

SAME-SEX BENEFITS

Employers offering benefits to same-sex spouses prior to the U.S. Supreme Court's partial overturn of the Defense of Marriage Act in June 2013.

Employer size	Percentage
0-50 employees	32.5%
51-499 employees	58.4%
500-4,999 employees	58.4%
5,000-9,999 employees	73.2%
10,000+ employees	80.0%
Overall	61.4%

Source: International Foundation of Employee Benefit Plans

HEALTH BENEFITS

Same-sex benefits attract workers

Many offered them before high court ruling

BY MATT DUNNING

Offering health care benefits to employees' same-sex spouses is not obligatory for many large U.S.-based companies, but it's still a sound business decision, benefits experts say.

Late last year, the National Railway Labor Conference, a Washington-based nonprofit trade association that represents more than 30 large U.S. freight carriers in collective bargaining agreements with labor unions, announced that its member companies had agreed to provide health care coverage to their employees' same-sex spouses beginning Jan. 1, 2014.

Several other large employers made similar announcements late last year, including Exxon Mobil

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CYBER RISKS

TARGET TESTED BY HUGE HOLIDAY DATA BREACH

Checkout keypads focus of 'sophisticated' attack



AP PHOTO

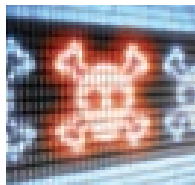
The Target Corp. data breach is being called the second-largest in U.S. retail history, behind a 2007 breach at TJX Cos. Inc.

BY RODD ZOLKOS AND BILL KENEALY

The Target Corp. data breach that exposed 40 million shoppers' debit and credit card account information has caused lawsuits, state and federal investigations and potential company reputation damage, while raising fresh concerns among other businesses about the worsening risk of cyber attacks.

The data breach is being called the second-largest in U.S. retail history, behind a 2007 breach at TJX Cos. Inc. in which cyber criminals collected personal information from more than 90 million credit cards over more than a year.

Target first acknowledged its breach on Dec. 19, and revealed



CYBER SECURITY
Read more on cyber security exposures
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CYBER RISK AVOIDANCE

Cyber security tips that can help risk managers reduce their organizations exposures.

Use vulnerability assessment tools. There are many robust software tools available to help assess cyber vulnerability at the enterprise level.

Use application scanning tools. Known as "fuzzers," these tools can help security teams test the code of proprietary applications for scripting errors and vulnerabilities.

Have a cyber security plan. Establish internal protocols that stipulate how sensitive data will be segmented and hold periodic security exams to test them.

Don't panic. If a breach occurs, do not destroy data that may be needed for forensic analysis of the cyber attack.

Consider cyber risk insurance. Policies typically have their limitations, but an increasing number of organizations are opting to buy the coverage to address some of the costs associated with an attack.

LEGISLATION

Congress raises firms' pension premiums

Employer benefits lobbyists irate at move

BY JERRY GEISEL

The last major congressional legislative action of 2013 will mean billions of dollars in additional — and some say unnecessary — insurance premiums employers will have to pay to the Pension Benefit Guaranty Corp.

Under provisions tucked into a federal budget agreement measure, which lawmakers approved last month, the PBGC flat-rate premium, which is paid by all defined benefit plan sponsors, will rise in 2015 to \$57 per plan participant and to \$64 in 2016. The premium now is \$49 per plan participant.

In addition, the variable-rate premium, which is paid by employers with underfunded plans, will increase to \$24 per \$1,000 of plan underfunding in 2015, up from \$14 this year and \$29 per \$1,000 of plan underfunding in 2016. The PBGC uses the premium revenues to help pay for benefits promised — but not fully funded — to employees and retirees in plans the agency took over after plan sponsors ran into severe financial difficulty or went out of business.

In all, these latest increases, which come on top of steep premium hikes mandated under legislation Congress passed in 2012, will require employers to pay close to an additional \$8 billion in

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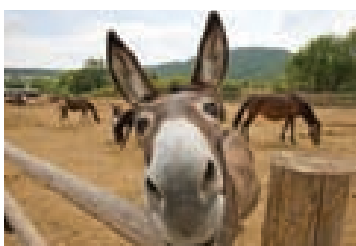
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NEWS

P/C INSURERS

TRIA EXTENSION TOPS INSURANCE INDUSTRY WISH LIST

Insurers, reinsurers hoping for long-term solution

BY MARK A. HOFMANN

For many insurance trade groups, extending the federal terrorism insurance backstop again tops the list of federal legislative priorities this year, but with a sense of urgency greater than last year.

That is because the program established by the Terrorism Risk Insurance Act of 2002, passed in response to the Sept. 11, 2001, terrorist attacks, is slated to expire at the end of 2014.

As Carolyn Snow, president of the Risk & Insurance Management Society Inc., put it, "Our No. 1 priority remains TRIA. We really want to see a long-term solution to TRIA. We were hopeful to get something done by the end of last year, so we're hoping something will be done early in 2014."

Other legislative issues gaining insurance industry interest include streamlining producer licensing procedures, proposed changes in reinsurance taxes and insurance regulation.

Other priorities, some of which deal less with legislation than with implementing laws that have already been approved, include the Patient Protection and Affordable Care Act, the Biggert-Waters Flood Insurance Reform Act and the Dodd-Frank Wall Street



AP PHOTO

Police in tactical gear search for a suspect in last April's Boston Marathon bombings. TRIA reauthorization is a high priority for the insurance industry.

Reform and Consumer Protection Act.

"TRIA extension would be No. 1 on the list," said Jimi Grande, senior vice president in the Washington office of the Indianapolis-based National Association of Mutual Insurance Cos. NAMIC would prefer a long-term reauthorization "with as few material changes as possible," he said.

"Clearly, our most important legislative priority next year is reauthorization of the terrorism

response plan," said Nat Wieniecke, senior vice president in the Property Casualty Insurers Association of America's Washington office. Reauthorizing the terrorism insurance backstop is part of the terrorism "resilience strategy," he said.

"We view TRIA — particularly given its expiration date — as a priority for this year" said Leigh Ann Pusey, president and CEO of

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CYBER RISKS

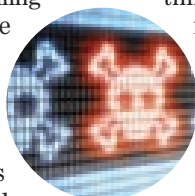
U.S. proposal offers firms cyber security guidance

BY JUDY GREENWALD

The proposed voluntary cyber security framework for critical U.S. infrastructures will act as a blueprint for plaintiffs attorneys seeking rationale for filing lawsuits against companies, and will require firms to be on top of their cyber security procedures in 2014.

But the proposal issued in October by the National Institute of Standards and Technology in response to President Barack Obama's executive order in May should also prove a valuable guide even for companies not considered part of the critical infrastructure, experts say. The final version of the guidelines is anticipated in February.

The proposed NIST framework includes five core functions in keeping information and systems safe: identify such risks; protect systems; detect attacks; respond to incidents; and recover afterward.



"The good aspect" of the NIST standards is it creates minimum standards and encourages information sharing, said Robert Parisi, network security and privacy practice leader at Marsh Inc. in New York. "I think it has potential for being a very positive influence on how people look at cyber information and security."

The NIST and other guidelines have a positive effect because "to the extent you can adopt or adapt a standard, at least you can tell how you're doing and you can tell your board, management and you can tell your board, 'Here's the standard,'" said Alan E. Brill, senior managing director of secure information services at New York-based Kroll Associates Inc.

But Tim Francis, Hartford, Conn.-based enterprise cyber lead for Travelers Cos. Inc., said that while

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P/C LEGISLATION

Volcker rule won't apply to P/C insurers

PCI pushed for exemption

BY MATTHEW LERNER

Property/casualty insurers dodged new federal regulation, upon confirming last month they would be exempted from the long-awaited implementation of the Volcker Rule, a key part of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The final rules implementing section 619 of the Dodd-Frank financial reform law, known as the Volcker Rule, were issued Dec. 10 by five federal agencies: the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corp.; the Securities and Exchange Commission; and the Commodity Futures Trading Commission.

The Federal Reserve Board announced that banking organizations covered by section 619 will be required to be fully compliant by July 21, 2015.

But thanks to the efforts of the Property Casualty Insurers Association of America, P/C insurers will continue to be allowed to invest in "covered funds," which according to the final regulations include hedge funds and private equity funds, as well as certain foreign funds and commodity pools.

The original Volcker rule exempted insurance companies from the proprietary trading ban, but not from investing in covered funds, said Jim Olsen, vice president of accounting and investment policy for the Property Casualty Insurers Association of America.

"We submitted a comment letter when the original regulations came out saying we didn't think it was appropriate for insurance companies to be covered by Volcker limitations and asked for an exemption on covered funds," Mr. Olsen said. The original regulations proposed in 2011 and 2012 generated more than 18,000 such comment letters, according to a recent SEC statement.

"The (commercial insurance) industry got the result it desired; it was a good result for us," Mr. Olsen said. "We don't see it as controversial for the P/C industry. As far as we are concerned, there is no significant impact on the P/C

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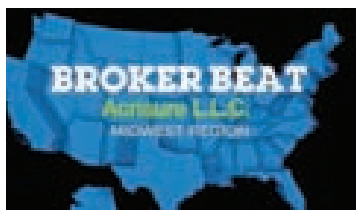
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BUSINESS INSURANCE (ISSN 0007-6864) Vol. 48, No. 1, is published biweekly by Crain Communications Inc., 150 N. Michigan Ave., Chicago, IL 60601-7620. Periodicals postage is paid at Chicago and at additional mailing offices.

POSTMASTER: Email address change to customerservice@businessinsurance.com or mail to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, MI 48207-2912. \$10 a copy and \$149 a year in the U.S. \$169 in Canada and Mexico (includes GST). All other countries, \$249 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850. GST No. 136760444. Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in USA. Copyright © 2014 by Crain Communications Inc.

NEWS

INSURANCE RENEWALS

PROPERTY INSURANCE PRICES
STABILIZING AFTER TRANQUIL YEAR

Some sectors see rates decreasing in 2014

BY MARK A. HOFMANN

The dawning of a new year is bringing good news for U.S. buyers of commercial property insurance.

Unlike last year's Dec. 31/Jan. 1 renewals, some risk managers are enjoying rate reductions after years of higher rates. Superstorm Sandy's long-term effect on rates has been receding, a process helped along by the lack of large catastrophes in the United States in 2013.

But even in the best of markets from a buyer's perspective, there are steps risk managers can take to make their property accounts more attractive to underwriters, according to brokers and insurers.

"It's definitively a good time to be a buyer," said Duncan Ellis, U.S. property practice leader at Marsh Inc. in New York. "The bigger story is not so much the rates but the capacity that's out there ... That's what's pushing the rates."

Mr. Ellis said accounts without catastrophe exposures are experiencing rates ranging from flat to down 10%, while those with moderate catastrophe exposures are facing rates between a 5% increase to a 5% decrease, which is the same range for accounts without catastrophe exposures but with loss problems,



One year after Superstorm Sandy devastated coastal properties along the Eastern seaboard, property insurance prices are easing.

AP PHOTO

he said. Accounts with high catastrophe exposures are experiencing rate increases of as much as 10%.

"It's a very different marketplace than we saw 12 months ago," he said.

"Year over year, we are in such a better place now," said Alfred Tobin, New York-based managing principal at Aon Risk Solutions' property practice. He said that after Superstorm Sandy, insurers were losing money. "We are not in anything like that right now, which is a great way to end the year," he said.

"Our guidance for 2014 is very

favorable for clients," he said, adding that Aon's Global Risk Insight Platform data is showing rate reductions up to the high single digits in this renewal season.

"We saw a slight hardening in the first quarter," said Alexandra Glickman, area vice chairman of Arthur J. Gallagher Risk Management Services Inc. in Glendale, Calif.

Now, "our average rate decreases have been in high to middle single digits," she said.

Ms. Glickman said there is "tremendous capacity" for California earthquake exposures, and

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MORE RENEWALS COVERAGE

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Calm D&O market could liven later on litigation

BY BILL KENEALY

A seemingly placid market for directors and officers liability coverage renewing in January could change depending on the pace of litigation brought later this year.

Alan G. Gier, director of global risk management and insurance corporate risk management for the treasurer's office at Detroit-based General Motors Co., said there were no unpleasant surprises when he recently renewed the automaker's D&O coverage.

"For D&O, we found the market pretty flat," Mr. Gier said. "It was really business as usual and we made few changes to our pro-

gram."

Mr. Gier said the renewal also was aided by the company's recently simplified business model as the federal government in 2013 shed the ownership stake in GM it had acquired in 2008 during the financial crisis. "We are in a situation where our risk profile is improving year after year, so that benefitted us," he said.

For the D&O market as a whole, rate increases were generally negligible in the renewal period, a marked contrast to the double-digit increases many faced when renewing the past three or four years, said Ann Longmore, New York-based executive vice presi-

dent of FINEX North America, a unit of London-based Willis Group Holdings P.L.C.

"We are in a disinflationary period," Ms. Longmore said. "Many accounts will continue to have increases, but they will be lower than in the past."

Moreover, large price increases will be tougher to sustain given an expected increase in capacity as new insurers enter the D&O market, Ms. Longmore said.

"On the public company side, we are looking at a number of new markets entering," she said. "Hiscox is now open on a test basis, and

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Ample capacity
keeps liability
rates low

BY BILL KENEALY

A mix of new market participants and emerging risks will shape the liability insurance market in the coming year.

Stephan Upshaw, vice president of risk management at Equity Residential, said his renewal for liability risks faced by the Chicago-based apartment complex owner and operator essentially was uneventful despite talk of rising prices.

"There was talk of the market getting harder in 2013, and we did not see it at all," Mr. Upshaw said. "Some people asked for more money, but it didn't materialize."

The primary factor limiting price increases is that "there is plenty of well-rated capacity out there," Mr. Upshaw said.

The abundant liability capacity looks to increase in the coming year as Berkshire Hathaway Specialty Insurance Group, the Boston-based commercial insurance arm of Berkshire Hathaway Inc., makes a stronger push in the market, Mr. Upshaw said.

"Berkshire has made a real play on the casualty side," he said. "I'm not sure what the exact outcome will be, but it's certainly going to be an interesting market" in the next year, he said.

Another potentially influential factor for the liability and excess casualty markets is the weakened state of Australia's QBE Insurance Group Ltd., which had its financial-strength rating downgraded in December after announcing large claims in North America are expected to cause a \$250 million net loss in 2013.

After years of aggressively pricing to win market share, QBE's potential pullback from certain liability markets in light of the losses could make underwriters from other insurers more aggressive in trying to win desired accounts, Mr. Upshaw said.

Nonetheless, coverage will remain constricted in certain pockets of the market. Mr. Upshaw said underwriters' concerns about a New York state law that allows subcontractors to sue general contractors and owners directly, bypassing workers compensation as the sole remedy for injuries, has helped make insurance expensive for construction projects in New York.

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SENTRY
INSURANCE

FIT WORKERS CONTRIBUTE TO HEALTHY BOTTOM LINE

Firms reduce workers comp costs by encouraging workforce fitness

BY JOANNE WOJCIK

Employers that treat their employees like professional athletes can reduce their workers compensation costs.

That doesn't mean paying them exorbitant salaries for working only a few months of the year, but rather encouraging them to be in "playing" shape year-round, experts say.

"There are similarities between professional athletes and everyday workers," said Alan K. Sokoloff, director of education, TIPS (Toward Injury Prevention in Sports) for the Carmichael, Calif.-based Foundation for Chiropractic Progress and the official team chiropractor for the Baltimore Ravens football team. "There is a season and an off season. During the off season, athletes do things to prepare to play the game, while during the season they do things that enable them to play the game."

Similarly, everyday workers "can't just come to work and expect their bodies to perform," he said.

Employees need to learn "biomechanics" so they don't injure themselves on the job. That means learning proper lifting techniques, proper sitting posture, even how to safely get in and out of vehicles, Mr. Sokoloff said.

"Lifting is an art, not a random task," he said.

He cited as an example a case in which he consulted that involved dock workers at a printing company. The job required that workers "bend down and pick up bound magazines and place them on pallets." Because the pallets were situated close to where the workers were picking up the magazines, they were "reaching and twisting and hurting themselves," Mr. Sokoloff said. "We moved the pallets three feet away, which required the workers to walk three feet before placing the magazines on the pallets, and it resulted in a significant reduction in lost-time



COURTESY OF FITME WELLNESS

Employers are looking at a holistic approach to employee wellness by focusing on fitness and nutrition instead of just weight loss.

back-injury claims," he said.

Workers whose jobs are largely sedentary are also vulnerable to injury, he said.

"Exercise is especially important to workers who sit all day long. It helps to improve strength, flexibility and circulation," Mr. Sokoloff said.

In the same vein, employees need to learn proper nutrition to support their structures, he said.

"Hydration and nutrition are equally important to workers as for athletes. Athletes drink throughout their practice. Likewise, employees should drink throughout the day. It also will make them get up frequently to take bathroom breaks," he said.

Recognizing the connection between fitness and work-related injuries, Jim Knutson, risk and human resource manager at Loves Park, Ill.-based Aircraft Gear Corp. contracted with Rockford, Ill.-based FitMe Wellness, a firm that takes a holistic approach to employee wellness by focusing on fitness and nutrition instead of just weight loss.

"We had a person who lost 30 pounds become a health basket case with shin splints and other injuries," he said. "We discovered that (body mass index) is a poor proxy of functional health."

Instead, FitMe Wellness focuses on exercises designed to improve core strength, agility, balance and mobility, Mr. Knutson said.

"If you're a pleasingly plump woman with good flexibility, you're not going to cost your company any money," said

Greg Georgis, founder of FitMe Wellness.

"The program is designed so that you're stronger at 40 than you were at 30. We want to arrest or turn back the clock on the aging process. For example, we can take a small hip-and-balance issue that hasn't manifested itself into an injury and, for a small sum of money, teach the worker standard mobility exercises that will save the company \$30,000 on a future intervention."

Research by the University of Washington also has found that individuals who are fit recover quickly from surgical interventions and have fewer complications, Mr. Knutson said.

"In the occupational health arena, we've spent most of the last 25 years thinking about accommodating the work station to the worker," he said. "Ergonomics is about revising the environment and not as much about modifying the individual to fit the environment. I use myself as an example. I lost 30 pounds, but I had to sit down to put my socks on. Now I can stand on one leg and do it."

In less than a year, the program already is lowering the aviation and automotive component maker's workers compensation costs, Mr. Knutson said.

"Even though our historical loss experience put us on the edge for inclusion" in the Workers' Compensation Trust of Illinois, "our commitment to fitness gave us a probationary pass. So we're in.

Now our ability to stay in, which will reduce our premiums immediately by 25% to 30%, and to have the prospect for long-term reductions" will be contingent on how well the FitMe Wellness program works, he said.

WEIGHT LOSS INTERVENTIONS WORTH A TRY

Because workers compensation claim costs are statistically higher for overweight employees than for those who are of healthy weight, employers may want to consider incorporating weight-loss interventions into their workers compensation programs, said Misty Price, director of analytics at Adelson, Testan, Brundo, Novell & Jimenez, a workers compensation defense firm based in Thousand Oaks, Calif.

"We all know that if your 300- or 400-pound worker has that injury, you're looking at a half-million-dollar claim," she said. "Their obesity is going to drive it. If an employer spends \$30,000 or \$40,000 helping them with their obesity, they may reduce the total cost of the work comp claim and return the individual to work sooner. Radical things are going to net some radical differences."

According to "Indemnity Benefit Duration and Obesity," a report published in June 2012 by the National Council on Compensation Insurance Inc. in Boca Raton, Fla., obesity contributes in significant ways to the length of time during which claimants receive indemnity benefits under workers compensation. For morbidly obese individuals, identified by a body mass index of 40 or higher, medical costs are 6.8 times the costs for employees of healthy weight, the study found. At the same time, an employee in this morbidly obese group is twice as likely to have a claim, while the number of lost workdays is almost 13 times higher.

For individuals with BMIs of between 35 and 40, medical costs are 3.1 times higher, and for individuals with BMIs between 30 and 35, medical costs associated with workers compensation claims were 2.6 times that of employees of recommended weight.

At the same time, the relative multiples for the number of claims was 1.9 for those with BMIs between 35 and 40, and 1.5 for those with BMIs between 30 and 35, while the multiples for lost workdays were 8.3 and 5.3, respectively, according to the NCCI report.

Just as employers use payroll data to calculate their workers compensation exposure, Ms. Price recommends that employers collect BMI data to model how much obese and overweight workers are contributing to their workers comp costs.

"You don't need to spend a lot of money on fancy predictive modeling to predict your large losses," she said. "You can lay your eyes on it by looking at your workforce."

By Joanne Wojcik

TIPS FOR PROPER LIFTING

- Plan your lifts
- Know the load
- Get help when available
- Stay balanced
- Use your legs
- Plan your route
- Keep things close
- Breathe
- Use smooth moves
- Don't twist or rotate

Source: Alan K. Sokoloff, official team chiropractor for the Baltimore Ravens



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EAP SERVICES WOEFULLY UNDERUSED BY EMPLOYEES

Lack of information may contribute to perceived mental health stigma

BY MATT DUNNING

Employee assistance programs can effectively reduce the adverse effects of depression, workplace stress and other mental health issues, but research shows that most EAP-based mental health services are underutilized by employees.

A mere 3% of employees used their employer's EAP counseling services in 2012, according to data compiled by EAP Technology Systems Inc., a Yreka, Calif.-based EAP analytics company.

A separate study, published in September by New York-based Towers Watson & Co., found that while 85% of employers of all sizes offer stress management services within their EAP, only 5% of employees had used those services.

Generally inexpensive and administratively unobtrusive, EAPs have long been popular among employers for their potential to reduce direct and indirect costs associated with employees' substance abuse and mental health disorders. The

average annual per-employee cost of an EAP ranges from \$12 to \$40, representing less than one third of 1% of the average employers' annual per-employee spending on health insurance at the high end of the market, according to reports by the Employee Assistance Society of North America and the Kaiser Family Foundation.

However, EAP utilization for stress and mental health management has remained consistently low, primarily due to poor communication about the services available to employees and their families and also to stigmatization of EAP use and mental health ailments in general, several benefits and human resources experts say.

"One of the biggest problems surrounding EAPs is that employers generally don't do a very good job communicating with their employees about the program," said Bruce Elliott, compensation and benefits manager for the Alexandria, Va.-based Society for Human Resource Management. "A lot of

employees simply aren't aware that their company even has an EAP, or they've heard of it but they don't know who to call or how to use it."

Experts said employees' lack of information on the full range of services their employer's EAP provides is a common deficiency.

"There still seems to be a pervasive sense among employees that EAPs are for very specific and discrete problems like substance abuse or management issues," said Helen Darling, president and CEO of the Washington-based National Business Group on Health. "The message that EAPs really need to get across is that they're a one-stop shop where employees can seek out help no matter what challenge they're facing."

In the absence of comprehensive information about the availability of EAP benefits and services, experts said it is easy for employee misconceptions to manifest as a negative perception of those who request counseling.

"A number of clients have told me that when they bring EAP counselors on-site, employees tend to assume that the people using those services must have a drinking problem or something like that, and that's simply not the case," said Paula Andersen, a Louisville, Ky.-based director of Buck Consultants L.L.C.'s health and productivity practice.

Another frequent barrier to broader use of EAP services — particularly counseling services for depression and other mental health ailments — is employees'

distrust or lack of awareness of privacy policies.

"A lot of employees tend to worry about confidentiality issues when it comes to using their EAP benefits, and they may not be aware of all the robust privacy protections they're provided" under the Health Insurance Portability and Accountability Act, Mr. Elliott said.

"I can't tell you the number of times I've had to tell employees not to worry about the confidentiality aspect because their information is protected by HIPAA. If an EAP vendor were to provide us with information about a specific employee's conversations with a counselor, not only would the vendor get sued, but we'd get sued as well, especially if we made any employment decisions based on that information," Mr. Elliott said.

Beyond misconceptions, experts said use of EAP-based counseling services for depression, stress and anxiety has likely been dampened by a persistent stigmatization of mental health disorders in the U.S., particularly within certain industries and geographic regions.

"I've been told, for example, that people in rural areas avoid getting treatment at mental health clinics because they're terrified that their neighbors will see their car in the parking lot," Ms. Darling said. "Outside of major cities, especially places like New York and Los Angeles, the idea that you might have a psychiatric disorder is still something most people — particularly men — aren't likely to admit."

EAP UTILIZATION

Here are usage rates of employee assistance program services in 2012 by case type.

Type	Usage (Per 1,000 employees)
Alcohol abuse	1.4
Drug abuse	0.7
Depression	6.5
Anxiety	8.1

Source: EAP Technology Systems Inc.

COMMUNICATING EAP BENEFITS NEEDS UPGRADE

Many impediments that employers encounter in leveraging an employee assistance program to manage direct and indirect costs associated with mental health disorders can be addressed by modifying their program's communication strategy.

Specifically, experts outlined messaging tactics that employers can use to reduce employees' reluctance to use EAP counseling services.

"Employers need to do a much better job of changing the conversation around utilization of EAPs in order to remove the stigma that might come with it," said Bruce Elliott, compensation and benefits manager for the Alexandria, Va.-based Society for Human Resource Management.

Advertising an EAP's less intrusive services — including financial planning and family-oriented concierge services, such as directories for babysitters and after-school child care, personal shoppers and travel arrangements — can draw employees into the program without fear of incurring negative attention from their co-workers or managers, Mr. Elliott said.

"If you can get employees used to the idea of accessing the EAP for day-to-day issues, they won't be as likely to hesitate to call the EAP for help when a more serious problem comes up," he said.

Employers can also ease concerns about using EAP-based services by highlighting employees' positive experiences with the program, experts said.

"One of the keys to broader acceptance is at the peer level," said Paula Andersen, a Louisville, Ky.-based director of Buck Consultants L.L.C.'s health and productivity practice. "If there's any type of communication, make sure you're including testimonials from ordinary employees about their experiences using the program."

Another crucial element of employers' communication about EAP mental health services is frequent and detailed information about their program's privacy protections.

"Wherever it is that you're communicating with your employees about the EAP, there needs to be a banner headline that their trust in you is critical to the program, and that their information will never be used in a way that affects their employment," said Helen Darling, president and CEO of the Washington-based National Business Group on Health. "I don't think you can ever say that often or strongly enough."

By Matt Dunning



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Global property cat reinsurance rates drop

■ Strong balance sheets, relatively low loss levels and an influx of convergence capital has resulted in global property catastrophe reinsurance rates falling an average of 11% for business renewing on Jan. 1, 2014, Guy Carpenter & Co. L.L.C. said in a report. According to the reinsurance brokerage's "Global Property Catastrophe Reinsurance Rate-On-Line Index," property catastrophe rates fell an average of 15% in the United Kingdom and declined 10% in Continental Europe. Decreases up to 20% were achievable in some cases, according to the report. However, in some areas of Germany and the Nordic region that were affected by storms and flooding, loss-affected business saw rate increases, according to the report. Rate hikes also were seen on loss-affected business in Canada. Property catastrophe reinsurance rates in the United States decreased by an average of 15%.

Wal-Mart recalls product in donkey meat scandal

■ Wal-Mart Stores Inc., the world's largest retailer, has recalled donkey meat sold at some outlets in China after tests showed the product contained the DNA of other animals, the U.S. company said. Wal-Mart will reimburse customers who bought the tainted "Five Spice" donkey meat and is helping local food and industry agencies in eastern Shandong province investigate its Chinese supplier, it said in official posts on China's Twitter-like Weibo. The Shandong Food and Drug Administration earlier said the product contained fox meat. "This is another hit on Wal-Mart's brand," said Shaun Rein, Shanghai-based managing director of China Market Research (CMR) Group. CMR estimates Wal-Mart's market share fell from 7.5% to 5.2% over the last three years. Donkey meat is a popular snack in some areas of China, although it only accounts for a tiny fraction of overall meat consumption.

Reuters

Swatch fire may affect other watchmakers

■ A fire that destroyed a workshop at a Swatch Group factory will affect other watchmakers it supplies more than the Swiss firm itself, as a break in production is likely to cut the availability of parts to an industry already facing bottlenecks. The fire at a part of

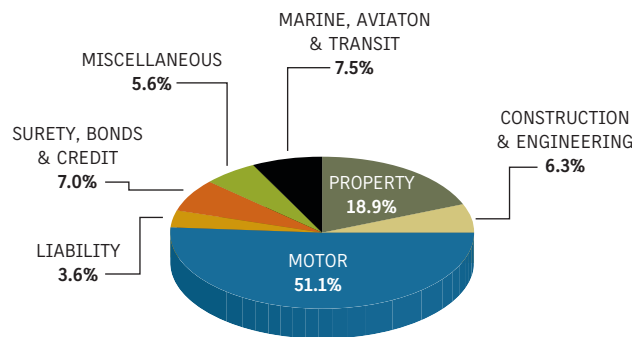
PROFILE: MEXICO

\$9.3
BILLION

Following Mexico's entry into the North American Free Trade Agreement in 1994, it became much easier for North American insurers to invest in Mexican companies. Insurer investment deals up to 100% ownership can be used to form a subsidiary or joint venture. Several European insurers used their American subsidiary firms to benefit from the NAFTA legislation. Overall, foreign insurers are influential, with nine of the top 20 P/C insurers in 2012 having a majority of foreign ownership.

◀ 2012 P/C gross premiums

MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



AREA
761,604 square miles

POPULATION
118.4 million

PRESIDENT
Enrique Peña Nieto

2013 GDP CHANGE (PROJECTED)
2.7%

MARKET DEVELOPMENTS

UPDATED
DECEMBER 2013

- In October 2013, the rate for corporation tax was set at 30% under a new tax reform package. On Jan. 1, 2014, it was reduced to 29%.
- In April 2013, the country implemented a new insurance and bonding institutions law passed the year before.
- In March 2013, an amendment to the nation's labor law increased the compensation multiplier of daily salary for the death of a person at work to 5,000 days from 730 days.
- In August 2012, the Mexican Association of Insurance Institutions and the Mexican Bank Association signed a collaborative agreement of business protocols and best practices to improve consumer protection for insurance sold via banks and telemarketing firms.

COMPULSORY INSURANCE

- Third-party liability for fishing vessels
- Third-party liability for aircraft
- Timeshare apartments fire, earthquake and catastrophe coverage
- Tourism operators' liability
- Hotels' liability
- Insurance and bonding agents E&O

NONADMITTED

Nonadmitted insurance is not permitted because Mexican law requires that insurance must be purchased by locally authorized insurers. There are no exceptions unless specifically approved by regulators. One common exception has been coverages that are not available within the nation.

MARKET PRACTICE

The Mexican insurance market can accommodate virtually all risks, since fronting up to 100% is allowed. While unlicensed foreign insurers and agents still offer insurance in Mexico, it is not permitted without an exception. The majority of that sales activity is confined to the life and health insurance sectors. It is a criminal offense, punishable up to 15 years in prison, for nonadmitted insurers to sell their products in Mexico.

INTERMEDIARIES

Agents and brokers must be authorized by regulators to place insurance policies. Intermediaries are not allowed to place business with nonadmitted insurers unless approved by the Finance Ministry. This would include coverage of goods transported from Mexico abroad or vice versa.

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

the plant that treats metals to protect them from rust could stop production of some components for several weeks, Swatch's chief executive said.

Swatch chief Nick Hayek said watchmakers that buy watch parts from its ETA Manufacture Horlogere unit, based in Grenchen, Switzerland, would be most affected, rather than Swatch itself. Swatch, the world's biggest watch parts supplier has a near-monopoly on "movements," the mechanisms that drive the moving parts of a watch, and counts rival luxury groups Richemont and LVMH among its customers.

Reuters

S&P downgrades RSA strength rating to A-

■ Standard & Poor's Corp. has lowered its financial strength rating

on London-based RSA Insurance Group P.L.C. and its core operating subsidiaries to A- from A. S&P said in a statement that it has taken the rating action because of concerns about weaknesses in the company's management, among other factors. S&P said it had lowered its rating of RSA after "a succession of profit warnings, culminating in the resignation of the CEO and a strategic review, indicate some weaknesses in management and governance generally."

India seeks Iran's guarantees for ships

■ India has asked Iran to provide financial guarantees before Delhi continues to allow vessels with Iranian insurance cover to enter Indian waters, the latest sign of difficulties Iran is facing in exporting

oil. Iran and world powers reached a breakthrough agreement in November over Tehran's disputed nuclear program that allowed the Middle Eastern nation to continue oil shipments at current levels of about 1 million barrels per day. India's latest request, however, shows the struggle OPEC member Iran still faces in maintaining steady oil shipments.

Reuters

Court overturns ruling that 9/11 victims can't sue

■ A U.S. appeals court in December overturned a lower court's ruling blocking victims of the Sept. 11, 2001, terrorist attacks from suing Saudi Arabia for damages for injuries or deaths resulting from the attacks. Plaintiffs in the case, *In Re: Terrorist Attacks on September 11, 2001 (Kingdom of Saudi*

Arabia et al.), Federal Insurance Company et al. vs. Kingdom of Saudi Arabia, Saudi High Commission for Relief of Bosnia and Herzegovina, include "those who suffered personal injuries, the families and the representatives of those who died, insurers and property owners," according to the ruling. In the process of overturning the lower court's judgment that the defendants were immune from such suits under the Foreign Sovereign Immunities Act, the 2nd U.S. Circuit Court of Appeals sought to resolve previously inconsistent findings in cases brought by Sept. 11 attack victims. While the appeals court had previously upheld the lower court's findings that such immunity existed in the Saudi Arabia litigation, it held in its most recent ruling that its findings in a subsequent Sept. 11 case against Afghanistan that allowed the plaintiff's case to go forward represented an "extraor-

dinary” circumstance that justified allowing consideration of the Saudi Arabia case. The appeals court panel held that its “incorrect decision” in the first case “caused a disparity” between the plaintiffs “where none should have ever existed. We conclude that the circumstances of this case are ‘extraordinary,’” justifying the reversal of the lower court’s ruling, the opinion said.

with rigging the London Interbank Offered Rate. The revised law, which still needs to be formally approved by parliament and E.U. states, will take effect in 2016. Member states also will be required to impose criminal sanctions for inciting market abuse, and aiding and abetting market abuse as well as direct attempts to commit such offences.

Reuters

E.U. approves plan to put riggers behind bars

■ Traders in the European Union caught rigging market benchmarks like Libor, oil or currencies could be jailed for four years under a deal between representatives of the European Parliament and the bloc’s member states that toughens the E.U. law on stopping market abuse. It follows public anger after U.S. and European authorities fined 10 banks and brokerages around \$6 billion in connection

Chinese men try to steal U.S. seed technology

■ Three Chinese nationals, including one who attended a gala dinner for the then-vice president of China, have been charged in two separate cases of trying to steal seed technology trade secrets under development in the United States, authorities said. After a two-year investigation, a executive working for a Chinese conglomerate was arrested on charges of stealing inbred corn

seed from production fields in Iowa and Illinois and trying to smuggle it into China, U.S. Attorney for the Southern District of Iowa Nicholas Klinefeldt said. The thefts took place between September 2011 and October 2012, according to documents filed with the U.S. District Court for the Southern District of Iowa.

Reuters

Willis names Seth Peller as global head of casualty

■ Willis Group Holdings P.L.C. has appointed Seth Peller as global head of casualty. Mr. Peller assumes the newly created role in January, leaving his previous role as CEO of Willis Argentina, the broker said in a statement. In his new job, Mr. Peller will be responsible for building Willis’ casualty portfolio to help ensure Willis connects all of its resources to offer clients a holistic solution and to develop a team of casualty experts,

according to the statement. Ruben Signorini, currently CEO of Willis Re Argentina, will succeed Mr. Peller as CEO of Willis Argentina. Mr. Peller will be based in New York.

Spain close to privatizing insurer Cesce : Sources

■ Spain is close to selling its 50.25% stake in Cesce, Europe’s fourth-biggest credit insurer, in a deal that values the company at €400 million (\$551 million), three bankers with knowledge of the deal said. Spanish insurers Mapfre S.A. and Mutua Madrileña, French insurer Coface and at least one other international insurer, have expressed interest in the asset, the sources told Reuters. Spain has few state enterprises left to sell after a big wave of privatizations two decades ago.

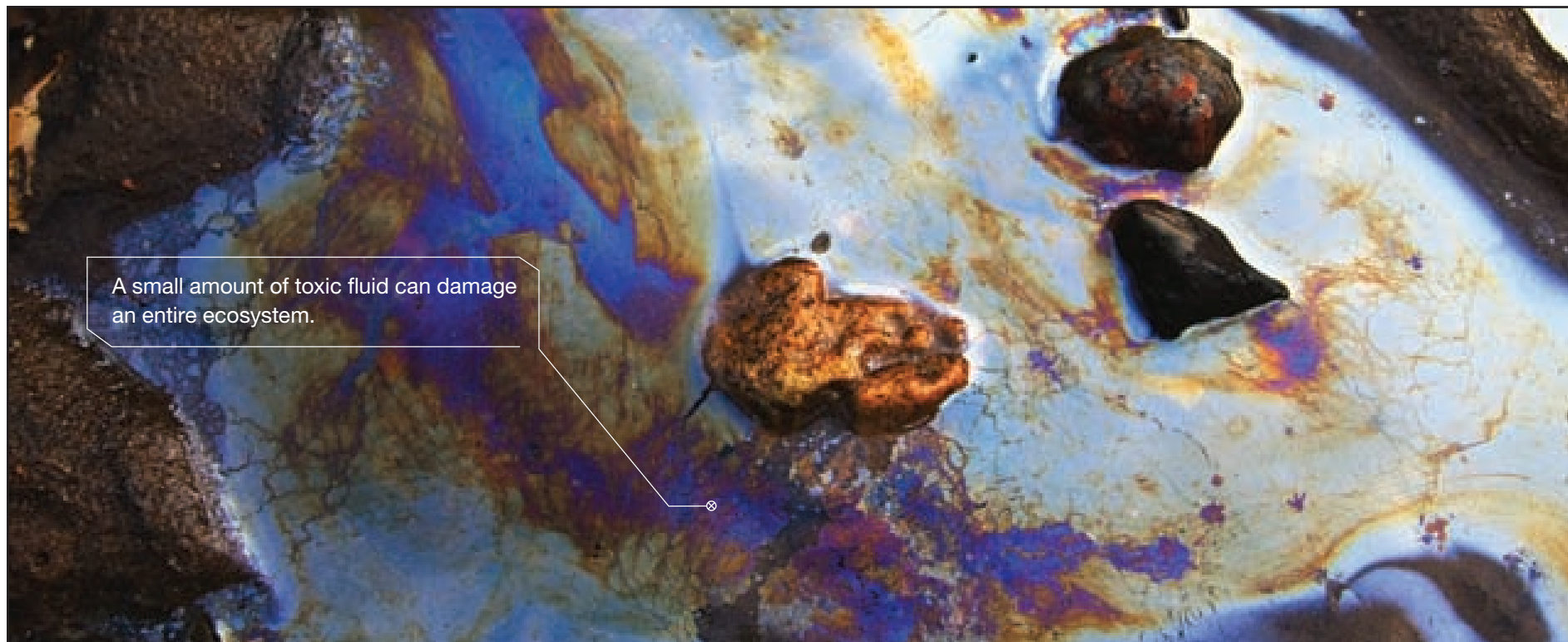
But as a result of the country’s financial and economic crisis of the last five years, the government

has looked at selling Cesce and other interests. Cesce originally specialized in export credit insurance, which protects a company if a foreign buyer fails to pay for products. But it has now branched out into wider commercial risk coverage.

Willis names CEO of new global captive business

■ Willis Group Holdings P.L.C. has named Paul Owens CEO of its newly formed Willis global captive management business, effective Jan. 1.

The new unit will bring the North America, Europe and international captive operations into a single business, the broker said in a statement. Most recently Mr. Owens served as chief operating officer of Willis Ltd. and global businesses, and he has had a long association with Willis’ captive operations, according to the statement.



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EDITORIAL

TARGET BREACH OFFERS CYBER RISK CASE STUDY

If there's a case study every employer should review about cyber and reputational risks, it's the one still unfolding about the massive data breach that exposed personal financial information of millions of Target Corp. customers last month during the busiest stretch of the holiday shopping season.

The nation's third-largest retailer announced on Dec. 18 that 40 million of its credit and debit card accounts were compromised in the breach, which occurred from Nov. 27 until Dec. 15. The data pilfered by cyber thieves included customer names, card numbers, expiration dates and three-digit security codes embedded in the magnetic stripes of the charge cards. The breach is believed to be the second-largest in U.S. history and it's the most widely publicized in the retail sector since the data theft that beset TJX Cos. in 2007.

The fallout from this breach inflicted Target with a big black eye at the worst time of the year. The holiday shopping season traditionally is that two-month stretch at the end of the year when consumers' frantic spending on Christmas gifts pushes retailers into the profitable category for the year. After news broke of the breach, many shoppers said they were wary of using their plastic cards at the Minneapolis-based retailer.

Certain angry Target customers have filed lawsuits, and likely more will follow.

A cyber breach of this magnitude would test any company's risk management program. How deftly, or not, Target handles this test of crisis management will have a direct effect on its bottom line — and on its corporate reputation for a long time. Thus far, the retailer's public response has been mediocre at best. Initially, it denied news reports that customers' debit card PIN data was stolen in the breach. Then a few days later, Target said indeed PIN data encrypted in the cards were exposed.

As data breaches mount, many businesses are beginning to understand the need for cyber insurance. However, the takeup rate doesn't match the sharp increase in cyber theft since 2010.

As this troubling Target saga continues, we hope companies large and small already see two lessons: assess their organizations' cyber risks and determine how to minimize them, and consider whether a cyber insurance policy would be a good investment.

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

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SCHILLERSTROM



COMMENTARY

FIO REPORT REIGNITES DEBATE OVER STATE VS. FEDERAL REGULATION

Last year ended with the Federal Insurance Office issuing its report on insurance regulatory reform, a report that had been supposed to be released nearly two years earlier. It received mixed reviews, with defenders of the current state-based system of insurance regulation expressing concerns that the report's recommendations could lead to federal encroachment on the state system and proponents of a greater federal regulatory role welcoming it.

These reactions came as no surprise — battle lines have been drawn for decades in the state vs. federal insurance regulation debate, and no one expected a single report to change that.

It's worth noting, however, what the FIO had to say about its own report in light of the long-running debate.

"This report concludes that the proper formulation of the debate at present is not whether insurance regulation should be state or federal, but whether there are areas in which federal involvement in regulation under the state-based system is warranted," according to the FIO report. "Reframed in this manner, the basic question with respect to reforming any aspect of insurance should be whether federal involvement is warranted at this time and, if so, in what area."

It's also worth noting that under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 — which created the FIO — the office has extremely limited regulatory powers. It can advise federal authorities and it can represent the United States in international regulatory matters, but it can't trump state regulation except under tightly defined circumstances.



MARK A. HOFMANN
SENIOR EDITOR

Only Congress could extend the FIO's regulatory powers at the expense of state regulators. Given Congress' general nonreaction to the report, coming as it did at the beginning of the holiday season, lawmakers appear unlikely to rush to give the FIO more regulatory power anytime soon unless some totally unforeseen catastrophe hits the insurance industry.

But the report certainly leaves the door open for federal involvement in insurance regulation. The federal government already plays a significant role in the terrorism insurance market with its reinsurance backstop and acts as the sole provider of flood insurance for millions of policyholders.

In the realm of international insurance regulation, the FIO can act as an advocate for the domestic insurance industry. Such advocacy could prove to be crucial as international regulatory bodies consider transnational capital standards and similar efforts, bearing with those the threat of a bank-centric regulatory approach being imposed on the property/casualty insurance industry.

As the report says, the question facing regulators isn't state vs. federal regulation, but rather whether the federal government should be involved in particular aspects of insurance regulation. The question cannot be answered "at this time."

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Wednesday March 12, 2014

- 7:45 AM Registration and Networking Breakfast
- 8:15 AM Welcome Keynote Address
- 9:00 AM – 10:15 Session 1: Cyber Risks – Focus on Cloud Computing
- 10:15- 10:45 AM Coffee & Networking Break
- 10:45 – 12:00 PM Session 2: Global Coverage & Compliance – Are You Covered?
- 11:15 - 12:15 PM Keynote Speaker
- 12:00 -2:00 PM **Innovations Awards Luncheon**
- 2:15 – 3:15 PM Session 3: Alternative Capacity – New Options for Insurers and Risk Managers
- 3:15 – 3:30 PM Networking Break
- 3:30 – 4:45 PM Session 4: Roundtable discussions
- Roundtable 1: Emerging Markets
 - Roundtable 2: Alternative Risk Financing & Captives
 - Roundtable 3: Business Interruptions and Supply Chain Risk
 - Roundtable 4: Political Risk
 - Roundtable 5: Risk Management Tools & Tech
- 5:00 – 6:30 PM Cocktail Reception

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Thursday March 13, 2014

- 8:00 – 8:45 AM Networking - Coffee & Continental Breakfast
- 8:45 – 9:45 AM Session 1: Building Blocks of a Strong Social Media Policy
- 9:45 – 10:45 AM Session 2: Communications with the C-Suite: How to Get Their Attention
- 10:45 – 11:15 AM Coffee & Networking Break
- 11:15 – 12:15 PM Keynote Speaker - TBD
- 12:15 – 1:15 PM Lunch & Dessert Served
- 1:15 – 2:15 PM Session 3: Workplace Violence: The Risks & How to Mitigate Them
- 2:15 – 3:15 PM Session 4: D & O Insurance – Developments that Effect Rates
& Coverage
- 3:15 – 4:30 PM Risk Managers Only Session
- 4:30 PM Final Remarks & Close of Conference
-

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SPECIAL REPORT

Health Care Reform

Employer Update

Litigation challenging free contraceptive mandate unresolved

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State exchanges largely avoid woes of federal website

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Despite many proposals, legislative changes unlikely

PAGE 19



Still waiting for guidance on health law

Regulators expected to focus on new rules and clarifying issues with looming effective dates

BY JERRY GEISEL

With low expectations of Congress and the Obama administration reaching a consensus on changes to the health care reform law in 2014, much of the focus of employers will be on reform law regulations.

That focus will center, benefit experts say, on two broad areas: the release of proposed regulations where none have so far been issued, and finalizing guidance that already has been proposed.

Even though the Patient Protection and Affordable Care Act was passed more than three years ago, regulators have yet to propose guidance in several key areas relevant to employers.

For example, under the law, employers with at least 200 employees are required to automatically enroll employees who do not choose a medical plan and to give them the opportunity to opt out of a plan in which they were automatically enrolled.

Earlier, regulators said automatic enrollment rules would not be proposed until 2014.

The likelihood, though, of that regulatory intent being met is low, experts say.

“My understanding is that this is at the bottom of the IRS priority list,” said J.D. Piro, a senior vice president with Aon Hewitt in Norwalk, Conn.

Regulatory guidance also is lacking on a health care reform law provision due to take effect in 2018 that imposes a 35% excise tax on health care premiums that exceed \$10,200 for single coverage and \$27,500 for family coverage. The tax would be paid by plan administrators and insurers, who then almost certainly would seek reimbursement from employers.

While the provision on its face appears straightforward, there are unknowns, such as whether the excise tax trigger would be set higher in states with above-

average costs.

But given that the tax does not take effect until 2018, experts say the odds are overwhelmingly against guidance being issued this year.

“Guidance is pretty far down the line on that one,” said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

On the other hand, because of a looming effective date, final guidance is expected sometime this year on a health care reform law provision that imposes a fee —

to be paid annually in 2015, 2016 and 2017 — on group health care plan sponsors. The \$25 billion that is supposed to be generated by the fee is to be used to partially reimburse commercial insurers that cover individuals with high health care costs.

Regulators have said the fee for the first year — to be paid in early 2015 — would be \$63 per plan participant; for the second year, the fee would be \$44. The amount of the Transitional Reinsurance Program fee to be paid in the third year has not been set yet.

Still waiting for final action are proposed U.S. Department of Health and Human Services rules that would exempt health care plans that are self-insured

and self-administered from the fee during the last two years of the program.

That special exemption, though, has drawn fire from several lawmakers, who say it is geared to big union health care plans.

“Since the overwhelming majority of self-administered health insurance plans are run by unions, let’s call this what it is: a political payback by the administration to its union friends for backing this disastrous law,” Sen. Orrin Hatch, R-Utah, said at the time he introduced legislation to bar regulators from finalizing the special exemption.

Employer groups also oppose the special exemption.

Even though the Patient Protection and Affordable Care Act was passed more than three years ago, regulators have yet to propose guidance in several key areas relevant to employers.

FREE CONTRACEPTIVE PRESCRIPTION MANDATE AWAITS SUPREME COURT RULING

Do companies have the same First Amendment and religious rights as individuals?

BY MATT DUNNING

As employers prepare for new requirements under the Patient Protection and Affordable Care Act, unsettled legal challenges still could upend certain provisions of the landmark law.

The U.S. Supreme Court is expected to rule later this year whether the federal government can compel private, for-profit employers to provide cost-free coverage of contraceptive prescriptions to their employees.

Separately, lawsuits seeking to block the government from handing out premium subsidies for health care coverage purchased through the federally run insurance exchange are proceeding through federal courts in Oklahoma and Washington.

The Supreme Court agreed in November to hear arguments in two lawsuits brought by privately owned companies challenging the government's authority to enforce a provision of the health care reform law requiring employers with 50 or more full-time employees to provide their group health benefit plan members with cost-free insurance coverage for contraceptive prescriptions and other preventive care services.

Conestoga Wood Specialties Corp., based in East Earl, Pa., and Oklahoma City-based Hobby Lobby Stores Inc. are among the three dozen for-profit, family-owned businesses that sued to block the coverage requirement on the grounds that it violates their rights to free expression of religion under the First Amendment to the U.S. Constitution and the Religious Freedom Restoration Act.

Both companies, which are owned by Christian families, have argued that the reform law's coverage requirement forces them to choose between providing health care benefits that conflict with their religious beliefs or paying a \$2,000-per-year-per-employee penalty for excluding contraceptives from their insurance plans.

Conestoga asked the Supreme Court to overturn a series of lower court rulings rejecting its challenge to the requirement. Conversely, the U.S. Department of Health and Human Services is seeking reversal of an appeals court's decision in June granting Hobby Lobby's request for a temporary exemption from the coverage requirement, pending the final outcome of the company's lawsuit.

Hearing dates for the cases had not been set last week. Separately last week, Supreme Court Justice Sonia Sotomayor granted a temporary restraining order barring enforcement of the mandate on Roman Catholic-related organizations while their appeals continue.

When deliberations begin in the cases brought by Conestoga and Hobby Lobby, legal experts said the high court's first task likely will be to determine whether private, for-profit companies — through their owners — have a right to free exercise of religion under the First Amendment and/or the religious freedom law and, by extension, legal standing to challenge a federal law.

"Assuming they decide that those challenges can stand, the next question becomes whether the contraceptive mandate represents a substantial burden on their

free exercise of religion," said Sarah Bassler Millar, a Chicago-based partner at Drinker Biddle & Reath L.L.P. "If so, the question then is whether the government has a compelling interest in overriding those protections and, if it does, whether the mandate is the least restrictive means of satisfying that interest."

Experts were divided in their predictions as to how the Supreme Court might rule.

Amy Gordon, a Chicago-based partner at McDermott Will & Emery L.L.P., said she thinks the companies have raised a valid argument for the protection of religious expression.

"I would like to think that the court will find that (the contraceptive requirement) is a violation, but it obviously remains to be seen whether or not they will do that," Ms. Gordon said. "I wouldn't have

guessed that the court was going to uphold the individual mandate in 2012, but they did."

Conversely, Jeffrey Pasek, a Philadelphia-based member at Cozen O'Connor, said he thinks the Supreme Court is likely to reject the concept that companies are entitled to the same rights of religious freedom as individuals.

"It opens up an opportunity for companies to do an end-run around all of the civil rights laws that we've passed," Mr. Pasek said. "It seems to me that a clean place for the court to draw a line would be to say that even though corporations do have some First Amendment rights — such as the right of free speech through advertising and political donations — it's quite another thing to say that they also have the right to turn around and impose the religious views of their owners on their customers or employees."

Premium subsidy lawsuits challenge core tenet of reform law

While employers' moral objections to covering contraceptive prescriptions have commanded more popular attention, experts say the pair of lawsuits aimed at limiting availability of premium subsidies for health care coverage purchased through certain public exchanges could be far more damaging to the health care reform law's long-term viability.

In a lawsuit filed in 2011, Oklahoma Attorney General Scott Pruitt asked a federal judge to bar the Internal Revenue Service from issuing subsidies to low-income individuals for health insurance plans sold through exchanges run by the federal government, arguing that the original language of the Patient Protection and Affordable Care Act only authorizes the government to provide premium assistance for insurance bought in state-run exchanges.

A group of small businesses and individuals filed a similar lawsuit in May 2013, arguing that the IRS improperly expanded eligibility for the premium subsidies to include consumers in states that opted out of setting up their own exchanges.

Under the reform law, employers with more than 50 full-time workers are required to offer health benefit plans to 95% of their qualifying employees starting in 2015 or incur a \$2,000-per-employee penalty in the event that any of their employees use a federal subsidy to purchase coverage through a public exchange.

In both cases, the plaintiffs argue that the IRS decision to include the federal exchanges in the subsidy program improperly exposes employers in states that have declined to establish their own public exchanges to penalties from which they otherwise would have been shielded.

Judges in both cases denied the government's request for summary dismissal of the suits.

"The fact that the issue survived the government's arguments for summary judgment and that it's lasted this long makes me think that it does have a chance of prevailing," said Amy Gordon, a Chicago-based partner at McDermott Will & Emery L.L.P.

Legal experts said a ruling against the government likely would limit its ability to enforce minimum coverage requirements for employers and individuals in states that refuse to establish insurance exchanges, as well as effectively cut off access to subsidized coverage for the millions of lower-income, uninsured adults in those states.

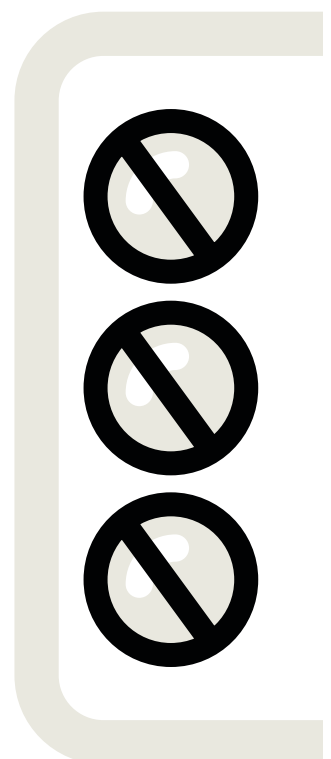
"When coupled with the enormous complication caused by the cancellation of millions of insurance policies, the subsidy issue has the potential to accomplish indirectly what the law's staunchest critics have hoped to accomplish in Congress, which is a repeal," said Royal Oakes, a Los Angeles-based partner at Barger & Wolen L.L.P.

By Matt Dunning



"It opens up an opportunity for companies to do an end-run around all of the civil rights laws that we've passed."

Jeffrey Pasek, Cozen O'Connor



State-run exchanges grab lion's share of health plan enrollees

Simpler design, thorough testing
avoid many woes of federal website

BY MATT DUNNING

Rigorous testing and an emphasis on simplicity helped several state-run health insurance exchanges avoid many problems that bedeviled the launch of the federal government's exchange.

Excluding Medicaid enrollments, public health insurance marketplaces operated by 14 states and the District of Columbia enrolled about 30% of people who were determined to be eligible for an exchange-based health plan through November, far outpacing the federal enrollment rate of 9% across 36 states, according to the U.S. Department of Health and Human Services' latest report on exchange performance.

Not all state-run exchanges have run smoothly, however. Maryland, Oregon and Hawaii in particular experienced significant technical issues regarding eligibility determinations, account registrations and basic usability. However, officials in the four states with the largest enrollment totals — California, New York, Kentucky and Washington — pointed to several factors they said positioned their exchanges for success.

Keeping it simple

One common refrain among state exchange officials was the importance of simplicity in their marketplaces' operational structure and online user interface.

"From an operational standpoint, we wanted to have one central website and customer service center that would handle applications and calls from New Yorkers," said Donna Frescatore, executive director of New York's insurance exchange, NY State of Health. "Regardless of which program a user qualifies for, they're all channeled to the same web portal and customer service center. We thought that it would be important from the consumer's perspective to have a single 'front door' to the system."

A second element that exchange officials said was key was allowing

online users to browse health care plans and determine eligibility for Medicaid or premium subsidies anonymously, using only basic demographic information.

By contrast, the federal exchange, *Healthcare.gov*, initially required users to register prior to gaining access to eligibility and plan information.

"The goal was to create an e-commerce experience that customers were already familiar with, such as an Amazon or Expedia," said Curt Kwak, chief information officer of the Washington Health Benefit Exchange. "Users can enter in basic information such as ZIP code and estimated annual income to see what types of options are available to them."

State officials said their exchanges also benefited from decisions to initially forgo features such as mobile applications and online chat networks, which they said helped preserve bandwidth for their sites' core functions.

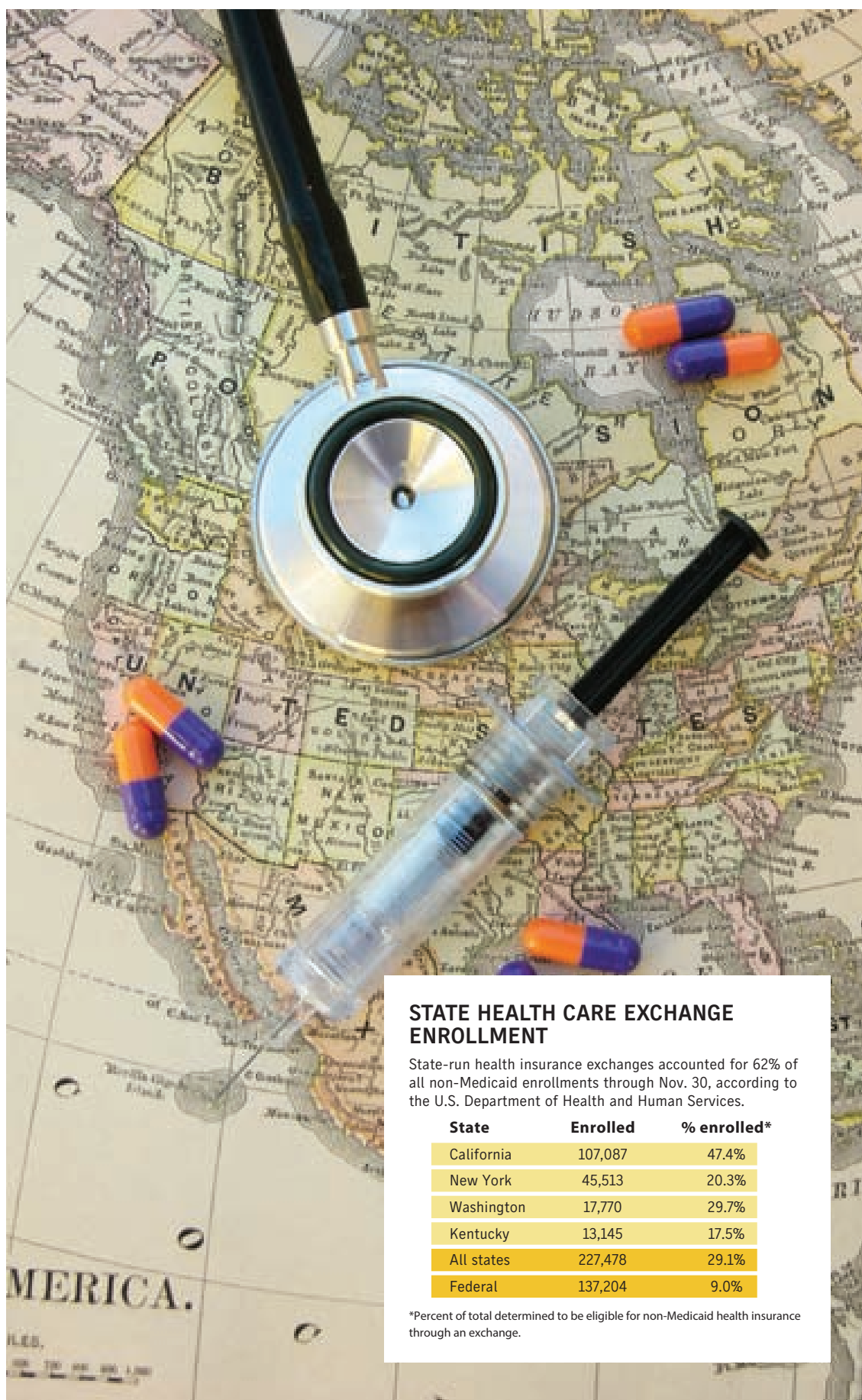
"Our system is very simple," said Carrie Banahan, executive director of Kynect, Kentucky's public insurance exchange. "We don't have a lot of graphic elements and the site doesn't take up a lot of bandwidth. The language is very simple and the site overall is very easy to navigate."

Another critical factor in the disparate performances of the state-run insurance marketplace and the federal exchange appears to be the extent to which the respective systems were stress-tested prior to their launches.

During an October hearing before the U.S. House Energy and Commerce Committee, executives of the private contractors that designed and built the federal exchange testified that end-to-end testing of the federal website did not begin until two weeks before launch.

Testing of the states' insurance exchanges, by contrast, began as early as April 2013. In Kentucky, Ms. Banahan said the state began its testing in July and performed more tests just before it launched.

"One of the key aspects that seems to have been a stumbling



STATE HEALTH CARE EXCHANGE ENROLLMENT

State-run health insurance exchanges accounted for 62% of all non-Medicaid enrollments through Nov. 30, according to the U.S. Department of Health and Human Services.

State	Enrolled	% enrolled*
California	107,087	47.4%
New York	45,513	20.3%
Washington	17,770	29.7%
Kentucky	13,145	17.5%
All states	227,478	29.1%
Federal	137,204	9.0%

*Percent of total determined to be eligible for non-Medicaid health insurance through an exchange.

block for a lot of other states, and certainly for the federal government, is the account registration mechanism," Ms. Banahan said. "We made sure that we really put that system through its paces prior to launch. We had the state's Medicaid staff, our in-house (information technology) department as well as our contractor's staff all test the system independently."

State exchange officials also said continuous post-launch testing of their marketplaces' information technology systems has helped them address capacity and usability

issues.

"Since the site's launch, we've been doing 24/7 auditing in order to give us some indication of where there are code irregularities and functionality impairments," said Dana Howard, deputy director of communications for California's insurance exchange, Covered California.

California's exchange website experienced significantly longer load times than designers intended, and was taken offline for coding updates and bandwidth expansion the weekend of Oct. 5, four

days after its launch. But it was back online the following Monday. Without round-the-clock auditing, he said the website's down time could have much longer.

"We were trying to determine what was causing the long load times for the site's pages, because they were extending well beyond the page load time goals we had set," Mr. Howard said. "So we had to identify where it was specifically that those barriers were coming up that kept the pages from loading, and that took a little bit of time to work through."

Major legislative changes to Patient Protection and Affordable Care Act unlikely

Ongoing Republican opposition to the landmark health care reform law and repeal efforts expected

BY JERRY GEISEL

While there is no shortage of bills in Congress to amend the health care reform law, the odds of any of them getting congressional approval and being signed into law in 2014 are very low.

Those proposals include:

- Repealing a \$25 billion reinsurance fee that will be paid by all group health care plan sponsors.

- Barring special exemptions from the reinsurance fee.

- Delaying by yet another year — to 2016 — the requirement that most employers offer affordable coverage to their employees or be hit with a stiff financial penalty.

- Revamping the definition of a full-time employee to determine if employers are offering coverage.

The chief reason, Washington observers say, for the likely lack of congressional action to approve measures to amend the Patient Protection and Affordable Care Act, is politics.

“I really can’t imagine” significant changes, said Judy Bauserman, a partner with Mercer L.L.C. in Washington. “While President

Obama expressed a willingness to make changes, Republicans say their strategy is to get rid of the law, not make it better. It doesn’t look like Republicans have given up on that strategy.”

Other benefits experts concur. “Election years are not known as times when a lot of stuff gets done,” said J.D. Piro, a senior vice president at Aon Hewitt in Norwalk, Conn.

On the other hand, some say congressional action is possible on some relatively narrow, though costly, provisions in the health care reform law.

One example is the requirement that group health care plan sponsors pay to the federal government a \$63 fee for every person enrolled in their health plans starting in 2015. The fee is to decline to \$44 in 2016, while the amount to be paid in 2017 — the last year of Transitional Reinsurance Program — has yet to be set by the U.S. Department of Health and Human Services.

The fee has angered employers that say it is unfair to assess them when the \$25 billion in generated fee revenue is to be used to partial-

ly reimburse commercial insurers that cover individuals with high health care costs.

“It is a direct hit to employer plans,” said Steve Wojcik, vice president of public policy for the National Business Group on Health in Washington.

Some lawmakers agree. For example, Rep. Pat Tiberi, R-Ohio, who introduced the reinsurance fee repeal bill — H.R. 3489 — said at the time he proposed the measure that “it is simply outrageous that employers will be forced to pay the tax while they will get nothing in return.”

Mr. Wojcik said there is a reasonably good chance that lawmakers could act on the proposal, especially because, with enrollment in public exchanges much lower than expected, the need for revenue to offset insurers’ costs will be less.

Others, though, are less sanguine about the prospects for repeal.

“The challenge is finding other revenue sources” if the fee is repealed, said Amy Bergner, managing director of human resources solutions at PricewaterhouseCoopers L.L.P. in Washington.

“I don’t expect to see it (the

repeal legislation) go anywhere,” said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

Experts also say the odds do not favor a congressional delay in the law’s requirement that employers with at least 50 full-time employees offer coverage or be liable for a \$2,000 penalty for each full-time employee, minus the first 30 employees.

That requirement, which was to have gone into effect on Jan. 1, 2014, was delayed to Jan. 1, 2015, by U.S. Treasury Department regulators, who said it was necessary to give the agency more time to simplify how employers are to file health care plan enrollment information with the government.

Some lawmakers say compliance with the “play-or-pay” mandate should be delayed to 2016. Delaying the employer mandate until 2016 is necessary “to give businesses time to learn about” the Patient Protection and Affordable Care Act, said Sen. Mark Begich, D-Alaska, when he introduced legislation to delay the mandate.

Experts, though, say there is nothing close to a congressional

consensus for delaying the mandate to 2016.

“I don’t think an employer compliance strategy should be based” on an assumption that the mandate will be delayed again, Aon Hewitt’s Mr. Piro said.

Observers also are not optimistic that Congress will approve a measure that would liberalize the definition of a full-time employee. Under the law, a full-time employee is defined as working an average of at least 30 hours per week.

That measure introduced by Sens. Joe Donnelly, D-Ind., and Susan Collins, R-Maine, would change the definition of full-time employees to those working an average of 40 hours per week.

The health care reform law’s definition of a full-time employee “has caused significant confusion among employers who are struggling to understand and comply with the new requirements,” Sens. Donnelly and Collins wrote in a letter to President Obama.

While there is some bipartisan support for the measure, “I wouldn’t hold out much hope for the change to be made in 2014,” Ms. Bergner said.

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Health insurance exchanges

Public health insurance exchanges, or marketplaces for buying health care coverage, got their start with passage of the Patient Protection and Affordable Care Act. The health care reform law is designed to greatly reduce the number of U.S. residents without health insurance, a number the Congressional Budget Office put at 58 million in 2013. Public exchanges, notably the problem-plagued federal www.healthcare.gov online marketplace, began operations in 2013, as did several private health insurance exchanges. The private exchanges, which some projections say eventually will surpass public exchanges in enrollment, primarily target employers too large to purchase coverage through a public exchange. This data page looks at many of the private health insurance exchanges that already have launched and the private health insurance exchange platforms available to brokers.

PRIVATE HEALTH INSURANCE EXCHANGE PLATFORMS FOR BROKERS

Exchange platform	Company	Website
Alegeus WealthCare Marketplace	Alegeus Technologies L.L.C.	www.alegeus.com
Array Health Private Health Exchange	Array Health Solutions Inc.	www.arrayhealth.com
benefitsCONNECT	Transcend Technologies Group Inc.	www.benefitsconnect.net
BeneFit Marketplace	Empowered Benefits L.L.C.	www.empoweredbenefits.com
Bright Choices Exchange	Liazon Corp.	www.liazon.com
BrokerEngage	Benefitalign L.L.C.	www.benefitalign.com
bswift Exchange Solutions	bswift	www.bswift.com
CieloStar Exchange	CieloStar Inc.	www.cielostar.com
ConnectedHealth Smart Choices Marketplace	ConnectedHealth L.L.C.	www.connectedhealth.com
ebenefit Private Benefit Marketplace	ebenefit Marketplace	www.ebenefitmarketplace.com
eflexConnect	eflexgroup (eflex)	www.eflexgroup.com
HealthStyle Insurance Exchange	HR Technology Advisors L.L.C.	www.hrtadvisors.com
HR InTouch Marketplace Edition	Benefitfocus Inc.	www.benefitfocus.com
MyConsumerLink	HealthPlan Services	www.healthplan.com
PlanSource	PlanSource Benefits Administration Inc.	www.plansource.com
QHIX Private Health Exchange	Q4 Systems Corp.	www.qfor.com
SelectQuote Insurance Exchange	SelectQuote Benefit Solutions	www.selectquotebenefitsolutions.com
Solstice Marketplace	Solstice Benefits Inc.	www.solsticemarketplace.com/
WebInsure Private Exchange	hCentive Inc.	www.hcentive.com

Note: Given the market dynamics, this may not be an all-inclusive list of exchange platform providers.
Source: BI Research

PRIVATE HEALTH INSURANCE EXCHANGES

Name of exchange	Company	Website	Type of company	Target user	Regional scope
Aon Hewitt Corporate Health Exchange	Aon P.L.C.	www.aon.com	Broker, consultant, human resources and outsourcing solutions provider	Employers	National
Assurex Global Marketplace Platform	Assurex Global	www.assurexglobal.com	Worldwide partnership agents and brokers	Brokers, employers, insurers	National
CaliforniaChoice	CaliforniaChoice	www.calchoice.com	Distributor of health insurance plans via a defined contribution platform	Employers with 1-50 employees	California
CaliforniaChoice 51+	CaliforniaChoice	www.calchoiceplus.com	Distributor of health insurance plans via a defined contribution platform	Employers 51-199 employees	California
CarePlus Custom Exchange	BB&T Insurance Holdings Inc.	insurance.bbt.com	Broker	Employers	National
CarePlus Standard Exchange	BB&T Insurance Holdings Inc.	insurance.bbt.com	Broker	Employers	National
CbizChoice	Cbiz Inc.	www.cbiz.com	Business services provider (accounting and tax, benefits and insurance, and consulting)	Employers	National
Choice Builder	CaliforniaChoice	www.choicebuilder.com	Distributor of health insurance plans via a defined contribution platform	Employers with 2-99 employees	California
Digital Benefits Marketplace	Digital Insurance Inc.	www.digitalbenefitsmarketplace.com	Broker	Employers	National
eHealthInsurance.com	eHealthInsurance Services Inc.	www.ehealthinsurance.com	Online health insurance agency	Small businesses, families, individuals	National
Eide Bailly Private Exchange	Eide Bailly L.L.P.	www.eidebailly.com	Business service provider (accounting and other business services)	Employers	Arizona, Colorado, Idaho, Iowa, North Dakota, Oklahoma, Utah
Frenkel Benefits Marketplace	Frenkel Benefits L.L.C.	www.frenkelbenefits.com	Broker	Employers	National
Gallagher Benefit Services Private Exchange	Gallagher Benefit Services Inc.	www.gallagherbenefits.com	Broker	Employers	National
GHLIT Private Insurance Exchange	American Veterinary Medical Association Group Health and Life Insurance Trust	www.avmaghlit.org	Association	Employers (veterinarians only)	National
Health Partners America Insurance Exchange	Health Partners America	www.hpaexchange.com	Benefits consultant and private health exchange platform provider	Employers	National
HealthPass New York	HealthPass New York	www.healthpass.com	Independent, nonprofit health insurance exchange	Small businesses (up to 50 employees)	New York City
The Horton Group Private Exchange	The Horton Group	www.thehortongroup.com	Broker	Employers	Midwest
HSA California	CaliforniaChoice	www.hsacalifornia.com	Distributor of health insurance plans via a defined contribution platform	Small businesses (1-50 employees)	California
Hub International Private Exchange	Hub International Ltd.	www.hubinternational.com	Broker	Employers	National
InsureXSolutions	Flexible Benefit Service Corp.	www.insurexsolutions.com	Consumer-driven employee benefits agency and benefits administrator	Employers	Illinois
InsuringCT	InsuringCT	www.insuringct.com	Online insurance agency	Employers	Connecticut
iSelect Custom Benefits Store	iSelect Custom Benefits Store	www.iselectcbs.com	Multicarrier and multidistributor benefits exchange	Midsize and small employers	Michigan
Lawley Marketplace	Lawley Insurance	www.lawleyinsurance.com	Broker	Employers	New York
Mercer Marketplace	Mercer L.L.C.	www.mercer.com	Benefits consultant	Employers	National
NFP Marketplace	National Financial Partners Corp.	www.nfp.com	Benefits, insurance and wealth management services	Employers	National
North Carolina Chamber MarketPlace	North Carolina Chamber of Commerce	www.ncchambermarketplace.com	Association	Employers	North Carolina
OneExchange	Towers Watson & Co.	www.towerswatson.com	Broker, benefits, talent management, rewards, and risk and capital management consultant and service provider	Employers	National
PeopLease Benefits Marketplace	PeopLease Corp.	www.peopleasecorp.com	PEO administration, human resources, risk management services and solutions provider to the logistics and transportation industry	Employers	National
RightOpt	Buck Consultants L.L.C.	www.buckconsultants.com	Human resources and benefits consulting	Employers	National
SynergiesSELECT	Corporate Synergies Group L.L.C.	www.corpsyn.com	Broker	Employers	National
USI Insurance Services Private Exchange	USI Insurance Services L.L.C.	ww2.usi.biz	Broker	Employers	National
Virtus Group Marketplace	Virtus Benefits L.L.C.	www.virtusbenefits.com	Employee benefits adviser	Employers	National
Virtus Individual Marketplace	Virtus Benefits L.L.C.	www.virtusbenefits.com	Employee benefits adviser	Individuals, associations, employers	National
Willis Advantage	Willis North America Inc.	www.willis.com	Insurance/reinsurance broker and global risk adviser	Employers	National

Note: Given the market dynamics, this may not be an all-inclusive list of private exchanges.
Source: BI Research

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PUBLIC NOTICES

LEGAL NOTICE

**IN THE MATTER OF THE LIQUIDATION OF
 REALM NATIONAL INSURANCE COMPANY**
 Supreme Court County of New York
 Index No.: 401876/05
 NOTICE

Pursuant to an order of the Supreme Court of the State of New York, County of New York ("Court"), entered on June 15, 2005, the then-Superintendent of Insurance of the State of New York and his successors in office were appointed as liquidator ("Liquidator") of Realm National Insurance Company ("Realm") and, as such, have been directed to take possession of Realm's property and liquidate its business and affairs pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Superintendent of Financial Services of the State of New York has now succeeded the Superintendent of Insurance as Liquidator of Realm. The Liquidator has, pursuant to Insurance Law Article 74, appointed Michael J. Casey, Acting Special Deputy Superintendent, as his agent to carry out the responsibilities of the Liquidator, through the New York Liquidation Bureau, 110 William Street, New York, New York 10038. The Liquidator has submitted to the Court a verified petition ("Verified Petition") seeking an order: (i) approving the Liquidator's Report on the Status of the Liquidation of Realm National Insurance Company ("Liquidation Proceeding") and Request for Authority to Distribute Assets and Establish a Cut-Off Date ("Report") and the financial transactions delineated therein; (ii) establishing July 31, 2014 as the cut-off date, the final date by which the Liquidator must actually receive in respect of any claim presented prior to January 31, 2014 (the "Bar Date") established in the Liquidation Proceeding by order of the Court entered on November 15, 2013) any and all evidence demonstrating (a) that such claim has been liquidated and (b) that there has been actual loss and/or payment in respect of such claim; (iii) barring and discharging all claims, other than claims for administrative expenses reported after the Bar Date; (iv) authorizing the continued payment of administrative expenses; (v) authorizing the Liquidator to distribute Realm's assets, consistent with this Court's orders and the priorities set forth in Insurance Law Section 7434, to those creditors of Realm with allowed claims, to the extent that, in the Liquidator's discretion, sufficient funds are available; (vi) extending judicial immunity to the Liquidator of Realm, his successors in office and their agents and employees, for any cause of action of any nature against them individually or jointly, for any act or omission when acting in good faith, in accordance with the orders of this Court, or in the performance of their duties pursuant to Insurance Law Article 74; and (vii) providing for such other and further relief as this Court deems appropriate and just.

A hearing is scheduled on the Verified Petition on the 3rd day of March, 2014, at 9:30 a.m., before the Honorable Michael D. Stallman, JSC, New York Supreme Court at the Courthouse, IAS Motion Submission Part, Room 130, 60 Centre Street, in the County, City and State of New York, 10013.

If you wish to object to the relief sought, you must serve a written statement setting forth your objections and all supporting documentation upon the Liquidator and Clerk of the Court, at least seven days prior to the hearing. Service on the Liquidator shall be made by first class mail at the following address: Superintendent of Financial Services of the State of New York as Liquidator of Realm National Insurance Company, 110 William Street, New York, New York 10038, Attention: General Counsel.

The Verified Petition and Report are available for inspection at the above address. In the event of any discrepancy between this notice and the documents submitted to Court, the documents control.

Requests for further information should be directed to the New York Liquidation Bureau, Creditor and Ancillary Operations Division, at (212) 341-6588.

Dated: December 16, 2013, Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York as Liquidator of Realm Insurance Company of New York.

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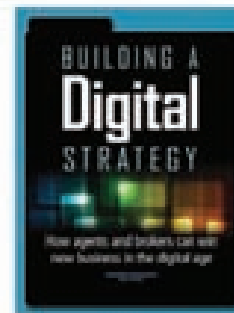
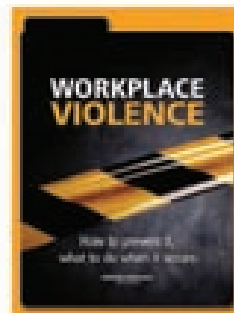
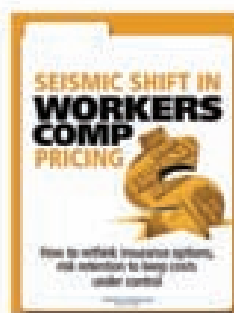
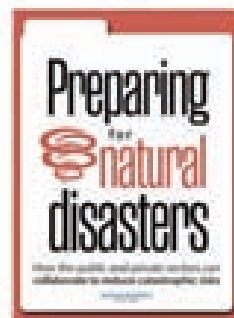
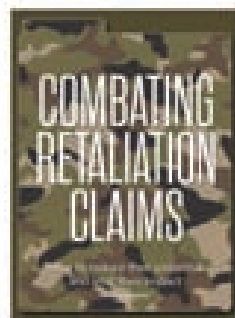
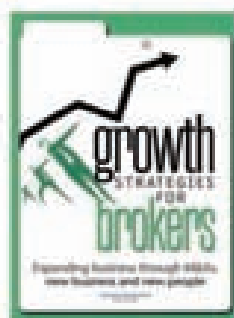
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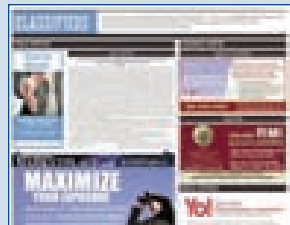


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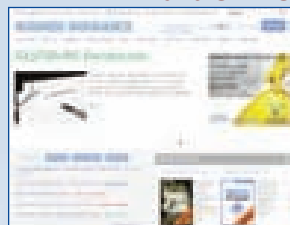
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CAPITAL MARKETS DRIVE REINSURANCE MARKET CHANGES

Q What lessons are you bringing from your previous roles within Aon to your current position?

A There are certainly lessons around innovation. Aon Benfield has always been innovative, but the pace of innovation needs to increase to match the pace of new capital flows that will find a place in the reinsurance business. The value proposition of reinsurance has improved, and it will continue to become an even more accretive source of underwriting capital.

Q How will your background in the investment banking, catastrophe bond and sidecar activities help you in your current position?

A Reinsurers will more often engage in capital management techniques that will involve the capital markets. Reinsurers have already begun taking a more active role in sponsoring catastrophe bonds and sidecars to lower their cost of underwriting capital. They will also begin managing insurance-linked securities and

Q&A

collateralized reinsurance funds. These activities will improve the value proposition of reinsurance and lower the cost of our clients' underwriting capital.

Q How can buyers of reinsurance reap the benefits of plentiful capacity from a variety of sources?

A Until about February of 2013, reinsurers saw nontraditional capital as competitive. But now they are seeing it as a way to improve their value proposition to clients. Reinsureds had to, in the

past, do things like catastrophe bonds by themselves. But as traditional reinsurers start to incorporate the new value from new capital, it can be really helpful to reinsurance buyers.

Q How has the reinsurance industry changed during your career?

A It has changed at an accelerating pace. The changes were mild when I started in the business at Aon in 1994. Quite a lot of the business then was with direct markets.

But over those 20 years, clients have really seen the value in advocacy and want to explore the creativity of the entire market. The traditional reinsurance business is transforming with alternative capital.

Q What are your ambitions for Aon Benfield Americas?

A Aon Benfield needs to continue to lead innovations that benefit our clients. The transitions that



BRYON EHRHART
AON BENFIELD AMERICAS

Bryon Ehrhart was appointed CEO of Aon Benfield Americas, a reinsurance arm of London-based Aon P.L.C., in September. Based in Chicago, he joined Aon in 1994 and has held various roles at the brokerage. He also has served as an advisory board member for the Katie School of Insurance at Illinois State University. He recently spoke with *Business Insurance* Senior Editor Sarah Veysey about his plans for the unit and reinsurance market conditions.

are occurring in the market are unprecedented, and our clients have the opportunity to think very differently about how they manage peak and nonpeak risks. It's a changing time for our clients.

"The value proposition of reinsurance has improved, and it will continue to become an even more accretive source of underwriting capital."

COMINGS & GOINGS

UP CLOSE: JAMES DAVIES

CHICAGO-BASED SENIOR CONSULTANT
Towers Watson & Co.'s international consulting group

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LOOKING FORWARD TO: Spending time getting to know my new clients and working hard with a wonderful team of people at Towers Watson to further grow our market share.

CHALLENGES FACING INDUSTRY: The decline of defined benefit retirement plans is a challenge to the traditional actuarial consulting model, as is downward pressure on pricing in our industry. These challenges are forcing us to work hard to identify other ways to deploy our deep technical expertise as we seek to bring other strategic ideas and opportunities to our clients.

INDUSTRY OUTLOOK: Our group focuses on advising multinational clients on the employee benefits for their employees outside of the headquarters country. That work is often supporting our clients as they improve and expand on the governance and oversight of their benefit programs around the world. This continues to be an important trend for multinational companies' management of human resources programs as they seek to be more efficient,



more nimble and more confident in the compliance and relevance of their employee benefit programs.

FIRST INDUSTRY JOB: I started my professional career as an actuarial trainee with Bacon & Woodrow in Epsom in the U.K.

WHAT SURPRISED ME: Actuarial exams are hard, especially as you take on more responsibility at the office, making the balance of work and study more difficult. It's

a bit of a cliché, but the average actuarial student is not used to failing exams — most get plenty of practice once they start work.

MYSELF IN 10 YEARS: Still enjoying work and watching my kids as they start to head off to college.

OUTSIDE THE INDUSTRY, A DREAM JOB: My tutor and applied math teacher in the last two years of high school (6th form college for any Brits reading this) was a huge inspiration for me. And it was clear how much she truly enjoyed her job. I have often wondered if I should have gone down that path.

HOBBIES: I love riding roller coasters.

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JLT Specialty Ltd.	Darren Marshall
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JLT Specialty Ltd.	Kevin Seakins
JLT Specialty Ltd.	Mike Lewis
Willis Group Holdings P.L.C.	Seth Peller
Willis Group Holdings P.L.C.	Paul Owens

REINSURANCE

Third Point Reinsurance Ltd.	Nicholas Campbell
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INSURERS

Liberty Mutual Holding Co.	Viji Rangaswami
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OTHER

Surety Partners of America	Richard Isgard
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Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to: Kate Shepherd, *Business Insurance*, 150 N. Michigan Ave., Chicago, Ill. 60601-7524. kshepherd@businessinsurance.com.

PROPERTY

Continued from page 4

even some Tier 1 wind exposures seem “to have calmed down.” Some insurers, however, are cutting back capacity for commercial flood coverage, she said.

“We are seeing an influx of carriers that didn’t suffer massive Sandy losses, and it has been an excellent renewal season for our clients, and we anticipate that continuing at least through the first quarter or beyond because reinsurance rates are dropping,” she said, adding that “London has become very aggressive and is stepping up its capacity and underwriting appetite.”

“It turned out to be a more competitive year than many of us expected, particularly in the second half of the year,” said Randall Schreitmueller, vice president, manager of broker relations at FM Global. He said that FM Global’s clients received another membership credit in 2013. “So basically, we gave a \$435 million renewal credit to our clients,” he said.

Mr. Schreitmueller said the class of business isn’t so much an issue of rates as catastrophe exposure. “Accounts that will be the biggest challenge to place are those that are heavily cat-exposed,” he said.

Ms. Glickman said the one asset class that continues to have challenges is multifamily dwellings because of frequency and severity of losses. “You’ve got an enormous amount of capacity out there, but rates have gone up,” said Mike Halvey, head of middle-market commercial at Zurich North Amer-

TRIA uncertainty weighs on property renewals

The federal government’s terrorism insurance backstop isn’t slated to expire until the end of 2014 — if it expires at all — but uncertainty over its fate caused ripples in the commercial property insurance market during the Dec. 31/Jan. 1 renewal season.

The program, initially created by the Terrorism Risk Insurance Act of 2002, has been extended twice — in 2005 and in 2007. While some market observers expect Congress to renew the program yet again before the scheduled Dec. 31, 2014, expiration date, the possibility that it won’t act is raising concern.

“The TRIA issue is raising its head,” particularly for real estate owners with high-profile properties in places like New York and Washington, said Duncan Ellis, U.S. property practice leader at Marsh Inc. in New York. Mr. Ellis said the general consensus is that the program will renew, but with bigger retentions by insurers.

Alexandra Glickman, area vice chairman of Arthur J. Gallagher Risk Management Services Inc. in Glendale, Calif., said that three bills that would extend the program have already been introduced. She said that the “odds are very, very high there will be some sort of extension, but it may not bode well for those with private captives that provide the terrorism coverage; that’s the real wild card.”

“Other than causing uncertainty for buyers, I don’t think it’s having a huge impact,” said Randy Schreitmueller, vice president and manager of broker relations at FM Global. He said that while most people hope the program will be extended, “everybody expects Congress will renew it, but as usual they’ll probably wait until the last minute.”

But what could happen if the consensus proves wrong and the program is not extended? In a market update published late last month, Lockton Cos. L.L.C. listed several possibilities.

“There may be a number of insureds that will have to retain a significant terrorism-related exposure for workers compensation coverage, as statutory coverage may be unavailable or cost-prohibitive,” said the Lockton update, adding that the greatest effect would likely to be felt in such cities as New York, Las Vegas, Los Angeles and Washington, as well as for employers with significant payroll exposure.

According to Lockton, other possible effects could include a run on the assigned risk market, increases in assessment charges that fund those assigned risk markets, a “significant increase” in the cost of catastrophic workers compensation coverage, and transfer of the catastrophic risk burden from the government to business.

By Mark A. Hofmann

ica in Schaumburg, Ill. “We’ve got a tremendous amount of capacity; typically that portends a soft market, but we haven’t seen that in this cycle.”

Insurers have become far more disciplined about catastrophes, he said. “The absence of cats creates a perception that the market is going to be softening in those zones but the underwriting discipline is holding,” he said.

Renewal of the primary policy was challenging “only due to change in underwriter, and after some limited re-underwriting we were able to secure a flat renewal,” said Carolyn Snow, director-risk management at Humana Inc. in Louisville, Ky. “Overall, we were

pleased, as we had several acquisitions in late 2012 and a few more weather-related losses than usual. Fortunately, the losses were smaller and in some cases did not reach our deductible. Our major challenge is that we have multiple locations in major wind zones, and

there aren’t a lot of companies who are willing to take the entire risk.”

Even in a market of falling rates, risk managers can take steps to make their property accounts more attractive to underwriters. Accurate data is key, experts say.

For example, Risk Management Solutions Inc. has introduced a new wind model called RMS 13.

RMS 13 launched last year, and “that is having the result of an improvement around how wind is being modeled,” said Marsh’s Mr. Ellis, who is advising clients to make sure they remodel their exposures using the new model.

“Be as transparent about the account as you possibly can,” Zurich’s Mr. Halvey said. “In the absence of information, we typically revert to the mean. But when we have this information, we’re able to underwrite to it.”

It’s all about accurate information, Mr. Ellis said. “You can’t just shrug your shoulders and say ‘I don’t know.’”

Last year was “a pretty lucky year for both buyers and insurers — it makes it pretty easy to feel invincible,” said FM Global’s Mr. Schreitmueller. “Our advice is always, rather than leave it to a roll of the dice, make a regular investment in risk improvement. That’s really what drives these membership credits.”

And don’t forget the personal touch, Aon’s Mr. Tobin said. “Our industry has become an email industry, but I think clients need to do as much as they can face to face with their lead carrier,” he said.

LIABILITY

Continued from page 4

“The New York excess liability market for development is very tight,” Mr. Upshaw said. “It’s starting to affect companies’ abilities to do construction projects.”

Another potential constraint is the lack of affordable reinsurance for certain casualty sectors.

David Dee, Philadelphia-based head of casualty underwriting for national clients and the reinsurance division at Munich Reinsurance of America, said capacity varies greatly according to the industry sector, with industries with recent large losses finding less capacity available.

“For standard excess casualty classes, there is ample reinsurance capacity,” Mr. Dee said. “But if you get into portfolios where some of the compensation of the book involves energy, especially offshore energy, you are looking at a bit of a restrained market.”

Mr. Dee said reinsurers will carefully scrutinize insurers that write management liability for large financial institutions.

“For some financial lines, there are still fresh memories of the credit crisis of 2007-2008 for underwriters on the professional indemnity side,” he said.

Dean Andrighetto, San Francisco-based division president of Ace Westchester Specialty Casualty, said underwriting caution is imperative for primary casualty insurers, given the need to operate profitably despite low interest rates.

“We continue to evaluate each risk individually when placing a price on the risk we are assuming,” he said.

Geoffrey Allen, New York-based executive vice president at FINEX North America and national cyber and E&O product leader for Willis North America Inc., said the buyers’ renewal experience depended on their industry and loss experience.

“Firms with decent loss experience, and that didn’t have an extremely challenging industry sector, likely saw a flat renewal to a very slight decrease,” he said. “Even firms with losses were unlikely to see the conditions you would see in an extremely hard market.”

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WORKFORCE'S VULNERABILITY TO TERRORISM AFFECTING WORKERS COMP PRICING IN MAJOR CITIES

Uncertainty over federal terrorism insurance backstop has comp insurers raising prices

BY SHEENA HARRISON

Uncertainty about whether the federal government's terrorism insurance backstop will be renewed has resulted in limited workers compensation insurance capacity and increased prices for companies with large concentrations of employees in major cities such as New York, Chicago and Los Angeles.

Experts at Marsh Inc., Aon P.L.C., Lockton Cos. L.L.C. and Willis North America Inc. say the potential expiration of the backstop at the end of 2014 already is affecting financial institutions and other companies with at least 1,500 employees in a single major city.

The backstop, established by the Terrorism Risk Insurance Act of 2002, was renewed in 2005 and again in 2007 under the Terrorism Risk Insurance Program Reauthorization Act. Without congressional action, the 2007 law will expire Dec. 31.

Companies with workforces concentrated in major urban areas are seeing workers comp price increases of 5% to 10% as insurers

look to limit potential terrorism-related exposures should the backstop lapse, said Christopher Flatt, New York-based leader of Marsh's Workers' Compensation Center of Excellence.

"I think carriers are viewing it as an opportunity to try to push prices up," Mr. Flatt said. "In fact, we've gotten a number of inquiries from folks that are not currently writing workers comp on large-concentration risks who are looking to potentially enter the market because they see it as an opportunity to get some better-than-average rates on the business."

Reacting to that uncertainty, the National Council on Compensation Insurance Inc. issued an endorsement last July that allows workers comp insurers to continue applying a premium charge for terrorism-related losses should the backstop expire. But only "a handful" of insurers use that endorsement, said Pam Ferrandino, executive vice president and casualty practice leader for Willis in New York.

Additionally, she said, some insurers have been unwilling to underwrite workers comp policies

for companies with the most risk under TRIA uncertainty.

"Carriers just frankly have not been willing to offer the same level of limits in concentration-exposed areas, for the most part," Ms. Ferrandino said. "They're just not going to offer statutory excess comp."

Anthony DeFelice, managing director of Aon Risk Solutions' national casualty practice in New York, said some insurers are writing limited-term comp policies set to expire at the end of the year should the backstop lapse.

"Everybody's hoping that TRIA gets extended, but that's an unknown at this point in time," Mr. DeFelice said. "Certain underwriters are taking precautions not to expose their bottom line or their companies to an unprotected terrorism type of event."

The overall workers comp market has seen increases in pricing at renewal, experts say.

Eric Silverstein, Dallas-based senior vice president and risk management practice leader at Lockton, said about 53% of companies are expected to see higher

workers comp premiums this year, while 15% could see a decrease at renewal.

Experts project that middle-market firms with guaranteed-cost workers comp programs can expect premium increases of 5% to 10%. National employers with large deductibles or retentions can expect 2% to 4% increases in prices, experts said.

"It's not a hard market, (but) it's a firming market," said Peter Steffen, managing director of commercial risk for Aon Risk Solutions in Chicago.

Irving, Texas-based CEC Entertainment Inc., which operates Chuck E. Cheese's restaurants and has more than 17,000 employees nationwide, has seen little change due to the hardening market. The company is set to renew its large-deductible workers comp policy on March 1 with Ace Ltd. with relatively flat pricing, said Jeff Strege, CEC Entertainment's director of risk management.

"That program has been very stable for us," said Mr. Strege, who said the company's comp pricing and program structure have

remained relatively unchanged in recent years.

Marsh's Mr. Flatt said increased pricing is prompting more firms to take on high-deductible workers comp programs or to consider self-insurance.

Aon's Mr. Steffen said some insurers are offering lower-deductible options for workers comp to attract clients that do not want to secure letters of credit for loss-sensitive programs.

"I'm starting to see carriers that are coming out with a \$50,000 deductible," Mr. Steffen said. "If they can get the deductible low enough or a loss-sensitive structure in such a way that they don't have to charge collateral, that's more appealing to (guaranteed-cost) customers."

Companies that receive the most favorable pricing are the ones that document their workers comp track record and prove to insurers they are a good risk, said Lockton's Mr. Silverstein. "You should be focused on how you can make your account look more profitable rather than just throwing it out there on a competitive basis," he said.

D&O

Continued from page 4

Berkshire Hathaway is gearing up for the D&O market in 2014 — and they are not slow movers."

"Our expectation is that Berkshire is a large-capacity player and this will be a turnaround from the smaller and smaller layers of coverage that the U.S. carriers had been writing," she said. "They have good people and deep pockets and are not 'toe-in-the-water' type people."

In addition to the new entrants, new products are also affecting the market, such as American International Group Inc.'s August announcement of \$100 million in limits for Side A D&O liability insurance, Mr. Gier said.

Ms. Longmore said many terms and conditions for D&O coverage are expanding, citing express coverage for climate change and policy enhancements designed to address the exposures to the personal liability of individual officers as prime examples of new options now available on D&O policies.

"The D&O world has evolved phenomenally in the last five years

in regard to terms and conditions," she said. "We are broadening terms and conditions regardless of what's happening on the rate side."

Capacity issues aside, legal trends are shaping much of the D&O market.

"One traditional measure of the market is securities class action lawsuits," said Mike Karmilowicz, New York-based head of Zurich North America's management solutions group.

While securities class actions declined in 2012 and the first half of 2013, according to Cornerstone Research Inc. and the Stanford Law School Securities Class Action Clearinghouse, litigation challenging mergers and acquisitions has increased, Mr. Karmilowicz said.

"Bump-up" suits, where shareholders allege a company's directors and officers accepted an undervalued bid, are increasingly common, he said.

"They are low-hanging fruit for plaintiffs," Mr. Karmilowicz said. "We are now seeing almost 50% of loss costs coming from non-securities-related actions."

Another trend he is keeping an eye on is lawsuits against opera-

Supreme Court ruling will affect shareholder class action risks

Many employers are awaiting the U.S. Supreme Court's ruling this year in *Erica P. John Fund Inc. v. Halliburton Co.*, when the court will decide what burden of proof shareholders alleging monetary losses must meet to qualify for a class action, rather than individual lawsuits.

Ann Longmore, New York-based executive vice president of FINEX North America, a unit of London-based Willis Group Holdings P.L.C., said the court's ruling could significantly affect companies' vulnerability to securities class action lawsuits.

"The big question hanging over the D&O market for 2014 is what the Supreme Court is going to do in the *Haliburton* case," she said. "While no longer the lion's share of D&O litigation in terms of frequency, class actions are still the most significant slice of the pie from a severity standpoint."

The dispute at the heart of the case dates back to 2002, when an investment fund for the Archdiocese of Milwaukee sued Halliburton, alleging the company falsely represented its asbestos liability, a claim Halliburton has denied.

By Bill Kenealy

"The big question hanging over the D&O market for 2014 is what the Supreme Court is going to do in the *Haliburton* case."

Ann Longmore,
FINEX North America

tions in foreign countries where his clients do business.

"If you talk emerging risks, one of the biggest things we are seeing is around regulatory risk and the Foreign Corrupt Practices Act," he said. "These can lead to derivative lawsuits."

For health care companies, ongoing deals and transitioning to accountable care organizations as a result of the Patient Protection and Affordable Care Act present greater D&O risk, said Mark Karlson, Hartford, Conn.-based health care practice leader at Marsh Inc.'s

FINPRO unit.

"With the ACA, there is a feeling across the health care industry that you have to have size to be competitive," he said. "That leads to M&A activity, which has always been one of the biggest sources of D&O claims."



AP PHOTO

In areas where there were large losses in 2013 — such as Canada and areas of northern and central Europe, which were affected by widespread flooding — there were reinsurance rate increases for affected businesses.

Reinsurance rates drop with increasing market capacity

Nontraditional capital puts lid on most price increases

BY SARAH VEYSEY

The continued influx of nontraditional capacity in the reinsurance market served to push rate reductions for many lines of business at the Jan. 1, 2014, renewals — even for nonpeak perils.

A lack of major U.S. hurricanes during 2013 also helped keep rates down in some areas, although localized losses have led to some upward movement in rates elsewhere, experts say.

And buyers of reinsurance in many instances sought a widening of coverage during renewal negotiations, according to industry experts.

At the Jan. 1 renewals, buyers were unsure of how large a rate reduction they could push for, and underwriters were unsure of the extent to which they would need to lower rates to maintain signings, said Alastair Speare-Cole, CEO of JLT Towers Re, the reinsurance brokerage arm of London-based Jardine Lloyd Thompson Group P.L.C.

“Nontraditional capacity had a softening effect on rates. But there were a few programs where the underlying exposure grew faster than that rate of softening,” he said.

There were no really extreme geographic variations in rate movements, Mr. Speare-Cole said.

Rates for catastrophe business, even in nonpeak zones, are being influenced by the secondary trading market prices, he said. And there was talk within the market

about wider coverage, such as changes to hours clauses reinsurance provisions, Mr. Speare-Cole said.

Nontraditional capacity had a major effect on the renewals, and there was a “cascading effect” that meant even business in nonpeak zones — those areas where nontraditional capital has mostly been deployed — saw rate reductions, said Mike Schnur, a partner at brokerage TigerRisk Partners L.L.C. in Chicago.

Smaller regional buyers in many cases benefitted from rate reductions, as reinsurers needed to retain their income levels, Mr. Schnur said.

Some reinsurers offered coverage to buyers that they typically would not have because of the participation of nontraditional capacity on bigger-ticket programs, he said.

Brokers were reluctant to generalize on the size of rate reductions seen in the renewal period.

Rate movements are on a client-by-client basis, Mr. Speare-Cole said.

In a briefing note, Fitch Ratings Ltd. said that due to the absence of a major U.S. hurricane and the fewest number of named Atlantic storms since 1982, rates, on average, were down for U.S. catastrophe-exposed business.

“A low double-digit price drop” would be in line with the reductions reported at the mid-year renewals, according to Fitch.

Analysts at Nomura Investment Bank said rates for U.S.

property/catastrophe business could have fallen by as much as 15% to 25% in some cases at the Jan. 1 renewal, and by as much as 5% in Europe.

In areas where there were large losses — such as Canada and areas of northern and central Europe — there were rate increases for affected businesses and lines, Fitch said.

There were general improvements in the terms and conditions available to many buyers, experts said.

The availability of nontraditional capacity — and the influence that such capacity had on the behavior of traditional reinsurers — meant that brokers were able to align the terms and conditions provided by reinsurers with buyers’ needs, said Bryon Ehrhart, CEO of Aon Benfield Americas in Chicago.

From a buyer standpoint, it was “a good time to have a large program in the market,” he said.

Many buyers were able to secure multiyear deals, according to TigerRisk’s Mr. Schnur.

And as well as rate reductions, buyers were able to negotiate hard on terms and conditions, he said.

Traditional reinsurers have been working hard to stress the importance of long-term relationships and also have been putting a lot of effort into retaining clients, Mr. Schnur said.

“We have been able to put together some very creative programs” as a result of this keenness and the influence of nontraditional capacity, he said.

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TARGET

Continued from page 1

on Dec. 27 that its forensic investigation had found that the information hackers collected from Nov. 27 to Dec. 15 included card users' encrypted PIN data embedded in their cards. The breach occurred during the annual Christmas shopping season, the busiest retailing period of the year.

While the Minneapolis-based retailer released few specifics about the nature of the data breach, many experts say it appears to have involved malicious software that collected shoppers' data as they swiped cards at checkout keypads to pay for purchases in Target stores.

"If that's the case, this is a very sophisticated kind of attack," said Jon Neiditz, a partner at law firm Kilpatrick Townsend & Stockton L.L.P. in Atlanta, whose practice focuses on big data, privacy and information security. "The big risk management issue to me for all of the retail companies I work with and hospitality companies and others that have point-of-sale systems is: was this very sophisticated malware that involved point-of-sale systems and what lessons are there for other point-of-sale systems?"

Jerry Irvine, Chicago-based chief information officer at information technology adviser Prescient Solutions, said: "We don't know for sure what happened. Target has not put out any detailed information on the attack, but they said it was a very complex type of breach.

"It was likely a long-term persistent event, where a low-level device is compromised and gradually accumulates information and

eventually enables the hackers to gain access to control rights over more critical systems," Mr. Irvine said.

"Hackers are no longer looking for instant gratification. Today, they are all financially motivated and willing to lurk in the background, until they get that golden tidbit of information that gives them root-level access or a backdoor information protocol," Mr. Irvine said.

Even companies that follow strict data security protocols, such as the Payment Card Industry Data Security Standard, remain vulnerable, he said.

"Target and the other large organizations that have been breached recently have all been PCI-DSS certified," Mr. Irvine said. "They are all following (retail) industry best practices and adhering to regulatory and compliance requirements, but the problem is that you cannot secure everything 100%."

Scott N. Godes, a partner with law firm Barnes & Thornburg L.L.P. in Washington who represents clients in data breach litigation, agreed being certified PCI-compliant "is not a guarantee against a data breach."

The Target data breach is "definitely a circumstance that can incentivize companies to step back and look at what they're doing in terms of risk management, what they're doing in terms of insurance, what they're doing in terms of security" and whether they have a cyber breach response plan in place, Mr. Godes said. "I think we're in a day when there's a broader recognition that no company is impenetrable and no company can guarantee themselves free from cyber attacks or hacking."

Jim Whetstone, senior vice pres-



AP PHOTO

Experts say the Target data breach appears to have involved malicious software that collected shoppers' data as they swiped cards at checkout keypads to pay for purchases.

ident and U.S. technology and privacy manager at Hiscox Inc. in Chicago, said the Target cyber event supports a growing number of companies' decisions to buy insurance as part of their cyber risk management efforts.

"More and more companies are buying the coverage and it wouldn't surprise me that a company like Target felt they had an expo-

sure that they needed insurance for," Mr. Whetstone said.

"For me it just points out that there is no silver bullet," he said. "I'm sure (Target) invested a lot and felt they were protected."

Target did not respond to a request from *Business Insurance* for information about its insurance coverage for losses stemming from the data breach.

Aon P.L.C., Target's broker, also declined a request for comment.

Mr. Whetstone said the Target data breach does raise concerns for other retailers about point-of-sale system vulnerabilities.

But, he said, the differing ways companies configure various information technology components reduce the risk of hackers being able to widely apply the approach apparently used against Target in a broad attack on companies' point-of-sale payment systems.

"One of the things that mitigates that exposure is that companies have multiple layers of technology," Mr. Whetstone said, with the uniqueness of the technology mitigating the potential of a widespread, catastrophic data breach.

Meanwhile, according to news reports, about 40 lawsuits seeking class action status in connection with the data breach had been filed against Target by consumers as of last Friday. The nation's third-largest retailer also facing probes from state attorneys general related to consumer protection and privacy laws.

In a statement on its website, Target said it hosted a conference call Dec. 23 with state attorneys general to discuss the data breach and that a "majority of state offices were in attendance on the call." The company said it will hold a follow-up call with state officials this week.

Target also said it was partnering with the Secret Service and the U.S. Department of Justice on forensic and criminal investigations into the data breach.

"We want to be clear that neither entity is investigating Target," according to the retailer's statement on its website.

TRIA

Continued from page 3

the American Insurance Association in Washington.

Another legislative issue is dealing with congressional attempts to delay some reforms in the National Flood Insurance Program that were contained in the Biggert-Waters law, notably implementing actuarially based rates to shore up the debt-ridden flood program.

"A rising No. 2 priority is a defensive issue: working to make sure that Congress doesn't roll back the Biggert-Waters NFIP reforms," NAMIC's Mr. Grande said. "There's some growing momentum toward erasing all of the progress and going back to a more fiscally unstable program."

A bipartisan group of lawmakers is backing legislation that would delay the implementation of actuarially based rates for NFIP coverage for four years.

PCI shares that concern and will work with Congress on the implementation challenges of the Biggert-Waters legislation, Mr. Wienecke said.

"We believe that it's possible through some surgical fixes to keep the program on track toward actuarially based rates," he said.

"We need to make changes to lessen the rate shock that's being experienced in many parts of the country," said Charles Symington, senior vice president at the Alexandria, Va.-based Independent Insurance Agents & Brokers of America. "We're strong supporters of Biggert-Waters. We think a move toward actuarial rates is a way to do that, but we'd like to see

a bit of smoothing out so we don't have these significant and, in many ways, harmful rate shocks."

Frank Nutter, president of the Washington-based Reinsurance Association of America, said that the reinsurer group is awaiting the Federal Emergency Management

"We think a move toward actuarial rates is a way to do that, but we'd like to see a bit of smoothing out so we don't have these significant and, in many ways, harmful rate shocks."

Charles Symington,
Independent Insurance Agents &
Brokers of America

Agency's report on another aspect of the NFIP: possible privatization of the program, a move the RAA supports.

Like others, Mr. Nutter also cited handling regulatory issues as a priority this year.

He said that Dodd-Frank grants authority to the Federal Insurance

Office to pursue "covered agreements," which are essentially treaties for the nation's treatment of cross-border reinsurance, but the FIO so far has not yet pursued such agreements.

The AIA's Ms. Pusey also cited regulation as a concern.

"We have the (Federal Reserve) regulating insurance companies that are either structured as thrifts or have been deemed systemically risky," she said. "How does the Fed interact with state regulation, FIO and other bodies?"

Mr. Wienecke expressed concern over international efforts to establish capital standards for insurers. He said PCI is concerned that such regulations would be bank-centric and would discount the "strong history of the U.S. prudential regime to safeguard policyholders."

Ms. Snow said that RIMS opposes legislation that would change the tax treatment of certain reinsurance transactions. RIMS is concerned about the effect the legislation, introduced in the House and Senate by Rep. Richard Neal, D-Mass., and Sen. Robert Menendez, D-N.J., respectively, and backed by the Obama administration, would have on the market, she said.

"We all understand the need to balance the budget, but we do not believe that is the way to increase tax revenue. It would disrupt markets and would raise rates," Ms. Snow said of the reinsurance tax proposal.

On another front, producer groups want enacted legislation that would streamline interstate agent licensing through establishing the National Association of Registered Agents and Brokers.

"We've been working at this for 80 years, and it needs to be done," said Joel Wood vice president of the Council of Insurance Agents & Brokers in Washington.

"We're very, very close to getting this," said the IIBA's Mr. Symington.

While Mr. Wood called NARAB "our top parochial concern," he said as "a general matter, ACA implementation remains the biggest anxiety consideration for our members.

"Of the 172 million Americans who receive their health insurance through their employer, our member firms sell upward of two-thirds of that. The issue that gnaws at us the most are long-term threats to self-insurance products," he said.

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CYBER

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companies will be examining the proposed guidelines in light of their particular security posture, that does not mean that following them “reduces the potential for liability” if there is a breach.

Kevin Kalinich, Chicago-based national managing director at Aon Risk Solutions, said, “The framework may not be mandatory, and it may not have specifics for every type of industry,” but now “plaintiffs attorneys have a roadmap” to ask if companies have followed this framework and, if they have not, why not.

Richard J. Bortnick, a shareholder with law firm Christie, Pabare & Young P.C. in Philadelphia, said even before its formal adoption, as it now stands the NIST proposal “will become the formula for best practices, and companies that fail to adhere to the recommended best practices are going to leave themselves vulnerable to privacy class actions.”

Experts say a related concern is the U.S. Securities and Exchange Commission’s October 2011 publication of publicly traded firms’ responsibilities to disclose to investors any material cyber risks or loss events.

Michael Born, Kansas City, Mo.-based vice president and account executive, global technology and privacy practice, with Lockton Cos. L.L.C., referred to reports that SEC Chairman Mary Jo White has asked her staff to brief her on compliance with the guidance.

“Some recent comments by the SEC have indicated that they don’t believe companies are sufficiently paying attention or giving enough weight to that guidance, and whenever the SEC says anything like that we tend to think they’re moving toward making it more mandatory,” Mr. Born said. This means more mandatory requirements could arise around this issue in 2014, he said.

More generally, Mr. Parisi said: “One of the things that we certainly expect to see is the continued awareness around business interruption issues.

“Technology is becoming much more of any issue in companies’

Risk managers confront myriad cyber challenges

In addition to the National Institute of Standards and Technology’s proposed voluntary cyber security framework, other cyber-related issues expected to absorb risk managers this year include insider threats and use of the cloud.

■ **Insider threats.** This can include disgruntled, negligent or poorly trained employees and others, such as vendors, who are inside the company’s firewall. The root causes of cyber breaches frequently turn out to be “not some super technology, but an insider,” said Alan E. Brill, senior managing director of secure information services at New York-based Kroll Associates Inc. It is aggravated as well by the “bring-your-own device” trend of workers using their own devices, particularly if they are unencrypted, experts say.

■ **The cloud.** The use of clouds is going to “really take off” in 2014, and ensuring effective control of corporate data within a cloud environment will be critical, said Oliver Brew, New York-based vice president of technology and privacy for Liberty International Underwriters, part of Liberty Mutual Holding Co. Inc.

■ **Personally identifiable information.** While this is not a new issue, theft of personal data “continues to be a very lucrative crime” for cyber thieves. Some of the new technologies that are emerging, including the increased use of mobile payments, are going to make it a bigger risk, said Michael Born, Kansas City, Mo.-based vice president and account executive, global technology

and privacy practice, with Lockton Cos. L.L.C.

■ **Big data.** Related to the personally identifiable information issue, big data refers to how consumers are conducting more of their lives online. Criminals are able to “hack into a system and suck out data,” mining it for information, said Michael Bruemer, Austin, Texas-based vice president of Experian Data Breach Resolution, a unit of Experian Information Solutions Inc.

■ **The “Internet of things.”** This refers to technology’s ability to operate devices, which can be as innocuous as remotely turning on the heat in your home. But it also can be used for far more nefarious purposes, such as controlling a company’s fleet of cars or gaining access to confidential medical information, Mr. Born said.

■ **Nation-state and “hacktivism” breaches.** While the former are criminally motivated, and the latter — motivated by political activists — are not, there is the potential for both types of breaches to increase, creating disruption via malware or hacking schemes, said Tim Francis, Hartford, Conn.-based enterprise cyber lead for Travelers Cos. Inc.

■ **Regulatory environment.** International regulations, including those in the European Union, will put added pressure on companies globally to look closely at their cyber defenses, said Tom Sraile, Cleveland-based senior vice president of FINEX North America at Willis North America Inc.

By Judy Greenwald

day-to-day operation, “and that’s something people are starting to take real recognition of,” he said.

Company executives are “going to take a harder look at it this year,” he said.

overall insurance business model,” according to a statement from the American Council of Life Insurers.

“It will ensure that all life insurers can continue to make investments and investment decisions permitted by and in accordance with state insurance investment laws.”

The rule, named after former Federal Reserve Chairman Paul Volcker, will be phased in according to institution size. The final rule becomes effective April 1, 2014, and the Federal Reserve Board has extended the conformance period until July 21, 2015.

Beginning June 30, 2014, banking

entities with \$50 billion or more in consolidated trading assets and liabilities will be required to report quantitative measurements.

Banking entities with at least \$25 billion, but less than \$50 billion, in consolidated trading assets and liabilities will become subject to this requirement on April 30, 2016.

Those with at least \$10 billion, but less than \$25 billion, in consolidated trading assets and liabilities will become subject to the requirement on Dec. 31, 2016.

The agencies will review the data collected prior to Sept. 30, 2015, and revise the collection requirement as appropriate.

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VOLCKER

Continued from page 3

industry.”

Other insurance industry trade groups expressed similar sentiment.

The Volcker rule is “really not a P/C issue,” said J. Stephen Zielezienski, the general counsel at the American Insurance Association.

“The Volcker rule issued Dec. 10 reflects a recognition that the investment activities of life insurance companies are central to the

PENSION

Continued from page 1

premiums between 2014 and 2023, according to an estimate last month by the Congressional Budget Office and the congressional Joint Committee on Taxation. Last year, employers paid nearly \$3 billion in PBGC premiums, roughly double those of 2005, due largely to earlier rate hikes.

The latest premium hike has outraged employer benefits lobbying groups, who say it was driven by federal budget gimmickry — with the additional funds being recognized as a federal budget deficit offset — rather than because of a new PBGC need for additional revenue.

The premium increase is a “convenient way to pay for other things. It is totally lacking in policy support,” said James Klein, president of the American Benefits Council in Washington.

“It is a gimmick. It is smoke and mirrors,” said Deborah Forbes, executive director of the Bethesda, Md.-based Committee on Investment of Employee Benefit Assets, which represents large pension plan sponsors.

In fact, the PBGC did not specifically request the premium increase, an agency spokesman said. Still, the agency thinks “premiums always have been too low for the agency to do its job,” PBGC

Director Josh Gotbaum said in a statement.

While the agency reported a \$27.4 billion deficit in its single-employer insurance program in 2013, that’s a drop from the \$29.1 billion deficit in 2012. In addition, the single-employer insurance program reported \$1.76 billion in net income in 2013, a sharp improvement compared with a \$5.9 billion loss in 2012 and the first time in five years that the program reported net income.

While the latest hike in premium rates will boost revenue, experts say the increase will be counterproductive in the long run by giving employers a greater financial incentive to shrink their pension plans, reducing their PBGC premi-



HEAR INTERVIEW

Access *Business Insurance's* interactive digital edition to hear Mike Archer of Towers Watson & Co. discuss the effect of higher premiums firms with defined benefit plans have to pay the PBGC.

ums and, with that, cutting the amount of premiums collected by the PBGC.

“The increase will do substantial harm to the defined benefit plan system. It will cause more employ-

LARGEST PENSION PLAN LOSSES

Except for auto parts manufacturer Delphi Corp., the Pension Benefit Guaranty Corp.’s largest losses resulted from the agency taking over pension plans sponsored by failed or financially troubled airlines and steel companies.

Employer	Number of plans	Plan termination	PBGC loss
United Airlines Inc.	4	2005	\$7.35 billion
Delphi Corp.	6	2009	\$6.39 billion
Bethlehem Steel Corp.	1	2003	\$3.70 billion
US Airways Inc.	4	2003, 2005	\$2.75 billion
LTV Steel Corp.	6	2002, 2003, 2004	\$2.13 billion
Delta Air Lines Inc.	1	2006	\$1.72 billion
National Steel Corp.	7	2003	\$1.28 billion
Pan American World Airways Inc.	3	1991, 1992	\$841 million
Trans World Airlines Inc.	2	2001	\$668 million
Weirton Steel Corp.	1	2004	\$640 million

Source: Pension Benefit Guaranty Corp.

ers to exit the system,” said Scott Macey, president and CEO of the ERISA Industry Committee in Washington.

Mr. Macey said the increase will be counterproductive. If more employers reduce the size of their pension plans, such as transferring benefit obligations through purchasing group annuities from insurers, the PBGC’s revenue base will continue to shrink, increasing the need for new premium hikes and leading to more employers to reduce the size of their pension plans. Major employers such as General Motors Co. and Verizon Communications Inc. already have done this.

As premiums increase, “that makes annuity purchases look a lot less expensive,” said Mike Archer, a senior retirement consultant with Towers Watson & Co. in Philadelphia.

Pension lobbyists say more needs to be done to educate federal lawmakers on the negative consequences of continued PBGC premium hikes.

“We have to ratchet up the message that incessant premium increases are unacceptable,” ABC’s Mr. Klein said.

Continued premium increases give plan sponsors another reason to consider whether they should keep offering a defined benefit

PREMIUM REVENUE

Revenue the Pension Benefit Guaranty Corp. receives through insurance premiums paid by employers has soared due to sharp rate increases mandated by Congress.

Year	Premiums paid
1980	\$71.2 million
1985	\$81.7 million
1990	\$659.0 million
1995	\$838 million
2000	\$807.0 million
2005	\$1.46 billion
2010	\$2.23 billion
2011	\$2.07 billion
2012	\$2.64 billion
2013	\$2.94 billion

Source: Pension Benefit Guaranty Corp.

plan, Mr. Archer said.

Even before the most recent premium increase, the number of pension plans covered by the PBGC had declined dramatically.

Last year, employers with about 23,000 pension plans paid premiums to the PBGC, down from nearly 29,000 in 2008 and a huge drop from the all-time high of more than 112,000 plans in 1985.

The number of participants in those plans also has declined every year since 2004, when 34.5 million plan participants were enrolled in employer plans insured by the PBGC. Last year, about 32 million participants were in plans insured by the PBGC.

SAME-SEX

Continued from page 1

Corp., American Financial Group Inc. and Intermountain Health Care Inc., as well as the nation’s largest employer, Wal-Mart Stores Inc.

Although most companies said the inclusion of same-sex spouses in their health care plans was driven in part by the U.S. Supreme Court’s decision in *United States v. Edith Windsor et al.*, which partially overturned the federal Defense of Marriage Act, several emphasized that the court’s decision did not compel them to make the changes.

Rather, they pointed to strategic and operational justifications for extending the benefits, including reducing administrative burden, attracting and retaining talent, aligning with consumer demographics and preferences, and securing public contracts.

In early December, the railway trade association said although the Supreme Court’s decision by itself did not require its member carriers to include same-sex spouses in their benefit plans, the carriers agreed to extend coverage to those spouses to address administrative complexities — specifically, changes to the federal tax code granting equal status to legally married same-sex and opposite-sex couples — that resulted from the court’s ruling.

PUBLIC CONTRACTS A CARROT

The availability of publicly funded contracts is yet another factor experts say appears to have motivated several large employers to extend their group benefit plans to the lesbian, gay, bisexual and transgender community, even before the first laws legalizing same-sex marriage.

In 1996, San Francisco became the first municipality to require companies to provide equal spousal benefits for same-sex domestic partners.

Less than four years later, San Francisco-based Bechtel Corp., the largest construction and engineering firm in the United States, agreed to extend benefits to employees’

same-sex domestic partners in order to secure a joint venture contract to overhaul the city’s water supply system.

“That’s certainly another thing moving the needle,” said Wade Symons, a Portland, Ore.-based principal and employee benefits attorney at Mercer L.L.C. Some municipalities “are telling employers that they can’t get public contracts unless they demonstrate that they provide equal benefits to their employees’ same-sex partners and spouses.”

Following San Francisco’s lead, at least 16 cities and counties, plus the state of California, have passed equal benefits ordinances since 2000.

By Matt Dunning

“We thought this was an appropriate time to change our plans,” Kenneth Gradia, chairman of the National Carriers’ Conference Committee, the railway trade association’s collective bargaining agent, said in a statement.

“Employers certainly tend to avoid drawing negative attention or creating complexity where it need not exist, and they’re looking to apply a more consistent definition of ‘spouse’ across their benefit plans,” said Jack Towarnicky,

employee benefits attorney at Willis North America Inc.’s national legal and research group in Columbus, Ohio.

“As we learn more from the federal government in terms of guidance and regulations following the Supreme Court’s decision, I would expect many employers to extend welfare plan eligibility to same-sex spouses and/or remove any distinction or difference from opposite-sex spouses,” he said.

Wal-Mart, which self-insures its

group health plan and thus is not required to offer benefits to same-sex spouses, sent a memo to its employees in August saying its decision to offer spousal coverage to gay couples was motivated largely by its desire to simplify the administration of its benefits program.

“We operate in 50 states, hundreds of municipalities and Puerto Rico,” the company’s memo said. “By developing a single definition (of ‘spouse’) for all Wal-Mart associates in the U.S. and Puerto Rico, we are able to ensure consistency for associates in various markets.”

Wal-Mart executives said in the memo that the decision also advanced the company’s need to remain competitive in its efforts to attract and retain top talent, noting that 28 of its 30 closest rivals in the retail industry already provided for same-sex and/or opposite-sex domestic partners.

“I think employers see the tide moving toward offering these kinds of benefits on a more equal basis, and they don’t want to lose out in that race for potential employees” by seeming less focused on equality than their competitors, said Wade Symons, a Portland, Ore.-based principal and employee benefits attorney at Mercer L.L.C.

“There’s been a recognition among large employers that family structures are changing, and moving forward with the times seems to be important to a lot of them,” Mr. Symons said.

About 80% of companies with 10,000 or more full-time employees already provided health care coverage for same-sex spouses at the time of the *Windsor* ruling in June, according to a survey published by the International Foundation of Employee Benefit Plans.

“Many of the trends that we’ve been tracking in terms of benefits for same-sex spouses predate all of the marriage equality laws we’ve seen passed over the last several years,” said Deena Fidas, director of workplace equality at the Washington-based Human Rights Campaign.

“The rate at which corporations have been extending benefits to same-sex spouses has been steadily going up since 2002,” Ms. Fidas said.

Aside from administrative simplicity and competition for talent, experts say many large employers recognize the value of corporate policies — including employee benefit eligibility — that reflect the diverse nature of their consumers’ demographics and attitudes.

“Part of our diversity leadership team’s job is to take a look at how we’re viewed by our customers, and how we represent ourselves in the communities that we serve,” said Philadelphia-based Robert Pompey, head of commercial management administration at TD Bank N.A., which began covering employees’ same-sex spouses and domestic partners in 2009. “We want to look and feel like the customers we serve.”

Final pension rule reduces premium payments to once a year

■ The administrative hassle and expense of paying mandatory insurance premiums to the Pension Benefit Guaranty Corp. will be reduced for large pension plan sponsors under a final PBGC rule published recently in the Federal Register. In many cases, employers with at least 500 participants in their pension plans now make three filings and payments a year to the PBGC. Under the final rule, they will have to make just one filing and payment a year. The rule goes into effect for the 2014 plan year.

RIMS names Snow president, other 2014 officers announced

■ The Risk & Insurance Management Society Inc. has named Carolyn M. Snow the society's president for 2014. Ms. Snow, who is director of risk management for Louisville, Ky.-based Humana Inc., has been a RIMS member for 14 years, serving on the New York-based organization's board for the past seven years. She previously served as the society's treasurer, secretary and director of external affairs and is a member of the RIMS Kentuckiana/Bluegrass chapter. RIMS' other 2014 officers include: Richard J. Roberts Jr., corporate risk manager at Simsbury, Conn.-based Ensign-Bickford Industries Inc., as RIMS vice president; Julie C. Pemberton, director of enterprise risk and insurance management at Bellevue, Wash.-based Outerwall Inc., as RIMS treasurer; and Nowell R. Seaman, director global risk management at Saskatoon, Saskatchewan-based Potash Corp. of Saskatchewan Inc., as RIMS corporate secretary.

Large pension plans' funding up sharply in 2013: Analyses

■ Fueled by a robust equities market and rising interest rates, the funded status of pension plans sponsored by large companies improved sharply in 2013, according to two surveys released last week. On average, pension plans sponsored by companies in the S&P 1500 were 95% funded at year-end 2013, according to New York-based Mercer L.L.C. That's up from 93% at the end of November and a 21 percentage point increase from year-end 2012. Similarly, a Towers Watson & Co. analysis of pension plans sponsored by Fortune 1000 companies found that the plans were an average of 93% funded at year-end 2013, up from 77% a year earlier. At 93%, the Fortune 1000 plans' average funded level is the highest since 2007 when big companies' plans were, on average, 106% funded.

Property/casualty insurers' nine-month net income up 54.9%

■ The U.S. property/casualty insurance industry's net income for the first nine months of 2013 surged 54.9% over that of the same period in 2012 to \$47.7 billion, according to an analysis released last week by A.M. Best Co. Inc. In its special report, "U.S. P/C Industry Performance Remains Strong; Premium Growth Slows," Oldwick, N.J.-based Best said that financial performance during the first three quarters of 2013 reflected improved underwriting results across all segments of the industry. The report also noted that the combined ratio for the period improved 3.7 points to 96.5% from 100.2% during the same period a year earlier.

Milwaukee sues over wellness program data theft

■ The City of Milwaukee has filed a complaint with the U.S. Department of Health and Human Services' Office of Civil Rights over the loss of personal information of as many as 9,000 city employees, their spouses and domestic partners by the city's wellness program vendor. According to the complaint, the city provided Froedtert Workforce Health with a password-protected encrypted flash drive containing patient names, addresses, dates of birth, Social Security numbers and gender. But that information was allegedly transferred to an unencrypted, non-password-protected flash drive that was reported stolen on Oct. 21 from the car of an employee of United/Dynacare L.L.C., a lab with which Froedtert subcontracted to perform blood tests on Milwaukee city employees. "It was not until the afternoon of Nov. 15 that City of Milwaukee representatives were informed of the loss by Froedtert representatives," the complaint said. The complaint also said that the Milwaukee Police Department, which had investigated the car theft, was not informed of the missing flash drive or its contents.

Willis Capital Markets places \$75 million catastrophe bond

■ Willis Capital Markets & Advisory, a unit of Willis Group Holdings P.L.C. has placed a \$75 million catastrophe bond transaction for American Modern Insurance Group Inc. to cover U.S. named storms. The transaction provides American Modern, a diversified specialty short-tail lines insurer and wholly owned indirect subsidiary of Munich Reinsurance Co., with \$75 million of fully collateralized protection against U.S. named storms for a three-year risk period using an indemnity trigger on a per-occurrence basis, the Willis division said in a statement. "Investors were eager to support a new sponsor to the market," Tony Ursano, CEO of Willis Capital Markets & Advisory, said in the statement. "The transaction was substantially oversubscribed, and pricing ended up well below the initial price guidance."

Workers comp rate hike of 10.1% recommended for Missouri

■ The Missouri Department of Insurance has recommended a 10.1% increase in advisory workers compensation rates for 2014, the agency said in a bulletin. The rate hike is lower than one proposed by the National Council on Compensation Insurance Inc., which had recommended a rate increase of 11.6% for Missouri, the state insurance department said. Missouri law allows insurers to set their workers comp rates based on either recommendation from NCCI or the state insurance department, or insurers may set rates based on their own analysis.

Arthur J. Gallagher buying two mid-market brokers

■ Arthur J. Gallagher & Co. is acquiring Cleveland Insurance Group, a Rock Island, Ill.-based retail insurance broker serving the middle market. Terms of the transaction were not disclosed. Founded in 1868, Cleveland Insurance provides property/casualty, employee benefits and risk management insurance services to midsize businesses throughout the United States. Arthur J. Gal-

lagher is also buying Cherry Hill, N.J.-based McIntyre Risk Management L.L.C., a retail broker catering to upper middle-market and international companies. Financial terms of the deal were not disclosed. Established in 2002, McIntyre provides commercial property/casualty insurance and risk management products and services, as well as insurance support services including risk control strategies, contact reviews, claims management, loss control and modeling.

Aviation insurance rates drop lower at renewal

■ Most airlines saw rate reductions during recent aviation insurance renewals, according to a report published by Willis Group Holdings P.L.C. For 2013, overall premium volume for insurance for airlines is likely to be less than \$1.5 billion, a more than \$150 million drop from 2012 and the lowest level since the Sept. 11, 2001, terrorist attacks in the United States, according to the "Airline Insight" report. Willis said increased competition, growth in exposures and low loss levels are among factors that led to rate reductions in the fourth quarter of 2013, when most airlines renew their coverage. "Market conditions are being described by some as the 'softest for a generation,'" Phil Smaje, CEO of Willis Aerospace in London, said in a statement accompanying the report.

Former RIMS President Cheri Hawkins dies at 80

■ Cheri J. Hawkins, a former president of the Risk & Insurance Management Society Inc., passed away Dec. 25 at the age of 80 after an extended bout with pneumonia and other diseases. In addition to being the first female president of RIMS, Ms. Hawkins served on several boards of directors, including those of the Vermont Captive Insurance Association and Panol Insurance Co., a subsidiary of the U.S. Olympic Committee, and was also on the board of governors of the Bermuda Risk Exchange Association.

Citigroup settles suit over sour mortgages for \$250 million

■ Citigroup Inc. paid \$250 million to taxpayer-owned Fannie Mae and Freddie Mac to settle a lawsuit over soured mortgage securities, the regulator of the two housing finance firms said. General Electric Co. also paid \$6.25 million to settle a similar suit, the Federal Housing Finance Agency said in a statement. Ally Financial Inc., the former parent of bankrupt Residential Capital L.L.C., paid \$475 million. Citi, GE and Ally had previously settled the claims in 2013, but none had disclosed the financial terms. The banks are among 18 financial institutions that were sued in 2011 for allegedly misleading Fannie Mae and Freddie Mac, the biggest provider of housing finance in the United States, into buying more than \$200 billion in mortgage-backed securities.

Reuters

All Risks acquires Stonebridge Underwriters

■ Hunt Valley, Md.-based All Risks Ltd. has acquired St. Paul, Minn.-based Stonebridge Underwriters Inc., a national general agency and program administrator. Terms of the transaction were not disclosed.

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Insurer to defend Donkey Ball claims

An insurer must defend bodily injury claims filed by two players tossed off their donkeys during a “donkey basketball game” because the event is not technically a sport that would be excluded under the organizer’s liability coverage, a federal judge ruled last month.

The dispute arose from a negligence suit that two teachers in the Pennsbury School District in Bucks County, Pa., filed in 2010 against Buckeye Donkey Ball L.L.C., a company that arranges “Donkey Ball shows” — events when people play basketball while riding donkeys.

The teachers, Amanda Sciolla and Meredith Hopkins, said they were thrown to the ground during an equine spectacle at Charles Middle School on Nov. 13, 2009, and sought more than \$75,000 in damages. But Buckeye’s insurer, West Bend Mutual Insurance Co. of West Bend, Wis., denied coverage, citing a policy exclusion that excludes coverage for bodily injury to participants in any “sports or athletic contests or exhibitions which are sponsored by Buckeye Donkey Ball L.L.C.”

Cop’s fraud foiled by pizza delivery driver

An eagle-eyed eyewitness has foiled an off-duty cop’s alleged scheme to commit insurance fraud.

Philadelphia police officer April Shaynick was arrested on charges including insurance fraud, leaving the scene of an accident and conspiracy last month. Prosecutors allege that Ms. Shaynick’s 2004 Honda Civic was involved in a hit-and-run accident with a 2003 Mazda Protégé on Aug. 9. According to the complaint, Ms. Shaynick fled the scene after the collision and subsequently filed an insurance claim with Allstate Insurance Co. the next day, claiming that her car was parked on the street outside her home when it was struck.

The keystone cop’s scheme was ultimately undone by a pizza delivery driver who witnessed the accident was able snap a photo of Ms. Shaynick’s license plate as she fled.

According to press reports, the Philadelphia Police Department has suspended Ms. Shaynick, a 14-year veteran of the force, for 30 days with the intent to dismiss.

FIRST AMENDMENT PROTECTS RAPPER’S STAGE NAME



RANDY MIRAMONTEZ/SHUTTERSTOCK.COM

William Leonard Roberts II performing as Rick Ross.

A convicted cocaine dealer cannot sue a rapper for having a similar stage name because the musician’s persona and name are protected by the First Amendment, a California appellate court ruled in December.

William Leonard Roberts II performs as Rick Ross, and his music often includes “fictional accounts of selling cocaine,” court records show.

The similarly named Ricky D. Ross ran a “cocaine-dealing enterprise” in the 1980s that sold as much as \$3 million in drugs per day at its height, according to court records.

Mr. Ross was arrested in 1989 and served “lengthy sentences” for his drug-dealing activities, records show. While in prison in 2006, Mr. Ross found out that Mr. Roberts was performing under the Rick Ross stage name and sent Mr. Roberts a cease-and-desist letter that went unacknowledged.

In 2010, Mr. Ross sued Mr. Roberts, his record label and associated entities, alleging that Mr. Roberts misappropriated his name and identity for financial benefit. A Los Angeles County Superior Court judge ruled against Mr. Ross in 2012, finding that his claim was not filed in a timely manner. Mr. Ross, who was released from prison in 2009, appealed.

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Patient plaintiff nets big in copyright suit

Patience is a virtue. Just ask Claude Robinson, a Canadian plaintiff who prevailed to the tune of \$4 million Canadian dollars (\$3.7 million) in a copyright infringement suit with its roots in the 1980s.

After developing and pitching a children’s television show in the 1980s called “The Adventures of Robinson Curiosity,” based on the novel “Robinson Crusoe” by Daniel Defoe, Mr. Robinson was shocked to see “Robinson Sucroe” pop up on television in 1995, which not only bore a striking resemblance to his idea but was produced by companies including Cinar Corp. and France Animation, which had access to his project.

Mr. Robinson sued in Quebec, Ontario, civil court in 1994.

After an 83-day trial including more than 40 witnesses, Mr. Robinson initially was awarded CA\$5.2 million in damages, including CA\$607,489 in compensatory damages, CA\$1.7 million to disgorge profits, CA\$400,000 for psychological harm, CA\$1 million for punitive damages and CA\$1.5 million in legal fees.

After an appeals court affirmed the ruling but reduced the damage award to just more than CA\$2 million, the Supreme Court of Canada last month nearly doubled those damages back to CA\$4 million.



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Doughnut war rising in Alabama

In a country that can’t seem to get its fill of televised contests between rival cupcake shops, legal skirmishes over doughnuts probably shouldn’t be surprising.

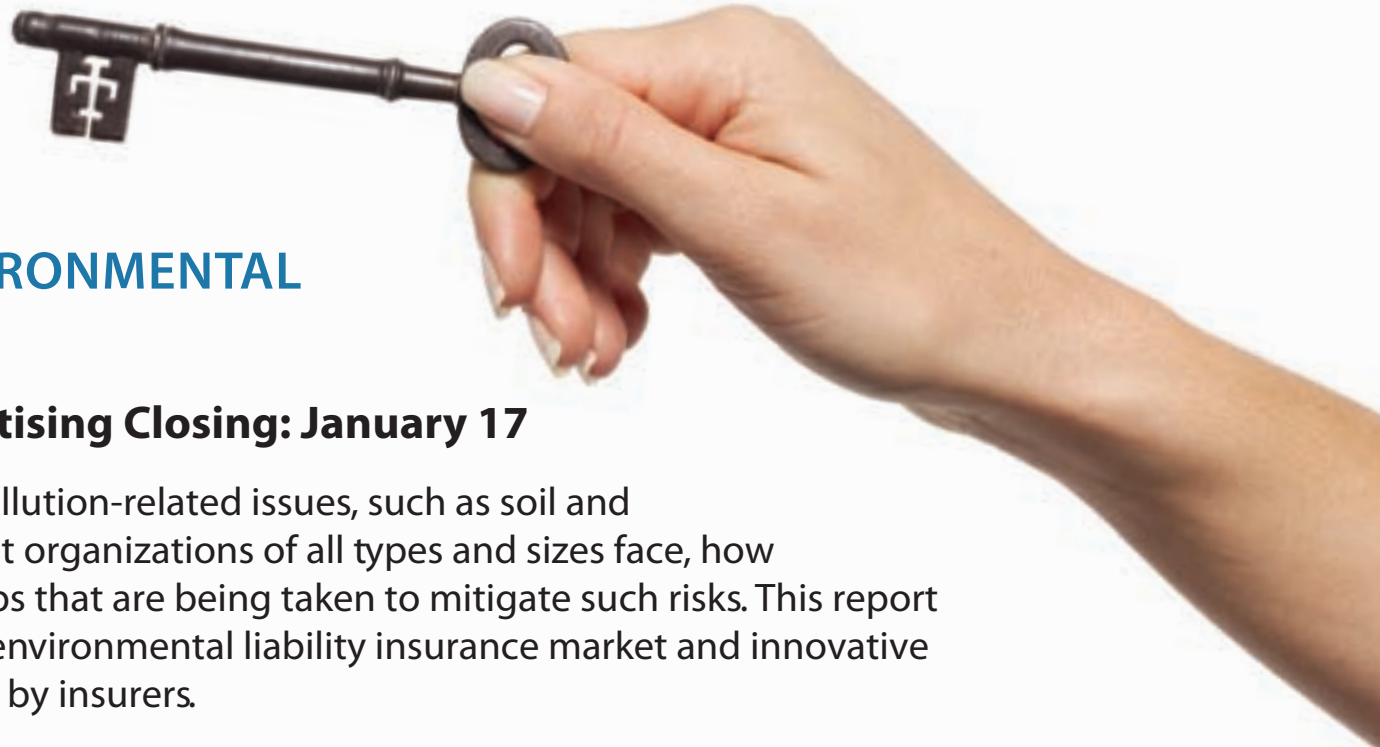
YoYo Donuts L.L.C., in Minnetonka, Minn., filed a lawsuit in an Alabama federal court this month, claiming its trademarked name was being used illegally by a Homewood, Ala.-based bakery operating as YoYo Donuts Etc. Inc.

Although YoYo Donuts has been in operation in Minnesota since 2010, its application for a federal trademark was not approved until August 2013, two years after YoYo Donuts Etc. opened.

In another case in Alabama, the owners of the Pelham, Ala.-based Donut Joe’s chain accuses two former employees of trademark infringement and unfair competition.

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