

## HEALTH ISSUES

Former National Hockey League players who are suing the league say they suffer various concussion-related health problems, including problems with:

- Balance
- Depression
- Dizziness
- Headaches
- Impulse control
- Light sensitivity
- Short-term memory loss
- Tinnitus



Source: Court filings

## SAFETY

### NHL may follow football's lead on concussion

Settlements seen likely with former players

BY SHEENA HARRISON

Concussion-related lawsuits by professional football players are likely to guide the National Hockey League's legal strategy in similar cases filed by retired hockey players, including the possibility they will be settled out of court.

"I think that the (NHL) recognizes that it's in their long-term interest to deal with these issues and to settle these cases," said Gary R. Roberts, dean emeritus and law professor at the Robert H. McKinney School of Law at Indiana University in Indianapolis. "They don't want the cases to drag on for years and years and have the league look like they're insensitive or unfeeling or don't care about their players."

Earlier this month, attorneys for the family of former NHL player

See **CONCUSSIONS** page 29

## CATASTROPHES

### END OF A COSTLY ERA FOR HURRICANE LOSSES?

Third season of moderate storm activity predicted



Tropical Storm Ana battered South Carolina May 10, but experts expect few named storms in 2015.

BY MATTHEW LERNER

Hurricane forecasters predict a strong El Niño weather pattern this year will likely lead to another quiet Atlantic hurricane season, but there's a caveat: similar conditions prevailed in 1992, which was the last time a Category 5 storm struck the United States.

Still, if early predictions for a quiet storm season prove true, it would be the third straight year of limited hurricane activity and insured losses.

In light of that prospect, a researcher at Colorado State

See **HURRICANES** page 28

## HURRICANE LOSSES

- U.S. hurricanes account for five of the 10 costliest global natural disasters in insured losses since 1950.
- Hurricane Katrina (2005), Superstorm Sandy (2012) and Hurricanes Andrew (1992), Ike (2008) and Wilma (2005) totaled \$143.3 billion in insured losses.
- Japan's earthquake and tsunami (2011), U.S. and New Zealand earthquakes (2011), U.S. drought (2012) and Thailand flooding (2011) totaled \$97.3 billion in insured losses.

Source: Aon Benfield's Impact Forecasting

## CYBER RISK

### Cyber claims start heading to court

Insurers, policyholders wrangle over details

BY JUDY GREENWALD

Insurers are fighting having to pay for the settlement of a data breach suit or providing a defense for allegedly mishandled data in early challenges to relatively new cyber coverage, but they also raise a longtime issue: the need to negotiate the terms of an insurance contract.

"We're right back to the fundamentals of coverage analysis," said Todd M. Rowe, an insurer defense attorney and a partner at law firm Tressler L.L.P. in Chicago.

Experts say the same is true of a third case, a Connecticut Supreme Court decision involving commercial general liability and umbrella liability policies (see story, page 28).

The litigation that has garnered the lion's share of the attention involves Chicago-based CNA Financial Corp., which is seeking a ruling that it is not obligated to pay a \$4.1 million settlement in *Columbia Casualty Co. v. Cottage Health System*.

Citing an exclusion in the Santa Barbara, California-based hospital system's policy that precludes coverage for "failure to follow minimum required practices," CNA

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Lloyd's cautious on cyber aggregation. PAGE 3



### Q&A: BRADLEY L. KADING

President of the Association of Bermuda Insurers and Reinsurers discusses the market.

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### COMMENTARY

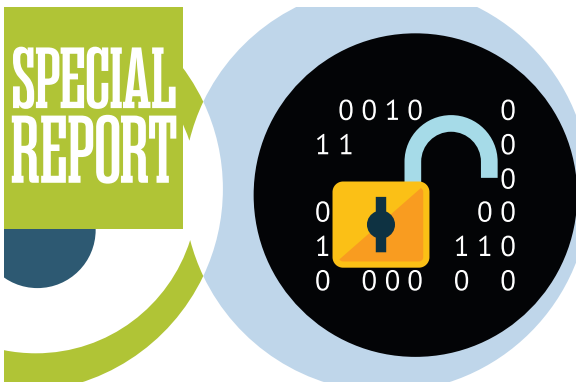
There's been bad news for corporate cyber policyholders over the past few weeks.

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### RESEARCH & DATA

Results of an exclusive *Business Insurance* survey on cyber risk and insurance.

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### CYBER RISK: SECURITY/REGULATION

Insurance market evolves; security training programs for employees need improvement; hackers widen scope of corporate targets; 2015 could be the year Congress passes law that supports data protection efforts.

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Record settlements will shape shareholder derivative litigation in 2015 and beyond, say Stephanie Resnick and John C. Fuller of Fox Rothschild L.L.P. **15**

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The property/casualty insurance market in Azerbaijan contracted 3.8% in 2014 after three years of

strong growth. That growth in 2011-2013 was driven in part by various compulsory lines of insurance. **10**

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Avoiding the body shop

Google Inc. reported that after logging 1.7 million miles, its more than 20 driverless cars were involved in only 11 accidents. **30**

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NEWS

PRESCRIPTION DRUG MANAGEMENT

New generation of drugs may curb health care costs

But U.S. pharmaceutical firms fight sale of biosimilars

BY SHELBY LIVINGSTON

The first biosimilar drug approved for the U.S. market has put the spotlight on how such medications could help employers with their ongoing health care cost battle, while biologic-drug makers are fighting biosimilars in court.

Biosimilars are “closely similar” to biologics, according to the U.S. Food and Drug Administration. Biologics are costly specialty drugs used to treat diseases such as cancer, rheumatoid arthritis and diabetes.

Unlike generics, which are exact, frequently chemical copies of brand-name pharmaceuticals, biosimilar medications are somewhat different than biologics because they are grown from complex, living organisms.

Though biosimilars were introduced in Europe in 2006 and have entered markets that include Canada and Australia, the FDA approved the first biosimilar drug for the United States only in March. It is Zarxio, a cancer treatment manufactured by Novartis A.G.’s Sandoz unit that is biosimilar to Neupogen, a biologic developed by Amgen Inc.

However, Amgen won a temporary injunction May 5 in U.S. District Court for the Northern District of California, blocking introduction of Zarxio.

In addition, Johnson & Johnson, Hospira Inc. and Celltrion Inc.

**BIOLOGICS VS. BIOSIMILARS**

- Biologics are large-molecule, protein-based drugs made from living cells of humans, animals and microorganisms such as bacteria and yeast. Created through processes such as fermentation or cell cultures, purified and often delivered by injection. Because they are not made of chemicals like small-molecule drugs, such as aspirin, their structures are more difficult to characterize.
- Biosimilar drugs are similar but not identical to biologics. Created by processes similar to biologics, they also are derived from living cells. It is impossible to recreate the active ingredient of a biologic exactly. An FDA-approved biosimilar drug has no “clinically meaningful” differences from the biologic it was made to imitate.

Sources: U.S. Food and Drug Administration, Rand Corp. and Amgen Inc.

have been involved in regulatory and legal skirmishes over a drug that is biosimilar to J&J’s Remicade, which treats rheumatoid arthritis. Hospira and Celltrion market the similar Remsima in Europe.

Despite the litigation, many

experts remain optimistic about the use of biosimilars.

Biosimilars “could really be a godsend for holding pharmaceutical costs in check,” said Dr. Steve Miller, St. Louis-based chief medi-

See **BIOSIMILARS** page 27

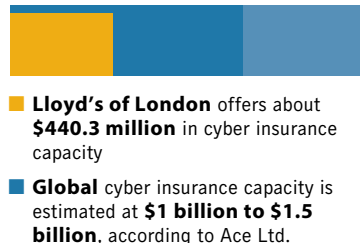
RISK MANAGEMENT

Lloyd’s wary of market aggregation of cyber risk

BY SARAH VEYSEY

Lloyd’s of London is taking steps to ensure it avoids a “dangerous aggregation” of insurance related to cyber risks while uncertainty remains about potential fallout should there be a catastrophic cyber attack.

Lloyd’s CEO Inga Beale has spoken publicly of the market’s desire to become a world leader for cyber



coverage; current cyber risk capacity in London is about £280 million (\$440.3 million), said Toby

Clowes, a broker at Safeonline L.L.P. in London. That’s at least 30% of global cyber premium volume, which Ace Ltd. estimates at \$1.5 billion to \$2 billion.

“Aggregation is a key issue for Lloyd’s and the underwriters within the marketplace,” Mr. Clowes said.

As a result, the market’s perfor-

See **AGGREGATION** page 27

CORRECTION

The commentary on page 14 of this issue incorrectly refers to the policyholder of general and umbrella liability policies in a cyber claims dispute. The policies were issued to a company transporting tapes containing IBM employee data; they were not issued to IBM. The error was discovered after the page had been printed.

HEALTH CARE REFORM

‘Cadillac tax’ complicating labor talks

Employers blaming law’s dollar thresholds

BY KAREN PALLARITO

The health care reform law’s so-called “Cadillac tax” on employer health plans doesn’t take effect until 2018, but it already is complicating employer contract negotiations with unions.

Under the Patient Protection and Affordable Care Act, a 40% excise tax will be imposed on premiums that, in 2018, exceed \$10,200 for single coverage and \$27,500 for family coverage. Multiemployer plans, which are collectively bargained plans maintained by two or more employers, must stay within the higher threshold, whether the coverage is for singles or families.

In April, KapStone Paper and Packaging Corp., based in Northbrook, Illinois, proposed replacing its Kaiser HMO and United-Healthcare PPO with two high-deductible health plans linked to health savings accounts.

Mill workers in Longview, Washington, represented by the Association of Western Pulp and Paper Workers Union Local 153, rejected the tentative eight-year contract containing the change. Health care is one of several major sticking points, as union workers’ last contract expired May 31, 2014. The union would prefer to continue negotiating but has received notice from KapStone that talks are at or near an impasse.

KapStone declined to comment, but in a memo to employees of the Longview plant dated Feb. 9, the company said the two traditional health plans would trigger a \$2.7 million tax liability.

Greg Pallesen, AWPPW vice president in Portland, Oregon, argued that most employers are using the Cadillac tax as an excuse to trim benefits.

Labor lawyer Louise Pongracz, a partner with Willig, Williams & Davidson in Philadelphia, said employers may say they can’t provide richer benefits, but it’s all part of the negotiation strategy. “I think that most employers, when you sit down and negotiate, they say, ‘Fine, here’s the pie: You want it in your pocket, (or) you want it in your benefits?’”

Southeastern Pennsylvania Transportation Authority in

See **CADILLAC** page 27

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ONLINE FEATURES

BEST PLACES

Nominations open for 2015 Best Places to Work program

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GALLERY

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VIDEO

Risk Management Spotlight



Meet Lafarge S.A.'s Laurent Barbagli, risk manager of the global building materials company and a member of

*Business Insurance's* 2015 Risk Management Honor Roll®. [www.BusinessInsurance.com/BarbagliSpotlight](http://www.BusinessInsurance.com/BarbagliSpotlight)

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NEWS

SAFETY

NURSES STRUGGLE WITH INJURIES DESPITE RISE IN LIFTING AIDS

Equipment costs, old habits inhibit safety efforts

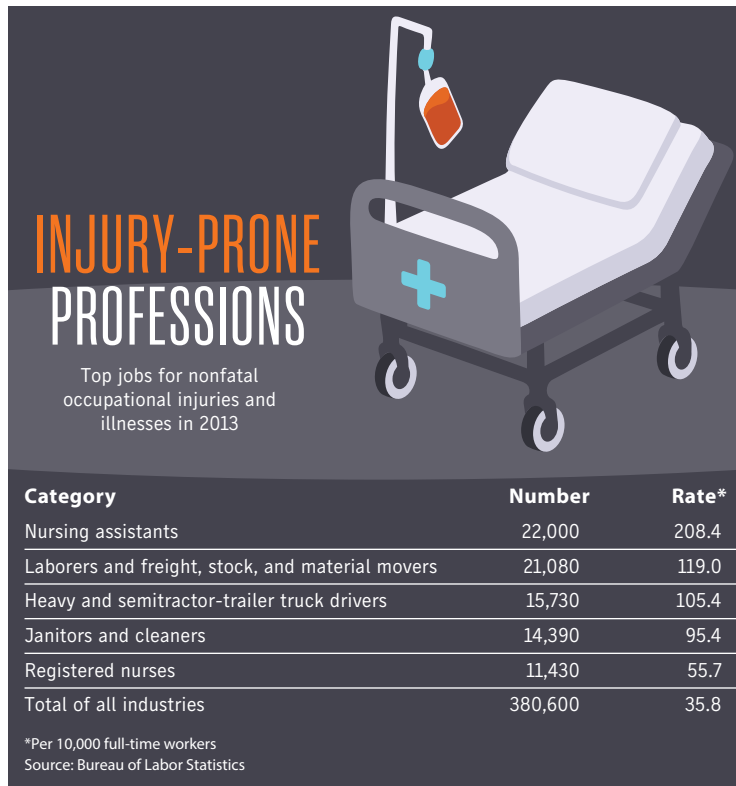
BY BILL KENEALY

As nurses and other health care workers continue to suffer high levels of lifting-related musculoskeletal injuries, safety managers are working to establish workplace patient handling regimens before proposed legislation would mandate such procedures nationwide.

According to data from the Bureau of Labor Statistics, nursing assistants suffered musculoskeletal injuries at a rate of 208.4 per 10,000 full-time workers in 2013, compared with a rate of 35.8 across all industries.

Despite the widespread availability of improved hoists, full-body sling lifts and overhead lifts to help move patients, experts say the high injury rate persists for a variety of reasons, among them heavier patients and a workplace culture in which nurses and orderlies were trained to lift patients manually using proper body mechanics.

"I have been a nurse for a long time and was part of the 'lifting brigade' generation," said Carla Casia, Chicago-based employee health services manager and interim director of EHS clinical operations for Presence Health. "However, most nursing students coming out of school now are being trained on lifting equipment, so it's already



embedded in them. Even some of my most experienced nurses now think that this is a good idea."

Nonetheless, safe patient handling programs are far from ubiquitous, said Lynda Enos, Portland Oregon-based ergonomics consultant at HumanFit L.L.C. "We estimate that maybe 25% of hospitals in the U.S. are truly implementing safe patient handling and

ergonomics and prevention for their health care worker injuries," Ms. Enos said.

One reason for the low adoption rate may be concern about the cost of acquiring equipment, she said.

"However, you can make the business case just from the savings on workers compensation.

See **NURSES** page 26

RISK MANAGEMENT

ERM helps firms, but results hard to measure

BY BILL KENEALY

CHICAGO — As the discipline of enterprise risk management matures, risk managers are highlighting the benefits ERM brings to their organization even if they cannot attach a direct dollar value.

"We are all facing the same challenge of not having a clear way to quantify" the benefits of ERM, said Puneet Kapoor, Deerfield, Illinois-based director of enterprise risk management at Walgreen Co.

For example, Walgreen's ERM program was discussed when the drugstore chain's financial officials met with ratings agencies after its recent merger with Bern,



Ms. Pemberton

Switzerland-based Alliance Boots GmbH, Mr. Kapoor said.

"The merger that happened was

a more material fact than the presence of an ERM program," Mr. Kapoor said. "You never really know to what extent the ERM program was attributable to the rating; it's just part of the package that you present to the rating agency."

Likewise, Julie C. Pemberton, Chicago-based director of enterprise risk and insurance management at Outerwall Inc., which operates movie, coin-counting and electronics recycling kiosks, said it is difficult to gauge how insurance underwriters value a company's ERM efforts.

See **HINES** page 26

P/C LEGISLATION

Regulatory reform effort welcomed

Systemic risk review part of provisions

BY MARK A. HOFMANN

Insurer provisions of a wide-ranging proposal to reform the financial services regulatory process are drawing generally favorable reviews from property/casualty insurance industry observers.

Insurance comprises only a small portion of the Financial Regulatory Improvement Act of 2015, sponsored by Sen. Richard Shelby, R-Ala., chairman of the Senate Banking Committee. The bill deals with matters extending from credit unions to transparency at the Federal Reserve.

The Senate Banking Committee on Thursday approved the bill, which would also change the Gramm-Leach-Bliley Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The bill also seeks to promote greater transparency in the way the Financial Stability Oversight Council decides whether nonbank financial institutions, including insurers, are determined to be systemically important financial institutions and thus subject to enhanced regulation by the Fed.

Thus far, three insurers — American International Group Inc., MetLife Inc. and Prudential Financial Inc. — have been designated SIFIs. MetLife is challenging the designation in court, and insurers have argued since Dodd-Frank established the SIFI designation that they do not present systemic risk to the economy.

In addition to the section on the Financial Stability Oversight Council, three sections of the Financial Regulatory Improvement Act would affect insurers if they become law.

According to a summary prepared by the Senate Banking Committee, the first insurance section "sets forth the sense of Congress that the McCarran-Ferguson Act of 1945 remains the preferred approach to regulating the business of insurance." That law made states the primary regulators of insurers.

A second section, the Policyholder Protection Act of 2015, would affect insurers that are part of an entity that contains savings and loan institutions subject to federal

See **FRIA** page 26

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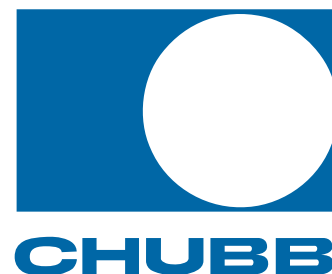


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# Shift to on-demand workforce exposes gaps in disability insurance

Independent contractors may lack coverage in general

BY STEPHANIE GOLDBERG

ORLANDO, Fla. — Workers compensation needs to evolve to keep up with today's growing on-demand economy, experts urge.

People can make and deliver goods and services without a formal employment relationship as a result of the on-demand or sharing economy, said Steve Klingel, president and CEO of the National Council on Compensation Insurance Inc.

"Your neighbor could end up being your chauffeur, could be running around doing errands for you or you might even rent a room for visiting relatives from them," Mr. Klingel said. With the ability to telecommute from just about anywhere, "the employees we're going to see coming on the scene will work where they want and when they want," he said, referring to a group that spans all generations.

Several speakers at the workers comp ratings and research organization's 2015 Annual Issues Symposium in Orlando, Florida, this month said the insurance industry needs to evolve along with workplaces and the workforce.

"If you think we have struggles

*"Your neighbor could end up being your chauffeur, could be running around doing errands for you or you might even rent a room for visiting relatives from them." With the ability to telecommute from just about anywhere, "the employees we're going to see coming on the scene will work where they want and when they want."*

Steve Klingel, National Council on Compensation Insurance Inc.

with (the) employee versus independent contractor (debate) today, it's going to become a lot trickier," Mr. Klingel said, adding that investigating a workers comp claim also is likely to become much more complex.

While the evolving workplace and employer-employee relationships can benefit the economy and workers seeking supplemental

income, the insurance industry isn't sure how to "provide protections" for an on-demand economy, Insurance Information Institute Inc. President Robert Hartwig said during the symposium.

As on-demand companies such as ride-sharing firms Uber Technologies Inc., room or home rental firm Airbnb Inc. and crowdsourced invention business Quirky Inc. become more popular among workers, creating new definitions of workplace accidents and injuries become more important. In the meantime, insurers can educate on-demand workers that they may need to buy their own insurance, experts said.

For example, Mr. Hartwig said people might not know that a private passenger automobile policy won't cover the commercial use of their vehicle or that homeowners insurance will not cover them if they're using their house as a hotel.

"Unless you've self-procured your workers comp coverage, an on-demand worker — an independent contractor, in other words — may not have any workers comp recourse if they're injured in the performance of their duties," Mr. Hartwig said.



AP PHOTO

As on-demand companies become more popular among workers, new definitions of workplace accidents and injuries become more important.

Independent contractors have become more common as the working world has gone from "a physical environment to a digital environment," said Salim Ismail, global ambassador and founding executive director of education and business accelerator firm Singularity University.

"We will likely lose a couple billion jobs locally over the next 20 years, but that means the concept of a job as you see it today," said Mr. Ismail, formerly a vice president at Yahoo Inc. But losing a job is not the same as losing work, he said.

"Whenever we see a big technological injection, we see a temporary dip (in employment) and then we find other things for people to do," he said.

Some say new technology that matches workers and jobs faster than ever before "frees workers from the bonds of centralized and

hierarchical institutions," Mr. Hartwig said. But others say that "jobs are being reduced to nothing but freelance temporary gigs."

Some people fear the on-demand economy could mean the end of workers comp, retirement benefits, sick pay, maternity leave, overtime, minimum wages, health insurance, liability coverage and employment stability in general, experts said.

"As the economy changes in the postindustrial era, workers compensation has to change with it," Mr. Hartwig said.

But it's not clear what workers comp will look like in the future, experts agreed.

"So far, the Ubers of the world have been successful in arguing they are software platforms, not employers," Mr. Hartwig said. "Even though in another context they'll say, 'We created all these jobs.'"

## HEALTH CARE BENEFITS

# Employers welcome private health insurance exchanges as cost-cutting tools

BY BILL KENEALY

MINNEAPOLIS — Private health insurance exchanges are enabling employers to dampen rising costs for benefits they provide to employees and changing benefits professionals' view of their roles.

Pamela Sande, Boston-based vice president of total rewards and human resources services at The Mentor Network, said the organization that focuses on services for the disabled, families and the elderly briefly considered dropping employee health coverage because of rising costs before its recent switch to a private exchange run by New York-based Towers Watson & Co.

"Before the exchange, we thought about exiting altogether," Ms. Sande said last week during World At Work's Total Rewards 2015 Conference & Exhibition in Minneapolis. "We also considered building our own exchange and putting together multiple carriers to try and get deep discounts, but the

effort ... would have taken us multiple years and required us to staff up to get there. The exchange has already done that kind of work."

Thomas Foley, Chicago-based director of employee benefits at building materials manufacturer USG Corp., said tools that are part of the Towers Watson exchange, which USG uses for retiree health benefits, help users better understand and select the plan that best meets their needs.

"The advisory services are very important for us to make this transition as easy as possible for our retirees," Mr. Foley said. "That's why we went with a private exchange."

The exchange "has helped bring the cost per employee down," Ms. Sande said, without specifying precise amounts.

Thomas Sondergeld, Deerfield, Illinois-based vice president of benefits and mobility at Walgreens Boots Alliance Inc., said using the private exchange run by Aon

*"The advisory services are very important for us to make this transition as easy as possible for our retirees. That's why we went with a private exchange."*

Thomas Foley, USG Corp.

Hewitt, a unit of London-based Aon P.L.C., has helped the drug store giant, which has 250,000 U.S. employees, "reset" its benefit cost trend.

"Because we have moved to a private exchange, we have helped contribute to the bottom line of the organization about \$100 million," Mr. Sondergeld said. "That's a lot of money, and usually benefit changes can't have that big of a contribution."

Nonetheless, he said a private exchange is not a "silver bullet" to stem rising health

care costs and users' experience may change as the exchanges tweak features and terms in the rapidly evolving market.

"It's an immature model," he said.

"It doesn't matter which private exchange that you are on today, they ... are adjusting things left and right."

Yet, Mr. Sondergeld said he remains excited about the private exchange model because it has helped him transform the pharmacy chain's human resources department.

Freed from much of health plan design duties, benefits professionals now can spend more time addressing the causes of employee illness and improving mitigation efforts, such as wellness programs, he said.

"A private exchange is really a type of outsourcing," Mr. Sondergeld said. "In going to a fully insured private exchange, it totally releases you from all strategy about plan design and worrying about whether to direct employees from one hospital to another."



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## PartnerRe turns back to Axis after Exor bid talks stall

■ PartnerRe Ltd. said it would seek shareholder approval for its merger with Axis Capital Holdings Ltd. after its overture to enter discussions with Exor S.p.A. were rebuffed by the Italian investment firm. Pembroke, Bermuda-based PartnerRe had said it would begin discussions with Exor about the company's enhanced bid of \$137.50 per share made on May 12. But those discussions may not occur. "By demanding that we declare their offer 'reasonably likely to be a superior proposal' as a precondition to any negotiations, Exor has effectively rejected our board's good-faith offer made to engage in discussions on price and other terms," PartnerRe said in a statement. PartnerRe also reiterated that it remains committed to its plans with Pembroke-based Axis, which improved its offer after Exor entered its original bid. "PartnerRe will now proceed to shareholder approval of the transaction with Axis Capital," PartnerRe said in the statement.

## Allegheny mulls TransRe sale: Sources

■ Property/casualty insurer Allegheny Corp. is considering a sale of Transatlantic Holdings Inc. in a deal that could value the reinsurance unit at around \$6.5 billion, sources familiar with the matter said. Allegheny is working with investment bankers to respond to takeover interest in TransRe from at least one other company, the sources said. Allegheny has not decided whether to sell TransRe and no deal is imminent, they added. An Allegheny spokesman did not respond to a request for comment. Founded in 1978, New York-based TransRe is a property/casualty reinsurer with worldwide operations. It was acquired by Allegheny in 2012 for \$3.5 billion. In 2014, TransRe had net earnings of \$523 million, accounting for 77% of Allegheny's total net earnings. TransRe had over \$5 billion of equity capital as of Feb. 11, according to an investor presentation. New York-based Allegheny has said it faces challenges from nontraditional entrants to the property reinsurance market, as well as falling demand from large clients.

Reuters

## High court 401(k) ruling opens questions

■ The U.S. Supreme Court's decision that retirement plan fiduciaries have a duty to continually monitor investments leaves a key issue of what exactly they have to do unresolved. In its ruling in *Tibble et al. v. Edison International et al.*, the Supreme Court neglected to decide the scope of plan fiduciaries' duties regarding the ongoing monitoring of investment plan options, observers say. "The court did not decide the key issue, which would be exactly what the fiduciary or plan sponsors would need to do regarding continuously monitoring the investment plan options," said Washington-based Annette Guarisco Fildes, president and CEO of the ERISA Industry Committee. "We'll have to wait and see what the Ninth Circuit says to determine what the scope of the duty is of the plan sponsor to monitor investments options if there's not been a significant change in circumstance." The ruling vacated an earlier decision by 9th U.S. Circuit Court of Appeals in Pasadena, California, that decided against employees who alleged that 401(k) plan fiduciaries at electric power company Edison Interna-

tional violated their duties when offering six higher-priced mutual funds over six identical lower-priced funds of the same institutional class that were available. The U.S. District Court for the Central District of California said the employees failed to petition in a timely manner. The Supreme Court ruled unanimously that the 9th Circuit's decision, which decided in favor of the District Court's ruling, failed to recognize that plan sponsors are required to regularly review investments in the retirement plan.

## MasterCard, Target fail to reach settlement on 2013 data breach

■ MasterCard Inc., the world's No. 2 debit and credit card company, said it failed to reach a settlement with Target Corp. over claims related to the 2013 data breach at the retailer as a key condition was not met. Target said in April that it had agreed to reimburse about \$19 million to financial institutions that had issued MasterCard-branded cards that were a part of the massive data breach. "This settlement was conditioned on eligible issuers representing at least 90% of the eligible MasterCard accounts accepting their alternative recovery offers by May 20. As of today, the 90% threshold has not been reached," MasterCard said in an email to Reuters on Friday. Target spokeswoman Molly Snyder confirmed the development and said the company had "nothing further to share at this time."

Reuters

## Treasury benefits regulator to be nominated as PBGC chief

■ President Barack Obama said he intends to nominate W. Thomas Reeder, health care counsel at the Internal Revenue Service, to be director of the Pension Benefit Guaranty Corp. If confirmed by the Senate, Mr. Reeder would succeed Joshua Gotbaum, who left the PBGC in September to take a position at The Brookings Institution in Washington. Prior to joining the IRS in 2013, Mr. Reeder was senior benefits counsel on the Senate Finance Committee from 2009 to 2013. From 2000 to 2013, Mr. Reeder also held several positions at the U.S. Treasury Department, including benefits tax counsel and deputy benefits tax counsel.

## Former AIG exec to join Worldwide Broker Network

■ Worldwide Broker Network has named former American International Group Inc. executive Francie Starnes to the newly created role of president and chief operating officer. Ms. Starnes, who was previously vice president of global commercial distribution and manager of independent broker networks for AIG, will report to Worldwide Broker Network CEO Bruce Basso, the organization said in a statement. Ms. Starnes will be based at Worldwide Broker Network's headquarters in San Mateo, California, and will begin her new role effective July 1, a spokesman for the organization said.

## Texas lawmakers approve captive insurance measures

■ Texas lawmakers have given final approval to legislation that would allow captives to accept and cede risks to captive reinsurance pools or to an affiliated captive. The measure,

S.B. 667, also would allow a captive to pay dividends to those holding an equity interest in the company-owned insurer, with regulatory approval. State lawmakers also approved H.B. 2557, which will allow Texas county hospital districts to set up captives in the state individually or with other hospital districts. Texas Gov. Greg Abbott is expected to sign both measures.

## Deglobalization, 'Internet of things' hold unknown risks for insurers

■ Deglobalization and "challenges of the Internet of things" are two risks ranked to have a potential "high" impact over time for insurers and reinsurers in a new report from Swiss Re Ltd. Swiss Re's "New Emerging Risk Insights" looks at 21 emerging risks for insurers and reinsurers. Political conflict and large natural catastrophes are two more of the risks identified in the report, which is based on the Systematic Observation of Notions Associated with Risk process. SONAR is a crowdsourcing tool drawing on Swiss Re's internal risk management expertise to identify and evaluate new threats, the company said in its statement.

## South Carolina considers workers comp opt-out system

■ South Carolina legislators have introduced a bill that would allow employers to create alternative benefit plans for injured workers rather than providing traditional workers compensation insurance coverage for employees. The South Carolina Injury Benefit Plan Alternative states that minimum benefit requirements must be "interpreted and applied in a manner so that the benefit plan is comparable to" the South Carolina workers compensation law. According to the bill, total disability benefits must be at least 75% of a worker's average weekly wage and no less than \$75 per week. Workers eligible for temporary partial disability benefits will receive at least 75% of the difference between their pre- and post-injury average weekly wages. And death benefits are to be paid when death results from an accident or within two years of accident.

## Lumbermen's ordered into financial rehabilitation

■ Lumbermen's Underwriting Alliance, a Boca Raton, Florida-based workers compensation insurer, has been placed into rehabilitation by a Missouri court, according to the Missouri Department of Insurance. A Cole County, Missouri, circuit court granted a rehabilitation order from the Missouri insurance department, according to a statement on Lumbermen's website. The insurance department's director, John M. Huff, has been named as receiver of the insurer, allowing him to take over operations for the company, the insurance department said in a statement. Lumbermen's, which specializes in property/casualty insurance for the forest products industry, has 3,000 policyholders and more than 6,000 open workers comp claims nationwide, according to the Missouri insurance department. A.M. Best Co. Inc. downgraded Lumbermen's financial strength rating to E from B+ in March after the Missouri insurance department requested in February that the insurer be placed into receivership, according to a statement from Best, which added that Lumbermen's had a \$22.5 million deficit position at the end of 2014, caused by the professional employer organization bankruptcy filing.

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## Windstorm damage estimated at \$955.5M

■ Perils A.G. issued an initial loss estimate for insured property damage caused by windstorms Mike and Niklas of €853 million (\$955.5 million). The combined storms, known as Lentestorm in the Netherlands, occurred in Germany, the Zurich-based catastrophe insurance data company said. Losses also occurred in Austria, Belgium, the Netherlands, Switzerland and the United Kingdom. The storms occurred in rapid succession and affected similar areas in late March, Perils said, and so in some instances it is not possible to allocate specific insured losses to either of the events. "There are two factors which distinguish Mike-Niklas from other events," Edi Held, head of product at Perils, said in a statement. "Firstly, its late occurrence date during the European windstorm season and secondly, in Germany, virtually every part of the country experienced damaging gusts in excess of" 50 miles per hour.

## Munich Re tightens grip after profit drops

■ Tightening its underwriting to adjust for conditions in the reinsurance market, Munich Reinsurance Co. reported profit of €790 million (\$848.1 million) for the first quarter of 2015, a 15.6% decline from the same period a year ago. However, the insurer and reinsurer reported gross written premiums of €13.03 billion (\$13.99 billion) for the first quarter, a 0.9% increase over the same period in 2014. The combined ratio for the company's property/casualty reinsurance business was 92.3% for the quarter, compared with 86.9% in the same period of 2014. The company cited Windstorm Niklas, which struck Europe at the end of March, and Cyclone Pam, which devastated the island nation of Vanuatu in the middle of March, as major sources of claims. Munich Re was also stung by difficult conditions in the financial markets as the reinsurer's investment income in the first quarter fell 8.6% to €1.82 billion (\$1.95 billion). Torsten Jeworrek, Munich Re's reinsurance CEO, said pressure on prices, terms and conditions remained high in the reinsurance market, and said the company is focusing on cycle management and underwriting discipline. "In the underlying portfolio, we remained very disciplined but were very successful at concluding a few larger proportional transactions, which contributed to premium volume growth," he said. "Without these

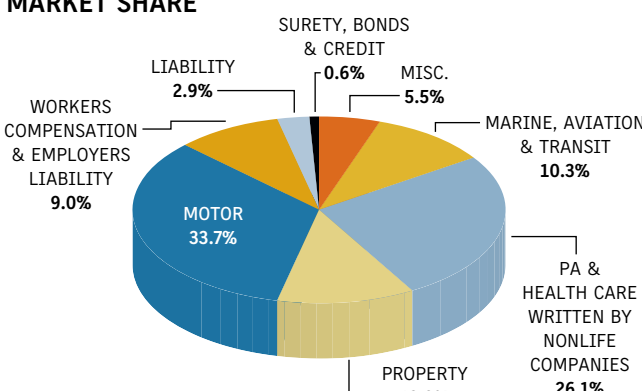
## PROFILE: AZERBAIJAN

### \$305.4 MILLION

The property/casualty insurance market in Azerbaijan contracted 3.8% in 2014 after three years of strong growth. That growth in 2011-2013 was driven in part by the reintroduction and enforcement of various compulsory lines of insurance. The market used to be dominated by energy placements, which were fronted locally and then placed into global programs, but the local commercial and personal lines insurance markets are growing.

◀ 2014 P/C gross premiums

### MARKET SHARE



Line of Business	Market Share (%)
MOTOR	33.7%
PA & HEALTH CARE WRITTEN BY NONLIFE COMPANIES	26.1%
PROPERTY	12.0%
MARINE, AVIATION & TRANSIT	10.3%
MISC.	5.5%
SURETY, BONDS & CREDIT	0.6%
LIABILITY	2.9%
WORKERS COMPENSATION & EMPLOYERS LIABILITY	9.0%

Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

#### COMPULSORY INSURANCE

Various lines of coverage are compulsory, including:

- Auto third-party liability
- Insurance against HIV/AIDS infection for medical staff
- Auditors civil liability
- Professional liability for insurance brokers
- Shipowners liability for oil pollution

#### NONADMITTED


Nonadmitted insurance is not permitted in Azerbaijan because the law provides that insurance must be purchased from locally authorized insurers, except for risks related to international marine and air transport and space risks.

#### INTERMEDIARIES

Intermediaries must be registered and authorized to conduct insurance business. Risks must be placed with local insurers, with a few exceptions, but in such cases there are no rules requiring a broker to inform a client that a risk is being placed with a nonadmitted insurer.

#### MARKET PRACTICE

Energy companies in Azerbaijan have long covered their risks through global programs, but nearly all of the programs have at least been fronted by local insurers since 2008. All reinsurers for fronted programs must register with Azerbaijani regulators.



**AZERBAIJAN**

**AREA**

### 33,436

square miles

**POPULATION**

### 9.5

million

**LAND BELOW SEA LEVEL**

### 18%

**2015 GDP CHANGE (PROJECTED)**

### 3%

## MARKET DEVELOPMENTS

UPDATED MAY 2015

- In February 2014, the minimum capital requirement for reinsurers doubled to \$19 million. At the same time, a requirement was introduced that insurers writing inwards reinsurance carry supplementary capital. In January 2015, the supplementary capital requirement stood at \$4.8 million.
- In June 2014, a law phasing out a cap on foreign capital participation in the Azerbaijani insurance market became effective. It will be eliminated by 2017.
- Since April 2014, insurance brokers have been required to carry professional liability insurance.
- The government is drafting a bill to reform agriculture insurance. Market sources indicate that the most likely outcome is the creation of a voluntary market that will lead to the creation of an agricultural insurance pool.

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

extraordinary new transactions, we would have seen a small reduction in premium volume."

## AIG buys network for multinational benefits

■ American International Group Inc. said it has acquired a controlling stake in Brussels-based ING Employee Benefits Global Network and renamed it AIG Global Benefits Network. Terms of the deal were not disclosed. The network provides administrative and marketing services to insurance companies offering benefits to multinational employers, AIG said in a statement, and its members are insurers from around the world. "Our ability to offer benefit plan solutions through this network creates additional opportunities for AIG to support our multinational clients," said Curt Olson,

president and CEO of AIG Benefit Solutions, in the statement. The Hague, Netherlands-based insurance and investment company Nationale-Nederlanden and Paris-based nonprofit health insurer Malakoff Médéric are minority shareholders in the network.

## Best quarterly profit in 7 years for Generali

■ Italian insurer Assicurazioni Generali S.p.A.'s first-quarter operating profit rose 6% as growth in its life business offset a fall in nonlife activity. The insurer said the figure stood at €1.33 billion (\$1.51 billion), its best quarterly result in seven years. Premiums in the first three months of the year rose 8.3% to €20.1 billion (\$22.85 billion), driven by a 12.7% growth in its life business, and especially unit-linked policies. Like its rivals,

Generali has been faced with weak economic growth in its domestic market and rock-bottom interest rates that have eaten away at investment returns. Under pressure to boost profitability and cash generation, it has bolstered its balance sheet by trimming costs and selling assets, meeting a number of recovery targets early. "It's a good start to the year and augers well for the rest of the year," Generali Chief Financial Officer Alberto Minali said in a conference call.

Reuters

## Pool Re on track with revamp efforts

■ Pool Reinsurance Co. Ltd., the U.K. government-backed terrorism reinsurance backstop, has announced details of a series of modernization proposals that will take effect in October. Among the

changes to the pool, which is funded by levies charged to insurers and guaranteed by the U.K. Treasury, are a bespoke proposition for small and medium-size insurance buyers that will offer a 40% rate discount for buyers with less than £2 million (\$3.1 million) material damage sum insured. In addition, the pool will grant discounts for deductibles of between £500,000 and £1 million (\$768,750 and \$1.5 million). For loss limits in excess of £500 million (\$768.8 million), Pool Re said it will consider rate discounts for locations where insured values are at least 20% more than the limit. Pool Re also said it would begin to introduce revised rates that "are more reflective of the underlying risk and are based on modern modeling techniques." The revisions will reflect the changes to terrorism risk and exposures in the 12 years since the rating was last reviewed, Pool Re said.



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# BERMUDA MARKET FACING ALTERNATIVE CAPITAL REALITY

**Q** What are the biggest challenges facing the Bermuda market?

**A** In Bermuda, companies are focused on three priorities: the path to Solvency II equivalence, convergence with alternative capital and business consolidation. With regard to Solvency II, the Bermuda Monetary Authority is in the final stages of law and regulation adoption to meet the (European Insurance and Occupational Pensions Authority) criteria for equivalence. The BMA continues its discussions with the European Commission, and we are optimistic about an equivalency finding for the Bermuda commercial insurance sector by the end of the year.

Alternative capital is with us for the long term, and we consider ourselves “converged,” with most members having already launched their capital markets ventures. The challenge is putting this capital to work.

On the third point, with four mergers or acquisitions announced this year within the membership, consolidation is on everyone’s mind. Some argue that that we are in one of those periods

## Q&A

where it is best to have a bigger balance sheet to achieve certain efficiencies in operation. Others argue you can still be successful as long as you have a specialization. The market is deciding that now as we speak.

**Q** Where are opportunities for growth in the market?

**A** By year-end, Florida will have shed half of its residual market risk. This is due to successful take-out programs and purchase of efficient risk transfer products by the Florida Citizens (Property Insur-

ance Corp.) program. Citizens recently announced it will be able to cover a 100-year hurricane without resorting to debt issuance and the necessary hurricane taxes to pay off this debt. This is a remarkable accomplishment. In the U.S. market, coastal residual markets in Florida, Louisiana and Texas continue to depopulate. This is largely due to increased availability of reinsurance and increased investment in specialty insurers (creating them or expanding their footprints) willing to underwrite coastal risk.

In California, the California Earthquake Authority is experimenting with alternative deductibles to try to generate interest in consumers in buying protection against earthquake shake damage. At the federal level, the extension of (the federal government’s terrorism insurance backstop) brought some opportunities for purchase of additional private terrorism insurance. Everyone is experimenting with some new products in cyber insurance. It’s a market with tremendous growth opportunities and tremendous uncertainty.



**BRADLEY L. KADING**

**ASSOCIATION OF BERMUDA INSURERS AND REINSURERS**

Bradley L. Kading has been president and executive director of the Association of Bermuda Insurers and Reinsurers since 2005. Before joining ABIR, he served as senior vice president and director of state affairs for the Reinsurance Association of America. He joined RAA in 1991, having previously served as vice president and director of government affairs for the Alliance of American Insurers in Schaumburg, Illinois. He recently spoke with

*Business Insurance* Senior Editor Mark A. Hofmann about the state of the Bermuda market. Edited excerpts follow.

**Q** Are you concerned about any legislative or regulatory initiatives?

**A** The Global Reinsurance Forum has identified protectionist measures in more than 24 countries around the world that limit cross-border reinsurance trade. This is quite discouraging, and it is largely a legacy of the 2008 global financial crisis.

The fight against the discrimina-

tory reinsurance tax goes on in the U.S. It should be clear to all that insurers are successful when they can pool and diversify risk; any tax or regulatory impediment to this necessary use of affiliate reinsurance should be opposed.

Limits on cross-border reinsurance, affiliate or nonaffiliate, will result in increased concentration of risk within jurisdictional boundaries and less competitive markets.

## COMINGS & GOINGS

### UP CLOSE: DARRELL BROWN

**LONG BEACH, CALIFORNIA-BASED CHIEF CLAIMS OFFICER AND EXECUTIVE VICE PRESIDENT**  
Sedgwick Claims Management Services Inc.

**PREVIOUS POSITION:** Long Beach, California-based chief performance officer and senior vice president for Sedgwick Claims Management Services Inc.

**LOOKING FORWARD TO:** A chief claims officer is a new position at Sedgwick. I am looking forward to rolling up my sleeves and working with the team. I want to see it work, see it in motion and see it add value to our organization. ... I want to make sure we are improving the customer experience.

**GOALS FOR NEW POSITION:** To complete the quality spectrum. Currently we have the best practices in place. We do training. We provide feedback. In this new role ... (we are) adding to the complex claims unit real-time direction and advice on complex claims.

**INDUSTRY OUTLOOK:** It’s very good. I think that there are challenges such as rising medical costs and prescription drug abuse. I think we are, as an industry, working through those.



**FIRST INDUSTRY JOB:** Working as a lien negotiator for an insurance company that is no longer in business (Superior National Insurance Co.).

**WHAT SURPRISED ME:** How my love and interest in workers compensation could open so many doors for me. It’s allowed me to teach for the Insurance Educational Association. It’s allowed me to speak to the industry and promote within the industry.

**ADVICE:** Work hard, learn the job and do great work, and you can differentiate yourself. You will be noticed.

**HOBBIES:** Traveling and working out. I eat just about everything in sight. Spending time over food with family and friends.

**THING MOST PEOPLE DON’T KNOW ABOUT ME:** Puedo hablar espanol.

**THOUGHTS ON SMARTPHONES:** I don’t know how we ever lived without them.

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# 40 UNDER 40

BROKER AWARDS 2015  
BUSINESS INSURANCE

**NOMINATIONS OPEN**

## Who are your broker superstars?



**THEY WOULD WEAR CAPES (IF IT DIDN'T VIOLATE COMPANY DRESS CODE).**

*Business Insurance's* 40 Under 40 Broker Awards program honors the top insurance brokers under the age of 40 across the United States. Honorees are recognized for their leadership, client service skills and expertise in the retail commercial insurance brokerage industry.

Winners are announced online in August and their profiles published in the October 12, 2015, issue of *Business Insurance*. The program culminates with a recognition events in New York (Northeast), Chicago (Midwest), Atlanta (South) and Los Angeles (West).

For more information about the nomination process, contact Gavin Souter, editor of *Business Insurance* at [gsouter@businessinsurance.com](mailto:gsouter@businessinsurance.com) or 312-649-5482.

Deadline to submit nominations is Monday, June 15 at 11:59 p.m. EDT.

EDITORIAL

## TIME TO AX CADILLAC TAX

If there is one provision in the health care reform law for which there should be bipartisan agreement on repeal, it is the one that will impose a stiff excise tax on health care premiums that exceed statutory limits. Specifically, starting in 2018, a 40% excise tax, widely known as the “Cadillac tax”, will be slapped on group health care premiums that exceed \$10,200 for single coverage and \$27,500 for family coverage.

In the case of fully insured plans, the tax will be paid by insurers, while plan administrators will pay the tax for employers with self-funded plans. Ultimately, insurers and TPAs will pass the cost of the tax onto employers in the form of higher premiums and fees.

One justification for the tax has been that it will encourage employers to redesign their health care plans to better control costs to avoid, or at least delay, being hit with the tax.

To that we say: nonsense. Employers have all the incentives they need — chiefly the need to earn a profit and stay competitive — to design their health care plans to keep cost increases under control.

Indeed, it was the spiraling health care costs of a decade ago, not the threat of a federal excise tax, that led to the revolution in plan design that is helping employers keep the lid on cost increases.

A key part of that revolution is the employer move to consumer-driven health care plans, whose key feature is greater participant cost-sharing through higher deductibles and coinsurance requirements.

There is no question that CDHPs have made employees better consumers of health care services by, for example, moving them away from brand-name prescription drugs to less costly but identical generics, or going to urgent care centers rather than expensive hospital emergency rooms.

But aside from being unnecessary, we feel an excise tax is inherently unfair. Health care premiums vary enormously, reflecting, among other things, regional costs of living. Should an employer be exposed to the tax simply because it is based in a region where costs are above average? We think not.

Finally, we shudder at the complexity of the rules that would be needed to enforce the excise tax. An IRS request just for comments totaled two dozen pages. We fear regulations on the excise tax would be many times that.

For all those reasons, we hope lawmakers move quickly to junk the tax.

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

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SCHILLERSTROM



COMMENTARY

## CYBER INSURANCE HEADS INTO UNCHARTED LEGAL TERRITORY

There's been a rush of cyber risk events over the past few weeks, and at first blush it's mainly bad news for risk managers.

But first the good news: Congress seems motivated to pass some kind of federal law that will provide liability protections for businesses that share information on cyber security with the government.

As seems clear to just about everyone, cyber threats are pervasive, and it's going to take the joint efforts of governmental bodies, public entities and private industry to blunt those threats. Providing liability protections will encourage information sharing so passage of legislation offering those protections, which has already been passed by the House of Representatives, would be a step in the right direction.

The rest is largely bad news. There has been another cluster of cyber breaches with CareFirst BlueCross BlueShield, Sally Beauty Holdings Inc. and the German Parliament, among others, announcing that their data records may have been compromised by cyber attacks. Keeping track of the number of cyber attacks over the past couple of years is dizzying.

A few other bad news events for risk managers in particular are the legal scrapes over coverage for cyber breaches.

Last week, the Connecticut Supreme Court upheld a ruling that IBM's general liability insurers were not liable for data lost when some tapes fell off a truck. That's too bad for IBM, but there does seem to be a growing consensus that, going forward at least, you need specialty cyber coverage to address cyber risks.

With that in mind, the recent insurance ruling involving Travelers Cos. Inc. and Federal Recovery



**GAVIN  
SOUTER**  
EDITOR

Services Inc. may be more troubling for risk managers. You can read details of the case in more detail in our story on page 1, but Federal Recovery Services had cyber coverage from Travelers, although the details of the loss were not your run-of-mill data breach.

Then in an ongoing dispute, CNA Financial Corp. is seeking a legal ruling to relieve one of its units from

defending or indemnifying a hospital system that it covered under a cyber policy for “failure to follow minimum required practices” to protect data.

This last case really gets into the mainstream of cyber coverage, policy wordings and the care buyers need to take when reviewing their coverage terms and complying with the stipulations detailed.

While the breaches and claims denials may be disheartening for corporate policyholders, there is reason for hope. That's because, as more of these cases are fought out, insurers will start to gain more insights into the nature of the risks they are covering with cyber policies and start accumulating claims data to support their underwriting.

That being the case, surely the next market move will be for insurers to start offering meaningful capacity to cover the cyber exposures that corporations are really concerned about rather than just a small slice of the risk.

# Large shareholder awards pressure directors and officers

Record settlements will shape the direction of shareholder derivative litigation in 2015 and beyond. Stephanie Resnick and John C. Fuller, corporate governance attorneys at Fox Rothschild L.L.P., explore the situation and see some relief in the form bylaws that shift legal fees.

In 2015, trends in shareholder litigation are certain to be affected by two recent developments. First, the stakes for directors and officers, and their insurers, rose significantly when two shareholder derivative actions were settled last year for \$275 million and \$154 million, respectively — two of the largest settlements in history. Second, at the same time, courts have increased the risk for shareholders bringing derivative actions by upholding fee-shifting bylaws, which allow corporations to seek legal fees from unsuccessful shareholder plaintiffs.

At first blush, these two developments appear to be inconsistent. However, their combined effect may create a new equilibrium in shareholder derivative litigation, in which both sides have more at risk than ever before.

Corporations and shareholders will closely monitor “test” cases, which will define how broadly fee-shifting bylaws will be accepted, as well as potential legislative responses. However, directors, officers and their insurers must keep in mind the massive awards of the past year when approaching any shareholder dispute. Until courts fully realize significant disincentives to unsuccessful shareholder plaintiffs, the tendency is that courts will continue to approve record-setting settlements.

## Record-setting settlements

In November 2014, the largest shareholder derivative settlement ever, \$275 million, was announced in an action brought against video-game maker Activision Blizzard, Inc. in the Delaware Chancery Court.

The Activision lawsuit involved an \$8 billion transaction in which two of Activision’s senior officers used an outside entity to secretly take a controlling interest in Activision. Through the entity, the officers purchased a substantial portion of Activision’s outstanding stock from Activision’s controlling shareholder, French media conglomerate Vivendi S.A.

In a statement after the announcement of the settlement in the suit alleging breach of fiduciary duty, Activision said the settlement would be paid by “multiple insurance companies, along with various defendants.” Some \$207 million of the settlement amount is to be paid by Activision’s directors and officers and their insurers, while \$67.5 million will come from Vivendi.

The second massive shareholder derivative set-

tlement involved fuel exploration company Freeport-McMoRan Inc. The \$154 million settlement was first announced in late 2014 and approved by the Delaware Chancery Court in April 2015. The settlement resolved a dispute regarding alleged conflicts of interest among Freeport board members when the company purchased McMoRan Exploration Co. and another company for \$9 billion in 2013. The shareholders alleged that the conflicts of interest led to Freeport paying an inflated price to acquire the two companies.

Though none of the defendants admitted liability, according to the settlement agreement, Freeport’s D&O insurers will pay \$115 million of the settlement, while the Freeport will contribute \$22.5 million and Credit Suisse, the financial advisors to Freeport’s board during the transaction, will supply the remaining amount through a combination of cash and credits to Freeport.

To reimburse the shareholders, the settlement proceeds, less attorneys’ fees, will be paid in a special dividend. The payment of a special dividend is unusual because most successful derivative actions, which are brought on behalf of the corporation, result in payments made to the company.

Whether a settlement structure that involves the use of dividends to distribute proceeds to shareholders will become commonplace is hard to determine, but it does show potential for making shareholders whole when there has been a clearly discernible injury to the value of their investment.

It is also difficult to say what has prompted the trend of massive shareholder derivative settlements. Perhaps most troubling for directors and officers, and their insurers, is the emboldening effect such settlements may have on plaintiffs attorneys as they approach the settlement table.

## Fee-shifting bylaws

In the face of record settlements in shareholder derivative actions, the potential liability for directors and officers may never have been higher. However, 2014 also saw the advent of fee-shifting bylaws that raise the stakes for shareholders and that, hopefully, will create a deterrent against plaintiffs who seek the next mega-award.

Fee-shifting provisions in bylaws allow corporations to seek legal fees from shareholders who bring unsuccessful derivative actions. Such pro-

visions were upheld as facially valid by the Delaware Chancery Court in *ATP Tour Inc. v. Deutscher Tennis Bund*.

ATP Tour is a Delaware membership corporation that includes professional tennis players and the owners of professional tennis tournaments. In 2006, ATP amended its bylaws so if a member brought an action against the ATP but did not obtain a judgment on the merits that “substantially achieved” the remedy sought, the member would be required to reimburse ATP for all attorneys fees, costs and expenses.

In 2007, after the ATP moved two national tennis federations to a lower tier of competition, the federations sued ATP and its directors, claiming antitrust violations and breach of fiduciary duty. ATP and the directors prevailed and moved to recover fees and costs under its bylaws.

Though ATP is a non-stock corporation, the reasoning and broadly applicable precedents cited by the court likely indicate that the decision will be applied to Delaware stock corporations. The ruling reinforces the concept that bylaws are part of the contract between a corporation and its interest holders and that the contract may be amended when proper procedures are followed.

As expected, the ramifications of the *ATP Tour* decision already are being tested by corporations amending their bylaws to limit their exposure and shareholders seeking to secure their right to sue. For example, in *Kastis et al. v. Carter et al.*, before the Delaware Chancery Court, the shareholders filed a motion to invalidate the fee-shifting bylaw adopted just days after *ATP Tour* was decided. Significantly, the bylaw provision at issue in *Kastis* provided for the payment of fees in any unsuccessful litigation that began or continued after the bylaw was adopted. Unfortunately, the court declined to hear arguments on the validity of the bylaw, finding that it was inapplicable to the issues in that case.

## Delaware takes a stand

As additional challenges arise without clear resolution, the Delaware Legislature has also recently taken up the issue of fee-shifting bylaws. On May 12, 2015, the Delaware Senate passed S.B. 75, which would prohibit fee-shifting provisions in the bylaws of stock corporations. The bill is currently under consideration by the Delaware House of Representatives.

The record-setting settlements of 2014 present a troubling trend for directors and officers. With the sky as the apparent limit for shareholders, the only glimpse of a silver lining from the year for directors and officers are fee-shifting bylaws. This year, all insurers should be tuned to the Delaware courts and the Delaware Legislature to see whether such bylaws will be accepted in other corporate forms and with what scope bylaws can be used to insulate directors and officers from impending, or even ongoing, litigation.



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SPECIAL REPORT

Cyber Risk:

Security/Regulation

Training programs help make workers cyber savvy

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2015 could be year for federal law on cyber reporting

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Health care, retail still prime targets, but others in sights

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Business Insurance survey on state of cyber cover

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# Cyber market shows maturity

Growing number of U.S. firms view specialized insurance as necessary

BY BILL KENEALY

The market for cyber insurance is finding a receptive audience as corporate concerns about the effect of data breaches rise and policy options available in the market continue to evolve.

A *Business Insurance* survey of 327 risk management decision-makers and 995 insurers, brokers and consultants conducted in March 2015 reveals that among the buyers surveyed, 80% acknowledged that the risk of penetrating their systems for the purposes of account manipulation, obtaining company, customer or private information or data destruction was a top concern.

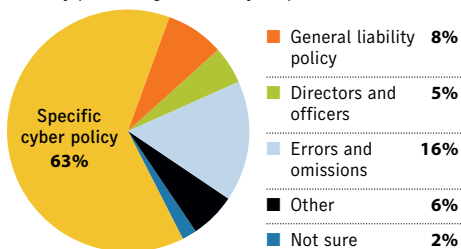
Additionally, 63% of risk managers acknowledged that they purchased a specific cyber policy for their company, while 35% said they obtained coverage for cyber risks through other policies such as general liability or errors and omissions.

The series of high-profile data breaches that has hit companies in sectors ranging from retail to health care has helped clarify the need for dedicated cyber insurance policies, experts say.

"It's finally on every organization's radar," said Tracie Grella, New York-based global head of professional liability for American

## CYBER COVER

Types of insurance programs purchased to cover cyber risks by percentage of survey respondents



Source: BI survey, March 2015

International Group Inc. "We have been offering cyber insurance for the last 16 years, and it has really only been this year that we feel that awareness has been reached in the U.S."

Carolyn Snow, director of risk management at Louisville, Kentucky-based Humana Inc. and former president of the Risk & Insurance Management Society Inc., agreed that the perception of cyber insurance has shifted recently among risk managers.

"We have reached a tipping point in people knowing and understanding that they should have the coverage," Ms. Snow said.

In addition to reinforcing the need for dedicated cyber coverage, recent breaches such as the massive attack on health insurer Anthem Inc. have caused underwriters to intensify

their scrutiny of cyber risks.

"The big claims we have seen are adding a lot of caution into the market," Ms. Snow said. "It has certainly tightened significantly, particularly in the health care market."

Adam Cottini, New York-based managing director of the cyber liability practice and area senior vice president for Arthur J. Gallagher & Co., said the scale and potential costs of the Anthem attack, which has been estimated to affect almost 80 million former and current policyholders, is noteworthy.

"There's been a revelation that the cost of data breaches is extremely expensive when there are a lot of impacted lives involved," he said, noting that a company could exhaust an entire insurance tower just in the cost of notification and credit monitoring, forensics and attorneys.

"Just determining how many individual lives are contained on a computer network is a significantly more difficult question than it appears on the surface," he said. But since Anthem, he said, the question repeatedly asked by underwriters is "How many individual lives do you have in your system?"

Given these mounting costs, many companies are changing their insurance pro-

See SURVEY page 18



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# CORPORATE CYBER TRAINING EFFORTS REMAIN A WORK IN PROGRESS

Practical steps include recognizing phishing links, regular reminders

BY JUDY GREENWALD

Companies are paying more attention to training their employees on how to prevent and respond to cyber incidents, but there is room for improvement.

“Companies can do a lot better,” said Eric Cernak, Hartford, Connecticut-based Munich Reinsurance America Inc. cyber risk practice leader.

“Many companies probably do a pretty good job of training during the onboard process, when they bring in new employees. The problem is, they don’t keep things really up to date. They don’t do training on an annual basis,” except at perhaps at some of the largest companies, Mr. Cernak said.

A total of 54% of firms say they have privacy and data protection awareness training for employees and other stakeholders who have access to sensitive personal information, according to a September report by Traverse City, Michigan-based Ponemon Institute L.L.C., compared with the 44% who reported this in its 2013 survey. The San Diego-based Identity Theft Resource Center estimates that between 2005 and March 20, 2015, there have been 5,203 breaches involving 778 million records.

“The standard protocol is to send an email with guidance on what to do and not to do, but for the most part the training is limited to just that internal communication,” said William P. Cosgrove, Stamford, Connecticut-based managing principal and practice leader for financial institutions at Edgewood Partners Insurance Center Inc.

“Very few companies are pulling their employees aside for sessions where they go through what cyber security means, how the individual can affect cyber security at the firms and what they should be doing to prevent an occurrence,” Mr. Cosgrove said.

However, Robert Parisi, Marsh USA Inc.’s national cyber product leader in New York,

sees improvement. Rather than having workers watch a PowerPoint presentation and sign a statement saying they sat through it, employers “are engaging in active training,” including sending out fake phishing emails to see who clicks on the link.

“The training has evolved with the evolution of the risk,” he said.

The training does not need to be overly complicated, Mr. Cosgrove said. “It just comes down to basic steps” of taking employees aside, getting them to understand what a cyber incident is, its effects, how their response can cause harm and what they should or should not do in the event of an incident.

Experts say training should include how to recognize and avoid phishing links; limiting access to sensitive information; explaining the corporate policy on the use of personal devices; and how to respond to a suspected data breach.

Training must be updated and repeated “because the techniques of attacks change,” said Lauri Floresca, cyber team leader and partner and senior vice president at Woodruff-Sawyer & Co. in San Francisco.

Just a year ago, for instance, poor grammar or misspellings were signs of a phishing attack. But many more of these attacks now “look pretty darn good,” she said.

Rick Shaw, president and CEO of Lincoln, Nebraska-based Awareity, which provides training, said the key in training is not only to provide the training itself, including best practices, “but to include ongoing reminders throughout the year” on issues such as the organization’s policy on opening up emails.

Ongoing education is important, said Royce Jeffries, vice president of risk management and security at Cornhusker Bank in Lincoln, which works with Awareity. “The bad guys use all kinds of techniques, and by educating our employees and hopefully providing some information to our customers as well, we can try to help them prevent becoming victims.”

And don’t forget an employee who is laid off or fired.

“You’d be surprised how many instances you hear of employees being let go, and up to a week or two later they still have access to systems,” Mr. Cernak said.

Larger companies are more likely to have the facilities or infrastructure to conduct training, said Mr. Parisi. However, “smaller companies are aware of the issue” and have the advantage of having fewer people to train, he said.

Corporate support of training is critical, experts say. There must be management level awareness “and a willingness to deploy the resources, because it takes time and money” to put an effective training program in place, said Sarah Stephens, head of cyber, technology and media errors and omissions at JLT Specialty Ltd.

“This needs to be a boardroom-level matter,” said Mr. Cosgrove. Board and senior managers cannot rely on the chief technology or information officer “to tell them what is, or is not, adequate.”

Costs “depend on the size of the company and the type of information the organization has access to,” said Matt Donovan, Atlanta-based national underwriting leader for technology and privacy at Hiscox USA. “There’s no one-size-fits-all approach.”

Mr. Shaw said the cost of training can range from \$7 to \$24 a person. The Ponemon Institute estimated in 2014 that the average cost for each lost or stolen record is \$201.

“Costs are relatively minor, considering what the cost of a loss can be,” said Nicholas Economidis, Houston-based underwriter of professional liability and specialty lines at Beazley P.L.C.

“It’s the single best investment a company can make” in terms of improving its risk profile, Mr. Parisi said, and a factor underwriters take into account in their underwriting.

And the training pays off, say experts. “We certainly see a correlation between the quality of the training and the frequency of loss” associated with events or incidents, Mr. Economidis said.



## PHISHING TEST CATCHES MANY IN ITS NET

A fake “phishing” attack by the city auditor’s department in Kansas City, Missouri, led to some concrete recommendations regarding how to prevent the problems created by phony emails in the future.

A staff member, a certified information systems auditor, came up with the idea for the fake phishing attack after a training session, said city auditor Douglas Jones.

“We thought it was a really timely audit for us to do with all the breaches going on to see how our staff handled a phishing email,” as well as how the information technology staff responded to the incident, said Mr. Jones.

In March, the auditing department embedded a link to a fake website in an email. Employees visited the website more than 600 times within the first 24 hours after the emails were sent.

About 280 of the 3,115 city employees to whom the email was delivered provided their system login information, including email address, login ID and password to the fake website. “Had our test been an actual phishing email, a hacker would have had about 280 chances to infiltrate the city’s information systems” says the report, issued in March.

“Although some employees gave invalid credentials because they suspected the mail was a phishing email, just clicking the website link in the email could expose the city’s information systems to risk.”

The report notes employees who provided credentials were from all city departments, including those that handle confidential and sensitive information.

Recommendations made by the auditing department in the report include implementation of an IT security awareness program and mandatory continuous training for all city IT users.

Others include developing a comprehensive cyber security incident response plan. The report notes that though the IT department responded appropriately, it lacks written procedures.

Mr. Jones said the city has six months to respond to the report, which has been well-received.

By Judy Greenwald

## SURVEY

Continued from page 16

grams by increasing both limits and the percentage of limits dedicated to cover costs associated with dealing with the immediate aftermath of a data breach, said Rich DePiero, New York-based head of cyber and technology in North America for Swiss Re Corporate Solutions Ltd.

“Even a few years ago on a \$10

million limit, maybe 20% of that went to cover data breach costs,” he said. “Now, instead of buying \$50 million in limits just to get \$8 million in breach costs, those breach costs are now full limits.”

According to the risk managers surveyed, the average coverage limit for cyber risk was \$24 million, while 18.9% of respondents said they have more than \$50 million in coverage.

Still, many feel the limits are insufficient for large companies.

“If you are a company with a \$30

billion market cap, I’m not sure the market is there to buy what could be considered the proper amount of insurance,” Ms. Snow said. “If all the big companies in the market went out and bought what’s considered a proper amount, I’m not sure that the capacity is there.”

Mr. DePiero said there’s a divergence between the large market and middle market for cyber cover.

“In the middle market space, you have seen it move toward more a partnership or service model,” he

said. “Less sophisticated clients can come to their insurer and obtain access to some of the best (forensic and technology) service companies in the world to help them mitigate losses or prepare them so that they don’t have a loss.”

In addition to buying a greater amount of cyber insurance, companies are also increasing spending on other cyber risk mitigation measures such as tools that provide active monitoring and analysis of information security, the sur-

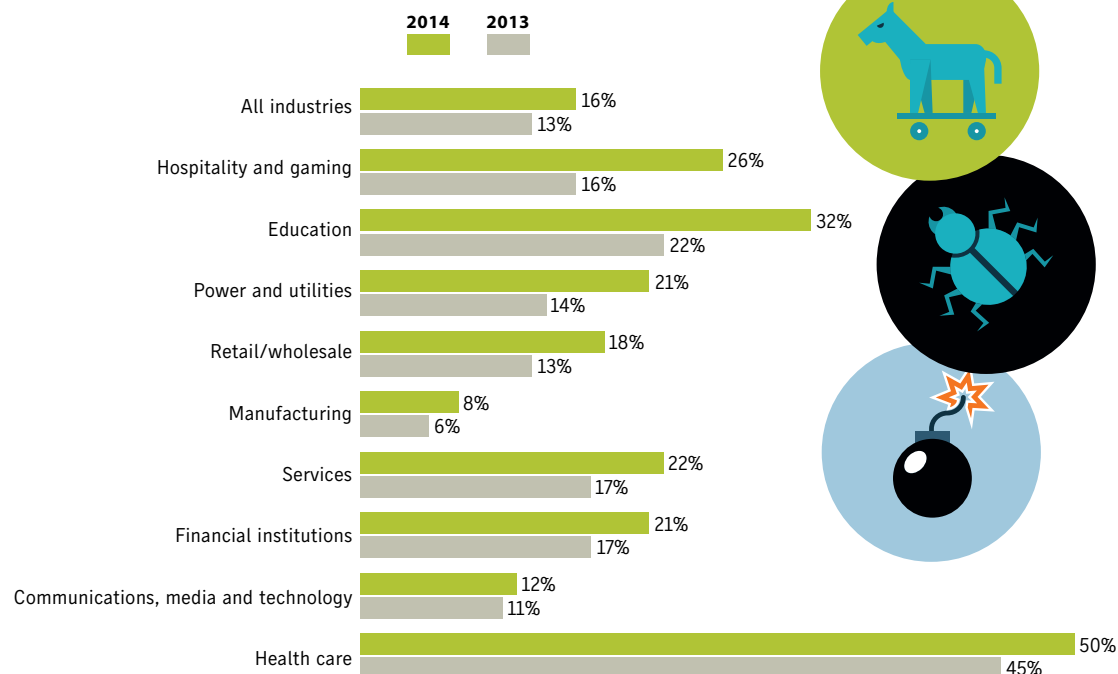
vey found, with 53% of risk managers indicating that their company would increase spending on cyber security in 2015.

“A few years ago, IT and security was seen as a cost of doing business,” Mr. DePiero said. “Now, we have heard some companies say that their security operation has an unlimited budget — if they believe a security measure is worthwhile, they have automatic approval for it.”

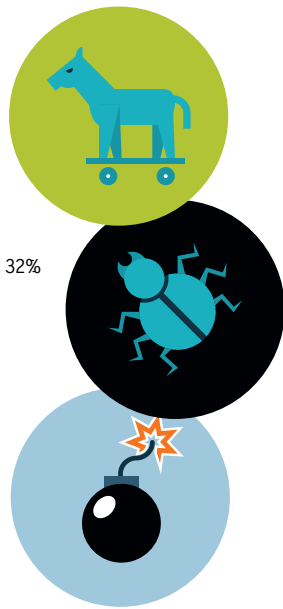
Full results of the *Business Insurance* survey on page 21.

## GROWING CYBER COVERAGE

Percentage of brokerage clients by industry that purchased stand-alone cyber insurance



Source: Marsh & McLennan Cos. Inc., based on Marsh USA Inc. clients



# Cyber criminals widen scope of industries to attack

## Retail, health care prime targets but others vulnerable

BY JUDY GREENWALD

The health care and retail sectors, among others, will continue to be primary targets for cyber hackers for the foreseeable future.

But, hackers will also expand their efforts to attack all sorts of companies, say experts, who point to smaller companies, especially those that serve as vendors to larger firms, as particularly vulnerable.

Furthermore, despite companies' best practices, their efforts are generally defensive, as creative hackers keep developing ways to attack firms.

Retailers and health care entities are particular targets because of the vast amounts of data they hold. But the introduction of chip and PIN technology on payment cards may promise at least a partial solution for retailers.

Payment cards are "a significant vulnerability right now that's been identified, and companies are working toward" the new technology, "but it's costly, and it's an expense they didn't anticipate, so it's going to take some time to get established and integrated into the network," said Peter Foster, New York-based senior vice president of network security and privacy, media, tech professional and intellectual property at Willis North America Inc.

With respect to health care, a study issued this month by Traverse City, Michigan-based

Ponemon Institute L.L.C. found that more than 90% of the firms participating in its health care data security study have had a breach, and 40% have had more than five over the past two years.

There is a perception that, because of limited resources, health care does a poorer job than other sectors in managing cyber risk.

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Peter Foster,  
Willis North America Inc.

"If you look at some of the largest health care entities, they've grown partially organically, but they have also grown externally by acquisition," said Kevin Kalinich, Chicago-based global practice leader of cyber risk solutions at Aon Risk Solutions.

"When you expand by acquisi-

tion, it's entirely difficult, complicated and expensive to integrate legacy computer systems," he said. Furthermore, the sector has also been affected by the transition from hard-copy records to electronic health records, which has further increased its vulnerability, Mr. Kalinich said.

At the same time, "they're still trying to make their services more efficient and easier for patients to use, which is medical care's first obligation," he said.

It is also inaccurate to say health care, retail, financial and hospitality industries have been the largest targets of cyber attacks, Mr. Kalinich said.

There have also been attacks affecting the pharmaceutical, agribusiness, manufacturing and aviation sectors, but the public is less aware of these, in part because certain industries such as health care must report this information, putting them under more scrutiny, he said.

Sarah Stephens, London-based head of cyber, technology and media errors and omissions at JLT Specialty Ltd., said she believes hospitality and anything related to travel, including airports and airlines, will become targets in particular. She referred, for instance, to a report by British Airways P.L.C. in March of unauthorized activity relating to some of its frequent-flyer Executive Club accounts.

The targets will expand over time, said Matt Donovan, Atlanta-based national underwriting leader for technology and privacy at

Hiscox USA. "You have a lot of people" who search for open ports on firewalls, which basically allow them to access networks and acquire information, he said.

"Hacker criminals are opportunists, and they will attack anyone and everyone who they think will get them some return on their time and their effort," said Robert Parisi, Marsh USA Inc.'s national cyber product leader in New York.

These will include smaller companies. "Unfortunately," he said, "smaller companies can be more vulnerable than their larger brethren," which is a function of large organizations having more money to spend.

"Now smaller companies are actually being used in an effort to access larger companies as a springboard," said William P. Cosgrove, Stamford, Connecticut-based managing principal and practice leader for financial institutions at Edgewood Partners Insurance Center Inc.

Risk managers who are securing their own hardware and assets must make sure their vendors are doing the same, or they are "going to be the entry into your system for the bad guys," said Eric Cernak, Hartford, Connecticut-based Munich Re U.S. cyber risk practice leader for Munich Reinsurance Co.'s Hartford Steam Boiler & Insurance Co. unit.

Immediate profit is not necessarily the hacker's motive, say experts. Nicholas Economidis, Houston-based underwriter of professional liability and specialty lines at Beazley P.L.C., said hackers may be seeking intellectual property data, have a political agenda or be motivated by curiosity or to see whether they can find security flaws.

Defenders are inherently one step behind attackers, Mr. Donovan said. Companies must continually defend themselves against new threats as the hackers discover new vulnerabilities, he said.

The problem with system intrusions is that "the best-laid plans are typically being sort of second-guessed" and overcome by the hackers, said Katherine Keefe, Philadelphia-based global head of Beazley's Breach Response Services, pointing to the data breach at Indianapolis-based Anthem Inc., which she said was hacked despite its size, sophistication and considerable information technology budget.

Mr. Parisi said it is not a matter of having a zero-loss mindset, but rather one of resiliency and of how well-prepared a company is to deal with a disaster or business interruption.

"Resilience is really the issue people are looking at today," he said.

## Federal law for cyber risk possible in 2015

### Uniform rules, company privacy top concerns

BY MARK A. HOFMANN

This looks like the year some form of cyber security legislation will finally win congressional approval and be signed into law, according to Washington observers.

But the questions remain: What will a law look like? And how effective will it be? Opinion is sharply divided among cyber security legal experts and others.

Two issues dominate the cyber security debate. One is how to encourage private entities to share information about cyber threats and responses without incurring liability and without endangering privacy. The other is how to bring some sort of uniformity to the reporting of cyber breaches.

By large bipartisan margins, the House has passed two bills dealing with information sharing. The National Cybersecurity Protection Act, H.R. 1731, and the Protecting Cyber Networks Act, H.R. 1560, would, among other things, give private entities a certain amount of protection from liability that might arise while sharing information.

Both have gone to the Senate, where another bill dealing with information sharing, the Cybersecurity Information Sharing Act, S. 754, was introduced this year. Several other pieces of legislation touching on cyber security have been introduced in both chambers as well.

"We expect the Senate will pass a cyber security bill, the House and Senate bills will be reconciled, and the final bill will be signed into law this year," said a spokesman for the House Intelligence Committee.

For its part, the Risk & Insurance Management Society Inc. is particularly interested in uniform cyber threat reporting standards.

"The key to cyber legislation is uniformity, particularly as it relates to laws governing notifications following a data breach," Nathan Bacchus, senior government affairs manager for the New York-based risk management professional organization, said in an email.

"There are currently 47 different state laws governing how notifications must be carried out," he said. "RIMS' hope is that Congress can

See LEGISLATION next page

## WHITE HOUSE LENDS SUPPORT TO CYBER BILLS

The Obama administration has issued statements of administration policy on H.R. 1560, the Protecting Cyber Networks Act, and H.R. 1731, the National Cybersecurity Protection Advancement Act.

In both cases, the White House supported passage of the bills by the House of Representatives, adding that both needed change. It has called for amendments to rein in the scope of liability protections granted businesses.

It closed its statements on both bills with identical language spelling out a general philosophy regarding cyber security legislation:

“Information sharing is one piece of a larger suite of legislation needed to provide the private sector, the federal government and law enforcement with the necessary tools to combat cyber threats. In addition to updating information sharing statutes, the Congress should incorporate privacy and civil liberties safeguards into all



aspects of cyber security and enact legislation that creates a strong and consistent notification standard for breaches of personal data, as well as legislation that gives law enforcement the tools to fight cyber crime in the digital age.”

By Mark A. Hofmann

## LEGISLATION

Continued from previous page

enact a federal standard that would increase efficiency for any organization (that) experiences such a breach, while also ensuring that those affected are properly informed and notified. RIMS board of directors will continue to review and make recommendations to better protect organizations and the public against cyber threats.”

A series of high-profile cyber breaches at such well-known businesses as retailers Target Corp. and The Home Depot Inc. as well as health insurer Anthem Inc. focused public and congressional attention on the need for companies and the government to bolster cyber defenses, one of which is sharing information about cyber attacks and responses.

“We are very supportive of the idea of information sharing, and we would very much like to see a voluntary real time cyber threat information sharing bill passed with meaningful liability protections,” said Angela Gleason, associate counsel of the Washington-based American Insurance Association, which is working with the Protecting America’s Cyber Networks Coalition to ensure a bill passes this session. “Cyber information sharing will allow us to strengthen our nation’s resiliency against cyber-attacks and allows us to come together against a common bad actor.”

Ben Beeson, vice president for cyber security and privacy with Lockton Cos. L.L.C. in Washington, also is optimistic about legislative action.

“Ultimately all three bills are trying to achieve the same end, with some nuances. In some shape or form, there is going to be cyber security legislation in 2015,” said Mr. Beeson.

Prominent cyber security attorney Howard Waltzman, a partner at Mayer Brown in Washington, agrees, pointing to the overwhelming majority by which both House bills passed. He added that the official statement of administration policy “was a little critical, but compared to the last Congress, it was materially better and more positive about the legislation to get to the point where the president will sign it.”

Though the White House supported passage of the House bills, it called for amendments to rein in the scope of liability protections granted businesses.

“I’m sure there will be amendments; I feel very good about the fact that the Senate will pass it,” Mr. Waltzman said. He noted that Senate Majority Leader Sen. Mitch McConnell, R-Ky., has made cyber security a priority. Sen. McConnell

said in April that he hoped to bring cyber security legislation to the floor for debate in “the near future.”

Michael R. Overly, a partner at Foley & Lardner L.L.P. in Los Angeles, acknowledged that pressure on lawmakers “to give the illusion of some progress in this area” would get something passed but he’s not sure about what. “Let’s be honest, this particular Congress has not been a house afire with passing substantive useful legislation.”

He said that the idea of information sharing is well entrenched in the information security industry. But “the information you share could be used by the government to prosecute you for matters unrelated to cyber security,” thus creating liability for a company.

“What is new is that a certain level of liability protection will be included in the final law,” said Mr. Overly. There also are the risks inherent in information sharing. “Whenever you share information about your information security measures someone could use that information to gain access to your company,” he said.



AP PHOTO

Senate Majority Leader Sen. Mitch McConnell, R-Ky., has made cyber security a priority.

Erin F. Fonté, a member of law firm Dykema Cox Smith in Austin, Texas, notes that the outlook for information-sharing and uniform reporting standards legislation are not the same.

“If we do get something, I think the odds are the cyber security sharing component is probably what will pass,” she said. “The baseline issue is how bad is the problem?” she asked. The federal government can understand the scope only if threats are accurately reported, she said.

Besides, a national data breach notification law, favored by businesses that operate nationally, could run into problems, she said.

State attorneys general and the states themselves like the ability to highlight the issue and do the enforcement because they like to be seen as protecting consumers, she said. “I think there’s a bit of territorial issue,” with states asking whether the federal standard will offer as potent protection against cyber threats. “You have a lot of competing interests at play.”



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### CYBER SECURITY: RISK AND INSURANCE DECISION-MAKER PERSPECTIVE

<b>22%</b>	Say their companies currently use a security framework
<b>52%</b>	Are very confident/confident about how cyber risks are managed
<b>53%</b>	Expect security investments to increase in 2015
<b>40%</b>	Expect cyber insurance to be a top security spending category in 2015
<b>55%</b>	Currently have some type of cyber protection
<b>34%</b>	Currently have a specific cyber policy
<b>\$2.2 million</b>	Average annual security investment

**\$24.1 million** Average limit of cyber policy

### CYBER SECURITY: BROKER, CONSULTANT AND INSURER PERSPECTIVE

<b>18%</b>	Clients currently using a security framework
<b>8%</b>	Are very confident/confident about how clients manage cyber risks
<b>64%</b>	Expect clients' security investments to increase in 2015
<b>65%</b>	Expect cyber insurance to be a top client security spending category in 2015
<b>58%</b>	Clients with some type of cyber coverage
<b>35%</b>	Clients with a cyber-specific policy
<b>\$1.2 million</b>	Average annual client security investment

**\$21.3 million** Clients' average limit of cyber policy

### DOES THE GOVERNMENT HAVE A ROLE IN REPORTING OR REGULATING CYBER SECURITY?

	Risk and insurance decision-makers	Brokers, consultants and insurers
<b>Yes (net)</b>	<b>83%</b>	<b>87%</b>
Only among public companies	8%	6%
Only among government entities	30%	32%
Across all types of companies	45%	49%
<b>No, the government has no role</b>	<b>17%</b>	<b>13%</b>

### CYBER RISK POLICIES AND PROGRAMS IN PLACE\*

Policy/program	Risk and insurance decision-makers
Cyber incident response team	58%
Annual security risk assessment	57%
Crisis response plan	56%
Periodically consult with cyber security expert to identify risks	36%

\*Multiple responses

### TOP THREE CYBER SECURITY CONCERNS

Largest concerns for your company or your clients\*

	Risk and insurance decision-makers	Brokers, consultants and insurers
Hackers (outsider attack)	80%	91%
Insider risk (misuse of information/data manipulation by authorized employees)	58%	61%
Operational risks associated with the environment (power failure, natural disasters, etc.)	47%	33%

\*Multiple responses

### IMPROVING CYBER SECURITY

The most important actions companies can take to improve cyber security\*

Action	Risk and insurance decision-makers
Track, document and report every cyber incident	45%
Adopt the National Institute of Standards and Technology cyber security framework	44%
Purchase the appropriate cyber coverage	33%
Adopt the 2013 COSO <sup>1</sup> cyber risk guidelines	28%

\*Multiple responses

<sup>1</sup> The Committee of Sponsoring Organizations of the Treadway Commission

### CYBER SECURITY CHALLENGES FOR 2015-2016\*

Challenge	Risk and insurance decision-makers
Developing an internal cyber security culture	57%
Defining IT systems and procedures risks	45%
Implementing a cyber risk program based on existing and new technologies/software	31%
Making cyber risk management a key priority for the executive team	27%
Achieving collaboration in cyber risk initiatives across business units/departments	25%

\*Multiple responses

### CYBER SECURITY SPENDING

The top five spending categories in 2015\*

	Risk and insurance decision-makers	Rank	Brokers, consultants and insurers	Rank
Active monitoring and analysis of information security	51%	1	41%	4
Data loss prevention tools	43%	2	48%	2
Employee cyber security awareness training	41%	3	45%	3
Tools to discover unauthorized access	40%	4	39%	5
Cyber insurance	40%	4	65%	1

\*Multiple responses

### GOVERNMENT CYBER SECURITY RESPONSIBILITIES\*

	Risk and insurance decision-makers	Brokers, consultants and insurers
<b>Promote cyber security awareness, education and training</b>	<b>43%</b>	<b>48%</b>
Establish a cyber security office	35%	32%
<b>Establish a mandatory reporting system for cyber attacks</b>	<b>29%</b>	<b>33%</b>
Define cyber self-defense standards	27%	31%
<b>Create an infrastructure to enable information sharing across companies</b>	<b>26%</b>	<b>24%</b>
Reward companies for good cyber behavior	18%	18%

\*Multiple responses

## Online policy-checker aims to cut errors

Document analysis software company Adsenza Ltd. has launched an insurance policy-checking product for North American brokers that aims to minimize potential errors and omissions exposures and reduce policy backlog.

The Web-based product uses document comparison and analysis software to allow brokers to analyze complex policy documents, understand the differences in coverage and determine if coverage adheres to industry and company standards, Chicago-based Adsenza said in a statement.

The product also can be used to check same-insurer renewal policies, renewal policies with a change in insurer, new business and placement documents, Adsenza said.

## Hanover expands liability coverages

Hanover Insurance Group Inc. is introducing an enhanced suite of general liability and umbrella coverage offerings, the insurer said.

The general liability suite consists of more than 20 coverages and enhancements, including coverage for newly acquired or formed organizations until the end of the policy period and for additional policyholders, the Worcester, Massachusetts-based insurer said in a statement.

The umbrella liability coverages help eliminate potential gaps in coverage, and allows agents to offer additional protection in the event of a catastrophic loss, with limits that go beyond their clients' scheduled general liability, commercial auto and employers liability coverages, the insurer said.

The coverages are available on new and renewal policies effective immediately, the insurer said.

## Aon Benfield tool models Canadian flooding risks

Aon Benfield Group Ltd. has launched a probabilistic flood model for Canada.

The model will allow insurers and reinsurers to better underwrite and manage riverine and off-flood plain exposures, Aon Benfield said in a statement.

The model offers a view of Canadian flood risk using location-specific underwriting data intended to enable insurers to understand the effect of accumulations on their portfolios, structure reinsurance cover and meet regulatory and rating agency requirements, Aon Benfield said.

The tool assesses the potential level of damage based on loss data from Aon Benfield's catastrophe model development team, Impact Forecasting's seven other country-specific flood models and Canadian client claims information, according to the statement.

Aon Benfield said 2013 was the costliest year in the Canadian insurance industry's history because of flooding in Toronto and Calgary, Alberta, leading flood risk management to become an



## Lloyd's group to cover renewables

Lloyd's of London company Ascot Underwriting Ltd. has joined Chaucer P.L.C. and Assuranceforeningen Skuld to form the Renewco Consortium, an underwriting platform for the renewable energy industry.

The consortium, to be led by Ascot and managed by Chaucer, will provide capacity of up to \$165 million, Ascot said in a statement.

The consortium will focus initially on utility-scale onshore wind and solar PV installations, or power systems, according to the statement.

"As the renewable energy market continues to grow and evolve, there is increasing demand from our brokers and clients for efficient access to specialist Lloyd's capacity," Ascot CEO Andrew Brooks said in the statement. "By creating a consortium with like-minded first-class capital within Lloyd's, we are generating more meaningful scale and market presence, supporting the expanding renewable energy sector."

urgent priority for the industry.

"While Southern Alberta and Toronto have diligently been rebuilding their communities following the staggering floods of 2013, our in-house catastrophe

experts from across the globe have focused their efforts to develop a flood model for Canada from the ground up," David Sloan, Toronto-based president and CEO of Aon Benfield Canada, said in the statement. "Based on its release, I am thrilled that we are able to provide a high-quality tool that will hopefully transform how Canadian insurers underwrite and manage their flood risks both from a location level and aggregate accumulation perspective."

## CNA unveils life sciences product liability policy

CNA Financial Corp. has launched an admitted product liability policy for life sciences companies worldwide.

The life sciences products-work hazard policy provides claims-made product liability coverage with aggregate limits of up to \$10 million and a minimum premium of \$2,500, CNA said in a statement.

Coverage can be expanded to include professional and technology liability on a combined endorsed form, CNA said.

CNA, which also offers life science companies a nonadmitted coverage option, said the policy is available in about 30 states with filings pending in others.

"By offering life sciences companies the choice of either an admitted or nonadmitted option for primary coverage, we can better serve this market's product and professional liability needs, particularly those of smaller emerging life science companies," Ryann H. Elliot, CNA's vice president of underwriting, said in the statement. "Often, smaller life sciences companies do not address their potential product and professional insurance needs because their product is either in the preclinical or clinical trial phase, or they've been put off by the cost of the insurance."

## Beazley policy covers legal firm liabilities

Beazley P.L.C. has introduced Beazley Practice Protect, a management liability policy that aims to help law firms confront the evolving market for counsel and legal services, the London-based insurer said.

The policy covers law firm partners and nonpartner officers, such as CEOs and chief operating officers, Beazley said in a statement.

The policy also provides an additional excess limit for nonpartner executives for nonindemnifiable management liability claims in the event of an investigation, Beazley said.

Additionally, the policy includes coverage extensions, such as cyber liability coverage and sublimited wage-and-hour defense cost coverage as part of employment practices liability protection, according to the statement.

"We have sought to design Beazley Practice Protect to provide the most responsive coverage possible for the widening range of management liability exposures that today's law firms confront," London-based Wayne Imrie, Beazley's management liability underwriter, said in the statement.

## DEALS & MOVES

### Wholesaler Burns & Wilcox opens Midwest office

Burns & Wilcox Brokerage has opened an office in St. Louis, the wholesale brokerage announced.

Denise Dockendorf, formerly a senior vice president at Worldwide Facilities Inc., has been named managing director and will oversee operations at the office.

Burns & Wilcox Brokerage has locations in New York City; San Francisco; North Dallas; Atlanta; Tampa, Florida; Scottsdale, Arizona; and St. Louis. It is an independent business unit of the H.W. Kaufman Financial Group.

### Towers Watson buys health plan technology firm

Towers Watson & Co. has acquired Acclaris, a Tampa, Florida-based software provider for accounts such as health savings accounts and health reimbursement arrangements linked to consumer-driven health plans.

The purchase price was \$140 million, Towers Watson disclosed.

Founded in 2001, Acclaris, which has more than 600 employees and expects 2015 revenues to be about \$35 million, says its products support 1.4 million accounts, which also include flexible spending accounts.

Acclaris will continue to be based in Tampa and will operate as a separate line of business within Towers Watson's exchange unit. It will keep its name for the foreseeable future, and all employees will be retained, a Towers Watson spokeswoman said.

### Marsh acquires benefits brokerage for Japanese firms in U.S.

Marsh L.L.C. has acquired Sumitomo Life Insurance Agency America Inc., the employee benefits brokerage of Osaka, Japan-based Sumitomo Life Insurance Co. A Marsh spokeswoman declined to comment on the terms of the deal, which were not disclosed.

Based in New York, Sumitomo Life Insurance Agency America provides employee benefits to U.S.-based subsidiaries of Japanese companies, Marsh said in a statement.

As part of the deal, Sumitomo Life Insurance Agency America employees will become part of Marsh's Asia Client Services team, reporting to New York-based John McDonnell, president and CEO of Asia Client Services in the United States, Marsh said.

The spokeswoman said they will relocate to six existing Marsh Asia Client Services offices in New York; Los Angeles; Irvine, California; Atlanta; Columbus, Ohio; and Cincinnati.

### California broker acquires benefits consulting firm

Insurance broker Edgewood Partners Insurance Center has acquired Los Angeles-based employee benefits consulting firm Executive Financial Inc.

Executive Financial, founded in 1995, specializes in executive benefits and life and disability insurance strategies, EPIC said in a statement.

The acquisition of Executive Financial is San Francisco-based EPIC's second this month. It also acquired Sorci Insurance Brokerage Inc., a specialist in providing comprehensive workers compensation insurance services to California new car auto dealers.

# CYBER RISK SUMMIT 2015

September 27-28, 2015  
JW Marriott, San Francisco



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

## AGENDA AT A GLANCE:

### DAY 1

**4:30 p.m.-7:00 p.m. Solutions Expo**  
Meet cyber risk solution vendors to learn about products and services to address your cyber risk exposures.

### DAY 2

**8:00 – 8:30 a.m. Networking Breakfast**

**8:30 – 8:40 a.m. Welcome Remarks**



**8:40 - 9:20 a.m. Morning Keynote: Malcolm Palmore, FBI San Francisco Asst. Special Agent in Charge of Cyber**



**9:25 – 10:05 a.m. Keynote 2: The State of ICS Cyber Security: What is Happening and What Needs to be Done**  
Speaker: Joe Weiss, Managing Partner, Applied Control Solutions L.L.C.

**10:05 – 10:25 a.m. Networking Break**

**10:25 – 11:15 a.m. Session 1: You're Not a Retailer, but You're Still a Target (pun intended)**  
This session will explore new and emerging cyber threats such as attacks on critical infrastructure that could interrupt operations and supply chains.

**11:20 a.m.-12:10 p.m. Session 2: Quantifying the Impact of a Cyber Incident**  
Using data analytics and modeling scenarios derived from actual cyber events, this session will examine potential costs to organizations when their systems are hacked.

**12:10 - 1:00 p.m. Networking Luncheon**

### DAY 2 (cont.)

**1:00 - 1:40 p.m. Session 3: Legislative and Regulatory Landscape**

Examining federal and state legislation, risk managers will be updated on data privacy and security requirements for their organizations.

**1:35 - 2:30 p.m. Session 4: A Buyer's Guide to Cyber Insurance**

Discover the latest advances in cyber risk insurance coverage, including available coverage limits and costs, terms and conditions.

**2:30 - 3:10 p.m. Session 5: Case Study: Southwest Airlines**

**3:10 - 3:30 p.m. Networking Break**

**3:30 - 4:20 Session 5: Cyber Risk Mitigation: Sometimes Insurance Isn't Enough**

Explore risk mitigation strategies designed to reduce this exposure when cyber risk coverage is either unavailable or inadequate.

**4:25 - 5:10 p.m. Session 6: Cyber Improv: Audience Participation Encouraged**

In an interactive session, the audience will lead various professionals through a data incident. Attorneys, insurers, forensics, risk manager, credit monitoring, public relations and, yes, a "shot clock" will be included!

**5:15 - 5:50 p.m. Closing Keynote: Jeff Moss, a former hacker known as the Dark Tangent, and founder of DEF CON and Black Hat hackers conventions**

**5:50 - 5:55 p.m. Closing Remarks**

**6:00 - 7:30 p.m. Closing Cocktail Reception**



**Track The Hacker**

Winner of the sweepstakes will be announced - A trip to a BI Event of his/her choice.

## Find out what to do, before they find you.

For more details visit: [businessinsurance.com/cyberrisksummit](http://businessinsurance.com/cyberrisksummit)

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**To sponsor event:**

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978.317.5032

**To speak at event:**

Joanne Wojcik  
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**To attend event:**

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Track the  
**HACKER**

The hunt begins in the next issue of

**BUSINESS INSURANCE**


Some *Business Insurance* events are for risk managers only.  
Winners must fit audience criteria to be eligible for the prize.

## LADY LIBERTY HOSTS THE BIGGEST CELEBRATION OF WOMEN IN RISK MANAGEMENT

Nominations are now open for the 10th anniversary of Women To Watch presented by *Business Insurance*.

We're spotlighting a decade of women who are doing outstanding work in commercial insurance, reinsurance, risk management, employee benefits and related fields.

To nominate someone, visit [businessinsurance.com/womentowatch](http://businessinsurance.com/womentowatch)



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December 14-15  
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To speak at event:  
Joanne Wojcik  
[jwojck@businessinsurance.com](mailto:jwojck@businessinsurance.com)  
303.278.7444

For event information:  
Julie Ford  
[jford@businessinsurance.com](mailto:jford@businessinsurance.com)  
312.649.5441

### LEGAL NOTICE

#### NOTICE

TO THE POLICYHOLDERS, CLAIMANTS, CREDITORS AND ALL OTHER PERSONS INTERESTED IN THE AFFAIRS OF LEGION INSURANCE COMPANY (IN LIQUIDATION) AND VILLANOVA INSURANCE COMPANY (IN LIQUIDATION) NOTICE IS HERBY GIVEN THAT: Legion Insurance Company (In Liquidation) ("Legion") and Villanova Insurance Company (In Liquidation) ("Villanova") were placed into Liquidation by Orders of the Commonwealth Court of Pennsylvania, dated July 25, 2003, effective July 28, 2003 (the "Liquidation Orders"). The Liquidation Orders appointed the Insurance Commissioner of the Commonwealth of Pennsylvania as statutory Liquidator of Legion and Villanova and vested her and her successors with title to all the property, assets, contracts and rights of action of Legion and Villanova. On February 19, 2015, the Liquidator filed in the Commonwealth Court of Pennsylvania Applications to Establish a Claims Bar Date for Legion and Villanova. On April 29, 2015, the Commonwealth Court entered Orders granting the Applications and setting a Claims Bar Date of July 28 2015. Therefore, all persons who may have a claim against Legion or Villanova, against the Liquidator, her agents or representatives, or in any way affecting or seeking to affect any of the assets of Legion or Villanova, wherever or however such assets may be owned or held, directly or indirectly, whether that claim is reduced to judgment, liquidated, unliquidated, fixed, matured, disputed, undisputed, legal, equitable, secured, or unsecured, must file a Proof of Claim by the Claims Bar Date of July 28 2015, or the claim will be forever barred. You may obtain a copy of the Order and Proof of Claim form at [www.legioninsurance.com](http://www.legioninsurance.com), or by writing to Legion Insurance Company (In Liquidation), or Villanova Insurance Company (In Liquidation), P.O. Box 58160, Philadelphia, PA 19102-8160, or calling Legion or Villanova at (215) 979-7879.

For 2015 BI Rates or Editorial Calendar call Pegeen Prichard at 312.649.5446 or [pprichard@businessinsurance.com](mailto:pprichard@businessinsurance.com)

### ANTI-FRAUD NOTICE

**Amalgamated Life Insurance Company is committed to preventing fraud in regard to the insurance coverage it issues. Therefore, Amalgamated Life, as required by the New York State Department of Financial Services makes the following statement:**

Any person who knowingly and with intent to defraud any insurance company or other person, files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material there to, commits a fraudulent insurance act, which is a crime and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

Anyone knowing of a fraudulent act should call Ellen Dunkin at:  
**Amalgamated Life Insurance Company**  
333 Westchester Ave.  
White Plains, NY 10604  
800-624-5844

### LEGAL NOTICE

#### IN THE MATTER OF THE LIQUIDATION OF MIDLAND INSURANCE COMPANY Supreme Court of the State of New York New York County, IAS Part 21 Index No. 41294/86

#### NOTICE

By order dated April 3, 1986 ("Liquidation Order"), the Supreme Court of the State of New York, County of New York ("Supervising Court") placed Midland Insurance Company ("Midland") into liquidation ("Liquidation Proceeding") and appointed the then-Superintendent of Insurance of the State of New York (and his successors in office), as liquidator ("Liquidator"). The Superintendent of Financial Services of the State of New York has now succeeded the Superintendent of Insurance as Liquidator of Midland. The Liquidator carries out his duties through the New York Liquidation Bureau, ("NYLB"), 110 William Street, New York, New York 10038.

The Supervising Court signed an order to show cause on February 9, 2015, submitted by the Liquidator, with supporting papers ("OTSC"), seeking, among other things, an order establishing a December 31, 2015 deadline applicable to Undetermined POC (Proof of Claim) Claimants, as defined in the OTSC. The OTSC provided all Undetermined POC Claimants, remaining Midland reinsurers and triggered state guaranty funds with the opportunity to be heard on the OTSC, a copy of which, along with supporting papers, is available on the NYLB website at <http://www.nylb.org>. No Undetermined POC Claimant or any other party submitted any opposition to the relief sought in the OTSC.

PLEASE TAKE NOTICE, that the Supervising Court issued an Order, dated April 24, 2015 and entered on April 30, 2015 ("2015 Order"), establishing December 31, 2015, as the last date by which an Undetermined POC Claimant may submit to the Liquidator a Claim Amendment, as defined in the Midland decision and order, entered on July 1, 2011 ("Bar Date Order"), that was capable of having been submitted by the January 31, 2012 deadline established in the Bar Date Order, and any proof in support of the allowance of the claim of an Undetermined POC Claimant that was capable of having been submitted by the January 31, 2013 deadline established in the Bar Date Order. The 2015 Order and the Bar Date Order are available to be viewed on the NYLB website.

The 2015 Order further provides, among other things, as follows:

The 2015 Order does not amend, modify or supersede the Bar Date Order, except to the extent that it provides Undetermined POC Claimants with the opportunity to submit Claim Amendments and proofs by the December 31, 2015 deadline.

Any such Claim Amendments and proofs shall be submitted to the Liquidator in writing either electronically on or before the December 31, 2015 deadline, or by first-class mail, postage paid and postmarked on or before the December 31, 2015 deadline, or by overnight courier service, fees paid and with written acknowledgement of receipt by such courier on or before the December 31, 2015 deadline, addressed to:

If submitted electronically: [midland@nylb.org](mailto:midland@nylb.org)  
If submitted by first-class mail or overnight service: Superintendent of Financial Services of the State of New York as Liquidator of Midland Insurance Company, 110 William Street, 16th Floor, New York, NY 10038-3889, Attn: Gail Pierce-Siponen, Director, Creditor and Ancillary Operations

The Liquidator shall not consider any submissions by the Undetermined POC Claimants after the December 31, 2015 deadline.

If the Liquidator determines that a Claim Amendment submitted in accordance with the 2015 Order does not amend an undetermined, timely-filed (or deemed filed) proof of claim, the Claim Amendment shall be deemed a proof of claim filed after April 3, 1987. If the Liquidator allows that claim, that claim shall fall under Class Seven in priority of the distribution of assets, unless such claim should fall under Class Eight or Class Nine of the distribution scheme set forth in Insurance Law Section 7434.

The Liquidator's determination that a Claim Amendment submitted in accordance with the 2015 Order does not amend an undetermined, timely-filed (or deemed filed) proof of claim may be challenged before the Special Referee appointed to hear and report on written objections to claims recommended for disallowance in accordance with existing procedures adopted for the Midland estate.

The Liquidator shall recommend allowance or disallowance of the amended claims, if any, of Undetermined POC Claimants as promptly as possible after December 31, 2015, by issuing Notices of Determination ("NODs") in accordance with the adjudication procedures adopted for the Midland estate.

Any objections to the NODs or any other disputes arising from Claim Amendments or submissions of proof in support of allowances by Undetermined POC Claimants shall be referred to the court-appointed Special Referee to be heard in accordance with existing procedures adopted for the Midland estate. Further information may be obtained at the NYLB website or by calling (212) 341-6795 (direct claims and state guaranty fund inquiries) or (212) 341-6459 (reinsurance inquiries).

Dated: May 4, 2015, BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York as Liquidator of Midland Insurance Company.

**BUSINESS INSURANCE®**

## HINES

Continued from page 4

“I thought that executive risk insurers would have a greater interest in our ERM program, but they didn’t have as much interest as I expected,” Ms. Pemberton said at the Harold H. Hines Jr. Memorial Symposium in Chicago this month, which was presented by the Chicago chapter of the Risk & Insurance Management Society Inc. and *Business Insurance*. “However, I did use ERM in our underwriting meetings to describe what we did internally and position the risk in a way that it should be presented.”

Janice Ochenkowski, Chicago-based international director at commercial real estate services and investment firm Jones Lang LaSalle Inc., said she’s seen some positive insurer response regarding the company’s ERM practices.

“It’s one thing to say you have ERM in place, but I think the difference can be made when you can explain in detail some of the things that you have done that make an operational difference,” Ms. Ochenkowski said. “You have to connect the dots between what you are doing in your ERM program and how it lessens or mitigates the risk for a particular

line of insurance. If you can draw that picture, you can have some impact on better pricing or terms.”

Mr. Kapoor said risk managers also need to convince business unit leaders that ERM programs are worth the time and effort.

“One analogy that you hear is that ERM is like an orchestra where the risk manager is the conductor,” he said. “The problem is that we are not the ones playing the instruments. If you are the head of a business unit, you have no obligation to listen to me, but I have an obligation to try and influence you.”

Ms. Ochenkowski warns that focusing too much on quantifying ERM’s financial returns risks obscures its larger value to an organization by treating it as an object rather than a methodology, and that risk managers should strive to integrate ERM into the organization’s DNA.

“ERM shouldn’t exist to be a profit center, a cost center or a group within an organization,” said the former RIMS president. “Rather, it ought to serve as a catalyst for raising the awareness of risks, and reduction and mitigation of those risks. The success of a good enterprise risk management program is that operationally your managers are thinking about risk and reward as they go about their tasks on a daily basis.”



Ms. Ochenkowski

## NURSES

Continued from page 4

Safe patient handling also improves productivity and reduces staff turnover,” she said.

Deb Fell-Carlson, Salem, Oregon-based policyholder safety and wellness adviser for workers compensation insurance provider SAIF Corp. said cultural resistance among staff members long accustomed to working without lifting equipment is another issue safety managers must address.

“There is a sense that use of equipment somehow depersonalizes the encounter for the patient. In reality, it frees up the caregiver and enables them to look the patient in the face and talk to them while they are moving them,” she said

But states are pushing for safer lifting methods. Eleven states have enacted laws requiring safe patient handling in recent years. At the federal level, Rep. John Conyers, D-Mich., said during a May 12 briefing with the American Nurses Association that he intended to reintroduce legislation to require health care employers to develop and implement safe patient handling and injury prevention programs. A similar bill, the Nurse and Health Care Worker Protection Act of 2013, failed to pass in 2013.

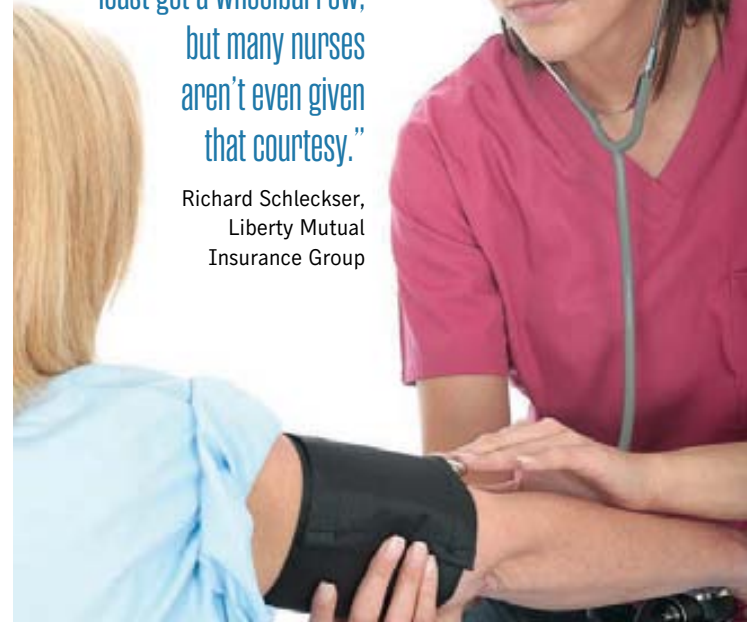
Colin J. Brigham, Exton, Pennsylvania-based vice president of safety management and ergonomics for consulting firm ISource Safety and Health Inc., said workers compensation insurers have led the charge on safe patient handling.

“The primary loss-producing source for workers compensation insurers in this space is patient handling,” Mr. Brigham said. “They know that if you are loading your body beyond its capacity, proper body mechanics won’t help you.”

Richard Schleckser, Boston-based senior service director in the risk control department for Liberty Mutual Insurance Co., sees the scope of lifting-related injuries

“A guy handling 200 pounds of bricks on a construction site would at least get a wheelbarrow, but many nurses aren’t even given that courtesy.”

Richard Schleckser,  
Liberty Mutual  
Insurance Group



in health care in the company’s claims data.

“The exposure is evident in the number of injuries we were seeing. But also when we began to assess the loads on the body, we realized that you just couldn’t do what they were doing safely,” Mr. Schleckser said. “A guy handling 200 pounds of bricks on a construction site would at least get a wheelbarrow, but many nurses aren’t even given that courtesy.”

Accordingly, underwriters are showing more interest in the patient handling procedures of health care facilities, Mr. Schleckser said.

Ms. Casia said her company’s 12 hospitals and other health care facilities in Illinois have committees that evaluate safe patient handling. In addition to securing the necessary equipment, health care providers must ensure that employees adhere to patient handling procedures, she said.

“It is very easy for any employee to want to take a short cut and not use the proper equipment, but it is safer for both the employee and

the patient if they do,” Ms. Casia said. “So, we hold our employees accountable for it.”

Ms. Enos agreed that health care providers need to take a systemic approach to safe patient handling.

“We have to look at the culture of health care all the way from senior management right down to physical therapists, technicians and nurses,” Ms. Enos said.

Mr. Brigham said the need for safe patient handling will become more important as the nursing population ages.

“The average age of an RN is now 50,” he said.

Scott Smith, director of ergonomics for Aon Global Risk Consulting, agreed that health care ergonomics is a growing concern, noting that older workers are not only more likely to be injured but also are more costly to treat.

“In a moderate-risk environment, you are going to get a different response from a 47-year-old than a 25-year-old,” Mr. Smith said. “Moreover, if somebody older does get hurt, the costs are going to be significantly higher.”

## FRIA

Continued from page 4

regulation. It would establish parity for savings and loan holding companies with current laws governing bank holding companies “to ensure that the same protections exist in both structures so that there are resources sufficient to pay policyholder claims.”

The third section, International Insurance Capital Standards Accountability, says the Fed, the Federal Insurance Office and state insurance regulators should develop consensus positions in international discussions on insurer capital standards and increase transparency in such talks. Among other things, it would establish an

advisory committee on insurance matters at the Fed.

Capitol Hill representatives of property/casualty insurance trade groups generally welcomed the reforms.

“The insurance provision reflects bipartisan agreement on opening international regulatory discussions to congressional oversight and public participation and requires federal agencies to reach a consensus with the state regulators who, after all, are the primary regulators,” said David Snyder, a vice president in the Washington office of the Property Casualty Insurers Association of America.

There also is a consensus that the FSOC’s process “needs to be improved by specifically providing for a greater voice for knowledgeable insurance regulators when

making decisions relating to insurance companies,” Mr. Snyder said. “It is critically important that Congress be on the playing field and revisit problems and issues that have emerged.”

The American Insurance Association also praised the inclusion of policyholder protections.

Tom Santos, an AIA vice president, said in an email that the Washington-based group “has long held that insurance company assets should be available to pay claims.” The policyholder provision does so “by ensuring that the implementation of Dodd-Frank aligns with the insurance business model and that insurance company assets will be walled off for the protection of policyholders and to pay claims.”

Jimi Grande, senior vice presi-

dent in the National Association of Mutual Insurance Companies’ Washington office, called the Shelby bill “very significant.” He said it reaffirms the state-based system of insurance regulation, would ensure that policyholders and regulators play a role in any liquidation, and bring “much-needed transparency to international standards setting.”

“The Shelby bill creates a vehicle to have an important conversation and while it includes many areas, we’re glad that insurance is included,” he said.

Joel Wood, senior vice president of the Council of Insurance Agents and Brokers in Washington, said in an email that he believes there is industry consensus on the provisions dealing with SIFI designations, adding “hopefully there will

be unity on the (Senate Banking) committee as well.”

He was slightly more skeptical about other provisions.

“As for the ‘sense of the Congress’ resolution and language about international coordination, I suppose it does no harm,” Mr. Wood said. But Congress established the Federal Insurance Office to speak with one voice at international negotiations, he said.

“Certainly, we live under a state-based regulatory regime, but we believe (FIO) Director (Michael) McRaith has and is doing an excellent job in representing our country. We don’t need to move back to a situation where 50-plus state regulators are cramming into a room where every other government is represented by one,” Mr. Wood said.

# AGGREGATION

Continued from page 3

mance management directorate, which monitors syndicates' business plans, is keeping a close eye on aggregation risk that would arise if too many syndicates were hit by the same or related losses, sources say.

Aside from monitoring syndicates' underwriting, Lloyd's this year introduced a risk code for cyber security property damage and updated its risk code for cyber security data and privacy breach coverage. The codes allow the Lloyd's performance management team to monitor the business that syndicates are underwriting, among other things.

Nevertheless, "Lloyd's is concerned that without proper controls, there exists a material risk of a dangerous aggregation of exposure in the market," it said in a statement.

"Systemic exposure is the problem," said Dan Trueman, head of the cyber division at Novae Group P.L.C. in London, which manages Lloyd's syndicate 2007.

Aggregation is one of the big challenges facing underwriters seeking to cover cyber, said Tim Davies, war and terrorism underwriter in the political risk and crisis management division of Canopus Group Ltd. in London. So Canopus, is examining the potential interconnectivity of cyber risks, he said.

For example, if several companies in the same sector use the same information technology system or cloud, a problem could affect a whole industry segment and result in huge claims, Mr. Trueman said.

One way to mitigate this risk is for underwriters to try to ensure clients do not rely on the same IT systems, he said.

"The realization that a catastrophic breach to a large service



Lloyd's this year introduced a risk code for cyber security property damage.

provider may, through exposed data held on a client's behalf, create a chain reaction of potential claims as an aggregated book unravels, is becoming prevalent," Mr. Clowes said. "In the same manner that a property insurer will manage its book geographically, the London market is spreading its exposure to avoid what could be considered a 'cyber hurricane.'"

While underwriters specializing in cyber risks have a keen eye on aggregation and the interconnectedness of risk, sources say that potential effects on noncyber-specific insurance could pose a wider problem.

"The aggregation that some (underwriters) must be carrying by adding cyber to property policies" could be risky, said one broker source who asked not to be named.

In a report last week, Chicago-based Fitch Ratings Inc. said "a culmination of high claims activity — or aggregation risk — for property and casualty insurers is a rising risk as insurers increase coverage to protect against cyber threats."

But the rating agency also said that it believes cyber underwriters at Lloyd's, among others, have managed their exposures and limits prudently.

# CADILLAC

Continued from page 3

Philadelphia is handling it a little differently. Last November, the authority and Transport Workers Union Local 234, its largest labor union with more than 5,000 workers, inked a new contract. While the pact boosts wages by 5% over two years, the two sides failed to come to terms on medical and prescription drug benefits, partly due to uncertainty posed by the excise tax.

"It was just a very challenging issue to try to tie down," SEPTA Chief Financial Officer Richard Burnfield said.

While the contract runs through Oct. 31, 2016, transportation and union leaders have had a meeting about the next pact. With medical and prescription drug costs rising 8% to 9% per year, "health care and

benefits certainly are going to be one of those major issues that we're going to have to talk to between now and then," Mr. Burnfield said.

Even employers well-prepared for labor talks may find it difficult to predict the effect of the tax, as the IRS has not issued proposed rules for its implementation. An IRS notice published in March, however, suggests that the agency will cast a wide net, including, for example, employees' pretax contributions to health savings accounts in premium cost calculations.

Republicans and some Democrats in the House of Representatives are backing legislation to repeal the tax but have not said how they would replace the \$87 billion in revenue that the Congressional Budget Office projects the tax would generate through 2025.

Steve Wojcik, vice president of public policy at the National Business Group on Health in Washing-

# BIOSIMILARS

Continued from page 3

cal officer at pharmacy benefit manager Express Scripts Inc. "Otherwise, we're going to see ever-increasing (spending) for the pharmacy side of the benefit (plan), and it's not going to be sustainable."

But John Malley, St. Louis-based national practice leader of pharmacy benefit consulting at Aon Hewitt, expects the effect of biosimilars on U.S. health care savings to be muted for a while. For "2020 and beyond, it could be significant" if the FDA approves biosimilars, he said.

The savings could be in the billions of dollars. A Rand Corp. report last November said biosimilars will reduce biologic drug spending by \$44.2 billion, or 4% of the total, through 2024.

Express Scripts predicted in 2013 that \$250 billion could be saved in the next decade if 11 of the biologic products whose patents expired or are about to expire come to the market as biosimilars.

While generic drugs have limited increases in pharmacy spending, now accounting for 80% of the U.S. market, biosimilars could help limit spending on biologics, Dr. Miller said.

The Rand study found biosimilars marketed in Europe cost 10% to 35% less than biologics. According to Express Scripts, there have been no known safety-related issues.

But other research indicates similar savings may not be possible in the United States. A widely cited 2007 Duke University study said high costs associated with clinical testing and manufacturing would lead to fewer biosimilars in the U.S., keeping them "relatively close in price" to branded biologics.

More recently, a Matrix Global

Advisors L.L.C. study commissioned by PBM Prime Therapeutics L.L.C. concluded that "a biosimilar manufacturer would not find it worthwhile to enter the U.S. market" because of high costs and roadblocks. According to the report, only biologics with average annual sales exceeding \$897.6 million would attract competition from biosimilars.

Experts say more guidance from the FDA on approval and regulations is needed. The FDA now has 52 programs related to the development of biosimilars to 15 biologics in its Biosimilar

## POTENTIAL SAVINGS

While only one biosimilar drug has received approval from the Food and Drug Administration, and even it is not yet on the U.S. market, research indicates biosimilars, which were authorized by the 2010 health care reform law, could save billions of dollars.

- \$44.2 billion reduction in direct spending on biologic drugs 2014-2024<sup>1</sup>
- \$250 billion savings in the next decade if 11 biosimilars are approved<sup>2</sup>
- 15 branded products developed as of March 31 in an FDA biosimilar development program
- Eight of top 20 drugs sold in U.S. in 2011 were biologics<sup>1</sup>
- 13.1% prescription drug spending increase in 2014, driven by a 30.9% jump in specialty drugs<sup>2</sup>

1 Rand Corp. 2 Express Scripts Inc.

Development Program, which expedites the review process for biosimilars. It has issued three pieces of final guidance and four pieces of draft guidance on regulatory and scientific issues related to biosimilars, according to a spokeswoman.

Questions remain on regulatory obstacles surrounding clinical testing requirements, interchangeability with biologics and naming conventions.

It's necessary to ensure biosim-

ilars are "comparative and equal in efficacy and safety" to biologics, said Mr. David Lassen, chief clinical officer at Eagan, Minnesota-based Prime Therapeutics L.L.C. Testing, however, "can be taken too far as to really blunt the successful entrance of these new agents to the market."

Interchangeability, which designates that a biosimilar can be swapped with a biologic at the pharmacy without physician approval, will lead to more market share and lower prices, said Dr. Miller, but the FDA has yet to release guidance on the issue.

While there has been litigation against biosimilars, Fiona Scott Morton, a professor of economics at the Yale School of Management in New Haven, Connecticut, and a biosimilar researcher, said it's not insurmountable.

"We have precedent in the United States that there are generic firms willing to go through the process of litigation to get into a lucrative market," she said.

Ms. Morton said it remains unclear how Medicare will handle biosimilar drugs. And the Matrix Global Advisors study said the same of private insurers.

In the meantime, employers should prepare for a biosimilar industry, sources say.

Aon Hewitt's Mr. Malley said he advises employers to put placeholders in their PBM contracts "to reserve the right to negotiate separately the pricing for biosimilars."

Additionally, Dr. Miller said employers need "to be pushing" their PBMs and health insurers "to make sure we have good ideas on how to help biosimilars be successful."

Employers and payers "have to think long term," he said, "because if they just take the short-term, easy route of sticking with the (biologic) ... they could end up without a vigorous biosimilar market, and in the long-run that will really hurt."

*"In their minds, it was gold-plated plans that were given to Wall Street executives" that would trigger the tax, but in reality "it's even high-deductible plans to the average employee on Main Street America."*

Steve Wojcik,  
National Business Group on Health

ton, said employers are focused on educating members of Congress and the administration on the "far-reaching" implications of the tax.

"In their minds, it was gold-plated plans that were given to Wall Street executives" that would trigger the tax, but in reality "it's even high-deductible plans to the average employee on Main Street

America," he said.

A 2014 Towers Watson & Co. analysis projected that 48% of employers with at least 5,000 employees that offer health plans could be hit by the excise tax in 2018, with 82% affected by 2023.

The tax is to be paid by insurers and third-party claims administrators, which are expected to seek reimbursement from employers.

In the meantime, employers are using all the bargaining tools available to them to avoid painting themselves into a financial corner.

Erin Kartheiser, a partner at Winston & Strawn L.L.P. in Chicago, has several clients negotiating typical three-year contracts that extend into 2018 but still address the tax prospectively. One option is to include language unilaterally reducing benefits if the collective bargaining agreement triggers the tax. Another is to seek to reopen negotiations in 2017.

Ms. Pongracz said limited

"reopeners" that deal solely with health care costs are common.

KapStone's proposal to mill workers included such language, Mr. Pallesen confirmed.

"Nobody wants their money to go to the government," said Linda Mendel, an employee benefits attorney who is of counsel with Vorys, Sater, Seymour and Pease L.L.P. in Columbus, Ohio. That's money that "would either stay in the employer's pocket or go into the employees' pocket," she said.

Ms. Mendel worries that human resources and benefits specialists at some companies are not fully communicating with their labor relations teams, "so that people are just going in blind to bargaining."

Most benefits people are very aware of the tax and its impact of labor talks, but some haven't even thought about preparing estimates of the tax's impact, let alone sharing that information with their labor teams, she said.



A Jacksonville, North Carolina, resident inspects damage to his home on May 11 after Tropical Storm Ana swept through the Southeast. The early arrival of the storm is not expected to signify an active 2015 Atlantic hurricane season, which starts June 1.

## HURRICANES

Continued from page 1

University's respected Tropical Meteorology Project is investigating whether a third consecutive below-average season indicates that the U.S.-Atlantic Basin is entering a period where atmospheric conditions will be less likely to lead to hurricane formations.

Tropical Storm Ana, which affected the Carolinas in May, began the season before its official June 1 start. But experts say this has zero predictive value for the rest of the Atlantic hurricane season, which ends Nov. 30 and in which an average of 12 named storms form.

CSU researchers project there will be seven named storms this year, citing a moderate to strong El Niño weather pattern that limits hurricane formations in the Atlantic Ocean. The projection includes three storms

becoming hurricanes and one becoming a major hurricane with winds of 111 mph or more.

There is a 28% probability that the U.S. coastline north of Florida will see a landfall, probabilities that decline to 15% for the East Coast including the Florida peninsula and the Gulf Coast from the Florida panhandle to Brownsville, Texas, the forecast predicts.

It's possible the projection for total named storms may be revised to eight, including Ana, said Phil Klotzbach, a CSU researcher and lead author of the Tropical Meteorology Project forecast.

A forecast from Coastal Carolina University in Conway, South Carolina, sees seven to 10 named storms with three to six of those hurricanes, said Len Pietrafesa a Burroughs & Chapin Scholar at the university. The U.S. National Oceanic and Atmospheric Administration is to make its inaugural 2015 hurricane forecast this week.

In a May briefing after Tropical Storm

Ana, James Franklin, chief of the hurricane specialist unit of NOAA's Miami-based National Hurricane Center, said though it is unusual for a named storm to form in May, it does happen every six or seven years and has occurred 23 times since 1851.

"There's always a tendency to want to draw conclusions from what happens early in the season," Mr. Franklin said. "It's usually pretty hard to do that."

Mr. Klotzbach agreed. "It doesn't really relate at all to what the rest of the season will bring," said the researcher who is working on a paper about whether a third straight below-normal year would indicate that the U.S. is entering a longer period of less favorable hurricane conditions. "I would say at this point it is an unanswered question," Mr. Klotzbach said.

Several experts said quiet and active hurricane periods become clear only in retrospect.

Because Ana formed outside the tropics,

"it doesn't really tell us what's going to happen in the tropics at all," said Tim Doggett, assistant vice president and senior principal scientist at catastrophe modeling firm AIR Worldwide Corp., referring to where the stronger storms form.

The return of El Niño is a factor in this year's forecasts, said NOAA's Mr. Franklin. "We are in an El Niño, and El Niño seasons typically have below-normal amounts of activity in the Atlantic," he said.

In a mid-May report, NOAA's Climate Prediction Center and the International Research Institute for Climate and Society said there's a roughly 90% chance that El Niño will continue through the summer and a more than 80% chance that it will last through the year for the Northern Hemisphere.

Aside from producing warmer water in parts of the Pacific Ocean, El Niño also increases wind shear, which inhibits formation of hurricanes in the Atlantic, Mr. Pietrafesa said.

"It does certainly look like El Niño conditions are setting up for the Pacific, so that particular climate scenario is indicating that we're probably looking at below-average activity for the season," said Mr. Doggett.

"The Atlantic is a lot cooler than it has been for the past five to 10 years," Mr. Klotzbach said. That also keeps storms from forming. "Even in an El Niño year, there still can be periods of time when devastating storms can form," Mr. Franklin said, pointing to Hurricane Andrew.

Andrew, which devastated Southern Florida and is one of only three Category 5 hurricanes to hit the U.S. coast since 1900, came during an inactive hurricane season, said Karen Clark, co-founder and president of catastrophe modeling firm Karen Clark & Co. in Boston.

Andrew, the third-costliest U.S. hurricane and fourth-costliest natural disaster since 1950 according to Aon Benfield's Impact Forecasting (see chart, page 1), was the first named storm of 1992, but did not form until late August.

"This shows you that a Category 5 storm can happen at anytime," Ms. Clark said.

Insured losses are driven by storm intensity and landfall location rather than storm frequency, she said. When considering expected average annual hurricane losses of \$12 billion to \$15 billion since 1900, "80% of those losses come from the top 20% of loss producing storms," Ms. Clark said.

## CYBER

Continued from page 1

filed suit May 7 in Los Angeles federal court seeking to void its obligation.

Cottage Health suffered a data breach involving some 32,500 confidential medical records in 2013. A \$4.1 million settlement of a resulting class-action suit received preliminary court approval last December.

In Salt Lake City, a federal judge ruled May 11 in *Travelers Property Casualty Co. of America et al. v. Federal Recovery Services Inc. et al.* that a Travelers unit is not obligated to defend the data management firm in litigation involving a dispute over the transfer of a client's data. The dispute was about payment to transfer the data and was not due to an error, omission or negligence, the court ruled.

"It's not surprising to see cases beginning to be filed under cyber

**A** Connecticut Supreme Court ruling holding that insurers are not obligated to defend or indemnify the loss of data under general liability and umbrella insurance could increase interest in cyber insurance.

The case involves a Chicago-based recall information management firm that had contracted with Armonk, New York-based IBM Corp. to transport and store computer tapes, according to the May 18 ruling in *Recall Total Information Management Inc. et al. v. Federal Insurance Co. et al.* Recall Total subcontracted the work to another firm.

Recall Total and the subcontractor had coverage under a commercial general liability policy issued by Federal Insurance, a Warren, N.J.-based unit of Chubb Corp., and

an umbrella liability policy issued by Scottsdale, Arizona-based Scottsdale Insurance Co., a unit of Nationwide Mutual Insurance Co.

The problem began when 130 computer tapes containing information on 500,000 current and former IBM employees fell out of truck in February 2007. An unknown individual retrieved the information, but the data apparently never were accessed.

A settlement for notification and other costs was eventually reached with IBM, and the firms then sought \$6.4 million in coverage under their policies, which the insurers denied.

The Connecticut Supreme Court agreed with an appellate court that the loss of the

policies, given their increasing adoption across various industries," said Russell P. Cohen, a

partner at Orrick, Herrington & Sutcliffe L.L.P. in San Francisco. Marsh USA estimates the cyber

market totaled about \$2 billion in gross written premium in 2014.

"We're finally starting to see

By Judy Greenwald

# CONCUSSIONS

Continued from page 1

Steve Montador, who died in February, said a brain study found the 35-year-old died of chronic traumatic encephalopathy. Mr. Montador played defense for several teams during his 10-year career, including the Chicago Blackhawks. Attorneys say a concussion he suffered in 2012 while playing for the Blackhawks contributed to his brain condition.

Mr. Montador's degenerative brain condition and death "should serve as yet another sad wake-up call to the NHL," Thomas Demetrio, a partner at Chicago law firm Corboy & Demetrio, said May 12 in a statement.

The firm, which represents Mr. Montador's family, also represents several former NHL players who are pursuing multidistrict litigation against the league over concussion-related health problems in federal court in Minneapolis.

Players in the case, which reportedly has grown to 70 plaintiffs, say they "signed up to play hockey knowing that they might get injured and dinged, but they did not sign up for avoidable brain damage," according to court filings last August. The problems include headaches, personality changes, sleep disturbances and severe depression, according to the master complaint.

Players allege the NHL has "fostered an unnecessarily violent sport" by allowing "ferocious head-snapping checks" and "vicious bare-knuckle fist fights" between players to attract fans and revenue.

For "nearly a century, the NHL has failed to supply its players with full, accurate information about the risks of head trauma because it has continued to profit handsomely from its culture of violence, notwithstanding the brain injuries inflicted on NHL players," according to the players' suit.

Charles S. Zimmerman, a partner at Minneapolis law firm Zimmerman Reed P.L.L.P. and a lead attorney in the players' suit, said he expects more concussion litigation from retired NHL players. Attorneys in the federal suit are seeking class-action status.

"There is clearly growing momentum for the litigation amongst former players who are concerned about the long-term effects of the repetitive head trauma they sustained in the NHL," Mr. Zimmerman said in a statement to *Business Insurance*. "We hope this case will allow former players to finally hold the NHL accountable for its misconduct so they can receive the care and support they urgently need."

In court filings, the NHL has argued that the players' claims "occurred many years — and even decades — ago" and should be time-barred. It also contends that the players have not shown sufficiently that the NHL took steps to conceal the dangers of concussions and other head injuries.

"On the face of the complaint, plaintiffs do not even attempt to plead that the NHL deliberately concealed material information from plaintiffs; nor could they given that the alleged material facts were publicly available," the NHL said in a November motion seeking to dismiss the suit. "Rather, the only alleged misconduct plaintiffs identify is 'silence' regarding the alleged risks and long-term effects of head injuries

**"We hope this case will allow former players to finally hold the NHL accountable for its misconduct so they can receive the care and support they urgently need."**

Charles S. Zimmerman,  
Zimmerman Reed P.L.L.P.



AP PHOTO

The Florida Panthers' Steve Montador, right, fights with the Dallas Stars' Bill Guerin during an NHL game in 2005. An autopsy of Mr. Montador's brain shows he had degenerative brain disease.

suffered while playing in the NHL."

The NHL said it could not have fraudulently concealed head trauma dangers because such risks have been "publicly known and conclusively established for decades."

Attorneys for the NHL did not respond to requests for comment last week.

Legal experts say they believe the NHL has watched how concussion-related lawsuits have played out for the National Football League in determining its defense.

In April, a Philadelphia federal judge approved the NFL's settlement of a class-action suit brought by more than 4,500 former players over concussion-related injuries.

Former player Craig Heimburg this month filed an appeal in the 3rd U.S. Circuit Court of Appeals challenging the settlement, which is expected to cost the NFL more than \$1 billion.

Ronald S. Katz, Los Angeles-based partner and chair of the national sports law practice at Manatt, Phelps & Phillips L.L.P., expects the NHL to use some of the NFL's presettlement defense arguments.

"The primary defense will probably be the same as that of the NFL — that this subject is covered by the collective bargaining agreement and should therefore be decided by an arbitrator rather than a court," Mr. Katz said in a statement to *Business Insurance*.

Marc Edelman, a law professor at the Zicklin School of Business at Baruch College in New York, said players in the NHL case may have more difficulty pursuing their claims than athletes in the NFL or the NCAA, which offered in April to settle several former football players' federal suit over head trauma they suffered while playing for college teams.

NCAA athletes are not unionized, and many former NFL players who sued played before a union existed for them, Mr. Edelman said. As a result, the NCAA and NFL had a difficult time arguing that players should have filed grievances under collective bargaining agreements, rather bringing claims in court.

Players suing the NHL were represented by a union at the time of their alleged injuries, making it likelier that the league could be shielded from such litigation, Mr. Edelman said.

Indiana University's Mr. Roberts said concussion litigation has prompted the sports leagues to consider safety programs to help reduce player head trauma.

For instance, the NFL created a wellness program in 2012 for current and former players, while the NCAA released updated guidelines last year to diagnose and manage sports-related concussions.

Mr. Roberts doesn't believe such lawsuits will hinder the leagues in the long run.

"We're not going to see the NFL or NHL go out of business because they have to be more careful and they have to have more thorough protocols and treatment, but we might see them change the rules and that could have an impact on the game," he said.

He also said such litigation has spread to other sports, such as professional wrestling and water polo.

"Suing a sporting organization because of concussions or head injuries has almost become America's favorite sport in the last few years," Mr. Roberts said.

some interpretation of cyber policies. That's good that we're able to get that road map down for people," said Mr. Rowe.

Policyholder attorney Stephen T. Raptis, a partner at Manatt, Phelps & Phillips L.L.P. in Washington who is not involved in the case, said the exclusion in Cottage Health's cyber policy is common and "one that's troubled me for a long time" because it is "completely open-ended," overly broad and subjective.

"This case highlights the importance of negotiating over the terms of your cyber policy to eliminate these kinds of broad exclusions," Mr. Cohen said. "Broad exclusions like this allow insurers to turn the tables on their insureds, making it all about the insured's conduct, not the criminal who broke into their system. It defeats the very purpose of the insurance."

Roberta Anderson, a partner at

K&L Gates L.L.P. in Pittsburgh, said a key factor was Cottage Health's allegedly inaccurate responses to a risk control self-assessment that was part of the insurance application. CNA alleges that Cottage Health failed to "continuously implement the procedures and risk controls identified in its application."

This highlights the need to "have a very cohesive, team approach" including the information technology department, outside counsel and a broker partner to submit cyber insurance applications, she said. "What you're trying to do is eliminate a situation where someone checks the wrong box inadvertently," which can lead to a coverage battle after a loss, said Michael P. Hindelang, a partner at Honigman Miller Schwartz & Cohn L.L.P. in Detroit.

Honestly filling out an application prevents a company from

being "tripped up" by a question that an insurer later uses to deny coverage, said Ms. Anderson. At the same time, "I've never had a client denied coverage based on answers in an application."

While the Travelers ruling involves a cyber policy, it is basically an errors and omissions case based on a technology E&O liability form within its CyberFirst policy.

## Policy language reigns

Linda D. Kornfeld, a partner at Kasowitz Benson Torres & Friedman L.L.P. in Los Angeles, said the case addresses a "contractual obligation to provide data information, but not a data breach" so it should not apply when a company is seeking coverage under a cyber policy "for an actual data breach event."

Observers say that despite the relative newness of cyber insur-

ance — appearing around 1998, according to Marsh USA — established insurance principles still apply, as these cases illustrate.

"At the end of the day, cyber insurance is still insurance," said Robert Parisi, New York-based Marsh USA's national cyber product leader. Though it is a particularly complex form of insurance and relatively new, buyers should expect that when there is a loss or a claim "that the carrier will look at the policy language, they will look at the application and they're going to apply the terms and conditions" of the policy.

"I think people lose sight of that" and think cyber is different, Mr. Parisi said.

Still, he said, "the one defining feature of cyber insurers" is their flexibility and willingness to listen. "They're pretty good" about responding and "meeting us halfway."



## HEAR INTERVIEW

Visit *Business Insurance's* multimedia

Web page to hear Joseph F. Bermudez of Wilson, Elser, Moskowitz, Edelman & Dicker L.L.P. discuss recent cyber insurance policy disputes with *Business Insurance* Senior Editor Judy Greenwald. Cyber claim litigation looms as a new legal battlefield as more policies are sold.



## Posts undermine tired excuses

**A**n insurance cheat who claimed that illness had stopped him working was caught out by his social media posts detailing his hobby of modifying fast cars and driving them on the roads and racetracks of Cyprus.

Christopher Parkin, 41, claimed that he was unable to work between August 2007 and September 2012 because he was suffering from Myalgic Encephalopathy which causes chronic fatigue.

He claimed he was living with his parents in Yorkshire, England.

But Mr. Parkin's social media posts revealed that he was able to continue his hobby of modifying and racing Noble Supercars. Many of those posts suggested that he was living in Cyprus, ITV reported.

A judge in the High Court of London recently ordered Mr. Parkin to repay £19,096 (\$30,030) he fraudulently had obtained under an income protection policy from the Cirencester Friendly Society Ltd., plus interest and an interim £20,000 (\$31,452) payment towards a £35,000 (\$55,041) bill for costs.

## E.U. court can't tell Skype from Sky

**A**s William Shakespeare famously said in "Romeo and Juliet," "that which we call a rose by any other name would smell as sweet."

But Mr. Shakespeare, perhaps to his credit, never worked in marketing.



The nomenclature issue comes up in connection with a court battle between Microsoft, which owns the Skype Internet voice and video conferencing service, and Rupert Murdoch's (left) satellite television business, Sky.

A European Union court held last week that Skype's name is so similar to Sky's that the public is likely to be confused between the two and held that, as a result, Microsoft could not register a trademark for Skype's name and logo, according to news reports.

"Conceptually, the figurative element conveys no concept, except perhaps that of a cloud," said the court.

"(That) would further increase the likelihood of the element 'sky' being recognized within the word element Skype for clouds are to be found 'in the sky' and thus may readily be associated with the word 'sky,'" says the ruling.

# GOOGLE TRUMPETS LOW ACCIDENT RATE OF SELF-DRIVING CARS



AP PHOTO

Google Inc. reported last week that its more than 20 driverless cars were involved in only 11 accidents, none of them caused by the vehicles' robot.

**I**f the notion of driverless cars gives you pause, it turns out you may be worrying about the wrong vehicles. Google Inc. has reported that after logging 1.7 million miles over six years, its more than 20 driverless cars were involved in 11 accidents, none of them caused by the vehicles' robot drivers.

In a blog post, Google's self-driving car program director, Chris Urmson, argues that the technology has many advantages over a flawed human operator.

"With 360-degree visibility and 100% attention out in all directions at all times, our newest sensors can keep track of other vehicles, cyclists, and pedestrians out to a distance of nearly two football fields," he wrote.

It is hard to tell whether this breakthrough will trickle down to company cars and fleet insurance, but Google's findings sound like a good reason for drivers to focus on the road.

"Our safety drivers routinely see people weaving in and out of their lanes; we've spotted people reading books, and even one playing a trumpet," Mr. Urmson wrote.

*Business Insurance* isn't all business all the time, and we know you're not either. So visit [www.businessinsurance.com](http://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.

## Brown to shepherd ancient privileges

**T**he life of J. Hyatt Brown (left) — chairman of Daytona Beach, Florida-based Brown & Brown Inc. and a former speaker of the Florida House of Representatives — has been marked by accomplishment, and now he has received a rare recognition, particularly for an American: the Freedom of the City of London.



The Freedom dates back to the 13th century. A freeman was someone who was not the property of a feudal master but who had the right to own land and earn money. The Freedom was once restricted to British citizens and citizens of British Commonwealth countries, but was extended globally in 1996.

The Worshipful Company of Insurers, the City of London's livery company for the U.K. insurance industry, invited Mr. Brown to become an honorary freeman of the City of London in recognition of his work in the worldwide insurance industry as well for his relationship with the United Kingdom and London market.

Of course, rank has its privileges. One of the early privileges was being able to take sheep over the London Bridge as a freeman and not having to pay the toll. But don't expect Mr. Brown to don shepherd's garb anytime soon — now, freemen can take sheep over the bridge during designated charitable events rather than as part of their livelihood.



## Heading to Korea? Hit the high notes

**I**nternational business travel carries plenty of risks, but none are as subtle as potentially offending your hosts.

Yet thanks to business travel website [ctbusinesstravel.co.uk](http://ctbusinesstravel.co.uk), travelers can stave off potential politeness pitfalls.

In several countries, the simple act of accepting a business card carries risks, the website warns. Two hands are required in Hong Kong, Japan, South Korea, Singapore and Taiwan; but in India and Israel the two-hand requirement includes handling the offered card "with respect."

Communication is often a subtle art, but in Germany business travelers are reminded to be direct "to the point of bluntness."

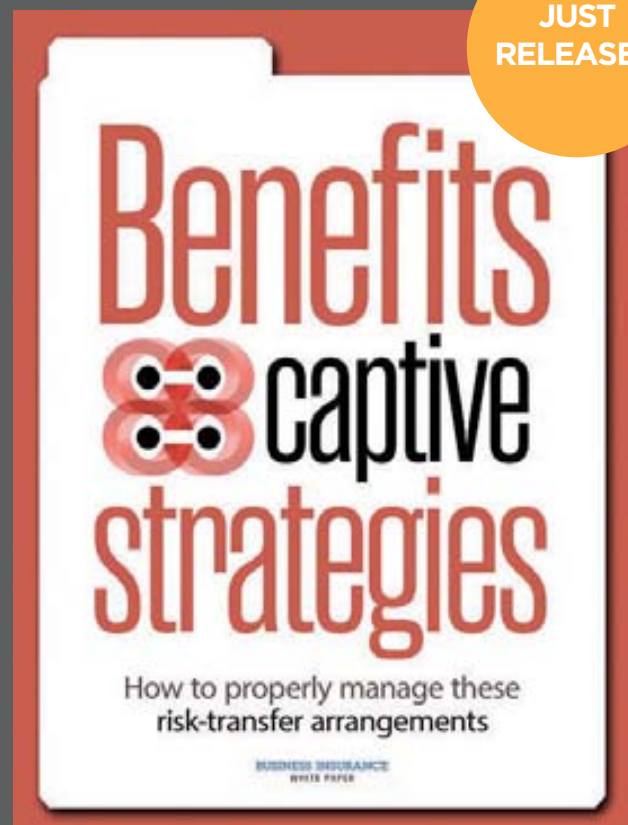
Rules on toasts and table manners also abound, but one thing is certain in South Korea: "Be prepared to sing a solo karaoke number after dinner," the website says.

# Sound research and analysis to handle your business challenges

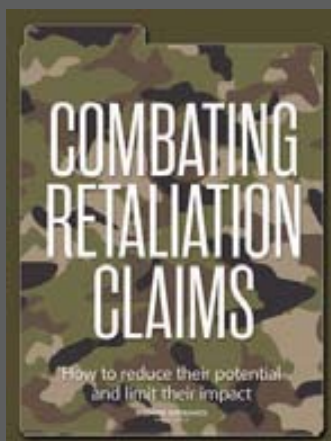
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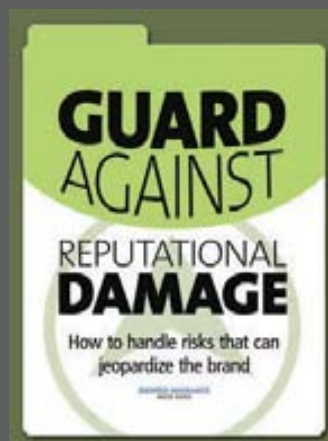
JUST  
RELEASED



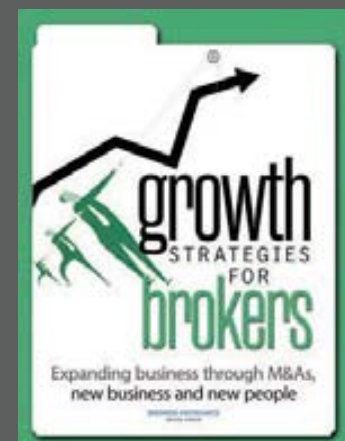
**Benefits Captive Strategies**  
How to properly manage these risk-transfer arrangements



**Combating Retaliation Claims**  
Reducing their potential and limiting their impact



**Guarding Against Reputational Damage**  
Strategies to handle risks that jeopardize brands



**Growth Strategies for Brokers**  
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