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OF PPO NETWORKS
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**TIPS FOR MID-MARKET FIRMS
ON GOOD RELATIONSHIPS
WITH BROKERS / PAGE 6**

In Brief

AIG, investor settlement given initial OK by judge

U.S. District Court Judge Deborah A. Batts has given preliminary approval to American International Group Inc.'s proposed settlement with investors involving charges that anti-competitive market division, accounting violations and stock price manipulation misled them about AIG's value. Richard Cordray, Ohio's attorney general at the time, in July 2010 announced the \$725 million settlement involving allegations about events that occurred from October 1999 to April 2005. A fairness hearing on the proposed settlement is set for Jan. 31, 2012.

Obama signs NFIP extension

President Barack Obama last week signed a stopgap funding

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SPOTLIGHT

**EXCESS & SURPLUS
LINES REPORT**

Large losses push up some rates; stamping offices' premiums hold steady; clearinghouses undergo streamlining; market conditions fuel innovation; *BI* ranks largest companies; premiums, taxes listed by state. **PAGE 13**

REGULATION

Whistle-blower risks get louder

Tipster incentives create headaches for companies

By JUDY GREENWALD

WASHINGTON—Employers should make sure their internal compliance procedures are strong and effective in light of a rule that is expected to encourage whistle-blower tips to the Securities and Exchange Commission.

The whistle-blower provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act offers workers bounties for reporting securities violations. The final rule permits them to go first to the SEC rather than their own firms, thus putting their firms at risk of falling under SEC scrutiny.

Under the provision, a whistle-blower who provides "original information" to the SEC that results in a sanction of at least \$1

million could receive 10% to 30% of the penalty levied.

The SEC's Office of the Whistle-blower lists dozens of cases where sanctions exceeded \$1 million, although it does not specify whether a whistle-blower award will be paid in connection with any of the cases.

An SEC spokesman said while he has no data to indicate whether the number of whistle-blower tips have increased since its rule implementing the act went into effect Aug. 12, there has been a "significant increase in the number of quality tips." The SEC has estimated it will receive about 30,000 whistle-blower complaints a year.

Companies lobbied vigorously but unsuccessfully for a requirement that employees first go to their own companies with any whistle-blower complaints before the go to the SEC. Lloyd B. Chinn, a partner with Proskauer Rose

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30,000

The SEC has estimated it will receive about 30,000 whistle-blower complaints a year.

PENSION BENEFITS

Market woes to force large pension contributions

By JERRY GEISEL

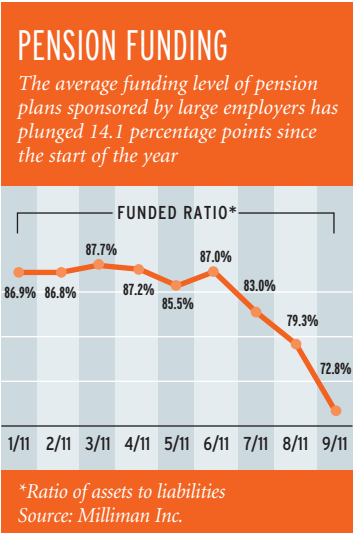
Employers will have to put tens of billions of dollars in extra contributions to their pension plans next year as plan assets have tumbled due to the equities market slump and liability values have surged due to low interest rates.

Pension plan funding levels,

which were buoyed this year by gains in the equities markets, now are near all-time lows, hammered in recent months by the sharp reversal in the equities markets and the continuing fall in interest rates.

Two studies released last week affirm those developments.

As recently as June, defined



87% funded, according to an analysis by Milliman Inc.

But by the end of last month, the average funding levels of those plans dropped to 72.8%, with the difference between plan assets and liabilities hitting \$438.9 billion, a record one-month increase in the amount of unfunded liabilities in the 11 years Milliman has been tracking such changes.

Other surveys also show the rapid erosion of pension plan funding levels.

A Mercer L.L.C. analysis of pension plans sponsored by companies in the S&P 1500, also released last week, found that the average plan funding level sank to 72% as of Sept. 30, down from 79% at the end of August. It also is a major

benefit plans offered by the 100 U.S. employers with the largest pension plans were on average

See **PENSIONS** page 33

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WORKERS COMPENSATION

Workers comp exclusive remedy challenged

Nebraska grain elevator suit could affect all industries

By **ROBERTO CENICEROS**

A case argued before Nebraska's Supreme Court last week in the death of an 18-year-old grain elevator company worker seeks to circumvent the exclusivity rule common in many states' workers compensation laws.

"It's a big deal," because the plaintiffs in *Estate of Joseph Teague vs. Crossroads Cooperative Assn.* want Nebraska's Supreme Court to create an exception to the exclusivity rule when employers engage in intentional actions, said Steven W. Olsen, a partner at Simmons Olsen Law Firm P.C. in Scottsbluff, Neb.

State exclusivity laws typically bar civil litigation by making workers comp law the exclusive remedy for work-related accidents.

A ruling favoring the plaintiffs would not be limited to the case at hand, but would undermine the exclusivity rule for Nebraska employers across all industries, said Mr. Olsen, who represents the defendants in the case.

"What they want to do is to make a change in what has existed in law for years and years, which is the exclusivity provision," Mr. Olsen said. "Their whole argument is there are certain kinds of actions that would justify somebody being able to sue."

The case stems from the May 2007 suffocation death of Joseph Teague and comes amid a growing trend of accidents and deaths involving workers trapped in grain elevator facilities across the nation's heartland.

Grain entrapment accidents have spiked in recent years because of harvesting conditions and the increased storage and consumption of corn used to produce ethanol, according to researchers at the Agricultural Safety and Health Program at Purdue University in West Lafayette, Ind.

They found that at least 51 grain entrapment accidents occurred in 2010, the highest since researchers began tracking the accidents in 1978. Twenty-six were fatal. A common cause of death is workers entering bins to loosen clogged grain while unloading equipment is running, often without



AP PHOTO

Firefighters cut a hole in a Zachow, Wis., grain elevator in June 2010 in searching for an employee who became engulfed in the grain at Sorensen Grain L.L.C. and died. 2010 was a record year for grain entrapment accidents, according to Purdue University researchers.

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RISK MANAGEMENT



MORE COVERAGE FROM FERMA

More coverage of the forum held by the Federation of European Risk Management Assns. will appear in the Oct. 17 issue of *Business Insurance*.

Most insurance rates stable: FERMA panel

Pricing 'neutral' for most accounts, but pressure building

By **SARAH VEYSEY**

STOCKHOLM—Rates for most insurance coverage will remain stable in the coming months, a panel of insurer, reinsurer and broker CEOs told the Federation of European Risk Management Assns. forum last week.

While there are various pressures that may lead to future rate hardening, for the time being rate increases likely will be limited to

loss-affected areas and lines of business, they said during the biennial meeting in Stockholm.

"Rates are stable," said Greg Case, president and CEO of Chicago-based brokerage Aon Corp.

"There is a tightening, but we are not quite at an inflection point," Mr. Case said.

While rates in some catastrophe-hit areas or loss-prone lines of business are hardening, "overall it is pretty neutral," said David Batchelor, CEO of Marsh Inc.'s Europe, Middle East and Africa operations.

Low interest rates, which limit

See **FERMA** page 30

HEALTH CARE BENEFITS

San Francisco supports rule change on health reimbursement arrangements

Mayor seeks compromise to stop year-end forfeiture of funds

By **JERRY GEISEL**

SAN FRANCISCO—Lawmakers in San Francisco are moving to curb the appeal of a funding option employers can use to satisfy a law requiring that they spend a certain amount of money on employees' health care coverage.

Under the law, employers with 100 or more employees are required to spend \$2.06 per covered employee on health care, while employers with 20 through 99 employees must spend at least \$1.46 per hour. Employers with fewer than 20 employees are exempt from the requirement.

The overwhelming majority of employers satisfy the requirement through paying group health insurance premiums.

However, the San Francisco law also allows an alternative in which employers contribute the required amounts to health reimbursement arrangements, which then reimburse employees for health care expenses. Employers can design their HRAs so unused funds revert to employers at the end of the year.

Smaller employers, especially restaurants, that don't offer group plans or don't extend coverage to part-time employees are most likely to use the HRA approach to comply with San Francisco's health care spending law, said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

However, in a 6-5 vote last week, the San Francisco Board of Supervisors, the city's legislative body, tentatively approved a proposal by Supervisor David Campos that would require any HRA funds remaining at the end of the year be rolled over automatically to be used the next year. Terminating employees would be able to access the funds for 18 months.

"It has been a long road and this is the first step toward achieving the original intent of the Health Care Security Ordinance—to provide access to meaningful health care for San Francisco workers and relieve the burden on taxpayers who foot the bill of uninsured workers," Supervisor Campos said in a statement.

The proposal still requires a second vote before it could be sent to San Francisco Mayor Edwin Lee.

Mayor Lee, who described the HRA approach in which unused funds are forfeited at year-end as a "loophole," said he intends to work with business and labor groups to develop a compromise proposal.

"I am committed to continuing the collaborative effort to ensure health care access to workers while protecting jobs," he said in a statement.

Business leaders say an agreement on a final bill is likely, though it wasn't clear what changes would



AP PHOTO

San Francisco legislators have tentatively approved a proposal by Supervisor David Campos (above) requiring health reimbursement arrangement funds remaining at year-end be automatically rolled over to be used the next year.

See **SAN FRANCISCO** page 33

WORKERS COMPENSATION

Illinois nears launch of PPOs for workers comp

By SHEENA HARRISON

SPRINGFIELD, Ill.—Illinois could start rolling out preferred provider organizations for workers compensation care early next year as the state implements reforms passed during the spring.

The Illinois Department of Insurance is finalizing its workers comp network program, such as provider network rules, said Mark Denzler, a member of the state Workers' Compensation Advisory Board.

The state is expected to clarify those issues in the coming weeks, with networks starting operations as soon as January.

"You already use networks for health insurance, so you're not necessarily starting from scratch," said Mr. Denzler, who also is vp of government affairs and chief operating officer of the Illinois Manufacturers' Assn. in Springfield.

Illinois' workers comp reform bill, passed in June, allows employers to use specialized

PPOs for workers comp care.

The networks, which need approval from the state Department of Insurance, aim to lower workers comp costs by directing injured employees to providers who specialize in such claims. In turn, the networks are

'You already use networks for health insurance, so you're not necessarily starting from scratch.'

Mark Denzler, Illinois Manufacturers' Assn.

intended to lower costs by improving care and helping employees return to work faster.

Illinois had not approved any workers comp networks as of last week.

In a statement, the department said it has held a series of meetings with providers, networks, employers, insurers and other

stakeholders in workers comp reform.

The department is using feedback from those meetings to develop fact sheets and revise Illinois' requirements for provider networks.

Mr. Denzler said he believes the networks are a critical element of workers comp reform for Illinois employers.

"We think (there) will be a significant reduction in costs for the employers while making sure employees have access to quality health care," he said.

Jay Shattuck, executive director of the Illinois Chamber of Commerce's Employment Law Council, said network approvals could extend into the first quarter next year.

"I think it's going to be an education process on behalf of employers to ensure to their workforce" that the networks will provide quality care and that medical providers "are looking out for the best interest of the employees as well as they employer," he said.

Kimberly George, senior vp of the man-

aged care practice and client services for Sedgwick Claims Management Services Inc., said the third-party administrator plans to apply for network status once Illinois irons out its application process.

"We would be ready to go live sooner, but we understand that there are some complexities," Ms. George said.

Sedgwick plans to select providers for its network that have a history of favorable return-to-work outcomes, among other criteria. Ms. George said the company is talking with providers now, because many are concerned about a 30% reduction in the state's medical fee schedule as part of the workers comp reform legislation.

She expects competition for workers comp networks will come from companies that already have PPOs in Illinois. "The networks that exist today will exist tomorrow in 2012," she said. "There may be a couple new solutions that come in the market, but I don't know that it will significantly change."

LIABILITY & LITIGATION



In 2005, the Ethan Allen capsized on Lake George, killing 20 passengers. An insurance policy sold to the vessel's owner was fraudulent.

Broker enters guilty plea in fake insurance scheme

By MATT DUNNING

HOUSTON—The owner of a Houston-based insurance brokerage faces up to 20 years in federal prison for selling a fake insurance policy to an upstate New York tour boat operator, then trying to retroactively limit the policy after a 2005 boating accident that killed 20 passengers.

Christopher Purser, who owned Monarch Insurance Services Inc., pleaded guilty to one count of conspiracy to commit wire fraud in Houston federal court last week.

According to prosecutors, Mr. Purser sold Lake George, N.Y.-based Shoreline Cruises Inc. an insurance policy that included marine liability coverage for a 40-foot sightseeing boat called the Ethan Allen. The policy was underwritten by United Reinsurance Group Ltd., one of a number of shell companies he and five other co-defendants founded as part of a

fraud scheme dating back to 1999.

On Oct. 2, 2005, the Ethan Allen capsized on Lake George, killing 20 of its passengers. When Shoreline tried to collect on its insurance for the accident, prosecutors said Mr. Purser drafted falsified backdated documents in an attempt to convince the tour company that it never bought coverage for boating operations or accidents on Lake George.

All five of Mr. Purser's co-defendants are still awaiting trial.

Prosecutors allege that the group conspired to sell dozens of fake commercial insurance policies through a collection of fictitious offshore insurers and business advocacy associations. The defendants allegedly sold general liability and life insurance policies to nursing homes, assisted living facilities, apartment complexes, condo associations, bars, restaurants and other businesses throughout the United States, according to the February indictment.

REGULATION

N.Y. regulatory overhaul welcomed

By SONJA RYST

ALBANY, N.Y.—The New York State Department of Financial Services, which officially launched last week with promises to save money and collaborate with business, has taken early steps that seem business-friendly, experts say.

New York Gov. Andrew Cuomo created the DFS in March by merging the New York State Banking Department and New York State Department of Insurance. The agency is "on track" to save more than \$25 million this year, or at least 10% of its budget, New York Superintendent of Financial Services Benjamin Lawsky said at Pace University in New York at last week's launch. He confirmed that the savings go to New York-domiciled insurers, which fund their regulators by paying fees.

"If our budget is smaller, that means we're assessing the industry less and taxing the industry less to pay for our regulations and our operations," Mr. Lawsky said in an interview. "When you talk about a

way to help try and kick-start the economy and help these industries thrive, that's a great place to start."

Government officials continue searching for ways to create jobs in the wake of the 2008 financial crisis while also crimping their own spending, experts say. As all New York agencies "carefully

manage" their budgets to operate more efficiently, the DFS already has achieved savings through reductions, "tight controls" and other measures, an insurance department spokesman said in an email.

Insurers have pushed to pay lower fees for years, experts say.

"It remains to be seen, but we're very optimistic about the DFS being business-friendly," said Ellen Melchionni, president of the New York Insurance Assn. Inc. in Albany, which represents the property/casualty industry. "They're saying all the right things."

Ms. Melchionni said she is "thrilled" that James Wrynn, who formerly headed the stand-alone insurance department, will stay on at the DFS as

See **NEW YORK** page 31

\$25M

The New York State Department of Financial Services is "on track" to save more than \$25 million this year, or at least 10% of its budget.

Business Insurance adds to staff

Business Insurance has added to its editorial staff in Chicago.

Sheena Harrison has joined the publication as an associate editor covering workers compensation.

Ms. Harrison previously was a business reporter at the Toledo Blade, a daily newspaper in Toledo, Ohio. Prior to that, she was a freelance writer for CNN-Money.com and other business media outlets, and worked as a reporter for Crain's Detroit Business, a sister publication of *Business Insurance*.

She has a Bachelor of Arts in

journalism from Michigan State University.

In her new role, Ms. Harrison will work closely with Roberto Cenicerros, who is the editor for the Workers Comp channel on *BusinessInsurance.com*.

The online Workers Comp channel provides news and analysis about the legislative, legal and insurance market issues that affect workers compensation managers, as well as strategies for reducing comp claims and costs, promoting workplace safety and returning injured employees to work.



Ms. Harrison

Ms. Harrison can be reached at 312-649-5249 and at smharrison@crain.com.



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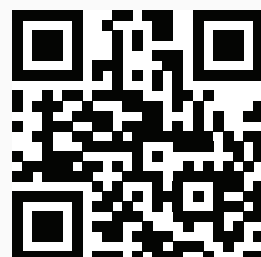


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Mid-Market EXECUTIVE

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

Economic pressures test broker/client relations

Focus on pricing creates friction, undermines trust

By MATT DUNNING

As the dismal state of the economy continues to pressure bottom lines, maintaining the health and productivity of a company's relationship with its insurance broker is of paramount importance for mid-market executives.

However, several brokerage experts said those very economic pressures have, in many cases, led mid-market companies to view their brokers more as vendors than as business partners, insisting on lower upfront costs while drawing back on the amount of direct involvement, level of trust and breadth of information they invest in the relationship.

That shift in the buyers' attitudes toward insurance brokerage services, they said, ultimately could limit their access to coverage or leave them exposed to risks that are not addressed.

"Middle-market clients have really tended to treat the insurance process as though they're buying a commodity, more so these days than they have in the past," said Todd Belden, a Cincinnati-based vp at Hylant Group Inc. "Their directive to us will be to give them the lowest price possible on their premium without wanting to get involved in the process."

"When you do that, it becomes a challenge for the broker to help the buyer distinguish between the premium cost and the coverage's actual value," he added.

Of all the behaviors that tend to limit the quality of brokerage service mid-market



Of all the behaviors that limit the quality of brokerage service mid-market companies might receive, inadequate or infrequent communication with their broker is the most common, say brokerage executives.

companies might receive, inadequate or infrequent communication with their broker is by far the most common, experts said. Fearful that it will leak to competitors or simply unaccustomed to doing so, many private and nonprofit companies are hesitant to share vital financial information, claims history or operating procedures, experts said.

More often, companies neglect to regularly inform their brokers of significant changes to the business—new facilities, products or operating territories—waiting instead to broach the subject just before a

policy is due for renewal, if ever.

"A lot of these clients simply don't trust us enough," said David Jones, vp of risk management accounts at Lockton Cos. L.L.C. in Philadelphia. "We can help them if they would just tell us where they're struggling and what they need."

Another common problem plaguing relations between mid-market companies and their brokers, experts said, is a fundamental lack of understanding of the parties' respective interests and objectives.

In particular, companies that use third-party consultants to negotiate with a broker on their behalf risk alienating both parties by not facilitating an ongoing three-way conversation to discuss coverage goals, financial limitations and other important factors.

"You often don't see an agreement about what the real objectives are for the client," said Steve Anderson, an executive managing director at Beecher Carlson Holdings Inc. in New York. In a lot of cases, the broker and the consultant see each other more as competitive threats or adversaries, and they wind up working to cross-purposes."

Further complications can arise if a company or its third-party consultant uses multiple brokers in a competitive bid to place one policy, which Mr. Anderson said can lead some brokers to drop a client's account altogether.

"We'll get instructions to go out and secure best terms from the market for something like management liability coverage, only to discover a client has one or more other brokers that we didn't know about actively trying to do the same thing," Mr. Anderson. "It provides a disincentive in some cases for the broker, because they're so far removed from really understanding

what's happening with the client that they decide ultimately that it's a waste of time."

Poor communication, withholding information and generally misunderstanding a broker's objectives often can be toxic to a mid-market firm's ability to secure adequate coverage, particularly in high-risk industries such as health care and technology. Although the insurance market for midsize firms still is largely favorable to the buyer, experts said underwriters are becoming a bit more selective with their risk appetite, reserving the broadest coverages for clients with comprehensive financial information and claims histories.

"Any uncertainty about what the company does or its financials, or the future viability of the business is going to translate into more conservative coverage," said Lesley Warrin, a senior vp at Willis North America in New York. "When an underwriter feels like they have a full grasp of the business and there's some transparency there, that's always going to play to the client's benefit."

"Where we're seeing problems is where the communication and information-sharing habits don't improve," Mr. Belden said. "I think what those buyers would see, eventually, are tougher underwriting standards and tougher pricing. In essence, the can create their own problems in the market."

GLOBAL GROWTH RISKS WEBINAR

Many mid-market firms are looking to foreign markets to grow, but such efforts can bring potentially catastrophic business and liability risks. A free Nov. 9 webinar, sponsored by Zurich Insurance, will explore the risks and the solutions to address them. Register for the webinar at www.businessinsurance.com/webinars.

Cultivate an informed partnership to get the best coverage and price

To maximize the short- and long-term value of an insurance broker's services, experts said mid-market companies should think of their broker less as a vendor and more an advocate, if not an out-right partner.

To that end, investment of time and effort will be crucial for both parties. Buyers shouldn't be shy about asking for on-site visits from their broker at least once before their account is taken to market, if not on a regular basis, experts said.

"We thought it was important to bring the broker out and have him look at exactly what it is we have," said Paul Brandel, risk manager at the Rockford Mass Transit District, a 140-employee transit agency that operates 17 bus routes in and around Rockford, Ill. "When he

sees how the whole thing is set up, it puts him in a better position to answer specific questions from underwriters about the business."

Brokers and their clients—and any applicable third-party consultants—should hold regular meetings either in person or over the phone to discuss new trends in coverage, risks and the insurance market on the whole, even if renewals are several months away. Mr. Brandel said those meetings also can be used to address significant changes in operations, holdings or workforce.

Mid-market clients also need to acclimate to the notion that they likely will be asked for at least some sensitive details of their business model, including financial statements, claim histories and banking

covenants. If necessary, companies usually can obtain confidentiality agreements for such documents or information.

"You've got to be able to trust your broker to a certain extent," Mr. Brandel said, adding that economic pressure to lower premiums should not automatically trump recommendations from a broker that might be more expensive at the policy onset, but could reduce losses and lower claims over time.

"I know I'm not my broker's only client, and I know he's seen a lot of things out there dealing with different carriers and clients," Mr. Brandel said. "Your broker might have some ideas based on that experience that will ultimately help the business."

One way in which companies can

achieve a greater degree of trust in their broker's objectives is by contracting services on a fixed-fee basis as opposed to a commission-based agreement—in which the broker is paid a percentage of the premium price—thereby removing the specter of conflicting interests.

"We feel like this arrangement...really cements the relationship based on doing what's right for us," said Jeremy Allen, director of risk management for Austin, Texas-based Cirrus Logic Inc., a 570-employee publicly traded semiconductor manufacturer. "We view our broker relationship as a partnership, and with this fee arrangement, I know my brokers are looking to procure the right policy for us at the best premium possible."

—By Matt Dunning

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Because change happenz



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Opinions

EDITORIAL

SEC tipster rule raises alarms

As if employers did not have enough to worry about, now they are finding that the internal compliance procedures they worked to build during the past few years in response to legislation, including the Sarbanes-Oxley Act, have a competitor: the U.S. Securities and Exchange Commission.

Despite business groups' pleas, under the final rule approved by the SEC in August implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act whistle-blower provision, whistle-blowers with complaints can go directly to the SEC without first going through their own companies' procedures.

Under the law's provision, a whistle-blower who provides valuable information to the SEC that results in a sanction of at least \$1 million could receive 10% to 30% of the monetary sanction levied.

With good reason, companies are worried that the lure of this lucrative award will drive workers to go to the SEC first and undermine their own compliance programs. No data is available at this point on how popular the program would be, although the SEC has said it expects about 30,000 complaints each year.

And, as one observer pointed out, a disgruntled employee who may not even have a bona fide complaint could conceivably cause a company no end of trouble by going to the SEC and inviting an investigation.

To the SEC's credit, the final rule includes incentives intended to encourage workers to first go through their own company's internal complaint procedures. But it is too soon to tell how effective they are likely to be. And who could really blame workers attracted by the idea of a \$100,000 bounty?

It seems the best approach companies can take at this point is to do whatever they can to encourage workers to first come to them with any problems. But they may have their work cut out for them. One survey indicated that as many as 43% of employees were not comfortable reporting misconduct on their firms' hotlines.

Experts suggest steps firms can take to encourage internal procedures' use include promotion, training and reassuring workers there will no retaliation against them for filing complaints. And it probably wouldn't hurt if companies offered their own whistle-blower bonuses as well.

LETTERS

Business Insurance welcomes letters to the editor.

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

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SCHILLERSTROM



COMMENTARY

Opioid trends must be addressed

A recent analysis by the Los Angeles Times found that U.S. drug deaths, propelled by prescription narcotics overdoses, now exceed traffic fatalities in this country.

Drugs killed at least 37,485 people in the United States in 2009, according to the Los Angeles Times story published in September.

That means that in two years there are more drug-related deaths in the United States than there were U.S. lives lost in our 20-year history of fighting in Vietnam, a doctor concerned about the nation's prescription drug problem recently pointed out to me.

Meanwhile, a Centers for Disease Control and Prevention chart shows that deaths caused by opioid analgesics began exceeding deaths caused by cocaine and heroin about 10 years ago. Deaths from opioids, often available with a prescription, eventually outstripped the number of deaths attributed to the two illegal drugs combined, according to the CDC chart.

But concern over an epidemic of prescription painkiller deaths in the country has been slow to build.

"If these were salmonella deaths, I can guarantee that there would have been a much stronger action earlier than there has been in this case," said a speaker at *Business Insurance's* recent Workers Comp Cost Control Strategies virtual conference.

That is why it is all the more impressive that many doctors have been working steadily for the past several years to uncover the facts on opioid-related deaths and increase public awareness. Several are in workers compensation- and public health-

related fields.

And 2011 may be the year their message gains momentum.

For one reason, there has been greater media attention paid to deaths caused by opioids, like the recent Los Angeles Times story. That has been fueled, in part, by the White House Office of National Drug Control Policy and the CDC drawing attention to prescription drug abuse.

The workers comp media, including bloggers, also have drawn more attention to opioid issues affecting injured workers.

And I am seeing an increasing number of claims payers—including self-insureds and their vendors, as well as insurers—developing strategies and products to track opioid prescriptions provided to injured workers. They also are sharing alternatives to handing workers with chronic pain prescriptions that may not improve their conditions yet leave them addicted or, as statistics show, dead.

Workers comp research groups also have added to the body of knowledge on the topic. But it hasn't come without pushback.

Some researchers have drawn fire, as have certain state efforts to curb opioid prescribing. I am told some of that pushback comes from doctors with legitimate concerns, while some of it is inspired by pharmaceutical funding.

But injured workers are suffering horrible harm. So I applaud all the individual efforts working to tame this monster.

Contact: rceniceros@businessinsurance.com



ROBERTO CENICEROS
SENIOR EDITOR



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Market Moves

Torus buys Lloyd's operation Broadgate

LONDON—Torus Insurance Holdings Ltd. has acquired Lloyd's of London syndicate 1301 and its corporate members, Broadgate Underwriting Ltd. and Broadgate Underwriting 2010 Ltd., from Israel-based Clal Insurance Enter-

prises Holdings Ltd.

Terms of the deal, which is subject to Lloyd's approval, were not disclosed.

London-based Torus said it bought syndicate 1301, which underwrites direct and facultative property, accident and health, specie and bloodstock business and has capacity of about £92

million (\$1.45 billion).

The syndicate is managed by Chaucer Syndicates Ltd.

Torus said it would not make any job layoffs and would retain the syndicate's active underwriter, Bob Katzaros, and the syndicate's teams of underwriters, claims handlers and management staff.

If Lloyd's approval is granted, Torus would begin underwriting at Lloyd's on Jan. 1, 2012. The deal gives Torus direct access to Lloyd's.

Torus underwrites construction business through syndicate 2243 under an agreement with Starr Managing Agents Ltd. It also writes onshore and offshore

energy business through quota share agreements.

"Today's announcement is an important milestone for Torus," Torus CEO Clive Tobin said in a statement. "With the acquisition of Broadgate, the key global platforms required to achieve our strategy of building a leading specialty insurer are essentially now in place," he added.

BB&T Insurance acquires Atlantic Risk Management

COLUMBIA, Md.—BB&T Insurance Services Inc. is expanding into the Baltimore area with the acquisition of Columbia, Md.-based Atlantic Risk Management

Corp., a commercial property/casualty and employee benefits broker with 45 employees.

Terms of the transaction, expected to be completed this month, were not disclosed.

"This acquisition provides an attractive foothold for us in metro Baltimore and a broader representation in the Washington" area, H. Wade Reece, Raleigh, N.C.-based BB&T's chairman and CEO, said in a statement. "It will extend our deep relationships with BB&T banking clients and open doors to new clients."

Founded in 1981, Atlantic Risk provides risk management consulting services and business insurance products and services to midsize businesses operating locally and nationally. Two of its niche offerings include surety bonds for the construction industry and telecommunications insurance for independent cellular tower owners, paging companies and related companies.

"This is a winning combination and a great move for our employees and clients," Pete Marcelli, chairman and co-founder of Atlantic Risk Management, said in the statement.

Atlantic Risk will operate as BB&T-Atlantic Risk Management. Mary Ann Marbury, president of Atlantic Risk, will continue to oversee the operation.

BB&T Insurance Services already operates a Maryland agency, BB&T-Frederick Underwriters in Frederick.

BB&T, a division of financial services firm BB&T Corp., is the world's seventh-largest insurance broker based on 2010 brokerage revenues of nearly \$1.08 billion, according to the 2011 *Business Insurance* ranking.

NAS sets up sports, entertainment division

ENCINO, Calif.—NAS Insurance Services, a managing general underwriter, has launched an entertainment and sports division.

The division will focus on risks within the entertainment, hospitality, media and sports industries, the Encino, Calif.-based MGU said in a statement.

Jerid Schmickle has joined NAS Insurance as senior vp to lead the new division.

Previously, he was director of underwriting at Fireman Fund's Insurance Co., a unit of Allianz S.E.

NAS is an underwriting manager of specialty insurance with binding authority on behalf of Lloyd's of London and other insurers.

SEPTEMBER 5TH, 1:45 A.M.

A DEADLINE AND A BUSINESS LIFELINE

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TO SUBMIT ITEMS

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



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Insurers and reinsurers have been hammered by property catastrophe losses this year, with the impact of claims from Hurricane Irene not yet fully realized.

AP PHOTO

Large losses push up some rates

But competition keeps cap on most surplus lines prices

By MICHAEL BRADFORD

Stirred by heavy property losses and catastrophe modeling changes, insurers in the surplus lines market are seeking higher prices in some categories, but competition and economic uncertainty is blunting a significant market hardening.

Insurers and reinsurers have been hammered by property catastrophe losses this year, with the impact of claims from Hurricane Irene not yet fully realized.

"Certainly, property is leading the way, given the magnitude of the losses," said David Bresnahan, president of Lexington Insurance Co. in Boston. "We could see this year pass 2005 as the most expensive year for property losses," he said.

The overall property market saw insured property losses for the first half of this year amount to around \$70 billion, Mr. Bresnahan said—well above \$40 billion in losses for all of last year.

"Our rates in property—catastrophe and

noncatastrophe—have been moving up every month and every quarter. We crested double-digit rate changes in July," Mr. Bresnahan said.

Lexington expects further market firming won't be sudden. Rather, Mr. Bresnahan said he foresees "a progressive march forward."

Much of the surplus lines market "is still bumping along at the bottom," said Glenn Hargrove, president of MarketScout Wholesale L.L.C., a unit of Dallas-based electronic insurance exchange MarketScout. "But there are glimmers of activity."

Mr. Hargrove and others pointed to Risk Management Solutions Inc.'s new hurricane model as a potential rate-changer.

"I would say the effect of the modeling change will be \$20 billion to \$25 billion of additional (industry) capital that needs to be allocated," by insurers, said Mr. Bresnahan. Increased capital costs will mean rates will rise, he said.

The modeling changes are a big reason rates are going up for catastrophe-exposed property, said Mr. Hargrove. Terms are changing too, he said, even for property

not at greatest risk in the United States.

"Properties that are wind-exposed but not coastal are seeing deductible increases," and some insurers are not willing to write coverage for those risks, said Mr. Hargrove.

Even with the heavy property losses, there remains enough competition among insurers to hold back a drastic market change, said Adam Kagan, senior vp with Crump Insurance Services Inc. in Roseland, N.J.

While loss-driven accounts and exposures affected by the RMS modeling changes are seeing price increases, many other classes are not, said Mr. Kagan. "There is a desire for a market change and a lot of talk about it. What we are seeing is a lot of competitiveness out there," he said.

As long as there is a market willing to write a risk more cheaply than a competitor, a market hardening will take longer, Mr. Kagan said. "It only takes one," he said.

"It's tougher to place business in trucking or loss-sensitive business with bad experience," he said by way of example. But often when a market rejects an account, another insurer is found to write it, Mr. Kagan said.

See **MARKET** next page

\$70B

The overall property market saw insured property losses for the first half of this year amount to around \$70 billion, well above \$40 billion in losses for all of last year.

Much of the surplus lines market 'is still bumping along at the bottom.'

Glenn Hargrove, MarketScout Wholesale L.L.C.,

Excess & Surplus Lines Report

SPOTLIGHT

LARGEST SURPLUS LINES INSURERS

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MGAs/UNDERWRITING MANAGERS RANKED

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LARGEST P/C WHOLESALERS

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PREMIUMS, TAXES LISTED BY STATE

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STAMPING OFFICE SEES SLIGHT FIRING

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STREAMLINING CLEARINGHOUSES

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MARKET FUELS INNOVATION

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Market: Large cat losses push up property rates

CONTINUED FROM PREVIOUS PAGE

Even the casualty side of the surplus lines market is undergoing change.

Lexington has increased rates on its primary occurrence-based casualty business for general liability and product liability risks, said Mr. Bresnahan. That primary coverage soon will see double-digit rate increases from a year ago, he said, with rates for excess liability coverage up around 5%.

"One of the things that we are

seeing is that standard markets are becoming a lot more difficult about doing things," said Kevin Westrope, president of Kansas City, Mo.-based broker Westrope. Some of the risks the admitted market no longer wants to write are showing up as submissions to the surplus lines market, he said.

"Accounts where the standard market took all the product exposures of a client, for example," said Mr. Westrope, then the standard market suddenly decides that it does not have the appetite to cov-

er the liability related to every product.

Surplus lines insurers and brokers also are seeing greater demand for products that address cyber privacy.

"We're seeing an influx of inquiries and business bound in the cyber liability space," said Mr. Kagan. "More companies are aware of the issues in that space," he said, adding that "it doesn't seem a day goes by that tech doesn't come into play" in the form of submissions or queries.

"The whole data protection issue and increasing lack of confidence" among consumers and others that data exchanged over the Internet and in other ways will be kept private "will be a robust area of coverage for specialty insurers," according to Letha E. Heaton, president of the National Assn. of Professional Surplus Lines Offices Ltd.

As the market looks ahead, signs point to a more significant hardening, experts say, but the state of the economy could have a stalling effect.

The catastrophe losses and other factors that point to a firming marketplace are all present, said Ms. Heaton. "The toughest part of the equation is that the overall economy is so suppressed," she said.

"The biggest problem is the overall economic condition of the country," Mr. Hargrove said. Dampened economic activity means less premium volume because of fewer jobs and the loss of policyholders who go out of business, he said.

"In the first six months, our clients were positive about their future prospects," said Mr. Bresnahan. "As a result, we saw our business grow."

Since then, uncertainty over the economy has reappeared, he said. "Now there is a great deal of uncertainty among our clients about their future prospects."

If things begin to brighten for Lexington's clients, that should translate into growth for the insurer, Mr. Bresnahan said. "If not, it could be a long, tough slog with a lot of churn in the market" with clients pushing hard for low prices, he said.

Meanwhile, marketplace relationships among surplus lines brokers and insurers are shifting, according to a report released late last month by A.M. Best Co. Inc.

"Relationships among carriers, wholesalers and retailers continue to be in flux, as each segment looks for stronger partners," Best said.

"Carriers are culling wholesalers. Intermediaries in turn, are doing the same with retailers," the report points out. "Retailers also are forming exclusive relationships with a limited number of wholesalers that agree to give them more commission...Some of the larger retailers also have been sold to national firms that do not deal with smaller wholesalers."

"We are seeing a real flight to quality," said Dave Obenauer, president of Crump Insurance Services Inc. in Roseland, N.J. Retail brokers and insurers are interested in "fewer, more productive relationships," he said.

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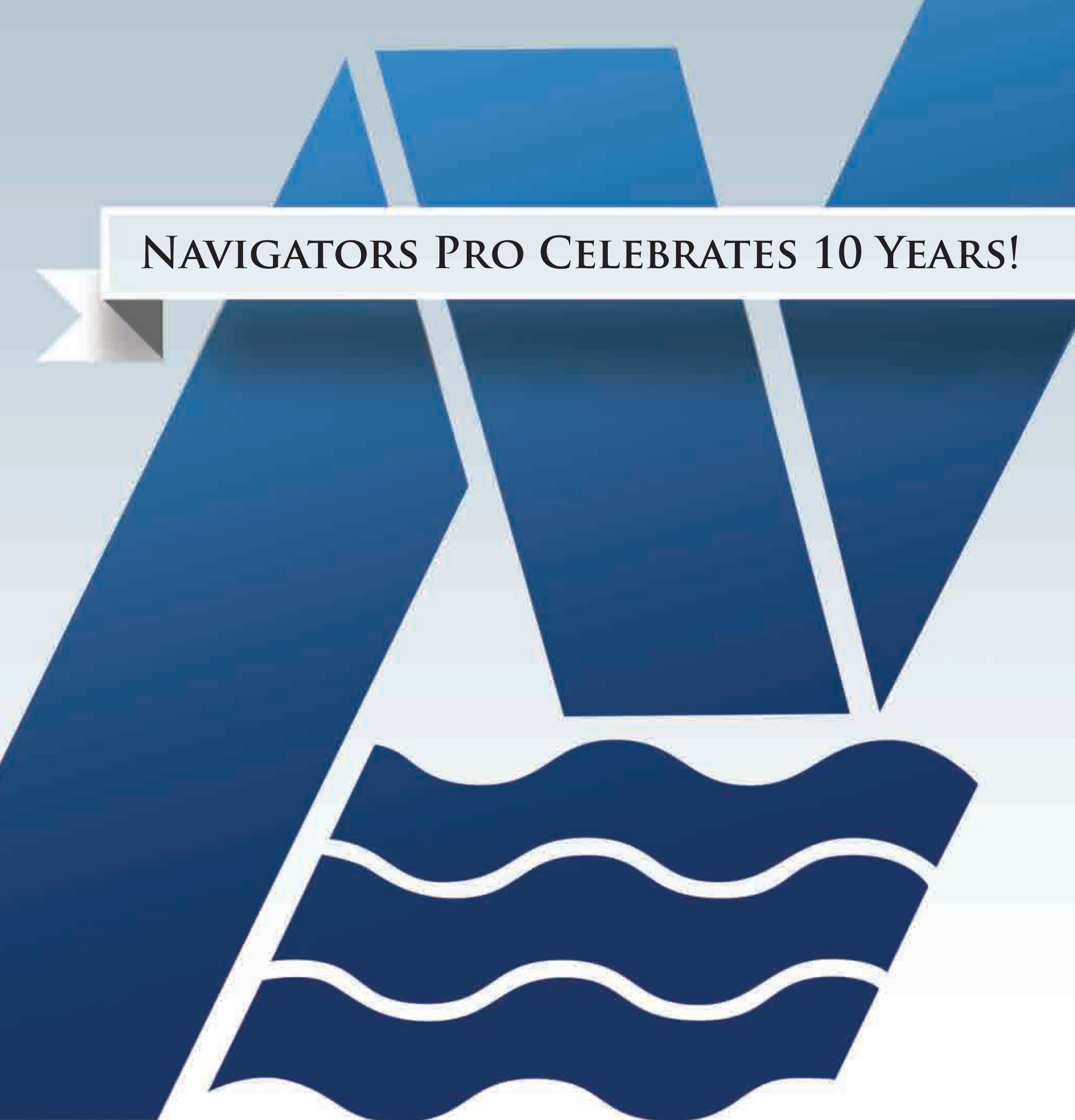
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DATA

snapshot

TOP SURPLUS LINES INSURERS

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PREMIUMS HAVE DECLINED 30.6% IN SINCE 2006
Nonadmitted direct written premiums of the top 10 surplus lines insurers, in billions of dollars



LARGEST U.S.-BASED SURPLUS LINES INSURERS

Ranked by 2010 nonadmitted direct written premiums

RANK	Company/address	Parent	Phone/website	2010 direct written premiums	% change	2010 gross premiums	% change	2010 net written volume	2010 net income (loss)	Principal officer
1	Lexington Insurance Co. ¹ 100 Summer St., Boston, Mass. 02110	Chartis Inc.	617-330-1100 www.lexingtoninsurance.com	\$4,605,795,515	-14.7%	\$7,585,962,725	22.1%	\$3,684,484,931	\$384,816,973	Peter Eastwood, president/CEO
2	Steadfast Insurance Co. ¹ 1400 American Lane, Schaumburg, Ill. 60196-1056	Zurich Financial Services Group	847-605-6000 www.zurichna.com	\$1,073,451,439	-3.4%	\$1,262,427,810	-3.0%	N/A	\$31,636,693	Nancy D. Mueller, president
3	Scottsdale Insurance Co. ¹ 8877 N. Gainey Center Drive, Scottsdale, Ariz. 85258-2108	Nationwide Mutual Insurance Co.	480-365-4000 www.scottsdaleins.com	\$1,004,147,047	-2.6%	\$2,444,134,762	0.0%	\$571,575,156	\$30,293,444	Michael D. Miller, president/COO
4	Chartis Specialty Insurance Co. 175 Water St., 18th Floor, New York, N.Y. 10038	Chartis Inc.	212-770-7000 www.chartisinsurance.com	\$784,795,135	-0.4%	\$1,881,224,829	138.9%	\$402,828,052	\$6,854,969	David N. Fields, president
5	Columbia Casualty Co. CNA Center, 333 S. Wabash, Chicago, Ill. 60604	CNA Financial Corp.	312-822-5000 www.cna.com	\$718,064,491	-2.1%	\$718,476,081	-2.0%	N/A	\$7,721,085	Thomas F. Motamed, chairman/CEO/president
6	Illinois Union Insurance Co. 436 Walnut St., Philadelphia, Pa. 19106	ACE Ltd.	215-640-1000 www.aceusa.com	\$532,554,380	16.4%	\$531,854,014	16.0%	N/A	\$3,594,466	John J. Lupica, president
7	Landmark American Insurance Co. 945 E. Paces Ferry Road, Suite 1800, Atlanta, Ga. 30326-1160	Alleghany Corp.	404-231-2366 www.rsui.com	\$509,470,668	-10.8%	\$519,299,022	-10.6%	\$44,845,516	\$19,050,466	E.G. Lassiter, chairman/CEO
8	Evanston Insurance Co. 10 Parkway N., Deerfield, Ill. 60015	Markel Corp.	847-572-6000 www.markelcorp.com	\$470,571,621	-9.9%	\$645,190,222	-6.7%	\$448,540,800	\$113,675,438	Gerry Albanese, president
9	Westchester Surplus Lines Insurance Co. 436 Walnut St., Philadelphia, Pa. 19106	ACE Ltd.	215-640-1000 www.aceusa.com	\$409,449,256	-10.2%	\$413,580,316	-10.7%	\$25,806,340	\$16,549,566	John J. Lupica, president
10	Arch Specialty Insurance Co. 300 Plaza Three, Jersey City, N.J. 07311	Arch Capital Group Ltd.	201-743-4000 www.archinsurance.com	\$402,861,503	-9.3%	\$418,103,067	-8.9%	\$86,355	(\$752,658)	Mark D. Lyons, chairman/CEO

¹ Figures reported on a pooling basis. N/A=Not available.

MOST COMMON CLASSES OF BUSINESS PROVIDED

Percentage of surplus lines insurers providing coverage

GENERAL LIABILITY	94.3%								
PRODUCT LIABILITY	85.7%								
PROFESSIONAL LIABILITY	85.7%								
COMMERCIAL PROPERTY	80.0%								
UMBRELLA/EXCESS	80.0%								
INLAND MARINE	77.1%								

Source: BI Survey. Researched by Kevin Edison

OVER & UNDER

Ranked by combined ratio by A.M. Best Co. Inc., Standard & Poor’s Corp.

LOWEST	COMBINED RATIO
LANDMARK AMERICAN INSURANCE CO.	62.7%
GENERAL STAR INDEMNITY CO.	67.3%
MT. HAWLEY INSURANCE CO.	72.2%
NATIONAL FIRE & MARINE INSURANCE CO.	72.5%
PENN-AMERICA INSURANCE CO.	74.3%
HIGHEST	COMBINED RATIO
CHARTIS SPECIALTY INSURANCE CO.	139.1%
GENERAL STAR NATIONAL INSURANCE CO.	136.7%
LEXINGTON INSURANCE CO.	103.9%
TUDOR INSURANCE CO.	103.6%
WESTERN WORLD INSURANCE CO.	103.6%



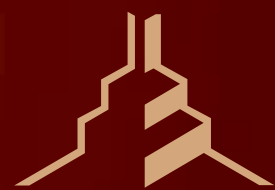
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DATA snapshot

TOP MGAs/UNDERWRITING MANAGERS

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PREMIUM VOLUME
Written premiums of the top 10 MGAs/underwriting managers, in billions of dollars



LARGEST MGAs/UNDERWRITING MANAGERS

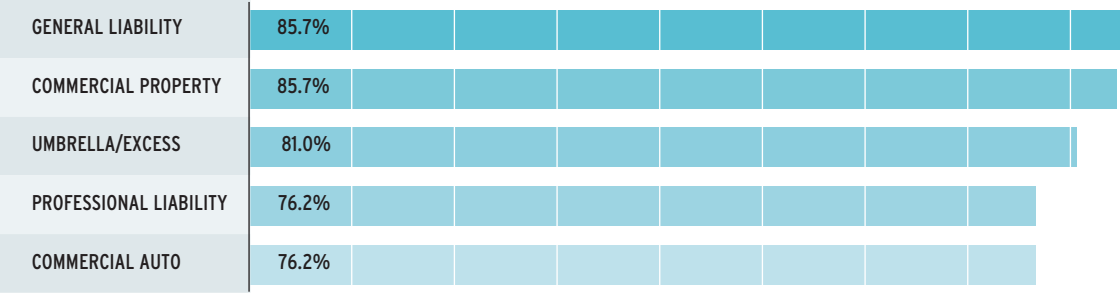
Ranked by 2010 wholesale premium volume from property/casualty placements*

RANK	Company/address	Phone/website	2010 premium volume	% change	2010 gross revenues	% change	Surplus lines	Underwriting manager	Managing general agent	Wholesale broker	Lloyd's of London coverholder	Principal officer
1	Risk Placement Services Inc. 2 Pierce Place, 25th Floor, Itasca, Ill. 60143-3141	630-285-4303 www.rpsins.com	\$1,610,000,000	8.8%	\$138,900,000	5.4%	55.0%	0%	52.0%	44.0%	4.0%	Joel Cavaness, president
2	Schinnerer Group 2 Wisconsin Circle, Chevy Chase, Md. 20815	301-961-9800 www.schinnerer.com	\$715,000,000	-1.4%	\$69,020,000'	-1.4%	5.0%	98.0%	0%	2.0%	0%	Jean Laurin, president/CEO-Schinnerer Group/president-Encon Insurance Managers Inc.
3	Burns & Wilcox Ltd. 220 Kaufman Financial Center, 30833 Northwestern Highway, Farmington Hills, Mich. 48334	800-521-1918 www.burnsandwilcox.com	\$660,000,000	2.3%	\$170,000,000	9.7%	85.0%	0%	50.0%	33.0%	17.0%	Alan J. Kaufman, chairman/president/CEO
4	AmRisc L.P. 20405 State Highway 249, Suite 430, Houston, Texas 77070	281-257-6700 www.amrisc.com	\$584,000,000	1.8%	\$71,000,000	4.4%	65.0%	100.0%	0%	0%	0%	Dan Peed, CEO/president
5	Appalachian Underwriters Inc. 800 Oak Ridge Turnpike, A-1000, Oak Ridge, Tenn. 37830	888-376-9633 www.appund.com	\$402,000,000	1.8%	\$38,000,000	3.5%	10.0%	0%	98.0%	2.0%	0%	Bob Arowood, principal/president
6	Markel Midwest Inc. 10 Parkway N., Deerfield, Ill. 60015	847-572-6000 www.markelcorp.com	\$290,840,381	-4.7%	\$46,428,466	-38.9%	94.0%	100.0%	0%	0%	0%	Susan J. Swanson, regional president
7	Gresham & Associates Inc. 1 Gresham Landing, P.O. Box 927, Stockbridge, Ga. 30281	770-389-1600 www.gresham-inc.com	\$267,900,000	-4.2%	\$29,263,000	-12.7%	50.0%	0%	45.0%	45.0%	10.0%	James V. Gresham, chairman/CEO
8	Program Brokerage Corp. 1065 Ave. of the Americas, New York, N.Y. 10018	866-607-8370 www.programbrokerage.com	\$219,730,413	-3.8%	\$23,265,121	-6.3%	N/A	0%	70.0%	30.0%	0%	Cynthia O'Brien, president-wholesale division
9	Eastern America Insurance Agency Inc. Metro Office Park, Street One, Lot 10, P.O. Box 193900, San Juan, Puerto Rico 00919-3900	787-273-1288 www.universalpr.com	\$218,814,785	12.2%	\$10,824,189	-11.0%	2.0%	0%	100.0%	0%	0%	Monique Miranda, CEO
10	K&K Insurance Group Inc. 1712 Magnavox Way, Fort Wayne, Ind. 46804	260-459-5000 www.kandkinsurance.com	\$187,778,000	-17.7%	\$42,867,000	-11.6%	8.0%	0%	96.0%	4.0%	0%	Todd Bixler, president/CEO

*Companies deriving more than 50% of their wholesale premium volume from acting as a managing general agent, underwriting manager or Lloyd's of London coverholder (authority to bind risks for Lloyd's syndicates, similar to an MGA). 1 BI estimate. N/A=Not available.

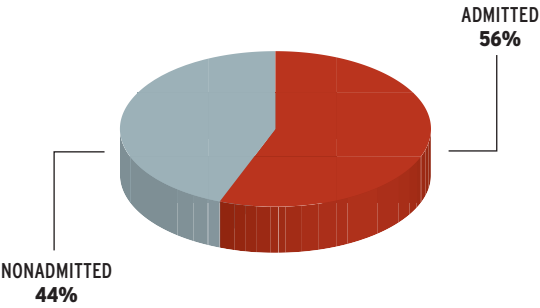
MOST COMMON CLASSES OF BUSINESS PROVIDED

Percentage of MGA/underwriting managers providing coverage



ADMITTED VS. NONADMITTED

Business performed by all MGA/underwriting managers



Source: BI Survey. Researched by Kevin Edison

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EXCESS CASUALTY & UMBRELLA

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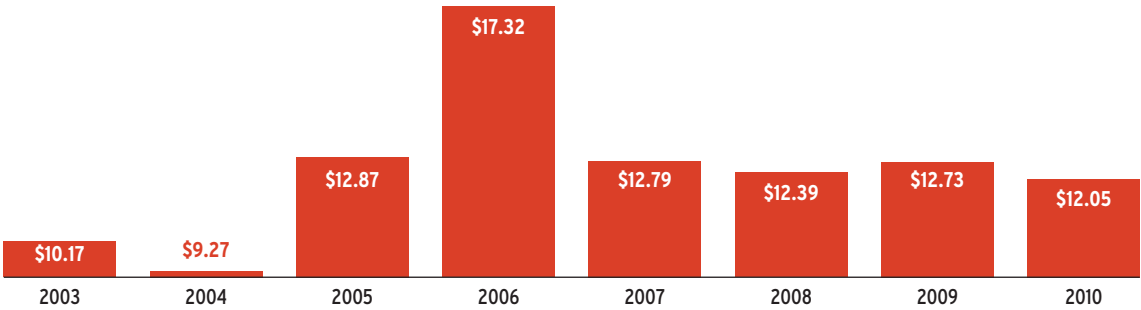
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TOP WHOLESALERS

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PREMIUM VOLUME
Written premiums of the top 10 wholesale brokers, in billions of dollars



LARGEST PROPERTY/CASUALTY INSURANCE WHOLESALERS

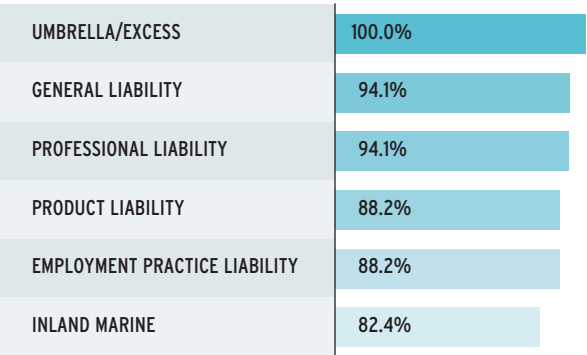
Ranked by 2010 wholesale premium volume from property/casualty placements*

RANK	Company/address	Phone/website	2010 premium volume	% change	2010 gross revenues	% change	Surplus lines	Underwriting manager	Wholesale broker	Managing general agent	Lloyd's of London coverholder	Principal officer
1	AmWINS Group Inc. 4725 Piedmont Row Drive, Suite 600, Charlotte, N.C. 28210	704-749-2700 www.amwins.com	\$4,072,220,761	9.5%	\$400,745,220	11.1%	62.0%	0%	82.5%	14.0%	3.5%	M. Steven DeCarlo, CEO
2	CRC Insurance Services Inc. 1 Metroplex Drive, Suite 400, Birmingham, Ala. 35209	205-870-7790 www.crcins.com	\$2,145,000,000	-26.7%	\$221,354,000	-27.2%	80.0%	0%	81.0%	19.0%	0%	Thomas J. Curtin, co-chairman/CEO
3	Swett & Crawford Group Inc. 3350 Riverwood Parkway SE, Suite 1100 Atlanta, Ga. 30339	404-240-5200 www.swett.com	\$2,100,000,000	0%	\$191,000,000 ¹	1.1%	55.0%	0%	75.0%	18.5%	6.5%	Neal Abernathy, CEO
4	Crump Group Inc. 105 Eisenhower Parkway, Roseland, N.J. 07068	973-461-2100 www.crump.com	\$1,383,291,903	2.9%	\$413,000,000	4.6%	11.0%	0%	92.0%	7.0%	1.0%	John Howard, CEO
5	All Risks Ltd. 10150 York Road, Fifth Floor, Hunt Valley, Md. 21030	800-366-5810 www.allrisks.com	\$620,000,000	-5.3%	\$60,000,000	-7.7%	67.0%	5.0%	55.0%	35.0%	5.0%	Nicholas Cortezi, CEO
6	ARC Excess & Surplus L.L.C. 1122 Franklin Ave., P.O. Box 9240, Garden City, N.Y. 11530	516-747-4100 www.arcbrokers.com	\$480,000,000	-5.0%	\$43,000,000	-2.3%	25.0%	5.0%	90.0%	5.0%	0%	Christopher J. Cavallaro, managing director
7	Westrope 1100 Walnut St., Suite 3200, Kansas City, Mo. 64106	816-842-8222 www.westrope.com	\$401,434,900	9.5%	\$29,551,000	5.4%	56.0%	0%	93.0%	6.0%	1.0%	Kevin T. Westrope, president/CEO
8	Partners Specialty Group L.L.C. 100 Tournament Drive, Suite 214, Horsham, Pa. 19044	484-322-0400 www.psgins.com	\$322,000,000	1.6%	\$25,861,000	-0.1%	67.0%	0%	96.0%	2.0%	2.0%	Maureen C. Caviston, president
9	U.S. Risk Insurance Group Inc. 10210 N. Central Expressway, Suite 500, Dallas, Texas 75231	800-232-5830 www.usrisk.com	\$307,000,000	-5.5%	\$51,758,200	-11.5%	90.0%	15.0%	54.0%	13.0%	1.8%	Randall G. Goss, chairman/CEO
10	Bliss & Glennon Inc. 435 N. Pacific Coast Highway, Suite 200, Redondo Beach, Calif. 90277	310-372-9115 www.bgsurplus.com	\$223,000,000	6.7%	\$25,000,000	4.2%	90.0%	0%	60.0%	35.0%	5.0%	Corinne Jones, COO

*Companies deriving more than 50% of their premium volume from wholesale brokerage. 1 BI estimate.

MOST COMMON CLASSES OF BUSINESS PROVIDED

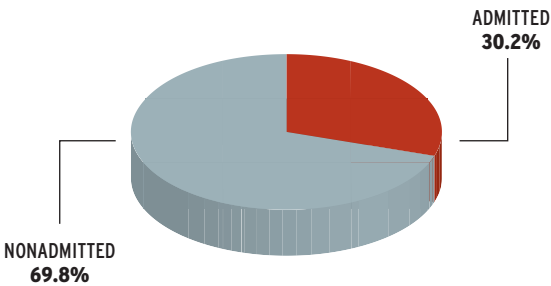
Percentage of wholesale brokers providing coverage



Source: BI Survey. Researched by Kevin Edison

ADMITTED VS. NONADMITTED

Business performed by all wholesale brokers



LARGEST WHOLESALE BROKERS

Ranked by 2010 wholesale premium volume including employee benefits and property/casualty

RANK	COMPANY	TOTAL PREMIUM VOLUME
1	AmWINS Group Inc.	\$5,724,931,711
2	Crump Group Inc.	\$5,568,816,901
3	CRC Insurance Services Inc.	\$2,145,000,000
4	Swett & Crawford Group Inc.	\$2,100,000,000
5	All Risks Ltd.	\$620,000,000
6	ARC Excess & Surplus L.L.C.	\$480,000,000
7	Westrope	\$401,434,900
8	Partners Specialty Group L.L.C.	\$322,000,000
9	U.S. Risk Insurance Group Inc.	\$307,000,000
10	Bliss & Glennon Inc.	\$223,000,000

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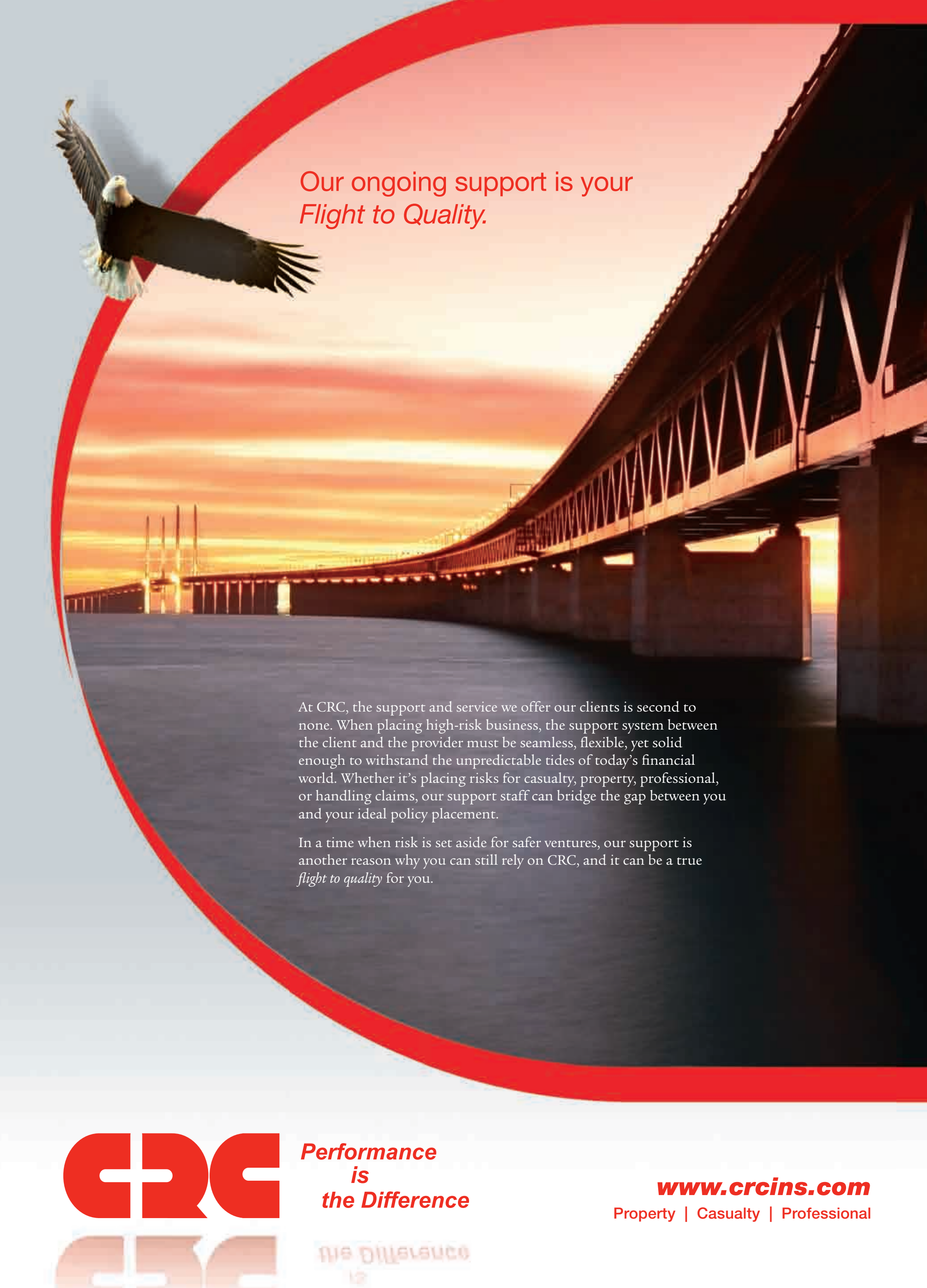
Property & Casualty

SURPLUS LINES PREMIUMS AND TAXES BY STATE

	GROSS SURPLUS LINES PREMIUMS WRITTEN			% CHANGE		SURPLUS LINES TAXES COLLECTED			
STATE	2010	2009	2008	2009-2010	2008-2010	2010	2009	2008	TAX RATE
Alabama	\$413,137,083	\$464,420,733	\$477,447,000 ¹	-11.0%	-13.5%	\$24,788,225	\$27,865,244	\$28,466,820	6.0%
Alaska	\$110,355,905	\$110,884,619	\$98,659,502	-0.5%	11.9%	\$2,529,131	\$2,546,863	\$2,331,452	2.7%
Arizona	\$345,276,334	\$400,593,950 ²	\$456,368,984 ²	-13.8%	-24.3%	\$10,630,715	\$10,680,474 ²	\$12,955,960 ²	3.0%
Arkansas	\$190,640,000	\$194,700,000 ¹	\$194,737,480	-2.1%	-2.1%	\$7,625,600	\$7,788,000	\$7,784,005	4.0%
California	\$4,281,088,592	\$5,198,014,923	\$5,671,679,594	-17.6%	-24.5%	\$113,567,663	\$136,898,007	\$148,141,122	3.0%
Colorado	\$460,076,335	\$456,674,150	\$500,674,190	0.7%	-8.1%	\$13,802,290	\$13,698,240 ³	\$15,020,000	3.0%
Connecticut	\$320,182,481	\$296,120,786	\$314,938,794	8.1%	1.7%	\$11,218,747	\$11,389,261	\$12,113,031	4.0%
Delaware	\$61,452,694	\$55,545,006	\$62,488,872	10.6%	-1.7%	\$1,225,058	\$1,111,239	\$1,251,659	2.0%
District of Columbia	\$161,903,220	\$158,670,350	\$142,197,650	2.0%	13.9%	\$3,238,064	\$3,173,407	\$1,292,564	2.0%
Florida	\$3,887,288,162	\$4,102,587,946	\$4,350,075,914	-5.2%	-10.6%	\$175,425,869	\$183,425,643	\$196,827,134	5.0%
Georgia	\$725,432,250	\$762,868,350	\$773,019,300	-4.9%	-6.2%	\$29,017,289	\$30,514,734	\$32,182,373	4.0%
Hawaii	\$220,623,558 ⁴	\$224,592,613 ⁴	\$266,610,549 ⁴	-1.8%	-17.2%	\$10,375,697	\$10,510,842	\$12,444,083	4.7%
Idaho	\$64,188,352	\$62,699,122	\$74,153,561	2.4%	-13.4%	\$997,119.77	\$983,819	\$1,169,627	1.5%
Illinois	\$1,026,856,572	\$987,413,683	\$1,062,017,764	4.0%	-3.3%	\$33,384,215	\$34,549,239	\$37,168,493	3.5%
Indiana	\$366,517,160	\$294,126,084	\$362,329,438	24.6%	1.2%	\$9,162,929	\$7,353,152	\$9,058,236	2.5%
Iowa	\$150,313,739	\$157,838,864	\$153,794,438	-4.8%	-2.3%	\$1,503,137	\$1,578,389	\$1,537,944	1.0%
Kansas	\$151,191,030	\$154,010,710	\$166,316,271	-1.8%	-9.1%	\$9,071,462	\$11,164,172	\$10,164,618	6.0%
Kentucky	\$158,095,118	\$150,844,360	\$147,504,433	4.8%	7.2%	\$4,405,860	\$4,597,705	\$4,457,812	3.0%
Louisiana	\$1,279,435,677	\$1,305,625,926	\$1,303,277,762	-2.0%	-1.8%	\$63,971,459	\$65,281,296	\$65,167,670	5.0%
Maine	\$17,263,919 ³	\$25,690,356	\$64,157,138 ²	-32.8%	-73.1%	\$468,294 ³	\$702,090	\$1,764,889 ²	3.0% ³
Maryland	\$331,192,177	\$358,206,400	\$363,277,699	-7.5%	-8.8%	\$9,935,765	\$10,746,192	\$10,898,331	3.0%
Massachusetts	\$622,576,217	\$649,870,811	\$693,187,811	-4.2%	-10.2%	\$23,303,366	\$24,259,256	\$25,284,212	4.0%
Michigan	\$567,374,219	\$579,336,124	\$592,746,594	-2.1%	-4.3%	\$14,052,263	\$14,326,910	\$14,639,765	2.5%
Minnesota	\$292,335,179	\$251,274,966	\$319,266,650	16.3%	-8.4%	\$9,155,983	\$8,066,345	\$9,576,641	3.0% ⁵
Mississippi	\$351,940,243	\$372,365,663	\$352,327,618	-5.5%	-0.1%	\$14,078,306	\$14,895,119	\$14,095,433	4.0%
Missouri	\$440,728,528	\$452,010,350	\$439,207,492	-2.5%	0.3%	\$21,840,343	\$21,827,870	\$21,254,184	5.0%
Montana	\$64,773,666	\$62,510,454	\$56,615,624	3.6%	14.4%	\$2,089,596	\$2,072,951	\$1,816,711	2.8%
Nebraska	\$108,028,287	\$123,099,439	\$115,553,923	-12.2%	-6.5%	\$3,357,160	\$3,867,482	\$3,570,812	3.0%
Nevada	\$207,197,193	\$231,790,188	\$293,080,460	-10.6%	-29.3%	\$7,251,518	\$8,112,690	\$10,257,850	3.5%
New Hampshire	\$57,256,980	\$62,675,761	\$73,626,311	-8.6%	-22.2%	\$1,521,790	\$1,253,512	\$1,472,526	3.0% ¹¹
New Jersey	\$1,126,682,343	\$991,343,970 ³	\$1,062,208,793	13.7%	6.1%	\$50,072,658	\$42,329,930 ²	\$31,847,279	5.0%
New Mexico	\$69,461,116	\$74,843,458 ²	\$81,043,816 ²	-7.2%	-14.3%	\$2,628,069	\$3,105,432	\$2,955,499 ³	3.0% ⁶
New York	\$3,086,813,224	\$2,957,943,587	\$3,282,162,085	4.4%	-6.0%	\$72,555,433	\$61,627,634	\$79,837,049	3.6%
North Carolina	\$501,925,648	\$504,454,717	\$492,940,414	-0.5%	1.8%	\$25,137,190	\$25,185,970	\$24,921,563	5.0%
North Dakota	\$55,897,871	\$53,827,716	\$44,288,922	3.8%	26.2%	\$978,922	\$942,131	\$775,061	1.8%
Ohio	\$527,341,315	\$566,447,354	\$555,916,120	-6.9%	-5.1%	\$26,123,193	\$27,861,495	\$30,232,899	5.0%
Oklahoma	\$226,153,557	\$206,042,969	\$320,523,031	9.8%	-29.4%	\$19,307,008	\$18,177,368	\$19,231,382	6.0%
Oregon	\$234,676,582	\$244,439,308 ²	\$298,964,454 ²	-4.0%	-21.5%	\$4,772,881	\$5,486,373 ²	\$6,742,234 ²	2.0% ⁷
Pennsylvania	\$832,833,859 ⁸	\$862,298,836 ⁸	\$919,848,150 ⁸	-3.4%	-9.5%	\$25,689,664 ³	\$25,664,000	\$24,071,000	3.0%
Rhode Island	\$27,769,277	\$37,612,607 ³	\$45,559,778	-26.2%	-39.0%	\$952,090	\$1,128,971 ³	\$1,366,793	4.0%
South Carolina	\$496,714,019	\$496,402,643	\$506,265,522	0.1%	-1.9%	\$19,868,593	\$19,856,105	\$20,250,615	4.0%
South Dakota	\$40,240,429	\$31,551,096	\$28,659,850	27.5%	40.4%	\$1,006,011	\$788,777	\$716,496	2.5%
Tennessee	\$335,254,306	\$476,896,329	\$518,488,047	-29.7%	-35.3%	\$12,046,883	\$12,921,616	\$12,962,201	2.5% ⁹
Texas	\$4,342,933,747	\$4,286,247,835	\$3,912,420,734	1.3%	11.0%	\$160,957,958	\$166,276,711	\$170,785,658	4.9%
Utah	\$148,683,769	\$156,967,481	\$178,472,478	-5.3%	-16.7%	\$6,020,354	\$6,410,531	\$7,301,542	4.3%
Vermont	\$45,116,000	\$40,220,000 ²	\$52,817,000 ²	12.2%	-14.6%	\$938,084	\$937,783	\$1,034,478 ¹	3.0%
Virginia	\$508,320,140 ^{3,4}	\$528,949,157 ⁴	\$541,193,044 ⁴	-3.9%	-6.1%	\$11,325,627 ³	\$11,997,486	\$12,614,995	2.3% ³
Washington	\$530,160,391	\$586,897,849	\$595,114,357	-9.7%	-10.9%	\$10,603,222	\$11,716,391	\$11,902,287	2.0%
West Virginia	\$115,632,628	\$129,486,286	\$133,845,763	-10.7%	-13.6%	\$4,484,831	\$4,921,115	\$5,118,842	4.0%
Wisconsin	\$261,013,953	\$271,081,787	\$257,202,439	-3.7%	1.5%	\$7,816,339	\$8,132,454	\$7,716,096	3.0% ¹⁰
Wyoming	\$66,255,335	\$72,568,208	\$63,837,631	-8.7%	3.8%	\$1,816,729	\$2,034,115	\$1,801,764	3.0%
TOTAL	\$31,014,600,379	\$32,283,585,880	\$33,833,111,244	-3.9%	-8.3%	\$1,098,096,654	\$1,132,742,530	\$1,188,351,692	

1 Estimated. 2 Restated. 3 BI estimate. 4 Net surplus lines premiums written. 5 2% for companies not recognized by the Commerce Department. 6 3.003%. 7 Plus 1% on premium subject to fire marshal tax. 8 Includes premium for independently procured insurance. 9 3.25% on fire and 4.4% on excess workers compensation. 10 0.5% on ocean marine. 11. Revised in 2010.

Source: BI survey
Researched by Karen Tucker



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Surplus lines market premiums hold steady

Underwriting tightening, but only by small margin

By KRISTIN GUNDERSON HUNT

Despite a series of natural disasters across the United States, pricing in the surplus lines market is firming only slightly, experts say.

“The supreme softness of the last several years is slowing, but there is no indication of a dramatic turn” in pricing, said Phil Ballinger, executive director of the Austin-based Surplus Lines Stamping Office of Texas. “You’re starting to see a series of events that are tightening underwriting, but not by much.”

Stamping offices examine surplus lines filings to ensure compliance with state laws and regulations. They also ensure that surplus lines taxes and stamping fees are properly calculated and collected.

The state of the surplus lines market is reflected in premium data of all 14 U.S. stamping offices, which the Texas stamping office compiles: Overall surplus lines premium volume increased 11.4% in the first half of this year compared with the first half of last year, but policy filings decreased 1.4% during that same period.

Mr. Ballinger said those results are skewed, though, because they include the New York stamping office’s inflated results—an 85.9% increase in premium volume and a 4.4% increase in policy filings—

that stemmed from reporting late filings in bulk this year.

“The numbers we’ve recently seen include a significant volume of filings that should have been made prior to this year,” said Dan Maher, executive director of Excess Line Assn. of New York. “They gave our statistics a big boost, but the numbers are a bit distorted.”

Mr. Maher said the uncharacteristic late filings are mostly attributed to three-year policies that were suspended in recent years because their premiums were incorrectly reported as one-year annual installments over three years instead of a one-time installment for all three years. The reporting issue since has been corrected, and the policies have been reinstated—explaining why the premium volume now is being reported.

Discounting New York’s results, overall stamping office premium volume and filings decreased approximately 1.5% and 1.8%, respectively. The current premium volume statistics are a shift from first-half 2010 results, when stamping offices experienced an 11.1% decrease in premium volume from the same period in 2009.

“This clearly shows that the larger declines we’ve seen in previous years have slowed down and are approaching flat,” Mr. Ballinger said.

Idaho and Nevada were the only states to see double-digit decreases in premium volume, rising 13.7% and 16.4%, respectively. However, wide swings in percentages in small states such as Idaho don’t necessarily

have a large monetary impact because the base premium is smaller from the start, Mr. Ballinger said.

In Nevada, a multitude of factors could be influencing surplus lines results, said Lynn Twaddle, executive director of the Nevada Surplus Lines Assn. in Reno. She said the weak economy, soft market and essentially no new building construction are some of the factors having an impact.

Being unable to point to one explanation makes forecasting for the future difficult, she said.

“There are a lot of different contributing factors, so it’s hard to say whether our numbers are going to flatline or if they are going to go up,” Ms. Twaddle said.

While California also has been affected by a sluggish economy and construction market in recent years—experiencing a decrease in surplus lines premium volume in 2010—the market improved in the first half of 2011. The state experienced a 4.1% increase in premium volume—or nearly \$2 billion—and a 9% increase in policy filings between first-half 2010 and first-half 2011.

“We are just beginning to think we’ve hit the bottom of this insurance cycle,” said Ted Pierce, executive director of the San Francisco-based Surplus Line Assn. of California.

Mr. Ballinger said the small change in the marketplace, despite the multitude of natural catastrophes that have taken place during the past year, is telling.

“The fact that the extraordinary amount of catastrophes we’ve seen this year world-

STAMPING OFFICES

First-half 2011 surplus lines premiums collected and items underwritten by the 14 state stamping offices, in millions of dollars.

STATE	PREMIUMS COLLECTED	% INCREASE (DECREASE)
Arizona	\$172.6	3.2%
California	1,983.3	4.1
Florida	2,208.9	(5.9)
Idaho	26.4	(13.7)
Illinois	492.4	(2.2)
Minnesota	150.0	1.4
Mississippi	163.6	(8.6)
Nevada	83.2	(16.4)
New York	2,522.4	85.9
Oregon	109.0	(9.4)
Pennsylvania	387.9	0.5
Texas	1,571.4	(1.2)
Utah	83.1	9.1
Washington	247.4	0.7
TOTAL	\$10,201.6	11.4%

Source: Surplus Lines Stamping Office of Texas

wide haven’t really turned the market shows how much excess capacity exists,” he said.

Mr. Maher said for the market to change, the economy must improve, insurance companies will need to consolidate and more big events likely will have to happen.

For now, though, he said the market is steady.

“It’s a marketplace where we’re not seeing a lot of change. Not a lot of things are driving growth in the surplus lines market. It’s slow but steady, with no huge surprises.”

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Rival surplus lines tax systems may meet in middle

Possible alignment of tax treatment would aid brokers

By MICHAEL BRADFORD

Competing efforts to launch clearinghouse arrangements for the payment and allocation of surplus lines premium taxes soon may be working alongside one another to make it easier for brokers and policyholders to meet their obligations.

Two widely differing arrangements being developed by industry groups have been bogged down for months while proponents of each try to convince state lawmakers, regulators and the surplus lines market of the merits of their approaches.

The Surplus Lines Insurance Multi-State Compliance Compact is the clearinghouse backed by the National Assn. of Professional Surplus Lines Offices Ltd. and the National Conference of Insurance Legislators, among others. The Nonadmitted Insurance Multi-State Agreement is supported by the National Assn. of Insurance Commissioners.

In late September, Louisiana Insurance Commissioner James J. Donelon, who chairs the NAIC's Surplus Lines Implementation Task Force, revealed that insurance regulators were considering changes to NIMA that would allow it to work in the same way as SLIMPACT with regard to collecting and allocating the taxes.

"We have been approached by the industry as to the extent we can make that happen," Mr. Donelon said. Brokers have made known their view that having NIMA operate similarly to SLIMPACT "will greatly enhance the efficiency" of tax collections, he said.

SLIMPACT proponents have argued that their proposed collection and allocation system is far better than that originally conceived by NIMA because it is simpler and does not require the same data-collection burden called for by NIMA.

The clearinghouses are being developed in response to the Nonadmitted and Reinsurance Reform Act, which became part of the Dodd-Frank Wall Street Reform and Consumer Protection Act and took effect July 21. The law stipulates, among other things, that only the home state of a policyholder can collect the premium taxes. It requires state legislatures to approve a method to allocate the taxes.

The NRRA does not address how states should allocate the taxes, but allows them to approve the system they feel will do it best. They can select SLIMPACT or NIMA, or devise their own allocation method.

Since the law took effect, SLIMPACT and NIMA have worked to launch their clearing-

house arrangements, each touting their method in a sometimes-contentious debate as the one that will do it best.

Neither, though, has been widely embraced by states, leaving surplus lines brokers, insurers and policyholders to comply with the NRRA as best they can without help from a formalized tax payment and allocation system.

As of late September, nine states had agreed to use the SLIMPACT approach, while a dozen had signed on to the NIMA compact.

Before it can be implemented, SLIMPACT needs 10 states to sign on.

"We are studying the possibility of coordinating our system with SLIMPACT if and when it becomes operational," Mr. Donelon said. "That would allow for similar, if not identical, allocation and collection systems."

Brady Kelly, NAPSLO's executive director, said the organization applauds the proposal that NIMA allocate taxes in the same manner as SLIMPACT. "The news of coordi-

nation between NIMA and SLIMPACT is a welcomed first step in the direction of a more efficient surplus lines tax system," he said in an email.

Mr. Kelly said that a "uniform system for the allocation of surplus lines tax is necessary, and having NIMA and SLIMPACT work together is consistent with the law's intent that nationwide, uniform requirements be implemented."

NIMA would not, however, adopt the same uniformity

requirements around nontax issues for surplus lines policyholders and brokers that are found in SLIMPACT.

NIMA is meant only to address tax collection and allocation, Mr. Donelon confirmed, and is structured differently than SLIMPACT, which sets up an executive committee as a governing board and establishes an operations committee.

Reactions among market

See **CLEARINGHOUSE** next page



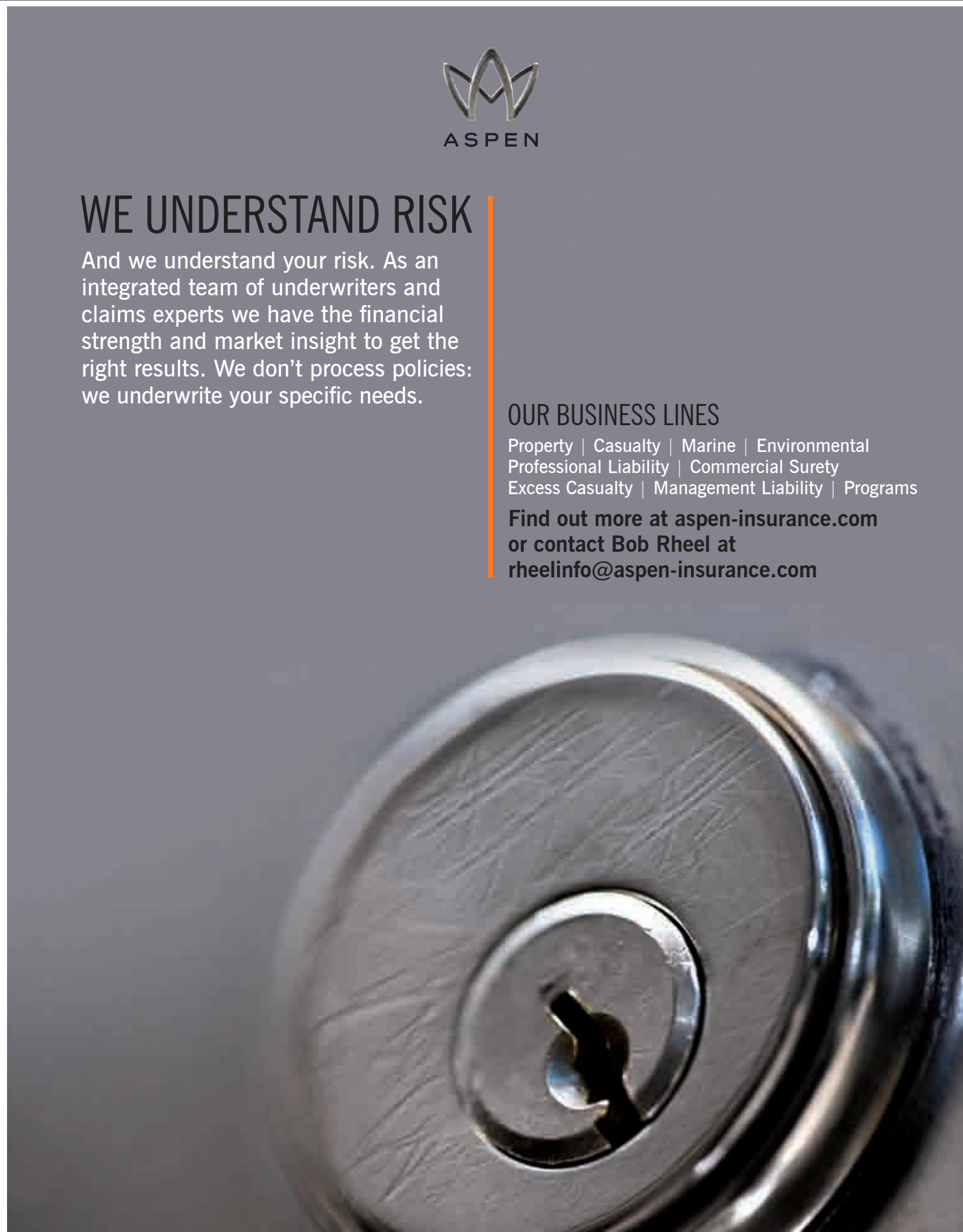
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Economy, catastrophes foster surplus lines product innovation

Market responds to changing demand with new offerings

By MIKE TSIKOUKAKIS

Current economic and market conditions and natural catastrophes, such as Hurricane Irene and the earthquake and tsunami in Japan, have steered product innovations in surplus lines insurance, often with tweaks to existing coverage.

"The surplus lines market develops products both based on needs and wants," said James Drinkwater, property/casualty brokerage division president of AmWINS Group Inc. in New York.

As a result of Hurricane Irene in August, flood coverage is top of the list of priorities for many insurance buyers in the Northeast, Mr. Drinkwater said. Similarly, the March disaster in Japan sparked heavy interest in contingent business interruption cover.

"The markets responded," Mr. Drinkwater said. "That's one of those things which I do think is unique about the E&S market: It is an incredibly responsive market to people's needs."

The recent market environment has brought back some older cov-

erage, he said. For example, when an insurer lowers the limit on a renewing policy due prior-year losses, "there is more of a demand for buffer liability," Mr. Drinkwater said, particularly for product liability and auto liability coverage.

Buffer liability sits between the primary and excess layers of a program. For example, if the primary layer is \$500,000 and the excess layer attachment point is \$1 million, then a buffer layer of \$500,000 is required.

While the coverage was used often in the 1980s, it has had little use since then "because there's been so much capacity and so much appetite for risk," Mr. Drinkwater said. "It's a different strategy and a different structure, and the E&S market has been very responsive in that particular area."

Timothy W. Turner, president and CEO of R-T Specialty L.L.C., a unit of Ryan Specialty Group L.L.C. in Chicago, said the managing general agency has devised specific products targeting regulatory developments in the food and drug industry.

ThinkRisk Underwriting Agency L.L.C., another Ryan Specialty unit, focuses on errors and omissions coverage in the converging areas of media, advertising, technology, privacy and network secu-

rity. It has developed a program responding to California's Proposition 65 for food and drug labeling.

Proposition 65 requires the state of California to publish an updated list of chemicals known to cause cancer, birth defects or other reproductive harm, and requires businesses to notify consumers about significant amounts of such chemicals used in products.

The program provides advertising injury coverage for the food, drug and life sciences industries, Mr. Turner said.

R-T Specialty also developed broad coverage for the nutraceutical industry, specifically for the American Herbal Products Assn., for the products and dietary supplements that lack a Food and Drug Administration approval process.

The coverage "meets the emerging needs for product development around Proposition 65," Mr. Turner said.

Nutraceutical growth

Nutraceuticals are also a growing area for Admiral Insurance Co., which has tweaked traditional coverage to meet an individual company's needs, said Bob Mescher, Cherry Hill, N.J.-based senior underwriter.

Nutraceuticals are a growing area for surplus lines market product development.



Many policies typically have an endorsement that excludes a number of product types that have been problematic because of either loss information or news reports, he said.

"Admiral has a pragmatic approach to the individual account, such that if there's a good story behind the account and the reason why they are using some ingredient, or they're paying attention particularly well to quality, then we're able to tweak that endorsement."

Kevin M. Ottley, senior vp at 5Star Specialty Programs in Chicago, said that the Crump Group Inc. unit has focused on helping retail agents to efficiently structure and sell their new programs and services nationally.

For example, once a retail agent

requests a specific coverage, 5Star handles much of the marketing, Mr. Ottley said.

"We produce for the retail agent a website portal specifically crafted for the new product," he said.

First, 5Star devises the insurance product a particular retail agent is seeking with pricing and policy forms through binding authority on behalf of its main partners at Lloyd's of London, AXIS Capital Holdings Ltd. and Allied World Assurance Co. Holdings A.G.

"The portal can be used either in-house to help run the program within the retail agency, or we can private-label it for the retail agent to be sold directly to insureds," Mr. Ottley said. "Although the

Continued on next page



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Clearinghouse: Rivals may still find middle ground

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sources varied as to how SLIMPACT and NIMA, perhaps along with other arrangements developed by states, might work if more than one exist.

"I really think we need one approach, not two or three," said Dave Obenauer, president of Crump Insurance Services in Roseland, N.J. "We're a strong advocate of one approach moving forward."

If more than one approach is used, said Mr. Obenauer, a process that already is complicated and expensive will become even more so.

Some brokers are not too worried about the clearinghouse issue.

"Whatever version we end up with, or if we end up with no version, I don't think it will be terribly material," said Kevin Westrope, president of Kansas City, Mo.-based wholesaler Westrope. "Most of us doing multistate filings are already doing very complex transactions."

"We're used to confusion because we're used to dealing with 50 state regulators," said Glenn Hargrove, president of Mar-

ketscout Wholesale L.L.C., a Dallas-based broker. "Ultimately when it's settled as to how the clearinghouse works and states are in agreement, it should streamline our operations. By all accounts, it should make things simpler and easier."

Depending on how the clearinghouses are administered, costs related to operating the arrangements could trickle down to insurance buyers, some sources suggest.

If a clearinghouse has to be run by a company or organization selected by the state, there will be additional costs to insurance buyers, said Mark R. Goodman, an attorney with Freeborn & Peters L.L.P. in Chicago.

"Somebody has got to run it, and there's going to be a cost," Mr. Goodman said. Those costs likely will be passed on to brokers, who will then pass the cost on to insureds, he said.

"Ideally that shouldn't be required," Letha E. Heaton, president of NAPSLO, said of an outside organization administering the clearinghouse. "I'd like to think (the states) will know how to do that without another level of bureaucracy."

Excess, surplus lines product innovation catering to small, mid-market firms

Many of the latest excess and surplus lines product innovations are focusing on small and middle-market businesses, industry experts say.

"There's less competition in the small business (market) because there's less dollars to be made and the overhead costs are that much higher as a percentage when dealing with small accounts," said Kevin M. Ottley, senior vp at 5Star Specialty Programs in Chicago, a unit of Crump Group Inc.

"But you have carriers who love small-account business because once they got it

booked and got the premium in, the claims frequency is less, so they're looking to grow that book," he said.

Admiral Insurance Co. is focusing its new coverage on the risks facing business startups, said Bob Mescher, senior underwriter for Admiral Insurance in Cherry Hill, N.J. With the economy forcing people out of their current job, many are taking that industry knowledge and starting their own business, he said.

"Admiral is prepared to underwrite that business and to issue a policy to

these folks who could probably not get coverage elsewhere or would be faced with a bought policy that would not give them the coverages they require," he said.

Admiral also developed a technology liability and data breach product for middle-market firms, which it recently launched with select wholesalers.

Joe LaRocco Jr., national marketing director for Risk Placement Services Inc., a unit of Arthur J. Gallagher & Co. in Itasca, Ill., also says E&S insurers are focusing on cyber liability coverage for small and

middle-market businesses.

"We have the ability to explain the complexities of tech E&O coverage and monoline cyber liability to nontech clients," which include medical offices, colleges, universities, contractors and municipalities, Mr. LaRocco said.

"One of the areas that we're looking at is how to better streamline and be more efficient on small-business delivery," said Robert J. Greenebaum, executive vp and casualty practice group leader for Swett & Crawford Group Inc. in Chicago.

—By Mike Tsikoudakis

CONTINUED FROM PREVIOUS PAGE

whole site is managed and run by ourselves, it looks and feels as though it's a part of either the (insureds) or the retailers."

The website, which offers E&O and employment liability coverage in all 50 states, can accept applications online and quote various options based on applicants' input.

The portal also accepts credit card payments, can bind policies, and emails the entire policy to the buyer within 48 hours, Mr. Ottley said.

Surplus lines products and innovation generated more than \$1.5 billion in gross written premiums over the past five years for Lexington Insurance Co., said Matthew Power, Boston-based executive vp at the insurer.

"It's not only a core competency of the organization, but it's a very critical aspect of our overall income stream," Mr. Power said.

Lexington's interactive website LexPlorations—launched in June 2010—offers a platform to examine market issues and emerging risks and "is really the genesis of new product creation at Lexington," said Mr. Power.

"LexPlorations is a mechanism for us to have discourse with our brokers and others from the industry in order to consider topics of real change," he said. "What we try to do is create in that space a mechanism for thought leadership and discussions on issues that are pertinent to our customer base."

Lexington's strategy is less reactive and more deliberate, Mr. Power said.

When creating products, the specialty insurance unit of Chartis Inc. deliberately examines trends to discern emerging liabilities for its customers.

As a result, Lexington has introduced various products in the past year, such as an endorsement that allows commercial property policyholders to rebuild a damaged or destroyed property using green products; liability coverage for businesses that manufacture, distribute or use nanoparticles or nanomaterials; and an endorsement to its builders risk policy forms that is triggered solely by discovering significant archaeological resources during a construction project.

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LEGAL NOTICE

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**
In re
Highlands Insurance Company
(U.K.) Limited (in Administration),
Debtor in a Foreign Proceeding Chapter 15
Case No.
07-13970 (MG)

**ORDER GRANTING MOTION PURSUANT TO
BANKRUPTCY CODE SECTION 1521 AND FED. R.
BANKR. P. 7065 FOR PERMANENT INJUNCTION
AND RELATED RELIEF**

Upon the Motion Pursuant to Bankruptcy Code Section 1521 and Fed. R. Bankr. P. 7065 for Permanent Injunction and Related Relief (the "Motion"), the Memorandum of Law in support of the Motion (the "Memorandum of Law") and the Declaration of Dan Schwarzmann in support of the Motion, (the "Schwarzmann Declaration," and together with the Motion and Memorandum of Law, the "Motion Documents"), each filed on August 16, 2011 by Dan Schwarzmann and Mark Charles Batten (the "Administrators") in this case; and upon the Court's consideration of the Motion Documents and the record of the hearing before this Court on September 22, 2011 and all prior hearings herein; and due notice of the Motion Documents and the hearing being given, which notice is deemed adequate for all purposes such that no other or further notice thereof need be given; and no objections to the relief requested in the Motion having been filed or raised thereto that have not been over-ruled, withdrawn or otherwise resolved; and after due deliberation and sufficient cause appearing therefor, this Court hereby finds and concludes as follows:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Standing Order of Referral of Cases to Bankruptcy Judges of the United States District Court for the Southern District of New York (Ward, Acting C.J.), dated July 10, 1984; and

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and

C. Venue is proper in this District pursuant to 28 U.S.C. § 1410; and

D. The Administrators, acting as the court-appointed joint administrators of Highlands Insurance Company (U.K.) Limited (in Administration) (the "Company"), are the duly appointed foreign representatives of the Company within the meaning of 11 U.S.C. § 101(24); and

E. The relief requested in the Motion is necessary to effectuate the purpose of chapter 15 and to protect the assets of the Company and the interests of its creditors, and is not manifestly contrary to the public policy of the U.S.; and

F. Absent the requested relief, the Company may be subject to the prosecution of judicial, quasi-judicial, arbitration, administrative or regulatory actions or proceedings in connection with a claim against the Company or its property in the U.S. thereby interfering with and causing harm to the Company and the English Proceeding,¹ and as a result, the Company and its creditors, as a whole, would suffer irreparable injury for which there is no adequate remedy at law; and

G. Absent the requested relief, the Administrators' administration of the Company may be thwarted by the actions of certain creditors, a result inimical to the purposes of chapter 15 as reflected, *inter alia*, in 11 U.S.C. § 1501(a). Such actions may threaten, frustrate, delay and ultimately jeopardize the administration of the English Proceeding; and

H. The relief sought in the Motion will not cause undue hardship or inconvenience to parties in interest and, to the extent that any hardship or inconvenience may result, such hardship or inconvenience will be outweighed by the benefits to the Company and its creditors, as well as to the interests of cooperation between the courts of the U.S. and those of foreign jurisdictions; and

I. The relief requested in the Motion is necessary to the implementation of the scheme of arrangement pursuant to Part 26 of the Companies Act 2006 (the "Scheme of Arrangement"); and

J. The Administrators are entitled to the relief sought under 11 U.S.C. § 1521.

For all of the foregoing reasons, and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT as of the Effective Date and provided there has been no early termination of the Scheme of Arrangement:**

1. the Scheme of Arrangement shall be given full force and effect and be binding on and enforceable against all Scheme Creditors in the U.S.;

2. all claims of Scheme Creditors shall be administered and adjudicated exclusively pursuant to the terms of the Scheme of Arrangement;

3. except as provided in the Scheme of Arrangement, all Scheme Creditors are permanently enjoined and restrained from taking any actions in contravention of, or that are inconsistent with, the terms of the Scheme of Arrangement or its administration, implementation or enforcement, including:

(a) transferring, relinquishing or disposing of any property of the Company located within the territorial jurisdiction of the U.S. or the proceeds thereof ("U.S. Property");

(b) taking or continuing any act to obtain possession of, or exercise control over, the Company or any of its U.S. Property;

(c) commencing or continuing any actions or proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim, (each, individually, an "Action") against the Company or any of its U.S. Property;

(d) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment, order or arbitration award against the Company obtained in connection with any Scheme Liability;

(e) commencing or continuing any act or proceeding to create, perfect or enforce any lien, attachment, set-off or other claim against the Company or any of its U.S. Property, including, without limitation, rights under Reinsurance Contracts;

(f) except as prohibited by 11 U.S.C. § 1501(d), invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring the Company to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any Action arising out of a Scheme Liability (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever) and such statute, rule or requirement will be rendered null and void for such proceedings; *provided however*, that nothing herein shall in any respect affect any Security Interest in existence as the Effective Date or the replacements for such Security Interest;

(g) except as prohibited by 11 U.S.C. § 1501(d), drawing down any letter of credit established by, on behalf of or at the request of, the Company unless expressly authorized by the terms of any contract or agreement pursuant to which the letter of credit has been established; and

(h) except as prohibited by 11 U.S.C. § 1501(d), withdrawing from, setting-off against, or otherwise applying U.S. Property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest in excess of amounts expressly authorized by the terms of the contract and any related trust or other agreement pursuant to which such trust, escrow or similar arrangement has been established;

4. except as provided in the Scheme of Arrangement, all Scheme Creditors that are parties to any trust, escrow agreement or similar arrangement in which the Company has an interest, shall be required to:

(a) provide notice to the Administrators' U.S. counsel, Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019 (Attn: Sara M. Tapinekis), of any withdrawal from, set-off against, or other application of property that is the subject of any such trust or escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Company to assess the propriety of such withdrawal, set-off or other application, including, without limitation, the date and amount of such withdrawal, set-off or other application and a copy of any contract, related trust or other agreement pursuant to which any such withdrawal, set-off or other application was made, and provide such notice and other information contemporaneously;

(b) turn over and account to the Company for all funds resulting from such withdrawal, set-off or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such trust, escrow or similar arrangement has been established;

5. except as provided in the Scheme of Arrangement, all Scheme Creditors shall be required to:

(a) turn over and account to the Company for any U.S. Property of the Company, or proceeds thereof, that relate to any Scheme Liability, of which they have possession, custody or control;

(b) deliver to the Company any books, papers or records of the Company that relate to any Scheme Liability, of which they have possession, custody or control and all Scheme Creditors having any books, papers or records that the Company or Scheme Adjudicator may reasonably require in relation to their duties or related to any matter that may affect the implementation of the Scheme of Arrangement shall preserve them and submit them to the Company or Scheme Adjudicator, or their designees, for examination at all reasonable times; and

(c) to the extent they have a claim of any nature or source against the Company or any U.S. Property or are a party to any proceeding in which the Company is or was named as a party, or as a result of which a liability of the Company may be established, notify the Company, in accordance with the terms of the Scheme of Arrangement, and put the Administrators' U.S. counsel on the master service list of any such proceeding and to take such other steps as may be necessary to ensure that they receive (A) copies of any and all documents sent by the parties in connection with such proceeding or issued by the court, administrator, arbitrator, regulator or similar official having jurisdiction over such proceeding, and (B) any and all correspondence or other documents circulated to parties named in the master service list;

6. nothing herein shall prevent the continuance or commencement of proceedings against any insurer other than the Company, *provided however*, that if any third party shall reach a settlement with, or obtain a judgment against, any person or entity other than the Company, such settlement or judgment shall not be binding on or enforceable against the Company;

7. no action taken by the Company, its successors, agents or representatives, or any of them, or its counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Scheme of Arrangement, this order, the chapter 15 case, any further order for additional relief in the chapter 15 case, or any adversary proceedings in connection therewith, will be deemed to constitute a waiver of the immunity afforded to the Company, the Administrators, the Scheme Adjudicator or their successors, agents, attorneys or representatives pursuant to 11 U.S.C. § 1510;

8. this Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this order and requests for any additional relief in this case and all adversary proceedings in connection therewith properly commenced and within the jurisdiction of this Court;

9. nothing herein shall alter or effect the Direct Scheme Order which remains in full force and effect;

10. nothing herein shall alter or affect the terms of the Settlement Agreement (including the venue and jurisdiction provisions thereof) or the order of the Texas Court approving the Settlement Agreement, or authorize the offset of any amounts owed to HICUS by a Scheme Creditor;

11. nothing herein shall authorize the Company to commute reinsurance or any other amount owed to HIC U.S. or the special deputy receiver (or otherwise affect the rights of HIC U.S. or the special deputy receiver in respect thereof);

12. this Order shall be in force as of the Effective Date and provided that the Administrators have not proposed a further scheme in replacement of the Scheme of Arrangement and that there is not an early termination of the Scheme of Arrangement in accordance with paragraph 8.3 of the Scheme of Arrangement. If the Scheme of Arrangement is terminated by the Administrators prior to the date upon which the Scheme of Arrangement is fully consummated, the Administrators shall immediately inform this Court of such termination;

13. this Order shall be served:

(a) by first class postage prepaid mail upon all known potential Scheme Creditors whose addresses are reasonably available to the Company (or their counsel, if known to the Company) within 7 days of the entry of this Order (or as soon as reasonably practicable thereafter); and

(b) by publication in (i) *Insurance Day* (ii) the international edition of the *Financial Times*, and (iii) the international edition of *The Wall Street Journal*, and (iv) *Business Insurance* within 7 days of the entry of this Order (or as soon as reasonably practicable thereafter);

(c) and such service will be good and sufficient service and adequate notice for all purposes;

14. the Motion Documents shall be made available by the Administrators upon request to the Administrators' U.S. counsel, Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019 (Attn: Sara M. Tapinekis); and

15. except with respect to the matters over which this Court has expressly retained jurisdiction, the above-referenced chapter 15 case is hereby closed, subject to it being reopened pursuant to 11 U.S.C. § 350(b) of the Bankruptcy Code.

Dated: New York, New York September 22, 2011 /s/ Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

¹ Capitalized terms used but not defined herein shall have the meaning given to them in the Motion.

HELP WANTED

President and Chief Executive Officer
Wisconsin Physicians Service Corp, based in Madison, Wisconsin is seeking a highly ethical and experienced executive to lead this multi-faceted, 4000 employee insurance organization. WPS has enjoyed a strong track record of success and customer service throughout its history; the CEO will be looked upon to preserve the organization's success and foster future growth in the marketplace. A seasoned leader with experience in a high performing organization and knowledge of government and commercial lines of business is strongly preferred. Demonstrated accomplishments in the overall improvement of strategic, financial and operational performance of an organization is required.

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Comings
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STEPHEN GAMBALE

NEW JOB TITLE: Los Angeles-based senior vp of the commercial practice for Momentous Insurance Brokerage Inc.

PREVIOUS POSITION: Los Angeles-based branch manager for Guaranty California Insurance Services Inc.

LOOKING FORWARD TO: I am looking forward to broadening the company. Momentous is very well-known in the entertainment industry and high-end personal lines. It is extremely well-positioned. I am looking forward to combining the commercial practice together and growing that to other industry segments.

BEST THING ABOUT A BAD ECONOMY: Clients are reaching out for creative thinking to help with their bottom line.

FIRST EXPERIENCE IN JOB MARKET: I worked at Johnson & Higgins Inc. (now merged with Marsh & McLennan Cos. Inc.) and had some super mentors. They helped me understand the industry and customer needs

and expectations. I'll remember them for the rest of my life. They took the time to develop me into a working professional, just two weeks out of college. I am extremely grateful for that. We need more of that in the industry right now.

COLLEGE MAJOR: Business management with a focus on finance.

OUTSIDE THE INDUSTRY, A DREAM JOB: I would love to be a sports agent, like a "Jerry Maguire," with my first client being my son as a professional baseball player.

HOBBIES: Boating, golf and relaxing with family and friends.

MOST PASSIONATE ABOUT: Winning and mentoring people, coaching. Helping people realize their true potential.

CAN'T-MISS TELEVISION SHOW: "House." There's never a dull moment in that show.

FAVORITE MEAL: A nice steak.

ON A SATURDAY AFTERNOON: Coaching youth baseball or any other youth sport.

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Perspectives

CONTRACTORS SHOULD TAKE a point by point approach to identifying and managing construction defect risks, says Jody T. Wright, senior vp and construction department manager at Lockton Cos. L.L.C. in Denver. Tapping these strategies also can show contractors how they can monitor loss history to uncover preventable trends as well as avoid the expense of potential litigation and reputational damage, he says.

Seven strategies to manage construction defect risks

By Jody T. Wright

Claims for defective construction can be enormously expensive and time-consuming. As contractors struggle with the challenges of finding profitable work in a hypercompetitive environment, the most progressive construction organizations are researching risk and making conscious decisions about work acquisition, target project profiles and mitigation tactics that can help protect their balance sheets.

What techniques might help you avoid the lawsuits, expenses and potential damage to your reputation that accompany disputes around construction defects? There are seven strategies being used around the country to identify, manage and mitigate your exposures to these kinds of losses.

STEP ONE: Refine your project appetite and match it to your insurance program.

Since many construction insurers have sought to limit the amount of high-risk work that their insured contractors are performing, understand the profile of your most profitable jobs. When measuring profitability, remember to keep the books open on your project costs until the statutes of limitation and repose have expired. Warranty and repair costs need to be tracked and built into future estimates to help measure the true final job costs and ensure future profitability on similar projects.

Many contractors have set up separate companies to separate riskier work from the more "traditional" projects within their work program. Insurance carriers usually price their liability coverage based on the perceived or proven risk of your previous projects and upcoming backlog, and a "silo" strategy to isolate the more expensive, riskier projects can protect the liability rates for the projects

with lower risk. This might make you more competitive on hard bid work and could help you acquire new work.

Some contractors also insure higher-risk projects through consolidated insurance programs, or "wrap-ups." This is another risk isolation technique that can protect the stand-alone pricing for more traditional commercial work. Insurance carriers typically view residential construction pro-



Mr. Wright

jects as riskier, but each carrier applies their own definition of what constitutes "residential." Multifamily "for sale" projects are viewed by most carriers as the riskiest, but any project that creates a homeowners association carries a higher potential threat of future litigation.

Pricing for project-specific or wrap-up programs is especially competitive in the current marketplace.

STEP TWO: Determine what makes your liability insurer nervous.

Take the time to familiarize yourself with the key exclusions and limitations within your general liability insurance program. Ask your broker to review all of the exclusions with you and explain what they mean, and ask

to meet with your underwriter to clarify any gray areas. The more you know about how your insurer prices your risk, the more accurate your pricing estimates can become, and the more sustainable your insurance program will become over time.

STEP THREE: Monitor your loss history and link it to your quality control/quality assurance efforts.

Your insurers are constantly tracking the profitability of your account. They keep score by compiling a history of the losses that they have paid on your behalf, and they compare that with the premiums they have collected from you every year. If this loss ratio gets too high, either your prices will go up or your insurer will not offer you renewal terms.

Ask your broker for periodic loss reports, and review them with your project teams to identify any trends that might show preventable patterns.

Look backward for the last three to five years, and recognize that your insurance carrier will perform the same analysis when pricing your account. For example, if water-damage claims persist, focus on tougher standards and more frequent inspections on those building components or systems that may have failed on earlier projects.

Consider design peer reviews or constructability discussions during the preconstruction phases of complex projects.

STEP FOUR: Negotiate your contracts.

In the current bidding environment, owners know they have an advantage and are seeking to contractually transfer more risk downstream to contracting organizations. When possible, seek competent risk and legal advice and push back on risk allocations that are out of proportion to the work you perform or to the amount of profit or fee you might

earn. We have seen several recent large construction defect claims paid where the contracting party built the project in conformance with the plans and specifications, but the contract terms obligated them to indemnify the owner for the negligent work of others that they did not control. Strong contractual guidelines can help mitigate this risk.

STEP FIVE: Avoid new components and technologies.

Unproven systems and products carry a higher risk of failure than time-tested, reliable components and have recently produced an uptick in claims frequency, particularly around "green" or renewable materials and designs. Be cautious about pioneering in these areas.

STEP SIX: Make quality a larger component of your subcontractor prequalification process.

Ask your subcontractors to augment their prequalification packages with their own liability loss history. Avoid those subcontractors with loss patterns that might affect your project or reputation.

STEP SEVEN: Keep your ears open.

Research those owners with a pattern of suing contractors, and only bid their work at margins that support the increased risk. Learn who the most effective attorneys and expert witnesses were at a recent local construction trial, and consider hiring them to advise your team on how to avoid litigation before your next project starts. Ask your broker and insurer for suggestions to preserve your stellar track record and contain future insurance costs.

Construction defect disputes are complex, time-consuming, expensive and distracting. Consider a robust discussion of these seven steps at your next planning meeting, and select a few that your team feels can help you improve your construction performance and protect your net worth.

Jody T. Wright is senior vp and construction department manager in the Denver office of Lockton Cos. L.L.C. He can be reached at (303) 414-6002 or jody.wright@lockton.com.

There are seven strategies being used around the country to identify, manage and mitigate your exposures to these kinds of losses.

Remedy: Comp rule challenged

CONTINUED FROM PAGE 3

required personal safety equipment or rescue equipment.

Flowing grain acts like quicksand and pulls workers under, according to U.S. Occupational Safety and Health Administration. "Such was the case in June when three workers were killed in one week after they were buried in grain," OSHA said in a statement.

In the case before Nebraska's Supreme Court, Mr. Teague was shoveling grain inside a bin when an auger caused the product to flow, which pulled him under and asphyxiated him, according to court records.

Sidney, Neb.-based Crossroads operated the elevator and is the defendant in the case.

In October 2007, OSHA said it cited CCA for alleged "willful violations," including failure to disconnect and lock out machines when an employee entered a bin, not having equipment to prevent engulfment and failure to provide emergency rescue equipment.

"Willful violations are those committed with an intentional disregard of, or plain indifference to," OSHA requirements, according to the agency.

OSHA also alleged "serious violations, which occur when there is substantial probability that death or serious harm could result from a hazard an employer knew of or should have known."

CCA pleaded guilty to federal charges, court records show.

In 2009, Mr. Teague's estate

filed a civil suit, but a trial court dismissed it. In weighing the workers comp exclusivity rule, the court found that Nebraska's Workers' Compensation Act applied in the case. It said the accident "arose out of and in the course of (Mr. Teague's) employment."

The estate appealed, arguing that an exception to the exclusivity rule should be recognized for alleged intentional torts by an employer.

"The estate seeks to circumvent this rule by arguing that CCA engaged in intentional vio-

lation of a variety of safety regulations designed to protect employees from serious injury and death and that, as a result, either the (workers compensation) act should not be held applicable or the court should recognize an exception to the exclusivity rule," the state appeals court said.

But the appeals court also ruled that the estate's argument had no merit and agreed with the trial court that compensation for such injuries is available exclusively under Nebraska's

Workers' Compensation Act.

Now the state Supreme Court will determine, among other things, whether "employers seeking the applicability of the (Workers' Compensation) Act must be held to the same standard of conduct as employees. Otherwise, it improperly deprives an employee due process and equal protection under the law," according to court records.

In a recording of last week's arguments before the Nebraska Supreme Court, plaintiffs argued that the Workers' Compensation Act should not apply in this case because Mr. Teague's death was not an unforeseen accident.

They argued for an exception to the exclusivity rule for intentional torts or willful safety violations, as determined by OSHA. Otherwise, employers can insure for intentional torts and that should be against public policy, argued an attorney for the plaintiffs.

An attorney for the plaintiffs did not return a telephone call seeking comment.

In recent years, OSHA has stepped up enforcement of requirements for employers operating grain facilities across the country. Since 2009, the federal agency has issued fines exceeding \$100,000 after fatalities and injuries.

During 2010 and this year, OSHA also has sent out 13,000 notification letters warning grain elevator operators about necessary safety precautions. Those include prohibiting entry into grain storage facilities while grain is flowing, prohibiting employees from "walking down the grain" to get it to move, ensuring that employees enter the bin with the proper safety equipment and providing equipment that can be used to rescue workers.

FERMA: Most insurance rates stable despite losses

CONTINUED FROM PAGE 3

investment returns, and a string of large catastrophe losses in the past year mean that there will likely be some hardening of insurance prices at some point, but it hasn't happened yet, Mr. Batchelor said.

The outcome of the upcoming Jan. 1, 2012, treaty reinsurance renewals could affect primary insurance pricing in the near future, and the current global economic turmoil could affect certain areas of insurance coverage, such as financial lines, he noted.

In some areas, particularly emerging markets such as China, rates have continued to decrease as much as 20%, noted Rory MacLeay, managing director of the international network of London-based brokerage Jardine Lloyd Thompson Group P.L.C.

With interest rates likely to remain low for several years, insurance rates will have to increase at some point, said Torbjörn Magnusson, president and CEO of If P&C Insurance Co. in Stockholm. "But we are in flux at the moment," he said.

It is unlikely that there will be a single driver that will lead to rate increases, said August Pröbstl, Munich-based head of the corporate insurance partner division of Munich Reinsurance Co. But current conditions mean that underwriters have to increase their discipline in choosing which risks to underwrite, he noted.

"A cocktail of ingredients make up a cycle change," noted Lex Baugh, London-based CEO of Chartis Inc.'s European operations.

Currently, areas that are seeing "minihardening" include the air-

line business and catastrophe-exposed property, he said. These changes relieve some of the pressure for a more general hardening of insurance rates and lead to a "dampening of the overall cycle," he said.

The cycle is not dead, Mr. Baugh said, "but maybe it looks different than it did in the past."

The CEOs said they were not overly concerned about the effect that a global economic slowdown—and particularly the sovereign debt crisis affecting certain areas of Europe—would have on insurers' performance. But they did say it is imperative that insurers and brokers support their clients through what likely will be a difficult economic time.

Insurers actively have "derisked" their balance sheets and reduced their exposure to sovereign debt, noted Mr. Pröbstl.

But, said Mr. Baugh, the property/casualty insurance industry could face exposures if a large number of insurers choose to invest similarly and those investments do not perform well. Insurers need to invest in high-grade

'A cocktail of ingredients make up a cycle change.'
Lex Baugh, Chartis Inc.

bonds, which currently are those issued by financial institutions, he said.

If contagion from the debt crisis spreads beyond Greece and affects those institutions, then insurers could be heavily exposed to that risk, he said.

"Our anxiety is about the impact on our clients," said Mr. Case. "No matter what your opinion is on the economy, there is no doubt that risks are increasing, interconnectedness is increasing and risk awareness has increased," he said.

"What you as risk managers do every day is becoming more and more important," Mr. Case said.

Austerity measures across Europe could affect buyers' own companies, said Mr. Batchelor. For example, premium taxes could be increased to help governments increase their revenue, he said.

Jeff Moghrabi, country manager for France for ACE Ltd., said it is important to "manage risks not fear."

At the end of FERMA's Oct. 2-5 forum, Jorge Luzzi, group risk management director for Pirelli S.p.A.'s global operations, succeeded Peter den Dekker as president of the association.

Mr. Luzzi said his three aims for his presidency are "communication, interaction and innovation."

The association's next forum in 2013 will be held in Maastricht, Netherlands.

A seminar will be held next fall in either London or Paris, Mr. Luzzi said.

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New York: Regulatory change welcomed

CONTINUED FROM PAGE 4

deputy superintendent for financial services.

Mr. Wrynn now leads a team tasked with persuading businesses to bring jobs and capital to New York state, Mr. Lawskey said. As superintendent, Mr. Wrynn took business-friendly steps such as proposing to revive the New York Insurance Exchange, a Lloyd's of London-style marketplace through which buyers could purchase insurance and reinsurance.

"Wrynn has been an effective cheerleader for New York state as

a domicile," said Howard Mills, director and chief adviser of Deloitte Services L.P.'s insurance industry group in New York, who had formerly served as the New York state insurance superintendent.

"All the indications are that the governor's directive is to be receptive to business, so I have every expectation that they'll be open to the industry," Mr. Mills said.

Insurance trade group representatives say Mr. Lawskey seeks their input. Gary Henning, Albany-based vp of the American Insurance Assn.'s northeastern region,

for example, said Mr. Lawskey had asked him months ago if it was important to have a separate insurance division within the DFS. Mr. Henning said the agency risked losing its institutional memory if it were combined with banking people who might not understand the history of insurance. "We were happy that he listened, was open-minded, and came up with an administrative structure that makes sense," Mr. Henning said.

The DFS, which consists of divisions in insurance, banking, capital markets, real estate finance, and financial frauds and con-

sumer protection, has the power to review all financial products. Gov. Cuomo originally wanted the agency to have enforcement powers comparable to those held by the attorney general's office, but 14 trade organizations representing the insurance and banking industries opposed the idea. As a result, the DFS did not get those powers, experts say.

"The industry is rightly very concerned about the heavy emphasis on enforcement that was made during the legislative process," said Matthew Gaul, a New York-based partner at Step-toe & Johnson L.L.P. who formerly worked for the New York insurance department. "At the

same time, I think (Mr. Lawskey and others are) serious about trying to create a good environment for people to do business in New York."

John R. Phelps, board liaison for the Risk & Insurance Management Society Inc. external affairs committee and director-business risk solutions at health insurer Blue Cross & Blue Shield of Florida Inc. in Jacksonville, said RIMS "applauds" Mr. Lawskey's goal of better consumer protection.

"We stand ready, willing and able to help him make that a reality," Mr. Phelps said. He added that the "thesis behind combining and being more efficient is a sound one."



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Whistle-blower: Risks get louder with tipster pay

CONTINUED FROM PAGE 1

L.L.P. in New York, said many companies already have regulatory compliance programs in place in response to various legislation, including the Sarbanes-Oxley Act.

“Employers feel that this bounty program is going to potentially undermine significantly their internal compliance efforts by offering such dramatic incentives to go outside the internal process,” Mr. Chinn said.

Companies assume there will be more whistle-blower claims and “that people might be more inclined to go to the SEC first, as opposed to following internal compliance guidelines,” said Paul R. Monsees, a partner with Foley & Lardner L.L.P. in Washington.

“Particularly if the whistle-blower is a disaffected employee who may not have a bona fide complaint, that whistle-blower could wreak some level of havoc in the company,” forcing it to defend itself in an investigation and “prolonging employment because of federal whistle-blower employment protections,” said Jacob S. Frenkel, an attorney with Shulman Rogers Gandal Pordy & Ecker in Potomac, Md., and a former SEC enforcement attorney.

The provision “will result in an explosion of people reaching out to the SEC, reporting just about any kind of incident they feel might potentially violate” the law, said John Reed Stark, managing director and deputy general counsel at Stroz Friedberg L.L.C. in Washington and a former chief of the SEC’s Office of Internet Enforcement.

Zachary T. Fardon, a partner with Latham & Watkins L.L.P. in Chicago, said the whistle-blower provision “creates a new venue and opportunity for employees of companies to profit, to get a bounty, in essence, from internal whistle-blower information.”

Renee B. Phillips, a senior associate with Orrick, Herrington & Sutcliffe in New York, said, however, “It’s unclear at this point what effect” the provision is having “because a lot of times the SEC will start an investigation but not say it derives from whistle-blower tips. So companies may be getting these inquiries, but are not sure of their origin.”

Observers note the rule makes an attempt to encourage employees to go to their own companies before approaching the SEC.

It provides a 120-day grace period during which companies that learn of problems through their internal compliance programs can go to the SEC and self-report, and the whistle-blower still could collect their share of a sanction.

If a company reports more issues than reported by an employee, the whistle-blower would receive a

bounty for those as well, even if the revelations go beyond what the employee knew.

Elizabeth P. Papez, a partner with Winston & Strawn L.L.P. in Washington, said companies do not yet know whether the incentives that were included in the final rule are “strong enough to keep employees reporting internally first before they go to the agency.”

“We’re not really going to know how this is going to play out for a number of years, but certainly it’s important for companies to ensure that they have strong governance and compliance programs in place, and adequate communication and response and training mechanism to address this significant change,” Mr. Frenkel said.

“The challenge for companies today is to really look at their hotlines and reporting mechanisms to ensure that they’re getting the information early enough in the process, that employees are encouraged to use internal mechanisms, so the company has a chance to respond and do an internal investigation if it is required,” said Richard H. Girgenti, New York-based national forensic service line leader at KPMG L.L.P. Then a company can disclose the issue to the SEC to “mitigate its own exposure and risk,” he said.

But a 2009 KPMG survey indicates this may be a challenge for employers. The survey found that only 57% of employees “were comfortable reporting misconduct” on internal company hotlines, Mr. Girgenti said.

Only 34% of workers thought their employer would take appropriate action, and 47% said they were not confident they would be protected from retaliation after filing such reports, he said.

“There’s a huge gap between what a company would like to see happen and what in fact might happen,” said Mr. Girgenti.

He said companies should examine their internal reporting procedures. “Do you need to advertise your hotline program better? Perhaps more training and orientation with employees is needed to educate them not only about the access to the hotline, but that the organization takes nonretaliation very seriously,” he said.

Mr. Girgenti also suggested that companies reward employees making an internal whistle-blower complaint “the same way you would reward employees who have good business results,” because managing risk should be as important as managing earnings.

Mr. Stark said companies should consider establishing an ombudsman program that, although costly, “might encourage employees to take a healthy look at what they can do internally rather than running to the SEC.”

In addition, “Companies need to consider using an independent third party to help

them manage the complaints, and help them investigate the complaints” and then study the digital evidence that is often involved, Mr. Stark said.

Mr. Frenkel recommends that companies also “exercise greater diligence” in investigating whom they hire, because “an employer saddled with a whistle-blower now has fewer options.”



AVOID SCRUTINY

Experts have several recommendations for firms to follow to avoid SEC scrutiny in light of the Dodd-Frank Act’s whistle-blower provision:

- Examine hotline and reporting procedures to ensure the company is getting information about wrongdoing early enough.
- Encourage workers to use the internal procedures.
- Conduct internal investigations, perhaps by an independent third party.
- Consider improved promotion of the hotline program.
- Introduce more training and orientation to employees.
- Reassure workers they will not be retaliated against if they report wrongdoing.
- Reward whistle-blowers who report problems internally.
- Periodically survey compliance programs to monitor their effectiveness.
- Establish an ombudsman program.
- Exercise greater diligence in hiring practices to avoid potential whistle-blowers.

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measure that includes extending the National Flood Insurance Program through Nov. 18. The U.S. House of Representatives passed H.R. 2608 on a 352-66 vote Tuesday, after the Senate had already approved it.

Worker's firing over Facebook post upheld

A National Labor Relations Board administrative law judge has ruled a car dealership did not wrongfully terminate an employee for his Facebook postings. Judge Joel P. Biblowitz's ruling said two posting incidents—only one of which was a protected activity, the judge concluded—preceded salesman Robert Becker's termination from Karl Knauz Motors Inc. in June. The judge also concluded that sections of the firm's employee handbook were overly broad, although they have since been rescinded. He ordered a notice be posted at the dealership informing employees of their right to engage in protected concerted activity.

LexisNexis buys automation tool

LexisNexis Risk Solutions acquired Marsh Berry & Co. Inc.'s sales management automation tool, for an undisclosed amount, as LexisNexis develops an online insurance exchange designed to improve the flow of data between agents, brokers and insurers.

Supreme Court declines arbitration clause case

The United States Supreme Court won't review an insured's case on whether an insurer can enforce an arbitration clause in an asbestos-related injury claims case. A federal court of appeals had determined that Nationwide Mutual Fire Insurance Co. was not prevented from seeking arbitration under a settlement agreement with George V. Hamilton Inc., which purchased a liability insurance policy with coverage from 1985 to 1986 from Nationwide. In 1992, GVH entered into a settlement agreement—which included an arbitration

clause—with Nationwide and other insurers after receiving asbestos-related injury claims related to products it installed. Nationwide participated in the agreement until 1996, when it said policy limits had been exhausted. Nationwide raised the arbitration provision of the settlement agreement in 2007 after GVH filed new asbestos-related claims with Nationwide and other insurers. A federal district court precluded Nationwide from invoking the clause, since GVH had terminated the agreement in a previous dispute with other insurers.

Chartis, Hartford to cut staff

American International Group Inc. and The Hartford Financial Services Group Inc. are reducing staff as they attempt to streamline their businesses, the companies said. AIG is cutting less than 1% of workers at its property/casualty unit Chartis Inc. AIG and its subsidiaries had about 63,000 employees at the end of last year, according to regulatory filing. Of those, 40,000 are Chartis employees. Hartford reportedly plans to cut at least 500 jobs over the next 18 months. Hartford has about 25,000 employees.

Florida lowers collateral requirement for Lloyd's

Lloyd's of London has received permission to operate as a reinsurer in Florida under relaxed collateral rules, according to the Florida Office of Insurance Regulation. A Florida rule that had required non-U.S.-based reinsurers to post collateral equal to 100% of their U.S. claims liabilities was relaxed in 2008 in the catastrophe-prone state, allowing highly rated and financially sound companies to post collateral equal to 20% of their loss reserves on Florida property catastrophe reinsurance.

HCC launches primary, excess casualty units

HCC Insurance Holdings Inc. has formed two divisions to write primary and excess casualty insurance. Christopher Day, formerly president of the primary casualty division of Navigators Management Inc., leads HCC's Chicago-based primary casualty division as senior vp. Phil Joschko, previously a vp at C.V. Starr & Co. Inc., is senior vp of the new excess casualty division, also based in Chicago.

Pensions: Market woes force large contributions

CONTINUED FROM PAGE 1

drop from this year's peak funding status, set in April, when plans had an average funding level of 88%.

That 72% average funding level was near the all-time low of 71%—set in August 2010—while the \$512 billion difference in September between assets and liabilities was a record.

One implication of the plunge in funding levels is obvious: Employers will put more money in their pension plans.

"We definitely will see higher contributions over the next few years," said Ari Jacobs, retirement solutions leader with Aon Hewitt Inc. in Norwalk, Conn.

"We are talking about record contributions," said John Ehrhardt, a Milliman principal in New York.

"Things will get worse before they get better," said Sheldon Gamzon, a principal with Price-waterhouseCoopers L.L.P. in New York.

Towers Watson & Co. has projected that employers—excluding a few categories, such as nonprofit organizations—would have to contribute \$175 billion to their plans next year, up from \$163 billion this year and \$91 billion last year.

Unless there is a "significant rebound in the markets, the numbers for 2012 are going to be a lot higher," said Mike Archer, a senior retirement consultant with Towers Watson in Parsippany, N.J.

Many companies, which have been building up cash during the past couple of years, will be better able to meet those bigger contribution demands compared with the Great Recession, experts say.

But the impact of the higher contribution requirements will vary.

"It will be a significant burden for some, but for others, who have been sitting on a lot of cash, it will not," said Jonathan Barry, a Mercer partner in the consultant's Boston office.

Still, the higher contribution requirements and the difficulty in predicting contributions—due to volatility in the equities markets—will lead some companies to freeze their plans, continuing a trend that began about seven years ago.

\$175B

Towers Watson & Co. has projected that employers—excluding a few categories, such as nonprofit organizations—would have to contribute \$175 billion to their plans next year, up from \$163 billion this year and \$91 billion last year.

"I suspect it will drive some to freeze their plans," said Heidi Rackley, a partner in Mercer's Seattle office.

Some employers, though, say they intend to stick with their plans.

Offering a defined benefit plan "continues to be part of our overall benefits package," said Joseph Molloy, vp-benefits and employee services at North Shore-LIJ Health System in Lake Success, N.Y. Mr. Molloy said the health

care system remains on target to fully fund its plan by 2015.

Yet another reaction, experts say, will be changes in investment strategies, such as putting more plan assets in bonds and less in equities, as well as exploring approaches in which pension plan risk is transferred to a third party, with the employer retaining the plan.

For example, this year, Hickory Springs Manufacturing Co. in Hickory, N.C., purchased a "portfolio buy-in" policy from a unit of Prudential Financial Inc. Under that policy, Hickory Springs transferred just less than \$75 million in plan assets to Prudential, while Prudential is responsible for about \$75 million in benefits earned by about 1,000 Hickory Springs retirees.

"I do think we will see more activity in that area," Mercer's Mr. Barry said.

Experts also expect a push by employers for federal lawmakers to at least temporarily ease funding rules, which Congress tightened considerably under the 2006 Pension Protection Act.

Congress already has responded twice in recent years to calls for relief. In 2008, for example, Congress gave employers whose plans slipped below certain funding levels, more time to boost funding.

In 2010, lawmakers also provided relief. For example, under one approach, employers could amortize their obligations over 15 years, rather than the required seven years, for funding shortfalls for any two years between 2008 and 2011.

But so many conditions were attached to the relief, such as requiring employers to make extra plan contributions if they paid any employee more than \$1 million in compensation, that only a small percentage of employers took advantage of the provision, PwC's Mr. Gamzon said.

San Francisco: City supports change

CONTINUED FROM PAGE 3

be proposed for the HRA provision.

"We believe legislation will be signed into law," said Jim Lazarus, senior vp with the San Francisco Chamber of Commerce.

Supervisor Campos' proposal stemmed from a June report by the city's and county's Office of

Labor Standards Enforcement that concluded only 20% of the \$62 million allocated to HRAs last year actually was used to reimburse employees.

"It is this gap that has caught lawmakers' attention," said Andy Anderson, a partner with Morgan, Lewis & Bockius L.L.P. in Chicago.

In all, about 13% of employers last year used the HRA approach

to satisfy the spending requirement, according to the Office of Labor Standards Enforcement report.

The legality of the overall 2006 law, which went into effect in 2008, was affirmed by the 9th U.S. Circuit Court of Appeals. In 2010, the U.S. Supreme Court declined to review the appeals court ruling.

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Fraudster pumps up Medicare bills

An Illinois man accused of defrauding Medicare beneficiaries with an erectile pump scheme faces up to 33 years in prison as part of a plea agreement.

Gary Winner of Northbrook, Ill., purchased \$26 penis enlargers from adult websites, repackaged them and sent them to Medicare beneficiaries claiming the devices were for "bladder control, urinary flow and prostate comfort," according to court documents filed in federal court in Providence, R.I.

Mr. Winner is to plead guilty to five charges, including health care fraud, introduction of an adulterated and misbranded medical device into interstate commerce, and money laundering.

From 2005 to 2008, Mr. Winner, through his company, Planned Eldercare Inc., purchased marketing leads for diabetic males over age 65 and telemarketed the products.

According to the documents, when Mr. Winner—who at times employed 10 telemarketers—was confronted by employees who questioned his business practices, he typically responded by saying, "It doesn't cost the client anything as the government is paying for it, and that the government would just print more money, so order more."

Mr. Winner collected \$284 for each pump from Medicare reimbursements, claiming the devices treated erectile dysfunction, among other ailments.

Mr. Winner, who also agreed to forfeit approximately \$2 million that he collected during the scheme, faces up to 33 years in prison and \$760,000 in fines as part of the plea agreement, according to court documents.



CONTRIBUTING: Matt Dunning, Judy Greenwald, Mike Tsikoudakis, Sarah Veysey

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Reality star covers assets at Lloyd's

Holly Madison, star of the reality television show "The Girls Next Door," reportedly has insured her breasts at Lloyd's of London.

Ms. Madison, who is starring in the Las Vegas striptease stage production "Peepshow," told reporters she had insured her breasts for \$1 million at Lloyd's.

Ms. Madison told reporters that if anything happened to her breasts, she would be unable to work and likely would lose out on millions of dollars.

"I thought I'd cover my assets," she said.

It is not the first time that Lloyd's, famed as a market for specialty risks, has insured body parts of the rich and famous.

Last year, underwriters in the market designed a policy to insure the locks of National Football League star Troy Polamalu.

The \$1 million policy, purchased by Procter & Gamble Co., whose shampoo products Mr. Polamalu endorses, would pay out if the Pittsburgh Steelers' strong safety lost 66% or more of his hair.

Lloyd's underwriters also have underwritten insurance for actress Marlene Dietrich's legs, Keith Richards' fingers, Bruce Springsteen's vocal chords, "Ugly Betty" star America Ferrara's smile and Jennifer Lopez's bottom.

Holly Madison has insured her breasts at Lloyd's of London for \$1 million.



AP PHOTO

Customer gets her two cents' worth

Bentonville Ark.-based Wal-Mart Stores Inc. has been back in court, but the dispute this time involves pennies rather than the potential millions involved in the gender discrimination lawsuit it also has been battling.

Consumer activist and Murrysville, Pa., resident Mary Bach brought Wal-Mart to county court in Export, Pa., claiming that on Aug. 20 she had been charged \$1 instead of 98 cents for a box of Banquet Brown 'N Serve sausages. Ms. Bach said the clerk corrected the mistake and refunded the 2 cents. But six days later, the same thing happened again, said Ms. Bach.

District Judge Charles Conway sided with Ms. Bach in her civil lawsuit alleging unfair trade practices, and awarded her \$100 in damages and about \$80 in court costs, according to the Pittsburgh Tribune-Review.

But Ms. Bach apparently is not mollified. "This is the fifth lawsuit we've had against this store for the same problem," Ms. Bach said. "This isn't an isolated incident."

A Wal-Mart spokesman could not be reached for comment.



Film studio faces surprise lawsuit

Two former Fox Searchlight Pictures Inc. interns have accused the producers of last year's Oscar-winning hit movie "Black Swan" of the seemingly impossible: underpaying its unpaid interns.

According to a lawsuit filed in Manhattan's federal district court late last month, the News Corp.-owned movie studio had dozens of its interns working as accountants, secretaries, office assistants and janitors, tasks that the plaintiffs—Brooklyn resident Eric Glatt and Tacoma Park, Md., resident Alexander Footman—allege failed to meet the educational experience requirement for minimum wage and benefits exemption prescribed by state and federal labor laws.

The suit alleges that the practice of using interns to perform tasks normally assigned to full- or part-time paid employees has become a new standard in the movie-making industry, and was largely the reason Fox Searchlight was able to produce "Black Swan" for a paltry \$13 million. The film grossed

more than \$300 million in theaters.

"Unpaid interns are becoming the modern-day equivalent of entry-level employees, except that employers are not paying them for the many hours they work," the suit claims. "This practice runs afoul of basic wage-and-hour laws."

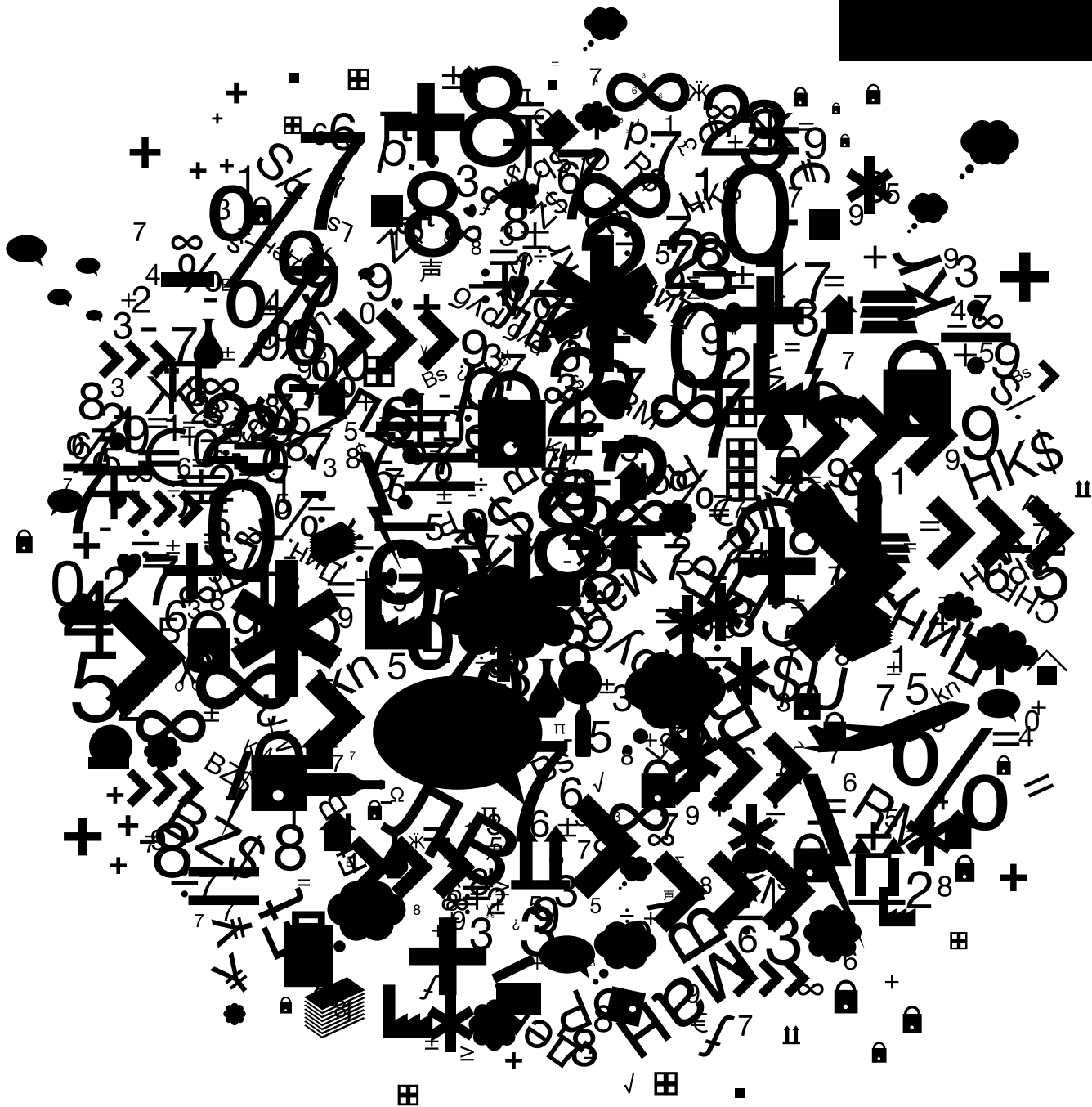
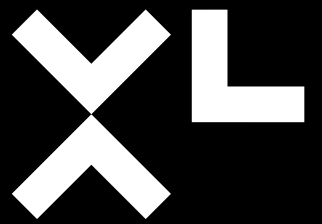
The plaintiffs have asked for class action status on behalf of more than 100 unpaid interns in various Fox Searchlight projects. Their suit seeks at least \$5 million in back pay for those interns, plus a matching amount in damages and an injunction prohibiting the studio from continuing its "unlawful practices."

Fox Searchlight responded in an emailed statement: "It is clear that these are completely meritless claims aimed solely at getting press coverage for the litigants and their attorneys."

"These individuals were never employed as interns or retained in any capacity by Fox Searchlight....We look forward to aggressively fighting these groundless, opportunistic accusations," the statement said.



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CASE SPECIFICS:

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