


**2.3 MILLION**  
The number of U.S. workers  
exposed to breathable  
crystalline silica



WORKPLACE SAFETY

## OSHA silica rule sets stage for legal battle

Construction industry limit seen as unfeasible

BY GLORIA GONZALEZ

The legal battle has just begun over the Occupational Safety and Health Administration's final rule lowering the limits of breathable silica, with betting on both sides whether the stricter requirements will survive judicial scrutiny.

Following OSHA's issuing the final rule in late March, a coalition of trade associations filed a legal challenge April 4 in the 5th U.S. Court of Appeals in New Orleans, a jurisdiction where several of the associations are based.

Opponents argue OSHA ignored concerns about the technological and economic feasibility of lowering the maximum exposure over an eight-hour shift to 50 micrograms per cubic meter of air for the construction industry, one-fifth of the current maximum, as well as for general industry and the maritime industry, half of the current

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### CATASTROPHES

## MANUFACTURERS FEELING AFTERSHOCKS IN SUPPLY CHAIN

Hundreds dead after quakes hit Japan, Ecuador



AP PHOTO

Riot police examine the damage from a 6.5-magnitude quake in Japan's Kumamoto prefecture.

BY ROB LENIHAN

Deadly earthquakes in Japan and Ecuador in recent weeks have resulted in hundreds of deaths, extensive destruction and business disruption, with insured loss estimates nearing \$4 billion.

In Japan, quakes that struck in mid-April hit the Kumamoto Prefecture on Japan's island of

Kyushu particularly hard. The quakes also affected the Fukuoka, Oita, and Miyazaki prefectures, Boston-based catastrophe modeler AIR Worldwide said.

The quakes, which reportedly killed nearly 50 people, damaged highways, rail lines, bridges and other infrastructure, AIR Worldwide said. There

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### CYBER RISKS

## Cyber ruling opens door to CGL claims

Records 'published' without being viewed

BY JUDY GREENWALD

Policyholders hit by a cyber breach may still find some coverage in their older commercial general liability policies thanks to an appeals court's broad interpretation of what constitutes "publication."

In its unanimous April 11 ruling in *Travelers Indemnity Corp. v.*



*Portal Healthcare Solutions L.L.C.*, a three-judge panel of the 4th U.S. Circuit Court of Appeals in Richmond, Virginia, focused on a

dispute over Portal's responsibility for patients' medical records.

The records were accessible online from Nov. 2, 2012, to March 14, 2013, although no third party allegedly viewed the information. Still, affected patients sued alleging violation of their privacy rights.

The appeals court held that the information could be considered published even if it was not viewed, and therefore was covered under the definition of "published" under Portal's CGL policies (see story, page 28).

To say "a book that is bound and placed on the shelves of Barnes & Noble is not 'published' until a customer takes the book off the shelf and reads it" does not "comport

See **CGL** page 28



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Bermuda's deputy prime minister and finance minister addresses recent changes

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## RIMS CONFERENCE REPORT

All the news from the annual conference in San Diego, including: Cyber insurance policies need to be retroactive; alternative capital isn't just for big firms; RIMS past presidents tout flexible risk management programs; beware public-sector pitfalls.

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Value well beyond profit



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Mariah Carey allegedly insured her vocal chords for a hefty sum, and took out an additional \$35 million policy on her legs as well. **30**

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NEWS

REGULATION

SURPLUS LINES TAX COMPACT IN JEOPARDY AS FLORIDA EXITS

NIMA formed after Dodd-Frank but gained little traction

BY MARK A. HOFMANN

The fate of the Nonadmitted Insurance Multistate Agreement remains murky at best in the wake of Florida's announcement that it will leave the surplus lines premium tax collection and allocation clearinghouse on June 1.

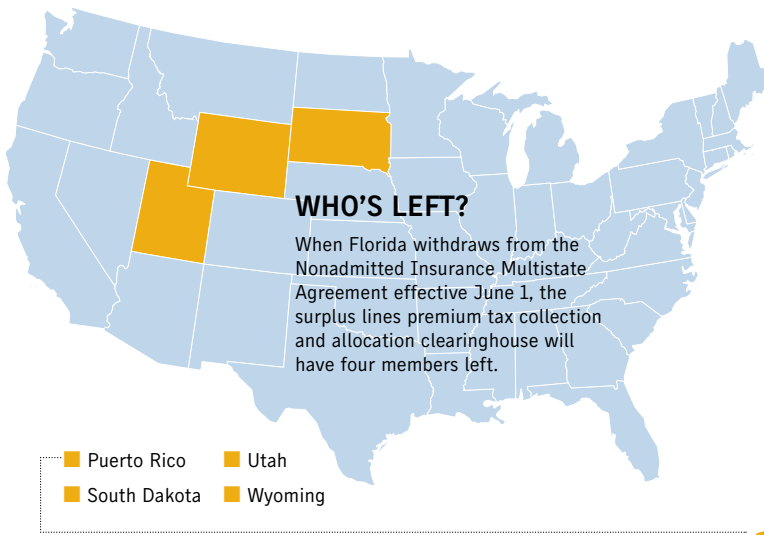
NIMA came into being in response to the Nonadmitted and Reinsurance Reform Act, which became part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

One of NRRA's aims was to clarify that the only rules governing the placement of surplus lines cover, including collecting premium taxes, are those of the home state of the insured. While the law imposed a uniform standard of home-state taxation of surplus lines premiums, it made it optional for states to allocate premiums to other states where risks covered under the policy are located.

Although NIMA was developed through the National Association of Insurance Commissioners, the NAIC had no involvement in its operation.

However, brokers and others criticized the state compact approach as unnecessary and costly.

One such clearinghouse — the Surplus Lines Insurance Multi-State Compliance Compact — never began operating because it



did not get 10 states to join the group initially backed by the National Association of Professional Surplus Lines Offices Inc.

NIMA did begin operations, with an initial membership of 11 states plus Puerto Rico, and did not require a minimum number of states to be activated.

But Florida's withdrawal announced earlier this month leaves only Puerto Rico, South Dakota, Utah and Wyoming as full members, raising questions about NIMA's future.

"As a member since 2011, Florida was fully committed along with the other member states to the benefits envisioned by this multi-state agreement, to include the reporting, payment, collection and

allocation of premium taxes for nonadmitted insurance," a spokeswoman for the Florida Office of Insurance Regulation said in an email.

"Despite the achievement of these benefits, nationwide participation in NIMA, especially among large states, did not occur as expected and led to the decision to withdraw," the spokeswoman said. "Florida will continue to use the Florida Surplus Lines Service Office's clearinghouse services on a single-state-only basis via an independent contract separate from the NIMA arrangement."

The Tallahassee, Florida-based surplus lines office will continue to

See NIMA page 27

WORKERS COMPENSATION

Utilization review under fire in state high court

BY STEPHANIE GOLDBERG

The California Supreme Court will weigh in on a lower court decision that would have a chilling effect on the state's workers compensation medical treatment approval process and expand potential liability for providers of utilization review.

The state high court last week agreed to review *Kirk King v.*

*CompPartners Inc. et al.*, in which Mr. King sued the Irvine, California-based managed care organization and its employee, Dr. Naresh Sharma, alleging negligence and other wrongdoing.

The 2014 suit filed in Riverside County Superior Court alleged the doctor didn't appropriately wean Mr. King off the sedative Klonopin prescribed for a 2008 work-related back injury, causing him to suffer

seizures and additional injuries. It argued that California's Workers' Compensation Act did not preempt the suit since it disputed only the utilization reviewer's decision to "abruptly halt the medication," not the determination that it was medically unnecessary.

Finding that "workers comp exclusivity may or may not apply,"

See UTILIZATION page 27

CORRECTION

In "Cyber Coverage Seen as Security Incentive" in the April 11 issue, Tom Finan's title was stated incorrectly. He is chief strategy officer of Dulles, Virginia-based Ark Network Security Solutions L.L.C.

P/C INSURERS

Insurers jostle for position in trying market

BY GAVIN SOUTER

SAN DIEGO — Risk managers likely will continue seeing attractive insurance pricing through 2016 as insurers reposition themselves in a dislocated commercial property/casualty market.

Mergers as well as executive and operational changes by some major insurers have disrupted the market, and new and existing players are looking to take advantage of the situation.

Meeting at the Risk & Insurance Management Society Inc.'s annual conference this month, traditionally the year's largest gathering of commercial insurance buyers, insurers and brokers sought to position themselves in a changing market that has seen two major insurers — American International Group Inc. and Zurich Insurance Group Ltd. — realign their business after past struggles, while other significant players — Chubb Corp. and Ace Ltd., and XL Group P.L.C. and Catlin Group Ltd. — combined to create Chubb Ltd. and XL Catlin Inc., respectively.

But market moves have not changed pricing, with rates decreasing steadily in the past couple of years in many lines.

"Clearly, we are in a buyer's market. There's an abundance of supply," said Marc R. Kunney, San Francisco-based president of North American operations at Integro Ltd.

Property insurance buyers are seeing rate declines, multiyear deals and multiyear aggregate limits being offered, said Mike Andler, New York-based executive vice president and property practice leader at Lockton Cos. L.L.C.

"The market continues to be soft, and the forecast is for it to remain soft. Most clients should be looking for a minimum 10% reduction in 2016," he said.

Despite the soft pricing, the market is changing.

AIG late last year announced it was exiting some lines of business and shedding more than 20% of its senior staff.

Robert S. Schimek, executive vice president and CEO of commercial at AIG in New York, said the strategic roadmap the insurer



Mr. Schimek

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ONLINE FEATURES

GALLERY

World's largest earthquakes

A look back at major seismic activity across the globe.

www.BusinessInsurance.com/LargestEarthquakes



VIDEO



Risk Management Education

College students tour SeaWorld Parks & Entertainment in San Diego.

www.BusinessInsurance.com/InFocus

GALLERY

Week in pictures

A visual tour of the latest big stories.

www.BusinessInsurance.com/WeekInPictures

RESEARCH

2016 Directory & Ranking of Third-Party Administrators

Rankings of the top U.S. TPAs, including 2015 revenue in our comprehensive guide to third-party administrators.

www.BusinessInsurance.com/TPADirectory

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NEWS

TRANSPORTATION

PROPOSED TRUCKER RULE TARGETS DRIVER FATIGUE

Sleep apnea screening seen as tool to reduce collisions

BY DONNA MAHONEY

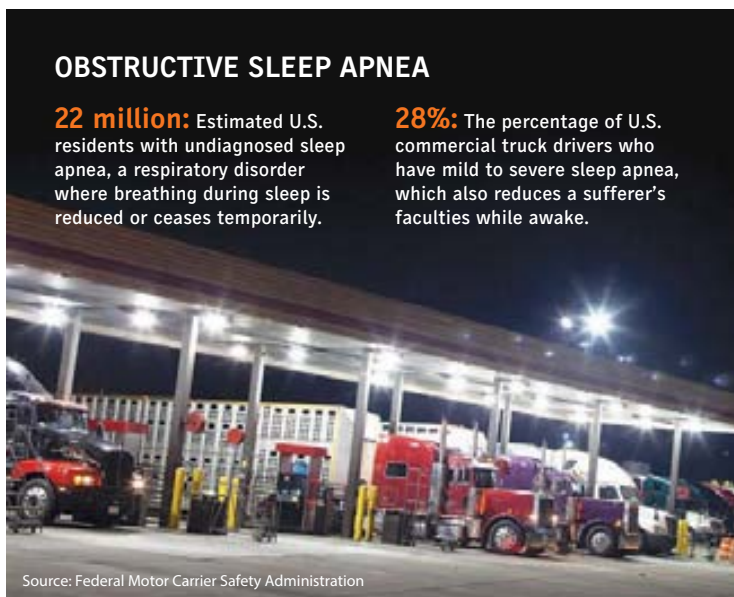
Requiring commercial truck drivers to be tested for sleep disorders could improve highway safety, but testing and managing treatment could prove an additional burden for drivers and motor carriers.

Commercial vehicle drivers are not required to be screened for obstructive sleep apnea, a disorder that disrupts sleep and causes excessive daytime sleepiness, according to the American Academy of Sleep Medicine.

The organization's Seattle-based president, Dr. Nathaniel F. Watson, is concerned about the lack of a test requirement for truckers to determine whether they have the disease. "People are dying on the roadways because people are falling asleep, and when that happens there are no evasive maneuvers or slowing down before the crash," he said.

The Federal Motor Carrier Safety Administration and the Federal Railroad Administration, in an effort to address the issue, announced March 8 a joint advance notice of proposed rulemaking that would require truck drivers and rail workers to be tested, evaluated and treated for sleep apnea.

Richard Bleser, senior vice pres-



Source: Federal Motor Carrier Safety Administration

OBSTRUCTIVE SLEEP APNEA

**22 million:** Estimated U.S. residents with undiagnosed sleep apnea, a respiratory disorder where breathing during sleep is reduced or ceases temporarily.

**28%:** The percentage of U.S. commercial truck drivers who have mild to severe sleep apnea, which also reduces a sufferer's faculties while awake.

ident and fleet specialty practice leader at Marsh Risk Consulting, a unit of Marsh L.L.C., in Milwaukee, said a majority of vehicle collisions are from drivers being sleepy or distracted and not paying attention. The National Highway Safety Traffic Administration estimates in a March report that more than 72,000 police-reported crashes are the direct result of driver fatigue each year.

"We have seen some nuclear verdicts, large liability claim settlements, many of them coming from the vantage that the driver was fatigued," he said.

Mr. Bleser also said every organization should have a fatigue management program. He acknowledged that fleets will face additional work if the requirement takes effect. "The challenge the industry will have is that if the test for sleep apnea becomes mandatory and a driver is diagnosed to have it, the motor carrier will take on liability and the responsibility to manage the driver in their off time to ensure they are using proper approaches to managing their issue," he said.

See SLEEP page 26

HEALTH INSURERS

UnitedHealth's exit won't kill ACA exchanges

BY SHELBY LIVINGSTON

Although UnitedHealth Group Inc.'s withdrawal from public health insurance exchanges in all but a "handful" of states will reduce competition, its exit doesn't spell doom for the future of the Affordable Care Act exchanges.

UnitedHealth said last week that it will exit nearly all of the 34 states where it sold coverage on health insurance exchanges this year amid slow enrollment growth and an unhealthy population that have dented its profit. It said it expects to lose \$650 million this year on exchange business, on top of \$475 million it lost last year.

The Minnetonka, Minnesota-based insurer will bow out of 2017 exchange offerings that include Arkansas, Connecticut, Georgia, Louisiana, Michigan, Oklahoma and Tennessee.

UnitedHealth will, however, sell plans on exchanges that include Nevada and Virginia next year, the states' insurance departments confirmed.

Limited impact

Even before UnitedHealth's announcement, a Kaiser Family Foundation analysis said the exit of the nation's largest health insurer is unlikely to make waves

nationwide, and analysts agreed with that conclusion.

UnitedHealth's departure "is going to have an impact here and there," but it doesn't have a big enough "presence" in each market to drive premiums up everywhere, said James Sung, associate director and insurance credit analyst at Standard & Poor's Corp. in New York.

According to the Kaiser analysis, if UnitedHealth withdrew completely and no insurer replaced it, there would be a "modest" effect on exchange premiums. That is because enrollees tend to sign up

See EXCHANGES page 26

PENSIONS

PBGC legislation could cut toll on employers

But change faces tough time getting passed

BY JERRY GEISEL

Legislation that would end a widely reviled budget-balancing "gimmick" of increasing the premiums employers must pay to the Pension Benefit Guaranty Corp. faces a difficult but not insurmountable battle.

The bipartisan legislation introduced earlier this month by Rep. Jim Renacci, R-Ohio, with two Republicans and three Democrats as co-sponsors, would repeal part of a 1980 law that allows PBGC premiums to be counted as general revenue when it comes to balancing the federal budget.

The premiums, however, are used exclusively to help the PBGC pay pension benefits in plans it has taken over from employers who get in financial trouble or go out of business.

Business groups are optimistic that an educational campaign will convince Congress to eventually approve H.R. 4955, the Pension and Budget Integrity Act of 2016, to stop the premium hikes.

"When lawmakers have all the facts and are educated, this can be done," said Lynn Dudley, senior vice president of global retirement and compensation policy at the American Benefits Council in Washington.

"We think the environment is ripe for Congress to advance the legislation," said Annette Guarisco Fildes, president and CEO of the Washington-based ERISA Indus-

See PBGC page 26

PBGC PREMIUM

The flat-rate per-participant premium that employers with a pension plan must pay to the Pension Benefit Guaranty Corp. has increased steadily since 2012.

Year	Premium
2012	\$35
2013	\$42
2014	\$49
2015	\$57
2016	\$64
2017	\$69
2018	\$74
2019	\$80

Source: Pension Benefit Guaranty Corp.

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# LLOYD'S DIVERSITY SURVEY SHOWS FIRMS MAKING SOME PROGRESS

## Network-based recruitment curbs inclusion efforts

BY SARAH VEYSEY

Businesses that operate at Lloyd's of London are making progress with diversity and inclusion initiatives, but the market remains male-dominated.

And efforts to increase the diversity of those entering the insurance profession in general — and staying in the business — must be stepped up, experts say. Risk managers also agree that more work needs to be done.

Inclusion@Lloyd's, a steering group for overseeing the market's diversity and inclusion efforts, governance and best practices, surveyed human resources executives at 40 Lloyd's organizations to gauge their diversity and inclusion practices and identify areas where more work is needed.

The study, "Holding up the Mirror," also sought to identify barriers to improving diversity and inclusion in the Lloyd's market using anonymous responses.

The study, conducted in January and published earlier this month found that 13 of the 40 organizations interviewed have an established diversity and inclusion policy. Four said their organization has an equal opportunity policy.

Only 15% said their business has a diversity council, and 17% have at least one employee resource group. Some 57.5% said their employees belong to external diversity and inclusion groups.

"Our senior leaders feel that we need to be doing a lot more in this

### DIVERSITY

On average, just 18% of leadership positions are occupied by women, according to a Lloyd's of London study. Other conclusions include:

- **19 of 40** companies in the Lloyd's of London market say they have gone beyond legal requirements on parental leave and adoption; **18** on flexible work policies; **six** on religious observations; and **five** on gender reassignment.
- About **60%** said their business captures some diversity and inclusion data, while about half offer diversity training and development.
- However, **85%** said their companies do not measure inclusion.
- **27.5%** said some of their clients require diversity efforts.

Source: Inclusion@Lloyd's' "Holding Up the Mirror"



space," said one respondent. "I like it because it is genuine, not because our competitors are doing it or because we should be seen to be doing it. But I do think we are behind the curve compared with some of our competitors."

"Having someone at the top of the organization (promoting this) is vital. It's not just me banging the drum," said one human resources director in the survey.

The traditional image and outlook of the insurance industry and a continued tendency to recruit from personal networks are among barriers to improving Lloyd's diversity, according to the survey.

When asked to identify ways

Lloyd's can help enhance the diversity agenda, the ideas included: providing resources and case studies; giving presentations; publicizing Lloyd's efforts; emphasizing that diversity is not just "women's issues;" educating business leaders; and updating the market's image to attract younger, diverse talent.

The topic resonated with senior executives during the Risk & Insurance Management Society Inc.'s annual conference in San Diego earlier this month.

While they said progress has been made to improve the industry's diversity and inclusion, they agreed that attracting and retaining talent is a big challenge.

J. Patrick Gallagher, chairman, president and CEO of Itasca, Illinois-based Arthur J. Gallagher & Co., noted that the panel he was on, comprised of four white males, is "not the face of the future."

Of 300 interns that will join Gallagher this summer, about half will be female, Mr. Gallagher said.

Todd Jones, co-head of North America at Willis Towers Watson P.L.C., said the industry has made great strides in attracting well-qualified young people. But he also said keeping them in the business is a challenge.

"We need to figure out how to show people a (career) path," Mr. Jones said. "If we don't, we are going to miss out."

### RISK MANAGEMENT

## Cyber exposures top list of emerging risks

BY ROB LENIHAN

A former Nuclear Regulatory Commission scientist was sentenced earlier this month to 18 months in prison for trying to plant a virus in a U.S. Energy Department computer network.

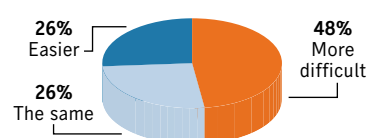
While no malicious code was transferred, the federal case against Charles Harvey Eccleston underscores the rising threat of cyber attacks that topped risk management professionals' list of

emerging risks in a new survey.

The majority of respondents in the survey by the Risk & Insurance Management Society Inc. and Marsh L.L.C., which was released earlier this month, named cyber attacks as the top emerging risk for their companies. Only 27% of the respondents to the annual "Excellence in Risk Management" survey said identifying emerging risks is a priority, however.

"While everyone has known about cyber for a number of years

now, the acceleration or velocity of change in cyber is constantly evolving and increasing," said Brian Elowe, Boston-based managing director of global risk management at Marsh. "Every day we're reading about some new application of technology and new use of technology. And every time there's a new use of technology, there are new risks associated with that."



### FORECASTING DIFFICULTY

Nearly half of 700 risk management professionals surveyed say forecasting risks will be more difficult three years from now than today, while the remainder were split on whether it would be easier or the same.

Source: "Excellence in Risk Management," Marsh L.L.C. and Risk & Insurance Management Society Inc.

## Investment advice rule heightens risk

### Employers may need to amend plan admin to avoid liability

BY JERRY GEISEL

A federal rule that puts retirement plan advisers at risk of civil penalties if they fail to consider customers' best interests also could put employers at risk should they or their providers offer suggestions on investments in the plans they sponsor.

The Department of Labor issued its final fiduciary rule concerning retirement plans earlier this month, wrapping up nearly six years of rulemaking.

Under the rule, which revises a 1975 regulation, retirement plan suggestions to participants, such as whether or not to roll over a distribution from an employer retirement plan into an individual retirement account, would be considered fiduciary advice. In many cases, such suggestions could be considered prohibited transactions that subject advisers and employers to financial penalties under the Employee Retirement Income Security Act.

Last week, however, the U.S. House Education and Workforce Committee voted 22-14 largely along party lines to approve a resolution that would block enforcement of the rule.

"We must prevent this flawed rule from wreaking havoc on workers, retirees and small businesses, and today's vote is an important first step," Rep. Phil Roe, R-Tenn., said in a statement prior to the committee's vote.

"We can directly reject costly regulations, and that is how we are going to try and stop this fiduciary rule," House Speaker Paul Ryan, R-Wis., said last week during a press briefing.

Under federal law, Congress may vote to prevent a federal agency from implementing a rule or issuing a substantially similar rule without congressional authorization. Whether there is enough support to approve the resolution to halt the fiduciary rule's April 2017 implementation remains to be

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See FIDUCIARY page 29



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## Former Zurich U.S. executive takes position at XL Catlin

■ Former Zurich Insurance Group Ltd. executive Daniel Riordan has been appointed to the new position of president of global political risk and trade credit at XL Group P.L.C. Mr. Riordan held a variety of positions at Zurich, most recently as CEO of global corporate in North America. He left the post last year amid several executive-level departures at the Swiss insurer, which underwent a review of its property/casualty operations following disappointing results. “The appointment also marks a structural change at XL Catlin with (political risk and trade credit) becoming a separate underwriting unit, having previously been under the umbrella of crisis management, led by Stephan Ashwell,” XL Catlin said announcing the appointment. Mr. Riordan’s appointment takes effect May 2. He will report to Neil Robertson, XL Catlin’s chief executive of global specialty, insurance.



Mr. Riordan

Express Scripts’ services over the duration of the contract, or take less cash upfront and better pricing over the long term. “Although Anthem could have passed this upfront money through to its members — in the form of reduced drug pricing — instead, Anthem used the upfront payment to repurchase its stock, which applied upward pressure to Anthem’s stock price, thereby enriching Anthem’s shareholders and management (who held substantial stock options),” Express Scripts argued. In 2009, Anthem, then known as WellPoint, repurchased 57.3 million shares at a cost of \$2.6 billion. Anthem did not mention the sale of its PBM in its complaint filed last month.

Modern Healthcare

## Hurricane forecaster William Gray dies at 86

■ William M. Gray, who pioneered seasonal hurricane forecasts at Colorado State University in the 1980s, died April 16 at the age of 86. Mr. Gray’s Atlantic Basin hurricane forecasts, supported in part by contributions from the insurance industry, drew widespread attention, and the CSU team’s most recent forecast called for an average Atlantic hurricane season this year. An obituary at Fort Collins, Colorado-based CSU’s Tropical Meteorology Project said Mr. Gray had remained active in his hurricane and climate change research until the time of his death. Mr. Gray is “best known worldwide for his seasonal hurricane predictions,” wrote Phil Klotzbach, a research scientist at CSU who worked with Mr. Gray, in an online eulogy. “He instituted these predictions when he discovered that El Niño impacted Caribbean and tropical Atlantic vertical windshear. This was the first time that any group had issued seasonal forecast for the Atlantic. Now, nearly two dozen groups have followed his lead issuing these predictions.” The obituary gave no cause of death for Mr. Gray, who is survived by three children and two grandchildren.

## Uber drivers remain contractors as class-action lawsuit settles

■ Uber Technologies Inc. has agreed to pay up to \$100 million to settle a class-action lawsuit that resolves a major challenge to its business model by allowing the ride-hailing service to keep its California and Massachusetts drivers as independent contractors. The lawsuit had claimed that Uber drivers are employees and thus entitled to reimbursement of expenses. The case against Uber, scheduled for trial in San Francisco federal court in June, had been closely watched in Silicon Valley, as other companies in the on-demand tech economy share Uber’s reliance on independent contractors. The settlement is similar to a separate agreement announced with Lyft Inc. drivers earlier this year. Over 450,000 U.S. drivers currently use the app each month, Uber CEO Travis Kalanick said in a blog post about the settlement. The deal must be approved by U.S. District Judge Edward Chen in San Francisco.

Reuters

## New York names top insurance regulators

■ The New York State Department of Financial Services has named New York-based Scott Fischer executive deputy superintendent for insurance. Mr. Fischer will lead the insurance division of the department, which supervises 1,700

insurers, the financial services department said in a statement. Previously, he was special deputy superintendent at the New York Liquidation Bureau. He succeeds Troy Oechsner who now serves as deputy superintendent for health insurance, according to a department spokesman. In addition, Laura E. Evangelista has been named deputy superintendent for insurance, a newly created position. Previously, Ms. Evangelista was vice president and assistant general counsel at Nausch, Hogan & Murray Inc., according to the statement.

## Marsh shuffles Bermuda captive leaders as Ezekiel retires

■ Marsh IAS Management Services (Bermuda) Ltd. has named Jill Husbands chairman of Marsh IAS Bermuda. She succeeds David Ezekiel who will retire. In her new role Ms. Husbands will focus on strategic growth initiatives and key client relationships and will continue as the country corporate officer of all Marsh & McLennan Cos. Inc. companies in Bermuda. Previously, Ms. Husbands was head of office for Marsh IAS in Bermuda. She will be succeeded in that role by Lawrence Bird, who previously was client leader in the Bermuda office. Both executives are based in Hamilton, Bermuda.

## Total reinsurance capital rises, but traditional capacity falls

■ Traditional capital dedicated to reinsurance dropped 3.5% from the previous year to \$357 billion in 2015, according to Willis Towers Watson P.L.C. reinsurance unit Willis Re. Continued focus on active capital management was a main driver behind the fall in traditional capital, according to Willis Re’s latest Reinsurance Market Report, as opportunities for acceptably profitable capital deployment remained challenging. Unrealized investment losses, the strengthening of the U.S. dollar against the euro and the record volume of mergers and acquisition activity in 2015 also played a role, according to the report, which is based on the Willis Reinsurance Index. The decline in traditional capital was offset by the continued growth in nontraditional capital, which hit a new high of \$70 billion, Willis Re said. In total, global capital dedicated to reinsurance stood at \$427 billion at the end of 2015, up from \$425 billion at the end of the first half of 2015, Willis Re said.

## Ashley Madison plaintiffs cannot remain anonymous

■ Plaintiffs leading a lawsuit against online dating website Ashley Madison over a security breach that exposed the personal data of customers must publicly identify themselves to proceed with the case, a U.S. judge has ruled. Forty-two plaintiffs seeking to represent users of the website who had their information compromised had proceeded anonymously against Ashley Madison’s Toronto-based parent company Avid Life Media Inc. Judge John A. Ross, of a U.S. District Court in Missouri, wrote in his ruling that being publicly named as an Ashley Madison user amounts to more than common embarrassment, but noted the 42 plaintiffs have special roles in the case that require identification. The plaintiffs are “class representatives” and may need to testify or offer evidence, unlike “class members,” those in the lawsuit who do not need participate as actively, Judge Ross wrote.

Reuters

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## U.K. law won't cover Sony losses after riot

■ British property owners and their insurers cannot recover consequential losses suffered after a riot from the police department, the U.K. Supreme Court ruled in a decision that overturns a landmark appeals court ruling that allowed Sony DADC, a Salzburg, Austria-based unit of Sony Corp., and its insurers to recover for losses suffered after a Sony distribution center in north London was damaged during riots in the summer of 2011. In *The Mayor's Office for Policing and Crime v. Mitsui Sumitomo Insurance Co. (Europe) Ltd. and others*, the U.K. Supreme Court ruled that consequential losses — such as loss of profit and loss of rental income — suffered by Sony, the owner of a warehouse, and customers whose stock was destroyed are not covered by the U.K. Riot (Damages) Act of 1886. According to the ruling, the law was only intended to cover physical damage to property. Sony was seeking a combination of property and consequential losses totaling about £50 million (\$71 million).

## E.U. hits Google with second antitrust charge

■ The European Union charged Google Inc. with using its dominant Android mobile operating system to squeeze out rivals, opening a second front against the U.S. technology giant that could result in large fines. E.U. antitrust regulators said that by requiring mobile phone manufacturers to pre-install Google Search and the Google Chrome browser to get access to other Google apps, the U.S. company was harming consumers by stifling competition. The European Commission said such practices, which started in 2011 when the company became dominant in mobile operating systems and app stores, showed Google was seeking to shield its search engine, the world's most popular, from competition. Google is already facing E.U. charges over the promotion of its shopping service in Internet searches at the expense of rival services in a case that has dragged on since late 2010 despite three attempts to resolve the issues.

Reuters

## Lloyd's market measures member diversity efforts

■ Firms operating within the Lloyd's of London insurance market are making strides to improve workplace diversity and inclusion,

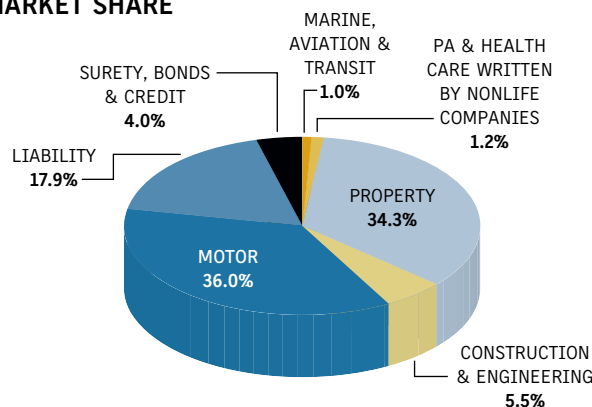
## PROFILE: PUERTO RICO

**\$1.79 BILLION**

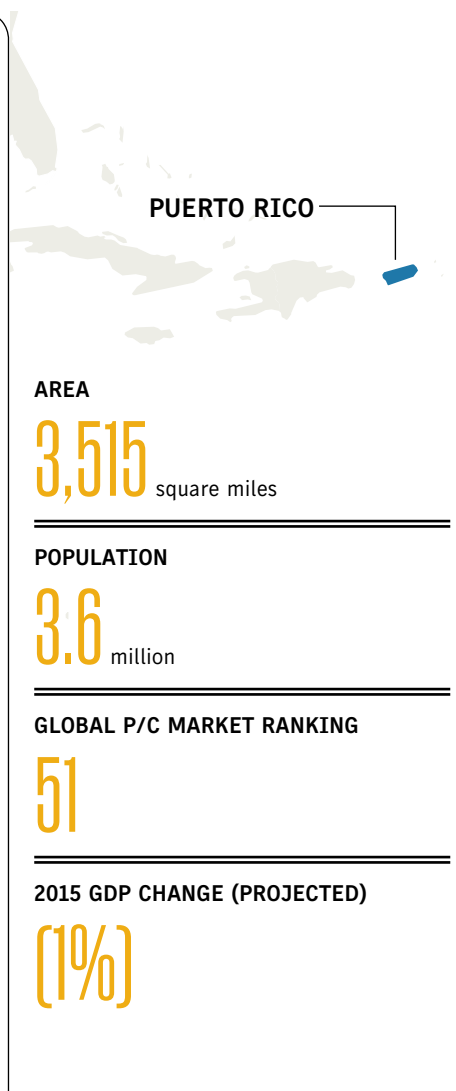
The economy of the island, a U.S. commonwealth since 1952, is based on light manufacturing and tourism and has been mired in a depression since 2007, with a modest expansion only in 2012. Poor economic fundamentals that stifle incoming capital and ties to an expensive currency draw comparisons to Greece. Though the island — with interior mountains surrounded by coastal plains of 8-12 miles wide — is at risk for earthquake and hurricane, the last major ones to hit were in 1918 and 1998 (Hurricane Georges), respectively.

◀ 2014 P/C gross premiums

### MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



## MARKET DEVELOPMENTS

UPDATED FEB. 2016

- Though insurance premiums, intermediary commissions, loss adjusters' fees and legal fees are exempt from a 4% "business to business" tax on professional services introduced in October, the levy does apply to vehicle repairs, increasing insurers' claim costs.
- An April 2015 ruling by the Insurance Commissioner's Office repealed a regulation in effect since 2005 that set criteria for reinsurance and the use of nonadmitted reinsurers. Reinsurance contracts approved under the 2005 regulations will remain in effect until they expire.
- Venezuela's One Alliance Insurance Corp. has entered the market to write compulsory and voluntary motor cover. American International Group Inc. has withdrawn from its personal lines business in Puerto Rico to focus on commercial lines. Point Guard Insurance, which entered the market in 2013, was bought by Universal Insurance Co. Inc., a deal that made Universal the leading insurer in the market.

### COMPULSORY INSURANCE

- Motor third-party liability, government supported
- Motor third-party property damage
- Nonoccupational disability benefits for employees
- Workers compensation, government supported
- Medical malpractice, placed privately or through the Puerto Rico Medical Defense Insurance Co.
- Marine liability, particularly for passenger vessels that carry 50 or more people
- Professional indemnity for insurance intermediaries

### NONADMITTED

Unauthorized insurers cannot carry on insurance activity in Puerto Rico except in excess and surplus lines, following the U.S. model. Surplus lines insurers authorized by the OCS may sell coverage through approved brokers, particularly cover that's not available from admitted insurers. E&S placements through brokers are subject to a 9% premium tax.

### INTERMEDIARIES

Agents and brokers have to be authorized by the OCS. Brokers involved in placements with OCS-authorized surplus lines carriers must warn buyers that the insurer is not subject to local supervision with a prominent red label on the policy document. Reinsurance may be placed via broker or directly through local reinsurers licensed in the same way as other intermediaries.

### MARKET PRACTICE

Insurers and intermediaries face heavy oversight from the OCS, including spot checks of documents on their premises. OCS also will expose publicly any nonauthorized insurers operating in the commonwealth. Penalties for noncompliance can include suspension and fines of indeterminate amounts.

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

but there is still work to be done, according to "Holding up the Mirror," a study by the market's Inclusion@Lloyd's diversity steering group. The study surveyed human resources executives from 40 Lloyd's market organizations and found that 13 of the 40 currently have an established D&I policy. Only 15% of respondents said that their business has a diversity council, while 57.5% said there were external D&I groups to which their employees belong. More than half — 52.5% — of respondents said their organization had a positive D&I culture, while 37.5% said the D&I culture was improving, 7.5% said their business did not have a positive D&I culture, and 2.5% did not respond. About 60% of those surveyed said their business currently captures some D&I data, while about half offer some training and

development related to diversity. But 85% said their companies did not measure inclusion.

## Capsicum lures JLT Re marine and energy execs

■ Capsicum Reinsurance Brokers L.L.P. has named former JLT Re executives Alistair Lockhart-Smith and Jerry Reeves as managing partner and partner, respectively, in its marine and energy business. Both executives will be based in London. Previously, Mr. Lockhart-Smith was deputy chairman of global business at JLT Re, while Mr. Reeves was head of U.K. facultative division and a member of the JLT Re executive committee as head of marine and energy international, Capsicum Re said in a statement.

## Partnership targets Africa specialty sector

■ Specialist Lloyd's of London insurance group Chaucer P.L.C. said it has entered a partnership with New York-based insurer Axa Equitable Life Insurance Co. to develop a specialty insurance business in Africa. This partnership with Axa's African distribution network will help London-based Chaucer extend its specialty underwriting reach and access more specialty business in this market, Chaucer said in a statement. Chaucer said it has a 12% share of Lloyd's premiums written in this region. Chaucer will share the specialty business with Axa through the formation of a special purpose syndicate, according to the statement.

## Pensions watchdog drops E.U.-wide regime plans

■ The European Union's pensions regulator has ditched plans for a blocwide capital regime for pension funds, proposing instead checks on funds to make sure they are robust enough to withstand low interest rates and people living longer. The European Commission has already dropped its own plans for E.U.-wide capital rules for pension funds after opposition from industry and governments, which said they would increase pension fund deficits. After the Commission's U-turn, the E.U. regulator looked at an alternative, so-called holistic balance sheet assessment, which considers all the risks that pension funds face but without determining capital

levels. The regulator, the European Insurance and Occupational Pensions Authority, said a one-size-fits-all solvency regime would not be appropriate due to the potential significant negative impact. Instead, it has recommended that pension funds conduct a common risk assessment to measure the impact of certain stress scenarios. The funds would then publish the outcome so that investors could compare results.

Reuters

to protect individuals that perform senior management functions, Ironshore said in a statement. "Pembroke's D&O policy has been updated to address regulatory changes, thereby assuring broader protection for those individuals subject to closer scrutiny in performing senior management functions," Chris Brown, Pembroke's Hamilton, Bermuda-based global industry practice leader for financial institutions, said in a statement.

## Insurer expands Lloyd's syndicate presence

■ AmTrust Financial Services Inc. said it will acquire specialty insurer ANV Holdings B.V. from the Ontario Teachers' Pension Plan for \$218.7 million in cash. New York-based AmTrust said it would support ANV's funds at Lloyd's of London. For 2015, Netherlands-based ANV's three managed syndicates

at Lloyd's reported gross written premiums of \$710 million. AmTrust currently operates multiline syndicate 1206, group life syndicate 4 and liability syndicate 2526.

## Chubb names leader for marine reinsurance

■ Chubb Tempest Re, the global reinsurance division of Chubb Ltd.,

has named Neil Lee-Amies head of marine and energy. Based in London, he is responsible for the performance and future development of Chubb Tempest Re's combined marine and energy and books of business. Previously, Mr. Lee-Amies was a marine and energy excess of loss underwriter at legacy Chubb Corp. He succeeds William Neave, who will retire Dec. 16 after 16 years with legacy Ace Ltd., Chubb said in a statement.

## Steve Hearn named CEO of Lloyd's broker

■ Steve Hearn, CEO of Cooper Gay Swett & Crawford Ltd., has been named CEO of the brokerage's Lloyd's of London broker, CGNMB L.L.P. He takes over from Gordon Newman, who has retired from that role. Mr. Newman, who has worked in the insurance industry for almost 50 years, will continue as chairman of the energy and reinsurance divisions of CGNMB, it said. Cooper Gay Swett & Crawford acquired Newman Martin & Buchan L.L.P., of which Mr. Newman was a founder and executive chairman, in 2013. "Gordon is a highly respected figure in our industry who has been an integral part of our business," Mr. Hearn said in a statement. "I am grateful that, despite his decision to retire as chief executive, he has agreed to continue to provide his counsel and support as chairman of our energy and reinsurance divisions."

## London market veteran returns from retirement

■ London insurance market veteran Adrian Colosso has been appointed nonexecutive chairman of specialist property managing general agent Inet3 Ltd. Mr. Colosso most recently was CEO of London-based brokerage Howden U.K. and retired from that role last year. He also was CEO of London-based brokerage Heath Lambert Group Ltd., which Arthur J. Gallagher & Co. Ltd. bought in 2011.

## D&O insurance reflects new U.K. regulation

■ Ironshore Inc.'s Pembroke Managing Agency Ltd. has enhanced its directors and officers liability insurance product for financial institutions to reflect U.K. regulation. The new regulation, known as the Senior Managers Regime, places greater personal accountability on senior managers of U.K. financial institutions and the liability coverage has been broadened

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# FINANCE MINISTER STRESSES BERMUDA'S STRENGTHS

**Q** Why is Solvency II equivalence important for Bermuda?

**A** It shows the quality of Bermuda's regulatory regime, which we have worked hard to upgrade — it's been like an eight-year odyssey to get it to where it is now — but it's not only the regulatory framework but the actual quality of participants in the market.

With those two in tandem, we really think that it puts Bermuda in a position that will stand us in good stead, and we don't think any other offshore jurisdiction is likely to get that status. Companies are looking for that expertise, that convenience, that efficiency. We're very pleased that XL Catlin made a decision to move their charter back to Bermuda — their headquarters was essentially in Bermuda even though the charter wasn't.

**Q** Do you expect other companies to make a similar move?

**A** I'm hopeful. As companies look around the globe for domiciles of advantage, I think Bermuda is uniquely placed, particularly for companies that do business in a lot

## Q&A

of different places in the world. We are hopeful that more companies will take advantage of that.

**Q** There's been a lot more competition for captive business in the past few years, with U.S. states offering some tax incentives to lure captives. How do you deal with that as a jurisdiction?

**A** Well, captives is where it all started for us in insurance, and so we still value our captive business very highly. There's a lot of competition out there, but I think what it really says is that the

whole concept of captive really has spread much more.

I think that we'll continue to hold our own with captives. We have that know-how, that intellectual capital, and we have that kind of synergy between private sector and public sector that will keep us competitive. A lot of states in the United States have captives, but the state infrastructure isn't as focused on making insurance work as we are.

**Q** The "Panama Papers" leak has put a negative focus on offshore domiciles. How has that affected Bermuda, and how do you respond to it?

**A** For the top tax havens in the world, as it relates to the "Panama Papers," Bermuda wasn't mentioned at all, but a lot of commentators keep putting Bermuda in the mix anyway.

Our policy is to aggressively point out the facts: First, Bermuda has always been selective with whom we do business. We don't accept just anybody; you have to qualify.

Second, we need to know who



**BOB RICHARDS**

**BERMUDA'S DEPUTY PRIME MINISTER & MINISTER OF FINANCE**

Bermuda, one of the world's largest insurance and reinsurance markets, has seen some significant developments in the past few months — it was granted Solvency II equivalence by the European Union, reducing red tape for Bermuda's insurers, and XL Catlin announced plans to redomicile to the island. But it also has seen its share of the captive market shrink, and the "Panama Papers" leak has tainted offshore domiciles in general. Bob Richards, Bermuda's deputy

prime minister and minister of finance, spoke recently with *Business Insurance* Editor Gavin Souter about the developments. Edited excerpts follow.

we're doing business with, so from the get-go, since 1947, we have required to know who the ultimate beneficial owners of companies are and we have those records.

And third, we understand there's a requirement to share that information with competent authorities, so we share that information with tax authorities. We have a

network of 90 countries that we share information with through tax information treaties. And we also share information with international law enforcement.

We don't share information with every Tom, Dick and Harry who's just curious. We still think there's a thing as privacy, but privacy's not secrecy.

## COMINGS & GOINGS

# UP CLOSE: SARAH JOHNSON COURT

**MIAMI-BASED VICE PRESIDENT FOR FINE ART, MUSEUMS AND HIGH-NET-WORTH BUSINESS**

Alliant Insurance Services Inc.

**PREVIOUS POSITION:** Miami-based director, global fine art practice with Aon Private Risk Management.

**LOOKING FORWARD TO:** Working with museums, galleries and institutions with various collections, as well as private and corporate collections.

**GOALS FOR NEW POSITION:** Create a successful national fine art insurance practice for Alliant and help grow its presence among high-net-worth clients and family offices.

**CHALLENGES FACING THE INDUSTRY:** Many large organizations are merging, creating service disruptions for clients, while various new insurers are coming onto the playing field. Brokers need to be extra vigilant in protecting their clients' best interests in terms of coverage, service and claims resolution.

**FIRST INDUSTRY JOB:** Account executive at Heath Lambert (now a branch of Arthur J. Gallagher & Co.) in London. I handled a book of art restorers/conservators,



auction houses and antique dealers.

**WHAT SURPRISED ME:** How much fun insurance could be. Working in art insurance allows me to go to gallery openings and exhibitions and have unique, behind-the-scenes experiences. For example, seeing a Van Gogh or a Turner out of their frames and being worked on in a conservation lab (and going into an underground mine where millions of dollars of vintage and rare wine is stored.

**ADVICE:** Travel. It opens so many doors for your future.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** Artist/bookstore owner.

**THING MOST PEOPLE DON'T KNOW ABOUT ME:** From the age of 14, I was a professional horse rider and trainer (hunter/jumper) and only stopped before I moved to London for my master's degree in 2004. I also lived on a farm in Vermont and was a glassblower during my art student days.

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EDITORIAL

## COURT RULING LIGHTS UP SIFI EXIT RAMP

**U**.S. District Judge Rosemary M. Collyer made the right call when she ordered MetLife Inc. off the federal government's list of systemically important financial institutions. MetLife didn't belong there in the first place. In fact, it's hard to see how an insurer — even if it is American International Group Inc. — should be on that list.

In her opinion, Judge Collyer said that the Financial Stability Oversight Council, which decides which institutions should be designated as SIFIs and subject to heightened regulation by the Federal Reserve, didn't even follow its own rules when it slapped MetLife with the designation. She said the council, which is chaired by Treasury Secretary Jack Lew, looked only at the benefits of designating MetLife as a SIFI without taking the costs of doing so into consideration. She said the FSOC had acted in an "arbitrary and capricious" manner in its dealings with MetLife.

The U.S. Treasury Department wasted little time in announcing that it would appeal Judge Collyer's decision. That's a decision we wish the government hadn't made.

It's hard to see how any insurer presents the type of systemic risk — the kind of risk that can send shock waves through the national and even global economy if a financial institution fails — that a megabank or other noninsurance financial institution can. Insurers already are highly regulated at the state level; and by the very nature of their business, they don't have the interconnections with other types of financial institutions that a megabank would have.

Despite the role that AIG played in the financial crisis of the late 2000s, it's worth remembering that the problems had nothing to do with the company's core insurance operations. They stemmed from overexposure to mortgage-backed securities far removed from the business of insurance.

AIG and Prudential Insurance Co. are the only U.S. insurers other than MetLife to have been designated SIFIs, although MetLife was the only insurer to challenge the government in court.

Insurers have rightfully complained FSOC has provided no "exit ramp" from the designation, leaving SIFIs in a regulatory limbo from which escape is uncertain.

Judge Collyer has provided an exit for one insurer stuck in that limbo. That exit should now be legally illuminated brightly enough for others to follow.

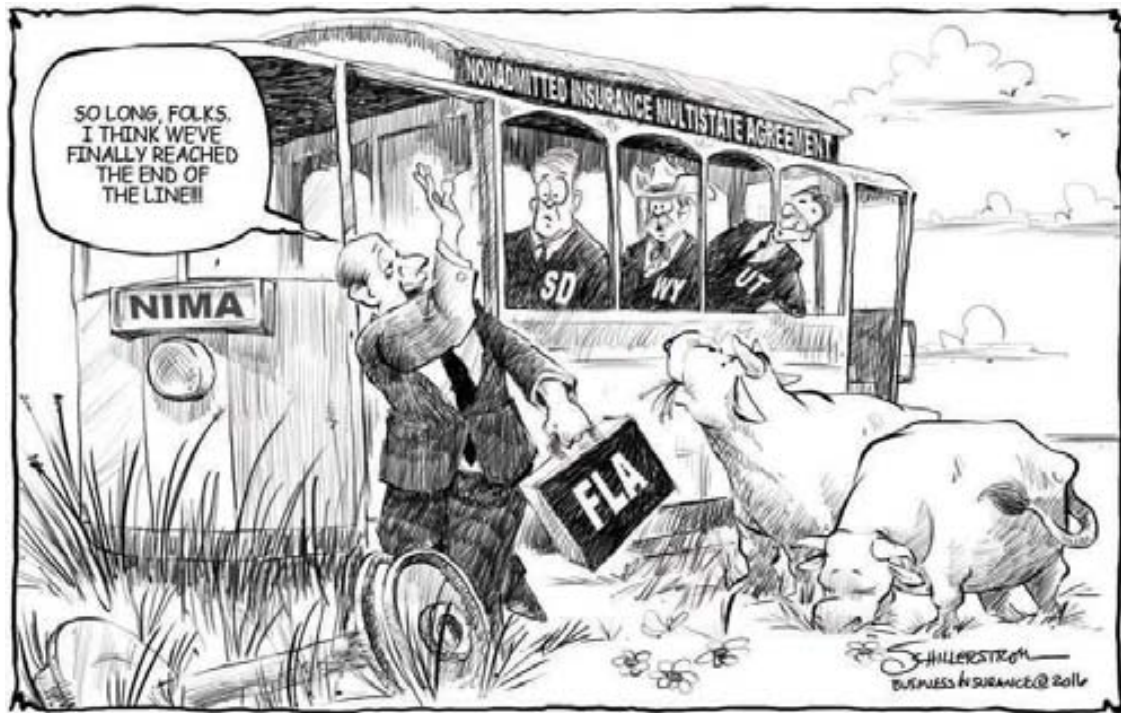
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COMMENTARY

## INSURERS COULD HOLD KEY TO MANAGING CYBER RISKS

**C**ould private industry provide at least a partial answer to one of the United States' most critical national security problems? The answer may well be "yes," if the problem is cyber security and the industry in question is the insurance industry.

This doesn't mean that the feds will suddenly flood underwriters' offices from California to London and everywhere in between with applications for cyber coverage. The federal government isn't in the market for cyber insurance, and even if it were, nobody would be rushing to sell cyber to the government given its rather spotty record on data protection.

But cyber insurance might enhance national security in an indirect yet crucial way — by encouraging ever more effective risk management for exposures involving such matters as critical infrastructure.

A few weeks ago, Tom Finan — a former Department of Homeland Security official who is now chief strategy officer for Ark Network Security Solutions L.L.C., a Dulles, Virginia-based consultant — appeared before a House Homeland Security Committee subcommittee and noted that cyber insurance could one day promote the same kind of risk management for cyber that fire insurance has provided against fire perils. While at DHS, Mr. Finan headed the agency's cyber insurance initiative.

"We knew that insurers had been very successful in identifying specific fire safety controls that today are not only conditions for coverage within fire insurance policies but also prerequisites for obtaining a building permit," said Mr. Finan in his testimony. "Our hope was that brokers and underwriters together could help identify the cyber security equivalents



**MARK A. HOFMANN**

SENIOR EDITOR

of sprinkler and other fire suppression systems. What we discovered is that while they may get there one day, they are not there yet."

That's hardly surprising. After all, it's taken fire insurers a couple of hundred years to create the risk management tools they advocate and require of their policyholders. And loss control technologies against fire loss constantly evolve.

Evolution is the hallmark of cyber threat — the good guys are always playing catch-up with the bad guys, and the speed at which the threat evolves is far faster than any threat posed by fire. The nation's critical infrastructure such as the power grid and its various components is particularly vulnerable to cyber attacks. Only a few weeks ago, the administration publicly accused Iranian hackers of launching a cyber attack against a dam in New York.

While no catastrophe occurred, the attack was a potent reminder of how much is at risk. That's where insurance comes in. Although it will take time to achieve penetration, the industry can begin encouraging enhanced cyber risk management through both carrots such as premium breaks for sound risk management, and sticks such as refusing to write coverage for accounts that don't practice adequate risk management. The faster they begin, the sooner a gap in national security will be at least partially filled.

# Value of wellness programs extends far beyond profit

Talk of wellness programs is all the rage, but a lack of understanding by employers and employees can undermine even the best of them. Arthur Hall, senior vice president and employee benefits practice leader at USI Insurance Services L.L.C., writes about how wellness programs can affect health care costs.

**T**he goal for most employers when implementing a wellness program is to improve the health of their employees and reduce health care costs.

The spectrum of wellness programs covers anything from no-cost or low-cost options such as newsletters and healthy eating days to comprehensive programs with participation or outcome-based requirements. When an employer implements a well-designed wellness program, it can expect to see a modest reduction in their annual premiums and a significant reduction in their long-term trend.

## Understand cost drivers

It is no secret that unmanaged chronic diseases, such as Type 2 diabetes, drive health care costs higher and will continue to do so if they remain unmanaged. The American Heart Association published an article in a 2012 issue of *Circulation*, which found that a 7% to 10% reduction in weight from lifestyle modifications including diet, physical activity and behavior decreased the risk of several chronic diseases, including diabetes. But it is difficult for wellness companies to project such cost reductions into the future. When an employer cannot see data that illustrate a positive effect on health care costs, the wellness program often becomes stagnant or it is terminated.

Case in point: A food manufacturer with approximately 250 employees needed to cut skyrocketing health care costs but did not want to shift additional costs to their employees. The population health manager and benefits consultant reviewed the company's data and identified a significant number of claims generated from emergency room care that could have been handled by a primary care physician. The company incentivized their employees by reducing their payroll contributions for the next plan year if they visited a primary care physician for a physical in the current plan year. As a result of increasing primary care visits, the client saw a 49 percent reduction in the cost of emergency room care, to \$20,500 in 2015 from \$40,194 in 2013.

Initially during the renewal process for the current plan year, the senior leadership was hesitant to implement additional wellness initiatives but changed their position after reviewing the health report. The report showed that per-member-per-year health care claims costs had fallen by nearly

26 percent, to \$3,707 in 2015 from \$4,985 in 2013 and the projected savings for additional wellness initiatives were impressive. The new phase of the wellness program, which focuses on spouses, was introduced at the beginning of the new plan year and the client is seeing a continued decline in

Sharing stories of employees who credit the wellness program with improving or even saving their lives can be motivating and further establish the credibility of a program's effectiveness.



emergency room and urgent care facility utilization compared to this time last year.

## Make it personal

In addition to reporting on health data, there is a human element to program success. Sharing stories of employees who credit the wellness program with improving or even saving their lives can be motivating and further establish the credibility of a program's effectiveness. Sometimes these stories are about early stage cancers discovered during the preventive screenings, such as mammograms and colonoscopies. With such preventive screening, cancer can be detected early, enabling employers and employees to avoid the financial and other burdens associated with advanced cancer treatment.

For example, a senior executive, a 40-something husband and father who skipped annual physicals due to his active lifestyle and healthy weight, shared a poignant story with his company.

As part of a new wellness initiative, this executive met with his doctor, who diagnosed a heart murmur during a physical. A subsequent echocardiogram revealed a malfunctioning heart valve. A cardiologist confirmed the diagnosis and referred him to a heart surgeon to repair the heart valve.

In preparation for the surgery, the heart surgeon performed an angiogram, revealing a blocked coronary artery that required a bypass. The surgery for the valve repair and coronary artery bypass was successful, and the patient made a full recovery.

The executive said: "If I didn't have my annual physical due to our wellness program, I'm not sure what would have occurred with my health. I can say with full confidence and passion that I believe in this proactive approach to wellness, as it has been life-changing and life-saving for me."

## The value of wellness

A wellness program is an important facet of a benefits plan and careful consideration is needed to develop a strategy that will reduce health care spending and help employees become healthier.

A West Coast-based ethnic food distributor with 600 employees saved approximately \$145,000 by implementing diabetes management in its wellness program. Numerous success stories from participants include one employee who shared that she lost 27 pounds, found a caring doctor and got her diabetes under control.

Though a wide range of wellness programs are available, not all are created equal. However, implementing a well-designed program that gets to the root cause of the health care consumption will help an employer make an informed cost management decision. Following this strategy will lead to engaged, healthier, productive employees and lower medical costs.



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**SPECIAL REPORT**

**RIMS Conference Report**

Alternative capital not just for big firms anymore

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Function trumps form, say past RIMS presidents

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Red tape can put public sector in sticky situation

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MICHAEL A. MARCOTTE

Risk managers and industry leaders attended the Risk & Insurance Management Society Inc.'s annual conference in San Diego this month.

# Future threats grounded in past

Because it can take a while to find breaches, cyber policies must be retroactive

BY JUDY GREENWALD

SAN DIEGO — Risk managers should be sure their cyber insurance policies include retroactive provisions.

It is “super important” that cyber policies provide this coverage, said Christopher Liu, head of cyber for financial institutions at American International Group Inc., in noting it takes roughly 200 days before a cyber breach is discovered.

In theory, a breach could have occurred five or 10 years ago, with the firm “only discovering it today,” he said.

AIG, he said, is happy in such

cases to pay for the forensic analysis and other costs associated with such a breach.

“We’re just not going to pick up the legal liability” or regulatory liability associated with such breaches that occurred in the past, he said.

Roberta Anderson, a partner at K&L Gates L.L.P. in Pittsburgh, told attendees at the Risk & Insurance Management Society Inc.’s annual conference that she has never placed a cyber policy with a retroactive date of less than a year.

Cyber coverage also is a consideration in mergers and acquisitions, said Timothy J. Flaherty, Alcoa Inc.’s Pittsburgh-based manager of

insurance risk management.

“If you acquire somebody, you want to make sure that you understand whom you’re buying,” he said. “You really can’t do a deep dive” into security before completion of the deal, but should use an external provider to do a thorough check as soon as possible, he said.

“You’ll find out quickly where your weaknesses are,” Mr. Flaherty said. Before integrating the systems of an acquired company, “you have to make sure you stop and understand what you’re bringing in.”

Underwriters also have changed

*“If you acquire somebody, you want to make sure that you understand whom you’re buying. You really can’t do a deep dive” into security before completion of the deal, but should use an external provider to do a thorough check as soon as possible.*

Timothy J. Flaherty, Alcoa Inc.

See **CYBER** next page

# More risk managers adding cat bonds to their bag of tricks

Wider capacity, access to cash the attractions

BY SARAH VEYSEY

SAN DIEGO — Risk managers are increasingly interested in using catastrophe bonds to obtain insurance coverage and gain immediate access to capital in the event of a claim.

And while cat bonds are better suited to large buyers, parametric insurance products are simpler to set up and can provide buyers quick access to capital after a specified trigger such as a named storm, offering an alternative for midsize buyers, experts say.

“This really is an up-and-coming issue for risk management,” said David Goodwin, a partner at Covington & Burling L.L.P. in San Francisco, who chaired a session on the topic at the Risk & Insurance Management Society Inc.’s annual conference in San Diego this month.

The use of catastrophe bonds, which typically have been used by insurers as a source of reinsurance capacity, is on the increase among primary insurance buyers, said Jamie Crystal, executive vice president at insurance broker Crystal & Company in New York.

And there is interest among investors in buying cat bonds because they are viewed as a way to diversify risk, as they are not correlated with other forms of investment, and yields are seen as attractive, Mr. Crystal said.

Cat bonds transfer a specific risk, or set of risks, to investors, Mr. Crystal said, typically setting parameters or triggers, such as a named storm hitting a predefined metropolitan area.

“You can slice and dice these any way you want,” he said.

Lauren Coyne, retired director of risk management for the Metropolitan Transportation Authority in New York, told conference attendees that a sudden lack of affordable insurance capacity had prompted the MTA to examine the possibility of buying a cat bond.

In the aftermath of Superstorm Sandy in the fall of 2012, the MTA was faced with a loss of about \$5 billion, and its insurance coverage did not come close to that amount, Ms. Coyne said. There was a contraction in the amount of insurance capacity available to the MTA and an almost doubling of its rates, she added.

Consequently, the MTA began to explore the possibility of using a cat bond, and the MetroCat Re Ltd. Series 2013-1 bond became the first ever to contain storm surge as a peril.

The bond, Ms. Coyne explained, gave the MTA’s captive insurer “a fully collateralized source of multiyear reinsurance protection for storm surge risk” and contained a parametric trigger limited to named storms or earthquakes



AP PHOTO

In the aftermath of Superstorm Sandy in the fall of 2012, New York’s Metropolitan Transportation Authority was faced with a loss of about \$5 billion, and its insurance coverage did not come close to that amount.

occurring in any of eight named states.

Other large corporations have also used cat bonds to obtain insurance coverage, the panelists said.

For example, in October 2015, Ms. Coyne said, the Washington-based National Railroad Passenger Corp., better known as Amtrak, issued the PennUnion Re Ltd. Series 2015-1 cat bond to give it about \$275 million in protection for damage to infrastructure from natural events including storm surge, wind and earthquake in the Boston-to-Washington corridor.

“Each transaction can learn from the last one, and it becomes a better and better product,” said Ms. Coyne.

Because of the frictional costs — such as the use of lawyers and bankers — involved in putting together the structures, cat bonds tend to be about \$100 million or more in size, said Mr. Crystal.

But for smaller buyers, one alternative is parametric insurance products, he said.

Parametric insurance mimics many of the characteristics of cat bonds, but instead of the risk being borne by investors it is taken on by insurers, he said.

Buyers of such coverage do not need to provide underwriting information to insurers since the product works upon a trigger — such as a named storm — occurring rather than indemnifying a loss, Mr. Crystal said.

Parametric insurance products can provide buyers with ready access to capital immediately after a loss from a peril such as a wind-storm or earthquake, he said.

No adjusters are required, so payment is swift, he said.

Parametric insurance products typically take less time to structure than cat bonds, Mr. Crystal said, and can be annual or multi-year.

“Each transaction can learn from the last one, and it becomes a better and better product.”

Lauren Coyne,  
Metropolitan  
Transportation Authority

## CYBER

Continued from previous page

how they handle the underwriting process, Mr. Liu said. Whereas AIG once had a 100-page questionnaire and conducted on-site visits, now “we’re down to 10 questions” that address about 50 points of cyber coverage, he said. “It’s basically sort of a first pass.”

One factor of interest to AIG is whether firms have someone with technical expertise on their board, he said.

Another issue for the industry is the amount of cyber exposure in insurers’ portfolios, said Ben Beeson, Washington-based cyber risk practice leader at Lockton Cos.

L.L.C. “There’s coverage in other policies” aside from in cyber policies, he said.

Modeling cyber risk also is a major challenge, he said.

“There’s a massive demand for this risk and limited supply today,” in addition to limited actuarial data, Mr. Beeson said.

“It’s a static process with a very dynamic risk,” with new attack vectors appearing frequently, he said.

He suggested companies use the voluntary framework to improve critical cyber security infrastructure recommended by the Gaithersburg, Maryland-based National Institute of Standards and Technology.

“It’s one of the better things the government has done,” Mr. Bee-

son said.

The road to obtaining cyber insurance for the first time can be a long and arduous one, risk managers said.

“It was a daunting, overwhelming process,” said Donna Stone, Houston-based director of insurance risk management at GDF Suez Energy North America Inc. “It took us a long time to get out of denial” and realize the need for a policy.

The Paris-based energy firm initially was concerned about operational risk, but then came to the realization that it also had personal employee data such as driving and health records.

In all, she said, it was a two-year process to purchase the coverage. The policy was renewed this year,

which required the participation of the human resources, regulatory compliance and communications arms of GDF Suez Energy, she said.

“We’re still learning as we go,” Ms. Stone said.

“It’s a long process the first time,” said Mr. Flaherty.

### No easy comparisons

One challenge, he said, is that the coverage varies from insurer to insurer, and “it’s very time-consuming” to compare them. Risk managers also must conduct a gap analysis and work with their brokers, taking into account other coverage that the company has, including directors and officers liability insurance.

When it comes to getting cyber insurance coverage for the first time, he said, “underwriters want to understand how you’re protecting yourself,” which cannot be accomplished by sending an email or flash drive.

This information is “kind of the crown jewels,” he said. In Alcoa’s case, the company’s chief security officer personally handed over the required information to its broker.

“Make sure you know exactly who’s getting the information and track that. Keep the spreadsheet on who has it,” Mr. Flaherty recommended.

Obviously, it is important that senior management also becomes involved in this process, he said. “It’s critical, especially when it comes to limits and retentions.”

# RISK MANAGEMENT CAN BE BAKED IN TO OPERATIONS, BUT COOKIE-CUTTER APPROACH WON'T WORK

Former RIMS presidents say flexibility key as organizations face different challenges

BY STEPHANIE GOLDBERG

SAN DIEGO — Chief risk officers are not for every business: The culture and structure of an organization should dictate the way its risk management is handled.

But however risk professionals are labeled, it's their job to help businesses succeed rather than just avoid risks, a panel of senior risk managers said.

There is no one right way to approach risk management, said Janice Ochenkowski, international director of global risk management at real estate services and investment firm Jones Lang LaSalle Inc. in Chicago.

Jones Lang LaSalle doesn't "dwell a lot on titles," Ms. Ochenkowski said "we decided very early on we didn't want a chief risk officer."

Rather, the company's global operating board, comprised of leaders from risk management, legal, finance, human resources and other departments, "has to think about what risk is and how it affects the company," she said.

"That works for us," but it wouldn't necessarily work for another organization, Ms. Ochenkowski said. "When you get too wrapped up in the process and how it's going to be packaged, you forget about what you're trying to accomplish and you lose a lot."

Ms. Ochenkowski was among former Risk & Insurance Management Society Inc. presidents sharing their insights earlier this month during the RIMS annual conference in San Diego.

Rick Roberts, the 2015 RIMS president and director of risk management and employee benefits at Ensign-Bickford Industries Inc. in Simsbury, Connecticut, said he's "split" on the issue of whether the chief risk officer position should be as pervasive as the chief financial

officer role.

In industries such as manufacturing, that role likely belongs to the CEO and the CFO, Mr. Roberts said. But a chief risk officer makes "perfect sense" in the finance industry, he said.

A chief risk officer might focus on the "aggregation of risk" in the finance sector, but risks are more clearly owned by business unit heads or the CEO in a manufacturing setting because of the nature of the business, Mr. Roberts added.

"I've seen insurance companies that have multiple (chief risk officers) and I don't understand that," Mr. Roberts said. "People are starting to abuse it already. It's a title. At the end of the day, we as risk management people own our pieces."

By focusing on devising a process to identify emerging, existing, operational and strategic risks that are important to the business, "you find the best way to do it within your organization," Ms. Ochenkowski said.

Regardless, an effective risk manager will understand the risks and inner workings of his or her organization better than almost anyone else, said Scott Clark, risk and benefits officer of Miami-Dade County Public Schools.

It also helps to educate and manage workers "from the ground-up rather than the top-down," Mr. Clark said.

When it comes to enterprise risk management, the former RIMS presidents said the effort should develop a culture that values working and living safely.

In an example from nearly 20 years ago, Mr. Roberts said he hired a firm to implement a safety program when several workers injured their backs on the job.

"The program had nothing to do with work

and it had everything to do with, 'Here's how you protect your back,' " Mr. Roberts said. The safety firm used Cheez Whiz and "chicken bone" metaphors to train workers to move safely.

Even today, Mr. Robert said he "can go out on the shop floor and say, 'Cheez Whiz' and they remember."

Similarly, Ms. Ochenkowski urged risk managers to "ditch the jargon."

"Don't talk about risks and risk identification and all of those things," she said. "For example, sit down with the operating engineers," identify actual losses or near misses and "ask them to help you avoid similar situations."

At Jones Lang LaSalle, Ms. Ochenkowski said risk professionals identify with different business lines, such as corporate solutions and construction. That identification "allows that risk manager to, first of all, understand the business; secondly, have the business get to know them; and be seen as assistants in solving the business problems."

Calling risk an "opportunity," Ms. Ochenkowski said if a business is setting out to do something that's high-risk, "I bet it's because they think they're going to get some good financial reward for it."

"Any idiot can say no. It takes somebody smarter to come up with a solution," she said.

"You're not risk exterminators," Ms. Ochenkowski said. "You're risk managers. If all you ever do is tell your business, 'No,' they're going to stop coming to you ... They will not see you as part of the team and they will know that you absolutely don't understand the business. What my risk managers have to do is understand what the risks are and figure out how to make it happen anyway."



"When you get too wrapped up in the process and how it's going to be packaged, you forget about what you're trying to accomplish and you lose a lot."

Janice Ochenkowski, Jones Lang LaSalle Inc.



"I've seen insurance companies that have multiple (chief risk officers) and I don't understand that. People are starting to abuse it already. It's a title. At the end of the day, we as risk management people own our pieces."

Rick Roberts, Ensign-Bickford Industries Inc.



MICHAEL MARCOTTE

Former Risk & Insurance Management Society Inc. presidents shared their insights earlier this month during the RIMS annual conference in San Diego.

# INTEGRATED BUSINESS CONTINUITY, ERM PLANS HELP ORGANIZATIONS BUILD RESILIENCE

But language barriers can get in the way of effective collaboration

BY GLORIA GONZALEZ

SAN DIEGO — Some corporations are beginning to recognize the benefits of connecting their enterprise risk management and business continuity management programs, but hurdles such as divergent vocabularies must be overcome before such linkages are widespread.

A primary function of a business continuity team is to ensure the company can function after an incident such as a supply chain disruption or a natural catastrophe that shuts down a major facility, meaning that continuity planning should be a core element of a strong enterprise risk management program, experts say.

“A lot of ERM and BCP is about trying to come up with plans that allow you to respond efficiently and effectively to uncertainty,” said Rich Michel, head of the national risk management practice at Wells Fargo Insurance Services USA Inc. in Atlanta. “You may not be able to prevent something from happening, but you can certainly decide how you need to respond.”

While business continuity management does not address every enterprise risk, it can identify and respond to fast-approaching, high-impact interruption risks that can overwhelm operational resilience, Philip Samson, a principal with PricewaterhouseCoopers L.L.P. in Dallas, told attendees of the Risk & Insurance Management Society Inc.’s annual conference in San Diego this month.

“Where do we need to become stronger so we can take a hit?” he said. “Let’s see if we can build some resiliency into our infrastructure. Business continuity can help you do that.”

Business continuity is much more tactical and operational than enterprise risk management, but the programs have to be linked and integrated, said Lisa Kremer, San Francisco-based U.S. practice leader, enterprise risk management, for Marsh Risk Consulting, a unit of Marsh L.L.C.

“We’re not necessarily seeing that all across the board, but when you think about all risks to the organization from an ERM standpoint, they need to have mitigation and controls in place,” she said. “If we’re not seeing a business conti-



MICHAEL A. MARCOTTE

Enterprise risk management was one of three overarching themes at the Risk & Insurance Management Society Inc.’s annual conference in San Diego this month.

nity program that’s actually alive and well and sustained and not just a document, then that’s a big gap. That is a primary way where I can see the integration and the linkages between those two.”

Some companies have started to link their ERM and BCM programs. Falken Tire Corp. did not have a formal business continuity program until a phone line disruption propelled business continuity onto its top-five priority list, said Luis Cortez, internal audit manager based in Rancho Cucamonga, California. That spurred it to integrate BCM into its ERM program this year and form one steering committee to identify risks and develop continuity plans, Mr. Cortez said.

“We’ve married both programs into one program, and what we’re finding by doing that is some of the risks we’ve identified through ERM we have to address through BCM anyways,” he said.

Cyber risk was one of the exposures Falken identified through this process, which helped raise awareness of the need to revamp the company’s business continuity plan for information technology, Mr. Cortez said. Falken also sought to address logistical challenges caused by weather issues, which had created problems delivering supplies into and out of the District of Columbia and during

port closures in 2015, and the risk posed by receiving all of its product from overseas parent company Japan-based Sumitomo Rubber Industries Ltd.

“Because our sole source is our parent company, we’re kind of handcuffed a little bit,” Mr. Cortez said. “As we were going through this assessment from a BCM perspective, we talked to the different players that came up with the contingency plans, and we were able to determine that because we get 100% of our supply from our parent company, the only thing we can do is try to have some type of buffer.”

But there are obstacles to linking ERM and BCM programs, including the traditional silos built up within organizations and the different disciplines of these teams, with business continuity planners generally coming from the engineering field and ERM staff having financial, accounting or auditing backgrounds, experts say.

“Sometimes you almost feel like a translator, and that’s a very, very important thing to do,” said Christopher Johnson, executive vice president for FM Global in Johnston, Rhode Island. “The worlds of engineering, procurement, finance, insurance and on it goes, all have very distinct vocabularies. A starting point is to get everyone together to imagine what for them is probably unimag-

inable.”

It takes a skilled risk manager to articulate how ERM and BCM fit together and to reassure staffers that the goal is not to take their jobs away, said Geoff Taylor, San Francisco-based executive vice president for Willis Towers Watson P.L.C. Senior management can also drive efforts to adopt a singular culture, but ideally consensus would be built among the parties, which requires negotiation and cooperation, he said.

“The problem is, language of risk is not common,” Mr. Taylor said. “If you go to an accountant and say EBITDA, everyone knows exactly what you’re talking about,” but not so for risk. “It’s hard to advance things when you don’t all speak the same language.”

One of the signs of progress is when ERM and BCM steering committees are joined into one working to identify core risks and develop response plans, Ms. Kremer said.

“When we think about it from an ERM standpoint, one of the fundamental, successful pieces of the framework is making sure you have that risk communication in place and try to establish that risk culture, that information is shared,” she said. “Not that they all have to speak the same language all the time, but you at least have to start that dialogue.”

“The problem is, language of risk is not common. If you go to an accountant and say EBITDA, everyone knows exactly what you’re talking about,” but not so for risk. “It’s hard to advance things when you don’t all speak the same language.”

Geoff Taylor,  
Willis Towers Watson P.L.C.

# Red tape ties up risk management efforts for public sector organizations

Higher scrutiny, regulation make it tougher to implement ERM strategies, avoid risks

BY LOUISE ESOLA

SAN DIEGO — The public sector lags the commercial sector when it comes to emerging best practices and particularly when it comes to enterprise risk management.

Public organizations are usually subject to more scrutiny and more bureaucracy than private companies, and they are often required to provide services regardless of the potential liability.

Still, public sector risk managers do have some advantages over their private sector counterparts, such as sovereign immunity protections that limit liability, risk management experts said.

“In the private sector you want to ... push the responsibility for the risk as close to the source of the risk, get away from the hierarchy of risk management,” said David Dolnick, San Diego-based risk manager for construction firm The Brady Cos.

Incorporating risk management across an organization to create better outcomes has spread among companies in the private sector and gained recognition among risk managers generally as a way to reduce exposures. Yet the public sector faces greater restrictions and organizational challenges, Mr. Dolnick said.

“If (a private company) wants to make changes, (executives) can do so behind closed doors,” he said. “Public boards have to do things in the open, and that can slow them down. (In turn), the private sector tends to be more nimble.”

Speaking earlier this month during a session of the Risk & Insurance Management Society Inc.’s annual conference, risk managers from opposite realms also said the adoption of enterprise risk management is another major difference between the public and private sectors.

Joseph Mazza, Oceanside, California-based director of risk management for MiraCosta College, agreed that public sector adoption of ERM has been slow, but also said the college and other California public institutions are well on their way to implementing ERM programs.

Citizen and media scrutiny affecting decision-making is a key challenge for public sector risk managers, Mr. Dolnick said.

“You never get away from that public eye,” he said. “In the private sector, we try to stay away from that.”

There are fewer options in the public sector because of stricter accountability, said Mr. Mazza. There are “many bureaucratic hurdles in the public sector. We have a board of trustees (and) transparency is critical. If someone in the community asks, ‘Why did you do that?’ (the board of trustees) has to answer.”

In addition to the politics of working in the public sector, there are numerous codes to comply with, which slows the implementation of ERM. In California alone, Mr. Mazza said, public organizations in California face 28 sets of laws, ranging from an elections code and family code to a vehicle code and water code, that strictly guide day-to-day operations.

Another key difference is the tolerance for risk. Whereas the pri-

vate sector can avoid certain risks, the public sector is required to provide a wide array of services and cannot avoid all risks.

“If taxpayers want it done, (we) have to find a way to get it,” Mr. Mazza said. “We are not concerned about profit. We are given a budget (and) we have to operate and squeeze every dollar out of that.”

Public entities, however, can use some of the same risk manage-

ment techniques as private firms. At MiraCosta Community College, for example, the board elected to hire a landscaping service to trim the tall trees on campus. This eliminates some risk of having the college’s own maintenance workforce performing risky work on campus.

Another difference between public and private entities is sovereign immunity, which protects public entities from some law suits.

The public sector, for example,

may provide photocopies of a book or manual if it is used for educational purposes, said Mr. Mazza. “In the private sector, you are looking at copyright infringement.”

Mr. Dolnick also said public entities are shielded by law from punitive damages.

The private sector has “less infrastructure, but a higher level of liability,” Mr. Dolnick said. “You are trading one for the other.”



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## Chubb creates division for small commercial risks

Chubb Ltd. has launched a small commercial insurance division for North America.

The division will provide management and professional liability and standard insurance coverage for small businesses with annual revenue up to \$10 million, Chubb said in a statement.

New York-based Jim Williamson has been named president of the division. Previously, Mr. Williamson was division president of Ace Private Risk Services, according to the statement.

New York-based Michelle Middleton will be chief operating officer. Previously, she was Eastern territory underwriting center branch manager and senior vice president at Chubb & Son.

## Mercer partnership boosts multinational benefits

Mercer L.L.C. has partnered with Thomsons Online Benefits Ltd. to expand their respective offerings to multinationals looking to manage their global benefits programs.

Mercer will provide global employee benefits brokerage and consulting, and Thomsons will provide streamlined administration, automation and enhanced communication of benefit plans through its global employee benefits software as a service platform called Darwin, Mercer said in a statement.

This alliance between Mercer and Thomsons aims to address the difficulties that companies operating globally face managing employee benefits in line with local regulation and workforce expectations, according to the statement.

“We expect the relationship to evolve with new offerings in the future. Many of these will center on robust and comprehensive data analytics — financial, vendor and design data from Mercer coupled with engagement and workforce data from Darwin,” Graham Pearce, head of Mercer’s international consulting group, said in the statement.

## Broadspire adds testing for soft-tissue injuries

Broadspire Services Inc. has partnered with Emerge Diagnostics L.L.C. to provide electrodiagnostic functional assessment services to help control workers compensation costs.

Atlanta-based Broadspire is a third-party administrator of workers comp claims, liability claims and medical management services.

According to Broadspire, soft-tissue injuries are a leading cause of comp claims, costs and time away from work.

The partnership aims to reduce the costs of claims involving such injuries. Electrodiagnostic functional assessment is a computer-assisted, diagnostic test that evaluates musculoskeletal and soft-tissue pathology and functionality. The resulting profile helps establish the location, nature, age and extent, or lack, of an injury. The electrodiagnostic assessment can be performed as a post-injury test or



## Firms develop cat model for marine losses

\* Sompo Canopus A.G. has partnered with Risk Management Solutions Inc. to create a marine catastrophe model.

RMS and Sompo Canopus have been development partners since 2015. They have joined with Chubb Ltd., Aon Benfield Group Ltd., Axis Capital Holdings Ltd., Liberty Mutual Holding Co., MS Amlin P.L.C. and Munich Reinsurance Co. to develop this model, compile data and build and calibrate models to better assess cargo vulnerability and specie, particularly in product classification, storage and packaging, Sompo Canopus said in a statement.

“Significant marine losses such as the 2011 Tohoku (Japan) earthquake, 2012 Hurricane Sandy (in the Caribbean Sea and U.S.) and the 2015 Tianjin (China) explosion have improved the understanding of the link between property and marine lines of business. ... A new approach is needed to align these correlated classes, and our collaboration with RMS represents a key step on this journey,” Marek Shafer, head of catastrophe management at Sompo Canopus, said in the statement.

used to develop a baseline for selected job classes, Broadspire said in a statement.

The assessment is conducted onsite and administered by licensed medical professionals, Dr. Jacob Lazarovic, Sunrise, Florida-based chief medical officer for Broadspire, said in an email.

## Support for parents of kids with developmental issues

Mercer L.L.C. and Rethink Autism Inc. have partnered to provide employers and working parents with tools and resources to care for children with developmental disabilities such as autism.

This brings together Mercer’s health

benefits consulting capabilities and Rethink’s health technology and evidence-based clinical guidance platform, Mercer said in a statement.

New York-based Rethink offers members access to a video-based treatment program, behavior intervention planning tools, training for caregivers, individualized assessments, online skills-based activities and access to remote, clinician-led consultation for treatment guidance and care. Its case management and data analytics capabilities automatically generate data-based reports to track the interactions, according to the statement.

“The unprecedented increase in the number of children with developmental disabilities such as autism creates a significant and heavy burden on their working parents, and those unique challenges they face follow them into the workplace,” Rethink CEO Daniel Etra said in a statement.

## Program protects car lots from natural hazards

Managing general underwriter Victor O. Schinnerer & Co. Inc. has launched a dealer open lot insurance program.

The program is for automotive dealerships and provides coverage for owned inventory held for sale. The program is available in states except Alaska, Colorado, Hawaii, Iowa, western Kansas, Louisiana, Minnesota, Nebraska, North Dakota, Oklahoma and South Dakota, Schinnerer said in a statement.

The coverage includes flood and earthquake damage and aggregate wind/hail deductibles. Limits up to \$25 million per location can be raised upon request, according to a Schinnerer spokeswoman.

## Predictive model to cut pain for injured workers

Travelers Cos. Inc. has developed a predictive model that identifies the likelihood of an injured worker developing chronic pain, the company said.

Travelers Early Severity Predictor, designed to mitigate chronic pain caused by workplace injuries, has been used in more than 20,000 cases since 2015, Travelers said in a statement.

The more than 9,000 injured workers identified as being at risk of developing chronic pain “received a customized, sports medicine-like regimen of treatment precisely sequenced to aid and accelerate their recovery,” according to the statement.

On average, injured workers who participated in Travelers Early Severity Predictor program recovered and returned to work faster and were less likely to receive opioids, the statement said, noting that injured workers who were prescribed opioids typically received a lower dosage and/or for short-term use.

“Our goal is to work with injured employees and their doctors to eliminate or substantially reduce the need for painkillers that can slow their recovery or lead to devastating long-term addiction,” Dr. Adam Seidner, national medical director at Travelers, said in the statement.

## DEALS & MOVES

### Marsh & McLennan Agency acquires benefits consulting firm

Marsh & McLennan Agency L.L.C. has acquired Corporate Consulting Services Ltd.

The terms were not disclosed.

Corporate Consulting Services is a New York-based insurance brokerage and human resource consulting firm that provides employee benefits, retirement planning and human resources consulting services, Marsh & McLennan Agency said, in a statement.

Corporate Consulting Services generates \$6 million in annual revenue and has 20 employees. All of its employees are joining Marsh & McLennan Agency’s Northeast region. Corporate Consulting Services will continue to operate out of its New York office under its president and CEO Grant Dougherty. It will begin operating under the Marsh & McLennan Agency name immediately, according to the statement.

“With the addition of CCS, we further enhance our employee benefits platform and design to better serve the needs of our clients in the Northeast region,” Anthony Gruppo, CEO of MMA’s Northeast region, said in a statement.

### Hilb Group acquires specialty agency

The Hilb Group L.L.C. has acquired Keene, New Hampshire-based Clark-Mortenson Insurance.

The terms of the transaction were not disclosed.

Clark-Mortenson Insurance is an independently owned insurance and financial services agency that specializes in hospitality, elder care, residential health facilities and technology, The Hilb Group said in a statement.

Tom Minkler, Clark-Mortenson Insurance president, will continue to lead the company’s 48 employees under its existing name, according to the statement.

### Broker USI picks up Indiana insurance agency

USI Insurance Services L.L.C. has acquired Forrest Sherer Insurance Inc. from First Financial Corp.

Terms were not disclosed.

Terre Haute, Indiana-based Forrest Sherer provides property-casualty, employee benefits and personal risk services. Its 60 employees will remain at their Terre Haute and Evansville, Indiana, locations, USI said in a statement.

Forrest Sherer will operate as USI Insurance Services, according to a USI spokeswoman.

### Arthur J. Gallagher adds employee benefits group

Arthur J. Gallagher & Co. has acquired Capitol Benefits Group Inc.

Terms were not disclosed.

Oklahoma City-based Capitol Benefits Group is an employee benefits insurance broker that provides insurance products and consulting services to small and middle-market businesses and individual clients in the U.S. Its team will continue to operate from its current location under the direction of John Neumaier, head of Gallagher’s South Central employee benefit consulting and brokerage operations, Arthur J. Gallagher said in a statement.

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### REQUEST FOR PROPOSAL

#### Request for Proposal Auditing Services

The WTC Captive Insurance Company is seeking proposals for auditing services. The WTC Captive is an independent, not-for-profit corporation, created by the City of New York, licensed by the New York State Department of Financial Services and domiciled in New York State. The WTC Captive is insuring the City and contractors from their work performed on the City's FEMA funded debris removal site.

The Request for Proposal solicits proposals from firms to provide the following services, among others:

1. Audit of financial statements in accordance with auditing standards generally accepted in the United States of America as promulgated by the American Institute of Certified Public Accountants (AICPA).
2. Single audit of WTC Captive's federally assisted program, covering internal control over the administration of federal programs and compliance with applicable laws and regulations, in conformance with Generally Accepted Government Auditing Standards (GAGAS), as promulgated by the United States Government Accountability Office (GAO) in its publication, Government Auditing Standards, as well as the additional standards for financial and compliance audits contained in the Single Audit Act Amendments of 1996 and the provisions of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) issued by the Office of Management and Budget and its Compliance Supplement.

In addition to other prerequisite qualifications for consideration, each candidate must affirm that it presently satisfies all licensing and certification requirements necessary to conduct business in the State of New York with regard to the scope of service required, and have experience with at least four other captive insurance companies. This experience must include currently serving as auditor to a minimum of two (2) US domiciled single parent or group captive insurers with assets over \$50 million. Please contact [jschoenbeck@wtccaptive.com](mailto:jschoenbeck@wtccaptive.com) or [dbiester@wtccaptive.com](mailto:dbiester@wtccaptive.com) to request a copy of the Request for Proposal. Proposals are due by Friday, May 27, 2016 at 12 noon.

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### LEGAL NOTICE

**IN THE MATTER OF: The Companies Act 1981  
MEMBERS' VOLUNTARY WINDING-UP  
IN THE MATTER OF: CHESAPEAKE INSURANCE  
COMPANY LIMITED  
NOTICE OF COMMENCEMENT OF THE LIQUIDATION**

The Members of the above-named Company, acting by written consent without a meeting on 23rd December 2015 passed the following resolutions:

(1) THAT the Company be wound up voluntarily, pursuant to the provisions of the Companies Act 1981;

(2) THAT John C. McKenna be appointed Liquidator, for the purposes of such winding-up, such appointment to be effective forthwith.

Codan Services Limited, Secretary

### LEGAL NOTICE

**IN THE MATTER OF: The Companies Act 1981  
MEMBERS' VOLUNTARY WINDING-UP  
CHESAPEAKE INSURANCE COMPANY LIMITED  
NOTICE OF APPOINTMENT OF LIQUIDATOR**

I, John C. McKenna, of Finance & Risk Services Ltd., 502 International Centre, 26 Bermudiana Road, Hamilton HM 11, Bermuda, hereby give you notice that I have been appointed Liquidator of CHESAPEAKE INSURANCE COMPANY LIMITED (the "Company") by a resolution of the Company dated 23rd December 2015.

John C. McKenna, Liquidator

### LEGAL NOTICE

**IN THE MATTER OF: The Companies Act 1981  
MEMBERS' VOLUNTARY WINDING-UP  
CHESAPEAKE INSURANCE COMPANY LIMITED  
NOTICE OF BAR DATE JUNE 30, 2016**

NOTICE IS HEREBY GIVEN that the Creditors of the above named Company, which is being voluntarily wound up, are required, on or before June 30, 2016, to send their full Christian and Surnames, their addresses and descriptions, full particulars of their debts or claims, and the names and addresses of their solicitors (if any) to John C. McKenna, the undersigned, c/o Finance & Risk Services Ltd., 502 International Centre, 26 Bermudiana Road, Hamilton HM 11, Bermuda, the Liquidator of the said Company, and if so required by notice in writing from the said Liquidator, and personally or by their solicitors, to come in and prove their debts or claims at such time and place as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved.

DATED: April 11, 2016  
 John C. McKenna, Liquidator

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"The three issues that are the biggest barriers to lowering the risk of sleep apnea among truck drivers are convenience, cost and culture."

Jamie Wilson, Zurich North America

## SLEEP

Continued from page 4

In a March U.S. Department of Transportation statement, Transportation Secretary Anthony Foxx encouraged the public to comment on the issue within the 90 day period from March 8. "It is imperative for everyone's safety that commercial motor vehicle drivers and train operators be fully focused and immediately responsive at all times," he said in the statement.

A University of Minnesota study highlighting the risks, which included 1,613 drivers who had obstructive sleep apnea, was published March 21. The "non-adherence with employer-mandated sleep apnea treatment and increased risk of serious truck crashes" study, which took place from 2006-2009, reported that drivers with sleep apnea who were not treated for it had "a five-fold greater preventable crash risk," meaning the driver could have and should have taken actions that would have prevented the crash.

"I'm sure our study's evidence will be considered, and I also think it will be a scientifically challenging process to figure out what kind of regulation should be in place, but I believe there should be some regulation," said University of Minnesota, Morris-based economics professor Stephen V. Burks, the lead author of the study and a former truck driver.

Jamie Wilson, a Huntsville, Alabama-based senior risk engineering consultant and transportation specialist at Zurich North America, was diagnosed with sleep apnea in 2010. He knows that the testing and diagnosis can be expensive and time consuming, making it a challenge for commercial truck drivers to complete the program.

"The three issues that are the biggest barriers to lowering the risk of sleep apnea among truck drivers are convenience, cost and culture," he said.

Mr. Wilson said the current method of diagnosis requires numerous visits to a sleep specialist over several weeks, which can be difficult to fit into a driver's schedule. He recommends

that trucking companies explore alternative methods such as take-home tests or working with a local physician to reduce delays in diagnosis and treatment. The cost of the tests is also high, so he recommends trucking companies review their medical insurance plan to make sure it covers sleep studies, he said.

Mr. Wilson said the biggest challenge may be getting transportation companies to change the culture of their fatigue management programs and to start working to include sleep apnea before regulations take effect because "any new regulation regarding sleep apnea will affect every trucking company, regardless of size."

Dr. Watson recognizes the concern among commercial drivers that being diagnosed with obstructive sleep apnea could impair their livelihood, but he said he would rather they viewed it as an opportunity to improve their health and quality of life.

"It's everybody's responsibility to be awake at the wheel," he said, "not only for their own safety but for the safety of others," he said.

## EXCHANGES

Continued from page 4

for the lowest-cost plans and UnitedHealth's pricing is not the cheapest in most markets.

The national average monthly premium for silver plans this year would have been only 1% higher without UnitedHealth, the Kaiser analysis showed.

Still, in 29% of counties where United sells exchange plans, its exit would leave behind just one insurer and affect 1.1 million people — primarily in Southern states and rural areas.

"Where competition diminishes in certain areas, that could have a long-term impact, but that's more difficult to quantify," said Cynthia Cox, Washington-based associate director of health reform and private insurance at Kaiser. "Markets are still able to function" even "in areas that have only one insurer."

Though most insurers are losing money on the public exchanges, many have said they will stay put.

"We believe that the market offers a potential longer-term opportunity for profitable growth," a Cigna Corp. spokesman said in an email, adding that the Bloomfield, Connecticut-based insurer plans to expand beyond its current seven states next year.

Anthem Inc. and Aetna Inc. also said they remain committed, though it's unclear if the insurers will expand into new markets.

### State-by-state effect

Analysts said UnitedHealth's exit from multiple exchange markets would have varying effects.

"It's going to be hard to make a nationwide blanket statement that this is going to have 'X' impact on premiums," said Chris Sloan, Washington-based senior manager at consultant Avalere Health. "It's going to vary state to state and vary a lot based on what other competitors there are in the market. It's also going to vary based on how competitive United was in that state."

Most observers expect health

insurance premiums to increase next year as health insurers adjust their pricing to respond to the high-risk exchange enrollees.

However, "I don't think the withdrawal of the United alone would have those effects" because of its small exchange market share, said insurance lawyer Kevin Fitzgerald, a partner at law firm Foley & Lardner L.L.P. in Milwaukee.

Still, he said the "inadequate pricing across the board" and sicker exchange population mean rates will go up as insurers try to "recover losses."

Though insurers could evaluate exchange participation on a "market-by-market and product-by-product" basis, Mr. Sung said he

**"It's going to be hard to make a nationwide blanket statement that this is going to have 'X' impact on premiums."**

Chris Sloan, Avalere Health

doesn't expect others to respond as dramatically as UnitedHealth.

Ana Gupte, New York-based managing director and senior research analyst at Leerink Partners L.L.C., said in a report last week that Leerink does not "expect mass exodus from the exchanges by other plans" as insurers, such as Aetna and Anthem, are busy closing mergers and have more revenue tied to the individual health insurance market.

Still, Avalere's Mr. Sloan said, "It wouldn't surprise me to see other insurers pull out of some states."

The Department of Health and Human Services, which oversees the health care reform law and the public exchanges established under the law, said it expects insurers to enter and exit the exchange market.

"The marketplace should be judged by the choices it offers consumers, not the decisions of any one issuer," an HHS spokesman said in an email. "Data shows that the future of the marketplace remains strong."

## PBGC

Continued from page 4

try Committee.

Business groups say the budget-balancing gimmick has led lawmakers in recent years to repeatedly raise PBGC premiums with no debate or even a PBGC request for such hikes.

The flat-rate PBGC premium that all defined benefit plan sponsors must pay is \$64 per participant this year. Under legislation passed last year, that rate will rise annually, reaching to \$80 in 2019.

In addition, the 2015 law raised the so-called variable-rate premium for underfunded plans to \$33 per \$1,000 of plan underfunding in

2017, \$37 in 2018 and \$41 in 2019. That compares with \$30 this year.

According to an earlier Congressional Budget Office report, the 2015 law will cost employers an additional \$4 billion in PBGC premiums through 2025.

Business groups say there is no evidence that the PBGC needs more premium revenue. They say the agency has not been hit with a major claim of \$1 billion or more from a failed pension plan in nearly seven years. In addition, the PBGC projected prior to the 2015 law hiking premiums that the deficit in its single-employer insurance program will drop to \$4.9 billion by 2024 from nearly \$24 billion last year.

"The single employer pension insurance program is in pretty

good shape. There clearly is no compelling need for premium increases," said Alan Glickstein, a senior retirement consultant at Willis Towers Watson P.L.C. in Dallas.

The sole motivator for the repeated PBGC premium rate hikes has been the provision in the 1980 law, the Multiemployer Pension Plan Amendments Act, allowing those hikes to be counted as federal revenue, which on paper shrinks the federal deficit, business groups say.

Some say the increases, though, actually damage the PBGC's financial health.

That is because the hikes have been a key factor in the growing employer move to shrink the size of their pension plans and the pre-

miums they pay to the PBGC, Mr. Glickstein said.

Employers can shrink their pension plans by, for example, offering a cash lump sum to certain participants or buying a group annuity to shift plan benefit obligations to insurers.

"The sad, ironic aspect of all this is that premium hikes could shrink the PBGC's premium base, reducing premium income (and) hurting the PBGC's overall financial position," Mr. Glickstein said.

"It is counterproductive. When Congress raises premiums, the PBGC's premium base will shrink," said Deborah Forbes, executive director of the Washington-based Committee on Investment of Employee Benefit Assets, which represents large pension

plan sponsors.

Educating Congress, though, on the damaging and counterproductive results of continued PBGC premium rate hikes will take time, experts acknowledge.

"It is an uphill and difficult climb. There is a significant educational component," said Ms. Dudley of the American Benefits Council.

But benefits groups say they are prepared to wage that educational battle.

"We are working very hard and are meeting with many lawmakers and their staffs to convince them of the negative consequences to the PBGC and to the pension system of continual PBGC premium increases," the ERISA Industry Committee's Ms. Guarisco Fildes said.

# NIMA

Continued from page 3

run the clearinghouse for NIMA.

The remaining states are considering NIMA's future without Florida. For its part, "Utah is still evaluating the situation with NIMA and the role Utah will play with it in the future," a spokesman for the Utah Department of Insurance said in an email.

"The South Dakota Division of Insurance is currently reviewing all options and will make a determination regarding our future direction when the analysis has been completed," South Dakota Insurance Director Larry Deiter said in an email.

A spokeswoman for the Wyoming Department of Insurance said it also is considering its options.

NRRA supporters who questioned the wisdom of multistate clearinghouses rather than allowing the home state of the policyholder to collect the taxes say Florida's move could doom NIMA.

"It certainly looks as though NIMA is continuing to devolve, and it is something that the AAMGA has continued advocating because we continue to believe that the 100% home state tax provision under the NRRA is the most consistent and uniform provision that can provide the greatest amount of ease for brokers and consumers alike," said Bernie Heinze, executive director of the King of Prussia, Pennsylvania-based American Association of Managing General Agents.

"This really does bring us closer to finally realizing the goal of the NRRA for the consistent and single approach to the taxation of premiums on multistate surplus lines policies," he said.

"Florida was the largest state," said Keri Kish, director of government relations at Kansas City, Missouri-based NAPSLO. "With Florida's withdrawal, it's taking most of the tax-sharing revenue for the other states with it."

NIMA "was an unnecessary burden for the broker and for the consumer," Ms. Kish said. "NAPSLO strongly believed that the cost of supporting any tax-sharing system would far exceed the benefits derived from the insignificant tax reallocation among participating states. And we found that to be true since NIMA became operational in 2012."

Florida's withdrawal from NIMA is "very likely the death blow to the multistate surplus lines premium tax allocation mechanism," the Washington-based Council of Insurance Agents & Brokers said in a message to members.

"With the withdrawal of Florida, NIMA loses its largest market and brings us one step closer to finally realizing the long-delayed goal of the Nonadmitted and Reinsurance Reform Act for a single, uniform approach to the taxation of multistate surplus lines placements," the council said.

# UTILIZATION

Continued from page 3

the lower court asked California's 4th District Court of Appeal in Riverside to intervene.

Ruling that "nothing about (his) job is alleged to be the cause of the seizures," the appellate court decided in January that Mr. King, whose employer was not identified, could bring a tort claim against CompPartners and Dr. Sharma. It also concluded that Dr. Sharma owed Mr. King a duty of care since a doctor-patient relationship exists between utilization reviewers and injured workers.

The appellate court ruling "threatens utilization review and the ability (of workers comp payers) to control medical care," which is why insurance organizations, municipalities and self-insured employers "have filed requests for 'depublication' of this decision," Tiffany Speers, managing partner at law firm Adelson, Testan, Brundo, Novell & Jimenez in San Francisco, said in an email.

California's utilization review process says a claims adjuster must approve a request for treatment unless a physician determines it "medically unnecessary." The independent medical review process was established to resolve challenges to utilization review decisions.

If the state Supreme Court upholds the appellate court's decision, health care providers might be reluctant to conduct utilization reviews that could prompt malpractice claims

"for providing services that many believe are part and parcel to workers compensation claims and would be protected by the exclusive remedy," said Albert B. Randall Jr., Baltimore-based principal at law Franklin & Prokopik P.C.

Mike Lemrick, vice president of utilization review at Coventry Workers' Comp Services in Dallas, said the relationship between utilization reviewers and injured workers already is considered somewhat "adversarial."

**"It is the role of the primary care physician who actually examines the claimant to determine whether weaning a drug is necessary and, if so, to determine the protocol."**

William D. Naeve,  
Murchison & Cumming L.L.P.

"It is the role of the primary care physician who actually examines the claimant to determine whether weaning a drug is necessary and, if so, to determine the protocol," William D. Naeve of law firm Murchison & Cumming L.L.P. in Irvine, California, who represents CompPartners, said in an email.

The ruling could lead to a "systemic change on how utilization review is conducted, including the potential for face-to-face examina-

tions," which Ms. Speers said could make it difficult to comply with timelines and lead to an "increase in utilization review costs that will ultimately be passed on to workers compensation payers."

She also cautioned that duty of care could extend beyond denials of medical treatment to "medical care that is ultimately certified by the reviewing physician."

According to California's Department of Industrial Relations, treatment decisions must be made within five business days in most instances, but the deadline may be extended or shortened depending on the case.

"Having the California Supreme Court review (King v. CompPartners) is a crucial step in the right direction for preserving the exclusive remedy," Michael Krawitz, general counsel for York Risk Services Group Inc., which owns CompPartners, said in a statement.

Calling the case a "red herring," Joseph Paduda, principal of Madison, Connecticut-based Health Strategy Associates L.L.C., said the fact that the state Supreme Court has agreed to hear the case "indicates to me there's a high likelihood that it will fix this."

Mr. King's attorney declined comment.

This case isn't just about the potential for malpractice suits, higher utilization review costs or a shortage of utilization reviewers, sources said. Workers comp payers that choose not to use utilization review could cover unnecessary medical treatment and potentially endanger injured workers, Mr. Lemrick added.

# INSURERS

Continued from page 3

has laid out shows that AIG will "continue to sharpen our focus and we'll sharpen our focus with respect to the products that we offer, with respect to the clients that we serve and with respect to the geographies that we focus on."

AIG this year said it was exiting the pollution legal liability insurance market in the United States and Canada — of which it was one of the founders in the 1980s — but Mr. Schimek said that and reductions in other business lines represent only 2% of the insurer's global commercial net written premiums.

The company also will limit the products it offers in some countries, such as various coverages aimed at local customers, but it will continue to offer a full range of coverage for multinational policyholders in all countries in which it operates, he said.

The insurer will also likely end some client relationships, Mr. Schimek said.

"Where we have clients where we are only writing a single line of business, or maybe two lines of business, and that line or those two lines are not profitable, we have to ask ourselves the question of whether we would be better off again sharpening our focus and putting our resources on those clients where we do have a deep, multiline relationship," he said.

Zurich, too, is making changes to its business. The insurer exited

some lines and saw several senior executives leave last year after it announced disappointing third-quarter results, in part, due to losses from the Tianjin, China, port explosions.

"We did have some challenges around accumulations, particularly around Tianjin, that we are working to build better data bases



**"We repositioned the book of business, but we are now focused on building and growing."**

David B. Duclos, QBE North America

to look at aggregations globally versus regionally," said Michael T. Foley, CEO of Zurich North America Commercial in Schaumburg, Illinois.

The insurer will more closely examine the structure of the limits it offers, he said.

The changes are "less around whether we are on or off a customer, but (are focused on) actually structuring the transaction,

particularly in the global corporate space, in a way that we have the right limits profile," Mr. Foley said.

In addition, Zurich will examine its pricing structure. "We tier our accounts A, B, C, D where A and B are the best-priced accounts and C and D are less strongly priced accounts ... neither account is better or worse inherently. It's just whether we have the pricing right for the risk we are assuming," he said.

QBE North America is further removed from its problems in 2012 and 2013 but also is seeking to reposition its business as it continues to recover. The Australian-owned insurer has reduced its total premiums to \$5 billion from \$7 billion three years ago.

"We repositioned the book of business, but we are now focused on building and growing," said David B. Duclos, president and CEO of QBE North America in New York. "We are seeing more opportunities and are writing more new business." It starts with people, he said. "The last six- to nine months have been fortuitous for us because of the consolidation and companies that have stubbed their toes."

Opportunities exist, in particular, in directors and officers liability insurance because Chubb and Ace both were big D&O insurers, and buyers don't want aggregation of risk, he said. Similar pressures have resulted in opportunities in professional liability lines due to the merger of XL and Catlin, he said.

Aspen Insurance, the insurance operations of Aspen Insurance Holdings Ltd., also is taking

advantage of the market changes, said Mario Vitale, New York-based CEO.

"When you look at all the dislocation that's going on from all the mergers and acquisitions, it is creating opportunities for specialty insurance carriers like Aspen. I think the opportunity for companies like Aspen is in building our talent base," he said.

Aspen Insurance has recruited several dozen staff in the past five months, including some well-known names in the industry, he said.

The recruits will enable Aspen to take a leadership position in several product lines, Mr. Vitale said.

Italian insurance giant Assicurazioni Generali S.p.A. also is looking to increase its share of the market. The insurer, which had limited its U.S. business largely to employee benefits and travel assistance insurance over the past several years, launched its U.S. commercial insurance business last year at RIMS.

Bill Skapof, executive vice president and chief underwriting officer of Generali's U.S. branch in New York, said it is seeking to offer coverage in select areas, which it plans to expand over the next several years.

Key U.S. market areas in which it is seeking to establish itself include property and construction, he said.

For global property risks, Generali will provide up to \$250 million in capacity, Mr. Skapof said. "We want to put up meaningful capacity so that we have an influence on terms and conditions and pricing."

# Underlying cyber case concerns medical records

The origins of the ruling by the 4th U.S. Circuit Court of Appeals in *The Travelers Indemnity Co. of America v. Portal Healthcare Solutions L.L.C.* is a 2013 New York Supreme Court lawsuit filed against Centreville, Virginia-based Portal alleging patients' medical records were accessible online from Nov. 2, 2012, to March 14, 2013.

Portal was accused in *Dara L. Halliday et al. v. Glens Falls Hospital et al.* of negligence, among other charges, although no third party viewed the information.

Portal's insurer, Travelers, agreed to provide a defense under a reservation-of-rights clause, but filed suit in U.S. District Court in Alexandria, Virginia, in July 2013 seeking a declaration that it was not obligated to defend the company because there had been no "publication" of the information.

The three-judge appeals court panel essentially adopted the lower court's ruling in Portal's favor without setting out its own specific arguments.

Meanwhile, the underlying New York case is still pending and class certification has not yet been decided, said plaintiffs attorney Donald W. Boyajian, a partner at Dreyer Boyajian L.L.P. in Albany, New York.

By Judy Greenwald

## CGL

Continued from page 1

with the term's plain meaning," an Alexandria, Virginia, federal judge ruled. The appeals court upheld the lower court's decision.

"The court appropriately found that publication does not require that anyone has actually used the medical information at issue," said Roberta Anderson, a partner at K&L Gates L.L.P. in Pittsburgh.

Brian T. Himmel, a partner at Reed Smith L.L.P. in Pittsburgh, said despite the increasing uses of cyber exclusions in CGL coverage, the ruling is still relevant.

While CGL policies issued in 2016 may very well have cyber exclusions, "oftentimes it takes time to discover you're the victim of a cyber attack or cyber negligence-related conduct," so a CGL policy issued in 2014 or 2015 may still provide coverage, Mr. Himmel said.

While cyber exclusions and stand-alone cyber coverage may limit this case's importance, firms should also "not forget about other insurance policies that might exist in a company's portfolio," said Alex Purvis, a partner at Bradley Arant Boult Cummings L.L.P. in Jackson Mississippi. "You just never know what could be there."

While the ruling "certainly is not going to revolutionize insurance coverage for cyber liability," CGL policies still exist that do not exclude cyber coverage, said Jeffrey O. Davis, a partner at Quarles & Brady L.L.P. in Milwaukee. This ruling "certainly could provide helpful precedent for a policyholder that's faced with a data breach claim."

The appeals court's ruling provides greater clarity, said Dennis

S. Klein, a partner at Hughes Hubbard & Reed L.L.P. in Miami. "How far-reaching it is remains to be seen, because it's only applying to the traditional commercial (general liability) insurance policy."

Gregory D. Podolak, an attorney at Saxe Doernberger & Vita P.C. in Trumbull, Connecticut, said the case's key takeaway is that "most companies should be looking into stand-alone cyber insurance if they haven't gotten that already."

However, Linda D. Kornfeld, a partner at Kasowitz Benson Torres & Friedman L.L.P. in Los Angeles, said the ruling could have a somewhat wider application.

"The decision is not just favorable in the data breach setting, but it extends into other privacy-related exposures for policyholders," such as those involving the Telephone Consumer Protection Act, Ms. Kornfeld said.

Consumers bringing litigation under the telephone law have alleged interference with their privacy interests, she said. "The debate in those cases has been whether the privacy interests at issue there involve any sort of 'publication' of private information."

"If one of my clients came tomorrow with a TCPA issue, I would certainly use (*Portal*) as support, in addition to other cases around the country, for the concept that publication should be construed to favor coverage in other privacy contexts," Ms. Kornfeld said.

Experts said they were not certain why the appeals court issued an unpublished ruling, but said it remains significant.

"If I had a case that was evaluating the same issues, I would not hesitate to cite an unpublished decision that I thought was on point," Mr. Purvis said.

## SILICA

Continued from page 1

maximum.

OSHA said on its website that it made "substantial changes" to its original proposal in response to testimony from 200 people and 2,000 comments to devise the Occupational Exposure to Respirable Crystalline Silica rule.

While OSHA estimates the rule will cost the construction industry about \$659 million per year, a March 2015 analysis by Bethesda, Maryland-based Environomics Inc. pegged the cost at nearly \$4.9 billion per year — \$3.9 billion in direct compliance expenditures such as additional equipment, monitoring and respirators, and more than \$1 billion in indirect costs such as higher prices for construction materials and building products.

When calculating costs, OSHA took into account only initial training costs rather than the expenses of ongoing training or ensuring employees understand the risks and requirements as their job changes or new hazards are identified, said Cressinda Schlag, an associate at Keller & Heckman L.L.P. in Washington. The agency also did not take into account increased laboratory testing expenses and had only limited discussion of the costs of monitoring equipment, she said.

OSHA has broad authority to issue regulations, but it must demonstrate that its standards are reasonably necessary and appropriate to remedy a significant risk of material health impairment, per a 1980 U.S. Supreme Court ruling.

However, some opponents argue that the steep drop in silicosis deaths, which the Centers for Disease Control and Prevention say declined 93% to 165 in 2004 versus 1,065 in 1968, shows OSHA cannot meet the threshold set in the

Supreme Court case, *Industrial Union Department v. American Petroleum Institute*. They also dispute OSHA's contention that the rule would save 600 lives a year.

"The courts are going to take a hard and deep look at this rule," said Henry Chajet, of counsel at Jackson Lewis P.C. in Washington, which represents the trade associations in the New Orleans litigation. "We're going to make sure the courts are very much aware of the CDC findings and how that impacts the significant risk threshold that OSHA has to prove to support its rule."

However, others say the courts are likely to defer to OSHA.

"OSHA's going to be given great deference for adopting these rules," said Matthew Linton, of counsel at Holland & Hart L.L.P. in Denver. "I'm 99% confident that we're just going to have to adjust to the new normal. That's why there's so much time built in for the implementation."

The associations have yet to determine whether they will seek an injunction to prevent the rule from taking effect. As it stands, construction employers are to comply with the new rule by June 23, 2017; general industry, maritime and hydraulic fracturing employers would have an additional year for most requirements.

"One of the difficulties of seeking a stay is you have to show a likelihood of success and harm (to the plaintiffs), so if something doesn't go into effect for a while, I have trouble convincing a court that they should take an extraordinary act and stay a rule," Mr. Chajet said.

The building unions are concerned about the medical surveillance provisions, namely the 30-day trigger to include employees in the surveillance program, which provides medical exams and X-rays when employees are exposed to respirable crystalline silica above the limit, said Chris Trahan,

deputy director of CPWR — The Center for Construction Research and Training in Silver Spring, Maryland, speaking on behalf of North America's Building Trades Unions.

The unions want all workers assigned to tasks that cannot be controlled below the respirable silica limit to be included in the surveillance program and are concerned the rule could lead to unfair employment practices such as employees being let go before the 30-day trigger from hazard exposure is reached or not being hired at all, she said.

However, the unions and other stakeholders do support parts of the rule, particularly a table devised by OSHA that matches common construction tasks with dust control methods such as using water to keep dust from getting into the air or using vacuums to capture dust so employers know exactly what they need to do to limit worker exposures.

"Strictly from a safety standpoint, I think it's extremely good, and I really like how OSHA did it," said Bob Trinkleback, senior vice president and casualty risk control leader at JLT Specialty USA's analytics and consulting practice in Chicago. "I think it's practical, particularly the construction end of it."

The rule also gives construction employers correctly following the table's provisions safe harbor protection from citations even if OSHA finds exposures above the limit.

"We need a standard that's protective, but we also need one that's achievable," Ms. Trahan said. "There's no point in asking OSHA to put out a standard that's going to be unachievable. I think this is a great standard, and I think it's achievable and it's written more plainly than any health standard I've ever seen come out of OSHA. We're really happy with a lot of provisions."



## BREATHABLE CRYSTALLINE SILICA

Under the final U.S. Occupational Safety and Health Administration rule, construction workers' exposure for an eight-hour shift would be limited to 50 micrograms per cubic meter of air versus the current 250 micrograms.

**The same 50 microgram limit** would apply to general industry, the marine industry and hydraulic fracturing industry versus the current 100 microgram limit.

**About 2.3 million workers** are exposed to breathable silica, which OSHA says results in 900 new cases of silicosis a year.

**The rule is aimed at** reducing not only silicosis but lung cancer, chronic obstructive pulmonary disease and kidney disease.



AP PHOTO

Demolition efforts continued last week in Canoa, Ecuador. The magnitude-7.8 earthquake killed more than 570 people, destroyed more than 1,000 buildings and caused hundreds of millions of dollars in insured losses.

## QUAKES

Continued from page 1

also were short-term disruptions of airline and train service, as well as “significant” supply chain and production interruptions among regional industries.

AIR Worldwide estimated insured losses at \$1.7 billion to \$2.9 billion in the Japan quakes.

Modeler Risk Management Solutions Inc. estimated the Japan insured losses at \$2.5 billion to \$3.5 billion, including residential, commercial and industrial buildings.

The quakes and aftershocks hit the supply chains of automakers such Toyota Motor Corp. and Honda Motor Co. Sony Corp. production also was affected, as were several silicon chip factories in Kumamoto.

The effects spread to North



AP PHOTO

Workers prepare last week for removal of a bullet train which had derailed in the Japan city of Kumamoto during a series of strong earthquakes.

America, where General Motors Co. said Friday that it plans to temporarily close four U.S. assembly plants while it assesses the Japan

quakes’ potential impact on its supply chain. The automaker said two-week closures begin this week for its plants at Spring Hill, Ten-

nessee; Lordstown, Ohio; Fairfax, Kansas; and Oshawa, Canada.

“This temporary adjustment is not expected to have any material impact on GM’s” full-year North America production plans or results, GM said in a statement.

On Friday, A.M. Best Co. Inc. said while the Japan quakes will lead to a “sizable loss,” there would be only a “moderate impact” on insurers’ earnings “mostly mitigated” by reserve releases.

Renee Lee, senior manager at Newark, California-based RMS, said the Japan quakes could change the way insurers handle business interruption coverage, which historically has not had extensive underwriting in Japan because “supply chain impacts are difficult to model” and are “extremely complex.”

“I think the interesting takeaway ... that if we continue to see events in Japan like this, eventually there may be some increased option of (business interruption coverage), or more interest in understanding both business interruption and supply chain impact and how perhaps the insurance industry may modify the way” that business interruption or contingent business interruption are written in Japan, she said.

“With these events,” she said in a follow-up email, “the industry may begin to place more importance” on underwriting business interruption and contingent business interruption coverage.

Despite the quakes, RMS Capital Markets said its analysis showed “no material probability of loss to the cat bond market at this stage.”

Also in mid-April, a magnitude-7.8 earthquake struck Ecuador, destroying more than 1,000 buildings in six provinces — Esmeraldas, Los Ríos, Manabí, Santa Elena, Guayas and Santo Domingo — and killing more than 570 people.

AIR Worldwide estimated insured losses in the Ecuador quake at \$325 million to \$850 million.

## SURVEY

Continued from page 6

Mr. Elowe said organizations are looking beyond their own vulnerability to cyber attacks and turning their attention to their supply chains.

“It’s not just their own exposure to cyber, but it’s what key suppliers and vendors of theirs are exposed as part of their own value chain,” he said. “It’s very, very complex and continues to emerge.”

Randy Nornes, Chicago-based executive vice president at Aon Risk Solutions, said “cyber risk is kind of in the eye of the beholder.”

“A lot of people focus on the cyber risk of yesterday,” Mr. Nornes said. “We get pretty good at fixing the problem that’s already happened. But I don’t

think most people or most organizations are really good at focusing on the things that haven’t happened yet.”

David Sommer, Charles E. Cheever Chair of Risk Manage-

*“Aside from the rapid change of pace, another challenge of cyber risk is that it requires such a multifaceted approach to deal with it.”*

David Sommer,  
St. Mary’s University (San Antonio)

ment at St. Mary’s University in San Antonio, said cyber attacks will grow more serious for the foreseeable future.

“Aside from the rapid change of pace,” Mr. Sommer said in an email, “another challenge of cyber

risk is that it requires such a multifaceted approach to deal with it. Part of it, of course, is highly sophisticated technological responses, but it also involves the human element: educating employees about the risks of keeping sensitive data on laptops or carelessly opening email attachments.”

In addition, he said, “a thoughtful crisis management plan to minimize financial and reputational damage after a cyber event occurs” is essential.

Mr. Nornes stressed the importance of communication, noting that “we had a lot of conversations with risk managers about how they interact with their peers” at RIMS’ recent conference in San Diego. “Most of the risk managers had not had any interaction with the chief information security officer,” and most of the security officers “didn’t even know they had a risk manager.”

Mr. Elowe said organizations will

benefit by increasing the conversation about what kind of new risks they might face.

“Most organizations have risk committees,” he said, “and these risk committees are charged with understanding the most material risks facing them and making sure they have protocols around them. But when we asked, ‘Does your risk committee include discussion around emerging risks?’ almost two-thirds of organizations said they don’t have conversations about emerging risks or very rarely have conversations about emerging risks.”

“That’s kind of an interesting dichotomy,” Mr. Elowe said. “The C-suite and the boards want to understand what’s around the corner, yet their own risk committees aren’t having these broad-based conversations. Then that’s probably an opportunity to increase discussions about broad-based trends and how they might affect them.”

seen, however.

“We will just have to wait and see what Congress does,” said Kent Mason, a partner at law firm Davis & Harman L.L.P. in Washington.

Others say the likelihood that the rule would be blocked is low.

“My general view of these rules is that they’re probably here to stay,” said Joseph Urwitz, a partner at McDermott Will & Emery L.L.P. in Boston.

While the 2017 effective date will give employers and their consultants time to analyze the rule and make any changes to prevent exposure to litigation, some observers say the result may be changes in the administration of benefit plans to prevent employers and administrators from taking actions that would be considered prohibited.

For example, employers could be exposed by advising employees who are leaving the company concerning account bal-

*“My general view of these rules is that they’re probably here to stay.”*

Joseph Urwitz,  
McDermott Will & Emery L.L.P.

ances that have accumulated in corporate savings plans, such as 401(k) plans.

Employers “have to be very careful about communications materials. You don’t want to do anything that could be considered investment advice, which, in turn, could make them fiduciaries,” said Robyn Credico, national director of defined contribution consulting at Willis Towers Watson P.L.C. in Arlington, Virginia.

“Employers can give information, but not advice,” said Bill McClain, a principal and defined contribution plan consultant at Mercer L.L.C. in Seattle.

Even giving information in some situations could be considered investment advice under the Labor Department rule. Mr. Mason, for example, said the Labor Department rule defines investment advice as any communication that could reasonably be viewed as a “suggestion.”

A new employee, for example, might call human resources and ask what other employees are doing with their accounts.

If the HR department employee says that some employees have invested in target-date funds, that could make the employer a fiduciary, Mr. Mason said, since that could be viewed as a suggestion.



AP PHOTO

Prints of Andy Warhol's Campbell's Soup Can paintings were stolen in Missouri.

## Ozarks theft sparks hunt for Warhols

Pop art icon Andy Warhol might have been surprised when prints of his Campbell's Soup Can paintings were exhibited in sleepy Springfield, Missouri, but he would have been even more shocked to learn that they were stolen after being uneventfully displayed there for more than 30 years.

The Springfield News-Leader reports that someone broke into the Springfield Art Museum this month, making off with seven of its 10 prints, including "Tomato," "Chicken Noodle" and "Green Pea."

The taxpayer-funded museum reportedly pays an annual premium of \$14,045 for a fine arts insurance policy, the newspaper reported.

So far, no Ozark-area art villains have been apprehended, but both Interpol and the FBI are on the case, with the FBI offering a reward of \$25,000 for information. News reports value the entire collection of 10 prints as high as \$500,000.

## RAPPER ACCUSED OF CRIBBING BILL WITHERS SONG



AP PHOTO

Kendrick Lamar performs during February's Grammy Awards. He faces a copyright suit over a song said to resemble another by Bill Withers.

A copyright infringement lawsuit probably isn't music to rapper Kendrick Lamar's ears. Mr. Lamar and his record label, Top Dawg Music, are being sued for sampling the 1975 Bill Withers song "Don't You Want to Stay" for his song "I Do This" from his 2013 Kendrick Lamar EP. The lawsuit filed this month by Golden Withers Music and Musidex Music, said that they hold the copyright to "Don't You Want to Stay." The song was sung and co-written by Mr. Withers and appears on his album "Making Music," Reuters reported.

The complaint filed in Los Angeles federal court claims that Mr. Lamar added original lyrics to a "direct and complete copy" of Mr. Withers' music, Reuters reported.

The complaint also states that Mr. Lamar has openly admitted that his song "I Do This" copies the music of "Don't You Want to Stay" "with a thumb to the nose, catch me if you can attitude," Billboard reports.

The lawsuit seeks a halt to the alleged infringement and unspecified damages.

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## Mock robbery traumatizes teller

Somewhere John Dillinger is smiling. America's most notorious bank robber would probably see the irony in the case of a teller who filed a lawsuit against Winston-Salem, North Carolina-based bank BB&T, alleging he was roughed up and traumatized in a "mock armed robbery" at the bank's Greensboro branch.

Moises Vasquez said he and another employee were opening the bank for the day when a teller from another branch wearing a ski mask screamed at him, jabbed a fake gun in his side, "and told him not to do anything stupid."



Mr. Vasquez "was visibly traumatized and very angry and upset once he learned he

was subjected to a mock armed robbery without his prior knowledge or consent," according to the complaint filed in Guilford County, North Carolina, Superior Court. He is seeking damages from the bank for assault, battery, intentional infliction of emotional stress and false imprisonment.

The complaint claims that BB&T staff conspired to harm employees, and that the mock armed robbery was carried out by those not experienced in conducting such security training, in violation of industry standards.



REUTERS

A French family recently discovered a long-lost work by Caravaggio in their attic.

## Stolen art appears 400 years later

Fine art underwriters and homeowners insurers will be wringing their hands at the news that a French family recently discovered a long-lost work by Caravaggio in their attic.

A family living outside of Toulouse, in southwestern France, discovered the more than 400-year-old artwork while examining a leaky roof.

The painting, "Judith Beheading Holofernes," is thought to have been painted by Caravaggio — real name Michelangelo Merisi da Caravaggio — between 1604 and 1605, the Telegraph reported.

It was believed to have gone missing about 400 years ago, and the family that discovered it thinks the work must have been brought back by an ancestor who served abroad in Napoleon's army.



Grammy award-winning singer Mariah Carey has a \$35 million voice. The music superstar allegedly insured her vocal chords for the hefty sum, and took

out an additional \$35 million policy on her legs as well, celebrity news outlet TMZ Inc. reported.

The combined \$70 million in coverage means monthly premiums are in the thousands of dollars, according to TMZ.

But Ms. Carey raked in \$27 million last year during her Las Vegas residency, according to Forbes, and is currently touring Europe for her Sweet Sweet Fantasy Tour, so she stands to lose a lot if her voice or legs go south.

This isn't the first time Ms. Carey took out an insurance policy. In 2006, she reportedly insured her legs for \$1 billion, the Toronto Sun reported.

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