

# TEXAS SURPLUS LINE REPORTER & INSURANCE NEWS

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## NEWS IN BRIEF

### PEOPLE

**Ted Dimitry, a commercial property/casualty broker specializing in oil and gas for 23 years, has joined Higginbotham's Houston office as its energy and marine practice leader.** Dimitry brings experience managing staffs of more than 15 employees producing, marketing and servicing energy and marine accounts. Most recently, Dimitry was first vice president at Alliant Insurance Services, Energy and Marine Group. Dimitry holds a Master of Business Administration from Rice University and a BA from Washington and Lee University. He is a board member of Marine Insurance Seminars and a member of Houston Marine and Energy Insurance Conference Planning Committee, and the Houston Mariners Club. **Dudley Ray**, managing partner of Higginbotham in Houston, said, "Ted is a world-class expert in this field. With his experience managing risk for diverse energy companies and his relationships within the energy insurance market, we have the added strength to continue growing this practice and evolve with the industry."



Dimitry

**RT Specialty announced the promotion of Claudia May to co-president of RT Specialty's National Personal Lines practice.** May came to RT Specialty through its acquisition in March 2019 of Myron Steves, where she was the executive director of personal lines and the agency's chief underwriting officer for personal lines. May is based in RT Specialty's Houston office. Also named co-president of RT Specialty's personal lines practice was **Dave Adcock**, who came to RT Specialty through the acquisition of Atlantic Specialty Lines last June. Adcock is based in RT Specialty's Richmond, Virginia office. Also promoted was **Jason Lentz**, who has been with RT Specialty for three years. He was named RT Specialty's National Practice Leader, Private Client Group. Lentz has extensive experience serving high net worth clients. Previously, Lentz was a U.S. Marine for more than six years. Lentz is based in Las Vegas.

**On Jan. 21, TDI's Division of Workers' Compensation announced two new hires and a promotion. Kara Mace was named deputy commissioner for the newly created legal services program at the TDI DWC.** The new program will handle rule development, open records, litigation, contracts, subpoenas and other legal issues for

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## Surplus lines offices across U.S. report record premium

Excess and surplus lines (E&S) premium recorded by the 15 U.S. surplus lines stamping and service offices reached \$37.45 billion in 2019, a 19.32 percent increase over the \$31.39 billion reported for 2018. Additionally, the 15 offices recorded a total of 4.83 million filings for the year, up 8.98 percent from 4.43 million in 2018.

In 2019, Texas retained its ranking as the second highest state in surplus lines writings, behind only California, and Florida remained a close third. New York had the fourth highest premium among states whose surplus lines writings are reported through stamping or service offices. The four top surplus lines states wrote about 76.74 percent of such reported surplus lines writings.

The only shift in state ranking of surplus lines premium volume occurred with Mississippi and Oregon trading places. In 2019, Oregon moved into 11th place and Mississippi into 12th for surplus lines premium volume among the 15 states with surplus lines stamping or service offices.

Surplus lines writings in Texas made up about 18.56 percent of all premium reported through service offices in 2019. Texas surplus lines premium was 24.19 percent of the premium reported by the top

four states.

All 15 states experienced growth in premium, with 12 of the 15 reporting double-digit premium increases. All states also had increased filing totals, and two experienced double-digit growth in this area.

California reported the largest premium amount in 2019 at nearly \$10.26 billion. Michael Caturegli, senior vice president of data analysis and technology for the Surplus Line Association of California, noted that this total includes \$1.17 billion in premium that was processed in 2019 but dated for 2018. The Surplus Lines Stamping Office of Texas recorded the next highest premium amount at \$6.95 billion, followed by the Florida Surplus Lines Service Office with \$6.67 billion, and Excess Lines Association of New York with \$4.86 billion.

California also reported the highest percentage of premium growth, at 34.13 percent over 2018's recorded premium. Idaho experienced the second highest premium growth at 33.57 percent. Wendy Tippetts, manager of the Surplus Line Association of Idaho noted that Fire and Allied Lines premium doubled to \$42 million and Environmental Impairment Liability coverage

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## IIAT hosts 600 during its 57th agency management seminar

The Independent Insurance Agents of Texas assembled a cast of 18 presenters from near and far for its 57th Annual Joe Vincent Management Seminar, held Jan. 26-28 at the Renaissance Austin Hotel. Attended by more than 600 agency executives and company representatives, the event offered the participants as much as six hours of continuing education, several additional hours of thought-provoking material and opportunities to network.

A mock civil trial opened the seminar on Sunday afternoon. Following a skit demonstrating the actions at an insurance agency that gave rise to an E&O claim against it four years later, attorneys from Blaies and Hightower staged a mock trial scripted by Swiss Re. The full drama was

based on actual E&O claims defended by Swiss Re. At the end of the trial, the audience was divided into seven juries. Unscripted, all of the juries returned a verdict favoring the plaintiff. Damage awards ranged from \$1 million to the full \$3.125 million sought by the insured.

Featured keynote speakers included Todd Buchholz, who led off the program on Monday, Jan. 27, and Chris Riddell, who closed the seminar on Tuesday. Buchholz is a former White House director of economic policy under George H.W. Bush, bestselling author, and frequent commentator on the state of the markets. Riddell is an internationally recognized futurist from

See **JOE VINCENT SEMINAR** Page 11

## Texas loss ratios better than most countrywide averages

Looking at insurers' loss ratios for 2018, Texas outperformed the U.S. overall in Homeowners, personal lines auto, business auto, and workers compensation, said Jim Gavin, IIAT's information services specialist. Gavin's look back to 2018 was included in IIAT's 2020 Industry Preview, presented at the recent Joe Vincent Management Seminar during a breakout session on Jan. 27.

Throughout his presentation, Gavin referenced 2018 results, as the year end results for 2019 will not be available until after the first quarter of this year.

Gavin was joined by Lee Loftis, IIAT's director of governmental affairs, whose preview of 2020 looked ahead to the fall election and its potential to impact the in-

surance business. Together, their presentation offered 1.5 hours of continuing education credit to attendees.

The only line where Texas' loss ratios underperformed the U.S. average was in Commercial Multi Peril, where Texas experienced marginally good results with a 63.6 percent loss ratio, compared with the U.S. loss ratio of 60.7 percent, said Gavin. That is actually the closest the two loss ratios have been for some time, according to Gavin, who said that Texas had a loss ratio of 105.4 percent in 2017 and an 87.1 percent loss ratio in 2016 when the national average loss ratio ranged from 50.9 per-

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## Brexit: A fish problem could queer an EU deal with the U.K.

**London Views**  
**By Len Wilkins**  
**London Correspondent**

Having finally left the European Union on Jan. 31, Lloyd's and the London insurance and reinsurance company markets are waiting to see how things will change.

At the moment, nothing changes because there is a transition period between now and Dec. 31. Until then, an intense game of poker will be played between the U.K. and the EU over the future relationships between the parties and a trade deal on how they will trade with each other in the future. Meanwhile, EU law applies. The transition period can be extended by two years to allow for further negotiations, but Prime Minister Boris Johnson has said this will only happen over his dead body.

The current legal position is that any EU member state which authorizes a domestic insurer empowers that insurer to trade anywhere in the EU. Domestic insurers and reinsurers in non-EU member states can only trade locally. This is why more than 300 companies were set up in the EU by Lloyd's, U.K. insurers and non-EU insurers. As an EU company they have the right to trade across the EU but ironically not with the U.K.

While most of the trade talks between the U.K. and EU do not concern Lloyd's and the London company market, the access to each other's financial services markets are of prime importance. The financial services sector is Britain's biggest tax contributor, generating \$98 billion annually in tax.

There will be equivalence tests under which the U.K. and the EU will decide if the other party's rules for financial stability and investor protection are sufficiently aligned with one another to allow access to their territories. The plan is to have completed the technical assessments for equivalence by the end of June. The U.K. wants a permanent deal, but the EU wants an open-ended one with a 30-day cancellation period.

All this because of the problem with fish.

U.K. regulators believe they have made the U.K. the most equivalent country in the world, and in a straight "I'll show you mine if you show me yours" negotiation there would be no problem. Unfortunately, the EU made it clear that these negotiations are a combined package and not a sector specific agreement, so London's access to the EU depends on trade-offs in a broader deal that cuts across all economic sectors.

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# IIAT market overview

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cent to 60.1 percent. “It’s feast or famine in this line,” Gavin said as he pointed to the line’s deficient performance 10 years ago when the Commercial Multi Peril loss ratio in Texas was 129.1 percent, and the nation’s average was 56.8 percent.

### Homeowners

Homeowners is a personal lines property coverage subject to many of the same perils as commercial, and 2018 was a “pretty decent” year for the line in Texas. With a loss ratio of 45.8 percent, Texas outperformed the nation, which averaged a 74.4 percent loss ratio in the line. The 2018 results followed two tough years for Homeowners, said Gavin.

Texas had a “terrible ’16 and ’17” said Gavin, when the loss ratios in Homeowners were 79.7 percent in 2017 and 87.5 percent in 2016. “That’s the nature of the property market in Texas,” he said. “The loss ratios are either 80 or 40.” Nationally, the

loss ratio for 2017 was 78.8 percent and in 2016, 52.6 percent.

The turn in the market for Homeowners is “catastrophe driven,” said Gavin. Absent catastrophes, the Homeowners line should remain fairly competitive, he said. Gavin said Homeowners’ premium in Texas increased from \$5.3 billion in 2008 to \$9.2 billion in 2018. He attributed the increase in part to economic growth in the state and an increase in property values. He noted that 2008 was “a lousy year too” with the loss ratio in the line reaching 129.1 percent when the national average was 71.8 percent.

Gavin reported that insurers in Texas during 2019 sought varying levels of rate changes in the Homeowners line. He said that 21 insurers reduced their rates, 82 sought rate increases below 10 percent and 28 received “big rate increases” between 10 percent and 30.2 percent.

Gavin said he has become aware that some insurers offer a specialty product to

cover an insured’s windstorm deductible. Another observation Gavin made about the Homeowners’ market was that one insurer filed a preferred contractor program that offers a 20 percent reduction in the deductible for using certain contractors for repairs. Gavin said he would not be surprised if other carriers would include this offer in the future.

Two endorsements are being used by Homeowner insurers to eliminate coverage for cosmetic damage, Gavin said. HO 06 44 eliminates cosmetic damage to the roof; HO 06 43 eliminates coverage for cosmetic damage to the roof and exterior surfaces, such as doors, siding and windows. Gavin cautioned agents to make certain they know which endorsement is attached to a policy at renewal to make certain it is explained to the customer. Without explaining, Gavin said, “Damage from hailstorms could become a real surprise to your customers” if they found out after the storm that the endorsement was a part of their policy.

Gavin alerted attendees on the potential challenge due to a law passed in 2019 affecting deductibles. The new law authorizes an insurer to require reasonable proof that the insured paid the deductible before issuing full payment for a replacement cost claim, Gavin said. He expects that this will operate with the insurer paying actual cash value initially, then require, at its option, proof of payment of the deductible before forwarding the balance of the replacement cost. Proof is defined by law as a canceled check, a money order receipt, a credit card statement or an executed finance plan.

Gavin foresees the implementation of this law as potentially problematic, as it seems to add another step in the claims process which is unlikely to be managed uniformly by all insurers. He told agents that following a catastrophe, they should contact their clients to remind them of this

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# What we’ve got here is failure to communicate!

By Michael G. Manes  
Manes and Associates

“What we’ve got here is failure to communicate!” is one of the most famous and most memorable lines from the movie Cool Hand Luke, a classic from 1967. Remove the quotation marks, and you have a textbook explanation for many failures in planning, marketing, leadership, marriages, organizations, relationships, and so on. Communication is more important than most of us realize most of the time.

A major reason for our frequent failure is that we focus on words and not on how they are being said. Albert Mehrabian, professor emeritus of psychology at UCLA, developed a communication model in which he demonstrated that only seven percent of what we communicate consists of the literal content of the message, the words. The use of one’s voice, tone intonation and volume take up 38 percent, and as much as 55 percent of communication consists of body language, including facial expression, gestures and postures. This is the Mehrabian 7-38-55 rule of personal communication.

Clinical speech-language pathologist and noted counselor in Baton Rouge, Jim Barton, Ph.D., received patient referrals in the 1980s from psychologists and psychiatrists when their treatments weren’t working. He had a simple philosophy on communication: “Effective communication is getting what’s in your heart out through your mouth or some other socially acceptable means.”

Barton theorized further that if you don’t transmit communication in a positive method, such as conversation, words, song, dance, art, or poetry, the thoughts and feelings in your heart would emerge as stress, anger or violence or harm the lining of your

stomach, collapse your arteries, or even cause cancer.

George Bernard Shaw once said, “The single biggest problem in communication is the illusion that it has taken place.” I have experienced Mr. Shaw’s wisdom.

Once, I heard a speaker explain, “If I tell my wife, ‘When I look at you, time stands still,’ she’ll love me. If I say, ‘Your face can stop a clock,’ she’ll divorce me. By literal meanings of the words, I’ve said the same thing.” To me this is evidence of the correctness of Mr. Shaw’s statement.

If you ask a group of folks to punctuate the following sentence, “Woman without her man is nothing.” Chances are you’ll get two entirely different responses.

Women will answer, “Woman, without her, man is nothing.”

Men will respond, “Woman, without her man, is nothing.”

These responses are entirely consistent with an insight from Anaïs Nin, 19th cen-

tury essayist, diarist and novelist: “We don’t see things as they are; we see them as we are.”

Here are two brief stories to reinforce these theories on the power and importance of communications.

Boudreaux was a baseball umpire. After a game, he and his friends Arceneaux and Comeaux went to get a beer. Arceneaux started by saying, “Boudreaux, you’re a great umpire because you call them like you see them.”

Comeaux corrected that statement with his own opinion: “Boudreaux, you’re so good because you call them like they are.”

Boudreaux corrected them both by saying: “Y’all are both wrong. They are nothing until I call them.”

In the mid-1980s, I coached youth soccer. One year I coached four- and five-year olds. The two youngest, smallest and slowest kids on the team were Jeremy and Ryan. The ball reached to the bottom of their shorts.

Every time Jeremy kicked the ball, he kicked it in the wrong direction since his slowness had him going against the flow. In the last game of the year, the ball accidentally ended up at his feet as he was running toward the goal. His short legs did not allow him to kick it away, so the ball stuck to him, and he ran it into the goal.

His mama cried tears of joy, as did most of us on our side of the field. Across the way, the other team was celebrating Jeremy’s newfound success. Jeremy was now a winner. The next year, Jeremy returned to the soccer field a much better player, changed by a newfound confidence created by his accidental success.

Sadly, Ryan’s story is different. Ryan, too, was a good kid who just wanted to be on the field running with his buddies. His dad was at every practice, and he hovered over Ryan with unrealistic expectations.

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## S/L results

increased to \$5.8 million, both of which contributed to the state’s overall growth. She also noted small increases in Professional Liability for engineers and hospitals.

Other states with large premium growth were Arizona, Pennsylvania, Illinois, and North Carolina, with increases of 22.35 percent, 21.26 percent, 20.69 percent, and 20.59 percent, respectively.

“We saw broad-based advances in the Illinois surplus line market in 2019,” said David Ocasek, chief executive officer of the Surplus Line Association of Illinois. “GL, E&O/D&O, All Risk Property, and

Umbrella were the leading categories. Property/Fire, Multi-peril, Inland Marine, Fidelity/Surety, and Auto Physical Damage were also very strong. In almost all of these major categories, we experienced double digit growth – not just in premium and document volume, but also in the average premium per policy, which is a strong indicator of higher rates.”

In North Carolina, 80 percent of the surplus lines premium growth in the state was derived from Commercial Property and General Liability classes of business, according to Geoff Allen, chief operating of-

ficer of the North Carolina Surplus Lines Association.

“The General Liability increase can be attributed to the state’s economy, and the Property increase was the result of rate increases due to the two recent hurricanes,” Allen said. “We also realized significant increases in Medical Malpractice, Cyber and Credit insurance.”

The state of Florida recorded the largest number of filings for the year, at 1.29 million. Texas had the second highest total with 1.09 million. California experienced a 22.62 percent increase in items filed, the

were part of a backlog, according to a media release from the Surplus Lines Stamping Office of Texas. Utah had the second highest increase in filings, with a 12.15 percent growth for the year.

This year, California, Oregon, and Utah submitted 2018 premium and filing amounts that were updated since the previous annual recap of service office filings.

Effective January 1, 2019, the Surplus Line Association of Illinois reduced its stamping fee rate to 0.075 percent, an additional decrease from its reduction to 0.125 percent at the beginning of 2018. The Surplus Line Association of Oregon also decreased its stamping fee to \$10 per transaction from \$15, beginning January 1, 2019. On June 1, 2019, the Surplus Line Association of Idaho implemented a policy where premium, tax, and stamping fees are rounded to the nearest dollar. Wendy Tippetts, manager of the Idaho association, stated that the policy likely balanced out and did not have much of an impact on premium totals.

Moving forward, California has increased its stamping fee from 0.20 percent to 0.25 percent, effective January 1, 2020, and Florida plans to reduce its rate from 0.10 percent to 0.06 percent beginning April 1, 2020. In December, Texas announced plans to reduce its stamping fee and indicated then that the amount of the change and the effective date would be determined later this year. The reduction will be calculated by the SLTX actuary and will be subject to approval by the SLTX board and Commissioner of Insurance Kent Sullivan.

## NEWS IN BRIEF

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DWC. Mace rejoined TDI after serving as the deputy counsel for the Office of Public Insurance Counsel. She spent several years with TDI’s policy development counsel. Mace also served as senior counsel for external litigation and enforcement for the New York City Department of Homeless Services. DWC has hired **Jessica Bergeman** as a new prosecutor with its fraud unit. Bergeman is a seasoned litigator, having spent nearly a decade in Chicago prosecuting criminal cases in Cook County. After relocating to Texas in 2012, Bergeman spent six years as director of the Client Attorney Assistance Program in the Attorney Compliance Division at the State Bar of Texas. **Nick Canady** was named special counsel for DWC, where he will focus on litigation impacting the Texas workers’ comp system and serve as the DWC liaison to the Office of Attorney General. Canady has served as DWC’s general counsel since March 2016 and has been licensed to practice law since 1983.

## TRUCKING TESTIMONY

Nat Wienecke, senior vice president of federal government relations at the **American Property Casualty Insurance Association (APCIA)**, submitted a statement into the record of the Senate Subcommittee on Transportation and Safety hearing on Feb. 4, to steer the committee to include consideration of “the costs of abusive litigation on the trucking sector.” The subcommittee met to hear about technological advances that make vehicles safer and improvements needed for the nation’s roads. APCIA members write approximately 70 percent of the commercial auto in-

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## U.S. Surplus Lines Stamping/Service Offices End of Year Comparison

State	Percentage Change		2019		2018		Rates	
	Premium	Items	Premium (in millions)	Items	Premium (in millions)	Items	Stamping Fee	S/L Tax
California	34.13%	22.62%	\$10,258.58	895,534	\$7,648.03	730,320	0.20%	3.00%
Texas	14.36%	4.43%	6,951.70	1,093,760	6,078.60	1,047,318	0.15%	4.85%
Florida	14.53%	9.31%	6,668.19	1,285,058	5,822.47	1,175,660	0.10%	5.00%
New York	9.96%	2.61%	4,863.10	352,497	4,422.73	343,521	0.17%	3.60%
Illinois	20.69%	2.81%	1,913.46	157,127	1,585.37	152,830	0.075%	3.50%
Pennsylvania	21.26%	4.55%	1,555.25	229,548	1,282.54	219,549	\$20.00	3.00%
Washington	6.74%	9.49%	1,112.59	147,263	1,042.32	134,500	0.10%	2.00%
North Carolina	20.59%	6.70%	928.60	189,351	770.02	177,462	0.40%	5.00%
Arizona	22.35%	5.73%	718.00	89,178	586.84	84,342	0.20%	3.00%
Minnesota	18.95%	0.86%	616.17	49,292	518.00	48,870	0.04%	3.00%
Oregon	18.30%	5.15%	477.70	70,674	403.81	67,215	\$10.00	4.00%
Mississippi	11.15%	7.63%	469.00	166,410	421.97	154,613	0.25%	2.30%
Nevada	8.51%	8.25%	413.59	41,032	381.16	37,906	0.40%	3.50%
Utah	13.81%	12.15%	350.37	40,953	307.85	36,515	0.18%	4.25%
Idaho	33.57%	4.81%	155.65	20,822	116.53	19,867	0.50%	1.50%
TOTALS	19.32%	8.98%	\$37,451.95	4,828,499	\$31,388.24	4,430,488		

Source: Surplus Lines Stamping Office of Texas (SLTX)

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The Renaissance Austin Hotel was the setting for IIAT’s annual Joe Vincent Management Seminar



Bob Havey, left, Worldwide Facilities, MHI-MGA Division, and Matt Leicht, Craig and Leicht, and Diana Moinot, Moinot Insurance Group.



Abraham Padron, left, SafeGuard Insurance Agency, with Fred Steves, RT Specialty.



State Representative Cole Hefner, left, Hefner Group Insurance, with Rodney Watkins, Watkins Insurance Group.



From left are Rich Mayer, AmTrust NA; Tim Shackleford, Boyd, Shackleford, Barnett and Dixon, and Tony Gonzalez, UPC Insurance.



From left are Mike Berry, Specialty Insurance Managers; Albert Perez, Brisky and Perez Insurance Agency, and Adolfo Villanueva, US Insurance Services.



Mark Bridges, left, INSURICA, with Gunnar Kephart and Stephanie Stokes, both with IIAT.



From left are Drew Kopal and Ryan Kopal, both with Woodlands Insurance Services, and Gene Darnell, Dean and Draper Insurance Agency.



From left are Shirley Barnes and Susan Berry, both with Service Lloyds Insurance, and Betty Bush, Rust-Ewing Insurance.



Don Whitaker, Whitaker Insurance, with Laura Farmer, center, Service Lloyds Insurance, and Marit Peters, IIAT.



Jan Kearbey, Service Lloyds, with Don Morriss, Offenhauser and Company.



Priscilla Oehlert, left, University of Houston-Downtown, with Brooks Jay and Karen Plackemeier, both with UFG Insurance.

TOGETHER WE'RE BETTER



From left are Laura Dedet, Douglas B. Johnson Insurance Agency, with Nicole Rhooms, Matt Zollner and Stephanie Dalmatoff, all with Central Insurance Companies.



From left are Scott Freiday and Robert Pettinicchi, both with InsurBanc; Paul Guerrero, Legacy Independent Agency, and Glenn Hastings, WinStar Insurance Group.



From left are Dustin Miller and Jeff DeLoff, both with Select Insurance Markets, and Michael Cortez, Risk Strategies/PPIA.



Don Meyer, Surplus Lines Stamping Office of Texas, and Jean Patterson, Texas Surplus Lines Association.





Chris Chaloupka, left, Southern Quality Insurance Group, and Robert Kent, Kent Family Insurance Group.



From left are Tiffany Leffke, LUBA Workers' Comp; Larry Batie, BXS Insurance; Alice Caballero and Trent Bondy, both with LUBA Workers' Comp.



Lee Loftis, left, IIAT, and Jay Thompson, Thompson, Coe.



From left are Saul Garcia, Burns and Wilcox; Jorge Gonzalez, FalconSure; Lori Chadwick, gotoPremiumFinance.com, and Noe Reyes, Worldwide Facilities, MHI-MGA Division.



Rick Orr, Craig and Leicht, with Peggy Kawamura, center, RBFCU Insurance Agency, and Sandy Garza, Sandy Garza and Associates.



Judy Walker and Brent Davis, center, both with Texas Specialty Underwriters, and Robert Ferguson, Family Financial Group.



With QEO Insurance Group are, from left, Katherine Goodin, Claire Tabor, and Elizabeth Stehling.



Lisa Weiland, FCCI Insurance Group, and Ed Schreiber, BXS Insurance.



From left are John Husbands, Soules Insurance Agency, with Brian Doherty and Kyle Dean, both with Dean and Draper.



From left are Patrick McDavid and Travis McDavid, both with GSM Insurors, and Jared Pitts, Galveston Insurance Associates.



From left are Bart Koch, TAGA; Mary Ellen Hamel, Republic Group; Tim Hodges, Union Standard Insurance Group, and Richard Salley, TAGA.



Wendy Rhoden, left, Patterson and Associates Insurance Agency, and Janet Dawson, Higginbotham. Rhoden is president of FIWT and Dawson is corresponding secretary.



From left are Lucas Boyd, BSBD Insurance; Sam Stringer and Monte Stringer, both with All Risks, Ltd.



From left are Scott Houser, Houston International Insurance Group, with Jeri Payne, Von Breaux and Kristin Lonergan, all with Sleeper, Sewell Insurance.



Marsha Hammond, left, Travelers, with Kristofor Spiegel, Hemphins Insurance, and Mayra Hernandez, Travelers.



MaryPeyton Sumners, left, IIAT, with Frank Swingle, Swingle, Collins and Associates, and Cari Senefsky, IIAT.

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# Mock trial ends in E&O judgment against fictional agency

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 outcome 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 Happens” 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 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.”

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## NEWS IN BRIEF

FROM PAGE 4

insurance coverage in the U.S., including commercial trucking. Through a 2019 survey by APCIA, insurers ranked transportation liability and legal costs as the second most worrisome liability trend, second only to construction liability.

### 2019 DISASTERS

According to Aon’s Weather, Climate and Catastrophe Insight report, 2019 closed out the costliest decade for natural catastrophes with a below-average economic loss total for the year. At \$232 billion, 2019’s global economic loss total for natural disasters fell three percent below average losses since 2000, and 20 percent below losses of the last decade, according to Aon. Of that \$232 billion, \$71 billion was covered by insurance. Last year, there were 409 natural catastrophe events; about half of the year’s global insured loss total was created by the top 10 costliest weather events (\$35 billion). Among the 10 worst natural disaster events in 2019 ranked by insured losses and economic losses were Typhoon Hagibis (Japan)

See **NEWS IN BRIEF** Page 13



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# IIAT market overview

FROM PAGE 2

new requirement and to make certain that they retain proof of payment of the deductible. Roofers and others who choose to waive the deductible commit a Class B misdemeanor, Gavin said.

This new law, passed as HB 2102 last session, applies to insurance contracts entered into after Sept. 1, 2019.

The market will continue to grow in Homeowners, Gavin said, due to the booming economy. New home starts, higher construction costs, and increased real estate values will result in greater total premium in the line. Rates in the line, predicted Gavin, will stabilize, primarily because of two good years of results. "It's important for you to understand," said Gavin, "that premiums are going up, not because rates are increasing, but because values are going up." Customers' insurance bills are higher because they are buying more coverage that will replace or rebuild their house if anything happens, Gavin said.

### Personal Auto

"Personal Auto is a challenge as well," said Gavin, but Texas had a "pretty good" 2018 when it was a \$22.68 billion market in Texas and the loss ratio in the line was 59.0 percent. Personal Auto, said Gavin, is the largest single market in the state, and it is growing significantly. Ten years ago, there was \$12.70 billion in Personal Auto premium in the state. This increase, said Gavin, represents not just rate increases, but population growth and more people on the road in more expensive vehicles that are more expensive to repair.

Weather claims also affect auto insurance, said Gavin. Insurers are able to predict losses from liability issues, he said, but vehicles beat up by weather events are less predictable.

Turning to recent developments that af-

fect personal lines coverage, Gavin explained legislation from the 2019 legislative session that stemmed from a frequent battle experienced by automobile dealers. Having repeatedly seen a collision of two auto insurance policies both claiming to be excess over the other, the Texas Automobile Dealers Association sought a statutory solution. In 2019, a law passed mandating that a driver's Personal Automobile policy respond as primary for damage to a temporary vehicle loaned to him while his vehicle is being serviced. This change applies to policies written after Jan. 1.

Gavin recapped the Texas Supreme Court action in the Zuniga decision rendered in mid-2019. An appeals court had found that the punitive damages awarded by the trial court were to be paid by the defendant and not by his insurer. Under the language of the personal lines automobile liability policy covering the defendant, the insurer would pay for bodily injury or property damage. The appeals court found that punitive damages were neither bodily injury nor property damage. Instead of ruling on this legal issue, the Supreme Court "punted," said Gavin. The Supreme Court reversed the award of punitive damages altogether, saying that there was insufficient evidence for a finding of gross negligence, effectively mooting the punitive damage award. Gavin said this leaves the appeals court decision on coverage "sitting out there."

With insurers still not happy about their Personal Auto insureds becoming hired drivers, ISO has developed a form containing public and livery exclusions. As yet, the ISO form has not been approved for use in Texas, but Gavin expects many of the provisions of the ISO form to be incorporated into insurers' Texas filings, espe-

cially if the filings have been approved in other states.

Another notable feature of the new ISO form is an exclusion for shared vehicles, where there are multiple unrelated owners or lessees of a single vehicle; the form limits coverage to one of the owners. Custom furnishings and equipment exclusions formerly applied to just pickups and vans, said Gavin, but a new ISO form expands the exclusion to all vehicles. The form also changes the definition of racing to include driver skill events or training, which excludes events dealerships have been sponsoring for their customers who purchased high performance vehicles.

Whether visionary or science fiction, flying cars are also excluded under the ISO form.

ISO is also offering some endorsement enhancements like full safety glass, key replacement, pet injury coverage and coverage for child restraint systems. "These are things that some companies have been covering for years," Gavin said.

Also new from ISO by endorsement are replacement cost coverage up to 24 months or 24,000 miles. For car owners that don't have a Homeowners or tenants policy, some personal property could be covered under the auto policy by endorsement, Gavin said. He suspects this feature is driven by gig workers.

The ISO form also increases replacement rental car coverage from \$20 per day/\$600 aggregate limit to \$30 day/\$900 aggregate limit.

Gavin's predictions for Personal Auto in 2020 are that, even without a catastrophe, rates will continue to rise as a result of increases in car values, medical costs and other high-cost factors; more Personal Autos will be used for delivery; more ve-

hicle drivers will be involved in litigation after hitting motorized scooters ridden on the road. Looking ahead to 2024, Gavin said usage based insurance will grow by more than 17 percent over the next four years, as apps are developed to allow people to log on and buy insurance only when they are actually driving their vehicle.

### Commercial Multi Peril

In addition to commenting on loss ratios in Texas exceeding the national average in Commercial Multi Peril, Gavin recapped some recent coverage changes in ISO forms.

There is one endorsement in particular that Gavin considers "draconian." The endorsement filed by one insurer excludes cosmetic damage to roof surfacing caused by wind or hail and authorizes coverage only if there is an actual puncture through the roof that produces a leak. "If you don't have a leak, you don't have a hail claim," said Gavin of this endorsement. As Gavin pondered the possibility that other companies may "follow suit," he called this endorsement "just the kind of thing that gives the insurance industry a bad name."

Gavin's forecast for commercial coverage is for relatively small rate increases, as reinsurance rates are already up one percent to two percent in commercial property. He also expects tighter underwriting and higher deductibles.

### Business Auto

The loss ratio in 2018 in business auto made it "three lousy years in a row," said Gavin. Loss ratio results for the three years were 72.0 percent in 2018, 82.1 percent in 2017 and 78.4 percent in 2016. Looking back 10 years, Gavin said the loss ratio in business auto was 61.4 percent in 2008. "Commercial auto is bad all over the country," said Gavin, "so companies are trying to figure out ways to address that."

Increasingly, said Gavin, insurers require companies to install electronic logging devices in commercial vehicles, as the devices will capture hours of service for short haul and intrastate transport and assure compliance with a company's own standards.

Gavin said he has noticed an uptick in advertising by lawyers targeting folks who have been in accidents with commercial vehicles. Increased litigation has already resulted in rate increases in this line, he said.

### Workers Compensation

"Workers' Compensation had been tremendous in Texas, and it's been good countrywide," said Gavin. While there was a slight increase in Workers' Comp written premium in Texas from 2017 to 2018, there was still less written premium in 2018 than in 2008, Gavin observed. In 2018, written premium in the line was \$2.50 billion; in 2008, it was \$2.58 billion. "Kind of amazing," he said, when considering the number of hours worked at higher payroll levels with greater exposures than 10 years ago. "Somehow it's all working from a loss ratio point of view."

Loss ratios in the Workers' Comp line in Texas ranged from 35.8 percent to 47.0 percent between 2016 and 2018, while the U.S. loss ratios ranged from 49.9 percent to 54.3 percent.

Again, said Gavin, the Oregon Department of Consumer and Business Services published comparative average Workers' Comp rates for selected classifications across the U.S. The report ranked Texas 43rd on the rate scale, with New York, California, New Jersey, Alaska and Delaware claiming the highest Workers' Comp rates in the country. Gavin speculated that the state's Workers' Comp rates are a factor in the economic boom in Texas, as companies view Workers' Comp rates as equiva-



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# Attorney updates agency execs on wage and hour laws

Employers who may have welcomed the successful federal court challenge of the Obama-era federal overtime rule, as of Jan. 1, are bound by law to follow the compromise standard adopted by the U.S. Department of Labor under the Trump administration. Ann Price, attorney with the Austin-based employment and litigation law firm Boulette, Golden and Marin, LLP, explained the new wage and hour standards that apply to all U.S. employers regardless of the size of their workforce. Price also looked ahead toward what may change as labor laws adapt to cultural shifts. Her remarks came during her Jan. 27 presentation to the attendees at IIAT’s Joe Vincent Management Seminar in Austin.

While the Obama-era regulation would have made four million more workers eligible for overtime, the Trump-era one is estimated to make 1.3 million more workers eligible for overtime.

To be exempt from overtime under the current law, an employee’s regular salary must equal or exceed \$35,568 annually or \$684 per week, plus pass the duties test. The thresholds changed from \$23,800 annually and \$455 per week, levels that were

adopted in 2004. If an employee is paid more than \$107,432 annually, he is considered a highly compensated employee (HCE) and is most likely to be considered exempt from overtime. Previously, the HCE threshold was \$100,000.

The duties test remains in place. As Price explained, it is not the fact that an employee is salaried that makes him or her exempt from overtime. In addition, “an employee’s primary duties, what they spend the most time on or is most important about their job, must match up with the regulation’s definitions of what it is to be an executive or administrative em-

## Joe Vincent seminar

Melbourne, Australia, who is known for analyzing emerging trends and applying them to business development.

Buchholz pointed to the national debt and the weak K-12 education system in the U.S. as the biggest threats to the U.S. economy. Along with giving conference participants a close up view of the Australian wildfires, Riddell explored how natural disasters and global shifts are creating unprecedented amounts of volatility in glo-

bal markets. “We’re swimming in technology and information,” said Riddell. “Finding the truth is more complex than ever for both business and the consumer. Underneath all of it is the need to be more human at every moment.”

Jim Gavin, IIAT’s information services specialist, and Lee Loftis, IIAT’s director of governmental affairs, presented the 2020 Industry Preview, with Gavin presenting market data and anticipating trends, and Loftis recapping IIAT’s successes during the 2019 legislative session and looking ahead to the 2020 state election and how it may impact redistricting of the state legislature and Congressional seats.

The mock trial carried two hours of C.E., and the industry preview session, 1.5 C.E. hours. Other continuing education options included Key Considerations in Agency Acquisition and Perpetuation, by Scott Freiday and Robert Pettinicchi, both from Insurbanc; Beware of Ransomware, by Brad Schrum, Wingman Insurance, and The Sharing Economy, by Gavin.

Other informative sessions centered on

leadership; sales management; HR, operations and employment law, and technology. Presenters included Carey Wallace, CEO of IntellAgents and COO of the Ohio Insurance Agents Association; Ann Price, partner with Boulette, Golden and Marin law firm; Doug Mohr, Vertafore; John Fear, Premium Business Consulting; Brady Polansky, EZLynx; Sarah Borders, Benefits Compliance Solutions; J. Lee Whittington, Ph.D., professor of management with the University of Dallas; Creative Disruption: A Solution to Stalled Growth, by Steve McKee, McKee Wallwork and Company, and Building a Story Brand, by Marit Peters, executive director and president of IIAT.

In addition to networking breaks between sessions, the event included a welcome reception, a casino party, lunch and an end of Monday reception. Questpro joined ELITEXAS in hosting the night out social.

Audio recordings are available on the IIAT website along with slide presentations for most breakout sessions. Presentations by both keynote speakers are available in IIAT’s audio recordings.

See **WAGE AND HOUR LAW** Page 12

**FROM PAGE 1**



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## Wage and hour law

tributions to health plans, and some bonuses. The newer exclusions, said Price, are intended to encourage employers to offer the benefits without pushing them into a recalculation of the regular rate when overtime is due.

There is another rule change pending adoption that was placed in a comment period last November. It would affect how bonuses must be treated when employers use the fluctuation workweek method of calculating overtime. According to Price, adoption of the rule could be a year away or not at all, depending on the results of the next presidential election. If adopted, it could reduce some employers' liability for overtime, she said.

Under current overtime law, only non-exempt salaried employees whose work hours vary each week would be eligible for this method of overtime calculation. Under the fluctuating workweek method, employees who are entitled to overtime pay receive a fixed weekly salary, which is divided by the actual number of hours an employee worked in the week to determine the week's base hourly rate. The employees will then receive an additional 0.5 times their base rate for each hour worked beyond 40 in the workweek. As yet, because

of varying court decisions, it is unclear how this wage calculation method would be affected by compensation bonuses, Price said, something the new rule is expected to clarify.

On the horizon, said Price, is the issue of paid leave, or as Price termed it "paying people to not work." While local ordinances requiring private employers to grant paid sick leave in Austin and San Antonio are on hold pending court action, a similar ordinance in Dallas is scheduled to become effective in April, unless enjoined.

Civilian federal workers now get 12 weeks of paid parental leave, said Price. Several states are also requiring paid family and medical leave. "In the future, we're going to see a lot more of this," Price said.

Never seen before, said Price, is a new law in Maine that requires one paid hour of leave for every 40 hours worked, for any purpose. "That's a pretty big change," she said.

Also unprecedented, said Price, is the new law in New Jersey requiring severance pay equal to one week per year of employment to be paid to employees when mass layoffs occur. The new law there also requires 90 days' notice of the mass layoff, a 30-day increase over the typical federally mandated WARN Act requirements.

(WARN stands for Worker Adjustment and Retraining Notification.) Severance rate increases in New Jersey if the 90 day notice is not given.

The amount of student loan debt is giving rise to some employers contributing to student loan repayment as a recruiting tool. This benefit currently is taxed just like wages, but some bills in Congress might change that. "Will this (tax benefit) be perceived as fair," questioned Price, by older workers without student debt or parents who paid for their children's education so they would not have debt?

Also on the horizon, said Price, are more antidiscrimination laws or new interpretations of the Civil Rights Act of 1964 prohibition against sex discrimination that would expand it to cover sexual orientation, transsexual status, gender identity and gender expression. So far, the Fifth Circuit U.S. Court of Appeals, which includes Texas, Louisiana and Mississippi, says no to any expansion of the application of sex discrimination.

What brings this issue to a closer horizon is interpretation by the EEOC when applying it to federal employees, who are now protected from sexual orientation discrimination. Austin passed an ordinance

expanding protections from sex discrimination, said Price, but because it bans lawsuits as an enforcement mechanism "it has no teeth."

Since 2008, federal contractors are banned from discriminating based on sexual orientation, and since 2014, based on gender identity.

The U.S. Supreme Court is expected to rule on some aspects of this issue by mid-June, as it heard arguments in a couple of cases last October. Regardless of how the decisions come out, they will be "big news," said Price.

Price also predicted some movement in federal debate and potential changes in laws regarding gender pay equity, sexual harassment (already tax law no longer permits deduction of attorney's fees when sexual assault settlements are held confidential), gig workers, marijuana use, use of data analytics in recruiting and hiring, and displacement of workers through automation. The future of the workplace is already here, Price said. No longer can a worker expect the ordered life of receiving an education, working, then retiring. Instead, lifelong learning, up-skilling and re-skilling have become necessary to remain employed over one's lifetime.

FROM PAGE 11

## Fail to communicate

Once when the ball rolled toward Ryan he missed it and flipped over backwards. This is fairly common among four year old players.

In a moment I'll never forget, his dad bent down, got in his son's face and screamed, "Boy, you'll never be worth a (expletive deleted)."

Ryan was hurting, and I was shocked. I picked Ryan up and sent him to join the team. I pulled his dad off to the side for a private conversation. I said simply, "And you just guaranteed it, (expletive deleted)!"

To this day, I pray that my message to the dad impacted his future behavior, and I pray that Ryan forgot his dad's rebuke.

Unfortunately I fear the worst happened. My fear is that Ryan never became the player he might have been with time and practice because he was labeled by negative emotion rather than reinforced by the positive that we all so hope for.

Whether you're a 90-year-old member of the Greatest Generation, an aging

Boomer like me or a much more tech-savvy individual member of Gen X, Y, or Z, please remember that communication is important. Words matter. Meaning is even more important. You haven't succeeded until what you and the person you are communicating with have "connected." Communication isn't successful until the message transmitted is the same as the message received.

Special cautions are needed in today's day of electronic communication. With an email, a text message and much of social media, you send or receive only the words, which is likely only seven percent of the message and, therefore, easily miscommunicated.

*MICHAEL G. MANES is the owner of Manes and Associates, a New Iberia, Louisiana-based consulting business focusing on planning, sales and operations, and change. He has over 46 years of insurance industry experience, including serving as an instructor of Risk and Insurance at Louisiana State University.*

FROM PAGE 3

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NEWS IN BRIEF  
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with \$9 billion in insured losses, the Mississippi basin floods with \$4 billion in insured losses, and Hurricane Dorian (Bahamas, Caribbean, US, Canada) with \$3.5 billion in insured losses.

MEETINGS/EDUCATION

**The Independent Insurance Agents of Texas has launched a monthly webinar series called Mornings with Marit.** Each 30-minute segment features IIAT Executive Director and President **Marit Peters** sharing growth and success strategies with member agencies. The first episode on Feb. 13 addressed relationship management. On March 12, Peters will discuss the 80-20 Rule and describe ways to identify and prioritize efforts that are potentially the most productive. IIAT members can register in advance through the association’s website for a free webinar every second Thursday of the month at 10 a.m.

MARIT’S READS

**With unemployment rates at an all-time low and holding, recruiting and retaining the best employees is as important as ever. In The Dream Manager, Matthew Kelly** shares his belief that employers must get into the “dream business.” His premise is that the future of organizations and the potential of their employees are intertwined; their destinies are linked. He states, “An or-

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London views

Which brings us back to fish. EU members are demanding that the U.K. allow them to fish in U.K. waters for the next 25 years. This has gone down in the U.K. like a lead balloon, and the EU stated its determination that these fishing rights are part of the overall deal. So no overall deal – no access for insurers. Fish could stop Lloyd’s and London market companies trading with EU members even though there are other must have items on the EU’s shopping list. In practice the U.K. can expect some sort of compromise. A no deal agreement, which would make trade between the EU and the U.K. difficult, is unlikely as the EU sells more to the U.K. than the U.K. sells to the EU.

The problem the U.K. has is that EU negotiators are not worried about trade. As most are lawyers and not business oriented, they are more worried about protecting the EU from fragmenting, and their concern is that, if they give the U.K. too good a deal, other members of the 27-countries strong EU will be tempted to leave.

Lloyd’s being Lloyd’s, it likes everyone to know where it stands and has issued a market bulletin (Y5278) which sets out the impact of the U.K.’s withdrawal from the EU on Lloyd’s insurance contracts and confirms the relevant measures Lloyd’s has put into place.

The expectation on Lime Street is that after the transition period is over Lloyd’s members will no longer have the benefit of EU passporting provisions and would not be able to underwrite EU or European Economic Area (EEA) reinsurance business. They can, however, write reinsurance to cedants in the EEA (except Germany) provided they comply with local requirements. The EEA is an international agreement which enables the extension of the

EU’s single market to non-EU member parties. It links the EU member states and three European Free Trade Association states, Iceland, Liechtenstein, and Norway, into an internal market governed by the same basic rules as the EU.

The bulletin reminds members that Lloyd’s EU subsidiary, Lloyd’s Insurance Company SA (known as Lloyd’s Brussels), is up and running in Belgium and meets the EU’s Solvency II formula. It also benefits from the same financial ratings as Lloyd’s that AM Best, S&P and Fitch provide. It has 18 branches across the EEA and a branch in the U.K. The company can write all classes of nonlife insurance business and facultative and excess of loss reinsurance from EEA member states. Lloyd’s reminded its members and managing agents that authorization to write EU business comes from its EU subsidiary and not from Lloyd’s and that they must have a compliant structure in place to gain authorization.

Only EEA coverholders can act as coverholders for Lloyd’s Brussels, and where the policyholder and the risk location are in the EEA, all intermediaries in the distribution chain must be authorized in an EEA country. If a risk is partly in the EEA and partly outside, two separate contracts are needed, with the EEA risk written by Lloyd’s Brussels.

The Europeans are coming

Much has been made in the U.K. press about the loss of companies and jobs to the EU. Over the whole financial sector some 7,000 jobs will move to the EU, according to consultants EY. What hasn’t been reported is the number of jobs being created by the EU insurers moving to the U.K.

Over a thousand EU banks, asset managers, payments companies and insurers are planning to open offices in post-Brexit

Britain to serve their existing U.K. clients, according to regulatory consultancy Bovill.

Bovill said figures provided by the U.K.’s Financial Conduct Authority show that many EU firms see the U.K. as Europe’s premier financial services hub. How negotiations go between the U.K. and EU remains to be seen. The worst case scenario is that U.K.’s financial companies will not be recognized by the EU – unlikely but possible.

Coronavirus major losses not expected

Lloyd’s and London market insurers are more concerned with catching the coronavirus than receiving large claims from the disease. Coronavirus is not the first pandemic in recent times, and the industry previously responded by writing policies that exclude these risks.

Standard event cancellation policies written in London have a communicable disease exclusion, which excludes coronavirus losses. Likewise, standard business interruption policies will probably have a communicable disease exclusion covering any loss of revenue if premises or factories are forced to close temporarily. Where a contingent exclusion for denial of access or loss of attraction has been agreed, a disease exclusion will apply.

Coronavirus could be a problem for insurers covering travel, hospitality and healthcare costs. These are risks that London insurers either don’t write or insist on disease exclusion clauses.

One area that could cause insurers concern is the prevention or hindrance of access by a public authority. This may trigger business interruption policy claims irrespective of physical damage. Often BI policies cover interruption caused by any legal authority closing or evacuating all or

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## IIAT market overview

lent to a payroll tax.

Lower loss costs are keeping the rates down, said Gavin, as he pointed to a overall 36.4 percent decline in loss costs over the last four years in five selected classifications: air conditioning, carpentry (not otherwise classified), lawn maintenance, oil/gas well servicing and store retail (not otherwise classified).

Gavin’s short term prediction for workers comp is that it will remain highly competitive. Long term, Gavin expects declining rates will eventually lead to tighter underwriting, but not “this year.” A slowdown in the overall economy could trigger a “big uptick” in Workers’ Compensation claims. “That’s a historical trend primarily among folks who aren’t sure where their next job is coming

from,” he said. “They tend to get hurt during their last two weeks on the job.”

### Market indicators

Gavin shared the latest results from the Council of Insurance Agents and Brokers’ quarterly pricing report that showed steady price increases countrywide for small, medium and large commercial accounts. Auto, Property and General Liability lines were up, while Workers’ Comp was down, as of Sept. 2019. The biggest increases, said Gavin, are in umbrellas and D&O, where pricing “is going through the roof.”

Gavin found a significant difference between the current trend of price increases and a true hard market. “A hard market,” said Gavin, “is when nobody wants to write anything, (especially) products liability or

completed operations coverage.”

Gavin recalled explaining price increases to his customers as “When prices go up, it means more claims are being filed. You may have exposures you haven’t even thought about.”

Policy count increases in the surplus lines market indicate a tightening market in Texas, said Gavin, as he shared policy count numbers from the Surplus Lines Stamping Office of Texas. Across five top commercial lines, policy count rose in 2019 to 754,982 from 714,786 in 2018.

Migration of policies to the surplus lines market is a reflection of underwriting discipline among admitted carriers, said Gavin. What an admitted carrier would write a couple years ago, he no longer has an appetite for.

Commercial Auto is a growing line in the surplus market because “no one wants to touch it.” Commercial Auto premium in this surplus line grew more than 30 percent between 2017 and 2018, then rose nearly another 20 percent in 2019.

### TWIA and FAIR Plan

The exposure for the market of last resort for Homeowners, the FAIR Plan, declined 12.8 percent in the last year and policy count came down 26.5 percent over the last two years, said Gavin. That says the voluntary market for Homeowners in Texas is healthy, said Gavin. Tier 2 (close to the coast) policy count was down 17.1 percent, even though it still makes up about 75 percent of the total.

TWIA’s policy count has also dropped, along with its exposure and written premium, said Gavin. He added that the premium decrease is tracking consistently with exposure decreases in TWIA, an indicator that the feared “cherry picking” of risks has not occurred with the depopulation plans.

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## NEWS IN BRIEF

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ganization can only become the-best-version-of-itself to the extent that the people who drive that organization are striving to become better-versions-of-themselves.” The problem is, the great majority of people in the workplace today are actively disengaged. To become more attractive to workers, companies should help them realize their dreams, even those set aside by being caught up in the hustle and bustle of surviving. This book, based on a real Cincinnati-based cleaning company, provides tools to unleash an energy that will transform your business by making the connection between your employees’ daily work and their dreams for the future. The style of this book is much like **Patrick Lencioni’s**: a fable to begin and then tips for applying the concepts. This book is a great read for both business and personal applications. It was an excellent reminder to me that not only do we all need a dream manager, but we are also someone else’s dream manager. That responsibility is awesome. -**Marit Peters**, IIAT president and executive director

### MERGERS/ACQUISITIONS

**On Jan. 22, Fort Worth-headquartered Higginbotham announced that Galiot Insurance Services**, specializing in the life sciences sector, has merged operations with Higginbotham. Under Galiot President and CEO Brian Toggia, the company focuses on pharmaceutical, biotechnology, medical de-

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## FIWT planners meet in Stephenville

**FIWT Corresponding Secretary Janet Dawson, foreground, snaps a selfie with the FIWT team of planners, from left, President-elect Sue Finke, Blue Lime Insurance Group; Vice President Esther Torres, Litchfield Special Risks; Planning Chairman Debbie Trees, Higginbotham; President Wendy Rhoden, of Patterson and Associates; Membership Marketing Chair JoAnna Ringel, AmWINS Access; Recording Secretary Tanya Wyatt, Barnard Insurance Agency; Executive Director Kristie Gray, and Immediate Past President Cindy Jordan, retired. The Planning Committee met at Linda Saupp's house in Stephenville, Jan. 17-19. Saupp works for Texas Specialty Underwriters.**





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NEWS IN BRIEF

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vice software and instrument companies in 22 states, as well as foreign subsidiaries. Toglia will serve as life science practice leader for Higginbotham to increase the agency’s presence in the biotech market. Higginbotham has more than 20 industry practice groups that cater to companies with specialized risks. According to the agency’s news release, uniting with Toglia gives Higginbotham additional expertise to serve the life science industry while expanding risk management service to Toglia’s existing clients. Toglia holds a BA/BS from Pepperdine University’s political science/business administration program. Toglia is based in Higginbotham’s office in Houston in the Energy Corridor.



Toglia

SLTX

**The Surplus Lines Stamping Office of Texas ended the first month of 2020 with reported premium up 8.1 percent.** The agency received 84,253 filings in January, with 98.4 percent of the filings made electronically. There were 54,992 surplus lines policies filed in January. The stamping fee collection for the month totaled \$811,515, an 8.5 percent increase over January 2019.

TWIA

**Texas House Speaker Dennis Bonnen, R-Angleton, named four state representatives to each of two Texas Windstorm Insurance Association oversight boards.** The Windstorm Insurance Legislative Oversight Board, originally created in 2009, was charged during the 2019 session to evaluate a merger of TWIA with the Texas FAIR Plan Association. Appointed to this board are **Abel Herrero**, D-Robstown; **J.M. Lozano**, R-Portland; **Geanie Morrison**, R-Victoria, and **Ed Thompson**, R-Pearland. Their recommendation must be reported by Jan. 1, 2021. The other board, newly created during the session to make funding and funding structure recommendations, will report to the legislature by Nov. 15 of this year. Appointed to the Windstorm Insurance Legislative Funding and Funding Structure Oversight Board were **Greg Bonnen**, R-League City; **Alex Dominguez**, D-Brownsville; **Todd Hunter**, R-Corpus Christi, and **Eddie Lucio III**, D-Brownsville. Four senators shall also be appointed to these boards by **Lt. Governor Dan Patrick**.

**TWIA has posted on its website guidance to agents for procedural changes resulting from the 2019 legislative session.** A new policy contract became effective in January, and by March a new renewal process will be implemented. Renewal applications will no longer be required; instead, TWIA will send renewal offers prior to the effective date of renewal. Agents should confirm coverage details and make any necessary changes. Policyholders may make payment through their agent or directly to TWIA. Mortgage companies with escrowed funds can pay TWIA directly. Policies that require premium financing must still be handled by the agent.

London views

part of the premises due to the outbreak of an infectious or contagious human disease. There is usually a territorial limit such as “within a 10-mile radius” of the insured building or plant.

Renewal season was good

Lloyd’s and London market insurers have had a good renewal season. The thought that Lloyd’s will publish losses for the third year in a row later this year helped underwriters’ discipline. Lloyd’s and the London market were helped by a reduction in market capacity, which led to improved rates.

According to the Insurance Insider, rate increases varied from mid-single digits to around 15 percent.

Underwriters see this renewal season as the beginning of a new era and predict price increases for the renewal seasons of April, June and July. While this is not a hard market, rates are now closer to their loss exposure, and profits should follow.

Those insurers celebrating the renewal season are underwriters for cargo (increases in double digits), energy (increases averaging 30 percent), aviation (increases averaging 30 percent), space (between 200 percent and 300 percent) and property (increases in double digits). Aviation and space business saw losses and massive rate cuts recently, so a return to normality was expected.

Reinsurers were also happy with renewals. Contraction in the alternative reinsurance market helped, with ILS capacity dropping by seven percent, according to Guy Carpenter. The result was rate increases of between five percent and 25 percent for catastrophe renewals and 15 percent to 35 percent for catastrophe renewals that had been hit by losses. Expect primary carriers to compensate by putting up rates on their direct business.

January’s renewals are mainly U.K., USA and Europe. Since these areas were not impacted by major losses, brokers didn’t have too much trouble placing renewals and even got rate reductions in some European loss free accounts. The real fun will come when Japanese and Australian renewals come up later in the year.

Insurance and reinsurance rates have increased; capacity has dropped, and insurers and reinsurers are looking for rate increases for the rest of the year.

Performance director to leave

Shock waves circulated throughout the Lloyd’s market following the unexpected announcement that Performance Director Jon Hancock is to leave during 2020. Hancock has been a breath of fresh air at Lloyd’s. He led the Blueprint One – Future of Lloyd’s strategy. It was Hancock who pushed Lloyd’s to center on bottom-line performance. Lloyd’s said Decile 10, where Lloyd’s managing agents had to identify the worst performing 10 percent of their risks and either not renew or renew on terms that would produce profits, will continue under Hancock’s successor.

Hancock joined Lloyd’s in 2016, but missed the commercial world he grew up in. No firm date has been fixed for his departure. A global search for his replacement has already started. The market predicts that a former Lloyd’s underwriter will get the job.

New chief HR officer

With concerns over behavior in the market and a lack of diversity, Lloyd’s strengthened its human resources team by appointing Julia Tyson as chief human resources officer. Previously, Tyson was HR and communications director at insurer LV and HR director at Wates Group. She joins Lloyd’s at a crucial time and will help to develop an inclusive and innovative culture to talented people for Lloyd’s future.

Lloyd’s policies for cyber content

Having talked to the market, Lloyd’s now believes that it should adopt best practices for all policies regarding any cyber coverage. Lloyd’s mandated that all policies provide clarity regarding cyber coverage by either explicitly excluding or providing affirmative coverage.

The requirement will be implemented in a phased approach. For first-party property damage policies incepting on or after Jan. 1, 2020, Lloyd’s underwriters are required to ensure that all policies affirm or exclude cyber cover. The requirement applies regardless whether the policy is written on an all risks or named perils basis and applies to new and renewal policies and to policies written on a stand-alone basis or where first-party exposures are combined with other lines within blended products (in respect of the first-party prop-

erty damage element of coverage). For liability and treaty reinsurance, the requirements will come into effect in two phases during 2020 and 2021. Lloyd’s will provide more details on how the requirements should be implemented following a period of further market consultation.

Plans begin for insurance museum

An effort is underway in the City of London to create an insurance museum to showcase artefacts that the Chartered Insurance Institute collected over the last 100 years.

Industry veteran, Reg Brown, and brand consultant, Jonathan Squirrel, are behind the project, according to an article in the Jan. 24 edition of the Financial Times. They believe that the museum would do wonders for the insurance industry’s reputation. The project has already drawn start-up contributions from a number of insurance companies, including Hiscox, Aviva, Aon, Axa and Swill RE.

Brown spent decades working at Lloyd’s of London and was also president of the Chartered Insurance Institute.

Squirrel is project manager for the future museum. He has no background in insurance, according to the Financial Times, but became involved after proposing to the Chartered Insurance Institute that it should make a documentary to showcase the industry’s skills.

The museum idea was born out a mixture of jealousy relative to the success of the Bank of England’s museum, which gets around 100,000 visitors each year, the Financial Times reported.

Brown is a regular visitor of the bank’s museum and believes the insurance business is as important to the City of London as the bankers are. “We could tell lots of stories,” he told the Financial Times.

The idea took shape when the Chartered Insurance Institute moved out of its historic building in Aldermanbury to smaller premises in Lombard Street and needed a place to display the artefacts it had amassed over the past 100 or so years.

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erty damage element of coverage).

For liability and treaty reinsurance, the requirements will come into effect in two phases during 2020 and 2021. Lloyd’s will provide more details on how the requirements should be implemented following a period of further market consultation.

For coverholder arrangements, the requirement applies to binding authority agreements that incept on, or after, Jan. 1, 2020. Lloyd’s does not expect policies bound under binding authority agreements entered into before Jan. 1 to comply until the binding authority agreement next renews.

For the avoidance of doubt, Lloyd’s views policies where no exclusion exists and there is no express grant of cyber coverage as non-affirmative.

While the organizers are not settled on a name for the attraction, the Insurance Museum is the working title, but the Museum of Risk is another possibility.

There is no shortage of material to display since insurance and risk management has been around for thousands of years, going back to Mesopotamia and China. In London, insurance goes back to the 1680s when the market began at Edward Lloyd’s coffee house.

Among the possibilities for artefacts to display are the Titanic’s insurance policy, fire engines and fire marks.

In addition, there should be some sort of marquee attraction, Squirrel told the Financial Times. The Bank of England museum has gold bars. Squirrel mused that an insurance museum could feature a Virgin Galactic spacecraft, which would illustrate how insurers deal with the risks of space flight. He also wants some interactive attractions such as digital games and videos.

Brown hopes the museum will encourage more people to work in the insurance business.

Organizers already have a video and are trying to raise £3 million to open a small pop-up museum later this year, to test exhibits, ideas and visitor appetite. If all goes well, organizers want to raise £10.5 million to set up a permanent, 20,000 square foot museum in the City of London. Alistair Brown, policy manager of the Museums Association, said getting people to visit an insurance museum will be “a tricky marketing job, but I’m sure there’s a story worth telling.

According to the Financial Times, there already are insurance museums in Milan, Madrid, and Ningbo, China.

TDI Final Disciplinary Actions December 2019 and January 2020*			
Date	Name & City	Action Taken	Violation
12/13/19	BIN Insurance Holdings LLC, Chicago, IL	Fined \$5,850	Failed to timely file new or renewal surplus lines policies and related documents
1/30/2020	Goliad Title Services, LLC, Goliad	Fined \$2,600	Failure to submit an annual audit of trust fund accounts
1/16/2020	James Leslie Sloan, The Woodlands	Fined \$2,500	Failed to timely forward premium payment to an insurer causing the policy to cancel. Upon notice, agent made proper payment and insured’s policy was reinstated.
1/30/2020	Sandra Elena Sustaita-Mascorro, Grand Prairie	General agents property and casualty license granted with a \$ 1033 waiver	Felony deferred adjudication in 1995; drug felony in 1997; sufficient evidence of rehabilitation provided to TDI
1/30/2020	Texas Heritage Title, LLC, Fairfield	Fined \$20,000	Failure to submit annual escrow audit reports timely for 2015 through 2018
*All orders in this table were by consent; licensees waived all additional procedural rights.			



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