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Business Insurance

February 8, 2010

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WHITE HOUSE SEEKS TAXES ON FOREIGN REINSURANCE TRANSACTIONS / PAGE 3

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In Brief

MetLife talking with AIG about buying ALICO

MetLife Inc. said it is in talks with American International Group Inc. to acquire AIG unit American Life Insurance Co. The disclosure, which was included in MetLife's fourth-quarter earnings report last week, said "no agreement has been reached, and there are no assurances that an agreement will be reached." The Wall Street Journal reported last month that MetLife would pay between $14 billion and $15 billion for ALICO, but the report also cited people familiar with the discussions in saying the deal could fall apart.

N.Y. producer disclosure rule nearly ready: IIABNY

The New York State Insurance Department will publish its final producer compensation disclosure regulation in the New York State Register on Feb. 10, according to the Independent Insurance Agents & Brokers of New York Inc. The IIABNY, which has threatened to sue the NYSID over the rule, said Friday that it had obtained a copy of the final version of the regulation, which will go into effect Jan. 1, 2011, and it includes several changes the IIABNY had sought.

S&P lowers rating for Berkshire units

Standard & Poor's Corp. last week lowered the financial strength rating of Berkshire Hathaway Inc.'s main insurance operations to AA+ from AAA, citing the pending acquisition of Burlington Northern Santa Fe Corp. as driving the downgrade. The outlook for Berkshire Hathaway remains stable, S&P said.

See **IN BRIEF** page 22

HEALTH CARE BENEFITS

Extension likely for COBRA subsidy

Obama, lawmakers back proposal to aid laid-off workers

By JERRY GEISEL

WASHINGTON—Experts say employers should brace for another extension of the federal subsidy of COBRA health insurance premiums for involuntarily terminated employees, with the president and top Senate Democrats adding their support last week.

The Obama administration included the extension in its proposed fiscal 2011 budget, which it sent to lawmakers last week.

In Congress, key lawmakers also are backing an extension. Senate Majority Leader Harry Reid, D-Nev., and Finance Committee Chairman Max Baucus, D-Mont., and several other top Senate Democrats last week distributed a description of a soon-to-be-introduced jobs bill that would include extending the COBRA subsidy, but provided no specific details. One proposal under discussion, sources said, would extend the subsidy another three months so employees laid off in March, April and May would be eligible.

President Obama's 2011 budget seeks another extension of the subsidy.

PENSIONS: Employers ask Congress to consider easing pension funding rules. **PAGE 20**

Under the extension proposed by the administration, employees laid off from March 1 through Dec. 31 this year would be eligible for the 65% subsidy for up to 12 months.

Previous subsidies affected employees laid off from Sept. 1, 2008, through Feb. 28, 2010, Those individuals, who are eligible for 15 months of premium subsidies, would not be affected by the extension proposed by the White House.

See **COBRA** page 20

REUTERS

Gregor Schlierenzauer of Austria competes in a World Ski Jumping event in Klingenthal last week.

RISK MANAGEMENT

With covers in place, Games set for launch

By MICHAEL BRADFORD and ROBERTO CENICEROS

VANCOUVER, British Columbia—The XXI Olympic Winter Games in Vancouver are covered by billions of dollars in insurance limits to protect against a host of perils from terrorism to a lack of snowfall that could derail the competition and lead to huge losses for organizers, broadcasters and others involved in staging the event.

Abandonment and cancellation are widely seen as the biggest fears of the Lausanne, Switzerland-based International Olympic Committee and others that have huge sums invested

See **GAMES** page 22

LIABILITY & LITIGATION

Toyota faces lawsuits as vehicle safety concerns grow

By ROBERTO CENICEROS

Toyota Motor Corp.'s problems—and potential financial liabilities—continued to mount last week, as litigation related to certain Toyota vehicles grew.

Lawsuits already have been filed in U.S. courts seeking class action status for economic damages suffered by consumers, and the Tokyo-based company also faces personal injury product liability claims related to auto accidents involving its vehicles.

Toyota could not be reached for comment on its products liability coverage, but observers say it would be highly unusual for an automaker to not purchase coverage for such a large exposure.

REUTERS/LANDOV

A Toyota service technician works on an accelerator pedal from a recalled Toyota Camry last week.

The Tokyo automaker has recalled millions of vehicles over accelerator pedals and other problems, and according to reports, Toyota officials estimate the total cost of the global recall could be as much as $2 billion.

The sheer size of the recall exposes the company on several fronts, observers say.

"Right off the bat, when you have millions of vehicles involved, you have exposure from a potentially large number of people," said Michael Hoenig, an attorney in New York at Herzfeld & Rubin P.C. who has defended auto manufacturers in product liability and class action cases.

Other parties, such as auto parts makers that supplied Toyota, also could face claims from Toyota and from those alleging injury from crashes, observers said.

See **TOYOTA** page 17

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New research report on Solvency II

Solvency II risk-based capital rules will have far-reaching implications, and risk managers need to understand how the new regulatory regime will affect insurers inside and outside the European Union. To preview and purchase *BI*'s new guide to Solvency II, go to *www.BusinessInsurance.com/Reports.*

HEALTH CARE REFORM

Updated FAQ addresses new questions

Business Insurance has updated its COBRA FAQ and Health Care Reform FAQ in light of recent legislative developments. To read the latest versions, go to *www.BusinessInsurance.com/HealthCareReform.*

THIS WEEK IN *BI*

Podcast takes you behind the headlines

"This Week in *Business Insurance*" is a weekly podcast that reviews the headlines in each new issue and interviews reporters for in-depth insights to the top stories of the week. Listen to these audio reports at *www.BusinessInsurance.com/Audio* or subscribe to this free podcast on iTunes.

Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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REINSURANCE

Budget plan targets foreign-owned reinsurers

By JUDY GREENWALD and COLLEEN McCARTHY

WASHINGTON—An Obama administration budget proposal that would hike foreign-owned U.S. reinsurers' taxes would dramatically constrict capacity and increase rates, particularly in catastrophe-prone areas, if implemented, many observers say.

But observers also say the proposal's prospects are uncertain. They note that a comparable proposal by Rep. Richard E. Neal, D.-Mass., has never gained traction in Congress, although the administration's support for the concept could change that situation.

According to the budget request, reinsurance transactions with affiliates that are not subject to U.S. federal income tax on insurance income "can result in substantial U.S. tax advantages over similar transactions with entities that are subject to tax in the United States. The excise tax on reinsurance policies issued by foreign reinsurers is not always sufficient to offset this tax advantage."

TRIA PLAN: The administration's proposal to pare TRIA is unlikely to fly, observers say. PAGE 18

Under the proposal, U.S. insurers would not be allowed a deduction:

- To the extent the foreign reinsurers, or their parent companies, are not subject to U.S. income tax with respect to premiums received, and
- If the amount of reinsurance premiums, net of ceding commissions, paid to foreign reinsurers exceeds 50% of the total direct insurance premiums received by the U.S. insurance company and its U.S. affiliates for a line of business.

The budget proposal estimates the provision would generate $233 million in 2011-2015 and $519 million by 2020.

But opponents point to an analysis of the Neal bill by the Cambridge, Mass.-based economic and financial consulting firm The Brattle Group, which estimated its approval would cost U.S. consumers $10 billion to $12 billion more per year to obtain the same coverage, as reinsurers pass on the cost of their less favorable tax treatment. The report was sponsored by the Washington-based Coalition for Competitive Insurance Rates, which opposes the bill.

Scott B. Clark, who is secretary of the New York-based Risk & Insurance Management Society Inc. and director of its external affairs committee, said the proposed savings is small "compared to what we believe would be the significant financial

See **REINSURANCE** page 18

EMPLOYMENT PRACTICES

AP PHOTO

Sen. Harry Reid, D-Nev., met with Lilly Ledbetter last month in Washington to mark the one-year anniversary of the Lilly Ledbetter Fair Pay Act of 2009.

Ledbetter fair pay law hasn't flooded courts

Year-old bias law still has changed rules; litigation may rise

By JUDY GREENWALD

The Lilly Ledbetter Fair Pay Act of 2009 has kept lawsuits alive that otherwise would have been dismissed and revived others, but it has not generated the significant increase in litigation that some observers had feared.

Furthermore, federal courts generally have been conservative in interpreting the law, observers say.

However, the legislation has generated concern about the adequacy of employers' document retention policies (see story, page 11).

President Barack Obama signed the law on Jan. 27, 2009, with great fanfare as one of his first acts in office. The law says every paycheck resulting from a previous discriminatory pay decision constitutes a violation of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973 (see box, page 10).

The fair pay law reversed the U.S. Supreme Court's 2007 ruling in *Lilly Ledbetter vs. Goodyear Tire & Rubber Co. Inc.*

While the law had been expected to be the first of much employee-oriented legislation, that has not materialized so far but still could be on the horizon, observers say (see story, page 11).

Concerns that the law would result in a flood of litigation proved unfounded, observers say.

"The sky hasn't fallen," said Martha J. Zackin, of counsel with law firm Mintz Levin Cohn Ferris Glovsky & Popeo P.C. in Boston.

"Some people got more excited" than the situation justified, said Thomas H. Christopher, a partner with law firm Kilpatrick Stockton L.L.P. in Atlanta. The legislation "applies only to a very limited situation and those kind of situations

See **LEDBETTER** page 10

BI to honor industry's innovators

NEW YORK—Seven companies will be honored for the most innovative new risk management products and services at *Business Insurance*'s 2010 Innovation Awards next month in New York.

The Innovation Awards dinner will be held March 8 at the Waldorf=Astoria Hotel in New York, coinciding with the *Business Insurance* Risk Management Summit.

An independent panel of judges, comprising professional risk managers, pored over more than 50 entries from leading commercial insurance and risk management services companies to evaluate, score and select this year's winners.

Recipients of the inaugural Innovation Awards will be announced this month.

The Innovation Award-winning companies and their products will be recognized during the March 8 awards dinner, which will feature a keynote address on innovation from Frans Johansson, author of the critically acclaimed "The Medici Effect," which explores how individuals, teams and organizations can find new ideas at the intersection of different fields, cultures and industries.

The honorees and their award-winning entries also will be profiled in the April 5 print edition of *Business Insurance* as well as online at *www.BusinessInsurance.com.*

For information on the 2010 Innovation Awards, as well as to reserve seats and tables at the March 8 Innovation Awards dinner, please visit *www.BusinessInsurance.com/InnovationAwards.*

The Risk Management Summit is a unique, invitation-only educational program created exclusively for senior risk managers of Fortune 300 companies of the top 100 European companies, along with active risk managers who received Risk Manager of the Year® and Risk Management Honor Roll® awards. It was developed with support from an advisory board comprising risk managers of some of the world's leading companies.

The summit will feature networking and well-structured discussions about the most pressing risk management issues. These core topics will be introduced by a risk management professional and then explored in discussion groups and by a panel of senior executives from insurance and risk management services companies. The topics are:

- Counterparty risks, which will be introduced by William J. Kelly, president of WJK Advisory L.L.C., a risk management consulting firm based in Morristown, N.J.
- Global programs and risks, introduced by Frédéric Dhers, corporate risk officer for Veolia Environnement, a Paris-based environmental services company operating worldwide.
- Global regulatory risks and legislative developments, introduced by Christopher Lajtha, owner of ADAGEO, a Paris-based risk management consulting firm.
- Innovation in risk management, introduced by Lori Jorgensen, senior director of finance and risk management for Redmond, Wash.-based Microsoft Corp.

Sponsors of the inaugural Risk Management Summit include Zurich Insurance, Aon Corp., Chartis Inc., Dempsey Partners L.L.C., Liberty Mutual Group Inc., Lloyd's of London, Marsh Inc. and Sedgwick Claims Management Services Inc.

For information on the Risk Management Summit, the Innovation Awards or sponsorship opportunities, please go online to *www.BusinessInsurance.com/RMSummit.*

RISK MANAGEMENT

Florida sees savings from risk management changes

Approaches borrowed from private sector help state cut costs

By MARK A. HOFMANN

TALLAHASSEE, Fla.—Private-sector risk management practices are paying dividends for one of the nation's largest public entities—the state of Florida.

In fact, greater emphasis on loss prevention, encouraging workers to return to work sooner rather than later and other techniques adopted from the private sector saved Florida about $12 million in 2009, state Chief Financial Officer Alex Sink wrote in her introduction to the Division of Risk Management's 2009 annual report.

In the area of workers compensation, injured employee satisfaction with the state's services rose 30% while lost-time claims fell 28%, she wrote. The state also achieved savings by reducing litigation costs associated with employment discrimination, she said.

Since becoming CFO in 2007, Ms. Sink—a former Florida president of Bank of America—has stressed using private-sector approaches to save money at the Florida Department of Financial Services, which includes the Division of Risk Management. She invited experts from leading private employers in Florida to suggest ways to improve risk management.

Florida CFO Alex Sink has led an effort to improve loss control at state operations.

The state plans to improve its risk management practices even more through a new Advisory Council on Risk Management. The council, which held its first formal meeting this year, consists of three private-sector risk managers, a state official and an insurance professor (see story, page 17).

R.J. Castellanos, who became director of the Division of Risk Management in 2008, said Florida "wasn't doing that poorly to begin with as far as claims experience," and compared favorably with many private and public programs in frequency and severity of claims. But the division had no clear legislative authority to require agencies participating in Florida's self-insurance program—which covers everything but some catastrophic property exposures—to implement loss-control programs.

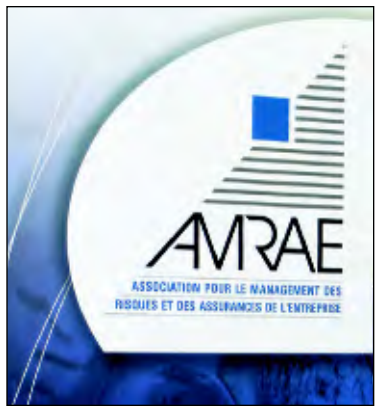
"As a result, we were not always getting cooperation with the agencies," Mr. Castellanos said. "We also didn't always have the top management of the agencies involved in the risk management program."

In her message, Ms. Sink advocated that state lawmakers this year establish "comprehensive risk management requirements for all state agencies and to reward agencies that demonstrably improve their performance."

Mr. Castellanos noted that private-sector workplaces must comply with regulations from the Occupational Safety and Health Administration.

"There's more emphasis from a

See **FLORIDA** page 17



INTERNATIONAL

French buyers want openness on broker pay

By REGIS COCCIA

DEAUVILLE, France—Brokers and insurers in France remain at odds over remuneration, but risk managers would like more transparency, said panelists at the recent annual conference of the Association pour le Management des Risques et des Assurances de l'Entreprise in Deauville, France.

Transparency became a major concern after former New York Attorney General Eliot Spitzer sued Marsh & McLennan Cos. Inc. in 2004 and led the world's four largest brokers to renounce contingent compensation from insurers, noted Marc de Pommereau, risk manager at GDF Suez Energie Services S.A. in Paris. The subject of broker pay and transparency re-emerged in July 2009 after one of the four, Arthur J. Gallagher & Co., renegotiated permission to accept contingent commissions, he said. It remains to be seen whether other major brokers will attempt to do the same, though Willis Group Holdings P.L.C. has stated it would not.

"French law allows insurers and brokers to determine remuneration for the broker on premiums and

See **AMRAE** page 12

WORKERS COMPENSATION

Some cash-strapped states raiding workers comp funds

Employers, insurers sue to block cash transfers

By ROBERTO CENICEROS

The recession is driving some state governments to raid workers compensation funds to combat budget deficits, but employers, risk-sharing pools and insurers are fighting back.

Employers, pools and insurers have gone to court seeking to stop the practice that is tapping money collected through assessments on insured premiums and self-insured entities. They argue that "sweeping," or transferring employer assessments, is an unconstitutional confiscation of private money amounting to unauthorized taxation.

In the battle, Kentucky's Supreme Court has handed employers a partial victory in one such lawsuit that sought to stop lawmakers from funneling employer workers comp assessments to the state's general fund.

Additional lawsuits have been filed in Arizona and Kansas.

The plaintiffs say they face additional assessments to restore the money states have taken from workers comp programs, such as the Special Fund of the Industrial Commission of Arizona. The Special Fund provides benefits to employees of insolvent insurers, uninsured employers, bankrupt self-insured employers and other workers comp-related claims.

Similarly, self-insurance groups in Kansas sued Jan. 21 to stop the sweep of money into the state's general fund from a workers comp account that pays second injury and insolvent employer claims.

Observers say they expect more states will try to tap workers comp funds for revenue as the recession continues to take its toll on government coffers.

"This happens every time there is a recession (or) an economic downturn and states are looking everywhere for money, including money that is not legitimately theirs," said Bruce C. Wood, associate general counsel and director of workers compensation for the American

See **COMP** page 11

REUTERS

Technicians work near debris from the July 2000 Air France Concorde crash near Paris.

AVIATION

Airline faces criminal trial over fatal Concorde crash

By ZACK PHILLIPS

PONTOISE, France—The manslaughter trial of Continental Airlines Inc. and five aviation officials whom prosecutors blame for the fatal 2000 crash of an Air France S.A. Concorde presents "ominous" possibilities for aviation insurers and policyholders, experts say.

The criminal trial in Pontoise, France, began last week with prosecutors describing manslaughter charges against the Houston-based airline, two of its mechanics, two workers at the Concorde manufacturer and one official from the French civil aviation authority.

If convicted of manslaughter, Continental could be fined as much

See **CONCORDE** page 18

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DB plans outperform 401(k)s: Study

By JERRY GEISEL

Defined benefit pension plans are consistently earning higher rates of return than 401(k) plans, according to a new analysis.

The median annual rate of return for defined benefit plans averaged 10.13% compared with 9.06% for 401(k) plans from 1995 through 2007, according to consulting firm Towers Watson & Co.

Towers Watson consultants say it isn't surprising that rates of return in defined benefit plans have topped those of 401(k) plans.

Participants in 401(k) plans "often do not optimize their investment strategies. Even with investment education and better default investment options for 401(k) plan participants, (defined contribution) plans plans do not replicate all the advantages of DB plans and are unlikely to outperform DB plans, which generally have extended investment horizons and economies of scale," Mark Warshawsky, Towers Watson's director of retirement research in Arlington, Va., said in a statement.

Looking at individual years, the analysis, which is based on pension plan reports employers file with the federal government, found in 2007—the most recent year included in the analysis—that the median rate of return for defined benefit plans was 7.71% compared with 6.78% for 401(k) plans.

The biggest difference during the 13-year period was in 2000 when the median rate of return for defined benefit plans was down 0.01% compared with a 401(k) plan loss of 2.76%.

BETTER OVER TIME

Median rate of return of defined benefit pension plans vs. 401(k) plans 2000-2007.

Year	Defined benefit	401(k)	Difference
2007	7.71%	6.78%	0.93%
2006	13.28%	11.89%	1.39%
2005	7.74 %	6.69%	1.05%
2004	11.81%	9.80%	2.01%
2003	21.35%	19.68%	1.67%
2002	-8.56%	-10.93%	2.37%
2001	-3.78%	-6.07%	2.29%
2000	-0.01%	-2.76%	2.75%

Source: Towers Watson & Co.

The highest rate of return for defined benefit plans during the 13 years was in 2003, with a median rate of return of 21.35%. During the same period, 401(k) plans registered a 19.68% median rate of return.

The top year for 401(k) plans was 1997 when the median rate of return was 19.73%, compared with 18.82% for defined benefit plans.

In all, median rates of return for defined benefit plans were higher than 401(k) plans in nine of the 13 years analyzed by Towers Watson.

Still, despite generating higher investment returns, the number of defined benefit plans open to new employees continues to fall. As of May 2009, 45% of Fortune 100 companies offered a defined benefit plan to new salaried employees, down from 90% in 1998, according to an analysis last year by Watson Wyatt Worldwide prior to its merger with Towers Perrin.

By contrast, 55% of Fortune 100 companies offered only a defined contribution plan to new salaried employees last year, compared with 10% in 1998.

Reasons employers frequently cite for moving away from defined benefit plans include the unpredictability of the amount of required contributions due to the swings of investment results and interest rates, and concerns about future costs as plan participants live longer.

The analysis is available online at *http://www.towerswatson.com/research/845*.

Commentary

Older workers warrant researchers' attention

ROBERTO CENICEROS

Senior Editor Roberto Ceniceros can be reached at: rceniceros@businessinsurance.com

Too little is known about how workers manage job demands as they age and begin to lose physical and cognitive abilities.

Yet there seems to be widespread agreement that knowing more about older workers is important for employers, especially as older employees make up a growing proportion of the U.S. workforce.

As a result, there have been more discussions about the productivity of aging workers along with studies comparing how older and younger workers differ with regard to the how often they are injured, how much medical attention they require when they are hurt and how many days of work they miss.

Last month, for example, NCCI Holdings Inc. released a finding that indemnity severity, or wage benefits, is roughly 4% less among workers compensation claims filed by employees age 65 and older compared with all other age groups. That is largely because they tend to earn a lower weekly wage. Medical severity costs, however, are 26% higher for their claims.

Previously NCCI, a rating and research organization, limited its investigation of older workers' claims injuries to those age 64 and younger.

But the percentage of people 65 and older who either are in the workforce or looking for work has grown from 11% to 17% of all people in that age group since the late 1980s. The percentage for those age 55 to 64 who are working or looking for work has increased from 55% to 65% during the same period.

Meanwhile, the percentage of people age 25 to 54 who are working or looking for jobs has remained unchanged at 83% during the period.

Simply put, we baby boomers make up a big part of the workforce and we are not getting any younger.

Simply put, we baby boomers make up a big part of the workforce and we are not getting any younger.

So you see organizations such as the American Society of Safety Engineers providing more information on how to design workplaces that are safer for older workers and help boost their productivity.

But despite the growing body of knowledge about aging employees, we still don't know much about what older people do every day while at work to make up for the decline in eyesight, hearing, attention capacity, memory and other abilities.

A recent conversation with Joel M. Haight convinced me of that.

Mr. Haight is a branch manager supervising human factors researchers for the National Institute for Occupational Safety and Health's Office for Mining, Safety and Health Research. Prior to that, he was an associate professor of energy and mineral engineering at Pennsylvania State University, where he studied safety. He also has worked as an environmental and safety engineer for Chevron Corp.

Unfortunately, there has not been adequate research into older worker performance conducted in real workplaces, where all the workaday pressures are present, said Mr. Haight, who spoke to me as a member of ASSE and not as a spokesman for the U.S. government.

Most studies on aging-worker performance have been completed in quiet lab environments where people are asked to complete specific tasks, Mr. Haight said.

But "there is not enough, and actually not much at all, in studies addressing performance in the midst of a workday," he said.

That means employers don't know enough about how aging employees are accommodating for declining capabilities. Are they jerry-rigging devices to help them lift loads or creating platforms that help them step over obstacles?

If employers are not directing such accommodations, it is possible individual worker efforts could actually be creating safety hazards for themselves and other employees.

Perhaps there are better ways to accommodate that could increase productivity. Research could help answer such questions.

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Business Insurance OPINIONS

Budget should not cut terror program funds

FEDERAL BUDGETING is an inexact science at best, but the way the Obama administration's proposed budget treats the terrorism insurance backstop doesn't even approach a scientific method.

As we report on page 18, the Obama budget asserts that it will cut the program's cost by about $250 million through increased deductibles and copayments paid by insurers participating in the program. The proposal also would prohibit coverage of acts of domestic terrorism.

We have a few problems with this approach.

To begin with, the program really doesn't cost the government anything beyond administrative expenses. Only a catastrophic terrorist attack would trigger the backstop and disburse federal funds to insurers that paid claims arising from the attack.

There are places where the administration can achieve real savings, but scaling back the terrorism insurance backstop isn't one of them.

Fortunately, there have been no catastrophic U.S. attacks since Sept. 11, 2001, and no federal outlays to cover attacks since the program was established in 2002. Any savings the budget purports to achieve by scaling back the program are at best potential and at worst fictional.

Removing acts of domestic terrorism from events to which the backstop would respond is an even worse idea. A terrorist attack is a terrorist attack, regardless of whether the order came from inside or outside the United States. In addition, determining whether an attack is of domestic or foreign origin might take weeks or months, if a determination is ever made. Meanwhile, the need to pay for the devastation would remain.

There are places where the administration can achieve real savings, but scaling back the terrorism insurance backstop isn't one of them. We hope Congress remembers the delicate compromises and hard work that established and extended the program, and leaves the backstop intact.

Much to consider about COBRA subsidy law

THERE ARE SEVERAL pros and cons for Congress to weigh when it considers extending the law that temporarily subsidizes COBRA premiums of employees who are involuntarily terminated and want to keep health insurance offered by their former employers.

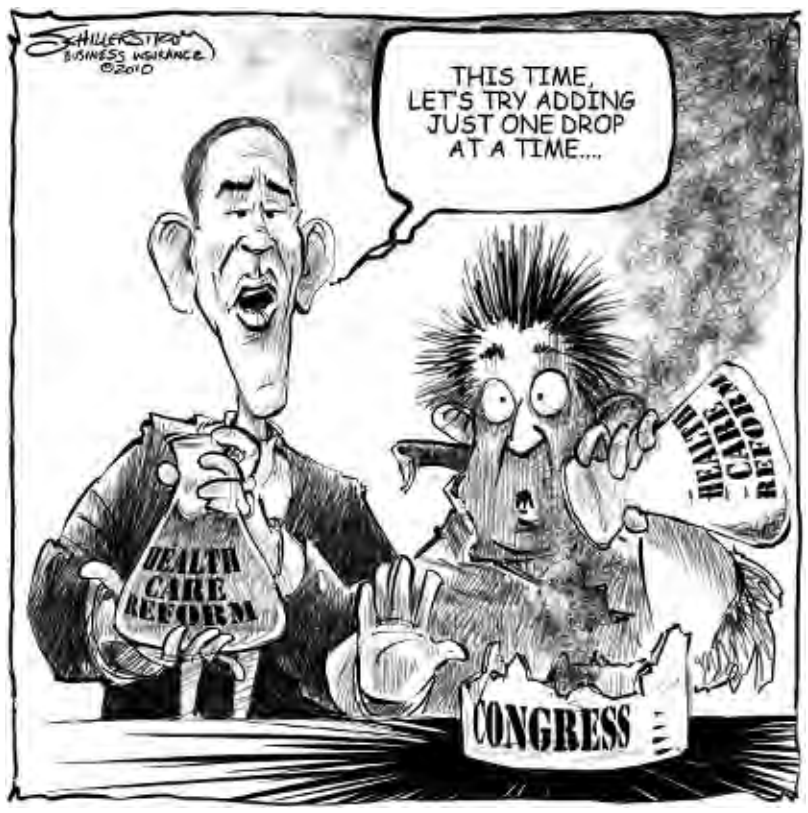
On one hand, beneficiaries and the federal government are paying only part of the cost of extending the coverage, an extension President Barack Obama backs and has strong bipartisan congressional support.

There is no question that those who opt for COBRA are above-average users of health care services. As a result, claims incurred by beneficiaries typically exceed the premiums paid for the coverage. This means employers are paying part of the cost of COBRA coverage, a fact that legislators have yet to acknowledge.

Still, there are powerful reasons why the subsidy should be extended.

If former employees are able to continue employer-provided coverage, they will receive care if a medical emergency strikes and providers will be paid, reducing the amount of uncompensated care that providers would otherwise absorb and then try to pass on to individuals in insured plans.

If employers start hiring when the economy picks up, beneficiaries who retained COBRA will not have the stress of a mountain of unpaid medical bills when they return to work and likely would be more productive when they're back on the job.



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THIS WEEK'S RESULTS

Q How should the government address the problem of financial institutions deemed "too big to fail"?

Break them up 40%

Increase regulation 22%

Leave them alone 38%

NEXT WEEK'S QUESTION

Q: What should the administration do with the federal terrorism backstop?

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How do we fare on political risk?

While numerous comparisons have been made between the current economic crisis and the Great Depression of the 1930s, one element that has been absent this time around is the political upheavals that came after the earlier crisis. In general, political risks have not risen sharply since the current economic problems began and, so far, there are few signs that major disruptions will materialize. But are we out of the woods yet on the political risk? If the economic crisis continues will political risk exposures increase? Rolf Tanner and Kaspar Zellweger of Swiss Reinsurance Co. survey the outlook.

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Business Insurance

Ledbetter: Fair pay law revives some bias suits

CONTINUED FROM PAGE 3

come up sometimes in the courts, but not as much as I think some people would think."

C.R. Wright, a partner with Fisher & Phillips L.L.P. in Atlanta, said the provision that plaintiffs can recover only two years of back pay if they prevail may have had a dampening effect.

"I think that the limited remedy, in terms of damages, has been one reason there hasn't been a flood of new cases. While a person can go back more years than that to point to what they allege to have been the discriminatory conduct, they still can only recover back pay for a two-year period under the statute," Mr. Wright said.

The law, however, has kept some cases alive and revived others.

"The courts are following correctly the language of the statute for the most part, but that is opening the door for a lot of plaintiffs who would not have been allowed to go forward because their claims are time-barred," said Christina L. Lewis, an

'I think that the limited remedy, in terms of damages, has been one reason there hasn't been a flood of new cases.'

C.R. Wright, Fisher & Phillips L.L.P.

associate with law firm Hinckley, Allen & Snyder L.L.P. in Boston.

She was referring to the Supreme Court's ruling in *Ledbetter* which limited plaintiffs to filing a complaint within 180 days of an alleged discriminatory act. The Ledbetter law gives plaintiffs up to 300 days to file a complaint, depending on their state, from the time each paycheck that is based on a discriminatory decision is issued.

Since the law's enactment, subsequent rulings on the issue have included the September 2009 ruling in *Mary Lou Mikula vs. Allegheny County of Pennsylvania*, in which the 3rd U.S. Circuit Court of Appeals in Philadelphia reversed its own previous decision and held that the plaintiff could proceed with her claim on the basis of the Ledbetter law (*BI*, Sept. 20, 2009).

Reviving a case does not necessarily mean the plaintiff will prevail, "but it means (plaintiffs) now have a shot at it, which certainly adds a cost both financial and managerial to the employer who now has to go back and try to figure out what happened" many years earlier, Mintz Levin's Ms. Zackin said.

There also have been ongoing cases in which the allegation has been added, where defense attorneys are "suddenly faced with a supplementary brief to address the (Ledbetter) Fair Pay Act," said Philip K. Miles III, an associate with State College, Pa.-based McQuaide Blasko Attorneys at Law.

"It's one more defense that falls by the wayside for defendants' counsel and one more issue that has to be dealt with in a lot of these cases," said Mark W. Batten, a partner with law firm Proskauer Rose L.L.P. in Boston, who has studied the 47 federal court rulings interpreting the law.

"The pattern that we're seeing is that the courts are applying the act as it was written, but no more broadly; so where there is a compensation claim or a claim that is closely tied to a compensation claim, like denial of tenure, or a denial for promotion, the courts are holding that the passage of time is not a bar to those cases," Mr. Batten said. "But the fears of some that the act might be applied more broadly, either to statutes other than those listed in the act or, more importantly…might be applied to discrimination claims that are not closely connected with compensation, has not materialized."

Mr. Miles said courts have proceeded cautiously in interpreting the law. "It seems like the courts aren't in a hurry to sort of use this as a way to...bring every claim possible in," he said.

Ms. Zackin agreed the act's applicability "has been somewhat limited by the courts in the last year."

For instance, "It's been clear that the act doesn't apply to pension benefits." If a worker has retired, he cannot claim he is receiving a lower pension because of a promotion denied during his active career, Ms. Zackin said.

Still, she warned, there is always the possibility of "outlier" decisions that expand employers' potential liabilities. "You never now what the courts are going to do, unfortunately for employers."

The legislation remains a source of concern for employers, Mr. Miles said. It is difficult to "support your side of the story when you may not have the people or the documentation to support your side of the argument.

"I would definitely say it's still an issue for employers and it's really going to be an ongoing issue....It's something they're really going to have to continuously prepare for by creating and maintaining documentation," Mr. Miles said.

AP PHOTO

President Barack Obama signed the Lilly Ledbetter Fair Pay Act of 2009 into law on Jan. 29, 2009. The law extended the period of time workers have to file pay discrimination complaints, but it has not resulted in a flood of new lawsuits.

FAIR PAY REQUIREMENTS

Provisions of the Lilly Ledbetter Fair Pay Act of 2009

- Discriminatory compensation occurs each time a person is paid based on previous discriminatory decisions or practices.
- Amended Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973
- Effective May 28, 2007, the day before the Supreme Court ruled in *Lilly Ledbetter vs. Goodyear Tire & Rubber Co.*, for claims pending on or after that date.
- Limits recovery of back pay to two years preceding filing of charges.
- The law states that the Supreme Court's Ledbetter ruling impaired "statutory protections against discrimination in compensation that Congress established and that have been bedrock principles of American law for decades."

Source: www.govtrack.us

More pro-employee laws on the way?

Many expected the Lilly Ledbetter Fair Pay Act of 2009, which President Barack Obama signed into law as one of his first acts in office, to be the first of a series of new pro-employee laws.

With Congress absorbed with health care reform and other issues, that trend has yet to materialize. However, observers say more pro-employee legislation could become law, and some warn that employers can expect stricter enforcement of existing laws by federal agencies.

"There are at least 27 different pieces of legislation proposing changes to federal law affecting just about every aspect of the employer-employee relationship," said C.R. Wright, a partner with law firm Fisher & Phillips L.L.P. in Atlanta.

The legislation covers areas that include paid sick leave, union membership, sexual orientation discrimination, age bias, predispute arbitration agreements, and health and safety issues.

"We're still in Obama's first term and I wouldn't bet against the possibility these will come up and be voted on and may pass," said Richard D. Tuschman, a defense attorney with Epstein Becker & Green P.C. in Miami.

Jonathan T. Hyman, a partner with law firm Kohrman Jackson & Krantz P.L.L. in Cleveland, said once health care issues have been sorted out in Congress, "you may see a bigger push to get some of these things passed, like the Employment Nondiscrimination Act." That bill, which would prohibit discrimination based on sexual orientation or gender identity, is in committee.

"My impression is that the administration would like to get back to these kinds of issues, including the Employee Free Choice Act and some of the other pro-labor legislation that was originally on the agenda," said Mark W. Batten, a partner with law firm Proskauer Rose L.L.P. in Boston. That measure, which also is in committee, would make it easier for workers to join unions.

"The question now will be whether the influence of the Democrats in Congress and the Obama administration has diminished so much in recent months that now they are not going to have the mandate," Mr. Batten said.

Michael Layman, manager of labor and employment policy at the Alexandria, Va.-based Society for Human Resource Management, said "some of the issues we're confident we'll see more of in 2010 include the Employment Nondiscrimination Act and the Healthy Families Act." The Healthy Families Act, which is in committee, would provide paid sick leave for most employees.

But because of Congress' absorption with the midterm elections, "the political landscape in Washington may be such that the legislative year may be short in 2010," Mr. Layman said.

However, Valerie J. Hoffman, a partner with law firm Seyfarth Shaw L.L.P. in Chicago, said, "as important as Congress is, maybe even more important is the regulatory activity by the executive branch, agencies that deal with employment," including the Equal Employment Opportunity Commission and the Department of Labor's Office of Federal Contract Compliance Programs, which oversees employers that hold federal contracts.

Ms. Hoffman said she expects the federal agencies to take "a vigorous approach to employment issues that will continue to put the pressure on employers nationwide." While there might not be action in Congress, "I think it'll be substantial in regulation," she said.

"I absolutely think that employer enforcement is going to kick up a notch" during the next year, said Martha J. Zackin, of counsel with law firm Mintz Levin Cohn Ferris Glovsky & Popeo P.C. in Boston. "These agencies now have bigger budgets and will use those budgets to enforce what past administrations didn't necessarily focus on."

—By Judy Greenwald

Employers urged to save pay documents

The Lilly Ledbetter Fair Pay Act of 2009 has led many employers to re-examine their document retention policies to be prepared should they be sued under its provisions, but some experts say more work needs to be done.

The act provides that every paycheck resulting from a previous discriminatory pay decision constitutes a violation of several federal laws, meaning employers may have to go back decades to provide documentation to defend against such claims.

A survey released in August 2009 by Lincolnshire, Ill.-based Hewitt Associates Inc. of 1,156 organizations found that 88% were aware of the law. It found that 38% had conducted a pay-equity analysis, but 36% had taken no action in response to the law.

Jeffrey D. Polsky, a partner with law firm Fox Rothschild L.L.P. in San Francisco, said, "Now that litigation over compensation decisions can potentially reach back 20 years or more, it's become important for employers to hold onto records of when and why certain compensation decisions were made."

Philip K. Miles III, an associate with State College, Pa.-based McQuaide Blasko Attorneys at Law, said: "Employers should be looking at how they document their compensation decisions, with an eye toward building a record that can be used many years down the line. Today's compensation decision could result under the Fair Pay Act in a claim several years down the road, and long after the people involved in the compensation decision have moved on. It may be the only thing they have."

Liz Snyder, a senior consultant with Hewitt Associates in Lincolnshire, said, employers "are a little bit confused about what they need to keep indefinitely, but what we're seeing and what we're telling them is, anything related to their pay decisions—which is not only their payroll files and their compensation programs but also performance reviews and any of the decisions and guidelines around starting pay, promotional pay, merit increases"—should be retained.

"Some employers also are looking more seriously at conducting pay-equity analyses," Ms. Snyder said.

However, Mark W. Batten, a partner with law firm Proskauer Rose L.L.P. in Boston, said, "In my experience, most employers are still not doing what they need to do in that area."

Richard D. Tuschman, an attorney with Epstein Becker & Green P.C. in Miami, said his impression is that "most employers don't have real good records on why pay decisions are made at any stage of the game, much less retaining records that go back several years or more."

However, Ms. Snyder said, "I think they're moving in the right direction" in re-evaluating their record retention policies.

"I think that employers have become a lot more aware that they need to make sure that their procedures and decisions are objectively verifiable and objectively reasonable, because things can live on," said Martha J. Zackin, of counsel with law firm Mintz Levin Cohn Ferris Glovsky & Popeo P.C. in Boston.

Observers note, however, that while employers may have the right policy in place, they may have not adequately trained their managers and supervisors in their policies' implementation.

"Individual managers and supervisors can have the biggest impact" on a company's potential risk in this area, said Fred Crandall, a senior consultant with Towers Watson & Co. in Chicago.

"Employers really need to firm up their structure, firm up their training of managers, have specific criteria for compensation decision-making, and then monitor it so the criteria are being followed," Ms. Snyder said.

—By Judy Greenwald

Comp: State budget deficits spur efforts to raid funds

CONTINUED FROM PAGE 4

Maricopa County.

The suit against state officials argues that the Special Fund is a trust and not public money intended as a revenue source.

During a 2009 special legislative session called to address a budget deficit, Arizona lawmakers approved sweeping $4.7 million of Special Fund money into the state's general fund, court records show.

$4.7M
Arizona lawmakers approved sweeping $4.7 million of Special Fund money into the state's general fund.

But employers and insurers say they are on the hook through added assessments should the Special Fund not meet its obligations.

The transfer imposes "a double burden on the private assets of insurers and employers who contribute to the Special Fund and to whom the (Industrial Commission) must look in order to ensure the solvency…of the Special Fund," the employers and insurers allege in the pending case.

In the Kentucky suit, the state Supreme Court ruled Jan. 21 that the governor and legislators are barred from transferring $5 million to the state's general fund from the Kentucky Workers' Compensation Funding Commission and its investment account, the Benefit Reserve Fund.

The KWCFC collects assessments imposed on workers comp premiums paid by employers through their insurers and paid directly by self-insured entities to finance workers comp programs. It also invests the assessments, which are credited to the investment account.

The Kentucky Supreme Court ruling in *Steve Beshear vs. Haydon Bridge Co. Inc. et al.* stems from the 2001 recession when the state faced a budget deficit and began taking KWCFC money, said Edward H. O'Daniel Jr., an attorney in Springfield, Ky., who represents employers in the case.

For its 2002-2004 biennial budget, Kentucky's General Assembly transferred $1.7 million of KWCFC funds to a state mining agency and $5 million to the general fund from the Benefit Reserve Fund. The transfers have continued since then, Mr. O'Daniel said.

"There is always pressure on the government to provide more revenue for government programs," Mr. O'Daniel said. "Even in good times, there are pressures on state legislatures and governors to find more money. Trying to get to the (Kentucky Workers' Compensation) Funding Commission investments is a pretty easy way to fill holes in the budget."

Kentucky employers, with the support of insurers, sued to recover the money and "secure from future raids" about $340 million in assets held by KWCFC that employers and insurers paid in assessments, Mr. O'Daniel said.

Employers feared the Benefit Reserve Fund transfers would continue indefinitely rather than using their assessments to pay down the KWCFC's approximately $1.6 billion in liabilities, essentially forcing them to pay the debt over and over, Mr. O'Daniel said.

Kentucky employers argued that the transfers violated Kentucky's constitution; that money held by the Benefit Reserve Fund is private, not public, and held in trust for workers comp beneficiaries; and that the General Assembly did not have the authority to transfer the money.

The Supreme Court sided with employers on those issues, remanding the case. When the plaintiffs return to court, they will seek a return of about $26 million to the KWCFC.

But the state high court also ruled against employers, saying that a $19.8 million transfer of coal tax revenues from the Benefit Reserve Fund was proper because it was public money that was not comingled with private funds.

In Kansas, the lawsuit filed in Shawnee County District Court on behalf of several self-insurance pools seeks to stop the transfer of money to the general fund from the Kansas Workers' Compensation Fund administered by the state Insurance Department.

The transfers stem from former Gov. Kathleen Sebelius' effort, with legislative approval, to alleviate revenue gaps in the 2009 and 2010 state budgets with "cash sweeps" from several industry-supported fee accounts, including the workers comp fund, the lawsuit states.

'Instead of cutting expenses or raising revenue, the governor looked for fee funds that have balances…despite the fact that it's not the state's money.'
Kansas House Speaker Mike O'Neal, R-Hutchinson

"Instead of cutting expenses or raising revenue, the governor looked for fee funds that have balances…despite the fact that it's not the state's money," said Kansas House Speaker Mike O'Neal, R-Hutchinson.

Rep. O'Neal also is an insurance defense attorney at Gilliland & Hayes P.A. in Hutchinson and filed the lawsuit on behalf of insurance groups.

To make up for sweeping $2.35 million from the workers comp fund, the Kansas Insurance Department levied a 1% assessment on all workers comp payers for 2010 that otherwise would not have been necessary, the lawsuit states.

Questions & Answers

Lloyd's of London sees an opportunity to grow its business in France and has appointed a new branch manager in Paris to lead the market's efforts, which include expanding access for French brokers. Richard Ward, chief executive of Lloyd's, attended the AMRAE annual conference late last month in Deauville, France, and spoke with Business Insurance Editor Regis Coccia about Lloyd's plans.

Lloyd's eyes opening

Q: What opportunities does Lloyd's see in France?

The French market is a very important market for us. It's only 20 miles from the U.K. The business we write here, about €500 million ($693.2 million), in the context of the Lloyd's marketplace, is a small business. It's also about 1% of the French insurance market itself. We're missing an opportunity. The French can benefit from Lloyd's skills and expertise, and we're missing an opportunity to grow in a market that's so close to London. We're at AMRAE to raise our profile, and we appointed a new person, Guy-Antoine de la Rochefoucauld, to spearhead this push for new business.

Q: What kind of risks is Lloyd's keen to write in France?

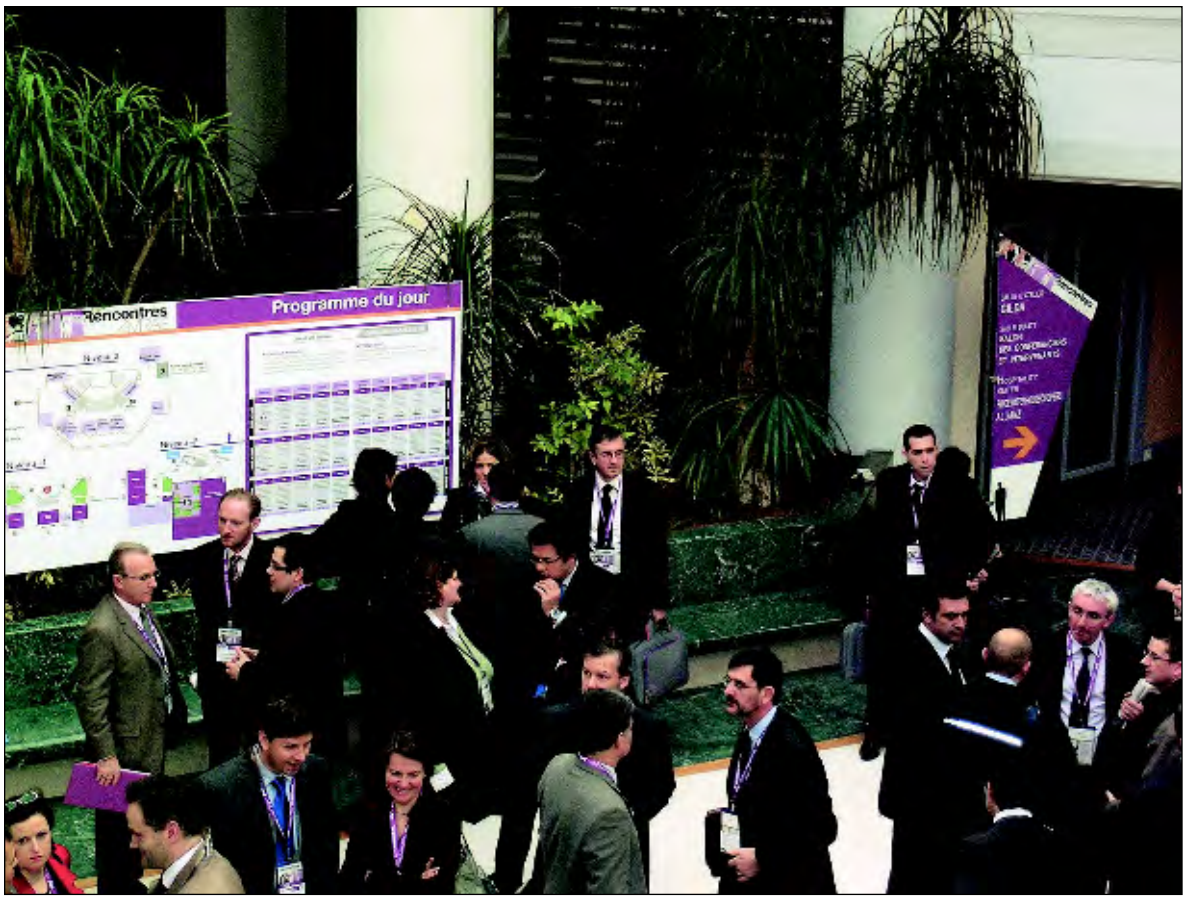
People here, as elsewhere, are worried about energy security, food security, supply chains and reputation. Lloyd's is a global marketplace and we're very comfortable covering global business exposures for companies with multinational operations. For example, we're participating at AMRAE on a kidnap and ransom panel. We are experts in providing cover for that, and for piracy risks. But we also covered the first commercial aviation flight and the first commercial space flight, so we have great expertise in many areas. We'll be able to tailor solutions that French risk managers can't get from their current providers.

Q: Is the fact that Lloyd's can syndicate coverage an advantage?

The subscription markets are far more important today than only a few years ago. The opportunity of Lloyd's is to spread risks across many layers, but the risk manager knows that Lloyd's is able to back it up with the protection of the Central Fund, if needed. The ability to spread risk is not peculiar to the French market, but Lloyd's can help large French businesses to spread their portfolios.

Q: What is Lloyd's goal in France for this year?

Our goal is, when you have brokers talking to clients, they should be saying, "And you can consider placing this risk with Lloyd's." It's a challenging market at this point in time. We want to be at the forefront of people's minds when they're thinking about placing their cover. Lloyd's should be seen to be no different, from a broker's perspective, from a company market. It should look just as easy to place business into Lloyd's as it does your local market. We've put in place initiatives to make it easier for brokers to access Lloyd's, and getting more French brokers into Lloyd's is very important to us.



REGIS COCCIA

Attendees at the Deauville, France, annual conference of the Association pour le Management des Risques et des Assurances de l'Entreprise. The conference included sessions on broker compensation, reputational risk management and international risk management standards, among other topics.

AMRAE: Buyers focus on transparency

CONTINUED FROM PAGE 4

casualty underwriting at AXA Corporate Solutions in Paris. Like other insurers, he said AXA resists increasing commission payments. "There is no legal obligation to pay a commission to a broker, however, and a broker should be able to freely reduce his compensation," he said.

On fee-based brokerage, a system that applies to most large risk management accounts, "there is always an obligation of transparency between the broker and the client," Mr. Jouvelot said.

AMRAE's position is that, rather than develop more regulation of brokers' activities, compensation should be disclosed by brokers at the request of clients, said Mr. de Pommereau, who moderated the panel discussion.

Jean-Pierre Pocholle, risk manager at Air Liquide in Paris, said that, from a buyer's perspective, insurance market participants are "understood to be faithful, flexible and reactive" to market conditions. He said a level of opaqueness in premium components makes it difficult for risk managers "to discern the full cost and who is paid for what."

That lack of full transparency is not a "terrible" situation, but "risk managers have had to learn to adapt," Mr. Pocholle said.

"Buyers are prepared to pay for services they need, at their fair value. We need to understand the structure of prices and be able to break it down," he said. "Confidence and transparency are what the buyer-insurer-broker relationship is based on. The essential point is that buyers, brokers and carriers work as a team."

Describing the structure of premiums, Mr. Jouvelot said that when AXA sets premiums for large, international business accounts, the pure premium includes a charge for anticipated claims plus adjustments added for the cost of capital to meet solvency requirements, the cost of reinsurance, policy acquisition costs and any regulatory charges for fronting local policies, for example.

Bruno Vesval, director general at brokerage Gras Savoye & Cie. in Paris, said broker compensation must acknowledge the value brokers bring.

"The broker serves varied customers—for example, global businesses, individuals and even clients' customers," Mr. Vesval said. "Brokers negotiate with multiple market players, provide multiple experts, provide guides and documents on managing risks and loss runs, and we follow premium fluctuations."

The added value that brokers bring to clients and to insurers is differentiated and complementary," he said. "You can't forget that brokers are important to the effectiveness of the insurance system," he said.

Insurance options available for reputational risk exposures: Panel

By REGIS COCCIA

DEAUVILLE, France—Reputation risk is difficult to measure, but it is insurable if considered carefully, according to panelists at the Association pour le Management des Risques et des Assurances de l'Entreprise annual conference late last month in Deauville, France.

"Reputation risk is intangible, so it's difficult to understand and quantify," said Laurent Barbagli, director of risk and insurance at Lafarge Group in Paris. "All the same, it's a major exposure for a business."

Mr. Barbagli, who moderated the panel discussion, defined reputation risk as the perception of an organization's history, ethics, values, quality of strategy, and quality of products and services by the entity's stakeholders, who include employees, customers and investors.

Guillaume de Chatellus, director of marketing and commercial strategy at Marsh S.A. in Paris, said several changes since 2001 have made reputation risk management more important. These include the Sarbanes-Oxley Act in the United States, France's law of financial security and other French decrees on economic and finance operations, he said.

"All of these have put more responsibility on administrators, including risk managers," Mr. de Chatellus said.

Reputation risk "is a fashionable term, but how do we value a reputation?" asked Daniel Trueman, underwriter for syndicate 510 at Lloyd's of London, managed by London-based R.J. Kiln & Co. Ltd. "It's very difficult to get a hold of."

Mr. Trueman said scholar Charles Fombrun, whom Mr. Trueman called "the world's leading thinker on reputation risk," asserts that "reputation is what keeps revenues flowing and keeps clients coming back; it's why organizations can survive crises."

Interbrand Corp., a global consultant, ranks the world's largest brands by goodwill value, which Interbrand defines as market capitalization minus the combination of tangible asset values and intangible assets values, Mr. Trueman said. But goodwill is very variable, so he suggested that "revenue generation through the brand is probably a better way of looking at measuring reputation."

"As an insurer, we like to know that there's manageable post-loss impact," so the existence of a loss control program is critical, he said. Underwriters of reputation risk coverage—"a mythical beast we call nondamage business interruption"—need concrete ideas about valuation, definition of event triggers, wording that both parties can agree to and loss control, Mr. Trueman said.

Achieving coverage for reputation risk can only be done through partnership with the client, he said. "but my conclusion is reputation is insurable."

International standard seen as framework for ERM programs

Flexible approach should allow widespread use of tool

By REGIS COCCIA

DEAUVILLE, France—Development of the ISO 31000 standard for risk management should enable organizations to create a risk management culture, according to panelists at the Association pour le Management des Risques et des Assurances de l'Entreprise annual conference in Deauville, France, late last month.

During a session on enterprise risk management discussing the ISO standard, Jean-Paul Louisot, a professor at the University of Paris and the Sorbonne, said ERM "has become the new mantra for risk managers; it's about integrated risk management." While ERM offers organizations the opportunity to "develop a real culture of risk management, this supposes a common reference point," Mr. Louisot said.

ISO 31000 is a step toward creating such a reference point, he suggested. "ISO 31000 provides a framework for evaluating risks; its flexibility is a strength—it can apply to any profession," Mr. Louisot said. The standard calls for a process in which organizations establish a context for their risks, by identifying, analyzing, evaluating and addressing them but applying continuous review, consultation and communication within the organization, he said.

'ISO 31000 provides a framework for evaluating risks; its flexibility is a strength–it can apply to any profession.'

Jean-Paul Louisot,
University of Paris and the Sorbonne

A fundamental element of the ISO risk management standard is communication, he said.

Michel Dennery, director of risk management at Paris-based utility giant GDF Suez, noted that public disclosure of risk management systems and internal controls is required by law in the European Union and the United States.

Taking on risk is becoming less acceptable in social opinion, he said, adding that public tolerance of risk is shrinking. He questioned whether the ISO standard would enable businesses to transfer to insurers what the public views as "bad" risks and focus internally on "good" risks.

Gerard de la Martiniere, president of the audit committee at Paris-based Air Liquide, a global provider of medical and industrial gases, noted that while many risks businesses face are financial in nature, "all risks can affect results." Consequently, the role of the audit committee is to provide continuity in risk management, internal controls and corporate governance, he said.

Mr. de la Martiniere said his committee acts as a "facilitator between senior management and the office of general counsel." Among other actions, the audit committee maps risks and evaluates and monitors the effectiveness of risk management measures, he said.

"What's essential is understanding the risks to the enterprise, not the method used," he said. Mr. de la Martiniere suggested that "sweeping" the organization and conducting frequent discussions about the organization's risks is important.

Mr. Dennery moderated the ISO standard panel.

REGIS COCCIA

French risk management group AMRAE held its annual gathering at the Centre International de Deauville. More than 1,700 attended the late January conference.

Some retirement savings plan sponsors are using Twitter, Facebook and other online tools to help alert plan members to issues affecting their savings.

Saving plans tap social media

Sponsors, managers go online to educate workers about retirement

By ROBERT STEYER

At the Teachers Insurance and Annuity Assn., College Retirement Equities Fund, retirees can view a password-protected Web site that enables people to talk about retirement issues. On the organization's Facebook page, visitors can play the Nest Egg Challenge with friends, an interactive game that encourages discussions about trimming expenses and saving money.

Putnam Investments operates three blogs, including the Retirement Savings Challenge, which not only provides the Putnam perspective via charts and commentary, but also directs viewers to Scribd, a Web site where people can post documents and original writing.

A Putnam article, "Why the 401(k) Will Prevail—And How," is a recent addition to Scribd. Two other Putnam blogs provide financial information as well as links to the company's Twitter and Facebook pages.

And among several clients of consultants like Hewitt Associates Inc. and Towers Watson & Co., participants can turn to their respective plan sponsors' accounts on the Twitter real-time messaging service. There they can find an assortment of brief comments alerting them to sources of greater detail about retirement strategies.

Money managers have begun using social media—including Facebook, Twitter, YouTube and LinkedIn—to educate participants about retirement savings.

"Our goal is financial literacy," said Jeffrey Fleischman, chief digital officer of TIAA-CREF, New York. "Our commitment is very much around speaking to customers in their comfort zone."

Like others interviewed for this story, Mr. Fleischman said his organization emphasizes education—it doesn't use social media for account servicing—to avoid raising red flags with government regulators. "We have a high level of engagement from our legal and compliance teams," he explained. "They review content the way they review our content in other information sources."

Being cautious

Legal and regulatory concerns are among reasons money managers and plan sponsors are moving cautiously in using social media on the job.

"It's been our experience that companies want to do it by disseminating bite-size information," said Marina Edwards, senior consultant for defined contribution at Towers Watson in Chicago. She wouldn't name any companies, but said retailers appear to be the most interested in using social media to communicate retirement information.

People in their 20s, 30s and early 40s are the most active users, she said. "Plan sponsors believe that (social media) resonates with younger workers, but it's still a small percentage of the employees," Ms. Edwards said.

Twitter appears the most popular source because it offers "short bites of information," she said. "It's relevant…but the information is not confidential and it's not advice." Twitter, available over multiple devices such as cell phones and personal digital assistants, demands brevity: Messages can contain only 140 characters.

Ms. Edwards said that while larger plan sponsors appear to be the most interested in using social media tools, they also have the most concerns about them.

"Companies don't feel comfortable with the level of internal (information technology) support and knowledge," Ms. Edwards said.

She said clients' biggest questions involve monitoring sites, guarding against inappropriate language or behavior, making sure employees aren't wasting time, making sure proprietary information is secure and addressing employee dissent that could spill out on social media.

Some clients of Lincolnshire, Ill.-based Hewitt Associates, use Twitter to post retirement-plan reminders, and they host blogs that allow employees to offer "share my story" retirement planning experiences, said Jim Hoff, solutions and strategies leader in Hewitt's communications practice. He declined to name any clients.

Participants are encouraged to post "how I saved" or "how I retired" stories because they have "more impact" than a corporate pronouncement, Mr. Hoff said.

Clients also use Twitter to provide participants with retirement plan information. "It offers a quick tip or a reminder," Mr. Hoff said.

Putnam has a big social media arsenal: blogs, Facebook, Twitter and YouTube. "The key isn't so much vehicles…you need content to make people interested," said Jeffrey R. Carney, global head of marketing for products and retirement.

Log onto the company's YouTube connection, for example, and you'll find video interviews with Putnam executives, as well as links to instructional videos from other sources about 401(k) plans and even a "60 Minutes" segment on problems with 401(k) plans.

Putnam provides education, not advice, through its social media outlets, making sure it doesn't run afoul of the Financial Industry Regulatory Authority, which monitors investment advertising and communications. "We're trained in a regulatory world," Mr. Carney said. "We actively monitor."

Putnam uses essentially the same content for each outlet, making modifications in presentation to fit the media site, said Mark McKenna, director of communications. "We would have a more casual setting in Facebook and would adjust our content to that end," he said.

Baltimore-based T. Rowe Price Group Inc. uses some social media and is conducting research about expanding such sources. It has a message board for plan executives to discuss management and regulatory issues, and they can communicate through a Web site, webinars and e-mail, said Matthew McOsker, product development manager for technology.

But there's no Facebook or Twitter among the offerings. "I'm not sure they would use them," Mr. McOsker said. "A lot of corporations block Facebook—period. That's a big consideration."

The company is conducting interviews and focus groups with plan executives and consumers to decide whether to add Facebook and Twitter.

"We've yet to see good, hard evidence that significant portions of users" would use Facebook or Twitter, Mr. McOsker said. "Sponsors are not beating down the door for Facebook and Twitter."

Mr. McOsker said his research to date shows plan sponsors' major concerns are cost, legal issues, technical expertise and demands on human resources departments. He expects to complete his research in another month or two.

Many plan sponsors and money managers employing some social media have done so for only a year or two. And although the retirement plan industry is moving cautiously, some research suggests there's greater interest in finding new ways to communicate financial information.

Here to stay

In a survey to be released later this month, Kasina L.L.C., a New York-based research and advisory firm, reports that 84% of respondents from asset management firms believe social media is "here to stay" and will have a "significant impact" on financial services, said Eric Daugherty, director of research.

Mr. Daugherty said Kasina solicited responses from "over 100 people," getting 64 responses from 48 firms for the Web-based survey that was conducted in December. The survey found that 16% of respondents believe social media will not have a significant impact on financial services. Kasina's clients include asset managers, brokerage firms and insurance companies.

Forty-eight percent of respondents "engaged in some form" of social media, Mr. Daugherty said. Some of that social media use is being financed informally. Two-thirds of respondents said they have "no current or planned specific budget" for social media activities, Mr. Daugherty said.

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

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2010 BENEFIT INSIDER DEMOGRAPHIC EDITORIAL CALENDAR

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

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

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Professional MarketPlace

LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE (CHANCERY DIVISION) COMPANIES COURT NO. 625 OF 2010
IN THE MATTER OF SOMPO JAPAN INSURANCE INC. And IN THE MATTER OF TRANSFERCOM LIMITED
And IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

NOTICE IS HEREBY GIVEN that on 25 January 2010 Sompo Japan Insurance Inc. (formed from the merger in 2002 of The Yasuda Fire & Marine Insurance Co Ltd and Nissan Fire & Marine Insurance Company Ltd) ("**Sompo**") applied to the High Court of Justice for:

1. an Order under Part VII of the Financial Services and Markets Act 2000 (the "**Act**") sanctioning a scheme (the "**Scheme**") providing for the transfer to Transfercom Limited ("**Transfercom**") of certain reinsurance business of the UK branch of Sompo; and
2. an Order making ancillary provision in connection with the implementation of the Scheme under Section 112 of the Act.

The proposed transfer will result in almost all of the reinsurance business carried on by Sompo in the UK being carried on by Transfercom. The proposed transfer will secure the continuation by or against Transfercom of any legal proceedings by or against Sompo that relate to rights and obligations in respect of the transferred business. All claims being dealt with before the transfer by Sompo will following the transfer be dealt with by Transfercom; all claims arising after the transfer will be dealt with by Transfercom.

The application is directed to be heard before the Companies Court Judge at the Royal Courts of Justice, Strand, London WC2A 2LL on 26 March 2010 and any person (including any employee of Sompo or Transfercom) who alleges that he or she would be adversely affected by the carrying out of the Scheme may appear at the time of that hearing in person or by Counsel. Any person who intends so to appear, and any policyholder or reinsured of Sompo or Transfercom who dissents from the Scheme but does not intend so to appear, is requested to give not less than two clear days' prior notice in writing of such intention or dissent, and the reasons therefor, to the solicitors named below.

Copies of a report on the terms of the Scheme prepared pursuant to Section 109 of the Act (the "**Independent Expert's Report**") and a statement setting out the terms of the Scheme and containing a summary of the Independent Expert's Report can be accessed at:

http://www.sompo-japan.co.jp/english/news/transfer.html

and will be provided free of charge by the solicitors named below.

Lovells LLP (Ref: CI/NC/TJG), Atlantic House, Holborn Viaduct, London, EC1A 2FG
Tel: +44 (0) 20 7296 2000, Fax: +44 (0) 20 7296 2001

Solicitors for Sompo Japan Insurance Inc.

8 February 2010

LEGAL NOTICE

NOTICE OF MEETINGS
IN THE HIGH COURT OF JUSTICE (IN ENGLAND AND WALES), CHANCERY DIVISION, COMPANIES COURT
Claim Nos. 21332-33, 21337, 21343, 21347, 21351, 21353, 21355, 21357-59, 21361-64 and 21786 of 2009
IN THE MATTERS OF

ENGLISH & AMERICAN INSURANCE COMPANY LIMITED
AND
THE INSURANCE CORPORATION OF SINGAPORE (U.K.) LIMITED
AND
THE BALOISE INSURANCE COMPANY LIMITED
CITY INTERNATIONAL INSURANCE COMPANY LIMITED
DOWA INSURANCE COMPANY (EUROPE) LIMITED
EAST WEST INSURANCE COMPANY LIMITED
FUJI INTERNATIONAL INSURANCE COMPANY LIMITED
HISCOX INSURANCE COMPANY LIMITED
THE HOME INSURANCE COMPANY (IN LIQUIDATION)
KX REINSURANCE COMPANY LIMITED
METROPOLITAN REINSURANCE COMPANY (U.K.) LIMITED
MOORGATE INSURANCE COMPANY LIMITED
NIPPON INSURANCE COMPANY OF EUROPE LIMITED
POLYGON INSURANCE COMPANY LIMITED
SWISS RE INTERNATIONAL SE, UK BRANCH
TOWER INSURANCE LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 2006
PROPOSED SCHEMES OF ARRANGEMENT

NOTICE IS HEREBY GIVEN [illegible] ("**Meetings**") [illegible] ("**Scheme Companies**") [illegible] United Kingdom [illegible] ("**Scheme**").

All Scheme Creditors are requested to attend the [illegible] Meetings either in person or by proxy.

Copies of the proposed Scheme and the explanatory statement [illegible] Section 897 of the Companies Act 2006 (the "**Explanatory Statement**") [illegible] ("**Website**") [illegible] ("**Voting Form**") [illegible] Schedule 8 to the Explanatory Statement. Voting forms can be completed either on the Website or in paper form.

Scheme Creditors should contact the Scheme Manager, PRO [illegible] ("**PRO**") [illegible] as follows:

Email: [illegible]
Fax: +44 (0)1452 523 437
Phone: +44 (0)1452 340 514

Scheme Creditors are strongly encouraged to enter their details directly on to Voting forms on the Website.

Scheme Creditors [illegible]

Scheme Creditors who wish to attend the Meetings [illegible] Meetings.

If approved by the requisite majorities of Scheme Creditors, the Schemes will [illegible] Court.

For further information in this regard, please contact PRO.

DATED [illegible] FEBRUARY 2010

BUSINESS OPPORTUNITY

LEGAL NOTICE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: HATTERAS REINSURANCE LTD. Debtor in Foreign Proceeding	Case under Chapter 15 of the Bankruptcy Code Case No. 08-11804 (JMP)

NOTICE OF FILING OF MOTION FOR AN ORDER CLOSING CHAPTER 15 CASE AND ENFORCING THE ORDER OF THE BERMUDA COURT AND GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on February 1, 2010, Mike Morrison and Charles Thresh, the individuals appointed by the Supreme Court of Bermuda ("**Bermuda Court**") as Joint Liquidators ("**JLs**") of Hatteras Reinsurance Ltd. (the "**Debtor**"), filed a motion (the "**Motion**") under chapter 15 of title 11 of the United States Code (the "**Code**") for an order (the "**Proposed Order**") (i) giving effect to the Bermuda Court's Order allowing the JLs to make a final distribution of the Debtor's assets and providing them with a release and discharge in respect of their administration of the Debtor's estate and (ii) closing this chapter 15 case.

PLEASE TAKE FURTHER NOTICE that any party in interest wishing to submit a response or objection to the Motion must do so pursuant to the Code and Local and Federal Rules of Bankruptcy Procedure. Such response or objection must be made in writing describing the basis therefore and shall be filed with the Court electronically in accordance with General Order M-182 by registered users of the court's electronic case filing system, and by other parties in interest, on a 3.5 inch disc, preferably in Portable Document Format (PDF), Word Perfect or any other Windows based word processing format, with hard copy to the Chambers of the Honorable James M. Peck, and served upon Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020 (Attention: Ken Coleman and Stephen Doody), counsel to the JLs so as to be received not later than **February 18, 2010 at 10:00 a.m. (ET)**.

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court has scheduled a hearing for **February 25, 2010 at 10:00 a.m. (ET)** before the Honorable James M. Peck in Courtroom 601 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004.

Copies of the chapter 15 petition, the Proposed Order, and other filings in this case with respect to the Motion (1) on the Bankruptcy Court's Electronic Case Filing System, which can be accessed from the Bankruptcy Court's website at https://ecf.nysb.uscourts.gov/ (a PACER login and a password are required to retrieve a document) and/or (2) upon written request to the JLs' counsel addressed to:

Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020, Telephone (212) 610-6300, Facsimile (212) 610-6399, Attention: Stephen Doody, stephen.doody@allenovery.com

Dated: New York, New York, February 1, 2010

ALLEN & OVERY LLP
By: /s/ Ken Coleman
Ken Coleman, Stephen Doody, 1221 Avenue of the Americas, New York, New York 10020, Telephone (212) 610-6300, Facsimile (212) 610-6399, ken.coleman@allenovery.com, stephen.doody@allenovery.com

Attorneys for the Joint Liquidators, As Foreign Representatives of Hatteras Reinsurance Ltd.

UP CLOSE
Comings & Goings

GABRIEL LUGO

NEW JOB TITLE: Dallas-based president of Taylor Risk Consulting, a risk management division of London-based Charles Taylor Consulting P.L.C.

PREVIOUS POSITION: Dallas-based senior vp for Taylor Risk Consulting's U.S. risk management business

GOALS FOR NEW POSITION: We are going to try to improve communicating the services that are available through Taylor Risk Consulting and the Charles Taylor Group as a whole. I believe we have a lot to offer. We need to get the word out to make sure the markets understand what we can provide.

INDUSTRY CHALLENGES: In three words: McCarran-Ferguson Act. State regulations worked well when the industry was a local business, but frankly, it hasn't been a local business for decades. Insurance and reinsurance has been international for some time, but the regulations haven't kept up with that. Which state has the responsibility, for example, of insurance sold over the Internet? The industry and the regulations aren't set up to handle that sort of a challenge. Otherwise, you are going to have 50 states all joined to do the same thing. It will be too costly and too limited to provide protection to the insurance buyer.

INDUSTRY OUTLOOK: If we can get past the regulatory issues, I think the outlook is quite good. The U.S. market is in good shape, I believe. We simply need to make sure that we put in place processes that will allow us to compete with the other global insurance markets and international business. The London and the European markets have an advantage in putting in place systems to keep up with international business.

FIRST MARKET EXPERIENCE: I started as a risk manager for an oil and gas operation in Houston.

ADVICE: Learn like you are training for the Olympics not knowing what sport you will compete in. It's possible that in the next few years you could be working in a job that doesn't yet exist. Another piece of advice is to learn to control the things you can control and don't sweat the small stuff.

Comings & Goings ONLINE

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 e-mail.

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:

Mike Tsikoudakis
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POSTING THIS WEEK

BROKERS:
- AFL Insurance Brokers
- Corporate Synergies Group Inc.
- Willis Group Holdings P.L.C.

INSURERS:
- C.V. Starr & Co. (California)
- Torus Insurance Holdings Ltd.
- Ironshore Inc.

MANAGED CARE:
- WellPoint Inc.
- CIGNA Corp.

OTHER PROVIDERS:
- Aon Consulting
- Specialty Risk Services L.L.C.

Florida: Risk management cuts state costs

CONTINUED FROM PAGE 4

cost perspective on the part of the private sector," he said. "We knew they had stronger programs. They also usually have a better command-and-control structure. We're really a pool of public entities as far as our risk management program."

Workers comp is the state's major cost, he said. To rein in expenses, the state implemented a new approach, which began with quickly getting the right kind of medical care for injured workers through physicians who are knowledgeable about occupational injuries and disease, Mr. Castellanos said. The plan includes a greater emphasis on return-to-work programs, he said.

"We conducted extensive training sessions all over the state to get as many managers as possible to understand the change in methodology we were undertaking and their role in making this new approach successful," he said. "We had some resistance because of the time involved in taking these managers from their jobs, but received very good feedback once they understood the new processes," he said.

"We've seen dramatic results there, where our indemnity costs—lost salary—have been reduced by about 30%" in 2009 compared with 2008, said Mr. Castellanos.

While only about 10% of injuries are serious enough to keep employees out of the workplace, they represent about 80% of costs, he said.

"It still takes time for the savings to accumulate, but we hope that will result in substantial savings over the next several years," Mr. Castellanos said.

"We also looked at how to reduce the millions spent every year in legal costs on employment discrimination claims," Ms. Sink wrote in her message. "Early review and intervention in discrimination claims saved more than $800,000, and application of this process to federal civil rights claims reduced litigated cases and saved the state more than $7.5 million."

-29%

Lost-time claims dropped about 29%, which Ms. Sink said resulted in more than $520,000 in savings

"We did this by asking the legal departments of state agencies to send us notices of any complaints filed with Equal Employment Commission or Florida Human Relations Commission that are required to be filed before the claimant can pursue litigation for employment discrimination," Mr. Castellanos said. "Because those are administrative proceedings, we were not being notified of those filings since our coverage did not include defending administrative claims, and previously it was only when we were notified of subsequent litigation that we became involved in those claims. When we started receiving these notices, we could then intervene earlier in the process to settle those claims that we felt had merit or could be settled for lower cost than if they proceeded to litigation."

An insurance industry observer with no ties to the effort praised the state's enhanced risk management efforts.

"With Alex Sink, we have a chief financial officer with real-world enterprisewide risk management experience," said William Stander, assistant vp in the Property Casualty Insurers Assn. of America's office in Tallahassee. "And she has proven that she knows how to apply her business background to improving the way the state of Florida runs."

Panel studies private strategies

TALLAHASSEE, Fla.—Florida's new Advisory Council on Risk Management will look at what the state is doing in risk management and what the private sector is doing.

R.J. Castellanos, director of state's Division of Risk Management, stressed that the members play no role in selecting vendors for the program, but provide advice on matters such as metrics to measure program effectiveness.

"The goal of the group would be to use lessons learned in private-sector risk management and attempt to apply those lessons to cost-reduction or loss-prevention activities in the public sector, within the constraints of the difference between a public entity and a private corporation," said Marc Salm, vp-risk management for Lakeland, Fla.-based Publix Super Markets Inc. and a member of the council.

"Between Rosen Hotels, Publix and Baptist Health System, I think we all have very fine-tuned risk management programs that are working quite well," said Ashley Bacot, risk manager for Rosen Hotels & Resorts in Orlando. "It is our hope to share these same practices with the state. No reason in reinventing the wheel; the state will hopefully take what we have and tweak it for their particular needs and their culture."

"A lot a more savings will be coming down the pipe," Mr. Bacot said.

"It's impressive what they've done in a relatively short time," said Patrick Maroney, a member of the council and risk management professor and director of the Florida Catastrophic Storm Risk Management Center at Florida State University in Tallahassee, said of the state's effort.

Cornelia Meyers, director-risk management and corporate compliance at Jacksonville, Fla.-based Baptist Health, and Beth Davis, director-office of program accountability at the Florida Department of Juvenile Justice, also serve on the council.

—By Mark A. Hofmann

Toyota: Liabilities mount

CONTINUED FROM PAGE 1

In addition, other types of litigation could arise against Toyota, such as claims filed by automobile insurers seeking to subrogate accident damages and shareholders alleging that directors and officers mishandled events concerning the recalls, brokers said.

"It is more than likely that there will be D&O claims," said Justin Whitehead, a director at R.K. Harrison Insurance Brokers Ltd. in London.

Plaintiff law firms in the United States already reportedly have filed lawsuits alleging personal injury for specific accidents, while others say they have filed cases seeking class action status and demanding economic recovery for consumers' loss of use of the vehicle and potential lower resale values. Lawyers also have set up Web sites soliciting plaintiffs among Toyota drivers.

Observers say huge car companies like Toyota usually buy product liability coverage.

"I would expect Toyota or any large auto manufacturers are in the market and buying excess liability limits probably into the hundreds of millions" of dollars, said David Pugson, senior vp in the casualty department in London for Willis North America. "I would find it very, very surprising if they weren't."

Japanese manufactures typically build their coverage layers by purchasing first from Japanese insurers and then going into the global market for additional layers, Mr. Pugson and other sources said.

Japanese carmakers typically have coverage in place for such claims, and it is expected that Toyota has insurance, Mr. Whitehead agreed.

The situation, meanwhile, could impact other automakers purchasing product liability and product recall coverage as insurers increase their scrutiny as accounts renew, Mr. Pugson said. "Anytime there is a loss, the market tends to tighten up a little bit," he said. "Everyone gets a little more prudent."

Ian Harrison, a product recall expert in London for Lockton Cos. L.L.C., agreed the product recall market could change.

"We are likely to see more demand for this cover going forward but...this market is likely to harden," Mr. Harrison said.

Because automobiles have many complex parts and so many cars are produced worldwide, insurance underwriters do not make available all of the product recall insurance capacity large auto manufacturers desire, brokers said. As a result, automakers typically rely on contractual agreements to push recall liability onto their suppliers.

There will be a liability argument—and "a hotly contested one"—over whether the manufacturer of Toyota accelerator pedals did anything wrong, Mr. Whitehead said.

A key question will be whether the faulty part was the pedal manufacturer's responsibility or if it was designed to specifications supplied by Toyota, sources said. In a statement, Elkhart, Ind.-based CTS Corp. said the gas pedals it manufactured were made to Toyota's specifications.

Meanwhile, product liability claims related to the various lawsuits could face challenges, several observers said.

REUTERS/LANDOV

RECALL TIMELINE

Major events in Toyota Motor Corp.'s recall of vehicles for accelerator and brake problems

OCTOBER 2009: Toyota recalled 3.8 million cars because of a potential the floor mat could entrap the accelerator pedal. That recall was expanded to another 1 million vehicles, according to the National Highway Traffic Safety Administration. The agency said it confirmed that five individuals died in two incidents involving gas pedal entrapment in recalled vehicles.

JANUARY: Toyota recalled 2.3 million vehicles because of an accelerator pedal that can be slow to return or get stuck while partially depressed, according to NHTSA. The agency said it was not aware of deaths or injuries due to the condition.

FEB. 4: In addition to the recalls, NHTSA last week said it is investigation the 2010 Toyota Prius hybrid based on allegations of momentary loss of braking under certain conditions. The agency said it had received 124 reports from consumers, including four that allege crashes occurred.

While coverage generally will be available for claims related to physical injuries or property damage in automobile accidents, suits seeking economic recovery for allegations such as the diminished value of cars or the loss of use of cars while under repair could raise coverage issues under product liability policies, observers say.

Attorneys seeking class action status lawsuits filed in several states likely will allege violations of state consumer fraud acts and breach of warranty, Mr. Hoenig and other legal experts said.

"Some (state) consumer fraud acts contain penalty provisions allowing treble damages and some allow for attorney fees. Then when you package all of this into a class action with a large number of vehicles," the costs can mount, Mr. Hoenig added.

But product liability insurers have taken the position that their policies cover claims where there is bodily injury or property damage, but not the economic damages sought in class action cases, said Brent R. Austin, a product liability defense attorney at Wildman, Harrold, Allen & Dixon L.L.P. in Chicago.

"Those (economic damage coverage) issues are getting litigated pretty frequently now," Mr. Austin said.

"In our experience, a products liability carrier will likely take the position that unless a resulting accident has taken place, there is no 'occurrence' under the policy and coverage is not triggered," said David Dietsch, vp-claims manager for Lockton.

Toyota's recalls may actually provide a defense against the economic losses alleged in class action lawsuits, attorneys said.

The purpose of a recall is to correct the defect and avoid class action exposure, said C. Barry Montgomery, a product liability defense attorney at Williams Montgomery & John Ltd. in Chicago. "Toyota has done a recall and, therefore, where are your damages?" he asked rhetorically.

Toyota also is likely to see demands made by auto insurers who will now cull through past and future accident claims to see whether they resulted from manufacturer defects, said Mark Bunim, an attorney who mediates commercial insurance claims at Case Closure L.L.C. in New York.

Culling through claims after a recall is standard practice, a spokesman for Allstate Corp. said.

Michael Bradford contributed to this report.

Reinsurance: Plan would tax foreign-owned firms

CONTINUED FROM PAGE 3

impact on the insurance consumers that RIMS represents, especially those with very difficult placements or very large insurance needs that would require access to the international insurance market." RIMS is a member of the coalition.

Mr. Clark, who is Miami-based risk and benefits officer for Miami-Dade County Public Schools, said, "This will make it especially difficult for entities such as my employer," which has $9 billion worth of property in south Florida and is "one of the most exposed windstorm areas in the world."

"There is not enough capacity in the domestic markets," said Mr. Clark. "We have to access international markets" and if this proposal were to move forward, it would "send a chilling effect to large property owners or any large company that must access the international market."

The revenue expectations associated with this are far outweighed by "the cost to the consumer and the introduction of volatility into the global insurance risk distribution mechanism," said Jason Schupp, head of regulatory affairs for Schaumburg, Ill.-based Zurich North America.

"If you increase the tax on reinsurance transactions, it would tend to increase the cost for insurance and reinsurance to consumers, and decrease capacity. I think that's basic economics," said Joseph B. Sieverling, senior vp and director of financial services at the Washington-based Reinsurance Assn. of America, which has not taken a stance on the proposal.

Policyholders in coastal states, including Florida and California, "would be particularly hard hit," said Brenda Viehe-Naess, an attorney with the Washington Advocates Group, a legislative consulting firm.

Howard Mills, New York-based chief adviser of the global insurance industry practice at Deloitte & Touche USA L.L.P., said "It is important to remember that the U.S. really depends on this capacity," and much of the capacity that came into the country after 9/11 was from offshore, affiliated reinsurers.

Not everyone opposes the concept of eliminating foreign-affiliated reinsurers' deductions, however. Its supporters include the Coalition for a Domestic Insurance Industry, a Connecticut-based organization of 13 insurance groups. Member William R. Berkley, chairman and CEO of Greenwich, Conn.-based W.R. Berkley Corp., said: "There's a long line of people who want to write business. There's no shortage of capacity in the industry and…the tax rate doesn't drive pricing."

Observers say the proposal is similar in concept to the Neal bill. Among differences, they say, is that instead of the 50% threshold, under the Neal bill calculations would be based on an industry average. The 50% limit would affect most, but not all, lines of business, which makes it "slightly less onerous" than the Neal bill, Ms. Viehe-Naess said.

Brad Kading, president of the Assn. of Bermuda Insurers and Reinsurers, said, however: "The U.S. Treasury is not going to write legislation. Legislation is written by Congress, so the legislation Congress works on will be more like" the Neal bill.

But observers say they are uncertain as to whether the Obama administration proposal is likely to be more successful than the Neal bill, which has not even had a co-sponsor for the past several years.

William J. Kelty III, a partner with law firm Locke, Lord, Bissell & Liddell L.L.P. in Washington, said although Rep. Neal is considered a "serious legislator…this bill's got no traction," and there was a significant amount of opposition to it last year.

Some observers also question whether Congress is prepared to deal with the strong opposition by many in the insurance industry for what is essentially a tiny percentage of $122.19 billion in international tax provisions for 2011-2020 in the budget.

But, Mr. Schupp said, "We're in an environment where there are significant pressures to raise revenue, so anything is possible."

The administration's support of the concept "gives it more weight," said Mr. Sieverling. He noted that in the president's State of the Union address, he made it "very explicit that any tax cuts or new spending must be offset by additional tax revenues," and this proposal would generate an additional $519 million. "That makes it more likely that it would be enacted," Mr. Sieverling said.

Furthermore, by increasing taxes for reinsurers, "this is essentially picking on a non-U.S. constituency," Mr. Kelty said. "This is sort of a 'tax-the-other-guy' proposal."

"The unfortunate thing here is the topic certainly looks attractive if you don't understand how insurance works," said Mr. Mills.

Administration plan to raise TRIA deductibles, kill domestic-origin cover won't fly: Observers

By MARK A. HOFMANN

The Obama administration's plan to scale back the federal terrorism insurance backstop appears unlikely to become reality, industry observers say.

The budget the administration proposed last week calls for eliminating "nearly $250 million in federal subsidies to insurance companies for terrorism insurance. These subsidies are no longer necessary given the robust private market for such insurance, and domestic terrorism insurance policies are now sufficiently available and affordable to meet demand. According to industry data, property and casualty insurers' surpluses—the balances available to pay claims associated with covered terrorist attacks—are currently estimated at over $490 billion."

Congress established the government backstop, which can be triggered only by a catastrophic terrorist attack, by passing the Terrorism Risk Insurance Act of 2002. The program established in response to the Sept. 11, 2001, U.S. terrorist attacks was modified and renewed in 2005 and then again in 2007 for seven years.

"I am sympathetic to the frustration with budgetary estimates," said Joel Wood, senior vp at the Council of Insurance Agents & Brokers in Washington. "The (budgetary) scoring rules on the cost of TRIA are beyond abstract and make absolutely no sense, so the administration is trying to achieve some paper savings. There is no traction whatsoever for scaling back the program."

The savings would be achieved by increasing deductibles and copays that insurers participating in the federal terrorism insurance program would pay if the backstop were triggered by a catastrophic terrorist attack. The administration proposal also would eliminate coverage for acts of domestic terrorism.

The savings are based on estimates of what the program would pay out if a terrorist act destructive enough to put the backstop in play actually occurred.

The administration initially called last year for the changes, but Congress didn't act and observers say Congress is unlikely to do so now.

"This proposal is a bad proposal," said Ben McKay, senior vp in the Washington office of the Property Casualty Insurers Assn. of America. "As terrorist attacks in Britain and Spain showed, the line between foreign-inspired and domestic terrorism can be blurred," he said in reference to the 2004 Madrid and 2005 London terrorist attacks on public transportation systems. He noted that unless someone takes responsibility for an attack, weeks or months could pass without knowing whether an attack was of foreign or domestic origin, if a determination could be made.

Increasing deductibles and copays would make insurers less likely to write primary terrorism coverage, Mr. McKay said.

"What private coverage is written now is because of TRIA," he said. "Congress clearly expressed its desire as recently as 2007 that the program should remain in place" and "there probably won't be much of an appetite for" changing it, he said.

The New York-based Risk & Insurance Management Society Inc. said it "strongly" opposes the administration's terrorism insurance plan and its call for taxing certain reinsurance transactions.

"To attempt to withdraw the government's support will adversely impact the availability and affordability of terrorism insurance," Scott B. Clark, RIMS secretary and director of the RIMS external affairs committee, said in a statement.

"We hope Congress will once again see the wisdom in not adopting this as part of its budget going forward," said Mr. Clark, who also is risk and benefits officer for the Miami-Dade County Public Schools.

Concorde: Airline faces criminal trial in fatal 2000 Concorde crash

CONTINUED FROM PAGE 4

as $521,000 and the individuals could receive up to five years in prison and a $104,000 fine.

The Concorde crashed July 25, 2000, shortly after takeoff from Charles de Gaulle International Airport near Paris. All 109 passengers and crew aboard the Air France flight to New York were killed, in addition to four people in a hotel that the plane hit when it went down.

French safety experts determined the crash was caused by a titanium strip on the runway that had fallen off a Continental Airlines DC-10 minutes before the Air France flight took off. That titanium strip punctured the Concorde's tire, creating debris that damaged the plane's fuel tanks and caused an explosion, the safety inquiry found.

Continental mechanics used the titanium strip to replace an aluminum strip, which was unauthorized by Federal Aviation Administration regulations, according to the French investigation.

Continental, however, disputed French investigators' conclusion.

An attorney for Continental argued in court last week that the titanium strip did not cause the crash and that Air France's maintenance crew was to blame for various problems with the jet that caused the accident. Witnesses saw the Concorde on fire before it reached the titanium strip, he said.

The trial may last four months, legal experts said. The families of most victims agreed to settlements long ago in the first fatal crash involving the Concorde, which was removed from service in 2003.

Kenneth P. Quinn, a Washington-based partner at Pillsbury Winthrop Shaw Pittman L.L.P., said criminal charges are becoming "increasingly the norm for some of the more spectacular (aviation) tragedies."

"It's certainly an ominous development for global aviation and insurers to face the prospects of criminal liability even after they've long settled the civil cases," Mr. Quinn said. "The costs of a 10-year investigation and four-month trial can be staggering."

Prosecutors typically have to prove that aviation officials took an unreasonably high risk that led to a crash to prove charges in such a case, Mr. Quinn said. He said there have been about 15 criminal prosecutions after air crashes during the past decade, including officials connected to the 2005 Helios Airways crash in Greece, the 2002 midair collision involving Bashkirian Airlines on the German-Swiss border and the 1996 ValueJet crash in the Florida Everglades.

Mr. Quinn said even when defendants are acquitted in such cases, criminal charges can increase the amount of damages airlines must pay and raise the possibility of punitive damages. That has influenced aviation insurers to fund the criminal defense of airlines and employees, which is excluded from typical liability policies, more than they did a decade ago.

"Increasingly, I think insurers are taking a long-term and sophisticated view that recognizes that the bar appears to be getting lower to bring these cases," Mr. Quinn said. "The risks are getting higher that a conviction will exacerbate their exposure to higher settlement or the prospect of punitive damages."

He and others say criminal charges can hurt flight safety by discouraging aviation officials from cooperating with investigators.

Sean Gates, a senior partner and aerospace attorney with London-based Gates and Partners Solicitors, said he advises clients to be "very guarded" during accident investigations.

"This is not conducive to the best investigation outcome, but the record of many courts of improperly using official accident reports and statements taken from witnesses without benefit of counsel compels those involved to take a defensive posture," Mr. Gates said in an e-mail.

Products & Services

Aon Benfield introduces online facultative platform

CHICAGO—Aon Benfield Fac has launched FAConnect, an electronic facultative reinsurance brokerage platform that is accessible through a Web portal.

FAConnect allows clients to submit their facultative risk placements, receive quotes and secure coverage from their computers within five minutes, the company said in a statement.

Aon Benfield said the online service is designed for "high-volume transactions where frictional costs have traditionally made it uneconomical for intermediaries to participate in the sector."

Six product lines are available through FAConnect: auto liability carve-out, commercial property, terrorism, homeowners, contractor's plant and equipment, and tourism legal liability.

Users log in to the Web site, enter data and then receive an automatic facultative reinsurance quote from their prenegotiated market of choice. Once the risk is accepted, a Fac Summary Page is generated, which provides coverage, limits and premium information.

For more information, contact Dawnmarie E. Black, head of global products for Aon Benfield, at 312-316-9079 or *dawnmarie.black@aonbenfield.com*.

Global Aerospace to provide safety, support program

PARSIPPANY, N.J.—Global Aerospace Inc. has rolled out a safety and support program for its U.S. general aviation clients.

Global Aerospace is partnering with three companies to provide the SM4 program, the company said in a statement. SM4 offers clients access to a coordinated series of training seminars, electronic newsletters from safety experts, an interactive Web site and direct onsite services.

"SM4 is the first initiative that combines all four safety management components: planning, prevention, response and recovery," the company said in a statement. The integration of all four components into one safety and support program aims to align safety initiatives while maintaining regulatory requirements.

The Parsippany, N.J.-based aviation insurer is working with Convergent Performance L.L.C., to provide training and support to avoid human errors; Baldwin Aviation Inc., to provide safety management systems programs, training and support; and Fireside Partners L.L.C., to provide training and support for incident response planning.

For more information, contact Richard Keltner, safety program specialist, at 206-818-0877 or *rkeltner@global-aero.com*.

Crump offers coverage for product recalls

CHICAGO—Crump Insurance Services Inc., the property/casualty unit of Dallas-based Crump Group Inc., said it has developed product liability coverage geared toward the manufacturing industry.

The PRODUCTSplus platform offers general liability along with financial loss coverage resulting from product recalls, including recall expense components coverage, the company said in a statement.

"Recent high-profile product recalls make it clear that these situations can be costly," said David Fiske, senior vp for Crump. "Many manufacturers do not carry product recall coverage, and those that do are probably not adequately protected as product recall, loss of income and product recall management expenses are typically not covered in a general liability policy."

Additionally, Crump provides third-party crisis management assistance through Lago Vista, Texas-based Specialty Risk Management Inc. SRM administers real-time support and assistance throughout the recall process to mitigate potential damage to reputation.

Crump said PRODUCTSplus covers all aspects of product recall exposures and limits are based on individual risk.

For more information, contact Mr. Fiske at 312-879-7115 or *David.Fiske@Crumpins.com*.

United HealthCare offers drug refill savings

MINNETONKA, Minn.—United HealthCare is offering discounts on select prescription drug copayments for plan participants who refill their medication regularly.

The Refill and Save Program covers certain asthma drugs such as Advair and Symbicort, along with certain antidepressant medication, including Cymbalta, Effexor XR and Pristiq, the company said in a statement.

Copayment savings are $20, or 40%, per refill and mail-order refills receive a $50 discount on a 90-day supply of medicine, with a refill deadline of 120 days.

The Minnetonka, Minn.-based arm of health insurer United HealthGroup Inc. said most plan participants are eligible for the discounts if they refill their prescriptions in a timely manner.

For more information, contact a United HealthCare account representative at *www.unitedhealthcare.com*.

TO SUBMIT ITEMS

***BI*'s Products & Services column reports on new product offerings. Please send Product & Services news to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. or e-mail *mtsikoudakis@businessinsurance.com*.**

Employers seek easing for pension funding rules

By JERRY GEISEL

WASHINGTON—Employers are making a new pitch to Congress to temporarily ease pension funding rules amid signs of new administration and congressional interest in backing the relief.

The Obama administration last week gave the first sign that it might support easing funding rules. During a House Ways and Means Committee hearing, Treasury Secretary Tim Geithner told relief backer Rep. Earl Pomeroy, D-N.D., that he was willing to work on relief legislation.

"We think there's a good case for targeted pension relief…and we'd like to work with you on doing that," Mr. Geithner said.

At the same time, employer groups were pressing top Senate Democrats to include funding relief provisions as part of a broader bill that, among other things, would give employers tax breaks for hiring new employees.

"This is the worst possible moment for companies to use money" for pension plan contributions that could instead go toward preserving jobs and hiring new employees, James Klein, president of the American Benefits Council in Washington, said at a briefing last week.

At the same briefing, several nonprofit organizations warned of tremendous increases in contributions they will have to make to their pension plans, which, in turn, could force them to lay off employees.

Kathy Cloninger, New York-based CEO of the Girl Scouts of the United States of America, said contributions to the council's $400 million pension plan could skyrocket to 30% of payroll next year—up from 9% this year and 3.8% in 2009—unless legislators relax funding requirements that Congress tightened considerably in 2006.

AP PHOTO

Rep. Earl Pomeroy, D-N.D., supports temporarily easing pension funding rules for employers, which the Obama administration seems to also support.

Without relief, staff cuts would have to be made, Ms. Cloninger said.

Katy Beh Neas, vp-government relations in Washington for Chicago-based Easter Seals Inc., also said pension plan funding relief is needed to avert staff cutbacks, which would endanger the organization's ability to provide services to families in need.

The cry for funding relief comes as many employers face huge increases in the amount of money they will have to contribute to their plans during the next couple of years.

That demand for contributions is the result, Mr. Klein said, of a "perfect storm" in which low interest rates have driven up the value of plan liabilities, while the equities market plunge has driven down the value of plan assets.

At the same time, pension plan funding requirements were considerably tightened by the 2006 Pension Protection Act. Among other things, the law accelerated the time in which employers must make up funding shortfalls.

Business groups say they do not want to gut that law but simply ease some of that law's requirements temporarily.

Rep. Pomeroy said he detects growing congressional interest in providing some type of relief. "There is a growing bipartisan consensus…that this is a step that should be taken soon," he said at the American Benefits Council briefing.

He also said his optimism is based on prior congressional actions. At the end of 2008, Congress softened certain rules in the 2006 law in response to employer lobbying.

For example, under the 2006 law, employers must put enough money in their plans so they are fully funded after seven years. That 100% funding target is being phased in, so the target in 2008 was 92%, rising to 94% in 2009, 96% in 2010 and 100% in 2011.

If the target is missed in any year, employers under the 2006 law are required to fund toward the 100% target. Under the 2008 funding relief measure, though, that requirement was removed during the 2006 law's phase-in period. For example, if an employer missed the 2009 funding target of 94%, its funding target in 2010 would be 96%, not 100%.

COBRA: Administration's backing makes subsidy extension likely

CONTINUED FROM PAGE 1

Driven by administration and congressional support, along with the nation's continuing high unemployment rate, another COBRA subsidy extension is almost certain, Washington observers say.

"All signals say to me that employers should prepare for another extension," said Frank McArdle, a consultant in the Washington office of Hewitt Associates Inc.

"There is huge public pressure on legislators" to pass another extension, said Kathryn Wilber, senior counsel-health policy with the American Benefits Council in Washington.

Congress included COBRA premium subsidies as part of a broad economic stimulus package it approved and President Barack Obama signed into law last February. The American Recovery and Reinvestment Act of 2009 included a 65% COBRA subsidy up to nine months for employees laid off from Sept. 1, 2008, through Dec. 31, 2009.

Congressional researchers estimated the subsidy would benefit about 7 million former employees and their families and cost about $25 billion.

THE COBRA OPTION

Percentage of laid-off employees who opted for COBRA before and after the federal premium subsidy went into effect in March 2009.

Industry	9/2008-2/2009*	3/2009-11/2009*
Electronics	55%	75%
Industrial manufacturing	7%	67%
Consumer products	54%	65%
Aerospace & defense	30%	63%
Banking	29%	50%

**Average monthly enrollment*
Source: Hewitt Associates Inc.

Then in December, Congress approved and President Obama signed into law a Defense Department spending bill with a provision extending the subsidy to a total of 15 months for employees laid off from Sept. 1, 2008, through Feb. 28, 2010.

The 65% subsidy has been a boon for millions of laid-off employees and their families who, in many cases, would have been hard-pressed to pay the entire monthly premium, which typically is about $400 for individual coverage and $1,200 for family coverage.

The availability of the subsidy has sent COBRA opt-in rates soaring. In a survey of 200 large employers, Hewitt found that the percentage of laid-off employees opting for COBRA more than doubled to 39% from March 1, 2009, when the subsidy generally first became available, through Nov. 30, 2009. In contrast, from Sept. 1, 2008, through Feb. 28, 2009, an average of 19% of involuntarily terminated employees opted for COBRA.

The original COBRA subsidy law, which went into effect almost immediately after passage, put enormous pressure on employers to locate and inform former employees who initially declined COBRA of their new right to obtain subsidized coverage.

"Initially, there was huge turmoil," recalled Gretchen Young, vp-health policy with the ERISA Industry Committee in Washington.

Problems easing

Over time, though, administrative and other problems eased as employers and their consultants put systems in place and as federal regulators provided guidance resolving many questions, not the least of which was defining situations that qualified laid-off employees for the subsidy.

"Within about six weeks to two months, problems eased," recalled Scott Keyes, a senior consultant with Towers Watson & Co. in Stamford, Conn.

Then in December when the initial nine-month subsidy started to run out, employers and administrators had another period of uncertainty in not knowing whether Congress would extend it. Many employers, uncertain on whether the subsidy would be extended, charged the full premium for beneficiaries whose nine-month subsidy eligibility had run out.

Then Congress extended the subsidy in mid-December, requiring employers to again notify beneficiaries of the change. For those who were overbilled because they paid the entire premium for December, beneficiaries typically received a credit applied to the next COBRA premium payments along with an explanation of the adjustment, said Jennifer Henrickson, a legal consultant with Hewitt in Lincolnshire, Ill.

Depending on when and how Congress extends the subsidy, employers and administrators could again face some of those same issues.

Aside from administrative issues, experts say the subsidies have boosted employers' costs, though definitive statistics are not yet available.

That is because those opting for COBRA typically are above-average users of medical services. While the risk pool has almost certainly improved due to the subsidy, premiums certainly are not covering the cost of claims, said Ms. Young of the ERISA Industry Committee.

The cost can be significant especially for employers who have laid off large numbers of employees, Ms. Young said.

Liberty Mutual sues former executives, Aspen Insurance

By JUDY GREENWALD

NEW YORK—Liberty Mutual Group Inc. has filed suit against Hamilton, Bermuda-based Aspen Insurance Holdings Ltd., several Aspen subsidiaries and several of its own former employees, charging they conspired to steal Liberty Mutual's professional liability business.

In a suit filed last Monday in New York State Supreme Court, Boston-based Liberty Mutual said nine former employees who left Liberty Mutual last month to join Aspen "breached their duties of loyalty by helping Aspen steal from Liberty the infrastructure necessary to run a successful professional liability insurance operation in direct competition with Liberty."

The suit, which seeks compensatory and punitive damages, states, "Rather than build its own infrastructure through legal means, Aspen pilfered that necessary infrastructure from Liberty, its competitor, by inducing Liberty's employees to breach their duty of loyalty by, among other things, taking with them Liberty's confidential proprietary information and trade secrets."

Named as individual defendants in the lawsuit are Bruce Eisler, former senior vp in Liberty Mutual's professional liability division; Justin Camara, Rob Cunningham, Ross Goodman and Ross Herlands, all former vps in the division; Susan Dufresne and Judith Olivier, former assistant vps in the division; and Bryan Nogaki and Douglas Sifert, former underwriting specialists in the division.

The lawsuit says Liberty began to create the unit that would offer professional liability insurance in 2000. According to the complaint, Mr. Eisler announced on Jan. 14 he was resigning from his position at Liberty Mutual and that he was taking at least five other employees with him. Three additional members of the unit resigned "within days," the complaint states.

"Although the investigation continues, plaintiffs have already discovered Liberty e-mail correspondence between the individual defendants, which demonstrates that the defendants' coordinated efforts were launched well before the individual defendants resigned," according to the lawsuit.

The suit charges the defendants with breach of duty of loyalty; inducing, aiding and abetting breach of duty of loyalty; breach of contract; misappropriation of trade secrets; and unfair competition, among other charges.

In addition to damages, among other things, Liberty says it seeks to prevent all the defendants from using Liberty's confidential proprietary information, and to prohibit the individual defendants from providing services to any Liberty competitor, including Aspen, for 12 months.

"We are aware of the complaint filed against Aspen by Liberty in the New York County Court. Whilst it is not our policy to comment on ongoing litigation matters we believe that the case is without merit and will act accordingly," Aspen said in a statement.

A spokesman for Liberty Mutual did not return a call seeking comment.

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News In Brief

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Marsh & McLennan Agency buys Haake Cos. in Kansas

Marsh & McLennan Agency L.L.C. said last week that it has acquired Overland Park, Kan.-based agency Haake Cos. for an undisclosed sum. Haake, which has about $11 million in annualized revenue and 70 employees, is the third in a series of acquisitions the Marsh Inc. subsidiary has made to build out its national middle-market agency platform. Haake will become part of Marsh & McLennan Agency's Midwest growth strategy, said Chairman and CEO David Eslick.

AIG hires general counsel, aircraft executive retires

American International Group Inc. has named former Lehman Bros. Inc. executive Thomas Russo as its new general counsel. Mr. Russo was named AIG's executive vp for legal compliance, regulatory affairs and government affairs and general counsel, replacing Anastasia Kelly, who resigned in December. Also, the director and CEO of International Lease Finance Corp., AIG's aircraft leasing unit, has retired. In a statement last week, AIG said Steven Udvar-Hazy had retired and ILFC President and Chief Operating Officer John Plueger was named acting CEO of the aircraft leasing unit he joined in 1987.

Court rejects Illinois malpractice damage law

The Illinois Supreme Court last week struck down the state's 2005 law limiting noneconomic damages in medical malpractice cases to $500,000 against physicians and $1 million against hospitals. The decision was the second since 1997 declaring caps for noneconomic damages in medical malpractice cases unconstitutional. In a statement, the president of the Chicago-based American Medical Assn. said the decision "threatens to undo all that Illinois patients and physicians have gained under the cap, including greater access to healthcare, lower medical liability rates and increased competition among medical liability insurers."

Senate financial services reform efforts stall

The top Democrat and top Republican on the Senate Banking, Housing and Urban Affairs Committee have reached an "impasse" on financial services reform, Sen. Chris Dodd, D-Conn., the panel's chairman, said in a statement last week. As a result, Sen. Dodd said he has instructed his staff to prepare legislation that will be presented to the committee later this month.

Workers comp claim frequency declines: NCCI

Workers compensation claim frequency declined 3.4% nationwide for the 2008 accident year, according to an annual NCCI Holdings Inc. report. In contrast, frequency declined an average of 4.7% for each of the previous five years, NCCI said. Indemnity severity for 2008 rose 5.8%, an increase from an average expansion of 3.8% experienced from 2003 through 2007. Medical severity, however, held relatively steady during the 2008 accident year, NCCI reported. It rose 6.7% over 2007, compared with an average increase of 6.2% during each of the previous five years.

Burns & Wilcox launches wholesale brokerage

Managing general agency Burns & Wilcox Ltd. has formed an insurance wholesaler focused exclusively on serving retail brokers with complex risk management accounts. Daniel Rossen, a former Chicago-based senior vp of Louisville, Ky.-based retail broker Neace Lukens, has joined Burns & Wilcox to lead Burns & Wilcox Brokerage, which will be based in Chicago.

Noted

Switzerland's reinsurance supervisory regime is equivalent to that applying to European Union reinsurers under the E.U.'s reinsurance directive, the **Committee of European Insurance and Occupational Pensions Supervisors** has determined.... **Angela F. Braly**, president and CEO of WellPoint Inc., will assume the additional role of chairman and succeed **Larry C. Glasscock**, who will retire effective March 1, WellPoint said last week....XL Insurance, a unit of XL Capital Ltd., said **Patrick Tannock** has been named president of XL Insurance (Bermuda) Ltd. effective Feb. 22....Torus Insurance Holdings Ltd. has named **Carl Groth** to its newly created position of group chief risk officer.

Games: Vancouver has up to $2.5B in cover

CONTINUED FROM PAGE 1

in the 17-day Olympiad that begins Feb. 12.

The Winter Games are expected to feature around 6,850 athletes and officials from more than 120 countries. Ten thousand media representatives will be on hand to chronicle the competition, according to the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games.

"The cancellation of the event itself would cause a massive loss," said David Bruce, head of specialty underwriting at Hiscox Ltd.'s Syndicate 33 at Lloyd's of London.

Mr. Bruce estimated that there is $2 billion to $2.5 billion in abandonment and cancellation coverage in place for the Vancouver games. He confirmed that Hiscox is involved in insuring the event but would not reveal the names of policyholders or specifics about coverage the insurer has written.

Organizers, broadcasters, sponsors, advertisers and others are among those with an interest in protecting themselves against the possibility that the Olympics could be canceled or abandoned, Mr. Bruce said.

Lori Shaw, managing director-sports and leisure for Aon Corp.'s Aon Entertainment Group in Charlotte, N.C., said there is limited capacity and high demand for cancellation coverage of the scale needed for the Olympics. "So you have a lot of parties with large financial exposures at risk that are looking to the event cancellation marketplace, which is somewhat of a finite capacity marketplace, because it doesn't have as many insurance players as ...more traditional lines of coverage."

The coverage, though, has gotten cheaper, Mr. Bruce said. "Most of this is placed in the contingency market, which is very competitive. Prices have fallen quite drastically" since the Beijing games.

The IOC's cancellation/abandonment coverage is written as part of a revolving program that covers the organization for a series of games. Aon Benfield placed coverage under the program for the 2006 Winter Games in Turin, Italy, and the Beijing Olympics in 2008. The program also covers the 2012 summer games in London and the 2014 winter games in Sochi, Russia, according to London-based Aon Benfield.

Swiss Reinsurance Co. and Munich Reinsurance Co. are lead reinsurers in the revolving program, company representatives said.

Ms. Shaw pointed out that VANOC is responsible for its own cancellation coverage, apart from that purchased by the IOC.

Hans Steffen, Zurich-based head of specialty risks at Swiss Re, said insureds sometimes negotiate cancellation coverage well in advance because a cancellation could occur years before an event.

General liability coverage typically is purchased at the same time as cancellation coverage, on a multiyear subscription, Mr. Steffen said. "This is standard coverage which you then have to adapt to cover the specific sites of the event," and generally is bought by organizers to cover injuries to visitors and athletes when, for example, they are being transported between venues, he said.

Strict confidentiality agreements have kept Aon Benfield and insurers from revealing specifics of the coverage for Vancouver. The IOC and VANOC did not respond to requests for coverage information.

REUTERS

Police patrol a creek abutting Vancouver's Olympic Village for the 2010 Games.

NBC Universal Inc. is among those with a lot riding on the successful completion of the games. Published reports quoted Dick Ebersol, chairman of NBC Universal Sports & Olympics, as saying the network will lose money televising the Vancouver games. He attributed the projected loss primarily to the rights fee to broadcast the games, said to be $820 million. If the games were canceled, NBC's woes would be compounded by lost ad revenue if it were uninsured.

"We have purchased an insurance policy to protect us against a disruption or cancellation," an NBC spokesman said.

Mr. Steffen confirmed that TV transmission rights are expensive, costing an estimated $250 million to $300 million for the 1984 Los Angeles Games and rising to more than $1.7 billion for the Beijing Olympics. It is typically covered under a cancellation policy, he said.

While insurers are tight-lipped on coverage specifics, Mr. Bruce said one of the biggest concerns has been the possibility that the H1N1 flu virus could disrupt the games.

Natural catastrophes also are a worry for the games, he said. "Vancouver is in an earthquake zone. Actually, a really big powerful earthquake would sink the Olympics."

The risk of terrorism would be another peril considered by policyholders, said Mr. Bruce. The games could even be susceptible to the fallout from a terrorist event in another part of the world if it frightened people into canceling their travel plans to Vancouver, he pointed out.

Weather also could play a part in delaying or canceling competition, and there is insurance available for that, Mr. Bruce said.

The weather risk is one the Vancouver organizers addressed with a contingency plan late last month. Unseasonably warm weather left the Cypress Mountain venues short of snow needed to hold the snowboarding and freestyle skiing events. The area's alpine runs were closed early so more than 300 truckloads of snow could be moved from the top of nearby Mount Strachan to the event venues.

VANOC did not reveal the cost of reworking the venues, but the cost would be covered only if it is a peril specifically in the organization's policy, said Mr. Bruce. While the expense of reconstructing a venue would not be covered if the peril isn't specified, revenue lost because an event was abandoned because of weather conditions would be insured under a typical policy, he said.

TEXTING BANS DRIVE PAST SAFETY LANE

Several states have banned talking on hand-held devices and texting while driving, but a recent study on the laws' effect might spark debate over the dangers of engaging in these activities while driving.

A study by the Arlington, Va.-based Highway Loss Data Institute, an affiliate of the Insurance Institute for Highway Safety, examined insurance claims from crashes before and after bans took effect in California, Connecticut, the District of Columbia and New York state and found that claim rates did not go down after those bans were put in place. Further, the institute found no change in patterns of incidents compared with states that do not ban using cell phones while driving.

"So the new findings don't match what we already know about the risk of phoning and texting while driving," institute President Adrian Lund said in a statement. "If crash risk increases with phone use and fewer drivers use phones where it's illegal to do so, we expect to see a decrease in crashes, but we aren't seeing it. Nor do we see collision claim increases before the phone bans took effect.

"This is surprising, too, given what we know about the growing use of cell phones and the risk of phoning and driving," Mr. Lund said.

Six states, the District of Columbia and the Virgin Islands ban talking on hand-held devices; 19 states, the District of Columbia and Guam ban texting while driving, according to the Governors Highway Safety Assn. The U.S. Department of Transportation also has banned commercial truck and bus drivers from texting while driving.

"We're currently gathering data to figure out this mismatch," Mr. Lund said.

Business Insurance END PAGE

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'THE BOSS' OBJECTS TO SUIT ADDING HIS JOHN HANCOCK

Maybe the American Society of Composers, Authors and Publishers should have checked with the rock legend revered by fans as The Boss before they added his name to a lawsuit alleging copyright infringement.

ASCAP filed suit last week in New York accusing a bar, Connolly's Pub and Restaurant, of being the venue for an unidentified band that played three Bruce Springsteen songs in 2008, and charged a cover fee for those who stayed to listen.

Venues that hold live performances are supposed to pay an annual fee to ASCAP, which distributes royalties to songwriters. ASCAP alleged copyright infringement on the pub's part for not paying a licensing fee to use the tunes and added Mr. Springsteen's name to the suit.

But shortly thereafter, a statement was posted on Mr. Springsteen's Web site saying that he had no knowledge of the suit and would not have participated even if he had been asked.

The statement said that his representatives demanded "immediate removal of his name" as a party to the suit.

It's fitting that Mr. Springsteen, who's known for his sympathy for the little guy, would want no part of suing a cover band. Had he agreed to join the suit, however, it would have been intriguing to see whether The Boss' authority extends as far in the courtroom as it does from the stage.

Bruce Springsteen, shown last August when he and the E. Street Band performed in at Zorrilla Stadium in Valladolid, Spain, backing the group's "Working on a Dream" album.

REUTERS

Rock bands' Camel challenge up in smoke

Camel cigarette-backed advertising, to which indie rock bands objected but lost when a court ruled that "The Farm" campaign within a Rolling Stone feature including their names is protected by the First Amendment.

The First Amendment won in a battle between indie rock bands and Rolling Stone magazine over Camel cigarettes.

In a unanimous decision, a three-judge panel California's 1st District Court of Appeal dismissed a lawsuit against Rolling Stone in which 186 bands accused the magazine of using their names to sell advertising to R.J. Reynolds Tobacco Co., the maker of Camel cigarettes, in the November 2007 edition.

The suit, filed Dec. 17, 2007, by Xiu Xiu and another band on behalf of the bands, claimed Rolling Stone's Indie Rock Universe feature was masked within a fold-out advertisement for Camel's indie rock-based "The Farm" campaign.

According to court documents, the bands alleged that Rolling Stone used the names of the bands and the artists for commercial gain.

The bands argued that the "integrated" layout implied that they endorsed Camel cigarettes, however the state appellate court disagreed.

In their opinion, the judges wrote that they found no evidence that R.J. Reynolds had influenced Rolling Stone's editorial content and that its main purpose is to publish a magazine, which is noncommercial speech.

"Simply put, there is no legal precedent for converting noncommercial speech into commercial speech merely based on its proximity to the latter," Justice Robert Dondero wrote for the court. "There is also no precedent for converting a noncommercial speaker into a commercial speaker in the absence of any direct interest in the product or service being sold."

WRONG KIND OF FIGURES GRABBING WORKERS' EYES

Ever wonder why the Securities & Exchange Commission missed some of the warning signs of the financial meltdown?

It could be that some employees had something far more interesting on their computer monitors. According to a report in the Washington Times last week, more than two dozen SEC employees and contractors during the past two years underwent investigations after they were caught viewing pornography on government computers.

According to the story, one unnamed regional supervisor had more than 1,800 attempts to view porn in less than three weeks. "It was kind of distraction per se," the paper said he told investigators.

"They're simply just stealing time," Allan Bachman, education manager for the Assn. of Certified Fraud Examiners, told the paper. "They're getting paid to do something that they're not supposed to be doing."

The SEC disciplined the employees, but taxpayers may still have cause for concern. After all, some of the financial information that should have been coming into the SEC as the economic system tottered was nothing if not shocking. Had they paid closer attention to their jobs, the porn-watching employees might have found more than enough to satisfy prurient interests of the financial variety, which is the only kind of prurient interests that should be permitted on their jobs.

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