

\$1 MILLION

The cost at which a workers comp claim becomes catastrophic

WORKERS COMPENSATION

Costly answers to once-fatal work injuries

Treatments can pay off over the long term

BY STEPHANIE GOLDBERG

Catastrophic workers compensation claims are becoming more complex as the cost of medical care increases and workers recover from injuries that would have been fatal as recently as five years ago, experts say.

Catastrophic injuries traditionally include traumatic brain injuries, spinal cord injuries, amputations, severe burns, blindness and multiple trauma, according to experts. However, many payers of workers comp claims now also consider any claim that reaches around \$1 million to be catastrophic, said Dr. Michael Choo, chief medical officer and senior vice president at Paradigm Management Services L.L.C., a medical management company in Walnut Creek, California.

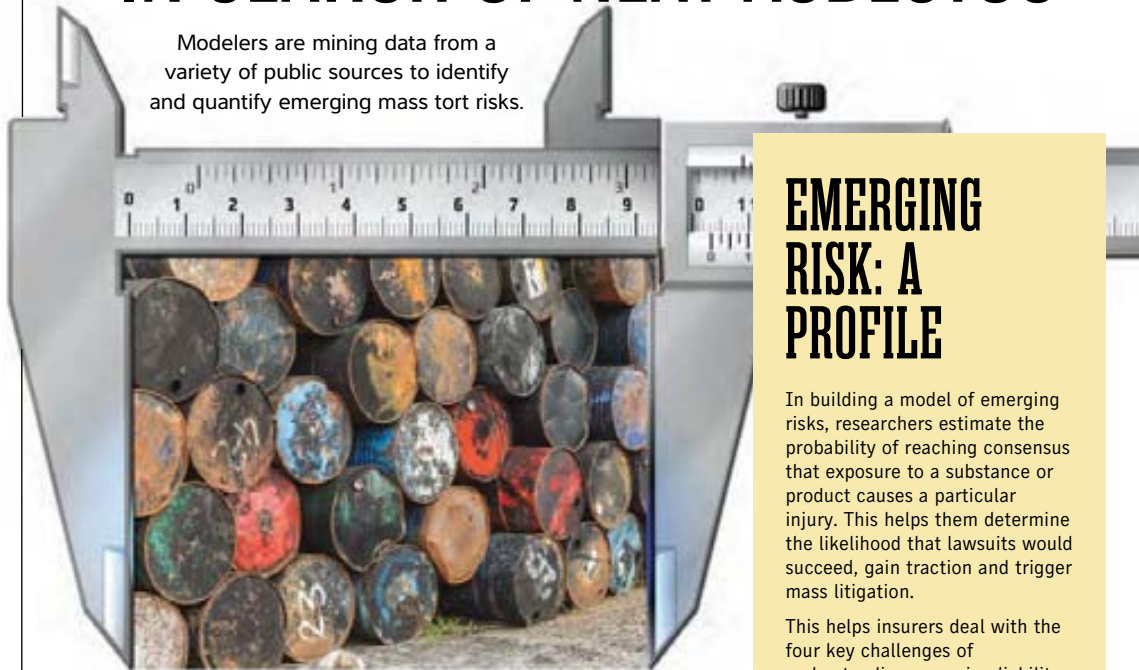
A worker with a low-back injury who has “three, four, five surgeries — they’re out of work for an

See **SEVERITY** page 28

PROPERTY/CASUALTY INSURERS

PUTTING BIG DATA TO WORK IN SEARCH OF NEXT ASBESTOS

Modelers are mining data from a variety of public sources to identify and quantify emerging mass tort risks.



BY DOUGLAS MCLEOD

Casualty catastrophe modeling is increasingly a focus of insurers and reinsurers as markets seek to identify and measure the next mass tort exposure.

Lloyd’s of London and Los Angeles-based modeler Praedicat Inc. earlier this month released a report outlining the challenges of casualty cat analysis. Praedicat has developed models that mine data from a variety of public sources to identify and quantify emerging mass tort risks and then apply the information to insurer portfolios.

Reinsurance units of Willis Group Holdings P.L.C. and Marsh & McLennan Cos. Inc. have also developed liability cat models using large databases of historic losses.

While the insurance industry’s typical response to liability disasters like asbestos has been to limit or bar coverage,

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EMERGING RISK: A PROFILE

In building a model of emerging risks, researchers estimate the probability of reaching consensus that exposure to a substance or product causes a particular injury. This helps them determine the likelihood that lawsuits would succeed, gain traction and trigger mass litigation.

This helps insurers deal with the four key challenges of understanding emerging liability risks:

- 1 Identification, or recognizing a risk before it leads to a claim or loss
- 2 Contextualization, or comparing the size of the risk to other emerging or established risks.
- 3 Projection, or putting an emerging risk into an exposure-relevant context, such as companies and portfolios.
- 4 Quantification, or estimating the expected loss from an emerging risk.

Source: Lloyd’s Emerging Risk Report 2015

HEALTH INSURERS

More hospitals compete with insurers

Mergers create opening for health care systems

BY JERRY GEISEL

As mergers and consolidations continue to shrink the number of health insurers, other health providers are entering or expanding their market presence in insurance, giving employers a new and growing source of coverage.

These insurers are owned by institutions — hospitals and health care systems — who see new opportunities by entering the health insurance market.

“We are seeing a lot of interest in our products from employers, brokers and the community,” said Sy Neilson, director of commercial marketing and plan communications at Sutter Health Plus in Sacramento, California. The insurer, an affiliate of nonprofit health care system Sutter Health, began operations in 2014 and now offers coverage in Sacramento, the Bay Area and California’s Central Valley.

“This is an opportunity to bring more affordable products to the market,” said Juan Serrano, senior vice president of payer strategy operations at health care system Catholic Health Initiatives in Englewood, Colorado, whose insurance units provide coverage to 1,150 employers with 95,000 employees and dependents.

Some of the newly formed health

See **STARTUPS** page 29



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Senior consultant at Towers Watson & Co. discusses pension de-risking issues

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The specter of a shrinking talent pool haunting the insurance industry

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IN BRIEF

Despite veto threat, the House passes a budget bill with health care reform repeals

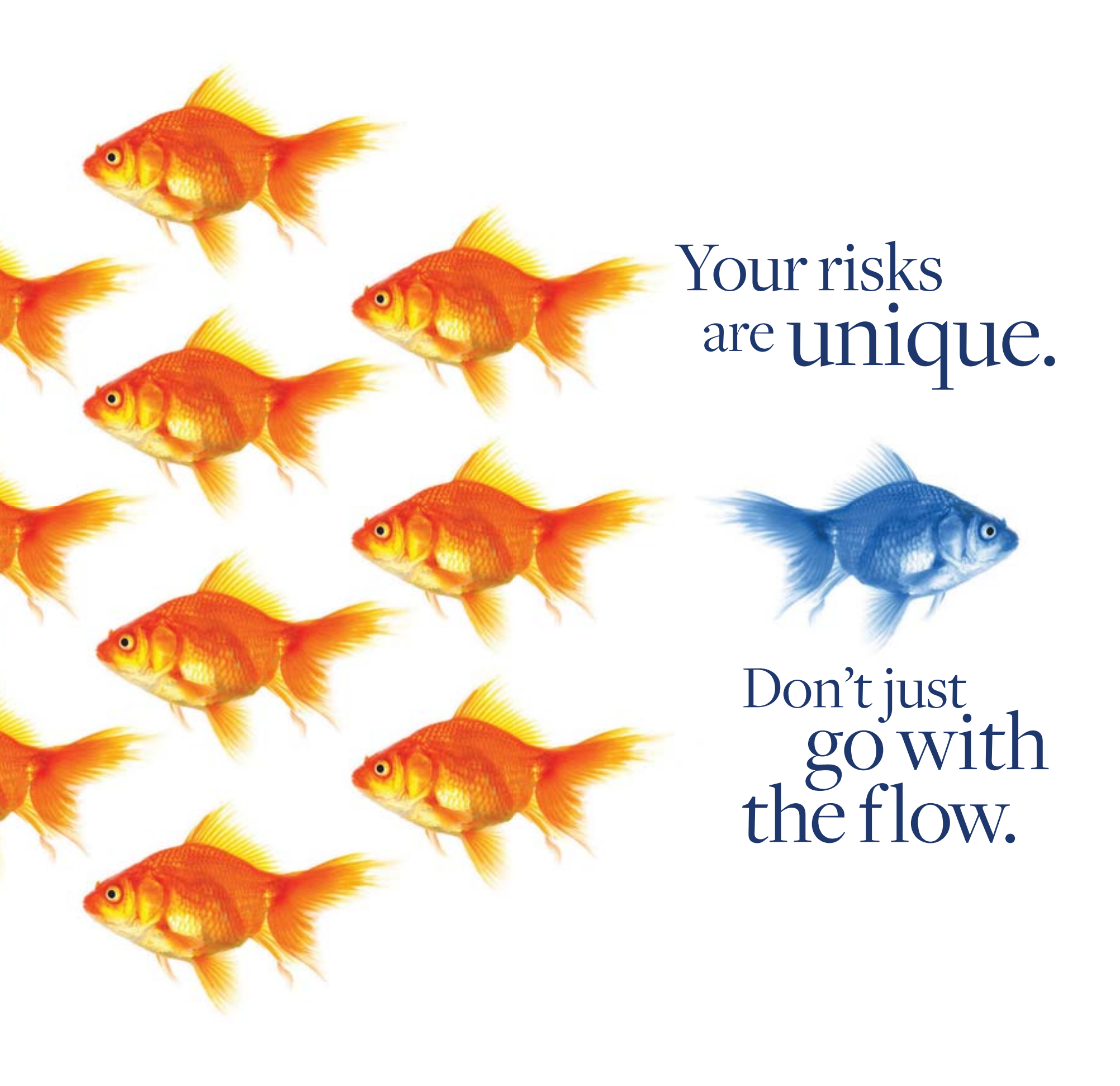
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REINSURANCE MARKET REPORT

Overcapacity spawns creative strategies; insurance-linked securities gain traction; M&A does little to boost rates; diversification seen as the way to grow; largest broker rankings and more data.

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To nonaficionados, one pretzel-like pose is like any other and no big deal, but to those in yoga business, it can be a bit more serious. 30

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NEWS

BENEFITS MANAGEMENT

LOOMING 'CADILLAC TAX' COMPLICATES OPEN ENROLLMENT

Employers adapt to limit effect of reform law provision

BY SHELBY LIVINGSTON

As the 2016 open enrollment season for group health plans nears, benefits managers are implementing strategies or stepping up existing ones to avoid the looming federal excise, or "Cadillac," tax.

It's the "overriding concern for most employers" leading up to open enrollment, said Steve Wojcik, vice president of public policy with the National Business Group on Health in Washington.

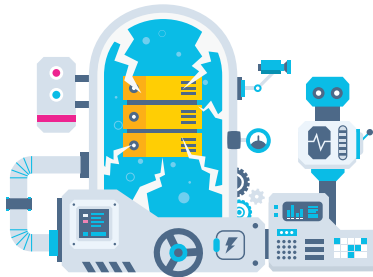
The Cadillac tax — the health care reform law's 40% excise tax on the portion of health plan premiums that exceed \$10,200 for single coverage and \$27,500 for family coverage — takes effect in 2018, but benefits consultants say this year is the last chance employers have to make major plan design changes or other tweaks to avoid hitting the thresholds.

"It takes a number of years to make the changes that they need to make in order to stay below the tax," Mr. Wojcik said. "You can't just do that from one year to the next, or it's going to be a drastic change, and employees will let you know that they don't like that."

"This is the year where employers are saying, 'I know by 2018 I need to make changes, so I need to do it over (the next) three years,'" agreed Rob Moroni, Detroit-based Midwest corporate market leader

for The Segal Group Inc. "Everyone has now decided what their strategy is for the excise tax, and they are implementing it in '16."

To avoid the tax, employers are moving to consumer-driven health plans, introducing consumerism tools that help workers shop for health care and sometimes shifting to narrower health plan networks with fewer providers, experts say.



"You kind of look at which lever you want to pull" to bring down plan costs, Mr. Moroni said. "Do I want to pull plan design lever (or) do I want to pull contribution lever? But with the excise tax, the contribution lever doesn't work, because you have to bring down the value of the plan."

Employers who are ahead of the game when it comes to avoiding the tax are putting a greater emphasis on wellness.

"This open enrollment season,

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CHALLENGES OF 2016 OPEN ENROLLMENT

The Affordable Care Act has added three major challenges to 2016 open enrollment in employer health plans:

'Cadillac tax'

A federal excise tax scheduled to take effect in 2018 would levy a 40% tax on the portion of health plan premiums that exceed \$10,200 for single coverage and \$27,500 for family coverage.

Adding to the problem, the tax is tied to general inflation, projected by the National Business Group on Health to grow at 2.4% annually over the next decade, rather than to medical inflation, expected to increase an average of 5% in 2016. That means more employers health care plans will be subject to the tax each year.

Compliance

Employers must cover at least 60% of total costs of medical services, and the employee's share of the annual premium of the lowest-cost plan offered can be no more than 9.5% of the worker's annual household income.

IRS reporting

For 2015, employers had to identify the full-time employees and provide at least 70% of health care coverage. In 2016, employers will have to start submitting that data to the IRS, a reporting requirement also faced by the employee. This year, employers must offer 95% of their full-time employees coverage.

LIABILITY & LITIGATION

Whistleblower rulings headed to high court?

Appeals courts split on Dodd-Frank retaliation protections

BY JUDY GREENWALD

Because of a split between two appellate courts over the issue, the U.S. Supreme Court is expected to consider whether corporate whistleblowers must first report issues to the U.S. Securities and Exchange Commission before they can receive anti-retaliation protection.

Experts say the question of protection from retaliation is an issue that arises frequently and can create significant consequences for companies and whistleblowing employees.

The 5th U.S. Circuit Court of Appeals in New Orleans held in its 2013 ruling in *Khaled Asadi v. G.E. Energy (USA) L.L.C.* that a whistleblower who had only reported alleged wrongdoing internally, but not to the SEC, did not qualify for anti-retaliation protection under the Dodd-Frank Wall Street Reform and Consumer Protection Act, based on its statutory language.

However, in a divided ruling issued Sept. 10, the 2nd U.S. Circuit Court of Appeals in New York held in *Daniel Berman v. Neo@Ogilvy L.L.C. and WPP Group USA Inc.* that because Dodd-Frank's language was ambiguous, it was deferring on the issue to an SEC rule that says internal reporting is sufficient to evoke the law's anti-retaliation provisions (see story, page 27).

New York-based marketing agency Neo@Ogilvy plans to seek Supreme Court review of the case, according to a motion filed with the 2nd Circuit.

Experts say the issue is significant.

"The great majority of (whistleblower) cases involve internal complaints, where the individual has not gone to the SEC," said Edward E. Ellis, a shareholder with Littler Mendelson P.C. in Philadelphia.

"It is a significant issue because employees do not have protection against retaliatory conduct, generally speaking, unless there's a statute that provides for it or some kind of a contractual obligation," said Holly H. Weiss, a partner with

See RETALIATION page 27

Nominate innovative products

Business Insurance is seeking nominations for its 2016 Innovation Awards, which recognize innovation and leadership in products, services and technologies designed for risk managers.

Eligible products or services are those designed for and made available to professional risk managers that address one or more of the following risk management functions: risk identification, risk assessment/analysis, risk control or risk financing.

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A company may submit up to five entries. An independent

panel of risk management professionals will select the winners, which will be profiled in the March 14, 2016, issue of *Business Insurance*. They also will be honored during the 2016 Risk Management Summit, to be held March 22-23 in New York.

Entries must be completed by Dec. 21 and submitted electronically using the official form available at www.businessinsurance.com/InnovationNominate. Entry information is also available on the Awards & Events page at www.businessinsurance.com.

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VIDEO

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Business Insurance talks to risk managers about their experiences and lessons learned from the recent flooding

disaster in the state of South Carolina

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NEWS

WORKERS COMPENSATION

FILMING COMP CHEATS CARRIES PRIVACY RISKS

Employers urged to weigh pros, cons of surveillance

BY GLORIA GONZALEZ

Employers and their workers compensation insurers generally have the right to conduct surveillance of injured workers, but there should be legitimate reasons to do so, and such efforts should not run afoul of privacy and anti-stalking laws.

Surveillance in the workplace is a relatively new trend, with the number of employers conducting such surveillance increasing in the past 18 months to two years, said Ranney Pageler, vice president of fraud investigations at Reno, Nevada-based workers comp insurance services provider Employers Holdings Inc. and chair of the Property Casualty Insurers Association's Inc. fraud committee.

A study the firm released in July found that about 24% of small-business owners have installed surveillance cameras to monitor employees on the job.

This type of surveillance has proven useful in addressing workers compensation fraud, Mr. Pageler said. In 2014, the firm dealt with two separate cases in California where video surveillance showed an allegedly injured worker staging the accident.

See SURVEILLANCE page 26

FAKED OUT?

Small employers see their employees as capable of faking an injury or illness to collect workers compensation benefits but are concerned about their ability to identify such fraud.

- 13% are concerned that an employee would commit workers comp fraud
- 24% have installed surveillance cameras to monitor employees on the job
- 21% feel unprepared or unsure of their ability to identify workers comp fraud

Potential indicators of claim-related workers comp fraud cited by small employers

- 58% cited the employee having a history of claims
- 52% cited the absence of witnesses to the incident
- 52% cited an employee's failure to report the injury or illness in a timely manner
- 51% cited the incident coinciding with a change in employment status

Source: Employers Holdings Inc.

WORKERS COMPENSATION

Communicate with physicians to reduce claim costs

BY STEPHANIE GOLDBERG

DANA POINT, Calif. — Better communication between payers of workers compensation claims and physicians can improve outcomes for injured workers and decrease employer costs, experts say.

“Physicians are the most critical component to a successful health care experience,” said Dr. Teresa Bartlett, Troy, Michigan-based senior vice president and medical director of Sedgwick Claims Management Services Inc. “Their communication skills often set the stage for recovery and the expectation of the healing process.”

When physicians tell employers whether injured workers should or shouldn't return to work rather than what they functionally can or cannot do, employers have a harder time matching workers with appropriate

light-duty jobs, said De Ann Wagner, assistant vice president of claims at York Risk Services Group Inc. in Inland Empire, California.

Payers also dislike when physicians engage in aggressive or unnecessary medical testing, and when they render medical care outside evidence-based guidelines without clearly documenting why, Dr. Bartlett said.

Meanwhile, submitting untimely utilization review responses or not conveying the covered conditions within a claim are examples of payer behaviors that can lead to contentious relationships with physicians, she added.

Dr. Bartlett, Ms. Wagner and other experts in attendance at the 2015 California Workers' Compensation & Risk Conference in Dana Point, California, earlier



See COMP page 27

WELLNESS

Finding value in wellness programs

Employers move away from ROI metrics

BY MATT DUNNING

BOSTON — As employers broaden the ways in which they measure the efficacy of their workplace wellness programs, many of them say they are beginning to recognize the total value those programs add to their companies.

Fifty-three percent of large employers polled in June and July 2015 by Towers Watson & Co. and the National Business Group on Health say they use a variety of financial and nonfinancial metrics to some extent to better gauge their wellness programs' net impact on their businesses, including overall employee productivity, absenteeism rates and short-term disability costs.

“This institute has spent a lot of time on the value-of-investment concept as well as return-on-investment, and what we're seeing from the survey results this year is that it's actually a little of both,” Shelly Wolff, New York-based senior health management consultant at Towers Watson, said earlier this month during the NBGH's 29th National Conference for Health, Productivity and Human Capital in Boston.

Unfortunately, Ms. Wolff said, the survey also revealed that far too many employers offering wellness initiatives and incentives to their employees do not use either model to evaluate their programs' overall worth.

“Measurement of wellness programs continues to be an issue,” Ms. Wolff said. “It's not being used nearly enough.”

In 2013, Richmond, Virginia-based auto retailer CarMax L.L.C. revamped its workplace wellness program to address a demonstrable link between elevated volumes, durations and medical expenses of short-term disability claims among employees who are at risk for metabolic syndrome, the indications of which are high blood pressure and other maladies linked to chronic conditions such as obesity, Type 2 diabetes and kidney disease.

Janet Bruington, CarMax's director of benefits in Richmond, said during a presentation that early results have been encouraging:

See NBGH page 27

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RISK MANAGEMENT

PRECISE POLICY LANGUAGE NEEDED TO COVER AFFILIATED BUSINESSES

Broad wordings can lead to narrow coverage rulings in court

BY SHEENA HARRISON

CHICAGO — Companies should have specific wording in their insurance policies to cover additional insureds and affiliated business units to ensure that coverage will be available for those entities when claims arise.

Companies tend to include broad, “any and all” indemnity provisions in their insurance policies in hopes of covering subcontractors, business holdings and any other entities that could be involved in liability litigation, said Paul Walker-Bright, a partner at a law firm Reed Smith L.L.P. in Chicago.

However, he said language that is not specific makes it more likely that insurers could argue and courts could rule that affiliated businesses and contractors are not covered, leaving those units vulnerable to liability exposures, he said.

“The broader and vaguer they are, the less (courts) like them,” Mr. Walker-Bright said. Such provisions are more likely “to be construed narrowly.”

In addition to specifically naming covered business entities, indemnity clauses in insurance policies should explicitly state details such as whether indemnity for third parties extends beyond the policy’s expiration date, he said.

Such details can ensure that insurance coverage is available when the insured parties expect it, he said when discussing risk trans-



F11PHOTO/SHUTTERSTOCK.COM

The Chicagoland Risk Forum, hosted by the Chicago chapter of the Risk & Insurance Management Society Inc., took place Sept. 28-29.

fer best practices during the Sept. 28-29 Chicagoland Risk Forum, hosted by the Chicago chapter of the Risk & Insurance Management Society Inc.

“Given the variety of additional insured endorsements that are available, it may not be sufficient to ask for additional insured coverage,” he said. “You may not have the coverage you think you have and, on the other side, you may not be providing the coverage that you thought you provided.”

Also during the conference, legal experts said employers should shop for cyber liability insurance that best fits their business since the line is evolving rapidly, and cyber coverage varies widely among insurers.

“I think everyone is struggling right now, whether you’re a seller or a buyer of insurance, with the concept of cyber coverage — whether you need it, how much you need, what supplements you should buy (and) what retentions you should purchase,” said John Hackett, a co-managing partner at Cassidy Schade L.L.P. in Chicago.

He noted that cyber liability policy forms differ from insurer to insurer, including the wording of coverage and exclusions.

“My first advice for everybody who’s a buyer is you have to shop around,” Mr. Hackett said. “A buyer of insurance has to compare forms carefully, as well as limits and sublimits to meet your anticipated needs.”

James Foster, a Chicago-based partner at Cassidy Schade, said recent high-profile data breaches at Target Corp. and extramarital-affair website Ashley Madison are beginning to shape cyber case law.

He said judges nationwide are allowing cyber attack victims to sue companies that were hacked if victims can show three things — that the data breach was caused by intentional hacking, that the victims’ information was disclosed or distributed to outside parties, and that they suffered damages from the disclosure of private information.

“If you do not have those three, the court may not let the plaintiff sue,” Mr. Foster said.

When it comes to quantifying risk Christopher Bohn, a director and actuary at Aon Risk Solutions in Chicago, said companies can use nontraditional sources — such as YouTube — to collect data on how various risks might play out for their companies.

For instance, he said companies can use Google to search how cyber breaches have affected similar firms and devise a plan to deal with similar risks.

While firms may not have enough claims data to build a predictive model for various risks, they often can find information to help them prepare for worst-case scenarios, Mr. Bohn said.

“You just have to hunt around a little bit more to try and find it,” he said.

VOLUNTARY BENEFITS

Employers offer niche benefits

Open enrollment features voluntary options for workers

BY SHELBY LIVINGSTON

ORLANDO, Fla. — As open enrollment nears, employers are looking to a variety of voluntary benefits to bolster employee benefit packages and fill the gaps left by high-deductible health plans.

Because of rising health costs and efforts to avoid triggering the Cadillac tax — the health care reform law’s 40% excise tax on the portion of health care premiums that exceed \$10,200 for single coverage and \$27,500 for family coverage starting in 2018 — voluntary benefits are increasingly being seen by brokers and employers as necessary, several benefits experts said.

“The market is trending toward (offering) more and more voluntary benefits,” Heather Garbers, Newport Beach, California-based vice president of voluntary benefits and technology with Hub International Ltd., said during a session last month of the Employer Healthcare and Benefits Congress in Orlando, Florida. “They are necessary for employers to offer and for a lot of employees to have.”

The greatest use of voluntary benefits is to “round out” a medical plan, Ms. Garbers said. Options like accident insurance and a hospitalization plan can complement health plans with high deductibles, she said.

And as the Cadillac tax prompts more employers to reduce or eliminate flexible spending accounts, health savings accounts and health reimbursement arrangements, she said, “voluntary benefits can be used to help soften that blow” if they are offered on a post-tax basis.

But voluntary benefits can also be used for other means. They open the opportunity to develop quality communication materials and promote wellness initiatives during open enrollment, said Mike Meredith, Boca Raton, Florida-based executive vice president at

HEALTH CARE BENEFITS

Labor, self-insurance group align on health care benefits

BY MARK A. HOFMANN

WASHINGTON — The Self-Insurance Institute of America Inc. plans to continue cooperating with organized labor in pursuit of common goals, according to the SIIA’s president and CEO.

The Simpsonville, South Carolina-based SIIA has traditionally worked with business organizations such as the U.S. Chamber of Commerce. Now “we’re doing more outreach” to organized labor, said SIIA President and CEO Mike Ferguson.

“We’re trying to demonstrate that this isn’t just a private employer issue. It’s a broadening of our coalition.”

Mike Ferguson,
Self-Insurance Institute of America

He noted that organized labor generally has better relations with Democratic lawmakers than business does during a panel discus-

sion on defending the self-insurance industry at SIIA’s annual conference in Washington last week.

In an interview after the discussion, Mr. Ferguson said many union members are receiving health benefits under multiemployer Taft-Hartley plans that use stop-loss insurance. Some states, however, have targeted the use of stop-loss insurance by self-funded employers. Mr. Ferguson said that many of SIIA’s members’ are business partners of Taft-Hartley plans.

A multiemployer plan is a collec-

tively bargained plan maintained by more than one employer, usually within the same or related industries, and a labor union. These plans are often referred to as “Taft-Hartley plans.”

“We’re trying to demonstrate that this isn’t just a private employer issue,” said Mr. Ferguson. “It’s a broadening of our coalition.”

“How often do you see business and labor line up on the same side?” he asked.

“Stop-loss is crucial for protect-

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See EHBC page 26

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House passes bill including health care reform repeals

■ The House of Representatives, on a near party-line vote, approved legislation that would repeal key parts of the health care reform law, including the employer and individual mandates. The repeal provisions are embedded in a broader budget reconciliation bill, H.R. 3762, that lawmakers cleared on a 240-189 vote. Aside from repealing the employer and individual mandates, the measure also includes repeal of the Patient Protection and Affordable Care Act's excise tax on costly health care plans and a tax on manufacturers of medical devices. The future of the bill, which now goes to the Senate, is in doubt; the White House has said President Barack Obama would veto the bill if it is approved by lawmakers.

Chubb shareholders spike CEO's \$80 million golden parachute

■ Chubb Corp. shareholders rejected a "golden parachute" package worth more than \$80 million for Chairman, President and CEO John Finnegan in a nonbinding vote. It included about \$23.5 million in cash, \$33.4 million in equity and \$170,683 in benefits, including outplacement benefits, three years of life insurance and three years of health benefits. It also includes about \$23.3 million in tax reimbursement. Nearly 61% of the Chubb shares were voted against the golden parachute provision, which also provided benefits to four other senior Chubb executives. Mr. Finnegan would be eligible for the package if he were terminated or resigned because of a demotion after the proposed acquisition of Chubb by Ace Ltd. He is currently slated to become executive vice chairman for external affairs of North America. The vote came as both Chubb and Ace shareholders overwhelmingly approved the proposed transaction. Roughly 98% of the shares in both companies were voted in favor of the transaction in separate meetings. Ace shareholders also voted in favor of naming the new company Chubb Ltd.

Plan urges switch from rebuilding to resilience, preparedness

■ The federal government should use unspent funds allocated to government agencies in the wake of 2012's Superstorm Sandy to pay for a new national resiliency effort, according to a report issued by the Washington-based Build-Strong Coalition. "Ending the Cycle of Destruction: The U.S. Should Invest More Before Disasters Through a National Mitigation Strategy" calls for: establishing a new resilient construction state and local building code grant program administered by the Federal Emergency Management Agency to help qualified states defray cost of enforcing building codes; increasing FEMA's funding for predisaster mitigation activities by \$100 million per year from fiscal years 2016 to 2020; and passing legislation to create resilient construction incentives for states, builders and individual homeowners. This legislation includes: The Safe Building Code Incentive Act — H.R. 1748 — that would give states a powerful incentive to adopt and enforce stronger statewide building codes; and the Disaster Savings and Resilient Construction Act — H.R. 3397 — that would establish a clear and permanent tax credit for owners and/or contractors who use resilient construction techniques when building and renovating homes and commercial structures in federally declared disaster areas. BuildStrong is a coal-

tion of insurers, insurance associations, business and consumer organizations and emergency management officials that support the enactment and enforcement of stronger building codes.

Bill would allow nonprofits to cover property in RRGs

■ In a new effort to further expand risk retention groups, legislation introduced by Reps. Dennis Ross, R-Fla., and Ed Perlmutter, D-Colo., would allow certain RRGs to cover policyholders' property risks. The measure, H.R. 3794, would allow RRGs to write property coverages for policyholders that are nonprofit organizations with tax-exempt status, or educational institutions and educational-related institutions that are nonprofit organizations or governmental entities. The expansion of coverage would be available to RRGs that have been operating for at least 10 years, while the RRG would have to maintain capital and surplus of at least \$10 million. The legislation also only would allow adding property coverage as long as the total insured value of risks of any individual policyholder insured by the RRG does not exceed \$50 million. Currently, there are about 235 RRGs.

Chubb profit up, Ace profit down heading toward merger

■ Chubb reported net income of \$601 million for 2015's third quarter, up 1.2% from \$594 million in the third quarter of 2014. Net written premiums were \$3.2 billion in the quarter, the same as in the prior-year period, the Warren, New Jersey-based insurer said in a statement. Operating income was \$547 million in the quarter, up 4.8% from the same period last year, the company said. The combined ratio improved to 83.3% from 85.8% in the prior-year quarter. Meanwhile, Ace Ltd.'s net income for the third quarter dropped 32.7% from that of the same period in 2014 to \$528 million, primarily because of foreign exchange and investment-related issues, the insurer reported. Ace posted net written premiums of \$4.22 billion, a less than half-percent decrease from that of the same period a year earlier. The company's combined ratio improved to 85.9% for the quarter from 86.3% during the same period in 2014. During an earnings conference call, Ace Chairman and CEO Evan Greenberg said Ace is "on track" to get all necessary approvals to complete its acquisition of Chubb by early next year. "Very good progress" has been made in integrating the planning process of the two insurers, and Ace is "establishing teams to work on future growth initiatives," he said.

Retired AIG executive Tom Tizzio dies at 77

■ Former American International Group Inc. Vice Chairman Thomas R. Tizzio has died at the age of 77. According to an obituary published in the Asbury Park Press of Asbury Park, New Jersey, Mr. Tizzio died from cancer on Oct. 20. A resident of Middletown, New Jersey, he retired as AIG's senior vice chairman of general insurance in 2006 after a career with AIG that lasted more than 38 years. "I am very sad to learn of the passing of Tom Tizzio," said former AIG CEO Maurice R. Greenberg in a statement. "Tom was a pioneer in the insurance industry, and we worked together for many years." An AIG spokesman said in an email: "We extend our deepest sympathy to the Tizzio family." Mr. Tizzio is survived by his wife Mary Ann, three

children and seven grandchildren, according to the obituary.

Hanover Insurance's David Greenfield dies

■ Hanover Insurance Group Inc.'s chief financial officer, David B. Greenfield, died Oct. 17 at age 53. The Worcester, Massachusetts-based insurer said Mr. Greenfield died "following a health event," but did not elaborate; a local news report said he died after undergoing emergency cardiac surgery. Mr. Greenfield joined Hanover in 2010 and was named executive vice president and CFO in 2011. He had previously served as executive vice president and CFO of Pembroke, Bermuda-based Axis Capital Holdings Ltd. "David was a loving husband and father, a leader, a colleague, a tireless mentor and a friend. He made an indelible mark on our company," Hanover President and CEO Frederick H. Eppinger said in the statement.

U.S. announces task force to develop drone registry

■ The Obama administration has formed a task force to develop a new federal register for the owners of unmanned aerial systems. The task force of both private sector and government officials is charged with recommending by Nov. 20 a process for drone registration that federal authorities hope to have in place before the Christmas holiday, when more than 1 million drones are expected to be purchased by consumers. "We're going to require operators of drones to register their aircraft," U.S. Transportation Secretary Anthony Foxx said at a news conference. The registry would apply not only to new drone sales, but also to drones already in use, officials said. Officials said a registry would help authorities identify the operators of rogue drones, a difficult task.

Reuters

Congressmen ask DOL to address workers compensation changes

■ A group of U.S. Senate and House members has asked the U.S. Department of Labor to increase federal scrutiny of state workers compensation programs following recent national news reports by National Public Radio and investigative journalism website ProPublica Inc. detailing workers comp benefit cuts and opt-out programs. In a letter addressed to Labor Secretary Thomas E. Perez, the group of 10 congressmen says that they are "concerned about a pattern of detrimental changes to state workers' compensation laws and the resulting cost shift to public programs like Social Security Disability Insurance," according to a copy posted to the Senate's website.

Interest in stand-alone cyber insurance surges

■ The number of U.S.-based Marsh L.L.C. clients purchasing stand-alone cyber insurance increased 32% for the first half of 2015 compared with the first half of 2014, the brokerage said in a benchmarking report. Power and utility companies increased their takeup rate to 19% from 9%, while universities and other education organizations increased takeup to 36% from 19%. Health care organizations had the highest takeup rates by sector in the first half at 41%, compared with 37% at the end of 2014's first half.

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Lloyd's CEO Inga Beale receives LGBT award

■ Inga Beale, CEO of Lloyd's of London, has been named the world's most inspiring LGBT business executive for 2015 by nonprofit business network OUTstanding. Ms. Beale, the first female CEO in Lloyd's more than 300-year history, "is one of the few — perhaps the only — openly bisexual business leaders at her level," OUTstanding said in a statement. Among other things, Ms. Beale has introduced a strategic diversity and inclusion group at Lloyd's.

Lloyd's, Chinese insurer seek closer ties

■ Lloyd's of London and China Taiping Insurance Group Ltd. have signed a memorandum of understanding to establish a broader and closer relationship. Under the terms of the memorandum, Lloyd's and China Taiping will "commit to achieve complementary and collaborative development of local and global markets." Lloyd's said it would support China Taiping's reinsurance arm's effort to become a member of Lloyd's and establish a Lloyd's syndicate, as well as Taiping Reinsurance Brokers Ltd.'s initiative to become a registered Lloyd's broker. For its part, China Taiping said it would support Lloyd's in developing and expanding its business with Chinese companies.

China tried to hack U.S. after cyber pact


■ Hackers associated with the Chinese government have tried to penetrate at least seven U.S. companies in the three weeks since Washington and Beijing agreed not to spy on each other for commercial reasons, according to U.S. security firm CrowdStrike Inc. The company said software it placed at five U.S. technology and two pharmaceutical companies had detected and rebuffed the attacks, which began on Sept. 26. On Sept. 25, President Barack Obama said he and Chinese President Xi Jinping had agreed that neither government would knowingly support cyber theft of corporate secrets to support domestic businesses.

Reuters

Former Aon exec joins Lloyd's broker

■ Former Aon UK CEO Dennis Mahoney has been named to the

PROFILE: ANGOLA

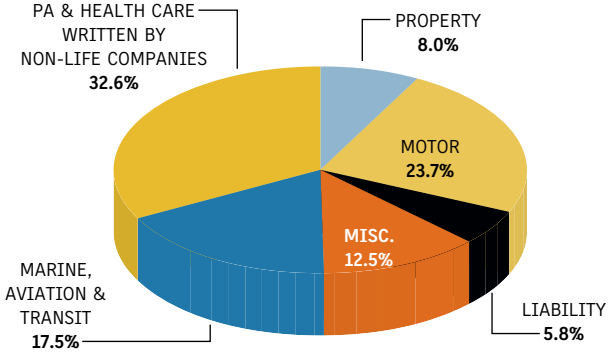


\$670
MILLION

◀ 2013 P/C gross premiums

Big storms are common in the former Portuguese colony, particularly in the rainy season, generally from late fall to early spring, with regular flooding in the southern regions. Other than that, natural threats including wind and earthquake take a back seat to the caprices of the crude oil market, from which Angola derives 40% of gross domestic product and 60% of government revenue.

MARKET SHARE



Category	Share (%)
PA & HEALTH CARE WRITTEN BY NON-LIFE COMPANIES	32.6%
MOTOR	23.7%
MARINE, AVIATION & TRANSIT	17.5%
MISC.	12.5%
LIABILITY	5.8%
PROPERTY	8.0%

Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

AREA

481,354

square miles

POPULATION

24.38

million

GLOBAL P/C MARKET RANKING

70

2015 GDP CHANGE (PROJECTED)

3.4%

COMPULSORY INSURANCE

- Workers compensation
- Professional indemnity for insurance and reinsurance brokers
- Marine cargo imports
- Public liability for motor sports on public roads
- Financial guarantee and public liability for sectors likely to generate pollution

NONADMITTED

Unauthorized insurers cannot carry on insurance activity in Angola except for contracts placed aboard with the approval of ARSEG for cover unavailable locally because of the risk or specialty.

INTERMEDIARIES

Agents and brokers have to be authorized, and intermediaries cannot place business with nonadmitted insurers without ARSEG approval. Brokers involved in nonadmitted placements do not have to warn buyers that their insurer is not subject to local supervision.

MARKET PRACTICE

Considerable cover traditionally has been placed in regional and overseas carriers. Fronting is widely practiced, especially by companies that retain a meaningful part of the business.

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

newly created position of executive chairman of Lloyd's of London broker RFIB Holdings Ltd. His appointment came on the heels of San Francisco-based private equity firm Calera Capital's acquisition of a majority stake in London-based RFIB. Terms of the transaction were not disclosed. Mr. Mahoney is based in Bermuda, with global responsibilities.

Wrongful death suit filed after El Faro sinking

■ A lawsuit seeking \$100 million for negligence and wrongful death has been filed by the family of a crew member missing from the El Faro cargo ship, which sank off the Bahamas during Hurricane Joaquin earlier this month. Lawyers representing the estate of Lonnie Jordan, one of the 33 crew members presumed dead after El

Faro went missing en route to Puerto Rico, filed suit against Jacksonville, Florida-based TOTE Services Inc. and TOTE Maritime Puerto Rico, which operated the vessel, and Michael Davidson, the ship's captain. Saltchuk Inc., the ultimate parent company of TOTE, is a member of the Steamship Mutual protection and indemnity club. Sources said that international insurers including Allianz S.E., QBE Insurance Group P.L.C. and XL Catlin.

Insurers centralize reinsurance buys

■ Many large European insurers have continued to centralize their reinsurance buying and are purchasing less reinsurance, according to a report published by Standard & Poor's Corp. But some are

taking advantage of competitive reinsurance market conditions to buy multiyear, multiperil coverage or increase their protection for high-severity risks, the New York-based rating agency said. A "clear trend has developed, particularly among larger insurance groups, to centralize and combine reinsurance purchasing within a group structure," S&P said in the report, "The Latest Twists In the Co-Evolution of European Insurers and Reinsurers." Large insurers such as Allianz S.E. and Zurich Insurance Group Ltd. have created their own group entities to approach the market from a more centralized perspective, the report said.

Irish court orders Facebook data probe

■ Ireland's High Court has ordered an investigation into Face-

book Inc.'s transfer of European Union users' data to the United States to make sure personal privacy was properly protected. The court told the Irish Data Protection Commissioner to investigate following a landmark ruling by the European Court of Justice earlier this month that struck down the safe harbor agreement that had allowed the free transfer of data between the European Union and the United States. Both the ECJ decision and Tuesday's ruling were the result of a challenge by Austrian law student Max Schrems, lodged after revelations in 2013 of the U.S. government's Prism program, which allowed private information directly from big tech firms like Facebook and Google Inc. The initial challenge was made in Ireland because Facebook has its European headquarters in Dublin

Reuters

MARKET DEVELOPMENTS

UPDATED MAY 2015

- The Angolan Insurance Regulatory and Supervisory Agency (ARSEG) is considering requiring that part of an insurer's assets be in property to allow authorities to appropriate them if the insurer leaves Angola or fails.
- Rules that took effect in April require insurers and pension fund managers to report suspicious activity in compliance with the Anti-Money Laundering and Financing of Terrorism Act.
- On Nov. 30, Angola and the U.S. signed a deal under the U.S. Foreign Account Tax Compliance Act 2010 that requires financial institutions abroad to report to the IRS information on accounts held by U.S. taxpayers.
- Banco BIC has established the first bank-owned insurer in Angola, BIC Seguros S.A. Chinese financial group Fosun International Ltd. has bought Universal Seguros S.A. from Caixa Seguros e Saude SGPS S.A. in Portugal. The sale of the state's stake in Empresa Nacional de Seguros e Resseguros de Angola has been delayed.

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EMPLOYERS EXPECTED TO KEEP SHIFTING PENSION RISKS

Q This month, two major pension de-risking deals were announced after what seemed to be a lull. Retailer J.C. Penney Co. Inc. and the U.S. subsidiary of Dutch technology company Royal Philips shifted obligations to insurers including Prudential. Why is such de-risking activity picking up?

A While larger deals tend to be somewhat episodic, there have been underlying pension de-risking trends. Since 2012, there have been some 500 lump-sum transactions and over \$60 billion in annuity purchases from major insurance companies. The headlines are often spread out and center on the large deals. In fact, this has been an underlying trend for a number of years.

Q What are the key factors that have driven employers to de-risk their pension plans?

A Broadly speaking, there is a desire to reduce risk. For many plan sponsors — but not all — there is a desire to work their way out of the pension business.

When you think about the mechanisms to get out of the pension

Q&A

business, effectively, there are really only two paths to do so: One is to offer lump sums to participants, while the other is to purchase an annuity contract from an insurance company.

Q What are the pros and cons of each de-risking approach?

A Lump sums provide participants an option to decide to either continue with their annuity benefit or to take the lump sum and effectively manage the money themselves.

The annuity purchase is more of a business transaction, where an

organization is trying to get out of or away from the pension business.

On the one hand, one approach is about giving participants options. The other approach is about transferring the responsibility to manage pensions to organizations that have been and will be in that business for a long time.

Q What kind of premium can employers expect to pay when they transfer pension liabilities to an insurer through the purchase of an annuity?

A The premium issue is one of the biggest misnomers in the marketplace today. There is no typical premium. We have seen a wide range of premiums, which depend on the specifics of the group and the underlying factors that are driving the liability measurement.

Q How competitive is the market? How many insurers are taking on these kinds of risks?

A The market is very competitive in certain spots and a challenge in other spots. Certainly, for retirees with immediate annuities,



MATT HERRMANN

TOWERS WATSON & CO.

office of Towers Watson & Co., discussed these and other pension de-risking issues. Edited excerpts follow.

Hardly a week goes by without a corporation announcing that it is de-risking its pension plan, either by shifting the liability to provide promised benefits to an insurer through a group annuity or giving certain participants the option to convert their annuity benefit to a cash lump sum. In an interview with *Business Insurance* Editor-at-Large Jerry Geisel, Matt Herrmann, a senior consultant in the St. Louis

there is a significant amount of competition where you can get up to 10 bidders in certain situations. For deferred liabilities, those placements and that marketplace can be a lot more challenging.

Q Is there a typical takeup rate for converting to a cash lump sum?

A While a lot depends on very specific facts and circumstances, a general takeup range might be between 50% and 60%. But there are a number of factors that can make takeup rates materially higher or lower. For exam-

ple, lump-sum size can be a material factor, while the age also of a participant also can be a factor.

Q The IRS has closed the door on annuity-to-lump-sum conversion offers to participants currently receiving monthly benefits. How common were such offers?

A They were not very common. If we are talking about 500 employer conversion offers to participants who had not yet started to receive benefits, there were less than 20 offers to participants already receiving benefits.

COMINGS & GOINGS

UP CLOSE: STEPHEN MOLL

HOUSTON-BASED PARTNER IN THE INSURANCE RECOVERY GROUP

Reed Smith L.L.P.

PREVIOUS POSITION: Houston-based partner with Gardere Wynne Sewell L.L.P.

LOOKING FORWARD TO: Working with a strategic-focused law firm and one of the largest and best insurance recovery groups in the world.

GOALS FOR NEW POSITION: Building a vibrant insurance recovery group in Houston.

CHALLENGES FACING INDUSTRY: More cyber liability issues. Virtually all crime will not be seen in the world of physical assets, but in the cyber world.

FIRST INDUSTRY JOB: Handling and later supervising property claims for one of the nation's largest casualty insurers, Farmers Insurance Group of Cos.

WHAT SURPRISED ME: The propensity of people to lie, even under oath.

ADVICE: Do the right thing, even when no one's looking.

OUTSIDE THE INDUSTRY, A DREAM JOB: Serving on a Mercy Ship.



HOBBIES: Sailing, cycling (and) woodworking. Did I mention sailing?

THING MOST PEOPLE DON'T KNOW ABOUT ME: I once put out a fire on a motorboat after the rest of the crew had abandoned ship.

WHEN I RETIRE: I want to continue doing good work, perhaps for a faith-based organization, and, yes, more sailing.

FAVORITE MEAL: Good food with even better friends, perhaps a bottle of wine, sitting in the cockpit of a sailboat.

CAN'T-MISS TELEVISION SHOW: None. I never get to the end of a year and wish I had watched more television. My advice: Turn off the television and go have some real-life adventures.

BEST CITY: Houston, a city that celebrates the ethnic diversity of its citizens and rewards ability rather than lineage.

ON A SATURDAY AFTERNOON: Sailing with friends.

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John Drzik



Mike Rogers

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John Drzik | *President, Global Risk & Specialties, Marsh LLC*

- **Cybersecurity, Counterterrorism and National Policy:**

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EDITORIAL

PAYING UPFRONT FOR RESILIENCY

There's a lot to like in the BuildStrong Coalition's call for a national resiliency effort. Probably the best thing about it is that it's grounded in the epitome of common sense — the notion that it's better to spend money on mitigating the impact of disasters than paying a lot more money in emergency relief after disasters strike.

Among other things, the report — “Ending the Cycle of Destruction: The U.S. Should Invest More Before Disasters Through a National Mitigation Strategy” — calls for the federal government to use some unspent funds allocated to government agencies other than the Federal Emergency Management Agency in the wake of 2012's Superstorm Sandy to pay for a new national resiliency effort. This includes a new building code grant program and increased funding for FEMA's predisaster mitigation activities. The report also calls for enactment of several pieces of legislation that would create resilient construction incentives for states, builders and individual homeowners.

The sad truth is, the United States cannot continue to follow a post-catastrophe strategy of repeatedly rebuilding and repairing in the wake of catastrophes. The National Flood Insurance Program alone — which responds to catastrophes — is more than \$20 billion in the red. Added on top of that are all of the emergency relief outlays that follow any disaster. In an era of tight budgets, persistent deficits and increasing debt, any way to prevent unnecessary government spending deserves serious attention.

There will always be situations where the government will have to provide post-catastrophe relief. But a national resilience strategy emphasizing resiliency through comprehensive, effective and well-enforced building codes would decrease the need for such relief. And it doesn't stop there. In the face of locations suffering repeated disasters, there needs to be a close look at whether some structures should even be rebuilt where they once stood.

An effective strategy won't come free, as the BuildStrong Coalition report recognizes. By using previously allocated money, though, a strategy can be implemented without additional burdens.

It's more effective to pay upfront to protect against catastrophe than to pay much more to clean up after catastrophe strikes. That's just a matter of common sense — and fiscal prudence.

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SCHILLERSTROM



COMMENTARY

INDUSTRY CONFRONTS A HEAD-HUNTING NIGHTMARE

It's almost Halloween, and a specter is haunting the property/casualty insurance industry. But this specter doesn't respect the calendar — it haunts the industry every day of the year, and it grows more frightening every day.

The specter is that of a shrinking talent pool to fill industry jobs. It's a topic that comes up at every industry gathering. Sometimes it merits a panel session or a prominent speaker; other times it comes up over drinks after a day's formal agenda has ended. But no matter what the setting, the concern is there, and it's real.

And it should be. Face it: There's a finite pool of talent, and the industry hasn't done the job it should in tapping it. With more and more members of the baby boomer generation cashing their first Social Security checks every month, the issue of replacing them becomes ever more critical.

In fairness, the insurance industry labors under some heavy burdens, not all of which it deserves, when it comes to filling its ranks. The industry suffers from a caricature image as hucksteresque enterprise — some are old enough to remember the scene in the Woody Allen movie “Take the Money and Run,” where the hapless Virgil Starkwell is punished by being put in a prison steam box with a life insurance salesman.

And if the industry isn't viewed as a joke, it's viewed as a boring distant cousin of the financial services industry. It's a drab Main Street endeavor competing against a far more glamorous Wall Street.

It was evident during conversations at both the recent MarketScout Entrepreneurial Insurance Symposium and the Council of Insurance Agents & Bro-



MARK A. HOFMANN

SENIOR EDITOR

kers Insurance Leadership Forum that the industry has to overcome these perceptions, and do so quickly. The catch — and of course there's always a catch — is that there's no single approach to solve the industry's demographic problem.

Only a multipronged strategy holds any real hope of meeting the challenge. One prong is encouraging risk management and insurance

programs at the collegiate level. Supporting such efforts can mean providing internships or other work-while-learning opportunities.

The talent pool doesn't end with risk management and insurance majors — liberal arts majors and others can learn the insurance business as well. And students at four-year educational institutions aren't the only source of talent, either. “Apprenticeship” programs that recruit from two-year community colleges can pay off as well.

Pulling those in the workforce from noninsurance backgrounds adds new perspectives to the business. In the past 30 years, I've met risk managers who didn't enter the field until years after they'd earned their livings in such diverse fields as engineering and law enforcement.

Skilled people are out there, they just have to be cultivated. Only then can the specter of the ever-shrinking talent pool be consigned to the oblivion it deserves.

Runoff business faces myriad complications

Despite a large amount of reserves in discontinued insurance lines and ample specialists at the ready to assume them, the runoff business is mired in cumbersome processes and arcane regulation. Sean Keyvan, a partner with Sidley Austin L.L.P. in Chicago, discusses the need for effective state laws to facilitate the transfer process while protecting policyholders' rights.

There are hundreds of billions of dollars worth of insurance reserves in discontinued books of business throughout the United States — and a growing number of runoff specialists that stand willing to acquire them. Amid the burgeoning market for runoff blocks, insurers are increasingly seeking strategies to transfer them to third parties who may be better equipped to administer legacy business.

Though the decision to discontinue a line of business may be a sound long-term strategy for many insurers, managing runoff blocks can present substantial challenges. Runoff blocks can drain the resources of an insurer, divert time and capital from profitable products and quickly become a distraction, especially given insurers' increasingly stringent capital requirements. Further, it becomes more difficult to retain qualified staff as policies mature and the block shrinks over time. For these reasons, insurers can be expected to continue their pursuit of exit mechanisms from claims exposure associated with legacy business.

Runoff specialists have not hesitated to capitalize on these realities, and in many ways, the transfer of closed blocks can create economic efficiencies for the insurance industry. Legacy business may take on a very different character when held by runoff acquirers who have expertise in certain long-tail risks and will likely manage runoff blocks more actively than carriers that relegate them to a lower priority.

Despite the benefits that the transfer of closed blocks may provide, insurers' efforts in this area have been somewhat stymied by limited legal avenues available to pursue such transactions. In general, insurers in the United States have traditionally shed their legacy blocks through the sale of insurance companies, the use of indemnity reinsurance and the transfer of individual policies through assumption reinsurance. However, none of these mechanisms provides a comprehensive solution to many runoff transfer issues, and therefore cannot meet the demands of the growing runoff market.

Though the sale of an insurance company may provide the cleanest break from a discontinued business, it is not always practical. The runoff block may not be isolated in a single legal entity with no other active business, and buyers may be reluctant to take on liabilities other than those

relating to the target business.

Indemnity reinsurance does not allow for clean transfers either, as ceding insurers remain primarily liable to policyholders, so they must bear the credit risk of a reinsurer's default. Also, the cedent must continue to administer the runoff business or allow the reinsurer to administer without contractual or regulatory responsibility for it.

Assumption reinsurance, on the other hand, may provide finality because it releases the insurer from liability. But the assumption process is cumbersome, lengthy and costly, and there is no guarantee that all policies will be transferred even if an insurer meets statutory requirements. Complicating matters is a disparate patchwork of state laws that governs assumption reinsurance in the United States. Moreover, many states do not pro-

Of paramount importance to any successful runoff transfer mechanism, is, of course, the protection of policyholders.

vide explicit authority or guidance with respect to assumption reinsurance.

Regulators in some U.S. jurisdictions have begun to recognize the need for reform in this space and have fashioned statutory mechanisms for certain runoff structures.

Under a 2002 law, Rhode Island, for example, allows for the voluntary restructuring of the runoff commercial business of a solvent insurer (workers' compensation, life and health policies and personal lines are expressly excluded). This past August, Rhode Island amended its regulations to allow any commercial insurer (domiciled in Rhode Island or not) to transfer runoff business to Rhode Island-domiciled insurers through a court-ordered process. Policyholders are protected by broad notice and threshold consent requirements that must be met before a transfer can occur, and the cedent must demonstrate that the reinsurer can satisfy obligations to policyholders.

Similarly, a Vermont statute allows for the transfer of legacy business, albeit through a regulatory approval process.

Similar procedures for the transfer of legacy

business have been available for some time in the United Kingdom in the form of Part VII Transfers and solvent schemes of arrangement. But the advent of uniform, nationwide regulation with respect to the transfer of closed blocks in the U.K. highlights the obvious hurdles in establishing similar mechanisms in the U.S., where insurance is primarily regulated at the state level.

Notwithstanding the efforts in Rhode Island and Vermont, the utility of these statutes with respect to the larger runoff market remains to be seen. As a threshold matter, such transfers are available only in Vermont and Rhode Island, where relatively few insurance companies are domiciled. In addition, the application of the Rhode Island and Vermont statutes to non-domestic insurers and non-resident policyholders is questionable. So it remains unclear whether such transfers are enforceable across state lines — they may be challenged on jurisdictional and due process grounds (can the laws of one state alter the rights of non-resident policyholders?) as well as conflicts of law principles (can the laws of one state affect contracts governed by the laws of another state?). For insurers with policyholders in multiple states, this lack of clarity may limit the practical utility of these statutes.

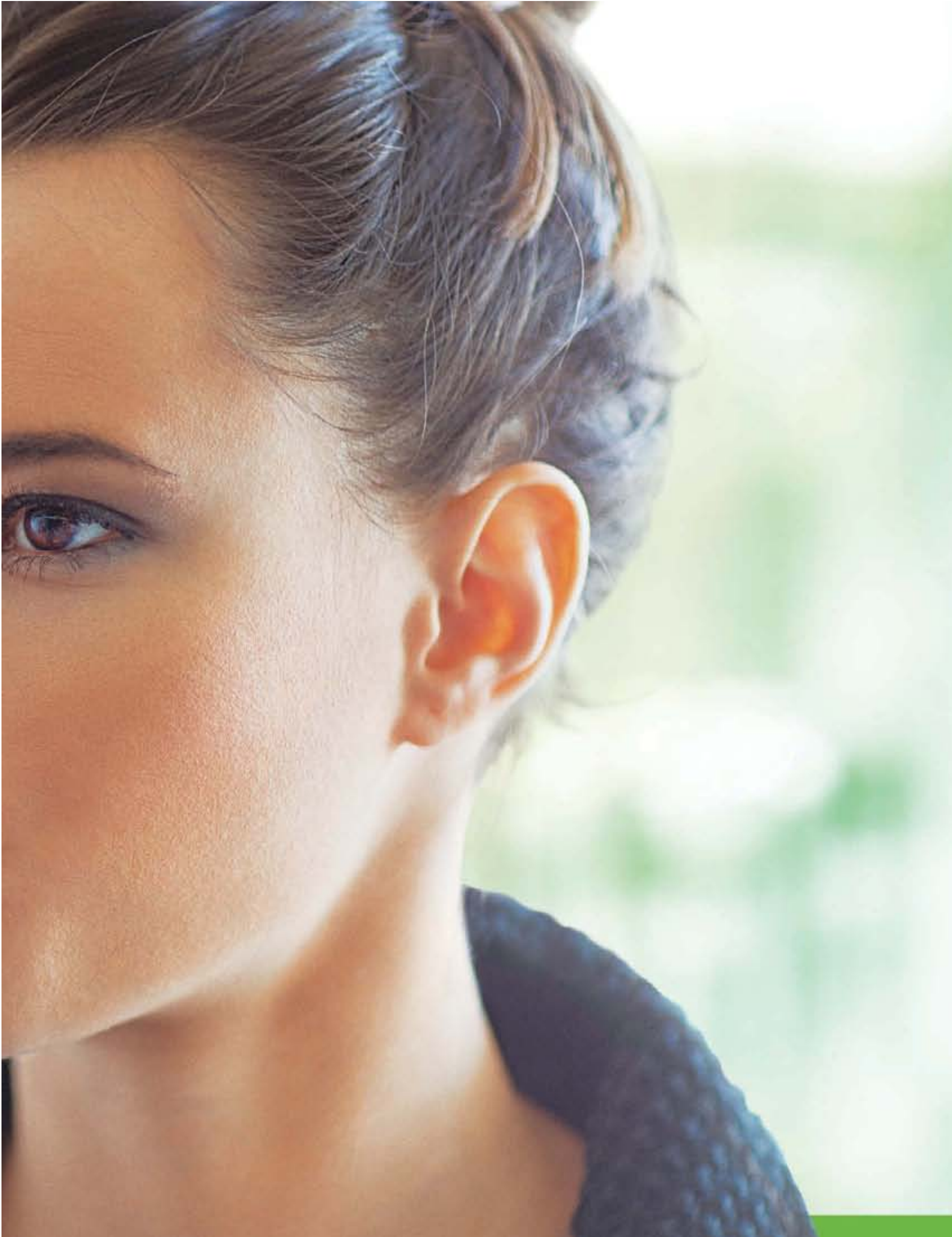
Moreover, any statutory transfer scheme may trigger constitutional concerns (including impairment of contract and due process considerations) even with robust notice requirements. Although at least one court has ruled that a restructuring under the Rhode Island statute did not “substantially impair” the rights of policyholders so as to violate the Contracts Clause of the U.S. Constitution, other courts may disagree. Policyholders' rights under the U.S. Constitution and state law equivalents add to the complexity of the situation.

A comprehensive, coordinated and uniform mechanism for the transfer of legacy blocks is therefore necessary. Such a holistic approach would benefit the insurance industry generally, and policyholders (who have an interest in ensuring that their rights are protected), in particular. Because regulatory uniformity among the states is essential to the success of any system allowing for the transfer of legacy business, the National Association of Insurance Commissioners is perhaps most qualified to lead the effort. Absent uniform treatment of legacy transfers among the states, effective exits for primary insurers will be difficult to attain.

Of paramount importance to any successful runoff transfer mechanism, is, of course, the protection of policyholders. This can be achieved by ensuring that assuming insurers honor the contractual obligations to each insured. As such, runoff transfer mechanics must be established with an eye toward policyholder protection (as demonstrated by Rhode Island and Vermont), and any such approach must safeguard against the material impairment of the rights of policyholder under the transferred policies.



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Reinsurance

Market Report

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Reinsurers hit doldrums

But competitive market, weakening demand spawn creative strategies

BY DOUGLAS McLEOD

Demand for traditional reinsurance remains weak among large ceding insurers and even some midsize companies despite soft pricing, leaving reinsurers looking for new ways to make up lost revenue.

Increasingly sophisticated buyers are retaining more of their risks, consolidating subsidiaries' programs, shifting from quota-share to excess-of-loss agreements and using alternative capacity, among other moves, market sources say.

The percentage of U.S. property/casualty premiums ceded to reinsurers, sliding since 2011, totaled 12.9% of direct written premium in 2014, the lowest since 2000, according to a Moody's Investors Service analysis of SNL Financial data (see

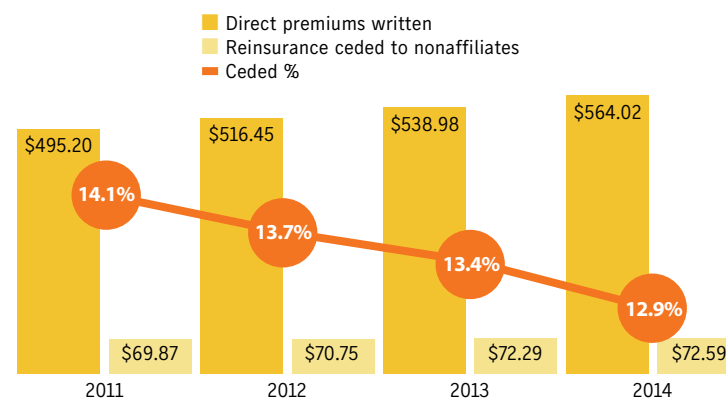
chart). The decline continues to pressure reinsurers already coping with overcapacity and fierce competition, Moody's said in a September outlook on the 2016 reinsurance market.

While there are some bright spots, including rising Florida property catastrophe business, "more generally, we will see less purchasing of reinsurance," said Brian C. Schneider, a senior director at Fitch Ratings Inc. in Chicago.

That is leaving reinsurers looking to new coverage lines, such as mortgage credit risks, cyber risks, and stricter insurer capital requirements to spur growth. They also are offering terms, including multiyear policies, that are more competitive with insurance-linked securities and other forms of alternative capacity, sources say.

DECLINING SHARE

While the premium dollars U.S. property/casualty insurers have ceded to reinsurers increased slightly since 2011, the portion of premiums ceded fell steadily through 2014. In billions of dollars.



Source: SNL Financial L.C.

"I think we are seeing demand emerging in places people weren't expecting even a year ago," said Bryon Ehrhart, CEO of Aon Benfield Americas in Chicago.

Large insurers have pared reinsurance programs for several years, in part to hold onto more profitable business in a slow-growth economy, observers say.

Chicago-based CNA Financial Corp., for example, has long consolidated subsidiaries' reinsurance programs to cut costs, raised retentions in some lines and abandoned quota-share for less expensive excess coverage, absorbing the more frequent, lower level loss exposure of the quota-share agreements, said Mark Verheyen, chief risk officer.

The trend among large insurers has moved from quota-share to excess-of-loss to progressively higher excess attachment points, he said.

In a more complex move, Ace Ltd. and investment bank BlackRock Inc. earlier this year established ABR Reinsurance Ltd. with \$800 million raised in a private placement. ABR Re will assume part of treaties covering Ace's primary insurance, removing that business from the professional

MULTIYEAR CONTRACTS GIVE TRADITIONAL REINSURERS A COMPETITIVE OPTION

Traditional reinsurers are offering more multiyear treaties as they compete with the insurance-linked securities market.

“Looking ahead to 2016, pretty much all markets will offer multiyear coverage, although the capacity available is clearly a function of price,” said James Kent, president of Willis Re North America in New York.

The traditional market has “come to terms” with the need to offer multiyear contracts, said Bryon Ehrhart, CEO Aon Benfield Americas in Chicago.

Northbrook, Illinois-based All-

state Corp. renewed its \$4.42 billion per occurrence excess property catastrophe program as of June 1 with traditional reinsurers, which offered better pricing and terms than the ILS market, an Allstate spokesman said. The lower layers consist of one-, two- and three-year policies, and upper layers include terms of up to seven years, according to Allstate.

Large multiyear reinsurance programs typically have staggered expiration dates, in part to keep the program from being exposed to pricing conditions at any one renewal date, said John Beckman,

chief underwriting officer at CNA Financial Corp. in Chicago, which he said negotiated its own multiyear cat cover the past two years.

The programs aren’t limited to the largest ceding insurers.

New York-based Assurant Inc. added traditional multiyear policies for a small percentage of its per occurrence cat program for the first time in 2013, according to company reports.

By this year’s renewal, the traditional multiyear component had grown to about 18% of Assurant’s \$1.47 billion in limits, along with traditional annual policies, cat

bond coverage and collateralized reinsurance.

Along with per risk excess cat covers, Moody’s Investors Service Inc. sees traditional reinsurers pressured to write multiyear aggregate reinsurance, following similar features of some cat bonds.

“Some reinsurers are likely to build up risk accumulations, through multiyear and multiperil policies, which could lead to higher losses in the event of elevated severity or frequency of insured catastrophes,” Moody’s warned in its 2016 reinsurance outlook.

Some multiyear deals have

already had an impact.

Bermuda-based Axis Capital Holdings Ltd. cited multiyear treaties in 2014 as one reason for an 11% decline in gross written reinsurance premiums in the first half of this year. London-based reinsurer Lancashire Holdings Ltd. similarly blamed multiyear policies for its first-half drop in written premiums.

Lancashire wrote a “significant number” of multiyear reinsurance deals in 2014 “precisely to mitigate the expected continued pricing declines,” it said in July.

By Douglas McLeod

reinsurance market and boosting underwriting profits for Ace, a 10% owner of ABR Re, market sources said.

“ABR Re is not the first hedge fund-backed reinsurer, but its registration highlights more momentum toward shortening the chain between the capital market and insurers, bypassing intermediaries and putting pressure on established reinsurers,” Standard & Poor’s Corp. said in a September analysis.

While sources note that only a handful of large insurers have the premium volume to support a vehicle like ABR Re, some midsize insurers are following some steps of their larger competitors.

Fort Lauderdale, Florida-based Universal Insurance Holdings Inc., which writes homeowners’ coverage in Florida and eight other states, eliminated its quota-share reinsurance during its June 1 property catastrophe renewal, it reported in filings with the Security and Exchange Commission.

“We expect to increase our overall profitability by retaining more premium,” Universal said in the filings.

Heritage Insurance Holdings Inc. similarly said it had shifted to excess coverage for its property cat placements with traditional reinsurers. While the fast-growing Clearwater, Florida, insurer increased its traditional reinsurance limits each year since 2013, it also increased its retention for the first cat event to \$35 million this year from \$9 million in 2013, and added cat bond coverage last year to its program, which now totals \$1.76 billion in limits, according to its SEC filings.

Midsize and smaller insurers also are using collateralized reinsurance more often to replace traditional reinsurance, Fitch’s Mr. Schneider said.

But not everyone sees demand falling among midsized cedents.

“The market is bifurcated,” said James Kent, president of Willis Re North America in New York. While demand from national and global insurers may be flat, “demand is actually increasing from the regional and specialty companies who are not only more

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See **BUYING** next page



The National Railroad Passenger Corp., (Amtrak), secured \$275 million in storm surge protection for just over three years with the PennUnion Re Ltd., 2015-1 catastrophe bond. U.S. perils account for the majority of insured risk.

Insurance-linked securities gain traction as private bond placements take hold

China market tapped for first time with \$50 million earthquake cat bond

BY MATTHEW LERNER

The insurance-linked securities market is benefitting from growth in the private placement market and expansion into new geographies and perils.

"We continue to see the growth of the private catastrophe bond market," said Bill Dubinsky, head of ILS at Willis Capital Markets & Advisory in New York. "With the private placements, there's a lot of innovation."

"The private cat bond market has grown exponentially in recent years," said Cory Anger, global head of ILS structuring at GC Securities in New York.

Total catastrophe bonds outstanding as of the end of the second quarter equal \$23.47 billion, according to Aon Securities.

Smaller issues and a less costly and time-consuming process appeal to many potential catastrophe bond players.

"The growth of the private cat bond market is a function of sponsors with lower-limit needs seeking to access capital market investors to gain the same benefits as larger sponsors using 144A (public market) cat bonds," Ms. Anger said.

Growing private placements' "ease of execution is definitely part of it, as is the ability to execute on a smaller notional limit," said Paul Schultz, president and CEO of Aon Securities in Chicago.

The private market includes buyers looking to achieve coverage like a 144A-fully distributed catastrophe bond, but on a "light" basis, meaning less expense and time, Mr. Dubinsky said.

"What you're seeing with the private deals is some of the midsize clients that have expressed an interest to pursue this kind of strategy, coming to market in private deals versus the 144A deals," said Mr. Schultz.

But private placements "could slow the growth of the 144A market," said Gary Martucci, a director at Standard & Poor's Corp. in New York. "If you can do it quicker and cheap-

er and you are providing the collateral, that's going to be the way to go for a lot of the companies looking for limited amounts of reinsurance. The transaction costs tend to be lower, but then again so are the issuance amounts."

New perils and locales also are helping the sector.

July's Panda Re Ltd. placement is the first cat bond covering Chinese perils, with \$50 million of fully collateralized reinsurance against earthquake losses for sponsor China Property & Casualty Reinsurance Co. Ltd.

"We've certainly seen a couple of new types of perils come in, and China is an example of that," said Mr. Schultz.

More recently, The National Railroad Passenger Corp., (Amtrak), secured \$275 million in

"There are always new perils in the works, and those are the ones I am most excited about."

Michael Pinsel, Sidley Austin L.L.P.

storm surge protection for just over three years with the PennUnion Re Ltd., 2015-1 catastrophe bond, Amtrak's first use of capital markets to secure coverage. The bond uses a parametric trigger involving myriad wind, water height and even earthquake measurements.

"We continue to look for the same advances we've looked for the last several years, which is new geographies and new perils that would be entering the market," said Michael Pinsel, a partner at law firm Sidley Austin L.L.P. in the insurance and financial services group in Chicago and head of its property/casualty alternative risk transfer practice.

"We're always looking at China," he said. "It's a very catastrophe-exposed geography, and it's huge. It will not be too long before they get much more active in the ILS market."

The Panda Re bond is "a sign of what is to

come, and it will come," said Mr. Pinsel.

As reinsurance penetration grows in Asia and Latin America, "we believe it is a matter of time before these regions open up to alternative capital," said Ms. Anger, citing the Panda Re bond structured and placed by GC Securities. "We see Asia as a high-growth region and look forward to bringing similar bonds to the market in the future."

Geographically, the ILS market "more or less follows global premium in the global insurance and reinsurance markets and those shift gradually over time," said Mr. Dubinsky.

"For any peril, the quality of data and investors' comfort with modeling are the key factors in determining whether that peril will be introduced into the ILS market," said Mr. Pinsel. "New risks are harder to model. It takes a little time."

Modeling advances may enable more flood-related ILS activity.

"I think that given the amount at risk, flood is a potential covered peril going forward," said Mr. Martucci.

"I think we'll see more in the flood area," said Mr. Dubinsky. "There's a lot of underinsurance in the flood area and, as new models become available, that's something we'll see quite a bit more of."

Cyber risks also could be brought to the ILS market.

"There are always new perils in the works, and those are the ones I am most excited about," said Mr. Pinsel, citing cyber risks as an example.

For now, the ILS market remains "a U.S. hurricane-dominated asset class," said Mr. Martucci.

Among outstanding cat bonds as of the end of August, U.S. perils accounted for 77% of total risks: 54%, U.S. hurricanes; 21%, U.S. earthquake; and 2%, other U.S. perils, Mr. Schultz said.

The U.S. concentration of the ILS market "is not surprising given the U.S. is the largest insurance market in the world," Ms. Anger said.

BUYING

Continued from previous page

reliant on reinsurance for their capital management needs but are also in growth mode."

More competitive terms have also kept some large players in the traditional market. Allstate Corp. took bids for its June 1 personal lines and auto catastrophe renewal from ILS markets, but opted instead for more competitive proposals from traditional reinsurers, a spokesman confirmed. Several parts of the new program feature multiyear terms up to seven years, Allstate reported.

"Traditional reinsurers are starting to borrow underwriting terms from the ILS market in the forms of multiyear policies and inclusion of nonmodeled perils in traditional reinsurance treaties," S&P noted.

Florida and other cat-exposed coastal states are becoming a source of growth for traditional reinsurers, said Aon Benfield's Mr. Ehrhart.

Florida's state-run Citizens Property Insurance Corp. has accelerated its effort to turn over coverage to private insurers, increasing demand for traditional reinsurance support, he said. Earlier this year, the Florida Hurricane Catastrophe Fund for the first time placed \$1 billion in cat retrocessional cover with traditional reinsurers.

In search of new business, reinsurers are looking to U.S. government-sponsored mortgage lenders. Fannie Mae and Freddie Mac, for instance, have tapped reinsurers for credit risk coverage on mortgage portfolios. The programs, which now have about \$3 billion in annual limits, may grow to \$6 billion in limits and generate \$2 billion in annual premiums, according to Aon Benfield, which helped place the coverage.

In addition, stricter insurer capital requirements — including A.M. Best Co. Inc.'s impending capital adequacy ratio and the European Union's Solvency II standards — are likely to prompt ceding insurers to seek additional reinsurance support to maintain their ratings, market observers say.

Whether any of these factors increase property/casualty premiums ceded to reinsurers, though, remains to be seen.

Given soft rates, higher ceding commissions for quota-share placements and other competitive terms, "ceding companies should be looking to cede more, not keep more net," said Mark D. Lyons, executive vice president and chief financial officer at Bermuda-based Arch Capital Group Ltd. "The industry generally keeps more net at the wrong time."

Rates still low despite increase in reinsurer mergers

Capital remains abundant as companies aim for economies of scale, cedents retain risk

BY SARAH VEYSEY

Ongoing mergers among reinsurers may reduce buyer choice, but it also has helped keep reinsurance rates low.

At the same time, cedents have been reducing the number of reinsurers with which they do business, experts say.

A need for greater size and diverse business drove many recent deals that include the mergers of XL Group P.L.C. and Catlin Group Ltd., Mitsui Sumitomo Insurance Co. Ltd.'s acquisition of London-based Amlin P.L.C., and Exor S.p.A.'s purchase of PartnerRe Ltd., experts say.

In many cases, the mergers have been "responsible moves" that helped the companies gain needed scale or diversify, said Dennis Sugrue, a director of insurance ratings at Standard & Poor's Corp. in London.

But the deals have not removed a large amount of capital from the market, so intense competition for reinsurance business has not been greatly reduced, he said.

Indeed, the newly merged reinsurers may feel pressure to grow to justify their enlarged capital bases and result in more competition, Mr. Sugrue said.

Likely additional industry consolidation could involve London- or Bermuda-based reinsurers that want to increase scale and/or diversify their books of business, both of which are hard to achieve organically or involve investors from Asia, he said.

Mergers and acquisitions likely will continue as competitive pressures mount, particularly for small and medium-size reinsurers, said Brian Schneider, a director at Fitch Ratings Ltd. in Chicago.

In many cases, mergers may be driven by regulatory issues, such as Europe's Solvency II capital requirements that will take effect in January, as well as globalization and competitive market conditions, said Clive O'Connell, a partner at law firm Goldberg Segalla Global L.L.P. in London.

Two main factors are driving reinsurer M&As — the desire to expand a company's footprint and/or capitalize on prospective synergies, said Andrew Holderness, global head of the corporate insurance group at Clyde & Co. L.L.P. in London.

The consolidation has exacerbated a trend among buyers to use smaller panels of reinsurers, said Alex Moczarski, London-based president and CEO of Guy Carpenter & Co. L.L.C.

While some cedents may buy from fewer reinsurers because there are fewer reinsurers from which to buy, "it is not a straight equation," said Mr. Moczarski.

The increased competition should

work to cedents' advantage by letting them buy coverage for a good price, said Nick Frankland, London-based CEO of Europe, Middle East and Africa at Guy Carpenter.

The current M&A trend likely will not stop reinsurance rates from falling slightly further, said Martyn Street, senior director at Fitch Ratings in London.

Recent mergers represent about 8% of the reinsurance sector's ded-

icated capital, so they are not expected to have a major effect on rates, said David Flandro, head of analytics at JLT Re, the reinsurance arm of Jardine Lloyd Thompson Group P.L.C., in New York.

In the straight reinsurer M&As, capital returned to shareholders so far has not been "meaningful enough to change" the competitive market dynamics, said Bryon Ehrhart, CEO of Aon Benfield

Americas, a unit of Aon P.L.C.

As a company enlarged by a merger this year, XL Catlin sees advantages of greater scale, along with opportunities in certain product lines, such as credit and surety, and territories, such as Latin America, from the combined companies' expertise, said Greg Hendrick, CEO of reinsurance in Stamford, Connecticut.

Increasingly, reinsurers need

such scale and capacity to underwrite their customer's risks, said Denis Kessler, CEO of Paris-based reinsurer Scor S.E., and M&As are one route to achieve that as well as diversification.

While much of Scor's growth is organic, its 2013 acquisition of Generali USA Life Reassurance, for example, was based partly on greater diversification and size, he said.



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REINSURERS VIEW DIVERSIFICATION AS STRATEGY TO GROW IN TOUGH MARKET

Niche casualty lines may have potential to offset falling prices

BY MATTHEW LERNER

Reinsurers that want to move away from weak property catastrophe pricing are looking to the U.S. casualty reinsurance market.

"Diversifying into areas other than short-tail property or property catastrophe has been a focus of reinsurers for the past two to three years," said James Eck, vice president and senior credit officer at Moody's Investors Service Inc. in New York.

Reinsurers' deployment of capital "has gone to other areas of the market, whether it be specialty lines, casualty, (or) professional lines," he said. "They've been looking for areas where the returns have held up a little better, and U.S. casualty has been one of those areas."

Those coverages include general casualty, professional and financial lines, and surplus lines, sources said.

"Companies are trying to find niches where they can still find some attractive business and continue to grow," said Taoufik Gharib, a director and reinsurance specialist at Standard & Poor's Corp. in New York.

Casualty niches

As reinsurers have moved away from property catastrophe business, "you are seeing some diversification into casualty," said Brian Schneider, senior director of insurance at Fitch Ratings Inc. in Chicago.

"When you get to general casualty and ultimately specialty lines, in that order, you are gravitating to an end of the spectrum where pricing is not as commoditized" compared with some property catastrophe sectors, said Mike Goldman, a partner at law firm Sidley Austin L.L.P. in Chicago and co-leader of the firm's global insurance and financial services group.

"I suspect these companies are looking for a way to diversify away from that business or just broaden their product offering to be more relevant to their customers," said Chris Buse, managing director and head of casualty reinsurance in North America at XL Catlin in Stamford, Connecticut.

"U.S. casualty has held up better

than U.S. property" in terms of the prices insurers can charge, said Bruce Ballentine, vice president and senior credit officer at Moody's in New York. "U.S. business in general has held up better than some other markets like Europe and some emerging markets where economic growth has been slower."

"We see casualty reinsurance growing in pockets," said Mr. Buse. "We tend to focus on specialty lines — environmental, directors and officers, excess and surplus lines casualty business."

"Our view has been that casualty in the U.S. as a long-term proposition is a good business," said Mr. Buse. "So I understand others wanting to come in to it."

He described U.S. casualty reinsurance pricing as "softening but still adequate."

"Motivations to escape pressures in the property catastrophe segment and diversification gains have been important considerations for many reinsurers in moving into the U.S. casualty market," said David Flandro, New York-based global head of analytics at JLT Re, a unit of Jardine Lloyd Thompson P.L.C. "As catastrophe pricing has fallen rapidly, casualty has become a relatively more attractive diversifying play in some instances."

With falling prices the past 30 months, some dropping below traditional markets' targets, reinsurers can increase shareholder dividends, conduct share buybacks, merge "or they can try other lines of business," said David Dee, head of casualty underwriting for national clients at Munich Reinsurance America Inc. in Princeton, New Jersey.

Reinsurers' moves also have increased competition for underwriting talent in the casualty space.

"The intellectual capital is probably the toughest thing to acquire these days," said Mr. Buse. "Finding the people who know the business and can navigate through a soft market are probably a little harder to find."

"What we've been seeing is in some cases people thinking, 'If we don't have the people currently, let's go hire some,' so you see some of the teams moving around the business," said Mr. Dee.



REINSURERS EXPLORE WAYS TO GET CLOSER TO PRIMARY RISKS

In their quest to respond to challenging market conditions, reinsurers are increasing their exposure to primary markets.

Some are taking on more of the risk through binding more proportional coverage.

In proportional coverage, the reinsurer shares all the premiums and losses on the underlying business, less the ceding commission paid to the primary insurer to write the business, said James Eck, vice president and senior credit officer at Moody's Investors Service Inc. in New York.

Casualty reinsurance is mostly proportional coverage, he said.

"If a reinsurer takes a 10% quota share, then it gets 10% of the premiums less the ceding commission and pays 10% of the losses from the first dollar," Mr. Eck said.

Reinsurer Scor S.E. said that 75% of its April renewals were proportional treaties, which still benefit from increased prices for property/casualty and specialty coverage on the primary insurance market.

Others are more directly active

in primary markets, such as Munich Reinsurance Co.'s "primary niche" business.

"In the U.S., part of the long-term strategy of Munich Re is to be operating within the primary niche insurance space as part of our reinsurance umbrella," said Tony Kuczinski, president and CEO of Munich Reinsurance America Inc. in Princeton, New Jersey.

"We purposely use the term 'primary niche' because it is truly a specialty business and, in this current marketplace, we're seeing more opportunities to grow our business in the niche primary insurance space than in the traditional reinsurance space," he said.

Doing primary market business can bolster a reinsurer's performance.

"Munich Re's activity in the primary niche insurance space supports overall profitable growth at a time when our 2015 reinsurance portfolio year-to-date is slightly smaller than what it was the year prior," said Mr. Kuczinski.

By Matthew Lerner

"If a reinsurer takes a 10% quota share, then it gets 10% of the premiums less the ceding commission and pays 10% of the losses from the first dollar."

James Eck,
Moody's Investors
Service Inc.

WORLD'S LARGEST REINSURANCE BROKERS

Ranked by 2014 gross revenue from reinsurance brokerage and related services*

Rank	Company/address	Phone/website	2014 reinsurance gross revenue	2013 reinsurance gross revenue	% increase (decrease)	2014 employees	Officers
1	Aon Benfield The Leadenhall Building 122 Leadenhall Street London, England EC3V 4AN	44-(0)20-7623-5500 www.aonbenfield.com	\$1,474,000,000	\$1,505,000,000	(2.0%)	N/A	Eric Andersen, CEO
2	Guy Carpenter & Co. L.L.C. 1166 Ave. of the Americas New York, NY 10036-2708	917-937-3000 www.guycarp.com	\$1,153,908,000 ¹	\$1,131,267,000 ¹	2.0%	2,367	Alex Moczarski, CEO
3	Willis Re 51 Lime St. London, England EC3M 7DQ	44-203-124-6000 www.willisre.com	\$860,000,000	\$860,000,000	0.0%	1,633	John Cavanagh, CEO-Willis Re
4	JLT Reinsurance Brokers Ltd. St Botolph Building London, England EC3A 7AW	44-207-466-1300 www.jltre.com	\$375,693,120 ²	\$375,869,460 ³	(0.0%)	N/A	Mike Reynolds, Global CEO
5	Cooper Gay Swett & Crawford Ltd. 52 Leadenhall St. London, England EC3A 2EB	44-(0)20-7480-7322 www.cg-sc.com	\$153,268,000	\$158,466,000	(3.3%)	636	Martin Sullivan, acting CEO; Steve Hearn ⁴ , incoming CEO
6	UIB Holdings (UK) Ltd. 69 Mansell St. London, England E1 8AN	44-207-488-0551 www.uibgroup.com	\$62,051,712 ²	\$67,463,114 ³	(8.0)	370	Bassem Kabban, chairman
7	THB Group Ltd. (International Division of AmWINS Group, Inc.) 107 Leadenhall St. London, England EC3A 4AF	44-207-469-0100 www.thbgroup.com	\$59,518,474	\$58,094,136	2.5%	548	Frank Murphy, CEO
8	BMS Group Ltd. One America Square London, England EC3N 2LS	44-20-7480-7288 www.bmsgroup.com	\$53,214,000 ⁵	\$54,300,000	(2.0%)	N/A	Dane Douetil, Group CEO, Minova Insurance Holdings Ltd.; Nick Cook, CEO, BMS Group Ltd. (UK); Andrew Bustillo, CEO, BMS Intermediaries Inc. (US)
9	Lockton Re 138 Houndsditch London, England EC3A 7AG	44-207-933-0000 www.locktonre.com	\$45,493,360	\$46,028,536	(1.2%)	N/A	George Carrington, managing director - Lockton Re; Brian Cole, managing director (US) - Lockton Re
10	Holborn Corp. Wall Street Plaza, 88 Pine St. New York, NY 10005	212-797-2285 www.holborn.com	\$40,000,000	\$40,000,000	0.0%	N/A	Frank T. Harrison, president/CEO

*Includes all reinsurance revenue reported through holding and/or subsidiary companies. N/A=Not Available 1 Includes aviation reinsurance business placed by Marsh Inc. 2 British pound 2014=\$1.5576 3 British Pound 2013=1.6529 4 Incoming CEO Nov 2, 2015. 5 B/ estimate
Source: BI survey

TOP 10 U.S. PROPERTY/CASUALTY REINSURERS OF U.S. BUSINESS

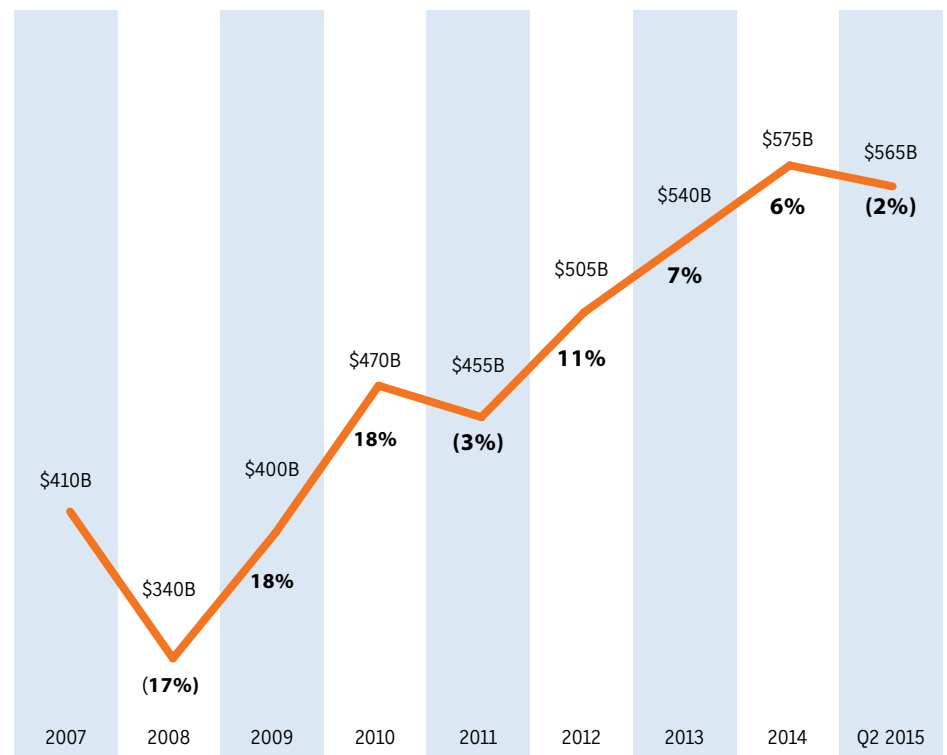
Ranked by gross premiums written, 2014

Rank	Company ¹	Country of parent company	2014 gross premiums written	2013 rank	2013 gross premiums written
1	National Indemnity Company (Berkshire Hathaway) ²	U.S.	\$26,447,145	2	5,494,058
2	QBE Re America	Australia	5,288,813	1	\$5,896,257
3	Everest Reinsurance Company	Bermuda	4,995,249	4	4,348,736
4	Swiss Reinsurance America Corporation	Switzerland	4,491,990	3	4,941,108
5	Munich Re America	Germany	4,162,336	5	4,267,168
6	XL Reinsurance America	Ireland	3,603,590	6	3,380,109
7	Transatlantic Reinsurance	U.S.	3,143,029	7	3,138,346
8	Odyssey Reinsurance Group	Canada	2,551,797	8	2,539,263
9	Partner Reinsurance Company of the U.S.	Bermuda	1,721,966	9	1,623,083
10	AXIS Reinsurance Company	Bermuda	1,269,884	N/A	N/A

1 See Reinsurance Underwriting Report footnotes posted at www.reinsurance.org for list of affiliated companies included.
2 Underwriting results exclude assumptions from affiliated General Re Group; includes National Indemnity Co.'s loss portfolio and quota share agreements with affiliated GEICO companies.
Source: Reinsurance Association of America

CHANGE IN GLOBAL REINSURER CAPITAL

In billions of dollars with percent increase/decrease



Source: Individual company reports, Aon Benfield Analytics

Swiss Re expands North America marine

Swiss Re Corporate Solutions Ltd. has opened a New York-based office to expand its North America marine team.

The team will provide ocean cargo insurance, Swiss Re said in a statement.

“Our new team enhances our offering to North American clients by providing primary, following and excess ocean cargo — transit, stock throughput and project cargo. Regional clients can access our underwriting talent locally and still benefit from Swiss Re Group’s strong financial ratings,” Robert Solitro, head of special lines North America, said in the statement.

Graeme Schultz has been named head of marine for North America. Previously, Mr. Schultz was marine underwriting manager at American International Group Inc.

“We are excited to fill an important missing local product offering for our North American clients and brokers. The marine expansion into North America reflects our commitment to building broad product offerings on a local basis in the region,” Bob Petrilli, CEO of North America Corporate Solutions, said in the statement.

Policies cover cyber liability, breach response

Berkshire Hathaway Specialty Insurance has launched two policies that provide cyber liability and breach response coverage with risk management resources in the U.S., Berkshire Hathaway said in a statement.

The Professional First Professional Liability and Network Security & Privacy policies include errors and omissions liability coverage.

Both include coverage for third-party exposures resulting from data security and privacy breaches, breach expense and extortion threat coverage, media liability coverage and coverage to pay lost income and related expenses resulting from the policyholders’ partial or full business interruption due to a network security failure, according to the statement.

Additionally, policyholders will have access to eRiskHub, an online hub that provides resources to help policyholders understand cyber exposures and establish a response plan to breaches, according to the statement.

“Our experienced professional liability team is providing solutions to simplify for customers the complex work of managing professional liability and cyber exposures,” Danielle Librizzi, senior vice president and head of professional liability for Berkshire Hathaway Specialty Insurance, said in the statement.

XL Catlin offers lead excess Side A D&O policy

XL Catlin Inc. has launched a directors and officers lead excess Side A difference in conditions policy through its Hamilton, Bermuda-based professional lines insurance operations.

PRODUCTS & SERVICES

Broker adds joint employer coverage

* Specialty broker FranchisePerils, a division of wholesaler Executive Perils Insurance Services, has enhanced its FranchisorSuite policy with the addition of joint employer coverage.

The policy is designed to provide protection for franchisors and their directors and officers, FranchisePerils said in a statement.

FranchisorSuite is a combined D&O, errors and omissions, employment practice liability, fiduciary liability and vicarious liability policy available in the United States.

FranchisePerils will endorse FranchisorSuite to provide a \$150,000 sublimit for litigation alleging joint employer liability, Los Angeles-based, FranchisePerils said in an emailed statement.

Side A coverage such as XL Catlin’s offering provides coverage to officers and directors for areas in which their company is not legally required to compensate them.

The policy includes an expanded definition of insured people to include shadow and de facto directors, advisory board members, prospective directors, representatives of entity directors and non-officer employees, XL Catlin said in a statement. Other coverage includes two reinstated limits of liability automatically afforded for unrelated claims, and insured people of all new subsidiaries are automatically covered.

MGA launches facultative reinsurance

Pardus Underwriting Ltd. said that it has launched a facultative reinsurance facility for North American property interests.

Pardus is a London-based independent managing general agent launched by co-founders Keith Thompson and Darren Stockman in July 2014.

The division will be led by Andy Billinge. Previously, Mr. Billinge was managing director of Oxford Insurance Brokers Ltd., Pardus said in a statement.

“We are delighted to have secured the services of Andy, who brings with him a wealth of experience and knowledge along with strong broker relationships, all of which combine to place Pardus in

an excellent position to develop facultative property business,” Mr. Thompson, CEO of Pardus, said in the statement.

Cover offers protection from Calif. product liability

Wells Fargo Insurance Services USA Inc. has launched an insurance program to provide protection from California’s Proposition 65 law.

Proposition 65 “requires product manufacturers, distributors and formulators to provide “clear and reasonable” warnings on products sold in California that contain chemicals known to be carcinogenic, or cause birth defects, if exposure to those chemicals from the product exceeds the safe harbor level. Currently, California Prop 65 covers more than 800 chemicals, according to a Wells Fargo Insurance statement.

The liability insurance program provides financial protection to product manufacturers, distributors and formulators of products that contain any of six plasticizers covered under California Proposition 65, Wells Fargo Insurance said in the statement.

According to Wells Fargo Insurance, the average settlement cost for these claims exceeds \$80,000, and existing general liability, product and pollution policies don’t provide coverage, which leaves companies at risk if faced with a Proposition 65 lawsuit.

“We recognized a need existed with our customers and in the marketplace, and we worked closely with SPI, The Trade Association of the Plastics Industry to craft the program,” Glynis Priester, Wells Fargo Insurance environmental national practice leader, said in the statement.

Company forms to quantify cyber risk

PivotPoint Risk Analytics has announced its launch and the rollout of a tool that quantifies cyber risk.

The cyber risk analytics firm, a spinoff of Baltimore-based cyber security provider CyberPoint International, will be led by President and CEO Julian Waits in Baltimore, PivotPoint said in a statement.

CyVaR, PivotPoint’s cyber risk quantification tool, “applies advanced cyber threat models to statistical techniques for determining cyber value-at-risk,” the company said in the statement. It addresses “the critical data gap” required to measure potential losses from cyber attacks and help chief information security officers and business leaders improve cyber investment decisions and reduce cyber risk, according to the statement.

“We believe the biggest threat to organizations today is the fuzzy picture of cyber risk that leads to misguided security investments. Throwing more money at security doesn’t make you more secure,” Mr. Waits said in the statement. Chief information security officers “can’t protect everything, but they can protect the assets most important to the company and secure the value of the business.”

DEALS & MOVES

Church Mutual Insurance acquires school board insurers

Merrill, Wisconsin-based religious organization insurer Church Mutual Insurance Co. has agreed to acquire the insurance operations of the Pennsylvania School Boards Association.

Terms of the agreement were not disclosed.

As part of the acquisition agreement, Church Mutual will acquire Mechanicsburg, Pennsylvania-based School Boards Insurance Co. of Pennsylvania Inc. and New Cumberland, Pennsylvania-based School Claims Services L.L.C. The two firms will become wholly owned subsidiaries of Church Mutual, the company said in a statement.

Marine broker buys out original backer Cooper Gay

Managers at Hong Kong-based Latitude Brokers have completed the buyout of shares owned by Cooper Gay Swett & Crawford Ltd. just over a year after Cooper Gay launched the marine specialist.

Cooper Gay plans to continue to work with Latitude following the management buyout, Shaun Hooper, CEO International of CGSC, said in a statement released by Latitude.

It was just last year on Sept. 1 that Cooper Gay announced the launch of Latitude as its “dedicated marine direct and facultative reinsurance broker in Asia.”

Nassau Reinsurance buys life and health units

Nassau Reinsurance Group L.P. has announced that it will acquire White Plains, New York-based Universal American Corp.’s life and health insurance units for approximately \$43 million.

Expected to close in early 2016, the deal consists of Universal American’s “traditional insurance” lines, including Medicare supplement, senior health insurance, specialty health insurance, long-term care insurance and life insurance products.

Under the terms of the deal, Nassau Re will assume control of Universal American subsidiaries Constitutional Life Insurance Co. and Pyramid Life Insurance Co., as well as portions of American Progressive Life & Health Insurance Co. of New York, according to a statement from the company.

Following the close of the deal, Universal American’s traditional insurance business will become a wholly owned subsidiary of Nassau Re. The company said it intends to retain the unit’s 30 current employees.

Kelso acquires majority stake in specialty broker Risk Strategies

New York-based investment firm Kelso & Co., will acquire a majority stake in Boston-based broker and risk management firm Risk Strategies Co. from Kohlberg & Co. L.L.C.

Terms of the deal were not disclosed.

Risk Strategies’ leadership team, led by CEO Michael Christian, will remain in place, Risk Strategies said in a statement.

Risk Strategies, focuses on middle- and upper-middle-market commercial and high-net-worth clients.

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LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE (CHANCERY DIVISION) COMPANIES COURT No: 6545 OF 2015

IN THE MATTER OF THE COPENHAGEN REINSURANCE COMPANY (U.K.) LIMITED

– and –

IN THE MATTER OF MARLON INSURANCE COMPANY LIMITED

– and –

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

NOTICE

NOTICE IS HEREBY GIVEN that on 2 October 2015 The Copenhagen Reinsurance Company (U.K.) Limited (“**Cop Re**”) applied to the High Court of Justice for:

1. an Order under Part VII of the Financial Services and Markets Act 2000 (the “**Act**”) sanctioning a scheme (the “**Scheme**”) providing for the transfer to Marlon Insurance Company Limited (“**Marlon**”) of the entire business of Cop Re; and
2. an Order making ancillary provision in connection with the implementation of the Scheme under Section 112 of the Act.

The proposed transfer will result in the entire business formerly carried on by Cop Re being carried on by Marlon. The proposed transfer will secure the continuation by or against Marlon of any legal proceedings by or against Cop Re that relate to rights and obligations in respect of the transferred business. All claims being dealt with before the transfer by Enstar (EU) Limited (“**EEUL**”) on behalf of Cop Re in relation to such business will following the transfer be dealt with by EEUL on behalf of Marlon. All such claims arising after the transfer will be dealt with by EEUL on behalf of Marlon.

The application is directed to be heard before the Companies Court Judge at 7 Rolls Buildings, Royal Courts of Justice, Fetter Lane, London, EC4A 1NL on 4 December 2015. Any person (including staff employed in the performance of Cop Re’s business or Marlon’s business) who alleges that he or she would be adversely affected by the carrying out of the Scheme is entitled to object in writing or may appear at the time of that hearing in person or by instructing a barrister or solicitor advocate. Any person who intends to make written objections or so to appear is requested to give written notice not less than two clear days before the hearing of such intention or objection, and the reasons therefor, to the solicitors named below.

Copies of a report on the terms of the Scheme prepared pursuant to Section 109 of the Act (the “**Independent Expert’s Report**”) and a statement setting out the terms of the Scheme and containing a summary of the Independent Expert’s Report will be provided free of charge by the solicitors named below. These documents may also be accessed at the following web address: www.copreuk-marlon-transfer.co.uk.

DATED this 26th day of October 2015

Hogan Lovells International LLP
Atlantic House, Holborn Viaduct
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Fax: +44 (0) 20 7296 2001
Ref: C4/NC/TJG
Solicitors for Cop Re and Marlon

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SIIA

Continued from page 6

ing efficient, quality health care coverage for millions of workers and their families,” Edward Smith, president and CEO of Washington-based insurer Ullico Inc., which provides life and health insurance for unions and group plans, said in an email. “Working with the SIIA on this issue is a win-win — it strengthens the voices of union members whose health care coverage is protected by stop-loss.”

During the panel discussion, Jerry Castelleo, chairman of the SIIA government relations committee, said numerous issues affecting self-insurance have arisen in the past few years. For example, he also noted that state regulators are showing considerable interest in regulating stop-loss insurance.

On the federal level, SIIA has commented on so-called “Cadillac tax” health care regulations, he said. The Patient Protection and Affordable Care Act calls for imposing a 40% excise tax on the portion of premiums above \$10,200 for individual coverage and \$27,500 for family coverage beginning in coverage year 2018.

Mr. Castelleo said SIIA’s comments have dealt with such questions as how a benefit potentially subject to the tax would be valued, what plans would be included and who would ultimately be responsible for paying the tax.

Also on the federal level, SIIA is focusing on passing the Self-Insurance Protection Act, which has been introduced in both houses of Congress. The act would amend the Public Health Service Act, the Employee Retirement Income Security Act and the Internal Revenue Code to exclude coverage of certain medical stop-loss insurance obtained by sponsors of self-insured group health plans from the definition of health insurance.

ERISA pre-empts states from mandating the content of self-funded benefit plans. In addition, self-funded benefit plans are exempt from many of the provisions of the Affordable Care Act.

“We continue to have engagements with Congress,” said Mr. Castelleo, urging conference attendees to visit their members of Congress to discuss the measure.

Bob Tierney, chairman of the Self-Insurance PAC board of trustees, picked up on the theme of the importance of personal contact with lawmakers. He said that

when a group of SIIA members visits a lawmaker, it’s important to have someone from that lawmaker’s state in the room.

“SIPAC gives SIIA the vehicle to strengthen its voice on the federal and state level,” said Mr. Tierney. “It’s really where policy and politics meet.” He added that the political action committee has raised \$40,000 this year and “we’re likely to increase that.”

John Eggertsen, an attorney with Eggertsen Consulting P.C. in Ann Arbor, Michigan, noted that there “really haven’t been that many cases in the past couple of years” dealing with ERISA.

But SIIA is involved in a case in which a federal appeals court decision upheld a Michigan law that imposes a 1% tax on paid health care claims.

Under that law, revenue generated by the tax, which is used to help fund the state’s Medicaid program, is paid by health insurers offering fully insured plans and by third-party claims administrators in the case of self-insured plans.

SIIA argues that the tax is barred by an ERISA provision that pre-empts state and local laws and rules that relate to employee benefit plans and is seeking U.S. Supreme Court review of the case.



SURVEILLANCE

Continued from page 4

“That was a real wake-up call for me,” Mr. Pageler said. “It was invaluable in a criminal case and to make that (claim) go away.”

Employers generally conduct the surveillance themselves when it involves their offices, warehouses, stores and restaurants, experts say. For off-site surveillance, however, employers rely on investigators employed by their insurers or third-party administrators.

“I think it’s advised the employer not do this because there could be human resources issues and could open the door to suits on the employee’s behalf,” said Tom Ryan, managing director and market research leader at Marsh L.L.C.’s Workers’ Compensation Center of Excellence in New York. “The on-site surveillance is very different because, as an employee, you are on site at the physical location of your employer.”

Investigators also usually are well-versed in applicable state laws and rules, which helps ensure legal or ethical boundaries are not crossed in conducting surveillance, experts say.

California has one of the strongest anti-stalking laws, Mr. Pageler said. It bars anyone from following, harassing or threatening another person, causing them to fear for their or their family’s safety. The maximum penalty for violating the law is a year in jail and/or \$1,000 fine for a misdemeanor, and up to five years in state prison for a felony.

However, investigators generally can record video on anything in public view, although this can be intrusive, such as filming a claimant at a family event, said Brody Ockander, a Lincoln, Nebraska-based lawyer with Rehm, Bennett & Moore P.C. L.L.O.

“I think most investigators will know not to be too intrusive,” he said. But “I tell my clients everything is pretty much fair game in the public area.”

Investigators cannot invade injured employees’ privacy by, for example, looking through a window into their home, but they can record the employee shoveling snow in their driveway, said Melissa Schilling, an attorney at Dickin-

son Mackaman Tyler & Hagen P.C. in Des Moines, Iowa.

The main restrictions involve not illegally entering private property of the claimant or others, not making direct contact with the injured worker, and no recording of sound, said Joe Quinn, a shareholder at law firm Nyemaster Goode P.C. in Des Moines.

Generally, most states either bar audio recording or bar it without consent, experts say.

Since surveillance is an added cost, it should not be done for every injured worker, Ms. Schilling said.

Employers should also have a reasonable basis to ask their insurer or TPA to conduct the surveillance, namely red flags that could indicate the claimant is not truthful. For example, a red flag could be the accident not being witnessed by anyone, which 52% of the small companies surveyed by Employers said is an indicator of fraud.

“Surveillance isn’t the tool to be used in every case,” Mr. Quinn said.

Surveillance can trigger a retaliation claim by an injured worker, but more often than not, communications about the surveillance creates the problem, said Jason Taylor, a Tallahassee, Florida-based partner at McConaughay, Duffy, Coonrod, Pope, Weaver, Stern & Thomas P.A. For example, if a supervisor sends an email to a colleague accusing an injured employee of lying and the employer launches surveillance in response, an unjustified accusation could result in a retaliation claim, he said.

“If you’re not careful, you can create a very adversarial relationship with the employee,” Mr. Taylor said. “It goes back to the question of perception.”

Employers should constantly re-evaluate the reasonableness and expense of the surveillance, he suggested. If, for example, they conduct surveillance for two or three weeks but find no evidence of injured worker wrongdoing, continuing surveillance could be perceived as retaliation, Mr. Taylor said. “It almost starts to feel like a vendetta,” he said.

An emerging risk in workers comp is the potential use of drones to monitor employees.

“That’s going to be a big one,” Mr. Pageler said. “It’s going to be on a state-by-state basis, but what is the right to privacy when you drive a drone over someone’s house in an area that could not be normally seen?”

Some employers are considering using drones at locations such as construction sites to ensure employees are safely lifting or operating equipment, although they have yet to actually implement drone surveillance, Mr. Ryan said.

“You need to be very prudent and conservative in not being too forward-thinking with technology when you could be doing something that could be construed as illegal,” he said.

EHBC

Continued from page 6

Willis North America Inc.

Oftentimes a portion of the commissions earned by voluntary benefit brokers can be used to design “high-quality communications,” Mr. Meredith said. Those communications reminding people of their options and participating in wellness and disease management programs can be “baked into the open enrollment process,” he said.

Enrollment in voluntary benefits can also be used to “clean up eligibility data” to ensure employers are not paying for ineligible workers, spouses or dependents, Mr. Meredith said.

Few companies have the resources to run an audit internally, as it costs money to outsource a firm to do it, but it can be paid for again by voluntary benefit commissions, he said.

Janet Wincko, Tamarac, Florida-based vice president of human resources with retailer City Furniture Inc., said during the conference that voluntary benefits have helped supplement her employees’ health plans as the company has shifted from traditional plans, such as the health maintenance organization and preferred provider organization, to a health reimbursement arrangement with a high deductible.

“We have associates saying, ‘We don’t think the coverage is as rich,’” she said.

“By filling in that gap with vol-

untary benefit plans ... it really does provide them an opportunity to still have some awesome coverage.”

When City Furniture began offering voluntary benefits, it started with accident, cancer and hospitalization coverage, Ms. Wincko said. The company now offers legal services to its employees and is considering pet insurance.

City Furniture uses focus

“It’s amazing to me that employers will spend in aggregate billions of dollars offering employee benefits and some are afraid to spend, you know, 50 cents communicating.”

Mike Meredith,
Willis North America Inc.

groups and feedback sessions to determine what employees want in terms of voluntary benefits, Ms. Wincko said.

But even while becoming more popular, the voluntary benefits available are changing, said Robert Shestack, executive vice president and voluntary benefits practice leader with AmWINS Group Benefits Inc., a unit of AmWINS Group Inc.

More traditional products such as dental, vision and long- and short-term disability, which were

once employer-paid, are now being offered on a voluntary basis because of rising costs and health care reform, Mr. Shestack said.

Options are also growing. Employers can choose between home warranty programs, cyber and personal security coverage, telemedicine, unemployment gap insurance and programs to assist with the worker’s estate, he said.

Many benefits experts recommend a multiyear strategy for offering voluntary benefits. Mr. Meredith of Willis suggested starting with critical illness coverage and additional life insurance before branching out into less traditional voluntary benefits.

The key, he said, is to make sure the voluntary offerings are complementary to the base plan and not redundant.

It’s also important to ensure employees understand what’s available.

“It’s amazing to me that employers will spend in aggregate billions of dollars offering employee benefits and some are afraid to spend, you know, 50 cents communicating,” Mr. Meredith said.

“One of the biggest things that we’ve learned is as much as we think we over-communicate, the reality is we don’t,” said City Furniture’s Ms. Wincko, whose company communicates to employees through a company intranet, email, newsletters and mail sent to their homes. City Furniture is also looking into social media as a way to reach younger workers, she said.

RETALIATION

Continued from page 3

Schulte Roth & Zabel L.L.P. in New York. Until the *Berman* ruling, whistleblowers who complained only internally did not have any statutory protection, she said.

“The gold standard under (the Sarbanes-Oxley Act of 2002) was to have a robust code of conduct that included methods of internal reporting so that any issues that might arise would be brought to light and could get addressed before they became an issue,” said Joseph C. Toris, of counsel at Jackson Lewis P.C. in Morristown, New Jersey.

But Dodd-Frank, which largely took effect in 2010, “changed that by encouraging whistleblowers to go to the SEC and created a bounty program so that in certain situations the employee would be able to share in the recovery made by the SEC,” Mr. Toris said.

The SEC has sought to achieve a balance between bolstering its whistleblowing program and empowering compliance programs, said John T. Zach, a partner with Boies, Schiller & Flexner L.L.P. in New York. Now, with these two conflicting opinions “depending on what jurisdiction you’re in, the incentives are different.”

Experts say the Supreme Court is expected to take on the issue because of the circuit split, which is also reflected in differing lower U.S. District Court rulings on the issue.

“There’s a good chance” it will take the case, said Mr. Ellis. “You have a pretty clear difference of opinion as to what the statute says, and the Supreme Court is there to resolve those differences.”

Experts who are willing to hazard a prediction regarding how the court will rule differ on the likely outcome.

The 5th Circuit’s opinion is “the more straightforward position,” said David Smyth, an attorney with law firm Brooks, Pierce, McLendon, Humphrey & Leonard L.L.P. in Raleigh, North Carolina.

“The statute doesn’t say what the 2nd Circuit says it does,” said Thomas O. Gorman, a partner at Dorsey & Whitney L.L.P. in Washington. “I don’t see how you can really rewrite the statute, which is what I think the 2nd Circuit did,” said Mr. Gorman, who believes it is unlikely the Supreme Court would support the 2nd Circuit’s ruling.

“It really boils down to a statu-

tory interpretation issue” and how much deference courts will give to the SEC’s interpretation, said Richard J.L. Lomuscio, counsel with Drinker Biddle & Reath L.L.P. in New York.

Michael E. Clark, special counsel with Duane Morris L.L.P. in Houston said he believes the Supreme Court may uphold the 2nd Circuit’s rule. “This seems to be the era of whistleblower protection,” he said.

Rulings clash over triggers for whistleblower protections

September’s divided ruling by the 2nd U.S. Circuit Court of Appeals in *Daniel Berman v. Neo@Ogilvy L.L.C. and WPP Group USA Inc.* says whistleblowers can obtain protection from employer retaliation if they report wrongdoing only internally under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

It conflicts with the July 2013 ruling by the 5th U.S. Circuit Court of Appeals in New Orleans in *Khaled Asadi v. G.E. Energy (USA) L.L.C.*, which held whistleblowers must have first filed a complaint with the U.S. Securities and Exchange Commission before falling under Dodd-Frank’s anti-retaliation provisions.

In the 2015 case, Mr. Berman, who was formerly finance director of New York-based Neo@Ogilvy L.L.C., alleged he was discharged in 2013 for reporting accounting fraud.

According to the 2nd Circuit’s 2-1 ruling in the case, the Dodd-Frank Act defines whistleblower in one section to mean an individual who reports violations to the SEC. But another section of the statute does not limit its protection to those who have reported wrongdoing to the SEC.

The decision points to a 2011 SEC rule that provides that Dodd-Frank’s retaliation protections extend to employees who report wrongdoing only internally.

The “pertinent provisions of Dodd-Frank create a sufficient ambiguity to warrant our deference to the SEC’s interpretive rule,” says the 2nd Circuit’s ruling.

The dissenting opinion in the case says “our obligation is to apply congressional statutes as written.”

In the 5th Circuit case, Mr. Asadi claimed he was fired by GE Energy, a now-defunct unit of Fairfield, Connecticut-based General Electric Corp., after he complained the company had violated the Foreign Corrupt Practices Act by hiring a woman who was closely associated with a senior Iraqi official in order to curry favor with that official in negotiating a lucrative joint venture agreement.

In the court’s ruling, a unanimous three-judge panel said “the plain language of the Dodd-Frank whistleblower-protection provision creates a private cause of action for individuals who provide information” to the SEC.

By Judy Greenwald



HEAR INTERVIEW

Visit *Business Insurance’s* multimedia

Web page to hear Joseph C. Toris of Jackson Lewis P.C. discuss anti-retaliation with *Business Insurance* Senior Editor Judy Greenwald.

According to the 2nd Circuit’s 2-1 ruling in the case, the Dodd-Frank Act defines whistleblower in one section to mean an individual who reports violations to the SEC. But another section of the statute does not limit its protection to those who have reported wrongdoing to the SEC.

COMP

Continued from page 4

this month stressed that effective communication requires participation from both parties.

Health care providers want to know if an employer has a formal return-to-work program in place, Ms. Wagner said. She told risk managers to make it clear that “you want them to embrace (the program) and you want them to partner with you” by offering work restrictions instead of temporary disability, for example.

Having physicians tour the worksite provides a greater understanding of workers’ functional requirements, Dr. Bartlett said, adding that supplying pictures, videos and job descriptions is also helpful.

Payers and physicians should at least feel comfortable enough with each other to pick up the phone and call regarding questions or issues, experts said, noting that utilization review tends to be a big point of contention.

“I never, after (33) years in my practicing time, had (a treatment) denied when I offered to pick up the phone and speak with an adjuster,” said Dr. Bernyce Peplowski, senior vice president of national medical strategy and innovation at U.S. HealthWorks Medical Group in Los Angeles. Health care providers can’t “be afraid to pick up the phone,” Dr. Peplowski added.

At Sedgwick, “there is a higher degree of scrutiny and UR” with physicians who don’t obtain good claim and medical outcomes, Dr. Bartlett said. “Doctors definitely need to know they are being watched and held accountable.”

It is the workers comp industry’s responsibility to drive the use of evidence-based care, which is “based on the latest research and ensures physicians are staying current with new technology and medical practice,” she added.

California’s medical treatment utilization schedule “provides medical treatment guidelines for utilization review and an analytical framework for the evaluation and treatment of injured workers,” according to the state’s Department of Industrial Relations.

Dr. Rupali Das, executive medical director of the California Division of Workers’ Compensation, said “a big part of our focus now is educating physicians” that there is a medical treatment utilization schedule and “how to apply it to patients, how to apply it to practice, and to encourage them that this is something they should do.”

Evidence-based care isn’t an excuse to deny care, Dr. Das said. “It is the application of the best scientific evidence that’s out there, but it has to be tailored to the individual patient ... Physicians are the ones who start the treatment process, and if we can get the message to them to do the right thing, we can avoid a lot of problems later.”

NBGR

Continued from page 4

CarMax’s percentage of at-risk employees shrank to 28% in 2014 from 31% in 2013, generating between \$90,000 and \$140,000 in estimated savings on costs associated with employee absences and replacement labor.

Ms. Bruington said she and her staff will be watching closely in the coming months and years for an even more substantial reduction of metabolic syndrome indicators among CarMax’s workforce, particularly as the company gradually adopts an activity-based rewards strategy that will require employees to complete certain health management activities — as opposed to merely participating in a health risk assessment — in order to receive the \$600 annual health plan premium discount it currently offers.

“We’re looking for incremental change in the right direction, Ms. Bruington said. “We continue to try to move the needle every year, but we have to balance that against the amount of change we ask our associates to go through from year to year.”

“So far the whole program has been geared toward awareness, but this year will be the first in which we say to the employees that they’ve got some skin in the game and you actually have to do something in order to maintain the incentive,” she said.

Reducing employee health risks

Newark, New Jersey-based Prudential Financial Inc. has shown similar success in its wellness program by tracking its employees’ year-to-year migration along a spectrum of risk levels determined by self-reported health conditions and behaviors.

Prudential has reduced its percentage of

high-risk and moderate-risk workers by 46.5% and 28.5% respectively since implementing the risk level methodology in 2010, while the percentage of low-risk employees grew by 8.5%. The result has been fewer employee absences and short-term disability claims, as well as fewer employees reporting presenteeism and lost productivity due to illness or injury.

“When we look at not only the frequency of short-term disability cases but also the duration of those cases, we do see pretty significant differences between the high-risk population and the low-risk population,” said Keith Winick, Prudential’s wellness manager in Newark. “We’re also seeing big differences between high-risk individuals and low-risk individuals in terms of their scores on our work limitations questionnaire, which measures presenteeism and lost productivity, and we think that if we can move the dial on our people’s health risks, we can hopefully affect a lot of these other measures.”

ENROLLMENT

Continued from page 3

you'll see even more employers tying employee contributions and what you pay out of your paycheck for health benefits into the new year to your participation ... in the company wellness program," said Jim O'Connor, Manasquan, New Jersey-based president of employee benefits with CBIZ Inc.

For instance, the Society of Human Resource Management Inc. "saw the writing on the wall" and in 2011 set a glide path to keep under the Cadillac tax thresholds, said Bruce Elliott, SHRM's manager of compensation and benefits in Washington.

Beginning in 2011, SHRM began making incremental changes in its health plans, using incentives to migrate employees away from the preferred provider organization plan and into one of two high-deductible plans: the health reimbursement arrangement and the health savings account.

Today, 75% of the workforce is enrolled in the HRA or HSA plans, Mr. Elliott said.

Now the organization is focusing on wellness. "Our wellness programs have been fairly effective to the extent that we are not going to do an increase this year" in health plan costs, Mr. Elliott said.

But the Cadillac tax is still a big concern, because it's tied to general inflation rather than medical inflation. According to an August NBGH study, general inflation is expected to grow at 2.4% over the next decade, while most employers expect health plan costs to increase an average of 5% in 2016.

"Eventually we will get caught up by it. It's just a function of math," Mr. Elliott said, adding that beyond 2018, SHRM may have to make additional plan changes or eliminate the PPO.

Another "front and center" concern for employers this season is being in compliance with the Patient Protection and Affordable Care Act "across the board," said Wally Dawson, Raleigh, North Carolina-based managing principal with Digital Benefit Advisors.

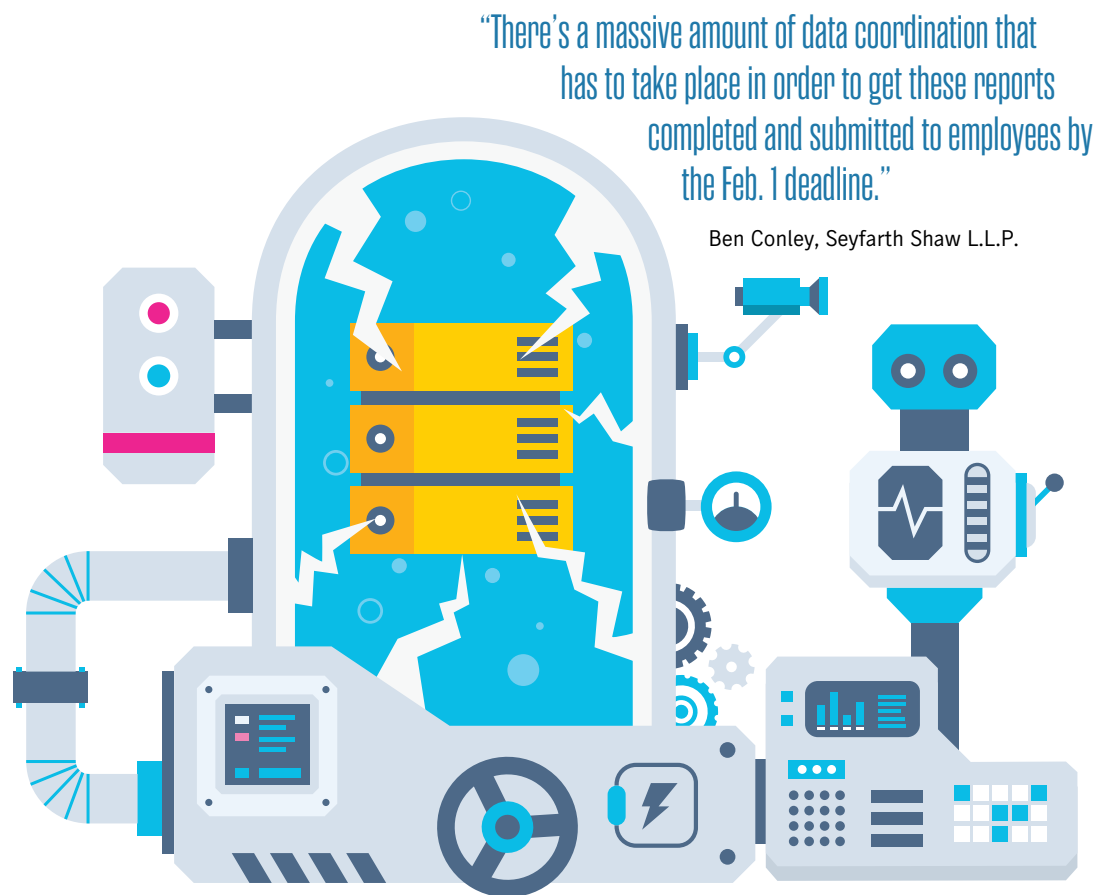
Benefits managers are working to keep within the affordability thresholds for offering health insurance coverage and providing more than the minimum value required by the Affordable Care Act. Under the ACA, a health plan meets the minimum-value standard if it covers at least 60% of the total cost of medical services. A plan is considered affordable if the employee's share of the annual premium for the lowest-priced individual plan is no more than 9.5% of the worker's annual household income.

Besides this, the reporting required by the IRS, which was a dominant concern for employers during open enrollment last year when they had to identify the full-time employees subject to coverage, remains a factor.

"I would say (the IRS reporting concern) is even bigger this year than last year because this will be the first year (employers) actually have to distribute the documentation," Mr. O'Connor said.

The ACA requires that employers and individuals submit forms to the IRS detailing the health coverage offered by the employer.

"There's a massive amount of data coordination that has to take



Ben Conley, Seyfarth Shaw L.L.P.

"There's a massive amount of data coordination that has to take place in order to get these reports completed and submitted to employees by the Feb. 1 deadline."

place in order to get these reports completed and submitted to employees by the Feb. 1 deadline," said Ben Conley, Chicago-based employee benefits attorney with Seyfarth Shaw L.L.P.

Many employers also feel responsible for educating employees on what they need to do regarding the unfamiliar IRS forms, he said.

Victoria Nolan, risk and benefits manager with Hillsboro, Oregon-based Clean Water Services, said the IRS reporting requirements are her biggest concern.

Not only does Clean Water Ser-

vices' payroll software need to be modified to hold the needed data, which the benefits team has to enter, but "we're having to take the time to educate the employees what these forms are because ... most employees that you talk with don't have a clue what they're supposed to do with them."

With all the changes being introduced by employers and the Affordable Care Act, benefits experts say thorough communication with workers is essential.

Employers must make sure "employees are paying attention and understand the magnitude of

change that might be happening in their employer's benefit plan this year," said Sandy Ageloff, U.S. West leader in Towers Watson & Co.'s health and group benefits practice.

"Communication is so much more critical today than it's ever been," Segal Group's Mr. Moroni said. "It's a matter of laying out the strategy and showing (employees), 'OK, here's why this plan isn't going to exist. Here's why this plan is really good for this segment of the people.' I think it's a great place in a lot of ways because of the whole communication effort."

SEVERITY

Continued from page 1

indefinite period of time, they might be addicted to opioids," and the claim ends up costing more than \$1 million, which is, "by our definition, a catastrophic claim," said Sherri Hickey, director of medical management for Safety National Casualty Corp. in St. Louis.

Catastrophic injuries usually require an immediate response, but "acute symptoms of underlying conditions may result in death or significant permanent injury," said Diane Blaha, Chicago-based senior vice president at managed care services provider Corvel Corp.

"It could be that (an injured worker) fell off the cart in the emergency room and lost consciousness, they were given the wrong dose of medication, or they had a bad response to the medication," Ms. Blaha added.

Denise K. Evans, Cincinnati-based director of workers comp claims for staffing company Staffmark, said she had a California employee suffer a heart attack

as he was about to undergo surgery for a work-related hernia.

The fact that "people are surviving injuries they did not survive five, 10 years ago" is also causing catastrophic claims to become more complex and, therefore, more expensive, Ms. Hickey said.

"What we're seeing is that we're taking care of more complex patients because they survive," Dr. Choo said. "It's not unusual now for us to see referrals for patients with 70% burns, 90% burns. What's amazing is that 10 years ago they would have died, but not today."

Return to productive life

Not only are medical and technological advances keeping more injured workers alive, they're making return to work a possibility, Ms. Blaha said.

"What we're able to do today with mechanics and robotics is amazing," Ms. Blaha said. "Yes, it's going to cost you a whole lot more from a medical expense (standpoint), but you are getting these people back to work, which five, 10, 15 years ago you didn't see."

She said that most employers do whatever it takes to return injured

employees to work and to productive lifestyles, as "the cost of that medical care is going to be less than supporting (an injured worker) for the rest of their life."

For example, Ms. Hickey said, standard prosthetics that cost around \$25,000 generally are considered to be medically necessary. But it makes sense to pay about \$100,000 more for a less rigid prosthetic with microprocessor technology if it allows a worker to be more functional, independent and return to work, she said.

"Sometimes you have to just do your research, and sometimes you've got to just go out on a limb and say maybe it is worth looking into some new technology," Ms. Evans of Staffmark said. "It depends on a company's appetite for risk."

One way Ms. Evans said she controls costs is by using MedicalServiceQuotes.com to get the "lowest possible cost with best possible service."

Catastrophic claims account for less than 1% of all workers comp claims, but they account for about 20% of costs, experts said, adding that the number of claims is slightly higher in safety-sensitive industries, such as trucking.

Traumatic brain injuries are the most common catastrophic claim employers see, since anyone can slip and fall, Ms. Hickey said.

She added that because she works at an excess workers comp insurer, she sees about 50 catastrophic claims each year, but that most claims adjusters and risk managers only see one or two in their entire career.

One best practice for managing catastrophic claims is immediately involving a nurse case manager who will meet the worker's family at the hospital, experts say.

"They're your eyes and ears right away," Ms. Evans said. "The family is upset. An awful incident occurred to their loved one ... That's not the time (for an employer) to be right in their faces ... with them asking questions you might not have the answers to yet."

Having expert physicians work alongside treating physicians is also a best practice, according to experts. So is having a worker's family member, as opposed to a registered nurse, serve as the primary caregiver to help reduce the cost of attendant care and make injured workers more comfortable at home, they say.

Regarding home or vehicle mod-

ifications, Ms. Hickey said she recommends having an occupational therapist work with contractors to identify what's medically necessary, in addition to added conveniences.

"You need to know exactly what an individual's capabilities are" before making modifications, she said. "Would they be able to open up a refrigerator or use a sink, or do they have to have somebody do that for them? ... If they go into the shower, do you need the shower to be big enough for the caregiver or not?"

Experts say it's important to remember that the injured worker isn't always the only employee affected by a catastrophic injury.

"What happens to the employees that are left at the job site?" Ms. Blaha said. "(They're) working together and witness (someone) crushed between a truck and a wall as it's backing up. (They) witness (a worker) jumping or falling off a building during construction."

"Think about the people left at a job site that have witnessed the catastrophic injury," she said, noting that they might develop post-traumatic stress disorder. "This is where we find employers aren't prepared."

LIABILITY

Continued from page 1

successful modeling may allow insurers to underwrite more selectively and manage risk accumulation, reducing coverage bans and limitations, according to Lloyd's.

Reinsurers, including the insurance-linked securities market, may also develop products to spread accumulation risk, Lloyd's noted in its report.

While property cat modeling has been able to rely on meteorology, seismology, historical loss patterns and geo-specific risk data, modeling emerging casualty risks "is a relatively new field without an established methodology," Lloyd's said in its Oct. 15 report, "Emerging Liability Risks: Harnessing Big Data Analytics."

Praedicat — which, backed by Newark, California-based catastrophe modeler Risk Management Solutions Inc., released its first liability cat model in February — starts by mining millions of peer-reviewed science journal articles and other data sources to identify substances and products that may pose threats of bodily injury or environmental damage. The model monitors scientific research on possible causal links between a product and injuries "before it matures to the point that it can support litigation," according to the Lloyd's report.

The model is also designed to "contextualize" a given risk, comparing its potential impact to other emerging and historical risks; and to use detailed information about a policyholder company's products and operations to place the company on a "map" of those exposed to liability disasters, the report explains.

Praedicat then applies the model's data to an insurer's portfolio to quantify its exposure to mass litigation. The model can also be used to analyze an industry's



Marsh's Guy Carpenter & Co. L.L.C. unveiled its ForCas model in March, focusing first on measuring insurers' exposure to "sudden disasters," such as oil rig explosions, that can generate multibillion-dollar cleanup costs, environmental liabilities and fines.

mass tort exposure and to measure an insurer's clash exposure across industries in a given line of coverage, according to Praedicat.

Others have developed their own models for casualty catastrophes. Marsh's Guy Carpenter & Co. L.L.C. unveiled its ForCas model in March, focusing first on measuring insurers' exposure to "sudden disasters," such as oil rig explosions, that can generate multibillion-dollar cleanup costs, environmental liabilities and fines. In June, it expanded the model to cover catastrophe risks of financial institutions across directors and offi-

cers liability, errors and omissions, excess casualty and fidelity lines; and cyber exposures including privacy liability, network security liability, business interruption and data asset losses.

Willis Re, meanwhile, has developed eNTAIL, which uses an analysis of more than 30 years of casualty cat events to project a probability distribution of potential future client insurer losses, according to the broker. Separately, Willis Re earlier this year announced a \$400 million reinsurance facility, dubbed PRIMO, to provide ceding insurers with cov-

erage for liability cat accumulation exposures. The facility, backed by 20 reinsurers, covers multiple accident years across all casualty and professional liability lines.

"While the world has changed since asbestos litigation emerged, the interplay between science, technology-driven innovation and risk which can drive the accumulation of exposure has not," Lloyd's observed in its report. Lloyd's noted possible toxicity of nanomaterials and potential environmental impacts of oil and gas hydrofracking among the emerging risks.

Modeling that makes these exposures more predictable could help insurers and policyholders, sources say.

"The results from casualty catastrophe modeling can lead to better underwriting — for example, risk selection, pricing for future events, portfolio optimization (and) exposure through policy terms," according to a 2013 analysis by Towers Watson & Co.

Modeling can also help map realistic disaster scenarios, validate capital model assumptions and test risk mitigation strategies, Towers Watson said.

STARTUPS

Continued from page 1

insurers have grown quickly. For example, North Shore-LIJ CareConnect Insurance Co. Inc., which was launched in 2014 by North Shore-LIJ Health System in Great Neck, New York, has seen enrollees in its health plans jump over the last year and a half from 12,500 to 29,000, including 10,000 who have coverage through their employers.

"We built a health insurance company virtually overnight," said Alan Murray, CareConnect's president and CEO. "We are expecting a doubling of coverage in the next 12 months."

While some health care systems have only recently formed health insurers, other health care systems have been — through their health insurance company affili-

ates or subsidiaries — big players in the health insurance market for many years.

For example, UPMC Health Plan, which was formed more than 15 years ago by UPMC (the University of Pittsburgh Medical Center), has 2.8 million enrollees, including 500,000 in employer group plans. It generates about \$6 billion in premium income, making it the second-largest health insurer in western Pennsylvania.

"We have been very focused on midmarket and smaller employers," said Diane Holder, president and CEO of UPMC Health Plan in Pittsburgh.

Just how many health care systems have formed health insurers, as well as the size of those insurers, isn't known.

But a recent Standard & Poor's Corp. report gives some insight. In that report, published in June, S&P looked at 16 health care systems that started health insurance com-

panies.

In all, the insurers collected more than \$25 billion in premiums and had more than 7 million enrollees in their plans.

And more growth is likely, S&P predicted in its report. "We believe that PSHPs (provider-sponsored health plans) will continue to proliferate," the rating agency said in its report.

Others concur.

"There has been extraordinary interest by health care systems getting into the insurance business," said Noel Obourn, a principal with Buck Consultants at Xerox in Stamford, Connecticut.

And that growth, experts say, will be welcomed by employers who increasingly have seen the number of health insurers offering coverage in their geographical areas decline due to the wave of insurer consolidation and mergers.

"Employers value the added

competition," said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York. "If successful, employers will be more than willing to send their employees" to insurers owned by health care systems if those insurers "provide high value," Mr. Thompson said.

"More choice is always good for employers and employees," Buck Consultants' Ms. Obourn said.

Still, the future of provider-owned health insurers is far from certain. "The jury is still out on how successful they will be in managing costs and improving health outcomes," Mr. Thompson said.

On the other hand, the relative late entry into the health insurance market by some health care systems has its advantages, some say.

"You are able to apply new technology to old problems," Ms. Obourn said.

"There has been extraordinary interest by health care systems getting into the insurance business."

Noel Obourn,
Buck Consultants at Xerox



'Santa Claus' heirs get early present

It's going to be a very merry Christmas for the family of the man who co-wrote "Santa Claus is Comin' to Town."

The heirs of J. Fred Coots, who co-wrote the 1934 holiday jingle with Haven Gillespie, are entitled to copyright ownership of the song, the U.S. Court of Appeals for the 2nd Circuit ruled this month.

The ruling states that EMI Feist Catalog Inc.'s rights to "Santa Claus is Comin' to Town" will expire in December 2016, not in 2029 like the music publishing company argued.

Mr. Coots sold "Santa Claus is Comin' to Town" to EMI's predecessor, Leo Feist Inc., in 1934, and granted him renewal rights in 1951, court records show.

Without copyright term extensions, "Santa Claus is Comin' to Town" would be in the public domain, and the many artists who've covered the tune, such as Bruce Springsteen and Justin Bieber, wouldn't owe royalties.

Partnership cooks up a court battle

Recipe books may lead to good meals and copyright battles as well. That happened between Rosemarie I. Carroll and Larry Moore who were partners for restaurant Tomaydo-Tomahhdo Express L.L.C. and a delivery catering business that ultimately led to a copyright disagreement.

Mr. Moore conceived hit recipes for the restaurant's menu, according to a ruling by the 6th U.S. Circuit Court of Appeals in *Tomaydo-Tomahhdo L.L.C. et al. v. George Vozary, et al.*

Ms. Carroll and Mr. Moore parted ways in 2007, with Mr. Moore signing a share purchase agreement agreeing to return all recipes to Ms. Carroll. Mr. Moore opened a catering business in 2011.

In 2012, Ms. Carroll assembled a recipe book based on Mr. Moore's recipes and applied for copyright protection in 2014. She then sued Mr. Moore for copyright infringement, among other charges, claiming he was using the recipes in his catering business.

But to prove copyright infringement creativity must be involved, and there is nothing creative about a mere collection of recipes, said a three-judge appeals court panel in Cincinnati in affirming a lower court ruling dismissing the case.

YOGA'S HISTORY POSES PROBLEM FOR COPYRIGHT SUIT



To non-aficionados, one pretzel-like pose is pretty much like any other and no big deal, but to those involved in yoga business, it can be a bit more serious. That seems to be the case illustrated in a recent court ruling, in which an appeals court held that yoga poses cannot be copyrighted.

In 1971, the "self-proclaimed 'yogi to the stars,'" Bikram Choudhury arrived in Hollywood and soon became a central figure in the popularity of yoga in the United States, according to last week's ruling by the 9th U.S. Circuit Court of Appeals in San Francisco in *Bikram's Yoga College of India et al. v. Evolution Yoga L.L.C. et al.*

Mr. Choudhury developed a sequence of 26 asanas, or yoga poses, and two breathing exercises, arranged in a particular order practiced over 90 minutes in a room heated to 105 degrees Fahrenheit that he published in a 1979 book, "Bikram's Beginning Yoga class."

In 2002 and 2005 respectively, Mark Drost and Zefea Samson completed the three-month Bikram Yoga Teaching Training course and founded North Tonawanda, New York-based Evolution Yoga, which also offers 26 poses and two exercises that are done for 90 minutes in a 105 degree heated room.

In 2011, Mr. Choudhury and his yoga college filed suit against Evolution Yoga, Mr. Drost and Ms. Samson, claiming copyright infringement. The U.S. District Court in Pasadena, California dismissed the copyright infringement claim, and a three-judge appeals panel unanimously agreed.

The book "was not proper subject of copyright protection because it was an idea, process or system designed to improve health, rather than an expression of an idea," said the ruling, in upholding the case's dismissal.

The ruling says "The Indian practice and philosophy of yoga date back thousands of years and is derived from ancient Hindu scriptures."

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Chinese coverage protects helpful

While no good deed may go unpunished, a Chinese insurer is trying to mitigate that risk.

"Helping elderly insurance" was launched this month to protect do-gooders who come to the aid of elderly citizens only to be accused later of malfeasance, China's official Xinhua news agency reported.



In one such incident in 2009, a man was ordered to pay 100,000 yuan (\$15,740) after coming to the aid of an elderly woman on the grounds that he would not have helped if he had not been responsible for her distress, according to media reports. Such incidents have reportedly led to reluctance by Chinese citizens to offer assistance to seniors.

The coverage is offered by a subsidiary of Chinese Internet provider Alibaba Group Holding Ltd. for a premium as low as 3 yuan (47 cents) a year and providing up to 20,000 yuan (\$3,148) to cover legal costs, Xinhua reported.

News agency AFP reported that according to the product's terms and conditions, the insurer, Sinosafe General Insurance Co. Ltd., will investigate alleged incidents before paying out.



'Fat fingers' type \$6 billion error

We've probably all suffered from "fat finger syndrome" when typing on small keyboards or our phones.

But rarely are such mistakes as potentially calamitous as the "fat fingered trade" committed by a junior banker at Deutsche Bank A.G.

According to the Financial Times, an unnamed junior banker at Deutsche Bank mistakenly paid a U.S. hedge fund a whopping \$6 billion last June after confusing a gross figure and net value.

The banker's boss reportedly was on vacation at the time of the incident.

The bank apparently recovered the money the following day and has reported the event to regulators in Europe, the United Kingdom and the United States.

It is not known whether the junior banker is still with the company, the FT said.

If he is, it is probably a good bet that he hasn't risked processing too many trades lately.

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KEYNOTE

Why Hasn't IDM Caught on With Workers Compensation and Risk professionals?

Terri L. Rhodes, CPDM, CCMP

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