



56%

Percentage of U.S. manufacturers with post-incident drug and alcohol testing policies in 2012

SAFETY

Post-injury drug testing under fire

OSHA rule may stifle employer efforts

BY GLORIA GONZALEZ

Employers are going to have to take a hard look at their post-incident drug testing policies in light of the U.S. Occupational Safety and Health Administration's stance against blanket mandates of such tests.

OSHA's Improve Tracking of Workplace Injuries and Illnesses rule does not ban drug testing of employees, but it does prohibit employers from using drug testing or the threat of it as a form of adverse action against employees who report injuries or illnesses, according to the final rule, published in May and taking full effect Jan. 1, 2017.

The rule is the latest and firmest sign that the agency will frown upon mandatory post-accident drug testing without a compelling reason, experts say.

It is unclear what will happen to

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INTERNATIONAL

INSURER CUTS TIES TO TOBACCO AS INVESTMENT GOALS EVOLVE

European trend yet to take hold in U.S.



BY DOUGLAS McLEOD

Axa S.A.'s decision to eliminate its tobacco company investments is the latest use of socially conscious investment policies that have become common among large European insurers but have lagged among their U.S. counterparts.

Several of the largest European insurers have

adopted environmental, social and governance, or ESG, standards to analyze not just the ethical effects but also the long-term risks of their portfolios. Fossil fuel assets have been a main focus of these standards so far: Axa, Paris-based Scor S.A. and Munich-based Allianz S.E. announced

See **TOBACCO** page 25

PENSIONS

Pension ruling triggers dire warnings

Multiemployer plans, PBGC solvency at risk

BY JERRY GEISEL

The U.S. Treasury Department's rejection of a proposal by the Central States Pension Fund to slash benefits sets the stage for the collapse of the massively underfunded plan as well as the failure of the decades-old federal insurance program that protects benefits of more than 10 million participants in multiemployer plans.

Benefit experts and Central States Southeast and Southwest Areas Pension Fund executives say the national implications of last month's decision by Treasury cannot be over-



stated.

Such restructuring proposals are allowed under a 2014 federal law, with Treasury's approval.

The department rejected the Central States proposal for several reasons, including the use of an investment return assumption that was too optimistic and failing to show that the proposed cuts would keep the plan solvent in the future.

"I view it as Armageddon," said Jack Abraham, a principal with PricewaterhouseCoopers L.L.P. in Chicago.

Others concur. Thomas Nyhan, executive director of the Central States plan, warns of devastating

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Q&A: THOMAS B. CONSIDINE

CEO of NCOIL talks about the biggest issues insurance legislators are dealing with today

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COMMENTARY

One key element to sound risk management is being able to think about the unthinkable

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IN BRIEF

In a major cyber ruling, Chubb doesn't have to cover some costs in big data breach

PAGE 8



CYBER RISK: INSURANCE

Rates moderate on expanding capacity; threat of catastrophic attack creates interest in TRIA-style backup; modeling firms turn their attention to cyber risks as insurers tackle aggregation of exposures.

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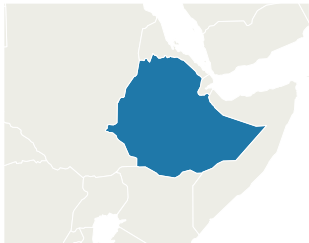
*Balance sheets as of 12/31/2015 for the Berkshire Hathaway National Indemnity group of insurance companies.

6/6/16

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Earthquake is the major natural threat to Ethiopia, though volcanic eruptions and flooding also are common.

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Prepare for the worst



It takes just one hurricane to wreak havoc on a business, so preparation is key. Andrew Higgins of

Allianz Risk Consulting L.L.C. offers tips to help companies reduce the risk and minimize losses.

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E.U. exit fans bet on soccer

Campaigners for the United Kingdom to leave the European Union have come up with a way to get apathetic voters interested.

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NEWS

CATASTROPHES

INSURERS WELL-POSITIONED TO WITHSTAND HURRICANE SEASON

Industry primed with capital as storms threaten

MARK A. HOFMANN

U.S. insurers should have the capacity to handle the average activity predicted for this year's Atlantic hurricane season.

Capitalization is high following several years of low catastrophe losses. But a single event, such as 1992's Hurricane Andrew, could have a significant negative impact on insurers, particularly during a time of low rates.

Several forecasters are calling for nearly average hurricane activity this year.

"We continue to anticipate that the 2016 Atlantic basin hurricane season will have approximately average activity," said the Tropical Meteorology Project at Colorado State University in Fort Collins, Colorado, in an analysis released June 1, opening day of the Atlantic hurricane season. "The current weakening El Niño is likely to transition to weak La Niña conditions by the peak of the Atlantic hurricane season."

The forecast calls for 14 named storms this hurricane season — including tropical cyclones Alex and Bonnie that occurred before the official start of the season. That compares with a median 12 named storms in the period 1981-2010. The Tropical Meteorology Project projects that six hurricanes will devel-



AP PHOTO

Insurers are well-capitalized after years of low storm losses. It would take a loss similar to 1992's Hurricane Andrew to raise concerns for them.

op during the season, down slightly from the 6.5 median during 1981-2010. Two will grow into "major" hurricanes packing sustained winds in excess of 111 mph, according to the Colorado State researchers.

Likewise, the federal National Oceanic and Atmospheric Administration in Silver Spring, Maryland, said that it expects a "near-normal" Atlantic hurricane season. NOAA cautioned, however, that "forecast uncertainty in the climate signals that influence the formation of Atlantic storms make predicting this season particularly

difficult."

NOAA predicted a 70% likelihood of 10 to 16 named storms, of which as many as eight could grow to hurricane strength — those with sustained winds of 75 mph — with as many as four of those becoming major hurricanes.

"While a near-normal season is most likely with a 45% chance, there is also a 30% chance of an above-normal season and a 25% chance of a below-normal season," said NOAA in an analysis released in late May. It noted that its out-

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P/C INSURERS

Greenberg faces trial over fraud charges

Appeals court rules against former AIG boss

BY MARK A. HOFMANN

A decision by New York's highest court allowing the state to continue to pursue fraud charges against Maurice R. Greenberg and another former AIG executive is far from the last word in the decade-long case.

The state of New York alleges that Mr. Greenberg, former CEO of American International Group Inc., and former AIG Chief Financial Officer Howard Smith committed fraud in relation to a series of transactions between the insurer and General Re Corp., a unit of Berkshire Hathaway Inc.

The state claims that AIG used a sham reinsurance transaction more than a decade ago to inflate AIG's loss reserves. In a separate case related to the deals, several former Gen Re and AIG executives were found guilty of fraud but later settled the charges, while admitting that aspects of the transaction were fraudulent, after the original convictions were overturned due to an error by the trial judge.

Controversy surrounding the deals led to Mr. Greenberg's resignation from AIG in 2005. Shortly after he resigned, then-New York Attorney General Eliot Spitzer sued Mr. Greenberg for alleged fraud. Mr. Greenberg sought to have the claims dismissed, and the state dropped some of them but continued to press for the matter to go to trial.

The New York Court of Appeals ruled last week that the matter should go forward under state law, saying that "the Attorney General's claims against defendants

See AIG page 22



Mr. Greenberg

HEALTH INSURERS

Health care providers enter the insurance arena

BY SHELBY LIVINGSTON

The lines are blurring between traditional health insurers and providers as more health systems develop their own insurance plans.

But, wary of this relatively immature health care delivery model and potential administrative headaches, most employers have been reluctant to choose the option.

Health systems are moving into the insurance business from solely providing care through fully owned insurance plans or joint ventures with insurers to help promote high-value care, reduce costs, drive patients to their ser-

vices and differentiate their revenue streams, observers say.

Though the concept isn't new — the 1990s saw an uptick in the creation of provider-sponsored health plans, though many failed — it has seen renewed growth since the passage of the Patient Protection and Affordable Care Act.

Exchanges spur interest

According to an April report by New York-based McKinsey & Co., 106 providers were offering at least one health plan in 2014, up from 94 in 2010, and about 15.3 million people were enrolled in a provider-sponsored health plan in

2014, versus 12.4 million 2010. Most of the growth occurred in government plans such as Medicaid and Medicare Advantage and the individual insurance market, where there's opportunity because of the public health exchanges. The small-group market also saw slight growth, McKinsey said.

Enrollment in the provider-sponsored health plans in the large group and administrative-services-only markets declined, however, McKinsey said.

Most recently, Hartford, Connecticut-based health insurer Aetna Inc. in May announced a

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ONLINE FEATURES

VIDEO

In Focus: Workplace wellness engages employees

Workers embrace wellness to lower health care costs.

www.BusinessInsurance.com/InFocus

VIDEO



Top five highest paid P/C insurer executives

See the data behind insurer CEO compensation for 2015.

www.BusinessInsurance.com/Top5InsurerExecs

GALLERY

Week in pictures

A visual tour of recent big stories.

www.BusinessInsurance.com/WeekInPictures

PODCAST

Spokeo lawsuit implications



Hear how the U.S. Supreme Court decision in *Spokeo Inc. v. Robins* may apply to data breaches when

Senior Editor Judy Greenwald speaks with Andrew J. Pincus, a partner with Mayer Brown L.L.C., in a podcast interview.

www.BusinessInsurance.com/Podcast

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NEWS

LIABILITY & LITIGATION

SUPREME COURT RULING CREATES BURDEN TO PROVE ACTUAL INJURY

Case could put chill on 'technical' class actions

BY JUDY GREENWALD

Last month's ruling in which the U.S. Supreme Court said plaintiffs must show evidence of "concrete" injury to successfully file suit, will help businesses defend themselves against class action litigation, many experts say.

These experts say the court's 6-2 ruling in *Spokeo Inc. v. Robins* will discourage class action litigation that is filed only on the basis of statutory, or technical, violations.

While the ruling focused on the Fair Credit Reporting Act, experts say it will affect a wide swath of other litigation, including employment, data breach and privacy and Employee Retirement Income Security Act cases.

The plaintiff in the *Spokeo* case was Thomas Robins, who claimed that inaccurate information provided by Pasadena, California-based Spokeo, which describes itself on its website as a "people search engine," harmed his employment prospects.

The website allegedly inaccurately described Mr. Robins as holding a graduate degree, being relatively affluent and in his 50s, all of which were untrue. His lawsuit charged Spokeo with violating the Fair Credit Reporting Act and sought class action status.

In its ruling overturning a 2014



decision by the 9th U.S. Circuit Court of Appeals in San Francisco, the Supreme Court held that even if there is a technical violation, the plaintiff must allege an injury that is "concrete and particularized" to have standing to sue under the Constitution's Article III. It said Mr. Robins' injury was particularized, but not concrete.

The high court, however, did not issue a final ruling in the case but instead sent it back to the 9th Cir-

cuit to reconsider whether Mr. Robins had adequately alleged an "injury-in-fact."

Defense attorneys "were hoping for a decision that would categorically undercut the ability of the plaintiffs' bar" to file litigation where there was only a statutory violation of the law, said Kevin LaCroix, executive vice president of RT ProExec, a division of R-T

See SPOKEO page 25

WORKERS COMPENSATION

Light duty assignments create risks

Return-to-work efforts require monitoring

BY STEPHANIE GOLDBERG

A recent court ruling should motivate employers to ensure return-to-work programs include frequent check-ins with injured employees performing transitional jobs.

Affirming a decision by the Louisiana Office of Workers' Compensation, a three-judge panel of the state's 5th Circuit Court of Appeal last month ruled that an injured St. James Parish Schools teacher's modified position was inappropriate considering work restrictions provided by her treating physician and duties that were not accurately stated in the job description.

Though some sources familiar with the case said another court might have ruled in favor of the Lusher, Louisiana-based school board, they agree the decision highlights the importance of clearly defining modified duty or transitional



work, as well as frequently checking in with injured workers to assess functional improvement and progress to full duty.

According to court records, Dena Wempren's treating physician determined she was unable to return to work pending treatment for a compensable injury sustained in January 2013, when a student pulled a chair out from under her as she was about to sit down. However, an independent medical examiner said she could return to light duty.

Ms. Wempren worked with the school's administrative director of human resources and a vocational rehabilitation consultant to create a modified position, which she started in January 2015 to prevent her workers comp benefits from being "adversely affected," records show. Despite remaining in the position until the end of the school year "with no reported issues," she filed a claim in April 2015 stating she performed duties that were not included in the agreed-upon job description.

Rather than providing reading

See RETURN page 23

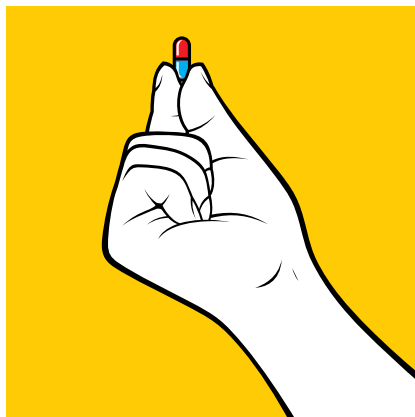
WORKERS COMPENSATION

California banks on benefit of closed drug formulary

BY DONNA MAHONEY

While the use of opioids for injured workers in California has dropped, experts say rolling out a closed formulary that uses evidence-based medical guidelines next year has strong potential to further reduce what still is considered "excessive" usage of the addictive painkillers.

According to a May analysis by the California Workers' Compensation Institute, opioid prescriptions and dollars spent peaked at nearly 32% in 2009 and have fallen steadily since then. In 2014, the latest data available, opioids accounted for 27.2% of prescriptions and



24.4% of spending, according to Oakland-based CWCI.

The decline coincided with greater scrutiny of such prescrip-

OPIOID TAB

According to the California Workers Compensation Institute:

- Opioids accounted for 27% of prescriptions for injured workers and 24% of spending in 2014, down from 32% for both in 2009.
- Establishment of a drug formulary in the state could save \$124 million to \$420 million a year.

tions through utilization reviews and independent medical reviews;

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RECISSION FIGHT ILLUSTRATES NEED FOR FULL DISCLOSURE

Policyholder wins round in court battle with Chubb

BY JUDY GREENWALD

A medical robotics firm's ongoing dispute with a Chubb Ltd. unit seeking to rescind its \$15 million product liability policy highlights how important it is for policyholders to provide thorough information on their insurance application, experts say.

In *Illinois Union Insurance Co. v. Intuitive Surgical Inc.*, Illinois Union, a Philadelphia-based Chubb subsidiary, is seeking to rescind the policy it issued to Sunnyvale, California-based Intuitive Surgical Inc. because the firm allegedly failed to notify it of possible litigation before the policy was issued.

Chubb contends it would not have issued the policy had it known the extent of possible litigation against the firm.

The other insurer that had participated in the litigation, New York-based Navigators Specialty Insurance Co., which had an excess policy that provided \$10 million in claims made coverage over Illinois Union's primary policy, reached a confidential settlement with Intuitive, according to court papers filed last month in U.S. District Court in San Francisco.

In the most recent development, the District Court on May 27 denied a partial summary judgment motion by Illinois Union to dismiss the case in part because three underwriters had changed their testimony.

According to the court papers, Intuitive Surgical's one product line, the da Vinci Surgical System, has been in use since the early 2000s and had performed more than 400,000 procedures by 2012.

The surgeon using the minimal-invasive robotic system sits at a console away from the patient and manipulates robotic arms with a variety of microsurgical attachments. Intuitive said the system causes less trauma and requires shorter hospital stays than traditional surgery.

Illinois Union issued a product liability insurance policy to Intuitive that was in force from March 2013 through March 2014. The policy provided for \$15 million in coverage, subject to a \$5 million limit for each occurrence and a \$5 million aggregate self-insured

retention.

Illinois Union contends that, though Intuitive disclosed 24 open claims when it applied for the insurance, it did not mention 734 "tolling agreements" with claimants. A tolling agreement waives a right to claim that litigation should be dismissed because a statute of limitations had run out.

"The undisputed facts show that Illinois Union is entitled as matter of law to rescind the product liability policy it issued to Intuitive based on concealment of material facts in the application process for the policy," Illinois Union said in court papers.

U.S. District Judge Jon S. Tigar said in his May 27 technical ruling

A Chubb spokesman said the company does not comment on pending litigation.

"It is not unusual, in my experience for an insurance company to assert there was some misrepresentation by the policyholder" when it faces a claim, said David E. Weiss, a partner with Reed Smith L.L.P. in San Francisco.

It is common for insurers to assert rescission in coverage litigation, said Sherilyn Pastor, a partner with McCarter & English L.L.P. in Newark, New Jersey. Neither Mr. Weiss nor Ms. Pastor are involved in the case.

However, the court pointed out that insurers' right to rescind a policy is "subject to a number of



AP PHOTO

A doctor operates via the da Vinci Surgical System, made by Intuitive Surgical Inc., which has been used in more than 400,000 procedures.

that while Chubb issued an insurance binder to Intuitive Feb. 27, 2013, it issued a revised binder and insurance policy April 29, 2013, and the concealment should be determined as of the April 29 date.

Judge Tigar said there is a "material dispute" as to whether Illinois Union knew about the tolling agreements before April 29. All three of Chubb's underwriters initially testified they had learned of the tolling agreements by March or April of 2013, he said in his ruling.

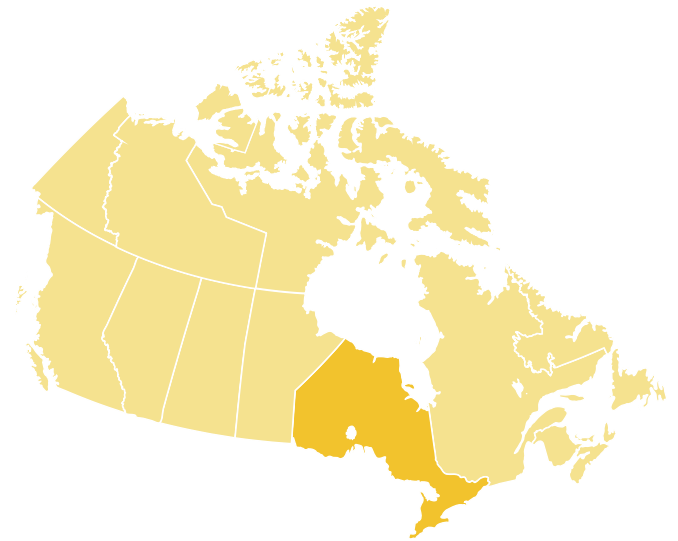
Judge Tigar also said the three subsequently submitted errata stating they had not known of the tolling agreements until at least May 23, 2013, which creates a dispute as to whether Illinois Union waived its right to rescind the policy.

limitations," said Mary Craig Calkins, a partner with Kilpatrick, Townsend & Stockton L.L.P. in Beverly Hills, California.

Policyholder attorneys say while they believe Intuitive was not at fault here, the best way for policyholders to avoid or deal with rescission attempts is to provide complete information during the application process.

"When you're submitting an application for insurance, disclose everything that you even think could be pertinent," said Stephen T. Raptis, a partner with Manatt, Phelps & Phillips L.L.P. in Washington.

The case "underscores the importance of vetting the application process," said Roberta Anderson, a partner at K&L Gates L.L.P. in Pittsburgh.



PENSIONS

Ontario forces employers to make pension contributions

BY GLORIA GONZALEZ

Employers with Ontario employees face tough choices about their retirement plans now that the province has adopted legislation to establish a government-led defined benefit plan.

The Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), adopted June 2, would be mandatory for employers and employees without a comparable workplace defined benefit or defined contribution plan. Both parties would be required to contribute a maximum of 1.9% of the employee's annual earnings up to 90,000 Canadian dollars (\$69,093).

Certain employers and employees are ineligible or exempt from mandatory participation, including those working for the federal government. Nonexempt employers, however, would have to show that their plans are comparable to avoid compulsory participation.

An existing defined benefit plan with an annual accrual rate of at least 0.5% based on an employee's earnings history would be considered comparable. A defined contribution plan would need a contribution rate of at least 8%, with employers contributing at least half, to be considered comparable.

"I think most defined benefit plans will meet that requirement," said Lorraine Allard, a Toronto-based partner at McCarthy Tétrault L.L.P. "I think that a lot of defined contribution pension plans will not meet the (4% employer and 4% employee) requirement."

A defined contribution plan rate of 3% is typical for employers, who could increase their rate to 4% and have employees con-

tribute the rest. That, however, would require many employers to move to mandatory employee contributions because voluntary contributions would not count toward the 8%, experts said.

Another complicating factor is that many Canadian employers have retirement arrangements that are not registered pension plans so they would not be considered comparable. For example, employers that offer deferred profit sharing plans in which the employer makes all the contributions in combination with group registered retirement savings plans to which the employees contribute would have to decide whether to maintain or reduce them while contributing to the government plan or closing their plans to participate in the provincial plan.

However, employers moving to the provincial plan would need to consider employment law mandates, such as required notice periods or collective bargaining agreements, said Kim Ozubko, a Toronto-based partner at Miller Thomson L.L.P.

"There are a lot of issues employers will have to wrestle with over the next couple of years," she said.

Although Ontario's Liberal government has committed to launching the pension plan, it could reverse course if it reaches agreement with the federal and other provincial governments on enhancing the Canada Pension Plan. Previous talks stalled largely due to conservative opposition, but last year's Liberal Party election victory could give new momentum to efforts to enhance the national pension plan — the preferred course for Ontario officials and stakeholders who do

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Who is ranked as the number one insurance brand in the world,* yet again?

Alternative Risk
Transfer
Aviation
Cargo
Energy
Engineering &
Construction
Entertainment
Farm & Ranch
Financial Lines
Highly Protected Risk
Hull & Marine
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Liability
Marine
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Allianz that's who. What makes Allianz the most valuable insurance brand in the world is more than the strength of our balance sheet or 125-year track record for safety and reliability. It is an unwavering commitment to placing brokers and clients at the center of our business and building the trust that is earned one conversation and one experience at a time. Put the power of the Allianz brand behind you.
Allianz, we're more than you know. www.agcs.allianz.com



Chubb scores a victory in key cyber policy ruling

■ In what may signal a wave of litigation between cyber insurers and policyholders, a Chubb Ltd. unit does not have to reimburse P.F. Chang's for costs charged to the restaurant chain by its credit card processor in connection with a data breach under its cyber policy, the U.S. District Court in Phoenix ruled. According to the ruling in *P.F. Chang's China Bistro Inc. v. Federal Insurance Co.*, Chubb's Federal Insurance unit had sold a Cybersecurity by Chubb policy to Scottsdale, Arizona-based Chang's corporate parent, Wok Holdco L.L.C., that covered "direct loss, legal liability, and consequential loss resulting from cyber security breaches." On June 10, 2014, Chang's learned hackers had obtained and posted on the internet about 60,000 credit card numbers belonging to its customers. Chang's notified Federal of the breach that same day, and Federal to date has reimbursed Chang's over \$1.7 million under the policy for costs resulting from the breach, the ruling said. Credit card processor Bank of America Merchant Services L.L.C., Charlotte, North Carolina, obtained reimbursement of \$1.9 million from Chang's for its own costs, but Federal denied coverage to Chang's for that amount. Chang's sued Chubb for the \$1.9 million, but U.S. District Judge Stephen McNamee ruled that Bank of America "did not sustain a privacy injury itself, and therefore cannot maintain a valid claim for injury against Chang's" and granted Chubb's motion for summary judgment. Policyholder attorney Robert D. Chesler with Anderson Kill P.C. in Newark, New Jersey, said he believes this is the first ruling on a cyber insurance policy.

Former Zurich Insurance CEO Martin Senn kills himself

■ Former Zurich Insurance Group Ltd. CEO Martin Senn, 59, shot himself at his family's Alpine resort home in Klosters. He had left Zurich in December following a series of profit warnings and a botched takeover of British rival RSA Insurance Group P.L.C. "Martin Senn's family has informed us that Martin committed suicide last Friday," the company said in a statement May 30, adding it was "stunned and deeply shaken." Mr. Senn had been CEO since 2010 at Zurich, which he joined after stints with Swiss banks in Asia. He was married to a Korean musician and had two grown children. Acquaintances, who asked not to be named, described him as withdrawn and reclusive following his departure from the company, which Zurich said at the time was by mutual agreement. His death follows the suicide of Zurich's finance chief Pierre Wauthier, 53, in August 2013, which brought into sharp focus the pressures facing senior corporate executives in Switzerland and elsewhere.

Reuters

QBE executive exits North American unit

■ Senior executive changes continue at QBE North America with the announcement that Richard Dziadzio will leave his position as chief financial officer next month. New York-based Mr. Dziadzio will join personal lines insurer Assurant Inc. as chief financial officer and treasurer, succeeding Christopher J. Pagano, who will serve as chief risk officer, a newly created role, Assurant said in a statement. Mr. Dziadzio joined QBE North America in 2013. The insurer

has not yet named a successor. Last month, Sydney-based QBE Insurance Group Ltd. named former AIG executive Russell Johnston CEO of North American operations, succeeding David Duclos, who is retiring.

Risk management honoree moves into ERM position

■ Daniel H. Kugler, Business Insurance's 2002 Risk Manager of the Year®, has been named vice president-enterprise risk management at the REV Group in Milwaukee. Mr. Kugler most recently served as director of the Center for Insurance and Risk Management at the College of Business at the University of Wisconsin-Oshkosh. Mr. Kugler won recognition as Risk Manager of the Year® for his work at Kenosha, Wisconsin-based Snap-on Corp., from which he retired as assistant treasurer with responsibility for global risk management in 2014. He joined Snap-on in 1979 as a risk analyst. He was also recognized in 2012 as the first individual honoree in the Katie School of Insurance and Financial Services of Illinois State University's Midwestern Insurance Innovation and Leadership Awards & Hall of Fame and is a member of the board of directors of the Spencer Educational Foundation Inc.

AIG must face Pimco lawsuit over financial crisis losses

■ American International Group Inc. failed to persuade a California judge to dismiss a lawsuit by Pacific Investment Management Co. that accuses AIG of lying about its subprime mortgage exposure prior to the 2008 financial crisis. Judge Thierry Patrick Colaw of Orange County Superior Court rejected AIG's argument that Pimco, a unit of German insurer Allianz S.E., waited too long to sue over the alleged deception. But the judge said AIG can appeal immediately, noting that federal courts in comparable cases have reached differing conclusions over the proper time limit. Pimco is seeking to recoup losses allegedly suffered by more than 60 funds, including its flagship Pimco Total Return, over securities purchased between 2006 and 2008. Newport Beach, California-based Pimco sued AIG last year after opting out of a \$970.5 million class action settlement between the insurer and other investors.

Reuters

Attorney fee ruling translates to comp rate hike proposal

■ Florida's workers compensation insurance may be seeing rate increases in the double digits by August due to the fallout of a recent Florida Supreme Court decision. The National Council on Compensation Insurance Inc., which files rates on behalf of Florida's workers comp insurers, proposed a 15% rate increase in response to the recent Florida Supreme Court decision in *Marvin Castellanos v. Next Door Co. et al.* deeming it unconstitutional to cap claimant attorney fees. The increase accounts for the potential effect the court ruling could have.

Swiss Re highlights top emerging risks

■ The top three emerging risks with the highest potential impact for insurers and reinsurers are a crisis in emerging markets, unconventional monetary policies and internet fragmenta-

tion, according to a report published by Swiss Re Ltd. In the Sonar report, which draws upon a crowdsourcing tool that picks up early signals of future risks, Swiss Re highlights 21 emerging risks that insurers and reinsurers should keep on their radar. Other potential risks, that likely would have a medium level of impact include a crisis of trust in institutions, human-induced earthquakes, phony data and precision medicine, which takes into account factors such as genes and lifestyle in treatment, the report noted.

Proposed capital standards for insurers released

■ The Federal Reserve Board has unveiled its anticipated capital standards for insurers. Insurers have been clamoring for further clarification of the rules since American International Group Inc., MetLife Inc. and Prudential Insurance Co. were identified by the Fed's Financial Stability Oversight Council as systemically important financial institutions in 2013 and subjected to a higher level of regulatory scrutiny. The board said it was seeking public comment on two approaches to regulatory requirements for supervised insurance institutions: a building block approach that would incorporate existing state and foreign insurer and banking regulations; and a consolidated approach that would categorize all of a consolidated insurance firm's assets and insurance liabilities into risk segments tailored to account for an insurer's liability structure.

Family of four health cover tops \$25,000 a year in costs

■ The total cost of coverage for a family of four under an employer-sponsored preferred provider organization plan, including premiums and employees' out-of-pocket expenses, rose 4.7% to an average of \$25,886, Seattle-based consultant Milliman Inc. said in its annual "Milliman Medical Index" report. While that is the smallest percentage gain in the history of the analysis that began in 2001, the \$1,155 increase is the 11th consecutive year that the annual increase has exceeded \$1,100, according to the consulting and actuarial firm. Surpassing \$25,000 a year for family coverage is "a significant and somewhat unsettling milestone," Chris Girod, a San Diego based Milliman principal and consulting actuary, said in a statement. The report attributed much of this year's increase in overall health plan costs to a 9.1% jump in prescription drug costs.

PBGC prepares merger rule for multiemployer plans

■ The Pension Benefit Guaranty Corp. is proposing a rule that will allow the agency to facilitate mergers of multiemployer pension funds as a way to protect some participants' benefits in troubled plans. The PBGC already has the authority to help with mergers, but the rule to be published in the June 6 Federal Register implements technical changes from the Multiemployer Pension Reform Act of 2014 that allow the agency to provide technical assistance or, if needed to avoid a plan's insolvency, financial assistance in some cases. "PBGC can help save troubled multiemployer plans before they fail. That helps plan participants and reduces the long-term costs of the pension insurance program," PBGC Director W. Thomas Reeder Jr. said in a statement.

Pensions & Investments

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Munich Re's ERGO unit to lay off 1,800 workers

■ Munich Reinsurance Co.'s ailing primary insurance unit, ERGO Insurance Group, said it plans to lay off 1,800 employees as part of a \$1.1 billion restructuring plan. The plan, scheduled to be completed by 2020, also includes exiting 18 locations in Germany and bulking up its digital capabilities, Düsseldorf, Germany-based ERGO said in a statement on its website. The company said it is targeting gross cost savings of roughly €540 million (\$600.2 million). "By 2021 at the latest," the company said, "ERGO expects annual net profits of over €500 million (\$555.8 million), thus making a sustainable contribution to the result of its owner Munich Re." ERGO, which underwrites both property/casualty and life and health insurance businesses, said next year it will launch a stand-alone digital company for customers who conduct their insurance affairs exclusively online. The first product will be auto insurance.

France's Axa sells final U.K. life business

■ French insurer Axa S.A. is selling its U.K. investment and pensions business to Phoenix Group Holdings, completing a well-flagged exit from a mature life assurance market to focus on faster-growing emerging economies. Axa completed a five-year strategic plan last year by turning more to countries in the developing world with low insurance coverage. Following the sale, Axa will have raised €832 million (\$934.0 million) from the disposal of its U.K. life and savings businesses this year, though it will book a €400 million (\$449.0 million) loss on the transactions, the insurer said.

Reuters

Austrian firm fires CEO after cyber fraud

■ The head of Austrian aerospace parts maker FACC was fired after the company was hit by a cyber fraud that cost it €42 million (\$47.1 million). The firm's supervisory board decided to dismiss CEO Walter Stephan with "immediate effect", the company said. FACC, whose customers include Airbus Group and Boeing Co., said on Jan. 19 it had been hit by a cyber fraud in which hackers stole around €50 million (\$56.13 million) by posing as Mr. Stephan in an email. The hoax email asked an employee to transfer money to an account for a fake acquisition project — a kind

PROFILE: ETHIOPIA

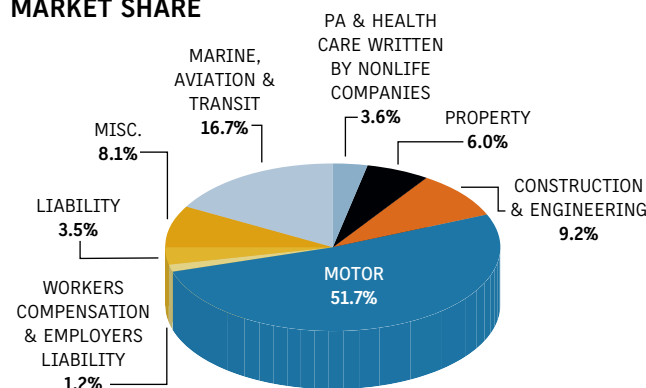
\$228.2 MILLION

◀ 2014 P/C gross premiums

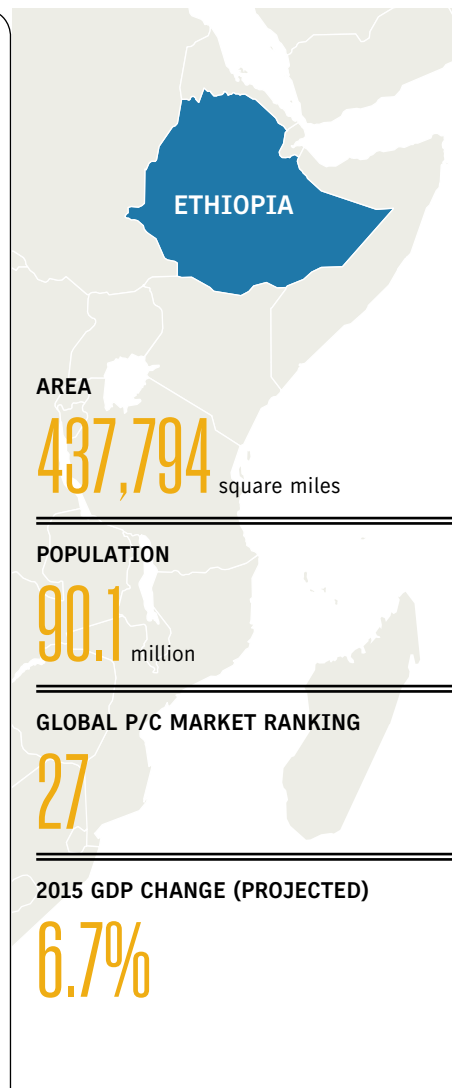
An archeological gem, Ethiopia faces stifling bureaucracy and nationalization. Though that eases infrastructure projects such as the Grand Ethiopian Renaissance Dam, due to be completed on the Blue Nile border with Sudan in 2017 and produce more than 6,000 megawatts of power, it has not changed the largely agrarian economy that relies heavily on subsistence farming, with coffee exports a main driver.

Straddling two major tectonic plates — the African and Somali — earthquake is the major natural threat to Ethiopia, though volcanic eruptions and flooding also are common.

MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



MARKET DEVELOPMENTS

UPDATED MARCH 2016

- Under the October 2015 Insurance Corporate Governance Directive, insurers have until October 2016 to form at least three sub-committees to handle audit, risk management, compliance and human resources matters according to key performance indicators and establish a code of conduct.
- Authorized by a 2014 directive, Ethiopia Re, the country's first reinsurance company, is being established with private shares limited to 5%, mandatory cessions from primary local carriers and a minimum capital requirement of \$500 million.
- Under a February 2015 directive, property/casualty and life microinsurance can be provided by an insurer licensed in those categories, a specialist microinsurer or a microfinance company, which need not be licensed.

COMPULSORY INSURANCE

- Auto third-party liability
- Marine cargo imports
- Professional indemnity for insurance brokers, agents, surveyors and claims adjusters
- Aviation third-party liability
- Undefined cover for insurance company premises
- Personal accident for domestic workers seeking visas to work in Arab countries

NONADMITTED

Unauthorized insurers cannot carry on insurance activity in Ethiopia, because all property, including imports, must be insured by companies licensed by the National Bank of Ethiopia. However, the National Bank can grant a specific exemption upon request, particularly for cover unavailable locally. Local insurers can act as agents for insurers licensed in the Schengen Area states for cover largely limited to travel health.

INTERMEDIARIES

Agents and brokers have to be licensed by the National Bank to do business in Ethiopia. Brokers cannot place business with nonadmitted insurers without the National Bank's approval. Brokers involved in nonadmitted placements do not have to warn buyers that their insurer is not subject to local supervision.

MARKET PRACTICE

Ethiopian insurers complain that, despite the tight restrictions, multinational donors and their contractors buy cover abroad, either keeping the premiums outside the domestic market or logging them as aid. Penalties for doing business without a license include fines of up to \$917 per day of the offense and/or up to 15 years in prison.

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

of scam known as a "fake president incident." The supervisory board "came to the conclusion that Mr. Walter Stephan has severely violated his duties, in particular in relation to the 'fake president incident,'" FACC said. A company spokesman declined to give details of how Mr. Stephan had violated his duties. The firm said no comment was available from Mr. Stephan. Robert Machtlinger was appointed interim CEO.

Reuters

Cyber stress tests urged for E.U. banks

■ Domestic authorities in European Union member states should stress-test their financial institutions for cyber risks, a top E.U. supervisor said, warning banks

might be required to hold extra capital as a buffer against what is an emerging threat. Speaking to Reuters in Beijing, Andrea Enria, chairman of the European Banking Authority, said cyber security had become an important issue for E.U. member states. He called on domestic regulators to stress-test local banks to understand the possible risks. "I would not run a massive cyber-risk attack scenario for 28 member states at the same time," said Mr. Enria. "But if you ask me would I recommend competent authorities to think more on this and consider running this type of stress test? I would say yes." The global financial system is still reeling two months after a still-identified group was able to use malware to hack the SWIFT bank messaging network and steal \$81 million from the Bangladesh central bank. The February heist

prompted Mary Jo White, chair of the U.S. Securities and Exchange Commission, to warn last week that cyber security is the biggest risk facing the financial system. The EBA operates as a pan-E.U. regulator, writing and coordinating banking rules across the 28-country bloc.

Reuters

Insured U.K. storm losses may reach \$1.89 billion

■ Insured losses from a series of storms that hit the United Kingdom in December likely will total about £1.3 billion (\$1.89 billion), the Association of British Insurers said. The London-based ABI said insurers had received about 15,000 claims after storms Desmond, Eva and Frank hit the United Kingdom

causing widespread flooding. The ABI said 85% of those claims had been either fully or partly paid. "Repairing a flooded building cannot be rushed because of the importance of making sure it is properly dried out before repairs are done," Mark Shepherd, manager of general insurance policy at the ABI, said in a statement. "The work needed to fully restore every single property affected in December continues with the same sense of urgency as in the immediate aftermath," he said.

Sedgwick unit expands in Canada

■ Sedgwick Claims Management Services Inc. and its Vericlim Inc. subsidiary said they will expand their services in Canada. Sedgwick

will offer claims administration and adjusting services to the Canadian market for property, liability, auto and niche industries, Sedgwick said in a statement. Toronto-based Michael Holden and Terry Deamer are leading the companies' Canadian expansion. Mr. Holden has been named president, and Mr. Deamer will serve as senior vice president of operations, according to the statement. "Sedgwick has been helping its U.S.-based clients manage their exposures in Canada for the past 12 years; this expansion ensures we can continue helping our clients manage and control their risk needs as they grow," Vericlim CEO Michael Arbour said in a statement.

Anonymous database for cyber underwriting

■ The Association of British Insurers has called for a national anonymous database of cyber incidents to enable the insurance market to better assess, underwrite and price cyber risks. The London-

based ABI said in a statement that it hopes the nonprofit, anonymous database of cyber incidents, including business interruption losses, ransom demands, loss of confidential data and damage to information technology systems, could build upon the E.U. European Network Information Security Directive, which will require some firms to provide notification of cyber breaches starting in 2018. The ABI said the data would be then made available to insurers to enable them to better price cyber coverage.

Pension woes hinder steel manufacturer sale

■ Britain's government has started discussions on overhauling the deficit-laden British Steel Pension Scheme, a major stumbling block for potential buyers of Tata Steel Ltd.'s U.K. assets. With serious offers now on the table for Tata Steel UK, Britain's government is racing against time to find a way to put the company's British pension fund on a sound footing to

help facilitate a sale. The consultation is looking at separating the pension scheme from Tata Steel and reducing its outgoings, while avoiding a collapse into the Pension Protection Fund, a government safety net that would leave many pensioners worse off. Steel industry trade unions said it would be an "unmitigated disaster" if the plan were allowed to fall into the PPF. The British Steel Pension Scheme is one of Britain's largest defined benefit plans, with 130,000 members. Even with a solvent employer sponsoring it, the plan's £14 billion (\$20.3 billion) of liabilities exceeds its £13.3 billion (\$19.29 billion) in assets.

Reuters

Sompo Canopus taps ex-Aspen executive

■ Sompo Canopus A.G. has appointed Bernie de Haldevang as global head of specialty. Mr. De Haldevang most recently was head of financial and professional lines at Aspen Insurance Holdings Ltd. in London. In a statement,

Sompo Canopus said he would be responsible for developing the insurer and reinsurer's political risk lines and "reinvigorating its accident and health and casualty lines, as it looks to diversify its book" with more noncatastrophe-related business.

U.K. businesses get flood deductible help

■ Policy Excess Ltd., London, has launched Flood Excess Insurance to help small and medium-size U.K. enterprises in flood zones pay the deductibles on their flood coverage. The policy is underwritten by Catlin Insurance Co. (UK) Ltd., Policy Excess said in a statement. Many U.K. business faced steep increases in their flood insurance deductibles following widespread flooding earlier this year in the United Kingdom, Policy Excess said in a the statement. "Many landlords, business owners and managers are unaware of the potential implications arising from greatly increased excess limits, with many now set at tens of thou-

sands of pounds," Chris Netherton, CEO for Flood Excess Insurance said in the statement. "Weather events that are only expected once every hundred years have been occurring with greater frequency, meaning insurers are unable to continue providing the same levels of indemnity. With Flood Excess Insurance, U.K. (small and medium-size enterprises) can be certain that a high excess bill following a flood will not jeopardize their livelihoods."

Arch names European president and CEO

■ Arch Insurance Co. (Europe) Ltd. has named New York-based Matthew Shulman president and CEO, effective July 1. Previously, Mr. Shulman was executive vice president for Arch Insurance Europe's executive assurance and professional liability underwriting units. He succeeds James Weatherstone, who will remain with Arch Insurance Europe through Dec. 31, Arch Insurance Europe said in a statement.

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NCOIL FOCUSING ON CONCERNS OVER INTERNATIONAL REGULATION

Q What are your top goals as CEO of NCOIL?

A To increase NCOIL's proper leadership role in the legislative and public policy area for what is a state regulated topic.

Q How have the roles you've held, on all sides of this industry, prepared you for this one?

A The combination of them well-prepared me for this role. If you go all the way back, it certainly helps that I went to law school. Then, having served as a regulatory lawyer for 17 years, including years managing the public policy and government relations area for a really large company, was a role in which I dealt with the debate over the formation of laws and regs literally on a daily basis.

Q What are some of the biggest insurance issues legislators are dealing with today?

A I think there's a natural concern about the encroachment of international regulatory activity on U.S. insurers. If internationally

Q&A

there are developed international capital regulatory standards that apply all over the world, including to insurers in the United States, that would have the effect of pre-empting the ability of state insurance regulators to develop, as they traditionally have done, the capital standards for insurers. So, if you think about it, that leaps right past federal pre-emption of state insurance regulations to international pre-emption.

There are areas where states and the federal government need to work closely together, but state jurisdiction should not be preempted.

Q What does NCOIL do to help legislators better understand such issues?

A The NCOIL staff can conduct research on an issue, develop white papers, share that with our member legislators. We can hold hearings, or discussions that are short of hearings, where we hear from all sides of an issue. Then NCOIL legislators from around the country hear from the experts we bring in to discuss an issue. And from other legislators around the country to hear what their experiences are.

Q How has NCOIL's role evolved over time?

A Well, the basic structure hasn't changed that much. You know I've been coming to NCOIL meetings on and off since the latter part of the '90s in my different roles. It will change as new technology becomes available to NCOIL. We'll have more conference calls and perhaps webinars during the year. That way we'll be able to keep momentum going on various topics. If you only meet three times a



THOMAS B. CONSIDINE
NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

Thomas B. Considine became CEO of the National Conference of Insurance Legislators on Jan. 1. Based in Manasquan, New Jersey, the organization helps inform legislators on insurance issues. Mr. Considine began his career as a lawyer before joining MetLife Inc.'s government relations team. He held various positions during his 17 years at the insurer, including head of national government relations and public policy. In 2010, he was appointed commissioner of the New Jersey Department of Banking and Insurance. Having also spent time as chief operating officer of a regional health plan and CEO of a community hospital, Mr. Considine says his experience as a regulator, insurer and provider "well-prepared" him for his current role. Mr. Considine recently spoke with *Business Insurance* Associate Editor Stephanie Goldberg about some of the biggest issues insurance legislators are dealing with today. Edited excerpts follow.

year and there's not activity in between the meetings, then when you get back together people are kind of saying, "OK, now where did we leave off last time?" We want to eliminate that. So, those

are a few of the ways that we'll change, with better use of technology and interim sessions. We're in the process right now of redesigning the website, looking at designing an app, things like that.

COMINGS & GOINGS

UP CLOSE: JOSHUA BRIONES

LOS ANGELES-BASED MANAGING MEMBER
Mintz Levin Cohn Ferris Glovsky & Popeo P.C.

PREVIOUS POSITION: Los Angeles-based partner with Blank Rome L.L.P.

LOOKING FORWARD TO: Building on Mintz Levin's reputation as the "go-to" firm in the areas of life sciences, health care, technology and communications in Los Angeles.

GOALS FOR NEW POSITION: Contribute to an enthusiastic, collaborative, family-like environment focused on exceeding expectations.

ON LEADERSHIP: Inspire confidence.

CHALLENGES FACING INDUSTRY: Trend toward commoditization.

CRYSTAL BALL: Doing good work is no longer a differentiator. Many in the industry are perceived as doing good work. The question for the client is becoming more and more: Of all the smart, skilled lawyers I can select among, which one should I call for this particular matter? Perhaps the one with the best reputation? Or the one who



is best-known for this narrow specialty practice or industry?

FIRST INDUSTRY JOB: Summer associate at Gray, Cary, Ames & Frye in San Diego.

ADVICE: Think of ways to make life easier for the people around you, especially clients.

OUTSIDE THE INDUSTRY, A DREAM JOB: Formula One race car driver.

HOBBIES: Hobbies?! I have four children — Estella, Maximilian, Leonardo, Augustine — and a fifth on the way.

DON'T LEAVE THE HOUSE WITHOUT: My iPhone.

BIGGEST OBSTACLE FOR WORK-LIFE BALANCE: My iPhone.

WHEN I RETIRE: Never. I love what I do.

FAVORITE MEAL: A traditional Mexican meal at my parent's house.

FAVORITE BOOK: The Bible.

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EDITORIAL

NO HARM, NO FOUL WINS CASE

It's always nice, not to say refreshing, when a court ruling not only helps businesses but makes common sense as well. That's certainly the case with the U.S. Supreme Court's 6-2 ruling May 16 in *Spokeo Inc. v. Robins*. In that case, Thomas Robins had charged Pasadena, California-based Spokeo, which describes itself as a "people search engine," with violating the Fair Credit Reporting Act by posting inaccurate information about him and damaging his employment prospects.

In its ruling, the high court held that to successfully sue under the FCRA, it is not enough that Spokeo may have technically violated the law, but the plaintiff also has to show the alleged injury was both "concrete and particularized." In short, the plaintiff has to prove he was actually hurt by the statutory violation.

Experts point out this ruling has widespread implications for businesses beyond the FCRA in protecting themselves against class action litigation, including in employment, data breach, privacy and Employee Retirement Income Security Act cases, all instances where mere statutory violations may be alleged.

Unfortunately, the Supreme Court did not issue a final judgment on Mr. Robins' case but instead turned the litigation back to the 9th U.S. Circuit Court of Appeals in San Francisco to determine whether Mr. Robins met this standard, based on the particular facts of his case.

And at least the dissenting opinion in the case proposes that Mr. Robins may have a valid argument that he was harmed by Spokeo.

The court's failure to issue a final opinion means the ruling was not an unmitigated victory for employers but, as one expert put it, "a little bit of a punt."

Nevertheless, there is general agreement that, on balance, it is clearly a victory for businesses and will help curtail the plaintiff bar's efforts to continue to rake in millions of dollars for technical violations where nobody is really hurt, costing businesses who knows how much in defense costs, not to mention aggravation.

Clearly, business shouldn't have to shell out money where no one has been hurt. This is truly a case where it can be unambiguously said that justice has been served.

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SCHILLERSTROM



COMMENTARY

THINKING THROUGH THE THREAT OF CYBER WAR

Sound risk management requires its practitioners to perform many tasks, and to perform them well. Some are obvious, like making sure insurance purchased adequately covers the exposures involved. Others may not be so obvious.

One key element to sound risk management may sound esoteric, but it's not — that is being able to think about the unthinkable. It's a phrase popularized by the late futurist Herman Kahn in the 1960s. Mr. Kahn used the term in regard to nuclear war, which dominated defense issues during the Cold War.

There's another unthinkable now: the prospect of cyber catastrophe. A question for which the answer appears to be a definite "yes" is whether nation states would use cyber attacks as a weapon of war.

U.S. authorities have traced some hacks to people working on behalf of nation states, although state sponsors of such attacks obviously don't want to admit their involvement. That raises the question of how the United States — or any other country, for that matter — would react if its leaders received incontrovertible evidence that another nation had deliberately launched a cyber attack aimed at crippling military capabilities and/or destroying critical infrastructure.

The answer is, we don't know. Sen. Mike Rounds, R-S.D., addressed the issue last month by introducing the Cyber Act of War Act, which was included in the version of the National Defense Authorization Act approved in mid-May by the Senate Armed Services Committee.

"As the nature of warfare continues to evolve, it is critical that our armed forces have the authorization and ability to defend against cyber attacks on our crit-



**MARK A.
HOFMANN**
SENIOR EDITOR

ical infrastructure such as the electric grid, transportation systems and water supplies. Clearly defining what constitutes an act of war in the cyber realm is the first step in this effort," said Sen. Rounds in a statement following the committee action.

The provision would require the White House to develop a policy to determine when an action carried

out in cyber space constitutes an act of war against the United States. According to Sen. Rounds, such a formal definition "would allow our military to be better able to respond to cyber attacks and deter bad actors from attempting to attack us in the first place."

Calling an action an act of war is not to be taken lightly. Having a definition of what would constitute such an act is critical. That would give the president, whoever may sit in that office, guidance before possibly exercising the gravest of constitutional duties — asking for and receiving a formal declaration of war. That's something that's happened only five times in U.S. history, the most recent being World War II.

The response could fall short of a declaration of war. But the possibility of cyber space being a battlefield would have been unthinkable outside of science fiction not all that long ago. Given the risks involved, it should be unthinkable for policymakers not to think very seriously about how to respond now.

Hurricane season is here so prepare for the worst

It takes just one hurricane or windstorm to wreak havoc on a business. So, with some forecasters predicting an active storm season, preparation is key. Andrew Higgins, technical manager for Allianz Risk Consulting L.L.C. offers tips to help companies reduce the risk and minimize losses.

Hurricane season is upon us, and forecasts by the national meteorological and scientific agencies range from below average to very active. With such a broad range, it is difficult to know how to prepare. But preparation is crucial because one hurricane making landfall can disrupt businesses and people's lives over a large area.

Whether it's hurricanes in the North Atlantic Ocean, typhoons in the Northwest Pacific Ocean or cyclones in the Southwest Pacific and Indian oceans, windstorms can have a devastating effect on businesses.

With the advent of just-in-time management philosophies and lean inventories, windstorm losses can cripple an organization. Property damage and business interruption may be covered by the insurance policy, but the loss of market share and reputation due to the inability to produce cannot be easily recovered.

As much as storm severity, population growth and industrial expansion — particularly in the developing world — will ensure increasing losses. While we can't prevent windstorms, damage can be minimized with adequate preparation. Following are select guidelines to protect a business before, during and after a windstorm.

Pre-windstorm planning

Develop a comprehensive written emergency plan to mitigate the exposures. The plan should include:

- Assigning emergency organization roles and responsibilities.
- Providing training at least annually.
- Assembling emergency supplies and equipment, such as plastic tarps, mops, squeegees, lighting, battery operated radio, tape for windows, lumber and nails, in a safe location.
- Planning for salvage and recovery, including maintaining a list of key vendors, contractors, and salvage services.
- Designate a person to monitor the windstorm, keeping management and maintenance personnel updated. Allow enough time to implement the emergency procedures.

Inspect and repair the roof for problems with:

- Loose shingles, flashing, edging strips and accessories.
- Blocked or loose drains, gutters or downspouts.
- Inadequately secured equipment, signs, stacks, ventilators, etc.
- Anchor large equipment, such as cranes and draglines, in accordance with manufacturer's

guidelines.

- Move or securely fasten outdoor equipment, machinery and inventory. Outdoor structures, such as trailers, should be anchored. Secure inflammable liquid containers or move them to a sheltered area (but not the main facility).

- Consider removing large trees or limbs that could fall and damage buildings, outdoor equipment, power lines, etc.

Protect exterior windows and doors as follows:

- Attach pre-fitted windstorm shutters and/or plywood.

- Inspect doors and windows for weak latches and hardware. Repair as needed.

- Install pre-fabricated steel bars inside exterior roll-up doors.

- Fill fuel tanks of generators, fire pumps and company-owned vehicles.

- Fill aboveground tanks to capacity to prevent wind damage.

- Clear debris from storm drains and catch basins.

- Protect computers, inventory and key machinery and equipment with plastic tarps or waterproof covers. Back up all important computer data and store in a safe location.

- Consider moving valuable and/or critical inventory and materials to a safe location.

- Isolate, neutralize or remove chemicals.

Prepare for flooding:

- Move important equipment, inventory and records to higher elevations. Cover anything that can't be moved with plastic tarps or store on pallets.

- Install devices in sewer and drain lines to prevent floodwater from backing up into buildings.

- Be prepared to place sandbags at vulnerable openings and around critical outdoor equipment.

- If flooding is imminent, shut off the building's electrical power — except to motor-driven fire pumps.

Be prepared to safely shut down operations:

- Shut off processes and equipment following established procedures.

- Shut off all inflammable and combustible liquid and gas lines at their source to prevent discharge from broken piping.

- Enforce "No smoking" and "No cutting or welding" rules.

- Protect or shut off other possible flame sources.

During a windstorm

- Emergency response team personnel should remain at the facility if possible and be prepared to respond.

- Continue to monitor weather reports for information on potential storm damage, access to property and utility outages. Update management and maintenance accordingly.

- Patrol the property and watch for roof leaks, broken pipes, fire or structural damage.

- Constantly monitor processes, equipment, boilers and furnaces that must remain on line during the windstorm.

- During power failure, turn off electrical switches to prevent reactivation before checks are completed.

After a windstorm

- Secure the site to prevent unauthorized entry.

- Organize and prepare emergency crews for salvage and cleaning.

As soon as it's safe, conduct a damage assessment, paying particular attention to the following:

- Structural damage to the building, particularly the roof.

- Fire protection equipment, keeping as much in service as possible while making repairs.

- Utilities: electric; gas; water; compressed air; heating, ventilation and air conditioning; steam.

- Production and process equipment.

- Areas subject to flooding, including basements.

- Call in key personnel and notify contractors to begin major repairs after facility safety procedures are implemented. This would include controlling ignition sources such as smoking and hot work.

Initiate salvage operations:

- Promptly cover compromised building elements, such as roofs, doors and windows, with plastic tarps to keep water out.

- Move damaged inventory and equipment to dry areas.

- Clean and dry equipment.

- Inspect and repair electrical systems and equipment before re-starting.

- Clear debris from roof and yard drains, gutters, drain pipes, gutters and catch basins.

- Remove water and dehumidify damp areas. Monitor air humidity levels over an extended period of time in areas with highly sensitive equipment.

- Review the effectiveness of the windstorm emergency plan and revise as needed, but at least annually.

By taking some simple steps now, companies and other enterprises can avoid much of the damage and business interruption caused by a windstorm, allowing you to get back up and running as quickly as possible.



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SPECIAL REPORT

Cyber Risk:

Insurance

Should there be a TRIA-style backstop for cyber losses?

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Modeling firms strive to tackle emerging risk

PAGE 18

Cyber insurance rates moderate

Expanding capacity, robust London market give buyers more options

BY JUDY GREENWALD

The cyber insurance market is generally buyer-friendly with competitive rates and plentiful capacity as new insurers enter the market. While companies in the retail, health care, financial and hospital-ity sectors, still are finding relatively higher rates due to major data breaches that have hit the sectors, experts say rates are increasing at a slower pace than a year to 18 months ago.

“The market remains robust,” said Robert Parisi, managing director and national cyber risk product leader at Marsh L.L.C. in New York. After digesting some large data breaches, insurers have “started to move forward,” and once-aggressive rate increases are “starting to moderate somewhat.”

“We’re in an expanding period,” said Lauri L. Floresca, senior vice president and partner at Woodruff-Sawyer & Co. in San Francisco. “We’ve seen a lot of capacity come in over the last 18 months, and while there was a bit of a hard market for the very large consumer-facing companies ... most of that has played through the market right now.”

Also, there’s “a high degree of flexibility,” and insurers are willing to provide broad coverage “as long as applicants were able to provide appropriate underwriting information,” Mr. Parisi said.

Despite the lack of actuarial data and risk aggregation “headwinds,” new players have entered the market and increased its capacity, said Ben Beeson, Washington-based cyber risk practice leader at Lockton Cos. L.L.C.

Some experts estimate market capacity has reached \$4 billion, with 65 to 70 insurers now offering cyber coverage. About \$500 million in capacity is available through towers for stand-alone cyber

CAPITAL POURS IN AS INSURERS EYE POTENTIAL FOR GROWTH

More capital is coming into the cyber insurance market, experts say.

“It’s one of the real growth areas, so there’s a lot of pressure on the carriers’ side to be in the market in some way, shape or form,” said William P. Cosgrove, New York-based managing principal and practice leader of financial institutions at Edgewood Partners Insurance Center. Recent examples include:

In October 2015, Berkshire Hathaway Inc. said its Berkshire Hathaway Specialty Insurance Co. unit had launched two policies providing cyber liability and breach response coverage with risk management resources in the U.S.

In December 2015, Allianz Global Corporate & Specialty S.E. launched a dedicated U.S. cyber unit in response to rising intellectual property theft and cyber extortion.

In January 2016, Marsh L.L.C. launched a global excess cyber risk facility underwritten by Lloyd’s of London syndicates that offers up to \$50 million in follow-form coverage for any industry sector worldwide.

In May 2016, London-based Beazley P.L.C. and a unit of Munich Reinsurance Co. said they had entered into a coinsurance partnership to provide buyers with customized cyber limits up to \$100 million.

In addition, “There is a nascent market for

insurance-linked securities,” which would permit insurers, reinsurers or even buyers to transfer cyber risk rather than the typical insurance mechanisms, said Ben Beeson, Washington-based cyber risk practice leader at Lockton Cos. L.L.C., who said he could foresee development of exchanges that would deal with insurance-linked securities.

Kevin Kalinich, Chicago-based global practice leader of cyber/network risk at Aon Risk Solutions, said the cyber insurance market is of particular interest to retirement and pension funds, which prefer the longer-term investments.

By Judy Greenwald



across the board.”

“We’ve also seen a healthy London market,” with insurers and brokers “working together on the very large, sophisticated programs” on a risks service basis to “put up some larger blocks of limits, so the capacity has opened up a bit more in the last quarter,” said Catherine A. Mulligan, New York-based senior vice president of specialty products at Zurich North America.

On the buyer side, companies are gaining sophistication in controls, protocols and procedures around cyber-related issues as well as recovery plans when there is a data breach, said Shawn Ram, San Francisco-based executive managing director, Western regional practice leader at Crystal & Company. This has given insurers “more comfort” in underwriting the risk, he said.

Underwriting precision also has improved, said Dena Cusick, Charlotte, North Carolina-based national practice adviser at Wells Fargo Insurance Services USA Inc.’s professional risk practice.

“We’re seeing more underwrit-

ing questions very specific to the technology” used by a particular company, including questions on firewalls and passwords, Ms. Cusick said.

Health care, hospitality and retailers continue to get particular scrutiny, with financial institutions sometimes included.

Health care, financial institutions and retailers “have consistently been industry classes that might experience higher rates than others, based purely on the value of personally identifiable or confidential information that they have,” said Shannon Groeber, Philadelphia-based senior vice president of the cyber and errors and omissions practice at JLT Specialty Insurance Services Inc.

“Over the years, we’ve been looking at those classes a little bit differently and limiting the amounts of limits” provided, said Tracie Grella, American International Group Inc.’s New York-based global head of cyber. But now in cases where security has been revamped and firms are in a much stronger position than their competitors, AIG “would consider increasing the coverage or limits

available to them,” she said.

Companies that put good controls in place are “not getting the huge increases they were getting” previously, said Anthony Dagostino, executive vice president and cyber E&O practice leader at Willis Towers Watson P.L.C. in New York.

Meanwhile, terms and conditions are being refined “depending on the nature of the risk involved,” said Eric Cernak, Hartford, Connecticut-based Munich Reinsurance America Inc. cyber risk practice leader. “There’s still a wide variety of variability of both rates and terms in the marketplace. We still haven’t coalesced” the coverage into a single form or common language, he said.

Experts say more insurance buyers that already have a captive insurer are exploring putting their cyber coverage into the facilities.

“Customers are keen to see how they can leverage their current captives to address both the security and privacy and some of these other cyber peril exposures, so we think that could be something that could be a good solution,” said Zurich’s Ms. Mulligan.

Prospect of catastrophic cyber attack triggers interest in insurance backstop

BY MARK A. HOFMANN

Opinions differ on whether the time has come to establish a federal backstop that would respond to losses caused by catastrophic cyber attacks similar to the U.S. facility that backstops terrorism losses.

Such a backstop was created by the Terrorism Risk Insurance Act of 2002 to help insurers cover losses from truly catastrophic future terrorist events.

But whether the current facility, which is commonly known as TRIA, could respond to cyber attack losses remains an open question. Also muddying the issue is that some cyber attacks appeared to be sponsored by nation states and might be construed as acts of war not usually covered by insurance.

In addition, backstop supporters stress that any facility should not replace the private cyber insurance market, which should be allowed to continue growing.

Not everyone agrees that the time for a TRIA-like approach to cyber attacks has arrived. What is clear is that a large cyber attack could have a systemic impact, as countless businesses would find their systems seriously damaged or destroyed, and a crippling attack on the power grid would cause property damage and widespread business interruption — perhaps for weeks and months.

“At some point we’re going to have to develop some TRIA-like backstop where it comes to cyber security law,” said former Rep. Mike Rogers, R-Ohio, who chaired the House Intelligence Committee before retiring from Congress in 2015. Mr. Rogers, now an independent Washington-based consultant, pointed out that nation states already have attacked private companies, as North Korea allegedly did to Sony Corp., and countries such as China and Russia also have the capability.

Achieving a “really mature cyber security private insurance market” is difficult because nation states are using their military and intelligence capabilities to target U.S. companies, he said.

“My one caution is we need to not allow the availability of a TRIA-like backstopped insurance product to stop companies from developing wholesome cyber defenses,” Mr. Rogers said.

It is “increasingly clear that the risks of cyber terrorism are very large,” with extremely large potential losses, said Ben Beeson, cyber risk practice leader at Lockton Cos. L.L.C. in Washington. He said the insurance market does not have much capacity to address the risk.

“The losses could run into the billions,” Mr. Beeson said. “It does warrant support from the government.”

The insurance industry has

never seen a risk so interconnected, and a single event could do great damage to the insurance industry, he said.

“Can the market solve this problem without a government backstop?” While the market is trying to do so, “if the power grid went down tomorrow, it’s not going to be enough,” Mr. Beeson said. “The government can help accelerate the market’s ability to deal with this by providing a backstop.”

“I think it’s a conversation that’s probably long overdue,” said John

Farley, vice president of cyber risk at Hub International Ltd. in New York.

Three issues lead him to believe that “we probably need a TRIA-like program,” he said:

- The internet of things “has basically expanded an attack surface for the hacker,” he said.

- The cyber insurance market is growing but remains small compared with some other lines. “We can expect doubling and perhaps tripling the number of cyber policyholders by 2020,” he said.

- Hackers are backed by the “vast resources” of nation states, he said.

The three together could lead to a “cyber Armageddon” that could hit thousands of businesses around the world simultaneously, with “a real supply chain risk that goes along with it,” he said. “Cyber risk is systemic. As more policyholders enter the market, as the threat expands, and as hackers evolve and get more sophisticated and backed by nation states, there can be a real aggregation of risk in

the not-too-distant future.”

“We’d be looking at the larger state-sponsored or terrorist attack on infrastructure,” said Martin J. Frappolli, senior director of knowledge resources at The Institutes, the operating name of the Malvern, Pennsylvania-based Insurance Institute of America and the American Institute for Chartered Property Casualty Underwriters. He also is the editor of the organization’s new “Managing

See TRIA next page

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Pervasive nature of cyber risk worries insurers

Aggregation of exposures could cause problems as claims mount

BY JUDY GREENWALD

TRIA

Continued from previous page

Cyber Risk” textbook.

“Those are akin to wartime exposures that are typically excluded by commercial insurers,” said Mr. Frappolli. “Wartime exposures are typically considered to be uninsurable.”

“The biggest threat from widespread attack is going to be business interruption,” he said. “If the internet is disabled, a lot of businesses won’t be able to operate for a period of time.”

No legislation to create such a facility has been proposed, and the insurance industry holds that TRIA could respond to a catastrophic cyber attack under some circumstances.

“The reinsurance community is certainly supportive of anything that will provide incentives for the creation of a vibrant market for cyber insurance,” said Frank Nutter, president of the Reinsurance Association of America in Washington.

“TRIA itself would appear to be applicable to cyber coverage as long as it’s written in a commercial policy that covers cyber,” said Mr. Nutter. “In any kind of congressional initiative, the question is what is the quid pro quo? Is it mandatory offering, mandatory coverage, and is the industry willing to do that in return?”

But the American Insurance Association thinks it’s too early to talk about a TRIA-like response to cyber attacks.

“From our perspective, we don’t think a backstop is necessary at this stage,” said Angela Gleason, associate counsel at the Washington-based AIA. “We think those discussions are really premature. We need to let the market continue to evolve and innovate. We need to allow the market to continue to grow.”

According to Marsh L.L.C.’s March report “Benchmarking Trends: Operational Risks Drive Cyber Insurance Purchases,” purchases among Marsh clients increased 27% in 2015 from 2014, compared with a 32% increase in 2014 over 2013. There was also a 32% increase for the first half of 2015 vs. the comparable period in 2014.

Meanwhile, overall capacity remains abundant, at more than \$500 million, with most large towers comprising between \$200 million and \$400 million in limits, according to the report.

Insurers are keeping an eye on their risk aggregations when it comes to cyber coverage. Experts say underwriters are concerned about cyber risks that are embedded in lines aside from stand-alone cyber coverage, such as property, as well as the risk of a service provider breach that could affect numerous policyholders.

Policies written by some insurers that don’t specifically exclude cyber risks may face cyber-related claims even though the cyber exposures have not be underwritten nor priced, said Bob Wice, an underwriter with the Beazley P.L.C. Group in Farmington, Connecticut.

Another major issue involves business interruption, in which multiple policyholders rely on one business that suffers a network security breach, and the potential aggregation of risk, Mr. Wice said.

Along with the lack of actuarial data, risk aggregation is the biggest challenge facing the insurance industry right now, said Ben Beeson, Washington-based cyber risk practice leader at Lockton Cos. L.L.C.

“We’ve never seen a risk as interconnected as cyber,” Mr. Beeson said.

“It’s challenging enough to be able to understand how our exposure’s coming from explicitly cyber coverage, but when you throw in the addition of (directors and officers) policies, management (liability), crime, even property policies — that’s where it becomes even more

challenging,” said Eric Cernak, Hartford, Connecticut-based cyber risk and privacy practice leader at Munich Reinsurance America Inc.

“Property is going to become much more ... on the forefront of this discussion” because cyber events can cause not only property damage but business interruption losses, and the losses can occur anywhere, he said.

Even if there were three years of actuarial experience, the exposure “is changing with the speed of technology and the common attack vectors being exploited today might not be relevant in the next three years,” Mr. Cernak said.

While some insurers have studied the issue for five or six years, “others are starting to ask questions and going through the process of evaluating their overall exposure,” said Shannon Groeber, Philadelphia-based senior vice president of the cyber/E&O practice at JLT Specialty USA.

“They’re all talking about it, but I haven’t seen them change their actions as a result,” said Lauri L. Floresca, senior vice president and partner at Woodruff-Sawyer & Co. in San Francisco.

“They’re still willing to write multiple lines for a company without extra exclusions,” although “we’ve pretty clearly seen the move” to exclude cyber claims from general liability coverage, Ms. Floresca said.

As insurers’ books of cyber business grow “and they become better able to model their risk, they are looking to understand aggregation,” such as whether they are heavy in one

industry class, revenue band or outside providers, said Robert Parisi, managing director and national cyber risk product leader at Marsh L.L.C. in New York.

Several firms have devised or are devising models to get a better handle on cyber risk (see related story).

“Insurers and reinsurers are both taking the issue of risk aggregation into careful consideration,” said Catherine A. Mulligan, New York-based senior vice president of specialty products at Zurich North America. “Reinsurers have certainly been working with their existing models to assist with the appropriate measure of this,” but the issue is “something that the industry will continue to have to address,” she said.

In late January, Lloyd’s of London said it and others had developed common data requirements to allow tracking of exposures and help underwriting the risks.

Beazley has “various scenarios to determine what our ultimate downside would be, and we manage our book to that,” Mr. Wice said. “We have studied the issue and are working to manage our limits.”

American International Group Inc. also is concerned about risk aggregation, where, for instance, a hardware provider suffers a security breach that spreads to many policyholders, said Tracie Grella, New York-based global head of cyber.

“That is where we’re looking to manage our aggregation,” Ms. Grella said.

MODELING FIRMS TAKE FIRST LOOK AT CYBER RISKS

BY ROB LENIHAN

As cyber attacks have proliferated and morphed, so have efforts to model the rapidly evolving risk.

From the hacker theft of credit and debit card records of 40 million Target Corp. customers in 2013 to the \$81 million that cyber thieves stole in February from the central bank of Bangladesh — and numerous data breaches in between — the issue has the attention of insurers, brokers and modelers.

The cost can be substantial: Last year, Basingstoke, England-based Juniper Research Ltd. predicted the cost of data breaches will increase to \$2.1 trillion globally by 2019, up nearly four times from the estimated cost of breaches in 2015.

Scott Stransky, Boston-based assistant vice president of AIR Worldwide’s research and modeling group, said the Target data breach “triggered a movement to begin to model cyber risk.”

“We really needed to acquire a lot of data before we could even think about modeling or decide how to model,” Mr. Stransky said.

Armed with subsequent agreements with Richmond, Virginia-based Risk Based Security Inc. and its database of 16,000 cyber incidents and Cambridge, Massachusetts-based BitSight Technologies and its security performance measurement technology,

AIR used the “information to give our modeling a real-time view of the risk” and “help calibrate the relative vulnerabilities between certain types of risk,” he said.

That led to the Verisk Analytics Inc. unit’s January release of a global cyber exposure data standard to allow clients to capture necessary cyber risk information.

“We don’t expect companies will collect everything,” he said. “It’s a standard that they’ll have to grow into, but not one that they’ll outgrow very quickly ... The standard can work on just limited information on the industry of a company and its revenue.”

Rob Savage, director of product management at Risk Management Solutions Inc. in London, said “the abundance and frequency of cyber-related attacks makes it possible to observe and identify those trends and patterns that contribute to the risk modeling process.”

In February, RMS released the Cyber Accumulation Management System, which includes cyber catastrophe loss process models for data exfiltration, distributed denial-of-service attacks, cloud service provider failures, financial thefts and cyber extortion.

The models, devised in collaboration with cyber insurers as well as the University of Cambridge Centre of Risk Studies, examine “extreme but plausible catastroph-

ic events,” he said. They include “who is carrying out the attacks; why are they carrying out the attacks; how are they carrying out the attacks.”

In recent weeks, Guy Carpenter & Co. L.L.C. said it had formed a strategic alliance with Mountain View, California-based cyber security firm Symantec Corp. to devise a cyber aggregation model for insurers to examine their frequency and severity distributions and potential losses.

“While there is not a standardized approach to underwriting this evolving risk, there certainly are key factors that underwriters contemplate when deploying their capacity for security and privacy coverage,” Julia Chu, New York-based managing director of strategic advisory at Guy Carpenter, said in an email.

The factors include a company’s prior loss experience, industry class, whether point-of-sale technology is used and the portion of business conducted in the United States versus abroad, she said.

Willis Re, which released PRISM-Re in 2015 to enable insurers to quantify and manage their portfolio exposure to data breaches, plans an update to include network outages, said Alice Underwood, New York-based executive vice president and head of analytics for North America.

“I think we all recognize that

what we’ve got in the market right now is absolutely first-generation stuff, and it will get better over time, just as the property catastrophe models have continued to improve. But, of course, it’s a different science that goes into these models, just like in the terrorism models,” she said.

Karen Clark, co-founder and CEO of Boston-based Karen Clark & Co., said it likely will take years to build a “fully probabilistic cyber model.”

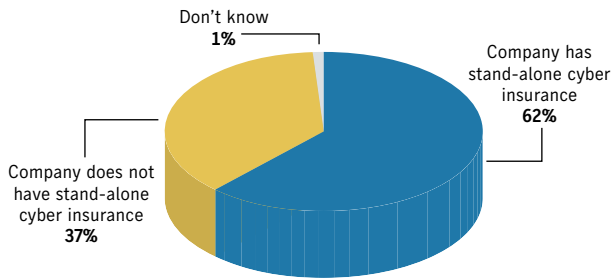
“This may not be the best approach for this peril,” Ms. Clark said in an email. “Many of the emerging risks are more challenging to model than hurricanes and earthquakes, so insurers should not expect a one-size-fits-all methodology.”

Lauri Floresca, senior vice president at Woodruff-Sawyer & Co. in San Francisco, said that while modeling cyber risk has improved in the past year, cyber risk is “a constantly changing landscape.”

Jeremy Platt, New York-based senior vice president and cyber solutions specialty practice leader at Guy Carpenter, said in an email that “cyber is more similar to perils like terrorism than hurricanes or earthquakes, because the motivations, vectors and methods are evolving rapidly — and the attackers can react and respond to changing defenses and mitigation.”

CYBER INSURANCE

A majority of companies already have stand-alone cyber insurance, and more plan to buy the coverage in the next year, according to a new survey of the *Business Insurance* Risk Management Insights Panel.* The average limit is about \$10.8 million and the average premium is \$229,000.

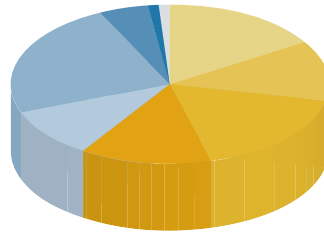


*Signet Research Inc. conducted the April email survey of the risk management decision-makers that drew 172 responses, a response rate of 39%.

HISTORY OF COVERAGE

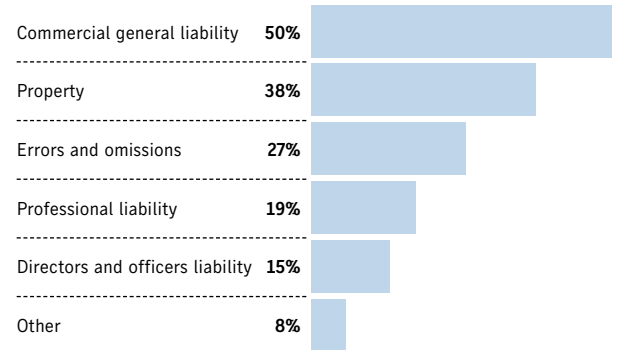
The average length of time the company has had stand-alone cyber insurance is three years, according to the Risk Management Insights Panel. Ninety-nine percent said they did not buy the insurance as a result of a data breach.

Less than one year	16%
One year	12%
Two years	17%
Three years	13%
Four years	10%
Five to seven years	23%
Eight to 10 years	5%
More than 10 years	1%
Not sure	1%



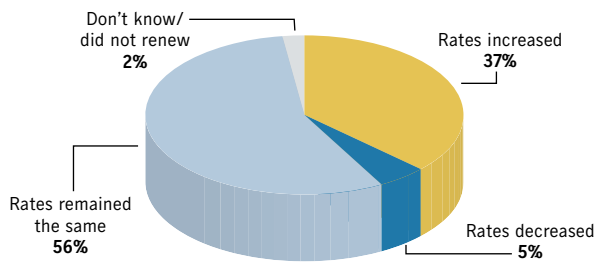
OTHER SOURCES OF COVERAGE

Of companies that do not have stand-alone cyber insurance, 43% of respondents said the risk is covered by other types of insurance, and 16% plan to buy cyber-specific coverage in the next year.



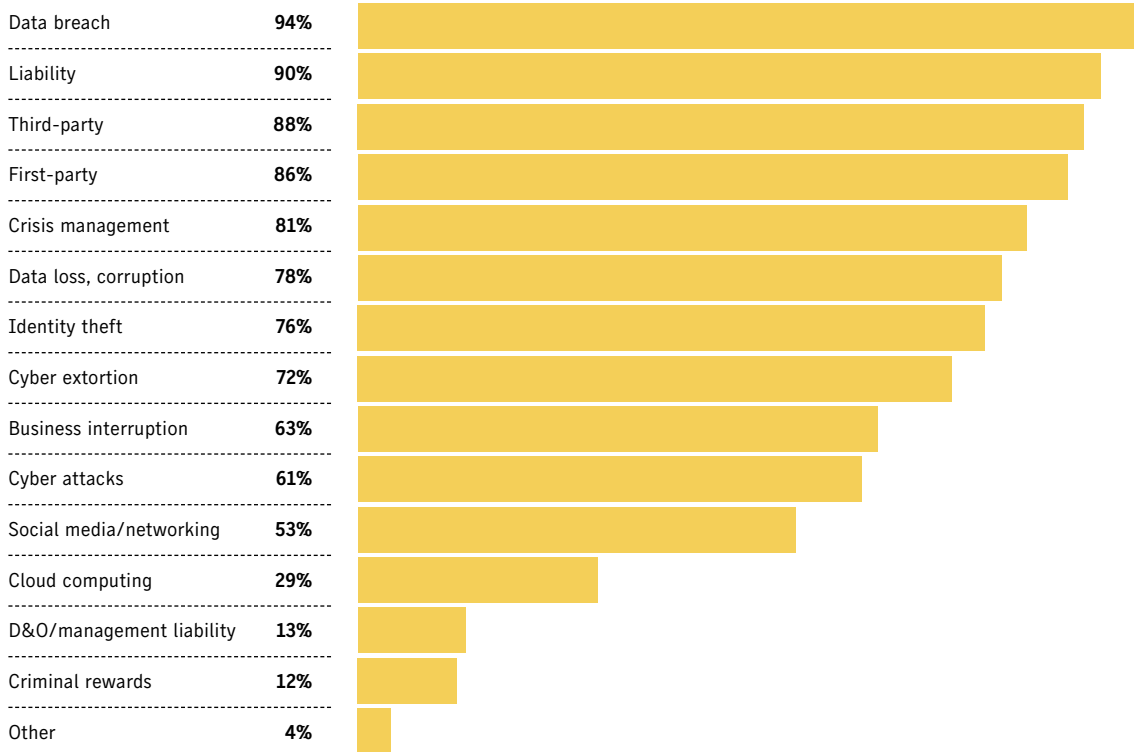
RENEWAL RATES

A majority of companies saw cyber insurance rates that were flat when the coverage was renewed.



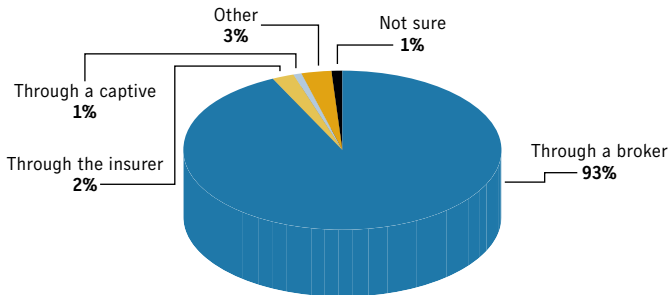
RISKS COVERED

Most companies cover a variety of risks through their stand-alone cyber coverage.



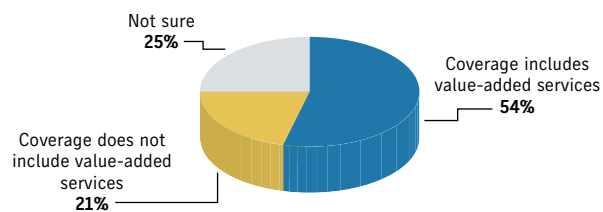
PURCHASE ASSISTANCE

The vast majority of companies purchased cyber coverage through an insurance broker.



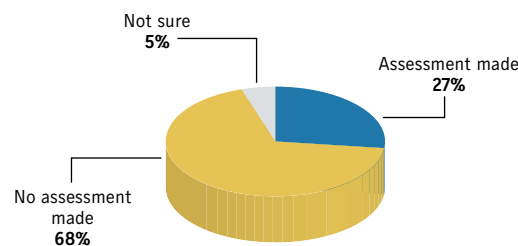
VALUE-ADDED SERVICES

A majority of respondents said their stand-alone cyber insurance includes services such as training and workshops, crisis management support, credit monitoring assistance, development of incident management plans and access to service providers such as forensic analysts, law firms and public relations firms.



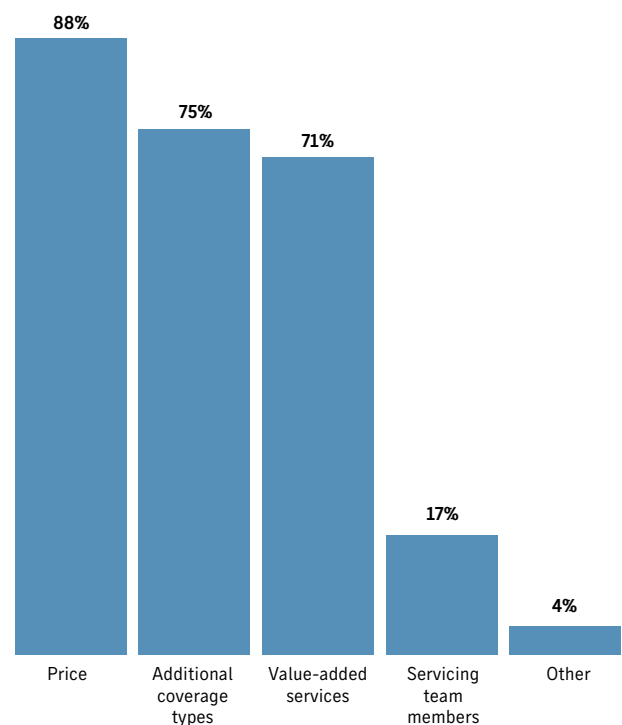
PRECOVERAGE ASSESSMENT

The vast majority of risk managers said there was no online or on-site security assessment of their company before purchasing cyber insurance.



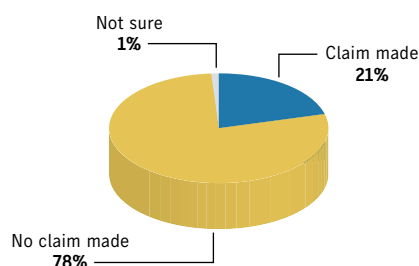
TOP FACTORS

Of risk managers looking for new cyber coverage this year, price is the most important factor that would make them switch insurers.



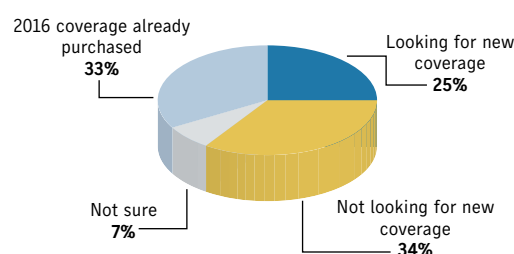
CLAIMS

More than three in four companies that have stand-alone cyber insurance have not made a claim in the past year.



SATISFACTION

Seventy-nine percent of risk managers are satisfied with their current cyber coverage. However, one-quarter will be looking for new coverage this year, and all will seek help from a broker.



CNA Financial enhances umbrella, excess forms

CNA Financial Corp. has enhanced its umbrella and excess policy forms.

The coverage includes crisis management, employee replacement coverage, waiver of rights of recovery and per project/location aggregate. Coverage limits are available up to \$25 million, a CNA spokesman said in an email.

The umbrella and excess product is available on a monoline basis and as part of a property and general liability package policy, CNA said in a statement.

“We’ve developed these forms based on agent, broker and insured feedback,” Michael Kirchgessner, CNA vice president for umbrella & excess underwriting, said in a statement. “The latest policy forms are straightforward and are ideal for our customers needing more than just a primary policy.”

Oil and gas industry coverage introduced

Willis Towers Watson P.L.C. has launched Risk Protect, an insurance and risk management product for companies that serve the global oil and gas industry.

Risk Protect is an insurance policy underwritten by Chubb Ltd. that addresses risks in the oil and gas sector, including cyber security, supply chain interruption and terrorism, Willis Towers Watson said in a statement.

The policy offers coverage for employer’s liability, public and products liability, property damage, and business interruption insurance, the statement said.

“Risk Protect helps businesses control their costs without increasing their exposure to regulatory, safety and environmental concerns. It is designed to protect businesses in the long term, helping them overcome a variety of significant challenges wherever they operate in the world,” Rosemary Wilson, Willis Towers Watson’s regional director for Scotland, said in the statement.

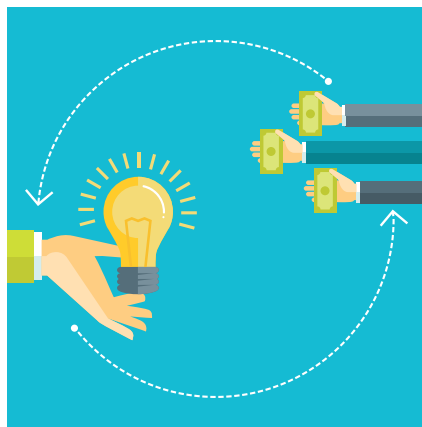
Cat modeler updates loss modeling platform

Catastrophe risk modeler Karen Clark & Co. has launched an updated version of its loss modeling platform for various perils.

RiskInsight version 4.3 includes enhancements to its interactive dashboards, custom model building tools and job manager, Boston-based Karen Clark & Co. said in a statement.

The interactive loss dashboards now automatically display exceedance probability curves by peril and combined historical event losses, and the characteristic event losses for all return periods. Version 4.3 supports custom models for all peril types, including flood and severe convective storm, along with expanded event catalog creation capabilities, while the job manager makes it easier to set up complex analyses and distribute them across multiple processors, according to the statement.

The update also makes it possible to



Protection for crowdfunding investments

American International Group Inc. has launched Crowdfunding Fidelity, a product that targets the crowdfunding investment industry.

Crowdfunding Fidelity was developed to protect investors on equity crowdfunding platforms, which allow investors to fund start-ups, against issuer fraud, AIG said in a statement.

The product aims to protect investors from issuer asset theft by issuer directors, officers or general employees that cause a direct loss to the individual investor, according to the statement.

“As a sector still in its infancy, equity crowdfunding platforms are only as strong as the confidence they instill in their investors,” Lex Baugh, president of liability and financial lines for AIG, said in the statement. “This new product will help provide that confidence and help to support this asset class as it matures.”

track tornado and severe convective storm events in real time. For one localized tornado or an outbreak of tornadoes and hailstorms, RiskInsight users can immediately assess how much exposure they have in the affected area and estimate their likely losses, according to the statement.

Claims platform integrates comp disability guidelines

Marsh ClearSight L.L.C., a unit of Marsh L.L.C., has released a new version of the Marsh ClearSight platform that integrates official U.S. disability guidelines.

The version 15.1.3 release includes new functionality to identify potentially high-

severity claims through predictive analytics, to return injured and ill employees to work and to uncover trends with advanced analytical tools, Marsh said in a statement.

The features include a workers compensation claim severity model, which clients can use to identify early intervention candidates. Users have the ability to manage the return-to-work process with insights from the Official Disability Guidelines embedded in the app, and with business intelligence tools that help users perform advanced analyses from their risk, safety, and claims data without the limitations of traditional reporting, according to the statement.

“With a database of more than 60 million claims, Marsh ClearSight has a unique ability to identify predictive indicators around claims severity,” Chicago-based Paul Marushka, president of Marsh ClearSight, said in the statement. “Organizations now have the ability to access insights from 10 million lost-time cases to determine the right treatment plans to get injured workers back to work safer and faster.”

Everest offers coverage to private equity firms

Everest Re Group Ltd. has launched an alternative solution group at Everest Specialty Underwriters, a division of Everest Insurance.

The group offers transactional risk insurance and professional and management liability insurance on both a primary and excess basis to private equity firms and hedge funds, Everest Re said.

New York-based Robert Clark has been appointed vice president to head the new unit. Mr. Clark joined Everest Re in late 2015 from Axis Insurance Co., where he was vice president of the private equity group, according to the statement.

Chubb TPA unit launches health care practice

ESIS Inc., Chubb Ltd.’s third-party administrator division, has launched a practice to serve the claims and risk management needs of health care organizations and life sciences firms.

Chicago-based Sam Terzich, ESIS senior vice president, will lead the health care industry practice, Philadelphia-based ESIS said in a statement.

The practice will provide claims management services by ESIS ProClaim to self-insured organizations, risk retention groups, other alternative markets and insurers. This includes health care professional liability claims management, litigation management, medical record reviews, investigations, clinical risk management consultation and National Practitioners Data Bank reporting, according to the statement.

“The creation of our new health care industry practice, as well as its alignment with Chubb’s own practice in this area, will enable us to provide these clients with an even more powerful and broader service offering,” Joe Vasquez, ESIS division president, said in the statement.

DEALS & MOVES

Arthur J. Gallagher unit buys captive manager

Artex Risk Solutions, the Bermuda-based captive management unit of Arthur J. Gallagher & Co., said it has acquired Gibraltar-based captive manager Quest Holdings (Gibraltar) Ltd.

Terms of the deal were not disclosed.

Founded in 2004, Quest specializes in providing services to insurers in Gibraltar, and will help Artex establish a European Union domicile, the company said.

Quest founder and CEO Steve Quinn and the Quest staff will remain with the business, Artex said.

Plexus Groupe acquires benefits consulting specialist

Brokerage The Plexus Groupe L.L.C. said it has acquired Oklahoma City-based Caba Inc.

Terms of the deal were not disclosed.

Caba Inc. is an employee benefits consultancy and administrative services firm, Deer Park, Illinois-based Plexus said in a statement.

Caba CEO Cher A. Bumps will join Plexus as a partner along with Caba’s 14 employees. Caba will be rebranded as Plexus, according to a Plexus spokesman.

Sedgwick expands in Europe with Irish acquisition

Sedgwick Claims Management Services Inc. has agreed to buy Irish claims management firm OSG Group.

Terms of the deal were not disclosed.

Dublin-based OSG offers property/casualty loss adjusting services, third-party administration, auto and specialist claims services in the Irish and overseas markets, Sedgwick said in a statement.

OSG has more than 400 staff and eight offices in Ireland. The firm will to operate as an independent entity under the name OSG Vericlam, a Sedgwick Company, according to the statement. OSG CEO Malcolm Hughes will remain in this role, a Sedgwick spokeswoman said in a statement.

Great American adds offerings through Mexico operation

The Mexican Insurance Commission has granted formal approval to extend the license of Great American Insurance Group’s local company, El Águila Compañía de Seguros S.A. de C.V. to establish a specialty property/casualty operation in Mexico.

Ydhelio Espinosa has been named divisional president of the new operation, Cincinnati-based Great American Insurance Group said in a statement.

The new division, based in Mexico City, will focus on providing specialty insurance solutions offering a commercial package policy and selected monoline products through a network of independent agents and brokers to small and medium-size enterprises, according to the statement.

“With the expansion of El Águila’s license, we are pleased to launch our 33rd specialty P&C business unit and grow our footprint in Mexico,” Carl H. Lindner III, chairman of Great American Insurance Co. and co-CEO of American Financial Group Inc., said in the statement.

NOMINATE A STAR BROKER

Exceptional value and talent deserve recognition. If you know—or are—an outstanding broker under the age of 40, submit a nomination for the 2016 **Business Insurance 40 Under 40 Broker Awards.**

Winners are announced online and their profiles will be highlighted and published in the Oct 10, 2016, issue of *Business Insurance*. These star brokers will be honored at the *Business Insurance 40 Under 40 Broker Awards* across the United States. (Regions include Northeast, Midwest, South and West.)

BUSINESS INSURANCE

40 UNDER 40 2016 BROKER AWARDS

ENTRY REQUIREMENTS:

- Nominations should be submitted online at www.businessinsurance.com/40under40 nominate
- Nominations must include client and management/coworker references
- Brokers must be under 40 & employed as a broker on Oct. 1

Nomination Submissions due by Monday, June 27

businessinsurance.com/40under40nominate

REQUEST FOR PROPOSAL

GOVERNMENT OF GUAM
 HUMAN RESOURCES DIVISION
 DEPARTMENT OF ADMINISTRATION

REQUEST FOR PROPOSAL (RFP)
 (DOA/HRD-RFP-GHI-17-001)

FY2017 Group Health Insurance Program

The Government of Guam is accepting proposals from interested and qualified health insurance companies licensed under the applicable Guam laws, to provide health insurance coverage for eligible government of Guam active employees, retired employees, survivors of retired employees and their dependents.

The RFP will be available on the Department of Administration, Human Resources Division's website at www.hr.doa.guam.gov on Thursday, May 26, 2016, Chamorro standard time, at no charge.

All questions regarding this RFP must be submitted in writing and received by the Director of the Department of Administration, as identified in the RFP, on or before 4:00 p.m., Thursday, June 2, 2016, Chamorro standard time.

All hard copies and electronic files of the entire proposal must be received by the Director of the Department of Administration no later than 4:00 p.m., Friday, June 24, 2016, Chamorro standard time.

Should you have any questions regarding this RFP, please call the Human Resources Division, Department of Administration at (671) 475-1179/1296.

/s/

Christine W.P. Baeto, Director
 Department of Administration

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A-list

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LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF
 PROFESSIONAL LIABILITY INSURANCE COMPANY OF AMERICA
 Supreme Court County of New York; Index No.: 400986/10

NOTICE

Pursuant to an order of the Supreme Court of the State of New York, County of New York, entered on February 10, 2014, the Superintendent of Financial Services of the State of New York and her successors in office were appointed as liquidator ("Liquidator") of Professional Liability Insurance Company of America ("PLICA") and directed to take possession of PLICA's property and liquidate its business and affairs pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Liquidator has, pursuant to Insurance Law Article 74, appointed Scott D. Fischer Special Deputy Superintendent ("Special Deputy"), as her agent to liquidate the business of PLICA. The Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038. The Liquidator has submitted to the Court an application by Order to Show Cause seeking an order: (i) establishing June 30, 2017 or such other date as may be set by the Court as the bar date ("Bar Date") for the submission to the Liquidator of all claims and documents supporting those claims against PLICA or its insureds, including claims reportable under any extended reporting period endorsements of policies issued by PLICA, other than the Liquidator's claims for administrative expenses, after which date, no new claims or evidence of claims shall be accepted by the Liquidator; and (ii) providing for such other and further relief as this Court may deem just and proper.

A hearing on written submission is scheduled on the Liquidator's application on the 18th day of August, 2016 ("Return Date"), at 9:30 a.m., at the Courthouse at 60 Centre Street, Room 130, the IAS Motion Submission Part. If you wish to object to the relief sought, you must serve a written statement setting forth your objections and all supporting documentation ("Answering Papers") upon the Liquidator at least seven days prior to the Return Date. Service on the Liquidator shall be made by first class mail or overnight courier at the following address: Superintendent of Financial Services of the State of New York as Liquidator of Professional Liability Insurance Company of America, 110 William Street, New York, New York 10038, Attention: General Counsel.

You must also submit copies of the Answering Papers, with an affidavit of service on the Liquidator, to the Court at IAS Motion Submission Part, Room 130 at the Courthouse located at 60 Centre Street, New York, New York, at 9:30 a.m. on the Return Date.

The Liquidator's application and supporting papers are available to be viewed on the Internet web page maintained by the New York Liquidation Bureau at <http://www.nylb.org>. In the event of any discrepancy between this notice and the Order to Show Cause signed by the Court, the Order to Show Cause controls.

Requests for further information should be directed to the New York Liquidation Bureau, Creditor and Ancillary Operations Division, at (212) 341-6241. Dated: May 18, 2016; Maria T. Vullo, Acting Superintendent of Financial Services of the State of New York as Liquidator of Professional Liability Insurance Company of America.

BUSINESS INSURANCE®

Erin Smith at 212.210.0719 or esmith@businessinsurance.com

LEGAL NOTICE

NOTICE OF SANCTION OF SOLVENT SCHEME OF ARRANGEMENT
 IN THE HIGH COURT OF JUSTICE (IN ENGLAND AND WALES)
 CHANCERY DIVISION COMPANIES COURT
 CLAIM No. CR-2015-008880/82

IN THE MATTER OF Part 26 COMPANIES ACT 2006 and
 PART VII THE FINANCIAL AND SERVICES AND MARKETS ACT 2000
 AIOI NISSAY DOWA INSURANCE COMPANY OF EUROPE LIMITED
 ("the Company")

(as successor to DOWA INSURANCE COMPANY (EUROPE) LIMITED)

NOTICE IS HEREBY GIVEN THAT by Orders of the High Court of England and Wales made on 3 May 2016 in the above matter,

1. the Company has become the legal successor to DOWA INSURANCE COMPANY (EUROPE) LIMITED in respect of all its business including the Scheme Business the subject to the Scheme of Arrangement; and
2. the solvent scheme of arrangement (the "Scheme") to be made between the Company and its Scheme Creditors (as defined in the Scheme) pursuant to Part 26 of the Companies Act 2006, which was voted on and approved by the Scheme Creditors at a duly convened meeting of Scheme Creditors held on 28 January 2016, was sanctioned. A copy of the Order sanctioning the Scheme was delivered to the Registrar of Companies on 10 May 2016, and the Scheme became effective on that date (the "Effective Date").

Scheme Creditors are required to submit completed Claim Forms together with the supporting evidence required by the Scheme in respect of their Scheme Claims (as defined in the Scheme) by 5pm London time on **16 December 2016** (the "Claims Submission Date") to AIOI NISSAY DOWA INSURANCE COMPANY OF EUROPE LIMITED, 5th Floor, 11 Old Jewry, London, EC2R 8DU, UK for the attention of Celia Stuart (Tel +44 (0) 20 7367 1016), or by email (in PDF format) to celia.stuart@aioinissaydowa.eu. Forms will be accepted only if they are legible.

If a Scheme Creditor fails to complete and submit a Claim Form to the Company prior to the Claims Submission Date, it shall not be entitled to assert any Scheme Claim and it shall not be entitled to receive any payment pursuant to the Scheme or otherwise from the Company in respect of a Scheme Claim. This is subject to the exception that any Unpaid Agreed Claims (as defined in the Scheme) will be deemed to be included on a Claim Form sent to and received by the Company before the Claims Submission Date and each Scheme Creditor will be entitled to receive payment under the Scheme in respect of such Unpaid Agreed Claims.

Notice of the Effective Date and Claims Submission Date has been sent to all Scheme Creditors of which the Company is aware and for whom it has what it reasonably believes to be current contact details. Any Scheme Creditor who has not received notice by post or email of the Effective Date should contact Alec MacMillan at FTI Consulting LLP, 200 Aldersgate, Aldersgate Street, London EC1A 4HD, UK or by email to alec.macmillan@fticonsulting.com.

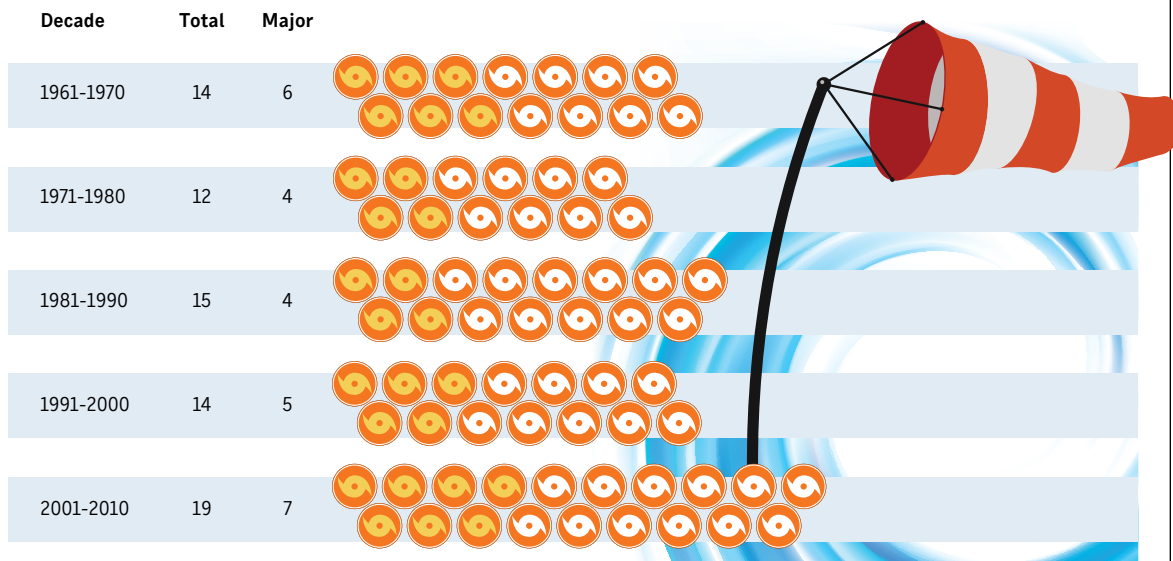
Any Scheme Creditor who is unclear about this Notice, or the action he is required to take should contact Alec MacMillan at FTI Consulting LLP by telephone (+44 (0) 20 3727 1768), email or letter in accordance with the above contact details. To download the Scheme and Claim Form, please visit the website at <http://www.pro-global.com/outsourcing/scheme-management/dowa-insurance-company-europe-limited-scheme-under-management>

HURRICANES

Continued from page 3

HURRICANES TO HIT U.S.

The total number of hurricanes to make landfall along the Gulf and Atlantic coasts by decade in the past 50 years, along with the number of major storms, based on central pressure at landfall.



Source: National Hurricane Center

The industry is in a good position to withstand a season of average hurricane activity, Mr. Schneider said.

“Given the current substantial level of industry capitalization, it would likely take a record individual storm loss or a series of significant losses equal to 15% or more of industry aggregate surplus” to switch the property/casualty sector outlook to negative based on catastrophes, said Fitch in its report, “U.S. Hurricane Season 2016: A Desk Reference for Insurance Investors.”

Mr. Schneider said the fact that

“we haven’t had a major storm in a while” creates a risk that policyholders will become more complacent about the potential threat they face. “People haven’t been tested in a while.”

The conflicting signals could have a considerable effect on the season, said Tom Sabbatelli, product manager with the model product management team at catastrophe modeler Risk Management Solutions in London.

“This season’s activity will be highly sensitive to the exact timing of expected transitions in the El Niño-Southern Oscillation and

Atlantic sea surface temperatures,” he said in an analysis released June 1.

Mr. Sabbatelli added that increased activity does not necessarily mean an increased number of landfalls.

“But you also had Andrew,” he said, of the Category 5 storm that produced an estimated \$15 billion in insured losses in 1992. “It only takes one large event” to significantly affect insurers, he said.

In addition, noted Mr. Sabbatelli, insurers have been saying that property rates cannot go much lower.

AIG

Continued from page 3

withstand summary judgment and, therefore, should proceed to trial.”

“It’s again rebuffing attempts by Hank Greenberg and Howard Smith to get the charges dropped” in their entirety, said Anthony Sabino, a practicing attorney and a professor at the St. John’s University Peter J. Tobin College of Business in New York.

Mr. Sabino said that part of Mr. Greenberg’s and Mr. Smith’s defense is that they settled with the federal government, “but New York’s entitled to pursue its own state law remedies under what’s called the Martin Act,” which deals with allegations of fraud and wrongdoing in the financial industry broadly, he said.

“Now it’s going back to lower court in New York,” said Mr. Sabino “This will no doubt be a long and complex trial after which, when there is verdict or judgment, it will begin yet another long uphill climb in the appellate courts.”

Greenberg’s response

Shortly after the ruling was released, the law firm representing Mr. Greenberg, New York-based Boies, Schiller & Flexner L.L.P., issued an emailed statement:

“Mr. Greenberg respectfully disagrees with the court’s decision, which inexplicably fails to address at all the principal argument raised on appeal — that under the court’s own prior ruling in *People v. Applied Card* the relief sought by the attorney general is barred by settlements already entered into by Mr. Greenberg with AIG and the (U.S. Securities and Exchange Commission).”

According to the statement, “Mr. Greenberg is considering his options in light of this decision, which he believes flies in the face of both the court’s own precedent and federal law.”

New York Attorney General Eric T. Schneiderman welcomed the ruling.

“Since 2005, this office has sought to hold Mr. Greenberg and Mr. Smith responsible for financial fraud and manipulation during their tenure at AIG,” he said in a statement. The decision will allow New York state to seek to recover bonuses the defendants earned while committing their alleged fraud, which caused losses for AIG shareholders, Mr. Schneiderman said.

“Nobody — no matter how rich or powerful — is allowed to commit fraud in our state, and we are very pleased the people of New York will finally have a chance to obtain justice at trial,” he said.

HEALTH

Continued from page 3

joint health plan with Texas Health Resources, a 24-hospital system based in Arlington, Texas. And in late April, a Wisconsin subsidiary of Anthem Inc. joined forces with Milwaukee-based health system Aurora Health Care to create a 50-50 joint venture, Wisconsin Collaborative Insurance Co.

“The entire design of this is based on a mutual commitment to build a more sustainable health care system by, in essence, optimizing care delivery,” said Larry Schreiber, New York-based CEO of Wisconsin Collaborative Insurance. “We are acutely aligned on all the important metrics that we need to be holding ourselves accountable to” involving cost structure and clinical pathways, he said.

Today’s post-health care law environment, with its emphasis on driving value in health care, is ripe for health systems to take on more financial risk by insuring their own patients, observers say.

But larger employer groups are a challenging market for provider-sponsored plans.

Large employers have been approached, but “we see very few takers,” said Mike Taylor, Boston-based senior vice president with Aon Hewitt.

There have been enrollment gains among small employers, as

McKinsey noted, but they typically don’t need a big national network.

It’s risky for employers, Mr. Taylor said, because most of the provider-sponsored plans aren’t as mature as traditional health insurers. Additionally, it can be an administrative headache for an employer who has a workforce in several states, because provider-sponsored plans typically operate

“The entire design of this is based on a mutual commitment to build a more sustainable health care system by, in essence, optimizing care delivery.”

Larry Schreiber,
Wisconsin Collaborative Insurance

in the state or location where the health system is present, he said.

“There’s a little bit of a barrier to entry in that they’re new, they don’t cover enough geography, and I think that’s what’s sort of holding back employers from going to (them),” he said.

Many local health systems don’t have the “administrative infrastructure that’s required to support an employer directly,” like the ability to coordinate with the employer’s pharmacy benefit manager or deal with employees’ health sav-

ings accounts, said Scott Rabin, Los Angeles-based national practice leader of health exchange solutions with Xerox HR Services.

Providers “love this idea” of going direct, Mr. Rabin said, but some are “forgetting that there’s a whole bunch of stuff that the health plan is doing for those large employers that are not necessarily about provision of care, but are absolutely essential to running a benefit plan.”

Still, a few large, innovative employers are “piloting” deals with provider health plans, because “it could be better quality, better experience and lower cost, which is kind of the gold standard,” said Cameron Congdon, Boston-based North American health and benefits leader, client delivery and sales with Willis Towers Watson P.L.C.

“Providers who have their own health plan have some unique and special advantages that most health plans don’t have, because they have a local brand, because they know these people, they take care of them, they know where they live, they know their preferences, they know all the social determinants of health ... and as a result, they have some competitive advantages, where they can lower the cost and improve the a quality and make something much more affordable,” said Bill Copeland, Philadelphia-based leader of Deloitte L.L.P.’s U.S. life sciences and health care practice.

For the model to be effective,

employers evaluating provider-sponsored plans should ensure that the narrow network is “stratified” based on quality and outcomes and not just cutting out the most expensive providers to save costs, Mr. Rabin said.

Wisconsin Collaborative Insurance is one of the few provider-sponsored plans focused only on middle-market and large employer groups. In the long term, the company could expand into individual and government plans.

“What we’re coming to market with is everything that you want from a local provider-sponsored health plan with everything you need from a national carrier,” Mr. Schreiber of Wisconsin Collaborative said. “It puts us in a space that differentiates us not just relative to local provider-owned health plans, but to our national carrier competition.”

The joint venture eliminates the geography barrier for multisite employers by combining a local health system in Wisconsin with a national network.

Provider-sponsored health plans could play a larger role in employer health plans in the future, experts say.

“As these provider-sponsored health plans get bigger and more mature, I think there is likelihood to be more interest, because in general, they can ... price more competitively than some of the big carriers,” Aon Hewitt’s Mr. Taylor said. “They can control what they charge for their services.”

RETURN

Continued from page 4

instruction to alternative career students and instructional support to students enrolled in the virtual academy program, as agreed upon, Ms. Wempren testified that the actual work involved teaching algebra, substitute teaching other classes and monitoring large numbers of students waiting for buses, according to records.

The St. James Parish School Board unsuccessfully argued that “it makes no practical sense for Ms. Wempren to work a job that she helped create, not report any issues during performance of the job, complete the term of that position and subsequently claim that the position was not suitable,” court records show.

Keeping in touch

To address such issues, managers — along with third-party administrators, vocational rehabilitation specialists or “whoever is responsible for setting up the return to work (program)” — should check-in with employees performing transitional work at least every 30 days “to see how it’s going, monitor (their) progress and make adjustments as necessary,” said Angela Blanch, Tampa, Florida-based vice president of national accounts for CorVel Corp., a third-party administrator and managed care services provider.

Todd DeStefano, director in PricewaterhouseCoopers L.L.P.’s insurance and claims operations practice in New York, compared the situation to conducting performance evaluations once a year.

“(If) you tell them they were terrible, they’ll say, ‘Well where have you been all year? You didn’t tell me any of this,’” Mr. DeStefano said. “That’s why periodic check-ins with the injured worker along the way, and documenting that, I would think, would have benefited the (school board) in this instance.”

One of the national employers CorVel works with requires managers to check in with injured workers daily, which Ms. Blanch said “is something I would recommend.”

Company policies should also include “some sort of complaint mechanism ... because what we oftentimes see is, an employee will attempt light duty and just walk off the job or not come in the next day,” said Albert B. Randall Jr., Baltimore-based principal at law firm Franklin & Prokopik P.C. “That employee will later argue, ‘I was asked to perform duties outside of the modified duty description, and therefore I didn’t come back.’”

To further prevent an injured worker from performing duties outside a modified job description, Ms. Blanch recommends creating a list of tasks that match the employee’s restrictions, such as “light cleaning” or “answering the

phone,” rather than relying on a “bank of light-duty job descriptions” for each job.

Physicians who aren’t trained in occupational medicine might be hesitant to release an injured worker to light duty or transitional work, Ms. Blanch said. But rather than just ordering an independent medical examination and “automatically going into litigation,” CorVel might send a vocational rehabilitation specialist or nurse case manager to educate physicians about the workers comp process.

Such a program should also take the Americans with Disabilities Act into account, which is why many employers limit modified

duty to 90 to 120 days, Mr. Randall said.

The ADA requires employers to provide “reasonable accommodation” to qualified individuals, so “there’s a fear they could run afoul of the (act) if they extend a modified duty position for too long,” making it difficult to “argue that the temporary position is not potentially a permanent” reasonable accommodation, Mr. Randall said.

If injured workers don’t reach maximum medical improvement or full duty within 90 to 120 days, many employers will take them off modified duty and reinstate temporary total disability benefits, Mr. Randall added.

ONTARIO

Continued from page 6

not want Ontario to move forward independently.

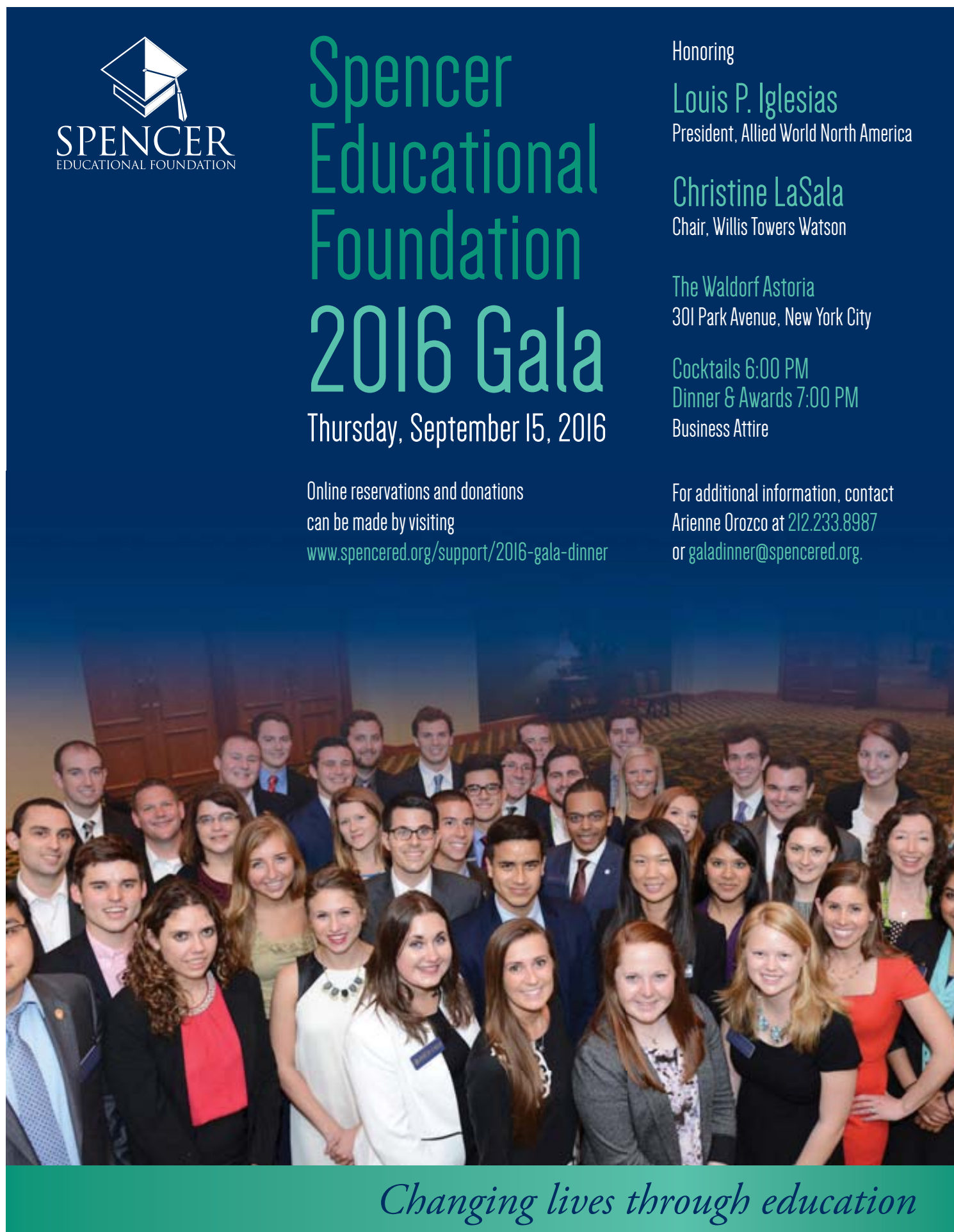
“It is important that the solution to the so-called pension crisis be national rather than regional,” said Michel St-Germain, Montreal-based vice chair of the Association of Canadian Pension Management’s national policy committee. “I do not think it would be good for Canada, for the pension industry and for Canadians if each province started to have its own pension plan with different features. It would

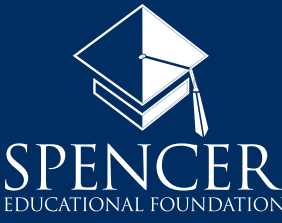
be very confusing and difficult to administer.”

However, enhancing the national plan would be lengthy and complicated since it would require two-thirds of Canadian provinces, including Quebec, representing two-thirds of the population, to agree.

And if the national plan is enhanced after the provincial plan is implemented, there would be challenges in reconciling the programs.

“Nobody knows if this (Ontario) plan will possibly exist for three years and then shut down,” said Natasha vandenHoven, a Toronto-based partner at Stikeman Elliott L.L.P.



**Spencer Educational Foundation**
2016 Gala
Thursday, September 15, 2016

Honoring
Louis P. Iglesias
President, Allied World North America

Christine LaSala
Chair, Willis Towers Watson

The Waldorf Astoria
301 Park Avenue, New York City

Cocktails 6:00 PM
Dinner & Awards 7:00 PM
Business Attire

Online reservations and donations
can be made by visiting
www.spencerred.org/support/2016-gala-dinner

For additional information, contact
Arienne Orozco at 212.233.8987
or galadinner@spencerred.org.

Changing lives through education

MULTI

Continued from page 1

consequences for not only the plan's more than 400,000 participants, but also the Pension Benefit Guaranty Corp.'s insurance program that guarantees benefits — up to certain limits — accrued by the more than 10 million people covered by the nation's 1,425 multiemployer plans.

"If the PBGC's multiemployer fund is not already insolvent itself at that time, the failure of Central States would, absent new funding for the PBGC, soon drain whatever money remains. There would no longer be any federal backstop for participants of any multiemployer plan. The retirement security of millions is at stake," Mr. Nyhan said in an email.

Publicly available financial figures bring home Mr. Nyhan's warning. According to its most recent public financial statements, the Central States plan had at the end of 2014, \$35 billion in liabilities and \$17.8 billion in assets.

Its future is not promising. The plan has lost thousands of employer members due to industry deregulation and economic downturns among other things. In addition, Mr. Nyhan says, nearly 1,000 employers have gone broke or gone out of business without making required plan payments known as withdrawal liability.

The plan now pays out \$3.46 each year in benefits for every \$1 it collects from employer members, creating a \$2 billion annual shortfall between employer contributions and benefit payouts. The plan projects going broke in about a decade.

And that could lead to the collapse of the PBGC's multiemployer insurance program, which would be liable for an undisclosed portion of the benefits Central States participants were promised.

Indeed, assets in the PBGC's multiemployer insurance program — about \$1.9 billion at the end of 2015 — are dwarfed by its more than \$54 billion in liabilities. The PBGC now collects just \$270 million a year from the \$27 per participant annual premium paid by the plans.

"The PBGC was in trouble already," says Vince Sandusky, CEO of the Sheet Metal and Air Conditioning Contractors' National Association in Chantilly, Virginia, many of whose members contribute to a multiemployer plan. The collapse of the Central States plan would accelerate the decline of the PBGC's multiemployer insurance program, Mr. Sandusky added.

Last year the PBGC projected that the passage of the 2014 legislation allowing — with Treasury Department approval — financially troubled plans to cut benefits, will only delay by three years to 2025 from 2022 the insolvency of the agency's multiemployer insur-

drug testing to ensure employee safety, said Tressi Cordaro, a shareholder with Jackson Lewis P.C. based in Reston, Virginia.

More important, she said, is the lack of data to support OSHA's position.

"And certainly the concern of employees working and operating under the influence and endangering the safety of the public, themselves and other employees outweighs any concerns of post-accident

"It's going to be very difficult for employers to prove to OSHA that it was 'reasonable' for them to do any kind of post-incident testing on someone who has reported the incident without having another law to point to."

Valerie Butera,
Epstein Becker & Green P.C.

dent drug testing discouraging employees from reporting injuries and illnesses," Ms. Cordaro said. "Additionally, for an employee who is under the influence of drugs or alcohol at work, I'm not sure that the post-accident drug test itself would actually be the discouraging factor to report an injury or illness."

OSHA dismissed concerns that its stance would conflict with drug-

CHANGING DEMOGRAPHICS

As fewer new employers join multiemployer pension plans, the percent* of plan participants who are active employees has plummeted.

Year	Employees	Retirees	Separated vested participants
1980	75.9%	17.7%	6.5%
1985	66.1%	22.6%	11.4%
1990	58.6%	25.2%	16.2%
2000	51.1%	30.1%	18.7%
2005	45.7%	30.8%	23.5%
2010	39.1%	33.1%	27.7%
2015	37.3%	35.1%	27.6%

*Percentages may not add up to 100 due to rounding.
Source: Pension Benefit Guaranty Corp.

ON SHAKY GROUND

The financial condition of the PBGC's insurance program for multiemployer pension plans has deteriorated dramatically in recent years.

Year	Assets*	Liabilities*	Deficit*
2011	\$1.74	\$4.51	\$2.77
2012	\$1.81	\$7.04	\$5.24
2013	\$1.72	\$9.98	\$8.26
2014	\$1.77	\$44.20	\$42.43
2015	\$1.92	\$54.21	\$52.28

*In billions of dollars
Source: Pension Benefit Guaranty Corp.

ance program.

While provisions in the 2014 multiemployer law that allow troubled plans to suspend benefits will "substantially reduce the magnitude of the PBGC deficits in 2024, they do not significantly change the projected insolvency of the fund," the PBGC said in its report.

The Obama administration already has proposed several changes, all of which would

require congressional approval, to prevent or at least delay the collapse of the PBGC's multiemployer insurance program.

They include requiring multiemployer plans to pay an additional premium to the PBGC based on their level of underfunding, much like single-employer plans do.

Some observers say the threat of a collapse of the Central States plan and its effect on the PBGC's

insurance program could pique congressional interest.

"Congress is more likely to raise premiums now that there may be a deeper hole to fill," said Randy DeFrehn, executive director of the Washington-based National Coordinating Committee for Multiemployer Plans, which represents many of the nation's 1,400 multiemployer plans.

"Premiums were set too low to start," said Karen Friedman, executive vice president and policy director of the Pension Rights Center in Washington.

Others worry that boosting premiums too much could lead more employers to exit the plans.

"Big premium hikes would have dramatic, negative implications for those remaining in the system," Mr. DeFrehn said.

Other suggestions include offering employers a new plan design — one in which they no longer would be exposed to withdrawal liability or payment of PBGC premiums but still would have to pay premiums for current liabilities.

Some observers are confident that Congress will come up with a solution to preserve the agency's insurance program.

"We have time to come up with solutions. It is in everyone's interest," Ms. Friedman said.

But it could be awhile for congressional action, others warn. "Congress tends not to act until a crisis is imminent," Mr. DeFrehn pointed out.

TESTING

Continued from page 1

employers who enforce post-incident drug testing policies that OSHA deems unreasonable, although several experts say they expect the agency will attempt to cite employers.

"We will look carefully at every allegation of that and determine whether that is actually what's going on," said David Michaels, assistant secretary of Labor for Occupational Safety and Health.

OSHA telegraphed its stance in an interpretation letter on recording of injuries involving intoxicated workers in March, and the agency's proposed safety and health management guidelines, which specifically call out mandatory drug testing as an example of a program that can discourage injury and illness reporting, in November.

Post-incident drug and alcohol testing policies are common or required in certain industries, with a 2012 study by the U.S. Government Accountability Office finding that 56% of U.S. manufacturers had such policies and that they may discourage workers from reporting injuries and illnesses.

OSHA's stance becomes problematic in states where workers compensation laws require such testing, and within the federal government, including the military, which also requires post-accident

testing requirements in state workers comp laws, partly because the Occupational Safety and Health Act prohibits the agency from superseding or affecting these laws.

"If an employer conducts drug testing to comply with the requirements of a state or federal law or regulation, the employer's motive, by definition, is not retaliatory and this rule wouldn't prohibit that sort of testing," Mr. Michaels, said during a stakeholder call last month.

However, the way the rule is written implies that if an employer cannot cite a regulation or statute requiring testing, such as U.S. Department of Transportation requirements, for example, that employer must have a "smoking gun reason" for compelling employees to submit to the testing, said Valerie Butera, a Washington-based member of the labor and employment practice of Epstein Becker & Green P.C.

"It's going to be very difficult for employers to prove to OSHA that it was 'reasonable' for them to do any kind of post-incident testing on someone who has reported the incident without having another law to point to," she said.

To strike the appropriate balance, OSHA says in the rule that employer policies should limit post-incident testing to situations in which employee drug use is likely to have contributed to the incident and for which the drug test can accurately identify impair-

ment caused by drug use, according to the final rule. For example, OSHA said, it would likely not be reasonable to drug-test an employee who reports a bee sting, a repetitive strain injury or an injury caused by a lack of machine guarding or a machine or tool malfunction.

No blanket policy

Employers do not have to specifically suspect drug use before testing, but there should be a reasonable possibility that drug use by the reporting employee contributed to the reported injury or illness for the employer to mandate the testing, according to the rule.

"If there is going to be some kind of drug testing policy, it should not be a blanket policy that identifies workers who report injuries and illnesses or workers who have injuries that require medical care," said Nancy Lessin, senior staff for strategic initiatives at the United Steelworkers' Tony Mazzocchi Center for Health, Safety and Environmental Education in Pittsburgh. "The probable cause for a drug test would need to be based on observation and a good-faith belief that an employee is under the influence of drugs and alcohol."

Such observations should be made by two people trained to spot such impairments and should be documented in writing, she added.

For some employees, the humiliation and fear involved with being

drug-tested, particularly with the possibility of false positives and the adverse consequences associated with them, can deter them from reporting an injury or illness, Ms. Lessin said.

"This is not related to people being afraid that they're going to be caught," she said. "This is related to the experience of the drug test."

"The drug testing is not necessarily a bad thing," said Wes Scott, director of consulting services at the National Safety Council in Itasca, Illinois. "I think we should be more open to doing that, but we also have to be sensitive to how we do that so that we're not calling employees out unnecessarily, so that we're not embarrassing them. If the test is made and it's negative, let's acknowledge that and move on."

A "very critical" step for risk managers is to examine the employer's potential goal for doing post-accident drug testing, said Robert Cartwright Jr., Exton, Pennsylvania-based safety and health manager for Bridgestone Retail Operations L.L.C. and treasurer of the Risk & Insurance Management Society Inc.

"What most employers need to start looking at is what kind of policy do they have in place, how is that policy communicated to their employees, and what kind of 180-(degree) feedback do they have when these things are put into place," he said. "Everything really just needs to be reviewed."

TOBACCO

Continued from page 1

last year, for example, that they would sell off certain coal investments, with Allianz phasing out investments in companies that derive more than 30% of their revenues or that generate more than 30% of their energy from coal.

U.S. insurers, by contrast, place ESG standards relatively low on their list of investment considerations, according to a 2016 survey of global insurers by Goldman Sachs Asset Management.

“It has not been front and center in the industry,” said Catherine Seifert, an equity analyst with Standard & Poor’s Corp. in New York.

This may be because U.S. companies sometimes wrongly conflate ESG principles with the divestment movements of earlier decades — such as the push to divest South African investments over apartheid — that ignored other investment criteria, said Alex Bernhardt, Seattle-based senior consultant with the responsible investment team at Mercer L.L.C.

ESG instead can function as a risk management system for investment portfolios, with divestment being only one of several possible actions, he explained.

In making its decision last month to sell off \$224.5 million in tobacco company equities and run off its \$1.8 billion portfolio of tobacco company bonds, Paris-based Axa cited the health and economic damage caused by smoking. The insurer said the move is in line with ESG principles it has integrated into its management of €552 billion (\$613.55

billion) in investments and that previously led to its divestment of €500 million (\$555.8 million) in coal-related assets.

While a tiny fraction of its total holdings, Axa’s tobacco investments are among the largest held by global insurers, said Robert Hartwig, president of the Insurance Information Institute Inc. in New York.

“The vast majority of insurers would have less, and most companies substantially less, than the \$2 billion that Axa has,” Mr. Hartwig said.

Fossil fuel investments, though, have been a larger concern than tobacco for advocates of ESG guidelines, industry sources agree.

U.S. insurers are large energy investors and face significant

“It’s a slippery slope. There’s literally no end to this.”

Robert Hartwig, Insurance Information Institute Inc.

“carbon asset risk,” according to a report last month from Boston-based nonprofit sustainability group Ceres and Mercer.

Forty U.S. insurance groups analyzed in the study hold \$459 billion in fossil fuel company bonds and equities, including \$237 billion in electric/gas utilities, \$221 billion in oil and gas companies and just under \$2 billion in coal companies.

Along with bankruptcies and rating agency downgrades resulting from the slide in energy prices, these investments face “stranded asset risk” as energy producers are forced to leave oil, gas and coal in the ground during a transition to cleaner energy

sources, and litigation risk over alleged failures to disclose climate change impacts of fossil fuel consumption, the report warns.

The Ceres report urges insurers to make climate change investment risk a board-level governance issue, evaluating overall portfolio risk along with the suitability of individual high-risk assets. Insurance regulators should also require companies to disclose fossil fuel investments, Ceres recommends.

Earlier this year, California Insurance Commissioner Dave Jones called on insurers licensed in the state writing more than \$100 million in direct premiums nationwide to provide data regarding their carbon investment exposures and to voluntarily divest coal-related assets. He set a June 1 deadline for insurers to respond to the coal divestment request, and several insurers have said they intend to divest, according to the insurance department.

Whether other states follow suit remains to be seen. Regulators in many states lack the statutory authority to compel divestment of particular assets, a spokesman for the National Association of Insurance Commissioners said. The NAIC itself is unlikely to take up the issue, he added: “There’s no consensus on that, and the NAIC would only get involved if a consensus exists.”

U.S. insurers generally are less likely to consider ESG investment principles than insurers in other parts of the world, according to Goldman Sachs Asset Management, which surveyed 276 insurer chief investment or chief financial officers earlier this year. Among North and South American respondents, 61% said ESG principles are not a primary investment

consideration, compared with 52% of respondents in Europe, the Middle East and Africa and 36% in Asia-Pacific countries. Only 15% of respondents in the Americas said ESG was one of several investment considerations, compared with 34% in EMEA countries and 52% of Asia-Pacific insurers.

The III’s Mr. Hartwig said that insurers have a fiduciary responsibility to policyholders to maximize investment returns in order to hold down insurance rates. While ESG principles currently discourage fossil fuel investment, in the future they might discourage investment in nuclear, hydroelectric or even wind power because of negative environmental effects of those technologies, he said.

“It’s a slippery slope,” Mr. Hartwig said. “There’s literally no end to this.”

But John Goldstein, a managing director with Goldman Sachs Asset Management in San Francisco, said investment managers can square sustainable investing goals with portfolios that match or attempt to beat market rates of return. He cited New York State’s Common Retirement Fund, which worked with Goldman last year to create a \$2 billion “low emission index” fund that underweights investment in companies with high carbon profiles and overweights low-carbon emitters while matching broad market performance.

Investors can also pursue “impact investing,” providing direct funding in private markets to companies tackling environmental or social problems, and use the power of their holdings in public companies to push those companies toward more sustainable practices.

SPOKEO

Continued from page 4

Specialty L.L.C., who was not involved in the litigation. However, “it is still a defense-friendly decision,” he said.

“I would describe it as a clear victory on the issue we asked the court to decide, and the court has given some guidance now on what comes next,” said Andrew J. Pincus, a partner with Mayer Brown L.L.P. in Washington, who represented Spokeo in the case.

The ruling will keep some cases from being filed, and cause others to be dismissed. “Unless plaintiffs can really allege how they were impacted in a concrete way, these cases should go away,” said Michael L. Mallow, a partner with Sidley Austin L.L.P. in Los Angeles.

A. Jeff Ifrah, founding member of Ifrah Law in Washington, said: “The really outrageous aspect of these class actions” is plaintiff attorneys’ ability to leverage “huge” settlements for themselves when there has been no injury. This ruling could have a chilling effect on such lawsuits, he said. The Supreme Court ruling notes, for instance, that FCRA statutory fines can range from \$100 to \$1,000 per violation.

In data breach cases in particular, *Spokeo*’s affect will be based on how it lines up with the *Neiman Marcus* ruling, said Scott Sweeney, of counsel at Wilson, Elser, Moskowitz, Edelman & Dicker L.L.P. in Denver.

In its July 2015 ruling in *Remijas v. Neiman Marcus Group L.L.C.* the 7th U.S. Circuit Court of Appeals in Chicago held that plaintiffs had met the standard set by the U.S. Supreme Court by showing there was a “substantial risk of harm” from a 2013 data breach.

The *Spokeo* ruling has already been cited in several data breach cases, said Scott L. Vernick, a partner with Fox Rothschild L.L.P. in Philadelphia.

And it has been cited by plaintiffs and defense to support their position in litigation filed in U.S. District Court in Chicago against New York-based Barnes & Noble Inc. in connection with a 2012 data breach, *In re: Barnes & Noble Pen Pad litigation*.

One area of litigation in which the *Spokeo* ruling is expected to favor employers in particular is cases filed in connection with criminal background checks.

One of the grounds for this litigation is plaintiff attorneys’ claims that contrary to the statute’s requirement, employers have been including “extraneous” information in their criminal background notices, such as statements that their policies are nondiscriminatory.

“Properly interpreted, the *Spokeo* decision says these kinds of claims, that are purely on a statutory violation are not going to succeed,” said James A. McKenna, a principal with Jackson Lewis L.L.P. in Chicago.

FORMULARY

Continued from page 4

limits by pharmacy benefit managers, medical provider networks and payers; and greater use of generic drugs, CWCI said. However, “opioid use is still excessive” and in situations not supported by scientific literature, according to the analysis.

While California Gov. Jerry Brown last October signed into law a bill that requires establishing a workers comp formulary by July 1, 2017, with the intent of further reducing the overutilization of opioids, experts say attitudes also need to change.

“We have a prescribing culture in our country where we want to try to eliminate pain, and we usually go right to an opioid, but there can be better alternatives with which to start treatment depending on the nature of the injury,” said Brian Allen, Westerville, Ohio-based vice president of government affairs for the workers comp division of Optum.

Closed formularies — in effect in the states such as Washington and Texas — help ensure the medication prescribed is medically necessary and other alternative therapies are considered before relying on an opioid, Mr. Allen said.

A drug formulary creates a “pause moment” for everyone involved in treating injured

workers’ pain to consider less dangerous options, said Mark Pew, senior vice president at Duluth, Georgia-based medical management company Prium. “Too often, treatment becomes automatic without consideration for individual needs, and, once a bad choice is made, it often cascades into a series of more bad choices that complicate matters.”

A drug formulary “will change prescribing behavior,” Mr. Pew said.

Closed formularies require proof that non-formulary medications — called N drugs — are medically necessary before they can be prescribed to injured workers. A limited list of covered medications — called Y drugs — don’t require authorization.

Dr. Robert Hall, Westerville, Ohio-based medical director for the workers comp division of medical cost management firm Optum, said the formulary will require physicians to take a more holistic view of each injured worker and whether the prescribed medications are effective.

The goal is to “see what else can be done to get patients back their function and quality of life. Whether it’s pharmacy-related or a treatment program that involves physical medicine, there are lots of different areas that can be focused on as we go through the formulary process,” Dr. Hall said.

Alex Swedlow, the CWCI’s Oakland-based president and author of the May report, said, for example, that a minor back sprain that can

resolve itself in six weeks is not a good candidate for opioid treatment.

Citing a 2014 CWCI study that a formulary could save California \$124 million to \$420 million a year, Mr. Swedlow said that shows “just how much excessive cost we have in our system.”

Joe Paduda, principal of Madison, Connecticut-based Health Strategy Associates L.L.C., said there is “no question” a formulary would improve the opioid usage situation in California, adding more needs to be done.

“The state needs a binding utilization review, or they won’t have regulations to enforce it,” Mr. Paduda said.

Some in California are trying to eliminate the state’s utilization review and that could lead to care that is inappropriate according to medical guidelines being prescribed, he said.

“The California Applicants’ Attorneys Association and other self-styled ‘workers’ advocates’ are calling for drastic changes to the current utilization review process that would return to the days of far too much lousy care, far too many opioid prescriptions, and far too many unnecessary surgeries,” he said.

Dr. Hall said California’s formulary will need to be balanced and based on best practices.

This can help prescribers who may not realize that a drug they are prescribing is an “outlier” in best practices, he said.

A closed formulary “made a significant difference in Texas,” Dr. Allen said.



Workers ready for monster attack

Thanks to new health and safety guidelines, the employees at a U.K. office supplier are equipped to handle a host of workplace scenarios, including a “blood-thirsty vampire attack.”

Leicester, England-based Viking, which is part of Office Depot Inc., recently decided to have some fun with workplace safety, and find out whether its 1,300 employees were paying attention to internal health and safety guidelines, by addressing some “questionable” emergency situations.

The guidelines published to the company’s website in May include what to do when “cats take over the world,” “evil robots want to enslave humanity,” and “zombies want to eat your brain.”

The illustrations were produced in the same style as Viking’s normal health and safety guidelines, but the company said it didn’t take long for employees to notice.

“We were really impressed with the reaction. It really shows that our staff is attentive and invested in everything that goes on here,” a Viking spokeswoman said in a statement.

Battery bunny dispute re-energized

A trademark dispute between Energizer Holdings Inc. and Duracell Inc. over a pink bunny mascot “just keeps going and going.”

According to Reuters, in the U.S. District Court in St. Louis, Judge Carol Jackson recently ruled that Duracell must face claims that its bunny mascot confuses customers and harms Energizer, which has used a bunny mascot on its battery packaging since 1989.

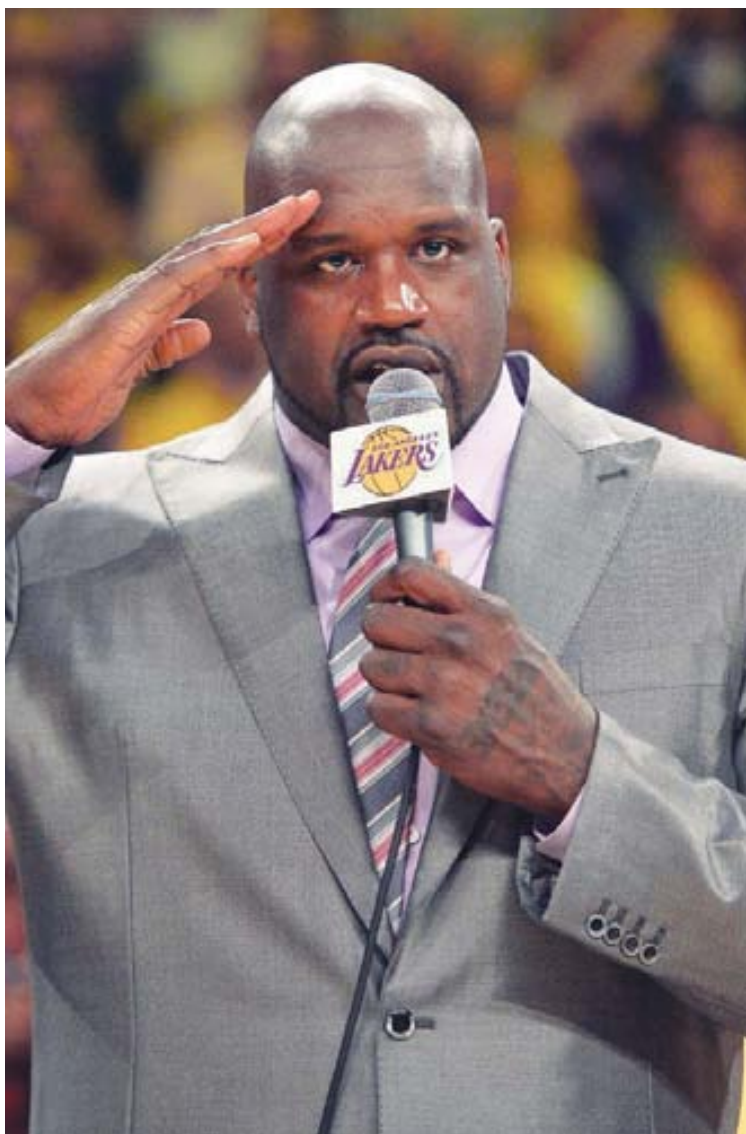
Energizer’s pink rabbit originally was a parody of a bunny used in Duracell advertisements. The Duracell bunny still is used in Europe and Australia but is not part of Duracell’s U.S. branding.

In 1992, Duracell and Energizer struck an agreement limiting Duracell’s usage of the bunny in marketing in the United States and Canada.

Duracell claimed that Energizer’s lawsuit was a “thinly veiled” attempt to renegotiate that agreement, and said that it should not be liable if distributors of its batteries lawfully send bunny-branded packages to the United States.

But The judge said that those assertions were not a proper basis for dismissing Energizer’s suit.

SHAQ GETS NOSTALGIC WITH INSURANCE ENDORSEMENT



AP PHOTO

NBA great Shaquille O’Neal is representing the same insurer that covered his Ford Bronco while he attended college in the 1980s.

Basketball great Shaquille O’Neal has a personal tie to the latest in his long line of product endorsements. In his college days at Louisiana State University in the 1980s, Shaq first bought car insurance for his Ford Bronco from The General, American Family Mutual Insurance Co.’s higher risk line, so it was natural for him to endorse the insurer, according to ESPN.com.

“I got the car for \$2,200, and my dad said, ‘Now you need insurance.’ I remember asking him what insurance was and why I needed it and eventually had a policy with The General,” he told the sports website.

Ever popular, Mr. O’Neal also sells suits at Macy’s, jewelry at Zale’s and a flavor line of Arizona Iced Tea, as well as endorsing Gold Bond and Icy Hot.

Over his 19-year NBA career, Mr. O’Neal was on four championship teams and played in Orlando, Florida, Los Angeles, Miami, Phoenix, Cleveland and Boston, where he retired in 2011. He is scheduled to be inducted into the Naismith Memorial Basketball Hall of Fame in September.

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Court slaps down ‘too cute’ yoga suit

Being “too cute” doesn’t make it as grounds for a gender discrimination lawsuit, says a New York judge, in dismissing a case filed by a yoga instructor who was allegedly the unhappy target of a jealous wife.

Dilek Edwards had been hired as a yoga and massage therapist by Charles V. Nicolai, co-owner of Wall Street Chiropractic and Wellness in New York, in April 2012, according to the May 11 ruling by the New York Supreme Court.



According to the ruling Mr. Nicolai warned Ms. Edwards that his wife — who is a former Playboy Playmate, according to news reports — might become jealous because she was “too cute.”

On Oct. 29, 2013, Ms. Edwards received a text from Mr. Nicolai’s wife, whom she had only met once, warning her to stay away from her husband and family. She was fired the next day.

Ms. Edwards filed suit charging gender discrimination. But, unfortunately for Ms. Edwards, cuteness cannot be the basis of a gender discrimination charge, according to the ruling.



AP PHOTO

The way to the United Kingdom’s heart is apparently through soccer.

E.U. exit fans bet on soccer tactic

Campaigners for the United Kingdom to leave the European Union when the country votes on the issue on June 23 believe they have come up with a way to get apathetic voters interested — betting on soccer.

Inspired by Warren Buffet’s “March Madness” basketball contest, the “Vote Leave” campaign is offering a whopping £50 million (\$73.1 million) prize to anyone who can correctly guess the outcome of each game in the upcoming European soccer championships.

Vote Leave has taken out insurance at Lloyd’s of London in case anyone wins the prize, according to media reports.

If nobody guesses all the match outcomes, then Vote Leave will pay out £50,000 (\$73,110) to the person who correctly guesses the most consecutive outcomes.

Of the four countries that make up the United Kingdom, three — England, Northern Ireland and Wales — have qualified for the Union of European Football Associations’ 15th tournament.

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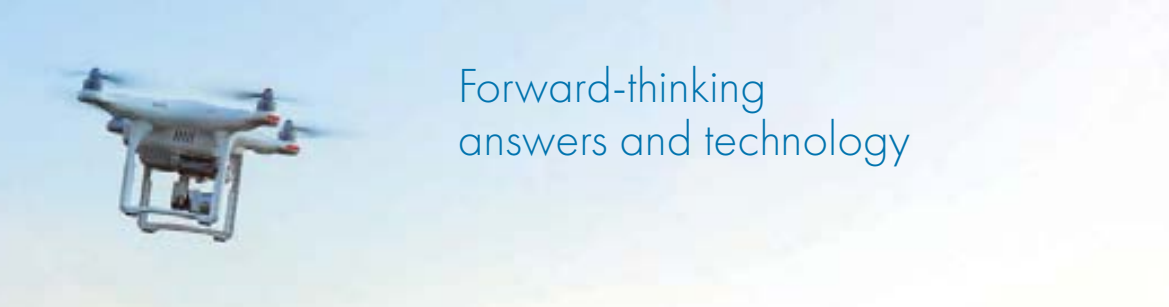
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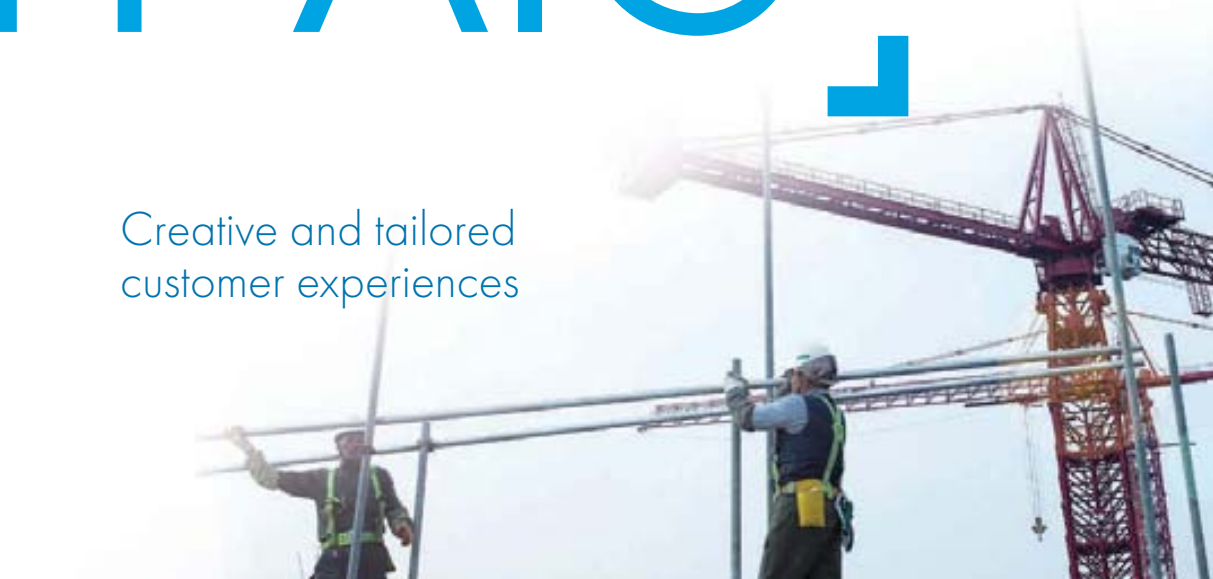


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