

**BATTLE FOR TRANSATLANTIC  
DRAWS ANOTHER ENTRANT  
INTO THE FRAY / PAGE 3**

**COVERAGE FROM FERMA:  
BUSINESS INTERRUPTION,  
CYBER IN FOCUS / PAGE 4**

**RECESSION BOOSTS FRAUD  
BY EMPLOYEES WORKING  
AT MIDSIZE FIRMS / PAGE 6**

## In Brief

**P/C insurers' profits  
fall by 72% in first half**

U.S. property/casualty insurers' net income fell 71.6% to \$4.76 billion in the first half of 2011 compared with the same period in 2010, according to an analysis by the Insurance Services Office Inc. and the Property Casualty Insurers Assn. of America. Insurers suffered a net underwriting loss of \$24.1 billion during the first six months of this year compared with an underwriting loss of \$5.1 billion during the same period in 2010. The industry's first-half combined ratio deteriorated to 110.5%.

**Bills could limit some  
reinsurer deductions**

Legislation that would limit tax deductions for reinsurers that cede large portions of their U.S. premiums to offshore affiliates

See **IN BRIEF** page 25



## CASE STUDY D&O BEST PRACTICES

U.S. firms pay dearly if caught breaching anti-bribery laws; build a proactive compliance program; hospital M&As boost D&O need; bundling D&O may leave gaps; exclusions a moving target; strong governance essential.

**PAGE 9**



## Is there a risk in the house?

*Hospitals eye legacy med mal exposures as more doctors come on board*

By **RODD ZOLKOS**

**A**s hospitals look to bring self-employed physicians on board as employees, a key issue is addressing those physicians' medical malpractice liability tail exposures.

Hiring hospitals can either ask those physicians

to cover the risk themselves or, as is increasingly the case as they look to provide an incentive for physicians to join them as employees, the hospital can take on the med mal tail and prior acts exposure in its own insurance program.

See **MED MAL** page 25

### REGULATION

## P/C insurers may dodge FSOC scrutiny

*Unlikely to pose  
systemic risks*

By **MARK A. HOFMANN**

**WASHINGTON**—Property/casualty insurance groups are greeting as good news the Financial Stability Oversight Council's proposal on assessing nonbank financial companies to determine whether they present a systemic risk to the U.S. economy.

But they would like FSOC to go a step further and simply say that property/casualty insurers should not be included in the category of nonbank financial institutions that can prove to be systemically risky.

Property/casualty groups have long argued that their very nature precludes them from creating a systemic risk and that asset size alone should not determine whether such a risk exists.

The Dodd-Frank Wall Street

See **FSOC** page 24

### WORKERS COMPENSATION

## States approve requests to hike workers comp rates

*Insurers seek price increases after tough years*

By **ROBERTO CENICEROS**

More states are approving workers compensation rate increases this year as insurer results deteriorate amid rising injury expenses and the Great Recession's hammering

of employer payrolls.

In states where regulators have approved workers comp rate increases, insurers are passing costs on to employers of all sizes, although smaller buyers are feeling the greatest impact, brokers say.

After years of rate and premium decreases, rising costs and diminished payrolls, insurers' combined ratios have reached untenable levels, making rate increases necessary in more states but not all, industry sources say.

"When we look at the past several years that industry premiums have been coming down significantly, you were seeing rate decreases in a variety of states and also diminishing payroll," said Frank Freund, chief financial officer in Lansing, Mich., for Accident Fund Holdings Inc.

"Everybody's combined ratio has been climbing because of the lower premium levels, and you can only do so much with expenses," Mr. Freund said. "The expense portion of the combined ratio continues to grow. So you

are going to see those increasing combined until rate adequacy comes about."

Workers comp premiums generally are a function of an employer's payroll multiplied by state-approved rates. But other factors, such as market competition, employer size and policy structure influence the actual premium amount paid by an individual insurance buyer.

Shrunken payrolls also mean insurers need larger rates to cover losses, sources said.

Already this year, NCCI Holdings Inc. has filed for rate increases in 19 of the 38 states it provides with rating services, and it is only partially through its annual rate filing cycle, which runs from July

See **COMP** page 24

### INDEX

Advertiser Index	.23
Business Resources	.20
Commentary	.8
End Page	.26
Opinions	.8
Mid-market Executive	.6
Products & Services	.20
Professional MarketPlace	.20
Up Close	.20

# Business Insurance

Online features & highlights  
[www.businessinsurance.com](http://www.businessinsurance.com)

## INSURANCE BROKER INSIGHTS

video

**MANAGING TALENT:** Brokers must adopt a variety of strategies to attract, cultivate and retain the best employees. Our latest Insurance Broker Insights video looks at what some leading firms are doing to win the war for talent. To watch, go to [www.BusinessInsurance.com/video](http://www.BusinessInsurance.com/video).

### MOST POPULAR STORIES Week of October 10, 2011

1. Nurse injured while glancing at cell phone due workers comp
2. Workers comp insurer results likely to weaken further: Best
3. Largest property/casualty insurance wholesalers ranked
4. Insurance veterans set up London MGA aimed at U.S. homebuilders
5. U.S. property/casualty insurers' net income falls nearly 72%
6. P/C insurers growing more concerned about inflation
7. *Business Insurance* ranks largest surplus lines insurers
8. Lloyd's lauds iPad test, but focus remains on relationships
9. Calif. laws bar credit, E-Verify checks of most employees
10. Aon names Healy to oversee construction-related surety team

**GET ONLINE NEWS EACH DAY**  
 Subscribe to *BI's* daily newsletter



webinars

**UPCOMING EVENTS:** Register for "Behind the Looking Glass" on Oct. 20 or "International Expansion Risks for Middle-Market Firms" on Nov. 9. For more information about these free events, go to [www.BusinessInsurance.com/webinars](http://www.BusinessInsurance.com/webinars).

### Business Insurance IN FOCUS

**VIDEO:** Watch the latest Business Insurance In FOCUS video for info on top stories and interactive resources.



**FACEBOOK:** Connect with *Business Insurance* and your peers on Facebook at [facebook.com/BusInsMagazine](http://facebook.com/BusInsMagazine).



**SOLUTION ARCS:** Explore how to manage construction risks on the Specialty Risks featured solution arc.

Business Insurance (ISSN 0007-6864) Vol. 45, No. 40, is published weekly, except for combined issues the first and second week of July, the fourth and fifth week of August and no issue the last week of December, by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Email address change to [customerservice@businessinsurance.com](mailto:customerservice@businessinsurance.com) or mail to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912, \$5 a copy and \$125 a year in the U.S. \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A. Copyright © 2011 by Crain Communications Inc.

Aon Risk Solutions

# Challenge or opportunity?

As the world of health care faces unprecedented consolidation, medical malpractice management becomes even more critical.

Aon Risk Solutions has the industry insight and analytics to help hospitals and physicians see past the challenge and embrace the opportunity.

Contact your Aon representative to speak with the authors of Aon's 12<sup>th</sup> annual Hospital and Physician Professional Liability Benchmark Analysis at ASHRM and access the report at [aon.com/hplreport](http://aon.com/hplreport)



Risk. Reinsurance. Human Resources.

## REGULATION

# Solvency II delay in U.K. may bring dual regulation

By SARAH VEYSEY

**LONDON**—The U.K. insurance regulator's decision to delay full implementation of Solvency II until 2014 may mean large insurers will have to comply with two sets of solvency rules in 2013.

While the Financial Services Authority's announcement this month adds some clarity about the start date for Solvency II in the United Kingdom, significant uncertainties remain about which requirements insurers will have to fulfill in 2013.

The risk-based capital regulatory regime for insurers and reinsur-

ers previously was slated for introduction across the European Union on Jan. 1, 2013.

But recent moves by European Council committees and the European Parliament

mean a Jan. 1, 2014, start date is more likely, with some elements of the new rules being phased in over several years.

In saying that it had revised its planning assumptions for Solvency II, the London-based regulator said it expects Jan. 1, 2013, to remain the date at which national regulators and the European regu-

**FERMA FORUM:**  
Risk managers urged to lobby for special treatment of captive insurers under Solvency II. **PAGE 22**

lator, the Frankfurt, Germany-based European Insurance and Occupational Pensions Authority, would need to have Solvency II transposed into law.

But the FSA also said that Jan. 1, 2014, is the date it assumes that "Solvency II requirements would be switched on for firms."

Companies that wish to have an internal capital model approved by the FSA have from March 2012 until mid-2013 to submit their models to the regulator for assessment.



While the Financial Services Authority's announcement this month adds some clarity about the start date for Solvency II in the United Kingdom, significant uncertainties remain.

Internal models are likely to lead to lower capital requirements for companies than using the standard model contained in Solvency II, but each internal model used by the companies must be approved by a regulator.

This is good news for companies seeking internal model approval from the FSA, said Janine Hawes, a London-based director in KPMG L.L.P.'s Solvency II technical group.

See **SOLVENCY** page 21

## REINSURERS

## Transatlantic draws another buyout bid

Questions on plans of Starr, runoff firm

By SONJA RYST

**NEW YORK**—Transatlantic Holdings Inc.'s decision to entertain a fourth bidder for the reinsurer looks to be an effort to increase competition and win a price closer to its book value, analysts say.

Hamilton, Bermuda-based Enstar Group Ltd. and New York-based C.V. Starr & Co. reportedly entered the bidding with a joint bid last week, though an Enstar spokeswoman declined comment and C.V. Starr did not respond to a request for comment.

New York-based Transatlantic, the world's ninth-largest reinsurer in the 2011 *Business Insurance* ranking, also declined comment.

Enstar, which typically buys and manages insurers and reinsurers in runoff, has backing from private equity investor and former Goldman Sachs Group Inc. banker Chris Flowers.

C.V. Starr is led by Chairman and CEO Maurice R. Greenberg, who is familiar with Transatlantic as the former leader of American International Group Inc., which sold its stake in Transatlantic in 2010 to help repay its 2008 government bailout.

Transatlantic said its agreement last week to discuss a deal with a fourth bidder is in addition to discussions with a third party, which it has not named but is believed to be a group of investors that includes former Gen Re Corp.



CEO Joseph Brandon, as well as Bermuda-based Validus Holdings Ltd. and Omaha, Neb.-based Berkshire Hathaway Inc.'s National Indemnity Co. It is unclear whether Berkshire is still in the running as Transatlantic refused its \$52 a share offer and Berkshire has said that it won't increase the offer.

The latest bid shows that Transatlantic's board is "still entertaining as many offers as they possibly can," said Michael G. Paisan, a New York-based analyst for Stifel Nicolaus & Co. Inc.

"If you're looking for a deal, the more the merrier," said a Transatlantic investor. "A competitive bid situation is likely to get a higher price. It's that simple."

"Enstar and a few others, what they typically do is buy the existing business and then they don't sell new product," said a source familiar with the matter. "You would only do that if you thought there was no future value or little future value in continuing to write the policies...I can't imagine that this is anyone at Transatlantic's first choice. It's true we're in a soft casualty market, but the business still makes money."

Transatlantic reported profits of \$402 million for 2010 compared with \$478 million in 2009. The reinsurer reported revenues of \$3.88 billion last year compared

See **TRANSATLANTIC** page 21

## HEALTH CARE BENEFITS

## Calif. OKs pregnancy coverage mandate

16-week coverage extension requirement may violate ERISA

By JERRY GEISEL

**SACRAMENTO, Calif.**—A new California law will require employers to extend health insurance coverage for up to 16 weeks to employees classified as disabled due to pregnancy, childbirth or related medical conditions.

The measure, S.B. 299, which Gov. Jerry Brown signed into law last week with a Jan. 1, 2012, effective date, mandates that employers continue health care coverage for up to 16 weeks to disabled pregnant employees on the same basis as prior to the employee taking disability leave.

The California pregnancy measure got little attention as it moved through the state Assembly and Senate.

"This one fell under the radar screen," said Robin Weideman, a partner with law firm Carlton DiSante & Freudenberger L.L.P. in Sacramento, Calif.

In certain ways, the California law mirrors the 1993 U.S. Family and Medical Leave Act, but there are several key differences. The federal law mandates that health care coverage be continued for up to 12 weeks, rather than the 16 weeks mandated in the California law.

In addition, the FMLA applies to employers with at least 50 employees. The California law applies to employers with as few as five employees.

Some observers say, though, that the California law may not pass legal muster.

Specifically, they say, the law runs afoul of the 1974 Employee Retirement Income Security Act, which pre-empts state and local



rules that relate to employee benefit plans. The intent of that provision was to prevent multistate employers from having to comply with myriad state benefit laws, which could discourage them from offering benefit plans.

"There may be a viable basis for challenges by self-insured plans," said Nicole Diller, a partner in the San Francisco office of Morgan, Lewis & Bockius L.L.P.

But whether a challenge would succeed is another matter.

In a 2005 advisory opinion letter, the Department of Labor said a reading of the FMLA makes it clear that neither the FMLA nor ERISA was intended to pre-empt more generous state leave laws.

Still, past regulatory conclusions, which involved paid leave programs rather than the longer extension of health care benefits under the California law, do not, "going forward, guarantee similar answers," said Andy Anderson, a partner at Morgan, Lewis & Bockius in Chicago.

Whether employers will challenge the California law remains to be seen.

"There may not be a lot of appetite for fighting the good fight," said Laura Paszkiewicz, director of health and productivity in the Santa Ana, Calif., office of Buck Consultants L.L.C.

In fact, employers unsuccessfully battled a San Francisco law requiring organizations to spend a certain amount of money on employees' health care coverage. But a three-judge panel of the 9th U.S. Circuit Court of Appeals ruled in 2008 that the law was not pre-empted by ERISA. Nothing in the San Francisco statute required an employer to set up a benefit plan or interfered with the uniformity of ERISA regulation, the appeals court panel ruled.

In addition, employers might be reluctant to challenge a law extending additional health care coverage for pregnant employees or employees who have given birth, due to the potential for public relations problems, said Richard P. Asensio, a vp with Aon Hewitt Inc. in Los Angeles.

## RISK MANAGEMENT

# Social networks put firms at risk

*Employees combine business, private lives on Facebook, Twitter*

By GAVIN SOUTER

**STOCKHOLM**—Cybersecurity exposures don't begin and end with hacking—organizations' own employees often give away sensitive information of their own accord through social networking sites, experts say.

The explosion in the use of sites such as Facebook and Twitter over the past few years has widened the scope of cyber-related risks that organizations face as employees regularly mix their professional and private lives, a panel of experts said at the Federation of European Risk Management Assns.' biennial forum held in Stockholm earlier this month.

To guard against the risk, organizations must rethink their security training procedures. In addition, significant insurance capacity is available to cover these risks.

"Today, with the new ways that there are to communicate and exchange information, we have to think that there are no more boundaries. Everything from private life and professional life is completely mixed," said Laurent Dellhalle, general secretary of Bureau European d'Information Commercial, a credit and information security organization in Décines, France, during a session at the forum.

The speed at which the messages are transmitted adds another dimension to the risk, Mr. Dellhalle said. Companies have little control over information because employees use social networks to distribute the information globally within seconds, he said.

And employees often distribute sensitive information unwittingly, said Christian Aghroum, Prilly, Switzerland-based chief security officer at SICPA Management S.A., a security ink provider.

For example, by updating resume information on LinkedIn,



**MORE FERMA COVERAGE:** Additional stories from the Federation of European Risk Management Assns.' biennial forum held in Stockholm on PAGES 22, 23

## Compliance problems hinder global programs

By SARAH VEYSEY

**STOCKHOLM**—Members of the insurance industry must work together to solve the problems of compliance associated with global insurance programs, delegates at the Federation of European Risk Management Assns.' recent forum were told.

Experts gathered Oct. 2-5 at FERMA's forum in Stockholm said concerns still exist about global programs' compliance with local insurance and tax rules and that insurers, brokers and risk managers should work together to pool their knowledge to avoid the risk of fines or revocation of licenses.

"I am paid to provide an insurance policy that is compliant everywhere we have operations," Helen Hayden, group insurance risk manager at Lon-

don-based Prudential P.L.C., told a forum panel session.

"In a time of crisis, I want to be able to rely on my policy," she said, rather than on "somebody else's," such as a broker's errors and omissions policy.

Ms. Hayden, who is part of the London-based risk managers' association Airmic's efforts to start a comprehensive database of insurance and tax laws, said that while all buyers need different global programs—"because we are all different"—there is a need for a single database of laws and rules in order to give risk managers peace of mind that their programs are compliant wherever they operate.

"We need access to data because the risk, ultimately,

See GLOBAL page 22

employees may inform competitors about sensitive aspects of

their work. In addition, employees who use Twitter to send messages

about their whereabouts while traveling for work and their schedule may be giving competitors clues about sensitive company operations, he said.

Previously, employees may have disclosed this information in personal meetings, and they may feel that it is still appropriate to disclose this information to friends or colleagues. "But now you are not speaking in a restaurant, you are speaking to the whole world," Mr. Aghroum said.

Companies should ensure that they inform employees that there must be a clear line between private and professional use of social networks, and they should have training on these issues, he said.

But the training needs to take into account the preferences of different groups of employees, Mr. Aghroum said. Older employees generally are quick to understand the difference between private and public use of social networks, but younger employees frequently require more training.

And younger employees are more engaged by e-learning techniques than traditional meeting-based training or printed guidebooks, he said.

Significant capacity is available in the insurance market to cover cyber-related risks, said Luc Vignancour, deputy manager in the FINPRO department at Marsh Inc. in Paris.

In the Continental Europe market, about €50 million (\$66.9 million) is available, and by tapping the London market as well, policyholders can obtain a total of €100 million (\$133.8 million) in cyber risk capacity, he said.

The policies typically cover: extra security expenses; notification costs associated with informing people whose information may have been accessed; liability claims; ransom payments in the event that hackers take control of a system and threaten to release confidential information; and loss of funds, in the event that hackers access a financial system and transfer funds.

Business Insurance.  
**BEST**  
places  
to work 2011

## Event to honor 2011 Best Places companies

The 50 insurance industry companies to be recognized in this year's Business Insurance Best Places to Work in Insurance program have been identified and will be recognized at an awards event next month.

Best Places to Work in Insurance is a joint effort of Business Insurance and the Harrisburg, Pa.-based Best Companies Group, and is open to all publicly or privately held property/casualty insurers, group life/health insurers, retail agents and brokers, wholesale brokers/managing general agents, reinsurers, group health advisers and claims managers with at least 25 employees working in the United States and serving the commercial insurance market.

Companies recognized this year range in size from 25 employees to 8,778. Business Insurance will recognize the companies and celebrate their achievement at an awards luncheon Nov. 1 in New York.

The 50 companies recognized this year are to be celebrated as an elite group of employers that have created high-quality workplaces that encourage employees to thrive in a work environment they can love.

Best Companies Group, an independent workplace excellence research firm that manages other regional and industry programs in the U.S. and Canada, managed the registration process, conducted the surveys, evaluated the data and ultimately selected the firms that made the cut.

The assessment was a two-part process. Part one, responsible for 75% of a company's score, involved a confidential Employee Engagement & Satisfaction Survey that was used to evaluate employees' workplace experience and the company culture. The second part of the assessment, responsible for the remaining 25% of a company's score, was an employer questionnaire that collected information about each company's benefit programs, policies, practices and other general information.

BCG's work also involves comparative analysis of the companies making the list, and a special report in the Nov. 7 issue of Business Insurance will reveal how the companies ranked and take a closer look at the 50 companies honored.

To view an alphabetical list of the companies, visit [www.BusinessInsurance.com](http://www.BusinessInsurance.com). To register for the luncheon, contact Becky Briggs at 212-210-2132 or [rbriggs@businessinsurance.com](mailto:rbriggs@businessinsurance.com).

## SURPLUS LINES

## New RMS model may crimp surplus lines capacity

By MICHAEL BRADFORD

**SAN DIEGO**—Surplus lines insurers are finding that their property exposures are uncomfortably larger under a revised catastrophe model, and some are considering whether to shrink availability or adjust their capital to cover the additional risk.

Insurers and brokers at the National Assn. of Professional Surplus Lines Offices Ltd.'s annual conference in San Diego last week said Risk Management Solutions

Inc.'s Version 11 Atlantic hurricane model—which increases potential inland damage from hurricanes, among other changes—is causing companies to rethink how they underwrite windstorm exposures.

"Whatever (probable maximum loss) position you were in prior, you are in a significantly higher position if you write exposed property," said Mario P. Vitale, president of the U.S. insurance operations of Hamilton, Bermuda-based Aspen Insurance Holdings Ltd.

Insurers that find themselves with inadequate capital because of the revised model by the Newark, Calif.-based RMS will have to dedicate more to their catastrophe business, he said. "To the extent that there was excess capital, it will now be depleted."

Insurers with adequate capital across their books of business will have to shift some to their property catastrophe exposures, Mr. Vitale said. The only remaining option would be to reduce catastrophe underwriting, he said.

Partly in response to changes in the model, Aspen CEO Christopher O'Kane said in a July earnings call that the insurer has reduced the amount of its limits exposed to U.S. windstorm risks by more than \$100 million.

"A lot of carriers are struggling with the impact of RMS 11 and the ramifications on their ability to write in windstorm areas," said Judy Patterson, Boston-based head of surplus lines U.S. property

See NAPSLO page 21



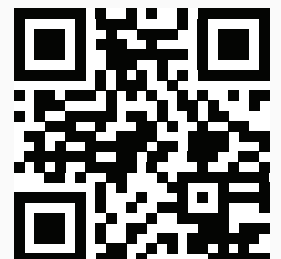
# Smarter is doubling the likelihood your employees will take charge of their health.



**Aetna gets your employees more involved in their health and savings.** With Aetna, employees are 2x more likely to actively plan for health and consider their options, helping you manage your bottom line without sacrificing quality care.

- Proven record of short-term and sustainable savings.
- Decrease overall medical costs by 7% and prescription costs by 14%.
- Proven savings of more than \$400 per member per year.
- 10% fewer non-routine physician visits. 5% less non-urgent ER visits.<sup>1</sup>

See the proof and the savings at [smarteris.aetna.com/cdhp](http://smarteris.aetna.com/cdhp), or just scan the code.



<sup>1</sup>Aetna HealthFund® Seventh Annual Study Results, released December 2010.  
© 2011 Aetna Inc. Plans offered by Aetna Life Insurance Company and its affiliates. Health benefits and insurance plans contain exclusions and limitations.  
Providers are independent contractors and are not agents of Aetna.  
2011106

# Mid-Market EXECUTIVE

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

## Employee theft, fraud pose growing challenge

*Midsize companies viewed as especially vulnerable*

By JOANNE WOJCIK

A former employee of San Francisco's Tenderloin Housing Clinic recently was arrested and charged with embezzling \$29,000 in tenant rent money from the nonprofit organization, which operates the city's largest housing program for homeless adults.

The clinic, which has 250 employees, fired James Eugene Holland, 41, two years ago after the theft was discovered. In one instance, Mr. Holland placed a tenant in clinic-managed housing without notifying his employer and arranged for the rent money to be sent to his personal post office box, according to police reports.

The housing organization has not recovered any of the stolen funds.

This type of employee-perpetrated fraud has been increasing since the beginning of the recession and is likely to continue unless employers implement better controls to detect and prevent it, experts warn.

Fortunately, low-cost crime insurance is widely available to help employers victimized by such scams to recoup at least a portion of any losses they incur (see related story).

According to a survey of more than 500 fraud examiners conducted by the Assn. of Certified Fraud Examiners in March 2009,

more than half indicated that employee theft had increased in frequency in early 2009 from early 2008. Additionally, 49% reported that the sums lost also grew over the prior-year period (see chart).

Moreover, such fraudulent activity could proliferate, because many employers have cut their workforces, leading to reduced internal controls and fewer fraud prevention measures, and leaving them more vulnerable, suggests ACFE's report, "Occupational Fraud: A Study of the Impact of an Economic Recession."

Another report by Boston-based investigators Marquet International Ltd. dubbed 2010 "a banner year for employee theft in the United States." The "2010 Marquet Report on Embezzlement" cited a 17% increase in employee-perpetrated fraud cases over 2009. "Employee misconduct and internal corporate fraud will continue to be problems as the U.S. economy struggles and unemployment hovers at levels nearing 10%," the report predicted.

"Unscrupulous employees have been biting the hand that feeds them for a very long time," said Richard Plansky, senior managing director at security firm Kroll Inc. in New York. "But the combination of tough economic times and increased access that technology gives employees is making it easier for them to steal."

Kroll's "Global Fraud Report" found that in fraud cases where the perpetrator was identified, 55% were "an inside job."

"If you look at all frauds—where perpe-



### FRAUD METHODOLOGY

Ways fraud is committed, by size of victim organization\*

CATEGORY	EMPLOYEES	
	LESS THAN 100	MORE THAN 100
Billing	28.7%	24.9%
Check tampering	26.1%	8%
Corruption	25.5%	35.2%
Skimming	21.6%	11%
Expense reimbursement	16.8%	14.2%
Noncash	14.9%	18.1%
Cash on hand	14.7%	10.7%
Payroll	13.4%	6.5%
Larceny	12.3%	8.4%
Financial statement	5.6%	4.5%
Register disbursements	3%	2.9%

\*More than one method may be used to commit fraud. Source: "2010 Report to the Nations on Occupational Fraud and Abuse," Assn. of Certified Fraud Examiners

trators are known or unknown—it's reasonable to assume that percentage is actually much higher," said Mr. Plansky, who pointed out that in many cases the culprit is nev-

er positively identified.

"We expect to see more of this in all companies, especially middle-market companies that can be more vulnerable because they have fewer resources than large companies" to prevent and detect such activity, Mr. Plansky said.

Matthew Crooks, assistant vp at Willis Executive Risks in Pittsburgh, said he saw a 40% surge in crime losses among Willis North America clients in the last six months of 2008 as the economy headed downhill. "They went up another 60% in the first six months of 2009," he added.

"When people start to worry about where their next paycheck is going to come from, they are more than willing to set up some sort of a scheme," Mr. Crooks said. "They run the gamut from expense-report fraud, depositing company checks into their own accounts, vendor schemes."

"It can happen to people who are otherwise good-intentioned; maybe they are trying to make a mortgage payment or put food on the table," added Dave Recker, a marketing specialist at Willis Executive Risks, also in Pittsburgh. "These aren't hardened or overly sophisticated criminals."

The incidence of employee fraud is generally higher in small and midsize businesses, according to experts, because such firms often don't have adequate internal controls in place.

"Mid-market companies are more vulnerable to employee theft," said Mr. Crooks. "A lot of times smaller companies don't have the number of employees needed to put controls in place."

The recession also has exacerbated the situation for many mid-market companies, Mr. Crooks said.

"With layoffs, people have been wearing multiple hats, and controls have become even more lax. Maybe there were five people that were doing it and now there are only three, so things tend to slip through the cracks," he said.

## Few midsize firms lured by buyers market for crime cover

By JOANNE WOJCIK

Even though crime insurance is widely available at relatively low cost to protect companies from employee theft and dishonesty, many smaller and midsize businesses do not buy it—or, when they do, they often don't file claims because recovery requires that they prosecute the perpetrators, experts say.

"The large, jumbo companies are more likely to buy it, whereas the smaller companies tend to trust their employees," said Doug Karpp, a vp at Hiscox Ltd. in Los Angeles.

This can be especially dangerous for small companies "because they have less sophisticated internal controls," often resulting in later fraud detection and greater losses relative to the size of the organization, he said. "A \$100,000 loss to a \$3 million company is more damaging than a \$100,000 loss to a billion-dollar organization," Mr. Karpp said.

### FRAUD PERPETRATORS

Employee categories most likely to commit fraud

Finance and accounting	66%
Manager	14%
Executive	13%
Administrator	4%
All others	3%

Source: "2010 Marquet Report on Embezzlement," Marquet International Ltd.

Lee McGriff, principal of McGriff-Williams Insurance, an independent insurance agency in Gainesville, Fla., said he has found that many small and midsize business owners are reluctant to buy crime coverage "because they trust their employees explicitly. But my experience has been that when this comes to roost, it's usually the most trusted employee who is the culprit."

"The bigger the business, oftentimes the person handling insurance procurement may even be the one stealing from the company," he said, citing a recent situation involving a law firm client that lost \$600,000 in an embezzlement perpetrated by a finance department employee.

"She was prosecuted," Mr. McGriff said, a requirement for filing a claim under crime insurance policies.

Crime policies respond to loss of money, securities or other property resulting directly from dishonest or fraudulent acts perpetrated by employees either acting alone or in collusion with others, said Chris Gilman, a managing director at Aon Risk Solutions in New York. The policies also cover loss of money or securities from their destruction, disappearance or theft while on the an employer's premises or in transit. Depending on the business operations, crime policies also may be extended to cover employee theft of a client's property when in the custody of the insured.


Some crime policies also cover telephone toll fraud, computer virus remediation and software licensing violations, Mr. Karpp said.

In light of the financial crisis, Mr. Gilman said he is seeing more interest in buying crime insurance among financial institutions and private equity firms.

Despite increasing losses attributable to the recession, the annual cost of crime coverage is competitive, brokers report.

For example, "if you're a private, middle-market company with \$100 million in revenue and you want a \$1 million policy with a \$10,000 deductible, you could probably get it for \$3,000 to \$4,000," said Matthew Crooks, assistant vp at Willis Executive Risks in Pittsburgh. And, "as the limits go up, the rates get cheaper."

Mr. McGriff said he has sold employee dishonesty coverage to smaller firms with limits up to \$300,000 for annual premiums of \$500 when added as an endorsement to a typical business owner policy.

A man with glasses, wearing a dark suit, white shirt, and red tie with white polka dots, stands in front of a large industrial machine with many horizontal slats. The machine is metallic and has various pipes and bolts. The background is slightly blurred, showing more of the industrial setting.

**“We’re a growing company. And, with Zurich’s help, we’re already a global one.”**

**Chip Bottone, President and CEO  
FuelCell Energy, Inc.  
Connecticut, USA**

## Zurich **HelpPoint**

**International insurance solutions for the global companies of today and tomorrow.**

FuelCell Energy is bringing renewable and ultraclean power generation to three continents—and counting. Zurich’s ability to design a flexible insurance program in compliance with local and global regulations is helping them grow. And with a single, U.S.-based contact, supported by a global network spanning more than 170 countries, Zurich is making it even easier for FuelCell to manage their overseas risks. It’s an example of how Zurich HelpPoint delivers the help businesses need when it matters most. Let FuelCell tell you more. Watch the video at [www.zurichna.com/stories6](http://www.zurichna.com/stories6)



*Because change happenz.*®

# Opinions

## EDITORIAL

## Pensions need middle ground

**P**ension plan funding rules are the perfect example of the need to find a middle ground between two extremes. For decades, pension funding rules were weak and laden with loopholes.

The results were disastrous for plan participants and the federal insurance program created to protect the benefits employers promised to participants.

Companies could promise rich benefits and then do very little about funding those benefits. One of the most egregious examples of how weak pension plan funding rules were involved Bethlehem Steel Corp. For three consecutive years prior to the federal Pension Benefit Guaranty Corp. taking over the Bethlehem plan in 2002, the failed steelmaker did not legally contribute a dime to the plan.

Because of this, the PBGC's insurance program—which is partially funded by premiums paid by employers with pension plans—became responsible for the payment of about \$3.7 billion in benefits promised by Bethlehem but not funded by the company, which later went out of business.

Stories like that got the attention of federal lawmakers. In 2006, Congress passed legislation that considerably tightened the funding rules.

But now we are beginning to wonder if the pendulum has swung too far in the opposite direction. The biggest and most disturbing development in the defined benefit plan world is not pension plan failures, but the accelerating corporate drive to freeze their pension plans.

There are many reasons why employers are freezing their plans, including a belief that the plans are ill-suited to a more mobile workforce and that the plans may be too costly due to increased longevity.

Another cited reason is that the interest rates employers are required to use to value plan liabilities are too low, forcing employers to contribute more into the plans than is necessary and depriving employers of cash they could use for other business purposes.

Employers should be required to contribute enough money to their pension plans to honor benefit commitments. If employers feel they are putting in far more than is required, some will freeze their plans. Lawmakers need to examine if something is wrong here and, if so, redesign the rules to ensure adequate contributions without unfairly burdening employers.

## LETTERS

### Consultants not competition

TO THE EDITOR: As always, I found the Oct. 10 issue of *Business Insurance* filled with timely, informative information. Thank you for the effort that is put into the publication. However, I must say that as an independent risk management consultant, I was somewhat alarmed by comments in the article titled "Economic Pressures Test Broker/Client Relations" and found it a bit one-sided. The criticism of risk consultants in the article is unfair and unanswered.

See **LETTERS** page 21

## SCHILLERSTROM



## COMMENTARY

## Jobs' legacy serves as reminder

**T**he death of Apple Inc. founder Steve Jobs at age 56 after a lengthy battle with cancer illustrates how valuable employees facing debilitating diseases can be to organizations.

Despite taking three leaves of absence for health reasons, the last decade of Mr. Jobs' life was his most productive. The man who was responsible for creating the personal computer industry and teaching us how to use a mouse to navigate the Internet went on to create the iPod, the iPhone and the iPad—three consumer products that changed how we listen to music, how we communicate and how we retrieve information at home, work and in school.

Because Mr. Jobs was the chief executive of the company he founded, he probably didn't face much resistance from supervisors or co-workers when he took time off to care for his illness. Yet thousands of U.S. workers continue to face discrimination after they receive a cancer diagnosis or seek time off to be treated, despite recent amendments to the Americans with Disabilities Act intended to eliminate such workplace bias.

The first ADA suit to be tried before a jury involved cancer discrimination, according to a 2010 Equal Employment Opportunity Commission report. The suit, filed in 1995, charged that Chicago-based AIC Security Investigations Ltd. fired an employee after he returned from work following treatment for brain cancer. The jury awarded \$22,000 in back pay, \$50,000 in com-

pensatory damages, \$250,000 in punitive damages against AIC, and \$250,000 in punitive damages against the owner. However, the total punitive damage award was reduced to \$150,000 in light of the ADA's statutory cap on damages.

Had Mr. Jobs been any other hard-working professional in the corporate world, he, too, may have been pressured to take a lesser job or even to resign when it became evident he would not recover.

Recent amendments to the ADA require employers to accommodate employees diagnosed with cancer unless doing so would cause an undue hardship to the company. With recent advances in medical care, many employees with cancer need little more than a few months of leave to undergo treatment. In some cases, they still may be able to do their work remotely, thanks to some of the technology that Apple invented. Though an employee undoubtedly would be incapacitated during surgery, he or she could participate in conference calls or answer emails while undergoing chemotherapy, for example.

While most workers diagnosed with cancer are unlikely to leave a legacy of accomplishment as rich and influential as Mr. Jobs', employers need to realize that their workers can continue to be productive members of the work force until it is time for them to meet their own lives' final deadlines.

Contact: [jwojcik@businessinsurance.com](mailto:jwojcik@businessinsurance.com)



**JOANNE WOJCIC**  
SENIOR EDITOR

# Business Insurance

# CASE STUDY

## DIRECTORS & OFFICERS [BEST PRACTICES]

### U.S. firms pay dearly if caught breaching anti-bribery laws

By **MATT DUNNING**

**A**s global expansion among mid-market companies and the federal government's enforcement of the Foreign Corrupt Practices Act trend upwards, experts say now is the time for executives and their employees to educate themselves on the law's finer points.

Enacted in 1977 to combat bribery among U.S. companies doing business overseas, the law essentially prohibits firms and their representatives from paying any operative of a foreign government in exchange for contracts, unfair business advantages or other considerations.

The U.S. Department of Justice's enforcement of the law has increased 300% in the past 10 years, rising to 24 such enforcement actions in 2010. The U.S. Chamber of Commerce has made it a high priority to try to win changes in the law. Other business groups also have criticized on the law saying it puts U.S. companies at a competitive disadvantage in markets where bribery or other conduct prohibited by the law is customary.

While publicly traded companies are held to a stricter standard—including bookkeeping and internal control documentation—experts said smaller and midsize private companies and nonprofits should expect just as much scrutiny from federal regulators as their larger counterparts.

Criminal penalties for violation of the FCPA can carry fines of up to \$2 million for companies and \$100,000 for individuals—not to mention jail time—or, under the Alternative Fines Act, up to twice the cash value of the benefit sought in making the bribe or other corrupt payment. The government also can impose civil fines of up to \$10,000 per employee convicted of violating the anti-bribery law.

Beyond fines, companies risk forfeiting their right to bid for U.S. government contracts, suspension or revocation of their export licenses, as well as possible external civil litigation for damages under other federal or state laws. For example, a company alleging that bribery led to a competitor winning a foreign contract could sue for damages under the Racketeer Influenced and Corrupt Organizations Act, according to the Justice Department.

Though 88% of corporate FCPA violations filed since 2008 have been brought against publicly traded companies, roughly 78% of individuals charged have been representatives and/or employees of privately held companies.

"Private companies have to take this law seriously," said Coleen Freil Middleton, of counsel at Wilson Elser Moskowitz Edelman & Dicker L.L.P. in White Plains, N.Y. "It's complicated and there's a lot to it."

Without an in-house compliance program (see story, page 12),

See **FCPA** next page

**INSIDE:** Build proactive compliance program to avoid FCPA violations [PAGE 12] Hospital M&As boost D&O coverage need [PAGE 14]  
Bundling D&O cover may leave gaps [PAGE 16] Exclusions a moving target [PAGE 17] Strong governance essential [PAGE 18]

## CASE STUDY

## FCPA: U.S. firms pay for breaching law

CONTINUED FROM PREVIOUS PAGE

mid-market companies could run afoul of the FCPA in several scenarios.

Experts say it is important for mid-market companies to know that the Justice Department's definition of a foreign official includes direct employees of the local government, as well as employees of wholly or partially government-owned companies.

Especially in countries such as

China, Russia and India—where governments have more minority or controlling stakes in private firms—U.S. companies run the risk of unwittingly making improper payments to a de facto government official when they thought they were interacting with a private executive, experts said.

FCPA violations can occur even if not one dollar was paid directly to a foreign official.

While it is permissible for a U.S. company to cover certain costs of

doing business—travel expenses for on-site demonstrations, utility payments, clerical and other locally sanctioned administrative fees, those expenditures are allowed only for “routine governmental action,” according to Justice Department publications. Excessive expenses, such as lavish hotel rooms, pricey meals or other gifts, are likely to be interpreted as an attempt to curry undue favor, experts said.

Mid-market companies also

should recognize that the law applies not only to direct employees but also to business and trading partners, agents, emissaries or any other third party representing its interests abroad. A company could draw a FCPA violation even if it were unaware of the third party's illegal action in securing a business contract, retaining a contract or facilitating business. Similarly, the FCPA prohibits improper payments to third parties representing a foreign official when the U.S. company or one of its intermediaries knows that all or a portion of the payment eventually

will land with the official.

“You might rightfully believe that you can control your own enterprise; but when you also need to control the actions of third parties with which you're doing business, that becomes a much tougher task,” said Ann Longmore, executive vp at Willis North America in New York. “Smaller and midsized companies are clearly at a disadvantage here, and might actually be more exposed to FCPA violations than larger companies, because they have fewer resources and are less likely to have people on the ground abroad that could foresee or prevent these kinds of actions.”

When evaluating the risks of international commerce, a key step that mid-market companies often overlook, experts said, is evaluating a target market's local traditions and laws with the FCPA in mind. Many regions of the world, and particularly emerging markets, treat payments that the Justice Department likely would construe as bribery as a matter of etiquette or even necessity in the course of doing business.

“Frankly, one of the biggest risks a company can take is failing to familiarize yourself with the culture, the language and the rules in the countries in which you're doing business,” Ms. Middleton said. “You do so at your own peril.”

Conversely, most industrialized foreign states have their own laws governing international trade to which a U.S. company could be held accountable.

The recently updated U.K. Bribery Act should be a particular focus for mid-market companies in that it applies to a significantly wider range of circumstances. Under that law, enacted July 1, penalties can be applied to any company with direct or indirect dealings with a British entity. That means U.S. companies could find themselves in violation the U.K. and U.S. anti-bribery laws for the same act. Additionally, the U.K. law prohibits payments to private companies and their executives just as it does payments to government officials.

“The U.K. act is essentially our FCPA laws on steroids,” said Dana Kopper, senior vp and director at Lockton Cos. L.L.C. in Los Angeles. “You're pulling in your whole supply chain and the vast array of your external business relationships with third parties, and in doing so, you risk running into issues that you could be totally ignorant of but, under the U.K. law, you are at least partially culpable.”

Fines against an individual employee or representative for an unintentional act likely would be covered by directors and officers insurance, experts say.

But coverage for fines against the corporation itself, regardless of the nature of the violation, would be much harder to get, specifically for mid-market companies.

It also is possible that an individual's D&O coverage would be exhausted by investigation and litigation costs before a fine is levied.

## PRUDENTIAL GROUP INSURANCE

## CHALLENGE US TO HELP YOU OUTSMART, NOT OUTSPEND, ON VOLUNTARY BENEFITS.

Escalating costs have many employers cutting back on workplace benefits. Today, Prudential offers smart, cost-effective solutions that can help you meet your benefits challenges. And help employees meet their needs for protection.

A robust portfolio of voluntary benefits—Life, Disability, Long-Term Care and Dental\*—backed by the strength of a recognized brand can help businesses attract and retain the top talent they need to stay competitive, while minimizing costs and administrative burdens.

With 95 years of group insurance experience, Prudential knows the key to a successful and financially strong voluntary benefits plan is high participation. Innovative enrollment solutions that educate employees on the value of benefits will maximize plan participation—and result in a win-win for both employee and employer.

- Life-stage and educational communications targeted to employee needs
- Multi-year and off-cycle enrollment periods
- Online tools and toll-free customer service
- Consultative, administrative and marketing support from experts

Contact Bob Patience, Vice President, Voluntary Benefits, Prudential Group Insurance at 973-548-6233.

Download our “Fifth Annual Study of Employee Benefits: Today & Beyond” at [www.prudential.com/group](http://www.prudential.com/group)



**Prudential**  
Bring Your Challenges™



# BUILT FOR EVERY TURN

Each possible stage of a company's life-cycle demands unique coverage.

#### START-UP SEEKING CAPITAL

Even for true start-ups, Arch offers industry leading coverage breadth, including automatic coverage for private capital raising.

#### EARLY GROWTH AND HIRING

Arch's D&O and Professional Liability teams deliver coverage for: D&O Liability, Employment Practices, Fiduciary Liability, Crime Insurance, Cyber/Privacy, Errors & Omissions.

#### PUBLIC OFFERING

Arch's customized D&O programs offer protection from shareholder class and derivative actions, prospectus liability, government investigations and newly-legislated whistleblower risk.

#### GLOBAL EXPANSION

Arch draws from its global platform and experience insuring the Fortune 500, to provide tailored global programs including locally admitted policies, FCPA protection and Kidnap/Ransom.

#### PRIVATE TAKEOVER

Arch offers a full menu of M&A-related products: Reps & Warranties, Tax Insurance, Run-off D&O, and is a known industry leader in private equity funds.

Arch's **Financial & Professional Liability Products Group** has the product portfolio, international platform, strong financial ratings, and industry-leading underwriting talent to insure a company, no matter which course they are on.

It's an approach that demonstrates proven expertise. **ArchExpertise<sup>SM</sup>**

A.M. Best: "A"

Standard & Poor's: "A+"

 **Arch**  
**Insurance Group<sup>®</sup>**  
Powering Specialty Risk Solutions

**SPECIALTY PROPERTY/CASUALTY, FINANCIAL & PROFESSIONAL LIABILITY SOLUTIONS, AS WELL AS OTHER UNIQUE PRODUCTS.**

[www.archinsurance.com](http://www.archinsurance.com)

Insurance coverage is underwritten by one or more member companies of Arch Insurance Group in North America, which consists of (1) Arch Insurance Company (a Missouri corporation, NAIC # 11150) with admitted assets of \$2.0 billion, total liabilities of \$1.4 billion and surplus to policyholders of \$616.7 million, (2) Arch Specialty Insurance Company (a Nebraska corporation, NAIC #21199) with admitted assets of \$426.6 million, total liabilities of \$109.8 million and surplus to policyholders of \$316.7 million and (3) Arch Excess & Surplus Insurance Company (a Nebraska corporation, NAIC # 10946) with admitted assets of \$33.0 million, total liabilities of \$5.2 million and surplus to policyholders of \$27.8 million All figures are as shown in each entity's respective Quarterly Statement ended March 31, 2011. Executive offices are located at One Liberty Plaza, New York, NY 10006. Not all insurance coverages or products are available in all jurisdictions. Coverage is subject to actual policy language. This information is intended for use by licensed insurance producers.

## CASE STUDY

## Proactive FCPA compliance program essential

By MATT DUNNING

The unfortunate truth regarding violations of the Foreign Corrupt Practices Act, experts say, is there is no feasible way to completely prevent them from happening.

However, that inevitability is all the more reason mid-market companies should take proactive steps to minimize their exposure to potential fines and sanctions for violation of the law, beginning with implementing an in-house

FCPA compliance program.

While not necessarily required by the letter of the law, experts said federal regulators all but expect any U.S. company to have developed some system of ensuring compliance with the FCPA, as well as any applicable local anti-bribery laws in the countries in which they plan to do business.

The Justice Department—the main prosecutor of FCPA violations by private and nonprofit firms—allows firms accused of

bribery to assert as a defense that the payment was permitted under the laws of the foreign country, or that the money was spent to demonstrate a product or perform a contractual obligation.

However, experts said either claim would be difficult to support without internal compliance controls already in place.

“The smaller and midsized companies need to recognize that the U.S. government views doing business abroad as inherently risky,

and that compliance is a cost of doing business,” said Greg Husisian, a Washington-based attorney at Foley & Lardner L.L.P. “It’s true that there’s nothing in the law that says you have to do this, but the government clearly expects that you’re going to have it set aside in your budget from the start if you are contemplating doing business overseas.”

Last year, in conjunction with the Organization for Economic Co-operation and Development,

## ENFORCEMENT ACTIONS

U.S. enforcement actions under the FCPA since 2005 have been more likely in Central and South America than in any other region.

Business location	Enforcement actions
Mexico, Central and South America	29
Asia	21
Africa	14
Europe	2

Source: Chadbourne Compliance Quarterly, Chadbourne & Parke L.L.P.

the Justice Department issued an outline of its recommendations for compliance protocols. It urged companies to build compliance programs based on the individual circumstances that inform their foreign bribery risks, particularly geographical (see chart) and industrial sectors of operation.

The recommendations to ensure effective internal controls, ethics and compliance included a clear corporate policy prohibiting foreign bribery, explicit support from senior management and granting one or more senior officers the authority to report potential violations directly to independent monitors without interference from top management.

Beyond direct cash exchanges, expenditures and activities likely to draw attention from investigators include gifts, hospitality and entertainment expenses, customer travel expenses, political contributions, charitable donations and sponsorships, and excessive facilitation payments.

The Justice Department also recommended installing a system of internal and external accounting controls to ensure accurate tracking of expenditures, as well as periodic communication and documented training on compliance standards for all employees.

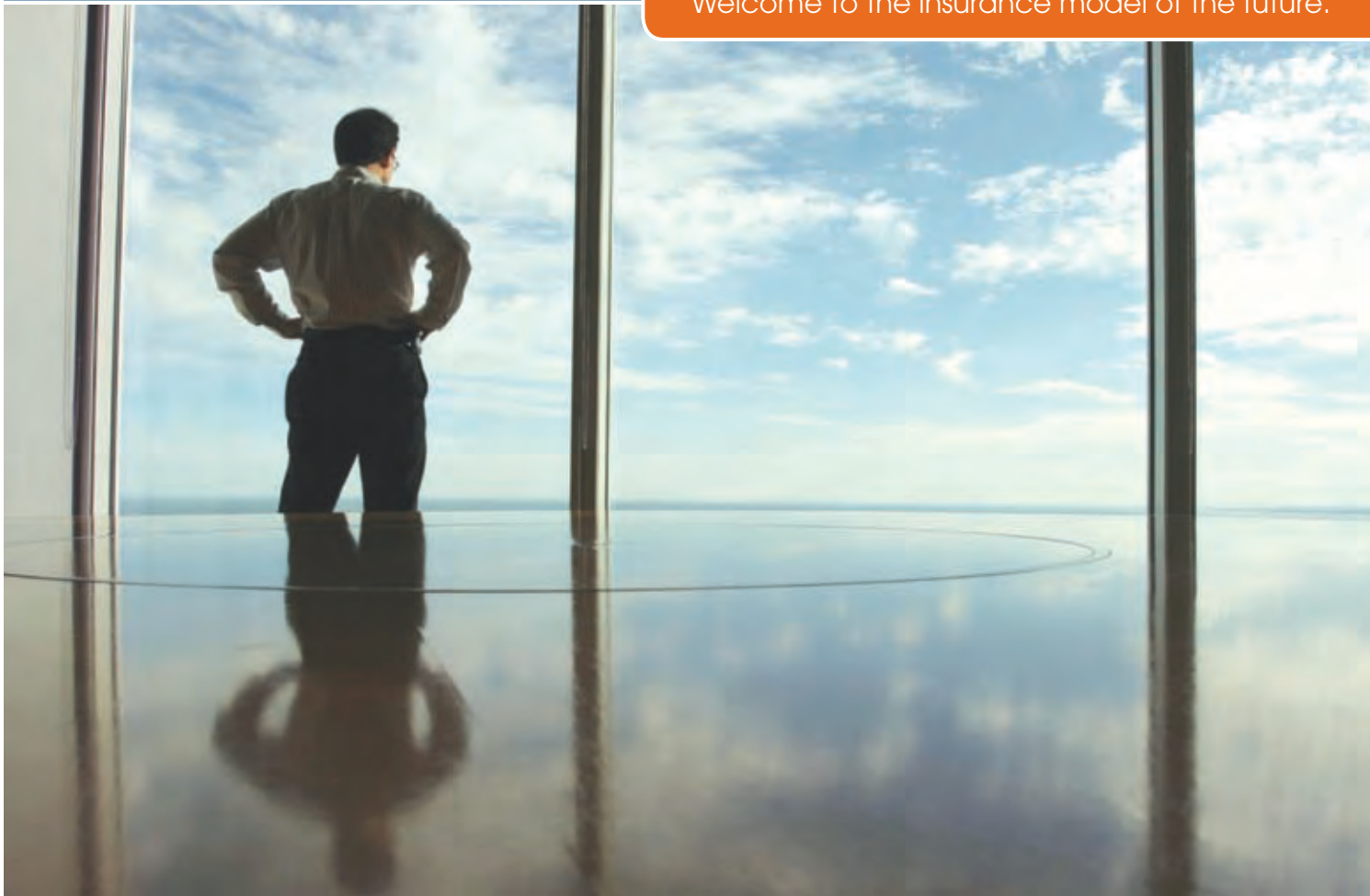
“Having an organizational compliance program that’s been folded into the company’s contracts, periodic meetings, sales literature, etc., is critical,” said Dana Kopper, a Los Angeles-based senior vp and director at Lockton Cos. L.L.C. “There’s no way that a company, even with 100 or 250 employees, is going to be able to watch everything that goes on if it’s operating on an international scale. They’re going to have to rely on how they go about officially documenting and communicating what it is that they will and won’t do.”

Experts said mid-market companies should expect to invest at least some capital and personnel resources into developing a comprehensive program.

“It takes a lot of time and effort, but in the end you’re on the hook,” said Coleen Friel Middleton, a White Plains, N.Y.-based attorney at Wilson Elser Moskowitz Edelman & Dicker L.L.P. “Especially in the economy we’re in, mid-market companies are probably going to look at FCPA compliance efforts as an area that they can cut costs, but that’s a real mistake. The government is definitely going in a different direction.”

We'll protect you before a PR crisis happens, as soon as a cyber breach occurs and after your overseas investments are launched.

Welcome to the insurance model of the future.



At Ironshore®, we work, so you work. When you combine a strong balance sheet, senior leaders who average nearly 30 years' experience and an entrepreneurial culture, you create breakthrough ideas. With products like Crisis ThreeSixty®, Enterprise PrivaProtector 9.0<sup>SM</sup> and LPT Plus<sup>SM</sup>, it's no wonder Advisen named us one of the leading innovators in the industry. Best part is, we can't wait to show you what comes next. For more information please call 1-877-IRON411 or go to [www.ironshore.com](http://www.ironshore.com).

Depth in Leadership. Trusted Partnership.

IRONSHORE  
your safe harbour®

# from Predecessor to Successor, **ACE** insures progress

Property & Casualty | Accident & Health | Life

To address the complexities of D&O insurance, it takes the right people, a strong balance sheet, worldwide capabilities and a flexible approach. These are the strengths of ACE. We take on the responsibility of your risks so that you can take on the responsibility of making things happen. We call this *insuring progress*. Visit us at [acegroup.com/us](http://acegroup.com/us)



insuring progress®



## Ahead of the Curve. Competitive Edge.

Since 2007, our Insurance Coverage Practice has helped our clients recover more than \$5 billion, including coverage for property damage and business interruption claims. Our attorneys do more than practice insurance law—they shape and influence it. It's why we have been recognized as a leading policyholder firm by publications such as *Chambers USA*, *U.S. News*, and *Business Insurance*.

To learn more about insurance recovery for recent U.S. disaster-related losses, please visit [dicksteinshapiro.com/icbi](http://dicksteinshapiro.com/icbi).

## DICKSTEINSHAPIRO LLP

LOS ANGELES | NEW YORK | ORANGE COUNTY | SILICON VALLEY | STAMFORD | WASHINGTON, DC

Prior results do not guarantee a similar outcome.  
© 2011 Dickstein Shapiro LLP. All Rights Reserved.

1825 Eye Street NW, Washington, DC 20006  
(202) 420-2200 | [dicksteinshapiro.com](http://dicksteinshapiro.com)

## CASE STUDY



AP PHOTO

West Penn Allegheny Health System Inc. filed an antitrust suit in 2009 charging the University of Pittsburgh Medical Center, shown above, with conspiring with the area's dominant insurer to limit competition.

## Health care mergers trigger D&O concerns

### *Antitrust allegations put hospitals in line for big defense costs*

By JOANNE WOJCIK

Directors and officers liability insurance, which helps hospitals and health care systems defend against antitrust allegations, is likely to become increasingly essential to institutions involved in mergers, joint ventures and other activities designed to reduce costs in a post-health-care-reform world, experts say.

Even before the passage of the Patient Protection and Affordable Care Act last year, health care system consolidation had begun, spurred by cuts in Medicare and Medicaid reimbursements and from commercial insurers under pressure by employers to rein in escalating health care benefit costs, they say.

For example, when Pittsburgh-based West Penn Allegheny Health System Inc. filed an antitrust suit in 2009 charging the University of Pittsburgh Medical Center with conspiring with the region's dominant insurer to reduce competition in the Pittsburgh market, the action very likely triggered coverage under UPMC's D&O policy, according to experts.

The suit, filed in U.S. District Court in Pittsburgh, came after a 2006 complaint that West Penn Allegheny filed with the U.S. Justice Department seeking an investigation of the relationship between UPMC and Pittsburgh-

based Highmark Inc.

UMPC did not respond to an inquiry from *Business Insurance* regarding its D&O coverage.

Any time the words "antitrust" or "unfair competition" appear in a lawsuit filed against a hospital or health care system, D&O liability coverage generally comes into play to provide a defense and, in some cases, to pay settlement costs, experts say.

"In the strictest sense, it's something that would come from government alleging violation of fair competition laws," such as the Sherman Antitrust Act, said Mark Karlson, a Hartford, Conn.-based managing director at FINPRO, Marsh Inc.'s financial and professional liability practice.

### *Antitrust litigation to rise*

But antitrust coverage under a D&O policy also could come into play in certain acquisition situations, according to Holly Meidl, Marsh USA's national health care practice leader based in Nashville, Tenn.

"You may see a hospital being acquired, and the board doesn't want to see the hospital go into a larger system. The board might ask the state attorney general to come in and put pressure on, unwinding it. So it may not be a full-on antitrust allegation, but it starts the investigative process," she said.

Ms. Meidl and other D&O coverage experts predict antitrust litigation will increase in response to the passage of PPACA as hospitals and other medical providers

Continued on next page

## CASE STUDY

CONTINUED FROM PREVIOUS PAGE

collaborate to form accountable care organizations that will become eligible for bonus payments under the Medicare Shared Savings Program.

While consumer advocates fear that such consolidation could create incentives for doctors and hospitals to scrimp on necessary care, the Justice Department and the Federal Trade Commission have pledged to intervene in mergers and collaborations that appear to have a dampening effect on competition in a given market.

"In response to PPACA, consolidation is expected to increase. Health care providers will be looking for efficiencies and synergies. We're already seeing consolidation, with doctor groups being absorbed by hospitals," said Bertrand Spunberg, senior vp in Hiscox USA's management liability group, based in New York. "The DOJ and the FTC will be working closely together...and the DOJ has applied renewed vigor to targeting any potentially anti-competitive behaviors."

"This is a growing area that is going to bring with it increased risks that the D&O policy may potentially be tapped for," said Ms. Meidl.

Scott Kantrowitz, vp of the private and nonprofit management liability group at ACE USA in New York, said that since the passage of the health care reform law, "for each and every hospital we work with, the single most important thing they ask about is antitrust coverage."

"Most, if not all, of the hospitals had concerns about regulatory oversight even before the passage of PPACA," he said, but those concerns are being heightened in response to "ambiguity on how the regulators will address antitrust exposures." Since the passage of PPACA, "hospitals are in the news every day," he said. As a result, "more and more risk managers and executives of health care systems have concerns about the coverage that's in place. There is more thought going into the purchase of D&O coverage."

In some cases, hospitals and health care systems are increasing the aggregate limits of coverage they buy; in other cases, they are building separate "towers" of coverage for D&O, employment practices and fiduciary liability when purchased as part of a package policy, coverage experts say.

While the majority of claims against private and nonprofit health care systems historically have involved employment practices issues, such as discrimination, retaliation or wage-and-hour suits, the cost of settling such disputes is considerably less than that of resolving a D&O antitrust violation, according to Mr. Kantrowitz.

"An antitrust claim could be a limit loss," he said, meaning it could erode all of a health care system's D&O coverage.

Deneen Schmitt, Pittsburgh-based senior vp at Willis Executive

Risks, a division of Willis North America, said "the antitrust issue has always been a significant exposure for health care companies. Typically when we get one of these antitrust claims, they're large from a defense-cost standpoint," especially when the Justice Department gets involved. "We've had some big ones over the years."

Fortunately, it's a buyer's market when it comes to private and nonprofit hospital D&O coverage, she said.

For years, there were only a couple of significant insurers in the space, but when American Inter-

national Group Inc. was bailed out by the U.S. government, many of the underwriters who were working at National Union Insurance Co., an AIG unit that provided hospital D&O coverage, left to join other insurers. As a result, more insurers are able to provide D&O coverage to nonprofit and private-company business, several brokers said.

### D&O policies broader

Because of this intense competition, today's private and nonprofit hospital D&O policies are much broader than they were in the

past, with antitrust coverage almost always included, according to Ms. Schmitt.

"Ten years ago, you'd typically get it at a sublimit, not the full policy limit (for antitrust), and it would be subject to a higher retention and coinsurance. What we're finding now, with all the competition, you can typically get antitrust coverage within full policy limits—not sublimited anymore—and retentions are lower than they used to be, and on occasion you can even get a policy without any coinsurance."

Despite the market's softness,

though, "there are a couple of pitfalls" that private and nonprofit hospital D&O insurance buyers should beware of, especially when securing excess coverage, according to Martha Jacobs, senior vp in Aon Corp.'s financial services group in Pittsburgh.

"Excess policies usually follow the primary form when they're providing supplemental coverage," she said. However, "any coverage that is sublimited in the primary policy they may not follow. So you have to be careful with excess-policy language if coverage is referred to as sublimited coverage."

## There's a lot more to Swiss Re than reinsurance. Isn't it time you found out how much more?

Don't let the name mislead you; there's a lot more to Swiss Re than reinsurance. Commercial insurance, industrial insurance, large corporate risks and specialty insurance. Insurance for aviation and space as well as environmental and commodity markets. Financial tools like insurance-linked securities and catastrophe bonds. Yet every service we offer and every challenge we face, our clients receive the same commitment and the same hands-on expertise. As in everything we do at Swiss Re, risk is our raw material; what we create for you is opportunity.

See for yourself at [www.swissre.com/corporatesolutions](http://www.swissre.com/corporatesolutions)

Corporate Solutions

Swiss Re



## CASE STUDY

# Low rates provide incentive to buy unbundled coverage

*Breaking out cover gives mid-sized firms better protection*

By JOANNE WOJCIK

While most publicly traded middle-market companies purchase separate directors and officers, employment practices and fiduciary liability coverages, many privately held midsize firms usually buy such protection as a package—which could prove disastrous if a single claim in any one of these coverage areas erodes policy limits.

Fortunately for buyers, the soft market for such management liability coverage is helping many middle-market firms secure separate, dedicated limits for each of these exposures, even when the insurance is purchased as a package, experts say.

Regardless, many privately held mid-market firms remain oblivious to the risks their companies face from such management liability issues and are not buying

any form of protection even though the insurance market for such coverage is extremely soft, experts say.

"Private companies don't understand what their D&O exposures are," said William Boeck, senior vp-insurance and claims counsel at Lockton Cos. L.L.C. in Kansas City, Mo. "You read about D&O policies responding to securities claims against publicly traded companies. Private directors and officers don't think they have this exposure. But that ignores the very real private-company exposures that are out there."

For example, "a private company could lure employees away from a competitor. It's not unusual to see the competitor sue the company and its directors and officers in connection with this poaching. These suits can be very expensive to defend and settle. That's an exposure that would be picked up under their private-company D&O policy," Mr. Boeck said.

"A stand-alone D&O lawsuit against a private company is very rare," said Tripp Sheehan, U.S.

D&O practice leader for Marsh Inc. in Boston. Some potential scenarios include lawsuits brought by lenders in a financial insolvency situation or lawsuits filed by competitors alleging some sort of anti-competitive activity, he said.

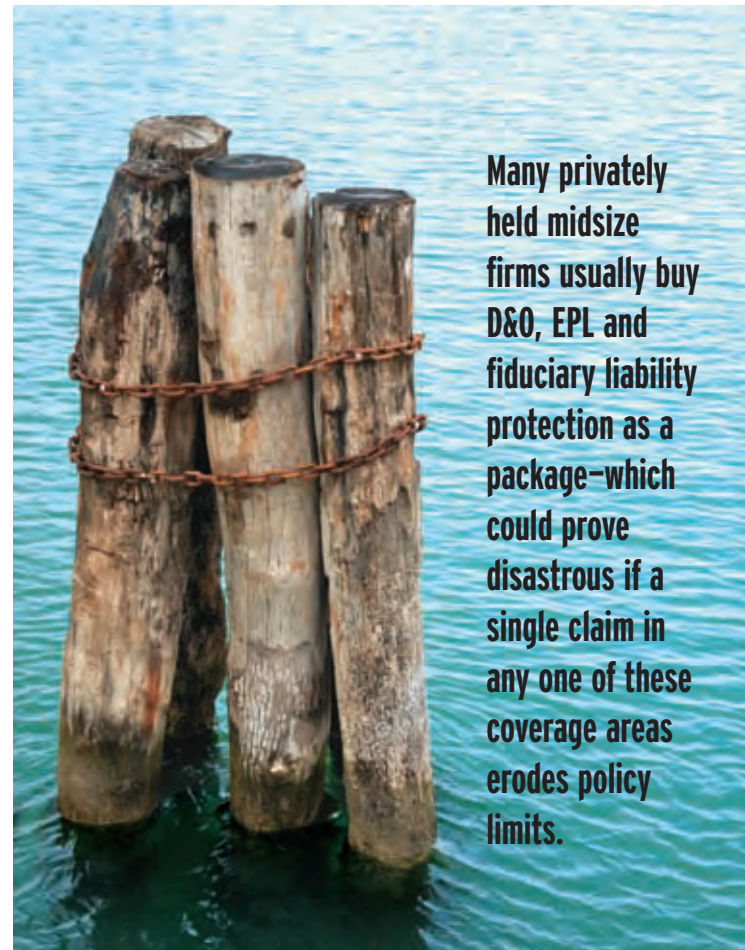
"By far the biggest pool of plaintiffs is the employees. And with downsizing, you've definitely seen an increase in employment litigation," Mr. Sheehan said.

Fortunately, because many private mid-market firms purchase D&O coverage as part of a package that also includes EPL, they generally have coverage for these risks, he said.

"When you buy these blended programs, you're really buying it for the EPL, and the D&O and fiduciary are throw-ins," he said.

But buying combined D&O, EPL and, in some cases, fiduciary liability coverage, which would pay claims alleging violations of the Employment Retirement Income Security Act of 1974, may not always be the best course of action for some mid-market companies, according to Mr. Sheehan.

"There is the danger of eroding



Many privately held midsize firms usually buy D&O, EPL and fiduciary liability protection as a package—which could prove disastrous if a single claim in any one of these coverage areas erodes policy limits.

the D&O limits with EPL," he said.

Forty-one percent of Marsh Inc.'s mid-market clients—representing all industries, private and public, nonprofit and for-profit—bundle D&O, EPL and fiduciary liability insurance, he said. While just 2% of publicly traded mid-market clients blend these coverages, 48% of private midsize companies do so, he said.

Publicly traded middle-market firms also typically buy higher D&O coverage limits—\$34 million on average vs. just \$10 million on average for private mid-sized companies, according to Mr. Sheehan.

To prevent the possibility of a director or officer running out of coverage in the event of protracted EPL or ERISA litigation, Mr. Sheehan recommends that mid-market buyers purchase an excess Side A policy that would provide coverage for individual directors and officers.

The basic stand-alone D&O liability insurance policy has two separate parts: an executive liability part, often referred to as Side A; and a corporate reimbursement part, often referred to as Side B. The Side A portion of this coverage pays directors and officers directly for loss, including defense costs, when corporate indemnification is unavailable. The Side B portion of coverage pays the corporation for any money it has paid as indemnification to the insured directors and officers.

But such excess coverage may not be necessary if a mid-market company is able to separate the limits on its D&O package policy, according to Lockton's Mr. Boeck and others who report seeing such a trend with increasing frequency.

"This is the result of companies realizing that having a single

aggregate limit could put them at risk. Let's say, for example, in a particular policy year you have a bunch of EPL claims and they erode the limit to a significant extent. Then say you've got a D&O claim. All of a sudden, the directors and officers don't have full limits. They want a dedicated limit available to them in the event there is a claim," Mr. Boeck said.

Perhaps in response to this increased demand, many D&O policy forms have become "modular," according to Larry Racioppo, director of the executive liability practice at Towers Watson & Co. in Stamford, Conn. "You have one policy form that has various coverage parts, so you can mix and match, tie the limits together, or you can separate the limits."

Dave Recker, marketing specialist for executive risks at Willis North America in Pittsburgh, said "insurers are very hungry for privately held and nonprofit business, so the carriers will put out their most competitive terms," including separate limits for each component of a D&O package policy. Moreover, "they put out extremely competitive pricing."

But even an extremely competitive price for separate limits may not be attractive enough for a price-conscious middle-market buyer, he said.

"Maybe they need that extra 10% or 15% discount offered for combining limits, Mr. Recker said. "We're obviously in a situation economically where a lot of us can't afford to be spending a whole lot of money, where maybe they haven't allocated those funds in their budget. So if they need to save \$3,000, \$4,000, \$5,000 on a package policy, they'll do it."



It's not easy to earn a FORC shield. It takes years of experience in insurance regulatory law. Recommendations from many insurance industry leaders. A rigorous vetting by insurance industry experts. If you are looking for the high standards and expertise of a FORC lawyer, just go to **FORC.org** and search our member directory.



## CASE STUDY

# Private, nonprofit firms unclear on D&O cover

*Many executives fail to understand structure of policies*

By MATT DUNNING

When asked about problems plaguing private and nonprofit companies when it comes to their directors and officers liability insurance coverage, experts in the field consistently have identified confusion over the policies' mechanics as the most common.

Approximately 26% of private and nonprofit companies couldn't describe the exact structure of their D&O policy, according to New York-based Towers Watson & Co.'s 2010 analysis of the D&O market. In particular, experts said mid-market companies often are ill-informed about the risks and liabilities excluded from coverage.

"They expect that it's all inclusive and that anything that comes about is going to be picked up," said Jim Lash, Cincinnati-based vp and executive risk practice leader at Hylant Group Inc. "Then they're disappointed when they get a denial letter or a reservation of rights from the carrier."

For most private and nonprofit firms, typical D&O exclusions include acts of fraud and intentional wrongdoing, environmental pollution claims and legal costs associated with prior or pending litigation at the time of the policy purchase. Most D&O policies also will not cover losses associated with litigation between current and some former executives and board members, commonly known as the "insured vs. insured exclusion." Lawsuits brought by a former director or officer could be covered, but only if the individual has been divorced from the company for a prescribed period of time, usually at least two or three years.

"That doesn't help that much," said Carolyn Polikoff, senior vp and corporate executive protection practice leader at San Francisco-based Woodruff Sawyer & Co. "We see a lot of claims from founders who were former officers who are washed out in a financing round. This claim is usually brought relatively quickly after the founder departs. Companies are surprised when they find out this exclusion applies."

Typical D&O policies for private and nonprofit firms also include at least some exclusions regarding competitive practices, though brokers and clients are beginning to see some loosening of those restrictions, experts said. Claims from competitors for violation of intellectual property, copyright or patent laws are almost always excluded from D&O policies, but some underwriters will cover related claims brought by minority shareholders. Similarly, antitrust actions brought by competitors

and regulatory agencies are commonly excluded. However, brokers have had some success in securing coverage for minority shareholder claims, particularly in low-risk industries.

"There are so many factors on the exclusions side that have changed in recent years," said Chris Leisz, a Chicago-based senior vp at Hiscox Ltd. "It's a combination of a number of things, not the least of which is

this soft market that we've been in for about eight years. You are seeing a broadening of the coverage terms, but frankly we're seeing that slowing down a bit because it's becoming harder to find the next thing, the next risk to address."

One area of risk in which experts said carriers are only beginning to adjust their offerings is regulatory liability. Investigation costs in cases where a compa-

ny is merely a party of interest, not the target of the investigation itself, are typically not covered by most D&O policies, experts said. Until recently, legal fees and other costs associated with an investigation prior to the issuance of a subpoena or official notice of an accusation, referred to by underwriters as "preclaim" costs, usually fell to the company or its directors.

In the past year, however, insurers have begun offering products

to cover preclaim costs attributable to a company's individual directors and officers, but have yet to issue a comprehensive coverage package for costs for individuals and the company itself.

Private and nonprofit companies can obtain coverage for the entity and its officers, but only for costs borne after an official notice of investigation or inquiry is received, experts said.



## You're unique. We see that clearly.

The healthcare industry is an extremely dynamic landscape and no two providers are the same. At Pinnacle, our medical professional liability

experts spend time learning what makes you unique, then work to create tailored actuarial services that meet your needs. As our relationship grows, you'll find we anticipate and respond to your needs and can be counted on time and time again. We are a team of world-class experts — yet are small enough to be flexible, timely and cost-effective.

Seeing you clearly — it's just part of the Pinnacle Difference!

ALTERNATIVE MARKETS  
ENTERPRISE RISK MANAGEMENT  
LOSS RESERVING  
LEGISLATIVE COSTING  
PREDICTIVE MODELING  
REINSURANCE  
PRICING AND PRODUCT  
MANAGEMENT

**PINNACLE**  
ACTUARIAL RESOURCES, INC.  
*The Firm of Choice*



[www.pinnacleactuarial.com](http://www.pinnacleactuarial.com)

## CASE STUDY

# Smaller companies can learn from laws for big business

*Voluntary adherence may lower liability, reduce premiums*

By **MATT DUNNING**

One of the benefits of being a privately held or nonprofit company is the significantly lower threshold of liability exposure to the corporate governance and financial reporting laws that apply to publicly traded companies.

Considering this, insurance brokers and underwriters urging private and nonprofit companies to voluntarily adhere to provisions of those laws—in particular, those of the Sarbanes-Oxley Act of 2002—above and beyond their legal responsibility might seem counterintuitive.

However, insurance professionals say smaller nonpublic companies that install compliance programs using the same templates as the nation's listed entities can drastically shrink their management and employment practices exposures without assuming any additional liability to the law itself. Doing so, insurers say, ultimately could lead to lower insurance premiums and broader coverage offerings.

"Underwriters like to see that



**Where many small and midsize companies likely will struggle with implementing comprehensive corporate governance is the sizeable investment of time and money to do it correctly.**

the company they are being asked to insure is focused on at least establishing the procedures that should be followed," said Debbie Schaffel, managing director of the financial services group of Aon Risk Solutions in Chicago. "A well-established corporate governance program that is actually followed will be seen as a positive contribution to the underwriting process."

On the other hand, inadequate corporate governance protocols

could increase a company's liability to its stakeholders and business partners or, in some cases, state and federal regulators, especially in terms of fiduciary duties. Shawna Nolan, a New York-based senior vp at Zurich North America, said claims most often associated with poor corporate governance arise from a failure to provide oversight of company finances, misrepresentation of financial position, or failure to dis-

close significant events and financial impacts to investors and business partners.

"Private or public, it's really a building block of successful companies," Ms. Nolan said. "By having the governance in place, you create an environment of control and senior-management accountability that will ultimately protect your stakeholders and their interest in the company."

To begin with, managers and executives first should be aware that some rules targeting public firms also apply to private and nonprofit companies, insurers say. Sarbanes-Oxley, for example, establishes rules for accurate accounting controls and timely financial reporting for public companies, as well as prescribes a governance structure to ensure the integrity of those controls. However, the law also contains document-retention requirements that apply to all companies, regardless of ownership structure.

The Foreign Corrupt Practices Act of 1977 (see story, page 9), largely aimed at curbing international bribery and pay-for-play contracts among listed companies, also forbids private and nonprofit firms from making payments to foreign officials in exchange for competitive advantages.

Private companies and nonprofits also could be held responsible for certain elements of the Dodd-Frank Wall Street Reform and Consumer Protection Act—such as whistle-blower protection laws—though that legislation is largely undefined.

Using the requirements of Sarbanes-Oxley as a model, private and nonprofit companies should seek to establish an independent and financially qualified board of directors with an appointed audit committee that would oversee the activities of internal and external auditors hired to vet the company's finances, insurers say. That

structure, laid out in the form of a code-of-conduct or bylaws charter, as well as regular financial reports, should be made available to the company's stakeholders, investors and business partners. The compliance program also should be distributed to all company employees in the form of a conduct handbook.

Where many small and midsize companies likely will struggle with implementing comprehensive corporate governance is the sizeable investment of time and money to do it correctly, insurers say. Depending on the size and complexity of the company, hiring independent auditors, compliance officers or legal counsel to implement and maintain a governance program easily could become too costly a venture for many mid-market firms, especially in a sluggish economy.

"It's a matter of making the right investments," said Jeffery Grange, a Jersey City, N.J.-based senior vp with Hamilton, Bermuda-based Torus Insurance Holdings Ltd. "Very seldom do mid-market executives view compliance build-out as a dollar-for-dollar investment. But the benefits governance can deliver, like lower insurance premiums, better credit ratings and a less restrictive borrowing environment, can translate in to real dollars in the future."

It also may be difficult for smaller firms with lower insurance limits and no existing corporate governance program to attract qualified independent directors.

"It's all actually sort of circular," Zurich's Ms. Nolan said. "You might have a hard time getting the directors you want without the governance program in place, but you almost need that board of directors to help put those controls in place."

Companies unwilling or unable to invest money in corporate governance are not without options. One way for companies to install at least some oversight is to create an advisory board with reduced authority, and therefore less liability exposure. That approach, insurers said, should give mid-market companies a better chance of attracting individuals who might otherwise reject the offer of a director's position. Additionally, most insurance carriers provide some resources and loss-control tools to help clients build internal governance structures, Mr. Grange said, and those services often are bundled with D&O and EPL coverage.

"There's a tremendous amount of hidden value in the contracts mid-market companies have with their insurers," Mr. Grange said. "It's just that many of them don't think to ask. As carriers, why wouldn't we offer those kinds of services if it ultimately reduces a client's risk exposures?"

## IN PRINT AND ONLINE, BUSINESS INSURANCE

IS THE LEADING NEWS AND INFORMATION SOURCE FOR EXECUTIVES CONCERNED ABOUT RISK AND ITS IMPACT ON THEIR BUSINESS

**DON'T MISS OUT - SUBSCRIBE TODAY!**

### One year of our print edition includes:

- Special Report issues
- Annual Broker Profiles issue (\$100 value)
- Market Sourcebook issue (\$50 value)

### One year of the digital edition:

- Prompt Monday morning delivery
- Exact replica of the print edition
- Easily accessible

### Subscription also includes:

- Discounts on white papers
- Unrestricted access to all the special features on our website



**Business Insurance**  
www.BusinessInsurance.com

Go to [www.businessinsurance.com](http://www.businessinsurance.com)  
for your special subscription offer!

DON'T JUST SAVE THE DATE - SAVE THE FULL DAY!



2011

Business Insurance's  
**WOMEN  
TO  
WATCH**

**LEADERSHIP WORKSHOP  
AND AWARDS LUNCHEON**

**DECEMBER 6TH | NYC | HILTON**

The Annual Women to Watch Awards Luncheon has expanded to include a day of sessions with targeted content for our past and present honorees and industry guests.

**Why attend?**

- These senior-level workshop sessions are packed with practical and in-depth information from the corner office and your buyer clients.
- Networking with fellow honorees and industry leaders.

**Topics to be discussed:**

- Executive Outlook for 2012.
- How to operate in a tough economic climate.
- The Buyer Prospective: Challenges and plans and projection for 2012.
- Leadership interviews from past Women to Watch honorees.

**Who should attend:**

- Past and present Women to Watch honorees
- Senior executives from the commercial insurance industry
- Consultants and lawyers within the benefit management and commercial insurance industry.

[BusinessInsurance.com/WomenToWatch](http://BusinessInsurance.com/WomenToWatch)

For information about attending or available partnership opportunities, please contact Becky Briggs, Events Manager at [RBriggs@BusinessInsurance.com](mailto:RBriggs@BusinessInsurance.com) or 212-210-0132.

Presented by:

**Business Insurance**

In Partnership with:



# Products & Services

## Ironshore, NAS launch health care E&O programs

**HAMILTON, Bermuda**—Two health care-related errors and omissions programs, one for managed care organizations and the other for medical billers and coders, have been launched.

Ironshore Inc. said in a statement that its specialty health care unit, IronHealth, has expanded its government billing E&O product suite to include a tailored policy form for managed care organizations.

Separately, underwriting manager NAS Insurance Services Inc. said it has launched an E&O program for medical billers.

Hamilton, Bermuda-based Ironshore said its new product is similar to its health care provider policy form and is designed as a policy option to provide flexible coverage to protect managed care organizations during in-depth government audits and investigations of their Medicare and Medicaid billing practices.

In addition, the existing health care provider form and the new form have been enhanced to allow integration with other coverage that an organization may purchase, specifically managed care E&O for managed care organizations and directors and officers liability coverage for health care providers, the insurer said in a statement.

Ironshore said federal prosecutors had 1,787 pending health care criminal fraud investigations involving 2,977 defendants last

year. They negotiated about \$2.5 billion in judgments or settlements and returned more than \$18 billion to the Medicare Trust fund.

Encino, Calif.-based NAS said components of its program include coverage for third-party claims arising out of a wrongful act in the performance of, or failure to perform, medical billing and coding services; coverage for defense costs and fines and penalties from governmental and private payer allegations of improper billing; and coverage for network security and privacy liability, customer notification and credit monitoring expenses, regulatory fines and penalties, data recovery costs and multimedia liability.

In a statement, NAS said it has full binding authority to underwrite on behalf of Lloyd's of London, London-market companies and other highly rated insurers.

For more information on the NAS coverage, contact Richard Robin, CEO for NAS, at 818-808-4477 or [rrobin@nasinsurance.com](mailto:rrobin@nasinsurance.com).

For more information on the IronHealth coverage, contact Randy Oates, chief operating officer for IronHealth, at 860-408-7816 or [randy.oates@ironshore.com](mailto:randy.oates@ironshore.com).

## Reputational risk cover offered for hotels

**LONDON**—Willis Group Holdings P.L.C. has developed reputational risks insurance coverage for the hotel industry.

The hotel reputation coverage aims to respond to losses resulting from adverse publicity through

any medium, the London-based insurance brokerage said in a statement.

Willis has partnered with Kiln Group Ltd., a Lloyd's of London company, to offer Hotel Reputation Protection 2.0, which covers loss of revenues and includes crisis management services, according to the statement.

The policy provides coverage for lost revenues based on a performance projection of the hotel industry that measures revenues per available room, along with costs of hiring a crisis management consultant during the first weeks of an incident, Willis said.

The coverage also includes death and permanent physical disability of a guest and food poisoning caused by malicious or accidental contamination, according to the statement.

"In the extremely competitive hotel industry, reputation accounts for approximately 30% to 40% of a business' overall worth," said Laurie Fraser, global markets leisure practice leader for Willis, in the statement. "Therefore, damage to reputation, which spreads virally through social and other media channels, can have a significant financial impact."

The policy will pay up to 25 million (\$33.4 million) for loss of revenue and crisis management costs, Willis said.

For more information, contact Ms. Fraser at +44 (0)20 3124 6517 or [fraserl@willis.com](mailto:fraserl@willis.com).

## TO SUBMIT ITEMS

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

# UP Comings & Goings CLOSE



## ORLANDO NEAL

**NEW JOB TITLE:** Kansas City, Mo.-based director of pharmacy analytics for Lockton Benefit Group, a unit of Lockton Cos. L.L.C.

**PREVIOUS POSITION:** Milwaukee-based director of pharmacy for Willis of Wisconsin.

**GOALS FOR NEW POSITION:** Increasing pharmacy (transactions) for my clients through contract evaluation, clinical solutions and data analytics.

**CHALLENGES FACING INDUSTRY:** The biggest challenge in the coming years is a high influx of specialty drugs, drugs that are typically very, very expensive.

**INDUSTRY OUTLOOK:** Over the next several years, there are going to be billions of dollars' worth of brand drugs coming off of patents, which will create more generic drugs for plan members.

**FIRST EXPERIENCE IN JOB MARKET:** I worked for Mercer as part of an actuarial team evaluating pension plans.

**ADVICE:** Your time is very limited; don't waste it living somebody else's life.

**SOMEONE ONCE TOLD ME:** You are in control of your own destiny, so make it happen.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** I am a big eater, so my dream job would be to become a world-renowned chef and restaurant owner.

**HOBBIES:** I like to get out there and be really active. I play a lot of sports. I jog and play basketball mostly.

**MOST PASSIONATE ABOUT:** Spending time with my family.

**FAVORITE BOOK:** "The Art of War," (by Sun Tzu). The book is about war, but there are so many lessons on how to interact with people. It teaches you how to move forward in a strategic way.

**CAN'T-MISS TELEVISION SHOW:** "CSI Miami." I like the problem-solving; just when you think something is impossible for them, they figure it out.

**FAVORITE MEAL:** Bone-in rib-eye steak.

# Business Resources

To place your ad, contact Monique Murray 212.210.0129 • E-mail: [mmurray@BusinessInsurance.com](mailto:mmurray@BusinessInsurance.com)

Business Insurance, Classified Department, 711 Third Ave., New York, NY 10017-4036 • Call for details on blind box and internet advertising

## EDUCATION

### ONLINE Master's Degree in Risk Management and Insurance

- Take your knowledge and skills to the next level
- Earn our Top 10-ranked degree in under two years

Apply now at [onlineRMI.cob.fsu.edu](http://onlineRMI.cob.fsu.edu)



THE FLORIDA STATE UNIVERSITY COLLEGE OF BUSINESS

For 2012 BI Rates or Editorial Calendar call Monique at 212.210.0129

## Professional MarketPlace

### FOR SALE

Domain names for sale  
 AdjustClaims.com - InsurBiz.com  
 AdjustClaims.net - InsurBiz.net  
 AdjustClaims.org - InsurBiz.org  
 Call Bob @ 480-382-8772 or [bob@bobu.net](mailto:bob@bobu.net)

## Business Opportunity?

### ADVERTISE HERE

Contact Monique at 212-210-0129

## Comings & Goings

# ONLINE

**VISIT** [www.businessinsurance.com/ComingsandGoings](http://www.businessinsurance.com/ComingsandGoings) for a full list of this week's personnel moves and promotions. Check our Web site daily for additional postings and sign up for the weekly email.

### TO SUBMIT ITEMS

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

Mallory Gillikin  
 Business Insurance  
 360 N. Michigan Ave.  
 Chicago, Ill. 60601-3806

[mgillikin@businessinsurance.com](mailto:mgillikin@businessinsurance.com)

### POSTING THIS WEEK

#### RISK MANAGERS

- Weight Watchers International Inc.

#### INSURERS

- Allianz Life Insurance Co. of North America

#### BROKERS

- Lockton Cos. L.L.C.
- IMA Inc.
- S.H. Smith & Company Inc.
- Swett & Crawford Group Inc.
- Crump Insurance Services Inc.
- AmWINS Brokerage of Georgia

#### OTHER PROVIDERS

- Stop Loss Insurance Services Inc.
- CTPartners Executive Search Inc.
- Paul Davis National

## NAPSLO: New model

CONTINUED FROM PAGE 4

underwriting at Beazley Group P.L.C.

The model's impact on insurers "varies widely, depending on the nature of the portfolio" of property risks, said Ms. Patterson. "But there is a significant increase in the modeled loss on the Gulf Coast, particularly in Texas."

J.C. Sparling, executive vp of the Preferred Brokerage unit of Preferred Concepts L.L.C. in Atlanta, said the model is "particularly punitive" in the area around Houston, where the modeled losses are significantly higher than previously thought, creating an "aggregation issue" for some insurers.

The revised model takes into account hurricane behavior not previously modeled, sources said.

Hurricane Ike, which made landfall around Galveston, Texas, in 2008, showed that the storms don't always disperse quickly when reaching land, Mr. Sparling said. "Ike slammed into Texas and kept going," causing losses far north of the coast, he said, and changing the way hurricanes would be modeled going forward.

The new RMS model has thwarted some insurers' attempts to distance themselves from coastal risks.

### 3,420 attend NAPSLO meeting in San Diego

**SAN DIEGO**—A lineup of noted presenters and perfect weather combined to attract record attendance of around 3,420 registrants to San Diego last week for the annual convention of the National Assn. of Professional Surplus Lines Offices Ltd.

Attendees heard experts discuss NAPSLO's efforts to develop its next generation of leaders and update ongoing work to make the surplus lines business more efficient technologically. Michael Lewis, author of "Liar's Poker: Rising Through the Wreckage on Wall Street," and other books, was the featured speaker for the Derek Hughes/NAPSLO Educational Foundation Lecture Series.

Next year's conference will be in Atlanta on Oct. 8-11. More information on NAPSLO is available at [www.napslo.org](http://www.napslo.org).

—By Michael Bradford

Crum & Forster Inc. has had a longstanding policy of not writing property coverage within 1 mile of a coastline, said Douglas M. Libby, CEO of the Morristown, N.J., insurer. Under the revised model, property much farther inland is treated much the same as that

along the coast.

"So we are in the process of rethinking that strategy," Mr. Libby said of Crum & Forster's underwriting approach. "We haven't decided what that will be yet."

Sources say the new catastrophe model is one of several drivers of what could be a slowly hardening market.

"There isn't one single thing that points to a hardening market," said Mr. Sparling. The RMS model, though, "is clearly one of them."

"For a long period, rates have been depressed," said Colin Bird, CEO of Besso Insurance Group Ltd., a London-based broker. "Couple that with traditional markets entering lines that surplus lines brokers have been involved with," he said, and unless there's a market-changing event such as a major hurricane, the marketplace may not look drastically different for some time.

One wild card for insurers of all sorts, though, is their exposure to sovereign debt of countries that have had, or could have, their ratings downgraded, Mr. Bird said. Companies that hold that debt as security against their capital could find themselves with problems, depending on how some of the economic and political turmoil plays out, he said.

"That could be a bigger issue," Mr. Bird said, "than any God-made catastrophe."

## Transatlantic: Another bidder for reinsurer

CONTINUED FROM PAGE 3

with \$3.99 billion in 2009. Its combined ratio for 2010 was 98.2% compared with 93.5% in 2009.

Like many other reinsurers, Transatlantic faced significant catastrophe losses in the first half of 2011. It reported a first-half loss of \$109.3 million on revenues of \$2.19 billion, compared with a profit of \$126.4 million on revenues of \$1.97 billion in the same period last year. Its first-half combined ratio was 123.7% this year compared with 101.8% a year ago.

Previous deals involving Enstar include its 2009 agreement to pay about \$28 million to Danish financial services firm Alm Brand Forsikring A/S for Copenhagen Reinsurance Co. Ltd. But that reinsurer was already in runoff, having suspended underwriting shortly after Sept. 11, 2001.

Earlier this year, Enstar bought Clarendon National Insurance Co. from Hannover Reinsurance Co. for \$219.1 million. But, again, Clarendon already was in runoff.

Transatlantic is financially solid, experts say.

"We'd view Transatlantic as having a good platform to write new business," said James Eck, vp-senior credit officer at Moody's Investors Service Inc. in New York.

"Transatlantic is a longstanding, well-regarded franchise with an A (excellent) financial strength rating," John Andre, group vp at Oldwick, N.J.-based A.M. Best Co. Inc., said in an email. "Each bidder likely has different thoughts for how they would manage the company."

But the offers for Transatlantic, which began a stock buy-back program in mid-September, have been less than its book value.

For example, National Indem-

nity's \$3.25 billion bid in August was rejected, with Transatlantic saying it was only 77% of its June 30 book value.

Transatlantic also rejected Validus' bid of 1.5564 of its shares and \$8.00 per share in cash as well as a \$500 million boost to Transatlantic's reserves.

The four existing bids came in the wake of Transatlantic's proposed merger with Zug, Switzerland-based Allied World Assurance Co., which was announced in June. That deal collapsed in September after Validus and National Indemni-

**-\$109.3M**

Transatlantic faced significant catastrophe losses in the first half of 2011. It reported a first-half loss of \$109.3 million on revenues of \$2.19 billion

ty made their bids.

"If Validus wins, (Transatlantic will end up as) an ongoing concern," said Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York.

"If one of these other bidders win, and they're doing it for economic reasons and they think they can run it off and that has more value and it's financially attractive, you probably won't need a lot of employees at Transatlantic. But it's a real possibility that Transatlantic stays independent and continues to do business," he said.

Transatlantic, preparing for the retirement of President and CEO Robert F. Orlich, has had discussions about possible deals with insurers and reinsurers since June 2009, according to a U.S. Securities and Exchange Commission filing.

## LETTERS

CONTINUED FROM PAGE 8

Firstly, the view that "the broker and the consultant see each other more as competitive threats or adversaries" says much more about its source than it does about consultants. Brokers play a vital role in the chain of commerce. Risk consultants do not place insurance and are no threat to the broker's role.

Moreover, professional and independent risk consultants recognize the importance of and need for the communication referenced in the article. The client is more likely to be candid with the

risk consultant (or because of the consultant's role, they often have firsthand knowledge!), and the consultant can encourage the release of the information to the broker and underwriters.

While it is not outside the realm of possibility that some consultant has at some point suggested that their client instruct multiple brokers to place the same insurance, this is clearly counterproductive and unprofessional. I do not believe that this occurs with such frequency to be of concern.

An economic downturn is an ideal time to engage an indepen-

dent risk consultant, if there is a need for highly qualified professionals but reluctance to engage a full-time employee.

Hopefully this criticism will be received in the constructive manner in which it is intended. I look forward to seeing more positive coverage of the many positive contributions of professional risk management consultants in the pages of *Business Insurance* in the future.

**Chris Moss**

Senior Risk Management

Consultant

Charles Taylor Risk Consulting

Dallas

## Solvency: Delay in U.K. may bring dual regulation

CONTINUED FROM PAGE 3

"This will give firms greater flexibility around their implementation plans," Ms. Hawes said.

Small U.K. insurers may "breathe a sigh of relief" given the FSA's extension, said Gareth Haslip, London-based head of the risk and capital strategy group for Europe, the Middle East and Africa at Aon Benfield Analytics, a division of Aon Corp.

Larger insurers that already have invested heavily in preparing for a Jan. 1, 2013, start date should capitalize on their readiness and use the investment in risk management to help their business strategy, he said.

Scott Paton, an insurance expert at London-based PA Consulting Group Ltd., also said the delay allows insurers to improve their internal models. "They now have a longer window, meaning that there should be more time to do more things to improve the quality of their submissions and to embed the new ways of working into their organization," he said.

While the FSA announcement gives insurers in the United Kingdom some clarity about the Solvency II start date, there is some uncertainty about what rules they will need to comply with during 2013, experts say.

The FSA announcement "is helpful, as it removes some of the

distracting debate and formally assumes a year's delay in implementation to 2014," said Jim Bichard, an insurance partner at PricewaterhouseCoopers L.L.P. in London. "Despite this, insurers will be keen for more detail from the FSA on the practical implications of complying with two parallel regimes in 2013."

It is unclear whether insurers will have to comply with the FSA's individual capital assessment requirements, seen as a forerunner to Solvency II, in 2013, Ms. Hawes said.

"Many in the insurance industry would like to see the FSA drop this requirement for 2013, allowing forms instead to report on a Solvency II basis," she said.

Lloyd's of London CEO Richard Ward previously said the market was lobbying the FSA to adopt a Jan. 1, 2013, start date to avoid Lloyd's and its constituent syndicates effectively being forced to use two methods of solvency calculations next year.

Lloyd's has been pressing syndicates to comply with Solvency II by the end of this year, in part to try to ensure that the market's internal capital model is approved.

In a statement reacting to the FSA's decision to delay the start date until 2014, Sean McGovern, general counsel for Lloyd's, said the market is glad to see the FSA is "committed to pressing ahead and maintaining the momentum on

Solvency II implementation."

"However, we urgently need clarity on how firms are to be treated in 2013 if we are to avoid significant unnecessary and duplicative expense," Mr. McGovern said.

"Lloyd's is focused on completing our preparations for internal model approval in the most timely and cost-effective way possible, and we hope the FSA will be pragmatic" and allow companies to move to the Solvency II rules before 2014, he said.

Delaying Solvency II implementation "is likely to be met by disappointment from many of the largest insurers...when they have committed time and resources, including their best people, to progressing for a mid-2012 delivery" of their internal capital models, said Mr. Bichard.

# Global: Compliance problems hinder international programs

CONTINUED FROM PAGE 4

lies with us," she said.

"We want the profession as a whole to come together to work to solve this problem" so that risk managers can be sure they have not bought programs that are noncompliant, she said.

John Hurrell, CEO of Airmic, said the association is in discussions with other risk management bodies and insurers about devising a single, open-source database. Longer term, he said he hoped that a global database updated by regulators every time there is a change in their laws could be established.

Peter den Dekker, the outgoing president of FERMA, told delegates at the forum that he fully supported Airmic's efforts to devise a database and said he hoped that by the time of FERMA's next forum in fall 2013, the issue would no longer be a discussion point.

Mr. den Dekker called on the industry to "start moving to a solution."

"We need to keep the pressure on," he said. "We don't have time to build something new and reinvent the wheel." Insurers already have existing sources of information, and it is time for collaboration, he said.

When underwriting and purchasing global programs, insurers and buyers need to find a balance between "cost, coverage and compliance," said Praveen Sharma, global leader of insurance regulation and tax at Marsh Inc. in London, during the panel session.

There is no "one-size-fits-all" global program structure, said Martin Strnad, legal counsel for Zurich Financial Services Ltd. in Zurich.

And there are various nuances to the way laws are applied depending on how risks are underwritten, he said.

"We need a database that takes care of all these nuances," Mr. Strnad said. "We at Zurich have one, but a database (alone) cannot capture each and every specificity," he said.

He added that a common set of data that could be applied to the various individual situations of buyers is needed.

The problem for risk managers is the "level of difference in interpretation" of rules, said David Batchelor, London-based CEO for Marsh Inc. in Europe, the Middle East and Africa, in an interview.



Peter den Dekker, outgoing president of FERMA

"There are risks with the structure of any program," said Lex Baugh, London-based CEO for Europe for Chartis Inc., during a CEO panel discussion during the forum. "We need to understand what each client's tolerance of the risk is," he said.

"We are in danger as an industry if we try to make it look like there's such a thing as 100% compliance," he said. "It doesn't exist."

"I think the industry should come up with a standardization in terms of approach," he said. Industry bodies should help their members, and underwriters should help buyers understand what the limitations of compliance might be, he said.

One solution might be for the industry to come together to provide a database of "the lowest common denominator" of information that would be managed on a consistent and transparent basis, said Marsh's Mr. Batchelor, and "above that, anything else could be a competitive differentiator" for underwriters.

While a database is important, it also is important to understand local practices and have employees on the ground, said Yves de Mestier du Bourg, head of the international network of AXA Corporate Solutions, a unit of AXA S.A., in Paris.

He added that it is vital to have input from national regulators, as laws often are open to interpretation.

But Mr. Sharma called upon insurers to abandon their "egos" and cooperate on this issue, rather than using their proprietary databases as competitive differentiators.

"It is a no-brainer," he said. "We need to pool our knowledge and our resources."

He said that proprietary systems had not been shown to lead to insurers necessarily gaining more business. Insurers, he said, should focus their efforts on what they are good at—underwriting and claims—and use those as differentiators. He said there should be a single database on compliance used by the whole market because, among other things, it is frustrating for risk managers when they have bought programs underwritten by more than one insurer to find that there are differences of interpretation within those policies.

Zurich recently began offering its database to brokers via a licensing agreement, said Thomas Hürlimann, CEO of the global corporate business of Zurich, in an interview.

"Zurich would like to contribute to a global standard" on global program compliance, he said. "We want to move our industry to the next level."

The database is updated constantly and covers 180 countries and 41 lines of business, he said.



## Record 1,521 attendees at FERMA's 2011 forum

A record number of delegates—1,521—attended the Federation of European Risk Management Assns.' forum in Stockholm on Oct. 2-5.

Of that total, 436 were risk managers, according to Peter den Dekker, outgoing president of FERMA. Jorge Luzzi, group risk management director for Pirelli S.p.A., took over as FERMA president at the meeting.

There were 70 Swedish risk manager attendees, according to Charlotte Barnekow, head of insurance and risk management at Stockholm-based Ericsson and chairman of the Swedish Risk Management Assn.

The next FERMA forum will be held in fall 2013 in Maastricht, Netherlands.

—By Sarah Veysey

# Risk managers urged to lobby for special capital rules for captives

By SARAH VEYSEY

**STOCKHOLM**—The full impact of Solvency II on captive insurance companies is unclear, and risk managers should continue their lobbying efforts to ensure that captives are treated appropriately under the upcoming risk-based capital rules, according to experts at the Federation of European Risk Management Assns.' recent forum.

And uncertainties still exist about the effect the rules, slated for partial implementation in 2013, will have on the cost and scope of insurance coverage that risk managers will be able to buy, experts add.

"We think, as a guesstimate, that Solvency II will put the cost base (for captives) up by about 30%," Rory MacLeay, London-based managing director of Jardine Lloyd Thompson Group P.L.C.'s international network, told a CEO panel session.

Solvency II, which will be applied to large captives within the European Union, is prompting a "heightened interest" from chief financial officers about the strategic role captives play for their organizations, according to August Pröbstl, Munich-based head of the corporate insurance partner division of Munich

Reinsurance Co. FERMA, along with the European Captive Insurance and Reinsurance Owners' Assn., has been lobbying the European Union to ensure that captives are treated in a way that is appropriate to their size and complexity, said Peter den Dekker, the outgoing president of FERMA.

Risk managers are lobbying the authorities to make clear to them that captives need a special regime, said Alessandro de Felice, group risk manager for Milan-based Prysmian S.p.A., who moderated a conference session on the topic.

In particular, he said, regulators need to be made aware that captives usually do not handle third-party risks the way traditional insurance companies do, therefore their risk to consumers is less.

While Solvency II may be delayed, and its full impact on captives is not known, it "will come sooner or later" and likely will increase the capital requirements, as well as governance and disclosure requirements, on captive owners, Markus Mende, the Basel, Switzerland-based managing director of Aon Global Risk Consulting, a unit of Aon Corp., said during the session.

He said that, in light of Solvency II, risk managers should consider whether their

organization really needs a captive. And if it does, he said, then Solvency II could be very useful for the company in helping it to better understand its risks.

He quoted Walt Disney, who said: "You may not realize it when it happens, but a kick in the teeth may be the best thing in the world for you."

Captive owners should participate in any further Europe-wide quantitative impact studies on Solvency II's effects and focus on preparations for the upcoming rules, he said.

"There are certainly shortcomings in the Solvency II directive" as far as captives are concerned, and each country likely will adopt the rules slightly differently, said Urs Neukom, director of corporate strategic solutions at Zurich-based Swiss Reinsurance Co. Ltd.

There are still "gray areas" about how the rules would apply to captives, and it is not clear when the legislation will come into force, he said.

But, he said, risk management is the focus of the new rules, and captive owners should take this into account and embrace it.

Meanwhile, debate exists about the extent to which Solvency II will affect insurers and their clients.

"I like Solvency II. It simplifies the way we structure our legal entities, which will provide benefits from our own diversified book of business," said Peter Hancock, New York-based CEO of Chartis Inc., in an interview. "Solvency II will provide scale economies with a single hub with one regulator in the E.U. There's been a lot of attention from authorities to modernize regulation, and we feel good about the modernization of regulation globally," he said.

When added to the other pressures that the insurance industry is facing, such as low interest rates and other macroeconomic factors, it is likely that Solvency II will result in some consolidation of insurance carriers, according to Greg Case, Chicago-based CEO of Aon Corp.

But while certain types of business will face larger capital penalties under the new regime, the fact that most large insurers will have internal capital models and will have had similar ways of loading capital for certain business lines, means that it is unlikely there will be wholesale shifts by insurers out of certain lines of business, said London-based Lex Baugh, CEO of Chartis' European operations.

# Business interruption cover must fit individual needs

*Indemnity period, coverage extensions key considerations*

By **GAVIN SOUTER**

**STOCKHOLM**—Business interruption coverage provides valuable protection for companies, but risk managers should take care to ensure the coverage they buy fits the specific needs of their organizations, according to an insurer claims executive.

In particular, careful attention should be given to the length of indemnity periods and the structure of coverage extensions for supplier and customer risks, said Staffan Ljung, Nordic business interruption specialist at If P&C Insurance Co. Ltd. in Stockholm.

When considering whether to buy business interruption coverage, risk managers should perform the same calculations that underwriters do when they are assessing the risk, he said.

Policyholders frequently underestimate the uninsured costs they may face when they select long time-based or monetary deductibles, he said during a session at the biennial forum of the Federation of European Risk Management Assns. in Stockholm this month.

A crucial decision for risk managers buying business interruption coverage is the length of the indemnity period that they should include in the coverage, Mr. Ljung said.

“You have to map out your risk and then start thinking about what indemnity period to choose...a common indemnity period is six months; but if you choose such a short period, you have to ensure that you can retool in such a short time,” he said.

Some companies choose periods of 18 or 24 months, he said. Companies that have long delivery times or use difficult-to-replace or tailor-made machinery are more likely to choose these longer indemnity periods, though they need to consider whether the extra insurance costs are warrant-

ed, he said.

Companies also need to base the decision on the nature of their business, Mr. Ljung said.

“If you are dependent on a few customers, you may have a big problem as it can be tough to get clients back” after a prolonged down time, he said.

For example, suppliers to the automobile industry, which is dominated by a limited number of large companies, may have few opportunities to replace a customer if they lose one due to a dis-

ruption in production.

Longer indemnity periods also increase the chances of getting extra expense claims paid by insurers, Mr. Ljung added. Insurers will be more likely to pay for a marketing campaign, for example, if they think it will shorten the period of time that a policyholder will be reporting lost profits on a policy with a long indemnity period, he said.

Another important consideration for policyholders is how they measure their exposure to shut-

downs by suppliers or customers that suffer a property damage loss, Mr. Ljung said.

In particular, policyholders need to determine who they are contractually linked with as insurers will likely pay claims related only to suppliers or customers that have contracts with policyholders. For example, a company may rely on another firm for supplies, but its contract is with the distribution arm of the company, which may not have suffered the property loss. Most business inter-

ruption policies pay out only in the event of physical damage.

Companies also can use risk management processes to mitigate the risks of shutdowns at suppliers, Mr. Ljung said. For example, they can ensure that they have at least two suppliers for key products or that the suppliers used have adequate insurance to recover quickly from a loss.

“Risk managers should be involved in the purchasing policy to manage the supplier risk,” he said.



CONNECTING WITH THE FUTURE

## 2012 WORLD CAPTIVE FORUM

JANUARY 30 – FEBRUARY 1

DORAL GOLF RESORT & SPA | MIAMI, FLORIDA

— REGISTER TODAY —

### CONNECT WITH THE CAPTIVE COMMUNITY!

[www.worldcaptiveforum.com](http://www.worldcaptiveforum.com)








**WORLD CAPTIVE FORUM IS...**

**Innovative** – We utilize the latest technology to enhance highly rated educational sessions.

**Interactive** – Opportunities to network, share knowledge and build relationships.

**Engaging** – Exhibit Lounge and agenda designed to maximize information exchange.

**Energizing** – You will leave with renewed enthusiasm!

**Complimentary registration for risk managers and benefits managers and early bird discounts for all attendees!**

Produced by:





Exhibit and sponsorship opportunities available!

Contact Holly Harris | Phone(972) 989-8001 | [hharris@BusinessInsurance.com](mailto:hharris@BusinessInsurance.com)

ADVERTISER	
INDEX	
Issue of October 17	
ADVERTISER	PAGE #
ACE	13
Aetna	5
Aon Corporation	2
Arch Insurance	11
Business Insurance	18, 19, 23, 25
Dickstein Shapiro LLP	14
Federation of Regulatory Counsel	16
Florida State University	20
The Hartford	28
Ironshore	12
OneBeacon Professional	9 A/B
Pinnacle Actuarial Resources	17
Prudential	10
Swiss Re	15
XL Insurance	27
Zurich North America	7

# Comp: States approving requests to increase rates

CONTINUED FROM PAGE 1

1 to June 30.

During all of last year's filing cycle, Boca Raton, Fla.-based NCCI asked regulators for increases in only 15 states, said Peter Burton, NCCI's senior division executive for state relations in Wayne, Pa.

Conditions and laws affecting rates differ by state, so NCCI also has applied for rate decreases in seven jurisdictions this year. In Alabama, for example, it is seeking its steepest rate decrease of 9.3%.

Additionally, some NCCI rate increase requests this year have been "very modest, single-digit adjustments" in contrast with Virginia, where NCCI is seeking its largest increase of 10.5%, Mr. Burton said.

But there are more states that will see NCCI filing for increases, and the number of increases this year reveals a trend, Mr. Burton said.

"It's the general pattern that is happening with workers comp around the country," Mr. Burton said.

The New Jersey Compensation Rating & Inspection Bureau, for instance, recently applied to the state's Department of Banking and Insurance for a 6.9% rate increase for 2012.

In May, the New York Insurance Compensation Rating Board proposed a 10.4% loss-cost hike,

but Insurance Superintendent James J. Wrynn approved an average 9.1% increase effective Oct. 1.

During a Florida hearing last week, attention focused on physician dispensing of repackaged drugs accounting for 2.5% of an 8.9% rate increase NCCI is seeking there.

**'The market really has to sort out where (insurers are) going to get pricing because they can't even have a constant underwriting result of 115% and hope to stay in this line of business.'**

**Not with today's investment marketplace. It's impossible.'**

Bruce Hockman,  
Towers Watson & Co.

But in general, costs such as those for medical expenses, are rising nationwide. Meanwhile, employer payrolls remain below pre-recession levels, although premium growth is on track to be positive this year for the first time since 2005, according to A.M. Best Co. Inc.

Insurer results also have suffered under flattening or increasing claims frequency in many states, several sources said. That represents a recent shift from a long-term decline in claims frequency that offset increasing costs over many years.

Under those conditions, deteriorating underwriting results are more the norm than the exception.

Last week, Best reported that workers compensation insurers' underwriting results likely will weaken further before improving, as "conditions appear grim over the near term."

Best said in its "Market Review" that the workers comp line—which is among the largest in the U.S. property/casualty insurance industry, representing 16% of all commercial lines premium—experienced the greatest deterioration among the property/casualty industry's overall underwriting performance.

The combined ratio for workers comp insurers is projected to reach 121.5% for 2011, up from 118.1% in 2010 when "business deteriorated sharply" and the industry's combined ratio rose to the highest level since 2000, Best reported.

"Industry combineds of 120% or 121% indicate rates are not where they need to be," Accident Fund Holding's Mr. Freund said.

And lost costs are likely to continue growing, said Bruce Hockman, executive vp and workers comp practice leader in Philadelphia for Towers Watson & Co.

"The market really has to sort

out where (insurers are) going to get pricing because they can't even have a constant underwriting result of 115% and hope to stay in this line of business," Mr. Hockman said. "Not with today's investment marketplace. It's impossible."

The rate increases that are occurring are getting passed on to employers, although insurer competition remains a factor in pricing, brokers said.

"For workers compensation as of (Oct. 1), we are seeing most of our accounts, maybe as high as 70%, see at least some rate increase on their renewals," said Pamela F. Ferrandino, casualty practice leader, placement for Willis North America in New York.

Small accounts that do not take retentions are experiencing the greatest amount of rate hikes pushed through to them, Ms. Ferrandino said. Similarly, a larger percentage of middle-market accounts are experiencing insurers passing rate increases through to them than large national accounts.

Large national accounts and larger middle-market employers are seeing an average of 1% to 2% rate increases passed on to them by insurers, added Jesse Olsen, vp in the risk finance practice for Lockton Cos. L.L.C. in Kansas City, Mo.

Those buyers also are seeing premium increases of up to 4%, partly because of some growth in payrolls, although any increases are "heavily jurisdiction-dependent," Mr. Olsen said.

# FSOC: P/C insurers may dodge scrutiny by agency

CONTINUED FROM PAGE 1

Reform and Consumer Protection Act requires that financial institutions deemed to present a systemic risk to the economy be subject to heightened regulation.

An outline of the proposed guidance discussed last week during an FSOC meeting described a three-stage process. Under the process, the FSOC would apply a uniform quantitative threshold to identify a "subset" of nonbank financial companies that warrant further review.

Such U.S. companies would have to have at least \$50 billion in global assets or a foreign company would have to have the same amount in U.S. assets to be considered for examination. In addition to meeting the asset threshold, the entity would have to meet one of several criteria:

- Have at least \$30 billion in notional credit default swaps;
- Have at least \$20 billion in outstanding debt;
- Have at least \$3.5 billion in derivatives liability; or
- Have a minimum 15-1 assets-to-equity leverage ratio.

An assessment of companies identified in the first stage would be conducted based on public and

regulator data. The third step would be to contact the individual companies that warrant additional review.

Members of the FSOC stressed that nothing has been formalized yet. "It is still a proposal," said Mary Schapiro, chairman of the Securities and Exchange Commission and a member of the FSOC.

## Insurer impact limited

The proposal's impact on insurers of any kind could be limited.

For example, New York-based investment bank Keefe Bruyette & Woods Inc. said that out of nine life insurers with more than \$50 billion in assets, only two—MetLife Inc. and Prudential Financial Inc.—would meet those thresholds.

Property/casualty insurers say that while they would have preferred that the FSOC spelled out that they would not fall into the ranks of entities that could present a systemic risk, they welcomed the FSOC's move.

"Ideally, we'd love a flat-out statement that P/C insurers don't present a systemic risk," said J. Stephen Zielezienski, senior vp and general counsel of the American Insurance Assn. in Washington.

He also said that AIA has long said that size should not be the sole factor in determining systemic risk.

"This guidance suggested that while size is a required threshold at Stage 1, it is not the sole factor for that screening process," Mr. Zielezienski said.

"I think Stage 1 provides quantifiable metrics that should help all nonbank financial companies determine whether or not they will be screened out of the designation process at Stage 1," he said.

He said that while the second and third stages "don't provide a lot of additional clarity," if the criteria are applied in a "fair and reasonable way, I don't expect property/casualty insurers involved in traditional insurance activity to be a target."

He added, though, that many details need to be checked and confirmed.

"For property/casualty insurers, it's good news," said Ben McKay, senior vp in the Property Casualty Insurers Assn. of America's Washington office.

"It recognizes the fact that property/casualty insurance is not systemically risky," he said.

But he said PCI would like to see changes to the rule, notably adding cyclicity as a criterion. He said property/casualty insurers tend not to be cyclical with economic downturns, unlike some other financial institutions. "As the economy goes down, the

stock market goes down and banks tend to fail. But when the market goes down, you don't see the same thing in insurance companies. Our sources of income are more steady." He called the omission "particularly problematic."

He said PCI's other concern is that "a lot of this language we're so pleased with is actually in the guidance but not in the rule." He said PCI would like to see the language codified in the rule.

"It's a lot easier to change guidance," said Mr. McKay. "Guidance is just guidance, and it's a lot harder to change a rule."

"While a clear statement that the FSOC did not intend to look at property/casualty insurers would have been preferable," the National Assn. of Mutual Insurance Cos. believes the "framework for assessing both a company's vulnerability to financial distress and its potential impact on the broader economy will conclude that no property/casualty insurance company should be designated as a systemically significant financial institution," Jimi Grande, senior vp in NAMIC's Washington office, said in a statement.

"To the extent the minimum quantitative thresholds create a clear distinction with regards to what the FSOC believes makes a financial institution 'systemically important,' the proposed framework is a positive first step," Mr. Grande said.

# Business Insurance

**Publisher/General Manager,  
Strategic Business Media:**  
Mark Stach (Chicago)

**Associate Publisher/  
Online General Manager/Event Director:**  
Paul D. Winston (Chicago)

**Editor:** Gavin Souter (Chicago)

**Editor-at-Large:** Jerry Geisel (Washington)

**Managing Editor:** Matt Scroggins (Chicago)

**Assistant Managing Editors:**

Charmain Benton (Chicago);

John D. Thomas (Chicago)

**Art Editor:** William Murphy (Chicago)

**Senior Editors:** Michael Bradford (Dallas);

Roberto Cenicerros (Boise);

Judy Greenwald (San Jose);

Mark A. Hofmann (Washington);

Sarah Veysey (London);

Joanne Wojcik (Denver);

Rodd Zolkos (Chicago)

**Associate Editors:** Matt Dunning (New York);

Sheena Harrison (Chicago);

Sonja Ryst (New York); Mike Tskoudakis (Chicago)

**Copy Desk Chief:** Katherine Downing (Chicago)

**Copy Editor:** Ann Reus (Chicago)

**Editorial Assistant:** Mallory Gillikin (Chicago)

**Research Director:** Kevin P. Edison (Chicago)

**Research Editor:** Karen Brown Tucker (Chicago)

**Editorial Cartoonist:** Roger Schillerstrom (Chicago)

**Advertising Sales Director:**

Susan Stillwill (Chicago)

**Regional Sales Managers:**

Ron Kolgraf (Boston); Robert B. Murray

(New York); Mary Pemberton (Denver)

**Southeast & Classified Advertising Manager:**

Monique Murray (New York)

**Production Manager:** J. Thomas Janka (Chicago)

**Assistant to the Publisher:**

Justine Karl (Chicago)

**Marketing Manager:**

Kathy L. Barnes (Chicago)

**Audience Marketing Director:**

Michelle O'Malley (Chicago)

**Events Manager:**

Rebecca Briggs (New York)

**Digital Product Manager:**

Christina Kneitz (Chicago)

**EDITORIAL:** Boise: 208-286-1425;

Chicago: 312-649-5200; Dallas: 972-691-7960;

Denver: 303-278-7444; London: 44-207-457-1400;

New York: 212-210-0100; San Jose: 408-774-1500;

Washington: 202-662-7200

**ADVERTISING:** Boston: 617-292-4856;

Chicago: 312-649-5224; Denver 303-898-4043;

New York: 212-210-0136

**SUBSCRIPTIONS & SINGLE COPY SALES:**

1-877-812-1587 (U.S. & Canada)

1-313-446-0450 (All other locations)

Business Insurance is published by

Crain Communications Inc.

**Chairman:** Keith E. Crain

**President:** Rance Crain

**Secretary:** Merrilee Crain

**Treasurer:** Mary Kay Crain

**Executive Vice President/Operations:**

William A. Morrow

**Senior Vice President:** Gloria Scoby

**Vice President/Group Publisher:**

Christopher Crain

**Group Vice President/Technology,  
Circulation, Manufacturing:**

Robert C. Adams

**Vice President/Production & Manufacturing:**

Dave Kamis

**Chief Information Officer:** Paul Dalpiaz

**G.D. Crain Jr.** Founder (1885-1973)

**Mrs. G.D. Crain Jr.** Chairman (1911-1996)

**S.R. Bernstein**

Chairman-executive committee (1907-1993)



## News in Brief

CONTINUED FROM PAGE 1

has been introduced in the House of Representatives and the Senate. The Coalition for a Domestic Insurance Industry, which represents 13 U.S. insurers, would like to see the legislation incorporated in a deficit-reduction plan. But the Coalition for Competitive Insurance Rates, which includes insurers as well as the Risk & Insurance Management Society Inc., consumer groups and free-market advocates, denounced the move.

### Platinum Underwriters' ratings downgraded

Standard & Poor's Corp. has downgraded its counterparty credit and financial strength rating on Platinum Underwriters Holdings Ltd.'s core operating companies to A- from A after the reinsurer's estimate that it will have \$112.4 million in third-quarter catastrophe losses. S&P also lowered its counterparty credit rating to BBB from BBB+.

### U.K. high court upholds pleural plaques law

The United Kingdom's highest court has rejected an appeal by a group of insurers challenging a Scottish law that provides compensation for people suffering from pleural plaques, an asbestos-related condition. The Assn. of British Insurers described the ruling as "disappointing." In the decision, the Supreme Court in London ruled that a Scottish Court of Session judgment should stand on the Damages (Asbestos Related Conditions) (Scotland) Act. The judges ruled that the law is reasonable because it provides compensation for pleural plaques sufferers only if their exposure to asbestos is caused by negligence on the part of their employer, among other things.

### IRS delays cash balance pension plan rules

The Internal Revenue Service is delaying by at least a year the effective date of cash balance pension plan rules it proposed last

year. The proposed rules involve a provision in the Pension Protection Act of 2006 that allows plan sponsors to use a "market rate" to credit interest to participants' account balances. The IRS said finalized rules would be effective no earlier than Jan. 1, 2013.

### Health reform law's LTC program killed

The Obama administration pulled the plug on a voluntary long-term care program that was part of the health care reform law. "We have not identified a way to make CLASS work at this time," Health and Human Services Secretary Kathleen Sebelius said, referring to the Community Living Assistance Services and Support Act.

### Calif. bars credit, E-Verify checks of most workers

California has become the seventh state to prohibit credit checks in making employment decisions with legislation Gov. Jerry Brown signed into law. Under the law, effective Jan. 1, 2012, employers can use consumer credit reports for employment purposes only for certain positions. Gov. Brown also signed into law another bill that prohibits federal E-Verify mandates in California.

### Calif. law requires autism treatment cover

California Gov. Jerry Brown signed legislation into law that will require health insurers to provide coverage for behavioral health therapy for treatment of autism on the same basis as other medical conditions. The measure will go into effect July 1, 2012, and expire on July 1, 2014.

### Noted

Dane Douetil has announced he will step down as CEO of **Brit Insurance Holdings B.V.** on Oct. 27. Mark Cloutier, an industry veteran, will succeed Mr. Douetil. Brit also announced that Hans-Peter Gerhardt, a nonexecutive director, will chair the company's underwriting committee. Mario P. Vitale will become co-CEO of **Aspen Insurance** on Jan. 1, 2012.

## Med mal: Legacy exposures eyed

CONTINUED FROM PAGE 1

"As a broker, ideally if we have doctors who are on claims-made policies, we like to see them buy their own coverage and close out their tails and start fresh with the hospital," said Merry Robinson, team leader and client service manager at Brower Insurance Agency L.L.C. in Dayton, Ohio.

But as hospitals compete with other health care systems to recruit physicians to join their staffs, there are sometimes internal conflicts between what offers the most straightforward risk management approach and hospital development efforts.

"It's definitely becoming a bigger and bigger issue, because one of the things that we are seeing is that more and more hospitals are employing docs, and the hitch with that is that either (the doctors) purchase coverage or (the hospitals) end up purchasing it on their behalf," said Vivian Miller, senior risk management specialist at the Chicago-based American Society for Healthcare Risk Management.

Particularly in addressing the med mal tail exposures for physicians in high-demand specialties, "Hospitals are more likely to negotiate in favor of the physician rather than in favor of the hospital because they need them," said ASHRM's Ms. Miller. "The tail coverage and the prior acts coverage, it all depends on how the doc negotiates that when they come onboard."

To a large extent, hospitals' interest in employing physicians is driven by outcomes-based reimbursement provisions included in the federal health care reform law.

"It's happening, it's happening very frequently, and it's happening increasingly across the country," said Michael Maglaras, president of consultant Michael Maglaras & Co. in Ashford, Conn. "It's become more apparent. It's a complex insurance and risk management issue."

"What is apparent is hospitals are continuing to recruit, into employment or into a joint venture, physicians in the community," Mr. Maglaras said. "When they recruit them, they are using their insurance facilities to ease the transition."

Brower Insurance's Ms. Robinson said she has seen cases where hospitals have taken on employed physicians' med mal tail exposures and faced claims as a result. "We're seeing different approaches," she said. "We have seen hospitals who agree to take those liabilities wind up getting claims."

Sarah E. Pacini, vp of risk management and insurance at Advocate Health Care Network in Oak Brook, Ill., said Advocate prefers not to bring physicians' tail exposures into the organization's captive insurer when physicians become employees.

"When we look at a physicians group or even a single physician, we generally want to procure the tail coverage from the carrier they've been with," Ms. Pacini said. "We believe that when a physician comes to Advocate, they're practicing in a safer environment."

Although Advocate prefers to purchase coverage for employed physicians' tail exposures, the system

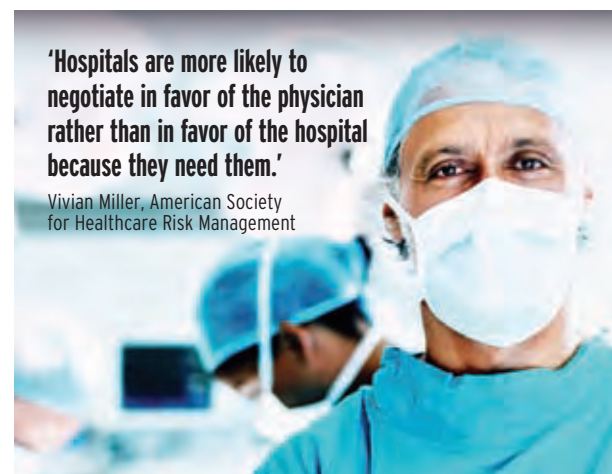
can write that coverage in its captive. Advocate looks to remain flexible and best meet the needs of both the physician and the organization, Ms. Pacini said.

"We've done a number of different customized responses depending on what the physician needs and what the organization needs," she said. "I think that's the key: to be nimble and flexible."

Whether employing physicians directly or entering into joint ventures, "the hospital system's captive is very much in evidence, the hospital system's risk manager is very much needed as part of that process," said Mr. Maglaras. The hospital's excess insurance or reinsurance also must be closely aligned with the process of employing those physicians and how the med mal tail is addressed, the consultant said.

Ms. Robinson said specialties such as obstetrics and gynecology and bariatric medicine, where the med mal tails are longer than other specialties, are "a little concerning." Also, she said, in considering whether to take on a newly employed physician's tail exposure, "We counsel our clients about that, too: Is this somebody who's going to be with you a long time?"

If not and the hospital agrees to take on the tail exposure, they might see the doctor leave to start fresh elsewhere while the hospital remains exposed to those earlier risks, she said.



**'Hospitals are more likely to negotiate in favor of the physician rather than in favor of the hospital because they need them.'**

Vivian Miller, American Society for Healthcare Risk Management

Ms. Miller noted, however, that when doctors become hospital employees, they're typically subject to a credentialing and privileging process, as well as a probationary period. Subsequent contracts set out the responsibilities of both the doctor and the hospital in the relationship. "They make it very clear in the contracting process who's going to be responsible for what and for how long," she said.

Ms. Miller said the employment relationship can have several advantages for doctor and hospital.

Among them, she noted, medical malpractice suits involving self-employed physicians typically target both the doctor and the hospital. In the case of hospital-employed physicians, "the plaintiff only has one pocket" to target, so total awards tend to be less than if the hospital and physician were sued separately, she said.

Also, insurance claims paid on behalf of a doctor in medical liability cases must be reported to the National Practitioner Data Bank for the remainder of a physician's career, Ms. Miller said. However, claims on the hospital's insurance in connection with an employed physician don't have to be reported. "That's a huge, huge incentive for the docs," she said.

JOIN US OCTOBER 20, 2011 AT 2 PM FOR

**BEHIND THE LOOKING GLASS: LESSONS LEARNED FROM NETWORK SECURITY BREACHES**

Join professionals in insurance, law, and computer forensics who will review common trends and potential causes of data and privacy breaches as well as mitigation techniques that can be cost-effectively deployed.

Presented by **OneBeacon**  
PROFESSIONAL INSURANCE®

**REGISTER TODAY!**  
[www.businessinsurance.com/webinars](http://www.businessinsurance.com/webinars)





## No winners in firing game

An Iowa convenience store owner is on the hook for unemployment benefits for several former workers, who quit after the owner started a game in which employees were rewarded for guessing who would be fired.

According to court documents, William Ernst, owner of a chain of Bettendorf, Iowa-based QC Mart convenience stores, passed a memo to his employees in March titled, "New Contest—Guess the Next Cashier Who Will Be Fired!!!" Winners received \$10.

"Once we fire the person, we will open the envelopes, award the prize and start the contest again," read the memo cited in court documents. "And no fair picking Mike Miller from Rockingham. He was fired at around 11:30 a.m. today for wearing a hat and talking on his cell phone. Good luck!"

Several employees quit shortly after the memo was issued and applied for unemployment, citing hostile working conditions. Ernst objected and the matter went to an administrative law judge.

"It is bizarre and immature," one employee wrote to the company in a letter submitted as evidence. "I'm also concerned about the announcement of employee termination details."

In a May decision awarding unemployment benefits to the former employees, Judge Susan Ackerman called the contest "egregious and deplorable."

"The employer's actions have clearly created a hostile work environment by suggesting its employees turn on each other for a minimal monetary prize," Judge Ackerman wrote.

CONTRIBUTING: Matt Dunning, Judy Greenwald, Mallory Gillikin, Mike Tsikoudakis

# End Page



Phil Immordino made participants in his Cave Creek, Ariz., bull run sign a seven-page liability waiver before taking part in the event.

## Mess with the bull, you get the waiver

After a decade-long hiatus brought on by rising insurance costs, hundreds of daredevils ran for their lives recently when a Spanish-style bull run returned to Cave Creek, Ariz.

Though participants only paid \$25 for the quarter-mile chase, they first needed to sign a sobering seven-page liability waiver that warns of serious injury and even death.

"It says you, your neighbor, your cousin and your cousin's brother can't sue anybody about any of this," said Phil Immordino, the event's organizer.

Though the town of Cave Creek initially approved a special event permit that required Mr. Immordino to come up with \$5 million in insurance coverage, later lowered to \$3 million, the permit was withdrawn and the event now takes place on private property.

Mr. Immordino secured \$1 million in coverage, as did the owner of the property on which the event took place. Additional precautions, such as placing escape routes along the track and keeping paramedics and rodeo clowns on hand for emergencies, further reduced liability.

Event organizers claim their bull run is safer than the Spanish version romanticized by Ernest Hemingway in "The Sun Also Rises." Unlike the running of the bulls in Pamplona, no one in Mr. Immordino's run has ever been gored.

However, minor incidents plagued the bull run in previous years. In 1998, Mr. Immordino was arrested after failing to get proper permission to hold a bull run. Then in 2002, he was hospitalized when he fell from a roof after attempting to get a better view of the bulls.

AP PHOTO

## Rival peeks at Hooters secrets: Suit

A restaurant known for its scantily dressed servers is suing a competitor alleging trade secret theft.

Hooters of America L.L.C. has filed a trade secret theft suit against Atlanta-based La Cima Restaurants L.L.C. after a Hooters executive defected.

In the suit, Atlanta-based Hooters alleges that former operations and purchasing executive Joseph W. Hummel "misappropriated a great volume of confidential and proprietary business information" belonging to Hooters.

Mr. Hummel, who resigned from Hooters in July, joined La Cima shortly afterward as partner and chief operating officer, according to the lawsuit filed in federal court in Atlanta.

La Cima then entered into a franchise development agreement with Twin Peaks Restaurants, a competitor of Hooters. Twin Peaks, which is a mountain lodge-themed rather than beach-themed restaurant, describes its focus as "male-oriented, exhibiting sporting events on in-store televisions and the friendly, attentive and beautiful Twin Peaks Girls," according to the suit.

Before and after his resignation, Mr. Hummel, who is not named in the suit, allegedly "downloaded and transmitted to his private email account" a large volume of business information, including "a proprietary management development blueprint

used to recruit and retain

employees," Hooters alleges.

Hooters asserts that La Cima committed computer theft, misappropriation of trade secrets and violated the federal Computer

Fraud and Abuse Act,

among other allegations.

La Cima could not be reached for comment.



## Writer sues over borrowed 'Time'

Award-winning science fiction writer Harlan Ellison says a movie is based on one of his short stories, and he's not at all happy about it.

Mr. Ellison filed suit in Los Angeles federal court last month alleging that "In Time" is based on his award-winning 1965 short story, "Repent, Harlequin! Said the Ticktockman."

The defendants are Los Angeles-based New Regency Productions Inc. and director Andrew Niccol. The movie, which opens Oct. 28, stars Justin Timberlake, Amanda Seyfried and Cillian Murphy.

In the suit, Mr. Ellison said he has had numerous requests to adapt the story into a

feature film, but he declined until recently. Now, however, under an agreement with his company, the Kilimanjaro Corp., a screenplay has been written and is ready to be presented to studios. "However, the value and marketability of the screenplay has been and will be seriously and irreparably degraded" by "In Time," according to the suit.

The suit says similarities in the book and movie include that both take place in a dystopian corporate future in which everyone is allotted a specific amount of time to live; that the amount of time left can be manipulated; and that death is instant by heart stoppage, among others.

Among the demands, Mr. Ellison seeks an injunction to prevent the film's release, that all copies be impounded and destroyed, and that he receive any profits.

Observers note Mr. Ellison filed a similar lawsuit against Los Angeles-based Orion Pictures Corp., alleging its 1984 film "The Terminator" infringed his copyright on an episode of "The Outer Limits" called "Soldier." The case ended in a settlement, with Orion agreeing to give him credit in future copies of the work and pay him an undisclosed sum, according to observers.

Perhaps at the time, Mr. Ellison told Hollywood, "I'll be back."



XL Group  
Insurance  
Reinsurance



# CMOPELX

Change is changing, risk is riskier and complex just got even more complex.  
That's why at XL we **ANALYZE** deeper and **DREAM** harder to  
find **ANSWERS** to the world's most complex risks. Because we're  
here to help keep you and your business moving forward.

***MAKE YOUR WORLD GO***

[xlgroup.com](http://xlgroup.com)

# WHILE THEY'RE CARING FOR THEIR PATIENTS, WHO'S CARING FOR THEM?



You are. Prescribe The Hartford for healthcare facilities looking to protect their people and their property. Our specialized claim handling for needlesticks and other sharps-related injuries covers both first- and third-party testing and reimbursement. And with billing based on self-reported payroll, our Workers' Compensation is an industry leader. Streamline your clients' risk management with insurance and retirement solutions from The Hartford.

Learn more at [thehartford.com/info/healthcare](http://thehartford.com/info/healthcare) or email [david.grinblatas@thehartford.com](mailto:david.grinblatas@thehartford.com).

Workers' Compensation • Property • Auto • Management Liability • Disability • Retirement



**THE  
HARTFORD**

With The Hartford behind you, achieve what's ahead of you.®