$5

Business Insurance

January 18, 2010

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In Brief

Hartford plans $100M cat bond

Hartford Fire Insurance Co., a unit of Hartford Financial Services Group Inc., plans to place a $100 million catastrophe bond to cover a portion of its U.S. hurricane exposures. Standard & Poor's Corp. rated the notes BB+. The bond, Foundation Re III Ltd., is expected to be placed at the end of January. If successful, it will be the first cat bond transaction during 2010.

Commercial rates remain soft: RIMS

Commercial insurance prices fell in the fourth quarter of 2009, and the U.S. market is likely to remain soft in 2010, according to a pricing index. The Risk & Insurance Management Society Inc.'s Benchmark Survey found few signs that the market is close to firming. The survey is administered by New York-based Advisen Ltd. Workers compensation renewals saw premiums decrease 5.5% on average, and general liability renewals decreased 5%, the report said. Premiums for directors and officers liability policies declined 2.8% overall, while property premiums fell less than one-half of a percentage point, according to the survey. In addition to declining prices, demand for insurance has decreased as some cash-strapped companies attempt to limit costs and others go out of business, the report said.

PBGC takes over plans at Crucible, Hartmarx

The Pension Benefit Guaranty Corp. has taken over underfunded pension plans sponsored by bankrupt specialty

See **IN BRIEF** page 22

HEALTH CARE REFORM

Obama, labor agree to tax on benefits

Pact removes major hurdle for reform bill

By JERRY GEISEL

WASHINGTON—A tentative accord on a plan to tax costly health insurance plans that was hammered out last week between the White House and organized labor brings a final agreement on health care reform legislation within sight, experts say.

The agreement on a health care tax ends union opposition to what was one of the most controversial provisions in the legislation, which had threatened to block a final agreement.

"It takes off the table one of the showstoppers. This was one of the big stumbling blocks that had to be resolved to improve the odds" of passage, said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington. "With labor unions now promising to endorse the legislation, a lot of underbrush has been cleared away."

With the accord on the health care tax, "an agreement in principle on other major issues may not take much longer," said Paul Dennett, senior-vp health care reform with the American Benefits Council in Washington.

"We've seen tremendous progress over the last couple of days," said AFL-CIO President Richard Trumka in a briefing with reporters.

But some uncertainties lie ahead, Mr. Dennett noted. Still unknown, for example, is whether the health care tax agreement will be embraced by rank-and-file Democrats, especially in the House, which did not include a health care

See **TAX** page 21

AP PHOTO

President Obama's support for a tax on some health plans forced unions to the bargaining table, experts say.

CATASTROPHES

REUTERS/LANDOV

Survivors look at one of many buildings destroyed by a deadly earthquake that struck Haiti last week, killing more than 100,000. Donations from numerous governments and organizations flowed in to help the relief effort.

Regional catastrophe pool responds to Haiti quake

By JOANNE WOJCIK

PORT-AU-PRINCE, Haiti—Despite widespread devastation and a six-figure death toll from the magnitude 7.0 earthquake that struck Haiti last week, insured losses likely will be a fraction of economic losses, industry sources say.

While the Caribbean nation's private insurance market is small, Haiti's government will receive an $8 million capital infusion from the Caribbean Catastrophe Risk Insurance Facility, a pool the World Bank set up in 2007 to provide economic stability for the catastrophe-prone region.

Although insurers were not paying sizable claims stemming from

See **QUAKE** page 22

LIABILITY & LITIGATION

Medicare gets aggressive in drive to recoup medical costs

By ROBERTO CENICEROS

The U.S. government's first-of-its-kind lawsuit against all parties that settled a pollution liability case signals Medicare's aggressive push to make sure it does not pay medical expenses when others are to be the primary sources of payment, observers say.

The suit filed Dec. 1, 2009, cites Medicare Secondary Payer provisions in federal law that allow Medicare to recover past and future medical expenses from all parties—insured and self-insured—involved in a liability claims award or settlement that includes Medicare-eligible individuals.

$300M

MEDICARE is seeking part of a $300 million pollution settlement to meet related medical expenses it paid.

With the suit, "CMS basically let the insurance and self-insured world know, 'This is an important issue for us (and) if you are resolving a case and you don't tell us and somehow we are not collecting this money, we are going to come after you,'" said Roy Franco, director of risk management strategies for supermarket chain Safeway Inc. in Pleasanton, Calif.

Mr. Franco also is co-chairman of the steering committee for the Medicare Advocacy Recovery Coalition, a group formed in 2008 to advocate improvements in the Medicare Secondary Payer program.

See **MEDICARE** page 21

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NEWSPAPER

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HEALTH CARE REFORM

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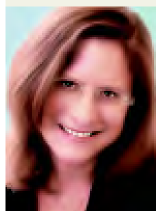
Business Insurance's health care reform section is dedicated to the latest legislative news updates, FAQs on health care reform and COBRA, a timeline of key health care laws and more. Go to *www.BusinessInsurance.com/HealthCareReform*.

BI VIDEO

Health reform expert tackles employer queries



In a new video, *Business Insurance* talks with Chantel Sheaks, principal at Buck Consultants L.L.C., about health care legislation now in committee and how it might affect benefit managers. Go online to *www.BusinessInsurance.com/Video*.

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

Business Insurance (ISSN 0007-6864) Vol. 44, No. 3, is published weekly, except for combined issues the first week of June, the second week of June, the third week of June, the fourth week of June, the first week of July, the second week of July, the fourth week of July, the first week of August, the second week of August, the third week of August, and no issue the fourth week of December, by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. $5 a copy and $125 a year in the U.S. $130 in Canada and Mexico (includes GST). All other countries, $230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3.
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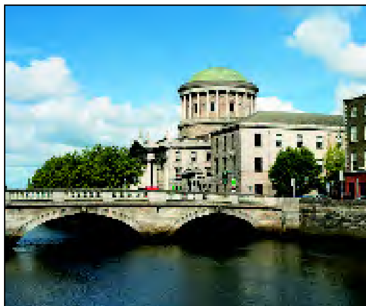
INTERNATIONAL

Irish attractions lure firms from rival domiciles

By MICHAEL BRADFORD

DUBLIN—Ireland's reputation as a stable, well-regulated insurance domicile with reasonable taxes is attracting interest from companies seeking more favorable tax treatment or worried about remaining in jurisdictions carrying the "tax haven" stigma.

XL Capital Ltd. is the latest insurer to make Ireland the new home for its holding company operations, announcing last week that it will leave the Cayman Islands in a redomestication expected to be completed July 1. The move does not affect XL's Hamilton, Bermuda-based operation.



Dublin has emerged as a welcoming center for international business, including insurance.

XL's move comes after Willis Group Holdings Ltd. moved from Bermuda to Ireland, a redomestication it announced last September and completed this month. Willis Group Holdings P.L.C. now is the parent's name.

Ireland also was the domicile of choice last year for Beazley Group P.L.C., which effectively redomiciled to Dublin by incorporating a new parent company in Jersey that is a tax resident in Ireland.

Other companies likely are considering moving to the Emerald Isle, sources say.

"There certainly seems to be a trend," said Catherine Thomas, managing senior financial analyst with A.M. Best Co. Inc. in London. Whether more companies arrive in Ireland may depend partly on how U.S. President Barack Obama's administration ultimately treats tax havens, she said. "It will be interesting to see what happens with legislation in the pipeline in the U.S. that could affect companies based in Bermuda and the Cayman Islands."

Stuart Secker, tax partner at KPMG L.L.P. in London, said the move by XL is not expected to change its tax situation, at least in the short-term, but "it does offer options against some of the mood music coming out of the U.S. in attacking tax havens. It's a friendlier place to do business from," he said of Ireland.

See **IRELAND** page 18

AP PHOTO

Florida citrus growers are bracing for losses from a recent winter storm that iced orange groves in South Florida and chilled much of the Southeast.

CATASTROPHES

Old Man Winter puts squeeze on Florida orange growers

By JEFF CASALE

MIAMI—Florida growers have yet to determine how much damage their crops suffered from the cold snap that gripped most of the country the first week of January, but insurance experts say much of the expected losses will be covered.

Freezing temperatures descended on South Florida and much of the Southeast for more than a week, causing anxiety for farmers, particularly orange growers. Some agricultural insurance experts said growers may have avoided large freeze losses, while growers' groups still were assessing how much of this year's orange crop will be lost.

"The quick answer is that we don't know the extent of the damage yet," said Ray Royce, executive director of the Sebring, Fla.-based Highlands County Citrus Growers Assn. Inc. Jan. 10 "was the coldest day of the seven or eight days of

See **FREEZE** page 20

P/C INSURERS

Treasury chief Geithner on hot seat over AIG

Paulson, Bernanke also reportedly will be asked to testify

By COLLEEN McCARTHY

WASHINGTON—Intensifying political pressure concerning counterparty payments that American International Group Inc. made after its federal bailout has put U.S. Treasury Secretary Timothy Geithner on the defensive.

A hearing by the House Committee on Oversight and Government Reform set for Wednesday will focus on Mr. Geithner's role in AIG's September 2008 bailout, when he was head of the Federal Reserve Bank of New York, and seeks to explain "how and why taxpayer dollars were used for a backdoor bailout," Rep. Edolphus Towns, D-N.Y., chairman of the panel, said in a statement last week.

AP PHOTO

U.S. Rep. Edolphus Towns took Treasury Secretary Timothy Geithner to task over counterparty payments made as part of AIG's bailout.

Separately, controversial bonuses paid to AIG executives are back on the agenda of the House Financial Services Committee, Rep. Barney Frank, D-Mass., last week said of the panel he chairs.

Mr. Geithner has come under fire since early January reports that the New York Fed advised the New York-based insurer to limit its public financial disclosures. E-mails obtained by the government and disclosed by Rep. Darrell Issa, R-Calif., showed that the FRBNY instructed AIG to withhold information in a December 2008 regulatory filing about more than $62 billion it paid to counterparties.

The counterparty payments of 100 cents on the dollar were to Goldman Sachs Group Inc., Societe Generale S.A., Bank of America Corp. and others to liquidate credit default swaps an AIG unit had sold them, officials said.

Questions remain "why these companies received full compensation, when the best they could have hoped for in a bankruptcy proceeding was perhaps 30 or 40 cents on the dollar," Rep. Towns said.

Mr. Geithner will be asked to testify about his role in AIG matters, including any advice to AIG about counterparty payments, Rep. Towns said. Last week, Rep. Towns subpoenaed FRBNY documents related to the matters, including e-mails and phone logs.

In a CNBC interview last week, Mr. Geithner defended the decision to pay the counterparty banks in full, saying the FRBNY was legally obligated to do so.

The Obama administration and the FRBNY have said Mr. Geithner was not aware of e-mails that FRBNY lawyers sent advising the insurer to limit public disclosures about

See **AIG** page 18

RISK MANAGEMENT

Risk managers under pressure to rein in collateral costs

Companies examine alternative strategies to letters of credit

By ROBERTO CENICEROS

Tight credit markets that have raised risk management collateral costs are not expected to ease significantly in 2010, but policyholders have new options and strategies that can help, experts say.

Despite slight improvements in economic conditions and credit availability in last year's fourth quarter, insurers continue to aggressively manage the credit risk they take on from policyholders. At the same time, the cost and limited availability of bank letters of credit remain a challenge for policyholders.

Risk managers, meanwhile, are under pressure from upper management to reduce collateral costs and limit their LOC use to keep scarce capital available for other corporate needs.

"It's not only the diminished capacity in letters of credit that banks are willing to put up, but the increased costs for them," said Dominic Zullo, director of risk management for San Diego-based Cubic Corp., a defense and transportation contractor. "It's double-headed."

Brokers note that costs for bank-issued LOCs are four or five times higher than a year ago, prompting risk managers to turn to other strategies, such as new trust accounts arranged by insurers, surety bonds and loss-portfolio transfers. Also, some are aggressively seeking to free up old collateral insurers hold for past policy years.

'It's not only the diminished capacity in letters of credit that banks are willing to put up, but the increased costs for them. It's double-headed."

Dominic Zullo, Cubic Corp.

In recent years, LOCs have been the most widely used instruments for posting collateral that insurers require to guarantee payment of commercial auto, general liability and workers compensation claims falling within large deductibles.

Self-insurers also use them as the collateral state regulators require to guarantee payment of workers comp obligations should an employer face financial problems.

Credit concern "is probably the most frequent phone call (subject) I get from customers right now," said Gary Kaplan, president of construction for Zurich North America Commercial. "They are absolutely lasered in on this.

"Their executive committees are looking at where their capital is being utilized, and there is lots of pressure on them to make sure they are utilizing it to the maximum" benefit, he said.

Last fall, some insurers introduced new trust accounts as alternatives to LOCs.

Zurich, for instance, offered customers with cash an opportunity to place money in either a trust fund or a certificate of deposit as collateral. Zurich works with banks that hold the funds and pay interest to insureds.

See **COLLATERAL** page 14

LIABILITY & LITIGATION

Savings cloud risks of outsourcing tech

By JUDY GREENWALD

As the popularity of cloud computing increases, companies should be aware of the related liabilities, particularly in the areas of security and data access, experts say.

Cloud computing promises cost savings by allowing companies to outsource their information technology infrastructure by using Internet technology to access hardware and software services. The data may be stored in another state or even another country.

By taking advantage of economies of scale, the cloud computer provider can make available up-to-date software and computer capacity in a highly cost-effective manner. But the risks of such an approach underscore the need for due diligence in selecting a provider and ensuring safeguards, including insurance coverage (see stories, pages 10, 11+).

See **CLOUD** page 10

FEDERAL LEGISLATION

Flood cover doubts raise concerns

Short-term extension of federal program creates uncertainty

By MARK A. HOFMANN

WASHINGTON—Congress' latest failure to give the National Flood Insurance Program a long-term extension is causing headaches for some risk managers.

The program, which provides up to $500,000 in property coverage for commercial structures and $500,000 in contents coverage, is used by some risk managers to provide a first layer of coverage on which larger limits can be stacked. But the NFIP, which dates back to 1968 as a means to encourage better land use by minimizing the exposure of property to flood damage, has become a political football over the past several years.

AP PHOTO

Some risk managers rely on the National Flood Insurance Program to provide first-layer coverage.

A major reason is that the House and Senate have been unable to agree whether the program should be expanded to include windstorm coverage. The House has approved legislation that would require the NFIP to offer windstorm coverage, a move that the property/casualty insurance industry opposes. The Senate has refused to add windstorm coverage.

The result has been a series of short-term extensions of the program, the most recent of which will expire Feb. 28.

"Unfortunately, it's hard to see the current Congress breaking the logjam that's preventing meaningful reform of the NFIP," said Jimi

See **FLOODING** page 17

P/C INSURERS

Insurers struggle to grow in economic downturn

Sector weathers crisis, but outlook unclear

By RODD ZOLKOS

NEW YORK—The property/casualty insurance industry weathered the financial crisis and economic downturn as well as or better than other industries, but any industry growth won't come until an economic recovery gains traction, according to a group of industry executives and experts.

Speakers at this year's Property/Casualty Insurance Joint Industry Forum last week in New York suggested the property/casualty industry's performance in the face of the financial crisis and recession is a testament to the industry's business model and companies' governance practices.

"We're a pretty resilient group," said Thomas F. Motamed, chairman and CEO of Chicago-based CNA Financial Corp.

"One thing we have to remember is, we're in the business of paying claims," Mr. Motamed said. "And all of us were liquid and paying claims during the credit crisis."

Another speaker on the event's CEO panel, Patrick Thiele, president and CEO of PartnerRe Ltd. in Pembroke, Bermuda, said his company used the financial crisis as an opportunity to review its governance process. PartnerRe found that its

See **FORUM** page 17

TOM MADAY

'One thing we have to remember is, we're in the business of paying claims. And all of us were liquid and paying claims during the credit crisis.'

Thomas F. Motamed, CNA Financial Corp.

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Businesses hone ERM plans: Survey

By MARK A. HOFMANN

More companies are moving beyond basic enterprise risk management practices, according to an Aon Corp. survey released last week.

The Global Enterprise Risk Management Survey 2010, conducted by Aon's global enterprise risk management practice, found that 62% of the survey respondents reported going beyond basic ERM, compared with only 38% in Aon's inaugural ERM survey in 2007.

"Respondents indicate that the primary drivers for investment in ERM are improving governance and transparency, adopting best practices, and improving performance and decisionmaking," Aon said in the survey. "The number of organizations seeking improved performance and decisionmaking with ERM has risen dramatically since the 2007 survey."

Aon said 55% of the 201 client and nonclient respondents described themselves as being at the "defined" or "operational" level of ERM, "meaning that they have policies and techniques in place to identify, measure, monitor and manage some risk components; this represents a healthy 20-point increase over the 2007 level.

"The number of respondents who have matured to the 'advanced level' since 2007 has more than doubled from 3% to 7%, and respondents in this stage of maturity report they now have dynamic ERM processes that allow adaptation to changing risks and opportunities," Aon said in the survey.

Aon uses a five-stage ERM maturity model to evaluate ERM programs. The stages range from "initial/lacking" through "basic," "defined," "operational" and "advanced."

The advanced ERM level is marked by a "well-developed ability to identify, measure, manage and monitor risks across the organization; process is dynamic and able to adapt to changing risks and varying business cycles; (and) explicit consideration of risk and risk management," according to Aon.

Aon stressed that ERM is not a one-size-fits-all process.

"It is clear from the survey findings that the ERM journey is organic in nature and unique for each organization; it cannot be completed with a cookie-cutter approach," Aon said in the survey. "The objective is to have ERM rooted in an organization's individual culture, management processes and strategic vision, leading to enhanced risk-based decisionmaking. Advanced practitioners have honed this capability and are better positioned to capitalize on emerging opportunities."

"As companies mature on the (learning) curve, they really have the ability to drive value in the organization," said Laura Taylor, global practice leader of ERM for Aon Global Risk Consulting in New York and a survey co-author. "Specifically, the respondents identified enhancing shareholder value, optimizing and reducing total cost of risk, and strengthening business resiliency and increasing operational efficiency."

The report is available online at *www.aon.com/ermsurvey2010.*

ERM IMPLEMENTATION BARRIERS

Barrier	%
Lack of tangible benefits	40%
Lack of skills and capability to embed ERM business	34%
Lack of senior management sponsorship	31%
Unclear ownership and responsibility for implementation	30%
Lack of a clear implementation plan	28%
Failure to clearly communicate the business case for change	27%
Lack of capital to invest in risk management	24%
Lack of access to key people	12%
Other	7%

Source: Aon Corp.'s Global Enterprise Risk Management Study 2010

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Commentary

Literacy challenges extend to health care

JOANNE **WOJCIK**

Senior Editor Joanne Wojcik can be reached at: jwojcik@businessinsurance.com

In Healthy People 2010, a 10-year set of objectives developed by the U.S. Department of Health and Human Services, improving the general population's health literacy is seen as integral to ensuring patient safety.

Among other things, health literacy is defined as the ability to understand instructions on prescription drug bottles, appointment slips, educational brochures, doctor directions and consent forms, and the ability to negotiate complex health care systems. It requires sophisticated reading, listening, analytical and decisionmaking skills applied to health care situations.

But it will be difficult for individuals who lack basic literacy skills to achieve these goals.

The other day while driving, I noticed a sign on an area strip mall marquee greeting passers-by with the proclamation, "Happy Holiday's." By putting an apostrophe between the "y" and "s," the signmaker made it possessive, not plural. As a person who writes for a living, such misuse of the English language, especially in public displays, annoys me.

It is a perfect example of the functional illiteracy we're dealing with as a society. It's becoming acutely apparent to me that the emphasis educators have placed on math and science in recent years has served only to enhance serious deficiencies in other academic areas, such as basic communication skills.

> 'Even a slight transposition of letters in a person's name could have serious consequences.'

The Institute of Medicine reports that 90 million people—nearly one-third of the U.S. population—have difficulty understanding and using health information. As a result, patients often take medicines on erratic schedules, miss follow-up appointments and do not understand instructions such as "take on an empty stomach."

I recently received a letter from my health insurer's pharmacy benefit manager addressed to "Joanne Wojchick." If the letter had come from almost any other source, I might not have been too concerned. But the PBM, which is part of my health insurer, should have the proper spelling of my name on file, particularly because the PBM issued me an insurance card with my name—spelled correctly—printed on it. What was even more amazing was that it had the wrong house number. It's a wonder it ever got to me.

At first I was going to mark it "addressee unknown" and return it to the PBM. But on second thought, I decided to open it to see what was inside. The envelope contained a folded plastic bag and a return postage label, also inscribed with the butchered version of my last name, and a note explaining how to return a mail-order prescription.

Because I don't use the PBM's mail-order service, I called my health plan. The customer service representative transferred me to the PBM's "merchandise return department," where a recording asked that I leave a detailed message, which I did. That was three weeks ago.

A lot of people stumble over my last name. But even a slight transposition of letters in a person's name could have serious consequences.

A few years ago, after receiving several prescriptions from a local pharmacy in which my name was spelled "Wojick" instead of "Wojcik," I insisted that the pharmacist correct the spelling in her computer. Afterwards, my drug copayments all increased. When I asked why, she explained to me that my prescriptions had been erroneously processed under the insurance terms of someone whose name was spelled "Wojick" and whose copayments were lower.

That got me to wondering what this "Joanne Wojick" might have thought when she received an explanation of benefits from her insurer after I filled a prescription for a colonoscopy prep kit. Then again, maybe she was one of those 90 million people who don't know how to interpret an EOB.

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Business Insurance OPINIONS

Don't make health care taxes more taxing

FEW, IF ANYONE, in the employee benefits field would be in favor of taxing employer-provided health care coverage.

The tax-favored status of group coverage, which provides that employers receive a tax deduction for the premiums or claims they pay and employees are not taxed on the value of those employer contributions, has advantages for firms and their workers. Employers have an incentive to offer ample coverage and, at least in the case of workforces covered by collective bargaining agreements, employees have an incentive to demand extensive benefits. Giving employees protection from large medical bills certainly is in everyone's best interest.

But it is clear that the days of unlimited tax benefits for employer-provided coverage are coming to an end. The loss of tax revenue to the government resulting from the tax break has become too great, so employers and their workers will have to come to terms with changes to the tax-favored status of health care coverage.

Giving employees protection from large medical bills certainly is in everyone's best interest.

As Congress works on the final details of health care reform legislation, some of those tax changes are taking shape. As we report on page 1, congressional leaders, the White House and organized labor have worked out a deal in which employer-paid premiums above a certain level would be subject to a 40% excise tax. Revenues raised from the tax would be used to help fund federal premium subsidies for the low-income uninsured.

While complete details are not yet available, the tentative agreement appears to be a significant improvement over a tax cap embedded in the health care reform bill previously passed by the Senate. Among other things, the cost threshold that would trigger the tax would be higher for plans with a large percentage of older employees, whose costs are higher not because of generosity of benefits but as a result of employee demographics.

We would hope, as legislators put the finishing touches on the plan, that fairness and workability are their guideposts.

Medicare law tough, but must be followed

WHEN IT COMES to making sure Medicare pays only those claims it is obligated to pay, the federal government means business.

As we report on page 1, the government is taking a particularly aggressive stance on recovering funds that the Medicare program paid out but are the responsibility of another, primary payer. The feds are suing a group of plaintiffs and defendants that agreed to a $300 million settlement of a pollution liability case.

The Medicare Secondary Payer law offers the government a powerful tool in recovering funds from other payers—namely, private businesses, insurers and individuals.

The law also established reporting requirements for claims in which the state/federal health care programs might have any financial stake. That means that even ostensibly unrelated claims, such as directors and officers liability or pollution cleanup liability, could fall under federal government scrutiny and recovery efforts.

While the government may be well within its rights to recover funds, we think the law is problematic for businesses. Risk managers and insurance companies have no choice but to comply.

WRITE

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THIS WEEK'S RESULTS

Q What are the chances that Chris Dodd will push through financial services reform before he leaves the Senate in January 2011?

AP PHOTO

Prospect looks good 10%

50/50 50%

Not much chance 40%

NEXT WEEK'S QUESTION

Q: Should Congress impose a tax on "Cadillac" health plans?

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ADVERTISING: Boston: 617-292-4856; Chicago: 312-649-5286; Denver 303-898-4043; London: 44-207-457-1412; New York: 212-210-0133
SUBSCRIPTIONS: Detroit: 888-446-1422

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Cloud: Savings obscure risks of outsourcing technology services

CONTINUED FROM PAGE 4

Many companies are exploring cloud computing to cut costs, observers say.

"I think people are moving pretty quickly" to use cloud computing, said Jeffrey D. Neuburger, a partner with law firm Proskauer Rose L.L.P. in New York. "We're doing a lot of cloud computing work for clients."

But because the data no longer is in the end-user company's hands, there is a potential loss of control and accessibility, observers say.

"Although cloud computing offers many opportunities, it also brings with it many risks," Mr. Neuburger said.

"Fundamentally, it involves a certain lack of control over where your data and applications reside. Along with that comes the risk of system failure, comes the risk of unauthorized access to your materials, comes the risk of a lack of control over privacy and data security, and risks associated with intellectual property and privacy," he said.

Foresight needed

R. Jason Straight, New York-based senior managing director, computer forensics & ESI consulting, with consulting firm Kroll Ontrack Inc., a unit of Kroll Inc., said, these issues are "not something people are thinking about when they go to take advantage of the huge, very compelling cost advantages of moving to cloud computing." When issues arise, "there's no time to go back and figure these things out. You need to address them in advance," he said.

Firms should first consider whether cloud computing is even appropriate for their needs, Mr. Neuburger said.

"If you have an application that involves sensitive information or needs to be processed on an immediate, instantaneous, real-time basis, it may not be well-suited for a cloud environment," he said, noting that information technology staff need to conduct this evaluation.

Peter S. Vogel, a partner with law firm Gardere Wynne Sewell L.L.P. in Dallas, said companies operating their own computer may have it in their office "in an air conditioned, secure location" and those conducting daily backup of the data "know it is being taken care of." But with cloud computing, "you don't necessarily know" those steps are being taken, even if the contract provides for them, Mr. Vogel said.

Once the decision is made to use cloud computing, security is a major concern, say experts. Mr. Straight said while data management can be delegated to a third party, "the accountability for keeping that data safe will always lie with the company."

Robert J. Scott, managing partner with law firm Scott & Scott L.L.P. in Dallas, said, "The first thing you have to be thinking about is the risks associated with liabilities arising from loss of customer information that's entrusted to the cloud provider."

Businesses that have customer records have a "nondelegatable duty" and "can't contract that to another party and absolve itself of liability. As soon as you do a cloud arrangement involving customer information, then you've immediately put yourself in a risk situation," Mr. Scott said.

In addition, when there is an internal breach, "you're going to need to access logs and other information" from the cloud computing provider to investigate what caused the breach, Mr. Straight said.

Experts say access also is a major concern.

"At the end of the day, you want to get your data back and you don't want to be held ransom by the cloud provider," Mr. Vogel said.

He said he knows of a case where a cloud provider alleged that his client breached security and cut the client off from his own data, a situation that took a lawsuit and several years to resolve. "If you get crossways with the cloud provider, you run the risk they will cut off your service and you can't run your business anymore," Mr. Vogel said.

The cloud computing provider's level of service is a critical concern, said Michael R. Overly, a partner with law firm Foley & Lardner L.L.P. in Los Angeles. A company cannot run its business "if data isn't available because the cloud computing provider is having problems with their systems, and it's up for two hours, down for six," he said.

Retrieving data if the cloud computing provider goes bankrupt is another concern, said Mr. Overly.

Another consideration is "how locked in are you to that particular provider?" There "are not a lot of standards in this space right now," which means providers' formats can vary significantly. It "commits you to a much longer term than you may have realized initially," Mr. Straight said.

Legal issues

There are legal issues to consider as well, said Lisa J. Sotto, a partner with law firm Hunton & Williams L.L.P. in New York. "One of the key issues is that it's unclear, typically, where data resides when it's in the cloud, and therefore it becomes (an issue of) which jurisdiction's laws apply to that data."

In Europe, Ms. Sotto said, "you can't move data (via computer) outside the European Union without having a legal basis in place to transfer that data to another jurisdiction."

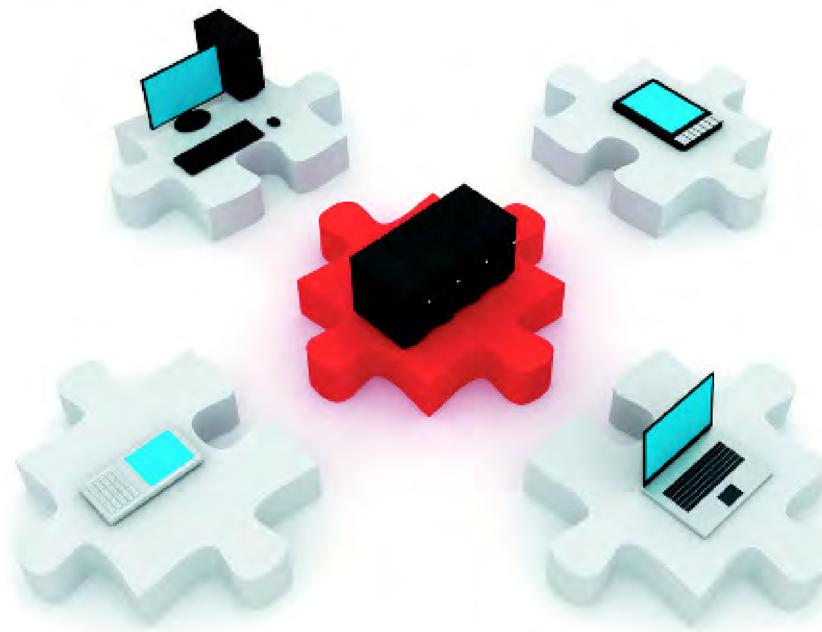
In addition, E.U. privacy laws are stricter than U.S. laws, Mr. Vogel said.

There also could be litigation.

Litigating parties are obligated under federal and most states' rules to preserve relevant electronic evidence. The requirement "becomes much more complicated" when a company has contracted with a cloud provider but "you as a litigant don't have real control" over that data, said Mr. Vogel.

"The largest source of cost and expenditure in the litigation process today is electronic discovery," which can subject firms to millions of dollars in sanctions for failing to preserve this data, Mr. Straight said.

There even is reputational risk, Mr. Scott said. Contracting with a cloud provider in many instances involves a "relatively close partnership between the cloud provider and its customers, and if something goes bad reputationally with that cloud provider, there could be a spilloff, a ripple effect on its customer in terms of the reputational risk."



Firms use cloud computing to cut costs, reduce admin

By JUDY GREENWALD

Cloud computing involves using an Internet browser to access software and hardware on a "cloud," or network of computers that can be located anywhere in the world, rather than a single, owned computer system.

Businesses can have the power of a supercomputer while no longer having to worry about administering and updating complex computer systems; those duties are essentially outsourced to the cloud computing provider.

Cloud computing also can generate considerable cost savings through economies of scale, observers say. It readily accommodates businesses' shifting needs because the cloud's networked servers provide adequate computer capacity whenever necessary.

Companies "don't want to pay to have an internal data center in the backroom for their office, so it's cheaper and easier to offload to a cloud computing company," said Gabriel M. Helmer, an associate with law firm Foley Hoag L.L.P. in Boston.

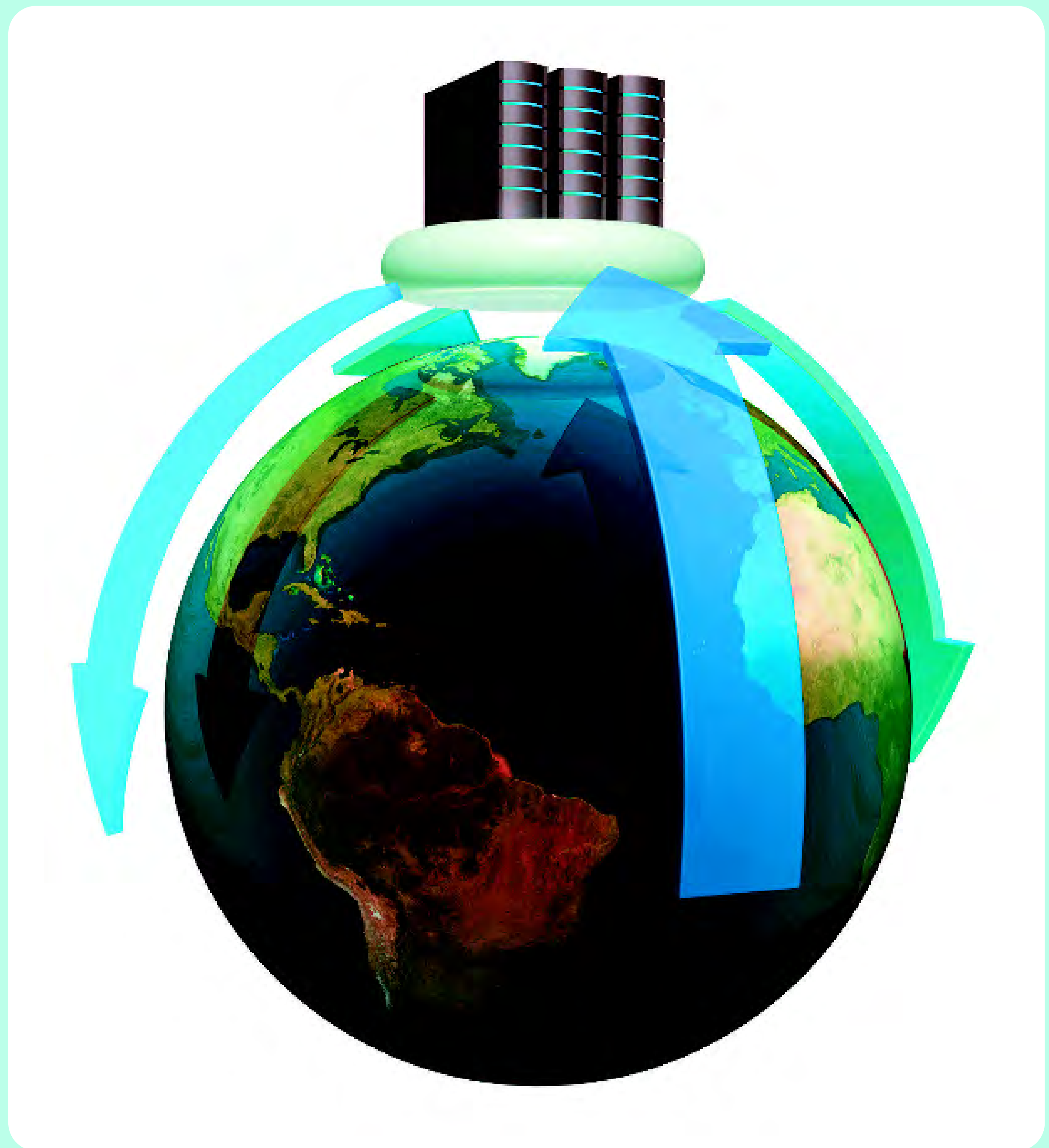
Experts say there are three basic types of cloud computing delivery models: software applications; infrastructure, which provides server and storage capacity; and platforms, which permit developers to build Web applications.

Although the cloud computing label is new, "actually, it's a very old concept," said Peter S. Vogel, a partner with law firm Gardere Wynne Sewell L.L.P. in Dallas. The idea of sharing computer time "has been around for 40 years," he said. "What makes it a little bit trickier now" is that because of the Internet, data no longer is stored in any particular location. "It is just out there on the Internet somewhere," he said.

Some major companies—such as IBM Corp., Microsoft Corp., Yahoo! Inc. and Google Inc.—are in this business, observers note, but numerous smaller vendors also are servicing all aspects of cloud computing. That calls for exercising caution in selecting vendors, experts say. Whatever the vendor's size, a good contract is critical (see story, page 11).

Contract details need to address liability issues

By JUDY GREENWALD



Due diligence is critical in contracting with a cloud-computing provider to avoid potential liability, observers say.

While cloud-computing services are offered by some of the biggest names in the information technology business as well as smaller companies, the need to achieve a contract that protects the company using the services is essential, experts say.

"There is no substitute for negotiating a contract to make sure the right protections are in place," said Peter S. Vogel, a partner with Gardere Wynne Sewell L.L.P. in Dallas.

A company's risk manager, attorney and security department all should help develop a contract with the cloud provider, said R. Jason Straight, New York-based senior managing director, computer forensics & ESI consulting, with Kroll Ontrack Inc., a Kroll Inc. unit whose ultimate parent is Marsh & McLennan Cos. Inc.

Find out what incident response plans the provider has "to react if and when there is a breach in the environment. How will they respond to make sure your data is not affected by that?" Mr. Straight said.

"Make sure there are strong contractual protections related to information security and confidentiality" for personally identifiable information, said Michael R. Overly, a partner with law firm Foley & Lardner L.L.P. in Los Angeles.

Try to get a contract that restricts what the cloud-computing provider can do with the information, so it is subject to the same restriction as the firm with which it is contracting, said attorney David Bender, a Dobbs Ferry, N.Y.-based sole practitioner.

"Ask a lot of questions," said Mr. Straight. "Make sure that your contract is as watertight as can be," he said. "Is this a company that's got some money behind it, that will be able to support me so I can transfer some liability? Many providers are very reluctant to allow large amounts of liability to be transferred under these contracts. You lose the cost-effectiveness (of cloud computing) pretty quickly that way, but certainly companies should inquire as to how much liability could be transferred."

The insurance in place must be considered, said Robert J. Scott, managing partner with law firm Scott & Scott L.L.P. in Dallas. "What kind of indemnification is being provided in the contract, and what is the nature of the insurance coverage?" Are there "sufficiently deep pockets to cover any claims that may arise?"

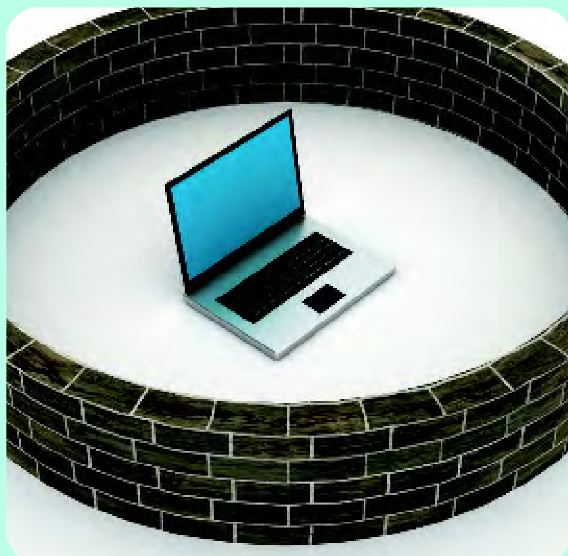
Mr. Scott recommends that firms require their cloud-computing providers to obtain insurance coverage and prove that the firm's customers are named as additional insureds.

Also, "make sure you understand how your data is going to be returned to you, and likewise securely destroyed, to the extent it's resident on the cloud provider's system, after the services are terminated," said Lisa J. Sotto, a partner with law firm Hunton & Williams L.L.P. in New York.

Mr. Scott advised to be sure "it's clear at the end of the term (of the contract) who owns what and how the customer is going to get the information back so they can migrate to a different solution, if that's their intent."

Data "could be dangerous if it's just kind of left hanging around, and those things can be easily addressed in a contract," said Joseph J. Lazzarotti, a partner with Jackson Lewis L.L.P. in White Plains, N.Y.

The finances of the cloud-computing company also should be investigated to address bankruptcy concerns, said Mr. Overly. Ask for financial statements and, if they are a publicly held company, review publicly filed statements, he said.



EXAMINE POTENTIAL CLOUDBURSTS

Questions related to the privacy, security and management of information that cloud-computing users should answer to avoid potential liability include:

- If there is a cloud computing data breach, who is responsible for notifying affected persons and bearing the costs?
- Who owns the data that is placed in the cloud?
- If the data in the cloud is employee e-mail, can the employer still access and monitor those communications? Will new policies be needed?
- Will proprietary information be safe?
- Who has—and should have—access to the data?
- Is the cloud provider required and prepared to comply with the Health Information Technology for Economic and Clinical Health Act, which requires individuals to be notified when their health information is breached? What other legal compliance requirements exist?
- Must a company maintain a backup of data in the cloud?
- Where is the data stored? Is it in the United States or in a country subject to different data security standards? Does one location as opposed to another provide better access or security?
- What if the cloud goes down? How can the company access its data and applications needed to run the business?
- How does the firm move between clouds? Can data be held captive when contract negotiations fall through?
- Can clients' data be put in the cloud? Does the company have to tell the customers where it is?
- What happens if the cloud service provider or customer goes out of business?
- Will applications in the cloud work the same way, be as flexible and respond with the same speed as those on current personal computers?

Source: Jackson Lewis L.L.P.

Market Moves

Independence acquires Alliance Underwriters

LAKE MARY, Fla.—Independence Holding Co. said it has acquired Alliance Underwriters L.L.C., a Lake Mary, Fla.-based managing general underwriter with $30 million in employer stop-loss business.

Part of the acquisition, for which terms were not disclosed, included majority interests in medical management firm MedWatch L.L.C. and cost-containment firm Hospital Bill Analysis L.L.C., which also are based in Lake Mary.

Stamford, Conn.-based IHC said its acquisition of Alliance is intended to better manage large claims and fully insured clients.

"What we found is that the best way to produce consistently profitable business for our insurance company is to actually have an ownership interest in the MGU itself," David Kettig, chief operating officer for IHC, said in a statement. "It's very much within our strategy."

IHC said the Alliance, MedWatch and Hospital Bill Analysis operations and upper management will remain in place. The operations employ approximately 50 people.

Workscape opens office in London

LONDON—Workscape Inc. has opened an office in London.

The human resources and solutions provider based in Marlborough, Mass., said the office will help Workscape serve new markets and provide better service to existing clients across Europe.

Nick Adams has been named managing director for Workscape's European operations. Previously, he was country manager for the United Kingdom and Ireland for MrTed Ltd.

The office is located at St. Clement's House, 27-28 Clement's Lane, London, England, EC4N 7AE. The phone number is +44 (0) 203 207 9033.

Pan-American Life courts Hispanics

NEW ORLEANS—Pan-American Life Insurance Group has launched a subsidiary that offers limited medical benefits.

Pan-American Benefits Solutions Inc. aims to address rising insurance costs to uninsured working Hispanic families by providing accessible, affordable group benefits programs for employers, the company said in a statement.

Aside from serving Hispanics, the unit's goal is "addressing the issues surrounding the rising costs of employer benefits and the growing number of uninsured employees in the U.S.," Jose S. Suquet, chairman, president and CEO of Pan-American Life Insurance Group, said in the statement.

Pan-American Benefits Solutions will offer services and other products, such as group life and medical accident/accidental death and dismemberment, through Pan-American Life Insurance Co.

The company said it expects to offer a full array of medical benefits later this year.

New Orleans-based Pan-American Life Insurance Group offers group life and health insurance in the United States as well as Central and South America.

InsurPac donations hit $1 million mark

WASHINGTON—The Independent Insurance Agents & Brokers of America Inc. said InsurPac surpassed $1 million in donations during 2009.

According to its Web site, InsurPac is the IIABA's political action committee that represents its 23,000 member agencies and 300,000 independent insurance agents and brokers nationally. It seeks personal contributions from agents and brokers to help elect members of Congress who share the Washington-based IIABA's business philosophy.

In 2009, it raised just more than $1 million to break the previous mark of just more than $900,000, the company said in a statement.

More than $1.6 million was disbursed to candidates for federal office in the 2008 elections, with 222 victories in the 241 races that IIABA supported.

"Surpassing the $1 million mark in one year is a huge milestone for InsurPac," said Robert Rusbuldt, IIABA president and CEO. "The Big I membership has always prided itself on political engagement, and the continued growth of InsurPac says that we're not slowing down anytime soon."

TO SUBMIT ITEMS

BI's Market Moves column reports on activities by insurance industry companies and related entities. Please send news of Market Moves to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. or e-mail *mtsikoudakis@businessinsurance.com*.

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Pension funding relief backers seek compromise

By DOUG HALONEN

WASHINGTON—Efforts to hammer out compromise legislation that could give defined benefit pension plan sponsors much of the additional plan funding relief they have been seeking for more than a year are moving ahead, spurred by fears that failure to do so would generate more job losses.

Pension industry representatives long have been arguing that without additional relief from the stiff funding requirements of the Pension Protection Act of 2006, employers will have to plow more money into plans, reducing capital needed to retain existing jobs or to create new ones.

But the funding relief effort has been stymied on Capitol Hill, largely because employers and advocates of plan participants have been unable to agree on what sort of trade-offs employers should be required to accept in exchange for the lifeline.

Plan-participant groups, led by the AFL-CIO and the Pension Rights Center, have sought to make relief available only to companies with active plans that promised not to freeze the plans for a set period of time—a move some employer groups viewed as a step toward mandatory pension coverage.

But the AFL-CIO now is ready to cut a deal that would provide extra relief for companies that maintain active plans, while providing some funding breaks for all employers.

"We are supporting relief for all pension plans, but we would like to reward the good actors—those who have maintained active plans—with something better," said Lauren Rothfarb, an AFL-CIO lobbyist in Washington.

To recharge the effort, Rep. Earl Pomeroy, D-N.D., is considering modifications to a funding relief bill he introduced in October with Rep. Pat Tiberi, R-Ohio.

A spokeswoman for Rep. Pomeroy said the lawmaker, working with colleagues on the House Ways and Means Committee, is trying to come up with a compromise that would provide some funding relief to all defined benefit plan sponsors, and then an additional level of relief to plan sponsors that have "ongoing active plans."

Rep. Earl Pomeroy, D-N.D., is considering changes to a pension funding relief measure.

Rep. Pomeroy's spokeswoman said the lawmaker also was considering whether to tie funding relief to a cap on nonqualified deferred compensation to company executives.

The original bill drew applause from the American Benefits Council but sharp criticism from the Pension Rights Center.

Under Rep. Pomeroy's original bill, single-employer defined benefit plans would be able to amortize 2008 investment losses either over a period of up to 15 years or a nine-year period, at the employer's option. Current law requires plans to amortize their investment losses over seven years.

Using the nine-year approach, plan sponsors would have to make interest payments only on their 2008 investment losses during the first two years. Under the 15-year plan, the sponsor would amortize their 2008 investment losses over the entire 15 years.

Plans that choose amortization relief would have to agree to either continuing benefit accruals to the plan, making a 3% contribution to a defined contribution plan for employees frozen out of the defined benefit plan, or freezing nonqualified deferred compensation of the company's key employees.

In addition, the Pomeroy-Tiberi legislation, called the Preserve Benefits and Jobs Act, would let a plan expand the smoothing of average asset values to 20% of fair market value for 2009 and 2010, from the 10% of fair market value currently.

The Pension Rights Center wants full funding relief available only to companies that continue their sponsorship of defined benefit plans.

"If companies get the relief, they should be required to keep their plans in place and not freeze ongoing benefits for the period of the funding relief," said Karen Friedman, executive vp and policy director at the participants' group in Washington.

Officials at the PRC and other participant groups also have made clear they want to freeze nonqualified deferred compensation for executives of companies that take advantage of any funding relief.

"Why should we give you relief on your pension funding when you seem to have plenty of funding for your executive comp programs?" asked David Certner, legislative policy director for the AARP in Washington.

Yet to be determined, sources said, is whether to limit the legislation to defined benefit plan funding relief alone or to include provisions to enhance defined contribution plan fee disclosures. Rep. George Miller, D-Calif., chairman of the House Education and Labor Committee, wants fee disclosure provisions included in the pension funding relief package.

"Chairman Miller expects that 401(k) fee disclosure will be a part of pension funding relief," said a spokesman for the lawmaker.

Whether Rep. Pomeroy will be able to win support from all parties with a stake in funding relief remains to be seen.

"Assuming that the compromise is sensible, we look forward to working with Rep. Pomeroy and other members of Congress to promote funding relief," said Judy Schub, managing director of the Committee on Investment of Employee Benefit Assets in Bethesda, Md.

"Funding relief for defined benefit pension plans, particularly for 2010 and 2011, is an urgent legislative priority for employer plan sponsors," an American Benefits Council spokesman said in a statement. "We support the efforts of lawmakers to enact this relief as soon as possible. We will need to take a close look at provisions addressing executive compensation practices to ensure that there are no unintended consequences for rank-and-file workers, or plan administration in general."

Doug Halonen is a reporter for Pensions&Investments, a sister publication of Business Insurance.

Collateral: Risk managers under pressure to cut costs

CONTINUED FROM PAGE 4

Travelers Cos. Inc. also introduced a collateral account product. It allows qualifying customers to invest their collateral.

"It's a cash collateral product, but it comes with an asset management feel rather than (the bank or insurer) just holding the cash," said Pam Ferrandino, executive vp and casualty practice leader for Willis HRH in New York.

The savings potential is substantial, said Eric Silverstein, casualty practice leader in Atlanta for broker Beecher Carlson Holdings Inc.

"Instead of (insureds) paying somebody for their LOC—maybe 300 or 500 basis points—they get 50 or 75 basis points on the money in trusts," Mr. Silverstein said. "That is a pretty significant advantage, if you have the cash."

The insurer arrangements are simplified Regulation 114 insurance trusts that banks have provided throughout the years for risk management needs, such as captive owners needing collateral required by fronting insurers, sources said.

Yet some risk managers still prefer to get their collateral from banks rather than from their insurers.

"They feel a sense of control, having a third party hold their assets," Ms. Ferrandino said.

Even before turning to a trust or other alternative to LOCs, however, companies should demand a full accounting of how their insurer will calculate their collateral requirements, said Marc Kunney, casualty practice leader at Integro Insurance Brokers in San Francisco.

The calculations typically are based on loss projections and the insured's creditworthiness. But buyers should seek to understand the parameters insurers will use to calculate those factors, Mr. Kunney said.

Using sureties for collateral also is growing, sources said.

That approach has proved challenging, because surety companies have declined to include certain wording in their contracts insisted upon by insurers requiring collateral.

But "a couple of surety carriers have now agreed they will use wording in the surety bond that mirrors what's in an LOC," said Len Churnetski, chief operating officer in New York for the national casualty practice of Chicago-based Aon Corp. At the same time, some insurers that previously rejected sureties recently have agreed to apply them to satisfy about 20% to 30% of the collateral they demand.

"They are putting their big foot out on the ice and trying to decide if it's thick enough to stand on," Mr. Churnetski said.

Loss portfolio transfers, an arrangement in which underwriters essentially issue a new policy for older, unpaid losses already covered under a past year's insurance policy, also are gaining interest as some insurers find the deals generate substantial premiums, several sources said.

"We have (about) half a dozen (loss portfolio deals) outstanding right now, where a year ago we didn't have anywhere near that," Mr. Churnetski said.

Because LPTs allow insureds to transfer older liabilities by paying a one-time premium, they eliminate collateral requirements for those liabilities.

LPTs also can eliminate a policyholder's administrative responsibility for older claims, but paying an LPT premium also requires cash.

The interest rate environment also limits their appeal because insurers typically offset the cost for assuming the claims by investing the LPT premium. With investment returns low, insurers can't significantly discount the premium.

Still, some insurers recently have developed an appetite for LPTs, if the price is right.

"There is much more activity now because (some) carriers are more aggressive," Mr. Churnetski said. "They want the premiums."

Another strategy requires negotiating with insurers to release past-year policy collateral held for accounts they no longer insure, Ms. Ferrandino and Mr. Silverstein said.

Often, there is little incentive for insurers to release the collateral on "runoff accounts," Mr. Silverstein said.

But recently, some insurers have done so in cases where the losses are winding down and they hope to improve their relationship with a broker or win back an old client.

Mr. McGuinness

Risk management pioneer McGuinness dies at age 87

By JEFF CASALE

NORWALK, Conn.—William Danner McGuinness, an innovator in the field of risk management, died Dec. 15, 2009, in Norwalk, Conn. He was 87.

Mr. McGuinness, who began his insurance career as an underwriter for Loyalty Group, helped redefine the role of an insurance manager into that of a risk manager.

After a stint in the U.S. Army and World War II, where he served in the Battle of the Bulge and other European campaigns, the New York native became a safety engineer and assistant insurance manager for the Port Authority of New York and New Jersey, where he remained until 1957.

At the Port Authority, he helped design and implement the caisson construction safety and loss control insurance program used in building the Lincoln Tunnel under the Hudson River. The program resulted in no loss of life during the dangerous 20-year project, a first for a construction project of that size, according to the Port Authority.

In August 1957, Mr. McGuinness became assistant insurance manager for Standard Oil of New Jersey, a role he redefined into one of risk manager. Shortly afterward, Mr. McGuinness became president of the New York chapter of the American Society of Insurance Management.

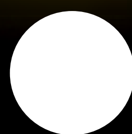
While at ASIM, he oversaw changing the organization's magazine from National Insurance Buyer to Risk Management Magazine, and ASIM to today's Risk & Insurance Management Society Inc.

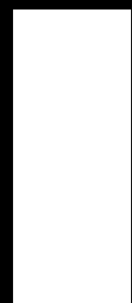
Mr. McGuinness moved his family to Malaysia in 1971 when he became assistant director of Esso Malaysia Berhad and, later, director of finance.

In 1974, he and his family moved back to the United States and he become the risk manager of Gulf Oil Corp.

It was at Gulf Oil that Mr. McGuinness established INSCO Ltd., one of the first wholly owned captive insurers that accepted third-party business.

Mr. McGuinness retired in 1985 as treasurer of Gulf Oil, where he also oversaw the completion of its merger with Chevron Corp.





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LEGAL NOTICE

IN THE MATTER OF THE REHABILITATION OF THE INSURANCE CORPORATION OF NEW YORK
New York Supreme Court, Index No.: 401477/09
NOTICE

By order of the Supreme Court of the State of New York, County of New York (the "Court"), entered June 30, 2009 (the "Rehabilitation Order"), The Insurance Corporation of New York ("INSCORP") was placed into rehabilitation and the then-Superintendent of Insurance of the State of New York was appointed Rehabilitator (the "Rehabilitator"). The Rehabilitator hereby gives notice that he has applied to the Court by order to show cause for an order: (1) converting INSCORP's rehabilitation proceeding to a liquidation proceeding; (2) appointing the Superintendent and his successors in office as liquidator of INSCORP; (3) vesting title to all INSCORP's property, contracts and rights of action with the Superintendent as liquidator; (4) continuing the permanent injunctions provided for in Insurance Law Section 7419, including enjoining and restraining all persons from transacting INSCORP's business, wasting or disposing of its property, interfering with the Superintendent or the proceeding, or commencing or prosecuting any actions, obtaining any preferences, judgments, attachments or other liens, or making any levy against INSCORP, its assets or any part thereof; (5) granting injunctions enjoining and restraining: (a) all parties from commencing or prosecuting any actions or proceedings against INSCORP, the Liquidator or the New York Liquidation Bureau, its employees, attorneys or agents with respect to any claims against INSCORP; (b) all parties to actions, lawsuits and special or other proceedings in which INSCORP is obligated to defend a party pursuant to an insurance policy, bond, contract or otherwise, from proceeding with any discovery, court proceedings or other litigation tasks or procedures, including but not limited to conferences, trials, applications for judgment or proceedings on settlement or judgment, for a period of 180 days, and (c) all persons who have first party or New York Comprehensive Automobile Insurance Reparations Act (No Fault) policyholder loss claims, from presenting and filing claims with the Superintendent as liquidator for a period of 90 days;

(6) authorizing, permitting and allowing the Liquidator to sell, assign, transfer any and all stocks, bonds, or securities of INSCORP at market price or at the best price obtainable at private sale;

(7) terminating all contracts and agreements, unless otherwise expressly assumed by the Liquidator, and fixing liability thereunder as of the date of entry of the Liquidation Order;

(8) requiring all persons or entities having property, including, but not limited to, insurance policies, claims files (electronic or paper), software programs and/or bank records belonging or relating to INSCORP shall preserve such information and immediately, upon the Liquidator's request and direction, assign, transfer, turn over and deliver such information to the Liquidator; (9) extending judicial immunity to the Superintendent in his capacity as liquidator of INSCORP and his successors in office and their agents and employees and extending such immunity to them for any cause of action of any nature against them, individually or jointly, for any action or omission of any one or more of them when acting in good faith, in accordance with the orders of this Court, or in the performance of their duties pursuant to Article 74 of the Insurance Law; and (10) granting such other relief as is just; \

The order to show cause further provides that the injunctions provided for in the Rehabilitation Order, that were extended by the Court's order entered September 29, 2009, remain in effect pending a hearing on the Rehabilitator's application.

A hearing is scheduled on the order to show cause on the 23rd day of February 2010 (the "Return Date") at 9:30 a.m., at the Courthouse, 80 Centre Street, New York, New York, at IAS Part 8. If you wish to object to the petition, you must serve your objections and all supporting documentation ("Answering Papers") upon the Superintendent so as to be received by the Superintendent at least seven business days prior to the Return Date, and by submitting copies of the Answering Papers, with affidavits of service on the Superintendent, to the Court at IAS Part 8, at the Courthouse located at 80 Centre Street, New York, New York, on or before the Return Date. Service of Answering Papers on the Superintendent shall be made by first class mail at the following address:

Superintendent of Insurance of the State of New York
as Rehabilitator of The Insurance Corporation
of New York
123 William Street
New York, New York 10038-3889
Attention: John Pearson Kelly, Esq.
General Counsel

The order to show cause and supporting papers are available for inspection at office of the New York Liquidation Bureau at 123 William Street, New York, New York.

Requests for further information should be directed to Bernadette Colbert at 212-341-6521.

Dated: New York, New York
December 24, 2009

James J. Wrynn
Superintendent of Insurance
of the State of the New York as
Rehabilitator of The Insurance
Corporation of New York

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Classified Ad Close: February 9

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Benefit Insider: Benefits Communication and Technology
Publishing: April 19
Classified Ad Close: April 13

Benefit Insider: Benefit Consulting
Publishing: May 17
Classified Ad Close: May 11

Contact Monique at 212-210-0129 For Details

UP CLOSE — Comings & Goings

VON PETERSON

NEW JOB TITLE: St. Paul, Minn.-based senior vp and general manager of the insurance division of Securian Financial Group Inc.

PREVIOUS POSITION: Vp of client relationships at Securian.

GOALS FOR NEW POSITION: The biggest goal will be to continue the record that we've established...keep things going in that direction. We've been very successful and we want to continue that.

INDUSTRY CHALLENGES: I think employers are squeezing every dollar in their benefits plans. Clearly that's a challenge.

INDUSTRY OUTLOOK: I'm optimistic on the industry. Our insurance volume has gone up with our clients. I think that despite the economy, insurance is a tried-and-true product. There is some value in that, especially for people who are buying insurance through their employer.

FIRST JOB MARKET EXPERIENCE: I was an individual agent at Prudential. That more or less was calling as many people as you could, people who probably didn't want to hear from you, but that's how you cut your teeth in sales.

CAREER HIGHLIGHT: I guess the highlight is what we have done over the last five years at Securian (regarding) our successes and sales within our group division. We have among the most productive sales forces in the industry.

ADVICE: Learn how to sell. Learn how to prospect.

WHAT YOU WANTED TO BE GROWING UP: I wanted to be a journalist. When I went to college, I majored in English with a writing emphasis. The jobs weren't that plentiful or lucrative.

HOW I GOT TO WHERE I AM: I had a double major, in hospital administration. My first job out of college was as an assistant administrator at a nursing hospital. I would field a lot of calls and a lot of calls came from the insurance industry and I became interested in that. I was fascinated by that business. That's why I made my move to insurance.

Comings & Goings ONLINE

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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:

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- Texas Property and Casualty Insurance Guaranty Assn.

Flooding: Extension raises concerns over program

CONTINUED FROM PAGE 4

Grande, senior vp in the Washington office of the National Assn. of Mutual Insurance Cos.

He blamed efforts by some in the House to add windstorm coverage and the fact that Congress has been dealing with issues such as health care and financial services regulatory reform for the lack of long-term action.

"We hope that it doesn't take another disaster to wake them up to the importance of creating a long-term, financially stable NFIP," Mr. Grande said.

"We're going to go through this drill again," said Melissa Shelk, vp-federal affairs for the American Insurance Assn. in Washington. "While the House may turn its attention now to try to craft a flood reauthorization bill, the Senate is just now getting into their real debate on financial services regulatory reform, which is going to take precedence."

Ms. Shelk said while the program is aimed primarily at homeowners, "a lot of commercial accounts buy the NFIP" coverage, therefore, the uncertainty affects them as well, she said.

Risk managers acknowledge the uncertainty.

'It's very important for us to have all of our ducks in a row with the threat of hurricane season coming every summer.'

Ron Hayes,
Calcasieu Parish
School Board

"As a risk manager, I'm looking for consistency where I can find it in our insurance program," said Ron Hayes, risk manager for the Calcasieu Parish School Board in Lake Charles, La., and president of the Alexandria, Va.-based Public Risk Management Assn.

"I need to advise my superiors the best possible way we can maintain a plan in place for our risk exposures. If there's some uncertainty and instability, particularly in regard to flood insurance programs, it's very important for us to have all of our ducks in a row with the threat of hurricane season coming every summer. It's unsettling to know that the plans we have in place may be extremely short-term," Mr. Hayes said.

The uncertainty often means that for commercial buyers who purchase excess coverage, limits imposed by the NFIP "essentially become a deductible," said Donald Griffin, a vp at the Property Casualty Insurers Assn. of America in Des Plaines, Ill. "Should there be a gap and there's a loss, that could be a very expensive proposition for the policyholder."

Short-term fixes for the NFIP certainly cause concern, said Chuck Magazine, risk manager for the city of Boynton Beach, Fla. But he added that the "NFIP is a wonderful program, but it doesn't go far enough."

AP PHOTO

Water being pumped from a New Orleans outflow canal last May as the city prepared for another hurricane season. As organizations seek to buy flood insurance, many are asking for a permanent fix for the federal flood insurance program.

First phase

Mr. Magazine said he views flood insurance as the first phase of a process that would lead to broader natural catastrophe insurance for other perils. "We've been trying to get people interested in the second phase—which is natural catastrophe insurance."

Many risk managers expect the short-term fixes to continue, said Nancy Sylvester, a Baton Rouge, La.-based managing director in the public entity and scholastic division at Gallagher Risk Management Services Inc., a unit of Arthur J. Gallagher & Co.

"All of my clients—and I insure mainly public entities—expect this to happen. They don't view this year as any different as last year or the year before. Everything's a little up in the air. It is what it is," she said.

Mr. Griffin noted that the NFIP is about $18 billion in debt, and that the property/casualty insurance industry would like to see reforms to the program, such as making it actuarially sound and mandating that properties behind levees and dams buy the coverage.

"The most important thing for us is creating a financially responsible program that charges actuarially sound rates to provide consumers with the product they need," said NAMIC's Mr. Grande.

Forum: Insurers struggle to grow business in economic downturn

CONTINUED FROM PAGE 4

governance structure worked as designed, so it hasn't made any significant changes in its management or governance as a result of the financial crisis, Mr. Thiele said.

"I think we've always tried to make sure we have transparency," said Stuart Parker, president of USAA Property & Casualty Insurance Group in San Antonio. "I think with the current environment, it's made us a little more sensitive to that point."

"Every company is putting greater teeth into its corporate governance and risk management, but also, the rating agencies are much more interested in what you're doing, and the same goes for regulators," Mr. Motamed said. "It's here to stay and I think we're all going to get better at it."

With reductions in economic activity and insurable value, property/casualty insurers aren't expecting growth any time soon, however.

"We do need to see a period of sustained economic growth before we're going to benefit from premium growth," said Sandra Glaser Parrillo, president and CEO of the Providence Mutual Fire Insurance Co. in Warwick, R.I.

COURTESY OF NAIC

'For those of us that think state regulation has a lot of benefits, we also recognize that it's got some issues.'

Therese M. Vaughan,
National Assn. of Insurance Commissioners

Speaking as part of a panel of industry experts, Jay Gelb, director and senior equity research analyst at Barclays Capital, the investment banking division of Barclays Bank P.L.C., in New York, said, "We are modeling a slight increase in premiums in 2011 as the economy grows." But increases are likely to remain in the single digits, he said.

Another member of the experts panel, Joseph Guastella, partner and leader of the global insurance practice and U.S. insurance consulting practice at Deloitte L.L.P. in New York, said he expects some consolidation in the property/casualty industry, with some companies seeking growth through acquisitions.

Asked whether regulators are concerned about the ongoing soft commercial lines market's impact on some companies' financial strength, another member of the experts panel, Therese M. Vaughan, chief executive officer of the National Assn. of Insurance Commissioners in Washington, said, "Certainly we talk about that a lot."

But, Ms. Vaughan said, "It's a challenge to identify those companies that are going to become challenged early enough." It's difficult for regulators to identify those potentially troubled companies in advance unless they are in the process of examining the company, Ms. Vaughan said. "That's something we're struggling with."

Financial regulatory reform and its possible impact on the insurance industry was another topic addressed by both Joint Industry Forum panels.

Looking at regulatory reform efforts in Congress, Ms. Parrillo said she's worried about the impact of legislation developed by congressional staffers who don't understand insurance, and several panelists spoke of the threat of "unintended consequences" in any regulatory reform.

CNA's Mr. Motamed stressed that for the property/casualty industry it's important that any changes reflect the fact that "we didn't create this crisis."

PartnerRe's Mr. Thiele agreed, saying he'd like to see any regulatory reforms recognize the difference between the property/casualty industry and other financial services sectors, as well as the fact that the U.S. insurance regulatory system "has done a pretty good job."

And Hank Watkins, president of Lloyd's North America in New York, noted that Lloyd's supports the idea of a federal insurance office, adding that he'd like to see any regulatory reform not be based on a nationalistic approach.

"Let's keep cool heads," Mr. Watkins said. "Let's think of the whole world."

Panelists on both panels noted the significance of international regulatory efforts under way and their likely impact on U.S. insurers and regulators.

"The regulatory thought leadership has moved to Europe," said Mr. Thiele. "Accounting as well."

And the NAIC's Ms. Vaughan said she thinks the regulatory reform debate in Washington is less significant than similar discussions taking place internationally.

"International standards as a result of this crisis are going to become more and more important," she said, adding that U.S. regulators are struggling with that fact.

"For those of us that think state regulation has a lot of benefits, we also recognize that it's got some issues," Ms. Vaughan said. The NAIC has supported a federal insurance office, but Ms. Vaughan said questions remain concerning how it could be structured to help increase efficiency and deal with insurance issues on an international basis, without placing limits on state-based insurance regulation.

The annual Property/Casualty Joint Industry Forum is sponsored by 16 organizations representing various insurance industry interests and audiences.

AIG: Geithner to take hot seat over bailout

CONTINUED FROM PAGE 3

the payments.

Aside from Mr. Geithner, the hearing will include Thomas Baxter, general counsel for the FRBNY; Elias Habayeb, former chief financial officer of AIG Financial Services Group; and Neil Barofsky, special inspector general for the Troubled Asset Relief Program, Rep. Towns said.

Meanwhile, in response to calls to widen the probe, Rep. Towns late last week invited former Treasury Secretary Henry Paulson and former FRBNY Chairman Stephen Friedman, now a member of Goldman Sachs' board, to testify.

"We're learning that the bailout of AIG was far more complex than we initially understood, and the hearing confirms that," said Robert P. Hartwig, president of the New York-based Insurance Information Institute. "But this time, it is Mr. Geithner in the hot seat, as opposed to AIG."

Several observers said the hearing is largely about the past and should not have any direct bearing on AIG's operations or the status of its federal rescue package.

However, "It does raise a lot of important issues about transparency," said Bill Bergman, an analyst with Morningstar Inc. in Chicago. "But I think the bigger question for AIG is, 'Who is calling the shots?'"

U.S. Treasury Secretary Timothy Geithner has come under fire after reports that the New York Fed advised AIG to limit its public financial disclosures in 2008.

AP PHOTO

Meanwhile, Rep. Frank said he would reopen the AIG bonus issue.

"The roles of Treasury Secretary Tim Geithner, his predecessor Henry Paulson and Federal Reserve Board Chairman Ben Bernanke in approving controversial bonuses to AIG executives are back on the agenda," Mr. Frank said in a statement.

The $165 million retention bonuses paid to employees of AIG Financial Products Corp. sparked a public outcry last March, with President Barack Obama instructing Mr. Geithner to explore legal avenues to get the bonus money returned. Former AIG CEO Edward M. Liddy called on some employees to voluntarily return the bonuses.

About $19 million was returned, Mr. Barofsky said in a recent report.

AIG declined to comment.

Ireland: Firms drawn to redomesticate

CONTINUED FROM PAGE 3

XL made the move, in part, to "reinforce our reputation" and "reduce certain risks that may impact us," CEO Michael S. McGavick said in a statement. He did not elaborate during an interview on those "certain risks," but referred to a Jan. 12 company proxy statement filed with the U.S. Securities and Exchange Commission that he said addressed those concerns.

In its proxy, XL said: "We are subject to reputational, political, tax and other risks because of negative publicity regarding companies that are incorporated in jurisdictions, including the Cayman Islands, whose economies have low rates of, or no, direct taxation or which do not have a substantial network of double taxation" or similar treaties with the United States, European Union or other members of the Paris-based Organization for Economic Cooperation and Development.

The proxy also said XL is concerned there could be legislative or regulatory changes that "could increase taxes for companies incorporated in jurisdictions such as the Cayman Islands."

In announcing its move, Willis said Dublin provided "a more stable environment" and would improve its ability to "maintain a competitive worldwide effective corporate tax rate."

Willis and XL said they were motivated to move partly because the Cayman Islands and Bermuda lack tax treaties with U.S. and E.U. members that Ireland already has in place.

Ireland is perceived to be more stable with those treaties in place, Ms. Thomas said. "Ireland has no reputational issue that it is just a tax haven."

XL made the move, in part, to 'reinforce our reputation' and 'reduce certain risks that may impact us.'

Michael S. McGavick, XL Capital Ltd.

Ireland also is becoming attractive to insurers and reinsurers ahead of the implementation of Solvency II, Europe's risk-based capital framework scheduled for implementation in 2012, sources said.

A group support provision originally contained in the Solvency II proposal was removed, meaning insurance company subsidiaries will not be able to calculate whether their capital is adequate on a cross-group basis. That is leading some insurers to convert subsidiaries into branches of a group entity that will be held accountable for capital adequacy of the branch network.

Also last week, Zurich Financial Services Group Inc. said it is transferring most of its general insurance portfolios in Italy, Portugal and Spain to local branches of its Dublin-based Zurich Insurance P.L.C., the insurer's main risk underwriter in the European Union. It plans a similar transfer of its business in Germany later this year.

Such a "hub and spoke" type of operation "is becoming attractive to insurers and reinsurers," said Sarah Goddard, CEO of the Dublin International Insurance Management Assn. Ltd. "That sort of model is one in which a number of companies are looking at. It simplifies corporate structures" but has little effect on operations in various jurisdictions, she said.

Jane Portas, regulatory director with KPMG in London, said she expects more companies to consider locating in Ireland to establish those kinds of branch operations as implementation of Solvency II nears. "I think what you are going to see is a lot of companies looking at their structures," she said.

But, Ms. Portas noted, Ireland is not an automatic choice because "there are lots of different reasons why people move."

Mr. Secker agreed, pointing out that the overall regulatory environment, taxes, infrastructure, availability of skilled workers and language are among those considerations.

All of those considerations make Ireland attractive to companies considering redomestication, Mr. Secker said.

Insurers appeal ruling on pleural plaques

Scotland court's ruling 'fundamentally flawed'

By MICHAEL BRADFORD

EDINBURGH, Scotland—Insurers are appealing the Jan. 8 ruling by Scotland's Court of Session that upholds the law passed last year to compensate people suffering pleural plaques, an illness related to asbestos exposure.

Insurers had sought a review of the Damages (Asbestos Related Conditions) (Scotland) Act passed last June. The act makes pleural plaques a compensable condition in Scotland and reverses a House of Lords ruling that the illness should not be compensable.

The insurers lodging the appeal are Aviva P.L.C., AXA Group, RSA Insurance Group P.L.C. and Zurich Financial Services Group Inc.

"After careful consideration and legal advice, insurers consider that there are good grounds for the appeal," Nick Starling, director of general insurance and health at the Assn. of British Insurers in London, said in a statement.

Insurers believe the act is "fundamentally flawed as it ignores overwhelming medical evidence that plaques are symptomless, and the well-established legal principle that compensation is payable only when there are physical symptoms," Mr. Starling said.

Worker's coffee break injury compensable

Court rules errand was 'minor deviation from employment'

By ROBERTO CENICEROS

TRENTON, N.J.—Injuries that a foreman plumber suffered while driving for coffee arose in the course of his employment, a New Jersey appellate court has ruled.

The Jan. 13 decision by the Superior Court of New Jersey Appellate Division in *Jesse J. Cooper Sr. vs. Barnickel Enterprises Inc.* upheld a Division of Workers' Compensation finding that Mr. Cooper suffered 100% disability as a result of a February 2003 auto accident that caused compound fractures in both legs and his left arm.

Barnickel appealed the division's judgment, arguing that the accident occurred while Mr. Cooper was on a personal errand unrelated to his work, irrespective of company authorization to use one of its vehicles.

The accident occurred shortly after Mr. Cooper left a union hall where he had gone to discuss an upcoming company project with a union instructor. But because the instructor was busy teaching a class, Mr. Cooper took a coffee break.

The New Jersey Appellate Division ruled that Mr. Cooper, who is an "off-site" employee—one who does not report to a single job site—could not be expected to "stand like a statue or remain at the union hall with nothing to do for such a period, particularly when there was no coffee available at the site."

READ documents from this case and other public documents at www.BusinessInsurance.com

Accidents occurring during coffee breaks for off-site employees are equivalent to those suffered by on-site workers and "are minor deviations from employment which permit recovery of workers' compensation benefits," the court ruled.

World's economic crisis creating other global risks: Report

By STUART COLLINS

Efforts to tackle the global economic crisis have created new economic risks and have drawn resources away from efforts to counter long-term risks such as energy security and climate change, according to the World Economic Forum's latest report on global risks.

The WEF's "Global Risks 2010" report, released last week, also highlights an increase in interdependencies among risks, as well as the need to fundamentally change risk management thinking. Governments should establish "country risk officers," and risk management frameworks should better reflect the interrelatedness of risks rather than follow a silo approach, the report states.

The report does not identify any new risks, but it shows greater interdependency among risks, said Robert Greenhill, managing director and chief business officer at the Geneva-based think-tank, in launching the report in London on Thursday. The annual report is supported by several insurance industry companies.

The interconnectedness of risk is one of the most important themes of the report, said John J. Merkovsky, New York-based managing director and global practice leader for Marsh Risk Consulting, which contributed to the report. "The headline theme of interconnectivity of risk shows risk managers that they cannot manage risk in silos. The concept of interconnectivity of risk is far more important than any of the risks (identified in the report) themselves."

"Global Risks 2010" does not rank risks, but those with the greatest likelihood and highest severity are certain economic risks, underinvestment in infrastructure and the impact of chronic diseases.

One of the economic risks of most concern is the formation of new asset bubbles, in part due to the fiscal stimulus aimed at dealing with the financial crisis, said Daniel M. Hofmann, Zurich-based chief economist at Zurich Financial Services Group Inc., one of the report partners. There also is a high risk of a fiscal crisis in major economies such as the United States and the United Kingdom, where levels of government borrowing are not sustainable, he said.

There also is a high risk of "hard landing" for the Chinese economy, where growth is "unbalanced," he said.

Other risks that must be addressed include transnational crime and corruption, loss of biodiversity and critical information systems and cyber liability, said Mr. Greenhill.

According to Raj Singh, chief risk officer at Zurich-based Swiss Reinsurance Co., another partner in the report, long-term risks such as energy, climate change and food and water security are not getting the attention they deserve.

"Long-term risks like these have huge implications for infrastructure spending, but governments do not perceive the need for such investment," he said.

The risks associated with underinvestment in infrastructure have moved up in importance and have been exacerbated by the financial crisis, Mr. Hofmann said. "Governments are under so much pressure to fight the recession that they risk focusing on long-term issues," he said.

Efforts to promote the creation of country risk managers, who would serve as national chief risk officers, may be gaining traction, Mr. Singh said.

The concept of a country risk manager was first discussed in 2007, but the financial crisis derailed discussions that were being held with international banking organizations, said Mr. Singh. Efforts have since resumed, and a meeting was held with the Organization for Economic Cooperation and Development to discuss the matter in the summer, he said.

There has been some progress in promoting the concept with individual countries, he said, noting that the main political parties in Germany have commissioned a feasibility study for creating the post of country risk officers at a central and local government level.

In the five years that the WEF has published its global risks reports, there has been more international cooperation on risk issues, Marsh's Mr. Merkovsky said.

The report is intended to bring government, nongovernmental organizations and business together and align their interests, he said. Risk managers are increasingly being asked to participate in wider-risk dialogue, and they should consider the potential implications of the risks identified in the WEF report for their own companies, Mr. Merkovsky said.

"Global Risks 2010" is available for download at *www.weforum.org/en/initiatives/globalrisk/Reports/index.htm.*

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Founder, Crain Communications Inc

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Wintry weather storms across much of Europe

Damage covered by insurance is limited despite economic losses

By MICHAEL BRADFORD

Europe's deadly winter weather caused widespread business disruptions, event cancellations and transportation snarls, which are costly in terms of economic damages but should spare insurers a blizzard of claims.

Extreme cold, snow and rain that swept through Europe this month was blamed for more than 120 deaths in Poland and about two dozen in Britain. Heavy snow contributed to an avalanche in central Switzerland that killed at least seven, authorities said.

Insurers, though, said they expected to escape the frigid weather in good shape.

"We do not have any major losses and do not expect any," said a spokeswoman for Munich Reinsurance Co. She acknowledged, though, that flooding caused by dikes that began leaking along Germany's Baltic Sea coastline during freezing weather likely will generate some claims. "We will have to wait and see on that one," she said.

Yorn Tatge, managing director of AIR Worldwide Corp.'s Munich office, said insured losses in Germany are not significant. Much of the economic damage resulted from traffic disruptions, while storm surge along the Baltic Sea coast left severe damage to sea defenses, he said.

London-based HSB Engineering Insurance Ltd. said it has seen an increase in the number of boiler failures among its U.K. clients during the past two weeks. While large companies may have maintenance staff onsite to mitigate losses related to such incidents, smaller companies could be hurt by the loss of a boiler, which could cost up to £3,000 ($4,808) to replace, and by business interruption losses that result, HSB said in a statement.

Hiscox Ltd. in London said travel disruptions caused by the cold led to a spike in claims from event cancellations because few exhibitors and delegates were able to attend trade shows and other functions.

Economic damages from the bad weather are expected to far outstrip insured losses.

London-based RSA Insurance Group P.L.C. estimated that each day the cold snap prevented people from reaching work, the U.K. economy took a £690 million ($1.11 billion) hit.

In Ireland, the Small Firms Assn. in Dublin said the fierce weather hit the nation's productivity hard.

"Distribution companies are the worst to suffer, with driving conditions making deliveries impossible in some parts and extremely difficult in others," said Avine McNally, assistant director of the association.

REUTERS/LANDOV

A worker takes a break Jan. 6 from what is known as "gritting the pavement" along London's Westminster Bridge from a winter storm that swept across central and southern England.

The SFA estimated that if half of the private workforce loses just 30 minutes of work in a day, the productivity loss during that day amounts to more than €7 million ($10.1 million).

Freeze: Citrus growers still assessing damage in Florida's cold snap

CONTINUED FROM PAGE 3

freezing weather we experienced. To what degree that freeze had an effect on the crop, we won't know for a matter of weeks."

As of Jan. 14, the Southeast had 13 consecutive days with temperatures 32 degrees or colder, according to the National Weather Service.

Florida has a $9.3 billion citrus industry, which produces more than three-quarters of the U.S. orange crop and accounts for about 40% of the world's orange juice supply, according to Florida Citrus Mutual Inc. Citrus crops can be damaged if temperatures fall to 28 degrees for four hours or longer.

At the time of the freeze, Florida Citrus Mutual, the largest growers group in Florida with 8,000 members, said 25% of its harvest was complete, with some damage to fruit, branches and leaves of trees.

"It may be days or weeks until we figure out whether there is long-term tree damage," Michael W. Sparks, executive vp and CEO of the Lakeland, Fla.-based Florida Citrus Mutual, said in a statement. "All of the information is anecdotal at this point and varies literally from grove to grove, so we won't be able to come out with a definitive answer until the U.S. Department of Agriculture accounts for the cold snap in the monthly crop forecast, probably in February."

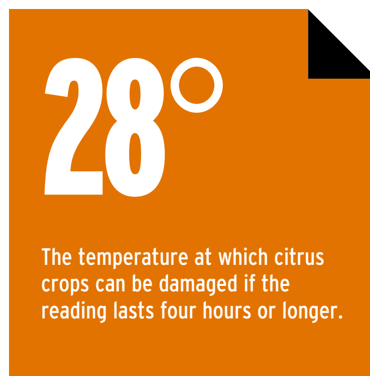
Mr. Royce said the 185 growers in his group, which account for 55,000 acres of Florida's citrus crop, might experience crop losses between 10% and 20%.

AP PHOTO

Workers in Dover, Fla., remove a protective cover from a strawberry field that attempted to ward off readings that dipped into the 20s.

The citrus growers are covered by multiple-peril crop insurance overseen by the USDA's Risk Management Agency. The government-subsidized insurance provides comprehensive protection against weather-related causes of loss and certain unavoidable perils, such as pollination failure.

The RMA contracts with 15 insurance companies or managing general agents to sell the crop insurance to farmers. Growers can purchase policies providing coverage levels ranging from 50% to 85%.



In 2008, the multiple-peril crop insurance program insured approximately 552,000 acres of citrus crops in Florida, said Richard Shanks, Kansas City, Mo.-based national managing director of Aon Corp.'s food system, agribusiness and beverage group. He said the protection limits for that citrus acreage in Florida were approximately $408.1 million with gross premiums of about $14 million. Growers paid about $5.1 million of the premium, Mr. Shanks said.

Only $226,000 worth of all crops in Florida were insured outside the government-subsidized program, Mr. Shanks said.

Fred Simons III, a sales agent with Winter Haven, Fla.-based Carden & Associates Inc., said some groves experienced colder temperatures for longer stretches than others. Carden procures coverage for about 150,000 acres of citrus in Florida, with a majority of growers electing policies at a 65% attachment, which means they have to lose at least 35% of their crop before MPCI applies, he said.

At the time of the freeze, growers were harvesting Hamlin oranges, which are an early season crop used for eating and juicing. Hamlin oranges typically are harvested between November and late February, while late-season Valencia oranges typically are harvested between mid- to late February and late June, Mr. Simons said.

"Hamlins have been picked for the most part as growers are trying to get as much early fruit harvested as possible," Mr. Simons said. "With Valencias, it's going to be wait-and-see. It could be months before we see what kind of damage the freeze did."

David Cash, Pembroke, Bermuda-based chief underwriting officer with Endurance Specialty Insurance Ltd., said growers will be covered under MPCI, adding that it provides broad coverage for loss of crop yield, as well as coverage for lost profit due to price declines.

Endurance underwrote about $700 million in premiums in 2009 for MPCI with about $3.5 million of that from citrus crops, Mr. Cash said.

"Even as it is clear this freeze event is potentially very damaging, it is surprising how resilient southern citrus crops are to the freeze peril," Mr. Cash said, adding that MPCI coverage requires farmers and growers to demonstrate sound farming practices, such as watering the citrus to coat it with an ice shell to protect the fruit.

Mr. Cash said the ice slows the rate of cooling and often can be sufficient to save the crop if the freeze is of short duration.

"By historic standards, this year's freeze is a very unusual event for these crops," Mr. Cash said. "It will likely turn out that this event ends up being the largest citrus freeze that the MPCI program has had to cover in the last 10 years."

Medicare: Government gets aggressive with secondary payer lawsuit

CONTINUED FROM PAGE 1

The case breaks new ground because CMS simultaneously named insurers, settlement beneficiaries and plaintiffs attorneys all in one lawsuit, said John Williams, CEO and president of Bradenton, Fla.-based Gould & Lamb L.L.C., which specializes in complying with Medicare secondary payer and mandatory insurer reporting to CMS.

It serves notice that CMS will seek payments from defendants and plaintiffs in a liability settlement involving those eligible for Medicare, Mr. Williams said.

"What you can read into it is that Medicare is getting a lot more aggressive in their conditional payment rights of recovery and they are not going to pick one side vs. the other," Mr. Williams said. "A lot of attorneys I talked to thought they were just going to go after the claimants or just go after the insurers. They are going to go after everybody. "

Mr. Franco said it is the first suit to his knowledge in which Medicare has sued insurers contributing to such a settlement.

The lawsuit brought in U.S. District Court for the Northern District of Alabama, caught many observers by surprise, because they assumed CMS would seek reimbursement only for future liability settlements, Mr. Franco said.

But the lawsuit seeks money from a $300 million global settlement reached in 2003 in a case that alleged injuries from exposure to polychlorinated biphenyls manufactured in Alabama.

"What we are seeing is CMS going back quite a few years here," Mr. Franco said. MARC is seeking federal legislation that would place a three-year statute of limitations on claims brought by the government to recover under the Medicare Secondary Payer law.

The government's lawsuit names St. Louis-based Monsanto Co.; New York-based Pharmacia Corp., St. Louis-based Solutia Inc., Hartford, Conn.-based Travelers Indemnity Co., New York-based American International Group Inc., individuals who received settlement payments, and several law firms and individual attorneys who represented thousands of plaintiffs in the case.

> **'A lot of attorneys I talked to thought they were just going to go after the claimants or just go after the insurers. They are going to go after everybody.'**
>
> John Williams, Gould & Lamb L.L.C.

Monsanto, Pharmacia and Solutia were defendants in the consolidated Alabama case known as *Abernathy vs. Monsanto Co.* The government claims in its suit that approximately 907 Medicare beneficiaries were among those who received compensation for their medical expenses.

CMS has made conditional medical payments on behalf of those beneficiaries for illnesses and injuries tied to the PCB pollution case, the complaint states.

Travelers and AIG insured Solutia under a product liability policy and paid a portion of the $300 million settlement, court documents show. Monsanto and Pharmacia also contributed a portion of the $300 million.

The government's lawsuit seeks "payment of damages," but does not specify an amount. It also seeks to force the defendants to pay Medicare before making any future payments to claimants in the underlying case.

The complaint alleges that AIG and Travelers did not determine whether any settling plaintiffs were Medicare beneficiaries and they did not pay Medicare on behalf of Medicare beneficiaries that received settlement money.

Similar allegations are made against Monsanto, Solutia and Pharmacia.

Reacting to the suit, a Solutia spokeswoman said the company denies the government's allegations. Solutia agreed to the settlement in the underlying case and fulfilled its obligation in that settlement, but was not involved in distributing the funds to individual plaintiffs, she said.

Monsanto believes that if Medicare is owed anything, it would be from plaintiffs attorneys and their clients who received money from a court-approved settlement trust account to which Monsanto contributed, a Monsanto spokesman said. Monsanto had no control over distribution of the funds and plaintiffs attorneys were empowered to distribute the funds, the spokesman said.

The suit also alleges that plaintiffs attorneys received $129 million of the settlement funds and knew or should have known that the settlement claimants were Medicare-eligible. The law firms have not made any payments to the United States on behalf of those claimants, the suit states.

The government's action ultimately will raise liability insurance costs, said Douglas J. Holmes, president of UWC Strategic Services on Unemployment & Workers' Compensation, a Washington-based business group.

He said this is because underwriters now face greater uncertainty when insuring risks. The government's case is ambiguous about precisely how many plaintiffs in the Alabama case are Medicare-eligible, the medical services each used or will need, and the value of their care in the future.

Insurers will have to price for that uncertainty, Mr. Holmes said.

But another option may be to deduct Medicare's share from liability lawsuit settlements.

Insurers and self-insureds have limited options to avoid this exposure, Mr. Franco said in a newsletter he distributes to MARC supporters. One possibility is to work with Medicare to determine the amount it will demand and pay that out of the settlement fund, with the balance then paid to the Medicare beneficiary.

Because the government sued both sides in the Alabama settlement, the lawsuit serves as notice to the plaintiffs bar and the defense in future cases that they will have to cooperate to determine how they will comply with the Medicare Secondary Payer law, Mr. Williams added.

HOW MEDICARE SECONDARY PAYER LAW WORKS

The Medicare Secondary Payer law essentially allows the U.S. government to recover reimbursement from insurers and self-insured plans that are legally required to the primary source of payment of medical care for individuals eligible for Medicare who settle a liability claim.

According to the Code of Federal Regulations, 42 CFR 411.25, the parties also are required to notify the federal Centers for Medicare & Medicaid Services in writing when they become aware of any liability claim settlement, award or "other payment" tied to the release of a medical injury claim by a Medicare-eligible beneficiary.

A recent lawsuit filed by the U.S. Department of Justice reveals a lot about how CMS will enforce those laws, observers say.

Observers had thought CMS might seek reimbursement only from future liability claims settlements. However, the lawsuit shows that CMS is looking to past cases. In this instance, the government is suing for reimbursement related to a 2003 settlement of a pollution liability case.

—By Roberto Ceniceros

Tax: Tentative agreement reached on taxes for expensive health plans

CONTINUED FROM PAGE 1

plan tax in the reform package it passed last year.

With the House and Senate passing health care reform measures by razor-thin margins, opposition from even a handful of members could derail a final agreement, Mr. Dennett said.

For example, a proposal floated last year by Senate Majority Leader Harry Reid, D-Nev., to allow retirees age 55 through 64 to enroll in and buy coverage from the federal Medicare program died within a few days amid opposition from a group of Senate Democrats.

"How will rank-and-file House and Senate Democrats respond to this? That is the key," Mr. Dennett said.

The new proposal—of which not all details are yet known or decided on—modifies a health care tax plan embedded in the Senate-passed health care reform package.

Under the Senate plan, a 40% excise tax would be imposed on health insurance premiums exceeding $8,500 for individual coverage and $23,000 for family coverage. The tax would be paid by insurers and plan administrators but almost certainly passed back to employers in the form of higher charges.

The cost threshold triggering the tax would be somewhat higher for plans covering employees in certain high-risk industries, such as mining and construction, and for plans covering early retirees.

The tax would begin in 2013, and the cost threshold would be increased in succeeding years to reflect the annual increase in the Consumer Price Index, plus one percentage point.

Under the latest agreement, though, the cost thresholds would be raised to $8,900 for single coverage and $24,000 for family coverage.

More significantly, the cost thresholds triggering the tax would be higher for plans that have a significant number of women and older workers, though the details of that change still are being worked out, sources said.

The cost threshold also would be modified, at least for a few years, to reflect geographic differences in health care costs.

In addition, the cost of dental and vision plans would not be included until 2015 in calculating the cost of a health care plan for tax cap purposes.

And in a step to end union opposition to the tax cap, health care plans set up through collective bargaining agreements and plans covering state and local public employees would be exempt from the tax until 2018, or five years later than all other group plans.

Observers said the seeds of an agreement were sown when President Barack Obama, in meetings with House Democrats, said he would continue to support a tax on costly health insurance plans.

That continued presidential support forced unions to the bargaining table. "Unions recognized the inevitability of the health care tax," which led them to negotiate, Mr. McArdle said.

Still, plenty of unknowns remain, with one of the biggest being what legislators will decide on how to replace the revenue that would be lost through the modifications to the health care tax cap, Mr. Dennett said. Under the Senate plan, its health care tax cap would raise about $150 billion over a 10-year period. Revenue figures for the new plan are not available, but informal estimates suggest it would cut that revenue figure by between $60 billion and $90 billion.

Yet another unknown is the actions employers and employees would take if a tax is imposed on the most costly plans.

It is possible, says Helen Darling, president of the National Business Group on Health in Washington, that employers would step up their offerings of lower-cost plans and more employees would enroll in those plans.

"The imposition of an excise tax would be a powerful reason for some employers to change the design of their plans," Mr. Dennett said.

While higher cost thresholds and other changes would significantly decrease the number of plans affected by the tax, eventually more and more plans would be hit by the tax, unless the indexing method is changed, Mr. Dennett said. That is because the cost of group plans historically has increased much more than the annual rise in the Consumer Price Index.

BREAKING IT DOWN

How the new health care plan tax would work

- Health insurance premiums exceeding $8,900 for individual coverage and $24,000 for family hit with 40% excise tax starting in 2013. Union plans and plans covering state and other public employees exempt from tax until 2018.
- Higher cost threshold for plans covering employees in certain high-risk industries, early retirees and plans with significant numbers of women or older employees.
- Cost threshold triggering the tax increased starting in 2014 to match increases in the Consumer Price Index, plus one percentage point.
- Exempting, starting in 2015, vision and dental plan costs in calculating cost threshold.

Source: AFL-CIO

News In Brief

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metal products manufacturer Crucible Materials Corp. The plans, which have about 3,600 participants, are 58% funded with $147.1 million in assets and $277.3 million in liabilities. The PBGC said it expects to be liable for $106.4 million of the shortfall. In addition, the PBGC took over the pension plan of men's clothing manufacturer Hartmarx Corp., which is in bankruptcy reorganization. The plan, which has about 13,000 participants, is 47% funded with assets of $142.8 million and liabilities of $306.6 million. The PBGC said it expects to be responsible for $158.5 million of the $163.8 million shortfall.

MetLife exec tapped as N.J. regulator

Tom Considine, vp and government relations counsel for MetLife Inc., has been named banking and insurance commissioner for New Jersey. Mr. Considine, who has been with MetLife since 1993, has experience in government relations and financial services working in MetLife's government and industry relations department.

Little insured damage from California quake

A moderate earthquake that struck Jan. 9 off the coast of northern California caused little insured damage, said catastrophe risk modeler AIR Worldwide Corp. According to AIR, the magnitude 6.5 quake with an epicenter 27 miles west of Ferndale, Calif., broke windows and cut power to more than 25,000 households but caused little structural damage.

E.C. approves Danish terrorism backstop

The European Commission has approved Denmark's plan to provide a state guarantee of insurance coverage for losses from terrorist attacks that exceed certain thresholds. Under the plan that the commission approved last week, domestic and foreign nonlife insurers that provide coverage in Denmark for nuclear, biological, chemical or radioactive terrorist attacks will be liable for claims up to the threshold. The Danish government will provide a guarantee of coverage for the next 15 billion Denmark krones ($290.7 million) of losses above the threshold, which is set at 5 billion Denmark krones ($969 million). Insurers will pay a fee for the coverage, which is 0.15% of the guarantee amount. Denmark will recover any payouts under the guarantee through policyholder levies over time.

Noted

Arthur J. Gallagher & Co. named Scott R. Hudson as president and CEO of Gallagher Bassett Services Inc. Mr. Hudson, most recently director of insurance practice for Chicago-based Bridge Strategy Group L.L.C., is responsible for leading Gallagher Bassett's worldwide property/casualty third-party claims management, loss control and administrative services....American International Group Inc. property/casualty unit **Chartis Inc.** has named Thomas Scherer senior vp and general counsel. Mr. Scherer previously was special litigation counsel and chief compliance officer at Swiss Reinsurance Co....**ACE Group** has appointed John Lupica as chief operating officer of insurance-North America. In the expanded role, Mr. Lupica, who is president and CEO of ACE Ltd. unit ACE USA, will be responsible for the company's commercial property/casualty insurance operations in North America, including its ACE Westchester excess and surplus lines division and its newly formed small-business unit, ACE Commercial Risk Services, the company said....The International Insurance Society said Frank O'Halloran, CEO of QBE Insurance Group Ltd., now is part of the **Insurance Hall of Fame.** William C. Greenough, past chairman and CEO of Teachers Insurance and Annuity Assn.-College Retirement Equities Fund, received Insurance Hall of Fame honors posthumously.... **RenaissanceRe Holdings Ltd.** said it is consolidating its global underwriting organization and has named Kevin J. O'Donnell as executive vp and global chief underwriting officer. Mr. O'Donnell previously was senior vp of RenaissanceRe and president of the company's reinsurance operations. RenaissanceRe also said John D. Nichols Jr., executive vp of RenaissanceRe and president of RenaissanceRe Ventures Ltd., and William J. Ashley, president and CEO and chief underwriting officer of the company's insurance operations, have said they intend to retire.

Quake: Regional cat pool responds

CONTINUED FROM PAGE 1

the catastrophe, many made donations to help the impoverished nation rebuild from its worst quake in more than 200 years (see box).

Meanwhile, many businesses that operated on Haiti were focusing on locating and ensuring the safety of their employees before assessing damage.

Although it did not provide an insured damage estimate, Oakland, Calif.-based catastrophe modeler EQECAT Inc., a subsidiary of ABSG Consulting Inc., projected total economic damage from last Tuesday's earthquake would reach the "low-single-digit billions" of dollars, up from its initial estimate of "hundreds of millions" of dollars.

Late Friday, a Haitian official reportedly said that 40,000 bodies already had been buried and the death toll could reach 140,000.

Because Haiti is the most impoverished country in the Western Hemisphere, its insurance market is not very developed, said Nikhil da Victoria Lobo, vp for Swiss Reinsurance Co.'s public sector team based in New York. Swiss Re is the lead reinsurer for CCRIF.

"In Haiti, one of the challenges has been distribution," said Mr. da Victoria Lobo.

London-based Axco Insurance Information Services Ltd. estimates that total nonlife insurance premiums in Haiti amount to less than $20 million annually, and that earthquake insurance penetration is extremely low.

Munich Reinsurance Co. put its exposure at up to a low-double-digit millions of dollars figure.

The insurance through CCRIF will provide a revenue stream for the government to continue operating after the disaster, said Simon Young, supervisor of the pool in which 16 Caribbean governments participate.

Although it is the largest claim paid to date by CCRIF, the facility will not be financially impaired by the event, said Mr. Young, who noted that it would pay the $8 million from its reserves without tapping its reinsurance coverage.

CCRIF paid out nearly $1 million to the governments of the Dominican Republic and St. Lucia in a November 2007 earthquake in the eastern Caribbean. CCRIF paid $6.3 million to the Turks & Caicos islands after Hurricane Ike made a direct hit on Grand Turk in 2009.

The magnitude 7.0 quake in Haiti toppled hundreds of buildings in Port-au-Prince, including the presidential palace, local offices of the World Bank and United Nations, hotels, a hospital and the university, according to the London arm of catastrophe modeling firm Risk Management Solutions Inc.

Many buildings in Haiti were constructed "with poor building materials that are not properly reinforced," said Guillermo Franco, senior research engineer at AIR Worldwide Corp. in Boston.

"Another type of exposure is commercial or industrial facilities, power plants, water distribution facilities. Those are a bit trickier to gauge whether they've undergone damage," Mr. Franco said, adding that any private insurance coverage that exists most likely would be restricted to these facilities.

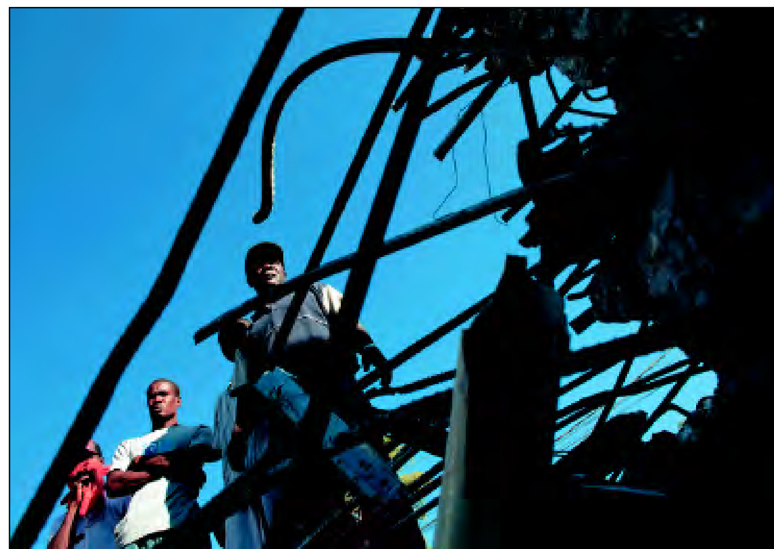
Willie Sanchez, head of procurement for Miami-based Golden Crown Produce Inc., which imports mangoes from Haiti, last week said he was unable to ascertain the extent of damage to the company's packing plant on because he could not reach any suppliers in Haiti. He said Golden Crown Produce is insured gave no details.

Digicel Group, a cellular company with 2 million subscribers in Haiti, said its communications infrastructure incurred some damage but still was operational. The company, a client of Caribbean Risk Managers Ltd., which manages the CCRIF, did not respond to requests for insurance information.

Fort Worth, Texas-based American Airlines Inc. said it was sending aid into Haiti to help its more than 100 employees who work at Toussaint Louverture International Airport and to help hospitals in Port-au-Prince.

Miami-based Royal Caribbean Cruises Ltd. reported that the buildings, pier and attractions at its private beach on the northern coast of Haiti were undamaged and that it would resume stops on the island this week to bring relief supplies.

"Royal Caribbean wants to do its part to help out not only the general response, but also our hundreds of Haitian employees and their families through this disaster," company Chairman and CEO Richard D. Fain said in a statement.



REUTERS/LANDOV

Residents watch as a bulldozer razes a destroyed building after a major earthquake hit the Haitian capital of Port-au-Prince last week.

INDUSTRY RESPONSE

Several insurance companies and groups have joined the relief effort in Haiti. They include:

- Aetna Inc.
- Allstate Foundation
- Aon Corp.
- Chartis Inc.
- Chubb Corp.
- CIGNA Foundation
- Farmers Insurance Group of Cos.
- Health Net Inc.
- Humana Inc.
- Insurance Industry Charitable Foundation
- InsureMyTrip.com partnering with HCC Medical Insurance Services L.L.C.
- Medco Health Solutions Inc. partnering with AmeriCares
- NEM Insurance Co. (Jamaica) Ltd.
- OptumHealth
- Travel Guard
- UnitedHealth Group Inc.

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Business Insurance END PAGE

Contributing: Jeff Casale, Mark A. Hofmann, Matt Scroggins, Rodd Zolkos

PROGRESSIVE GIRL SEES LOVE 'FLO' IN

Flo, the ebullient fictional sales rep for Progressive Casualty Insurance Co., is the most popular insurance mascot, at least on Facebook.

Flo's main Facebook page—Flo, the Progressive Girl—had 263,097 fans last week, while two other pages dedicated to the character combined had a little over 100 fans.

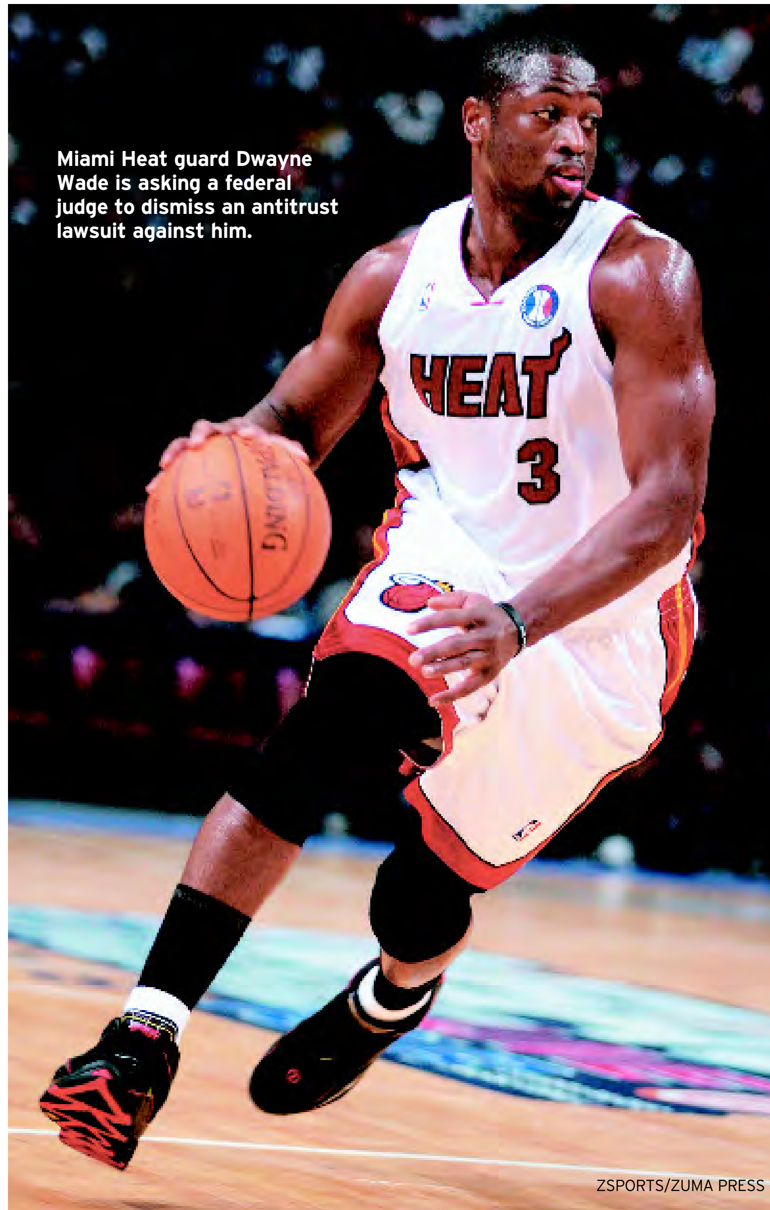
Actor Stephanie Courtney, who plays Flo, also is a Facebook hit, with her most popular page boasting nearly 24,000 fans.

Coming in second in the insurance ad icon race last week was the Aflac Duck, which last week had 165,637 Facebook fans on its most popular page, as well as a Facebook group called "WE LOVE THE AFLAC DUCK!!!" with 585 members.

Although it has fewer total Facebook fans than either Flo or the Aflac Duck, the GEICO Gecko has many more pages on its site, including one for "The sexy gecko from Geico! ;)" that has 225 fans.

The Cockney lizard, whose most popular page had 769 fans last week, even has a handful of Facebook members who want him to run for president.

Snoopy—from Charles M. Schultz's "Peanuts" and the mascot for MetLife—has more than 700,000 Facebook fans on various pages, but the beagle likely won most of that affection for being Charlie Brown's best friend.



Miami Heat guard Dwayne Wade is asking a federal judge to dismiss an antitrust lawsuit against him.

ZSPORTS/ZUMA PRESS

NBA star Wade cries foul on suit

Miami Heat guard and National Basketball Assn. star Dwyane Wade has some off-court moves he's trying to thwart.

He has asked a federal judge to dismiss a multimillion-dollar antitrust lawsuit brought by his former business partners after his restaurant and sports memorabilia chain, D. Wade's Place, flopped.

A federal judge in West Palm Beach, Fla., was to hear arguments last week in the case, according to the Associated Press.

However, Mr. Wade's lawyers say antitrust laws don't apply because Mr. Wade has absolute control over licensing of his name and image, AP reported.

The $90 million lawsuit stems from a business venture between Mr. Wade and former business partners Richard von Houtman and Mark Rodberg. The trio inked a deal to build a restaurant and memorabilia chain centered on Mr. Wade, a 28-year-old Chicago-area native, and his accomplishments on the basketball court.

However, the venture barely got off the ground. Just two of the planned 40 restaurants opened before Mr. Wade allegedly walked away from the venture, according to reports.

The antitrust suit brought by the former business partners alleges violations of their agreement on merchandise, which would have featured Mr. Wade's likeness and name.

The former partners also filed a breach of contract suit seeking $25 million.

SEPARATISTS STAND UP FOR 'LITTLE GUY'

Could the largest U.S. captive domicile become an "offshore" domicile sometime soon? It could, if a slate of independent candidates for Vermont state offices has its way.

If they're elected this year—which is believed to be unlikely—the candidates on the Vermont Independence Day slate, including gubernatorial candidate Dennis P. Steele, lieutenant governor candidate Peter Garritano and seven candidates for state Senate seats, plan to push for Vermont's secession from the United States, according to the Associated Press.

Among the factors said to be fueling their efforts is the nation's focus on corporate profits over the "little guy," environmental issues, the ongoing wars in Iraq and Afghanistan, and President Barack Obama's failure to close the Guantanamo Bay detention facility.

If successful, the separatists said they believe Vermont could fund such items as social services and physical infrastructure with money Vermonters previously paid in federal taxes.

Vermont has experience as an independent republic, a status it held from 1777 to 1791. Of course, back then there probably wasn't as much concern about Department of Labor guidelines for funding benefits covered by the Employee Retirement Income Security Act through a captive or the domiciliary requirements of the Liability Risk Retention Act.

HANK CREDITS DIET FOR STRENGTH, VIGOR

How does Maurice "Hank" Greenberg, the legendary former chairman and CEO of American International Group Inc., stay so vigorous even as he approaches his 85th birthday?

In a recent interview with Reuters, Mr. Greenberg, now chairman and CEO of C.V. Starr & Co. Inc., said there are two types of birthdays—"chronological and biological."

He said his doctors tell him that "biologically I am 25 years younger" than chronologically.

Mr. Greenberg, who turns 85 in May, credits his dietary habits for keeping him trim. He eats a salad at lunch. At home, his diet has no meat and no dairy products. He said he also works out regularly, including lifting weights. Mr. Greenberg has been trying to get the federal government to change the terms of its 2008 bailout of AIG, a task that could require Herculean stamina.

It sounds like his fitness and dietary regimen can only put him in a better state than most to tackle that job.

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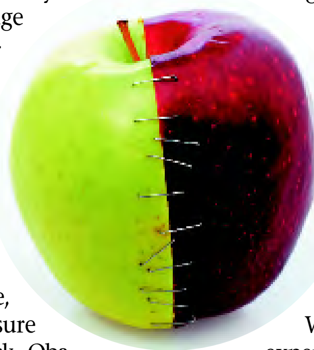
Rethinking health care

On the cusp of landmark reform, employers brace for changes not yet entirely decided

By JERRY GEISEL

WASHINGTON—Congressional negotiators will determine the shape of health care reform legislation in the coming weeks, changes that are certain to affect employers' health care plans.

As the drive to pass health care reform enters the home stretch, negotiators now are behind closed doors discussing changes they believe will be necessary for the reform package to win final congressional approval.



The health care reform drive began almost a year ago as Democrats began drafting legislation to move the United States closer to universal coverage, under strong pressure from President Barack Obama, who had just taken office.

A year later, that goal is in sight. The House and Senate have passed reform bills by razor-thin margins, albeit with big differences. Now, negotiators representing each branch have to find a way to bridge those considerable differences and hammer out a compromise bill that then will have to go back to the full House and Senate for a final vote.

The task facing negotiators is daunting. The bills diverge sharply on critical issues such as how the revenue will be raised to finance health insurance premium subsidies to enable nearly 30 million lower-income uninsured individuals to receive coverage and whether the federal government itself should directly offer coverage.

Aside from major issues, negotiators have to make decisions on dozens of lesser yet important subjects. Even bill language will have to be cleaned up to eliminate ambiguities and drafting errors.

Some of that work already is under way.

"Staffers have been working night and day" since the Senate passed its reform bill in late December, said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

While specifics won't be known for weeks, a near-consensus exists among Washington health care experts that a final agreement will be reached, perhaps in about a month.

At this point, "It is almost impossible to imagine a bill not passing," said Paul Dennett, senior vp-health care reform for the American Benefits Council in Washington.

"You have very powerful people—the president of the United States and top congressional leaders—committed to making reform happen and they don't need GOP support to make it happen. The end is in sight," said Helen Darling, president of the National Business Group on Health in Washington.

The potential changes have generated anxiety in the business community as employers worry whether the plan will do more harm than good to their own programs.

"Overall, I don't see much good news for most employers. There are more take-aways for employers than givebacks," said Steve Raetzman, a senior consultant with Towers Watson & Co. in Arlington, Va.

"We see a lot of potential harm, but not that much good," said Gretchen Young, vp-health policy at the ERISA Industry Committee in Washington.

Others, though, are wary of making generalizations, noting that the legislation's effect will vary by employer.

"The impact will be case-by-case and be relative to what you now offer," Mr. McArdle said.

Take, for example, a provision in the Senate bill that would impose a $600 per employee penalty on employers that don't extend coverage to new employees within 60 days. That provision would not affect employers that extend coverage immediately to new hires.

On the other hand, the proposal would be costly for employers in high-turnover industries, such as retail and hospitality, that impose

See REFORM page 12D

CONFEREES MUST RECONCILE DIFFERING HOUSE, SENATE PROPOSALS

DIFFERENCES

PROVISION	SENATE	HOUSE	OUTLOOK
Tax on expensive plans	40% excise tax on premiums exceeding $8,500 for single coverage and $23,000 for family coverage. Higher for certain high-risk industries and early retirees. Provision would apply beginning in 2013 and future increases in the threshold triggering the tax would be linked to annual rise in the Consumer Price Index, plus one percentage point.	No provision.	Likely, but with modifications, such as increasing the cost threshold before the tax would apply.
Coverage mandate	Penalty of $750 per employee on employers not offering coverage. If premiums paid by employees exceed 9.8% of income, other penalties apply.	Penalty of 8% of pay for each employee not covered.	Some type of employer mandate is certain in a final agreement, but details had not been decided.
Retiree health care coverage maintenance of effort	No provision.	Bars employers from reducing retiree health care coverage to pre-Medicare-eligible retirees unless they make comparable reductions for active employees.	Not likely to be included in final bill.

SIMILARITIES

PROVISION	SENATE	HOUSE	OUTLOOK
Flexible spending accounts	$2,500 cap on FSA contributions, starting in 2011. Future increases in cap linked to annual rise in Consumer Price Index.	Same, except cap would begin in 2013.	Certain that a cap will be in final bill.
Medicare prescription drug subsidy	Strip tax break from employers offering retiree prescription drug coverage.	Similar, except tax break would end after 2012.	Likely.

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Federal health care reformers view Massachusetts favorably

Connector plan likely to remain intact amid federal reforms

By JERRY GEISEL

BOSTON—Members of Congress working on health care reform legislation are almost certain to allow Massachusetts to continue its pioneering 2006 law that has moved the state close to universal health care coverage.

Bills already passed by the Senate and House would allow Massachusetts to continue operating a key feature of its reform law—an exchange in which the lower-income uninsured can choose among different health plans offered by insurers, with the state paying all or part of the premium.

In addition, embedded in the Senate-passed bill is a provision that would allow Massachusetts to seek a waiver from federal regulators to enable it to continue other key components of its law, including imposing financial penalties on individuals who don't enroll in a qualified health care plan and employers that don't offer qualified coverage to their employees.

The special protection afforded for the Massachusetts law is the result of the involvement of the Bay State's governor, Deval Patrick, and its two Democratic U.S. senators, John Kerry and Paul Kirk, state observers say.

"Gov. Patrick and Sens. Kerry and Kirk have been working closely together to help safeguard the successes achieved in Massachusetts," said a spokesman for the Massachusetts Health Insurance Connector Authority, the state agency overseeing Massachusetts' health care reform law.

In addition, congressional negotiators are expected to make changes in the legislation to make it even clearer that the Massachusetts law can remain intact, state observers say.

Due to its success, it isn't surprising that Massachusetts is receiving special treatment from federal health care reformers.

With slightly more than 97% of its residents enrolled in health care plans, Massachusetts is the only state to have achieved near-universal health insurance coverage. The insured rates in the other 49 states average about 85%, according to the U.S. Census Bureau.

Massachusetts' success in expanding coverage—about 90% of its population had coverage prior to the passage of the 2006 legislation—is the result of several provisions in the 2006 law.

Those include state health insurance premium subsidies now provided to more than 170,000 residents with incomes up to 300% of the federal poverty level, financial penalties of more than $1,000 a year on individuals not enrolled in a health care plan, and an annual assessment of $295 per employee on employers—except very small firms—that do not offer health care coverage.

Another measure of Massachusetts' success is the continuing popularity of its reform law. Polls have found that about 70% of state residents support the law.

While the prospect of federal health care reform legislation is causing anxiety among employers who fear big increases in administrative burdens and costs depending on the design of their plans, the Massachusetts law enjoys broad support among state employers, said Richard Lord, CEO of the Associated Industries of Massachusetts in Boston.

> **'The law has been very successful in providing access to coverage, while winning broad support.'**
>
> Richard Lord,
> Associated Industries of Massachusetts

"The law has been very successful in providing access to coverage, while winning broad support," Mr. Lord said.

A key reason for that support is that the law had minimal, if any, effect on employers offering coverage. "Massachusetts made it easy for employers to continue to do what they had been doing" before the reform law, said Randy Abbott, a senior consultant with Towers Watson & Co. in Wellesley Hills, Mass.

For example, an employer that wants to avoid the $295 per employee penalty for not offering qualified coverage has to prove that it is making a fair and reasonable contribution to employees' health care coverage.

Employers with more than 50 employees are exempt from the penalty if their health care plans cover at least 25% of full-time employees and pay at least 33% of the individual premium within 90 days of an employee starting work. Most employers easily pass those requirements, consultants say.

Even if a company failed the second part of that two-prong test, it still would be exempt from the special assessment if it covered at least 75% of its full-time employees in its health care plans.

Massachusetts also has won employer support because of the willingness of state regulators to respond to employer concerns.

"While working within the law, they have tried to be very flexible," said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

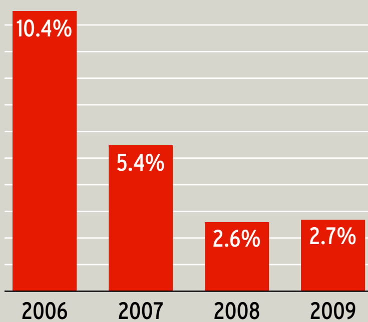
For example, state regulators in 2008 revamped a previous requirement in which employees could have been hit with big fines if their health care plans didn't meet benefits stipulated by the Commonwealth Health Insurance Connector Authority board.

Under the revised rules, employees have to be enrolled in health care plans whose relative value is equivalent to bronze-level plans, which generally have the lowest level of benefits, sold through the Connector.

The change protected employees enrolled in generous plans but did not provide the exact coverage previously required by the Connector board.

MASSACHUSETTS' EXAMPLE

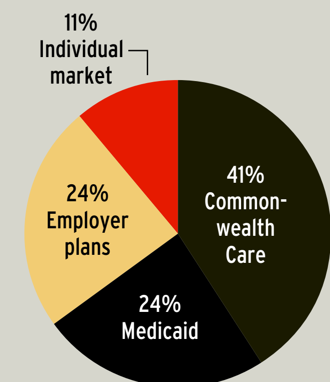
How the uninsured rate has fallen since Massachusetts passed health care reform legislation in 2006



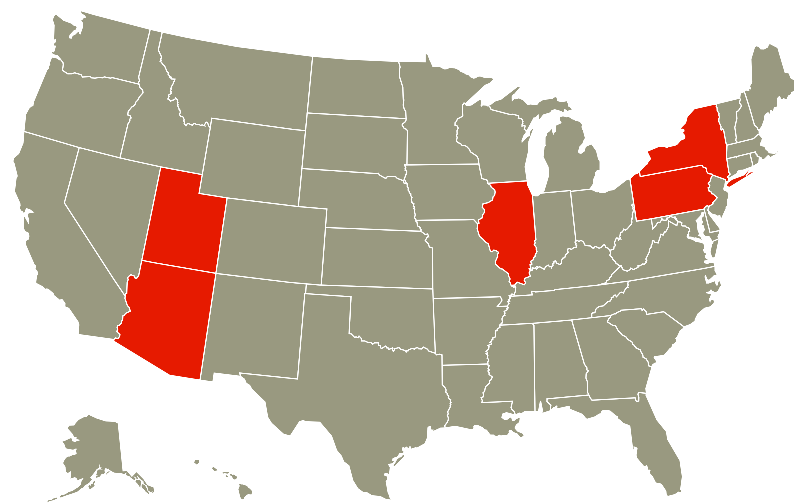
Sources: U.S. Census Bureau and Commonwealth Health Insurance Connector Authority

COVERAGE SOURCES

Where the uninsured in Massachusetts found coverage after the state passed health care reform legislation in 2006



Source: Urban Institute



2009 STATE REFORM EFFORTS

Selected state laws that affect health care insurance coverage

ARIZONA, H.C.R. 2014
Puts a state constitutional amendment on the November 2010 ballot that would prohibit mandates requiring the purchase of insurance.

ILLINOIS, H.B. 5285
Requires insurers to offer coverage to employees' adult dependent children to age 26 and age 30 for those in the military, effective June 1, 2009.

NEW YORK, S. 5471
Doubles the duration of health care continuation coverage for employees who work in New York state who are enrolled in fully insured health plans who quit or are laid off, effective July 11, 2009.

NEW YORK, A.B. 9038
Requires insurers to offer individual and group policyholders the option of extending coverage to dependent children through age 29, effective July 18, 2009.

PENNSYLVANIA, S.B. 189
Requires insurers to give employers the option of extending coverage up to age 30 of employees' adult children who meet certain eligibility requirements, effective June 10, 2009.

UTAH, H.B. 188
Creates NetCare, a purchasing exchange in which insurers can offer low-cost, bare-bones coverage exempted from certain state coverage mandates. Also allows employers to give workers a choice of enrolling in an employer-sponsored health plan or using an employer contribution to purchase coverage on their own, effective March 11, 2009.

Source: National Conference of State Legislatures

Several states took up reform measures in '09

By JOANNE WOJCIK

As lawmakers in Washington worked long hours to craft sweeping reforms to the nation's health care system, most states put health reform legislation on hold during 2009.

However, three states—Illinois, New York and Pennsylvania—attempted to tackle the uninsured issue with laws that expanded coverage in 2009 for the young adult children of employees (see box).

All of the laws require that the children be unmarried and have no dependents. Pennsylvania does not require that the child be a tax dependent, but it does require that a child be either a resident of the state or a full-time college student, regardless of his or her location. Likewise, Illinois and New York require that the child be unmarried and have no dependents, and there is no requirement that they be a tax dependent.

New York extended continuing coverage for unemployed individuals whose COBRA coverage had expired.

One state—Arizona—enacted a measure to put an initiative on the November 2010 ballot that would bar implementation of any federal mandate to either require individuals to buy health care coverage or employers to provide such coverage.

Meanwhile in Utah, legislation created a purchasing exchange in which insurers can offer low-cost coverage exempted from certain coverage mandates. The measure also allows workers to choose their employer-sponsored health plan or a plan offered through the exchange.

While numerous states last year mandated coverage for certain conditions and medical procedures, the laws' impact was limited to those with health care coverage and apply only to fully insured plans.

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2010 BENEFIT INSIDER DEMOGRAPHIC EDITORIAL CALENDAR

Date	Ad Close	Benefit Insider Editorial Content
Jan 18	Published	**Rethinking Health Care** *Bonus Distribution: EHHCC, IBI/NBCH*
Feb 15	Feb 3	**Benefits for a Diverse Workforce** *Bonus Distribution: NBGH*
Mar 15	Mar 3	**Value-Based Plan Design** *Ranking/Directory: Consumer-Driven Health Care Plan Providers* *Bonus Distribution: IHPM*
Apr 19	Apr 7	**Benefits Communications & Technology** *Ranking/Directory: Employee Benefits Software*
May 17	May 5	**Benefit Consulting** *Ranking/Directory: Benefits Consultants/Outsourcing Providers* *Bonus Distribution: AHIP, World at Work*
Jun 21	Jun 9	**Supplemental Benefits: Life, Disability, Dental & Vision** *Ranking/Directory: Dental Plan Providers*
Jul 19	Jul 7	**Pensions & Savings Plans** *Ranking/Directory: 401(k) Plan Providers*
Aug 23	Aug 11	**Health Care Cost Control Strategies** *Ranking/Directory: PBMs*
Sep 20	Sep 8	**Prescripton Drug Benefits**
Oct 18	Oct 6	**Alternative Benefit Financing**
Nov 15	Nov 3	**Wellness Benefits** *Bonus Distribution: NBCH*
Dec 13	Dec 1	**Behavioral Health & Work/Life Benefits**

Note: Editorial Content and Bonus Conference Distributions are subject to change.

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Questions & Answers

Is Congress likely to pass sweeping health care reform legislation in the coming weeks? If it does, what will the impact be on employers and how should employers start to prepare?

Those are some of the questions Business Insurance Editor-at-Large Jerry Geisel posed to Chantel Sheaks, a principal in Buck Consultants L.L.C.'s Washington office. Ms. Sheaks, who has been closely tracking the health care reform legislation since its inception, also follows a wide range of employee benefits-related legislation, regulations and judicial developments.

Trade-offs for employers

Q: Congress has been working on health care reform legislation for nearly a year. It is now in the home stretch. The House and Senate each have passed bills. Conferees are trying to resolve differences. Is there good reason to believe a bill will be agreed to by conferees and passed?

I think that at this point there is very good reason to believe something will be passed. I think they're trying to get it before the State of the Union (address by President Barack Obama). That might be a little bit too fast, but I think something will come out by February or by March.

Q: It's clear that the lower-income uninsured will receive health insurance subsidies. What will the impact be on employers?

The things that I think have not been really looked at, and especially in the Senate version, which will add a lot more money, are the new notice, reporting and disclosure requirements. First of all, employers would be required to provide for each new employee and each current employee an explanation of the exchanges, how to get in contact with the exchanges, the fact that if they go into the exchange the employer contribution will not be part of the contribution in the exchange. They have to provide these notices to each employee. Whether they can provide them electronically or they have to provide them hard copy, that's going to be a big debate. And you may think to yourself, "Well that's just one notice," but it's one more notice.

Q: If 30 million more people have coverage, there should be less cost shifting, or providers that treat individuals without coverage trying to shift those costs to insured plans. Employers should benefit. Is that the full picture?

That's part of it, but you also have offsets of additional requirements that you're putting on employers. And the fear is more people may have coverage, but there may be more people covered under Medicaid. The Medicaid reimbursement rates are not nearly what the hospitals and doctors charge private plans and what they charge employers. So if you start getting more people in programs that don't reimburse (fully), there's still going to be cost shifting. Until there's a level playing field between what Medicare pays, what Medicaid pays and what private insurance pays, there still will be cost movement.

Q: What should employers now be doing as health care reform's likelihood of enactment grows more and more certain?

You need to make sure: Right now the people we've been talking to are the (human resources) people, your benefits managers, maybe your vp of HR. It needs to go up a rung. You need to start briefing your (chief financial officers) and your CEOs to let them know what this really means and let them know what the impact it will have, the financial impact on your plan.

Q: With the work and costs employers face, are there benefits if this legislation becomes law?

One thing that will help employers is that if the exchanges actually work the way they have said they would work in theory, you may have people who, instead of taking COBRA, would go into the individual market and take coverage there. There are some industries that we've seen that people actually want to retire, but they can't retire because they can't get health care coverage…(and now) they could get coverage through the exchange.

WATCH more of this interview online in a video available at www.BusinessInsurance.com

Q: The legislation will improve access, but what will it do to costs?

A very simple economic theory: increase access, increase cost. Without cost control, without education, without explaining to people how to use their health care coverage, you'll have increased costs.

Reform: Rethinking U.S. health care

CONTINUED FROM PAGE 12A

lengthy waiting periods before new employees are eligible for group coverage.

In other cases, the beneficial effects of some provisions might be more than offset by other provisions.

Employers are bound to benefit from the huge reduction in the number of uninsured residents. Up to 30 million of the nation's 46 million uninsured will gain coverage, chiefly through health insurance premium subsidies that will enable them to buy coverage through state health insurance exchanges.

That reduction in the number of uninsured also should reduce the amount of uncompensated care, a cost providers try to shift to insured patients, which inflates the costs of medical services to those with group coverage.

However, the reduction in cost shifting could be offset by other provisions. For example, while health care providers should see a reduction in uncompensated care because more patients will have group coverage, their payments from Medicare also may decline. That is because both chambers' bills would reduce projected increases in Medicare payments to providers.

"There may be less uncompensated care, but there could be more undercompensated care," a revenue loss that providers might try to recoup through higher charges on patients in employer plans, Mr. Raetzman said.

Another provision—only in the Senate bill—would hit employers with the costliest health insurance plans. That provision would impose a 40% excise tax on annual health insurance premiums exceeding $8,500 for individual coverage and $23,000 for family coverage.

The tax—to be paid by insurers and third-party administrators but almost certainly passed on to employers—would start in 2013. The cost thresholds would be somewhat higher for plans covering employees in high-risk industries, such as construction and mining, or early retirees. From 2014, the maximum nontaxed premiums would rise in tandem with increases in the Consumer Price Index, plus one percentage point.

Some experts say employers that want to avoid the excise tax might reduce or eliminate noncore health care benefits—such as dental and vision care—as well as flexible spending accounts.

Meanwhile, the administrative cost and burden imposed by the health care spending cap could be significant, said Ms. Darling. That is because employers would have to calculate the exact amount of health insurance premiums and FSA contributions for every employee every month.

"This is going to very cumbersome," said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

Despite intense opposition from organized labor and many House Democrats, observers expect the provision to survive, though in somewhat modified form with a higher cost threshold before the excise tax would kick in. President Obama said last week that he favors such a tax.

Differences remain

Employers also are anxiously awaiting the outcome of negotiations on other provisions in which there are significant differences between the House and Senate bills. Some of those differences include:

- COBRA coverage. The House bill would require employers to extend COBRA health care continuation coverage until 2013, when state health insurance exchanges would kick in. The Senate bill has no such requirement.
- Retiree health care coverage. The House bill would bar employers that offer coverage to pre-Medicare-eligible retirees to maintain current benefit levels unless they make comparable changes to health care plans covering active employees. Such a requirement is not included in the Senate bill.
- Employer mandate. The House bill would impose a penalty of 8% of pay for each employee not covered. The Senate bill would impose a $750 penalty on employers for every employee not offered coverage.

In addition, employers with low-income workforces and that require employees to pay a significant portion of the premium would face another new penalty. The Senate bill would affect employers whose workers pay more than 9.8% of their income for employer-provided coverage and who receive premium subsidies through new health insurance exchanges.

The annual penalty would be $3,000 for each employee receiving subsidized coverage through the new health insurance exchanges, or $750 for each employee in the company, whichever is less.

- Public option. The House bill would establish a public option, or government-run health insurance plan, to provide coverage to the uninsured. A public option is not in the Senate bill.

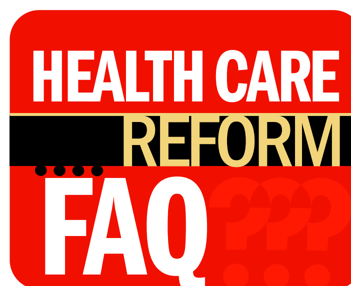
On the other hand, the Senate and House bills contain other employer-related provisions that are identical or very similar. Those provisions include:

- Limit pretax contributions to FSAs at $2,500. The Senate bill would impose the limit beginning in 2011, while it would start in 2013 under the House bill. Both measures would link increases in the cap to the annual rise in the CPI.
- Bar FSAs and health savings accounts from reimbursing employees for over-the-counter medications starting in 2011.
- Both bills would strip tax breaks enjoyed by employers that offer prescription drug coverage that is equal to Medicare Part D.

Understanding key provisions in federal health care reform

Congress is on the edge of passing historic health care reform legislation with House and Senate negotiators working on a final agreement. While federal legislators the past three decades have passed numerous health care-related measures, none has come close in scope to the current reform legislation.

Roughly 30 million of the nation's 46 million uninsured would gain coverage, largely through federal health insurance premium subsidies. Insurance exchanges would be set up in every state where commercial insurers would compete to provide coverage to individuals and small employers.



Insurers would have to revamp their underwriting practices to eliminate, among other things, exclusions for pre-existing medical conditions.

For the first time, employers would face penalties if they do not offer coverage and, some health insurance plans may lose their tax-free status.

To help employers prepare for the changes, *Business Insurance* provides answers to frequently asked questions about the issues. View the Health Care Reform FAQ at *www.businessinsurance.com.*

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