

CYBER COVERAGE

U.S. gross written premiums for cyber insurance grew to about **\$1.3 billion in 2013**, up from \$1 billion in 2012.

The majority of insurers underwriting cyber coverage said their **premiums grew 10% to 25%** in the past year.

Source: Betterley Risk Consultants Inc.

CYBER RISKS

Court win gives FTC authority on cyber breaches

Pivotal Wyndham case extends agency's reach

BY JUDY GREENWALD

Companies can expect more Federal Trade Commission investigations of their data security practices as a result of a judge allowing the FTC to sue the Wyndham hotel chain on grounds it failed to adequately protect customers' personal information.

Legal experts say the ruling firmly establishes the FTC's authority to oversee companies' practices to secure customer information, a ruling the hotel chain is appealing.

In addition, experts advise insurance buyers to be sure their cyber coverage includes regulatory actions, although such defense and indemnification coverage may be subject to sublimits.

In its suit, *Federal Trade Commission v. Wyndham Worldwide*

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SAFETY

LEGAL OR NOT, EMPLOYERS ACT TO STAMP OUT POT AT WORK

Policies reinforced despite two states' new laws



BY SHEENA HARRISON AND JOANNE WOJCIK

Companies with employees in states that have legalized recreational use of marijuana are reemphasizing and, in some cases, strengthening their drug-free workplace policies and safety procedures.

Marijuana use continues to fall under most companies' existing policies that bar employees from coming to work impaired, whether by drugs or alcohol, according to employers in Colorado and Washington, the two states that have legalized recreational marijuana use.

"It's never been acceptable to show up to work drunk or high or anything else, so that really hasn't changed at all," said Scott D. Collins, director of risk management at Denver-based publisher

DRUG TESTING

A survey of more than 330 Colorado employers by the Mountain States Employers Council Inc. found that 77% test for drug use, but their methods and drug policies vary.

94% Urinalysis the primary drug test method

83% Drug testing conducted before employment

74% Drug testing conducted after a work-related accident

71% Drug policy retained despite Colorado's legalization of recreational marijuana

21% Drug policy made more stringent following legalization of recreational marijuana

MediaNews Group Inc., a division of New York-based Digital First Media that publishes the Denver Post and other newspapers.

"There is a misconception among the masses that it's OK for employees to smoke marijuana now, but most employers have not changed their policies at all. In fact, many have inserted a paragraph in employee handbooks stating that they are aware of the legalization, but that it hasn't changed their policy," said Kara Craig, staff counsel at Washington Employers Inc., a Seattle-based employer coalition with about 1,000 members statewide.

Although employers with zero-tolerance policies say they apply them to an employee who

See **MARIJUANA** page 58

REINSURANCE

Hostile bid may trigger consolidation

Aspen rejects \$3.2B offer from Endurance

BY MATTHEW LERNER

Endurance Specialty Holdings Ltd.'s \$3.2 billion hostile takeover bid for Aspen Insurance Holdings Ltd. could signal a wave of consolidation among reinsurers this year.

Abundant capital, softening rates, and a quest for critical mass and diversity are factors making the reinsurance industry ripe for consolidation, market experts say.

Bradley Kading, president and executive director of the Association of Bermuda Insurers & Reinsurers, said, "There's always a sense that there is a critical mass at which a reinsurer gains some market clout."

Hamilton, Bermuda-based Endurance made the unsolicited cash-and-stock offer for Pembroke, Bermuda-based Aspen earlier this month. Aspen immediately spurned the bid, rejecting Endurance's claim about the benefits of a combined entity and casting doubt about the strength of Endurance stock.

The two sides traded barbed statements since then, with Endurance pressing its case that the combination would create a market leader with bigger scale and market presence and a diversified platform across products and geography. Still, Aspen

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Employers need to review their benefits strategies when choosing private health insurance exchanges

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New York investment firm to buy Southport Re; Cross Insurance buys two Rhode Island agencies

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Q&A: INGA BEALE

After a long career in executive positions in the insurance and reinsurance industry, Inga Beale this year took a new challenge: leading Lloyd's of London as it embarks on a period of change. The first woman to head the storied insurance market, Ms. Beale plans to broaden Lloyd's reach internationally and make the market more efficient and accessible.

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COMMENTARY

JOANNE WOJCIK

SENIOR EDITOR



City's altitude will likely have an effect on their physical stamina and their ability to hold their liquor.

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paraner.

IN LOCKSTEP WITH
ENERGY COMPANIES
LONG TERM



Berkshire Hathaway
Specialty Insurance

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Bonds and the auto industry

When the economic crisis of 2008 stalled automobile dealerships, the fortunes of the fidelity and surety business were temporarily hurt. **6**

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Cyber threats, cover evolve



Cyber insurance is nothing new. But as the Internet spreads deeper into people's lives, cyber risks and the need for

cover are growing, says Lon Berk of Hunton & Williams L.L.P. **49**

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Claim form downplays iceberg

A claim form lists the cause of the Titanic's sinking as a "small low-lying iceberg" to dissuade adjusters from denying payment. **60**

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NEWS

RISK MANAGEMENT

GM COULD FACE TOUGH TIME WRINGING FUNDS FROM INSURERS

Long-term nature of ignition defects raises concerns

BY DOUGLAS McLEOD

General Motors Co., the world's second-largest automaker, faces potential coverage disputes if it seeks liability insurance or reinsurance contributions to a fund that would settle mounting legal claims over ignition switch defects in millions of its cars.

GM hired lawyer Kenneth Feinberg to study establishing such a fund, even as the company last week asked a bankruptcy judge to bar dozens of ignition defect claims under the terms of its 2009 bankruptcy reorganization.

If the automaker sets up a fund and seeks insurance recoveries, insurers — or reinsurers of its Bermuda captive, General International Ltd. — could argue GM's settlements are voluntary or that it knew about potential ignition switch liabilities for years and failed to disclose them to underwriters, legal experts say.

"What's in the public record suggests a significant degree of intentional wrongdoing (on GM's part), such that insurers are unlikely to rush to contribute to any such fund," said Barry R. Ostrager, senior partner at Simpson, Thacher & Bartlett L.L.P. in New York.

A GM spokesman said Mr. Feinberg, who managed BP P.L.C.'s



AP PHOTOS

GM CEO Mary Barra takes the heat last month at a Senate subcommittee hearing on the massive recall of faulty ignition switches (inset).

Deepwater Horizon oil spill fund, is expected to make recommendations to GM about a compensation fund within six weeks. The spokesman would not comment on insurance coverage or whether GM has discussed coverage with insurers or reinsurers.

GM's first-quarter results, announced last week, include a \$1.3 billion pretax charge for repairs to 7.1 million recalled vehicles, including \$700 million for 2.6 million vehicles with faulty ignition switches and cylinders. The defect — which can cause cars to shut off while being driven, dis-

abling power steering, brakes and airbags — has been linked to at least 13 deaths.

U.S. House and Senate panels held hearings on the defect last month, and a House subcommittee released internal GM documents showing engineers at the automaker and parts supplier Delphi Automotive P.L.C. knew of the switch problems for more than a decade.

A flood of litigation followed the recalls, with more than 50 class actions and two individual suits filed against GM as of last week,

See GM page 54

P/C INSURERS

Federal group cites value of terror backstop

But supporters still face challenges in Congress

BY MARK A. HOFMANN

A report by the President's Working Group on Financial Markets could further boost efforts to reauthorize the federal government's terrorism insurance backstop.

The program, which was established by the Terrorism Risk Insurance Act of 2002, will end Dec. 31 if it is not extended. Four extension bills — three in the House and one in the Senate — have been introduced, and another House bill is expected in the next few weeks.

The House bills call for varying lengths of extension and other changes. The Senate measure would extend the program for seven years and require insurers to shoulder higher copayments before triggering coverage from the backstop.

Although the recent report, "The Long-Term Availability and Affordability of Insurance for Terrorism Risk," did not call for extending the program, it noted that respondents to its call for comment cited potentially serious market dislocations if the backstop is allowed to expire.

"Challenges continue to exist regarding the ability of the private market to provide terrorism risk insurance without a federal backstop, particularly with respect to the ability of insurers to model the frequency and severity of losses that would arise from acts of terrorism," according to the report. "Also, reinsurers and the capital markets appear reluctant to provide further support to the terrorism risk market."

The working group is comprised of the heads of four federal agencies and is chaired by the treasury secretary.

Observers generally gave the report high marks.

"This has cachet because it's done by a handful of federal agencies," said Charles Symington, senior vice president of the Alexandria, Va.-based Independent Insurance Agents & Brokers of America. "When you look at their conclusions, they're largely in line with the conclusions we've seen in a number of the private studies. That gives even more

See TRIA page 54

WORKERS COMPENSATION

Comp experts fear higher costs as health care reform kicks in

BY SHEENA HARRISON

While the rollout of federal health care reform is still in its early stages, workers compensation experts are concerned that the Patient Protection and Affordable Care Act could increase patient demand for medical treatment, making it more difficult for injured workers to get the care they need and potentially increasing medical costs.

Though some portions of health care reform could prove beneficial to workers comp claims — such as

providing health coverage to treat comorbid health conditions that often increase workers comp medical costs — observers say they're predicting lengthened treatment and return-to-work timelines for injured workers.

"If they can't get treated, that means you're going to continue to pay their salary continuation benefits ... so that could be an effect," said Paul Braun, managing director of casualty claims for Aon Global Risk Consulting in Los

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2014 HINES SYMPOSIUM

The Chicago chapter of the Risk & Insurance Management Society Inc. and *Business Insurance* will present on May 20 a complimentary panel discussion on "International Travel Risks." The moderated panel discussion will feature Michal Gnatek of Lockton Cos. L.L.C., Jonny Gray of Control Risks Group Holdings Inc. and Gail Meyer of Caterpillar Inc. To receive more information and to register for the event at the Union League Club of Chicago contact Kate Shepherd at kshepherd@businessinsurance.com.

4/28/14

ONLINE
FEATURES

CYBER RISK SUMMIT

Register now for May 22
Cyber Risk SummitRegistration is ongoing for *Business Insurance's* 2014 Cyber Risk Summit in Washington.www.BusinessInsurance.com/
CyberRiskSummit

VIDEO



In Focus: World Trade Center

This new video report explores Silverstein Properties' WTC rebuild.
www.BusinessInsurance.com/
InFocus

40 UNDER 40

Nominations still open

Nominations for the 40 Under 40 Broker Awards are open for all regions until June 15.

www.BusinessInsurance.com/
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NEWS

PROPERTY/CASUALTY INSURERS

INSURER RESERVE RELEASES
KEEP BOOSTING PROFITS

Long-lived trend continues to surprise analysts

BY MATTHEW LERNER

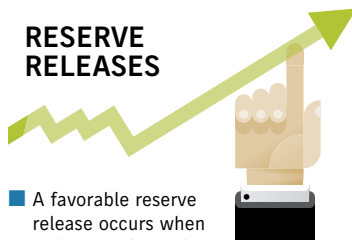
Property/casualty insurers have tapped prior-year reserves for several years and, despite analysts' expectations, look to continue doing so to boost the current-year bottom line.

While property insurers' reserves generally are thought to be adequate to withstand virtually any modeled loss, some analysts say there may be early warning signs that favorable reserve developments will decrease for some insurers moving forward.

Concerns were sparked by a recent report by Charlottesville, Va.-based SNL Financial L.C. that concluded that the commercial U.S. property/casualty industry's favorable prior accident year releases reached a four-year high of \$14.74 billion in 2013, up from \$12.17 billion in 2012.

"It's been a pretty large period of reserve releases" in the past several years, said Terry Leone, SNL's manager of insurance. "If you exclude the financial and mortgage guarantee companies and go back to 2006, we've had pretty substantial favorable reserve changes in every single year."

Among insurers with large loss reserve decreases in 2013, SNL identified Financial Guaranty Insurance Co. as leading the pack

RESERVE
RELEASES

- A favorable reserve release occurs when an insurer determines that money set aside for a specific line of business in a specific accident year exceeds what is needed to pay claims, and then adds that extra amount to its current-year results, bolstering profitability.
- Reserve releases are based on an actual or a projected decline in the cost and/or frequency of claims or a decline in the assumed incurred loss ratio, based on actual costs or models/projections.
- Factors affecting calculations to determine loss reserves can include loss-cost inflation, medical-cost inflation, rate/premium increases, interest rates or even internal insurer cost-cutting measures.

with a negative reserve change of \$2.94 billion; followed by Berkshire Hathaway Inc., down \$2.29 billion; and State Farm Mutual Automobile Insurance Co., down \$2.19 billion. The Travelers Cos. Inc. and Chubb Corp. rounded out the top five negative reserve changes.

"We were surprised ... in terms of the overall releases for the industry since we've been saying for a number of years now that the

reserve cushion has been diminishing," said Tracy Dolin-Benguigui, New York-based director of financial services ratings for North American insurance at Standard & Poor's Corp. Ms. Dolin added that most of the releases came from shorter tail lines, mitigating S&P's concerns.

At the other end of the spectrum, Meyer Shields, managing director and analyst at Keefe, Bruyette & Woods Inc. in Baltimore, said the ongoing reserve releases could point to trouble in the future.

"Instead of it being a clean reserve release in line with the prior quarter, you started to see actual examples of individual lines of business or product lines or accident years or some combination thereof where there was much less than the automatic reserve releases that we'd seen" until the latest report, Mr. Shields said.

Those types of releases have been "a leading indicator of more widespread problems" in the past, he said. "In other words, things look OK and then individual issues look bad, and then those individual problems spread more broadly."

There also are questions about how long reserve releases can last. "A lot of the big public companies have benefitted from reserve

See RESERVES page 57

REINSURANCE

Alternative capital becomes permanent fixture

BY RODD ZOLKOS

CHICAGO — Alternative capital sources and convergence of capital markets with the insurance and reinsurance markets have become permanent factors that may affect pricing cycles in the future.

Beginning with Hurricane Andrew in 1992 and through the Sept. 11, 2001, terrorist attacks and Hurricane Katrina in 2005, the pace with which capital comes into the reinsurance market after a catastrophe has accelerated and its diversity has increased, said Edward Torres, director of capital market reinsurance solutions at PartnerRe Ltd. in Greenwich, Conn.

"This is beyond the inflection point of convergence. The alternative capital is going to be the capital," said Donald M. Callahan, managing principal at Vanbridge L.L.C. in New York

Michael J. Millette, managing director of structured finance at Goldman Sachs & Co. in New York, said traditionally there have been two insurance market cycles: the primary property/casualty hard/soft market cycle and an event-driven cycle in the reinsurance market.

The latter likely resulted from the absence of vehicles that allowed capital to flow easily in and out of the reinsurance mar-

kets, Mr. Millette said, something that's changed with the convergence of the capital markets and reinsurance markets. Consequently, he said, that cycle is "probably going to recede."

As for the primary property/casualty market cycle, "I don't think the convergence markets have chipped away at that yet, but I think that they could," Mr. Millette said during a discussion by industry experts at the April 8 "What's Ahead for Insurance M&A and Corporate Finance" conference presented by Chicago-based law firm Mayer Brown L.L.P.

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REGULATION

NAIC urges
more uniform
regulation

BY MARK A. HOFMANN

The National Association of Insurance Commissioners' decision to open its model act on regulating insurers is drawing industry praise and apprehension.

At their spring meeting in Orlando, Fla., NAIC commissioners voted to reopen the act for comment on establishing groupwide supervision of insurers. Currently, there is no uniform way in the United States to supervise all entities within an insurance holding company as a group.

While state adoption is voluntary, the NAIC's model acts carry weight with state legislatures.

The move to amend the NAIC's Insurance Holding Company System Regulatory Act, which last was changed in 2010, has come in the face of international initiatives to supervise insurance holding companies on a groupwide basis — rather than unit by unit — as well as regulate systemic risk and capital standards.

"In light of the recent financial crisis and the globalization of the insurance business models, U.S. insurance regulators have begun to modify their group supervisory framework and have been increasingly involved in developing an international group supervisory framework," the NAIC said in a January statement.

"The main thing they will be focusing on is developing a uniform process through the development of uniform language" so state regulators can determine who is the groupwide supervisor, said Adam Kerns, assistant general counsel of the American Insurance Association, which supports the move.

Five states either have a law or are considering legislation that would provide groupwide supervision, said Michelle Rogers, director of financial and regulatory policy for the National Association of Mutual Insurance Cos. in Indianapolis. Pennsylvania and Iowa already define a groupwide supervisor as being the supervisor of an internationally active insurance group, she said.

Ms. Rogers said the NAIC is looking at four aspects of the model insurance holding company act:

- Give clear legal authority for state regulators to supervise internationally active U.S. insurers;

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AUTO DEALER BOND MARKET REVIVES AS ECONOMY IMPROVES

Careful underwriting key to stability in commercial surety sector

BY BILL KENEALY

Even more than most sectors of the insurance industry, the fortunes of the fidelity and surety business for automobile dealerships are closely tied to the health of the overall economy.

Thus, when the economic crisis of 2008 struck and stalled automobile dealerships insurers were temporarily hurt.

Kimberlee Wells, Des Moines, Iowa-based director of commercial underwriting for Nationwide Fidelity & Surety, said the recession and subsequent shakeout in the auto dealer market cost the company longstanding customers — but also introduced new opportunities as competing insurers pulled back from the market.

“When the recession hit, some dealerships closed,” Ms. Wells said. “In the last five years, we’ve been able to increase our premiums by 40%, where other companies have left the market.”

The surety market for auto dealers has been a “bumpy road” over the past five to seven years said Brian Weber, Overland Park, Kan.-based vice president and head of sales operations for the direct markets business unit of Zurich North America Commercial.

“So much of the turmoil in a dealer’s financial statement was a function of both the economy and the internal turmoil at franchisors such as General Motors and Chrysler,” he said. “Also, many independent dealerships borrowed money against their inventory during the downturn and were walking a pretty fine line in regards to cash flow. However, today, I can’t remember a time when car dealer financial statements were healthier.”

Mr. Weber said that while a couple of longstanding insurers have left the market in the past few years, none of the seven different surety companies that Zurich’s internal agency, Zurich Agency Services, uses to write coverage left the market, because that capacity is ample.

“We feel very good about the stable of carriers we have, and the appetite for bonds has improved dramatically in key states such as California and Florida,” he said.

John Horton, Bloomington, Ill.-based underwriting manager for State Farm Mutual Auto Insurance Co., agreed the fidelity and surety market is largely shaped by macroeconomics.

“We really go with what the economy is doing,” he said. “When the economy is going good, you can get favorable results on both the fidelity and surety side of the business,” Mr. Horton said. “When the economy is bad, we tend to tighten up our belts and do more extensive underwriting.”

The bond requirements are especially stringent for auto dealerships, said Dan Ely, Houston-based account executive for Arthur J. Gallagher & Co. “In the auto dealer space, it’s almost as if they need a bond for everything that they do,” he said.

Mr. Ely said regulations around commercial bonds also restrict an insurer’s ability to differentiate its product through terms and conditions. “Terms and conditions are pretty vanilla,” but one benefit of this lack of novelty is a more stable market in terms of capacity and pricing, he said.

“From a capacity standpoint, we haven’t had any issue securing bonds for our dealer clients,” he said. “Pricing trends are flat and have been consistent for quite some time. We don’t see that fluctuation as you would with property insurance rates.”

Chris Martin, Fayetteville, N.C.-based president of auto dealership Team E-Z Auto Inc., said the price to maintain his dealership’s surety bond has remained consistent over recent years.

“To operate in North Carolina, you have to have a motor vehicle deal-



OPERATING MORE LIKE A BANK

Why is the fidelity and surety market so different from other parts of the insurance industry?

One reason is that commercial bonds are not technically an insurance product, said Kimberlee Wells, Des Moines, Iowa-based director of commercial underwriting for Nationwide Fidelity & Surety. “Bonds are not insurance,” she said.

“We have to guarantee the actions of a

customer.”

Some people liken the surety and fidelity insurer to a parent co-signing on a student loan for a child.

Ms. Wells said a more apt analogy is a bank.

“We underwrite similar to how a bank would,” she said. “It’s just that we extend surety credit.”

By Bill Kenealy

er surety bond of \$50,000,” Mr. Martin said. “Fortunately, the cost to renew our bond every three years has consistently remained at \$450 — \$150 per year — for the last several renewals. I sure wish I could say other expenses over that time frame had remained that stable.”

Indeed, careful underwriting has been a hallmark of the surety market, said Robert J. Duke, Washington-based director of underwriting and corporate counsel for the Surety & Fidelity Association of America, noting that the vast majority of insurers refused the temptation to loosen underwriting standards in order to make up for the declining premium volumes in the market.

“Coming out of 2008, what we began seeing was a gradual decline in written premiums industrywide,” Mr. Duke said. “We were also expecting to see an increase in loss ratios, but it didn’t happen to the extent that one would expect. I think one reason was because surety companies maintained underwriting discipline throughout the downturn.”

In addition to the economy, regulations are the other primary factor shaping the contours of the commercial bonding market.

“When the economy is bad, the city or state may bump up bond requirements. This means our exposures are increased,” Mr. Horton said.

TOP FIVE SURETY INSURERS

The top five writers of surety in the United States as of May 21, 2013, based on direct written premium

RANK

1

Travelers Cos. Inc.
\$751,574,962

RANK

2

Liberty Mutual Holding Co. Inc.
\$717,694,494

RANK

3

Zurich Insurance Group Ltd.
\$462,501,417

RANK

4

CNA Financial Corp.
\$400,667,665

RANK

5

Chubb Corp.
\$197,812,481

TOP FIVE FIDELITY INSURERS

The top five writers of fidelity in the United States as of May 21, 2013, based on direct written premium

RANK

1

Chubb Corp.
\$225,950,862

RANK

2

Travelers Cos. Inc.
\$189,204,242

RANK

3

American International Group Inc.
\$129,427,302

RANK

4

CUNA Mutual Group
\$84,209,559

RANK

5

American Financial Group Inc.
\$80,617,094

Source: National Association of Insurance Commissioners

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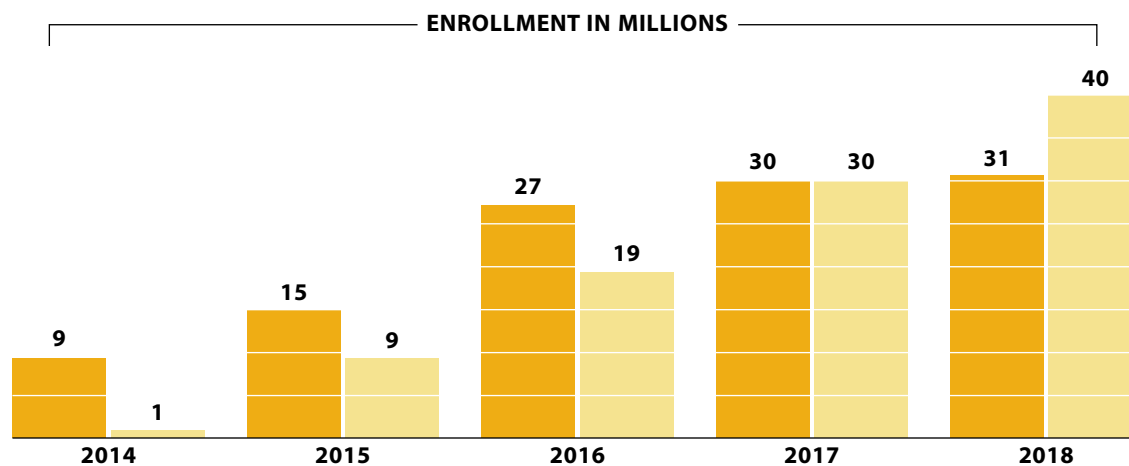
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HEALTH CARE EXCHANGES

Health care enrollment by active employees and pre-Medicare-eligible retirees through private health insurance exchanges is projected to reach 40 million by 2018.

Public exchanges ●
Private exchanges ●



Source: Accenture P.L.C.

MIDSIZE FIRMS OFFERED FEWER CHOICES

For many employers, the choice between partnering with a single-insurer private health exchange or a multi-insurer exchange will depend on the size and location of their benefits-eligible workforce.

Most true multi-insurer exchanges — where employees select from a menu of prepackaged health plans offered by multiple insurers — are not open to employers with fewer than 3,000 full-time workers.

The reason, according to industry experts, is that most insurers insist on a high number of eligible employees as a condition of participating in a multi-insurer exchange to minimize the threat of adverse risk selection.

“I don’t think you’re going to see anything in the marketplace for midsize employers in terms of a true multi-insurer exchange, at least not anytime soon,” said Don Garlitz, executive director for exchange solutions at bswift L.L.C., a Chicago-based benefits consulting and information technology services firm. “There’s no tolerance at the insurer level to offer it because they’re concerned about risk selection.”

On the other hand, large employers spread across multiple geographic areas might be precluded from using single-insurer exchanges, since most of them currently are available only on a regional or local basis, experts said.

To accommodate mid-market clients, several third-party private exchanges — including Mercer L.L.C.’s Mercer Marketplace, Willis North America Inc.’s Willis Advantage and National Financial Partners Corp.’s NFP Marketplace — have developed hybrid models either in addition to or as their primary exchange offering.

In a hybrid model, employers select a single coverage provider from a group of contracted insurers that agree to offer employees a broader choice of plan designs than in a traditional arrangement.

“We think it gives our clients a better opportunity to take advantage of more favorable pricing, terms and conditions and cost sustainability. What we’ve found in that environment is that we’re getting far more plan design options for that client,” said Jim Blaney, Philadelphia-based CEO of Willis’ human capital practice. “In a traditional arrangement, you might only get two or three plan design options from a carrier, but in the exchange environment, we’re seeing anywhere between six and eight plan designs that employees can choose from.”

Mr. Kaura said the multi-insurer exchange model also would likely attract employers looking to realize additional cost savings by outsourcing some or all benefits administration responsibilities to their exchange provider.

By Matt Dunning

HEALTH CARE BENEFITS STRATEGY SHOULD DETERMINE EXCHANGE CHOICE

Single- or multi-insurer options offer attractions to different employers

BY MATT DUNNING

For employers contemplating moving their group health benefits to a private health insurance exchange, determining the appropriate exchange model requires a careful examination of their overall benefits strategy and objectives.

The majority of private health insurance exchanges are being marketed to employers as a means to transition their active group benefits to a defined contribution arrangement in which employees are presented a range of health and voluntary insurance plans and given a fixed amount to apply to the cost of their coverage.

The marketplace for private insurance exchanges is generally divided into two segments: single-insurer exchanges and multi-insurer exchanges.

Multi-insurer exchanges provide employees with access to coverage plans underwritten by multiple national and/or regional insurers, and are operated by benefits brokers, consultants and other third-party service providers.

Single-insurer exchanges provide plans offered through just one insurer and can be operated by a third-party intermediary or, in some cases, by the insurer itself.

From an employer’s perspective, both models are underpinned by the prospect of achieving greater predictability and control over their group benefit costs, as well as giving employees a broader selection of plans more tailored to their individual needs.

However, not all exchange models are available to certain groups

of employers (see related story). To the extent that an employer’s choice of exchange models is not demographically limited, experts say there are a variety of advantages and disadvantages to each type of exchange that must be weighed against the company’s strategic priorities.

“The most important thing for employers to think about is what they’re trying to accomplish with regard to their employee health benefits,” said Jake Biscoglio, vice president of Hartford, Conn.-based Cigna Corp.’s private exchange business. In addition to participating in several third-party multi-insurer exchanges, Cigna launched its own proprietary exchange earlier this year.

“There are a lot of different reasons that an employer would look to an exchange for their benefits delivery,” Mr. Biscoglio said. “It’s important for the employer to understand where the value is coming from, and to make sure that their benefits goals and objec-

tives can be met through the particular type of exchange that they’re looking at.”

Experts say employers looking to maintain a direct relationship with their health insurers, as well as some input regarding specific coverage options and provider networks offered to their employees, are more likely to gravitate toward a single-insurer exchange platform.

“The level of input that the employer has in designing the specific benefit plans offered to their employees is generally greater in single-insurer exchange models, at least under the current market conditions,” said Nancy Scola Lombaer, a partner at Chicago-based benefits consulting firm Laurus Strategies. “Even those insurers operating their own proprietary exchanges are going to have a set of recommended standard plans for the employers to offer their workforce, but certainly larger employers are going to have more flexibility to tweak those plans than their smaller

PROS AND CONS

SINGLE-INSURER EXCHANGES		MULTI-INSURER EXCHANGES	
Advantages:	Disadvantages:	Advantages:	Disadvantages:
<ul style="list-style-type: none"> Plan design and network flexibility Consistency in health management services Closer relationship with insurer. 	<ul style="list-style-type: none"> Fewer coverage options Greater administrative burden Limited or no nationwide availability. 	<ul style="list-style-type: none"> Broader coverage options for employees Competition among insurers potentially drives efficiency Opportunity to reduce administrative overhead. 	<ul style="list-style-type: none"> Potential for inconsistent health management services Not available to all employer sizes Little flexibility in plan designs.

Lloyd's lays out strategic plan

■ Lloyd's of London has set out its strategy for 2014 to 2016, updating its plans to meet its Vision 2025 goals. The strategy change includes an increased focus on insurance business and a commitment to open more local operations. Lloyd's CEO Inga Beale said that while international expansion remains at the heart of the market's long-term plans, there are various changes in emphasis to the strategy over the next three years. Lloyd's said its previously stated intentions to be the global center for specialist insurance and reinsurance, to continue to be a broker market, to make it easier to do business with the market and to have a greater diversity of business, capital and people, remained unchanged. But it said there would be an increased focus on insurance in addition to reinsurance. In 2013, reinsurance made up 37% of Lloyd's business. It also said it will have a local presence, and in some cases set up local operations, in international markets where this is a commercial or regulatory requirement to gain access to business. Lloyd's also will aim to make it as easy for brokers and coverholders to access the Lloyd's market as it would be to access insurers and reinsurers in their local markets.

Bermuda underwriters' profit up 23.9% in 2013

■ Bermuda underwriters surveyed by the Association of Bermuda Insurers and Reinsurers reported net income of \$11.70 billion in 2013, an increase of 23.9% from 2012, the ABIR said. The group of 18 insurers and reinsurers out of 21 wrote \$70.05 billion in premiums, a 5.5% increase over a year earlier. The group's combined ratio was 85.0%, compared with 91.5% in 2012. "The \$11.7 billion in net income demonstrated earnings power during a year characterized by low catastrophe losses. But this number was still below net income reported by the membership in 2009," said Bradley Kading, president and executive director of ABIR, in a statement.

Aspen profit rises 31% in first quarter

■ Aspen Insurance Holdings Ltd. reported net income of \$120.4 million for the first quarter of 2014, an increase of 31.2% over the prior-year period. Net premiums written increased 16.8% to \$697.5 million for the three months ended March

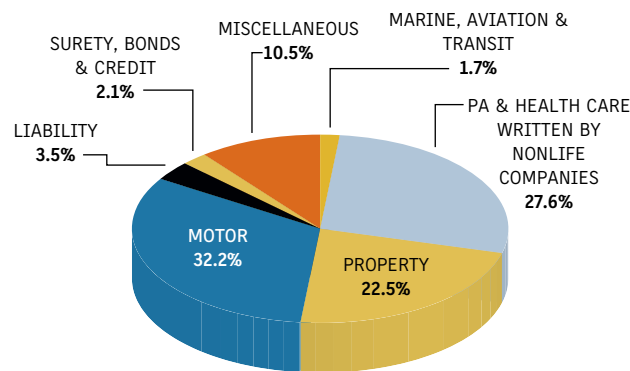
PROFILE: SPAIN

\$28.81
BILLION

The Spanish property/casualty insurance market, like much of the economy, was severely affected by the deep recession after the 2008 worldwide financial crisis. Spain exited recession in the third quarter of 2013, but the economy's growth is expected to be gradual. New insurance business is expected to be scarce. Existing insurance business is expected to draw fierce competition and experience falling rates. Preliminary information shows 2013 property/casualty gross premiums fell by 2.8%.

◀ 2012 P/C gross premiums

MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



POPULATION

46.6 million

BLACK MARKET SHARE OF ECONOMY

24.6%

2014 GDP CHANGE (PROJECTED)

0.6%

MARKET DEVELOPMENTS

UPDATED APRIL 2014

- In September 2013, a law went into effect transferring medium and long-term political export credit risk from Compania Espanola de Seguros de Credito a la Exportacion S.A. to the state.
- In July 2013, a clause added to Spain's insurance law prohibited the use of gender as a rating factor in insurance.
- Spain's insurance and pension fund regulator, the General Directorate of Insurance and Pension Funds or Dirección General de Seguros y Fondos de Pensiones, plans to introduce legislation to regulate socially responsible investments for insurers and pension funds. The projected regulations will cover investment criteria, risk control and corporate governance.
- The regulator is considering changes that would affect insurance intermediaries, including: regulation of online insurance aggregators and a requirement that they make a professional analysis of a sufficient number of policies rather than presenting at least three offers to a client, among other things.
- In October 2013, the regulator raised minimum limits for professional liability coverage for insurance intermediaries to \$1.7 million per claim and \$2.5 million per year.

COMPULSORY INSURANCE

Many lines are compulsory, including:

- Auto third-party liability
- Hunters liability
- Professional liability for insurance brokers, auditors and others
- Personal accident for sports federations
- Clinical trials
- Waste shipments
- Third-party liability for owners of dangerous dogs

NONADMITTED

Nonadmitted insurance is not permitted in Spain, with the exceptions of international marine cargo shipments and any other specific risk requiring special authorization from the insurance regulator. Insurers from European Economic Area states may provide insurance under the European Union's freedom-of-services legislation.

INTERMEDIARIES

Agents and brokers must be authorized to do business in Spain. Intermediaries involved in nonadmitted business must be registered with the Spanish insurance regulator, or with the regulator in their country of origin provided that it is a member state of the European Economic Area. The law does not require brokers involved in nonadmitted placements to warn buyers their insurer is not subject to local supervision.

MARKET PRACTICE

Attempts are made occasionally by nonadmitted insurers and brokers to seek business in Spain and the regulator publishes a list of nonadmitted entities. Buyers have little need to seek insurance outside the admitted market, which offers a full range of products and secure coverage.

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

31, while net investment income grew 2.5% to \$49.5 million, the Hamilton, Bermuda-based insurer and reinsurer said in its earnings statement. Broken out, insurance net premiums written increased 10.5% over the first quarter of 2013 to \$442.6 million, while reinsurance premiums grew 29.7% to \$254.9 million, Aspen said. The company's combined ratio for the three months improved to 87.6% from 90.1% during the year-ago quarter.

Brindle to retire from Lancashire

■ Richard Brindle, CEO and founder of insurer Lancashire Holdings Ltd., will retire from the company on April 30. Alex Maloney, group chief underwriting officer and chief executive of the company's U.K. operating subsidiary, will replace him, subject to regulatory approval, London-

based Lancashire said in a statement. Paul Gregory, chief underwriting officer of Lancashire Insurance Co. (U.K.) Ltd., will become chief underwriting officer, according to the statement. "Richard has been the driving force behind the success of the group since its formation, building a team of the highest quality and determined to create a distinctive business with a market-leading track record," said Lancashire Chairman Martin Thomas in the statement.

E.U. changes rules for cartel lawsuits

■ European lawmakers have eased the way for cartel victims to claim compensation from companies under new rules that also shield price-fixing whistleblowers from being the main target of million-dollar lawsuits. The new E.U.-wide

rules set common standards and minimum requirements across the bloc. They are fairly lenient towards whistleblowers, said Bernd Meyring, a partner at law firm Linklaters. "The fact that whistleblowers have often been the first victims of damage claims is counterbalanced by a limitation of their liability to their own customers. This should further strengthen the incentives to apply for immunity," he said. Under the new rules, cartel victims will be barred from getting access to documents with evidence of wrongdoing provided by whistleblowers. The rules also contain safeguards against abusive litigation, massive payouts and law firms and third-party funders hunting for potential claims and claimants, to avoid creating a U.S. style litigation culture. The rules, drafted by the E.U. competition authority, need the blessing of the 28 European Union countries before they can come into force.

Reuters

XL opens Dubai reinsurance unit

■ XL Group P.L.C. has set up a reinsurance operation in Dubai, United Arab Emirates, that will act as a regional hub for the company's business in the Middle East and North Africa region, XL said in a statement. Mohamed Alali has been appointed senior executive officer of the operation, XL said. He previously was regional manager for facultative reinsurance for Willis Group Holdings P.L.C. in Dubai. Imen Hamadouche has been appointed property facultative underwriter, XL added. She previously was client manager for MENA facultative business for Aon Benfield Group Ltd., the reinsurance arm of Aon P.L.C., in Dubai. "There remains a strong reinsurance purchasing culture among local cedents with large property, industrial and energy

exposures in the MENA region, as well as growing opportunities in the casualty and specialty sectors,” said David Watson, CEO of XL Re Europe S.E., in the statement.

RSA names COO to oversee asset sales

■ Britain’s RSA Insurance Group P.L.C. has appointed its emerging markets chief to the newly created role of chief operating officer to oversee sales of noncore businesses as the company shores up its balance sheet. RSA is restructuring after an accounting scandal at its Irish arm and large weather-related insurance claims left it with a hole in its finances and major 2013 losses. In a statement, RSA said Paul Whittaker, chief executive of emerging markets, will move into the role on May 1. “This role reflects our new strategy and will provide essential coordination and focus for the successful delivery of the self-help measures underway to recapitalize the business,” Group Chief Executive Stephen Hester said. The company’s difficulties culminated in a string of profit warnings in 2013 and the departure of a number of senior figures, including chief executive Simon Lee who was replaced this year by former Royal Bank of Scotland boss Mr. Hester. RSA is looking to raise up to \$2.7 billion in capital, about half of which will come from disposals and money saved by scrapping its dividend, with the rest put up by shareholders through a rights issue this month.

Reuters

Endurance names head of global property

■ Endurance Specialty Holdings Ltd. has named Richard Housley as executive vice president and global practice leader for property insurance, the Pembroke, Bermuda-based insurer said. Mr. Housley will launch the company’s property business in London, working closely with Doug Worman, CEO of U.S. insurance at Endurance, to build the property book in the Americas and internationally and serve as general manager of the London office, Endurance said in a statement. “Richard has an exceptional reputation as a skilled underwriter along with extensive relationships across the primary brokers serving this market,” Graham Evans, CEO of international insurance at Endurance, said in the statement. Mr. Housley joins Endurance from ANV Syndicate Management Ltd., where he worked as an underwriting director, according to the statement. He is based in London.

Allied World reports quarterly profit of \$177M

■ Allied World Assurance Co. Holdings A.G. reported profit of \$177.0 million for the first quarter of 2014, an 11.3% increase compared with the same period in 2013. The Zug, Switzerland-based insurer reported net written premiums of \$771.6 million in the quarter, an 11.0% increase compared with the

first quarter of 2013. Allied World’s combined ratio improved to 79.9% for the quarter from 85.1% during the same period a year earlier. “Allied World is off to a great start in 2014. Premium growth in selected products and record underwriting income drove our combined ratio below 80%,” said Allied World President and CEO Scott Carmilani in a statement. “Our focus on solid underwriting and investment expertise generated 4.4% growth in diluted book value per share,” he

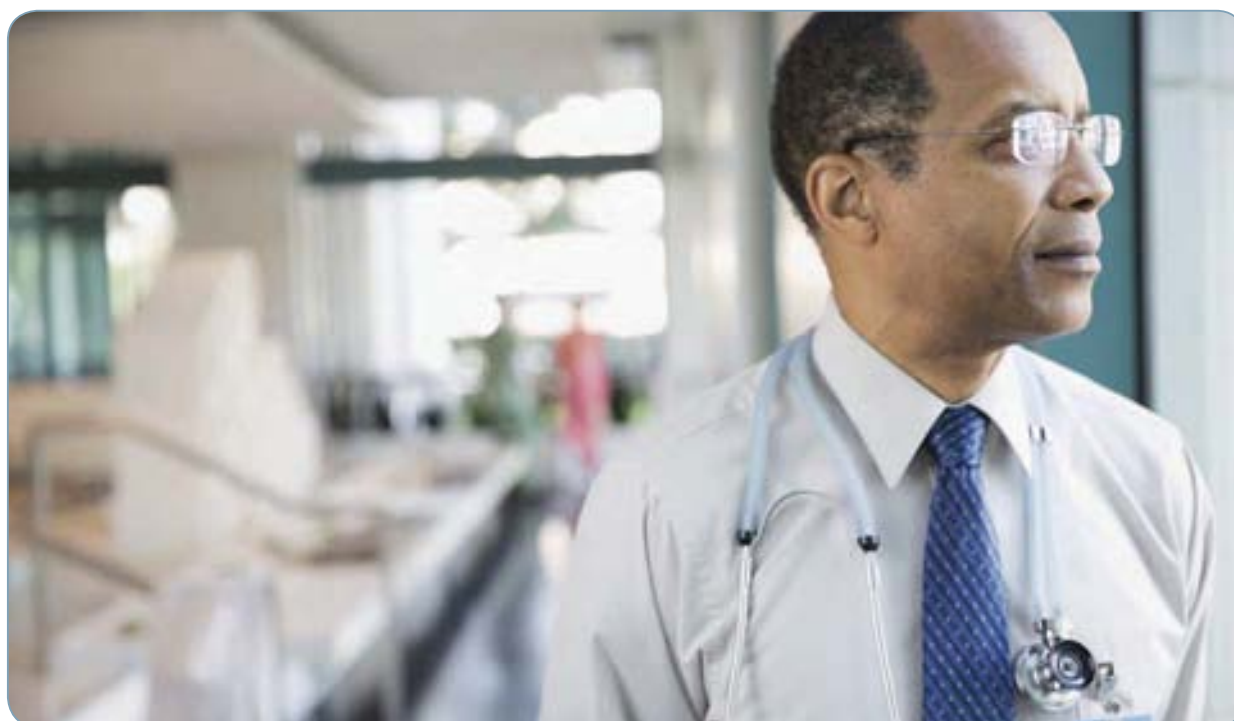
said. “We remain well-positioned to take advantage of opportunities.”

Canadian charged in ‘Heartbleed’ attack

■ The Royal Canadian Mounted Police have arrested a 19-year-old man and charged him in connection with exploiting the “Heartbleed” bug to steal taxpayer data from a Canadian government web-

site. In what appeared to be the first report of an attack using a flaw in software known as OpenSSL, the Canada Revenue Agency had reported earlier that about 900 Social Insurance Numbers and possibly other data had been compromised as a result of an attack on its site. The suspect, Stephen Solis-Reyes from London, Ontario, faces criminal charges of unauthorized use of computer and mischief in relation to data.

Reuters



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EDITORIAL

OUTSTANDING MANAGERS HONORED

Risk management usually is regarded as a cost item companies must endure to ensure safety and financial security. As a result, risk managers and their departments often are positioned on the negative side of the balance sheet. Yet through creative use of the many tools at their disposal, risk managers can shift the perception of their role to a more positive one within their organizations. Featured in this issue are three risk managers who've done just that.

William M. Zachry, vice president of risk management at Safeway Inc., has demonstrated over the past 13 years the effect concerted risk management efforts can have inside and outside an organization. His efforts to change the approach to workers compensation administration at Safeway and in California as a whole resulted in significant savings for the supermarket chain and other employers.

In addition, his efforts to overhaul Safeway's relationship with the insurance market and instill a culture of safety have reduced costs and presented Safeway with a strategic advantage that has been publicly commended by its top executive.

As a result of his efforts, Mr. Zachry has been recognized as *Business Insurance's* 2014 Risk Manager of Year®.

Our 2014 Risk Management Honor Roll® members also have shown the difference exceptional risk managers can make.

Eamonn Cunningham, chief risk officer of Westfield Group, turned risk management at the global retail real estate development and management firm from an insurance buying function into a far-reaching framework that has positively affected its operations and strategy. By working with senior executives and operations managers to demonstrate the beneficial results of effective risk management, Mr. Cunningham has achieved consistent adherence to the risk management framework through Westfield's operations.

Brett E. Dahl, director of Montana's Risk Management and Tort Defense Division, has elevated the status of risk management to a much higher level throughout the state's operations. Creating risk management teams to advocate a different approach to risk has transformed the loss prevention and risk mitigation efforts at Montana's state agencies and university system. His efforts also have had a huge effect on the division's financial status, with sharply reduced liability claims and the overturn of unfunded liabilities.

Please join us in congratulating the 2014 honorees, and we hope you enjoy reading their profiles on page 14.

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

Please send your letters to:

Letters to the Editor, *Business Insurance*,
150 N. Michigan Ave., Chicago, Ill. 60601-7524

Fax: 312-280-3174; email: gsouter@businessinsurance.com

SCHILLERSTROM



COMMENTARY

WELCOME TO MILE HIGH CITY — AND AN ALTITUDE ADJUSTMENT

As a longtime resident of the host city for this year's Risk & Insurance Management Society Inc. conference, I would like to offer some practical advice to attendees visiting the Mile High City for the first time.

But first, please don't be too disappointed that we are not actually in the Rocky Mountains. Sure, you can see that purple mountain majesty from virtually everywhere in the city, but you have to drive at least 10 miles before you reach the foothills.

Still, with an elevation of 5,280 feet and a location on the western edge of a high plains dessert, Denver is literally high and dry. And for most people, being at high elevation requires more than an attitude adjustment.

Because our air is thinner, some people feel light-headed or experience shortness of breath when climbing a flight of stairs or going for a run. Those participating in the Spencer Golf Tournament shouldn't be fooled by their sudden athletic prowess. Balls fly as much as 10% farther at high altitude. In fact, because it was so easy for baseball players to hit home runs when the Colorado Rockies made their Major League Baseball debut in 1993, the "Blake Street Bombers," as they were nicknamed then, now store their baseballs in a humidor prior to home games at Coors Field.

Since we have very low humidity, most RIMS attendees may also need a little extra moisturizer and lip balm to soothe their dry skin and parched lips. Being Rocky Mountain high also contributes to severe temperature swings. Because Denver is clos-



**JOANNE
WOJCIK**

SENIOR EDITOR

er to the sun, it can feel much warmer than the actual air temperature, which in April can climb well into the 70s during the day but plunge into the low 30s at night. So wear your sunglasses and dress in layers. And don't forget sunscreen. The sun literally bakes you at high altitude, where exposed skin can burn in just 10 minutes.

Perhaps the most significant phenomenon of which RIMS attendees should be acutely aware is the effect of alcohol consumption at high altitude. Because the lack of oxygen at higher elevations interferes with the body's ability to process alcohol, two or three drinks consumed in downtown Denver are the equivalent to four or five drinks at sea level. While this effect varies from person to person based on body mass and metabolism, drinking at high altitude will enhance the dehydration nearly everyone experiences during a trip to Denver.

So whether you decide to cruise the hospitality events at this year's RIMS conference, or sample a few craft beers on a Denver microbrew tour, make sure you drink plenty of water before your head hits that pillow. Otherwise that Rocky Mountain high you feel the night before will surely turn into a mile-high hangover in the morning.



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ACE congratulates Business Insurance Risk Manager of the Year 2014 Honorees.

Risk Manager of the Year®: *William Zachry, Safeway*

Risk Management Honor Roll®: *Eamonn Cunningham, Westfield & Brett Dahl, State of Montana*

Making a difference with risk management



RISK MANAGER OF THE YEAR®

William M. Zachry

SAFeway INC.

BY RODD ZOLKOS

When William M. Zachry came to Pleasanton, Calif.-based supermarket chain Safeway Inc. in 2001, his charge was to rein in runaway workers compensation costs.

Through innovation, determination, public policy involvement, support from company leadership and a great risk management team, he's accomplished that and much more.

There's also a good deal of passion for his job that flows through every facet of his efforts — efforts that have produced considerable results, including reducing Safeway's annual cost of risk by \$86 million since 2004, while increasing its coverage for catastrophic events and reducing the company's open workers comp claims inventory from 12,869 in 2004 to 5,541 in 2012.

This year Mr. Zachry's efforts and achievements resulted in his selection as *Business Insurance's* 2014 Risk Manager of the Year®.

Today, risk management is integrated throughout the Safeway organization, valued by the company's senior

management and viewed as a competitive advantage. And with the contributions risk management has made to the company's bottom line during Mr. Zachry's tenure, Safeway executives are willing to listen to ideas for new risk management programs and to provide the resources necessary to make them happen.

"I wasn't looking for someone to change the world," said David Bond, who, as Safeway's senior vice president of finance and control, hired Mr. Zachry with the goal of getting a handle on Safeway's workers comp costs. "I was looking for a claims person. In that process, the headhunter found Bill — or I'd like to say Bill found me."

After joining Safeway in 2001 as vice president of workers compensation, Mr. Zachry was given responsibility for the company's overall risk management operation in 2008 as vice president of risk management. In his current position at Safeway — which self-insures and self-administers its workers compensation and liability risk programs — Mr. Zachry is responsible for 315 risk management employees and a risk management budget that was

SAFeway INC.

Safeway Inc. is one of the largest food and drug retailers in North America, with 1,335 stores in the West, Southwest, Rocky Mountain and mid-Atlantic regions of the United States as of Dec. 28.

Founded: 1926

Headquarters: Pleasanton, Calif.

2013 financials: Safeway reported 2013 net income of \$3.51 billion on total revenue of \$36.14 billion.

Employees: 138,000

Did you know:

- Safeway is credited with introducing such grocery store innovations as produce pricing by the pound, "sell by" dates and nutritional labeling.
- In March, Safeway entered into a definitive merger agreement under which its shares are to be acquired by AB Acquisition L.L.C., the owner of Boise, Idaho-based grocery chain Albertsons L.L.C.
- Safeway holds a 49% interest in Casa Ley S.A. de C.V., a food and general merchandise retailer with 200 stores in western Mexico.

See ZACHRY page 16

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ZACHRY

Continued from page 14

\$218 million in 2012.

That risk management budget has actually come down considerably from its \$304 million level in 2004. Working on several fronts, including such internal steps as improving Safeway's claims-handling operation and the quality of information available to it and external efforts aimed at promot-

ing state workers compensation reform, Mr. Zachry helped reduce Safeway's comp costs to \$113 million in 2012 from \$218 million in 2004.

Among the steps taken internally to control workers compensation costs were an emphasis on claims resolution, establishing a Culture of Safety program across Safeway, a pharmacy benefits management program, establishing a program of early identification and intervention in the case of injured workers at risk of delayed

recoveries, and alternative dispute resolution.

Quality care reduces costs

All those efforts to reduce workers compensation costs were shaped by Mr. Zachry's belief that providing injured employees the best possible medical care reduces overall comp costs.

"What really struck me was he had a very fervent belief in delivering the best possible health care to injured employees," Mr. Bond

said. "His next statement was, 'The best medical care is actually the cheapest medical care.' I have become absolutely convinced that the best medical care is the cheapest way to go."

The money saved by reducing Safeway's workers compensation losses has helped Mr. Zachry and the company's risk management program invest in other areas of risk reduction and protect the company from exposures that can't be mitigated.

Safeway believes in retaining a

large level of risk, according to Mr. Zachry, and under his risk management leadership the company has purchased insurance for potentially catastrophic events.

"Conceptually, if you want to take a step back and look at what we're doing from a risk management perspective, Safeway is a large organization. We can take risk," Mr. Zachry said. "So we take the first \$5 million on the casualty and on the property, generally speaking, and we take \$2 million on the workers compensation."

That large retention puts a focus on reducing working layer losses, with the company using tools like chargebacks and other incentives to drive desired behaviors. "We've been trying to bring down the frequency and severity of injuries, accidents and claims within our control, then we're strategically reinvesting some of that money in insurance for catastrophic events," the risk manager said.

"The big exposures on the casualty side are trucking, pharmacy, food safety," Mr. Zachry said. "Sixty-seven percent of my acci-

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"Why do an easy goal? Ten percent's nothing; it's not going to make a difference. Fifty percent will give us another \$10 million plus savings, both in the casualty and the workers comp."

William M. Zachry,
Safeway Inc.

dents in casualty are slips, trips and falls. Our goal this year is to eliminate more than 50% of the slips, trips and falls.

"Why do an easy goal?" he asked. "Ten percent's nothing; it's not going to make a difference. Fifty percent will give us another \$10 million plus savings, both in the casualty and the workers comp."

In looking at Safeway's exposures, Mr. Zachry identified areas of potential catastrophic losses for which the company previously wasn't covered.

"Bill came in and said, 'What can I do to protect the balance sheet from volatility and severity? What can I do to make sure there's never a question of our ability to respond to something that's gone wrong?'" said Andrew D. Lennox, San Francisco-based strategic account manager and director at Aon Risk Solutions, one of Safeway's brokers.

"When I took over, I did not have any cyber coverage. I now have a substantial cyber program," Mr. Zachry said. "I did not have employer's practices liability. I now have a really good program for employer's practices liability. I did not have a Side A tower for

directors and officers. I now have a very good Side A tower.”

The company also didn't have insurance for losses from earthquakes at its retail stores. Looking at previous earthquake events, however, Mr. Zachry realized the most likely catastrophic loss at the stores in the event of an earthquake — or some other event — was to product falling from the shelves or spoiling.

“On the property side — the biggest exposure I have — earthquake's one of them,” he said. “But loss of power — if I lose power in 30 stores, and I have \$1 million of perishable product in each store, that's a lot of loss.” In response, Safeway carved product out of its property program and covered it with stock throughput insurance.

“On earthquakes, you may not have any damage or little damage to the stores,” Mr. Zachry said. With both the 1989 Loma Prieta and 1994 Northridge earthquakes, “only one store got a lot of damage. But there was a lot of product on the floors. So that stock throughput protects us from a catastrophic event that doesn't destroy the store,” he said. “It's really effective at protecting us from catastrophic events.”

Safeway's insurance programs also have benefited under Mr. Zachry in the way the company treats its insurers and the information it provides them. “It's an overused word, but he

treats (Safeway's insurers) as partners,” Mr. Lennox said.

“When I started, I came out of the workers comp side and I had very little experience with some of the other programs,” Mr. Zachry said. “So I spent an inordinate amount of time with each of the brokers talking to them about the structure, organization, weaknesses and strengths of what we had.”

Among the observations emerging from those discussions were that Safeway didn't have a close relationship with its underwriting partners and that its presentations and submissions weren't comprehensive enough. “The way we marketed Safeway when we went to insurance markets was just all wrong,” said Mr. Bond.

Mr. Zachry worked to change that. “One of my initial goals was improving the quality of the submittals to the community,” he said. “The one thing we've been very aggressive about is going out into the marketplace and working on our relationships with the various partners.”

“Underwriters expect to pay a loss, but they don't expect to pay a loss that comes as the result of a surprise,” said Mr. Lennox. After seeing the more thorough Safeway submissions provided under Mr. Zachry, their underwriters “would stand up and say, ‘Thank you. This is the best submission that I have seen and I don't have

additional questions.’”

“We materially changed the way that Safeway was viewed by the marketplace,” Mr. Lennox said.

Among the ways Safeway has benefited from that changed perception is the ability to obtain multiyear deals from insurers. “Every one of the (primary layers), we're in a three-year deal,” Mr. Zachry said. “We have multiyear deals with some people who literally do no multiyear deals with anyone else anywhere in the world.”

Mr. Zachry and Safeway's risk management team have become expert at quantifying not only exposures, but also the results of their efforts, something that's helped the risk manager sell the company's leaders on the benefits of risk management and its insurance program.

“We're also very good at communicating to senior management about the programs we have in place,” Mr. Zachry said. When the Target Corp. data breach hit, “we sent an email up the line saying, ‘Here's our cyber coverage, and here's how it would work.’”

“Our former CEO used to joke with me that we get everything we ask for, and it's because of the results,” said Mr. Bond. “With that reputation, you get all the resources you want.”

“When Bill first came on board, the perception of the insurance buying department was not very high,” said Mr. Lennox. “We've really worked

very hard to build the bridges internally. The strength of the relationships that he and his department have built within the organization — there's a high degree of trust there.”

“It used to be the risk management was a separate function standing alone and not part of the frontline operations,” Mr. Zachry said. “But now risk management is a piece of the frontline operations, and the responsibility really rests with the same people who are responsible for sales or anything else. And they've bought into it; it's part of the culture.”

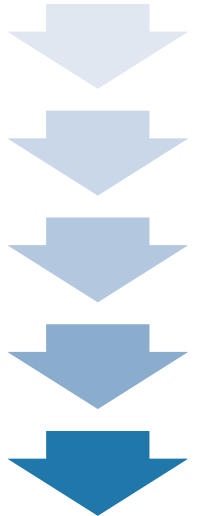
As an example, the Safeway risk manager cited Robert L. Edwards, the company's CEO and president, talking in an earnings release about the company's Culture of Safety effort and injury prevention program as a strategic advantage in the low-margin grocery business.

“That's a remarkable level of involvement by senior management,” Mr. Zachry said. “And without that level of senior management support, we wouldn't be where we are today.”

Across Safeway's various divisions now, there's a recognition that risk management is there to help them accomplish their initiatives while protecting the company, he said.

“They all know that if they come to us, we don't say no, we say, ‘OK, how do we make it work for you?’” Mr. Zachry said.

\$218
MILLION



\$113
MILLION

Mr. Zachry helped reduce Safeway's comp costs to \$113 million in 2012 from \$218 million in 2004.



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PROFESSIONAL LIABILITY

Innovative early intervention program helps workers, reduces comp costs

BY RODD ZOLKOS

Workers compensation's place as Safeway Inc.'s costliest risk is a big reason William M. Zachry and the company's risk management team devote considerable efforts to reducing claim frequency and severity.

There's another equally significant reason from Mr. Zachry's perspective, however: It's the right thing to do.

"It all comes back to a basic philosophy, and that is that we take great care of our injured workers," Mr. Zachry, vice president of risk management at Pleasanton, Calif.-based Safeway, said. "One of the things that I always talk to my claims staff about is that their job is to bend over far enough backwards that they have a rug burn on their forehead. If they do it that far then it's just about right in terms of providing care and substance and benefits to the injured workers."

"Everything we do is really focused on getting people healthy and back to work because our workforce is really what makes our business," said Anita Weir, Safeway's director of medical and disability management.

The Safeway risk management department goes about meeting that goal of getting injured workers healthy and back to work in a variety of ways ranging from uncommon to innovative. Among the latter is a program focusing on early identification and intervention in cases of injured workers at risk of delayed recovery because

of psychosocial issues.

The program stems from an understanding that for some injured workers recovery is delayed by ability to cope, not severity of the injury, Mr. Zachry said.

"So what happened was seven years ago we started a pilot program with Kaiser (Permanente). And they were wonderful," Mr. Zachry said. The program basically involves a nurse working with Safeway reaching out to an injured worker two weeks after the injury to ask questions aimed at indicating whether the worker might be at risk of delayed recovery. If the questionnaire indicates the employee is at risk, that information is shared with the treating physician, and steps are taken to get the employee counseling.

"When the ability to cope with an injury or illness on top of the stress of work, family and finances is not addressed, some employees will decompensate and not recover enough to return to work or normal life," said Juanita Hayes, Safeway's director of workers compensation.

Focusing on employees who'd suffered acute back injuries, the pilot program identified 88 over the past seven years at risk of delayed recoveries. "And to this day, we have 88 people back to work and zero litigation because what we did was we intervened with psychosocial counseling, positive support from the claims examiner, positive support from the store manager and very positive support from the treating

physician," Mr. Zachry said.

Based on the success of the pilot, Safeway expanded the delayed recovery intervention program last year. "The biggest delay between the pilot program and rolling it out was finding the infrastructure, the support, the people who could do the psychosocial counseling because there literally wasn't a vendor out there when we started looking," Mr. Zachry said.

"I think that's how to change how comp is handled in the United States: early identification and intervention," he said. "It's so logical. But nobody else has done it."

"We're doing as much educating physicians as we are employees in this process," Ms. Weir said. "Physicians have been so browbeaten about not addressing psychosocial issues in the recovery process.

"It's a huge new idea. It's being talked about a lot in the industry but very few people are really implementing it effectively," Ms. Weir said. "Even if you only identify one in 100 (patients), the cost of that one if you can avoid over medical utilization ... is a huge amount of savings, not only dollar-wise but in people's lives, the employee and their family."

"Bill's going to try to sell this program to the nation," Ms. Hayes said.

Safeway's risk management department also focuses relentlessly on closing open workers comp claims, even if it means claims adjusters will have a smaller case load.



Safeway electronically links its workers comp utilization review and bill review processes allowing the company to more easily identify unauthorized or inappropriate treatments.

"We sit down with our claims adjusters and we say, 'If you do a great job, we're not going to fire you for doing a great job,'" Mr. Zachry said. "So if you settle cases, I'm not going to fire you because you now have a lower caseload. It may mean that if somebody leaves we're not going to replace them. And we have far fewer claims adjusters than when we started. But we don't fire people for doing a great job. And they know it."

"With communication, cooperation and team effort we get quicker resolution of claims and a reduction of claims costs," Ms. Hayes said. "The average claims examiner case load is 100 open claims, and a lot of times it's lower than that."

Safeway also has taken the step of electronically linking its workers comp utilization review and bill review processes, allowing the company to more easily identify unauthorized or inappropriate treatments.

"And it dropped our medical payments," Mr. Zachry said. "The reason it's gone down pretty regular-

ly is once the doctors know they're not going to get paid for it they stop doing it."

In an effort to rein in workers comp litigation costs, in November Safeway implemented an alternative dispute resolution program in Southern California, and Mr. Zachry plans to expand the program. "We're exploring Northern California, and we expect to be able to roll it out in many other states throughout the United States once we show the success of it in California," he said.

"A lot of the people here like being part of a unique, special place where we get these kinds of results," Mr. Zachry said. "At the same time though, I have hearing representatives who go in front of the various judges in California or other states, and we're known for taking good care of our injured workers. We're known for being fair and so we get the right kind of respect when we go in front of them, because we're not trying to take advantage of the injured workers. We're known for doing the right thing."

Traumatic personal experience shapes Zachry's view of comp

BY RODD ZOLKOS

Safeway Inc.'s William M. Zachry brings a rare commodity to his work with the company's workers compensation program: a grisly experience as a workers comp claimant.

And in the office of Pleasanton, Calif.-based Safeway's vice president of risk management, there's actually a testimonial to his experience.

"My introduction to workers compensation was as an injured worker," Mr. Zachry said. "I was putting myself through college and I was working in Daly City, which is next to San Francisco, as a playground director."

Arriving at the playground one after-

noon, Mr. Zachry encountered a fight. "There were two girls fighting, and there were eight or nine guys standing around watching the fight," he said. "And when I broke up the fight the eight guys attacked me."

And so began Mr. Zachry's introduction to workers compensation.

"The knife went through my back, through the lung, through the diaphragm, through the spleen," he said. "I was in the hospital for a week, and they took out my spleen."

The experience shaped the risk manager's view on workers compensation, its purpose and his philosophy on how it should be managed.

"For me, workers compensation is an

extraordinarily personal thing in terms of making sure that you provide the right benefits, the right kind of medical care, get people well, and get them back to work," Mr. Zachry said.

The serendipity that someday he would not only be overseeing a major company's workers compensation program but be a member of the board of the entity that handled his workers comp claim decades earlier isn't lost on Mr. Zachry.

"I like the irony in the world here, because many years later (then-Gov.) Arnold Schwarzenegger appointed me to the board of directors of the California State Compensation Insurance Fund," he said. "And it was the State Compensation Insurance Fund that handled my


claim."

In January, California Gov. Jerry Brown appointed Mr. Zachry to another five-year term on the compensation insurance fund board. "So I'm probably one of the very, very few board members of any insurance company that had their claim handled by that insurance company," he said.

Today, the certificate announcing Mr. Zachry's board appointment by then-Gov. Schwarzenegger hangs on a wall in his office.

And the certificate from Daly City that's also displayed in his office?

"That little Daly City thing is actually an award of bravery from Daly City," Mr. Zachry said before joking, "It probably should have been an award of stupidity."



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Making the right connections

Email database keeps Zachry in touch with thousands of people

BY RODD ZOLKOS

Among the tools William M. Zachry relies upon in efforts to promote governmental reforms or share important risk management or insurance information is a well-organized database that includes the names and contact information of about 15,000 individuals across 65 different distribution lists.

“At the start of the legislative process, when I got into this, it sort of evolved into all these different distribution lists,” said Mr. Zachry, vice president of risk management at Pleasanton, Calif.-based super-market chain Safeway Inc.

“I will send out things focused at

certain people in the industry,” he said. “I have one for small California employers or large California employers. If there’s something that might affect how actuaries might look at something that’s going on in California, I might include them on one distribution list that might not go to others.”

“You don’t want to give Bill your business card,” said Mr. Zachry’s boss, David F. Bond, senior vice president of finance and control at Safeway. “He’s got a database of 15,000 email addresses, and he shares all kinds of stuff. He’s prolific at that.”

Mr. Zachry initially built his database by saving not only the contact information of the various



MICHAEL MARCOTTE

Mr. Zachry with David F. Bond, senior vice president of finance and control at Safeway Inc.

people he met while on business and at conferences, but also the email addresses of anyone copied on the emails he received.

“For years I’d take all the other CCs and bang them into my distribution list,” he said. “Then the first time I sent it out, if somebody wasn’t happy being on it ... I’d take them off.”

“It was sort of like the La Brea Tar Pits of distribution lists,” Mr. Zachry said.

Among the instances in which the database has proved useful, Mr. Zachry said, is when he’s asked to organize employer support for a political appointee.

“Once in Gov. (Arnold) Schwarzenegger’s administration,

they wanted employer support for somebody to be confirmed as the administrative director of the Division of Workers’ Compensation,” Mr. Zachry said. “Normally they’ll have 25 or 30 letters of support. I uncorked my distribution list, and I had 700 letters of support from employers in California. It was a small percentage in terms of a hit rate, but it was enough of them that it made a difference.”

The database is one more tool Mr. Zachry uses to communicate to and about the insurance and risk management industry. “It’s been very effective in helping get the message out in the right fashion,” he said.

As effective as it’s been, however, there are times Mr. Zachry is still surprised by his database’s reach. He recalled crossing a street in London and encountering one of his broker’s colleagues crossing the other way with a risk manager client of his own from Texas. As greetings were exchanged, Mr. Zachry introduced himself to the risk manager from Texas, who replied, “I’m on your distribution list!”



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Workers comp reform efforts lower costs for all employers

BY RODD ZOLKOS

William M. Zachry's efforts to improve Safeway Inc.'s risk management program and lower its cost of risk have played out not only in the supermarket chain's facilities, but in the California State Capitol, benefiting both Safeway and other employers through savings generated by workers compensation reform.

Mr. Zachry, now the Pleasanton, Calif.-based company's vice president of risk management, said when he arrived at Safeway as vice president of workers compensation in 2001, the company's workers compensation system was out of control. David F. Bond, Safeway's senior vice president of finance and control, charged Mr. Zachry with fixing it.

After doing what he could internally, Mr. Zachry realized that real improvements would require legislative change.

"One of the comments in conversations that David and I had was ... I can fix Safeway's (workers compensation) administration, but to really fix workers compensation we have to change the laws," Mr. Zachry said. "And David said, 'Well, what are the chances of doing that?' and I said, 'Slim and none.'"

"I just looked at him and said, 'Really,'" recalled Mr. Bond. "He came back two weeks later with a contact in then-California Sen. (now U.S. Rep.) Jackie Speier's office."

"I was working with her staff, and the biggest cost driver back in '01, '02 and '03 in California was chiropractic care," said Mr. Zachry.

While the national average number of chiropractic visits by injured workers at the time was 15, in California it was 32, Mr. Zachry said. His efforts to promote reform that would rein in California workers com-

pensation costs led to two bills — A.B. 227 and S.B. 228 — being introduced in 2003. Among other things, they mandated adoption of utilization guidelines, limited chiropractic visits and provided a procedure for employers to seek second opinions on recommendations of spinal surgery.

His suggestions ultimately "wound into several other bills, and it turned into those two up there — 227 and 228," he said, pointing to enacted copies of the legislation on the wall of his office. "I have wording in all of these."

After a 2003 recall election in which Arnold Schwarzenegger replaced Gray Davis as California governor, there was a push for further workers compensation reform — and Mr. Zachry was involved.

"At first there was some reluctance on the part of the Republicans to work with me until some of the folks said, 'Well wait a minute, Bill actually knows comp. And he's not really here as a Republican or a Democrat, he's here as an employer who really gets it,'" Mr. Zachry said. "So we were directly involved in the Schwarzenegger bill."

That sweeping workers compensation reform measure, S.B. 899, which then-Gov. Schwarzenegger signed into law in 2004, "completely changed the face of workers comp" in California, Mr. Zachry said, saving California employers an estimated \$15 billion annually by reducing the frequency and cost of litigation, producing consistent outcomes for injured workers, encouraging return to work, improving medical treatment affordably and ensuring injuries falling under workers comp were the direct result of employment.

The Safeway risk manager's role in California's workers comp reform earned him the

Risk & Insurance Management Society Inc.'s 2005 Richard W. Bland Memorial Award, presented in recognition of a significant contribution in the areas of legislation or regulation related to risk and insurance.

In 2012, Mr. Zachry was again at work, this time in Sacramento, Calif., on further workers compensation reform efforts. That measure, S.B. 863, was intended to both improve benefits for injured workers while stabilizing employer costs through such provisions as increased utilization of medical provider networks and independent medical and bill review.

In all of the legislation, the position Mr. Zachry promoted was informed by his philosophy that providing the best medical



California made several changes to its workers comp system following lobbying efforts by Safeway and other employers.

treatment for injured workers reduces workers comp costs.

"It's his sense of fairness in this whole thing," Mr. Bond said. "(Mr. Zachry) really looks at it very objectively. He doesn't look at it from the point of view of what's best for the bottom line of Safeway. He looks at it from the perspective of what's in the best interests of the employee, what's the common good."

"There are a lot of things that go into reducing the costs. But what we really got the big bucks from was improving the medical care," Mr. Bond said. "And the legislation that Bill pushed through in California allowed us to make the improvements."

In working with state leaders to promote workers compensation reform, Mr. Zachry

recognized that signed legislation doesn't mean the task is completed — and realized that often reforms won in legislation are eroded in the process of writing regulations and through subsequent case law.

"Usually, the employers would get involved in the legislation and declare victory and go home, and then there would be regulations and there would be case law and they would undo it all," Mr. Zachry said. "And I said that's not going to happen. So we were very active in working on the regulations, and I'm co-chair of the (California) Chamber of Commerce Amicus Committee to make sure the case law supports our legislation."

Mr. Zachry is quick to say that the California workers comp reforms weren't the result of his efforts alone, but involved a number of employers. The Safeway risk manager's role in workers compensation reform efforts hasn't been limited to California.

"We have wording in Texas legislation and other states as well," he said. "We have been very influential in trying to get a system that gets the benefits to the injured workers but limits the mischief, that limits the expenses."

"We've influenced legislation in Illinois," said Mr. Bond. "There are a couple of other states that have used Bill's wording ... I offer him up to any business group that wants to talk about workers comp or workers comp reform."

Mr. Zachry's role in California's workers compensation system became more formal in 2009 when then-Gov. Schwarzenegger appointed him to the board of the California State Compensation Insurance Fund. In January of this year, Gov. Jerry Brown appointed him to another five-year term on the board. He's also a board member of the California Self-Insurers' Security Fund and was chairman of the California Fraud Assessment Commission from 2000 to 2009.

"The nice thing about Safeway is they didn't say, 'Well, you're the workers comp claims geek — you can't go up and talk to people,'" Mr. Zachry said. "I spent literally two years in the capital working on legislation and regulations to get these things fixed."

Transforming Safeway's safety culture saves company \$100 million

Using the language of retail rather than risk management and applying tools not usually used in risk management to aspects of its stores' business, supermarket chain Safeway Inc. has created a "Culture of Safety" program that is saving the company millions in workers compensation and general liability costs while offering it a competitive advantage.

The Culture of Safety, an internally branded product at Pleasanton, Calif.-based Safeway Inc. with its own logo, has been in place for more than five years after being developed to reduce workers compensation and general liability costs.

"What it's turned into is the largest cultural transformation at Safeway in 17 or 18 years," said Ward Ching, Safeway's vice president of risk management operations, who developed the program at the direction of William M. Zachry, Safeway's vice president of risk management.

"I hired (Mr. Ching) originally when I

got into this role as a consultant to figure out what do we do to develop a culture of safety," Mr. Zachry said.

The exercise involved combining behavioral economics with behavior-based safety, Mr. Ching said, "adding in some big data analytics and some Six Sigma to transform workers compensation and general liability into a retail issue."

"As the store is operating on a day-in and day-out basis, there are hundreds of thousands of behaviors that contribute to its success," Mr. Ching said. His work sought to identify behaviors that detract from that success and find ways to change them. Reducing accidents, Mr. Ching said, is "all about the behaviors, it's not about the equipment."

The Culture of Safety program that was created includes tools and incentives that company leaders can use to encourage and support store managers in the safety effort. It also assigned day-to-day respon-

sibility for safety at each store to the assistant manager.

Perhaps the strongest tool that was created was a method for employee-to-employee or supervisor-to-employee observation of safe behaviors through which employees or supervisors can use a form to formally note safe activity.

"They are praising each other for what's right. Weekly, we generate approximately 110,000 to 120,000 positive observations," Mr. Ching said.

"We think we're the only one doing the positive observation program like this," Mr. Zachry said. "The unions, by the way, love it because it's not negative, it fosters the relationships, and we're not beating people up for having done something, we're encouraging the right behavior from the beginning."

The Culture of Safety also has given Safeway a clearer window into recognizing issues or developments at stores

before they become safety problems.

"I can use that information to see things in the organization that nobody else can see," Mr. Ching said. "We have a way of seeing when things are happening, when they're trending before they actually happen." That allows risk management to take steps to change a process before an accident occurs.

And using the Six Sigma System Control Analysis technique to examine Safeway as a system allows Mr. Ching to determine which efforts to influence behaviors are succeeding and which are not.

Mr. Ching estimated the Culture of Safety program has saved Safeway \$100 million in direct costs over four years.

"Our frequency rates, we believe, are better than our competitors'," he said. "We know it's much lower than the industry average, and we believe that is a competitive advantage."

By Rodd Zolkos

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Safeway's program rewards stores for prevention efforts

Supermarket uses self-insurance, captives, host of insurers

BY RODD ZOLKOS

Supermarket chain Safeway Inc. generally looks to retain the more predictable risks across its various lines of exposures, self-insuring and self-administering its workers compensation and liability programs.

The company's risk management operation then uses tools such as premiums, charge-backs and incentives to reduce loss frequency and severity in its operations.

"For all intents and purposes, what we're trying to do here is run a theoretical insurance company within the organization," said William M. Zachry, vice president of risk management for Pleasanton, Calif.-based Safeway. "We charge the divisions their premiums, we work with them on bringing down losses.

"We put an economic value to the process; most of the stores know that a loss is worth so much bread or so much meat or so much milk," Mr. Zachry said. "We make it relevant to what they do in order to drive behaviors correctly."

Zurich Insurance Group Ltd., Safeway's largest insurance trading partner, leads the company's property program, with Munich Reinsurance Co., Swiss Re Ltd., Lexington Insurance Co., PartnerRe Ltd., Scor S.E. and various Lloyd's of London syndicates also participating on the property tower.

Safeway's stock throughput program is anchored by RSA Insurance Group P.L.C., with numerous other insurers and Lloyd's syndicates on the program.

Ace Ltd. anchors Safeway's casualty coverage with Travelers Cos. Inc., Allied World Assurance Co. Holdings A.G., Zurich, Liberty Mutual Holding Co. Inc., Great American Insurance Group, XL Group P.L.C., Endurance Specialty Holdings Ltd., Catlin Group Ltd., Magna Carta Insurance Ltd., Iron-Starr Excess Agency Ltd., Chubb Corp., Canopus Group Ltd. and Argo Group International Holdings Ltd. completing the tower.

Zurich provides Safeway's excess workers compensation coverage.

Safeway's directors and officers program is anchored by Zurich with Axis Capital Holdings Ltd., Houston Casualty Co., Hartford Financial Ser-

vices Group Inc., CNA Financial Corp., AWAC, Ace and American International Group Inc. on the tower.

The company's employment practices tower includes Alterra Capital Holdings Ltd., Argo, Zurich, AIG, AWAC and Endurance, in that order.

Ace is the primary insurer on Safeway's cyber risk program, with higher layers underwritten by AIG, Scor and Ironshore Inc.

"Essentially we have two brokers," Mr. Zachry said. Marsh L.L.C. is the broker for Safeway's property and stock throughput programs, and Aon P.L.C. is the broker for the casualty, workers compensation, directors and officers, employment practices liability and cyber risk programs.

Safeway has two captive insurers, one in Hawaii and one in Bermuda, both managed by Aon. The Hawaii captive is used for some property and cyber exposures but mostly for the company's terrorism insurance program, Mr. Zachry said. "It really does a great job in terms of creating coverage for terrorism that's not too expensive," he said.

The Bermuda captive is used for Safeway's property and common area maintenance coverages.

"The captives are very effective, and we've done some internal studies looking at opportunities for expanding the use of the captives," Mr. Zachry said. "We continue to look for opportunities for that."

While Safeway self-administers its workers compensation and liability programs, it does have occasion to use third-party administrators. "There are certain states that require administration within the state. New Mexico is a good example," Mr. Zachry said. "We have four stores in New Mexico, not enough volume to warrant staffing in that state, and yet it requires local claims administration."

"We've used Sedgwick (Claims Management Services Inc.), and we've used other smaller local ones for TPAs," he said.

Safeway has a risk management information system bought from Aon that helps keep track of historic insurance program information. The company uses Computer Sciences Corp.'s Riskmaster Accelerator sys-



MICHAEL MARCOTTE

Safeway Inc. uses a charge-back process with individual stores to reduce liability losses, both by charging stores for an incident but also acknowledging safe behavior.

tem for its claims management.

"We have a small (information technology) vendor that houses a lot of our documents, so it's a document management system, and it's actually a workflow system as well," said Gilbert Cabrera, vice president of finance/corporate risk management at Safeway. "It works in conjunction with our claims system. We utilize it to be more efficient, so we don't have any more paper out there; it's all paperless. The bill review system is all automatic, including the matching of the (utilization review) decisions vs. the bills."

Diagnostic tools

Safeway also builds various analytical tools in-house, Mr. Cabrera said. "Bill likes to involve our actuaries on our programs," he said. "What I've been doing for the last six years with our actuaries is giving them more diagnostic tools to look at our data, to give them the confidence that we are doing what we say we're doing."

The various analytical tools are an important part of tracking the success of Safeway's various risk management initiatives and justifying their existence.

"We don't do any programs just because we think it's going to work. We actually put returns on investment on everything we do," Mr. Cabrera said. "That's really the backbone of what analytics for us is — looking at the numbers, making sure that we're making the best deci-

sion for the organization."

The risk management department uses various incentives to reduce losses.

"The incentive that we use for the divisions themselves is really a returned premium incentive," Mr. Cabrera said, indicating that divisions that meet risk management goals get back a portion of their premium.

Safeway uses a charge-back process with individual stores to reduce losses, both by charging stores for an incident but also acknowledging safe behavior. "Sixty-seven percent of all of our liability claims are slips and falls in the stores," for example, Mr. Zachry said.

Typically, the charge-back system provides that in the event of a slip, trip or fall incident, a certain amount will be charged against the store.

"But if we go online and see the video of the store, and it has been swept or inspected within an hour prior to the slip, trip or fall, we will charge the store zero," Mr. Zachry said. "What it does is it gives the incentive for the stores to make sure they're spending the time doing the sweeps and the inspections."

An analysis showed the charge-back approach has reduced liability at stores enough to save Safeway \$6 million, Mr. Zachry said.

"The success in the sweeps and the inspections went from 85% to 95% because of the incentive. So you put incentives in the right place, you try to drive the right behaviors, and you get better outcomes."

"The captives are very effective, and we've done some internal studies looking at opportunities for expanding the use of the captives."

William M. Zachry,
Safeway Inc.

Zachry gives risk management staff freedom to excel

Insurance professionals say they appreciate department's creativity, encouragement

BY RODD ZOLKOS

Often in discussion about his risk management successes, William M. Zachry, vice president of risk management at supermarket chain Safeway Inc., interrupts the conversation to credit his department's staff — a staff that includes numerous industry experts and a very engaged group working to thrive in an environment where risk management is highly valued and innovation produces results.

"It's not your typical insurance-buying department," said Andrew D. Lennox, San Francisco-based strategic account manager and director at Aon Risk Solutions, one of Safeway's brokers.

"He's accumulated a group of people that he's developed over the years that we've brought on board to take a very different approach to providing health care for injured employees," said David F. Bond, senior vice president of finance and control at Pleasanton, Calif.-based Safeway.

"Bill's a little bit of a Pied Piper," Mr. Bond added. "He's got strong people from his past history that we've brought into the company. We've got other people that we've brought in that just wanted to be part of the experience."

According to Mr. Lennox, one of Mr. Zachry's strengths extends beyond surrounding himself with highly skilled people — he gives them the opportunity to excel.

"One of the unique things about Bill is he allows his people to do great things. He doesn't get in the way," Mr. Lennox said. "He's hired the best and the brightest, and he's given them latitude to go out and do what they do best, and that's a rarity these days."

One of the individuals who values Mr. Zachry's leadership style is Juanita Hayes, Safeway's director of workers compensation. "We've worked at three different places together now," she said.

"Bill and I came to Safeway 13 years ago. I have worked with him for 27 years," Ms. Hayes said. "He's the dreamer, and I'm the organizer."

Ms. Hayes added that Mr. Zachry brings much to the process of managing Safeway's workers compensation efforts, including an innovation that fits well into his overall strategy and a humanity that's always coupled with his initiatives. She also said that Mr. Zachry is eternally optimistic and quick to acknowledge others' achievements.

Anita Weir, director of medical and disability management at Safeway, has been with the company for 10 years. "It's very fulfilling," she said. "I've been looking for an environment like this for a

good part of my career."

She said she appreciates that Mr. Zachry recognizes the scale of the challenge involved in various risk management department initiatives and understands that achieving them involves adequate resources.

"That's one of the things that I've enjoyed about working with Bill. He understands that if we're going

to do these things it's going to be hard work," Ms. Weir said. "That means we're going to need resources and the encouragement to keep doing it."

In addition to their contributions to Safeway, members of the company's risk management team are actively involved in the risk management community.

"We participate in the communi-

ty a lot," Mr. Zachry said. "I have people throughout the organization who are active in giving back."

Members of Safeway's risk management staff sit on the boards of organizations such as the Captive Insurance Companies Association, the Hawaii Captive Insurance Council and the Integrated Benefits Institute. And of course, the

group is very active in the Risk & Insurance Management Society Inc.

"All of the risk directors are members of RIMS. Last year we took something like 14 of our staff to RIMS — we were one of the largest contingents," Mr. Zachry said. "The day after RIMS, we gave

See STAFF next page

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STAFF

Continued from previous page

a tour of our production plant, distribution plant and store, and we had 71 insurance underwriters, brokers and risk folks on the tour.”

In assessing his successes at Safeway, Mr. Zachry said, “It’s not me, me, me at the end of the day. It’s the team. The team is amazing. These folks have done an amazing job.”

The risk management innovations Safeway’s risk management staff are allowed to pursue, and the successes the department experiences, create an environment that contributes to recruiting and retaining risk management talent.

“The culture is incredibly strong, and again a lot of it ties in to the latitude Bill is given from the C-suite to do what he does. He’s also given the latitude to go out and hire people,” said Mr. Lennox. “That shared success and feeling of camaraderie is evidenced throughout the organization.”

“They can probably get more money elsewhere, but I don’t think they’d have as much fun,” Mr. Zachry said. “And the results are astonishing.”



MICHAEL MARCOTTE

Mr. Zachry’s staff: Front row (against the rail, front to back): Marsha Rodgers, Ward Ching, Alice West, Gilbert Cabrera, Jeff Brown, Warren Stocker. Second Row (front to back) Anita Weir, Patrick Singh, William M. Zachry, Jim Cole.

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ZACHRY TOOK UNUSUAL JOURNEY TO ROLE AS SAFEWAY'S RISK MANAGER

William M. Zachry brought a solid background in workers compensation when he arrived at the Safeway Inc. supermarket chain — even if it was one he acquired somewhat accidentally.

Mr. Zachry, Safeway's vice president of risk management, began his career as a claims adjuster for California Casualty Group in 1979 after completing a bachelor's degree in business administration, personnel and industrial relations, wage and salary administration at San Francisco State University.

"I was looking for a job," Mr. Zachry said. "I got married ... came back from the honeymoon on a Thursday ... on a Friday night I was playing softball."

A teammate informed him California Casualty had just hired someone and encouraged him to apply. Mr. Zachry got the job.

"As usual, nobody sort of plans to get into the industry," he said.

"Nine months after I started, I was a supervisor in claims and went off to a third-party claims administrator for a couple of years and then went back into the insurance industry. About eight or nine years into it, I was the vice president of claims at C.E. Heath," Mr. Zachry said.

Mr. Zachry worked at C.E. Heath Compensation & Liability Insurance Co. from 1987 to 1998, and later joined Zenith Insurance Co., where he was a vice president from 1998 to 2000. He worked at eStellarNet Inc., an Internet medical bill and attachment clearinghouse for the workers compensation industry, from 2000-2001 as senior vice president and chief operations officer. Mr. Zachry then joined, Pleasanton, Calif.-based Safeway as vice president of workers compensation before being named to his current position in charge of Safeway's overall risk management efforts in 2008.

Mr. Zachry, a "nearly" native Californian born in Phoenix, calls his background rather unusual for a risk manager.

"Most of the risk managers don't come out of claims," he said. "I think they come out of underwriting or broking."

"I came at a very early age (to California), but my dad was a civil engineer, so we spent 3½ years in Iran, a year in the Australian Outback and a year in Singapore as I was growing up," he said.

That experience gave him a "unique international perspective on cultures," Mr. Zachry said. "You learn about how people are all human, and there are significant cultural differences, but there are significant similarities in terms of the values of what humans care about and who they are. Besides, who else had a pet kangaroo growing up?"

Mr. Zachry's wife, Lisa, retired last year after serving as an elementary school principal and her school district's special education

director. They have two daughters, 30-year-old "mirror image identical twins" Lauren and Elizabeth. "One's right-handed, one's left-handed, one's right-brain and one's left-brain," Mr. Zachry said. "They're both great ladies."

"We found out we were having twins 17 hours into labor, and my wife is 4 feet 10 inches tall, so it was a big surprise," he added, calling the experience "a surprise that lasts a lifetime."

The Safeway risk manager is an avid photographer, a hobby evidenced by the Canon camera that

sits on his office credenza along with some of his displayed images, like shots he took atop the north tower of the Golden Gate Bridge. A friend with the Golden Gate Transportation District arranged the tour with a bridge metal inspector, Mr. Zachry said. "We got to the top and the inspector said, 'Don't fall off.'"

Mr. Zachry is also a diligent editor of his photographs.

"When I go on vacation, I'll take 1,000 a day, then the object of the game is to whittle that down below 100," he said. "So I'll keep 100 per

day of what I saw. The nice thing about that is by editing it that night, it reinforces the memory of what I saw."

Mr. Zachry is also a cancer survivor.

"One other thing I'm very proud about is that I was diagnosed with cancer pretty much the day I got the job, when I was promoted to risk manager," Mr. Zachry said. "It was prostate cancer. I've had some surgery, and the latest tests show everything's fine. It's nice to be a survivor, if you will."



MICHAEL MARCOTTE

By Rodd Zolkos Mr. Zachry

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Integrating risk management with business

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**Eamonn
Cunningham**
WESTFIELD GROUP



ARAN ANDERSON

BY MATT DUNNING

To say that Eamonn Cunningham has transformed the Westfield Group's risk management strategy would be a considerable understatement, in that it presumes such a strategy existed prior to his arrival.

By all accounts, risk management itself was an unfamiliar term at Westfield Group when Mr. Cunningham joined the Sydney-based retail property management and development company in 1986 as its group internal audit manager.

"My job as an administrator was just to buy the insurance," Mr. Cunningham said. "But when I started digging into that, I began to ask some fundamental questions. Why are we buying a particular insurance policy? Is there another way to protect ourselves? Do any of our actions pre-event influence the outcome of an event, and all other things being equal, can they diminish our need to buy insurance?"

Mr. Cunningham — now Westfield Group's chief risk officer — said the philosophical groundwork for an enterprise risk management strategy that seeks to strike a bal-

ance between business interests and risk avoidance was already part of the company's culture.

What the company lacked, and what Mr. Cunningham has spent more than 25 years developing and implementing, was a unified risk management framework that encompasses the company's global operations, all organized under the core principle that every Westfield employee shares a responsibility for managing risk.

The integration and consistent execution of that framework, the extent to which it has successfully reduced Westfield's exposure to catastrophic property damage, business continuity disruptions and many other risks, and the positive effect it's had on the company's broader operations and strategic goals, are just part of the reason Mr. Cunningham has been named to *Business Insurance's* 2014 Risk Management Honor Roll®.

"For me, risk management is all about instilling into the conduct of your enterprise the notion of risk and reward," Mr. Cunningham said. "Of course, it would be a bit ambitious to expect everyone in the company to intuitively put that notion into practice, which is why we have these frameworks that we deploy across the globe in a

WESTFIELD GROUP

Business: Global retail real estate development and management firm

Founded: 1959

Headquarters: Sydney

2013 Financials: AU\$1.91 billion (\$1.70 billion) in pretax profit on AU\$2.39 billion (\$2.13 billion) in revenue

Employees: 4,000

Did you know:

- The Westfield Group manages approximately 93.6 million square feet of retail space worldwide, making it one of the largest retail real estate management firms in the world.
- The Westfield Group made its first entry into the U.S. market in 1977 with the purchase of the Trumbull Shopping Park in Trumbull, Conn. Today, the U.S. accounts for more than 42% of the company's total property assets.
- Westfield tripled the amount of retail space it managed in the U.S. in 1994 when it purchased St. Louis-based Centermark Properties Inc. for approximately \$1 billion.

manner that delivers the benefits of consistency and considered thought, but not in a manner where people perceive it to be a bureaucracy.”

Mr. Cunningham’s innovative risk mitigation policies and procedures — coupled with his commitment to “layering certainty on top of certainty” when it comes to managing a global insurance program covering more than \$35 billion in insured assets spread out over three continents — have been credited with saving the Westfield Group millions of dollars in potential losses, insurance premiums and claims costs over the course of his career.

However, those who work closely with Mr. Cunningham say his successes are not measured solely in financial terms, but also in the consistent adherence and support his risk management policies and procedures have received at every level of Westfield’s business, including its regional corporate divisions, design and construction units, and day-to-day operating staffs at its 90 shopping centers worldwide.

Peter Allen, Westfield Group’s chief financial officer and Mr. Cunningham’s direct supervisor, attributed the companywide embrace of risk management’s inherent value to Mr. Cunningham’s insistence that Westfield’s various business units view his role within the company not as a barrier to their operations, but rather as a facilitator of their safe pursuit of growth and innovation.

“Because of the way that Eamonn leads, the people in our other divisions want to understand and make sure that they address their risks as a means of supporting Eamonn in what he does,” Mr. Allen said. “They believe that their business unit is going to be made better by adhering to the processes and procedures that we’ve enshrined in our risk management program.”

David Bidmead, Marsh L.L.C.’s New York-based global multinational client service leader and a personal friend of Mr. Cunningham’s since assuming senior responsibility for Westfield’s account with Marsh in 2000, said he often marvels at the extent to which Mr. Cunningham’s risk management framework is consistently applied across the company’s regional corporate operations in Sydney, London, Los Angeles and Auckland, New Zealand, as well as the day-to-day management of its 90 shopping centers worldwide.

“We’ve seen other companies attempt that same kind of permeation, and it usually results in a kind of turf warfare or power struggle, where someone in a chief risk officer position attempts to occupy the moral or intellectual high ground and dictate to the rest of the organization what it can and can’t do,” Mr. Bidmead said. “Eamonn’s approach is different, and its success is significantly

influenced by his ability to closely empathize with the needs of the people he works with.”

“It’s such a pleasure to me to hear someone like (Westfield Chairman Frank Lowy) talk regularly about risk, because it makes it somewhat easier for us to do what we do as the company’s trusted adviser,” he added. “The people that we interact with at Westfield know that the management of risk isn’t an add-on to their normal job, it’s a core part of how they’re expected to act each day. It’s something that I wish we had in every client relationship that we’ve got.”



ARAN ANDERSON

Peter Allen (left), group chief financial officer of Westfield Group said of Mr. Cunningham, “Because of the way that Eamonn leads, the people in our other divisions want to understand and make sure that they address their risks as a means of supporting Eamonn in what he does.”

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Westfield's risk management strategy puts business leaders in pole position

BY MATT DUNNING

To understand the role Eamonn Cunningham plays within the Westfield Group's global operations as the chief risk officer, group Chief Financial Officer Peter Allen says it's helpful to think of the company as a Formula 1 race car.

"The best piece of equipment you can have in a race car is a good set of brakes," Mr. Allen said. "They allow you to brake later as you enter into the turns and accelerate out of them earlier, thereby allowing you to retain more of your momentum."

In that context, Mr. Allen described Mr. Cunningham — and more specifically, the comprehensive risk management program Mr. Cunningham has implemented during his 27-year career at Westfield — as the best brakes money can buy.

"What he's doing is making sure that as an operating business, we've got the things in place that ensure that our operational leaders are still the drivers in terms of their business," Mr. Allen said. "They're still able to grow and innovate as quickly as they can, but without jeopardizing the company or taking an undue risk."

The evolution of Westfield's risk management strategy under Mr. Cunningham's leadership has been a gradual process, marked by the development and implementation of several innovative policies and procedures designed to reinforce the core principle that the task of minimizing the company's exposure to potential losses extends to every Westfield employee.

"We were rapidly waking up to the notion that risk is owned by everyone in the organization, and that we needed a way to get everyone to begin playing their part," Mr. Cunningham said.

In 1995, at Mr. Cunningham's suggestion, Westfield began designating risk management coordinators at each of its Australian mall properties and construction projects to

take on primary administration of all risk-related matters within their respective locations.

"Our mall managers and our project managers ultimately bear responsibility for the risks at their specific properties, but we understood the pressures and the limited time those individuals have, so we knew that each one of them needed a good risk lieutenant," Mr. Cunningham said. "At the time we introduced it, I made a point of going out to each and every mall in our Australian portfolio and talking to the local staffs about exactly what this program was intended to do, because it was quite a change for the company."

The program was later expanded to include all of Westfield's properties and development projects worldwide. The company estimates that their addition to its management structure has significantly reduced loss incidents and claims costs over time, in some locations by as much as 30%.

"One of the ways we went about it was telling people that regardless of their job function, they need to consistently ask themselves the 'what if' question," Mr. Cunningham said. "If you do that, and you're at all uncomfortable with the answer, then you owe it to yourself and the organization to do something about it."

Another element of Westfield's field-level risk management strategy that has proven effective in both mitigating casualty claims and preserving the company's reputation with its patrons is the introduction of follow-up phone calls to each shopping center's incident management protocols.

"A lot of times, that approach alleviates the risk of a person going to a lawyer if there's been a slip-and-fall incident, because they've



ARAN ANDERSON

Zaheen Singh, senior vice president at Sydney-based Marsh Pty Ltd, with Eamonn Cunningham of Westfield Group

seen that Westfield cares and they're appreciative that we took the time to follow up with them," said Donna Blackley, risk management coordinator at the Westfield Garden State Plaza shopping center in Paramus, N.J. "By following up with these individuals, last year alone I was able to handle 77 (potential and activated) claims in-house rather than sending them out to our third-party administrator. If we hadn't been able to nip those claims in the bud, we definitely would have had higher costs in paying out those claims."

At a global level, Mr. Cunningham said he's particularly proud of his role in formalizing an enterprise-wide adoption of business continuity planning, including the installation of crisis management teams at each of its four regional headquarters.

"We needed to ensure that each individual unit of Westfield has a business continuity management system in place that can identify internal and external influences that might potentially derail it from meeting its objectives," Mr. Cunningham said.

While securing the capital investments necessary to implement the range of programs and procedures was by no means easy, Mr. Cunningham said he'd be hard-pressed to recall an instance in which a program he genuinely thought would benefit Westfield's broader operations eventually was not adopted.

"None of this was done in a vacuum, and I'm fortunate to work for a company that is very focused on ensuring that we're doing all we can to preserve brand value, and that sees the innate value in programs like these," Mr. Cunningham said. "They look at what needs to be done, and only after that do they consider the cost of what those measures will be, rather than the other way around."

"We've increased our risk management capabilities because we believe, as a company, that we're getting a lot of value out of those investments. You can't necessarily track that value day-to-day, but you certainly see it when an issue or loss event does come up," Mr. Allen said.



ARAN ANDERSON

Mr. Cunningham's Sydney-based team: Robert Wilson, Mawar Ahmad Aras, Moira MacFie, Talbot Sanders, Eamonn Cunningham, Minela Addison, Andrew Nicolaou, Peta O'Donnell

PROGRAM REDUCES COSTS, EXPANDS COVER

BY MATT DUNNING

As chief risk officer of the Westfield Group, Eamonn Cunningham insists his mantra when it comes to managing the company's global insurance program is to "layer certainty on top of certainty."

That's no small undertaking, given that Mr. Cunningham is responsible for an insurance program comprised of 27 coverage lines spread among 50 insurers worldwide, at a premium cost of more than \$40 million annually. Overall, Mr. Cunningham said Westfield's insurance portfolio covers more than \$35 billion in total insured property, as well as total casualty and professional liability limits in excess of \$250 million and \$25 million, respectively.

Since taking responsibility for managing Westfield's insurance program in 1988, Mr. Cunningham has successfully streamlined and/or expanded several major parts of its coverage portfolio.

Lyndon Broad, the Sydney, Australia-based vice president and operations manager for FM Global and Associated FM's units in Australia and New Zealand, described Mr. Cunningham as a "meticulous" and "demanding" insurance buyer with an "impressive ability to navigate and balance the expectations" of his insurers with the commercial realities facing his company.

"He's a tough negotiator, both on renewals and on individual losses," Mr. Broad said. "That doesn't mean that his focus on representing Westfield's interests necessarily comes at the expense of the relationship between Westfield and FM Global, it just means that we need to be able to demonstrate our value to Westfield and to deliver on that account."

"At the same time, even through some admittedly difficult situations, I've always found him to be a very ethical and loyal person and someone who values the personal relationships," he said.

In the late 1990s, Mr. Cunningham began negotiating to unify the separate property insurance towers Westfield maintained for its assets in Australia and the United States. Additionally, the company's property coverage within each tower was subdivided into separate policies for Westfield's static properties and its construction projects, the latter of which was bought on a project-by-project basis.

"I couldn't afford to have a situation where an event on one side of the mall impacts the other, and I have different groups of insurers pointing fingers at each other in terms of issues of causation and the like," Mr. Cunningham said. "It took a lot of hard work to convince the markets that when you look at Westfield, you're looking at a

product with a consistent risk management approach across the design, construction and property management phases.”

By reorganizing the separate property insurance policies into a single, global all-risk coverage program — and subsequently expanding the program to include coverage for California-based earthquake damage, as well as business interruption losses resulting from construction delays — Mr. Cunningham was able to save Westfield an estimated \$50 million in premiums over the past five years.

“It’s a holistic, global placement that is robust enough to cater to every redevelopment project that Westfield takes on, whether it’s an extension of an existing center or a greenfield site,” said David Bidmead, Marsh L.L.C.’s New York-based global multinational client service leader. “We think it’s a landmark placement, and it’s proven to be successful.”

Peter Allen, Westfield’s group chief financial officer, said he credits the gradual improvements made to the company’s insurance program to Mr. Cunningham’s tireless efforts to provide its insurers with as clear a view as possible of the totality of its operations and, more specifically, its global risk management strategy.

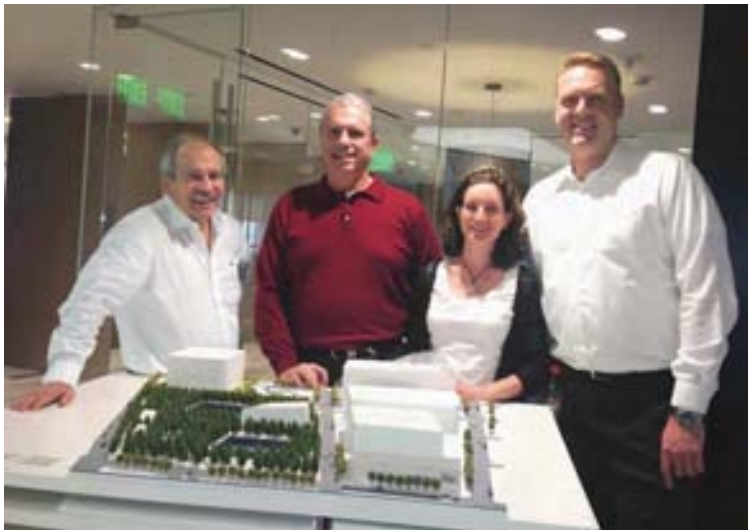
“I look at the quality of information we provide to the insurance market today, and the understanding that each of those insurers has in terms of the way we operate, Eamonn’s been such a strong communicator and driver of that,” Mr. Allen said. “It’s probably the single biggest change that we’ve undergone in terms of the way we approach the insurance market.”

To that end, one of the more innovative tools Mr. Cunningham has developed in his time with Westfield is the company’s insurance renewal web portal. Launched in 2005 and redeveloped in 2011, the web portal provides the multitude of insurers participating in Westfield’s insurance portfolio on-demand access to the company’s declarations and coverage requirements within a given policy year.

“We were giving these massive binders of information to our carriers, and it was a nightmare to prepare,” Mr. Cunningham said. “You have to hope to God you don’t miss a single piece of paper, and with 50 carriers on the program, it makes life very difficult.”

Mr. Cunningham said the web portal saves Westfield’s risk management department about 75 labor hours each year, and that he’s been told by certain insurance executives that the depth and ease-of-access to the information it provides saves the company an estimated \$1 million in premium costs annually.

“I can’t think of any other company doing anything like the website at the time of its launch. Eamonn was definitely years ahead of his time on that,” Mr. Broad said. “It provides transparency around the declarations that Westfield makes to its insurers, and that’s enormously important.”



Eamonn Cunningham (left) with his U.S.-based team: (From left) Dave Rapp, Molly O’Reilly, Jonathan Bredehoft



Mr. Cunningham’s U.K.-based team: (From left) Zain Anderson, William Stanbridge, Mr. Cunningham, Claire Wood, Adam Cochrane



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William Zachry

Safeway

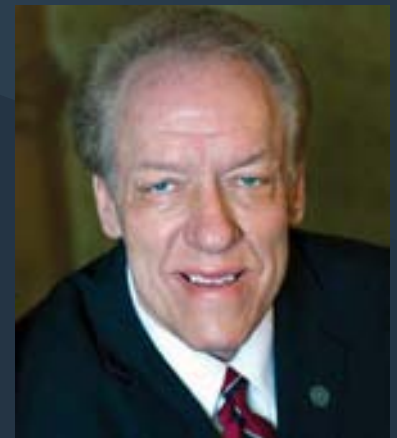
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Lessons learned from World Trade Center tragedy

Aftermath of terror attack illustrated importance of contract certainty

MATT DUNNING

More than any other single event, the Sept. 11, 2001, terrorist attack on the World Trade Center in New York marked a turning point for the Westfield Group in its approach to risk management.

Just six weeks before the attacks, Westfield invested \$127 million in a 99-year lease agreement with the Port Authority of New York and New Jersey for control of the 400,000-square-foot concourse shopping center beneath the Twin Towers.

The towers' collapse completely destroyed the underground mall. In the hours immediately after the attacks, Westfield's executive leadership and regional crisis management teams elected to temporarily close all of the company's malls worldwide as a precaution against additional attacks.

"We didn't know the scale of what was happening in New York and whether it was going to affect other parts of the U.S. or other countries around the world," said Eamonn Cunningham, chief risk officer for the Sydney-based retail property management and development company. "We took the conservative approach across all of our locations globally, and through the respective crisis man-

WESTFIELD'S WORLD TRADE CENTER DEAL

July 2001: Westfield Group commits \$127 million toward a 99-year lease agreement with the Port Authority of New York and New Jersey for control of the World Trade Center's concourse mall.

September 2001: The World Trade Center is completely destroyed.

December 2003: Citing design conflicts in the rebuilding of the site, Westfield Group sells its lease of the future trade center's retail space back to the Port Authority for \$140 million, a \$1.9 million net profit over the company's initial investment and subsequent costs, including lost revenue; and retains first-refusal rights if the Port Authority solicits a third-party operator for the space.

February 2012: Westfield Group invests \$612.5 million in a joint operation agreement with the Port Authority, assuming control of 50% of the subterranean and street-level retail spaces under construction at the new World Trade Center.

December 2013: Westfield Group buys the Port Authority's 50% operational stake in the trade center retail space for \$800 million and announces that the Westfield World Trade Center shopping center will open in late 2015.

agement teams decided that we needed to put certain additional security measures in place before we opened our doors again."

Following the attacks, Mr. Cunningham served as Westfield's primary witness in Silverstein Properties Inc.'s years-long legal battle with insurers over the recovery amount to be paid out under the limits of its insurance policy for the Twin Towers, which had not been finalized at the time of the Trade Center's destruction.

Westfield itself was reimbursed for the revenue it lost as a result of the attacks through its \$140 million sale of its interests in the World Trade Center site back to the Port Authority in 2003, and will re-open retail operations in the new trade

center in 2015 (see timeline).

Mr. Cunningham — as well as those who work closely with him — said the experience of watching the attacks unfold and the maddeningly complex insurance-related litigation that resulted from them had a profound effect on him personally and professionally, and has informed his approach to risk mitigation, crisis response and insurance management.

"One thing that I definitely learned from that event, and it's lived with me ever since, is the fundamental notion of contract certainty when it comes to insurance," Mr. Cunningham said. "The year after Sept. 11 and in every year since, by the time that the last day of June rolls around before

our renewals, I've made sure that I had absolute certainty in terms of coverage in all of our insurance programs worldwide."

That prioritization of insurance contract certainty would eventually lead Mr. Cunningham to develop and implement regular full-day "loss workshops," during which Westfield's major insurance policies are tested against a series of hypothetical claims scenarios by members of Westfield's risk management team and key operational leaders, underwriters from the company's leading insurers, its account specialists at Marsh L.L.C. and several other third-party service providers.

At the conclusion of each loss workshop, the various parties enter into a memorandum of understanding outlining each entity's rights and responsibilities should the hypothetical claim scenario used in the workshop actually occur.

"The Sept. 11 attacks showed not only Westfield but plenty of our other clients that you can have a wonderful insurance program underwritten by great insurance companies, but you also have a responsibility to have your own house in order in terms of your business continuity and resiliency planning," said David Bidmead, Marsh's New York-based global

multinational client service leader. "If the best outcome is when your expectations of what's going to happen in the event of a claim and your insurers' expectations are the same, why wouldn't we get the insurance companies that support Westfield together and walk through how these policies would react in the event of a loss incident?"

Though the loss workshops were by all accounts a cumbersome process at first, their practical value was made clear following a 2010 arson incident at the Westfield Roselle shopping center in Sacramento, Calif.

With a memorandum of understanding in place to guide Westfield's risk management team through its interactions with insurers, loss adjusters and forensic accountants, Mr. Cunningham said the company was able to reach a settlement on the value of its losses — which totaled more than \$70 million — in less than eight months.

"Having that memorandum of understanding definitely helped," Mr. Cunningham said. "It meant that we had an established set of protocols that laid out who would be involved in the claim if an event like that arose and identified the communication channels.

"Bad things do happen," he added, "but when you've had an opportunity to have an interaction with insurers without the dark cloud of a claim hanging over you, it allows you to develop and nurture the relationship more effectively and use those relationships when an event does occur."

Risk manager aggressively protects Westfield brand's global reputation

BY MATT DUNNING

The Westfield Group's Australian unit represents one of the country's top 25 most valuable brand names, worth an estimated \$635 million in 2013, according to the London-based consulting firm Brand Finance P.L.C.

Although the value of Westfield's brand in Australia and around the world is not by itself an insurable asset, the global real estate management company is acutely aware of the potential consequences of an event that damages its reputation in the eyes of its insurers, business partners, tenant retailers and shoppers at large.

"When we look at our enterprise risk management framework, I focus a lot of energy on the risks that have the potential to tarnish the brand that we so jealously protect," said Eamonn Cunningham, Westfield's chief risk officer. "At an enterprise level, the notion we try to put forth is a sense of responsi-

bility for personal behavior. When all of our people within Westfield are tuned appropriately to that notion, we know we're heading in the right direction in terms of managing our reputation."

Those who work closely with Mr. Cunningham said that the preservation of Westfield's brand and reputation is a theme that appears to underscore the entirety of its global risk and insurance management program.

"They're a very proud and very brand-conscious organization," said Lyndon Broad, vice president and operations manager at FM Global in Sydney.

From his perspective, Mr. Broad said the Westfield Group's determination to mitigate any potential harm to its reputation is particularly evident in its strict, enterprise-wide adherence to the completion dates it sets for construction and redevelopment projects.

"Their loss mitigation approach takes a lot of pride in setting a date

for a property to open or reopen a property, and then meeting that date as expected," Mr. Broad said. "It would take a catastrophic event to prevent that from happening, and that's how they go about their business overall."

David Bidmead, Marsh L.L.C.'s New York-based global multinational client service leader, said Mr. Cunningham's focus on protecting Westfield's brand on a global scale was a primary contributor to the successful construction and operation its \$2.7 billion Westfield Stratford City shopping center in Stratford, England, adjacent to the site of the 2012 Summer Olympic Games.

Mr. Bidmead said the fact that Westfield Stratford City incurred fewer than 20 minor personal injury claims and not a single security breach or adverse reputational event during the games — despite more than 13 million visits in the two week span — was a testament to Mr. Cunningham's "pro-

fessionalism and his ability to pull the team together."

"The entire focus for the company was how to make its contribution to a successful London games,

"Social media demands that you be aware of its power. If you use it in the appropriate way, you can harness that power to your advantage. If you ignore it, you do so at your own peril."

Eamonn Cunningham,
Westfield Group

and to make sure that Westfield Stratford was seen as a welcoming and safe environment so that people will return to their home countries and still be talking about how fantastic the Westfield center was," Mr. Bidmead said.

"That was one of my primary motivations for nominating him (for the *Business Insurance* awards program), because his contribution to that success will always stand out in my memory," he said.

Mr. Cunningham said his department is also keenly aware of the growing constellation of digital threats to Westfield's reputation, particularly the myriad risks related to social media.

"Social media demands that you be aware of its power," Mr. Cunningham said. "If you use it in the appropriate way, you can harness that power to your advantage. If you ignore it, you do so at your own peril."

During the 2011 London riots, Mr. Cunningham said 24-hour monitoring of social media platforms enabled Westfield to identify a picture of a store in the company's London mall — doctored to look as though it had been looted — meant to encourage rioters to storm the shopping center. Within minutes,

PASSION FOR MATHEMATICS PERVADES CUNNINGHAM'S CAREER

Throughout his academic and professional life, Eamonn Cunningham has often described himself as a mathematics enthusiast.

"I love my maths, and I did well in mathematics and physics in high school," he said. "I applied for a science degree and was actually offered a place in medical school. But I turned that down — much to the chagrin of my parents — and decided to pursue a degree in commerce instead."

Born and raised in Galway, Ireland, Mr. Cunningham began a career in accounting, after graduating from the National University of Ireland (then known as University College) in Galway in 1975. His first job was at Haughey Boland & Co. and then he worked at the former Price Waterhouse now PricewaterhouseCoopers L.L.P.

In 1986, during his second multi-year assignment in Sydney as a senior manager at Price Waterhouse, the Westfield Group asked Mr. Cunningham to assume the role of group internal audit manager.

Eighteen months later, Mr. Cunningham, 60, was tasked with the procurement and management of Westfield's Australian insurance portfolio. As his responsibility grew over the next several years to include Westfield's other insurance programs worldwide, Mr. Cunningham said his skill and appreciation of mathematics played a key role in making clear to him the need to steer the company toward a more proactive approach to managing its global risks.

Today, as Westfield's chief risk officer, Mr. Cunningham said he still consistently relies on "an abid-

ing faith in everything mathematical" to incorporate the principles of enterprise risk management into Westfield's broader operations and strategic objectives.

"So many things ultimately distill down to numbers," Mr. Cunningham said. "If you're not comfortable around numbers, certainly in our organization, you generally won't do well within risk management."

A Chelsea F.C. soccer fan since age 7, Mr. Cunningham said he still manages to follow the team from Sydney, where he lives with his

wife Anne, a published author with a doctorate in history from Macquarie University. The couple has raised three daughters, Lisa, Mianh and Catherine.

Away from his work, Mr. Cunningham said he enjoys a good card game, particularly bridge, and strives to keep as regular a fitness regimen as time and business travel allows.

"I try to run every day, especially when I'm on the road," Mr. Cunningham said. "The tyranny of the business breakfasts, lunches and dinners will take their toll on you,

so you have to try to keep yourself in good shape. It also gives me an opportunity to think about things in a more abstract way, and a lot of the things I've come up with over the years have probably come out of my morning run."

When it comes to cultural tastes, Mr. Cunningham said he's developed an appreciation of most kinds of music, especially opera and classical. "Heavy metal doesn't exactly turn me on," he said, "but I'll listen to almost everything else."



ARAN ANDERSON

By Matt Dunning

Mr. Cunningham

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a Westfield employee inside the mall was able to post an unaltered picture of the store in question.

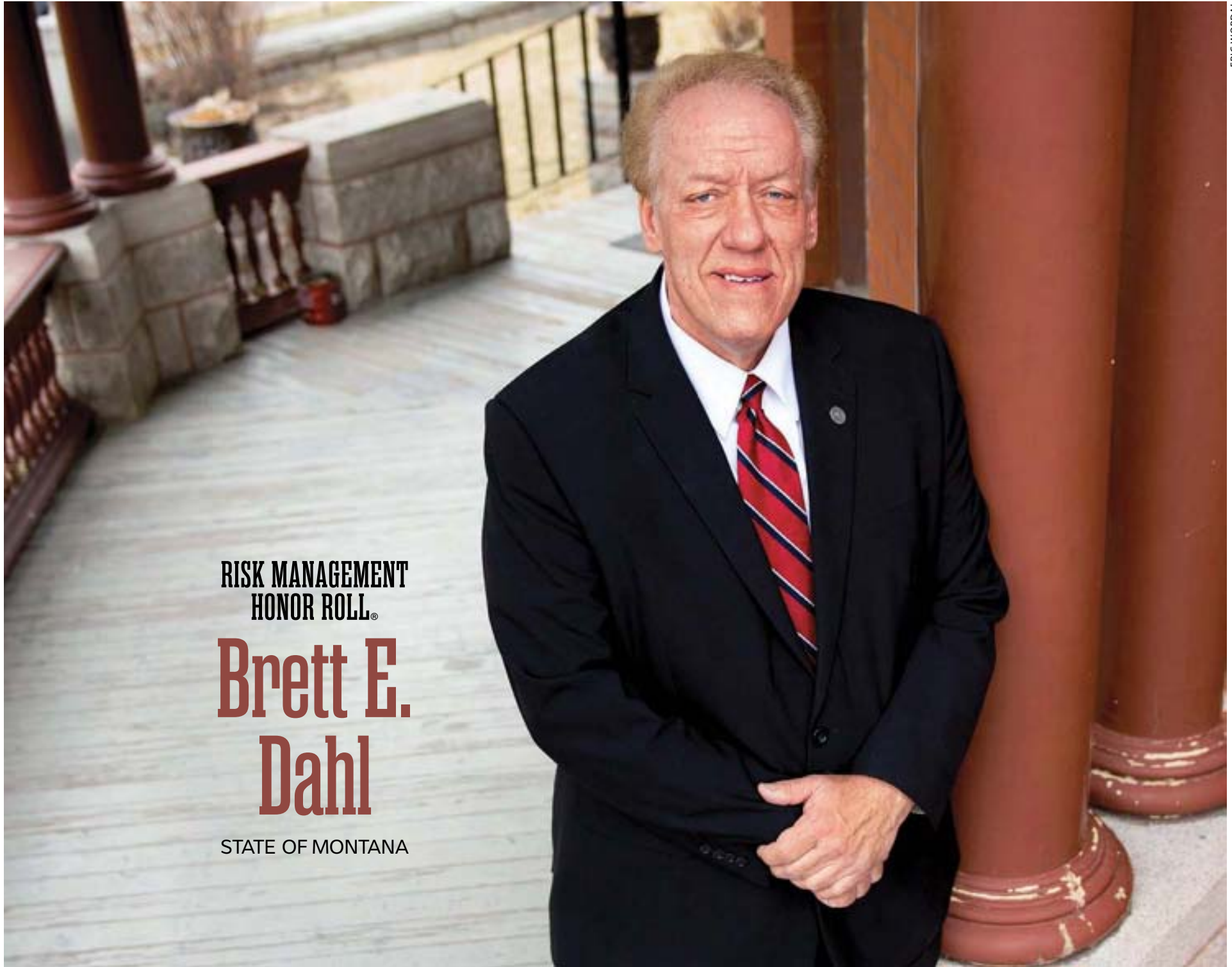
"The message was, 'Don't bother coming, because this store has not been looted,'" Mr. Cunningham said.

"That wasn't accidental," he said. "It was the result of a carefully engineered plan that included active monitoring ... should something come up. If we had let that original post go unanswered for another hour, it might well have been a much different outcome."

In the immediate aftermath of a last November's live-shooter incident at the Westfield Garden State Plaza shopping center in Paramus, N.J., Westfield staff used the mall's branded Facebook and Twitter accounts to direct the public on where family members could reconnect with evacuees, as well the evacuees themselves on recovering cars or personal items left at the scene.

"We got a quite a bit of positive feedback on how we handled that aspect of the response," said Bryan Gaus, general manager at Westfield Garden State Plaza mall.

Taking risk management to new frontiers



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**Brett E.
Dahl**

STATE OF MONTANA

BY JOANNE WOJCIK

Brett E. Dahl has transformed Montana's risk management mission since he became director of the state's Risk Management and Tort Defense Division. Inheriting a liability fund that was essentially insolvent, Mr. Dahl and his team have reset Montana's risk management culture over the course of nearly 25 years, putting a far greater emphasis on loss prevention and mitigation.

Through the development and implementation of innovative loss-prevention training programs available to all state and university system employees, Mr. Dahl's division has reduced the number of general liability claims filed against the state to just 272 in 2013 from 900 in 2001, and has cut the number of auto liability claims in half.

Mr. Dahl and his brokerage team from Newport Beach, Calif.-based Alliant Insurance Services Inc. also have assembled a comprehensive risk-financing program for the state. Although Montana self-insures its liability exposures, which are limited under statutory tort liability caps, it buys commercial property insurance, terrorism cover-

age and cyber security insurance. Mr. Dahl's Helena, Mont.-based office also insures one of the largest collections of Western fine art in the nation, including paintings, statuary and drawings from such renowned artists as C. M. Russell and Frederic Remington.

These accomplishments, along with his division's quick response to help the state recover from several recent natural and man-made catastrophes, have earned Mr. Dahl a place on the 2014 *Business Insurance* Risk Management Honor Roll®.

"Brett's very much of an innovative thinker. He looks for ways things can be done differently and better," said Tom Bryson, senior vice president in the Thousand Oaks, Calif., office of Alliant, who has worked with Mr. Dahl since 2005.

Mr. Dahl is also an excellent mentor who empowers his 18-person staff through training, delegation and succession planning to foster their professional development, with the ultimate goal of leaving a legacy that he hopes will continue to win national recognition long after he has retired.

"Brett is a great leader. He has a relatively young staff.

STATE OF MONTANA

Business: State government

Granted statehood: 1889

Capital: Helena

2012-2013 biennial budget: \$3.7 billion

Employees: 22,000

Did you know:

- Montana is the fourth-largest state behind Alaska, Texas and California, encompassing 145,000 square miles. But with just 1,015,165, residents, it ranks 44th in population.
- The Museum of the Rockies in Bozeman, Mont., houses the largest collection of dinosaur remains in the United States, including the largest *Tyrannosaurus rex* skull ever discovered.
- To protest the slaughter of elk in Yellowstone National Park in 1961, motorcycle daredevil Evel Knievel, who was also a guide and outfitter, hitchhiked from Butte, Mont., to Washington wearing a 54-inch-wide set of elk antlers strapped to his back and carrying a 3,000-signature petition. Afterward, the culling stopped.

The current average age in Montana state government is 48. Brett takes succession planning seriously,” said Sheila Hogan, director of the Montana Department of Administration, to whom Mr. Dahl reports. “He is developing the next generation of risk managers in the public sector.”

In a state as vast and sparsely populated as Montana, with just over 1 million people spread throughout 145,000 square miles of territory, “If we don’t find people with the exact qualifications we are seeking, then we train them and develop their expertise,” said Mr. Dahl, who came to Montana 24 years ago from Texas, where he transitioned from hospital administration to risk management after discovering he had a knack for understanding risk finance, loss control and mitigation.

For example, he hired a state highway patrol officer with good investigative skills to be a claims specialist. In fact, nearly all of Mr. Dahl’s 18-person staff are Montana natives. He creates “lead workers” and two-person loss prevention “teams” that are responsible for administering certain risk management business processes provided by his division, which is operated like a state-owned insurer.

He likens his department to a municipal insurance pool that charges assessments or “premiums” to address the myriad risks faced by 57 state agencies, 10 Montana university system campuses, 5,000 state properties, 22,000 state and university employees and hundreds of boards, councils and commissions. Mr. Dahl considers those agencies and universities to be his “clients” with the risk management division serving as the insurer and loss control consultant.

As one of the nation’s most prosperous states, due largely to its rich supply of natural resources, Montana is often viewed as a “deep pocket” by residents and others who file claims seeking compensation for injuries that often are due to their own negligence, according to Ms. Hogan. “We mitigate risk to protect the general fund,” she said.

Even though there are range laws in Montana in which drivers have assumption of risk, “people sue us because we can’t keep deer off the highway,” Mr. Dahl said. “Montana is a frontier state. It’s very sparsely populated. Boulders roll down mountains. Deer, moose and elk cross highways. These are hazards that we all know about.”

When Mr. Dahl joined the Risk Management and Tort Defense Division in 1990, total liabilities exceeded assets held in the state property/casualty insurance fund, which is made up of the assessments that the division collects from the state agencies and universities it serves. The assess-

ments, determined through actuarial analysis, are based on loss experience and exposures, such as property values.

“We would have been insolvent if we were a private company. We had an unfunded liability of \$33 million,” he said.

Mr. Dahl appealed to the Montana Legislature for funding to cover those liabilities, an especially difficult task because “there were legislative audit deficiencies in the way the program was run,” he said. “We didn’t have a lot of

credibility.”

But over time, by showing leadership and developing systems and programs to measure and mitigate risk, Mr. Dahl persuaded elected officials to provide his department with the necessary resources.

Mr. Dahl’s programs have been so effective that he has also been given authority to add to his staff at a time when most state government offices are being asked to cut back. He is in the process of hiring an individual who will be given

dual responsibilities for both training and loss prevention so that he or she can back up either function as needed.

It is part of Mr. Dahl’s succession plan.

“My goal is to leave a legacy that goes on to win a few more national awards after I’m gone,” he said. “That’s important to me. It’s not about me being famous. It’s about this being a vital and important process in Montana state government that should outlive Brett Dahl.”

“Montana is a frontier state. It’s very sparsely populated. Boulders roll down mountains. Deer, moose and elk cross highways. These are hazards that we all know about.”

Brett E. Dahl,
State of Montana

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Catastrophes prompt property program revamp

BY JOANNE WOJCIK

When a flash flood inundated Montana's first territorial capital with tons of mud and debris last July, damaging most of Bannack State Park's 80 historic structures, it was only the latest in a string of catastrophic property losses that has plagued the state in recent years.

That \$2.6 million loss (see story, page 37) followed a \$1.5 million electronics loss at the State of Montana Data Center in Helena in April 2011 and an \$8.1 million hail damage loss in Bozeman, Mont., in June 2010. A day after Bannack State Park reopened on Sept. 9, 2013, a torrential downpour unleashed \$800,000 in flood damage on Montana State University's Billings campus.

Fortunately, the state had sufficient insurance coverage and an immediate crisis response plan that enabled it to bounce back quickly

from all of those property losses.

But acknowledging the effect its recent poor claims experience would have on its 2014 property insurance renewals, Brett E. Dahl, Helena-based director of the Risk Management and Tort Defense Division for the state of Montana, elected this year to increase the state's per-occurrence deductibles from \$1 million to \$2 million and eliminate an annual policy aggregate that capped losses at \$3 million.

Property insurers, led by Boston-based Lexington Insurance Co., a unit of American International Group Inc., were seeking a 27% premium increase to \$2.9 million, according to Mr. Dahl. Instead, by eliminating the annual aggregate and increasing the per-occurrence deductible, the premium for the property program, which renews July 1, increased 15% to \$2.6 million.

In addition to its property coverage from Lexington, Montana pur-



AP PHOTO

Water gushed down the main street of Bannack, Mont., the state's first territorial capital, during a July 2013 flash flood.

chases property insurance from Lloyd's of London, Great American Excess & Surplus Lines Insurance Co. and XL Insurance America Inc. The state also participates in the Alliant Property Insurance Program for public entities.

"Like a lot of other public entities and corporations, and like this country, we've had historic losses the past two decades," he said.

Without the annual aggregate,

"if we have four \$2 million losses in a year, we would have to pay \$8 million out of my fund," Mr. Dahl said, referring to the money the state collects from Montana agencies and universities and uses to pay for insurance and provide loss control services, among other things. "It would have cost us a few hundred thousand dollars a year to cap our annual exposure. We looked historically at our loss-

es and saw we never really had over three of those cat losses in a year. We've had one or two a year over the past 10 years, but never over three, so the annual aggregate wouldn't have done us a whole lot of good, and it would have been expensive to keep it in place. We've just got to believe there are better days ahead."

The rate increase will be passed on to the state agencies via the assessments based on their individual property exposures. The Risk Management and Tort Defense Division also is re-appraising all of the state's property values to ensure that the coverage limits purchased are adequate, Mr. Dahl said.

State agencies and universities can earn a discount of up to 10% on their property insurance premium contributions by establishing comprehensive and effective property loss management programs, which include periodic self-inspections, preventive maintenance processes, engineering controls, building plan reviews, cold-weather precautions, and infrared and thermographic surveys (see story, page 37).

The Risk Management and Tort Defense Division also offers loss mitigation grants to cover the cost of projects, equipment and training to prevent or mitigate property and other types of losses (see story, page 40).

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Flood recovery in remote state park highlights crisis response capabilities

BY JOANNE WOJCIK

When Bannack State Park was inundated by flash flooding during the height of tourist season last July, cleanup crews arrived with bulldozers and truckloads of equipment within 48 hours thanks to disaster recovery contracts already in place.

"It happened all of a sudden. Several inches of rain fell in a short period of time," said Brett E. Dahl, Helena, Mont.-based director of the Risk Management and Tort Defense Division for the state of Montana. "It washed tons of debris, including mud, bones, Sears catalogs from 100-plus years ago, into the city. We preserved what could be retrieved and did some loss mitigation, digging a bigger storm drain to prepare for potentially larger floods."

Because of the magnitude of the loss and the historic nature of the affected properties at the gold rush ghost town, many members of state government didn't think the

park would ever recover. But when it reopened less than eight weeks later on Sept. 9 with improved flood mitigation to protect Montana's first territorial capital from similar catastrophes in the future, Mr. Dahl's risk management division received the "Agency Supporter of the Year" award from the Department of Fish, Wildlife and Parks for its crisis response.

"This is in a remote area of Montana, so getting that many qualified guys there in the middle of summer ... was pretty remarkable," said Gordon Amsbaugh,

senior claims specialist for the risk management division.

State lawmakers were even more impressed by the fact that the damage, affecting 62 of 80 historic buildings in the park and estimated at \$2.6 million, was covered by property insurance, said Sheila Hogan, director of the Montana Department of Administration, which oversees the Risk Management and Tort Defense Division.

"The governor's chief of staff called me in disbelief after the Bannack flood," Ms. Hogan said. "She asked, 'Are we really covered?'

People don't get it."

The property insurance, underwritten by Boston-based Lexington Insurance Co., a unit of American International Group Inc., paid the cost of the claim above a \$1 million deductible. And with the "Red Alert" contract that the state's insurance broker, Alliant Insurance Services Inc., negotiated with disaster recovery firm Belfor USA, the crisis response was almost immediate, he added.

Other high-profile losses were handled in similar fashion, including an \$8.1 million hail storm in

Bozeman in June 2010 and a \$1.5 million electronics loss at the Montana State Data Center in Helena in April 2011 that occurred after one of the compressor units failed, blowing a contaminant into a room that housed the state's servers.

"It's the heart and soul of state government's data," Mr. Dahl said. Fortunately no important data was lost, he said. And because the loss occurred before Mr. Dahl negotiated a higher deductible for the state's property insurance program, Lexington paid that claim less a \$500,000 deductible, he said.

INFRARED SURVEYS REDUCE RISKS

Recognizing the role faulty electrical systems can play in triggering fires and service interruption-related losses to state facilities, Montana's Risk Management and Tort Defense Division began performing infrared thermographic and ultrasonic underwriting surveys in December 2010.

The surveys, conducted by contractor Global Risk Consultants, can detect hot spots in electrical systems that could spark fires or trigger power interruptions, according to Aric Curtiss, risk and loss control specialist in charge of the program.

"Any claim that is electrical in nature probably could have been detected using infrared photography," he said.

Since the program's inception, 214 state properties, or 40% of the state's facilities that have access to electricity, have been surveyed, Mr. Curtiss said. In one case, the photographic survey was able to prevent a potential shutdown of a power generation system at the state-owned Broadwater Power Project, he said.

The Montana Department of Natural Resources & Conservation receives approximately \$5 million annually selling the power generated by the hydroelectric project to the electric grid, Mr. Curtiss said, so the state was spared the risk of losing revenue.

By Joanne Wojcik

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Risk management team increases emphasis on loss prevention

Efforts empower state agencies to mitigate core exposures

BY JOANNE WOJCIK

When Brett E. Dahl became director of Montana's Tort Claims Division in 1990, its primary function was to investigate, evaluate, resolve and litigate tort claims against the state involving personal injury or property damage.

"What they weren't emphasizing enough was prevention, being proactive and having comprehensive insurance programs and solutions in place," said Mr. Dahl.

So he made it his "mandate" to build a "state-of-of-the-art, world-class" risk management program with an emphasis on prevention,

changing the division's name to reflect its new mission.

And he succeeded in shifting the focus of the Helena, Mont.-based department, which was renamed the Risk Management and Tort Defense Division shortly after Mr. Dahl's arrival, through the widespread implementation of training programs that addressed the "core risks" affecting all 57 state agencies, 10 university system campuses, 5,000 state-owned properties and 22,000 state and university employees.

"I'm a risk manager, but I can't manage 57 agencies and 10 universities' different risks because they're all so diverse," he said.



From left: Kristie Rhodes, Julie Ouzts, John Duezabou, Cathy Meidinger, Kirk Barfuss, Brett E. Dahl, Aric Curtiss, Jennie Younkin, Deb Lopuch, Gordon Amsbaugh.

ERIC WORDAL

"What we can do is help them with core risks," which Mr. Dahl defines as "the risks that all the agencies have, like driving. They all drive vehicles. So we've put together all

kinds of training programs to help them because that's a common risk they all share."

In addition to the specific training programs, the division has three two-person teams made up of one claims specialist and one loss prevention specialist who regularly go out into the field to identify and address risks and also help the agencies and universities learn how to mitigate and prevent losses from occurring.

These training programs, which were developed by loss prevention training and development specialist John Duezabou, a member of Mr. Dahl's team, include winter and distracted driving safety, violence at work prevention, student activities and university liability, property loss management and managing contract risk.

"We do a lot of consulting in that area to make sure that our contracts have appropriate boilerplate language so that risk is appropriately managed and transferred and we're not left hanging with contractor liability," Mr. Dahl said.

In addition, the Risk Management and Tort Defense Division supports and is developing an incentive program to encourage all state and university employees to complete the "Securing the Human" online security awareness program from the SANS Institute, a Bethesda, Md.-based

research and education organization formed in 1989 to support information technology security professionals around the world that focuses on changing human behavior to prevent data breaches through a variety of training and testing tactics (see story, page 40).

"A lot of what loss prevention and risk management involves is behavior modification," Mr. Dahl said. "You want people to think in a different way. There has to be a

"A lot of what loss prevention and risk management involves is behavior modification. You want people to think in a different way."

Brett E. Dahl,
State of Montana

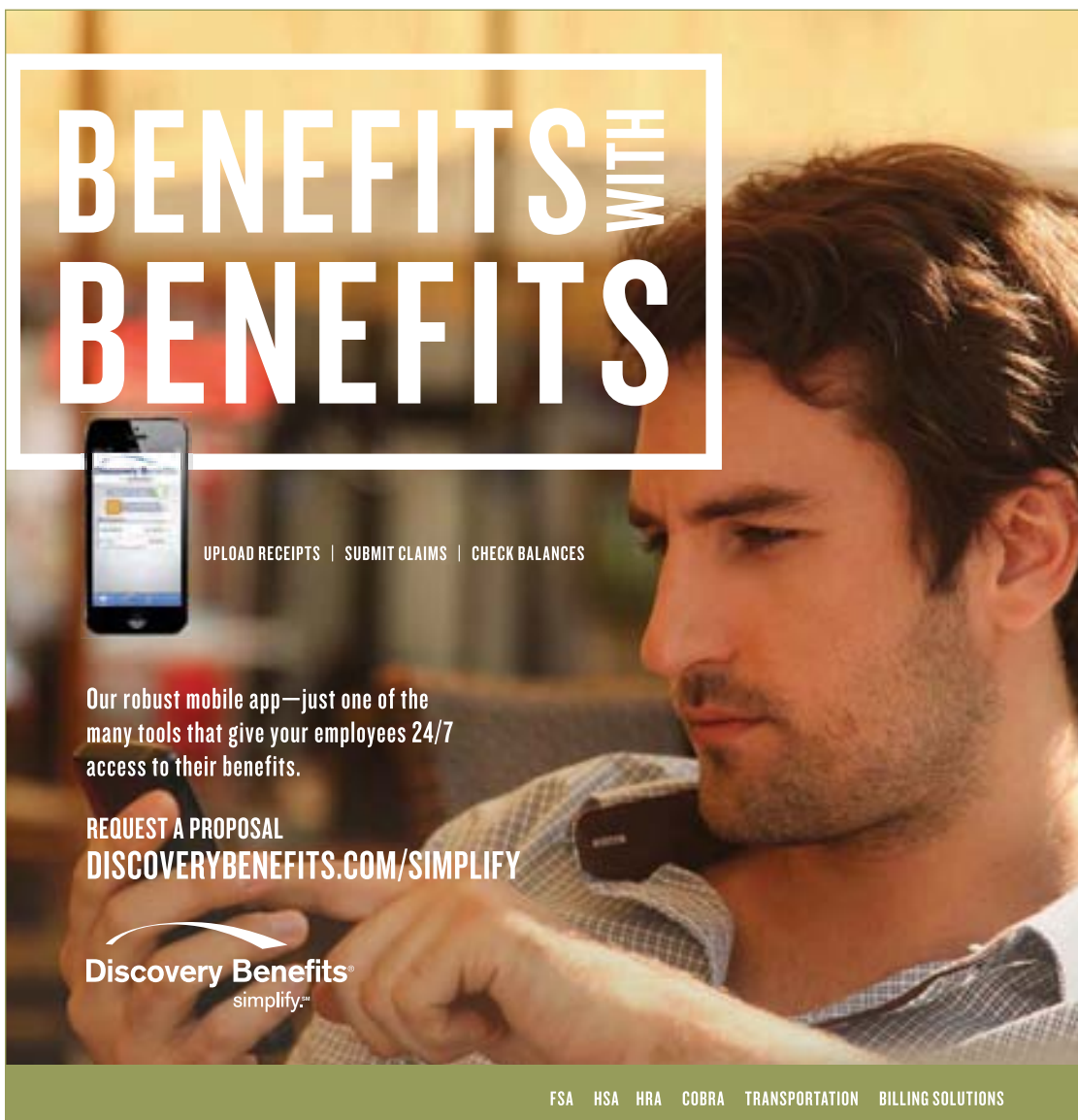
personal paradigm shift in the way they think about driving our vehicles, for example, especially in winter, which is why we've developed the winter driving course."

In addition, "there's distracted driving. When you're driving from Helena to Billings, there's only a few towns ... and there's wildlife — there's a lot of animals in Montana. The stretch of highway from Helena to Kalispell is particularly dangerous," he said.

Since the winter and distracted driving programs have been implemented, the total number of claims against the state involving motor vehicle accidents dropped to 146 last year from 399 12 years ago, Mr. Dahl said.

The program won second place in the Outstanding Award for Product Category in 2007 from the Public Risk Management Association, according to PRIMA.

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TERRORISM INSURANCE PROGRAM PROVIDES MONTANA WITH ADDED PROTECTION

Montana, with its sparse population and remote location, may not seem like a typical terrorism target, but the risk is real, and if an attack happens the state is covered, said Brett E. Dahl, Helena, Mont.-based director of the Risk Management and Tort Defense Division for the state of Montana.

He is quick to point out that Montana was home to one of the nation's most notorious domestic terrorists: Ted Kaczynski, also known as "the Unabomber," who spent 17 years plotting deadly attacks from his remote cabin in western Montana.

In addition, the 2013 Boston Marathon bombings, allegedly perpetrated by Chechen brothers Dzhokhar and Tamerlan Tsarnaev, showed that just a few people can create havoc, he said.

Although the state participated in a shared terrorism program under the Alliant Property Insurance Program, which pooled risk for a group of Alliant Insurance Services Inc. clients, Mr. Dahl said he wasn't satisfied with the primary coverage limits of \$100 million per occurrence/\$200 million aggregate. "I know this sounds extreme, but what if terrorist cells

did infiltrate our country and begin to attack local, city, state and federal governments — the heart and soul of this country — and those limits in the APIP program were gone? What would be left for my state to cover an act of terrorism that could cripple our infrastructure?"

So Mr. Dahl investigated the purchase of terrorism insurance. He went to his broker, Tom Bryson, a senior vice president in the Thousand Oaks, Calif., office of Alliant, to secure a second shared APIP layer of coverage of \$300 million per occurrence/\$800 million aggregate avail-

able to APIP members through a Lloyd's of London syndicates. "Then I said to myself, 'What if, again, a terrorist attack exhausted that \$800 million aggregate?,'" he said. "I wanted \$100 million standalone that applied only to the state of Montana."

He figured that this additional \$100 million in standalone coverage, added to the APIP limits, would cover an attack on the state capitol building, valued at \$300 million. And because London-based underwriters saw Montana's exposure as being fairly low, the price was right: Just \$37,000 annually, Mr. Dahl said.

By Joanne Wojcik

UPDATED SYSTEM HELPS TRACK COVERAGE NEEDS

When Brett E. Dahl took on the top risk management position for the state of Montana in 1990, he entered a low-tech environment: The Helena, Mont.-based Risk Management and Tort Defense Division had few systems, processes or technologies in place to identify, measure or control risk.

"We had different spreadsheets in Lotus, broken up by agency, and then sent them out to the various entities who would mark them up with red pen," recalled Kristie Rhodes, risk finance specialist.

But in 2000, Mr. Dahl led the development of Montana's proprietary risk information management system, which it calls the Property/Casualty Insurance Information System, to centralize all insurance exposure and underwriting information.

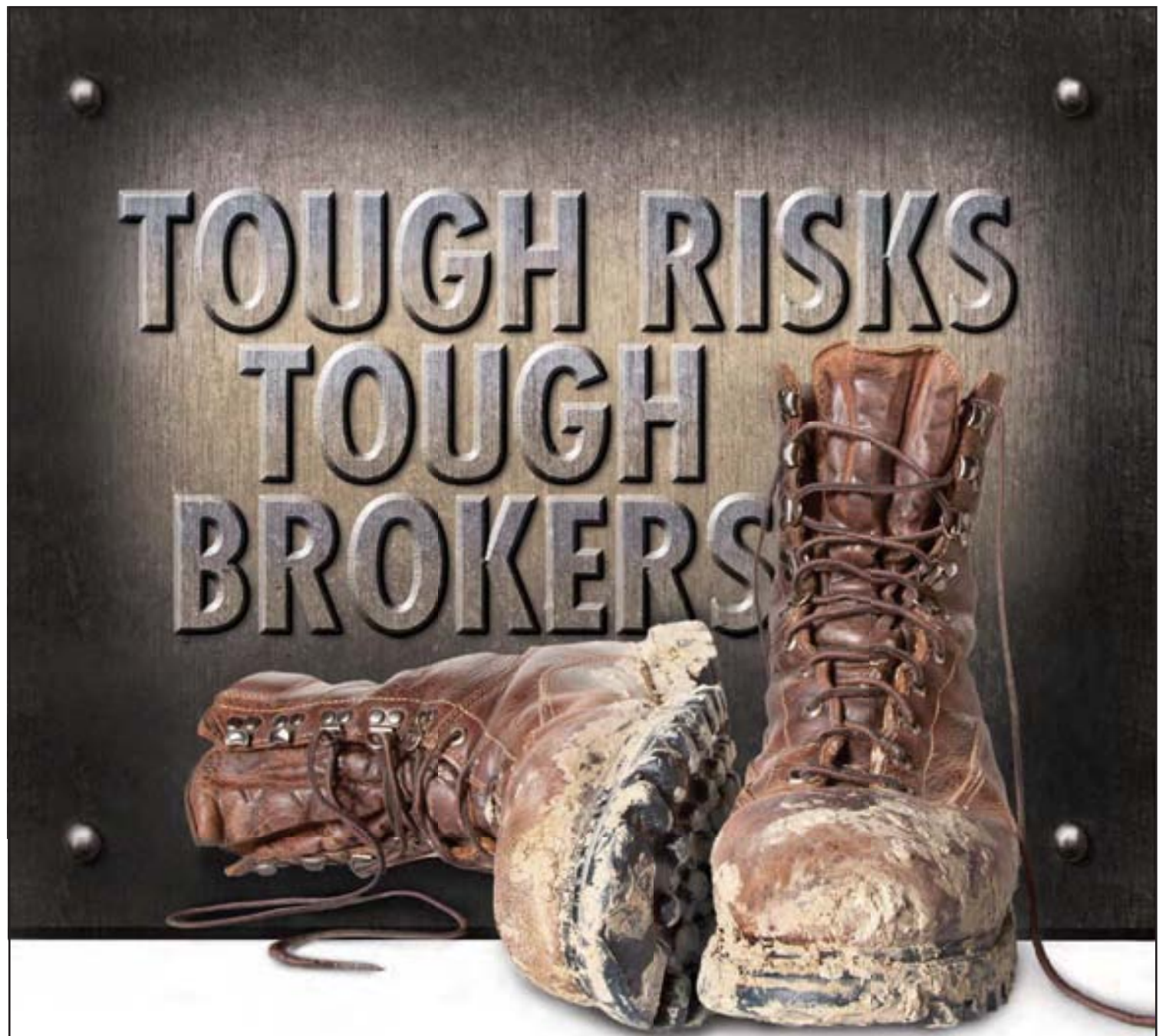
Such automation, developed in conjunction with the state's Information Technology Services Division, was instrumental in persuading state lawmakers to allocate the resources that were necessary to address the state's unfunded liabilities, which Mr. Dahl said amounted to about \$33 million when he took over as risk manager in 1990.

"We had a hard time justifying our request for additional money," Mr. Dahl recalled. "We had some things to fix" that would enable him to more accurately "paint the picture of risks" the state faced.

Today, each state agency and university "can go into the system, find the record by line of coverage, make updates as necessary," such as when a new vehicle is purchased, Ms. Rhodes said. During the first few months of the year, Ms. Rhodes compiles the information in databases that are presented to the state's insurance broker and underwriters for July 1 renewals.

The PCIIS also enables the risk management division to allocate the cost of insurance coverage and liabilities among the 57 state agencies, 10 Montana University System campuses, 5,000 state properties, 22,000 state and university employees and hundreds of boards, councils and commissions.

By Joanne Wojcik



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Heightened cyber threats prompt state to purchase specialty coverage

Response to data breach is swift

BY JOANNE WOJCIK

With 500 million attempts a month to access Montana's state information technology systems, it is no wonder that Brett E. Dahl, the state's risk manager, views this as the No. 1 risk facing the state.

To address the exposure, Mr. Dahl has established a comprehensive cyber/information security insurance program that enables the state to respond quickly in the event of a data breach, such as one that occurred last year involving the inadvertent release of the names and Social Security numbers of 4,500 Montana State University students.

The state's cyber risk insurance program, led by Beazley P.L.C., with an excess layer underwritten by syndicates managed by Lloyd's of London insurer Barbican Group, provides \$2 million in forensics investigation and privacy notification coverage and up to \$5 million for regulatory fines and penalties. The limit for legal services, including the defense and indemnification costs, is \$750,000 per claim, \$1.5

million per occurrence, which is Montana's statutory cap for such liabilities. "It's a very comprehensive insurance program and approach to mitigate the impact on the individuals whose names are released," Mr. Dahl said.

Although the personally identifiable information was only briefly available on the state's internal intranet as a result of the temporary removal of firewalls by a programmer who was having trouble getting a program to run, the Helena, Mont.-based Risk Management and Tort Defense Division mobilized quickly, contacting its insurer and working with outside counsel Baker & Hostetler L.L.P. to craft a notification letter using the language appropriate for the situation, according to Gordon Amsbaugh, senior claims specialist.

"We did a forensic investigation that determined that someone with significant computer skills could have accessed the information and identified the parties whose information was potentially at risk," he said.

The letters were sent to the 4,500 affected students, who were also



ERIC WORDAL

Brett E. Dahl with Sheila Hogan, director of the Montana Department of Administration.

offered free credit monitoring services, and a call center was established to address any questions, Mr. Amsbaugh said. Fortunately, "there weren't that many calls to the call center and very few escalations from what the call center couldn't handle, but we designated a person at MSU who was able to provide support to the callers if there was something that the call center couldn't address," he said.

"We wouldn't self-insure cyber because the resources that are available through the carriers include legal resources from law firms that specialize in technology, federal and state data and cyber laws," said Mr. Dahl.

For example, in the case of the 2013 MSU data breach, "those names involved students who lived in 30 or 40 different states — I don't remember how many — but the privacy laws are different in

every state — and what the commercial insurance coverage offered that we didn't have expertise in was knowledge of federal and state laws," he said.

"The insurance carriers also have contracts with vendors to do the mail notification, and they have a public relations firm to help craft the letter."

To prevent similar inadvertent breaches from occurring, state employees are also required to complete "Securing the Human," an online security awareness program that focuses on changing human behavior through a variety of training and testing tactics.

This collaborative program with the chief information officers from state agencies and universities received the 2013 AFIRM award for innovative risk management from the State Risk & Insurance Management Association.

DAHL THRIVES IN MONTANA LOCATION

Brett E. Dahl came to Montana in 1990 to lead the state's risk management efforts after working in hospital administration and in the Texas State Insurance Commissioner's Office in Austin, Texas.

Originally from Utah, where he received a master's degree in health administration from Brigham Young University in 1986, Mr. Dahl said he missed the Rocky Mountains. Moreover, his wife was a Montana native.

"When my wife brought me home to Montana to meet her parents for the first time, it was love at first sight," Mr. Dahl said. "I immediately fell in love with Montana."

"Call it 'luck' or 'fate,' but I found out about the Montana risk manager job while attending a family reunion in Helena, and here I am 23 years later," Mr. Dahl said.

While in Texas, Mr. Dahl discovered he had an aptitude for working with insurance underwriters, attorneys and finance staff, and it whetted his appetite to pursue a career in risk management.

He and his wife, Debbie, have sons Ryan and Tyler and daughter Kristin in Montana, where this tight-knit family enjoys hiking, camping, hunting and fishing.

"I am very fortunate to have a supportive wife and wonderful children who have tolerated my frequent absences from home and my love of everything outdoors," Mr. Dahl said. Montana has "some of the most scenic and primitive country in the lower 48, and it's right here in my backyard."

By Joanne Wojcik

Risk management grant program funds mitigation efforts

BY JOANNE WOJCIK

When the information technology managers of the State of Montana Data Center in Helena needed money to pay for installation of seismic stabilizers to protect computer equipment in the event of an earthquake, Brett E. Dahl, director of the Risk Management and Tort Defense Division for the state of Montana, responded with "tell me how much you need and you've got it."

The \$60,000 request demonstrated that word had gotten out about the kind of resources available from his department, he said.

"It made me feel good that the IT people knew enough to come to us," he said. "To me, that's a good investment if you can mitigate electronic data processing exposures."

Mr. Dahl's division established a grant program five years ago to

help Montana state agencies and university systems pay for "projects, equipment or training" to mitigate auto, aviation, general lia-

"It made me feel good that the IT people knew enough to come to us. To me, that's a good investment if you can mitigate electronic data processing exposures."

Brett E. Dahl,
State of Montana

bility and property losses. Altogether, it has doled out more than \$1.5 million in loss mitigation grants since the program's inception.

Grant funding is derived from

the premiums Mr. Dahl's division collects from 57 state agencies, 10 Montana university system campuses, 5,000 state properties, and hundreds of boards, councils and commissions. The division acts as a quasi-insurer and treats all of the state agencies and universities as policyholders. Each of these state agencies and universities pay a "premium" to the division to cover the cost of insurance attributable to their individual exposures.

The grant application is posted online each March, and the division begins awarding funding in April. Each year's grants are usually distributed by July 1, but "if something comes up with something worth funding in the middle of the year, I'm a pushover," Mr. Dahl said.

For example, during a recent winter cold snap when the University of Montana requested funds to pay for personnel to perform pipe

inspections to identify those that could potentially freeze and burst, Mr. Dahl made sure the money was available. And the mitigation was successful, he said.

Those "cold-weather patrols," Mr. Dahl said, "found a lot of problems, so we were able to circumvent floods and other problems because of the grant money."

Other grants have paid for such things as security cameras to protect the state's \$300 million collection of Western fine art treasures at the Montana Historical Society, security lighting at high-risk facilities to prevent vandalism, cyber security software to detect and prevent hackers from obtaining sensitive and private information, sidewalk repairs, snow removal equipment, ventilated hoods for a laboratory at a state university, and additional security staff and vehicles to protect the state Capitol building.



ERIC WORDAL

Mr. Dahl

Independent panel of judges

Business Insurance created the Risk Manager of the Year® award in 1977 to increase recognition of the risk management profession and to recognize outstanding performance in the practice of risk management.

The Risk Management Honor Roll® was introduced in 1981.

Honorees are selected by an independent panel of judges that includes winners from the previous year, insurance industry executives, an academic and a representative of the Risk & Insurance Management Society Inc., which co-sponsors the awards.

Judges for the 2014 awards were: **Lori J. Gray**, risk manager of Prince William County, Va., and the 2013 Risk Manager of the Year®.

Michael D. Horvath, senior vice president of risk management at Simon Property Group Inc. in Indianapolis and a member of the 2013 Risk Management Honor Roll®.

Chad C. Jackson, staff director of risk management at FedEx Corp. in Memphis, Tenn., and a member of the 2013 Risk Management Honor Roll®.

James Jones, director of the Katie School of Insurance and Financial Services at Illinois State University in Normal, Ill.

Kevin T. Kenny, executive vice president and head of insurance brokerage and consulting at Wells



Ms. Gray



Mr. Horvath



Mr. Jackson



Mr. Jones



Mr. Kenny



Mr. Motamed



Mr. Phillipus



Mr. Royer

Fargo Insurance Services USA Inc. in Madison, N.J.

Thomas F. Motamed, chairman and CEO of CNA Financial Corp. in

Chicago.

Michael D. Phillipus, director of property insurance and risk management at Occidental Petroleum

Corp. in Houston and on the board of directors of the Risk & Insurance Management Society Inc.

Dennis G. Royer, senior director

of risk management at AutoNation Inc. in Fort Lauderdale, Fla., and a member of the 2013 Risk Management Honor Roll®.



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- Innovatively applied the diverse tools of risk management and insurance.
- Creatively and effectively used risk financing/insurance to structure a risk financing and risk transfer program that served the needs of the organization.
- Established a workable intelligence system inside and outside the organization that culminated in a flow of information about events and activities that affect the organization's risk management and insurance.
- Skillfully performed the functions of management in the overall organization and within the risk management/insurance department.
- Achieved the most effective program at the optimum cost over the long term.
- Developed technical expertise in any or all of the broad categories included within risk management, leading to a better managerial grasp of the operations aspects of the job.
- Exhibited an attitude and performed activities fostering the advancement of the risk management profession.
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MANAGING CYBER RISK

PREPARING FOR AND PREVENTING
DIGITAL INFORMATION LOSSES

Cyber insurance in the Digital Age

Research shows changing attitudes toward insurance protection

By Dr. Larry Ponemon

With the increasing cost and volume of data breaches, cyber security is quickly moving from being considered by business leaders as a purely technical issue to a larger



business risk. This shift has spurred increased interest in cyber insurance to mitigate the cost of these issues.

In recent months, Ponemon Institute has

intellectual property, confiscating online bank accounts, creating and distributing viruses on other computers, posting confidential business information on the Internet and disrupting a country's critical national infrastructure. The loss or misuse of information assets is the most significant consequence of a cyber attack. Based on these findings, organizations need to be more vigilant in protecting their most sensitive and confidential information.

While data breaches are expensive, cyber crimes are even more costly.

In our annual Cost of Cyber Crime studies sponsored by HP Enterprise Security we found that on average companies spent

etc.

- Worries about costly future data breaches and cyber security exploits drive interest in cyber security insurance. Among those companies that had an incident in the past 24 months, 70 percent of respondents say the experience increased their interest in these policies.

- Most companies either have cyber security insurance or are considering adoption. Currently, 31 percent of companies in the study have a policy and 39 percent of respondents say their organization plans to purchase a policy.

- Satisfaction with policies runs high. Forty-four percent of respondents say they

Risk managers often find themselves in the eye of the security storm with the greater acknowledgement that data breaches have serious financial consequences for organizations.'

conducted three studies¹ on what IT security, risk management and insurance professionals think about the benefits of cyber insurance. The conclusion drawn from these studies is that companies are well aware of the threats to the continuity of their business from data breaches involving the loss or theft of confidential information, cyber attacks and cyber terrorism. As a result, the majority of respondents say they have purchased or will purchase cyber insurance in the near future.

Traditionally the CIO and IT department has been considered the domain for cyber security. However, more companies are looking to other corporate leaders to help manage the financial risks of a cyber attack. Risk managers often find themselves in the eye of the security storm with the greater acknowledgement that data breaches have serious financial consequences for organizations.

In Ponemon Institute's 2013 Cost of Data Breach Study, the average cost of a data breach was \$188 for each lost or stolen record. In response, major corporate risk underwriters offer policies specifically devoted to helping companies manage the financial costs related to data breaches.

Cyber attacks generally refer to criminal activity conducted via the Internet. These attacks can include stealing an organization's

\$11.6 million per year to deal with the consequences of a cyber attack. The cost could go as high as \$58 million.

In a research study sponsored by Experian® Data Breach Resolution, Ponemon Institute surveyed risk management professionals across multiple sectors that have considered or adopted cyber insurance. Based on responses, many understand that security is a clear and present risk. Indeed a majority of companies now rank cyber security risks as greater than natural disasters and other major business risks.

Some of the most noteworthy findings include the following:

- Security exploits and data breaches result in multi-million dollar losses. The findings of the research reveal that the average financial impact to companies for one or more incidents was \$9.4 million. Respondents estimate that the average potential financial risk of future incidents is estimated to be \$163 million. Most involved the loss of business confidential information.

- Concerns about cyber risks are moving outside of corporate IT teams. Protecting against the financial impact of cyber security risks rank high as or higher than other insurable risks (natural disaster, fire, etc.) Of those that have experienced a security exploit, 76 percent think they are greater to or equal to a natural disaster, business interruption, fire,

would be extremely likely to recommend their insurance provider to a friend or colleague. The findings also show that the longer the policy has been held, the greater the satisfaction.

- A stronger security posture follows the purchase of cyber security insurance. Sixty-two percent of respondents believe the insurance has made the company better prepared to deal with security threats. Fifty-five percent say it is an important part of their risk management program.

Dr. Larry Ponemon is the Chairman and Founder of the Ponemon Institute, a research "think tank" dedicated to advancing privacy, data protection and information security practices. Dr. Ponemon is considered a pioneer in privacy auditing and the Responsible Information Management or RIM framework. Dr. Ponemon was appointed to the Advisory Committee for Online

Access & Security for the United States Federal Trade Commission. He was appointed by the White House to the Data Privacy and Integrity Advisory Committee for the Department of Homeland Security. For more information about Dr. Ponemon and the Ponemon Institute, visit www.ponemon.org



- Some companies are still skeptical about policies. Thirty percent of respondents note their company has no interest in purchasing a policy at this time. Key roadblocks include price and concerns about too many exclusions, restrictions and uninsurable risks that inhibit their organizations from purchasing a policy.

- However, those with a policy believe premiums are fair. Sixty-two percent of respondents in companies with this insurance believe the premiums are fair given the nature of the risk. Most also do not anticipate an increase.

In the wake of a serious data breach or security exploit, companies will often increase investments in enabling technologies and training and awareness programs to prevent or reduce the severity of future incidents.

In addition to these important steps, more companies are considering the purchase of cyber security insurance. These policies are designed to mitigate losses from a variety of cyber incidents, including data breaches, network damage and cyber extortion. A cyber insurance policy can be one way to protect the company against

future losses. To obtain copies of the studies referenced in this article, please contact research@ponemon.org.

¹ The studies conducted by Ponemon Institute include the following: *Cyber Catastrophes: Understanding the Risk and Exposure*, sponsored by the Property Casualty Insurance Association of America, March 2014; *Perceptions about the Potential Expiration of the Terrorism Risk Insurance Act (TRIA)*, April 2014; and *Managing Cyber Security as a Business Risk: Cyber Insurance in the Digital Age*, sponsored by Experian, August 2013.

Executive Insights: Cyber Risk Management



Q: What are the cyber-related exposures your clients are most worried about?

Kerns: The cyber related risks clients are most worried about include the adequacy of limits of insured exposures, the exposures where existing policies -even cyber specific policies - may not comprehensively respond (some of these exposures may not have even been thought of yet) and insuring exposures where the market is slowly evolving.



John Kerns
Executive Managing
Director
Beecher Carlson

While there are a number of data sites that provide the size of a data breach, companies are not always transparent about the specific costs incurred from a data breach. Furthermore, IT security and forensic companies are not aligned on their estimations of

the cost per data file per breach. Modeling for first party costs is very useful; however, the liability side is still evolving. Tools, estimations and specificity will continue to evolve as the transparency of the final costs associated with cyber-related exposures is revealed.

There is also growing concern over multiple policies responding to a single cyber event. We have seen incidences of large breaches where the data breach not only triggers the cyber liability and notification expense, but a follow on shareholder derivative action is filed. This is

not to suggest that a cyber-related securities claim is going to be covered under a cyber-program, but unknown areas such as bodily injury and property damage related to a denial of service attack or virus continues to cause anxiety.

Many clients feel that their greatest exposure is business interruption and extra expense. We are seeing new expansions of coverage that will not only cover the liability, but also offer protection against the loss of business that may occur if customers no longer feel comfortable doing business with a company post breach.



David Molitano
Vice President, Content,
Technology and Services
OneBeacon Professional
Insurance

Molitano: I would say there are three main areas of concern to clients.

The first is dealing with the costs that accompany a data breach. Second is the amount of negative publicity that can be generated in the media due to a data breach. And the third would be the

loss of a company trade secret.



Q: What are the factors an organization should consider when evaluating a cyber risk management service provider?

Molitano: They should be viewed as any other company an organization is going

to work with. Those criteria could be experience in the field, other similar clients, professionalism and reputation.

Kerns: A company should consider product knowledge, an understanding of industry specific risks, the various laws within the United States and abroad governing IT standards and responses, the ability to understand and differentiate risks, how to streamline the underwriting process and, most importantly, how the service provider plans to manage and advocate on their behalf when a breach occurs.



Q: What role, if any, should the corporate risk manager have in setting cyber risk management strategy for the organization? For example, as a leader, influencer, or not part of the team at all?

Molitano: The risk manager should take a leadership role and often does. They understand keeping the assets of the company safe is part of their job responsibility

Kerns: As previously mentioned, risk management is an integral part of a company's cyber risk management strategy. Just as in any disaster recovery plan, how insurance is called upon, rights reserved and the policy utilized are extremely important.

Having risk management included assures your response is covered and any requirement under the policy is being adhered to, avoiding extra costs and headaches during and post breach.

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We are living in an era of extreme innovation. The cause and effect cycle continues to shrink, as today's great idea is already spawning tomorrow's reaction. From an insurer's point of view, the time needed to responsibly analyze and develop coverage for new and emerging risks often butts up against the market's demand for immediate response. Which in turn leaves brokers and insurers with a bit of a dilemma, as they may look to quickly secure coverage... coverage that may not completely recognize or address the complexity of the nascent risk.

A New Kind of Specialization.

Managing risk used to mean asking questions, getting answers, and developing solutions. Today, however, an insurer needs to have a much greater understanding of the possibilities that may result from the transformational pace of change. This requires a deep understanding of industry-specific issues that may not have been considered in a previous underwriting cycle. As industry segments are sliced increasingly thinner, a dedicated level of specialization is required to identify potential scenarios that may emerge. Anticipation, driven by experience and insight, will support a new paradigm of risk assessment and response. The result will be an even finer-tuned approach to underwriting as specifically tailored coverage is developed on a one-to-one basis for each opportunity.



As industry segments are sliced increasingly thinner, a dedicated level of specialization is required to identify potential scenarios that may emerge.

*Paul Romano
President, OBPI*

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Operational Risk: Time To Look Beyond Traditional Risk

As the health care landscape becomes more complicated to navigate, risk management continues to evolve. Risk managers need to assess and mitigate risks beyond those that are clinical in nature. An effective risk management program – one that takes an integrated view of clinical and operational risk – is imperative when looking to minimize or prevent liability exposure.

Why Now?

Traditional risk management, focusing on such areas as medical errors and omissions, adverse events or incidents, patient safety and clinical care continues to be a foundational piece of any organization's risk management program. However, as new models of care, an increasingly complex regulatory environment and a reliance on electronic medical records introduce an entirely new set of risks, a more holistic approach may be in order. In addition to clinical and operational risk, there is also a need to consider hazards associated with facilities management and safety, security, construction, renovation and more. In short, if the focus on risk management is solely on clinical, it may be a very short-sighted view.

What's Driving This: A Few Examples

Physician Employment and Alignment Models

There are significantly less independent physician practices than there were 10 years ago. Hospitals have moved toward acquiring physician groups and employing them, creating potential risk exposures.

Health Care Reform: Accountable Care Organizations and Managed Care Organizations

As the Affordable Care Act statute continues to become operational in 2014 and beyond, its broad impact on the

business of health insurance and the quality of health care delivery continues to be felt.

Health Information Privacy and Security: From Low-tech to HITECH

2013 saw the publication of the revised HIPAA-HITECH final rule. The revised regulations impact HIPAA privacy and security, data breach requirements under HITECH, PSOs, ACOs and human research. Private health information needs to be protected – whether it's on a laptop, Electronic Medical Records or elevator discussions.

The Case for Expertise

Developing an effective, state-of-the-art risk management program requires a broad view of the health care landscape. Organizations should look to work with carriers who know and appreciate these risk management challenges, and whose staff offer expertise gleaned from years of working on the front lines. No one understands the challenges being brought to bear by today's dynamic environment better than experts who have been there: nurses, attorneys, health care administrators, business executives, authorities in health care operations and health care consultants. A carrier's deep-rooted commitment to the health care industry, illustrated by an understanding of emerging trends and issues, can assist the ever-expanding roles and responsibilities of an organization's risk management operations, including solutions for risks that may be new or less familiar to them.

Contact

Patricia Hughes
Senior Vice President, Risk Management
phughes@onebeaconpro.com or 860.321.2601

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WHERE WE FOCUS

Emerging exposures are often not identifiable as belonging to specific types of businesses. OBPI recognizes this, and has developed a wide range of solutions that can be tailored to provide coverage across a spectrum of industries. Issues related to data breaches, employment practices or management liability, for example, have no geographic or business-specific boundaries. OBPI's response to this is to carefully craft coverage to meet each individual risk.

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For a complete, at-a-glance look at OBPI's coverages and services, go to www.onebeaconpro.com/whatwedo

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Comprehensive coverage for data breaches

Data breaches have become more and more prevalent. Given the press surrounding the size of such instances (the number of files breached and people affected), companies



have begun to realize the resulting costs can be staggering. Companies should not have to worry about whether their policy fully or partially responds, it should be comprehensive, complete and not riddled with sub-limits.

Beecher Carlson is pleased to announce the launch of its proprietary Cyber Liability and Data Breach Response policy – CyberSelect. The

policy is designed to offer one of the most comprehensive coverages available in the market and offers many enhancements not typically available, such as:

- Eliminates the need to gain consent from the Insurer

to hire legal experts, forensic accountants and public relations consultants allowing a rapid response to a data breach.

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Digital threats require broad cyber cover



Mr. Berk

BY LON BERK

On the market since the late 1990s, cyber insurance is nothing new. But as the Internet spreads deeper into people's lives, cyber risks continue to grow and evolve well past simple data loss or compromise. Insurance buyers should try to find an insurance form to address their specific cyber needs, including the potential of business interruption, loss of reputation, and even bodily injury and property damage, says attorney Lon Berk, a partner advising clients on cyber insurance procurement and recovery at Hunton & Williams L.L.P.

The hacking of retailer point-of-sale systems has made clear cyber risk exposures can be enormous. With good reason, such incidents have increased the attention on and demand for cyber insurance. But insurance buyers need to beware not only of cyber risk, but also of buying insurance policies that do not address their particular exposures.

Although on the market for about 20 years, there is no one cyber insurance form. Many cyber risks fall outside the usual cyber policies, and companies should work to be sure their risks fall within the purchased form.

The public focus has been on protecting against data loss. Most cyber policies do a solid job of protecting against data loss exposures. They typically provide coverage for the costs of identifying and notifying consumers, of providing credit-monitoring services, of forensic analysis and legal fees, and of the costs of defending against consumer and regulatory claims arising from the breach. But many — though not all — cyber policies restrict coverage to such exposures, providing little or no coverage for a victim's business interruption or loss of reputation. Perhaps more seriously, virtually all cyber policies exclude coverage for bodily injury and property damage.

The importance of securing proper coverage for a data breach should not be minimized. But data loss is not the only cyber risk, and insureds need coverage for these other risks, too.

The need for broader cyber insurance is acute in the energy sector. Companies in that industry may handle a huge amount of data about customers and energy usage. They also may control critical infrastructure, including portions of the electric grid, pipelines and refineries, all of which are subject to cyber exposure. Indeed, Lloyd's of London has reportedly refused to sell some of these companies cyber insurance, apparently taking the position that energy infrastructure is too insecure to insure.

Much of this infrastructure is operated through supervisory control and data acquisition systems (SCADA), a geographically expansive private network that monitors data regarding system operations. This network combines telemetry, data acquisition and control systems to automate industrial operations. In its most simplified version, it consists of a central operating unit networked to a series of scattered regional units that monitor input and execute opera-

tional commands.

There had been a belief that this kind of network is not part of the Internet and is therefore immune from cyber attack. That belief was inaccurate. Components of the network often are connected to the Internet and, as such, can be subjected to malicious code and other cyber attacks. Researchers using a search engine SHODAN that permits identification of connected network components, have identified thousands, if not millions, of components of these systems on the Internet.

Even if a component is not directly connected to the Internet, the systems often share components with other systems that are connected. For example, a company may share a router with its email server and SCADA system and, while the latter may be unable to receive and send emails through that router, a compromise of the router through the email server can compromise the SCADA. Additionally, malicious code can be and has been uploaded directly onto infrastructure components through USB devices and computers used to program and/or update network software. SCADA components often communicate wirelessly and can be subjected to man-in-the-middle attacks, as can any device on a wireless network.

There have been known cyber attacks on industrial control systems. The Stuxnet malware is the best-known example. It infected files and eventually resulted in the destruction of 1,000 fuel centrifuges inside Iran's uranium fuel enrichment program. Similar malware, apparently based upon the Stuxnet code, has been found in energy companies' systems as well. Other malware has been discovered in an electric utility's turbine control system that affected computers on the control system network. And the FBI cyber division reported that infrastructure network systems in three cities had been compromised.

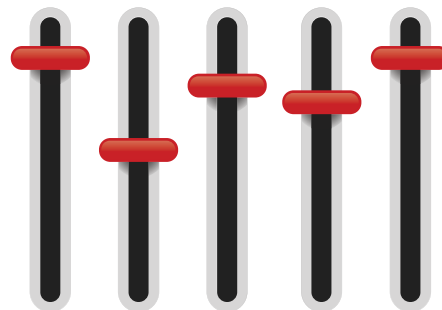
In short, these networks are subject to the range of cyber risks, malware, denial-of-service attacks and other dangers — as are all systems connected to the Internet.

It is not hard to conjure vast property and personal injuries resulting from a cyber attack on SCADA — a "cyberscageddon." Electric grids might be shut down through denial-of-service attacks, and fuel might be diverted from delivery to refineries. A recently leaked Federal Energy Regulatory Commission report suggests that the U.S. could suffer a coast-to-coast blackout, if just nine of the country's 55,000 electric-trans-

mission substations were knocked out. How many of those substations could be taken down by a Stuxnet-like code is unknown.

Such risks are, moreover, likely to increase. More and more ordinary items are being manufactured with embedded processors and connected to the Internet. As this so-called "Internet of Things" grows, the risk of data loss may be dwarfed by other cyber events.

Already, there have been apparent cyber attacks using this "Internet of Things." One security provider, Proofpoint Inc., uncov-



There have been known cyber attacks on industrial control systems. Other malware has been discovered in an electric utility's turbine control system that affected computers on the control system network.

ered "smart" appliances, including refrigerators and televisions, used to further malicious activities. And it was recently reported that an advanced electric car can be hacked. As more "ordinary devices" incorporate processors and are connected to the Internet, the risk of a security event extends beyond loss of data to injury to persons and property.

Unfortunately, most cyber insurance does not protect against such infrastructure risks. Many, if not all, cyber insurance policies have exclusions for bodily injury and property damage. Others define coverage so narrowly that sound arguments can be made that bodily injury or property damage caused by cyber attacks on networks are outside the scope of coverage.

Moreover, at the same time insurers are issuing these narrow cyber policies, they also are attempting to limit the coverage provided for cyber risks under traditional property and liability policies. For example,

the Insurance Services Office Inc. is proposing certain exclusions be incorporated into traditional property and liability policies. These exclusions, although apparently intended to bar coverage for claims relating to loss of personally identifiable information, such as those recently suffered by retailers, could be read more broadly by insurer advocates seeking to limit coverage.

One exclusion bars coverage for injuries resulting from "loss of, loss of use of, damage to, corruption of, inability to access or inability to manipulate electronic data." In high-stakes disputes involving coverage for property damage or bodily injury resulting from a cyber attack on a private network, an aggressive insurer advocate might contend these exclusions apply.

A final problem with obtaining cyber coverage for infrastructure is the terrorism exclusion. Many cyber attacks on infrastructure are performed by "hacktivists" or organizations affiliated with nation-states. Researchers from the Massachusetts Institute of Technology set up a phony private network utility system online and were able to determine it was hacked by groups affiliated with the People's Republic of China. Some terrorism exclusions are so broadly written they might be read to exclude coverage for cyber attacks politically motivated and performed by or in the name of nation-states, even if there is no physical attack. Such exclusions, if given broad interpretations by courts, could eliminate much coverage for critical infrastructure, creating another potential gap in cyber insurance.

There are brokers and insurers working to fill these gaps in cyber insurance and to provide coverage for nondata losses that may result from a cyber attack. One broker has a product providing protection for attacks on networks not only for data loss, but also for damage to components. An insurer recently announced coverage that might extend to bodily injury.

Cyber security is not merely to protect data. Especially when infrastructure is at issue, cyber security involves the protection of lives and property, too. Firms buying cyber insurance need to be sure they have protection against the full risk of a cyber attack and not limit their protection to lost or publicized data.

Lon Berk is a partner at Hunton & Williams L.L.P., where he advises clients on cyber insurance procurement and recovery. He can be reached at lberk@hunton.com or 703-714-7555.

ISO online pricing tool caters to E&S market

Jersey City, N.J.-based Insurance Services Office Inc. has unveiled ISO Rapid Valuator, a new pricing tool for commercial excess and surplus insurance underwriters.

Accessible via an online portal, the tool enables users to perform a detailed loss cost analysis for multiple individual exposures in five minutes or less, the company said in a statement.

“The E&S market has long been riskier and more instinctive for insurers as they try to price competitive policies for niche risks with limited historical data,” John Buchanan, principal of Excess and Reinsurance at ISO, said in a statement. “The ISO Rapid Valuator can help you make more informed pricing decisions with speed and ease, balancing a solid foundation of industry data with your own experience and insight.”

ISO Rapid Valuator can be customized and enables users to access ISO’s commercial property size-of-loss database, which contains information on more than 3 million insurance loss occurrences, the company said in the statement.

Ironshore crisis cover to include recall help

Ironshore Specialty Casualty, a unit of Ironshore Inc., has expanded its crisis management coverage to include a product recall enhancement for product makers.

The product, Crisis ThreeSixty, has a crisis management element to help clients provide a response to the potential effect of a product recall and includes recall reimbursement expenses, the Hamilton, Bermuda-based insurer said in a statement.

The expanded coverage includes expenses incurred to recall, inspect or dispose of a product because of a Crisis ThreeSixty-covered event, and coverage is provided on a first-dollar basis, according to the statement.

The enhancement gives clients a free service that allows them to get advice from specialists who can help an organization with its response to a recall, the insurer said.

Product recall incident specialist red24assist will oversee these services, and red24assist will offer Ironshore clients pre-event advice on assessment, safety planning and inspection processes, according to the statement.

Lockton launches comp analytics program

Lockton Cos. L.L.C. has launched the Lockton Work Comp Claims Outcome Analytics program to help companies manage workers compensation claim costs, the insurance brokerage said last week.

The tool uses a proprietary claim database developed by Kansas City, Mo.-based Lockton along with predictive analytics to help recommend cost-reduction strategies for workers comp claims, Lockton said in a statement.



Zurich ERM tool aids financial institutions

Zurich North America, a unit of Zurich Insurance Group Ltd., has launched an enterprise risk management assessment tool for financial institutions.

ERM Healthcheck Assessment aims to help financial institutions adapt to regulations making them more accountable for risk management, the Schaumburg, Ill.-based insurer said in a statement.

“ERM Healthcheck helps financial institutions to objectively assess their current ERM strategy and processes to find opportunities for improvement,” Chris Taylor, Zurich North America’s head of financial institutions for commercial markets, said in the statement. “Based on their responses to the assessment, they will receive recommendations for improving the institution’s ERM framework.”

The assessment will evaluate a financial institution’s risk awareness based on its responses to a 10-question test, according to the statement.

The tool was developed after several large companies “shared their concerns about escalating work comp claims cost,” Lockton President and CEO John L. Lumelleau said in the statement.

Lockton said the analytics tool will have the most value for companies with “significant” workers comp costs and more than 100 comp claims annually.

Hiscox expands cover for colleges, universities

Hiscox Ltd. has expanded protections in its insurance coverages for higher education institutions.

Courts have recently been finding more colleges and universities across the U.S. liable for violations under the Clery Act, Title IX and other laws and regulations, the New York-based insurer said in a statement.

The additions include: an amended definition of “claim” that includes investigative cost coverage for Clery Act violations; an expanded definition of “reputation risk event” to include campus violence, infectious diseases, data breaches, embezzlement and bullying or hazing; expanded errors and omissions coverage for individual insureds in the perfor-

mance of professional services; and privacy/data breach coverage, a Hiscox spokesman said.

The Clery Act can result in a citation for institutions for neglecting their responsibility to inform students about acts of harassment, campus crime and other potential dangers to their well-being, and Hiscox’s higher education portfolio covers costs associated with both Clery Act investigations and violation claims, according to the statement.

Broadspire service helps return-to-work

Broadspire Services Inc. has started a client advocate service that helps the process of employees returning to work after an injury and gives employers the tools to manage overall disability and absence costs, the Atlanta-based third-party administrator said.

The client advocate is a single point of contact and works as an expert on the complexities of the disability environment, providing education and guidance on Broadspire services, the Crawford & Co. unit said in a statement.

“[Clients, brokers and employers] have expressed a need for a solution that provides a single, accountable and knowledgeable point of contact to drive the return-to-work and claim-resolution process ... This model drives the integration of our medical and vocational solutions that drive quantifiable results,” Erica Fichter, senior vice president of medical management at Broadspire, said in the statement.

The product is available to Broadspire clients, self-administered employers and companies who use other claims administrators.

PRIMA starts training for public risk managers

The Public Risk Management Association is developing a program aimed at training a group of government risk managers to train others in the public sector on implementing enterprise risk management using the ISO 31000 standard.

Alexandria, Va.-based PRIMA is partnering with Dorothy Gjerdrum, senior managing director, and Robin Flint, executive director, of Arthur J. Gallagher & Co.’s public sector group, and Jan Mattingly, president of RiskResults Consulting Inc., on developing the training, PRIMA said in a statement.

Through the train-the-trainer program, funded by the Public Entity Risk Institute, PRIMA will select trainers from among experienced risk managers in the public sector and higher education institutions who will learn a curriculum developed by the partners. The trainers then will teach other public entity and higher education risk managers from throughout the United States how to implement enterprise risk management using ISO 31000. The program will begin in the fall.

Released by the International Organization for Standardization in 2009, ISO 31000 offers principles, a framework and a process for managing risk.

DEALS & MOVES

N.Y. investment firm to buy Southport Re

Lennox Investments L.L.C. has signed a memorandum of understanding to acquire Southport Re (Cayman) Ltd., the New York-based investment group said.

Terms of the transaction were not immediately available.

Southport Re (Cayman) is a Cayman Island-domiciled property/casualty reinsurer owned by Southport Lane Genesis L.P., a limited partnership managed by Southport Lane Management L.L.C. It wrote about \$32 million in gross premiums in 2013, Lennox said in a statement.

Lennox said the reinsurer focuses primarily on underwriting long-tail lines of property/casualty reinsurance and is oriented toward high-frequency, low-severity risk classes, primarily within the United States and Europe.

“We are pleased to be moving forward quickly in our plans” to buy Southport Re (Cayman), Lennox said in the statement. “We expect to finalize the definitive transaction documentation in a timely manner and anticipate completing the transaction by the end of the second quarter of 2014, subject to customary closing conditions, including required regulatory approvals.”

Cross Insurance buys two Rhode Island agencies

Cross Insurance, an insurance agency owned by Cross Financial Corp., has acquired East Providence, R.I.-based insurance agencies Troy, Pires & Allen Insurance and Shove Insurance Inc.

Terms of the transactions were not disclosed.

Troy, Pires sells a variety of personal and business insurance coverages through more than 25 different insurers. Troy, Pires will operate under the Cross Insurance name, and Troy, Pires partner Gregory Troy has been named president of the merged agency, Bangor, Maine-based Cross Insurance said in a statement.

Cross Insurance also bought East Providence, R.I.-based Shove Insurance Inc., an insurance agency affiliated with Troy, Pires, and former Shove partners William Hunt and David Francis have been retained as producers.

“We see the acquisition of Troy, Pires & Allen Insurance as vital to our expansion in Rhode Island as we plan for the future growth of Cross Financial Corp.,” Royce Cross, CEO of Cross Insurance, said in the statement.

Aegis General Insurance Agency starts Allied Public Risk division

Aegis General Insurance Agency, a unit of San Diego-based K2 Insurance Services L.L.C., has opened a new Allied Public Risk division.

Allied Public Risk, based in Washington, will offer insurance coverages to the public sector, including general liability, commercial auto, property, police professional coverage, public officials’ liability, employment practices liability, inland marine and cyber liability coverages, Aegis said in a statement.

Joel Hirsch, based in Washington, has been named president of Allied Public Risk. He was most recently a senior vice president and chief operating officer at Richmond, Va.-based American Public Risk.

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NEW LLOYD'S CHIEF PREPARES MARKET FOR CHANGE

Q Lloyd's has come out with modernization/expansion plans with Vision 2025. Is there anything in particular that you see as something you want to advance?

A Vision 2025 is going in absolutely the right direction. We've already highlighted the key areas, and one of them is really to tap into the high-growth economies of the world, which Lloyd's traditionally hadn't been very strong in. So, while the U.S. remains very much our core market, we do see that people are going to be buying insurance for the first time in all sorts of other places, and we want to tap into that. We're trying to get primary insurance licenses in some of these markets. We're looking at countries like Mexico, Brazil, China, Turkey and other places around the world.

The other part is distribution. We are very much a brokered market, and we'll be looking at making Lloyd's generally easier to do business with. Alongside that is modernizing and streamlining how business can come into Lloyd's. I've been in this industry for over 30 years, and when I see how paper-based some of the pro-

Q&A

cessing that we do is, it sends a few shudders down my spine. We've really got to act on this to make sure that Lloyd's is keeping pace with the rest of the world.

Q The Aon P.L.C./Berkshire Hathaway Inc. so-called sidecar facility caused quite a bit of controversy. Do you generally view those facilities as being positive or negative for Lloyd's?

A These facilities have been around a long time, but there is quite an increased focus on them. And I can understand why the brokers are looking at this, because

they're looking at streamlining and providing solutions for their clients. Regarding this particular transaction, it shows a huge confidence in the expertise in Lloyd's, which I think is fantastic. We have been carefully monitoring the impact on the rest of Lloyd's, and we've been able to measure that there's actually been a 3% increase in business into Lloyd's in general from Aon last year.

Q What about some of the smaller, following syndicates? Do you think that the Aon facility or other facilities may be usurping their position?

A Syndication is a fabulous way of getting capacity on new placements. And what Lloyd's can do is actually facilitate more and more of these consortia. So there's been quite a few consortia put together; and this provides a nice slug of capacity out to a client, but in a streamlined fashion where there's underwriting control but you have capacity from several underwriters.

Q With more alternative sources of capital, such as pension funds,



INGA BEALE

LLOYD'S OF LONDON

Inga Beale was named CEO of Lloyd's of London in January. The first woman appointed to the position, Ms. Beale has worked in the insurance sector since 1982. Previously the CEO of Canopus Group Ltd., she has held senior executive positions at several European insurers. Ms. Beale spoke recently with *Business Insurance* Editor Gavin Souter about the outlook for the market. Edited excerpts follow.

entering the market with potentially huge amounts of capital, how do you compete with them?

A We are setting ourselves out to be providing an indemnity-based product rather than something that's based on some parameterization. So very much we want to stay to the heart of what we've been about. What we're trying to do is also tap into alternative capital. Now it may need a certain mechanism, but there are ways we can do it.

Q You mentioned the U.S. is core for Lloyd's. Are there any

changes that you would want to see in terms of the way Lloyd's obtains business or services business in the United States?

A No. I think we're going to very much go along with our coverholder model, and we're looking to continue to grow. We've had success there. And in 2013, we did actually see growth from North America for Lloyd's overall. North America accounted for 43% of our premiums last year. So I think that was terrific. And we remain very much the No. 1 excess and surplus lines writer in the U.S., and of course we mustn't forget that we're also a sizable reinsurer.

COMINGS & GOINGS

UP CLOSE: SARA BENOLKEN

AUSTIN, TEXAS-BASED GLOBAL INDUSTRY LEADER FOR TECHNOLOGY, MEDIA, AND TELECOMMUNICATIONS

Willis Group Holdings P.L.C.

PREVIOUS POSITION: Austin-based North American leader for technology, media and telecommunications for Willis North America Inc.

LOOKING FORWARD TO: Creating new solutions that address more significant risks that (technology, media and telecommunications) clients are facing today.

CHALLENGES FACING INDUSTRY: Managing the rapidly changing risk profiles. Just this morning, I was reading about 3-D printers. We've been covering printers forever, and now there is a whole new level of complexity.

INDUSTRY OUTLOOK: That is the fun part of what I do. We are looking to turn the industry's dial to adapt to focus on protecting the risks. Instead of looking at traditional lines of coverage, we are looking at other protections in a new way. We want to focus on what's important for our customers.

WHAT I WOULD CHANGE: The underwriting paradigm



of "Well, we always do it that way." It needs to be more nimble and focused in a new way.

FIRST INDUSTRY JOB: I was a broker program intern for a division of Sedgwick that has undergone mergers and was purchased by Marsh.

WHAT SURPRISED ME: I was quite naïve. I was surprised at how vast and diverse the industry was.

OUTSIDE THE INDUSTRY, A DREAM JOB: A think-tank director. It's a fascinating place. They sit around and say, let's solve this problem.

THING MOST PEOPLE DON'T KNOW ABOUT ME: Every year I challenge myself to learn something completely outside of my scope and study it. For instance, one year as an intellectual journey I challenged myself to read the Dead Sea Scrolls. It wasn't religious, it was just to learn.

FAVORITE MEAL: Anything my mother cooks.

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Marsh & McLennan Cos. Inc.	Eddie Dunn
Lockton Cos. L.L.C.	Shannon Groeber
Lockton Cos. L.L.C.	Jay Sherwin
Sullivan Brokers Wholesale Insurance Solutions Inc.	Jim Sce

INSURERS

Allied World Assurance Co. Holdings A.G.	Gord Kerr
CNA Financial Corp.	Timon Mueller
Endurance Specialty Holdings Ltd.	Richard Housley

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Anderson Kill P.C.	Anna M. Piazza
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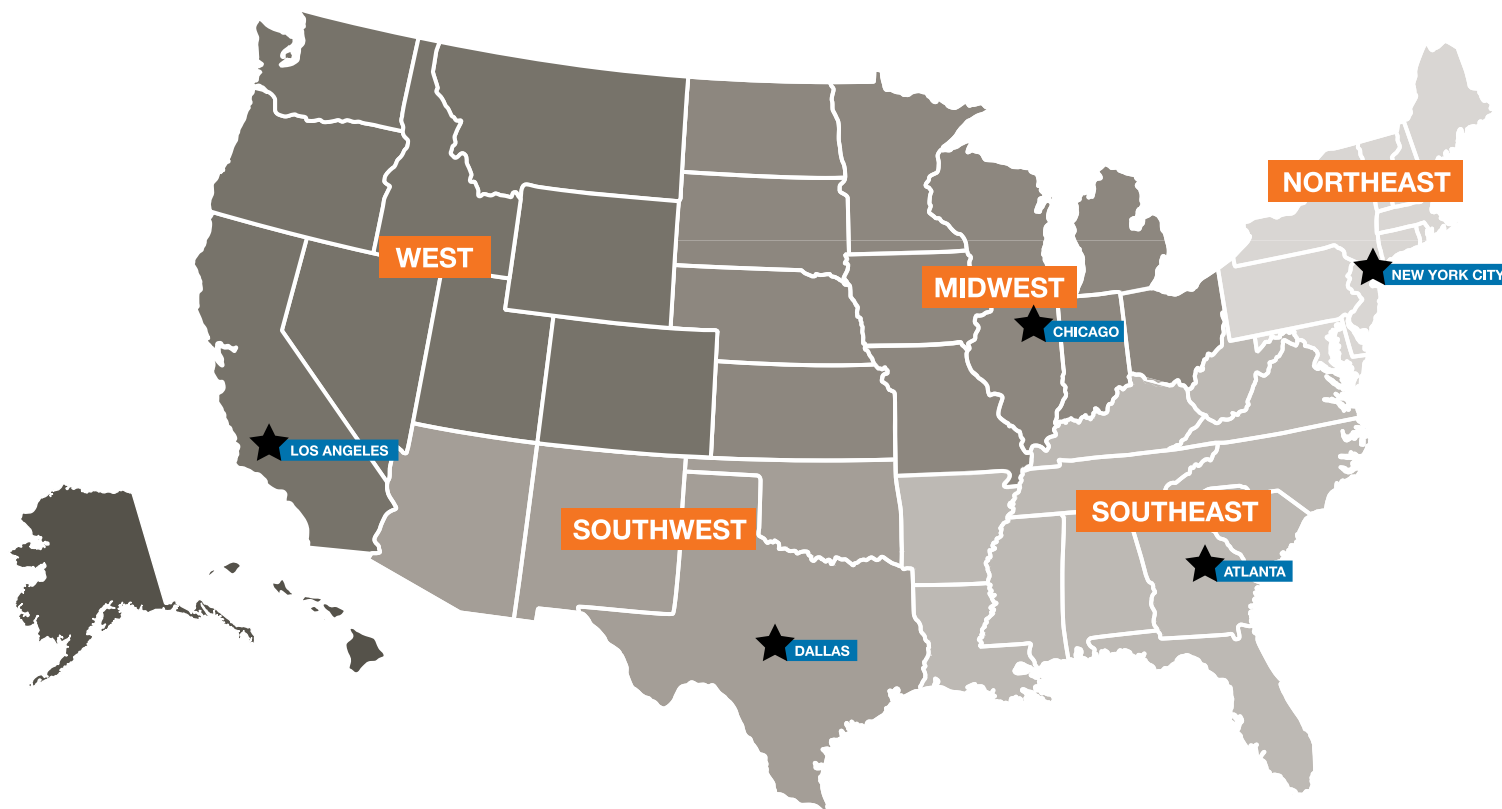
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weight to the case that the program is working well and absolutely critical.”

“I would certainly view it as positive step forward, and the timing is quite good in conjunction with the Senate bill,” said Aaron Davis, New York-based managing director with Aon Risk Solutions national property practice.

He said the report is “largely supportive of TRIA being extended in its current format, and I think it’s supportive of all the analytics that exist regarding the need for the backstop in creating an available and affordable terrorism insurance market in the United States.”

Under current law, in the event of a terrorist attack, insurers would first pay 20% of the prior year’s direct earned premium for covered commercial lines as a deductible. After that deductible, the federal government covers 85% of each insurer’s losses until losses total \$100 billion, leaving individual insurers to cover the remaining 15%.

The proposed legislation would increase insurers’ copay after the deductible to 20% from 15%. The copay increase would be phased in incrementally over five years.

“All the data they gathered really confirms what we’ve been saying all along — that the program works and provides market stability and certainty,” said J. Stephen Zielezienski, senior vice president and general counsel of the Washington-based American Insurance Association.

“It further confirms that the amount of available reinsurance is not enough to provide capacity to

Terrorism coverage takeup rate stays steady in 2013: Marsh

The 2013 takeup rate for terrorism coverage was 62% in 2013 among clients of Marsh L.L.C., according to a report released by the broker last week.

That was the same takeup rate as in 2012, according to Marsh’s “2014 Terrorism Risk Insurance Report.” Marsh said the takeup rate has remained consistently in the low-60% range since 2009.

But that could change if the federal government’s terrorism insurance backstop program, which will expire on Dec. 31 unless Congress reauthorizes it, is not extended, Marsh cautioned in the report.

If the program is not extended and insurers do not have to make the coverage available, lower takeup rates could result as fewer insurers offer the coverage, according to the report.

The report added that

increased pricing, particularly for properties in major metropolitan areas, could also follow. The potential negative economic consequences of failure to extend the federal terrorism insurance backstop program should be “an impetus for quick congressional action,” said Marsh.

The report also found that educational organizations purchased property terrorism insurance at a higher rate, 81%, than did those in any other industry segment in 2013. Health care organizations ranked second with a 75% takeup rate, and financial institutions third at 74%. Construction ranked last among the 17 industry segments surveyed at 44%.

Among individual states, Massachusetts had the highest property terrorism insurance takeup rate at 84% in 2013, with

Maryland coming in second at 81%. Hawaii had the lowest takeup rate at 36%.

Median rates for companies with total insured value of less than \$100 million rose slightly in 2013 to \$51 per million from \$49 per million of total insured value, while median rates for companies with total insured values of more than \$1 billion fell slightly to \$18 per million from \$19 per million in 2013.

The report found that construction companies paid the most for terrorism insurance in 2013, a median rate of \$66 per million total insured value, while health care companies paid the least at a median rate of \$14 per million of total insured value.

The report is based on placements made throughout 2013 by almost 2,600 Marsh client companies.

By Mark A. Hofmann

enable the private market to act on its own,” Mr. Zielezienski said. “I think all of that is positive. All signs in the report lead to a positive outlook on TRIA, although the report doesn’t come out and say that, so I think it provides some momentum.”

“I think the working group report certainly adds support to the notion that the private market does not have the capacity to provide reinsurance by itself” said

John P. Dearie Jr., a partner at Edwards Wildman Palmer L.L.P.’s New York office. “They don’t have the adequate models to determine the frequency and severity of losses. It certainly will add support to the momentum, to getting a reauthorization,” but there could be “some disconnect” from Republicans regarding the program.

He noted that two senior House Republicans asked the Government Accountability Office to

assess the program in a report that’s due next month.

“The sticky issue will be on the Republican side on what this GAO report says and what impact that may have on the copay issue,” said Mr. Dearie.

The working committee report is “likely is a net plus,” said Jimi Grande, senior vice president in the Washington office of the National Association of Mutual Insurance Cos. “The report makes

it clear that the sharing partnership created under TRIA is vital for the existence of a private marketplace for terrorism insurance coverage.”

Robert Freeman, government relations principal at Cozen O’Connor in Washington, said the report reflects comments of insurers that support extension.

“I think it will be used by those who are in favor of TRIA reauthorization,” he said. “There are some strong statements that make it clear that the industry is still very dependent on it. It appears to me they make it clear that the reinsurance still remains a large problem.”

But insurer observers questioned the report’s contention that insurers could bear higher incremental retentions without significantly disrupting the market.

“We would take issue with that,” said the AIA’s Mr. Zielezienski. “At some point the industry skin in the game affects the ability of individual insureds to maintain their current exposure to terrorism risk, and that will have negative impact on the market in terms of availability and perhaps affordability.”

The report’s recommendations do nothing to protect taxpayers or increase private capacity, he said. “Our view is keeping TRIA on its current terms is your best shot on maintaining private market stability.”

NAMIC’s Mr. Grande called the contention “a little bit careless” since the report didn’t analyze the retention issue.

“Incremental can mean a lot of thing to a lot of people,” Mr. Grande said. “Any change to the program can have an impact on availability and affordability.”

GM

according to a GM court filing. Some also named Delphi and airbag maker Continental Automotive Systems U.S. Inc. Most accuse GM of fraudulently concealing the ignition switch defect and violating federal and state consumer protection laws.

GM, though, filed a motion last week in U.S. Bankruptcy Court in New York to bar the claims since they relate to cars manufactured before its 2009 Chapter 11 reorganization. The bankruptcy court order creating the “New GM” absolved it of most liabilities for cars made by the “Old GM,” the company said.

Some plaintiffs counter that GM defrauded the bankruptcy court and the reorganization plan should be reopened.

Overturning the Chapter 11 plan “is going to be an uphill battle for plaintiffs,” said Anthony Sabino, a law professor at St. John’s University in New York. “They must make a powerful, powerful show-



BLOOMBERG

GM hired lawyer Kenneth Feinberg to study establishing a fund to handle claims related to the recalls.

ing to the bankruptcy judge that GM engaged in fraud and deception.”

Several senators, meanwhile, asked the U.S. Department of Justice, which launched a criminal investigation into GM’s conduct, to intervene in the civil suits to prevent GM from denying responsibility and force it to establish a victim compensation fund.

If GM creates the fund and seeks to recover some costs, there could be pushback from liability underwriters, legal experts say.

“If you are installing a product that has a known defect and you’ve been put on notice of that defect multiple times and you don’t do anything about it, it seems unreasonable to expect (liability) insurers to pay for your knowing disregard of a known hazard,” Mr. Ostrager said.

GM historically had a large self-insured retention for general and products liability, along with high excess limits. At its reorganization, GM retained \$35 million per occurrence for product liability claims, with \$10 million in primary liability coverage fronted by an American International Group Inc. unit to Bermuda-based General International; and \$835 million in excess limits led by AIG’s Lexington Insurance Co. At least part of the excess program flowed through General International to reinsurers, court records show.

If liability coverage is through GM’s captive, much would depend on provisions of its reinsurance contracts, said Lawrence I. Brandes, a reinsurance lawyer based in New York. Because reinsurance typically reimburses losses paid by a ceding company, “any contribution to a (compensation) fund like that could be viewed as voluntary,” he said.

It’s possible reinsurers may contribute if they have a longstanding profitable relationship with General International on GM’s risks or could negotiate concessions such as lower liability caps or payback provisions in future contracts, he said.

On the other hand, if GM and General International knew of the exposure and failed to notify underwriters, “that’s a great recision claim,” unless reinsurance contracts specifically waive such claims, Mr. Brandes said.

GM, meanwhile, is financially strong enough to bear costs associated with the recalls, analysts say. Fitch Ratings, for example, has maintained a positive outlook on the company’s BB+ credit rating, noting that it had more than \$38 billion in liquidity at the end of 2013. The main risk to GM, Fitch said, was reputational damage caused by the recalls.

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All inquiries for additional information regarding the Invitation for Bid are to be directed to **Rebecca Oliver, Vice President, at the aforementioned address, telephone or e-mail at: Rebecca.Oliver@jlttowersre.com**

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REQUEST FOR PROPOSALS

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-PUBLIC NOTICE-
INVITATION FOR BID
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ASPEN

Continued from page 1

officials remained steadfast in refusing the advances of its unwanted suitor.

“We are hearing a clear and resounding message from our clients and brokers that they seek more expansive business partnerships and select insurers who are top notch competitors of a sufficient size and strength to compete in today’s increasingly complex and global market environment,” John Charman, chairman and CEO of Endurance, said in a statement emailed last week to *Business Insurance*.

He disclosed in an April 14 letter to Aspen’s board of directors that he already owns \$30 million of Endurance stock and, showing a personal commitment to the takeover, pledged to buy \$25 million of additional common shares “in connection with this transaction.”

Responding in a statement, Aspen Chairman Glyn Jones called Endurance’s takeover bid “ill-conceived” and said “we have actively reached out to shareholders and have found overwhelming consensus for our rejection” of the offer which “undervalues Aspen.” Mr. Jones added that the combination would be a “strategic mismatch.”

Mr. Jones was unavailable to be interviewed for this story.

Analysts, however, think the stage is set in the reinsurance market for deals. They stopped short of speculating on whether they think Endurance eventually can consummate a deal with Aspen.

“The fundamentals that currently exist remain conducive for M&A activity,” said James Eck, vice president and senior credit officer at Moody’s Investors Service Inc. in New York.

Excess capital and competition from alternative capital, particularly for property/casualty business, in the form of catastrophe bonds, collateralized reinsurance and institutional investors are among factors promoting consolidation, he said.

While there’s the potential for more unsolicited offers, analysts say friendly deals are the norm in the market.

“There’s a lot of pressure for some of the smaller reinsurance players. Given some of these factors, like the level of undeployed capital, you would expect you might see some consolidation in the industry,” said Brian Schneider, Chicago-based senior director of insurance at Fitch Ratings Inc.

POISON-PILL DEFENSE

■ A shareholder rights plan, also known as a poison-pill defense, is a tactic publicly held companies use to make them less attractive takeover targets.

■ The strategy generally allows existing shareholders to buy more shares at a discount, diluting the holdings by the potential acquirer and making the takeover more expensive.

■ Such a takeover defense allows existing shareholders to buy additional shares based on their current holdings, such as one right for each share owned.

Aspen with \$1.23 billion in 2012 annual premiums (\$3.23 billion in shareholders’ equity) and Endurance with \$1.12 billion in annual premiums (\$2.74 billion in shareholders’ equity) ranked No. 35 and No. 37, respectively, according to a Moody’s ranking of the world’s 40 biggest reinsurers based on reinsurance premiums.

Munich Reinsurance Co. sits at the top of the group with \$41.9 billion in 2012 premiums, while Berkshire Hathaway Reinsurance Group is the largest in shareholders’ equity at \$98.45 billion.

“The large amount of capital within the insurance industry combined with the large inflow of capital from investors or capital markets vehicles or insurance-linked securities, when you combine those two it’s putting a lot of pressure on companies,” said Jason Porter, a director at Standard & Poor’s Corp. in New York.

In its reinsurance analysis, Moody’s said, “Reinsurance buyers have long exhibited a ‘bigger is better’ perspective when it comes to considering the capital bases of their reinsurance counterparties.”

There is a cluster of reinsurers with \$5 billion to \$10 billion in market capitalization and another cluster with \$1.5 billion to \$3 billion in capitalization, said Mark Dwelle, director of insurance equity research at RBC Capital Markets, a unit of RBC Dominion Securities Inc., in Richmond, Va.

“I think it’s natural and realistic that some of those in that smaller camp would want to combine together to be part of the larger camp,” Mr. Dwelle said.

Mr. Kading, of the Association of Bermuda Insurers & Reinsurers, said, “It’s about getting a critical mass that allows a company to expand its global playing field,

have a stronger balance sheet, and reach into a different tier of clients that are looking for scale or that are looking for a certain size in the balance sheet.”

Meyer Shields, managing director and an analyst at Keefe, Bruyette & Woods Inc. in Baltimore, agreed that size and reach can be assets as brokers and reinsurance buyers consider a smaller set of larger companies.

“Having a wider array of lines and business does imply some diversification and is also beneficial to reinsurers,” Mr. Shields said.

Analysts say Endurance’s \$47.50 per share offer for Aspen leaves little room for higher bids from other potential suitors because it’s at the upper end based on Aspen’s book value.

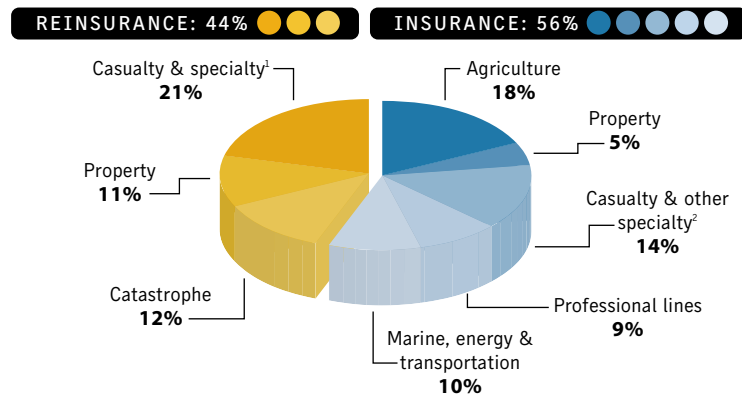
Endurance said its offer represented a 21% premium on Aspen’s closing share price of \$39.37 on April 11, and a 15% premium on Aspen’s record high share price of \$41.43 on Dec. 31, 2013.

Aspen’s share price has since risen, closing at \$45.40 per share Friday.

“The proposed price worked out to be just about 1.2 times book value,” Mr. Dwelle said. “It would be hard to make a case for a multiple of 1.5 or higher.”

COMBINED ENTITY

Combining Aspen and Endurance would achieve diversification, Endurance said.



¹ Includes professional lines reinsurance segment for Endurance Specialty Holdings Ltd.
² Includes programs insurance segment for Aspen Insurance Holdings Ltd.
 Source: Endurance investor presentation

DATA

Continued from page 1

Corp. et al., the FTC charged Parsippany, N.J.-based Wyndham “failed to provide reasonable and appropriate security for the personal information collected and maintained” by its hotels, which permitted intruders to gain unauthorized access to its computer network three times between April 2008 and January 2010.

While the hotel chain sought to dismiss the suit, U.S. District Judge Esther Salas refused.

“The court is guided by precedent that compels rejecting (Wyndham’s) request to carve out a data-security exception to the FTC’s authority,” the Newark, N.J.-based judge ruled April 7 in allowing the suit to proceed.

The FTC is seeking injunctive and “other relief,” which could include restitution and refunds, among other monies.

“Companies should take reasonable steps to secure sensitive consumer information,” FTC Chairwoman Edith Ramirez said in a statement in reaction to the ruling. “When they do not, it is not only appropriate, but critical, that the FTC take action on behalf of consumers.”

Wyndham, which plans to appeal, noted that the judge made no decision on liability.

“We continue to believe the FTC lacks the authority to pursue this type of case against American businesses, and has failed to publish any regulations that would give such businesses fair notice of any proposed standards for

data security,” Wyndham said in a statement.

Other cases also challenge the FTC’s authority.

In March, for example, a medical laboratory that closed in January sued the FTC in Atlanta federal court. LabMD Inc. accused the FTC of an “unconstitutional abuse of government power” for its investigation of the Atlanta-based company’s data security practices.

“There’s nothing about the Wyndham decision that would prevent another company from making similar arguments in their own cases brought by the FTC,” said William Boeck, Kansas City, Mo.-based senior vice president and insurance and claims counsel for Lockton Cos. L.L.C.

“I would imagine there’s more to come in this area, whether there is an appeal or whether it’s future action,” said Michael P. Hindelang, a partner at law firm Honigman Miller Schwartz & Cohn L.L.P. in Detroit. “The boundaries of it are going to be defined in some fashion.”

However, Jay L. Levine, a Washington-based partner at Porter Wright Morris & Arthur L.L.P., said he doubts other courts would rule differently than Judge Salas.

“If a court is going to say the FTC cannot govern data security in such a cybercentric world, then who is?” Mr. Levine said.

Wyndham “is probably the most significant judicial ruling to come down in the cyber/privacy space,” said Richard J. Bortnick, a shareholder at Christie, Pabarue & Young P.C. in Philadelphia.

The ruling “shows the FTC being even more

aggressive. They’re counting this as a win,” said Christopher Nucifora, managing partner at Kaufman Dolowich & Voluck L.L.P. in Hackensack, N.J.

“Certainly, this is the first time that it’s been made expressly clear the FTC can regulate the data security area as a matter of consumer protection,” said Honigman Miller’s Mr. Hindelang.

The ruling “doesn’t give the FTC a broad ability to go out and get every company that’s been hacked,” but it does set a precedent of enabling it going forward to protect what it views as consumers’ interest, he said.

Now the FTC has “the license to define what minimum cyber security standards are for all companies within its jurisdiction — that is, companies who deal with consumers,” said Paul Rosenzweig, founder of Washington-based Red Branch Consulting P.L.L.C. and a former deputy assistant secretary for planning at the Department of Homeland Security.

However, Kevin LaCroix, an attorney and executive vice president at Beachwood, Ohio-based RT ProExec, a division of R-T Specialty L.L.C., said he believes the FTC pursued Wyndham in particular because “there were multiple breaches over time, and it seemed like it was the same vulnerability that allowed the breach to happen.”

“If the high-profile data breaches like Target were not enough to (get companies to) stop and consider coverage for cyber risks, this ruling should be the wake-up call,” said Marla H. Kanemitsu, a partner at Dickstein Shapiro L.L.P. in Washington.

REGULATORY PROBES CAN BE COVERED

Observers say coverage for regulatory investigations is available under cyber insurance policies.

Cyber policies with the coverage will respond to defense costs the insured organization incurs as a result of a regulatory proceeding, as well as any fines or penalties that may be assessed against an organization, said Meredith Schnur, Madison, N.J.-based senior vice president at Wells Fargo Insurance Services USA Inc.

It may also cover the funds an organization may be required to pay for consumer redress when there are monetary damages, she said.

While some cyber policies offer the full limit for regulatory actions, others have a 50% sublimit, she said. Some still offer only 10% to 15%, though those are less popular.

By Judy Greenwald

RESERVES

Continued from page 4

releases in their earnings for the last several years — so much so that you expect at some point it has to stop or slow down” said Cliff Gallant, an analyst at Nomura Securities International Inc. in San Francisco.

“But it hasn’t. It’s continuing,” he said. “It has continued to surprise us, and I think one of the drivers has been that we’ve had loss-cost inflation, which has been abnormally low,” possibly due to the economy or better cost control by insurers. “But for whatever reason, we’ve seen very little inflation in loss-costs, and that has led to redundant reserve positions.”

Doug Pawlowski, managing director at Fitch Ratings Inc. in Chicago, had similar views.

“What we’ve been expecting for a number of years now is there still to be favorable reserve devel-

opment, but for the magnitude of that favorable reserve development to diminish,” he said. “So the fact that it has remained at a similar level is better than expected.”

The ongoing reserve releases are not necessarily indicative of any red flags, at least “none that I’m willing to raise,” he said.

“Within the context of standard commercial lines reserves, these numbers are fairly small and they have been declining over the last few years,” said Alan Murray, analyst with Moody’s Investors Service Inc. in New York.

“Our view as of year-end 2012 was that reserves were, for the standard commercial lines, break-even to slightly redundant overall, with redundancies for accident years 2003 to 2008, deficiencies for accident years 2010 and 2011, and break-even years for 2009 and 2012,” said Jasper Cooper, a New York-based analyst at Moody’s.

Some say softer property/casualty pricing has affected insurers.

“The present condition of the

property and casualty industry and the life industry is very strong and very well-capitalized,” said Howard Mills, director and chief adviser of the insurance industry group at Deloitte L.L.P. and a former New York state insurance commissioner. They are “able to withstand any projected catastrophe claims that anyone could model or predict on the horizon right now.”

“Where they have had a problem is in pricing,” with the softer rates today not comparing favorably with rates that supported past cycles of robust favorable reserve development, Mr. Mills said.

“When I think of the previous years when you had great reserve releases, like in the late 1980s, it’s because you had huge rate increases before,” Mr. Gallant said. “Prices were up substantially, and so the reserve releases just reflected the huge change in profitability. Whereas this time, it’s not that prices went up a lot; it’s been more that loss costs have been surprisingly favorable.”

NAIC

Continued from page 4

■ Make it clear that the state regulator has direct supervision over the entire group, particularly to establish capital requirements;

■ Require such insurance groups to report their financial activities globally; and

■ Require international groups and other large companies to provide a resolution plan in case of insolvency.

“The problem that the industry is facing is that Europeans are united in their views and are pushing forth a lot of ideas that the U.S. industry is not very favorable toward. But when it comes time to respond to those, the U.S. industry is at a disadvantage because there is not uniformity in the U.S.,” said Lawrence Mirel, a partner in the Washington office of Nelson Levine de Luca & Hamilton L.L.C. and former District of Columbia insurance commissioner.

The NAIC proposal, he said,

attempts to achieve greater consensus among U.S. regulators.

Differing state regulation is “not an ideal situation from the insurer perspective,” said Joanne Zimolzak, a partner in the Washington office of McKenna Long & Aldridge L.L.P. and head of the firm’s insurance division. She also said conflicting approaches could be a problem for international insurers expanding in the U.S.

But some observers warned against moving too quickly.

“It does need to be made more consistent among the states, but it needs to be flexible enough to fit the concentration of business within the holding company,” said Ken Levine, a partner in the West Palm Beach, Fla., office of Cozen O’Connor and a former Florida insurance regulator.

“My concern is they not over-medicate the patient,” he said. “You may have a holding company system that’s made up primarily of noninsurance-type entities, and do they really want to start regulating restaurants that may be affiliates? If the holding compa-

ny system is made up entirely of insurers, it makes perfect sense to jump in there.”

“Regardless of what’s added, the big concern that we have is that we don’t get a layering impact that actually increases the cost to consumers,” said David Snyder, senior vice president in the Washington office of the Property Casualty Insurers Association of America.

“The NAIC had addressed issues that were perceived to have arisen during the financial crisis,” said Steve Broadie, vice president for financial policy at PCI in Chicago. “There is authority for states to participate in supervisory colleges, which we think is a very good development.”

Supervisory colleges, which consist of the regulators overseeing an insurance group and its individual insurance legal entities, are led by a groupwide supervisor.

Mr. Snyder said participation in the supervisory college allows regulators to become more efficient and effective. “We’re not seeing a need for a major new layer of regulation,” he said.

“Reinsurers now have a very rich set of instruments,” Mr. Millette said. “We have reinsurers buying interest in hedge funds, and we also have reinsurers creating reinsurance risk to lay on top of hedge funds.”

“But it’s disconcerting because it creates a lot of chaos,” he said. “It also draws a lot of lower-cost capital into the industry,” forcing reinsurers to evaluate risks quickly.

Asked about the merger and acquisition implications of alternative market capital, Mr. Callahan said, “It depends on the pool of capital and what they’re going after.”

“I think partners who can bring a cheap cost of capital to experts in the insurance space are going to start to link up,” he said. That

activity “will start to have an incremental effect” on pricing and capacity in the market, he said.

Meanwhile, the casualty convergence market likely will take time to develop and faces limitations such as the lack of a “quick exit strategy” for investors, Mr. Torres said. “But if there’s a long-term view, I think we’ll see some.”

For casualty, “the tail is very difficult because most capital market instruments are collateralized,” Mr. Millette said. Since casualty risks can stay open for decades, “that makes it very difficult.”

In addition, “you’ve got to decide when to sue and when to settle, when to pay slowly and when to pay quickly,” he said. “That’s very hard to package into a bond.”

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MERGER

Continued from page 4

Asked whether the new capital will stick in the insurance and reinsurance market, Mr. Millette said, “We think the pension funds and endowments are a very sticky sector” because those investors are in the market to add assets that are uncorrelated with other investments. The same is mainly true for high-net worth individuals participating in the market, he said.

“This is an exciting and also difficult time for reinsurance companies,” he said, with reinsurers enjoying more variety of markets in which to take on and lay off risk.

MARIJUANA

Continued from page 1

tests positive for marijuana use, legal experts and employers are closely watching a Colorado Supreme Court case involving an employee fired for off-duty medical marijuana use.

“Most employers have been warned by their attorneys that they now need to revise their employment policy manuals if they want to ensure a workplace that’s 100% drug-free,” said Hilary Bricken, an attorney in charge of the Canna Law Group, a practice group of Harris Moure P.L.L.C. in Seattle.

“Now that marijuana is legal under (Washington) state law, if an employer is tolerant of alcohol consumption or prescription pill use, there’s a good argument to be made that marijuana should be treated no differently, especially if an employee is functional at work but only uses marijuana, for example, on the weekend,” Ms. Bricken said. “So many employers are revamping their workplace policies to be stricter than before to notify employees that marijuana use is strictly prohibited.”

While most employers in Colorado, where legal recreational sales of marijuana began Jan. 1, test employees for marijuana usage, their disciplinary policies vary, according to a January employer survey by the Denver-based Mountain States Employers Council Inc. Of more than 330 employers polled, 77% said they test employees for drug use either in pre-employment screenings or during employment.

When asked how they discipline workers with one positive marijuana test, 53% said they terminate such workers, while 12% return the employee to work under probationary conditions, 9% send the worker to rehabilitation and 8% suspend the employee without pay, according to the survey.

When employees are caught using marijuana again, 68% of employers said they terminate such workers, while 8% said the punishment “depends on the situation,” according to the survey.

The prevalence of drug testing in Colorado likely reflects companies’ federal compliance requirements, rather than the state’s marijuana laws, said Curtis Graves, staff attorney for the employers council. He said most surveyed employers have at least one employee who is covered by federal standards that ban drug use, such as drivers regulated by the U.S. Department of Transportation.

CoorsTek Inc., a Golden, Colo.-based technical ceramics manufacturer with about 3,400 employees globally, has a zero-tolerance policy on marijuana use, which may lead to immediate termination, said Ondrea Matthews, director of risk management and benefits.

“Part of (management’s) responsibility is to make sure that if they think (someone) is intoxicated or impaired ... they are to report that to human resources and have that employee stop working on whatever they’re working,” she said.

Even though commercial sales of recreational marijuana won’t begin until later this year in Washington state, Gig Harbor, Wash.-based temporary staffing firm West Sound Workforce has seen a threefold increase in job applicants testing positive for marijuana use since Initiative 502 took effect in December 2012. While only about 5% of applicants tested positive for marijuana use historically, close to 15% of applicants test positive today, said Julie Tappero, the firm’s president.

“More people are turning up positive as a result of the pre-employment drug test,” Ms. Tappero said. “We’re also seeing more candidates who voluntarily talk about their marijuana usage.”

In response, Ms. Tappero said her staffing firm has “altered our policies to say we will continue to test for THC,” or tetrahydrocannabinol, the active ingredient in marijuana. “Even though it’s legal on the state level, it’s not legal on the federal level,” she said.

Employers outside Colorado and Washington also are reviewing their workplace safety policies that include drug testing in response to changing state marijuana laws.

For example, Charlotte, N.C.-based snack food manufacturer

EMPLOYERS SEARCH FOR CHEAP, ACCURATE TEST

Employers in Colorado and Washington say they would like to see testing improved to more easily determine an employee’s current level of marijuana intoxication

“We just need a cheap reliable test that shows present impairment, and that will make everybody’s job a lot easier,” said Curtis Graves, staff attorney for the Denver-based Mountain States Employers Council.

Most employers use urine screening for employee drug tests, which, unlike blood tests, doesn’t determine the amount of marijuana in someone’s system, Mr. Graves said.

“One technical problem is that the chemical in marijuana stays in your system longer than alcohol. So if you smoke pot over the weekend and then go to work on Monday, you may test positive even if you are no longer under the influence,” said Paul Guppy, vice president of

research at the Washington Policy Center, a statewide independent public policy research organization based in Seattle.

While most employers testing for marijuana still rely on urine tests, which are less invasive and cheaper than blood tests, oral fluid testing has been gaining acceptance as an alternative to detect cannabis use, said Todd Macumber, president of Hub International Ltd.’s risk services division in Chicago. “It’s a fairly rapid test and can provide a more accurate measure of intoxication.”

Oral fluid testing can detect drugs immediately after their most recent use and up to three days after use. By contrast, conventional urine drug testing cannot accurately detect usage until at least four hours after a drug has been ingested. Moreover, while drug abusers have found many ways to “beat” a urine test, it is more difficult to cheat on an oral fluid test using saliva.

By Joanne Wojcik

STATE COURT TO HEAR FIRED LICENSED USER’S CASE

In *Brandon Coats v. Dish Network L.L.C.*, the Colorado Supreme Court is weighing whether Dish Network had the right to fire Mr. Coats, who is quadriplegic and licensed to use medical marijuana in Colorado.

Englewood, Colo.-based Dish Network terminated Mr. Coats in 2010 after he tested positive for marijuana in violation of company policy, according to court records. He reportedly worked as a telephone operator when he was fired.

In his suit, Mr. Coats argues that he used marijuana within the limits of his medical license, he

never used it on Dish Network’s campus and was never under the influence of marijuana at work.

He argues his termination violates the Colorado Civil Rights Act.

Dish Network argues that Mr. Coats’ marijuana use was not “lawful activity” under Colorado civil rights law because it was prohibited by state and federal law at the time.

Colorado law did not establish a constitutional right to use state-licensed medical marijuana. It established an affirmative defense against prosecution for medical marijuana use.

A panel of the Colorado Court of Appeals ruled 2-1 in Dish Network’s favor in April 2013. While finding that Mr. Coats was protected under Colorado law, the majority said state law does not “extend employment protection to those engaged in activities that violate federal law.”

The Colorado Supreme Court agreed to hear Mr. Coats’ case in January, but has not yet ruled.

By Sheena Harrison



HEAR INTERVIEW

Access Business Insurance’s interactive digital edition to hear Senior Editor Joanne Wojcik talk with Julie Tappero of West Sound Workforce temporary staffing firm about the big increase in job applicants in Washington testing positive for pot use.

Snyder’s-Lance Inc. recently revised its drug and alcohol policy to say marijuana use remains banned for employees, said Angela C. Matherly, senior director of risk management. The company has about 5,000 employees, including salespeople who live in and truck

drivers who travel to states that have legalized marijuana sales.

“Just because you can do it doesn’t mean you should do it,” Ms. Matherly said of pot use. “So we’re taking the stance that if it’s legalized for recreational use, we still consider it a prohibited activity.”

Snyder’s-Lance employees who have medical marijuana prescriptions are not allowed to come to work while taking such treatments, similar to how Snyder’s-Lance deals with workers who are taking narcotic prescriptions, Ms. Matherly said.

ACA

Continued from page 3

Angeles.

“If I could have gotten back to work in one month, and now it takes two months or three months, that cost comes out of workers comp,” said Marc Gallo, principal in the financial services advisory practice at PricewaterhouseCoopers L.L.P. in San Francisco.

Observers say they expect an uptick in medical service utilization once previously uninsured people begin receiving health care coverage under the Affordable Care Act.

A white paper published by Travelers Cos. Inc. in January predicted a 15% hike in demand for health care services, based on an increased number of patients insured under the ACA.

Harry Shuford, chief economist for the National Council on Compensation Insurance Inc. in Boca Raton, Fla., expects that increased demand is likely going to be placed on specialists, such as orthopedic surgeons, since new insurance coverage would allow previously uninsured patients to receive surgeries or procedures they couldn’t afford before.

Specialists booked with new patients could have difficulty making time to see workers comp

claimants, Mr. Shuford said.

“It would be not so much primary care physicians, because I think for really significant injuries, the injured worker is going to go to the emergency (room) anyway,” Mr. Shuford said.

Increased demand for a limited supply of doctors could drive higher prices for workers comp medical care, particularly in states that don’t have workers comp fee schedules to set pricing, Mr. Gallo said.

“There can be price controls and measures in place to affect that, but (increased demand has) got to come out (of) somewhere,” Mr. Gallo said.

Despite concerns about delayed treatment, experts say they expect

workers comp to see some cost savings and other positive developments from reforms under the Affordable Care Act.

A report released early this month by Santa Monica, Calif.-based RAND Corp. estimates the Affordable Care Act could decrease workers comp costs by 1.4%, or \$930 million overall.

That’s based largely on a reduction in patients using workers comp to obtain treatment for health conditions that normally would be covered under group health plans, as well as lowered rates for workers comp fee schedule pricing in states where comp fees are tied to Medicare reimbursement rates.

Mike Farrand, Radnor, Pa.-based national technical director for workers comp medical cost containment at Willis North America Inc., said it’s possible that injured workers who previously didn’t have group health insurance would be more likely to receive preventive care and develop a relationship with a treating physician under the Affordable Care Act.

In turn, Mr. Farrand said, that could prompt an injured worker to visit their usual doctor rather than go to an emergency room after a minor work accident.

“There’s a huge cost benefit there, if that truly happens,” Mr. Farrand said.

Northwestern granted review of student-athlete ruling

■ The National Labor Relations Board has granted Northwestern University's request for a full-board review of a prior decision classifying student-athletes as employees for the purposes of forming a labor union. Northwestern's scholarship football players had been scheduled to vote last week by secret ballot on whether or not they will unionize following NLRB Chicago regional director Peter Sung Ohr's March 26 ruling that the athletes qualify as employees under the National Labor Relations Act. But the NLRB said in its April 24 order granting Northwestern's appeal request that their ballots will not be counted until after the full board completes its review of the "substantial issues" raised by the prior ruling. "Northwestern believes strongly that our student-athletes are students first and foremost, not employees," Alan Cabbage, vice president for university relations for Evanston, Ill.-based Northwestern. "We believe the recent ruling by the NLRB regional director was flawed and overlooked or ignored key evidence that Northwestern presented supporting that position." The NLRB has not yet set a date for the review hearing.

Many businesses hurt by Sandy were uninsured or couldn't collect

■ Few small and midsize businesses affected by Superstorm Sandy have been able to recover some portion of their financial losses through insurance, according to a new report by the Federal Reserve Bank of New York. Nearly one-third of businesses with fewer than 500 employees in the storm-affected regions of New York, New Jersey, Pennsylvania and Connecticut that reported financial losses in the aftermath of the October 2012 storm were uninsured when it made landfall, says a supplemental report in the New York Fed's "Fall 2013 Small Business Credit Survey." Among the businesses that had purchased property, flood or business interruption insurance, 65% said they were not able to recover any of their financial losses under those coverages, 14% said their insurance reimbursed some of their losses, and 9% said their coverages reimbursed most or all losses.

Commercial insurance rate hikes ease in first quarter: CIAB

■ Price increases for commercial property/casualty risks continued to ease in the first quarter of 2014, according to the Council of Insurance Agents & Brokers' quarterly Com-

mercial P/C Market Index Survey. On average, pricing for all sizes of accounts rose at a rate of 1.5% during the 2014 first quarter, vs. 2.1% in the last quarter of 2013. But the smaller the account, the greater the increase, with small accounts reporting a 3% increase and large accounts reporting a decrease of 0.1%, the council said. The "exception to the first-quarter good news for commercial buyers was workers' compensation, which continued to be a tough line to write coast to coast," the council said.

Aon reports slight increase in first-quarter revenues

■ Aon P.L.C. posted revenue of \$2.95 billion in the first quarter of 2014, a 1.0% increase over the same period a year earlier, the broker reported. Aon's net income increased 24.5% over that of the same period last year to \$325 million, with the effective tax rate on net income in the first quarter at 18.9% compared with 26.1% in the prior-year quarter, Aon said in a statement. Aon Risk Solutions posted revenue of \$1.99 billion for the quarter, a 1% gain over the same period a year earlier. Risk Solutions' retail organic revenue increased 3%, "reflecting revenue growth in both the Americas and international businesses," Aon said. Reinsurance organic revenue increased 3% compared with the prior-year quarter due "primarily to growth in facultative placements and capital markets transactions and advisory business, as well as net new business growth in treaty placements, partially offset by an unfavorable market impact in the quarter."

Insurer groups press Senate to review IAIS capital standards

■ Two insurer trade groups want the Senate to investigate the effect on U.S. consumers and markets of the International Association of Insurance Supervisors' intention to set capital standards for internationally active insurers. The letter suggests several questions it believes the panel should explore, including what impetus exists for creating a capital standard for insurers that have not been deemed systemically risky and whether a risk exists that these standards will eventually affect small and midsize insurers that are not internationally active. "We are specifically concerned that the IAIS is attempting to develop a European-style quantitative insurance capital standards that it will seek to apply, not only to globally systemically important insurers, but also to many other companies as well," said the National Association of Mutual Insurance Cos. and the Property Casualty Insurers Association of America in an

April 24 letter to Senate Banking, Housing and Urban Affairs Committee leaders.

Lockton launches analytics program for workers comp claims

■ Lockton Cos. L.L.C. has launched the Lockton Work Comp Claims Outcome Analytics program to help companies manage workers compensation claim costs. The tool uses a proprietary claim database developed by Kansas City, Mo.-based Lockton along with predictive analytics to help recommend cost-reduction strategies for workers comp claims, Lockton said in a statement. The tool was developed after several large companies "shared their concerns about escalating work comp claims cost," Lockton President and CEO John L. Lumelleau said in the statement. Lockton said the analytics tool will have the most value for companies with "significant" workers comp costs and more than 100 comp claims annually.

FBI says health care sector vulnerable to cyber attacks

■ The FBI has warned health care providers their cyber security systems are lax compared with other sectors, making them vulnerable to attacks by hackers searching for Americans' personal medical records and health insurance data. Health data is far more valuable to hackers on the black market than credit card numbers because it tends to contain details that can be used to access bank accounts or obtain prescriptions for controlled substances. "The health care industry is not as resilient to cyber intrusions compared to the financial and retail sectors, therefore the possibility of increased cyber intrusions is likely," the Federal Bureau of Investigation said in a private notice it has been distributing to health care providers, obtained by Reuters. It urged recipients to report suspicious or criminal activity to local FBI bureaus or the agency's 24/7 Cyber Watch.

Reuters

Comp rate reduction proposed for Ohio private-sector employers

■ The Ohio Bureau of Workers' Compensation has proposed a 6.3% reduction to base workers compensation insurance rates for private-sector employers beginning July 1. The proposed reduction would result in a \$91 million decrease in collected workers comp premiums compared with premiums collected under the current rates, the bureau said in a statement.

New staff member joins *Business Insurance*

Business Insurance has hired Stephanie Goldberg as an associate editor to cover the workers compensation sector.

Ms. Goldberg will work with Sheena Harrison, the associate editor who leads all of the workers comp coverage for the *Business Insurance* print and digital editions and website.

Ms. Harrison assumed the lead responsibility for workers comp reporting after Roberto Cenicerros

left in November to take a job with LRP Publications.

Most recently, Ms. Goldberg was managing editor of internal publications for Deerfield, Ill.-based drugstore chain Walgreen Co. She managed the publication of the company's bi-monthly magazine and a monthly pharmacy newsletter.

Previously, she was a writer and associate producer for three years in Atlanta at CNN.com.

Among her responsibilities were

writing and editing posts for the Marquee blog, which received an EPPY Award from Editor and Publisher in 2013.

Earlier in her career, Ms. Goldberg was a reporter at the State News in East Lansing, Mich. She holds a bachelor's degree in journalism from Michigan State University.

Ms. Goldberg is based in Chicago and can be reached at sgoldberg@businessinsurance.com and 312-649-5283.



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Titanic claim form minimized iceberg

A historic insurance claim form set to be sold at auction downplays the cause of the 1912 Titanic's sinking as a "small low-lying iceberg" in an apparent attempt to dissuade insurance adjusters from denying or reducing the claim's payment because of the crew's negligence for failing to spot the iceberg before hitting it.

The form, completed by Titanic's second officer, Charles Lightoller, reported, "The captain was on and off the bridge throughout the watch. A sharp lookout was kept from the crow's nest ... The ship was on a course South 86 degrees West true, when the lookouts reported ice dead ahead; the first officer immediately starboarded the helm, reversed the engines full speed and closed all watertight doors. The ship swung to port but struck a 'growler' or small low-lying iceberg with the bluff of her starboard bow, making a comparatively slight jar with a grinding sound."

White Star Line, the Titanic's owner, received the full policy payout of \$5 million minus a deductible of \$750,000.

The form was to be auctioned April 26.

British drivers told to keep their pants on

Police in the English county of Surrey are citing a recent case in warning motorists about the risks associated with what might be the ultimate example of distracted driving: sexual activity behind the wheel.

According to a report from The Telegraph, Surrey Roads Police stopped a half-naked driver recently after traffic cameras spotted him driving slowly and erratically late at night. After discovering the driver had been engaging in sex behind the wheel, police warned him to focus on his driving and fined him for faulty lights, the report said.

Through their Twitter feed, the Surrey Police offered the following advice for motorists: "When driving, please don't attempt any 'sexual interaction.' It might be fun, but you'll both be red-faced when we stop you for poor driving."

The driver involved was reported to be in his 50s.



ELVIS ESTATE FIRED UP OVER GUNMAKER'S MARKETING PLOY



AP PHOTO

A gunmaker's new Elvis-based marketing campaign has left the King's heirs all shook up. Representatives of Elvis Presley's estate filed suit against Italy-based weapons manufacturer Fabbrica d'Armi Pietro Beretta S.p.A. in a federal court in Tennessee earlier this month, claiming the company used the late crooner's image without permission.

Alleging intellectual property infringement, the lawsuit notes the company used Elvis impersonators at trade shows and during a social media campaign to promote its new shotgun.

"Elvis' interest in firearms and target shooting is well-known by his fans and gun aficionados," the lawsuit states. "Beretta made a deliberate and intentional decision to tie its new product, model 692, to Elvis and trade on his popularity to generate as much publicity as possible when introducing model 692 to the public."

The suit asks that Beretta stop using Mr. Presley's image in its advertising campaign as well as unspecified damages, thank you very much.

Business Insurance isn't all business all the time, and we know you're not either. So visit www.businessinsurance.com for more Off Beat stories and monthly photo galleries featuring the best of the weirdest news about insurance, fraud, liability issues and related topics that make people and companies do funny, silly and strange things.

TV network wins transgender style suit

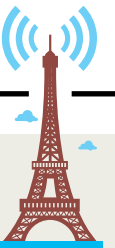
Despite the incredible amount of foresight frequently displayed by the framers of the U.S. constitution, it is highly unlikely that even they would have predicted that the First Amendment would someday be applied to the wardrobe of a transgendered individual. Yet that is what happened when a Los Angeles Superior Court judge held that the First Amendment protected BET Network's wardrobe decisions.

Last August, B. Scott, whose birth name was Brandon Sessoms, filed a \$2.5 million lawsuit against BET Networks and its parent company, New York-based Viacom Inc., for alleged discrimination in connection with his appearance as a style correspondent at the preshow of the BET Awards, according to news sources.

Mr. Scott contended he was "literally yanked backstage and told that he 'wasn't acceptable,'" said reports of the complaint. He was "told to mute the makeup, pull back his hair and was forced to remove his clothing and take off his heels, thereby completely changing his gender identity and expression," the complaint said. "They forced him to change in solely men's clothing, different from the androgynous style he's used to, which he was uncomfortable with."

Viacom asked the judge to strike the complaint as an impingement of its First Amendment rights, and Los Angeles Superior Court Judge Yvette Palazuelos granted the motion.

"If casting decisions are protected speech, then logic dictates that decisions about wardrobe, style, and whether to appear with or without a co-host, also fall within the protection of the First Amendment as these decisions impact the end product marketing to the public," the judge wrote.



French firms respect le weekend

Are you tired of getting emails from your boss outside of working hours? Then you should consider moving to France and getting a job in the tech industry.

An agreement signed by employers' federations and digital and technology sector trade unions bars employers from contacting staff in the 133 hours of the week designated for personal time and ensures there is no pressure on employees to keep in touch after hours, according to the Telegraph newspaper.

The affected employees, including those who work for the French arms of Google Inc. and Facebook Inc., have been told to turn off professional phones and emails when they're off the clock, the paper reported.

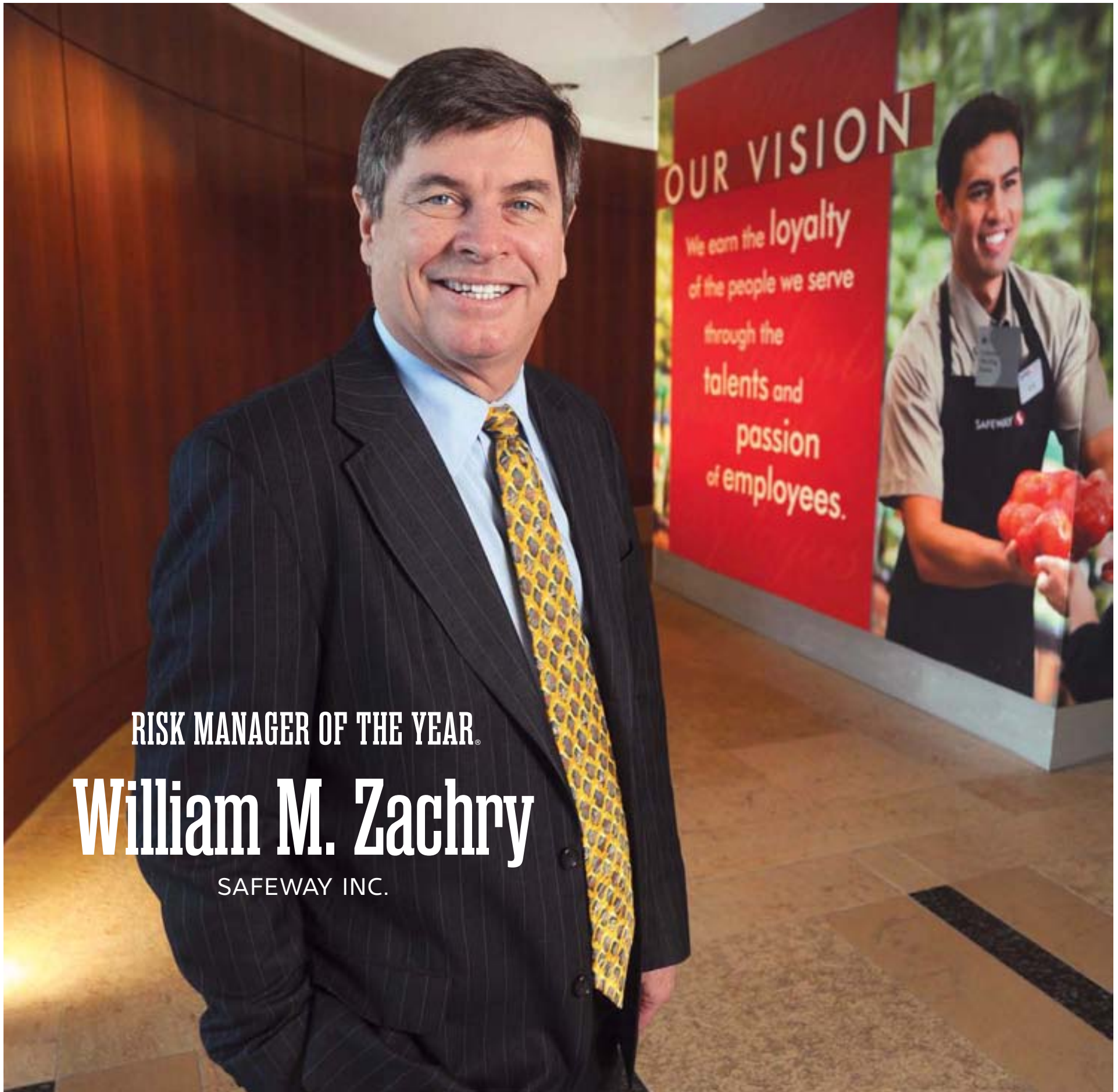
"We can admit extra work in exceptional circumstances, but we must always come back to what is normal, which is to unplug, to stop being permanently at work," Michel De La Force, chairman of the General Confederation of Managers, said in the report.

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