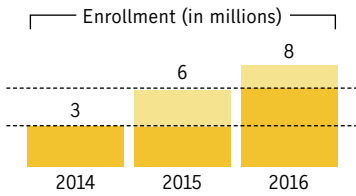


## GROWTH

Though enrollment in private exchanges continues to climb, growth has slowed. The number of sign-ups for 2016 jumped 33% vs. 100% in 2015.



Source: Accenture P.L.C.

## HEALTH CARE REFORM

### Private health exchanges see slower growth

Enrollments curbed by Cadillac tax delay

BY SHELBY LIVINGSTON

The two-year delay of the Cadillac tax may take some of the wind out of the sails of private health insurance exchanges, but experts say private exchanges will continue to attract customers.

The Cadillac tax, which is to impose a 40% excise tax on the portion of group health plan premiums over \$10,200 for individual coverage and \$27,500 for family coverage, has been a boon to enrollment in private health insurance exchanges, several benefit experts say.

Private exchanges have been one way for employers to cut health costs through a defined contribution model, while allowing employees to shop for the lowest price and greatest value.

See PRIVATE page 26

## PROPERTY/CASUALTY INSURERS

# AIG DETAILS IMPROVEMENT PLAN AMID CALLS FOR STRONG ACTION

Spinoffs, sell-offs won't yet change SIFI status



AP PHOTO

AIG President and CEO Peter Hancock last week outlined a plan to improve the insurer's performance.

BY MARK A. HOFMANN

Is there an "urgent" need for American International Group Inc. to shed its designation as a systemically important financial institution, or are calls to break up the insurer merely a "red herring"?

Both arguments were made last week as AIG President and CEO Peter Hancock outlined a plan to improve the insurer's performance.

The plan includes strengthening AIG's property/casualty reserves, offering up to 19.9% of its

United Guaranty Corp. mortgage insurance operation in a stock offering later this year as the first step toward divestment and selling its broker-dealer group for an undisclosed sum.

AIG is one of three insurers — the others being MetLife Inc. and Prudential Insurance Co. — on which the Financial Stability Oversight Council has imposed SIFI status. According to the council, it can make such a designation if it "determines that material financial distress at the non-

See AIG page 26

## INTERNATIONAL

### Zurich lures former exec back as CEO

Mario Greco hailed as turnaround artist

BY SARAH VEYSEY

Mario Greco, widely credited with turning around Italian insurer Assicurazioni Generali S.p.A., will face financial and other challenges when he returns to Zurich Insurance Group Ltd. as its next CEO.

Zurich said last week that Mr. Greco, CEO of Trieste, Italy-based



Mr. Greco

Generali, will take Zurich's helm on May 1 after his term at Generali expires.

Mr. Greco will succeed Tom de Swaan, who has been interim CEO since Martin Senn stepped down in December amid intensifying problems in Zurich's nonlife unit and its eleventh-hour withdrawal from a £5.6 billion (\$8.79 billion) deal to buy London-based rival RSA Insurance Group P.L.C.

Mr. Greco previously was CEO of general insurance at Zurich, which he joined in 2007, before leaving in 2012 to become Generali's CEO.

He joined Generali during the eurozone crisis and after a boardroom coup that ousted previous CEO Giovanni Perissinotto.

During his three years at Generali, Mr. Greco is widely credited

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## Q&A: JULIE C. PEMBERTON

President of the Risk & Insurance Management Society Inc. discusses RIMS' objectives

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Ruling provides businesses with potential plan to win dismissal of class-action lawsuits

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## IN BRIEF

Former New York City Mayor Rudolph W. Giuliani joins law firm cyber practice

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SPECIAL REPORT

## DIRECTORS & OFFICERS MANAGEMENT LIABILITY

Insurers and buyers react to renewed corporate scrutiny by the Justice Department; boardrooms are not immune to cyber exposures; E&O insurers blending in cyber coverage; class-action securities lawsuits on the rise; largest U.S. D&O insurer rankings.

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NEWS

CATASTROPHES

INSURERS EMERGE FROM STORM WITH LIMITED COMMERCIAL CLAIMS

Snow blankets East Coast, but timing helps stem losses

BY MATTHEW LERNER

Insured damages from Winter Storm Jonas, which attacked the Eastern Seaboard in January with record snowfalls and blizzard conditions, may be mitigated by its weekend timing and the above-freezing temperatures in the wake of the storm.

While Jonas was historic for snowfall totals in many places, "the fact that it happened on a weekend lessened the impact to businesses and the subsequent impact from an insurance perspective," said Rick Miller, national property practice leader for Aon Risk Solutions in Boston.

"The higher temperatures and quick melt is definitely going to help as well," added Mr. Miller, noting above-freezing temperatures across the Northeast in the days immediately following the storm.

"I think at the end of the day, Jonas will prove to be a relatively minor insurance event from an overall industry perspective," said Mr. Miller. "From a large commercial standpoint, I am not aware of many significant losses."

Bud Trice, vice president of catastrophe services for Crawford & Co. in Atlanta, said claims appeared to be evenly split between commercial and residen-



AP PHOTO

Rail workers clear snow Jan. 25 in Port Washington, New York. Transit systems are not expected to recoup losses from lost riders.

tial lines.

"A quick glance would suggest we're running about 50/50 commercial to residential losses," Mr. Trice said in an email.

"Only a handful of these appear to be in the very large category and are being handled by our global technical services group. They believe they'll see more in the coming days," he added.

Mr. Trice said about 20 of the claims manager's catastrophe adjusters are in Maryland, Maine, New Jersey and New York cleaning up from prior storms and will be on hand to handle any addition-

al surge in claims there.

Though it is still early in the process, the majority of claims seen thus far have been mainly roof collapses in states such as Kentucky, Virginia and Maryland, according to Scott Richardson, senior vice president and property practice leader for VeriClaim Inc. in Chicago.

There haven't been a significant number of claims thus far, said Mr. Richardson — only a couple of hundred, with a 70%/30% split between commercial and

See **STORM** page 25

LIABILITY & LITIGATION

Ruling maps out class action defense plan

Plaintiffs win, but court exposes weak points

BY JUDY GREENWALD

The U.S. Supreme Court's ruling on an unsolicited text message technically sided with plaintiffs, but also suggested a way companies can cut back on the amount of class action litigation filed.

The high court's 6-3 ruling last month in *Campbell-Ewald Co. v. Jose Gomez*, which focused on a marketing company's potential liability under the Telephone Consumer Protection Act for sending an unsolicited text message on behalf of the U.S. Navy, suggests there would have been a different ruling had proffered payment been submitted in an account payable to the plaintiff, with the court then entering judgment for the plaintiff in that amount (see story page 24).

Defense attorneys say the ruling applies to any law where class action plaintiffs would receive a small payout as a settlement while their lawyers could collect relatively large attorney's fees.

For example, in *Jonathan Gehrich et al. v. Chase Bank USA*, a 2012 case in U.S. District Court in Chicago involving unsolicited phone calls, led to a proposed \$34 million settlement that includes \$11 million in plaintiffs attorneys fees and expenses. A status conference is scheduled for Feb. 26.

"It's a very significant ruling, especially for claims brought under the TCPA and under the (Fair Labor Standards Act), where the potential damages to the named plaintiffs may be small," and the defendant may try to resolve the case before the class action is certified, said Jason C. Gavejian, a principal at Jackson Lewis P.C. in Morristown, New Jersey.

In many such cases, the plaintiffs attorney "is aggregating many small claims on behalf of a large group" of class members, "nearly all of whom show no interest in pursuing" the litigation, said Ryan E. Mick, a partner at Dorsey & Whitney L.L.P. in Minneapolis.

Defense attorneys say Justice Ruth Bader Ginsburg's opinion written for the high court's 6-3 majority suggests that had a payment been made, the court would have ruled differently.

See **CLASS** page 24

CAPTIVES

Changes to microcaptives may heighten appeal

BY STEPHANIE GOLDBERG

Changes designed to curb abuses of so-called microcaptives could actually lead more small and mid-size firms to use them.

Under a measure that President Barack Obama signed into law last year, microcaptives electing Section 831(b) of the U.S. Tax Code can avoid taxation on up to \$2.2 million in premium income per year, indexed for inflation, effective in 2017.

That compares with the current \$1.2 million limit on premium income. Captives electing Section 831(b) are taxed only on their investment income, not their



underwriting income.

Sources said diversification requirements also included in the new law are intended to address abuses of microcaptives, which appeared alongside identity theft and phishing on the IRS' 2015 list of Dirty Dozen Tax Scams.

To qualify for that tax break

under the new law, captive sponsors have to meet a diversification requirement that no more than 20% of net written premiums come from any one policyholder.

However, such captives still can qualify for the tax break if the ownership of the parent company or companies is within 2% of mirroring the ownership of the insurer.

The 831(b) election has been abused by financial professionals who marketed it as a wealth-transfer vehicle rather than a risk management tool, said Doug O'Brien, national casualty and alternative risk practice leader at Wells Fargo

See **MICRO** page 24

2/1/16

ONLINE  
FEATURES

## VIDEO

## In Focus: Send in the drones



Drones are poised to become powerful tools for property/casualty insurers.

[www.BusinessInsurance.com/InFocus](http://www.BusinessInsurance.com/InFocus)

## GALLERY



## Costliest winter storms

A roundup of the costliest winter storms to the U.S. since 1980.

[www.BusinessInsurance.com/WinterStorms](http://www.BusinessInsurance.com/WinterStorms)

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## GALLERY



## Week in pictures

A visual tour of the latest stories.

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## NEWS

## CYBER RISKS

LLOYD'S DEVELOPING  
CYBER INSURANCE STANDARDS

Common data requirements help policy development

BY JUDY GREENWALD AND SARAH VEYSEY

Core data requirements devised by Lloyd's of London provide a critical first step in better underwriting and developing cyber risk models that will ultimately help the buyer.

Lloyd's said in late January that the common data requirements, which will let it track exposures and help underwriters better develop policies to cover cyber risks, were developed in collaboration with Boston-based AIR Worldwide; Newark, California-based Risk Management Solutions Inc.; and the U.K.'s Cambridge Center for Risk Studies.

Experts say the effort will encourage development of common insurance policy language, which will enable insurers and reinsurers to more accurately measure risk aggregation.

"Models for natural catastrophe risks are well-developed in the (insurance and reinsurance) industry, and the data requirements are relatively standardized," Tom Bolt, director of performance management at Lloyd's, said in a statement. "But in comparison, models for cyber risks are still developing and need the industry to work collectively, so that risk can accurately be calculated."

CYBER CORE DATA  
REQUIREMENTS

Lloyd's of London, in cooperation with AIR Worldwide, Risk Management Solutions Inc. and the U.K.'s Cambridge Center for Risk Studies, has developed a set of core standards by which to collect, identify and assess cyber risk. Among them:

- **Geographic information** will be collected on insured companies using International Organization for Standardization country codes such as U.S. for United States and DE for Germany.
- **Threats** will use standard cyber peril codes, such as PCY for cyber security data and privacy breach, and PCZ for cyber security property damage.
- **Key indicators** of cyber vulnerability will include size as measured by revenue and headcount and sector as denoted by North American Industry Classification System codes such as NAICS Code 524: Insurance.
- **Evaluation** of existing cyber coverage including security, breach of privacy, liability, business interruption and physical damage and bodily injury.
- **Presence** of common cyber risk factors including amount and type of breachable data, such as credit cards, personal identification information and intellectual property.

Source: Cyber Insurance Exposure Data Schema v.1.0

The effort will help buyers, said John Graham, Boston-based security and privacy product manager at Zurich North America.

"We as a company tap into our own data, but also look externally

to what's publicly available," Mr. Graham said. "The more those sources of data are aligned and the more useful that information is,

See **CYBER** page 23

## WORKERS COMPENSATION

## Safety in focus as comp pricing tools change

BY SHEENA HARRISON

Without improved safety practices, updates in the calculation of workers compensation experience modification factors could raise workers comp premiums for employers in Texas, which has seen a notable jump in the split-point calculations for workers comp.

"The impact on their experience mod in the state of Texas really can be substantial," said Pam Ferrandino, New York-based executive vice president and casualty practice leader at Willis Towers Watson P.L.C.

As split points increase nation-

wide, experts say employers can mitigate the potential for higher workers comp costs by implementing safety programs that hold down comp claim losses.

"Improving workplace safety will ultimately work its way into the experience mod," said Steve Math, senior vice president of underwriting and field operations with Texas Mutual Insurance Co. in Austin, Texas. "It would behoove employers ... to really devote financial and management resources toward those improvements sooner rather than later."

See **SPLIT POINT** page 23

## MODIFICATION FACTOR

A workers compensation experience modification factor is part of the formula used to adjust a workers comp premium. The factor measures the difference between a particular company's safety risk and the average safety risk for all companies in the same line of work.

To determine an employer's premium, state-approved premium rates for employee class codes are multiplied by the employer's exposure, which is measured by payroll. That then is modified by an employer's ex-mod.

For instance, a workers comp insurer might apply an ex-mod of 0.75 for an employer that runs a safe workplace, which would reduce \$100,000 of workers comp premiums to \$75,000. An employer that has a more frequent accident rate might see an ex-mod of 1.25, which would raise their workers comp premiums from \$100,000 to \$125,000.

## HEALTH CARE BENEFITS

Exchange  
enrollments  
fall short

More employers than expected keeping workers in health plans

BY JERRY GEISEL

Enrollment in public health insurance exchanges this year will fall far short of earlier government predictions largely because employers are retaining their group health plans at a higher rate than once forecast.

In its annual budget and economic outlook released last week, the Congressional Budget Office estimated that 13 million people will get coverage through public exchanges this year, including 11 million who will receive federal subsidies to pay part or all of their premiums.

Last year, the CBO projected exchange enrollment would hit 21 million this year, with 15 million people getting subsidies established by the health care reform law.

Though the CBO did not fully explain the sharp drop in its estimates, a footnote said most people who are not getting the subsidy have obtained coverage directly from insurers rather than through the public exchanges.

Outside observers, though, attribute the dramatic reduction to far more employers keeping their group plans and not shifting employees to the exchanges.

"The big change is that fewer employers decided to end or curtail plans and shift employees to exchanges," said Katherine Hempstead, director of the coverage team at the Robert Wood Johnson Foundation in Princeton, New Jersey.

For example, a Mercer L.L.C. survey last year found that 7% of employers with 50 to 499 employees said they're likely to stop offering coverage, down from 21% in 2013.

The employer decision whether to continue offering coverage, some say, comes down to economics.

Paying the Patient Protection and Affordable Care Act penalty for not offering coverage, plus increasing salaries to partially offset employees premiums in an exchange would cost many employers more than their group plans, said Tracy Watts, a Mercer

See **EXCHANGES** page 23

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Source: Internal study based on claims results as of February 2014 on claims reported Jan. 1, 2011 through Dec. 31, 2012, which compared similar claims with and without a nurse assigned.

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## RESEARCH & ANALYSIS

# Private equity buyers drive surge in deals as brokerage acquisitions accelerate

BY TIMOTHY J. CUNNINGHAM  
AND DANIEL P. MENZER

Mergers and acquisitions of insurance agents and brokerages in the United States and Canada set fresh records in 2015 in deals pushed by strong valuations and ongoing private equity interest.

A total of 451 deals were announced or reported in 2015, up from the previous record of 357 in 2014.

Private equity-backed buyers were involved in 242 acquisitions, while property/casualty agents and brokers accounted for 255 sellers.

Total agent/broker transactions in 2015 rose about 26% compared with 2014. Private equity-backed buyers made 242 deals, a roughly 53% jump. This group was responsible for about 54% of all 2015 deals, up from 44% of the total in 2014 and only 21% in 2008.

There were 148 separate buyers in 2015, more than any year since 2008. The biggest change was the dramatic expansion of activity of the private equity-backed buyers, with an average of more than 12 deals per firm compared with less than four per firm in 2008.

The buyer group's sheer volume of activity is creating the demand for acquisitions, and appears to be pushing pricing and valuations to newfound highs.

Among buyers, Caledonia, Michigan-based Acrisure L.L.C. was No. 1 in 2015 with 56 closed transactions,

### BUYERS

Private equity-backed buyers accounted for more than half of all mergers among North American insurance agents and brokers in 2015 and have been the most active buyers since 2012.

Buyer type	2008	2009	2010	2011	2012	2013	2014	2015
Private equity-backed broker	62	45	59	85	110	115	158	242
Privately held broker	82	69	77	101	94	83	113	109
Publicly traded broker	68	26	44	52	72	34	56	50
Bank	42	24	19	37	24	27	13	24
Other	43	20	5	14	21	9	17	26
<b>Total</b>	<b>297</b>	<b>184</b>	<b>204</b>	<b>289</b>	<b>321</b>	<b>268</b>	<b>357</b>	<b>451</b>

Source: Optis Partners L.L.C.

### BIGGEST BUYERS

Acrisure L.L.C. surged past Hub International Ltd. and Arthur J. Gallagher & Co., the most acquisitive North American brokers in 2014, to become the No. 1 buyer of insurance agents and brokers in 2015.

2015 rank	Company	Private equity investor	Acquisitions
1	Acrisure L.L.C.	Genstar Capital	56
2	AssuredPartners Inc.	Apax Partners L.L.P.	38
3	Hub International Ltd.	Hellman & Friedman L.L.C.	37
4	Arthur J. Gallagher & Co.	Publicly traded	27
5	BroadStreet Partners Inc.	Ontario Teachers Pension Fund	26
6	Confie Seguros	ABRY Partners	19
7	Brown & Brown Inc.	Publicly traded	12
8	NFP Corp.	Madison Dearborn Partners L.L.C.	11
9	USI Insurance Services L.L.C.	Onyx Partners	9
10	The Hilb Group L.L.C.	ABRY Partners	8
10	Alliant Insurance Services Inc.	Madison Dearborn Partners L.L.C.	8
Total top 10			251
% of total purchases			55.6%

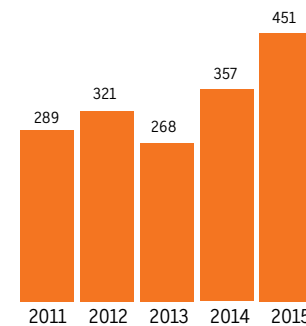
Source: Optis Partners L.L.C.

up from 22 in 2014. Lake Mary, Florida-based Assured Partners Inc., with 38 deals, and Chicago-based Hub International Ltd., with 37 transactions, rounded out the top three, all of which are private equity buyers.

See **MERGERS** page 24

### BROKER MERGERS

The number of mergers and acquisitions among North American insurance brokers rose for a second consecutive year to set a record in 2015.

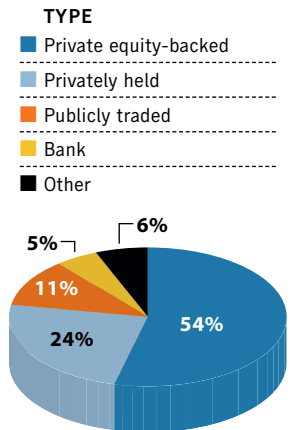


Source: Optis Partners L.L.C.

See **MERGERS** page 24

## 2015 BUYERS

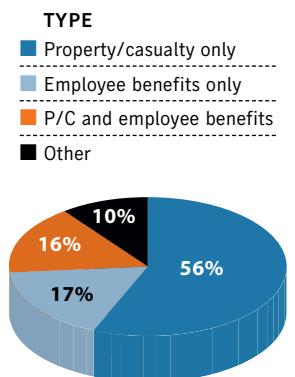
By type of ownership of parent company



TOTAL M&As  
451

## 2015 SELLERS

By type of brokerage sold



Source: Optis Partners L.L.C.

## SAFETY

# Employers on notice after manager gets jail sentence for fatal safety lapse

BY GLORIA GONZALEZ

Canadian employers, managers and supervisors are on high alert as a result of a jail sentence imposed on a construction project manager in a fatal workplace accident, a stiff sentence meant to deter those in authority from taking a cavalier attitude toward health and safety.

On Jan. 11, Ontario Superior Court Judge Ian MacDonnell sentenced Metron Construction Ltd. project manager Vadim Kazenelson to 3½ years in prison for his conviction on four counts of criminal negligence causing death and one count of causing bodily harm in a December 2009 incident in which a swing-stage scaffold collapsed at a Toronto high rise, killing four employees.

"I'm quite certain employers across the



province of Ontario had shivers sent down their spines because now it's on the record, and an individual has been incarcerated for 3½ years for allowing workers to work under conditions that were unsafe," said Chris Buckley, president of the Toronto-based Ontario Federation of Labor.

In 2013, 902 employees died in workplace

incidents, according to the latest data compiled by the Association of Workers Compensation Boards of Canada.

Mr. Kazenelson's conviction occurred under the Criminal Code of Canada, which legal experts say allows for stiffer fines and prison sentences, rather than the provincial Occupational Health and Safety Act.

The decision is relevant for all Canadian employers and managers who direct workers' tasks as they may be held accountable under the federal law, Élodie Brunet, a member of the labor and employment law group of Lavery de Billy L.L.P., said in an email.

The federal law was amended in 2004 in response to a 1992 Nova Scotia coal mine explosion that killed 26 miners in which company officials escaped conviction despite knowing about serious safety issues,

according to legal documents.

With a handful of convictions since its implementation, the longest sentence imposed under the code occurred in 2013 when a navigation officer for the Queen of the North ferry in British Columbia was sentenced to four years in jail for a sinking that killed two passengers.

In Mr. Kazenelson's case, the judge applied the code's principles of denunciation and deterrence to condemn and discourage unlawful conduct that results in a workplace fatality, legal experts said.

"The prison sentence, it's fair to say, is breaking new ground here in terms of jail time for supervisors or managers who are found criminally negligent under the

See **SAFETY** page 23

## Rudolph Giuliani joins law firm cyber practice

■ Former New York City Mayor Rudolph W. Giuliani has joined the law firm Greenberg Traurig L.L.P. as the global chair of its cyber security and crisis management practice. Based in New York, Mr. Giuliani will also serve as senior adviser to the law firm's executive chairman, Richard A. Rosenbaum, the firm said in a statement. Mr. Giuliani most recently worked at Bracewell & Giuliani L.L.C., a Houston firm whose New York office was established by Mr. Giuliani in 2005. "Greenberg Traurig has visionary leaders who clearly understand that the practice of law in today's world is inextricably intertwined with the worldwide political, social and security issues of the moment," Mr. Giuliani said in the statement. "This comes at a time when my practice and Greenberg Traurig's particular focus on cyber security and related counseling, investigations and litigation is an absolute match."

## Vote to override veto of ACA bill delayed by East Coast blizzard

■ Employers and others have been waiting for the outcome of a House of Representatives vote to try to overturn President Barack Obama's veto of legislation that would repeal key provisions of the health care reform law. The House had been scheduled to vote last week to override the veto of budget legislation, H.R. 3762, that would repeal reform law provisions imposing financial penalties on employers not offering coverage, as well as the so-called Cadillac tax. But due to Winter Storm Jonas, which dumped more than 2 feet of snow in the Washington area, House leaders agreed to delay floor votes until this week. The House earlier approved the measure with the ACA repeal provisions on a 240-181 vote, while the Senate approved the bill on a 52-47 vote.

## California wildfires cause estimated insured losses of \$1B

■ Two major wildfires that struck parts of California last fall caused an estimated \$1 billion in insured losses, according to the California Department of Insurance. The Valley and Butte fires affected nearly 150,000 acres in Northern California last fall, the department said in a statement. The Valley Fire damaged 1,958 structures in Lake, Napa and Sonoma counties, resulting in approximately \$700 million in insured losses. The Butte Fire damaged 818 structures in Amador and Calaveras counties and caused an estimated \$300 million in insured losses. The department said that so far, insurers say they have received 5,600 claims, paid out more than \$500 million and expect to pay another \$500 million in anticipated future losses. The department added, however, that the \$1 billion claim total does not include all surplus insurance lines claims or damages to public infrastructure such as roads and utilities.

## NCAA concussion settlement gets preliminary approval

■ A federal judge in Chicago granted preliminary approval of a settlement between the National Collegiate Athletic Association and a group of former student-athletes who suffered concussions playing college sports. Like the

original settlement proposed in July 2014, last week's agreement would require the NCAA to establish a \$70 million fund to test and diagnose current and former athletes for injuries from concussions, and provide an additional \$5 million for concussion research. The lawsuit was originally filed in 2011 in the U.S. District Court in Chicago. One change to the original settlement requested by U.S. District Judge John Z. Lee was that the Indianapolis-based NCAA would not be protected against class action concussion litigation brought by athletes.

## Tennessee, North Carolina grow captive numbers in 2015

■ The Tennessee Department of Commerce and Insurance licensed 57 captive insurers in 2015, bringing its year-end total to 126, state officials reported. Of those new 57 new captives, which included seven redemptions, 47 were single-parent captives, four were risk retention groups, and six were protected cell captives, the department said in a statement. Meanwhile, the North Carolina Department of Insurance licensed 42 captive insurance companies in 2015, bringing its year-end total to 92, state officials reported. North Carolina is one of the newest captive domiciles, with state lawmakers passing legislation in 2013 authorizing the formation of captive insurers in the state.

## Political discrimination case reinstated on appeal

■ The 1st U.S. Circuit Court of Appeals in Boston has reinstated a "political discrimination" case filed by a Puerto Rican public official who claimed her constitutional rights were violated when she was terminated from her position after an opposition party took office. According to the ruling in *Sheila Reyes-Orta et al. v. Puerto Rico Highway and Transportation Authority et al.*, Ms. Reyes-Orta filed suit against defendants including the Puerto Rico Highway and Transportation Authority claiming she was stripped of various job duties and ultimately terminated from her job at the Puerto Rico Highway and Transportation Authority because of her affiliation with the Popular Democratic Party, after the candidate representing the rival New Progressive Party, Luis Fortuño, took office as governor following the 2008 general election. A three-judge panel of the 1st Circuit unanimously reinstated the case, saying Ms. Reyes-Orta established a prima facie case of political discrimination. There is evidence that "taken together, raises an inference that the defendants' actions were politically motivated," said the appeals court in remanding the case for further proceedings.

## New Chubb on solid footing with fourth-quarter profit gain

■ Net income for the new Chubb Ltd.'s legacy Ace Ltd. operation increased 23.0% in the fourth quarter of 2015 to \$683 million, the insurer said. For the quarter ended Dec. 31, Ace net written premiums were \$3.63 billion, a 4.6% decline year to year. Its combined ratio improved to 87.7% from 88.5% from the same period a year earlier. Chubb Ltd. also released fourth-quarter and full-year 2015 results for its legacy Chubb Corp. Net income rose 19.4% to \$666 million. Net written premiums fell less than 1% to \$3.05 billion and the combined ratio rose to 86.3% from 84.3%. Ace's final quarter of 2015 was "a good quarter that contributed to a very good year," said

Chubb Ltd. Chairman and CEO Evan Greenberg during an earnings call. Ace closed its acquisition of Chubb Corp. on Jan. 15, launching the new Chubb Ltd.

## Federal health exchange enrolls nearly 9 million

■ Enrollment in the federal health insurance exchange and now tops 8.9 million, according to the latest U.S. Centers for Medicare and Medicaid Services report. Of the 8,939,274 individuals who selected exchange coverage between Nov. 1 and Jan. 23, 103,172 opted for coverage between Jan. 17 and Jan. 23. Enrollment in the federal exchange is significantly higher compared with about the same period a year ago. From Nov. 15, 2014 through Jan. 23, 2015, nearly 7.3 million individuals had enrolled in plans offered through the exchange.

## Marsh excess cyber product underwritten by Lloyd's

■ Marsh L.L.C. has launched a global excess cyber risk facility underwritten by Lloyd's of London syndicates. Marsh said the facility, known as Cyber ECHO, will offer up to \$50 million in follow-form coverage for clients from any industry sector around the world. The brokerage said the facility includes a prepriced option that allows buyers to reinstate policy limits if, during the period of the policy, they experience a cyber event that might exhaust their policy limits.

## UnitedHealth's OptumRX unit acquires comp PBM Helios

■ OptumRx Inc., the pharmacy benefit management unit of UnitedHealth Group Inc., has acquired workers compensation PBM Helios, spokespeople for the companies confirmed. Terms of the deal, which took place Jan. 15, were not disclosed. A spokeswoman for Memphis, Tennessee-based Helios said that Helios' current leadership and account management teams will remain in place after the acquisition. A spokesman for Minnetonka, Minnesota-based OptumRx said that Helios will be folded into OptumRx's existing workers comp and auto no-fault PBM business.

## Ford's global pension funding up, but U.S. plans see declines

■ Ford Motor Co. said the funded status of its pension plans significantly improved in 2015 due to strong investment returns for the automaker's pension plans outside the United States. At year-end 2015, Ford's pension plans worldwide were underfunded by \$8.2 billion, down from \$9.8 billion a year earlier, according to financial reports released by Ford. Ford's pension plans outside the United States were underfunded by \$4.5 billion in 2015, down from \$7.5 billion in 2014. That steep decline in underfunding was largely due to a 7.7% return on plan assets. By contrast, underfunding of Ford's U.S. pension plans jumped to \$3.7 billion last year, up from \$2.3 billion in 2014. In its financial reports, Ford noted that its U.S. pension plans had a return on assets of minus 1.8% last year compared with a 16.4% return in 2014. Ford sharply reduced contributions to its pension plans in 2015, pumping in \$1.1 billion, down from \$1.5 billion in 2014.

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## E.U. security chiefs brace for Islamist attacks

■ Islamic State and other militants are very likely to attempt big new attacks in Europe following the Nov. 13 attacks in Paris, said Europol, the European Union's police agency. The assessment was based on discussions by security agencies from E.U. states. The eight-page public report said further attacks could even take place quite soon. The events in Paris "appear to indicate a shift towards a broader strategy of IS going global, of them specifically attacking France, but also the possibility of attacks against other member states of the E.U. in the near future," it said. There was "every reason to expect" an attack, by Islamic State or "IS-inspired terrorists or another religiously inspired terrorist group ... in addition to the threat of lone actor attacks, which has not diminished," it said. The report also warned of a risk of cyber attacks but said there was no evidence of Islamist militants trying to use chemical, biological or nuclear material as a weapon in Europe.

Reuters

## VW chief casts doubt on whistleblower account

■ Volkswagen A.G. Chief Executive Matthias Mueller has cast doubt on a report that said many managers at the German carmaker knew of, or were involved in, developing emissions test-rigging devices. Volkswagen's development of software to cheat diesel-emissions tests was an open secret in its engine development department, Germany's Sueddeutsche Zeitung reported on Jan. 22, citing results from VW's internal probe. The newspaper, which researched the matter with regional broadcasters NDR and WDR, cited a whistleblower whom they said was himself involved in the deception and had testified to investigators hired by VW. "No one has spoken with me," Mr. Mueller told reporters at a reception of auto executives. "You got the information from some sources who have no idea about the whole matter."

Reuters

## Liberty Mutual Insurance acquires Chilean insurer

■ Liberty Mutual Insurance Co. announced it has acquired about 99.6% of Compañía de Seguros Generales Penta Security S.A. Terms of the deal were not disclosed. Liberty Mutual named Fer-

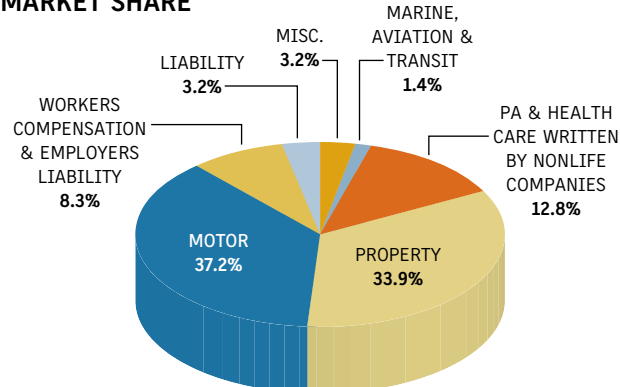
## PROFILE: NORWAY

**\$9.99**  
BILLION

Norway is among the world's richest nations, a strength reflected in a competitive insurance market with a low combined ratio of 83.5%. The market is so strong, it would take legislation regarding liability to boost penetration and premium income. Though windstorm is the largest natural threat to the country, activity has been quiet since 2011, when Dagmar caused claims of about \$250 million, covered automatically by the Norwegian Natural Perils Pool.

◀ 2014 P/C gross premiums

### MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

NORWAY

AREA

**125,050** square miles

POPULATION

**5.17** million

GLOBAL P/C MARKET RANKING

**20**

2015 GDP CHANGE (PROJECTED)

**1.4%**

### MARKET DEVELOPMENTS

UPDATED  
DECEMBER 2015

- Based on a May 2015 Norway Supreme Court ruling that a law firm is liable as an employer for the intentional acts of a partner, professional liability policies will have to be reworded to clearly state that the employer's liability is covered in those situations.
- A member of the European Economic Area (the European Union plus Norway, Iceland and Liechtenstein), Norway in 2015 implemented the E.U. directive on gender-neutral insurance premiums, which affects primarily personal lines.
- The Ministry of Finance is preparing to phase in, beginning Jan. 1, 2017, a fee similar to the annual road vehicle charge to be collected by motor third-party liability insurers.
- With the introduction of Solvency II on Jan. 1, Norwegian insurers are no longer subject to two sets of capital requirements.

### COMPULSORY INSURANCE

- Auto third-party liability
- Workers compensation
- Third-party liability for operators of cable cars and ski lifts
- Liability in connection with the carriage of passengers, particularly at sea and in air
- Professional indemnity or financial guarantees for auditors, chemists, insurance brokers, doctors and lawyers.

### NONADMITTED

Unauthorized insurers cannot carry on insurance activity in Norway, but there is nothing in the law indicating that insurance must be purchased from locally authorized insurers. This is generally interpreted to mean that insurers can issue a policy from abroad, if approached by a buyer or intermediary.

### INTERMEDIARIES

Agents and brokers have to be registered with supervisory authority Finanstilsynet. Registered brokers can place only commercial/industrial business with nonadmitted insurers. Brokers involved in nonadmitted placements do not have to warn buyers that their insurer is not subject to local supervision.

### MARKET PRACTICE

Buyers are free to obtain cover, except for compulsory motor and workers compensation, outside Norway on a nonadmitted basis, though most commercial/industrial cover is placed locally.

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

nando Cámbara Lodigiani, current CEO of Santiago-based Penta Security, as CEO of its Chile operations. In 2014, Liberty and Penta Security generated 171 billion Chilean pesos (\$235.1 million) and 226 billion Chilean pesos (\$310.8 million) of direct written premiums, respectively, Liberty Mutual said in its announcement.

## Lloyd's insurer Helios expands capacity

■ Lloyd's of London insurer Helios Underwriting P.L.C. has acquired Devon Underwriting Ltd., a limited liability member of Lloyd's, for £1.1 million (\$1.6 million) in cash. Devon's 2016 underwriting capacity is £1.2 million (\$1.7 million), compared with Helios' 2016 capacity of £28.1 million (\$40.1 million) prior to the acquisition, Helios said in a statement. The acquisition "further increases our underwrit-

ing capacity," Helios CEO Nigel Hanbury said in the statement. "This is in line with our stated strategy of acquiring corporate members as suitable opportunities arise."

## Bermuda registers 22 captives in 2015

■ The Bermuda Monetary Authority registered 77 new insurance entities in 2015, including 22 captive insurers, up from 16 new captives in 2014, the regulator said in a statement. This brought the total number of active captives in Bermuda to 797 by Dec. 31, a BMA spokesman said. "Captives registered ... cover a diverse range of risks, from oil and natural gas drilling in Canada to drivers' insurance in Peru," Shelby Weldon, the Hamilton, Bermuda-based BMA's director of licensing and authorizations said in the state-

ment. "It is encouraging to see continuing registration from Canada and Latin America, as these regions have been targeted by Bermuda's business development efforts. However, the U.S. remained by far the greatest source of Bermuda's captive formations."

## Axa Corporate Solutions nabs Aon exec as CEO

■ Axa Corporate Solutions Assurance S.A. has named former Aon Risk Solutions executive Rob Brown CEO, effective March 1. Based in London, Mr. Brown will succeed Philippe Rocard, who has been named chairman and CEO of Axa Assurance Morocco and head of sub-Saharan Africa, Axa Corporate Solutions said in a statement. Prior to his appointment as CEO, Mr. Brown was CEO of Aon Risk Solutions across Europe, Middle

East and Africa, according to the statement.

## Canadian manufacturer fined over electrocution

■ A Canadian employer pleaded guilty and was fined \$110,000 for a fatal workplace electrocution. An employee of Thorndale, Ontario-based manufacturer Ideal Drain Tile Ltd., now known as Ideal Pipe, was killed in July 2013 when working alone on a machine from an elevated forklift platform, according to a statement from the Ontario Ministry of Labor. There was no operator at the forklift's controls as required, and the machine was not powered off, according to the statement. The employee was electrocuted when he came into contact with the machine's plug, which had been disassembled, exposing the prongs of the plug, according to the state-

ment. Ideal Tile pleaded guilty to failing as an employer to ensure compliance with the provisions of Ontario's Industrial Establishments Regulation. The court also imposed a 25% victim fine surcharge, which goes into a provincial government fund to assist victims of crime, on top of the fine.

## China insurer premiums hit \$365 billion in 2015

■ The premium income received by China's insurance firms hit 2.4 trillion yuan (\$364.80 billion) in 2015, up 20% from a year earlier, the China Insurance Regulatory Commission said. Industry profits were estimated to be 282.36 billion yuan (\$42.92 billion) last year, an on-year rise of 38%, a commission spokesman said. The sector made 780.36 billion yuan (\$118.61 billion) in investment returns using insurance funds last year, up 46% from 2014, Mr. Chen said, representing an average rate of return of 7.6%. China's insurance industry also saw its total assets reach 12.4 trillion yuan (\$1.885 trillion) by the end of last year, the spokesman said.

Reuters

## RSA names CRO for U.K., Europe

■ RSA Insurance Group P.L.C. has appointed Doug Stewart to the newly created role of chief risk officer for the United Kingdom and western Europe, effective March 1. Based in London, Mr. Stewart will be responsible for governance of risks to RSA's U.K. and western European businesses, including strategic, insurance, reputational, operational and financial risk, the insurer said in a statement. He previously was risk director for the financial services practice at Deloitte Touche Tohmatsu Ltd. in London.

## Solvency II may spur French consolidation

■ The high cost of new insurance regulations under Solvency II, which went into effect in January, is likely to spur consolidation among some of the smaller players in the sector in France, the country's insurance association said. "There are 279 companies in the insurance sector, that is a lot of players," said Pierre Michel, deputy chief of the association, adding that French insurers were "healthy," with a few exceptions. "But it is a real problem for small cooperative insurers about how to meet all the Solvency II requirements with limited resources," he

said. The cost of compiling financial reports for the financial regulator according to the new standards is expected to weigh on the profitability of smaller players. French insurance sector revenue rose 3.9% in 2015 to €208 billion (\$224.62 billion), the association said. Flows into life insurance contracts rose to €24.6 billion (\$26.57 billion) from €22.6 billion (\$24.41 billion) in 2014. For the first time, investors put more cash into higher-risk unit-linked funds than

guaranteed-return funds. Inflows into unit-linked funds jumped to €13 billion (\$14.04 billion) from €7 billion (\$7.56 billion) in 2014.

Reuters

## Biosimilar drugs get boost in U.K.

■ Cheaper "biosimilar" copies of expensive biotech drugs received a boost in the United Kingdom

when the country's health cost-effectiveness agency said patients needing such medicines "should be started with the least expensive drug." Biosimilars are gaining ground in Europe, which has been faster to adopt their use than the United States, offering savings to health care systems and threatening sales of companies making original products. The latest ruling by the U.K.'s National Institute for Health and Care Excellence is a further victory for the biosimilar

lobby and may help two cheaper copies win market share from five other original brands. Pfizer Inc. unit Hospira and Napp Pharmaceuticals Ltd. both offer biosimilar treatments for rheumatoid arthritis, known as Inflectra and Remsima, that are copies of Merck and Johnson & Johnson's established blockbuster Remicade. These have now been recommended for use on the state health service, alongside Remicade.

Reuters



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## NEW PRESIDENT OUTLINES TOP GOALS FOR RIMS IN 2016

**Q** What are your top goals as RIMS president?

**A** The No. 1 goal is to simply pursue our mission. RIMS has developed a new mission statement, and it is to educate, engage and advocate for the global risk management community. The objectives we outlined to achieve that mission are to ensure a stable and adaptable organizational structure, equip risk professionals so that they can succeed in an evolving environment and enhance the way we engage the broader risk management community, and to expand RIMS' influence worldwide.

**Q** What important professional issues currently confront risk managers?

**A** Information security and cyber risk would be at the top of that list. It is such a hot topic and specialty area of risk, and monitoring best practices, the regulatory environment and the insurance product space are ever-changing.

**Q** What is RIMS doing to help its members better understand and

### Q&A

mitigate this exposure?

**A** We are featuring a lot of educational tracks in this area at our annual conference. We've also published our first RIMS cyber survey that measures how our members are managing and insuring their cyber exposures. Our external affairs committee is continuing to monitor and advocate around legislation in this area, and our magazine includes articles in every edition that discuss the nuances in this area.

**Q** In addition to cyber, what other emerging risks are you looking to help risk managers with this year?

**A** Globalization continues to be a focus and a challenge for risk professionals. Last year we held conferences in Dubai and in Peru. This year we're pursuing a China delegation and a risk forum in Bogota, Colombia, and likely in other international venues as well. We're focused on gaining understanding of risk management processes our global constituents are using, as well as challenges they may be experiencing and how we can fill the need.

In addition to globalization, another thing we're looking to support are the rising risk professionals, the next generation of risk managers. We have a NextGen Summit in June, and we are continuing to invest in our partnership with the Spencer Educational Foundation. We just approved \$450,000 in funding over the next three years to support their programs.

**Q** RIMS recently launched its new RIMS Certified Risk Management Professional certification. How has it been received?

**A** We're having an overwhelmingly positive response to that.



**JULIE C. PEMBERTON**

**RISK & INSURANCE MANAGEMENT SOCIETY INC.**

Julie C. Pemberton was recently elected president of the Risk & Insurance Management Society Inc. Chicago-based Ms. Pemberton, who is director of enterprise risk and insurance management for Bellevue, Washington-based Outerwall Inc., recently spoke with *Business Insurance* Senior Editor Mark A. Hofmann about RIMS' objectives. Edited excerpts follow.

We're holding our first exam at the conference on April 10. Space is still available, but it's limited. We have a limit of 200 people who can take the test.

**Q** What regulatory and legislative issues are you keeping an eye on?

**A** We're definitely monitoring what Congress and the administration are going to do in the area of cyber risk and cyber security. Late last year, we worked with the (U.S. Treasury Department) to study the current markets around cyber risk. We're also monitoring the Neal bill, which would change the tax treatment of certain rein-

urance transactions — it continues to come and go, and RIMS is opposed to it.

**Q** What are you looking forward to at this year's annual conference in San Diego?

**A** It's going to be an exciting conference. The keynote speakers are extraordinary this year. The topics — 3-D printing, how to spot deception and the psychology of illusion — are extremely relevant to risk managers.

We have 180 educational sessions, and the destination — San Diego — is probably one of our most popular spots. We're expecting a great turnout.

### COMINGS & GOINGS

## UP CLOSE: NICOLA WOOD

LONDON-BASED UNIT HEAD OF U.S. EXCESS CASUALTY  
Novae Group P.L.C.

**PREVIOUS POSITION:** London-based co-head of global casualty for Aspen Insurance Holdings Ltd.

**LOOKING FORWARD TO:** Working exclusively in the Lloyd's (of London) market, (where Novae launched a U.S. property excess and surplus lines business Jan. 1). There is such an energy and buzz working for a Lloyd's syndicate.

**GOALS FOR NEW POSITION:** To build a diverse book of profitable U.S. casualty business that provides tailored solutions for our clients.

**CHALLENGES FACING INDUSTRY:** Whilst we theoretically have access to a lot of data, we are not using it in the best means possible. Finding reliable data sources and applying it is extremely difficult.

**INDUSTRY OUTLOOK:** Many believe that consolidation in the industry will continue this year and that, balanced with a slowdown in new capital entering the market, may be beneficial. Whilst pricing remains competitive, in certain areas there are some signs that pricing pressure



may ease.

**FIRST INDUSTRY JOB:** Professional trainee at Independent Insurance Co. Ltd.

**WHAT SURPRISED ME:** That it wasn't boring. There is such a diversity of tasks and insureds that you are always learning and being challenged.

**ADVICE:** Never be afraid to ask a question.

**OUTSIDE THE INDUSTRY, A DREAM**

**JOB:** Wildlife documentary filmmaker.

**HOBBIES:** Spending time with my daughter and husband. Reading and drinking a nice pint of ale.

**WHEN I RETIRE:** I would like to spend more time traveling.

**FAVORITE MEAL:** Roast dinner.

**FAVORITE BOOK:** I love reading and go through various stages of different types of novel. At the moment I can't read enough psychological thrillers ... "1984" (by George Orwell) always remains vivid in my mind.

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



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EDITORIAL

## COURT OFFERS PLAN TO CURB CLASS ACTIONS

In a rare move, a U.S. Supreme Court ruling has provided businesses with a possible roadmap to help them win dismissal of many class-action lawsuits that business would do well to consider. As we report on page 3, the high court's 6-3 ruling in *Campbell-Ewald Co. v. Jose Gomez* stems from an unsolicited recruitment text message sent on the Navy's behalf. The plaintiff in the case, who was outside of the age group targeted by the Navy for recruitment, sued alleging violation of the Telephone Consumer Protection Act.

In her Jan. 20 majority ruling in favor of the plaintiff, Justice Ruth Bader Ginsburg points out that a settlement offer to Mr. Gomez had not been accepted, it had just been allowed to lapse. As a result, there was still an unresolved dispute between the parties and the case could not be dismissed.

But in a not-so-subtle hint as to how the defense bar should act in future, Justice Ginsburg said that "we need not, and do not, now decide whether results would be different" if the texting company had deposited Mr. Gomez's claim in an account payable to him and the court had entered a judgment for him in that amount.

"That question is appropriate for a case in which it is not hypothetical," said Justice Ginsburg.

And indications are the dissenting justices in the case, who are already sympathetic to businesses, would go along with this approach.

Attorneys say that while it may take a year or two to reach the high court, a case such as Justice Ginsburg seems to solicit is likely to find a sympathetic audience.

Experts point out that while plaintiffs in Telephone Consumer Protection Act and Fair Labor Standards Act class actions, in particular, may receive small amounts in settlements, it is the plaintiffs' bar that can rack up millions in legal fees for relatively little work.

Sometimes, the plaintiffs' bar can find only a single plaintiff willing to attach his or her name to these often-frivolous cases. By following Justice Ginsburg's suggestion, companies may at the very least make life more difficult for these plaintiff attorneys.

Yes, these unsolicited texts and phone calls, which seem to always come during dinner time, are pretty annoying. But all these cases do, really, is enrich the plaintiffs' bar.

And pursuing this strategy means business may not only save on legal fees but also may have the satisfaction of knowing they helped clear courts' dockets, leaving the judiciary freer to focus on more urgent issues.

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

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SCHILLERSTROM



COMMENTARY

## NATIONAL FLOOD PROGRAM NEEDS PRIVATE INSURERS IN THE GAME

Sometimes it takes something akin to an emergency to get Congress' attention. That may be the case with the recent floods in the Midwest and South and the future of the National Flood Insurance Program. One can only hope so, at least.

A recap: The NFIP provides flood coverage because private insurers won't provide it for homeowners, though they do write commercial flood policies.

The NFIP is currently more than \$20 billion in debt, debt run up by paying claims from 2005's Hurricane Katrina and other catastrophes. Why? Because we're talking homeowners here, and homeowners vote. So lawmakers are loathe to anger homeowners, who understandably don't want to pay the higher rates that would put the program on an actuarially sound footing.

Congress approved an effort to reform the program a few years back, but public outcry made short work of it. In fact, one of the bill's chief sponsors — Rep. Maxine Waters, D-Calif. — disavowed her own handiwork.

But the cost of the NFIP is making Congress reconsider reform. The program has to be reauthorized before Sept. 30, 2017, or it will lapse. Squabbles over the NFIP's reach, including whether an already financially shaky program should be expanded to include wind coverage, led to lapses before. Each time, the NFIP was reinstated.

Now some lawmakers are considering what should have been considered all along — how to get the private sector to play a role in the provision of flood insurance. The appetite is certainly there on the part of reinsurers, who wouldn't mind assuming some of the risk at a time when they're dealing with a flood



**MARK A. HOFMANN**  
SENIOR EDITOR

of their own — a flood of capacity.

And it's not like the private market can't provide flood cover. For example, private insurers underwrite flood insurance in the United Kingdom, although there is a pool for some high-risk properties.

At a time when the federal debt continues to grow, any reasonable idea that would reduce debt deserves a serious hearing.

Getting the private sector involved in the flood insurance market certainly counts as a reasonable idea.

The catch — and there's always a catch where a federal program's involved — is political. Even slowly allowing the private sector to get back into the flood insurance business would require considerable political will. That's because rates would be certain to rise for some policyholders, because private underwriters won't get involved if they can't make a profit.

There will probably always be some federal involvement in the flood insurance market, but every step should be taken to assure that involvement is no greater than absolutely necessary.

Congress is taking baby steps, but even baby steps are unusual in an election year as contentious as this one. Reform is critical, and one can but hope that reform including opening the door to a greater private presence in flood insurance is part of any reauthorization of the NFIP this time around.

# One of Crain's secrets to lasting 100 years: Impeccable timing

Crain Communications Inc., which publishes *Business Insurance* and many other business-related magazines, is turning 100 years old in 2016. To commemorate that milestone, Rance Crain, the company's president, editor-in-chief of *Advertising Age* and *Business Insurance's* first editor when the magazine was launched in 1967, reflects on the origins of Crain Communications and the legacy of all the people who contributed to the growth of the company.

BY RANCE CRAIN

**T**iming — being in the right place to take advantage of our opportunities — has played a big role in the success of Crain Communications over our 100-year history.

My father, G.D. Crain Jr., who founded our company, even felt his timing was right when he started *Ad Age* in the beginning stages of the Great Depression.

At the time, Dad was president of the National Conference of Business Paper Editors, and his group met regularly with President Herbert Hoover to discuss the economic health of the country.

"We were assured by these authorities that prosperity was just around the corner and the Depression would not last very long," he said. "However, I think I would have gone ahead anyway because I had gotten enthusiastic about the idea."

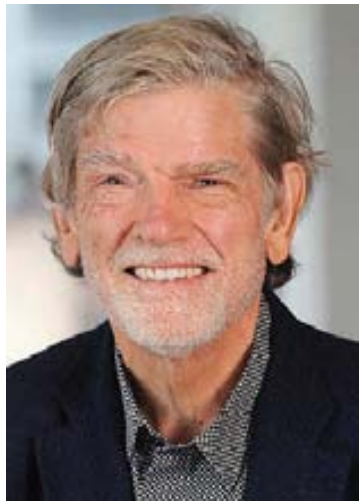
His thinking was that if *Ad Age* had started under more favorable conditions, other publishers would have been able to counter our limited efforts with more resources.

So timing has always been a key to our success. When my dad was running his business-news writing service, one of the publications he wrote for was the old *Western Underwriter* (now the *National Underwriter*). The paper was edited for agents and brokers — sellers of insurance — and my dad thought that the corporate buyers of insurance should have a publication of their own.

He kept his idea on ice for over 50 years, and during the Christmas holidays back in 1966 he asked me if I wanted to become editor of a new insurance publication he had in mind. That's how *Business Insurance* was born. The next publication, *Pensions & Investments*, was a spinoff from *BI*. We wrote about pensions as part of the

employee benefits mix in *BI*, and I realized that nobody was covering the investment side of pensions. We started *P&I* in 1973, and it's turned out to be one of our biggest winners, thanks to people like Steve Gilkenson, Bill Bisson, Chris Battaglia and Nancy Webman, who just retired after 34 years with us.

Dad was always very astute about putting the right person in the right place at just the right time. When *Automotive News* came up for sale in 1971, Dad wouldn't have been interested if it hadn't been for my brother Keith. Keith loved cars, and my dad knew that appointing him publisher of *Automotive News* would give our new publication the best chance for success. When we bought it, it was losing a half-million dollars a year. Six months later, it was breaking even, and now it is our biggest and most profitable publication. Keith quickly got to know all the important movers and shakers in Detroit, and he was the first journalist to find out that Henry Ford II had fired Lee Iacocca. When he called Lee at home, his first words were, "Say it isn't so, Lee."



Rance Crain

Henry also inspired what I consider the best trade ad ever written. Keith knew that Henry was an avid reader of *Automotive News*, and when he told that to adman Al Ries, whose agency was doing promotional work for AN at the time, Al said "That's your ad." There has never been a more powerful B-to-B ad than: "The trade paper Henry Ford II reads."

Some of our strongest brands — *Crain's Chicago Business*, *Modern Healthcare*, *Investment News* — started during my mother Gertrude Crain's tenure as chairman. She took over for my dad when he died in 1973 and served until she passed away in 1996.

Mom was very supportive of both my brother Keith and me when we wanted to expand, but she

also grilled us to make sure we were fully committed. When we started *Crain's Chicago Business* in 1978, I was only half joking when I used to give a talk about how I summoned up my courage and walked boldly into the office of the chairman of the board, saying, "I've got this great idea, Mom."

Timing played a big part in the arrival of *CCB*. Back in 1977, I was in Houston to give a talk to the local ad club, and afterward Bob Gray, publisher of the *Houston Business Journal*, was kind enough to take me through his operation and show me how his publication worked and the economics of it. I got to thinking that if it worked in Houston — and it did — it would work twice as well in Chicago.

At first, people were a little skeptical about our new paper. Chicago, I found, had a perceptible second-city syndrome. People would say to me, "I think I like it, but if it's so good, why didn't you do it in New York?"

So progress was a little slow until we broke a big story on Sears' 10-year merchandising plans. *Newsweek* did a story on us calling us "the cheeky young offspring of *Advertising Age*."

This year also marks the 40th anniversary of when we bought *Modern Healthcare*. *Modern Healthcare* became one of our publications because McGraw-Hill had given up on it and wanted to give it to us for free. But since McGraw-Hill was such a good advertiser, we offered \$200,000, which the magazine was happy to accept. We changed the emphasis of *Modern Healthcare* to the business side of running health-care institutions, and that gave us a distinctive point of view.

## Nourishing a legacy

So many great people have contributed to our success. In writing about one of them, Charlie Groomes, Sid Bernstein stated that Charlie helped solve difficult, unusual or frustrating problems at *Advertising Publications* "always in a manner which ultimately enhanced the company's reputation — so forcefully and carefully nurtured by founder G.D. Crain Jr. — for fairness, thoughtfulness, good citizenship and devotion to a higher order of journalistic endeavor."

That's the legacy, nourished by people who cared deeply about what they were helping to create, that has endured for 100 years.

And I'm betting we have what it takes to burnish that legacy for at least another 100 years. Chris and KC, my brother Keith's sons, are playing important roles in the business as executive vice presidents. My daughter Cindi serves on our board of directors, and my granddaughter Candace has just been promoted to senior events manager at *Ad Age*.

Thanks to all of you for your support, and we pledge to work hard to continue to be worthy of it.

My dad thought that the corporate buyers of insurance should have a publication of their own. He kept his idea on ice for over 50 years, and during the Christmas holidays back in 1966 he asked me if I wanted to become editor of a new insurance publication he had in mind. That's how *Business Insurance* was born.

SPECIAL  
REPORT

## Directors &amp; Officers

## Management Liability

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not immune to  
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## Corporate scrutiny looms

Insurers, buyers react to renewed Justice Department interest

BY MATTHEW LERNER

**D**irectors and officers liability insurers and buyers have taken notice of the U.S. Justice Department's greater emphasis on individual accountability in cases of corporate wrongdoing.

In a memorandum, Deputy Attorney General Sally Quillian Yates detailed how Justice Department attorneys are to approach civil corporate matters "to hold to account the individuals responsible for illegal corporate conduct."

The implications have gotten insurers' and buyers' attention.

"The Yates memo, the Department of Justice's line in the sand, defined new game-changing 'steps' specifically aimed at strengthening the Justice Department's pursuit of individual corporate wrongdoing, and it lays out the details of how they intend to do that," said Rob Yellen,

New York-based executive vice president of FINEX North America, a unit of Willis Towers Watson P.L.C. "That has the potential to fundamentally change how companies look at enforcement risks and how they respond to inquiries by authorities."

Last year's Yates memo emphasizes "the primacy in any corporate case of holding individual wrongdoers accountable," said Brady Head, division president of the public company D&O division of American International Group Inc. in New York.

Once the U.S. Securities and Exchange Commission "got the ball rolling" following the 2008 financial crisis, the Department of Justice "came out strong" with its memo last September, said Brenda Shelly, New York-based directors and officers product leader at

Marsh L.L.C.'s FINPRO practice.

"The way it looks right now is a re-commitment to enforcement against corporations and a new, higher level of individual accountability," she said.

That re-commitment has resulted in an increased focus on individual liability for corporate wrongdoing, said Alan Sorkowitz, counsel in the insurance group for Sidley Austin L.L.P. in New York.

"I see this all the time from our white-collar criminal group and our securities and derivatives enforcement group," he said.

Risk managers should talk with their brokers, lawyers and other industry professionals to make sure that their insurance addresses the exposure and that the policy will respond in the event of a related claim, Mr. Yellen said.

"There are definitely conversations going on given the Yates memo,"



## 'YATES MEMO' OUTLINES JUSTICE DEPARTMENT EXPECTATIONS OF FEDERAL PROSECUTORS

The U.S. Justice Department's new playbook on individual responsibility in corporate wrongdoing, known as the "Yates memo," is a seven-page document written by Deputy Attorney General Sally Quillian Yates.

"Fighting corporate fraud and other misconduct is a top priority of the Department of Justice. Our nation's economy depends on effective enforcement of the civil and criminal laws that protect our financial system and, by extension, all our citizens," begins the dictum.

"One of the most effective ways to com-

bat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing," it continues in laying out specific guidelines.

"The measures described in this memo are steps that should be taken in any investigation of corporate misconduct. Some of these measures are new, while others reflect best practices that are already employed by many federal prosecutors," Ms. Yates wrote last September.

Six "key steps" the Justice Department says it will take to strengthen its pursuit of individual corporate wrongdoing,

"some of which reflect policy shifts," are:

- To qualify for any cooperation credit, corporations must provide the Justice Department with all relevant facts about individuals responsible for the misconduct.

- Criminal and civil corporate investigations should focus on individuals from the start of the investigation.

- Criminal and civil attorneys handling corporate investigations should communicate routinely.

- Absent extraordinary circumstances or approved departmental policy, the Jus-

Department will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation.

- Justice Department attorneys should not resolve corporate matters without a clear plan to resolve related individual cases and should "memorialize any declarations as to individuals in such cases."

- Civil attorneys should evaluate whether to sue individuals "based on considerations beyond that individual's ability to pay."

By Matthew Lerner

said Robbyn Reichman, co-leader of Aon Risk Solutions' legal and claims practice in New York. "We're talking about adequacy of D&O limits. We're talking about policy exclusions and making sure those exclusions are as narrow as possible. We're talking about program structure."

Clients are certainly asking for guidance from their brokers. Colin Daly, executive vice president of financial lines and D&O practice of JLT Specialty Insurance Services Inc., said those he talks to are asking for advice on "policy coverage matters and changes that are needed within a policy to insure that it will perform to the standards they expect" in the wake of the stepped-up regulatory activity.

Some brokers will recommend increasing the organization's D&O limits and "do a close inspection of the D&O program to see if there are any seams or gaps where an individual or director can be held liable and not have any protection," said Robert Hartwig, president of the Insurance Information Institute Inc. in New York.

This flurry of activity is par for the course when it comes to making sure coverage suits the purpose, however.

"There is always an ongoing need to customize the D&O policy, and it will take the flavor of what issues are present in the exposure environment," said Marsh's Ms. Shelly. "Right now, customization activities focus largely around policy conditions that keep protections in place for individuals and, to the extent they're available (and increasingly they are), for the corporation itself, when a target of governmental regulatory enforcement activity."

And the coverage terms and conditions are being tested.

"You see more disputes under directors and officers policies than you ever did before," said Mr. Sorkowitz. "You see more changes in terms and conditions than you ever did before. It's a very fluid market and a very fluid legal environment."

"I would not be surprised if in the coming six to eight months we saw an increase in the number of investigations," said Ms. Reichman. "More investigations of individuals means more defense costs — they go hand-in-hand."



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# DIRECTORS CAN'T PLEAD IGNORANCE AS CYBER EXPOSURES MULTIPLY

Boards should tap risk managers' expertise to understand risks

BY MARK A. HOFMANN

**I**nformation and a solid response plan are essential for corporate directors and officers as cyber liability issues evolve.

"This is an extremely dynamic risk area. There's always more learning we all have to do," said Rob Yellen, executive vice president of FINEX North America at Willis Towers Watson P.L.C. in New York. "How boards will deal with it will be interesting this year. Maybe they'll have nonvoting board members with cyber expertise; having the right expertise and having something the board can tap into is important."

"As cyber security exposures continue to evolve, the responsibility of protecting an organization from key cyber exposures has shifted away from the (information technology) department and toward the board of directors," Christian Hoffman, national practice leader of Aon Risk Solutions' financial services group in New York, said in an email. "As data breaches continue to occur, the responsibility and expectation of the board of directors will only increase."

Most directors and officers liability insurance policies do not specifically exclude cyber-related claims, but corporate officials must understand the nature of the risk they face. And because cyber risk mutates quickly, corporate executives and directors must stay current on the effect of cyber exposures on their organizations.

"Boards always have to deal with the most important issues facing a company," said Donna Ferrara, senior vice president, managing director and management liability practice group counsel at Arthur J. Gallagher & Co. in Wyckoff, New Jersey. "What's more important to business than technology, after people?"

Boards and executives ignore technology-related exposures at their own peril, experts said.

"I don't think there are any hidden cyber liability risks anymore," said Neil Posner, a partner at law firm Much Shelist P.C. in Chicago. "There may be corporate officers and directors out there who do not fully appreciate those risks, but I don't think it takes a lot of work to figure out what those risks are. What it really means, it would be very difficult for a corporate director and officer to defend himself or herself on a



ground that, 'I just didn't know,'" he said.

Mr. Posner cited "spear phishing," which typically is an email that appears to have been sent by a person or business the recipient knows as an example of such risks. He said hackers use this to extract credit card and bank account numbers, passwords, and similar information. Other risks include malicious code and malware that create vulnerabilities in computer systems, which can result in data theft, damage to files and, in some cases, the systems themselves.

Robert Parisi, managing director and national cyber risk product leader at Marsh USA Inc. in New York, agreed that cyber risks may

be "underappreciated" by boards of directors. They include reputational risk and vicarious or contingent risk stemming from reliance on third parties such as cloud computing providers, he said.

But the level of board awareness has increased "dramatically," said Mr. Parisi. "I think it's become very clear to pretty much every director, every officer that cyber risk is something they have to deal with."

"We've seen boards becoming very aggressive in trying to attract talent that can manage these issues," he said. "You haven't until now found many boards seeking people who understand and handle technology issues."

Board members and officers need

to rely on risk management, IT and legal departments to understand their cyber risks, said Mr. Posner. "That's a shared responsibility."

Boards need to have "a full and current grip on the issue," said Tony Galban, Chubb Ltd.'s Warren, New Jersey-based senior vice president and D&O global product manager. "You want them to be comprehensively informed, and you want them to be currently informed," he said. "You don't want cyber to be a once-a-year board discussion."

The U.S. Senate also may get involved in the issue.

Sens. Jack Reed, D-R.I., and Susan Collins, R-Maine, introduced the Cybersecurity Disclosure Act of 2015, S. 2410, late last year. According to Sen. Reed's office, the bill would have each publicly traded company include in its U.S. Securities and Exchange Commission disclosures whether any member of the company's board is a cyber security expert, and if not, why such expertise is not necessary. No action has been taken on the bill.

Mr. Galban said one challenge is that board directors typically don't speak the language of cyber technology. "Customers have said getting someone to speak to the board who can inform and keep their attention can be a challenge," he said.

Boards should provide oversight and supervision of a company's cyber security risks and vulnerabilities, among other things, and develop a proper risk and security assessment that will quantify risk, identify meaningful risk metrics and convey the effectiveness of risk mitigation options, Mr. Hoffman said.

If a director or officer becomes the target of a liability action stemming from a cyber issue, D&O liability insurance can respond.

Marsh's Mr. Parisi said he is not aware of any D&O policies that exclude cyber per se, but they also would not provide the same coverage as a formal cyber liability policy.

"If it's a cyber event that has a material impact on the company, that would flow through the same way as if it were a financial or physical catastrophe," Mr. Parisi said.

But Willis Towers Watson's Mr. Yellen said there could be exceptions.

"One place you could end up having trouble is the terrorism exclusions, whether that applied to the acts of hackers and others," he said.

"It would be very difficult for a corporate director and officer to defend himself or herself on a ground that, 'I just didn't know.'"

Neil Posner,  
Much Shelist P.C.

# Cyber cover blended with professional liability

E&O insurers flexible in soft market

BY DONNA MAHONEY

Professional liability policyholders are enjoying enhanced coverage, and some are seeing significant rate cuts as the soft property/casualty market persists.

In particular, cyber risk coverage is being blended into errors and omissions policies as professionals grow increasingly wary of cyber-related exposures.

The move to blend cyber coverage into E&O policies, for an increased premium, follows increased demand for the coverage by policyholders who often view cyber liability as an intrinsic risk for professionals, said Jill Salmon, New York-based vice president of professional liability at Berkshire Hathaway Specialty Insurance Co.

"The focus has shifted from the 'vanilla' management professional liability policies to blended cyber products," Ms. Salmon said.

Lawyers and accountants were some of the last professions to get on board. "Law firms thought their lawyer's professional liability policy would cover a cyber breach and they didn't need additional capacity to address it. That seems to be changing," she said.

David M. Finz, New York-based senior vice president and senior client adviser for Marsh USA, said it is common to see cyber coverage blended into E&O policies, noting that media companies in particular are interested in the expanded coverage.

"The cyber liability product came out of the media and tech underwriting space," Mr. Finz said. "Media companies are accustomed to being asked about copyright infringement, defamation or errors in advertising, but cyber security is a whole new arena for them to respond to," Mr. Finz said.

In addition, the process of buying coverage is changing to reflect the increased cyber risk, he said. E&O policyholders are bringing their chief information security officers or chief technology officers to underwriting meetings to answer questions about cyber risks. "Underwriters ... are asking questions that haven't been part of underwriting discussions in the past," Mr. Finz said.

Cyber is one of several coverages increasingly being added to E&O policies as insurers seek to stand out from their competition, said Dennis Bissett, professional liability claims director at Sedgwick Claims Management Services Inc. in Chicago.

For example, larger accounting

firms "have senior underwriters and brokers interviewing them to determine what exactly their exposures are, and they will tailor that

See **PROFESSIONS** next page



Cyber risk coverage is being blended into errors and omissions policies as professionals grow increasingly wary of cyber-related exposures

Media companies are accustomed to being asked about copyright infringement, defamation or errors in advertising, but cyber security is a whole new arena for them to respond to."

David M. Finz,  
Marsh USA

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## PROFESSIONS

Continued from previous page

policy to their needs," he said.

"Now they're including crime coverage, cyber or reputational risk. Before this you would have to get each policy separately. Now they are combining those policies to fit what the risks are," Mr. Bissett said.

While coverage is being enhanced, the professional liability insurance is generally soft.

Paul Denny, errors and omissions leader for Marsh L.L.C. in New York, said rates are flat for most professions, despite increases in claims for some professionals, such as law firms, he said.

"Every profession is very different, but the lawyers are seeing an increase in big claims for classic mistakes arising out of human drafting errors; not checking documentation properly has led to some sizable losses in the marketplace," Mr. Denny said. Excess insurers "are pushing for rate increases more than the primary carriers because they're being hit by these kinds of sizable losses, but with the competition in the marketplace, they can't get the increases," he said.

One segment seeing lower rates is financial institutions, said Phil Norton, Chicago-based vice chairman of the Midwest region for Arthur J. Gallagher & Co.'s retail property/casualty brokerage operations and a managing director of the management liability practice.

"Financial institutions got gyped; they had seven years of increases. We didn't trust that they would survive in 2008 through 2010, but they did and now we want to give them a larger-than-normal decrease because they missed out on decreases other segments had been seeing in the past," he said.

Some financial institutions are seeing double-digit reductions, he said.



"Every profession is very different, but the lawyers are seeing an increase in big claims for classic mistakes arising out of human drafting errors; not checking documentation properly has led to some sizable losses in the marketplace."

Paul Denny, Marsh L.L.C.



One segment seeing lower rates is financial institutions, which missed out on decreases other segments had been seeing in the past



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Securities class actions have increased despite a decline in the number of publicly held companies; 4,972 companies were publicly listed in the United States in 2013, 43% fewer than 1996.

# GLOBAL ECONOMIC PRESSURES MAY FUEL CLASS ACTIONS

Lawsuits increase despite reduction in public firms

BY JUDY GREENWALD

**S**tock market volatility is among factors that could fuel the filing of securities class action litigation.

New York-based NERA Economic Consulting said in a report last week that federal securities class action cases totaled 234 in 2015, an 8% increase from 2014's 216 and the highest level since 2008.

The securities class actions have increased despite a decline in the number of publicly held companies. For instance, 5,305 companies were listed on major U.S. securities exchanges as of October 2015, down 40% from 8,783 in 1996, according to NERA.

The rise in class action filings also has come despite a decline in the number of initial public offerings. According to London-based Ernst & Young L.L.P., U.S. exchanges saw 139 IPOs raise proceeds of \$25.4 billion during the first nine months of 2015, compared with 220 deals with proceeds of \$47.9 billion for the same period in 2014.

Concerns about China's economy and cheap oil prices have fueled stock market volatility in recent weeks.

It is unclear how much IPO activity there will be this year

because of the stock market uncertainty and, especially, because this is an election year, said Deirdre Finn, a New York-based underwriter at Beazley P.L.C.

Experts say they generally do not expect a significant change in the amount of litigation filed.

The modern era of securities litigation "takes place in a rather narrow band," with usually around 200 cases filed, "plus or minus 20. From that perspective, you don't have a very large database to begin with."

Joseph P. Monteleone, Rivkin Radler L.L.P.

The modern era of securities litigation "takes place in a rather narrow band," with usually around 200 cases filed, "plus or minus 20," said Joseph P. Monteleone, a partner at Rivkin Radler L.L.P. in Hackensack, New Jersey. "From that perspective, you don't have a very large

database to begin with."

However, higher IPO activity of earlier years probably will contribute to an active level of litigation because there usually is a delay between the IPO date and the time a lawsuit is filed, said Kevin LaCroix, executive vice president of RT ProExec, a division of R-T Specialty L.L.C. in Beachwood, Ohio.

Another trend likely to continue this year is litigation against non-U.S.-domiciled companies, which "has been an important factor over the past several years," he said.

Several experts also say litigation against smaller entities has increased.

A small group of law firms has been targeting smaller issuers that experienced stock price declines, said Glenn K. Vanzura, a partner at Irell & Manella L.L.P. in Los Angeles. Whether that will continue "remains to be seen" and depends on the law firms' success, he said.

Other factors that may contribute to class action securities litigation this year include turmoil in the mining and oil and gas industries, said Mr. LaCroix. Many companies went into debt when oil prices were high and there could be increased litigation if they are unable to manage their

## Delaware law helps corporations avoid multiforum litigation headaches

Of all the strategies used by firms to diminish the number of stockholder derivative lawsuits, forum selection is likely to be most successful and effective, experts say.

Legislation approved by Delaware lawmakers last year validates that Delaware corporations can adopt bylaws designating the state's courts as the exclusive forum for shareholder litigation.

The same law prohibits publicly traded corporations from adopting bylaws that require plaintiff shareholders who lose derivative litigation to pay defense costs.

Other corporate efforts to discour-

age shareholder derivative litigation include so-called minimum-stake-to-sue bylaws, which require that shareholders comprise a specified portion of the company's outstanding shares, typically 1% to 2%, to sue.

Others have required shareholders to turn first to mediation or arbitration.

Experts generally believe, however, that the forum-selection provisions, which help corporations avoid litigation in multiple states, have gained the most traction.

These bylaws, which have been affirmed by the Delaware courts,

have become "mainstream," said Kevin LaCroix, executive vice president of RT ProExec, a division of RT Specialty L.L.C. in Beachwood, Ohio. They ensure that if there is litigation, it is filed in one court, and companies "don't have to worry about multiforum litigation."

Meanwhile, the Delaware judiciary has sent the message that judges will not approve settlements for cases that are not substantive, said Rob Yellen, New York-based executive vice president of Willis Towers Watson P.L.C.'s FINEX North America.

By Judy Greenwald



Legislation approved by Delaware lawmakers last year validates that Delaware corporations can adopt bylaws designating the state's courts as the exclusive forum for shareholder litigation.

Court's 2005 decision in *Dura Pharmaceuticals et al. v. Michael Broudo et al.*, established an improved loss-causation standard for securities fraud plaintiffs.

Barring a new development or tactic by the plaintiffs bar or a financial crisis, "I don't think we will see a spike" in litigation, said Brenda Shelly, New York-based directors and officers product leader at Marsh L.L.C.'s FINPRO practice.

Securities lawsuits "have largely followed the fortunes of the economy," said Patrick M. Kelly, a partner at Wilson Elser Moskowitz Edelman & Dicker L.L.P. in Los Angeles. "If the economy continues to prosper, we'll probably see a flat year in terms of securities suits."

However, any dip in securities class action litigation "should not be read as some kind of sign that the D&O liability landscape has gotten less risky," warned Carl E. Metzger, a partner at Goodwin Procter L.L.P. in Boston. "Overall, that landscape has just as many land mines as it has had in the past. They may just be in different shapes and forms."

debt obligations, he said.

Greater stock market volatility will result in more litigation "because there will be some significant drops" in certain companies'

stock prices, said Jacqueline Urban, Chicago-based senior managing director and practice leader of Aon Risk Solutions' financial services group.

Meanwhile, two positive trends for publicly held companies include improved corporate governance and favorable case law, said Steve Boughal, New York-based

vice president and chief underwriting officer of Hartford Financial Products, a unit of Hartford Financial Services Group Inc.

For example, the U.S. Supreme

## EMPLOYMENT LITIGATION IS A BIG PROBLEM FOR BUSINESSES OF ALL SIZES



**11.7%**

Likelihood that an employee will bring a charge of discrimination against their employer

**\$125,000**

Average cost for an SME to resolve an employment matter

**275 days**

Average duration of an employment matter for an SME

Source: 2015 Hiscox Employee Lawsuit Handbook

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Ranked by direct premiums written through the third quarter of 2015, in millions of dollars

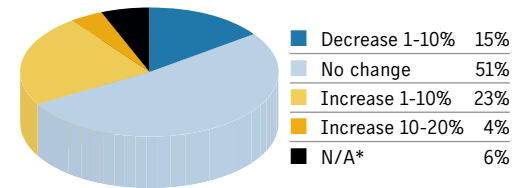
2015	2014	Insurer	Direct premiums written	% increase (decrease) vs. 3Q 2014	Direct losses incurred	Direct loss ratio	Market share
1	1	American International Group Inc.	\$778.4	2.6%	\$478.4	60.5%	16.6%
2	2	XL Group P.L.C.	\$466.5	1.2%	\$364.5	75.1%	9.9%
3	3	Chubb Corp.*	\$432.7	4.2%	\$97.3	22.0%	9.3%
4	4	Tokio Marine Holdings Inc.	\$416.7	0.6%	\$214.1	50.5%	8.9%
5	5	CNA Financial Corp.	\$289.0	(2.4%)	\$184.9	60.5%	6.2%
6	7	Ace Ltd.*	\$227.9	2.5%	\$164.6	70.6%	4.9%
7	6	Travelers Cos. Inc.	\$227.5	(3.1%)	\$127.0	53.0%	4.9%
8	9	American Financial Group Inc.	\$174.4	4.9%	\$55.2	32.2%	3.7%
9	8	Zurich Insurance Group Ltd.	\$155.9	(13.2%)	\$147.5	89.1%	3.3%
10	10	Alleghany Corp.	\$127.6	(4.1%)	\$96.8	72.2%	2.7%
11	11	W.R. Berkley Corp.	\$113.4	(7.3%)	\$63.0	52.6%	2.4%
12	12	Axis Capital Holdings Ltd.	\$101.5	(14.3%)	\$61.7	51.6%	2.2%
13	14	Liberty Mutual Holding Co. Inc.	\$100.1	8.9%	\$15.5	16.0%	2.1%
14	13	Arch Capital Group Ltd.	\$90.4	(4.8%)	\$28.2	29.1%	1.9%
15	17	Endurance Specialty Holdings Ltd.	\$80.6	35.8%	\$31.9	43.2%	1.7%
16	15	Hartford Financial Services Group Inc.	\$73.5	(17.2%)	\$1.7	1.9%	1.6%
17	16	Cincinnati Financial Corp.	\$69.0	2.1%	\$14.3	21.3%	1.5%
18	22	Berkshire Hathaway Inc.	\$67.5	36.2%	\$12.3	20.6%	1.4%
19	18	Old Republic International Corp.	\$63.3	9.7%	\$23.8	39.9%	1.4%
20	20	Everest Re Group Ltd.	\$57.1	12.3%	\$50.4	86.3%	1.2%
Top 20 total			\$4,112.9		\$2,232.9	52.8%	87.9%
Industry total			\$4,678.9		\$2,453.8	51.1%	100%

\*Ace Ltd. completed the acquisition of Chubb Corp. and adopted the name Chubb Ltd. globally, effective Jan.14, 2016.

Source: SNL Financial L.C. analysis of National Association of Insurance Commissioners data

### D&O PRICING

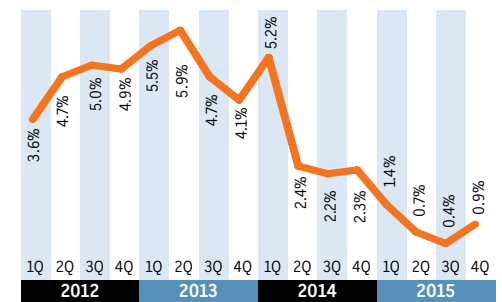
66% of survey respondents saw no change or a decrease in premium rates for directors and officers liability coverage during the fourth quarter of 2015.



\*N/A = Not available  
Source: Council of Insurance Agents & Brokers

### RENEWAL PRICING

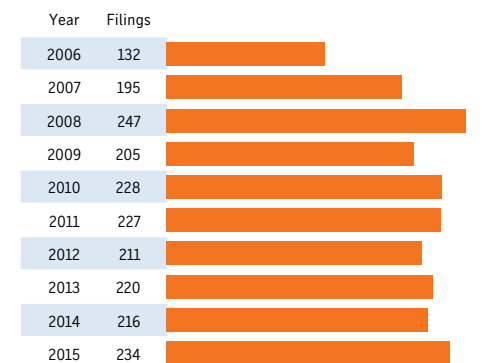
Average D&O renewal pricing changes by quarter since 2012



Source: Council of Insurance Agents and Brokers

### CLASS ACTIONS

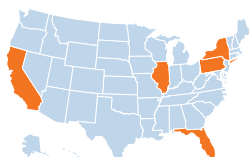
The number of securities class action filings in 2015 was the highest since 2008.



Source: NERA Economic Consulting

### TOP STATES

States with the most direct premiums written for medical professional liability insurance in 2014

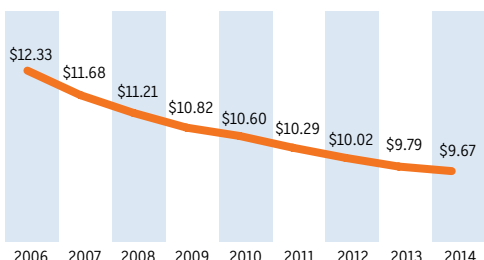


State	Direct premiums written	Number of insurers
New York	\$1,735,720,656	127
California	\$754,339,896	125
Pennsylvania	\$655,704,833	142
Florida	\$593,263,143	120
Illinois	\$527,421,729	126

Source: National Association of Insurance Commissioners

### PROFESSIONAL LIABILITY COVER

Direct premiums written for U.S. medical professional liability insurance 2006-2014, in billions of dollars



Source: National Association of Insurance Commissioners

### LARGEST MEDICAL PROFESSIONAL LIABILITY INSURERS

Ranked by direct premiums written through the third quarter of 2015, in millions of dollars

2015	2014	Company	Total direct premiums written	% increase (decrease) vs. 3Q 2014	Physicians	Hospitals	Other health care professionals	Other health care facilities
1	1	Berkshire Hathaway Inc.	\$788.4	5.7%	\$584.9	\$65.6	\$107.7	\$30.2
2	2	The Doctors Co.	\$540.9	(2.7%)	\$516.8	\$3.3	\$16.7	\$4.2
3	3	Medical Liability Mutual Insurance Co.	\$419.2	(12.2%)	\$382.5	\$26.3	\$10.4	\$0
4	4	ProAssurance Corp.	\$359.5	(3.1%)	\$251.8	\$21.1	\$81.1	\$5.5
5	5	CNA Financial Corp.	\$351.3	(4.4%)	\$53.3	\$73.9	\$189.1	\$34.9
6	6	Medical Professional Mutual Insurance Co.	\$306.8	(4.7%)	\$233.3	\$61.1	\$5.0	\$7.3
7	7	Physicians' Reciprocal Insurers	\$280.3	(8.6%)	\$213.8	\$61.7	\$4.8	\$0
8	8	American International Group Inc.	\$264.4	(2.5%)	\$43.9	\$52.7	\$56.4	\$111.5
9	9	NORCAL Mutual Insurance Co.	\$246.6	(0.6%)	\$245.5	\$0.8	\$0	\$0.4
10	10	MCIC Vermont, a Reciprocal Risk Retention Group	\$218.8	(8.8%)	\$0	\$218.8	\$0	\$0
Top 10 total			\$3,776.1		\$2,525.8	\$585.3	\$471.2	\$193.9
Industry total			\$7,794.8		\$4,616.5	\$1,613.7	\$958.3	\$606.4

Source: SNL Financial L.C. analysis of National Association of Insurance Commissioners data.

## Tom Ridge's firm expands cyber offerings

Ridge Global L.L.C. has launched three new cyber insurance products to complement the firm's cyber resiliency services.

The products are based around an organization's size and cyber priorities, Washington-based Ridge Global said in a statement. The Enterprise Plus is typically for larger organizations with revenue greater than \$2.5 billion and provides technical reviews. The Enterprise product provides feedback for insurance applicants on cyber resiliency for organizations between \$50 million and \$2.5 billion in revenue. The Professional product is a cyber product for smaller organizations with less than \$50 million in revenue.

Limits are available up to \$50 million, according to the statement.

"The C-Suite understands how to protect against physical damage to its assets, but still struggles with virtual damage, much to their peril," Tom Ridge, chairman of Ridge Global and the first U.S. secretary of Homeland Security, said in the statement. "That is why we have created customized insurance solutions that combine with our segment-specific risk management and best-in-class pre-breach services."

## Ironshore expands builders' risk coverage

Ironshore Inc.'s global property division has announced it will expand its builders' risk coverage to include wood frame commercial construction projects in the U.S. and Canada.

The policy will provide protection against property risks of large-scale commercial wood frame structures during construction. Sector-specific projects can include health care facilities, hotels and resorts, retail developments and residential buildings, Ironshore said in a statement.

Tony Mammolite, New York-based president of Ironshore global property, said in the statement that the introduction of the builders' risk enhancement "allows Ironshore to offer commercial builders the ability to secure comprehensive property protection within this specialty sector, thereby meeting the demand evidenced by heightened commercial wood frame construction activity throughout North America."

## Berkshire Hathaway launches Australian lines

Berkshire Hathaway Specialty Insurance Co. has launched four executive and professional lines policies in Australia.

The four new policies are Executive First Directors & Officers Liability Insurance; Professional First Financial Planners Professional Indemnity Insurance; Professional First Asset Manager Liability Insurance; and Professional First Civil Liability Insurance, Berkshire Hathaway said in a statement.

"We are pleased to introduce the first of our primary executive and professional lines policies in Australia, while round-

## PRODUCTS & SERVICES

### Insurer ups public workers' gunshot cover

\* Colonial Life & Accident Insurance Co. has beefed up its voluntary gunshot wound insurance policy for public-sector employees.

Colonial Life has raised the lump-sum benefit provided by the gunshot wound policy, available to workers as a voluntary benefit through their employers, to up to \$5,000 from \$1,000 for a covered injury from a nonfatal gunshot wound, the Columbia, South Carolina, insurer said in a statement.

The insurance policy covers gunshot wounds on or off the job and pays benefits regardless of any other insurance the employee has, according to the statement.

Policyholders can use the benefit to pay medical bills, copayments and deductibles, or household bills, according to the statement. The policy is also portable, so employees can retain coverage with no increase in premiums if they change jobs or retire.

"The coverage is ideal for police, fire, emergency medical technicians and even private security guards or any employee who values this benefit," Steven Johnson, Colonial Life's vice president of products and market development, said in the statement.

ing out our geographic footprint with experienced underwriting professionals now in Sydney, Melbourne and Brisbane," Cameron McLisky, head of executive and professional lines, Australasia, said in the statement.

### Hiscox expands terrorism coverage

Hiscox Inc., New York, announced that it has added new products to its terrorism portfolio.

The new products cover property damage caused by malicious attacks from nuclear, chemical, biological and radiological devices. The policy also provides coverage up to \$25 million for blast damage, decontamination and cleanup costs, and lost income caused by government actions, Hiscox said in a statement.

Additionally, policyholders will have access to Hiscox's Control Risks risk advisory services through a 24/7 helpline, according to the statement.

## Telehealth service targets Spanish-speakers

Mercer L.L.C. has joined with ConsejoSano to provide employers, employees and dependents with a telehealth service in the U.S. for native Spanish speakers.

San Francisco-based ConsejoSano, which helps connect employees to Spanish-speaking doctors, is designed to help employers simplify care, increase engagement and lower costs related to Spanish-speaking employees. Available 24/7, it can be accessed by phone or mobile app, Mercer said in a statement.

"Many Spanish-speakers disengage from the health care system altogether because of language and cultural barriers, lack of insurance coverage, or a lack of knowledge about how the U.S. health care system works," Abner Mason, CEO of ConsejoSano, said in the statement.

"As the diverse health needs of the U.S. population grow, so does the need for doctors who can understand and empathize with the language and cultural context of their patients," Dr. David Kaplan, leader of the Mercer Health Innovation LABS team, said in the statement."

## Hospitals protected from pandemic losses

Axis Healthcare, a unit of Axis Capital Holdings Ltd., has launched insurance coverage that protects hospitals in the U.S. and Canada from revenue loss due to an outbreak of a contagious disease.

The Axis Healthcare medical catastrophe business interruption and extra expense product provides coverage for bubonic plague, methicillin-resistant Staphylococcus aureus, Legionnaires' disease, Middle East respiratory syndrome, hantavirus, severe acute respiratory syndrome, West Nile virus, HIV, Ebola virus, Marburg virus, Lassa fever, influenza, bird flu and less well-known diseases, Axis said in a statement.

The policy provides coverage if a governmental quarantine of a hospital takes place, if 25% or more of the medical personnel don't come to work, if there is a 25% or more decrease in inpatient stays, or if there is a 25% or more reduction in emergency room visits. The maximum coverage lasts 12 months from the date the coverage is applied, according to the statement.

## Fidelity offers small-firm health exchange

Fidelity Investments, Boston, has launched a private health exchange for small and midsize employers.

Fidelity Health Marketplace lets employers with two to 2,500 employees select from a network of national and regional medical, dental, vision, and life benefits, as well as wellness programs and tax-savings options, Fidelity said in a statement.

The marketplace has been running for about a year.

A spokeswoman for Fidelity said the firm intends to expand it to all 50 states through a state-by-state process.

## DEALS & MOVES

### EPIC expands into Southwest with benefits consultant buy

San Francisco-based insurance broker and consultant Edgewood Partners Insurance Center has acquired Houston-based employee benefits consulting firm Ascende Inc., expanding the broker's footprint in the Southwest.

The transaction adds nearly 100 benefits professionals to EPIC's team of more than 200 benefits professionals nationally, EPIC said in a statement.

The deal adds capabilities including support for workers compensation, directors and officers liability insurance and property/casualty coverage, said Houston-based Jim Watt, former CEO of Ascende and now the regional president for the Southwest at EPIC. He is charged with expanding EPIC's Southwest footprint. EPIC has until now largely operated on the West and East coasts, Mr. Watt said. Ascende will continue to operate in Houston and will retain all of its employees, he said.

Mr. Watt declined to disclose the terms of the deal.

### Aspen acquires crop business, agricultural specialty firm

Aspen Insurance Holdings Ltd. has acquired AgriLogic Insurance Services L.L.C.

Terms of the deal were not disclosed.

AgriLogic is an Overland Park, Kansas-based specialist U.S. crop business and agricultural consultancy. AgriLogic President and CEO Joe Davis will continue in his role. Part of Aspen's existing reinsurance operations will be made up of Aspen Re and AgriLogic and led by Michael Dicker, global head of agriculture reinsurance, Hamilton, Bermuda-based Aspen said in a statement.

### Global travel risk manager acquired by specialty insurer

Specialty insurer Tokio Marine HCC has acquired Salem, New Hampshire-based On Call International L.L.C. Terms of the deal were not disclosed.

On Call International designs travel risk management plans that provide medical, travel, political and natural disaster coverage. The company provides risk management services that include medical evacuation and emergency assistance, to travelers around the world, Houston-based Tokio Marine HCC said in a statement.

"In today's increasingly perilous world for travelers, we've brought this vital service in-house, helping us to increase our competitive edge by offering a superior customer experience," Bill Hubbard, president and CEO of Wakefield, Massachusetts-based HCC Specialty, a Tokio Marine HCC division, said in the statement.

### USI Insurance Services acquires employee benefits wholesaler

USI Insurance Services L.L.C. said that it has acquired Marlton, New Jersey-based employee benefits wholesale brokerage CBDI Inc.

Terms of the deal were not disclosed.

CBDI will combine with Valhalla, New York-based USI's employee benefits wholesale brokerage unit, Emerson Reid L.L.C., according to a USI statement.

CBDI's 26 employees will remain at their current location.

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# WHAT MATTERS MOST



### REQUEST FOR PROPOSAL

UNITED STATES BANKRUPTCY COURT • SOUTHERN DISTRICT OF NEW YORK

In re OIC RUN-OFF LIMITED and THE LONDON AND OVERSEAS INSURANCE COMPANY LIMITED Debtors in Foreign Proceedings.

In a Case Under Chapter 15 of the Bankruptcy Code Case No. 15-13054 (SCC)

#### NOTICE OF ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDINGS, PERMANENT INJUNCTION AND RELATED RELIEF

NOTICE IS HEREBY GIVEN THAT, in connection with the petitions filed on November 16, 2015 (the "Petitions") by Dan Yoram Schwarzmann and Paul Anthony Brereton Evans (the "Petitioners"), in their capacity as the duly authorized foreign representatives, as defined in section 101(24) of title 11 of the United States Code (the "Bankruptcy Code"), of OIC Run-Off Limited (subject to a scheme of arrangement) ("Orion") and The London and Overseas Insurance Company Limited (subject to a scheme of arrangement) ("L&O," together with Orion, the "Companies"), the United States Bankruptcy Court for the Southern District of New York (the "Court") has entered an Order Granting Recognition of Foreign Main Proceedings, Permanent Injunction and Related Relief (the "Order") [Docket No. 18], which provides, among other things, that:

1. The proceedings respecting the Amending Scheme (as defined in the Order) in the High Court of Justice of England and Wales are granted recognition as foreign main proceedings pursuant to section 1517 of the Bankruptcy Code;
2. All relief afforded foreign main proceedings pursuant to section 1520 of the Bankruptcy Code is granted;
3. The Amending Scheme (including any modifications or amendments thereto) shall be given full force and effect in the United States, and shall be binding on and enforceable against any person or entity that is a Scheme Creditor (as defined in the Amending Scheme), including, without limitation, against such person or entity in its capacity as a debtor of the Company in the United States;
4. All Scheme Creditors are permanently enjoined from taking any action in contravention of, or inconsistent with, the Amending Scheme;
5. Except as otherwise provided in the Order or in the Amending Scheme, all Scheme Creditors are permanently enjoined from: (a) commencing or continuing any proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever) against a Company or any of its property in the United States, or any proceeds thereof, or seeking discovery of any nature against a Company; (b) enforcing any judicial, quasi-judicial, administrative judgment, assessment or order, or arbitration award and commencing or continuing any proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, attachment, garnishment, setoff or other claim against a Company or any of its property in the United States, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; and (c) invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring a Company to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative action, proceedings or process whatsoever) and such statute, rule or requirement will be rendered null and void for proceedings; and
6. In accordance with the terms of the Amending Scheme, all persons and entities in possession, custody or control of property of a Company or the proceeds thereof, are required to turn over and account for such property or proceeds thereof to such Company or the Scheme Administrators (as defined in the Amending Scheme).

Copies of the Petitions and the supporting documents and the Amending Scheme documents are available (1) on the Bankruptcy Court's Electronic Case Filing System, which can be accessed from the Bankruptcy Court's website at <https://ecf.nysb.uscourts.gov/> (a PACER login and password are required to retrieve a document), (2) on the Petitioners' website, [www.oicrun-offitd.com](http://www.oicrun-offitd.com), or (3) upon written request to the undersigned counsel:

CHADBOURNE & PARKE LLP • Attorneys for the Petitioners • 1301 Avenue of the Americas  
 New York, New York 10019 • (212) 408-5100 • Attn: Howard Seife, Esq. and Eric Daucher, Esq.

# Reach the A-list



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# SPLIT POINT

Continued from page 4

The National Council on Compensation Insurance Inc. has updated its split point — one of the factors used in ex-mod calculations — incrementally over the past few years. Most of the 34 states that use Boca Raton, Florida-based NCCI to set workers comp rates saw their split point raised in 2012 from \$5,000, the standard for two decades, to \$10,000 in 2013, \$13,500 in 2014, \$15,500 in 2015 and \$16,000 as of Jan. 1.

“Because there had been claim escalation and the average cost of claims had gone up over a number of years without the split point increasing, it was not an appropriate cut off for that frequency point,” Christine Williams, New York-based managing director in Marsh L.L.C.’s Workers’ Compensation Center of Excellence, said of why the split point increased.

Rather than simply setting the split point, NCCI began raising it based on claim-expense inflation in 2016. The split point rate is

\$16,000 as of Jan. 1.

Workers comp claim losses less than the split point are known as “primary losses” and reflect the frequency of an employer’s workers comp claims, according to NCCI documents. Claim losses that exceed the split point are referred as “excess losses,” which reflect claim severity.

Primary losses are factored more heavily than excess losses into an employer’s experience rating formula, according to NCCI. So, raising the split point could increase the number of workers comp claims considered primary losses.

In turn, employers whose primary losses increase could see their ex-mod increase, which would ultimately drive a hike in workers comp premiums.

Jeff Eddinger, senior division executive at NCCI, said the split point is meant to even out fluctuations in an employer’s loss history that could result from a small number of severe claims.

“It’s saying that 100 \$10,000 claims are worse than one \$1 million claim, because a \$1 million claim just might have been a freak accident,” Mr. Eddinger said. “But

if you have 100 \$10,000 claims, something’s going on in the business where safety is a factor.”

NCCI took over ratemaking in July for Texas, which previously had its workers comp rates set by the Texas Department of Insurance.

While the insurance department had used a split point of \$5,000, Texas employers saw a jump to NCCI’s higher split point for workers comp policies renewed on or after July 1.

Mr. Math of Texas Mutual said the split point jump has not hurt employers that tend to have claim losses under \$5,000, such as companies where a significant number of employees work in offices.

Texas employers that have frequent workers comp claims with losses of more than \$5,000 are more likely to see an increase in their ex-mods and workers comp premiums, Mr. Math said.

He notes that Texas is the only state that allows employers to negotiate their ex-mods with workers comp insurers, allowing policyholders to mitigate some of the potential cost increases from higher split points or ex-mods.

However, Mr. Math said such negotiations for Texas employers will cease in 2018 under NCCI rules.

Split point changes also are expected to affect employers in New York, where workers comp rates are set by the New York Compensation Insurance Rating Bureau. New York’s split point was raised to \$15,000 from \$10,000 as of Oct. 1, according to bureau filings posted online.

Experts agree that employers can reduce potential cost increases from changing split points by keeping their workers comp claims costs as low as possible.

“Any increase in the split point just reinforces the need for best-in-class safety, cost control, claims management practices and risk management,” Marsh’s Ms. Williams said.

“It’s really about getting ahead and identifying what are the large losses that are going to have the biggest impact on your experience mod, then really working with their broker, their TPA or their carrier to get those claims closed at a lower cost,” said Ms. Ferrandino of Willis Towers Watson.

# SAFETY

Continued from page 6

criminal code,” said Daryl Cukierman, a Toronto-based partner at Blake, Cassels & Graydon L.L.P. “But I think it’s important to keep in mind that the facts that were found by the court in this case were particularly egregious.”

The judge found there was wanton or reckless disregard for worker safety, Mr. Kazenelson had direct knowledge of the safety lapses and did nothing to rectify them, that having fall protection is a fundamental rule to protect employees working at heights and that the incident resulted in fatalities, he said.

“That is a sobering thing for supervisors,” said Adrian Miedema, partner in the Toronto employment group of Dentons Canada L.L.P. “It is not going to be enough to simply identify a concern, but these supervisors should, where appropriate, take proactive steps to rectify or remedy that concern.”

## Jail a deterrent

Still, the sentence was “pretty harsh” considering Mr. Kazenelson was not the direct supervisor at the site and the person most directly responsible, Fayzulla Fazilov, told Mr. Kazenelson not to worry about the lack of harnesses and allowed the work to continue, said Norm Keith, Toronto-based partner at Fasken Martineau DuMoulin L.L.P. who was not involved in the case.

Mr. Fazilov also died in the incident.

“Why can’t a project manager rely upon his onsite supervisor to deal with safety issues?” Mr. Keith said. “Just because the primary person responsible is not around, doesn’t necessarily mean that you go harder on Mr. Kazenelson.”

In 2012, a trial judge imposed a penalty of \$200,000 Canadian (\$137,580) on Metron Construction, but the Ontario Court of Appeals the next year increased the fine to CA\$750,000 (\$516,000), plus a 25% victim’s surcharge. The appeals court said the trial judge put too much emphasis on Metron’s financial health and not enough on the gravity of the criminal negligence conviction and imposed the largest fine handed down to date for a workplace safety violation under the code, according to legal experts.

However, jail sentences are a more effective tool in sending employers a message about workplace safety, Mr. Buckley said.

“The more serious the consequences, the more likely someone is going to get thrown in jail,” Mr. Miedema said.

# CYBER

Continued from page 4

ultimately that trickles down to our customers so we can better advise” them on managing risk.

Right now, “the insureds are overwhelmed by the different standards and the different suggestions about what best practices are,” said Kevin Kalinich, Chicago-based global practice leader of cyber risk solutions at Aon Risk Solutions.

The Lloyd’s plan provides a “much better roadmap for the risk manager to identify what the key issues are,” Mr. Kalinich said.

“I’m hoping it will translate into more stability in the cyber market” by giving underwriters “additional accuracy and comfort to the point where maybe they will relax a little bit with some of my clients,” said Phil Norton, Chicago-based president of Arthur J. Gallagher & Co.’s professional liability division.

While there is a need for standardization, “how it gets met is the bigger question,” said Robert



Parisi, New York-based national cyber product leader at Marsh L.L.C.

For other lines, including property/casualty, “pretty much most of the marketplace talks with a common vernacular” to describe risk, “with data points used to capture risk so actuarial tables can be built,” Mr. Parisi said. Right now, cyber policies are “trying to get to the same thing, but they’re speaking with different accents as it were.”

The Lloyd’s announcement “is an excellent first step, but not the end of the journey,” Mr. Parisi said.

Having a common language for cyber risk will allow brokers and underwriters to leverage much more information to ensure better coverage of cyber risks, said Ryan

Jones, director of cyber risk intelligence at London-based brokerage BMS Group Ltd.

A lack of consistent terminology has meant that sometimes it is difficult to talk to buyers about cyber risks, said Sarah Stephens, head of cyber and technology and media E&O at JLT Specialty, a unit of Jardine Lloyd Thompson Group P.L.C. in London.

Elements of the common core data, such as which cloud computing provider a company uses, will give a better sense of whether underwriter fears about a so-called “cyber hurricane” resulting from risk aggregation are founded, Ms. Stephens said.

“There’s a huge need” for standardized data to measure aggregation of cyber risk, which can be reflected in policies including directors and officers, property and general liability, said Ben Beeson, Washington-based cyber risk practice leader at Lockton Cos. L.L.C. Until now, the cyber insurance industry has been focusing on personally identifiable information and personal health information, he said.

# EXCHANGES

Continued from page 4

senior partner in Washington.

Effective this year, employers with at least 50 employees face a penalty of \$2,160 per employee if they do not offer coverage to at least 95% of their full-time employees.

“The math just does not work,” Ms. Watts said.

In other situations, employers are waiting to see how well public exchanges hold down costs and

what medical providers are part of those networks before making the change, Ms. Watts said.

In addition, with public exchange plan premiums escalating, some employers feel they cannot rely on exchanges to replace their own programs, said Steve Wojcik, vice president of public policy at the National Business Group on Health in Washington.

Still, exchange enrollment may be lagging for unrelated reasons.

Despite a massive government outreach program, millions of uninsured U.S. residents still are not

aware of the availability and size of premium subsidies to the lower-income uninsured, Mr. Wojcik said.

For example, individuals who received subsidies paid, on average, \$113 a month for coverage purchased through the federal health insurance exchange, the Department of Health and Human Services said last month.

Without those subsidies — available to uninsured individuals with incomes between 100% and 400% of the federal poverty level up to \$47,080 — the average monthly premium would have been \$408.

Effective this year, employers with at least 50 employees face a penalty of \$2,160 per employee if they do not offer coverage to at least 95% of their full-time employees.

# CLASS

Continued from page 3

“The ruling, both the majority and the dissent, leaves open the prospect that a defendant can moot a class action by making an offer of judgment and actually tendering payment of the judgment to the court,” said Gerald E. Arth, a partner at Fox Rothschild L.L.P. in Philadelphia.

“This might be an effective tactic for defendant companies to control their own destiny in a way that (defendants in) class actions generally can’t,” Mr. Mick said.

In many Telephone Consumer Protection Act cases, plaintiffs attorneys have only one plaintiff when seeking class certification. “Picking off” that plaintiff by offering a settlement could result in the case being dismissed or at least increase plaintiffs attorneys’ expenses as they seek more clients.

“If actual payment makes a difference, that could significantly impact plaintiffs counsel because they’re going to have to worry, ‘Who’s my second, third, fourth, plaintiff,’” and how the class action can proceed, said Lewis S. Wiener, a partner at Sutherland, Asbill & Brennan L.L.P. in Washington, who co-chairs the law firm’s practice on the TCPA.

“It’s going to shift the balance between the defense and the plaintiffs, and require the plaintiffs counsel to do more work upfront,” said Mr. Wiener, who estimated a case involving the payment of funds suggested by Justice Ginsburg could reach the court by 2018.

“Companies should certainly carefully read the decision and, if they’re in a position to, either send a check to the plaintiff or deposit money in the court,” said Matthew J. Fedor, a partner at Drinker Biddle & Reath L.L.P. in Florham Park,

## UNACCEPTED SETTLEMENT OFFER AT HEART OF TEXT MESSAGE RULING

The U.S. Supreme Court’s 6-3 ruling in *Campbell-Ewald Co. v. Jose Gomez* stems from a U.S. Navy recruitment message.

Mr. Gomez, then nearly 40 years old, received an unsolicited text message in May 2006 from Mindmatics L.L.C., a subcontractor hired by marketing firm Campbell-Ewald Co., urging that he enlist in the Navy, according to court papers. The contract between Mindmatics and Campbell-Ewald had provided that the messages, which were sent to more than 100,000 people, were to be sent to cellular phone users between the ages of 18 and 24 who had consented to receiving solicitations.

Mr. Gomez filed suit in 2010 against Detroit-based Campbell-Ewald in Pasadena, California, federal court alleging the firm violated the Telephone Consumer Protection Act by sending the message and sought class action status.

Campbell-Ewald offered Mr. Gomez \$1,503 for each message he received plus costs to settle the case, but he allowed the offer to lapse.

The marketing firm then moved to dismiss the suit, arguing Mr. Gomez’s rejection of the offer made the case moot. The federal court granted the firm summary judgment.

But in September 2014, a three-judge panel of the 9th U.S. Circuit Court of Appeals in San Francisco reinstated the case, and the marketing firm appealed to the U.S. Supreme Court.

“An unaccepted settlement offer has no force,” Justice Ruth Bader Ginsburg wrote for the U.S. Supreme Court’s 6-3 majority. “With the offer off the table, and the defendant’s continuing denial of liability, adversity between the parties persists.”

“We need not, and do not, now decide whether the result would be different” had the defendant deposited “the full amount of the plaintiff’s individual claim in an account payable to the plaintiff” and a court entered judgment for the plaintiff in that amount, Justice Ginsburg wrote. “That question is appropriate for a case in which it is not hypothetical.”

By Judy Greenwald

New Jersey.

“The law is going to develop from this point forward, as defendants try to figure out what they can do ... and plaintiffs lawyers will try and figure out how they can minimize the defendants’ ability to do those things,” said Joshua D. Rogaczewski, a partner at McDermott Will & Emery L.L.P. in Washington.

However, Lori Armstrong Halber, a partner at Fisher & Phillips L.L.P. in Philadelphia, said there are other considerations.

“There has to be an agreement on some level that the offer actually covers the potential damages,” she said, “I’m not entirely convinced” that submitting the money “changes the complexion, if you will, of the offer.”

# MICRO

Continued from page 3

Insurance Services USA Inc. in New York.

In some cases, when premiums were converted to surplus, owners would “take back that surplus or give it to grandkids, children or spouses,” he said.

“You’re kind of taking out the bad actors” with the revised requirements, Mr. O’Brien said. The primary focus will be “building up surplus for that day that will come when you might have that high-severity loss and you don’t want it to impact your balance sheet.”

Plenty of interested companies have decided against an 831(b) election to avoid attracting an IRS audit or because they did not feel there was IRS support of the structure, said Leslie C. Boughner, chairman of the business insurance division at Advantage Insurance Management L.L.C. in Naples, Florida.

By increasing the threshold and directly addressing estate planning and wealth-transfer abuses, the IRS effectively “endorsed” 831(b), he said.

While the \$2.2 million ceiling will allow more companies to take advantage of the election, Mr. O’Brien said “this will still be the domain” of privately held “middle-market companies, with revenue from \$25 million up to probably \$500 million.”

The total number of captives worldwide was 6,876 in 2014, a 7.1% increase over the previous year, according to the latest

*Business Insurance* survey.

Charles J. Lavelle, senior partner at Bingham Greenebaum Doll L.L.P. in Louisville, Kentucky, said traditional captive users with premiums up to \$2.2 million will “seriously consider making the election,” but he also said there are downsides to weigh.

“If your claims fluctuate substantially, then you’ll have years where you have an underwriting loss, and that’s where the election is unfavorable ... and the election is irrevocable,” Mr. Lavelle said.

Many companies likely will take a wait-and-see approach, but captives electing Section 831(b) will become more prominent over time, Mr. O’Brien said.

Christopher L. Kramer, senior vice president of business development at Caitlin Morgan Insurance Services in Cleveland, said inquiries have increased since the Section 831(b) changes were passed.

The changes have “elevated the recognition that captives are a useful tool,” Mr. Kramer said.

The election is, perhaps, most useful to recapture profits that commercial insurers would otherwise take, said Sean B. Rider, managing director of consulting and development at Willis Towers Watson P.L.C.’s global captive practice in New York.

So even though workers compensation is a main reason companies move to a traditional captive arrangement, sources said the generally high-frequency and low-severity line is less desirable for microcaptives that want to maximize underwriting

income.

However, Jason Flaxbeard, senior managing director at Beecher Carlson Holdings Inc. in Denver, said many clients who have made the election do write workers comp.

“It provides them with a lower underwriting profit in some instances, but that’s because the captive is set up to respond to a specific risk management need,” Mr. Flaxbeard said.

Because of the opportunity to retain underwriting profits, sources said many companies write risks such as business interruption, cyber, terrorism and natural catastrophes.

Nontraditional lines such as audit liability, intellectual property and copyright infringement might be included, either because they can’t be obtained in the traditional market or a company has an unusual risk, Mr. Kramer said.

Beecher Carlson’s Mr. Flaxbeard said the changes to Section 831(b) are great for anyone “in this space appropriately and for the right reasons.”

Advantage Insurance’s Mr. Boughner called the amendments “a very positive development for the captive industry.”

“There are going to be captive managers out there that are now going to have to restructure their entire portfolio,” Mr. Boughner said. “And there are going to be others that did it for the right reasons in the right way that are going to look at (the changes) and say, ‘This really has no impact on us. We’re just going to continue to grow the business.’”

# MERGERS

Continued from page 6

Publicly traded brokers Arthur J. Gallagher & Co., in fourth place with 27 deals, and Brown & Brown Inc., in seventh place with 12 transactions, were the only non-private equity-backed firms in the top 10 buyers for 2015.

Publicly traded and privately held brokers reported fewer deals in 2015 while banks and buyers in the “other” category increased the deals they made.

Agents and brokers focused on property/casualty coverage continue to be the primary acquisition targets, accounting for about 56% of all deals last year. While sales of brokers focused on employee benefits and those offering property/casualty and employee benefits services increased last year, their share of total M&As dropped to 17%.

Significant deals in 2015, which do not include international acquisitions, included:

■ The merger of Willis Group Holdings P.L.C. and Towers Watson & Co. was announced in June 2015, which established Willis Towers Watson P.L.C. and became effective in January 2016.

■ Stone Point Capital L.L.C., Greenwich, Connecticut, took a “significant” undisclosed stake last June in Newport Beach, California-based Alliant Insurance Services Inc. to join New York-based Kohlberg Kravis Roberts & Co. L.P. as the largest institutional investors in Alliant.

■ Arthur Gallagher purchased William Gallagher Associates Insurance Brokers Inc. last June.

■ Integro Ltd., New York, consolidated its equity backers to New York-based Odyssey Investment Partners L.L.C. in November.

■ Marsh & McLennan Agency L.L.C. brought MHB T Inc., Dallas, last June and J.W. Terrill Inc., St. Louis, in July.

■ Atlanta-based Prime Risk Partners Inc. made its first acquisition in purchasing Cook Maran & Associates Inc., East Hampton, New York last June.

Expectations for the near-term future are for a continuation of the current M&A environment — barring significant financial, political or economic events that may change the underlying market. The U.S. economy continues to move forward. Insurance prices are softening, but not significantly, and are being offset to some degree by growth in exposures and coverage. Interest rates are still at historic lows, but have slowly started the increase many have been expecting and will likely continue to move up over the next several years.

While there is no belief the brokerage M&A bubble will burst or slow in the near term, the current valuation levels may not be sustainable. Whether private equity investors fail to achieve their expected returns or buyers simply can’t afford sellers’ prices, at some point the valuations will come back to some degree of normalcy.

If you are a buyer, caution may be appropriate. If you are a potential near-term seller, consider getting on the bandwagon sooner rather than later, before it changes course.



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# STORM

Continued from page 3

residential claims.

Business interruption, said Mr. Miller, is a more complex claims equation because lost sales must be proven, whereas retailers that lost sales one day could very well recoup such sales in the following days.

Companies hardest hit by lost business will be those which don't recoup sales, such as restaurants and entertainment, said Mr. Miller.

"Some consumer segments, primarily restaurants, will be the big losers, as the lost sales won't be

made up," New York-based Moody's Analytics Inc. said in a research note after the storm.

Business interruption claims may take time to sort out.

"What's really going to be interesting will be finding out how much of the business interruption is covered on the commercial side," said Steve Bowen, associate director and meteorologist with Aon Benfield Group Ltd. in Chicago.

"Transportation will be another loser. Transit systems were completely or partially shut down in D.C., Baltimore, Philadelphia and New York, and these lost sales won't be recouped," said the Moody's Analytics report, which placed the storm's total economic losses at between \$2.5 billion and \$3 billion.

"This estimate is for the lost output that won't be recouped through overtime, working from home, and deferred spending," said the Moody's report, as distinguished from insured losses.

Aon Benfield, in a report, said "Given the substantial damage and business interruption, it remains too early to provide a specific economic or insured loss estimate."

The firm, did, however, say that "It is anticipated that this will be the first billion-dollar weather event for 2016."



AP PHOTO

Pedestrians navigate mounds of snow from Winter Storm Jonas on Jan. 26 in Times Square in New York. A fortuitous combination of timing and temperature appear to have helped dampen the storm's insured losses.

In its report, Aon Benfield noted that Jonas was similar in size and scope to the Jan. 5-10, 1996, event that hit the Northeast, Mid-Atlantic, and parts of the Midwest and caused estimated economic losses of \$4.6 billion and insured losses of \$920 million.

Mr. Bowen said it is still pre-

ma-  
ture to have a high level of confidence in saying that the final insured loss would match the 1996 event.

"What I can say is that we're very comfortable in assuming that insured losses will run into hundreds of millions of dollars," said Mr. Bowen.

He added that it will take some time, given the large footprint of storm damage, to produce accurate loss figures.

"It will be at least a few weeks until we can start to feel a little bit more comfortable in coalescing around a specific number," said Mr. Bowen.



**HEAR  
INTERVIEW**

Visit *Business Insurance's* multimedia Web page to hear Rick Miller, national property practice leader in Boston for Aon Risk Solutions, discuss insured losses from winter storm Jonas from an overall industry perspective with *Business Insurance* Associate Editor Matthew Lerner.

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**DEADLINE  
MARCH 1**

# PRIVATE

Continued from page 1

But Congress last year passed and President Barack Obama signed legislation delaying implementation of the Cadillac tax by two years to 2020.

“There’s no question that the Cadillac tax was a tailwind for private exchanges, and with the pause button hit, private exchanges will need to rely on other tailwinds,” said Jeff Yaniga, Chicago-based chief revenue officer for private exchange provider Maestro Healthcare Technology Inc.

For example, Accenture P.L.C. last year predicted a spike in exchange enrollment in 2017 as the Cadillac tax’s original 2018 effective date neared.

While Accenture last year projected private exchange enrollment would hit 12 million in 2016 and 22 million in 2017, it reported last month that only about 8 mil-

lion people enrolled in private exchanges this year.

An Accenture spokeswoman said the firm has “made a deliberate decision” to not predict private exchange enrollment in the future.

While the delay in the excise tax “will have an impact in that spike” in 2017 that Accenture predicted last year, “employers are continuing to pursue and assess various strategies to help stabilize their health care costs,” said Scott Brown, a Chicago-based managing director of Accenture’s private health exchanges. “We believe that this is why it’s even more critical for private exchanges to deliver meaningful differentiation in the market.”

If the Cadillac tax added allure to move to a private exchange, choice and decision-support tools are the “sticky” factors that will keep them coming, Mr. Yaniga said.

“Ten years ago, the choice you had around health care benefits was ‘yes or no.’ ‘Do you want them or not?’ And I think the millennial generation, and the X’ers and

Y’ers especially, are saying, ‘I need more options,’ and that all persists with or without the Cadillac tax,” Mr. Yaniga said.

Still, others don’t see the Cadillac tax delay, or even a full repeal, having a significant impact.

Don Garlitz, Salt Lake City-based senior vice president at bswift L.L.C., said the technology that is central to private exchanges will continue to prompt adoption. More than 11 million people used the bswift technology in 2015, up nearly 40% from the year before, he said.

“I think about exchanges as a mechanism for tech-enabled choice,” Mr. Garlitz said in an email. “We see ample evidence that employers of all sizes are embracing technology tools, such as employee self-service and decision-support tools, at a steady clip.”

“Although some people ... have talked about the Cadillac tax being an important part of the growth of exchanges, I have never believed that,” said Alan Cohen, chief strat-

egy officer and co-founder of exchange technology provider Liazon Corp. in New York.

The No. 1 reason clients move to an exchange, he said, is to attract and retain talent, not to cut costs — so the Cadillac tax delay would not affect their decision.

While a private exchange “certainly moderates costs to a degree, (it) doesn’t make sick people healthy,” Mr. Cohen said.

For many private exchange providers, most adopters are small and medium-size employers that, through the exchange, can offer benefits choices and an online shopping experience they previously might not have been able to offer, sources said.

But for large employers, moving to a defined contribution model or a high-deductible plan reduces costs without having to move to a private exchange, said Jay Godla, a partner with PricewaterhouseCoopers L.L.P. in Chicago.

A survey by the Washington-based National Business Group on Health last August found that 24%

of larger employers were considering moving active employees to a private exchange in 2017, down from 35% in the NBGH’s survey a year before. Only 3% of employers actually planned to move to a private exchange by 2016, according to the latest survey.

“When employers look at the most effective tactics to control their health care costs or to minimize the impact of the Cadillac tax, moving to private exchanges does not come up high on the list,” said Brian Marcotte, president of the NBGH in Washington. “There’s still not the confidence in large employers that they can manage costs better (through a private exchange) than what they’re doing today.”

The private exchange model “hasn’t really addressed the fundamental core drivers of medical cost,” such as care management, chronic disease management or value-based care, Mr. Godla said. So until then, “employers are saying, you know, let’s just wait and see.”

# AIG

Continued from page 1

bank financial company or the nature, scope, size, scale, concentration, interconnectedness or mix of the activities of the nonbank financial company could pose a threat to the financial stability of the United States.”

SIFIs are subject to heightened supervision by the Federal Reserve.

Activist investor Carl Icahn first raised AIG’s SIFI status in late October in calling for breaking AIG up into three companies — property/casualty, mortgage and life insurance — to enhance shareholder value.

“The regulators have made clear that the best outcome is for SIFIs to shrink and ‘reduce their systemic footprint,’” Mr. Icahn wrote in an Oct. 28 letter to Mr. Hancock. “If nothing is done, returns and AIG’s competitive position will continue to suffer as the SIFI regulation, including its costs and capital requirements, is fully implemented.”

Mr. Icahn has repeated that call since then, most recently in a Jan. 19 letter to the company’s board in which he said there “is only one sensible path for AIG to follow: become a smaller, simpler company with a path to de-SIFI.”

AIG has rejected the idea, and during a webcast last week, Mr. Hancock addressed the SIFI issue directly: The designation, he said, has “provided little to no additional expense” with compliance costs of \$100 million to \$150 million a year. Being designated a SIFI “has not prevented the return of capital” to shareholders, Mr. Hancock said.

While changing conditions could lead AIG to “consider an exit route” in the future, “worrying



AP PHOTO

Investor Carl Icahn first brought up AIG’s SIFI status in late October when calling for breaking AIG up into three companies.

about a SIFI designation today is a distraction to the important actions we have just announced,” Mr. Hancock said.

During last week’s webcast, Mr. Hancock also called concerns about the designation a “complete red herring.”

Observers split on how the SIFI designation has affected AIG.

“I’m pretty firmly of the view that at this point the SIFI designation is not preventing them from doing anything they want to do or need to do,” said Mark Dwelle, an insurance analyst at RBC Capital Markets Inc. in Richmond, Virginia. “I think the designation for nonbank companies is as much political as financial — (FSOC) have not established any capital requirements and they have not established an off ramp, so there’s no way of knowing whether what they’re doing would get them any closer to losing that designation or not.”

“I think any of AIG’s capital needs stemming from SIFI status are masked by the capital needs of its status as a weak (property/casualty) underwriter,” said Meyer Shields, a managing director at Keefe, Bruyette & Woods

Inc. in Baltimore. “If it’s successfully addressed, the reserve issues and overall profitability improves, then SIFI status could start to matter, but right now, I don’t think it does.”

But Josh Stirling, a senior analyst at Sanford C. Bernstein & Co. L.L.C. in New York, took a different view.

“We think pursuing a path to de-SIFI must be an urgent strategic priority for the firm, but with no apparent plans to de-SIFI, clearly the company disagrees,” Mr. Stirling said in a research note last week.

“We struggle to understand this posture from the company, since we believe that being a SIFI adds substantial direct costs if fully loaded (technology, audit, modeling, consulting, etc.), capital (we believe stress testing leads to capital held at AIG of 30% or more) and a huge tax in the form of a major strategic and operational distraction for this already overly complicated and challenged firm,” he wrote. “Practically none of their competitors have to face similar hurdles.”

Mr. Stirling added that he believes time is of the essence. “It appears the de-SIFI window may be open,” he said in the note.

Looking solely at the issue from a regulatory angle, an insurance attorney said AIG can handle the technical aspects of the designation.

“AIG has a lot of skilled people including people who interact with regulators,” said Tom Dawson, a partner in the New York office of Drinker Biddle & Reath L.L.P. and co-head of the firm’s insurance transactional and regulatory team. “I would have felt that AIG had this well and truly buttoned up in terms of the reports that are required by various regulators, and they cope with it. I believe it is a bit of a red herring.”

# ZURICH

Continued from page 1

with turning the Italian insurer around by cutting costs and selling assets worth about €4 billion (\$4.32 billion).

Generali said it expects to hire a new CEO as soon as February.

Mr. Greco will face several challenges on his return to Zurich, which said last month that it expected to report a \$100 million loss in its nonlife insurance segment for the fourth quarter of 2015 after large losses from storms in Europe, a tornado in Australia, a large credit and surety loss and several significant property claims.

Zurich has been restructuring since its fall pullout from the RSA deal and saw its third-quarter profit drop 78.6%, to \$207 million, due in large part to losses from the August 2015 explosions in the Port of Tianjin, China, and in its U.S. auto insurance book.

The restructuring, intended to save at least \$300 million in 2016, will see the insurer shed about 1,800 jobs, among other changes.

“I am honored to be asked to join Zurich at this critical juncture for the insurance industry,” Mr. Greco said in a statement last week.

“Like many global players, the company has faced market challenges in recent times, but I know that Zurich’s strong global franchise, the breadth of talent and the powerful brand provide all of the ingredients for our future success,” he said.

“Mario offers the rare combination of entrepreneurial spirit, deep industry knowledge and



Tom de Swaan, chairman and interim CEO, Zurich

proven CEO experience that anchored our search for Zurich’s next leader,” Mr. de Swaan, chairman of Zurich’s board of directors, said in the statement. “His intimate knowledge of our company and our history and his track record as a leader make him a unique candidate for the role.”

Eamonn Flanagan, head of the Liverpool, England office of Shore Capital Group Ltd., said Mr. Greco is well placed to help steer Zurich through its restructuring.

He described Mr. Greco as “a class act” who “knows Zurich well” and helped turn around the fortunes of Generali, a similarly large and complex insurance group.

Mr. Greco has a good track record and knows the industry well, Georg Marti, an analyst at Zurcher Kantonalbank in Zurich, said in an investor note.

Mr. Greco is an “experienced turnaround manager” who must now work to get Zurich’s nonlife business back on track, Daniel Bischof, an equity research analyst at Helvea Baader Bank Group in Zurich, said in an investor note.

Thomas Seidl, a London-based senior research analyst at AllianceBernstein L.P., said one thing Mr. Greco must do is address Zurich’s reserving position.

Rating agencies did not immediately change their ratings of Zurich after Mr. Greco’s appointment was announced.

But in a note after Zurich’s fourth-quarter profit warning, A.M. Best Co. Inc. highlighted execution risks associated with the turnaround plan without elaborating.

Contributing: Judy Greenwald, Sheena Harrison, Shelby Livingston, Dave Roknic, Sarah Veysey



CARNIVAL FILMS

## Downton serves up workplace advice

**A**lthough it harks back to a period of time when there was a clear divide between “upstairs” and “downstairs,” British period drama *Downton Abbey* can offer today’s employers valuable lessons on how to ensure they have disability-inclusive workplaces, according to one blogger.

Although the show is set in a bygone era, there are lessons that modern employers can take from the actions of Lord Grantham, head of the eponymous household, according to Jennifer Sheehy, deputy assistant secretary of labor for disability employment, who writes a blog on the U.S. Department of Labor’s website.

“For instance, when Mrs. Patmore, the estate’s longtime and beloved cook, begins experiencing vision loss, Lord Grantham arranges for cataract surgery and lays out a return-to-work plan,” the blogger notes.

There are also examples of Lord Grantham — the “CEO” in this case — showing his support for staff with combat injuries sustained in WWI, Ms. Sheehy notes.

## Lawsuits sting lip balm company

**T**he maker of egg-shaped lip balms seen on the pouts of celebs like Britney Spears and Hilary Duff — eos Products L.L.C. — may have found itself in a rough situation it can’t smooth over.

Several class action lawsuits filed in district courts in Illinois, California, New York and Florida claim that eos balms have left users’ lips cracked, bleeding, burning, boiling and blistering, according to the Chicago Tribune.

Sounds glamorous.

One class action filed last month in the Illinois Central District Court in Urbana, Illinois, claims the mint

green eos lip balm left an Urbana woman with rashes and blisters, the Chicago Tribune reported.

And a Long Island, New York, woman has filed a class action in the New York Southern District Court in Manhattan, claiming the lip balm gave her two week’s worth of sores on her lips, the New York Daily News reported.

In other class actions, plaintiffs claim they experienced similar issues with the products.

New York-based eos, which stands for “evolution of smooth,” wrote on its Facebook page on Jan. 13 that the lawsuits are “without merit.”

## COURT THROWS FLAG ON HAIL MARY LAWSUIT OVER TICKET PRICES



AP PHOTO

Seattle’s Richard Sherman tackles Denver’s Julius Thomas in action during Super Bowl XLVIII at MetLife Stadium in East Rutherford, New Jersey.

**T**here were probably thousands, if not tens of thousands, of football fans who were frustrated by the expense and unavailability of tickets to the 2014 Super Bowl in East Rutherford, New Jersey, but only two who apparently took the matter to court. Unfortunately, for them, their legal effort was unsuccessful. Josh Finkelman paid \$2,000 each for four tickets that had an \$800 face value, while Ben Hoch-Parker gave up his attempt to buy tickets when he saw how much they would cost, according to last week’s ruling by the 3rd U.S. Circuit Court of Appeals in Philadelphia.

The two men filed suit against the National Football League and affiliates under New Jersey’s Ticket Law, a rarely litigated, anti-scalping statute, asserting the NFL’s method of selling tickets to Super Bowl XLVIII violated the law and unjustly enriched the league.

Their efforts gained little yardage. Mr. Hoch-Parker did not have standing to sue because he never actually purchased a ticket. He therefore had not suffered the requisite injury required to successfully file suit, said last week’s ruling, which upheld a ruling by the U.S. District Court in Trenton, New Jersey.

As for Mr. Finkelman, the ruling notes only 1% of tickets are available to the general public, and one of those can only be obtained through a League-sponsored lottery.

“The problem is that Finkelman failed to enter the lottery,” said the ruling.

In the end, in light of the Seattle Seahawks’ lopsided 43-8 victory over the Broncos that year, one can’t help but wonder what all the fuss was about.

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

## Farmer’s fraud fails despite painful plan

**P**ulling off a successful insurance scam requires a bit of nerve, but a Spanish farmer’s fraud took nerve to the next level.

The man was in desperate financial straits in 2007 when he came up with a cold-blooded plan to collect from numerous insurers, according to reports about a provincial court’s ruling on his fate last month.

In December of 2007, the farmer, identified by a local newspaper, as Miguel B.P., 42, of Nules in Spain’s rural Castellon region, completely sliced off his right hand as Step 1 of his scheme.

He then applied a tourniquet and drove to a curve in a road where he swerved off, landing in an orange grove. There, he placed his severed hand in the car and torched the vehicle, staging an accident, according to reports.

The court sentenced the farmer to four years in jail, a €3,000 (\$3,278) fine and an order to repay €335,000 (\$366,021) he had collected from eight separate insurers.



BRAVO TV.COM

Sheree Whitfield and “Chateau Sheree.”

## ‘Housewife’ faces insurance reality

**A** star on the “Real Housewives of Atlanta” reality television show is reportedly suing an insurer for being a real pain to deal with after her new home suffered water damage.

Sheree Whitfield filed a lawsuit last month in Fulton County, Georgia, court against Central Mutual Insurance Co., according to the Atlanta Journal Constitution. She reportedly alleges that the Van Wert, Ohio-based insurer failed to pony up on a builders risk policy that covered a building contractor working on her house, which is often referred to as “Chateau Sheree” on the “Real Housewives” show.

The dispute was in relation to a water leak in the 15,000-square-foot house, which reportedly caused significant damage to the house, according to media reports. While Ms. Whitfield said she hired contractors to repair the damage, she reportedly accused Central Mutual of only paying for a portion of the repairs.

Ms. Whitfield is reportedly seeking nearly \$280,000 from the insurer to cover her remaining repair costs.

# ACE and Chubb are now one.

On January 14, 2016, ACE Limited acquired The Chubb Corporation, creating a global insurance leader operating in 54 countries under the renowned Chubb name.

The new company combines Chubb's 130 years of underwriting insights and devotion to customer service with ACE's three decades of technical underwriting excellence, broad risk appetite and global presence. Our goal is to provide the very best insurance coverage and service to individuals and families and businesses of all sizes – from small and medium-sized companies to the largest multinational corporations – all across the globe.

As the world's largest publicly traded property and casualty insurer, the new Chubb has the balance sheet strength and financial security of an AA rating from Standard & Poor's and an A++ rating from A.M. Best.

As craftsmen of insurance, we are devoted to meticulously conceiving, crafting and delivering extraordinary coverage to meet the needs of the modern world – a world that is epic in scale but by nature both personal and connected.

To find out more, go to [new.chubb.com](http://new.chubb.com).

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