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AT COMPANIES / PAGE 4**

**EMPLOYERS GET BREAK
ON BENEFIT COMMUNICATION
REQUIREMENT / PAGE 4**

inBrief

AIG's Miller named Hawker Beechcraft CEO

American International Group Inc. Chairman Robert S. Miller will become CEO of aircraft manufacturer Hawker Beechcraft Inc., effective Tuesday. Mr. Miller was named chairman of AIG in 2010, and in October of that year the insurer announced he would serve as temporary CEO if CEO Robert Benmosche had to step down due to his previously announced battle with cancer. The AIG board "has an active succession planning process and will be assessing its plans in light of Mr. Miller's announcement," said a company spokesman.

Wrynn to join N.Y. law firm

New York State Financial Services Department Deputy

See **IN BRIEF** page 21

SPOTLIGHT

BENEFIT MANAGEMENT & COMMUNICATIONS TECHNOLOGY

Companies using social media for benefit communications; technology reshapes strategies; knowing audience vital to success; rules complicate communication; incentives evolve. **PAGE 9**

PROPERTY/CASUALTY INSURERS

Hartford breakup talk returns

Policyholders watch after key shareholder pushes for changes

By **MARK A. HOFMANN**

HARTFORD, Conn.—The future makeup of one of the few remaining large multiline insurers was thrown into question last week when the Hartford Financial Services Group Inc.'s largest shareholder publicly called for the company to be split up.

While the immediate impact of spinning off Hartford's property/casualty operations would be felt by shareholders, the long-term implications for the insurer's policyholders remains uncertain.

Some observers see a spinoff having little effect on risk managers, but others say it could have positive and negative ramifications.

The question of a spinoff arose during Hartford's earnings conference call last week. Hartford's net income dropped 61% to \$662 million last year. The company attributed its drop in earnings in part to reserve fund strengthening, including \$161 million in



Hartford Chairman, President and CEO Liam McGee spoke about a possible spinoff at the company.

workers compensation reserve costs during the fourth quarter of last year.

But the question of the split centered not on Hartford's 2011 earnings but on the fact that its stock price has been in the doldrums.

During the presentation, Hartford noted that it had received inquiries on the feasibility of splitting the company, but said that doing so would present challenges

to creating shareholder value. One of those was maintaining competitive rates while allocating \$6.8 billion in holding company debt, according to a slide presented by Hartford.

"Life companies could assume no more than one-third of debt due to (a) combination of their currently limited capacity to generate statutory earnings and dividends and A-level interest coverage ratios," said Hartford, while property/casualty "companies would need to assume at least two-thirds of debt, which could require potentially dilutive deleveraging actions in order to meet A-rating debt leverage ratios."

According to Hartford, other challenges included regulatory issues, securing bondholder approval of debt allocation and other matters.

But Hartford's largest stockholder, John Alfred Paulson, president of New York-based hedge fund sponsor Paulson & Co., challenged Hartford Chairman, President and CEO Liam McGee for stressing challenges involved with a possible spinoff rather than how to overcome them.

While he agreed there were

challenges, "isn't your job to really overcome those challenges to achieve the maximum value for shareholders?" said Mr. Paulson, according to a transcript of the call. "Now I would say that Hartford needs to do something drastic because the stock is the lowest valuation relative to book value of any major insurance company."

"How long do we have to wait to hear if there's going to be a positive recommendation to separate these two businesses?" he asked.

"First of all, the analysis and the intent of the comments was to acknowledge that the challenges are significant, not to say that they could not be overcome," said Mr. McGee, before the exchange with Mr. Paulson continued.

This was not the first time the issue of splitting up Hartford has arisen.

Rumblings about the need to split Hartford's life and property/casualty operations arose in 2009 as the insurance group awaited final approval to receive \$3.4 billion from the U.S. Treasury Department's Capital Purchase Program.

In May 2009, Hartford made

See **HARTFORD** page 20

EMPLOYMENT PRACTICES

Wage-and-hour ruling may curb class actions

National impact seen for bank worker case in California court

By **JUDY GREENWALD**

SAN FRANCISCO—A state appellate court ruling last week in Cali-

fornia that dismisses a class action wage-and-hour lawsuit by bank employees is expected to lead to a dramatic reduction in the number of class actions filed in the state and be highly influential nationally as well.

Last week's decision in *Sam Duran et al. vs. U.S. Bank National Assn.* relies in part on the June

WHAT HAPPENED

- California's 1st District Court of Appeals dismisses wage-and-hour class action litigation.

WHAT'S NEXT

- Could lead to dramatic reduction in California class actions and affect such suits nationwide.

students' theory can be proved on a classwide basis." It also said anecdotal evidence of 120 affidavits, which it said represented one of every 12,500 class members, was "too weak to raise an inference" of discriminatory personnel decisions.

The plaintiffs in the *Duran* litigation are 260 current and former business banking officers who allege they were misclassified by U.S. Bank as outside sales personnel exempt from California's overtime laws.

The case, originally filed in 2001, has a convoluted procedural history. It includes a trial court granting plaintiffs' motion for class certification in 2005. In 2006, the trial court said it

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2011 U.S. Supreme Court decision in *Wal-Mart Stores Inc. vs. Betty Dukes*. In *Wal-Mart*, the high court held that statistical evidence presented by plaintiffs was "insufficient to establish that respon-

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LAST WEEK'S TOP STORIES

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1. GALLERY: PBGC's biggest losses
2. Hartford soars as shareholder Paulson pushes breakup
3. Comp losses contribute to 61% drop in Hartford's net income
4. Arguments made in Supreme Court briefs on health reform law
5. Integro forms four divisions, reports 21% jump in 2011 revenue
6. Commercial insurers lag in using predictive modeling
7. RIMS, Lockton outline how to avoid computer data breaches
8. Employers get time to comply in health benefits summary rule
9. Court rules for insurer in lead poisoning dispute
10. Administration rethinks contraceptive mandate

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AWARD: Nominations are due Feb 17. Forms available at www.BusinessInsurance.com/BMOYNominate.



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Business Insurance (ISSN 0007-6864) Vol. 46, No. 7, is published weekly, except for combined issues the first and second week of July, the fourth and fifth week of August and no issue the last week of December, by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Email address change to customerservice@businessinsurance.com or mail to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912, \$5 a copy and \$125 a year in the U.S. \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A. Copyright © 2011 by Crain Communications Inc.

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HEALTH CARE BENEFITS

Questions still unanswered on contraception cover rule

Amended regulations for self-funded plans yet to be formulated

By JERRY GEISEL

WASHINGTON—After intense criticism, the Obama administration last week said nonprofit affiliates of religious organizations, like hospitals and universities, will not be required to offer prescription contraceptive drug coverage to their employees.

Under the new policy, full coverage, with no copayments or other cost-sharing requirements, instead would have to be provided by the employers' health insurers.

The insurer could not charge a premium for the coverage. A senior administration official said extending the coverage would be cost neutral due to a reduction in the number of pregnancies.

In regulations issued Friday, the administration said it will develop a comparable rule that would apply to employers affiliated with religious organizations that self-fund their health care plans.

"The departments intend to develop policies to achieve the same goals for self-insured group health plans sponsored by nonexempted, nonprofit religious organizations with religious objections to contraceptive coverage" accord-



AP PHOTO

Under intense pressure from religious groups, the Obama administration last week revised its previous position that employers affiliated with religious organizations would have to offer contraceptive drug coverage.

ing to regulations released by the Internal Revenue Service and the Departments of Labor and Health and Human Services.

For now, "I see a gaping hole" on the self-insurance issue, said Andy Anderson, a partner with Morgan, Lewis & Bockius L.L.P. in Chicago.

"We need to see the details on how this will work," said Ilyse Shuman, a shareholder with Littler Mendelson P.C. in Washington.

The new rule, as it applies to affiliates of religious organizations, contrasts sharply with one

the administration released last month. Under that rule, which is mandated by the health care reform law, employers would have had to include the prescription contraceptive drug coverage directly in their group policies.

But that rule triggered a huge wave of criticism from religious organizations and lawmakers on both sides of the aisle.

Last week, Speaker of the House John Boehner said he would work to get legislation passed to block

See **CONTRACEPTIVES** page 21

EMPLOYMENT PRACTICES

Religious discrimination claims rising

Accommodations for worship, garb lead bias claims

By JUDY GREENWALD

Religious discrimination claims in the workplace are on the rise and expected to be a growing problem for employers, which experts say reflects a rise in religious rhetoric and better employee knowledge of their rights.

The U.S. Equal Employment Opportunity Commission says there were 4,151 religious discrimination claims filed with the agency during fiscal 2011, a 9.5% increase from the previous year. Such claims have increased steadily since 2005.

While many of these claims are motivated by perceived anti-Muslim bias, adherents of other religions claim bias, too. (see story, page 18).

Observers say two of the biggest

issues with regard to religious discrimination claims are accommodations for taking time off for the Sabbath and garb issues, such as Muslim women's requests to wear head coverings.

Steps employers can take to address the issue include developing a more tolerant environment and improved training, say observers (see story, page 18).

Many observers say they expect the number of religious discrimination claims will continue to increase.

"We have a growing willingness of people to carry their faith into the workplace, and we see that reflected in employees who are seeking accommodations to engage in religious practices at work," said Jeffrey I. Pasek, a member of law firm Cozen O'Connor P.C. in Philadelphia. Some employees "are using their workplace as a way to propagate their beliefs, proselytize," while other employees "just want to be left alone."

Add to that a rise in religious fundamentalism, "which we see all around the world, that causes people to be less tolerant of other religions," Mr. Pasek said, and "the increasing number of religions in the United States," the variations within different sects and "growing media attention to intergroup conflict post-9/11, and you can see why" the number of religious discrimination charges has more than doubled from 1997, he said.

Samuel J. Cordes, a plaintiffs attorney with Samuel J. Cordes & Associates in Pittsburgh, said people have the attitude that "times are tough, and sometimes you have to give up your religion when times are tough," although "clearly the laws are supposed to protect against that kind of thought."

The increased religious discrimination claims are "just a reflection of the growing religious

See **RELIGION** page 18

Explore strategies for cyber, supply risk

NEW YORK—Supply chain, cyber security and global expansion risks are top of mind for risk managers at large companies this year.

To get cutting-edge insights into how to manage these dynamic and potentially catastrophic exposures, risk managers from the largest companies in the world will gather at the Waldorf=Astoria in New York next month for *Business Insurance's* 2012 Risk Management Summit®. Qualified risk managers can attend the Risk Management Summit at no cost, and registration for the event is still open.

The annual Risk Management Summit®, now in its third year, provides attendees with focused insight via specific, timely general sessions and strategic, thought-provoking discussions with industry leaders and peers across an array of industries.

The Risk Management Summit®, to be held Feb. 29-March 1, is open to senior risk managers at Fortune 1000 companies and international companies of comparable size, as well as to past *Business Insurance* Risk Manager of the Year® and Risk Management Honor Roll® honorees who still serve as risk managers.

Summit partners include Chartis, Dempsey Partners, FM Global, Sedgwick and Zurich.

The 2012 Risk Management Summit® will provide case studies on four issues of greatest concern to risk managers, as identified in a recent survey of target attendees: cyber liability, risks of global expansion, supply chain risk and business continuity, and captive insurance strategies.

Each case study will be followed by panel discussion on the same topic featuring the views of leading academics, executives from industry partner companies and other experts.

The first presentation on Wednesday, Feb. 29, will be a case study on cyber security by Christopher Soghoian, cyber and privacy specialist at the Center for Applied Cyber Security Research, which will help attendees identify cyber security weaknesses in their systems. The subsequent cyber risk panel discussion will feature Alan Brill, senior managing director, Secure Information Services, Kroll Ontrack; Lori Nugent, partner with Wilson Elser Moskowitz Edelman & Dicker L.L.P.; Daniel W. Riordan, president-specialty products at Zurich; and Richard Santalesa, senior counsel, Information Law Group.

Wednesday also will feature a case study on global expansion risk management, presented by Jorge Luzzi, group risk management director, Pirelli Group. The global risks panel discussion will offer views from Thomas A. Lawson, executive vp, FM Global; Peter Laun, partner, Jones Day; and Mary Cline, director-corporate advisory services at Eurasia Group.

Thursday's sessions will kick off with a case study on supply chain security and risk management from Patrice Knight, vp-global supply operations at IBM Corp. Her presentation will be followed by a panel discussion featuring Edward Erickson, vp-product and business development at IntraPoint AS and founder of the Supply Chain Risk Management Leadership Council; David Closs, the John H. McConnell chaired professor of business administration in the Department of Marketing and Supply Chain Management at Michigan State University; Anita Househam, policy and legal adviser, issue manager-supply chain sustainability at the United Nations Global Compact; and John Dempsey, managing partner at Dempsey Partners.

In addition, Thursday will feature a case study on captive strategies presented by William D. Motherway, executive vp of Tishman Construction Corp., as well as a related panel discussion featuring Charles J. Lavelle, partner and chair, federal tax team, Bingham Greenebaum Doll L.L.P.; and David F. Provost, deputy commissioner-captive insurance division, Vermont Department of Banking, Insurance, Securities & Health Care Administration.

A luncheon and session on Wednesday will highlight the winners of *Business Insurance's* 2012 Innovation Awards.

Eligible risk managers can obtain more information or register to attend the event by visiting www.BusinessInsurance.com/RMSummit or by contacting Event Manager Rebecca Briggs at rbriggs@BusinessInsurance.com or 212-210-1032.



SAFETY

Unions push harder on worker safety

Clashes over practices persist, but safety is a shared interest

By **ROBERTO CENICEROS**

While labor unions' growing expertise and involvement in workplace health and safety can spark clashes with U.S. companies, such efforts also have driven collaborative efforts with employers that bring improvements for workers and the companies.

Unions point out that they have championed worker safety as a core value throughout their history. But in recent years, they have increasingly invested in health and safety education and technical expertise, in part to improve their appeal among workers, observers say.

And it is not unusual for union and management differences over health and safety practices to become contentious bargaining-table topics, or a means for rallying union members. In one recent, high-profile example of the significance of health and safety issues in labor contract negotiations, the United Steelworkers union and the nation's major oil producers late last month reached an 11th hour agreement that prevented what could have been crippling strikes for the U.S. petroleum industry (see story, page 20).

"Often safety issues are contentious within contract negotiations and in discussions



between employers and employees," said Stephanie Bloomingdale, secretary-treasurer for the Wisconsin State AFL-CIO in Milwau-

kee. She cited a decade-long demand by nurses nationwide to increase hospital staffing as an example of employers and unions diverging on spending for safety.

Safety is a real concern of unions, said Charles Craver, a professor teaching negotiations and labor relations at George Washington University in Washington. But with union membership declining and unions unable to make substantial gains in wage and benefits, they may also be seeking health and safety measures as an offset, Mr. Craver said.

But despite the possibility of disputes, many observers say that union interest in health and safety frequently results in positive collaboration with employers to reduce worker injuries and improve productivity. Indeed, joint committees of cooperating union and employer health and safety experts are increasingly common at large worksites, observers say.

"There is good cooperation when a company health and safety engineer and a union health and safety engineer preach the same thing," said Richard King, senior vp of construction and labor negotiator for Denver-based Black & Veatch Corp., a global engineering and construction company.

It has grown common to see highly educated union industrial hygienists on building sites, because construction-project own-

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P/C INSURERS



Mr. Shine

Technology can't replace underwriting

Despite advances, skills still required

By **MIKE TSIKOUKAKIS**
and **RODD ZOLKOS**

CHICAGO—Technological advances and capital allocation have had significant effects on insurance underwriting during the past several years, according to Bob Shine, New York-based chief underwriting officer for North American property/casualty at XL Insurance.

While technology has provided insurers with tools like predictive modeling and analytics, companies still need to balance that with skillful underwriting if they're to succeed, Mr. Shine said. Meanwhile, at many insurers the focus on capital allocation strategies is shaping their underwriting appetite, limiting underwriters' options in some cases, he said.

Mr. Shine made his remarks in a keynote speech last week at the seventh annual View from the Top Luncheon in Chicago sponsored by the Assn. of Lloyd's Brokers, the LaSalle Street Club and the Chicago chapters of the Risk & Insurance Management Society Inc. and the Chartered Property Casualty Underwriters Society.

"The technology is the biggest story and the biggest change on the underwriting side," Mr. Shine said. "We haven't been known for our technology."

Mr. Shine noted that early in his career at Fireman's Fund Insurance Co. in New Jersey, where he managed large accounts, there was a more "regional view" of underwriting. Much of the business was consistent and less volatile, and underwriters were familiar with the risks. "They basically saw the same business year in and year out," he said.

The impact of computers also wasn't fully realized at that time, Mr. Shine said. "From an underwriting perspective, (the computer) wasn't that dynamic. It was

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HEALTH CARE BENEFITS

Employers get some relief on communications rules

By **JERRY GEISEL**

WASHINGTON—Employers have more time and face a slightly reduced administrative burden in complying with health care reform law rules that require them to revamp how they communicate and explain their health care plan benefits.

In final rules published last week, the Obama administration said the requirement to distribute the new summary of benefits

coverage statement to employees now will go into effect for plan years that begin on or after Sept. 23, 2012.

For example, if a plan year begins on Jan. 1, 2013, and the employer's open enrollment period is from Oct. 1 to Nov. 1, the new SBC would have to be available by Oct. 1.

Under previous rules, later withdrawn in the face of intense employer opposition, the document would have had to be pro-

SPOTLIGHT

READ MORE: Benefit communications strategies change with the times. Read innovative approaches.

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vided by March 23, an impossible deadline, employer groups and others said.

"An extension was absolutely crucial for employers and insurers," said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

"The extension is very welcome, but it still is not a lot of

time," said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

"This will require employers to move very fast," said J.D. Piro, senior vp and national practice leader for Aon Hewitt's health and benefits legal consulting group in Norwalk, Conn.

The heart of the new communications requirement is the distribution of a new Summary of Benefits and Coverage booklet, which will be divided into three columns. One column will be headed, "Important Questions," and would include:

■ What is the overall deductible?

See **COVERAGE** page 18

EMPLOYMENT PRACTICES LIABILITY

Lactation-related firing not gender bias: Court

By **JUDY GREENWALD**

HOUSTON—Lactation discrimination is not sex discrimination, said a federal judge in upholding the termination of a woman who claims she was fired because she asked for accommodations to breast-feed her baby.

According to last Thursday's decision by the federal district court in Houston in *Equal Employment Opportunity Commission vs. Houston Funding II Ltd.*, Donnicia Venters took a leave of absence in December 2008 to have her baby girl. She did not discuss with anyone about how long she would be gone, or when she expected to return. On Feb. 10, 2009, several employees including a vp, decided to fire

Ms. Venters, effective three days later, although no written record of the meeting is available, according to the opinion by Judge Lynn N. Hughes.

Ms. Venters, who suffered from an infection after the birth that complicated her recovery, according to the ruling, left the vp a message by phone on Feb. 16, telling him she had her doctor's approval to return to work. "The next day, she called (the vp) to tell him that she was ready to return to work and wondered if she could use a back room to pump milk," said the ruling. She was told her spot had been filled because they had not heard from her. She subsequently received a letter telling her she was fired for job abandonment.

The EEOC "says the company fired her because she wanted to pump breast milk," says the brief opinion.

According to the ruling, "Even if the county's claim that she was fired for abandonment is meant to hide the real reason—she wanted to pump breast milk—lactation is not pregnancy, childbirth or a related medical condition. She gave birth on Dec. 11, 2008. After that day, she was no longer pregnant, and her pregnancy-related conditions had ended."

"Firing someone because of lactation or breast pumping is not sex discrimination.... Even if Venters' claims are true, the law does not punish lactation discrimination," the ruling said.

PENSION BENEFITS

Public firms plan to up pension contributions in 2012

By **ROB KOZLOWSKI**

Publicly owned U.S. corporations plan to increase pension contributions significantly in 2012.

Eleven companies announced a combined \$10.8 billion in contributions in their fourth-quarter earnings statements in the last week of January. Five of them announced contributions in 2012 of \$1 billion or more each to their pension plans.

The five companies are:

- Ford Motor Co., Dearborn, Mich., which plans to contribute about \$3.5 billion in cash to its global pension plans, about \$2 billion of which will be in discretionary contributions to its U.S. plans. Ford had U.S. defined benefit plan assets of \$39.1 billion as of Sept. 30, according to data from Pensions & Investments, a sister publication of *Business Insurance*. The company's non-U.S. defined benefit plan assets totaled \$18.6 billion as of Dec. 31, 2010, according to the company's latest 10-K.

- Boeing Co., Chicago, which plans to make \$1.5 billion in discretionary contributions to its pension plans. The company had \$49.3 billion in U.S. defined bene-

and in 2009 it went up to \$21 billion. In 2010 and 2011, that's gone up to \$25 (billion) to \$30 billion," said Mr. Collie.

The timing of these large contributions also can be attributed to record cash levels, according to Michael Schlachter, Denver-based managing director at Wilshire Associates Inc. "Cash is earning zero, their pension plans are earning 7% or 8% or whatever," said Mr. Schlachter. "With that cash you can hire people, you can

invest, you can build facilities or you can put it to work like that. Why not prefund the heck out of it right now?"

One reason companies can make these outsize contributions is that generally cash on corporate balance sheets is at an all-time high, Mr. Schlachter said. "Companies are earning virtually nothing" on their cash because it is conservatively invested in short-term instruments. Contributing to pension plans is "a better place to

put cash to work than sitting there earning zero (return)," Mr. Schlachter said.

Ford, for example, had \$22.9 billion in cash and marketable securities as of Dec. 31, up from \$20.5 billion a year earlier, according to a U.S. Securities and Exchange Commission filing Jan. 27.

"A lot of companies are sitting on record amounts of cash and there isn't enough confidence to reinvest in the business," said Kevin McLaughlin, New York-

based senior investment consultant at Mercer L.L.C.

The rise in contributions is no surprise, said Alan Glickstein, Dallas-based senior retirement consultant at Towers Watson & Co. Pension funding rules set by the Pension Protection Act of 2006, combined with the financial crisis two years later that resulted in historically low interest rates, has built what Mr. Glickstein calls the

See **PENSIONS** page 19

\$10.8B

Eleven companies announced a combined \$10.8 billion in contributions in their fourth-quarter earnings statements in the last week of January. Five of them announced contributions of \$1 billion or more each to their pension plans in 2012.

fit plan assets as of Sept. 30.

- Verizon Communications Inc., Basking Ridge, N.J., which expects to contribute up to \$1.26 billion to its \$23.7 billion U.S. pension plan.

- Raytheon Corp., Waltham, Mass., which plans to contribute \$1.2 billion in 2012, \$1.4 billion in 2013 and \$1.6 billion in 2014 to its \$13.9 billion U.S. pension plan.

- Honeywell International Inc., Morristown, N.J., which is making an \$800 million to \$1 billion contribution to its \$2.7 billion U.S. pension plan.

Bob Collie, chief research strategist, Americas institutional, at Russell Investments, said by looking at the total contributions of the 16 corporate plans in Russell's "\$20 Billion Club"—U.S. corporations with worldwide defined benefit liabilities of more than \$20 billion—one can see a growth pattern that is continuing into 2012.

"Those 16 plans account for about 40% of the total assets and the total liabilities (of all corporate plans). The combined contribution in 2008 was \$8.25 billion,

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Mid-Market EXECUTIVE

Helping C-level executives at midsize firms overcome critical risk and benefits challenges

Law schools sued over job prospect data

Former students say schools wooed them with flawed statistics

By **MATT DUNNING**

A team of attorneys filed 12 separate lawsuits seeking class action status on behalf of alumni against law schools in five states accusing the schools of misleading the former students about their job prospects after graduation.

In all, 15 law schools have been sued over allegedly inflated or falsified job placement statistics since the beginning of the year. The litigation's conceptual architect, New York-based attorney David Anziska, said he and his co-counsel—attorneys from four prominent regional law firms—are planning to file claims against as many as 20 additional schools by the end of February, and possibly dozens more by year-end.

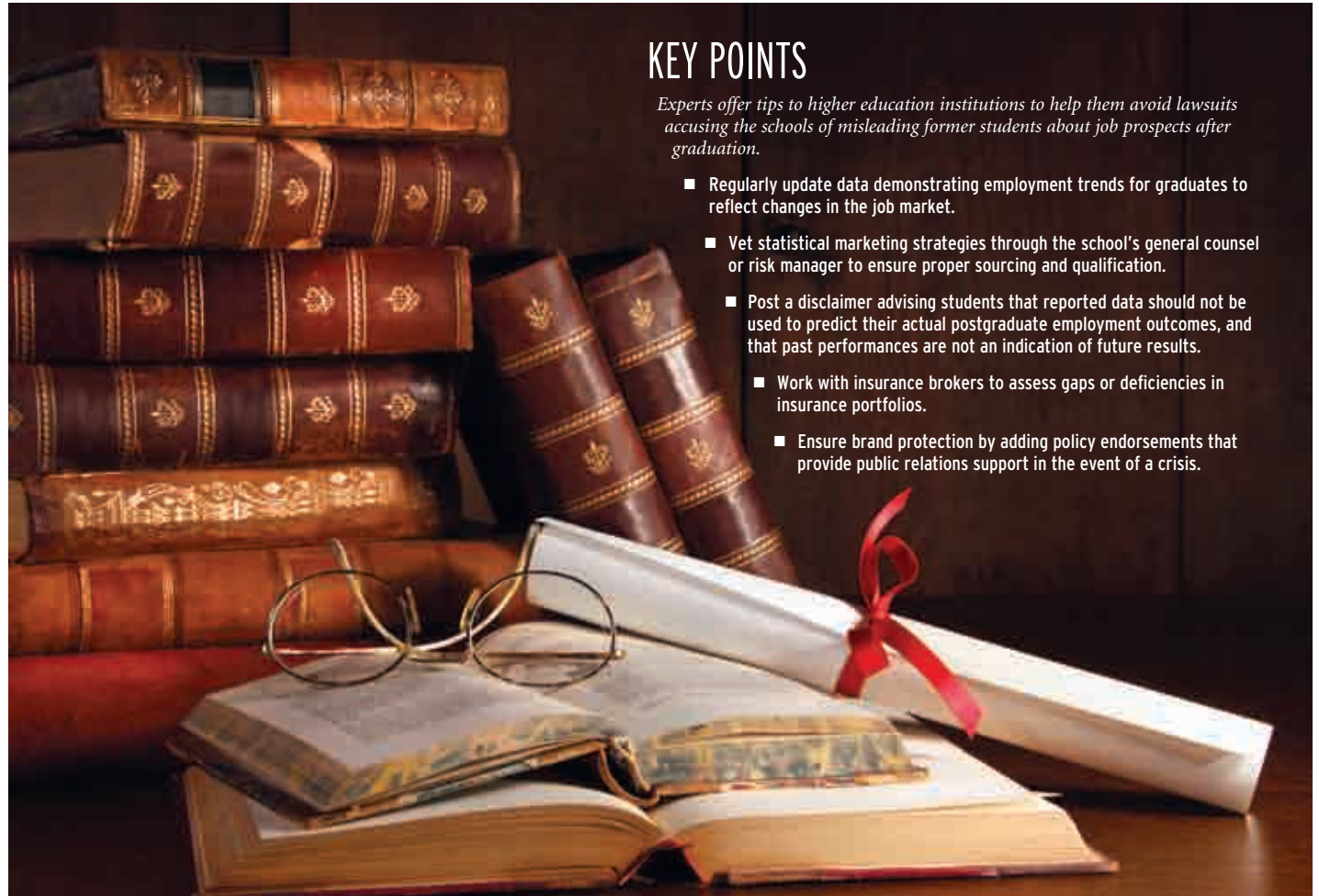
The mere fact that lawsuits against higher learning institutions are materializing at all signals a growing frustration among recent graduates struggling to find jobs, experts said. And while it is unclear if the claims actually will be litigated (see story, page 7), experts advised risk managers at small and midsize colleges—particularly professional schools—to treat their sudden proliferation as an invitation to evaluate any marketing campaigns in which job placement statistics are used to entice prospective students or boost rankings among competitors.

"I'm sure that more law schools, and other types of professional schools that are hurting from a down economy, will see similar kinds of claims," said Louis Castoria, the San Francisco-based chair of Wilson Elser Moskowitz Edelman & Dicker L.L.P.'s specialty professional risk practice. "Schools need to be ready to defend against those claims."

For starters, data demonstrating employment trends for graduates should be updated regularly to reflect changes in the job market, experts said. Common allegations among Mr. Anziska's clients are that data reported by certain schools obfuscates the recent economic downturn by sampling too few students or using too broad a time period, or does not differentiate between degree-relevant positions and ordinary work.

"What we've found, by way of some of these allegations, are some inconsistencies in how they're deriving their data and how they're qualifying it," said Chris Schwyter, a Philadelphia-based senior vp at Willis North America.

Particularly at smaller schools, and especially in regions saturated with larger institutions, those disconnects often are attributable to insufficient communication between a school's top-level administrators, its marketing department and its risk management personnel, experts said.



KEY POINTS

Experts offer tips to higher education institutions to help them avoid lawsuits accusing the schools of misleading former students about job prospects after graduation.

- Regularly update data demonstrating employment trends for graduates to reflect changes in the job market.
- Vet statistical marketing strategies through the school's general counsel or risk manager to ensure proper sourcing and qualification.
- Post a disclaimer advising students that reported data should not be used to predict their actual postgraduate employment outcomes, and that past performances are not an indication of future results.
- Work with insurance brokers to assess gaps or deficiencies in insurance portfolios.
- Ensure brand protection by adding policy endorsements that provide public relations support in the event of a crisis.

"If all of those interests aren't on the same page, you have an opportunity for defects in the end product," Mr. Schwyter said.

Any statistical marketing strategy should be vetted through a school's general counsel or risk manager to ensure proper sourcing and qualification, experts said. Schools are encouraged to work with their insurance broker to develop marketing compliance procedures and designate either their risk

'If there's going to be coverage problem, it's probably going to be something related to a specific definition.'

Edward Joyce, Jones Day L.L.P.

manager or legal counsel to monitor adherence to those procedures.

A clear disclaimer advising students that reported data should not be used to predict their actual post-graduate employment outcomes also can reduce a school's exposure to allegations of misrepresentations.

"It's very similar to advertising in the investment community, where customers are told that past performances are not an indication of future results," said J.C. Wile-

man, a Los Angeles-based senior vp of Lockton Insurance Brokers L.L.C.'s higher education practice. "That's almost common sense, but we've never really been in a position before now where we'd need to spell out that economic conditions may affect future hiring conditions and placement statistics."

Alongside an examination of their marketing operations, law schools and other professional institutions should work with their brokers to assess any gaps or deficiencies in their insurance portfolios.

Most schools carry some combination of trustees and officers liability coverage and educators' legal liability coverage—the education equivalents of directors and officers and errors and omissions liability insurance in the private sector—that likely would provide defense costs for a lawsuit alleging the use of misleading data. Such litigation also could trigger an advertising injury claim under a school's general liability coverage.

However, because most underwriters have their own distinct version of these policies, careful attention must be paid to the specific policy terms and conditions to ensure adequate protection, experts said.

"If there's going to be a coverage problem, it's probably going to be something related to a specific definition," said Edward Joyce, a New York-based partner at Jones Day L.L.P.

For instance, management and profes-

sional risk policies are generally broad in their definition of a claim event. Quite often, Mr. Joyce said, claims can include any written demand for monetary or non-monetary relief.

"The insurance company is likely to argue that the clock on a policyholder's notice obligations started running with receipt of that demand, regardless of whether a suit's been filed," Mr. Joyce said. "These schools have to keep a close watch on the materials they're receiving."

Definitions pertaining to the losses and wrongful acts covered under the policy, as well as which parties are insured, also are key areas that could present problems in defense of a misleading marketing lawsuit, Mr. Joyce said.

Beyond mitigating their financial risks, experts advise law schools and other professional institutions to prioritize protection of their brand. Several underwriters recently have introduced policy endorsements to provide public relations support in the event of a crisis.

"From a reactive standpoint, the focus should really be on the public reputation of the institute," Mr. Schwyter said.

"There is no single form policy for this coverage, so it would be good for school risk managers to sit down with their brokers and look at their policy's hypothetical response to misrepresentation or a false advertising claim," Mr. Castoria said. "The answer is not always going to be yes."

More suits against law schools likely, but success questionable

By **MATT DUNNING**

Attorneys representing the more than 70 law school graduates who recently sued their alma maters over allegedly misleading job placement statistics say they plan to pursue dozens of other cases by year-end, but some legal and insurance experts doubt many of those claims will make it to trial.

Fifteen lawsuits have been filed against law schools in five states since the beginning of the year. New York-based attorney David Anziska, who is representing plaintiffs in three of the suits and was the conceptual architect of the litigation, said the suits are, in essence, matters of false advertising on the part of the law schools.

Among the schools that have been sued are St. John's University School of Law in New York, DePaul University College of Law in Chicago, and University of San Francisco School of Law.

"It's a failure to disclose that the majority of their students fail to obtain jobs for which their degree is required or preferred," Mr. Anziska said. "Students wound up paying inflated tuitions based on what we believe are overly broad—or in many cases downright false—placement statistics."

Mr. Anziska said the plaintiffs in his cases will seek reimbursement of some portion of their tuition. However, some legal and insurance experts believe it will be difficult for the plaintiffs to establish that the law schools were responsible for predicting future economic conditions at the time of the tuition payments, particularly given the speed with which employment outlooks soured over a period of two to three years.

"The economy turned so quickly that, as long as these schools didn't inflate their numbers for the class of 2011 when these students entered in 2009, I would expect that to be a defense," said J.C. Wileman, a Los Angeles-based senior vp with Lockton Cos. L.L.C.'s higher education practice. "I would predict that if schools are still accurate within reason on their statistics, they'll probably get off on the bad economy defense."

Moreover, experts said plaintiffs could struggle to prove allegations of overly broad representations if the schools' statistical reporting can be demonstrated to be reasonably accurate, even if the larger sample demonstrates a significantly different hiring trend than has

'It's not as easy to say that the historical data is irrelevant or that it's a misrepresentation of the truth.'

Louis Castoria, Wilson Elser Moskowitz Edleman & Dicker L.L.P.

been the reality in recent years.

"It's not as easy to say that the historical data is irrelevant or

that it's a misrepresentation of the truth," said Louis Castoria, the San Francisco-based chair of Wilson Elser Moskowitz Edleman & Dicker L.L.P.'s specialty professional risk practice. "If you have a good track record over that long a timespan of students finding degree-related work, it's still true, even if the present job market dries up."

Despite their doubts as to the merits of the lawsuits, experts are still worried over the potential

ramifications should a handful of graduates succeed in compelling schools to return a portion of their tuitions. Mr. Anziska himself has theorized that similar claims could be successfully levied against as much as 75% of the law schools in the United States.

"If a few of these cases grow roots and develop into significant newsworthy jury awards, it wouldn't surprise me to see a lot of other kinds of schools hit with similar claims," Mr. Castoria said.

Successful litigation also could negatively impact schools' ability to insure themselves against future misrepresentation claims, experts said.

"If you have a case that sets precedent, it could alter how insurers choose to underwrite those schools, to the extent that there may be some limitations put on coverage for these kinds of allegations," said Chris Schwyter, a Philadelphia-based senior vp at Willis North America.



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Opinions

EDITORIAL

Religious bias a growing issue

As employers are all too well aware, the workplace is not a vacuum, and many of the issues that roil society are unavoidably reflected within it. Religious discrimination is perhaps a perfect example of that.

Today's growing sectarianism, which is causing people to be less tolerant of other religions, as well as lingering intolerance generated by the 9/11 attacks—and people's growing willingness to carry their faith into the workplace—unfortunately has landed this issue squarely in employers' laps.

Combine this with people's greater willingness to assert their perceived rights. The U.S. Equal Employment Opportunity Commission points out there were 4,152 religious discrimination claims filed with the agency during fiscal 2011, a 9.5% increase from the previous year. Such claims have increased steadily since 2005, and the pace is not expected to slow down any time soon.

All this creates a conundrum for employers, who have to walk a fine line. On one hand, there is the issue of letting people express their religious values, be it by wearing religious headdress, taking time off for their Sabbath, or taking breaks during the day to say their prayers.

On the other hand, employers have to worry about not causing resentment among fellow employees for the accommodations they grant. Nor—dare we say it?—should they be forced to accommodate workers to the point where it seriously cuts into their business' profits, or even puts their firms' survival at risk. An example of that would be the retailer whose busiest days fall on an employee's Sabbath, for which time off is required.

What to do? Fortunately there are some steps employers can take to at least try to keep everyone happy. Knowledge of the law and training for supervisors and managers can defuse many of the situations that lead to religious discrimination claims. A neutral approach and a willingness to go at least halfway often help as well.

Beyond that, perhaps all cooperative employers can do is hope that their own tolerance is reflected back into society at large.

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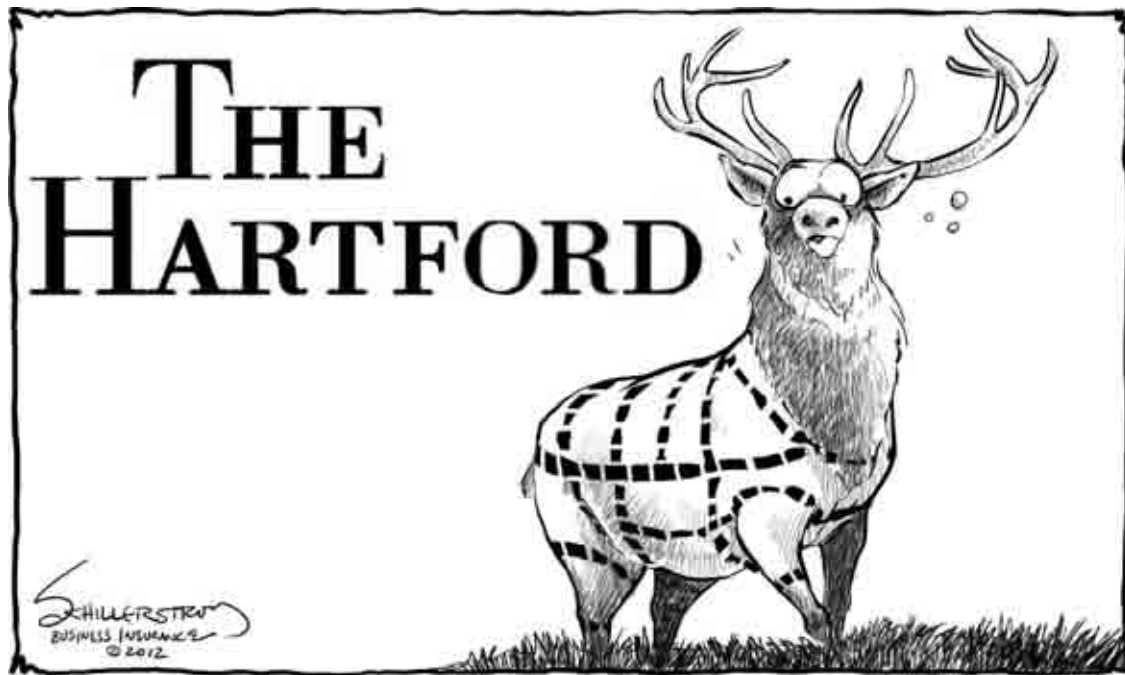
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SCHILLERSTROM



COMMENTARY

Insurers cursed by low interest rates

'May you live in interesting times" allegedly is an ancient Chinese curse, although the saying appears much more likely to have been the brainchild of a British writer or diplomat sometime early in the past century.

Such a "curse" would condemn its victim to a period marked by chaos and disaster—hardly a pleasant prospect.

But for insurers and others, a more frightening curse may be, "May you live in near-zero-interest-rate times." Interest income is key to the financial health of insurers, retirees and some other investors. Yet no less an authority than the chairman of the Federal Reserve System—and he is indeed an authority given the power the Fed has over interest rates—has said publicly that near-zero interest rates are likely to extend into 2014.

This assessment comes despite the fact that the economy appears to be improving, at least fitfully. The argument for the long stretch of historically low rates is that the economy still has a long way to go before it will be sturdy enough to withstand the shock of an interest rate increase, significant or otherwise. While no one knows what the economy will look like at the end of 2014—who in February 2006 would have predicted the extent of the financial crisis of 2008?—odds seem to favor continued, if slow, growth.

Of course, another reason for continued very low rates is to allow the U.S. government to

borrow at very favorable terms. Given the size of the U.S. debt and the fact that there's no consensus in Washington on how to approach the problem, a jump in rates would increase the government's costs and, ultimately, the tax burden.

The effort to keep the government's costs down through continued low rates of return seem almost certain to increase the cost of insurance. Given last year's catastrophe losses, pressure has been growing to increase rates. Some rates have been going up, albeit gradually rather than sharply, as happened a generation ago during the hard market of the mid-1980s.

Extended low interest rates simply add to that pressure. Insurers will have to demonstrate the discipline to post underwriting profits. Continued rate increases seem nearly inevitable if the economy continues its recovery and underwriters maintain discipline. Throw another high-catastrophe-loss year on top of that, and higher rates will be inevitable.

Risk managers know that they will be responsible for crafting risk management strategies to deal with the market change—after all, that's their job. For them as well, the fallout from insurers coping with low-interest-rate returns may mean interesting times in many ways.

Contact: mhofmann@businessinsurance.com



MARK A. HOFMANN
SENIOR EDITOR



LOUD & CLEAR

Cutting-edge companies using social media, other tech tools for benefit communications

By **KAREN PALLARITO**

While most benefits managers are still considering how social media and other cutting-edge tools fit into their benefits communications strategy, early adopters are forging ahead with innovations aimed at better informing and engaging their employee and retiree populations.

Six years ago, the Employees Retirement System of Texas began exploring ways to more fully engage members in their health and benefits decisions. As part of that process, ERS, which administers benefits for some 550,000 employees, retirees and depen-

dents, took stock of its communications strategy.

As the strategy evolved, ERS pruned its printed publications, retaining a retiree newsletter and a few other key mailings, and expanded its reach through email, YouTube videos and Facebook postings.

Certain members love print and “read every word we send them,” while others “won’t read anything we send them, but they will watch a video,” said Catherine Terrell, director of communications and research for the Austin, Texas-based agency, “and we need to reach all of those groups.”

See **STRATEGY** next page

Benefit
Management &
Communications
Technology

SPOTLIGHT

**NEW TECHNOLOGIES
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**KNOWING AUDIENCE,
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**RETIREMENT PLAN
RULES COMPLICATE
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**INCENTIVES EVOLVE
TO KEEP WORKERS
ENGAGED IN HEALTH**

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Strategy: New tools aid communication efforts

CONTINUED FROM PREVIOUS PAGE

The engagement effort has reaped benefits that include greater use of generic drugs, which saves members money and generates longer-term program savings, said Ms. Terrell.

"There definitely are innovators," and they're using all of the available technology to communicate benefits, said Jennifer Benz, chief strategist and founder of Benz Communications in San Francisco. "But, overall, the (benefits management) industry is still very far behind," she said.

Why the lag? Ms. Benz thinks benefits managers are so burdened by compliance issues and other job demands that embarking on a new communications strategy "seems really daunting." She said she believes employers tend to focus on the concerns that new technologies pose, rather than the opportunities they afford.

Employers are "really thinking carefully about how they want to use new communications vehicles," said Brenna Shebel, assistant director of the Institute on Health Care Costs and Solutions at the National Business Group on Health in Washington. Before adopting new tools, some employers conduct focus groups. "They want to make sure that it's something that employees will use and it's something they're interested in before they'll make

that available to them," Ms. Shebel said.

Randolph Carter, senior vp in the communications practice of Sibson Consulting, a division of The Segal Co. in New York, said some employers have made the leap from thinking about publications to thinking about content and matching content to new vehicles for conveying that information.

"Most, however, are still most comfortable thinking about communications in terms of, 'We've got to do a brochure, we've got to put it in the newsletter,'" Mr. Carter said.

Wait and see

A lot of employers are waiting to see what works before investing in new communications technologies, said Kathy Kibbe, North American director-communications and change management with Towers Watson & Co. in San Francisco. As those successful strategies begin to emerge, things will start to move more quickly, she predicted.

That could happen in fairly short order. Among 604 global companies surveyed by Towers Watson in April and May 2011, 69% said they planned to increase their use of social media tools during the next 12 months.

Yet among many human resource departments, scant or nonexistent communications budgets remain a barrier to effective

communications. According to an ADP Research Institute survey, 36% of large employers and 66% of midsize employers have no employee communications budget (see related box).

Mr. Carter said embracing new technology would help employers do more with less.

TECHNOLOGY TRENDS

With more companies pushing benefit decisions onto their employees, a recent survey looks at employers' use of communications and decision-support tools to help employees with that process.

EMPLOYEE BENEFIT COMMUNICATIONS BUDGETS SQUEEZED

Thirty-six percent of large employers (those with 1,000 or more workers) have no employee communications budget, while 66% of midsize employers (those with 50 to 999 workers) have no employee communications budget. Among those with a budget, human resources decision-makers at about half of large and midsize companies say budgets have remained the same in the past year.

DECISION-SUPPORT TOOLS

The most common decision-support tools are flexible spending account calculators, plan comparison charts, medical cost calculators and wellness incentive modeling. Fifty-three percent of large firms and 50% of midsize companies offer these tools the entire year; 23% of large companies and 33% of midsize firms provide them only during open enrollment and qualified events.

MOBILE APPLICATIONS

Mobile access to benefit information is deemed important by about 60% of HR decision-makers across companies of all sizes. Those drawing the most interest are apps that offer health care provider information, benefit alerts and single sign-on, which allows secure access to all apps with a single user ID.

WEB-BASED PORTALS

Eighty-six percent of large companies and 71% of midsize companies have a Web-based portal that hosts employee benefits information. Forty percent of large employers and 38% of midsize firms that offer these portals have a single Web-based portal that provides access to multiple information types, vs. multiple portals for each primary task. Single portals typically offer access to benefits, pay stubs, time and attendance, tax withholding and more.

Source: ADP HR/Benefits Pulse Survey on Employee Benefit Tools

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"Everybody has a cellphone in their pocket. Employers who recognize that fact and are comfortable using those cellphones to reach people are the innovators," he said.

If a company is going to spend \$50,000 on communications to introduce some new life-cycle funds to the 401(k) plan, he argued, it ought to go ahead and make the additional \$5,000 to \$10,000 investment required to provide Internet and smartphone access to that information.

Cutting-edge communications also can help cut through the clutter

'Everybody has a cellphone in their pocket. Employers who recognize that fact and are comfortable using those cellphones to reach people are the innovators.'

Randolph Carter, The Segal Co.

of messages bombarding employees. "Employers who are truly interested in reaching people's attention will explore new methods, new techniques to really get their messages across," Mr. Carter said.

According to a 2011 benefit enrollment survey, Towers Watson found that one of the greatest challenges employers face is helping employees grasp new plan features. So when Dallas-based casu-

al-restaurant company Brinker International Inc. replaced its traditional preferred provider organization offerings with high-deductible health plans in 2011, the company knew it had a huge communications challenge on its hands.

The change immediately affected 12,000 full-time and salaried employees and spouses who were enrolled in the plans and would need to elect new coverage. Brinker hired Abernethy Media Professionals in Dallas to produce a series of five short, videos to explain various aspects of the new plans. Each featured a cartoon character named Sam.

"The approach that we chose was by having this fictitious character, Sam—it made it feel like 'Sam's just like me,'" said Virginia Nisbet, Brinker's director of benefit design. Given the complexities of health benefits and the significant changes facing Brinker's employees, Ms. Nisbet wanted "to make it more personal and simple, as simple as you can make health care," and opted for the cartoon concept.

Brinker spent \$15,000 on videos for its 58,270 employees, and that upfront investment has paid off in several ways, Ms. Nisbet said. For one thing, it appears people understood the available options. Not only did Brinker sustain health plan enrollment, but people who had never enrolled before decided to participate in the plans.

What's more, the company's call center didn't receive the usual volume of calls that usually come in after an open enrollment period, Ms. Nisbet noted.

"People were understanding what they needed to do and how things were going to be different because of the information they received," she said.

Employee benefits communications see technological advances

By KAREN PALLARITO

With the proliferation of electronics in everyday life—from iPads and laptops to photo- and video-enabled smartphones—most employees are never far from a gadget that makes it possible to communicate health, wellness and retirement information in new and interesting ways.

Not every employee wants or needs a smartphone app that can download an open enrollment video or calculate how much to sock away in a retirement account. But for employees who prefer tools like these, technology is unleashing an endless stream of possibilities.

Human resource experts say what employees are demanding and what employers are delivering varies widely from one company to the next. “It really depends on the workforce and what the preferences are of the workforce,” said Brenna Shebel, assistant director of the Institute on Health Care Costs and Solutions at the National Business Group Health in Washington.

While email and intranet communications are old hat, innovative employers are exploring various phone, Web and social media applications.

Here are some of the latest communications technologies popping up in benefits management offices across the country:

■ **SOCIAL MEDIA.** Soon after international media and education company Pearson launched Neo, a Facebook-like platform connecting its employees around the globe, the U.S. benefits team began planning its first major wellness initiative: a virtual trek around the world called the Global Corporate Challenge. By leveraging Neo, Pearson exceeded its participation goal by 35%, recruiting 5,348 employees across 764 teams, said Theresa Rich, Pearson’s manager of health promotion in New York.

■ **BLOGS.** “Blogs are an incredibly effective way to educate people because you can give (employees) little bite-sized pieces of information and it’s much more aligned with how adults learn now, how we digest other information online,” said Jennifer Benz, chief strategist and founder of Benz Communications in San Francisco. A company can get a microsite on the Internet at very low cost, and “there’s a ton” of ready-to-use content from various carriers and vendors, she said. “A benefit manager who wants to do this on their own has a ton of information at their fingertips,” she added. Employers and their calls centers are answering questions one on one all the time, so they might as well do it on the blog, she said.

■ **VIDEO CLIPS.** Smartphones that double as video cameras are making it easier and cheaper than ever to record and post video clips. “So why not use it? Why not send someone from HR to walk around the building and talk to

people and then post it on the intranet, maybe even post it on YouTube, and let people hear what their colleagues are thinking and saying,” said Randolph Carter, senior vp in the communications practice of Sibson Consulting, a division of The Segal Co., in New York.

■ **GAMES.** Before the last state legislative session, the Employee Retirement System of Texas rolled out an interactive Web-based game allowing health plan participants to submit their individual preferences for handling a looming budget shortfall. Kathy Kibbe,

‘Blogs are an incredibly effective way to educate people because you can give (employees) little bite-sized pieces of information.’

Jennifer Benz, Benz Communications

North American director of communication and change management with Towers Watson & Co. in San Francisco, has a client who conducted a texting game in which employees scavenged for key pieces of information about their benefit plan. “This was an

example of a creative way to engage people,” said Ms. Kibbe. “When they’re having fun, they’re learning.”

■ **SMARTPHONE APPS.** Quick response codes have popped up everywhere, from advertisements to product packaging. Scan the

code with a smartphone to receive additional product information, videos, coupons, and more. Now benefits managers are pondering ways to use the codes to provide more information, too, consultants say.

■ **TEXT MESSAGES.** Employers are thinking about how to sync up the message with the medium, Ms. Shebel said. Text messages are great for reminders or reiterating information that’s been previously presented to employees. But, it would not be appropriate for introducing very large benefit changes, she said.

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Targeted message can bring clarity to benefit changes

Meet personal needs of entire workforce in communications

By LOUISE ESOLA

Employers that want their employees to better understand their benefits could borrow tactics used by advertisers and marketers: Know your audience and customize the message to meet their personal needs.

So say benefits communications experts who are trying to get their clients to do just that to ensure employees know how ever-changing benefits such as health care and retirement affect them.

"Everyone is so busy, and in this economy employees are being asked to do more with less and are being asked to manage their own benefits," said Betsy Woods Brooks, a Stamford, Conn.-based principal in the communication practice of Buck Consultants L.L.C., adding that the shifts toward defined contribution retirement and consumer-driven health plans have helped create a maze of confusion among workers. "It's putting more personal ownership and accountability into managing your benefits. All of that requires greater understanding."

As a recent survey reveals and experts agree on, nearly half of employees are not getting the message.

In December 2011, an ADP/Human Resources Pulse survey ADP HR/Benefits Pulse Survey

on Employee Benefits Tools revealed that 40% of employees do not understand their benefits plans, according to human resource decision-makers.

That figure doesn't surprise benefits communications experts, who said the challenge is multi-pronged: Benefits designs are calling for more employee decisions that put more power in the hands of workers, plans are more complicated than ever, and workers are bombarded with information every day, left to sift through what's important and relevant to them.

"It's just a complicated alphabet soup for some people," said Ann Bongiani, Seattle-based senior consultant for Towers Watson & Co.

"There are some complicated issues on how to manage the health care system...these tend to lull people to sleep," said P.J. Waters, a communications consultant with Lockton Cos. L.L.C. based in San Diego. "Appreciating our audience is definitely the first step."

"Most companies are still using a one-size-fits-all approach," said Ms. Bongiani of what she says is one of the biggest pitfalls in presenting benefits information to employees.

The term "targeted communications" is not a new one in the realm of human resources, but it is one that is becoming more commonplace as benefits get more complicated and the workforce more diverse.

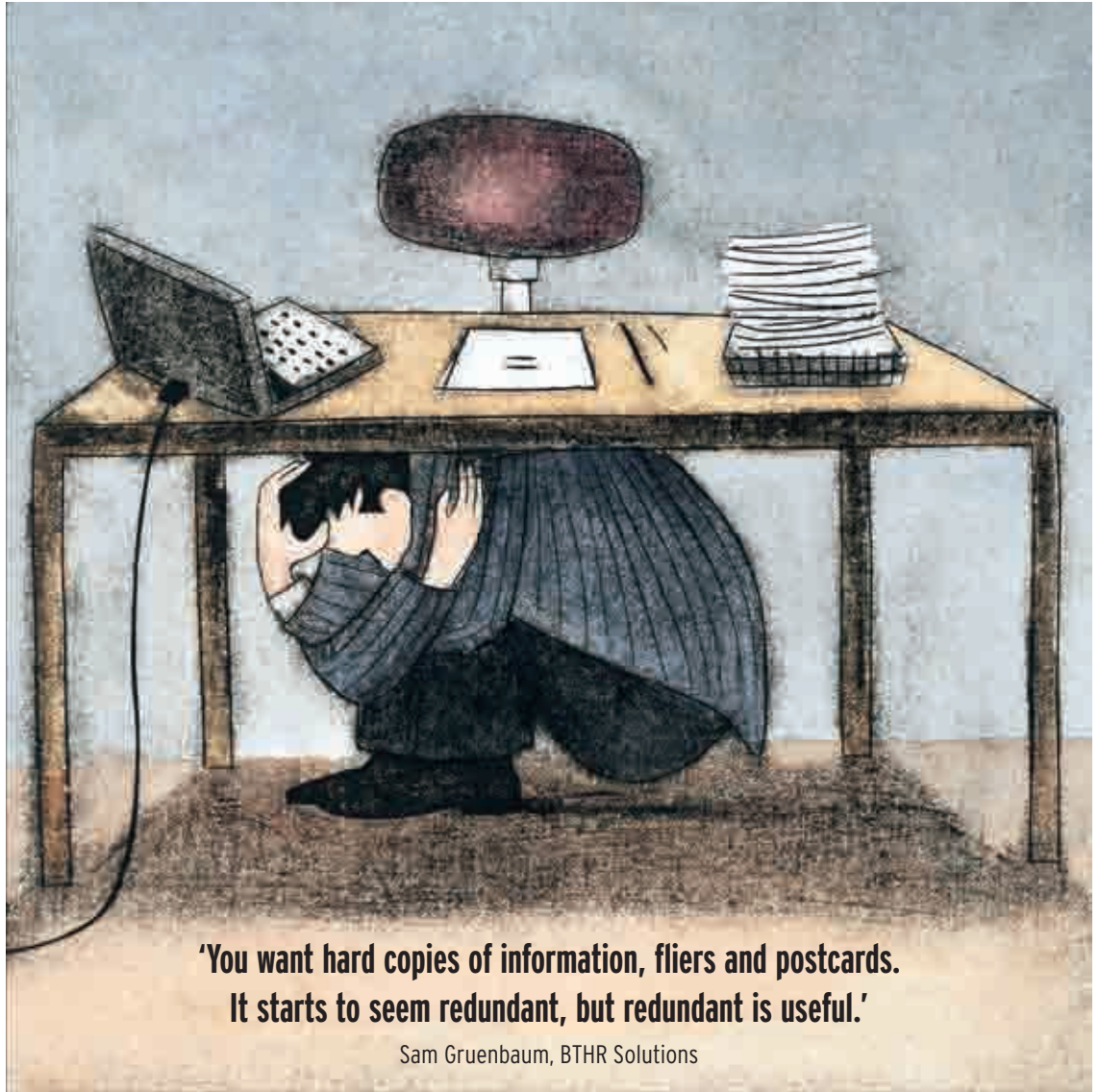
"Employers and human resources have always tried to emulate consumer marketers and haven't always been successful," said Ms. Brooks of Buck Consultants. "Now they have a greater need to do that."

"We have to understand that our employees are in a highly customizable world now, and we need to look at how we can (accommodate) that," said Jim Hoff, Chicago-based partner with the communication practice of Aon Hewitt.

An obvious but often overlooked problem with human resource communications is the language barrier in many workplaces, experts say. An easy fix is to rely on translators, said Mr. Waters, whose firm is among those who provide translation as part of their service to employers.

Next and most prominent are the various ages of employees, which experts say is tied to how certain demographics best receive information, experts say.

Robin Throckmorton, president



'You want hard copies of information, fliers and postcards. It starts to seem redundant, but redundant is useful.'

Sam Gruenbaum, BTHR Solutions

Communicate messages in various ways

If a company wants to get the word out and explain benefits, its human resource professionals should rely on a variety of ways to communicate.

A simple way to do this without segregating your workers into groups is to communicate a message in at least three ways, according to Robin Throckmorton, president of Cincinnati-based Strategic Human Resources Inc., a firm that provides human resources services to small and midsize companies. "It's going to take that constant reminder because people will pick and choose what they want to listen to," she said. Varying the way the messages are communicated is key, experts say.

Sam Gruenbaum, president of Needham, Mass.-based BTHR Solutions, a human resource consulting firm and provider of communications services for companies, provided a strategy for diversifying the message.

of Cincinnati-based Strategic Human Resources Inc., a firm that provides human resources services to small and midsize companies, has examined different age groups of workers and has determined, using research and focus groups, how certain demographics like to obtain their information.

The findings? The "radio babies," another name for anyone

born between 1930 and 1945, prefer face-to-face communication; baby boomers, born between 1946 and 1964, like to learn things in groups; generation X, workers born between 1965 and 1976, prefer email; and generation Y, born between 1977 and 1990, also like email but more and more prefer to receive reminders over mobile phone text messages.

First, provide an introductory message to all employees via managers' memos, emails, workplace meetings, etc. Then, to provide an in-depth look at the benefits plan or changes, make the information available in a multitude of ways, allowing employees to engage in the method they prefer. Emails and postings on company websites are universally accepted as a way to get employees' attention, but employers should "always recognize that some people won't look at anything electronic," said Mr. Gruenbaum. "You want hard copies of information, fliers and postcards. It starts to seem redundant, but redundant is useful."

Most effective, he said, are employee meetings, whether voluntary or involuntary. "The face to face is critical," he said. "Can't afford the face time? Technology can simulate this with online chats during enrollment. Or employers can

set up a phone center" staffed with HR representatives.

Jennifer Benz, chief strategist and founder of San Francisco-based Benz Communications, a firm that provides communication and human resource strategies for companies, said to keep things personal.

"Benefits are so much about peoples' lives, and that's very personal," she said. "People are used to having things presented the way they want it. You should be using every communication channel that you can."

Experts also recognize that while some companies may have a budget to provide multiple-channel communication, others don't. Also, added Mr. Gruenbaum, the recession has led to cutbacks in funding toward communication and human resources. But that's changing, as plans get more complicated, he said.

"The stakes are high," he said.

—By Louise Esola

TARGETING WORKER COMMUNICATIONS

- **"RADIO BABIES,"** another name for anyone born between 1930 and 1945, prefer **FACE-TO-FACE** communication.
- **BABY BOOMERS,** born between 1946 and 1964, like to learn things **IN GROUPS.**
- **GENERATION X,** workers born between 1965 and 1976, prefer **EMAIL.**
- **GENERATION Y,** born between 1977 and 1990, also like email but more and more prefer to receive reminders over mobile phone **TEXT MESSAGES.**

Source: Strategic Human Resources Inc.

This shows that, to get the word out and explain benefits effectively, human resource professionals should use a variety of ways to communicate (see related story). "You have to keep who you are trying to communicate with in mind when you want to get a message across," Ms. Throckmorton said. "But you also don't want to alienate your employees."

Proposals pose communications challenge

Workers would face tough decisions on retirement plans

BY JERRY GEISEL

WASHINGTON—Treasury Department rules that would give employees more choices in how they receive retirement plan benefits when they leave a job or retire would pose another benefit communication challenge for employers.

The proposed regulations, released this month, deal with what often is described as an “all-or-nothing” benefit payout approach inherent in defined benefit plans and defined contribution plans, such as 401(k) plans.

That approach is so named because in some defined benefit plans, such as cash balance plans, employees may have the choice of taking their accrued benefit as a cash lump sum or as a monthly annuity payable at retirement. However, federal rules make it difficult, if not impossible, for employees to take that payout as part lump sum and part annuity.

In addition, traditional pension plans often provide only a monthly annuity.

On the defined contribution plan side, participants’ benefits are provided as a lump sum, though a terminating employee or retiree could take the money and use it to purchase an annuity from an insurer.

However, the new Treasury Department guidance would expand the way defined benefit and defined contribution plan participants could take their benefits.

For example, in a defined benefit plan, terminating employees or retirees could take part of their accrued benefit as a lump sum and part of it as an annuity.

On the defined contribution side, plan participants could take a portion of their benefit as a lump sum and the other part as an annuity they would purchase with the remaining balance of the lump sum from their employer’s defined benefit plan, assuming the employer offered such a plan.

In advancing the proposals, the Obama administration said more needs to be done to expand choices available to retirees.

“When American workers take the responsible step of saving for retirement, we should do all we can to provide them with sensible, accessible choices for managing their hard-earned savings,” Treasury Secretary Tim Geithner said when the proposals were unveiled.

“The essence of choice as it applies to retirement benefits is key,” said Marina Edwards a senior retirement consultant in the Chicago office of Towers Watson & Co.

In fact, employees in defined benefit plans can face a difficult decision. Should they take their benefit as a cash lump sum payment that could run out during their retirement? Or, should they take the benefit as an annuity that would pay a smaller, fixed amount that would last through their retirement?

But by taking part of an accrued benefit in cash and the other part as an annuity, “some of the risk in benefit decision-making is taken off the table,” Ms. Edwards said.

“There really isn’t a downside to it,” said Martha Tejera, an adviser with the Institutional Retirement Income Council, a retirement think tank in Iselin, N.J.

By allowing combinations of partial annuities and cash lump sums, retirees would “receive a steady stream of income for the duration of their lifetimes, while also keeping a portion of their savings invested in assets with the flexibility to respond to liquidity needs,” the Treasury Department said.

More choice also would be provided by the defined contribution plan part of the administration proposal, under which employees could take part of their lump sum benefit to purchase an annuity that would be paid directly by the employer’s defined benefit plan.

“Retirees wouldn’t have to go to the retail market to buy an annuity. There would be a lower-cost option available through their employers,” said Ms. Tejera, who also is the founder of Tejera & Associates L.L.C., a retirement plan consulting firm in Bainbridge Island, Wash.

The Treasury Department proposals would not require employers to add such benefit payout features to their defined benefit and defined contribution plans, but some experts say employers likely would add such options gradually.

“First though, they will need to assess administration and communication issues,” said Alan Glickstein, a senior retirement consultant with Towers Watson in Dallas.

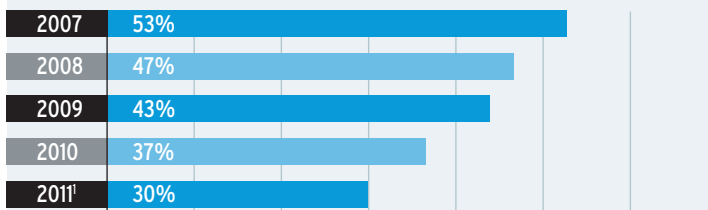
Indeed, communicating the new benefit distribution options would be a challenge for sponsors who decide to expand the options available to employees covered by defined benefit or defined contribution plans.

“One of the greatest challenges, however, will be in communicat-

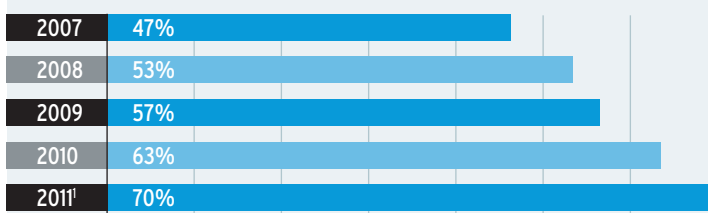
RETIREMENT PLAN SHIFT

Fortune 100 companies are moving away from defined benefit pension plans, with a growing percentage offering defined contribution plans as their sole retirement savings plan to newly hired salaried employees.

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PERCENT OFFERING ONLY DEFINED CONTRIBUTION PLAN



¹ As of May 31, 2011.

Source: Towers Watson & Co.

ing the various distribution options to employees, particularly in explaining the value of a lifetime income stream compared to a lump sum option,” said Anne Waidmann, a director with PricewaterhouseCoopers L.L.P. in Washington.

As for plan participants, “There would be definite interest and

employers likely would respond to that interest,” Ms. Waidmann said.

Still, the proposed rules are just that. It isn’t clear when the Treasury Department will finalize them, while the Labor Department also is expected to weigh in on the issue.

“This is a starting point,” Ms. Tejera said.



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‘One of the greatest challenges will be in communicating the various distribution options to employees, particularly in explaining the value of a lifetime income stream compared to a lump sum option.’

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Enhanced health incentives aim to promote engagement

By **JERRY GEISEL**

Employers are moving beyond “trash and trinkets” to more powerful financial incentives for employees to complete health risk assessments and take other steps to spot medical problems and to improve their health.

More employers, frustrated by health care plan cost increases that far exceed rises in the overall cost of living, are putting financial teeth into corporate wellness programs.

At Minneapolis-based medical technology firm Medtronic Inc., employees who complete a health risk assessment receive a \$50 monthly reduction in their health insurance premium contributions.

“We had to do something that we think will lead to lower health care costs,” said Gen Barron, Medtronic’s senior manager-wellness, noting that about 90% of its employees complete health risk assessments each year.

Similarly, employees at North Shore-LIJ Health System in Lake Success, N.Y., can have their annual health insurance premium contribution reduced by up to \$1,040 if they take actions to improve their health, such as completing a health risk assessment, providing various biometric information, getting a flu shot, providing information on their primary care doctor, certifying they are nonsmokers, or enrolling

in a smoking-cessation program.

At Lockton Cos. L.L.C., a Kansas City, Mo.-based insurance broker and consultant, employees pay up to 10% in higher health insurance premiums if they don’t take steps to improve their health status, such as keeping their blood sugar levels under control.

“Those employees who don’t reach certain health care goals will have to pay more for health insurance, in some cases significantly more,” said Jo-Ann Gastin, Lockton’s senior vp and director of human resources.

These employers are among those who have moved beyond the early generation of corporate wellness programs, which got their

INCENTIVE PLANS

Types of incentives used to persuade employees to have health risk assessments among large employers offering incentives*

INCENTIVE	PERCENT USING
Lower premium contributions	43%
Cash	40%
Contributions to HRAs, HSAs or FSAs	10%
Lower deductible, copay or other cost-sharing	7%

*For employers with at least 500 employees
Source: Mercer L.L.C.

tongue-in-cheek description “trash and trinkets” because many of the programs offered small incentives for employee wellness efforts.

“Today, it is a premium differential or, if you have achieved a

goal, a differential perhaps on coinsurance requirements,” said Steven Noeldner, a partner in the Newport Beach, Calif., office of Mercer L.L.C.

“It is all about sustainability, about changing behavior. Financial incentives can make a big difference,” said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

“Money is important to get the ball rolling,” added LuAnn Heinen, a vp with the National Business Group on Health in Washington.

Still, financial incentives aren’t the only ways employers can promote wellness, experts say.

To send the right message, employers should offer healthy choices at company cafeterias and at company events, the NBGH’s Ms. Heinen said.

At Medtronic’s on-site cafeterias, healthy food options are identified with a special icon. Healthy entrees do not exceed 500 calories per serving, and other healthy food options do not exceed 3 grams of fat per 100 calories.

Other strategies employers use is to pay fees—if certain conditions are met—for employees who join programs to help them lose weight.

For example, at North Shore-LIJ, the 43,000-employee health care system will reimburse participation fees in a Weight Watchers International program for an employee’s first set of meetings if the employee loses 5% of his or her body weight. Then, an individual has to hit a weight goal or lose 10% of body weight to receive full reimbursement for a second series of meetings.

At last count, employees in the program had lost nearly 42,000 pounds, said Jane Jacobson, director of North Shore-LIJ’s employee wellness and safety practice.

Other employers retain coaches to help employees meet health objectives and monitor their progress. Medtronic says more than 60% of employees working with a health coach, which the company pays for, have eliminated or reduced at least one health risk.

Another employer approach is to offer on-site programs in which medical tests, such as taking blood samples, try to spot health conditions before they develop into expensive-to-treat medical problems.

At Medtronic, an on-site screening detected colon cancer in an employee in his 40s in sufficient time to successfully treat the cancer, saving the employee’s life, Ms. Barron said in providing a real-world example of the value of such screenings.

Overall, Medtronic estimates it has achieved a more than 2-to-1 return on investment in its wellness programs.

Still, in measuring cost savings through wellness programs, employers have to look at a variety of factors, such as their employee turnover rate, said Christian Moreno, a vp in the Dallas office of Lockton Dunning Benefits Associates.

“You have to understand your population,” Mr. Moreno said.

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Market Moves

Broker BMS opens New York office

NEW YORK—London-based insurance broker BMS Group Ltd. has opened an office in New York, BMS said in a statement.

BMS CEO Carl Beardmore will use the new office as his base and spend the majority of his time in the United States, BMS said in its announcement. Larry Cantwell, executive vp, will serve as lead producer in the new office.

BMS also said it is in the process of moving the servicing of all reinsurance accounts to Minneapolis.

“Opening an office in Manhattan is vital to the continued expansion of our U.S. platform to complement our strong London position and build a truly unified reinsurance platform,” said Mr. Beardmore in a statement. “The new office will primarily be a production center....However, it is also designed to be a hub for all our markets, and any staff or clients who want to use the facilities will be made very welcome.”

The office is located at 230 Park Ave., Suite 1160, New York, N.Y. 10017. The phone number is 646-778-4840.

Lockton relocates to expanded Tenn. office

MEMPHIS, Tenn.—Lockton Cos. L.L.P. has moved its Memphis division to expanded office space in Memphis, Tenn., the Kansas City, Mo.-based brokerage said.

The Memphis division opened in June 2011 and since then has added five employees to its property/casualty insurance and employee benefits practice, with plans to hire more.

The office is located at 1715 Aaron Brenner Drive, Suite 512, Memphis, Tenn., 38120. The phone number is 901-757-6900.

InsureZone adds Sequoia to online rating platform

FORT WORTH, Texas—InsureZone Inc. said that it has added middle-market underwriter Sequoia Insurance Co. to its online commercial rating platform.

Fort Worth, Texas-based InsureZone, which provides independent brokers and agents with comparative ratings of personal and commercial insurers, on-demand policy quotes and branded wholesale websites, said in a statement that the partnership with Sequoia is the first step in its push to expand its roster of state-level insurers.

“Our goal for 2012 is to add the carriers required by our partner agencies so that they have a true comparative rating experience with all of the carriers in their market,” InsureZone President Ed Gillman said in the statement. “By focusing on developing our state-level roster of carriers, we’re able

to offer agents options that they wouldn’t otherwise have without a direct appointment.”

In addition to single-state underwriters, Mr. Gillman said InsureZone, which serves more than 20,000 independent agents nationwide, also is open to including regional insurers in its databases.

For more information, contact Mr. Gillman at 817-704-2223.

Buckner acquires Idaho insurance firm

REXBURG, Idaho—The Buckner Co. has acquired Rexburg, Idaho-based Leonardson Insurance Trac One L.L.C. for an undisclosed sum.

The acquisition will continue the company’s plans to diversify

into agriculture and crop insurance. The Salt Lake City-based insurer opened its first Idaho office in April 2011, which has continued to grow, said Randah Urbina, the director of corporate marketing, in a statement.

For more information, contact Brad Nielson, president of Idaho offices, at 208-221-3005 or bnielson@buckner.com.

Navigators Re launches PL reinsurance unit

NEW YORK—The Navigators Group Inc.’s principal underwriting agency subsidiary, Navigators Management Co., is expanding its Navigators Re division by launching a professional liability reinsur-

ance unit, the company said.

The unit will be headed by William C. Redington, who was head of professional liability at Princeton, N.J.-based Munich Re America from 2004 to 2011.

The professional liability reinsurance unit is the fourth for New York-based Navigators, adding to its agriculture, accident and health, and Latin American property/casualty units.

For more information, contact Mr. Redington at 267-234-9883 or bredington@navg.com.

JLT announces new division

LONDON—JLT Specialty Ltd. has launched a new risk practice divi-

sion, the London-based broker announced.

The new unit comes after a reorganization of the brokerage’s its global risk solutions and regional partnership divisions and will focus on communication, technology and media risk practice, life science risk practice, major risk practice and risk practice regional offices.

Major risk practice includes utilities, transport, food and drink, professions, engineering, retail, and complex risks. Risk practice regional offices include the public sector, leisure and corporate recovery.

For more information, contact Stuart Winter, risk practice partner, at +44 (0) 207-528-4756 or stuart_winter@jltgroup.com.

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Catastrophes, weak investments weigh on U.S. insurance industry

Underwriting losses of \$15.2 billion hit market last year

By MATT DUNNING

An unprecedented number of natural catastrophes, weak investment returns and a generally sour economy severely impaired oper-

ating performance and growth for the commercial insurance and reinsurance segment of the U.S. property/casualty insurance industry in 2011, A.M. Best Co. Inc. said in a new report.

Commercial property/casualty underwriters experienced an estimated \$15.2 billion in underwriting losses in last year, the Oldwick, N.J.-based rating agency said, pushing the segment's com-

bined ratio to an estimated 108.2% last year from 102.7% a year earlier.

Though greater industry focus on underwriting and pricing discipline boosted net premiums written by an estimated 3.9%—to \$181.2 billion in 2011, the segment's first year-to-year increase since 2004—net income for commercial property/casualty insurers dropped an estimated 40.3%, to \$11.7 billion in 2011, according to the report.

A large portion of the industry's underwriting losses, Best said, were due to severe U.S. storms, flooding and wildfires, as well as primary and contingent business interruption losses stemming from international natural catastrophe events, such as the Japanese earthquake and tsunami and the Thailand flood.

Damage to the property/casualty industry was especially high in 2011 because many of the individual U.S. loss events were not great enough to trigger reinsurance programs, leaving underwriters liable for a greater percentage of the insured losses, Best said.

Combined ratio deterioration was worst among fire and allied and commercial multiperil insurance lines, which Best estimated rose to 103.2% in 2011 from 82.5% in 2010, and to 117.1% from 100.2%, respectively.

Workers compensation combined ratios increased to an estimated 118.5% from 116.8%, while ratios for inland marine lines increased to 95.2% in 2011 from 86.2% a year earlier.

Grouped together, combined ratios for professional risk, directors and officers, excess casualty, product liability, environmental risk, general liability and employer practices liability lines decreased in 2011, down to 105.1% from 109.8% in 2010.

Macroeconomic conditions

Beyond insured losses, Best noted that macroeconomic conditions were also to blame for the commercial segment's lackluster performance in 2011. Investment income remained depressed for commercial property/casualty underwriters, yielding just 3.9% in 2011, Best said.

Looking to the year ahead, Best reported that it will maintain its negative outlook for the commercial property/casualty segment despite some signs of recovery in the economy and price stabilization in the industry.

The report said the apparent firming of premiums for some products is encouraging, but it has not convinced Best analysts that a long-term reversal of soft prices has arrived. But Best said it expects pricing to continue upward in 2012 for those products and geographies where loss experiences remain high, particularly catastrophe-exposed property liability and workers compensation.

UP CLOSE

GINA HIGGINS



NEW JOB TITLE: New York-based senior managing director of the commercial insurance services group for Frank Crystal & Co.

PREVIOUS POSITION: New York-based executive vp overseeing the national middle-market division and client advocate practice at Willis North America.

GOALS FOR NEW POSITION: I want to penetrate the book of business we have. We have clients that have been with us for a long time. I view that as a sign that we are doing a great job for them because the retention rate is high. What I would like to do is develop and design innovative products for them to better serve them.

CHALLENGES FACING INDUSTRY: As the market hardens, the challenge will be placing appropriate programs and services for companies. In a soft market, anyone can broker anything. In a hard market, you need the experience of solid brokers with a good background who know how to navigate the market and find the best deals for clients.

INDUSTRY OUTLOOK: It's very positive. We are looking at growth and moving forward. I see us growing stronger. It's a product that everyone needs. Regardless of the challenges, clients will still need proper insurance at the end of the day.

BEST THING ABOUT A BAD ECONOMY: You see creativity among experienced brokers. We are working with limited budgets, so you have to be creative.

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ADVICE: It's a great field to be in. The best thing you can do is get to know the products very well. Form close relationships with the markets.

OUTSIDE THE INDUSTRY, A DREAM JOB: I have a law background, so it would be litigation. I like challenges and I like to think on my feet.

HOBBIES: I love reading, walking and skiing. I enjoy doing things with my children.

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LEGAL NOTICE

IN THE MATTER OF THE CONSERVATION OF THE TRUST FUNDS OF RELIANCE INSURANCE COMPANY AS SUCCESSOR IN INTEREST OF RELIANCE INSURANCE COMPANY OF ILLINOIS
Supreme Court of the State of New York
County of New York - Index No.: 403409/02
NOTICE

Pursuant to an order of the Supreme Court of the State of New York, County of New York ("Court"), entered November 18, 2002, the then-Superintendent of Insurance of the State of New York and his successors in office were appointed as conservator ("Conservator") of a certain trust fund ("Trust Fund") of Reliance Insurance Company of Illinois ("RICI") and, as such, has been directed to conserve funds in the Trust Fund pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Superintendent of Financial Services of the State of New York has now succeeded the Superintendent of Insurance as Conservator of RICI. The Conservator has, pursuant to Insurance Law Article 74, appointed Jonathan L. Bing, Special Deputy Superintendent ("Special Deputy"), as his agent to carry out the responsibilities of the Conservator, through the New York Liquidation Bureau ("Bureau"), 110 William Street, New York, New York 10038. The Conservator, by the Special Deputy, has submitted to the Court a verified petition ("Verified Petition") seeking an order: (a) approving the conservation agreement ("Conservation Agreement") executed on October 14, 2011, a copy of which is annexed to the Verified Petition as Exhibit 1, by and between Michael F. Considine, Insurance Commissioner of the Commonwealth of Pennsylvania as liquidator ("Liquidator") of the Reliance Insurance Company entities, including RICI, and the Conservator; (b) authorizing the Conservator to distribute the Trust Fund to the Liquidator in accordance with the terms of the Conservation Agreement; (c) releasing and discharging, upon distribution of the assets in accordance with the terms of the Conservation Agreement and the filing of a final report, the Conservator, his predecessors and successors in office, their agents, attorneys and employees, from any and all liability arising from their acts or omissions in connection with this proceeding; (d) authorizing the Conservator to take further actions which he, in his discretion, deems advisable for the protection of creditors and of the assets in his possession and for the termination of this proceeding; and (e) providing for such other and further relief as this Court.

The matter is scheduled for submission on the 9th day of April, 2012 ("Return Day"), at 9:30 a.m., before the Court, at the Motion Submission Part, Room 130, at the courthouse located at 60 Centre Street, New York, New York 10007. If you wish to object to the Verified Petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Conservator and Clerk of the Court, at least fifteen business days prior to the Return Day. Service on the Conservator shall be made by first class mail at the following address:

Superintendent of Financial Services of the State of New York as Conservator of Reliance Insurance Company of Illinois
110 William Street
New York, New York 10038
Attention: John Pearson Kelly
General Counsel

By filing the Verified Petition, the Conservator is seeking the approval of the Conservation Agreement from the Court. The Verified Petition and supporting papers are available for inspection at the above address. In the event of any discrepancy between this notice and the documents submitted to Court, the documents control. Requests for further information should be directed to the Bureau's Legal Division at (212) 341-6755.

Dated: January 24, 2012
Benjamin M. Lawsky
Superintendent of Financial Services of the State of New York as Conservator of Reliance Insurance Company of Illinois

REQUEST FOR PROPOSAL

NOTICE OF REQUEST FOR PROPOSALS FOR THE HONOLULU RAIL TRANSIT PROJECT OWNER CONTROLLED INSURANCE PROGRAM ("OCIP") CONSULTING SERVICES AGREEMENT REQUEST FOR PROPOSALS NO. RFP-HRT-459003

The Honolulu Authority for Rapid Transportation requests proposals from qualified persons or firms to provide consulting services to assist HART in the development, procurement of coverage, implementation and administration of a comprehensive OCIP for the Honolulu Rail Transit Project. Responses to this RFP are due Thursday, March 1, 2012 by 2:00 pm HST. Interested parties are advised to visit the City's website at:

<http://www.honolulu.gov/pur>
for the solicitation notice.
Questions may be directed to:
transitmailbox@honolulu.gov.

LEGAL NOTICE

Notice of termination of the Scheme of Arrangement between North Atlantic Insurance Company Limited and its Scheme Creditors

In the High Court of Justice
Chancery Division
Companies Court
Claim No. 1448 of 2002

In the Matter of
NORTH ATLANTIC INSURANCE COMPANY LIMITED

and In the Matter of the Companies Act 1986

NOTICE IS HEREBY GIVEN that the Scheme of Arrangement terminated on 1 February 2012, being the date on which, in accordance with clause 81.1 of the Scheme, the Scheme Administrators gave notice to North Atlantic Insurance Company Limited (the "Company") and The Financial Services Compensation Scheme Limited that there is no further property of the Company that can be cost effectively collected and be distributed in accordance with the provisions of the Scheme of Arrangement.

Should you have any questions regarding this Notice, please address them to James Ferris at PricewaterhouseCoopers LLP, 7 More London, Riverside, London SE1 2RT, United Kingdom.

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Religion: Bias claims on the rise

CONTINUED FROM PAGE 3

diversity that exists in this country and the workplace," said Ron Chapman Jr., a shareholder with law firm Ogletree Deakins Nash Smoak & Stewart P.C. in Dallas. Religious groups "are becoming more cognizant about their rights and more vocal about asserting those rights," he said.

Employers "are more savvy about what their rights are and more aware" of where they can seek an accommodation, "so they tend to look for opportunities" where they can do so, said Diana L. Hoover, a partner with Hoover Kernell L.L.P. in Houston.

It's possible, she said, that some employers are unaware of their need to accommodate employees on a religious basis.

"There's been so much publicized about sexual harassment and sex and racial harassment and discrimination and even age" discrimination, but "I don't know that there's been a similar focus" on religious discrimination in the workplace, she said.

In addition, religious rhetoric in the U.S. presidential campaign may have become another factor as political developments become topics of discussion on the job, some observers say.

"Anytime you have the kind of rhetoric that we've seen on both sides—Democrats and Republicans proclaiming their strong religious beliefs—it does lead those who don't fall within those same religious beliefs to wonder if they're being excluded," said Gregory V. Murray, vp at Vercruyse Murray & Calzone P.C. in Bingham Farms, Mich.

Many employers are being faced with situations where an employee might want to start a Bible study group and use a conference room, Ms. Hoover said, "and employers start questioning, 'Do I have to do that?'" The political environment "has encouraged people to be more vocal about their religion and to raise it up, and I think employers are behind the curve in understanding what their duties are in that kind of sit-

Knowledge, training key to avoiding claims

By JUDY GREENWALD

Knowledge of the law and good training of supervisors and managers can defuse many situations that lead to religious discrimination claims.

"Take lessons (in) walking the tightrope. The best thing an employer can do is be neutral when it comes to religion and not foster an environment in which employees suffer a hostile workplace because they do not share the religious convictions of their co-workers," said Jeffrey I. Pasek, a member of Cozen O'Connor P.C. in Philadelphia.

"It starts with an understanding of what the law requires," said Ron Chapman Jr., a shareholder with Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Dallas. "It's not just an obligation to not discriminate, but it also includes an affirmative obligation to provide reasonable accommodation in some situations," he said.

"Companies, for example, should be including this topic in their training of supervisors, so that supervisors can recognize when a potential religious accommodation exists." Then they can consult with human resources or in-house counsel "to make sure they're handling the situation correctly," Mr. Chapman said.

"There's no magic bullet," said Samuel J. Cordes, a plaintiff attorney with Samuel J. Cordes & Associates in Pittsburgh. Employers should follow the law in accommodating religious-related worker requests, he said.

He pointed to a situation in which an employee who wants Sunday off for religious reasons and suggests a co-worker who is willing to work that day, but the employer says, "No. If I do it for you, I have to do it for everybody." Employers tend to "go a little overboard" in refusing such requests, said Mr. Cordes. "They need to understand the spirit of these laws" and not force people to choose between their god and their job.

"These laws aren't complex," Mr. Cordes said. If "someone asks for a reasonable accommodation, you do it. I can't think of any situation where someone's religion should be playing any role" in whether they are hired or fired. "Larger

employers need to make sure their lower-level people get that message," he said.

Some observers suggest addressing religious discrimination may be more neglected than sexual discrimination, particularly in firms' training and written policies.

"Historically, employers have spent a fair amount of time and been quite sophisticated about sexual harassment training of both managers and employees," said Amy L. Bess, a shareholder with Vedder Price P.C. in Washington. However, "Employers need to be focused on all aspects of discrimination," including religious discrimination, when rolling out training programs.

Diana L. Hoover, a partner with Hoover Kernell L.L.P. in Houston, said employers should "go back and look at their written policies, because most employers have well-written or substantial sexual harassment discrimination policies because that's always been the big push." But they may have only a "little blurb" that says "do not discriminate on any other basis" to address other forms of bias, she added.

"I think they need to go back and look at that, and analyze: Do our front-line supervisors understand what it means to discriminate on a religious basis, and do we have confidence that our supervisors who do the scheduling, or manage decisions about dress codes, understand and know what their obligations are as it pertains to claims for meeting religious obligations?" Ms. Hoover said.

Philip K. Miles III, an associate with McQuaide Blasko in State College, Pa., said employers "need to understand they have an obligation to engage in the interactive process with employees who seek accommodation for their religion." While most employers are aware they have such an obligation with respect to disability, they "may not be quite as aware, or don't have, a process to handle religious accommodations," he said.

Employers also need to be vigilant and act promptly "when they see any sign of religious intolerance in the workplace" because "it's not the kind of thing that's going to go away on its own," Ms. Bess said.

uation," she said.

Ms. Hoover said her firm's clients include retailers that are open seven days a week, raising the issue of dealing with workers who want Friday and Saturday off, which could be their busiest days, so they "are having to adjust to the idea they may have to accommodate," such workers.

Other issues that may arise include grooming, including the

length of beards and hair; religious requirements to wear religious symbols, which may clash with employers' dress policies; the need to take prayer breaks during the workday; and pharmacy employees who say they are not allowed to assist anyone in obtaining birth control.

Muslim women want to wear headgear ranging from scarves to full burqas "and still claim their

rightful place in the workplace" and equal opportunity, "even though it's off-putting to a lot of business customers," Mr. Pasek said. "But we also see people who are coming into work bringing Bibles, and trying to use their workplace interactions to proselytize, from the person in the next cubicle who plays religious music to the lunchroom lady who serves them mashed potatoes, with

MORE RELIGIOUS BIAS CASES

Employers have faced an increased number of charges filed by the federal Equal Employment Opportunity Commission charging them with religious discrimination. Recent cases include:

THE EEOC ANNOUNCED LAST

WEEK that the Los Angeles Fire Department will pay \$494,000 to settle a lawsuit in which firefighter-engineer Anthony Almeida charged he was subject to sexual and religious harassment, which appeared linked to a lawsuit filed against the Catholic Church regarding sexual abuse he suffered by a priest. The fire department said in a statement that changes it has made since the 2006 events underlying Mr. Almeida's complaint occurred include establishing an EEOC investigative unit.

IN JANUARY, the EEOC filed a lawsuit against Fayetteville, Ark.-based Ozarks Electric Cooperative Corp., charging that it fired an employee who is a Jehovah's Witness after she asked for a day off to attend a religious convention. The company said it plans to vigorously defend the case.

IN DECEMBER 2011, the EEOC filed suit on behalf of 25 former drivers for Hertz Transportation Inc. who are Muslim, who were terminated from their jobs at Seattle's Sea-Tac airport over the issue of clocking out for prayer breaks, in *Hassan Farah et al. vs. Hertz Transportation Inc.* Hertz has defended its actions.

IN NOVEMBER, 2011, Philadelphia-based Imperial Security Inc. agreed to pay \$50,000 to settle a religious discrimination claim made by Julie Holloway-Russell, a Muslim, who was terminated after she refused to remove a khimar, a cloth that covered her hair, ears and neck.

"Have a blessed day."

Mr. Chapman said accommodating religious requests "puts employers in a very tough spot" because they have to comply with religious accommodations while still running their business.

There also is "the danger of a backlash" from other employees who resent the special treatment they perceive these workers are getting, Mr. Chapman said.

Coverage: Employer relief on communication rules

CONTINUED FROM PAGE 4

■ Are there other deductibles for specific services?

■ Is there an out-of-pocket limit on my expenses?

■ What is not included in the out-of-pocket limit?

In an adjacent column, "Answers," responses to the questions will have to be provided. A third column, with the heading "Why This Matters," would have to include additional detail.

In another section of the state-

ment, employers will have to give examples of how coverage applies in two specific situations: having a baby and managing Type 2 diabetes. The examples will have to provide sample costs of treatment.

For each example, employers will have to use a dollar figure dictated by the government on the amount that would be owed to providers. Then, the employer will fill in how much the employee and the plan would pay.

Other information, also using government-supplied figures,

would include sample care costs. For having a baby, cost information would include the first office visit, radiology, laboratory tests and hospital charges for mother and child.

At the bottom of the example, under the heading "You Pay," dollar figures would have to be provided on deductibles, copayments, coinsurance, and limits or exclusions.

However, a third example—the costs of treating breast cancer—that would have been required

under the previous rules was dropped, a deletion benefit experts say was appropriate.

"There is such a variance in costs in treating breast cancer—depending on, among other things, what stage the cancer is in—that it would have been difficult to provide" sample costs, said Paul Dennett, senior vp-health care reform with the American Benefits Council in Washington.

Another change in the final regulations includes the dropping of a requirement that employers dis-

close the plan premiums under "Important Questions."

In addition, the final regulation makes clear that new employees do not have to be provided with paper SBCs for every plan the employee would be eligible to enroll in. Instead, an employer could provide a website on which the SBCs could be viewed or downloaded.

For employees already in a health care plan, the SBC only would have to be provided for the plan he or she is in. But the employer would have to provide an electronic link for other available plans. Employees could request paper copies.

Pensions: Firms plan for funding

CONTINUED FROM PAGE 5

“wall of contributions.”
“It’s definitely starting to hit in 2012 and will probably last a couple years, at least,” said Mr. Glickstein. “As we adapt to this new pension funding law and the unfortunate timing of the economic downturn—and one of the reasons the interest rates are so low is the government holding (rates) down—some plan sponsors are having trouble with that.”

At the end of 2011, the unfunded liability of Ford’s global pension plans was \$15.4 billion, with its U.S. plans underfunded by \$9.4 billion. Its discount rate dropped to 4.64% from 5.24% the previous year.

Boeing’s discount rate dropped to 4.4% from 5.3% a year earlier, and the plans’ funding ratio fell to 75% from 83% a year earlier.

“The deficits at the end of 2011 are as significant as the deficits at the end of 2009,” said Mr. McLaughlin. “It’s a timing decision. Should I fund today or fund in the future? They’d rather pay more today...than spread these contributions over the next couple of years,” said Mr. McLaughlin.

Mr. Collie said Russell is suggesting to clients that they might want to rethink the common practice of waiting until September to make their contributions.

By waiting until September, the last month that calendar-year plans are able to make contributions count toward the funded status of the current year’s valuation, companies are able to control their cash for as long as possible.

“Because the numbers are bigger, if they wait until September there’s the potential of a very crowded trade going on,” said Mr. Collie. Such a concentration of large contributions in September might affect prices of long corporate bonds, which are in relatively short supply.

Rob Kozlowski is a reporter for Pensions & Investments, a sister publication of Business Insurance. P&I Editorial Page Editor Barry B. Burr contributed to this story.

Technology: Changing underwriting

CONTINUED FROM PAGE 4

more about processing business,” he said.

The emergence and prominence of mobile telephones “fundamentally...changed underwriting,” as insurance professionals suddenly had 24-hour accessibility, he said.

Predictive modeling and analytics have further changed the industry for underwriters, who must balance the use of data with solid underwriting, Mr. Shine said. Today, companies often have proprietary data, he said, adding, “You’re no longer relying on ISO

data or an industry database to drive your pricing models.”

Mr. Shine said much of today’s underwriting behavior is driven by insurers’ capital allocation strategies. In the past five or six years, he said, “everybody’s focused on capital allocation,” which has become “the No. 1 thing driving underwriting appetite today.”

“The underwriter sometimes gets boxed in by all these parameters being set at the senior management level,” Mr. Shine said.

While some say technological advances may diminish the underwriter’s role, the best way for an insurer to be profitable is

to use the new wave of analytics in synergy with the human element of underwriting, he said.

“The best way to make money from an underwriting perspective is to take all the analytics, take all the information you can get...and make better decisions,” Mr. Shine said.

Mr. Shine noted that the next wave of underwriters is going to have a greater understanding of analytics, adding that the ability to “slice and dice” data is “going to be table stakes in the future.”

Moving forward, Mr. Shine stressed the importance of training and recruiting new under-

writers for the future. An “extra emphasis is on training new people,” Mr. Shine said, noting a gap in talent that emerged during the extended soft market of the 1990s when many insurers cut underwriting training programs.

As younger generations are interested in working in part for the social good, the insurance industry needs to make the case for its importance in the community, Mr. Shine said. To train and retain a new wave of underwriters, “we need to sell the fact that...we do serve a social purpose,” he said.

Meanwhile, in terms of future success, Mr. Shine said, “If you really want to make money, you need quality underwriting.”

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Safety: Unions push harder on worker safety

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ers have increasingly demanded safety practices exceeding Occupational Safety and Health Administration requirements and unions have learned to help employers win contracts with bids made competitive through good safety practices, said Richard King, senior vp of construction and labor negotiator for Denver-based global engineering and construction firm Black & Veatch Corp. He is also a health, safety, and environmental expert and member of the Des Plaines, Ill.-based American Society of Safety Engineers.

A USW spokesman noted that the union invests significant resources into staffing its employee ranks with highly-skilled health, safety and environmental experts, because of the complex science involved in issues such as chemical exposures and petrochemical plant equipment failures.

The labor-management cooperation also can help employers obtain better workers compensation insurance pricing because reviewing workplace safety practices is a key underwriting element.

"When the employee workforce is working together with the business owners and there is agreement on safety programs and their implementation...then you

are going to get better outcomes," said Joseph Wells, senior vp and head of workers compensation, accident, and health for Zurich North America in New York. "The best way to get good (insurance) pricing is to have good outcomes."

Most owners of very large construction projects now demand that their contractors have a record of good outcomes and have a history of injury losses below the national average, Mr. King said.

Construction project owners also require contractors to show they have a favorable insurance experience modification rating history that underwriters apply to price workers comp coverage, he said.

"If union contractors don't meet these qualifications then they don't get on the bid list and the unions don't get any work," Mr. King said.

"Most employers believe that a safe working environment is important, and unions cooperate most of the time for proper safety," said the Wisconsin State AFL-CIO's Ms. Bloomingdale, who also serves on the Wisconsin Worker's Compensation Advisory Council, which represents employers, organized labor and insurers in developing workers compensation law.

"But there are times when there are conflicts between what the company sees as profit and employees see as safety."

Oil industry negotiations highlight safety concerns

PITTSBURGH—Recent contract negotiations with the oil industry—led by Shell Oil Co.—will result in a three-year national bargaining agreement if ratified by 30,000 of the Pittsburgh-based United Steelworkers' 850,000 international members.

The agreement would affect 168 refining, petrochemical, transportation, and pipeline operations nationwide, including 69 refineries that represent nearly 65% of U.S. refining capacity, the USW said in a January statement.

As is typical during labor contract renewal time, the union has not released details of its national negotiations with the refineries because its local affiliates are still negotiating over local demands. But leading up to the negotiations, the USW criticized poor process safety practices and equipment failures for causing 18 deaths in the petrochemical industry from 2009 through 2011. It often cited the 2010 Deepwater Horizon drilling rig tragedy as an example of what can go wrong.

"Health and safety in the

oil industry is still out of control, and we can't let this continue any longer," said one union statement released in January.

Gary Beevers, USW's international vp for oil bargaining, said in another statement that "since the last time we sat down to bargain with the oil industry three years ago, 18 oil workers have died on the job. That's unacceptable. This time around we expect to see some real, enforceable improvements on health and safety."

In another document posted on the USW's website, the union told members it was demanding the right to refuse unsafe work; safe staffing levels at refineries; process safety representatives accountable to workers, not the company; and proper inspection and maintenance of refinery equipment.

A USW spokesman said that the union would not have moved forward with the contract ratification effort had it not realized "pretty significant success" on the process safety issues it demanded.

—By Roberto Cenicerros

Hartford: Shareholder sparks return of breakup talk

CONTINUED FROM PAGE 1

public an internal memo from then-chairman and CEO Ramani Ayer saying Hartford had no intention of selling either operation despite reports that it was trying to sell assets as a result of the credit crunch, which troubled its life insurance operations.

Few major commercial insurance groups continue to have large life insurance and large property/casualty operations, American International Group Inc. being a notable exception. During the late 1990s, CIGNA Corp. and Aetna Life & Casualty Co. sold their property/casualty operations to competitors in order to concentrate on health care, as well as maintaining some life insurance business. (see box).

Some Wall Street analysts agreed that Hartford might need to spin off some operations to increase shareholder value. In an equity research update issued after the earnings call, Goldman Sachs Group Inc. analyst Christopher Giovanni said Goldman continues "to believe macro issues coupled with low valuations will lead to an acceleration of strategic reviews. Within this context, we believe Hartford has several valuable assets that are underpriced in its current multiline structure but

BREAKING UP IS HARD TO DO?

The property/casualty insurance world was shaken more than a decade ago when two major multiline insurers sold their property/casualty operations to concentrate on health care.

P/C Seller	Aetna Life & Casualty Co.
P/C Buyer	Travelers Corp.
Year	1996
Price	\$4 billion
P/C Seller	CIGNA Corp.
P/C Buyer	ACE Ltd.
Year	1999
Price	\$3.5 billion

which could be worth notably more as separate entities or in a sale. As a result, we think this affords management several strategic options to unlock shareholder value."

"It's something we've thought about in the past," said Brian Schneider, a senior director at Fitch Ratings Inc. in Chicago. "At least two years ago, we actually split the ratings between the life companies and the property/casualty companies. We've main-

tained separate ratings for both. From our standpoint, there wouldn't be a ratings issue from the insurance company standpoint, but they do raise some points regarding the holding company, which is where the debt is."

"Debt is the single biggest issue," said Meyer Shields, director of equity research-property/casualty insurance at Stifel Nicolaus & Co. Inc. in Baltimore.

"It's usually easily resolved through some sort of capital infusion. I'm thinking of that in a two-step process. First step is loading up most of the debt on the P/C company and then raising some capital for the P/C to address that debt," he said. "Right now, the property/casualty operations are basically subsidizing the life insurance business."

Mr. Shields said there were "some disappointing elements of the property/casualty results, but we're sort of nibbling at the edges. To quote from Hartford's presentation, the life companies 'have currently a limited capacity to generate statutory earnings.'"

Whether a split would have a direct effect on policyholders remains unclear.

"I won't have any overriding concerns," said Wayne Salen, director of risk management at Labor Finders International Inc. in

Palm Beach Gardens, Fla., who has a small part of his total insurance program placed with Hartford. "They're large enough to handle it."

But, he added, "they're losing money like crazy on workers comp—you wonder what they're doing in other property/casualty" lines.

"We're going to keep our eye on it," said a Midwestern risk manager who asked not to be identified. "Our understanding is, from what we hear, there would be a lot of interest in the property/casualty operations of Hartford if there's a breakup."

"Our concern is that specialized coverage currently underwritten by Hartford would not be as attractive to a new owner," said the risk manager.

"I think the implications for risk managers would be minimal. There may even be some positives," said John L. Ward, CEO of Cincinnati Partners L.L.C., in Loveland, Ohio. "The positives would be that there would be a stand-alone business dedicated to risk managers and that whole segment of the business. Over the past several years, the life business has been a real drag on the franchise, but on balance I would say it would be neutral and not of concern to risk managers."

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Class: Wage-and-hour ruling may set precedent

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planned to use a random sample of 20 class members to testify as representatives for the class. In May 2009, the trial court awarded the class \$15 million.

The three-judge panel of the 1st District Court of Appeals of California criticized the lower court's approach in its ruling last week. "We agree with USB that the trial plan employed here was seriously flawed," the appellate court ruled. There was "no statistical foundation for the trial court's initial assumption that 20 out of 260 is a sufficient size for a representative sample by which to extrapolate either liability or damages."

"The court appears to have arrived at this procedure on its own, without reliance on legal precedent or the advice of expert witnesses," the appellate court ruled in reversing the lower court's judgment certifying the class. Referring to *Wal-Mart*, the California court said the U.S. Supreme Court found that "representative sampling studies did not justify certification."

Evidence banned

The ruling also says the trial court prevented U.S. Bank from introducing evidence pertaining to nonclass members in its defense. This "effectively prevented USB from establishing its affirmative defense as to class-wide liability. The record on appeal supports the inference that a large percentage of the absent class member plaintiffs were properly classified and that USB did not owe them any overtime."

"Thus, there is evidence that in the absence of the error, USB would have received a more favorable result."

The court said, "In sum, the court erred when, in the interest of expediency, it constructed a set of ground rules that unfairly prevented USB from defending itself."

A spokesman for Minneapolis-based U.S. Bank said it was pleased the court agreed with its position.

Plaintiffs attorney Ellen Lake, who worked with the Greenbrae, Calif.-based Wynne Law Firm on the case, said she was disappointed with the decision and plans to

appeal the ruling to the California Supreme Court. Observers note it is unknown whether the court will agree to hear the case.

"This is a huge decision," said Marc E. Bernstein, of counsel with law firm Paul Hastings Janofsky & Walker L.L.P. in New York. It is a "well-reasoned decision that explains employers have rights, too."

Mr. Bernstein said, "The reality is, most defendants up until now" have settled class actions. "They're afraid to try them, and I think a decision like this could well encourage employers to try more of these cases" because it will now be very difficult for plaintiffs to try cases like these "where you can't use a sam-

'It's a fantastic ruling.' The 'court of appeals gets' the arguments 'that the defense bar has been making about the trial of class actions and the manageability of class actions for a long time.'

Marlene S. Muraco, shareholder with Littler Mendelson P.C.

pling," Mr. Bernstein said.

Thomas R. Kaufman, a partner with Sheppard Mullin Richter & Hampton L.L.P. in Century City, Calif., said the court's "very thorough analysis" of the issue of class certification is consistent with the U.S. Supreme Court's logic in *Wal-Mart*.

The decision is the "logical extension of the *Wal-Mart* decision," which said "you can't prove a class action based on the so-called trial by formula," said Anthony J. Oncidi, a partner with Proskauer Rose L.L.P. in Los Angeles.

Douglas A. Plazak, a senior attorney with Reid & Hellyer A.P.C. in Riverside, Calif., said he was "thrilled" the "court finally corrected what I believe was the

trial court's violation of the due process rights of the defendant, USB, and certainly has cast grave doubt on the ability of plaintiffs to use statistical sampling to demonstrate liability which is, from a constitutional perspective, a very questionable way to prove liability against a defendant."

"It's a fantastic ruling," said Marlene S. Muraco, a shareholder with law firm Littler Mendelson P.C. in San Jose. The "court of appeals gets" the arguments "that the defense bar has been making about the trial of class actions and the manageability of class actions for a long time."

"The problem is, the judge just kind of made up a sampling plan. He said, '10% is just about right' without any input from statistics experts and wound up with a large margin of error on liability and on the damages," she said.

Mr. Kaufman said the ruling would "knock out 90 to 95% of the class actions that currently would get certified in California."

And, while not binding elsewhere, *Duran* will be a "very persuasive authority" in other states, most of which have laws that, like California's, are modeled on the federal statute. In addition, "big California decisions tend to be very influential," Mr. Kaufman said.

Mr. Bernstein said the decision also will have a national impact because it is based on the U.S. Constitution's concept of due process. For that reason, he also says it is unlikely it will be overturned on appeal. "You'll see it cited everywhere," he said.

Mr. Plazak said the ruling could be influential elsewhere "because it could show other courts from a practical standpoint how they should apply *Dukes vs. Wal-Mart* in their states as well."

"We're class-happy here" in California, which means the fact that this decision came from California court will make it particularly influential, said William L. Stern, a partner with Morrison & Foerster L.L.P. in San Francisco.

However, Wiston M. Ackerman, a partner with law firm Robinson & Cole L.L.P. in Hartford, Conn., disagreed.

"I'm not sure it will have a broad impact outside California," he said. "There are some state courts that have not adopted *Wal-Mart*, so we may see some different approaches in different states."

inBrief

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Superintendent James J. Wrynn will leave the department for a position as managing director of Goldberg Segalla L.L.P.'s New York office. Mr. Wrynn, who had served as superintendent of the New York State Department of Insurance prior to its 2011 merger with the New York State Banking Department, will serve as a senior partner in Goldberg Segalla's global insurance services practice. Mr. Wrynn plans to leave his position at the DFS on March 2.

Stage builder cited in collapse

The Indiana Department of Labor has cited the company that built the stage that collapsed during a storm at last summer's Indiana State Fair with three workplace safety violations in connection with the collapse. The state agency fined Mid-America Sound Corp. \$63,000 for the three violations, which included not developing a risk assessment plan and making workers aware of the hazards related to the construction of the

stage; not providing cross-bracing of the stage's roof structure as recommended by the manufacturer; and not taking into full consideration the weights of equipment associated with the structure.

Arab Spring alters political risk landscape

Tensions resulting from the pro-democracy uprisings in the Middle East and North Africa throughout 2011 and into 2012 remain a concern for businesses operating in those nations, according to Aon Risk Solutions. Aon's 2012 Political Risk Map measures political risk in 167 countries and territories based on levels of exposures to such risks as currency exchange transfer, sovereign nonpayment, political interference, supply chain disruption, legal and regulatory risk, and political violence.

Best upgrades Validus Re to A

A.M. Best Co. Inc. upgraded its financial strength rating for Validus Reinsurance Ltd. to A from A-, upgraded its issuer credit rating to a from a-, and upgraded its issuer credit rating for the reinsurer's parent, Validus Holdings Ltd., to bbb from bbb-. Best also changed its outlook for all of the ratings to positive from stable.

Contraceptives: New rule

CONTINUED FROM PAGE 3

the rule, with the Ohio Republican drawing support from some Democrats as well.

"If the president does not reverse the...attack on religious freedom, then the Congress, acting on behalf of the American people and the Constitution we are sworn to uphold and defend, must" act, Speaker Boehner said on the House floor.

The change in the administration's position helps to "avoid a big congressional battle," said Helen Darling, president of the National Business Group on Health in Washington.

"This should be enough to mollify lawmakers," said Chantel Sheaks, a principal with Buck Consultants L.L.C. in Washington.

Some religious-affiliated organizations backed the new rule.

"The framework developed has responded to the issues we identi-

fied that needed to be fixed," Sister Carol Keehan, president and CEO of the Catholic Health Care Assn. of the United States in Washington, said in a statement.

The change in policy does not affect other parts of the prescription contraceptive drug rule.

The requirement to offer full coverage will apply to other employers—those not affiliated with religious organizations with religious objections to contraceptive coverage—for plan years that begin on or after Aug. 1, 2012.

The new prescription contraceptive drug requirement affecting affiliates of religious organizations would apply for plan years that begin on or after Aug. 1, 2013.

However, the mandate would not apply to religious organizations, such as churches, that primarily employ those who share in their beliefs, and to employers with grandfathered health care plans.



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Beer pong litigation goes flat

A would-be beer pong champ has lost a court battle against the bar that served him alcohol before he was struck by a car.

Alan Berger was playing beer pong with friends at Wicked Willy's in New York in June 2009.

The drinking game typically requires players to toss ping pong balls into an opposing player's cup of beer. If the ball lands in a cup, the opposing player must drink the beer as quickly as possible.

According to court records, Wicked Willy's has designated beer pong tables, but it does not monitor the beer consumption of game players. An attorney for Mr. Berger said his client was "winning" the game before he left the bar, the New York Daily News reported.

Mr. Berger, then 22 years old, was "extremely intoxicated" when he boarded a commuter bus to New Jersey that night, court records show. Hours later, he was hit by a vehicle while attempting to walk across a New Jersey highway.

Mr. Berger sued Wicked Willy's for his injuries last year. He alleged that the bar was negligent in its failure to stop serving him alcohol, among other claims.

But the New York Supreme Court dismissed Mr. Berger's suit this month. Judge Lucy Billings said Wicked Willy's was not responsible for Mr. Berger's accident injuries, despite providing alcohol and supplies for beer pong.

"Plaintiff voluntarily engaged in the drinking game facilitated by defendant's furnishings and consumed alcohol to the point of diminished capacity," the ruling reads. "New York law recognizes no duty on defendant's part to warn patrons regarding the risks of engaging in the drinking activity defendant made available or to make it safer by stopping or monitoring its participants."

CONTRIBUTING: Roberto Cenicerros, Matt Dunning, Sheena Harrison, Mike Tsikoudakis

End Page



Singer M.I.A. could end up paying after she flipped the bird at the Super Bowl half time show.

AP PHOTO

NBC won't face fines over M.I.A. bird flap

Contract indemnification language means M.I.A. will get stuck with any fines NBC incurs for the British singer's middle-finger salute during Sunday's Super Bowl halftime show, reports say.

Ever since Janet Jackson's infamous wardrobe malfunction during the 2004 Super Bowl, television networks carrying the game require halftime performers to sign contracts containing language holding them financially responsible for inappropriate antics, according to one news report.

But a TMZ story says M.I.A. signed a contract with the National Football League, agreeing to indemnify the NFL for money it would have to pay the peacock network for any Federal Communications Commission fines levied against NBC.

The argument there is that the NFL hired and produced the halftime show, so the league should be responsible.

Either contract arrangement would leave M.I.A. on the hook for a fine.

But reports say the publicity M.I.A. receives for her indecent gesture could be worth much more than any fine.

The Super Bowl reportedly drew a record 111 million viewers, which made it the most-watched TV program in U.S. history.

The Janet Jackson wardrobe issue resulted in a \$550,000 fine for CBS, but a federal appeals court threw it out.

If you haven't heard by now, M.I.A. appeared in the halftime show alongside Madonna and flipped the bird directly at a camera while performing "Give Me All Your Luvin."

Norwegian insurer monitors workers' bathroom breaks

Employees at a Norwegian insurance company have eight minutes per day to do their business before an alarm alerts managers of time spent away from their desks, including bathroom breaks.

Using a new surveillance system, managers at a life insurance unit of Oslo, Norway-based DNB Bank A.S.A. are alerted by flashing lights when an employee has been away from their desk for "personal activities" beyond the allotted time, according to news reports.

Employees and unions are balking at the new practice, worried that the monitoring system is a violation of privacy.

"Surveying staff to limit lavatory visits, cigarette breaks, personal phone calls and other personal needs to a total of eight minutes per day is highly restrictive and intrusive and must be stopped," a spokesman for the employee union Finansforbundet told Britain's Daily Telegraph.

This isn't the first Norwegian lavatory lockdown.

Norway's chief workplace ombudsman Bjorn Erik Thon told The Telegraph that one firm required employees to wear a red bracelet during their menstrual cycles to indicate the need for more restroom visits.

"Toilet codes relating to menstrual cycles are clear violations of privacy and is very insulting to the people concerned," Mr. Thon told the newspaper.

DNB said the monitoring system's purpose was to take measurements over time to ensure that phones were properly staffed to handle customers' calls, according to newspaper. DNB said it is now reviewing its policy.



MLB Hall of Famer George Brett has been accused of false advertising.

AP PHOTO

BROUHAHA BREWS OVER BRETT'S BRACELETS

If his "Pine Tar Incident" tirade taught the world anything about Hall of Fame infielder George Brett, it was that he is quite capable of mounting a vigorous defense against accusations of wrongdoing.

That ability could again be put to use, as Mr. Brett has been accused of falsely advertising health and performance benefits associated with his line of sports necklaces and bracelets, according to an Associated Press report.

In a complaint filed last week in federal court, Iowa resident Seth Thompson alleged that Mr. Brett's company, Spokane Valley, Wash.-

based Brett Bros. Sports International Inc. misleadingly promotes its Ionic brand necklaces and bracelets as having pain-relieving and restorative abilities, the AP reported.

Mr. Brett, who spent all of his 21 seasons in Major League Baseball with the Kansas City Royals and was inducted into the Baseball Hall of Fame in 1999, has been president of Brett Bros. since 2001 and appeared in several company ads.

Mr. Thompson alleges the false representations appeared on the company's website from 2008 to 2010, and still can be found on products' packaging. His attorneys

asked a federal judge to approve class action status for his claim, as they believe there are "thousands" more potential claimants who have purchased one of Mr. Brett's products, the AP reported.

Mr. Brett is the latest purveyor of "performance" jewelry to find himself caught in a legal rundown. In November 2011, Power Balance L.L.C., the company behind a "performance-enhancing" bracelet that enthralled professional athletes, pop culture icons and millions of other consumers, filed for bankruptcy after reportedly agreeing to settle a class action false advertising lawsuit for \$57 million.



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DON'T BE LEFT OUT OF THE DISCUSSION

SUPPLY CHAIN RISK MANAGEMENT CASE STUDY & EXECUTIVE PANEL:

The recent Thai floods and Japanese earthquake highlighted the supply chain exposure that many organizations face. With limited insurance available for contingent business interruption, how do risk managers protect their organizations from the wide variety of supply chain risks? These sessions will analyze the exposure in light of the recent events and other key drivers of supply chain risks; review strategies for managing the exposure; and offer insights into the risk transfer and claims process.

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CASE SPECIFICS:

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