concentration, their potential exposure to terrorism and extremely high state workers comp assessments, sources said.

The rising cost for excess workers comp insurance is increasing in significance, along with issues such as collateral costs, when evaluating the type of self-insurance arrangement to adopt or even whether to self-insure, sources said.

“The self-insurance market is certainly becoming more difficult,” said Eric Silverstein, senior vice president of national accounts in Atlanta for Lockton Cos. L.L.C. “Can they still self-insure? Sure, but it’s not as inexpensive as it once was.”

Self-insured employers purchase excess workers comp insurance as a stop-loss to protect them against catastrophic or long-term claims that eventually exceed their retentions.

Ongoing increases in claim severity plus lower employer retention levels during the past

LARGEST EXCESS WORKERS COMP INSURERS		
The excess workers compensation insurance market reported \$1.07 billion in direct written premiums in 2011.		
Company	Direct written premiums	Market share
Safety National Casualty Corp.	\$328.2 million	30.6%
Ace Ltd.	\$110.4 million	10.3%
Midwest Employers Casualty Co.	\$107.1 million	10.0%
Liberty Mutual Holdings Inc.	\$90.2 million	8.4%
American International Group Inc.	\$81.6 million	7.6%
Source: SNL Financial L.C.		

“The self-insurance market is certainly becoming more difficult. Can they still self-insure? Sure, but it’s not as inexpensive as it once was.”

Eric Silverstein, Lockton Cos. L.L.C.

soft market mean “losses are approaching SIRs faster than they have in the past,” and not just for catastrophic claims, said Gene Maier, senior vice president of excess underwriting for St. Louis-based Safety National Casualty Corp.

Well-known issues such as pre-

scribing opioid medications for pain management, federal Medicare set-aside demands, medical cost inflation, an aging workforce, obesity and increased comorbidities among injured workers are driving increases in claim severity, several sources said.

So insurers decided they were

not earning enough return for insuring those risks, particularly when interest rates remain low, said Pamela Ferrandino, New York-based casualty practice leader for Willis North America Inc.

American International Group Inc. underscored that trend when it stopped writing stand-alone excess workers comp insurance about two years ago.

In 2012, New York-based AIG said in a 10-K filing that the line “has an extremely long tail and is one of the most challenging classes of business to reserve for because it is highly sensitive to small changes in assumptions — in the rate of medical inflation or the longevity of injured workers, for example — which can have a significant effect on the ultimate reserve estimate.”

AIG also cited rising pain management costs among its reasons to move its capital elsewhere.

AIG was among the largest writers of stand-alone excess workers comp coverage and other insurers have since followed its lead, losing their appetite for the business, several sources said.

There are a limited number of excess workers comp insurers willing to write the insurance on a stand-alone basis today, Mr. Niedringhaus said (see chart).

Funding the coverage “is just not overly appealing right now for the investment community,” Mr. Silverstein said.

Many insurers now provide excess workers comp insurance only if buyers purchase other lines from them, Ms. Ferrandino said.

The excess market has been firming longer than the primary workers comp insurance market, which is unusual, sources said. In some regions, excess writers are obtaining larger rate increases than primary insurers.

“Excess, just because it has been firming longer, I think you are seeing higher increases in rates,” Mr. Maier said. “Add to that to the increases in retentions (insurers are demanding) and that also counts as an increase as well.”

Recent rate increases have ranged from 5% to 40%, depending on the size of the account, location, state reforms, risk class and loss history, Mr. Maier said.

Even accounts without significant losses are seeing retention increases of \$50,000 to \$250,000, he added.

In some instances, such as for midsize California employers, rising retention and collateral costs could affect whether employers self-insure, Mr. Niedringhaus said.

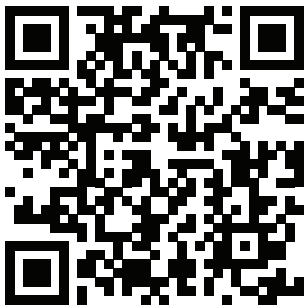
“For midsize employers with premiums under \$1 million, these retention levels may preclude them from using a self-insured program,” Mr. Niedringhaus said. “A more attractive option to minimize the retention levels would be to utilize a group captive.”

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Boeing’s handling of 787 problems will determine brand impact

BY RODD ZOLKOS

The grounding of Boeing Co.’s 787 Dreamliner fleet undoubtedly will have a short-term negative effect on the company, but it also could yield long-term benefits, aviation industry and risk management experts say.

“Yes, there is going to be an impact,” said Michel Merluzeau, managing partner and aviation and defense industry consultant at G2 Solutions L.L.C. in Kirkland, Wash. “An event of this nature has the potential to be disruptive.”

He said the brand impact “can be positive and negative.”

The immediate effect on Chicago-based Boeing’s brand is negative, Mr. Merluzeau said, “but you can turn this around. Let’s be hopeful that Boeing can see the opportunity and actually inform and highlight the safety features of this aircraft.”

For example, if an incident similar to the battery problem that forced an All Nippon Airways Co. 787 to make an emergency landing in Japan on Jan. 16 had occurred on an aircraft without the Dreamliner’s system redundancies and warning systems, the consequences might have been disastrous, he said.

“Financially, of course, it’s costing them hundreds of millions on top of the billions

of dollars from the four years of delays,” said Richard L. Aboulafia, vice president, analysis, at aerospace and defense industry analyst Teal Group Corp. in Fairfax, Va.

Still, he said, there’s a chance that “if they get (the solution to the problem) right, all the upfront agony will be forgotten except by historians.”

A Boeing spokesman declined to comment on events that are under investigation. But in a statement after the Federal Aviation Administration grounded the 787 fleet and suggested regulators elsewhere do likewise, Boeing said it was “committed to supporting the FAA and finding answers as quickly as possible.”

The Dreamliner relies more on electrical systems than previous passenger airliners, and the lithium-ion batteries it uses to produce more energy at reduced weight than the heavier nickel-cadmium batteries used on other passenger jets.

Asked whether it was unusual that Boeing chose a battery supplier, Japan-based GS Yuasa Corp., that media reports said have little aviation experience, Mr. Aboulafia called the situation “unusual but not unheard of.”

Much has also been debated about the 787’s supply chain, which involves hundreds of companies around the world providing parts for the aircraft in thousands of facto-

ries, an approach cited as a factor leading to the delays in the aircraft’s development and delivery.

But Mr. Merluzeau of G2 Solutions said he thinks Boeing’s supply chain approach is the right one for a company that needs to remain competitive financially.

“Any new system needs tweaking. Sometimes you think there’s something a supplier could do and they’re not as capable as you thought, so you go to a different supplier,” he said.

“Financially, of course, it’s costing them hundreds of millions on top of the billions of dollars from the four years of delays.”

Richard L. Aboulafia, Teal Group Corp.

Mr. Aboulafia said, “The idea of a company building its own batteries or even its own electrical systems — that was a debate that General Motors had in 1952.” In other words, it’s common for companies to outsource segments of their production.

Because of the 787’s strategic importance to Boeing, the company’s problems with the aircraft can be viewed from a strategic risk management perspective. Emphasizing that

she has no inside knowledge of the Dreamliner project or the risk management surrounding it, Carol Fox, director of the strategic and enterprise risk practice at the Risk & Insurance Management Society Inc. in New York, said the Dreamliner program likely involved considerable scenario analysis and stress testing.

“So from a supplier perspective, from the technology perspective, from the regulatory perspective, they’re identifying risk, they’re modeling risk, they’re stress testing what could occur, building those plausible scenarios and then taking a decision based on their risk appetite and risk tolerances,” Ms. Fox said. “I don’t know what their scenarios look like, whether they ran a scenario that basically said (what happens if) we get shut down globally for whatever reason.

“It’s not to say that nothing ever goes wrong, if you do a really good job of having that strategic risk management discipline in there,” she said. “Things happen that surprise all of us.”

Ms. Fox also said that often in such complex projects, “There’s a group of people that do the planning and then that’s transitioned over to operations. Sometimes that work that’s been done in planning either isn’t translated or isn’t executed or reviewed. That’s where we see a lot of the disconnects.”

BOEING

Continued from page 1

Boeing’s aviation product liability policies include coverage for grounding liability, which fits the definition of a grounding liability loss.

The recent incidents involved a Japan Airlines Co. 787 parked on the tarmac in Boston when a battery pack of an auxiliary unit caught fire and an All Nippon Airlines Co. 787 that made an emergency landing in Japan after an alarm warned of smoke in the cockpit.

Before allowing the new fleet to resume flights, U.S. and Japanese aviation safety officials are investigating the lithium-ion batteries in the 787 made by Kyoto, Japan-based GS Yuasa Corp., as well as the battery charging system.

The lead underwriter for Boeing’s manufacturer product liability program, including grounding liability, is London-based Global Aerospace Underwriting Managers Ltd., Global Aerospace Group CEO Nick Brown said.

Marsh Inc. is Boeing’s lead broker, aviation insurance market sources said. Marsh declined comment.

While Mr. Brown declined to provide details on Boeing’s insurance program, he said most aviation manufacturers typically buy grounding liability in addition to product liability cover.

Limits available in the marketplace for grounding liability are much lower, typically up to \$250 million, Mr. Brown said. Aviation product liability limits can reach up to \$2.5 billion, he said.

“This is because the grounding may be triggered by a catastroph-

ic accident, and this additional coverage is therefore directly cumulative,” Mr. Brown said. “Thankfully, in this case, there has been no major accident, so the extent of the insurance market’s potential exposure, if any, will be limited to the grounding cover in play.”

Grounding liability covers a manufacturer or subcontractor that may be found liable for the loss of use of an aircraft, and such a loss does not necessarily include bodily injury or property damage, aviation insurance industry experts said.

Airline suppliers typically have similar liability coverage with varying limits of legal indemnity, experts say.

Suppliers would have product liability coverage for bodily injury or property damage and, depending on the policy, may or may not have a grounding liability, said

Tim Bonnell, Wichita, Kan.-based owner and president of Professional Insurance Management Inc., an aviation brokerage that does business as PIM Aviation Insurance.

“Usually, there’s grounding after an accident. There’s been no accident here. It’s kind of like a warranty situation,” Mr. Bonnell said.

The grounding of the 787s will have a “minimal effect” on the global aviation insurance market, said Nigel Weyman, chairman of the aerospace division for JLT Specialty Ltd., a unit of Jardine Lloyd Thompson Group P.L.C. in London. “It’s a market that has substantial capacity and tends not to overreact to any one incident.”

In aviation loss terms, losses due to grounding the Dreamliner fleet would be minimal, Mr. Weyman said.

“It’s enough to be annoying, but it’s not a market-changing event,”

he said. “It’s well within the context of what insurers and buyers recognize as a typical exposure,” after a new aircraft fleet takes off.

With the Dreamliner, liability hinges on the contract language in the sales agreement between Boeing and each airline customer, said Jerry Frick, head of Ironshore Inc.’s aviation insurance practice in New York.

“Boeing, like Airbus and other major aviation manufacturers, has restrictions in their sales contracts that limit their liability,” Mr. Frick said. “Consequential loss, which this would be, is limited by the warranty provisions of the sales contract. That may or may not be the case here.”

It’s far too early to know the magnitude of any insured loss, he said. “First you have to determine the cause of the loss, which still hasn’t happened,” Mr. Frick said.

GENERIC

Continued from page 3

produced. On the other hand, innocent victims of harmful drugs should have recourse when hurt by drugs the brand name manufacturers originally developed.

Meghan A. McCaffrey, an associate with Weil, Gotshal & Manges L.L.P. in Washington, said the Alabama ruling “was a results-driven decision. I think the Alabama court wanted to give the plaintiffs an opportunity for relief of some sort and, quite frankly, I think they pushed it a little bit with this case.”

Michael A. Walsh, a partner with Dallas-based Strasburger Price L.L.P., said this is the first time a state Supreme Court has ruled on this issue. “That becomes something that other courts are going to take seriously,” he said.

While plaintiff attorney Michael L. Murphy, with Bailey & Glasser L.L.P. in Washington, said the ruling is unlikely to become a majority view, “I think it could get enough traction to at least take hold in a number of jurisdictions.”

However, James M. Beck, counsel at Reed Smith L.L.P. in Philadelphia, said the ruling is unlikely to be influential. “I don’t think it’s particularly persuasive. It’s not like it’s the New York

Court of Appeals,” which is more prestigious, or a court that “has me shaking in my boots.”

For its part, Pfizer said in a statement that 76 court decisions that apply 25 states’ laws have held that brand name pharmaceutical manufacturers “may not be held liable, on any theory, for injuries caused by products they did not manufacture.” Furthermore, the four federal appellate courts that have addressed the issue “rejected the assertion brand manufacturers can be held liable for injuries caused by a plaintiff’s ingestion of generic metoclopramide,” Pfizer’s statement said.

Some experts say it is unjust to have brand name drug makers be

liable, even as they lose market share to generic drug producers. It is not unusual for branded drug makers to retain only a 20 % to 30% market share after their patents expire, said Erin M. Bosman, a partner with Morrison & Foerster L.L.P. in San Diego.

This presents a challenge for underwriters in determining how to write the risk, said James W. Huston, a San Diego-based Morrison & Foerster partner.

While some say the ruling could affect nonpharmaceutical-related product liability, William A. Ruskin, a member of Epstein Becker & Green P.C. in New York, doubted that because it “is such an outlier decision.”

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LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF MIDLAND PROPERTY AND CASUALTY INSURANCE COMPANY Supreme Court County of New York Index No.: 41782/1990 NOTICE

Pursuant to an order of the Supreme Court of the State of New York, County of New York ("Court"), entered June 1, 1990 ("Liquidation Order"), the then-Superintendent of Insurance of the State of New York, and his successors in office, were appointed as liquidator ("Liquidator") of Midland Property and Casualty Insurance Company ("MIDPAC") and, as such, has been directed to take possession of MIDPAC's property, liquidate its business and affairs, and dissolve its corporate charter 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 MIDPAC. The Liquidator has, pursuant to Insurance Law Article 74, appointed an Acting Special Deputy Superintendent ("Acting Special Deputy") and Assistant Special Deputy Superintendents ("Assistant Special Deputies"), as his agents to liquidate the business of MIDPAC. The Acting Special Deputy and Assistant Special Deputies carry out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038. The Liquidator has submitted to the Court a verified petition ("Verified Petition") seeking an order: (i) approving the Liquidator's Report on the Status and Request to Close ("Closing Report") MIDPAC's liquidation proceeding ("Liquidation Proceeding") and the financial transactions delineated therein; (ii) authorizing the continued payment of administrative costs and expenses, including such costs and expenses pertaining to the closing of the Liquidation Proceeding; (iii) authorizing the continued distribution of MIDPAC's assets, to the extent assets are available after payment of administrative costs and expenses, to Midland Insurance Company in Liquidation ("Midland"), as the parent company of MIDPAC; (iv) terminating and closing the Liquidation Proceeding; (v) authorizing the Liquidator, without further application to this Court, to continue to receive and disburse assets to Midland, as the parent company of MIDPAC, after the termination of the Liquidation Proceeding and to pay all administrative costs and expenses incurred in connection with any such distributions; (vi) releasing and discharging the Liquidator, his predecessors and successors in office, and their agents, attorneys and employees, from any and all liability arising from their acts and omissions in connection with the Liquidation Proceeding; (vii) authorizing and directing the Liquidator, in his discretion, to destroy or otherwise dispose of any and all of the books, files, records and other property of MIDPAC without further order of this Court; and (viii) providing for such other and further relief as this Court may deem just and proper;

A hearing is scheduled on the Verified Petition on the 6th day of March, 2013, at 9:30 a.m., before the Court at the Court-house, IAS Part 2, 71 Thomas Street, in the County, City, and State of New York. If you wish to object to the Verified Petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Liquidator and on the Clerk of the Court with an affidavit of service on the Liquidator, 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 Midland Property and Casualty Insurance Company, 110 William Street, New York, New York 10038, Attention: John Pearson Kelly, General Counsel
The Verified Petition and Closing Report are 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) 341-6665.
Dated: January 2, 2013

Superintendent of Financial Services of the State of New York as
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IN THE SUPREME COURT No 2 of 2013
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IN THE MATTER OF
LEHMAN RE LTD.,
IN LIQUIDATION
and

IN THE MATTER OF THE COMPANIES ACT 1981
NOTICE OF SCHEME CREDITOR MEETINGS

NOTICE IS HEREBY GIVEN that by an order dated 10 January 2013 made in the Supreme Court of Bermuda in the above matters the Court has directed that meetings of the Scheme Creditors (the "Meetings") of Lehman Re Ltd., in Liquidation (the "Company") be convened for the purpose of considering and, if thought fit, approving (with or without modification) a scheme of arrangement proposed to be made between the Company and its Scheme Creditors pursuant to section 99 of the Companies Act 1981 (the "Scheme"). The Meetings will be held on 18 April 2013 at the offices of, PricewaterhouseCoopers Bermuda, Dorchester House, 7 Church Street, Hamilton, HM 11, Bermuda. The meeting for General Scheme Creditors (as defined in the Scheme) will commence at 10am (Bermuda time) and the meeting for Long Term Scheme Creditors (as defined in the Scheme) will commence at 11am (Bermuda time) or as soon as the first meeting has been completed, whichever is the later.

All Scheme Creditors are requested to attend at such place and time either in person or by proxy. Scheme Creditors may vote in person at the Meetings or may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place.

Scheme Creditors are requested to lodge completed forms of proxy, Meetings Claim Forms (as defined in the Scheme) at PricewaterhouseCoopers Bermuda, Dorchester House, 7 Church Street, Hamilton, HM 11, Bermuda, marked for the attention of Alison Tomb by 5.00pm (Bermuda time) on 12 April 2013. Forms may also be handed in at the registration desk prior to the Meeting. Completed forms may be returned by post and, if scanned and saved in Portable Document Format (PDF), by email. Please note emailed forms will only be accepted if they are legible and they are received in the mailbox of the addressee and can be opened and printed by the recipient. Scheme Creditors are requested to send the originals so that they arrive no later than 3 business days from the date of the Scheme Meetings.

A copy of the proposed Scheme and a copy of the statement required to be provided to creditors pursuant to section 100 of the Companies Act 1981 are incorporated in the Scheme Document of which this notice forms a part. Copies of these documents, as well as blank forms of proxy and Meetings Claim Forms, may be obtained by attending at, or on written application to PricewaterhouseCoopers Bermuda, Dorchester House, 7 Church Street, Hamilton, HM 11, Bermuda marked for the attention of Alison Tomb before 5.00pm (Bermuda time) on 12 April 2013. They may also be downloaded and printed from the website - <http://www.pwc.bm/lehmanrescheme.nsf>

The Court has appointed Dan Yoram Schwarzmann of PricewaterhouseCoopers LLP to act as chairman of the Meetings and has directed the chairman of the Meetings to report the result of the Meetings to the Court. If approved by the requisite majority of creditors, the Scheme will be subject to the subsequent approval of the Court.

Any Scheme Creditor who has any questions concerning the action he is required to take should contact the Scheme Helpline on +1 441 299 7123 or email: lehmanrescheme@bm.pwc.com

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Health care reform requirement on exchange information delayed

■ Federal regulators have delayed indefinitely a health care reform law requirement that employers notify employees in writing by March 1 about the availability of public health insurance exchanges. In a set of frequently asked questions and answers jointly issued by the Departments of Health and Human Services, Labor and Treasury, regulators said the reporting requirement will not go into effect until regulations are issued and “become applicable.” Regulators cited several reasons for delaying the March 1 reporting requirement, including the intent to set a date that would give employers more time and to coordinate more closely with exchanges’ open enrollment.

Cargo thefts down slightly from 2011: FreightWatch

■ There were 940 cargo theft incidents throughout the United States in 2012, a 0.5% decrease from 2011’s total, said FreightWatch International (USA) Inc. in a report. This slight decline comes after an 8.3% increase in 2011. There was an average of 78.3 cargo theft incidents per month, or 2.6 per day. 760, or 80.9%, were full-truckload or container thefts.

AIG explains why it did not join Starr lawsuit against government

■ American International Group Inc.’s board of directors decided not to join in a lawsuit brought by Starr International Co. Inc. against the federal government over its 2008 bailout of AIG for a variety of reasons, including “the fact that ‘a deal is a deal,’” according to a document filed with the Securities and Exchange Commis-

sion. The suit — filed by former AIG Chairman and CEO Maurice R. Greenberg, who now heads Starr — alleges that the terms of the government’s rescue of AIG, under which the federal government assumed a nearly 80% stake in the financial services giant, were unfair to shareholders and that the Federal Reserve Bank of New York charged an unfair high interest rate on its initial loan to AIG.

Casualty insurance pricing continues to rise: Marsh

■ Casualty insurance prices continued to move higher at the start of 2013, though changes vary by industry sector and by buyer, according to a report by Marsh Inc. The report showed 54% of clients reporting general liability price increases during the fourth quarter of 2012 with 18% reporting no change and 28% reporting price decreases. The benchmark report showed a median general liability rate increase of 3.1% and an average increase of 2.1% during the fourth quarter, up from a 1.1% median increase and a 1.6% average increase during the third quarter of last year.

Deutsche Bank unit to pay \$1.7M settlement

■ A unit of Deutsche Bank A.G. has agreed to pay \$1.7 million to settle charges it manipulated the California power marketplace during 2010. The Federal Energy Regulatory Commission said Deutsche Bank Energy Trading L.L.C., a unit of the bank, agreed to pay a \$1.5 million civil penalty and return \$172,645 in profit and interest in connection with its alleged violation of the commission’s regulations. The commission said Deutsche Bank violated the commission’s anti-manipulation rule as well as its reporting accuracy requirements between Jan. 29 and March 24, 2010.

Late-term workers comp costs expected to continue growing

■ More than 10% of the workers compensation medical benefit costs for injuries occurring this year will be paid for services provided more than two decades from now, according to NCCI Holdings Inc. The percentage of total claims for “late-term” costs — those that will be incurred 20 to 30 years in the future — has been growing and may continue to do so.

Regulators missing deadlines on Dodd-Frank reform law rules

■ Although regulators have made progress in implementing some key reforms required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as of December they have issued fewer than half of the rules called for by the legislation, says the General Accounting Office in a report. According to the report, of the 236 provisions of the act that require regulators to issue rule-making across nine key areas, final rules have been issued for 48%. The report says that of the 134 provisions with deadlines that passed as of December, regulators had missed the act’s deadlines in 119 cases, or 89% of the time.

Several domestic domiciles saw captive growth in 2012

■ Montana licensed 34 new captive insurance companies in 2012, bringing the total number of captives in the state to 114. Vermont licensed 32 new captive insurance companies in 2012, bringing the total number of active captives in the state to 588 at the end of the year. Delaware licensed 59 captives in 2012, one protected cell and 179 series business units, the state reported.

NFIP: Is it time to end federal-backed flood cover?

Continued from page 1

month, the chairman of the House Financial Services Committee, Rep. Jeb Hensarling, R-Texas, called the program “ineffective, inefficient and indisputably costly to hard-working American taxpayers.”

Rep. Hensarling said the committee “will take up legislation to transition to a private, innovative, competitive, sustainable flood insurance market.”

The Risk & Insurance Management Society Inc. noted that Congress has called for studying whether the program should be partly or fully privatized.

“More than just extend the program, RIMS applauds our representatives in Washington for taking the foresight to authorize studies on the privatization of flood insurance,” Carolyn Snow, RIMS’ secretary and liaison for external affairs and director of insurance and risk management at Humana Inc. in Louisville, Ky., said in an email. “We believe that these studies should be completed in order to determine whether privatization is a viable option. Prematurely abandoning the NFIP would leave

many homeowners and businesses exposed to the perils of floods and would throw the marketplace into flux.”

Frank Nutter, president of the Washington-based Reinsurance Association of America, noted the idea of privatizing part or all of the NFIP is not a new one.

“We’re delighted to see Chairman Hensarling raise the idea that this needs to be more fully explored,” he said. He added that the Federal Emergency Management Agency, which oversees the NFIP, took an initiative to examine private sector options some time ago.

Rep. Hensarling’s pledge drew praise from the free market-oriented R Street Project, which holds that flood is an insurable risk and should thus be left to the private market. Ray Lehmann, senior fellow at the Washington-based nonprofit, also noted that while privatization could lead to higher costs, it also could mean broader coverage.

“There’s no doubt rates would have to rise above what the flood insurance program charges,” said Mr. Lehmann. “But the other side is that the flood insurance pro-

gram is not all that generous; it doesn’t even offer business interruption. Having it be a private program, you could go to your traditional primary carrier and have a robust package put together that integrates all of the terms from dollar one.”

He said privatization would require “a good deal of discussion and thought and it would take time to both craft the legislation and provide for a transition to a private market.”

Caution urged

Charles Symington, senior vice president of the Alexandria, Va.-based Independent Insurance Agents & Brokers of America, said in an email that the group was happy to work with Rep. Hensarling on NFIP reform, but he also cautioned that “it is important that any such reform take into account the 5.6 million American consumers who rely on the NFIP for flood risk protection as well as the difficulty the private market historically has had with offering this coverage.”

“I believe that, looking at his

comments, that (Rep. Hensarling) believes the private sector can play a larger role in flood insurance,” said Nathaniel Wienecke, senior vice president in the Property Casualty Insurers Association of America’s Washington office. “The question is what would it take for the private market to engage in a different way in the flood insurance market. It may provide policyholders with broader protection; however, the cost would be significantly higher because the industry would have to charge rates that were actuarially sound.”

“To try to explore whether or not there’s any more capacity in the private market, you first have to create a market where risk-based rates exist,” said Jimi Grande, senior vice president in the Washington office of the National Association of Mutual Insurance Cos.

Mr. Wienecke also noted that insurers are regulated at the state level. “To the extent that P/C companies would be providing insurance in a different way than NFIP and would need to charge higher rates, those rates are regulated at the state level,” he said.

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AP PHOTO

Mr. Sheen

Hiring Sheen for movie role a risky business

Actor Charlie Sheen's winning ways apparently do not impress underwriters. In an interview with *Details* magazine, director Roman Coppola said his decision to cast the notoriously dissolute actor in the lead role of his new movie made it impossible to secure insurance or a bond on the film.

The movie, "A Glimpse Inside the Mind of Charles Swan III," stars Mr. Sheen as a successful graphic designer in a "comedy of lost love, friendship, revenge fantasies ..."

While few would fault the unnamed insurance company's underwriters for exercising discretion, Mr. Coppola said he does not regret the decision to cast Mr. Sheen, whom he has known since 1979.

Superman suit ends in tatters

In what will be welcome news to the residents of Metropolis, a federal appeals court declared that Superman is staying put.

A three-judge panel of the 9th U.S. Circuit Court of Appeals ruled that DC Comics Inc., a subsidiary of Warner Bros. Entertainment Inc., is the rightful owner of the Superman franchise.

The appellate ruling overturns a lower court's decision in a 2006 lawsuit brought by relatives of Superman co-creator Jerome Siegel. The family argued in court that a 2001 agreement between DC Comics and Mr. Siegel's widow over royalties never was finalized in accordance with California law.

The court agreed, opening the door for the family to reclaim some rights to the Man of Steel under the termination provision of the 1976 Copyright Act.

However, the appellate court noted in its decision that the contents of a 2001 letter from the attorney representing the family in its negotiations with DC Comics suggest that the family had struck an agreement with the comic book publisher. The court concluded that the letter constitutes a finalization of the agreement between the two parties under state law, and reversed the lower court's ruling.

FAN LINES UP COURT CHALLENGE OVER TEAM'S ROSTER



AP PHOTO

San Antonio Spurs coach, Gregg Popovich, decided to not play several star players in a game on Nov. 29, 2012, in Miami.

A decision by a basketball coach to rest his star players has a litigious fan crying foul. Miami Heat fan Larry McGuinness has filed a class action suit against the San Antonio Spurs after the team's coach, Gregg Popovich, decided to not play several star players in a game on Nov. 29, 2012, in Miami.

The suit, filed in Miami-Dade County, Fla., on Monday, contends that the Spurs "intentionally and surreptitiously" sent aging stalwarts Tim Duncan, Tony Parker and Manu Ginobili home to San Antonio, Texas, to rest rather than play in the game in Miami.

While Mr. Popovich defended the decision as a gambit to preserve his team from the grind of playing four road games in five days, Mr. McGuinness, a lawyer, said the move violated Florida's deceptive and fair trade practices law.

Noting that fans pay premium prices for tickets for games against visiting teams with star players, Mr. McGuinness told ESPN the situation was akin to ordering a porterhouse in a fancy restaurant and instead being served cube steak.

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Gardener in a hole over comp claims

A California gardener found himself in deep dirt last week after being charged with workers compensation fraud for allegedly lying about his recovery from a work injury.

Jose Cortez was injured in 2010 when a tree branch fell and landed on him at work, according to a statement from the district attorney's office for San Bernardino County, Calif. Mr. Cortez reportedly received workers comp for his injuries and was placed on minor work restrictions.

The district attorney's office said it began investigating Mr. Cortez's comp case in 2012 after private insurance investigators found Mr. Cortez working several times in 2011.

Both investigations reportedly showed Mr. Cortez performing a full range of gardening work without any pain or discomfort, despite claiming in workers comp proceedings that his 2010 injury left him unable to perform his job.

Mr. Cortez was arrested and charged with workers comp fraud and perjury on Jan. 7, according to the district attorney's office. He has pleaded not guilty in the case, and faces up to eight years in prison if convicted.



Man blows scam by showing off

A 90-pound weakling might have gotten away with workers compensation fraud requiring him to fake that he couldn't lift even 10 pounds, but an Ohio man caught repeatedly bench-pressing 500 pounds couldn't pull off the scam.

According to the Ohio Bureau of Workers' Compensation, Jason Dross received workers compensation benefits for "nonworking wage loss." These benefits are paid to injured workers unable to find employment because of physical restrictions.

Mr. Dross claimed he was looking for a job, but couldn't find one meeting his physical limitation of not being able to lift more than 10 pounds.

The trouble is that someone tipped off investigators, who videotaped Mr. Dross bench-pressing 500 pounds repeatedly over a month-long period.

He eventually pleaded guilty to one count of workers comp fraud and was recently sentenced nine months in jail. But that was suspended for three years of probation.

He must also maintain employment and pay restitution totaling nearly \$32,000.

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