

FLORIDA LITIGATION

Other suits challenging Florida's workers comp and exclusive remedy law include:

Leticia Morales v. Zenith Insurance Co. In January, 11th U.S. Circuit Court of Appeals ruled workers comp benefits of \$100,000 were exclusive remedy for estate of worker killed on the job; \$9.5 million liability judgment overturned.

Marvin Castellanos v. Next Door Co. et al. Florida high court weighing challenge of cap on claimant attorney fees.

Bradley Westphal v. City of St. Petersburg Florida high court weighing challenge of 104-week limit on temporary total disability benefits.

Source: Court records

WORKERS COMPENSATION

Have state comp reforms gone too far?

Florida law under attack, studies criticize system

BY BILL KENEALY

How the workers comp system balances the rights of injured workers and employers will be a central theme during oral arguments in *The State of Florida vs. Florida Workers' Advocates et al.*

The state is appealing Miami-Dade Circuit Judge Jorge Cueto's decision last August in which he declared the state's workers comp system unconstitutional because changes to it mean it does not provide "an adequate exclusive replacement remedy" in place of common-law torts.

The judge cited changes lawmakers made over the years that he said "decimated" benefits for

See **REMEDY** page 24

LIABILITY & LITIGATION

BACKGROUND CHECKS CREATE DILEMMA FOR EMPLOYERS

Discrimination, negligent hiring among liabilities



BY JUDY GREENWALD

Employers are struggling to deal with vague U.S. Equal Employment Opportunity Commission guidelines on how they should conduct criminal background checks.

A recent federal appeals court decision slammed statistical evidence provided by the EEOC to prove discriminatory employment practices based on criminal background checks, but it fell short of addressing the agency's aggressive stance pursuing perceived violations of Title VII of the Civil Rights Act of 1964.

See **BACKGROUND** page 25

BAN-THE-BOX LEGISLATION

Thirteen states, the District of Columbia, and 96 cities and counties have approved so-called "ban the box" legislation on employer criminal background check policies. The provisions limit but do not entirely bar criminal background checks.

Limits:

- Boxes that ask about a person's criminal history are not allowed on job applications.
- Criminal background checks are limited to later in the application process.

Allowed:

- The laws do not bar employers from running a background check, nor from considering an applicant's criminal history when making an employment decision.
- Employers retain the discretion to hire the most qualified candidate.

Source: National Employment Law Project

HEALTH CARE REFORM

Subsidy ruling may spur action in Congress

Reform law's fate lies in Supreme Court's hands

BY JERRY GEISEL

A U.S. Supreme Court decision striking down premium subsidies for millions of people obtaining health insurance through the federal exchange could result in the first major bipartisan congressional effort to change the health care reform law.

Striking down the subsidies "may be what forces Democrats and Republicans to forge a deal," said James Klein, president of the American Benefits Council in Washington. If the court rules against the federal exchange subsidies, "this could be a seminal event."

In return for Republican agreement on language in the Patient Protection and Affordable Care Act to clarify that federal premium subsidies are available to the lower-income uninsured in every state — regardless if health insurance exchanges are state-run or federally operated — Democrats may be open to changes sought by businesses groups that Republican lawmakers could advance, Mr. Klein said.

Those changes could include eliminating a 40% excise tax on costly health plans mandated by the reform law, easing reporting requirements and boosting the definition of full-time employees

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President and CEO of Accident Fund Holdings discusses handling workers comp claims

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Captive managers and captive domiciles rankings; largest domiciles; top managers

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CAPTIVES REPORT

A growing number of midsize companies are forming captives; RRG growth limited by soft pricing and improved underwriting; Utah and Delaware lead new U.S. captive formations; microcaptives see court victories despite IRS; China poised to lead boom in Asia.

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All materials for the April 27, 2015 issue of *Business Insurance* must be submitted by April 17.

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NEWS

HEALTH CARE REFORM

HIGH COURT SHOWS HAND ON CONTRACEPTION RULES

Religious organizations may opt out of coverage

BY MATT DUNNING

The U.S. Supreme Court has sent its strongest signal yet that it's unlikely to allow the federal government to force religious nonprofit organizations to offer prescription contraceptive coverage to their employees.

The high court last week vacated a February 2014 ruling by the 7th U.S. Circuit Court of Appeals in Chicago that denied the University of Notre Dame's bid to be exempted from having to provide cost-free coverage of birth control prescriptions and related services for its employees, as required under the federal health care reform law.

In its one-paragraph summary disposition March 9, the nation's highest court directed the 7th Circuit to reconsider Notre Dame's request for a preliminary injunction barring enforcement of the contraceptive mandate in light of its June 2014 ruling in *Sylvia Burwell v. Hobby Lobby Stores Inc. et al.* The landmark ruling gave closely held for-profit companies broad protection from the coverage requirement if they object on religious grounds.

"I think the Supreme Court is saying that they think their ruling in *Hobby Lobby* has an awful lot to say about how the courts should



AP PHOTO

The Supreme Court has vacated an appeals court ruling on the University of Notre Dame's objection to providing employees cost-free birth control.

treat these nonprofit organizations," said Mark Rienzi, senior counsel of the nonprofit Becket Fund for Religious Liberty in Washington. "The lower courts can't just keep going ahead as if nothing changed when they issued the *Hobby Lobby* ruling."

Following *Hobby Lobby*, the Department of Health and Human Services last August finalized two regulatory accommodations for nonprofits that object to providing contraceptive coverage through their health plan. The rules require the nonprofit to notify the agency that it is opting out of pro-

viding contraceptive coverage, thereby authorizing its health insurer or third-party administrator to provide the coverage at no cost to the employer.

Attorneys for Notre Dame argue that that the South Bend, Indiana, Roman Catholic college — and other institutions with religious affiliations or deeply held beliefs — should have no direct or indirect role in providing benefits that it finds objectionable on religious grounds, regardless of which entity funds the benefits.

See **CONTRACEPTIVES** page 23

REGULATION

U.S. insurer groups wary of international standards

BY MARK A. HOFMANN

Insurers in the U.S. and elsewhere are concerned that an effort to set an international capital standard for globally active insurers could result in duplicative rules, higher costs and less choice for insurance buyers.

The Basel, Switzerland-based International Association of Insurance Supervisors sought comment on an international capital standard during a consultation that ended Feb. 17. That consultation is the first of three slated before developing its international insurer capital standard next year.

"This public consultation is the first step in a multi-year process to develop and finalize the ICS," the IAIS said in a statement opening the consultation in December. The consultation is intended to develop elements of a proposed standard on issues "such as

valuation, qualifying capital resources, an example of a standard method for determining the ICS capital requirement as well as other potential methods for determining the ICS capital requirement."

U.S. insurance trade groups expressed concerns about the proposal in formal comments to IAIS, concerns that remain as the process enters its next phase.

One concern is the nature of U.S. regulation vs. some other jurisdictions, said J. Stephen Zielezienski, senior vice president and general counsel at the American Insurance Association in Washington.

"In the U.S. because we're in a state-based system where capital requirements are at the legal entity level, it's particularly tricky because we view capital standards from bottom-up perspective vs. a top-down



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Share your risk expertise

Risk Management Insights Panel launched

The *Business Insurance* Risk Management Insights Panel is open for membership.

The panel is an exclusive group of U.S. risk management decision-makers who share their thoughts and opinions on market trends, risk management practices, products and services offered in the market, and other issues affecting the evolving world of risk management.

Business Insurance is launching this unique risk management research group to identify risk management trends and produce detailed research on the sector.

Members of the Risk Management Insights Panel will participate in regular online surveys, none of which will take more than 20 minutes to complete, and the results will be aggregated.

Business Insurance will produce reports on many of the findings, but responses will remain anonymous and no personal information will be shared with third-parties. The surveys will be managed by Signet Research Inc., a leading market research organization.

Panel members will be offered various incentives to participate, including prize drawings and complimentary access to premium content on *BusinessInsurance.com*.

To participate in the research panel, members must be risk decision-makers who decide on or influence the purchase of insurance and risk management services for their own organizations, and their membership must be approved by *Business Insurance*. Insurers, brokers, consultants and other service providers are not eligible.

To apply for membership of the *Business Insurance* Risk Management Insights Panel go to biriskinsight.com.

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NEWS

RISK MANAGEMENT

RISK MANAGERS TO COLLABORATE
WITH LONDON MARKET INSURERS

Closer relations designed to encourage innovation

BY SARAH VEYSEY

Risk managers have pledged to work more closely with underwriters in the London market to develop insurance to cover emerging risks, such as cyber breaches and supply chain disruptions.

London-based Airmic Ltd., which represents U.K. risk managers, said it will work more closely with the International Underwriting Association, which represents insurers underwriting in the London market, to encourage innovation.

Airmic CEO John Hurrell and IUA Chair Helen-Clare Pope, who also is head of insurable risk at London-based supermarket chain Tesco P.L.C., discussed closer cooperation on product development which was discussed at the IUA's board meeting in February.

Risk managers in the United Kingdom are more concerned about risks that are "intangible," such as reputation, and supply chain issues that are "only insurable to a limited extent or not insurable at all," Mr. Hurrell said.

IUA CEO Dave Matcham said the idea of closer collaboration with Airmic and its members was prompted in part by findings of the London Matters report published last fall by the London Market Group, which is made up of under-



KEY INITIATIVES

The London Market Group has outlined its five key initiatives for 2015. They are:

- Work with the government and regulators to ensure the market has the right environment to thrive.
- Develop a marketing strategy to build a better profile "where it matters," including areas that historically omit the London market.
- Increase the talent and diversity of the London market workforce.
- Determine a more detailed operational vision of a modernized market.
- Review resources the market needs to deliver its central initiatives.

writers and brokerages operating in the London market.

That report outlined the need for the London market to "build upon its reputation for innovation and flexibility" to meet the competitive challenges it faces from other marketplaces. The challenges include added costs associated with plac-

ing business in London and the tendency for buyers in emerging economies to purchase insurance in local markets.

"Innovation rarely happens in isolation," Mr. Matcham said.

While many sectors of the

See COLLABORATION page 22

WORKERS COMPENSATION

Health care reform may drive higher comp costs

BY SHEENA HARRISON

BOSTON — Federal health care reform is expected to encourage the development of flat-fee, or capitated, health plans, which could shift medical costs for workplace injuries from group health plans to workers compensation, according to preliminary research from the Workers Compensation Research Institute.

Group health plans with capitation arrangements, such as health maintenance organizations, pay medical providers a set annual fee per plan member, regardless of visits. That differs from fee-per-service plans, which pay providers



for each procedure or visit.

WCRI Executive Director Richard Victor said workers comp plans pay providers in addition to the fees they receive under capitated plans, since the flat-fee plans don't cover work-related injuries. But for injuries that don't qualify for workers comp, provider pay-

ments are limited to the capitated group health plan payment.

Tentative data from WCRI shows capitation encourages providers to seek workers comp payments in addition to capitated health plan fees, Mr. Victor said during WCRI's annual conference March 5-6 in Boston.

Accountable care organizations — networks of doctors and hospitals established under federal health care reform to improve patient care while lowering health care costs — are shifting toward capitation payment, Mr. Victor said. Therefore, he said providers

See WCRI page 22

RISK MANAGEMENT

Captives used
to tackle
emerging risks

Interest increases
retaining cyber cover

BY MATTHEW LERNER

ORLANDO, Fla. — Risk managers are looking to mitigate exposures from emerging risks such as cyber liability and reputational risk through the use of captive structures.

Trade credit and political risks are other exposures for which companies and organizations are looking more often to the company-owned insurers for coverage.

"There definitely is an increase in submissions and interest" to use captives for political risk, David Anderson, senior vice president and director of global business development for trade and political risk at Zurich North America, said during the Captive Insurance Cos. Association's 2015 International Conference.

Political risk insurance still is considered a "nontraditional product" in the captive community, even though more than 40% of those attending the conference session said they already use captives for these types of risks. "I think that demonstrates the higher level of interest," Mr. Anderson said.

"It's become clear that a cyber security breach can lead to substantial liabilities and costs," Joseph Holahan, of counsel at Morris, Manning & Martin L.L.P. in Washington, said during the March 8-10 conference. "So the insurance industry has responded to these risks, and that includes the captives industry."

The National Association of Social Workers' NASW Assurance Services Inc. is a for-profit unit that manages a risk retention group, NASW Risk Retention Group Inc., for the nonprofit agency with 140,000 members nationwide, said Philip Lawson, development solutions leader at NASW Assurance Services in Frederick, Maryland.

The agency created a captive in 2008 and a risk retention group in 2012 to generate underwriting profit and achieve greater transparency and flexibility, said Mr. Lawson.

The agency's move into the cyber space was driven by "requests over about a year and a

See CICA page 25



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RISK MANAGEMENT

COMPANIES UNDER THREAT IN MORE DANGEROUS WORLD

China's expansion, raft of cyber attacks demand vigilance

BY MARK A. HOFMANN

NEW YORK — The world situation is “a little bit depressing,” the former chairman of the U.S. House Intelligence Committee said.

During an opening keynote address at *Business Insurance's* Risk Management Summit in New York earlier this month, former U.S. Rep. Mike Rogers, R-Mich., noted that threats to the United States and U.S. companies include traditional military threats, not-so-traditional military threats and cyber threats.

For example, China is building islands in the South China Sea to expand its territorial waters. Doing so conflicts with claims of neighboring countries, notably Vietnam and Japan, he said.

Mr. Rogers predicted that a skirmish will occur between China and another country, probably Japan, in the next 24 months.

China also is active in outer space. In fact, it has already “militarized” space by successfully destroying a satellite in a 2007 test, and the United States will have to build an infrastructure in space that can survive a military attack, he said.

North Korea presents a threat as well, having successfully fired a pair of ballistic missiles. Adding to the danger is the character of



Former U.S. Rep. Mike Rogers, R-Mich., noted that threats to the United States and U.S. companies include military threats and cyber threats.

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North Korean leader Kim Jong Un. “We’re not sure he’s a rational actor,” Mr. Rogers said.

State actors also present a threat to U.S. interests in the cyber world. “I think we’re in for some rough sledding” regarding cyber security, he said.

State actors and criminals also

pose threats to private companies, he said in citing an attack on a German steelmaker by what was believed to be Russia. Hackers got into the company’s computers and made it impossible to turn off a blast furnace, causing extensive damage.

Attacks such as that on Sony Corp., believed launched by North Korea, underscore that the “game has completely changed,” said Mr. Rogers.

“Companies don’t really understand what’s on their networks,” and apps are the best way to infiltrate a corporate network, he said.

The event’s closing keynote

speaker also addressed cyber security issues.

Joel Wood, senior vice president of the Washington-based Council of Insurance Agents and Brokers, said while two cyber security bills have been introduced in the Senate, they fall short of what the council believes to be necessary to facilitate sharing cyber threat information because they do not provide businesses that do so with adequate protections against liability.

He also addressed last year’s failed attempt to renew the federal government’s terrorism insurance backstop, a failure that he called a “nightmare.” The program lapsed after the Senate failed to move on an extension bill in December. The new Congress made approving legislation to extend the program through 2020 its first major legislative action in January.

Mr. Wood noted that former Sen. Tom Coburn, R-Okla., has been blamed for blocking reauthorization because he objected to a provision that created the National Association of Registered Agents and Brokers. But Mr. Wood said Senate Democrats also objected to a noninsurance-related provision that amended a portion of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

WORKERS COMPENSATION

Legal marijuana blurs workplace drug policies

Employers challenged by conflicting laws

BY MATT DUNNING

NEW YORK — Expansion of legalized marijuana use for medicinal and/or recreational purposes figures to compound an already complicated web of management and workers compensation liability issues for employers.

Since California became the first state to permit the sale and possession of medicinal marijuana in 1996, 22 other states and the District of Columbia have passed similar legislation.

More recently, recreational marijuana use has been legalized in four states — Alaska, Oregon, Washington and Colorado — as well as Washington, D.C.



As a result, employers with operations in states where marijuana prohibitions have been relaxed or vacated are challenged to enforce workplace anti-drug policies, experts said during *Business Insurance's* 2015 Risk Management Summit in New York.

“Marijuana in the workplace is not going to be easy to deal with for any employer,” said Paul Millus, of counsel at Meyer, Suozzi, English & Klein P.C. in New York. “It still has no accepted use as far as the federal government is concerned, and that is not going to change for quite some time. So you’re going to have this continuous conflict between the federal government and the states, and it’s going to give employers fits.”

In particular, the experts said many employers could see more employment practices liability claims, driven primarily by lawsuits brought by employees who were fired, disciplined or denied a job based on their use of marijuana in violation of company policies.

So far, though, Mr. Millus said employers have been mostly successful in defending those lawsuits in state and federal courts, thanks in large part to the federal government’s overriding prohibition on marijuana possession and use.

“Employers should stick to their guns for now,” Mr. Millus said. “Right now, we think employers have an obligation to uphold state laws and federal laws; and under

CYBER RISK

Crisis response teams form critical part of cyber security planning

BY MATTHEW LERNER

NEW YORK — Instituting a detailed plan to stem damage when a data breach occurs is essential to corporate cyber security, as is controlling access to data among employees and outside providers.

Such a plan should be formalized, including designating incident response team members and notifying senior management, and should be practiced before a major event occurs, said Ethan Harrington, director of insurance and risk management at H&R Block Inc. in Kansas City, Missouri.

“Insurance and risk management should take the lead,” Mr. Harrington said during a discussion of cyber risks at the *Business Insurance* Risk Management Summit earlier this month in New York.

The function of the insurance and risk management team is to consolidate and coordinate all communications internally as other departments, such as legal and information technology, become involved, he said.

The response team should include the company’s chief information security officer, said Grace Crickette, Emeryville, California-

based senior vice president and chief risk and compliance officer at the American Automobile Association of Northern California, Nevada, and Utah.

“The CISO needs to be on the response team if it’s a (data) breach,” Ms. Crickette said. Sometimes it’s helpful to have the IT department on hand also to lend investigative and technical support even when the event is not an IT event, she said.

Ms. Crickette said chief information security officers generally are happy to have a risk manager



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See **CYBER** page 22

Grace Crickette

See **MARIJUANA** page 22

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Giant earthquake, tsunami risks identified

■ More than 20 subduction zones could produce giant earthquakes and tsunamis such as the ones that devastated the Tohoku, Japan, area in 2011, according to a tsunami risk study released by Risk Management Solutions Inc. The Newark, California-based catastrophe modeling firm looked at all subduction zones, including dormant ones, capable of producing magnitude-9 earthquakes for the study “Coastlines at Risk of Giant Earthquakes & Their Mega-Tsunamis.” The study found, for example, that a tsunami generated on the dormant Puerto Rico Trench could inundate popular tourist resorts in the Dominican Republic and in the British and U.S. Virgin Islands with waves up to about 30 feet. The same tsunami could also flood coastlines along western and northern Puerto Rico, including areas around San Juan. “Future mega-tsunamis should no longer be considered black swan events, as we now know where these events can occur,” Robert Muir-Wood, chief research officer at RMS, said in a statement. “Many people are completely unaware they live in direct range of a potentially catastrophic tsunami.”

Cyber insurance uptake increases in 2014

■ The number of U.S.-based Marsh L.L.C. clients who purchased stand-alone cyber insurance for the first time increased 32% in 2014 vs. 2013, the brokerage said in its report “Benchmarking Trends: As Cyber Concerns Broaden, Insurance Purchases Rise.” Limits purchased also increased, with companies with revenues exceeding \$1 billion purchasing 22% higher cyber limits, averaging \$34.1 million compared with \$27.8 million in 2013. Recent increased loss activity, however, created challenges for some policyholders, particularly retailers, whose renewal rates rose an average of 5% and as much as 10% for some clients, according to the report. Market capacity varied by industry. Most industries were able to secure cyber coverage with aggregate limits in excess of \$200 million, although the most targeted industries, such as retailers and financial institutions, faced a “challenging market,” according to the report.

Reinsurance leaders chosen for combined XL Catlin

■ Gregory S. Hendrick, currently executive vice president of insurance operations at XL Group P.L.C., will be CEO of XL Catlin’s reinsurance operations, which will be organized into five regions led by five regional CEOs reporting to Mr. Hendrick, sources said. Charles Cooper, currently president and chief underwriting officer at XL Re Ltd., will become CEO of the merged company’s operations in Bermuda. Jonathan Gale, currently group deputy active underwriter of Catlin’s Lloyd’s of London syndicate 2003, will become CEO of reinsurance for the combined company in London. John Welch, currently CEO of XL Reinsurance America Inc., will become CEO of North America reinsurance for XL Catlin. Peter Schmidt, currently group CEO of Catlin Re Switzerland, will become CEO of Asia-Pacific, Latin America, and global credit and surety reinsurance for the combined group. David Watson, currently CEO of XL Re International, will become CEO of Europe, Middle East and Africa and international casualty reinsurance operations. In addition, Matthew

Paskin, currently underwriting director for reinsurance at Catlin, will become chief underwriting officer for reinsurance for the merged company. Chris Dougherty, currently executive vice president of underwriting and ceded reinsurance at XL, will become chief operating officer for reinsurance. XL and Catlin also have appointed Mark van Zanden, currently group underwriting director of outwards reinsurance at Catlin, to the role of CEO of ceded reinsurance; and Paul Shedden, currently group chief actuary at Catlin, to lead the insurance actuarial team of the new company with responsibility for pricing.

NAIC seeks input on cybersecurity issues

■ The National Association of Insurance Commissioners has released a draft of “Principles for Effective Cybersecurity Insurance Regulatory Guidance” for public comment. “This document will help state insurance departments identify uniform standards, promote accountability and provide access to essential information,” the Kansas City, Missouri-based NAIC said in a statement. Insurance regulators have a “significant role and responsibility” regarding protecting consumers from cybersecurity risks, insurers’ efforts to protect sensitive customer health and financial information, and protecting sensitive information housed in insurance departments and at the NAIC, say three of the 18 principles listed in the draft. Others include that effective cybersecurity guidance must be “risk-based and threat-informed” and that sensitive data should be encrypted. The NAIC also issued a second draft document, an annual statement supplement for cybersecurity policies. Comments on both drafts should be submitted to psimpson@naic.org by March 23.

PBGC requires employers to disclose de-risking

■ Employers that reduce the risks associated with offering pension plans now face a new reporting requirement: disclosing basic information about the transactions to the Pension Benefit Guaranty Corp. as part of paying their annual premium to the federal agency. In cases when employers offer to convert plan participants’ monthly annuity to a cash lump sum, employers will have to answer questions about how many plan participants not in pay status, such as retirees, were offered the option and how many took it. The same questions for employees in pay status also will have to be answered. In cases when employers buy a group annuity from an insurer and the insurer then provides the pension benefits to participants, the employer will have to report how many participants were in pay status and how many were not when the annuity was purchased. The disclosure requirement has been approved by the Office of Management and Budget and will affect 2015 premium filings, which are due Oct. 15 for most employers.

Average truck cargo theft worth \$232,924 in 2014

■ The average value of cargo stolen from trucks in 2014 increased 36% to \$232,924, Austin, Texas-based FreightWatch International (USA) Inc. said in its annual report. Ninety percent of all thefts last year occurred when the truck was stationary and unattended, while 87% of all thefts with a known location occurred within

unsecured parking. Food and drink was the most frequently stolen type of cargo, accounting for 19% of the total, followed by electronics at 16%, and home and garden products at 14%, according to the report. “The threat of cargo theft continues to grow in the United States due to increased organization and innovation on the part of cargo thieves,” according to the report.

Insurance merger deals expected to accelerate

■ Insurance merger and acquisition activity should continue to speed up this year, according to a report issued by Deloitte L.L.P. Factors including a 2015 interest rate hike, an uncertain regulatory environment and historic levels of capital could all drive insurance M&A activity, New York-based Deloitte said in “2015 Insurance M&A Outlook: Continuing Acceleration.” High capital reserve levels, intense price competition and stagnant organic growth will continue to depress insurance companies’ return on investment, according to the report. As a result, strategic buyers are expected “to turn to M&A to build out capabilities and markets.” Foreign buyers should become more active in the U.S., and private equity firms will try to both buy and sell assets. Deloitte cautions, however, that buyers will be prudent and selective in their acquisitions.

AIG settles workers comp rate allegations for \$1.25 million

■ American International Group Inc. has agreed to pay a \$1.25 million settlement after the Missouri Department of Insurance accused nine AIG-affiliated insurers of failing to file rate plans for thousands of large-deductible workers compensation policies, the department said. Missouri requires workers comp insurers to file rates with the state insurance department, the department said in a statement. The state alleged that the AIG units failed to provide individual rate filings for more than 2,100 large-deductible comp policies, among other alleged failures to follow procedures and guidelines for those policies. “The filing of workers compensation rates provides rate transparency which is crucial for a competitive insurance marketplace, particularly for Missouri small businesses,” Missouri Insurance Director John M. Huff said in the statement. AIG will pay the settlement to the Missouri State School Fund, his department said. “We’re pleased to have this matter settled,” an AIG spokesman said.

QBE names North American president of field operations

■ Mark Cantin has joined QBE North America as president of field operations, the New York-based unit of QBE Insurance Group Ltd. announced. In the newly created role, effective March 30, Mr. Cantin will head the sales and marketing operations, including producer relationships, distribution strategies, brand management and development of the supporting field organization, QBE North America said in a statement. Based in New York, Mr. Cantin is currently senior vice president and chief marketing officer at USI Insurance Services L.L.C., according to the statement. “In his career, Mark has demonstrated the ability to work collaboratively with brokers and agents on solutions to meet their clients’ unique needs,” Dave Duclos, CEO of QBE North America, said in the statement.

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Heightened political risks in oil-producing nations

■ Falling oil prices are increasing political risks in some emerging market countries, according to Aon P.L.C.'s 2015 political risk map, with the biggest one being increasing instability in already fragile oil-producing economies such as Iran, Iraq, Libya, Russia and Venezuela. Twelve countries saw their level of political risk increase and were downgraded: Angola, Central African Republic, Burkina Faso, Ghana, Guinea, Haiti, Libya, Mozambique, Oman, Pakistan, Sierra Leone and Uganda. Meanwhile, seven countries were upgraded because of an improvement in their political risk profile: Dominican Republic, Ecuador, Georgia, Laos, Panama, Swaziland and Zimbabwe. Two countries covered by the political risk map currently are at risk of a sovereign crisis: Ukraine, because of the current restructuring; and Venezuela, which has been hit by falling oil prices, among other things.

Winter weather took \$1 billion toll in February

■ Claims resulting from typhoon and flood-related damage in Asia, along with a harsh U.S. winter, helped create global insured losses of over \$1 billion in February, according to Impact Forecasting, the catastrophe modeling team of Aon Benfield Group Ltd. The Indonesian islands of Java, Bali, and West Nusa Tenggara were affected by floods triggered by heavy rainfall from Jan. 31 through Feb. 2. On Feb. 8, torrential rainfall inundated Indonesia's capital, Jakarta. The flooding caused by the rainfall killed six people and caused total economic damages estimated at \$235 million. Additionally, five separate periods of heavy snow, frigid cold, freezing rain and ice pummeled the U.S. Northeast, Mid-Atlantic, Midwest, Plains and Southeast during the month, the report notes.

Prudential CEO joining Credit Suisse

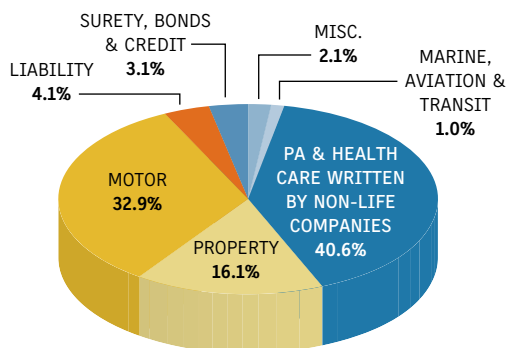
■ Prudential P.L.C. said group CEO Tidjane Thiam will step down from his post this year and join Swiss bank Credit Suisse A.G. as CEO. Prudential said that a successor to Mr. Thiam already has been identified and that it expects to announce the appointment of a new CEO once regulatory approval has been granted. "Although the board will be sorry to see him go, we understand his

PROFILE: SLOVENIA



A prolonged economic downturn has hit the Slovenian insurance market over the past several years. Since 2010, nonhealth premiums have fallen by a cumulative 8.4%. Premium rates also have fallen, but mainly in the personal lines market. Commercial insurers have been less affected, and even though well-performing accounts saw premium reductions of 5% to 10% last year, those decreases were offset by increases for less profitable accounts. The fragility of the Slovenian banking system has led to investment write-downs by insurers.

MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

COMPULSORY INSURANCE

Several classes of insurance are compulsory, including:

- Auto third-party liability
- Marine third-party liability
- Mountain guide liability
- Clinical trials liability
- Third-party liability for spread of fire
- Tandem parachute jump liability

NONADMITTED

Unauthorized insurers are not allowed to carry on insurance in Slovenia. Although there is nothing in the law to indicate that insurance must be purchased locally, most observers believe that nonadmitted insurance coverage is not allowed. Insurers from the European Economic Area may provide insurance in Slovenia under freedom of services legislation.

INTERMEDIARIES

Insurance agents and brokers must be authorized by Slovenian authorities or authorities in other European Economic Area countries. Slovenian insurers are not allowed to accept business from unauthorized intermediaries.

MARKET PRACTICE

Some non-E.U. multinationals include Slovenian exposures in global programs, but the majority of multinational risks are written on a fronting basis.

desire to take on a new challenge with another global leader in a different part of the financial services sector, headquartered in Switzerland, and we wish him every success in his new role," Prudential Chairman Paul Manduca said in a statement.

U.K. terrorism pool buys reinsurance

■ Pool Reinsurance Co. Ltd., the U.K. government-backed terrorism reinsurance backstop, has bought commercial reinsurance coverage for the first time since it was established two decades ago. Munich Reinsurance Co. leads the three-year program, which provides £1.8 billion (\$2.78 billion) in coverage for London-based Pool Re. Pool Re said in a statement that the single-layer program mirrors the coverage provided to Pool

Re members and includes coverage for chemical, biological, radioactive and nuclear risks. Guy Carpenter & Co. L.L.C. placed the coverage. The purchase of retrocessional reinsurance coverage from the commercial market is one of a series of modernization measures Pool Re agreed to in the fall. "The purchase of external reinsurance cover is one of our key initiatives to reinforce the Pool Re scheme which will protect and increase the resilience of the members' fund, diminishing the U.K. government's exposure and distancing the U.K. taxpayers from any potential liability," Julian Enoizi, CEO of Pool Re, said in a statement Monday. Pool Re, which was set up in 1993 by the U.K. insurance industry and the government in the wake of an Irish Republican Army terrorist bombing campaign, is funded by levies on the majority of insurers and Lloyd's of London syndicates that

underwrite property insurance in the United Kingdom.


London broker snags competitor's energy team

■ London-based insurance and reinsurance brokerage THB Group Ltd. has hired a team of energy brokers from London-based Howden Insurance Brokers Ltd. THB said it has appointed Chris Pinnington, formerly of Howden, to head the team. THB said six other former Howden energy brokers would join the team immediately. "With strong energy production streams from the U.S. market and excellent opportunities from our own network and international clients, the energy sector is a significant area of new business potential for THB," Frank Murphy, CEO of THB, said in a statement.

Bell Canada transfers pension liabilities

■ Bell Canada Pension Plan in Verdun, Quebec, said it transferred CA\$5 billion (\$3.97 billion) in pension liabilities for current retirees to Sun Life Financial under a longevity insurance agreement. Sun Life will be responsible for paying benefits to Bell Canada's current retirees; BCE Inc., sponsor of the Bell Canada plan, will pay monthly premiums to Sun Life and will retain responsibility for administering the plan, BCE and Sun Life said in a joint statement. BCE has CA\$18.90 billion (\$15.11 billion) in pension assets, including the Bell Canada plan. Sun Life will reinsure a portion of the longevity risk to RGA Life Reinsurance Co. of Canada and Scor Global Life.

Pensions & Investments



SLOVENIA

AREA
7,819 square miles

POPULATION
2 million

GLOBAL P/C MARKET RANKING
58

2015 GDP CHANGE (PROJECTED)
1%

MARKET DEVELOPMENTS

UPDATED FEBRUARY 2015

- In January, the insurance premium tax rate was increased to 8.5% from 6.5%. In addition, tax authorities last year extended premium taxes to classes of coverage that previously were exempt, including export cargo and travel insurance.
- The Insurance Supervision Agency has drafted a new Insurance Act with the main purpose of implementing the European Union's Solvency II directive. The new act is expected to be passed in the first quarter of 2015 and implemented starting Jan. 1, 2016.
- To better prepare for Solvency II, the ISA plans to break down the barriers between its five functional departments and to restructure into two "streams" dealing with policy issues and supervision, respectively.
- From September 2014, minimum professional liability rates for intermediaries were increased to \$1.49 million per claim and \$2.5 million in the aggregate.
- In October 2013, the Corporate Income Tax Act was amended to cancel planned reductions in the corporate tax rate. The tax rate remains at 17%.

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

CALM WORKERS COMP MARKET FACES FUTURE VOLATILITY

Q How do you view the state of the workers comp market right now, and do you expect the recent market improvements to stick around for awhile?

A I think that the overall state of the work comp market has been good, but I think there are some signs of some concerns in increased volatility on the horizon. I believe both NCCI and A.M. Best (Co. Inc.) are projecting that the combined ratio for work comp for 2014 was going to be either at or below 100%; and if that ends up being true, that would be probably the lowest combined ratio that the industry has had since around 2006. So all of that's really good.

We do think that we're going to start to see the combined ratio creep back up in 2015 and beyond as the market begins to soften again. But we also believe that while the combined ratios are probably going to rise, that many of the strategies that help make the industry profitable this last year are going to stick around. We think the industry has a significant increased use of data analytics.

Q&A

There's been an increased focus on improving medical outcomes. There's been a better understanding of the effects of opioids on injured workers. I think all of those things are favorable for the industry, and they're going to stick around, but we do believe that volatility is going to increase.

Q What are some of the emerging issues that you believe will have an impact on the comp sector the next few years?

A I personally think that the biggest impact on the comp sec-

tor right now is interest rates and the effect that interest rates have on investment results and underwriting targets for carriers. If you really go back historically, there's a lot of work comp carriers that were relatively happy to have some large losses on the underwriting side because their model was that they could make up for those large losses with large investment profits, and I just don't think that that model is going to work anymore. So work comp carriers really need to, I think, fundamentally change what they think their underwriting targets are in order to produce reasonable returns.

Q What role has workplace safety played in the workers comp space right now and has there been a shift in how risk management and safety departments are working together for the employers that you insure?

A Workplace safety used to be a lot about complying with (U.S. Occupational Safety and Health Administration) standards. Now, I



ELIZABETH HAAR

ACCIDENT FUND HOLDINGS INC.

Elizabeth Haar is president and CEO of Lansing, Michigan-based workers compensation insurer Accident Fund Holdings Inc. and chairwoman of the National Council on Compensation Insurance Inc., a Boca Raton, Florida-based workers comp ratemaking agency. She recently spoke with *Business Insurance* Associate Editor Sheena Harrison about projections for the workers comp sector

and developments in comp claims handling. Edited excerpts follow.

think there is less of a focus on compliance and it's more of a collaboration between insurance carriers and employers to improve overall safety. Also, I think employers are starting to take the approach that improving the safety of their business can improve their business overall.

Q What advances have you seen recently in workers comp, claims management and medical management?

A There has been an increased focus on the outcomes of medical claims. I think the shift has been to not just look at transaction costs, but look at the overall quality of what is being done to improve the medical outcome. I also think there's a huge increase in the use of data and data analytics. I know that we have been using predictive models now in the claim space for a number of years, and for us that has been a very big benefit.

COMINGS & GOINGS

UP CLOSE: CORY ISAACSON

NEWARK, CALIFORNIA-BASED CHIEF TECHNOLOGY OFFICER
Risk Management Solutions Inc.

PREVIOUS POSITION: Broomfield, Colorado-based CEO at CodeFutures Corp.

GOALS FOR NEW POSITION: To transform the way that risk is analyzed and accessed by the insurance industry.

CHALLENGES FACING INDUSTRY: The industry is changing a lot. The amount of data we have access to and the expansion of insurance into different areas continues to be a challenge.

INDUSTRY OUTLOOK: It's very exciting, the part we are involved in. People are going to be relying on information and data more.

FIRST INDUSTRY JOB: I have built software for insurance before, but this is really my first job in the industry itself.

ADVICE: I think you need to stay on top of the trends and learn a lot about technology to do the job better. It's all changing quickly.

OUTSIDE THE INDUSTRY, A DREAM JOB: This is my dream job, being a (chief technology officer) with a



challenge like this. I feel very fortunate.

HOBBIES: I like to be outdoors a lot. I run and ride bikes and hike. I also play music. I've played music all my life.

THING MOST PEOPLE DON'T KNOW ABOUT ME: I have an interest in farming and have started a small lavender farm in Colorado.

WHEN I RETIRE: Transition into consulting. I doubt I will ever stop really

working.

FAVORITE MEAL: I like Italian food in New York.

ON BOOKS: I like a lot of technology and business books.

BEST CITY: New York is my favorite place to visit.

ON A SATURDAY AFTERNOON: I am trying to be outside exercising or catching up on work for the week.

THOUGHTS ON SMARTPHONES: They have totally changed my life, and they have changed many lives. It's hard to imagine what we did before them.

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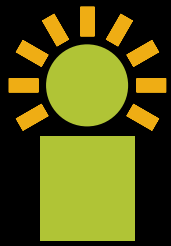
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EDITORIAL

CAPTIVES GAINING SECOND WIND

More than 50 years after captive pioneer Fred Reiss formed the first captive management firm in Bermuda, the policyholder-owned facilities are going strong and set to keep growing, which is good news for policyholders of all sizes. Captives have long been used by large companies to retain the working layers of risk, cover tough-to-place risks, improve risk management controls and gain direct access to the reinsurance market, among other things. Now, as we show in our special report starting on page 15, more midsize and smaller companies are seeing the advantages.

With the total number of captives worldwide increasing 7.1% in 2014 to 6,876, while rates for commercial coverage in many cases are flat or falling, it's clear that the vehicles are an ever-increasingly popular and effective alternative risk transfer mechanism.

And captives have become even more attractive with recent court victories and regulatory changes.

Legal victories for captive owners in the *Rent-a-Center* and *Securitas* cases last year will mean that captive owners have more flexibility when structuring their captives to maximize tax efficiencies. The rulings broadened the definition of "risk distribution" to include a large number of risks rather than a large number of policyholders, as the IRS had contended.

The victories will mean that more captive owners should be able to take tax deductions for the premiums they pay to their captives. While captives provide much more than just tax efficiencies, those tax breaks are an attraction for policyholders.

On the regulatory front, the Department of Labor recently gave another boost to captives by reinstating its fast-track ExPro procedure for approving the funding of employee benefits risks through a captive. ExPro approval means that final approval covering benefits can be granted in three months or less.

But the outlook is not all bright. The IRS is clearly suspicious of some captive structures. Last month, the agency added 831(b) captives to its Dirty Dozen list of "tax scams." The sometimes controversial microcaptives have been a source of growth for several U.S. domiciles, and it is in the domiciles' own interests that they do all they can to make sure 831(b)s, which are legitimate risk management tools for smaller companies, are not used as tax avoidance schemes.

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SCHILLERSTROM



COMMENTARY

ONCE SIMPLE LAWS TURN COMPLEX OVER TIME

Just how far can a law be stretched before it breaks? The question arises in connection with at least two apparently very different laws: Title VII of the Civil Rights Act of 1964, which bans discrimination on the basis of race, color, religion sex and national origin; and the Federal Wiretap Act, which is intended to protect privacy in communications.

Title VII may seem fairly straightforward. But recently, the U.S. Equal Employment Opportunity Commission has been aggressively pursuing litigation against employers on the basis that conducting criminal background checks can violate Title VII because it has a disparate impact on minorities.

The laudable impulse behind these EEOC actions is that blacks and Hispanics are arrested at a rate that is two to three times their proportion of the general population.

But as Richard B. Cohen, a partner with law firm FisherBroyles L.L.P. in New York correctly points out, there is no explicit mention of criminal background checks in the law.

"The problem is the EEOC has sort of gone one level beyond the protected categories" in stating criminal background checks have a disparate impact on minorities, Mr. Cohen said.

Barry A. Hartstein, shareholder with law firm Litaler Mendelson P.C. in Chicago has remarked, the EEOC can be commended for "attempting to move the dial" on this societal issue, and striving to establish a public policy that provides ex-offenders with the opportunity to put their past behind them and play a meaningful role in society. "It's merely a question of how and where you draw the line," he said.



JUDY GREENWALD
SENIOR EDITOR

But the fact remains the law does not directly address the issue of criminal background checks.

The Federal Wiretap Act was originally passed as Title III of the Omnibus Crime Control and Safe Streets Act of 1968. As pointed out in a blog by David Deitch, a partner in law firm Ifrah Law P.L.L.C. in Washington, these provisions were included, at least in

part, in response to concerns about investigative techniques used by the FBI and other law enforcement agencies that threatened individuals' privacy rights.

But the FBI was not involved in the recently filed litigation in *Jessica N. Bennett v. Lenovo (United States) Inc. and Superfish Inc.*, in which the plaintiff seeks to represent a class of purchasers of the Chinese-made Lenovo laptop computers in a lawsuit that claims its preloaded software, which it describes as malicious spyware, directs users to preferred advertisements.

Yet the Federal Wiretap Act's violation was one of the claims included in the complaint. Clearly, when Congress originally passed this law almost 50 years ago, it had never heard of the Internet, let alone had computer software in mind.

Of course, no one knows whether this claim will fly. The only thing we can be sure of, in fact, is that defense attorneys will be kept busy — and that companies' legal costs will continue to rise.

Constructing a successful business continuity plan

Being prepared is the cornerstone of having a business continuity plan regardless of the size of a company. Ultimately, getting back to taking care of customers as seamlessly as possible is the goal, says disaster preparedness expert Alan Berman, president and CEO of DRI International.

Recently, the world has been bombarded by events that strain the resources necessary to maintain operational capabilities. Natural disasters, cyber attacks, epidemics, and political and military unrest have all captured the world's attention.

But while preparedness demands we consider how to deal with these large-scale events, we also need to focus on events that might not make the headlines: A cable-seeking backhoe disrupts telephone service to a major airline's reservation system; a ruptured water pipe renders a \$100 million data center inoperable; a defective ingredient turns a cosmetic into a skin irritant. And the list goes on.

In approaching the creation and implementation of business continuity plans in light of these challenges there are five critical elements to consider:

- Consider the effects, not the causes:

A single disruptive event can be followed by multiple effects. A tsunami, record earthquake and nuclear power plant meltdown occurring over a three-day period would be impossible to anticipate and create in a training scenario. The same can be said when a truck overturns, spilling hazardous waste and destroying an electric transformer.

Business continuity professionals have been trained to deal with a multitude of possibilities, creating plans that focus on the consequences of these incidents. This allows organizations to better prepare for maintaining their viability without trying to predict what the next event will be.

- Effects can be classified into four categories:

Loss of facility — Offices, factories, warehouses and other physical structures can become inaccessible or unusable due to floods, fires, chemical contamination, loss of power, condemnation by inspectors and more.

Disruption in operations — Vital resources needed to carry out operations can be interrupted due to labor strikes, supply chain breakdown, mass transit disruption, pandemics and other events.

Technology disruption — Incidents that deny organizations the use of their technology can be caused by hardware malfunction, cyber attack, network failure and software issues, among other things.

Organizational issues — Issues that prevent organizations from fulfilling their obligations such as legal, regulatory, intellectual property, bankruptcy and financial malfeasance, among others.

- Data backup:

While an organization can always move to a new

office, replace equipment and reconnect communications, the loss of information may be irreversible.

With the advent of cloud technology and automated backups, the solutions to protecting information are available to everyone. Small businesses can keep all their information in an easily accessible and inexpensive environment. As the data resides remotely in the cloud and is available on a local drive simultaneously, the concern for backups is removed. There are other advantages to this method of storage, such as data sharing, availability of multiple devices and easier collaboration.

- Relocation site requirements:

Moving an operation to offset the loss or inaccessibility of a site affected by a disruption requires insightful planning. Not only must one be concerned with providing adequate space, equipment and security, but logistics, policy and even creature comforts may become obstacles. Consider these actual cases:

Logistics — A major financial institution has a recovery site with redundant power and communications feed and 24-hour surveillance and security. When 9/11 rendered their main site in lower Manhattan unusable, the company immediately activated its recovery site and notified its personnel to report to work there. It sounds relatively simple. But what they didn't anticipate was that 95% of their employees relied on mass transit to get to work, and mass transit service was disrupted. It took a week for alternative transportation to be put in place, and the new arrangements caused employee commuting time to double and triple, resulting in poor morale and quality of work.

When considering a recovery site, organizations should consider how it will change travel arrangements for employees.

Policy — A major consumer products corporation had located its customer service and accounts receivable departments in a midsize Southern city. Its recovery site was located 60 miles away. After an ice storm closed down the main facility, the staff was ordered to report to the recovery site. However, the company's human resources policy stated that if the main facility was closed, employees did not have to report to work and would be paid for their time as though they had reported to work as usual. When only 20% of the staff reported to the recovery site, the company struggled to operate with this reduced staff and its team of executives.

Organizations must consider company policy and contractual stipulations, including union agreements, when determining recovery strate-

gies and ensure that there is alignment.

Creature comforts — A securities trading organization had located its recovery site some distance from its facility in Manhattan. After their office building was destroyed in 9/11, they all assembled at the recovery site ready for business as usual. But the operation almost ground to a halt when their morning routine was rudely interrupted: no New York City-style bagels in the building's cafeteria! The problem was solved several hours later when, after three attempts, a suitable bagel supplier was finally found.

Consider taking into account special requirements when procuring a recovery site.

- Marketing advantage:

Whether an organization is a major end-product producer or a small vendor in the supply chain, customers are concerned with their ability to meet demand in a timely manner. New regulations, especially those that apply to banking and health care, not only require companies to perform due diligence on their vendors, but are explicit in requiring that suppliers have robust business continuity programs in place. In fact, some regulations require suppliers to participate in testing plans to ensure that end-to-end recovery can be achieved. Requests for proposals are now asking explicitly for the ability to review supplier plans.

Aside from legal compliance, organizations with robust business continuity plans have a better chance of avoiding disruption to their customers, which can strengthen customer relationships and loyalty.

- Optimize insurance coverage:

A key component that will help organizations maintain their viability in the face of disruptive events is the ability to transfer the risk from the organization to another party through insurance.

Business continuity planning can help identify the financial consequences of an outage and the cost of resources necessary to get an organization back and running. This information is vital to understanding two specific types of insurance:

Business interruption insurance provides protection for the loss of profits and continuing fixed expenses resulting from a break in commercial activities due to the occurrence of an insured peril.

Extra expense insurance pays for the extra expense of maintaining operations after an accident to an insured item until normal operations can be restored.

This kind of safety net is reassuring in planning for the future of an organization.

Creating a holistic business continuity plan requires a comprehensive understanding of potential organizational risks and, equally important, how to help organizations prepare for and recover from business threats of every kind. Make sure your business continuity professionals have achieved the highest possible levels of certification from a credible organization.



Alan Berman is president and CEO of DRI International, a nonprofit organization that helps companies prepare for and recover from disasters. He has over 25 years of experience in risk management, business continuity and disaster recovery. He can be reached at aberman@drii.org and 866-542-3744.



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SPECIAL REPORT

Captives report

Soft prices, improved underwriting limit growth of risk retention groups

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Utah, Delaware lead the U.S. in new captive formations

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Despite IRS scrutiny, microcaptives gain court victories

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China poised to lead expected boom in Asia

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Business Insurance ranking of captive domiciles, managers

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COUNTING CAPTIVES

Ranked by number of captive licenses at year-end 2014

Rank	Domicile	2014	2013
1	Bermuda	800	831
2	Cayman Islands	759	759
3	Vermont	587	588
4	Utah	422	342 ¹
5	Anguilla	379	295
6	Delaware	333	298
7	Guernsey	321	318 ¹
8	Nevis	281	276
9	Barbados	271	264
10	Luxembourg	224	226 ¹
11	Hawaii	194	184
12	District of Columbia	191	170 ¹
13	Montana	177	150
14	Nevada	160	148
15	South Carolina	158	145
16	Puerto Rico	152	107 ¹
17	British Virgin Islands	146	147
18	Isle of Man	122	123 ¹
18	Kentucky	122	128
20	Arizona	114	106
21	Dublin	85	81 ¹
22	Tennessee	72	32
22	Turks & Caicos Islands	72	88
24	Singapore	64	62
25	New York	63	65 ¹
26	North Carolina	52	4
27	Missouri	47	35
27	Oklahoma	47	10 ¹
27	Sweden	47	47 ¹
30	Alabama	40	27
31	Labuan	38	40
32	Switzerland	33	34
33	British Columbia	21	32
34	Bahamas	18	16 ¹
35	New Jersey	17	15
36	Gibraltar	15	16
36	Michigan	15	6 ¹
38	Micronesia	14	12
38	South Dakota	14	9
40	Germany	13	13
40	Liechtenstein	13	13 ¹
40	St. Lucia	13	13
43	Denmark	12	13
43	Netherlands Antilles	12	12
43	Norway	12	11
43	Texas	12	0
47	Malta	11	10 ¹
48	New Zealand	10	10
48	Panama	10	12
50	Georgia	9	13
51	U.S. Virgin Islands	8	8
52	Australia	7	7
52	Connecticut	7	4
52	Vanuatu	7	10
55	Dubai	4	2
55	Nebraska	4	2
57	Colorado	3	4
57	Guam	3	3
57	Hong Kong	3	2
57	Jersey	3	3 ¹
57	Maine	3	3
62	Arkansas	2	2
62	Bahrain	2	1
62	London	2	2 ²
65	Illinois	1	1
65	Kansas	1	1
65	Qatar	1	0
65	West Virginia	1	1
		6,876	4,873

¹ Restated. ² Estimated

Source: BI survey



Smaller companies try captives

Midsize firms opt to retain some difficult, expensive risks

BY JUDY GREENWALD

A growing number of midsize companies are forming captives, providing vigorous growth for the captive market.

While the vast majority of Fortune 500 companies already have captives, that percentage plummets among smaller companies, experts say.

However, a growing number of smaller firms are forming captive insurers, including 831(b) captives.

The 831(b) captives, also known as microcaptives, earn no more than \$1.2 million in annual written premiums and thus are eligible for the Internal Revenue Code's 831(b) election not to be taxed on those premiums. Though, efforts are underway in Congress to raise the

premiums limit.

The total number of captives worldwide increased 7.1% in 2014 to 6,876, according to *Business Insurance's* annual survey. (See our key captive rankings based on the survey on page 19.)

■ While Bermuda continues to be the leading domicile, its captive total decreased 3.7% to 800 in 2014.

■ Among U.S. domiciles, Vermont remains No. 1 with 587, down one from 2013.

■ Among European captive domiciles, Guernsey held onto its lead with 321 captives, an increase of three entities over 2013.

"The biggest trend is the industry is becoming more defined by how captives are applicable to the smaller and middle-market customers, rather than the historic focus on Fortune 500"

multinational companies, said David J. McManus, Bermuda-based president of Artex Risk Solutions Inc., a unit of Arthur J. Gallagher & Co.

"I think that's where all the excitement is, and certainly the innovation and growth," he said.

Middle-market companies with revenues of \$30 million to less than \$1 billion account for only 5% of all captives, Mr. McManus said.

There is "tremendous opportunity for growth," he said.

Smaller and midsize captives face exposures for which it's "not as easy to get appropriate coverage in the market," whether it is an emerging risk such as cyber, or political risk or surety, where pricing is either not competitive or the right type

See CAPTIVES next page

"The biggest trend is the industry is becoming more defined by how captives are applicable to the smaller and middle-market customers, rather than the historic focus on Fortune 500 multinational companies."

David J. McManus,
Artex Risk Solutions Inc.

CAPTIVES

Continued from previous page

of coverage is not available, said Chris Lay, London-based president of global captive solutions at Marsh L.L.C.

In the United States, Utah, Delaware, North Carolina and Tennessee were the domiciles with the strongest growth in number of new captives in 2014 among the larger captive domiciles.

"It's kind of a banner year for a lot of the newer domiciles," said Brady Young, president and CEO of captive manager Strategic Risk Solutions Inc. in Concord, Massachusetts. "That's really a reflection of growth in middle-market companies forming captives to address enterprise risks and the various uninsurable risks that they have."

Other risks being funded through captives include pension longevity and catastrophes.

David Snowball, director of the captive insurance division of the Utah Department of Insurance, said most captives domiciled in the state are the smaller 831(b) plans, although it has larger captives as well. Utah is attractive, he said, in part because of its friendly business environment and the department's responsiveness to businesses' needs.

C.B. Batts, chief financial officer of Kalamazoo, Michigan-based waste management firm AZO Management Services Inc., moved two captives that are not 831(b) plans to Utah from the Cayman Islands late last year. One captive focuses on risks including general liability, fleet, aviation and umbrella risks, while the second specializes in environmental risks.

"We were looking for something that was very competitive in regulation and in fees" similar to the Cayman Islands, which he said the company left in part because of the "encumbrances of the U.S. government" concerning offshore domiciles, Mr. Batts said.

While Vermont remains the largest U.S. captive domicile and is the third-largest in the world, "We've been at a plateau for a few years, in part because we're not an attractive domicile for the micro-captives," said David F. Provost, deputy commissioner of the captive insurance division in the Ver-

"It's kind of a banner year for a lot of the newer domiciles. That's really a reflection of growth in middle-market companies forming captives to address enterprise risks and the various uninsurable risks that they have."

Brady Young,
Strategic Risk Solutions Inc.

mont Department of Financial Regulation.

While Mr. Provost said 17 new companies were licensed last year, Vermont's total captive count was virtually flat.

"Once you've been around for 30 years," mergers and acquisitions and companies that shut their captives down are limiting captive growth in Vermont, which Mr. Provost said is "part of the business cycle."

Meanwhile, the IRS has become "much more strict about the use of

captives," particularly small captives, in "any tax planning way," said Phillip England, chair of Anderson Kill P.C.'s captive insurance group in New York.

Beyond microcaptives, Marsh's Mr. Lay said companies generally continue to use captives as part of their risk management and risk financing strategy "where they are seeing an opportunity to create value."

Thomas P. Stokes, New York-based practice leader with JLT Insurance Management US, a unit of Jardine Lloyd Thompson Group P.L.C., said that with the rulings in the IRS' *Securitas* and *Rent-A-Captive* cases, which overturned IRS rules on the tax treatment of captive insurance, "there's a little more confidence" about establishing captives (see story page 18). "We're seeing a lot more activity in that area where (companies are) saying, 'Let's take a look at that.'"

But even without taking the tax rulings into account, "I think you'll see a lot more uses of captives," Mr. Stokes said.

"More and more premiums are being diverted from the commercial markets" into captives, he said of companies' efforts to reduce their costs and centralize their risk management functions.

Companies today want to set up captives close to their corporate headquarters, said Mark Morris, Kansas City, Missouri-based senior vice president in Lockton Cos. L.L.C.'s risk finance group, who has conducted captive feasibility studies for company clients interested in Kansas, Ohio, Oklahoma, Missouri and Texas.

Directors and officers can more readily do business with their captives when they are nearby and potentially pay lower taxes, he said.

UNITED KINGDOM AHEAD OF UNITED STATES
IN TRANSFERRING PENSION RISKS

New risks being taken on by captives include pension longevity as well as catastrophes.

In February, Bermuda-based Artex Risk Solutions Inc. announced a new facility that allows pension funds to transfer their longevity risks directly to the reinsurance market. The facility enables pension funds to transfer away some of the risk involved with people living longer than expected, said president David McManus.

The Guernsey-domiciled incorporated cell company, Iccaria Insurance ICC Ltd., was developed in conjunction with London-based PricewaterhouseCoopers L.L.P., which helped set it up.

In July 2014, London-based BT P.L.C., which operates British Telecom, transferred about \$27.4 billion, or 25%, of its BT Pension Schemes' liabilities to a Guernsey captive and reinsured the risk with Newark, New Jersey-based Prudential Insurance Co. of America.

While the trend is not as strong in the United States as the United Kingdom, "I suspect it'll become more of a global trend," said Chris Lay, London-based president of global captive solutions at Marsh L.L.C.

Thomas P. Stokes, New York-based practice leader with JLT Insurance Management US, a unit of the Jardine Lloyd Thompson Group P.L.C., said captives also are moving "more and more into the catastrophic and less predictable type of risks," such as funding real estate companies' high deductibles for earthquake premiums "so that it protects the balance sheet of the companies."

While in recent years "there was a lot of discussion about employee benefits, that really hasn't taken off as much as people thought it might," Mr. Stokes said.

By Judy Greenwald

Standard market limits
risk retention groups

But some groups see growth in members

BY JERRY GEISEL

Risk retention groups continue to provide an effective way for employers to band together to form group captives even though their ranks have thinned in recent years.

Launched in 1981 under the Product Liability Risk Retention Act and expanded in 1986 under the Liability Risk Retention Act, RRGs can underwrite members' product liability and casualty coverage with the exception of workers compensation.

The number of RRGs, which peaked at 262 in 2008, has thinned to 237 as of February, according to the Risk Retention Reporter, a Pasadena, California-based newsletter that tracks the industry.

That decline is due largely to continued softness in many lines of coverage offered in the traditional insurance market, observers say.

"Some RRGs are doing very well. On the other hand, some are struggling to maintain membership" because of the soft insurance marketplace, said Jon Harkavy, vice president and general counsel at RRG manager Risk Services L.L.C. in Washington.

"Commercial insurers are managing underwriting cycles better. That creates more competition," said Michael Bemi, president and CEO of The National Catholic Risk Retention Group Inc., a Vermont-domiciled RRG.

But despite the competition, some RRGs have grown by leaps and bounds.

The RRGs that remain "are stronger and are doing well," said Robert Myers, a partner with Morris, Manning & Martin

L.L.P. in Washington and general counsel for the National Risk Retention Association.

For example, the Vermont-domiciled Alliance of Nonprofits for Insurance, Risk Retention Group in Santa Cruz, California, had 81 member-owners and premiums of just over \$200,000 in its first year of operations in 2001, said Pamela Davis, the RRG's president and CEO.

Today, it has well over 5,000 member-owners and an annual premium flow of more than \$36 million, she said.

That tremendous growth has been the result of several factors, Ms. Davis said, such as providing — at no cost — legal advice from attorneys the RRG has retained on proper employment practices as well as enhancement of insurance, including coverage for cyber liability.

"With an RRG, tailor-made coverage can be provided to policyholders and owners," said Dan Labrie, president and CEO in the Cheshire, Connecticut, office of Housing Authority Risk Retention Group Inc., a Vermont-based RRG whose premium volume has increased five-fold to \$31 million since it was licensed in 1987, while the number of housing authorities in the RRG now tops 1,000 compared with just 26 in the first year.

"Frictional costs are much less for an RRG because you don't have the cost of filing and maintaining rates and forms in every state. In addition, RRGs don't see the same level of fees, assessments, and other expenses that traditional carriers face. You can respond quickly to the coverage needs of the members and issue new policies," Mr. Labrie said.

UTAH, DELAWARE LEAD U.S. IN NEW FORMATIONS

Location, taxes among considerations for parents of captives

BY JERRY GEISEL

VERMONT STILL NO. 1 IN U.S., BUT COMPETITION INCREASES

While some U.S. domiciles are adding captives at a faster clip than Vermont, the Green Mountain State remains No. 1 in several key areas.

With 587 captives in 2014, Vermont is the largest U.S. domicile and the No. 3 domicile worldwide behind Bermuda and the Cayman Islands.

The nearly \$30 billion in gross written premiums its captives generated in 2014 was, Vermont regulators say, more than any other captive domicile.

In addition, Vermont officials say its captive regulatory unit, with a staff of 32, is larger than any other domicile.

More than 40% of Fortune 100 companies, including Alcoa Inc., Microsoft Corp. and The Walt Disney Co., have Vermont-based captives.

Still, Vermont regulators

acknowledge the state may have lost captives to states with newer captive legislation.

Some companies want their captives to be in or closer to their home state, said David Provost, deputy commissioner in the Captive Insurance Division of the Vermont Department of Financial Regulation in Montpelier.

"That is a fact of life we can live with," Mr. Provost said.

Parents of Vermont captives say the state is a top domicile for several reasons.

"Vermont has a very sophisticated regulatory regime. They understand what questions to ask. They are very responsive and supportive," said Janice Abraham, president and CEO of United Educators Risk Retention Group in Bethesda, Maryland. United Educators was licensed in Vermont in 1987.

By Jerry Geisel

underwriting income is exempt from federal income taxes.

In Delaware, Captive Insurance Director Steve Kinion attributes the state's captive growth to factors that include resources the state has given to captive regulation, which he said signals to prospective sponsors that captives will be "regulated as captive insur-

ers, not as commercial insurers."

North Carolina's rapid growth is notable since the state first passed captive legislation in 2013.

Since then, North Carolina captive regulators "have gone out of their way" to attend industry events. "They have been fantastic and responsive," said Martin Eveleigh, chairman of the North

Carolina Captive Insurance Association and chairman of Atlas Insurance Management in Charlotte, North Carolina.

An appealing feature of North Carolina's law is a \$100,000 cap on annual premium taxes and no annual fees, said Debbie Walker, director of captive insurance.

Texas is another state that saw solid captive growth in 2014 thanks to its passage of captive insurer legislation in 2013. Location was a key reason petroleum company Phillips 66 last year chose the Lone Star State as home for its captive, SHC Insurance Co., said Scott Irwin, the Houston-based petroleum company's principal consultant of corporate insurance.

"We have our headquarters here. It makes (captive) board meetings a lot closer," Mr. Irwin said.

In addition, being local makes it easier to help shape changes to the captive statute, Mr. Irwin said.

Location matters in Texas, which requires the parent of a captive to either be based in Texas or have a significant operation in the state.

"In Texas, regulators are making a real effort in reaching out. They are sending out staffers to our conferences to meet current and prospective captive owners," said Josh Magden, president of the Texas Captive Insurance Association.

Captive regulators say that receptivity is deliberate.

"We have applied our customer service to be as open as possible," said Jeff Hunt, admissions officer of company licensing and registration at the Texas Department of

Insurance in Austin.

Mr. Hunt said the openness extends to telling a potential sponsor that its plan won't pass the state's regulatory muster.

"If we think it will not work in Texas, we will make that clear. We want to be honest and straightforward," Mr. Hunt said.

Several features of Tennessee's captive law, passed in 2011, are attractive, said Joseph Haase, vice president of risk and insurance at Nashville-based health care provider HCA Holdings Inc., which domiciled its Park View Insurance Co. captive in Tennessee.

Attractive features include a maximum of \$100,000 in annual premium taxes, reasonable capitalization requirements and responsive regulators, he said.

"The law is very good. Plus, this is a pro-business state, and the captive regulators are both responsive and accessible," said Peter Foley, president of Onyx Insurance Co. Inc., a Risk Retention Group.

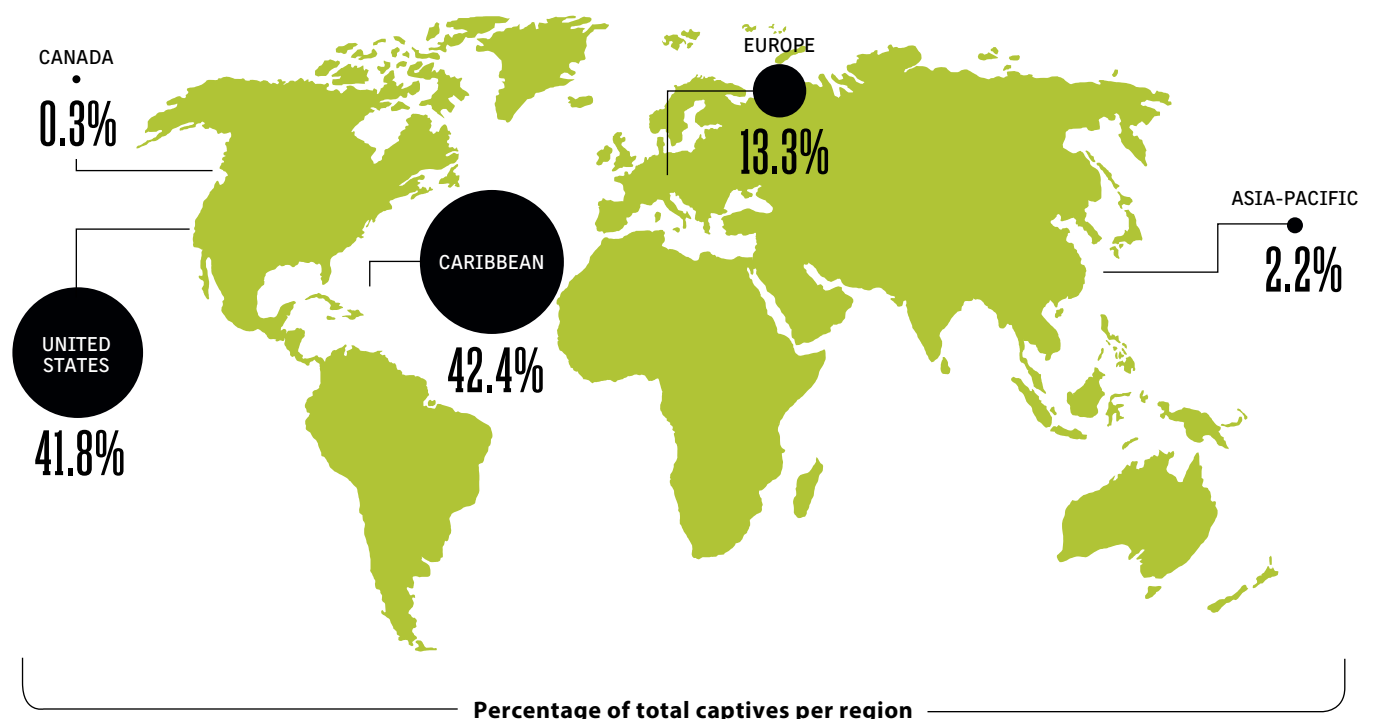
The RRG, licensed in Tennessee in 2013, provides commercial auto liability coverage to its 415 taxi and livery company policyholders.

"We have had across-the-board growth," said Michael Corbett, Tennessee's director of captive insurance in the state's Department of Insurance and Commerce in Nashville.

In Tennessee, regulators are "open to out-of-the-box questions. They are interested in new ideas," said Mike Serricchio, a senior vice president in Norwalk, Connecticut with Marsh Inc.'s Captive Solutions Group.

ONSHORE/ OFFSHORE BY THE NUMBERS

There were 6,876 captives worldwide in 2014, a 7.1% increase compared with 2013.



TAX COURT VICTORIES BOOST CAPTIVES

Microcaptives may gain additional attractions

BY DOUGLAS McLEOD

The owners of captive insurers have scored major victories in cases against the IRS, but they still face uncertainties on several fronts.

U.S. Tax Court judges ruled in favor of Plano, Texas-based Rent-a-Center Inc. and Parsippany, New Jersey-based Securitas Holdings Inc., finding last year that captives can meet the captive risk distribution requirements by insuring a large number of risks rather than, as the IRS contended, a large number of related policyholders.

The rulings provide “a lot more flexibility in putting together a captive structure,” said Leslie C. Boughner, deputy CEO of Willis North America Inc.’s global captive and consulting practice in Burlington, Vermont.

The IRS has not appealed either ruling, though how it will respond to similar future cases is uncertain, experts say.

Meanwhile, microcaptives formed under section 831(b) of the U.S. Tax Code may become more attractive under a Senate Finance Committee proposal unveiled in February, even as the IRS added 831(b)s to its Dirty Dozen list of potential tax abuses.

And the Tax Court is expected to rule this year on whether policies

covering the residual value of leased property can be defined as insurance for tax purposes.

Last year’s *Rent-a-Center* and *Securitas* rulings were big wins for captive owners, experts agree. Both upended IRS decisions on what constitutes risk distribution, one of the hallmarks, along with risk transfer, of determining premium deductibility.

“If you only were doing it for tax purposes, you shouldn’t have been doing it at all, but especially not in today’s environment.”

Charles J. Lavelle,
Bingham Greenebaum Doll L.L.P.

Pure captives that only insure the risks of their parent companies typically cannot deduct premiums for tax purposes, however, in cases where risk is distributed among several companies covered by a captive, even if the companies are related, companies can argue that the premiums are deductible.

IRS revenue rulings in 2002 and 2009 suggested that risk distribution requires that a captive insure at least 12 independent brother/

sister entities and that no one entity account for less than 5% or more than 15% of the captive’s risk.

In *Rent-a-Center* and *Securitas*, though, the Tax Court ignored IRS rulings and focused on the number and variety of insured risks rather than the number of insured entities. For example, *Securitas* employed more than 100,000 people and operated more than 2,250 vehicles in the U.S. in 2002-2004, enough “statistically independent risk exposures” to create risk distribution, the court found.

The rulings “look at the substance of the program vs. the form,” said Michael Serricchio, senior vice president of the captive solutions group at Marsh L.L.C. in Norwalk, Connecticut.

While the rulings give captive owners more flexibility in structuring their arrangements, they also create uncertainty about where the line on “statistically independent risk exposure” will be drawn in the future.

“What happens if you have not 20,000 employees but 2,000 employees?” asked P. Bruce Wright, a partner at Sutherland Asbill & Brennan L.L.P. in New York. “What happens if you have not 16 subsidiaries but two? Not thousands of vehicles but 20?”

It is unclear how the IRS will answer these questions or what its

future legal position will be, said Charles J. Lavelle, a senior partner with Bingham Greenebaum Doll L.L.P. in Louisville, Kentucky.

Owners of 831(b) captives, meanwhile, have political and tax issues to ponder.

The Senate Finance Committee in February considered capping premiums from any one 831(b) policyholder at 20% of the captive’s total, a move that could have been fatal to many microcaptives, which often insure a single policyholder. The provision was replaced, though, with one that could expand microcaptive growth by upping the deductible limit on premium contributions to \$2.2 million from \$1.2 million.

Neither the full Senate nor the House of Representatives has considered the plan.

At the same time, the IRS added 831(b) companies to its list of abusive tax schemes: Microcaptives may write policies covering ordinary business risks or “implausible” risks for exorbitant premiums simply to get the tax deduction, the IRS warned.

An official of Artex Risk Solutions Inc., Arthur J. Gallagher & Co.’s Hamilton, Bermuda, captive management unit, said last fall that Artex and other captive managers were engaged with the IRS in a probe of 831(b) clients.

Gallagher and others, though, said that 831(b) captives formed for legitimate insurance purposes are viable options.

“If you only were doing it for tax purposes, you shouldn’t have been doing it at all, but especially not in today’s environment,” Mr. Lavelle said.

If anything, the IRS attention “just promotes properly structured captives, regardless of size,” Mr. Boughner said.

ARCANE CASE MAY REDEFINE BUSINESS RISK

A current U.S. Tax Court dispute involving a little-discussed line of coverage — residual value insurance — could have broader insurance market implications.

Hamilton, Bermuda-based R.V.I. Guaranty Co. Ltd. is fighting an IRS decision that residual value policies, which cover leasing companies’ unexpected losses in the value of equipment or other property they rent, involve investment or business risk and not insurance risk.

Post-trial briefs were filed last month in the case, and a ruling is expected later this year.

“This is probably the most significant single issue up for decision” before the Tax Court now, said Thomas M. Jones, a partner at McDermott Will & Emery L.L.P. in Chicago. The case is the first in which a court has tried to distinguish between insurance risk and business risk for tax purposes, he said.

If the court finds residual value policies are not insurance, it could raise questions about taxation of premiums for other nontraditional coverage, he said.

A ruling against R.V.I. might create uncertainty about other types of insurance, Mr. Jones said.

Microcaptives could be especially vulnerable to an adverse ruling, since they may insure exposures — such as loss of trade credit or key customers — that the IRS might argue are business risks, he said.

By Douglas McLeod

CHINA’S CAPTIVE INSURANCE INDUSTRY POISED TO GROW

BY SARAH VEYSEY

Captive insurers are gaining popularity in China as well as other parts of Asia.

Regulatory changes, notably in China, are likely to fuel captive growth in the region as state-owned enterprises explore their use as a risk financing tool.

“It’s an emerging scene,” said Chris Lay, London-based president of the global captive solutions practice at Marsh L.L.C.

He said there are probably at least 50 companies in China that are large enough to set up captives that meet the China Insurance Regulatory Commission’s 2013 criteria, which include that the registered capital of the captive should match the risks it underwrites and that the captive or its parent’s business sector be characterized by high risk

concentration, wide geographic spread, difficult insurance transfer, steady insurance demand and ability to control high risk.

“As China’s growth accelerates and the government works to reform the economy, domestic companies are increasingly adopting risk management approaches more frequently associated with their Western counterparts,” including captives, said Paul Owens, CEO of Willis Group Holdings P.L.C.’s London-based captive practice.

While the captive domicile of Singapore historically has focused on captives owned by Australian companies and Japanese companies often have chosen Hawaii as a captive domicile, there now is significant interest in captives from companies in Laos, Malaysia, the Philippines and Vietnam, Mr. Lay said.

“This is part of the risk financing journey of these economies,” he said, which is being aided by the opening of many insurance markets in the region.

Several captives have been set up onshore in China since the CIRC issued its guidance in 2013.

China National Petroleum Corp. last year set up a captive, CNPC Captive Insurance Co. Ltd., in conjunction with one of its units, PetroChina, which said in a statement that the captive covers risks from overseas projects that are difficult to insure in the commercial market. The captive is rated A1 by Moody’s Investors Service Inc.

China National Offshore Oil Corp. also operates a captive, CNOOC Insurance Ltd.

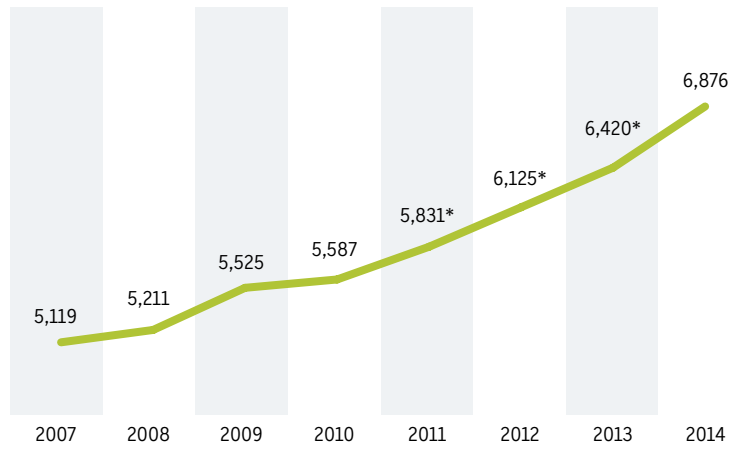
And earlier this year, China Railway Corp. received regulatory approval to set up a captive onshore in China.

In recent months, China’s insurance regulator has set out an approach that is “extremely supportive of captive insurance” and looks “to be attractive not only for local companies but for international ones considering China as a domicile,” Mr. Owens said.

Because they have well established frameworks as well as local expertise and resources, Hong Kong and Singapore also are likely attractive domiciles for Chinese companies looking to set up captives, he said.

Dominic Wheatley, CEO of Guernsey Finance, said the promotional body for Guernsey’s finance industry has worked with officials and insurance practitioners in Beijing and Shanghai to share experience and knowledge and “help develop their domestic captive regime.”

TOTAL CAPTIVES WORLDWIDE



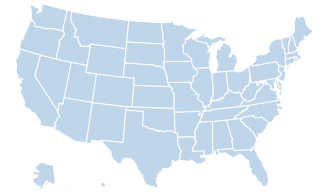
*Restated
Source: BI survey

MOST NEW LICENSES, U.S.

U.S. captive domiciles that issued the most new licenses in 2014

Rank	Domicile	New captives licensed
1	Utah	106
2	Delaware	87
3	North Carolina	49
4	Tennessee	40
5	Oklahoma	37
6	Montana	34
7	Nevada	26
8	District of Columbia	21
9	South Carolina	20
10	Alabama	16
10	Vermont	16

Source: BI survey



LARGEST U.S. CAPTIVE DOMICILES*

Ranked by number of captives at year-end 2014

Rank	State	2014	2013
1	Vermont	587	588
2	Utah	422	342
3	Delaware	333	298
4	Hawaii	194	184
5	District of Columbia	191	170**
6	Montana	177	150
7	Nevada	160	148
8	South Carolina	158	145
9	Kentucky	122	128
10	Arizona	114	106

*Continental United States
**Restated
Source: BI survey

TOP 10 CAPTIVE MANAGERS

Ranked by captives managed worldwide in 2014*

Rank	Company/address	Phone/website	2014 total captives	2014 captive premium volume**	Domiciles	Captives formed***	Total staff	Principal officers
1	Marsh Captive Solutions 1166 Ave. of the Americas 39th Floor New York, NY 10036	212-345-7769 www.marshcaptive.com	1,245	\$42,139,464,536	42	N/A	436	Chris Lay, president; Julie Boucher, practice leader-Americas; Ian Clancy, practice leader-EMEA Asia-Pacific
2	Aon Captive & Insurance Management 8 Devonshire Square London, England EC2M 4PL	44-2076-235-500 www.aon.com	1,043	\$25,500,000,000	33	N/A	460	Peter Mullen, CEO
3	Willis Global Captive Management The Willis Building 11th floor 51 Lime St. London, England EC3M 7DQ	44-2031-246-000 www.willis.com	345	N/A	30	N/A	194	Paul Owens, CEO-Willis Global Captive Practice
4	USA Risk Group Inc. 2386 Airport Road Barre, VT 05641	800-872-7475 www.usarisk.com	254	\$2,839,713,235	20	28	70	Gary Osborne, president
5	Strategic Risk Solutions Inc. 2352 Main St., Concord, MA 01742	781-487-9800 www.strategicrisks.com	230	\$2,491,000,000	16	18	73	Brady Young, president
6	Kane Group Ltd. Noble House Queens Road St. Peter Port, Guernsey G1Y 1PT	44-1481-729-957 www.kanegroup.com	184	\$3,825,253,909	12	20	97	Simon Hinshelwood, group CEO
7	JLT Insurance Management Cedar House 41 Cedar Ave. Hamilton, Bermuda, HM HX	441-292-4364 www.jltpartners.com	152	\$2,209,605,598	10	17	60	Steve Arrowsmith, executive chairman; Kilian Whelan, CEO
8	AMS Insurance Management Services Ltd. Sea Meadow House P.O. Box 116 Road Town, Tortola British Virgin Islands VG1110	284-494-4078 www.amsbvi.com	149	N/A	5	30	13	Derek Lloyd, director
9	R&Q Captive Holdings Ltd. 110 Fenchurch St. London, England EC3M 5JT	44-2077-805-850 www.rqih.com	105	N/A	13	5	42	Nicholas S. Dove, chairman
10	Atlas Insurance Management Whitehall House, Third Floor 238 N. Church St. George Town, Grand Cayman Cayman Islands KY1-1107	345-945-5556 www.atlascaptives.com	92	\$240,930,122	9	18	24	Martin Eveleigh, chairman

*Captives electing to operate under Section 831(b) of the Internal Revenue Service Code are not included. **Premium volume includes total gross premium volume of captives managed by the company or on its behalf.
***Captives and protected/segregated cell companies formed in 2014.

Source: BI survey



LARGEST EUROPEAN CAPTIVE DOMICILES

Ranked by number of captives at year-end 2014

Rank	Domicile	2014	2013
1	Guernsey	321	318*
2	Luxembourg	224	226*
3	Isle of Man	122	123*
4	Dublin	85	81
5	Sweden	47	47*
6	Switzerland	33	34
7	Gibraltar	15	16
8	Germany	13	13
8	Liechtenstein	13	13
10	Denmark	12	13

*Restated.
Source: BI survey

Pioneer launches marine specialty line

Pioneer Underwriting Ltd., a unit of Minova Insurance Holdings Ltd., has launched a marine specialty business to underwrite political violence, cargo, fine art and specie risks.

Pioneer's incidental Lloyd's of London syndicate 1980 will act as lead insurer, a spokesman for the London-based underwriter said.

In a statement, Pioneer said it named Grant Wheat to head the marine specialty division, reporting to Pioneer CEO Darren Doherty. Based in London, Mr. Wheat was most recently head of the specialty property division at The Channel Managing Agency Ltd.'s syndicate 2015, Pioneer said.

In addition, Brook Styles, former assistant cargo and specie underwriter at Markel International, a unit of Markel Corp., joins the marine specialty team as underwriter in London.

Workers comp insurer expands program's reach

Sagamore Insurance Co., a unit of Baldwin & Lyons Inc., has expanded its workers compensation program to Tennessee, Kentucky, Oklahoma, Mississippi, Kansas and Arkansas.

The program is also available in Indiana and Missouri, Carmel, Indiana-based Sagamore said in a statement.

Sagamore underwrites accounts up to hazard grade G and includes endorsements for all states on every policy, the firm said. According to Sagamore's website, the firm insures accounts of up to \$125,000 in premium.

Aetna offers support tool for metabolic syndrome

Toronto-based personalized health company Newtopia Inc. will begin offering a health engagement platform targeting the prevention and treatment of metabolic syndrome to health benefits provider Aetna Inc.'s corporate customers and their employees.

The platform uses genetic testing and personality and lifestyle assessments to develop tailored wellness programs for users with or at risk for metabolic syndrome, a condition that increases an individual's chance of developing diabetes, stroke or heart disease, Newtopia said in a statement.

The wellness program includes online coaching for nutrition, exercise and behavior management, Newtopia said.

The deal follows the completion of a pilot program with Aetna employees who had or were at risk for developing metabolic syndrome. Aetna found that participants in the pilot program lost weight, reduced their waist size and had higher levels of engagement in the program, according to the statement.

"As we continue to work towards improving health outcomes and reducing health care costs for our members, Newtopia provides an opportunity for individuals to be inspired by a health engagement platform that allows them to devel-



XL auto form targets trucks, commercial risks

* XL Group P.L.C. has launched a primary auto insurance form targeting trucking, public auto and commercial auto risks.

XL, which also offers excess auto insurance, will write primary auto coverage on an occurrence-based follow form policy with limits of up to \$1.5 million, the insurer said in a statement.

Chicago-based Andrew Miller will launch XL's primary auto insurance line as underwriting manager, according to the statement. Mr. Miller was most recently an underwriting manager for Vanliner Insurance Co., a unit of National Interstate Insurance Co., XL said.

He will report to Michael Gramm, XL's vice president of excess casualty.

Following an initial limited launch, "our intent is to gradually ramp up our primary auto operation to give ample attention to these tough risks and work with our broker partners to tailor workable insurance solutions," Mr. Gramm said in the statement.

XL Group's primary auto operation also has the ability to issue MCS-90 motor carrier policy endorsements and post required filings, according to the statement.

op healthy habits to meet their own unique lifestyles," Dr. Greg Steinberg, head of clinical innovation at Aetna, said in the statement.

ISO's cyber options cover smaller businesses

Two optional cyber endorsements for small and midsize businesses are becoming available, Verisk Analytics Inc.'s Insurance Services Office said.

The endorsements are for use with the ISO Businessowners Program, a package policy used by many insurers to offer broad property and liability coverage for small and midsize businesses, ISO said in a statement.

"Small and midsize businesses are often the victims of cyber attacks. But buying a stand-alone cyber insurance policy can sometimes be too expensive for them to consider," said Beth Fitzgerald, president of ISO Insurance Programs

and Analytic Services. "Our new business owner's coverage options give insurers new tools to address this underserved cyber insurance market."

ISO said its cyber insurance policies allow insurers to tailor coverage for their customers by offering set packages that protect against significant cyber exposures including data breaches, data replacement and restoration, cyber extortion, and business interruption.

Broker tool gives Axa's U.K. customers guidance

Axa S.A. has launched a risk management tool for brokers with Axa commercial customers in the United Kingdom.

Riskhelp.co.uk aims to help U.K. businesses understand their legal and civil liabilities by providing them with practical guidance and resources, including a risk library specific to the user's profession, at no cost, Axa said in a statement.

The tool, developed by Ignition New Business Solutions Ltd., Axa's marketing and digital services provider, allows users to measure their risk profile against a range of common risk factors beyond standard insurance risks or legal obligations, Axa said.

"Traditionally, risk management advice and support is provided to larger businesses or those that pose a particular risk, but this innovative new tool allows brokers to promote better client risk awareness which may have previously been out of their reach," Douglas Barnett, head of customer risk management at Axa commercial lines and personal intermediary, said in the statement.

Ace expands coverage for professional indemnity

Ace Ltd. is extending its Ace Tech Pro professional indemnity insurance coverage, which was launched in France last summer, to several European markets.

The policy is now being rolled out in Spain, Italy, Poland, Switzerland, the Czech Republic and the Nordic region, a spokesman for Ace said Thursday.

It is available to individual consultants and small to large technology companies, Ace said in a statement.

The policy has no specific limits, according to the spokesman.

Ace Tech Pro covers the financial losses of a third party due to wrongful acts committed by the insured and its employees, including malpractice, errors or omissions, negligence, reckless acts, project delay, accidental disclosure, breach of confidentiality and privacy breach, and lack of performance, Ace said in the statement.

The policy also provides coverage for defamation, transmission of a computer virus, loss of documents, infringement of intellectual property rights and defense costs in connection with a covered claim, Ace said. Additionally, Ace Tech Pro offers extensions including public relations fees to restore the policyholder's reputation and head hunter fees to replace a project manager who is temporarily disabled or dead.

DEALS & MOVES

Catamaran acquiring rival pharmacy benefit manager

Pharmacy benefit manager Catamaran Corp. said it has agreed to acquire competitor Healthcare Solutions Inc. for \$405 million in cash.

Schaumburg, Illinois-based Catamaran, the nation's fourth-largest PBM based on prescription volume, handles pharmacy benefits for group health and workers compensation plans, while Duluth, Georgia-based Healthcare Solutions specializes in workers comp and auto liability claims. The acquisition is expected to close in the second quarter of 2015, Catamaran said in a statement.

Catamaran was formed in 2012 when Lisle, Illinois-based SXC Health Solutions Corp. bought Rockville, Maryland-based Catalyst Health Solutions Inc. for \$4.4 billion and merged under the Catamaran banner. The company reported \$21.6 billion in revenue for 2014, up 46% from 2013 revenues.

Vanbridge expands offerings with two acquisitions

Insurance broker Vanbridge L.L.C. has agreed to acquire Boston-based Alan Gray Inc. and Deerfield Beach, Florida-based Universal Insurance Services.

A spokeswoman for New York-based Vanbridge declined to disclose the terms of the deals, which are expected to close April 1.

Alan Gray is an international audit, actuarial, underwriting, reinsurance and risk management firm, and Universal Insurance Services is a life insurance, executive benefits and financial advisory distribution firm, Vanbridge said in a statement.

Upon closing, each firm will continue operating out of its current location under its current leadership, the spokeswoman said.

Integro acquires specialty professional liability broker

New York-based broker Integro Ltd. has acquired New York-based specialist broker Design Insurance Agency Inc.

An Integro spokesman said terms of the deal were not disclosed.

Design Insurance provides professional liability insurance to architects, engineers and other design consultants in private practice, Integro said in a statement. It writes errors and omissions liability coverage for specialty design and construction consultants, and property/casualty coverage for design firms, according to the statement.

Sompo Japan to buy 7.8% stake in French reinsurer Scor

Property/casualty insurer Sompo Japan Nipponkoa Holdings Inc. has agreed to acquire a 7.8% stake in French reinsurer Scor S.E.

The Japanese company said it will acquire the 7.8% stake from Scor's largest shareholder, Swiss investment firm Patinex A.G. The stake is worth about 60 billion yen (\$500 million), Sompo Japan said, adding it plans to buy additional shares from the market and other major shareholders to bring its stake to 15% or more in the future.

Reuters

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CYBER

Continued from page 6

heading the response.

“In my experience, the CISO is really, really glad to have the risk manager actually be the coordinator. This frees up the CISO,” she said.

Having a detailed and well-practiced plan in place is key to any incident response, said Molly McGinnis Stine, a partner at law firm Locke Lord L.L.P. in Chicago.

“The whole point of the plan is to have thought about this ahead of time and to have identified scenarios where you might need to have a team ready to go,” Ms. Stine said.

“You need to act very quickly in cyber situations,” said Richard DeNatale, a partner at Orrick, Herrington & Sutcliffe L.L.P. in San Francisco.

He also recommended that a company’s accounting/finance department be represented on the response team to track costs.

Typically, a company’s board and senior management are not members of the response team, but the response team must keep them informed, Ms. Stine said.

“Part of your planning must be when you tell them, who tells them, what do you tell them — and that needs to be carefully thought about ahead of time,” she said.

A key aspect to mitigating any cyber threat is to limit access to a company’s data by insiders and outsiders alike.

“A big part of information technology security is actually controlling the data,” Ms. Crickette said. A company can reduce and segregate data to minimize exposure, “but it goes back to access management — who gets to see it,” she said.

“Vendors are incredibly important,” Mr. DeNatale said. “A company is only as strong as its weakest link,” he said of limiting outside providers’ access to company data.

Ms. Stine agreed and said controlling outside providers is an improving science.

“I think we’re part of an evolution of learning how to better vet vendors,” she said.

Panelists also agreed that human resources should be involved in efforts to monitor and control employee access to data.



SHUTTERSTOCK.COM/QQ7

London risk managers and insurers have set goals to keep their marketplace vibrant and nimble enough to compete for evolving risks in an increasingly competitive environment.

COLLABORATION

Continued from page 4

insurance market are involved in research and development around such risks, greater collaboration will help insurers design loss triggers, for example, in the absence of extensive historical loss data, Mr. Hurrell said, adding that insurance innovation is needed in three areas.

There are some risks, such as business interruption, for which insurance exists but may no longer be “fit for purpose” in that it does not adequately cover such losses as well as exclusions and/or endorsements, Mr. Hurrell said.

Cyber insurance also exists, but the “real world” is changing at a faster pace than current policies, he said.

Then there is coverage that either does not exist or is available but only in a very limited

way, such as brand and reputational risk, he said.

Mr. Matcham said that while the IUA has always “maintained a regular dialogue with Air-mic,” it realized that it could be a “facilitating body to get the insurer and the risk manager in the same room” to discuss coverage needs.

He said the IUA said it would invite representatives of the Lloyd’s of London market to join the initiative. While there are no concrete terms for the collaboration as yet, he expects brokers to be asked to also join the discussions.

He said a more coordinated approach should help the design of policies to cover buyer needs.

One broker, who asked not to be named, said the London market needs to retain its position as a center of excellence and resist becoming merely a distribution center. The greatest innovation, he said, likely will come in the field of cyber insurance, where the potential risks to insurance buyers are huge.

MARIJUANA

Continued from page 6

those circumstances, the best advice one could give would be to follow the law. So as long as you’ve got a valid, nondiscriminatory drug policy, apply it irrespective of the legality of marijuana in the workplace.”

The experts were less optimistic about the spreading legalization of marijuana when discussing its potential for long-term negative effects on workers compensation claims.

Specifically, they worried that the use of marijuana to treat chronic pain could increase at pace similar to the already costly rise in treatments involving opioid painkillers.

“We know that the use of opioids has not been very successful, so now we’re moving towards medical marijuana,” said Keith Rosenblum, a senior workers compensation risk control strategist at Lockton Cos. L.L.C. in Kansas City, Missouri.

Excluding catastrophic losses, which Mr. Rosenblum said represent about 3% of workers compensation claims overall, the majority of large-loss workers comp claims can be identified by some manner of delayed recovery, typically chronic pain.

“What you end up with is a creeping catastrophe claim,” Mr. Rosenblum said. “Those claims always have a component of chronic opioid treatment.”

The experts said employers can collaborate closely with their pharmacy benefit managers, workers comp insurers and other external services providers to prevent an escalation in chronic pain or injury treatments that include medical marijuana.



“As employers and insurers, we don’t want individuals in the workplace using marijuana or opioids,” said Dr. Teresa Bartlett, senior vice president and medical director at Sedgwick Claims Management Services Inc. in Troy, Michigan. “They’re not something we want a vibrant, productive workforce taking.”

One specific course of action Dr. Bartlett recommended employers take to prevent sudden spikes in workers comp claims including medical marijuana prescriptions is requiring PBMs to conduct point-of-sale utilization reviews for all marijuana-related claims.

“If we can prevent a drug from ever being dispensed because it’s not appropriate, then that can really help save some of those costs,” Ms. Bartlett said.

WCRI

Continued from page 4

in ACOs may have an incentive to shift patient claims to workers comp plans that pay more for certain conditions, such as soft-tissue injuries.

That trend could increase as more ACOs come into existence, he said.

“If it’s work-related, then the provider gets the same fee for service as what’s paid by workers comp,” he said. “If it’s not work-related, the provider’s already been prepaid for any care that they give. Potentially, that’s a pretty powerful incentive. If I call it ‘X,’ I get paid. If I call it ‘Y,’ I don’t” get any additional payment.

Employers in states without workers compensation medical fee schedules tend to spend more on medical management services and litigation to control claim costs, according to separate research by Cambridge, Massachusetts-based

WCRI.

While defense attorneys and medical management services can limit workers comp indemnity and medical claim costs, employers should consider where the expenses for such services are outweigh-

“If it’s not work-related, the provider’s already been prepaid for any care that they give. Potentially, that’s a pretty powerful incentive. If I call it ‘X,’ I get paid. If I call it ‘Y,’ I don’t” get any additional payment.

Richard Victor, Workers Compensation Research Institute

ing claim savings, said Carol Telles, a senior analyst at WCRI.

“Increased use of medical management may help reduce medical costs or cost growth, but there are

costs associated with doing that, and those costs have to be considered,” Ms. Telles said.

She highlighted medical management costs in New Jersey, which does not have a workers comp medical fee schedule and does not require medical cost containment tools, such as utilization review or medical treatment guidelines.

New Jersey saw increased use of medical provider networks for workers comp in 2011, which resulted in a leveling of medical costs in 2012 and 2013, Ms. Telles said. However, medical management costs rose from 21% of New Jersey’s workers comp medical costs in 2011 to 23% in 2013, the most recent year studied.

Employers also are prone to pay more litigation costs in states with complex workers comp dispute resolution processes or where it is difficult to appeal comp medical opinions, such as California, Louisiana and Georgia, WCRI data shows.

“In a state with a more complex resolution system, probably what

we’re looking at (is) more defense hours billed,” Ms. Telles said. “So that translates into higher defense attorney payments and may be associated also with higher legal expenses.”

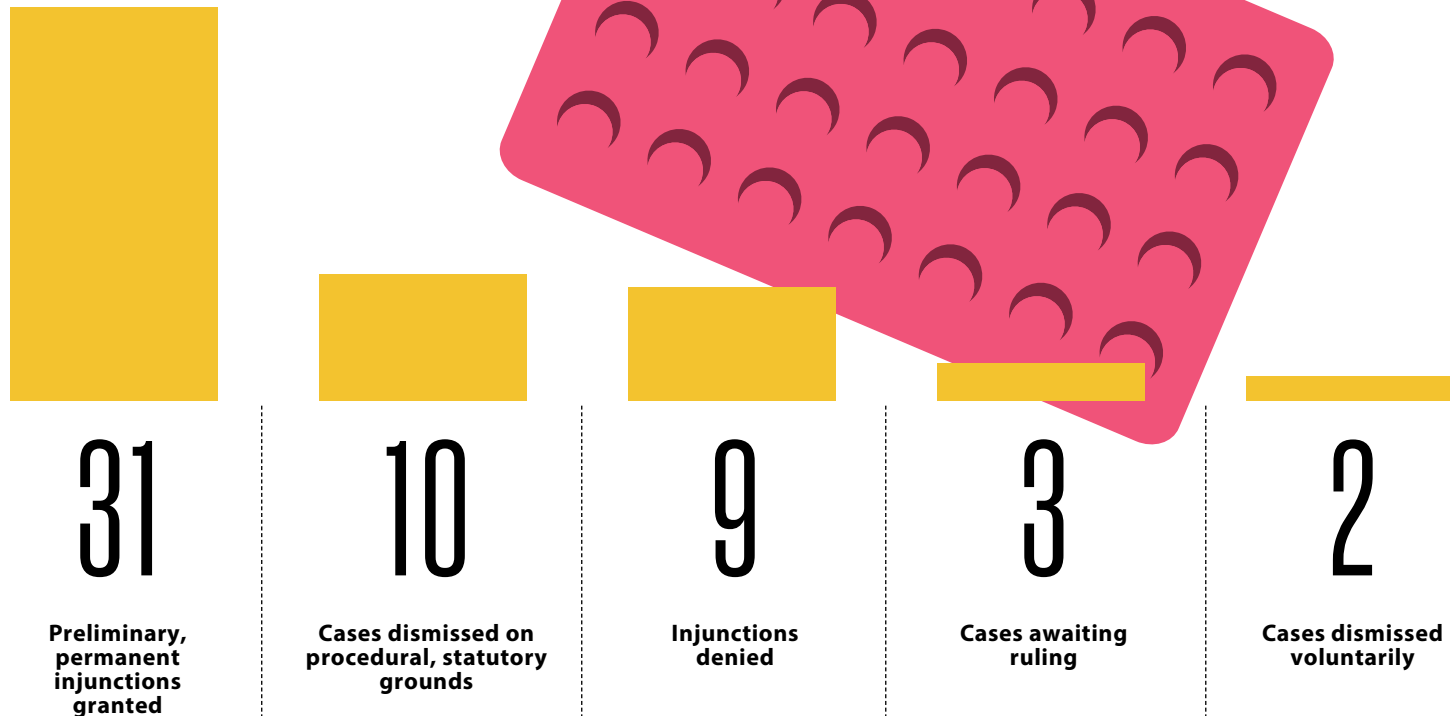
Yet another WCRI report showed that states with workers comp medical fee schedules that are priced too low may encourage providers to bill for more visits or costlier procedures than providers in states with higher reimbursement rates.

Rebecca Yang, senior public policy analyst at WCRI, said California, Florida, Massachusetts, New York and North Carolina have fee schedules that are near or below Medicare reimbursement rates. Such states are prone to seeing an increase in workers comp claim cost drivers, such as physician dispensing of costly medications or billing for expensive procedures.

“We often see there (is) more frequent billing of more complex office visits in those states,” Ms. Yang said of states with low fee schedule pricing.

CONTRACEPTIVE MANDATE CHALLENGES

Some 55 religious nonprofit employers have sued to block the health care reform law mandate that they provide contraceptives to their employees. However, federal appeals courts have split on the issue, making a hearing before the U.S. Supreme Court likely.



Source: Becket Fund for Religious Liberty

injunctions barring the government from enforcing the requirement have been granted in the 10th and 11th circuits (see box.)

Most recently, a three-judge panel of the 3rd U.S. Circuit Court of Appeals in Pittsburgh ruled in mid-February against Geneva College in Beaver Falls, Pennsylvania — as well as several Catholic-affiliated organizations in Pittsburgh, Erie and Greensburg, Pennsylvania. The panel ruled unanimously that HHS' relaxed requirements do not violate employers' rights to freedom of expression of their beliefs.

However, in light of the Supreme Court's summary disposition in favor of Notre Dame, experts said the 3rd Circuit's ruling might not stand for long.

"I would expect to see the same result as what we saw in the *Notre Dame* case if the 3rd Circuit ruling heads up the judicial ladder," said Royal Oakes, a Los Angeles-based partner at Hinshaw & Culbertson L.L.P. "The Supreme Court doesn't seem to have any appetite for taking one of these cases on for a full review right now."

While experts agreed that a hearing before the Supreme Court seems likely, it may be a year or more before the underlying legal questions in *Notre Dame* and *Geneva College* are ripe for review.

In the meantime, experts said religiously inclined nonprofit employers risk little from a legal perspective by notifying HHS that they intend to opt out of providing contraceptive coverage.

"It seems like a fairly accommodating process," said Sharon Cohen, a Washington-based principal at Buck Consultants at Xerox. "If you're trying to take a conservative approach and balance between preserving your religious beliefs and incurring the penalty that can be imposed for not complying with the requirement, it's a good approach, but only as long as an employer is agreeable to it."

CONTRACEPTIVES

Continued from page 3

In an emailed statement, a Notre Dame spokesman said the university is "gratified" that the 7th Circuit's ruling was vacated, but also noted that "absent injunctive relief, the objectionable aspects of the third-party insurance coverage remain in force."

"What Notre Dame was really

arguing is that although the HHS accommodation provided that Notre Dame itself did not have to pay for the contraceptives, the plan that it sponsors would still have to provide that coverage," said James Napoli, a Washington-based partner at Seyfarth Shaw L.L.P. "Their position is that it really doesn't matter who pays for it; it's the employer/employee relationship that provides access to those benefits."

Although the Supreme Court

granted some manner of injunctive relief to religiously affiliated nonprofits in three other cases prior to last week, experts said the decision to vacate the 7th Circuit's previous ruling is especially significant, since it effectively strips the government of precedential language that has been crucial to its defense of the coverage requirement in other federal courts.

More than 50 religiously affiliated colleges, charities and other organizations have argued in fed-

eral courts that the notification requirement violates their rights under the U.S. Constitution and the Restoring Freedom of Religion Act by forcing them to still provide access to medications that conflict with their religious beliefs.

So far, religious schools, charities and other institutions have been denied preliminary exemptions from the relaxed coverage requirement in four federal appeals court circuits — the 3rd, 6th, 7th and District of Columbia. Preliminary

STANDARDS

Continued from page 3

level," Mr. Zielezienski said, "In the U.S., the capital is there at the legal entity level; in another jurisdiction that views it from a group level, capital may be held at the group level to support the legal entities."

He said that the international insurer capital standard should not be designed to replace local capital standards. "You want a complimentary approach that doesn't add another layer of complexity," he said, adding that the "process will take awhile."

Australia, Bermuda, Canada and Switzerland already have insurance group standards in place, said Brad Kading, president of the Association of Bermuda Insurers and Reinsurers.

Those laws "reflect the idiosyn-

cratic nature of the markets they regulate" and are based on "knowledge gained from extensive field testing" undertaken before implementation. In addition, both the Federal Reserve Board and the National Association of Insurance Commissioners are working on group standards, he said.

The main concern with the IAIS effort is that it will roll out a global standard that has not been field tested in the markets in which it is intended to apply, that it would impose a basis of valuation of assets and liabilities that may be different from those in place in the jurisdiction, and that it will result in high capital requirements, Mr. Kading said.

If the standard were implemented in a way that focuses on transparency and "knowledge-building, the ICS provides some value," he said.

But if it were implemented to require excess capital or impose a

one-size-fits-all capital formula on a global basis, "it would be counterproductive to the goal of making insurance markets competitive," Mr. Kading said. "Excessive or redundant capital standards would increase costs for consumers and make markets less competitive."

The real benefit to insurance buyers has never been defined, said Dave Snyder, a vice president in the Property Casualty Insurers Association of America's Washington office. He said one capital standard will lead to systemic risk "because you drive all companies to the same business model." It also would overlay an international standard on top of existing standards, which would lead to increased cost to buyers.

"One of our chief concerns is you end up having a sort of one-size-fits-all standard imposed on marketplaces around the world," said Steve Broadie, vice president-

financial policy at Chicago-based PCI.

"We're dealing with a global marketplace, but in many cases insurance is extremely local," Mr. Broadie said. "They're always competing in their domestic markets," and there's a "real danger" that an inappropriate global standard would spread to domestic markets.

In fact, an international standard could prove to be counterproductive, Mr. Broadie said. If all regulators and companies share a global view of risk, "you may miss something. If you do so, you've increased the risk rather than deal with that appropriately."

"The fundamental question we still have is what is the benefit to consumers, when we know the wrong ICS will both create systemic risk, add to costs and even reduce competition by adding inappropriate burdens to niche players," Mr. Snyder said.

"In the U.S., the capital is there at the legal entity level; in another jurisdiction that views it from a group level, capital may be held at the group level to support the legal entities."

Stephen Zielezienski, American Insurance Association

REMEDY

Continued from page 1

injured workers, including 2003 revisions that eliminated compensation for permanent injuries that are not total and cutting off benefits for permanent total injuries after five years or age 75.

In addition, Florida's required co-payment by injured workers means those who cannot pay it cannot get treatment, the judge ruled.

Oral arguments are set for March 30 before the Florida Court of Appeals for the 3rd District in Miami.

In an amicus brief filed in late February, attorneys for several police unions supported Judge Cueto's assertion.

"The undisputed evidence in the present case shows that workers compensation is no longer simple, expeditious, inexpensive or self-executing, and the benchmark of full medical care and wage-loss payments no longer exists,"

according to the police unions' brief.

In an amicus brief filed on behalf of the Florida Chamber of Commerce, attorneys opposing the judge's ruling argued that any weakening of exclusive remedy would have disastrous consequences.

"Yearly, tens of thousands of employees in Florida are compensated for their work-related injuries solely through workers compensation," the chamber said in its brief. "Given the tremendous number of claims made, allowing even a fraction of these claims to be litigated would incredibly burden employers by embroiling them in unwarranted and unnecessary tort litigation."

Trey Gillespie, Austin, Texas-based senior workers comp director with the Property Casualty Insurers Association of America, said he expects the appellate court to find that the judge overstepped his authority, which several amicus briefs also argued.

"Essentially what the judge did in this case is that he substituted

his own opinion for public policy and how best to balance the interests of injured workers and employers," Mr. Gillespie said. "Public policy is the province of the legislature."

Robert J. Grace Jr., Tampa, Florida-based partner at The Bleakley Bovol Law Firm, said it's "difficult to believe" that the appellate court will agree with the lower court judge.

"Ultimately, I think it will end up before the Florida Supreme Court," Mr. Grace said.

Irrespective of the decision in Florida, Bruce Wood, Washington-based vice president and associate general counsel at the American Insurance Association, said disputes about the system's equity will continue nationwide as states look to "provide a fair level of benefits to workers, while keeping it affordable to employers."

Also in recent weeks, the U.S. Occupational Safety and Health Administration and National Public Radio and online investigative journalism site Pro Publica Inc. called into question the fairness

of the nation's workers comp system.

The OSHA report, citing dozens of other studies, said accumulated changes to state workers comp laws have "made it increasingly difficult for injured workers to receive the full benefits ... to which they are entitled."

The OSHA report said employers now pay about 20% of workers comp costs, with the rest borne largely by workers and taxpayers.

The NPR and ProPublica report concluded that employer and insurer interests have been put above those of injured workers. Nationwide, the average workers comp premium per \$100 of wages has fallen from \$3.42 in 1988 to \$1.85 in 2014, according to the report.

Chad Niec, Chicago-based vice president of risk management at Paramount Staffing Inc., said the system still serves a majority of injured workers well.

"There is no doubt that individuals are being hurt in many industries," Mr. Niec said. "However, for a majority of injured workers the system still works."

"Essentially what the judge did in this case is that he substituted his own opinion for public policy and how best to balance the interests of injured workers and employers. Public policy is the province of the legislature."

Trey Gillespie, Property Casualty Insurers Association of America

SUBSIDY

Continued from page 1

under the law to something more than the current 30-hour per week definition.

Defining a full-time employee is critical for certain employers, especially retailers, which frequently do not offer health insurance to employees working less than 35 or 40 hours a week. The penalty this year is \$2,000 for each full-time employee for employers that do not offer coverage to at least 70% of full-time workers, rising to 95% of in 2016 and succeeding years.

But a bipartisan accord on changes to the law, assuming the court strikes down the subsidies, is far from certain.

"Reaching an agreement on changes in the current political climate would be tough," said Gretchen Young, senior vice president of health policy at the ERISA Industry Committee in Washington.

Others, though, are more optimistic about lawmakers hammering out an agreement to continue the subsidies to eligible enrollees in the federal exchange as part of

deal for changes to the reform law.

"There would be only a small chance of nothing happening because no one would win," said John Barkett, director of policy affairs in Arlington, Virginia at Towers Watson's & Co.'s private health insurance exchange, One-Exchange

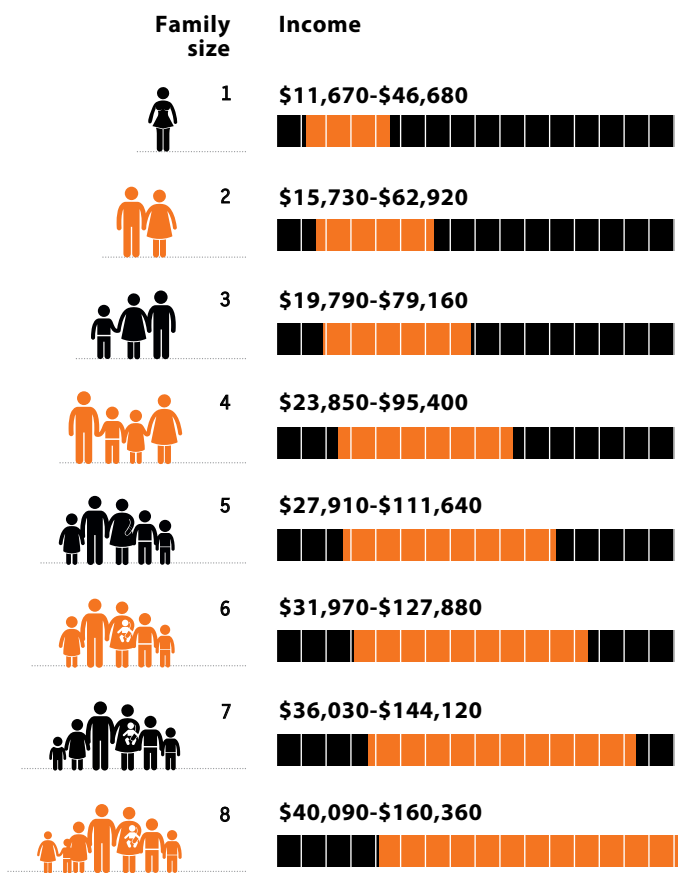
The litigation was triggered by 2012 IRS rules that authorized federal premium subsidies to eligible lower-income individuals obtaining coverage in both state and federal exchanges. Opponents of the IRS rules say the health care reform law clearly limits premium subsidies to those obtaining coverage in the state exchanges.

The Obama administration, though, contends that the intent of the law is to make the subsidies available in both state and federal exchanges. The federal exchange was set up by the Department of Health and Human Services to offer plans to individuals living in states that declined to do so.

Currently, 13 states and the District of Columbia have established exchanges. According to HHS, 2.8 million people opted for plans in state exchanges during the 2015 open enrollment period, which ended last month.

The state exchanges, though, are dwarfed by the federal exchange, which operates in 37 states. More than 8.8 million individuals chose health plans in the federal exchange and the availability of federal subsidies slashed premiums for millions of those enrollees. According to HHS, 87% of those choosing plans in the federal exchange qualified for a federal premium subsidy, which are available to those with incomes between 100% and 400% of the federal poverty level (see chart). The average premium subsidy was \$263 a month, with 55% of enrollees paying \$100 a month or less for

WHO IS ELIGIBLE?



*Allowed income levels are higher in Alaska and Hawaii.

Source: HealthCare.gov

Uninsured individuals whose 2015 income is between 100% and 400% of the federal poverty level generally will qualify for a subsidy, which the government calls a premium tax credit, if they buy health insurance coverage through a public exchange. Family size and income levels that qualify* include:

coverage after the subsidy.

If those enrollees were to lose those subsidies many would not be able to afford the full premium and would again become uninsured. That would hit hospitals hard, as they would face a surge of uncompensated care costs, which they likely would pass on to insurers and employers through higher charges. In addition, insurers pro-

viding coverage in affected exchanges could be hit hard if those remaining in the exchange are the heaviest users of health care services.

As a result, at least as an interim step — if the high court strikes down the subsidies — lawmakers might agree to continue the subsidies in the affected states for a certain period while lawmakers tried

to hammer out a longer-term approach.

"Doctors, hospitals and businesses would cling to their congressional representatives and say, 'You need to fix this,'" Towers Watson's Mr. Barkett said

Sen. Ben Sasse, R-Neb., said in a television interview prior to the Supreme Court oral arguments that lawmakers would "need to offer transitional temporary relief" to those receiving premium subsidies.

"You could see a patch," Mr. Barkett said.

But if the high court upholds the IRS' 2012 rules authorizing premium subsidies in federal and state exchanges, the status quo is almost certain to continue with Republicans trying to repeal or make major changes to the law while Democrats and the Obama administration oppose those actions.

"Republicans will be mad and will pursue strategies to try to undo the law," Mr. Klein said.

Striking down premium subsidies in the federal exchange could have another negative effect on some employers' strategies: eliminating coverage for pre-Medicare eligible retirees. The health care reform law opened the door to such a strategy with lower-income retirees becoming eligible for federal premium subsidies.

But if the Supreme Court knocked out subsidies in the states using the federal exchange, employers that eliminated or plan to eliminate early retiree coverage "would be scrambling on what to do," said Steve Wojcik, vice president of public policy at the National Business Group on Health in Washington.

"Employers would have to rethink their strategies when it comes to early retirees," Mr. Barkett said.

HEAR INTERVIEW

Visit *Business Insurance's* multimedia web page to hear Steve Wojcik, vice president of public policy at the National Business Group on Health, discuss possible fallout from the Supreme Court's upcoming decision on health insurance subsidies with *Business Insurance* Editor-at-large Jerry Geisel.

BACKGROUND

Continued from page 1

Employers are caught between staying in the EEOC's good graces and risking a negligent hiring charge.

Further complicating the issue is "ban the box" legislation, which forbids employers from asking job applicants about their criminal records. Such legislation had been approved by 13 states, the District of Columbia, and 96 cities and counties as of January, according to the New York-based National Employment Law Project.

A related factor is the Fair Credit Reporting Act, which requires employers using third-party consumer reporting agencies to gather criminal background information to inform the applicant or employee that the information might be used in employment decisions. The Federal Trade Commission enforces that law, which gives applicants the right to dispute any findings.

Driving the EEOC policy is data showing that blacks and Hispanics are arrested at a rate that is as much as three times greater than the general population.

In guidance last updated in 2012, the EEOC said before excluding an applicant with a criminal record, employers should consider the nature and gravity of the offense, how long ago it was committed and the nature of the potential job. It also said applicants should be given the opportunity to show why they should not be rejected.

Subject to second-guessing

But observers say the guidelines are too general, leaving employers vulnerable to second-guessing by the agency.

In the latest rulings on the issue, a three-judge panel of the 4th U.S. Circuit Court of Appeals in Richmond, Virginia, ruled unanimously in *Equal Employment Opportu-*

Criminal background checks "are inherently problematic under the discrimination laws because there's nothing about it on its face that would be discriminatory" given the protected categories under Title VII, which include race and creed.

Richard B. Cohen, FisherBroyles L.L.P.



nity Commission v. Freeman Decorating Services Inc. to uphold a lower court's dismissal of the case. It strongly criticized the quality of the data EEOC used to allege the Dallas-based trade show firm's criminal background check had a disparate impact on minority job applicants.

In a statement, the EEOC said its criminal background check policy remains an agency priority and that it was disappointed in the ruling in *Freeman*.

The court rulings to date have not yet gone to the heart of the EEOC's criminal background policy, experts say.

"You want to respect the rights of that individual, but at the same time your ultimate duty is to protect your business, protect your customers and hire the best per-

son for the job," said Michael A. Warner Jr., a partner at law firm Franczek Radelet P.C. in Chicago.

Criminal background checks "are inherently problematic under the discrimination laws because there's nothing about it on its face that would be discriminatory" given the protected categories under Title VII, which include race and creed, said Richard B. Cohen, a partner at FisherBroyles L.L.P. in New York.

"The problem is the EEOC has sort of gone one level beyond the protected categories" in stating criminal background checks have a disparate impact on minorities, Mr. Cohen said.

The situation is particularly burdensome for larger employers with "thousands and thousands of applications online" to conduct

individualized assessments, said Sheila B. Gladstone, who heads the labor and employment practice at Lloyd Gosselink, Rochelle & Townsend P.C. in Austin, Texas.

Furthermore, some states in certain highly regulated industries, such as health care, forbid hiring people with certain criminal offenses, which "kind of puts the employer in a conundrum," said Caroline J. Berdzik, a partner at Goldberg Segalla L.L.P. in Princeton, New Jersey.

Observers expect the EEOC to find another statistician in response to the 4th Circuit ruling and an earlier appeals court ruling criticizing the same statistician.

The agency is "going to be a lot more careful" in pursuing criminal background check cases, but "it looks like they won't back off," Ms. Gladstone said.

The EEOC also could look for a case where it can make a direct employment discrimination claim based on a criminal background check rather than a disparate impact argument, said Peter J. Gillespie, of counsel at Fisher & Phillips L.L.P. in Chicago.

"The main advice I give to clients is do not have any formal policy that automatically excludes anybody based on a conviction," Mr. Warner said.

Employers should "be as cautious and conservative as possible," Mr. Cohen said. They should follow the EEOC guidelines "as much as they can understand" and vet their policy or procedures with someone knowledgeable in the law, such as an attorney or knowledgeable human resources person.

But "if you're hiring a security guard or a hotel room service attendant, you shouldn't be hiring someone with any kind of violent criminal history," Ms. Gladstone said.

CICA

Continued from page 4

half from our members to address the cyber liability issue," Mr. Lawson said. "So we created a cyber liability policy and launched it in July."

The cyber product has sold very well, he said. Twenty-three percent of members who buy professional liability coverage through the RRG also have opted for the cyber coverage, which covers data notification, legal defense costs and some fines and penalties with a \$12,000 limit, he said.



County Reinsurance Ltd., a Vermont-domiciled group captive established in 1997 to reinsure county government pools, is member-owned and provides coverage only to those members that contribute equity, said Philip Bell, Clemmons, North Carolina executive director of the captive.

County Reinsurance, which technically is a nonprofit mutual, provides property, liability and workers compensation coverage in 17 states, said Mr. Bell.

After studying the "complicated topic" for 18-24 months, it began offering cyber liability coverage last July, Mr. Bell said during the conference in Orlando, Florida. Coverage includes legal counsel, fines and costs (subject to sublimits), and third-party liability with a \$1 million limit and options for higher limits via retrocession.

Peter Gerken, senior vice president of Steel City Re in Pittsburgh, said reputational risk is another coverage captives can offer.

"Captives can indeed insure this risk, helping to manage it and insure it, and in so doing they can help increase enterprise value," Mr. Gerken said.

Based on Steel City data, he said a reputational crisis can shave about 7% on average from a company's market capitalization.

"Reputation needs to be addressed on a risk mitigation and risk management basis," Mr. Gerken said.

"We do believe that captives not only can be used to mitigate loss but actually can be a vehicle that helps create value," said John Kelly, New York-based managing partner at Hanover Stone Partners L.L.C. "It is an effective and tax-advantaged manner of retaining and managing risk with the potential for underwriting profit."

PENDING CASES COULD INFLUENCE EEOC CRIMINAL BACKGROUND CHECK POLICY

Observers say two still-pending 2013 cases may directly address the U.S. Equal Employment Opportunity Commission's policy on criminal background checks in hiring.

Equal Employment Opportunity Commission v. BMW Manufacturing Co. L.L.C.:

The lawsuit involving Spartanburg, South Carolina-based BMW Manufacturing, filed in federal court in the same city, concerns BMW's use of a contractor, Columbia, South Carolina-based UTi Integrated Logistics Inc., which provided logistical services that included warehouse and distribution assistance, transportation services and manufacturing support.

When UTi ended its contract with BMW in 2008, BMW told the unidentified new contractor to perform new criminal background checks on UTi workers who were reapplying to continue working at BMW, according to the EEOC.

The checks found that several UTi workers had

certain criminal convictions in violation of BMW's policy. They were terminated, although many had worked at the BMW facility for years, the EEOC said.

Equal Employment Opportunity Commission v. Dolgencorp L.L.C. d/b/a Dollar General:

The EEOC lawsuit filed in Chicago federal court charges that Goodlettsville, Tennessee-based Dolgencorp conditioned its job offers on criminal background checks, which resulted in a disparate impact against blacks.

According to one example provided by the EEOC, the company revoked its job offer to one applicant after it learned she had a 6-year-old conviction for possession of a controlled substance, a conviction Dollar General used as a disqualification factor for 10 years.

The courts are now dealing with discovery-related issues in both cases.

By Judy Greenwald



SHUTTERSTOCK.COM/MAT HAYWARD

Hall & Oates filed a complaint against Brooklyn-based Early Bird Foods & Co.

Soft rockers play hardball vs. 'Oats'

Daryl Hall and John Oates, whose 1972 debut album featured a canister of oatmeal on the cover, are suing a granola company for naming a product "Haulin' Oats."

The musical duo, known as Hall & Oates, filed a complaint against Brooklyn-based Early Bird Foods & Co. L.L.C. last week alleging trademark infringement.

The complaint states that Haulin' Oats is an "obvious play" on Hall & Oates, and that it's meant "to trade off of the fame and notoriety associated with the artists."

Haulin' Oats includes rolled oats and maple syrup and can be eaten by itself or used "as the base for a breakfast parfait creation," according to Early Bird Foods' website.

"Hall and Oates' company ... owns a Federal Trademark Registration for the identical mark 'Haulin Oats' covering breakfast foods that is used in connection with the sale of 'Haulin Oats' branded oatmeal ..." a manager for the artists said.

Lloyd's throws flag at NFL receiver's claim

A Jacksonville Jaguars wide receiver may be facing his toughest defender yet. Second-year receiver Marqise Lee has sued Lloyd's of London, alleging the insurer owes him millions for an unpaid claim.

According to ESPN.com, Mr. Lee was a junior receiver at the University of Southern California in 2013 when he paid \$94,600 for a policy that guaranteed him \$9.6 million if his NFL contract was to fall short of that figure because of injury.

Within weeks, Mr. Lee injured his knee and failed to achieve his prior form, ESPN.com said. He was chosen by the Jaguars 39th overall in the 2014 draft and signed a four-year, \$5.17 million deal.

The Orange County Register reported that Mr. Lee filed his action after Lloyd's denied his claim for the \$4.5 million difference between the policy and his NFL contract.

SI.com reports that Lloyd's alleged that he hid medical information about his injury. Lloyd's subsequently refunded Mr. Lee's premium, plus interest, and has asked a New Jersey court to rule that the policy was never applied.



BANK ROBBER MOVIE FACES U.S. HOLD UP OVER PIRACY CLAIMS



AP PHOTO

Osiris Entertainment has filed a claim against Myriad Pictures over the release of "Electric Slide," starring Oscar-winner Patricia Arquette.

To the dismay of film distributor Osiris Entertainment, viewers could watch "Electric Slide" online before it hits the domestic box office next month. As stated in the claim Osiris Entertainment has filed against producer Myriad Pictures at the arbitration unit of the Independent Film & Television Alliance, the foreign release of "Electric Slide," starring newly minted Oscar-winner Patricia Arquette, allegedly caused the film to be "pirated and leaked online," according to a report by The Hollywood Reporter.

The film about infamous bank robber Eddie Dodson, aka the New York Yankees Bandit, debuted at the Tribeca Film Festival in April 2014 and was released in Thailand in November, according to the Internet Movie Database.

The Hollywood Reporter states that, according to arbitration papers, Osiris Entertainment is upset that Myriad Pictures allowed the film to open in countries, such as Thailand, which are "notorious for piracy," prior to being released in the United States and Canada.

Osiris Entertainment demands "a big discount" on the amount it agreed to pay for "Electric Slide," as Myriad reportedly already had deals in place for foreign distribution when the deal was struck.

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Offensive baker frosts ex-employer

Employee use of social media has been a concern of risk managers for some time. But here's an example that really takes the cake. Napier, New Zealand, woman Karen Hammond recently was awarded NZ\$168,000 (\$127,075) after she claimed her former employers breached her privacy by circulating a screenshot of an offensive cake she had baked to recruitment agencies.



Ms. Hammond left NZ Credit Union Baywide in March 2012 and five days later baked a cake for a former colleague.

The cake was emblazoned with an offensive message about her former place of work, according to The New Zealand Herald.

Photographs of the rude cake, which was taken to a dinner party of 10 friends, were uploaded to social media.

Ms. Hammond's former employers took a screenshot of the offending confectionary and circulated it to recruitment agencies and to Ms. Hammond's new employer with a request that she be sacked, the New Zealand Herald reported.

A tribunal ruled that, on the balance of probability, NZCU's actions invaded Ms. Hammond's privacy by disclosing personal information about her.

Ms. Hammond was awarded damages for humiliation, loss of dignity and injury to feelings, for lost income and pecuniary loss.



AP PHOTO

Victor Willis of Village People

Singer has no need to feel down

The lead singer of the 1970s costumed pop act Village People has won another round in his ongoing effort to receive a higher royalty rate from the group's catalog.

Last week, a jury seated in U.S. District Court in San Diego ruled in favor of the singer, Victor Willis, in his legal battle against music publishers Scorpio Music and Can't Stop Productions Inc.

Mr. Willis, who wore the police officer costume in the group, first moved to terminate the original copyright to many of the group's songs in 2011 under provisions included in the Copyright Act that went into effect in 1978 and enabled artists to terminate copyright grants after 35 years.

In wake of the jury's decision, Mr. Willis' share of the 33 songs in dispute, which include hits such as "YMCA," will rise to 50%.

WHAT MATTERS MOST BUSINESS INSURANCE

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ASSOCIATE EDITOR
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Find out what to do, before they find you

Put up your defenses before you're breached. And if you're hacked, how do you recover? The experts and the answers are here at this can't-miss event.

AGENDA AT A GLANCE:

DAY 1

Evening networking reception

DAY 2

Networking breakfast

Welcome remarks

Opening keynote

You're not a retailer, but you're still a target

No business is safe from cyber attacks. This session will give risk managers the tools to perform a cyber risk self-assessment by exploring today's latest threats.

Legislative and regulatory landscape

In the wake of the large-scale theft and destruction of data at Sony Pictures Entertainment Inc., President Obama has proposed new federal legislation to combat cyber attacks. This session will help risk managers navigate the data privacy and security requirements with which their organizations must comply.

CYBER RISK SUMMIT 2015

COMING SEPTEMBER 2015

DAY 2 (cont.)

Networking luncheon

Quantifying the impact of a cyber incident

Using data analytics and modeling scenarios derived from actual events, this session will examine the vast array of potential costs to organizations when their systems are hacked.

Addressing cyber risks:

Sometimes insurance isn't enough

The potential scope of cyber risk exposure is reaching \$2 trillion. Yet the market for cyber risk insurance is estimated at just \$85 billion. This session will report on the latest advances in coverage, provide a market update on new players and available coverage limits, costs, terms and conditions.

Cyber Challenge

In this session, "Jeopardy" meets "Who Wants to Be a Millionaire," as four risk managers test their knowledge of cyber risk terminology. All attendees will be invited to participate using electronic polling, which contestants can use as "help from the audience."

Track The Hacker

Months leading up to the Cyber Risk Summit, attendees and BI subscribers have been following clues in the "Track The Hacker" Sweepstakes for a chance to win valuable prizes. The location of the tracker will be revealed and a winner will be announced.

Closing keynote

Closing remarks and cocktail reception

For more details visit: BusinessInsurance.com/cyberrisksummit

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