

REINSURANCE
PREMIUMS

Net premiums written by major U.S. property/casualty reinsurers, in millions of dollars.

Year	Net premiums written
2013	\$26,843
2012	\$29,481
2011	\$26,391
2010	\$23,305
2009	\$23,906

Source: Reinsurance Association of America

REINSURANCE

Latest merger
creates Top 5
reinsurer

Axis, PartnerRe
respond to competition

BY MATTHEW LERNER

The \$11 billion merger of Bermuda-based PartnerRe Ltd. and Axis Capital Holdings Ltd. accelerates the trend of offshore reinsurers combining to remain competitive.

The stock-swap deal announced Jan. 25 is the third in as many months in a sector hit by pricing pressure from an ongoing influx of private equity capital and strong competition among traditional reinsurers. The combination will create the fifth-largest reinsurer in the world.

PartnerRe shareholders will own 51.6% of the combined company, for which a name has not yet been chosen, and Axis shareholders will own 48.4%. This mega-deal is expected to close in the second half of this year.

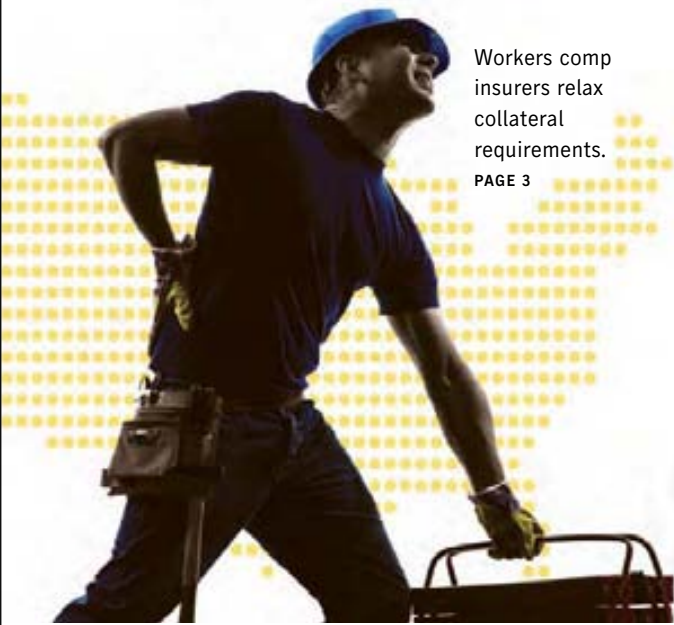
The transaction follows Dublin-

See REINSURERS page 28

WORKERS COMPENSATION

EXCLUSIVE REMEDY UNDER FIRE
AS COMP REFORMS EXPAND

Workers go to court to get higher benefits



Workers comp
insurers relax
collateral
requirements.
PAGE 3

BY STEPHANIE GOLDBERG

Workers compensation exclusive remedy provisions, under attack in Florida and Oklahoma, face challenges in more states where workers comp reforms have reduced benefits.

Often referred to as the “grand bargain,” exclusive remedy in most states means workers injured on the job can receive benefits only through the workers comp system. A liability lawsuit may be allowed in the case of gross employer negligence.

Exclusive remedy is being challenged strongly in Florida and Oklahoma, which have had significant workers comp reforms, said Albert B. Randall Jr., Baltimore-based principal at law firm Franklin & Prokopik P.C. and president of the National Workers’ Compensation Defense Network.

See REMEDY page 29

CAPTIVES

Captive owners
head back to
the fast track

Employers use ExPro
for benefits expansion

BY JERRY GEISEL

For the first time since 2012, employers are taking advantage of a fast-track procedure to gain U.S. Department of Labor approval of paying for employee benefits through their captive insurance companies.

Hormel Foods Corp. and Sealed Air Corp. last month submitted expedited captive benefits funding requests to the Labor Department, which handles these applications. Under this approach known as ExPro, regulatory review and final approval can be completed in less than three months.

Labor Department approval is required because captive benefits funding generally is considered a prohibited transaction under the Employee Retirement Income Security Act.

Hormel wants to use its Vermont-based captive to fund life insurance and long-term disability coverage for its employees, while Sealed Air Life wants to use its captive, also licensed in Vermont, to fund life and accidental death and dismemberment benefits for its employees.

“On the risk side, we saw opportunities to diversify the captive’s risk portfolio and achieve favorable long-term financial results,” said Jeff Horner, Hormel’s Austin,

See CAPTIVES page 28



Q&A: CHRIS O’KANE

Aspen group CEO discusses
challenges facing insurers and
reinsurers in 2015.

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Wage-and-hour litigation is
causing big headaches for
employers.

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RESEARCH & DATA

Largest directors and officers
liability insurers; medical
professional liability insurers

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SPECIAL
REPORT

MANAGEMENT
LIABILITY

Wage-and-hour litigation is on the
the rise as regulations increase;
employer nondiscrimination policies
cover transgender workers;
derivative suits drive D&O litigation;
regulators clamp down on
corporate wrongdoing.

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property	casualty	energy
surety	healthcare professional liability	homeowners
programs	life sciences	construction
travel protection	executive and professional lines	transportation
marine	environmental	builder's risk

partner.
IN LOCKSTEP WITH YOU LONG TERM



Berkshire Hathaway
Specialty Insurance

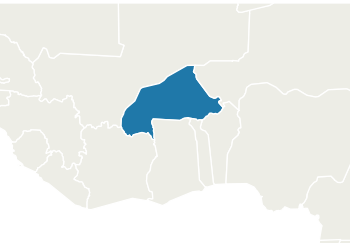
Atlanta | Boston | Chicago | Los Angeles | New York | San Francisco
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Statutes revive old claims



Victims of sexual abuse are taking advantage of state reviver statutes to file claims that were previously time-barred, says Richard C. Mason of Cozen O'Connor discusses how new laws can lead to fresh claims. 15

OFF BEAT



Petty, Smith share tune

Tom Petty and Sam Smith have similar taste in melodies. Their camps quietly settled a copyright matter in October. 30

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NEWS

CYBER RISKS

HOPES GROW FOR COMPROMISE ON CYBER SECURITY LEGISLATION

Sony hack draws Obama, Republicans closer together



AP PHOTO

Despite general agreement about the issue’s urgency for the past several years, Congress and President Obama failed to forge a bipartisan compromise on cyber security legislation. But that may change.

BY JUDY GREENWALD

A Republican-controlled Congress and a Democratic president with strong concerns on the subject may be the magic formula to finally win passage of cyber security legislation.

The two main focuses on legislation are sharing information and a national data breach notification law. Legislation encouraging firms to share information about cyber threats is more likely, although

See **CYBER** page 27

OBAMA’S CYBER PLAN

The Obama administration has proposed cyber security legislation that would:

- **Encourage** companies to share cyber threat information with the U.S. Department of Homeland Security and provide liability protection for businesses.
- **Encourage** private-sector formation of “information-sharing and analysis organizations.”
- **Require** companies to safeguard privacy by removing unnecessary personal information to qualify for liability protection.
- **Standardize** data breach notification requirements with one federal law rather than individual state laws.
- **Update** the Racketeer Influenced and Corrupt Organizations Act so it applies to cyber crimes.

Source: The White House

WORKERS COMPENSATION

Comp insurers ease collateral requirements

BY SHEENA HARRISON

Workers compensation insurers are relaxing collateral requirements for high-deductible policies as credit markets improve and insurers compete for profitable accounts.

Dominic Zullo, director of risk management at Cubic Corp., said it has been “many years” since he’s seen such flexibility in work-

ers comp collateral terms for the San Diego-based defense and transportation contractor.

Major workers comp insurers more often accept surety bonds in place of letters of credit to secure portions of large comp policy deductibles, which typically are \$250,000 or more, sources say. This allows employers to free up capital since sureties cost less than letters of credit.

In other instances, insurers are offering paid loss credits for claims costs that are expected to be paid by the employer in the next year or two or providing collateral buy-down options by paying a fee to post less collateral.

Though collateral requirements eased somewhat after the 2008 financial crisis, the past year has

See **COLLATERAL** page 26

CORRECTION

In the Jan. 19 issue in the article, “2015 legislative wish list a mixed bag,” the position of the Risk & Insurance Management Society Inc. on the relationship between captive insurance and the Nonadmitted and Reinsurance Reform Act was misstated. RIMS supports legislation that clarifies captive insurance is not covered by the act.

BI launches redesigned website

*B*usiness Insurance has a new-look website designed to help readers easily find the information they need no matter what device they are using.

The site uses a responsive design that adjusts to all devices — desktop, laptop, tablet or smartphone — providing easy navigation and a better reading experience.

In addition, we’ve reorganized *BusinessInsurance.com* to make it easier for users to find the information they want. We’ve kept three content channels — Risk Management, Benefits Management and Workers Compensation — and given them a wider scope. The content previously found in the Brokers & Insurers, Mid-Market Executive and Specialty Risks channels is integrated in the remaining channels.

This focused coverage will allow us to dive deeper into the issues and trends that matter most to our readers.

In addition to news stories, features and videos covering the full range of topics of interest to risk managers, benefits managers and the commercial insurance industry, we’ve also included a series of tabs to give quick access to nine In-Depth topics: cyber risk; disaster management; reinsurance; benefits plan design; health care reform; wellness; prescription drug management; workers comp cost control; and workplace safety.

Last year we expanded news and opinions coverage and made adjustments to the magazine to make it easier for readers to locate the information they want to read. The website redesign fulfills the same mission of providing readers and users with the information they want on the devices they want to use.

Please, visit the site at *BusinessInsurance.com* and take a look around. We’re hosting an open house until March 1, during which you gain unlimited access to all of our editorial digital content, simply by registering.

While you are on the site, don’t forget to review your preferences or register to receive the *Business Insurance* Daily Briefing email newsletter and weekly channel newsletters, which deliver news and analysis that matters to you to your inbox.

Gavin Souter, editor

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ONLINE
FEATURES

EVENT

Register for the 2015 Risk Management Summit

Registration is open for *Business Insurance's* March 4 Risk Management Summit.
www.BusinessInsurance.com/RMS2015

VIDEO



In Focus: Affordable Care Act

How the Affordable Care Act is affecting health insurance offerings.
www.BusinessInsurance.com/InFocus

TOP 10 STORIES

Top 10 stories of the week

Find out what the most popular news articles and features are on *BusinessInsurance.com*.
www.BusinessInsurance.com/BITop10

CAPTIVE FORUM

Follow BI coverage online

BUSINESS INSURANCE. The World Captive Forum is holding its 25th annual meeting this week. Visit BusinessInsurance.com to read our ongoing coverage of this international event.
www.BusinessInsurance.com/2015CaptiveForum

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NEWS

ASBESTOS & POLLUTION

LONG-RUNNING ASBESTOS CLAIMS
QUIETLY DRAG ON INSURERS

Litigation successes helping to cut unfunded liabilities

INSURER LOSSES

Insurer groups that posted the highest five-year average annual incurred losses for 2009-2013 due to asbestos- and environmental-related claims, in millions of dollars

Group	LOSSES		
	Total	Asbestos	Pollution
American International Group Inc. ¹	\$416.7	\$379.4	\$37.3
Travelers Cos. Inc.	\$238.1	\$171.0	\$67.1
Liberty Mutual Insurance Co.	\$222.1	\$212.9	\$9.2
Hartford Financial Services Group Inc.	\$204.4	\$164.4	\$40.0
CNA Financial Corp. ²	\$195.3	\$135.1	\$60.2
Munich Re America Corp.	\$182.4	\$155.4	\$27.0
Swiss Re Ltd.	\$171.0	\$145.3	\$25.6
Allianz of America (Fireman's Fund)	\$150.4	\$82.7	\$67.7
Fairfax Financial Holdings Ltd.	\$126.5	\$110.4	\$16.1
Ace INA	\$123.4	\$91.4	\$32.0

1 Includes \$1.4 billion 2010 charge for asbestos losses; excludes \$2 billion 2011 retroactive reinsurance transfer to National Indemnity Co. 2 Excludes 2010 loss portfolio reserve transfer to National Indemnity Co.
Source: A.M. Best Co. Inc.

BY MATTHEW LERNER

Outstanding asbestos liabilities continue to drag on insurance industry earnings, although the liabilities are predominantly well-managed.

In addition, slow and minor positive changes in the litigation environment have further improved the situation, insurance analysts say.

In a recent report covering the insurance industry's outstanding asbestos liabilities, "U.S. Insurers Continue Funding of A&E Liabilities Despite Elusive End Game," A.M. Best Co. Inc. puts its estimate of net

asbestos losses for the U.S. property/casualty industry at \$85.0 billion.

The industry has funded just over 90% of its aggregate asbestos and environmental liability exposures, according to Best, leaving an unfunded asbestos liability of \$6.7 billion.

This jibes with estimates from Fitch Ratings Inc., which said in its 2014 U.S. Asbestos Liability Dashboard that it "estimates U.S. property/casualty industry statutory asbestos reserves to be deficient

See **ASBESTOS** page 26

DISABILITY

Connected world provides disability dispute tools

BY MATT DUNNING

PHILADELPHIA — Social media, mobile technology and other forms of electronic technology can be powerful tools to defend against disability insurance claims.

At the same time, employers, disability insurers and their attorneys must observe the evolving legal parameters governing the accessibility, use and protection of certain types of electronic information in court, experts say.

"There's a treasure trove of valuable information available through social media when it comes to disability claims," said Kristina Pett, a found-

ing member at Pett Furman P.L. in Boca Raton, Florida.

Courts have routinely upheld employers' and insurers' rights to use certain information mined from publicly available social media accounts belonging to claimants and witnesses to disprove claims of limited function or capacity due to a disability, she said.

Similarly, experts said during the American Conference Institute's 17th National Advanced Forum on Litigating Disability Insurance Claims, attorneys may be able to persuade courts to grant limited access to plaintiffs

See **DISABILITY** page 29

"There's a treasure trove of valuable information available through social media when it comes to disability claims."

Kristina Pett,
Pett Furman P.L.



INSURERS

Earlier warning
on financial
oversight rules

Industry still skeptical
of 'too big to fail'
label for insurers

BY MARK A. HOFMANN

The Financial Stability Oversight Council's plan to inform nonbank financial companies earlier that they're being considered for tighter regulation is a welcomed move, but falls short of addressing a key insurance industry concern.

Instead, the council should decide whether insurers should be considered at all as "significantly important financial institutions" for regulatory purposes, insurance industry experts and observers say.

Thus far, three insurers — American International Group Inc., Prudential Financial Inc. and MetLife Inc. — have received the SIFI designation, meaning they have been deemed too big to fail. MetLife is challenging its designation in a lawsuit filed in mid-January.

Insurers dispute that even the largest property/casualty insurer could present a systemic risk to the financial system as a whole. Since property/casualty insurers are regulated at the state level and covered by state guaranty funds, designating them as SIFIs, and thus subjecting them to heightened regulation by the Federal Reserve, creates problems rather than solving them, insurer groups say.

During the council's meeting in late January, members discussed plans to notify any nonbank financial institution being considered for SIFI designation sooner in the process. The council also plans to make public more details on the designation process itself.

"Designating a firm is not a decision the council takes lightly," Treasury Secretary Jack Lew said at the meeting.

Although insurance industry observers and experts welcomed the move, they said the proposed liberalization involves procedure rather than substance.

"These changes are aimed at the procedures and the openness," said Lawrence H. Mirel, a partner in the Washington office of law firm Nelson Brown Hamilton & Krekstein L.L.C., which does business as Nelson Brown & Co., and a former District of Columbia insur-

See **FSOC** page 29

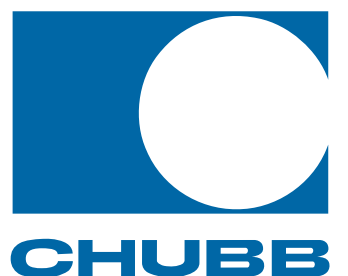
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WORKPLACE SAFETY

Slips, falls outside truck cabs drive increase in driver injuries

Lack of experience, physical exertion contribute to uptick

BY BILL KENEALY

Often-overlooked physical demands of the trucking industry and changing demographics are factors driving safety issues that are growing more acute as the improving economy increases demand for truck drivers.

The rate at which private-sector heavy and tractor-trailer truck drivers miss work due to injury and illness is rising while all other industry sectors are on the decline, according to Bureau of Labor Statistics data released last month.

Aside from obvious perils such as accidents with other vehicles, truckers are more likely to suffer slips, trips and falls than most other categories in the private-sector workforce, BLS data shows. "It appears that the small amount of time truckers spend entering and exiting their vehicles and securing loads puts them at an increased risk for slips, trips and falls," said Woody Hill, Austin, Texas-based vice president of safety services at workers compensation insurer Texas Mutual Insurance Co.

Kevin Burch, Dayton, Ohio-based president of Jet Express Inc., said the regional trucking company had an increase in falls last year.

"We went through a nasty winter here last year and saw people slip while walking to the back of the trailer to make sure the lights were working or just walking to get into the truck," Mr. Burch said. "Also, many of the lots where we do business don't have the best lighting, so we are teaching our drivers



TRUCK DRIVER INJURIES

Heavy and tractor-trailer truck drivers' injury rates, in contrast to U.S. workers overall, increased in 2013, which experts say is partly due to new drivers on the road.

Year	Employment	Driver injury rate*	All industries
2013	1,585,300	322.8	99.9
2012	1,556,510	283.7	102.3
2011	1,508,620	307.2	105.2
2010	1,466,740	306.5	107.7
2009	1,550,930	314.1	106.4

*Per 10,000 full-time workers

Source: Bureau of Labor Statistics, U.S. Department of Labor

to use more caution."

Caroline Smith, Olympia, Washington-based epidemiologist and director of the Safety and Health Assessment and Research for Prevention program for the Washington Department of Labor and Industries, said accidents that occur outside a truck are understandable given the vigi-

lance truckers must maintain on the road.

"Truckers will drive for hours and then they have to get out of their cab, often to unload heavy stuff" in an area that is often outside their control, she said. "Most workplace accidents are preventable, but unfortunately, trucking is complicated because truckers do not have complete control over their worksite or even the pace of their work."

Brian Hammer, Des Moines, Iowa-based senior transportation consultant at Nationwide Mutual Insurance Co. and transportation practice special administrator for the American Society of Safety Engineers, said many trucker injuries occur when drivers are in unfamiliar surroundings.

"Truck driving involves hours of sitting followed by sudden physical exertion, so we've seen a lot of accidents occur when somebody has to stop a truck midjourney to resecure a tarp or tighten straps," he said.

One factor contributing to the injury rate uptick is an influx of new drivers as trucking companies raise wages to meet growing demand and overcome a persistent driver shortage, Mr. Hill said.

"We are tending to get a lot of younger, inexperienced drivers being put on the road," Mr. Hill said, noting that the energy boom has made demand for drivers in Texas especially acute. "You have people that might have just recently been school teachers now being put into Class B vehicles, such as salt and water trucks, in order to serve the oil and gas industry."

Another factor affecting trucking industry injuries is the age of the workforce, Mr. Hill said, citing a 2011 American Trucking Association study that found the median age of a driver was 47 years old.

"Some trucking companies have certain expectations around the speed of loading and unloading a truck, which tends to have an impact on older operators," he said.

Experts say there are operational, educational and ergonomic steps that risk managers can take to keep workers safe.

Ms. Smith said Washington state, which has had its Trucking Injury Reduction Emphasis program since 2006, recently published a suite of simulation training tools to help educate drivers. "The safety training at truck driving schools is often incomplete, so companies will need to reinforce safety with new employees and also examine how their own internal policies are structured to see if there is anything that would cause drivers to rush or skip meals or exhibit unhealthy behaviors," she said.

"Larger trucking companies are instituting wellness and fitness programs and looking at fitness trackers like Fitbit to record driver steps each day," Mr. Hammer said. "However, most of the trucking is done by independents and small and local trucking companies that haven't yet got on the bandwagon."

Tom DiSalvi, Green Bay, Wisconsin-based director of safety and loss prevention at trucking company Schneider National Inc., which has more than 11,100 company drivers, said the firm takes great care when hiring drivers and reinforces safety training quarterly.

"When you are hiring drivers, you have to have clear standards in place and make sure new drivers meet those qualifications," Mr. DiSalvi said. "In addition to making sure that drivers are fully qualified, we go one step further and conduct physical function tests to make sure they can physically do the work, because this is a much more physical job than people realize."

LIABILITY & LITIGATION

Supreme Court considers case dragging foreign country into U.S. legal system

BY LOUISE ESOLA

A personal injury lawsuit the U.S. Supreme Court will take up later this year could have wide implications for foreign governments indirectly doing business in the United States.

Experts say the case, *ÖBB-Personenverkehr A.G. vs. Carol P. Sachs*, is unique because it involves a national railroad company owned by the Austrian government, and generally these cases aren't heard in U.S. courts.

Californian Carol Sachs was injured on a visit to Austria in 2009 when she fell through a gap in a railway platform trying to board a train in Innsbruck and lost both legs.

According to her suit, alleging negligence, liability and breach of implied warranties against ÖBB-Personenverkehr A.G., Ms. Sachs alleged the train moved suddenly

while she was boarding, causing her to fall.

In the United States, the Foreign Sovereign Immunities Act of 1976 forbids anyone from suing a foreign government in U.S. courts.

The U.S. Department of Justice supported the Austrian railway's stance that the U.S. law bars such suits. In its brief filed with a U.S. appeals court, the Justice Department argued that the Massachusetts travel agent who sold Ms. Sachs her Internet ticket was not operating directly under the direction or control of the Austrian national railway.

The Justice Department spokesman declined further comment on the case because it is an "ongoing matter."

A divided 9th U.S. Circuit Court of Appeals ruled in December that Ms. Sachs could pursue her claim in the United States because she bought her railway ticket from a Mas-

sachusetts-based Internet travel site and thus conducted the business transaction in the U.S.

The Supreme Court agreed earlier this month to hear an appeal from the Austrian railway that U.S. courts have no authority in this case.

If the justices side with Ms. Sachs, "It's going to leave other countries wide open to lawsuits if they are doing any business in the United States," said David E. Pilcher, a Monrovia, Calif.-based independent risk management, insurance, claims and litigation consultant "This is going to blur the laws."

Since most foreign governments are self-insured, a case like this is not likely to affect insurance underwriting, Mr. Pilcher said.

Juan Basombrio, a partner at Costa Mesa, Calif.-based Dorsey & Whitney L.L.P., who

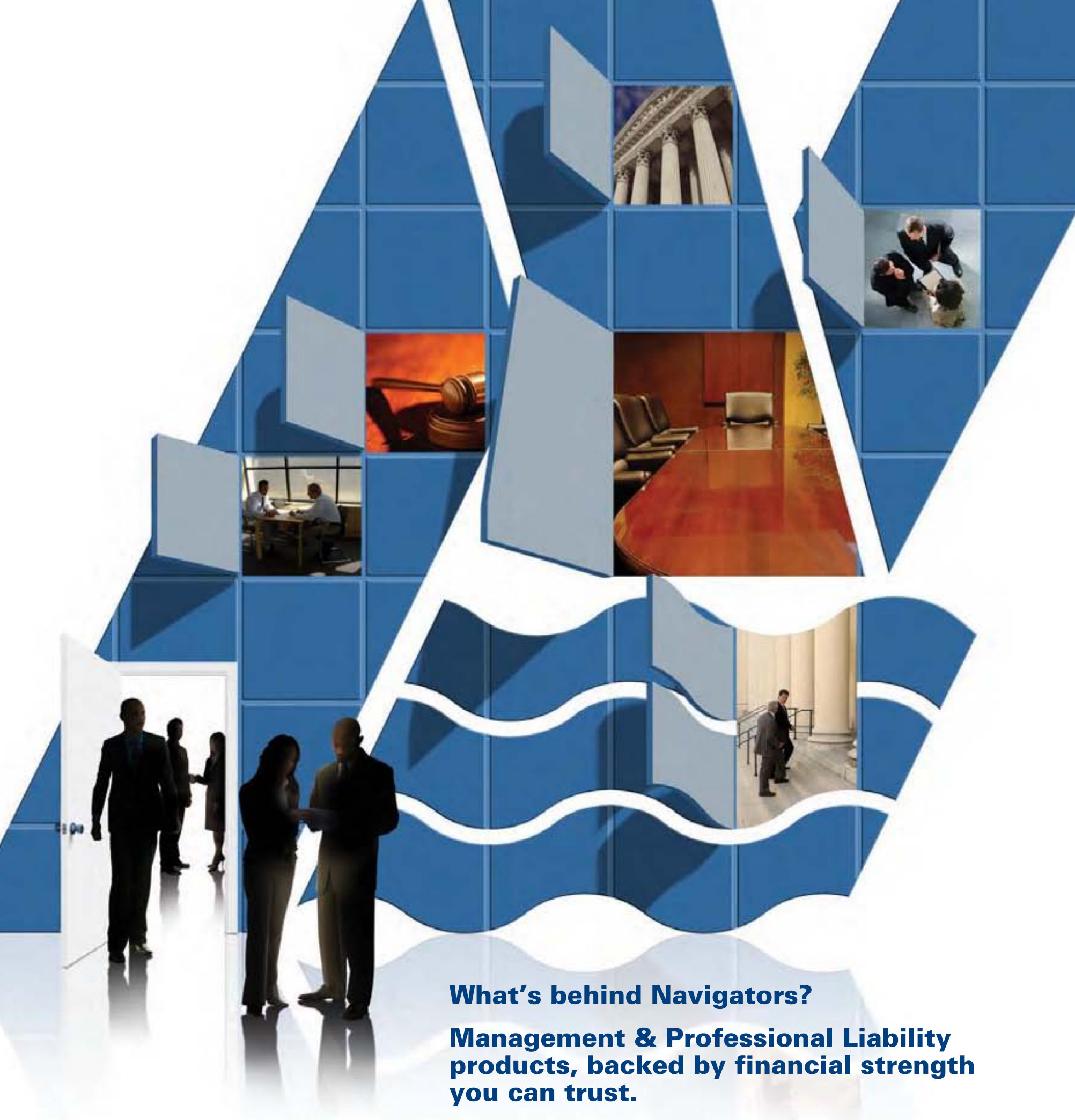
represents the railway, told a Financial Advisor Magazine blogger in January that a Supreme Court decision could affect a wide array of industries — including travel, construction, and telecommunications — that conduct business with foreign nations.

Mr. Basombrio could not be reached for comment.

Benjamin Shatz, a partner at Los-Angeles-based Manatt, Phelps & Phillips L.L.P., also argued that Ms. Sachs' suit belongs in a European court in a brief filed with the appeals court on behalf of the International Rail Transport Committee.

"European railways will be forced to change their business practices to avoid exposure to American lawsuits," Mr. Shatz wrote in the brief. "Such changes are likely to make it more inconvenient for Americans to purchase international railway passage." He declined to comment further.





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Alliant to buy QBE's U.S. specialty agencies

■ QBE Insurance Group Ltd. will sell its U.S. agency businesses to Alliant Insurance Services Inc. for about \$300 million. Sydney-based QBE said the sale of the specialty underwriting agencies, which include Community Association Underwriters of America Inc., Deep South Insurance Services Inc. and SIU L.L.C., which does business as SIU Managers, is expected to close in early February. Terms of the deal include an up-front cash payment of \$217 million, with the remainder paid over the next five years as part of a performance-based earn-out agreement. “An important element of the sale is the long-term agreement that we have entered into to retain the underwriting business provided by the agencies,” John Neal, CEO of QBE, said in a statement.

Strong investment markets push 401(k) balances to record highs

■ A strong equities market helped 401(k) plan account balances hit a record high at the end of 2014, Fidelity Investments said in an analysis. The average account balance was \$91,300 at the end of 2014, up from \$89,300 at year-end 2013, a 2.2% increase, the Boston-based mutual fund provider and 401(k) plan administrator reported. About 60% of the 2014 account balance increase was the result of stock market gains, while 40% was due to plan contributions, Fidelity said. The analysis was based on 21,000 plans with 13.1 million participants.

Wal-Mart settles with family of comedian killed in crash

■ Wal-Mart Stores Inc. has reached a settlement with the family of the comedian killed in the crash that seriously injured comedian Tracy Morgan, the retailer said. James McNair was killed in the June 7, 2014, accident on the New Jersey Turnpike when a Wal-Mart driver, who began his shift after a 700-mile commute, allegedly fell asleep behind the wheel because of fatigue and ran into the limousine carrying Mr. McNair, Mr. Morgan and others. Terms of the settlement were not disclosed. Litigation filed by Mr. Morgan and the other remaining plaintiffs in the case against Wal-Mart and its Wal-Mart Transportation L.L.C. subsidiary continues in U.S. District Court in Trenton, New Jersey.

Wellness programs improve worker health, lower costs

■ More employers believe their workplace wellness programs have had a positive effect on their employees' health and reduced health care costs, according to the Society for Human Resource Management's 2014 Strategic Benefits Survey. Seventy-eight percent of employers polled last year by Alexandria, Virginia-based SHRM reported that their organization's wellness initiatives have been at least somewhat effective at improving their employees' overall physical health, compared with 76% of employers polled in the previous two years. Additionally, 72% of employers surveyed said their organization's wellness program has been somewhat or very effective at reducing health care costs, up from 71% in 2013 and 68% in 2012. Accordingly, 56% employers surveyed said they planned to maintain their investment levels in

wellness programming in 2015, while 41% of employers indicated their wellness budgets would increase this year.

Natural disaster policy attracts new congressional attention

■ A public debate over federal disaster policy needs to begin in order to determine how best to respond to natural disasters, said Rep. Lou Barletta, R-Pa., chairman of the House Transportation and Infrastructure Committee's Subcommittee on Economic Development, Public Buildings and Emergency Management. A “comprehensive” review of federal disaster policy has not taken place in two decades, he said at a panel hearing. The purpose of the hearing was to “launch a public policy debate about the growing human and financial costs of disasters and to review if we — as a nation — are responding in the most appropriate and cost-effective way,” he said. R. David Paulison, former administrator of the Federal Emergency Management Agency, urged the adoption of more effective building codes as a means to mitigate natural disaster losses. Only 11 states have “adequate building codes and enforcement mechanisms in place,” he said, adding that many of the states lacking adequate codes are “directly in harm's way” for hurricanes and other natural disasters.

Health care reform provisions cut uninsured by nearly 20 million

■ This year, an estimated 36 million people under age 65 will be uninsured, down from an estimated 55 million if Congress had not passed the Patient Protection and Affordable Care Act, according to a Congressional Budget Office report, and the number of uninsured will continue to fall in succeeding years, dropping to 31 million in 2016 and 30 million in 2017, the CBO report says. The key reasons for the drop in the number of uninsured are health care reform law provisions that starting in 2014 gave premium subsidies to the lower-income uninsured individuals to purchase coverage in public health insurance exchanges and heavily subsidize states that expanded eligibility for their Medicaid programs. The estimates do not take into account the potential impact of an upcoming U.S. Supreme Court decision in *King v. Burwell*. The court will rule on whether federal premium subsidies are available in the 37 states in which the federal government runs the exchanges. Last year, more than 80% of enrollees in both the federal and state exchanges received federal premium subsidies.

U.S. top court rules for employer in retiree benefits fight

■ The U.S. Supreme Court has sided with a company that amended a collective bargaining agreement to force retirees to pay toward health care costs, throwing out a lower-court ruling that favored the former employees who objected to the change. On a unanimous vote, the nine-member court handed a win to M&G Polymers USA, a subsidiary of Italy-based chemical company Mossi & Ghisolfi International, by sending the case back for further proceedings in the 6th U.S. Circuit Court of Appeals in Cincinnati. Nearly 500 plaintiffs from Ohio who had worked at the M&G polyester plant in Apple Grove, West Virginia, sued in 2006 when the company said retirees would be required to contribute to their health care costs. The plaintiffs, backed by the United Steelwork-

ers union, said the collective bargaining agreement guaranteed them health benefits without requiring them to contribute. Justice Clarence Thomas, writing on behalf of the court, said the appeals court had not used the correct legal analysis. Justice Thomas wrote that “when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life.”

Reuters

Sagging underwriting results sap property/casualty sector

■ The U.S. property/casualty insurance sector had mixed results in the third quarter of 2014, according to data released by the Insurance Services Office Inc. and the Property Casualty Insurers Association of America. The sector posted net income of \$1.17 billion during the third quarter, a 36.2% decrease from the \$1.83 billion earned in the third quarter of 2013. However, net written premiums rose 3.6% from the previous year to \$13.06 billion. The fall in net income was largely due to deterioration in underwriting results, as the sector posted a combined ratio of 95.5%, compared with a combined ratio of 91.8% in the third quarter of 2013.

Construction accidents lead worker deaths

■ Work-related fatalities in North Carolina increased markedly in 2014, data released last week by the North Carolina Department of Labor shows. Forty-four workers were killed on the job in 2014 in the state, up from 23 fatalities recorded in 2013. By sector, the construction industry saw the most fatalities with 19, followed by the manufacturing sector with nine fatalities and the service industry with six work-related fatalities. North Carolina Labor Commissioner Cherie Berry said one troubling trend is that the data indicates that many of the construction accidents are happening to workers within the first 60 to 90 days of being on the job. Struck-by events accounted for the most work-related deaths with 18, while falls accounted for 13 deaths and seven workers died after being caught in or between objects.

NCCI president to retire

■ Stephen J. Klingel, president and CEO of the National Council on Compensation Insurance Inc., plans to retire from his post in February 2016. Mr. Klingel has headed up the Boca Raton, Florida-based workers compensation ratemaking agency since 2002. NCCI said it is forming a search committee to evaluate candidates for its next chief executive, and that Mr. Klingel will continue to run day-to-day operations in the meantime.

Captive formations slowing in Vermont

■ Vermont, the largest domestic captive insurer domicile, licensed 16 captives in 2014, down from 29 in 2013, as the soft market and competition from other states slowed growth, state officials said. Even with fewer formations, however, gross written premiums are expected to rise to \$29.8 billion, up from \$27.5 billion in 2013. The newly licensed captives bring Vermont's total to 581.

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Agenda at a glance:

Wednesday, March 4, 2015

- 8:00-9:00 am** Registration and Networking Breakfast
- 9:00-9:45 am** Welcome Keynote Speaker: Former U.S. Representative Mike Rogers
From Terrorism to Cyber, the New - and Changing - World of Risk
- 9:45-10:45 am** International Risks Part I: Protecting Your Business
- 10:45-11:15 am** Coffee & Networking Break
- 11:15-12:15 pm** International Risks Part II: Protecting Your People
- 12:15-2:00 pm** Innovation Awards Luncheon
- 2:00-3:15 pm** Legal drug use poses "pot holes" for employers
- 3:15-3:30 pm** Networking Break
- 3:30-4:30 pm** Roundtable discussions
 - Roundtable 1: Breaking Down Silos: Improving RM, HR Communication
 - Roundtable 2: The Role of Risk Managers in Mergers and Acquisitions
 - Roundtable 3: Establishing and Implementing a Social Media Policy
 - Roundtable 4: Impact of Climate Change on Supply Chain Risks
 - Roundtable 5: Filling the Talent Gap in Risk Management
- 4:30-6:30 pm** Cocktail Reception

Thursday, March 5, 2015

- 8:30-9:30 am** Networking - Coffee & Continental Breakfast
- 9:30-10:30 am** Virtual Offices, Real Exposures
- 10:30-11:00 am** Coffee & Networking Break
- 11:00-12:00 pm** Deploying "Big Data" Analytics in Risk Management
- 12:00-1:15 pm** Networking Lunch
- 1:15-2:15 pm** Cyber Risks: Tapping CGL, Other Policies to Respond to Breaches
- 2:15-3:00 pm** Risk Managers Only Session
- 3:00-4:30 pm** Closing Keynote "Info-tainment" & Cocktail Reception



Keynote Speaker:
Former US Representative
Mike Rogers
Topic:
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U.K. insurers won't need to raise capital levels

■ The European Union's Solvency II rules will not be an excuse for regulators to ramp up capital requirements for insurers in Britain, a senior Bank of England official said. The rules, which take effect in 2016, aim to ensure insurers such as Britain's Prudential P.L.C. and Aviva P.L.C. hold enough capital to honor policyholder commitments even when markets turn sour. "The PRA believes the U.K. industry is in a good position," the Bank of England executive director for insurance supervision, Paul Fisher, told a Westminster Business Forum conference. "We are therefore not looking to use Solvency II as an opportunity to raise capital requirements across the board," Mr. Fisher said, dismissing suggestions Britain might implement a tougher version of the E.U. rules. The U.K. insurance market was "probably about right" in terms of capital levels, and the overall requirement is likely to go down once Solvency II is fully implemented, Mr. Fisher said. The rules should be more challenging for the rest of Europe. "They will have to raise their capital levels" to close the gap with Britain, Mr. Fisher said. "Hopefully it will close to zero."

Reuters

Guy Carpenter named broker for Flood Re

■ Guy Carpenter & Co. L.L.C. has been named the retrocession reinsurance brokerage for Flood Re, the reinsurance fund that will offer coverage to homes in the United Kingdom that are the most vulnerable to flooding beginning this summer. Flood Re, which will be a nonprofit reinsurance pool funded by levies on U.K. insurers that underwrite homeowners insurance, is expected to announce the appointment of a managing agent in the coming weeks. The insurance industry and the U.K. government reached final agreement in December that the program would cover even high-value homes.

AIG plans to acquire Irish health insurer

■ American International Group Inc. said it is acquiring Cork, Ireland-based health insurer Laya Healthcare Ltd. Laya is Ireland's second-largest health insurance provider and has been operating in Ireland since 1997, AIG said in its statement. The purchase price was reported locally by the Irish Inde-

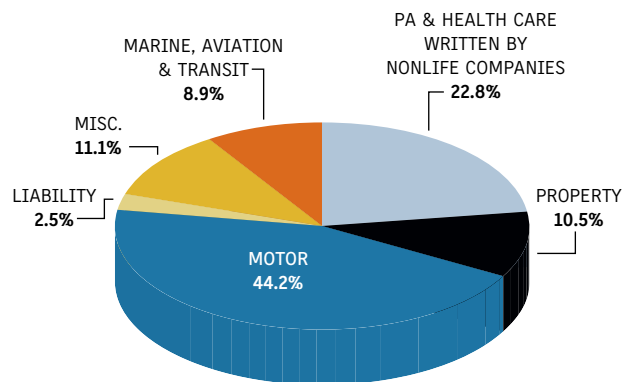
PROFILE: BURKINA FASO

\$51.6
MILLION

Insurers in Burkina Faso's small commercial insurance market are pressing for legislation that would help expand the market. Efforts are ongoing to introduce legislation that would reinforce regional rules requiring mining companies to insure locally. In addition, insurers are lobbying for compulsory insurance for hotels, markets and other commercial premises accessed by the public. Former state-controlled Societe Nationale d'Assurance et de Reassurance, or SONAR, has a 28% market share.

◀ 2013 P/C gross premiums

MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

COMPULSORY INSURANCE

- Auto third-party liability
- Clinical trials liability
- Marine cargo imports
- Professional liability for insurance brokers
- Large construction contracts

NONADMITTED

Nonadmitted insurance is not permitted in Burkina Faso because the law provides that insurance must be purchased from locally authorized insurers, with some exceptions. Burkina Faso is a member of the Conférence Inter africaine des Marchés d'Assurances, which bars most nonadmitted insurance in member countries.

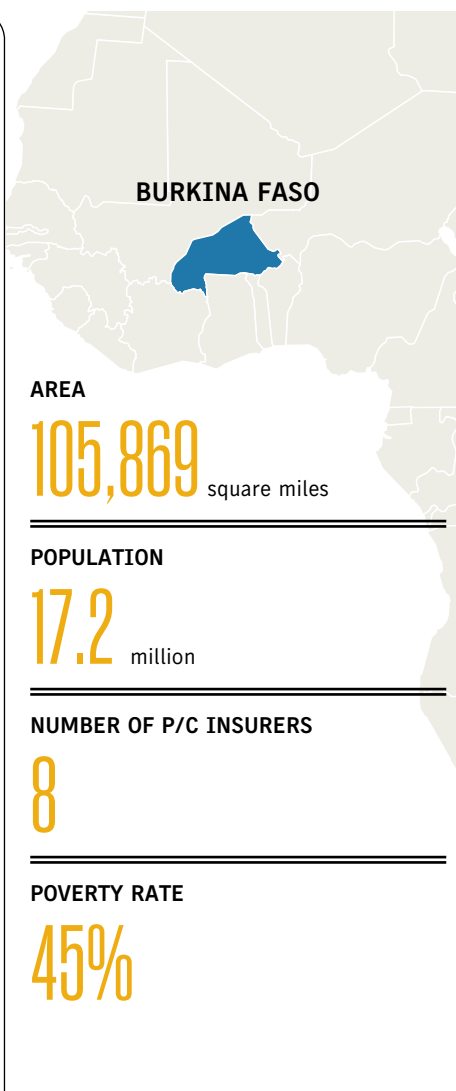
INTERMEDIARIES

Agents and brokers have to be authorized to conduct insurance business in Burkina Faso. Intermediaries are allowed to place business with nonadmitted insurers when permission has been granted by the regulator, and brokers that make nonadmitted placements are not obligated to inform buyers that the insurance is not subject to local supervision.

MARKET PRACTICE

Insurance laws are not strictly enforced. Insurers complain that trucking firms buy coverage in other countries their vehicles pass through where coverage is cheaper and that mining companies do not buy cover locally.

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



MARKET DEVELOPMENTS

UPDATED JANUARY 2015

- The government is planning to set up a public/private system of crop insurance. A private insurer would be established to cover some of the risks, but risks that are considered uninsurable would be covered by a government program provisionally called Centre de Gestion des Risques Agricoles.
- Projected legislation would reiterate mining companies' obligation to insure projects with local insurers. Several mines were affected by strikes or looting following the overthrow of former President Blaise Compaoré in October 2014.
- A law establishing an auto guarantee fund was expected in mid-2014, but it remains unpublished.
- Implementation legislation requiring insurance for large construction sites was introduced in 2013.
- Insurers are offering low premiums rates to try to persuade users of small motorcycles to buy obligatory third-party cover, but have had little success.

pendent in Ireland as being £80 million (\$121.2 million), unconfirmed by AIG, which declined to disclose terms of the deal. The transaction is expected to close in the first half of 2015, subject to regulatory approvals, according to AIG. Laya Healthcare has nearly 500,000 customers and employs 450 people, mostly in Cork, serving more than 23% of the Irish private health market, and will become part of AIG's health business, AIG said in its statement.

Singapore ups ante in cyber security fight

■ Singapore is gearing up for a crackdown on cyber crime with the launch of a central agency and the appointment of a minister in charge of cyber security. It relies heavily on its reputation of being low-crime and politically stable to

lure multinational companies to its shores but has struggled to combat cyber criminals, who have committed offenses including stealing client data from Standard Chartered Bank and hacking the official website of the prime minister. The national cyber security agency, which will start operations on April 1, will consolidate and centralize oversight of cyber security functions, the Prime Minister's Office said in a statement. Yaacob Ibrahim, minister for communications and information, will fill the minister of cyber security post.

Reuters

Reinsurance broker names facultative head

■ Malcolm Payton has been appointed partner and head of the facultative division at reinsurance brokerage Capsicum Reinsurance

Brokers L.L.P. London-based Capsicum said Mr. Payton would join the company later this year. He currently is head of property and energy for Guy Carpenter Facultative U.K., a division of Guy Carpenter & Co. L.L.C. in London. Capsicum Re is a joint venture between Grahame Chilton, co-founder and former CEO of Benfield Group P.L.C. and former nonexecutive chairman of Aon P.L.C.; Rupert Swallow, who was chief operating officer of Benfield at the time it was taken over by Aon; and Arthur J. Gallagher & Co.

Political risk model assesses exposures

■ A risk model launched by Willis Group Holdings P.L.C. and consulting firm Oxford Analytica enables companies to assess and compare

the financial implications of exposure to six different political risk perils across 11 industry types in 100 countries, according to a joint statement from the companies. For example, the value at political risk model, or VAPOR, determines that North Korea is the investment destination that currently carries the highest political risk, with investors estimated to lose about \$40 of every \$100 invested over a 10-year period compared with a \$1 loss on every \$100 invested over 10 years in the United States or United Kingdom, according to the statement. "Inspired by the catastrophe modeling industry, VAPOR takes a probabilistic approach that assesses whether a particular society is more or less vulnerable to experiencing a suite of discrete political contingencies over time — and then estimates the possible cost, over time, of these contingencies to business," Sam Wilkin, senior adviser for political risk at

Oxford, England-based Oxford Analytica, said in the statement.

Hamilton names head of Lloyd's operations

■ Hamilton Insurance Group Ltd. has appointed Dermot O'Donohoe to lead the company's operations at Lloyd's of London. Hamilton, Bermuda-based Hamilton in November announced the acquisition of Sportscover Underwriting Ltd., a Lloyd's of London managing agency that manages syndicate 3334. Mr. O'Donohoe, who most recently was group CEO at Torus Insurance Holdings Ltd., will be appointed CEO of Sportscover, subject to regulatory approval, Hamilton said in a statement. Hamilton said it intends to rename Sportscover as Hamilton Underwriting Ltd., also subject to regulatory approval. Mr. O'Donohoe, who also previously was president and CEO of XL Group P.L.C.'s European operations and CEO of XL's London market operations, among other roles, oversaw the transition of Torus to Enstar Group Ltd., which bought the company in November 2014.

Insurers prepared for regulatory change

■ The implementation of Solvency II capital requirements and other international regulatory changes is unlikely to hurt the financial strength ratings of insurers, Fitch Ratings Ltd. said in a report. While some insurers may need to increase their capital to comply with regulations, most already are sufficiently capitalized, according to the rating agency. But any further increases in capital requirements could raise the cost of capital and reduce competition, Fitch said in the report, "New International Ratings No Threat to Ratings." Fitch added that insurers' focus on regulation likely will lead to improvements in risk management within insurers. But it said that for large European insurers that are already well-regulated, "the benefits of incremental improvements in risk management frameworks could be outweighed by the costs associated with the increasing regulatory burden."

Guernsey regulator licensed 85 new insurers

■ The Guernsey Financial Services Commission, the island's insurance regulator, said it licensed 85 new international insurers during 2014. Last year, the GFSC licensed three protected cell

captive companies, 54 PCC cells, five incorporated cell captive companies and 15 ICC cells as well as eight limited insurance companies, the regulator said in a statement. At the end of 2014, there were 797 international insurance entities licensed in Guernsey, up from 758 at the end of 2013. Of those, 242 were limited companies, 67 were PCCs, 436 were PCC cells, 12 were ICCs and 40 were ICC cells, the GFSC said. Of the entities that set up in Guernsey in 2014, 35% had a

U.K. parent, 29% came from the Cayman Islands, 13% from Ireland, 6% from Europe, 6% from Guernsey, 3% from Bermuda, 3% from the Middle East, 2% from the U.S. and 3% from elsewhere.

Willis promotes executives in China

■ Willis Group Holdings P.L.C. has promoted three senior executives

in its Willis China unit, effective Jan. 26. The former CEO of Willis China, Mitchell Ma, has been named to the newly formed position of chairman of the brokerage's unit in China. Based at the Willis China's headquarters in Shanghai, Mr. Ma has served as CEO of the unit since it was founded in 2004, Willis said in a statement. Accordingly, Lincoln Pan will succeed Mr. Ma as CEO of Willis China, and will relocate to Shanghai from Hong Kong, where he was execu-

tive director of Willis Hong Kong, according to the statement. Meanwhile, Willis has named Beijing-based Wise Xu as deputy CEO of Willis China, with a focus on the management of specialist business units, placement and Beijing operations, according to the statement. Mr. Xu was previously Willis China's executive vice president, a Willis spokesman said. The promotions are subject to regulatory approval, Willis said in the statement.



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REINSURANCE SECTOR CHALLENGES ASPEN CEO

Q Do you see Aspen as either a buyer or seller in this era of industry consolidation?

A It's very, very tough to achieve growth. The U.S economy is off its knees but hardly at a healthy growth level, and Europe is worse. Without economic activity, it's quite hard for insurance to grow, so people turn to consolidation as an alternative way to achieve growth.

I don't think consolidation is necessarily the answer how to achieve profitable growth, but done well it probably can, and I think that's why we're now hearing more about consolidation.

If we felt we could create more value, either by buying someone else or selling to someone else, we would consider either possibility. The test is really what creates more value for our shareholders with greater assurance and with greater speed.

Q What is the greatest challenge facing the reinsurance sector in 2015?

Q&A

A Overcapacity, the overabundance of capital. The nature of reinsurance is dealing with infrequent and potentially serious threats for which a premium is charged. Absent those threats becoming losses, capital builds up very quickly. My guess is that in 2014, many reinsurers will have achieved better than 10% return on equity, some better than 15%, some could even be better than 20%. So, that's a lot of extra capital in the sector. It's creating its own oversupply of capital. So I think the challenge is the supply-demand equation — the supply of capital

and the demand for products that capital is meeting — is out of kilter.

Q What are the bright spots for reinsurers heading into 2015?

A I think that despite price declines, property and catastrophe coverage is still relatively well-priced. We would say industrywide that property/catastrophe is a double-digit return on equity business. We wouldn't say, however, that industrywide casualty reinsurance is a double-digit return on equity business — we think it is less than that. One of the bright spots is that you can look at areas of exposure, although priced less than they once were, still offer the potential for a reasonable return on the equity deployed.

Q Are the capital markets a threat to traditional reinsurance?

A I think if traditional reinsurers were to stand still and say "We don't do that; we'll never do that," — that would be a problem. I think what most traditional reinsurers are saying is: "Our client base



CHRIS O'KANE
ASPEN INSURANCE
HOLDINGS INC.

Chris O'Kane has been group CEO of Aspen Insurance Holdings Ltd. since founding the Hamilton, Bermuda-based company in 2002. Last year, he lead Aspen's successful effort to thwart a \$3.2 billion hostile takeover bid from Endurance Specialty Holdings Ltd. He recently sat down with *Business Insurance* Associate Editor Matthew Lerner to discuss the company's challenges and the reinsurance sector in 2015.

wants to buy some of what we've always sold, and some of their needs they feel are better met by a capital markets product." So, many reinsurers — certainly including Aspen — are developing ways to meet the customer's need from both sides of the market.

Q Do you think the insurance-linked securities market will continue to evolve? Will it become a permanent part of the reinsurance landscape?

A The ways in which the new capital markets products will

evolve is to make them more user friendly, more like the traditional products, including figuring out a way to provide a reinstatement of cover. They will try to more closely meet the needs of the customer. Capital markets products tend to be quite complex and therefore tend to be bought by larger, more complex companies.

One of the ways the market will evolve is to try to simplify the product and make it more amenable for smaller and less sophisticated companies. I think there are efforts going on to achieve that.

COMINGS & GOINGS

UP CLOSE: KIMBERLY CASTLE

JACKSONVILLE, FLORIDA-BASED ASSISTANT VICE PRESIDENT OF THE LONG-HAUL TRUCKING DIVISION
Long Beach, New York-based Lancer Insurance Co.

PREVIOUS POSITION: Jacksonville, Florida-based division manager for the Jacksonville office of the long-haul trucking division for Lancer Insurance Co.

LOOKING FORWARD TO: Right now we are building the long-haul trucking division in Jacksonville. ... I am in the process of creating that division.

CHALLENGES FACING INDUSTRY: There are driver shortages, which lead to severity of claims going up with the number of hours drivers are working.

INDUSTRY OUTLOOK: I see the market starting to harden a bit. Rates are increasing. I think it's going to go that way.

FIRST INDUSTRY JOB: As an accounts receivable clerk in Milwaukee for W.R Dustin and Associates in 1980.

ADVICE: I've been in it since the 1980s. I still learn something new every day. Keep an open mind. There is always something to learn.



OUTSIDE THE INDUSTRY, A DREAM JOB: A detective. I love those television shows. Trying to solve crimes intrigues me.

HOBBIES: I love to travel.

THING MOST PEOPLE DON'T KNOW ABOUT ME: Everybody thinks I have an easy-going, outgoing personality, but I have a fear of talking to crowds.

WHEN I RETIRE: Do volunteer work with little children

CAN'T-MISS TELEVISION SHOW: "Forensic Files."

FAVORITE BOOK: I like all the John Grisham books.

BEST CITY: I love Chicago. There is just something about Chicago. I love the downtown, the atmosphere.

THOUGHTS ON SMARTPHONES: They are smarter than me, I know that. I think they are a great tool for any industry. Truthfully, I sometimes have a hard time figuring them out, but that's what teenaged kids are for.

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EDITORIAL

TAKE CARE WITH COMP REFORMS

It's had ups and downs, but the U.S. workers compensation system has served employers and employees pretty well over the past 100 years. In exchange for agreeing to use the system as the exclusive remedy for dealing with workplace injuries, employees are assured that they'll be covered for lost pay and medical care, and employers have some degree of certainty in the liabilities and costs they incur when workers are injured.

There are some outliers, such as the Texas workers comp opt-out law that many employers have welcomed, and the courts are full of quirky workers comp disputes, often centering around employees caught taking part in physically challenging activities when they are supposedly injured. But generally the traditional workers comp system has, for want of a better word, worked.

Which is why it's discouraging to see the core tenet of the system, the exclusive remedy provision, under attack in several states.

As we report on page 1, especially in states that have implemented workers comp reforms, employees are suing in an attempt to win awards that exceed the benefits provided by the system.

There have been good reasons for the reforms that have been introduced over the past several years. The changes often have provided some clarity as treatment has evolved, they have helped reduce legal costs, and they have helped limit premium increases.

But the reforms need to be drafted with care. Oklahoma is a case in point — the state introduced a series of reforms in 2013, including a provision that workers comp benefits should only be paid if an accident is “unforeseeable.” The provision has, among other things, put some burden on workers to pay heed to safety guidance and common sense. But the provision also has opened up the exclusive remedy provision to attack as it leaves it up to the courts to interpret “unforeseeable,” which is reminiscent of pollution coverage disputes in the 1970s and 1980s that pivoted on the meaning of “sudden.”

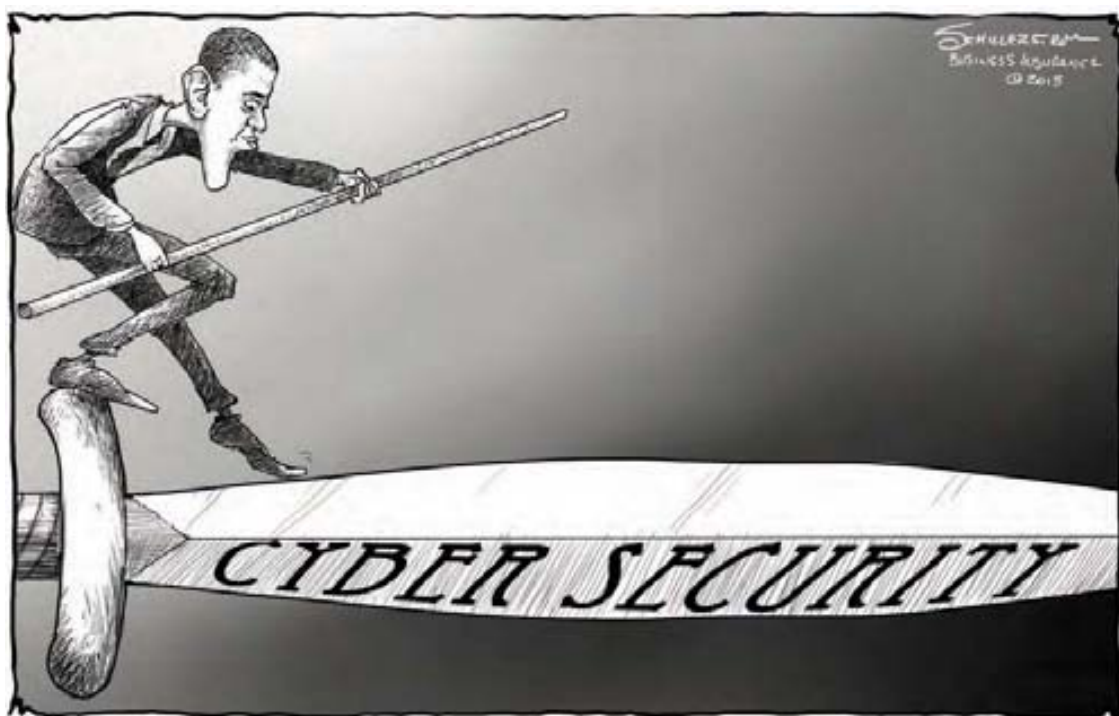
While states' efforts to reform their workers comp systems should continue, lawmakers and lobbying groups have to be careful when drafting reform legislation that they are not saving dimes today and paying dollars tomorrow.

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SCHILLERSTROM



COMMENTARY

WAGE-AND-HOUR SUITS CAUSE HEADACHES

Wage-and-hour litigation is a bit like playing whack-a-mole. There are so many issues involved — workers misclassified as exempt from overtime, and questions of whether they are salaried or independent contractors and if they should be paid for the time it takes them to put on their work clothes, to name just a few — that employers' bewilderment about how to comply is understandable. The U.S. Department of Labor has estimated, in fact, that about 70% of employers are noncompliant with the federal Fair Labor Standards Act.

Further complicating the issue are the blurred lines between work and off-work hours created by mobile media. How many of us have checked our emails while at home at night, or answered an urgent call during vacation? Even if the employer doesn't require it, sometimes the lure of that smartphone is too strong to resist. Which raises just one of the issues that should be addressed: If a worker voluntarily decides to put in some time at home, is his employer still obligated to pay him for it?

Meanwhile, a plaintiffs bar hungry for new business in light of fewer prospects because of the diminishing number of publicly held companies has led to a sustained burst of litigation, with the number of lawsuits filed in federal court increasing a whopping 31.8% in the five-year period between 2009 and 2014, according to a report by law firm Seyfarth Shaw L.L.P., and no end in sight.

Encouraging the litigation is that, unlike employment discrimination cases, which may require expensive expert testimony, just a few affidavits may be needed to file a wage-and-hour case.



JUDY GREENWALD
SENIOR EDITOR

At the same time, employers face an array of different state laws on this issue, with a range of potential fines and penalties.

Unfortunately for employers, the situation is only likely to get worse. President Barack Obama has asked the Labor Department to update the 77-year-old FLSA, which now calls for no overtime pay for workers who earn as little as \$23,000

a year. The proposed new rules are expected to be issued shortly.

While the FLSA clearly needs to be updated, caution on the part of federal regulators is called for as well. However well-intentioned, if increasing the number of workers eligible for overtime is too expensive, employers will simply cut back on the amount of overtime they are willing to approve, thus undermining the whole point behind the new regulation.

The issue also raises questions about the regulation's broader economic impact if it leads employers to either cut into their profits by paying more in overtime or get less accomplished. Fortunately, nimble Bermuda insurers are beginning to offer stand-alone policies that will help firms address this issue.

Employers can also introduce policies that call for strict monitoring of the amount of time their workers are on the job. In the meantime, best to keep those mole-whacking mallets handy.

Reviver statutes open window for older sexual abuse claims

Victims of sexual abuse are taking advantage of state reviver statutes to file claims that were previously time-barred, leading to unexpected exposures for religious and educational institutions, among others. Richard C. Mason of the Cozen O'Connor law firm discusses the recently enacted laws and how they can lead to fresh claims.

Reviver statutes establish a period, or a window, in which lawsuits can be filed that otherwise would be barred by a statute of limitations. Recently, they have become a favored method of permitting victims of sexual abuse to bring claims based upon abuse that occurred many years ago.

The revival of tort claims under long-expired insurance policies can generate unexpected, long-tail exposure for vulnerable organizations and their insurers, and therefore bears close monitoring.

In the past few years, four states have enacted reviver statutes, and statute of limitation reform bills are pending in eight additional states. This article will report on the recently enacted laws, inform readers about pending legislation, and explain how the statutes can lead to fresh claims under very old policies.

Traditional statutes of limitations

Traditionally, claims for sexual abuse were subject to general statutes of limitations applicable to tort claims. These statutes set forth short periods — typically two or three years — in which a claim must be brought. The limitations periods in most cases began running from the date of the injury or, under some statutes, the date when the breach of duty occurred. Accordingly, it has been common for statutes of limitations to bar lawsuits commenced more than three years after the plaintiff has been harmed.

In cases involving injuries to minors, an important qualification long has been recognized: The limitations period cannot commence until the victim reaches the age of majority, which is 18 years old in most states. Accordingly, in a state with a two-year tort limitations period, a child victimized in 1975 at the age of 12, would have until 1983, two years after he or she turned 18, to commence an action for sexual abuse.

A second qualification to the running of limitations periods in some cases is the discovery rule. In most states that allow for a discovery rule, the limitations period does not commence until a victim could have discovered he or she had been harmed by childhood sexual abuse.

In sexual abuse cases, the discovery rule has been successfully invoked in cases of “repressed and recovered memory.” In many jurisdictions,

repressed memory functions to suspend the running of statutes of limitations during the period when the victim cannot recall the injurious event. Thus, for example, a victim who establishes that he or she did not recover memory of a particular trauma until reaching age 31 may have until age 33 to file suit in a state that has a two-year statute of limitations. Such cases can present daunting issues of proof and credibility, but in compelling instances have permitted a suit to be brought long after the limitations period would otherwise have expired.

In recent years, activists and plaintiffs attorneys, dissatisfied with existing legal doctrines that broadly protect sexual abuse victims from any harsh application of statutes of limitations, have urged state legislatures to enact laws that permit

The revival of tort claims under long-expired insurance policies can generate unexpected, long-tail exposure for vulnerable organizations and their insurers, and therefore bears close monitoring.

the revival of decades-old sexual abuse claims that were presumed to have been time-barred.

During the past five years, legislation to revive time-barred sexual abuse cases has been enacted or is pending in a number of states.

Four states have enacted legislation permitting the revival of time-barred sexual abuse claims. California, Delaware, Hawaii and Minnesota have enacted such “window” legislation. A window is a period, usually from one to four years, during which any plaintiff can bring an action for sexual abuse no matter how long ago the abuse occurred. So under a two-year window, for example, a plaintiff can bring a suit based upon abuse that ceased 50 years ago, as long as he or she commences the suit during the next two years.

Some states look to other means of reviving matters in a more limited fashion. Massachusetts, for example, amended its statute to permit suits to be brought up to age 53 and to allow for a seven-year discovery rule in sexual abuse cases. Under that statute, a plaintiff need only commence an action

within seven years of the date when the victim could reasonably have discovered his or her psychological harm was caused by another’s sexual act.

Under such a statute, a plaintiff abused 50 years ago might be entitled to bring a suit now, but probably could not take advantage of the new statute unless he or she could demonstrate that current distress could not have been linked to past sexual abuse until seven or fewer years ago.

In addition, reviver-type legislation is pending in eight other states. In Pennsylvania, home to the Jerry Sandusky sexual abuse scandal, legislation has been introduced to revive previously barred claims for victims aged 50 or younger. The proposed statute of limitations would permit, for example, a 47-year-old man to sue for abuse that occurred in 1978.

Potential effect on insurance coverage

Reviver statutes potentially can create long-tail exposures under many general liability policies. Policies that are decades old can, when reviver statutes have passed, be forced to respond to numerous tort claims. When reviver legislation passed in California in 2003, more than 1,000 new suits, including many alleging abuse occurring well over 10 years prior to the suit, were brought.

Claims under older policies may present distinct challenges. Sexual molestation exclusions were rare until about 20 years ago and almost certainly will be absent from general liability policies issued prior to 1980. Self-insured retentions likewise were rare decades ago. Also, rescission for concealment can be more difficult to investigate and to litigate, when proof would depend upon aged or deceased underwriters. On the more favorable end, policy limits for older policies also likely will be substantially lower than insureds currently require.

These new and increased exposures are nevertheless manageable. Serial sexual abuse cases, meaning instances in which an insured is sued by a large number of victims, have primarily afflicted public entities, religious and educational institutions, athletic organizations, medical facilities and other policyholders that cater to, service or treat minors. Thus, many insurers will be able to quantify their exposures in light of business lines insured and engage in contingency planning if needed.

This often includes defining and measuring the exposure by forming an accurate picture of horizontal and vertical coverages, quantified according to the varying allocation regimes in key states such as California, New York and Pennsylvania. Those insurers who were most prepared when reviver legislation passed in states such as Delaware secured the most favorable allocations during the high-pressure and chaotic settlement and mediation process that often follows rapidly upon passage of a reviver statute.



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Watching the clock

Wage-and-hour litigation on the rise as regulations increase



BY JUDY GREENWALD

Employers face increased wage-and-hour litigation and greater regulatory scrutiny, although a recent U.S. Supreme Court ruling sided with businesses on one front in this increasingly contentious area. Major factors behind the increase include the outdated 77-year-old Fair Labor Standards Act, more plaintiff attorneys specializing in the area, employees who are more aware of their rights, active state and federal regulators, and technology changes that allow employees to work remotely at any time of the day or night, experts say. Wage and hour lawsuits typically allege that a worker's employer has failed to pay him or her wages due under the law. Often the suits allege that an hourly paid worker was misclassified under FLSA regulations as a

salaried employee and was not paid for overtime work. Other issues being considered by the courts include whether workers should be considered salaried employees or independent contractors; working off the clock; the time it takes workers to don or shed work clothes, boot up their computers or undergo security checks; and payment for meal and rest breaks. Depending on the state, fines for violating wage-and-hour laws can be significant. Amid already significant employer concern, experts say the issue is likely to become more complicated by a memo President Barack Obama sent to the U.S. Department of Labor last year calling for updating the FLSA's overtime rules, which is expected to happen sometime this year. While insurance traditionally has not covered wage-and-hour risks, some insurers have begun offering stand-alone coverage.

LITIGATION FILED

Lawsuits alleging employer violations of the Fair Labor Standards Act filed in federal court increased significantly between 2009 and 2014.

Year	Suits filed	% increase
2009	6,120	N/A
2010	6,761	10.5%
2011	6,779	0.3%
2012	7,672	13.2%
2013	7,882	2.7%
2014	8,066	2.3%

Source: Seyfarth Shaw L.L.P.



Insurers move to cover employers' wage-and-hour liability risks

Insurers traditionally have not covered large employers' wage-and-hour litigation risks, but that is beginning to change.

The Bermuda operations of three insurers have begun offering stand-alone coverage of the risk, including XL Group P.L.C., Allied World Assurance Co. and Markel Corp.

XL's policy offers up to \$25 million in limits on a primary or excess basis, said Matthew Irvine, chief underwriting officer of XL's Bermuda professional lines unit.

In addition, a proprietary wage-and-hour program developed in 2012 by Aon Risk Solutions offers up to \$75 million of stand-alone coverage on a line slip/quota share or on a traditional layered basis through a group of insurers. A line slip quota share involves a group of insurers that agree on a shared percentage of the risks.

Phil Norton, Chicago based president of Arthur J. Gallagher & Co.'s D&O professional liability division, said working with the three

insurers and adding \$45 million in excess capacity can result in as much as \$100 million in capacity in the Bermuda market.

Wayne Imrie, London-based management liability underwriter at Beazley P.L.C., which participates in the Aon program, said the employer takedown rate for wage-and-hour coverage has been disappointing so far, as it represents additional costs that need to be planned for 12-18 months in advance, but he anticipates it will gain in popularity.

Rodger Laurite, senior vice president and unit manager at Lockton Cos. L.L.C.'s financial services practice in Atlanta, said there are a handful of U.S. insurers that will offer wage-and-hour litigation coverage to smaller employers, generally those with up to 1,000 employees, and some sublimit of defense costs coverage, typically under an employment practices liability policy.

By Judy Greenwald

The Bermuda operations of three insurers have begun offering stand-alone coverage of the risk, including XL Group P.L.C., Allied World Assurance Co. and Markel Corp.

Some 8,066 lawsuits alleging FLSA violations were filed in federal court in 2014, a 31.8% increase from 6,120 in 2009, Seyfarth Shaw L.L.P. said in a January analysis.

"You keep waiting for the crest of the wave, and we haven't seen it yet," said Gerald L. Maatman Jr., a Chicago-based partner at the law firm.

Wage-and-hour suits began increasing in the late 1990s as "the plaintiffs' bar realized that there was money to be made," said Michael S. Kun, a member of law firm Epstein Becker & Green P.C. in Los Angeles.

Wage-and-hour suits have low

barriers to entry. Unlike employment discrimination cases, where plaintiff attorneys may hire expert statisticians or labor economists to obtain class certification, wage-and-hour cases may require just several affidavits, Mr. Maatman said.

Individual plaintiffs' recovery can be small, but "the legal fees can be enormous" for their attorneys, Mr. Kun said.

Compliance confusion

Part of the problem, observers say, is complex laws that even well-meaning employers may vio-

late. The Labor Department has suggested that 70% of employers do not fully comply with the FLSA, they add.

"Knowing exactly what time does count as hours worked" is a major issue for employers, said Lawrence S. McGoldrick, of counsel at Fisher & Phillips L.L.P. in Atlanta. While commuting to work normally is not covered, "what if someone commutes from home to different locations every day? Employers struggle with that," he said.

Modern technology also comes into play, such as whether employers are obligated to pay workers who answer email during off

hours.

President Obama said in the memo sent to the Labor Department last year to update overtime rules under the FLSA, that rules originally intended to limit overtime for highly paid employees now cover workers "earning as little as \$23,000 a year."

Deb Horne, director of human resources at Goleta, California-based CMC Rescue Inc., which provides rescue equipment and training to a variety of industries, said the anticipated new rule will increase employer payroll costs.

Ms. Horne, who also is past director of the Alexandria, Virginia-

based Society for Human Resource Management's California State Council, said it will cause employers to become stricter on allowing overtime and implement policies that require its preauthorization. Adding "greater wealth to the employee isn't necessarily going to happen if the employer can't afford to pay those increased payroll costs," she said.

Eric H. Oppenheim, executive vice president and franchisee at Rockville, Maryland-based Republic Foods Inc., a Burger King franchisee, said that depending on the location, the new rule could result in salary disparities for workers with the same title based on their exempt status.

The new definitions "will make it tougher for employers to meet the test to prove somebody's exempt" from overtime, which Mr. McGoldrick said will generate its own new wave of litigation.

The Department of Labor's strategy is "going after a lot of large employers with very visible enforcement actions," which are intended to serve as examples for others in the same industry, said Scott E. Hamilton, Lincolnshire, Illinois-based national managing director of human resources and compensation consulting at Arthur J. Gallagher & Co.

For instance, Mountain View, California-based LinkedIn Corp. agreed last August to pay \$3.3 million in overtime and \$2.5 million in liquidated damages to 359 current and former employees at company branches in California, Illinois, Nebraska and New York, according to the Labor Department.

The FLSA authorizes the Labor Department's Wage and Hour Division to assess employers penalties of up to \$1,100 for each violation for repeated or willful violations of the minimum wage and overtime requirements of the act.

Fines also can be severe under state law.

In Massachusetts, employers may be fined triple damages for overtime violations, in addition to having to pay attorney fees, said Martha J. Zackin, a partner at Bello/Welsh L.L.P. in Boston.

There is, however, a bright spot for employers.

In its December ruling in *Integrity Staffing Solutions Inc. v. Jesse Busk et al.*, the Supreme Court ruled unanimously that the Wilmington, Delaware-based firm was not obligated under the FLSA to compensate workers for the roughly 25 minutes a day they spend waiting to undergo a security screening to leave warehouses in Las Vegas and Fenley, Nevada. Security checks were not a "principal activity" the workers were employed to perform, the high court ruled.

"It could have led to a parade of horrors if the Supreme Court had ruled otherwise," Mr. Kun said.

EMPLOYERS MOVE TO PROTECT LGBT WORKERS FROM BIAS

More nondiscrimination policies cover transgender employees

BY MATT DUNNING

A growing number of U.S. employers are expanding their nondiscrimination policies to include lesbian, gay, bisexual and transgender employees, even when they are not legally compelled to do so.

Employers are responding as the federal government has taken a stand defending LGBT employees, even though federal laws do not explicitly prohibit employ-

ment discrimination on the basis of sexual orientation or gender identity.

Late last year, the U.S. Labor Department issued a final rule prohibiting federal contractors from discriminating against employees and job applicants based on their sexual orientation or gender identity.

The final rule applies to all employers holding government contracts valued at \$10,000 or more on or after April 15, 2015.

Additionally, the U.S. Equal Employment Opportunity Commission in recent years repeatedly has declared its intent to use existing gender nondiscrimination rules under Title VII of the Civil Rights Act to sue employers engaging in — or failing to prevent — workplace bias and harassment toward LGBT employees and potential hires.

In particular, experts say the federal government devoted considerable energy in 2014 to establishing employment protections for transgender workers under existing federal laws. Those efforts culminated in an Dec. 18 statement from the U.S. Department of Justice formally permitting federal regulators and prosecutors to pursue litigation against public employers — but not private employers — for gender identity discrimination claims under Title VII.

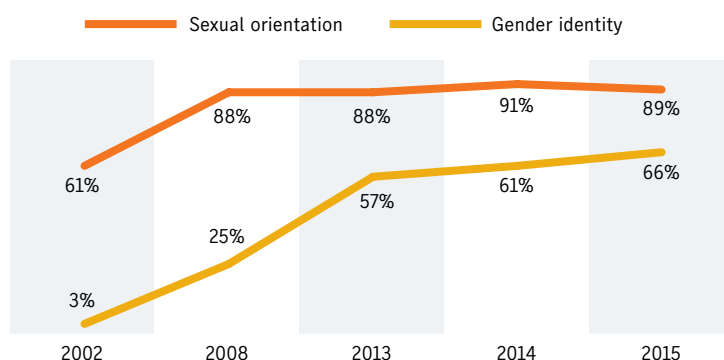
“This will help to foster fair and consistent treatment for all claimants,” U.S. Attorney General Eric Holder said in the statement. “It reaffirms the Justice Department’s commitment to protecting the civil rights of all Americans.”

For its part, the EEOC took arguably its most aggressive action so far toward achieving that end by filing federal lawsuits last September against private companies in Michigan and Florida on behalf of employees who allege they were fired after informing their employer they planned to transition from one gender to the other.

“The cases involving transgender employees in particular are something I’ve been watching, where we’re starting to see the extension of sex discrimination protection to transgender individuals,” said Todd Solomon, a

LGBT BIAS POLICIES

The percentage of Fortune 500 employers offering nondiscrimination protections for transgender employees has more than doubled since 2008, while such protections for gay, lesbian and bisexual employees have remained relatively unchanged.



Source: Human Rights Campaign

Chicago-based partner at McDermott Will & Emery L.L.P. “That’s kind of the new frontier in terms of employment discrimination. Not that the issue of equal employment rights for gays and lesbians is exactly settled, but I’d say they’re more stable today than they have been, so a lot of the focus lately has been on transgender rights in the workplace.”

While the EEOC’s lawsuits, as well as individual federal suits against private employers, should offer some encouragement to transgender employees seeking nationwide protection from workplace discrimination, experts say it could be years before the U.S. Supreme Court renders a definitive ruling on the issue or Congress passes legislation barring discrimination based on sexual orientation and gender identity.

Still, experts said many employers aren’t waiting for the courts or Congress to extend nondiscrimination protections to transgender workers.

Two-thirds of Fortune 500 employers currently include explicit gender identity protections in their corporate nondiscrimination policies, according to Washington-based nonprofit the Human Rights Campaign.

“Regardless of what the law requires, it’s really become an employment best practice to have these kinds of policies on the books,” said Sarah Warbelow, the Human Rights Campaign’s Washington-based legal director. “It helps create a more settled and stable work environment in which your people can focus on

getting their jobs done without having to worry that someone is going to find out who they are and who they love. That’s just good for business.”

However, experts say that while some employer clients are philosophically receptive to the idea of adding gender identity-specific provisions to their nondiscrimination policies, they have been reluctant to do so.

“Gender identity is a newer issue for a lot of employers,” said Laura Maehtlen, a partner at Seyfarth Shaw L.L.P. in San Francisco. “What we’re finding is that a lot of employers want to do the right thing, but they feel like they don’t understand the specific issues facing that community, so they’re scared to address it because they don’t want to make a mistake.”

To avoid complications — including potential discrimination claims under state and/or federal laws — Ms. Maehtlen said she has advised clients to establish clear guidelines for supervisors and human resources professionals “outlining how they should respond and what their responsibilities are in the event that an employee comes forward and announces that they plan to transition genders.”

“Some of the trickier situations we’ve seen come up involve companies where there aren’t a lot of resources in place for handling it, and it just creates a lot of frustration in the moment,” Ms. Maehtlen said.

“It makes it a lot easier to have thought through that process in advance.”

Derivative suits drive litigation in D&O sector

Large settlements
may signify more suits

BY JUDY GREENWALD

Two recent multimillion-dollar settlements of shareholder derivative lawsuits are expected to lead to more litigation and even larger settlements.

Experts say derivative actions are a growing problem for companies, driven in part by a plaintiffs bar seeking revenue as a shrinking number of publicly traded companies leads to fewer securities class actions.

Some observers expect companies engaging in mergers and acquisitions to purchase more Side A directors and officers liability cover, which protects them from personal liability when a company cannot or will not indemnify them.

A derivative lawsuit is filed by a shareholder on a company’s behalf. They typically alleged wrongdoing by directors and officers and money recovered after legal fees is returned to the company.

Two recent cases that were settled involved mergers and acquisitions and charged directors and officers with conflicts of interest.

In November, Santa Monica, California-based Activision Blizzard Inc. announced a \$275 million settlement of consolidated derivative and class action shareholder litigation in the October 2013 purchase by the video game company and a shareholder group of 88% of Paris-based Vivendi S.A.’s shares in the firm best known for its “World of Warcraft” and “Call of Duty” games.

In addition, Phoenix-based Freeport-McMoRan Inc. announced in December a \$137.5 million settlement of a derivative lawsuit in its purchase of two oil and gas companies.

These followed 2013’s \$139.3 million News Corp. settlement.

“You get a \$275 million settlement and that gets people’s attention,” said Kevin LaCroix, an attorney and executive vice president at RT ProExec, a unit of R-T Specialty L.L.C. in Beachwood, Ohio.

“At this point, the pattern has been established that there will be these larger settlements, which will create a ratchet effect when it comes to settlement trends,” Mr. LaCroix said.

Shareholder derivative litigation first gained popularity several years ago over options backdating.

Derivative litigation generally is filed in state court, and multiple suits may be filed in multiple states, unlike securities class actions that typically are filed in federal court and consolidated.

LGBT LITIGATION

Recent federal lawsuits seeking workplace discrimination protection for lesbian, gay, bisexual and transgender employees under Title VII of the Civil Rights Act include:

EEOC v. Lakeland Eye Clinic P.A.
Filed Sept. 25, 2014,
Middle District of Florida

The EEOC alleges Lakeland Eye Clinic fired Michael Branson in 2011 shortly after he informed supervisors he was undergoing a gender transition from male to female and planned to legally change his name to Brandi. The agency alleges the company’s actions were motivated by gender bias in violation of Title VII, in part because he did not conform to the company’s “sex- or gender-based preferences, expectations or stereotypes.”

EEOC v. R.G. & G.R. Harris Funeral Homes Inc.

Filed Sept. 25, 2014,
Eastern District of Michigan

The EEOC alleges that Harris Funeral Homes Inc. and its owners fired Amiee Stephens in 2013 after she told the company she planned to undergo a gender transition, but was told at her termination that “what she was ‘proposing to do’ was unacceptable.” The EEOC accuses Harris Funeral Homes of violating Title VII’s provisions in firing Ms. Stephens for refusing to conform to sex-based preferences or stereotypes.

Leyth O. Jamal v. Saks & Co.

Filed Sept. 30, 2014,
Southern District of Texas

Leyth Jamal alleges she was fired in retaliation for complaining to the EEOC that managers and co-workers at the Saks Off 5th outlet store in Katy, Texas, frequently engaged in gender-based intimidation and harassment regarding her transgender identity, in violation of Title VII.

FIRMS TAKE CLOSER LOOK AT SIDE A COVER FOR DERIVATIVE RISKS

Concern about potentially large derivative settlements is leading more publicly traded companies to reconsider their Side A directors and officers coverage, observers say.

“There hasn’t been a significant percentage of insureds that are increasing limits” as more derivative litigation has been filed, “but there are those who have been considering additional Side A limits on a case-by-case basis,” said Steve Boughal, New York-based vice president and chief underwriting officer of Hartford Financial Products, a unit of The Hartford Financial Services Group Inc.

“Clients are going to ... think seriously about increasing those limits because derivative actions, depending on the circumstances, are good candidates” for Side A D&O coverage, said Phil Norton, Chicago-based president of Arthur J. Gallagher & Co.’s D&O professional liability division, who said there is plenty of capacity available.

The market is likely to be receptive to such requests “depending upon the individual risk there,” Mr. Boughal said.

Derivative litigation has led to “some pretty intense negotiations between brokers and insurers as to the scope of what’s covered

for derivative suits,” including plaintiff attorney fees, said Will Fahey, New York-based senior vice president of Zurich North America’s management liability group.

“It’s a thorny issue that the industry needs to find way to address for the insured, without encouraging the plaintiffs bar to bring more frivolous litigation,” Mr. Fahey said.

Courtney C.T. Horrigan, a partner at Reed Smith L.L.P. in Pittsburgh, said she has counseled clients for the past several years to get an explicit agreement from insurers that plaintiff attorney fees will be covered as part of settling a derivative suit.

By Judy Greenwald

resulting in large fines and penalties,” and plaintiff attorneys are trying to chase derivative settlements associated with those issues “with not much success,” said Steve Boughal, New York-based vice president and chief underwriting officer of Hartford Financial Products, a unit of The Hartford Financial Services Group Inc.

Mr. Fahey also said cyber-related D&O litigation has been brought as derivative suits.

The question is whether the large settlements in the derivative cases are an anomaly.

“We’re going to have to wait and see how that plays out,” said Robbyn Reichman, co-leader of Aon Risk Solutions’ legal and claims practice group.

Also unlike securities class actions, derivative suits do not require a drop in a company’s stock price to file suit.

A derivative plaintiff must demand that the board take action before going to court, or plead doing so would be futile, and companies have more legal defenses available, such as the business judgment rule that begins with a presumption that the directors and officers acted reasonably.

Despite those defenses, derivative litigation is growing, although there are no official statistics avail-

DERIVATIVE SETTLEMENTS

The largest settlements of shareholder derivative lawsuits

Company	Size	Year
Activision Blizzard Inc.	\$275 million	2014
News Corp.	\$139 million	2013
Freeport-McMoRan Inc.	\$137.5 million	2015
Oracle Corp.	\$122 million	2005
American International Group Inc.	\$115 million	2008

Source: The D&O Diary

able on this issue.

“We absolutely saw an uptick in derivative litigation last year and believe we will continue to see an increase in derivative litigation in 2015” that seeks higher recoveries,

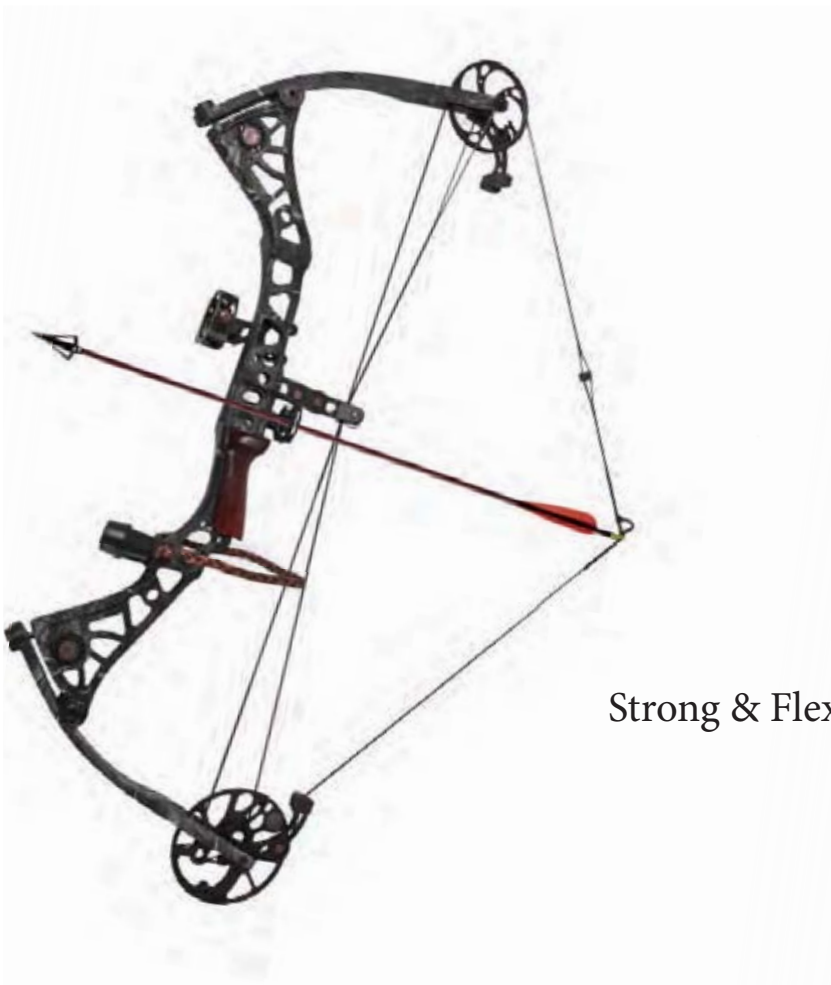
said Will Fahey, New York-based senior vice president at Zurich North America’s management liability group.

“Because there are fewer securities class actions for the plaintiffs bar to prosecute and generate significant fees, the plaintiffs bar has turned as an alternative revenue source to filing more derivative shareholder lawsuits,” said Dan A. Bailey, a member of law firm Bailey Cavalieri L.L.C. in Columbus, Ohio.

“There’s also been some increase in regulatory action that’s been

One factor that may help companies facing derivative litigation is a recent Delaware ruling that firms domiciled in the state, which accounts for more than half of publicly held companies, may include in their bylaws a requirement that derivative litigation be filed in one particular jurisdiction.

The Delaware Supreme Court also upheld a bylaw that requires plaintiff shareholders who lose derivative litigation to pay defense costs, which can be a significant deterrent to litigation, although this may eventually be overturned by the state Legislature.



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REGULATORS CLAMP DOWN ON CORPORATE WRONGDOING

Automated fraud investigations make firms jittery

BY BILL KENEALY

Companies face more stringent enforcement of laws that target corporate wrongdoing, ranging from the Dodd-Frank Wall Street Reform and Consumer Protection Act to the Foreign Corrupt Practices Act, as well as new regulatory tools — including one dubbed RoboCop.

While regulatory risk is perennial, a relatively new source of regulatory scrutiny is the U.S. Securities and Exchange Commission scaling up its Financial Reporting and Audit Task Force dedicated to detecting fraudulent or improper financial reporting.

The task force last year introduced a computer program known as the accounting quality model, which the media dubbed RoboCop for its automated examination of financial filings.

“There is a concern because there is now heightened scrutiny over financial filings,” said Brenda Shelly, New York-based U.S. directors and officers liability product at Marsh L.L.C.

One of greatest uncertainties regarding the task force is its reliance on the accounting program, she said.

“Things that are anomalies in accounting practices are now pulled out by the system, reviewed by an attorney and sent to a regulator as appropriate,” Ms. Shelly said, adding uncertainty remains about the parameters the accounting program will rely on to identify wrongdoing. “Does everybody’s data get pulled? What constitutes a red flag? We don’t know yet.”

A similar sense of regulatory urgency surrounds the U.S. Department of Justice’s enforcement of the FCPA, said Kevin LaCroix, an attorney and executive vice president at RT ProExec, a division of R-T Specialty L.L.C., in Beachwood, Ohio.

“A trend that we saw in 2014 that I think we are going to see a lot more of in 2015 is FCPA investigations,” Mr. LaCroix said.

Indeed, companies including Avon Products Inc. and Alcoa World Alumina L.L.C., a unit of Alcoa Inc., pleaded guilty to charges of bribing foreign officials in 2014.

What’s more, Mr. LaCroix said regulators in other countries also are taking a close look at the issue of bribery by multinational corporations, citing the recent \$500 million fine and suspended prison

sentences of executives of U.K. drug giant GlaxoSmithKline P.L.C. by Chinese officials.

“It’s not just U.S. regulators — you’ll see Brazilians, Chinese and Canadian and U.K. regulators looking at this closely,” he said. “So companies need to know that their biggest regulatory risk can come from outside the country.”

“The trend of global harmonization of regulations does create implications for boards in terms of how they manage their companies’ activities and protocols overseas,” Ms. Shelly said.

States take the lead

Closer to home, regulators are taking a closer look at how companies handle customer data and their own cyber exposures, said Zakia Phillips, executive vice president of the financial institutions group and North American practice co-leader at Willis North America Inc.

“I think it’s cyber regulation that’s really going to make a difference in 2015,” Ms. Phillips said, noting that state governments have taken the lead in imposing data security laws in the absence of a federal law.

For example, she said, “New York has come out with some really tough standards. Before, you would do some due diligence before you hired an outside technology vendor, but now New York is saying that you have to own that process.”

One federal agency looking to play a bigger role in regulating how companies protect consumers’ personal data is the Federal Trade Commission.

Reed Rubinstein, Washington-based partner at Dinsmore & Shohl L.L.P., said the FTC is very interested in how companies safeguard consumer data, especially health care data.

“The FTC is going to aggressively wield its authority,” he said. “Data security for health care has historically been regulated by U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act, but the FTC has decided that it can do what it wants regardless of what HIPAA mandates.”

Mr. LaCroix said companies need to be wary of regulatory investigations because “the dollars involved can be huge. Defense fees for civil litigation are often a couple hundred thousand dollars, but defense fees for a regulatory investigation can be millions of dollars.”

Many costs incurred due to regulatory investigations are not covered by traditional D&O insurance, Ms. Shelly said.

“We have seen many insurers come out with endorsements dealing with investigation defense costs, and several of those require additional premiums,” she said. “We have also seen three stand-alone products for corporate investigations for the corporation itself, but we haven’t seen much uptake for those due to the construct and the cost.”

Mr. LaCroix said the terms and conditions common to stand-alone products — such as coinsurance, high retentions, significant premiums, restricted limits and vigorous underwriting — likely are limiting uptake. “Entity investigative costs is the readily identifiable type of coverage that a lot of companies assume they have but that carriers don’t want to pick up,” he said. “It’s an issue that the insurance industry has never really found a comfortable solution for.”



DEFENSE COSTS SAP COMPANY FIGHTING FTC

Michael J. Daugherty, the Atlanta-based president and CEO of cancer diagnostics company LabMD Inc., is an expert on regulatory risk.

He’s been locked in a protracted dispute with the Federal Trade Commission since 2010 over the 2008 theft of a billing record from the company’s computers.

In the FTC’s 2013 complaint, the agency alleged that LabMD violated Section 5 of the FTC Act by failing to “take reasonable and appropriate measures” to prevent unauthorized access to 9,000 consumers’ personal data after their bills appeared on the peer-to-peer filing sharing network LimeWire.

Mr. Daugherty said he turned down a settlement offer from the FTC even though the consent decree would have excluded any omissions of guilt. Even though fighting the FTC would be extremely expensive, Mr. Daugherty said he also knew that signing it would damage the company’s competitiveness.

“Most corporations roll over, sign the decree and it never gets to court,” he said. “We weren’t a big company like Sony or T.J. Maxx, so we couldn’t weather this assassination of our reputation.”

Last March, LabMD turned to a federal judge in Georgia, seeking a preliminary injunction to suspend the FTC’s enforcement action and alleging that the agency overstepped its authority by attempting to regulate protected health information. “You can’t go to the judicial system until the FTC is done with you, which is years and millions of dollars later,” Mr. Daugherty said of mounting legal costs that forced the company to close last year.

Although the 11th U.S. Circuit Court of Appeals last month rejected his effort to halt the FTC probe, Mr. Daugherty said he advises other companies facing an FTC inquiry into their data privacy practices to quickly grasp the severity of the situation.

“Don’t waste time with the shock that you are being treated like this,” he said. “If they show up at your door, they already think you are guilty.”

By Bill Kenealy

SEC ACTIONS

Number of enforcement actions taken by the U.S. Securities and Exchange Commission, by year

2005	630
2006	574
2007	655
2008	671
2009	664
2010	681
2011	735
2012	734
2013	686
2014	734

Source: U.S. Securities and Exchange Commission



The U.S. Securities and Exchange Commission’s Financial Reporting and Audit Task Force last year introduced a computer program known as the accounting quality model, which the media dubbed RoboCop.

LARGEST D&O INSURERS

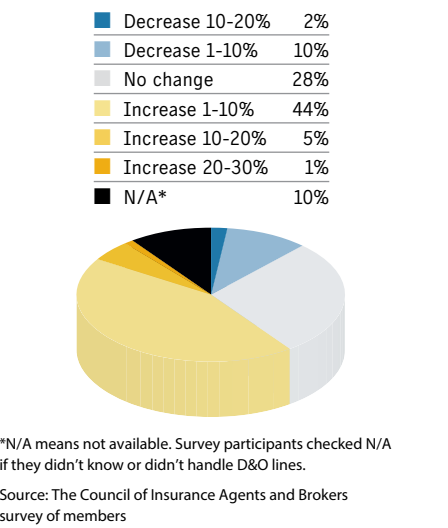
The 25 largest underwriters of directors and officers liability coverage ranked by direct premiums written for monoline policies during the first half of 2014.

Rank	Company	Direct premiums written (in millions)	Direct losses incurred (in millions)	Direct loss ratio	Market share
1	American International Group Inc.	\$482.7	\$323.0	64.4%	16.6%
2	XL Group P.L.C.	\$266.8	\$177.9	56.6%	9.2%
3	Chubb Corp.	\$254.9	\$26.5	9.2%	8.8%
4	CNA Financial Corp.	\$198.4	\$99.3	50.1%	6.8%
5	HCC Insurance Holdings Inc.	\$157.5	\$93.8	55.3%	5.4%
6	Travelers Cos. Inc.	\$153.9	\$90.3	54.4%	5.3%
7	Ace Ltd.	\$138.0	\$96.5	62.8%	4.8%
8	Zurich Insurance Group Ltd.	\$125.7	\$91.9	81.2%	4.3%
9	Tokio Marine Holdings Inc.	\$110.7	\$50.5	45.9%	3.8%
10	American Financial Group Inc.	\$107.9	\$27.7	26.8%	3.7%
11	Alleghany Corp.	\$87.8	\$36.7	42.4%	3.0%
12	W.R. Berkley Corp.	\$86.6	\$50.3	62.3%	3.0%
13	Axis Capital Holdings Ltd.	\$81.5	\$65.9	64.9%	2.8%
14	Liberty Mutual Group Inc.	\$61.8	\$11.1	18.5%	2.1%
15	Hartford Financial Services Group Inc.	\$55.2	\$13.7	21.3%	1.9%
16	Berkshire Hathaway Inc.	\$50.5	\$10.1	25.7%	1.7%
17	Cincinnati Financial Corp.	\$42.5	\$18.6	43.4%	1.4%
18	Endurance Specialty Holdings Ltd.	\$38.5	\$10.6	43.7%	1.3%
19	Arch Capital Group Ltd.	\$36.7	\$24.3	41.0%	1.3%
20	Old Republic International Corp.	\$33.3	\$12.6	33.7%	1.1%
21	Nationwide Mutual Insurance Co.	\$32.8	\$8.1	33.7%	1.1%
22	Allied World Assurance Co. Holdings A.G.	\$32.4	\$16.3	46.2%	1.1%
23	ICI Mutual Insurance Co., a Risk Retention Group	\$25.8	\$1.1	2.8%	0.9%
24	Ironshore Inc.	\$22.3	\$9.2	33.7%	0.8%
25	Navigators Group Inc.	\$21.3	\$307.5	1376.2%	0.7%
TOP 25 TOTAL		\$2,705.6	\$1,673.4	58.5%	93.0
INDUSTRY TOTAL		\$2,908.2	\$1,774.4	57.6%	100%

Source: SNL Financial L.C.

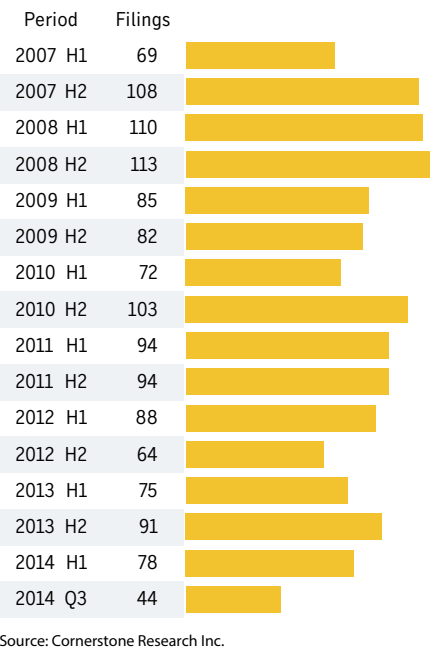
D&O PRICING

50% of survey respondents say premium rates for directors and officers liability coverage have increased during the second quarter of 2014.



CLASS ACTION FILINGS

Number of class action filings per semiannual period from 2007 to 2014, including the third quarter of 2014.



STATE MEDICAL PROFESSIONAL LIABILITY INSURANCE

The five states with the most direct premiums written in 2013 for medical professional liability insurance.

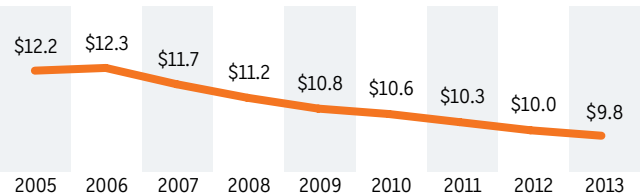


State	Direct premiums written	Number of insurers
New York	\$1,661,145,481	123
California	\$742,926,878	114
Pennsylvania	\$693,933,213	141
Florida	\$595,893,712	123
Illinois	\$542,701,608	121

Source: National Association of Insurance Commissioners

U.S. MEDICAL PROFESSIONAL LIABILITY INSURANCE

Direct premiums written for medical professional liability insurance nationwide from 2005-2013, in billions of dollars.*



*Based on initial filings as of March 2014; not adjusted for more recent revisions.

Source: National Association of Insurance Commissioners

LARGEST MEDICAL PROFESSIONAL LIABILITY INSURERS

The 10 largest underwriters of medical liability insurance ranked by 2013 direct premiums written.*

2013 DIRECT PREMIUMS WRITTEN, IN MILLIONS OF DOLLARS					
Rank	Company	Total	Physicians	Hospitals	Other health care professionals Other health care facilities
1	Berkshire Hathaway Inc.	\$825.6	\$629.2	\$53.3	\$112.9 \$30.2
2	The Doctors Co.	\$736.4	\$700.8	\$9.8	\$19.8 \$6.1
3	Medical Liability Mutual Insurance Co.	\$542.0	\$466.9	\$61.4	\$13.7 \$0.0
4	CNA Financial Corp.	\$498.2	\$76.1	\$152.7	\$264.5 \$4.9
5	ProAssurance Corp.	\$494.9	\$357.6	\$22.8	\$103.2 \$11.3
6	Physicians' Reciprocal Insurers	\$380.6	\$301.6	\$73.9	\$5.2 \$0.0
7	American International Group Inc.	\$351.5	\$46.1	\$85.3	\$66.7 \$153.4
8	Medical Professional Mutual Insurance Co.	\$350.0	\$262.5	\$80.0	\$5.4 \$2.0
9	NORCAL Mutual Insurance Co.	\$285.2	\$283.5	\$1.4	\$0.0 \$0.4
10	ISMIE Mutual Insurance Co.	\$243.2	\$243.2	\$0.0	\$0.0 \$0.0
TOP 10 TOTAL		\$4,707.6	\$3,367.5	\$540.6	\$591.4 \$208.3
INDUSTRY TOTAL		\$9,702.1	\$5,949.7	\$1,824.1	\$1,198.6 \$729.7

*Based on NAIC statutory property/casualty annual statement filings; U.S. filers only. May include business written outside the United States if reported in the NAIC statements.

Source: SNL Financial L.C.

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REQUEST FOR PROPOSALS



The Delaware River Port Authority (DRPA) is requesting a Technical Proposal and a Price Proposal for Broker/Consultant Services for Traditional Property & Casualty Insurance and Pollution Legal Liability. Interested parties can find the Request for Proposal documents by going to the DRPA web site www.drpa.org, clicking on the "Working with DRPA" link, and then clicking on "Bids and Contracts."

REQUEST FOR PROPOSALS



The Delaware River Port Authority (DRPA) is requesting a Technical Proposal and a Price Proposal for Broker/Consultant Services for Bridge Property & Excess Liability. Interested parties can find the Request for Proposal documents by going to the DRPA web site www.drpa.org, clicking on the "Working with DRPA" link, and then clicking on "Bids and Contracts."

BUSINESS INSURANCE®

REQUEST FOR PROPOSAL

NEW YORK CITY HOUSING AUTHORITY -PUBLIC NOTICE- INVITATION FOR BID POLLUTION LEGAL LIABILITY

The New York City Housing Authority ("NYCHA") requests proposals from qualified **INSURANCE COMPANIES** for Pollution Legal Liability. Insurance companies must be licensed in New York State with "A.M. Best" rating of at least "A minus, X". **Coverage is to become effective May 18, 2015.**

Proposals shall be made in the format included in the Invitation for Bid (IFB) package containing instructions, specifications and detailed submission requirements. IFB packets may be obtained by contacting

NYCHA's Pollution Legal Liability Insurance Broker:

**Edgewood Partners Insurance Center (EPIC),
One Stamford Plaza
263 Tresser Boulevard,
Stamford, CT 06901-3226
at (203) 363-1948.**

In order to be eligible, completed bid proposals must be received by 3:00 P.M. E.S.T. on March 2, 2015.

Direct inquiries for additional information to **Rebecca Oliver, Senior Vice President**, at the aforementioned address, telephone or e-mail to: rebecca.oliver@epicbrokers.com.

NYCHA IS NOT SOLICITING QUOTES FROM BROKERS

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Hartford Steam Boiler covers microelectronics

Engineering and technical risk insurer Hartford Steam Boiler Inspection & Insurance Co. has launched HSB TechAdvantage, an equipment breakdown and technology insurance that covers losses from microelectronic failures.

The product extends coverage to circuit boards, computer chips and other microcircuitry without requiring evidence of physical damage, which often is hard to assess, the Hartford, Connecticut-based unit of Munich Reinsurance Co. said.

HSB TechAdvantage covers losses from business interruption, data loss and reputational damage, Hartford Steam Boiler said. It also includes enhancements to existing service-interruption coverage for cloud computing services and adds data restoration coverage for data lost due to a utility service interruption, the company said.

Off-premises business income and extra expense coverage for mobile equipment and technology, as well as public relations coverage to address business interruption and reputational damage, are also included, according to a statement.

Jockey accident coverage for racetracks unveiled

The National Thoroughbred Racing Association, Lockton Cos. L.L.C. and Burns & Wilcox Brokerage have started jockey accident medical coverage for racetracks.

The policy covers licensed jockeys participating in racing events and is available to thoroughbred and quarter horse racetracks and racinos, according to information provided by San Francisco-based Burns & Wilcox Brokerage, a unit of Kaufman Financial Group.

The coverage is written through Swiss Re Ltd. and Lloyd's of London, with limits available of up to \$1.5 million, a spokesman for Burns & Wilcox said. Higher limits are available on a case-by-case basis, he said.

The policy includes coverages for accidental death, coma, rehabilitation, trauma counseling and rain day credit, Burns & Wilcox said in a statement.

"We have been able to introduce new insurance capacity, along with creative terms and conditions and favorable pricing, to a very complex area of insurance," Jared Mitilier, leader of Lockton's gaming, entertainment and sports practice, said in the statement.

Fidelis forms ocean cargo division

Marine insurance provider Fidelis Group Holdings L.L.C. and its Continental Underwriters Ltd. subsidiary have formed an ocean cargo division, Continental Underwriters said in a statement.

The Chicago-based division provides physical damage coverage, temporary warehouse coverage and processing coverage for goods in transit via vessel, aircraft, truck, railcar, courier services, and



Farmers to cover rideshare drivers between fares

 Farmers Insurance Group of Cos. has rolled out rideshare drivers coverage in Colorado that addresses the state's new insurance requirements for rideshare services.

Colorado's legislation, which was signed into law in June and authorizes ridesharing services such as Uber Technologies and Lyft Inc., requires rideshare drivers to maintain insurance coverage for the period between the driver activating a ridesharing app and picking up a passenger. The Farmers endorsement provides coverage for that period, the insurer said in a statement.

Farmers said coverage will continue between rides and ride requests until the driver logs off the application. However, Farmers said the endorsement does not provide coverage after a passenger is accepted or when a paying customer enters the car.

The law says ridesharing services, classified as transportation network companies, are required to provide insurance once a passenger is picked up until drop-off, according to the statement.

Farmers' policy will be available Feb. 16, a spokesman for the insurer said. On average, the endorsement will add an additional 25% to a customer's premium, Farmers said in the statement.

the U.S. mail and parcel post, a spokesman for New Orleans-based Continental Underwriters said.

The coverage is provided by HCC Insurance Holdings Inc. unit Houston Casualty Co. with limits of up to \$25 million, according to the spokesman. Coverage is available internationally, according to the statement.

XL offers simpler excess liability form

XL Group P.L.C. has launched an excess professional liability follow-form policy in the United States and Canada.

The simplified, one-page excess form provides up to \$50 million of additional liability limits over primary professional liability coverage from XL or other insurers, Dublin-based XL said in a statement.

According to information on XL's website, the excess form contains no exclusions.

"With this new true follow-form, we are simplifying the underwriting process, but also helping to eliminate potential conflicts and coverage gaps that can complicate claims," Gregory McCoy, assistant vice president of underwriting in XL's professional business, said in the statement.

NetDiligence offers SecurityScorecard

Cyber risk assessment and data breach services company Network Standard Corp., which does business as NetDiligence, will offer SecurityScorecard Inc.'s risk grading service as part of its own cyber risk assessment to enable cyber liability insurers to gauge the security of policyholders and applicants, SecurityScorecard said in a statement.

Gladwyne, Pennsylvania-based NetDiligence will offer SecurityScorecard's service as part of its QuietAudit assessment service, which gives client risk managers and their insurers a 360-degree view of their cyber risk exposures, according to the statement.

SecurityScorecard measures all potential risk factors, as well as indicators of trends and emerging risks, allowing insurers to quickly select the lowest risk applicants with less cost and less exposure, New York-based SecurityScorecard said.

SecurityScorecard also allows the stratification of applicants by risk level acceptability or by the amount of risk that can be carried at one time, according to the statement.

"When evaluating the security health of an organization, especially in today's interconnected world, the ability to gain right-now insight into potential malicious threats is critical," NetDiligence President Mark Greisiger said in the statement. "By partnering with SecurityScorecard, NetDiligence is able to provide that information to insurers."

Institutes course covers cyber risk management

The Institutes has launched a course focused on mitigating cyber risk exposures and responding to cyber threats.

The course, Managing Cyber Risk, aims to prepare risk management and insurance professionals to respond to cyber risk exposures from an enterprise risk management perspective and make better underwriting, claims and pricing decisions by accurately analyzing cyber risk coverage, The Institutes said in a statement. It also aims to help professionals manage cyber threats with an enhanced understanding of how cyber risk affects different operating units of insurance organizations, according to the statement.

A spokeswoman for The Institutes, based in Malvern, Pennsylvania, said the course is "self-study." Study materials are available in print and online, and the exam portion of the course can be completed on-site at a participant's company.

DEALS & MOVES

Houston International acquires Elite Underwriting

Houston International Insurance Group Ltd. has acquired Malvern, Pennsylvania-based Elite Underwriting Services.

Terms of the deal were not disclosed, a spokesman for HIIG said.

Elite is a managing general underwriting agency specializing in excess medical insurance, or medical stop loss, and other specialty accident and health products and writes nearly \$100 million in gross premiums, HIIG said in a statement.

Elite's team will join HIIG and operate as HIIG-Elite Underwriting Service in Malvern, the spokesman said.

Brown & Brown unit buys Hall-Wright General Agency

Managing general agent Texas Security General Insurance Agency Inc., a subsidiary of Brown & Brown Inc., has acquired San Antonio, Texas-based MGA Hall-Wright General Agency Inc.

A spokesman for Daytona Beach, Florida-based Brown & Brown declined to disclose the terms of the deal.

Hall-Wright, which has annual revenues of approximately \$1.6 million, specializes in personal lines and commercial lines property/casualty insurance in Texas and Louisiana, Brown & Brown said in a statement. Hall-Wright principal Robert Wright and his team will join Texas Security's existing office in San Antonio.

Hall-Wright will assume Texas Security's name, a Brown & Brown spokesman said.

Willis, Miller to form London specialty wholesale broker

Willis Group Holdings P.L.C. and Miller Insurance Services L.L.P. have agreed to combine their respective wholesale businesses to form a London-based specialty wholesale insurance broker.

Willis will take a majority 85% stake in the Miller partnership, with Miller partners retaining the remainder. Willis declined to disclose terms of the transaction, which is expected to close in the second quarter of 2015. Wholesale broking activities encompassing a series of units will transfer from Willis to Miller, while Miller treaty reinsurance, U.K. corporate client and financial institutions retail teams will transfer to Willis, according to the statement.

The newly formed entity will trade under the Miller brand, managed, governed and regulated as a stand-alone legal entity and separate Lloyd's of London broker, the statement said.

Associated Banc-Corp acquires consultant Ahmann & Martin

Associated Banc-Corp has agreed to acquire risk and benefits consulting firm Ahmann & Martin Co. for at least \$48 million, though the deal, expected to close this month, could cost as much as \$56 million, Green Bay, Wisconsin-based Associated said in a statement.

Edina, Minnesota-based Ahmann & Martin will be merged with Associated Banc-Corp's employee benefits subsidiary Associated Financial Group L.L.C.

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COLLATERAL

Continued from page 3

seen even more relaxed collateral terms due to competition among insurers and the strengthening credit market.

“Carriers, in an attempt to write more business when they see business that they like on a loss-sensitive basis, are trying to get more aggressive on their collateral terms in order to secure that new business,” said Daniel Aronson, managing director and primary casualty placement leader at Marsh L.L.C. in New York.

Letters of credit typically are used to post insurer-required collateral to guarantee that policyholders can repay insurers for workers comp claims.

While the cost of letters of credit can vary, they’re often expensive and tie up capital and available credit for employers, said Pam Ferlandino, executive vice president and casualty practice leader at Willis North America Inc. in New York. For instance, she said a financially distressed employer might expect to pay a 10% fee to secure a \$50 million letter of cred-

it, or \$5 million a year. That is in addition to claims costs an employer would need to repay.

Surety bonds often are less costly than letters of credit, Ms. Ferlandino said. In the past year, some insurers have allowed policyholders to guarantee up to 30% of their collateral with sureties,

“Carriers, in an attempt to write more business when they see business that they like on a loss-sensitive basis, are trying to get more aggressive on their collateral terms in order to secure that new business.”

Daniel Aronson, Marsh L.L.C.

“which is a huge advantage for our clients,” she said.

“Often, the price of a surety can be as little as a third of the price of a letter of credit, thereby reducing the cost of risk by significant amounts,” she said.

Brokers say some insurers also are allowing buyers to pay a fee, or

“buy down” their collateral requirements, which typically is cheaper than a letter of credit. Insurers also are offering paid loss credits for losses that would be paid by the employer in the first 12 to 24 months of workers comp policy coverage, they say.

The relaxed collateral requirements are the result of “interest rates being low and carriers needing to secure profitable premium growth,” Mr. Aronson said. “So they’re going to get more aggressive for loss-sensitive accounts that they view favorably.”

Insurers such as American International Group Inc. and Zurich Insurance Group Ltd. say they’ve offered additional collateral options for employers in the past few years. Zurich has let buyers put money in a trust fund or a certificate of deposit as collateral since 2010.

John Dyke, Schaumburg, Illinois-based head of credit risk at Zurich North America, said in a statement to *Business Insurance* that Zurich considers “the use of surety bonds as a form of collateral on a case-by-case basis.”

AIG’s offering, started in March 2013 under its Collateral Flex Option program, allows employers

with strong credit profiles to buy down up to 50% of their collateral requirements for large-deductible workers comp policies.

“The market’s actually responding to the fact that corporations in the United States are in better financial condition today than they were four or five years ago,” said Russell Johnston, New York-based president of AIG’s U.S. casualty division.

About one-third of the employers that have used Collateral Flex Option were new accounts to AIG, Mr. Johnston said.

Travelers Cos. Inc. offered investments buyers can use as collateral in 2010, but declined comment on whether the program remains in effect.

Employers are noticing the change in collateral terms.

Mr. Zullo said Cubic Corp. was able to apply paid loss credits to its workers comp collateral requirements with CNA Financial Corp. during its October renewal.

Cubic has 6,000 employees, and about 90% of its workers comp claim costs fall within its deductible. The more flexible collateral terms have allowed the company to free up capital for other initiatives, Mr. Zullo said.

“We’re in a growth mode, and it’s extremely important for us to keep credit lines open and available for growing the business,” he said.

Sources say collateral options tend to be available for employers with high credit ratings. But brokers note that policyholders need to ask for collateral options, since some insurers don’t actively market such programs.

Companies need to show insurers why their risk profile is more favorable than what an insurer might project based on the employer’s industry or loss experience in recent years, Marsh’s Mr. Aronson said. That could include safety programs to improve an employer’s workers comp claim frequency or severity.

Employers should work with comp insurers on flexible collateral terms, rather than demanding collateral options, since that could be seen as a sign of financial challenges that haven’t been disclosed or are emerging, he said.

“An insurance company that hears that either you don’t want to post collateral, or you don’t really have the means to post collateral, is going to be more concerned and take an even more conservative stance,” Mr. Aronson said.

ASBESTOS

Continued from page 4

by \$2 billion to \$9 billion at year-end 2013, based on estimated ultimate industry losses of \$85 billion, total paid losses of \$53 billion and current reserves totaling \$23 billion.”

“Industry reserves are inadequate,” said Jim Auden, Chicago-based managing director of insurance at Fitch.

Mr. Auden added that industry asbestos losses have totaled around \$2 billion per year over the last five years and are likely to come in at about that level or a little lower for 2014, although final tallies are not yet available.

At that level, he said, asbestos losses remain a drag on company earnings for those with asbestos exposures. Most companies, however, “have the ability to absorb those losses as they flow through,” he said.

“Most of the larger companies remain strongly capitalized and have the ability to absorb recurring moderate asbestos-related losses,” Mr. Auden said.

In the early 2000s, there were a few instances of companies reporting charges in excess of \$500 million for asbestos liabilities, something unlikely to be repeated in today’s market, said Mr. Auden.

Tracy Dolin, New York-based director of North American insurance financial services ratings for Standard & Poor’s Corp., agreed that the outstanding asbestos liabilities are less of an issue now than a decade or more ago. “A number of years ago we were concerned, but our concern has since

subsided,” she said.

Gerard Altonji, who authored the Best report, pointed out that some companies with major asbestos liabilities had divested much or all of those liabilities to Berkshire Hathaway Inc.’s Omaha, Nebraska-based National Indemnity Co. unit, most recently Liberty Mutual Insurance Co. in August 2014 and CNA before that in 2010.

He added that with several such deals already done, there may be less room for future divestitures.

Howard Mills, chief adviser at the insurance industry group at Deloitte Services L.L.P. in New York and the state’s former insurance commissioner, agreed that capital levels are adequate to meet asbestos losses.

“The industry is extremely well-capitalized,” said Mr. Mills. “Asbestos is still potentially an open-ended issue, but one for which the industry is prepared.”

Mr. Mills added that while some companies may continue adding reserves, overall capital levels remain good. Additionally, he said, insurers today benefit from more precise modeling, which allows them to more precisely model and thus manage losses.

He is less optimistic about tort reform, which he said is not likely to see movement under the Obama administration.

However, there has been some positive evolution in the litigation environment for asbestos claims, according to Mark Behrens, Washington-based partner with Shook, Hardy & Bacon L.L.P. and co-chair of the firm’s public policy group.

He pointed to the introduction late last month of the Furthering Asbestos Claim Transparency Act, H.R. 526, which would require



asbestos trusts to file a quarterly report that would disclose the names of parties that filed claims with that trust in that reporting period and what their claimed exposures are, and enactment of state asbestos trust transparency legislation.

The legislation “may finally pass in 2015 now that the GOP controls both houses of Congress,” Best said in its report, adding that developments in litigation against gasket manufacturer Garlock Sealing Technologies L.L.C. in U.S. Bankruptcy Court in Charlotte, North Carolina, may help spur movement toward greater transparency in asbestos litigation.

In that case, U.S. Bankruptcy Judge George Hodges found that plaintiffs attorneys had withheld information in asbestos litigation.

“This recent ruling may pave the way for more transparency and fairness in current and future liti-

gation,” Best said in its report.

Mr. Behrens agrees.

“In the last year, there is a greater public awareness about the problems of asbestos bankruptcy abuses,” he said, citing both the ruling in the Garlock case and the introduction of the FACT legislation.

“The report illustrates that the insurance industry is keeping up with asbestos claims, with individual insurers adjusting reserves as needed,” David Golden, senior director of commercial lines policy for the Chicago-based Property Casualty Insurers Association of America, said in an email. “Annual industry claim payments have been consistent for several years. While written about asbestos and environmental losses, the information in the report also supports general tort reforms that will help balance the scales of civil justice.”

“The industry is extremely well-capitalized. Asbestos is still potentially an open-ended issue, but one for which the industry is prepared.”

Howard Mills,
Deloitte Services L.L.P.

CYBER

Continued from page 3

critical issues such as protecting businesses from liability and balancing privacy and security also must be resolved, experts say.

Despite general agreement about the issue's urgency for the past several years, Congress and President Barack Obama failed to forge a bipartisan compromise on cyber security legislation.

That may have changed, driven in part by publicity over the alleged cyber hijacking of Sony Pictures Entertainment Inc. by agents on behalf of North Korea.

"No foreign nation, no hacker, should be able to shut down our networks, steal our trade secrets or invade the privacy of American families, especially our kids," President Obama said during his State of the Union address last month.

Legislation the administration proposes would codify ways to share information about cyber security between private entities and the government, as well as address notice requirements to people whose personally identifiable information is exposed by security breaches.

Many experts think information-sharing legislation has a better chance of passage in Congress.

They say that industry groups already have made progress on their own by forming "information-sharing and analysis organizations," such as the Financial Services Information-sharing and Analysis Center. It was launched by the financial services industry in 1999 in response to a presidential directive to share information to protect critical U.S. infrastructure.

"Perhaps ironically, both the president and congressional Republican caucus have come to the same conclusion," which is the need for a voluntary approach to encourage industry and the government to collaborate, said Larry Clinton, president and CEO of the Arlington, Virginia-based Internet Security Alliance, a trade association that includes multiple industries.

"The No. 1 job for the U.S. Chamber of Commerce this year is to get a good cyber information-sharing bill signed into law," a goal that is as important to the administration as it is to business, said Matthew J. Eggers, the Washington-based chamber's senior director of its national security and emergency preparedness department.

"A lot of the homework has already been done, so I do think we'll see an information-sharing bill of some sort moving forward ... and I expect the president will sign something," unless something unusual that has nothing to do with cyber security is added to the bill, said Jamie Barnett, a partner at law firm Venable L.L.P. in Washington.

A critical factor is protecting business against legal liability for sharing such information. A Jan.

27 letter signed by 35 organizations, including big and powerful insurance industry trade groups, that the U.S. Chamber of Commerce sent to members of the Senate calls for a law that provides businesses with "legal certainty that they have safe harbor against frivolous lawsuits."

"That's a huge, huge issue for companies," said Kevin Kalinich, Chicago-based global practice leader for cyber risk insurance at Aon Risk Solutions. Providing immunity from liability could push such legislation "over the finish line."

One of the "thornier" issues still to be resolved is the role of the National Security Agency, said Mark Greisiger, president of Gladwyne, Pennsylvania-based cyber risk management and information security service provider Network Standard Co., which does business as NetDiligence.

"We believe that the cyber security integration effort should be headed by a civilian agency, not the NSA, which is a military agency," and information received by the civilian agency "should not be automatically shared with the NSA," Mr. Greisiger said.

"I'm afraid ultimately we have to accept" that the issue of privacy must be compromised "if we want to remain secure," but civil libertarians do not agree, said Ben Beeson, Washington-based vice president of cyber security and privacy at insurance brokerage Lockton Cos. L.L.C.

"A delicate balance" must be achieved between privacy and security, said Matt McCabe, New York-based senior vice president in Marsh L.L.C.'s cyber and technology practice. "These are not simple questions, and there's a good reason why it's difficult to pass federal laws on this."

Meanwhile, businesses favor the streamlining that would result from a national law rather than having to deal with the current 47 state standards, even if some states, such as California, continue to have more stringent standards.

During a hearing on data breach legislation last week by the House Energy and Commerce's Subcommittee on Commerce, Manufacturing and Trade, subcommittee Chairman Michael Burgess, R-Texas, said legislation with bipartisan support is "achievable."

Those testifying at the hearing included Jennifer Barrett-Glasgow, global privacy officer at Little Rock, Arkansas-based Acxiom Corp., who said the large-scale computer processing services provider strongly supports preemptive federal legislation.

"Businesses would gain the benefit of more easily managed and understood compliance obligations, as well as increased regulatory scrutiny," she said.

However, "the chances are slim to none" of such legislation being approved, said Paul Bond, a partner at Reed Smith L.L.P. in Princeton, New Jersey. The concept has "been pushed year after year by



AP PHOTO

Despite general agreement about the issue's urgency for the past several years, Congress and President Barack Obama failed to forge a bipartisan compromise on cyber security legislation. That may have changed, driven in part by publicity over the alleged cyber hijacking of Sony Pictures Entertainment Inc. by agents on behalf of North Korea.



AP PHOTO

both sides of the aisle," but "has never gotten anywhere."

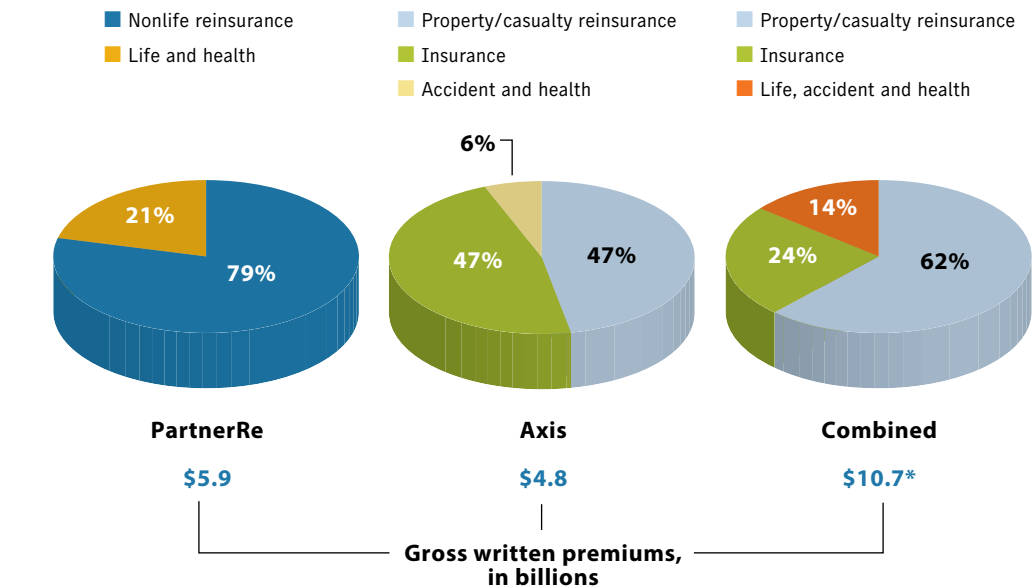
State attorneys general object to the issue being taken out of their hands, observers say.

"They will jealously guard their ability to govern or regulate commerce in their states," said Robert Parisi, managing director and national cyber risk practice leader at Marsh L.L.C.

However, Francine Friedman, senior policy counsel at Akin Gump Strauss Hauer & Feld L.L.P. in Washington, said that while she believes information-sharing legislation's prospects are better, the working relationship between business and Congress may lead to the successful passage of national data breach notification legislation.

COMBINED BUSINESS

Property/casualty reinsurance would dominate the combined books of business of PartnerRe Ltd. and Axis Capital Holdings Ltd., which announced an all-stock merger of the Bermuda companies.



*Pro forma combination as of Sept. 30, 2014
Source: PartnerRe, Axis investor presentation

REINSURERS

Continued from page 1

based XL Group P.L.C.’s Jan. 9 proposed acquisition of Bermuda-based Catlin Group Ltd. in a \$4.1 billion deal and Bermuda-based RenaissanceRe Holdings Ltd.’s Nov. 24, 2014, acquisition of Bermuda-based Platinum underwriters Holdings Ltd. in a \$1.9 billion deal.

“I think it is absolutely a trend and I think, ultimately, it’s all driven by the same factors,” said Cliff Gallant, San Francisco-based analyst at Nomura Securities Co. Ltd. “There is a lot of pressure in reinsurance; prices are coming down and the product is changing. I expect that the wave is building and that we’ll definitely see more M&A activity.”

Meyer Shields, managing director at Keefe, Bruyette & Woods Inc. in Baltimore, said: “This is a trend, it is accelerating and I don’t think we’re anywhere near done with this sort of announcement.”

“After a relative calm of several years, it seems the floodgates have opened for consolidation in Bermuda,” Amit Kumar, New York-based vice president and senior analyst of insurance at Macquarie Capital (USA) Inc., wrote in an analyst note that also cited the RenRe/Platinum and XL/Catlin deals.

Axis Capital CEO Albert Benchimol, who will head the combined entity, said in an interview: “I feel very confident that with the increased scale of the organization, strong profitability and cash flow, and capital efficiencies, we will have significantly enhanced resources to support the growth of additional specialty insurance business, either organically or at some point if it made sense through acquisition.”

Following last week’s announcement, Standard &

Poor’s Corp. put Axis on its credit watch negative list as it seeks answers to questions, said Taoufik Gharib, New York-based director of financial services ratings for North American insurance.

The rating agency will meet with company management over the next 90 days and either affirm Axis’ A+ stable ratings or put it on negative outlook, he said. Issues include how the combined entity will manage capital, its property catastrophe exposures, overlapping business, and how the enterprise risk management programs will be integrated and define risk tolerances, he said.

He agreed, however, there will

“This is a trend, it is accelerating and I don’t think we’re anywhere near done with this sort of announcement.”

Meyer Shields, Keefe, Bruyette & Woods Inc.

be more reinsurer combinations.

“We’ll see further consolidation, especially among the smaller companies, which need to compete to remain relevant in the market. They will be under pressure to take action,” Mr. Gharib said.

As for concerns that the deal increases Axis’ exposure to reinsurance, Mr. Benchimol was not worried.

“To go from having approximately 50% of our business in a top 20 property/casualty reinsurer to having 62% of our business as the No. 5 reinsurer and leading broker reinsurer, that’s a trade I’ll do every day,” Mr. Benchimol said.

“It became increasingly clear to

us — strategically — that what we wanted to achieve was more scale and size in the reinsurance operation” as well as build a primary insurance capability, David Zweiner, interim CEO of PartnerRe, said in an interview.

The reinsurance brokerage community also sees further consolidation.

“The conditions are all there; it’s just a matter of getting the personalities to agree,” said David Flandro, New York-based global head of strategic advisory at JLT Towers Re, the reinsurance unit of Jardine Lloyd Thompson Group P.L.C.

“One could argue this decreases competition, but the reverse is also a possibility,” said Phil Campbell, Edina, Minnesota-based executive vice president of BMS Intermediaries Inc. “These larger reinsurers need to write volume and need bigger lines to get it, so they might be more aggressive in pricing and providing broader coverage just to get a line on the contract.”

Mr. Shields has an opposite view. “If I’m a reinsurance broker, the fact that I have fewer companies to go to is going to be tough,” he said. “Every time we see one of these deals, the top 20 becomes more exclusive” and controls a larger portion of premium volume.

The Axis-PartnerRe deal is expected to produce at least \$200 million in annual pretax cost savings and efficiencies in the first 18 months of operations, the companies said.

Mr. Benchimol, who joined Axis in 2012 from PartnerRe, said that includes using PartnerRe’s existing offices in Miami and Hong Kong.

He also said the companies’ combined accident and health activities will yield an operation in excess of \$600 million annually, making it one of the top players in the U.S health market.

CAPTIVES

Continued from page 1

Minnesota-based risk manager.

Howard Edelstein, Sealed Air’s Elmwood Park, New Jersey-based director of risk management, said: “Just as companies can successfully assume a certain level of property/casualty risks, they also can successfully assume a certain level of benefit risks.”

Under ExPro, the Labor Department must act within 45 days of a company request for an exemption of an arrangement that normally would be barred by ERISA. The entire process, including a comment period for plan participants, takes about 2½ months, less than half the time often needed for exemptions that do not qualify for the quick-approval process.

“It no longer is a slow boat to China. Employers know they have time certainty,” said George O’Donnell, technical director of global risk consulting at Aon Risk Solutions in Somerset, New Jersey, which filed Hormel’s application. “The availability of ExPro is a huge advantage in implementing these programs.”

Previously, the expedited process generally was available to captive benefits funding applicants that could cite two substantially similar exemptions approved in the past 10 years, or one similar exemption and one approved through ExPro within the past five years.

In 2012, though, the Labor Department suspended the expedited approval option for captive benefits funding arrangements while reviewing the criteria, and completed that in late 2013.

In the interim, two employers applied for individual exemptions from the Labor Department to fund employee benefits risks via their captives.

The Coca-Cola Co. got approval in March 2013 for an individual exemption to use its South Carolina captive to reinsure group term life insurance and accidental death and dismemberment coverage. Last year, Intel Corp. received approval to reinsure life and accidental death and dismemberment insurance through its Hawaii captive.

Nearly simultaneous with approval of Intel’s application, Labor Department officials signaled the return of ExPro and said employers should review Coca-Cola’s and Intel’s approach before filing their captive benefits funding applications. Hormel and Sealed Air cited the Coca-Cola and Intel strategy in their applications.

While the Labor Department did not add new criteria in restoring the fast-track review process, experts say it did require greater clarity and more detail explaining how participants’ benefits would be enhanced with a captive.

Prior to the regulatory review, “You knew you had to enhance participants’ benefits. Now you have to be more precise in disclos-

ing the actual improvement,” said Terry Richardson, a principal at PricewaterhouseCoopers L.L.P. in Dallas.

If Hormel’s and Sealed Air’s benefits captives applications are approved, more employers are certain to follow, experts say.

“There can be cost savings” by funding benefits through a captive, compared with insured coverage in the commercial market, said Debbie Liebeskind, a senior actuarial consultant at Towers Watson & Co. in Parsippany, New Jersey.

In fact, a rule of thumb is that employers funding benefits risks through their captives can cut benefits costs by 5% to 15%.

“The savings are there,” said Karin Landry, a managing partner at Boston-based Spring Consulting Group L.L.C., which filed Sealed Air’s captive benefits funding application.

Another advantage to adding benefits to a captive’s book of business is that it diversifies risks, reducing a captive’s exposure to losses if its experience is bad in one line of coverage.

Also, by funding the benefits risks through the captive, the captive earns investment income on those premiums as opposed to “sending out those dollars” to commercial insurers, Mr. Richardson said.

BENEFITS IN CAPTIVES

Hormel Foods Corp. and Sealed Air Corp. are seeking to become the first employers since 2012 to win U.S. Labor Department approval under a rapid-review process to fund employee benefit risks through their captive insurers. The companies, their captives and benefit proposals are:

Hormel Foods Corp.

Founded: 1891

Producer and marketer of a variety of a meat and food products, including Spam.

Headquarters: Austin, Minnesota

2014 revenue: \$9.3 billion

Benefit funding plan: Use its Vermont-based captive, Diversified Foods Insurance Co. L.L.C., which was licensed in 2012, to fund life insurance and long-term disability benefits. Policies would be issued by Zurich American Life Insurance Co., which would be reinsured by the captive. Major risks now funded through the captive include property, earthquake and terrorism.

Sealed Air Corp.

Founded: 1960

Manufacturer of packaging materials, including Bubble Wrap.

Headquarters: Charlotte, North Carolina

2013 revenue: \$7.7 billion

Benefit funding plan: Use its Vermont-based captive, Saddle Brook Insurance Co., which was licensed in 2003, to fund life and accidental death and dismemberment benefits. Policies would be issued by Zurich American Life Insurance Co., which would be reinsured by the captive. The captive already funds a variety of casualty risks.

REMEDY

Continued from page 1

At least a dozen states have enacted changes to their comp laws in recent years. California and New York are among the states that made significant comp reforms.

“As a result of those reforms, the plaintiffs attorneys see an opportunity with new statutes to try to carve some additional exceptions into exclusive remedy,” Mr. Randall said. “Perhaps there are instances within each system where there’s been at least a perceived reduction in benefits.”

In one Oklahoma case, a Pottawatomie County judge ruled Jan. 9 that the state’s workers comp law no longer provides the exclusive remedy for “foreseeable” injuries, so Darrell Duck can sue his employer, Hibdon Tire Plus, a division of Bridgestone/Firestone Retail Operations L.L.C., for neck and back injuries he sustained while using a tool to loosen a wheel. The Feb. 19, 2014, incident occurred nearly three weeks after Oklahoma’s workers comp reforms took effect.

The law, which moved the state from a court-based adjudication system to an administrative process, also allows employers with at least 100 workers and \$1 million in net assets, among other conditions and with certain exceptions, to self-insure or buy private workers comp insurance.

In addition, under the new workers comp law in Oklahoma, permanent partial disability benefits are allowed for a maximum of 350 weeks rather than 500 weeks, which was the maximum duration under the previous law.

Bob Burke, Mr. Duck’s attorney, said Hibdon Tire accepted the claim under the state’s comp system, but given the reduced benefits available under the new law, “I no longer believed workers comp was a good replacement. After 100 years ... the grand bargain has now been breached. Exclusive

remedy is dead.”

Both sides filed petitions last week asking the Oklahoma Supreme Court to immediately review the decision. While Mr. Burke also expects quick action by the state Legislature to address the issue, “you’ve still got over a year of injuries here that are subject to this,” he said.

Similar arguments have been made in Florida, where a Miami-Dade County judge ruled in August that the state’s law might have been a reasonable alternative to tort litigation 40 years ago, but “the benefits in the act have been so decimated since then that it no longer provides a reasonable alternative” to civil court.

The ruling states that a workers comp law should provide some level of permanent partial disability benefit, absent from the Florida Workers Compensation Act as a result of 2003 workers comp reforms.

However, in a strong signal that exclusive remedy remains alive in Florida, the 11th U.S. Circuit Court of Appeals ruled Jan. 22 that Zenith Insurance Co. is not liable for a \$9.5 million judgment secured by the estate of a worker killed on the job at Lawns Nursery & Irrigation Designs Inc. due to the state’s exclusive remedy provision.

While the ruling was a big victory for Florida workers comp payers, “that’s the result that all employers and insurers, frankly, would have expected,” Mr. Randall said. “When the workers compensation system was designed ... there was that trade-off where employers paid more in benefits under the no-fault theory, but perhaps saved a little bit under the (resulting ban on) tort” litigation.

To figure out which states might experience exclusive remedy challenges next, look “to states that have had significant workers compensation reforms in the last 10 years, and to the extent that those reforms have made those workers compensation systems less litigious,” said Trey Gillespie, Austin, Texas-based senior workers comp director with the Property Casual-

ty Insurers Association of America. “You’re going to see a bunch of hungry plaintiffs attorneys out there trying to attack the reforms through constitutional challenges and/or attack the exclusive remedy provisions of the workers compensation act through creative litigation.”

Even in states where there haven’t been significant, recent workers compensation reforms, there are still attempts “to chip away at exclusive remedy,” Mr. Randall said.

In Nebraska, a bill would waive workers comp as the exclusive remedy if it’s determined that an

“After 100 years ... the grand bargain has now been breached. Exclusive remedy is dead.”

Bob Burke,
attorney for Darrell Duck



FSOC

Continued from page 4

ance commissioner.

“In that regard, they’re moving a step in the right direction,” he said. “What the proposals do not address are the criteria. The companies may know a little more and know it a little earlier, but I think it’s still not clear how insurance companies, no matter how large, can be systemic risks or what they can do to avoid being designated a systemic risk.”

“Any improvements in transparency are movements in the right direction,” said David Snyder, a senior vice president in the Washington office of the Property Casualty Insurers Association of America.

Like Mr. Mirel, Mr. Snyder said the proposed changes do not address key issues.

Mr. Snyder said the SIFI designation ought to be based on a company’s activities, not its size. In addition, “there needs to be an off-ramp for companies that are designated so they can take certain actions to be undesignated,” he said.

He also said there is a lack of due process when the council agrees to international SIFI designations before conducting its own domestic process.

“I think that FSOC’s commitment to telling nonbank financial institutions earlier in the process if they are potential SIFI designees is an acknowledgement the current SIFI designation process creates significant avoidable problems,” Howard Mills, chief adviser

in the insurance industry group at Deloitte Services L.L.P. in New York and a former New York insurance superintendent, said in an email.

He cited the “ongoing concern that the insurance industry is being assessed using inappropriate standards that may ultimately lead to adverse effects on consumers.”

Jimi Grande, senior vice president in the Washington office of the National Association of Mutual Insurance Cos., said any increase in transparency is positive, but “as with most things, the devil is in the details, and when they say they will ‘make more information available,’ it is hard to determine exactly what that means.”

“We believe that FSOC staff’s recommendations for enhanced

employer was guilty of willful negligence.

A West Virginia bill, on the other hand, would better protect employers by tightening the definition of “deliberate intent,” which is an exception to exclusive remedy.

The idea is that, to recover benefits, an employee has to prove his or her supervisor or co-employee “deliberately committed an act with the intent to injure,” Mr. Randall said. But sometimes it’s defined as intending “to commit an act which was likely to injure, which is a very different interpretation.”

In Oklahoma, the “case is a reminder that words matter,” said Bruce Wood, Washington-based vice president and associate general counsel at the American Insurance Association.

The word “unforeseen” was likely meant to distinguish accidents from intentional injuries, but there are few accidents that are truly unpredictable, Mr. Gillespie said. Workplace slips, falls and lifting accidents all are foreseen to some degree, he said.

To protect exclusive remedy provisions and keep “issues out of the tort system,” Mr. Wood said some states impose penalties on employers and/or award increased benefits to injured workers in cases of employer misconduct.

“We would say that this is a sound compromise between preserving ... a no-fault system and recognizing that, in certain cases, a state may want to provide additional compensation for employer conduct that’s deemed to be truly egregious but does not rise to the level of true deliberate intent to injure,” Mr. Wood said.

Challenges to exclusive remedy provisions are of concern for payers who are “subject to the whims of the court system,” Mr. Randall said. “The only thing they can do is just try to continue to create policies to enhance their safety. But once a claim is being made, at that point they’re subject to the legislative mandate and the court interpretation.”

review, company input, and public transparency into the designation process are a step in the right direction and should be adopted by the council without delay,” Stef Zielezienski, senior vice president and general counsel of the American Insurance Association in Washington, said in an email.

“We continue to have concerns that the process to date has yielded flawed designations that overemphasize the potential for systemic risk in the insurance business,” he said.

“I have yet to see how they connect that issue of how an insurance company, however large, can pose a systemic risk if it were to become financially troubled or go belly up,” Mr. Mirel said. “How would that have an impact on the wider financial market?”

DISABILITY

Continued from page 4

accounts for wearable fitness tracking devices, smartphone applications and other mobile technologies.

“This is a wonderful topic because it forces us all to think about stuff that we really haven’t thought of before,” said Robert Scott, managing partner of the Law Offices of Robert K. Scott in Irvine, California. “There are still thresholds here that we’ve yet to cross.”

However, defense attorneys and claims investigators gathering evidence via social media are limited to information their clients already can access or is publicly available, experts said.

Aside from its probable inadmissibility as evidence, experts said information gathered from social media accounts through deceitful or unethical means — including that collected by third parties — could expose attorneys to violations of the American Bar Association’s Rules of Professional Conduct.

“You can ask plaintiffs and witnesses to provide you with access to their accounts, but you must be honest about your purpose for requesting that access,” Ms. Pett said.

To the extent their litigation strategy in defending a disability claim includes the use of electronic medical records and other personal health information, employers, insurers and their attorneys have obligations to protect that information under two federal laws — the Health Insurance Portability and Affordability Act and the Health Information Technology for Economic and Clinical Health Act. “You can never be prudent enough when it comes to HIPAA compliance,” said Lisa Bondurant, an Atlanta-based partner at Womble Carlyle Sandridge & Rice L.L.P.

Under federal law, most entities that create, maintain, transmit or receive electronic personal health information are required to establish administrative, physical and technical safeguards to prevent “reasonably anticipated” unauthorized access, use, modification or disclosure of that information.

Unfortunately, experts say, the speed and intricacy with which cyber security threats evolve make the task of protecting sensitive data, such as personal health information, particularly daunting. “What’s reasonable to anticipate today is far different than what would have been thought of as reasonable a year ago,” said Bryan Bolton, a founding partner and vice president at Funk & Bolton P.A. in Baltimore. “The (data security) standards under HIPAA and HITECH are moving, not static, and you need to be mindful of that.”



Three huge bolts plunged to the ground from the recently opened 47-story Leadenhall Building in London.

'Cheesgrater' sheds bolts

British insurers moving into a new London high-rise may be recalculating their risks after parts of three huge bolts plunged to the ground from the recently opened building.

British media reported no injuries when the bolts fell from the 47-story Leadenhall Building, which Londoners have dubbed "The Cheese grater" for its tapered shape resembling the common kitchen tool. The Independent describes the imposing bolts as "about the size of a human arm."

Aon P.L.C. reportedly has claimed 10 floors in the building for its world headquarters. Located in the insurance district, the building also is reported to have leases with Brit P.L.C. and Amlin P.L.C., among others.

Although the developer has determined the flawed bolts do not impugn the structure's integrity, The Evening Standard reported that bolts across 11 floors were to be replaced as a "precautionary measure."

Driver slams insurer with crash claim

When insurance companies encourage their policyholders to be proactive about paying their premiums and reporting claims, this case almost certainly isn't what they have in mind.

A 76-year-old woman last month crashed her car into the front window of Acceptance Auto



Insurance Co. in Holly Hill, Florida, apparently on her way to make a payment on her auto insurance bill, according

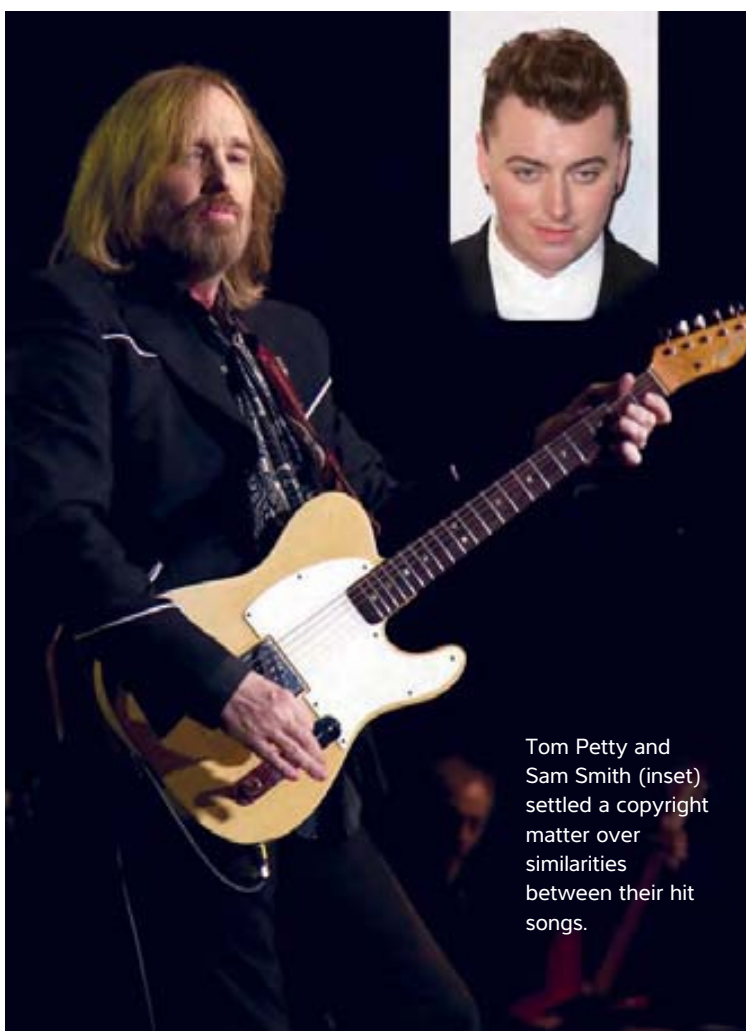
to a report by TV station WESH Orlando.

Police told the station that the woman was not hurt in the accident, nor was anyone inside Acceptance Auto's offices.

According to the report, police believe the woman accidentally hit the gas pedal as she was trying to park her car after driving to Acceptance Auto's offices to make a payment.

If there is a silver lining to the incident, it could be that Acceptance Auto's claims adjusters likely did not have to travel far to document the scene of the accident.

ROYALTIES, PLEASE. PETTY WINS SHARE OF MUSICIAN'S CHECK



Tom Petty and Sam Smith (inset) settled a copyright matter over similarities between their hit songs.

STEVE WHITE PHOTOS, HELGA ESTEB/SHUTTERSTOCK.COM

Classic rocker Tom Petty and first-time Grammy nominee Sam Smith have similar taste in melodies. Last year Mr. Petty and composer Jeff Lynne, who co-wrote the tune "I Won't Back Down" — the first single off Mr. Petty's 1989 solo album "Full Moon Fever" — reached out to representatives for British singer-songwriter Mr. Smith about similarities between their track and his 2014 single "Stay With Me."

Mr. Smith's representatives and Mr. Petty's camp quietly settled the copyright matter in October, though details weren't made available until January, according to media reports.

Mr. Petty and Mr. Lynn have been given a songwriting credit for "Stay With Me" and will receive royalties, reports state.

"Not previously familiar with the 1989 Petty/Lynne song, the writers of 'Stay With Me' listened to 'I Won't Back Down' and acknowledged the similarity," Mr. Smith's reps told media outlets. "Although the likeness was a complete coincidence, all involved came to an immediate and amicable agreement in which Tom Petty and Jeff Lynne are now credited as co-writers of 'Stay With Me' along with Sam Smith, James Napier and William Phillips."

If "Stay With Me" wins Song of the Year, Mr. Petty and Mr. Lynne will not be recognized as Grammy recipients, Bill Freimuth, senior vice president of awards for The Recording Academy, which presents the awards show, told Billboard magazine. Rather, they would receive certificates of honor.

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Sentence harshes pot grower's mellow

A penchant for insurance fraud has helped nip a man's marijuana growing operation in the bud. Kevin Turner of Essex, England, was sentenced to 20 months in prison after admitting to production of controlled Class B drugs and four counts of fraud by false representation. Mr. Turner, an electrician, made four £5,000 (\$7,496) claims to his insurer between December 2012 and June 2013, each time claiming his power tools had been taken from his van.



The fourth claim aroused the suspicion of the insurer, Zurich Insurance Group Ltd. who referred the matter to the Insurance Fraud Department of the City Police of London. When detectives searched Mr. Turner's property, they found forged receipts used to file the bogus insurance claims as well as an outbuilding containing 53 mature marijuana plants.

Mark Reynolds, who ran the IFED's investigation, said Mr. Turner's taste for the high life was his undoing.

"Turner's lavish lifestyle turned him into a drug producer and persistent insurance fraudster, which today has seen him jailed as a convicted criminal," Mr. Reynolds said in a statement.



Former Dodgers pitcher Ted Lilly.

Authorities balk at Lilly's RV pitch

Former Major League Baseball pitcher Ted Lilly has been accused of insurance fraud. The man who earned nearly \$80 million during his 1999-2013 career reportedly purchased insurance on a \$200,000 recreational vehicle after he was involved in a mishap.

Mr. Lilly, who pitched for the Montreal Expos, New York Yankees, Oakland Athletics, Toronto Blue Jays, Chicago Cubs and Los Angeles Dodgers, has been charged with insurance fraud in San Luis Obispo County, California, and faces up to five years in prison according to The (San Luis Obispo) Tribune.

According to the report, Mr. Lilly damaged his land monster to the tune of about \$4,600 last year, then purchased insurance in March 2014 from Progressive Casualty Insurance Co. and filed a claim.

The 39-year-old has been charged with three felonies by the California Department of Insurance.

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