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Business Insurance

January 30, 2012

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In Brief

AIG ratings outlook now stable: Best

A.M. Best Co. Inc. revised its outlook on American International Group Inc. and AIG's main operating units to stable from negative, saying that AIG's troubles seem largely behind it. Best also affirmed AIG's bbb issuer credit rating. Best revised to stable the outlook for AIG unit Chartis Inc.'s U.S. insurance group and its members, as well as the Lexington Insurance Pool and its members. The units' A financial strength ratings were affirmed.

Commercial P/C rates up 2.8% in Q4

Commercial property/casualty rates increased an average of 2.8% during the fourth quarter of 2011 compared with the same period a year earlier, the Council of Insurance Agents &

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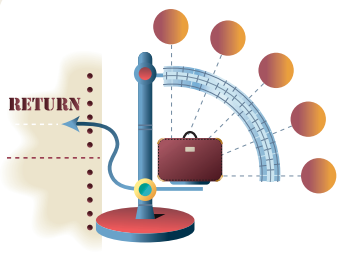

SPOTLIGHT

CAPTIVE INVESTMENT MANAGEMENT

Financial crisis, regulators spur more conservative investments; creative tactics; profits deployed to limit risks; caution is norm in captive asset investments. **PAGE 9**

MARINE

REUTERS

The Costa Concordia cruise ship suffered extensive hull damage after running aground and partially sinking off the Isola del Giglio, Italy, earlier this month.

Cruise ship disaster hits marine insurers

Questions on liability, environment impact cloud claims picture

By SARAH VEYSEY

ISOLA DEL GIGLIO, Italy—Insurers continue to count the cost of the Costa Concordia cruise ship disaster and attorneys are preparing class action claims on victims' behalf, but experts say the impact of the tragedy on marine insurance rates is not yet clear.

The loss of the 126,214 ton ship, which ran aground Jan. 13 off the island of Giglio, Italy, shortly after setting sail on a Mediterranean cruise with 4,200 people aboard, could become the largest marine insurance loss on record, experts say.

The largest insured loss to date was the 1989 Exxon Valdez disaster, which cost insurers about $500 million, including extensive pollution costs.

At least 16 people died when the ship struck a rock and capsized. Late last week, Italy-based Costa Cruises offered €11,000 ($14,225) in compensation to passengers who were unharmed in the disaster.

The ship's captain has been charged with negligent manslaughter and placed under house arrest.

According to analyst estimates, insured losses could range from $500 million to $1 billion.

The cruise ship was insured in the international insurance and reinsurance markets and has liability coverage in the protection and indemnity market.

Aon Corp. was the insurance broker for the vessel's coverage, sources said. Aon declined to comment for this story.

Miami-based Carnival Corp. & P.L.C., the owner of Costa Cruises, said in a regulatory filing that it had insurance for damage to the vessel above a $30 million

See **MARINE** page 17

LIABILITY & LITIGATION

Will decision on monitoring hit employers?

High court ruling could shape privacy

By JUDY GREENWALD

WASHINGTON—The Supreme Court's ruling that long-term police GPS monitoring of a suspected drug dealer constituted trespassing is expected to be influential as lower courts tackle such privacy issues in the workplace.

The high court's unanimous ruling last week in *United States vs. Antoine Jones* also indicates how the court is likely to rule when it confronts privacy in the workplace head-on, they say.

Employers that decide to use GPS devices on their fleet vehicles or smartphones to track workers' activities could avoid potential problems by telling workers of the tracking (see story, page 20).

Meanwhile, New York's highest court will consider the use of GPS tracking in a case that involves the workplace (see story, page 20).

According to last week's ruling by the U.S. Supreme Court, authorities obtained a search warrant in 2005 permitting installation of GPS on a vehicle registered to Mr. Jones' wife. The warrant authorized the GPS installation in the District of Columbia within 10 days; instead, agents installed it 11 days later in Maryland and tracked the vehicle for 28 days. Mr. Jones and others were subsequently indicted for drug trafficking.

A lower court suppressed GPS data obtained while the vehicle was parked at Mr. Jones' residence, but admitted the rest, stating Mr. Jones had no reasonable expectation of privacy. The District of Columbia Circuit Court of Appeals reversed that ruling, holding that the GPS tracking violated his Fourth Amendment right against unreasonable searches and seizures.

Five Supreme Court justices,

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REINSURANCE

London-based BMS Group Ltd. recently opened an office in New York and announced that the new office would be the base of Group CEO Carl Beardmore. Mr. Beardmore recently discussed the development with Senior Editor Mark A. Hofmann.

BMS sets sights on expansion in U.S. market

Q: Why move to the United States? Why now?

BMS has had a presence in the States for a number of years, but it may be described as not widely publicized and probably not as expansive as it needed to be to make head roads into the market. About 18 months ago, we moved to a new strategy where we determined that, as a group, we'd like to create the alternative to the big players in the marketplace. And in order for us to do that, we needed to have a far more visible and expansive presence in the U.S. to persuade clients to trust us with their business. It's very much on the back of a new strategic direction for BMS Group, and very much on the back on what the clients are telling us they need to see from us to allow them to support us with our business.

Q: Will the actual headquarters of BMS remain in London?

The headquarters will remain in London. I will be splitting my time in a way, which means I will spend a majority of my time in the U.S., but obviously we still have very important obligations within London. In order to fuel and drive the reinsurance element of our strategy, which is a very U.S.-centric strategy for the time being, I just think it's right that I spend an appropriate amount of time in the U.S. supporting the reinsurance strategy and placing me very closely to the clients. I have an aspiration to be seen as the most accessible CEO in the marketplace. In order to do that, I have to spend more of my time in the U.S. than I do in London.

Q: Have you already moved to the United States?

It's something that will be a transitionary move. We were delighted last week to announce the opening of our New York office, which is a significant step forward in the expansion of the U.S. platform. The opening of that office acted as a catalyst for me to start the process of me transitioning

See **BEARDMORE** page 19

RISK MANAGEMENT

Planners tackle Super Bowl risks

Potential liabilities rocket as fans descend on city

By RODD ZOLKOS

INDIANAPOLIS—When football fans tune in to the National Football League's Super Bowl XLVI on Feb. 5, they won't see the years of risk management efforts that preceded it.

Fans likely also will be unaware that the exposures that have been addressed include not just the event inside Indianapolis' Lucas Oil Stadium, but those extending far beyond the venue's gates.

"The planning of an event the size and scope of the Super Bowl has been going on for years in advance of the event," said Lori Shaw, director of sports and leisure in the entertainment practices group at Aon Risk Solutions in Charlotte, N.C.

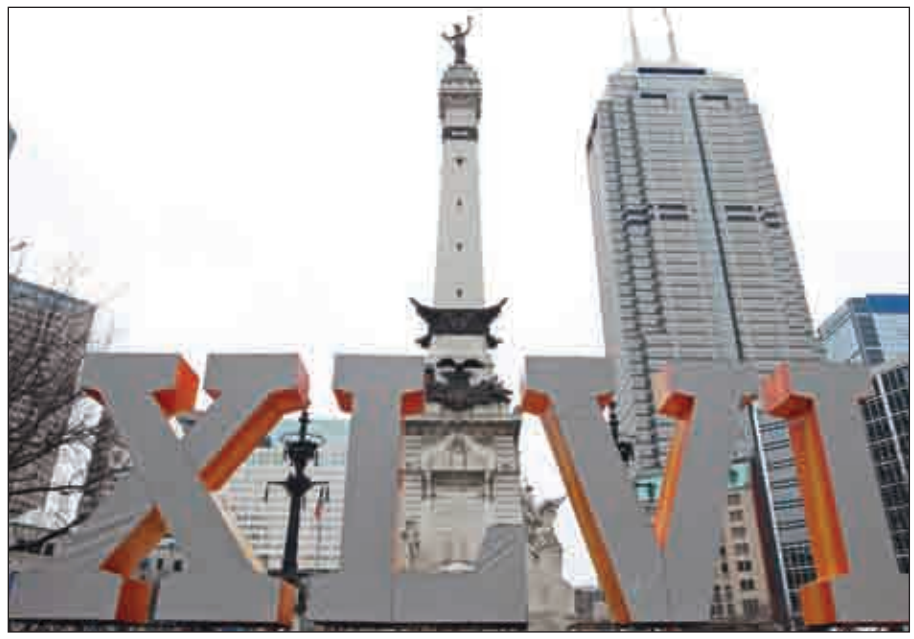
"In any major event, the planning from a risk management perspective as well as an insurance perspective…takes place years ahead," said Lance Ewing, leader of the hospitality and leisure industry practice group at Chartis Inc. in Memphis, Tenn.

Beyond the game itself and the fans it will bring to Indianapolis, there are various events leading up to the game involving temporary venues, a host of sponsorships, the game broadcast and other related exposures, including the host city's reputation.

"There are so many different stakeholders in an event like this," said Ms. Shaw.

"The Super Bowl has become more than a football game," said Chris Rogers, director of risk control, national entertainment group, at Aon Risk Solutions in Los Angeles. "It's a weeklong event."

Surrounding the game itself, risks range from slips and falls to acts of terrorism,



AP PHOTO

Among facilities that Indianapolis code enforcement officials have checked for safety are tents, stages and even the massive XLVI Roman numerals at the city's Monument Circle.

Ms. Shaw said.

Planning also has included "what happens if there's a weather event that affects ingress and egress," Ms. Shaw said in noting the need for contingency plans in case the venue becomes unavailable or the event has to be rescheduled.

In addition, an event of the Super Bowl's scale "speaks to the need for a very clear, defined evacuation plan," she said.

The halftime show is another challenge, Mr. Rogers noted, "especially when they do things like, 'Let's bring in 400 or 500 young people to stand around the stage and dance.'"

Mr. Ewing cited possible risks such as a mass illness at the game and determining whether local hospitals could accommodate a sudden influx of 25,000 to 30,000 patients. With terrorism and law enforcement exposures, it's also been necessary to consider whether the governor could mobilize the National Guard if needed.

"Even down to the flyover that many times occurs," Mr. Ewing said, "those are all things that have to be orchestrated and thought of from a risk management perspective."

In terms of insurance, "You've got quite a variety of markets that will participate in the insurance portfolio of an event like this," Ms. Shaw said. She expects general liability coverage for the Super Bowl to exceed $100 million, with additional cover-

See **SUPER BOWL** page 18

WORKERS COMPENSATION

NFL injury suits may turn on comp rules

League likely to raise exclusive remedy defense

By SHEENA HARRISON

The National Football League is expected to use an exclusive remedy defense in liability litigation filed by hundreds of former pro football players who suffer from concussion-related injuries and cognitive disorders.

The NFL is named as a defendant in 21 suits that allege the league negligently misled at least several hundred players about the dangers of concussions and other head injuries. Riddell Inc., the league's official helmet maker, also is named as a defendant in some of the suits.

The lawsuits have been filed in various federal courts, including Atlanta, Miami, New York and Philadelphia.

In Miami last week, a hearing was held to determine whether the concussion cases should be consolidated into multidistrict litigation, and the NFL and some plaintiffs asked for the cases to be heard in Philadelphia. A decision is expected in 30 days, said Richard Lewis, a partner with

AP PHOTO

Patrick Surtain, who played in the NFL from 1998 to 2008, is among players suing the league for concussion-related memory loss.

Hausfeld L.L.P. in Washington.

Additional lawsuits could be filed in the case, said Mr. Lewis, whose law firm represents more than 100 former NFL players.

Michael McGlamry, an attorney with Pope, McGlamry, Kilpatrick, Morrison & Norwood P.C. in Atlanta who represents about 50 players, said it's likely that the NFL will argue football players who suffered concussions should be covered solely by provisions of the league's collective bargaining agreement.

Those include workers compensation, disability benefits and the NFL's 88 Plan, which pays for medical and custodial care of retired NFL players with dementia.

While some players have been able to receive benefits for concussion-related injuries, Mr. McGlamry said player attorneys are seeking to prove, in part, that their clients face health problems due to negligence that extended beyond typical workplace hazards.

"I think this is something that you're going to see more and more players become a part of…and I think the general public will be amazed at the numbers of guys that are suffering from these kinds of injuries," Mr. McGlamry said.

The NFL declined to comment about the pending lawsuits. In a statement, the league said it "has long made player safety a priority and continues to take steps to protect players and to advance the science and medical understanding of the management and treatment of concussions."

"The NFL has never misled players with

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HEALTH CARE REFORM

Religious groups get delay on contraceptives

Employers granted extra year to comply with mandate

By JERRY GEISEL

WASHINGTON—Federal regulators may have given employers affiliated with religious organizations an extra year to ensure that their health plans fully cover prescription contraceptive services, but those employers should not regard the move as anything more than a delay.

While employers affiliated with religious organizations and some lawmakers oppose the health care reform law-related mandate, there likely is not sufficient support in Congress to overturn the rule, experts say.

The rule, announced this month by Department of Health and Human Services Secretary Kathleen Sebelius, will go into effect in two stages.

For most employers, the requirement, like a previous proposal, will apply to plan years that start on or after Aug. 1, 2012. As most employers offer calendar-year plans, the requirement will apply to the majority of plans on Jan. 1, 2013.

The shrinking percentage of employers with health plans that have grandfathered status under the reform law, are exempt from the contraceptive mandate. But to maintain grandfathered status, plans cannot ever increase coinsurance requirements and are sharply limited in how much they can increase employee copayments or premium contributions, among other things.

Religious-affiliated organizations, such as Catholic health care systems and universities, would have an additional year before they would have to comply. For such organizations, the mandate would apply for plan years starting on or after Aug. 1, 2013.

"This additional year will allow these organizations more time and flexibility to adapt to this new rule," Ms. Sebelius said.

Besides grandfathered plans, the only organizations automatically exempt from the mandate are certain religious employers, such as a church whose purpose is the "inculcation" of religious tenets, primarily employs those who share its religious tenets, and primarily serves those who share its religious tenets.

It isn't known how many employers will have to upgrade or expand their prescription drug plans to comply with the new requirement.

Such coverage is "widespread but by no means universal," said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

Aside from employers with religious objections, some may not offer prescription contraceptive coverage because they limit prescription drug coverage to treatment of diseases or other medical problems, consultants say.

"This does not fit that category," Mr. Thompson said.

On the other hand, many employers view this as a "family-friendly, visible and widely appreciated benefit," he said.

And some employers view coverage of contraceptives as the same as any other prescription.

"Whether it's for regulation/control of a woman's period, long-term contraception, or short-term family planning, I think plans should cover these prescriptions, just like any other medication," said Joseph P. Molloy, vp-benefits/employee services at North Shore-LIJ Health System in Lake Success, N.Y.

For those employers that will have to add the coverage, the additional cost will be modest, certainly less than 1% of total health care plan costs, said Rich

See **CONTRACEPTION** page 21

HEALTH CARE REFORM

Boehner vows speedy repeal of LTC measure

Suspended program deemed unworkable by administration

BY JERRY GEISEL

AP PHOTO

Speaker John Boehner said the House will vote this week to kill the CLASS Act.

WASHINGTON—The U.S. House of Representatives this week will vote on legislation that would kill a health care reform law provision to establish a voluntary long-term care program, House Speaker John Boehner, R-Ohio, said.

"We will repeal the CLASS Act," Speaker Boehner said during an address last week before the National Assn. of Health Underwriters conference in Washington.

CLASS is the acronym for the Community Living Assistance Services and Supports Act, which was incorporated in the 2010 health care reform law.

"Let's get it off the books," Speaker Boehner said of the program.

This month, the House Ways and Means Committee approved the bill, H.R. 1173, to kill the program, implementation of which the Obama administration suspended in October on grounds of being unworkable.

Administration officials said the program would have been unworkable because of its voluntary nature, with massive adverse selection that would have sent LTC premiums spiraling.

Speaker Boehner did not address the bill's prospects of passage in the Senate. But benefits experts say the repeal bill would have an uphill battle winning approval in the Senate, where Democrats are in the majority.

Some Democrats "don't want to be on an anti-Affordable Care Act bandwagon," said Gretchen Young, senior vp-health policy with the ERISA Industry Committee in Washington.

Business groups have opposed the program due to fears that it could, if implemented, lead to a taxpayer bailout.

"It would not have been financially viable. It would have been quintessential adverse selection. The design made no sense," said National Business Group on Health President and CEO Helen Darling in Washington.

"The program could have become a big sinkhole," Ms. Young said.

Turning to the health care reform law, which he strongly opposes, Speaker Boehner said its costs ultimately will bankrupt the country.

"It will ruin" what has been the world's best health care system, he said.

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WORKERS COMPENSATION

State to certify workers comp lawyers

Pa. program offers attorneys option to tout expertise

By SHEENA HARRISON

HARRISBURG, Pa.—The Pennsylvania Bar Assn. says a certification program for workers compensation attorneys in the state will assist injured workers and insurers in finding qualified representation for comp cases.

The Pennsylvania Supreme Court issued an order earlier this month that allows the state bar association's Workers' Compensation Law Section to act as a certifying organization through January 2017.

John Bagnato, chairman of the association's certification committee, said the certification will be the first offered by the state bar in any law specialty, and that the association believes the designation will help workers comp law specialists to stand out in their field.

"It would benefit attorneys by having something that's rock solid upon which to represent their competence," said Mr. Bagnato, who is an occupational disease defense attorney with the Spence Custer Attorneys at Law firm in Johnstown, Pa. "Right now, there isn't anything."

In turn, he said the certification will provide a compass for clients seeking workers comp attorneys.

"If they're certified in it, that will mean to the public that they can rely on that person," Mr. Bagnato said. "And that's not true just of claimants, but that's

See **ATTORNEYS** page 21

Ms. Briggs

Ms. Gaynor

Ms. Gillikin

Mr. Susina

Business Insurance makes staff changes

Business Insurance has made several changes to its staff.

Rebecca Briggs has been promoted to events director, with responsibility for leading all of the publication's special events.

Ms. Briggs, who is based in New York, joined *Business Insurance* in 2008 as events manager. Since then, she has led various events and awards programs, including the Risk Management Summit and the Women to Watch Leadership Workshop and Luncheon, as well as events recognizing the Risk Manager of the Year® and Risk Management Honor Roll®, and the Buyers Choice Award winners, among others.

Before joining *Business Insurance*, Ms. Briggs worked at the Financial Times, where she was responsible for the execution of all conferences, events and awards programs in the United States, Canada and South America. Prior to that, she managed events for several trade publications with Lebhar-Friedman Publishing—Home Channel News, Drug Store News, Retailing Today and Chain Store Age—and she has worked in nonprofit event management and fundraising.

Ms. Briggs graduated in 2000 from Franklin & Marshall College in Lancaster, Pa., with a bachelor's degree in sociology

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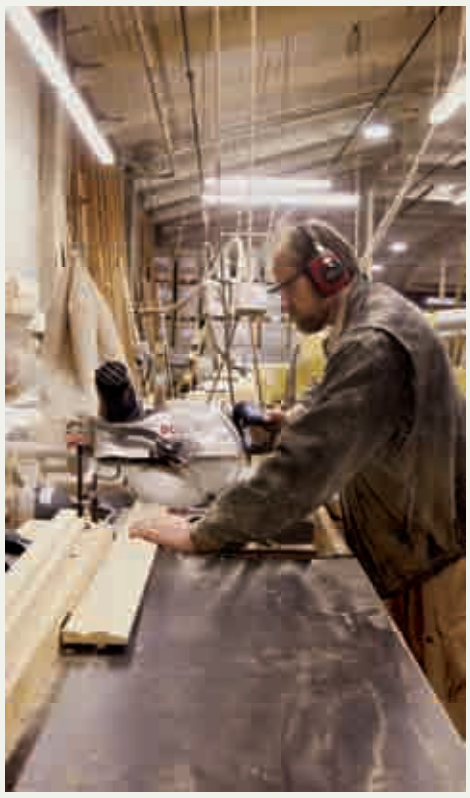

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Hotel lawsuits up in downturn

Property managers, hotel owners clash

By MATT DUNNING

Though conditions in the U.S. hospitality market have shown signs of improvement in the past year, hotel attorneys and insurers say the sluggish pace of broader economic recovery has led to a rising tide of litigation between hotel owners and their management companies.

During and after sustained economic downturns, independent hotel owners and management companies often are painted into a financial corner by the multiyear management contracts common to the industry, putting both sides at greater risk of being taken to court over an alleged breach of contract, experts said.

Even as hospitality revenues slowly find their way back to pre-recession levels, experts say they expected the upward trend in lawsuits between ownership and property management firms to be a long-tail effect of the recession.

"I think you're likely going to see more of these cases, either for nonpayment of fees or for termination or violation of a management agreement," said Richard Barrett-Cuetara, partner and chair of Shannon Gracey Ratliff & Miller L.L.P.'s hospitality group in Dallas.

Independent hotel owners, facing depressed revenues and looming mortgage debts, tend to apply greater pressure to the management companies running the day-to-day operations of their properties, scrutinizing every decision and spent dollar, experts said.

That level of scrutiny often can expose potential breaches of a management company's contractual duties to the property owner, which are the most common cause of legal disputes between small and middle-market hotel owners and operators, experts said.

"In good times, you're not as likely to see these kinds of disputes percolate," Mr. Barrett-Cuetara said, noting that disputes between hotelier partners often are settled in private during periods of robust economic performance.

"But when the market drops, all of a sudden you've got an owner that's seen gross revenue significantly decline with an operator that's charging the same fees that they were at the beginning of the contract, which might have been signed several years prior to the downturn," he said.

Similarly, hotel management companies also are more likely to pursue breach-of-contract action against a property owner if he or she struggles to keep up with service fees, operational costs and payroll allocations during times of sustained economic hardship.

Increasingly, disputes over breach of contract are being distilled down to a question of fiduciary duty, and whether it attaches to a contract between an owner and a management company. Many experts, like Jim Butler, a founding partner at Jeffer Mangels Butler & Mitchell L.L.P. in Los Angeles, contend that prior case law has established that hotel management companies are legally considered "agents" of the property owner.

That agent relationship—by way of English common law, Mr. Butler said—dictates that the operator owes a duty of loyalty, noncompetition and full disclosure to the property owner, and that its actions must be in deference to the owner's interests.

"We believe that virtually every hotel management agreement creates an agency relationship, making the operator the fiduciary of the owner," Mr. Butler said. "Whether the contract itself addresses it or not, the law imposes those duties."

Alternatively, some attorneys contend that sufficient case law does not yet exist to assign fiduciary duties automatically.

"It's an interesting concept, but there's a lot of litigation out there right now challenging it," said David Bender, a Los Angeles-based insurance recovery attorney at Anderson Kill. "I don't know of any courts that have ruled one way or the other on it."

In the meantime, Mr. Bender said, many operating firms have attempted to reduce their potential fiduciary liabilities through waivers included in their management agreements.

Because hotel management can encompass so many different and distinct business operations, the specific circumstances under which legal discord can manifest between hotel owners and management firms can vary greatly depending on a property's actual programming, experts said.

"The ways people frustrate one another in this industry are as infinite as the ingenuity of mankind," Mr. Butler said.

For instance, when owners begin examining their management company's workforce, they could find that the operator has maintained staffing levels far higher than the hotel's economic reality would necessitate. An owner might also discover that a general manager has hired an inordinate number of his or her own relatives to staff the hotel, regardless of their qualifications, or that some workers are being periodically diverted to jobs unrelated to the owner's interests.

In times of economic stress, owners frequently accuse their management company of shirking their responsibility to effectively market the property to customers, experts say. Operators also have been accused of selling hotel guest lists to timeshare marketers and other solicitors, or altering their accounting methods to artificially improve their revenue returns.

"There's only one reason to do something like that, and that's not to help the owner," Mr. Butler said, noting that management companies are just as prone to pressure during economic slumps as property owners.

Aside from the standard contractual requirements of hotel management, experts said owners and operators should pay especially close attention to language denoting the property's long-term intended uses. During an economic slump, a management company may be tempted to change certain aspects of the hotel's activities, amenities and other services, including operating hours and thematic programming of attached restaurants, bars and nightclubs.

"That can be a big disconnect between the owner and the management company," said Lance Ewing, Chartis Inc.'s industry practice leader for hospitality and leisure in Memphis, Tenn. "The operator is obviously trying to generate revenue, and they could be doing something that the owner hadn't originally intended to do. The risks can change dramatically if, for instance, the operator is suddenly targeting a spring break crowd instead of retirees."

Another way in which owners and management companies can reduce the likelihood of a dispute escalating to litigation, experts said, is to include in the management contract periodic opportunities for adjustment of fees, revenue quotas and other financial requirements.

Provisions in the management agreement pertaining to the hotel's risk management program can be just as troublesome as the operational elements of the contract if not properly examined, experts said. Defense costs for many variations of breach-of-contract claims would likely be covered under a combination of executive and professional liability insurance policies, but some allegations and activities could be excluded from coverage, depending on the terms of the management agreement and an entity's risk history.

Owners and operating firms need to be sure they and their partners carry the necessary insurance to respond to internal contractual disputes and externally generated litigation, as well as delineate to the extent possible whose insurance will respond in the event of a claim, experts said.

"Sometimes that's not thought out very well, or contemplated at all," Mr. Bender said, "particularly at the smaller properties, where they maybe have less experience or less access to risk management or legal advice."

Contract certainty key to avoiding complex legal issues

Vendor and subcontractor agreements can present their own unique set of problems.

If an owner imposes a certain vendor or subcontractor on its management company, it can be difficult for attorneys to sort out liability in the event of a negligent act or accident involving that third party, especially if there are questions as to the subcontractor's or vendor's suitability for the job.

"In those cases, you may have a management company arguing that their hands were tied because the owner wanted his brother-in-law's company to run the hotel restaurant or the nightclub," said Lance Ewing, Chartis Inc.'s industry practice leader for hospitality and leisure in Memphis, Tenn.

Similarly, experts said, some management companies have been known to partner with familiar vendors or subcontractors at above-market rates in exchange for rebates, which could not only be interpreted as a breach of their fiduciary duty to the owner but could lead to derivative liability exposure for claims against the third party or its employees.

To simplify complex legal tangles—if not avoid them altogether—experts recommend that owners and management companies invest in contract certainty above all else, for the management agreement itself and the insurance policies designed to support it.

—By Matt Dunning

'The ways people frustrate one another in this industry are as infinite as the ingenuity of mankind.'

Jim Butler,
Jeffer Mangels Butler & Mitchell L.L.P.

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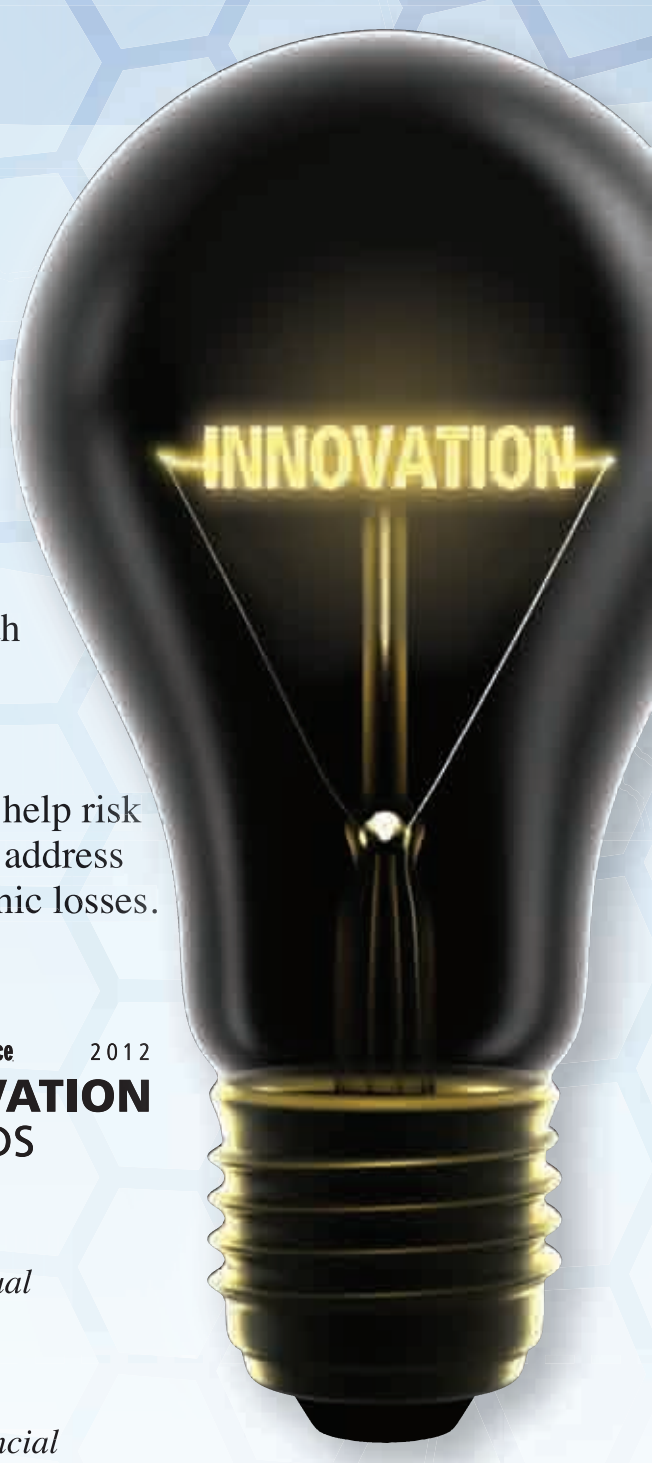

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Opinions

EDITORIAL

GAO mistaken on RRG fees

THERE IS GOOD AND BAD news in the Government Accountability Office's recent report on risk retention groups. The good news is that the report paints a picture—an accurate one, we believe—of a healthy and growing component of the alternative risk financing industry.

While still comprising a small share of the commercial liability market, RRGs' premium volume is growing. In 2010, the most recent year available, RRGs wrote about $2.5 billion in premiums, up sharply compared with $1.7 billion in 2003.

In some industries, RRGs have become a significant source of coverage. For example, more than 13% of premiums for medical professional liability coverage flowed into RRGs in 2010, according to the GAO report.

With an average combined ratio hovering in the 90% range since 2004, most RRGs are financially healthy.

But the bad news is the GAO's misunderstanding of the foundation of the federal law that authorizes RRGs.

Under the Liability Risk Retention Act, the role of states in which RRGs operate but are not licensed is sharply limited.

The federal law explicitly spells out what nondomiciliary states can do. Unless state actions, such as imposing premium taxes, are listed in the law, they are pre-empted.

That is why the GAO has it wrong when it said the law does not explicitly say whether insurance regulators in nondomiciliary states can or cannot impose fees on the groups. The law is not silent. It says clearly what nondomiciliary states can do—and imposing fees is not on that list.

The fee issue has plagued RRGs from the beginning. They clearly are impermissible. But the reality is that the cost of fighting them often exceeds the cost of paying them.

Given that cost/benefit analysis, RRGs often pay the fees—money that could have been used instead to add the groups' reserves, for example.

While we think the law is clear, if Congress does decide to take another look at the LRRA, we strongly suggest that legislators, in a single sentence, say that such fees are illegal. That would settle the matter once and for all.

LETTERS

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

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SCHILLERSTROM

COMMENTARY

A look back at changes, good and bad

Anniversaries are times for reflection. And with my 35th anniversary with *Business Insurance* this month, I have a few thoughts on some of the changes I've seen in my three and one-half decades here.

The most obvious change is the impact of technology. When I started in January 1977 as a reporter in *BI*'s Washington bureau, I wrote my stories on a typewriter and sent them for editing to Chicago on a telecopier, a slow and unreliable predecessor to fax machines. Production was cumbersome, and *BI* came out twice a month.

JERRY **GEISEL**
EDITOR-AT-LARGE

Today—thanks to the Internet—news can be distributed just about instantly and by almost anyone. That change is dramatic, but it is difficult for me to say whether the near-instant availability of news has made us better informed.

Narrower, but still important, is the change I've seen in the captive insurance industry. When I joined *BI,* if an organization wanted to set up a captive, its domicile choices basically were Bermuda and the Cayman Islands. Not one U.S. state had an attractive captive licensing law.

That changed in 1981 when Vermont passed its captive-friendly statute. Within a few years—thanks to its attractive law and a favorable regulatory climate—Vermont began to boom as a captive domicile. Today it is the third-largest domicile, with nearly 600 captives.

To me, the success of Vermont shows how a handful of people—a New York attorney, a New York insurance broker, the Risk & Insurance Management Society Inc.'s director of government affairs and a few Vermont officials who worked together in crafting and helping to win passage of what became Vermont's captive law—can change an entire industry.

Vermont's success inspired more than two dozen U.S. states to pass similarly attractive captive licensing measures, giving U.S. employers a breadth of domicile choices that did not exist 35 years ago.

In the benefits arena the biggest change, and an unfortunate one, is the decline and fall of defined benefit pension plans. Thirty-five years ago, stories about "pension plan freezes" were unheard because there weren't any. Today, it is increasingly difficult to find a company that hasn't frozen its plan.

Mandated low interest rates, which drive up the value of liabilities, and corporate concerns about how increased life expectancies will impact future costs are the major drivers of the plans' demise.

But decades of over-legislation and ever-changing rules from Washington lawmakers and regulators have contributed to the plans' demise.

The biggest and most ominous changes, though, involve our political system. Thirty-five years ago, congressional Democrats and Republicans really did try to work together to reach a consensus on major issues. That kind of bipartisanship is all but gone, for reasons of which I'm not entirely sure.

Whatever the reasons, we—the American public—are the victims of that loss of bipartisanship, as neither party has a monopoly on good or bad ideas.

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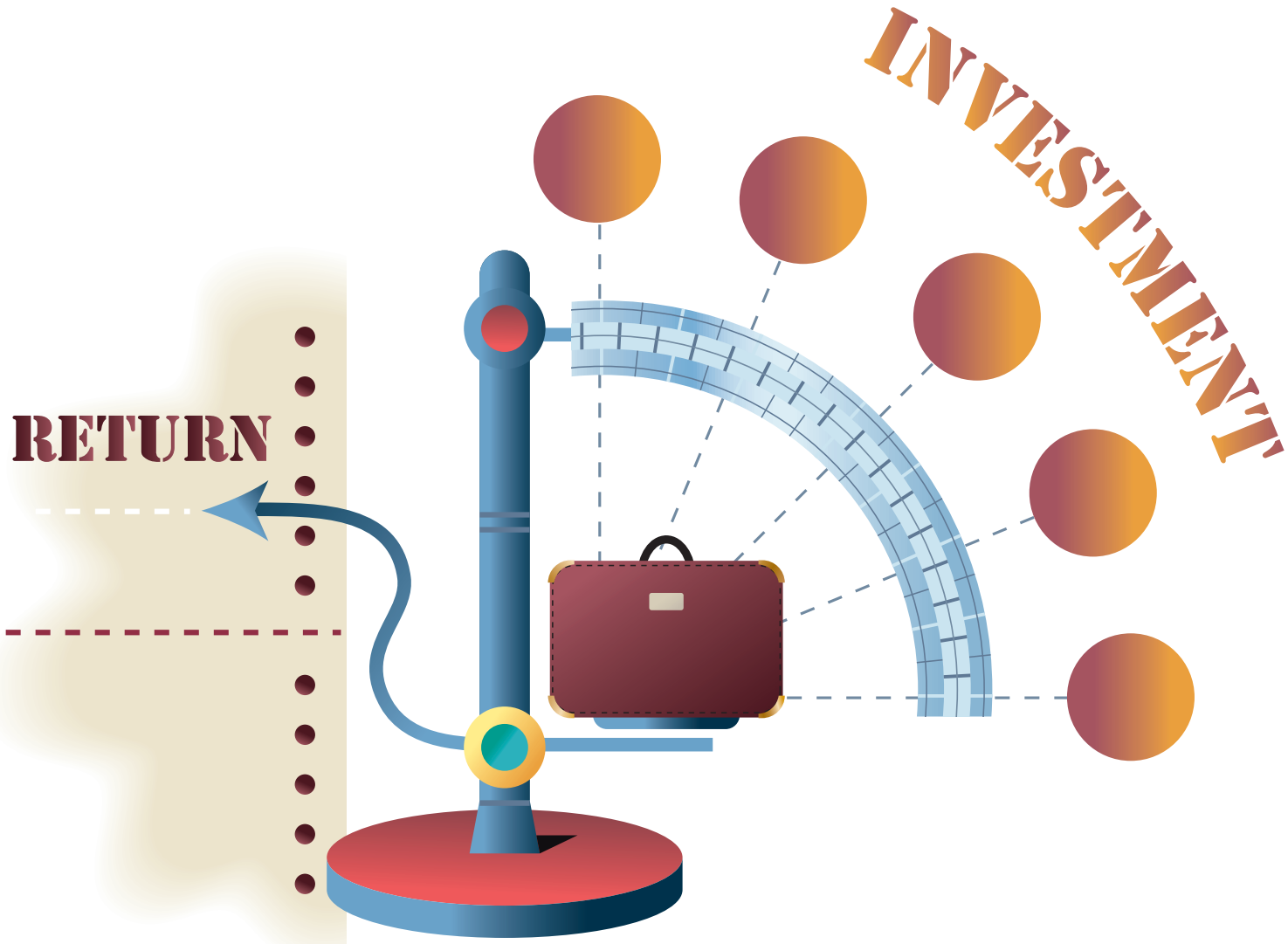


a measured approach

2008 financial crisis, regulators spur more conservative investments

By RODD ZOLKOS

'Everyone would love to get a better investment yield. The problem is, you've got to invest so conservatively.'

Les Boughner,
Willis Group Holdings P.L.C.

The assets captive insurance company parents or members commit to their alternative risk transfer vehicles to write insurance business give them a tremendous amount of money to invest, though they tend to be conservative in investing those assets.

For some that previously tried to reach a bit further for investment returns, the economic and market downturn of 2008 offered hard lessons, some captive industry experts say, with many captives becoming even more conservative in their investment strategies afterward.

"Everyone would love to get a better investment yield," said Les Boughner, executive vp and managing director of Willis Group Holdings P.L.C.'s North American captive practice in Burlington, Vt. "The problem is, you've got to invest so conservatively."

See **INVESTMENTS** next page

Captive Investment Management

SPOTLIGHT

Investments: 2008 crisis, regulators spur caution

CONTINUED FROM PREVIOUS PAGE

"They do tend to be conservative," said Edward Koral, specialist leader at Deloitte Consulting L.L.P. in New York.

Robert Eaddy, senior vp of the institutional trust and escrow group at Bryn Mawr Trust Co. in Bryn Mawr, Pa., noted that captives' investment options often face regulatory limits. "At the end of the day, (regulators) state what you can invest in," he said. "This is a highly regulated sector."

"Mostly what I see or come in contact with is fixed income," said Mr. Eaddy. Captives with less than $1 million in invested assets often rely on institutional money market accounts, he said.

Stuart H. Anolik, managing director in the tax group at CBIZ MHM L.L.C. in Bethesda, Md., noted that captive investments need to be relatively liquid, so they generally are placed in bonds, equities and cash, with a small amount sometimes placed in private equity investments. Speculative investments have no place in a captive investment portfolio, he said.

Captive owners also need to look at the asset classes in which they invest with an eye toward matching them to the insurance company's potential liabilities.

"That's why it's hard to invest in real estate when you have short-tail coverages," Mr. Anolik said.

"I think the biggest thing they need to understand…is that these are reserves of the insurance company that may be needed to pay claims," Mr. Anolik said. "I think 2008 was a chilling reminder to captive insurers of what types of investments they should be in."

Many captive owners moved to even more conservative investment policies after 2008, though some that did are looking to expand their portfolios a bit now, said Andrew Sargeant, chief operating officer at USA Risk Group in Montpelier, Vt.

"What I've seen a little bit of is some of my clients who took a more conservative stance after 2008 are looking to get a little bit more return," Mr. Sargeant said. In those cases, the captives might be looking at placing some of their investments in high-yield bond funds or returning to the equities market with a portion of their portfolio, he said.

But in the short term, "the return is horrendous at the moment," Mr. Sargeant said.

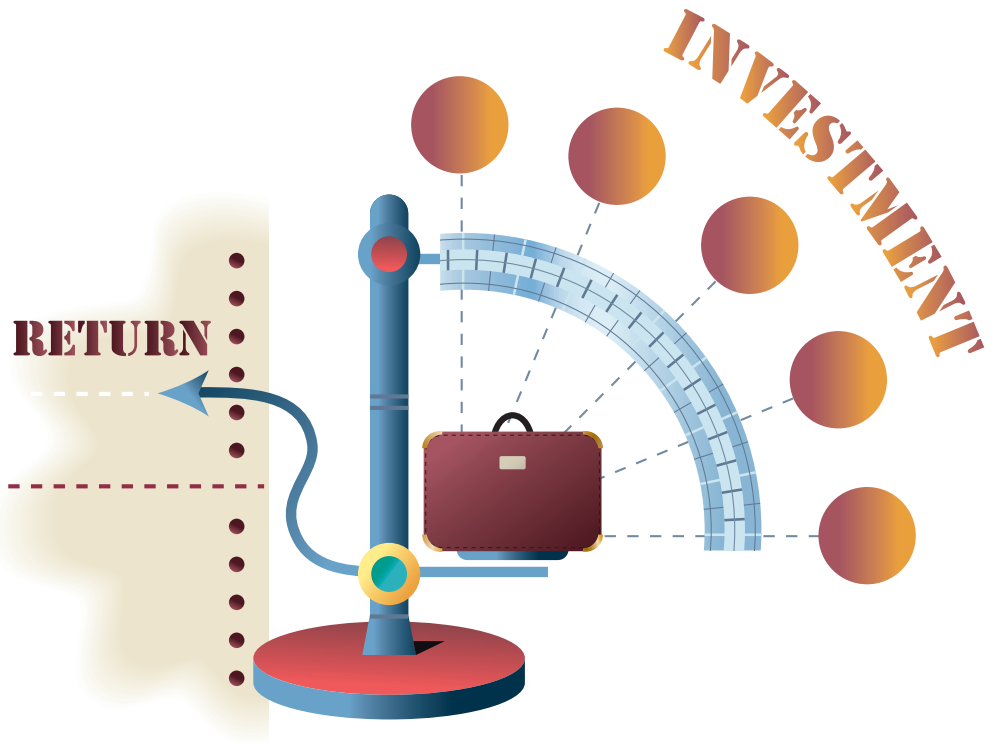
In its report last year on the 194 U.S.-based captives that it rates, A.M. Best Co. Inc. noted that those companies had more than $51.02 billion in admitted assets at the end of 2010, and saw an investment yield of 3.3% and a total return on invested assets of 5.7%.

Best's examination of its rated captives reinforced the notion of captives as conservative investors, saying the investment portfolios of those captives "are very short duration and heavily weighted toward highly rated, fixed-income securities."

The rating agency also noted that those captives' investment portfolios generally have recovered from the impact of the 2008 financial crisis and have returned to pre-crisis levels.

Despite current low yields, Willis' Mr. Boughner said he's seeing many captive clients realizing decent investment returns.

"Frankly, I'm pleasantly surprised by some of the investment returns we are seeing," he said, adding that he's seeing some captives earn returns in the 3% to 5% range, "which is pretty darn good these days."



5.7%

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While the captive investments can be managed in-house by the parent company, generally it's outside investment managers with good knowledge of captive business that are getting the better results in the current market, Mr. Boughner said.

"Either the treasury people look after it, which generally is not a good thing, or you get the outside investment managers—and they're the ones generating those (higher) results," he said. "My impression is the returns of captives that have professional investment advisers who are familiar with captives are much better than those that don't."

"It's a function of the size of the company, but I would say more and more captive companies are seeking independent outside investment folks," said Mr. Anolik.

Mr. Eaddy said he often sees cases where the captive owner allows the captive manager to handle the details of outsourcing its investment activity.

"The business owner is turning this over to a captive manager," he said. "The manager has relationships with investment managers, trusts and banks. The captive manager is offering a turnkey solution."

While their use might not be widespread enough to be characterized as "trends," there are some captives taking slightly different approaches with regard to intercompany loans of captive assets (see related story).

"What you've possibly seen as a new trend in captives, instead of lending money back to the parent, as captives often do, the captive is purchasing things that otherwise would be purchased by the parent," said Deloitte Consulting's Mr. Koral.

"We haven't really seen anything unusual or trendy lately," said David F. Provost, deputy commissioner of the Captive Insurance Division in the Vermont Department of Banking, Insurance, Securities and Health Care Administration. "Maybe a little bit more activity in more creative forms of intercompany investments, such as investments in the trademarks of the parent company or receivables of the parent company."

"But that's all variations on the theme of intercompany loans," Mr. Provost said. "Most of the captive owners are very conservative in the investment process."

Creative loans allow owners to use captives to support other purchases

By RODD ZOLKOS

One creative area in some captive insurance companies' investment portfolios is in their approach to what typically would be characterized as loans to their parent companies.

In some cases, the parent companies are using captive assets to purchase various items with "liquidation value" that they otherwise would have purchased themselves, said Edward Koral, specialist leader at Deloitte Consulting L.L.P. in New York.

Those items could take the form of vehicles, construction equipment, property, diagnostic equipment or other capital investments, Mr. Koral said. The approach, he said, integrates the captive with the parent company's capital spending program.

"Another thing that's frequently done is having the captive buy receivables from the parent," said Mr. Koral, with the captive purchasing those receivables the parent might otherwise sell into another market.

'I've seen some buildings in captives, at least one art collection, a couple of airplanes.'

David F. Provost,
Vermont Department of Banking, Insurance, Securities and Health Care Administration

Ultimately, the structure of the investments is more complex than the captive simply buying the equipment, Mr. Koral said. But, he said, "I think it's a terrific idea. It really just kind of rationalizes the financial management of the consolidated organization."

David F. Provost, deputy commissioner of the Captive Insurance Division in the Vermont Department of Banking, Insurance, Securities and Health Care Administration, said he's seen several examples of such variations on the intercompany loan theme.

"We've had a couple of captives where the trademark becomes an asset of the captive and generates revenue for the captive," he said. "I've seen some buildings in captives, at least one art collection, a couple of airplanes."

In taking such an approach, "I think the challenge is to make sure the (captive's) investment policy is being respected," Mr. Koral said. In general, that means "explaining to regulators why having a lien on an asset would be preferable to having an IOU from the parent."

Looking at such transactions as a regulator, Mr. Provost said that in Vermont, in the case of single-parent captive's investments, "there was no rule other than I can veto anything that threatens the solvency of the captive."

With that in mind, Mr. Provost said, the more unusual captive investments are usually "icing on the cake" of a captive's investment portfolio, not something on which the captive will rely for its solvency. Instead, he said, such twists on intercompany loans tend to be ways to go beyond the bulk of the captive's investment portfolio to allow it to help meet a particular goal of the parent.

Profitable captives help fund parents' loss control efforts

Some risk managers use excess capital to reduce exposures

By MIKE TSIKOUDAKIS

Companies and organizations are looking at their captive insurance programs not only as formal systems to reduce traditional insurance expenses, but also as profit centers that ultimately can reduce risks.

A captive insurance company's profitability usually stems from adequate rates and favorable loss experience, and the captive can deploy capital to the parent through various mechanisms, experts say.

Most commonly, successful self-insurance programs have a dividend strategy in which the captive declares a dividend to the parent. Captives also can loan money back to the parent as an investment or declare a premium holiday for the parent, industry experts say.

Mark L. Hubbard, senior vp of risk management for Loma Linda University Adventist Health Sciences Center in Loma Linda, Calif., has used profits and other financial gains from Loma Linda's self-insurance program to make significant investments to its comprehensive medical simulation center that serves all of the clinical and professional schools on campus, as well as the hospital operations, Mr. Hubbard said.

"In the last three years, we've put about $400,000 into our simulation center, either in terms of capital investments where we've purchased equipment, or in program development, where we've paid staff to develop a curriculum that is specifically targeted to reduce risk."

The simulation center, which resides within a large facility at Loma Linda, provides in-depth, robust clinical education to staff, allowing for multidisciplinary training and modeling for almost any kind of clinical environment, he said.

"In a simulation environment, we can recreate what would potentially be catastrophic circumstances over and over for someone so, if they are faced with those kinds of events in the future, they are better prepared to respond," Mr. Hubbard said.

Loma Linda also has supported two educational conferences for clinical leadership focused on patient safety.

"It was a way for us to spend some money on educating our senior leadership, so hopefully through their influence we can effectively reduce risk and improve patient safety," Mr. Hubbard said.

Most recently, Loma Linda established a budget for grant funding and has set aside $250,000 for researchers, clinical faculty and various departments on the campus to pursue research activities that are focused on patient safety and risk reduction.

Loma Linda also has taken gains from its captive program and created an experience-rating model where participants with favorable loss experience are assigned a premium credit to the allocation of their premium, he said.

While most companies reinvest captive profits in core operations, the use of the proceeds to fund an organization's loss control initiatives is progressive, yet "very few companies do this," said Les Boughner, executive vp and managing director in Willis North America's captive and consulting practice, in Burlington, Vt.

For many captives, their finan-

See **PROFITS** next page

Conservative approach needed for most captive investments

Strategy must reflect payout timetable for underlying claims

BY JERRY GEISEL

Captive insurance company sponsors, long accustomed to taking on a wide range of property and casualty risks, are far more cautious when it comes to investing captive assets.

"We take risk on the insurance side. We want to minimize our risk on the investment side," said Pamela Davis, Santa Cruz, Calif.-based president and CEO of the Vermont-domiciled Alliance of Nonprofits for Insurance, Risk Retention Group.

Captive executives and investment consultants say investment strategy has to follow two overriding objectives: ensuring sufficient cash flow to pay claims as they are due, and protecting the value of captive assets.

"We are not looking to make up for losses on the insurance side" when making investments. "The money must be there to pay claims," Ms. Davis said.

"Market risk is not something" with which most captive sponsors are comfortable, said William Dalziel a partner with U.K.-based London & Capital Asset Management Ltd., which provides captive investing services.

In trying to meet those objectives, the overwhelming majority of captive assets are in fixed-income investments, such as U.S. Treasury bonds and notes, state-issued bonds and high-grade corporate bonds, experts say.

For example, about 99% of Alliance of Nonprofits' assets are invested in fixed-income instruments, such as U.S. Treasuries and highly rated corporate bonds.

CAPTIVE INVESTMENT STRATEGIES

Tips for captives owners

- Don't try to make up for underwriting losses.
- Match investment maturities to claims payouts.
- Diversify investments by geography, industry.
- Invest directly in bonds not mutual funds.
- Avoid bonds from debt-crisis countries.

Other captives, though, have invested a small slice of assets in equities.

For example, the Vermont-domiciled National Catholic Risk Retention Group Inc. has about 17% of its assets invested in equities.

Including equities in the investment mix is "a good way to achieve a level of investment diversification without injecting too much volatility," said Michael J. Bemi, the RRG's president in Lisle, Ill.

Captive investment strategies, though, involve more issues than the mix—if any—of equities and fixed-income investments.

Another key consideration is the duration of fixed-income investments.

In general, the maturity lengths of captive investments should be tied to when claims are paid, experts say.

For example, captives with short-tail risks, such as property, should hold investments with short maturities, while those covering risks with longer tails should hold more investments with longer maturities.

"You have to look at loss patterns," said Les Boughner, executive vp and managing director of Willis Group Holdings P.L.C.'s North American captive practice in Burlington, Vt.

A "best practice is to match duration" of investments with claims payout, said Carl Terzer, founder and principal of CapVisor Associates L.L.C. in Chatham, N.J.

For example, "the bond portfolio representing reserve assets should be constructed in a manner such that liquidity matches the projected payout patterns and other cash requirements. This is typically accomplished through the appropriate design of the portfolio's maturity structure," Mr. Terzer said.

Through duration matching, captives can reduce the likelihood of being forced to sell investments—before maturity—at a loss when they need money to pay claims, experts say.

If interest rates have risen sharply since the captive purchased the bonds, the captive will incur a loss if the bonds are sold before maturity, eroding its asset base.

For that reason, captives should shy away from fixed investments with very long maturities.

For example, fixed-income investments held by the Alliance of Nonprofits' RRG have an average duration of four years, with no maturity exceeding 10 years, Ms. Davis said.

Another key component of a prudent captive investment strategy is to diversify investments geographically and by industry.

"You want diversification" of debt issuers, Mr. Dalziel said.

Captive investment consultants also strongly advise not investing in mutual funds that hold fixed investments, such as corporate bonds. Instead, they recommend purchasing the corporate bonds directly.

"By definition, there is no control over what a mutual fund holds. Some hold derivatives to enhance yields, and fees tend to be much higher than with separately managed accounts," said Claude R. Parenteau, president of Parenteau Associates L.L.C. in Easton, Conn.

Meanwhile, the European debt crisis has captive investment advisers recommending that—at least for now—captives should steer away from investing in bonds issued by countries with great financial strain.

"I'm much more comfortable with U.S. debt issues," Mr. Terzer said.

"There is a shying away from investing in European countries," Mr. Dalziel said, adding that U.S. fixed-income markets are so diverse that there are plenty of investment opportunities for captives.

For example, Ms. Davis said the RRG invests "strictly" in fixed-income investments whose issuers are in the United States.

Generally, captive domiciles do not have formal requirements on how or where captives, especially single-parent captives, can invest their funds.

Still, regulators say they scrutinize captive investments and, where appropriate, suggest and sometimes insist on changes.

Jeff Kehler, program manager of alternative risk transfer services in the South Carolina Department of Insurance in Columbia, recalls a situation in which state captive regulators found during a routine examination that a captive had more than 90% of its assets invested in illiquid securities. The captive was told to divest the investment.

"You need to be conservative and prudent," Mr. Kehler said of the state's order to divest the risky investment.

In Utah, the nation's second-largest captive domicile with 239 captives at year-end 2011, "gentle persuasion" is applied to prospective captives in situations where their proposed investment mix is not, for example, sufficiently diverse and conservative, said Ross Elliot, director of the Utah Captive Division in Salt Lake City.

Profits: Some owners use excess capital to pay for new loss control initiatives

CONTINUED FROM PREVIOUS PAGE

cial strategy is to break even because profitability creates tax issues, Mr. Boughner said.

"The thing that I find fascinating is that you spend an inordinate amount of time talking about profitability—a dividend creates this tax problem, a loan back creates this tax problem, and you can't do either one without a profitable captive," Mr. Boughner said. "All these profitable scenarios create tax problems, but they're good problems to have."

"That's probably the thing that is lacking for a lot of captives, is a dedicated strategy as to what they will do with profits," Mr. Boughner said.

A successful captive program is accomplished through rate increases, which generally means an organization has loss control and risk management issues, or the losses perform better than expected so that the reserves can be taken back, Mr. Boughner said, noting that self-insurance profits invested in loss control can feed back to a captive's success.

"For a risk management-oriented company, it's a great use of a captive's profitability because you're only building up future profits. I think it's a terrific use to dedicate those funds to improve your loss control," he said.

Loma Linda's primary source of profits in its self-insurance program has been related "to effective claims management and loss prevention," Mr. Hubbard said.

Mr. Hubbard noted that the loss control programs are partially funded by the captive and partially by the self-insurance trust, which Loma Linda views as one budget.

Two lines of business are routed through Loma Linda's captive, University Insurance Co. of Vermont, which writes the first layer of excess liability insurance with a self-insurance trust that assumes the primary exposure. The captive also writes a layer of excess workers compensation coverage.

Some captives with excess funds purchase corporate debt from their parent, and many companies are operating their captives to drive profits from internal and external operations said Jason Flaxbeard, senior managing director for Beecher Carlson Insurance Services L.L.C., in Greenwood Village, Colo.

"Most of the captives I'm setting up these days, more than 50%, are actually looking at it as a profit center," Mr. Flaxbeard said.

Risk managers are looking for lines of business that are peripheral to their core mission statements, which is to control losses and to protect the organization, Mr. Flaxbeard said, noting that many are seeking to capture profit from third parties.

'Most of the captives I'm setting up these days, more than 50%, are actually looking at it as a profit center.'

Jason Flaxbeard,
Beecher Carlson Insurance Services L.L.C.

"Most jurisdictions, in the U.S. especially and definitely overseas, will allow you to write business with connected parties. Essentially, you can capture the business of a group with whom you have a contractual relationship," Mr. Flaxbeard said.

But as market-hardening conditions loom moving forward, retaining capital in the captive, as well as developing strategies to invest, is vital, experts say.

"There's a happy medium in between the two, which is a buffer layer on top of the minimum capital that allows you to increase your premium writings should need arise when a hard market comes," Mr. Flaxbeard said.

"Part of our strategy in recent years has been to retain more capital in the captive to build up our internal capacity to assume risk in the future," said Loma Linda's Mr. Hubbard.

"The only caution I would throw out is that I don't think we would want to spend all of the windfall or all of the gains that we received in our program, because I think it's important now in a soft market to establish that rainy day fund that we'll eventually need," he said.

U.K. pension funds offload increased longevity risks

As retirees live longer, funds use swap deals to limit exposures

By THAO HUA

More U.K. pension fund executives are hedging against the possibility that their members will live longer, with fund officials in other countries expected to follow suit.

In 2011, which was a record year in longevity swap transactions among U.K. pension funds, about £7 billion ($10.90 billion) in pension liabilities was offloaded to insurance companies and other financial institutions in the event that retired members live longer than the average life expectancy, according to data from Aon Hewitt.

In 2010, the total value for longevity swaps stood around £4.3 billion ($6.71 billion).

"There have been enough deals now that I think the market has reached critical mass," said Martin Bird, managing principal and head of the risk settlement group at Aon Hewitt, London.

Pension funds in the Netherlands and, to a lesser extent, the U.S. also are considering similar longevity risk transfer solutions, but none has yet been implemented in those countries, several consultants and insurers said.

"Longevity concerns are not as acute in the U.S. compared to the U.K.," said Phil Waldeck, senior vp for pensions and structured solutions at Prudential Financial Inc., Newark, N.J., which implemented the first insurance-based pension buy-in in the U.S. in May 2011 for Hickory Springs Manufacturing Co., Hickory, N.C.

"We are seeing developments similar to the U.K.," Mr. Waldeck said. "They're slower but heading in the same direction."

In a longevity swap, the pension fund typically makes a series of payments over a fixed period of time that's related to the average life expectancy of retired participants. In return, the insurer or financial institution covers the payments to the participants for as long as they live, Mr. Bird said.

Fuel for deals

The first longevity swap was executed in 2009, and the aggregate value of such deals for that year totaled about £4 billion ($6.47 billion), according to data from Aon Hewitt.

Stricter regulations toward mark-to-market valuations and increasing transparency of pension obligations coupled with a volatile market environment in the past few years have fueled longevity swap transactions in the U.K. Similar trends are happening in the Netherlands, where some the largest funds added billions to their pension liabilities in 2011 as a result of increased life expectancy among members, consultants said.

Longevity risk transfers are part of a broader set of pension risk transfer solutions that also include "buy-ins" and "buy-outs," which typically involve insuring or transferring all or part of the defined benefit pension liabilities. In carving out the longevity risk, pension executives can offload that portion of the liability at a lower cost.

"Buy-ins and buy-outs require an upfront payment, and most (pension funds) can't afford to pay the premium to do that," Mr. Bird said.

In addition, pension funds entering into a longevity swap don't need to sell assets at current depressed prices to pay for the transaction compared to buy-ins and buy-outs, said James Mullins, partner and senior liability management specialist at investment consultant Hymans Robertson L.L.P., Birmingham, England.

"The supply side is growing as well," with new entrants into the market within the last couple of years also including financial institutions such as Goldman Sachs Group Inc., Deutsche Bank A.G., J.P. Morgan Chase & Co. and Credit Suisse Group A.G. Insurance companies have been at the forefront of offering pension risk transfers, with Swiss Re Ltd. and Prudential already offering longevity swaps, while Legal &

See **SWAPS** next page

$10.90 billion

In 2011, about £7 billion ($10.90 billion) in pension liabilities was offloaded to insurance companies and other financial institutions in the event that retired members live longer than the average life expectancy.

Many plan sponsors unclear on key plan data

Financial, HR executives often uninformed: Surveys

By ROBERT STEYER

Noticeable—and sometimes stunning—numbers of defined contribution plan executives are uncertain, unsure or unaware of key financial and management issues affecting their plans.

A review by Pensions & Investments, a sister publication of *Business Insurance*, of recent surveys on DC plan management, behavior and governance shows the percentages of "don't know" or "not sure" answers from financial and human resources executives can reach high double digits. Among the examples:

- One survey found that 51.7% of DC plan executives weren't sure about the glidepaths of the target-date funds in their plans.
- Another said 37.5% of executives of plans that credit excess revenue sharing back to participants don't know how this happens.
- One broad survey of DC plans revealed that 28% of plan executives don't calculate plan costs.
- A survey of 403(b) executives said 46.2% didn't know what type of plan agreement governed their plans.

"I'm surprised at what certain plan sponsors still don't know about their total fees," said Pamela Hess, director of retirement research at Aon Hewitt, Lincolnshire, Ill. "A lot of sponsors don't know what they could get (in terms of services or reduced fees) because they don't ask for it. They don't always ask the right questions."

The various surveys—covering large and small plans, 401(k) plans as well as 403(b) plans and other DC plans—illustrate that while plan executives express concern about participants' understanding of retirement investing, the executives themselves fall short, too.

A survey by San Francisco-based Callan Associates found a string of double-digit "don't knows": 13% about administrative fees for company stock; 37.5% about how the crediting of excess revenue sharing works; and 16.1% if their plans offer ERISA expense reimbursement accounts.

A report on the survey, published this month, characterized as "alarming" the finding that 19.4% of respondents didn't know about the proportion of funds in their plans that pay revenue sharing.

The survey featured responses by treasury and human resources executives at 99 DC plans—about three-fourths were 401(k) plans—with aggregate assets exceeding $85 billion.

The results were "surprising," said Lori Lucas, executive vp and defined contribution practice leader at Callan. "There's a lack of certainty on how fees are paid."

Although sponsors already receive a considerable amount of data about fees, "they don't necessarily seem to understand all of the data," said Ms. Lucas. "In the past, sponsors asked their record keepers about fees, but it's in the record keepers' interest to educate them in a certain way. Sponsors need a more objective, third-party source for unbiased information."

Sometimes, the executives just throw up their hands in frustration. In August, Aon Hewitt published results of a survey of 435 DC plan executives, in which 28% said they "have not attempted to calculate total plan cost."

Among those who didn't calculate plan costs, 51% cited complexity as the reason for inaction, the report said. Twenty-five percent said they couldn't obtain the data, and 23% said cost calculations were either a low priority or not attempted.

Off-target

The management of target-date funds produced a series of "don't knows" in several surveys. A November report by Denver-based Janus Capital Group Inc. said 31.2% of respondents weren't sure what types of target-date funds were offered by their providers, while 51.7% weren't sure about the target-date fund glidepaths.

"Neither the (executives') knowledge base nor the implementation has kept pace with target-date fund usage by participants," said Russ Shipman, senior vp and managing director of Janus' Retirement Strategy Group. "Plan sponsors need to really bore into their decisions and take responsibility for them."

The high percentages of "not sure" responses contrasted with another answer, in which two-thirds of executives said they were "confident that their employees understand the structure and intent of target-date funds," Mr. Shipman said. "We continue to be intrigued by these findings."

The Janus survey featured responses from 6,885 executives at plans ranging from less than $5 million in assets to those with $1 billion or more.

Although executives from smaller plans usually had the highest percentage of "not sure" answers, some percentages for large-plan executives were substantial. For example, 18.7% of executives from the largest plans weren't sure what target-date funds were offered by their record keepers, and 27.1% weren't sure about their target-date funds' glidepaths.

"At a fundamental level, a glidepath is the essence of a target-date fund," Mr. Shipman said. "If sponsors are uncertain, one could say that they don't understand the target-date fund series."

Target-date uncertainty appeared in other surveys, too. For example, a Towers Watson & Co. report issued in January 2011 noted that 20% of 334 DC plan executives in a survey didn't know where their plans' target-date funds made underlying investments.

Although target-date funds play a prominent role in qualified default investment alternatives, several surveys revealed confusion among plan executives.

An October survey by Harrison, N.Y.-based Diversified found that 12% of 272 DC plan executives didn't know if their plans had a qualified default investment alternative. The Janus Capital Group survey noted that 25% weren't sure which QDIA was best for their employees.

Who's in charge?

Another Towers Watson report, published in December, said 17% of 245 DC and defined benefit plan executives didn't know which members of investment or administrative committees had received fiduciary-duty training. Also, 9% said no committee member had been trained, while only 48% said someone with ERISA training attended every governance meeting.

"Since ERISA requires committee members and other fiduciaries to act with 'care, skill, prudence and diligence,' failure to have the necessary ERISA expertise in an advisory capacity could lead to governance gaps and failures," Towers Watson said.

The PSCA and Principal Financial Group in Des Moines, Iowa, recently collaborated on a survey of 712 executives at 403(b) plans, and some results were surprising to PSCA President David Wray. For example, 10% of the respondents said they didn't know if their plans were ERISA plans. "That's a big deal," he said.

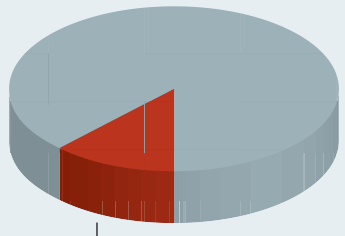
In addition, 34.6% didn't know if their plans had an investment policy statement, including 9.7% at the largest plans with more than 1,000 participants.

Mr. Wray said some uncertainty among executives on management issues could be attributed to plans changing designs to reflect a more institutional investment approach and to "nuances" of complex regulations.

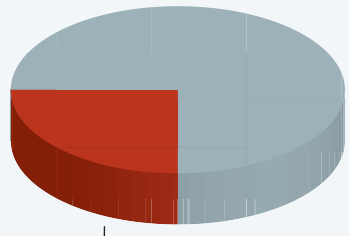
Still, some responses remain startling. The survey said 46.2% of executives didn't know what type of plan agreement—there are only four possibilities—governs their plans. "That's pretty important," said Mr. Wray, adding that 25.4% of executives at the largest plans couldn't identify their plan agreement.

Robert Steyer is a reporter for Pensions & Investments, a sister publication of Business Insurance.

CONFUSION AT THE TOP



A survey by Diversified found that **12%** of 272 DC plan executives didn't know if their plans had a qualified default investment alternative.



A Janus Capital Group Inc. survey noted that **25%** weren't sure which QDIA was best for their employees.

Swaps: U.K. pension plans offload longevity risks

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General Group P.L.C. completed its first such transaction this year with the £1.3 billion ($2.03 billion) Pilkington Group Superannuation Scheme, Merseyside, England. The deal is valued at £1 billion ($1.56 billion) and accounts for about 60% of the fund's total pension liabilities.

"We're in the process of launching a (longevity risk reduction) product aimed at smaller pension funds," said Tom Ground, head of business development within Legal & General Group P.L.C.'s pension insurance solutions division based in London. "Smaller funds have (relatively) larger longevity risk" because of an increasing chance that a few individuals within a smaller group of plan members will live much longer than the average plan participant.

> 'The credit crunch has shined the spotlight on managing pension risks, and one of those risks is longevity risk.'
>
> Martin Bird, Aon Hewitt

"The credit crunch has shined the spotlight on managing pension risks, and one of those risks is longevity risk," Mr. Bird said. Every additional year added to the average life expectancy could increase pension liabilities by 3% to 5%, according to estimates by consultants.

So far, longevity swaps have been implemented to offload the pension liabilities of retired members. There's still no efficient solution available to reduce longevity risk for younger members, consultants said. However, "there's more uncertainty" in life expectancy estimates for younger members, Mr. Mullins said. One potential solution is through a longevity swap transaction based on a longevity index rather than actual life expectancy of individual members.

"More and more work is being done in the index space," Mr. Mullins said. The first longevity index hedge was completed in 2011, when the £120 million ($186.9 million) Pall Europe Ltd. (UK) Pension Fund, Portsmouth, England, offloaded longevity risks associated with about £70 million ($109.0 million) in pension liabilities using the future values of the J.P. Morgan LifeMetrics Index.

Other longevity swap transactions conducted in 2011 include British Airways P.L.C., which entered a longevity swap relating to about £1.3 billion ($2.03 billion) in pension liabilities; Rolls-Royce Holdings P.L.C., which offloaded the longevity risk for about £3 billion ($4.67 billion) of its pension liabilities; and ITV P.L.C., which transferred about £1.7 billion ($2.65 billion) in pension longevity risk. All three companies are based in London.

Mr. Bird of Aon Hewitt added: "We think this is the tip of the iceberg, with probably more (deals) to come in 2012."

Thao Hua is a reporter for Pensions & Investments, a sister publication of Business Insurance.

MarketMoves

Risk Strategies acquires brokerage

MILLBRAE, Calif.—Middle-market insurance broker Risk Strategies Co. Inc. has acquired Millbrae, Calif.-based UPA Insurance Brokers Inc. for an undisclosed sum.

The deal is Boston-based Risk Strategies' third acquisition in the past two months.

In December, Risk Strategies said it had completed a merger with the acquisition of Needham, Mass.-based Global Insurance Network Inc. and Burlingame, Calif.-based Cohn-Reid-O'Neill Insurance Services Inc.

The latest acquisition will provide greater access to the commercial real estate, homeowners association, financial services, nonprofit and hospitality industries in Northern California, John O'Neill, executive vp of Risk Strategies' Bay-area operations, said in a statement.

"UPA is very highly regarded in multiple industry sectors based on its consistent track record of growth and a blue chip client portfolio," Mr. O'Neill said in the statement. "We look forward to integrating the UPA staff with our team here and leveraging their expertise and long-term client relationships."

UPA principals John Uhl and Chris Palmer will join the Risk Strategies management team as executive vps.

Risk consulting firm makes name change

PASADENA, Md.—Risk management consulting firm Kingson Group Ltd. has launched its new brand, changing its name formally to rPM³ Solutions L.L.C.

The new named is intended to emphasize the link between risk and performance, and is centered on its recently patented performance-based risk accounting and performance measurement tool, Aggregate Risk Quantification, the Pasadena, Md.-based company said in a statement.

The company, founded in 2002 as Kingson Group by Gary Bierc, CEO of rPM³, also is led by Rob Eckels, executive vp of business development and marketing, and Chris Mandel, executive vp of professional services, according to the statement.

Mr. Mandel was *Business Insurance's* Risk Manager of the Year in 2004.

According to the statement, the newly renamed company will focus on risk and performance management solutions and services for businesses.

Willis expands Florida operations

MIAMI—Willis Group Holdings P.L.C. has relocated the headquarters of its South Florida operations to Miami.

The move from its previous office in Coral Gables, Fla., is an effort to expand its presence and support the brokerage's growth in the region, London-based Willis said in a statement.

Willis said it signed a 10-year lease for 19,000 square feet in office space in Miami's financial district.

"As Miami-area businesses grow with the global economy and confront an increasingly complex risk and liability landscape, there is strong demand for a global insurance broker to meet their insurance and risk management needs," Willis Chairman and CEO Joe Plumeri said in the statement.

The office is at 1450 Brickell Ave., Miami, Fla., 33131. The phone number is 305-854-1330.

Benefits brokerage expands with Fla. office

ORLANDO, Fla.—Corporate Synergies Group L.L.C. has expanded its operations with a new office in Orlando, Fla.

The Mount Laurel, N.J.-based employee benefits insurance brokerage focuses on health benefits design and management for approximately 600 corporate and nonprofit employers across various industries.

"We handle planning, implementation and ongoing details regarding regulatory compliance, employee advocacy and education programs, and benefits administration management, so our employer clients can focus on their core business," Michael Goodwin, regional vp for Corporate Synergies who will lead the Orlando office, said in a statement.

The office is Corporate Synergies' sixth U.S. location. Regional offices are in New York; Melville, N.Y.; King of Prussia, Pa.; and Bethesda, Md.

The office is located at 390 N. Orange Ave., Suite 2300, Orlando, Fla., 32801. The phone number is 407-612-6324.

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. 60601 or email *mtsikoudakis@businessinsurance.com.*

Retaliation tops EEOC charge list

Last year set record for all bias filings

By JUDY GREENWALD

WASHINGTON—Retaliation charges filed with the federal Equal Employment Opportunity Commission increased 3% in fiscal 2011 and accounted for the greatest portion of charges filed, though the total number of charges across all categories remained basically flat, the agency said last week.

There were 36,344 retaliation charges filed in fiscal 2011, which ended Sept. 30. Retaliation was the most frequently filed charge for the second year in a row.

Total charges in fiscal 2011 increased slightly to 99,947 from 99,922 in fiscal 2010.

"For the second year in a row, the EEOC received a record number of new charges of discrimination," EEOC Chair Jacqueline Berrien said in a statement.

Through its enforcement, mediation and litigation efforts, the EEOC also said it obtained a record $455.6 million in relief during fiscal 2011, up $51 million from the previous year.

Sex discrimination charges, which were the second-most frequently filed charge, decreased 1.7% in fiscal 2011 to 28,534 and accounted for 28.5% of the total.

Next were disability discrimination charges, which increased 2.3% to 25,742 and accounted for 25.8% of the total; and age discrimination charges, which increased 0.9% to 23,465 and accounted for 23.5% of the total.

UP COMINGS & GOINGS CLOSE

LAMONTE THOMAS

NEW JOB TITLE: Plano, Texas-based president and general manager of North Texas and Oklahoma region for CIGNA Corp.

PREVIOUS POSITION: Richmond, Va.-based vp of sales for CIGNA Corp.

LOOKING FORWARD TO: Working with clients, hospitals and physicians, with the focus on improving the health of our customers and their families.

CHALLENGES FACING INDUSTRY: Getting individuals to take a look at how they can get more involved in reducing their health risks and overall health costs.

BEST THING ABOUT A BAD ECONOMY: It calls for clients and customers to put their focus on value and how to effectively utilize resources.

FIRST EXPERIENCE IN JOB MARKET: I was a human resources consultant for CIGNA. That job gave me the time to really listen to the individual. The value of listening was the lesson with that job.

COLLEGE MAJOR: Finance.

ADVICE: Take advantage of every opportunity that is made available.

OUTSIDE THE INDUSTRY, A DREAM JOB: Working for a railroad. I am fascinated with trains and the countryside views you get from a railroad.

HOBBIES: Model railroading.

MOST PASSIONATE ABOUT: Personally, it's my family.

CAN'T-MISS TELEVISION SHOW: "American Pickers." The history they give behind items they find I see as fascinating. One day on "Jeopardy," I will be able to answer a lot of questions based on the stuff I learn from watching that show.

FAVORITE MEAL: Anything pasta.

ON A SATURDAY AFTERNOON: Hanging out with my family. I spend a lot of time at work during the week, so on the weekends they set the agenda.

EMAIL OR PHONE, AND WHY: Phone. I am a believer that that's the best form of communication. It really allows you to understand the issues and concerns you miss out on over email.

Comings&Goings

VISIT *www.businessinsurance.com/ComingsandGoings* for a full list of this week's personnel moves and promotions. Check our Web site daily for additional postings and sign up for the weekly email.

TO SUBMIT ITEMS

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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POSTING THIS WEEK

INSURERS
- Kaiser Permanente
- Ironshore Inc.
- Ironshore Australia Pty. Ltd.

REINSURERS
- Third Point Reinsurance Co. Ltd.

BROKERS
- HUB International Ltd.
- Willis North America
- Frank Crystal & Co. Inc.

OTHER PROVIDERS
- Agencyport Sofware Corp.
- Alvarez & Marsal Holdings L.L.C.
- Buck Consultants L.L.C.

Staff: *BI* announces changes

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and also holds a certificate in event management from New York University.

She can be reached at 212-210-0132 or *rbriggs@businessinsurance.com*.

The publication also has made several changes in Chicago.

Steve Susina has been named director of demand generation services.

Mr. Susina, who heads the publication's lead generation services, most recently served as the director of marketing at Laurus Technologies, a Chicago-based information technology consulting and systems integration firm. While at Laurus, he was responsible for the firm's overall branding, demand generation and thought leadership efforts. He has previous engineering, sales and marketing experience at AT&T Inc., Tellabs Inc. and UTStarcom Inc.

Mr. Susina holds a bachelor of science in electrical engineering from Marquette University in Milwaukee, an MBA from the University of Pittsburgh, and a master of science in marketing communications from the Illinois Institute of Technology in Chicago.

Mr. Susina can be reached at 312-649-4340 and at *ssusina@businessinsurance.com*.

Mallory Gillikin has been promoted to video producer/copy editor.

Ms. Gillikin joined the publication in 2011 as editorial assistant. In her new role, she will produce all of the publication's video content, including the weekly InFOCUS video and all special video series, as well as editing stories for the publication's various print and online products.

Before joining *Business Insurance*, Ms. Gillikin was a collaborations specialist with InterCall, as well as working as a freelance search engine optimization writer and catering sales director, among other roles.

She holds a bachelor of arts in journalism from the University of Wisconsin at Madison.

Ms. Gillikin can be reached at 312-649-5398 and at *mgillikin@businessinsurance.com*.

Anna Gaynor has joined *Business Insurance* as editorial assistant.

She recently earned a master's degree in journalism from Northwestern University in Evanston, Ill., and has worked for a variety of publications, including daily newspapers and magazines covering local business and culture.

Ms. Gaynor also has a bachelor's degree in journalism from the University of Missouri in Columbia.

She can be reached at 312-649-5246 and at *agaynor@businessinsurance.com*.

An Italian Navy helicopter flies over the area where the Costa Concordia cruise ship ran aground near Isola del Giglio.

Marine: Cruise ship disaster hits insurance market

CONTINUED FROM PAGE 1

retention and third-party personal liability coverage above a $10 million retention. It is self-insured for the loss of use of the vessel.

Trieste, Italy-based Assicurazioni General S.p.A. and Hamilton, Bermuda-based XL Group P.L.C. are among the ship's hull insurers, sources said.

London-based RSA Insurance Group P.L.C. has a 5% line on the ship's hull program, which is thought to offer about €405 million ($523.7 million) in coverage, sources said.

Hamilton, Bermuda-based Lancashire Holdings Ltd. likely will post a $20 million to $30 million loss from the event, according to investment banker Jefferies International Ltd.

Hannover Re Group and Munich Reinsurance Co. confirmed that they also have exposure to the loss.

Munich Re said it expects to incur losses in the "mid-double-digit million euro range." Hannover Re said it expects losses of about €30 million ($38.8 million) from the ship's hull and the extent of its liability losses was yet unclear.

"The assumption is that a market loss running into triple-digit millions could result," the reinsurer said in a statement. "The total loss for Hannover Re—as a leading marine reinsurer—could therefore be in the mid-double-digit euro range."

The London-based Standard P&I Club confirmed it was the lead P&I insurer for the ship.

In a statement, the Standard Club said it and another member of the International Group of P&I Clubs would jointly share the first $8 million of the loss beyond the retention, above which the claim is reinsured through the International Group's pooled reinsurance program with London and international reinsurance markets.

The full extent of insured losses will not be known until the liability picture becomes clearer and any environmental losses are known, sources said.

Last week, New York-based law firm Proner & Proner said it would, in conjunction with the Italian consumer organization Coordinamento delle Associazioni per la Difesa dell'Ambiente e dei Diritti degli Utenti e dei Consumatori, known as Codacons, file a class action suit in Miami against Costa Cruises, which operated the ship, seeking at least $160,000 for each passenger who was aboard the ship at the time of the disaster.

According to a legal source who asked not to be named, there may be challenges for claimants wishing to bring a suit in U.S. courts.

While the ship's ultimate parent is in the United States, the cruise operator is an Italian company, he said. Therefore it may be difficult to "pierce the corporate veil" and have the case heard in U.S. courts, he said.

In addition, while some passengers aboard the ship were U.S. citizens, recent case history has shown that this may not be enough to convince the courts that the case should be heard in the United States, he said.

The Athens Convention of 1974 limits awards that can be paid to victims of marine disasters, though Italy is not a signatory to the convention, said Marcus Baker, chairman of the global marine practice at Marsh Inc. in London.

A legal source noted, however, that the terms and conditions on Costa Concordia tickets effectively used some of the language of the convention and limited payouts to €70,000 ($90,500).

The impact of the ship's loss on marine insurance rates is less than clear at this stage.

James Eck, senior vp and credit officer at Moody's Investors Service Inc. in London, said the losses are not expected to badly hurt insurers' and reinsurers' capital. But the "earnings drag" from the event could impede capital growth for the affected firms, he said.

Ole Wikborg, president of the International Union of Marine Insurance, said the fragmented nature of the marine insurance market likely would mean that the loss would affect a limited number of insurers and reinsurers. Therefore, there would be no marketwide incentive to seek rate increases, he said.

Marsh's Mr. Baker said there is about $1.7 billion to $2 billion of global marine hull capacity. While the loss from the Costa Concordia may be large, it likely will not affect the industry's capacity greatly, he said.

And despite the tragic loss of the Costa Concordia, cruise ships generally are deemed to be very safe risks, he said.

While some Lloyd's of London syndicates may push for rate increases as a result of the loss and due to potentially higher reinsurance costs resulting from high catastrophe losses in 2011, a wholesale move to increase rates is unlikely. More likely, said Mr. Baker, is a greater sense of "caution" among underwriters.

He also noted that much of the marine business renewed at Jan.1 before the cruise ship disaster.

The loss could affect the reinsurance program for the International Group of P&I Clubs, but Mr. Baker pointed out that negotiations on the program, which renews Feb. 20, already are well under way and some business may already have been bound.

Any effect of the Costa Concordia loss, therefore, more likely would be felt during the 2013 renewal, he said.

INSURED PASSENGER SHIP LOSSES

Insured losses in passenger ship accidents, 2006-2010, in millions of dollars.

Year	Number lost	Insured losses
2006	43	$132
2007	38	$50
2008	32	$31
2009	35	N/A
2010	22	$27

Source: Insurance Information Institute, Swiss Re Ltd.

Super Bowl: Planners tackle risk management

CONTINUED FROM PAGE 3

age addressing media liability, property, coverage for sponsors of co-branded events and event-cancellation insurance. "That will most likely be placed in the Lloyd's marketplace," she said of the latter.

In terms of Aon's role in placing Super Bowl coverage, "We participate in pieces of it," Ms. Shaw said.

Likewise, asked about Chartis' involvement in insuring the Super Bowl, Mr. Ewing said, "In most major sporting events, Chartis always has an interest."

Mr. Rogers noted that much of the Super Bowl risk management effort is actually focused on surrounding activities.

"Basically, I think where the impact will come as respects the Super Bowl is not so much inside Lucas Field but at the ancillary events," he said. "If I'm the organizer of an event like that, I'm going to have a very good checklist and work very closely with the fire marshal and other authorities."

With the stage collapse that killed seven and injured more than 40 others last August at the Indiana State Fair in Indianapolis still fresh in local memories, a spokeswoman said the Indianapolis Department of Code Enforcement hasn't necessarily heightened its inspection efforts of the various temporary venues erected for Super Bowl-related events, but the inspection activity is extensive.

"This is probably the highest number of temporary structures that our inspection team has had to go out and visit, at least in this time frame," she said.

"We have a couple of structures that are 50,000 square feet or more," she said, and the construction of some of the temporary facilities is so well-done that they are rated as permanent structures rather than temporary structures.

Among facilities that Indianapolis code enforcement officials have been checking are tents, stages and even the massive XLVI Roman numerals greeting visitors in downtown Indianapolis' Monument Circle. "Our inspectors have been out there as well," the spokeswoman said.

From the city's perspective, Brett Wineinger, Indianapolis' property and risk manager, noted that the city is a self-insured entity with limited liability under Indiana law.

"In most cases—the (NCAA men's national basketball championship) and things of that nature—risk is pretty much pushed back to our Capital Improvement Board, our Indiana Stadiums Commission or our Indiana Convention and Visitors Bureau, which is where most of our larger events have been held," Mr. Wineinger said. "Our responsibility may be from increased security or fire, readiness, etc."

AP PHOTO

Indianapolis officials examine a portable tent to be used during Super Bowl XLVI. While safety checks have not necessarily increased since last year's stage collapse at the Indiana State Fair, officials say they are extensive.

'Basically, I think where the impact will come as respects the Super Bowl is not so much inside Lucas Field but at the ancillary events.'

Chris Rogers, Aon Risk Solutions

"For the Super Bowl, obviously this has been a two-year process of street and sidewalk and curb redevelopment, and pushing for additional insured coverage with our host committee on various contracts that impact us," the Indianapolis risk manager said. The city also has donated its risk management services to the host committee's risk management subcommittee, he said.

With events such as the Super Bowl, it's typical for risk managers to learn from the experience of prior events and support one another in making preparations, Mr. Ewing said.

And, he said, those in the risk management and insurance communities will know that the risk management has been done well if it's unseen.

Concussions: Suits turn on comp rules

CONTINUED FROM PAGE 3

respect to the risks associated with playing football," the league said in the statement. "Any suggestion to the contrary has no merit."

Beth Wilkinson, an attorney for the NFL, described the litigation as "a workmans comp issue" covered by the collective bargaining agreement, the Miami Herald reported last week.

Hausfeld's Mr. Lewis said workers comp is not the appropriate remedy for players in theses cases since the NFL was not their direct employer.

In addition, Mr. Lewis disagrees that the collective bargaining agreement would cover concussion-related player claims in these cases.

The NFL is "clearly going to make that argument," Mr. Lewis said. "I don't think it's right, but that's something the court will decide."

Among allegations in the litigation are assertions that the former players suffer from headaches, dizziness, memory loss, psychological problems and other neurological issues after sustaining concussions during football games and practice.

The suits seek unspecified damages for medical expenses, disability and loss of potential employment or income, among other tort claims.

"The NFL, likely the richest professional sports league ever, has demonstrated a repeated unwillingness to take adequate care of retired players who are suffering from the consequences of on-field repeated and chronic head impacts incurred during their respective league careers and have made the game of professional football in this country what it is today," according to one suit filed in New York last month.

Pressing concern

Concussion-related injuries are one of the league's most pressing concerns, said Richard Berthelsen, Washington-based general counsel for the National Football League Players Assn., the union for NFL athletes. He declined to comment specifically about the litigation.

"There's no more important issue that players face today than issues regarding concussions and brain injury, and it's something that we are devoting a lot of time and effort to in a lot of ways," Mr. Berthelsen said.

Exclusive remedy has played a key role in at least one previous NFL-related lawsuit. The defense was used in the case of Korey Stinger, a Minnesota Vikings player who died of heat stroke after practice in 2001.

Mr. Stringer's wife sued the Vikings, several Vikings employees and physicians for alleged negligence in Mr. Stringer's death. But in a split decision in 2005, the Minnesota Supreme Court said that workers comp was the only remedy in that case.

Sports risk management consultant Herb Appenzeller of Appenzeller & Associates Inc. in Summerfield, N.C., said it will be interesting to see whether courts interpret the NFL lawsuits as being a matter of negligence or workers comp law.

"I think there's no question in this particular case that the football players in the NFL are definitely employees," Mr. Appenzeller said.

Mr. McGlamry said he's hopeful that the litigation will bring attention to the plight of NFL players who face adverse effects long after their NFL careers are done.

"This is not something that the NFL could not have foreseen…from players that were playing 20 years ago," Mr. McGlamry said. "It is such a physical game."

Beardmore: BMS Group sets sights on expansion in U.S. market

CONTINUED FROM PAGE 3

my time and my location so that most of my time will be spent in the U.S. I'm expecting it to be a three- to four-month process before it's balanced out to what you might call a normal operating level.

Q: What makes the U.S. an attractive marketplace for BMS?

It's not just for BMS—it's still one of the largest reinsurance marketplaces in the world. It's attractive from that respect, its overall potential. It's attractive for BMS because although for the majority of its existence BMS has been a correspondent broker, it has been a correspondent broker for reinsurance generated from the U.S., so it's a market that we understand. It's a market in which we're well-known, as we have a lot of good relationships. Therefore, we feel it's a natural extension of what we have been doing to move it to the next level and become a credible expansive platform that can generate business on a direct basis as opposed to a correspondent basis.

Q: What are BMS' long-term goals?

As a group, our long-term goals are to create the alternative vehicle to the big guys. The markets both in the U.S. and worldwide are concerned about the amount of dominance that the three big guys have. They would like to see the emergence of an organization resembling, say, Benfield of the past. Our long-term aspirations are to create an alternative, valid, independent broking enterprise that is perceived as the go-to place because we provide the best risk transfer solutions, the highest levels, and we offer truly independent advice.

I guess as a marker of our progress, we plan to at least (double) the size of our current operation by 2016. But I must stress that includes also building out the other elements of our business—which primarily operates out of London—which are our wholesale and underwriting activities. The reinsurance part of the strategy is extremely important, but we have extremely important ambitions for the London side of our operation, too. Hence the reason why I talk about the majority of my time being in the States, not completely my time being in the States.

> 'As a group, our long-term goals are to create the alternative vehicle to the big guys. The markets both in the U.S. and worldwide are concerned about the amount of dominance that the three big guys have.'
>
> Carl Beardmore, BMS Group Ltd.

Q: Where do you see growth areas for BMS?

I think the growth opportunity is there in the traditional arenas in which we've operated. On the reinsurance side, the normal property/casualty treaty business; on the facultative side, specialty casualty, med mal—we have a strong historical presence in those sectors. I think by having this credible, highly recognized expansive platform in place, we will be able to build considerable additional market share in those areas we know and understand well.

I would like people to understand that as a group as a whole, both on the U.S. and on the U.K. side, we have a very ambitious strategy. We have made tremendous progress in 2011. And we know already that we will be making considerably more progress in 2012. We're on a journey and we're enjoying it.

Q: Where do you see the reinsurance market right now?

It's a difficult market at the moment because it has been tough during the past 12 to 18 months. From an underwriting perspective, they are feeling the need to move rates to compensate for the losses they've incurred.

I think it's going to be a slow and steady uplift in the business as opposed to a radical change. It's a tough market, but there are still ample opportunities for people to develop good strong businesses.

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Issue of January 30

GPS: Will decision on monitoring hit employers?

Tell employees of monitoring plans: Experts

Employers considering GPS monitoring of their employees should inform them of their plan and make certain such monitoring does not spill into workers' private lives to avoid potential legal liability, observers say.

This advice stems from last week's U.S. Supreme Court decision in *United States vs. Antoine Jones*, in which the court ruled that the FBI and the District of Columbia Metropolitan Police Department violated the Fourth Amendment in placing a GPS device Mr. Jones' wife's car to gather information on a suspected drug dealer.

Tracking devices are used frequently by employers to track their delivery trucks, although there is no hard data on such usage.

While many employers already inform employees about GPS tracking, the Supreme Court's ruling should make employers "more conscientious in how they inform their employees of what kind of tracking is being done," said Evan Brown, an associate with Hinshaw & Culbertson L.L.P. in Chicago.

There is no rule that says employers have to tell employees they are tracking them via GPS, said Jonathan T. Hyman, a partner with Kohrman Jackson & Krantz P.L.L. in Cleveland.

"But I think if you're going to take something away from this decision, it is that there is some expectation of privacy in people's locations, and there may be situations" in which an employer overreaches or extends GPS monitoring to off-the-clock activity, which "may go beyond what is reasonable even in private employment relationships," Mr. Hyman said.

Michael R. Overly, a partner with law firm Foley & Lardner L.L.P. in Los Angeles, said, however, "Most employers are smart enough to draw the line and say, 'If we don't need it, we don't need to collect it.'"

—By Judy Greenwald

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led by Justice Antonin Scalia, raised the trespassing issue in ruling in Mr. Jones' favor.

"It is important to be clear about what occurred in this case: The government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted," Justice Scalia wrote.

"The present case does not require us to answer" the question of whether achieving the same result through electronic means without an accompanying trespass is an unconstitutional invasion of privacy, he wrote in the ruling joined by Justices John G. Roberts Jr., Anthony M. Kennedy, Clarence Thomas and Sonya Sotomayor.

However, a concurring opinion raising the issue of privacy was written by Justice Samuel A. Alito Jr., who was joined by Justices Ruth Bader Ginsburg, Stephen G. Breyer and Elena Kagan. "I would analyze the question presented in this case by asking whether respondents' reasonable expectations of privacy were violated by the longtime monitoring of the movements of the vehicle he drove," Justice Alito wrote.

While relatively short-term monitoring "accords with expectations of privacy," longer-term monitoring "impinges on expectations of privacy," the court said.

Although she joined the majority, Justice Sotomayor wrote a separate concurring opinion that also addressed privacy.

"The government usurped Jones' property for the purpose of conducting surveillance on him, thereby invading privacy interests long afforded, and undoubtedly entitled to Fourth Amendment protection," Justice Sotomayor wrote.

While many observers say the ruling's Fourth Amendment focus has no direct relevance to the workplace, Randy Gainer, a partner with law firm Davis Wright Tremaine L.L.P. in Seattle, said there are "tort claims in most states for invasion of privacy, and the majority opinion and the concurrences could be used by an employee who was tracked by a private employer to buttress his or her claim that the employer had violated the employee's privacy rights by installing a tracking device on a private vehicle."

Scott L. Vernick, a partner with Fox Rothschild L.L.P. in Philadelphia, said the decision raises the issue of the extent to which the private sector can use digital devices, such as smartphones, to track employees' whereabouts.

"You certainly have nine judges who are determined to preserve privacy, and I could see some application to the workplace—particularly if you did not tell the employees that that's what you were doing," Mr. Vernick said.

> 'The judges in the state court system and in the federal court system below the Supreme Court will look to this opinion and understand that the majority of Supreme Court justices expressly recognize the potential invasiveness of long-term GPS tracking.'
>
> Philip C. Gordon, Littler Mendelson P.C.

"Other courts will start looking at this and taking guidance from it," said Michael Overly, a partner with Foley & Lardner L.L.P. in Los Angeles.

Pointing to the opinions of Justices Alito and Sotomayor, Philip C. Gordon, a shareholder with Littler Mendelson P.C. in Denver, said, "The judges in the state court system and in the federal court system below the Supreme Court will look to this opinion and understand that the majority of Supreme Court justices expressly recognize the potential invasiveness of long-term GPS tracking."

"The courts are going to look at this when they are interpreting invasion of privacy claims by employees," said Mark B. Wiletsky, of counsel at Holland & Hart L.L.P. in Boulder, Colo. "And I think that employees and their attorneys will likely try to expand this case beyond the Fourth Amendment law enforcement context to make a claim for invasion of privacy, or some other claim, if they feel that their clients' rights have been violated."

Gerald L. Maatman Jr., a partner with Seyfarth Shaw L.L.P. in Chicago, said the ruling's impact will depend on whether the employer is public or private. Public sector employees "have additional protections, unlike private company employees, in that constitutional protections can apply," he said.

"I suspect you're going to see use of this precedent in a public sector workplace arena in terms of the limits that might be imposed on public employers in using location information in the context of workplace investigations or personnel decisions based on location information," Mr. Maatman said.

With respect to private employers, the ruling will become a "tool used by plaintiff lawyers" to allege abuse or illegitimate use of location information as an invasion of privacy. That would raise issues such as whether there was a valid need to use it, whether it tracked locations during working hours vs. nonworking hours, and how long the monitoring continued, he said.

Eventually, said Tyler G. Newby, of counsel at Fenwick & West L.L.P. in San Francisco and a former federal prosecutor in the area of computer crime, the Supreme Court will take a case that deals with "what they expressly declined to consider here, which is, 'What are the Fourth Amendment and privacy implications of tracking a person's movement using GPS technology or other types of technology when there's not a trespass?'"

Mr. Newby said, "That's the case that's eventually going to come before the Supreme Court, and until that happens, there's a fair amount of uncertainty as to the law of privacy in this area."

Appeal set in N.Y. GPS monitoring case

New York's highest court is set to consider the appeal of a state appellate court ruling last year in favor of a public sector employer that used GPS to monitor an employee.

The New York State Court of Appeals has agreed to review the Nov. 23, 2011, decision in *Michael A. Cunningham vs. New York State Department of Labor*.

According to the New York State Supreme Court appellate division ruling, the state Labor Department became suspicious in 2008 that Mr. Cunningham, a state employee since 1980, was taking unauthorized absences from work and falsifying time records. The Office of Inspector General launched an investigation that included placing a GPS on his car.

GPS data was used as evidence in a hearing that led to Mr. Cunningham's termination. He then sought to suppress the GPS evidence, arguing its use violated the New York Constitution.

However, the appellate court ruled 3-2 in the state Labor Department's favor, saying use of GPS devices "was necessary to obtain pertinent and credible information over a period of time" to establish a pattern of serious misconduct. "Given the facts and circumstances at the time of the investigation, we are unpersuaded" that the state agencies "acted unreasonably."

Corey Stoughton, who represents Mr. Cunningham and is a senior staff attorney with the New York Civil Liberties Union Foundation in New York, said she is confident the appellate court decision will be overturned.

The "U.S. Supreme Court is catching up to where the New York Court of Appeals has been for quite some time," she said. The lower New York court "did not sufficiently grapple with the consequences of permitting warrantless surveillance of people's cars using GPS devices."

An attorney in the New York attorney general's office had no comment.

—By Judy Greenwald

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Attorneys: State to certify workers comp lawyers

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also true of the self-insureds and the insurance companies that are seeking counsel in one of these cases."

Dina Brilliant, a partner with Brilliant & Neiman L.L.C. in Trevose, Pa., said she plans to seek the certification. She has practiced workers comp law since 1993 and said the certification could help differentiate her and other attorneys from lawyers who "dabble" occasionally in comp cases.

"With advertising today, I'm not sure if the general public can tell that we're experienced with it," Ms. Brilliant said.

According to a statement from the Pennsylvania Bar Assn., a 12-member committee will oversee the certification process. Application fees could reach up to $1,000 for a five-year certification, though Mr. Bagnato said the association is still working on determining costs.

Certification is optional for workers comp attorneys, and it will be available only to lawyers who dedicate at least 50% of their practices to workers comp. Applications are expected to become available in late fall, with the first annual certification exam taking place in spring 2013, Mr. Bagnato said.

Several state bar associations offer certifications for workers comp, including those in California, Florida and North Carolina, said Dennis Rendleman, Chicago-based ethics counsel for the Center for Professional Responsibility at the American Bar Assn.

Certification can help lawyers strengthen their practices, because it requires them to demonstrate up-to-date knowledge in their law specialty, Mr. Rendleman said.

"Your skills are being affirmed by the fact that you have to regularly renew your certification," said Mr. Rendleman, who said the ABA provides advice and support for state certification programs.

The process for certification in Pennsylvania won't be easy, said Matthew Wilson, a partner and workers comp attorney with the Martin Banks law firm in Philadelphia.

Mr. Wilson, who was part of the subcommittee that drafted the certification test, said the four-hour exam—which includes multiple-choice and essay questions—will be rigorous for even the most experienced workers comp attorneys.

He believes certified Pennsylvania attorneys could see more business coming through their doors, particularly from insurance industry clients.

"I think some carriers are going to insist upon having certified counsel," said Mr. Wilson, who believes the Pennsylvania bar could consider certifications for other law specialties in the future.

Contraception: Rule delay

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Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

Some members of Congress, however, strongly oppose the requirement. Bills have been introduced in the House and Senate that would exempt any organization from the mandate if offering the coverage is contrary to its affiliated religious beliefs.

But experts say it is unlikely that those measures could win congressional approval this year. "There may be some interest" in Congress in preventing enforcement of the requirement, but it is not widespread, said J.D. Piro, a principal in the Norwalk, Conn., office of Aon Hewitt.

Certain religious organizations, though, are strongly opposed.

"Never before has the federal government forced individuals and organizations to go out into the marketplace and buy a product that violates their conscience. This shouldn't happen in a land where free exercise of religion ranks first in the Bill of Rights," Cardinal-Designate Timothy Dolan of New York and president of the U.S. Conference of Catholic Bishops, said in a statement.

He urged Catholics and others to contact federal lawmakers to get the rule withdrawn.

"Let your elected leaders know that you want religious liberty and rights of conscience restored and that you want the administration's contraceptive mandate rescinded," he said.

"The challenge that these regulations posed for many groups remains unresolved. This indicates the need for an effective national conversation on the appropriate conscience protections in our pluralistic country, which has always respected the role of religions," Sister Carol Keehan, president and CEO of the Catholic Health Assn. of the United States in Washington, said in a statement.

Boehner: End to CLASS

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He said the law is transferring to government from consumers health care coverage decisions.

As an example, he cited a requirement, which was finalized this month by the Department of Health and Human Services, that will force many health care plan sponsors—including those opposed for religious reasons—to offer coverage for contraceptives. He did not address, though, whether he would try to block enforcement of the contraceptive mandate.

In 2011, Congress—without administration objections—repealed two health care reform law provisions. One provision would have required employers to offer lower-paid employees company-paid vouchers to purchase coverage in state health insurance exchanges if their required premium contribution toward employer coverage exceeded a certain percentage of their income.

The other repealed a provision that would have required employers to distribute Form 1099 statements to any vendor with which it did at least $600 in business.

inBrief

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Brokers said in its quarterly survey. Workers compensation experienced the largest rate increase at 7.5%.

U.S. rates expected to rise this year

U.S. commercial insurance rates are expected to climb across many lines of business in 2012, according to an analysis by Marsh & McLennan Cos. Inc.'s Marsh Inc. unit. The report noted that the U.S. property/casualty insurance industry sustained more than $105 billion in insured catastrophe losses last year. While the losses had a "minimal" impact on the industry's capital position, they did hit earnings, Marsh said.

Stable outlook seen for reinsurance sector

Despite high catastrophe losses in 2011, the outlook for the global reinsurance sector remains stable, Standard & Poor's Corp. said. The global reinsurance industry likely will post a combined ratio of 110% to 115% for 2011, up from its previous estimate of 105% to 110%. S&P said the reinsurance industry holds surplus capital, and its enterprise risk management capabilities are strong compared with the wider insurance industry. Separately, Towers Watson & Co. said a series of factors, including reinsurers' exposure to losses, the impact of Risk Management Solution Inc.'s version 11 U.S. hurricane model, continued low interest rates and "overall competitive pressures" helped move Jan. 1 renewal rates for U.S. property/casualty reinsurance premiums anywhere from down 5% to up 5%.

Partner Re under review, Arch upgraded: Best

A.M. Best Co. Inc. has placed under review with negative implications the financial strength rating of A+ and issuer credit rating of aa- of Partner Reinsurance Co. Ltd. and its affiliates. In addition, Best also placed under review with negative implications the issuer credit rating of a- and debt ratings of its parent, PartnerRe Ltd. Meanwhile, Best upgraded the financial strength ratings of Arch Reinsurance Ltd., its strategic affiliates and its separately rated affiliate, Arch Specialty Insurance Co., to A+ from A, and the entities' issuer credit ratings to aa- from a+. In addition, Best upgraded the issuer credit ratings to bbb+ from bbb of Arch Capital Group (US) Inc. Best upgraded the issuer credit rating to a- from bbb+, as well as all debt ratings, of the ultimate holding company, Arch Capital Group Ltd. Best revised the outlook for all ratings to stable from positive.

European storm loss could reach $388M

Last month's Windstorm Joachim in Western Europe caused an estimated €300 million ($387.9 million) in insured damage, according to Perils A.G. The majority of the losses from the Dec. 15-17, 2011, windstorm occurred in France. Perils also noted that Germany and Switzerland sustained losses.

Recent tornado losses under $100M: EQECAT

Insured losses from U.S. tornadoes earlier this month should be less than $100 million, according to EQECAT Inc. Tornadoes, hail and high winds affected a wide swath of the South between Jan. 21 and Jan. 23, with 21 tornado events reported in Alabama, Arkansas and Mississippi. Other states affected by the severe weather included Georgia, Indiana, Kentucky and Tennessee.

Noted

American International Group Inc. said **Chartis U.S. Accident and Health** and **American General Life Cos.** will merge their group benefit operations into a single organization, AIG Benefit Solutions....**Third Point Reinsurance Co.** has appointed Rob Bredahl as chief financial officer and chief operating officer, and Dan Malloy as executive vp, underwriting. Mr. Bredahl previously was CEO of Aon Benfield Securities and President of Aon Benfield Americas. Mr. Malloy previously was co-head of the specialty practice groups at Aon Benfield. Paul Shultz, president of Aon Benfield Securities, will succeed Mr. Bredahl as CEO of that unit.

CONTRIBUTING: Roberto Ceniceros, Matt Dunning, Mallory Gillikin

End Page

Disney's about-face on grooming

Don't let the beards on the Seven Dwarfs fool you. Until this week, facial hair on employees at Disney theme parks was a no-no.

A spokeswoman for the Walt Disney Co. announced Monday that workers at the company's two major American theme parks will be allowed to grow facial hair, starting next month, the Associated Press reported.

Beards, mustaches and all other configurations of face fuzz had been banned for theme park workers since Disneyland opened in California in the 1950s. In 2000, the company relaxed the policy somewhat to allow mustaches, provided they were fully grown—workers still could not begin growing a mustache while working, according to the AP.

Disney's revised employee appearance policy also permits casual dress on Fridays for employees who do not interact with visitors.

AP PHOTO

Actress Zooey Deschanel has dropped a lawsuit against shoemaker Steve Madden that claimed she was never paid for a $2 million endorsement deal.

Deschanel walks away from shoemaker suit

"New Girl" star Zooey Deschanel has dropped a lawsuit against shoemaker Steve Madden that claims she was never paid for a $2 million endorsement deal.

The lawsuit, filed in Los Angeles Superior Court in December 2010, alleged that Ms. Deschanel's agent negotiated a $2 million oral contract with Madden to use the entertainer's name and likeness in connection with shoes and accessories. The plaintiff also stated that while Madden attempted to negotiate the fee down to $1.5 million, she never received any payment.

After her representatives purchased a pair of Madden-made "Candie's Zooey shoes" through Kohl's Corp.'s department store website, Ms. Deschanel filed an amended complaint that asserted Madden also infringed on her publicity rights, in addition to breach of contract.

But last week, before the case could go before a jury, Ms. Deschanel's lawyers requested that the case be dismissed with prejudice. Terms of any possible settlement are not known.

Naiveté keeps man out of jail

An unemployed tattoo artist didn't realize his Range Rover was under warranty when he handed it over to insurance fraudsters because he assumed he couldn't afford crucial repairs.

By the time the owner learned the warranty would cover the repairs, the Range Rover had been used in a $78,000 staged-accident scam.

Fortunately for the 30-year-old, Stephen Eatherall of Burnley, England, a British judge reportedly found him "naive" and spared him any time in jail.

The scheme began in 2007 after the Range Rover broke down and a friend connected Mr. Eatherall with people who promised to make the repair problems disappear.

Mr. Eatherall then told his insurer that the Range Rover had been involved in a crash with an Audi. The Audi's owner reportedly wanted to dump his car, and a man running an auto recovery business said he cleaned up the crash scene before towing the cars.

Both vehicles actually were damaged in an auto repair garage. The garage's owner and an employee alleged they were in the Audi and suffered whiplash in the crash.

But the scam unraveled when Mr. Eatherall confessed to his insurer, Zurich Insurance Services Inc. At least two people were sentenced to jail for conspiracy to defraud.

The judge, however, noted that the evidence provided by Mr. Eatherall helped convict one person. The judge also said the owner was more naive than the fraudsters who sought to profit illegally.

While he escaped jail, Mr. Eatherall received a 51-week suspended sentence and was ordered to put in 200 hours of labor.

CANDID CAMERA CATCHES FRAUDSTER

Investigators who installed a surveillance camera near the home of a former postal worker eventually convicted of workers compensation fraud got more than they expected.

The husband of the female postal worker regularly enjoyed sipping his morning coffee while nude, investigators found in reviewing video from the camera placed atop a utility pole outside their Geneva, Ohio, home.

"The camera did record that on occasion," an investigator told a local TV news station.

Karen Anderson-Bagshaw, the 49-year-old former U.S. Postal Service worker, recently was sentenced to a year in prison and must pay more than $70,000 in restitution, according to news reports.

She was a postal worker in 2002 when she claimed disability and began receiving workers comp benefits.

The payments stopped in 2011 after investigators learned she was operating an alpaca farm. Their video showed Ms. Anderson-Bagshaw carrying bags of feed, installing a walkway, mowing the lawn and cleaning up after the farm animals.

They also followed her during a Caribbean vacation, filming Ms. Anderson-Bagshaw lifting luggage, sitting for hours while gambling, and jumping on a scooter.

Last fall, jurors convicted her on 13 counts of workers comp fraud, mail fraud and misleading her doctor about a back injury.

But who was the lucky investigator who traveled to the Caribbean in the name of justice?

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