

Business Insurance

February 15, 2010

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EAST COAST STORM LOSSES MAY SURPASS \$2 BILLION / PAGE 3



NEW YORK BROKER PAY RULE DRAWS FIRE FROM BUYERS, SOME PRODUCERS / PAGE 3

INSURERS FORESEE HIGHER REVENUES, MORE HIRING, SURVEY FINDS / PAGE 4

In Brief

AIG overhauls incentive compensation system

American International Group Inc. has established a new performance-based incentive compensation plan for its employees, a company spokesman confirmed. The system is based on four rankings determined by employees' performance compared with their peers. Those ranked in the top 10% of the employees will receive the greatest incentive pay, followed by those ranked in the next 20%, the next 50% and the remaining 20%. The plan affects 2010 compensation.

Law firms, lawmakers target Toyota recalls

About 25 law firms seeking class action status for lawsuits filed against Toyota Motor Corp. in more than 20 states have formed a consortium, an

See **IN BRIEF** page 22

SPOTLIGHT

SPECIALTY RISKS

Rates ease for insurance that covers political risks outside the United States; how to protect against major financial losses that are caused by the absence or departure of a key person in the organization; competition and coverages abound for corporate travel market; obtaining coverage for punitive damages can be tricky. **PAGE 11**



HEALTH CARE BENEFITS

COBRA extension hits speed bump

Lawmakers expected to find new route to continue subsidy

By **JERRY GEISEL**

WASHINGTON—Senate Majority Leader Harry Reid, D-Nev., last week abruptly removed provisions from a fast-moving jobs bill that would extend the 65% COBRA premium subsidy in duration and to more



Senate Majority Leader Harry Reid removed a COBRA subsidy extension from a jobs bill to speed passage.

people, but experts say the COBRA provisions remain very much alive. Top members of the Senate Finance Committee last week released a draft of a bipartisan jobs creation bill in which several COBRA premium subsidy provisions had been embedded. Within two days of the release of the draft,

though, Sen. Reid jettisoned COBRA and numerous other provisions from the measure and said he would seek immediate passage of a more narrowly focused bill.

"We are going to move a smaller package than talked about in the press," the Nevada Democrat said at a news briefing.

But experts say the COBRA provisions remain very much alive and could be included as part of a subsequent jobs bill or legislation to be developed to extend several expiring provisions in the U.S. Tax Code.

"The COBRA provisions themselves are uncontroversial," said Frank McArdle, a consultant with Hewitt Associates Inc. in Lincolnshire, Ill. "Instead of going out on this train, they may have to go out on the next train."

The most significant COBRA provision in the latest proposal would extend the current 15-month premium subsidy to employees who are involuntarily terminated from March 1 through May 31. Another would extend the subsidy, in certain situations, to employees who lost group health

See **COBRA** page 21

LIABILITY & LITIGATION



Medical marijuana laws create dilemma for firms

By **JUDY GREENWALD**

Employers are facing the challenge of maintaining a safe workplace while more states legalize the use of medical marijuana, experts say.

While courts generally have ruled that firms do not have to accommodate medical marijuana users, employers in some jurisdictions still are awaiting guidance on the issue (see story, page 20).

Furthermore, all employers must guard against the potential of running afoul of disability and privacy laws, experts warn.

Fourteen U.S. states now have laws that permit physicians to prescribe marijuana for cancer, chronic pain and a host of other

medical conditions, while legislation to permit medical marijuana has been introduced in another 12 states, according to Santa Monica, Calif.-based independent researcher ProCon.org.

New Jersey is the latest state to legalize medical marijuana, under a law that takes effect July 1 (see box, page 20). States with legislation pending as of Jan. 22 were Alabama, Delaware, Illinois, Iowa, Massachusetts, Mississippi, Missouri, New York, North Carolina, Pennsylvania, Tennessee and Wisconsin.

Despite the state action, marijuana remains an illegal substance under the federal Con-

See **MARIJUANA** page 20

AGENTS & BROKERS

Aon founder seeks to build new insurance venture

By **SALLY ROBERTS**

CHICAGO—Eighteen months after retiring as executive chairman of Aon Corp., Patrick G. Ryan is embarking on a new venture that

he plans to build into a significant player in the wholesale insurance marketplace.

Ryan Specialty Group will serve as a global holding company of managing general underwriters,



AP PHOTO

While he retired from Aon in 2008, Patrick G. Ryan said he never intended to retire from the industry.

and brokers around the world.

The announcement of Chicago-based RSG follows the December formation of ThinkRisk Underwriting Agency L.L.C., a Kansas City, Mo.-based managing general underwriting agency specializing in errors and omissions coverage for the media, advertising, technology, privacy and network security industries.

ThinkRisk, RSG's first subsidiary, was founded by industry veterans

managing general agencies and brokerages, and will provide specialty insurance services to retail agents

See **RYAN** page 19

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UNITED IN RESULTS

Last week, over 600 industry leaders, including clients, insurance executives, experts and colleagues, united at the annual Aon Property & Risk Client Symposium to share solutions to the key challenges facing their organizations in 2010.



Learn what you missed and sign up for information about Aon's 2011 Symposium by visiting www.aon.com/property2010

Business Insurance

Online features & highlights www.businessinsurance.com



NEW RYAN VENTURE

Patrick G. Ryan, founder and former chairman and CEO of Aon Corp., talks about his new insurance entities—Ryan Specialty Group and ThinkRisk Underwriting Agency—with Senior Editor Sally Roberts in a new online video.

COBRA SUBSIDY FAQ

Experts say employers should brace for another extension of the federal subsidy of COBRA health insurance premiums for laid-off workers. Editor-at-Large Jerry Geisel answers frequently asked questions about the COBRA provisions online.

D&O Insurers Directory
Available online under Lists & Data

Business Insurance 2010 INNOVATION AWARDS

The *Business Insurance* Innovation Awards recognize leadership, inventiveness and ingenuity in products and services designed for professional risk managers. The 2010 award winners will be saluted March 8 in New York. Visit BusinessInsurance.com and click on the Events & Awards tab for the names of the winners and judges, and to reserve a seat or table.



2010 BENEFIT MANAGER

Fran Ruderman, 2009 Benefit Manager of the Year, will help judge the 2010 award. Nomination deadline is March 15. Find nomination forms under the Events & Awards tab at BusinessInsurance.com.

MOST POPULAR STORIES

The week of February 8, 2010

1. Pat Ryan launches specialty group
2. Conn. power plant explosion covered by several insurers
3. COBRA subsidy extension now in draft jobs bill
4. Travelers names new leader of commercial insurance
5. Broker group to sue over N.Y. commission disclosure rule
6. RIMS disappointed in N.Y. producer compensation rule
7. AIG overhauls incentive pay system
8. AIG hires exec to oversee finance risk
9. New York state releases final broker pay rule
10. Lloyd's of London outlines three-year strategy

JOIN THE DISCUSSION

Comment online on all news, blogs

BLOGS

Comp Time, the award-winning blog by Senior Editor Roberto Cenicerros



As more states allow doctors to prescribe marijuana, there is growing potential for the issue to arise in work comp claims. Ironically, that occurred in a claim in Iowa, which is not one of the 14 states with a medical marijuana law.



CAREER CENTER

Business Insurance's Career Center, powered by JobTarget, is designed to deliver new career opportunities with the same specialization and quality that *Business Insurance* delivers in its news and information services. Whether you are looking for a new job, or to hire for a new position, sign up for the Career Center to make your search more efficient and successful.

AGENTS & BROKERS

New York producer pay rule draws ire of buyers, brokers

By SALLY ROBERTS

NEW YORK—Reaction to the New York State Insurance Department's final producer compensation disclosure regulation ran the gamut last week among agent/broker and risk management groups whose members will be affected by the new rule.

The Risk & Insurance Management Society Inc. reiterated its disappointment with what it sees as inadequate disclosure requirements, while a producer group representing smaller agents and brokers slammed the rules as too onerous and said it would sue to stop them from being enforced.

But another producer group supported the regulation, calling it not "overly burdensome."

The final Producer Compensation Transparency regulation, which was published Feb. 10 in the New York State Register, is the fifth iteration of the rule on which regulators had been working since holding joint hearings in 2008 with the New York attorney general's office (*BI*, July 28, 2008).

The final version is the most lax in terms of disclosure requirements on producers operating in the state and differs greatly from the original version in January 2009, which would have mandated that producers disclose in writing to clients the nature and amount of any compensation they receive in connection with an insurance placement.

Under the final regulation, which takes effect Jan. 1, 2011, producers

'Consumers should understand any incentives that may potentially affect the recommendations from their agents or brokers.'

New York State Insurance Superintendent James J. Wrynn

operating in the state must, among other requirements, disclose to clients their role in the insurance transaction and whether they will receive compensation from an insurer based on the sale. Further

information about the nature, amount and source of that compensation must be disclosed to clients upon request (see box, page 21).

The disclosure regulation does not apply to reinsurance placements, insurance placements within a captive insurance company, wholesalers and on renewals.

"This regulation will provide New Yorkers buying insurance with an important tool to use in making an informed decision," New York State Insurance Superintendent James J. Wrynn said in a statement. "Almost everyone buys insurance at some point, and in these difficult economic times, consumers should understand any incentives that may potentially affect the recommendations from their agents or brokers."

Not everyone is happy with the final regulation, though.

RIMS called the revised rule a "180 degree shift from previous versions in terms of its commitment to consumer protection for renewals."

The final regulation also contains diminished disclosure requirements for producers, said New York-based RIMS, which called on the New York department to reopen its public comment period for an additional 30 days.

"Consumer organizations have not had the opportunity to digest these additional changes and comment upon them," Scott Clark, director of RIMS' external affairs committee, said in a statement.

See **RULE** page 21

LEGISLATION & REGULATION

SEC risk disclosure requirement looms

By MARK A. HOFMANN

WASHINGTON—Most public companies must comply with federal risk management disclosure rules that go into effect in about two weeks.

The risk management disclosure requirements are part of a broader corporate governance document that the Securities & Exchange Commission approved in December. The rules, which take effect Feb. 28, require disclosures in proxy and information statements about:

- The relationship of a company's compensation policies and practices to risk management;
- The background and qualifications of directors and nominees;
- Legal actions involving a company's executive officers, directors and nominees;
- The consideration of diversity in the process by which candidates

for director are identified;

- Board leadership structure and the board's role in risk oversight;
- Stock and option awards to company executives and directors; and
- Potential conflicts of interests of compensation consultants.

The requirement would not apply to some small public companies.

Matt Allen, global practice leader-enterprise risk services and solutions at Marsh Inc. in New York, said the provision dealing with the board's role in risk oversight is raising a lot of questions. The language is subject to considerable interpretation, such as what oversight means and what has to be actively disclosed, he said.

A briefing paper issued by Marsh this month recommends several actions that organizations should take. These include instituting or refining an enterprise risk manage-

ment process, implementing one of the best practices structures in risk oversight, conducting a compensation risk assessment, educating the board on its role in the risk management process, and instituting a streamlined risk reporting function.

Board members need to be educated as to what they should be doing, what they need to be asking and where they "really intersect" with the ERM activities, said Mr. Allen. The CEO, chief financial officer or someone in legal or compliance activities should be telling board members what they need to do, he said, adding that the chief risk officer should be involved in the educational effort as well.

At Melbourne, Fla.-based Harris Corp., the risk manager already is involved.

See **SEC** page 20

INTERNATIONAL

Lloyd's of London confident about its future

Changing regulations, simplifying operations among challenges

By MICHAEL BRADFORD

LONDON—Lloyd's of London's operating model proved its mettle during the global recession and will hold up well with few modifications over the next several years, a review of the marketplace concludes.

As a subscription-based marketplace, however, Lloyd's still needs to simplify various aspects of its operations, including its claims processes, the review acknowledged.

And the market must prepare for regulatory challenges such as the scheduled implementation of Sol-



Sean McGovern of Lloyd's of London said the market made it through the financial crisis in "very good shape."

veny II in 2012, according to the review, Lloyd's Strategy 2010-2012, which was released last week.

The 26-page review looks at the

marketplace and its performance and ambitions going forward. It was produced after an analysis of Lloyd's data and interviews last year with more than 80 brokers, managing agents, market associations, investors and others with ties to the marketplace.

"Generally speaking, the findings confirmed what we already knew about Lloyd's," said Sean McGovern, director, general counsel at Lloyd's. "We got through the financial turmoil in very good shape."

"There are no major shifts in direction in this plan," Richard Ward, Lloyd's CEO, wrote in the review's introduction. "This is, in part, because the market is performing well."

See **LLOYD'S** page 17

CATASTROPHES



AP PHOTO

A pedestrian struggles against wind-whipped snow in Washington last week when wintry weather hit much of the mid-Atlantic region.

Winter storm losses may top \$2B: Analyst

By MARK A. HOFMANN

WASHINGTON—Catastrophe modeler EQECAT Inc. estimates that the two winter storms that raked the mid-Atlantic region earlier this month caused more than \$2 billion in insured losses.

Two storms struck the area, the first beginning on Feb. 5 and the second last week, leaving some parts of the Washington metropolitan area with more than 30 inches of accumulated snow.

Oakland, Calif.-based EQECAT based its estimate on a preliminary assessment of the overall scale of these storms and their snow, ice and wind impacts relative to major prior events in the past two decades. EQECAT expects that the majority of the losses will be focused in the corridor from northern Virginia to the New York metropolitan area.

EQECAT said the most common sources of monetary losses are a result of roof damage, pipe breakage, and ice dams in eaves causing water to leak into buildings.

Wind gusts of more than 50 mph were reported on the East Coast.

According to a spokeswoman for the New York-based Insurance Information Institute, winter storms are the third-largest cause of catastrophe losses annually.

"From 1999 to 2008, winter storms resulted in more than \$7 billion in insured losses.... Winter storms cost \$770 million in 2009, the lowest in eight years and \$600 million below the average," she said, in an e-mail.

Tim Doggett, principal scientist with AIR Worldwide Corp. in Boston, noted that the first storm resembled a 1996 storm in the same region in terms of snowfall but probably not in total impact.

"The blizzard of 1996...brought snowfall amounts comparable to (the first) storm, but it took a track that was farther to the north," and hit densely populated areas, Mr. Doggett said in a statement last week. "Hence, AIR does not expect the (second) storm to result in as much damage."

INSURERS

Jobs growth expected as insurers foresee higher revenues

Nearly half of insurers plan to increase staff in 2010: Survey

By **RODD ZOLKOS**

Nearly half of the insurers participating in a recent insurance industry labor market study indicate they plan to add employees in 2010, largely to address anticipated business growth.

And, contrary to the views of many industry analysts, the Jacobson/Ward Group Insurance Industry Labor Market Study finds a healthy majority of the insurance companies surveyed anticipate revenue growth this year.

The survey, conducted in January

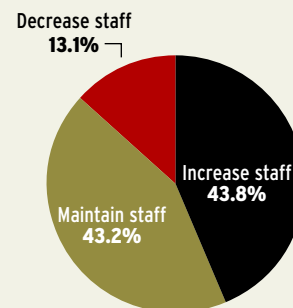
by the Chicago-based staffing and executive search firm Jacobson Group and Cincinnati-based consulting firm Ward Group, collected information from 150 U.S. insurance companies. It's the second such survey, with Jacobson and Ward planning to conduct the surveys each January and July.

In the most recent survey, "44% of the companies surveyed expect to increase staff in 2010, while only 13% expect to decrease staff," said Greg Jacobson, co-CEO of the Jacobson Group in Chicago. "In particular, sales and marketing positions have the greatest likelihood of staff expansion."

In the July 2009 Jacobson/Ward survey, 34% of companies indicated they planned to add staff. Meanwhile, 22% of those surveyed in July

MORE JOBS EXPECTED

Insurers' 2010 staffing plans



Source: Jacobson/Ward Group Insurance Industry Labor Market Study

anticipated staff reductions.

"We do expect fewer staff reductions and, in general, there are not

many substantial layoffs expected," said Jeff Rieder, president of Ward Group in Cincinnati. In the January survey, "only two companies expected to make staffing reductions greater than 10%," he said, with both of those the result of reorganizations rather than declines in business volume.

Of companies planning to reduce staff in the January survey, 27% attributed the reductions to automation improvements and 19% said the cuts would address areas of the business that were overstaffed.

"We also expect staffing increases to proceed at a greater rate in 2010 than 2009," Mr. Rieder said. "National carriers are 15% more likely to be adding staff than their regional counterparts."

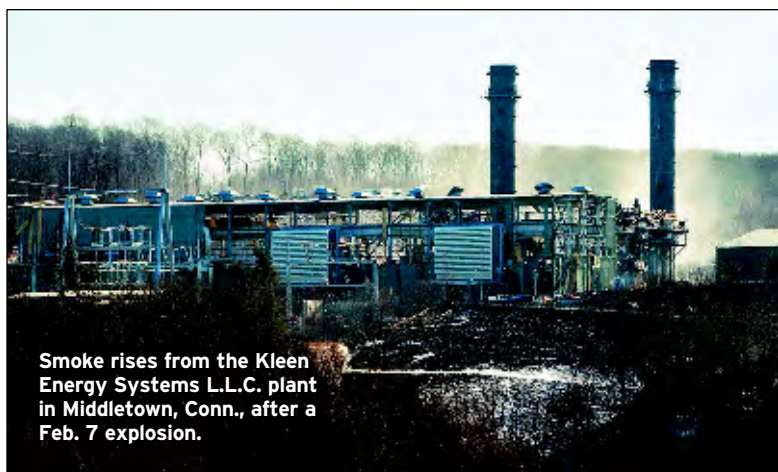
In addition, "I was very surprised

to see that 63% of companies expected revenue increases in 2010," Mr. Rieder said. "It's counter to what many outside analysts and experts project." The figure is up from 54% of companies that anticipated revenue increases in the July 2009 survey.

"Companies are more optimistic about their own results than the outside experts are," the Ward Group president said. "That may also be why they're projecting growth in staff."

Companies surveyed reported the most difficulty recruiting actuarial employees and executives, but those surveyed in January generally indicated it was easier to recruit needed talent than companies

See **STAFF** page 22



Smoke rises from the Kleen Energy Systems L.L.C. plant in Middletown, Conn., after a Feb. 7 explosion.

AP PHOTO/THE MIDDLETOWN PRESS, CATHERINE AVALONE

P/C INSURERS

Munich Re leads coverage on Kleen Energy explosion

By **MICHAEL BRADFORD AND ZACK PHILLIPS**

MIDDLETOWN, Conn.—Munich Reinsurance Co. leads the coverage in the fatal explosion at a Connecticut power plant under construction by Kleen Energy Systems L.L.C.

The Feb. 7 accident in Middletown, Conn., killed five people and injured more than two dozen others. State police and fire officials have launched an investigation.

Munich Re last week confirmed it is the lead on coverage for the plant, but would not provide details.

A market source said Kleen Energy has \$664 million in insurance to cover the estimated value of the project and \$212 million in limits to pay claims related to a startup delay.

Early estimates put the loss at about \$50 million in property damage and about \$100 million in busi-

ness interruption, the source said.

Paris-based SCOR S.E. confirmed it has 5% of the risk, and Chartis Inc. confirmed it is one of the insurers on the coverage. Officials for both companies declined to elaborate.

AEGIS London, the U.K.-based subsidiary of Associated Electric & Gas Insurance Services Ltd., insured 5% of the plant's all-risk coverage, Chief Underwriter David Croom-Johnson confirmed.

The market source also said Hartford, Conn.-based Travelers Cos. Inc. has a 5% share of the loss. A Travelers spokeswoman declined to comment, citing company policy.

Starr Technical Risks Agency Inc., a unit of C.V. Starr & Co. Inc.; ACE Group, a unit of ACE Ltd.; Lloyd's of London; National Union Insurance Group; and Arch Insurance Group Inc. also participate on the policy, according to a report.

DIRECTORS & OFFICERS LIABILITY

Extra D&O reserves exhausted: Panel

Insurers urged to focus on underwriting in competitive market

By **ZACK PHILLIPS**

NEW YORK—Directors and officers liability insurers may have to earn a profit this year from underwriting instead of relying on prior-year reserves to boost the bottom line, a panel of underwriters said.

Three D&O underwriters, speaking as part of a panel at a Professional Liability Underwriting Society symposium Feb. 4 in New York, said

many insurers in recent years have tapped reserves built up during the past decade to weather persistent soft market conditions.

John A. Rafferty, senior vp of Arch Insurance Group Inc.'s executive assurance division in Chicago, said D&O underwriters built up substantial reserves from 2003 through 2006, increasing rates while claims frequency fell.

"So what companies have been doing the last several years has been bleeding out redundant reserves," Mr. Rafferty said. "And that gives you the ability to produce calendar-year results...that look really great. (But) it's not speaking to what's

happening in your underwriting-year results or your accident-year results. That's ultimately what's going to be (used to) judge how you did."

Soon, Mr. Rafferty said, most D&O insurers no longer will be able to rely on prior-year reserves to pay claims or boost overall financial results.

"That part of the cycle is almost done," he said. "So we're going to have to start living and dying on what we are doing now, not from 2003 to 2006."

D&O insurers are facing soft pricing

See **PLUS** page 22

BI to honor insurance industry innovators

NEW YORK—Eight companies have been named as recipients of the inaugural *Business Insurance* Innovation Awards.

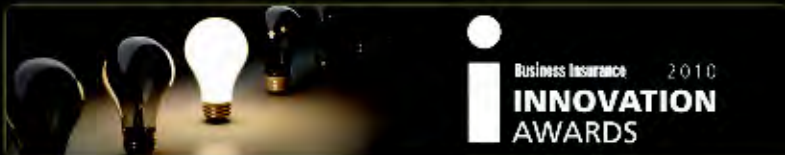
The 2010 Innovation Award winners are:

- ACE USA
- Aon Benfield Inc.
- Aon Risk Services
- Chartis Europe S.A.
- FM Global
- InterSys Ltd.
- Lexington Insurance Co.
- Marsh Inc.

An independent panel of judges, comprising professional risk managers, selected the Innovation Award winners by scoring entries on the basis of originality, creativity, problem-solving, execution of concept and results achieved.

Judges for the 2010 Innovation Awards were Julie Bean of Duchossois Group Inc., Ryan Brown of Peabody Energy, Ron Cooley of W.W. Grainger Inc., Ronald Gandolfi of Corn Products International Inc., Ellen Marie Menas of Potash Corp., Sarah Pacini of Advocate Health Care Network, Terry Sampson of the Art Institute of Chicago and Cindy Slubowski of Kraft Foods Inc.

The awards will be presented at a dinner



March 8 at the Waldorf=Astoria Hotel in New York in conjunction with the Risk Management Summit. Profiles of the winning entries will be published in the April 5 issue of *Business Insurance* and online at www.BusinessInsurance.com.

For information or to attend the awards dinner, please visit www.BusinessInsurance.com/InnovationAwards.

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

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

The topics are:

■ Counterparty risks, which will be introduced by William J. Kelly, president of WJK Advisory L.L.C., a risk management consulting firm based in Morristown, N.J.

■ Global programs and risks, introduced by Frédéric Dhers, corporate risk officer for Veolia Environnement, a Paris-based environmental services company operating worldwide.

■ Global regulatory risks and legislative developments, introduced by Christopher Lajtha, owner of ADAGEO, a Paris-based risk management consulting firm.

■ Innovation in risk management, introduced by Lori Jorgensen, senior director of finance and risk management for Redmond, Wash.-based Microsoft Corp.

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

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

Errors & Omissions

Due to a production error, a quote in a story on broker compensation from the 2010 AMRAE conference in Deauville, France, was truncated. The complete quote was: "French law allows insurers and brokers to determine remuneration for the broker on premiums and management services, such as claims handling," said Philippe Jouvelot, director of property and casualty underwriting at AXA Corporate Solutions in Paris.

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A LOT OF THINGS CAN HAPPEN IN A MAJOR STORM.
WE MADE SURE THIS DIDN'T.

SWELL'S SEAFOOD RESTAURANT



SWELL'S
SEAFOOD
RESTAURANT

Catch of
the Day:
Sea Bass
BEEF

When our customer's frozen seafood warehouse was hit by a major storm, it sustained significant roof damage and lost power. Jeopardizing not only the inventory, but the restaurants that depend on it. So while other companies were still assessing the storm's impact, our claims experts were already arranging for repairs and securing refrigerated trucks plus fuel, to preserve the fish. Whether it's responding quickly, keeping you informed, or paying your claims in a timely fashion, we're committed to helping you protect your business before and after adversity strikes. That's our policy. For more information, contact your broker or agent or visit libertymutualgroup.com/property.





Business Insurance 2010 INNOVATION AWARDS

New York City • March 8, 2010

A new awards program to recognize leadership and innovation in products and services designed for professional risk managers.

The 2010 Innovation Award Winners:

ACE USA
Aon Benfield Inc.
Aon Risk Services
Chartis Europe S.A.
FM Global
InterSys Ltd
Lexington Insurance Co.
Marsh Inc

All winners will be honored during an awards dinner, to be held in New York City during the Annual Risk Management Summit.

For additional information please contact
Becky Briggs, Event Manager,
rbriggs@businessinsurance.com or 212-210-0132

www.businessinsurance.com/InnovationAwards

Business Insurance

Commentary

New summit expands risk managers' options

If you are a professional risk manager, a variety of events provide important opportunities to network with peers, meet industry leaders and sharpen your skills.

One of the best-attended is the Risk & Insurance Management Society Inc. conference, which this year is taking place April 25-29 in Boston. *Business Insurance* will be there, as we have been for decades, because it is a key annual conference for our readers and a great opportunity to learn what's new in risk management and commercial insurance.

RIMS' annual conference and exhibition is always a highlight on my calendar as editor of this publication and, not coincidentally, is one of the busiest weeks of the year for me and *BI*'s hard-working staff. We invariably come back exhausted, but there's a big payoff: We return with lots of ideas and contacts that help us better inform *BI*'s readers.

As we did in 2009, RIMS and *BI* will jointly present the Risk Manager of the Year award and induct the 2010 members of the Risk Management Honor Roll. It is a great privilege for *Business Insurance* to share this moment with the leaders of the Risk & Insurance Management Society in celebrating achievement in managing risk. The 2010 Risk Manager of the Year will be the 33rd individual to receive this honor, and the Risk Management Honor Roll is now in its 29th year.

If you are new to risk management or haven't been to the conference in a while but are thinking about going to RIMS this year, you should strongly consider it. *BI* will produce a conference preview issue April 12, but a lot more information is available at www.rims.org.

A new, high-level event

Before I head to Boston, however, there is another risk management event that also will be a highlight for me, and it's a new one: the Risk Management Summit March 8-9 in New York.

The Risk Management Summit, hosted by *BI* and sponsored by leading insurance industry companies, is designed by and for risk managers in the Fortune 300, the *BI* Euro 100 list of the largest companies in Europe and past risk management honorees.

This event is expected to become an annual, must-attend for professionals who manage large, complex global risk programs. The 2010 summit is built around four core topics identified by Fortune 300 risk managers: innovation in risk management, global programs, global legislative and regulatory devel-



**REGIS
COCCIA**

Editor Regis Coccia's commentary appears periodically. He can be reached at: rcoccia@businessinsurance.com

opments, and counterparty risks.

Expert speakers will present on each topic, then risk managers will convene in a closed-door roundtable discussion, followed by an industry panel of top executives offering their perspectives and discussing risk managers' concerns. There will be lots of opportunity for peer-to-peer networking and comparing notes, and the inaugural *Business Insur-*

This event is expected to become an annual, must-attend for professionals who manage large, complex global risk programs.

ance Innovation Awards will be presented at a March 8 dinner during the summit.

Why this format for only this group? Because the risk managers in the Fortune 300 and Euro 100 do not have a similar opportunity at other industry- or association-sponsored events. RIMS and the Federation of European Risk Management Assns., for example, conduct high-quality events for their broader-based membership. Other groups offer more limited meetings, which is why *BI* saw an opportunity to complement these with the Risk Management Summit. In other words, the summit isn't a substitute for RIMS' annual conference or FERMA's biennial forum in Europe; if you want to maximize your networking and professional development opportunities, it would make sense to attend all three.

If you're in the Fortune 300 or Euro 100 and the summit sounds as interesting to you as it does to me, I urge you to reserve your spot at the Risk Management Summit by visiting www.BusinessInsurance.com/RMSummit right now. You won't be sorry.

from predecessor to successor, **ACE** insures progress

Property & Casualty | Accident & Health | Life

To address the complexities of D&O insurance, it takes the right people, a strong balance sheet, worldwide capabilities and a flexible approach. These are the strengths of ACE. We take on the responsibility of your risks so that you can take on the responsibility of making things happen. We call this insuring progress. Visit us at acegroup.com



25 years of
insuring progress

Business Insurance OPINIONS

Bipartisan summit will aid health reform

WE THOROUGHLY SUPPORT President Barack Obama's call for a televised summit to bring together congressional Democrats and Republicans to try to develop a bipartisan consensus on health care reform legislation.

There are many reasons why the drive to pass health care reform has faltered. High on the list of reasons was the attitude of top Democratic leaders, especially in the House of Representatives.

There was little, if any, effort to develop a measure that would attract GOP support. Democrats probably acted that way on the assumption that they could pass reform legislation without any Republican backing.

Neither political party has a monopoly on good ideas.

That assumption was flawed for two key reasons. Most importantly, neither political party has a monopoly on good ideas. Shutting out the GOP inevitably led to inferior reform bills on which many of the voters looked with suspicion.

The second reason became evident when the Democrats lost their filibuster-proof majority in the Senate after a special election in Massachusetts. With that change, they also lost their ability to win approval of reform legislation without Republican support.

Aware of that new political reality, President Obama is extending an olive branch to Republicans and actively seeking their ideas. We hope Republican leaders who initially were cool to the offer will respond positively and begin discussions. That, in turn, will increase the likelihood of developing a reform plan that would be meaningful and attract the bipartisan support needed for enactment.

Producer disclosure rule needs a new approach

LIKE MANY ATTEMPTS at compromise, New York's new producer disclosure rule has managed to antagonize groups on both sides of the issue.

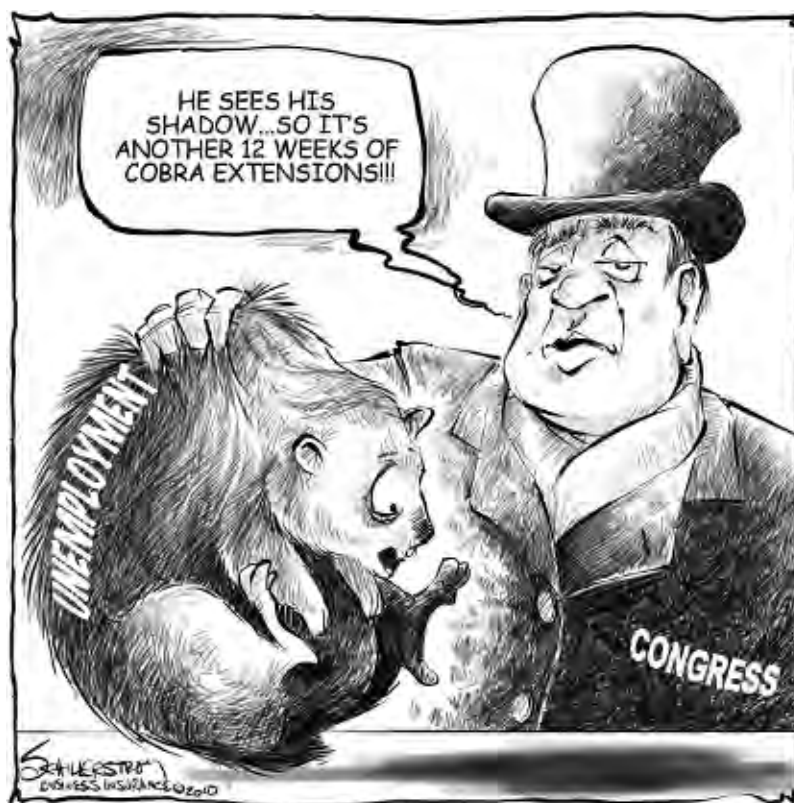
As we report on page 3, the state's producer compensation transparency regulation, which will come into force next year, is considerably watered down from previous drafts of the rule. It has come under fire from the Risk & Insurance Management Society Inc. and the Independent Insurance Agents and Brokers of New York, albeit for very different reasons.

Considering the tumult surrounding broker commissions during the past decade, we can understand RIMS' disappointment with the rule. For years, even before the investigations of former New York Attorney General Eliot Spitzer, risk managers have sought more information on how much their brokers are paid and who is paying them.

Given the abuses uncovered by the Spitzer probe and the direct correlation between the price that buyers pay for insurance coverage and the amount intermediaries receive in various forms of commissions and fees, disclosure of broker compensation should be mandatory under all circumstances.

The position of the IIABNY is less easy to understand. The group says the rule will add costs and administrative burdens and it plans to go ahead with legal action to try and block the rule from taking effect. If showing your customers what they are paying for is deemed too expensive or too troublesome, one has to wonder whether the compensation system is too complex in the first place.

New York's disclosure rule had been seen as a possible blueprint that could be used by other states. We hope other regulators take a different direction.



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NEXT WEEK'S QUESTION

Q: What's the likelihood of a bipartisan health care reform bill passing this year?

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U.K. legal fees set for change

If your company is more likely to be involved in English litigation as a defendant and face claimants who instruct lawyers on a "no-win, no-fee" basis, recent recommendations to reform the court system in England and Wales may sound like good news, says Ian Lupson, commercial disputes partner in the London office of law firm Jones Day. Less good news perhaps is the suggestion—subject to safeguards and a limited increase in damages—that contingency fees may become lawful in England and Wales, he says.



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Business Insurance is published by
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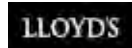
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Market Moves

Navigant acquires economics consulting firm

WASHINGTON—Navigant Consulting Inc. has acquired Empiris L.L.C., a Washington-based consulting firm that focuses on litigation, regulatory proceedings, policy debates and strategic planning.

The Empiris team, comprising 21 employees, will join Navigant's economics consulting unit, Chicago-

based Navigant said in a statement. "The Empiris team deepens our testifying expert base, particularly in antitrust and regulatory matters, and the senior leadership at Empiris provides a tremendous foundation for growing our presence in Washington," John Garvey, managing director and leader of Navigant's economics unit, said in a statement.

Terms of the acquisition were not disclosed.

Companies jointly form claims management firm

FISHERS, Ind.—Reinsurance broker U.S. RE Cos. Inc. and National Catastrophe Adjusters Inc. say they have partnered to form a claims management company.

The joint venture, Blue Hill Claims Management L.L.C., will provide claims administration services to property/casualty insurers and managing general agencies with catastrophe-exposed business, the companies said in a statement.

Indianapolis-based NCA will expand its third-party administration services through the Pearl River, N.Y.-based brokerage's network. U.S. RE said it will offer claims administration services to clients through Blue Hill Claims Management, supported by claims specialists from NCA.

James C. Pearl, president and chief operating officer of NCA, will direct the group.

Blue Hill Claims Management is located at 9725 Windermere Blvd.,

Fishers, Ind., 46037. The phone number is 317-915-8888, ext. 1210

U.S. Retirement Partners buys 403(b)-planning firm

DEERFIELD BEACH, Fla.—U.S. Retirement Partners Inc. says it has acquired a company that provides retirement planning to teachers in Florida.

Iselin, N.J.-based USRP said in a statement that it acquired Bencor Retirement Group L.L.C., which provides 403(b) plans for teachers of kindergarten through 12th grade in Dade, Broward and Palm Beach counties, to expand USRP's national network of benefits providers.

Deerfield Beach, Fla.-based BRG will operate under its current name

with current management as a wholly owned subsidiary of USRP. BRG has \$50 million in assets under administration, 12 advisers and two staff members. Further terms of the acquisition were not disclosed.

BRG specializes in retirement plans consisting of, among other contributions, sick pay and vacation pay, which are free from payroll taxes.

"Specialized plans are money savers for school districts and earners for teachers," Larry Heydt, founding partner at BRG, said in the statement. "We look forward to expanding that business with the help of USRP."

USRP said it has acquired nine firms specializing in benefits retirement in Florida plus firms in North Carolina, Michigan, Texas and Utah since forming in 2008.

Barney & Barney expands with European presence

STUTT GART, Germany—Barney & Barney L.L.C. has expanded its broker operations to Europe.

Recently relocated Client Executive Bevin Melody will lead efforts to grow the San Diego-based broker's international practice from the office in her Stuttgart, Germany, home, the company said in a statement. Ms. Melody, who has been with the firm's international unit for two years, will focus on international reverse-flow business and global business development.

Barney & Barney said Ms. Melody's presence in Europe will allow her to meet with parent companies and clients and to attend meetings and conferences hosted by insurance brokerage network Assurex Global, with whom Barney & Barney has a partnership.

For Barney & Barney's international office, contact Ms. Melody at 858-222-2537 or 49-(0)-160-841-8081 or bevinm@barneyandbarney.com.

Dawson Cos. acquires employee benefits broker

INDEPENDENCE, Ohio—Dawson Cos. has acquired employee benefits broker Quality Benefits Agency Inc.

Independence, Ohio-based QBA will take the Dawson name while retaining current employees and management, Dawson said in a statement.

James F. Harmon and Elizabeth A. Karl, previously principals at QBA, will lead the Ohio employee benefits practice for Dawson, the company said. Dawson has named Mr. Harmon as president and practice leader and Ms. Karl as vp.

Cleveland-based Dawson provides insurance, surety and employee benefits brokering and consulting services.

Dawson said the acquisition, for which terms were not disclosed, aims to expand its business in Ohio.



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REUTERS

Rates for political risk cover begin to decline

Moderation of world economic crisis helps stabilize prices

By **DAVE LENCKUS**

Stabilizing financial markets have helped buyers of trade credit insurance, as political risk underwriters are pulling back slightly on rates they hiked last year during the global financial crisis, insurers and brokers say.

Rates for political risk insurance covering investors against expropriation and civil unrest also are dropping somewhat, after holding steady in 2009. Meanwhile, rates for sovereign contract frustration coverage have stabilized after sharp increases last year, experts say.

In addition, coverage improvements have been implemented and more are planned by the political risk insurance facilities operated by the U.S. government and World Bank.

Fallout from the financial crisis smothered the political risk marketplace last year, as banking liquidity problems led to insured losses that experts estimated at \$1.3 billion to \$1.75 billion—or years of premium volume.

“The credit crisis was really the most significant event we have ever seen or hope to ever see in our careers,” said Keith Dunford, vp-worldwide underwriting manager for political risk at the Chubb Specialty unit of Chubb Corp. of Warren, N.J. However, “everything has moderated now.”

Rates for credit-related coverage soared from 50% to 300% last year, depending on the particular risk and the country involved, executives say.

The Kazakhstan government’s decision to allow failure of the nation’s largest bank—now called BTA Bank JSC—contributed significantly to hardening of the structured credit market last year, said Matthew Woolam, the London-based head of trade credit political risks at Liberty Mutual Insurance Europe Ltd., a unit of Boston-based Liberty

Mutual Group Inc. Financial institutions are the main buyers of the coverage for borrower or counterparty payment defaults.

The Kazakhstan government’s “unexpected behavior” compelled insurers to tighten their banking risk underwriting “in many countries,” Mr. Woollam said.

Other market executives agreed.

“We reviewed our portfolio and changed our strategy to reflect we’re still in a weak economic environment,” said Navaid Farooq, a London-based senior underwriter for Catlin Group Ltd. “We believe” the financial crisis is ending, so “most of the prob-

‘The credit crisis was really the most significant event we have ever seen or hope to ever see in our careers.’

Keith Dunford, Chubb Corp.

lems, hopefully, have been reported.”

The countries with the greatest credit risk include Kazakhstan as well as Bahrain, Latvia, Turkey and Ukraine, experts say.

Credit risk capacity estimates range from \$450 million to \$700 million. Buyers typically purchase \$10 million to \$20 million of limits, experts say.

Meanwhile, political risk insurance pricing is relatively soft, executives say.

Political risk “is one of the more stable markets compared to the credit insurance market, which had horrific loss ratios” in 2009, said Roger Schwartz, New York-based senior vp at Aon Trade Credit, a unit of Aon

Protesters hold up their rifles during an anti-government protest this month in southern Yemen, one of the countries cited by Aon as being among the most politically unstable.

Risk Services Inc.

A notable exception last year was sovereign contract frustration coverage. Rates spiked as much as 30%, said Claire Simpson, a London-based political risk underwriter for Lloyd’s syndicate 33, managed by Hiscox Syndicates Ltd.

This year, rates are down 5 to 15% as risk managers fight hikes because of budget restrictions, said Evan Freely, the political risk and trade credit practice leader at Marsh Inc. in New York. Insurers recognize that political risk cover is a discretionary buy and are relenting on rates, he said.

Estimated worldwide capacity for political risk insurance is \$1 billion to \$1.5 billion, though capacity shrinks as policy duration grows. Buyers typically secure between \$20 million and \$50 million in limits, said Dan Riordan, the Washington-based president of the surety, credit and political Risk unit of Zurich North America.

Africa is the most politically unstable region, according to Chicago-based Aon Corp. Experts say other nations with the greatest political risks are Argentina, Bolivia, China, Congo, Ecuador, Ghana, Indonesia, Kazakhstan, Russia, Turkey, Ukraine, Uzbekistan, Venezuela, Yemen and Zimbabwe (*BI*, Feb. 1).

Most market executives would not speak for attribution about political risk in China after Google Inc.’s threat to pull out of the nation, citing attacks on the e-mail accounts of Chinese human rights activists.

“It’s always been a risky place to do business in,” but that has been factored into rates, said one executive, who echoed other assessments.

Zurich’s Mr. Riordan noted that special political risk insurance covers interference with operations. The coverage typically protects investors in oil and gas operations, but it can be tailored for other types of business, he said.

Aon said political risk or credit risk deteriorated in 18 countries, but has improved in nine, including Albania, Colombia, Sri Lanka and Vietnam.

At the Washington-based U.S. Overseas Private Investment Corp., a review for a midyear rate reduction for oil and gas operations, manufacturers and schools is under way, said Rod Morris, vp-political risk insurance.

To draw commercial insurers into riskier countries, OPIC has expanded its reinsurance book. In addition, OPIC will cover title insurance losses and intellectual property losses that are “discreet and identifiable,” such as research and development costs, Mr. Morris said.

The World Bank’s Washington-based Multilateral Investment Guarantee Agency recently improved its political risk coverage, said Marcus Williams, strategy and operations adviser.

He said MIGA now covers a default of a sovereign financial guarantee and temporary business interruption losses resulting from war or civil unrest. It also no longer requires arbitration if a counterparty defaults on a contract.

In addition, MIGA is developing coverage for banks that make investor loans, but the product would not cover the value of those projects, Mr. Williams said.

Specialty
Risks

THE
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**KEY PERSON COVER
CAN PROTECT
AGAINST BIG LOSSES**
PAGE 12

**COMPETITION STRONG
IN CORPORATE
TRAVEL MARKET**
PAGE 14

**OBTAINING PUNITIVE
DAMAGE COVERAGE
CAN BE TRICKY**
PAGE 16

Key person coverage protects companies' critical assets

Typical life, disability package revolves around top executives

By **STUART COLLINS**

The loss of a star fund manager, a successful author or a high-profile chief executive through injury, illness or death can have significant financial implications for a company.

However, specialist life and disability insurance known as key person insurance can help companies

with lost revenues and incurred costs.

Key person insurance is a form of critical asset protection, said Tim Prifti, London-based active underwriter, accident and health, Kiln Syndicate 510, the Lloyd's syndicate managed by Kiln Ltd. "And for some companies, their intellectual property or key asset is a person with specialist skills, knowledge or contacts," he said.

The cover provides a "financial cushion" to a company should a key person be unable to work due to temporary or permanent disability

from an accident or illness or the person's death, Mr. Prifti said.

The death of a key employee can have a "disastrous effect" on a business, but there are several types of key person insurance that can help pay the costs incurred, said Tom Lobaugh, senior vp at Willis North America in West Palm Beach, Fla. Term life insurance, permanent life insurance, disability insurance and permanent total disability insurance also can be used to provide coverage for the loss of a key person's services, he said.

"Life insurance is more popular

because most buyers think of life insurance when they think of key person insurance," said Mr. Lobaugh. "And disability insurance costs substantially more than life insurance."

"Often, when disability insurance is recommended by the broker, it is not purchased. But what many employers do not know is their chances of losing the key person to disability, over death, is 17 times greater," Mr. Lobaugh said.

Key person insurance can be used to cover the loss of future revenue, recruitment costs and to pay death-

in-service benefits, said Paul Carter, London-based partner at Glencairn Ltd., a unit of wholesale broker Faber & Dumas Ltd., which is owned by Willis Group Holdings P.L.C.

It often is bought by companies with private owners, Mr. Carter said. Claims payments would be used by business owners to retain control of a company and fund the acquisition of shares in the business should a partner and/or major shareholder die or be permanently disabled, he added.

"The bulk of cover is purchased by companies for executives," Mr. Prifti said, "but key person insurance is also purchased by hospitals with reputation-enhancing and high-earning surgeons, or publishers looking to protect their revenue streams with multimillion-dollar advance book deals with authors."

Financial services companies also are typical buyers of key person insurance. "Hedge fund managers, which are integral to attracting investors, are a good example of a business that looks to buy this cover," he said.

Key person insurance sometimes is purchased by companies that have contracts with key people, such as a sports star, actor, recording artist or film director, said David Bruce, personal accident underwriter at Hiscox Ltd. in London. If the contracted person is unable to work due to an accident or illness, the company may be liable to pay them and pay for a replacement, he said.

Inquiries from companies in the entertainment industry for key person insurance have been increasing lately, said Lori Shaw, Charlotte, N.C., director of sports and leisure at Aon/Albert G. Ruben Insurance Services Inc., a unit of Aon Corp.

Companies have grown more aware of the potential costs to their balance sheets from the unexpected death or disability of a top revenue-producing personality, she said.

Greater awareness of the potential exposures has led to a "spike" in inquiries for key person insurance, and in particular for additional disburse coverage—that will reimburse a company for out-of-pocket expenses should it terminate an endorsement contract, said Ms. Shaw.

Historically, key person cover is bought by larger entertainment companies with sophisticated risk management, but Aon is seeing more inquiries for key person insurance from smaller companies, said Ms. Shaw.

Key person insurance also is used in corporate transactions such as buyouts or financing. Banks may insist on coverage where revenues depend on a key individual and to ensure financial commitments are met, Mr. Bruce said.

The United States is the biggest market for key person insurance, because of the prevalence of high earners and a greater awareness among companies of the risks and cover, Mr. Prifti said.

But it is unusual for larger companies in the United Kingdom to purchase key person policies, said John



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Competition abounds in corporate travel cover

By **JEFF CASALE**

While many companies have cut back on business travel, competition remains strong in the U.S. corporate travel insurance market, experts say.

The products and services available to buyers of business travel coverage are innovative and, most importantly, help safeguard the employee, insurers and brokers say.

Nine principal insurers provide business travel coverage and many are devising ways to expand their

offerings, brokers and insurers say.

"Not only is corporate travel insurance affordable, but it provides a very valuable benefit structure, which is integral in today's business environment when looking after the consideration of a company's most valuable asset—their employees," said Michael Dangler, New York-based senior vp and national specialty benefits practice leader for Willis Group Holdings P.L.C.

Typical travel insurance covers accidental death and dismemberment. It can cover employees'

business trips as well as side trips to visit family or friends. Typical limits range from a multiple of an employee's salary—such as three or five times their annual pay—or progress in increments with limits up to \$250,000, \$500,000 and \$1 million.

Standard policies typically include medical evacuation, repatriation of remains, delayed or lost baggage, and trip delay or interruption.

Popular additions include out-of-country medical insurance; security evacuation and security

services, which could include identity theft; political evacuation; natural disaster services; and trip information services.

Terrorism is not excluded under most policies, but war risk is excluded, say insurers who add that a company can purchase specific war risk coverage if it knows it has an exposure in a high-risk area.

Kidnap and ransom coverage is offered by some insurers, such as ACE Ltd. and Chartis Inc. A basic K&R benefit on travel policy could

See **TRAVEL** page 16

Key: Vital player cover

CONTINUED FROM PAGE 12

Hurrell, chief executive of the Assn. of Insurance and Risk Managers in London. "Limits tend to be relatively low, and there is the question of how you place a value on, say, the chairman of a FTSE 100 company," he said.

"Whilst some individuals make an immense contribution to their enterprises, it should always be possible in a big organization to ensure that even sudden and unforeseen vacancies are filled without undue disruption. Good succession planning is normally a more effective solution than purchasing key man insurance," Mr. Hurrell said.

U.S. companies must make certain that there is an "insurable interest," whereby the policy's beneficiaries must suffer a financial loss at the death of the insured, said Willis' Mr. Lobaugh.

An employer is permitted to purchase life or disability insurance on the life of a consenting employee, as long as the employer would suffer a financial loss from the employee's death or disability. The employee must be highly compensated with pay in the top 20% of money earners in the firm, with 2010 com-

'Good succession planning is normally a more effective solution than purchasing key man insurance.'

John Hurrell,
Assn. of Insurance and Risk Managers

pensation of at least \$110,000, Mr. Lobaugh said.

Most U.S. life insurers offer competitively priced key person life insurance, Mr. Carter said. But the largest provider of such coverage is Lloyd's of London, where a fast turnaround, higher limits and more flexible cover generally are available, he said.

Each key person policy written at Lloyd's is tailored to the individual, said Mr. Bruce. For example, most life and disability insurers will exclude risky activities such as motor racing, piloting a private aircraft or visiting war zones, he added. But personal accident insurers at Lloyd's will write this cover, he said.

Lloyd's underwriters also will write confidential life cover, which requires no prior medical examination. This would appeal to a company that wishes to acquire another company with a key person, who may be unwilling to undergo such an exam, Mr. Bruce said.

Lloyd's also covers higher sums insured and can be used to supplement cover from traditional life and disability insurers, Mr. Prifti said. Most disability insurers cap indemnity at around \$15,000 per month, but Lloyd's has written coverage with sums insured of more than \$100 million to protect a key person, he added.



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Hard-to-find punitive damage coverage is tricky business

Policies written offshore to insulate products, lawyer says

By MARK A. HOFMANN

Obtaining punitive damages coverage when a state declares such damages to be uninsurable can be tricky, but observers say some underwriters are willing to write the policies, albeit offshore.

Some states, including California and New York, hold that punitive damages generally are uninsurable as a matter of public policy. But punitive damage wraparound policies have been available for more than a decade from a handful of underwriters in the Bermuda market, market observers say.

Coverage is written offshore for a simple reason, a policyholder attorney said.

"The reason these products are offshore is to insulate the insurance products and the insurance company from the prohibitions that exist in some states regarding the insurability of punitive damages," said Joshua Gold, a shareholder at Anderson Kill & Olick P.C. in New York.

"I think most insurance commissioners will tell you this is an improper end run around the public policy that prohibits insuring punitive damages," Mr. Gold said. "The counterargument from insurance companies that are offshore and policyholders is there is freedom of contract to enter into commercial risk transfers.

"There's no question these draw the ire of some insurance regulators and departments," Mr. Gold said. "I think people try to be very low key about these contracts."

In fact, six Bermuda entities that provide wraparound punitive damages coverage would not comment for this story.

The details of policies differ, but the coverage wraps around underlying liability policies, including general, employment practices, and directors and officers liability.

Court shies away from unrestricted punitives

WASHINGTON—The U.S. Supreme Court generally has been moving away from allowing unrestricted punitive damages for more than a decade, a marked contrast to its previous approach.

For example, in its 1993 decision in *TXO Production Corp. vs. Alliance Resources*, the Supreme Court let stand a punitive damage award that was 526 times the underlying award for compensatory damages.

But the court changed direction in its landmark 1996 ruling in *BMW of North America vs. Ira Gore*. The case involved a car that was sold as new but later was discovered to have been repainted before it was sold.

An Alabama jury awarded Dr. Gore \$4,000 in compensatory damages and then added \$4 million in punitive damages. Although the Alabama Supreme Court halved the punitive damages award, the U.S. Supreme Court ruled for the first time that punitive damages can be so disproportionate to compensatory damages as to violate constitutional guarantees.

The high court took its reasoning further in 2003 in *State Farm Mutual Automobile Insurance Co. vs. Curtis B. Campbell et ux*. Although it stopped short of drawing a distinct line dividing acceptable from unacceptable punitive damage awards, the Supreme Court held that, under most circumstances, a punitive damage award that is more than a single-digit multiple of the underlying compensatory award violates constitutional guarantees to due process.

In 2007, the high court further restricted puni-

tive awards in *Philip Morris USA vs. Mayola Williams*. The case involved punitive damages of \$79.5 million that were placed atop compensatory damages of \$522,000.

The court held that juries can take into account evidence of harm allegedly inflicted by a defendant on people other than the named plaintiffs in determining the "reprehensibility" of the defendant's misconduct, but also held that juries cannot use punitive damages to punish a defendant for harm to others not named in the suit. In June 2008, the Supreme Court agreed to review the case again to see if the Oregon Supreme Court ignored its directive to apply the proper constitutional review of the punitive damages, which exceeded the single-digit multiple cited in *State Farm*. However, in an unusual move, the justices decided in 2009 that they had erred in agreeing to the further review and dropped the matter, causing some confusion over how closely state courts had to follow the high court's directions in punitive damages cases.

The high court addressed maritime law's impact on punitive damages in its 2008 decision in *Exxon Shipping Co. et al. vs. Grant Baker et al.* The case involved damage caused by the 1989 oil spill that occurred in Alaska's Prince William Sound after the Exxon Valdez ran ashore.

In the case, the Supreme Court held that punitive damages awarded under federal maritime law could not exceed the underlying compensatory damages, a ruling that reduced a lower court's award of \$2.5 billion in punitive damages to \$507.5 million.

—By Mark A. Hofmann

"They're all customized. You really have to do your due diligence," said Philip DiMeglio, director at broker Lockton Cos. International (Bermuda) Ltd. in Hamilton, Bermuda.

"They're fairly straightforward," said Bob Hessel, senior managing director at broker Beecher Carlson in Atlanta. "Typically, there is going to be a U.S. insurer issuing a liability policy. It could be umbrella; it could be employment practices; it could be any number of types of coverage. The policy will be issued domestically. Usually, the company will have an offshore affiliate, typically in Bermuda, that will issue the

punitive wraparound policy. While it's a separate policy and it provides coverage for otherwise uninsurable punitive damage loss, the payments don't stack. You don't get two limits; you get one," he said.

Mr. DiMeglio said that while limits vary, "usually the max is \$25 million. I've never seen a punitive wrap policy go beyond that."

He added that rates generally vary from 10% to 30% of the domestic premium.

There are other approaches to covering punitive damages, particularly where state law allows such coverage, observers say.

"Typically, we see the alternative

to punitive damage wraparound, which is some kind of mechanism that is built into the policy that addresses coverage for punitive damages," said Gary Seligman, of counsel at Wiley Rein L.L.P. in Washington. "Typically, some type of language in the definition of loss or damages addresses the law applicable to the insurability issue. In those types of policies, the current trend seems to be either in the policy form itself or by endorsement to include a most favorable jurisdiction-type provision."

"In some states, punitive damages are not insurable under any circumstances, and sometimes prose-

cutors will force a defendant to waive insurance rights," said Gary Thompson, a partner at Reed Smith L.L.P. in Washington. "Barring those two things, the insurability of punitive damages is a matter of private contract.

The general liability policies offer coverage for punitives. Typically, the main policy form will exclude coverage for punitives, but then there will be an endorsement stating that punitives are covered to the fullest extent covered by law."

"I think all of my clients are able to achieve coverage for punitive damages through their general liability program," Mr. Thompson said.

Even where insuring punitive damages is permitted, not all types of actions in which punitives could arise are covered by insurance, Beecher Carlson's Mr. Hessel said.

"My sense of it is that most of the punitive damage awards in terms of percentages are in areas where insurance wouldn't be involved anyway—such as business disputes, contractual disputes. That would be a very significant portion of the punitive awards," Mr. Hessel said. Cases in which a party is potentially exposed to punitive damages often don't go to litigation, but settle instead, he noted.

In addition, wraparound punitive damages coverage may not be attractive to all buyers.

"They've been around for about a decade," said Mr. Gold. "Only certain policyholders buy these. If you're a mid-sized business, I doubt you've ever heard of these."

"Most of these policies have alternative dispute resolution clauses, so you're probably going to have a very hard time finding out any public disclosure about them," he said.

"There's no clear documentation of what claims have been paid," said Mr. Hessel. "It's a very small number."

Yet demand for the coverage remains steady, Lockton's Mr. DiMeglio said. "This product does continue to hold significant value for our clients that want affirmative punitive damages coverage."

Travel: Competition strong in U.S. corporate travel insurance market

CONTINUED FROM PAGE 14

pay up to \$50,000 for a covered event, said Karen Sheekey, ACE USA vp of strategy and product development for its accident and sickness segment. She added that if a company requires additional coverage, ACE has the capability to provide standalone coverage with limits more than \$1 million.

William W. Beardsley, Philadelphia-based senior vp of Arch Insurance Group's travel and accident division, said the decision to carry K&R benefits as part of a travel insurance policy is usually done on a case-by-case basis.

"While a K&R benefit may be included in a corporate travel package, comprehensive kidnap and

'While risk managers are looking for the best value of for their premium dollars, first and foremost they are thinking about the safety and security of their employees.'

Frank D'Ancona, ACE USA

ransom protection and services are generally purchased separately due to the specialty nature of imple-

menting this service if a K&R event occurs," Mr. Beardsley said.

Mr. Beardsley added that premium costs vary depending on the benefit structure or principal sum limits, and the number of travel days and destinations. He noted that personal sojourn coverage can be added to cover an employee on business who also might visit friends or family.

"While risk managers are looking for the best value of for their premium dollars, first and foremost they are thinking about the safety and security of their employees," said Frank D'Ancona, Wilmington, Del.-based vp of sales and marketing for ACE USA's accident and sickness division. "The coverage they are seeking is going beyond your basic

accidental death and dismemberment policy."

Alan Kubitz, Downers Grove, Ill.-based director of risk management for The HAVI Group L.P., a supply chain and marketing services provider, said corporate travel insurance is used like a "safety net" atop other life insurance and workers compensation benefits that HAVI offers.

He said HAVI offers its employees emergency and medical evacuation coverage and medical coverage under its travel policy and the need to respond on an international level is important when purchasing it.

Mr. Kubitz said he has not had to use any of the coverages purchased, but the insurance, when used, is relatively inexpensive. While business

travel insurance "doesn't apply to everyone," it "truly is a benefit" for employees who travel for work.

Business travel also is an area in which risk managers are taking a greater hand.

"The risk community has become more involved in the placing decision of the business travel policy, especially when the business has employees who are working overseas," said Joe Puzzo, New York-based senior vp of Chartis' accident and health group. "It is not unusual to see a request for the business travel policy as a potential complementary sale to the foreign workers compensation policy."

Added Mr. Dangler: "When the claims come in, this type of coverage responds and it responds well."

Lloyd's: Market confident about future, preparing for new capital rules

CONTINUED FROM PAGE 3

It is not surprising that the review contains no radical suggestions, said Catherine Thomas, managing senior financial analyst at A.M. Best Co. Inc. in London. "Given the strong position that Lloyd's is in, we wouldn't expect there to be."

A top priority at the marketplace is underwriting discipline, according to the review.

"We need to keep our eye on the ball around underwriting discipline," said Mr. McGovern. Lloyd's had suffered from a lack of such discipline in the past, he said, and controls were put in place to guard against it. "Our credibility has returned and we need to maintain that," he said.

The responsibility for overseeing underwriting discipline falls largely to Tom Bolt, Lloyd's director of performance management, who replaced Rolf Tolle on Jan. 1.

While Mr. Bolt said his department would help ensure Lloyd's underwriters base their decisions on reasonable assumptions, "we don't micromanage." Instead, he said he tries to ensure that underwriters have sound pricing policies in place and that someone is accountable should things go wrong because of poor business practices.

David Hough, chief executive of the London & International Insurance Brokers Assn. in London, said his group is pleased with portions of the plan that focus on improving processes and the emphasis of Lloyd's role as a broker market.

"We see a very positive statement and a lot of clarity about Lloyd's positioning over the next few years," Mr. Hough said.

Moody's Analytics, a unit of Moody's Investors Service, said the review will help Lloyd's maintain its position in the global insurance market.

"Lloyd's and the London market maintain many advantages and a good critical mass as a leading center for property/casualty specialty business," Moody's Analytics said in a statement. "The strategic review underlines what is needed to ensure that this position is not eroded and gives added focus to Lloyd's initiatives."

The review acknowledges that while Lloyd's "derives significant strength from being a subscription market, the processes that support the market are inherently more complex" than in other markets.

Several initiatives are outlined in the review that are intended to make claims and information handling easier. Among them, Lloyd's aims to have by the end of this year 70% of the market's managing agents and 50% of brokers sending and receiving endorsement messages through the Exchange, a system launched in May 2009 that uses a common electronic standard developed by the Assn. for Cooperative Operations Research & Development.

Mr. McGovern said Lloyd's also is going through a "claims transformation pilot" aimed at speeding up and improving the quality of claims settlements. Lloyd's will assess the impact of this effort by the end of the year, the review says.

Simplifying operational processes will make Lloyd's more attractive and accessible to brokers, which is a major theme of the strategic review, Mr. McGovern said.

Mr. Hough said LIIBA was pleased the plan reiterated Lloyd's commitment to remaining a broker market and that it proposed ways to strengthen the distribution model.

The review calls for Lloyd's to ensure that its market development activities are aligned with brokers' business development strategies so the marketplace is attractive to intermediaries. More resources will be provided to brokers that need help in implementing new technology.

'We see a very positive statement and a lot of clarity about Lloyd's positioning over the next few years.'

David Hough, London & International Insurance Brokers Assn.

The review also points to Lloyd's plans to continue its pursuit of a direct license in China, its efforts to

determine the feasibility of opening representative offices in Mexico and Russia, and its lobbying for the ability to write onshore reinsurance in India.

The review notes the regulatory challenges Lloyd's faces, particularly regarding Solvency II. Lloyd's plans to continue lobbying to ensure that the final Solvency II regulations are proportionate and appropriate to Lloyd's structure, Mr. McGovern said.

According to the review, Lloyd's will continue its work to build an internal model to calculate risk-based capital needs, as called for in the proposed Solvency II framework.

"There is a risk of Solvency II affecting capital efficiency, which is one of Lloyd's key attributes," Ms. Thomas said. And, Lloyd's has to ensure that all syndicates are compliant with the framework's requirements, she said.

Mr. Bolt confirmed that levels of capital that could be required by Solvency II are a concern at Lloyd's.

Regulators were concerned by problems in banking that led to the financial crisis and are considering capital requirements for insurers that could be burdensome, even though insurers survived the crisis far better than banks did, he said.

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ANNOUNCEMENT

Louis D. Magnan, Managing Partner of Magnan Graizzaro & Associates CPAs, LLC was awarded the 2010 Stephen P. Cronin, Jr. Memorial Award at this year's LEA meeting.

The Stephen P. Cronin, Jr. Memorial Award is presented annually at the Loss Executives Association Annual Meeting to an individual in recognition of their dedicated service in contributing to and promoting the professional, educational and ethical development of members of the property claims profession."

LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA
COMPANIES (WINDING-UP)
2007/351
IN THE MATTER OF THE COMPANIES ACT 1987
AND IN THE MATTER OF THE INSURANCE ACT 1978
AND IN THE MATTER OF WALTON INSURANCE LIMITED
(IN LIQUIDATION)
NOTICE OF COMPLETION OF SCHEME OF ARRANGEMENT
Under the order for WIND-UP of the above named Company dated January 4, 2009,
Notice is hereby given that the Scheme of Arrangement between Walton Insurance Limited and its insurance creditors which became effective on January 5, 2007 (the "Scheme") has been completed in accordance with its terms as of August 24, 2009. All Scheme Liabilities have been finally determined and all Payable Scheme Claims have been paid in full in accordance with the terms of the Scheme and no further payments shall be made by the Company in respect of Scheme Claims.
Michael Merrick & Charles Threlk - Joint Liquidators

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INDUSTRY CHALLENGES: Tort reform is not likely forthcoming in the near to midterm. Directors and officers, accountants, lawyers, medical and other professionals can expect a continuing flood of litigation. Underwriters will need to continue to adjust to this environment with better underwriting risk selection as the abundance of capacity has put a lid on substantial rate increases, for now. More generally for the

(property/casualty) industry, cat losses are trending higher long term and getting more expensive. While 2009 was relatively quiet for cat losses, the overall period 2000 through 2009 was much worse than many people realize. The industry needs to better prepare for inevitable and severe cat losses in the future. Finally, the P/C industry must cope with flat investment income. P/C insurers typically have about two-thirds of their investments in bonds, so rising inflation and rising interest rates may put an even greater emphasis on the achievement of strong underwriting results going forward.

INDUSTRY OUTLOOK: Flat investment returns, the possibility of greater regulation and a low industrywide return on equity of about 6% will compel P/C carriers to improve their underwriting profitability. A 100% combined ratio may no longer be sufficient to generate an acceptable (return on equity). In coming years, look for P/C carriers to try to improve their combined ratios to 95%-96% via higher premiums and/or more restrictive underwriting standards.

Comings & Goings

ONLINE



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Ryan: Aon founder launches new insurance venture

CONTINUED FROM PAGE 1

Leib Dodell, Debra McClenahan and Chad Milton, all of whom have ties to Aon. Mr. Ryan is chairman of the MGU, while Mr. Dodell is CEO.

RSG last week also announced the launch of its second subsidiary, startup Ryan Specialty (Europe) Ltd., a U.K.-based MGU specializing in financial lines products, including directors and officers, financial institution and professional liability products.

Malcolm Nightingale and Adam Barker, formerly of HCC Global Financial Products L.L.C., have joined RSG to lead the new MGU.

Also joining RSG last week was Timothy W. Turner, former president of the nation's largest wholesaler, CRC Insurance Services Inc., who is a managing director of the holding company.

In an interview, Mr. Ryan, 72, said even though he retired from active involvement with Aon in 2008, he never intended to fully retire from the insurance industry.

Although in the interim he took on the role of CEO of Chicago 2016, the city's unsuccessful bid to host the 2016 Summer Olympic Games, Mr. Ryan said he would not have stayed on in that capacity had Chicago won.

"I thought I'd get back into the insurance business," Mr. Ryan said, but not in a capacity that would compete with Aon, of which he remains the largest individual shareholder.

Toward that end, RSG will not be in the retail brokerage, reinsurance brokerage or human resource consulting spaces, nor will it compete in the same lines of business as Aon's existing MGU operations, stressed Mr. Ryan, who is chairman and CEO of RSG.

Rather, he said he intends to build a specialty wholesale company that addresses new and emerging needs.

It's a segment of the business that is familiar to Mr. Ryan, who in 1964 established Pat Ryan Associates, a small MGU that distributed specialty credit life insurance to automobile dealers. Mr. Ryan ultimately built the agency into Aon, the world second-largest brokerage firm, according to *BI's* rankings.

"It's not by coincidence," Mr.

Ryan said, that he's back in the MGU/MGA business. "I've always liked that sector. I believe that it does allow you to really demonstrate your creativity" and differentiation, he said.

Indeed, "Pat Ryan is a leader in the industry and it will benefit from his vision," an Aon spokesperson said of the launch of RSG.

Other industry observers say they wouldn't bet against RSG's success.

"There's plenty of room for creative solutions and competition" in the industry, said Ken Crerar, president of the Council of Insurance Agents and Brokers in Washington. "Pat Ryan is surely one of the icons

'It will be interesting to watch and see what he does in this realm.'

Ken Crerar, Council of Insurance Agents and Brokers

of the industry in terms of building a major brokerage operation and it will be interesting to watch and see what he does in this realm."

"I think he's going to be a major player in the wholesale, MGA, MGU space very quickly," said

Kevin P. Donoghue, managing director of Mystic Capital Advisors Group L.L.C. in New York, specifically noting the "awesome team" of "extremely competent" people who have joined RSG so far. "He's not going to put his name behind something without succeeding."

Mr. Donoghue added that he would not be surprised if RSG ultimately "picked up" one of the large, private equity-backed wholesalers whose owners may be looking for an exit strategy.

Wholesalers Crump Group Inc., American Wholesale Insurance Group Inc. and Swett & Crawford Group are entering the fifth year of

their respective private equity-ownership structures.

When asked to comment on persistent rumors that he might be interested in purchasing Swett & Crawford, the wholesale operation that Mr. Ryan helped divest from Aon in September 2005, he laughed and said, "There are a lot of rumors out there. Swett and Crawford is a great company."

Mr. Ryan did say that he plans to build RSG into a company with meaningful scale through a series of acquisitions, startups and "bolt-on" acquisitions to those startups.

He noted that he's had "quite a bit of interest from outside investors, so capital is not an issue." It all depends "on how quickly we can grow prudently," he said.

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Marijuana: Laws create dilemma for employers

CONTINUED FROM PAGE 1

trolled Substances Act, which creates tension between state and federal laws. Observers say this was eased in October, when the Justice Department said the federal government will not prosecute individuals using marijuana for medical purposes—provided that they adhere to state laws.

David H. Black, of counsel with law firm Jackson Lewis L.L.P. in Seattle, said employers have sympathy for employees whose medical issues have led them to use marijuana.

“By the same token, they also have a concern or responsibility to maintain a safe and secure workplace for all the other workers that are there and for the public too,” Mr. Black said.

“It really creates a Catch-22 for employers,” said Richard R. Meneghello, a partner with law firm Fisher & Phillips L.L.P. in Portland, Ore. “If they try to discipline an employee or not allow medical marijuana in the workplace, they could face a potential disability discrimination claim by the employee, or could they face some other invasion of privacy or legal action by the employee.

“Yet if they try to accommodate the employee, then they could face a potential safety issue if the employee shows up for work impaired and injures himself and others. And moreover, there could also be the nightmare scenario of a catastrophic injury caused to a member of the general public or employee,” where the employer “could face liability because they knowingly allowed someone who’s a marijuana user to operate on behalf of the company,” Mr. Meneghello said.

“There really is a fine line, a balancing act that they have to negotiate that really makes it difficult for employers to determine which avenue to go,” he said.

However, Frederick T. Smith, a partner with law firm Seyfarth Shaw L.L.P. in Atlanta, had a different view.

“The issue isn’t as gray and as complicated as people think it is, and I think it’s pretty clear, notwithstanding the laws that have been enacted in 14 states, that an employer has no obligation to accommodate an employee’s use of medical marijuana,” Mr. Smith said.

Vance O. Knapp, an attorney with law firm Sherman & Howard

L.L.C. in Denver, said, “It’s no different than if somebody had Percocet and they weren’t supposed to use it during work” but “wanted to take it during a work break.”

Richard L. Hurford, a shareholder with law firm Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Bloomington Hills, Mich., said, “I think your greater liability will stem from looking the other way with individuals who use medical marijuana as opposed to...strictly enforcing your zero-tolerance policies.”

However, some observers say there may be room for accommodation.

An employer’s policy should depend on “how aggressive they want to be,” said Mr. Meneghello.



LEGAL IN 14 STATES

Fourteen states have enacted laws that legalized medical marijuana

STATE	YEAR PASSED
Alaska	1998
California	1996
Colorado	2000
Hawaii	2000
Maine	1999
Michigan	2008
Montana	2004
Nevada	2000
New Jersey	2010
New Mexico	2007
Oregon	1998
Rhode Island	2006
Vermont	2004
Washington	1998

Source: ProCon.org

“If they want to take a very aggressive approach,” employers can treat marijuana use the same as any other illegal substance and fire those who test positive.

A more moderate approach is “to

Courts rule firms do not have to accommodate

Court rulings involving medical marijuana generally have held that employers are under no obligation to accommodate medical marijuana users, despite the laws in 14 U.S. states that permit doctors to prescribe it.

In January 2008, the California Supreme Court ruled 5-2 in *Gary Ross vs. Ragingwire Telecommunications Inc.* that an employee whose doctor recommended he use marijuana cannot claim disability-based discrimination against an employer that fired him for a positive drug test. At issue was whether California’s Compassionate Use Act of 1996 would override an employer’s policy against drug use.

In a March 2009 ruling, the Montana Supreme Court in *Mike Johnson vs. Columbia Falls Aluminum Company L.L.C.* upheld a lower court ruling, stating “an employer is not required to accommodate an employee’s use of medical marijuana.”

However, employers in Oregon are awaiting a state Supreme Court decision in which an employer is appealing a 2008 appellate court ruling in favor of a worker in *Emerald Steel Fabricators Inc. vs. Bureau of Labor and Industries*. The case involves an employer who refused to hire a temporary worker as a permanent employee after learning he was a medical marijuana user. The appellate court ruling was based on technical grounds.

“It’s definitely an evolving area of the law,” said James M. Shore, a partner with law firm Stoel Rives L.L.P. in Seattle.

Mr. Shore successfully represented the employer

in an appellate court decision last year in *Jane Roe vs. Teletech Customer Care Management L.L.C.*, in which the court ruled that Washington’s medical marijuana law did not protect a medical marijuana user who was fired after the employer learned she had failed a pre-employment drug screening test. The woman is seeking a hearing before the state’s Supreme Court.

Michelle D. Bayer, an attorney with Frank, Haron, Weiner and Navarro P.L.C. in Troy, Mich., said employers’ success in some courts “doesn’t mean they’re always home free. I always advise clients they have to proceed with caution and this is a high-risk situation, but there’s nothing wrong with employers taking a zero-tolerance policy and enforcing it.”

In Colorado, where courts have not ruled on the issue, employers also face apparently conflicting laws, many observers say.

The state’s medical marijuana amendment says employers do not have to accommodate medical marijuana in the workplace. But the Colorado Anti-Discrimination Act, which is informally known as the lawful off-duty activities statute and originally was intended to apply to tobacco smokers, prevents employers from terminating workers for engaging in lawful activities off worksite premises during nonworking hours.

Employers are waiting to see the results of the litigation that emerges from the issue, said Vance O. Knapp, an attorney with law firm Sherman & Howard L.L.C. in Denver.

—By Judy Greenwald

only discipline employees if they can demonstrate that the employee was impaired by the marijuana,” he said.

A worker who is prescribed medical marijuana obviously has a physical problem that led to the issue, Mr. Meneghello said. He advises employers to treat this like “any other physical problem. Conduct an interactive process to see what accommodations might work.”

This could include asking employees to work with a doctor and providing intermittent time off or more frequent breaks, “anything that might allow them to do work despite the condition that has allegedly disabled them,” aside from being allowed to use marijuana, he said.

Whatever the employer’s policy may be, consistency is critical, experts say.

This “helps make sure they’re not inadvertently discriminating against any kind of a protected class,” Mr. Black said.

In New Jersey, “the most important thing is for an employer, before the issues arises, to decide how they want to deal with” it, said Amy Komoroski Wiwi, of counsel with law firm Lowenstein Sandler P.C. in Roseland, N.J.

“It’s going to really depend on the workplace and it’s going to depend on (employers’) preference,” Ms. Wiwi said.

Experts generally agree that, at the very least, employers can safely forbid workers from smoking any marijuana on their premises or from coming to work impaired.

Mr. Hurford said one employer called him and said, “An employee has a prescription for medical marijuana and he wants me to make a smoking room available. What can I say? I said, ‘No, you don’t have to do that.’”

The issue, though, is rife with questions, observers say. For instance, marijuana remains in the system after its effects have worn off. How can an employer tell if a worker is under the influence? At what point does smoking marijuana stop having an effect on someone who has smoked it? And what if a worker with a permit to smoke medical marijuana is found to have it in his system after a random drug test, but has otherwise shown no indication he is under its influence?

One inherent problem is “there is no standard” as to how much marijuana an employee can have in his

system “and still be able to work safely and effectively,” said Paula A. Barran, a partner with law firm Barran Liebman L.L.P. in Portland, Ore.

Meanwhile, asking employees about underlying medical conditions can leave employers vulnerable to discrimination charges if a worker is terminated later for other reasons, observers say.

Employers also could be accused of violating health privacy regulations for asking the wrong questions. It is “not the employer’s province to get involved in that issue, or should not be, at least,” said Mr. Knapp.

Meanwhile, medical marijuana is unlikely to be covered under employers’ health care plans, observers say. Medical marijuana is not approved by the U.S. Food and Drug Administration and most health plans do not cover drugs without FDA approval, said a CIGNA Corp. spokesman.

It is also not reimbursable under employee’s flexible spending accounts. Reimbursements under the FSAs “can only be used for things that are approved by the (Internal Revenue Service)” and medical marijuana is not, the CIGNA spokesman said.

SEC: Risk disclosure requirement looms

CONTINUED FROM PAGE 3

“I have been given the role of heading our ERM efforts,” said Rick Broderick, director-risk management at the international communications and information technology company. “As we start going through that, that will include making sure we are aware of what the SEC requirements are and setting up the procedures to assure compliance,” he said.

“Harris has a fairly robust ERM process,” Mr. Broderick said. “We have a committee that involves very senior folks,” he said. “The corporate sponsor is our CFO in communicating with board.

“It’s a very good process. We think what we’ve already been doing in the past meets that requirement. We are continuing to walk through it. We’ll be in compliance, we believe,” Mr. Broderick said.

A veteran risk management pro-

fessional hailed the move, but warned that simply emphasizing enterprise risk management is not enough.

“That truly has been a long time coming,” said Lance Ewing, former vp-risk management for Harrah’s Entertainment Inc. in Las Vegas and a former president of the Risk & Insurance Management Society Inc. “The focus on enterprise risk management, while it’s important and I think it’s a step in the right direc-

tion,” there were companies that had ERM processes in place and still failed during the economic downturn.

Mr. Ewing said those overseeing ERM need to have direct contact with the board and “have the audit committee’s ear on a regular basis.”

The SEC’s approach is a “vast undertaking,” said Derrick Neuhauser, a partner in international consulting firm BDO Seidman L.L.P.’s, Chicago office. “The SEC, I believe, is hoping for this area to be covered quite extensively,” he said.

Companies will have “to evaluate

every incentive plan they have in the organization.” That raises the question of “what part of the board is going to take ownership of this responsibility? Is it a governance issue? Is it an audit committee issue, should the compensation committee tackle it?” Mr. Neuhauser said. “There’s a lot of scrambling going on.”

Marsh’s Mr. Allen said he’s looking at the process from a shareholder’s perspective. “All I’m asking is get a little more formal about how they manage risk. Is that too much to ask?”

Rule: New York plan rules buyers, brokers

CONTINUED FROM PAGE 3

"The previous revision had reinstated the disclosure requirements for most renewals, so the reversal would appear to warrant another comment period."

In the previous version of the regulation, published in early December, renewals were exempt from the disclosure requirements when the producer had no sales or solicitation contact with the purchaser in connection with the renewal. In the final version, the disclosure requirements do not apply to renewals unless the purchaser requests more information about the producer's compensation less than 30 days prior to renewal or less than 30 days after a renewal.

"The intent of the rule, as it was initially presented, was to bring greater clarity and certainty to the insurance purchase transaction in order to protect consumers," RIMS said. "While this objective was a positive first step by the department, each subsequent revision has diluted the original intent and has resulted in the final rule that falls

short of complete and mandatory disclosure, for which RIMS has been a longtime advocate."

In response, the New York department said it did not intend to reopen the public comment period.

Despite what it described as "some positive changes" to the final rule, the Independent Insurance Agents and Brokers of New York said it plans to file suit against the department to try to block it from taking effect.

"IABNY has a responsibility to represent and to protect the interests of its members, and our members have unanimously and vociferously told us that this rule is unnecessary, ineffective and overly burdensome to their businesses," IABNY President and CEO Dick Poppa said in a statement. "We cannot sit back idly and let the department impose an unnecessary rule that will only serve to add another time-consuming and costly requirement for our members, which in turn could also result in additional costs to consumers."

Responding to the IABNY, the New York department said in an e-mail that the rule "protects consumers and their right to receive the

information they need when making important financial decisions. We are confident in our legal authority to promulgate the regulation and look forward to aggressively defending it in court if necessary."

The Council of Insurance Agents and Brokers, for one, supports the new regulation.

"The regulation is watered down to some extent...it's not as demanding as the (National Assn. of Insurance Commissioners' compensation disclosure) model that we've supported from the beginning, but we're fine with it," said Ken Crerar, president of the Washington-based CIAB.

"Our biggest concern has always been that there be consistent transparency. We've been supportive of transparency across the board and we're concerned that there are inconsistent requirements," he said.

"Having said that, the New York requirement appears to be not a heavy burden. It's a basic transparency requirement and we don't see any major issues with it per se," Mr. Crerar said. More than anything, it's time for the industry to move on from this, he said.

THE RULE

Under New York state's Producer Compensation Transparency Regulation, insurance producers must disclose to the buyer, either orally or in prominent writing, at or prior to applying for the insurance contract, the following information:

- A description of the insurance producer's role in the sale.
- Whether the producer will receive compensation from the selling insurer or other third parties based on the insurance contract being sold.
- That compensation may vary depending on factors that include, if applicable, the producer's business volume for the insurer or the profitability of the policy.
- The buyer may request information on expected producer compensation from a sale or alternative quotes presented.

Once requested, the producer must disclose compensation in prominent writing, at or prior to issuing the contract, except when immediate cover is needed in which case a response is required within five business days:

- A description of the nature, amount and source of compensation to the producer or parent, subsidiary or affiliate based on the sale.
- A description of alternative quotes presented by the producer, including coverage, premium and compensation the producer would have received.
- A description of material ownership interest the insurance producer, parent, subsidiary or affiliate has in the issuing insurer, parent, subsidiary or affiliate;
- A description of any material ownership interest the issuing insurer, parent, subsidiary or affiliate has in the producer, parent, subsidiary or affiliate.
- A statement whether the producer is prohibited by law from altering the compensation received from the insurer based in whole or in part on the sale.

Source: New York State Insurance Department

COBRA: Premium subsidy extension hits speed bump but still alive

CONTINUED FROM PAGE 1

coverage due to a reduction in hours and then were involuntarily terminated later.

While the latter provision as written would affect relatively few former employees, benefit experts say it would be a challenge to explain and administer.

"This is not something easy to understand and it is even harder to communicate," said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

The provision involves employees whose hours were reduced so much they no longer were eligible for their employers' health insurance plan, resulting in eligibility for regular, unsubsidized COBRA coverage. Later, the employees were terminated involuntarily.

In this situation under earlier Internal Revenue Service guidance, such individuals would not be entitled to the COBRA premium subsidy. The IRS said the initial event has to be involuntary termination of employment for former employees to qualify for the 65% subsidy of their COBRA premium.

The latest COBRA proposal would effectively overturn that IRS position as long as certain conditions are met.

To qualify for the subsidy under the proposal, the individual had to have a reduction in hours between Sept. 1, 2008, and May 31, 2010, that resulted in a loss of group coverage and which made the individual eligible for unsubsidized COBRA coverage. The provision also would require that the individual be involuntarily terminated after the jobs bill is signed into law.

The length of time in which a former employee would be entitled to COBRA coverage and the 15-month

SUBSIDIZED COVERAGE

Congressional actions to establish and extend the 65% federal COBRA health care premium subsidy to involuntarily terminated employees

- February 2009, American Recovery and Reinvestment Act: Provides a nine-month COBRA premium subsidy to employees laid off from Sept. 1, 2008, through Dec. 31, 2009.
- December 2009, Department of Defense Appropriations Act: Extends COBRA subsidy eligibility to 15 months for those laid off from Sept. 1, 2008, through Dec. 31, 2009, and provides a 15-month subsidy for those laid off from Jan. 1, 2010, through Feb. 28, 2010.
- February 2010, draft proposed finance committee jobs bill: Would extend 15-month COBRA subsidy to employees laid off from March 1, 2010, through May 31, 2010. In certain situations, would extend subsidy to employees who lose group health coverage due to reduced hours and are later laid off.

COBRA premium subsidy would be tied to when their hours were reduced—not when they were involuntarily terminated.

Take the case of an employee who lost group coverage after his or her hours were reduced on Jan. 1, 2009, and became entitled to unsubsidized COBRA coverage for up to 18 months. If the jobs bill were enacted on March 1 and the employee involuntarily terminated the next day, 14 months of the individual's initial COBRA entitlement would have elapsed. As a result, the individual would be entitled to the 65% federal COBRA premium subsidy for four months.

Implementing the provision will be challenging, experts say.

"First, employers are going to have to identify employees who had a reduction in hours going back as far as Sept. 1, 2008, and that will be an effort," said Jennifer Henriksen, a legal consultant with Hewitt Associates Inc. in Lincolnshire, Ill.

Then, employers would have to find a way to clearly explain the new right to opt for COBRA and

receive subsidized coverage to former employees.

"The issue here is trying to explain this to beneficiaries so that they understand this new opportunity," Ms. Henriksen said.

Experts say, though, that given the nation's continuing high unemployment rate, it is nearly certain that COBRA subsidies—even in the wake of Sen. Reid's removal of the subsidy provisions from the jobs bills—will be extended again.

Extending COBRA premium subsidies "would be no surprise at all," said Rich Gisonny, a consultant with Towers Watson & Co. in Valhalla, N.Y.

If the economy does not pick up, more COBRA premium subsidy extensions are likely.

"I expect this to run through the next election," said Andy Anderson, a partner with Morgan, Lewis & Bockius L.L.P. in Chicago.

If Congress extends the subsidy, it would be the second time lawmakers have done so since the original subsidy legislation was passed a year ago (see box).

President seeks bipartisan health care reform summit

WASHINGTON—President Barack Obama is trying to bring in congressional Republicans in efforts to develop a health care reform bill that can win approval in Congress, but it isn't clear how successful that effort will be.

Looking to renew momentum on the stalled health care reform legislation, President Obama said in a televised interview last week that he wants to discuss reform ideas with Republicans at a televised summit on Feb. 25.

"I want to consult closely with our Republican colleagues. What I want to do is to ask them to put their ideas back on the table," the president said in the interview. "I want to come back and have a large meeting, Republicans and Democrats, to go through systematically all the best ideas that are out there and move it forward."

President Obama's outreach to Republicans came several weeks after the political landscape in which health care reform legislation had been considered changed dramatically.

With the Jan. 19 election of Republican Scott Brown in Massachusetts to fill the seat of the late Sen. Edward Kennedy, Democrats lost their filibuster-proof majority in the Senate

and their ability to pass a comprehensive bill without Republican support.

By reaching out to Republicans, President Obama is taking a needed step to revive the reform drive, observers say.

"He is trying to find a common ground," said Helen Darling, president of the National Business Group on Health in Washington.

If the summit leads to a revamped bill that picks up support from just a couple of Senate Republicans, "that could be a real game changer," said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

Several key Republicans, while willing to participate in the summit, last week said they want the administration to drop its support of reform bills already passed by the House and the Senate as a condition of their attending the summit.

"The best way to start on real bipartisan reform would be to scrap those bills and focus on the kind of step-by-step improvements that will lower health care costs and expand access," House Minority Leader John Boehner, R-Ohio, said in a statement.

So far, though, the White House has been unwilling to do that.

—By Jerry Geisel

News In Brief

CONTINUED FROM PAGE 1

attorney said last week. Tim Howard, coordinator of the Attorneys Toyota Action Consortium, said a hearing on whether the class action cases will be consolidated is expected March 25 before a multidistrict panel in U.S. District Court in San Diego. Also, two congressmen asked leading automobile insurers to disclose any information they might have provided to federal regulators regarding problems with vehicles manufactured by Toyota. In letters last week to top executives of five auto insurers, Reps. Henry Waxman, D-Calif., and Bart Stupak, D-Mich., requested that the insurers provide them with any reports, briefings or presentations that they provided to the National Highway Traffic Safety Administration "concerning defect trends in Toyota since 2000." The lawmakers also sought copies of any communications to or from NHTSA regarding those reports. The House Energy and Commerce Committee plans to hold a hearing Feb. 25 to examine complaints of sudden, unintended acceleration in vehicles manufactured by Toyota.

Dodd more positive on financial reform prospects

Senate Banking, Housing and Urban Affairs Committee Chairman Chris Dodd, D-Conn., last week said he is "more optimistic" than he had been in several weeks that his committee will be able to draft a consensus financial services reform bill. Sen. Dodd said previously that he and the committee's top GOP member, Sen. Richard Shelby, R-Ala., had reached an impasse. But in a statement, Sen. Dodd said he asked another GOP committee member, Sen. Bob Corker, R-Tenn., to negotiate a reform bill, and that Sen. Corker agreed to do so.

Panel to quiz Anthem on insurance rate hike

A congressional subcommittee will hold a hearing this month on Anthem Blue Cross of California's plan to raise rates 39% in the individual market in California. Reps. Bart Stupak, D-Mich., and Henry Waxman, D-Calif., sent a letter last week to Angela Braly, the president and CEO of WellPoint Inc., Anthem's parent, seeking a detailed explanation of the proposed rate hike. In defending the

rate hike, WellPoint said the higher prices reflect greater medical costs and are in line with competitors. "These rate increases are unfortunate but necessary to reflect the costs of paying for the medical services for our members in the current challenging environment," wrote Brian Sassi, head of WellPoint's consumer business unit.

MMC's 2009 profit rises, revenue declines

Marsh & McLennan Cos. Inc. reported a \$242 million profit in 2009 compared with a \$73 million loss in 2008, while revenues dropped 8.9% in 2009 to \$10.5 billion. MMC President and CEO Brian Duperreault said MMC's "marked improvement" in operating income was driven by "very strong performance" in its risk and insurance services segment.

Financial Services Authority CEO to step down

Hector Sants, the CEO of the U.K. Financial Services Authority, last week said that he will step down this summer. Mr. Sants, who took the job in July 2007, said it always had been his intent to leave at the end of three years. The FSA, part of the United Kingdom's tripartite system of regulation, was criticized for alleged regulatory failures leading to the credit crisis. The FSA shares responsibilities with the Bank of England and the Treasury under the U.K. system.

Buffett's Munich Re stake rises to above 5%

Warren Buffett's investment in Munich Reinsurance Co. has risen to more than 5% of the company's shares and could grow to around 7%. Munich Re said previously that the billionaire investor had increased his stake in the reinsurer's voting rights through the holdings of shares and financial instruments. On Friday, the world's largest reinsurer said Mr. Buffett's 5.073% ownership now is solely in company stock. He also holds options to purchase an additional 1.945% of the company, which would push his ownership to around 7%. Mr. Buffett can exercise the options on or before March 11.

Oklahoma workers comp insurer opposes sale

CompSource Oklahoma said it opposes legislation that would sell the state-created workers comp insurer. Legislation calling for the sale of Oklahoma City-based CompSource to the highest bidder by Dec. 31, 2011, passed a Senate subcommittee last week.

PLUS: Extra D&O reserves are exhausted: Panel

CONTINUED FROM PAGE 4

ing brought on by excess capacity and intense competition. Several underwriters at the PLUS symposium said the D&O market now has 53 active insurers.

Many insurers entered the market or increased their capacity in 2008 in an attempt to win market share from three high-profile insurers who were experiencing financial troubles but ultimately survived. Mr. Rafferty said \$150 million to \$175 million in new capacity entered the market during that period.

"Typically, capital comes to an industry after (the market has) turned," Mr. Rafferty said. Instead, the excess capacity softened the market before it could harden in response to an increase in claims from the credit crisis.

Michael W. Smith, New York-based president of Chartis Insurance Co.'s executive liability division, said even though the number of securities class action lawsuits decreased in 2009 compared with 2008, many more claims are in the pipeline. About 4% of subprime credit-related claims have been settled, he said.

Mr. Smith and others said those claims will highlight that some insurers, particularly those on the excess layers of D&O towers, have not built up adequate reserves.

"These claims in the subprime credit crisis are going to blow

through towers and they're going to take out carriers who were never expecting to pay a claim," Mr. Smith said. "When these claims blow through a tower, I would suggest to you there are markets on that tower right now that don't have reserves up to that. And when that gets closer to them, it may change their attitude toward this business. When it's going to happen, I don't know."

Until then, panel members said newer D&O insurers—not burdened by the expensive claims from prior years that existing D&O insurers must pay—can continue to com-



pete aggressively, often choosing not to write for primary layers or for financial institutions, which have been hit hard by credit crisis-related claims.

In some cases, said Evan Rosenberg, senior vp at Chubb & Son Inc. in Warren, N.J., companies allow a new insurer to compete for a risk immediately after an incumbent insurer has paid a sizable claim for that policyholder. Such scenarios are frustrating to incumbent insurers, he said.

"We should be able to renew that account with a premium increase," Mr. Rosenberg said. "When you pay a big loss, none of us can make that up overnight."



The Marriott Marquis Hotel in New York was the venue for the 2010 D&O Symposium.

D&O Symposium brings 1,200 to N.Y.

NEW YORK—Nearly 1,200 underwriters, attorneys and other observers attended the Professional Liability Underwriting Society's 2010 D&O Symposium Feb. 3-4 at the Marriott Marquis Hotel in New York.

Panelists discussed trends in litigation, regulatory enforcement, bankruptcies and other areas that impact liability coverage for directors and officers.

The next symposium will be held Feb. 2-3, 2011, at the Marriott Marquis Hotel.

—By Zack Phillips

Staffing: Insurance jobs growth expected

CONTINUED FROM PAGE 4

reported last July. Recruiting technology employees also remains a challenge, according to the January survey, particularly for regional insurers.

The January survey also found that property/casualty companies reported 12% greater difficulty in recruiting needed staff than did life/health companies. That difference might reflect the fact that there is a larger pool from which to recruit in the life/health side of the industry than in the property/casualty side, Mr. Rieder said. "The data really show you that recruiting is not easy for property/casualty."

The 150 insurance company par-

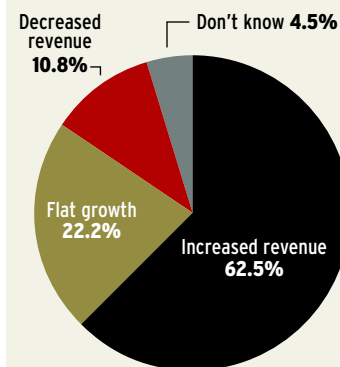
ticipants in the January Jacobson/Ward study averaged 1,516 employees. Of the participants, 122 were property/casualty companies and 28 were life/health.

Ultimately, based on the January survey results, Jacobson and Ward project a nearly 2% increase in U.S. insurance industry employment in 2010, resulting in approximately 26,500 new jobs, based on a baseline of nearly 1.4 million insurance company employees.

"I think we're really excited about being able to come up with a number like that," Mr. Jacobson said. "We believe that this is the only study that gives a forward-looking insight into the insurance industry's labor market."

FINANCIAL OUTLOOK POSITIVE

Insurers' 2010 revenue forecasts



Source: Jacobson/Ward Group Insurance Industry Labor Market Study



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WORKERS COMP SCAM BACKFIRES FOR COUSINS

A workers compensation scam prompted a judge to call the case "one of the dumbest things" he's ever seen.

Joseph Francis Brooks of Philadelphia tried to pull off the scam by shooting his cousin and "robbing" him on the job so his cousin could collect disability payments. Instead, Mr. Brooks was found guilty of insurance fraud and given a five-year suspended sentence and 18 months probation, according to the Maryland attorney general's office.

Mr. Brooks, who pleaded guilty in Rockville, Md., to a single count of conspiracy to commit insurance fraud, conspired with his cousin, Pierre Lamont Taylor, in the staged June 2002 armed robbery, according to the attorney general's office.

Mr. Taylor, who worked for United Parcel Service Inc. in Montgomery County, Md., then filed a workers compensation claim with Liberty Mutual Insurance Group, which prosecutors said paid him a lump sum disability payment of \$250,000.

Mr. Taylor then shared the money with Mr. Brooks.

Prosecutors said a friend of Mr. Taylor's reported the fraud to Boston-based Liberty Mutual and Mr. Taylor later confessed to police that they had staged the robbery that left him with a bullet in the leg, an idea they allegedly stole from a television show.

In sentencing Mr. Brooks last month, Judge Michael J. Alejo noted that he had spent time as a judge, an attorney and a prosecutor, and "this ranks as one of the dumbest things" he had ever seen anyone do.

Business Insurance END PAGE

Contributing: Michael Bradford, Jeff Casale, Mark A. Hofmann, Joanne Wojcik



REUTERS

Fans of soccer star Cristiano Ronaldo will be covered for injuries when they go to watch him play for Real Madrid under a new deal providing free insurance for Spanish soccer spectators.

Bank scores with fan cover

Spanish soccer fans no longer have to worry about coming home from rowdy matches with injuries or worse.

Spanish bank Banco Bilbao Vizcaya Argentaria S.A. is providing fans with free insurance covering permanent disability or accident death.

The bank's insurance unit is writing the coverage at limits of €25,000 (\$34,163) to cover adults at first- and second-division matches from one hour before the game begins until spectators leave the stadium as part of an agreement with Spain's soccer league, La Liga de Fútbol Profesional.

Fans younger than 14 are covered up to €5,000 (\$6,833).

Members of official fan clubs get even greater rewards for their dedication to the sport, with coverage expanded to apply during their trips to and from the matches.

The bank said more than 500,000 fans will be entitled to the *seguro afición*, or fan's insurance, each match day.

BBVA, which became an official LFP sponsor four years ago, wants to enhance its image as the "soccer bank," Javier Bernal, BBVA's head of business development in Spain and Portugal, said in a statement.

BBVA also wants to drum up a little business. The bank is offering discounts up to 65% on life and homeowners insurance for potential policyholders who can produce a ticket stub for the soccer matches.

CO-WORKERS MAY BE YOUR BIGGEST WORK STRESSOR



When Jean-Paul Sartre concluded that "hell is other people," he may have unwittingly prognosticated modern-day workplace stressors.

Continuous exposure to grumpy or moody colleagues, loquacious small talk, overused management jargon and loud phone conversations are enough to drive two out of three U.K. office workers batty, according to a recent study by Opinium Research L.L.P.

These office aggravations exacerbate stress levels for two in three people, while one in 10 say they actually have quit a job because of the overwhelming angst their office mates caused them. An additional two-fifths say they would consider changing jobs to escape such workplace nuisances.

The survey, conducted Jan. 15-18 among a national sample of 1,836 U.K. adults, also identified the top 10 most ridiculous office jargon phrases, the most annoying of which was "thinking outside the box," cited by 21% of respondents.

Other leading pet peeves included "let's touch base," cited by 20%; "blue sky thinking," 19%; and "blamestorming," cited by 16%.

Unlike "brainstorming," which means to discuss ideas spontaneously and openly, "blamestorming" means to "sit down and work out whose fault something is," Opinium said.



Woman sues, says coffee still too hot

From Portland, Ore., comes the story of a woman who's suing McDonald's Corp. for burns she received when coffee that was allegedly too hot spilled on her.

If this sounds familiar, it should: In 1994 a New Mexico jury told McDonald's to pay \$2.86 million to a woman who spilled coffee and suffered severe burns. The suit later was settled for an undisclosed amount.

The stakes in the Oregon suit aren't nearly as high.

Aurora Hill is seeking \$318 for lost wages and medical bills and \$7,182 for pain and suffering, according to published reports. Ms. Hill alleges that the coffee McDonald's serves still is too hot. While in a drive-through, the lid came off a cup of coffee an employee was handing her and spilled on her leg, causing "nervous shock" according to reports.

The suit names JWM Enterprises Inc., which it describes as an Oregon corporation doing business as McDonald's, as the defendant. According to reports, a spokeswoman for McDonald's could not say how hot McDonald's coffee should be.

Perhaps McDonald's should consider switching to an iced coffee-only menu.



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Business Insurance Benefit Insider

INSIDE ▶

Q&A WITH BENEFITS EXPERT
AUDRIETTA C. IZLAR P12BLESBIAN, GAY, BISEXUAL AND
TRANSGENDER RISKS HIGHER P12BTHOSE WITH EMPLOYER-PROVIDED
COVER TAP STATE HELP P12CRACE, ETHNICITY AFFECT 401(K)
PARTICIPATION RATES P12D

Employers target racial, ethnic health disparities

Programs promote disease management and prevention efforts

By JOANNE WOJCIK

While counseling a Hispanic patient taking part in a diabetes disease management program several years ago, Peggy Payne became frustrated by the woman's lack of progress.

The woman's food journal reflected the dietary changes Ms. Payne, now director of cultural and linguistic services for CIGNA Healthcare Inc. in Irvine, Calif., had suggested, yet her diabetes remained out of control.

Upon further investigation and with an interpreter's help, Ms. Payne discovered the source of the problem: The woman had been using tortillas as "utensils," as is customary in her culture, and didn't think it necessary to enter them into her food diary.

"She was eating maybe six or seven tortillas with every meal," Ms. Payne recalled.

The situation is one example of the many health disparities that may occur among ethnically and racially diverse working populations, experts say.

Employers "always think of translation and giving information in their language" as a way to communicate health messages to employees of various ethnic and racial backgrounds, "but that's just one piece of the puzzle," Ms. Payne said. The programs, the communications and the individuals performing the outreach all must be "culturally competent," she said.

Employers invest millions of dollars in the health and well-being of their employees by providing disease management and wellness programs, but if these programs fail to take into account beneficiaries' racial and ethnic differences, employers miss opportunities to maximize their return on invest-

ment, said Don Weber, managing director at PricewaterhouseCoopers L.L.P. in Atlanta.

"It falls under the whole realm of increasing productivity," Mr. Weber said. "If we believe these health initiatives are good for the employer and employee because they increase productivity, and we find out certain people aren't taking advantage of these programs, we want to find out why."

For example, black women get recommended mammograms only 30% of the time, he said, referring to statistics from U.S. Department of Health and Human Services' Office of Minority Health.

An employer with a large black population should make note of this disparity and take steps to ensure that the women covered by its plan are receiving mammograms as needed, Mr. Weber said.

New York-based Verizon Communications Inc. partnered with Aetna Inc.'s Breast Health initiative to identify black and Hispanic

women who had not undergone mammograms as recommended by the American Cancer Society, said Audrietta C. Izlar, Verizon's benefits manager.

As a result of the intervention, 44% of the identified women received their mammograms, Ms. Izlar said. To persuade even more to undergo the exams, Verizon is expanding its on-site mammography screening program to specifically target work locations with a large number of black and Hispanic women over age 40, Ms. Izlar said.

At San Antonio-based H.E. Butt Grocery Co., Director of Benefits Kathy Durbin conducted a claims data review and found that many of the company's Hispanic employees did not have a primary care physician and were not receiving adequate preventive care.

To address this, the grocery store chain is launching pilot projects in San Antonio, where Ms. Durbin is based, and in Austin, Texas, one of its larger markets, to educate His-

panic employees about the importance of having a primary care home and "knowing their numbers" in terms of cholesterol, blood pressure and blood-sugar levels.

The outreach programs involve developing culturally appropriate bilingual communications and using "promotores," or Spanish-speaking health workers to provide information about health and the health care system to community members to eliminate many of the barriers to health services.

"Whether it's disease management or prevention, you've got to get to that audience and resonate with them so they can adopt healthier lifestyles and also be comfortable seeking medical care," Ms. Durbin said.

Verizon and H-E-B were among a handful of the employers featured in the National Business Group on Health's September 2009 issue brief, which its Racial/Ethnic Disparities

See **DISPARITIES** next page

BRIDGING THE GAP

Ethnic and racial health disparities in health care diagnosis and treatment

- Black women are more likely to die from breast cancer than white women, in part because the former have lower screening rates and are diagnosed at later stages of the disease: *American Cancer Society*
- American Indians and Alaska natives die at higher rates than other Americans from tuberculosis (750% higher), alcoholism (550% higher), diabetes (190% higher), unintentional injuries (150% higher), homicide (100% higher) and suicide (70% higher): *Indian Health Service*
- Infant mortality rates among blacks are twice as high as those among whites. Black infants also are almost four times as likely to die from complications related to low birth weight as white infants: *Office of Minority Health*
- Hispanics are less likely to receive or use medications for asthma, cardiovascular disease, HIV/AIDS, mental illness or pain, as well as prescription medications in general: *National Alliance for Hispanic Health and the National Pharmaceutical Council*
- On average, Hispanics are 1.4 times as likely to have diabetes as non-Hispanic whites: *Office of Minority Health*
- Asian/Pacific Islander men and women have three times the incidence of liver and colon cancer as the white population: *Office of Minority Health*

ON THE WEB ▶

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Questions & Answers

As the U.S. workforce grows more diverse, employers should ensure that their standard approach to providing employee health benefits is not contributing to gaps in care. In an e-mail interview, Audrietta C. Izlar, benefits manager at New York-based Verizon Communications Inc., told Business Insurance Senior Editor Joanne Wojcik why employers should be concerned with health disparities and how they might address them. Ms. Izlar recently chaired the Racial/Ethnic Disparities Advisory Board for the National Business Group on Health, supporting a partnership with the U.S. Office of Minority Health to help employers address racial and ethnic health disparities within their workforces. She also served on a panel with the National Committee for Quality Assurance that recognized health plans for implementing steps to combat disparities among members.



Diversity affects costs

Q: Why should employers be concerned about health disparities?

Many companies value having a diverse workforce, but need to also account for the variances in consumption and outcomes of that care.

Disparities interventions should have the same resources allocated to them as structured wellness and benefits plan designs, because it's another way of arriving at the same desired results: getting employees to early detection and prevention services. Research has shown that preventive, diagnostic and treatment-related services may be effective in deterring serious, costly health problems before they develop or in treating them more appropriately once manifested. Some examples include coronary heart disease, cancer and other expensive, chronic health conditions. Early detection of some chronic conditions may reduce the amount of care needed, improve quality of life, increase the chances for survival and helps you better manage your costs.

Q: What strategies can employers adopt to address them?

Partner with ethnic affinity groups...to disseminate information and promote health and wellness initiatives relevant to and within their culture. Add voluntary race/ethnicity questions to secure health vendor Web site registration and health risk assessments to capture data. Work with health plans and other vendors to identify programs and initiatives that address health disparities.

Q: Describe work that NBGH's Committee on Health Disparities has done to assist employers.

The advisory board, comprised of employers, researchers and experts on disparities, completed several projects during its two-year tenure, including the following resources to help employers

identify and address disparities within their own environment:

- Conducted an employer survey and interviews on racial/ethnic disparities as well as health plan interviews;
- Hosted two webinars: Employers Addressing Disparities and Health Plans Addressing Disparities;
- Produced two issue briefs: Eliminating Racial and Ethnic Health Disparities: A Business Case Update for Employers, and Addressing Racial and Ethnic Health Disparities: Employer Initiatives; and
- Developed two employer guides for collecting data and communications: Data Subcommittee Guide: Getting Started and Things to Consider in the Workplace, and Communications Subcommittee Guide: Employer Communications on Health Disparities Resource Document.

Q: What has Verizon been doing?

Verizon partnered with Aetna's Breast Health initiative to identify African-American and Latina women in the Verizon population who have not obtained their annual screening mammograms as recommended by the American Cancer Society. As a result of this outreach initiative, 44% of the women identified received their mammogram.

At last year's Verizon Multi Employee Resource Group con-

ference, Verizon provided free on-site biometric screening and conducted women's and men's health workshops addressing health disparities.

Verizon is expanding its on-site mammography screening to target work locations with a large number of African-American and Latina women over age 40. Verizon's annual medical plan renewal process includes questions regarding the health plan's disparities strategy...in evaluating the renewal of the health plan.

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READ an unabridged version of this interview online at www.BusinessInsurance.com

Disparities: Income, education matter more

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Advisory Board, chaired by Ms. Izlar, developed. The group works in partnership with HHS' Office of Minority Health to help employers address disparities in disease and treatment among insured employees across various race, ethnic and gender groups.

While NBGH members have been proactive about addressing health disparities, the vast majority of U.S. employers have been reluctant to adopt similarly progressive policies, said Andy Hiles, senior vp for growth and innovation at Aon Consulting in Atlanta.

"Employers have been slow to act for a lot of reasons," Mr. Hiles said. "If there are disparities, (some think) it's an admission that someone is acting in a biased way, but that's not true at all. Just because we have a uniform system doesn't mean everyone has a uniform experience."

Some employers have been hesitant to collect data on ethnicity from their employees, but the emergence of corporate diversity programs is making that easier, Mr. Hiles noted. Such questions also can be added to health risk appraisals.

Many employers may find it easier to reach out to their health care providers, Mr. Hiles said.

"All of the major health plans are aware of this problem," he said.

In fact, a consortium of health plans collaborated with the HHS' Agency for Healthcare Research and Quality in 2005 to form the National Health Plan Learning Collabora-

tive to Reduce Disparities and Improve Quality. Although the project has ended, insurers continue to collect data on disparities and develop programs designed to address them.

"If we don't have self-reported data, we use Census data and member surnames" to identify race and ethnicity, said Grace Ting, health services director of programs in clinical excellence and clinical health policy at WellPoint Inc. in Thousand Oaks, Calif. Her role is the lead strategy officer to specifically address health disparities.

While Census data and surnames can be good predictors of race and ethnicity, Ms. Ting said the accuracy rate is only around 60% for blacks.

"So we added first names to the analysis to increase the accuracy rate to almost 80%," she said.

By determining the ethnic and racial composition of its members, WellPoint can better target programs designed to address disparities that have been associated with certain groups by the Office of Minority Health and other research, Ms. Ting said.

Bloomfield, Conn.-based CIGNA received a grant last October from Finding Answers: Disparities Research for Change, a national program of the Robert Wood Johnson Foundation at the University of Chicago that evaluates interventions aimed at eliminating racial and ethnic health disparities in local communities.

The grant will enable CIGNA to

conduct research to determine the most effective strategies in addressing hypertension among ethnically and racially diverse populations, said Dr. Jeff Kang, CIGNA's chief medical officer.

In 2008, the insurer established the Health Disparities Council, a multidisciplinary group of company leaders to exchange ideas, share knowledge and identify opportunities to effectively address health disparities in a culturally sensitive and medically appropriate manner.

The insurer also revamped its explanation of benefits letters to be more easily understood by individuals who do not speak English as their first language or who have limited education.

"A lot of people really focus on the race and ethnicity component, but there are so many other factors" that could be creating health disparities, such as lack of transportation, cost of services, even education," said Ms. Payne, one of the council's leaders. "Only 12% of U.S. adults are able to obtain and use information that can help their own health status. Because of that, we're working hard to try to communicate more simply."

"Race matters, but income and education matters even more," agreed H-E-B's Ms. Durbin, whose oversees benefits for a workforce that is predominantly low-income people with limited education and includes acculturated and unacculturated immigrants. Employers "need to consider the socioeconomic of their workforce" when addressing health disparities, she said.

Risks for LGBT population even greater

It's been eight years since the Institute of Medicine directed attention to inequities that minorities face in getting appropriate and timely health care treatment, but a more recent report has found even greater gaps in care for the lesbian, gay, bisexual and transgender populations.

The Healthy People 2010 initiative, the latest version of a project launched in 1979 and overseen by the U.S. Department of Health and Human Services, reports that LGBT populations experience greater barriers to care and worse health outcomes than their heterosexual counterparts.

The LGBT disparities are common due to factors such as low rates of health care coverage, high rates of stress due to harassment and discrimination, and a lack of cultural competency in the health care system. In particular, LGBTs are at a higher risk of cancer, mental illness and other diseases and are more likely to smoke, abuse alcohol and drugs and engage in other risky behaviors, according to the National Coalition for LGBT Health and Healthy People 2010.

Gays who are members of a racial or ethnic minority often face the highest level of health disparities, the Washington-based coalition's report says.

"When LGBT people present themselves for care as patients, they are not always recognized. It requires disclosure in order for them to have an honest conversation about their health needs," said Jody M. Huckaby, executive director of Parents, Families and Friends of Lesbians and Gays, a Washington-based advocacy group that recently published "Straight for Equality in Healthcare," a guide for health care providers about LGBT issues.

For example, "when a lesbian goes in and completes an intake form that says she's sexually active and not using birth control, if her doctor asks why,

she will have to reveal that she is homosexual," Mr. Huckaby said. But many LGBT individuals are reluctant to "out themselves" this way because "the staff may not be sensitive to addressing these patients."

Worse, if word gets back to the person's employer, their job might be in jeopardy. According to PFLAG, 29 states still have laws that permit employers to fire individuals based on their sexual orientation.

As a result of these concerns, many LGBT individuals avoid health care altogether, Mr. Huckaby said.

Warren, N.J.-based Chubb Group of Insurance Cos., an insurer recognized for its longstanding diversity efforts by the Washington-based Human Rights Campaign advocacy group, is trying to address health disparities among its LGBT employees, said to Donna Griffin, chief diversity officer.

"As more people identify themselves as being part of the gay population, it has opened up our benefits policies," Ms. Griffin said.

Aside from working to ensure that LGBT employees have equal access to all health benefits, Chubb plans to cover sexual reassignment surgery for transgender employees beginning in 2012, she said.

"Addressing health disparities in gay, lesbian and transgender individuals is the next step" to provide health equity to all populations, said Grace Ting, health services director of programs in clinical excellence and clinical health policy at WellPoint Inc. in Thousand Oaks, Calif.

Ms. Ting is working on a pilot project among WellPoint clients involving health disparities among LGBT individuals.

"To be truly culturally aware and supportive of our members, we need to take all of these issues into consideration," Ms. Ting said.

—By Joanne Wojcik

Some insured workers still rely on state programs for assistance

New federal-private partnership aims to address disparities

By LOUISE KERTESZ

Even people with employer-provided insurance may have disparities in the quality or level of their health care and turn to state programs for help. But many resources for employers to address health disparities are available through a new federal-private partnership, the National Partnership for Action to End Health Disparities, sources said.

Cheryl Boyce, executive director of the Ohio Commission on Minority Health, said she had long known that individuals working in health care and social services “can have insurance and still have health disparities.”

Still, Ms. Boyce was “fairly shocked” when a January review of the commission’s preventive health care programs found they were used equally by the uninsured and those with public insurance and private, employer-provided insurance, she said.

Each year during Minority Health Month, the commission offers a range of free health screenings.

“Restaurants use that month for their (uninsured) employees’ once-a-year checkup,” Ms. Boyce said. But until the January review, she said she was not aware that working, insured Ohioans are making more extensive use of the state-backed preventive health care programs.

The programs include health promotion and disease management for diabetes, certain cancers, infant mortality, asthma, substance abuse and violence prevention, she said.

Ms. Boyce said she has had “an epiphany,” realizing “there’s a way of framing (health disparities) that we had not thought of.”

Ms. Boyce said she plans to approach a member of the Business Roundtable to explore how employers might work with the commission to end disparities.

About 35 states offer programs similar to Ohio’s, which are at various stages of development and usually are offered through their health department’s office of minority health, said Melissa Hansen, policy associate at the National Council of State Legislatures in Denver. Some states have plans that include engaging business leaders in addressing health disparities, but “each state is unique,” she said.

A list of those states’ programs and contact information for their directors is available online at <http://www.ncsl.org/default.aspx?tabid=14299>.

However, “generally, employers don’t think of going to the state or local communities or health departments” for help, said Helen Darling, president of the National

Business Group on Health in Washington. “A business organization tends to look to business or employer groups (for solutions) because, frequently, the programs in the public domain are aimed at disadvantaged populations. They tend to focus on different issues and vehicles for change.”

“I see those programs as mostly geared toward the uninsured,” said

Patti Friedman, senior consultant at Towers Watson & Co. in New York. “I don’t know if employers can actually tap into state programs.”

Don Weber, managing director in PricewaterhouseCoopers L.L.P.’s Atlanta office, noted that state disparity programs are geared more toward providers and health systems

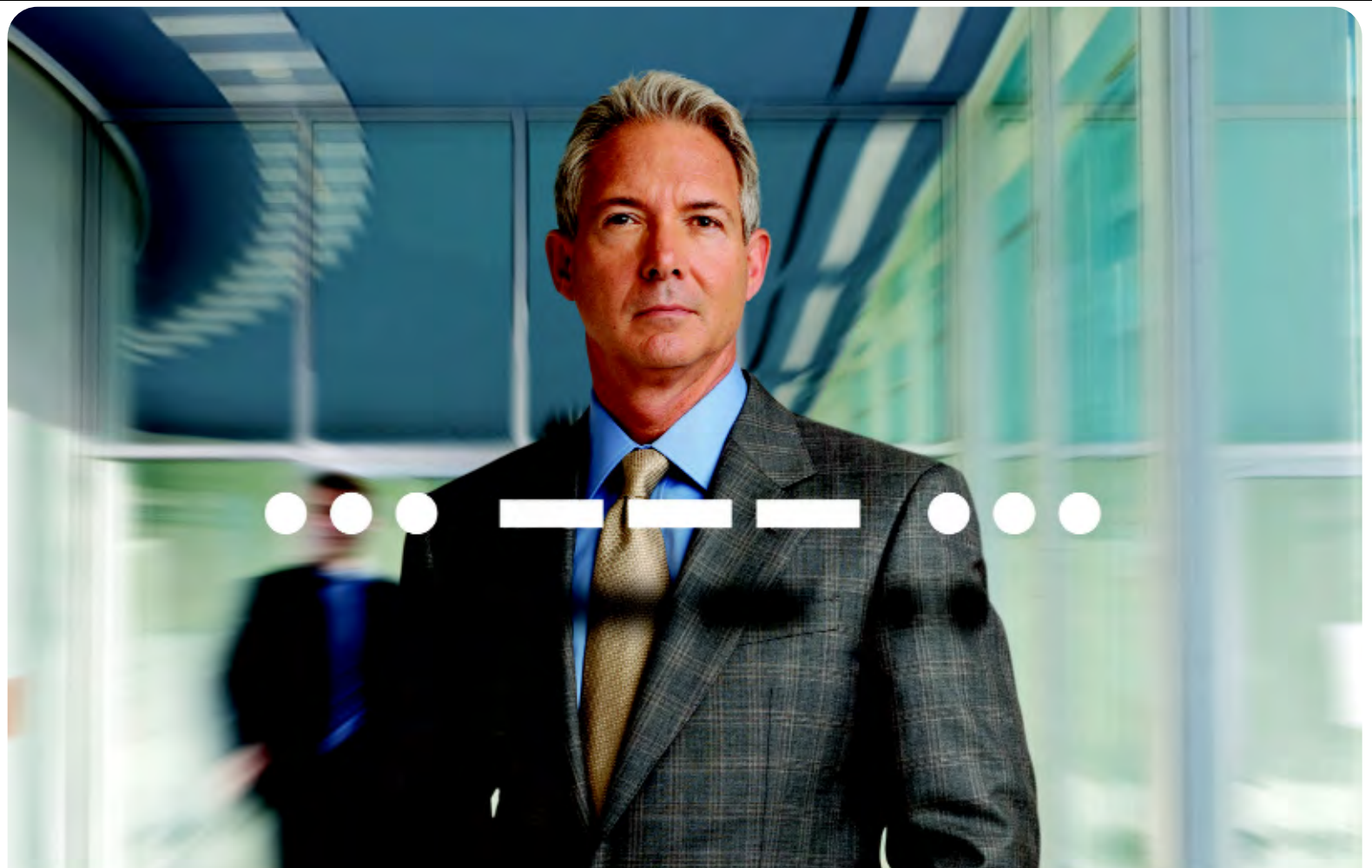
See **STATE PROGRAMS** next page

LESSONS LEARNED

In the current economy, assessing and reducing health care disparities are secondary priorities for employers and health care plans.

- Although some activity is taking place, many barriers to employer involvement in assessing and reducing racial/ethnic health care disparities remain.
- Lack of awareness of disparities, legal and privacy concerns, perceived administrative burdens, and costs of data sharing have limited collaborations between employers and health plans.
- Several strategies may increase employer involvement, including educating employers and employees on the causes and consequences of disparities, promoting the business case for disparities reduction, emphasizing the legality of racial/ethnic data sharing, and creating more visible and cohesive national leadership around these issues.

Source: Reducing Racial and Ethnic Disparities in Health Care: Partnerships Between Employers and Health Plans, Mathematica Policy Research Inc.



Retiree benefit liabilities costly. Who can help transfer the risk?

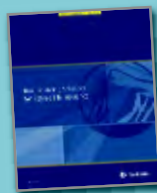
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Who?
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Employers focus on whole workforce for plan enrollment

Some say they should consider factors like race and ethnicity

By KRISTIN GUNDERSON HUNT

Despite studies indicating that race and ethnicity influence employees' investing habits, many employers remain focused on enrolling their entire workforce in their 401(k) plans.

"It's less about the ethnic groups and more about trying to move the workforce as a whole toward retirement readiness," said Marina Edwards, senior consultant for defined contribution at Towers Watson & Co. in Chicago. "You want all your employees to take the right action and become good savers."

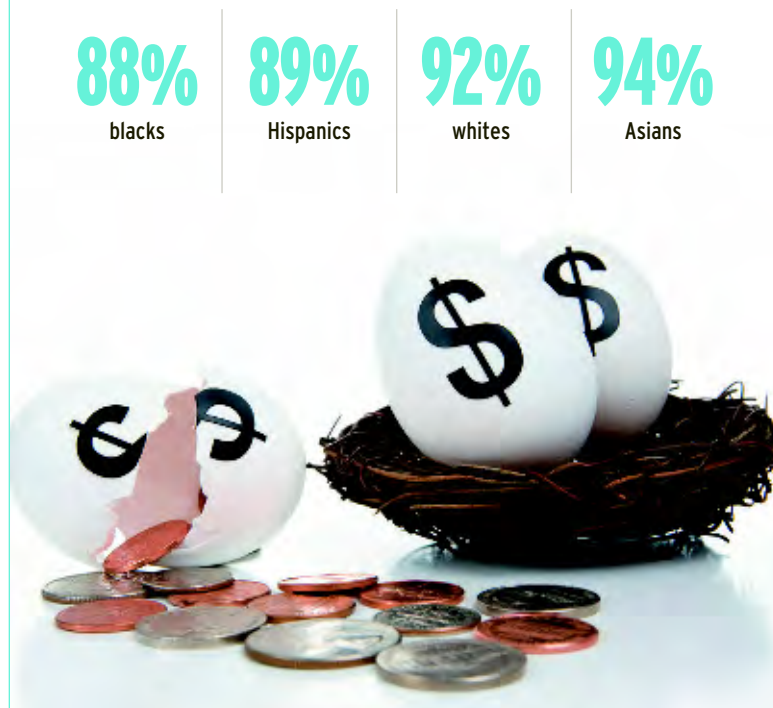
Race and ethnicity are factors that employers might want to consider, however. In 2009, Chicago-based Ariel Investments Inc. and Lincolnshire, Ill.-based Hewitt Associates Inc. released a survey of 57 large U.S. employers with nearly 3 million employees.

It revealed that 66% of black employees and 65% of Hispanic employees participate in their employers' 401(k) plan, as opposed to 77% of white employees and 76% of Asian employees. It also found that blacks and Hispanics are, respectively, 167% and 50% more likely than their white colleagues to take a hardship withdrawal; and nearly 39% of black workers and 29% of Hispanic workers have loans outstanding against their 401(k) plan, as opposed to 21% of white workers.

After controlling for factors such as salary, job tenure and age, however, those gaps shrank, particularly for higher-income earners: Of those respondents making between \$90,000 and \$119,000 a year, the participation rate was 88% among blacks, 89% among Hispanics, 92%

RACE A FACTOR IN 401(K) PLAN ENROLLMENT

According to a 2009 survey of 57 large U.S. employers with nearly 3 million employees by Ariel Investments Inc. and Hewitt Associates Inc., percentage of those respondents making between \$90,000 and \$119,000 a year who participate in their employers' 401(k) plans, by ethnic group



among whites and 94% among Asians.

"There are equalizers that can have an impact, but we still saw race as a factor," said Barbara Hogg, a senior retirement consultant for Hewitt in Lincolnshire. "There is not a one-size-fits-all answer."

Wealth, education factors

The Center for Retirement Research at Boston College in Chestnut Hill, Mass., followed up the Ariel/Hewitt survey with its own study released in November, concluding that 401(k) participation does not hinge solely on race, but on wealth and education as well.

The center analyzed the Federal Reserve Board's Survey of Consumer Finances—a triennial survey of a

nationally representative sample of about 4,500 U.S. households and their assets, liabilities and other demographic information.

"If you simplify it to race, you'll find a difference in race," said Christopher Sullivan, a research associate for the center. "But if you take two similarly situated people, two college-educated individuals—one black and one white—you'll find they invest about the same. It's the different levels of education and wealth leading (employees) to make different (investment) decisions."

While employees undoubtedly will make decisions based on individual circumstances, Ms. Hogg said ignoring the tendencies of particular groups will not help improve the

rates at which employees save for retirement.

"It's part of a bigger picture," Ms. Hogg said. "If we don't look at this with a wide lens, we might overlook segments of the population when it comes determining whether we're all saving enough for the future."

Ms. Edwards said employers may bridge the gap by providing multilingual communications or education to employees for whom English is a second language.

She said some plan sponsors, albeit very few, translate their enrollment materials into other languages. In addition, Ms. Edwards said more 401(k) providers are offering call centers that allow employees choose the language to receive explanations of their plan or answer their questions.

Some plan sponsors designate an employee to be the plan's "champion," Ms. Edwards said. The champion should understand the plan, how it works and its benefits, and speak the language of the targeted group. She said she hasn't seen this practice applied on the basis of race, but said it might be equally effective.

Ms. Hogg said automated solutions targeting all employees, such as automatic enrollment or automatic escalation of contributions, work well. Because they target everyone, groups that traditionally have not participated will be included and enrollment likely will increase, she said.

The high 401(k) participation rate among employees—including minorities—at Nationwide Mutual Insurance Co. in Columbus, Ohio, can be attributed somewhat to such automated solutions, said Jack Towarnicky, associate vp of benefits planning. Compared with Ariel/Hewitt study results, Nationwide's participation was more than 20% higher among whites and Asians, and 35% to 40% higher for blacks and Hispanics than white employees, he said.

"We believe our perennial, automatic enrollment may address the need to save—regardless of race," Mr. Towarnicky said.

Overall, 95% of Nationwide associates contribute, Mr. Towarnicky said. While participation was comparable, contribution rates among various racial and ethnic groups were noticeably different. He did not specify the difference in rates, though.

Rates of loan usage

Also parallel to the Ariel/Hewitt study results, Nationwide's black employees use loans more frequently than other groups. Mr. Towarnicky said. Borrowing from a 401(k) isn't necessarily negative, though, and the company does not offer hardship withdrawals.

"Studies show that loans need not negatively impact retirement preparation, that modest access to assets may be necessary to achieve greater participation rates, and that borrowing from your own account is often less expensive than a loan, if available, from other sources," Mr. Towarnicky said.

Actions suggested in the Ariel/Hewitt survey included limiting the number of hardship loans that participants can take at one time, requiring a certain time between loans and making payouts from 401(k) plans in installments rather than lump-sum distributions.

Additionally, Ms. Hogg said employers' messages about their plans need to be more inclusive and personal. She said employers should not communicate unrealistic expectations, consider their messages' relevance, and understand that different reasons motivate different people and tailor their message accordingly.

"Make it easier to help people take action," Ms. Hogg said. "On top of that, employers should reassess how they are communicating; making it real for the individual is important."

State programs: Insured workers rely on state programs for assistance

CONTINUED FROM PREVIOUS PAGE

with the goal of widening access to health care.

John West, public relations officer for the U.S. Department of Health and Human Services' Office of Minority Health in Washington, said employers could look at what their state minority health offices are doing. But he said the major push to address health disparities is the 2008 joint effort between OMH and NBGH, called the National Partnership for Action to End Health Disparities.

The OMH asked NBGH to develop a business case why employers need to address health care disparities and provide practical strategies that large employers could use to address the problem in their workforce.

"Employers are in their infancy in

dealing with this," Mr. Weber said. NBGH "has put the most succinct resources together for employers," he said.

"Addressing disparities is fairly new or in nascent stages" among employers, agreed Leah Trahan, manager of the Center for Prevention and Health Services at NBGH.

The NBGH-developed documents outlining those tools and strategies are available at HHS' Web site at <http://minorityhealth.hhs.gov/npa/templates/browse.aspx?lvl=1&lvlid=13#2>, where links to state plans and programs addressing disparities also can be found.

Also available at the NBGH's Web site is a report, "Eliminating Racial and Ethnic Health Disparities: A Business Case Update for Employers," at <http://www.business-grouphealth.org/pdfs/Final%20Draft%20508.pdf>, that provides a business

case, strategies and tools to address disparities in health care.

Companies that have taken the lead in tackling health disparities are discussed in the NBGH's "Addressing Racial and Ethnic Health Disparities: Employer Initiatives," at http://www.business-grouphealth.org/pdfs/Addressing_Racial_and_Ethnic_Health_Disparities_Employer_Initiatives.pdf. Companies participating include PepsiCo Inc., Cisco Systems Inc., Blue Cross and Blue Shield of Minnesota, Marriott International Inc., U.S. Foodservice, H.E. Butt Grocery Co., Prudential Financial Inc., Compass Group and Verizon Communications Inc.

Separately, a policy brief by independent researcher Mathematica Policy Research Inc., <http://www.mathematica-mpr.com/publications/pdfs/health/reducedisparities.pdf>, discusses how

health plans and employers can work together to address health disparities.

The Mathematica brief also addresses barriers, such as privacy concerns and the legality of targeting specific populations, to employers' tackling health disparities (see box, page 12C). The brief discusses legal scholars' arguments that sharing this data "is legal and should be encouraged."

"A lot of the work (in addressing health care disparities) is employers obtaining data from health plans" and learning that certain groups may not be accessing preventive services as much as others," PWC's Mr. Weber said.

Nevertheless, Ms. Friedman said employers are addressing disparities by virtue of offering health risk assessments that lead to certain employees receiving health coach-

ing and disease management.

The assessments provide information "that doesn't direct somebody to those programs because of an ethnic or racial (category). But when you see the people who are targeted, you could probably figure it out. But the problem is, because it isn't targeted up front, the outreach isn't necessarily meeting the need. It may not be culturally sensitive to language barriers and cultural attitudes," Ms. Friedman said.

She suggested that employers use the resources and outreach of national organizations such as the American Diabetes Assn., which offers programs for specific populations such as Hispanics. Another organization is the March of Dimes, which she said provides materials in various languages to help prevent premature birth and understand the stages of child development.