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NEW TIMETABLE

According to Treasury Department regulations, employers with **100-plus employees** must offer coverage to **70%** of their full-time employees in 2015 or pay a **$2,000-per-employee** penalty.

The requirement to extend coverage to **95%** of full-timers or pay a **$2,000 penalty** has been delayed until 2016.

HEALTH CARE REFORM

Health care reform law rules relaxed

Temporary relief gives employers more time

BY JERRY GEISEL

While U.S. Treasury Department health care reform law rules temporarily will shield more employers that do not extend health care coverage to all their employees from a big financial penalty, those employers will continue to be liable for a smaller, still substantial fine.

Under final rules the Treasury department issued last week, employers with 100 or more employees will be exempt from the Patient Protection and Affordable Care Act's $2,000-per-employee penalty in 2015 if they offer coverage to at least 70% of their full-time workers — those who work an average of 30 hours per week.

That's a change from an earlier rule under which employers, starting in 2015, would have been exempt from the $2,000 penalty if they offered coverage to at least 95% of their full-time workers. Last

See **REFORM** page 26

EMPLOYMENT PRACTICES

CONCERNS MOUNT OVER WORKPLACE BULLYING

Pressure builds to pass laws targeting problem

BULLYING AT WORK

According to a CareerBuilder L.L.C. survey, bullying at work has increased. However, employees who reported the bullying to human resources said nothing was done more than half the time.

35% vs. 27%

In 2012, 35% of nearly 4,000 employees said they were bullied at work, up from 27% in 2011.

48%

Of workers who cited bullying in 2012, 48% said the harassment came from their bosses.

45%

Among those who said they were bullied in 2012, 45% said co-workers were the culprits.

BY JUDY GREENWALD

Workplace bullying is a growing, and often complicated, problem for employers.

A stagnant job market, with workers who feel stuck in jobs in which they are subject to bullying, may be exacerbating the situation, industry experts say.

Since 2003, legislation banning workplace bullying has been considered in 26 states, but no state has passed a law, according to the Bellingham, Wash.-based Workplace Bullying Institute.

See **BULLY** page 28

REGULATION

FIO receives lukewarm early reviews

House panel chides director on tardy report

BY MARK A. HOFMANN

Although the Federal Insurance Office appears to be short on major accomplishments in three years of existence, most insurance industry experts still give it a passing grade and don't share the disappointed view of some on Capitol Hill.

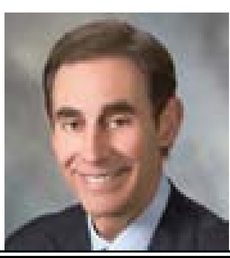
The office does not lack for congressional critics, as was evident earlier this month when FIO Director Michael McRaith appeared before the House Financial Services Committee's subcommittee on Housing and Insurance to discuss the office's long-delayed report on insurance regulatory modernization. The report was initially due by the end of January 2012, but was not finished until December 2013.

The report recommended a hybrid model of insurance regulation in which state and federal regulators play complementary roles to improve solvency and market conduct regulation. Many industry leaders' immediate reactions to that recommendation were opposition or displeasure.

But Mr. McRaith seemed to ease some of the industry's skepticism by telling the House panel that it's time to "move away" from the long-running state vs. federal insurance regulation debate.

Insurance industry experts tend

See **FIO** page 26



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Head of H.W. Kaufman Financial Group discusses outlook for the insurance industry in 2014

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Employers use workplace medical clinics to promote worker health and wellness

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DATA POSTER

Exclusive survey reveals risk managers' views on cyber risks, how to curtail exposures

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NEWSPAPER

SPECIAL REPORT

CYBER RISKS & LIABILITIES

Recent data breaches put focus on timing of notifications; effective breach response requires team approach; insurers expand coverage options; benefits, risks of placing data in the cloud; risk managers contend with cyber threats.

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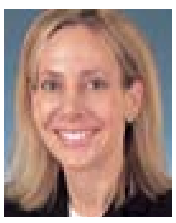

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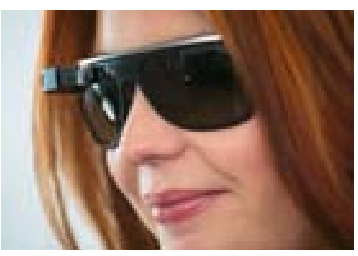

SECTIONS

NEWS

MARINE

MARINE LIABILITY RATES RISE AS LOSSES MOUNT FOR P&I CLUBS

Renewals slowed by shipowner pushback

SARAH VEYSEY

While shipowners have tried to contain insurance costs during a challenging economy, the rising value of attritional claims is among factors leading protection and indemnity clubs to ask for higher rates at the upcoming renewals.

Limited investment returns prompted P&I clubs to seek underwriting gains to offset large claims that have affected their reinsurance costs, experts say.

The largest such organization — the International Group of P&I Clubs, a 13-member group that accounts for about 90% of global P&I premiums — has sought rate increases at the upcoming Feb. 20 renewals.

Twelve International Group members are applying general increases of 2.5% to 12.5% when shipowners' cover renews, according to London-based marine specialist brokerage Tyser & Co. Ltd.

The remaining member of the group, Assuranceforeningen Skuld, said it does not impose general increases because "all members and clients are unique."

But the Oslo, Norway-based P&I club said in a statement that rates

See **P&I** page 29

AP PHOTO

Even though the Costa Concordia ran aground and capsized two years ago, the major loss is still affecting marine market reinsurance pricing.

REINSURANCE

Reinsurance arrangements for the International Group of P&I Clubs and its captive, Hydra Insurance Co. Ltd., for 2014/2015

- Individual club retention remains $9 million.
- General excess-of-loss policy increases to $80 million, with captive retaining the additional $10 million.
- Hydra's first-layer coinsurance share of general excess-of-loss cover remains 30%.
- Three-layer pool structure of $9 million to $45 million, $45 million to $60 million, and $60 million to $80 million. Claimant clubs retain 5%.
- Multiyear placement of 5% of open market reinsurance in two layers from $100 million to $1.1 billion.
- About 5.3% increase for clean and dirty tankers, dry cargo vessels; 20% for passenger vessels.

Source: International Group of P&I Clubs

PROPERTY/CASUALTY INSURERS

Vermont to target runoff business for growth

BY RODD ZOLKOS

Vermont Gov. Peter Shumlin is scheduled to sign a measure into law Wednesday that proponents hope could create a new niche insurance industry by providing a vehicle for transferring blocks of nonadmitted commercial insurance and reinsurance business into newly created entities in Vermont.

Gov. Shumlin

The mechanism established through Vermont's Legacy Insurance Management Act is being likened to so-called Part VII transfers in the United Kingdom.

LIMA "creates specialized Vermont-based insurance companies that help other companies consolidate policies and redeploy capital," Gov. Shumlin said in his budget address this year.

"This could be the next success in our efforts to serve as a specialized global financial services destination," Gov. Shumlin said. "Patterned after Vermont's captives sector, LIMA would add tax revenue and skilled, well-paying financial jobs."

This kind of transaction can greatly assist the reorganization of the transferring company or group, and also streamline the process of dealing with discontinued business by focusing it in the hands of a properly established runoff specialist, said Nigel Montgomery, a partner at law firm Sidley Austin L.L.P. in London.

"Effectively, we deal with nonadmitted business, including reinsurance and any direct commercial business written in the nonadmitted market," said

See **LEGACY** page 28

REINSURANCE

Court rejects cascading reinsurance tax

Industry lauds ruling on foreign transactions

BY MATTHEW LERNER

A federal court's rejection of the Internal Revenue Service's "cascading" excise tax theory on reinsurance transactions between two non-U.S. companies has been welcomed by reinsurance industry lawyers and professionals, who say it validates their interpretation of the federal law.

"It's a ruling that makes sense," said Mark Goodman, a Chicago-based partner with Freeborn & Peters L.L.P.

Validus Reinsurance Ltd. v. United States of America pitted Pembroke, Bermuda-based Validus against the IRS. Validus sued to recover taxes paid on an assessment from the IRS for taxation on retrocession transactions, the subsequent ceding of risk after it has been initially ceded by the primary insurer. Validus, through a spokesman, declined to comment.

Validus Reinsurance Ltd. filed the suit, alleging that the IRS improperly assessed and collected excise taxes on its foreign retrocession transactions. "Plaintiff seeks to recover the full amount of the excise tax and related interest that it paid in connection with the challenged 2006 tax assessment," court documents said.

On Feb. 4, U.S. District Court Judge Amy Berman Jackson ruled in favor of Validus, writing: "Because the court finds that the excise tax assessed was not authorized by the statute, it will grant plaintiff's motion for summary judgment, and it will therefore deny defendant's cross-motion for summary judgment."

The case, she said, involved retrocession, "a form of reinsurance one more step removed from the original direct insurance policy: It occurs when a reinsurer buys insurance from yet another insurance company (a retrocessionaire)."

Judge Jackson said since the statute provided for a tax on casualty insurance and indemnity bonds, life insurance, sickness and accident policies, annuity contracts and reinsurance, retrocessions were not mentioned and thus were exempt.

Industry sources consider the

See **REINSURANCE** page 29

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ONLINE FEATURES

AWARD

Benefit Manager of the Year® nominations now open

Nominations are now open for *Business Insurance*'s 2014 Benefit Manager of the Year® awards.
www.BusinessInsurance.com/BMOY2014

VIDEO: IN FOCUS

Winter Olympics coverage

Get the latest on the comprehensive insurance and risk management programs for the Winter Olympics.
www.BusinessInsurance.com/InFocus

VIDEO: BROKER BEAT

Profile of EPIC

Edgewood Partners Insurance Center Inc.'s John Hahn discusses issues that affect U.S. West brokers.
www.BusinessInsurance.com/BrokerBeat

WHITE PAPER

Medicare compliance

Learn how to deal with the evolving regulatory landscape for Medicare Secondary Payer compliance in *Business Insurance*'s latest white paper.
www.BusinessInsurance.com/MedicareSecondaryWP

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NEWS

CAPTIVE INSURANCE

CAPTIVE OWNERS URGED TO SCRUTINIZE DATA

Analysis of claims, expenses adds structure to program

BY BILL KENEALY AND RODD ZOLKOS

AVENTURA, Fla. — Among the benefits captive insurance programs provide is the value of the data generated during their business operations.

But communicating that value to internal decision-makers and dealing with an increasingly complex host of regulatory issues surrounding capital levels and tax treatment are the primary challenges captive insurers face, observers say.

Michael Kerner, Zurich-based CEO of general insurance at Zurich Insurance Group Ltd., said the process of analyzing the claims and expense data collected through a captive program increases an organization's understanding of the risks facing it and "provides rigor" to risk management programs.

"There's value that comes out of that process," Mr. Kerner said in an interview following his keynote address at this year's 23rd World Captive Forum, held Jan. 29-31 in Aventura, Fla.

MICHAEL MARCOTTE

This year's World Captive Forum drew approximately 325 attendees to the Turnberry Isle Miami resort.

"Analytics in health care have been growing in terms of their importance," said Janeanne Lubin-Szafranski, president and CEO of St. Raphael Healthcare System Inc. in New Haven, Conn., during a panel discussion looking at accountable care organizations under U.S. health care reform and the opportunities and challenges for health care liability captives. "Never will they be more important than they are now in accountable care organizations."

Data will drive those organizations' decision-making as they look to invest in improving quality of care, she said.

"The captive is a source of data. We know that," said another member of that panel, Michael Maglaras, principal at Michael Maglaras & Co. in Ashford, Conn. "The ultimate evolution of any health care captive … is learning from the claims you've had to improve the quality of people's lives."

The captive industry's evolving relationship with regulators was another recurring theme of the conference.

David Provost, Vermont deputy commissioner of captive insurance, said prospective captive parents interacting with his office would do well to stress the legitimate insurance issues the captive was expected to address as opposed to any potential tax and financial benefits.

"We want to hear less about your captive as a profit center and more about the insurance problems you need to solve," Mr. Provost said. "We are not in the business of licensing tax strategies. We license insurance companies."

Maria Sheffield, who is captive program manager for the Missouri Department of Insurance, Financial Institutions & Professional

See **WCF** page 26

RESEARCH & DATA

Private equity dominates broker M&As

BY TIMOTHY J. CUNNINGHAM AND DANIEL P. MENZER

Last year produced an average number of insurance agent and broker mergers and acquisitions in North America, an encouraging sign after an unprecedented number of deals in 2012.

There were 248 deals in 2013, slightly more than the average number of 245 U.S. and Canadian mergers and acquisitions transactions per year from 2008 through 2012. The low point was 167 deals in 2009 and the high mark of 299 transactions came in 2012.

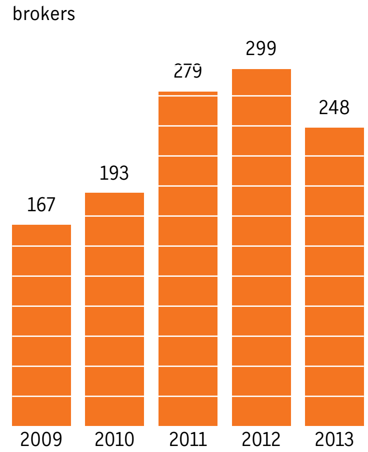
Despite the decline from 2012, which was not surprising given sellers' motivation to get deals done before the capital gains tax rate increased five percentage points to 20% in 2013, the second half of 2013 rebounded nicely from a sluggish first half of the year. Indeed, there were 76 deals in the October-through-December quarter last year.

The other significant factor driving deal activity in the agent and broker marketplace is the continued growth of the private equity-backed firms' appetite, with 2013 the first year in which private equity buyers led all groups. With 94 deals involving private equity last year vs. 85 involving privately owned brokerage firms, private equity buyers clearly have stepped up their activity. Insurance brokerages are attractive to private equity firms because they deliver a reasonably predictable cash flow with very little need for capital.

See **BROKERS** page 27

AGENT/BROKER MERGERS, 2009-2013

Mergers and acquisitions involving U.S. and Canadian insurance agents and brokers



Source: Optis Partners L.L.C.

40 UNDER 40 NOMINATIONS OPEN TO HONOR OUTSTANDING BROKERS

Know an outstanding broker who's headed for greater success? Nominate him or her for the 2014 *Business Insurance* 40 Under 40 Broker Awards.

This awards program, which is in its second year, recognizes retail brokers younger than 40 who work in five regions of the United States: Northeast, Southeast, Midwest, Southwest and West.

Nominations should highlight the broker's client service skills, leadership skills and market expertise. Nominations will be reviewed by a panel of *Business Insurance* editors, who will select eight honorees per region.

Anyone can nominate a broker — co-workers, managers, clients or insurance industry partners — but each nomination must include client and management/co-worker references.

To be eligible, nominees must have worked in the brokerage industry for at least three years and must be under age 40 on Oct. 1, 2014.

BUSINESS INSURANCE® 2014 40 UNDER 40 BROKER AWARDS

The deadline for entries for all regions is June 16, 2014.

The winners, which will be announced online in late summer, will be profiled in the Oct. 14 edition of *Business Insurance*. The awards will be presented at regional events in the fall.

Nomination forms are available at *www.businessinsurance.com/40under40nominate*.

For more information about nominating a broker for the 40 Under 40 Broker Awards, please contact Gavin Souter, editor of *Business Insurance*, at *gsouter@businessinsurance.com* or 312-649-5482.

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INSURANCE RENEWALS REQUIRE RIGOROUS REVIEW PROCESS

Expert assistance, benchmarking against peers can help

BY MATTHEW LERNER

A rigorous review and analysis of insurance coverage and risk management needs is a good way for middle-market buyers to manage their programs and risks.

For many middle-market businesses, the process usually involves engaging a professional broker or consultant, experts say.

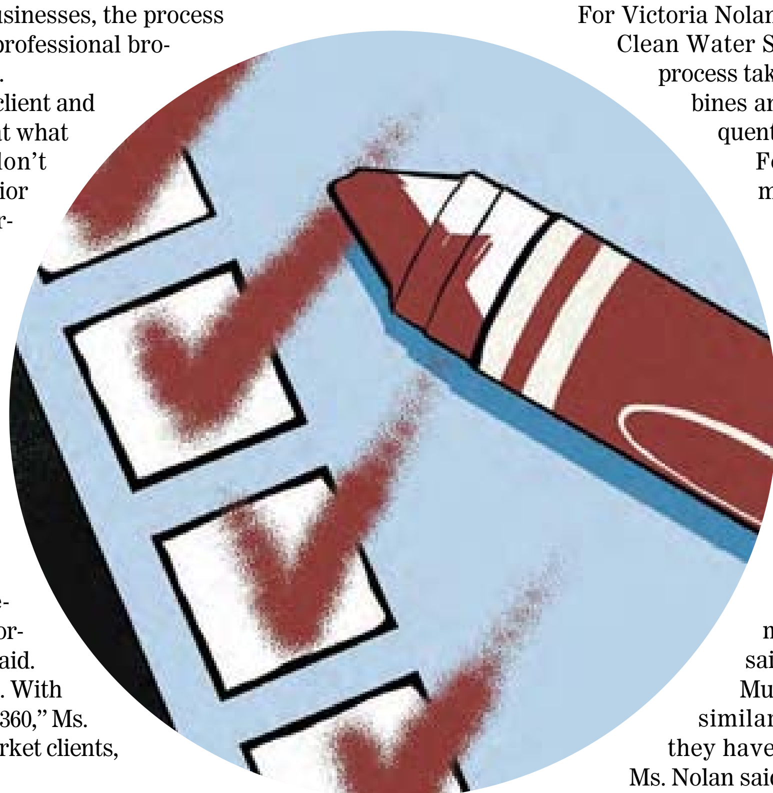
"Every year we sit with the client and have a checklist which looks at what they have and what they don't have," said Gina Higgins, senior managing director of commercial insurance services, at New York-based Crystal & Company.

For many middle-market clients, the commercial broker acts as the de facto risk manager or consultant, she said.

"The broker is the primary insurance resource for the client," Ms. Higgins said.

Businesses with a dedicated risk manager tend to be prepared and focused, mainly tailoring their own programs, she said.

"They tell us what they want. With middle-market, it's a complete 360," Ms. Higgins said. "With middle-market clients, we are the consultants."



Middle-market clients have "a huge reliance on the broker to give them guidance," said Al Tobin, New York-based managing principal and national property leader at Aon Risk Solutions' property practice.

A formalized timeline can add structure and rigor to middle-market buyers' coverage analysis protocol.

"We engage with the client 60 to 120 days out" from renewal, said Robert Stein, New York-based U.S. middle market chief broking officer at Aon P.L.C.

Typical renewal dates are Jan. 1 and June 1, although Aon handles renewals with larger middle-market clients up to July 1, he said.

"We would typically recommend starting the formal renewal process at least 120 days out," said Jay Chappel, Dallas-based executive vice president and regional partner with Willis of Texas Inc.

"In reality, risk management is a 365-day-a-year thing," Mr. Chappel said. "Issues that affect risk management and insurance happen any day, any time. From our perspective as a broker and adviser for our clients, we are starting a formal renewal process of their insurance policies, ideally, at least 120 days out.

"But in reality (for) some of them, we're on the phone with on a weekly basis, bi-weekly, monthly basis, helping them through their latest risk-related issue," Mr. Chappel said.

At Itasca, Ill.-based Arthur J. Gallagher & Co., a "stewardship meeting" is held with clients midway through their policy year, "showing them what they bought six months ago, and showing them what they should be buying," said Mike Pesch, regional president of Arthur J. Gallagher Risk Management Services Inc. in Itasca.

For Victoria Nolan, risk and benefits manager of Clean Water Services in Hillsboro, Ore., the process takes about four months and combines an internal review with a subsequent broker consultation.

Four months before the water management utility's renewal date, Ms. Nolan said she begins an internal review of risks, losses, costs of insurance coverage and related issues. During that first month of the process, she also schedules her meeting with brokers.

At three months before renewal, Ms. Nolan meets with brokers for further market analysis and some benchmarking.

"We definitely use the information brokers provide," she said.

Much of the information is data on similar organizations, the coverage they have and the challenges they face, Ms. Nolan said (see related story).

"The process is both internal and external," said Sarah Pacini, vice president of risk Management and insurance at Advocate Health Care in Downers Grove, Ill.

"It is also essential for the risk manager to work closely with his or her broker to remain abreast of current insurance developments and offerings to determine what product or financing technique is the best solution for their organization's needs," Ms. Pacini said.

Choosing the right person to handle insurance duties also is important for middle-market buyers.

Generally, the chief financial officer is involved, Mr. Chappel said. In smaller companies, the CFO might be the single contact, while larger mid-market accounts could have a second person as a daily contact, often with some specialization.

It also is important an insured select an insurance contact who is aware of all the firm's activities to avoid unplanned and uncovered exposures, Crystal's Ms. Higgins said.

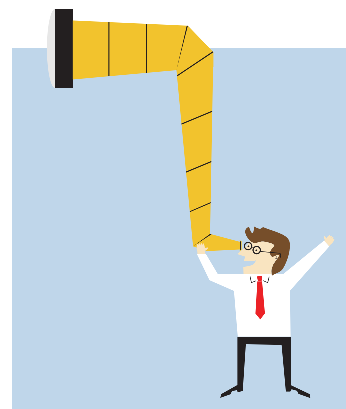
If a CFO is handling insurance but is not privy to or always aware of marketing activities such as special events, exposures could result if the two sides never confer, she said.

Middle-market insurance contacts are "predominantly the CFO in the lion's share of encounters," Gallagher's Mr. Pesch said. "It's typically not a dedicated risk manager."

COVERAGE REVIEW TIPS FOR MID-MARKET FIRMS

Middle-market companies should ask certain questions to assess coverage needs before renewal.

- Are we using the right insurance companies?
- Are we using the right arrangement of policies, such as packaging policies vs. individual monoline policies?
- Are we using the right broker?
- Is the risk financing strategy appropriate and are retention levels adequate?



Examine competitors' programs

For middle-market insurance buyers, knowing what similar businesses are doing can be a powerful tool.

"We are starting to see benchmarking" more among middle-market clients, said Gina Higgins, senior managing director of commercial insurance services, at New York-based broker Crystal & Company. "They get to see what peers around the country are buying."

"Now, some (brokers) are providing services to the middle market. There is better data and information accessibility," said Mike Pesch, regional president of Arthur J. Gallagher Risk Management Services Inc. in Itasca, Ill.

Aon P.L.C.'s Global Risk Insight Platform allows the customer to see what similar insurance buyers are doing, said Al Tobin, New York-based managing principal and national property leader at Aon Risk Solutions' property practice.

"It is very difficult for an individual insured to aggregate data," Mr. Tobin said. "GRIP puts these details at the brokers' fingertips. They are happy when we help them become more educated."

Willis P.L.C.'s WillPlace system allows similar comparisons.

"It can compare what we're seeing for that type of client across all our clients across North America," said Jay Chappel, executive vice president and regional partner in Dallas at Willis of Texas Inc.

Crystal's Ms. Higgins suggests a more personal way of benchmarking. Crystal's clients are invited to informational seminars, generally hosted by large insurers. Such events serve the dual purpose of informing clients as well as allowing them to meet each other and compare notes about insurance programs, she said.

By Matthew Lerner

ON-SITE CLINICS OFFER COMPREHENSIVE CARE

Employers use workplace medical facilities to promote worker health and wellness

BY JOANNE WOJCIK

Workplace clinics have come a long way from serving mainly as occupational clinics for workers' acute care medical needs.

Today's employer-sponsored on-site clinic is "a total population health management solution, not only treating acute conditions but also providing disease management and wellness, tobacco cessation and group support," said Paula Andersen, director of Buck Consultants L.L.C.'s national clinical practice in Cincinnati. "It also might include dental, pediatric care, physical therapy, radiology and pharmacy. The clinics are becoming more of a one-stop shop."

In some cases, "we've got clients whose population doesn't have access to a primary care physician, so those employers would be OK with employees treating the clinics as their medical home," she said.

Shawne Cihak, client manager at Hub Colorado in Denver, which recently conducted a request-for-proposal process to help Colorado Springs, Colo.-based Spectranetics Corp. select a clinic vendor, said one local vendor's model came out on top because of its ability to serve as a primary care medical home.

"Their model is different in that it's physician-driven," she said. "They rose to the top as the model that could have the biggest financial impact on controlling costs" by "engaging with teammates in a very proactive way." Maybe they can "get people to comply with wellness" in the process, she said.

Clinics run by Paladina Health L.L.C. also include pharmacies that dispense 50 commonly prescribed drugs at a nominal cost to patients, said Jamie Doucette, chief development officer at Paladina, a division of Denver-based DaVita HealthCare Partners Inc. that operates 38 clinics coast-to-coast, of which about 25 are employer on-site clinics.

Moreover, "it's not just on-site or near-site, it's also tele-site," said Terry Reams, senior vice president and employee benefits practice leader for Hub Colorado. "Employees can contact the doctor 24/7 by Skype or phone."

Similarly, Sussex, Wis.-based QuadMed L.L.C. clinics also have become the medical home for many employers that have its on-site clinics, President Tim Dickman said. "We've always been a medical-home model."

QuadMed has its origins in serving as a medical home for the employees of its parent company, Quad/Graphics Inc. Frustrated by soaring medical costs for the company's 9,000 employees, founder Harry V. Quadracci opened a small clinic at Quad/Graphics' plant in Pewaukee, Wis., in 1991. Today, QuadMed operates more than 90 employer-sponsored health centers in 18 states.

While clinics historically have been cost-effective mainly for employers with 800 to 1,000 employees in a single location, scaled-down models such as QuadMed's "Corporate Health Suites" are making them feasible for employers with as few as 250 employees on-site.

In addition, near-site clinics are growing in popularity among smaller employers and even large ones that do not have a big enough concentration of employees in a single location, said Josh Dunsby, a principal consultant at Mercer L.L.C. in San Francisco.

"There's been the traditional model where you need a certain threshold of employees to make it feasible," he said. "Then there are near-site models that could take a couple of different forms. One form is an employer collective for the exclusive use of employees of a couple of companies."

He said he has also seen primary care practices offer to provide clinic-like services to employers, charging a per-employee monthly fee.

"It's almost like paying for a fitness center membership. Employers have been interested in negotiating with a provider like that where they could get access without having to invest in the clinic themselves," Mr. Dunsby said.

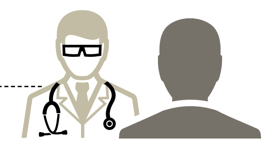
How workplace and near-site clinics are used "depends on the strategy of the employer," said Robin Mancuso, managing partner in the health care practice group at Gallagher Benefit Services Inc., a unit of Arthur J. Gallagher & Co. in Itasca, Ill. "Many are there to be the primary care provider, especially in industries where employees don't have (primary care physicians). On the other hand, if you're talking about an organization where employees do have their own primary care doctors, those employers try to sell the on-site clinic as free support to the doctors in the community."

ON-SITE CLINICS

The health care industry is most likely to provide on-site or near-site clinics for their employees to provide occupational and/or primary care services.

Industry	Occupational	Primary care
Health care	62%	47%
Manufacturing	32%	15%
Transportation/ communication/utilities	31%	9%
Government	23%	18%
Services	16%	9%
Financial services	10%	10%
Wholesale/retail	9%	3%

Source: Mercer L.L.C.



REASONS TO ESTABLISH & CONTINUE

Companies' reasons for starting on-site clinics

Reason	to establish	to continue
Enhance worker productivity	62%	62%
Reduce medical costs	56%	57%
Integrate health productivity efforts	52%	48%
Improve access to care	38%	46%
Meet occupational, safety needs	32%	33%

Source: Towers Watson & Co.

WORKERS RECEIVE 24/7 MEDICAL ACCESS

Colorado Springs-based medical device maker Spectranetics Corp. opened an on-site clinic and a near-site clinic last month to give its 325 local employees and their dependents round-the-clock physician access and to support its corporate wellness efforts.

Operated by Paladina Health L.L.C., a division of Denver-based DaVita HealthCare Partners Inc., both clinics provide a range of medical services including primary and preventive care, chronic condition support and basic urgent care, and help for patients to navigate specialty and hospital-based care, said Rob Fuchs, senior vice president of human resources.

"When you think about what's happening in health care today, it's certainly confusing," Mr. Fuchs said. "Physician engagement feels rushed."

Paladina Health L.L.C.'s on-site clinics provide a range of medical services for the workers of its employer clients.

With Paladina's patient-to-doctor ratio of 600 to 800 patients per doctor, compared with the average private practitioner load of 2,300 to 3,000 patients, "the model is proactive about health," he said. Patients also can access their clinic doctor via telephone or the Internet 24 hours a day, seven days a week.

To encourage employees and their dependents to use the clinic, Spectranetics is waiving copays and deductibles. Spectranetics also uses the clinics to provide biometric screenings.

The company's health plan administrator, Aetna Inc., also is working with Paladina to collect clinic encounter data and combine it with other claims data to ensure plan members are receiving appropriate and recommended care, Mr. Fuchs said.

"We're a self-insured company. We want to control costs, but we also want our employees to be healthy and productive," he said.

By Joanne Wojcik

Leverage Business Insurance's Media Experts

Savvy marketers understand that powerful content builds new business and cements existing relationships. Business Insurance's Custom Media Group can create, curate & distribute original content to your clients and potential clients through Business Insurance's media outlets. Custom services include:

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CMA 2013 CONTENT MARKETING AWARDS

Prices decline worldwide except in U.S.: Marsh

Average insurance prices declined across the globe except in the United States, brokerage Marsh L.L.C. said in an analysis. Marsh's "Global Insurance Market Quarterly Briefing" found that rates for global property programs renewing in the fourth quarter of 2013 fell about 10% in Latin America because of competition and available capacity coupled with acceptable loss experience. The Asia-Pacific region also experienced decreases in property rates averaging 5%, as an abundance of capacity across the region, particularly in Asia, kept rates low for noncatastrophe-exposed risks, according to Marsh. "Rates for catastrophe-exposed property risks in Japan remained largely stable through 2013, albeit still at levels 30% to 50% higher than before the 2011 Tohoku earthquake," Marsh said in a statement. Marsh found that casualty insurance programs "typically renewed with a slight decrease, led by falling rates in Asia-Pacific, Continental Europe, and Latin America; while falling financial and professional liability rates in Asia-Pacific, the U.K. and Continental Europe led to an overall decline in rates for those programs globally," Marsh said in the statement. Global aviation insurance rates declined significantly at the end of 2013, with most airlines renewing with decreases of 15% to 20%, Marsh said. In addition, directors and officers liability rates for financial institutions across the eurozone either fell or remained stable in the fourth quarter, with the exception of Italy and France, where rates increased 10% to 20% on average.

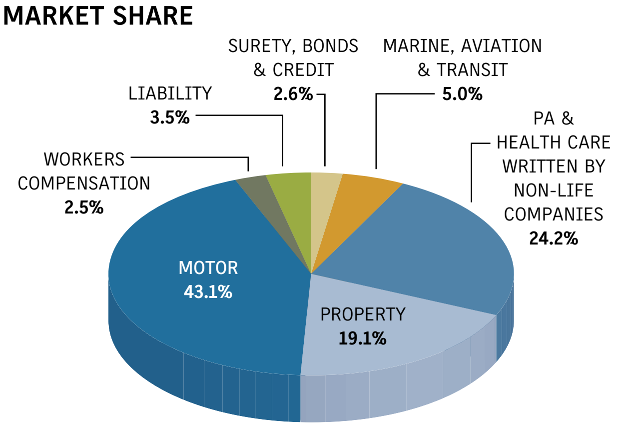
PROFILE: RUSSIA

$18.6 BILLION

◀ 2012 P/C gross premiums

The Russian insurance market saw rapid growth in 2012, the latest year for which data is available, with total premiums up by nearly 20%, fueled partly by more bank lending. Market growth figures for 2013 also are expected to show significant growth. However, with little insurance sold before the disintegration of the Soviet Union in 1991, the market remains relatively undeveloped. New capital rules for insurers were introduced in 2012, leading to a decline of insurers operating in Russia.

MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

AREA
6,592,849 square miles

POPULATION
143.1 million

P/C MARKET WORLD RANKING
13

2014 GDP CHANGE (PROJECTED)
3.7%

MARKET DEVELOPMENTS

UPDATED AUGUST 2013

- Third-party liability insurance for shipowners operating on inland waters became mandatory on Jan. 1, 2013. One of the risks insured is damage from pollution caused by oil and other substances harmful to the environment and third parties.
- A law approved in 2012 introduced compulsory liability insurance, or a bank guarantee, for any failure to fulfill the obligations of the transfer of residential premises under a joint construction agreement.
- Regulations to introduce a form of risk-based capital involving elements of the European Union's Solvency II directive are under consideration.
- In 2012, the Russian supreme court approved a decree extending the country's consumer protection law to insurance contracts. Russian insurers have criticized the move, saying it has led to increased fraud.
- Changes to the law requiring organizations carrying out hazardous activities to purchase insurance were put into effect in 2012. The changes raised indemnity limits and premium levels.

COMPULSORY INSURANCE

Several lines of insurance are compulsory, including:

- Auto third-party liability
- Third-party liability for hazardous facilities
- Shipowners liability
- Aviation liability
- Liability insurance for rocket launches
- Clinical trials liability

NONADMITTED

Unauthorized insurers cannot carry out insurance activity in Russia. The law is silent on the subject of nonadmitted insurance of risks located in Russia, with some exceptions, but the adverse tax treatment of premium and claims payments makes nonadmitted insurance impractical in most cases.

INTERMEDIARIES

Brokers and agents have to be authorized to carry out insurance business. Intermediaries are not allowed to place business with unauthorized insurers, and there is no special dispensation for intermediaries in placing nonadmitted insurance for Russian risks.

MARKET PRACTICE

Risks are usually placed with insurers domiciled in Russia and, where necessary, reinsurance is placed as part of multinational programs with insurers in international markets.

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

Allianz takes 8.33% stake in Bayern Munich

German insurer Allianz S.E. took an 8.33% stake in the Bayern Munich football club for €110 million ($150.0 million) as part of a deal to help the club pay down debts on its stadium and to sponsor a youth academy. Allianz said it had also extended a sponsorship deal giving the insurer the option to extend the naming rights for the club's Munich stadium until 2041. Bayern will use the proceeds to pay down the club's remaining obligations on the Allianz Arena in Munich. The stadium would then be debt-free, the football club said. Proceeds would also be used for the planned reconstruction of the youth and junior facility in Munich, the club said. Bayern Munich's stadium has been known as the Allianz Arena since 2005, when the insurer and the football club started a sponsorship deal.

Reuters

Qatar Insurance enters Lloyd's market

Qatar Insurance Co. S.A.Q. said it has agreed to acquire the entire share capital of Hamilton, Bermuda-based Antares Holdings Ltd., a specialist insurer and reinsurer operating in the Lloyd's of London market. Terms of the transaction were not disclosed. "The acquisition of Antares will provide QIC with access to Lloyd's through syndicate 1274 and Antares' own integrated managing agency, as well as bringing a Bermudian platform with a Class 3 reinsurance license," said Doha, Qatar-based Qatar Insurance in a statement announcing transaction. The deal is expected to close in the second half of the year subject to U.K., Bermudian and Qatari regulatory approval, Qatar Insurance said in the statement.

Tower bolsters reserves, posts quarterly loss

Hamilton, Bermuda-based Tower Group International Ltd. posted a third-quarter 2013 loss of $344.1 million compared with net income of $25.9 million in the third quarter of 2012. "Adverse loss reserve charges of $143.7 million in the third quarter of 2013 exceeded the previous estimate of $75 million to $105 million," the financially troubled insurer said in a statement. The reserve strengthening was "primarily from accident years 2008-2011 within the workers compensation, commercial multiperil liability, other liability and commercial auto liability lines of business," Tower said in the statement. Revenue for the quarter fell 6.7% to $442.9 million, "reflecting lower earned premiums and investment income offset by increased ceding commissions and net realized investment gains," the insurer said in the statement. Net written premiums dropped 43% to $237.6 million, while net investment income was down 18.5% to $25.6 million for the period. Its third-quarter 2013 combined ratio deteriorated to 151.8% compared with 95.3% in the year-earlier period. Separately, Tower said Chairman, President and CEO Michael H. Lee had resigned. Tower's board of directors appointed Jan R. Van Gorder as chairman and William W. Fox, Jr. as president and CEO to succeed Mr. Lee.

Catlin's profit rise on low losses in 2013

Catlin Group Ltd. posted a pretax profit of $432 million for 2013, a 27% increase over that posted in 2012, the Hamilton, Bermuda-based specialty insurer and reinsurer said. And while it incurred $156 million in catastrophe losses during the year, its loss ratio was 52.3% — its lowest since 2007, Catlin said. Its combined ratio for 2013 was 85.6% compared with 90.0% in 2012, Catlin said. Reserve releases of $167 million helped improve the combined ratio, the company said. Gross written premiums increased 7% to $5.31 billion in 2013, compared with $4.97 billion in 2012, while net investment income for 2013 was $124 million, down from $158 million a year previously, Catlin said. Market conditions are becoming more competitive in many of the insurance and reinsurance lines the company underwrites, but CEO Stephen Catlin said in a statement that he remains confident margins on that business are still strong. Average weighted premium rates across its underwriting portfolio increased 0.8% during 2013 compared with a 4.0% increase in 2012, Catlin said. On average, premium rates for catastrophe-exposed business classes fell 0.2% while they increased an average of 1.3% for non-catastrophe-exposed business. For aerospace business, average weighted premium rates fell 8% in 2013, while they rose 6% for casualty business, remained stable for energy and marine business, rose 2% for property business, remained flat for reinsurance, and fell 1% for specialty/war and political risk business.

Researchers uncover cyber spying campaign

A computer security software firm has uncovered what it calls the first cyber espionage campaign believed to be started by a Spanish-speaking country, targeting government agencies, energy companies and activists in 31 countries. Dubbed "The Mask," the campaign had operated undetected since 2007 and infected more than 380 targets before it stopped earlier this month, Moscow-based Kaspersky Lab said. The firm declined to identify the government suspected to be behind the cyber spying, but said it had been most active in Morocco, followed by Brazil, the United Kingdom, France and Spain. Kaspersky Lab said the discovery of The Mask suggests that more countries have become adept in Internet spying. The firm's researchers only came across the operation because it infected Kaspersky's own software. "There are many super-advanced groups that we don't know about. This is the tip of the iceberg," Costin Raiu, director of Kaspersky's global research team, said in an interview. Mr. Raiu said

Reuters

Howden expands with Colombia deals

Howden Insurance Brokers Ltd., a unit of Hyperion Insurance Group Ltd., has acquired Colombian insurance brokers Wacolda S.A. and Proseguros S.A. London-based Howden will acquire 70% of Wacolda and 100% of Proseguros, the broker said in a statement. Terms of the transactions were not disclosed. Wacolda is a corporate insurance broker specializing in property, construction and life, with offices in Bogota, Medellin and Cali, Colombia; Quito, Ecuador; and Lima, Peru, according to the statement. Bogota-based Proseguros focuses on the public sector with specialties in affinity programs, general liability and government and infrastructure projects, Howden said. The combined businesses will be led by Colombian market expert Carlos Quinones Machler, the broker said in a statement. He is based in Bogota.

Attorneys spar over Chinese reverse merger

U.S. prosecutors tangled with defense attorneys earlier this month over how the Justice Department is pursuing a fraud case against a former executive of a Chinese reverse merger company, one of the first such criminal cases being pursued. Federal prosecutors have accused Chao Jiang, a former vice president of China North East Petroleum Holdings Ltd., of misappropriating corporate funds and lying to the U.S. Securities and Exchange Commission about those funds. Prosecutors sparred with Mr. Jiang's lawyers over what evidence they might be able to present at trial, and whether U.S. authorities had conducted an appropriate investigation. The case is headed to trial next month, part of an effort by U.S. officials to crack down on suspected fraud at U.S.-listed Chinese companies. The SEC has pursued dozens of cases against Chinese companies that entered the U.S. capital markets through backdoor mergers with U.S. shell companies.

Reuters

EDITORIAL

REDEFINE FULL-TIME EMPLOYEE

The Treasury Department's rules dealing with the health care reform law's employer mandate are a good start, but should by no means be the last word on improving the Patient Protection and Affordable Care Act. Most significantly, as we report on page 1, the regulations shield for one more year many employers that do not extend coverage to nearly all their full-time employees from a penalty.

That penalty of $2,000 per full-time employee, which was to start in 2015, is imposed on employers that do not extend coverage to at least 95% of their full-time employees, which the law defines as those working at least 30 hours a week.

The penalty poses an especially tough issue for employers that do not extend coverage to employees working 30 to 35 hours a week because employers consider them part-time.

Employers could, for example, reduce the maximum number of hours part-time employees work below the 30-hour penalty trigger or they could extend coverage to those employees working at least 30 hours a week.

Those approaches, and perhaps others, could result in employers not having enough staff to meet customers' needs. On the other hand, extending health insurance to part-timers could cost more than an employer could afford.

Conducting an in-depth analysis of those and other approaches can't be done overnight. The administration wisely recognized that in its regulations. By allowing affected employers — only for 2015 — to extend coverage to as few as 70% of full-time employees without triggering the penalty, most will have the time to decide on the coverage approach that works best for them and for their employees.

While the regulations also provide welcome guidance elsewhere, there is only so much guidance regulators have the authority to provide.

Changes to the law can come only from Congress. An obvious one is changing the definition of a full-time employee. Bumping up that threshold to at least 35 hours a week should be a top priority for Congress.

LETTERS

DEPRESSION COSTS EMPLOYERS

Recently, Matt Dunning, a *Business Insurance* associate editor, wrote an article about employee assistance programs and why they are underutilized by employees — particularly counseling and stress management services.

As outlined in the article, there are many underlying reasons for this, including the continuing stigma around mental health conditions, concerns about confidentiality and privacy, and lack of awareness about EAP resources overall. These barriers can and must be addressed so that more people facing depression reach out for help

See **LETTERS** page 27

SCHILLERSTROM

COMMENTARY

PASSIONS OVER POLITICAL FIGHTS MAY COOL OVER TIME

MARK A. HOFMANN
SENIOR EDITOR

Who remembers the Environmental Insurance Resolution Fund? Does the Fairness in Asbestos Injury Resolution Act ring any bells? Who can forget federal insurance solvency legislation?

I don't blame you if you have forgotten these legislative initiatives between the early 1990s and mid-2000s. I'd halfway forgotten them before I had reason to go through some ancient files looking for something else. Probably only those with exceptionally long, clear memories remember much about the EIRF.

But it, like the other proposals mentioned above, was once one of the most controversial issues confronting the property/casualty insurance industry.

The EIRF came as part of a larger congressional debate over the Superfund liability framework in the early 1990s. The EIRF would have created a fund, paid for in part by new excise taxes on certain commercial insurance policies, to resolve private litigation over insurance coverage for cleaning up sites under the regulation of the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

Few issues have since proved to be so divisive for the property/casualty insurance industry. Most insurance trade groups opposed it, but the American Insurance Association supported it. But even within AIA's ranks, at least one member company publicly split with the association to oppose the measure. Industry lobbyists almost came to blows.

That was in 1994. A year later, the EIRF — over which so much passion had been expended — was a nonissue. Superfund liability reform, which had engaged the business community for years, faded in importance and dropped off legislative priority lists.

What happened? To begin with, Republicans won control of both chambers of Congress for the first time in more than a generation, and new taxes of any sort were anathema. So much for the EIRF. But as the worst of the Superfund sites were cleaned up, the liability issue itself lost its urgency.

Somewhat the same thing has slowly happened with asbestos liability. With use of the substance banned, fewer and fewer people were exposed to its potentially carcinogenic effects. While many people continue to suffer from asbestos-related diseases, their numbers shrink every year through both mortality — asbestos-related or not — and the fact that asbestos isn't being used in construction and manufacturing any more.

The property/casualty insurance industry still confronts its share of divisive issues. The relative merits of state vs. federal insurance regulation is one. The extent of the powers the Federal Insurance Office should wield is a related issue. And the question of whether certain reinsurance transactions should be subject to additional taxation is yet another.

All stir passions, although thankfully not as high as the EIRF did years ago. But I still can't help wondering if 20 years from now, a new generation will ask what the fuss was all about — if they remember the issues at all.

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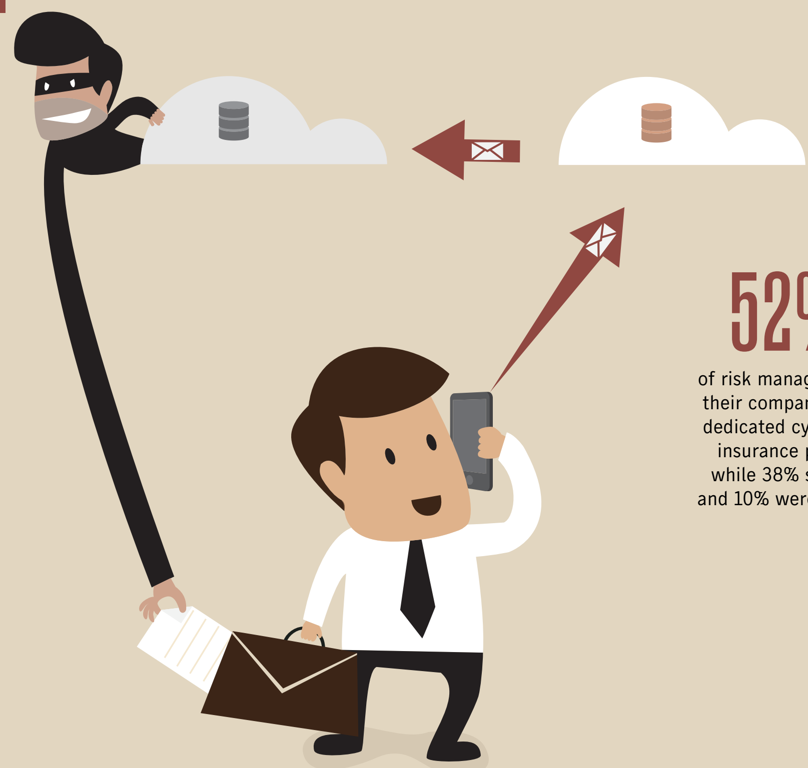
SPECIAL REPORT

Cyber Risks & Liabilities

Recent breaches put focus on timing of notifications
PAGE 18

Insurers expand coverage options, customize policies
PAGE 20

Benefits, risks of placing data in the cloud
PAGE 20



56%
of risk managers cited cyber risk as a top concern, whereas 53% said changing legislation and 36% said natural disasters

52%
of risk managers said their company has a dedicated cyber risk insurance policy, while 38% said no and 10% were unsure

Risk managers eye cyber threats

Exclusive *Business Insurance* survey shows data breaches now head list of concerns

BY BILL KENEALY

Cyber risk has become the top concern for risk managers, according to a *Business Insurance* December survey. Indeed, at 56% of respondents, cyber risk outpaced worries over threats of changing legislation, at 53%, and natural disasters, at 36%.

The escalating concern over cyber risk was evident in answers to another survey question. When asked whether their company has a dedicated cyber risk insurance policy, 52% of respondents answered yes, while 38% said no and 10% were unsure.

The survey queried 242 risk managers, 200 insurers, 407 brokers, 65 cyber risk consultants and 57 other consultants or risk-management service providers (see data, page 16).

Damien Magnuson, Los Angeles-based senior vice president at ExecutivePerils Inc., said he has noticed an increased demand for dedicated cyber risk insurance.

"We've been pushing cyber liabilities for over a decade, but recently it has really come to the fore, and more companies and risk managers are exploring it," he said.

Likewise, Tracie Grella, global head of professional liability for American International Group Inc., said the company is seeing rapid growth in demand for cyber risk policies in the U.S. and abroad.

"For stand-alone cyber policies, our sales increased 30% last year and 28% the year before that, so there's a significant amount of growth," Ms. Grella said. "In the last 18 months, we extended our policy area from three countries — the U.S., Canada and Japan — to over 50 countries."

Ms. Grella credits broader awareness of cyber risk in light of highly publicized data breaches, as well as an awareness of the limits of other types of liability insurance to respond to cyber risk, as reasons for the growing popularity of dedicated cyber risk policies.

"People now realize that this can happen to anyone, even if your technology is really good," she said.

Pricing competitive

The declining cost of obtaining cyber coverage is another factor, Mr. Magnuson said.

"Ten years ago it was an expensive coverage, and only the largest technology companies were buying it," he said. "Now the numbers of carriers in the market and capacity has risen, and prices are low. For smaller and midsized markets, prices are very competitive."

In addition to the increasing use of cyber risk insurance, the survey also probed internal attitudes and organizational structures in regard to cyber risk. When asked who has overall responsibility for their company's security/cyber risk management effort, chief information officer/information technology leader was the most frequently selected at 57%.

Yet Kevin Kalinich, Chicago-based global practice leader for cyber risk insurance at Aon P.L.C., said companies need to guard against viewing cyber risk as solely a technology issue.

"It not just firewalls and anti-virus protection," Mr. Kalinich said. "It's equally about policies and procedures."

Accordingly, companies should assemble a multidisciplinary team with risk managers, treasurers and information technology staff working in a defined process to determine the scope of the company's cyber exposures and classify them according to importance and how critical they are to the organization, he said.

Ms. Grella agreed the issue of cyber risk transcends technology and requires teamwork.

"Having strong processes in place is certainly part of the equation, because IT alone can't protect an organization," she said. "It's an enterprise-wide risk management issue."

Mr. Kalinich also advises companies to seek help from qualified third parties to quantify cyber risk.

"The idea of a third-party audit of your practices for cyber is a good risk management tool and will put you in better shape for getting better coverage at a lower price with insurance companies," he said. "Underwriters are extremely keen on having an independent, third-party assessment of your IT security standards."

BUSINESS INSURANCE

RMS 2014

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INNOVATIVE IDEAS FOR THE RISKS OF TOMORROW

Risk Management Summit Conference Agenda

Wednesday, March 12, 2014

7:45 AM	Registration and Networking Breakfast
8:00 AM	Welcome Keynote Address: Stephen E. Flynn, Ph.D.
9:00–10:15 AM	Session 1: Cyber Risks – Focus on Cloud Computing Moderator: Audrey Rampinelli, Loews Corp.
10:15–10:45 AM	Coffee and Networking Break
10:45–12:00 PM	Session 2: Global Coverage & Compliance – Are You Covered? Moderator: Rodd Zolkos
12:00–2:00 PM	**Innovations Awards Luncheon**
2:15–3:15 PM	Session 3: Alternative Capacity – New Options for Insurers and Risk Managers Moderator: Gavin Souter
3:15–3:30 PM	Networking Break
3:30–4:45 PM	Session 4: Roundtable Discussions

Roundtable 1: Emerging Markets
Roundtable 2: Alternative Risk Financing & Captives
Roundtable 3: Business Interruptions & Supply Chain Risk
Roundtable 4: Political Risk
Roundtable 5: Risk Management Tools & Technology

5:00–6:30 PM	Cocktail Reception

Panelists Include:

Cory Anger, GC Securities

Richard J. Bortnick,
Christie, Pabarue & Young P.C.

Duncan Ellis, Marsh L.L.C.

John N. Ellison, Reed Smith

Claude F. Gallello,
Willis Risk Solutions International

Jack Hampton, St. Peters College

John F. McCarrick,
White and Williams LLP

Debbie Michel,
Liberty Mutual Insurance

Jeff Natterman,
The Johns Hopkins Hospital

Bob Parisi, Marsh L.L.C..

Shawn Ram, Aon Risk Solutions

Rick Shaw, Awareity

Scott L. Vernick,
Fox Rothschild LLP

Shannon Wilkinson,
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Thursday, March 13, 2014

8:00–8:45 AM	Networking - Coffee and Continental Breakfast
8:45–9:45 AM	Session 1: Building Blocks of a Strong Social Media Policy Moderator: Paul Bomberger
9:45–10:45 AM	Session 2: Communications with the C-Suite: How to Get Their Attention Jack Hampton
10:45–11:15 AM	Coffee and Networking Break
11:15–12:15 PM	Keynote Speaker: Tom Ridge, CEO Ridge Global
12:15–1:15 PM	Lunch and Dessert Served
1:15–2:15 PM	Session 3: Workplace Violence: The Risks and How to Mitigate Them Moderator: Matt Dunning
2:15–3:15 PM	Session 4: D & O Insurance – Developments that Affect Rates and Coverage Moderator: Carolyn Snow, Humana Inc.
3:15–4:30 PM	Risk Managers Only Session
4:30 PM	Final Remarks and Close of Conference

Tom Ridge, Keynote Speaker*

First Assistant to the President for Homeland Security and, as of Jan. 24, 2003, became the first Secretary of the U.S. Department of Homeland Security. Tom Ridge, CEO, Ridge Global leads a team of international experts who help businesses and governments address a range of needs throughout their organizations, including risk management, global trade security, emergency preparedness, and response and strategic growth.

*Thursday 11:15 am

JOIN YOUR FELLOW RISK MANAGERS

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Arthur J. Gallagher
Awareity
Booz Allen Hamilton Inc.
Church of Jesus Christ of Latter-Day saints
College of American Pathologists
Computershare
Corporate Synergies
Crown Holdings Inc.
Diocese of Rockville Centre
DIRECTV
Dover Corp.
Eastman Chemical Company
FMC Corporation
Fortress Investment Group
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Hyatt Hotels Corp.
Ingersoll-Rand Co.
Ingram Micro Inc.
JP Morgan Chase
Kenny Construction Co.
Kimberly-Clark Corp.
Leviton Manufacturing Co. Inc.
Markel Corp
Marsh & McLennan Cos.
Marubeni America Corp.
Miami-Dade Public Schools
Mitsui & Co (USA) Inc.
MPV Consultoria
NLMK USA
North Shore-LIJ Health System
NYSE Euronext
Orbital Sciences Corp.
Oswald CoS.
Parsons Corp.
PHS
Prudential
Risk Synergy LLC
Saks Inc.
Sanford Insurance Group
Sapient Insurance Partners
Silverstein Properties Inc./World Trade Center Properties
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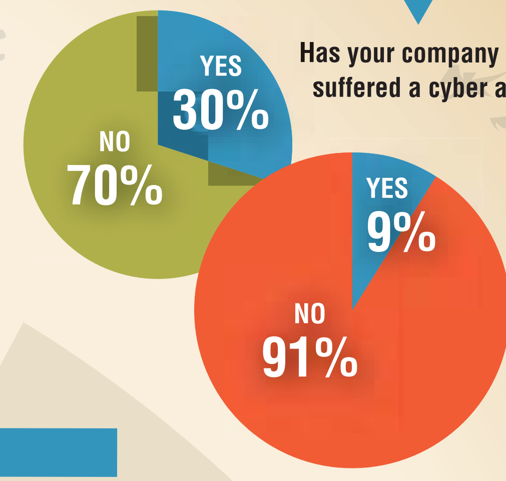
Cyber Risks

In December 2013, Business Insurance conducted an online survey about cyber risks. The survey respondents included 242 risk managers, 200 insurers, 407 brokers, 65 cyber-risk consultants and 57 other consultants or risk-management service providers. Of the 242 risk manager respondents, 86% are decision-makers and 14% participate in their companies' risk management decisions.

SOME 30% OF COMPANIES have suffered a cyber attack (phishing attacks being the most common), but only 9% have filed a cyber claim. Public companies have suffered more attacks (39%) and more types of attacks.

Has your company ever suffered a cyber attack?

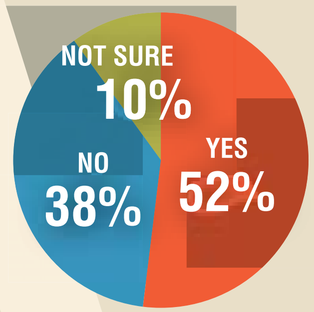
Has your company filed a claim as a result of a cyber attack?



CYBER RISK HAS GROWN in importance to risk managers over the past three years and tops the list of concerns for 2014–2015. Non-profit organizations are more concerned about cyber risks than their for-profit counterparts.

DESPITE INCREASED CONCERN, only one in two companies currently has cyber risk insurance.

Does your company have an insurance policy that specifically covers cyber risk?



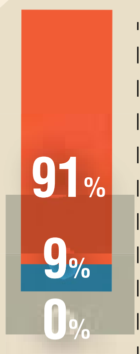
Average number of years with cyber insurance: 3.5

Risk managers' Top 5 concerns for 2014-2015

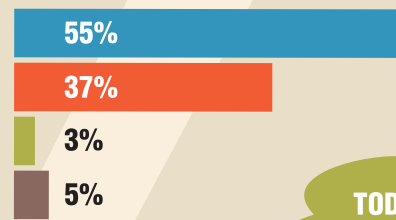
Cyber security, cyber risk	56%
Changing legislation	53%
Corporate liability	37%
Natural disasters	36%
Talent and skills shortage	33%

Note: Multiple responses

In your opinion, compared to 3 years ago (2010), how important is cyber risk/cyber security today?

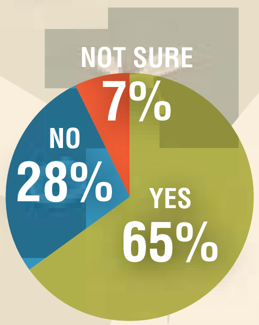


Does your company's current cyber coverage adequately meet current security/cyber protection needs?



TODAY, 60% OF COMPANIES have developed a cyber-security program, and 37% are developing one. Public companies have the most fully deployed programs (30%).

Does risk management coordinate with other departments within the organization in order to prevent or manage cyber risk, or to provide training in cyber security or cyber risks?



Areas or departments involved in cyber security or cyber risk along with risk management

IT department	95%
Legal Counsel/Dept.	65%
Compliance	54%
Human resources	42%
Operations management	9%
Other	24%
Not sure	2%

Note: Multiple responses

The Risk Managers' perspective

Cyber risk is a top concern but only 1 in 2 companies have cyber coverage. Human and economic resources limit how effectively cyber security is managed in most companies.

Top 5 cyber security practices currently implemented

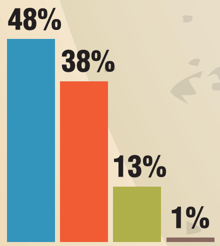
Malware defenses and blocking controls	91%
Data recovery capability	90%
Secure configurations for network devices	85%
Inventory of company-authorized technology	84%
Software security and controls	84%
Inventory of company-authorized software	81%
List of individuals with administrative privileges	81%

Base: Companies with security/cyber risk management program
Note: Multiple responses.

Who in the organization has the

Nine in 10 companies consider their cyber programs effective.

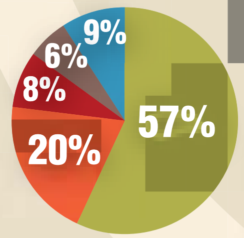
How much involvement does top management have in the company's cyber-risk decisions?



- Significant
- Moderate
- Little
- No involvement

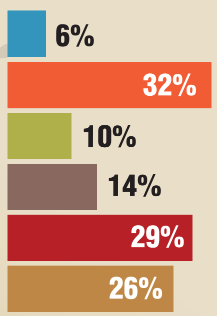
overall responsibility for the company's security/cyber risk management effort?

- CIO or IT leader
- Chief Information Security Officer/Chief Security Officer
- CEO, President
- CFO or finance leader
- All others



Base: Companies with security/cyber risk management program

How frequently is the Board of Directors informed of the company's cyber security issues?



- Monthly
- Quarterly
- Twice a year
- Once a year
- Only in an emergency, no regular Board of Directors cyber security report in place
- Does not apply/ No Board of Directors

Is the state of cyber security communicated to senior executives?

Yes No

93% (Net) 7%

25%	Only when a serious risk is discovered
13%	When there is a request from senior executives
41%	At regularly scheduled meetings (quarterly, semi-annual, etc.)
15%	Yes – unsure of frequency

The five most significant barriers to effectively managing cyber security

Insufficient human resources (not enough people monitoring cyber risks)	36%
Insufficient budget (money assigned to develop and maintain the security-risk practice)	33%
Complexity of security compliance requirements	28%
Insufficient risk assessments	26%
Lack of skilled or expert personnel (not enough training among workforce monitoring risks)	25%
Lack of business understanding of the role and contribution of information security	25%

Note: Multiple responses

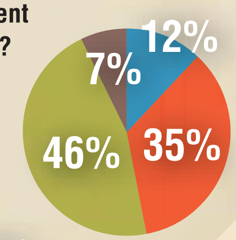
The most popular metrics for assessing effectiveness are:

Reduction in malware and virus incidents	55%
Reduction in access /authentication violations	47%
Reduction in unplanned system downtime	43%
Reduction in known vulnerabilities	42%
Reduction in time to respond to a cyber-security problem	31%

Base: Companies with security/cyber risk management program
Note: Multiple responses

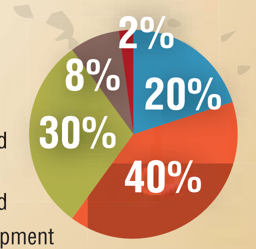
How effective is the current security/cyber program?

- Extremely effective
- Very effective
- Effective
- Somewhat ineffective
- Extremely ineffective 0%



Base: Companies with security/cyber risk management program

As of today, how well developed is the company's security/cyber risk management program?



- Very well developed
- Mostly developed
- In development
- At an early stage
- Non-existent

The Cyber Risks Product/Service provider perspective

BROKERS, INSURERS and risk consultants project their cyber risk business to grow about 9% over the next three years. They see cyber risk as a pressing issue for risk managers, and believe those clients will need additional expertise in information security and risk assessment to manage.

In your opinion, what are risk managers' top 5 concerns for 2014–2015?

	Brokers	Insurers	Risk Consultants
Changing legislation	66%	69%	81%
Cyber risk/cyber security	36%	41%	58%
Corporate liability	46%	30%	37%
Talent and skills shortage	32%	41%	38%
Keeping up with technology	31%	31%	33%
Natural disasters	26%	38%	32%

Does your organization currently offer insurance products or services focused on cyber risks?

	Brokers	Insurers	Risk Consultants
Yes	81%	64%	97%
No	19%	36%	3%
Average number of years offering cyber product/services	4.8	5.1	4.7
Percent of time you personally dedicate to resolve problems or offer solutions for cyber risks (average)	12.5%	11.4%	19.8%

THE REQUIRED SKILLS, assessments and understanding of the role of security are perceived to be a major barrier to effective cyber-risk management.

In your opinion, what are companies' five most significant barriers to effective risk-based security management within their organizations?

	Brokers	Insurers	Risk Consultants
Lack of skilled or expert personnel	56%	58%	61%
Insufficient risk assessments	61%	51%	62%
Lack of business understanding of the role and contribution of information security	58%	47%	50%
Complexity of data security compliance requirements	43%	47%	28%
Insufficient budget (to develop and maintain security)	42%	39%	41%
Insufficient HR (not enough people monitoring risks)	40%	31%	56%

BUSINESS INSURANCE®

SPECIAL REPORT

SLEW OF HIGH-PROFILE DATA BREACHES PUTS FOCUS ON CUSTOMER COMMUNICATIONS

Knowing how much to say, and when, is big challenge for companies

BY RUSS BANHAM

Welcome to the data breach parade. In December, Target Corp. announced a massive breach, followed by Snapchat Inc. and Neiman Marcus Group Inc. Then arts and crafts retailer The Michaels Cos. Inc. warned of a possible breach, followed by Coca Cola Co. and Yahoo Inc.

Each of these actual and potential breaches confronted the organizations with the same challenge: when to notify regulatory authorities and everyone whose identifiable information may have been compromised about the breach. This challenge came into sharp focus when Target was criticized in some quarters for revising the scope of its breach from 40 million customers to as many as 110 million customers two weeks after the initial announcement on Dec. 19.

Did Target jump the gun on its initial reports of the breach, which occurred from Nov. 27 through mid-December? Legal and insurance experts agree the giant retailer should not be faulted for upping the estimate, although they say revisions should be avoided given the impact on an organization's reputation.

"When exactly to make the announcement of a breach is a very tough decision to make," said Tom Srail, Cleveland-based senior vice president of FINEX North America at Willis North America Inc.

"There's a natural tension between the CEO wanting to do the right thing and get the word out fast, and the forensics investigators and legal counsel advising patience," Mr. Srail said.

The key, he said, is to find the middle ground.

"Forty-six states have data breach notification laws on the books, but they differ insofar as fines, sanctions and when to report and notify," said Collin Hite, partner and practice leader of the insurance recovery group with Richmond, Va.-based law firm Hirschler Fleischer.

These differences can be significant. "Some states require notification within 30 days following the determination of a breach, although Florida, for instance, requires notification within 45 days," said Joe DePaul, managing director of cyber risk services with Arthur J. Gallagher Risk Management Services Inc. in Itasca, Ill. "New Jersey, on the other hand, mandates notification in the most expedient time possible, which at times can become debatable."

Federal laws such as the Health Insurance Portability and Accountability Act complicate the decision by requiring notification within 60 days, he said.

"Generally speaking, reasonably expeditious notice should be sent between 10 and 30 days after the discovery of the breach," said Wendee M. Hilderbrand, a member of Bass, Berry & Sims P.L.C., a Nashville, Tenn.-based law firm. "Always, you want to assure you have taken into account the time it takes to promptly investigate the scope of the breach — which individuals and what information were affected."

By taking a reasonable amount of time to fully investigate the matter, the possibility of having to restate the scope of the breach is limited.

"The cardinal sin all companies should avoid is having to renotify or communicate more than once to the victims about the breach of their personally identifiable information," said David Katz, partner and head of the privacy and information security practice at Atlanta-based law firm Nelson Mullins Riley & Scarborough L.L.P. "It has the effect of creating undue stress, which can reverberate in lingering trust, brand and reputation problems."

Choose the state "with the most onerous guidelines and use that as a baseline," Mr. Hite said. By complying with the most rigorous laws, companies are protected from criticism claiming they should have notified victims earlier, he said.

Mr. Katz agreed.

"There are states like Massachusetts, Virginia and North Carolina that are more apt to investigate a company post-breach if they feel you did not handle the forensics appropriately or your privacy and security controls appear to have been lax," he said. "There is a greater chance such states will ask the company for more details, and potentially fine it or put it under consent order."

Honest and transparent communications are a best practice with regard to the mandated notification of victims, experts say. Since people have different levels of comprehension when it comes to understanding technology and finance, the notification needs to take these disparities into account.

"Companies must balance accuracy and completeness with a person's ability to understand what you're saying," Mr. Srail said.

The experts concurred that written notices by mail are most appropriate, and many states require notification by mail.

Much thought must be given to the actual content of the letter. "I've seen examples of notification letters that were confusing and too impersonal," Mr. Katz said. "Remember, this is the first opportunity to repair the relationship that occurs when the breach of trust occurs. Companies must take full responsibility for the problem."

Mr. DePaul shared this view.

"You want to provide an understanding of the facts, how the breach occurred, and what is being provided to the affected individuals, such as credit monitoring," he said.

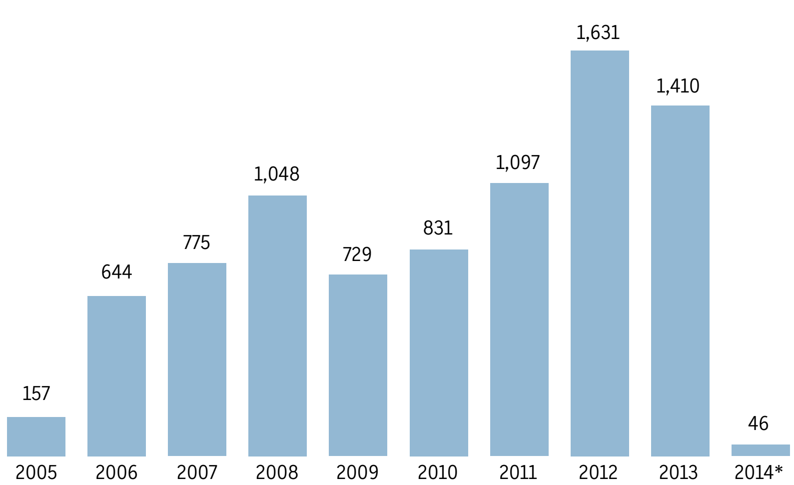
Both agreed that the notification should also provide assurances that the problem won't reoccur.

"The letter should clearly state what the entity has done to stop and mitigate future events," Mr. DePaul said.

On the bright side, Ms. Hilderbrand said, "the incident will likely pass with minimal expense and virtually no reputation damage" if companies act promptly and reasonably to fulfill the legal requirements and offer customers prompt notice with identity theft protection.

CYBER BREACHES

Thirty percent of all recorded cyber breaches have involved hacking, followed by stolen laptops at 12% and fraud at 11%. The highest number occurred in 2012, followed by 2013.



*Year to date
Source: Open Security Foundation

Effective data breach response requires team approach

Once a data breach occurs, an enormous amount of activity ensues.

Forensic investigators try to learn the causes and extent of the damage, attorneys prepare to notify regulatory authorities and the victims, the public relations staff drafts the company's media outreach effort, and systems to monitor victims' credit for suspicious activities are implemented.

For large organizations, breach responses can be challenging but not financially taxing — unless the response is poorly thought out and executed and results in reputational damage.

"A lawyer is almost always necessary to assess the extent of legal requirements implicated by the incident, as are forensic (information technology) professionals to question the nature, timing and scope of the breach," said Wendee M. Hilderbrand, a member at Nashville, Tenn.-based law firm Bass, Berry & Sims P.L.C. "If customer notice is required, credit monitoring services should always be offered. And depending on the scope of the breach and the (public) visibility of the company, a PR firm may also be advisable."

"Large organizations like retailers and financial institutions need dedicated security teams, legal experts and crisis management professionals, all of which they typically have on staff," said Jerry Irvine, chief information officer of Prescient Solutions, a Chicago-based IT advisory firm.

"But, even smaller organizations should partner with such services providers, doing quarterly audits to assess vulnerabilities and developing response plans in the event of a breach," said Mr. Irvine, who also is a member of the U.S. Department of Homeland Security's cyber security task force.

One way to obtain the needed assistance is to purchase cyber liability insurance from the handful of specialist insurers that typically provide the services at no additional cost. But even that is not a panacea.

"The question then becomes, 'Can they afford the insurance premium?'" said Collin Hite, partner and practice leader of the insurance recovery group at Richmond, Va.-based law firm Hirschler Fleischer. "If the premium is much higher than the exposure, you're better off going bankrupt."

"The best advice is to secure the four corners of your network, and ensure that your employees do not use third-party email like Gmail or Hotmail," he said. "We've handled three incidents this year where the customers were victims of wire fraud because the third-party emails were hacked."

U.S. credit card companies also are expected to enhance their security measures.

"The goal is to embed credit and debit cards with a micro chip requiring a security code or PIN to process every payment, which is in place in the European Union," Mr. Irvine noted. "The ideal solution would be a third form factor — biometrics."

This third form factor would require consumers to scan their thumbprint or retina during the purchasing process.

"Although these security measures would require merchants and banks to buy all new equipment, it's a heck of a lot cheaper than the costs of a data breach," Mr. Irvin said.

By Russ Banham

NOTIFICATION PROTOCOL

- Written notices by mail are the most appropriate way to notify customers of a cyber breach, and many states require such notification.
- A follow-up email and phone call also are considered part of proper protocol.
- All notifications should provide an email address and toll-free number for victims to contact the company for further information, advice and clarification.

SPECIAL REPORT

CYBER INSURANCE IN THE SPOTLIGHT

Target data breach spikes interest in coverage from many industry sectors

BY SARAH VEYSEY

Expanded coverage and a series of high-profile security breaches have helped spur buyer interest in cyber insurance, and insurers are more willing to customize that coverage to fit buyers' needs.

The massive data breach reported by Target Corp. in December substantially raised buyer awareness of the potential severity of cyber attacks, experts said.

"There really is now an awareness of the financial costs of breaches," said Steve Bonnington, senior vice president in the global technology and privacy practice at Lockton Cos. L.L.P. in London.

Since the Target breach hit the headlines, "the phone has been ringing off the hook," said Peter R. Taffae, managing director of specialty insurer Executive Perils Inc. in Los Angeles.

Buyers from all industry sectors now are exploring the coverage, Mr. Taffae said.

Risk managers are more aware of cyber risks and the insurance market is trying to educate buyers about their exposures and coverage needs, said Iain Ainslie, technology and cyber liability underwriter at Ace European Group in London, a unit of Ace Ltd.

Risk managers are examining first-party cyber risks their organizations face, and are asking themselves, "We know what would happen if a factory burned down. What would happen if our (computer) system failed?" Mr. Ainslie said.

The recent development of meaningful coverage for first-party cyber exposures has helped to boost takeup by buyers, said Karen Allen, a director at Howden Insurance Brokers Ltd. in London.

Risk managers also are getting "their heads around" potential third-party risks and how such risks would affect their business, Mr. Ainslie said.

"This is a product that is constantly evolving," Ms. Allen said. "Every month or so, underwriters are broadening" their offerings.

"The cyber policy has matured and expanded coverage and available limits over the past few years," said Chris Thorn, Dallas-based senior manager of payments and risk at Southwest Airlines Co.

"I am encouraged that I will be able to present my executives with viable options to consider," Mr. Thorn said, adding that Southwest just moved to buy its first cyber insurance policy. "The recent credit card data breaches suffered by several retailers are causing some markets pause in expanding their book," but there's still plenty of coverage capacity from insurers.

"This is very similar to the way (directors and officers coverage) developed," Ms. Allen said, explaining how buyers were tentative when D&O coverage was launched, then they adapted and most companies bought it.

The insurance market has reacted to demand from buyers and to risk managers saying, "Here are our real risks," said Bob Parisi, managing director of the FINPRO division at Marsh Inc. in London.

Coverage now can be bought for the failure of any technology that affects a business, outsourcing risks, vicarious liability and contingent business interruption, Mr. Parisi said.

"We're at that point now where (the market) is beginning to align products much more closely with the exposures," said Dan Trueman, head of the cyber division at Novae Group P.L.C. in London.

Risk managers and technology experts, such as chief information officers, should work as partners when examining potential exposures, he said. Also, there is greater understanding by senior executives that many of these risks are insurable, he said.

"We most certainly have seen an increase in the volume of inquiries and takeup rates" for cyber coverage, Lockton's Mr. Bonnington said.

"Buying tailored cyber coverage is absolutely necessary," said Ethan Harrington, insurance and risk manager at H&R Block Inc. in Kansas City, Mo.

While coverage could not be described as "overly broad," insurers are willing to work with buyers on "more broadly written coverage" to meet each client's needs, Mr. Harrington said.

Coverage tailored to a client's specific needs also is becoming more common, Ace's Mr. Ainslie said.

To understand the greatest exposures, "the risk manager should work with their broker to understand how to better benchmark against their peers," Mr. Harrington said.

Risk managers also should work with chief information and/or chief security officers within their organizations to evaluate their greatest fears, he said.

As questions of network security and the consequences of a failure have become higher profile, representatives of legal, human resources, internal audit and other departments have become involved in the cyber risk management and insurance purchasing process, Mr. Bonnington said.

"That results in a better dialogue with the insurance market, and a higher level of engagement," he said.

Mr. Thorn said he achieved the best results in securing the airline's cyber coverage by holding face-to-face meetings with underwriters and by inviting underwriters to talk directly to senior executives.

Brokers need to take the time and have the skills to truly understand the buyers' cyber exposures, while buyers must "appreciate and look to the policy as a financial instrument" and educate the broker and underwriters, Mr. Taffae said.

"This line of coverage is moving faster than a speeding bullet; and unless you are in the trenches every day, you cannot secure the best coverage" for the buyer, Mr. Taffae said.

CYBER RISK INSURANCE

- Cyber policies cover first- and third-party risks.
- First-party risks could include: loss or damage to digital assets, such as software programs; business interruption losses caused by network outages; cyber extortion; reputational damage; theft of money or digital assets.
- Third-party losses could include: costs arising from security/privacy breaches, such as investigation and defense costs and awards and fines; customer notification expenses; multimedia liability, such as investigation and defense costs arising from defamation or breaches of privacy; corruption or loss of third-party data.
- Some 38 insurers underwrite cyber coverage for U.S. buyers.
- In the United States, coverage limits of about $350 million are available. In Europe, limits of about $250 million can be obtained.

Putting information in the cloud

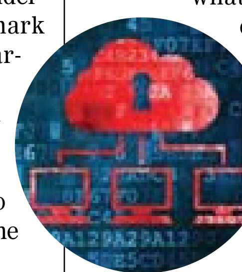
Companies learning to weigh risks vs. benefits

BY JUDY GREENWALD

Companies continue to flock to the cloud in great numbers as they recognize its economic benefits, but they should proceed cautiously in deciding what information they place within it, experts say.

Cloud computing economics "make the solution very compelling for many different organizations of all sizes, and we're still seeing a significant pace of adoption among companies for cloud-based solutions," said Oliver Brew, New York-based vice president of technology and privacy for Liberty International Underwriters, part of Liberty Mutual Holding Co. Inc.

"It's still huge," said Alan E. Brill, senior managing director of secure information services at New York-based Kroll Associates Inc. But "not in the sense of lemmings following each other over the cliff," he said. "It's now much more nuanced. The companies are taking a much more careful look at what cloud computing can do to help them and what the risks are."



Experts say that while cloud service providers may provide greater security than companies can get from their own systems, firms should nevertheless pause before they put any data in the cloud that is critical to their business, such as trade secrets, credit card information or information on mergers and acquisitions.

"The fundamental issue with the cloud is really not unique to the cloud; you're giving control of your data and your information to a third party," just as to any vendor, said Nicholas Economidis, Philadelphia-based underwriter for professional liability and specialty lines at Beazley P.L.C.

The cloud could add some risks and mitigate others, said Tom Srail, Cleveland-based senior vice president of FINEX North America at Willis North America Inc. The question is whether companies are better off moving particular data into the cloud or keeping it in-house.

Once data is in the cloud, it is out of a company's control and could be stolen, disclosed or destroyed, fall between the cracks or lost entirely, said Tim Zeilman, Hartford, Conn.-based vice president at the Hartford Steam Boiler Inspection & Insurance Co., a unit of Munich Reinsurance Co. The organization also may not be sure of where the data ends up, Mr. Srail said.

The first thing an organization should do is conduct a full inventory of the company's information assets and classify them by critical importance, said Kevin Kalinich, global practice leader for cyber and network risk at Aon Risk Solutions.

After that, ask which assets are comparable to KFC's secret recipe or Pepsi's formula. "You don't want to put those out to some third party," Mr. Kalinich said.

Conduct a risk analysis, said Philip L. Gordon, a shareholder with law firm Littler Mendelson P.C. in Denver. "The business should think through what would be the implications of a worst-case scenario — for example, if the cloud computing company goes out of business and it's difficult for the company to access the information."

Companies "have to work backward at troubleshooting" to determine "what would be the impact on the organization's business if it were not able to get immediate access to the information that's been stored in the cloud," Mr. Gordon said.

It really depends on the data involved, the industry and how the company intends to access the data, said Richard L. Santalesa, Fairfield, Conn.-based senior counsel at InfoLawGroup L.L.P. For instance, a company may want to keep credit information close to home, where it knows it is securely encrypted and can determine at any point in time where that data is, he said.

On the other hand "it makes perfect sense" to put old business records and noncritical data that takes up a lot of storage space into the cloud, he said.

"If you don't have the right protections in, you shouldn't store anything in the cloud you wouldn't want to be made publicly available," said Robert J. Scott, managing partner with law firm Scott & Scott L.L.P. in Dallas.

"Cost is always a big element in putting data in the cloud," said Robert Parisi, network security and privacy practice leader at Marsh Inc. in New York. The question is whether companies are gaining increased efficiencies in the cloud and is it helping them be "faster, stronger, and better-looking," or is it simply cheaper to use?

Gene Spafford, director of the Center for Education and Research in Information Assurance and Security in West Lafayette, Ind., said there are regular cycles in information technology when outsourcing data is "economically sensible" because of costs savings and the availability of both components and people. "And then it tends to swing back" because issues of local control, convenience and security need more attention.

"In some sense, we're nearing, probably, the peak of where it makes sense to outsource and move some resources externally, because there are concerns about continuity, security and privacy," Mr. Spafford said.

More competition needed within the cloud

The strength of companies' negotiating power with cloud service providers may depend on how big they are, as well as the size of the cloud service provider.

But if competition among cloud providers increases, it would help cloud users negotiate more favorable contract terms, experts say.

A critical factor from the business point of view is the cloud service providers' willingness to accept responsibility in the event of a data breach or loss.

The attitude of some cloud providers is that they are providing a service, they are not bankers, and therefore should not be held responsible for data loss, said David Rees, London-based cyber division director for broker R. K. Harrison Group Ltd.

"If you're trying to deal with a big cloud provider, there is no negotiation," said Mark Greisiger, president of Gladwynne, Pa.-based NetDiligence, which provides cyber risk management and information security service as the marketing arm of Network Standard Corp.

Instead, cloud users are faced with a "typical shrink wrap" agreement, he said.

If you are a big client, however, you do have more weight, and "there's a chance you can get them to modify" some provisions, Mr. Greisiger said.

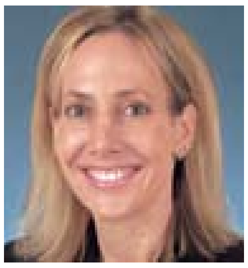
Many times, customers will not be able to negotiate with the larger cloud providers, but there are many small and medium-sized cloud providers "who are happy to negotiate with you and willing to focus on specific concerns," said Richard L. Santalesa, Fairfield, Conn.-based senior counsel at InfoLawGroup L.L.P.

But cloud users' negotiating position may continue to change if the market becomes increasingly competitive "and providers have to give a little bit," said Tim Zeilman, Hartford, Conn.-based vice president at the Hartford Steam Boiler Inspection & Insurance Co., a unit of Munich Reinsurance Co.

By Judy Greenwald

CYBER RISKS

Cyber policies have limited shelf life


Ms. Kornfeld

Evolving consumer protection privacy laws are changing corporate exposures. Therefore, when buying or renewing privacy and data breach policies, companies should carefully review and seek modifications to policy language to ensure their policies are flexible enough to continue providing coverage if the laws and their exposures change during the policy term, says attorney Linda D. Kornfeld, a partner with Kasowitz, Benson, Torres & Friedman L.L.P.'s insurance recovery litigation practice and managing partner of the firm's Los Angeles office.

BY LINDA D. KORNFELD

Target Corp., Neiman Marcus Group, Barclays P.L.C.: The list of companies addressing data breach events and the resulting claims and litigation alleging violations of consumer protection privacy statutes seemingly grows daily.

These events cannot be ignored by any business that collects, stores, uses and distributes individual "personally identifiable information." What also must be considered when assessing business risks is the spate of legislation proposed at the state level intended to increase consumer protection of private information. State attorneys general and local legislators nationwide are keenly focused on increasing consumer protection in this area of critical concern, which means increased risk for companies affected by the new legislation.

> Those within a company responsible for tracking privacy legislation and initiatives, such as a chief privacy officer or in-house counsel, should be involved in assessing what coverage is necessary to best protect the company's going-forward risks.

Recent changes to California's law alone makes the point that any business seeking to proactively risk manage around data breach concerns must pay close attention to the developing laws in the states in which they do business and regularly modify strategies to reduce the likelihood of financial exposure resulting from technical violations of these new laws.

For example, in addition to other laws modified last year, two new privacy laws went into effect Jan. 1 in California:

1. The California Online Protection Act was amended to increase the number of privacy policy disclosures that commercial Internet websites or online services must post if they collect personally identifiable information about California residents who visit their websites.

2. S.B. 46 expands California's data breach law to encompass breaches of an individual's "user name or email address, in combination with a password or security question and answer that would permit access to an online account." The amendment broadens the definition of personally identifiable information and includes additional notification procedures for breaches implicating user names and email addresses.

And, last fall a California state initiative was pursued that would have significantly reduced the largest hurdle faced by plaintiffs in privacy actions — demonstrating harm from the disclosure of personally identifiable information. The initiative proposed a definition of personally identifiable information that expanded what most companies have understood to constitute protected consumer information and could have created substantial increased exposure to class action privacy lawsuits for entities that collect and maintain personal information. The initiative was tabled. However, it illustrates that companies must pay careful attention to the "Whac-A-Mole" of new privacy laws in states in which they operate and be vigilant in their focus on methods to reduce their risk of financial exposure.

Any corporate policy addressing these risks should include careful consideration of insurance coverage. Companies should, on an ongoing basis, examine their potential exposure, matched against their existing insurance portfolio, to confirm they are adequately protected. In fact, insurance policy language that seemingly protected a company when its coverage renewed last June may no longer be adequate in light of the changing laws. This means that in more than any other area of coverage, when buying or renewing privacy and data breach policies, companies should consider necessary changes in the coverage purchased, but also multiple individuals within a given company should be involved in assessing the company's insurance needs.

The California initiative that did not come to pass provides a helpful case study in that regard. Privacy and data breach policies almost uniformly include a definition of personally identifiable information. While some define the phrase to track the definitions contained in federal and state laws that govern privacy concerns, others include their own specific definition. The California initiative proposed to expand personally identifiable information beyond many current insurance policy definitions. Therefore, if a company purchased or renewed data breach and privacy coverage that included the more narrow definition of personally identifiable information, at the time of policy issuance, the policy may have covered existing risks given the state of existing law. However, had the California initiative passed, within weeks or months of policy inception the new laws could have created liabilities that would not be covered by the policy.

So those in a company responsible for tracking privacy legislation and initiatives, such as a chief privacy officer or in-house counsel, should be involved in assessing what coverage is necessary to best protect the company's going-forward risks. And, critically, proposed policy forms should be carefully reviewed to ensure the coverage purchased today will be worth tomorrow the substantial premiums paid. Most data breach/privacy policy forms include detailed, often complicated definitions sections. If necessary, modifications can be requested to allow for maximum flexibility with respect to changing laws.

The same is true regarding policy exclusions, which also could render coverage for which the company paid substantial premiums essentially worthless. For example, many policy forms contain exclusions that purport to preclude coverage for some measure of statutory exposure, including "civil fines or penalties," unless incurred in a regulatory proceeding. However, many privacy statutes under which class action plaintiffs seek monetary relief for data breach events impose a specific damage amount, such as $1,000, per violation of the statute. Thus, if the conduct in question involved thousands if not hundreds of thousands of claimed statutory violations, the potential corporate exposure could be massive. In that circumstance, insurance can be a critical resource to help a company respond to claims against it and the risk of substantial "per violation" liability.

However, insurers frequently argue that alleged statutory violations involve uncovered statutory "fines" or "penalties." If an insurer prevails, then a possible major risk of exposure for data breach events could under insurer arguments leave the policyholder without coverage. Insurers pursue these arguments even though multiple courts recently have ruled against insurers.

For example, in May 2013, the Illinois Supreme Court in *Standard Mutual Insurance Co. v. Norma Lay* rejected an insurer argument that the statutory damages in the Telephone Consumer Protection Act were uninsurable. The court said Congress identified certain harms caused by a breach of the act ("loss of paper and ink, annoyance and inconvenience") and made them compensable by a liquidated sum per violation. The court further found that these liquidated damages were intended by Congress to be "an incentive for private parties to enforce the statute" and therefore concluded in favor of coverage because the "fixed amount clearly serves more than purely punitive or deterrent goals."

In August last year, the Supreme Court of Missouri in *Columbia Casualty Co. v. HIAR Holdings L.L.C.* reached a similar conclusion, finding that fixed TCPA damages encompassed compensable harms and, therefore, were covered "damages."

In October the U.S. District Court for the Central District of California in *Hartford Casualty Insurance Co. v. Corcino & Associates et al.* rejected Hartford's argument that statutory penalties are not covered damages: "The statutes . . . permit . . . recover(y of) damages for breach of an established privacy right, and ... fall squarely within the policy's coverage."

Considering this recent case law, policyholders should carefully review their data breach/privacy policy language and negotiate to narrow exclusions that insurers might argue eliminate critical coverage for companies facing data breach exposures. If sued, policyholders should be aware that arguments exist to avoid insurer efforts to avoid coverage for claimed statutory fines or penalties.

As states continue to regulate in the privacy arena, and companies focus on an overall program to address data breach events or claimed privacy breaches, insurance considerations cannot be ignored.

Linda D. Kornfeld is a partner with Kasowitz, Benson, Torres & Friedman L.L.P.'s insurance recovery litigation practice and managing partner of the firm's Los Angeles office. Ms. Kornfeld can be reached at LKornfeld@kasowitz.com and 424-288-7902.

MARKET PULSE

Lloyd's starts service for high-volume claims

Lloyd's of London launched a shared service to handle high-volume, low-value claims.

The Volume Claims Service, part of a wider claims transformation program taking place in the Lloyd's market, is aimed at helping market participants handle noncomplex claims.

High-volume, low-value claims comprise roughly 85% of all claims received by the Lloyd's market. Volume Claims Service is provided by claims manager Crawford & Co. and business processing firm Xchanging P.L.C.

"VCS enables managing agents to outsource the resolution of noncomplex claims to two service providers offering competing levels of service and price," David Lang, head of claims at Lloyd's, said in a statement.

Fox Rothschild offers data breach survival app

Philadelphia-based law firm Fox Rothschild L.L.P. has launched the Data Breach 411 app on the iTunes Store to help companies affected by a data breach learn more about state rules and regulations.

The free app includes state security breach statutes, HIPAA/HITECH rules and links to other resources, the law firm said in a statement.

"Data breaches can severely impact a company's reputation and have debilitating consequences to businesses big and small," Scott L. Vernick, partner at Fox Rothschild and head of the firm's privacy and data security practice, said in the statement.

"The ability to access these state rules at your fingertips can make all the difference in terms of what's at stake for an organization: loss of reputational integrity, public trust and business, and time-consuming and costly remediation efforts," Mr. Vernick said.

bswift launches exchange for private health benefits

Chicago-based benefits consulting and information technology services firm bswift has launched its Springboard Marketplace private health and voluntary benefits exchange.

Springboard Marketplace offers large and midsize employers control over their group benefits budgets by allowing them to set predetermined contributions toward the cost of their employees' medical and voluntary insurance coverages, as well as an online marketplace through which employees can choose from a range of plan options.

The company is in the process of finalizing partnership agreements with several national health insurers, and expects medical plan placements to be available for fully insured and self-insured employers in time for midyear policy renewals, Don Garlitz, executive director for exchange solutions at bswift, said in a statement.

While Springboard Marketplace is open to employers with as few as 50 full-time workers, bswift's marketing campaign for the exchange will focus primarily on employers with at least 1,000 employees, Mr. Garlitz said.

In addition to medical coverage, employers participating in the Springboard exchange also can provide their employees access to voluntary benefits such as dental, vision, life, disability and accident insurance, as well as direct care purchasing, employee wellness programs and other services. Several insurers have agreed to underwrite voluntary benefit plans through bswift's exchange, including the Guardian Life Insurance Co. of America, Unum Group, MetLife Inc. and Assurant Employee Benefits, a unit of Assurant Inc.

PRODUCTS & SERVICES

Big firms get more insurers in Liazon exchange

Liazon Corp. has upgraded its private health insurance exchange platform to include multiple insurers for large businesses.

This allows fully insured and self-insured employers with 3,000 or more full-time workers to use Liazon's Bright Choices Exchange platform to provide their employees with access to health and voluntary benefits options through multiple national and regional insurers, the Buffalo, N.Y.-based employee benefits firm said in a statement.

The multiple insurer exchange platform differs from Liazon's previous exchange services limiting employees to plan offerings from a single insurer chosen by their employer. Offering multiple insurers will help lower insurance costs for employers and employees by promoting competition, Liazon CEO and co-founder Ashok Subramanian said in a statement.

Employees have access to a minimum of seven health insurance plan options per insurer through Aetna Inc., UnitedHealth Group Inc. and other regional insurers.

Employees also can access voluntary benefits such as dental, vision, life, disability, critical illness and accident insurance plans, as well as flexible spending accounts and health savings accounts, pet insurance, identity theft protections and legal assistance. Providers include: Aetna; UnitedHealthcare; Allstate Insurance Co.; CVS Caremark Corp.; Express Scripts Holding Co.; the Guardian Life Insurance Co. of America; MetLife Inc.; OptumRX Inc.; and Sun Life Financial, the U.S.-based subsidiary of Sun Life Assurance Co. of Canada.

Med mal insurer MGIS offers online courses

The MGIS Cos. Inc., a provider of insurance products and services for physicians, is partnering with Astute Doctor Education Inc. to offer a risk management education program based on improving patient communications.

Astute Doctor will run the Prevent program for doctors interested in helping minimize the risk of malpractice litigation through eight continuing medical education online courses focused on improved doctor-patient communication and patient engagement, MGIS said in a statement.

Courses covering the doctor-patient relationship include: learning how to build strong patient relationships; motivating patients; discovering their concerns; setting goals; gathering information; managing difficult patients; maximizing their understanding and recall; and cross-cultural communications, according to an MGIS spokeswoman.

The courses' online format includes case studies, interactive diagrams, visual models and audio narrations.

"While of course physicians must always focus on quality care and look for ways to improve it, it's also very important to consider the 'warm and fuzzy' side of the patient experience," Jeff Brunken, president of MGIS, said in the statement. "These courses will provide our physicians with critical soft skills they can actually use in their daily practice."

Participants will receive continuing medical education accreditation through joint sponsorship of the Cleveland Clinic Foundation Center for Continuing Education and Astute Doctor after completing the courses.

IronPro selling network, privacy breach cover

IronPro, a unit of Hamilton, Bermuda-Ironshore Inc., has started selling a network security and privacy breach endorsement that can be added to its lawyers professional liability program, the insurer said.

The endorsement provides reimbursement for money spent as a direct result of privacy or network security wrongful acts with aggregate limits of up to $100,000 per incident, the insurer said in a statement.

"This new optional endorsement to the (lawyers professional liability) program is designed to protect law firms from increasing vulnerability inherent with network and cyber risks," Suzanne Fredericks, senior vice president of IronPro errors and omissions, said. "IronPro recognizes that law firms are often subject to claims arising from alleged misrepresentation or wrongful acts, thus triggering the need for comprehensive E&O protection."

DEALS & MOVES

Marsh & McLennan Agency buys surety bond agency Bond Network

Marsh & McLennan Agency L.L.C., the small and mid-market commercial brokerage subsidiary of Marsh L.L.C., has acquired Charlotte, N.C.-based surety bond agency the Bond Network Inc.

Terms of the transaction were not disclosed.

Founded in 1985 by H. Thomas Dawkins, the Bond Network generates $1.1 million in annual revenue and offers commercial, contract and specialty risk surety bonds to private construction contractors throughout the Carolinas, Marsh said in a statement.

Bond Network President Mr. Dawkins and his three employees will be retained.

The Bond Network will continue to operate out of its existing office throughout 2014 and move into Marsh & McLennan Agency's Charlotte office in 2015, a spokeswoman for Marsh said.

Cross Insurance acquires construction risk specialist Driscoll

Cross Insurance, a Bangor, Maine-based subsidiary of Cross Financial Corp., bought the Driscoll Agency Inc., an independent insurance agency based in Norwell, Mass., that specializes in professional risk management service and surety bonding.

Terms of the acquisition were not disclosed.

Founded in 1960, the Driscoll Agency represents more than 100 major construction industry contractors throughout New England. It will operate as a subsidiary of Cross Financial, retaining its name and product line.

In addition, Jay Driscoll will continue as president, and all employees affiliated with the agency will be retained by Cross Insurance, the company said in a statement.

Hub International buys insurance brokers in Colo., La.

Hub International Ltd. has acquired Colorado Springs, Colo.-based full service brokerage Baldrica & Co. and Lafayette, La.-based commercial brokerage Tammariello Group L.L.C.

Terms of the deals were not disclosed.

Baldrica & Co. was acquired via Hub's subsidiary, Hub International Insurance Services, Colorado Operations, and will become part of Hub Colorado's existing Colorado Springs office, the broker said in a statement.

Baldrica & Co. offers property/casualty, employee benefits and personal insurance to businesses and individuals.

The acquisition expands Hub's presence in the southern Colorado marketplace. Andrea Baldrica, the president of Baldrica & Co., is joining Hub Colorado as a vice president.

Tammariello Group was acquired via Hub subsidiary Hub International Gulf South, and its operations will become part of Hub Gulf South's Lafayette office.

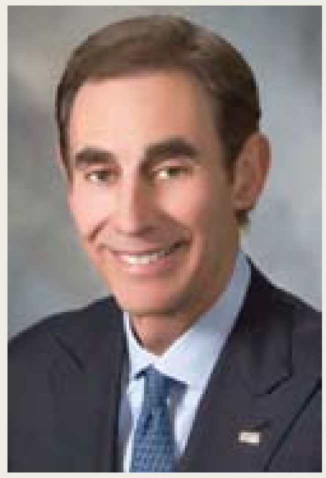
Mark R. Tammariello, senior vice president of Tammariello, is joining Hub Gulf South.

Tammariello offers property/casualty services with specialty expertise in public entities and the oil and gas industries.

Hub International is the 11th-largest broker of U.S. business, according to *Business Insurance*'s 2013 ranking.

PEOPLE

WHOLESALER PURSUES GROWTH DESPITE TEPID ECONOMY



ALAN JAY KAUFMAN

BURNS & WILCOX LTD.

Farmington Hills, Mich.-based Burns & Wilcox Ltd., the sixth-largest wholesale insurance broker in the latest *Business Insurance* ranking, has embarked on a growth strategy that includes last year's purchase of Global Excess Partners L.L.C., which underwrites property programs on behalf of Lloyd's of London and other insurers. It also established a separate brokerage unit. Alan Jay Kaufman, who is chairman, president and CEO of H.W. Kaufman Financial Group and Burns & Wilcox, its largest unit, recently spoke with *Business Insurance* Associate Editor Matthew Lerner about Burns & Wilcox's growth strategy and the outlook for the property/casualty insurance industry in 2014. Edited excerpts follow.

Q&A

Q Was there a specific purpose behind the appointment of Evan Bull as head of the national property practice at Burns & Wilcox Brokerage, and are there expansion plans for the national property practice?

A Yes. His experience and relationships coming from Marsh L.L.C. add credibility and expertise to our national and global broker presence. With the appointments of (Burns & Wilcox Brokerage President) Denis Brady and Evan Bull, we are remaking our brokerage at a higher level. I'd like to see the brokerage expand to produce business in the $500 million area. Our goal is to be in the top five of wholesale brokerages. Burns & Wilcox Brokerage will grow proportionally faster than the Burns & Wilcox managing general agent.

Q Why did you acquire Global Excess Partners?

A With Global, we looked for the opportunity to grow our business, and Global has the opportunity to expand significantly. We plan on investing in talent and enhancing Global's underwriting capabilities, both in the U.S and eventually abroad.

Q What are the advantages of operating as an integrated financial group?

A Vertical integration. To the client, the major impact is clients have better services. If a retail broker can approve premium financing instantly, it brings value throughout the food chain. US-Reports is another part of the Kaufman Financial Group which conducts inspections. In our industry, it is important to have great inspections to make prudent decisions. It directly impacts the timeliness and expediency of placing business. We think that speed is a vital component of the business process, and its demand is only increasing.

Q Is there an advantage to critical mass?

A Scale and expertise are necessary, and you have to have an adequate number of people to develop a solid reputation for having that expertise. You must also be able to afford the ever-increasing cost of doing business; however, a good broker is a good broker, from one or two employees to 100. It's the quality of the talent, not the quantity.

Q Is the influx of alternative capital into the insurance sector affecting your business?

A Yes. There is overcapacity. That's why reinsurance rates are down when they should be up. However, I think that will change. If there are downgrades of insurance companies, or if returns are not that great, there will be a receding amount of capital. Right now, we have overcapacity, and I don't think anyone would disagree.

Q What do you see for the economy in 2014, and how will it affect the insurance industry?

A 2014 will be ... OK. The economy will be marginally better and we are anticipating flat growth for the industry. There are opportunities, but because of overcapacity, rates will remain flat. The stronger companies will probably have a good year.

Q Is the insurance business fun?

A I think it's fun because it's a relationship business ... It's also a competitive business.

COMINGS & GOINGS

UP CLOSE: BRIAN BRIES

CHICAGO-BASED VICE PRESIDENT FOR CONSTRUCTION

Arthur J. Gallagher Risk Management Services Inc.

PREVIOUS POSITION: Chicago-based account executive, Weible & Cahill L.L.C.

LOOKING FORWARD TO: The Arthur J. Gallagher name has a very broad appeal for business in our area. My goal is to help them grow their construction business in the Midwest region.

CHALLENGES FACING INDUSTRY: In construction (risk management), there's a knowledge gap between guys who have been in the industry 40-plus years and new producers just getting into it. Part of the appeal of coming over here to Arthur J. Gallagher is the fact that they have a lot of young producer talent in our office. These guys are hungry and capable and can write business. They just need to gain some experience.

INDUSTRY OUTLOOK: I see the construction economy improving. It's going to be a slow, steady improvement.

FIRST INDUSTRY JOB: I worked as a large account claim representative for St. Paul, which is now Travelers (Cos. Inc.), in New York.

WHAT SURPRISED ME: The insurance industry as a whole is way more interesting and critical to the business world than it sometimes gets credit for.

MYSELF IN 10 YEARS: I see myself doing what I am doing now, acting as an advocate for my clients and a center of expertise for others in the construction world.

ADVICE: Gain as much technical knowledge and expertise as you can.

OUTSIDE THE INDUSTRY, A DREAM JOB: A professional golfer or a professional fly fisherman

FAVORITE MEAL: Anything grilled.

HOBBIES: Spending time with my family; watching Chicago sports

THING MOST PEOPLE DON'T KNOW ABOUT ME: I grew up in a small town in Iowa.

ON A SATURDAY AFTERNOON: Hanging out with my two children.

Professional Moves & Promotions

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

BROKERS

Lockton Cos. L.L.C.	Heidi Small
Lockton Cos. L.L.C.	Maggie Spalding
USI Insurance Services L.L.C.	Lindsay D. Wetherill
Willis Group Holdings P.L.C.	John Merkovsky

INSURERS

CNA Financial Corp.	Riki Nieman
Ironshore Inc.	Chris Horton
Ironshore Inc.	Joshua Neuman
QBE North America	Robert James
XL Group P.L.C.	Wade Pitman
XL Group P.L.C.	Michele Sansone

REINSURANCE

Validus Reinsurance Ltd.	Florian Lutz

OTHER

Century Risk Advisors	Ellen R. Segal
Mercer L.L.C.	Sharon Cunninghis

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

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PUBLIC NOTICES

REQUEST FOR PROPOSAL

INVITATION TO NEGOTIATE
STATE BOARD OF ADMINISTRATION OF FLORIDA

The State Board of Administration of Florida (SBA) is soliciting competitive responses from parties interested in offering investment banking services to the Florida Hurricane Catastrophe Fund (FHCF). The Invitation to Negotiate (ITN) will be available on February 17, 2014, and may be obtained from the FHCF web site at www.sbafla.com/fhcf under "Announcements." The deadline for submitting responses is 3:00 p.m. ET on March 6, 2014. The SBA reserves the right to reject any or all competitive proposals and to cancel any ITNs.

LEGAL NOTICE

ADVERTISEMENT FOR TERMINATION OF SCHEME OF ARRANGEMENT

Kingscroft Insurance Company Limited (in liquidation) (registered in England and Wales under company number 01277975)
El Paso Insurance Company Limited (in liquidation) (registered in England and Wales under company number 01277975)
Lime Street Insurance Company Limited (in liquidation) (registered in England and Wales under company number 01277975)
Mutual Reinsurance Company Limited (in liquidation) (registered in Bermuda under company number #3071)
Walbrook Insurance Company Limited (in liquidation) (registered in England and Wales under 01277975)
(together the "Companies")

Capitalised terms not defined in this notice shall have the same meaning as given to them in the Amended Scheme (as defined below).

The scheme of arrangement originally sanctioned in the High Court of Justice by Harman J on 15 December 1993 and in the Supreme Court of Bermuda on 8 December 1993 and later amended by Lindsay J's sanction in the High Court of Justice on 24 February 2004 and by the the Supreme Court of Bermuda on 27 February 2004 (the "Amended Scheme") in respect of the Companies has been terminated.

Pursuant to clause 10.1.1(c) of the Amended Scheme, the Scheme Administrators, with the agreement of the Creditors Committee gave written notice to each of the Companies at their registered offices stating that, after due enquiry, they concluded that the Scheme was no longer in the interest of the Scheme Creditors of the Companies and that each Scheme Company should be wound up.

This notification is being made in accordance with clause 10.1.2(c) of the Amended Scheme.

MEDIA PARTNER

FIO

Continued from page 1

to give Mr. McRaith and his office the benefit of the doubt, noting that launching a new federal entity — particularly one with limited powers — is no easy task. Some in Congress chided the FIO for its tardiness in releasing its first report and questioned its value.

The Dodd-Frank Wall Street Reform and Consumer Protection Act established the office in 2010, but granted it limited regulatory power, leaving that to each state. The law gives the office a role in representing U.S. interests in international forums and requires it to make reports to Congress.

Subcommittee Chairman Randy Neugebauer, R-Texas, opened the recent hearing by saying that while he is “appreciative of the hard work that Director McRaith and his staff put into this report, I am disappointed that it failed to provide any clarity on what strategic purpose the Federal Insurance Office serves. FIO has been in existence for over three years, and it's still not clear what value the office is bringing to policyholders and our domestic industry.”

Rep. Sean Duffy, R-Wis., was more critical, saying, “If we're asking for reports from FIO, we expect to get them and get them on time.” The long delay demonstrated disrespect for Congress, he said.

However, industry experts have a more conciliatory view, realizing the limited power of the office and its inherent challenges.

“I think they have done the best they could with the resources that are available and the fact that it is a nascent office” within the Treasury department, said J. Stephen Zielezienski, senior vice president and general counsel at the American Insurance Association in Washington.

“The truth is they have a small staff and a lot of important issues within their sphere of authority,” he said. “They're not regulators, but they do play an important role in how the regulatory view of the U.S. system is shaped. It's our hope and expectation that FIO will be allowed to fulfill its international role under Dodd-Frank. It is imperative that the U.S. contingent to the International Association of Insurance Supervisors speak with a unified view.”

David Snyder, senior vice president in the Property Casualty Insurers Association of America's Washington office, also stressed the FIO's role in international insurance matters.

“FIO has been actively engaged in international regulatory discussions, and its report is a thorough compendium of insurance regulatory issues,” he said. “We much appreciate FIO's focus on maintaining the competitiveness of U.S. insurance companies.”

The FIO's support for negotiating covered reinsurance agreements, which provide uniform regulatory criteria for transactions between U.S. and non-U.S. reinsurers, was noted by Frank Nutter, president of the Reinsurance Association of America. “This is a new initiative in the federal government,” he said.

“It's quite understandable that there may have been some delays in some initiatives and reports,” he said. “It's the nature of an entity that's in a startup mode.”

“I think everybody recognizes that Director McRaith and the FIO have a tough job. They do not have the power to increase the scope of their authority without congressional action,” said Howard Mills, former New York superintendent of insurance who is director and chief adviser of the insurance industry group at Deloitte L.L.P. in New York.


Mr. McRaith

“It's a job of trying to persuade and cajole state regulators in the area of uniformity,” Mr. Mills said. “It's a tough job.”

Others, however, questioned the office's performance.

“The delay of the big report remains somewhat inexplicable,” said Ray Lehmann, a senior fellow at the free market-oriented R Street Institute who follows insurance issues. “Two years late is a long time.” But he commended the FIO for being “very open to hearing from many stakeholders.”

The long-delayed report is “very comprehensive,” said Jimi Grande, senior vice president in the National Association of Mutual Insurance Cos.' Washington office.

He said, though, the FIO reached some conclusions in which Mr. McRaith “made the assumption that direct federal involvement would almost be a panacea, to which we would object. We see no evidence that regulation moving to Washington makes it better.”

The FIO did not respond to a request from *Business Insurance* to interview Mr. McRaith.

Mr. Grande disagreed with Mr. McRaith's statement before the House panel that it is time to “move away” from the state vs. federal debate about the best way to regulate insurance. “It appears that his report indicates that both is the answer; it's not either/or, we need both,” he said. “We think duplicative regulation would be the worst regulation we could imagine.”

REFORM

Continued from page 1

week's Treasury Department rules delayed the 95% coverage requirement until 2016, with the 70% coverage test applying in 2015.

While employers will be less likely next year to trigger the $2,000-per-employee penalty, the Treasury department did not delay another significant reform law penalty employers will face starting in 2015: a $3,000 fine for each full-time employee who is not offered coverage, is eligible because of lower income for a federal premium subsidy and uses that subsidy to buy coverage through a public exchange.

“As tempting as the 70% rule appears, note that it still exposes employers to the $3,000 penalty for each individual who winds up with subsidized exchange coverage,” said Andy Anderson, a partner with Morgan, Lewis & Bockius L.L.P. in Chicago.

Phasing in the 95% coverage mandate will be especially important for employers with employees working between 30 hours and 35 hours a week — whom they consider part-time and now don't extend health coverage to — from the $2,000-per-employee penalty.

That allows affected employers more time to consider various options, such as extending coverage to more employees or dropping part-time employees' hours below the 30-hour penalty trigger, as long as they can pass the 70% coverage test to avoid the $2,000 penalty.

“You'll have more time to make determinations,” said J.D. Piro, a senior vice president with Aon Hewitt in Norwalk, Conn.

Another part of the final rules will reduce the financial effect — also for one year only — of the $2,000 penalty on employers, especially smaller firms, not offering coverage.

In calculating the $2,000 penalty under the law, an employer can reduce its employee count by 30 employees.

Take the example of an employer with 100 full-time employees that does not offer coverage.

NEW TIMETABLE

Treasury department regulations ease and clarify health care reform law requirements.

- Coverage mandate for employers with 50-99 employees delayed to 2016.
- Up to 80 employees excluded in calculating penalty in 2015 for employers not offering coverage. In 2016, the 80-employee exclusion in calculating $2,000 penalty permanently drops to 30 employees.
- Employers with noncalendar plan years not required to extend coverage until first day of 2015 plan year.
- Employers are not required to offer coverage to employees' step-children, foster children or to seasonal employees whose customary employment is less than six months.

Under the health care reform law, that $2,000 penalty would be multiplied by 70, resulting in a $140,000 penalty.

But for 2015 only, the employer, for penalty calculation purposes, would reduce its employee count by 80. In the example of the employer not offering coverage to its 100 full-time employees, its penalty would be $40,000 — not the $140,000 that would have been applied without Treasury department relief.

“That is a significant reduction in the penalty for small employers, but that reduction is only for one year,” said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

Small employers — those with between 50 and 99 employees — will get an even bigger compliance break: The Treasury Department delayed the coverage mandate for them until 2016.

Other parts of the final rules resolve other compliance issues. For example, the rules include a formula to determine whether adjunct faculty members of colleges and universities are full-time employees; that employers are not mandated to extend coverage to employees' step-children and foster children; and that employers are not required to cover seasonal employees who work less than six months of the year.

“Employers now know the rules for which they will have to comply. That is of great assurance,” said Steve Wojcik, vice president of public policy at the National Business Group on Health in Washington.

“Employers can move forward now that they know the rules of the road,” said Amy Bergner, managing director of human resources solutions at PricewaterhouseCoopers L.L.P. in Washington.

Still, as sweeping as the rules are, employers are waiting for at least one more set of needed guidance from regulators: how they are to report coverage and enrollment information to the government.

“That will be a huge deal,” said Gretchen Young, senior vice president of health policy with the ERISA Industry Committee in Washington.

WCF

Continued from page 4

Registration, agreed that framing a captive's insurance value property was imperative.

“We want to look and make sure that companies understand that they are taking on risk,” she said. “We are concerned when individuals looking to set up a captive see it solely as a wealth-transfer mechanism.”

While captive insurers have long dealt with oversight from state insurance regulators, Thomas Jones, partner at McDermott Will & Emery L.L.P. in Chicago, expressed concern that the industry is beginning to attract attention from regulators less familiar with the intricacies of the business, noting recent actions by the U.S. Securities and Exchange Commission, the Federal Insurance Office and the National Association of Insurance Commissioners to elicit more information about captives.

“There's a lot of smoke and noise right now,” Mr. Jones said. “In the captive world, we pride ourselves on lighter regulation, so it puts a burden on us to demonstrate that lighter regulation is appropriate.”

Indeed, Mr. Jones said it was incumbent upon the industry to help educate regulators and the public about the benefits captive insurers provide. “How do we educate people at the NAIC and FIO about what captives do and why they are not harmful?” he asked.

Microcaptives

Some 831(b) microcaptives formed primarily for estate planning purposes with little real risk transfer are making it more difficult for conventional captives in Internal Revenue Service audits, said P. Bruce Wright, a partner at Sutherland Asbill & Brennan L.L.P. in New York.

“The mood is a little bit chillier with the IRS now,” Mr. Jones said in agreeing. “We're essentially now uncomfortable with IRS agents in the audience at captive conferences.”

Elsewhere, the discussion centered on how best to convey a captive's value to internal stakeholders.

Steven Resnick, Nashville, Tenn.-based chief operating officer and chief financial officer at Caterpillar Insurance Co., said that when pitching his captive to Caterpillar Inc.'s C-level executives, he stressed ways in which the captive would enable the equipment manufacturer's business model. For example, the extended warranty policies the captive would insure would give them an advantage in a competitive marketplace. Elsewhere the claims data the company collected could be fed back to the company's engineers to help improve product design and quality, Mr. Resnick said.

“The market demanded extended warranties on this type of equipment,” he said. “So it was easy as a risk manager to go to the C-suite and say that a captive will help increase sales and market penetration. It wasn't only about the financial benefits a captive can bring.”

This year's World Captive Forum drew approximately 325 attendees to the Turnberry Isle Miami resort. The next World Captive Forum is scheduled for Feb. 1-4, 2015, at the Boca Raton Resort & Club in Boca Raton, Fla. For more information go to *www.worldcaptiveforum.com.*

LETTERS

Continued from page 12

— not only for the health and happiness of our employees, but also for the bottom line of American businesses.

Each year, depression affects nearly 14 million U.S. residents, primarily during their prime working years, and exacts an equally difficult toll on businesses. Depression affects workplace performance in a number of ways, including presenteeism — when an employee is at work, but not engaged or productive — as well as absenteeism, sleep disturbance and low energy. No matter their field of work, if employees are depressed, it can affect their ability to think clearly and make decisions, and can quickly create major problems for them on the job.

The economic effect of depression in the workplace is staggering, and it's growing every year. Right now, it is estimated depression costs American employers $44 billion annually in lost productivity alone. Depression ranks among the top five disability claims globally — after cancer, pregnancy complications, back conditions and cardiovascular conditions — and short-term disability claims for mental illness are growing by 10% annually. In today's business environment, with employees increasingly asked to do more with less and cerebral skills now required by 85% of all new jobs, the effects and costs of depression in the workplace will only become more pronounced.

The stigma surrounding mental health conditions, especially depression, not only hurts employees, but also the bottom line. Every employer can help break down the stigma and increase communication and understanding around mental health. Once these channels of communication have been opened, we'll be on our way to healthier, happier and more productive employees, as well as a stronger and more competitive economy.

Clare Miller, director of the American Psychiatric Foundation's Partnership for Workplace Mental Health, and Marcas Miles, senior director of marketing communications at Employers Health Coalition Inc.

MOST ACTIVE BUYERS, 2011-2013

Most active purchasers of U.S. and Canadian agents and brokers

Buyer (type of owner)	Total	2013	2012	2011
Hub International Ltd. (private equity-owned)	78	25	21	32
Arthur J. Gallagher & Co. (publicly owned)	73	17	35	21
AssuredPartners Inc. (private equity-owned)	43	19	19	5
Confie Seguros Insurance Services (private equity-owned)	40	14	18	8
Brown & Brown Inc. (publicly held)	38	6	15	17
Digital Insurance Inc.[1] (publicly held)	30	10	10	10
USI Holdings Corp. (private equity-owned)	27	9	10	8
Marsh & McLennan Agency L.L.C. (publicly held)	21	4	9	8
Western Financial Group Inc. (bank-owned)	17	5	5	7
National Financial Partners Corp.[2] (private equity-owned)	13	5	6	2

1 Privately owned until December 2012, when it was acquired by Fidelity National Financial Inc. 2 Publicly held until April 2013, when Madison Dearborn Partners L.L.C. purchased it and took it private.

Source: Optis Partners L.L.C.

BROKERS

Continued from page 4

Last year, 16 private equity-backed buyers made 94 deals. In comparison, eight active publicly owned brokers made only 33 deals. While three private equity-backed firms — Hub International Ltd., Confie Seguros Insurance Services and AssuredPartners Inc. — had more than 10 transactions in 2013, only one publicly held broker — Arthur J. Gallagher & Co. — had more than 10 deals.

As a group, 63 privately owned buyers closed 85 transactions last year, second only to the 94 private equity deals for the year. Bank-owned agencies increased their buying level, from 24 deals in 2012 to 27 in 2013. However, nearly 20% of all bank deals were completed by Western Financial Group Inc., a wholly owned subsidiary of Desjardins Group. Still, bank-owned deals in 2013 trailed 2011 and 2008.

There were four major recapitalizations involving private equity firms last year. Due to the nature of these transactions, they are not treated as traditional M&As for this analysis. They were:

- Genstar Capital acquired GCP Capital Partners L.L.C.'s equity in Acrisure L.L.C. last March;
- Kohlberg & Co. L.L.C. replaced Berkley Capital's investment in Risk Strategies Co. in June;
- Hellman & Freidman L.L.C. replaced Apax Partners L.L.P./Morgan Stanley Investment Management Inc.'s ownership position of Hub International in August;
- And Carlyle Investment Management L.L.C. took a controlling interest in Edgewood Partners Insurance Center Inc. from Stone Point Capital L.L.C. in November.

Three noteworthy traditional M&As closed in 2013. They were:

- Private equity firm Madison Dearborn Partners L.L.C. acquired National Financial Partners Corp. in April;
- Brown & Brown Inc. acquired Beecher Carlson Holdings Inc. in June from Austin Ventures, FSPM and a group of individual equity holders;
- And Gallagher acquired Bollinger Inc. in August from private equity-backer Evercore Capital Partners and other minority shareholders.

Publicly held brokers Gallagher and Brown & Brown were the most active buyers over the past five years, but private equity-backed Hub International eclipsed both during the past three years.

Of the 10 most active buyers in the past three years, five are private equity-based firms, although National Financial Partners was a public company until April 2013.

Although privately owned agents and brokers announced the most M&As during the three-year period, the total most certainly was significantly larger as the majority of private transactions are not reported or disclosed.

The past two years have been somewhat of a roller coaster on the agent and broker mergers and acquisitions front. The end of 2012 saw the highest number of deals in any quarter, followed by the second quarter of 2013 with the least number of deals since the dark days of the 2007 to 2009 Great Recession, which finally ramped up again at the end of 2013 to numbers comparable to 2008 and 2011.

Looking ahead, brokerage deal activity is likely to be robust. There are many active buyers with plenty of capital to spend and/or invest, coupled with a large number of baby boomer agency principals who need an exit and are ready to avail themselves of that pool of capital. In addition, it appears January 2014 was the most active January for deals in the past seven years.

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BULLY

Continued from page 1

Earlier this month, the latest bill was introduced in Tennessee.

Workplace bullying is not recognized as a claim under federal law, but legal experts say it often is an underlying factor in litigation when the stated charge may be sex or racial discrimination. Experts say they think juries have become more sympathetic to bullying claims.

The issue attracted national attention late last year, when Miami Dolphins professional football player Jonathan Martin accused teammate Richie Incognito of bullying him, and then left the team. On Friday, the lawyer hired by the National Football League to investigate the matter released a report concluding that Mr. Incognito "engaged in a pattern of harassment" of Mr. Martin. Mr. Incognito's lawyer said the report was wrong and promised a counter report.

To be sure, more workers are feeling bullied in the workplace, according to a survey of 3,892 workers nationwide released by Chicago-based CareerBuilder L.L.C.

The 2012 survey found that 35% of workers said they were bullied at work, compared with 27% the previous year. Among workers who said they were bullied, 48% said it involved incidents with their bosses, while 26% said it involved someone higher up in the company than their bosses.

Otherwise, of those who said they were bullied, 45% cited their co-workers and 31% said it involved customers, according to the survey. Of the 27% of workers who reported the bullying to their human resources departments in 2012, 57% said nothing was done.

Experts say bullying often takes the form of ostracism. Bullies may isolate their victims by forbidding colleagues' contact with them; move their work site to a remote location; delete their names from group emails; and not inform them of meetings. Yelling, swearing and other public displays "are actually kind of rare," Workplace Bullying Institute national director Gary Namie said.

Workplace bullying is "a significant problem and it can lead to workplace violence," said Sean Ahrens, Chicago-based practice leader for Aon Group Consulting.

With today's economy, workers' "escape route is blocked," Mr. Namie said. "Individuals used to be able to leave the job and find something fairly comparable and they can't now, so they feel trapped" and stay in their jobs longer, which allows bullies "to ratchet up the abuse if it suits them."

David C. Yamada, a professor at Suffolk University Law School and director of the New Workplace Institute, both in Boston, has developed a workplace anti-bullying model bill. He said the issue is getting "more and more attention," making the prospects for legislation "rather good."

"Legislation is a great opportunity for organizations to recognize the need to have anti-bullying policies in their organization," Mr. Ahrens said. "From that standpoint, I think it's beneficial."

Mark A. Lies II, a partner with law firm Seyfarth Shaw L.L.P. in Chicago, said, "I am in favor of some type of legislation in the area, but I'm also concerned that sometimes the legislation goes too far" and causes other problems.

"It's got to be evenhanded and it's got to be done in such a way that the rights of everyone in the situation are respected," Mr. Lies said. Automatically assuming a supervisor who is accused of bullying is guilty "is not fair, either."

Susan K. Lessack, a partner with law firm Pepper Hamilton L.L.P. in Berwyn, Pa., raised another point.

"Legislation could really open up a Pandora's box of litigation," she said. "I think there are people who don't currently have a legally cognizable claim, who feel that they've been treated harshly and perhaps feel empowered to bring a claim if legislation were to pass," which would trigger more litigation.

Even though no state laws on workplace bullying have been enacted and it is not recognized as discrimination under federal law, the issue has sometimes been shoehorned into other existing laws, Mr. Yamada said. Those include discrimination laws and anti-retaliation provisions in whistle-blower laws.

"An individual says, 'You're bullying me because of my race'" and files litigation under civil rights law, Mr. Lies said, citing an example.

In what has been labeled the largest single judgment for a single victim of workplace harassment in U.S. history, Ani Chopourian, a physician assistant who claimed she had been bullied by a surgeon at Mercy General Hospital in Sacramento, Calif., was awarded $168 million by a jury in 2012. Ms. Chopourian's attorney said the case has since been settled for an undisclosed amount.

Juries are becoming more sympathetic to the alleged victims of workplace bullying, experts say. "Some of these cases are getting traction in terms of juries accepting the mental anguish associated with bullying" and believing employers either knew about, or should have known about, the bullying, said Tamsen L. Leachman, a shareholder with law firm Littler Mendelson in Portland, Ore.

"I believe people are much more sensitive to it now, and don't just say, 'Buck up,' or 'Man up,'" she said.

HEAR INTERVIEW

Access *Business Insurance*'s interactive digital edition to hear Mark Lies, partner with Seyfarth Shaw L.L.P., discuss the escalating problem of workplace bullying and what companies should do to alleviate the problem.

Enforcing anti-bullying starts with top execs

Taking a corporate stance against bullying is a message that should be communicated from a company's highest echelon, experts say.

Bullying "is about power, and it tends to be individualized and motivated by the makeup of that particular supervisor and manager," said Tamsen L. Leachman, a shareholder with law firm Littler Mendelson in Portland, Ore.

As a result, making it a priority at the top corporate level, including incorporating anti-bullying language into firms' mission statements, is critical, she said.

Organizations should establish a zero-tolerance policy, as well as identify what bullying is, determine how they will react to incidents of bullying, and create an investigative process to deal with such incidents, said Sean Ahrens, Chicago-based practice leader for Aon Group Consulting.

Susan K. Lessack, a partner with law firm Pepper Hamilton L.L.P. in Berwyn, Pa., said there should be a way for employees who feel they have been treated unfairly or bullied to be heard, but also a way for employers to address employees' concerns "before they escalate."

"Hold everyone who violates the policy accountable" and do not permit exceptions, said Gary Namie, national director of the Bellingham, Wash.-based Workplace Bullying Institute. "As soon as you start allowing for exceptions, it allows the bullies of the world to flourish."

"The big picture is to create a dignified work environment," said David C. Yamada, a professor at Suffolk University Law School and director of the New Workplace Institute, both in Boston.

"Create a work environment in which people can communicate honestly and in which people are treated fairly."

By Judy Greenwald

LEGACY

Continued from page 3

Anna Petropoulos, one of the proponents of the Vermont LIMA measure and president of Brattleboro, Vt.-based runoff manager Apetrop USA Inc., a unit of London-based Apetrop Ltd.

The impetus for pursuing the mechanism was a European client who wanted to transfer a block of U.S. business to a new owner and didn't see an efficient vehicle for doing so, Ms. Petropolous said.

"You can probably do anything you want to in the U.S., but with too much labor intensity and too much legwork," she said. "What we've created here is a streamlined regulatory process."

Business transferred through the LIMA mechanism would be closed blocks of business with no policies having been sold for at least five years and no premium collected for five years, typically involving long-tail liabilities such as asbestos, pollution and certain other environmental exposures, Ms. Petropoulos said.

The LIMA measure, which takes effect on passage, includes a provision for requiring written notice to all policyholders and reinsurance counterparties involved in a transfer plan, giving them an opportunity to voice objections and opt out of the transfers.

The commissioner of Vermont's Department of Regulation is responsible for reviewing the solvency of the assuming company before and after the proposed transaction, as well as the assuming company's ability to comply with all requirements of policies and inward reinsurance agreements involved in the transaction, including the administration of claims. The commissioner also has the authority to examine assuming companies.

Assuming companies' boards are required to hold annual meetings in Vermont.

Once the transactions are approved, "the terminology within the bill effectively concludes a whole and final novation," Ms. Petropoulos said.

Winning Vermont legislators' approval of the LIMA concept was "a three-year legislative journey," Ms. Petropolous said, with U.S. insurance industry groups initially voicing opposition.

"We worked on that for the last three years with various interested parties and the insurance department," said Matthew T. Wulf, vice president for state relations and assistant general counsel at the Reinsurance Association of America in Washington.

"While we question its ability to create a new niche industry in Vermont, we have become more comfortable with its operation and the controls," Mr. Wulf said.

But since the measure was initially proposed, "there were changes made and clarifications made," Mr. Wulf said. "I'm not saying it was something we advocated, but we didn't testify against it this year."

"When the bill was first proposed, we had a significant number of concerns," said Frank O'Brien, Boston-based vice president of state government relations at the Property Casualty Insurers Association of America. "Over the past several years, the sponsors and supporters of the bill worked hard to address those concerns, and we think that the bill that has passed the Legislature was far better than the bill that was initially proposed."

Initially, Mr. O'Brien said, "We had some concerns with the notice provisions. We had some concerns with the reach of the bill."

"The Department of Financial Regulation in Vermont stepped in and significantly improved the oversight of this particular type of transaction," he said. But the bill's signing into law is just a first step, he added. Now the Vermont Department of Regulation will have to address its implementation and possibly craft some regulations related to LIMA transactions, he said.

The American Insurance Association also previously opposed the LIMA bill, but, recognizing that it was a high priority for the governor and the state, took no position this year, instead working to amend it, said Gary Henning, the AIA's vice president for state affairs for the Northeast region in Albany, N.Y. "We could see where it was going so we said, 'Let's fix the bill,'" he said.

"The basic concern that we have with the legislation is that it encourages the formation of runoff companies," Mr. Henning said.

Among the amendments the AIA found favorable were steps to limit the scope of the bill and provisions for objections to the transactions, including allowing policyholders to opt out of having their policies transferred to the new entity. For the AIA, the opt-out provision is significant, as it allows insurers to opt out of the transfer of their reinsurance agreements from a reinsurer to one of the newly formed Vermont entities.

Mr. Montgomery, who has been involved in several Part VII transfers in the United Kingdom, including the transfer of Equitas Ltd.'s business to Berkshire Hathaway Inc., said that it is common under Part VII deals for some policyholders to object.

"There were a lot of positive changes that we were able to get," Mr. Henning said. "The bill was much improved."

There is interest in the Vermont LIMA mechanism "from some of the biggest insurance carriers in the world," Ms. Petropoulos said.

Sarah Veysey contributed to this story.

IN BRIEF

AIG to cut global workforce, posts fourth-quarter profit

■ American International Group Inc. plans to trim its global workforce by roughly 1,900 jobs, according to a company memorandum last week. "With results today, we announced a $265 million severance charge … which we expect will reduce AIG's global workforce by approximately 3%," CEO Robert Benmosche said in the document. "We know that this will mean some changes in roles and in reporting structure, and that some roles will have to be eliminated." Separately, AIG said it had swung to a fourth-quarter profit of $1.98 billion from a loss of $3.69 billion during the prior-year period, reflecting light catastrophe losses. Net written premiums for the insurer's property/casualty operations for the quarter rose 2.8% to $8.03 billion. Revenue for the quarter increased 1.0% to $17.35 billion.

401(k) plan balances hit record high in 2013: Fidelity

■ Fueled by a strong equities market, employees' 401(k) plan account balances hit a record high at the end of last year, Fidelity Investments said. The average account balance was $89,300 at the end of 2013, up from $77,300 at year-end 2012, a 15.5% increase, the Boston-based mutual fund provider and 401(k) plan administrator reported in an analysis. Seventy-eight percent of the 2013 account balance increase was the result of stock market gains, while 22% was due to plan contributions. Account balances are dramatically higher than a few years ago when participants' equity investments were battered during the Great Recession, with last year's $89,300 average account balance nearly twice as high compared with March 2009, when participants' account balances averaged $46,200, Fidelity said.

Marsh & McLennan reports fourth quarter revenue growth

■ Marsh & McLennan Cos. Inc.'s revenue for the fourth quarter of 2013 rose 4.0% compared with the same period a year earlier to $3.12 billion, while its net income for the quarter rose 17.0% year over year to $303 million, the brokerage said. That growth reflected a $57 million restructuring charge Marsh & McLennan took in the fourth quarter of 2012 vs. a $5 million restructuring charge during the same quarter of 2013, it said. Fourth-quarter revenue for its risk and insurance services operations, which include Marsh L.L.C. and Guy Carpenter & Co. L.L.C., rose 4.4% over the prior-year period to $1.63 billion.

Willis posts fourth-quarter net income of $68M

■ Willis Group Holdings P.L.C. swung to a profit of $68.0 million for the fourth quarter of 2013 compared with a loss of $805.0 million in the final quarter of 2012, the brokerage said. Total expenses were $767 million in the fourth quarter of 2013, compared with $1.65 billion in fourth-quarter 2012 expenses, Willis said, having earlier cited charges related to goodwill impairment and a change in its cash retention awards program as accounting for the 2012 quarterly loss. Revenue for the final quarter of 2013 quarter increased 5.5% to $919.0 million.

State funding for light-duty jobs saves employers $20 million

■ A Washington state program that helps employers provide light-duty jobs for injured workers has saved firms nearly $20 million in its first two years, the Washington State Department of Labor & Industries said. The "Stay at Work" program reimburses employers for providing medically approved light-duty jobs to injured employees. It has paid $19.6 million to 2,400 employers providing modified work for 8,400 workers in the last two years.

REINSURANCE

Continued from page 3

decision the correct one.

"The theory that the (federal excise tax) cascades onto multiple transactions never made any sense. It's heartening to see the federal court agree," said Bradley Kading, president of the Association of Bermuda Insurers and Reinsurers.

The tax was designed to be applied only once, reinsurance experts say.

"From the beginning, it has been the RAA's position that the initial design of the Federal Excise Tax was as a stamp tax, which meant when the premium went offshore in the first instance," said Joseph Sieverling, senior vice president and director of financial services for the Reinsurance Association of America. "So, it was only intended to be applied one time to the transaction and not on a cascading basis."

Indeed, in the "olden days," said Mr. Sieverling, one actually had to go to the post office and buy a special stamp showing that the tax had been paid.

"This is a great result for foreign insurers because now, if they write retrocession policies, they're not subject to the excise tax," said David Miller, a New York-based tax attorney with Cadwalader, Wickersham & Taft L.L.P.

"The industry has always thought that the cascade theory was wrong — it doesn't make sense," said Brenda Viehe-Naess, an attorney with industry lobbying group Washington Advocates Group. "Applying the tax twice has never made sense. The extraterritorial application of the tax has never made sense."

"The industry is delighted with this decision. They're very pleased," said Ms. Viehe-Naess.

But the IRS has until April 7 to file a notice of appeal if it intends to contest the decision, she said.

The agency did not respond to a request for comment.

"I think the common perspective is that the government will appeal, because I think the decision was very broad," said Mr. Sieverling. "Typically the government would appeal a decision that they lost."

"I don't know if the IRS will appeal. My guess is that they will," said Mr. Goodman.

In the meantime, other reinsurers may seek to leverage the decision to their advantage and file for tax refunds.

"I think that many insurance and reinsurance companies have already filed for refunds when they had to pay the tax and should expect to get refunds," said Mr. Sieverling.

"Other companies may file for refunds," said Mr. Goodman. He added that some reinsurers have what is called a "closing agreement" with the IRS that governs how such taxes are to be paid. Some of these reinsurers may look at whether they can and should change these agreements, Mr. Goodman said.

But one observer cautioned against a rush to judgment or action.

"The main point I would make is that I think it's pretty early in the game at this point and that companies have time to see how this develops before they take actions to try to take advantage of the court's decision," said Seth Rosen, a New York-based partner with Debevoise & Plimpton L.L.P.

"It's too early — people are still digesting it," said Mr. Miller of the decision and companies' potential reaction to it. He added, however, that "I'm sure this week there have been lots of calls to counsel," and "I think the community is somewhat emboldened by this."

P&I

Continued from page 3

would be "adjusted for changes in both individual and overall global risk factors," and said that attritional claims, or smaller claims, have been subject to inflation and larger, retained claims that are "on the increase" must be shared among members.

In an update to its "P&I Report 2013," Tysers said most Skuld members would see higher rates at this year's renewal.

Moderate — albeit improved on previous years' — investment returns coupled with a "more adverse claims environment" have resulted in tough conditions for P&I clubs, London-based brokerage Aon P.L.C. said in an analysis.

In a report published today, Standard & Poor's Corp. in London said the average weighted combined ratio for the P&I sector was 113% for the 2013/2014 policy year.

This underwriting loss, combined with limited investment returns, means many clubs need to "push rates a little bit," said Simon Schnorr, executive director and head of P&I at Aon Risk Solutions in London.

At last year's renewals, Mr. Schnorr said many clubs were willing to "make concessions" on rates for their members because of tough economic and trading conditions the shipping industry faced.

This year, however, such concessions are rare, resulting in what he described as "not an easy renewal by any means."

The renewal period has been more protracted this year, in part due to the tension between shipowners seeking concessions and P&I clubs' need to increase rates in many cases, Mr. Schnorr said. He said many clubs also were waiting to see what would happen to the International Group's reinsurance arrangements, where rates increased last year.

International Group clubs sought higher renewal prices "in response to the increasing size of average claims and low investment yields," S&P noted in its report, "P&I Insurance Clubs' Favorable Capital Positions Should Support Ratings in Choppy Waters Through 2014."

"Their attempts to offset falling investment returns by improving their underwriting results have been hampered by a sharp increase in reinsurance costs stemming from high-profile claims such as those for the Costa Concordia cruise ship and the Rena container vessel," S&P said in the report. "Although these incidents occurred two years ago, the marine insurance sector is still suffering from the fallout as the costs of these claims spiral and reinsurers seek to recover their outlay."

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AP PHOTO

Google Glass is currently available to a limited number of people for $1,500.

VSP cutting edge with Glass cover

Google Inc. has struck a deal with Vision Service Plan, the nation's largest optical insurance provider, to fit Google Glass, the tech giant's techno-forward eyewear, with prescription lenses.

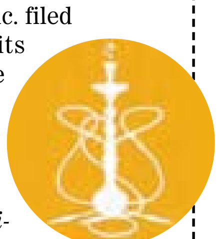
Google Glass is currently available only to a limited number of people through the Glass Explorer Program, at a cost of $1,500. By the end of 2014, however, VSP hopes to have trained about 6,000 optometrists, beginning with doctors in New York, Los Angeles and San Francisco.

VSP, which says it provides eye and vision care to 59 million members, plans to provide coverage similar to that for normal glasses with corrective lenses, generally between $125 and $150 for frames. Customers will be able to choose from four styles of titanium frames priced at $250 (cost of the computer element not included). The consumer launch of the prescription program is set for late 2014.

Hookah maker's suit goes up in smoke

A hookah water container is not protected under copyright law, an appeals court has ruled in a dispute between two companies selling versions of the Eastern smoking pipe.

Santee, Calif.-based Inhale Inc. filed for copyright protection for its hookah water container with the United States Copyright Office in 2011, according to a ruling last month by the 9th U.S. Circuit Court of Appeals in San Francisco in *Inhale Inc., a California Corp. v Starbuzz Tobacco Inc. et al.* Less than a month after registration, Inhale sued Anaheim, Calif.-based Starbuzz for copyright infringement, alleging that Starbuzz sold hookah water containers that were identical in shape to Inhale's container.



A federal judge in Los Angeles ruled in Starbuzz's favor and awarded it $112,000 in attorney fees. The 9th Circuit upheld dismissing the case and awarding attorney fees. "The shape of container is not independent of the container's utilitarian function — to hold the contents within its shape – because the shape accomplishes the function," the majority ruled.

POP STAR PRINCE SUES TO KEEP FANS IN LINE

AP PHOTO

Prince filed a lawsuit, which he later withdrew, against fans who had posted footage of him performing to their social media sites.

He's no stranger to controversy, but music star Prince has opted to pull a lawsuit targeting a group of fans who posted online video clips of him performing. The purple-loving star — real name Prince Rogers Nelson — last month launched a lawsuit against 22 people who had posted on social media sites video clips and footage of him performing.

Prince filed suit in federal court in San Francisco seeking damages of $1 million from each defendant but, according to reports, withdrew the suit late last month after the bootleggers took down the offending content.

The withdrawal was without prejudice, however, meaning that the singer could refile at a later date if he so wished, according to reports.

It is not the first time Prince has gone to court to prevent his music being shared online. In 2007, a woman from Pennsylvania launched an ongoing action against Universal Music Corp., which had sent YouTube a notice of copyright infringement after the woman — Stephanie Lenz — posted a video clip of her infant son dancing to Prince's 1984 hit "Let's Go Crazy."

Prince currently is on a tour of the United Kingdom with his band 3rdEyeGirl. It is perhaps a "Sign O' The Times" that he reportedly asks audience members to not use phones, tablets or cameras.

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Academy acts out over fake Oscars

The Academy of Motion Picture Arts and Sciences filed suit against a Texas man earlier this month in hopes of ensuring that if you receive an Oscar it will be from the academy, not from a website.

According to the Hollywood Reporter, the academy sued Jaime De La Rosa in U.S. District Court in Austin after discovering he was selling reproductions of Oscar statuettes on eBay and Etsy. The suit claims that in selling the replica statuettes, Mr. De La Rosa engaged in copyright and trademark infringement, false representation and trademark dilution.

The academy claims Mr. De La Rosa received from $850 to $5,000 each for his Oscar reproductions, the Hollywood Reporter said.

The report notes that the academy has vigorously defended its intellectual property in the past, including suing a candy maker who made chocolate Oscar statues and others who tried to create phony Oscars or sell real ones.

'85 Bears shuffle off to court

Six members of the 1985 Chicago Bears filed a lawsuit last month in Cook County, Ill., Circuit Court seeking to block allegedly illegal uses of the "Super Bowl Shuffle" rap song and music video they made for charity in the run-up to team's lopsided victory in Super Bowl XX.

The lawsuit accuses Chicago-based Renaissance Marketing Corp. of marketing, distributing and licensing the song and music video without permission from the players, including plaintiffs Jim McMahon, Richard Dent, Steve Fuller, Willie Gault, Mike Richardson and Otis Wilson, who along with 18 other players were known as the Shufflin' Crew.

It claims Renaissance Marketing illegally obtained licensing rights for the song and video from Julia Mayer, the widow of former Red Label Records President Richard Mayer, who signed a royalty agreement with the Shufflin' Crew in the fall of 1985 to ensure that the song was used only for charitable purposes. The agreement required the record company to obtain a majority consent from the players before licensing the song to third parties. But Mr. Mayer allegedly transferred control of the "Super Bowl Shuffle" to himself without telling the players. Upon his death in 1992, Mrs. Mayer assumed control of the properties, and subsequently licensed them to Renaissance Marketing for commercial uses.

The Shufflin' Crew has asked a judge to set up a constructive trust to further their charitable intent for the song.

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