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In Brief

P/C insurers' income falls 67% in first half

The U.S. property/casualty insurance industry's net income fell 67% to $6.9 billion during the first six months of this year compared with the same period a year earlier, according to a report by A.M. Best Co. Inc. The industry's combined ratio deteriorated more than 9 percentage points to 109.6%, according to the report. The industry sustained $27 billion in catastrophe losses during the first half of this year, which added 12.8 percentage points to the combined ratio.

Nationwide buying Harleysville Mutual

Nationwide Mutual Insurance Co. has entered into a definitive agreement to acquire Harleysville Mutual Insurance Co. in a deal that will expand

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SPOTLIGHT

MIDDLE-MARKET RISKS

Midsize firms dive into big risks in overseas markets; specialty cover tackles international risks; midsize firms likely targets for cyber data thieves; focus on safety can help firms with wellness; E&O capacity for event planners cheap, plentiful. **PAGE 11**

WORKERS COMPENSATION

State just says 'no' to opioids in comp

Washington guidelines curb prescribing

By ROBERTO CENICEROS

Early data show that a controversial Washington state medical guideline has played a part in reducing injured-worker deaths caused by a dramatic rise in the prescribing of opioid pain medications.

The guideline recommends that doctors curb prescribing large doses of the opioid painkillers, which the federal government blames for a nationwide public health epidemic of addiction and deaths paralleling a rise in the number of prescriptions written along with an increase in dosage amounts prescribed.

Medical experts say Washington state's guideline for chronic, noncancerous pain could serve as a model for other states looking to reduce deaths and addiction among workers compensation claimants and the general population.

They say such guidelines are called for because workers with relatively minor workplace injuries are ending up addicted or dying from overdoses.

"It's one of the most tragic outcomes in work comp," said Robert J. Malooly, former assistant director for the Washington State Department of Labor & Industries' Insurance Services Division and current CEO of Claim Maps L.L.C. in Olympia, Wash. "Someone comes in with a back sprain that otherwise would have resolved on its own and they wind up dying of an overdose."

See **COMP** page 24

> **'It's one of the most tragic outcomes in work comp. Someone comes in with a back sprain that otherwise would have resolved on its own and they wind up dying of an overdose.'**
>
> Robert J. Malooly, Claim Maps L.L.C.

REINSURERS

Transatlantic attracts another bidder

By SONJA RYST

NEW YORK—Solid financials, low stock values and a planned change in leadership are factors drawing several bidders for Transatlantic Holdings Inc., including a group that reportedly includes former General Re Corp. CEO Joseph Brandon.

Last week, Transatlantic said in a statement that it had entered into a confidentiality agreement with an unnamed third party that was in addition to similar agreements it already had with Validus Holdings Ltd. and National Indemnity Co., a unit of Omaha, Neb.-based Berkshire Hathaway Inc.

Transatlantic also said it had agreed with Validus not to take any action through Oct. 31 on pending litigation related to Validus' previously hostile takeover bid for Transatlantic.

The bidding for Transatlantic, the ninth-largest reinsurer in the world according to the 2011 *Business Insurance* ranking, intensified after its planned merger with Zug, Switzerland-based Allied World Assurance Co. collapsed in September.

Mr. Brandon and Dan H. Jester, a former U.S. Treasury Department official, reportedly are part of an investor group that has begun negotiations with Transatlantic.

Messrs. Brandon and Jester could not be reached, and a

See **TRANSATLANTIC** page 24

HEALTH CARE BENEFITS

Health care cost hikes increasing

Aon, KFF studies show upward trend

By JOANNE WOJCIK

WASHINGTON—Increases in group health insurance plan costs spiked this year and are expected to continue climbing in 2012, according to two new surveys.

The Kaiser Family Foundation and the Health Research & Educational Trust survey of 2,088 employers nationwide, released last week, found that premiums for family coverage rose an average of 9% to $15,703 in 2011 compared with an average increase of just 3% in 2010.

Meanwhile, a report released today by Lincolnshire, Ill.-based benefit consultant Aon Hewitt Inc. of 371 large, mostly self-funded employers, found that health benefit plan costs climbed 7.5% to an average of $9,792 per employee in 2011 and are projected to grow another 7% to an average of $10,475 per employee in 2012.

The key difference between the KFF/HRET and Aon Hewitt surveys is that the KFF survey included more fully insured plans, 40%, and more small and midsize firms, 85%, with fewer than 5,000 workers. More than 75% of the data from the Aon Hewitt survey was collected from large, self-funded employers with employee populations of more than 10,000.

Still, benefits experts note that both surveys point out an alarming trend: The cost of health care is surging for all employers, regardless of size or whether they buy insurance or self-fund their health benefit programs.

Perhaps more disconcerting is the fact that other surveys, including one released last week by Consumer Reports, show that health care utilization is down as fewer people

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Week of September 26, 2011

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2. Workers comp claim frequency posts first rise since 1997: NCCI
3. Health care reform law penalties for employers not set
4. Obama health care law cleared for Supreme Court review
5. Mich. insurers seek to bar comp funding of medical marijuana
6. Nadine Moore joins Lockton as senior vp, leaves Aon
7. Nationwide to buy Harleysville to expand commercial reach
8. Marsh names Liz Flynn to lead U.S. consumer business
9. Deloitte sued for $7.6B, accused of missing fraud
10. Most E.C. members back delaying Solvency II until 2014

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HEALTH CARE REFORM

High court to rule on pre-emption

Few other business cases placed on the docket

By MARK A. HOFMANN

WASHINGTON—The U.S. Supreme Court opens its October term Monday with a docket unusually light on risk management- and insurance-related cases.

In fact, the docket contains relatively few business-related cases, as Robin Conrad, executive vp of the Washington-based National Chamber Litigation Center Inc., which handles litigation for the U.S. Chamber of Commerce, noted in a pre-term briefing late last month. As of late September, only 41% of the high court's docket consisted of business-related cases, compared with 45% at the same time last year.

Overshadowing risk management-related cases is the possibility that the high court will accept a case that could determine whether the health care reform law's requirement that individuals purchase health insurance can pass constitutional muster. The Obama administration last week declined to ask the full 11th U.S. Circuit Court of Appeals to review a 2-1 decision by a three-judge panel of that court in August that declared the provision unconstitutional. That opened the way for possible Supreme Court review, which the Obama administration requested last week.

But issues that have drawn risk management and insurer attention in past terms, such as limits on punitive damages, do not appear on the court's current docket.

However, the court will decide at least three cases dealing with federal pre-emption of state law. One of the most closely watched is a consolidated case from California known as *Toby Douglas, Director, California Department of Health Care Services vs. Independent Living Center of Southern California Inc. et al.*, involving the federal Medicaid Act. The case, oral arguments of which are scheduled for Monday, is the first case the Supreme Court will hear this term.

Under the Medicaid Act enacted in 1965, states receive federal money to provide medical care for needy people. States that accept the money have to comply with certain federal regulations. California accepted the money, but then promulgated statutes that reduced payment rates to providers under the state's Medicaid program.

At issue in the case, and the other two with which it was consolidated—*Douglas vs. the California Pharmacists Assn. et al.* and *Douglas vs. Santa Rosa Memorial Hospital et al.*—is the scope of federal pre-emption of state law. The case revolves around whether the U.S. Constitution's supremacy clause allows the Medicaid providers and recipients affected by the rate reductions to seek injunctive relief on pre-emption grounds, and whether the California statutes that imposed the rate reductions conflict with the federal Medicaid Act and are therefore pre-empted by it.

AP PHOTO

The Supreme Court may review a provision in President Obama's health care reform law.

Ms. Conrad said the issue of pre-emption is "all about preventing regulatory Balkanization."

The other cases involving federal pre-emption issues are *Gloria Kurns vs. Railroad Friction Products Corp.* and *National Meat Assn. vs. Kamala Harris*. At question in *Kurns* is whether federal railroad safety acts—notably the Locomotive Inspection Act of 1911—pre-

See **COURT** page 22

RISK MANAGEMENT

Banks still learning lessons

Rogue trader case shows serious flaws in risk management

By JUDY GREENWALD

Banking institutions still have risk management lessons to learn in preventing rogue traders from racking up billions of dollars in losses, but experts say the problem is not entirely avoidable.

The latest rogue trading unfolded in recent weeks, with reports that London-based UBS A.G. trader Kweku M. Adoboli's scheme triggered $2.3 billion in losses at the Swiss-based firm. The situation also led to last week's resignation of UBS CEO Oswald J. Grübel.

UBS has $200 million of directors and officers liability coverage—$70 million of which is Side A, covering individual directors and officers—with Zurich-based ACE Ltd. leading the program on the primary side, a source confirmed.

ACE and New York-based Marsh Inc., which is the broker on the account, declined comment.

Other rogue trader incidents include the $7.62 billion fraud by trader Jerome Kerviel of Paris-based Société Générale S.A. in 2008. In 1995, Barings P.L.C., one of the most respected banks in London, collapsed after more than $1.3 billion in losses that were blamed on the activities of a single trader in its Singapore office, Nicholas Leeson.

AP PHOTO

UBS A.G. trader Kweku M. Adoboli's fraudulent scheme triggered $2.3 billion in losses at the Swiss-based bank.

Meanwhile, any U.S. litigation in connection with the UBS incident may be limited at least in part because of a U.S. Supreme Court decision last year.

Mr. Adoboli has been charged with one count of fraud and two counts of false accounting in the United Kingdom in connection with the loss, which UBS said stemmed from "unauthorized speculative trading."

According to reports, the alleged fraudulent UBS trading dates back to October 2008.

"One has to wonder" why the telltale signs "for one reason or another were missed," said Thomas O. Gorman, a partner at Dorsey & Whitney L.L.P. in Washington.

Peter Taffae, a D&O liability insurance expert at Los Angeles-based wholesale brokerage Executive Perils Inc., said rogue trading "is a problem that has always existed." Firms introduce controls and establish checks and balances, "but I don't think anybody's ever going to eliminate it 100%."

Geography may play a role, say observers. In many cases, including Messrs. Leeson and Adoboli's, losses occurred in locations "remote from the home office," where "risk management and audit functions are most robust," said Jeff Grange, senior vp and chief underwriting officer of global professional lines at Torus Insurance Group in Jersey City, N.J.

UBS' culture also may have been a factor, said Mr. Gorman, referring to reports that Mr. Adoboli did not profit personally from the trades.

Many observers say the industry

See **UBS** page 23

WORKERS COMPENSATION

No workers comp funding for medical pot: Insurers

By ROBERTO CENICEROS

LANSING, Mich.—Michigan's insurance industry backs a proposed law that would prohibit the workers compensation system from funding claims for medical marijuana, according to the Insurance Institute of Michigan.

A bill already moving through the state legislature would prohibit auto insurers from paying for medical marijuana as part of medical claims resulting from accidents, which some car insurers have already done because of uncertainty over requirements under Michigan's medical marijuana law.

Last week, S.B. 321—the legislation that would prohibit auto insurers from funding claims for medicinal pot—was passed by the Senate Judiciary Committee and is expected to go before the full state Senate, an Insurance Institute of Michigan spokeswoman said.

Auto insurers want the clarification because Michigan is the only state in the nation that holds them responsible for unlimited lifetime medical benefits, the spokeswoman said. That means they could be on the hook for a lifetime of medical marijuana payments.

The insurance industry wanted language banning workers comp insurers from paying for medical marijuana to be included in the auto bill, the spokeswoman said.

But now a separate workers comp bill is expected to be introduced this session as part of an overall effort to clarify requirements under Michigan's medical marijuana law, the spokeswoman added.

"I know from conversations with some of our workers comp carriers it is an issue they would like to see us pursue statutorily, so it is on their behalf that we are doing that," said Peter Kuhmnuench, the Insurance Institute of Michigan's executive director.

Mr. Kuhmnuench said he thinks the bill for auto insurers stands a good chance of adoption because the Judiciary Committee unanimously passed it last week. Additionally, a key backer of the medical marijuana ballot proposal made it clear that they did not want insurers to be required to pay for the drug, he added.

"We think it looks pretty good at this point in time" for the legislation clarifying that auto insurers do not have to fund medical marijuana, he said. "We hope the same thing for the work comp carve-out because we really think largely its kind of a reaffirmation of the original intent of ballot initiative."

Michigan already prohibits commercial health insurers from paying for medical marijuana.

INTERNATIONAL

Lloyd's rules, valuations spark M&A activity

Investors prepare for expected end of soft pricing cycle

By SARAH VEYSEY

LONDON—A recent spurt of mergers and acquisitions in the Lloyd's of London market is attributed to factors that include low company valuations and Lloyd's currently stringent rules on newcomers.

Preparing for the end of the ongoing soft insurance and reinsurance market is another factor, experts say.

"We are currently bobbing along at—or near—the bottom of the cycle," said Peter Allen, head of financial services at Grant Thornton U.K. L.L.P., "and this is the point in the cycle where people look to consolidate."

Three suitors—Barbican Insurance Group Holdings Ltd., Canopius Group Ltd. and Haverford (Bermuda) Ltd.—currently are vying to buy Omega Insurance Holdings Ltd., which operates syndicate 958 at Lloyd's.

While Barbican and Haverford already have submitted offers, Canopius said it likely would make a formal offer soon.

Canopius and Barbican already have a Lloyd's presence. In a statement, Barbican cited the cost and capital efficiencies of combining two Lloyd's entities into one as reasons behind its desire to buy Omega.

Mark Byrne, CEO of Haverford and co-founder of Flagstone Reinsurance Holdings S.A., said that while Omega has suffered heavy natural catastrophe losses, the business is "scratched and dented but not a train wreck."

He said his attraction to Omega, in part, is because it is within Lloyd's.

September saw a series of M&A deals.

ProSight Specialty Insurance Holdings Inc. bought Lloyd's coverholder TSM Agencies Ltd. and

See **LLOYD'S** page 25

LIABILITY & LITIGATION

AP PHOTO

A rush-hour collision between two Washington Metropolitan Area Transit Authority trains in 2009 killed nine people and injured dozens.

D.C. Metro sues Lexington over train crash damages

By MIKE TSIKOUDAKIS

ALEXANDRIA, Va.—The Washington Metropolitan Area Transit Authority has sued Lexington Insurance Co. seeking more than $13 million for breach of contract and failure to pay damages related to a 2009 train crash.

The transit agency said the suit is about "Lexington turning its back on WMATA" by breaching its insurance contract and failing to pay millions of dollars in losses from the June 22, 2009, train-on-train crash that killed nine people and injured dozens.

WMATA purchased an all-risks commercial property policy from Boston-based Lexington with time-element coverage, among other types of coverage, for a $1.86 million premium in 2008.

The policy provided $50 million of coverage per occurrence, according to court documents.

The accident, investigations, repairs and other work related to the crash caused a systemwide disruption of the second-busiest rapid transit system in the United States, according to the suit.

"Lexington does not dispute that WMATA has suffered business interruption loss and other covered losses arising from the June 22 accident," WMATA said in the suit, which was filed last month in U.S. District Court in Alexandria, Va.

"Yet in breach of the policy, Lexington has failed to pay millions of dollars of covered losses, including business interruption loss(es), that WMATA suffered as a result of the accident," according to the suit.

To date, Lexington has paid a "partial payment of approximately $1.2 million" for business interruption losses, according to the suit.

Lexington, a specialty insurance unit of American International Group Inc., declined to comment.

WORKERS COMPENSATION

Workers comp claim frequency rises

Slight increase in employment, worker confidence may factor

By ROBERTO CENICEROS

Several Great Recession factors may have caused a sudden halt in the trend of decreasing frequency of workers compensation claims, according to NCCI Holdings Inc. research.

Modest increases in employment since the recession formally ended in mid-2009 and workers possibly being less fearful of losing their jobs for filing claims may have contributed to a 3% rise in the frequency of lost-time claims during accident year 2010, NCCI said in its research brief.

4.3%

Prior to 2010, the frequency of comp claims had declined an average of 4.3% per year since 1990.

Prior to 2010, the frequency of comp claims had declined an average of 4.3% per year since 1990, with the only other increases occurring in 1994 and 1997.

"Reductions in claim frequency have been a major bright spot for workers compensation," with injury rates falling a total of 56.4% from 1990 through 2009, the rating and research organization said.

An increase in employment drives claims frequency because new hires generally file more claims than longer-term employees, NCCI noted.

There also is evidence of an influx of small lost-time claims during 2010, which may have been medical-only claims in previous years, NCCI said. But a lack of available light-duty jobs to which injured workers could return because of the recession might have changed that dynamic.

It remains to be seen if the 2010 frequency uptick is part of a new normal or a minor blip in the long-term decline in frequency, NCCI said.

While frequency is up, growth in average indemnity and medical cost per claim slowed in 2010, the NCCI analysis added.

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Nominees advanced by the screening panel are then asked to prepare a more detailed nomination form in Part 2 of the process. Those nominations will be judged and scored by a panel of independent judges representing the 2011 honorees; and executives from leading risk management providers, including brokers, insurers and consultants.

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Crystal ball for wellness intervention

Researchers work on predictive modeling to identify, quantify employee health risks

By JOANNE WOJCIK

Predictive modeling techniques used by health researchers to measure the likelihood of certain diseases or the effectiveness of wellness interventions eventually could be adapted to create an "H-mod" for group health insurance similar to the "ex-mod" that workers compensation insurers use to calculate workers compensation premiums.

The workers comp formula to calculate experience modification factors, or the ex-mod, compares actual reported loss information for a particular employer, usually over a three-year period, with average loss data for all employers in a given state that are in the same classification.

Employers with ex-mods higher than 1 pay higher premiums than the average, while those with ex-mods lower than 1 pay lower premiums.

While many large, self-funded employers have adopted similar scientific approaches to measuring and addressing health risks, it is less prevalent among midsize and smaller firms, many of which are still fully insured and lack access to their employees' claims data.

Rather, smaller groups, especially those with 500 or fewer employees, are subject to a community rating, in which the experience of all employers of similar size and geography are pooled together and charged a premium rate that reflects the overall group's average health care costs.

Some middle-market and larger groups can be rated based solely on their experience, but the smaller the group, the less an employer's specific experience is taken into account.

But health researchers are making great strides in developing tools to identify health risks in a given population, quantify their impact on health benefit costs, and then measure the effectiveness of mitigation techniques in lowering those costs. These tools eventually may be used to develop an experience modification factor that could be used to more fairly assess health insurance premiums for employer groups, some experts say.

COSTS AND WELLNESS

Employees with high wellness scores in health risk assessments cost employers less in annual medical and pharmacy costs, according to University of Michigan researchers. Every percentage point change in a worker's wellness score equals $56 in annual medical and pharmacy spending.

Wellness score %	Annual medical, pharmacy costs
65	$2,817
70	$2,508
75	$2,369
80	$2,087
85	$1,800
90	$1,643
95	$1,415

Source: University of Michigan Health Management Research Center

For example, a health risk assessment system developed by Professor D.W. Edington at the University of Michigan's Health Management Research Center in Ann Arbor has been found to be 83% accurate in predicting future health care costs (see chart).

Based on more than 30 years of research, the UM-HMRC's Trend Management System is programmed to recognize 34 dangerous risk combinations and predict how likely an individual is to face health problems that could lead to high health care costs in the next one to three years. The analytics also prioritize which individuals should be the first to undergo an intervention and help determine the best approach to take to address their health issues.

Recognizing the value of what eventually could become the ex-mod in health care, Bloomfield, Conn.-based health insurer CIGNA Corp. contracted with UM-HMRC in 2006 to offer its Trend Management System. It recently began offering small and midsize employers discounts on their health insurance premiums if a significant number of their employees complete the health risk assessment.

A benefit consulting firm in Arizona has developed an analytical tool called the Trend Neutralizer that incorporates some of the algorithms developed by UM-HMRC to determine how much money an employer will save on health benefit costs if large numbers of employees enroll in high-deductible consumer-driven health plans or participate in certain wellness initiatives.

For example, if 100% of employees complete a health risk assessment, the company's insurance premiums will decrease by 3%. However, if 75% to 99% take the assessment, the savings will be 2%, said Chris Hogan, president of Scottsdale, Ariz.-based Benefit Commerce Group.

"There's enough empirical data out there that shows if you adopt a CDHP, it's obviously going to change employee behavior," Mr. Hogan said. The situation is the "same for participating in health risk assessments and biometric screening programs," he said.

Rick DeGraw, senior vp and chief administrative officer at the SCF Arizona in Phoenix, the state's largest workers compensation insurer, said he has been searching for something equivalent to the ex-mod in health care benefits for years, and recently contracted with Benefit Commerce to evaluate the effectiveness of the insurer's wellness initiatives.

SCF Arizona, which self-funds its health benefits for its 390 employees, has been using ex-mods to measure the effectiveness of safety and loss control on work comp costs for the employers it insures "for as long as I've been around," Mr. DeGraw said.

Ex-mods have been used for workers comp for decades.

"We say, 'If we see a problem and you fix it, it will reduce the number of accidents,' and then we track it. There's no reason at all you can't do that if somebody could put together a tracking model in health care. If we see employees with diabetes that's out of control and provide a way to control it, then we can virtually guarantee that there won't be as many problems that develop out of the diabetes in the future. It's so long overdue," Mr. DeGraw said.

"We've had wellness programs in place for five years and we have been able to keep our health care costs increases down in the 2% to 3% range. We know it is working, but we haven't been able to get the loss link that shows that from one thing comes another," he said. "But by following the predictive modeling approach, an H-mod, and tracking it, you can actually see what the impact is."

Given the advances in predictive modeling technology, it should not be long before there is something like an H-Mod developed for health care benefits, said George Pantos, executive director of the Healthcare Performance Management Institute, a Washington-based research and education organization formed two years ago to study the use of business technology and management principles in improving health benefits delivery.

Unfortunately, lack of transparency in health care claims information, particularly for insured groups, has made it difficult for employers to capture, aggregate and analyze data to understand their health care spending, compare it against regional or national trends, and then implement effective cost-cutting or outcome-enhancing measures, he said.

"This is the new paradigm," Mr. Pantos said. "Loss control is possible."

For example, if predictive modeling is used to evaluate an employer's pharmacy data, it will spot trends in utilization of certain drugs that can accurately predict the likely development of numerous diseases and conditions, he said.

"If the report shows high usage of Lipitor, I know before any illness has occurred that there is a potential for cholesterol and stroke issues, and I could intervene with targeted education programs on the issue of high cholesterol," Mr. Pantos said.

MORE COVERAGE
Read more about using workers compensation techniques to improve wellness in this week's Spotlight. PAGE 17

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Opinions

EDITORIAL

Clarity needed on states' rights

Consistency promotes certainty. That's why we welcome the opportunities presented to the U.S. Supreme Court to re-examine the scope of federal pre-emption of state laws as they consider a trio of cases.

As we report on page 3, the pre-emption cases accepted by the court for review during the term that begins Monday don't deal with broad business issues but rather Medicaid reimbursement rates, federal railroad law and the treatment of certain swine in the slaughterhouse. These are matters with which most risk managers will never have to deal.

Still, the cases could prove to be significant. There has been a tension between federal law and states' rights since the founding of the country. While federal law can expressly pre-empt state law, states have found ways to get around federal law under less explicit circumstances.

And this is not an issue confined to arguments over political philosophy. Pre-emption has considerable practical implications for business. As Robin Conrad, the executive vp of the Washington-based National Chamber Litigation Center Inc., which handles litigation for the U.S. Chamber of Commerce, put it, the issue is "all about preventing regulatory Balkanization."

Minimizing regulatory Balkanization should be of particular concern to businesses with multistate operations. That was a reason behind the drive some years ago to adopt some sort of uniform federal product liability code rather than the patchwork of state laws that continue to govern product liability. Federal product liability reform was an area in which legislative efforts ultimately proved fruitless.

Pre-emption is an area in which the high court has the paramount role. The court has a mixed record on federal pre-emption of state law. We agree that in some cases, ambiguous federal legislation does not trump state statutes. But we hope that the justices use the opportunity presented by the three pre-emption cases before them to draw a clearer line to determine where federal law is the final word.

Uncertainty, particularly when liability is involved, can hamper business activity, something no one wants in a time of economic troubles. Each pre-emption case that comes before the Supreme Court gives the justices a chance to curb that uncertainty. We hope that justices use the three cases before them to do so.

LETTERS

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SCHILLERSTROM

COMMENTARY

Perfect storm for climate change

Speaking to a lunchtime audience a couple of weeks ago at the annual RIMS Canada conference in Ottawa, Ontario, David Phillips, senior climatologist at Environment Canada, the Canadian government's Department of the Environment, put an interesting twist on a well-worn adage about the weather.

Playing off the notion that everyone talks about the weather but nobody does anything about it, Mr. Phillips suggested that climate "is sort of the antithesis of the weather." In the case of climate, he said, "We change it, but we don't talk about it."

RODD **ZOLKOS**
SENIOR EDITOR

While there are, of course, still some who resist the notion of climate change, Mr. Phillips is emphatically not among them. "How do we know that climate change is an issue?" he asked RIMS Canada conference attendees. "Because the data tell us."

"Climate change is not about a belief. It is not about a hunch or a feeling," said the climatologist. "It's about an accumulation of data about the effects on the climate system."

Looking at that data, it's pretty clear that weather events have been getting more extreme, and extreme weather events are occurring with greater frequency. This year, for example, has seen a record-setting tornado season in the United States with outbreaks in April and May accounting for nearly $10 billion in insured losses, along with floods in Australia and floods in the northeastern United States resulting from Hurricane Irene.

In Canada and globally, the number of weather-related disasters has increased dramatically in the past several decades, Mr. Phillips noted. "Over 90% of natural disasters are weather- and water-related events, and in Canada weather-related losses now cost insurers more than fires," he said.

Not only are weather events becoming more extreme, the pace of climate change is beginning to accelerate, Mr. Phillips said. "What used to change in a century is now changing in a decade."

So why is all this happening? Most climatologists say the planet is warming, Mr. Phillips said, and part of that warming is the result of human activity.

And the upshot for risk managers?

"The new norm is expect the unexpected, with a good serving of extremes from one end of the pendulum to the other," Mr. Phillips said. "The big challenge for risk managers is to try to manage better in a more variable climate."

Beyond reducing our fossil fuel consumption, Mr. Phillips said it's necessary to learn to adapt to changing circumstances. That includes designing more resilient neighborhoods and communities, considering the impact of climate change on any structures designed to last more than 20 years; reviewing, revising and enforcing building codes; and relocating critical facilities where necessary.

So with all these causes for concern, why isn't there more talk about climate change? "Climate change doesn't present any clear and present danger," Mr. Phillips said. "There's no Pearl Harbor in climate change."

But, he cautioned, "The reality, though, is climate change is here."

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Products&Services

Hartford offers data breach cover to small businesses

HARTFORD, Conn.—Hartford Financial Services Group Inc. has broadened its cyber risk portfolio to include coverage for small businesses.

Hartford's data breach offering is designed to address breaches involving businesses with fewer than 100 employees, the Hartford, Conn.-based insurer said in a statement.

The coverage is aimed at any business that stores sensitive client information or patient data, including restaurants and retailers that process large amounts of credit card transactions.

"For smaller businesses in particular, the ability to respond quickly and appropriately to a data breach is critical to restoring customer trust," Raymond Sprague, senior vp of small commercial insurance at Hartford, said in the statement.

The coverage is available as an endorsement to Hartford's business owner policy and provides first-party coverage for response expenses, third-party coverage for defense and liability, access to a breach preparedness website, and consulting services through data risk management provider Identity Theft 911 L.L.C.

For more information, contact Lynn LaGram, assistant vp of small commercial underwriting for Hartford, at 860-547-9685 or *Lynn.LaGram@thehartford.com*.

Lexington app allows property claim reporting

NEW YORK—Lexington Insurance Co. has introduced a mobile application to report catastrophic property claims.

The offering allows U.S. commercial and homeowner property policyholders to report a catastrophic loss via the application, the Boston-based specialty insurance unit of American International Group Inc. said in a statement.

The application enables users to make their first notice of a loss directly to Lexington's claims department.

"Timely reporting of a claim, especially during this hurricane season, is essential to quick recovery from a loss," David Crowe, senior vp of claims at Lexington and global head of property claims at Chartis Inc., said in the statement.

The mobile application is available for iPhone, iPad and Andriod devices. Policyholders also can make a first notification of a claim online at *www.lexingtoninsurance.com/fnol*, the insurer said.

For more information, contact James Catanzano, vp of claims operations at Lexington, at 877-873-9972 or *james.catanzano@chartisinsurance.com*.

OneBeacon offers event cancellation insurance

HAMILTON, Bermuda—OneBeacon Insurance Group Ltd. has expanded its coverage for the entertainment, sports and leisure industries by offering event cancellation insurance.

EventShield is geared to associations and organizations that host conventions, conferences, and trade and consumer shows, the insurer said in a statement.

The coverage, offered nationwide on a surplus lines basis through OneBeacon Entertainment, which has offices in New York and Los Angeles, is available for nearly all indoor and outdoor events worldwide.

Coverage under EventShield includes adverse weather such as blizzards, floods, tornadoes, hurricanes, and fire and destruction of the event site.

Other coverages include power failures, strikes and no-appearance of a keynote speaker or entertainer, among others. Also, coverage options for acts of terrorism are available.

For more information, contact Peter Williams, president of OneBeacon Entertainment, at 310-954-3960 or *pwilliams@onebeacon.com*.

Chubb to waive deductibles with immobilizer purchase

WARREN, N.J.—Chubb Group of Insurance Cos. will waive policy deductibles if policyholders purchase a product designed to immobilize a vehicle in the event of a cargo theft.

The incentive is available to Chubb policyholders of motor truck cargo liability insurance, the Warren, N.J.-based insurer said in a statement.

Policyholders that purchase SteelSafe Truck Immobilizer system can have their policy deductible waived up to $10,000 should a stolen load not be recovered after law enforcement is notified in a timely manner, the insurer said.

"It stops cargo thieves dead in their tracks," said Pat Stoik, global marine manager at Chubb, in the statement.

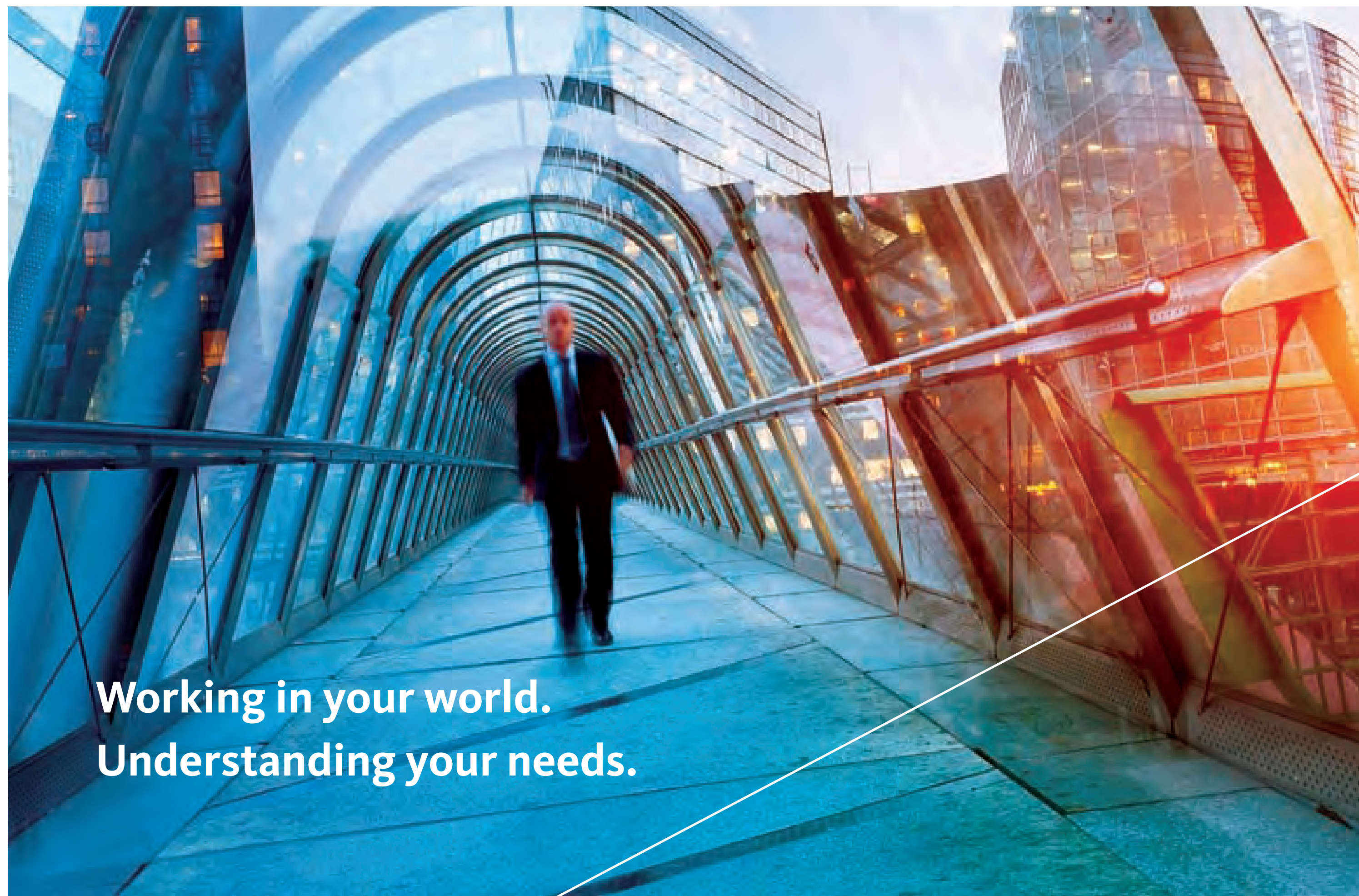
The product from SteelSafe Truck Immobilizer International Pty. Ltd. safely stops a truck through the vehicle's air brake system from a remote location.

The system also has a GPS device that can locate the stolen vehicle, according to the statement.

For more information, contact Robert Opitz, worldwide inland marine product manager, at 908-572-4506 or *ropitz@chubb.com*.

TO SUBMIT ITEMS

BI's Products & Services column reports on new product offerings. Please send Product & Services news to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. 60601 or email *mtsikoudakis@businessinsurance.com*.



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MATTERS OF IMPORT

Midsize firms dive in to big risks in overseas markets

By MATT DUNNING

Recent studies show foreign markets are attracting more and more mid-market companies, which raises risk management challenges for those operations.

More than 50% of companies that participated in New York-based Deloitte Consulting L.L.P.'s 2011 middle-market business conditions survey, "Mid-Market Perspectives," said at least part of their revenue came from overseas markets in 2010. By 2014, that percentage is predicted to rise to 65%.

Importing and exporting goods across international borders can be financially advantageous, but insurance and legal experts say mid-market firms, many of which are doing business in foreign markets for the first time, must be aware of the myriad risks that accompany shipping and trading in countries outside the United States.

Even without brick-and-mortar properties or large workforces positioned abroad, risks such as geopolitical conflicts, weather and environmental hazards and economic instability are inherent in any overseas transaction. Most of the difficulties companies could encounter while trading in foreign markets are easy enough to mitigate with moderate insurance coverage (see story, next page), qualified legal counsel, and local partners and advisers familiar with each country's laws and culture.

However, failing to comprehend and account for those

See GLOBAL next page

50%

More than half of middle-market companies say at least part of their revenue came from overseas markets in 2010.

Middle-Market Risks

SPOTLIGHT

MIDSIZE FIRMS LIKELY TARGETS FOR CYBER DATA THIEVES
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FOCUS ON SAFETY CAN HELP FIRMS WITH WELLNESS
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Global: Big risks overseas

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risks can inflict significant losses on a business or invite litigation, which could prove catastrophic for mid-market companies that may not be as well-positioned to absorb the financial damage as their larger counterparts.

"Understanding the nuances of doing business outside the U.S. is incredibly important," said Bill Skapof, head of international products for Zurich North America Commercial in Chicago. "So much of what you would imagine is similar to the U.S. in terms of how business is conducted is actually quite unique to the various countries in which you might be doing business," he said.

In international commerce, some risks are universal and owe little to a firm's specific business model. Piracy, political uprisings, labor strikes, pandemics and natural disasters can affect inbound and outbound supply lines, causing business interruption losses and even breach of contract disputes.

Companies planning to send personnel overseas, even for short-term business trips, likely will need to assess their exposure to employment practices liability, kidnapping and ransom risks, emergency extractions as well as account for coverage gaps for medical care and workers compensation abroad, experts said.

"Especially when we talk about the middle market, I see a lot of our clients too focused on getting the operations going and not really thinking about the salespeople that they're sending over to other countries or the employees sent to train foreign partners in the use of a product," said Shawn Burnsworth, vp and practice leader for Wells Fargo Insurance Services USA Inc.'s international unit in Philadelphia.

Mid-market firms also should take note of local laws and customs governing their foreign partners, as well as domestic regulations for international trade. Many countries do not permit transactions with firms covered by nonadmitted insurers, which are not subject to those countries' laws or regulations, experts said.

Additionally, companies should assess in advance any translation or cultural interpretation issues that may arise from their product's composition, packaging or accompanying literature.

On the other hand, domestic firms must be aware of U.S. laws that limit permissible business practices overseas, particularly the Foreign Corrupt Practices Act. Actions such as gift-giving and monetary stipends in exchange for face-to-face meetings or as consummation of a business arrangement might be considered the way business is done in foreign countries, but likely would likely run afoul of U.S. law.

Whether companies import products and materials, export them or both, experts said the biggest challenge facing mid-market firms is the tendency to assume domestic general liability insurance policies will provide adequate protection against losses in foreign markets.

"There are key gaps in coverage they may have if they're only carrying domestic general liability coverage usually related to the coverage territory definitions in the domestic policies," said Paul Privitera, vp of global services at Travelers Cos. Inc. in Hartford, Conn. Those gaps can be particularly problematic in a product defect claim, a negligence claim, or other loss event resulting in damages to a consumer or other third party. In those cases, Mr. Privitera said, "the domestic policy will not respond to resulting foreign suits and will most likely not respond to foreign occurrences."

"Those kinds of losses are not only damaging in purely financial terms, they can also inflict reputational harm or result in loss of access to a foreign market," he said.

Other risks mid-market firms are likely to encounter depend largely on what exactly is being shipped, its origin and its destination. Companies importing consumer products, prefabricated components or raw components should concern themselves mainly with their supply chain from source to end user, Mr. Burnsworth said.

"Really what you're looking for is contingent or dependent business interruption exposures where you're reliant on a foreign manufacturer or supplier," Mr. Burnsworth said. In a product contamination or recall situation, the ability of insurance coverage to respond to claims, as well as the firm's ability to replace that product or component "all contribute to liability exposures and the potential for public perception and reputation issues," he said.

The risks for U.S.-based companies that export products can be much broader and more numerous, experts noted. By virtue of their size and relative market share, many mid-market firms may lack the necessary leverage to negotiate unfavorable terms out of a contract with a foreign entity. Such arrangements can leave firms vulnerable, often unwittingly, to risks such as overseas retailers and distributors with which the domestic company is not in direct contract that are beyond the scope of a firm's insurance coverage.

"Suddenly, that firm finds itself having to respond to a claim in a territory in which they aren't covered for liability," Mr. Burnsworth said.

International intellectual property, patent and trademark issues also can damage a mid-market firm moving its products or materials through foreign countries.

Adam Bialek, intellectual property practice chair at the Wilson Elser Moskowitz Edelman & Dicker L.L.P. in Chicago, said companies often do not thoroughly vet their partner firms' intellectual property, patent and trademark holdings for true ownership, nor do they always perform the necessary due diligence to ensure their own properties will survive infringement challenges in countries to which their products are being exported.

Specialty coverages tackle international risks

By MATT DUNNING

Among risks inherent to importing and exporting across international borders, misunderstandings regarding insurance coverage are the most common tripping point for middle-market companies, experts say.

While smaller firms might be tempted to rely on the insurance of a freight broker, cargo carrier or warehouse owner as a matter of convenience or as a means to quickly secure a contract in a competitive market, all firms preparing to ship or receive goods from overseas should assume as much control as possible over how those transactions are insured, experts said.

Equally risky for domestic middle-market firms, particularly for importers, is the practice of opting for a third party to arrange insurance coverage and roll the cost into an overall invoice for the contract, said David Jones, vp of risk management accounts at Lockton Cos. L.L.C. in Philadelphia.

Without controlling terms and conditions, a domestic company would be hard-pressed to obtain the right policy limits and coverage for the materials in transit, full indemnification for any potential losses and proper claims handling in the event of an incident, experts warned.

"It's convenient, but the risk is very high," Mr. Jones said. "If there's a loss and the title (for the goods) still belongs to you, you're relying on someone else's terms. You don't know how good the insurance company is or what the deductible is. Control of the insurance is crucial."

Mid-market companies should have little difficulty obtaining coverage for at least some import/export risks, Mr. Jones said.

Many high-frequency risks can be mitigated with a stock throughput policy, which combines ocean and inland cargo coverage with coverage for static locations such as warehouses or distribution centers. Supply chain insurance, meanwhile, would respond to losses in the event that a supplier finds itself unable to ship a product.

Other, more expensive endorsements can include political and credit risk, marine blockage, information technology network disruption and product liability.

"There are products out there that are more holistic, but it's (an) emerging (market)," Mr. Jones said.

Experts said companies should obtain as much of their overseas risk management portfolio from a single source to avoid potential gaps in coverage or conflicts that might arise from multiple carriers and policies responding to a single claim.

Some common points of contention within foreign commerce policies can include inventory valuation methods, exclusions based on cargo placement aboard a carrier vessel and indemnity limits where coverage is limited to lawsuits brought in the United States stemming from an international incident.

"That's where a lot of folks get caught off-guard," said Shawn Burnsworth, a vp and practice leader for Wells Fargo Insurance Services USA Inc.'s international unit in Philadelphia. "They find themselves forced to respond to a suit in a foreign country, and they took it for granted that the policy was worldwide for jurisdiction, when really it only covers suits brought here."

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Midsize firms easy pickings for thieves targeting data

By RUSS BANHAM

When it comes to protecting one's house against intrusion, the common wisdom is to think like a burglar.

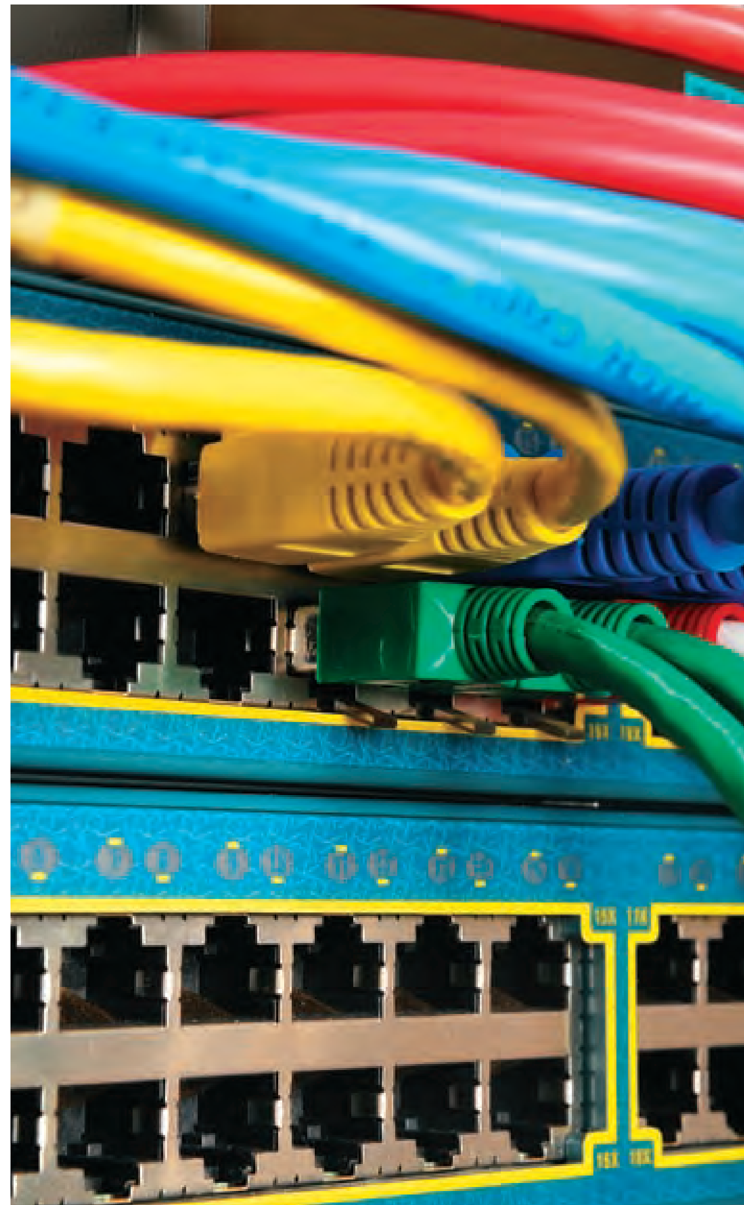
Criminals are adept assessors of risk: The house on the block without a fence, a dog and an alarm system vs. other homes that have such security measures is the one to burglarize.

The same applies to Internet hackers. Lots of companies have a tantalizing storehouse of personally identifiable information on customers and employees, but the ones hackers are going to attack are those deemed to be the least secure. Right now, this description fits many small and medium-size companies, experts say.

Recent studies underscore the threat to middle-market players.

According to a joint study by the U.S. Secret Service and New York-based Verizon Communications Inc.'s forensics analysis unit, of the 761 data breaches the unit investigated in 2010, 63% occurred at companies with 100 or fewer employees.

A May 2010 survey of more than 2,100 companies worldwide by Cupertino, Calif.-based security software provider Symantec Corp. backs this up, finding that 73% of small and midsize companies experienced a cyber attack in the past year, and that 30% of the attacks were "somewhat/extremely effective."



Apparently, the incidence of attacks against midsize companies is rising. According to a study by McAfee Inc., more than half of global midsize organizations surveyed by the Santa Clara, Calif.-based security software company reported an increase in hacker attacks in 2010 from 2009.

Sobering news, certainly. But, there are best practices that smaller companies can borrow from their larger counterparts to reduce the threat of a data breach, quickly learn of an attack when there is an intrusion, and transfer much of the risk to the insurance market.

"Two key questions midsize companies need to ask insofar as their risk of an intrusion are: 'What would the intent of a hacker be and do they have the opportunity to achieve this intent?'" said Bill Wansley, senior vp and analytics team member at management consulting firm Booz Allen Hamilton Inc. in New York.

He said hackers typically seek one or more of the following when gaining access to a company's network: bragging rights, access to valuable trade secrets and other proprietary data, and access to personally identifiable customer and employee information. Because there isn't much to brag about in penetrating a weakly secured system, hackers are more likely to target a midsize company for information on its products, plans and people, experts noted.

Like notorious bank robber Willie Sutton reportedly rationalized, "That's where the money is."

"Every company these days has their customer data filed electronically," said Mr. Wansley. "So the next question for a midsize company becomes, 'How vulnerable are we?'" The answer for many midsize companies likely will be "a lot," he said.

> 'Just because you're a small company doesn't mean you have small risks.'
> Casey Zgutowicz, Lockton Cos. L.L.C.

As Casey Zgutowicz, a producer in broker Lockton Cos. L.L.C.'s Chicago office, put it, "Just because you're a small company doesn't mean you have small risks. Lots of smaller organizations have lots of sensitive data, and the truth is that many aren't doing enough to secure it."

On the bright side, said Toby Merrill, a vp at Philadelphia-based insurer ACE Professional Risks, a unit of ACE USA, "More midsize companies at least are aware of the exposure and are recognizing the need to both manage the level of risk and consider risk transfer."

The problem is budgetary—a lack of financial and personnel resources to put into online security. "You'd need to pull capital

See CYBER page 16

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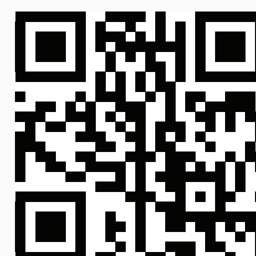

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Cyber: Midsize firms easy pickings

CONTINUED FROM PAGE 14

from one area to another—everything is a trade-off," Mr. Merrill said.

But it may be a trade-off that is well worth the investment, experts said.

"Not only do federal regulations and rules in 46 states require companies to alert victims of a breach, causing possibly extensive and expensive remediation, regulatory fines can be imposed for failing to notify the affected people," said Richard S. Betterley, president of Betterley Risk Consultants L.L.C. in Sterling, Mass.

Mr. Betterley cites statistics compiled by the Traverse City, Mich.-based data security research firm Ponemon Institute L.L.C. indicating that it costs companies, on average, more than $200 per compromised record.

"A single compromised record is no big deal; now multiply it by 10,000 customer records," Mr. Betterley said. "This is frightening stuff, and the bad guys are hard to keep up with."

"It can be catastrophic for a midsize company," said Jim Leonard, senior vp of FINPRO, the financial and professional liability practice of broker Marsh Inc. in New York.

"In my previous life before coming to Marsh, I was an investigator into data breaches. One I'll never forget (was) a data breach at a service provider that administered benefits plans for other companies," Mr. Leonard said. "Burglars broke into the company's offices and stole the computers, which had more than 300 clients' employees' sensitive personal information, including their names, birth dates and Social Security numbers. Millions of (the clients') employees had to be notified of the breach, forcing the company to close its doors."

Reputational risks

More than extraordinary expenses may doom a company, however. "There's the risk of significant reputational harm," said Ken Goldstein, vp at Chubb Group of Insurance Cos. in Warren, N.J. "You not only risk losing the customers affected by the breach, but other current customers and future ones."

What's a company to do? Aside from writing up a data security policy and sticking to it, beefing up security by installing firewalls, anti-virus and intrusion detection systems, and routinely upgrading software with the vendor's patches, privacy and network liability insurance are a way to mitigate the exposure.

"Really it's the smartest thing that small and medium-sized companies can do," said Angela Elbert, a partner in the insurance policyholder practice group at law firm Neal, Gerber & Eisenberg L.L.P. in Chicago.

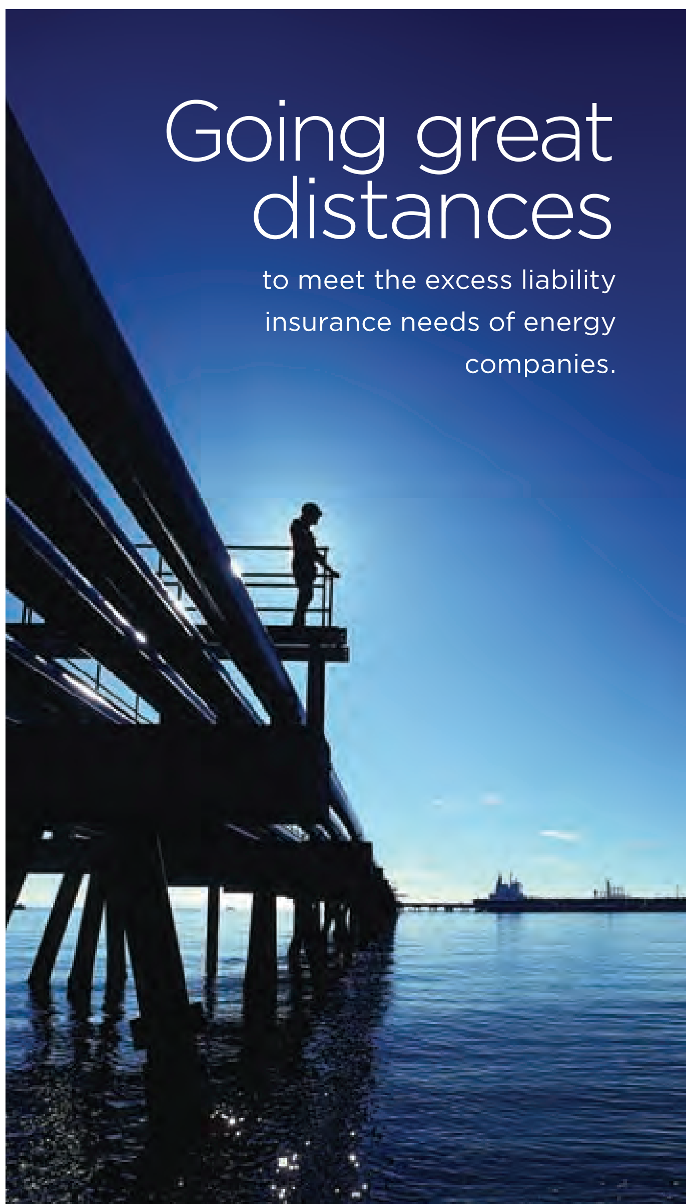
Mr. Betterley concurred: "The frequency and severity of this risk is very high, and meanwhile you have an insurance market that is eager to write this business. Not only can you transfer the risk to an insurer, the major ones in the marketplace offer ancillary public relations and breach notification services. You may not know what to do in the event of a breach, but the insurers know."

Ms. Elbert cautioned that the cyber insurance market still is maturing, resulting in a mix of products that have different terms, conditions and limits.

"Fortunately, the market is soft right now and carriers are willing to negotiate," she said. "I'm seeing pricing coming down, exclusions disappearing and coverages increasing."

Evidently, more midsize companies are getting this message.

"The demand from midsize companies for our privacy and network liability policy is up three to four times this year than the previous year," Mr. Merrill said.



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Road map to safe workplace leads to well workplace too

Safety measures can be adapted to wellness efforts

By JOANNE WOJCIK

Mid-market employers that successfully drive down workers compensation premiums through safety programs can be just as successful in lowering health care costs through wellness programs, although the payback likely will take more time, experts say.

Though the terminology may differ, the procedural road map for becoming a "well workplace" is very similar to that of becoming a "safe workplace."

In fact, the worksite wellness movement in many ways mirrors the development of safety in workers compensation, experts say.

"If you think about the evolution of the work comp market, insurers started providing the coverage and then, to be more competitive, they introduced financing alternatives like retrospectively rated and large deductible programs," said Robert Cohen, CEO of IMA Financial Group Inc. in Denver.

"Then someone suggested controlling claim costs through the use of preferred providers, return-to-work programs and on-site occupational care clinics. Then safety was introduced to prevent claims from happening. Then there was the introduction of the experience modification factor to track return on investment," Mr. Cohen said.

The formula for calculating experience modification factors, often called "ex-mod," compares actual reported loss information for a particular employer, usually over a three-year period, with average loss data for all employers in a given state that are in the same classification. Employers with an ex-mod higher than 1 pay higher premiums than the average, while those with an ex-mod less than 1 pay lower premiums.

Employer-sponsored health benefits evolved much the same way, starting with the introduction of major medical insurance that gradually was expanded to cover medical care beyond hospitalization, Mr. Cohen said. "Then there were new financing tools like copays and coinsurance," which enabled employers to share some of the cost with plan members.

Eventually, some employers, especially large ones, opted to self-insure health care benefits just as they did with retrospectively rated and large-deductible programs in workers compensation, Mr. Cohen said.

"Then the (health maintenance organization/preferred provider organization) world exploded to control claims costs," Mr. Cohen said. "Lately we've been in this wellness thing, which is like safety and loss control."

Recognizing these parallels, Mr. Cohen in 2007 led IMA to launch a health risk management practice that applies the basic tenets of safety and loss control from the workers comp arena to health care benefits. IMA even created a tool to track return on investment, which Mr. Cohen originally intended to call the "H-mod" similar to the "ex-mod" used in workers compensation.

Continued on next page

THE "7C'S"

Seven strategies of building a well workplace are similar to those used to create a safe workplace. They are:

- **CONCENTRATING** on senior-level support
- **CREATING** cohesive wellness (or safety) teams
- **COLLECTING** data to drive health (or safety) efforts
- **CRAFTING** an operating plan
- **CHOOSING** appropriate interventions
- **CREATING** supportive environments
- **CONSISTENTLY** evaluating outcomes

Source: Wellness Council of America

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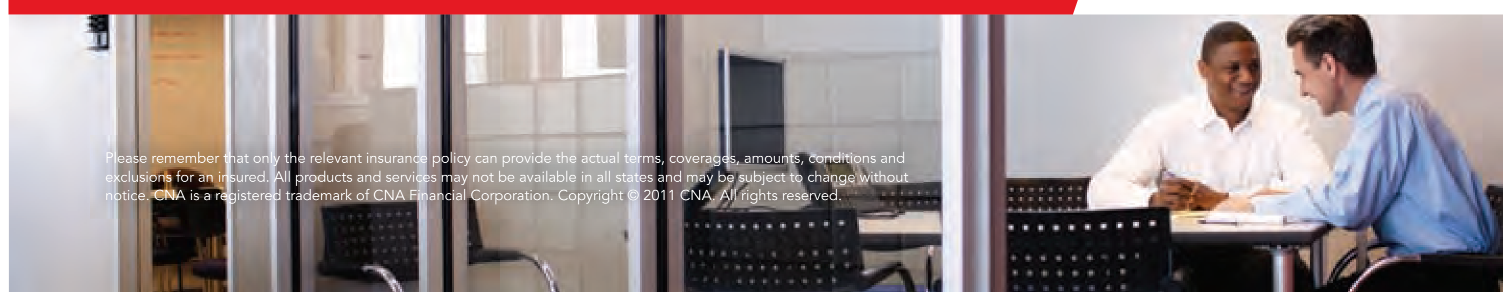

Health care: Map leads to wellness

CONTINUED FROM PREVIOUS PAGE

Instead, IMA dubbed the program "ibenefit" and used it on its own employee population before rolling it out to clients (see related story).

Cheryl Mealey, national practice leader for wellness consulting in the Willis Group Holdings P.L.C.'s human capital practice in Wauwatosa, Wis., said she often invokes the analogy between safety and workers comp and wellness and health benefits when talking to employers, "and it does resonate."

"I ask them, 'What is your ex-mod? Do you have a fully functioning safety committee? Then why not a wellness committee?'" Ms. Mealey said. "Sometimes, you can expand the safety committee to incorporate wellness. Both have education and training, middle- and upper-management support. Then the light bulb starts to go off."

However, the longer it takes employers to realize a return on investment from wellness initiatives vs. safety programs, the more it can pose a challenge for some organizations, Ms. Mealey said.

"You can put a guard on a machine, you can wear protective equipment, you can engineer a lot of things out of the workplace, but you can't do that in people's homes and in people's personal lives," she said.

There's also a direct financial reward in workers comp: Employers with lower experience modification factors receive credits against their premiums in a guaranteed-cost workers comp program, Ms. Mealey said.

Unfortunately, "we don't have similar pricing in health care. Actuaries will tell you it takes awhile for wellness to impact health care costs. If somebody has 50 pounds to lose, it could take several years for them to lose it, and then the impact on their health might take several more years to show up," she said. "Companies just need more patience."

Because it takes awhile for the impact of wellness to become evident through reductions in health care benefit costs, Ms. Mealey and other health care benefit consultants advise employers to collect data on other effects of wellness program effectiveness, such as absenteeism and presenteeism—defined as workers who show up but don't perform at full capacity—or disability incidence and duration, productivity and morale.

"Those things will show a more immediate impact," she said.

In some cases, improved health status can actually have a positive impact on work comp programs because healthier and more physically fit workers have fewer occupational injuries, according to a 2009 study published in the journal Occupational Medicine that assessed the relationship of obesity, smoking, alcohol use, sleep disorders, musculoskeletal disorders and other diseases on the rate of occupational injuries for various age groups.

Researchers concluded that "efforts to prevent disease and promote health by addressing issues such as obesity, smoking, alcohol use and optimum use of health care may also yield benefits in terms of reductions in the rates of workplace injuries. Appropriately, targeted workplace interventions may provide opportunities to reduce not only the risk of disease associated with working conditions but also the risk of workplace injury."

"The healthier people are, the less likely they are to have a work comp claim," said Kevin Herman, director of worksite wellness at the Horton Group, a benefits broker based in Orland Park, Ill. Moreover, chronic conditions often exacerbate work-related injuries, oftentimes extending recovery times, he added.

"If someone has hypertension, maybe they don't know it but are experiencing dizziness that could result in a work comp claim or a disability claim," said Cindy LaQuatra, a senior consultant at Benefits Resource Group in Independence, Ohio. "If we can engage people in different types of programs to identify conditions, teach them what it means to have that condition, and help them stay on track with treatment, we reduce not only health care costs, but also work comp and disability claims."

"When I talk to employers, they continually ask, 'Why should I care about wellness?' I tell them there are a lot of reasons. It isn't just the effect on health care costs," Ms. LaQuatra said.

Health risk scoring encourages healthy lifestyles

By JOANNE WOJCIK

Because much of IMA Financial Group Inc.'s expertise came from providing loss-control services in the workers comp arena, the middle-market broker introduced its health care cost containment program in 2007 as a "health risk management" rather than a "wellness" program.

Because the program begins with an analysis of claims data to identify health risks in an employer's population, followed by strategic loss-control efforts to mitigate or eliminate those risks, Robert Cohen, IMA's Denver-based CEO, immediately saw a parallel to workers compensation.

"In workers comp, if you invested in loss control, you could see your experience mod go down," he said, referring to the experience modification factor insurers use to set premiums in guaranteed-cost comp programs.

That's why before IMA rolled out the program to its clients, Mr. Cohen insisted that it also include a way to measure the program's impact, similar to the "ex-mod" used by workers comp insurers.

"Originally we were going to call it the H-mod, but we thought it was too corny," he said. Instead, IMA dubbed its innovative health risk management program "ibenefits," with an emphasis on the "I" for the individual and "fit" for wellness. IMA also tested the program on its own population—it has 465 employees in Colorado, Kansas and Texas—before offering it to clients.

It operates similarly to safety incentive programs that reward employees for following safety protocols or reducing workers comp claims. While those incentive programs generally offer employees payment in cash, merchandise credits, gift cards, meals or entertainment, ibenefits enables employees to earn discounts on their health insurance premium contributions.

'We now have data, and that's what this game is all about—proving that it can make a difference.'

Kyle Orndorff, IMA Financial Group Inc.

"Each event is worth a different number of points," said Kyle Orndorff, senior vp of human resources for IMA based in Wichita, Kan.

For example, employees can earn 1,500 points for completing an online health risk appraisals and another 1,500 points for submitting their appraisal to nurses prior to on-site biometric screenings. Employees can earn 1,000 more points for bringing their biometric screening results to their doctors. The first 4,000 points equate to a $20 discount on an employee's monthly insurance premium. Employees earn additional points by participating in programs such as managing stress, quitting smoking or losing weight.

Employees also receive health risk scores based on the results of their biometric screenings. Employees who score 85 or higher and have earned at least 7,500 points receive an additional $15 per month off of their premiums, while those who receive 10,000 or more points receive a "premium holiday" each December. Employees can raise their health risk scores by improving their health status.

By providing incentives to employees to reduce their personal health risks, the program has lowered the cost of health care for the broker and its employees.

"We've seen reduced risk, improved health status, and had a nearly flat trend over three years," said Gregg Kamas, vp and health risk management practice leader at IMA in Denver. In fact, IMA's health care trend—the rate of inflation in its health care spending—was just 0.7% in 2010, he said.

Moreover, "we now have data, and that's what this game is all about—proving that it can make a difference," Mr. Orndorff said. "The medical claims of those who have participated are 39% less than for those that did not. This shows that those who have fewer health risks generate lower health care costs."

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Most party planners enjoy soft rates for E&O cover

But few companies purchase insurance despite exposures

By DAVE LENCKUS

More than 50,000 event planners work in the United States, but the sector is not a significant source of business for errors and omissions insurers.

Among professional liability coverages, errors and omissions insurance for event planners probably is the "most innocuous," said Letha Heaton, the Cherry Hill, N.J.-based vp-marketing at Admiral Insurance Co., a subsidiary of W.R. Berkley Corp.

Other underwriting and broker executives agree with that assessment of the coverage, for which rates are soft and capacity ample.

But it's not because event planners do not shoulder risk when retained to handle arrangements for functions such as concerts, political rallies, air shows and drag races, glitzy corporate affairs, and personal celebrations, such as weddings and anniversary parties.

Instead, it's because most event planners—typically single proprietors or small operations that arrange functions—do not buy professional liability coverage, according to market executives.

"E&O is not necessarily a primary cover that most planners purchase," unlike other professionals, said Lori Shaw, the Charlotte, N.C.-based director-entertainment practice at Aon Risk Solutions, a unit of Aon Corp.

Event planners typically purchase E&O insurance, most often with $1 million of limits, only when their clients demand it or if an event includes an element, such as film clips, that creates trademark, copyright and likeness infringement risk, Ms. Shaw said.

Insurers also offer planners as little as $100,000 of limits, and many write up to $5 million of limits, market executives said. A few write up to $10 million of limits, they said.

While most planners don't buy E&O cover, the number of buyers has increased during the past decade, perhaps because there are more planners, said Inga Goddijn, a Deerfield, Ill.-based managing director at Markel Service Inc., a subsidiary of Markel Corp.

Many event planners do not buy any insurance—professional liability or general liability insurance, Admiral's Ms. Heaton said.

Even those who arrange star-studded concerts typically purchase only event cancellation coverage and general liability insurance, market executives said.

General liability insurance protects planners if an accident, such as a stage collapse, harms anyone in the audience, although a policy endorsement also would cover injuries to performers, said Brent Allen, CEO of Phoenix-based broker Allen Financial Insurance Group Inc.

E&O coverage would come into play in such an incident only if the event planner hired unlicensed contractors to construct the stage, Aon's Ms. Shaw said.

E&O coverage typically responds to a planner's mistake that could lead to breach-of-contract or non-performance claims. Such mistakes would include securing a venue for the wrong date, sending out mistake-riddled invitations, or failing to schedule an act or arrange services such as food catering, security or

See EVENT next page

Most event planners do not purchase professional liability coverage, according to market executives.

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Event: Party planners enjoy soft E&O market

CONTINUED FROM PREVIOUS PAGE

registration staff.

While insurers consider many events low-risk affairs, problems can befall even the most reputable planners, market executives said.

For example, if a wedding is somehow marred due to a planner's negligence, "emotional distress is a real issue," Markel's Ms. Goddijn said.

A problem might not be due to a planner's own negligence but instead could be caused by a vendor that a planner retained. Admiral's Ms. Heaton recounted a dinner that a former employer had planned for 500 clients at an opera house. The company, which Ms. Heaton would not identify, retained a highly regarded event planner to handle all of the arrangements. But more than an hour into the event, only 10% of the guests had been served. The remainder then left, causing the company significant embarrassment, Ms. Heaton said.

> **In negotiating rates and coverage, 'a lot of it will depend on the formalized contracts (planners) have.'**
>
> Lori Shaw, Aon Risk Solutions

The caterer returned its fee, but the refund was inconsequential compared with the reputational damage the company sustained, Ms. Heaton said. Suing the event planner for damages would have been pointless, because she was uninsured and did not have significant personal assets, Ms. Heaton said. But the company never used the planner again.

Still, "consultants like event planners are the easiest to write basic business liability for, as they theoretically do not have much exposure from the actual event," Mr. Allen of Allen Financial said. Their E&O exposure "is a relatively low risk and easy to insure at a general minimum premium of $750."

Other market experts said minimum premiums could be higher—around $1,250.

Market executives characterized the E&O market for event planners as competitive.

"In fact, it's downright too soft," Markel's Ms. Goddijn said.

Rates have dropped "dramatically over the past five years with new companies, a soft market and more competition," Mr. Allen said. The only price hardening he has seen has been "on the more extreme exposures."

Aon's Ms. Shaw estimated that rates are down 10% from a year ago.

However, in negotiating rates and coverage, "a lot of it will depend on the formalized contracts (planners) have," Ms. Shaw said. "You have to show the underwriter you're vetting contracts and not assuming responsibility for things you shouldn't be."

Event planners typically purchase a 12-month E&O policy, which can be written on a claims-made or occurrence form and on admitted or non-admitted paper, market executives said.

Admitted insurers are licensed in the state in which a policy is sold, and those insurers must follow state insurance regulations on policy forms and rates. Their policyholders are protected by a state guaranty fund if the insurer fails. Nonadmitted insurers are free of rate and form regulation, but state guaranty funds do not protect their policyholders. An occurrence policy in effect at the time a covered a loss occurs—regardless when the loss is reported—covers that loss. A claims-made policy responds when a covered loss is reported within the policy period or, if agreed upon by the insurer, during a defined extended period.

But there are exceptions to 12-month policies, some of which could cause coverage problems, market executives said.

Because some planners purchase insurance that covers them only for the portion of the year they work, Ms. Goddijn said, with E&O insurance written on a claims-made basis, "you will always have some sort of gap in coverage" with that approach. The insurer that writes the planner's next E&O policy either will not offer a retroactive coverage date, or the retro coverage will not respond to claims filed during the period the planner was uninsured, she said.

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LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA
(COMMERCIAL COURT)
COMPANIES (WINDING-UP)
NO. 353 OF 1998
IN THE MATTER OF THE COMPANIES ACT 1981
AND IN THE MATTER OF SECTIONS 33 AND 35 OF THE INSURANCE ACT 1978
AND IN THE MATTER OF HORIZON INSURANCE COMPANY LIMITED

NOTICE IS HEREBY GIVEN that Stephen Lowe, the Official Receiver of Bermuda and Liquidator of the above-named Company (the "Liquidator"), has obtained an order from the Supreme Court of Bermuda ("the Court") directing that creditors having provable claims, including future, unliquidated and contingent claims, against the above-named Company, which is being wound-up by Order of the Court, are required to lodge with the Liquidator, to the offices of Finance & Risk Services Ltd, 502 International Centre, 26 Bermudiana Road, P.O. Box HM 321, Hamilton HM BX, Bermuda (Telephone: +441-292-5526) on or before 30 November 2011 duly completed Proofs of Debt in respect of any and all of their claims not proved to date.

Further the Liquidator intends to make a first and final dividend payment and if the Liquidator does not receive such a completed Proof of Debt from a creditor, on or before the said date, that creditor, in respect of any amount for which a Proof of Debt has not been submitted shall be absolutely debarred from receiving, any portion of the first and final dividend to be declared and paid by the Liquidator in accordance with the order of the Court. The dividend to be declared and paid by the Liquidator is, by order of the Court, a first and final dividend following which there will be no further distributions and the liquidation will be closed.

Dated the 28th day of September, 2011

Finance & Risk Services Ltd
Agent for the Official Receiver and Liquidator

LEGAL NOTICE

NOTICE OF TERMINATION OF SCHEME OF ARRANGEMENT
FOR DIRECT CREDITORS
IN THE HIGH COURT OF JUSTICE (IN ENGLAND)
No. 13425 of 2009
CHANCERY DIVISION
COMPANIES COURT
IN THE MATTER OF
HIGHLANDS INSURANCE COMPANY (U.K.) LIMITED
(IN ADMINISTRATION)
and
IN THE MATTER OF THE COMPANIES ACT 2006

NOTICE IS HEREBY GIVEN that a scheme of arrangement pursuant to Part 26 of the Companies Act 2006 dated 1 May 2009, sanctioned by the High Court of Justice of England and Wales on 30 July 2009 and made effective in accordance with its terms on 19 August 2009 (the "Scheme"), between Highlands Insurance Company (U.K.) Limited (in Administration) (the "Company") and its Scheme Creditors (as defined in the Scheme), has now been finally implemented. The date of final implementation was 23 September 2011.

Should you have any questions regarding this notice, please contact the Company as follows:

By phone: +44 (0) 1452 413 985
By fax: +44 (0) 1452 782 582
By email: pro_hicukhelpline@proisinsurance.com
Website: www.ukhighlands.co.uk

PricewaterhouseCoopers LLP

NOTICE OF SANCTION AND EFFECTIVE DATE OF SCHEME OF ARRANGEMENT
FOR REINSURANCE AND NON-INSURANCE CREDITORS
IN THE HIGH COURT OF JUSTICE (IN ENGLAND)
No. 5125 of 2011
CHANCERY DIVISION
COMPANIES COURT
IN THE MATTER OF
HIGHLANDS INSURANCE COMPANY (U.K.) LIMITED
(IN ADMINISTRATION)
and
IN THE MATTER OF THE COMPANIES ACT 2006

NOTICE IS HEREBY GIVEN that, by an order dated 15 September 2011 made in the High Court of Justice in the matter of Highlands Insurance Company (U.K.) Limited (in Administration) (the "Company"), a scheme of arrangement dated 20 June 2011 (the "Scheme") proposed to be made between the Company and its Scheme Creditors (as defined in the Scheme) pursuant to Part 26 of the Companies Act 2006, was sanctioned. A copy of the order sanctioning the Scheme was lodged with the registrar of companies on 15 September 2011.

On 22 September 2011, the United States Bankruptcy Court entered an order granting, amongst other things, permanent injunctive relief under Chapter 15 of the United States Bankruptcy Code in favour of the Company in respect of the Scheme.

Therefore, in accordance with the terms of the Scheme, the Scheme became effective on 22 September 2011 (the "Effective Date").

Scheme Creditors are required to provide full details of their claim and supporting documents by completing a Claim Form (as defined in the Scheme) and ensuring that it is received by the Company by no later than 5pm (London time) on Tuesday 20 March 2012.

Further information and copy documents, including Claim Forms, may be obtained by contacting the Company as follows:

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PricewaterhouseCoopers LLP

UP CLOSE — Comings & Goings

WESLEY WOLFF

NEW JOB TITLE: Lake Jackson, Texas-based president at TDECU Insurance Agency L.L.C.

PREVIOUS POSITION: St. Paul, Minn.-based president at Bremer Insurance Agencies Inc.

LOOKING FORWARD TO: The transition from being Minnesotan to being Texan, especially during the winter months.

GOALS FOR NEW POSITION: To build a team and organization that can effectively serve the members of our credit union.

CHALLENGES FACING INDUSTRY: Poor economy; bringing younger talent into the business.

INDUSTRY OUTLOOK: Constant change will allow for opportunities for those who want to adapt.

BEST THING ABOUT A BAD ECONOMY: Individuals and companies will be looking for alternatives to reduce their cost of doing business. Opportunities exist for those who want to be creative.

FIRST EXPERIENCE IN JOB MARKET: Management trainee for Norwest Insurance (now Wells Fargo Insurance Services Inc.) in Gregory, S.D.

COLLEGE MAJOR: Bachelor of Science in business administration, with a primary focus on management and marketing, from Northern State University, Aberdeen, S.D.

ADVICE: Life is a marathon, not a sprint.

OUTSIDE THE INDUSTRY, A DREAM JOB: To own a minor league baseball team.

MOST PASSIONATE ABOUT: My family; chasing after my kids.

CAN'T-MISS TELEVISION SHOW: "Modern Family." It is hilarious.

FAVORITE MEAL: My mom's chicken and dumplings.

ON A SATURDAY AFTERNOON: Probably chasing my kids with one of their activities. Hopefully, this will transition to the college football scene. Minnesota really struggles in this area.

EMAIL OR PHONE, AND WHY: Phone. While email is convenient, too many things get lost in translation.

Comings & Goings ONLINE

VISIT *www.businessinsurance.com/ComingsandGoings* 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.

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Health: Medical cost hikes increasing

CONTINUED FROM PAGE 1

seek care in a down economy, these experts say.

Almost half of the 1,226 consumers responding to the Consumer Reports survey didn't fill prescriptions, took less medicine than prescribed or failed to undergo a medical test advised by their physician. That is 9 percentage points higher than the 39% that reported scrimping on medical care in the 2010 annual survey.

"It means prices for health care are up," said Helen Darling, president of the National Business Group on Health, a Washington-based consortium of the nation's largest employers. "Doctors and hospitals have been raising their prices steadily."

"Prescription drug trends have moderated over recent years because of the shift to generics and some blockbuster drugs coming off patent," said Gary Stanford, a Dallas-based principal and actuary at Aon Hewitt, and one of the survey's authors. "Those things are helping control that piece of the cost equation. But on the hospital and physician side, we're still seeing significant price increases."

Mr. Stanford attributed hospital and doctor price increases to impending reductions in Medicare and Medicaid reimbursements, an effort to balance the federal budget. "We see some evidence of price increases in anticipation of what may be coming down the road," he said.

Ms. Darling said the findings of the surveys are in line with a survey NBGH conducted of its members last summer.

"If we're saying just medical claims alone, with plan design changes, it's increasing by 7.2% in 2012 (for NBGH members, which are mostly self-insured). If I'm an insurance company and have to follow state mandates, pay premium taxes and build in a profit margin, it doesn't surprise me that it takes you to 9%," she said, referring to the KFF/HRET average increase.

Ms. Darling reasoned that insurers, in calculating premiums for their fully insured business and premium equivalents for self-funded employers, also expect utilization to return to normal levels and possibly increase next year.

"They believe that even though utilization has been down, the usual high use is going to return," she said. "They're estimating premiums for the whole of 2012, and they will always be conservative in their projections."

But Cindy Nayer, president of the St. Louis, Mo.-based Center for Health Value Innovation, said she thinks both estimates are low and that health care costs will climb even higher in 2012 because so many people, especially those that have been affected by the recession, have been putting off treatment of chronic conditions.

"People haven't been taking care of themselves since 2008 because of the economy," she said, and "because people are not getting appropriate care…their conditions get worse, which means the total cost of care when they do seek it will be higher."

Moreover, "we're covering family members up to age 26," she said. "Kids aren't as healthy as before and many cannot find a job, which contributes to unhealthy behavior."

The KFF/HRET survey found that 20% of employers added at least one adult dependent during 2011 in response to the Patient Protection and Affordable Care Act provision requiring employers to extend coverage to employees' adult children to age 26. The survey did not say what proportion of the 9% increase in plan costs for 2011 were attributable to these new members.

The Aon Hewitt survey found about 1% of the 2011 cost increase could be traced to the addition of these new plan members, but did not say how many new dependents were added.

The surveys also found increased cost-sharing with employees.

For example, the KFF/HRET survey showed that 31% of employees are enrolled in plans with a general annual deductible of $1,000 or more for single coverage, up from 27% in 2010.

Meanwhile, the Aon Hewitt survey found that employees' out-of-pocket medical costs jumped 18.7% to $2,007 from $1,691 in 2010. Aon Hewitt projects employees' out-of-pocket costs will grow an additional 13.4% in 2012 to $2,275, mostly as a result of plan design changes that discourage inappropriate use of medical care.

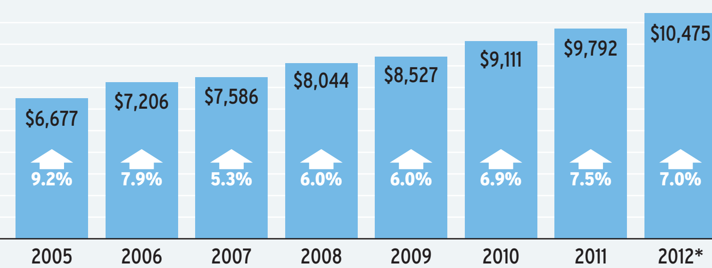
"A lot of employers realize they can't simply cost-shift by making employees pay more out of their paycheck for coverage, so they're doing more through plan design to encourage them to use care more appropriately," said Mr. Stanford.

Marianne Fazen, president of the Dallas-Fort Worth Business Group on Health, says she has noticed a distinct shift among her members toward the use of such value-based benefit designs.

"People just use the health care system excessively, and that drives up the cost. Employers are implementing plan designs that are a little bit more rigorous," she said. "For example, they're increasing penalties for going out of network, offering more restricted provider networks, mandating the use of generics. It's making health care for the correct things—like preventive care—easier and more convenient, but limiting access to the incorrect things."

TOTAL PLAN COSTS

Plan costs (premium or budget rate) and percentage increase on a per-employee basis, including employee contributions, but not out-of-pocket costs (copayments, coinsurance)



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Source: Aon Hewitt Inc. Health Care Cost Analysis

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Court: Light on business

CONTINUED FROM PAGE 3

empt state tort law claims for failure to warn and design defects against manufacturers for parts that cause injury to workers repairing trains in maintenance shops. *National Meat* asks whether the Federal Meat Inspection Act preempts a California statute that prohibits the processing of "nonambulatory swine."

The court will deal with arbitration yet again in *CompuCredit Corp. et al. vs. Wanda Greenwood et al.* At issue is whether claims arising under the Credit Repair Organizations Act are subject to arbitration pursuant to a valid arbitration agreement.

The high court also agreed last week to determine the amount of weekly disability benefits employers are liable for under the Longshore and Harbor Workers' Compensation Act. Under the federal law, compensation for disabled maritime workers is capped at twice the fiscal year's national average weekly wage as determined by the U.S. Secretary of Labor. In *Dana Roberts vs. Sea-Land Services Inc. et al.*, the Supreme Court will determine whether the national average wage provision applies for the year during which an employee suffers a disabling injury or for the year during which a formal compensation order is issued.

UBS: Banks still learning rogue trader risk management lessons

CONTINUED FROM PAGE 3

overall could have done more.

The latest incident may "demonstrate the banking industry has not learned its lessons about dealing in higher-risk securities and proprietary trading," said Edward Kirk, a partner with law firm Clyde & Co. in New York.

A governing structure is needed to prevent, or at least minimize, the risk of rogue trading, said risk management consultant James Lam, president of James Lam & Associates Inc. in Wellesley, Mass.

A risk officer with the authority "to challenge key business lines…all the way down to individual business units and back-office operations, to make sure the right people are in place to provide the checks and balances" is what is needed, he said.

Experts also stressed the need to have separate back-office and trading operations. Edward Pekarek, visiting law professor and assistant director at the Pace Law School's Investor Rights Clinic in White Plains, N.Y., said all three traders had extensive back-office experience before they became traders.

That is where they "learned where the cracks were in the system," he said. Then, when promoted to the front office, they "traded beyond their abilities and found themselves deep in a hole and kept digging, and used their back-office training as the shovel" to disguise their activity, Mr. Pekarek said.

Perry S. Granof, of counsel at law firm Williams Kastner in Chicago, said, "Financial institutions, especially, have to have adequate controls in place to make sure there's a complete separation" between the back-room and trading operations to prevent unauthorized trading, or to at least "make sure the unauthorized trading is identified in a relatively short time frame."

In the cases of the three traders, "it appears these trades have gone on for years without a proper check," Mr. Granof said.

Make sure there are good compliance procedures in place and "that in fact they're being implemented correctly," said Mr. Gorman. "You could have the best procedures in the world, but if they're not being followed up on, if they're not being properly applied, they're not worth the paper they're written on."

"Where you have trades going on year after year without a proper check on those trades, plaintiffs can create a very strong and effective case for negligence in the context of a derivative action," where shareholders sue on behalf of the corporation, Mr. Granof said.

In cases where there are stock drops because of unauthorized trading, a potential class action could be based on the theory "there was misrepresentation in the financials with respect to the checks and balances" employed to prevent it, he said.

But foreign investor plaintiffs, in particular, could be limited as a result of the U.S. Supreme Court's June 2010 decision in *Robert Morrison et al. vs. National Australia Bank Ltd.* The court held in that case that foreign plaintiffs cannot use the U.S. Securities and Exchange Act of 1934 to sue foreign and U.S. defendants for misconduct in connection with securities traded on foreign exchanges.

To date, no foreign appellate courts have ruled on the issues raised in *Morrison*, said Luke Green, Norman, Okla.-based head of research for Securities Class Action Services.

He noted, however, that *Morrison* was cited in a September ruling by New York federal judge in *In Re USB Securities Litigation*, in which the court dismissed a putative class action filed by shareholders in 2007 claiming violation of the SEC Act.

However, even U.S. investors may not find a warm welcome in U.S. courts in the UBS case, say some observers.

"Generally, although not uniformly, courts take the position" that a company's internal affairs should be subject to the laws of jurisdiction where it is incorporated and where the conduct took place, said Kevin LaCroix, executive vp at OakBridge Insurance Services L.L.C. in Beachwood, Ohio.

"The courts have become highly sensitized to adjudicating controversies where another state or foreign country has a particularly well-developed interest," said Fred T. Isquith, a partner with Wolf Haldenstein Adler Freeman & Herz L.L.P. in New York.

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Comp: State just says 'no'

CONTINUED FROM PAGE 1

Although Washington's efforts are not without detractors, the state's efforts also get high praise.

Washington state "should be commended for taking action where many other states have done nothing," said Dr. Andrew Kolodny, president of Physicians for Responsible Opioid Prescribing and chairman of the Department of Psychiatry at Maimonides Medical Center in New York.

Among other measures, Washington's guideline recommends that doctors not increase opioid doses beyond an average daily morphine equivalent of 120 milligrams when a patient does not demonstrate improved functionality and decreased pain at lower doses or without first consulting with a pain management expert.

Colorado has had a workers comp chronic pain prescription guideline for several years. It calls for measures such as testing claimants' urine to help assure they are not diverting painkillers, said Dr. Kathryn Mueller, an advocate of such guidelines and a professor in the department of emergency medicine at the University of Colorado Denver's medical campus.

But unlike Washington, Colorado's guideline does not suggest a specific opioid dosage that should trigger extra precautions by prescribing doctors. Studies on the detrimental impact of higher opioid doses available now did not exist when Colorado adopted its guideline, Dr. Mueller said.

It is anticipated, however, that an updated version of the Colorado Division of Workers' Compensation chronic-pain guideline now under development will suggest a dose at which doctors should be particularly cautious, Dr. Mueller said. Many medical experts believe that patients are being put at risk when opioid dosages reach 100 milligrams to 120 milligrams per day, she added.

According to the White House Office of National Drug Control Policy, the milligram-per-person use of prescription opioids increased 402% from 1997 to 369 milligrams in 2007.

Like Washington, Colorado's new guideline dose amount would only recommend that prescription writers take certain steps, such as getting other doctors involved in making such decisions, when considering prescribing high doses of painkillers.

The guidelines are not a mandate. But Washington state was the first in the nation to suggest a specific dose at which doctors should take certain precautions and its guideline applies to all medical care, sources said.

The guideline was introduced in 2007 as an "educational pilot," said Dr. Gary Franklin, medical director for the Department of Labor and Industries, which administers the state's workers compensation insurance fund. The guideline was updated in June 2010.

Dr. Franklin told the audience at *Business Insurance*'s recent Workers Comp Cost Control Strategies virtual conference that "there is now very strong evidence in at least three studies linking specific doses of opioids to increased morbidity and mortality."

Meanwhile, research has found that patients given larger and larger doses merely increase their tolerance for the drugs without achieving improvements in function or decreased pain.

Data show Washington state's death rate from unintentional opioid poisoning now exceeds the death rate from car crashes.

But since the 2007 implementation of Washington's dosing guideline, the state's workers comp system has experienced a 25% decline in average daily doses of morphine equivalence for opioid prescriptions, Dr. Franklin said.

In 2010, the state saw a 50% reduction in deaths related to opioid use among its workers comp claimants vs 2009, he said.

"For the first time in over a decade we have had a marked decline in (opioid) deaths in Washington state workers compensation," he told the conference. "This is only one year (of data) and I won't be really happy unless we see it again next year, but it's hopeful."

Not everyone thinks Washington state is on the right track.

The 120 milligram dose at which the guideline suggests that primary care doctors consult a specialist is an arbitrary level, said Dr. Lynn Webster, an officer for the Glenview, Ill.-based American Academy of Pain Medicine.

Additionally, the guideline suggests a dosage without appropriately considering why certain patients need higher doses, Dr. Webster said.

"Dose is a factor (that puts patients at a greater risk of harm), but more important than dose is the reason why physicians have patients at 120 milligrams or more," she added. "When we see guidelines that are somewhat arbitrary and don't take into account individual responses to medications or their needs, to me its not addressing the appropriate issue."

ONLINE

For more on opioid overprescribing, check out the Workers Comp Cost Control Strategies virtual conference, now available on demand at *www.businessinsurance.com/compcosts.*

Raid nets opioids at Boeing plant

PHILADELPHIA—While federal agents secretly investigated illegal prescription narcotic sales and abuse at a Boeing Co. plant, Boeing said it kept suspected employees from risking co-workers' safety.

The Justice Department said last week after a four-year undercover investigation, agents from the FBI and the Drug Enforcement Administration arrested more than two dozen employees at a military aircraft manufacturing plant near Philadelphia.

Indictments charged them with the illegal distribution of prescription drugs including opioid painkillers, such as fentanyl and oxycodone.

Fourteen other defendants were charged with attempted misdemeanor possession of drugs sold by co-workers.

"The defendants are accused of diverting controlled substances and selling them to alleged abusers," the Justice Department said in a statement.

The sales of the drugs on Boeing property show how pervasive the problem of prescription drug abuse is, the Justice Department said.

A spokesman said Boeing learned of the problem from employees who reported it to a hot line.

With measures put in place, "there was no opportunity for the suspected employees to put at risk the safety of their teammates," he said.

—By Roberto Ceniceros

Transatlantic: Another bidder lines up

CONTINUED FROM PAGE 1

representative of the New York financial services firm declined comment.

Validus' bid was worth roughly $2.96 billion as of Friday. Aside from its cash-and-stock offer, Validus said it would add $500 million to Transatlantic's reserves.

National Indemnity's $52-per-share bid was valued at about $3.25 billion, an amount Transatlantic rejected, saying its was only 77% of Transatlantic's stated book value as of June 30.

"There are definitely a cadre of (Transatlantic stock) investors anticipating that an offer of at least as high or higher than the last round received will come through," said Mark Dwelle, an equity insurance analyst in Richmond, Va., at New York-based RBC Capital Markets.

The first round began as President and CEO Robert F. Orlich approached retirement. Transatlantic's senior management began discussions about possible business combinations back in June 2009, according to a U.S. Securities and Exchange Commission filing. Its willingness to sell became known when it announced its plan to merge with Allied World in June.

The competing offers differ.

Berkshire's all-cash offer was higher per share, but rivals provided Transatlantic investors with the opportunity for gains when stock prices improve, said Paul Howard, director of research at Solstice Investment Research L.L.C. in Glastonbury, Conn.

The reinsurer's business appears solid, experts say. A.M. Best Co. Inc. gave Transatlantic an A financial-strength rating, which the rating agency described as reflecting the company's "excellent" ability to meet obligations.

"It's a global, decent-sized reinsurer, and you can apparently get it for a good price," said a source.

"These sorts of opportunities don't happen often where reinsurance companies get put into play," said Paul Newsome, an insurance industry analyst at Sandler O'Neill & Partners L.P. in Chicago. "The multiples are really low, so there's attractive economics" at this time, he said.

An investor group has different motivations for bidding than an existing insurance company.

Someone coming into a deal with money to buy out current shareholders typically would be looking more to make a good investment, said James Eck, vp-senior credit officer at Moody's Investors Service Inc. in New York. A merger, on the other hand, would entail the alignment of corporate cultures, operations, businesses and risk exposures. "It's more challenging, but, depending on the merger partners, could make sense strategically," he said.

Mr. Brandon had been a rising star at Berkshire's reinsurance operation, Gen Re. But then the government alleged that Gen Re helped New York-based American International Group Inc. inflate its loss reserves with a pair of sham reinsurance transactions, identifying Mr. Brandon as an unindicted co-conspirator. Although legal experts said at the time that the prosecutors most likely did not have enough evidence to charge Mr. Brandon, and no charges were ever field, he resigned from Gen Re in April 2008.

Insurance experts see Mr. Brandon's track record as an asset.

"Mr. Brandon has a good reputation as a deal-doer," Mr. Dwelle said. He noted a "frenzy of allegation" over derivatives and off-balance sheet deals in 2008. Mr. Brandon's run-in with prosecutors was "probably a product of the times as much as anything," Mr. Dwelle said.

An investor with Transatlantic stock said Mr. Brandon has key business contacts, but the investor remained dubious about whether Messrs. Brandon and Jester could drum up enough backing to win Transatlantic.

Representatives from Validus, Allied World and Transatlantic declined comment.

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News In Brief

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Nationwide's commercial insurance reach. Under the agreement, Nationwide will acquire all publicly held shares of Harleysville at $60 a share, or about $760 million in total.

SEC finds failures at 10 rating agencies

A report by the U.S. Securities and Exchange Commission found that problems remain at 10 rating agencies it examined despite the agencies' efforts to improve their operations. The review "generally found instances where each of the (nationally recognized statistical rating organizations) failed to follow all its ratings procedures." It said the instances generally involved failing to follow procedures regarding documentation to be maintained with respect to each rating action, adding that "none of these instances appears to have been material." It also found that some rating agencies failed to manage potential conflicts of interest adequately and to make timely and accurate disclosures.

Renewal rates decline except cat-prone areas

Rate decreases remained common in most classes of insurance business renewing in the third quarter that were not affected by recent catastrophes, Marsh Inc. said in a report. Prices on catastrophe-exposed property programs in Australia increased on contract renewal by as much as 10% during the third quarter. But insurance prices remained flat or declined in many lines of insurance coverage. In the United States and Canada, property programs not exposed to catastrophes renewed in the third quarter at the same rates they'd had a year earlier.

Typhoon Roke, Nesat damage estimates released

Typhoon Roke caused $300 million to $600 million in insured damages, catastrophe modeler EQECAT Inc. said. Roke, the 15th typhoon of this year's west Pacific typhoon season, made landfall in Japan near Hamamatsu City on Sept. 21 and moved quickly across Honshu, Japan's main island. The storm packed winds and heavy rainfall and affected the area of northeast Japan that was ravaged by an earthquake and tsunami in March. Meanwhile, insured losses in China caused by Typhoon Nesat should be less than $50 million, EQECAT said. The typhoon made landfall Thursday near Haikou, in China's Hainan Province, with maximum sustained winds of 75 mph.

N.J. OKs bill to allow taxi firms to use RRGs

The New Jersey Legislature has approved legislation that would allow taxicab companies operating in the state to continue buying liability insurance coverage from risk retention groups. The measure was amended after Gov. Chris Christie's veto of a previous version of the bill in May. The vetoed bill would have required taxicab operators to purchase primary liability coverage from an admitted company that is a member of the New Jersey Property-Liability Insurance Guaranty Assn. However, the federal law that established RRGs bars the special multiple-owner captive insurers from being members of state guaranty associations, effectively ruling out RRGs as a coverage source for New Jersey cab operators. Under the revised bill, which now goes to Gov. Christie, a taxicab company could satisfy the insurance coverage requirement by purchasing a policy from insurers registered in the state, a stipulation that would allow the companies to secure the coverage from RRGs.

Noted

The U.S. Senate has confirmed former Kentucky insurance commissioner and Treasury official S. Roy Woodall to serve as a voting member on the **Financial Stability Oversight Council**....John R. Coomber, former CEO of **Swiss Reinsurance Co. Ltd.**, is the new chairman of insurance industry initiative ClimateWise. The global collaborative insurance industry effort focuses on the risks of climate change. Mr. Coomber, who retired as Swiss Re's CEO in 2005, succeeds Andrew Torrance, CEO of Allianz Insurance, who has completed his three-year term as chairman of the group.

Lloyd's: Uptick in M&A activity seen

CONTINUED FROM PAGE 4

the capacity rights to syndicate 1110 for an undisclosed sum (see chart).

A consortium comprising Tawa P.L.C., Assuranceforeningen Skuld and Paraline Group Ltd., bought the Lloyd's managing agency services of Whittington Group Pte.

Torus Insurance Holdings Ltd. acquired Lloyd's syndicate 1301 and its corporate members Broadgate Underwriting Ltd. and Broadgate Underwriting 2010 Ltd.

Although Torus underwrites construction business at Lloyd's through an agreement with Starr Managing Agents Ltd., and some quota share business, it said the Broadgate deal would give it direct access to Lloyd's and further its development as a specialty insurer.

And Ryan Specialty Group L.L.C. completed its acquisition of Jubilee Group Holdings Ltd. and installed Lloyd's veterans Johnny Rowell, former executive director and head of specialty lines at Beazley Group P.L.C., as CEO and Max Taylor, former chairman of Lloyd's, as nonexecutive chairman.

Several drivers are causing the increased interest in Lloyd's, experts say.

Because of soft insurance and reinsurance pricing, it has become more difficult in recent years for new syndicates to bring business plans to Lloyd's management that "have a reasonable chance of making a profit," said Richard Ward, CEO of Lloyd's.

The Lloyd's Franchise Performance Board reviews and approves syndicate business plans.

This may be a reason companies have been keen to gain a foothold in the Lloyd's market looking to buy existing Lloyd's businesses or bring additional books of business into Lloyd's, he said.

Simply buying a Lloyd's business does not necessarily make the process of business plan approval any simpler, said Denis Sugrue, a director at Standard & Poor's Corp. in London.

Still, there has been "steady interest" in Lloyd's by potential investors in recent years because of its international licenses, "chain of security," strong ratings and the lines of business underwritten, among other factors, he said.

Relatively low stock valuations of many Lloyd's businesses also have made them more attractive, Mr. Sugrue said.

But some shareholders may be reluctant to sell their shares at such a low price, he said.

> It is 'historically relatively cheap' to acquire a Lloyd's business, and the market is 'ripe for M&A.'
>
> Martyn Street, Fitch Ratings Ltd.

It is "historically relatively cheap" to acquire a Lloyd's business, and the market is "ripe for M&A," said Martyn Street, a director in the insurance team at Fitch Ratings Ltd. in London. But the current economy may make it difficult for potential acquirers to raise the capital needed to buy potential targets, he said.

Anticipation from investors that the market may turn in the next couple of years means many are interested in buying a platform now to be ready to take advantage of rate increases when they occur, he said.

The European Union's upcoming Solvency II regulatory regime also may spur some companies to seek to diversify to gain the capital benefits under the new rules. In addition, smaller companies may see the rules as too great a burden and put themselves up for sale as a consequence, Mr. Street said.

There likely would be more M&As among existing Lloyd's entities were it not for the fact that so many Lloyd's businesses are strongly associated with their leaders and/or founders, and that personality plays such a large role in the way the Lloyd's market operates, said Grant Thornton's Mr. Allen.

Lloyd's reluctance to admit too many startup syndicates and its strictness on new entrants could explain some of the M&A interest, although several potential purchasers already have a Lloyd's presence, he said.

M&A MOVEMENT

There has been a recent uptick in merger and acquisition activity in the Lloyd's of London market.

- In March, Achilles Netherlands Holdings B.V. took over Brit Insurance Holdings N.V., which operates Lloyd's of London syndicate 2987.
- In May, Chicago-based Ryan Specialty Group L.L.C. bought Lloyd's company Jubilee Group Holdings Ltd., which operates syndicates 5820 and 779. The deal was finalized in September.
- In July, Worcester, Mass.-based Hanover Insurance Group Inc. bought Chaucer Holdings P.L.C., which operates several Lloyd's syndicates.
- In September, ProSight Specialty Insurance Holdings Inc. bought Lloyd's coverholder TSM Agencies Ltd. and the capacity rights to syndicate 1110.
- Also in September, a consortium comprising Tawa P.L.C., Assuranceforeningen Skuld and Paraline Group, bought the Lloyd's managing agency services of Whittington Group Pte. Whittington provides managing agency services for turnkey syndicates at Lloyd's whereby capacity is managed on behalf of a third party.
- And also in September, Torus Insurance Holdings Ltd. acquired Lloyd's syndicate 1301 and its corporate members Broadgate Underwriting Ltd. and Broadgate Underwriting 2010 Ltd.

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End Page

CONTRIBUTING: Matt Dunning, Mike Tsikoudakis, Sarah Veysey

Starbucks cans singing barista for video rant

Many gripe about their jobs, but one California man set his complaints to music and then hit a sour note with his employer.

A former Starbucks employee was so riled by customers who frequent the Chowchilla, Calif., shop where he worked that he was moved to write and perform a song in tribute to his frustration, donning only his underwear and his company-issued green apron.

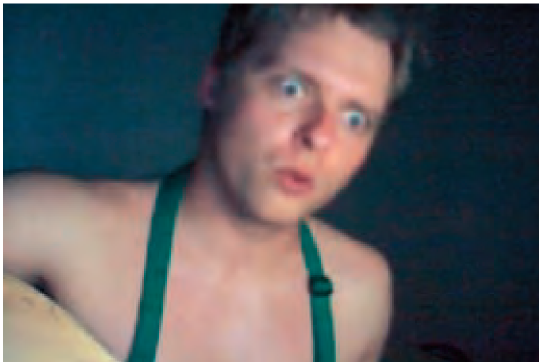
The song and accompanying video, posted on YouTube and picked up by the satirical website StarbucksGossip.com, went viral, collecting more than 720,400 views since July. The employee, 25-year-old Christopher Cristwell, was promptly fired, according to an ABC News report.

"Hello, rich white lady. I already know what you want, you want a skinny vanilla latte, young debutante. Well, that drink won't make you skinny. You've got to work for that. And, just in case you're wondering, I just called you fat," Mr. Cristwell sings over an acoustic guitar.

Other targets of his scorn include customers who order multiple time-consuming breakfast sandwiches despite the long line of other patrons gathering behind them and would-be customers angrily banging on the storefront window after finding the shop closed for the day.

In a follow-up video, complete with a second song, Mr. Cristwell said he harbors no ill will toward the company and understands the reason for his termination.

"Just so you know, I loved my job. I loved my boss and coffee too," he later sings. "I will miss every minute I spent with my Starbucks crew."



Christopher Cristwell's musical rants about his Starbucks customers posted online got him fired from his job.

A photographer is suing over the use of his photos of rap legends N.W.A.

VH1/SHOOTING STAR: H. ROSENBERG

Photog snaps over use of pics

A New York photographer is taking music network VH1 and the producers of a documentary featuring rap legends N.W.A. to court for unauthorized use of his pictures.

Howard Rosenberg, a professional photographer who worked with N.W.A. after the release of the Los Angeles-based group's 1988 album "Straight Outta Compton," alleges that VH1, parent companies Viacom Inc. and Viacom International Inc., and Los Angeles-based filmmaker Creature Films Inc. never obtained his permission to use his photos in a 2008 documentary, according to a suit filed last month in Manhattan federal court.

Three months before the premier of the documentary, "N.W.A.: The World's Most Dangerous Group," Mr. Rosenberg alleges he told the network and Creature Films that they would be required to secure usage rights for the photos directly from him.

But when price negotiations stalled, Mr. Rosenberg alleges he was told by Shooting Star Agency that VH1 and the film's producers had tried to secure permission through the agency, a stock photography syndicator that holds limited licensing rights to some of Mr. Rosenberg's work.

He agreed to allow six of his photos to appear in the documentary, excluding promotional materials and other applications. However, he says the film used at least 27 of his photos, and several appeared repeatedly in advertising materials and reviews of the film. He also alleges the network used them in social media campaigns to promote the film.

Mr. Rosenberg is seeking an injunction, damages and any profits the network or the filmmakers earned from using his photos.

A spokeswoman for Viacom and VH1 declined comment.

LLOYD'S OF LONDON

Lord Peter Levene

Lord Levene to receive Lloyd's gold

Lord Peter Levene of Portsoken, the outgoing chairman of Lloyd's of London, will receive a gold medal for his services to the market.

Lord Levene, who will retire from Lloyd's this month, has been the longest-serving chairman of Lloyd's in the modern era.

A gold medal has not been awarded by Lloyd's since 1996, when Sir David Rowland was honored for his efforts in steering the market through the Reconstruction and Renewal program.

"When Lord Levene took over the chairmanship of Lloyd's, its reputation was not where it is today. In his nine years at the helm, he has worked tirelessly to rebuild that reputation and to promote the market across the globe," said Andreas Prindl, chairman of Lloyd's Council's Nominations, Appointments and Compensation Committee, in a statement. "He has been instrumental in opening up major new markets, most notably China, and has played a major part in Lloyd's once again being the gold standard in insurance worldwide," he added.

Lord Levene said he was humbled to receive the medal.

Richard Ward, CEO of Lloyd's, said the medal was well-deserved and that under Lord Levene's stewardship the market had gone from "strength to strength."

John Nelson, a former investment banker and current chairman of London-based real estate company Hammerson P.L.C., will succeed Lord Levene this month to become only the second chairman of Lloyd's—after Lord Levene—to come from outside of the more than 300-year-old market.

Firm tee'd off over course 'lie'

A company that manages a public golf course in Sanford, Fla., is suing the city over who designed the grounds.

Maece Taylor Inc., which does business as Mayfair Country Club, wants to be let out of its 20-year lease because, according to the suit, officials lied that the public facility was designed by famous golf course architect Donald Ross, according to the Orlando Sentinel.

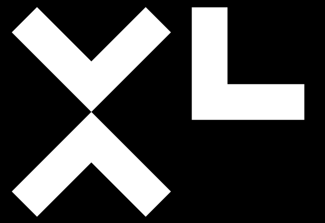
In 2008, Sanford's city commission approved an agreement with Maece Taylor to manage the golf course and clubhouse facilities, according to newspaper.

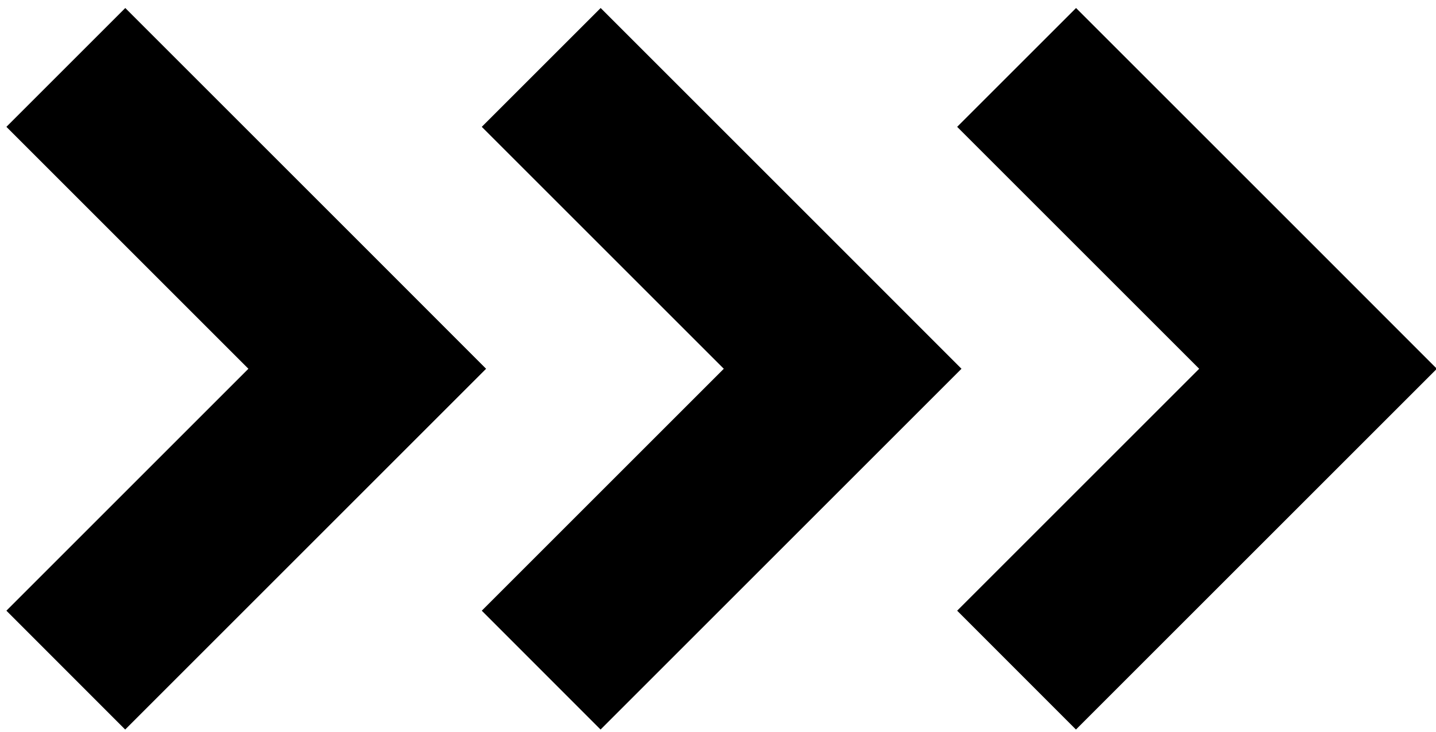
As part of the agreement, Maece Taylor paid the city $1 million and put $700,000 in capital improvements into the course, which the previous operator reportedly left after a falling-out with the city.

In the suit, Maece Taylor alleges that its lease with the city, which says the facility was designed by the renowned Mr. Ross in the 1920s and 1930s, is invalid as there's no evidence that Mr. Ross, who died in 1948, designed the course in Sanford.

City officials said it doesn't matter who designed the course and that Maece Taylor is creating a "smoke screen" because the company is behind on its lease and utility payments, the newspaper reported.

The golf course management company is seeking full return of its money and unspecified damages.





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