

## CORPORATE INCOME TAX RATES

Maximum effective corporate income tax rates in selected domiciles and countries.

Country	Rate
Bermuda	0.0%
Cayman Islands	0.0%
Ireland	12.5%
Luxembourg	29.22%
Switzerland	7.83%*
United Kingdom	23.0%
United States	39.5%

\*Effective rate including cantonal/communal income taxes ranges from 12% to 22%; holding companies with no active trade or business in Switzerland are exempt from cantonal tax.

Source: Deloitte Touche Tohmatsu Ltd.

## REGULATION

# Focus on tax could affect insurance

BY DOUGLAS MCLEOD

U.S. and European efforts to counter corporate tax avoidance are a potential concern for multinational insurers and reinsurers, but to a lesser degree than for manufacturers and other multinational enterprises, tax experts say.

A U.S. Senate subcommittee last month held hearings to delve into Apple Inc.'s use of offshore tax havens to shelter profits, following similar hearings last year about the tax strategies of Microsoft Corp. and Hewlett-Packard Co. Authorities in Europe and the United Kingdom are likewise targeting "aggressive tax planning" by corporations, which U.K. Prime Minister David Cameron sharply

See **TAXES** page 30

## CATASTROPHES

# INSURED TORNADO LOSSES MAY REACH \$5 BILLION

Insurers expected to absorb losses

Clouds hovered over tornado-ravaged homes in Moore, Okla., where a twister packed 200 mph winds.



AP PHOTO

BY MIKE TSIKOUDAKIS

Insured losses from a string of recent tornadoes that ravaged 10 states across the Midwest and the Plains were not high enough to boost prices in the U.S. commercial property market, but there may be lingering business interruption coverage issues.

The tornadoes that struck May 18-20 caused insured losses estimated at \$2 billion to \$5 billion, according to the Oakland, Calif.-based catastrophe modeling firm Eqecat Inc.

Risk Management Solutions Inc., another catastrophe modeling firm, estimated insured losses in Moore, Okla., at \$2 billion to \$3.5 billion, with residential structures accounting for 95% of the losses, said Matthew Nielson, director of model product management at the Newark, Calif.-based firm.

See **TORNADOES** page 31

## U.S. TORNADO FACTS

**1,253** Average number of U.S. tornadoes per year

**\$7.4 billion** (in 2012 dollars) Most insured losses ever from U.S. tornado-related event were twisters in April 2011 that hit Tuscaloosa, Ala., and elsewhere

**\$25 billion** Insured losses from 2011 tornadoes, a record year for twister losses

**553** Deaths caused by tornadoes in 2011, highest annual number from 1992-2012

Source: Insurance Information Institute Inc., National Oceanic and Atmospheric Administration

## P/C INSURERS

# China insurers make push for U.S. risks

PICC among insurers offering significant limits

BY BILL KENEALY

Risk managers looking for significant property insurance capacity have more options as insurers based in China make a concerted push to write U.S. business.

The insurers, which include Beijing-based People's Insurance Co. of China and Shanghai-based China Pacific Property Insurance Co. Ltd., are taking up to 10% lines on property placements up to \$1 billion.

Risk managers at several major U.S. companies say they have accessed or are considering accessing the Chinese capacity.

"It's been just over the last six to nine months that we have seen more aggressive positions taken by these companies," said Duncan Ellis, U.S. property practice leader at Marsh Inc. in New York. Marsh has secured capacity for about a dozen large international clients through Asian insurers, he said.

Mr. Ellis said the new entrants have strong balance sheets and are looking for ways to diversify risks in their books of business.

"This is definitely a trend which is here to stay. In fact, I would probably argue that it is only a matter of time before one of these companies buys a shell company



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## INTERNATIONAL



Country profile of China; Charman named new chief at Endurance

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## U.S. MID-MARKET



How companies can gauge effectiveness of employee assistance programs

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## RESEARCH & DATA

Business Insurance ranks the largest U.S. property loss control consultants by clients and staff size

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## CATASTROPHE & DISASTER PLANNING

### PREPARING FOR THE WORST

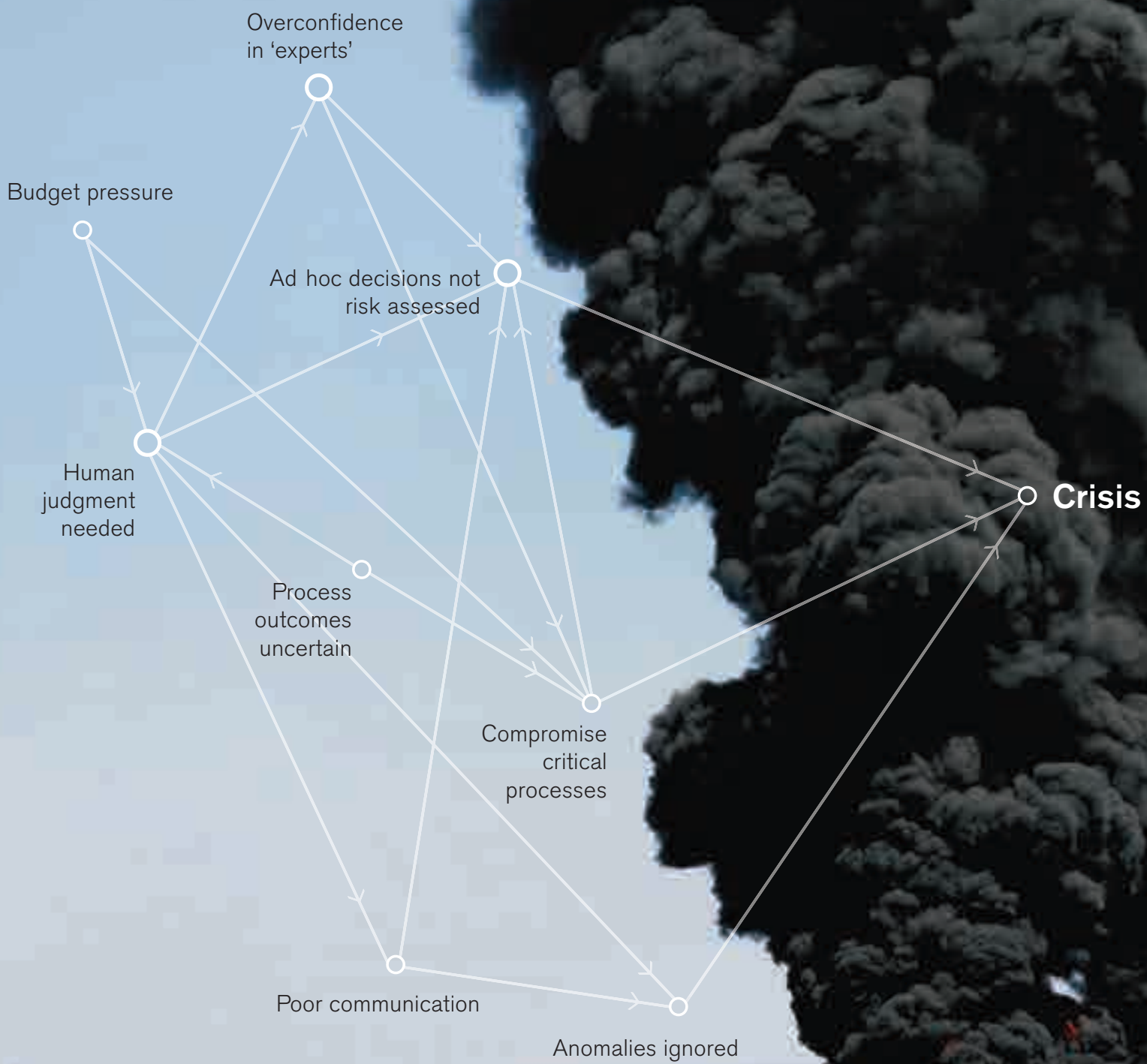
James Lee Witt, ex-FEMA leader on infrastructure; prearranged services essential to recovery; claims adjusters learn lessons from Sandy; many companies unprepared for catastrophes.

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Here's something you rarely see in enterprise risk consulting.

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MID-MARKET



Foreclosure liability mess

Financial institutions that foreclose on commercial properties may find themselves liable, if those sites require environmental cleanup. **6**

PEOPLE

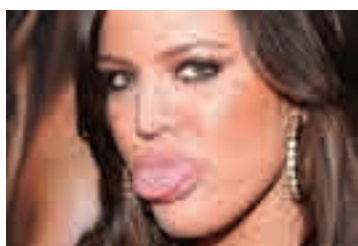
Q&A: Peter F. Garvey



Risk managers are well-positioned to tackle the changing risks of their organizations, says

Peter F. Garvey, CEO of insurance brokerage Integro Ltd. **24**

OFF BEAT



T-shirt trademark fight

A T-shirt designed and sold by a clothing line owned by Khloe Kardashian and Lamar Odom raised the ire of New York state. **34**

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NEWS

MERGERS & ACQUISITIONS

Brown & Brown takes new direction with Beecher Carlson acquisition

Established middle-market broker to take on large-account business

BY BILL KENEALY

Brown & Brown Inc.'s \$336.5 million acquisition of rival Beecher Carlson Holdings Inc. is a marked departure from the Daytona Beach, Fla.-based brokerage's previous acquisition strategy.

By acquiring Atlanta-based Beecher Carlson from private-equity firm Austin Ventures and others including a group of individual employee and nonemployee equityholders, Brown & Brown is to add the 27th largest broker of U.S. business, according to the 2012 *Business Insurance* ranking. (See related story on page 32 about brokerage Arthur J. Gallagher preparing for a big acquisition.)

Brown & Brown also gains a strong foothold in the large-account space, said Timothy J. Cunningham, managing director of Chicago-based investment banking and consulting firm Optis Partners L.L.C.

"It breaks the mold for Brown & Brown and puts them in a different segment of the business," Mr. Cunningham said. "The large-accounts business is somewhere where they really haven't been before."

In announcing the deal that is to be completed in July, Brown & Brown stressed that the large-account division will remain in Atlanta and operate as Beecher Carlson under its current leadership. Steve Denton, now president of Beecher Carlson, is to become its CEO as well as a regional vice president of Brown & Brown. Dan Donovan, Beecher Carlson's CEO, will serve as executive chairman of Beecher Carlson.

Conversely, Beecher Carlson's middle-market retail



Steve Denton, left, now president of Beecher Carlson, is to become its CEO as well as a regional vice president of Brown & Brown. Dan Donovan, Beecher Carlson's CEO, will serve as executive chairman of Beecher Carlson.



offices in Arizona, Mississippi and Oregon will become part of Brown & Brown's retail division.

"This combination with Brown & Brown is very positive for our clients and employees and we look forward to continuing to build out the Beecher Carlson large-account platform," Mr. Donovan said in the statement.

Thomas Doran, Atlanta-based principal at Reagan Consulting Inc., called the deal "a whopper," but also said it wasn't entirely surprising.

"Beecher Carlson is a large-account shop and it represents a real marquis acquisition for Brown & Brown,"

See **BROWN** page 32

HISTORY OF BEECHER CARLSON

<b>1981</b> Former Risk Management Inc. executives William Becher and David Carlson formed Becher + Carlson to focus on large commercial risks.	<b>1989</b> Becher + Carlson was purchased by American Re-insurance Co.	<b>2003</b> Key employees acquired the company.	<b>2004</b> Private equity sources committed \$90 million in capital to the newly renamed Beecher Carlson.	<b>2013</b> Brown & Brown Inc. buys Beecher Carlson Holdings Inc. for \$336.5 million.
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LIABILITY & LITIGATION

Private firms await SOX whistle-blower ruling

BY JUDY GREENWALD

Private companies likely would face increased retaliation litigation should the U.S. Supreme Court extend the Sarbanes-Oxley Act's whistle-blower protections to the privately held contractors of public companies.

The possibility arose last month when the Supreme Court agreed to

consider an appeal of the February 2012 ruling in *Jackie Hosang Lawson et al. v. FMR L.L.C. et al.* In that case, a panel of the 1st U.S. Circuit Court of Appeals ruled that employees of privately held contractors working for public firms are not protected by SOX's whistle-blower anti-retaliation provision.

Because there has been no split among the various appeals courts

on the issue, some observers say the Supreme Court's decision to review the case is unusual. It could signal that at least four judges — the number needed to accept certiorari — are uncomfortable with the court ruling.

However, others suggest the high court may have decided to

See **WHISTLE** page 29

CORRECTION

Due to an editing error, a country profile of the Czech Republic in the May 20 issue misstated the year in a reference to a property/casualty insurance market contraction. The market contracted by 1.4% in 2011.

HEALTH CARE REFORM

Limited plans may satisfy reform law rule

BY JERRY GEISEL

Employers that provide extremely limited health care plans have a way around paying significant penalties to the government when major provisions of the health care reform law go into effect next year.

A growing number of benefit experts say employers can offer bare-bones plans without running afoul of a Patient Protection and Affordable Care Act provision that imposes a \$2,000 penalty per full-time employee for not offering what the health care reform law calls minimum essential coverage.

Employers offering skimpy plans, which might only provide coverage for preventive services and a fixed number of office visits to medical providers, could be liable, however, for a different health care reform law penalty that is imposed on plans that do not pass a minimum value test.

Instead of facing a \$2,000 penalty for every full-time employee, employers offering plans that do not meet the minimum value standard would be liable for a \$3,000 penalty only for those eligible employees who use federal premium subsidies to buy coverage in a public insurance exchange.

"It is a way to reduce penalties, not to avoid them" altogether, said Steve Wojcik, vice president of public policy at the National Business Group on Health in Washington.

In some cases, those penalties could be minimal if most employees offered bare-bones plans enrol in those plans rather than more comprehensive and expensive exchange plans. The plans could

See **MINIMUM** page 32

WOMEN TO WATCH NOMINATIONS

*Business Insurance* has opened nominations for the 2013 Women to Watch recognition program. The program recognizes women doing outstanding work in commercial insurance, risk management, employee benefits and related fields. To nominate a candidate visit [www.businessinsurance.com/womentowatch](http://www.businessinsurance.com/womentowatch).

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ONLINE  
FEATURES

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## WHITE PAPER

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insurance coverage is available?

[www.BusinessInsurance.com/  
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## NEWS

## INTERNATIONAL

BROKER-INSURER FACILITIES  
RAISE CONCERNS FOR LLOYD'S

Market cautions syndicates over 'blind underwriting'

BY SARAH VEYSEY

Lloyd's of London executives have urged underwriters to exercise caution when entering into deals such as the facility launched by Aon P.L.C. and Berkshire Hathaway Inc.

Under the deal announced in March to increase capacity, Berkshire Hathaway International Insurance Ltd. will take a 7.5% share of all of Aon's retail placements in the London market where Lloyd's underwriters are participating.

In a similar move in May, Willis Group Holdings P.L.C. said it is preparing a facility for up to 20% of

its specialty business.

Meanwhile, Marsh Inc. said it has no plans to set up a similar facility, but sources said it has used the approach previously in some special cases.

The Aon/Berkshire Hathaway deal covers most lines of coverage (see box).

While Lloyd's executives initially welcomed the idea, CEO Richard Ward later expressed concern that the Aon/Berkshire Hathaway deal would take business away from Lloyd's syndicates.

Among more recent advice, two Lloyd's executives told market participants that they must treat such arrangements in a similar way to

binding authority business and ensure they have exercised sound risk management and capital control to avoid "blind underwriting."

"If you are considering entering into similar arrangements with brokers, then you should be aware that, because these arrangements involve delegation of underwriting authority to the broker, Lloyd's regards these as binding authorities," Tom Bolt, director of performance management at Lloyd's, said last month in an email to all syndicates. "Therefore, they need to be registered on the binding authority registration site before

See **FACILITY** page 28



## TERMS OF THE DEAL

- Berkshire Hathaway will accept 7.5% of Aon retail placements in the London market where Lloyd's underwriters participate.
- The agreement covers property, marine, energy, financial lines, professional lines. Some space and aviation business is excluded.
- The facility will participate in about 90% of the business Aon places in the London market.
- The facility is not separately capitalized and is managed by Aon Underwriting Managers, Aon's managing general agent that has been granted authority to bind coverage on behalf of Berkshire Hathaway.

## WORKERS COMPENSATION

## Recession likely to produce hard market: NCCI

BY ROBERTO CENICEROS

ORLANDO, Fla. — If the history of underwriting cycles provides a guide to the future, more expensive insurance premiums may lie ahead for property/casualty insurance buyers.

During the past four decades, every hard market of substantially higher insurance prices has followed a recession, Harry Shuford, chief economist for Boca Raton, Fla.-based NCCI Holdings Inc., told the workers compensation research and rating organization's recent "Annual Issues Symposium 2013."

That has occurred because of the interaction between insurance underwriting cycles and investment returns, with interest rates and investment yields typically falling during and immediately after a recession, Mr. Shuford said during the event held May 15-17 at the Hyatt Grand Cypress Resort in Orlando.

"Hard markets coincide with these periods of dramatically falling money yields (and) interest rates," Mr. Shuford said.

During a recession, Federal Reserve monetary policy drives down interest rates just as it increases them to slow the econo-

my during periods of rapid growth. That makes the Fed a key player in determining the investment income earned by the property/casualty industry, Mr. Shuford said.

Meanwhile, about 80% of the property/casualty industry's investment portfolio is in bonds that are maturing. That has underwriters concerned about reinvesting in new bonds that are expected to produce lower returns, the NCCI chief economist said.

Separately, insurance industry executives have expressed

See **NCCI** page 28

## RISK MANAGEMENT

International  
standard should  
aid decisionsISO 31000 helps balance  
uncertainty, opportunity

BY RODD ZOLKOS

TORONTO — Principles of the ISO 31000 risk management standard include the idea that risk management should create and protect value and be part of organizations' decision-making, areas in which many organizations are missing the mark.

Speaking at the "Second International Conference on the ISO 31000 Standard" held in Toronto May 28-29, Carl S. Spetzler, CEO and chairman of Strategic Decisions Group International L.L.C. in Palo Alto, Calif., said, "There's a big communication gap between ISO 31000 and the rest of the world," suggesting that most businesses don't recognize that risk has an upside.

Established in 2009 by the International Organization for Standardization, ISO 31000 is a generic set of principles and guidelines that provide a framework and a process for risk management by any organization of any size.

Speaking in sessions discussing ISO 31000 and decision-making, risk management and uncertainty, Mr. Spetzler said top executives and boards often don't consider the upside of risk when seeking protection from the uncertainty of risk.

Meanwhile, many organizations' competency in dealing with decision-making in the face of uncertainty resides in areas other than risk management, he said. What's more, there often are misunderstandings and differences in language applied to issues of risk and uncertainty across organizations.

"A decision-maker has to understand what is a quality decision," Mr. Spetzler said. "Uncertainty is just inherent in most important decisions."

He cautioned that it's also important in risk management to separate decisions from outcomes.

"You have to watch out that you don't create incentive structures that are wildly off-base with making the best decisions," Mr. Spetzler said. "This outcome measurement 'accountability' ... makes organizations very poor risk-takers."

Another speaker in that session, John Fraser, senior vice president of internal audit at Hydro One

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Helping executives at midsize firms and their brokers handle critical risks.

# ENVIRONMENTAL LIABILITY MAY FOLLOW FORECLOSURE

Commercial lenders should take care to protect themselves when taking over properties

BY RUSS BANHAM

Financial institutions that foreclose on commercial properties may find themselves liable should a site require an environmental cleanup, a problem made worse by the financial crisis.

Experts say smaller financial institutions, including mid-market firms, often lack the deep pockets of their larger counterparts should such a liability arise.

Under the U.S. Comprehensive Environmental Response, Compensation and Liability Act, better known as the Superfund law, owners or operators of properties containing hazardous materials are required to dispose of them or provide for their treatment. The 1996 Asset, Conservation, Lender Liability and Deposit Insurance Protection Act amended CERCLA, providing a secured creditor exemption eliminating owner/operator liability for lenders — provided they do not “participate in the management of the facility.”

“As long as banks avoid participating in the management of the foreclosed property, they are pretty well protected from liability,” said Neal Glazer, a partner and head of the environmental and toxic torts group at New York-based law firm D’Amato & Lynch L.L.P. “They should not influence or control the day-to-day environmental treatment of waste or hazardous materials at the contaminated site.” Active, day-to-day management of a site “could open the door to exposure,” he said.

While the 1996 amendment grants some protection for lenders, “there is still confusion on how to navigate this exemption and what is considered participating in the management of the on-site operations as well as other liabilities or costs a lender may face,” said Debra Hausser, Greenwood Village, Colo.-based financial institutions leader of environmental site and specialties products at Zurich North America.

Delinquency rates continued to decline for commercial and multifamily mortgage loans in the fourth quarter of 2012, according to the Mortgage Bankers Association’s Commercial/Multifamily Delinquency Report.

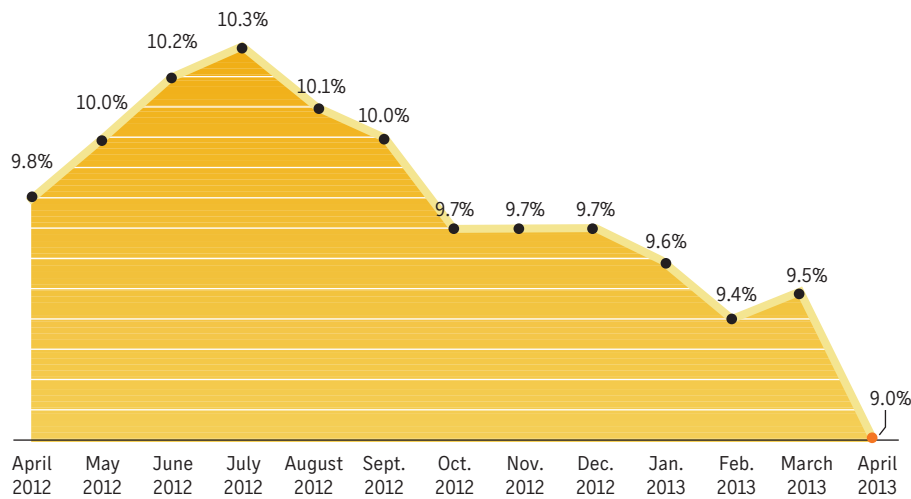
This good news might be temporary, however.

According to an April Wall Street Journal article, citing estimates from research firm Trepp L.L.C., about one-third of commercial mortgage loans coming due by the end of 2016 was under water as of mid-2012. Some \$276.2 billion of nonresidential commercial property loans, many of which were extended during the recession, are expected to come due this year, more than any previous year, according to Trepp (see chart).

“The concern for lenders is, should they take ownership of a property and then be involved in the use of that property or its operations, they could very well be liable for any environmental problems associated with that site,” said Richard Sheldon, environmental practice leader at Willis North

## DELINQUENCY RATES

The 30-day-plus delinquency rate for commercial mortgage-backed securities was slightly more than 9% in April, the lowest since November 2010.



Source: Trepp L.L.C.

America Inc. in New York. “The legal interpretation of the property’s ‘management’ is the crux of the issue.”

Lenders also could face “third-party liabilities for bodily injury and/or property damage from either on-site tenants, or an adjacent property owner” for contamination that may have migrated to their property, Ms. Hausser said. “Additionally, the lender could incur defense costs associated with the third-party claims.”

The issue requires superior due diligence — not just of the potential for a site’s past or future contamination, but also of the lending document contractual language.

“We’re seeing banks be more strict and cautious in their preloan due diligence, and particularly with regard to refinancing,”

said Chris Smy, managing director and global environmental practice leader in New York at Marsh Inc. “Banks have gotten on the wrong side of this in past. There have been cases where they assumed too much operational responsibility, such as determining how funds are spent, which then exposed them to liability.”

Ed Morales, vice president and environmental risk officer at Spokane, Wash.-based Sterling Savings Bank, said insurance is one way the financial institution that serves mid-market and small commercial businesses in the Pacific Northwest protects itself from such liabilities (see box).

Craig Richardson, Atlanta-based senior vice president of environmental risk at Ace USA, cited a situation where a bank pro-

vides a loan to a condominium complex that is foreclosed in the middle of construction.

“If it is determined that the site is contaminated — perhaps the developer failed to properly install environmental technologies — and the lender undertakes a cleanup of the site to resell it, it may inherit the liability associated with this contamination,” Mr. Richardson said.

“We have seen situations where banks and other financial institutions have purchased commercial properties in bulk, like hotels and condo complexes that have been foreclosed, with plans to renovate and resell them,” Mr. Glazer said. “The downside is that they are often contaminated by mold, which requires cleanup before sale.”

Aside from prudent due diligence and superior contract risk management, banks can buy environmental impairment liability, pollution legal liability, secured creditor impaired property insurance and lender’s collateral environmental insurance.

“Banks tend not to buy these (insurance) products because they have strict credit underwriting criteria and departments dedicated to doing environmental due diligence. They also have legal requirements, like the CERCLA exemption. Thus, when it comes to providing the loan, they feel they’re generally OK,” said Veronica W. Benzinger, London-based senior vice president in Aon Risk Solutions’ environmental practice.

A financial institution also can protect itself from liability by having it named as an insured on the borrower’s policy.

The converse also holds true. “We’ve seen situations where the borrower suggests that the bank buy the environmental insurance to cover the property in question, with the policy written in the name of the bank and the borrower paying the premium,” said Ms. Benzinger said.

Ken Cornell, New York-based executive vice president and chief underwriter of environmental lines at Aspen U.S. Insurance, said some banks will add the name of a potential buyer to the policy as an enticement, which he said protects both parties. “Another strategy is to get the buyer to purchase the insurance and name the bank as an insured, with the ultimate cost of insurance a point of negotiation,” he said.

“Insurance can help facilitate comfort with regard to taking title to a foreclosed property. Once we find a purchaser, we can then extend the coverage to the new owners,” Sterling Savings Bank’s Mr. Morales said.

There may, however, be times when a bank wants to take on the environmental liabilities of a foreclosed property, Ms. Hausser said.

“They may choose to incur the costs to clean up the property because if the owned/foreclosed property is not cleaned up before the lender tries to sell it, the lender would most likely have to sell the property at a discount due to the environmental contamination and thus, may not be made whole even after selling the property,” she said.

## ONE BANK’S STRATEGY

When it comes to potentially contaminated commercial property, Spokane, Wash.-based Sterling Savings Bank takes a series of steps to avoid liability.

Before providing a mortgage, “we undertake a Phase 1 environmental assessment identifying potential or existing environmental contamination liabilities,” said Ed Morales, vice president and environmental risk officer. “If ... foreclosure is likely, we will then undertake another Phase 1 assessment.”

The bank works closely with the borrower to find ways to prevent foreclosure, perhaps extending or altering the loan terms. If foreclosure is inevitable and the property has a recognized environmental condition, he said the bank pursues a Phase 2 environmental assessment of soil and water samples.

“If nothing is detected, we then get comfortable and may go ahead with the foreclosure. If not, then we try to bracket the source of exposure, the contamination, spending money to come to a point where we think we know what the exposures are for us from a liability standpoint,” Mr. Morales said. But if the cleanup would cost more than the property is worth, “the property is a write-down,” he said.

By Russ Banham



**“When managing a 17-block complex, you need an insurance carrier who can handle complex projects.”**

**Lou Haddad, President & CEO  
Armada Hoffler**

Armada Hoffler’s real estate ownership and management portfolio spans 45 properties across 18 states. And Zurich helps insure almost every square inch of it. Their Virginia Beach Town Center development is just one example of the enormous breadth and scope of their projects. Yet Zurich provides a single master program customized to meet their specific real estate and property insurance needs. This gives them the clarity and certainty of coverage needed in today’s complex environment. And if a claim should arise, Armada simply calls their single point of contact at Zurich for help. Watch the video to learn how Zurich helps keep Armada’s business moving forward. [zurichna.com/stories10](https://zurichna.com/stories10)



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# WEIGH OUTCOMES AGAINST OBJECTIVES TO GAUGE EMPLOYEE ASSISTANCE PROGRAMS

Aligning goals with metrics helps improve productivity, reduce costs

BY JOANNE WOJCIK

Midsize employers seeking to gauge the effectiveness of their employee assistance programs should focus on whether the EAP is achieving the objectives set when it was implemented.

For example, if the employer instituted an EAP as part of a risk management program designed to reduce occupational injuries or expedite employees' return to work, it should measure how it is affecting workers compensation costs, experts suggest.

If the objective is to enhance employee productivity by reducing absenteeism and presenteeism, the employer could survey employees to determine whether they are experiencing greater work engagement, experts say.

"Companies that invest a little time and money on monitoring their EAPs will get a huge return on investment in those services," said Jodi Jacobson Frey, chair of Employee Assistance Program Subspecialization at the University of Maryland's School of Social Work in Baltimore. She also advises employers to use "Selecting and Strengthening Employee Assistance Programs: A Purchasers Guide" by the Employee Assistance Society of North America.

The guide, which is available free at [www.easna.org](http://www.easna.org), includes questions such as, "What outcomes should my EAP be linked to?" Ms. Frey said, which also can be helpful to

employers determining their objectives in implementing an EAP.

The metrics that employers use to evaluate the effectiveness of their EAP offering "can't be general," she said. "It depends on the objective that the employer hopes to achieve. For example, some employers want their EAPs to be part of their risk management program, to improve return to work post-injury. Companies that don't have formal disability management programs might use their EAP for this service."

Kim Jinnett, research director at the Integrated Benefits Institute in San Francisco, suggests employers use employee performance measures, such as absenteeism and presenteeism, to measure EAP effectiveness, "because our research and that of others demonstrates that individuals experiencing high levels of work, family or financial stress are absent more and perform more poorly at work."

Indeed, the IBI's recent study of time off taken under the Family and Medical Leave Act "demonstrated a significant relationship between FMLA experience and short-term disability incidence and duration," Ms. Jinnett said. If an EAP is being used effectively to address issues such as care for sick family members, primary reasons employees use such leave, employees should take less time off and be more productive while at work, she said.

Most EAPs provide employers with utilization reports to demonstrate their effectiveness. But

Kathleen Mahieu, leader of the national behavioral health consulting practice at Aon Hewitt in Norwalk, Conn., said employers should look beyond utilization reports and examine "the impact on the population and the business" as well as "how the service affected performance, ability to stay at work, overall functioning."

This can be done relatively effectively using survey tools such as the Workplace Outcomes Suite developed by Chestnut Global Partners L.L.C. Such tools ask EAP users qualitative questions at the beginning, middle and end of their counseling (see related story).

In addition, Ms. Mahieu suggests comparing this self-reported data against attendance records to verify the outcome measures. "Most employers today focus on utilization. That is one very important metric, but we've got to move away from how many access the EAP to the impact on the population and the business."

"If you just look at the surface level, all EAPs look the same," Ms. Mahieu said. "The first question I always ask employers is, 'What do you want from your EAP?' An EAP can do and be many things, but it's important to define what you want the EAP program to look like."

Sometimes a simple metric such as utilization reports can help determine whether the right services are being provided for the population being served, said Mike Garfield, senior vice president of global business development at CompPsych Corp., an EAP based in Chicago.

"We can focus our visibility in the upcoming time period based on the issues that seem to be the most important for that organization during the previous three or six months," he said. "If a large part of their population is talking to financial professionals about selling or buying homes, moving or credit card debt, we can plan with the organization a strategy of holding seminars or webinars on managing a budget."



**SERVICES**

Most popular EAP services

- Behavioral health assessment, counseling and referral
- Assistance with work/life issues, such as child care and elder care
- Crisis intervention and critical incident stress debriefing
- Legal and financial assistance
- Supervisor training on addressing employee performance issues

## USEFUL TECH TOOLS EMERGING

Although using scientific measures to gauge the effectiveness of employee assistance programs is still in its infancy, two tools have emerged to help EAPs and employers evaluate outcomes and return on investment.

A survey tool by Chestnut Global Partners L.L.C., a subsidiary of Bloomington, Ill.-based nonprofit behavioral health organization Chestnut Health Systems Inc., is being used by more than 400 EAP providers worldwide to gauge how their services affect absenteeism, presenteeism, work engagement, life satisfaction and workplace stress.

In addition, a software tool developed by Swansea, Ill.-based Harting Associates Inc. has helped more than 80 EAPs quantify the ROI of their services.


Although both tools are being used primarily by EAP providers, they also are available to employers seeking ways to scientifically validate the effectiveness of their EAPs.

The objective of Chestnut Global Partners' Workplace Outcomes Suite "is to identify which programs are more effective than others," said Richard Lennox, Chapel Hill, N.C.-based chief scientist and vice president of commercial science. "It can detect differences that are statistically different to support the efficacy of the programs with samples as small as 50" employee responses, he said.

James Harting, president of Harting Associates, said his company's Daybreak EAP software recently produced an ROI report for an employer with just 265 employees that showed savings of \$11,000 over a two-year period in reduced health care utilization, days absent and occupational injuries.

The Workplace Outcomes Suite also is embedded in the software to measure employee satisfaction and intervention outcomes, he said.


By Joanne Wojcik



## 5 QUESTIONS TO ASK

When considering an employee assistance program provider, here are five questions to ask.

- 1 How will my employees access EAP services — online, by telephone or in person — and are counselors available 24/7?
- 2 What type of assistance is available if we have a critical incident?
- 3 What kind of reporting does the EAP provide regarding utilization, outcomes and return on investment?
- 4 Does the EAP understand the workplace culture, and is it able to tailor services and communications to meet employees' unique needs?
- 5 Can the EAP assist managers in addressing employee performance, conflict and other personnel issues?



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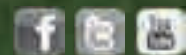


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RiskConversation.com



## NOAA predicts 'active' hurricane season

Expect an eventful 2013 Atlantic hurricane season, the National Oceanic and Atmospheric Administration said. Delivering its annual outlook, NOAA's Climate Prediction Center said it foresees an "active or extremely active" hurricane season this year, which began June 1. For the six-month season, NOAA projects a 70% likelihood of 13 to 20 named storms, including seven to 11 hurricanes (winds of 74 mph or higher) and three to six major hurricanes (Category 3, 4 or 5; winds of 111 mph or higher). NOAA said a combination of factors, including a strong West African monsoon season, warmer-than-average water temperatures in the tropical Atlantic Ocean and Caribbean Sea; and the lack of an El Niño pattern, underlie their predictions.

## Charman joins Endurance as chairman, CEO

John R. Charman has been named chairman and CEO of Pembroke, Bermuda-based Endurance Specialty Holdings Ltd. The industry veteran, who most recently was president and CEO of Axis Capital Holdings Ltd., will succeed David Cash, who has resigned from the insurer and its board, Endurance announced. Mr. Charman and members of his family recently became one of the largest shareholders in Endurance by purchasing \$30 million of ordinary shares. Mr. Charman left the board of Axis, the company he founded, in September 2012 after being replaced as a director by the board in June 2012.

## Marsh buys Aon's Peru representative brokerage

Marsh Inc. has agreed to buy Peruvian brokerage Rehder y Asociados Group, which currently has a representative brokerage relationship with Aon P.L.C. Rehder y Asociados has insurance brokerage and employee health and benefits units. After the transaction closes, which is expected by the end of the second quarter, the firm will operate as Marsh Rehder. Juan Carlos Rizo Patron, CEO of Marsh Peru, will be CEO of Marsh Rehder. Javier Rehder, CEO of Rehder, will become deputy CEO of the combined Marsh Rehder. Rehder has more than \$30 million in revenues and claims 17% of the Peruvian brokerage market. It has more than 250 employees. The combined firm will have offices in

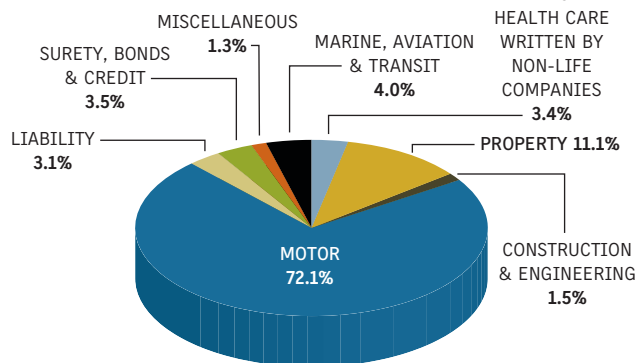
## PROFILE: CHINA

**\$71.5 BILLION**

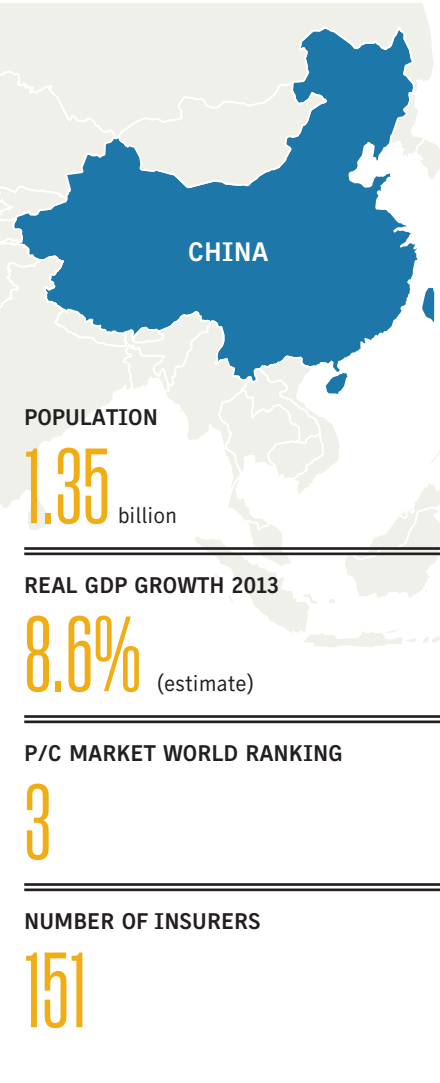
Despite many free market features, the Chinese insurance industry remains closely directed by its regulator. By far the largest sector of the market is the motor sector, which has been highly profitable and has enabled insurers to offer competitive rates on industrial and commercial risks, with rates falling by 10%-15% a year. While foreign insurers have sought to expand in China, regulatory and cultural issues have kept their market share static at about 1%. The property/casualty market has seen double-digit premium growth for several years.

◀ 2011 P/C premiums

### MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



### MARKET DEVELOPMENTS

UPDATED MAY 2013

- A regulation requiring railway operators to charge 2% of ticket prices to pay for personal accident-style compensation of up to \$3,210 per passenger was abolished on Jan. 1, 2013.
- A new wording for voluntary auto coverage is expected this year. The wording will require premiums to be based on the market value rather than the new value of a car.
- A regulation that came into effect on July 1, 2012, requires insurers to base their per-risk and per-event reinsurance retentions on their risk tolerance, financial strength and portfolio mix. Retained premiums should not exceed four times an insurer's paid-in capital and reserve fund.
- Since July 2012, the China Insurance Regulatory Commission has issued several regulations designed to increase insurers' investment returns by widening the scope of permitted investments.
- The regulatory commission has issued several regulations to limit the number of new insurance intermediaries that it will license. The measures are intended to encourage consolidation and improve the quality of the sector.

### COMPULSORY INSURANCE

Compulsory coverage includes:

- Auto third-party liability
- Liability for transport of hazardous materials
- Transport operators' liability
- Marine oil pollution liability
- Work-related injury for coal miners and hazardous construction work
- Third-party liability for schools
- Professional indemnity for insurance agents

### NONADMITTED

Nonadmitted insurance is not allowed in China, with the exception on international marine cargo risks. Some foreign investors arrange limited local policies and cover the balance of the risks through nonadmitted difference-in-conditions policies. The drawback is that foreign currency payments into China cannot be converted to local currency without regulatory permission. A large nonadmitted claim payment might attract the attention of authorities and a company may become liable for additional taxes.

### INTERMEDIARIES

Insurance intermediaries such as brokers and agents are not allowed to do business in mainland China without being authorized by the China Insurance Regulatory Commission. This prohibition also applies to intermediaries licensed in Taiwan, Hong Kong or Macao, which are not allowed to do business in mainland China without local authorization. Brokers are not allowed to represent or place business with nonadmitted insurers.

### MARKET PRACTICE

In the past, multinationals bought up to 100% nonadmitted coverage, but with plentiful capacity in China and growing concerns about taxation of claims payments, the current trend is to buy local coverage with a difference-in-conditions policy on top.

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

Lima, Trujillo and Cajamarca, with plans to expand further. Marsh says the combined firm will have a 30% market share in terms of premiums placed. Terms of the deal were not disclosed.

## Allianz increases cat bond program

Allianz S.E. secured an additional placement of \$175 million to its existing catastrophe bond shelf program, the insurer said. Known as Blue Danube II Ltd., the Bermuda-based special purpose vehicle covers U.S. and Canadian earthquake as well as named storm losses in certain portions of the U.S., Caribbean and Mexico for three years for Allianz Argos 14 GmbH, a wholly owned subsidiary of Munich-based Allianz S.E. Swiss Re Capital Markets and GC Securities, a division of broker-dealer

MMC Securities Corp., served as joint structuring agents and bookrunners on the transaction. The bond employs a modeled industry trigger, which takes industry loss estimates for the U.S. and Canada and weighs them based on certain applicable modeled portfolios to trigger the bond.

## Obama, China's Xi to discuss cyber security

President Barack Obama will discuss cyber security with Chinese President Xi Jinping during a meeting in California, as Washington becomes increasingly worried about Chinese hacking of U.S. military networks. "Cyber security is a key priority of this administration. It is a key concern that we have," White House spokesman Jay Carney told reporters on Air Force One as Mr.

Obama flew to New Jersey. "It is an issue that we raise at every level in our meetings with our Chinese counterparts, and I'm sure it will be a topic of discussion when the president meets with President Xi in California in early June," he said. The Pentagon underscored its concerns in a report to Congress this month, accusing China of using cyber espionage to modernize its military. It said the U.S. government has been the target of hacking that appeared to be "attributable directly to the Chinese government and military." But Pentagon spokesman George Little and other defense officials downplayed as outdated and overstated a report in the Washington Post, which cited a Defense Science Board report as saying that Chinese hackers have gained access to designs of more than two dozen major U.S. weapons systems. The newspaper said the

compromised U.S. designs included those for combat aircraft and ships, as well as missile defenses vital for Europe, Asia and the Gulf. But Mr. Little said it was wrong to suggest that U.S. capabilities had been eroded.

Reuters

## Costa Rica cyber criminal money-transfer shut down

U.S. authorities said they have shut down a Costa Rica-based money-transfer company that allegedly provided a digital currency widely used around the world by cyber criminals. In a statement, officials said authorities in Spain, Costa Rica and New York arrested five people and seized bank accounts and Internet domains associated with the company, Liberty Reserve. The digital currency is a transferable unit that

can be exchanged for cash. Along with the five arrests, prosecutors filed charges against two more company employees, who were still at large in Costa Rica. According to an indictment filed in U.S. District Court for the Southern District of New York, "Liberty Reserve has emerged as one of the principal means by which cyber criminals around the world distribute, store and launder the proceeds of their illegal activity." The indictment said the company had more than one million users worldwide, including at least 200,000 in the United States, and virtually all of its business was related to suspected criminal activity. It processed around 12 million financial transactions per year. Since it began operating in 2006, the indictment said, Liberty Reserve laundered around \$6 billion in criminal proceeds.

Reuters

## Brokerage BMS opens Ottawa office

BMS Group Ltd. announced the opening of its Ottawa office, its second branch in Canada. The office will act as the headquarters for its health care professional insurance alliance and group program portfolio business. The operation will be led by Brian Gomes, who most recently served as the chief operating officer for the Canadian Physiotherapy Association.

## Solvency II compliance may up insurers' risks

■ Insurers' efforts to manage volatility in their solvency ratios to comply with Europe's pending Solvency II regime may instead introduce new risks, Moody's Investors Services Inc. said in a report. The report, "Solvency II: Volatility of Regulatory Ratios Could Have Broad Implications For European Insurers," said inevitable mismatches between Solvency II's principles and insurers' economic reality will cause insurers to alter their operational behavior. For example, to hedge against slumping investment returns due to prolonged low interest rates, insurers may change product composition, the New York-based rating agency said. "Reducing interest rate risk could be achieved by reducing the weight of long-term guarantees on their balance sheet, notably by taking actions to reduce guarantees on new business or change product designs," Moody's said. "However, it takes time to run off legacy books before this has a material impact on an insurer's balance sheet. Furthermore, if the change is too abrupt, there is a

risk that an insurer's offers do not match policyholders' demand, which would have a negative impact on the insurer's franchise."

## Cayman-based captive changes to reinsurer

■ Southport Re (Cayman) Ltd. has changed its captive insurance status to become the second rein-

surer in the Cayman Islands. Southport Re, the reinsurance unit of New York-based private equity firm Southport Lane Management L.L.C., is the first insurer in the Cayman Islands to change its Class B captive license to a Class D open-market reinsurer license under the domicile's recently amended law, the company said in a statement. Class B licenses are for captive insurers with self-insurance and some direct commercial insurance pro-

grams, Gordon Rowell, head of insurance division for the Cayman Islands Monetary Authority, said in an email. The Class D license category was developed specifically for commercial reinsurers. The amended law, enacted in November 2012, established new categories of licenses for insurance-linked securities and reinsurers, among others, he said. The capital requirement to obtain a Class D reinsurer license is \$50 million, and "switching categories

is just a matter of meeting the various requirements of a specific category," Mr. Rowell said. Both types of licenses are regulated by CIMA, but Class D reinsurers are further required to maintain a place of business in the Cayman Islands, Southport Re said in a statement. The amended insurance law enables the domicile to effectively regulate risks inherent to different licensees in the market, CIMA Director Cindy Scotland said in the statement.



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EDITORIAL

## RETALIATION PROVISION NEEDS LIMITS

**P**rivately-held companies that conduct business with public firms have reason to worry in light of the U.S. Supreme Court's decision to consider a case centering on protection for whistle-blowers. In Jackie Hosang Lawson et al. v. FMR L.L.C. et al., the 1st U.S. Court of Appeals held that employees of privately-held contractors that do business with public firms are not protected from retaliation by the Sarbanes-Oxley Act's whistle-blower provision.

As the 1st Circuit correctly points out in its opinion, the plain language of the law restricts its application to public companies. Furthermore, had Congress wanted to extend whistle-blower protection to the contractors, subcontractors or agents of publicly-traded companies, as plaintiffs contend, it could have done so.

But there is some concern whether the Supreme Court will decide to overturn that ruling. Despite its pro-business reputation, the court has tended to side with employees in retaliation cases.

If it does extend SOX whistle-blower protections to employees of private firms, those firms then would have to worry about being charged with retaliation.

As the U.S. Chamber of Commerce's National Chamber Litigation Center pointed out in an amicus brief it filed on the issue before the 1st Circuit ruled in the case, extending the SOX whistle-blower provision to private companies would open the door to costly litigation and be at odds with "reasonable employer expectation."

The whole point of Sarbanes-Oxley, after all, is to protect shareholders. Numerous state laws already are on the books that would cover employees of private companies.

One can only hope that the Supreme Court can be persuaded to uphold the 1st Circuit ruling.

Meanwhile, as always, the best way to deal with trouble is to avoid it. That means all companies should establish policies that encourage whistle-blowers to feel free to come forward with any issues without any fear of reprisal.

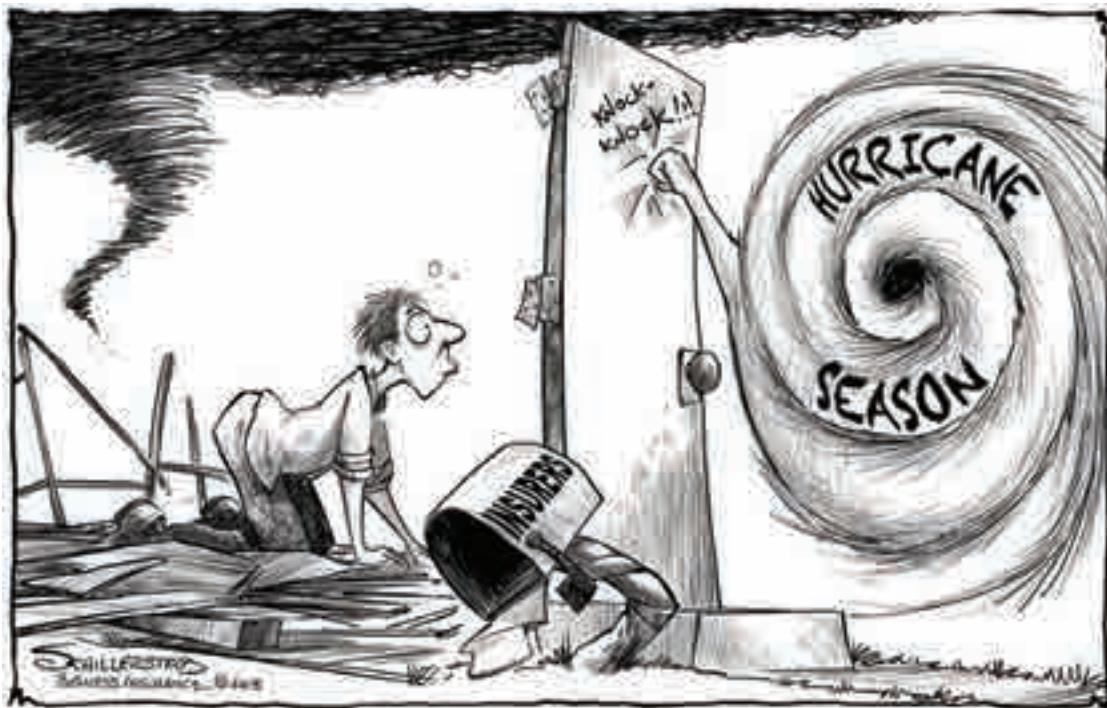
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SCHILLERSTROM



COMMENTARY

## GOOD NEWS FOR COMP SECTOR IS BAD NEWS FOR SOCIETY

**A** new OxyContin formulation is providing relief for workers compensation payers strapped with paying for the illegal diversion of the prescription pain reliever.

But unfortunately for society overall, heroin and other narcotics are replacing OxyContin as a drug of choice among addicts because the new formulation contains polymers that make it harder to crush for snorting or melt for injecting.

Allow me to explain.

The abuse-deterrent OxyContin formulation was introduced in 2010. Then in 2012, a study in the *New England Journal of Medicine* found that abusers preferred to shift from the reformulated OxyContin to heroin and other high-potency opioids.

The study relied on surveys completed by 2,566 people entering treatment programs because of opioid dependency. It revealed that before the release of the abuse-deterrent formula, 35.6% favored OxyContin as their primary drug.

That dropped to 12.8% just 21 months later, after introduction of the new OxyContin formulation.

The survey also found that of all opioids used to get high at least once during the past 30 days, OxyContin fell from 47% to 30%. Heroin use nearly doubled during that time and was the most-used alternative, according to the survey relying on data collected from July 2009 through March 2012.

Meanwhile, pharmacy benefit managers said in their workers compensation drug-trend reports released in April that opioid prescribing dropped during 2012.

Westerville, Ohio-based Progressive Medical Inc., for instance, said a drop in opioid prescriptions result-



**ROBERTO  
CENICERÓS**  
SENIOR EDITOR

ed from changing government prescribing guidelines, urine drug testing and the introduction of abuse-deterrent formulations.

That means the new formulations affecting pharmaceutical payer efforts to eliminate the diversion of addictive narcotic opioids also are helping. Diversion refers to using drugs outside their intended purpose, such as helping people with legiti-

mate pain-management needs, to selling them on the street illegally.

Payers have stepped up efforts to discourage diversion with measures such as urine testing to assure claimants are consuming prescribed opioids rather than diverting them.

This is good news for the workers comp industry.

But the authors of the *New England Journal of Medicine* study, titled "Effect of Abuse-Deterrent Formulation of OxyContin," wrote, the new formula reduced the abuse of one drug, but replaced it with a "drug that may pose a much greater overall risk to public health."

And Barry Lipton, practice leader and senior actuary for Boca Raton, Fla.-based NCCI Holdings Inc. said during the rating and research organization's recent 2013 Annual Issues Symposium, "It's not good news for society, but it is a big pressure release for workers comp."

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# RISK IN FOCUS

## Catastrophe & Disaster Planning

Q&A: James Lee Witt  
Ex-FEMA leader on  
infrastructure, codes

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Prearranged  
services essential  
to recovery

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Many companies  
unprepared for  
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# PREPARING FOR THE WORST

Risk managers should consider all possible scenarios when devising emergency plans

BY MARK A. HOFMANN

A successful natural disaster response plan must anticipate the unexpected, which experts say means thinking about every aspect of a company operation and how it would be affected by a catastrophe. Planning is complex because what's at stake can be nothing less than a company's survival. And it's not something that can be done overnight. In fact, planning should take place years in advance of an event, said William M. Lonchar, vice president and operations manager of property insurer FM Global in Atlanta.

Risk managers need to focus on communication, he said. "I really think the risk managers play a very integral part strategically in having the location level, corporate level and the risk level all looking at each other, saying, 'How can we do smart things to prevent the loss?'" Mr. Lonchar said.

There's also the interdependency issue. The risk manager has the strategic view to not only see how an individual location operates, but how that location fits in with the entire global organization, including providers along the supply chains, he said.

Linking communication and interdependency creates an opportunity for risk improvement, Mr. Lonchar said. That allows the risk manager to take the step to make a catastrophe loss preventable rather than inevitable, he said.

"These savvy risk managers make a huge impact on their organizations' resilience because when you're resilient, you're in business," Mr. Lonchar said.

During the prestorm planning, "we've tried to put together a pretty complex list of things to do," said Bart Douglas, managing director-national claim advocacy practice group at Arthur J. Gallagher & Co. in Miami.

This includes making sure the office is equipped with a good supply list, contracting with a landscaper to begin trimming trees and contacting the firm's security company so it can be retained. Mr. Douglas said contacting suppliers is also key, even the bottled water company, so delivery of supplies can continue after the natural disaster, he said.

In addition, hard files should be secured in plastic bags and computer files should be backed up and the computer hardware covered with plastic. File cabinets should not be ignored if they're still being used, Mr. Douglas said.

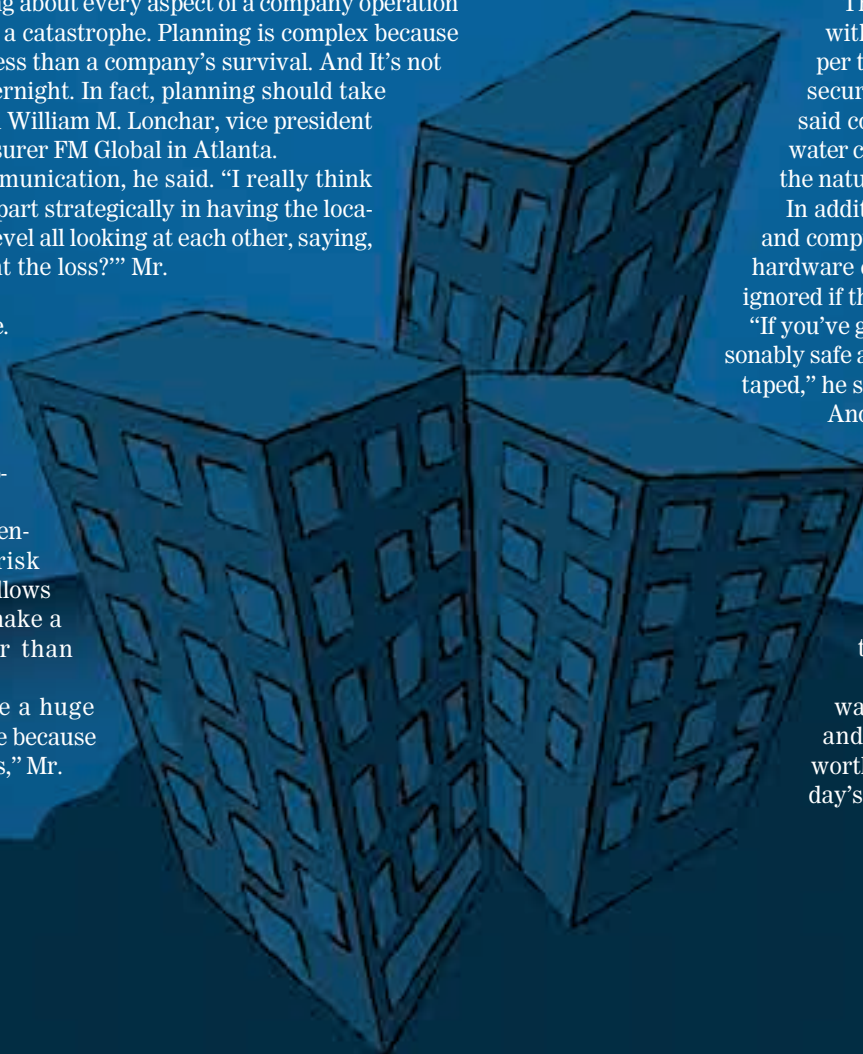
"If you've got file cabinets and you feel that they're in a reasonably safe area, you want to make sure your file cabinets are taped," he said.

Another key step is to make sure all vehicles that will respond to storm issues are filled up with fuel.

Checking emergency equipment supplies is also crucial, said Tom Fioretti, chief risk officer of Zurich North America in New York.

Mr. Fioretti recalled a customer that had a contract to have a fuel truck delivered in advance of Superstorm Sandy, which pounded the Northeast last October, to run generators.

"But no one bothered to check whether the tank was full," he said. The tank was only about half full, and the customer that thought it had three days' worth of fuel ended up with only a little more than a day's supply, he said.



“Many companies have emergency plans, but quite likely are too slow to pull the trigger,” he said. “You really may not think you’re going to need it, but you have to remember some of the most mundane things, like reviewing the plan with your team.”

In addition, inspect the building itself and make sure items on the roof are locked down, Mr. Fioretti said. Checking drains can prevent major storm damage, too, he said, noting that one customer suffered a roof collapse because drains were clogged and water formed a pond on the roof.

And making sure cell phones and radios are charged is also crucial. He said cell phone charging packs are \$15 to \$50, and a company should make sure its key people have them.

Mr. Fioretti said that some buildings in New York still aren’t functioning months after Sandy because all the electronics and disaster recovery material in the basement got washed away or

an adjuster may not have seen the policy’s particular language before, Mr. Douglas said. “It’s important that the adjuster and (the policyholder) are looking at the same material.”

“In advance, we try to suggest to our clients that they itemize those locations that might pierce the deductibles and have the adjuster focus on those locations, at least on the first visit,” Mr. Douglas said.

“Try to find common ground with the adjuster on the scope of damage,” he said.

## ACTIVE ATLANTIC HURRICANE SEASON EXPECTED

U.S. businesses and residents should expect an active Atlantic hurricane season in 2013, according to a report from the Tropical Meteorology Project at Colorado State University.

The closely watched report, “Extended Range Forecast of Atlantic Seasonal Hurricane Activity and Landfall Strike Probability for 2013,” in April projected 18 named storms for 2013, compared with the average of 12 for 1981-2010. The hurricane season officially started June 1 and runs through November.

In addition, the report predicted a 72% chance

that a Category 3, 4 or 5 hurricane will make landfall on the U.S. coastline in 2013, compared with a 52% average for the past century.

“We anticipate that the 2013 Atlantic basin hurricane season will have enhanced activity compared with the 1981-2010 climatology,” according to the report. The prediction cited an unusually warm tropical Atlantic and the relatively low likelihood of the El Niño effect, which usually coincides with lower hurricane activity.

An updated forecast will be released this week.

By Bill Kenealy

### 2012 NATURAL CATASTROPHE FACTS

Global insured losses: **\$65 billion**

U.S. insured losses: **\$58 billion**

#### BIGGEST LOSSES IN THE U.S.:

Superstorm Sandy **\$25 billion**

Summer drought **\$15-\$17 billion**

Tornadoes **\$2.5 billion**

#### BIGGEST LOSSES IN EUROPE:

Two earthquakes that struck Italy’s Emilia-Romagna region **\$1.6 billion**

Source: Munich Reinsurance Co.

ruined by the storm surge.

During the early stages of Sandy, Zurich’s risk engineering and claims operations reached out to almost 1,900 customers.

“We made sure we were very proactive,” he said.

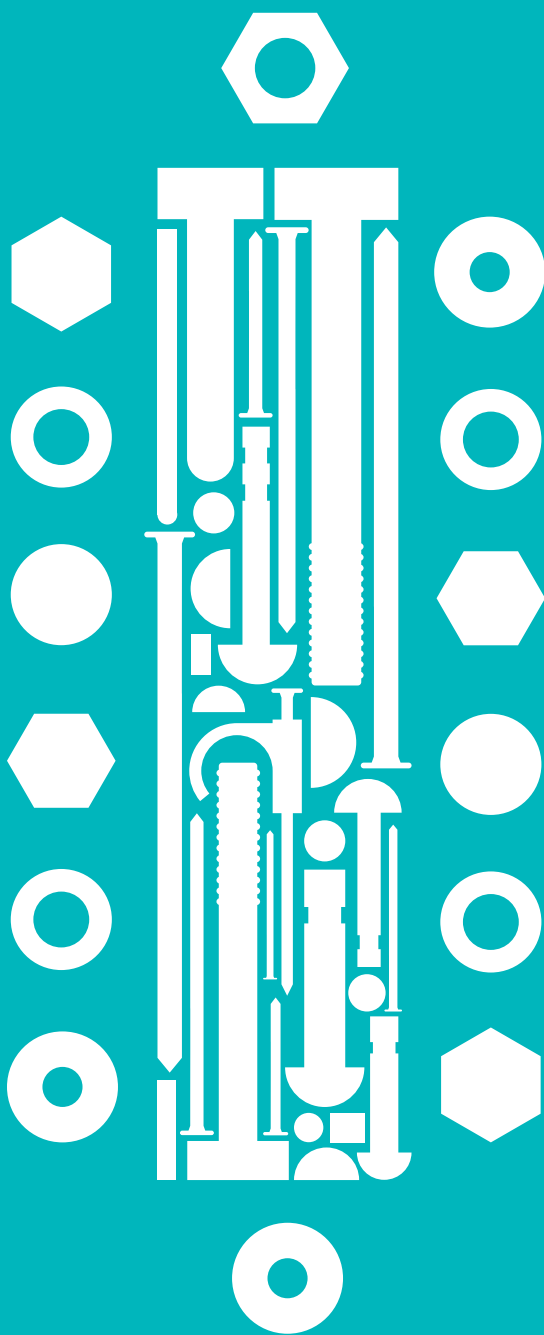
Gallagher’s Mr. Douglas said risk managers have advance notice of a hurricane making landfall, which gives them time to compile lists of key contacts such as adjusters and insurers so a claim can be reported promptly.

He said the policyholder needs to inspect damage and take photos before the adjuster assesses damage, and put the photos on a disk so they can be easily transferred to the adjuster. He also said policyholders should take before and after photos of any temporary repairs.

“We like to provide information in advance so when the adjuster gets there we have a spreadsheet to show things like type of deductible,” as well as a copy of the policy itself, he said.

Mr. Douglas said that sophisticated property policies aren’t just off-the-shelf documents.

“We like to provide a copy of the policy with the language” because



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## Collaboration imperative for effective catastrophe planning

**Q** When I interviewed you in 2005 for a story about hurricanes in the Northeast, you said the prospect of a major hurricane hitting that part of the country gave you nightmares when you headed FEMA. Does the possibility of a major hurricane hitting a major urban area such as New York or Philadelphia still cause you concern?

**A** Absolutely. Look what Sandy did, and it wasn't even a hurricane when it hit. Anytime you have a major storm that hits a highly populated urban area, the damages are catastrophic if there's any intensity at all. My greatest fear was a Category 5 hurricane starting around Florida and coming up the East Coast and just hanging along the coast for about 1,500 miles. It kept me awake at night worrying about that.

# Q & A

**Q** What were the major catastrophe planning lessons of Superstorm Sandy?

**A** One of the most important things is that local leaders, state leaders, federal leaders and even the private sector are going to have to come together in a partnership. They're going to have to look at some high-risk areas and

do some good land-use planning. They're going to have to start looking at critical infrastructure, start trying to put in things that would mitigate the losses of that. You look at Sandy: over 650,000 homes and businesses were affected. It was unbelievable. The infrastructure — water, sewer, roads, power — we just have to do a better job of looking at those. We spend billions of dollars on recovery. We need to spend billions of dollars on mitigation and prevention, if we're ever going to eliminate that damage/repair cycle we have.

**Q** What can public officials do to better prepare for a major hurricane hitting the Northeast or another Superstorm Sandy?

**A** It's very important that local officials look at their building codes, and make sure that those codes are up to standards now, par-



**JAMES LEE WITT**

**WITT O'BRIEN'S L.L.C.**

James Lee Witt is former director of the Federal Emergency Management Agency and now executive chairman of Witt O'Brien's L.L.C., a preparedness, crisis management and disaster response firm. He also is co-chairman of ProtectingAmerica.org, which advocates a comprehensive, integrated national catastrophe management solution that will better prepare and protect U.S. families,

communities, consumers and the U.S. economy from catastrophes. He recently spoke with *Business Insurance* Senior Editor Mark A. Hofmann about the Northeast's exposure to major hurricanes and the lessons of Superstorm Sandy. Edited excerpts follow.

ticularly in the rebuilding process and even before. If we build better and safer, then the loss of lives and structures are going to be less.

**Q** Is there a role for private-sector businesses in preparing for such an event?

**A** Absolutely. Eighty-five percent of our critical infrastructure is owned by the private sector. I think it's extremely important that businesses have good planning and they know what those critical risks are in those high-risk areas and start working toward

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# Diocese learns the value of disaster communications during Sandy

**S**uperstorm Sandy underscored the vulnerability of communications networks, according to the risk manager of one of the larger Roman Catholic dioceses in the United States.

“We had a suggested emergency plan in place at our parishes, but something as big as Sandy changes everything,” said William G. Chapin, director of the office of facilities and risk management for the Diocese of Rockville Centre in Rockville Centre, N.Y. “Given the past near-misses, no one can imagine the devastation.”

The diocese stretches across Nassau and Suffolk counties on Long Island. It encom-

passes 133 parishes plus other locations.

The diocese relies on individuals appointed as volunteer risk managers in each of the parishes, Mr. Chapin said. “They helped before the storm in identifying (vulnerable) areas and making sure we were as secure as possible,” he said. In the aftermath, they helped with the overall recovery effort.

“The biggest challenges had to do with communication,” said Mr. Chapin, a 2003 *Business Insurance* Risk Management Honor Roll inductee. “During the first few days after the storm, electric was down, including many cell towers.”

The diocese headquarters had power

because it is located in a village that has its own power source, he said. “We had power here for most of the time that most of the island was shut off,” he said.

In addition to phone calls and emails, people from Mr. Chapin’s department, as well as the diocesan third-party administrator and adjusters drove to every diocesan location to assess damage.

After the October 2012 storm, the diocese mobilized and collected materials and money. “In the two weeks following, getting the materials to the people in need became a logistics issue that took a significant amount of time,” Mr. Chapin said. In addi-

tion, his risk management department conducted daily update conference calls.

“The calls allowed all of the areas within the diocese to know what was going on,” he said.

Since dealing with Sandy’s wake, the Rockville Centre diocese has worked to improve its diocesan emergency operations to be ready for future storms.

“We will be providing information (throughout the diocese) on what we have learned, including a beefed-up communication plan,” Mr. Chapin said. “We’ve gone through a process of lessons learned.”

By Mark A. Hofmann

eliminating that.

It’s really important if you’re a business that you have good planning in place, you know what the risks are, and you try to mitigate as best you can for those risks. It’s important that employees have a family plan in place. With people at work, kids at school — what do you do if something happens?

**Q** Is there anything the insurance industry should be doing to better meet the challenges of a superstorm?

**A** Our goal at Protecting-America.org is to create this public/private partnership fund that would be the backstop that would be able to make insurance more available, more affordable, with lower deductibles, in high-risk areas. The more we can get insured, the more of the competitive market we can get out there, then that will happen. The backstop for states and also at the federal level is extremely important, because every time you have a major storm — you’re talking about an \$80 billion event up there in New York, Connecticut and New Jersey — reinsurance rates go up and those rates get passed back down to homeowners. It’s important that if we have a backstop in place, that we make it affordable with lower deductibles and more competitive in the market.

## FIVE MOST COSTLY HURRICANES IN THE UNITED STATES

Storm	Date	Estimated insured losses (2012 dollars)
Katrina	Aug. 25-30, 2005	\$48.68 billion
Andrew	Aug. 24-26, 1992	\$25.56 billion
Sandy	Oct. 22-29, 2012	\$18.75 billion <sup>1</sup>
Ike	Sept. 12-14, 2008	\$13.43 billion
Wilma	Oct. 24, 2005	\$11.07 billion

Note: Property coverage only. Does not include flood damage covered by the National Flood Insurance Program.

<sup>1</sup> Preliminary figures as of January 2013

Source: Property Claims Services unit of Insurance Services Office Inc.

SEPTEMBER 5TH, 1:45 A.M.

# A DEADLINE AND A BUSINESS LIFELINE

IN AN INSTANT, DOUG HOLT REMEMBERS WHY HE TRUSTS HIS AGENT

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# Disaster plans are only the starting point



Mr. Underwood

BY JOE UNDERWOOD

Recent events showed how quickly disasters can develop. Joe Underwood, a principal at risk and insurance advisory firm Albert Risk Management Consultants, discusses the importance of adapting disaster plans to changing circumstances.

Tragic events of late remind us that we need to take the time to improve our preparedness for disasters. Anticipation of a disaster is only half the battle.

While the goal is to envision every disaster scenario, this is an impossibility. We must review our plans and make adjustments when better knowledge and strategies become available.

And we must also realize that written plans are merely a starting point for preparedness.

Following are some issues to take into consideration:

## Stale plans

A common problem is that companies write disaster plans and do not revisit them. Even the best plans become stale over time. Contacts become out of date. People do not understand their roles, or worse, those with assigned duties are no longer with the company. It is a good idea to have employees who are assigned duties annually sign a statement that they understand and are willing to perform those duties.

## Limited training

The biggest problem, however, is that organizations only consider specific disaster scenarios and focus their preparedness on documentation alone. Problems arise when things deviate from the script.

Preparedness requires flexibility and adaptability. The importance of training cannot be overemphasized. To foster preparedness, organizations must perform simulation exercises. These exercises train managers to deal with the unexpected. They help identify gaps and evaluate plan completeness. Team building is also critical. Working together as a team develops the skills and abilities of many people, any of whom could be called upon to act during an emergency event.

Simulation and training must involve representatives at all levels of the organization. If the exercises are to be taken seriously, executive personnel must show their support and frontline individuals must be encouraged to speak up, if they see potential flaws in the plan. Similarly, it is important to follow simulation activities with review and discussion to encourage the sharing of ideas.

Regardless of the training received by your staff, there is no comparison to the training

that first responders have received. The first priority in any emergency is notifying emergency personnel and following their instructions. Yet, the needs of these first responders should be considered. As an example, it is wise to supply local fire departments with building blueprints. Advance knowledge of the facility can save time and save lives in situations ranging from fires to active shooters.

## Evacuation

Dealing with the disabled is often an overlooked aspect of evacuation. Appropriate equipment and a plan of action must be in place to help those with mobility or sensory impairments. This aspect must be reviewed annually to ensure that all locations, employees and potential visitors are covered.

## Communications

The next critical component that is all too often challenged is communication during the crisis event. A truly chaotic emergency is dramatic and unforeseen. Information is shifting moment by moment. The consequences of action or inaction are not easily understood. Organizations must establish in advance who is calling the shots under what scenarios. It might not be the people in charge during normal situations.

This also underscores the importance of reliable communication systems. In nearly every major catastrophe, landline phones are down and cellphone networks become overloaded because they were not designed for the heavy influx of calls that result from tragedies.

Alternate means of communication such as satellite phones, direct nonpublic telephone networks and/or radio communications must be in place. In the event of a widespread disaster, the return on these investments can be tremendous.

Another aspect is external communications. Depending on the nature of the disaster event, the media and others may be hungry for information. Who is going to talk to them, and what are the messages to be conveyed? Who is the backup person? What training do those people have? The communications landscape has been changed by social media. How will those platforms be used?

## Invalid assumptions

Another common problem with disasters is that companies mistakenly think their employees will be available to deal with the organization's needs prior to and following a catastrophe event. In widespread natural catastrophe situations, employees often are

dealing with personal crises. They may not place priority on sandbagging your facility versus boarding up their own homes. For this reason, it is wise to line up contractors and/or bring in employees from other nearby regions if possible.

Following disasters, companies are often challenged to restore operations because they cannot secure the needed supplies. Supply contracts for fuel, equipment and building materials can be beneficial. While these arrangements may fall through, the organization is likely to be in better shape than if it had made no arrangements.

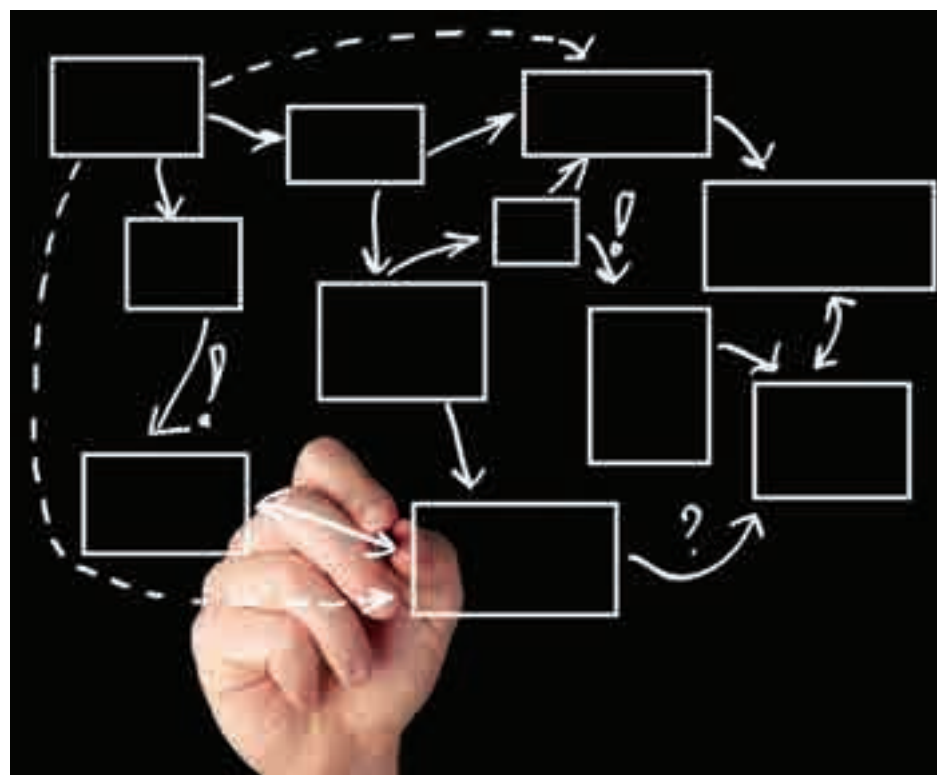
Organizations with nearby locations may also be able to supply the affected location. It is for this reason that large chain stores are often able to get up and running faster than others. For those organizations without this business dynamic, it may be possible to establish reciprocal mutual-aid arrangements with similar businesses. Understandings should be formally documented through contracts.

## Learning from past mistakes

Many organizations have suffered through some form of disaster. But following the event, they just want life to get back to normal. It is important to take the time to examine what went right and what went wrong from multiple perspectives.

There are three major components in disaster management. First, protect people by contacting emergency authorities, evacuating the area, warning neighbors. Second, protect property by guarding the site, organizing salvage operations. Third, protect reputation by communicating with stakeholders, maintaining control of external messaging. Each aspect should be retrospectively examined and the plan improved upon in order to be better prepared for future disasters.

This is one way in which insurance companies can help. Insurers have seen an abundance of successes and failures in disaster situations. Property and workers compensation insurers can offer valuable insight in the planning and training stages. Crisis management expertise is often available through umbrella and environmental liability insurance policies. Look into these resources, if you have them available.



*Joe Underwood is a principal of Albert Risk Management Consultants, a fee-only risk and insurance advisory firm located in Needham, Mass. He can be reached at [junderwood@albertrisk.com](mailto:junderwood@albertrisk.com) or 781-449-2866.*

# Prearranged contractor agreements aid swift recovery

BY MIKE TSIKOUDAKIS

**P**rearranged contracts and service agreements with restoration companies and critical vendors and providers can save companies and organizations crucial time when rebuilding after a natural catastrophe.

Such agreements not only help damaged businesses get up and running quickly following natural disasters, but also affect business interruption insurance deductibles and claim payments, experts say.

Prearrangements such as these are part of a larger emergency crisis management planning process, said Stephen Truono, vice president of global risk management and insurance at Stamford, Conn.-based Starwood Hotels & Resorts Worldwide Inc.

An emphasis on prearranged agreements for Starwood is crucial, as “most of our hotels are located where the wind blows and the ground shakes,” Mr. Truono said.

“One of the core fundamentals in the preparedness manual, which is part of this (emergency crisis management plan) procedure, is identifying critical business partners

and vendors and establishing a connectivity where you can, and prioritizing services where necessary,” he said. He also noted the importance of identifying and engaging alternative vendors or suppliers.

The importance of established agreements was never more evident than after Hurricane Katrina in 2005, when Starwood’s Sheraton was the only hotel in New Orleans that remained open during the hurricane and its aftermath, Mr. Truono said.

The hotel sheltered 700 guests and 500 employees, and became the central headquarters for local police and rescue workers.

“It’s about having that plan and practicing that plan and engaging the necessary critical vendors,” Mr. Truono said, such as power, plywood, diesel oil and potable water providers, among others.

Such agreements are basic contingency planning, said Alfred P. Tobin, New York-based managing principal and national property leader for Aon Risk Solutions.

“You’d be surprised how many small companies — or even large companies — have not invested in simple things like alternative

power,” he said, noting that established contracts with remediation firms can get rebuilding efforts started quicker.

Prearranged provider agreements are not expensive and are valuable to have in place, Mr. Tobin said.

Above all, an established catastrophe plan is critical before a company or organization engages provider contracts, said Dave Boyle, head of property claims for Zurich North America in Schaumburg, Ill.

“Before you can properly identify the right vendors, you have to have a fully developed catastrophe plan or disaster plan against which you can run mock exercises ... so that it fleshes out where you may have gaps in your business continuity plan,” Mr. Boyle said.

A company that provides water extraction and water mitigation is one of the most important agreements organizations should have in place before a disaster, he said.

Other agreements include contracting for alternative power supply, alternative communication resources and off-site redundant data systems.

Such arrangements can limit business interruption-type claims

or interruption to business services and operations, Mr. Boyle said.

“Obviously, that has dramatic impact on the length of time that their revenue is impacted, which in turn has a dramatic impact on both their deductibles, as well as our ultimate payouts on the claims side,” he said.

The Norfolk, Va., public school district faces considerable wind and flooding risks, said Dan Hurley, senior director of risk management and safety for Norfolk Public Schools.

“We have cooperative agreement language in contracts ... that allows a lot of us to share the contract,” Mr. Hurley said. “So if somebody has something that’s attractive for us to piggyback on, we’ll actually jump on that.”

One of the school district’s contracts is with a water extraction company, Mr. Hurley said.

“What we’re trying to do at that point also, besides get the water out, is to keep the mold out,” he said. “If we can quick-dry and dehumidify and blow air through, we can not only dry the building out, but keep the mold from getting in.”

Many organizations recognize the importance of established contracts for rebuilding after a catastrophe, but few take steps to create specific relationships with providers to execute against such exposures, Mr. Boyle said.

“Very few of them address some of the redundant issues and backstops, such as communication or alternative power,” or contemplating water extraction in advance, he said.

A best practice when arranging contracts with critical service providers and restoration firms is to establish relationships in advance, said Michelle Cross, Boston-based national practice leader for business continuity at Wells Fargo Insurance Services USA Inc.

“For any service provider to really provide quality, top-level, appropriate service, they have to know about the company they’re working with,” Ms. Cross said.

“They get to know your company, they get to know what you then need and what hazards you have on-site,” she said, noting that prearranged agreements typically do not include a fee until the time of service.



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# SUPERSTORM SANDY TAUGHT ADJUSTERS NEW LESSONS IN CLAIMS MANAGEMENT

Fuel, water, lodging problems among challenges that tested claims professionals

MARK A. HOFMANN

**S**uperstorm Sandy presented claims adjusters with some supersize challenges. And those challenges can serve as valuable claims management lessons for future natural disasters.

After the storm struck in late October, basic services were shut down across broad swaths of the New Jersey shore, Manhattan and Long Island. Getting claims personnel into the affected areas was difficult. And once adjusters were there, finding lodging for them was problematic. On top of that, there was the challenge of access to damaged properties as authorities assessed public safety issues.

“On Monday, it was lodging; on Tuesday, it was gas. It seems like they were coming one after another,” said Bud Trice, vice president-catastrophe services at Crawford & Co. in Atlanta, recalling the

adjuster challenges.

James Wheeler, vice president-commercial insurance property field claims for Liberty Mutual Insurance Co. in Richardson, Texas, which is the headquarters of the Boston-based insurer’s central regional office, said the insurer was somewhat challenged by the timing of Superstorm Sandy, which occurred “right in the middle of our realignment of claims operations.”

But, he said, the adjusters had more than a week to plan operations. “We made use of every hour, every minute” to communicate and to “know our organization inside and out,” Mr. Wheeler said.

Crawford’s Mr. Trice said from a strategic level, the proper placement of adjusters had to be determined.

“We had damage running from Delaware to Rhode Island. Probably the biggest problem was mak-

## SANDY CLAIMS DELUGE

Total property/casualty claims:

**1.5 MILLION, 92% of them closed**

Claims filed in New York:

**MORE THAN 500,000, 95.8% of them closed**

Adjusters handling the claims in New York:

**MORE THAN 4,500**

New York policyholder Sandy-related complaint rate:

**LESS THAN 1% of claims**

ing sure you had enough adjusters at the right location,” he said. The adjusting company chose a location in Allentown, Pa., for its managers.

Among the biggest issues were dependencies — lodging, gasoline and the overall issue of transporta-

tion, Mr. Trice said. Gasoline couldn’t be pumped where there was no power; long lines formed where fuel was available.

Liberty’s Mr. Wheeler said the insurer was prepared for the gasoline issue. “I’d been there before,” he said.

The insurer rented two gas tankers, which were positioned at central locations in Long Island and New Jersey, he said. “We knew gas was going to be a crisis; we wanted to make sure adjusters didn’t waste any time in gas lines.”

Issues hampering adjusters included “limited lodging, damages to the infrastructure; you couldn’t get gasoline on Long Island,” said Hart Hubbard, vice president-catastrophe services with Cunningham Lindsey in Columbia, S.C.

He said because of the limited lodging available, “we had people living in New Jersey who had to cross a toll bridge every day to get to Long Island.”

Another lodging problem arose from the storm’s timing, he said. Some adjusters use recreational vehicles as combination offices and homes while on the job, and the RV parks had already closed for the season.

Access to damaged property also emerged as an issue for adjusters.

Some states have clearances so that adjusters can get through a secured zone, Crawford’s Mr. Trice said. But even then, the passes are good only for a few days, he said.

Access presented some issues, particularly at first, said Greg Raab, manager of integrated services at Utica, N.Y.-based public adjuster Adjusters International Inc. and a member of the board of

the National Association of Public Insurance Adjusters.

“A lot of our guys have state ID cards; we have pretty liberal access to most of the places,” Mr. Raab said. “Some of the places were so fully damaged, you couldn’t walk in and take pictures of the structural damage.”

Limited access allowed by authorities was an issue in some parts of New Jersey, said Cunningham Lindsey’s Mr. Hubbard. Damaged infrastructure meant that authorities would allow homeowners in for only brief periods, he said.

Adjusters had to get passes, and sometimes authorities would bar access to damaged areas, Mr. Hubbard said. For example, bridges to barrier islands were blocked.

Despite the challenges, planning paid off, Liberty Mutual’s Mr. Wheeler said.

“We wanted a three- to five-day turnaround in all inspections, and we certainly exceeded that,” he said.

That involved a heavy commitment to communications, he said.

“We wanted to make sure we communicated with our agents and brokers,” he said. “Once Superstorm Sandy hit, we had a steady flow of conference calls with our agents and brokers.”

“I don’t think in a disaster situation you can overcommunicate,” Mr. Wheeler said.

Afterward, Liberty Mutual heard from agents about how well the claims process had worked. Good claims handling provides a competitive advantage, he said.

“We want to be first in and first out,” he said, meaning the first to complete the claims-adjusting process.

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# Companies recognize catastrophe risks but fail to prepare: Survey

Risk mitigation efforts often don't address key exposures acknowledged by executives

BY SARAH VEYSEY

While companies recognize the potential threats posed by natural catastrophes, many have insufficient mitigation plans in place, particularly in the area of information technology, according to research by Zurich Insurance Group Ltd. and the Economist Intelligence Unit.

Zurich and the EIU surveyed 170 executives from large and midsize companies around the world in January, and respondents indicated that disruption from a natural catastrophe could affect many aspects of their businesses.

Almost half of the respondents said a natural catastrophe could affect the continuity of information technology support for business processes, while 44% said a natural catastrophe could affect supply chain logistics.

Forty-four percent of respondents said a natural catastrophe would affect business critical functions, while 42% said it would affect communications with customers. Thirty-seven percent said it would affect employee performance and 24% said a natural catastrophe would hinder the company's ability to protect sensitive data from theft or loss.

The study found that only 45% of companies use some form of scenario analysis to assess the risks posed by natural catastrophes, while 27% adopt no systematic risk assessment from natural catastrophe, 22% study the effect of catastrophes on other organizations, and 16% use third-party risk assessment.

Less than one third of respondents transfer the risks posed to their information technology systems by natural catastrophes via insurance, the study showed, while just 23% said they expected to transfer information technology risks through insurance within three years.

When asked about the steps they had taken to mitigate the threats to information technology systems from natural disasters, 49% said they had employee-facing strategies to maintain business continuity, while 36% said they would be using such a strategy within three years.

Almost half of respondents said they had new information technology or data solutions to tackle the threats posed to their information technology systems by natural disasters, while 48% said they would have such a solutions in place within three years.

Thirty-one percent of respondents said they had customer-facing strategies to maintain business continuity, and the same percentage of respondents said they would have such a strategy in place in three years.

Almost a quarter of respondents said they had increased spending on the overall risk management, as part of an effort to mitigate the threats of natural catastrophes on information technology, while 22%

said they would adopt such an approach in three years from now.

And 19% of respondents said they would shift the risk exposure of their information technology systems to natural catastrophes via outsourcing, with 16% saying they would take such an approach in three years.

Companies were asked to cite the biggest single weakness they faced in managing information technology risks from natural catastrophes.

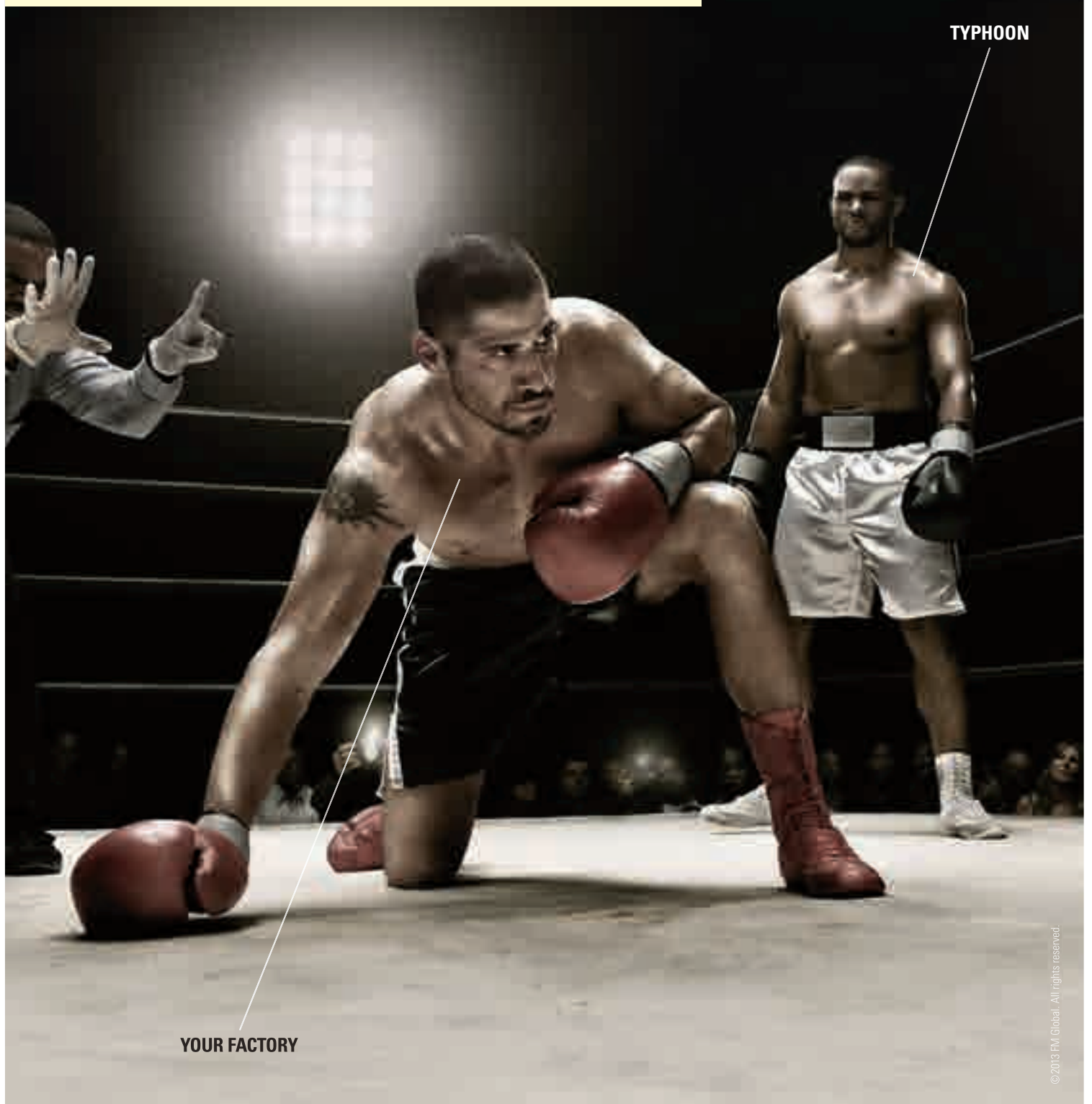
Almost one-quarter said their business plan did not adequately incorporate the full range of information technology risks from natural catastrophes, while 22% said there was no clear "ownership" of the company's risk management.

Another 17% said that their organizations did not have a formal business continuity plan, while 12% said their company's business plan was not communicated effectively to all stakeholders.

Another 8% said their organizations do not spend enough on technology solutions, while another 8% said the biggest single weakness in their company's management of information technology risks from natural catastrophes was the lack of insurance against natural disaster risks. Another 8% responded that their biggest weakness in dealing with such risks was the absence of third-party, information technology back-up services.

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### LARGEST PROPERTY LOSS CONTROL CONSULTANTS

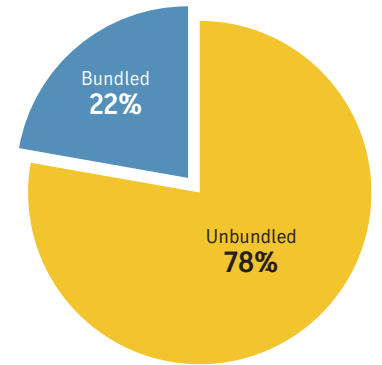
Ranked by 2012 gross revenue from unbundled property loss control consulting

Rank	Company	Headquarters	Unbundled property loss control consulting revenue	% of revenue from unbundled services	Total property loss control consulting staff	Unbundled clients	Principal officer
1	ABSG Consulting Inc.*	Houston	\$217,665,000	100%	1,700	1,800	David Weinstein, president/CEO of ABS Group
2	Aon Global Risk Consulting	Chicago	\$67,000,000	82%	535	1,800	Neil Harrison, group managing director
3	Global Risk Consultants Corp.	Clark, N.J.	\$66,612,000	100%	378	1,184	James Marsh, CEO
4	Arup	San Francisco	\$64,658,000	100%	440	1,000	Andy Thompson, associate principal
5	Marsh Risk Consulting	New York, N.Y.	\$51,000,000	68%	314	1,205	Michael Cormier, managing director/CEO of Marsh Risk Solutions
6	XL Global Asset Protection Services L.L.C.	Hartford, Conn.	\$30,000,000	70%	198	N/A	Timothy Heinze, head
7	Axa Matrix Risk Consultants	Miamisburg, Ohio	\$22,087,500	75%	151	200	Armand Fernandez, CEO
8	EFI Global Inc.	Humble, Texas	\$14,500,000	100%	313	95	Ron G. Holt, president/CEO
9	Regional Reporting Inc.	New York	\$9,000,000	100%	250	300	Martin Myers chairman
10	Paragon Risk Engineering	Allenwood, N.J.	\$7,100,000	100%	40	70	Robert McMullen, president

\* All figures for ABSG Consulting Inc. are BI estimates  
Source: BI survey  
Researched by Angelina Villarreal

### BUNDLED VS. UNBUNDLED

Percentage of 2012 revenue from bundled and unbundled clients among participating property loss control consultants



### LARGEST 100% UNBUNDLED PROPERTY LOSS CONSULTANTS

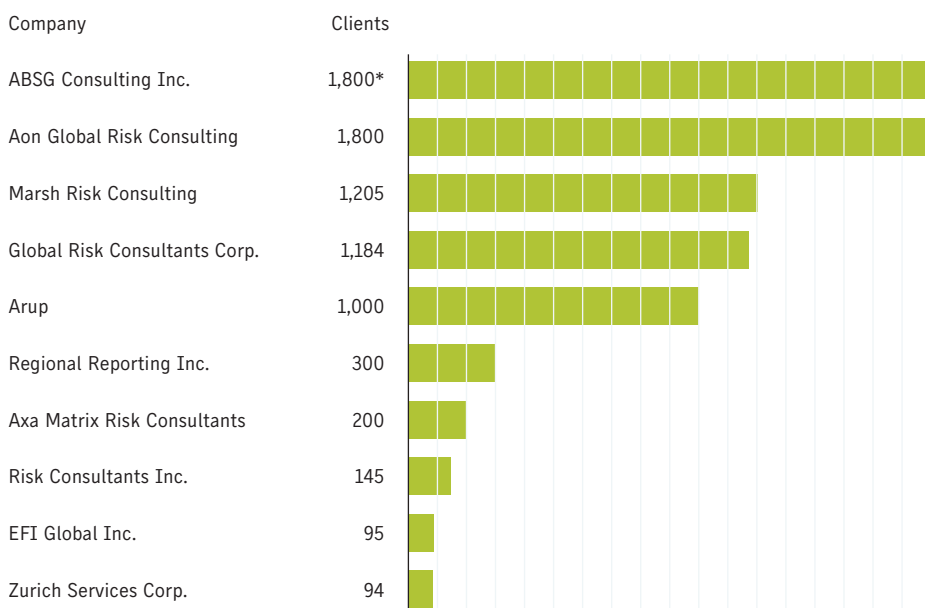
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3	Arup	\$64,658,000
4	EFI Global Inc.	\$14,500,000
5	Regional Reporting Inc.	\$9,000,000
6	Paragon Risk Engineering	\$7,100,000
7	AEGIS Insurance Services Inc.	\$2,295,280
8	Risk Logic Inc.	\$2,000,000
9	Haines Fire & Risk Consulting Corp.	\$1,100,000
10	Allrisk Engineering Inc.	\$950,000

\*BI estimate

### LARGEST BY CLIENTS

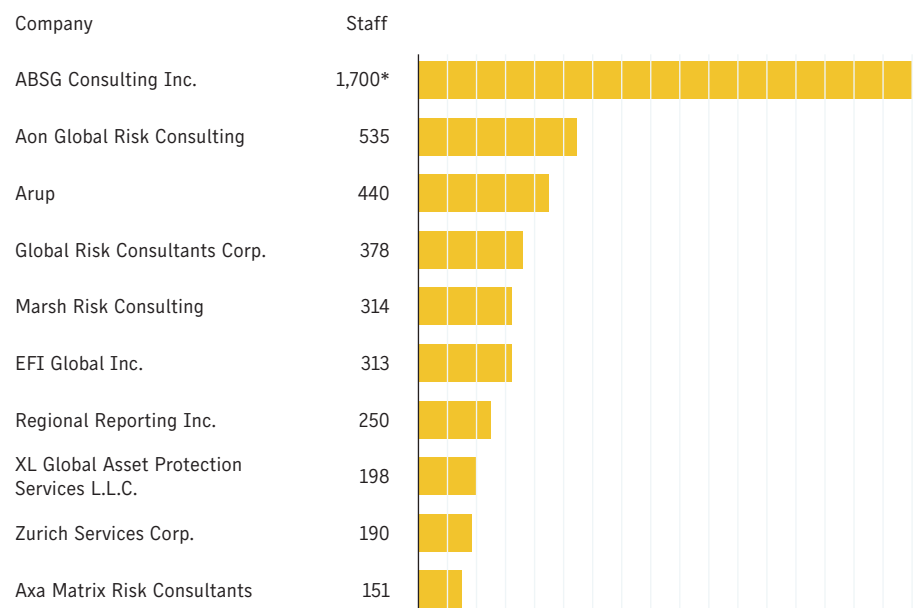
Ranked by number of unbundled property loss control clients during 2012



\*BI estimate

### LARGEST BY STAFF SIZE

Ranked by 2012 staff assigned to property loss control



\*BI estimate

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# RISK MANAGERS ADAPT TO EVOLVING RISK ENVIRONMENT

**Q** What are the top three risks facing risk managers today?

**A** The ones that are the most topical right now are obviously terrorism, especially what the government is going to do at the end of next year; cyber; and I'd probably have to say the last one is weather-related risks, just because it certainly seems ... it's more volatile than it's been in quite some time.

**Q** How are risk managers poised to address such risks?

**A** As a group, the discipline is much more highly developed than it had been in the past. The focus on enterprise risk has gotten much more granular. The professional nature of the position continues to increase. I'd say they're better prepared than ever as a group.

**Q** With an improving economy, what sort of risks accompany growth and what should risk managers keep their eye on?

**A** If there is in fact an improving economy, they're going to have to switch gears. For most commer-

## Q&A

cial enterprises, they've been kind of locked in an extended period of flat to negative growth in their businesses. They're now going to have to shift gears to (determine) is there enough capacity, are they in expansion, are they getting into new areas or new risks than before?

**Q** What's your assessment of the commercial property/casualty market, and where do you see it going throughout 2013 and into 2014?

**A** I'm skeptical of the claims of a hardening market. It just seems

like the fundamentals of excess capacity are still there. What's changed over the last 10 years or so and (is) increasing is the advent of sidecars. As there is any sort of reduction in capacity, sidecars provide an immediate increase in a pretty efficient way. So, other than specific jurisdictions in specific lines, like for instance California workers comp or wind-exposed coastal high-value properties, I just don't think there's anything fundamental that is going to move the market. I think it's very much like the economy. If there is growth it's at a glacial pace, and I think for us and my colleagues in the industry it's business as usual. It's more of the same.

**Q** What's the focus for Integro moving forward in 2013? Where do you see business growth?

**A** We view ourselves as a multi-specialty broker, so we think we can successfully compete in certain client industries with anybody. Our model is definitely something that clients are interested in. With the overconsolidation of the brokerage industry, it seems



PETER F. GARVEY

INTEGRO LTD.

The risk management discipline is more developed than in the past and risk managers are well-positioned to tackle the changing risks of their organizations, says Peter F. Garvey, co-founder, president and CEO of insurance brokerage Integro Ltd. in New York. In a recent interview with *Business Insurance* Associate Editor Mike Tsikoudakis. Edited excerpts follow.

to be all about them. Clients still want expertise. They want good advice. They still value the individual broker rather than the institution that those brokers work with.

Our model is about attracting quality individuals who are organized on a client industry specialty basis, and we're thrilled with the response of the client community. We'll continue to grow specialty by specialty. The ones that we already have achieved recognition in will look to bring in more people and expand the territory that we serve within those special-

ties and then as we can attract the right people, we'll add new specialties to our capabilities.

We've made a number of acquisitions, but I would call ... the level of acquisitions modest. That's because our belief is that clients benefit from a singular culture, highly collaborative culture across the organization. And it's hard to maintain a singular culture if you're buying other businesses. They may have fine cultures in their own right but ... it's hard to assimilate. So our view is organic growth builds a better firm for the long term.

## COMINGS & GOINGS

### UP CLOSE: GRACE CRICKETTE

EMERYVILLE, CALIF.-BASED CHIEF RISK OFFICER

American Automobile Association for Northern California, Nevada and Utah

**PREVIOUS POSITION:** Oakland, Calif.-based chief risk officer for the University of California.

**GOALS FOR NEW POSITION:** My concrete goals are to basically implement an enterprise risk management program and take all the components that already exist ... and strengthen all the components (of risk management). I have an opportunity to shape it.

**CHALLENGES FACING INDUSTRY:** The weakness is everybody is interested in risk management so you hear a lot of dialogue: "Who's in charge, whose role is it?" My thought is enterprise risk management is everybody's job. Everyone around here is a risk manager.

**INDUSTRY OUTLOOK:** The strength is people are interested in enterprise risk management. That's the upside.

**WHAT I WOULD CHANGE:** I think that the thing that I would change is the idea of what you need to know and the skill set you need to have to be an effective risk manager. I think you have to have a good financial



background, understand information technology, and ... understand project management.

**FIRST INDUSTRY JOB:** Risk management analyst with US Rentals, which eventually merged with United Rentals Inc.

**WHAT SURPRISED ME:** Risk management as a career is a hidden gem. I've learned that risk management is what you make of it.

**HOBBIES:** Music is my hobby, and second to that is cooking. I sing and I play guitar.

**CAN'T-MISS TELEVISION SHOW:** "Doc Martin."

**FAVORITE BOOK:** "The Art of War" by Sun Tzu.

**BEST CITY:** The best city for food is San Francisco. The best city for romance is Paris. The best city for fun is Rome. And the best city for business is London.

**ON A SATURDAY AFTERNOON:** Sitting in the sun in the Taylor Family Vineyard in Sonoma. It's my husband's family vineyard.

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## Cover for invalidation of Calif. offset credits

Parhelion Underwriting Ltd. has partnered with the Climate Action Reserve, which is the Los Angeles-based carbon offset registry for North America, to offer insurance products for California's Cap-and-Trade program for greenhouse gas emissions.

The product provides coverage against invalidation of compliance offset credits that were transitioned from credits issued by the Climate Action Reserve, said London-based Parhelion, which specializes in environmental and energy insurance.

"Invalidation of offset credits has been a concern for the market, especially for compliance buyers," Gary Gero, president of Climate Action Reserve, said in a statement. "While the reserve has a well-established reputation for its knowledge and experience in reviewing offset projects and ensuring that offsets have real environmental integrity, we are always looking for ways to further protect our account holders and market participants."

Policy limits are based on the volume and monetary limit of the offsets.

Called Parhelion California ARB Offset Credit Invalidation, the insurance program covers California Environmental Protection Agency Air Resources Board offset credits that were transitioned from reserve-issued registry offset credits or early action offset credits.

For additional information, contact Julian Richardson of Parhelion at [JHR@parhelion.co.uk](mailto:JHR@parhelion.co.uk).

## Marsh offers D&O cover for international entities

Marsh Inc. has launched a directors and officers liability insurance program for international organizations.

Called Marsh Delta D&O, the service offers coverage on a single-claim basis

## PRODUCTS & SERVICES

### Liberty Mutual introduces ADA compliance tools

\* Liberty Mutual Insurance Co. has rolled out tools and resources on Americans with Disabilities Act compliance issues.

Its group benefits business unit has published a guide for employers and a separate guide for brokers and producers.

The guides include information on: identifying compliance issues; documenting and tracking employee leave across ADA and other disability programs; communicating with employees; and integrating various disability, absence management and return-to-work programs.

To access the manuals at no cost, contact the Liberty Mutual group benefits unit at [groupbenefits@libertymutual.com](mailto:groupbenefits@libertymutual.com).

Additional information on compliance issues and risks is available at [www.libertymutualgroup.com/ADA](http://www.libertymutualgroup.com/ADA).

instead of an aggregate limit.

Limits up to £100 million (\$151.7 million) are offered, and the product includes more than 100 enhancements to most standard market forms. The coverage

includes protection against personal liability from nonpayment of corporate taxes demanded during the policy period; reasonable fees, costs and expenses associated with an investigation; and an additional limit for environmental violations on top of the overall limit.

With a challenging economy, evolving regulation and more regulatory scrutiny, directors "are increasingly worried that decisions made today, based on current information, could be attacked later with the benefit of hindsight. For directors, this means the potential for civil, regulatory and criminal liability," Leslie Kurshan, a senior vice president in the financial and professional practice, said in a statement.

The program is available to private, private equity-owned and publicly traded U.K. and international businesses outside the FTSE 100 or geographical equivalent, which includes organizations that have Level 1 American Depository Receipt programs.

For more information, contact Ms. Kurshan at [leslie.kurshan@marsh.com](mailto:leslie.kurshan@marsh.com).

## Schinnerer comp targets small, midsize firms

Specialty underwriter Victor O. Schinnerer & Co. Inc. has launched a stand-alone workers compensation program for small to midsize firms.

The coverage will be offered through an "A-rated insurance carrier" for companies with moderate severity classification, Chevy Chase, Md.-based Schinnerer said.

The workers comp line will cover mainly employers in the construction, transportation, health care, retail, manufacturing, restaurant, and food manufacturing industries.

The workers comp program will require a minimum premium of \$5,000 and a maximum premium of \$150,000, Schinnerer said.

## DEALS & MOVES

### Willis North America launches private health insurance exchange

Willis North America Inc., a unit of Willis Group Holdings P.L.C., has launched a private medical and voluntary benefits exchange.

The exchange, Willis Advantage, allows employers to set fixed contribution levels toward the cost of medical, dental, vision and other benefits for employees and their families, while providing plan members with multiple plan options and support tools to guide them through the decision-making process.

Jim Blaney, CEO of Willis' human capital practice in Philadelphia, said Willis Advantage is designed primarily to meet the needs of middle-market employers that he feels have been underserved by competing private exchanges.

"I don't think any of the solutions that have gone before us really address the underlying cause of health care costs, which is poor health," he said.

Rob Harkins, vice president of Willis' human capital practice in Boston, is leading the exchange's deployment and continuing development.

### AmWINS targets midsize firms with voluntary benefits practice

AmWINS Group Benefits has launched a voluntary benefits practice headed by Robert Shestack, who joined the Charlotte, N.C.-based division of AmWINS Group Inc. this year.

The voluntary benefits practice, which will specialize in coverage solutions for employer groups with 50 to 1,000 lives, will offer supplemental benefits to benefits professionals and their clients. Benefits offered include life, dental, vision, accident, short-term disability, critical illness and medical gap insurance.

"With more employers moving to high-deductible health plans, many of the traditional core benefits are being eliminated," Sam Fleet, president of AmWINS Group Benefits, said in a statement.

In addition to the new product offerings, AmWINS also will provide ancillary support services with plan administration, customer service, benefits communication, Web-based tools, call center support and enrollment counselors, the company said.

Before joining AmWINS, Mr. Shestack previously held the positions of managing director and national practice leader at two units of New York-based broker Marsh Inc. specializing in employee benefits.

### XL Group center of excellence targets global programs

XL Group P.L.C. has launched a global programs center of excellence and named Kevin Strong as its global programs manager.

The initiative aims to streamline XL's expertise to better serve policyholders and brokers, the Dublin-based insurer and reinsurer said in a statement.

Mr. Strong, previously senior vice president of the Aon Global Client Network, a unit of Aon P.L.C., will be based in New York and lead a team of professionals from Asia, Europe and North America, XL said.

Of global programs that XL leads, about one-third have policies in Asia and/or Latin America, said Jason Harris, chief executive-international property/casualty. "Our global programs center of excellence will help us to better support our clients and brokers across every step, whether it is policy issuance, collections or claims management," he said.

## Tool helps risk managers price blackouts, other perils

### TECHNOLOGY

#### HOW DOES IT WORK?



**BILL KENEALY**

Blackouts can leave even the most conscientious risk managers in the dark. With this problem in mind, The Hartford Steam Boiler Inspection & Insurance Co., a unit of Munich Reinsurance Co., and Atmospheric & Environmental Research, a unit of Verisk Analytics Inc., are partnering to provide a new service that will help risk managers prepare for blackouts.

The service, which is in a final testing phase and soon will be offered by both firms, uses data from both to calculate the financial consequences of power outages and assess potential losses from multiple perils.

HSB President and CEO Greg Barats said the offering is the result of an internal project started in 2003 to calculate the cost of power outages.

"We have refined this model over an extended period of time through our data and our losses," Mr. Barats said.

Mr. Barats said partnering with the Verisk research arm was the best way to commercialize the product.

"AER brings in a significant amount of technical modeling capability, including a state-of-the-art

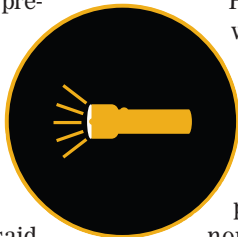
weather simulation model," he said.

AER President and CEO Ron Isaacs agreed that the alliance makes sense and will give users a better sense of how the intersection of weather events and an aging power grid threaten the power infrastructure on which businesses depend.

"HSB has very deep knowledge associated with electrical infrastructure equipment," Mr. Isaacs said. "They bring to the table a profound understanding of the parametric issues associated with power generation, distribution and transportation equipment. AER has a complementary, profound understanding of the phenomenology associated with the environment, in particular weather."

For example, using AER's historical data has allowed creation of simulations and scenarios to show risk managers how a given event would affect the power infrastructure on which they rely.

"We think this model would be able to run a wide range of scenarios from weather to human- and equipment-caused failures," Mr. Barats said. "This is a unique opportunity to bring in a probabilistic tool to estimate losses."



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## FACILITY

Continued from page 4

inception and should be subject to the same controls as other binding authorities.”

Before entering such an arrangement, Mr. Bolt said syndicates should discuss it with their contact at the market's Performance Management Directorate, which oversees market conduct and analyzes syndicates' business plans.

Syndicates that already have entered into deals involving such facilities, which Aon described as a type of sidecar, also should be reported to the directorate “so that we can discuss the risk management and risk monitoring measures in place,” Mr. Bolt said.

During a speech at a Lloyd's dinner in New York last month, Lloyd's Chairman John Nelson warned that the current low interest rate environment was driving the behavior of capital markets in

the reinsurance and direct insurance marketplace “in ways that may disrupt the insurance market, such that it operates against the interest of the insureds.”

“Specifically, tracker funds blind underwriting — if it proliferates — will damage the underwriting pool of expertise and diversity available in the market — so important to world economies and businesses — in respect of the specialized risks that Lloyd's and other carriers write,” Mr. Nelson said. “We must be careful in our industry to watch out for these sorts of unintended consequences.”

A spokesman for Aon said the London-based brokerage believes such deals are in the best interests of clients, that buyers can choose whether or not to participate in such arrangements and that buyer feedback so far was “overwhelmingly positive.”

The spokesman said that in all discussions with Lloyd's on the subject Aon stressed that it believes the facility to be in the

best interests of clients and reinforces the benefits of operating in the London and Lloyd's subscription markets.

Some underwriting sources, however, have expressed concern about so-called blind underwriting.

“If you are blindly underwriting a percentage of someone's business, you need to do your aggregate work,” said one source who asked not to be named.

“It is writing a line slip,” noted another market source, “but it still needs to be done properly.”

A source noted that when underwriters in London “give their pen” to a U.S. binding authority, they still have tight controls over what is underwritten.

While a brokerage source said a rash of deals such as the Aon/Berkshire arrangement is unlikely in the coming months, Willis said it is preparing a facility, called Global360, that will bring new following-market capacity for property/casualty, construction, aviation, and energy and marine risks.

## NCCI

Continued from page 4

concern about the ongoing low interest rate environment and the inability to earn adequate investment returns.

“What precedes a hardening (insurance market) is very low, if not negative returns, on the industry's surplus,” Mr. Shuford said. “That is what triggers a hardening.”

Mr. Shuford defined a hard market as a period when premium rate growth is substantially higher than expected. Hard markets also respond to underwriting losses and insurers' efforts to achieve profitability, he said.

Substantial hardening occurred during the mid 1970's, the mid-1980's and the early 2000's, with a less substantial hardening in the early 1990s.

While prices showed an upward gain during 2011 following the Great Recession of 2007 to 2009, Mr. Shuford stopped short of predicting a hard market lies ahead.

While he focused on the broader property/casualty market, other conference speakers described improving conditions for workers compensation underwriting.

The workers comp line is showing encouraging signs with its combined ratio improving by six percentage points and premium volume up 9% in 2012, said NCCI CEO and President Stephen J. Klingel.

Last year was the first time since 2006 that the workers comp combined ratio improved.

When insurers' combined ratios stood at 115% at the end of 2012, Mr. Klingel called the workers comp insurance market “conflicted.” But positive information now shows a market headed in the right direction, he said.

Nationwide, workers comp premiums rose 9% to \$35.2 billion during 2012, NCCI Chief Actuary Dennis Mealy said during his delivery of NCCI's State of the Line presentation.

The increase was driven by payroll increases, state loss-cost changes and insurers tightening discounts offered to policyholders, he said.

Despite the positive trends, Mr. Klingel said a 109% combined ratio is not good enough given shrinking investment returns.

Additionally, workers comp insurers experienced a \$13 billion reserve deficiency last year. That number had been growing by \$1 billion a year, but shot up \$2 billion in 2012, he said.

“It is a concerning trend,” Mr. Klingel said.

And estimated 800 people attended NCCI's 2013 meeting in Orlando. Next year's conference is set for May 8-9, 2013, in Orlando.

## ISO

Continued from page 4

Networks Inc. in Toronto, said employing the ISO 31000 standard can help organizations reduce “unpleasant surprises” while also helping them execute their strategic plans.

Mr. Fraser said three personality types are needed to implement ISO 31000 at an organization: a champion “who can break down doors and make it happen,” a charismatic “go-to” person and an analyst who can collect the data to support decisions.

“Implementing ISO 31000 or (enterprise risk management) is a journey,” Mr. Fraser said.

Speaking in another session examining ISO 31000 and enterprise risk management, Christopher E. Mandel, senior vice president of strategic solutions at Sedg-

wick Claims Management Services Inc. in Memphis, Tenn., said risk managers should use standards such as ISO 31000, “because standards, no matter what kind or which ones, support key tools and processes.”

“Standards allow you to proactively address risks with some discipline,” he said. “Standards also relate well to the whole idea of focusing on outcomes.”

Another panelist in the ERM session, Eyvind Aven, head of enterprise risk management at Statoil A.S.A. in Stavanger, Norway, said Statoil's ERM program is consistent with ISO 31000, in that it focuses on managing risks in relation to the energy company's principal risk management objectives: creating value and avoiding incidents.

Employing the ISO 31000 standard increases the likelihood of achieving risk management objectives, Mr. Aven said. While Statoil's definitions of concepts such

as “risk” and “risk owner” might differ slightly from those in the ISO 31000 standard, Mr. Aven said the standard appropriately presents those definitions in generic fashion so companies can tailor them to their own circumstances.

Also speaking on the ERM panel, Jeevan Perera, senior engineer at the National Aeronautics and Space Administration in Houston, said NASA doesn't comply completely with the ISO 31000 standard.

“We're probably 99% satisfying the intentions of ISO 31000,” he said. Some of the differences stem from the fact that NASA is not a for-profit enterprise.

But NASA's core risk management principles are that risk management creates value for the organization and that it is integrated in the agency's organizational processes, Mr. Perera said, aligning the program with principles of the ISO 31000 standard.

# WHISTLE

Continued from page 3

take the case because the 1st Circuit's ruling contradicts a Department of Labor administrative review board ruling on the issue and the court may be inclined to uphold the appeals court.

The 1st Circuit's ruling focuses on separate lawsuits, both brought by former employees of private contractors that advise and manage the Fidelity family of mutual funds operated by Boston-based FMR Corp. Both plaintiffs allege retaliation for reporting fraud.

The plaintiffs contend they are covered under Section 806 of SOX.

"We conclude that only the employees of the defined public companies are covered by these whistle-blower provisions," as indicated in the statute, despite plaintiffs' contention that they are covered by the law, the 1st Circuit ruled. Had Congress intended to provide this coverage to private companies, "it would have done so explicitly," it said.

"In our view, the 1st Circuit correctly concluded that the statute is limited to employees of publicly traded companies," FMR said in a statement.

The high court review is "a little bit of a surprise" because "usually the Supreme Court waits for a circuit split before granting cert on a legal issue," said Jonathan F. Cohn, a partner with law firm Sidley Austin L.L.P. in Washington. "Presumably there were at least four justices who were troubled enough by the lower court's ruling that they thought immediate review was warranted despite the lack of a circuit split."

The Supreme Court may view the 1st Circuit's ruling as "over-reaching" the parameters of SOX, said Thomas O. Gorman, a partner with Dorsey & Whitney L.P. in Washington.

Others, however, say the court may have accepted the case because of the 1st Circuit's disagreement with a May 2012 Department of Labor administrative review board ruling in *Thomas Spinner v. David Landau*

& Associates L.L.P. In that case, the board said whistle-blower protection extends to contractors, sub-contractors or agents of publicly traded companies even if they are not public themselves.

Lloyd B. Chinn, a partner with Proskauer Rose L.L.P. in New York, said the Labor Department's administrative review board "has been extremely aggressive in its interpretation of Sarbanes-Oxley, and I think it's at least possible that the court will take this opportunity to pare back" the board's interpretation of the issue.

"It is a fairly good time from business' perspective for this to go to court" and there is a "decent chance" the Supreme Court will

uphold the 1st Circuit ruling as a business-friendly court that tends to take a stricter "constructionist view" of the law, said Beth Golub Joffe, of counsel at Stokes Lawrence P.S. in Seattle.

However, "This court, under Chief Justice Roberts, has been surprisingly employee-friendly when it comes to retaliation cases, and the court has read retaliation protection very broadly," said Richard Moberly, a law professor at the University Of Nebraska College Of Law in Lincoln.

He cited, among others, the Supreme Court's 2011 ruling in *Eric L. Thompson vs. North American Stainless L.P.*, where it held that an employee linked to a co-

worker who has alleged discrimination also should be protected from workplace retaliation.

Observers note that the mutual fund industry is structured so that while the funds themselves are publicly held, none has employees, only private contractors, and all the advisory and management companies with which they deal are privately held. Under the 1st Circuit ruling, employees in the mutual fund industry "end up being inadvertently excluded" from whistle-blower protection, said Rosanne Felicello, principal attorney at Felicello Law P.C. in New York.

Should the Supreme Court extend relation protection to whis-

tle-blowers at private firms, that would open the door to "costly litigation for countless companies in a way that will do little to advance the purposes behind Section 806," the U.S. Chamber of Commerce's National Chamber Litigation Center in Washington said in an amicus brief filed in the 1st Circuit case. It also would be at odds with "reasonable employer expectation."

However, Geoffrey C. Rapp, a law professor at the University of Toledo School of Law in Ohio, said even if the 1st Circuit ruling is upheld, "the best approach is never to tolerate retaliation" and to have a system in place for workers to air complaints.

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#### WHO IS INCLUDED IN THE CLASS

The Settlement Class is defined as: all persons and entities that, during the period from January 1, 1998 through December 31, 2004, inclusive, purchased excess casualty or commercial umbrella insurance policies in any layer of coverage from any insurance company affiliated with any of the following defendant groups: ACE, AIG, AXIS, Chubb, Fireman's Fund, Liberty Mutual, Munich Re, Travelers, XL and Zurich (the "Excess Casualty Insurer Defendant Groups") through Marsh & McLennan Companies, Inc. or any subsidiaries or affiliates thereof (the "Settlement Class"). A list of the companies affiliated with the Excess Casualty Insurer Defendant Groups that were named as defendants in this class action is available at [www.insurancebrokeragesettlement2013.com](http://www.insurancebrokeragesettlement2013.com).

#### WHAT DOES THE SETTLEMENT PROVIDE

The Settling Defendants have agreed to pay a total amount of \$ 10.5 million to settle all claims against them. After deduction of certain fees and expenses from this amount, the Net Settlement Fund will be distributed in accordance with the Settlement Agreement and Plan of Allocation approved by the Court.

#### WHO WILL RECEIVE A PAYMENT

Payments will be made to all Settlement Class Members. If you are entitled to a payment, you do not need to do anything. Payments will be calculated and made based on the information that your insurer has provided about the policy you purchased, the premium paid and information about your participation in other settlements concerning this same conduct.

If you believe you are a Settlement Class Member and you did not receive a notice of this Settlement in the mail, you should contact the claims administrator at **1-877-310-0487**, or visit the settlement website at [www.insurancebrokeragesettlement2013.com](http://www.insurancebrokeragesettlement2013.com).

#### WHAT ARE MY LEGAL RIGHTS

If you do not want to be legally bound by the Settlement, you must exclude yourself in writing from the Class. The deadline for exclusion is **June 28, 2013**. The **Detailed Notice** of this Settlement, available at [www.insurancebrokeragesettlement2013.com](http://www.insurancebrokeragesettlement2013.com), gives instruction on what information must be included in the Request for Exclusion, and where it should be sent. If you do not exclude yourself, but instead stay in the class, you may object or comment on the Settlement by **June 28, 2013**.

The Court will hold a Hearing to determine whether to approve the settlement on **Wednesday, July 17, 2013**, at 11:30 a.m. in Courtroom 2B, Martin Luther King, Jr. Federal Building & U.S. Courthouse, 50 Walnut St., Newark, NJ 07101. If the Court approves the Settlement, then the Settling Defendants will be dismissed from the action and any class member that has not properly excluded itself from the Settlement Class will be deemed to have Released the Settling Defendants from all claims related to the Class Action and will not be able to sue the Settling Defendants for any of the conduct that was the subject of the Class Action. A copy of the Release is available at [www.insurancebrokeragesettlement2013.com](http://www.insurancebrokeragesettlement2013.com). At the Hearing, the Court will also decide whether to award attorneys' fees and expenses to Class Counsel and approve Service Awards to the Named Plaintiffs. Class Counsel has requested to be awarded attorneys fees of 33% of the Settlement Fund (\$3,465,000), and litigation expenses of \$1,035,000.

You or your lawyer may ask to appear and speak at the hearing at your expense. The Detailed Notice of this Settlement, available at [www.insurancebrokeragesettlement2013.com](http://www.insurancebrokeragesettlement2013.com), provides instructions on what you must do to get permission to speak at the Hearing.

#### HOW CAN I OBTAIN ADDITIONAL INFORMATION?

If you think that you might be a Settlement Class Member, you can obtain more information, including a copy of the Detailed Notice, the Settlement Agreement and other documents relating to the Settlement by visiting [www.insurancebrokeragesettlement2013.com](http://www.insurancebrokeragesettlement2013.com) or by contacting the Settlement Claims Administrator at 1-877-310-0487.

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE FOR INFORMATION**

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criticized in a meeting with European Union leaders in May.

Insurers and reinsurers so far have not become a target of the tax inquiries, though, and some of the practices highlighted in investigations to date — such as the shifting of intellectual property rights, and related profits, to tax haven subsidiaries — are not applicable to the industry.

“I don’t see anything that is a direct concern for insurers,” said Brenda Viehe-Naess, a Washington-based tax lawyer. “I wouldn’t say it’s no concern, but it’s not as great as for high-tech firms and multinationals.”

A study this year by the Paris-based Organization for Economic Cooperation and Development cited captive insurance tax issues as needing more study, and European-owned captives may face greater scrutiny, experts say. Many U.S.-owned captives, though, are either U.S.-domiciled or have elected to be taxed as U.S. residents, and are unlikely to be affected by the tax debates.

“The allegations flying around about the big multinationals are largely inapplicable to the captive world,” said Thomas M. Jones, a tax lawyer with McDermott, Will & Emery in Chicago.

A separate tax issue, meanwhile, has been raised by the reintroduction of legislation to change the tax treatment of reinsurance ceded to foreign affiliates of insurers operating in the United States.

Concerns about corporate tax avoidance have been building for months, with investigations in the U.S. and U.K. that have targeted the use of tax haven transactions

## Tax loophole bill revived

Legislation that would change the tax treatment of reinsurance ceded to non-U.S. affiliates of domestic insurers is unlikely to be enacted as a stand-alone measure, but might pass as part of a larger budget or tax reform bill, insurance industry sources say.

Companion bills introduced by Rep. Richard Neal, D-Mass., and Sen. Bob Menendez, D-N.J., would disallow tax deductions for reinsurance premiums ceded to affiliates in jurisdictions not subject to U.S. tax law. The measure has been introduced and failed in previous sessions.

President Barack Obama included a similar provision in his 2013 budget, estimating that it would raise \$6.2 billion in revenue over 10 years.

Several U.S. insurers supporting the legislation argue

that it closes an unfair tax loophole, while a wider group of opponents — including many multinational insurance groups and the Risk & Insurance Management Society Inc. — claim that it will reduce market capacity and raise costs for policyholders.

While several sources say the measure likely has too much opposition to pass on its own, opponents say it may be rolled into a tax reform bill now being drafted by the House Ways and Means Committee, or into a larger budget bill.

“The threat is some middle-of-the-night, last-minute deal,” said Bradley L. Kading, president of the Association of Bermuda Insurers and Reinsurers, which opposes the measure. “That’s what we’ve always been waiting for.”

By Douglas McLeod

by Amazon.com Inc., Google Inc. and Starbucks Corp.

In its inquiry of Apple, the Senate Permanent Subcommittee on Investigations found that the Cupertino, Calif.-based computer giant shifted billions of dollars in profits to a group of affiliates in Ireland by transferring the economic rights to its intellectual property to an Irish subsidiary — a transfer that had “no apparent commercial benefit apart from its tax effects,” according to the subcommittee’s report.

Apple also avoided taxes by using exceptions to Subpart F, a

U.S. tax provision intended to make an offshore affiliate’s passive income, such as dividend or royalty payments, subject to current tax. In its report on Apple, the subcommittee recommends reforming Subpart F exceptions to prevent uses like Apple’s, including reform of the “look-through” exception, often used by multinational insurers and reinsurers.

The look-through exception allows a corporation to transfer certain income from one offshore affiliate to another without triggering a U.S. tax liability, and insurers have lobbied to keep the provision

in the tax code.

Liberty Mutual Insurance Co., for example, wrote to the House Ways and Means Committee this year regarding tax reform proposals, noting that the look-through provisions “are critical to enabling U.S. corporations to redeploy capital overseas.” The Property Casualty Insurers Association of America similarly argued for the exception in its own letter to the committee.

Despite proposals to limit Subpart F exceptions, though, insurance industry sources say they see no significant threat to the continued availability of the look-through rule.

The European Commission and the OECD, meanwhile, also are pushing member countries to combat abuse of offshore tax havens. The commission, for example, is expected this summer to announce a new action plan on tax avoidance; a plan released last year targeted, among other things, double non-taxation, in which a company uses discrepancies in the tax laws of two countries to ensure that it is not considered a tax resident of either. The commission estimates the annual cost of tax fraud and evasion in member countries at more than €800 billion (\$1.032 trillion).

The OECD study on tax base erosion and profit shifting by multinationals focuses on several problems, including companies’ shifting of intangible assets like intellectual property to units in low-tax countries to shelter-related profits.

The study doesn’t cite commercial insurance and reinsurance companies as raising tax issues, but it cites captive arrangements. Without naming specific domiciles, the study describes situations in which premiums may be deducted by a parent company but

the related income not taxed in the captive’s jurisdiction. The OECD also raised the issue of transfer pricing: ensuring that the cost of captive coverage is determined at arm’s length.

The tax avoidance debate could become a concern for some captives even though aggressive profit-shifting is not normally a feature of captive programs, said Clive O’Connell, a partner with law firm Goldberg Segalla Global L.L.P. in London. Intense political and media pressure have resulted from investigations of Amazon, Google and others, he said.

“Anything like a captive could be seen as synonymous with this and could come under attack,” he said.

Multinationals are likely to take steps to change tax programs and corporate structures because of negative publicity rather than legislation, he said. Mr. O’Connor cited as examples the several insurance and reinsurance companies that have moved from Bermuda — which has no corporate tax — to Switzerland and Ireland, which impose at least some tax. Such moves will continue, he said.

“The strongest immediate pressure on companies is going to come from PR,” Mr. O’Connor said.

Insurers moving from no-tax jurisdictions — for reasons that include double-taxation treaties between their new domiciles and the U.S. — include Ace Ltd. and Allied World Assurance Co. Holdings A.G., which moved to Switzerland from the Cayman Islands and Bermuda, respectively; and XL Group P.L.C., which moved from Bermuda to Ireland.

Broker Willis Group Holdings P.L.C. moved from Bermuda to Ireland in 2009, while Aon P.L.C. moved from Chicago to London last year.

## CHINA: Insurers in emerging market make push for U.S. risks

in the U.S. and resurrects it to start issuing paper,” Mr. Ellis said.

Chris Baudouin, Chicago-based CEO of Aon P.L.C.’s global client network, said Chinese insurers are targeting property risks.

“Their appetite right now is only for property. They don’t understand the liability and workers compensation market in the U.S.,” he said.

The insurers tend to favor industries such as construction and manufacturing. “I don’t think they will be overly aggressive on pricing,” Mr. Baudouin added.

Daniel M. Ames, associate director of corporate insurance at Dearborn, Mich.-based Ford Motor Co., said Ford has worked with China-based insurers for three to four years, but the capacity they have offered has been fairly low.

However, a recent trip to China convinced him that the China-based insurers are taking a



“The emergence of new capacity from the Chinese insurers intrigues us, but we will likely move slowly. The new capacity is very competitive from a price, terms and conditions perspective.”

Alan G. Gier, General Motors Co.

greater interest in providing significant positions on global program placements.

“This year, we were able to have some very successful meetings and got a better understanding of CPIC and PICC,” Mr. Ames said. “They are solid companies.”

Alan G. Gier, director of global risk management and insurance corporate risk management for the

treasurer’s office, at Detroit-based General Motors Co., said the automaker is familiar with China-based insurers through its joint ventures in China and is investigating their capacity.

“The emergence of new capacity from the Chinese insurers intrigues us, but we will likely move slowly,” Mr. Gier said. “The new capacity is very competitive

from a price, terms and conditions perspective.”

Brian Eichenlaub, director of risk management and insurance for Troy, Mich.-based Delphi Automotive L.L.P., said Chinese insurance capacity appeared on his radar screen as he went through property renewals this year.

“We’ve been watching it for the last few years, but now they have really made a big push into the property side by trying to get on our program,” Mr. Eichenlaub said. “They took a more aggressive stance and we took serious consideration.”

### Challenges

The Chinese insurers face regulatory challenges, however. Lacking admitted status or U.S. subsidiaries, the insurers have structured their deals as reinsurance or through captive insurance.

Stephan Upshaw, vice president of risk management at Equity Res-

idential, a Chicago-based apartment complex owner and operator with more than 400 properties, said such concerns have led him to pass on using Chinese capacity for now.

“Up to now, I have chosen not to include them in our programs.”

Mr. Upshaw also said he has concerns about procedural issues in paying claims.

“I am concerned what would happen if there were a big, complicated claim,” Mr. Upshaw said.

Initially, Mr. Gier said he also had concerns about claims procedures and the Chinese insurers’ lack of familiarity with highly manuscripted insurance programs, but said doing business with the Chinese insurers makes strategic sense for companies looking to grow in Asia.

“We currently access capacity all over the globe, so adding some Asian capacity or increasing it would be a natural move for us as we look to diversify our panel of insurers,” Mr. Gier said.

# TORNADOES

Continued from page 1

"It's going to be a large loss for sure," said Gary Benefield, human resources and risk management director for the city of Moore, where a two-mile-wide tornado caused the bulk of the estimated insured losses, 24 fatalities and damaged about 13,000 homes, businesses and schools.

The Hartford Financial Services Group Inc. is the city's property insurer, having handled losses from previous tornadoes that hit Moore in 1999, 2003 and 2010, Mr. Benefield said.

"We've had experience with them," Mr. Benefield said. "I've been in contact with the adjuster. I have full faith in them that they're going to do everything. They always went above and beyond for us."

He said he expects property damage not covered by Hartford will be covered by the Federal Emergency Management Agency.

The Greater Oklahoma City Chamber estimated that about 300 businesses were in the path of the tornado, said Roy H. Williams, the chamber's president and CEO.

About 20% of those businesses were in the health care and social assistance industry, 12% were

retail businesses and 11% construction operations, Mr. Williams said. The other types of companies in the twister's path were not immediately clear.

"It's a reasonable estimate to say there's probably in excess of 2,000 registered businesses that were directly impacted" of more than 80,000 in the Oklahoma City area, Mr. Williams said. "That's a very small percentage, yet it's important and significant."

Insurers are well-capitalized and

able to absorb the insured losses from the tornadoes, said Howard Mills, New York-based director and chief adviser of the insurance industry group at Deloitte L.L.P.

"It will not lead to a hardening of the market," Mr. Mills said. "Tornadoes ... are horrific and devastating, but it's a very narrow swath of destruction compared to something like a hurricane."

With an all-time high surplus of \$600 billion, insurance markets will not feel any broad effects from

the storms, said Alfred P. Tobin, New York-based managing principal and national property leader for Aon Risk Solutions, a unit of Aon P.L.C.

"A billion-dollar event should not dramatically change, or even regionally change, the property insurance marketplace for commercial customers," Mr. Tobin said.

Businesses that have either suppliers or customers in areas hit by the tornadoes may face contingent business interruption issues, said

Walter Andrews, partner and head of the insurance practice group at law firm Hunton & Williams L.L.P. Washington.

"It's those businesses that need to look at, or will be looking at, whether or not they have coverage to the extent their business is interrupted because of the damage to the assets in Oklahoma," Mr. Andrews said.

Companies often have no access to their suppliers' records, so "getting an accurate, detailed record and proving your loss for CBI is very difficult," said Selena J. Linde, insurance policyholder partner at Perkins Coie L.L.P. in Washington.

"It's tough because a lot of people don't have their policies right now. They have to locate their policies through their brokers, and asking insurance companies themselves, when their policies were actually destroyed in the storm," Ms. Linde said. "Yet those policies have time limits and time traps."

Among many lessons learned from these recent natural catastrophes is that policyholders must understand what their insurance will and will not cover, Aon's Mr. Tobin said.

"Sometimes insurance can fall into a commodity," he said. "Folks really have to read the fine print of their insurance policies and appreciate what they're buying."

## MOORE TORNADO CAN HELP IMPROVE MODELS

The massive tornado that devastated a large area of Moore, Okla., on May 20 provided scientists and engineers an opportunity to gather critical windstorm information for catastrophe modeling systems.

Catastrophe modeling is based on historical data. While abundant post-loss data is available on hurricanes, there is "lots of room for improvement" when it comes to tornado models, said Alfred P. Tobin, New York-based managing principal and national property leader for Aon Risk Solutions, a unit of Aon P.L.C.

Scott Stransky, Boston-based senior scientist at AIR Worldwide Corp., led a team of engineers and scientists that spent a day examining seven different damaged sites in Moore during the first weekend after the tornado struck.

AIR Worldwide is updating its thunderstorm model, with an anticipated June 2014 release, and will incorporate much of the information gathered from Moore.

The biggest challenge for tornado modelers is the twister's long, narrow size that caused severe damage in a concentrated area.

While AIR Worldwide is not fundamentally changing how it models such natural disasters, "one thing that we probably will change is the function of this decay from the center," Mr. Stransky said, referring to how the damage lessens the farther away from the center.

The team that went to Moore determined the location of the tornado's center, which helped them figure out how a tornado's wind strength decays.

"This was a perfect ... laboratory setting for us to get that information," Mr. Stransky said. "It's lessons learned."

By Mike Tsikoudakis



## Helping Employers Control Workers Compensation Costs and Exposures

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## \$2.5 billion in unpaid early retiree health program claims: GAO

Employers and other early retiree health care plan sponsors awaiting government payment from a health care reform law program are likely to be paid only a fraction of the \$2.5 billion they have filed in claims. The reason is that the \$5 billion Congress authorized for the Early Retiree Reinsurance Program has been nearly exhausted by payment of earlier claims filed by plan sponsors, according to a Government Accountability Office report.

## Sale of AIG plane lease unit to Chinese group at risk

A Chinese group's purchase of ILFC, one of the world's largest airplane leasing businesses, could collapse after insurer American International Group Inc. said it did not receive

a scheduled deposit payment. Under terms of the purchase agreement, the missed payment gives AIG the right to cancel the sale, though such a decision was not expected to be imminent. AIG declined to comment, while a spokesman for the consortium was not immediately available to comment. AIG said in December it would sell up to 90% of ILFC for up to \$4.8 billion.

Reuters

## Reinsurers report increase in premiums for first-quarter

U.S. reinsurers posted strong results in the first quarter of this year, according to data released by the Reinsurance Association of America. The RAA's survey of the statutory underwriting results of 19 U.S. property/casualty reinsurers reported the group wrote \$9.1 billion in net premiums during the first three months of 2013, up from \$7.7 billion during the same period in 2012.

## Noted

The level of U.S. cargo thefts dropped from February through April compared with the previous three month-period, according to Freight-Watch International (USA) Inc. It said it recorded 176 thefts in the United States from February through April. This was a 16% drop from the December-through-February period, while the average loss value per incident dropped 31% to \$120,990. ... Julia Rathgeber has been appointed **commissioner of insurance for Texas** for a term that expires Feb. 1, 2015. ... In addition, the Texas legislature passed a bill allowing **pure captives** to form in the state. Gov. Rick Perry is expected to sign the measure ... **The Travelers Cos. Inc.** secured an additional placement of \$300 million to its existing catastrophe bond shelf program, Long Point Re III Ltd. Known as Series 2013-1, the indemnity-triggered bonds are issued through Cayman Islands-based Long Point Re III Ltd. and provide Travelers with three years of protection for hurricanes affecting coastal areas from Maine to Virginia.

## BROWN

Continued from page 3

Mr. Doran said. "There are just not a lot of \$100 million acquisitions out there right now to be had."

Mr. Doran said that the May acquisition came after another large acquisition for Brown & Brown: its \$395 million purchase of Arrowhead General Insurance Agency Inc., a managing general agency, in December 2011.

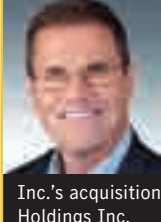
"The sense is they spent a fair amount of time last year digesting that deal, so now you have two back-to-back blockbuster deals," Mr. Doran said.

While Brown & Brown completed 16 transactions with a cumulative value of \$150 million in 2012, the brokerage doubled that value in one day.

"But if you can do one big deal, it's a heck of a lot more efficient than 10 medium-sized deals or 100 small ones," Mr. Doran said.

Yet Adam Klauber, Chicago-based analyst at investment banking and asset management firm William Blair & Co. L.L.C., said the size of the deal presents some risk

HEAR MORE



Access the *Business Insurance* tablet edition to hear Thomas Doran of Reagan Consulting Inc. talk about Brown & Brown Inc.'s acquisition of Beecher Carlson Holdings Inc.

for Brown & Brown.

"Like any large deal, it comes with greater performance risks and a higher price than an aggregation of smaller acquisitions," Mr. Klauber said in a research note. "However, given the company's positive outcome with Arrowhead and a favorable market environment, we believe the positives of the deal outweigh the negatives."

Moreover, Mr. Klauber said the deal should effectively increase Brown & Brown's top-line revenue by roughly 8% in the coming year. Brown & Brown already is the world's seventh-largest insurance brokerage, according to the 2012 *Business Insurance* ranking.

Brown & Brown's increased scale should help the company.

## Gallagher preps for big buy

Arthur J. Gallagher & Co., a brokerage that's grown over the past two decades through small deals is now preparing for a big acquisition.

The Itasca, Ill.-based firm, which is the world's fourth-largest commercial broker, is in advanced talks to buy a New Jersey-based brokerage with over \$100 million in revenue, according to people familiar with the matter.

If completed, the acquisition of Short Hills, N.J.-based Bollinger Inc. would be Gallagher's priciest ever and perhaps a sign that CEO J. Patrick Gallagher Jr. is scaling up his deal-making ambitions. Sources say Bollinger is expected to sell for \$270 million or more.

A deal for Bollinger would top Gallagher's largest acquisition — its \$158 million pur-

chase two years ago of U.K. brokerage HLG Holdings Ltd., which enabled Gallagher to break into the retail insurance market in Britain.

Gallagher's usual practice soared to new heights in 2012, when it bought a record 60 small firms with a collective \$231 million in annual revenue—an average deal pace of one every four business days. Gallagher posted \$2.5 billion in revenue last year, up 18% from \$2.1 billion in 2011; a third of that growth was attributable to purchases. Net income was \$195 million, or \$1.59 per share, up 35 percent from \$144 million, or \$1.28 per share, the year before.

By Steve Daniels

*Steve Daniels is a reporter for Crain's Chicago Business, a sister publication of Business Insurance.*

## MINIMUM

Continued from page 3

be especially attractive to young and healthy low-income employees.

"It is a calculated gamble that many employees will not go to the exchanges," said Frank McArdle, an independent benefit consultant in Bethesda, Md.

Some private sector experts, as well as Department of Health and Human Services and Treasury Department officials, believe only a small percentage of employers would offer the limited health plans.

"I would be surprised if any of our members were thinking of

going down this route of offering plans that fall far short of being comprehensive," said Gretchen Young, senior vice president of health policy at the ERISA Industry Committee in Washington.

"The great majority of employers are determining how to offer comprehensive plans that are affordable for them and for their employees," said Michael Thompson, a principal at PricewaterhouseCoopers L.L.P. in New York.

Still, "Some companies are looking very hard at this," said Ed Fensholt, senior vice president and director of compliance services at Lockton Benefit Group in Kansas City, Mo.

Employers most interested in offering such plans are in low-

wage, high-turnover and low-margin industries, such as retail and hospitality.

"There are industries where employers can't afford to provide mainstream plans" to all employees, said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

The focus on offering skimpy plans to avoid or reduce health care reform law penalties is recent as employers were focused on complying with reform law provisions with earlier effective dates.

"People did not focus on it. There were so many other health care reform law provisions where there were imminent deadlines," said Amy Gordon, a partner at McDermott, Will & Emery L.L.P.

in Chicago.

But as the Jan. 1, 2014, deadline for offering minimum essential coverage draws closer, experts say it is clear that skimpy plans can meet the health care reform law essential coverage standard.

While small-group, individual market and exchange plans have to cover essential health benefits in 10 major benefit categories, the reform law does not impose a comparable requirement on insured large-group or self-insured plans, NBGH's Mr. Wojcik wrote in a memo to members.

Still, employers need to be cautious, said George Katsoudas, division senior vice president and compliance counsel for Gallagher Benefit Services in Itasca, Ill.

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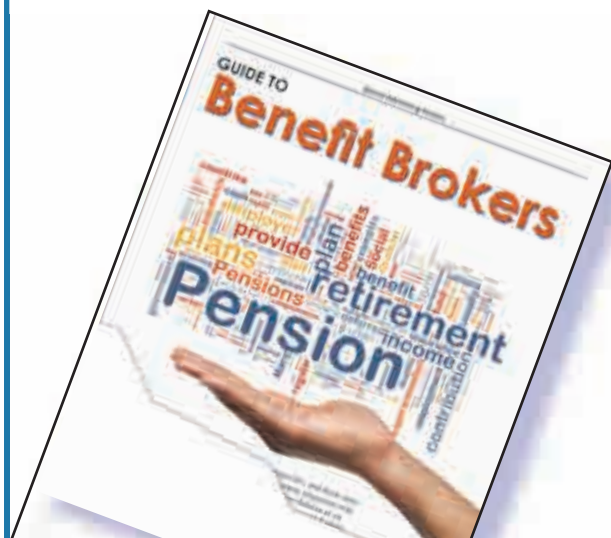
**Issue: July 15**

**Ad Closing: July 3**

*Business Insurance* takes its annual look at the trends and innovations coming from the broker community. This issue also contains profiles of the Top 10 Global Brokers and the multiple annual rankings:

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- **Top 100 Brokers of U.S. Business**
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Vermont Hard Cider claims Woodchuck Coffee Roasters has unjustly benefitted from using a woodchuck logo.

## Shadow cast on cider maker's logo

**T**here's only room for one Woodchuck in Vermont, according to a lawsuit filed this month by the makers of Woodchuck Hard Cider.

Middlebury, Vt.-based Vermont Hard Cider Co. L.L.C. filed a complaint in U.S. District Court against South Burlington, Vt.-based Woodchuck Coffee Roasters L.L.C., claiming the coffee company committed trademark infringement when it opened with the Woodchuck name in 2011.

Vermont Hard Cider, which began selling its cider in 1991, claims that Woodchuck Coffee Roasters has unjustly benefitted from using a woodchuck logo that it claims is similar to the logo used on its hard cider bottles, according to court filings.

Vermont Hard Cider "has begun to receive inquiries from residents of Vermont regarding whether it has gone into the coffee business," the company's complaint reads.

Vermont Hard Cider is seeking payment for "unjust enrichment" that Woodchuck Coffee Roasters allegedly received from its logo, as well as an order prohibiting the use of the coffee company's woodchuck-centric label.

## ANOTHER KARDASHIAN GEARS UP FOR TRADEMARK FIGHT



S\_BUKLEY/SHUTTERSTOCK.COM

Khloe Kardashian's T-shirts have raised the ire of the state of New York.

**T**he Kardashians — the family that's famous for being famous — are once again in the news, this time in a dispute over a \$35 T-shirt. A T-shirt designed and sold by a clothing line owned by the youngest of the three Kardashian sisters, Khloe, and husband Lamar Odom, has raised the ire of the state.

A lawyer for the considerably less sexy New York Department of Agriculture has written the couple's firm, Rich Soil, charging that the T-shirt's logo too closely resembles the logo used by the state agency.

Ms. Kardashian's form-fitting T-shirt has a logo featuring the Statue of Liberty surrounded by the words "New York" and "Rich Soil."

The Department of Agriculture's logo features the Statue of Liberty overlooking a farm, with the state's name printed in a font similar to the one used on the Rich Soil shirt.

According to the state agency's letter, "The State of New York has invested substantial time, effort and resources creating the respect and goodwill associated with the trademark."

It demands that Los Angeles-based Rich Soil stop the sale and advertisement of merchandise featuring the logo, and provide an estimate of how much money it has made from the design. The letter warns the state will take legal action if Rich Soil fails to respond.

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## Summer brings nightmare claims from home renters

**P**roperty owners renting out vacation homes might consider themselves lucky if renters leave them with a broken window or clogged sink, as opposed to a brothel or an abattoir.

U.K.-based vacation and second home insurer Schofields Ltd. reportedly detailed some of the most unusual claims the company has investigated, including an Italian vacation property that was used as a brothel during a four-week rental and an English cottage that needed to be completely refurbished after the vacationers renting it decided to hold an indoor barbecue on the flagstone floor.

Renters vacationing in a home in Spain also tried to bring the outdoors inside by building an indoor beach, according to the report, while renters at another Spanish property chose to redecorate their vacation home, moving various items of furniture into the swimming pool.

The topper, perhaps, was a claim from one vacation homeowner who reported discovering that renters had left the walls and carpets of his property covered in blood. A look around subsequently revealed a pig's head in the trash.



JAGUAR PS/SHUTTERSTOCK.COM

## The secret life of Justin Bieber

**Y**ou've probably heard the old adage, "Don't kiss and tell." Well if you're one of Justin Bieber's friends, divulging any of his secrets could cost you more than his friendship.

Seemingly in an attempt to mitigate his reputational risks, the celebrity pop star is requiring anyone who attends a party at his house to sign a "liability waiver and release" barring them from taking photos of his L.A. mansion, blogging about their experience or tweeting about his décor, etc.

Anyone on the 19-year-old pop star's guest list is forbidden from talking about his "physical health" or his "philosophical, spiritual or other views or characteristics," according to the legal document obtained by entertainment media company TMZ.

The penalty for divulging any aspects of Mr. Bieber's private life is a suit seeking \$5 million in damages, with an additional \$5 million sought if the gossip involves Instagram, Twitter or blogging.

## Ad agency takes rap for using Eminem song

**A**n attempt to curry favor with Facebook founder Mark Zuckerberg has led an advertising agency to run afoul of Eminem, *The Detroit Free Press* reports.

Ferndale, Mich.-based Eight Mile Style, the dyspeptic rapper's publishing firm, sued Portland, Ore.-based ad firm Wieden+Kennedy in Detroit federal court this week, claiming it had misappropriated the song "Under The Influence" for a recent commercial announcing Facebook's new mobile phone software application, Home.

The suit speculates the ad agency inserted the music into the ad as a nod to Mr. Zuckerberg.

"Facebook CEO Mark Zuckerberg has been a longtime fan of Eminem," the suit states. "This is evidenced by one of the first websites Zuckerberg reportedly created in 1999, on which Zuckerberg refers to himself as 'Slim Shady,' which is Eminem's famously known alter ego.

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