

CYBER CRIME COSTS IN 2013



Industry sectors that spent the most last year to deal with data breaches and other cyber exposures included:

Financial services	\$23.6 million
Defense	\$23.2 million
Energy and utilities	\$21.0 million
Technology	\$10.8 million
Communications	\$10.2 million

Source: Ponemon Institute L.L.C.

CYBER RISKS

Cybersecurity framework unveiled

NIST rules help firms contend with breaches

BY JUDY GREENWALD

The federal government's recommendations to address cybersecurity risks target critical infrastructure industries such as utilities, but the voluntary standards can help any company potentially mitigate legal liability from data breaches or other cyber threats.

The U.S. Department of Commerce's National Institute of Standards and Technology's final framework for improving cybersecurity provides a flexible guide that is not unduly specific, experts say.

The guidelines released last month responded to President Barack Obama's executive order a year ago, citing "repeated cyber intrusions" that are "one of the

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LIABILITY & LITIGATION

RELIGIOUS FREEDOM LAWS COULD SPUR UNINTENDED RISKS

Several states reverse course after national uproar



AP PHOTO

Opponents of a proposed religious freedom bill in Arizona recently urged Gov. Jan Brewer to veto the measure. Amid a national outcry, she vetoed the legislation last week.

BY MATT DUNNING

States' recent efforts to pursue legislation protecting companies from doing business against their religious beliefs could backfire, and the bills if enacted could broaden companies' exposure to legal liabilities.

Legislators in more than a dozen states have introduced such measures since the beginning of the year, largely in response to the spreading legalization of same-sex marriage. None of these bills has been enacted into law.

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RELIGIOUS FREEDOM LEGISLATION

A state-by-state list of bills intended to shield private companies from litigation or regulatory action for conducting business based on their owners' religious beliefs

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P/C INSURERS

Demand surges for terror risk coverage

Policyholders hedging against TRIA expiration

BY MATTHEW LERNER

As the debate intensifies over whether to renew the federal terrorism insurance backstop, the private terrorism coverage market is seeing increased activity as policyholders seek alternatives should Congress substantially change the government program or refuse to extend it.

There are billions of dollars in private insurance capacity available, and certain insurers have boosted policy limits because of the spike in demand for stand-alone terrorism coverage as a hedge against expiration of the federal program.

The outlook for that government backstop, created by the Terrorism Risk Insurance Act of 2002 and since reauthorized twice, remains cloudy. The Senate Banking, Housing, and Urban Affairs Committee last week held its first hearing on the matter and heard several people ask Congress to make the program permanent rather than extend it again before it expires on Dec. 31.

"We would like to see a permanent program," said Carolyn M. Snow, president of the Risk & Insurance Management Society Inc.

Senate banking committee leaders recommended extending it, but

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Q&A: HELEN DARLING

The National Business Group on Health leader discusses the health care marketplace

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Health care reform mandate pushes firms to search for ways to stem liabilities

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Detailing effects of emerging risks, including medical marijuana, fracking, oil shipping

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EMERGING RISKS & SPECIALTY LINES

Rail risks expand as oil shipments boom; fracking risks keep evolving; Bitcoin risks may be left to the specialty market; new diseases plague crop growers and their insurers; employers deal with hazy marijuana laws.

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Specialty Insurance

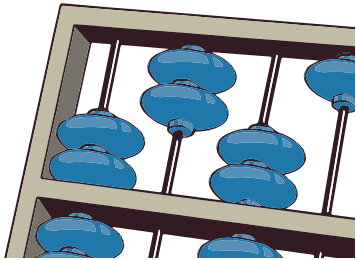
Strength.

*Balance sheets as of 9/30/2013 for the National Indemnity group of companies.
Financial information for the group may be found at www.nationalindemnity.com.

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NEWS

INTERNATIONAL

INSURERS INUNDATED WITH CLAIMS AFTER SEVERE FLOODS IN U.K.

Losses could hit \$2.5 billion after unusually wet winter

BY SARAH VEYSEY

As floodwaters began to recede across the United Kingdom, insurers counted the cost of heavy rainfall while business groups called on insurers and the government to invest more in flood risk management and disaster plans.

Windstorms and heavy rain in late December and early January caused severe flooding in many areas of the United Kingdom, followed by heavy rain through much of January and February.

According to the Met Office, the U.K.'s national weather service, the U.K. has had its wettest winter since national series records began in 1910 as well as its wettest winter in its England and Wales precipitation series going back to 1766.

Flooding was particularly severe in areas of southern England, forcing evacuations, affecting large swathes of agricultural land and resulting in severe transportation disruptions.

While the full cost of the flooding is not yet known, analysts at Credit Suisse Group A.G. said the cost to the insurance industry could reach \$2 billion.

Experts at Bank of America Merrill Lynch said insured losses likely will be lower than the estimated £3 billion (\$4.99 billion) that resulted from severe flooding in 2007,



Volunteers used a pontoon to save a car from floodwaters last week in Somerset, England, where record-setting rain has fallen this winter.

GETTY IMAGES

and the insurance industry could face losses up to £1.5 billion (\$2.49 billion) in the latest flooding. Deloitte L.L.P. also projected insured losses loss of \$2.49 billion.

The Association of British Insurers said severe weather between Dec. 23 and Jan. 8 likely would result in insured losses of about £426 million (\$708.1 million).

Since Dec. 23, the industry has paid out about £14 million (\$23.3 million) in emergency payments to policyholders. The London-based association had not released estimates for subsequent bad weather.

Still, the London office of rating

agency Standard & Poor's Corp. said it did not expect continued flooding in southern England to threaten the financial strength ratings of U.K. insurers.

The rating agency said even if losses were at the higher end of predictions, those due to flooding would represent "an earnings event rather than a capital event" for U.K. insurers.

"Even if political pressure were to hinder insurers from recovering the full extent of their flood losses through raising premiums, we

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CATASTROPHES

NFIP reforms come under political pressure

BY MARK A. HOFMANN

Advocates of reforming the National Flood Insurance Program may have gained some ground last week when the House of Representatives delayed voting on a measure that would roll back reforms approved in 2012.

The victory, however, may be only temporary as the House could move on a new version of the Homeowner Flood Insurance Affordability Act of 2013, H.R. 3370, which could be brought to the House floor as early as this week.

The bill came under fire from

some insurance and environmental groups as well as free market-oriented think tanks as an assault on reforms made to the NFIP by the Biggert-Waters Flood Insurance Reform Act of 2012.

Among other things, the House bill calls for maintaining premium subsidies for the roughly one-fifth of policyholders, many along the East Coast, who currently receive them. It also would repeal a section of Biggert-Waters that called on the Federal Emergency Management Agency to update its flood maps, a result of which would mean some policyholders would pay higher

premiums.

The House was scheduled to consider H.R. 3370 last week, but it was removed from the schedule. A spokesman for House Majority Leader Eric Cantor, R-Va., said consideration of the bill was delayed because Republicans were "working with Democrats on the details of the bill" and the revised measure could come before the House floor this week.

The Senate already has approved a measure that would delay the implementation of risk-based rates for NFIP policies for at least four years, but that bill has not been

See NFIP page 36

WORKERS COMPENSATION

Expanded rules for Medicaid may hit firms

Changes could delay comp, liability settlements

BY SHEENA HARRISON

Medicare Secondary Payer Act experts are weighing an effort to change federal Medicaid recovery law that they say could hinder claim settlements this fall.

Like Medicare, state Medicaid programs can seek reimbursement for medical expenses paid to a Medicaid beneficiary when that person receives a settlement. Language in the federal budget approved in December increases the portion of a settlement from which Medicaid programs can seek reimbursement.

Medicare recovery experts say they are concerned that the expanded Medicaid recovery rules, which take effect Oct. 1, will hamper parties' ability to settle liability and workers compensation cases.

Members of the Medicare Advocacy Recovery Coalition plan to meet Wednesday to discuss strategies to deal with the new Medicaid recovery challenges, including a push to change the law, said coalition Chairwoman Michele Adams.

"We're really hoping that Congress will repeal that section and amend it so ... recoveries are balanced and fair, rather than coming 100% off the top of any settlement," said Ms. Adams, who also is director of claims management and business strategies for risk management services at Walt Disney World Resort in Orlando, Fla.

A portion of the Bipartisan Budget Act of 2013 includes several provisions to strengthen "Medicaid third-party liability." While federal law previously said Medicaid programs can collect "payment for medical care from any third party," the recent budget changed that to allowing collection from "any payment from a third party that has a legal liability to pay for care and services available under the plan."

Liability claims that are eligible for Medicaid reimbursement typically include funds for lost wages, pain and suffering and medical expenses, Ms. Adams said. Previously, Medicaid programs could collect reimbursements only from the medical portion of settlements,

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ONLINE FEATURES

AWARD

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Nominations are open for *Business Insurance's* 2014 Benefit Manager of the Year® awards.

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View photos from the 23rd World Captive Forum in Aventura, Fla.

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NEWS

RISK MANAGEMENT

SAFETY GROUP SETS GUIDELINES AFTER STRING OF STAGE COLLAPSES

Organization issues guidebook, plans training schedule

BY RODD ZOLKOS

An organization that aims to increase safety and reduce risks at live music events is hoping the resources it provides become a global standard for production of such events.

And, as they involve the insurance industry in their efforts, they hope event producers that utilize the guidelines and training they're creating will see the benefit of reduced premiums and increased coverage availability.

The Event Safety Alliance's formation stemmed largely from a series of stage collapses that occurred at various festivals in 2011, most notably the collapse of a stage at the Indiana State Fair in August of that year that killed seven people and injured 58 others.

"My selfish reason is that when my five-year-old grows up and goes to shows he comes home," said Jim Digby, founder and executive director of the alliance. "The overwhelming feeling early on was that if we didn't do it and God forbid there was another incident like the one in Indiana, government was going to do it for us."

"The expressly stated goal of ESA is to have people put life safety first," said Steven Adelman, vice president of the ESA and head of



AP PHOTO

The collapse of a stage at the Indiana State Fair in August of 2011 killed seven people and injured 58 others.

the Adelman Law Group P.L.L.C. in Scottsdale, Ariz. "The original thought of having an Event Safety Alliance is we want people to be able to go to live events and not die. It's a simple as that."

The alliance formed in 2012 based on a realization that there was no single source for event producers to use as a risk management and safety resource, said Lauren Bailey, vice president of entertainment insurance at Novato, Calif.-based Fireman's Fund Insurance Co., which recently became a sponsor of the alliance.

"One of the most important pieces I think will be coming out of

this will be the education and training," said Ms. Bailey, who is a director of the Scottsdale, Ariz. organization.

Mr. Digby is owner of Collaborative Endeavor Group, a Downingtown, Pa.-based international live entertainment touring and production strategies and solutions firm. Members of the alliance include various participants involved in staging a live music event.

Nearly 3,000 individuals have registered with the organization so far through its www.eventsafety-alliance.org website.

See SAFETY page 33

WORKERS COMP

More firms eye Texas comp opt-out move

Experts caution higher exposure to litigation

BY SHEENA HARRISON

While the Texas nonsubscription system can help employers save money compared with purchasing traditional workers compensation insurance, experts say companies need to consider whether the risk of tort lawsuits from injured workers — and the possibility of significant jury awards resulting from such cases — outweighs the initial cost savings.

"One of the things you look at is the nature of your claims and do you have the potential to face greater exposure on the civil side than you would under workers compensation," said Mark Walls, St. Louis-based senior vice president and workers compensation market research leader at Marsh Inc.

Employers are considering Texas nonsubscription more often as the national workers comp market hardens and rates have begun to increase in recent years, said Blake Stock, CEO of Dallas-based Combined Group Insurance Services Inc., a managing general agent that provides liability insurance and benefit programs for Texas nonsubscribers.

"In general, workers compensation is a deteriorating profitability line of business for" insurers, Mr. Stock said. "So as workers comp rates continue to rise and carriers' workers comp appetites continue to shrink, then employers are looking for alternatives such as our program."

Texas and Oklahoma are the only two states that allow employers to opt out of the traditional workers compensation system. Large employers who opt-out in Texas typically set up benefit programs to cover their injured workers, similar to benefit programs that Oklahoma requires certain nonsubscribers to create.

Unlike Oklahoma, alternative benefit programs in Texas are not subject to exclusive remedy provisions, which can leave Texas nonsubscribers at risk for tort lawsuits from injured workers. Firms often purchase employer liability coverage to mitigate exposures from such lawsuits.

Nonsubscribing employers strive

See NONSUBSCRIBER page 33

TELL US WHAT MAKES YOUR WORKPLACE THE BEST

Registration is open for *Business Insurance's* 2014 Best Places to Work in Insurance program, which identifies and recognizes high-quality workplaces in the commercial insurance industry.

As employers compete for talent and strive to be employers of choice, companies honored through the program create workplaces that do superior jobs of encouraging employees to thrive in a work environment they can love.

In the 2014 Best Places to Work in Insurance program, *Business Insurance* will recognize commercial insurance industry employers in several categories. With a registration deadline of June 6, we invite applications from employers from the following types of companies serving risk and benefits managers:

- Retail agents/brokers
- Wholesale brokers/managing general agents
- Reinsurance brokers
- Property/casualty insurers
- Group life/health insurers
- Claims services
- Benefits brokers and consultants
- Reinsurers

Within each category, companies are segmented by size

for ranking purposes into three groups: small companies with 25 to 249 employees; medium-size companies with 250 to 999 employees; and large companies with 1,000 or more employees.

Companies that make the list of Best Places to Work in Insurance must demonstrate that they meet or exceed a minimum standard of excellence in a variety of employment-related metrics, measured against other employers in this industry as well as other companies nationwide.

The information is drawn from a two-part survey of all participating companies. One part of the survey evaluates employees' workplace experiences and company culture; the

other gathers information on the employer's benefits, policies, practices and more.

Since 2009, *Business Insurance* has conducted the annual Best Places to Work in Insurance program in partnership with Best Companies Group, an independent workplace excellence research firm that manages similar programs in the United States and Canada.

To nominate a company, go to www.bestplacestoworkins.com.



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Regulators scrutinize business plans for expected benefits, tax issues

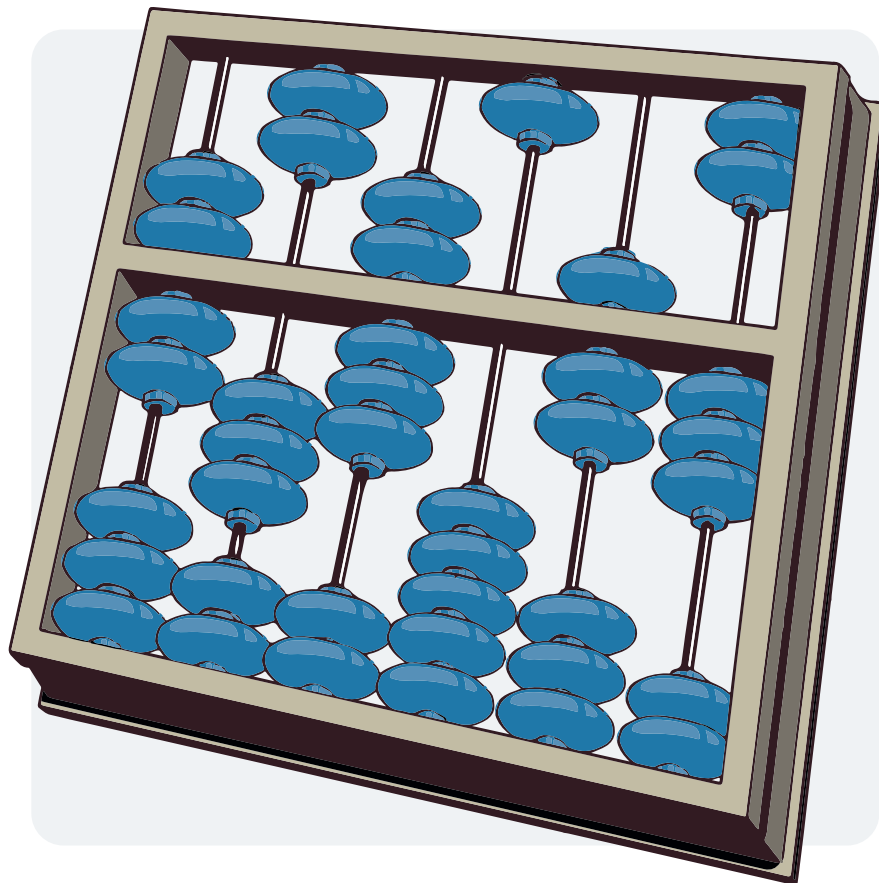
BY JOANNE WOJCIK

Although the content of captive insurer feasibility studies can vary almost as much as the types of risks these special-purpose vehicles are established to insure, all must contain a basic actuarial analysis of the types of losses an owner anticipates in operating the captive, experts say.

“Each captive is unique. It sounds like a cliché, but it’s true. The feasibility study will be different depending on the types of risks it will insure,” said Kevin Doherty, president of the Tennessee Captive Insurance Association Inc. and a partner at law firm Nelson Mullins Riley & Scarborough L.L.P. in Nashville, Tenn.

“A captive feasibility study is a mixture of words and numbers, a quantitative and qualitative analysis that outlines what the program might look like, coverages written, risk retained, how to fund and capitalize it (and domiciles,” said John Lochner, a director at consultant Towers Watson & Co. in Hartford, Conn. “It will also include pro forma financial statements to highlight the financial commitment that’s required, project likely financial results given certain loss and investment returns, describe potential adverse scenarios and compare the captive program to the current program.”

“The role of the feasibility study is to establish the business purpose of the transaction,” said Phillip England, chairman of the insurance practice



group at Anderson Kill P.C. in New York. “As a general rule, you cannot create a captive unless there is a legitimate business purpose other than tax savings.”

The cost of captive feasibility studies also varies depending on what a captive encompasses.

“At a minimum, a study should develop a business plan that shows potential premiums and losses and addresses some of the tax issues,” said Art Koritzinsky, managing director of Marsh L.L.C.’s captive solutions group in Norwalk, Conn. “That might cost \$15,000. But a full-blown study that the client could use to educate its leadership and put in a file in case the Internal Revenue Service ever asks for the business case will also talk about domiciles, operation issues, perhaps include a multiyear plan for expansion. That might cost another \$15,000.”

Although actuarial firms often are hired to conduct captive feasibility studies, insurance brokers, consultants or captive managers also may perform the reviews. But experts warn other parties may have a bias that could affect their recommendation.

“Everybody’s got an angle,” said Brady Young, Atlanta-based president and CEO of captive manager Strategic Risk Solutions Inc. “Consulting firms want to sell studies, brokers could potentially lose commissions. We have a separate division that does feasibility studies.”

“I try to discourage (potential captive owners) from doing the feasibility study if I can tell they are not a good candidate,” Mr. Young said. “Even with this upfront vetting, probably only half end up moving forward after the study is performed.”

Companies considering captives should do financial and risk tolerance soul-searching before paying \$15,000 or more to conduct a feasibility study, experts advise.

“Everyone says they want to take risk. But when you get down to it, a lot of business owners don’t,” said R. Wesley

Sierk III, president of consultant Risk Management Advisors Inc. in Long Beach, Calif. “It also depends on the structure of the business. If they have a culture that doesn’t support or reward risk management, then they probably aren’t going to be successful.”

Companies also must realize that captives require a considerable upfront investment — with sufficient capital, premiums and reinsurance in place to pay for at least one policy-limit claim — as well as ongoing operating expenses ranging from \$25,000 annually for a protected cell company with minimal loss activity to \$100,000 a year for a very active captive, experts say.

When performing a captive feasibility study, “we usually like to start with looking at the insured program and the business operations,” said Fay Okamoto, Honolulu-based division senior vice president at Artex Risk Solutions Inc., a subsidiary of Arthur J. Gallagher & Co. “We look for areas where they are already retaining risk in the form of deductibles, exclusions under their insured programs, and risks that are uninsured either because it’s too expensive or they feel they don’t have a big exposure so they don’t buy insurance. We also conduct an actuarial analysis on the loss data available. The further back it can go, the better, to understand how risk may have changed over time, such as if there were acquisitions or divestitures, or if

they entered a new segment of business.”

A captive feasibility study also will examine risk transfer, “because the first thing the IRS asks for when doing an audit is the feasibility study,” said Karin Landry, managing partner of Boston-based Spring Consulting Group L.L.C. “There has to be legitimate risk transfer for premiums to be tax-deductible. Otherwise, only the incurred losses are tax-deductible for the captive owner.”

ESSENTIAL ELEMENTS OF CAPTIVE FEASIBILITY STUDIES

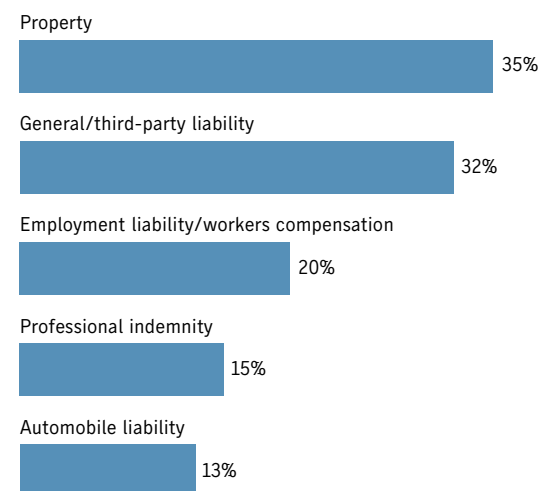
A captive feasibility study usually takes four to eight weeks, costing \$15,000 to \$30,000 depending on the complexity of the prospective organization and its objectives. A comprehensive study includes the following elements:

- An actuarial analysis of past claims, future loss projections and other financial assumptions that include growth rates, cost of capital and investment income.
- A business plan for the captive, including capitalization, operating budget, types of risks it will insure, underwriting, claims management, financial management, compliance and reporting.
- A comparison of potential domiciles, including application and other fees, minimum capitalization requirements, premiums and excise taxes.
- A discussion of whether a fronting insurer and/or reinsurance capacity is needed.
- An analysis of potential captive structures, such as pure or single-parent, group, protected cell or 831(b) microcaptive.
- A discussion of risk transfer and potential income tax consequences.
- Pro forma financial statements of the parent company, including income statements and balance sheets for at least five years.

By Joanne Wojcik

TOP FIVE CAPTIVE RISKS

Top risks insured by captives during 2012*



*Multiple types of risks can be insured via a captive. Source: Marsh L.L.C.

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LARGE EMPLOYERS RETHINK MEDICAL STOP-LOSS

Health care reform mandate pushes firms to search for ways to stem liabilities

BY JOANNE WOJCIK

While a growing number of small and midsize employers use captives to fund primary layers of medical stop-loss coverage for their self-funded health care programs, the health care reform law is prompting some large employers to also explore the idea.

Small and midsize companies that self-insure health benefits for their employees typically purchase medical stop-loss coverage to pay individual claims above a certain threshold.

While the approach generally did not appeal to large employers because most had the wherewithal to pay claims up to their benefit plan coverage limits, the Patient Protection and Affordable Care Act's bar on setting annual or lifetime caps on employee health benefits has prompted some large employers to look for ways to stem potentially unlimited liabilities.

Safeway Inc. examined the feasibility of using its Bermuda-based captive insurer, Milford Insurance (Bermuda) Ltd., to fund stop-loss coverage for its self-funded health plan for its 171,000 U.S. employees, said Ward Ching, Pleasanton, Calif.-based vice president of risk management operations.

The grocery chain stopped buying commercial stop-loss cover eight or nine years ago after determining that it could withstand significant medical claims, he said.

"At Safeway, we are self-insured, self-administered with high retentions on most lines of coverage, so there isn't a question about appetite for risk," Mr. Ching said. "What we do have a concern about is volatility. And we didn't get too far into the math to figure out in terms of medical stop-loss for us ... the volatility variable was harder to get our arms around; and if we couldn't get our arms around it, it was not a candidate for the captive," he said.

While Safeway decided against using its captive for medical stop-loss in its post-health care reform law review, other large employers are choosing this option, said George O'Donnell, technical director at Aon Global Risk Consulting

STOP-LOSS CATASTROPHIC CLAIMS

Among 224 plan sponsors in 2013 covering 450,000 employees with more than \$145 million in annual stop-loss coverage in the previous two years:

- 24% had at least one claim that exceeded \$500,000 but was less than \$750,000.
- 17% had at least one claim that exceeded \$750,000 but was less than \$1 million.
- 14% had at least one claim that exceeded \$1 million.
- 41% had no catastrophic claims that exceeded \$1 million.
- 4% did not know the amount of catastrophic claims.

Source: Source: Aegis Risk L.L.C., International Society of Certified Employee Benefit Specialists

DECISION-MAKERS

Four categories of company executives in a 2013 survey typically were involved in conducting a stop-loss review and making a final coverage decision.

Benefits/human resources	91%
Finance/chief financial officer	63%
President/CEO/executive leaders	39%
Risk managers	12%

Source: Aegis Risk L.L.C., International Society of Certified Employee Benefit Specialists

in Somerset, N.J.

"We are seeing a number of situations in which companies that previously did not consider stop-loss ... are now feeling a little uncomfortable because under health care reform they could be exposed to unlimited liability," Mr. O'Donnell said.

"Many of our clients are becoming aware that the management of this type of risk within the company is probably best handled by the risk manager through a captive as opposed to having it handled through human resources, which his-

torically handled stop-loss purchases, Mr. O'Donnell said.

"Usually at the end of the year, HR is concerned with things like annual enrollment and making sure that people's benefits packages are supplied to them appropriately, and answering questions relating to the core business of HR," he said. "The last thing HR needs or wants to be doing at that same time of year is shopping the market for stop-loss. It's much easier to turn it over to the risk manager and have the captive issue the stop-loss and then have the captive purchase reinsurance."

Several clients last year and so far this year have examined their captives to cover stop-loss, he said.

Steve Gransbury, head of specialty at QBE North America in Boston, said he is seeing large employers in higher education, energy and medical care using their captive to fund a \$500,000 layer of stop-loss coverage above a \$250,000 self-insured retention, then purchasing commercial stop-loss insurance attaching at \$750,000.

In addition, some hospitals are using their captives "to offer stop-loss to their employer clients," Mr. Gransbury said. "We've done several arrangements at this point" in which the stop-loss policy is issued by QBE, a division of Australian reinsurer QBE Insurance Group Ltd., and then reinsured by the hospital captive, he said.

For certain small and midsize employers, a group captive approach may be appealing, experts say. In addition, large employers that already self-insure and have a captive may find stop-loss coverage is a way to limit potential costs (see related story).

Still, many large employers ultimately decide against using their captives to fund stop-loss coverage for their self-funded benefit plans, said John Currie, principal emeritus at consultant Ascende Inc. in Houston.

"We've looked at it for clients that have upwards of 10,000 employees," he said, "but we haven't seen where it makes economic sense yet."

Using a captive for stop-loss coverage usually isn't feasible unless an employer already pays at least \$1 million in stop-loss premiums a year, he said.

GROUP CAPTIVES OFFER ECONOMIES OF SCALE FOR SMALLER EMPLOYERS

Some experts say group captives may be an attractive approach for small and midsize companies looking to use stop-loss coverage, and stop-loss may be appealing for large companies that already self-insure employee health benefits and have a captive.

For small to mid-market companies that take self-insured retentions from \$50,000 to \$150,000 and then purchase stop-loss coverage above that, "it can be beneficial for those companies to group together" in a captive arrangement, said Anne Marie

Towle, senior captive consultant at Willis North America Inc. in Chicago.

Ms. Towle said she has performed 20 to 30 feasibility studies to evaluate whether to put stop-loss in a captive, and "50% to 60% go forward with this arrangement."

She said it is feasible if the captive provides stop-loss coverage to benefit plans covering at least 5,000 lives, whether it is an individual employer or several employers collectively.

However, for a large employer that already has the ability to pay the first \$1

million or more of each plan member's claims, putting stop-loss in a captive could potentially increase its costs, Ms. Towle said.

"When an employer retains additional risk in their captive, it will add transaction costs," she said.

Mark Orzechowski, area senior vice president at Gallagher Benefit Services Inc. in Chicago, said he suggests using a captive for stop-loss whenever he meets with large employers that already self-insure their health care benefits and also

have a captive for funding other company risks.

"I think it's a natural thought for these organizations," Mr. Orzechowski said. "If they don't have stop-loss now, ACA almost forces their hand to consider something."

Among organizations that already have an integrated human resources and risk management platform, "there's already greater awareness" of the potential use of the captive for this purpose, Mr. Orzechowski said.

By Joanne Wojcik

BUSINESS INSURANCE

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For more details on the nomination criteria and process, visit www.businessinsurance.com/bmoynominate

The deadline for submitting nominations for this year's award is March 24, 2014. • The 2014 winners will be profiled in the June 23rd issue of *Business Insurance*.

Hiscox, Willis talks on Global 360 'stalled'

■ Hiscox Ltd., one of the prospective backers of Willis Group Holdings P.L.C.'s Global 360 underwriting facility, said that while it remains in negotiations with the broker about backing the facility, those discussions have "stalled." Hamilton, Bermuda-based Hiscox in October said it would become one of the backers of the facility set up to offer follow-market capacity for aviation, space, construction, specialty property/casualty, marine, energy and facultative business in the London subscription market. Berkshire Hathaway Inc. and People's Insurance Co. of China also said they would support the facility. Hiscox is still in negotiations with Willis about the facility, but those negotiations have stalled, a Hiscox spokeswoman said. She added that Hiscox still would support the facility, or others like it, if "the conditions are right." A spokesman for Willis declined to comment.

Pension buyouts priciest in U.K., index shows

■ The United Kingdom is the most expensive country for pension buyouts, according to a new buyout cost index created by Mercer L.L.C. The cost of insuring retiree obligations in the U.K. would be around 23% more than the equivalent accounting liabilities vs. 17% in Ireland, 8.5% in the U.S. and 5% in Canada, according to the Mercer Global Pension Buyout index, based on data compiled in January. Overall, the global index is at 13%. The U.K.'s high cost is because of the country's legal requirement to automatically increase pension benefits in line with inflation, increasing liability durations. Also, costs in the U.K. and elsewhere are affected by regional market conditions.

Pensions & Investments

Firms urged to pay into Bangladesh factory fund

■ Campaigners are urging all 27 clothing brands linked to a collapsed Bangladeshi factory that killed more than 1,100 people to pay into a compensation fund by the anniversary of the disaster in April. The disaster has galvanized most of the clothing industry's big names to work together to improve safety standards, but many brands have shunned a fund that is trying to raise \$40 million for families of the dead and more than 2,000 injured. The Clean Clothes Campaign, an Amsterdam-based group lobbying for better conditions in the garment industry, demanded that all 27 brands linked to factories in the Rana Plaza complex should contribute by the first anniversary of the collapse. The group said the only brands to have committed to pay into the fund so far are Loblaw, Mascot of Denmark and Spanish chains El Corte Ingles, Mango and Zara-owner Inditex.

Reuters

El Niño may return, hit global food production

■ The El Niño weather pattern that can trigger drought in some parts of the world while causing flooding in others is increasingly likely to return this year, hitting production of key foods such as rice, wheat and sugar. El Niño is a warming of sea-surface temperatures in the Pacific that occurs every four to 12 years. A strong El Niño can wither crops in Australia, Southeast Asia, India and Africa when other parts of the globe such as the U.S. Midwest and Brazil are drenched in rain. While scientists are still debating the intensity of a potential El Niño, Australia's Bureau of Meteorology and the U.S. Climate Prediction Center have warned of increased chances one will strike this year. In January, the United Nations' World Meteorological Organization said there was an "enhanced possibility" of a weak El Niño by the middle of 2014. The specter of El Niño has driven global cocoa prices to 2½ year peaks in February on fears that dry weather in the key growing regions of Africa and Asia would stoke a global deficit. In India, the world's No. 2 producer of sugar, rice and wheat, a strong El Niño could reduce the monsoon rains that are key to its agricul-

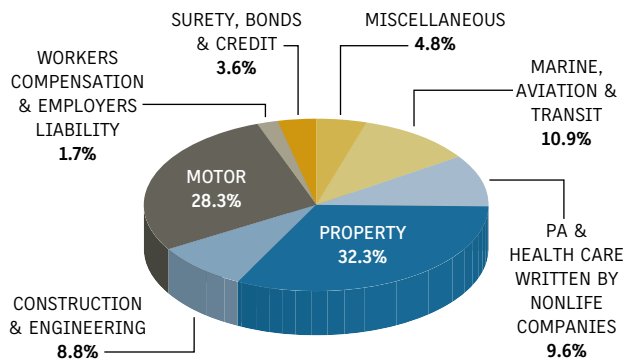
PROFILE: THE PHILIPPINES

\$1.09 BILLION

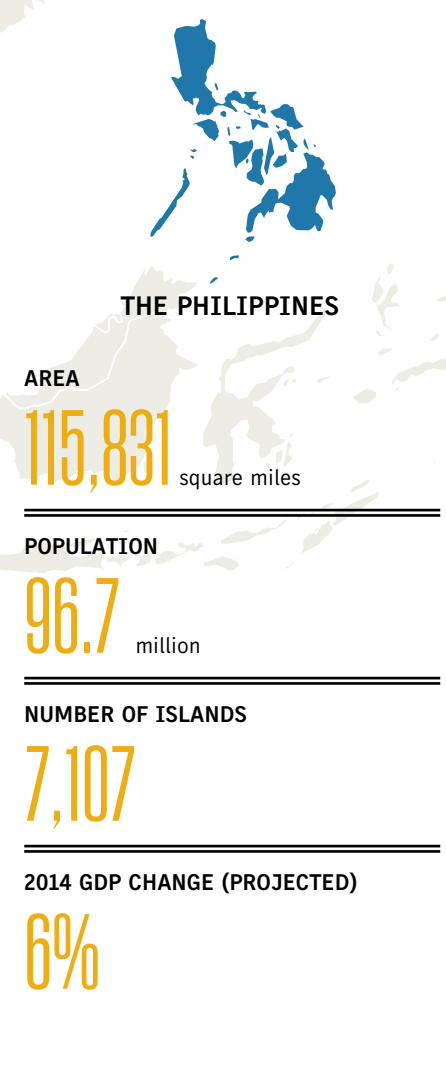
Gross premiums for the Philippines' property/casualty insurance market increased 10.3% in 2011, the latest year for which confirmed figures are available, and 15.2% in 2012, according to preliminary statistics. Premium rates for property risks, construction and marine cargo have decreased over the past several years, but rate reductions slowed in 2013. Several proposed regulatory changes, including increased capital requirements, are expected to lead to consolidation among insurers.

◀ 2011 P/C gross premiums

MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



COMPULSORY INSURANCE

- Auto third-party liability
- Personal accident for passengers of transportation operators
- Professional liability for insurance and reinsurance brokers
- Public liability for some businesses
- Coverage for foreign workers
- Oil pollution coverage

NONADMITTED

Nonadmitted insurance is not permitted in the Philippines, except for marine cargo imports and exports. Laws stipulate that insurance must be purchased from locally authorized insurers, unless special permission is granted by the insurance commissioner. Marine cargo imports and exports may be insured on a nonadmitted basis, subject to the terms of trade of the shipment.

INTERMEDIARIES

Brokers and agents must be authorized to conduct insurance business. Intermediaries are not permitted to arrange nonadmitted insurance, and it is incumbent upon intermediaries to make clients aware of the regulations and the penalties for noncompliance. The penalty for breaching regulations regarding nonadmitted insurance placements is suspension or withdrawal of intermediaries' operating licenses.

MARKET PRACTICE

It is customary for foreign multinationals to buy primary coverage locally and arrange excess liability coverage on a nonadmitted basis under their global programs. There are no restrictions on fronting. Facultative reinsurance must be offered first to the local market.

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

MARKET DEVELOPMENTS

UPDATED JANUARY 2014

- An earthquake pool is planned, sponsored by the Asian Development Bank, which may lead to the introduction of mandatory earthquake insurance for residential building owners.
- Republic Act No. 10607, which was signed into law last year, includes several reforms that are expected to be introduced when the law is implemented, including: an insurance industry code of conduct, a staggered increase in minimum capital requirements for insurers to \$29.3 million in 2022, and expanding permitted investment categories for insurers and reinsurers.
- The Asian Economic Community of member countries of the Association of Southeast Asian Nations has set an objective of 2015 to establish a single market for the provision of services, including insurance. Law in the Philippines restricting foreign insurers from providing insurance services would have to be modified significantly.
- Projected insurance legislation includes provisions that would, among other things: fix the tenure of the insurance commissioner at six years, strengthen the powers of the commissioner, revise company and agency licensing processes, and introduce a new financial reporting framework.

ture, curbing production. Elsewhere in Asia, which grows more than 90% of the world's rice and is its main producer of coffee and corn, a drought-inducing El Niño could hit crops in Thailand, Indonesia, Vietnam, the Philippines and China. And it could deal another blow to wheat production in Australia, the world's second-largest exporter of the grain.

Reuters

Hardy Underwriting names Brosnan CEO

■ Hamilton, Bermuda-based specialty insurer Hardy Underwriting Agencies Ltd. has appointed David Brosnan CEO effective immediately, the company said in a statement. Mr. Brosnan, who will be based in London, will also serve on the Hardy board of directors. His appointments

have been approved by the Prudential Regulation Authority and are subject to approval by Lloyd's of London, the company said in its statement. He replaces Barbara Merry, who has left the company.

PartnerRe announces executive changes

■ PartnerRe Ltd. announced the retirement of Marvin Pestcoe, currently CEO of life and health, along with other executive management changes. Mr. Pestcoe's retirement is effective April 15, though he will continue to work with PartnerRe in a consulting capacity, the Pembroke, Bermuda-based reinsurer said in a statement. He also had responsibility for all investments, the reinsurer said. Bill Babcock, chief financial officer of PartnerRe, will take executive responsibility for investments, and Emmanuel

Clarke, CEO of PartnerRe Global, will take executive responsibility for life and health, according to the statement. Zurich-based Charles Goldie, currently head of specialty lines at PartnerRe, will be promoted to deputy CEO for global non-life; and New York-based John Adimari, currently head of risk management services at PartnerRe, has been appointed to the newly created position of chief administrative officer, according to the reinsurer's statement.

and also pay a special dividend of 4.15 francs (\$4.64) per share. Swiss Re released \$1 billion in reserves previously set aside for disaster payouts, which, along with a more favorable tax rate, helped 2013 net profit rise 6% to \$4.4 billion. Swiss Re reported a combined ratio of 86.6% in the fourth quarter compared with 90.5% a year earlier. The company has said it expects natural catastrophe pricing rates to stabilize in 2014 after a decline

last year, with demand for the cover doubling by 2020 in high-growth markets.

Reuters

Chinese academic to receive IIS award

■ The International Insurance Society last week named Qixiang Sun of Peking University as the

2014 recipient of the John S. Bickley Founder's Award. Ms. Sun will be honored on June 23 at an awards dinner held in conjunction with the IIS' "50th Annual Seminar" in London. She serves as the dean of the Peking University School of Economics in Beijing and is the school's C.V. Starr chair professor of risk management and insurance, the IIS said in the statement. Ms. Sun's "work and leadership has influenced insurance

thought and practice not only in China, but around the world," Bernhard Fink, IIS Honors Committee chairman, said in the statement. "She has contributed greatly to the reform and development of the insurance industry in China and has served as a major adviser and resource for policymakers." The IIS Honors Committee, a body of senior insurance executives and academics, selects the winner of the award.

Hackers target Brazil's World Cup

■ Brazilian hackers are threatening to disrupt the World Cup with attacks ranging from jamming websites to data theft, adding cyber warfare to the list of challenges for a competition already marred by protests, delays and overspending. In a country with rampant online crime, a challenging telecommunications infrastructure and little experience with cyber attacks, authorities are rushing to protect government websites and those of FIFA, soccer's governing body. "We are already making plans," said an alleged hacker who goes by the nom de guerre of Eduarda Dioratto. "I don't think there is much they can do to stop us." Reuters contacted Mr. Dioratto and other self-proclaimed members of the international hacker network known as Anonymous by finding them online. They said the event offers an unprecedented global audience and an opportune moment to target sites operated by FIFA, the government, other organizers or corporate sponsors. "The attacks will be directed against official websites and those of companies sponsoring the cup," a hacker known as Che Commodore said.

Reuters

Swiss Re's profits rise despite lower rates

■ Reinsurer Swiss Re Ltd. promoted David Cole to finance chief and raised its payout to shareholders after an unexpected rise in annual profit, taking the sting out of falling prices for new business. Mr. Cole, who has been chief risk officer since 2011, will replace Chief Financial Officer George Quinn when he joins Zurich Insurance Group Ltd. in May. Zurich-based Swiss Re said prices on renewals in January fell, particularly for natural catastrophe reinsurance. Rates for new business fell 3.6%, while overall business volumes shrank 6%. Swiss Re said it would raise its 2013 dividend by 10% to 3.85 Swiss francs (\$4.30) a share

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EDITORIAL

TIME TO MAKE TRIA BACKSTOP PERMANENT

The federal government's terrorism insurance backstop should not be allowed to expire Dec. 31, as will happen if Congress does not reauthorize the program. In fact, we think another temporary extension of the program established by the Terrorism Risk Insurance Act of 2002 would not go far enough. The program should be reauthorized on a permanent basis.

This is the third time the terrorism insurance program has come up for reauthorization. It was reauthorized for two years in 2005, and then for seven years in 2007.

Before each reauthorization, property insurance markets entered a period of uncertainty as underwriters could not promise they would continue to provide terrorism coverage.

That's understandable because, unlike natural catastrophes, terrorism defies normal underwriting convention. No one can predict the frequency or severity of terrorist attacks. The United States has been fortunate that no catastrophic terrorist event has occurred on its soil since the Sept. 11, 2001, attacks on New York's World Trade Center and elsewhere, attacks that led to creation of the federal backstop.

The backstop established by TRIA is a valuable part of a broad national security strategy. After all, as the events of 2001 and elsewhere in the world have so tragically underscored, terrorists choose economic targets to damage nations and their people. Without guarantees of insurance to respond to such events, economies weaken. Instead, the program's existence promotes the completion of long-term construction and infrastructure projects that might not occur without the availability of reasonably priced terrorism coverage.

The federal terrorism insurance backstop is not an example of corporate welfare, as some critics have charged in the past. In fact, the government can recoup money paid by the program to cover terrorism losses. Without insurance backed by the program, the government would either end up providing billions in emergency assistance for rebuilding or doing nothing. The likelihood it would do nothing is extremely small.

The threat of a catastrophic terrorist attack is not temporary. The insurance mechanism that would respond to it should not be temporary, either.

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

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SCHILLERSTROM



COMMENTARY

CYBER SECURITY THREATS BRING HOME RISK MANAGEMENT

Like many people associated with the insurance sector, I've seldom had personal experience with insurance or risk management issues. There's been the occasional fender bender — not my fault, officer — but generally I've been fairly lucky.

Home insurance is just something that's wrapped with the mortgage payment, legal liability is not much more than a concept and refusing the extended warranties offered on electronic devices is just part of the routine.

For the most part, insurance and risk management issues have been a purely professional concern.

That's changed, however, with the onset of cyber risk. As a holiday shopping procrastinator, the Target breach was out in the open before I'd even started the annual grind around department stores, but I've had my fair share of problems with cyber crime.

On the hardware front, I had my iPhone snatched while riding the train home a while ago. Of course, after I paid to replace the phone, I bought insurance. Closing the barn door after the horse has bolted, I know, I know.

Perhaps more troubling, though, is the fact that I've had to cancel my credit card three times in the past year because of what I presume are cyber thieves who tried to use it to buy everything from audio-visual equipment in New Jersey to watches in Spain.

Other than the feeling of helplessness when someone accesses your personal information, such incidents may be only an irritating inconvenience for consumers, because federal law caps liability. For banks and other financial institutions, however, cyber crime can add up to colossal costs. The Target Corp. breach cost banks



**GAVIN
SOUTER**
EDITOR

\$10 to replace each card, according to the Consumer Bankers Association, and about 40 million credit and debit cards were affected as a result of the breach.

And that was just one, albeit sizable, breach. The long list of cyber breaches that happened over the past two months make the Target breach seem like a distant memory.

The introduction last month of the National Institute of Standards and Technology's cyber security framework, which explicitly focuses on risk management processes, should help organizations assess their cyber weaknesses and give them a footing to build a cyber security policy.

Some critics have complained that the framework is too vague; but given that it's a public document that can give cyber security advice to both those seeking to protect data and those who are trying to steal it, such a framework can only provide so much detail.

And there's the rub: How does anyone provide widespread guidance to businesses on ways to protect data without providing a road map to the bad guys, too?

Clearly, organizations need to invest in cyber security tailored to their own circumstances, and those investments often can be expensive.

Cyber risk management seems to be a headache for all of us. And, at the moment, there's little relief in sight.

SPECIAL REPORT

Emerging Risks

& Specialty Lines

Regulators, insurers try to tackle fracking risks

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Many insurers steer clear of Bitcoin exposures

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Citrus greening, drought hit growers

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Employer rights vary on medical marijuana use

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Rail risks expand as oil shipments boom

High-profile accidents raise safety, liability issues for shippers, railroads

BY JUDY GREENWALD

While only a tiny percentage of trains carrying crude oil are likely to derail, the risk of derailment and catastrophic losses have increased significantly with the growing number of tank cars carrying the fuel.

The most dramatic example is last year's accident in Lac-Mégantic, Quebec, which killed at least 42 people and destroyed much of the town.

"It's just sheer volume," said Fadel Gheit, an oil analyst at Oppenheim & Co. in New York. Railroads "have never experienced this kind of traffic before."

U.S. railroads transported an estimated 400,000 carloads of crude oil in 2013 compared with just 9,500 carloads in 2008, according to the Washington-based Association of American Railroads.

Underwriters say they are particularly concerned about the volatility of the fuel being extracted from the Bakken oil deposits in North Dakota.

The U.S. Department of Transportation last week issued an emergency order forcing shippers to test all crude oil drawn from the Bakken formation and to classify it in one of two higher-risk categories. This follows a similar move in Canada after the fiery Quebec derailment.

"We've seen an unprecedented level of losses that have made headline news, and we're not sure if this is a trend or just a freakish thing that will pass," said David Adameczyk, vice president in the railroad department at Liberty International Underwriters, a unit of Liberty Mutual Holding Co. Inc., in Hunt Valley, Md.

"Certainly, one of the exposures that can't be denied is that more crude oil is being transported, and some of that crude oil is coming from parts of the country where that crude oil is more volatile ... so we're monitoring that closely,"



MEUNIERD/SHUTTERSTOCK.COM

DERAILMENTS OF OIL SHIPMENTS ADD UP

The Lac-Mégantic, Quebec, accident (pictured above) in July killed at least 42 people and destroyed more than 30 buildings after train cars carrying fuel oil derailed and some of the cars exploded, causing Canada's worst railway catastrophe in about 150 years.

While this was the most serious accident involving the derailment of tank cars carrying crude oil, there recently have been others.

- Earlier this month, 21 railcars operated by Norfolk, Va.-Southern Corp. derailed in Vandergrift, Pa., 19 of which carried crude oil and leaked up to 4,500 gallons of heavy crude oil, according to a company spokesman.

- In December, cars of a crude oil train unit operated by the Fort Worth, Texas-based BNSF Railway Co. derailed near Casselton, N.D., after a collision, releasing 400,000 gallons of crude oil and leading to the evacuation of about 1,400 people, according to the National Transportation Safety Board.

- In November, 26 cars of a 90-car crude oil train derailed in Aliceville, Ala., then the breached tank cars caught fire and released crude oil into a wetland, according to the Federal Railroad Administration. The train, operated by Darien, Conn.-based Genesee & Wyoming Inc., spilled nearly 750,000 million gallons of crude oil, according to news reports.

By Judy Greenwald

he said.

"This is a potentially significant increased risk due to the increase in petroleum carloads and the emerging concerns that petroleum from the Bakken reserves in North Dakota may have inherent chemical properties not fully known, including lower flash points," said

Nick Bayliss, assistant vice president with Gemini Transportation Underwriters, a Boston-based unit of W. R. Berkley Corp.

"Underwriters' eyes are wide open" to the potential exposure, said Daniel Bancroft, New York-based senior vice president and transportation practice leader

with Willis North America Inc.

In response, some insurers have left that class of business, some have reduced their liabilities and others are trying to carve out pollution risks on liability policies, he said

Insurers "are creating a new underwriting paradigm, new fil-

ters" and raising new questions on this issue, Mr. Bancroft said. Insurance applications are going to get "even more granular and specific as to what they'll underwrite" and the limits offered, he said.

Coverage for smaller railroads is of particular concern. Having as few as five miles of track, smaller railroads may have no more than \$10 million insurance coverage, Mr. Bancroft said.

Another issue is the prevalence of DOT-111 tank cars, which observers say are more prone to rupture than newer versions.

"A lot of people have known for 20 years the tankers were inadequate," said Fred Millar, an Arlington, Va.-based independent transportation consultant.

According to the Association of American Railroads, there are roughly 92,000 DOT-111s that transport inflammable liquids, such as crude oil and ethanol, with only about 14,000 built to the latest industry safety standards.

Tankers built since 2011, when higher standards were introduced, are less prone to rupture, but there is no deadline for the older cars' replacement and they may be used for decades.

On Feb. 17, Saint John, New Brunswick-based Irving Oil Ltd. announced it was voluntarily removing its DOT-111 railcars from service and would complete the conversion of its fleet of crude oil railcars to newer models by April 30.

Meanwhile, both Calgary, Alberta-based Canadian Pacific Railway Ltd. and Montreal-based Canadian National Railway Co. are introducing surcharges on customers that transport crude oil using the older rail cars, according to spokesmen for both companies.

In addition, although tank cars generally are owned by companies that lease them to others, not the railroads themselves, Fort Worth,

See **RAIL RISK** next page

FRACKING RISKS KEEP EVOLVING AS REGULATORY, LEGAL LANDSCAPE CHANGES

Variety of state rules complicate efforts to manage environmental liabilities

BY RODD ZOLKOS

While increased hydraulic fracturing by the oil and gas industry has raised concerns about environmental and seismic risks, differing state laws and a changing legal landscape have created challenges in managing and transferring those exposures.

Hydraulic fracturing, commonly known as fracking, has been used to improve access to oil and gas in shale rock formations for decades, experts say. But recent improvements in technology have made it feasible to drill in previously marginal production areas, driving a dramatic increase in the technique's use.

With the increased use of fracking have come claims that it is causing groundwater contamination in some areas and seismic activity in others.

Meanwhile, the regulation of fracking activity has been left largely to the states, a development some experts see as a positive but others see as complicating the process of managing and insuring related risks.

"It's a really complex mosaic of laws and issues and requirements that companies have to look at when they're working in this industry," said Pamela D. Hans, managing shareholder at Anderson Kill P.C. in Philadelphia.

From an indemnity risk transfer perspective, "it's very hard to negotiate because the landscape is changing so frequently and it



CHRISTOPHER HALLORAN/SHUTTERSTOCK.COM

varies so much from state to state," Ms. Hans said.

Though the state-by-state regulatory landscape may add complications for companies using fracking in multiple states, state regulation that is done well is a good thing for the energy business and the insurance industry, said Brian K. McCarthy, president and CEO at Energi Insurance Services Inc., a Peabody, Mass., provider of specialized energy industry insurance

programs in the United States and Canada.

"States like Pennsylvania and Ohio, North Dakota, Oklahoma have really taken the lead on regulation," Mr. McCarthy said. "The regulation is no different than the regulation on other energy sectors where the regulation is really good for insurance."

"The American Petroleum Institute has put together some general best practices, but what we're

seeing is the states are taking the best practices to the next level," said Justin Russo, senior vice president of safety and loss prevention at Energi. "That's really what has to be done when there are such differences in geology."

Solid regulation including inspection of drilling facilities reduces exposures, Mr. McCarthy said. "Today the state of Pennsylvania has hundreds of inspectors on staff," he said. "They have

WHAT IS FRACKING?

- Hydraulic fracturing, also known as fracking, is a process that uses injected water, sand and chemicals to produce natural gas and oil.
- Fracking has been used for more than 50 years in vertical wells, with the process of horizontal drilling and multiple hydraulic fracturing applications beginning in the 1980s.
- There are hundreds of chemicals used in fracking, some of which may be trade secrets and exempt from reporting to the industry-established FracFocus.org chemical disclosure registry website.
- While fracking now is used extensively in the United States and Canada, its use is growing in Asia, Europe and South America.
- The U.S. Environmental Protection Agency is studying the effects of fracking on drinking water resources and will release a draft report late this year.

Source: U.S. Geological Survey, U.S. Environmental Protection Agency

resources in place."

The current insurance market for fracking is limited, Mr. McCarthy said, but those that are doing it well emphasize inspections.

"The insurers out there that are doing it right are really making sure there's stability in the market for the long haul," he said. "They have boots on the ground. They have their own inspectors."

"In casualty lines that have significant loss exposures, you abso-

RAIL RISK

Continued from previous page

Texas-based BNSF Railway Co. said it had asked major manufacturers to submit bids for 5,000 up-to-date railcars that it would own.

Another issue is the extent to which railroads can reasonably be expected to be able to divert dangerous loads away from heavily populated areas. In January, the Transportation Safety Board of Canada and the U.S. National Transportation Safety Board jointly recommended requiring expanded hazardous materials route planning for railroads to avoid "populated and other sensitive areas."

But many experts doubt that is feasible.

Traditionally, tracks were built to be near industry and populated areas, said Justin Russo, senior vice president of safety and loss prevention at Peabody, Mass.-based risk management firm Energi Insurance Services Inc. Even in rural areas, tracks were intended to be in the downtown areas of small towns, said Dave Tiedgen, Energi's senior vice president of research and development.

While the railroads themselves are taking a hard look at this issue, routes "can't be completely altered," said Bill Anderson, president of Rail Services Inc., a railroad safety and claims consultant in Boise, Idaho.

Railroads also are required to introduce by 2015 "positive train control," which integrates command, control, communications and information systems to control train movements safely and efficiently. Under the Rail Safety Improvement Act of 2008, the Federal Railroad Administration mandated that certain rail lines put in place these systems by

2015, but many question whether the railroad industry will be able to comply on time.

The deadline is unrealistic for a highly complicated industry with tens of thousands of miles of track, said Paul Burgess, a regulatory specialist with Chicago-based Labelmaster, a hazardous materials transporter unit of American Labelmark Co.

Meanwhile, some experts say derailment risks have been exaggerated.

Defense attorney Michael B. Flynn, president and chief trial attorney at Flynn Wirkus Young P.C. in Quincy, Mass., said the rail industry "from time to time finds itself, perhaps by pure coincidence, with incidents that just kind of happen to bundle together and raise the consciousness of the public."

"This is just a condition of the rail business that occasionally there are derailments," said James R. Beardsley, managing director and global rail practice leader at Marsh L.L.C.

lutely have to have significant investment in loss control and engineering," Mr. McCarthy said. "Otherwise, you're going to get hit with the losses, the reinsurers are going to get hit with the losses and you'll have disruptions to the market."

"There's a lot of insurers that have gone into the market, haven't done particularly well, then pulled out of the market," said Mr. Russo, agreeing that those that have done well have done so because of their risk engineering arrangements.

"Just like with anything, there are good actors and bad actors" among energy companies engaged in fracking, Mr. Russo said. "The good actors embrace the safety and loss management and invite insurers to come out and view their business operations and ask for help."

While litigation around hydraulic fracturing has increased in the past several years and publicity surrounding it, the amount of litigation remains limited, said Carl J. Pernicone, partner at Wilson Elser Moskowitz Edelman & Dicker L.L.P. in New York.

"There's not a huge number of pending cases," Mr. Pernicone said. There are, however, common causes of action in almost every case that include nuisance, trespass and negligence, he said.

In addition, "Virtually every complaint has a medical monitoring count. If you look at all the complaints, typically a common count is to set up a medical monitoring fund," he said.

Mr. Pernicone said he thinks the limited number of fracking-related suits might be due to a lack of injuries definitively connected to the practice.

"I think it probably has something to do with the fact that there isn't really any present injury," he said. "I can't think of anybody that's claiming they have an immediate injury."

As an example of similar litigation, he said suits in the recent West Virginia chemical spill are seeking medical monitoring funds. "Water contamination claims are well-suited to these kinds of funds, but it remains to be seen at the end of the day whether these things will be upheld," he said.

Jason B. Kurtz, a consulting actuary at Milliman Inc. in New York, said past water contamination cases in other industries, such as those that involve gasoline additive MTBE, demonstrate how costly such events can be.

"If these types of things do manifest themselves, some of the companies involved (in fracking) may not be big enough to fully absorb the financial hit," he said. "Regulators should be aware of that."

Regulators overseeing fracking might want to look to insurer solvency requirements as a guide to requirements that could be imposed on companies involved in hydraulic fracturing that would ensure they have sufficient

"The American Petroleum Institute has put together some general best practices, but what we're seeing is the states are taking the best practices to the next level. That's really what has to be done when there are such differences in geology."

Justin Russo, Energi Insurance Services Inc.

resources, either through their own funds or insurance, to cover groundwater contamination claims, Mr. Kurtz said.

As they look to secure insurance to cover fracking activities, companies need to be aware of the differ-

ences in regulation and the language defining some causes of action from state to state, said Ms. Hans. They should try to keep insurance and indemnification contracts "all encompassing" with language that's "plain old English

as opposed to legal lingo," she said. At the same time, she said, "companies should take care to avoid recycling the same contract forms or language without paying close attention to variations in state law."

Concerning claims of fracking-caused seismic activity, Ms. Hans said some insurance policies "actually exclude liability arising from earth movement and collapse."

"You want to make sure that your insurance policy doesn't have an earth movement exclusion, a collapse exclusion if those are the risks of your activity," she said. If it's not possible to remove the

exclusion or find coverage elsewhere, companies might consider forming a captive or risk retention group, Ms. Hans said.

Companies looking to address potential water contamination exposures also have to be aware of differing state laws when watersheds cross state lines, she said.

And it's necessary to understand the insurance coverage and financial wherewithal of partner companies providing indemnity agreements, she said, while companies that provide the indemnification should consider limiting the scope of the indemnity obligation by dollar amount or duration.

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COVERING BITCOIN RISKS MAY BE LEFT TO SPECIALTY MARKET

Insurers wary of digital currency pitfalls

BY JUDY GREENWALD

The insurance industry has dipped its toe into providing coverage connected to the digital currency Bitcoin, but significant obstacles remain.

They include the industry's conservatism, Bitcoin's widely fluctuating monetary value, the absence of any government backing, its use by some unsavory criminal elements and uncertainty as to whether its popularity is a short-lived fad.

On the other hand, experts point to the industry's eagerness to find new premium volume and increasing buyer interest as factors that could encourage underwriting Bitcoin insurance.

Bitcoin is a digital or cryptocurrency created through a digital "mining process." It reportedly was introduced by the pseudonymous Satoshi Nakamoto in 2009. Miners use special software to solve math problems and are issued a certain number of bitcoins in exchange.

Any initial Bitcoin coverage is likely to be written in the excess and surplus lines market, and experts say the best approach may be a hybrid policy combining various types of coverage.

Limited insurance coverage has already been provided, including a Lloyd's of London policy that covers Bitcoin storage for London-based Elliptic Vault Ltd. Other insurers report receiving queries

about such coverage.

Bitcoins already are accepted as payment by some businesses, including the Sacramento Kings professional basketball team, online discount shopping website Overstock.com Inc. and online travel CheapAir.com.

Insurance would be very welcome by the Bitcoin industry, which is "looking for legitimacy and financial protection and hedges that would build confidence in it," but "it's going to be a difficult nut to crack," said Tim Zeilman, Hartford, Conn.-based vice president at Hartford Steam Boiler Inspection & Insurance Co., a Munich Reinsurance Co. unit, which currently does not plan to offer such coverage.



One concern is that Bitcoin is not backed by any government.

"It's intangible and covert. I think that's going to be a problem," said Peter Taffae, managing director at wholesale brokerage Executive Perils Inc. in Los Angeles.

Another issue is the reported connection between the use of bitcoins and criminal activities, said Ty Sagalow, president of consulting firm Innovation Insurance Group L.L.C. in New York. The insurance industry has to look at "some of the criminal activities that are so often associated with that enterprise," he said.

Earlier this month, the reincarnated online black market Silk Road reportedly said hackers took advantage of an ongoing bitcoin glitch to steal \$2.7 million from its customers.

An April 2012 FBI report said bitcoins are likely to continue to attract cyber criminals, "who view it as a means to move or steal funds as well as a means of making donations to illicit groups."

Another concern is whether Bitcoin will be around in the long term, with some comparing it with Holland's 17th century tulip mania, which is synonymous with speculative bubbles that eventually pop.

Indeed, last week a major Bitcoin exchange, Tokyo-based Mt. Gox, which was experiencing technical issues including a hacking attempt, shut down. CEO Mark Karpeles said in a message on its website he was "working very hard" to fix the problems.

THE HISTORY OF BITCOIN

- Wei Dai first described an electronic currency, or digital peer-to-peer currency, called "b-money" in 1998.
- Satoshi Nakamoto, a pseudonym, established the first "genesis block" of Bitcoin currency in 2009.
- Laszlo Hanyecz reportedly conducted the first Bitcoin transaction to buy pizzas in 2010.
- New bitcoins are generated by a competitive "mining" process on users' computers or smartphones without the need for an intermediary financial institution.
- Bitcoin issuance is to cease when 21 million bitcoins exist, but each can be subdivided to eight decimal places.
- While value has fluctuated significantly, Bitcoin has a market capitalization of about \$8.3 billion.

Source: Bitcoin Foundation, Coinbase, The Washington Post

Furthermore, someone could devise an alternative that is "easier, faster, cleaner and a more desirable piece of transaction, a currency that could cause bitcoins to go away," said Robert Parisi, network security and privacy practice leader at Marsh L.L.C. in New York.

Bitcoin may be the Myspace of its day, said Richard Magrann-Wells, vice president and financial services practice leader at Willis North America Inc. in New York, referring to the social media network that Facebook later overtook. It "may have broken new ground," but it also "may not be

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the one that sticks around for the long run," he said.

Bitcoin is a difficult risk for underwriters to "get their hands around," Mr. Parisi said. "It's cutting edge. It's pushing the envelope as to what transactions could be undertaken, and that carries with it a certain amount of risk. You're asking people to do things in a new and distinct way."

"The truth is, no one wants their name to be associated with the first big deal having something go awry, or having the company that insured it prosecuted for criminal charges," Mr. Magrann-Wells said.

"Everyone would like to be the first, but there's some serious risk going on," he said. "Quite honestly, insurers and underwriters are willing to take large risks if they see large premiums," but Bitcoin now would result in little potential premium.

However, some experts view the situation differently.

"There's a fair amount of innovation in the insurance industry, and there are insurance companies who love to be seen as offering the next new thing, especially when it comes to anything that smacks of the Internet," said Richard Betterley, president of Sterling, Mass.-based Betterley Risk Consultants Inc.

"I would not be at all surprised to see products coming to the market very soon surrounding bitcoins," said Howard Mills, New York-based director and chief adviser of the insurance industry group at Deloitte L.L.P.

"The industry is really working to be very innovative and being cutting-edge and being on top of this," Mr. Mills said. "With growth being such a challenge in this market, the insurance industry is really looking for all sorts of new avenues and areas of growth, so I think this will be a very vibrant space in the industry."

At XL Group P.L.C., "we have actually started to see some submissions" from firms involved in Bitcoin, said Steven Anderson, Dallas-based vice president and senior underwriter.

"The entrepreneurs are going right into tapping this new monetary market," Mr. Anderson said. "With that said, we're very leery of just how (Bitcoin currency) works and the reputation it has up to this point, so we have been reluctant to write any of those risks. But that is not to say that won't change, because it's obviously gaining a little bit more steam."

Oliver Brew, New York-based vice president of technology and privacy at Liberty International Underwriters, part of Liberty Mutual Holding Co. Inc., has received coverage inquiries from companies that accept bitcoins.

"We look at this type of risk on a case-by-case basis, and where it may make sense," he said.

However, Liberty Mutual has not developed a dedicated product for that risk. Bitcoin coverage would be incorporated into the insurer's data privacy policy, Mr. Brew said.

HYBRID POLICY MAY BE BEST INSURANCE OPTION FOR BITCOIN

The best approach to insuring Bitcoin risk may be a hybrid policy that incorporates several elements, including cyber, fiduciary, crime, property, and errors and omissions coverage.

It also is likely to be written in the excess and surplus lines market, experts say.

"Conceptually, it would require bringing together aspects of the specialist insurance industry," said Oliver Brew, New York-based vice president of technology and privacy at Liberty International Underwriters, part of Liberty Mutual Holding Co. Inc.

With a hybrid policy, in which all risks are covered by a single insurer, there is "no finger-pointing between carriers" if there is a claim, said Richard Magrann-Wells, vice president and financial services practice leader at Willis North America Inc. in New York. "You eliminate all the cracks."

Likely buyers include Bitcoin storage, training or mining companies, "so we're talking about very different types of entities with very different types of risks," he said.

However, it is unlikely any Bitcoin policy would cover currency fluctuations, given its

wide swings in value, experts say.

It could be some time before a dedicated Bitcoin policy is introduced, Mr. Brew said.

"Product development is typically driven by the demands of our clients, in terms of innovation, and right now Bitcoin is a topic of great interest," but is not yet "mainstream," he said.

However, "I would not be surprised if carriers would not be putting serious effort into this in the next year or two," said Ty Sagalow, president of consulting firm Innovation Insurance Group L.L.C. in New York.

By Judy Greenwald

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NEW DISEASE STRAINS PLAGUE INSURERS, GROWERS

BY SHEENA HARRISON

Domestic and foreign fruit growers are dealing with several newer strains of crop diseases that threaten harvests, but the development of new insurance products can help to mitigate some risks for U.S. food producers.

However, there's still no insurance coverage available for citrus greening, the most costly and harmful disease affecting Florida's vast orange groves.

"There's always a new strain of something that's coming out there that will impact a crop," said Rick Shanks, Kansas City, Mo.-based national managing director of Aon Risk Solutions' food system, agribusiness and beverage practice.

A variety of insects and diseases have affected farmers in recent years. For instance, the glassy-winged sharpshooter bug has been responsible for spreading disease among California grapevines, while banana crops in Mexico, Cen-

tral America and Hawaii have been hurt by Panama disease, a fungus that affects the plants' roots.

Then there's citrus greening, a bacterial infection spread by the Asian citrus psyllid, said Andrew Meadows, communications director for Florida Citrus Mutual, a Lakeland, Fla.-based trade group that represents more than 8,000 orange growers. It has caused \$4 billion in economic damage to orange growers in the last seven years, Mr. Meadows said. Additionally, Florida orange production, measured in 90-pound boxes, is expected to reach only 115 million boxes this year, down drastically from 240 million boxes 10 years ago.

While some of the reduced production can be attributed to major hurricanes in 2004 and 2005, other orange diseases and farmers leaving the industry, Mr. Meadows said citrus greening is the "overriding issue" affecting growers.

"As you drive around the Citrus Belt, you see... groves that just a

couple years ago were healthy are now in deep decline," he said. "I can't really overstate how much citrus greening has affected our industry," and citrus industry groups have been discussing the issue with the U.S. Department of Agriculture's Risk Management Agency, he added.

Meanwhile, California growers have been hit particularly hard by a recent drought, which has been the "worst in history for the predominant specialty crop state," said Mike Day, head of Anoka, Minn.-based Rural Community Insurance Services, a crop insurance managing general agency owned by Wells Fargo & Co.

"With the California drought, there's an immediate negative impact on annual crop planted acres, notable risk to perennial crop yields and longer-term damage to actual trees and vines with an extended drought," Mr. Day said in a statement to *Business Insurance*. Recent crop afflictions are part of



GETTY IMAGES

CITRUS GREENING

- Citrus greening, a major disease affecting the Florida orange crop, is thought to have originated in China in the 1990s and was discovered in the United States in 2005.
- Spread by two species of psyllid insects, the bacterial disease is not harmful to humans, but has affected citrus trees in Asia, Africa, the Americas and the Middle East.
- There are three strains of the disease: the American, African and Asian strains.
- The disease drops the average productive lifespan of citrus trees from 50 years to 15 or less, with most trees dying three to five years after infection.
- Once a tree is infected, there is no known cure for citrus greening, which renders the fruit unsuitable for eating or juicing.

Source: U.S. Department of Agriculture

an evolving threat of pests, diseases and severe weather conditions that growers constantly face, said Tom Zacharias, president of National Crop Insurance Services, an Overland Park, Kan.-based trade group that consists of more than two dozen crop insurers.

"Farming is a risky business, and every year growers are at the mercy of challenges outside of their control, ranging from weather disasters to extreme market fluctuations," Mr. Zacharias said in a statement to *Business Insurance*.

Growers' ability to weather adverse crop conditions often depends on federal crop insurance, as well as best practices put in place by farmers and industry funding to help develop solutions to common agricultural problems.

The USDA's Risk Management Agency underwrites crop insurance policies that are sold and serviced by private insurers, and sets rates that can be charged for such coverage. The agency also subsidizes grower insurance premiums, as well as crop insurer operating and administrative costs that otherwise would be paid by farmers.

While the Risk Management Agency underwrites more than 100 types of crops in the United States, it also develops pilot programs to determine the feasibility of issuing insurance coverage for other fruits and vegetables, according to the agency's website. One is an insurance pilot involving tropical fruit insurance is being conducted in Hawaii for Cavendish and Brazilian bananas, according to information provided to *Business Insurance* by the agency.

"Crop insurance has grown in popularity because it's not a one-size-fits-all tool, but is rather customizable to farmers' unique businesses," Mr. Zacharias said in a statement. "Growers work hand-in-hand with agents to design the coverage mix that works best for them. And where policies do not exist or need to be strengthened, the USDA has a process in place to help bring new products to market."

Most insurance policies cover adverse weather conditions that reduce crop yields, Mr. Shanks said. Growers that experience problems with crop disease or pests also can be covered by USDA insurance policies, he said. "As long as they follow the right procedures" for application of pesticides or treatments that fight diseases, "then the loss of yield can be covered by federal crop insurance," he said.

While there are no USDA policies that cover orange crop losses from orange citrus greening, Mr. Meadows said, federal assistance is on the way. The Agricultural Act of 2014, signed early last month by President Barack Obama, includes \$125 million in funding during the next five years for a specialty crop research initiative that includes a subcommittee for citrus diseases — something Mr. Meadows said the orange industry is hopeful will help mitigate future losses.

Meanwhile, Florida citrus growers have committed \$70 million of their own money in the last seven years to fund research that could curb the spread of citrus greening.

"It's an all out war right now," Mr. Meadows said. "Although we're optimistic, it certainly is a huge challenge."

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EMPLOYERS DEAL WITH FOGGY POT RULES

BY BILL KENEALY

While many of the emerging risks facing risk managers lack legal clarity, few are as hazy as the effects of decriminalized marijuana on companies and public entities.

The 2012 passage of Amendment 64, which legalized the sale and use of recreational marijuana to adults 21 and older in Colorado, and Initiative 502, which did the same in Washington, has forced risk managers to consider a variety of issues related to employment law and safety.

Nonetheless, the overall transition to the Colorado law has been more seamless than some anticipated, said Andrew Stephenson, Denver-based risk and insurance manager at the University of Denver, noting an earlier law legalizing medical marijuana was a precursor for risk managers.

“Colorado has had medical marijuana for a while and it was hardly restricted to medical use,” he said. “So we have been dealing with a somewhat legalized situation for a while.”

One concern in the wake of the

enactment of Amendment 64 is a rise in crimes such as robberies, Mr. Stephenson said.

“From a risk perspective, there have been some unique challenges,” he said. “One of the situations we are concerned about is potential for crime because marijuana businesses can’t use banks.”

Insurance Information Institute Inc. President Robert Hartwig said the underwriting challenge the insurance industry faces with legalized marijuana is similar to the challenges it faces with other potentially dangerous substances such as prescription painkillers.

“There are a countless number of substances, many of them already legal, that can lead to somebody’s impairment on the job and potential injuries to themselves, co-workers or third parties,” Mr. Hartwig said. “There’s nothing necessarily that leads insurers to think that marijuana will be any different than a drug approved by the Federal Drug Administration or a legal intoxicant such as alcohol.”

While Colorado law contains a “lawful activities” statute that forbids companies from firing people for activities performed off duty

and off premises, a controversial case centering on the statute is under consideration by the Colorado Supreme Court, said Vance Knapp, a Denver-based member in the labor and employment practice of law firm Sherman & Howard L.L.C. Plaintiff Brandon Coats, a quadriplegic licensed to use medical marijuana, was fired from his job as a customer service representative for Dish Network L.L.C. after he failed a random drug test. Mr. Knapp said the outcome of *Coats v. Dish Network L.L.C.* will be noteworthy because, while Mr. Coats was permitted to use marijuana under state law, it is still illegal under federal law.

Even in the wake of the passage of the state laws, employers still get to determine their own marijuana policies, Mr. Knapp said. “Employers and risk managers have been concerned about whether to accommodate employee marijuana use,” he said. “Even in Colorado and Washington, you don’t have to allow it at work.”

Philippe Lebel, Los Angeles-based associate in the labor and employment practice group for law firm Drinker Biddle & Reath

L.L.P., agreed that employers maintain the upper hand when dealing with marijuana policies.

Decriminalization “doesn’t necessarily affect employers and risk managers,” he said. “Employers are still completely privileged to prohibit their workers from using marijuana on duty.”

Nonetheless, Mr. Knapp suggested that risk managers carefully review any employee handbooks and personnel policies regarding marijuana and clearly communicate expectations to employees.

“The biggest problem companies and risk managers may face is the misperception by some employees that they have a constitutional right to use marijuana,” he said.

Moreover, Mr. Knapp said risk managers need to be mindful of the potential effect their marijuana policies for guests and customers will have on their insurance. For example, a bed and breakfast in Colorado will have to carefully consider whether or not to allow guests smoke marijuana in rooms.

“From an insurance standpoint, you have to be careful,” he said. “We have not seen underwriters



PETER KIM/SHUTTERSTOCK.COM

HAZY MARIJUANA LAWS

Employers are caught between conflicting state and federal laws concerning pot use.

- Although marijuana remains illegal under federal law, 21 states and the District of Columbia have passed laws permitting medical marijuana use.
- The rights of employers to fire or discipline medical marijuana users varies among states.
- Six states have placed limits on employers’ ability to take adverse actions against employees based on medical use of the drug: Arizona; Connecticut; Delaware; Illinois; Maine; and Rhode Island.
- Five states have upheld the right of employers to take action against users of medical marijuana: California; Colorado; Montana; Oregon; and Washington.

include marijuana exclusions into general liability policies yet, but we imagine that it’s just a matter of time.”



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Debbie Michel,
Liberty Mutual Insurance

Jeff Natterman,
The Johns Hopkins Hospital

Bob Parisi, Marsh L.L.C..

Shawn Ram, Aon Risk Solutions

Evan Rosenberg,
Chubb Specialty Insurance

Rick Shaw, Awareity

Scott L. Vernick,
Fox Rothschild LLP

Shannon Wilkinson,
Reputation Communications

Tim Yeates, AXCO

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

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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

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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.

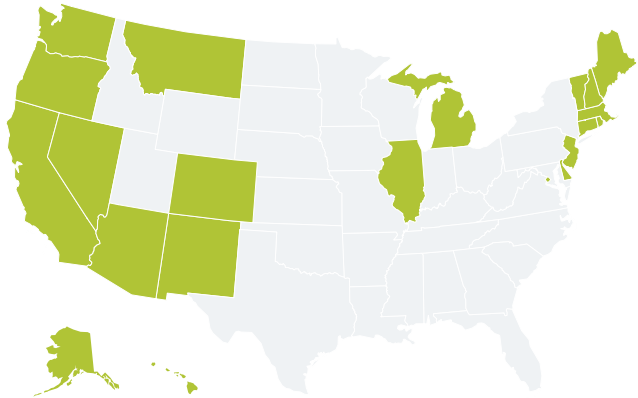
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MEDICAL MARIJUANA

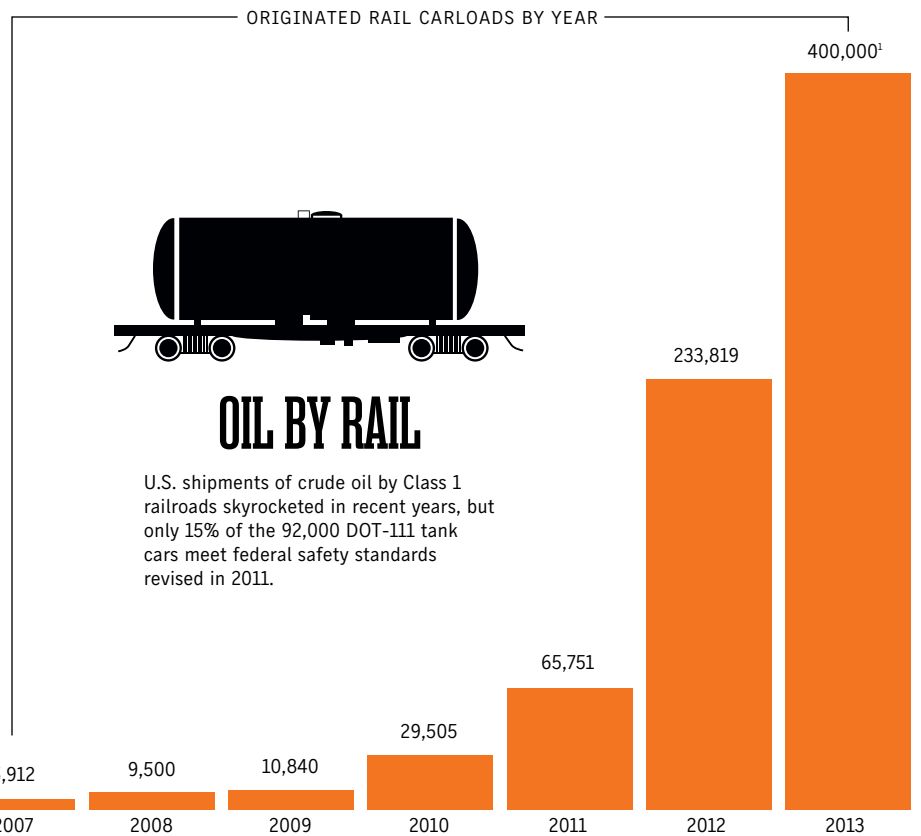
Twenty states and the District of Columbia have approved laws allowing the use of marijuana for medical conditions, with cancer being the most common of these. According to the American Cancer Society, 13.7 million people already have cancer, and 1.7 million new cases are forecast for 2014.



State	Year approved	Possession limit
Alaska	1998	1 ounce usable; 6 plants, 3 mature
Arizona	2010	2.5 ounces usable; 12 plants ¹
California	1996	8 ounces usable; 18 plants, 6 mature ²
Colorado	2000	2 ounces usable; 6 plants, 3 mature
Connecticut	2012	One-month supply
District of Columbia	2010	2 ounces usable
Delaware	2011	6 ounces usable
Hawaii	2000	3 ounces usable; 7 plants, 3 mature
Illinois	2013	Amount not yet determined
Maine	1999	2.5 ounces usable; 6 plants
Massachusetts	2012	60-day supply
Michigan	2008	2.5 ounces usable; 12 plants
Montana	2004	1 ounce usable; 6 plants
Nevada	2000	1 ounce usable; 7 plants, 3 mature
New Hampshire	2013	2 ounces usable, 10-day supply
New Jersey	2010	2 ounces usable ²
New Mexico	2007	6 ounces usable; 16 plants, 4 mature
Oregon	1988	24 ounces usable; 24 plants, 6 mature
Rhode Island	2006	2.5 ounces usable; 12 plants
Vermont	2004	2 ounces usable; 9 plants, 2 mature
Washington	1998	24 ounces usable; 5 plants

¹ Patients can grow up to 12 plants if they live more than 25 miles from the closest dispensary. ² Exceptions to the guidelines can be made if physicians specify a patient needs more.

Source: BI research

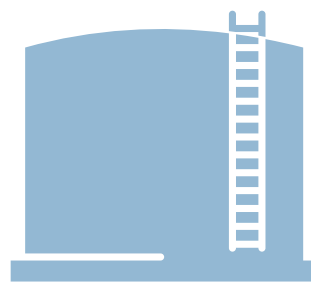


OIL BY RAIL

U.S. shipments of crude oil by Class 1 railroads skyrocketed in recent years, but only 15% of the 92,000 DOT-111 tank cars meet federal safety standards revised in 2011.

¹ Estimated annual shipments based on first three quarters

Source: Association of American Railroads



WATER USE IN HYDRAULIC FRACTURING

Hydraulic fracturing, known as fracking, in natural gas- and oil-drilling operations requires significant water resources.*

Source: Ceres, January 2011-May 2013

Number of reported wells	39,294
U.S. counties with fracking activity	402
Gallons of water used	97.5 billion
Average gallons used per well	2.5 million
Water at risk due to fracking wells	
Wells in medium or high water stress areas	73%
Wells in low or no water stress areas	27%

CYBER CRIMES

Information is the top loss that businesses face due to cyber crimes

Year	Information loss	Business disruption	Revenue loss	Equipment damage	Other
2013	43%	36%	17%	4%	0%
2012	44%	30%	19%	5%	2%
2011	40%	28%	18%	9%	5%
2010	42%	22%	13%	13%	10%

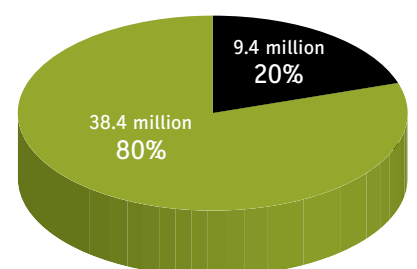
Source: Ponemon Institute L.L.C.

FOODBORNE ILLNESSES

Foodborne illnesses affect one in six U.S. residents a year¹ at an aggregated annual cost of \$77.7 billion.²

CAUSE

- 31 known pathogens
- Unspecified agents



TOTAL ILLNESSES

¹ Centers for Disease Control and Prevention, 2004-2010. ² Journal of Food Protection, 2012.

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LEGAL NOTICE

To all persons or entities interested in the affairs of PROFESSIONAL LIABILITY INSURANCE COMPANY OF AMERICA Notice is Hereby Given:

Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York ("Superintendent"), has been appointed by an order (the "Order") of the Supreme Court of the State of New York, New York County ("Court"), entered February 10, 2014, as the liquidator (the "Liquidator") of Professional Liability Insurance Company of America ("PLICA") and, as such, has been: (i) vested with all powers and authority expressed or implied under Insurance Law Article 74, in addition to the powers and authority set forth in the Order; (ii) vested with title to PLICA's property, contracts, rights of action and all its books and records, wherever located, as of the date of entry of the Order; and (iii) directed to liquidate PLICA's business and affairs in accordance with Insurance Law Article 74. The Liquidator has, pursuant to Insurance Law Article 74, appointed Michael J. Casey, Acting Special Deputy Superintendent of Insurance (the "Acting Special Deputy") as his agent to carry out his duties as Liquidator. The Acting Special Deputy carries out his duties through the New York Liquidation Bureau ("Bureau"), 110 William Street, New York, New York 10038. The Order provides:

- I. The rehabilitation proceeding of PLICA is converted to a liquidation proceeding.
- II. The Liquidator may deal with the property of PLICA in its name or the name of the Liquidator.
- III. PLICA is insolvent pursuant to Insurance Law §7432(a).
- IV. The officers, directors, shareholders, members, depositors, trustees, policyholders, agents, servants, employees, attorneys, managers and affiliates of PLICA and all other persons other than the Liquidator and his agents are permanently enjoined and restrained from: (i) transacting the business of PLICA, except as authorized by the Liquidator; (ii) wasting or disposing of or permitting to be done any act or thing that might waste or dispose of PLICA's property; (iii) interfering with the Liquidator in the possession, control and management of PLICA's property or in the discharge of his duties; and (iv) disclosing the name, address or contact information of PLICA's policyholders, or any other information that is proprietary to PLICA or not in the public domain, except as may be authorized by the Liquidator.
- V. All persons are permanently enjoined and restrained from obtaining preferences, judgments, attachments or other liens, or making any levy against PLICA's assets or any part thereof.
- VI. All parties are permanently enjoined and restrained from commencing or prosecuting any actions or proceedings, or efforts to collect on debts or judgments, against PLICA, the Liquidator or the NYLB, the Liquidator's or the NYLB's present or former employees, attorneys or agents with respect to the liquidation proceeding or the discharge of their duties under Insurance Law Article 74.
- VII. Any pending claims adjudication proceedings that were, or could have been, brought pursuant to the Court's Order Approving the Procedure for the Rehabilitator's Adjudication of Claims, filed August 17, 2011, are stayed.
- VIII. All rights in PLICA's contracts and agreements, including all leases, tax agreements, insurance policies and employment contracts, however described, are vested with the Liquidator, unless the Liquidator expressly terminates such contracts or agreements, in which case all liability under such contracts or agreements shall cease and be fixed as of the date of termination.
- IX. Any bank, savings and loan association, other financial institution or any other entity or person, which has on deposit or in its possession, custody or control any of PLICA's funds, accounts or assets shall immediately, upon the Liquidator's request and direction: (a) turn over custody and control of such funds, accounts or assets to the Liquidator or his designees; (b) transfer title of such funds, accounts or assets to the Liquidator or his designees; (c) change the name of such accounts to the name of the Liquidator; (d) transfer funds from such bank, savings and loan association or other financial institution to a bank, savings and loan association or other financial institution designated by the Liquidator; and/or (e) take any other action necessary for the proper conduct of the liquidation proceeding.
- X. All persons and entities having any property and/or information, including, but not limited to, insurance policies, claims files (electronic or paper), software programs and/or bank records owned by, belonging to or relating to PLICA shall preserve such property and/or information and immediately, upon the Liquidator's request and direction, assign, transfer, turn over and deliver such property and/or information to the Liquidator.
- XI. All persons and entities providing claims processing services, data processing services, electronic records retention services or other information technology services to PLICA shall maintain and preserve all information relating in any way to PLICA, wherever located, including but not limited to all documents, data, electronic files and records, computer equipment (e.g., servers and printers), software programs and software licenses owned by PLICA ("Information"), and are directed, upon the Liquidator's request, to promptly submit all such information to the Liquidator or his designees for examination and copying.
- XII. The Liquidator is authorized, permitted and allowed to sell, assign or transfer any and all stocks, bonds, or other securities and any real or other property of PLICA at market price or at the best price obtainable at private sale, at such times and upon such terms and conditions as, in his discretion, he deems is in the best interest of the creditors of PLICA, and to take such steps as may be necessary to effect and carry out such sales, transfers and assignments.
- XIII. The Liquidator is authorized to pay the actual and necessary administrative costs and expenses of PLICA out of the assets of PLICA.
- XIV. Any distribution of assets shall be in accordance with the priorities set forth in Insurance Law Article 74.
- XV. In accordance with Insurance Law Section 7432(b) and subject to Insurance Law Section 7433(b), all claims against PLICA must be presented within four months of the date of entry of the Order.
- XVI. The Liquidator may at any time make further application to the Court for such further and different relief as he sees fit.
- XVII. The court shall retain jurisdiction over this matter for all purposes.
- XVIII. All communications relating to PLICA and to the Liquidation Proceeding thereof should be addressed to: New York Liquidation Bureau, 110 William Street, 15th Floor, New York, New York 10038, (212) 341-6400.

BENJAMIN M. LAWSKY
Superintendent of Financial Services of
the State of New York as Liquidator
of Professional Liability Insurance Company of America

MICHAEL J. CASEY
Acting Special Deputy Superintendent
and Agent for the Superintendent as Liquidator of
Professional Liability Insurance Company of America

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LEGAL NOTICE

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(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.

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A change in the weather



Mr. Waller

With the scientific consensus agreeing that global warming is happening, policyholders, insurers and reinsurers must assess the risks, the most pervasive of which is coastal flooding, and confront the challenges of climate change, says James Waller, research meteorologist at reinsurance brokerage Guy Carpenter & Co. L.L.C.

BY JAMES WALLER

Climate change and global warming are leading to growing concerns and dialogue for governments, the general public, the private sector and, of course, the reinsurance sector. The resulting landscape shift for meteorological perils is one that is real and potentially significant over the coming decades.

The scientific consensus is that global warming is indeed a certainty. The evidence is undeniable and includes increasing air and ocean water temperatures and ice cap retreat. The Intergovernmental Panel on Climate Change, a United Nations body for consolidation and assessment of climate change science, has concluded based on consistent and scientifically defensible evidence that global warming cannot be explained since the industrial revolution without the human contribution of greenhouse gases, or identified in the scientific community as “external radiative forcing.”

The most pervasive threat under global warming is coastal flooding. According to the IPCC, a sea-level rise of at least

one to three feet can be expected by the end of this century as a result of retreating ice caps. Coastal effects from tropical cyclones, extratropical cyclones such as Nor’easters and even tsunamis will become more severe with sea-level rise.

Given the high concentrations of population, property and infrastructure in coastal areas such as New York City and Hong Kong, this threat is of great significance to the reinsurance industry. Increased attention to coastal flood resilience, including Federal Emergency Management Agency guidelines concerning elevated homes, relocation of high-value assets to higher levels and urban flood-resilience measures, can offset the coastal flood threat. Irrespective of global warming, the coastal flood threat emphasizes the need for a flood insurance strategy that is financially sustainable, actuarially sound and

accounts for the various regional, physical, economic and political constraints affecting the flood problem.

With global warming, tropical cyclone frequency is projected to either remain unchanged or decline on a worldwide basis, including the Atlantic basin. However, tropical cyclone intensity is projected to increase. The wide variability in tropical cyclone frequency and intensity will remain from year to year, making trend detection very difficult. Historically, there are no sustained, long-term detectable trends in the North Atlantic basin. Since 1995, the active phase of hurricane activity is actually part of a natural swing between quiet and active phases that each last around 25 to 30 years.

Many inland areas of the world prone to flood face an increasing threat under global warming. In fact, some regions, even with a reduced annual total of rainfall, face the prospect of increasing heavy rainfall events as a consequence of global warming. According to the IPCC, evidence to assess changes in flood events is hampered by limited flood gauge data

together with changing land use and engineering practices. However, it also adds that some regions have seen significant trends in heavy precipitation events, most with increases, while acknowledging that there have been strong regional variations. Many stormwater management systems, especially those of older design, are not equipped to handle the events of today’s climate, and urban flooding is certainly an issue as a result.

Perils and resilience

Global warming also should affect drought and wildfire patterns around the world, with notable regional differences. The IPCC says that some regions of the world already have experienced more intense and longer droughts — southern Europe and West Africa in particu-

lar. Areas that see declining precipitation could over time face water shortages. Other areas supplied from glacial sources could face the same problem to a greater severity.

For some urban and suburban areas, the increasing footprint of the suburban landscape reduces the area of groundwater recharge zones, and together with decreased rainfall could limit long-term water supplies of local aquifers. Irrigation and agricultural interests face particularly severe challenges in this regard, including the U.S. Southern Plains.

The wildfire hazard could increase with a longer growing season, higher temperatures, diminished snowpacks and less precipitation. Fire probability is enhanced by hot temperatures, lower relative humidity and greater wait times between rainfall events. As vegetation becomes dry under these conditions, it is more prone to ignition by random sources and more likely to spread with surrounding dry fuels. The IPCC has noted that the wildfire season in western regions of the United States has increased by about 78 days in the past three decades.

For severe convective storm threats, no observable trends have been detected in either tornado or hail climatology. The tornado events of 2011 are not unprecedented when compared with the notable severe convective seasons of 1974 and 1965. The 2011 severe convective season is not attributable to climate change, and it cannot be identified as part of a trend. In fact, the 2011 season was followed by two of the quieter seasons on record in spite of a few very significant outbreaks such as the Moore, Okla., tornado of 2013.

Irrespective of any change in meteorological perils, areas that warrant attention include resilience measures to protect property and assets from coastal floods, inland floods, wildfire droughts and extreme wind events.

The Insurance Institute for Business and Home Safety undertakes very valuable research in this area, and their recommendations concerning structural resilience and building codes are quite informative. Building codes are not uniformly adopted or enforced from region to region in the United States. Appropriate codes together with appropriate resilience measures for fire and flood can reduce costs to homeowners, businesses and the industry, and improve the safety of occupants under extreme weather events in

both present and future climates.

Although there has been a significant increase in losses from natural catastrophes in recent decades, it is important to put these numbers into context.

Putting it all into context

With the exception of coastal floods, inland floods and droughts, the wholesale attribution of rising financial losses to an increase in hazard frequency can be misleading. Statements concerning the influence of global warming on loss trends would be better served if normalized by factors such as inflation, per-capita gross domestic product, total insured value, population density and annualized property value. Indeed, the IPCC argues that ignoring such factors leaves an upward trend in losses for purely economic reasons, notwithstanding any behavior in the peril.

As an example, the recent trend in hurricane losses for the coastal United States seems less clear when normalized by inflation and population density. This would cause, for example, the Great Miami Hurricane of 1926 to stand out as a much more significant event in financial terms. Modeling tools to reliably assess climate change effects and scenarios would be an asset to identify and address these emerging threats to the industry, the public and commerce.

The reinsurance sector is well-positioned to confront the challenges of climate change. It already has a deep understanding of natural catastrophe risks, having amassed high quality data on loss trends, building standards and their vulnerability to extreme weather. The sector’s involvement in promoting risk mitigation activities such as reducing carbon emissions and resiliency by reinforcing protective measures against extreme weather events is crucial to developing long-term strategies that help manage climate change risk. Insurers and reinsurers that confront the risks posed by global warming and develop innovative solutions and enhanced risk management strategies can gain a competitive advantage by adapting their underwriting practices and embracing the opportunities facing their businesses.

James Waller is a Philadelphia-based research meteorologist at Guy Carpenter & Co. L.L.C. He can be reached at 215-864-3622 and james.waller@guycarp.com.



SPECIALTY RISK EXPOSURES

Helping Businesses Balance Risk and Opportunity

Developing new talent a priority for industry

The National Association of Professional & Surplus Lines Offices (NAPSLO) is a membership organization of insurance brokers, agents, underwriters and associates who are committed to the surplus lines industry and the wholesale distribution system. With headquarters in Kansas City, Mo., NAPSLO has more than 700 member firms from 1,500 offices. Its membership is comprised of approximately 62% wholesale brokers and 21% companies/underwriters; the remaining members are associates. Incorporated in 1975, NAPSLO provides a variety of valuable services to its members.

What challenges and opportunities face the excess and surplus lines market in the coming year?

Generating favorable investment returns in a recovering economy and adapting to the impacts of catastrophic natural disasters continue to be challenges for our industry. However, recent analysis, including A.M. Best's 2013 Special Report on U.S. Surplus Lines, indicate that the health of surplus lines is stable with no financially impaired surplus lines companies in the last nine years.

Another continual challenge for our industry is adjusting to ever-changing market demands. The marketplace is constantly shifting and E&S professionals have to evolve to provide the best, most

educational opportunities for every phase of their careers. That progression begins with the Excess and Surplus Lines School (E&S), an introductory school for insurance professionals with less than five years of surplus lines experience, and is followed by the NAPSLO Marcus Payne Advanced School, developed for students with five to 15 years of surplus lines experience to learn about industry regulatory issues, marketing, the claims process and reinsurance impacts on the insurance industry. NAPSLO's Executive Leadership School is the capstone course in the schools progression and is offered for senior-level executives with more than 10 to 15 years of experience in the industry. That course is held at University of Virginia's Darden School of Business and emphasizes development and implementation of strategic planning, leadership and change management at the personal, team and organizational level.

New to the NAPSLO schools line-up is the Surplus Lines Professional Selling Skills School. The course is offered regionally several times a year in a small group environment. It's tailored to real world E&S account placement situations between wholesale and retail agents, and wholesale agents and market underwriters. The school is presented in conjunction with Richardson, a leading global sales training and strategy execution company and has been met with rave reviews from participants. Next January NAPSLO

Why should a retail agent seek out a NAPSLO member in the surplus lines marketplace?

Integrity and professionalism form the foundation cornerstones of both the Association and its membership and represent the core values clients should expect from NAPSLO member firms. NAPSLO members, who must meet specific criteria and adhere to a detailed code of ethics, are guided by the Association's founding promise to conduct business in utmost good faith. NAPSLO members are dedicated to providing innovative and cost-effective insurance solutions that don't fit in the standard market.

What legislative issues are on the horizon for the industry?

NAPSLO provides critical legislative advocacy on state and federal issues on behalf of members. Our top priority continues to be the Nonadmitted and Reinsurance Reform Act (NRRRA) and its successful uniform implementation of home state regulation and taxation. The GAO report, "Effects of the Nonadmitted and Reinsurance Reform Act of 2010," was released in January and is highly complementary of the surplus lines insurance industry. NAPSLO acted as a significant resource to the GAO, and the report shows the NRRRA has produced significant benefits for the surplus lines industry by reducing the need for brokers and insurers to comply with differing sets of rules,

"The industry is stable and it's important that we develop young leaders who can help it remain that way into the future."

innovative solutions. Fortunately, that commitment to innovation also creates opportunity. With projections of continued growth for the surplus lines market in the coming year, the industry's ability to solve complex insurance problems is also a great strength.

We also need to be focused on recruiting and training new talent in this industry. The industry is stable and it's important that we develop young leaders who can help it remain that way into the future.

How does NAPSLO help recruit and train new talent in the surplus lines industry?

NAPSLO's Career Awareness and Internship programs recruit and educate students. These programs make students aware of career opportunities and provide internships that allow them to learn with on-the-ground training.

NAPSLO's internship and career awareness initiatives are valuable ways for members to access potential new talent. Each summer NAPSLO and its member firms host at least 12 students in an intensive internship program that exposes students to a wide variety of roles within the industry. NAPSLO members also work throughout the year to raise the level of awareness on college campuses about careers in the E&S market. Members reached more than 900 students last year through alumni presentations, webinars and symposiums about the industry.

As we bring new talent into our firms, NAPSLO's education and career development schools provide important training, offering E&S professionals valuable

will introduce its Management Operations School, which will be presented in partnership with Emory University's Goizueta Business School and geared to operational-management professionals that work directly under the executive level of their organization.

Business succession planning is a very real challenge for many in our industry and these are important tools in that process.

What benefits exist in the wholesale distribution system for the retail market?

Retail agents, and insurance buyers, should look to wholesalers as specialists for complex risks, because wholesalers work in a very unique segment of the insurance industry and they offer access to stable market capacity in the nonadmitted market. That results in cost-effective solutions for clients that are not "one size fits all," but are instead skillfully tailored to meet specific needs for non-standard risks.

When faced with an insurance need that falls outside their typical sphere of expertise, retail agents who seek a customized solution with the help of a wholesale broker ultimately strengthen that client relationship because we know that a client who walks away with the right customized policy is more likely to come back for other needs. Wholesale brokers can also help smaller, independent and more regionalized operations compete with national brokers for E&S business. A wholesaler adds value not only in recommending the various levels of coverage and the right carrier fit, but also provides expertise in areas retail agents may not have.

disclosures and requirements.

NAPSLO continues to advocate for the home state taxation approach adopted by 46 states. Preliminary data from NIMA supports NAPSLO's position that the cost of supporting the tax sharing regime will likely exceed insignificant tax reallocations among the states. Although there continues to be inconsistency among states in implementation of the NRRRA insurer eligibility provisions, NAPSLO is working to improve this inconsistency for our members.

The Association monitors, and works on, various state legislative and regulatory compliance changes that arise for our NAPSLO members frequently. From changes in export lists and statutory updates that may have unintended consequences or effects on the surplus lines industry, NAPSLO spends a great deal of time working the issues and communicating any changes that may impact NAPSLO members. NAPSLO is also working a number of national issues including

Continued on next page

Kevin Westrope is President RT Specialty Kansas City and Managing Director of RT Specialty and Ryan Specialty Group, and the 2013-2014 President of the National Association of Professional Surplus Lines Offices.



Continued from previous page

NARAB legislation, private market solutions to flood insurance, TRIA, lender-placed insurance and concerns regarding the applicability of the Foreign Account Tax Compliance Act to the property/casualty industry. The National Association of Registered Agents and Brokers legislation will streamline the licensing process for agents and brokers nationwide by establishing a national clearinghouse as a one-stop licensing system for agents and brokers operating outside of their home state.

By eliminating burdensome multistate requirements, the law will greatly increase the efficiency and compliance in the licensing process for NAPSLO members licensed in multiple states, while preserving important state regulatory authority and consumer protections.

As Congress considers further reforms to the National Flood Insurance Program this year, our work continues to ensure surplus lines insurers are eligible to offer

private market solutions and alternatives to consumers in need of unique and complex flood risks. This includes advocacy of the January 2014 report of the GAO to Congress on the National Flood Insurance Program, focused on ways to reduce the financial burden on the federal government and provide strategies for the federal government to increase private market participation in flood insurance.

We are engaged in the debate over renewal of the Terrorism Risk Insurance Act this year. NAPSLO and other industry trade associations have requested action well in advance of TRIA's December 31, 2014 expiration date to provide certainty as policy terms extending beyond 2014 are renewed. We have worked with the FHFA in their work to reform banks' activities related to lender-placed insurance with the purpose of educating the FHFA on the differences between the admitted and nonadmitted insurance markets and the important role that nonadmitted insurers already play

in lender-placed insurance.

Finally, we are hopeful the IRS will exempt the property and casualty industry from Foreign Account Tax Compliance Act directed at foreign financial institutions and financial intermediaries in an effort to prevent tax evasion by U.S. citizens, U.S. residents and corporations through the use of offshore accounts. The IRS is expected to issue guidance in the near term to clarify compliance questions, but it is unknown if they will provide such an exemption in advance of its July 1, 2014 effective date.

What is NAPSLO's focus for the future?

NAPSLO is focused on providing premier networking opportunities, regulatory and legislative advocacy and education and career development programs for its members. The Association continually works to increase the value and relevance of all these member benefits.

Executive Insights: Specialty Risk Market Outlook

Q: 2013 saw strong demand for excess and surplus lines coverage. What's your outlook for the growth of this business in 2014?

On a number of levels, specialty lines are poised to grow more than ever before. The amount of premium

in our marketplace compared to 10 years ago has skyrocketed. As clients and retailers seek specialty coverages, the value of industry expertise and solutions for the ever-challenging conundrum that is small business will rise even more and the marketplace will continue to seek those providing the most creative and substantive solutions.



Mike Brennan
Chief Executive Officer
of Wholesale Swett & Crawford,
a CGSC Company

That said, we have to continue to demonstrate our expertise and value proposition. Wholesalers that simply hope to receive submissions from their friends will lag behind as retail clients demand that the best of us deliver more and more specific expertise that results in their being able to deliver creative solutions to insureds.

Q: What sector or lines of coverage are accounting for the biggest growth, in your opinion?

Brennan: In Property & Casualty we see construction and real estate-related exposures finally on the rise as the economic recovery slowly takes hold. Construction business in particular will accelerate if public funds for infrastructure work are made more available.

We are seeing very good growth in D&O and E&O lines as the market continues to tighten for coverages

such as EPL and Private D&O.

More than anything, we need to capitalize on the opportunity presented by the fact that our retail partners are demanding more specialized expertise and customized products.

The delivery of our strengths through our practice and industry groups has also increased our ability to gain a lot of new business in the past year. I believe this will continue in earnest as we continue to deliver in specialized areas such as Energy, Healthcare, Construction, Public Entity, Real Estate and other niches. We bring to these new accounts a worldwide view of risk and its management which encourages greater creativity in the solutions we deliver, much of which is embedded in many of our in-house programs and industry-specific products.

Q: How well do you think the specialty lines, surplus market is competing for talent by hiring graduating college students? What more can the surplus lines industry do to position itself as an attractive career choice?

At Engle Martin, we believe there is a major opportunity to develop industry talent among the pool of new college graduates. The reasons to focus on graduating college students are numerous, including,



Brucie Boggs
Executive Vice President,
Chief Human Resources Officer,
Engle Martin & Associates, Inc.

1.) a growing number of competitive, reputable academic institutions across the country are offering degrees or courses targeted to our business, and this academic preparation provides the fundamental knowledge and, ideally, critical thinking skills that we value; 2.) talent acquisition is essential to our success, and one of the most effective

ways to acquire talent is to be involved in helping grow that talent; and 3.) when businesses and academic institutions collaborate, through such efforts as industry personnel guest lecturing or helping establish curricula, both parties benefit, that is, the colleges and universities can better provide a learning experience that prepares their graduates to compete in the workforce, and the employer gains a new employee who has the fundamental tools to succeed.

Our industry is inherently attractive in many ways, and we need to give these features as much exposure as possible to upcoming graduates in the insurance and risk management arena. In the excess and surplus line market, these advantages include offering challenging, stimulating and rewarding work and giving graduates the chance to apply their quantitative, verbal and interpersonal skills. Additionally, at Engle Martin we provide the opportunity to be part of a culture where intelligence, integrity, and service are all highly valued, combined with handsome compensation that's limited only by the graduate's ambition and effort. Further, we're seeing emerging career tracks that appeal to a broad and diverse workforce: the adjuster track (up to Executive General Adjuster level with outstanding earning potential), the management track (leading potentially to senior management and executive roles) and, more recently, the educator and mentorship track. Finally, ours is an industry and profession that is wide open for women and minorities, with ample opportunity for careers that are both financially lucrative and personally gratifying.

Brennan: I think that we've begun to tap college grads better than ever with NAPSLO leading the charge, but we need to work harder on specifics, including:

- Formal talent development
- Structured mentoring
- Succession planning
- Creative talent sourcing – looking for talent and skill outside the insurance industry
- Crafting and telling a better “story” about the industry
- Outreach targeting grads who are not focused on insurance and risk management.

Swett & Crawford, A CGSC Company

www.swett.com

In 2014 Swett & Crawford is celebrating its 100th year of leadership in the commercial insurance marketplace. As one of the nation's top ranked wholesale brokers of property and casualty coverage, Swett works exclusively with retail agents and brokers to protect accounts whose large, unusual or complex risks demand additional coverage from the excess and surplus lines and specialty lines insurance arena. A unique element is the company's worldwide reach, which is the result of its combination with London-based Cooper Gay—Lloyd's broker—in 2010. The combined company Cooper Gay Swett & Crawford (CGSC) is a recognized global leader in wholesale, specialty and reinsurance.

Acting as an intermediary between carriers and retailers, Swett & Crawford and CGSC bring the expertise, experience and insight of nearly 1600 professionals on five continents to the design and placement of comprehensive coverage that is essential to effective risk mitigation for businesses ranging from start-ups to multi-national conglomerates.

Working with Swett & Crawford offers independent agents and brokers the benefits of long-term relationships with more than 200 primary and specialty carriers here and around the globe; a wealth of in-house binding authorities; access to a broad range of exclusive programs for niche and specialty



industries; extensive knowledge of carrier appetites and untapped market capacity; and the knowledge, experience, creativity and dedication of the company's brokers, underwriters and support staff. Their single purpose is to offer thoughtful, complete and responsive coverage at a reasonable cost for risks of every size and description.

Swett & Crawford's Practice Groups harness the intellectual capital and expertise of its brokers and underwriters into industry or coverage-specific teams that are accessible through any of the firm's domestic offices. Independent agents and brokers can take advantage of the specialized knowledge of these teams which includes risk analysis and modeling, submission support, market identification, targeted negotiation strategies and after-placement service. The Swett & Crawford Practice Groups are the keystone of a collaborative culture focused on aggressive production that results in coverage solutions that are both creative and well-structured to optimize protection.

Globally respected, powerfully connected.

Swett's Capabilities in Life Sciences and Public Entity

LIFE SCIENCE/BIOSCIENCE ORGANIZATIONS

Meticulous attention to risk is particularly imperative in industries in which lives are at stake. Swett & Crawford's Life Sciences platform has extensive expertise in developing specialized products and services that address coverage for the entire range of bioscience organizations.

The Swett & Crawford national platform can manage the risks of firms whether in start-up phases or fully matured, and can deliver Product liability, E&O, domestic and international Clinical Trial Liability and Products Recall coverages that address the exposures through all growth phases.

A unique risk-quoting system accommodates submissions for all distribution phases, offering exclusive products for each stage with access to forms, markets and pricing others cannot offer. Each program is custom tailored, based on the account's appetite for risk. The Life Science platform is currently being expanded to include reinsurance capacity and exclusive products from global markets.



GOVERNMENT/EDUCATION NICHE EXPERTISE

Swett & Crawford has long been the "go-to" source for casualty/property insurance protection for school systems, community/junior colleges, public/private colleges and

universities, vocational and charter schools nationwide. S&C is also one of the leading wholesale sources of insurance for states, counties, cities, towns, boroughs and villages, law enforcement organizations, and special servicing districts.

Swett & Crawford developed its Public Entity Practice with open market and exclusive programs for property risks and custom-tailored D&O, E&O and Workers Comp coverage, designed by public sector specialists highly familiar with differences in state regulations and site-specific or regional issues affecting risk mitigation. These specialists partner with retail brokers to market the risk including assisting with RFPs, submission structuring, and creative program design, negotiation and risk management. They use modeling tools that help anticipate exposures, thereby positioning those risks for favorable rates. Each program is custom designed to address the organization's unique conditions and risk appetite. Outside-the-box public entity problem solving is based on Swett & Crawford's clout with specialty market carriers, where it is a dominant broker. Daily interaction with these carriers gives S&C exceptional knowledge of the types of exposures, range of entities, and territories markets will accept. S&C's ongoing and long-term relationships with these markets allow a close match between account parameters and carrier expectations.



SWETT PRACTICE GROUPS AT A GLANCE

Casualty Practice Group

The Casualty Practice Group places all types of liability coverage for all types of risks. Over 100 professionals deliver specific expertise from the routine to very complex placements requiring industry knowledge and tailored coverage wordings. Industry specialties include Construction, Energy, Healthcare, Public Entity and Real Estate.

Energy Practice Group

Swett, J.H. Blades, Energy Technical Underwriters, Blades Marine and NMB, all CGSC companies, have exclusive domestic and London facilities for upstream and midstream energy risks. Their in-house facilities provide coverage for General Liability, Umbrella, Control of Well, Onshore Property, Offshore Property and Oil Pollution Act Certification.

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This 40-broker team handles professional and management liability risks for dozens of classes, from D&O and EP through Cyber Liability. Swett PL specialists can act as technical advisors to your sales team and provide detailed coverage comparisons.

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Swett brings the acumen and experience of nearly 40 analysts, risk evaluators and underwriters to coverages for Property and Casualty Contract Underwriting, Managed Care, Long Term Care, and California Earthquake risks. They are also specialists in creating niche programs that provide ground-breaking protection resistant to market cycle fluctuations.

Contact:

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Director – Marketing
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Account Adjusters Pivotal to Large Loss Claims Process

When it comes to large losses, experiencing a fair, impartial claims adjusting process is critical for both insurance carriers and their insureds. Within the commercial property and casualty (P&C) industry, there is an opportunity to establish a relationship with an adjusting partner before a claim occurs. Most excess and surplus lines carriers do not employ staff adjusters and therefore hire independent adjusting firms, like Engle Martin & Associates, Inc., to act as an extension of their claims department in the field. Insureds and their brokers can specifically request in their market submission that an independent property adjusting company or a specific adjuster, often referred to as an account adjuster, be named in their property insurance policies.

There are several advantages to utilizing Engle Martin, a leading national independent loss adjusting and claims management provider, as an account adjusting partner. First, having an account adjuster you know in advance of a loss, someone you have an established business relationship with, will benefit both insured and insurer because it means a more efficient, effective claims adjusting process. "At Engle Martin, for example, we match up our Executive General Adjusters with clients based on claims experience and expertise within an industry and familiarity with loss exposures," said Joe Slane, Managing Director of Engle Martin's Specialty Loss Group (SLG). "We



Joe Slane
Managing Director,
Specialty Loss Group

also focus on understanding an insured's individual business and risk management philosophies before any claims might occur."

Engle Martin's SLG consists of the firm's elite nationwide team of highly credentialed and experienced Executive General Adjusters. The SLG is dedicated to managing high-value, complex losses from a variety of commercial business segments and is the backbone of Engle Martin's account adjuster strategy.

"Sometimes there are multiple carriers on a large claim," Slane said. "Having a single, highly experienced account adjuster greatly simplifies the claim process in those situations, and that works to everyone's benefit." Slane explained that because it is a possibility that an insured will change carriers due to market or risk conditions, having an ongoing relationship with a specific account adjuster will help facilitate a consistent claims process.

To learn more about the advantages of an Engle Martin account adjuster, call 800.818.5619 or email marketing@englemartin.com.

Engle Martin & Associates, Inc. is a leading national independent loss adjusting and claims management provider. Privately held and owner operated, the firm delivers a comprehensive line of service offerings including commercial property, casualty, inland marine/cargo, heavy equipment and large loss adjusting, as well as TPA/claims management and subrogation services.

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AIG cross-border casualty targets mid-market firms

American International Group Inc. has launched coverage for cross-border casualty risks for U.S.-based mid-market multinational companies, the insurer said.

AIG's global casualty single solution product is designed for businesses with up to \$700 million in annual revenue, the insurer said in a statement.

The facility allows brokers to access AIG's U.S. domestic, foreign, and excess casualty products and services on behalf of their clients with one underwriting contact and provides companies with more consistency across policy forms, according to the statement.

Industries targeted for the coverage include manufacturing, wholesale, financial institution and business, legal and engineering services firms, the insurer said.

"Brokers serving small- and medium-sized businesses want to access their multinational insurance partner in a simple way," Russell Johnston, president of AIG's U.S. casualty division, said in the statement.

"We've updated our new multinational casualty process with brokers and customers in mind to create this new product," he said.

Berkshire Specialty offers contractor cover

Berkshire Hathaway Specialty Insurance, a unit of Berkshire Hathaway Inc., introduced a consolidated insurance endorsement for contractors.

The product combines primary general liability coverage enhancements into a package designed for construction wrap-ups and project-specific programs, the Boston-based insurer said in a statement.

The endorsement can be structured for a single construction project or a rolling wrap-up project and allows for a clear description of the covered project, according to the statement. Flexible limits are available, and per-project limits can be provided for completed operations.

"Our consolidated insurance endorsement makes it easy for contractors and project owners to secure general liability and completed operations coverage tailored to their needs and to the current industry environment," Bill Sullivan, vice president for construction at BHSI, said in the statement.

Guy Carpenter establishes cyber reinsurance practice

Guy Carpenter & Co. L.L.C. has launched a cyber solutions specialty practice, the reinsurance brokerage announced.

The New York-based practice will focus on the development and delivery of cyber reinsurance solutions to address the risks associated with cyber security, the broker said in a statement.

The practice is headed by co-leaders Jeremy Platt and Mike Brown. With the launch of the practice, Guy Carpenter



Trade groups join to tackle cyber security

* Several trade organizations representing the merchant and financial services industries have formed a partnership to address cyber security issues.

The partnership, proposed by the Arlington, Va.-based Retail Industry Leaders Association and the New York-based Financial Services Roundtable, will focus on ways to increase information sharing, improve credit card security and maintain customers' trust, the Financial Services Roundtable said in a statement.

"We are committed to working together to ensure customer personal and financial information is secure and protected," Financial Services Roundtable CEO and former Minnesota Gov. Tim Pawlenty said in the statement.

"Exploring avenues for increased information sharing and collaborating on innovative technologies and safeguarding data will be critical in defending against common enemies," he said.

Participating trade associations will form working groups in which they, member companies and other stakeholders focus on cyber issues.

Other members of the group include the American Bankers Association, the American Hotel & Lodging Association, The Clearing House Payments Co. L.L.C., the Consumer Bankers Association, the Electronic Transactions Association, the Independent Community Bankers of America, the National Restaurant Association and the National Retail Federation, all based in Washington.

The New York-based International Council of Shopping Centers; the Arlington, Va.-based Food Marketing Institute and National Grocers Association; and the Alexandria, Va.-based National Association of Convenience Stores also are members of the group.

has designed and launched a "cyber cat" product that responds to systemic risks inherent in cyber portfolios, according to the statement.

"Rapidly developing computer technology and the unrelenting evolution of cyber risks presents one of the biggest challenges to the reinsurance sector today," Mr. Platt said in the statement.

"In fact, cyber attacks, along with technology failure, represent a greater threat than adverse weather, fire and social unrest combined."

Ace USA launches cat policy for construction

Ace USA, a unit of Ace Ltd., has launched the Ace catastrophe liability plus policy for the construction industry through its excess casualty division, the insurer said.

The product, offered through its excess casualty division, consolidates multiple catastrophe liability endorsements into a single policy and is available for construction wrap-up programs, including owner controlled insurance programs, contractor controlled insurance programs, and rolling and joint-venture programs, the insurer said in a statement.

Limits are available of up to \$25 million, the insurer said.

XL partners with Sullivan for med mal prevention

XL Insurance (Bermuda) Ltd., a unit of XL Group P.L.C., is partnering with medical industry services provider The Sullivan Group to provide clinical risk and loss prevention services to health care clients.

The partnership with Oakbrook Terrace, Ill.-based Sullivan aims to improve patient safety by reducing medical errors and lowering the frequency of medical malpractice claims, XL said in a statement.

Policyholders of Hamilton, Bermuda-based XL Insurance Bermuda will be offered services that include risk assessments, recommendations and online education for physicians and nurses on loss prevention techniques to reduce medical errors, an XL Group spokeswoman said in an email.

Keenan targets health care insurance

Keenan & Associates Inc. has launched the Keenan Public Agency Marketplace designed for the use of California's public agencies and their employees in the post-health care reform environment.

The marketplace's purpose is to allow users to navigate employee benefits decision-making, enrollment and access to public and private exchange markets, the Torrance, Calif.-based broker and consulting firm said in a statement.

The product will add solutions to Keenan's existing BenefitBridge platform, including individual and family plan programs for part-time employees or over-age dependents, private and public individual exchange markets, and post-65 retiree access, according to the statement.

"Public agencies are unique as their bargaining units have complex agreements with varying contribution schedules and coverage amounts that require specially designed approaches," John Scatterday, senior vice president of Keenan, said in the statement.

DEALS & MOVES

Swiss Re buying majority of Colombian insurer

Swiss Re Ltd. Corporate Solutions is acquiring a 51% stake in Bogota, Colombia-based Compañía Aseguradora de Fianzas S.A. Confianza.

The deal will provide Colombian corporate clients with access to Swiss Re's commercial insurance products and services, the reinsurer said in a statement.

Terms of the transaction were not disclosed.

Confianza sells surety, third-party liability and all-risk construction insurance.

"The combination of our capabilities and expertise will create a strong commercial insurer for corporate clients in Colombia," Agostino Galvagni, CEO of Swiss Re Corporate Solutions, said in the statement.

The transaction is subject to regulatory approval and is expected to close in the second half of 2014.

York Risk Services buys American Claims Services

York Risk Services Group Inc. has acquired the assets of Houston and Destrehan, Texas-based American Claims Services Inc.

ACSI co-Presidents John Bannon and Bill Johnson will continue to lead the acquired business, the claims administration and risk management services provider said in a statement.

Terms of the deal were not disclosed.

ACSI provides claims adjusting services primarily to the London market and first response and medical management services to the energy sector.

"We believe that being part of York will be ... a springboard for future growth in the London market," Mr. Bannon said in the statement.

Atlas General launches specialty programs division

Atlas General Insurance Services L.L.C. has launched Atlas Specialty Programs, division focused on developing specialty property/casualty insurance lines nationwide.

The division is run by Scott Polkinghorne, the insurer said in a statement. Mr. Polkinghorne, who is president of the New York-based division, previously was a director at U.S. Re Cos. Inc.

"Atlas Specialty Programs will complement Atlas' sizable workers compensation business, allowing for a broader product offering for its valued customer base," Mr. Polkinghorne said in the statement.

Willis starts specialty unit in Copenhagen for Nordic risks

Willis Group Holdings P.L.C. has opened a unit in Copenhagen, Denmark, focusing on political, trade credit and terrorism risks for large multinational and financial institutions, the broker said in a statement.

Azzizza Larsen will lead the unit as financial solutions executive director and will be based in Copenhagen. Ms. Larsen worked in the London-based Willis Financial Services practice for seven years.

"Our Nordic unit will bring a more tailored and focused offering to the Nordic companies facing these volatile risks as they increasingly look to expand overseas," Paul Davidson, global product leader for political risk at Willis, said in the statement.

RETIRING NBGH LEADER REFLECTS ON HEALTH CARE EVOLUTION

Q During your time with the NBGH, what are some of the key changes you observed in group health benefits?

A Well first off, just look at how expensive they are. It's close to \$15,000 per active employee now. It's had the effect of making employers say they can't continue to subsidize this system the way they have in the past. We've seen a movement toward more of a defined contribution model in health care. More employers, including the government, are saying they can only provide so much, and plan members are going to have to spend more of their own money. There's much more shared cost than ever before, and much more talk about the fact that the employee has to be very actively engaged. If they're not, they're going to be spending more of their own money, but they're going to do it in an uninformed way.

There's been more change in total in the last three to five years than I saw in my prior 25 years in health care. The most rapid change has been to what I call the hybridiza-

Q&A

tion of American health care. We now have integrated delivery systems like (accountable care organizations) and patient-centered medical homes. We have insurance companies acquiring physician offices and hospitals acquiring or creating insurance companies. Sometimes it's really hard to tell them apart, because they're becoming so intertwined.

Q What do you see as some of the biggest challenges lying ahead for both the NBGH and the employers that it serves?

A I think it continues to be controlling costs. You can't get the growth rate of health care costs down to zero, but you can get it closer to 3% instead of 6%, 7% or 8%. For employers, the challenge is to find ways to keep doing that and to recognize that they can't stop. It's like trying to maintain your own weight. You can't get up on any day and ignore the problem. You've got to get up every day and keep working on controlling costs. Organizations need to keep sending that message, and keep providing more tools and resources to make it possible, because the world is changing very rapidly.

Q In an ideal world, how would you see employer-sponsored health benefits change 10 years from now?

A In an ideal world, everyone should have access to quality, safe, evidence-based health care that is affordable for workers, employers and the taxpayers. It's possible that could occur through a combination of public-sector programs and private-sector sponsorship. I think it would have to look



HELEN DARLING

NATIONAL BUSINESS GROUP ON HEALTH

After more than 13 years as the president and CEO of the Washington-based National Business Group on Health, Helen Darling plans to retire at the end of April. She recently spoke with *Business Insurance* Associate Editor Matt Dunning about the rapidly changing health care marketplace and the challenges employers face in providing health benefits to their workers. Edited excerpts follow.

different, more like the defined contribution model and that sort of thing, but having employers — especially large employers — remain part of providing health care helps to keep pressure on providers to keep health care cost-effective and efficient.

Q Finally, what are your plans after you step away from the National Business Group on Health at the end of April?

A The NBGH board asked me to spend about 20% of my time through the end of 2014 assisting

in the transition. I'm also chair of the board of directors of the National Quality Forum, which I will continue to do at least until the end of the year. I'm on a couple of other nonprofit boards that I will continue to serve on until those terms end, which will be within a year or two. After that, I hope that I will continue to have opportunities to speak about this problem of affordability and what the cost of health care has done to our other investments in the nation, such as education for children and education and training at the university level.

COMINGS & GOINGS

UP CLOSE: DANIEL J. HEALY

WASHINGTON-BASED PARTNER
Anderson Kill P.C.

PREVIOUS POSITION: Washington-based trial attorney for the U.S. Department of Justice tax division.

LOOKING FORWARD TO: The opportunity to grow the Washington-based office for Anderson Kill and working with our various clients and helping them maximize their insurance recovery.

GOALS FOR NEW POSITION: The health insurance industry is one of the fast-evolving areas. The goal is to grow the awareness of Anderson Kill representing employers against insurance companies with regard to health plans.

CHALLENGES FACING INDUSTRY: Right now the two big challenges from the coverage perspective are to evolve with the rapidly changing health care industry and cyber liability coverage, because so many businesses rely on technology.

FIRST INDUSTRY JOB: My first job out of law school was with Anderson Kill. Then I went to the Justice Department. And now I am back.

WHAT SURPRISED ME: How insurance is involved in



every aspect of business and our economy.

ADVICE: Take any opportunity you have to work for the government as an attorney. It provides experience you can't get anywhere else.

OUTSIDE THE INDUSTRY, A DREAM JOB: Professional soccer player.

HOBBIES: I coach youth sports and play sports. I like to do crossword puzzles when I have the time. I like to ski, too.

WHEN I RETIRE: One of my children will be nearby so I can spend a lot of time with grandchildren.

FAVORITE BOOK: "The Amazing Adventures of Kavalier & Clay" by Michael Chabon.

FAVORITE MEAL: Steak, fries and a good dark beer.

BEST CITY: New York City.

ON A SATURDAY AFTERNOON: Coaching one of my children's sporting events.

THING MOST PEOPLE DON'T KNOW ABOUT ME: I am an Eagle Scout.

Professional Moves & Promotions

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Willis Group Holdings P.L.C.	Sara Benolken
Willis North America Inc.	Renee Folkerts

INSURERS

CNA Financial Corp.	Christopher Leisz
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REINSURANCE

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Swiss Re Corporate Solutions	Sylvain Bouteillé

OTHER

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

SAFETY

Continued from page 4

Among the keys to the group's efforts is its Event Safety Guide, released in February, and planned educational events, the first of which is scheduled for December.

"That was job one, the creation of the guide," said Mr. Digby.

"The U.K. has had an event safety guide, which is their best practices, around for years," said James Chippendale, CEO of Ascend Insurance Brokerage in Austin, Texas, and a founding contributor of the alliance. "It was time to adapt and adopt that guide to the U.S. standards."

"The hope is this will become the global best practices for the industry," Mr. Chippendale said.

The guidebook is "not intended to be a recitation of the laws of each state," said Roger Sandau, CEO of Doodson Insurance Brokerage, a division of Integro USA Inc., in Baltimore. "What it's intended to be is a framework for people to work within."

And, Mr. Sandau said, "It's not to be used only on one side or for one participant. It's to create a common discussion point for all of the participants."

"One thing I learned from (Chicago's) Lollapalooza: The key to having a safe event is having clear communications and knowing what every person is going to do in the event of an emergency," said Mr. Chippendale, whose firm works with 100 medium-size and large music festivals and hundreds of smaller events each year on their insurance coverage and risk management. "You don't want to sit there and have, 'What are we

going to do now' conversations when you have a storm or a threat coming at you."

Nearly two years of work went into the Event Safety Guide, including vetting by major concert production companies, Mr. Chippendale said. The existing U.K. guide served as a basis for the project.

Mr. Digby recalled nearly a year of bi-weekly conference calls "with as many folks as we could get on the phone" as the group looked to shape the safety guide's content.

The group chose "not to reinvent the wheel," Mr. Adelman said. Instead, they made "the existing body of knowledge of event safety

"We see the guide as the anchor point for everything that happens next."

Jim Digby, Event Safety Alliance

more accessible to the boots on the ground."

"Our task was to take the very large, rather difficult existing body of knowledge and make it simpler," Mr. Adelman said. "It's great to have technical standards, but if the people who need them don't even bother to read them and probably don't even know of their existence, it doesn't help get the job done."

The finished guide addresses topics that include emergency planning, weather preparedness and fire safety as well as technical issues such as pyrotechnics, rigging and temporary staging. It is "really quite usable," Mr. Adelman said.

"We see the guide as the anchor point for everything that happens

next," said Mr. Digby.

Event Safety Alliance representatives appear regularly at industry events to promote event safety and the organization's efforts. With the help of Fireman's Fund, the group plans to hold its first safety training institute in December. The institute will be a several-day course to teach aspects of the Event Safety Guide and further the application of those standards, Mr. Adelman said.

Heading into 2015, the alliance ideally would like to hold such an educational event once a quarter in different parts of the country, said Fireman's Fund's Ms. Bailey. "Based on some of the discussion we've had with people, there's a high degree of interest in attendance," she said.

Utilization of the alliance's resources and following the guidebook should benefit event producers as they seek coverage for their events, many of those involved with the group believe.

"We have reached out to the insurance community to involve them in putting the Event Safety Guide together and in promoting the Event Safety Alliance," said Mr. Sandau. "We would hope that an organization that avails themselves of (the alliance's resources) would see a benefit in terms of insurance pricing and the terms and conditions they're receiving."

"The insurance companies have gotten behind that," said Mr. Chippendale. "I think the insurance companies should support that whether it's premium discounts or additional coverage."

"We identified early on through James Chippendale that this wasn't going to work until we got the insurance companies in on it," Mr. Digby said.

NONSUBSCRIBER

Continued from page 4

to create safety programs that mitigate the need for employer liability coverage, said Steve Bent, executive director of the Texas Association of Responsible Nonsubscribers, an Austin, Texas-based group that includes about 1,200 employer members.

"We hope that (nonsubscribers are) proactive and work to limit the scope of injuries in the first place, rather than looking to insurance, which should be a last resort," Mr. Bent said.

Tort cases for nonsubscribers are typically rare, said Bill Minick, president of Dallas-based PartnerSource, a consultant on alternative workers comp plans and a unit of Arthur J. Gallagher Risk Management Services Inc., based in Itasca, Ill.

The firm sees attorney involvement in about 15 out of every 1,000 injury claims for nonsubscribers, and about one in those 15 typically proceeds to court or arbitration, Mr. Minick said in a statement to *Business Insurance*.

But unlike defined-benefit awards paid through traditional workers comp, tort cases for nonsubscribers have the potential to lead to uncapped damages in cases of gross negligence, sources say. In the case of *Lawrence Rene Montoya v. Ben E. Keith Co.* in 2012, a truck driver reportedly was awarded \$8.59 million from a jury in Harris County, Texas, after he was dragged by a truck owned by his employer, a nonsubscriber.

That risk of large jury awards in nonsubscriber cases prompts many employers to continue purchasing traditional workers comp insurance in Texas, said Anthony DeFelice, managing director of Aon Risk Solutions' national casualty practice in New York.

"A lot of the higher hazard industry classes that are out there want to remain as a subscriber or covered under the workers comp act for fear of tort litigation," Mr. DeFelice said. "So it's only the smaller, lighter hazard industry groupings that I see that ever opt out of workers compensation."

Companies that are considering Texas nonsubscription need to weigh whether their workers comp claims involve injuries that

could potentially result in liability suits if they opt out of the traditional market, sources say.

For instance, injuries that occur from material handling work, such as lifting boxes, typically are run-of-the-mill and wouldn't lead to significant tort cases, said Marsh Inc.'s Mr. Walls. But employers in industries that are more injury-prone, such as construction, might limit their risk exposure by purchasing traditional comp insurance.

"It's very much an individual evaluation," Mr. Walls said. "Whenever somebody is interested in opting out, we work with them on the feasibility study."

Eric Silverstein, Dallas-based senior vice president and risk management practice leader at Lockton Cos. L.L.C., said nonsubscribing employers should make sure they have an "ironclad arbitration clause" in their alternative benefit plan for injured workers in order to limit employer liability exposures.

"The big verdicts have come from companies who do not have that arbitration clause in place, or did not go to the trouble of doing it the proper way," he said.

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RELIGION

Continued from page 1

Supporters of the so-called religious-freedom bills say they are designed to protect businesses with religious objections to same-sex marriage from being compelled to provide services or accommodations that conflict with their beliefs, citing a handful of recent lawsuits in various states against Christian-owned florists, bakeries and photography studios that refused service to gay and lesbian couples.

However, legal experts say many of the proposed bills around the country could leave companies open to civil lawsuits. In particular, many of the proposed laws are worded in ways that would permit employees to sue their employers for burdening their religious beliefs, even if the burdensome action was taken in compliance with separate employment rights and non-discrimination laws, experts say.

"It certainly puts the employer in a very hard spot, especially when you consider that most companies are operating on limited margins and can't afford to deal with this kind of litigation," said Michael Newman, a Los Angeles-based partner at Barger & Wolen L.L.P.

From an insurance perspective, the proposed laws could represent a potential spike in employment practices liability claims, said Bertrand Spunberg, senior vice president and executive risk practice leader at New York-based underwriter Hiscox USA.

"If I were to speculate, if these laws were to pass, I think it's rea-

sonable to expect that they would be tested in court and, at least for a time, we would see an increase in EPL claims on that front," Mr. Spunberg said. "Unfortunately, until these theories are tested, it will be very difficult to get an idea of the potential severity."

Arizona came close when its legislature recently passed legislation igniting a national firestorm the past couple of weeks as the governor considered the measure.

Last week, Arizona Gov. Jan Brewer vetoed the proposed amendment to the state's Religious Freedom Restoration Act that would have allowed businesses and their employees to use their religious beliefs as an affirmative defense or cause of action in civil lawsuits between private parties.

In a letter to state legislators explaining her veto, Gov. Brewer said the bill was "broadly worded and could result in unintended and negative consequences."

"The legislation seeks to protect businesses, yet the business community overwhelmingly opposes the proposed law," Gov. Brewer said, referencing the dozens of national companies — including Delta Air Lines Inc., AT&T Inc., Marriott International Inc., Apple Inc., PetSmart Inc. and Microsoft Inc. — that criticized the proposed amendment, which they said would discourage tourism and economic growth in Arizona.

Already, federal and state anti-discrimination laws protect employees from harassment and adverse employment actions based on religious biases, and those laws also shield employers from liability as long as reasonable steps have been taken to accommodate an employee's religious

beliefs.

By contrast, under bills like those considered in Arizona and other states, employers would face a significantly higher legal standard in justifying employment actions that infringe on an employee's religious beliefs, experts say.

"If an employee were to sue

RELIGIOUS FREEDOM LEGISLATION

Bills intended to shield private companies from litigation or regulatory action for conducting business based on their owners' religious beliefs have been introduced in about a quarter of U.S. states. No state has yet passed such legislation.

State	Status
Arizona	Vetoed
Georgia	Introduced
Hawaii	Pending in committee
Idaho	Held in committee
Kansas	Rejected by Senate
Maine	Rejected by Senate
Mississippi	Passed by Senate
Missouri	Introduced
Ohio	Withdrawn
Oklahoma	Pending in committee
South Dakota	Rejected by Senate
Tennessee	Held in committee
Washington	Introduced

Source: states' websites

under one of these proposed laws, the employer would have to show that their action against that employee was in furtherance of a compelling governmental interest, and I'm not sure how employers are supposed to do that," said Jane Ann Himsel, an Indianapolis-based shareholder at law firm Littler Mendelson P.C.

"You can see some instances

where an employee may try to establish a claim of wrongful termination based on the argument that public policy provides this heightened protection of religious beliefs," Mr. Newman of Barger & Wolen said. "The hardest of all the potential scenarios is where employers would have to sort out a dispute between employees, where you would have two different sets of religious beliefs colliding with each other," he said.

The national outcry over Arizona's proposal prompted lawmakers pursuing similar legislation in a number of other states to drastically change their proposals or abandon them altogether.

In Ohio, state Reps. Tim Derickson and Bill Patmon said in a joint statement last week they would withdraw their bill amid concerns it would permit private businesses to invoke religion as a justification for ignoring Ohio state laws governing commercial entities, including anti-discrimination, employment practices and consumer protection statutes.

Meanwhile, legislators in Oklahoma and Mississippi scrambled to amend proposals similarly to Ohio and Arizona legislation.

"I think that in their haste, the state legislators sponsoring these bills haven't really thought through the implications for business interests in their states," said Eunice Rho, advocacy and policy counsel at the Washington-based American Civil Liberties Union. "If states have any interest in attracting big employers and growing their local economy, they'll recognize that this kind of legislation is an unfortunate trend and a real threat to the business community."

TERROR

Continued from page 1

stopped short of supporting suggestions that it be made permanent. The last extension, provided by Terrorism Risk Insurance Program Reauthorization Act of 2007, renewed the program for seven years.

Meanwhile, there is between \$3 billion and \$4 billion of per-risk capacity available in the U.S. private terrorism insurance market, industry sources say. That amount drops sharply for higher-risk cities such as New York, San Francisco and Chicago. In San Francisco and Chicago, there's likely up to a \$1 billion per-risk limit, while parts of Manhattan could see limits as low as \$100 million.

"There has definitely been more activity and more interest in the stand-alone market just because of the uncertainty" with the federal program, said New York-based Sharon Herbert, executive vice president for Global Excess Partners L.L.C., a specialty lines broker. Since October 2013, she estimates there has been about a 20% increase in the purchase of stand-alone terrorism insurance.

"I would say we've seen a 20% to 25% increase in U.S.-originated inquiries since the beginning of 2014," said Julian Barker, head of terrorism at Aqua Underwriting Ltd., a London-based specialty broker owned by RKH Holdings. Aqua places cover on behalf of 13 Lloyd's syndicates and one international insurer.

Policy submissions are up about 25% over last year at Hiscox, and the Bermuda-based company's

NIST

Continued from page 1

most serious national security challenges we must confront."

In another move regarding cyber threats, U.S. Attorney General Eric Holder last week called on Congress to establish a national standard to alert consumers whose information gets exposed by cyber breaches. Experts say it would be a major challenge to implement such a standard since there are 46 differing state laws on the issue.

Meanwhile, "the NIST standards are definitely a step forward because they're so broadly applicable and they're a standard set up by the government," said Tom Reagan, New York-based large-risk underwriter of breach response insurance at Beazley P.L.C. The framework looks beyond prevention to how to respond to data breaches, he said.

"It's helpful that they're taking a risk-based approach, rather than imposing any kind of an inflexible and uniform set of standards that applies to all in the same manner," said Oliver Brew, New York-based

vice president of professional liability at Liberty International Underwriters, a unit of Liberty Mutual Holding Co. Inc.

With this federal cybersecurity framework, "an organization can ask itself a set of questions and start to see where they are," where they aspire to be and "what they need to do to get there" to protect against cyber risks, said Toby Merrill, Philadelphia-based vice president of Ace Professional Risk, a unit of Ace Ltd.

It provides guidelines for companies to look at their cyber security structure critically, said Joe DePaul, managing director of cyber risk services at Arthur J. Gallagher Risk Management Services Inc. in Parsippany, N.J.



HEAR INTERVIEW

Access Business Insurance's interactive digital edition to hear Catherine A. Mulligan, a senior vice president at Zurich North America, talk about cybersecurity recommendations for critical infrastructure industries.

Ben Beeson, a London-based partner at Lockton Cos. L.L.P., said the NIST standards will help insurance buyers "get their arms around what is a very tricky new area of risk."

The U.S. Department of Homeland Security in particular "has done a really nice job in engaging" in a dialogue with the insurance industry regarding the cybersecurity standards, said Catherine A. Mulligan, senior vice president and head of specialty errors and omissions at Zurich North America.

Experts say noncritical infrastructure firms also should adopt the NIST framework.

For companies that have made "a significant effort" to meet the government's recommendations and then have a data breach, courts are unlikely to find them negligent, said Richard J. Bortnick, a shareholder at law firm Christie, Pabarue & Young P.C. in Philadelphia.

George Allport, Warren, N.J.-based vice president and worldwide product manager for financial institution bond products at Chubb Corp., said while many organizations may not consider themselves part of the critical infrastructure, they may in fact be a smaller contractor dependent on

CYBERSECURITY GUIDE

The Framework for Improving Critical Infrastructure Cybersecurity, by the U.S. Department of Commerce's National Institute of Standards and Technology, has three main parts:

- **Core:** Set of cybersecurity activities, outcomes and references providing detailed guidance to develop individual organizational profiles.
- **Implementation tiers:** Provides context on how an organization views cybersecurity risks and what processes are in place to manage the risks.
- **Profile:** Helps an organization align its cybersecurity activities with its business requirements, risk tolerance and resources.

The NIST framework was drafted with a recognition that organizations have unique risks and practices that need to be updated and improved.

By Judy Greenwald

such a firm. In the cyber world, "you have no way of knowing if you're below the radar," he said.

Some experts think insurers will use the federal recommendations to evaluate risks in their cyber policy underwriting.

"I could see insurers using this as a yardstick," said Michael R. Overly, a partner at Foley & Lardner

L.L.P. in Los Angeles.

The NIST framework "will increase the need for insurance because it'll clarify a cybersecurity standard of care that more companies will have to fulfill," said Matt McCabe, New York-based senior vice president at Marsh L.L.C.'s network security and privacy practice.

"I see this also as a period of almost a unique opportunity to have the insurance industry take a leadership role in driving the voluntary compliance," said Alan E. Brill, senior managing director of secure information services at New York-based Kroll Associates Inc.

While the NIST framework may help insurers understand a company's cyber risk profile, this will not necessarily be transmitted directly into the underwriting process, Mr. Allport said.

Kevin Kalinich, Chicago-based global practice leader for cyber risk insurance at Aon Risk Solutions, said insurers generally price cyber coverage based on companies' business and size. Audit standards for cyber exposures also already are available, but insurers do not use them in underwriting, he said.

bind ratio is some 20% higher, said Jennifer Rubin, a vice president and underwriting leader of war, terrorism and political violence coverage for Hiscox USA. "Insureds want to have an alternative program in place" in case Congress scraps the federal terrorism insurance backstop, Ms. Rubin said.

Responding to market demand, Hiscox on Jan. 1 raised its terrorism policy per-risk limit to \$125 million from \$100 million, in order to capitalize on increased market activity, Ms. Rubin said.

London-based Steven Tebbutt, a terrorism underwriter for Talbot Holdings Ltd., which operates in the Lloyd's market and is owned by Pembroke, Bermuda-based Validus Reinsurance Ltd., also sees the increased interest in private terrorism coverage.

"Especially in the last three to four months, culminating in the past six weeks, we've seen a dramatic upturn in inquiries," Mr. Tebbutt said.

"Historically, we always wrote a lot of business from the U.S., and that's just increasing and increasing as there is this uncertainty," he said. "I think buyers have come to market to try to ease that position."

Immediately after the Sept. 11, 2001, terrorist attacks in New York and elsewhere, Talbot was one of the original five syndicates to write terrorism policies at Lloyd's, with approximately \$100 million of total capacity at the time, Mr. Tebbutt said. Now there are almost 40 syndicates writing terrorism coverage with aggregate limits over \$2 billion, he said.

"At the moment, you will definitely see an uptick, probably going back about six months," as people realize they are drawing closer to Dec. 31, said Timothy Press, head of specialty risks at Miller Insurance Services L.L.P., a London-based partnership that writes terrorism coverage.

"There has been a huge upswing in submissions for stand-alone terrorism coverage," said Radnor, Pa.-based Wendy Peters, senior vice president of Willis North America's terrorism practice group. Another reason for this increased activity can be a client's contractual or shareholder obligations.

Such restrictions can come in the

form of "sunset provisions" written into a policyholder's terrorism coverage, said New York-based Tarique Nageer, senior vice president and head of terrorism placement and advisory for Marsh L.L.C.

Many insurers put so-called sunset provisions or sunset clauses in these policies, saying in effect if the federal terrorism backstop expires or is substantially changed, they reserve the right to cancel the private terrorism coverage outright or change the terms and conditions of policies and coverage that they offered, Mr. Nageer said.

Also, the private terrorism insurance market offers coverages and flexibility not available within the government program.

"At the moment, you will definitely see an uptick, probably going back about six months," as people realize they are drawing closer to Dec. 31.

Timothy Press, Miller Insurance Services L.L.P.

While the federal program only covers U.S. risks, the stand-alone market offers coverage for companies with foreign exposures, such as hotel chains and entertainment and transportation companies,

said Aaron Davis, managing director of operations for Aon Property Broking's Northeast region.

"The stand-alone market helps the global client deal with the whole bucket of risks including foreign exposures," Mr. Davis said.

Another advantage of stand-alone terrorism coverage is that the private market does not rely on government certification of a terrorism act, in order for claims to move forward, Ms. Herbert of Global Excess said.

For example, the federal government has not certified the bombings at last year's Boston Marathon as terrorist acts. However, claims from the Boston bombings made under stand-alone ter-

rorism coverage already have been paid, said Mary Pat Thurston, a partner with Global Excess.

The fate of the federal terrorism coverage backstop also would likely have implications for the reinsurance markets, said Emil Metropoulos, senior vice president of the terrorism specialty practice at Guy Carpenter & Co.

If Congress does not extend the federal program or increases retentions, "that would create displacement in the market and increase the demand both for traditional property and workers compensation coverage that could include terrorism, and that could increase the activity for private market reinsurance," Mr. Metropoulos said.

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MEDICAID

Continued from page 3

leaving lost wage payments and other damages for beneficiaries.

Ms. Adams said allowing Medicaid to collect reimbursement from all portions of a settlement is a disincentive for beneficiaries to close their cases.

"If you're going to take dollar-for-dollar every dime that the beneficiary could receive, then what incentive do they have in resolving their claim?" Ms. Adams said.

Roy Franco, principal of Bradenton, Fla.-based Medicare compliance firm Franco Signor L.L.C. and former MARC chairman, said secondary payer experts hope they can succeed in having the Medicaid recovery changes removed or revised before they take effect this fall.

"It's not quite certain where this is going to land," Mr. Franco said. "It's a definite political back and forth" between the legislators.

Since Medicaid is a need-based program, experts expect the Medicaid recovery changes would be more likely to affect liability settlements, rather than workers comp

settlements involving beneficiaries who earn an income above the federal poverty level.

However, some workers comp settlements could be affected under federal health care reforms, said Jennifer Jordan, Columbia, Md.-based general counsel of Medicare compliance company Medval L.L.C.

The Patient Protection and Affordable Care Act sets the national Medicaid minimum eligibility level at 133% of the federal poverty level. That threshold is \$31,721 for a family of four in 2014 — a figure that could include single breadwinners who would be eligible for workers comp benefits as well as Medicaid, Ms. Jordan said.

"It's very likely that we're going to see in the foreseeable future situations where we're going to have dually eligible ... injured workers," Ms. Jordan said.

Beyond allowing Medicaid programs to be reimbursed from a larger portion of claim settlements, expanding Medicaid recovery could present additional problems, sources say.

While Medicare reimbursement liens can be confirmed through the Centers for Medicare and Medi-

caid Services, there is no central clearinghouse to determine if a claimant owes money to a state Medicaid program, said Greg McKenna, counsel and head of governmental affairs for Itasca, Ill.-based third-party administrator Gallagher Bassett Services Inc.

That could force payers to turn to individual states for a claimant's Medicaid records, which could be costly and time-consuming, Mr. McKenna said.

"You would have to have ways to identify and confirm that the state Medicaid offices ... and the insurance industry are actually talking about the same beneficiary," he said.

While Medicare allows settlements to cover legal fees before being subject to reimbursement, Medval's Ms. Jordan said it's uncertain whether the expanded Medicaid recovery language would be the same.

"If (Medicaid has) a right to take it all, and they don't allow for procurement costs, then the attorney's not going to get paid, either," said Ms. Jordan, who said it would be up to state programs to determine such details. "That's definitely going to make it harder to get cases settled."

COURT RULING MAY BE INFLUENTIAL

Sources say changes to Medicaid recovery rules in the most recent federal budget contradict a 2006 U.S. Supreme Court decision that found Medicaid programs could not be reimbursed from settlement funds for lost wages or pain and suffering.

In *Arkansas Department of Health and Human Services et al. v. Heidi Ahlborn*, Ms. Ahlborn received a \$550,000 settlement after she was injured in a 1996 car accident.

Arkansas' Medicaid program sought to recover \$215,645 in past medical expenses that it paid on Ms. Ahlborn's behalf.

The Supreme Court ruled unanimously that the Arkansas Department of Health could collect only on the portion of Ms. Ahlborn's settlement that represented payments for medical care, or \$35,581.

By Sheena Harrison

NFIP

Continued from page 3

considered in the House.

Proponents of NFIP reform consider risk-based rates as called for under Biggert-Waters to be critical for the program, which currently is about \$24 billion in debt. And insurers are not alone in supporting risk-based rates: The White House, Consumer Federation of America, environmental groups and free-market advocates have staked out that position as well.

Reform advocates hailed the delay in House consideration of the bill during a telephone news conference by Smarter-Safer.org, a coalition of insurer, environmental and free-market-oriented organizations.

Steve Ellis, vice president of Washington-based Taxpayers for Common Sense, said the delay presented an opportunity for "responsible reform."

"We view the recent delay as an opportunity for the House to go back to the drawing board and fix this," Andrew Moylan, a senior fellow at the Washington-based R Street Institute, also said during the news conference. "Pure politics" is driving efforts to roll back the Biggert-Waters reforms, he said.

With much of the House political process going on behind closed doors, "it's hard to interpret delays other than suggestions that they're still trying to resolve some issues in it. And they may have lost some conservative Republican support in the past week," said Frank Nutter, president of the Reinsurance Association of America in Washington. Democrats want more revisions to the bill he said already is "too aggressive" and "effectively guts the Biggert-Waters Act."

"I think the delay of consideration of the House Bill is a sign that many members of Congress realize that it's bad policy," said Jimi Grande, senior vice president of the National Association of Mutual Insurance Cos. in Washington. "Hopefully, it gives us an opportunity to convince the House to create a more responsible reform package that provides targeted assistance without further jeopardizing the solvency of the NFIP."

"We still have a shot," Mr. Grande said. "The longer we have, the more people we'll be able to convince that it's bad policy. However, the political pressure being felt by some members of Congress is very real and very powerful."

"Unfortunately for us, the elimination of Biggert-Waters is good politics in many parts of America," Mr. Grande said. "Not many politicians have won courage awards in the past few years."

FLOODS

Continued from page 3

would not expect it to change our assessment of the U.K. nonlife sector's industry and country risk," S&P said.

While much of insured losses will stem from personal lines claims, some large commercial property losses and business interruption claims are likely, sources say.

According to Boston-based catastrophe modeler AIR Worldwide, while most commercial U.K. buildings are built to strict standards and have sophisticated flood defenses, "post-disaster surveys indicate that low-rise commercial wood frame and masonry buildings are generally nonengineered and have vulnerabilities similar to those of their residential counterparts."

Although it is too early to assess the extent of business interruption losses, insurers have factored such losses in setting rates for the coverage, said Catherine Barton, a partner at Ernst & Young Global Ltd. in London.

But it remains to be seen how quickly businesses can recover from the recent flooding, she said, and many likely will seek more comprehensive business interruption coverage in the future.

The financial impact of the flooding may be felt for two to three years, said Justin Balcombe, London-based U.K. head of general insurance consulting at KPMG L.L.P., because of the volume of water and sewage as well as damage to agriculture and infrastructure.

BUSINESSES, INSURERS URGE U.K. GOVERNMENT TO PLACE SMALL COMMERCIAL RISKS IN PROGRAM

Business groups and insurers called on the government to change its upcoming non-profit Flood Re insurance program in the wake of recent widespread flooding across the United Kingdom.

Flood Re, which is slated for introduction in the summer of 2015, would be funded by a levy on insurers that underwrite homeowners insurance. Money collected through the levy would be used to purchase reinsurance to cover losses paid by insurers.

If losses exceeded the limits of that reinsurance coverage, a supplemental levy would be charged to insurers, according to the government's proposals.

The Blackpool, England-based Federation of Small Businesses last month called on the government to rethink its plan and include small businesses in the scope of Flood Re.

"Since last summer, small businesses in flood risk areas have often been unable to access affordable and adequate insurance," the federation said in a statement. "We want the government and the insurance industry to look again at the scheme they have in place for households in these areas, Flood Re, and see whether small business can be reinstated into that."

The leader of Hamilton, Bermuda-based Hiscox Ltd., which has large operations at Lloyd's of London and in the U.K. personal and small-to-medium-size-enterprise insurance sector, also criticized plans for Flood Re.

This may mean that conventional business interruption and homeowners coverage may not be sufficient to redress the losses, he said.

While business groups welcomed a £10 million (\$16.6 million) pledge from the U.K. government to help businesses recover from the floods, they called on the government to

consider enabling small business to access insurance coverage through the Flood Re plan, funded by the insurance industry and backed by the government, that is slated to begin operations next year (see box).

The Federation of Small Businesses said the government



AP PHOTO

Business groups and insurers called on the government to rethink its plans for the Flood Re insurance program in the wake of recent flooding.

In a statement, Hiscox CEO Bronek Masojada said that one in six U.K. households would be excluded from Flood Re, including many currently affected by flooding.

While the proposed plan is a great concept, he said it falls short in practice.

"An urgent rethink is needed," Mr. Masojada said. "It is unreasonable to exclude new homes, buy-to-let properties and higher-value properties from Flood Re protection."

While Hiscox supports "a sustainable, mutualized solution to the problem of insurance," he said, "the government must listen to growing concern from insurers and the public."

By Sarah Veysey

should include small business in the Flood Re plan.

Meanwhile, the Institution of Civil Engineers called on the government to increase its spending on flood defenses and commit to a longer-term project on flood risk management that would extend beyond the current five-year plan.

Asiana fined \$500,000 for not aiding families after crash

■ The U.S. Department of Transportation said it has fined Asiana Airlines Inc. \$500,000 for violating federal law by failing to assist family members of passengers on a flight that crashed at a San Francisco airport in July. “In the very rare event of a crash, airlines have a responsibility to provide their full support to help passengers and their families by following all the elements of their family assistance plans,” U.S. Transportation Secretary Anthony Foxx said in a statement. For almost a full day following the crash, Asiana failed to widely publicize a telephone number for family members of those onboard, and the only number generally available to the public that family members could call was Asiana’s toll-free reservations line, the department said.

Reuters

Calif. comp changes reducing payments to surgery centers

■ Recent workers compensation reforms in California have reduced fees paid to ambulatory surgery centers by more than one-quarter, according to a study by the Workers’ Compensation Insurance Rating Bureau of California and the California Workers’ Compensation Institute. California’s most recent workers comp reform bill (S.B. 863) was signed into law in 2012 by California Gov. Jerry Brown and began taking effect Jan. 1, 2013. The bill limited the maximum fees that could be paid to ambulatory surgery centers — a driver of increasing workers comp medical costs in California — to 80% of the fees paid by Medicare for similar services. Medical fees paid to California ambulatory surgery centers fell to \$2,443 per episode in 2013, down nearly 26% from \$3,291 per episode in 2012, according to Oakland, Calif.-based CWCI and San Francisco-based WCIRB. The net payment per procedure performed by California ambulatory surgery centers fell to \$632 in 2013, down 28% from \$878 per procedure in 2012, the study said.

Tax reform plan includes controversial reinsurance tax

■ A new House tax reform plan has resurrected a controversial reinsurance tax proposal. Under a draft of the Tax Reform Act of 2014 unveiled by House Ways & Means Committee Chairman Dave Camp, R-Mich., U.S. insurers in

most circumstances would not be permitted a tax deduction for reinsurance premiums paid to a non-U.S.-affiliated company that is not subject to U.S. taxation on the premiums. Such a change in reinsurance taxation has been introduced in Congress before, but has never reached a floor vote. The issue has split the property/casualty insurance industry, with some insurers supporting the change and others, joined by the Risk & Insurance Management Society Inc., opposing it.

Joseph Tocco named chief exec of XL North American property

■ XL Group P.L.C. has named Joseph A. Tocco as chief executive of North American property/casualty, effective immediately. An XL spokeswoman said he replaces Seraina Maag, who moved to American International Group Inc. in November. Previously, Mr. Tocco ran XL’s North American property business as well as XL Global Asset Protection Services, the Dublin, Ireland-based insurer said in a statement. Ken Riegler, the head of XL’s North America primary casualty business, will take on the added responsibility of leading the North American distribution and network. Messrs. Tocco and Riegler will continue to be based in New York.

Brokerage Willis can be sued in Stanford Ponzi scheme

■ Investors victimized in a \$7 billion Ponzi scheme run by Allen Stanford can sue defendants in the case, including units of Willis Group P.L.C., who were associated with him, the U.S. Supreme Court has ruled. Mr. Stanford and his companies sold investors certificates of deposits in Stanford International Bank, according to the high court’s 7-2 ruling in *Chadbourne & Parke L.L.P. v. Samuel Troice et al.* They expected the bank would use the money to buy “highly lucrative” assets, but instead Mr. Stanford and his associates used the money provided by new investors “to repay old investors, finance an elaborate lifestyle and to finance speculative real estate ventures,” according to the ruling. Mr. Stanford, who was convicted and found guilty, is now serving a 110-year prison term. Four groups of plaintiffs sued firms and individuals who helped sell the bank’s certificates of deposit, including brokers Willis of Colorado Inc. and related Willis companies, and Houston-based Browne Mellette & Britt Insurance Agency L.L.C., among other defendants, on the grounds that they helped the bank perpetrate the fraud or conceal it from

regulators. All four suits have been consolidated. The focus of the high court’s ruling last week is the 1998 Securities Litigation Uniform Standards Act, which forbids class actions under state law for “covered” securities.

Post-Katrina risk program for New Orleans wins accreditation

■ The Federal Emergency Management Agency has accredited the Greater New Orleans Hurricane and Storm Damage Risk Reduction System that was prompted by the devastation of Hurricane Katrina. The FEMA accreditation will see the system represented on FEMA’s new flood insurance rate maps as reducing risk within Jefferson, Orleans, St. Bernard, St. Charles and Plaquemines parishes in Louisiana, the U.S. Army Corps of Engineers said in a statement. The accreditation follows “a formal and comprehensive process, after which the agency determined that the (storm damage reduction system) levee improvements will reduce risk from the effects associated with a 100-year storm,” the Corps of Engineers said in the statement. Overseen by the Corps of Engineers, the project involved strengthening and improving nearly 133 miles of levees, floodwalls, gated structures and pump stations, along with the construction of surge barriers at Lake Borgne, Seabrook, the New Orleans Outfall Canals and the West Closure Complex, which have pushed the area’s line of storm surge defense outside the city of New Orleans. The system was developed in response to the catastrophic effects of Hurricane Katrina in 2005.

Kiln buys 49% stake in NAS Insurance Services

■ London-based Tokio Marine Kiln Group Ltd., a Lloyd’s of London specialty insurance and reinsurance underwriter, has acquired a 49% stake in Encino, Calif.-based NAS Insurance Services Inc., Kiln said. Terms of the deal were not disclosed. Kiln said in a statement that it has worked since 1975 with NAS, which underwrites specialty professional liability, legal expense, health care, entertainment and reinsurance products, including cyber and medical billing errors insurance, in the United States. Kiln’s U.K. operating company, R.J. Kiln & Co Ltd., currently manages four syndicates at Lloyd’s. NAS will retain its existing brand and management structure, and the remaining 51% of the business will be retained by existing shareholders, according to the statement.

New staff members join Business Insurance

Business Insurance has added to its editorial staff in Chicago.

Dave Roknic has been named copy editor and Jewell C. Washington has joined as copy editor/video producer.

Most recently, Mr. Roknic spent 15 years as copy editor and production editor for the Chicago Sun-Times.

Prior to joining the Sun-Times, Mr. Roknic worked in editing and reporting roles for several newspapers in the Chicago area and in California.

He holds a bachelor’s degree in journalism from the University of Illinois at Urbana.

Mr. Roknic replaces Ann Reus, who left to join



Mr. Roknic



Ms. Washington

WATT Global Media.

Mr. Roknic can be reached at droknic@businessinsurance.com and at 312-649-5313.

Ms. Washington most recently worked as a freelance reporter for The Bugle Newspapers, a suburban Chicago newspaper chain. Previously, she worked as a news assistant and reporter for WACH-FOX News in Columbia, S.C.

She holds a bachelor’s degree in journalism from the University of South Carolina and master’s in journalism from Roosevelt University in Chicago.

Ms. Washington replaces Anna Gaynor, who left to join Harpo Productions Inc.

Ms. Washington can be reached at jcwashington@businessinsurance.com and at 312-649-5246.

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AP PHOTO

Designer Dawn Simorangkir claims Courtney Love (above) made defamatory comments about her.

Love testing free speech limits

Having recently won a unique lawsuit accusing her of defamation on Twitter, Courtney Love appears likely to once again have to defend in court her messages on another social network, this time concerning her posts on Pinterest.

According to the Hollywood Reporter, a lawsuit filed in September in Los Angeles County Superior Court by designer Dawn Simorangkir — who previously settled another suit she filed against the singer over comments on Twitter — claims Ms. Love made defamatory comments about her on the Pinterest social media site, as well as on Howard Stern's radio show.

The Hollywood Reporter account says that while Ms. Love's attorneys tried to block the suit, Judge Michael Stern ruled against that motion, calling the singer's behavior "egregious" and saying the plaintiff had met the burden of proof necessary for the case to move forward.

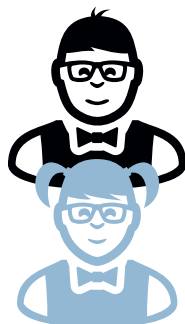
Lawsuit follows leadership claim

Forcing elementary school children to wear uniforms touting their potential to be their generation's political and economic leaders could violate their right to free speech, a federal appeals court has ruled.

A three judge panel of the 9th U.S. Circuit Court of Appeals reinstated Mary and Jon Frudden's 2011 lawsuit against the Washoe County, Nev., School District and administrators of the Roy Gomm Elementary School in Reno, where their children attend third and fifth grade.

The couple alleges the school's required uniform shirts, emblazoned with the phrase "Tomorrow's Leaders," unconstitutionally compel their children to tacitly endorse the view that "leadership should be celebrated" and the school is likely to produce future leaders.

In ordering the lower court to reconsider, the 9th Circuit said the district's justification of the policy must be strictly scrutinized.



BIBLE, KIM KARDASHIAN COVERS HER DERRIÈRE FOR \$21 MILLION



AP PHOTO

Any good insurance broker will advise insuring the most valuable assets. Reality television and social media star Kim Kardashian reportedly has heeded that advice by insuring her famous bottom for a cool \$21 million.

Ms. Kardashian, who recently denied having implants in her celebrated derrière, insured her bottom on the insistence of her fiancé, rapper Kanye West, according to news reports.

Mr. West also is reportedly seeking insurance coverage for his voice.

Ms. Kardashian is not the first celebrity to insure her behind for millions of dollars. Actress and singer Jennifer Lopez also bought insurance to cover her buttocks.

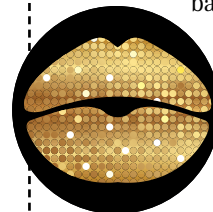
This is merely the latest in a string of singers and actresses that have insured their famous body parts for millions of dollars. Singers Mariah Carey, Rihanna and Tina Turner, and actress Jamie Lee Curtis each insured their legs.

Also, Dolly Parton and reality TV star Holly Madison bought coverage for their breasts.

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Makeup artist paints picture of fraud

Hollywood makeup maven Paula Dorf says she is a victim of identity theft by a New Jersey distributor she alleges is using her name and tarnishing her reputation by selling bargain-basement makeup made in China.



Since the early 1980's, Ms. Dorf had been the makeup artist to stars such as Katie Holmes, Stevie Nicks and Barbara Streisand, before launching her own line of cosmetics in 1995.

After Ms. Dorf's company, Paula Dorf Cosmetics L.L.C., went bankrupt in 2009, Jack Sandbach, who purchased a 51% stake, began selling the Paula Dorf makeup line once available exclusively at high-end department stores. However, he sold the cosmetics at discount retailers, fired Ms. Dorf and moved manufacturing to China.

"People think I'm still producing the product and are angry with me," Ms. Dorf said in news reports.

Mr. Sandbach reportedly maintains that Ms. Dorf has no rights in the matter since she no longer controls the company.



LISSANDRA MELO/SHUTTERSTOCK.COM

Chicago's Pizzeria Uno offers one of the city's famous deep dish pizzas.

Scalia rules for N.Y.-style pizza

Pizza restaurateurs in Chicago have a new risk to add: A Supreme Court Justice declared that the city's famous deep dish pizza pie is not a true pizza.

In a speech at the Union League Club in Chicago, Justice Antonin Scalia waded into the debate over whether Chicago or New York pizza is superior by expressing his preference for the New York style.

While he described Chicago's famous deep dish pie as "very tasty," Justice Scalia said he preferred pizza from his home city of New York, according to the *International Business Times*.

Furthermore, the justice, who has previously publicly expressed his feelings on the great pizza debate, reiterated his previous remarks that "real pizza" — which originated in Naples, Italy — is "thin, chewy and crispy."

Chicago's signature dish, he said, should be renamed a "tomato pie."

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the one that sticks around for the long run," he said.

Bitcoin is a difficult risk for underwriters to "get their hands around," Mr. Parisi said. "It's cutting edge. It's pushing the envelope as to what transactions could be undertaken, and that carries with it a certain amount of risk. You're asking people to do things in a new and distinct way."

"The truth is, no one wants their name to be associated with the first big deal having something go awry, or having the company that insured it prosecuted for criminal charges," Mr. Magrann-Wells said.

"Everyone would like to be the first, but there's some serious risk going on," he said. "Quite honestly, insurers and underwriters are willing to take large risks if they see large premiums," but Bitcoin now would result in little potential premium.

However, some experts view the situation differently.

"There's a fair amount of innovation in the insurance industry, and there are insurance companies who love to be seen as offering the next new thing, especially when it comes to anything that smacks of the Internet," said Richard Betterley, president of Sterling, Mass.-based Betterley Risk Consultants Inc.

"I would not be at all surprised to see products coming to the market very soon surrounding bitcoins," said Howard Mills, New York-based director and chief adviser of the insurance industry group at Deloitte LLP.

"The industry is really working to be very innovative and being cutting-edge and being on top of this," Mr. Mills said. "With growth being such a challenge in this market, the insurance industry is really looking for all sorts of new avenues and areas of growth, so I think this will be a very vibrant space in the industry."

At XL Group P.L.C., "we have actually started to see some submissions" from firms involved in Bitcoin, said Steven Anderson, Dallas-based vice president and senior underwriter.

"The entrepreneurs are going right into tapping this new monetary market," Mr. Anderson said. "With that said, we're very leery of just how (Bitcoin currency) works and the reputation it has up to this point, so we have been reluctant to write any of those risks. But that is not to say that won't change, because it's obviously gaining a little bit more steam."

Oliver Brew, New York-based vice president of technology and privacy at Liberty International Underwriters, part of Liberty Mutual Holding Co. Inc., has received coverage inquiries from companies that accept bitcoins.

"We look at this type of risk on a case-by-case basis, and where it may make sense," he said.

However, Liberty Mutual has not developed a dedicated product for that risk. Bitcoin coverage would be incorporated into the insurer's data privacy policy, Mr. Brew said.

HYBRID POLICY MAY BE BEST INSURANCE OPTION FOR BITCOIN

The best approach to insuring Bitcoin risk may be a hybrid policy that incorporates several elements, including cyber, fiduciary, crime, property, and errors and omissions coverage.

It also is likely to be written in the excess and surplus lines market, experts say.

"Conceptually, it would require bringing together aspects of the specialist insurance industry," said Oliver Brew, New York-based vice president of technology and privacy at Liberty International Underwriters, part of Liberty Mutual Holding Co. Inc.

With a hybrid policy, in which all risks are covered by a single insurer, there is "no finger-pointing between carriers" if there is a claim, said Richard Magrann-Wells, vice president and financial services practice leader at Willis North America Inc. in New York. "You eliminate all the cracks."

Likely buyers include Bitcoin storage, training or mining companies, "so we're talking about very different types of entities with very different types of risks," he said.

However, it is unlikely any Bitcoin policy would cover currency fluctuations, given its


wide swings in value, experts say.

It could be some time before a dedicated Bitcoin policy is introduced, Mr. Brew said.

"Product development is typically driven by the demands of our clients, in terms of innovation, and right now Bitcoin is a topic of great interest," but is not yet "mainstream," he said.

However, "I would not be surprised if carriers would not be putting serious effort into this in the next year or two," said Ty Sagalow, president of consulting firm Innovation Insurance Group L.L.C. in New York.

By Judy Greenwald



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