

**TRANSATLANTIC FILES SUIT AGAINST SUITOR VALIDUS OVER BID CLAIMS / PAGE 3**

**U.S. INSURERS LOOK AHEAD TO GLOBAL CHANGES FROM SOLVENCY II / PAGE 3**

**TIPS FOR MIDSIZE FIRMS ON OFFERING INCENTIVES FOR SAFETY / PAGE 6**

## In Brief

**P/C insurer reserves deficient by \$2.7B**

The property/casualty insurance industry's loss reserves for accident years 2001 to 2010 are deficient and are likely to become more so, according to a report issued by Keefe, Bruyette & Woods Inc. In its annual property/casualty industry reserve review, the analyst estimated that industrywide loss reserves for the period are about \$2.7 billion—or 0.5%—deficient.

**Industry groups back Woodall for FSOC**

Insurance trade groups have urged swift confirmation of S. Roy Woodall to serve as a voting member of the Financial Stability Oversight Council. The American Insurance Assn., the National Assn. of Mutual Insurance Cos. and the

See **IN BRIEF** page 21

## SPOTLIGHT

### LONDON & LLOYD'S MARKET REPORT

No wave of deals expected; coverholder oversight tweaked; innovation still a hallmark; Solvency II preparations; BI ranking of largest syndicates. **PAGE 9**



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### WORKERS COMPENSATION

## ALG comp fight settlement near

*Judge signals OK for pact with rivals in premium dispute*

By **ROBERTO CENICEROS**

**CHICAGO**—A long-running battle pitting American International Group Inc. against several rivals in the workers compensation market moved closer to resolution last week, when a judge indicated that he will grant preliminary approval to a \$450 million settlement offer.

But Boston-based Liberty Mutual Group Inc.—which has battled AIG and several other insurers seeking to settle—could appeal the federal judge's decision regarding AIG's \$450 million offer to settle the litigation over whether the insurer underreported workers comp premiums for decades.

The allegations against New York-based AIG surfaced in 2006 when then-New York Attorney General Eliot Spitzer reached a settlement in which the insurer

was to pay about \$350 million to settle allegations it underreported workers comp premiums to avoid paying its fair share of residual market assessments.

Then in May 2007, the National Workers Compensation Reinsurance Pool operated by Boca Raton, Fla.-based NCCI Holdings Inc., sued AIG, alleging it violated the Racketeer Influenced and

See **AIG** page 18

**\$450M**

A judge indicated that he will grant preliminary approval to a \$450 million settlement offer in a long-running battle pitting American International Group Inc. against several rivals in the workers compensation market.

### DIRECTORS & OFFICERS LIABILITY



REUTERS

**Media mogul Rupert Murdoch's News Corp. is embroiled in a scandal over alleged hacking of phones, among other concerns.**

## Bad news for D&O insurers?

*Scandal-plagued News Corp. faces lawsuits*

By **JUDY GREENWALD**

**NEW YORK**—Allegations and litigation against News Corp. continue to mount over the media giant's phone hacking scandal, raising questions about the company's ultimate financial liability—and how big a hit its professional liability insurers will take.

See **NEWS CORP.** page 18

### RISK MANAGEMENT

## Survey compares pay levels for risk management jobs

By **RODD ZOLKOS**

Risk management professionals at higher levels in their organizations are not only better compensated than those at lower levels, they also have a greater percentage of their total cash compensa-

tion at risk, according to a new survey.

The Risk & Insurance Management Society Inc.'s "2011 Risk Management Compensation Survey" provides compensation data for 11 risk management-related jobs in the United States

and Canada.

Of 231 U.S. respondents identifying themselves as belonging to the highest-paid group—chief risk officer, vp of risk management or vp of strategic and enterprise risk—the average base salary was \$183,755, with average total compensation of \$236,301.

Among 25 respondents in that top category in the Canadian sample, the average base salary was \$145,719 Canadian (\$153,734) with average total compensation of \$176,143 Canadian (\$185,831).

Jill Levy, director of membership and chapter services at New York-based RIMS and coordinator of the survey project, said the survey showed an increase in the

number of respondents at that highest level.

"It's interesting to me that there are that many more individuals in these types of positions than there were just three years ago," she said. Ms. Levy added that she thinks that trend is evidence of "the concept of risk rising to the C-suite."

The 114 U.S. respondents in the director of enterprise risk management/strategic risk management/risk intelligence category reported an average base salary of about \$130,200 and average total compensation of about \$150,500.

For their 31 Canadian counterparts surveyed, the average base

See **SALARY** page 17

### INDEX

Advertiser Index	19
Business Resources	18
Commentary	8
End Page	22
Opinions	8
Market Moves	16
Professional MarketPlace	16
Up Close	16

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**VIRTUAL ADVANTAGE 2011:** Sign up for *Business Insurance's* Sept. 22 virtual conference on controlling workers compensation costs, especially soaring medical expenses from growing abuse of painkillers. The keynote speaker is Harry Shuford, chief economist for NCCI Holdings Inc. [www.BusinessInsurance.com/virtualadvantage](http://www.BusinessInsurance.com/virtualadvantage).

## MOST POPULAR STORIES

Week of July 25, 2011

1. P/C insurer reserves deficient by \$2.7 billion: Analysis
2. NFL players' deal will allow comp claims in other states
3. Brown & Brown settles suit vs. ex-execs who left to launch rival
4. Medco, AstraZeneca get U.S. subpoenas over four drugs
5. In Cartoons: The Economy
6. London surplus lines underwriters to benefit from Dodd-Frank law
7. New asbestos charges point to reserve woes
8. Fewer big employers offer new employees DB plans
9. Hurt worker adequately notified employer, due workers comp
10. Validus appeals to Transatlantic shareholders to accept buyout

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**IN CARTOONS: THE ECONOMY**  
*Business Insurance* cartoonist Roger Schillerstrom offers his wry take on ways the turbulent economy has affected employers and the insurance industry. See the slideshow at [www.BusinessInsurance.com/photos](http://www.BusinessInsurance.com/photos).



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## REINSURANCE

# Transatlantic sues Validus over hostile takeover bid

*Reinsurer says suitor made false claims about value of deal*

By SONJA RYST

**NEW YORK**—Validus Holdings Ltd.'s hostile takeover bid for Transatlantic Holdings Inc. generated a war of words last week, as well as a Transatlantic lawsuit accusing Validus of false and misleading statements.

"The mud is starting to be slung back and forth," said Paul

Howard, director of research at Solstice Investment Research L.L.C. in Glastonbury, Conn.

Allied World Assurance Co. Holdings A.G. last week stuck by its all-stock merger agreement with New York-based Transatlantic, valued at \$3.2 billion when announced in June, arguing that its offer "provides the best immediate and long-term value and strategic benefits for all shareholders." And Bermuda-based Validus has not budged from its cash-and-stock proposal, initially valued at about \$3.5 billion.

While Transatlantic previously

said it was open to talks with Validus, the Bermuda reinsurer refused the offer as it was conditioned and instead made a direct appeal to shareholders on July 25.

Transatlantic's board then advised its shareholders to reject Validus' offer, and it filed suit in U.S. District Court in Wilmington, Del., alleging that Validus made false and misleading statements in bid documents.

In its proposal, Validus bid 1.5564 Validus shares and \$8 in cash per Transatlantic share,

See **TRANSATLANTIC** page 19

## THE PLAYERS

*Validus Holdings has made an unsolicited bid for Transatlantic Holdings, which already agreed to merge with Allied World Assurance Co. The insurers vary in size and business.*

### TRANSATLANTIC HOLDINGS INC., New York

**BUSINESS LINES:** Property/casualty reinsurance, with a specialty risk emphasis

**OPERATES IN:** Asia, Europe, United States

**2010 GROSS PREMIUMS WRITTEN:** \$342.8 million

**BUSINESS UNDERWRITTEN:** 73% casualty, 27% property

### ALLIED WORLD ASSURANCE CO. HOLDINGS A.G., Zug, Switzerland

**BUSINESS LINES:** Specialty property/casualty insurance, reinsurance

**OPERATES IN:** Bermuda, Hong Kong, Ireland, Singapore, Switzerland, United Kingdom, United States

**2010 GROSS PREMIUMS WRITTEN:** \$1.76 billion

**BUSINESS UNDERWRITTEN:** 41.5% U.S. insurance, 28.7% international insurance, 29.8% reinsurance

### VALIDUS HOLDINGS LTD., Pembroke, Bermuda

**BUSINESS LINES:** Mainly property catastrophe reinsurance

**OPERATES IN:** Bermuda, London

**2010 GROSS PREMIUMS WRITTEN:** \$981.1 million

**BUSINESS UNDERWRITTEN:** 32.1% property, 32.1% marine, 35.8% specialty

Source: Securities and Exchange Commission, court filings

## P/C LEGISLATION AND REGULATION

## U.S. insurers begin work on Solvency II

*Eventual equivalence with E.U. rules eyed*

By MARK A. HOFMANN

**WASHINGTON**—While a final date to implement the European Union's Solvency II regulatory regime is not yet certain, observers say U.S. insurers should be planning now to comply with the rules.

That's true even though the United States is not among the first group of non-E.U. countries—Bermuda, Japan and Switzerland—that will be considered for equivalence reviews. If the U.S. fails to achieve equivalence, there could be consequences on both sides of the Atlantic, experts say.

"The fundamental question for insurers based in the U.S. or any country outside of the E.U. is the equivalence process and standards," said Dave Snyder, vp and associate general counsel, public policy, at the Washington-based American Insurance Assn. "We believe that the U.S. system, while different in detail, achieves a very high level of policyholder protection and that equivalence is warranted."

In the United States, for example, the National Assn. of Insurance Commissioners is making adjustments to its solvency modernization initiative to incorporate portions of Solvency II, said Robert Gordon, Washington-based senior



vp-policy development and research for the Property Casualty Insurers Assn. of America.

U.S. insurers should prepare by becoming educated and informed about regulatory trends and developments, said Mr. Gordon.

Among those developments, a key European Parliament committee recommended last week that full Solvency II implementation be delayed one year to 2014 (see story, page 21.)

Companies also are devising internal capital models at the individual company and group levels, he said. Some PCI members also have met with domestic and foreign regulators to talk about areas that Solvency II would address even before formal rules are issued, he said.

How much Solvency II will affect U.S. insurers varies, said Howard Mills, director and chief adviser of Deloitte Services L.P.'s insurance industry group in New York. U.S. insurers with overseas subsidiaries and operations will be affected more immediately than purely domestic companies, said Mr. Mills, a former New York

See **SOLVENCY** page 17

## SAFETY

## Voluntary OSHA program working?

*More than 2,400 worksites participate in safety program*

By JEFF CASALE

A voluntary federal safety program in place at more than 2,400 U.S. worksites continues to receive criticism, but supporters say the Voluntary Protection Program remains a worthwhile designation for businesses to obtain.

The Center for Public Integrity's iWatch News, a nonpartisan news organization, recently examined the Occupational Safety and Health Administration program, finding that some worksites and organizations deemed the safest in the nation have serious safety issues.

The examination added to a May 2009 Government Accountability Office report, which noted among other things that OSHA's internal controls are "not sufficient to ensure that only qualified worksites participate in the VPP." It also said OSHA's oversight of the program is "minimal" as is the required documentation needed to participate.

The more than 2,400 plants and worksites recognized as VPP-certified range across several industries (see chart). One perk of being recognized as a VPP site is being exempt from regular OSHA inspections. This is because OSHA has recognized the site as having an exceptional program that takes a proactive approach to safety, which includes identifying hazards to reduce injuries and loss costs.

Still, more can be done by OSHA to strengthen VPP, said R. Davis Layne, executive director of the Falls Church, Va.-based VPP Participants' Assn. Inc. and a former deputy assistant secretary at OSHA.

"One thing that should be clear is that any fatal-

ity at a worksite is unacceptable, and that applies to VPP worksites as well," Mr. Layne said.

The association supported the 2009 GAO evaluation, with Mr. Layne noting that the main issue is how OSHA administers the program.

"VPP does not stand for 'Voluntary Perfection Program,' so sometimes accidents will happen," he said. "Data has shown that (VPP) sites have injury and illness rates 50% below non-VPP sites on average...These sites not only meet the OSHA standards and requirements for health and safety, but exceed them."

No fee is associated with participating in the VPP and it is expected that the worksites and companies participating in the program will maintain high safety standards and programs.

"The VPP recognition is something that shows good housekeeping and (a company or worksite) almost looks conspicuous if (that recognition) is absent," said Michael Hayslip, executive director of the Voluntary Protection Program Assn. for Construction in Dayton, Ohio. "Having the VPP designation makes the company or a worksite a place where people want to be because it shows a culture, awareness and importance of safety."

Since 2000, at least 80 workers have died at VPP-designated sites, with federal investigators finding serious safety violations in at least 47 cases, according to iWatch. It also found that VPP companies that experienced a serious accident or fatality rarely received a large fine or were removed from the program. At least 65% of sites where a worker has died since 2000 remain a VPP-designated site, according to iWatch.

Mr. Layne said OSHA's evaluation of an incident should review the VPP requirements and see if there are any deficiencies within them that would have

See **VPP** page 20

### SAFETY FIRST

*The top 15 industries involved in the Voluntary Protection Program and the number of VPP-designated sites as of June.*

INDUSTRY	SITES
Chemical	257
Utilities	162
Couriers	133
Professional services	85
Paper	72
Transportation equipment	67
Waste management	65
Wood products	63
Specialty trade contractors	59
Plastics	54
Fabricated metal	53
Food	52
Warehousing	51
Petroleum	48
Machinery	45

Source: Occupational Safety and Health Administration's Office of Partnerships and Recognition

## RETIREMENT BENEFITS

# Defined benefit plan exodus continues at big companies

*Among Fortune 100, just 30% still offer traditional pension*

By **JERRY GEISEL**

Less than one-third of the largest U.S. employers now offer a defined benefit pension plan to new salaried employees, with the move away from the plans accelerating in recent years, according to new research.

As of May 31, 30% of Fortune 100 companies offered a defined

benefit plan to new salaried employees, according to New York-based Towers Watson & Co. That's down from 37% at the end of 2010, 43% in 2009 and 47% in 2008 (see chart).

As recently as 1998, defined benefit plans were the norm among the nation's largest employers, when 90% of Fortune 100 companies offered the plans to new salaried employees.

Since then, large employers have moved away from the plans. "The decline of traditional DB plans is striking," Towers Watson said in an article posted last month in *Insid-*

*er*, a company publication.

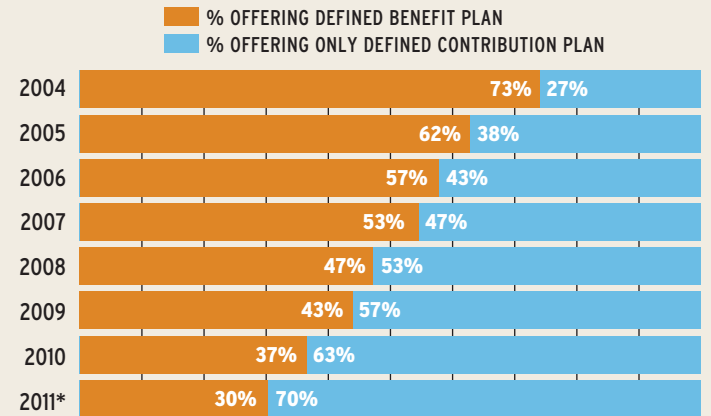
The defined benefit plan decline is the result of several factors, said Alan Glickstein, a Towers Watson senior consultant in Dallas. One is a more mobile workforce for which traditional final average pay plans—in which employees accrue meaningful benefits after many years of service—have less appeal.

"Greater employee mobility has certainly influenced plan design," Mr. Glickstein said.

In addition, tougher funding and accounting rules have dampened employer interest in spon-

## RETIREMENT PLAN SHIFT

Fortune 100 companies are moving away from defined benefit pension plans, leaving defined contribution plans as their sole retirement savings plan offered to newly hired salaried employees.



\*As of May 31

Source: Towers Watson & Co.

soring the plans, while employers face less competitive pressure to provide the plans.

"It is reasonable to conclude

that the larger number of other organizations that have made that

See **DEFINED** page 20

## CYBER RISKS

# Lack of cyber attack data complicates risk management

*Better info would aid assessment, underwriting*

By **JUDY GREENWALD**

**SAN FRANCISCO**—Good data is hard to find when evaluating cyber breaches and the need for insurance to protect a business, underwriters say.

In addition, it may take buyers considerable time to decide to purchase cyber coverage, said underwriters who spoke last month during a session at the International Risk Management Institute Inc.'s Cyber & Privacy Risk Conference.

There is "not a lot of sharing information" in this area, said John Dietsche, San Francisco-based senior vp and western zone manager of executive liability for Chartis Inc. He said about half of data breaches are not reported, which "means a lot of breaches are going underreported" because some firms do not want the public to know their information is at risk.

CEOs often have only "limited information when making" decisions on whether to buy cyber insurance, he said.

"One of the biggest challenges" in conversations between risk management and the CEO is the lack of data in this area outside of general statistics, such as reports by the Ponemon Institute L.L.C. and Verizon Communications Inc., said Tim Stapleton, assistant vp and product manager of professional liability at Zurich North America in New York.

"A lot of insureds are not willing to put their cards on the table when it comes to how much is spent" with regard to data breaches, so chief financial officers "are not getting the benefit of that information," Mr. Stapleton said.

John F. Gibson, IRMI's president and

## Mobile devices may be small, but data risks are enormous

By **JUDY GREENWALD**

**SAN FRANCISCO**—The biggest security problems associated with mobile devices are their portability and data capacity, an expert says.

"We take it out of our pocket, set it down and look away," said Sarah Stephens, San Francisco-based assistant vp with Aon Risk Solutions, a unit of Aon Corp.

As their capacity to store data grows, sensitive information can be at risk in a device that easily can be stolen or misplaced, Ms. Stephens told attendees last month at the International Risk Management Institute Inc.'s first Cyber & Privacy Risk Conference.

"Often, we don't even have passwords protecting our phones unless it's mandated by corporate policies," she said. Furthermore, now that cell phones and other mobile devices have high-resolution cameras, gyroscopes and GPS technology, it sets up privacy and security

risks, she said.

Mobile devices also can provide a portal for criminals to hack into personal or corporate information. "We're seeing a huge shift in cyber crime that's targeted towards mobile devices," Ms. Stephens said.

The mobile devices that can transmit personal information—including location and potentially financial information—without their user's consent raises privacy concerns, she said.

Another issue is mobile payment applications, a growing business in which mobile devices can be used to pay for a variety of services. "It's kind of like the Wild West right now with respect to mobile payment applications," she said.

Privacy issues also can arise if employers track the locations of their workers, Ms. Stephens said.

U.S. court decisions on law enforcement's ability to track crim-

See **MOBILE** page 20

CEO and panel moderator, asked what underwriters would say to the big percentage of company CEOs who think their companies are safe from cyber breaches.

Nicholas Economidis, Philadelphia-based underwriter, professional liability,

specialty lines at Beazley Group P.L.C., said he wants CEOs to feel they are doing the right thing and be proactive on this issue. "The question really becomes, 'Should they buy insurance' or should they have enough confidence

in their systems and controls they do not need to buy it?"

He answered that question with an analogy: Most hotel operators would say their facilities are "very well-protected for fire, and they are certainly sprinklered, but they still buy property insurance" because "no risk control can guarantee you will not have a loss."

Mr. Dietsche said factors that determine the amount of insurance coverage include the number of records involved, number at risk, whether all are in the same location, and how many are encrypted "and therefore not at risk."

Then, he said, buyers should examine the available coverage, including factors such as public relations expenses. The situation is analyzed "much the same way you would purchase other areas of insurance," Mr. Dietsche said.

Look at providers and "get a sense of what they're charging" for notification and credit monitoring services as well as public relations and forensic firm charges, said Mr. Stapleton. "It's a good way to quantify what you might face from a damages standpoint upfront if you're breached," he said.

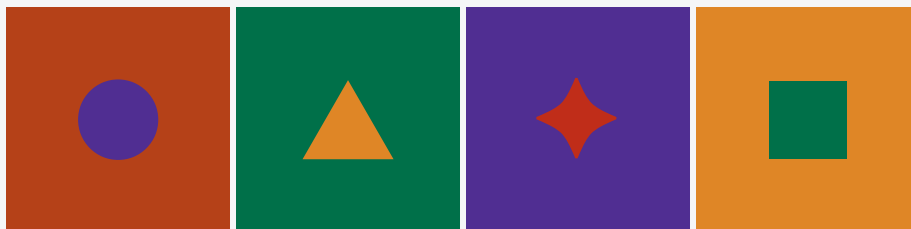
"In a perfect world," underwriters would spend as much time as they could with multiple layers of the company to create a profile, said Mr. Stapleton. "But we have too much volume, that's the reality," he said.

Among factors taken into consideration is whether "someone is going to be accountable if an actual breach occurs," he said. "What are they going to do if a breach occurs" and what is in place structurally "to deal with the incident?" Encryption is a "very key point in this

See **UNDERWRITING** page 20

# Alternative Risks

## Special Report



On September 5 *Business Insurance* will devote the entire issue to exploring the risk financing innovations and options available to risk managers for transferring their risks outside of traditional insurance and reinsurance policies.

Coverage will include:

- How to use a captive to cover workers comp risks
- Tapping weather derivatives to structure alternative coverage
- 25 years after inception, an analysis of how risk retention groups being utilized
- The pros and cons of using risk retention groups vs. the commercial insurance market
- The benefits of using a captive to access the reinsurance market
- After a slew of catastrophes over the past 12 months, developments in the markets for cat bonds and industry loss warranties
- Alternative ways to cover supply chain risks

As businesses seek solutions for their risk financing challenges this issue will be one that C-suite executives and risk managers of both large and middle-market businesses will use to be more effective and refer back to time and time again.

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# Mid-Market EXECUTIVE

Helping C-level executives at midsize firms overcome critical risk and benefits challenges

## Right way to use safety incentives

*Good reward programs can produce results; bad ones, more problems*

By MATT DUNNING

As long as employers have used safety incentive programs to reduce injuries and lost work time, there has been debate over the best way to administer them, because some models can produce short-lived or artificial results.

That prevailing uncertainty, along with other factors, often is enough to discourage mid-market companies from implementing a safety incentive program, experts said.

Marc Hindman, Atlanta-based strategic outcomes practice leader for Willis North America, said only 20% of his mid-market clients use a reward system for employees who remain injury-free or act proactively to improve worksite safety, and a majority of them are in the manufacturing and construction trades.

The market's reluctance, he said, usually is driven by the cost and complication of building an incentive program that works, and the potential consequences of implementing one that does not.

"Middle-market companies struggle the most with incentive programs, typically because their managers don't have a strong



safety or risk management background, so they're not thinking about what has to happen behind the scenes to set the groundwork for an effective program," Mr. Hindman said. "Uptake has been low, because they just don't have the internal resources who have seen success with it, and I think there's a healthy concern with doing it wrong."

A frequent mistake is neglecting to conduct a thorough assessment of the company's injury history, existing hazards and conceptual receptiveness among employees, said Pam Walaski, president of Pittsburgh-based consulting firm JC Safety & Environmental Inc.

Additionally, she said, worksites without comprehensive safety management protocols aren't likely to experience much success with an incentive program, regardless of its structure or offerings.

"Incentive programs really ought to be part of a larger picture. You need to get the bones of your safety protocols in place first, and then after that, incentives and rewards can be a nice tool to have in the toolbox. But they shouldn't be the foundation of your program," Ms. Walaski said.

For mid-market companies that have safety incentive programs, either in-house or administered by any one of dozens of third-party firms, experts said most of the potential problems can be attributed to rewarding employees based simply on how long they work without being injured or fil-

ling a workers compensation claim (see related story). Popular incentives include cash, merchandise credits, gift cards, meals and entertainment.

In 2009, the Government Accountability Office found a significant coincidence of workers and managers pressuring health practitioners to underdiagnose injuries—keeping them off the Occupational Safety and Health Administration radar—at worksites with programs that reward injury and claim reductions.

Ron Prichard, president of Arcanum Professional Services Inc. in Plainfield, Ind., and a columnist for the Dallas-based International Risk Management Institute Inc., said he has long opposed incentive programs that reward only reductions in lost work time, injuries or other lagging indicators for their overall failure to change employee behavior.

"Any time you offer someone an incentive in advance of a behavior, they'll try to figure out the shortest path to that incentive. That's not the behavior you want them to display," Mr. Prichard said.

Within the overarching model of results-based incentive programs, opinions differ on whether programs that evaluate and reward employees as a group are more or less problematic than models that reward individuals. Some argue that group-based incentives force workers to choose between hiding their injuries or incurring the scorn of their group.

Ken Sullivan, safety director for Milpitas, Calif.-based Devcon Construction Inc., said his company has rewarded its employees as a group with merchandise credits for hours

logged without an injury that results in time away from the job. While Devcon's workers comp claims have declined up to 45% since the program began in 1998, he said peer pressure is a factor.

For example, if a worker cut his hand, needed stitches and was advised to take the day off, Mr. Sullivan said the worker may well "ask for restricted duty instead because he doesn't want to get harassed by his co-workers or jeopardize his team's incentives."

Conversely, some experts insist that individual reward programs remove an employee's sense of responsibility to their co-workers and company, a critical component of a program's success.

Companies might see a reduction in the frequency of their claims, but also could see an increase in severity and, as a result, lost production time if workers are letting minor injuries go unreported in pursuit of a reward.

"There needs to be a lot of thought put into the behaviors that you don't want to have emerge," said Josh Warren, Chicago-based property/casualty director at Equity Risk Partners Inc.

"What can happen is, people suck it up and walk on a bad ankle for a few days and, all of the sudden, it becomes a severity problem. You have to think about the ways employees might manipulate the program," Mr. Warren said.

Additionally, perceived inequities, such as rewarding managers at a higher level than employees, can hurt morale and employee retention.

"The moment you create a sense among the workforce that a particular employee or group is getting a disparate benefit over the rest of the company, you dissolve any possible benefit that could come from it," Mr. Prichard said. "There are just more ways for them to do harm than good."

## Reward proactive safety behaviors, rather than accident-free time

By MATT DUNNING

Less than a year into his post as safety director at Seattle-based Sellen Construction Inc., John Hogan is planning to overhaul an incentive system that in more than 10 years made no substantive impact on the company's frequency of workers compensation claims.

The program, which rewards employees strictly for the number of hours they work without recording an injury, also fell well short of the company's goal of enhancing safety awareness among its workers, he said.

"It doesn't change behaviors overall, really," Mr. Hogan said. "The people that get the incentive, they appreciate the money. But incentives should be based on contributions, recognizing people for what they do to improve the safety performance of an organization."

By the beginning of next year, Mr. Hogan said he plans to install a new program that rewards employees for preventing accidents and injuries as

opposed to workers who are able to remain on the job the longest without getting hurt. It's an approach most experts embrace as being far more effective in fostering a culture of safety awareness, whether it's done with cash, merchandise or merely the praise of managers and company leaders.

"We are starting to see more clients moving toward nontraditional models of incentive programs, where you have rewards based on proactive behaviors," said Joyce Long, a managing director at Marsh USA Inc.'s St. Louis office. "You're trying to change behavior through positive reinforcement. The more of those proactive safety behaviors you have employees performing, you should see a benefit in that."

Not only do recognition-based programs tend to fare better in enhancing safety conditions in the workplace, they also are likely to find much more favor with labor regulators, experts say.

Pam Walaski, president of the Pittsburgh-based consulting firm JC Safety and

Environmental Inc., who this year instructed a conference hosted by the Ohio Bureau of Workers' Compensation on OSHA-friendly incentive programs, said the Occupational Safety and Health Administration has no specific rules or policies regarding incentive programs, but it has begun making the programs part of its regular inspection criteria.

In an October 2010 speech, OSHA Director David Michaels condemned programs "offering workers parties and prizes for not reporting injuries, or bonuses for managers that drive down injury rates."

However, Mr. Michaels lauded programs that reward workers who demonstrate safe work practices, report hazards and close calls, and participate in safety and health training.

The biggest impediment for mid-market companies looking to implement a successful recognition-based incentive program is the level of effort and resources required, said Chris Iovino, a managing director at Aon Global Risk Management Consulting Inc.'s New

York office.

Companies serious about pursuing a comprehensive program likely will need to conduct property and worksite assessments of existing injury risks, as well as focus groups among employees to gauge receptiveness and desired structure. Qualified third-party safety instructors may be needed for educational courses if one isn't already on staff. In addition, there's the cost of the incentives themselves, which could be enough of a deterrent for mid-market companies with limited funds, he said.

"Undoubtedly, there's a lot more work that goes into this type of model," Mr. Iovino said. "But, to me, whether or not you do it is the difference between success and failure."

Where resources fall short, experts say building a reputation among company managers for positive verbal or written reinforcement of safety-conscious behavior is an inexpensive, and often more effective, way to boost workplace safety than cash or trinkets.

# Perspectives

When considering potential pollution liabilities in a merger or acquisition, the due diligence team and risk managers should note that insurance recovery is constantly evolving, say John S. Wyckoff, a senior regulatory consultant at Technology Sciences Group Inc., and Robert Martin, consultant at Freeman & Mills Inc. This analysis will provide significant insights into the target company's legacy liabilities and insurance assets to cover those liabilities. This "kicking the insurance tires" can avoid coverage issues once the M&A is complete, they say.

## M&A strategies for addressing legacy environmental liabilities

By John S. Wyckoff  
and Robert Martin

**B**usiness Insurance published an article Feb. 21 by Mike Tsikoudakis titled "How to Avoid Pollution Liability When Firms Merge." The article indicated that merger and acquisition activity is poised for an uptick and reminds risk managers that with an acquired company and the associated property, a new owner may be liable for past environmental liabilities.

The article and the cited webcast present strategies for minimizing environmental liabilities.

These strategies include creating certain deal structures, such as acquiring assets vs. the business and leasing vs. purchase; conducting business compliance reviews including Phase I/Phase II environmental site assessments; using the prior owner's liability coverage for environmental exposures; negotiating environmental liabilities and exposures as part of the purchase price; and/or developing an indemnification agreement and/or funding agreement.

The indemnification and funding agreement may take the form of a fund to pay for certain environmental liabilities or the acquisition of a new environmental liability policy to cover certain risks associated with remediating environmental impacts.

While these are excellent strategies, this article outlines an approach as part of the M&A due diligence effort to analyze comprehensive general liability coverage to address legacy environmental liabilities of the acquired property.

While the acquiring company likely will want to evaluate other insurance coverage held by the target company, this article focuses on CGL coverage because it typically is used to recover costs and pay for damages related to legacy environmental liabilities.

### *Kicking the tires*

In recent years and due to the enhanced disclosure requirements under the Sarbanes-Oxley Act, purchasers of companies and properties may increasingly rely on recent cor-

porate disclosures and supporting information to satisfy due diligence based on the belief that the insurance disclosures are adequately "scrubbed" by the target company's auditors and an additional review would only "recreate the wheel." That said, kicking the tires and reviewing the target company's insurance program—particularly the company's CGL coverage to address long-tail environmental-related claims—is well worth a focused effort to determine the availability of insurance to pay ongoing and future claims.



Mr. Wyckoff



Mr. Martin

This can be done fairly quickly and may yield valuable information regarding the adequacy of coverage, such as the amount and anticipated date when coverage may become exhausted, to pay for any legacy liabilities. In addition, the target company likely already is recovering costs from certain of its insurance policies to pay for these damages, which allows the acquiring company to review the target company's progress and compare it with its own experience. Often, the companies tend to be in the same industry sector, and such a comparison may provide insights about the target company's historic risk management practices and compliance posture.

Lastly, the policy information and the underlying defense and indemnity cost data can be provided quickly and analyzed with the company's insurance program data.

Defense and indemnity costs may be treated differently to maximize recovery when allocating costs to policies because the duty to defend generally is distinct from and broader than the obligation to indemnify. When policies treat defense costs outside the policy limits, that

means it is the insurer's responsibility to defend the claims at their cost, that the costs do not reduce the limit of liability and are paid above and beyond the policy limits.

As a first step, an insurance due diligence team should be formed to assess the target company's insurance program. The team should include the acquiring company's risk manager; counsel overseeing insurance; and consultant/in-house personnel who have analyzed environmental liabilities, insurance allocations, claims data and costs. This team has a relatively narrow focus compared with the larger due diligence team. In addition, the insurance team likely will communicate with the target company's risk manager, insurance counsel and consultant/in-house personnel to obtain the necessary information for review. A potential buyer also may need to get insurance-related information from the target company's broker or third-party administrator.

The exchange of information likely will require devising or modifying the due diligence confidentiality agreement, and preparing focused information requests to ensure the insurance due diligence is encompassed within the confidentiality agreement, and that the information is obtained expeditiously and as efficiently as possible.

Often the M&A is cost- and time-sensitive, so these due diligence efforts must ensure the M&A goals are met and the transaction team members' expectations are adequately addressed. For example, to ensure quick transfer of information, a file-transfer protocol website or similar system can be set up between the target company and the acquiring company to share large datasets and documents in a secure environment and on a need-to-know/controlled basis among the due diligence team.

Next, it is helpful for the insurance due diligence team to assess which policies or liabilities it should target as part of its evaluation. In certain instances, the team may want to look only at a subset of potential liabilities such as asbestos, a subset of environmental liabilities

associated with certain large sites, insurers providing the majority of the company's coverage or insurers involved with coverage in-place agreements to provide coverage for the liability being evaluated.

As part of this assessment, the acquiring company's counsel and risk manager should assess the insurance policies and whether the policies, and in-place agreements, can be assigned and/or transferred from the target to the acquirer and whether the assigned/transferred policies are available or will provide coverage for liabilities assumed by the acquiring company.

Whether the policies transfer or can be assigned also may depend on the nature and structure of the transaction and other legal factors. Once it has been determined that the policies and in-place agreements can be assigned and/or transferred and may provide coverage for liabilities to be assumed by the acquiring company, then the next step is to assess the availability of coverage.

### *Different scenarios*

Often when assessing the availability of coverage, it is important to understand the value of remaining coverage to cover current and future claims; the erosion rate of the coverage, depending on the claim rate, costs incurred and treatment of costs; and when such coverage will be exhausted. This may require the due diligence team to consider a number of different scenarios—different claim rates, such as annual claim filings, pending claims and closed claims; and different coverage allocation scenarios to evaluate a range of outcomes and the most likely scenario.

There are many factors to evaluate regarding the availability of coverage. These include proof of coverage, insurer solvency, choice of law, trigger of coverage, policy limits, and loss allocation. Munich Reinsurance Co. provides updated summaries of key coverage principles and leading court decisions governing a variety of claims topics, including environmental coverage law (see [www.munichreamerica.com/pub\\_claims.shtml](http://www.munichreamerica.com/pub_claims.shtml)). These summaries are useful to orient the coverage team, but they also should be examined by counsel.

The evaluation of the insurance program typically requires developing a chart, putting the years of coverage on the "x" axis and value and

'Kicking the tires' and reviewing the target company's insurance program is key to determining the availability of insurance to pay ongoing and future claims.

# Opinions

## EDITORIAL

### State RRG moves pointless, costly

**H**OW MANY TIMES will state insurance regulators waste their own and risk retention groups' time and money by taking actions that clearly violate the federal law that authorized the special policyholder-owned captive insurers?

The latest misguided state effort involved Nevada regulators, who ordered a highly rated Vermont-domiciled risk retention group to stop writing first-dollar auto liability coverage last year for members in Nevada.

Nevada said only authorized insurers can write the coverage. To be authorized, an insurer has to be a member of the state guaranty association. However, under the federal Liability Risk Retention Act, RRGs cannot join guaranty associations.

By imposing that authorization requirement, Nevada effectively barred the Vermont RRG—Alliance of Nonprofits for Insurance, Risk Retention Group—from writing the coverage.

That clearly violated the LRRRA, which carefully and deliberately limits the role of nonlicensing states to that of preventing RRGs in hazardous financial condition from operating, which was not at issue in this case. The RRG, with backing from the National Risk Retention Assn. and the Self-Insurance Institute of America Inc., sued Nevada.

U.S. District Court Judge James Mahan didn't accept Nevada's position and last month barred the state from preventing the RRG from writing the coverage.

This is not the first time state insurance regulators have overstepped their authority in trying to set rules for RRGs. Nor is it the first time that courts have found such actions to violate federal law.

There is no question as to why Congress so sharply limited the regulatory role of nondomiciliary states in passing the LRRRA. If RRGs had to meet the requirements of every state in which they wanted to write coverage, it would be prohibitively expensive for the groups. And that would have defeated federal lawmakers' goal of giving insurance buyers an alternative to the traditional market.

Our advice to insurance regulators is to take the time to read the Liability Risk Retention Act. By so doing, they will be much less likely to take actions that will result in their being sued and then losing in court.

## LETTERS

*Business Insurance* welcomes letters to the editor.

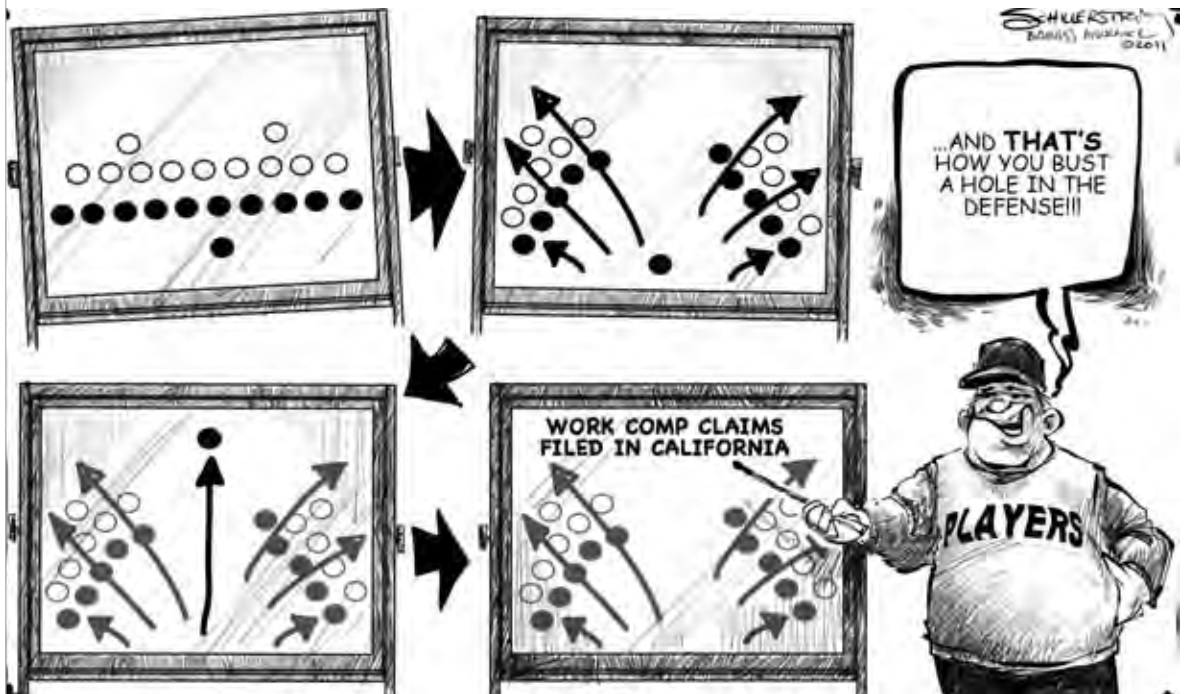
The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters.

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## SCHILLERSTROM



## COMMENTARY

### Acrimony turns to action on NFIP

**F**or years, congressional wrangling over the future of the National Flood Insurance Program provided a classic example of what is wrong with Washington.

The more than 40-year-old program was designed to correct a private market failure, that of the insurance market to provide coverage in flood-prone areas. Like many government programs, the NFIP became a fiscal nightmare and racked up billions in debt.

Like many government programs, the NFIP must be reauthorized periodically. This is where Washington's dysfunction became all too evident.

Faced with a program that already was deep in the red, the House would pass a reauthorization bill that could have thrust the program even deeper into the red by requiring the NFIP to offer wind as well as flood coverage to its policyholders. Such wind coverage, its proponents insisted, would be "actuarially sound."

Yup, we've heard that one before.

The Senate, meanwhile, would counter with its own approach, sans wind cover. Nobody could agree exactly what the program should or should not do.

As a result, the program was reauthorized on a short-term basis or, worse yet, allowed to lapse, which it did several times in the previous Congress. No NFIP meant uncertainty in flood-prone real estate markets.

And this was not the result of partisan deadlock. The deadlock that led to program lapses occurred when one party—the Democratic Party—controlled both houses of Congress as well as the White

House. To its credit, the Obama administration opposed adding wind cover to the program.

Given the acrimony that's marked relations among the House, Senate and White House of late, anyone can be forgiven for having expected that NFIP reauthorization would receive the same treatment—or worse—in this Congress that it received in the last Congress. Particularly in the House, Democrats and Republicans have been at odds on virtually every major issue. Reauthorization of the NFIP doesn't count as a major issue, but it could have provided an excuse for some more acrimony.

But a funny thing happened—NFIP reauthorization didn't lead to another partisan brawl. Quite the contrary, the reauthorization measure that emerged from the House Financial Services Committee reflected an unusual degree of bipartisan comity.

What made things even stranger was that the comity continued when the reform bill reached the House floor. An effort to kill the program outright in the name of fiscal responsibility failed miserably and an amended bill won overwhelming approval.

A bipartisan reform bill has emerged in the Senate as well. While it differs from the House measure on several points, it shouldn't be impossible to iron out the differences. If it is indeed possible, a subject that has epitomized a dysfunctional legislative process ultimately may show how a legislative body is supposed to function.

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**MARK A. HOFMANN**  
SENIOR EDITOR

# Lloyd's building

Consolidation to continue,  
but no deal wave expected

By SARAH VEYSEY

**LONDON**—Despite several recent deals and talk about buying Lloyd's of London businesses, widespread merger and acquisition activity is not expected in the coming months.

Deals that have been made and those being discussed likely are just part of a natural cycle of M&A activity, said Robert Smith, director of insurance at Moody's Analytics in London.

See **CONSOLIDATION** page 11



London & Lloyd's  
Market Report

# SPOTLIGHT

**BI RANKING:  
LARGEST LLOYD'S  
SYNDICATES**  
PAGE 10

**LLOYD'S TWEAKS  
COVERHOLDER  
OVERSIGHT**  
PAGE 12

**INNOVATIVE COVER  
STILL A HALLMARK  
OF MARKET**  
PAGE 13

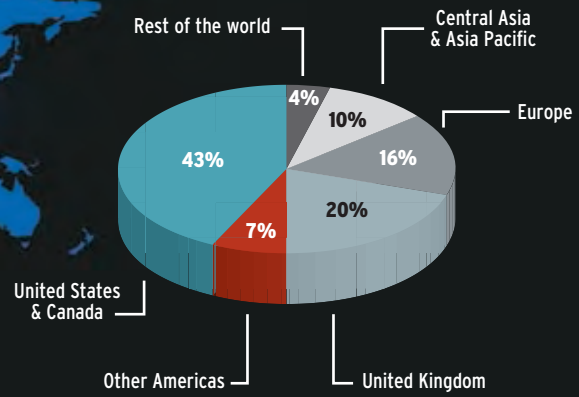
**LLOYD'S CONFIDENT  
SOLVENCY II MODEL  
WILL WIN APPROVAL**  
PAGE 14

# DATA snapshot

## LARGEST LLOYD'S SYNDICATES

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## LLOYD'S TOTAL BUSINESS BY REGION



## LARGEST LLOYD'S OF LONDON SYNDICATES

Ranked by 2010 gross written premiums

RANK	Managed syndicate	Managing agent	2010 gross written premiums	2010 combined ratio	Premiums from insurance	Premiums from reinsurance
1	2001	Amlin Underwriting Ltd.	\$1,873,091,440 <sup>1</sup>	84.0%	68.1%	31.9%
2	4472	Liberty Syndicate Management Ltd.	\$1,599,674,481 <sup>1</sup>	92.0%	48.0%	52.0%
3	2999	QBE Underwriting Ltd.	\$1,565,051,184 <sup>1</sup>	83.1%	45.8%	54.2%
4	2623	Beazley Furlonge Ltd.	\$1,492,800,000	86.0%	88.4%	11.6%
5	510	R.J. Kiln & Co. Ltd.	\$1,385,687,459 <sup>1</sup>	87.6%	83.0%	17.0%
6	2987	Brit Syndicate Ltd.	\$1,383,593,713 <sup>1</sup>	97.8%	59.4%	40.6%
7	33	Hiscox Syndicates Ltd.	\$1,347,105,360 <sup>1</sup>	89.0%	62.8%	37.2%
8	1183	Talbot Underwriting Ltd.	\$978,035,885 <sup>1</sup>	90.1%	46.5%	53.5%
9	4444	Canopus Managing Agents Ltd.	\$899,193,600 <sup>1</sup>	99.0%	75.2%	24.8%
10	2007	Novae Syndicates Ltd.	\$898,277,297 <sup>1</sup>	N/A	81.1%	18.9%

<sup>1</sup> Converted at applicable rate, British pound=\$1.5452 (2010) fiscal year ending Dec. 31. N/A=Not available.

## LLOYD'S 2010 GROSS WRITTEN PREMIUMS BY CLASS

In millions

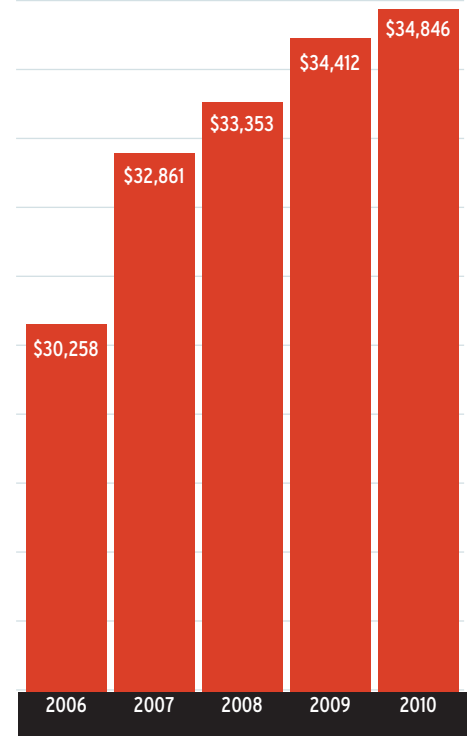
CLASS	2010 GROSS PREMIUMS*
REINSURANCE	\$12,961
PROPERTY	\$7,584
CASUALTY	\$6,794
MARINE	\$2,582
ENERGY	\$2,193
MOTOR	\$1,704

\*Converted at applicable rate. British pound=\$1.5452. Fiscal year ending Dec. 31

Source: Lloyd's of London Syndicate Reports and Accounts  
 Researched by Kevin Edison

## GROSS WRITTEN PREMIUMS AT LLOYD'S

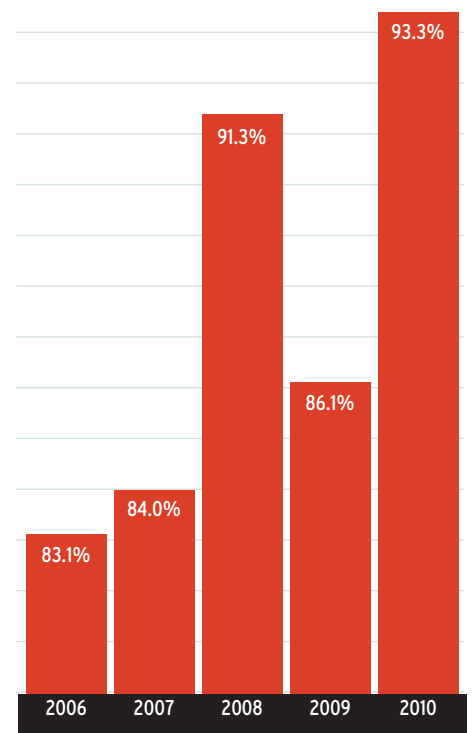
In millions



\*Converted at applicable rates, fiscal year ending Dec. 31.  
 1 British pound=\$1.8434. 2 British pound=\$2.0020.  
 3 British pound=\$1.8545. 4 British pound=\$1.5661.  
 5 British pound=\$1.5452.

## COMBINED RATIO

Combined ratio for all classes of business at Lloyd's 2006-2010



# Consolidation: M&A activity limited

CONTINUED FROM PAGE 9

Rather than Lloyd's companies buying other Lloyd's companies, recent deals have been made by overseas companies taking the opportunity to gain a presence in the market and access its brand and licenses, Mr. Smith said.

For example, Worcester, Mass.-based Hanover Insurance Group Inc. bought Lloyd's-based Chaucer Holdings P.L.C. in a deal announced in April and completed in July that Hanover said would expand its Lloyd's presence.

Hanover President and CEO Frederick H. Eppinger said "access to the Lloyd's market would enable us to further strengthen our capabilities," and "provide many of our larger winning agents with a valued market for complex, cross-border risks."

In addition, Chicago-based Ryan Specialty Group L.L.C. bought Lloyd's firm Jubilee Group Holdings Ltd. in May.

"Jubilee is a strategically important acquisition for RSG. It provides us with direct access to the Lloyd's market and represents a key cornerstone of our strategy to provide specialty expertise and commitment to insurance underwriters, brokers and agents across a single, unique platform," RSG Chairman and CEO Patrick G. Ryan said in a statement.

The deals, and the finalization this year of Achilles Netherlands Holdings B.V.'s takeover of Brit Insurance Holdings N.V., are examples of outside companies seeking to establish platforms at Lloyd's, said Andrew Holderness, a partner at law firm Clyde & Co. L.L.P. in London.

Such deals are likely to continue, said Tim Goggin, a partner in the financial institutions group at Hogan Lovells International L.L.P. in London. There are certain types of business—principally specialty—that can be accessed only through Lloyd's, even by large international insurers, he said. So Lloyd's always is an attractive platform, he said.

Catherine Thomas, a director at A.M. Best Co. Inc. in London, said Lloyd's has performed well in recent years and has "enviable licenses" to trade in many countries throughout the world.

The Lloyd's performance management board has been fairly strict in the past several years about the amount of capacity in the market, which has made it difficult to launch startups and makes buying an existing player an easier route into the market, said Ms. Thomas and Mr. Goggin.

Because the generally soft market limits organic growth opportunities, some companies are looking to expand via acquisition, Ms. Thomas said.

Private equity investors—such as the funds that formed Achilles to buy Brit—also have shown interest in buying Lloyd's operations in recent years, she said. Investors see the market's capital efficiencies and the fact that, thanks to its central fund, compa-

nies at Lloyd's benefit from "A-rated paper," Ms. Thomas said.

In addition, many publicly listed Lloyd's entities have been trading below their book value for some time, making them attractive targets, she said.

But M&As involving existing Lloyd's companies are less likely in the near future, experts say.

## LOYD'S DEALS

Recent M&A deals involving Lloyd's of London companies

**MARCH 2011:** Achilles Netherlands Holdings B.V., a holding company representing funds managed by Apollo Management II L.P. and funds advised by CVC Capital Partners Ltd., finalized the purchase of Brit Insurance Holdings N.V. in a deal worth £888 million (\$1.43 billion).

**APRIL 2011:** Hanover Insurance Group Inc. agreed to buy Chaucer Holdings P.L.C. for £313 million (\$505 million).

**MAY 2011:** Ryan Specialty Group L.L.C. bought Jubilee Group Holdings Ltd. Terms were not disclosed.

Several "Lloyd's on Lloyd's" mergers have been discussed recently, but none has materialized, said Mr. Holderness.

For example, Beazley P.L.C. dropped its bid last December to buy fellow Lloyd's insurer Hardy Underwriting Bermuda Ltd. after Hardy refused to recommend the bid to its shareholders.

Hardy defended itself vigorously against that bid, which it considered to be too low for the company, said Ms. Thomas. While many publicly listed Lloyd's companies have been trading below their book value in recent months, making them appear cheap to potential acquirers, potentially being undervalued in any deal likely has made management teams resistant to some takeover approaches, she said.

Two factors that are likely to stymie any intra-Lloyd's deals are "price and personality," said Mr. Holderness.

Businesses that operate in Lloyd's often carry the name of the person who founded them and have distinct characters and cultures, which makes it a challenge to consolidate teams, he said.

Personalities involved in any potential deal probably are the first thing for potential acquirers to consider—even above price, he said.

In addition, Lloyd's businesses tend to value their independence and their own cultures, making Lloyd's-on-Lloyd's deals less likely, Mr. Smith said.

If Lloyd's companies want to diversify their business, they are more likely to recruit a team of underwriters from a competitor than buy another company, Ms. Thomas said.

Nonetheless, several companies with Lloyd's operations have had their bids for rival Lloyd's operations rejected in recent months.

For example, Bermuda-based Omega Insurance Holdings Ltd., which operates syndicate 958 at Lloyd's, has been the subject of several approaches.

Omega said it had fielded several unsolicited offers since it was approached in January by Canopus Group Ltd. In May, Novae Group P.L.C. said it had begun due diligence about a possible merger with Omega. But in June it said it had withdrawn from the discussions.

Also in June, Barbican Group Holdings Ltd. said it was exploring a possible merger with Omega.

While Solvency II, the risk-based capital regulatory regime slated for introduction in Europe in 2013, will place huge pressure on smaller companies at Lloyd's, it will not necessarily lead to a rush of consolidation, experts said.

Rather, managing agencies may seek to merge syndicates they manage to simplify their Solvency II requirements, said Moody's Mr. Smith.

Several Lloyd's businesses already have announced their intent to merge syndicates for the 2012 underwriting year, he said.

Managing agencies already announcing syndicate mergers include Kiln Group Ltd., Beaufort Underwriting Agency Ltd. and Atrium Underwriting Group Ltd., although none explicitly cited Solvency II as a reason for the move.

While it is possible that Solven-



Lloyd's performance management board has been fairly strict in the past several years about the amount of capacity in the market, which has made it difficult to launch startups and has made buying an existing player an easier route into the market.

cy II will prompt M&As, the proposed "soft launch" of the new rules on Jan. 1, 2013, has given companies "a bit of a breather" before the full impact of the new requirements hit, Mr. Goggin said.

Once there is greater certainty about what syndicates' capital requirements will be under Solvency II, some companies may seek to diversify or put themselves up for sale, Ms. Thomas said.



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# Lloyd's boosts coverholder oversight

*Market seeks improvements, but some wary of changes*

By **STUART COLLINS**

**LONDON**—Lloyd's of London has taken steps to improve the efficiency and oversight of its coverholder business, but brokers warn that, despite those efforts, growing bureaucracy may discourage some market participants.

Its 2,219 coverholders generate about 30% of Lloyd's annual premiums, said Peter Montanaro, head of delegated authority at Lloyd's. It has been working with brokers and associations representing managing general agents in recent years to improve coverholders' experience in dealing with the market, he said.

Lloyd's sees coverholders as integral to its strategy and is showing interest in managing general agents while many other insurers are ignoring them, said Reg Brown, chairman of the steering committee at the Managing General Agents' Assn. in London.

"While some companies have had their figures burnt by MGAs in the past, Lloyd's has made enormous strides in improving the audit process over the past 10 years," Mr. Brown said.

"There was a traditional nervousness around coverholders because they are remote and have the authority to underwrite risk on behalf of syndicates, and their experience as an agent of the market was rarely considered," said Adam Stafford, London-based head of electronic distribution at Lloyd's. "However, we have moved to offer them more support and improve the process of dealing with Lloyd's as well as put in place more efficient and effective oversight through streamlined audit and approval processes."

While understanding Lloyd's motives, wholesale brokers said increased oversight also increases bureaucracy.

While a coverholder can win Lloyd's approval in as little as six weeks, "rigorous controls on managing agents are slowing down and even blocking the approval of new coverholders," said Chris Butcher, chief executive of international at Cooper Gay & Co. Ltd. in London, part of Cooper Gay Swett & Crawford Ltd.

"Managing agents are reluctant to lead (coverholder) applications because they do not want the responsibility and administration costs, and this has blocked some proposals and meant we have had to go outside the Lloyd's market where the agreement process is easier," Mr. Butcher said.

John Smith, senior partner at Lloyd & Partners Ltd., the wholesale arm of Jardine Lloyd Thompson Group P.L.C. in London, agreed. "The application process was supposed to be quicker and simpler, but I have not seen any discernable difference. It can still take an inordinate amount of time to get approval—as long as two years in the extreme," he said.

Compliance is greater than in the past, but

## 30%

Lloyd's of London's 2,219 coverholders generate about 30% of the market's annual premiums. Lloyd's has been working with brokers and associations representing managing general agents to improve coverholders' experience in dealing with the market.

that is not unique to Lloyd's, said Mr. Montanaro.

"Criticism from brokers in one respect is fair," said Mr. Montanaro. "We need to be clear and consistent with our message to the coverholder community to ensure that everyone is clear on what is required, regardless of which broker and underwriter they deal with," he said.

"Essentially we are looking to make it easier for good business to come to Lloyd's by cutting out bureaucracy and making approval and oversight as straightforward as possible, but without lowering the bar," he said.

Lloyd's also is keen to drive greater adoption of technology by managing agents, brokers

and coverholders, particularly in processing claims, to achieve real-time information said Mr. Stafford.

However, said Mr. Butcher, "Coverholders do not tend to use the same structured data reporting that fits neatly into the systems of brokers and Lloyd's. And to attract coverholders, you have to be flexible and adapt your model—they are cognizant that there are alternative carriers."

Miller Insurance Services Ltd. has developed a system that allows managing agents to access real-time claims and premium data from some coverholders, said David Hall, coverholder specialist at the brokerage's London office. A significant proportion of reporting is through the "bordereaux"—a paper submission 30 to 40 days after the close of the month, he said.

"Real-time reporting requires a significant investment by the broker and is more suited to the more sophisticated coverholders," said Mr. Hall. "The reality is that we deal with coverholders at different levels of business maturity."

Lloyd's is not actively looking to expand the number of coverholders during the soft market, but is investing now for when the market turns, said Mr. Stafford.

MGAs are well established in the United States, United Kingdom, Canada and Australia, but they are also becoming more common in Europe, said Mr. Brown. "Lloyd's has an interest in supporting MGAs and its recent efforts should lead to more coverholder business for the market in the long term," he said.

There is room for Lloyd's to grow its U.S. coverholder business by developing and innovating, said Mr. Hall. For example, Miller recently placed a program at Lloyd's developed by Professional Liability Insurance Services Inc. to protect hotels against lost revenue from bed-bug infestations, he said.

Cooper Gay also has been looking at ways to sell more Lloyd's products through U.S. coverholders associated with Swett & Crawford Group Inc., which joined with the London-based brokerage in July 2010.

The broker also is actively developing coverholder business in emerging markets, in particular Asia and Latin America, said Mr. Butcher.

## LLOYD'S COVERHOLDERS THROUGHOUT THE WORLD

DOMICILE	COVERHOLDERS
Andorra	1
Argentina	2
Australia	117
Austria	2
Bahamas	2
Bahrain	1
Belgium	11
Bermuda	3
British Virgin Islands	2
Canada	289
Cayman Islands	2
Chile	3
Cyprus	4
Czech Republic	1
Denmark	4
Dominica	1
Ecuador	1
Finland	1
France	35
Germany	17
Gibraltar	7
Greece	7
Grenada	1
Hong Kong	15
Iceland	1
Israel	6
Italy	96
Jamaica	1
Malta	4
Mauritius	1
Monaco	3
Namibia	1
Netherlands	14
New Zealand	19
Norway	17
Poland	4
Portugal	1
Republic of Ireland	32
Russian Federation	1
South Africa	26
Spain	18
Sweden	12
Switzerland	29
Tahiti	1
Thailand	1
Trinidad and Tobago	2
United States	867
United Arab Emirates	5
United Kingdom	518
U.S. Virgin Islands	10
<b>TOTAL</b>	<b>2,219</b>



## What are coverholders, and what business do they write?

**LONDON**—Coverholders are entities with the authority to underwrite, and sometimes settle, claims on behalf of Lloyd's of London syndicates. They typically are brokers with binding authority or managing general agents, independent companies that act on behalf of insurers.

They underwrite a range of business, but

generally it is higher volume and lower premium value than the business brought to Lloyd's via brokers.

Coverholders offer commercial and residential property insurance—especially in catastrophe-exposed U.S. states—as well as specialty liability coverage.

There also are coverholders offering fine

art, prize indemnity, loss of earnings due to disability or injury for sports and movie stars, yachts and bloodstock, among others.

There are 2,219 coverholders, with the largest number in the United States, followed by the United Kingdom, Canada and Australia (see chart).

—By Stuart Collins



# Height of innovation

Ability to cover complex, emerging risks still a key selling point for Lloyd's players

By **STUART COLLINS**

Insurers elsewhere are developing innovative solutions for corporate buyers, but Lloyd's of London continues to lead when it comes to complex, difficult-to-place international risks, experts say.

The structure of Lloyd's encourages innovation, said Bronek Masojada, chief executive of Hiscox Ltd., the London-based company that has been involved with Lloyd's since 1901. There are insurers that can underwrite the lines of business written at Lloyd's, but the market has the additional benefit of London's "cluster effect," he said.

"There is a lot of expertise in London, and the collaborative nature of Lloyd's means that you can get things done you can't in other markets," he said. "The City of London is a relatively small area and the physical proximity between insurers and brokers is small, which fosters trust between firms. And sometimes you have to collaborate to be truly innovative," said Mr. Masojada.

The cluster effect is particularly relevant for complex lines that require plenty of capacity, said Robert Cage, London-based active underwriter of syndicate 1882, a Lloyd's operation established by Chubb Corp. in July 2010. Difficult-to-place risks, such as power and utility companies and specialist construction risks, cannot be handled easily by domestic markets, he said.

"These risks require underwriting expertise that only comes with seeing enough of that type of business. As well as being a leading market for marine, for example, Lloyd's also leads many sub-

sets, like cat-exposed cargo or livestock-in-transit" coverage, he said.

"The business that comes to the market is complex and challenging—these specialist risks are all different and require customized and innovative insurance. This is not off-the-shelf cover," Mr. Cage said.

Innovation is one of Lloyd's historic strengths, said Jonathan Ibbott, operations officer for global speciality at XL Insurance in London, a unit of XL Group P.L.C. However, other insurers also are innovative, he said.

There are several innovative lines that XL offers outside the Lloyd's market, such as cyber and environmental liability insurance, said Mr. Ibbott. However, risks such as fine art, specie and equine benefit from the concentration of business and underwriting talent at Lloyd's, he said.

"Lines of business like marine, energy and fine art are attracted to Lloyd's because their complexity and capacity needs require expertise and syndication," he said.

Lloyd's continues to be a center for product development, providing solutions for emerging risks and the changing needs of business, experts say.

Risk managers and their companies increasingly are looking to insurers to help them protect their intangible assets, said Paul Culham, active underwriter in London for Kiln Group Ltd. Insurers are good at providing cover for physical damage to property, but they may not offer coverage for areas such as the loss of revenue from supply chain disruption, intellectual property or reputational damage, he said.

Kiln has been working on a suite of products that focus on protecting intangible assets, said Mr. Culham. It recently launched a product to help companies deal with adverse media coverage from an incident such as the loss of key personnel, breach of international laws or corporate wrongdoing. Kiln already has developed products to cover other intangibles, such as cyber and supply chain risks as well as the value of carbon credits, he said.

An area where corporate insurance buyers have been seeking innovation is nondamage business interruption, said Caroline Woolley, Europe, Middle East and Africa property practice leader at Marsh Ltd. in London. In recent years, volcanic ash clouds affecting Europe and earthquakes with rolling blackouts in Japan have raised awareness of supply chain risks and the need for broader business interruption cover, she said.

Marsh has been working with Lloyd's syndicates, reinsurers and insurers on nondamage business interruption coverage to reflect changes in clients' business structures, said Ms. Woolley. Recent developments include a move to all-risk wordings rather than named perils, extension of cover to second-tier suppliers, the use of parametric triggers and preagreed daily reimbursement rates instead of loss indemnification, she said.

While Chartis Inc. and Zurich Financial Services Group have produced innovative nondamage business interruption policies, Lloyd's syndicates can offer higher limits and customized cover, she said.

Another example of recent innovation is Lloyd's response to the growing threat

of data breaches for U.S. health care companies, said John Hudson, executive director of London-based broker R.K. Harrison Group Ltd.

U.S. regulatory changes have increased the costs of dealing with a data breach for sectors such as health care that have a high exposure to the loss of personal information through hacking, rogue employees, or lost laptops and backup data tapes, he said. Until five years ago, almost no cover was available for cyber risks, but insurers in the United States and Lloyd's have responded by developing data breach products.

In particular, insurance from London-based Beazley P.L.C.—which combines insurance with services such as forensics, legal advice, crisis management and credit monitoring—is innovative because it separates the limits for third-party liability and the costs of responding to a data breach. The cover also does not cap the overall cost of the breach; instead, it limits it to a set number of patients, a facility that is unique to Beazley, he said.

As for reinsurance, Lloyd's still is the pre-eminent market for complex facultative risks and is more flexible than other markets for more standard treaty business, said John Faustman, executive vp in Philadelphia for brokerage BMS Group Ltd. "If you have a unique problem, we can go to Lloyd's underwriters and craft a bespoke solution," he said.

BMS has used Lloyd's to develop aggregate catastrophe reinsurance without hours clauses, which normally would limit earthquake or storm cover to a specific time period, such as 72 hours, he said.

**'There is a lot of expertise in London, and the collaborative nature of Lloyd's means that you can get things done you can't in other markets.'**

Bronek Masojada, Hiscox Ltd.

55

Lloyd's, like many insurers and reinsurers readying for Solvency II, is seeking approval of its internal model from the U.K. Financial Services Authority. But that model also will be calibrated against the models of the 55 managing agents working in the market.



# Lloyd's prepares for Solvency II

## Readiness assessment for managing agents scheduled for this fall

By SARAH VEYSEY

**LONDON**—Lloyd's of London is confident that its internal model for Solvency II will be endorsed by regulators and is making sure the models of its managing agents also meet Europe's new rules governing insurer capital.

Lloyd's will be treated on a marketwide basis by European regulators once Solvency II goes in effect, which is scheduled for Jan. 1, 2013. In preparation, individual managing agencies must provide Lloyd's with information about how they are managing risks in accordance with Solvency II.

Lloyd's, like many other insurers and reinsurers, is seeking approval of its internal model from the U.K. Financial Services Authority. But that model also will be calibrated against the models of the 55 managing agents working in the market, said Luke Savage, director of finance, risk management and operations at Lloyd's.

"We need to be comfortable that all of those 55 models are up to a standard—including their corporate governance—that would gain them approval (from

regulators) on an individual basis," Mr. Savage said.

The need to aggregate the models of 55 managing agencies is a costly challenge and one on which Lloyd's is hard at work, said Andy Tromans, a partner at London-based law firm Clyde & Co. L.L.P.



LLOYD'S OF LONDON

Under Solvency II, internal models must pass what is known as the "use test," which requires insurers to demonstrate that their internal model plays an important role in the company's system of governance, risk management and decisionmaking, Mr. Tromans said.

To ensure the market is well-

prepared for Solvency II, Mr. Savage recently informed managing agents that Lloyd's will assess their readiness this fall.

In a letter, Mr. Savage explained that by November, when Lloyd's businesses must put up their capital for the coming year, if there are concerns about a managing agen-

**'We need to be comfortable that all of those 55 models are up to a standard—including their corporate governance—that would gain them approval (from regulators) on an individual basis.'**

Luke Savage, Lloyd's of London

cy's preparedness for Solvency II, Lloyd's may take several sanctions.

He said Lloyd's may increase the capital that managing agents must have in place for 2012, restrict business that managing agencies' syndicates can underwrite or charge managing agencies higher contributions to the mar-

ket's central fund—its fund of last resort.

Solvency II would allow "partial approval" of an insurer's internal model, whereby an insurer may be allowed to use it for certain areas of its business but also be required to use the standard model, which likely will impose higher capital requirements, for other areas.

Lloyd's also may adopt a similar approach for some managing agencies in the market, Mr. Savage said.

While Lloyd's is confident regulators will improve its internal model, Mr. Savage said Lloyd's is working hard to ensure that all 55 managing agencies are ready for Solvency II. Still, it is possible that some will not be fully ready for the new rules when they come into force, he said.

In that case, any managing agencies that are not deemed ready to be included in Lloyd's internal model would have to use the standard formula "until they are up to speed," he said.

Applying the standard model to determine an insurer's solvency requirements would vastly increase the amount of capital that Lloyd's would have to hold to underwrite its business, said Clyde & Co.'s Mr. Tromans.

The entire Lloyd's market will spend about £300 million (\$484 million) to prepare for Solvency II, outgoing Chairman Lord Peter

Levene has said.

The Corp. of Lloyd's has about 100 people—of a worldwide staff of about 900—working on preparations for Solvency II, Mr. Savage said. In addition to a team developing Lloyd's internal model, a team also is working with managing agencies to ensure that they are progressing in their preparations.

It is essential for Lloyd's to receive approval of internal model, said Catherine Thomas, a director of analytics at A.M. Best Co. Inc. in London.

There are several areas where the standard model calculation is disadvantageous to Lloyd's, notably the amount of capital that companies underwriting catastrophe risks outside the European Economic Area must hold, Ms. Thomas said.

International catastrophe business is one of Lloyd's largest sources on premium volume.

Martin Bride, group finance director of Beazley P.L.C., said his company, which operates five syndicates at Lloyd's and is domiciled in Dublin, will spend about £4.6 million (\$7.4 million) and devote about 4,000 working days to prepare for Solvency II.

As well as developing internal models, Solvency II requires insurers to undergo extensive reporting and documentation of governance controls, noted Clyde & Co.'s Mr. Tromans.

Solvency II is "a significant program of work made more intensive by the reporting and documentation requirements," Beazley's Mr. Bride said.

Beazley has a capital model team, a risk team and a compliance team working to prepare for Solvency II. It also has a team of information technology specialists and consultants who will work with the company on Solvency II for the next 18 months, he said.

Beazley has to report its Solvency II readiness to three regulators, Mr. Bride noted—Lloyd's, the FSA and the Central Bank of Ireland, the Irish regulator.

For companies that operate outside of Lloyd's but also run syndicates within the market, models of those differing businesses need to be dovetailed, Mr. Tromans said.

Developing models, plus the Solvency II reporting and documentation requirements, could prompt mergers and acquisitions among some smaller Lloyd's agencies, he said.

While the burden of Solvency II compliance is a heavy one for small Lloyd's entities, they benefit from the support and information provided by Lloyd's in a way that smaller stand-alone companies outside the market would not, said Best's Ms. Thomas.

However, the reporting and governance requirements of Solvency II—or what are known as Pillars II and III of the regime—may prove onerous for smaller Lloyd's entities, she said. After requirements are fully known, some M&As may take place among smaller players that find the burden too great, she said.

# WE PUT THE PIECES TOGETHER on Health Care Reform coverage

**AUGUST 15**

## Health Care Reform: Compliance

This issue will look at:

- What rules have been finalized
- Which rules have been implemented
- How those rules have affected employers
- What other regulatory guidance is still in the works

**AUGUST 22**

## Health Care Reform: Impact on Employers

This issue will look at:

- The effect of the law on companies of various sizes
- How their health care offerings and plan designs have changed
- How retaining their health care plans will affect employers' competitiveness and bottom line

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## Market Moves

### Dawson Cos. brokerage acquires Va. agency

**RICHMOND, Va.**—Dawson Mid-Atlantic L.L.C., an insurance brokerage unit of Dawson Cos., has acquired a Richmond, Va.-based insurance agency.

The asset purchase of Tabb, Brockenbrough & Ragland L.L.C. is intended to further Dawson Mid-Atlantic's expansion plan in the region, Dawson said in a statement.

TB&R has provided commercial insurance and surety bonding since 1882, according to its website.

Robert C. Moore, most recently a principal at TB&R, will serve as president of Dawson Mid-Atlantic, according to the statement.

TB&R will retain its name, location and employees and operate as an independent agency unit of Dawson in Richmond, according to a spokeswoman at Cleveland-based Dawson.

Financial terms of the deal were not disclosed.

### Law firm Clyde & Co. enters Canada with deal

**MONTREAL**—Law firm Clyde & Co. L.L.P. has entered the Canadian market through a merger with Montreal-based law firm Nicholl Paskell-Mede L.L.P.

The deal with NPM, for which

financial terms were not disclosed, establishes a base through which Clyde & Co. can access the insurance market in Canada, the London-based firm said in a statement.

NPM, which also has an office in Toronto, was founded in 1992 and has focused on insurance law and professional and civil liability defense. It offers litigation, arbitration and mediation, and claims monitoring services.

"Canada is an extremely attractive market with a robust and diversified economy," James Burns, a partner and board member of Clyde & Co., said in the statement.

The merger is effective Sept. 1, with 40 NPM employees, including 15 partners, joining Clyde & Co.

NPM will adopt the Clyde & Co. name and maintain both Canadian locations, according to a spokeswoman for Clyde & Co.

### Ironshore expands trade credit cover

**LONDON**—Ironshore Inc. has added underwriting capacity for its trade credit insurance program through an expanded agreement with a London-based managing general agency.

The agreement with Equinox Global Ltd. allows Ironshore to provide increased capacity on a facultative basis to meet the demands of the trade credit insurance market, the Hamilton, Bermuda-based specialty insurer said in a statement.

"Ironshore's expanded relationship with Equinox Global allows us to provide greater access to an on-demand, one-stop resource for

capacity in an expeditious manner," Daniel L. Sussman, president of Ironshore's political risk unit, said in the statement.

Terms of the agreement were not disclosed.

Equinox Global, established in 2010, is an MGA that exclusively underwrites and manages trade credit insurance coverage and is an approved Lloyd's of London coverholder.

### USI acquires provider of online benefit services

**ATLANTA**—USI Insurance Services L.L.C. has acquired an Atlanta-based online employee benefit services provider.

The acquisition of Tricerion Group L.L.C. aims to strengthen USI's distribution of its benefit enrollment and administration services, the Briarcliff Manor, N.Y.-based insurance brokerage unit of USI Holdings Corp. said in a statement.

Tricerion will become the benefits administration service center of Univeris Workplace Solutions, which is USI's benefit communication and enrollment unit.

"Tricerion's online enrollment product line will enhance our menu of worksite solutions to the market," Michael J. Sicard, chairman, president and CEO of USI, said in the statement.

Tricerion specializes in automating benefit enrollment processes through online technologies, communications and outsourcing.

USI said the deal, for which terms were not disclosed, is expected to contribute approximately \$3.6 million in annual revenues.

Tricerion will operate under the USI name and its employees will remain at their Georgia locations in Atlanta and Savannah, a spokesman said.

### Risk International opens Asia office

**SINGAPORE**—Risk International Services Inc. has opened its first office in Asia.

Located in Singapore, the office will offer services to the region, including risk management consulting, outsourced risk management, claims mitigation and loss prevention, Fairlawn, Ohio-based Risk International said in a statement.

The Singapore office also will offer site security services, according to the statement.

The office is Risk International's second international location. Its first, in London, opened in March 2010.

The office is at UOB Plaza 1, 35th floor, 80 Raffles Place, Singapore 048624. The phone number is +65-8306-9881.

### TO SUBMIT ITEMS

*BI's Market Moves* column reports on activities by insurance industry companies and related entities. Please send news of Market Moves to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. 60601 or email [mtsikoudakis@businessinsurance.com](mailto:mtsikoudakis@businessinsurance.com).

## UP Comings & Goings CLOSE



### SHERI WILSON

**NEW JOB TITLE:** Dallas-based managing director, global technical services for the U.S. property/casualty south-central region for Crawford & Co.

**PREVIOUS POSITION:** Dallas-based manager with the fraud investigation and dispute services for Ernst & Young L.L.P.

**BEST THING ABOUT A BAD ECONOMY:** I think the bright side for the insurance industry is the opportunity for companies to show their excellence.

**FIRST MARKET EXPERIENCE:** In risk management, my first job was in customer service and then in the safety and industrial hygiene arena for a large manufacturing company in west Texas. It was a great place to start because it really taught me the value of customer service and being responsive to not only my employer but to people who were calling on the phone with problems. It made me a good listener.

**ADVICE:** Never be afraid to ask why. Status quo is sometimes status quo. If you ask why, you

can become a vehicle for change.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** I would love to find a way to help our elderly people through physical fitness, whether that's providing a place for them to go or providing service in their residence, to help improve their quality of life after retirement.

**HOBBIES:** I spend a lot of time with my dogs. I like to play golf, go for runs or long walks. Anything outside.

**FAVORITE BOOK:** I like all of the "Harry Potter" series. I thought that was the greatest thing for both grownups and young adults.

**FAVORITE MEAL:** A good steak with a baked potato and a salad. I live in Texas; I am a meat eater.

**ON A SATURDAY AFTERNOON:** Probably sitting by the pool watching the dogs chase the pool sweeper.

**EMAIL OR PHONE, AND WHY:** I would have to say phone because I like hearing someone's voice.

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### LEGAL NOTICE

#### UNITED STATES BANKRUPTCY COURT - SOUTHERN DISTRICT OF NEW YORK

In re  
Petition of David McGuigan, as foreign representative of  
Tokio Marine Europe Insurance Limited  
Debtor in a Foreign Proceeding. Chapter 15  
Case No. 11-13420 (MG)

#### NOTICE OF FILING AND HEARING ON PETITION UNDER CHAPTER 15 OF THE UNITED STATES BANKRUPTCY CODE

**PLEASE TAKE NOTICE** that on July 18, 2011, David McGuigan, (the "Petitioner"), as the duly appointed foreign representative, as defined in section 101(24) of title 11 of the United States Code (the "Bankruptcy Code"), of Tokio Marine Europe Insurance Limited (the "Scheme Company" or "Debtor") filed a Verified Petition Under Chapter 15 For Recognition Of A Foreign Proceeding And Motion For Permanent Injunction (the "Verified Petition and Motion"), pursuant to chapter 15 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

**PLEASE TAKE FURTHER NOTICE** that, among other things, the Verified Petition and Motion seeks the entry of an order (i) granting recognition in the United States to an adjustment of debt proceeding (the "English Proceeding") pursuant to Part 26 of the Companies Act 2006 and the scheme of arrangement of the Scheme Company (the "Scheme") sanctioned by the High Court of Justice of England and Wales (the "English Court") on April 15, 2011, and (ii) providing for a permanent injunction and related relief. Details of the business included in the Scheme and the former names in which the Scheme Company wrote business can be found in the Scheme documents which are on the Scheme website at [www.TMEIScheme.com](http://www.TMEIScheme.com).

**PLEASE TAKE FURTHER NOTICE** that the Bankruptcy Court has scheduled a hearing with respect to the Verified Petition and Motion for **September 8, 2011 at 10:00 a.m. (Eastern Time)** before The Honorable Martin Glenn in Courtroom 501 of the Bankruptcy Court located at The Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, to consider the Verified Petition and Motion, and any motion, answer, objection or other response thereto made in accordance with this Notice.

As part of the English Proceeding, a copy of the Scheme and related notice regarding the submission of claims has been sent to each person or entity of which Pro Insurance Solutions Limited, the Scheme Manager, was aware and which it believed was or might be a Scheme Creditor, and for which it had a current address. Copies of the (i) Notice, (ii) Official Form Chapter 15 Petition of the Scheme Company, (iii) Verified Petition and Motion (without the exhibits thereto), (iv) Memorandum of Law, (v) List submitted pursuant to Bankruptcy Rule 1007(a)(4), (vi) Statement of Foreign Representative required pursuant to 11 U.S.C. § 1515, and (vii) Proposed Order Requesting Recognition of the Scheme and Foreign Proceeding, are available to parties-in-interest on the Bankruptcy Court's website at <http://www.nysb.uscourts.gov> (a PACER login and password are required), on the Scheme website at [www.TMEIScheme.com](http://www.TMEIScheme.com) (in addition to the Scheme itself) or upon written request to the Petitioner's United States counsel (including by facsimile or email) addressed to: Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019, (212) 839-5599 (facsimile), Attention: Lee S. Attanasio and Alex R. Rovira, [lattanasio@sidley.com](mailto:lattanasio@sidley.com), [arovira@sidley.com](mailto:arovira@sidley.com)

**PLEASE TAKE FURTHER NOTICE** that any party-in-interest wishing to submit a response or objection to the Verified Petition and Motion or the relief requested by the Petitioner must do so in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, and electronically with the Court by registered users of the Court's electronic case filing system in accordance with General Order M-242 (a copy of which may be viewed on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)), and by all other parties-in-interest, on a 3.5 inch disc, preferably in Portable Document Format (PDF), Word Perfect or any other Windows-based word processing format, which disk shall be sent to the Office of the Clerk of the Court, Room 534, One Bowling Green, New York, New York 10004-1408. A hard copy of such response or objection to be sent to the Chambers of the Honorable Martin Glenn, United States Bankruptcy Judge, and served upon Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019 (Attention: Lee S. Attanasio and Alex R. Rovira), United States counsel to the Petitioner, so as to be received on or before **4:00 p.m. (Eastern Time) on August 29, 2011**.

**PLEASE TAKE FURTHER NOTICE** that if no response or objection is timely filed and served as provided above, the Court may grant the recognition and relief requested in the Verified Petition and Motion without further notice.

**PLEASE TAKE FURTHER NOTICE** that the hearing with respect to the relief requested in the Verified Petition and Motion may be adjourned from time to time without further notice other than an announcement in open court of the adjourned date or dates at the hearing or any other further adjourned hearing.

Dated: July 21, 2011, New York, New York

Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019, (212) 839-5300 (tel), (212) 839-5599 (fax), Lee S. Attanasio, Alex R. Rovira, Attorneys for the Petitioner

## Comings & Goings

# ONLINE

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for a full list of this week's personnel moves and promotions. Check our Web site daily for additional postings and sign up for the weekly email.

### TO SUBMIT ITEMS

*Business Insurance* would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to:

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*Business Insurance*  
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### POSTING THIS WEEK

#### BROKERS

- Aon Risk Solutions
- Bollinger Inc.
- Lockton Cos. L.L.C.

#### INSURERS

- QBE Insurance Group Ltd.
- Willis Australasia
- Life and Specialty Ventures L.L.C.

#### REINSURANCE

- Tokio Millenium Re Ltd.
- Transatlantic Reinsurance Co.

#### OTHER PROVIDERS

- Perkins Coie L.L.P.
- Boston Consulting Group Inc.

## Solvency: U.S. at work

CONTINUED FROM PAGE 3

insurance superintendent.

"That said, the entire industry is bracing for the impact of Solvency II," Mr. Mills said. "A lot involves investments in (information technology) and having the infrastructure in place to deal with consequences of increased transparency, reporting and the like."

U.S. insurers that have European arms or operations in countries outside of Europe "have been building their efforts quickly to make sure they can address Solvency II," said Tom Hettinger, a director in Towers Watson & Co.'s Chicago office. These efforts run the "full gamut," he said, and include qualitative efforts such as examining the risk process as well as devising models.

Some domestic U.S. insurers "are viewing this as something that will come in the marketplace no matter what," Mr. Hettinger said. "We are working with companies that want to get their process in place," such as conducting their own risk solvency assessment. But not everyone is doing so, he said.

"Insurers are all keeping an eye on it," said the PCI's Mr. Gordon, a former senior counsel for the U.S. House Financial Services Committee. "Regulators are moving ahead aggressively even before the rules are done. But ultimately, insurers are waiting to see what the final standards and requirements will be before making wholesale changes."

He added that Solvency II views sovereign debt more favorably than it does corporate bonds when regulators view insurer assets. "The irony is that we have several sovereigns that are not the best investments at moment," said Mr. Gordon.

Looking ahead, the AIA's Mr. Snyder said the "next development will be the transition measures for third countries," including the United States. He said it was important that the development of those measures be open to the U.S. government, U.S. insurers and for the new Federal Insurance Office to play a major role.

AIA is "very much engaged" with the European private sector, the European Commission, the U.S. government and the NAIC in "any discussions relating to transatlantic issues, this being the major one," he said.

Failure to grant equivalence or imposition of unreasonable transition measures "could potentially harm transatlantic insurance commerce that would harm not only insurers but policyholders on both sides of the Atlantic," said Mr. Snyder. "Our efforts are strongly directed toward constructive dialogue and an ultimate equivalence finding for the United States."

Deloitte's Mr. Mills said insurers find the general regulatory uncertainty "particularly vexing."

Regarding Solvency II, "the industry is left to wonder when will it really happen and what it will really be like," he said.

## Salary: Compensation levels compared

CONTINUED FROM PAGE 1

salary was about \$113,800 Canadian (\$120,059) with average total compensation of about \$128,100 (\$135,146).

There were 908 respondents in the director of insurance and risk management category in the U.S. group with an average base salary of about \$126,800 and an average total compensation of about \$149,500. The Canadian sample included 78 respondents who identified themselves as director of insurance and risk management, reporting an average base

salary of about \$114,600 Canadian (\$120,903) and average total compensation of \$125,500 Canadian (\$132,403).

The lowest-paid risk management position reported in the survey results was claims analyst. There were 23 respondents in that category in the U.S. sample who averaged \$55,263 in base salary and \$56,403 in total compensation, while the Canadian group included six claims analysts reporting average base salaries of \$58,950 Canadian (\$62,192) and average total compensation of \$59,783 Canadian (\$63,071).

Conducted by enetrix, a division of Gallup Inc., the RIMS survey sought information on 16 positions, but gathered insufficient data or too small a sample size on five of them.

The data ultimately presented includes responses of risk management professionals in more than 1,750 organizations in the United States and 256 organizations in Canada. RIMS members submitted 2,400 usable surveys online between March and May, RIMS said in the survey executive summary.

"I was very pleased at our

response rate," said Ms. Levy, noting that responses were up approximately 22% over RIMS' last version of the survey in 2008. "It makes the results that much more reliable."

Of U.S. respondents, approximately 55.5% work for organizations with more than \$1 billion in annual revenue, while 36.6% of Canadian respondents work for organizations with more than \$1 billion in revenue.

This was RIMS' sixth "Risk Management Compensation Survey." Copies of the complete report can be ordered at [www.RIMS.org/Compensation](http://www.RIMS.org/Compensation). Data contributors receive a discount on the complete report.

### COURT-ORDERED LEGAL NOTICE

## IF YOU PURCHASED COMMERCIAL INSURANCE POLICIES FROM JANUARY 1, 1998 THROUGH DECEMBER 31, 2004, A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS

There is a proposed Settlement with certain insurance companies and brokerage firms who are Defendants in a class action lawsuit. In the suit, Plaintiffs allege that Defendants violated antitrust and other laws, by, among other things, allocating insurance policies or customers among the Insurer Defendants in return for the payment of certain commissions, and engaging in improper conduct with respect to the solicitation of bids for the policies. The **Settling Defendants** are AIG, Aon, AXIS, CNA, Crum & Forster, Fireman's Fund, Hartford, Liberty Mutual, Travelers, Willis/HRH and XL. The Settling Defendants deny the allegations made against them.

### WHO IS INCLUDED IN THE CLASS

The **Settlement Class** is defined as: All individuals or entities that, from January 1, 1998 through December 31, 2004, inclusive ("**Class Period**"), purchased commercial insurance policies from any of the **Insurer Defendants** through any of the **Broker Defendants**, or from another insurer after soliciting insurance policy quotes or indications from any Insurer Defendant through any of the Broker Defendants, except to the extent that the Broker Defendant was acting as a managing general agent or managing general underwriter for an Insurer Defendant or through a captive program.

**Insurer Defendants** include the following Companies, along with their affiliated entities: ACE, AIG, AXIS, Chubb, CNA, Crum & Forster, Fireman's Fund, Hartford, Liberty Mutual, Munich/Am Re, Travelers, XL and Zurich.

**Broker Defendants** include the following Companies along with their affiliated entities: Aon, Gallagher, HRH, Marsh & McLennan Companies, Inc. ("**Marsh**"), Wells Fargo/Acordia, and Willis.

A list of the Insurer Defendants and the Brokers Defendants is contained in a **Detailed Notice** published on the Settlement website at [www.insurancebrokeragesettlement.com](http://www.insurancebrokeragesettlement.com).

### WHAT DOES THE SETTLEMENT PROVIDE

The **Settling Defendants** have collectively agreed to pay the total amount of \$41 million to settle the claims against them. After deduction of certain fees and expenses from this amount, as permitted by the Court, 85% of the remaining money will be paid to certain purchasers of excess casualty insurance policies from certain of the Settling Insurers through **Marsh** (and/or its affiliates), and the remaining 15% will be used to fund a *Cy Pres* award, which is a charitable contribution, to Consumer Action (CA) and the Public Entity Risk Institute (PERI), and/or other recipients designated by the Court.

### WHO WILL RECEIVE A PAYMENT

Payments will be made only to Settlement Class Members that purchased excess casualty insurance policies from certain of the **Settling Insurer Defendants** (AIG, AXIS, Fireman's Fund, Liberty Mutual, Travelers, XL, and/or their affiliated entities), where the purchase was brokered by Marsh (the "**Excess Casualty Claimants**").

**If you are an Excess Casualty Claimant entitled to a payment, you do not need to do anything.** Payments to Excess Casualty Claimants will be calculated and made based on the information that your insurer has about the policy or policies you purchased, the premium you paid

and information about your participation in other settlements concerning this same conduct.

If you believe you are an Excess Casualty Claimant and you did not receive a notice of this Settlement in the mail, you should contact the Claims Administrator at **1-866-903-1176**, or visit the Settlement website at [www.insurancebrokeragesettlement.com](http://www.insurancebrokeragesettlement.com).

### WHAT ARE MY LEGAL RIGHTS

If you do not want to be legally bound by the Settlement, you must exclude yourself in writing from the Class. The deadline for exclusion is **August 30, 2011**. The **Detailed Notice** of this Settlement, available at [www.insurancebrokeragesettlement.com](http://www.insurancebrokeragesettlement.com), gives instruction on what information must be included in the Request for Exclusion, and where it should be sent. If you do not exclude yourself, but instead stay in the class, you may object or comment on the Settlement by **August 30, 2011**.

The Court will hold a **Hearing** to determine whether to approve the Settlement on **September 14, 2011, at 12:00 PM, in Courtroom 2B, Martin Luther King, Jr. Federal Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101**. If the Court approves the Settlement, then the Settling Defendants will be dismissed from the action and any Settlement Class Member that has not properly excluded itself from the Settlement Class will be deemed to have **Released** the Settling Defendants from all claims related to the Class Action and will not be able to sue the Settling Defendants for any of the conduct that was the subject of the Class Action. A copy of the Release is available at [www.insurancebrokeragesettlement.com](http://www.insurancebrokeragesettlement.com). At the **Hearing**, the Court will also decide whether to award attorneys' fees and expenses to Class Counsel and approve Service Awards to the Named Plaintiffs. Class Counsel has requested to be awarded attorneys' fees of no more than 25% of the Settlement Fund (\$10,250,000), and litigation expenses of no more than \$400,000.

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

### WILL PARTICIPATION IN THIS SETTLEMENT AFFECT MY PARTICIPATION IN OTHER SETTLEMENTS IN THE CLASS ACTION?

No. Not all of the Defendants have settled the claims against them and your participation in this Settlement will **not** affect your ability to obtain relief from any of the Non-Settling Defendants in the Class Action if there is a later judgment against, or Settlement with the Non-Settling Defendants.

### HOW CAN I OBTAIN ADDITIONAL INFORMATION?

If you think that you might be a Settlement Class Member, you can obtain more information, including a copy of the Detailed Notice, the Settlement Agreement and other documents relating to the Settlement by contacting the Claims Administrator at 1-866-903-1176 or by visiting [www.insurancebrokeragesettlement.com](http://www.insurancebrokeragesettlement.com).

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

# News Corp.: Bad news for D&O liability insurers?

CONTINUED FROM PAGE 1

According to market sources, Chubb Corp. writes New York-based News Corp.'s primary D&O coverage of \$20 million or \$25 million out of a total of at least \$160 million to \$180 million in coverage.

In addition, Chartis Inc. provides an excess layer of \$15 million of coverage above Chubb's layer. Chartis also is the lead Side A coverage insurer, providing an additional \$25 million of Side A cover, sources say.

To date, 10 people have been arrested in connection with the hacking scandal at Rupert Murdoch's media empire; the company's News of the World tabloid has been shut down; top officials at Scotland Yard have resigned; there has been parliamentary scrutiny; political fallout has engulfed British Prime Minister David Cameron; and there have been bribery charges, among other developments.

In addition, U.S. Attorney General Eric Holder has said an investigation is under way in response to reports that News Corp. employees hacked the phones of victims of the Sept. 11, 2001, terrorist attacks. An FBI spokesman confirmed that the allegations are being investigated.

Last week there were new charges that News of the World had hacked into the phone of a

British woman whose 8-year-old daughter was murdered by a repeat sex offender in 2000.

The issue has received congressional attention as well. U.S. Sen. Frank Lautenberg, D-N.J., has asked Mr. Holder and Securities and Exchange Commission Chairman Mary L. Schapiro to investigate News Corp.'s possible violation of the Foreign Corrupt Practices Act of 1977, which prohibits bribes to foreign government officials.

## Litigation

The scandal already has prompted several lawsuits.

A shareholder derivative lawsuit, led by plaintiff Gregory L. Shields, was filed in federal district court in Manhattan against News Corp. and its directors and officers. Two others have been filed in Delaware's Chancery Court in Dover by the Massachusetts Laborers' Pension & Annuity Funds and by Amalgamated Bank.

In addition, shareholder Lewis Wilder is the named plaintiff in a class action complaint filed against the corporation and its directors in New York.

In the meantime, public figures including English soccer player Ashley Cole, whose phones allegedly were hacked by News Corp. employees have filed suit against the corporation, according to reports.



REUTERS

To date, 10 people have been arrested in connection with the hacking scandal at Rupert Murdoch's media empire, and the company's News of the World tabloid has been shut down.

Any litigation filed so far is only the "tip of the iceberg," said Scott L. Vernick, a partner with law firm Fox Rothschild L.L.P. in Philadelphia.

The alleged bribes could create liability under the FCPA in the United States and the U.K. Bribery Act, said Edward Kirk, a partner with Clyde & Co. in New York.

News Corp. outside directors have retained New York-based law firm Debevoise & Plimpton L.L.P.

to represent them in connection with litigation and investigation of the company, according to the law firm.

News Corp. had no comment. Warren, N.J.-based Chubb and New York-based Chartis also did not comment.

## Insurance questions

Observers say there is likely to be an exclusion in the policy for criminal activity by directors or officers of the company that

applies if there is a final adjudication, but not if there is ultimately a settlement.

David M. Gische, a partner with Troutman Sanders L.L.P. in Washington, who is not familiar with the particulars of News Corp.'s coverage, said several policy forms would provide coverage for defense costs for criminal cases, at least to the extent that they lead to an indictment. Mr. Gische said "less likely, but possible" is the availability of defense costs if "it were simply a criminal investigation," he said.

The D&O insurance may be insufficient to cover all the costs, said Michael Chester, a principal with law firm Boundas, Skarzynski, Walsh & Black L.L.C. in New York. Pointing to News Corp.'s outside directors retaining attorneys at Debevoise & Plimpton, Mr. Chester said defense costs alone could be rather large.

Allegations in the securities class actions that information was misrepresented to the marketplace "could be a source of tremendous exposure," said Mr. Chester.

"It's going to cost hundreds of millions of dollars" to emerge from the situation, but the company will survive, said Richard J. Bortnick, a West Conshohocken, Pa.-based member of law firm Cozen O'Connor.

News Corp. is "too big" to fail, "and unless you can find a direct link to the people at the top, it'll be hard to blame them for things they can justifiably, or plausibly, say they had no knowledge of or involvement in," even if they created the atmosphere that led to the situation, Mr. Bortnick said.

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# AIG: Workers comp fight settlement near

CONTINUED FROM PAGE 1

Corrupt Organizations Act. The pool argued it was excluded from the 2006 settlement negotiations and alleged that its members paid states more than their appropriate share of residual market assessments because AIG was assigned too small a share of high-risk workers comp policies.

AIG countered with its own lawsuit, which alleged that its competitors "conspired to disable" a fund established under the 2006 settlement with New York authorities. AIG also alleged that competitors similarly underreported workers comp premiums.

Since then, the judge hearing both cases in Chicago, U.S. District Court Judge Robert Gettleman, dismissed the NWCRP as lead plaintiff. But the litigation continued when Liberty Mutual units Safeco Insurance Co. of America and Ohio Casualty Insurance Co. sued in 2009, seeking to replace the NWCRP and have the suit certified as a class action.

But seven commercial insurers, as interveners, argued recently that they, and not Liberty Mutual, should represent a class of about 500 insurers that have potential claims against AIG for underreporting.

The seven also argued in favor of the court approving AIG's \$450 million settlement offer, which Liberty Mutual has opposed.

Last week, Judge Gettleman said that in addition to granting preliminary approval for the \$450 million settlement, he would certify the seven insurers as class representatives, sources familiar with the case said.

As of late last week, the judge had not issued a written opinion, but his statements in court were viewed as a victory for AIG.

"AIG is pleased that the court stated today that it will grant preliminary approval of the proposed settlement," the New York-based insurer said in a statement. "AIG is optimistic that the proposed settlement will soon receive final approval as a fair and appropriate resolution of this litigation."

A Liberty Mutual spokesman said the insurer would wait for the judge to issue a written opinion before commenting.

Sources say Liberty Mutual's options include appealing the judge's ruling or opting out of the class and continuing to battle AIG on its own.

But the judge's statements represent a significant advancement of the case because settlement notices will go out to members of the class,

sources said.

Judge Gettleman set an Aug. 5 hearing to discuss the settlement notices, sources said.

"It's an important next step to seeing whether this case can get resolved," said a source familiar with the litigation.

Class members will have a certain amount of time to accept the proposal, opt out, object or do nothing, sources said.

Insurers eligible for about 60% of the settlement offered already have stated their support or opposition to the deal, the sources said.

Meanwhile, the \$350 million settlement with Mr. Spitzer never was completed. Among other problems, it relied on state insurance regulators to settle claims on behalf of insurers participating in state residual markets, but the regulators did not have the legal authority represent them.

Then last year, AIG agreed to pay \$100 million in fines to regulators in all 50 states plus another \$46.5 million in additional taxes and assessments for its alleged underreporting of workers comp premiums.

However, conclusion of that arrangement, known as a regulatory settlement agreement, depends on AIG resolving its litigation with the other insurers.

# Transatlantic: Validus sued after takeover bid turns hostile

CONTINUED FROM PAGE 3

which it said was \$55.95 per share based on the July 12 closing price. Among other allegations, Transatlantic said Validus failed to disclose that its stock price later declined enough to significantly diminish the bid's value.

In its lawsuit, Transatlantic seeks to compel Validus to correct its alleged misstatements.

Validus Chairman and CEO Ed Noonan retorted that Transatlantic is "spreading misinformation" to hide the fact that Validus' bid "provides greater market value." In a statement, he said the Transatlantic board has taken "steps to entrench themselves by establishing a poison pill, initiating meritless legal action and changing corporate bylaws in an apparent effort to more easily manipulate stockholder meetings."

Transatlantic last week filed a plan with the Securities and Exchange Commission that CEO Robert Orlich called a "commonly used" instrument "to assist in protecting stockholders from abusive takeover tactics."

Under that plan, if someone acquires beneficial ownership of at least 10% of Transatlantic, every shareholder gets the right to buy stock at a 50% discount, thereby diluting the acquirer's holdings.

Kevin Lee, a senior credit officer at Moody's Investors Service in New York, said last week's developments show that "it's going to be a more contentious path to a merger" for Transatlantic. "At the end of the day, what matters is what the Transatlantic shareholders think."

### How talks broke down

Validus said Transatlantic wouldn't discuss its proposal without a "standstill" provision that would contractually prohibit the Bermuda reinsurer from pursuing its bid without board approval.

But Transatlantic board Chairman Richard S. Press said the agreement it asked Validus to sign is "the standard confidentiality agreement" required under its agreement with Allied World, with "substantially" the same terms and conditions that Allied World agreed to, including a standstill provision.

In contrast, Validus sent Transatlantic's board a draft confidentiality agreement that had no standstill provision and included other terms that would have

**The Transatlantic board has taken 'steps to entrench themselves by establishing a poison pill, initiating meritless legal action and changing corporate bylaws in an apparent effort to more easily manipulate stockholder meetings.'**

Ed Noonan, Validus Holdings Ltd.

allowed Validus to disclose Transatlantic's information, Mr. Press said in the statement.

The Allied World deal "will provide greater long-term value potential to Transatlantic's stock-

holders than Validus," Transatlantic said in its statement, noting that it consulted independent advisers to reach its conclusions.

Allied World, whose headquarters is in Zug, Switzerland, said last week that integration planning with Transatlantic was "well under way," noting that rating agencies reacted favorably to its offer, among other things.

New York-based Standard & Poor's Corp., for example, put its BBB+ counterparty credit rating on Allied World and its A counterparty credit and financial strength ratings on Allied World's subsidiaries under review with posi-

tive implications. In a statement, S&P said that being part of a leading global reinsurance group could improve Allied World's competitive position.

"We view the fact that Transatlantic and Allied World entered into a definitive agreement as a stronger possibility of success than Validus' (unsolicited) bid prevailing," said Tracy Dolin-Benguigui, an associate director at S&P in New York.

Developments suggest there's more momentum in favor of the deal between Transatlantic and Allied World, but shareholders have the final say, she said.

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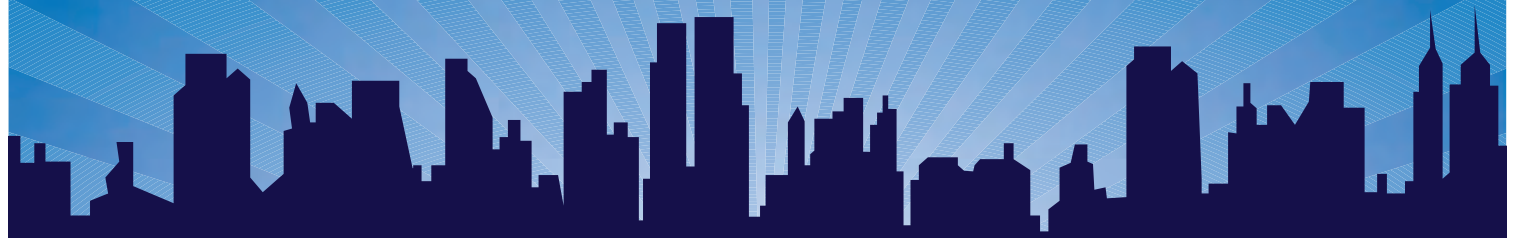


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# INDEX

### Issue of August 1

ADVERTISER	PAGE #
Aon Corporation	2
Business Insurance	5, 15, 19, 21, 23
Chartis	24
Devonshire	18
Employee-Benefit Ins Brokerage	
Antitrust Litigation	17
Federation of Regulatory Counsel	11

## Defined: Exodus

CONTINUED FROM PAGE 4

change makes it easier for others to follow," Mr. Glickstein said.

Employers are phasing out both traditional defined benefit plans and hybrid plans, such as cash balance plans, which legally are defined benefit plans that combine elements of defined benefit and defined contribution plans.

Just 13 Fortune 100 companies offered a traditional defined benefit plan to new salaried employees as of May 31, down from 17 in 2010, 19 in 2009 and 23 in 2008.

That's a major change from the 1980s, when defined benefit plans were the norm among the nation's largest employers. In 1985, for example, nearly 90% of Fortune 100 companies offered a traditional plan to new employees.

Hybrid plans, which grew rapidly prior to a flood of lawsuits alleging that cash balance plans were age discriminatory, also are being phased out.

As of May 31, 17 Fortune 100 companies offered hybrid plans to new salaried employees, down from 20 at the end of 2010 and 24 in 2009 and 2008. Hybrid plan sponsorship peaked in 2002, when 35 Fortune 100 companies offered the plans.

Benefit experts thought cash balance plan growth might resume after the passage of the Pension Protection Act of 2006, which made it clear that the basic design of the plans did not discriminate against older employees.

While a handful of big employers, including Dow Chemical Co. and The Coca-Cola Co., set up new plans after the passage of the PPA, those startups were more than offset by other Fortune 100 companies, such as The Boeing Co., CIGNA Corp. and Wells Fargo & Co., that began to phase out their cash balance plans.

One reason that more large companies did not set up cash balance plans after the passage of PPA is continued regulatory uncertainty, Mr. Glickstein said. For example, the Internal Revenue Service has yet to finalize rules on how much interest employers can credit to employees' accounts.

As employers have moved away from defined benefit plans, the vast majority of Fortune 100 companies now offer only a defined contribution plan to new salaried employees, according to Towers Watson.

As of May 31, 70% of the Fortune 100 offered only defined contribution plans, up from 63% in 2010, 57% in 2009 and 53% in 2008. As recently as 1998, just 10% of Fortune 100 companies offered only such plans.

## VPP: Program criticized

CONTINUED FROM PAGE 3

helped avoid an accident or fatality.

"OSHA could do a better job of oversight once a company gets a VPP designation," Mr. Hayslip said. "Companies shouldn't just get a star, they should take it. I'm not seeing a lot of firms out there that take it, so I'm not sure the bar is set high enough."

OSHA did not respond to requests for comment about its VPP program.

While maintaining a perfect safety record might be ideal, Mr. Hayslip and other safety professionals said there will be accidents no matter how much emphasis is put on safety and practices that are put into place.

However, if an injury or fatality occurs at a VPP-designated site, some safety professionals said the option of a third-party evaluation could take place in addition to an

evaluation by OSHA.

One issue that companies face is "consistency in performance," said Jim Johnson, group vp of workplace safety initiatives for the Itasca, Ill.-based National Safety Council.

"Any safety management system relies on quality product efficiency, and it's a challenge to maintain that system and its requirements," he said. "It's important that (these companies) have a means to evaluate and assess the quality and performance of their safety management systems."

Mr. Johnson, who previously was a vp in Liberty Mutual Group Inc.'s loss prevention department, said various studies have shown a link between a company's performance and its safety record. He said a company with a good safety management program will have lower frequency and severity of workers compensation claims.

## Underwriting: Cyber attack data lacking

CONTINUED FROM PAGE 4

area," he said.

Another underwriting factor to consider is how a company handled a breach that already occurred, Mr. Stapleton said.

The company's place in its life cycle also is a factor, Mr. Dietsche said. With a startup, the insurer is "probably dealing with one person" vs. many people the underwriter would deal with in larger, more mature companies, he said.

There is a degree of subjectivity in setting the cost of cyber coverage, Mr. Dietsche said. "There's a lot of underwriter gut feel on this," because there is not as much statistical data available in this area as in others. This is why the underwriting process varies by underwriter, he said.

The underwriters at the IRMI gathering also were asked how they keep up with emerging technology and the resulting exposures when underwriting a piece of business. "It's always a challenge to keep up with new vulnerabilities," Mr. Stapleton said.

Cyber insurance policies are crafted fairly generally, "so it does-

### IRMI draws 100 to San Francisco

**SAN FRANCISCO**—The cyber risk insurance market is "white hot," said Richard S. Betterley, president of Sterling, Mass.-based Betterley Risk Consultants L.L.C., who spoke about the market at International Risk Management Institute Inc.'s first Cyber & Privacy Risk Conference.

Other experts at the June 20-21 conference spoke about network security information and privacy risk, contractual risk transfer strategies, and data breach incident response vendor management and insurance.

The conference was attended by about 100 risk managers, brokers, agents, insurers and attorneys.

—By Judy Greenwald

n't have specific triggers in there." A trigger could be unauthorized access or use, but the policy "doesn't necessarily say how unauthorized use or access

Having a safety management program also can affect insurance.

Gary Clevenger, consulting director for Chicago-based CNA Financial Corp.'s risk control department, said the VPP designation shows a dedication to safety and carries some weight with insurers.

"When we evaluate an account, that designation is evidence of accountability and integrity" he said. It also shows a business is "establishing a safe culture in the workplace."

Mr. Johnson noted that while VPP status doesn't guarantee underwriters have a great risk, it does indicate a "better risk" from a workers comp perspective.

"We look to see if the company is constantly evaluating their safety program as it should be evolving and changing just as the economy and technology changes," Mr. Clevenger said.

"A safety program...should be an evolving and living program," he said.

occurs." By keeping it general, "you don't have to keep updating the policy wording," he said.

Underwriters are a "little bit ahead and behind" the curve at the same time, said Mr. Economidis. They read a lot of forward-thinking materials, while providers inform them of the "latest and greatest products." On the other hand, because they are not on the front lines, sometimes underwriters are not aware of the "practical things going on today," he said.

"We insure what we know," said Mr. Dietsche. "We're constantly watching what's going on in cloud computing," which can create new exposures.

"It takes a little bit of time for the organization to come to a consensus that they're ready to buy" and that involves an education process, said Mr. Economidis. In one case, he said, it took a health organization a year to decide to buy the coverage, but it is "something an organization needs to go through."

Mr. Dietsche said even though buyers are able to save premium dollars in a soft market, they may be unwilling to spend on new insurance.

risk mitigation as well. Create a culture where it is a "bigger deal than, 'I just can't find my phone,'" so workers do not wait five days before reporting a loss, she said.

She also advised businesses to make sure that insurance includes the use of mobile devices and take precautions in using social media.

"I think it's an important part of the risk management process" to think about a social media strategy, said Ms. Stephens.

She recommended "pushing back" on the marketing and sales department, asking, "Do we have a thoughtful strategy behind what we're doing?" Ask them to make the business case to you" for their activities on social media.

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## Mobile: Enormous risks

CONTINUED FROM PAGE 4

inal suspects potentially could be extended to raise common law invasion of privacy issues for employers, she said.

The European Union, she said, has issued clear guidance that it is unlawful to track an employee's location unless there is a "legitimate business purpose in doing so," Ms. Stephens said.

But steps can be taken to reduce the potential for misusing tracking applications, she said.

Employers should not lie about what they are doing, provide

detailed notice if they are tracking employees "and, where possible, obtain specific written consent. Then limit the location tracking to work hours," and do not do it on weekends, she advised.

In terms of risk mitigation "we need to focus on encryption," which is "incredibly important," said Ms. Stephens.

Talk to the company's security about encryption, making sure workers have strong passwords and that remote wipes of data can be conducted if the device is lost or stolen, Ms. Stephens said.

Corporate culture plays a role in

## News In Brief

CONTINUED FROM PAGE 1

Property Casualty Insurers Assn. of America issued statements urging approval of his nomination.

### Bresnahan named president of Lexington

David J. Bresnahan has been named president of Lexington Insurance Co., succeeding Peter Eastwood, who now is president and CEO of parent company Chartis Inc.'s U.S. and Canada region. Mr. Bresnahan previously was executive vp of the casualty, health care and program divisions of the surplus lines insurer.

### Key E.U. panel backs delay of Solvency II

A key European Parliament committee has recommended that full implementation of Solvency II, the European Union's new risk-based capital regulatory regime, be delayed by one year until Jan. 1, 2014. A delay would better enable national regulators and companies to get up to speed with Solvency II's requirements, the panel said.

### U.S. audit questions Afghan comp program

A government audit concluding that an insurance program for injured contract workers in Afghanistan potentially lost tens of millions of dollars also calls into question CNA Financial Corp.'s billing methods. The audit, released by the Special Inspector General for Afghanistan Reconstruction, blames the U.S. Army Corps of Engineers for failing to exercise strong oversight of its Defense Base Act workers compensation insurance program in Afghanistan, which led to higher insurance costs than necessary.

### NFL deal allows comp claims in other states

The National Football League's new collective bargaining agreement will allow players to file workers compensation claims in states where their teams are not based, a loophole the league had tried to close during negotiations. The NFL and the National Football League Players Assn. signed off on the new

accord with both sides agreeing on terms that will allow the season to start Aug. 4. Workers comp was among sticking points the two sides had yet to agree on as negotiations wound down.

### Alterra sets up branch in Zurich

Alterra Capital Holdings Ltd. said it is establishing a Zurich branch of its Lloyd's of London operation and has named Dirk Turley, who co-founded Glacier Group, as general manager of the Swiss facility. Alterra operates Alterra at Lloyd's Ltd., a managing general agent for syndicate 1400.

### New Haven settles reverse bias suit

A group of New Haven, Conn., firefighters have accepted settlement offers from the city that total about \$2 million to end a long-running reverse discrimination case. The offers include cash and additional pension benefits to the firefighters who in 2009 won a U.S. Supreme Court case against New Haven after they were passed over for promotions. The city's Civil Service Board had refused to certify results of two promotion examinations on the grounds that the tests might have had a disparate impact on black firefighters.

### Munich Re places catastrophe bond

Munich Reinsurance Co. has obtained \$150 million in catastrophe bond protection from European windstorms, the first non-U.S. hurricane-exposed cat bond issued since October 2010, GC Securities said. The variable-rate notes were placed through Munich Re's catastrophe bond program, Queen Street III Capital Ltd. The German reinsurer's asset management company, MEAG Munich ERGO Asset Management GmbH, set up a U.S. Treasury bill fund to collateralize the debt. GC Securities acted as sole underwriter.

### PBGC takes over pension plan

The Pension Benefit Guaranty Corp. is taking over the underfunded pension plan of Alabama Aircraft Industries Inc., a Birmingham-based aircraft maintenance provider that filed for bankruptcy protection this year. The plan, which has about 3,000 participants, has \$82.4 million in assets and \$142.8 million in liabilities.

## Perspectives: Environmental liabilities

CONTINUED FROM PAGE 7

layers of coverage on the "y" axis. This includes primary coverage, excess coverage, policy gaps, insolvencies and other coverage provisions. These include exclusions, deductibles, self-insured retentions and aggregate limits to name just a few.

Once the chart is prepared, it is easy to identify gaps in coverage, the reasons for the gaps and any "secondary" evidence indicating coverage. The acquiring company should understand the process the policyholder has used to establish coverage for its missing policy(ies). This will avoid covering the "same ground" should the acquiring company want to pursue additional efforts to find missing policies.

The evaluation also should examine which insurers are solvent, in schemes of arrangement, liquidation, runoff or insolvent. The evaluation must identify policies where: the target company's insurers cashed out, or "bought back" the coverage; and any coverage-in-place agreements. The coverage-in-place agreements between the policyholder and insurer often provide for paying claims, terms to reimburse defense and indemnity costs, and the amount of coverage available.

Based on the coverage-in-place agreement, a percentage discount may be required to reflect insurers that are insolvent. The discount factor should include an assessment of the likelihood of collecting claims decades into the future. The carriers' ability to pay claims can be assessed based on target company-provided information and data as well as ratings from A.M. Best Co. Inc., Standard & Poor's Corp., Moody's Investors Services and other rating agencies.

The evaluation of potential recoveries also needs to address how any "orphan share" associated with insolvent insurers will be allocated, whether that share will be allocated to the other carriers or the policyholder.

When evaluating insurance as part of an M&A due-diligence effort, the issue of choice of law generally is a foregone conclusion for policies with a choice-of-law provision and where insurers are paying claims. The availability of recovery from policies that previously have not been triggered will vary greatly depending on the jurisdiction. If needed, certain assumptions and dis-

counts can be applied to reflect judgments regarding "place of contract," where the policy was issued or the principal location of the insured risk.

The treatment of aggregate limits can vary by jurisdiction and result in differing interpretations. In the case of multiyear policies, the policyholder likely will assert multiple annual limits as would be provided by separate policies for each year or even fraction of a year for the "stub" period after the last full-year policy period. Conversely, the insurer will take the position that a multiyear policy will provide coverage only as one policy with one set of limits. This significantly affects the amount of recovery available.

The trigger of coverage defines the period and the insurance policies to which claims can be allocated. Coverage under pre-1985 CGL policies usually is provided on a per-occurrence basis and policies generally respond if the damage or loss occurred during the policy period regardless of when the claim is made. Conversely, a claims-made policy provides coverage only if a claim is made during the policy period.

There are four ways to trigger CGL policies: an exposure trigger, a "manifestation" trigger, a "continuous" trigger and an "injury-in-fact" trigger.

Generally, the exposure trigger theory implicates policies on the date of first exposure, the manifestation trigger begins when the harm or damage first manifests itself or is detected, the "continuous" trigger coverage includes all policies from first exposure to harm through manifestation, and the "injury-in-fact" trigger implicates the policy or policies in force at the time of the onset of actual harm may provide coverage.

### Allocation

Generally there are three allocation methodologies that can be evaluated: "all sums," "pro-rata," or the time on the risk; and "coverage provided," or an allocation based on policy limits multiplied by years of coverage.

Accepted methodologies vary by state and by type of claim. For example, environmental property damage in New York is allocated under the pro-rata approach, whereas it would be allocated under an all-sums approach in Pennsylvania, according to Munich Re. Each methodology may result in significantly differ-

ent recovery amounts for the policyholder as well as primary and excess insurers. Analyzing different allocation scenarios will bracket the likely recovery ranges.

Allocation methodologies also affect potential coverage litigation approaches and, thus, the net value of coverage. For example, the all-sums approach allows the insured to pick and choose which year of coverage to respond to a loss. The benefits of this are twofold: The policyholder can avoid periods of no or low coverage and/or policies that were issued by a now-insolvent carrier. The policyholder also can minimize the cost of obtaining coverage by seeking coverage from a limited number of insurers rather than numerous insurers as would typically be required under a pro-rata allocation.

Once the costs have been allocated to the policies, an assessment of the erosion of coverage can examine the timing and erosion of policies, both primary and excess. Again, the purpose of this analysis is estimate the availability of coverage to pay claims going forward. Erosion looks at how insurers treat defense and indemnity costs. In addition, as primary coverage is exhausted, excess coverage may be triggered.

### Conclusion

The due diligence team and risk managers in particular should note that insurance recovery is constantly evolving, and analysis as part of due diligence efforts during the M&A process will provide significant insights into the target company's legacy liabilities and the availability and amount of insurance to cover those liabilities. The result of "kicking the insurance tires" provides the necessary analysis to evaluate the legacy liabilities and potential coverage by insurance to avoid potential coverage issues once the M&A is complete.

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## ALL THE BENEFITS, NONE OF THE WORK

An employee at the Norfolk Community Services Board in Virginia reportedly collected nearly \$320,000 plus benefits during the 12 years she remained on the payroll but did not report for work.

Office assistant Jill McGlone had been suspended for reportedly revealing confidential medical information. Her situation came to light when the new executive director discovered and reported it.

Four managers and an executive assistant were fired or forced to resign as a result.

Board Chair Lewis Taylor said the money should have been used to treat low-income Norfolk residents with mental illness or substance abuse issues.

Meanwhile, two employees forced to resign are suing the board for defamation. In turn, the board is suing



Ms. McGlone

several of the dismissed staff members, including Ms. McGlone.

Norfolk Commonwealth's Attorney Greg Underwood announced that he did not have enough evidence to charge anyone in the incident.

Ms. McGlone reportedly said she feels vindicated by the decision not to bring criminal charges, but also said media attention has ruined her reputation.

"My name and my picture have been all over the newspaper and all over TV," she said. "You haven't mentioned anybody but my name. It's all about me. It's about Jill McGlone."

Ms. McGlone also alleges she was wrongfully terminated and that her civil rights were violated, and she has filed for unemployment benefits.

## INSURER HIT BY TRICKSTER TWEETS

A life insurance firm dropped a lawsuit against a Twitter prankster after a potential legal misstep. Coventry First L.L.C., a Fort Washington, Pa.-based secondary life insurance company, sued the Twitter imposter in June for posting fake messages on behalf of the company.

The suit, filed in a Philadelphia federal court, is the second lawsuit involving Twitter-squatting—in which someone claims an identity on Twitter that isn't theirs—according to reports.

As a player in the secondary life insurance market, companies such as Coventry First have been criticized for profiting from a person's death as investors pay individuals for the right to collect on their policies, according to reports.

The Twitter prankster, with the handle @coventryfirst, sent tweets cheering for the demise of policyholders, according to reports.

In the suit, the insurer accused the imposter of unfair

competition and trademark infringement, saying that the "numerous tweets about the life settlement industry is likely to cause confusion in the marketplace," according to court documents.

But a month later, the insurer dropped the suit after its attorneys sent a letter of subpoena to Twitter requesting the account holder's identity, according to a blog post by Paul Levy, an attorney who represented the anonymous user.

"(W)e were aided by a tactical misstep by Coventry First's counsel at Cozen O'Connor—instead of following the federal rules by filing a motion for leave to take early discovery, the lawyers simply sent a subpoena to Twitter," Mr. Levy said in his blog post. "It is unclear why they took the shortcut."

Cozen O'Connor declined to comment.

According to Mr. Levy, Coventry First's demand for the Twitter user's identity could have sanctioned the insurer for discovery misconduct.



# End Page

Contributing: Jeff Casale, Roberto Cenicerros, Judy Greenwald, Mike Tsikoudakis



AP PHOTO

Joe Pesci is suing Fiore Films L.L.C., claiming the company reneged on an offer. The actor gained 30 pounds for the role.

## Actor Pesci files suit charging big fat lie

Joe Pesci is not amused with the idea that he has gained more than 30 pounds for a role he says he was promised but didn't get.

In response, Mr. Pesci filed a lawsuit in Los Angeles against Fiore Films L.L.C., the producer of "Gotti: In the Shadow of My Father," a drama about the son of Mafia boss John Gotti Sr.

According to reports, Mr. Pesci claims he was offered the role of Gotti Sr.'s right-hand man, Angelo Ruggiero, and gained 30 pounds for the role. Mr. Pesci thought he was going to get paid \$3 million for the role, but Woodland Hills, Calif.-based Fiore Films reneged on its initial offer and instead offered the actor \$1 million and a lesser role, according to reports.

The "plaintiff secretly planned to use (Mr. Pesci's) name and likeness to promote the film and

then to later concoct some pretext for terminating the contract so as to avoid paying plaintiff anything for the substantial publicity and 'buzz' that was generated," the lawsuit said.

The movie also stars John Travolta, Al Pacino, Kelly Preston and Lindsay Lohan.

After the original alleged offer, Mr. Pesci "ended his very strict and healthy diet, and has so far gained approximately 30 pounds in anticipation of playing Ruggiero, who was well-known for his heavy and stocky build," the lawsuit said.

Mr. Pesci, who has starred in big movies such as "Raging Bull," "Goodfellas" and "Casino," usually plays characters that don't like to be messed with, and he looks to be throwing his weight around in this situation.



## Bus insurer says claim not fair

A video recording put the brakes on a 69-year-old woman's alleged scheme to take a Haverhill, Mass.-based bus company and its insurer for a ride.

Now, even her attorney no longer wants to represent her, according to a recent report on the website of the North Andover, Mass., Eagle-Tribune.

Dolores Alvarez claimed she suffered a painful back injury in 2009 while riding in a Merrimack Valley Regional Transit Authority bus. She was among eight passengers on the bus when a van sideswiped it, then kept going.

She told Travelers Cos. Inc. that the hit-and-run crash caused her body to jerk forward and then backward, hitting her neck and back on the seat.

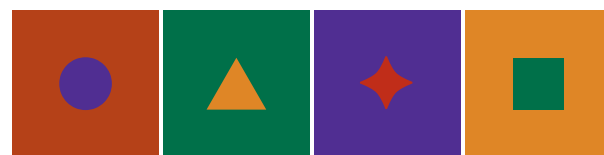
However, a video recording inside the bus showed that the impact was too slight to cause the injuries and Travelers rejected her claim. When her attorney saw the video, he reportedly withdrew as the woman's attorney.

Now she has been charged with filing a fraudulent insurance claim.

"To anyone watching that video, it's pretty obvious that nobody got injured," Lawrence, Mass., Police Chief John Romero told the Eagle-Tribune.

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Professional Liability	Oct 31	Oct 19
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## ▲ Brokers

Feature	Issue	Close Date
Industry Financials: First-Half Results	Aug 22/29	Aug 17
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## ▲ Brokers (continued)

Feature	Issue	Close Date
<b>Special Report: Construction Risks</b>	Nov 14	Nov 2
Industry Financials: Nine Month Results	Nov 21	Nov 9
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## ◆ Insurers/Reinsurers

Feature	Issue	Close Date
Industry Financials: First-Half Results	Aug 22/29	Aug 17
Health Care Reform: Impact on Employers		
<b>Special Report: Alternative Risks</b>	Sept 5	Aug 24
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Excess & Surplus Lines Report	Oct 10	Sept 28
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<b>Special Report: Construction Risks</b>	Nov 14	Nov 2
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## ◆ Insurers/Reinsurers (continued)

Feature	Issue	Close Date
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## ■ Middle Market

Feature	Issue	Close Date
Industry Financials: First-Half Results	Aug 22/29	Aug 17
Health Care Reform: Impact on Employers		
<b>Special Report: Alternative Risks</b>	Sept 5	Aug 17
Workers Comp and Safety Management	Sept 12	Aug 31
Global Programs Reinsurance: Rendez-Vous Report	Sept 26	Sept 14
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