

SURPLUS LINE REPORTER & INSURANCE NEWS

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NEWS IN BRIEF

PEOPLE

Stonetrust Commercial Insurance Company announced on April 17 the promotion of Michael “Shane” Treigle, CPA, and the hiring of Tracy Chou and Natalie Jones. Treigle has been promoted to executive vice president and chief financial officer.



Treigle

Treigle is a native of Baton Rouge and a graduate of Louisiana State University. He joined Stonetrust in 2003 and has been instrumental in the company’s growth and expansion. He was formerly senior vice president. Chou joins the company as executive vice president and chief investment officer. Chou holds bachelor’s degrees in mathematics and business administration and a Master of Science degree from Stanford University. Chou was formerly a director for Chou Investment Funds and will be responsible for leading and managing the company’s investment strategy. Jones joins the company as director of human resources. Jones is a native of Litcher and a graduate of Southern University. She has more than 20 years of human resources experience and has prior experience in healthcare, telecommunications, and insurance. She will be responsible for leading the company’s human resource and organizational development initiatives. Stonetrust President and CEO **Michael Dileo** stated, “All three individuals are outstanding contributors to our team and each will play key roles in our strategic plans to continue growing the company as a first choice workers’ compensation carrier for our agency partners and policyholders in all of our markets.”



Chou



Jones

See **NEWS IN BRIEF** Page 4

Auto tort reform bill on the move

The proposed automobile tort reform legislation passed in Louisiana Senate and House committees, which heard the bills simultaneously on May 12, causing witnesses to have to hotfoot it from one hearing room to the other to give testimony. The bills each now move, one to the House floor and the other to the Senate floor for approval.

The automobile tort reform legislation was number one on the lists of people in business and industry, including the insurance business, when the Legislature was set to convene March 9 before the coronavirus sent legislators home. The Legislature convened on May 4, with legislators, lobbyists, witnesses and spectators wearing masks and minding the six-foot social distance

requirement. Time is closing in for passage of the bills, since the lawmaking body must adjourn no later than 6:00 p.m. on June 1.

Proponents of the bills hold out hope that, if either of the proposed measures becomes law, the new law would put the brakes on the volume of lawsuits arising from vehicle accidents. People in Louisiana file twice as many bodily injury claims emanating from automobile crashes as the national average, and they file 60 percent more lawsuits, according to testimony by IIABL CEO Jeff Albright.

Opponents of the premium reduction proposals voice skepticism about whether changing the law will do any more than deny injured parties access to recovery for damages by clogging the courts. They were

insistent that the bills should not move forward because some people were unavailable to testify.

Both the House and the Senate bills are titled Omnibus Premium Reduction Act of 2020 and substantively mirror each other.

Senate Bill 418, authored by Sen. Kirk Talbot, R-River Ridge, was heard by the Senate Judiciary A Committee and reported favorably with amendments on a 4-3 vote after close to six hours of testimony. The bill awaits final passage in the Senate and is scheduled to be heard on May 18 as the Reporter goes to press.

House Bill 9, authored by Rep. Ray Garofalo, R-Chalmette, was heard by the

See **AUTO TORT REFORM** Page 2

Bill prohibiting credit score use deferred

Senate committee defers bills that would restrict rate determination

The Louisiana Senate Insurance Committee at its first meeting of the 2020 Legislative Session, on May 6, deferred three bills that would have prohibited insurance companies from using insureds’ credit scores (SB 14), the gender of an insured over the age of 25 (SB 13) and the fact that an insured is a widow or widower (SB 15) as factors in making automobile rates. During the same meeting, the committee decided, with no objection, to give thumbs up to a bill (SB 16) barring insurers from raising the private passenger auto rates of an insured based on deployment in the military for more than six months.

The four bills were sponsored by Sen. Jay Luneau, D-Alexandria, who testified in favor of all the bills and, as a member of the plaintiffs’ bar, has been vocal in opposing the industry’s tort reform measures which are expected to bring down automobile insurance rates.

Four similar bills were introduced on the House side by Rep. Kyle M. Green, D-Marrero. As the Reporter was going to press, all four bills were pending in the House Insurance Committee. In addition, Sen. Cleo Fields, D-Baton Rouge, introduced a bill that would prohibit the use of credit scores in determining insurance rates. As of May 17, that bill was pending in the Senate Insurance Committee. Time is short as the Legislature must adjourn no later than 6:00 p.m. on June 1.

Luneau contends that the industry is misguided and that it is his proposals which would actually bring automobile insurance rates down, not the tort reform measures proposed by conservatives. Luneau views

the state’s high automobile rates as a result of lack of regulation and trumpets his proposals as a way to implement regulation.

On the other side, the insurance industry views Luneau’s bills as red herrings intended to deflect the Legislature’s focus away from the tort reform measures.

Discussion of Luneau’s proposals was lengthy, often heated and included outbursts, with Luneau and Commissioner of Insurance Jim Donelon taking a few verbal jabs at each other and each calling the other a prevaricator (our word, not theirs).

Several of the individuals who testified against the bill prohibiting the use of credit scores, which was heard first, essentially indicated that ground had been plowed 15 years ago. They said they were present for the discussion in 2005 when the state’s Legislature passed the National Council of Insurance Legislators’ (NCOIL) model legislation approving limited use of credit

See **RATE DETERMINATION** Page 6

NCOIL panel weighs challenges of BI claims

With 553 in live attendance and more tuning in for the replay, an April 24 webcast hosted by the National Council of Insurance Legislators featured facts and figures surrounding business interruption insurance coverage. Rep. Matt Lehman, R-Indiana, president of NCOIL said it was important to share the message with state lawmakers throughout the U.S. Lehman was joined in the video conference by Rutgers law professor Adam Scales, whose research focuses on insurance law and torts; Sean Kevelighan, president and CEO of the Insurance Information Institute, and New Jersey state lawmaker Assemblyman Louis D. Greenwald, D-Camden.

Greenwald serves as the majority leader of the New Jersey Assembly and is a sponsor of A-3844, legislation that would expand business interruption coverage to include the coronavirus as an insured peril under existing policies.

From the outset, Lehman stated that NCOIL strongly opposes retroactive application of business interruption coverage for coronavirus to insurance policies not heretofore offering such coverage. “Rewriting coverage in the absence of physical damage and expressed exclusions,” said Lehman betrays contracts between two parties. Instead, Lehman, who is an insurance agent, said NCOIL looks to the federal gov-

ernment to create a federal solution for the millions of businesses whose lost income falls outside policy protections. NCOIL also supports a federal backstop for pandemic coverage to be offered by insurers in the future to protect against future harm caused by the outbreak of diseases.

Scales was frank: “Insurance is generally organized around the concept of physical loss or damage to property. While insurers are loath to indemnify against the risks of someone’s business turning sour, they do provide coverage for loss of business income accompanied by property dam-

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London’s reputation at risk with COVID claims
See Page 17

NICB helps law enforcement solve crimes
See Page 21

Prime Natural Resources sees court award dwindle
See Page 24

Agents don’t tolerate carelessness at mock trial
See Page 26

Auto tort reform

House Committee on Civil Law and Procedure in a meeting that lasted nearly nine hours and was reported favorably with amendments on an 11-5 vote. If passed, the reform legislation will be effective Jan. 1, 2021.

Both bills were passed by committees voting along party lines – Republicans voting yea, and Democrats voting nay. The question remaining is whether or not Gov. John Bel Edwards, a Democrat, will sign an automobile tort reform bill into law if/when it reaches his desk.

Both of the bills will:

- Remove the direct action statute; Louisiana is one of three states that have direct action;
- Lower Louisiana’s jury trial threshold from \$50,000 to \$5,000, which would make

Louisiana the second highest in the country behind Maryland at \$15,000 and still an outlier because 36 states do not have a jury threshold;

- End the collateral source rule, which allows plaintiffs to recover more than they paid for healthcare;
- Extend prescriptions for tort actions from one year to two years for motor vehicle accidents;
- Eliminate the seat belt gag rule, and
- Require a 10 percent reduction in rates for each impacted coverage for personal automobile insurance, unless an insurer satisfies the Commissioner of Insurance that the company has not experienced a sufficient reduction in loss costs to actuarially justify the 10 percent rollback.

In response to a question by Rep.

Mandie Landry, D-New Orleans, Commissioner of Insurance Jim Donelon said he would require the 10 percent rollback unless an insurance company’s solvency was threatened by reducing rates.

Donelon told the House Civil Law Committee that the tort reform measure is the most important bill affecting “our people and our business climate.”

He pointed out that Louisiana is an outlier among states when it comes to jury threshold, direct action, collateral source and the seatbelt gag rule. He argued that lowering the jury threshold was unlikely to clog the judicial system as judges have argued. He said Louisiana has the same number of judges per capita as the standard nationally. “We are not going to clog the system. We can handle it just like the other 49 states are.”

Rep. Gregory A. Miller, R-Norco, who chairs the House Civil Law Committee, reminded the panel that judges try more than just jury trials. “I don’t want to leave anyone with the impression that judges are just sitting around with clear dockets.”

Donelon said, “Truthfully we are talking about two groups of people. (The first group includes) the working poor, the 45 percent of drivers who drive with only the minimum limits that the law requires them to have. They are buying that insurance not because they have assets to protect, but because the law requires them to carry insurance. Another 12 percent to 15 percent drive without insurance altogether. The other group is the business community.

See **AUTO TORT REFORM** Page 5

FROM PAGE 1



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Will you feel the change in time to act?

By Michael G. Manes

I was standing at the receptionist’s desk for Pitcher, Penn, and Doyle in Hunt Valley, Maryland, on Nov. 20, 1980. I was scheduled to meet with Don Doyle about a GM Famex Program they managed. The radio broadcast playing in the background announced: “We are interrupting this program to go to Jefferson Island (a few miles from my hometown), Louisiana, for an update.” I asked the receptionist to let me listen to this report before calling Mr. Doyle.

A local man was being interviewed about what had happened. He said in the thickest Cajun accent you’ll ever hear, “Mais, all of a sudden the lake goes ‘woo, woo, woo’ like a commode flushing, I got my boat to shore just in time.” The receptionist laughed at his broken English and country ways; I celebrated his quick thinking and response in this life threatening event. If she’d been in that boat, she may have drowned planning her next actions instead of instantly reacting to the crisis.

The excerpts below from Wikipedia give a sense of what actually happened:

Lake Peigneur was a 10-foot deep freshwater lake, popular with sportsmen, until an unusual manmade disaster on Nov. 20, 1980, changed its structure and the surrounding land.... Texaco accidentally drilled into the Diamond Crystal Company salt mine under the lake.... The resulting whirlpool sucked in the drilling platform, eleven barges, many trees, and 65 acres of the surrounding terrain. So much water drained into those caverns that the flow of the Delcambre Canal that usually empties the lake into Vermillion Bay was reversed, making the canal a temporary inlet.

Although there were no injuries and no human lives lost, three dogs were reported killed. All 55 employees in the mine at the time of the accident were able to escape thanks to well-planned and rehearsed evacuation drills. The crew of the drilling rig fled the platform before it was sucked down into the depths of the lake; a fisherman (the aforementioned Mr. Viator) who was on the lake at the time was able to pilot his boat to shore and escape. Days after the disaster, once the water pressure equalized, nine of the eleven sunken barges popped

out of the whirlpool and refloated on the lake’s surface.

The event permanently affected the ecosystem of the lake by changing the lake from freshwater to saltwater and increasing the depth of part of the lake.

Get the picture?

Months later, a friend of mine who had spent his entire career in the “oil patch” explained that the tool pusher in charge felt the slightest of movement in the rig and immediately called for evacuation. His experience (scar tissue), sensitivity to the environment and quick thinking saved lives. Lake Peigneur has been transformed, but no one died in the process. We may not control the environment, but we can control our response to what happens in our environment. I now realize the genius of the Scout mantra: Be prepared.

I have been active in or consulting with the insurance industry and independent agency system for 47 years. I’ve been preaching the gospel of change for over 27 of those years. I’ve been criticized by many traditionalists and ridiculed by folks who have been blessed by the ways of yesterday. A very successful friend said it best, “Mike, you’re preaching to a congregation that doesn’t want to be saved.”

We may not control the environment, but we can control our response to what happens in our environment.

Recently I’ve felt some vibrations on the platform that is our industry’s marketplace that signal it is time to evacuate from yesterday’s world and regroup in and with the marketplace of tomorrow. Most recently, at the beginning of this year, our country and the world took a punch to the gut like no other since Pearl Harbor. Like Mr. Viator, you can head to shore and regroup there or you can stay on the lake that is familiar to you and take your chance on drowning. Consider these challenges to your comfort zone:

-Too many of our agencies have clung to a Father Knows Best Main Street model of yesterday and are not ready to fully transform to the Modern Family marketplace of tomorrow.

See **FEEL THE CHANGE** Page 4

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-The Greatest Generation is gone, and we Boomers are near the exit. The market we'll serve is now about Gen Xers and Millennials who don't care how we did it in the past.

-The portrait of yesterday's mass market is now a mosaic of many niches. We must meet our clients (who, what, how, when, and) where they are. They won't come to us.

-Decades ago, a new employee was thrown into the market and had to sink or swim. Today's best talent seeks controlled structure with flexibility. This includes a work life balance not promises of riches in the end if you nearly kill yourself getting there.

-Yesterday new employees bought the trust-me promise of opportunity: Do well, and we'll bonus you. Today they want specifics in writing — a clear career path, train-

ing, mentoring, specific education, and workplace flexibility, including some office time and some work from home. Rhetoric will not suffice.

-If you're trying to replace an employee who has 45 years of experience with someone of like experience, don't. Find who is right for the future and work with him or her to define and build the role, not as it was but as it will be.

-What you sell today is not nearly as important as what will be needed tomorrow. Flood and health insurance may be government programs tomorrow, and auto insurance may be provided by the manufacturer of the driverless cars we buy. Find and embrace the new products and new markets that are coming. There are future opportunities we can't even yet anticipate.

-From Peter Drucker's WSJ Article (Oc-

tober 21, 1993) The Five Deadly Business Sins, we learn the future is in "price driven costing" — not "cost driven pricing." We must determine what the marketplace is willing to pay and innovate our processes to come in under that price. Customers do not see it as their job to ensure manufacturers a profit.

-Finally, today our world has been changed by a "bug" that none of us fully understands called the coronavirus. It has changed our world, our innocence, our work, our social life, and our sense of security. How has your world changed? How do you adapt to this new world? How do you go forward? Will your future be driven by fear or faith, hope or adventure, or opportunity?

-More importantly, how have your clients and potential clients been changed? Will they depend on you? More or less?

FROM PAGE 3

Will they hunker down alone?

If you can leverage technology for efficiency (doing things right) and client intimacy for effectiveness (doing the right things), you can survive and prosper. Flexibility and vision will be more important than history and structure. Remember, in turbulence, rigid pine trees snap and flexible willow trees and well-rooted, strong oaks prevail. Are you ready for tomorrow? Really?

MICHAEL G. MANES is the owner of Manes and Associates, a New Iberia-based consulting business focusing on planning, sales and operations, and change. He has over 47 years of insurance industry experience, including serving as an instructor of Risk and Insurance at Louisiana State University.

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NEWS IN BRIEF FROM PAGE 1 NEW FOUNDATION

LWCC announced April 30 the formation of a private foundation to continue furthering its vision – to be a catalyst for elevating Louisiana. The foundation will focus on the areas of health, wellness and safety in the workplace. The foundation's leading initiative, Louisiana Well Again, will include a \$1.1 million, three-phased response package to help Louisiana respond to and recover from COVID-19. Phase one is a \$100,000 gift to Feeding Louisiana, a statewide nonprofit organization that supports food banks across the state. Phase two is a \$500,000 grant program that will help hospitals across the state support the work of COVID-19 front-line healthcare workers. Funds will be distributed by June 2020. Phase three is a \$500,000 grants program to fund initiatives focused on improving the health, wellness and safety of Louisiana workers in the wake of the COVID-19 peak. These initiatives will implement long-term solutions targeting long-existing vulnerabilities in Louisiana workers. This grants program will begin later in 2020, once there is greater clarity on the impacts of COVID-19 on Louisiana's workforce. On March 24, LWCC announced an early dividend distribution of \$86 million, which went to approximately 20,000 businesses across Louisiana on or before April 10.

MERGERS/ACQUISITIONS

XPT Partners LLC announced April 22 its acquisition of LP Risk Inc., an MGA and surplus lines broker with offices in Houston, San Antonio and Dallas and in-house commercial automobile programs. The transaction closed April 22, and LP Risk will continue to operate under its established brand name, so client business will not be affected. **Landon Parnell** will continue as president of LP Risk and take on the new role of leading XPT's National P&C brokerage division. **Mark Smith**, XPT Partners, touted the collaborative partnership culture of the firms. XPT Partners CEO **Tom Ruggieri** said that Landon's track record of success and knowledge will strengthen XPT's executive committee. LP Risk is XPT's sixth

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Auto tort reform FROM PAGE 2

When they go out to recruit people to do business in our state, one of the first things they have to overcome is the ‘judicial hellhole’ that our state is known for nationwide, which truly is a deterrent to attracting industry.”

According to Donelon, the state’s claims to litigation ratio is number one in America; above the minimum limits for a jury trial, Louisiana is the 12th highest. “It is the jury trial threshold primarily that is driving the cost of auto insurance through the roof.”

Donelon explained that the reason is it does not pay an insurer to try to defend those claims in a judge trial where the judge is elected by the constituents who are coming before him with a soft tissue claim that is worth \$15,000 for one person. If they happen to have two people in the vehicle, it is worth \$30,000. Rather than pay the cost of defending that action, insurance companies just write the check for \$15,000. “That is what feeds the TV lawyers that you see day in and day out and up and down every highway in the state,” he said.

“It is not the really injured people, who have to go before a jury and prove that they were injured and have been operated on or will have to be operated on. Those cases have to convince a jury of their peers of the legitimacy of their claim. That is the ones you see on those TV ads. They were rightly compensated, but that’s not what they (the attorneys) are really advertising for. What they are really advertising for is all those minor accidents that come their way as a result of the millions of dollars that they spend advertising. That, frankly, ought to bring the majority of the lawyers in Louisi-

ana to this table in support of this legislation. ...”

Donelon predicted that automobile insurance rates would go down 25 percent if the bill passes as presented to the committee. Rates would go from the highest to the national average, he said, but not immediately, because there will be a lag time before litigation diminishes.

Donelon contended that direct action, “does nothing but prejudice the case; it inflates artificially the value of a claim, because (people think) big insurance companies will pay the bill. That is not true,” he said. “That is a lie. We pay the bill.” The people who buy insurance in each state ultimately pay the bill for loss costs in their state.

Representing his clients, Roland Stalter, a commercial insurance broker in New Orleans, told the panel, “The crisis is true, since the premium for \$1 million of liability coverage on a tractor truck went from \$7,200 to \$35,000, almost more than the truck is worth.” Stalter expressed concern about the Port of New Orleans. He fears business for the port may go to Houston or the Gulf Coast because of the drayage cost.

“At this point,” Stalter said, “plaintiff attorneys are beating the adjusters to the scene of accidents.” He said companies have told him they need about 30 days to get in touch with people involved in a crash and reach a settlement.

“Everyone wants legitimate claims to be paid,” Albright told legislators, “but there are only two ways to reduce insurance pre-

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Rate determination

FROM PAGE 1

scores in rate making.

This is not Luneau’s first attempt to get legislation passed that would prohibit the use of credit scores in rate making. Last year, he said, he had an actuary testify that automobile insurance rates in Louisiana would go down with more regulation of insurers’ rate setting abilities.

The use of credit scores in rate setting “typically penalizes poor people,” he said, even if they have an “adequate” driving record.

Luneau explained that this is not a FICO credit score. “This is an algorithm invented by insurance companies. We do not know what’s in it or how they do it.” Luneau alleged that “companies can do what they choose to, and that causes rates to go up.”

A freshman senator, Robert Mills, R-Minden, asked if there is any way for the legislation to be amended to add that if an insured prepays or pays cash for coverage, the credit score “should not be involved.”

Luneau explained that the issue is not whether the insured is “going to pay the premium; the issue is they use these algorithms to determine whether the insured is a good risk.”

Luneau said there are many states that do not allow credit scores to be used in determining rates – an allegation disputed by others.

Essentially agreeing with Luneau on the use of algorithms, Commissioner of Insurance Jim Donelon said, “It is not about the ability to pay; it is about the likelihood of loss.”

Where Donelon parted company with Luneau was about how widely credit scores are used in other states to set rates. Donelon

said Luneau “misspoke” when he (Luneau) said credit scores are not widely used.

According to Donelon, all states, but two, allow use of credit scoring on a limited basis because credit scores are an accurate predictor of loss. “Companies don’t care,” he said, “because insurance is a cost-plus business.” In Louisiana, he said, when making rates, companies typically add seven percent to their cost, while in other states they add eight or nine percent.

Donelon explained that Louisiana uses the NCOIL model, which allows credit scores to be used in initial pricing, but prohibits the use of credit scores on renewal. “If you prohibit the use (of credit scores altogether), you will benefit those who are higher risks and penalize those who are lower risks. The truth is (with credit scores) you are pricing the policy based on the risk.”

Luneau said he did not misspeak. “States don’t allow the use of credit scores the way we do.”

Luneau contended the Department of Insurance has no idea what insurance companies use in their rate making algorithms and that the department’s actuary had said so, whereupon Donelon disagreed and said that the actuary had been misquoted and that the department does know what is in the algorithms companies use.

At that point the department’s actuary, Rich Piazza, came to the table and explained that the use, or not, of credit scores will not affect the average rate insurers in the state pay for private passenger automobile insurance. Barring the use of credit scores would cost shift, but “it is a zero sum game,” Piazza said. “If you don’t take losses out of the system, you can’t lower” what

people pay in the aggregate.

The same is true for any classification variable, Piazza said. “If you remove it, some will pay less and others will pay more.”

Piazza explained that the use of credit scores as predictors started in the 1990s with FICO (Fair Isaac Company) scores, which are used “because they are highly predictive of loss. That correlation needs to be there, and it needs to be consistent,” he said.

Over the last 20 to 30 years that Piazza has reviewed rate filings, he said it doesn’t matter which company or which year, credit scores are highly predictive of losses.

“Granted, in any classification system, there will be some folks who do not have losses. ... If you knew (which people) were going to have losses, you wouldn’t insure them, but insurance is a pooling system.”

Credit is a rating mechanism, and it “works well predicting lower risk and higher risk drivers.”

Testifying on behalf of the National Association of Mutual Insurance Companies (NAMIC), Dr. Lawrence “Lars” Powell, University of Alabama, responded to a question from Sen. Gary Smith, D-Norco, about how credit is weighted relative to

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driving record in the rating making algorithm, by saying that credit is the first or second most predictive variable for automobile accidents.

Powell is the executive director of the Alabama Center for Insurance Information and Research in the University of Alabama’s Culverhouse College of Commerce and Business Administration.

He led his remarks with an explanation of what a credit score is and is not. “It is not a probability of default on a loan. It is taking information that represents your risk taking characteristics – your personality, your psychology. It is how much of your limit is taken up by the balance on your credit card; how much credit are you using; are you seeking new credit, and it correlates that with the number of losses you have. So, it is not just dropping your FICO

score into a rating model,” he said.

“Why not just use the number of accidents or driving record?” Powell asked. Then answered his own question: “The problem is those are very course variables. The average person has a 3.5 percent chance of crashing their car annually and about the same chance of having a traffic citation, so you could misclassify an average or bad driver for years and years.”

Powell explained that a “course” variable is either yes or no. Either it has happened or not. And probably will sooner rather than later. The credit score, he said, is a continuous variable that can take on a number of values.

“It is true,” he said, “that there is no slack in the automobile insurance rates in Louisiana.” For the last few years, the return on automobile insurance in Louisiana has been

a little less than a negative one percent (-0.9 percent). There is not a surplus of profit, so one cannot cut the profit out and save money.

“There is no way to save money by getting rid of the credit variable or any other variable,” Powell said. “If you disallow the use of credit, you will have riskier or worse drivers paying less and the better, or safer, drivers paying more, which is the opposite of what I think the system is intended to do.”

Responding to a question by Committee Chairman Rep. Kirk Talbot, R-River Ridge, Powell said that only California, Hawaii and Massachusetts do not allow the use of credit in setting rates. Those three states have the highest price for automo-

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NEWS IN BRIEF

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acquisition, preceded by Western Security Surplus, WE Love and Associates, SVA Underwriting, Klein and Costa, and Sierra Specialty. XPT is a specialty distribution company formed through a partnership of management executives and an institutional investor which backs early stage insurance distribution firms.

Webster Financial Corporation, the holding company for Webster Bank, N.A. and its HSA Bank division, announced in April that HSA Bank has signed a definitive agreement to acquire the existing health savings accounts (HSA) of State Farm Bank, F.S.B., a subsidiary of State Farm Mutual Automobile Insurance Company. Under the agreement, approximately 24,000 accounts, including an estimated \$140 million in deposits, will transition from State Farm Bank to HSA Bank, the nation’s leading bank administrator and depository of HSAs. Expected closing is in the second or third quarter of 2020. No other terms of the transaction are being disclosed. The transaction is subject to regulatory approval and customary closing conditions.

RATINGS

AM Best has assigned a financial strength rating of B++ (Good) to Stonetrust Premier Casualty Insurance Company and has affirmed the financial strength rating of B++ (Good) of Stonetrust Commercial Insurance Company. The outlook for both companies is stable, AM Best said in a news release issued April 30. The companies are domiciled in Omaha, Nebraska, and collectively are known as Stonetrust Insurance Group. The ratings reflect the group’s balance sheet strength, which AM Best categorizes as very strong, as well as its adequate operating performance, limited business profile and appropriate enterprise risk management. AM Best bases its assessment on the group’s level of risk-adjusted capitalization and favorable loss reserving trends, as well as positive underwriting and operating cash flows. Additionally, improved underwriting leverage has enhanced risk-adjusted capitalization and overall balance sheet strength. Offsetting positive factors is the elevated common stock leverage, leaving surplus susceptible to stock market downturns. The group’s limited business profile reflects its concentration as a monoline workers’ compensation insurance company operating in eight states, predominately Louisiana. The group’s 10-year average combined ratio of 96.5 percent compares favorably with the industry and workers’ compensation composite averages. The group has a comprehensive reinsurance program with low retentions, AM Best said.

LDI

Insurance Commissioner Jim Donelon has called upon commercial vehicle insurers to review their Louisiana policies and consider returning a percentage of premium to policyholders whose businesses have been impacted by the stay-at-home orders put in place as a result of the coronavirus pandemic. Following these emergency

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bile insurance, while Louisiana has the lowest price. The three states do not have the highest premium, he explained, adding that price is the premium relative to loss costs. Louisiana has the lowest price because costs are high. To bring down premium, “all you can do is address losses.”

Luneau contended that despite hearing that credit scores are the best way to rate, he had seen “no data or studies by anyone except those by insurance companies.”

When Kevin Cunningham, representing the American Property Casualty Insurance Association (APCIA), took a chair at the witness table, he pointed to a University of Arkansas study in 2017 dealing with credit

scores being predictive of risk and a 2015 study relative to the use of credit and whether it is predictive of income. “It is not necessarily, quite frankly, because poor people do not have access to credit,” Cunningham said. “Poor credit is not a proxy for low income.”

Cunningham pointed out that the University of Arkansas study showed that when credit scores are used in rating, 54 percent of the insureds have a positive result; 20 percent no effect at all, and 20 percent have a negative result.

In closing, Luneau insisted that he had not seen a study, other than those done by insurance companies or paid for by insur-

ance companies. “If there is any peer reviewed material, no one has presented it to me. This might have been a good time to give it to me. I think if one existed that would have been done.”

Luneau questioned where the information comes from that 60 percent of insureds have a lower premium when credit scores are used. “Does it come from the algorithm that insurance companies won’t share be-

Rate Making based on Gender

Luneau had no objection to the use of gender in determining private passenger automobile rates for persons under the age of 25, he said, because “under 25 typically males are worse drivers.”

In introducing his bill, Luneau referenced a study in which all other things were equal, except that the male had a recent DWI and the female did not, yet the

Price is the premium relative to loss costs. Louisiana has the lowest price because costs are high. To bring down premium, ‘all you can do is address losses.’

-Powell

cause it’s proprietary information?

“If the credit score is so great and the driving record not, why do rates go up when (an insured has) an accident? Why not just use the credit score? If you get a ticket why does your insurance go up?”

“They increase our insurance because we don’t do anything about it. This is an opportunity to say we are not going to let this go on any more. It defies logic. It does. We all know it does.”

“Mr. Cunningham said it best when he said last year insurance rates are not going to go down. The way to make them go down – we all agree to that – is regulation.”

Smith moved to report the bill favorably. Sen. Barrow Peacock, R-Bossier City, objected and made a substitute motion to defer the measure. There was no objection to Peacock’s motion to defer.

female’s automobile premium was higher.

Peacock opined that discrimination in automobile rates based on gender should not occur at any age. But he was more concerned about moving the bill to the floor of the Senate and having Luneau amend the bill with the credit score bill, which could occur because both bills deal with insurance rate determination as their titles indicate. Peacock asked Luneau if he intended to amend the credit score bill onto the gender bill.

Luneau responded that “it depends on the language of the amendment” and later said he “probably will” but has “not decided for sure.”

“As you recall,” Donelon told the panel, “this (proposal) was brought to the com-

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mittee last year to distract from tort reform. “This lowers no premiums for the state of Louisiana. If we pass the bill, we will be ranked as we are today. We will pay to the insurance companies the exact same amount of money. All this bill will do is change who pays the premium. Rates will go up for single men over 25, and rates will go down for single women over 25.” Changing the subject, Donelon said, “By the way, last Friday I got an email support-

as individuals. People don’t like lawyers until they need one to help them solve problems. I am offended when someone tries to besmirch me by saying I filed these bills to do away with tort reform. That is a lie,” he said. “This is common sense,” Luneau said. “You don’t need a PhD to find out how much a loaf of bread costs. We should be looking at driving records. If we continue to let insurance companies do whatever they

make a profit. But this is a product we are all mandated to buy. If you are going to own an automobile and use it on the roads in the state of Louisiana, you have to have this product. Therefore, it has to be regulated. This is a common sense bill. We should not be discriminating against women.” Smith moved to report the bill favorably. Peacock made a substitute motion to defer, and Smith objected to Peacock’s motion. Peacock’s motion to defer passed on a 4-2 vote of the panel. **Rate setting based on marital status** In introducing SB 15, Luneau said that some, not all, companies raise a driver’s automobile rates if the driver’s spouse dies.

“I do not think that is the proper way to rate customers,” he said. Luneau said he got more response from this bill than any of the other bills he filed. He told the panel about a lady whose rates went up after her husband died, which she found amazing because her husband had been bedridden for about six years. “All of sudden she is a worse risk,” Luneau said. Donelon said that he got a few phone calls when a special interest fund said he was discriminating against women. “That group is advocating against tort reform,” he said.

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I am tired of statewide officials castigating me because I am a trial lawyer. ... I am offended when someone tries to besmirch me by saying I filed these bills to do away with tort reform. That is a lie. -Luneau

ing all these bills from a group that I am a member of, the Louisiana Bar Association. It kind of offended me that they would take that position. It did not surprise me. And (they took a position) opposing the tort reform bills in the session. That did not surprise me either.” According to Donelon, the actuary who testified last year was paid by trial lawyers. “I urge you not to take the bait,” Donelon said. “I have four daughters, no sons and one wife almost as old as I am. I do not want to discriminate against anyone. ... It is not that insurance companies like men more than women. It is actuarially justified.” In closing, Luneau said, “I tried to stay away from personalities. I am tired of statewide officials castigating me because I am a trial lawyer. I represent as many businesses

want, we will never get our rates down. (Everyone) agrees that regulation is the way to lower rates. That’s what this bill attempts to do, regulate them in that fashion. If we continue to sit here and listen to what the insurance companies say, it is going to be very hard to get rates down.” Last year, when the bills were heard, according to Luneau, the industry “kept talking about the legal climate in Louisiana” as a reason rates could not be reduced. “Yet as soon as the session was over State Farm reduced rates, not once, but three times. What happened to make that happen? And other big companies followed suit,” he said. “These groups make a lot of money. I am not against businesses making a profit. I want all businesses to be successful and



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declarations, many commercial fleet operators are seeing significantly fewer miles driven and as a result, a reduction in the frequency of accidents and claims exposure to their insurers. “In a letter to the major commercial auto insurers doing business in Louisiana, I have challenged those companies to review the previous 90 days of claims history and determine if a return of premium is appropriate for each of them, as has been seen in the private passenger market,” Donelon said in a news release May 5. “While we know that Louisiana has represented a hard market for these commercial insurers for many years, the challenges being faced by their commercial policyholders are both historic and unprecedented. We’ve made it clear to these insurers that there are no substantive regulatory impediments to offering discounts or rebates to commercial policyholders in Louisiana, and we appreciate the companies’ willingness to consider this request.”

FINANCIALS

Kingsway Financial Services Inc. announced April 21 that it received notice from the New York Stock Exchange that the company is not in compliance with NYSE listing standard 802.01E because it had not timely filed its Annual Report on Form 10-K for the fiscal year ended Dec. 31, 2019. The NYSE has informed the company it will closely monitor the status of Kingsway’s late filing and related public disclosures for up to six-months from its due date. Kingsway will continue to work with its auditors with the objective of filing its 2019 Form 10-K as soon as practicable. At the same time, the company also announced that it received a notice from the NYSE that the company is not in compliance with NYSE listing standard 802.01B because its average global market capitalization over a consecutive 30 trading-day period is less than \$50,000,000 and stockholders’ equity is less than \$50,000,000. The NYSE has informed the company that it may submit a plan advising the NYSE of how the company will become compliant with the applicable listing standard within 18 months. The company intends to submit such a plan to the NYSE as soon as reasonably practicable. If the plan is accepted, the NYSE has advised that it will not initiate suspension and delisting procedures but will monitor the Company’s compliance with the plan on a quarterly basis. Kingsway is a holding company that owns or controls subsidiaries primarily in the extended warranty, asset management and real estate industries.

REINSURANCE CAPITAL

Global reinsurance capital may be eroded by some \$30 billion as a result of market movements in the wake of the coronavirus outbreak, according to a report released April 23 by Willis Re, the reinsurance arm of broker Willis Towers Watson. That represents capital destruction of about five percent of a \$559 billion global reinsurer capital base before the outbreak, the report found. The calculation was based on applying a 15 percent decline in equities together

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Donelon explained that the rating class is single women, “whether they never married or are a widow. It is single women versus married women.” The rate is based on the fact that they are driving more because they no longer have a spouse that they are sharing the driving with. “There is an incremental cost whether they are a widow or widower,” he said.

“It is just a lie to say that there is a penalty that I support or that the industry imposes (a rate increase) based on widow or widower status,” Donelon said.

In closing, Luneau referenced Donelon’s explanation, saying “It’s not because the spouse died. It’s because (the driver) is single. Why are they single? It’s because their spouse died. It’s smoke and mirrors. It’s unconscionable to charge a person more because their spouse died.”

Smith moved to report the bill favorably. Peacock offered a substitute motion to defer. The bill was deferred.

Rates based on military deployment

There was little discussion about the merits of SB 16 which prohibits rate determination based on the fact that the insured is deployed in the military in excess of six months.

As soon as the title was read, Talbot, who chairs the committee, moved to report the bill favorably.

From the audience, Donelon voiced his support of the measure.

Peacock wanted to know if Luneau intended to amend the bill on the floor of the Senate using the credit score bill as the amendment. Luneau responded, “I have no intention of amending this bill.”

Donelon explained that the bill has nothing

to do with the military. It has to do with gaps in coverage when the insured driver fails to turn in the automobile’s license plate as required by law when coverage lapses.

Senate Bill 16 was unopposed and reported favorably.

Talbot solicited support for his bill, SB 65, which creates an exception for members of the armed services, who are deployed out of state, allowing them to avoid a penalty for a lapse in automobile insurance coverage. The bill also provides that no insurer shall increase premium rate or add a surcharge for lapse in coverage if the insured is a member of the armed forces. The bill passed the Senate Committee on Transportation, Highways and Public Works as amended on May 7 and passed the full Senate on May 13. The bill is pending in the House Insurance Committee.



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BI claims

FROM PAGE 1

age. The precise phrasing of this (coverage) can vary from policy to policy; modern policies generally require damage or loss to (the covered) physical property.”

Greenwald’s proposal in New Jersey is at odds with Lehman’s and Scales’s views. The impact of this unprecedented economic slowdown on businesses is in the billions

of dollars, Greenwald said. “The appearance is that people have insurance, but when they call upon their insurance, they hear ‘Insurance doesn’t cover that.’ This is harmful to the business community and is a bad appearance for the insurance industry.”

The New Jersey lawmaker wants insurers to provide some benefit to their policy-

holders. He wants insurers’ response to be: “This doesn’t fall under business interruption; however, you do have this coverage, and we can give you some relief under that.” While he tries to work this out with insurers in New Jersey, Greenwald said the legislation that would expand all loss of use and business interruption policies is on hold. The New Jersey legislation would provide such coverage for the duration of the declared state of emergency due to the coronavirus, and is limited to businesses employing fewer than 100 employees working 25 or more hours weekly.

Greenwald cited examples of health insurers “stepping up” during the pandemic to waive deductibles and co-payments for coronavirus testing. He credited some insurers with “stepping up” to defer payments or return premium to policyholders. Greenwald made it clear that he expects more from the property and casualty insurance industry.

Greenwald predicted that there would be a second wave of the coronavirus before a vaccine is available 18 months from now, and he recommended that the insurance industry craft a policy that would offer coverage for customers in the future in a way that is affordable and makes good sense for small businesses.

Greenwald pointed out that leaving businesses unprotected also leaves government unprotected, as governments greatly depend on revenue derived from business profits and employment, both of which have taken hits during the pandemic. Sufficient funds for government, said Greenwald, protects the ability of government to serve the most vulnerable population in a way that keeps the percentage of vulnerable people from growing.

Triple I’s president defended the insurance industry’s response to the pandemic, because it applies “forward-thinking solutions to take care of its customers, communities and employees and is acting with urgency during the COVID-19 crisis.” Kevelighan called insurers “financial first responders.”

Auto insurers across the U.S., said Kevelighan, have returned \$10.5 billion to customers through premium relief. Through the Insurance Industry Charitable Founda-

tion, insurers have contributed an estimated \$220 million to national and local organizations on the front lines of the pandemic. Property casualty insurers have continued to operate as an essential business to serve their customers, keeping nearly two million employed, even as they make use of virtual processing to protect their employees by maintaining social distancing.

“The insurance industry is facing challenges as well,” said Kevelighan. Even without legislation expanding coverage, the insurance industry will see increased claims, he said, for workers’ compensation for health care workers and first responders. Other businesses, such as retailers and res-



Scales



Kevelighan

taurants that are continuing to operate, have potentially increased their workers’ comp exposures.

At the same time, insurers are anticipating a decrease in workers’ comp premium as greater unemployment, decreased manufacturing, and less economic activity drive payroll-based premium down. Insurers’ investment income, already in decline due to low interest rates, will decline more, Kevelighan predicted. Beyond the pandemic, insurers are preparing for an active catastrophe year of tornadoes, hurricanes, wildfires and cyberattacks.

A lot has been said of the \$860 billion surplus held by insurers at the end of 2019, Kevelighan said. Triple I’s economists are estimating a capital loss of \$78 billion for the first quarter of 2020. Accounting for the active catastrophe season later in the year, III estimates the yearend surplus will diminish to \$717 billion. With \$400 billion representing the critical level for the overall industry to maintain before the U.S. starts seeing widespread red flags and systemic

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BI claims

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issues, Kevelighan said that the industry has about \$317 billion available for “unexpected losses.” This is an industry-wide number; it does not describe the bottom line of any single insurer.

Proposed legislative solutions, said Kevelighan, fall into two categories: removing the virus/bacteria exclusion from business interruption policies and expanding property policies of small and medium businesses to include business interruption insurance. Only about a third of all small businesses purchase business interruption insurance; broadened to all businesses, the take-up rate for business interruption coverage is about 40 percent, said Kevelighan. Retroactively eliminating the exclusion would cost insurers about \$150 billion per month, he said. It would quickly climb to \$485 billion in costs for 2020, pushing the industry

into a zone that endangers its ability to pay normal and expected claims.

Legislation that would apply business interruption coverage to the small and medium businesses that did not purchase it would increase the monthly cost to the industry to about \$380 billion.

Both scenarios of retroactivity would push the insurance industry into multiple insolvencies. “Requiring an insurer to pay for losses it never insured would cause irreparable harm to the industry,” Kevelighan said.

Kevelighan concluded with key takeaways:

- Global pandemic risks are uninsurable. A pandemic impacts all lines of insurance and many economies around the world at once.
- Retroactive payouts would bankrupt insurers.

- Insurers are actively paying covered claims.
- Policies clearly explain the virus and bacteria exclusions, usually on the declarations page. Insurance that would overcome this exclusion is expensive and extraordinary, said Kevelighan. Wimbledon, for example, purchased this type of coverage at a premium of \$2 million, he said.

The federal government is looking for solutions, Kevelighan said. Congress has implemented some solutions and continues to work on others. In addition to providing forgivable business loans, federal lawmakers are developing a plan that would create the COVID-19 Business and Employee Continuity and Recovery Fund to provide further assistance, he said. Meanwhile, large businesses that might legitimately lay claim to business interruption coverage are hav-

ing to give back the federal coronavirus relief money, making more available for small businesses, he added.

After Kevelighan presented Triple I’s summary of the financial consequences of the legislative proposals to retroactively award business interruption coverage, Scales addressed the legal challenges the industry expects to face in the coming months, some of which have already begun.

Eight states have introduced legislation that would “attach different legal consequences to the content of insurance policies that are in existence right now,” Scales said. While it appears that such laws would be ripe for a legal challenge based on impairment of contracts, Scales said such challenges in the past have been somewhat un-

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with a 10 percent hit to high-yield credit instruments. The report noted, however, that with so many situations so fluid, values and variables can change quickly.

INSURANCE PRICING

Reuters reported May 11 that Marsh’s latest Global Insurance Market Index revealed that global average commercial insurance prices jumped 14 percent in the first quarter, driven in part by increases in property insurance rates. This marks the highest year-over-year gain since 2012, when Marsh launched the index. Dean Klisura, president of Global Placement and Advisory Services at Marsh, said pricing was trending higher in the first quarter before any meaningful impact from losses associated with COVID-19 occurred. He said the pandemic likely will have an impact on pricing for the rest of 2020. Marsh said on average, global pricing for property risks climbed 15 percent while financial and professional lines surged nearly 26 percent and casualty rose five percent. Christopher Lang, Marsh’s global placement leader for the United States and Canada, said insurers have been fielding a growing number of notices from customers who intend to file various types of claims, including those for lost business revenue due to the pandemic. “We know there will be an impact in the market, the extent of which is still unknown,” he said. Lang expects an increase in claims for directors and officers and employment practices liability coverages.

DATA CALL

Relative to the dispute between insureds and insurers over business interruption coverage, the National Association of Insurance Commissioners (NAIC) is coordinating a data call involving all 50 states, the District of Columbia, and the U.S. territories, and facilitating the collection and aggregation of data. The NAIC says, “This data will assist state insurance regulators and others in understanding which insurers are writing applicable coverage, the size of the market, the extent of exclusions related to COVID-19, and claims and losses related to COVID-19.” Business interruption premium and exposure in-

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BI claims

successful. Despite the clear language of the U.S. Constitution article on contracts, interpretation of the article “has waxed and waned over United States’ history.”

Federal courts first consider whether the law actually impairs a contract relationship. Then, the courts ask if the state legislature had a sound reason for doing so. There are variations to how this test applies, Scales said. He added that the contract clause has not played a strong role in insurance cases at the federal level because federal courts “lack enthusiasm” for intruding into the state-regulated area of insurance.

Taking a closer look at states’ court actions since the specter of these retroactive legislative proposals arose, Scales uncovered some jurisprudence on contract clause challenges through the state courts. State courts, he said, focus on the process of the legislature’s consideration. He said state courts review “legislative determination regarding the seriousness and genuineness of the problem.” Also intertwined is the court’s respect for separation of powers “which might cut a couple different ways,” he said.

Where courts have not previously entertained the question of impairment of a contract in a specific way, they may find it prudent to settle the matter as advised by the legislature, he said. There is clear precedent that insurance contracts bearing ambiguity will be resolved in favor of the policyholder, he added.

As an example of the court’s deference to legislative will, Scales cited a case involving payment of billed charges under a health policy. After the case was decided in favor of the plaintiff who received a higher

benefit from the insurer, one state’s legislature passed a law to prevent the same outcome in the future. Hence, claims before the change in law and claims occurring after the change had different outcomes when litigated. How the court’s deference to the legislative will may operate in the current situation is an unknown at this time, Scales said.

Another discernment that will affect court rulings, said Scales, is that courts are

It is ‘a stretch, in my view, to suggest that businesses always and forever expected coverage of this type.’
-Scales

protective of judicial prerogative. Where a court has ruled on its interpretation of a contract, it will stick with that decision in future decisions. Scales said that not all states have clear case precedent of what constitutes physical damage as the trigger to business interruption relief under the terms of an insurance policy.

Insurers who defend only on the impairment of the contract might not be successful, said Scales, but they do have other arguments to use. Legislatures that define a serious and genuine problem are expected to narrowly tailor a reasonable solution to that problem, he said. Scales said the present situation would reach the serious problem threshold; he questioned whether the court would consider the solution sufficiently narrow and reasonable.

There is also an equal protection concern in the proposals that carve out small business only for the legislative preemption

of the contract, Scales added. “It is difficult to understand why the meanings of the terms of the contract change once a company hits 100 or 150 employees,” he said. “This is going to provide fodder for an equal protection-type attack.” If the court were to wrap this into the general “reasonableness” requirement, Scales said, it still appears to be “a carve-out for favored interests. That is not a good place for legislatures to be.”

Scales shared further insight on the public policy decision facing state lawmakers. He said there has been no correlated event to the economic losses of this pandemic. But, even with the general notion of consumer protection under the ambiguity doctrine, it is “a stretch, in my view, to suggest that businesses always and forever expected coverage of this type,” he said.

“Hopefully it’s not an actual end-of-the-world-event, but in terms of your planning as a business it sure looks like one. In my experience, people tend to discount the likelihood of end-of-the-world events happen-

ing. They almost never buy insurance that would be adequate to deal with that situation.... This makes it challenging for policymakers who want to find a way of compelling insurers to participate here,” Scales said.

Some policies will respond because the coverage is already contained in the policy, Scales said. But he questioned the wisdom of lawmakers retroactively creating an obligation for insurers to pay what would certainly become policy limits to every policyholder at the same time.

NCOIL’s COVID-19 Resource Page on the organization’s website includes a recording of this webinar along with links to related public documents and public statements from the Wholesale and Specialty Insurance Association and the U.S. Chamber of Commerce. The website also provides links to the business interruption expanding legislation under consideration in New Jersey, New York, Pennsylvania, Louisiana, Ohio, Massachusetts, South Carolina and Rhode Island.

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Lloyd's reputation at risk as COVID-19 claims flood in

London Views
By Len Wilkins
London Correspondent

It takes years to build a reputation but just hours to ruin it.

Ever since Lloyd's paid for losses from the San Francisco earthquake in 1906, it has had a reputation of always paying claims. While the market has paid every valid claim, Lloyd's reputation could be sorely tested over the next few months.

The problem relates to business interruption claims launched by thousands of small and large businesses. Some businesses do have valid cover, but the majority do not.

Lloyd's is not the only part of the London market to be hit by these BI claims and allegations of nonpayment. There seems to be a mixture of confusion, misunderstanding, and panic, with businesses fighting for survival and politicians on both sides of the Atlantic getting involved.

At least there are no concerns about Lloyd's ability to pay. Lloyd's stated that the market is in a strong position to respond to COVID-19 and that it will support its customers and business partners with its resources, which now reach \$40 billion with a central solvency ratio of 238 percent.

The U.K. government is concerned about allegations of nonpayment and encouraged the Financial Conduct Authority, which oversees Lloyd's and U.K. insurers, to investigate.

Originally, the FCA said in a letter to the

market's CEOs that it saw no "reasonable grounds" to intervene in the BI claims where pandemics were not a feature of the policy. The FCA said that, following discussions with the industry, it understands that most policies have only basic cover and do not cover pandemics; therefore, insurers would have no obligation to pay the COVID-19 claims. The FCA accepted this

Other insurers AXA, Hiscox, RSA, QBE and Zurich already face potential multimillion dollar lawsuits from British pubs, hotels, restaurants and leisure groups alleging that legitimate BI claims were rejected.

would be disappointing for policyholders.

Now, however, there has been a dramatic turnaround, and the FCA announced that it intends to seek legal clarity on BI insurance in order to resolve the issue for businesses that are facing uncertainty on their claims. No reason was given for the about face, but the assumption is that businesses' pressure on their political representatives and trade bodies caused the change.

The FCA now emphasizes that, where there is cover for COVID-19, there is an obligation to pay. The FCA said it is important that claims are assessed and settled quickly and, where there are reasonable grounds to pay part of a claim, but not to make full payment, it expects insurers to make an interim payment.

The FCA statement says it intends to bring to court what it believes are the key relevant cases. Christopher Woolard, interim chief executive of the FCA, said, "Our intended court action is designed to resolve a selected number of key issues causing uncertainty as promptly as possible and to provide greater clarity for all parties, both insureds and insurers. It is clear that deci-

sive action is appropriate given the severity of the potential consequences for customers."

Insurers hope the courts will find little wrong with the market's wordings. The problem is likely to be a misunderstanding of what was covered by the policy. Attempts by politicians to force through uncovered losses are at the moment unsuccessful, and the U.K. government realizes that to do so would just swap the financial problem from one side of the economy to another.

Two law firms said they are gathering companies in Britain for a potential group lawsuit against German insurer Allianz for rejecting BI claims for restaurants and leisure groups on policies that had been arranged by Marsh. Other insurers AXA,

Hiscox, RSA, QBE and Zurich already face potential multimillion dollar lawsuits from British pubs, hotels, restaurants and leisure groups alleging that legitimate BI claims were rejected.

While Lloyd's and London insurers believe they have a strong case against these claims, they are concerned about international action. Swiss insurer Helvetia has offered to pay 50 percent of the virus-related BI claims by Swiss restaurant policyholders, despite continuing to insist that the risk is legally excluded from its policies. The offer to pay could be used as an argument for coverage by politicians.

As far as the U.S. is concerned, Standard and Poors issued an opinion that attempts by state legislators to retroactively grant expanded BI coverage for COVID-19 related losses are likely to fail. S&P believes a fierce defense by insurers and concerns over solvency, should legislators be successful, will halt any attempts to create coverage.

Hiscox denies COVID-19 BI claims

Lloyd's managing agent Hiscox specializes in property and casualty insurance aimed at companies and high-net-worth individuals and covers such risks as hacking, kidnapping and satellite damage. The group's overall annual revenues are \$3.77 billion.

Hiscox is one of the Lloyd's and London insurers facing BI claims and telling clients that their policies don't cover the

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pandemic. A group of businesses led by PR firm Media Zoo alleges that Hiscox is trying to avoid paying over \$65 million for legitimate BI claims related to business closures as a result of the pandemic.

Media Zoo set up an action group to organize a class action against Hiscox. The action group alleges the firm's policies clearly state they will pay where the interruption to the business was "due to restric-

Market gossip suggests COVID-19 will produce the biggest insurance loss in history – over \$100 billion. Others are less pessimistic.

tions imposed by a public authority following an occurrence of a notifiable human disease" and has called on the insurers to pay or for the government to step in. So far, over 500 claimants have joined the group, and Media Zoo claims a number of brokers support its work because they believe Hiscox policies covered COVID-19.

Unfortunately, there has been considerable press coverage on these claims recently, which has led to more members joining the action group. The action group is believed to have appointed a lawyer to progress its claims.

Hiscox's response is to deny any liability. Hiscox said it reviews every claim or complaint individually. Hiscox provides BI cover as part of its small commercial pack-

age policies. Of these clients around 10 percent buy cover for BI. Hiscox believes that approximately 10,000 of these clients have been directly impacted by mandated government closure to stop the spread of COVID-19. Over 70 percent of these customers have monthly revenues of less than \$50,000 in a normal trading environment. Hiscox believes its BI exposure to COVID-19 is limited in Europe, and it has negligible exposure in its U.S. retail business, and in any event, it has substantial reinsurance cover in place.

Hiscox said, "We understand that these are incredibly difficult times for businesses affected by COVID-19. At Hiscox we strive to pay claims that are covered by the policies fairly and quickly.

"However, general business interruption policies across the industry, including Hiscox's, were not designed to cover these extraordinary circumstances. Like terrorism and flood, which have government-backed insurance schemes, pandemics like COVID-19 are simply too large and too systemic for private insurers to cover."

Where Hiscox may have a problem is with event cancellation. It published a realistic disaster scenario which estimates a net loss of \$175 million for losses emanating primarily from event cancellation, entertainment and travel, in a global pandemic scenario. Hiscox said it is proactively paying claims for these lines of business, and the claims are progressing in line with its expectations.

While \$175 million is a lot of money, it won't break Hiscox's bank.

COVID-19, catastrophe or opportunity?

It's far too early to even consider the

likely costs of COVID-19, but already regulators worry about potential exposures, while insurers look at increased revenues.

Market gossip suggests COVID-19 will produce the biggest insurance loss in history – over \$100 billion. Others are less pessimistic.

Lloyd's CEO John Neal recently wrote in the UK's Financial Times that COVID-19 is "no doubt the largest insurance challenge the industry has ever faced" and it will be "tens of billions, if not hundreds of billions, of loss that will be discussed over time." The eventual losses will take a long time to resolve, said Neal, and will be shared very widely among the worldwide insurance and

reinsurance industry, not just Lloyd's.

Neal urged the industry to get mechanisms in place quickly so that, if there is a dispute, it doesn't go on for months or longer. He also is concerned about the possibility of a second wave of COVID-19 cases and said that there needs to be dialogue between the government and insurers about how any second wave of COVID-19 cases could be covered. "We've got weeks, not months, to resolve some of these immediate issues." He concluded that the 2020 calendar year will see a "notable loss."

Lloyd's expects claims from COVID-19

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to affect both the 2019 and 2020 years of account, with 2019 having more significant claims. Lloyd's will publish shortly market figures for the period.

Lloyd's is not the only insurer worried about COVID-19. London market insurance companies listened carefully to the initial estimates from the ABI (Association of British Insurers), which indicate that its members expect to pay out over \$1.6 billion in claims to support businesses and individuals affected by COVID-19. This figure covers payments on business interruption, travel insurance, wedding policies and canceled school trips.

The \$1.6 billion is made up of \$1.3 billion of BI claims and a record \$0.3 billion in cancellation claims on travel insurance, and \$25 million spread across wedding insurance, school trips and events. Like

Lloyd's, the ABI believes few policyholders have COVID-19 cover.

COVID-19 is going to cause havoc across the industry. It is expected to boost the current hardening of rates across the board. There is a school of thought in the market which believes rates on big-ticket insurance could surge. For the first three months of the year, London underwriters saw market rates rise by single digits and low double digits. The belief is that rates could jump by 20 percent as the COVID-19 effect feeds through at the beginning of 2021 onward.

To take on new business, insurers will need capital. Ironically, one of those raising money is Hiscox, which has raised almost \$500 million by issuing extra shares at a discount of 6.1 percent.

Hiscox said it expects opportunities for

profitable growth in wholesale and reinsurance markets as a result of capital contraction and rate improvement across the market following the uncertainty caused by the COVID-19 pandemic. The proceeds raised from the share issue will allow Hiscox to take advantage of future growth opportunities and rate improvement in the U.S. wholesale and reinsurance markets, as well as position the group to withstand a range of downside scenarios. Hiscox also is buying \$100 million of additional reinsurance to protect against natural catastrophe, especially U.S. wind.

Along with Hiscox, Australian insurer QBE is going to raise \$1.3 billion, and others are expected to look for opportunities to expand.

At least some insurers see an encouraging future.

Market to create pandemic backstop

Lloyd's has joined other market bodies in creating a government funded backstop to cover future pandemics.

The market's aim is to set up Pandemic Re, a government funded backstop that would pay for major pandemic losses. The talks involve the U.K. finance ministry, market regulators and insurance participants such as Lloyd's, the Association of British Insurers, the London and International Brokers Association and the British Insurance Brokers Association.

The first step is to produce preliminary estimates of the impact of COVID-19 on the insurance community. Some hope to do this in May, but other members consider this too early. The U.K. already has two back-

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formation is being collected from insurers by May 22, while business interruption claims and losses data is due by June 8. Letters were to be delivered to insurers by May 8, the NAIC said.

PANDEMIC FUND

The Risk and Insurance Management Society and a coalition of 17 business organizations issued two separate letters to the U.S. Treasury Department, Congress, and President Donald Trump, urging them to create a pandemic risk insurance program, according to several news sources. The growing momentum among insurance buyers and others for a government backstop to cover pandemic risks comes as insurers continue to maintain that most commercial property policies do not provide coverage for business interruption losses arising from the COVID-19 pandemic. A draft bill outlining the proposed Pandemic Risk Insurance Act of 2020 has been circulated on Capitol Hill, modeled on the Terrorism Risk Insurance Act that was enacted after the 2001 terrorist attacks. The proposed legislation would establish a federal backstop for business interruption losses resulting from a future pandemic and would be triggered when insurance industry losses exceed a \$250 million threshold and capped at \$500 billion, according to an April 3 draft. However, reaching consensus on the details of a federal backstop may prove challenging, sources say.

INSURER FIRES BACK

Travelers Insurance Cos. fired back against a policyholder seeking business interruption coverage for coronavirus-related losses by filing a lawsuit against a Los Angeles lawyer who sued the insurer in April, according to news sources. The insurer argues that virus-related losses are excluded from business interruption policies issued to the firm and that, even without the exclusion, coverage would still be denied because the virus did not cause physical damage. In Travelers Casualty Insurance Co. of America v. Geragos & Geragos, filed in U.S. District Court for the Central District of California in Los Angeles, Travelers seeks a declaratory judgment under two

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businessowners policies it issued to the law firm, court papers say.

AON CUTS SALARIES

Aon PLC is imposing an approximately 20 percent temporary salary cut on about 70 percent of staff due to the COVID-19 crisis, and CEO Greg Case and other senior executives will take 50 percent cuts, Case said in a letter to Aon staff April 27. Senior executives agreed to a temporary 50 percent reduction in their base salaries from May 1 through Dec. 31, 2020. The broker pledged it would not lay off workers during the pandemic. The brokerage based the salary cut on “a set of criteria, including cost-of-living” in the countries it operates, the letter said. “Based on that analysis, we have set a floor in each country. This means that approximately 30 percent of our colleagues will see no reduction,” Case said. The firm’s acquisition of rival Willis Towers Watson PLC will continue, the letter said.

COVID-19 COSTS

Reuters reported May 1 that, according to Willis Towers Watson, general insurance losses from the novel coronavirus are estimated at \$32 billion to \$80 billion across key classes in the United States and the United King-

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London views

stops, one for flood (Flood Re) and the other for terrorism risks (Pool Re).

Since many SMEs are unwilling to purchase BI cover, the U.K. government feels a Pandemic Re is vital. Without it, pandemic cover would be limited, expensive and unattractive to buyers.

The proposed Pandemic Re would be expected to operate on similar terms as Flood Re and Pool Re. The primary carrier would issue policies to buyers and then be reinsured for losses above an agreed figure by the government. Insurers charge a fee to the policyholder of around \$325 and insurers pay an annual levy of around \$235 million into Flood Re. Pool Re has a similar system, but with each insurer fixing the rate for terrorism cover.

Electronic trading target unchanged

With all the chaos over COVID-19, it’s difficult to remember that there is still insurance business being transacted in the London market. There is a curious difference in that, prior to lockdown, a broker would negotiate a risk face-to-face and then use the electronic placing system; whereas, now electronic placing rules the roost.

Lloyd’s recently issued Market Bulletin Y5276, which gives the electronic placement targets for the second quarter of 2020. The bulletin says that effective April 1, 2020, the target for electronic placing is to continue at 80 percent of all risks.

Lloyd’s is working with representatives from the LMA Operations Committee to agree on appropriate submission/quote targets for the second half of the year. Consequently, another bulletin is expected to be issued at the beginning of June.

Largest ever new syndicate at Lloyd’s

American International Group Inc. recently announced the launch of Lloyd’s Syndicate 2019. This landmark syndicate is the largest ever syndicate to be launched through Lloyd’s. It will exclusively reinsure risks from AIG’s Private Client Group. PCG is an industry-recognized brand with a leading market position in the high net worth segment.

AIG said it has received significant capital support from high-quality investors and capacity providers, which is a testament to the quality and growth potential of the PCG franchise. In combination with its existing Lloyd’s opera-

tions, AIG will now operate the ninth largest managing agency in the Lloyd’s market, in terms of capacity.

For Lloyd’s and the third-party investors and capital providers, Syndicate 2019 represents an opportunity to access the highly attractive High Net Worth segment.

Peter Zaffino, AIG’s president and global chief operating officer, said that Syndicate 2019 is “a unique and industry-defining structure between AIG and the oldest insurance market in the world.”

Syndicate 2019 will be managed by Talbot Underwriting Limited, the managing agency AIG acquired in 2018 as part of the Validus transaction.

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The NICB helps law enforcement solve crimes, LDI told

A homicide detective in Kansas City needed information from a suspect’s car’s navigation system showing that the car was present at the site of the homicide; a multi-year multi-jurisdiction investigation busted a cargo theft ring in the jurisdiction of the U.S. Attorney’s Office for the Southern District of Indiana, and a truck and RV, owned by a New Hampshire couple murdered in Corpus Christi, was tracked to Mexico. These are instances where the National Insurance Crime Bureau (NICB) helped local, state and national law enforcement agencies, Director of Field Operations, Southwest Region Fred Lohmann, NICB, told attendees at the LDI Conference 2020 hosted by the Louisiana Department of Insurance March 4-5 at the Crowne Plaza Executive Center in Baton Rouge.

The NICB traces its roots to the merger of the National Auto Theft Bureau and the Insurance Crime Prevention Institute in 1992. The National Auto Theft Bureau, a not-for-profit that managed vehicle theft investigations and developed vehicle theft databases for use by the insurance industry, was founded in 1912. The Insurance Crime Prevention Institute, a not-for-profit which investigated insurance fraud, was founded in 1972.

The NICB, headquartered in Des Plaines, Illinois, has 250 field agents and analysts who cover the United States and Mexico.

The NICB’s membership includes more than 1,300 property-casualty insurance companies, vehicle rental companies, auto auctions, vehicle finance companies, self-insured organizations and strategic partners.

NICB receives its funding through assessments of its member companies.

The NICB serves both law enforcement and the insurance industry, Lohmann said. The investigative focus of the NICB is multi-claim, multi-carrier investigations of major criminal activity including auto theft, heavy equipment theft, cargo theft, staged accidents and medical fraud. The key component of this is acting as a liaison between law enforcement and the insurance industry to facilitate faster and more effective criminal investigations and prosecutions, Lohmann said. “NICB will also take on single cases that have large economic losses; NICB does not say ‘no’ to requests for help,” Lohmann added.

Insurance companies can make fraud referrals by submitting questionable claims to NICB and state fraud bureaus after detecting suspected fraud. The alleged insurance fraud cases are investigated by NICB and presented to law enforcement and prosecutors for possible prosecution. NICB has access to ISO claim files from multiple insurance carriers, and NICB will indemnify members if an issue arises. NICB will also handle law enforcement requests for assistance.

NICB can help law enforcement with the identification of passenger vehicles that have altered VINs, are stolen, or burned. In addition, NICB can assist law enforcement with searching for vehicles or people that have been involved in a major crime, or searching for information on individuals suspected of committing insurance fraud.

NICB has a database that contains the location of the secret VINs on vehicles, and

only qualified law enforcement personnel can have access to the information. The law enforcement person requesting the information must be a qualified vehicle theft investigator. “NICB must protect this data because NICB and vehicle manufacturers don’t want this information to get out,” Lohmann said.

NICB can also assist in recreating a vehicle’s VIN by cross referencing component parts (airbags, radios, engines and infotainment systems).

NICB acts as a liaison between vehicle manufacturers and law enforcement. The vehicle manufacturers started sending vehicle information to NICB over 20 years ago so that NICB could act as a single point of contact for law enforcement. This information includes secret VIN locations on the vehicles as well as shipping records, manufacturer contact information and sales records.

NICB can also give law enforcement access to data on factory key purchases/replacement keys (key read examinations). A key read examination allows law enforcement to know which key fob was the last one to cycle on the engine.

In addition, when a VIN is entered into the national MVR database there can be a note attached to the MVR record that shows NICB interest in the vehicle. “The MVR database will have instructions for law enforcement to contact an NICB agent,” Lohmann said. NICB also provides a hotline that is available for 24/7 assistance.

NICB, through its Foreign Operations Office, serves as a liaison with foreign governments and provides assistance with in-

ternational vehicle location, recovery and repatriation services for stolen vehicles.

NICB also assists local law enforcement by purchasing bait-cars and license plate readers to help reduce the number of stolen vehicle incidents in a hot spot. “License plate readers are an effective tool to recover stolen vehicles,” Lohmann told the audience. “But, NICB does not monitor the license plate readers; NICB just purchases the equipment for the local jurisdiction to use,” he added.

In addition to assisting in the investigation, identification and recovery of autos, NICB assists with heavy equipment thefts, cargo thefts, commercial vehicle thefts, burned vehicles/arson for profit rings, and marine thefts.

NICB offers analytical support by producing its annual trend reports: “Hot Wheels” – that shows the top five car models stolen and top five model year cars stolen and “Hot Spots” – that shows the top 10 municipalities with the highest rate of vehicle theft per 100,000 residents. “NICB has an analyst embedded with the Texas Department of Public Safety in Austin who handles all five states of the Southwest region,” Lohmann said.

NICB offers special operations funding for law enforcement operations – Nexus Insurance Crime; medical fraud; staged accidents; vehicle, cargo, heavy equipment, marine vessel and aircraft thefts; commercial and residential burglaries and theft losses; life insurance fraud; store front under-cover operations targeting property

See **NICB** Page 22



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NICB

FROM PAGE 21

crime; bait vehicle programs, vehicle thefts, and burglary of motor vehicles. NICB produces the following reference materials for use by law enforcement: passenger VIN manuals, commercial VIN manuals, passenger vehicle identification manuals, Cargo Theft Pocket Investigation Guide for Law Enforcement, Fire Pocket Investigation Guide for Law Enforcement, Staged Accident Pocket Investigation Guide for Law Enforcement, and Vehicle Theft/Fraud Pocket Investigation Guide for Law Enforcement.

NICB developed QCNet to help member companies in the speedy review of information to help identify potential insur-

ance fraud. The QCNet dashboard allows members to quickly identify involved parties in the claim who have been designated as a subject of investigation in a questionable claim within the two previous years and have been in at least two questionable claims in the previous five years. For the purpose of entity integrity, a subject of investigation is only included in QCNet if the subject of investigation possesses a hard identifier such as a taxpayer identification number or social security number which has been listed in two or more questionable claims over the past five years. Social security numbers are not displayed within the QCNet dashboard. Access to QCNet is

granted by the company's ISO ClaimSearch self-administration. NICB also provides member companies with the Geospatial Intelligence Center (GIC). This combines NICB's unique position in the property and casualty insurance industry with advanced imagery capabilities, so members have enhanced disaster response capabilities to expedite claims and improve fraud detection following catastrophe events.

The GIC provides members with tools to compare pre- and post-storm high-resolution aerial imagery following catastrophic events such as hurricanes, tornadoes, floods, and hailstorms. The imagery is available to

members within 24 hours of collection. The imagery is also made available free of charge to first responders and emergency personnel to allow them to better assess the extent of damages and coordinate their response. Information will also provide valuable evidence to help the NICB fight fraudulent claims, which are a frequent problem after catastrophes. The GIC is committed to mapping the top metropolitan areas with high-resolution aerial imagery each year and the entire continental United States every other year. This includes 45-degree oblique images in urban areas that allow for a rotatable image of any property.

LABI backs protecting job creators

The Louisiana Association of Business and Industry released on May 5 LABI's policy recommendations to help protect the state's job creators from the threat of excessive and frivolous lawsuits in the wake of the COVID-19 pandemic. LABI's recommendations include specific measures designed to prevent opportunistic lawsuits against essential infrastructure companies which have worked to comply with the COVID-19 guidance provided by government authorities. While existing laws offer limited liability protections to some government employees, healthcare providers and others who respond to natural or other disasters, policymakers should fill the gaps in these safe harbors to ensure that protections are afforded to all healthcare facilities and their workers, first responders, and producers of PPE and other protective materials.

LABI points out in its recovery recommendations that healthcare workers and first responders face shortages of personal protective equipment, including surgical masks, sanitizer, gloves and gowns, as they combat the COVID-19 virus. In response, many manufacturers rapidly retrofitted and repurposed their operations and distribution capacity to provide much-needed PPE. Louisiana should limit the potential legal liability of anyone who produces, distributes, donates or uses PPE in accordance with government standards and ensure that those protections extend to hand sanitizers and disinfecting products recommended by the federal government, LABI said. LABI's recommendations also include addressing two persistent barriers to business growth, high auto insurance rates and coastal litigation, which have inflicted financial hardship on Louisiana's job creators.

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Prime sees court awarded fortune dwindle

Prime Natural Resources saw its court-awarded fortunes dwindle from the May 2017 jury verdict of \$41 million, to \$19.7 million in trial-court Judge Michael Gomez’s adjusted award three months later. Since then, the case moved to the First Court of Appeals in Houston, where a three-judge panel reduced the award further, eliminating the exemplary damages, and remanding the case to the trial court for recalculation of judicial interest. The appeals opinion and judgment order was signed by Judge Richard Hightower on Jan. 23, 2020, then released for publication on Jan. 31. The actual damage award of \$1.8 million remained intact.

Remanded to the trial court, the case was settled on May 13, with all parties agreeing to dismiss the lawsuit with prejudice. Details of the settlement were not disclosed in the Harris County Court document.

Prime’s lawsuit against Certain Underwriters at Lloyd’s (named in the appeal as Syndicates 2020, 1084, 2001, 457, 2791, 2987, 3000, 1221, 5000) and Navigators Insurance Company, UK, stemmed from extensive damage done to its well situated in the Gulf of Mexico 75 miles south of Morgan City, Louisiana, by Hurricane Rita, a storm that made landfall in southwest Louisiana on Sept. 24, 2005. The case was heard in Houston, where Prime is headquartered.

The forces of Rita bent the well about seven feet above the mudline, toppled the platform away from the well and damaged the pipelines. Underwriters paid the company about \$4 million under the policy, reserving the right to reimbursement if the loss was overpaid. Prime, however, sought additional payment in order to return the well to production.

At issue in the case was whether the Control of Well coverage in the policy should respond to making the necessary repairs to restore a producing well to its pre-loss production capabilities even though it did not sustain a blowout. Prime had purchased \$50 million in coverage for three well locations.

The trial focused on language of the policy that covered damage to the drilling, workover or production equipment caused by windstorm, a provision the plaintiff attorneys read in isolation and alleged ambiguity that should favor their client. Trial testimony lasted nearly three weeks.

The appeals court affirmed the damage award, prejudgment interest at five percent (which continued to accumulate during the appeal) and the \$1.4 million in attorney’s fees. By keeping the damage award intact, the appeals court sided with Prime on its interpretation of the language of the policy. The appeals court reversed the “bad faith”

and “knowingly” portions of the jury’s judgment awarding treble damages and penalty level interest.

The case was remanded to the district court for recalculation of the proper amounts of interest.

Then, on May 13, all parties signed a Joint Agreed Motion to Dismiss with Prejudice. The motion states, “All claims between and among the Parties in the matter have been resolved,” and the “Parties entered a settlement agreement and jointly move for dismissal with prejudice.

Appeals court costs were set at \$53,296, to be shared equally by Prime and Underwriters, with the named appellants jointly and severally responsible for half of the appellate costs.

Whether this order provides solid precedent for future cases involving damages sought through Control of Well policies when there has been no blowout or seepage remains to be seen. On Page 15 of this 57-page opinion, the court quotes the Southwestern Bell v Mitchell decision rendered by the Texas Supreme Court in 2008: “[U]pon no sound principle do we feel at liberty to perpetuate an error, into which either our predecessors or ourselves may have unadvisedly fallen, merely upon the ground of such erroneous decision having been previously rendered.”

NEWS IN BRIEF FROM PAGE 20

dom, surpassing claims from the 2001 terrorist attacks. The report showed early estimates for U.S. and U.K. business interruption, business contingency, U.S. directors and officers, U.S. employment practices liability, U.S. general liability, U.S. mortgage, trade credit and surety, and U.S. workers’ compensation. An optimistic scenario involving a return to a pre-COVID-19 state following three months of social distancing would mean \$11 billion of insured losses, while a moderate scenario involving a gradual return following six months of social distancing would mean \$32 billion of insured losses. Willis added that insured losses would total \$80 billion under a severe scenario involving social distancing for a year. The broker also modeled an extreme pandemic scenario, which could result in \$140 billion of losses.

According to a National Council on Compensation Insurance study, COVID-19 could cost the workers’ compensation sector between \$1 billion and \$80 billion. The NCCI came to that conclusion after studying data on injury and medical costs with key assumptions to model the potential impacts that COVID-19 could have on workers’ compensation in the 38 states where the agency serves as the licensed rating and statistical organization. There is “a wide range of possible impacts” from the coronavirus because of the lack of knowledge on exact infection rates or compensability rates, ranging from \$1 billion to \$80 billion, said **Jeff Eddinger**, NCCI senior division executive. NCCI’s study estimated that between 49 million and 62 million workers could potentially qualify as essential workers who would be eligible for workers’ compensation relating to COVID-19. Using infection rate assumptions of 5.0 percent to 50 percent and a fatality rate of 0.5 percent, NCCI said that, with an assumption of compensability of 60 percent to 100 percent for first responders and health care workers, COVID-19 could cost between \$1 billion and \$16.2 billion. Using those same infection and fatality assumptions but modifying the compensability rate from 20 percent to 60 percent, but including all essential workers, raises that worst-case cost impact scenario to \$81.5 billion. The insurance industry alone would not be responsible for all of

See **NEWS IN BRIEF** Page 27



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Auto tort reform

miums. One is to take excessive losses out of the system to reduce costs. The other is to bring more insurance companies to Louisiana to increase competition. The source of both of those problems is the litigious legal system of Louisiana. Meaningful tort reform solves both of those problems,” he said.

By way of describing the situation, Albright told the panel that United Fire sold its book of personal lines business to Nationwide – “all except the Louisiana business. Nationwide walked away from an \$8 million book of business, and United Fire can’t find an insurance company that wants to take the business.”

Albright balked at agreeing with the commissioner that the bill’s passage would save insureds 25 percent, but he was comfortable with 10 percent.

Several owners of trucking businesses and other businesses testified relative to the disastrous impact escalating insurance rates have had on their businesses.

During the Senate Judiciary A hearing, Mark Arceneaux, the owner of Arceneaux Trucking in Jefferson Davis Parish, told the committee how Louisiana’s high automobile insurance rates forced his sons out of the family’s trucking business.

In the House Civil Law Committee, Scott Ballard, with Ballard Brands in

Covington, which has several restaurant chains around the country, said it’s “very hard to stay in Louisiana the bigger you get,” because insurance costs twice as much. The House bill is one of the top issues in terms of “what we can do for this state,” he said.

Responding to the testimony of a woman who owns a business that moves mobile homes, Rep. Mike Johnson, R-Pineville, said, “We failed you, and we failed a lot of businesses in Louisiana.”

Among those speaking against the bill were Robert H. Morrison III of Livingston, a 21st Judicial District Court judge, and Scott Andrews, who spoke on behalf of the Louisiana Bar Association.

In his closing, Garofalo pointed out to the panel that the proponents of HB 9 were business people who are affected negatively by the issue, while the opponents were judges and lawyers, all practitioners. “We need to address this issue for business and consumers,” he said.

Even before the coronavirus pandemic came onto the landscape, automobile insurance rates in Louisiana were the highest in the nation. Now, unemployment is greater than during the great depression, Garofalo said. The bill is designed to save businesses and families some money. “I would argue that we needed this bill even before the COVID-19 pandemic.”

FROM PAGE 5

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The Louisiana State Senate’s Judiciary A Committee heard testimony on SB 472 by Sen. Jay Luneau, D-Alexandria. The bill provides for the execution of electronic notarial acts and is pending in the House Committee on Civil Law and Procedure.

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Agents demonstrate low tolerance for carelessness in mock trial

Members of the Independent Insurance Agents of Texas proved their low tolerance for carelessness when they acted as mock trial jurors and returned unanimous verdicts finding the fictional Dani Noonan, owner of the also fictional Noonan's No Risk Insurance Agency, negligent in her service to the fictional Ty Webb, owner of Bushwood Country Club.

Bushwood sought damages of more than \$3 million because of Noonan's errors or omissions. The mock trial was based on claims and situations that SwissRe has seen in E&O cases it has defended on behalf of insurance agents.

The jurors' intolerance for less than stellar job performance by an agency was evident when the various foremen (seven separate juries deliberated) were unanimous in their findings, despite being told by the defense attorney, an expert witness and the judge that by law the basic standard of an insurance agent in Texas is that of an order taker. Jury awards ranged from \$1 million to the full \$3.125 million that was sought by the plaintiff.

Richard Lund, a senior underwriter for SwissRe Corporate Solutions, stepped out of his role of judge following the mock trial to advise agents how to avoid a similar out-

come for themselves. Jurors attributed the agency's negligence primarily to an agency-issued inaccurate certificate of insurance and the fact that the principal of the agency failed to offer increased coverage on property she frequently visited and personally observed its renovation and expansion.

Lund looked to the website of the defending agent for the amount of influence it might have on a jury. He found little in this case. Only one foreman reported that his jurors thought the statements on the website heightened the agency's required standard of care for its clients.

During the mock trial, Noonan's No Risk Insurance Agency's website was displayed in evidence, but there was no testimony that the plaintiff had even seen the website.

Attorney Gregory Gober, partner of Blaies and Hightower which represents SwissRe's E&O insureds in the Dallas/Fort Worth area, said websites are used in lots of E&O cases because they may elevate the standard of care required of the agency. The question becomes, said Gober, "Did your customer justifiably rely on the website?" If a defense attorney can establish that a customer didn't look at the website until after filing a lawsuit, he said, the website's

content would be disregarded. "As a matter of law, if he (the plaintiff) didn't see the website, there could be no justifiable reliance."

Lund said underwriters at SwissRe look at agencies' websites at renewal of their E&O policies and the insurer's underwriters point out problems they see on an agency's website. "Phrases such as 'partner,' 'expert' and 'piece of mind,'" said Lund, "are real problems for us." Lund speculated that with proper coaching by their attorney, plaintiffs will say that they looked at the agency's website and based their decisions on it.

Lund recalled an E&O case in Kansas that he thought should have cost the insurer about \$25,000 in E&O damages for the agency's negligence. Instead, the language on the website pushed the jury to award nearly \$5 million.

Mark Shackelford, vice president of SwissRe Corporate Solutions, said websites become problematic when they "overpromise" and an agent "under-delivers." He said every agency's quandary is wording its advertising message that says it is good at what it does without going too far.

Lund said there are tips for what to say and not say on websites on the "E&O Hap-

pens" section on the rms.iiaba.net website. Passing a website audit and qualifying for the risk manager credit through the Big I earns agents a credit on their E&O premium with SwissRe, Lund said.

The main problem that turned juries to favor the plaintiff in this case was the agency's issuance of a faulty certificate of insurance. Even though every certificate clearly says on its face that it is issued as a matter of information only, confers no rights upon the certificate holder and does not alter coverage under the policy, the mock jurors in the case found the agency negligent for issuing a certificate of insurance that did not match the actual coverage established by the insurance policy. The certificate mistakenly said that the building had \$3 million in coverage, when it actually had \$500,000 of coverage.

Lund agreed that the disclaimer language on every Acord certificate will mean nothing to a jury "if someone (at trial) says 'I never read that.'"

Agents need to check the policy before issuing a certificate of insurance, said Lund. He stressed, "It is extremely important that COIs are accurate." Lund further cautioned

See **MOCK TRIAL** Page 27

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NEWS IN BRIEF
FROM PAGE 24

the cost. Some employers self insure and others have high deductibles.

WORK AT HOME

Nationwide announced April 29 a plan to permanently transition to a hybrid operating model that comprises primarily working-from-office in four main corporate campuses and working-from-home in most other locations. “We’ve been investing in our technological capabilities for years, and those investments really paid off when we needed to transition quickly to a 98 percent work-from-home model,” said Nationwide CEO Kirt Walker. The four main campus locations will include central Ohio (including downtown Columbus and Grandview Yard); Des Moines, Iowa; Scottsdale, Arizona, and San Antonio, Texas. The company plans to exit most buildings outside of the four designated campuses by Nov. 1, and move associates in these locations to permanent remote-working status.

FLOOD RISK

A new World Resources Institute report found that 147 million people will be hit by floods from rivers and coasts annually by 2030, compared with 72 million people just 10 years ago, The Guardian reported April 23. Damages to urban property will soar from \$174 billion to \$712 billion per year. By 2050, 221 million people will be at risk, with the toll in cities costing \$1.7 trillion yearly. The worst flooding will come in south and southeast Asia, including Bangladesh, Vietnam, India, Indonesia and China. The effects will be less dire but increasingly serious in the United States, where the risk is highest for coastal flooding. Coastal flood damage in the United States will soar from \$1.8 billion in 2010 to \$38 billion in 2050, with half the country’s exposed population in just three states – Louisiana, Massachusetts and Florida.

Mock trial

agents that they cannot give additional insured status through a certificate of insurance.

Lund recommended that agents consult the Virtual University on the Big I website as a resource for questions or concerns about certificates of insurance.

That the defendant in the mock trial frequented the plaintiff’s golf course and clubhouse became another factor in several mock juries’ determination of negligence. According to testimony at the mock trial, over the course of four years between the initial policy issuance and total loss by fire, the insurance agent had attended parties in the renovated and expanded area of the clubhouse and should have noted the need to increase coverage on the property. While the agent was not there for work-related purposes, her presence on the site represented a missed opportunity.

Switching to real life, Lund said agents who offer or recommend increased coverage to a client should make contemporaneous documentation of that if the client declines the increased coverage. Such documentation can be important in the defense of an E&O claim after a loss.

Lund recommended that agents use a checklist and said that SwissRe rewards agents who do so by a credit on their E&O premium. Using a coverage checklist, said Lund, gives agents opportunities to make more money and to avoid E&O claims. Use of a thorough checklist that the customer reviews, signs and returns means “we will win the case.”

The courts have yet to modernize the long held “mailbox rule” and apply it as a doctrine to electronic communications, Lund said. Still, defense attorneys can draw parallels when electronic communication between an agent and his client is their established practice, he said. The rule dates back to Ben Franklin’s days when the U.S. Post Office was created. This rule, said Lund, allows a court to presume that if a piece of mail was sent to the same address that a client provided and to which prior communications were sent and received, then the piece of mail in question was received. The burden of proof shifts to the party who claims not to have received the particular communication, Lund said.

Another action that Lund said may have influenced the juries is that the agent in the mock case did not initiate any direct contact with her client, other than sending renewals and invoices, for four years. Ideally, said Lund, agents initiate phone contact with their clients at least once a year. “We

know you can’t do that every year, but do the best you can,” Lund said. “They (personal lines clients) may have gotten a new car or a new boat, a new RV... or if a business, more employees...new equipment.... All things you find out if you follow up with them on a regular basis.”

FROM PAGE 26

WHAT NEXT?

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