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Business Insurance

February 22, 2010

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AGENTS & BROKERS

Contingents ban lifted for big brokers

Revised settlements for Marsh, Aon, Willis drop pay restrictions

By SALLY ROBERTS

Five years after being banned from accepting contingent commissions from insurers, the world's three largest brokers reached agreements last week with state authorities allowing them to resume collecting contingents.

As a result, Marsh & McLennan Cos. Inc., Aon Corp. and Willis Group Holdings P.L.C. no longer are limited in the types of compensation they can receive or held to the rigorous disclosure required in their 2005 settlements.

In those settlements, the brokers agreed to give up contingents, change their business practices and pay more than $1 billion in client restitution to settle allegations that they steered business to insurers that paid the highest contingent commissions.

In 2003, the last full year for which the brokers collected contingents, Marsh had $845 million, Aon had $169 million and Willis had $70 million of the high-margin incentive payments.

Under the new agreement, the brokers can resume collecting the payments and must comply, on a nationwide basis, with the New York State Insurance Department's new producer compensation disclosure regulation, similar to all producers operating in New York.

The NYSID said the decision by the five regulatory and legal authorities to amend the brokers' settlements will help consumers.

Marsh, Aon and Willis welcomed the move, saying it not only levels the playing field but also reduces the administrative and financial burden associated with complying with the settlements.

While Marsh and Aon didn't specifically address whether they would resume collecting contin-

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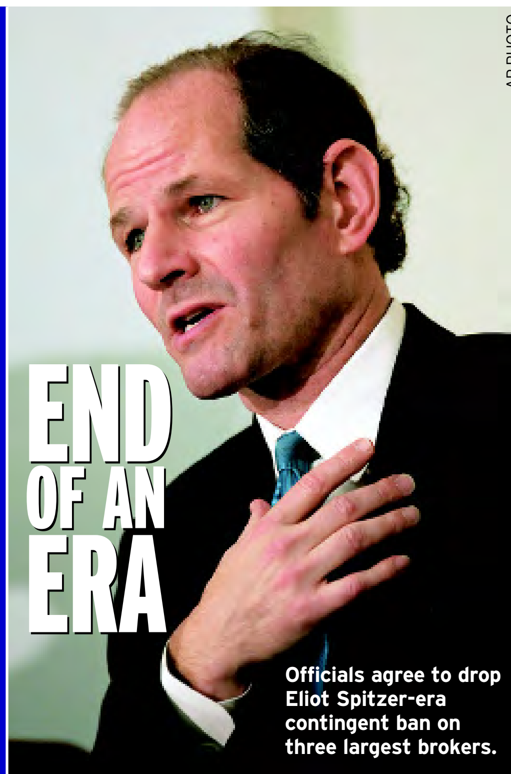
INSIDE: more on N.Y. rule

Q&A with NYSID exec Matthew Gaul (below) on producer disclosure rule **PAGE 18**

New York state's new rule unlikely to be widely adopted by other states **PAGE 18**



AP PHOTO

Officials agree to drop Eliot Spitzer-era contingent ban on three largest brokers.

Risk managers say payments invite conflicts

By SALLY ROBERTS

Risk managers reacted strongly to the news last week that New York and other state legal and regulatory authorities had lifted the 5-year-old contingent commission ban on the world's three largest brokers.

The Risk & Insurance Management Society Inc., for one, said it was "dismayed" at the decision, which came on the heels of New York's new producer compensation disclosure regulation that does "not afford consumers appropriate protections," RIMS said.

In 2005, Marsh & McLennan Cos. Inc., Aon Corp., Willis Group Holdings and Arthur J. Gallagher & Co. collectively paid more than $1 billion in client restitution and agreed to cease collecting the incentives to settle allegations that they steered business to insurers that paid the highest contingent commissions.

In July 2009, Illinois' attorney

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In Brief

Obama administration to unveil reform plan

Seeking to revive stalled health care reform legislation, a top official says the Obama administration plans to present its own reform bill this week. At a news briefing last week, Health and Human Services Secretary Kathleen Sebelius said the administration would take some of the "best ideas" from measures passed in the House and Senate and incorporate them into a single proposal, which will be posted online prior to a Feb. 25 health care summit.

Antitrust shield bill cuts malpractice insurers

A bill has been introduced to strip health insurers of the limited antitrust exemption granted to them by the McCarran-Ferguson Act, but unlike a previous version, this

See **IN BRIEF** page 22

FINANCIAL RISK REPORT

Insurers enhance their vigilance of potential risks; obvious and hidden risks gain greater market scrutiny; the exodus of bond insurers puts municipalities in a bind; risk managers need multifaceted skills but don't need to be an expert on all subjects. **PAGE 11**

HEALTH CARE BENEFITS

Which drug works? Depends on genetics

By JOANNE WOJCIK

Pharmacy benefit managers and employers are looking to genetic testing as a way to fine-tune prescription benefits.

At least 200 employers nationwide are working with Medco Health Solutions Inc. to test whether certain patients should receive two particular drugs—warfarin and tamoxifen—and, if so, in what dosages.

Apparently, it's tricky to get the right dosage for warfarin, a blood thinner. As a result, many patients have serious complications such as excessive bleeding or blood clots that often require hospitalization. As for tamoxifen, used to prevent recurrence of breast cancer, certain women do not metabolize the drug, rendering it useless.

In addition to Medco, Woonsocket, R.I.-based CVS Caremark Corp. is preparing to introduce a similar program in May after acquiring a majority stake in Generation Health Inc., a genetic benefit management company in Upper Saddle River, N.J. The companies last fall formed a strategic partnership to expand pharmacogenomic clinical and testing services for CVS

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UNITED
IN
INNOVATION

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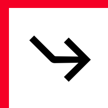
Aon Global Risk Insight Platform®
With Aon GRIP, risk managers are offered a new set of facts never before captured in the insurance industry. Tracking annual placements of more than $54 billion in premium, this web-based proprietary platform enables Aon Risk Services' brokers to deliver unparalleled market insights to clients. Real-time information based on carrier quoting activity pre-binding helps guide risk managers in their pre-renewal strategies.

Aon Benfield's FAConnect℠
FAConnect brings the broker marketplace to clients' computer desktops, allowing them to quote and bind their unique facultative risks in less than five minutes through a straightforward user interface. The proprietary facultative broking platform is designed for managing individual risk within facility contracts and provides a choice of global markets, where frictional costs have traditionally made it uneconomical for intermediaries to participate.



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MOST POPULAR STORIES
Week of February 15, 2010

1. CMS delays Medicare reporting requirement
2. Revised Marsh, Aon, Willis settlements allow contingents
3. Ironshore names U.S. specialty casualty executive
4. Zurich names new head of N. America specialties unit
5. RIMS 'dismayed' by contingent commission decision
6. Colo. bill would limit surveillance of injured workers
7. Liberty Mutual alleges fraud in Gen Re reinsurance deal
8. Obama administration to unveil health reform bill
9. Court rules for insurer in construction defect case
10. Top Endurance executive to retire, successors named

SEE THE LATEST NEWS
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inSight podcast

Take a closer look at New York's producer compensation disclosure rule.

Senior Editor Sally Roberts interviews NYSID's Matthew J. Gaul about the state's agreement to amend terms of the world's three largest brokers' 2005 settlement agreements. Find Mr. Gaul's full-length interview in an online podcast under the Multimedia tab.

Business Insurance 2010 INNOVATION AWARDS

The *Business Insurance* Innovation Awards recognize leadership, inventiveness and ingenuity in products and services designed for risk managers. The 2010 winners will be saluted March 8 in New York during the Risk Management Summit. Click on the Events & Awards tab to reserve your table.

Business Insurance (ISSN 0007-6864) Vol. 44, No. 8, is published weekly, except for combined issues the first week of June, the second week of June, the third week of June, the fourth week of June, the first week of July, the second week of July, the fourth week of July, the first week of August, the second week of August, the third week of August, and no issue the fourth week of December, by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. $5 a copy and $125 a year in the U.S. $130 in Canada and Mexico (includes GST). All other countries, $230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A. Copyright © 2010 by Crain Communications Inc.

P/C INSURERS

Systemic risk assessments should look beyond size: PCI

By MARK A. HOFMANN

Arbitrary size-based thresholds should not be used to determine whether a financial services firm presents a systemic risk to the U.S. economy, concludes a study slated to be released today by the Property Casualty Insurers Assn. of America.

Instead, regulation of systemic risk should be based on a variety of other factors, such as interconnectedness of the firm with others, leverage, liquidity risk and transparency, say the authors of "Why 'Too Big to Fail' Is Too Short-Sighted to Succeed." The report was prepared for Des Plaines, Ill.-based PCI by consultants in the Washington office of NERA Economic Consulting, a unit of Marsh & McLennan Cos. Inc.'s Oliver Wyman Group.

The report comes as the Senate Banking, Housing and Urban Affairs Committee prepares to debate financial services regulatory reform. The House passed its plan late last year. The Wall Street Reform and Consumer Protection Act of 2009 would require, among other things, that asset size be used to determine whether a financial firm would be a "covered entity" subject to assessments to prefund a "systemic dissolution fund." Under the House plan, financial companies with assets of more than $50 billion would be subject to the assessments.

Property/casualty insurers adamantly oppose such a provision, fearing they would have to cover mistakes of systemically risky firms while presenting no systemic risk themselves.

Robert Gordon, a senior vp at PCI, said NERA consultants analyzed systemic risk literature and found that none concluded that size is a determinative factor. "It seemed very misguided that Congress would choose size as the only mandatory threshold or factor," he said in an interview.

"Our concern is, if Congress uses size as the threshold for systemic risk tax or oversight, it could have a lot of unintended consequences," said PCI President and CEO David Sampson in the same interview.

The report reached the same conclusion. "The proposed legislation fails to appropriately identify systemically important firms," according to the report. "Instead, an arbitrary asset size threshold is relied upon as the sole factor for effectively determining whether a firm is systemically important or not. Such a process is not only subject to gaming by firms, but is conceptually flawed, as well-known key factors for evaluating firm systemic risk are ignored." Those include interconnectedness, cyclicality, leverage, liquidity risk and transparency.

"Should additional regulation and explicit monetary charges be assessed against an incorrectly identified set of financial firms deemed systemically important based on asset size," several negative effects are likely, the report holds. These include increased frequency of systemic risk episodes because of increased moral hazard, job losses as firms attempt to avoid size thresholds, increased consumer costs and economic distortions.

"The significant economic costs of such a flawed policy are likely to outweigh any potential benefits associated with the increased regulation of large firms and the planned creation of a systemic risk dissolution fund," according to the report.

RISKY BUSINESS

A report prepared for the Property Casualty Insurers Assn. of America concludes that a financial services firm's size alone is not a valid factor to determine systemic risk to the U.S. economy. Doing so and subjecting firms to systemic resolution fund assessments, would:

- Increase consumer prices for basic financial services
- Increase systemic risk resulting from moral hazard
- Result in job losses and economic inefficiencies

Source: "Why 'Too Big to Fail' is Too Shortsighted to Succeed" at www.pciaa.net

LIABILITY & LITIGATION

Liberty Mutual seeks cut of Gen Re settlement

Asks judge for $12.1M reinsurer paid SEC over AIG, Prudential deals

By COLLEEN McCARTHY

NEW YORK—Liberty Mutual Insurance Co. has asked a federal judge to amend a recent settlement between General Re Corp. and the Securities and Exchange Commission, saying it was a victim of fraud.

The motion, which was filed Feb. 12 in U.S. District Court in New York, follows last month's agreement in which Gen Re paid $92.2 million to the SEC to settle charges that it entered into a fraudulent reinsurance agreement with American International Group Inc. and Prudential Financial Inc.

Liberty Mutual is seeking to recover $12.1 million that Gen Re paid to the SEC as part of the pact.

The dispute stems from Liberty Mutual's 2003 acquisition of several of Prudential Financial's property/casualty units, known as PruPac.

In its motion, Liberty Mutual said it was unaware at the time that the units were involved in a "sham reinsurance transaction," including what was represented as a $41.3 million recovery from PruPac's reinsurance policies with Gen Re.

Liberty Mutual said Gen Re later paid it $29.2 million of $41.3 million owed under some agreements, but Gen Re paid the rest to the SEC. Liberty Mutual said it previously requested that the SEC put the disputed sum in escrow until a court or arbitration panel could decide who had a right to it. However, the SEC refused, according to the filing.

"Liberty Mutual is the victim of one of the fraud schemes described in the SEC's complaint against defendant Gen Re Corp. As such, the $12 million the court has directed Gen Re to disgorge because of that scheme should be paid to Liberty Mutual, and not to the Treasury" as the Jan. 26 judgment directs, according to the filing.

A Liberty Mutual spokesman said the insurer is "not presently a party to the SEC–Gen Re action," but is "asking the court to allow us to intervene so we can make our case."

A spokesman for Prudential, which settled related civil charges with the SEC in 2008, said "the SEC found no fraud violation at the time of our settlement" and declined to comment further. AIG had no comment. Gen Re did not respond.

LIABILITY & LITIGATION

Olympics death raises liability questions

By ROBERTO CENICEROS

Several legal liability issues emerged last week with the death of Georgian luger Nodar Kumaritashvili just before the opening of the 2010 Winter Olympic Games.

Some could weigh against game organizers and other parties, such as track designers or resort operators, in potential litigation, experts say. But other factors could provide a defense should, for example, the family of Mr. Kumaritashvili file suit. So far, family members of the 21-year-old reportedly have said they do not plan to sue.

Olympic athletes sign participation agreements that include waivers releasing Olympic organiz-

See **GAMES** page 20

REUTERS/LANDOV

Germany's Felix Loch made the first run in the men's singles luge event at the 2010 Winter Olympic Games in Vancouver, British Columbia, following last week's death of a Georgian competitor who was killed during a practice run.

REUTERS/LANDOV

Two state-owned commuter trains crashed head-on last week outside Brussels, killing the driver of one of the trains and injuring the other. Two black box data recorders were recovered, authorities said.

INTERNATIONAL

Local insurer leads cover for train crash in Belgium

Officials investigating cause of fatal collision of commuter trains

By MICHAEL BRADFORD

BUIZINGEN, Belgium—A Belgian insurer leads the liability coverage for the railway company whose trains were involved in a fatal rush-hour collision last week.

The crash, which killed at least 18 people, occurred in Buizingen, Belgium, which is near Brussels, last Monday.

Speculation centered on whether one of the trains missed a stop signal, but investigators still were examining two black box data recorders from the trains and had not determined the cause.

Both trains were from Belgium's state-owned Société Nationale des Chemins de fer Belges.

SNCB has liability insurance limits of €50 million ($68.1 million) led by Ethias S.A., a Liège, Belgium-based insurer. Ethias wrote 50% of the coverage, and AXA Corporate Solutions provided 40%. The remaining 10% was written by a Belgian branch of Italian insurer Assicurazioni Generali S.p.A., a spokesman for Ethias confirmed.

The liability coverage carries a deductible of €1.5 million ($2 million), the spokesman said.

Ethias also writes 35% of the property insurance that covers damage to the railway infrastructure and nearby property, the spokesman said. That coverage has a limit of €125 million ($170.2 million) and carries a deductible of €500,000 ($680,000).

RSA Insurance Group P.L.C. confirmed that it writes 20% of the property coverage. The remaining insurers could not be confirmed.

The property insurance does not cover damage to the trains, the Ethias spokesman said.

One train's driver was killed, and the other driver was among more than 170 people injured.

RISK MANAGEMENT

Trucking wakes up to sleep apnea

Efforts under way to address condition that adds to fatigue

By JEFF CASALE

Transportation risk managers and commercial drivers are grappling with the problem of sleep apnea, a condition that contributes to daytime drowsiness, as they try to find ways to improve safety on the road.

According to a 2002 Federal Motor Carrier Safety Administration commissioned study, out of 3.4 million licensed commercial drivers, approximately 26% of drivers suffering from some form of sleep apnea. Studies have shown that sleep apnea can severely impact driving performance by greatly increasing fatigue, boosting the risk of crashes.

Though the commercial trucking industry is aware of the prevalence of sleep apnea among drivers, there still is much to be learned in the way the condition is diagnosed, treated and monitored, experts say.

Sleep apnea is a condition in which the airway is constricted due to muscular relaxation while sleeping, with interruptions in breathing lasting several seconds at a time, often accompanied by loud snoring and resulting in nonrestful sleep.

Individuals considered at risk for sleep apnea are those with a body mass index of 30 or greater and a neck circumference of 17 inches or more, experts say, adding that such people often suffer from additional health problems related to obesity, such as diabetes and heart problems.

Many people with sleep apnea don't even know they have it, researchers say, adding that the sleep disorder often results in daytime sleepiness, which has severe effects on reflexes and cognitive and motor skills.

"I promise you there are thousands of commercial drivers out there that have some form of sleep apnea," said Don Osterberg, vp of

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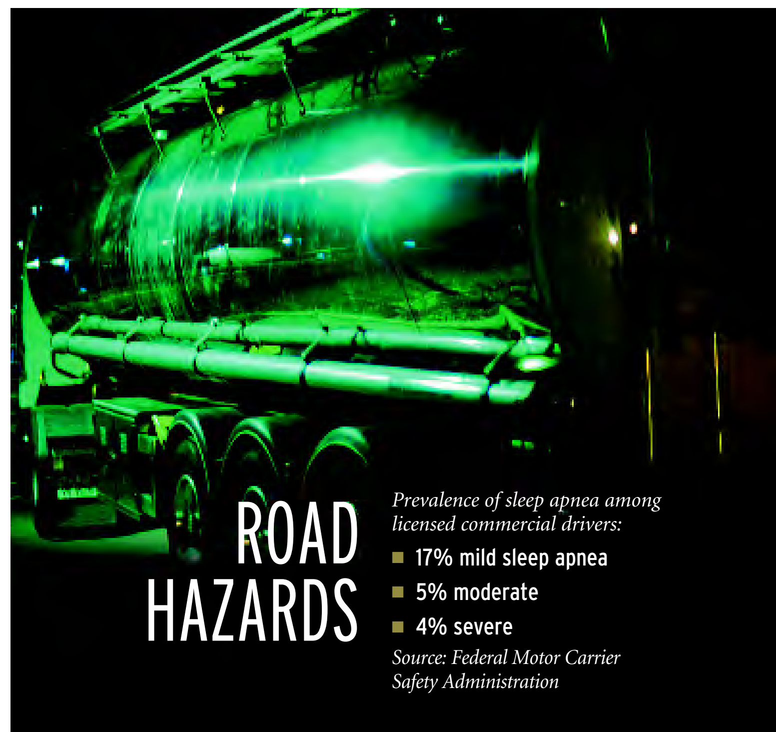

Rate increases for protection and indemnity clubs during recent renewals were considerably smaller this year than a year ago.

MARINE

P&I clubs ease rate hikes after claims costs drop

By MICHAEL BRADFORD

Protection and indemnity clubs finished this year's renewals with far smaller rate increases than the double-digit hikes they imposed a year ago.

In better financial shape because of a relatively benign claims year and an improving investment market, P&I mutual insurers pushed rates up an average of 5% during the renewal period that ended last week. That compares with a 16.5% average hike that the mutuals charged a year ago.

"The ranges are far lower this year," said Steve Griffiths, a London-based director of Aon Ltd.'s marine unit. "They range from zero to 12.5%, but most are at 5% or below. That is in stark contrast to last year."

Fewer claims have reduced the need for big rate increases, experts say.

2009 claims were far lower than the previous-year levels, "certainly in the number of large claims," Mr. Griffiths said. With the recession hammering the shipping industry, fewer ships in use has slowed claims activity, he said.

Claims costs have been lower partly because the value of materials such as steel have fallen, said Henric Gard, director of the Swedish Club, a Göteborg, Sweden-based P&I club. "That has slowed down claims inflation."

At the same time, harbor congestion and spare parts shortages have eased, all of which helps reduce claims, Mr. Gard said.

P&I clubs entered renewals after getting a break on costs under the excess-of-loss reinsurance arrangement in place for members of the London-based International Group of P&I Clubs.

The excess-of-loss rates, which include the cost of coverage provided by the group's Hydra Insurance Co. Ltd. captive insurer in Bermuda and other reinsurers, fell by slightly more than 9% for some tanker risks during renewals in January. Passenger vessel rates were down 2.3%, the London group said.

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EMPLOYMENT PRACTICES

New eating disorder raises bias concerns

Recognition of binge eating condition may add to litigation under ADA

By JUDY GREENWALD

A proposal to add binge eating disorder to the American Psychiatric Assn.'s handbook of mental illnesses could provide another avenue for disability lawsuits against employers, some legal experts say.

Even though the American Psychiatric Assn.'s Diagnostic and Statistical Manual of Mental Disorders is not a legal, government-approved document, it could help plaintiff attorneys successfully sue employers for violating the Americans with Disabilities Act, the experts say.

Adding binge eating disorder is among several proposed revisions to the DSM's fifth edition, scheduled for publication in May 2013. They are being presented for public review and written comment until April 20.

The proposed criteria to diagnose binge eating disorder include eating in a "discrete period of time," such as within a two-hour period, an amount of food that is "definitely larger" than most people would eat in a similar period, and a sense of lack of control over eating during the episode.

The prevalence of binge eating disorder is relatively small.

According to a study published in 2007 that was based on survey data from the Bethesda, Md.-based National Institute of Mental Health, 3.5% of women and 2% of men reported having the condition at some point in their lives.

Jonathan T. Hyman, a partner with Kohrman Jackson & Krantz P.L.L. in Cleveland, said including binge eating in DSM-5 "may lead to more viable claims to the extent that addictions have always been covered by the ADA." This is particularly true in light of the ADA Amendments Act of 2008, which makes it easier for plaintiffs to sue employers, he said.

Mr. Hyman said the danger is that an employee is terminated and then claims the firing was because of perception of binge eating, "which now is a recognized psychiatric disability."

Michael W. Fox, a shareholder with law firm Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Austin, Texas, said plaintiff attorneys still would have to meet the legal standard of a disability, "but I think it will give them some credibility."

Brian T. Ashe, a partner with law firm Seyfarth Shaw L.L.C. in San Francisco, said if binge eating is

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Nominate the 2010 Benefit Manager of the Year

Business Insurance 2010 BENEFIT MANAGER of the year®

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For more information and to download a nomination form, please visit *www.BusinessInsurance.com/BMOY*. The nomination deadline is March 15.

Profiles of the 2009 and previous winners also are available online.

The winner of the 2010 Benefit Manager of the Year® will be profiled in the June 28 issue of *Business Insurance*.

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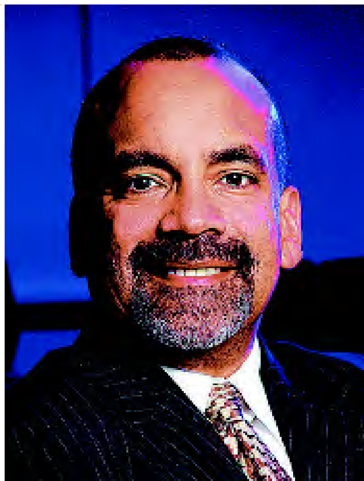
Questions & Answers

Chartis Europe S.A. encompasses the property/casualty business of parent Chartis Inc. across continental Europe, and it sees significant opportunities to grow. Julio Portalatin, Paris-based president and CEO of Chartis Europe, recently spoke with Business Insurance Editor Regis Coccia about its plans in the European market.



Opportunity knocking for Chartis

Q: What are Chartis' activities in France, its home base?

In France, we have the legal entity of Chartis Europe, representative offices as well as a country operation. That operation continued to generate good client retentions, well into the 90s, through the third quarter of 2009 and continues to perform well. They have focused themselves on segmenting very closely with the type of business they want to attract and also expanding in the middle market. They are looking at a further expansion in the aviation practice as well as what we call the Private Client Group segment for high-net-worth individuals. Those are our next steps in our expansion in that marketplace.

The financial lines business has been a mainstay for us in France and other countries for the last several years. It has been a big generator of our growth and we want to continue to do that, but we want to diversify as well. You'll see us get a little more into the retail business and segments like aviation and Private Client Group.

Q: Does Chartis see commercial business flowing through the Private Client Group and vice versa?

In the U.S., you tend to find brokers that represent clients in a horizontal way. In Europe, we tend to find intermediaries that specialize in certain segments of business. In the case of Private Client Group in particular, we have found that specialization among the intermediary group.

While we of course look for opportunity to not only cross-sell to a client that we have a new relationship but to further cross-sell to clients we have current relationships with, we find that a lot of that is multiple-intermediary controlled as opposed to single-intermediary controlled. That said, we see that as an important opportunity for us to take these types of clients and intermediaries into these types of markets that we expand into.

We're pretty innovative in the way we approach our products and distribution. Many times, we're taking distribution with us as we move into new products or new segments, and many times they're taking us with them. It depends on the segment itself.

Q: Why do certain segments, such as aviation, tend to gravitate toward specific markets?

Every time we look to expand our business, we always do an extensive review of the way the business is conducted, both traditionally and where we think it's going in the future. And they're not always the same answer. Traditionally for Europe, it's been a U.K.-centric aviation market. We see it decentralizing in the years to come, so we've made a proactive play to take advantage of that decentralization. It's not necessarily happening as we speak, but we believe that it's going to happen and thus we want to be there when it does.

It's not as important to understand where things have been, but much more important to understand where things are going. That's why in many cases Chartis has positioned itself in markets that aren't quite yet there but where we think we're hopefully proactive enough to outperform others who haven't figured it out yet. So markets like China and India are very important to us.

When you look at the traditional base of some of the more traditional lines of coverages—you can go back to where we started in Shanghai in 1919, the marine business started exploding in that marketplace as trade picked up, and we happened to get there early and take advantage of that growth.

If you look at the export activity that takes place in Germany, it obviously is going to be conducive to the marine business. That export business is helped or at times challenged depending on exchange rates, economic conditions, etc. But Germany is a pretty big market. It has a large export community. You'll see a concentration of marine business there for many, many years to come. Then you look at where the future marine business might be going and some of the developments happening in Asia. You see China and Taiwan starting to open up. So there are some opportunistic plays for things that are developing. It's not always what's happened traditionally, but more importantly what's happening for the future.

Q: What strategies are helping Chartis in Europe cope with difficult market conditions?

It's important to be able to adjust but also to continue to invest. You can't just contract and look at expense savings. Those are important, for sure, but you also have to look at opportunities to take advantage as the economy continues to improve. The things that have kept us focused on what's important are underwriting discipline, expense discipline and continued investing in the business for long-term returns. We keep people very focused on the things that can make a difference operationally as well as strategically.

Q: What are some challenges in getting business done across the various cultures and markets in Europe?

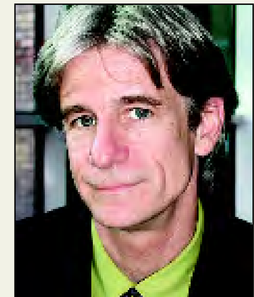
We segment our markets. We try to understand the cultural differences and the maturity curves for the different markets. We develop strategies that are local but maximize the Europeanness of our operation and the international breadth of our operation.

We're very focused, especially in a market like this, on multinational and pan-European accounts where we have the opportunity to be able to maximize our network of being in all the countries of Europe as well as around the world as European companies expand. That is a linchpin that gives us the ability to establish a solid foundation in some of the countries so we can move on to indigenous strategies.

Another piece of this is we have local staffs as branches of the legal entity of Chartis Europe in all of these countries. We don't have sales offices, we have branches, and they're fully equipped and fully able to handle the market as if it were a local player. Some people say, "That's expensive." At the end of the day, you invest, you get a return. It's an important strategy for us to be able to look at those markets and be as local as we need to be and as global when necessary.

Commentary

Finding some good in 'bad old corporations'



MICHAEL **BRADFORD**

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It's a bad time to be a big company.

Bankers know this quite well, having been relegated by politicians and much of the world's media to a status only slightly higher than the Prince of Darkness. It was they, the argument goes, who got us into this mess.

Insurers have been able to deflect some of the criticism by shouting long and hard that they are not the same as banks. They argue that they collect money instead of loaning it to people who can't pay it back, and are far less inclined than banks to invest in products no one understands. Nonetheless, conventional wisdom says giant insurance companies must be evil if they are in the same branch of commerce as American International Group Inc.

With so much vitriol clouding our vision, it's harder these days to see some of the good done by these "bad old corporations."

Insurers' response to the earthquake in Haiti was the most recent example of providing help in dire circumstances. Millions of dollars in aid went to Haitians thanks to insurers, brokers and others related to the industry.

While insurers often are out front with help during catastrophes, they have begun working in recent years with organizations on a less visible way to ease misfortunes of people in emerging nations. Insurers are developing microinsurance aimed at giving these populations access to care and peace of mind they might otherwise never find.

Small doses of insurance, through microinsurance, can help cure big problems.

Microinsurance is low-premium, low-limit coverage for individuals and small businesses that typically can't find or afford traditional insurance.

Pharmaceutical maker F. Hoffmann-La Roche Ltd. in Basel, Switzerland, also is in a line of work that doesn't always get glowing media coverage. Big Pharma often is regarded by the general public with the same disdain as automobile dealerships, selling products at vastly inflated prices that consumers are forced to pay because they can't do without a car or medicine.

But Roche is quietly working on a project with insurers and reinsurers to use microinsurance to expand access to expensive cancer treatments in emerging nations, said Catherine Steele, head of international communications and public policy at Roche. "We saw an opportunity for insurers to provide affordable cover for the reimbursement of the costs of cancer treatment," she said.

Call it insurance in small doses.

Cynics will say it is natural that Roche would back an insurance program that encourages sales of its product, but Ms. Steele said the plan being discussed would "provide access to all cancer medicines," not just Roche products.

A January report, "Insurance in Developing Countries: Exploring Opportunities in Microinsurance," by Lloyd's of London said commercial insurers would be wise to participate in the microinsurance market.

Besides profits, the report said microinsurance can provide insurers with larger, more diversified risk pools, "benefits to reputation, and market intelligence and innovation that can be applied to other business activities."

Zurich Financial Services Ltd. is one insurer that has seen the upside of writing small policies. Its Z Zurich Foundation this year contributed 3 million Swiss francs ($2.8 million) to the International Labor Organization's Microinsurance Innovation Facility founded in 2008 with a grant from the Bill & Melinda Gates Foundation. It works with private-sector companies to implement microinsurance projects to serve low-income populations.

Zurich CEO Martin Senn said not only is such an approach good for the bottom line, "it is important to underpin our commitment to corporate responsibility and actively support the development of better insurance services for the less fortunate."

In other words, those small doses of insurance can help cure big problems for the needy and make insurers healthier down the road.

Employers can help workers, communities by reaching out

By JOANNE WOJCIK

SAN ANTONIO—By joining forces with community and public health organizations, employers can make their worksite wellness and health promotion activities go a lot further, employer health coalition leaders say.

Through such collaborations, employers also can take advantage of funding resources that might not otherwise be available to them individually, said Gary Rost, executive director of the Savannah Business Group on Health in Savannah, Ga. In fact, many grant providers require private employer involvement to guarantee funding, he said.

MORE COVERAGE: How 'mental gymnastics' can help productivity; healthy workers mean healthy profits, page 20.

Employers also are in the position to spearhead efforts to improve the quality of care delivered throughout their communities, said Sara Palermo, vp, Mid-America Coalition on Health Care in Kansas City, Mo.

"We see employers as change agents in the market, so being able to build on that momentum is really important," Ms. Palermo said.

The three coalition leaders described the work their organizations have been doing during a panel discussion on Building the Business Care for Community Health Improvement held during the 2010 Integrated Benefits Institute/National Business Coalition on Health Joint Health and Productivity Forum Feb. 8-10 in San Antonio.

The panel was added to the agenda of the conference that focused mainly on worksite health and productivity management.

"It's important because you're employers. You've got a captive audience for 40 hours a week at the worksite, you've got lots of opportunity to influence the behavior of your workforce. But they go home and they go into communities, and whether those communities have a healthy or unhealthy influence on your workforce is a determining factor in their health status," said Andrew Webber, NBCH president and CEO, who moderated the panel discussion.

"Employers who are making incredible investments in worksite health and productivity activities should also be thinking about investing in the community at large," Mr. Webber said. "But if your workforce enters a community with violence and poor food supplies, failing schools, poor economic conditions, you add to the list of social determinants of health that are factored in your own community. Your investments can be compromised and limited," he said.

"Employers need to get engaged not only in leading health and productivity activities at the worksite, but (also) take the leap in the engagement and providing leadership and working with others to improve community health dynamics as well," Mr. Webber said.

In fact, the NBCH, which is a coalition of coalitions, has a five-year cooperative agreement with the U.S. Centers for Disease Control and Prevention aimed at building partnerships with employers and other stakeholders to establish evidence-based community health interventions, he said.

In addition, the NBCH recently launched a seed grant program to provide funding to member coalitions to help them implement community health improvement strategies.

While it may seem unusual for employers to collaborate with public health organizations, they share common goals, Mr. Rost said.

For example, when the Safety Net Planning Council, a Chatham County, Ga., initiative involving clinics for the uninsured and the underinsured, complained about emergency room overutilization, low prescription refill rates and no-shows at doctor's appointments, Mr. Rost pointed out that employers were experiencing the same problems among their insured populations.

"When the insured commercial population has the same issues as the uninsured, then it's a community problem," he said.

As a first step to address the problem, the Savannah group is working with the council and other community health organizations to compare insured data against data from federal clinics.

"We've already done it with ER, and it confirmed what we already knew," Mr. Rost said.

To address the obesity issue in the Kansas City area, MACHC's Building a Healthier Heartland initiative promotes environmental changes using sustainable, innovative and replicable evidence-based efforts that can be shared with other communities, Ms. Palermo said.

In Memphis, "our mission is to mobilize the greater Memphis area to achieve excellent health for all. We're no longer about improving anything, because you can improve and still not be excellent," said Christie Travis, CEO of the Memphis Business Group on Health.

"By working across the community with multiple stakeholders, you really can have a way to engage people in the many places that they live, play, worship and work," Ms. Travis said.

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Business Insurance OPINIONS

Return of contingents not necessarily good

THE RECENT DECISION by five legal and regulatory authorities to amend agreements banning contingent compensation for major insurance brokers brings with it more questions than answers.

As we report on page 1, there are clear sides: Buyers see the return of contingent pay as troubling, while some of the big brokers that gave up the payments see it as leveling their playing field.

Fundamentally, lifting the ban reverses what former New York Attorney General Eliot Spitzer established in 2005. Despite various lawsuits and more than $1 billion in settlements, the industry is no closer to eliminating contingent compensation than it was before Mr. Spitzer showed up. What did his crusade accomplish? And what, if anything, did the industry learn?

Contingent pay, by itself, is not a problem. The problem is who receives it.

During the past six years, we have held to the position that contingent pay, by itself, is not a problem. The problem is who receives it. Agents can accept contingent pay from insurers; they represent the insurer. Brokers, however, represent their clients, the buyer of insurance. We still believe brokers should not accept bonus payments from insurers for placing coverage on behalf of clients. Doing so opens the door to conflict of interest, which is good for no one.

Among the world's major brokers, only Willis Group Holdings P.L.C. appears to agree with that principle. Marsh Inc. and Aon Corp. have not stated whether they ultimately will resume taking contingent pay from insurers, though analysts expect the financial impact on shareholders will prompt Marsh and Aon to do so.

Transparency has been cited as the solution to broker compensation concerns. We agree transparency is critical, but for it to work, disclosures must be uniform and all brokers must commit to them. While a small window with a view is better than none at all, it's not necessarily satisfactory, either.

Size alone does not a systemic risk make

SIZE SHOULD BE one of many factors and not the only factor considered when determining whether a financial services firm presents a systemic risk to the U.S. economy.

As we report on page 3, that is the conclusion of a report the Property Casualty Insurers Assn. of America is releasing today. The report, prepared for PCI by NERA Economic Consulting, finds that factors such as interconnectedness, liquidity risk and transparency must be taken into account when evaluating systemic risk.

Unfortunately, the financial services regulatory reform bill passed last year by the U.S. House sets asset size as the sole determining factor that a financial institution considered a systemic risk should be subject to assessments to prefund a "systemic dissolution fund."

Property/casualty insurers rightly believe they shouldn't be subject to such a regime. They already are required to support state guaranty funds to cover insolvencies. Despite the experience of American International Group Inc.—the woes of which stemmed from a financial products unit, not P/C operations—one would be hard pressed to see how even the largest insurers would present a systemic economic risk. Using asset size as the sole factor in determining systemic risk might work for banks, but it doesn't for P/C insurers.

The Senate Banking, Housing and Urban Affairs Committee is about to tackle its version of financial services regulatory reform. We hope the panel heeds the PCI report and recognizes that while size matters, size alone cannot determine whether an insurer presents a systemic economic risk.

WRITE

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

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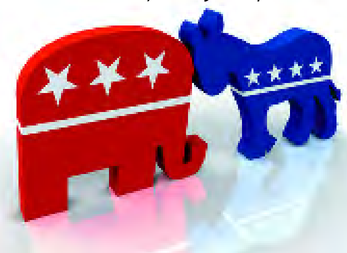
THIS WEEK'S RESULTS

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



Very likely
2%

Somewhat likely
18%

Unlikely
42%

No chance
36%

NEXT WEEK'S QUESTION

Q: Do you routinely request information on compensation your broker receives?

LETTERS

Health care access vital to greater good

TO THE EDITOR: The United States is close to having some version of a universal health care plan, and we have arrived at this point feeling more divided and separate as a nation. How painful it is to be at this place—still pointing fingers and looking for someone else to be the scapegoat, regardless of which side we are on. We can't agree that every person in America should have health care services and we don't want to see that "they"—the "uninsured"—suffer. Yet every time we look away, we suffer too. It's unimaginable, really, to be a country with so many resources, that we don't see health care services as a basic necessity, like working traffic signals and garbage pickup.

My career as an insurance executive, underwriting officer, consultant and broker has allowed me to wear many hats. As insurance professionals, we know that the market works best when there is alignment of interests and everyone benefits. In an insurance market where one party consistently has the upper hand, whether it is the broker, underwriter or buyer, the imbalance strains the

See **LETTERS** page 16

PERSPECTIVES

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All articles for the Perspectives page should address the concerns of the corporate buyer of insurance; i.e., the risk management or employee benefits manager.

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SUBSCRIPTIONS: Detroit: 888-446-1422

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Published weekly at 360 N. Michigan Ave., Chicago, Ill. 60601-3806, Fax: 312-280-3174, *biweb@crain.com*. Offices: 711 Third Ave., New York, N.Y. 10017-5806, Fax: 212-210-0704; Suite 814, National Press Building, Washington, D.C. 20045-1801, Fax: 202-638-3155; 6500 Wilshire Blvd., Suite 2300, Los Angeles, Calif. 90048-4947, Fax: 323-655-8157; 967 Bermuda Court, Sunnyvale, Calif. 94086-6750, Fax: 408-774-1155; 21 St. Thomas St., London SE1 9RY, U.K. Fax: +44-(0)20-7457-1440; 12524 Acuff Court, Olathe, Kan. 66062, Fax: 312 280-3174. 77 Franklin St., Suite 809, Boston, Mass. 02110-1510; Fax: 212-210-0704. $5 a copy and $97 a year in the U.S., $130 in Canada and Mexico (includes GST). All other countries, $230 a year (includes expedited air delivery). Four weeks' notice required for change of address. Send subscription correspondence to Circulation Department, *Business Insurance*, 711 Third Ave., New York, N.Y. 10017-5806. Microfilm copies available: University Microfilms, 300 Zeeb Road, Ann Arbor, Mich. 48013. Microfiche copies: Bell & Howell, Micro Photo Division, Old Mansfield Road, Wooster, Ohio 44691. Portions of the editorial content of this issue are available for reprint or reproduction in other media. For reprints or reprint permission, please contact Lauren Melesio/Crain Communications at 212-210-0707 or e-mail BusinessInsurance@reprints.crain.com.

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Zurich adds enhancements for financial institutions

SCHAUMBURG, Ill.—Zurich North America Commercial has rolled out enhancements of financial institution management and professional liability coverage.

The Financial Institutions Select program is a customizable, menu-driven policy with more than 75 enhancements tailored to the risks and litigious business environment facing management of financial institutions, Zurich said in a statement.

Zurich said the policy offers 10 coverage options, including excess Side A liability; private and public company securities; and other liability such as employment practices, fiduciary, lender and trust department.

Enhancements include loss prevention and control services such as electronic discovery consulting and access to risk engineers from Zurich Services Corp.

Zurich North America Commercial, based in Schaumburg, Ill., is a unit of Zurich Financial Services Group.

For information about Financial Institutions Select, contact Pamela Jozwiak, vp, at 410-559-8807 or *Pamela.jozwiak@zurichna.com*.

ISO adds geographic services to product suite

JERSEY CITY, N.J.—Insurance Services Office Inc. has added geographic services to its risk information and management product suites.

The new services are available through ISO's Location and Location Analyst products, which use geographic information system technology to calculate information used to manage risk, the company said in a statement.

The Jersey City, N.J.-based ISO said additions include tsunami and lava services for Hawaii, which determine if a property is within Hawaii's defined evacuation zone and provide lava-flow information for the Big Island's five volcanoes.

ISO said separate enhancements include premium tax services to identify appropriate tax codes and territory names, along with lines of business subject to premium taxes for Delaware, Mississippi and South Carolina.

Location and Location Analyst uses GIS underwriting databases to provide address-specific information for underwriting, rating and analysis for property/casualty insurers.

ISO is a unit of Jersey City, N.J.-based Verisk Analytics Inc.

For more information, contact Linda Hotchkiss, manager of marketing and customer service, at 201-469-2478 or *Lhotchkiss@ISO.com*.

IMI installs insurance premium calculator

TAMPA, Fla.—Insurance Market Intelligence L.L.C., an online resource for commercial property insurers, has installed a premium calculator available through its Web site, the company said in a statement.

IMI said the online tool calculates nonadmitted Florida property premium estimates based on surveys and "continuous market tracking."

According to Tampa, Fla.-based IMI, the calculator allows users to enter total insurance value and set various parameters such as location, construction, year built, distance to coast and occupancy. They then receive an estimate with average wind and hail deductibles.

The premium calculator is available for an annual cost of $599, which includes access to the entire site. It also is open as a free 30-day trial at *www.imicompany.com*, under the tools tab.

For more information, contact Dustin Applebaum, managing partner, at 877-770-4051 ext. 111 or *dapplebaum@imicompany.com*.

AXIS team focuses on renewable energy

LONDON—AXIS Insurance, a unit of Bermuda-based AXIS Capital Holdings Ltd., has formed a new team to focus on renewable energy, the company said.

AXIS says the London-based team will insure and determine risks for producers and distributors of renewable energy, such as wind turbines, biofuel plants, solar energy and hydroelectric power generators among others.

"AXIS Insurance has served the energy sector consistently since its inception and as the marketplace has become more environmentally conscious, we have broadened our expertise to meet its emerging insurance needs," Jack Gressier, chairman of AXIS Insurance, said in a statement.

AXIS named Matthew Melville as senior vp and Richard Carroll as vp of the renewable energy team. Previously, Mr. Melville was chief underwriting officer and Mr. Carroll was business development manager for London-based GCube Underwriting Ltd.

For more information, contact Cliff Easton, executive vp, at 44-207-877-3800 or *cliff.easton@axis-capital.com*.

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Financial Risk Report

SPOTLIGHT

Insurers enhance vigilance of potential risks

By MARK A. HOFMANN

What you don't know can hurt you, a lesson impressed upon insurers and other financial firms as the economy tanked.

Insurers found that their risks extended far beyond traditional issues such as catastrophes and reserves (see story, page 12). Some insurers strengthened internal risk management systems, including naming chief risk officers.

"When companies fail, most of the time it's not due to some calculated risk. Most of the time it's due to risk that ends up being a surprise to management," said Samir Shah, senior vp and CRO for Chartis Inc. in New York. Surprises can stem from outside events to which managers have not paid attention or internal events where "you think you have everything in place, but you don't."

Not surprisingly, insurers have become more attuned to managing their risk profiles since the economic turmoil began.

Insurers are trying to create a risk management culture at all levels to break down silos and identify risks early, said Howard Mills, chief adviser-insurance industry group at Deloitte Services L.P. in New York and former New York insurance superintendent. "The present crisis has taught us that the devastating risks are those that cannot be contained to one business unit or one silo."

Senior managers and boards are getting better "dashboard" information on risk, said Joe Lebens, a senior consultant with Towers Watson & Co. in Hartford, Conn. Boards more often are asking senior managers to provide the snapshot risk profile data that describes the organization's main risks and what's being done to manage them.

In past 12 to 18 months, Mr. Lebens said companies are paying more attention to the amount of risk they want to take and

See **RISK** next page

OBVIOUS AND HIDDEN RISKS GAIN GREATER MARKET SCRUTINY
PAGE 12

MUNICIPALITIES HIT BY EXODUS OF BOND INSURERS
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RISK MANAGERS NEED MULTIFACETED SET OF SKILLS
PAGE 15

NEXT SPOTLIGHT March 1: Spring Broker Report

Risk: Insurers enhance their vigilance

CONTINUED FROM PREVIOUS PAGE

where they want to take it. "We've certainly seen more efforts spent on defining their risk appetites and risk limits," he said.

Jacob Rosengarten, chief enterprise risk officer for XL Capital Ltd. in Hamilton, Bermuda, said people have to be encouraged to speak their minds. "Getting the right information to really smart people at the right time" is essential, he said.

To achieve this goal, XL has established an enterprise risk committee, which Mr. Rosengarten described as a "kind of a public square where risk themes can be vetted, discussed and acted upon."

He stressed the importance of having a free flow of information.

"If you have great mathematics and a culture that does not encourage communication, you have a smaller chance of succeeding," he said. "Models and tools by themselves can't alone be the answer."

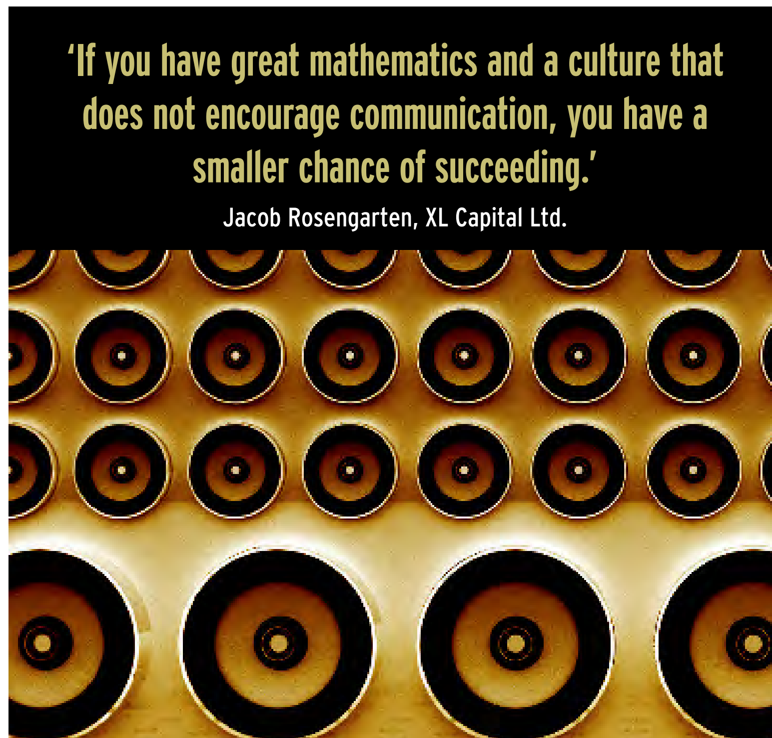
How insurers manage risk is drawing attention from regulators and rating agencies alike.

"We have recently rolled out an enterprise risk management assessment" that is aimed at life insurers, said Tim Nauheimer, chief risk management specialist at the New York State Insurance Department.

Although only life insurers have been subject to the assessment, Mr. Nauheimer said the NYSID plans to roll out a program for property/casualty insurers later this year. He said the ERM reviews for the life side include looking for a separate risk management function with a CRO who is the central point of contact.

'If you have great mathematics and a culture that does not encourage communication, you have a smaller chance of succeeding.'

Jacob Rosengarten, XL Capital Ltd.



"We really look at risk management as being part of the entire organization," said Richard Attanasio, a vp at A.M. Best Co. Inc. in Oldwick, N.J. "It should be part of the culture of the organization," including everything from underwriting to investments to succession planning.

Mr. Attanasio said risk management "comes up a lot when you talk about the type of exposures a company is writing. We want to understand that when we assign a rating to the company: What's their risk tolerance? What's their risk appetite?"

The subject is discussed a lot more than it was before the economic turmoil began. Companies that already had a good risk management culture were better able to manage through the situation, he said.

"We don't have a separate rating category for risk management, but rather it's embedded in our methodology in the different factors," said Sarah Hibler, senior vp and team leader of Moody's Investors Service's U.S. property/casualty team in New York. "We look at business fundamentals and financial fundamentals. Within each of those categories, we think about risk management and the types of report or information that companies collect in order to manage the risk in those respective areas."

"Since the meltdown, you've had investment risk. We paid attention to that that before; we're doing more of that now," said Pano Karambelas, vp and senior credit officer of Moody's U.S. property/casualty team in New York. "A lot of categories people think of in risk management line up with our rating factors. To the extent companies are doing ERM on the investment, we would take that into account on the investment risk factor category in our methodology."

One of the things companies have been doing and "we would expect to see more on in risk management is scenario testing," said Ms. Hibler. For P/C insurers, "you think about product risk that shows up in reserving risk; you think about catastrophe risk; and you think about investment risk," she said. She added that when a company is considering different scenarios, "we would expect them to incorporate a lot of risks, but those are three big risks."

The management of risk varies from insurer to insurer, observers say.

"Reinsurers such as Swiss Re have been strengthening their risk management capabilities in recent years, employing CROs and adding more people with expertise in actuarial and financial risk," Raj Singh, Zurich-based CRO for Swiss Reinsurance Co., said in an e-mail. "In order to be most effective, the risk management function should operate independently of the other departments with which it interacts and have an overview of all the risks that a company faces."

Such a culture can encourage risk managers to speak up and risk managers should report directly to the chief executive, he said. "Risk governance has improved significantly in recent years, providing more clarity around decisionmaking and encouraging more discipline. Examples of this include explicit risk limits that are continually enforced and clear individual signatory responsibility for all major deals."

"While the risk committee of the board serves as focal point for oversight regarding risk management, the board of directors of Zurich has ultimate oversight responsibility for the group's risk management," Axel Lehmann, Zurich-based group CRO for Zurich Financial Services Group, said in an e-mail. "On an operational level, the group CEO has delegated oversight of Zurich's risk management framework to the group chief risk officer, who is a member of the group executive committee and also reports to the risk committee of the board."

"We see more CROs," said Towers Watson's Mr. Lebens. "I think together with the CEO, the CRO has been at the forefront of helping companies do a better job of managing their overall risks."

But, "the authority or impact or influence they have varies tremendously," he said.

Property catastrophe remains top risk, but others gain ground

The risks confronting insurers appear to become more complex every day.

Traditional risk, notably catastrophes, remains a core concern for underwriters. But newer risks, such as inflation and even advancing technology, must be taken into insurers' risk management calculations as well, observers say.

Property catastrophe risk "is and continues to be the largest risk," said Joe Lebens, senior consultant at Towers Watson & Co. in Hartford, Conn. But insurers also must include the "hidden risk" of inflation. In many cases, reserves might not anticipate higher inflation, he said.

"Certainly, inflation has to be a concern" given the massive amount of borrowing by both public and private parties, said Jacob Rosengarten, chief enterprise risk officer of XL Capital Ltd. in Hamilton, Bermuda. But he added that deflation remains a concern as well, because "the world economy isn't out of the woods yet."

Insurers must manage very complex, large risks, said Howard Mills, chief adviser-insurance industry group at Deloitte Services L.P. in New York. "They can manage their exposure to catastrophes, but they cannot manage when the cat occurs." They have to deal with interest rates and investment earnings. They must practice careful underwriting and be aware of what the global climate can bring that is beyond their control. They must "be able to survive scenarios that, prior to the (economic) crisis…many people thought were so far out there" that they weren't taken into account. However, "scenarios at the edge of probability can indeed happen," he said.

"We are a focused insurance company, so naturally we are exposed to insurance risks," Axel Lehmann, group chief risk officer for Zurich Financial Services Group in Zurich, said in an e-mail. "These include exposures to natural catastrophes or terrorist attacks, but also risks stemming from our liability insurance lines, which might emerge only in the future. On the asset side, we are following a very disciplined investment strategy and match our assets to our liabilities. But to a certain extent, insurance companies are also exposed to developments in the financial markets. Here we are especially vulnerable to a long-lasting low-interest-rate environment, as this obviously means lower income on our investments."

Insurers have to be careful about how they use modeling, said Samir Shah, who recently became senior vp and CRO of New York-based Chartis Inc. "Insurers are putting in more sophisticated stuff, but I'm not sure in all cases that translates into reliability." In some cases, it actually leads to less reliability, he said.

Technology pros and cons

He said one process that insurers are adopting is capital modeling, which he said is "absolutely required of them." But he also said sophisticated capital models are not always anchored to the real portfolio of risk in a company. Mr. Shah said that because capital models are powerful and potentially dangerous, insurers should take the time to assure that the models are tied to real information.

XL's Mr. Rosengarten also said some emerging risks stem from the role of technology.

"The benefits of technology are typically much more apparent than the long-term risks of technology," Mr. Rosengarten said. But "until the risk emerges, nobody wants to pay for it."

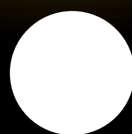
Insurers must pay attention to changes in government-initiated actions—regulations, taxes, judicial precedent—that could affect them. There also is the role of emerging economies: What if some products aren't designed to the same standards as those of developed economies? he asked.

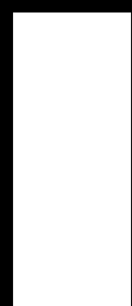
Reinsurers must manage risks beyond what they reinsure, including "risks relating to credit, to financial markets and to operations," Raj Singh, CRO for Swiss Reinsurance Co. in Zurich, said in an e-mail.

"These risks can come from sources as diverse as stock market fluctuations, the impact of tropical cyclones or earthquakes, or pandemics which could affect the book of insured risks or equally the company's ability to operate. The main advantage that a reinsurer has is in the diversification that the risk pool offers: A hurricane in Florida has very little to do with an earthquake in Japan. Because these risks are uncorrelated and because the risk of them occurring at the same time is small, then this diversification reduces the costs of the risk transfer and improves capital efficiency for the client."

On the other hand, Mr. Singh said, "there are some risks that accumulate: A natural catastrophe such as a major flood can, for instance, cause damage that triggers claims on property policies, on casualty or in life insurance policies. Under Solvency II, the diversification benefits and the accumulation effect are adequately reflected."

—By Mark A. Hofmann





Business Insurance 2010

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Business Insurance

Bond insurer exits put municipalities in a bind

Some experts foresee permanent decline in market penetration

By JUDY GREENWALD

Many municipalities and other governmental entities are struggling to bring their bond issues to market given that only one AAA-rated municipal bond insurer remains in the United States, observers say.

Although there are several efforts under way to launch new municipal bond insurers, no one is sure how successful they will be (see story below).

Even if they succeed, there is a general consensus that the insured portion of the municipal bond insurance market never again will reach the 57% penetration it achieved at its height five years ago.

Previously, AAA-rated monoline municipal bond insurers conferred their own ratings on lower-rated municipal issues, which permitted the municipalities to pay lower interest rates. This more than offset the cost of the insurance.

The first municipal bond insurer, American Municipal Bond Assurance Corp., now AMBAC Financial Corp., began operations in 1971. Other insurers that followed included Municipal Bond Investors Assurance Corp., now MBIA Inc.; FGIC Corp.; and Assured Guaranty Ltd.

For a long period, municipal bond insurers thrived.

"One percent of the municipal bonds actually default, and they were enjoying 50% market penetration in terms of the new bonds being issued, so from that perspective, it was a pretty good deal," said Dwight V. Denison, associate professor of public and nonprofit finance at the University of Kentucky in Lexington.

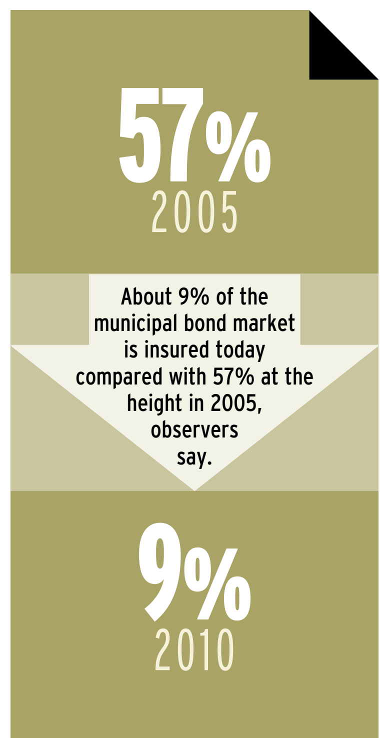
But in the 1990s, the insurers began to diversify away from the "plain vanilla" municipal bonds into structured financial products, including subprime home mortgages, experts say. Then the credit crisis hit in late 2007 and rating agencies began to downgrade municipal bond insurers.

Assured Guaranty Ltd., which has units rated AAA by a single rating agency, Standard & Poor's Corp., now is the only municipal bond insurer still actively writing new business, observers say. The Bermuda-based insurer, which acquired competitor Financial Security Assurance Holdings Ltd. last July, was less heavily involved in the structured market than its competitors.

About 9% of the municipal bond market is insured today compared with 57% at the business' height in 2005, observers say.

Municipalities, particularly smaller ones that infrequently come to market, have suffered as a result, observers say.

"They're basically just doing without," said Richard Larkin, director of credit analysis at Herbert J. Sims & Co., a Southport, Conn.-based investment banking and brokerage firm.



> **'There has been a limited amount of credit enactment available in the form of letters of credit from banks, but banks have tightened credit standards' and these letters of credit have 'really diminished to a fairly small component of the market.'**
>
> Rodney A. Clark, Standard & Poor's Corp.

"It's had a drastic impact on our program," said Robert Lautenberg, managing director of the Richmond-based Virginia Municipal League/Virginia Assn. of Counties Finance. Mr. Lautenberg's association pools local governments' projects and then issues bonds.

In the past, municipal bond insurance allowed the Virginia governmental agencies to put different credits into one pool. "The bond insurance brought everyone up to the same level," with the local governments sharing the insurance's cost, Mr. Lautenberg said.

The bonds traded better because they were part of a larger bond issue, but "now that's not really possible because of the lack of bond insurance," Mr. Lautenberg said.

Eric Johansen, debt manager for the city of Portland, Ore., said most of the city's debt is rated AA or higher and bond insurance is not needed. However, certain bonds issued in urban development projects are rated A and "historically have benefited from having bond insurance available." Its absence has led to higher borrowing costs for the city, Mr. Johansen said.

In addition, Portland has been unable to obtain surety bonds it previously purchased from municipal bond insurers, said Mr. Johansen.

"It's had a huge impact down here" in Florida, particularly among small- and medium-size municipalities, said Craig Hunter, public finance director for the Tallahassee-based Florida League of Cities.

"There is a meaningful portion of the municipal market that is not being served right now," said Rodney A. Clark, an S&P analyst.

Mark Young, a principal at Gardner, Underwood & Bacon L.L.C., a Los Angeles-based public finance advisory firm, said some municipal bond issuers have not been able to access the bond insurance market at affordable interest rates. Others have issued bonds, but at "significantly higher rates than they would otherwise have paid" had there been more bond insurers, he said.

There are few viable alternatives aside from doing without bond insurance, observers say.

"There has been a limited amount of credit enactment available in the form of letters of credit from banks, but banks have tightened credit standards" and these letters of credit have "really diminished to a fairly small component of the market," Mr. Clark said.

Meanwhile, Assured Guaranty is charging high rates and being highly selective, observers say.

Assured "knows the value of their guarantee" and has priced it appropriately, Mr. Young said.

"They're getting significant profitability on what's being issued today," Mr. Clark said.

Sean McCarthy, Assured Guaranty's chief operating officer, responded to the pricing comments in a statement: "Our premiums have been consistent over the past two years. While we are the only active bond insurance market, we compete against alternative executions."

Mr. Clark said if participants now in development enter the market in the near term, "then it is likely, we think, that the insured municipal issuance will increase, but it is difficult to say by quite how much."

"We think the equilibrium is somewhere between" the 57% it reached in 2005 "and the 10% or so it is today, but it's difficult to say where the equilibrium will be, and a lot depends on the strength of the potential new insurers and how quickly they are able to launch," Mr. Clark said.

Mr. Young said the market has become bifurcated, with large AA-rated entities not finding significant value in insured bonds. However, there will continue to be a market for insurance for lower-rated, smaller, infrequent issuers "where the insurance will, in fact, be a proxy for credit review" by the investor.

"I do not see a return" to a market where more than half is insured. Instead, there will be a 25% to 30% penetration accounted for by the smaller entities, Mr. Young said.

There also is the possibility the situation will remain essentially as it is today.

"One potential alternative is, the longer the period of time that persists with the market being underserved, the more the issuers and investors learn to go without bond insurance," Mr. Clark said. "In that scenario, we could have a really long-term condition where very little municipal (bond) issuance is actually insured."

Efforts under way to launch new monoline bond issuers

Several efforts are under way to launch new monoline municipal bond insurers, although none has gained traction so far.

At least two, backed by the Washington-based National League of Cities and a consulting firm, have sought government help to get started, so far without success.

The National League of Cities is seeking an interest-free federal loan of $5 billion to get its planned mutual company started, said Cathy Spain, director, the center for enterprise programs, at the League.

"At this point, because of the lack of a groundswell of stories about cities not having access to the market, we have not been successful in getting the money," she said. "We've continued to explore the possibility of finding other sources of capital which would still be affordable," including private capital that "might be an inducement for the feds helping us out, too."

Robert M. Smith, Somerset, Calif.-based executive vp of consulting firm HRF Associates L.L.C., which is seeking a $25 billion federal loan to launch a municipal bond insurance company, said Washington has been preoccupied with other issues.

"I think if (U.S. Treasury Secretary Timothy Geithner) or President Obama were actually to have an awareness of this plan, it would be given serious consideration, but unfortunately I don't believe it has gotten to that level yet," Mr. Smith said.

Last year, MBIA Inc. ceded its U.S. public finance business to a separate entity, National Public Finance Guarantee Corp., and hopes to begin writing new municipal bond insurance business, said a spokesman for the Armonk, N.Y.-based insurer, whose units no longer have a AAA rating.

It is being held up, though, by litigation brought by a group of banks objecting to the split in its business, and by its current ratings below AAA. It hopes to have the situation resolved this year, the spokesman said.

"We view the litigation as sort of the critical path towards removing the question mark in the minds of investors about National and getting the ratings up to a level to facilitate writing material amounts of new business," he said.

Other entities that have been formed to write new business, but have not yet started, include the Municipal and Infrastructure Assurance Corp. and BondModel Co. L.L.C., both based in New York.

A spokesman for Municipal could not be reached for comment, while BondModel had no comment.

—By Judy Greenwald

Broad knowledge base best for managing risk

Risk professionals say it's important to have wide range of insight

By DAVE LENCKUS

Financial acumen is an invaluable asset for risk managers committed to enterprise risk management, but developing expertise in functions that other organizational departments oversee is unnecessary for success, risk professionals concur.

One independent consultant and former chief risk officer even advised risk professionals to develop a wide range of business insight or risk becoming "a nerd." James Lam, president of James Lam & Associates Inc. in Wellesley, Mass., invoked the term to describe a risk manager whose knowledge is so concentrated that he or she cannot grasp the principles of other important functions on which senior management wants input.

Risk professionals stressed the importance of risk managers developing a strong grounding in finance and then supplementing that with other strengths, including soft skills such as written and oral communications.

Understanding complex financial transactions is essential, but being the top expert is not, risk professionals say.

People do not "need to be cartographers in order to read maps," said Carol Fox, a Cincinnati-based consultant and former risk manager.

"You need to know how to get results though others," said Ms. Fox, who chairs the Risk & Insurance Management Society Inc.'s standards and practices committee and was a founding member and former chair of RIMS' ERM development committee.

Pete Fahrenthold, who chairs the ERM development committee, noted that risk managers at organizations implementing ERM often report to the chief financial officer or treasurer and evaluate emerging risk along with human resources, operations, finance, governmental affairs and other departments.

"To be useful to this group, you have to understand how it all translates into the financial statements," said Mr. Fahrenthold, managing director-risk management at Continental Airlines Inc. in Houston.

But ERM often is about the process of managing risk in general, not a specific risk, he said. "You provide the risk analysis structure."

John Phelps, who as director-business risk solutions for Blue Cross & Blue Shield of Florida Inc. has implemented ERM at the Jacksonville-based health insurer, agreed. He also sits on the RIMS board and is its treasurer.

At the health insurer, for example, Mr. Phelps reviewed the investment department's risk-based process and determined it was thorough and consistent with the ERM program. The department also shares its process changes with risk management for comment. "We provide a tool, but we don't suggest they're not the expert," he said.

Mr. Lam said financial basics with which risk managers should be familiar are present and future values, interest rate compounding, probability estimation, and economic value and risk volatility. That level of understanding would allow a risk manager to measure risk accurately as well as integrate risk management and shareholder value, as risk imperils cash flow and future shareholder value, he said.

But there is no need to be an expert in areas such as currency hedging, weather derivatives, foreign exchange rates and interest rate exposures, which he said can be "handled by the experts in those areas."

Mr. Lam advises risk managers to develop a multi-dimensional skill set that he describes as a "T set."

The vertical axis represents the skill in which the risk manager is deeply proficient, such as risk management, finance, accounting or law.

The horizontal axis represents a broader knowledge base, such as business management or a master's degree in business administration.

With only a vertical axis of knowledge, "you'd be a nerd," Mr. Lam said. "You know a topic deeply, but it's not as useful" as when you also have a firm grasp of numerous business concepts.

With only a horizontal knowledge base, "you're a jack-of-all-trades but a master of none," he said. "That doesn't offer much value."

Having financial expertise could be critical in some circumstances.

For example, the risk manager of a financial institution "needs to be more of an expert" on risky financial instruments, said John McLaughlin, a senior managing director and the risk practice leader at SMART Business Advisory & Consulting L.L.C. in Philadelphia.

Joseph A. Restoule, a past president of RIMS, agreed and said the global financial crisis might have been mitigated if risk managers at financial institutions had better understood their organizations' practices and dogged senior management about it.

Today, most financial institutions practice ERM, so those risk managers need to understand the core business, said Mr. Restoule, leader of risk management at Calgary, Alberta-based Nova Chemical Corp. "As those institutions develop their risk models and do their stress testing, (the risk manager) would have to be fairly involved and active."

Risk managers at organizations with captive insurers also should be experts in investment strategy, many risk managers and consultants said.

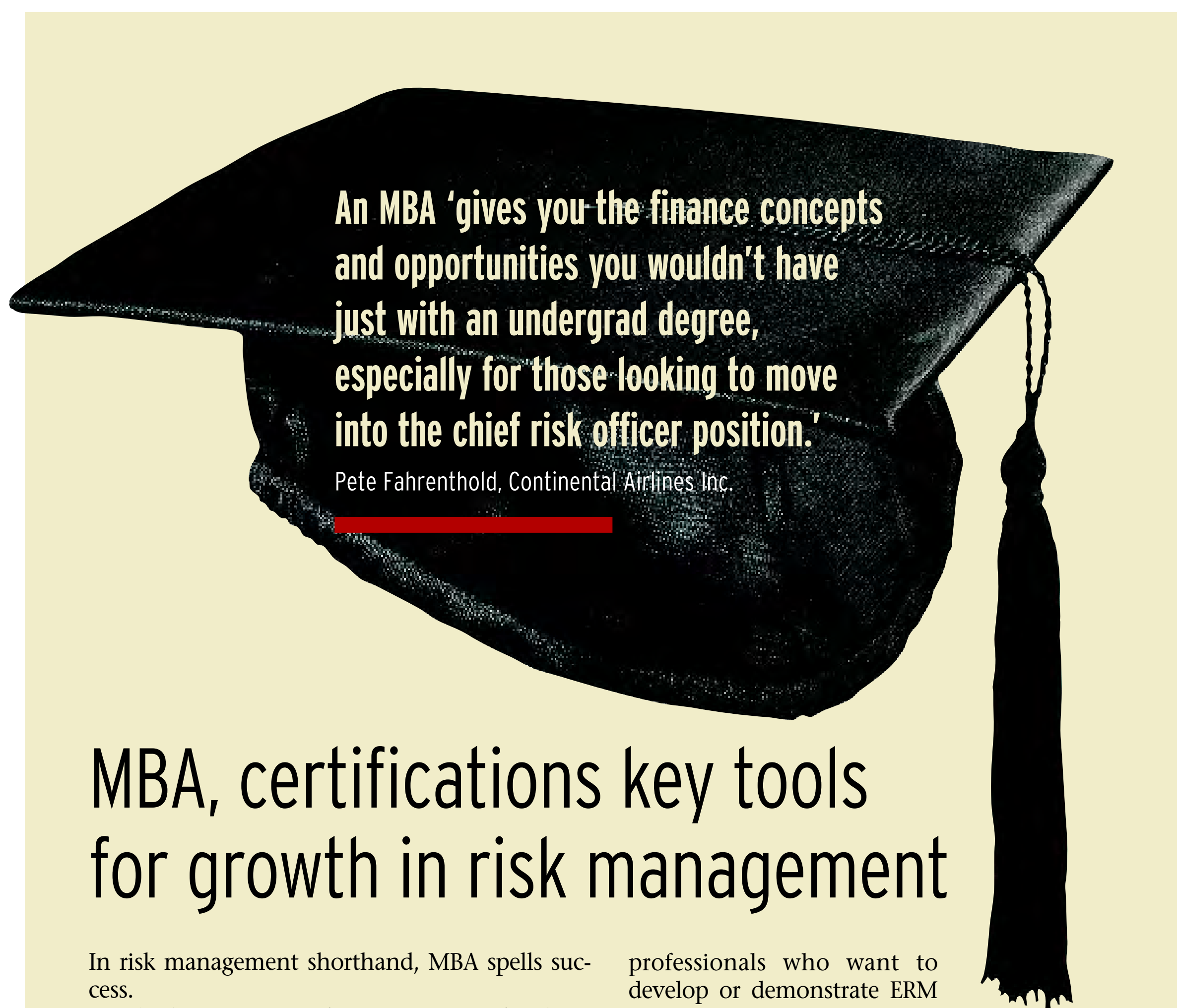
Risk managers who are part of a captive's executive team or sit on captive boards "have a fiduciary duty to understand the investment strategy of the captive," Mr. Restoule said. "And you need to understand how the strategy is doing and be able to make adjustments if need be."

Continental's Mr. Fahrenthold agreed, but he said the parent company's cash management expert also would be involved to assist the risk manager.

Overall, however, risk managers overseeing ERM are "trying to look at the interrelationships between exposures and the controls that are in place" across the organizations and need to be an expert only in the areas they directly oversee, he said.

Critically important, he said, is that with an area outside a risk manager's expertise, he or she "has to know it well enough" to provide the organization's audit committee "realistic input" on the risk controls in place.

"Otherwise, you're just a messenger" from the manager of the area that the audit committee is evaluating, Mr. Fahrenthold said.



MBA, certifications key tools for growth in risk management

In risk management shorthand, MBA spells success.

Whether practicing for years or just finishing undergrad work, those who aspire to climb to the pinnacle of risk management would have a better chance if they have a master's degree in business administration, risk managers and consultants agree.

Risk professionals also advise adding professional certifications.

More than any other course of study, an MBA gives risk managers the breadth of finance and business education they need to succeed, especially as the view of risk expands from operational perils to enterprisewide risks, experts say.

An MBA "gives you the finance concepts and opportunities you wouldn't have just with an undergrad degree, especially for those looking to move into the chief risk officer position," said Pete Fahrenthold, managing director-risk management at Continental Airlines Inc. in Houston and chair of the Risk & Insurance Management Society Inc.'s ERM development committee.

"A lot of risk managers are assistant treasurers, so an MBA would be really advantageous" for them, said Joseph A. Restoule, RIMS past president and leader of risk management at Calgary, Alberta-based Nova Chemical Corp.

A risk professional's education should continue with professional designations, such as the Associate in Risk Management and the Chartered Property and Casualty Underwriter designations, experts say.

Now, risk managers with an ARM can earn what amounts to a graduate designation—an ARM-E. The new designation is designed for risk professionals who want to develop or demonstrate ERM expertise.

Cincinnati-based independent consultant Carol Fox, a founding member and former chair of the RIMS ERM development committee, recommends the designation.

John Phelps, director-business risk solutions for Blue Cross & Blue Shield of Florida Inc. in Jacksonville, advocated the CPCU designation even for risk managers who are not employed by insurers. The designation demonstrates that the bearer has "a higher understanding of property/casualty insurance," said Mr. Phelps, a RIMS board member and officer.

"But the modern-day risk manager is going so far beyond the property/casualty portfolio in managing risk that it doesn't carry as much weight as an ARM or an MBA," he added.

Risk managers also should seek out other professional designations specific to their industry, experts advise.

"You have to have enough of an organizational perspective to recognize when something goes wrong," said John McLaughlin, a senior managing director and the risk practice leader at SMART Business Advisory & Consulting L.L.C. in Philadelphia.

Degrees and designations are "all very good," said consultant James Lam, president of James Lam & Associates Inc. in Wellesley, Mass.

"But nothing beats experience," said Mr. Lam, who was a CRO at two companies before entering consulting. "When I was a CRO and wanted to hire a risk professional, the most important thing that I was looking for was experience."

—By Dave Lenckus

LETTERS

Continued from page 8

process and creates a backlash. For a while, the party that can dominate feels secure, but it always falls apart, doesn't it? We have too many scandals and market cycles to ignore this reality. Let's take our knowledge gained from this experience and apply it to the current state of the availability of health coverage.

How are we impacted by people not having adequate or any health care insurance? Taxpayers pay the cost to subsidize the community hospitals (that) treat the uninsured. Insured people pay a portion of our premium to cover the costs of the uninsured indirectly. Business owners struggle when their workforce is not reliable because the employees are trying to take care of sick selves, children and extended families. Schools lose out on revenue when their students can't make it to class. Personally, we feel a loss of integrity as we disconnect from the reality that other human beings are sick or need medical care, and don't get it because they don't have the money. We are in the backlash—look at the health care coverage debate. It is very interesting that the people who actually have insurance are the loudest voice, trying to deny the imbalance. The lack of coverage for everyone is impacting our society on every level already and yet we want to continue to deny it—to protect "ourselves" and ignore "them."

In this debate, there is no "them" as hard as we might try to create a divide. If we are one of the fortunate who have health insurance, do we marginalize those who don't have coverage as people that we cannot relate to? Do we label them as "poor?" Or "uneducated" low-end laborers? These paradigms are ridiculous—talk to your brother, sister, friend, neighbor or co-worker and you'll quickly find people who have lost coverage because they have lost their jobs, regardless of their socioeconomic status. Talk to me. I became a consultant/independent contractor and lost benefits as a result. It was a conscious choice to change my status as it was mutually beneficial to my former employer and my family. I anticipated that I would pay for my own health insurance. However, I can't qualify for health insurance on my own because of postpartum depression nine years ago, despite my doctor's written assurances to potential insurance companies that I do not present any risk currently. As a middle-aged, college graduate with a good career and solid income, I could not have imagined I would go without health insurance and, at one point, the only option to get my son coverage was to enroll in the state program for low-income families. I became one of "them," those "uninsured" that I had always ignored as a statistic.

It has been hard for many of us to accept that we need to scale back in our lifestyle because of the recession. At a time when we are already cutting expenses, both in our personal and corporate budgets, it feels impossible to think about taking on another financial burden—the possible increased cost of health insurance. But it is not impossible, just hard. Let's move beyond this, together. Let's support each other to connect to what is for the highest good of all, including ourselves, and get health care reform in place, so that our government can move onto tackling the next seemingly impossible problem. Our greatest hope is that we can tackle tough problems and still stay connected, to find solutions that will support the whole, instead of just the lucky ones.

Chris Reese
Owner
Chris Reese Consulting
Fallbrook, Calif.

UP CLOSE Comings & Goings

STEVE COOPER

NEW JOB TITLE: New Berlin, Wis.-based president of United Heartland, a workers compensation insurer and subsidiary of Blue Cross Blue Shield of Michigan.

PREVIOUS POSITION: Lansing, Mich.-based vp of claim operations and third-party administrator at Accident Fund Insurance Co. of America, another Michigan Blues subsidiary.

GOALS FOR NEW POSITION: I would like to continue the tradition of success at United Heartland. It's really a premier, high-service workers compensation insurer. I want to focus on growing the business geographically. I would also like to go deeper in states we already have a presence in. I would also like to continue to grow partnerships with agents so they have the knowledge and tools they need to work with United Heartland.

INDUSTRY CHALLENGES: Anybody in workers comp right now is dealing with this prolonged soft market. The economy is taking a toll on workers comp. We've seen a large declines in employment, hence payroll, which drives down premiums. Workers comp insurers are also having difficulty achieving underwriting profits. Complicating all of this is the rise in medical costs as a percentage of overall losses. Workers comp insurers really need to focus on the medical cost piece of this.

INDUSTRY OUTLOOK: There is no sign of a hardening insurance market in terms of pricing. Investment income has been pretty good. That's a double-edged sword, because if it continues to provide the lift for earnings, then there are some insurers than can operate with the underwriting loss and recoup it on the investment gains. It's a tough dynamic right now. We expect the market to continue to be competitive pricewise. You are going to see a lot of insurance companies focus on their internal expenses, which I think will provide a benefit to United Heartland because we have really focused on service and underwriting. As other insurers look at their spending, I would expect to see a drop in service.

FIRST MARKET JOB EXPERIENCE: I was a claims rep for Aetna Casualty & Surety (Co.).

Professional MarketPlace

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LEGAL NOTICE

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

IN RE:)
) CV185-1206CC
TRANSIT CASUALTY COMPANY) Division IV
IN RECEIVERSHIP) Administrative Order File

NOTICE OF HEARING ON SPECIAL DEPUTY RECEIVER'S APPLICATION FOR CLAIMS CLOSURE ORDER

The Special Deputy Receiver (SDR) of Transit Casualty Company in Receivership has filed an Application requesting that this Court enter its Order directing the SDR to refuse consideration of any Post-Bar Date claims in the estate because it will, inter alia, "prejudice the orderly administration of the liquidation." The Court has considered the SDR's Application and hereby Orders that:

A HEARING SHOULD BE HELD IN DIVISION IV OF THE COLE COUNTY COURTHOUSE ON **MARCH 4, 2010 AT 2:00 P.M. CENTRAL TIME** TO CONSIDER WHY THE SDR'S APPLICATION SHOULD NOT BE GRANTED AND SUCH AND ORDER SHOULD NOT BE ISSUED.

This Notice of Hearing should be published in each of the following within a reasonable time before said hearing: Wall Street Journal, Business Insurance, USA Today, Los Angeles Times and the St. Louis Post-Dispatch. Such notice shall also be mailed to the Transit Creditors Committee, to the creditors who receive distribution checks, which includes all state guaranty funds and Transit's major policyholders and to any other creditors or potential creditors that the Special Deputy deems appropriate.

SO ORDERED

/s/
Byron L. Kinder, Circuit Judge

Dated this 16th day of February, 2010.

Mark your Calendar...

Spring Broker Report
Publishing: March 1
Classified Ad Close: Feb. 23
Bonus Distribution:
IIABA, NAPSLO, ECFC

Captives: Leading Domiciles
Publishing: March 8
Classified Ad Close: Mar. 2
Bonus Distribution:
CICA, NBGH

Contact Monique Murray at 212-210-0129 For Details

Comings & Goings ONLINE

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

TO SUBMIT ITEMS

Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to:

Mike Tsikoudakis
Business Insurance
360 N. Michigan Ave.
Chicago, Ill. 60601-3806
mtsikoudakis@businessinsurance.com

POSTING THIS WEEK

AGENTS:
- Iron-Starr Excess Agency Ltd.

BROKERS:
- JDW Insurance
- Lockton Cos. L.L.C.
- Lockton Dunning Benefits

INSURERS:
- Assurant Inc.
- Chartis Inc.
- Fireman's Fund Insurance Co.

MANAGED CARE:
- Harvard Pilgrim Health Care Inc.

OTHER PROVIDERS:
- Buck Consultants L.L.C.
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Tests: Genetic testing eyed for ways to fine-tune pharmacy benefits

CONTINUED FROM PAGE 1

Caremark PBM clients to improve care for patients who either don't respond to their medications or have adverse reactions.

In the Medco and CVS programs, the employer generally picks up the tab for the largely voluntary testing of how genetic variation affects response to drugs.

While the testing "is not cheap," said Dr. Martin Sepulveda, vp-integrated health services at Armonk, N.Y.-based IBM Corp., "the return is very high if it is done on the patient who needs it."

The genetic tests cost about $300 on average, said Kristin Begley, national pharmacy practice leader at Hewitt Associates Inc. in Los Angeles.

But if just one patient benefits from the genetic test for warfarin use, IBM saves between $12,000 and $13,000 by avoiding a hospitalization due to an adverse drug reaction, Dr. Sepulveda estimated.

IBM was among early users of Medco's personalized medicine services in a pilot program involving 27 employers that began in 2008.

"The pilot demonstrated to us that it could be provided in a way that was considered of value and respecting of patients and physicians to make decisions," Dr. Sepulveda said.

In the Medco pilot and program, the PBM directly contacts doctors after receiving notification that either warfarin or tamoxifen have been prescribed.

Those drugs were targeted because Medco's medical data showed that 25% of people who started warfarin either had excessive bleeding or a blood clot within the first six months, said Dr. Jane Barlow, vp of business solutions at the Franklin Lakes, N.J.-based PBM.

Other Medco research showed that about 10% of women don't metabolize tamoxifen, she said. "In those poor metabolizers, the rate of (breast cancer) recurrence is 30% higher within two years" than women who metabolize the drug, Dr. Barlow said.

Although Medco's personalized medicine program is limited to those two drugs, it is researching other drugs, such as those used to treat HIV, cardiovascular disease and cancer "to determine whether a particular drug is safe for a person to take, whether it's the right dose and whether they'll metabolize it correctly," Dr. Barlow said.

CVS' personalized medicine program will be introduced to a handful of large, self-insured employers and several health plans in the second quarter, said Dr. Troy Brennan, the PBM's chief medical officer in Woonsocket, R.I.

Initially, it will involve genetic testing for two drugs: Herceptin, used to treat cancer, and Plavix, an arterial plaque-reducing drug, he said.

Dr. Brennan said the involvement of PBMs in genetic testing is a natural extension of their services. Aside from ensuring the most efficacious treatment, testing also lowers pharmacy costs, particularly for expensive specialty drugs, he said.

"Most of the drugs are in the specialty area," such as oncology drugs. The pharmaceutical industry "wants the drugs to be used for all patients. The whole design here is to target them to the most appropriate people," Dr. Brennan said.

Commenting on the program, Mike Thompson, a principal at PricewaterhouseCoopers L.L.P. in New York, said: "This is where patient safety, cost and quality all congregate. We pay for drugs if they're on a formulary, but we don't check to make sure if that drug is the best for a particular individual. To the extent that you can improve patient safety, quality and save money, that's a winning combination."

While some employers embrace personalized medicine, other employers are hesitant, said Ritu Malhotra, Chicago-based vp and clinical pharmacy consultant at Segal Co.

"We think it's an exciting new benefit focus. What we haven't seen is a lot of our clients at the point where they have enough supportive evidence to fund the genetic testing," Ms. Malhotra said. "There needs to be more research and clinical evidence," she said.

But Amy Miller, public policy director at the Washington-based Personalized Medicine Coalition, an education and advocacy group of which Medco and CVS are members, said the list of drugs and available genetic tests has grown in recent years, particularly specialty drugs.

In fact, the U.S. Food and Drug Administration has published a list of drugs for which genetic testing should be considered, she said. The FDA also includes such recommendations in the drug information that pharmacies package with the drugs, she added.

"What we don't yet know is how to personalize drugs used to treat more common conditions such as hypertension, diabetes or (reflux disease), Ms. Miller said.

The Genetic Information Nondiscrimination Act of 2008 also may play a role in advancing personalized medicine, which includes this form of genetic testing, she added.

"Before GINA was passed, people avoided genetic tests because they thought the information would be used against them or their families in getting insurance or even jobs," Ms. Miller said. But now, "an employer can't discriminate against you and your health insurer can't drop you."

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Questions & Answers

After issuing its new producer compensation disclosure rule on Feb. 10, the New York State Insurance Department, together with four other state regulatory and legal authorities, agreed to amend the terms of the world's three largest brokers' 2005 settlement agreements, allowing them to once again collect contingent commissions. Under the new agreements announced last week, Marsh & McLennan Cos. Inc., Aon Corp. and Willis Group Holdings P.L.C. agreed to comply with the NYSID's new disclosure regulation nationally. The NYSID's Matthew J. Gaul, who recently was named deputy superintendent for life insurance, talked with Business Insurance Senior Editor Sally Roberts about the amendments, New York's disclosure rule and the events that led up to them.

Closer look at N.Y.'s disclosure rule

Q: Earlier this month, the NYSID published the final version of its producer compensation disclosure regulation. As you know, the Risk & Insurance Management Society Inc. and the Independent Insurance Agents and Brokers of New York object to the new regulation saying, in RIMS' case, that you didn't go far enough and, in IIABNY's case, that you went too far. Does that mean that the department got it right?

I think there's sort of a lazy analysis that can run in that direction, but I don't think that's the best way to look at it. Often times in the regulatory process, you end up with people who are unhappy with the result and it's probably not the best way to judge things. Having said that…we think we did the best job we could in balancing all the various competing interests. We obviously wish there was more effort to kind of embrace this regulation and work with us on implementing it going forward, but these interest groups have their complaints and they're obviously free to air them.

Q: Do you think other states will look to New York's disclosure rule as a model and adopt similar regulation?

We've had conversations with other states through the (National Assn. of Insurance Commissioners) and through informal conversations. I think they're obviously taking note of the work that we've done. A few states seem to be somewhat interested in pursuing something like it. There's also an NAIC model that a few of the states have adopted—we think our reg is a little stronger than that—but overall I would have to say that in seeing the very difficult political process that we've gone through in getting this reg out, I'm guessing that most of the other states won't have an appetite for taking on this issue.

Q: Before joining the NYSID, you were with the New York attorney general's office and actually spearheaded former Attorney General Eliot Spitzer's bid-rigging investigation of Marsh & McLennan Cos. Now that things have come full circle, what's it like having been part of the effort to curtail contingents and now being part of the effort that brings them back?

Mixed feelings, obviously. I still am very proud of the work that we did at the AG's office. I think pretty much everyone who worked on those cases, including a number of people who moved over here to the department and the folks at this department who worked with us at the time, are very proud of the work that we did. I think we brought to light a lot of very troubling practices in the industry and caused a lot of people inside the industry to take a look at those practices, to be a little more introspective about how the compensation structures work, the value of transparency, whether certain types of compensation are problematic or not. It aired those issues. It caused a lot of public debate about those issues, and where we've ended up is with a focus more on transparency than on something like banning contingents. But that's where the bus has gotten us. I don't think it's a bad thing where we've ended up. I think it's certainly better than where the industry was before all of this.

Q: Do you personally think contingent commissions should be eliminated from the insurance brokerage industry?

Well, I think back at the time of the investigations we found a lot of bad behavior and outright fraud and bid rigging…and at that time we'd really been looking at fashioning a remedy for that. The first remedy was obviously getting those brokers to pay back a lot of money to their clients who had been harmed. But obviously we wanted to go beyond that and try to come up with ways to prevent that kind of behavior from happening again and that had to include disclosure as the first level. And then when we looked at contingents, we realized that a big problem was that disclosure, when it comes to contingents, is really very difficult. It's something that we've struggled with right through this regulatory process to the present day. So at the time, it made sense to say that this was a type of compensation that should just be off limits since it is so difficult to disclose. At the end of the day, I think that the problem with banning something like contingents is that there's a lot of difficulty in line drawing. There are lots of different forms of incentive compensation, including some of the upfront types of compensation that brokers and agents have always gotten, which provide powerful incentives for people to steer business. So transparency is probably the best fix. Maybe there could be more robust transparency in certain parts of the market, but this, I think, is the ultimate best solution.

Q: Although you were not at the New York attorney general's office at the time the bid-rigging cases went to trial, how do you feel about the outcomes of those trials where there were many more acquittals than convictions?

You have to have respect for the criminal process, really. I think there was ample evidence in each of those cases to bring the cases that our criminal prosecutors brought. And at the end of the day, there were a few convictions, some acquittals, and you just have to have respect for that process and for the work that the judge did in that case.

Q: It's been more than five years now since Mr. Spitzer's bid-rigging suit against Marsh. What do you see as the legacy of his investigations into the insurance brokerage industry?

Well, I think it's part of a larger legacy overall that really addressed issues with conflicts of interest. I think you see it both in the insurance investigations and in a number of the other Spitzer investigations—the troubling behaviors that result from unmanaged conflicts of interest. And I think it's caused this industry to take a look at that. I think you see some of the focus in the insurance agent and broker world really embracing transparency and using it to sort of tout a value proposition where they don't take certain types of payments. And I think this debate about different types of compensation and transparency will probably continue, but it's obviously better for this debate to be happening in a public forum in the regulatory process. Those investigations really brought all of this to light.

N.Y. not expected to be model for disclosure rules

Producer compensation regulation 'unlikely' to be widely adopted

By SALLY ROBERTS

While New York often is looked to as a model for regulatory reform by other states, industry observers, including the New York State Insurance Department, do not expect the state's new producer compensation disclosure rule to be widely adopted.

The NYSID published the final version of its disclosure regulation in the New York State Register on Feb. 10—one year and five revisions after publishing its first draft.

Under the regulation that goes into effect Jan. 1, 2011, producers operating in New York 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.

The Risk & Insurance Management Society Inc. objected to the rule, saying the NYSID did not go far enough in protecting consumers. The Independent Insurance Agents and Brokers of New York said it plans to file suit against the NYSID in an attempt to block implementation of the regulation, which it says is too onerous.

Matthew J. Gaul, former special counsel and now deputy superintendent for life insurance at the NYSID, said given the difficulties in promulgating such a regulation, he does not see it being widely adopted by other states.

"A few states seem to be somewhat interested in pursuing something like it…but overall I would have to say that, in seeing the very difficult political process that we've gone through in getting this reg out, I'm guessing that most of the other states won't have an appetite for taking on this issue," Mr. Gaul said.

Industry observers agree.

If one were to look at the "trajectory" since October 2004 when former New York Attorney General Eliot Spitzer filed his fraud and bid-rigging suit against Marsh & McLennan Cos. Inc., the resulting battles have gone in the opposite direction, said Joel Wood, senior vp-government affairs for the Council of Insurance Agents and Brokers based in Washington.

Most of the major litigation that resulted has been resolved, with many acquittals; the assumption that the rest of the industry would adopt similar transparency and business practices spelled out in various settlements did not occur; and there has been "no traction" to the National Assn. of Insurance Commissioners' producer compensation disclosure model, which came out in 2004, he said.

So while New York often is the model for states in regulation generally, "it's unlikely" that its new disclosure regulation will be adopted across the board, Mr. Wood said.

"We're not anticipating any additional states taking action based on New York," said Wes Bissett, Washington-based senior counsel-government affairs for the Independent Insurance Agents and Brokers of America, who described New York's rule as "very much an anomaly."

He noted that when the NAIC and National Conference of Insurance Legislators adopted model disclosure laws in 2004 and 2005 to address the issue, some states adopted legislation based on the NCOIL model.

Since then, however, states have been "very quiet" on the issue, Mr. Bissett said.

Illinois Insurance Director Michael T. McRaith said he's not looking to adopt a similar disclosure regulation.

"What we're interested in in Illinois is the same as every commissioner and department of insurance is interested in, and that is providing the clients and consumers with the information they need to make educated decisions," Mr. McRaith said. "We encourage consumers to do their part, which is to be aggressive in shopping for insurance. Also, though, producers have the responsibility to communicate fully and completely with their clients. Whether we need to have a law or regulation to that effect, that's an issue we'll leave to the legislature to decide."

Reaction: Buyers say contingents invite conflicts

CONTINUED FROM PAGE 1

general and insurance director amended Arthur J. Gallagher's settlement agreement, allowing the Itasca, Ill.-based broker to once again accept contingent commissions.

Last week's decision to also lift the ban on Marsh, Aon and Willis reflects the desire to help consumers by providing a level playing field for insurance agents and brokers, on which they can easily be compared, the attorneys general of New York, Illinois and Connecticut and the insurance departments of Illinois and New York said.

According to RIMS, though, "the investigations, admissions and fines that led to the 2005 agreements banning such commissions prove that these practices can be, and were, manipulated at the expense of the insurance consumer. Without strong consumer protections in place, RIMS has strong reservations about a policy that permits contingent commissions again, and this development illustrates why RIMS so vigorously fought for a strong rule."

On Feb. 10, the NYSID issued its final producer compensation disclosure rule, which takes effect on Jan. 1, 2011, and differs greatly from its original draft that would have mandated disclosure of compensation. Under the final regulation, producers operating in New York 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.

Scott Clark, director of RIMS' external affairs committee, noted in the statement that after Arthur J. Gallagher was given the green light to resume collecting contingents, RIMS expected that New York and other states would follow suit with the other brokers. The New York-based society had hoped, however, that in the absence of a contingent ban, New York would adopt a mandatory compensation disclosure rule, Mr. Clark said.

"Unfortunately, the final regulation does not live up to that standard, and instead the burden to request full disclosure has been placed squarely on the consumer," said Mr. Clark, who also is risk and benefits officer for Miami-Dade County Public Schools.

Other risk managers echoed RIMS' disappointment.

"I don't think it's right," said Bill Milaschewski, director of risk management for Boston-based global specialty chemical and materials manufacturer Cabot Corp. "I think that the duty of the regulator is to protect the public, and a broker…is an agent of the consumer, and to protect the consumer, I think it is appropriate that there is a ban…on contingent commissions."

Mr. Milaschewski noted that this is especially the case with smaller, middle-market companies that may not have risk managers to ensure full disclosure by their brokers.

David S. Hershey, Portsmouth, N.H.-based risk manager for Sprague Energy Corp. and its holding company Lexa International Corp., also takes exception to New York regulators' actions.

"In this day and age where everybody is talking about increased regulation on Wall Street, here we have one of the biggest insurance violators (American International Group Inc.) in the state of New York, and the very regulatory body that would be responsible for full disclosure regulation and consumer protection (is) flip-flopping" on the issue of contingent commissions and mandatory producer compensation disclosure regulation, he said.

"If they can't side with the consumer in this day and age on the doorstep of the taxpayer's involuntary bailout of AIG, what needs to happen? I just don't understand that," Mr. Hershey said.

Brad Wood, senior vp-risk management for Marriott International Inc. in Bethesda, Md., said that regardless of lifting the ban on contingents, "one would hope that all brokerage firms would swiftly come out and publicly reassure policyholders that they will not accept contingent commissions. Risk managers don't want to go back to the past, questioning whether their brokers' incentives are cross-purpose with policyholders' interests."

> **'Unfortunately, the final regulation does not live up to that standard, and instead the burden to request full disclosure has been placed squarely on the consumer.'**
>
> Scott Clark, Risk & Insurance Management Society Inc.

> **'I understand why (New York authorities) ruled the way they did. There's a perception out there by these brokers that there was an unlevel playing field—that's debatable, but that was their perception.'**
>
> Raymond J. Alletto, United Rentals Inc.

Other risk managers say the focus now should be on transparency.

"I understand why (New York authorities) ruled the way they did. There's a perception out there by these brokers that there was an unlevel playing field—that's debatable, but that was their perception," said Raymond J. Alletto, vp-risk management for United Rentals Inc. in Irving, Texas.

"The important thing to remember, I think…is transparency and full disclosure are still key requirements," he said. "Risk managers really need to be very clear, unambiguous and direct with their brokers in setting their expectations for compensation."

Jessica Maldonado, director of enterprise risk management at Centerline Capital Group in New York, said she believes "there should be a level playing field for agents and brokers" and "that brokers provide value to the insurers and should be compensated in return."

However, brokers need to be "transparent in identifying revenue derived from contingent commissions" and they need to come up with "an appropriate formula for determining contingent commissions that ensures there will be no conflicts of interest and that the clients' best interest remains at the forefront," Ms. Maldonado said.

In its statement, RIMS urged Aon, Marsh and Willis to commit to full compensation disclosure "above and beyond" NYSID's regulation. "Such action would go a long way toward building trust and strengthening the relationship between broker and purchaser," it said.

Contingents: Ban on incentive payments lifted for big brokers

CONTINUED FROM PAGE 1

gents, Willis reiterated its stance that it will not.

The Risk & Insurance Management Society Inc., for one, blasted the decision to lift the ban and said NYSID's new disclosure standard does not go far enough to protect insurance buyers from potential abuse.

The new disclosure rule and lifting the ban on contingents brings full circle the compensation scandal that erupted in October 2004 when former New York Attorney General Eliot Spitzer filed a fraud and bid-rigging suit against New York-based MMC. His subsequent probes into broker compensation and other issues resulted in lawsuits and settlements with several other brokers and insurers in 2005 and 2006, and set into motion similar investigations and settlements in other states, including Connecticut and Illinois.

But while many had predicted that contingent commissions would disappear and the industry would move toward more uniform compensation practices, it never happened. And it didn't take long before the world's largest brokers began to complain that the resulting two-tiered market—where a vast majority of agents and brokers accepted contingents and were not subject to the same disclosure standards—put them at a competitive disadvantage.

Recognizing this, the Illinois attorney general and director of insurance agreed in July 2009 to amend Arthur J. Gallagher & Co.'s settlement agreement and lift its contingent ban. It was generally assumed at that point that authorities in New York and other states would follow suit with Marsh, Aon and Willis.

In announcing its revised stance last week, the NYSID said consumers will be the beneficiaries.

"In the five years since the original settlements, the nation's four largest brokers…had been operating under different rules from the majority of brokers nationwide, making it difficult for consumers to easily and accurately compare compensation and incentives, thus distorting the market," the NYSID said in an e-mail. "Under the amended agreement, Marsh, Willis and Aon have agreed to comply with the New York State Insurance Department's newly issued producer compensation disclosure regulation nationally. This means one clear standard will apply throughout New York for all insurance consumers and nationally for all consumers of these brokers."

While Marsh and Aon did not specifically say whether they intend to resume collecting contingents, Willis last week reiterated its longstanding position that such incentive payments constitute a conflict of interest and Willis will continue to refuse to collect them on its retail business.

"You can't, in our opinion…represent the buyer when you're taking profit-based or growth-based contingents" from insurers, said Don Bailey, CEO of Willis North America, in an interview.

Furthermore, "contingents are not paid out often until 12 to 14 months after the transaction. You can't sit in front of a client and tell them how much you are going to make on a contingent until about a year-plus down the road. So from a transparent standpoint, you can't be fully transparent unless you tell clients exactly what you're making," Mr. Bailey said. "These things are mutually exclusive."

While Willis may not resume collecting contingents, it said in a statement that it "welcomes" the new agreement that "relieves us of a number of technical compliance obligations that have imposed significant administrative and financial burdens on our operations that we do not believe benefit our clients."

In a statement, Marsh said it "is committed to integrity and transparency, and to serving our clients' best interests. The actions by the New York State Insurance Department and the New York attorney general have helped to restore a level playing field for MMC and other insurance intermediaries. We commend the NYSID and NYAG for applying consistent, mandatory compensation disclosure standards across our industry."

Similarly, Aon said in a statement that it "very much appreciates the moves made toward consistent business practices for all brokers. However, our overriding consideration is to act in the best interests of our clients at all times."

Neither Marsh nor Aon said whether they will resume taking contingents. However, an Aon spokesman noted that the Chicago-based broker has "no current plans to do so."

Analysts say they believe both brokers will resume the practice ultimately.

"With Marsh and Aon, there's no question, in my opinion, they will push for these payments," Keith Walsh, an analyst with Citigroup Research in New York, said last week. "But I think they want to be measured in the approach they take and communicate with their customers before they talk to Wall Street about it."

Mr. Walsh estimated contingents could enhance the brokers' revenues by 3%, which would translate into a 5% to 10% positive impact to the bottom line. "That isn't going to come in right away," Mr. Walsh said. "That's more of a 2011, maybe spilling into 2012, full run-rate event."

Meyer Shields, an analyst with Stifel, Nicolaus & Co. Inc. in Baltimore, said he also expects Marsh and Aon to again collect the incentive payments. "There is some value there that the company and, therefore, its shareholders are not getting right now," he said.

Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York, said he sees Marsh as the most likely beneficiary of the new agreement.

"MMC was clearly the broker most hurt by the loss of contingents and for various reasons—including poor management, loss of employees, low morale—struggled to restructure," he wrote in a client note last week. "In our view, a relatively small portion of the lost revenues have been restructured. While the return of contingents will be gradual and unlikely to ever near former levels, we expect an eventual earnings lift."

Mental gymnastics score on the job

IBI/NBCH speakers cite online program's productivity gains

By JOANNE WOJCIK

SAN ANTONIO—Just as regular exercise has been found to help prevent physical illness, "mental gymnastics" may boost worker productivity and even ward off depression, at least one employer has found.

In a three-month pilot using an online program called MyBrainSolutions, Nationwide Mutual Insurance Co. saw significant improvements in attitude and emotional resilience among participating employees, which translated into lower absenteeism, less presenteeism and enhanced productivity, said Kathleen Herath, associate vp of health and productivity at the Columbus, Ohio-based insurer.

In fact, one call center employee who had always performed at a somewhat mediocre level received productivity scores of 100% after participating in the program, Ms. Herath said during a session on brain health at the 2010 Health & Productivity Forum.

The Feb 8-10 meeting in San Antonio was co-sponsored by the San Francisco-based Integrated Benefits Institute and the Washington-based National Business Coalition on Health.

MyBrainSolutions, devised by Sydney-based Brain Resource Ltd., an international network of scientists, clinicians and information technology specialists, is a Web-based program that uses interactive games and videos to help users reduce stress and improve general and social cognition.

The program begins with a 40-minute assessment that helps users determine their strengths and weaknesses. After completing the assessment, users are instructed to practice certain exercises for 15 minutes a day, three times a week, for three to four weeks. Afterwards, users take the assessment again, almost always discovering improved scores in all areas.

Ms. Herath explained that Nationwide had sought out a program to prevent depression "because it's too late once they're depressed."

"We offer weight loss programs to help people lose weight, but we also offer nutrition courses for people who just want to maintain their weight. We offer physical fitness for people who are physically fit. The one big gaping hole was, we didn't offer anything for people who are mentally healthy so we can keep them that way," Ms. Herath said.

"So we were looking for a program that hit long before the crisis did," she said of the program conducted last year.

MyBrainSolutions isn't designed to treat depression, but rather, to "keep healthy brains healthy," said Eugene Baker, vp of employee assistance programs at Golden Valley, Minn.-based OptumHealth Inc., Nationwide's employee assistance program provider that piloted the program among its employees before offering it to customers.

Preventing depression could produce significant savings for employers in health care costs and productivity, Mr. Baker said.

Depression results in approximately 400 million lost workdays each year, representing an economic cost of $51.5 billion annually for U.S. businesses, Mr. Baker said. Depressed workers take an average of 9.9 sick days and $4,000 in medical services annually, compared with an average of less than $1,000 in medical services used by nondepressed employees each year, Mr. Baker said.

In fact, the per capita annual costs of depression are significantly more than that of hypertension or back problems and comparable to that of diabetes or heart disease, he said.

The exercises in the online program are designed to address such areas as emotion, thinking, feeling and self-regulation.

"So, for example, you can recognize what people are feeling by looking at their faces," he said, describing an exercise in MyBrainSolutions in which participants were instructed to identify people who were angry, sad, happy, disgusted or neutral.

"Or you could learn to focus on people who are really positive," Mr. Baker said. "You can train your brain to attend to more positive things," he said, explaining that human beings are naturally wired to watch for threats, a negative orientation that the program attempts to turn into a positive orientation.

The program also can help users regulate breathing and heart rate, thereby reducing stress and enhancing productivity.

"When you are breathing at your resonant frequency, where your body is aligned for peak performance, your heart and brain are working together in synchrony and you are calm, focused and 'in the zone,'" Mr. Baker said.

Joint forum draws 300 to San Antonio

SAN ANTONIO—More than 300 health benefits professionals attended the 2010 Health & Productivity Forum co-sponsored by the San Francisco-based Integrated Benefits Institute and the Washington-based National Business Coalition on Health.

The forum, held Feb. 8-10 in San Antonio, featured case studies demonstrating how health, absence and disability interventions have resulted in less lost time and lost productivity, as well as in lower medical costs. Several sessions also provided measurement strategies that can be used to help quantify those savings and make a business case for such interventions.

The date and location of next year's joint forum have yet to be determined.

For more information, visit *www.IBIweb.org*.

—By Joanne Wojcik

Companies that aid worker health also aid bottom line

SAN ANTONIO—Companies that effectively manage the effects of worker health on their productivity are more profitable than companies that do not, research by the Integrated Benefits Institute has found.

And employers are blending a mixture of strategies derived from occupational injury management, health promotion and disease management to shorten disability durations, according to the San Francisco-based IBI survey that will be published in May.

IBI President Tom Parry previewed some of the survey's findings during the 2010 IBI/National Business Group on Health Health & Productivity Forum held Feb. 8-10 in San Antonio.

Using a scoring system based on the use of 12 popular health and productivity management practices, IBI found that publicly traded, for-profit companies had higher effectiveness scores than nonprofit governmental entities and privately held for-profit companies.

Moreover, the more profitable the company, the higher the health and productivity management effectiveness score, IBI's research showed.

Among the strategies employers reported as having the greatest effect on worker productivity are a mixture of those used in workers compensation and health management, according to the IBI survey of 482 employers.

For example, the leading two strategies—transitional return-to-work programs and early reporting of injuries—most often are associated with managing work-related injuries and are designed to shorten disability duration, Mr. Parry noted.

But rounding out the top 10 were an "interesting collection of practices from health promotion and disease management," including use of on-site clinics, health risk coaching and referrals to specialists for care, Mr. Parry said.

"What this tells us is employers are getting at this productivity issue through a variety of different approaches that focus on promotion, disease management and disability management," he said.

Complete survey findings will be published in May. Visit *www.ibiweb.org* for more information.

—By Joanne Wojcik

REUTERS/LANDOV

Switzerland's Stefan Hoehener makes his final run in the men's singles luge at the Winter Olympics, where another contestant died during a practice run.

Games: Liability questions arise in death of athlete

CONTINUED FROM PAGE 3

ers and other parties from liability, said David Mair, a former director of risk management for the U.S. Olympic Committee.

Waiver arrangements vary depending on the host county, Mr. Mair said. There may be several waivers for a variety of parties, or a single release "that adds the International Olympic Committee and the Games Organizing Committee and sponsors and everyone that might have a relationship to the parties to be released and protected," Mr. Mair said.

In addition, athletes typically compete under a "primary assumption of risk" doctrine, said Geoffrey C. Rapp, a sports law expert and an associate professor at the University of Toledo College of Law in Ohio.

Under the legal doctrine, athletes shoulder risks that are inherent in their sport, Mr. Rapp explained.

"The basic claim that you make in a sports participant injury case is something like an ordinary negligence lawsuit," Mr. Rapp said. "The obstacle that any person injured in recreational or athletic activity, regardless of whether it's you out skiing on a Sunday or someone in Olympic competition, is that the law has the doctrine called assumption of risk."

But last week, there were reports that Venezuelan luger Werner Hoeger had warned Olympic officials months ago about track safety hazards after he was injured in a crash at the Whistler Sliding Center facility where Mr. Kumaritashvili was killed during a practice run last week.

Sources say the Games Organizing Committee would have liability coverage for such events.

A Boise, Idaho, attorney representing Mr. Hoeger said it would be an insult to the Olympics to prematurely say whether Mr. Hoeger would sue. More information is needed, said Bryan Storer of Storer Injury Lawyers P.L.L.C.

But Mr. Storer said he is investigating and multiple defendants are possible, "whether it be the designer of the luge track or whoever else may be involved (and) whether there are liability issues, that is what we are looking at."

Warnings that the track was more dangerous than necessary show potential misconduct on the part of the Olympics, Mr. Rapp said. That could reach a legal standard of recklessness, which is greater than negligence.

"Most courts say that recklessness is not covered by assumption of risk," Mr. Rapp said. "So while (an athlete) may assume the risk of injuries integral to the sport, (they) don't assume the risk of other parties' recklessness."

Liability waivers may not cover recklessness and a waiver's weight would depend on how courts in various jurisdictions interpret it, Mr. Rapp said.

Such waivers have their limits, agreed Mr. Mair, who is chief operating officer in Phoenix, Md., for China Connection Global Healthcare Inc., a provider of destination health care services. The waivers do not apply in cases involving gross negligence or willful acts by the defendants, said Mr. Mair, who also is a former president of the New York-based Risk & Insurance Management Society Inc.

Reports last week also said the head of Georgia's Olympic Committee rebuked previous statements by Olympics and International Luge Federation officials that the fatal accident was caused by the luger's maneuvers and, perhaps, his experience level.

"The incident with the Georgian athlete, while absolutely tragic, is related to the desire for any sport to push performance to its maximum, and one of the open questions is whether this particular athlete was prepared to perform at that level," Mr. Mair said.

'The basic claim that you make in a sports participant injury case is something like an ordinary negligence lawsuit.'

Geoffrey C. Rapp,
University of Toledo College of Law

Sleep: Trucking industry waking up to prevalence of sleep apnea

CONTINUED FROM PAGE 4

safety and driver training for Green Bay, Wis.-based Schneider National Inc. "Many drivers don't want to talk about it, or are in denial that they have a medical condition, or don't even know they have it. They are not educated on sleepiness, and they might think that daytime sleepiness is normal to them and they don't realize it is abnormal."

Mr. Osterberg said at least 17% of drivers at Schneider are afflicted with severe sleep apnea. To deal with the issue, Mr. Osterberg said Schneider recently funded an initiative to help diagnose and treat their drivers as a way to help mitigate health care costs and reduce the crash risk on the road.

As a result, Mr. Osterberg said Schneider has seen a "significant reduction" in the frequency and severity of crashes.

"Making this a safety priority has paid back dividends," he said.

Drivers who are diagnosed with sleep apnea are required by the FMCSA to be "disqualified until diagnosis of sleep apnea is ruled out or has been treated successfully."

According to Christina Cullinan, director of workplace and fleet safety with the American Trucking Assn., a FMCSA certified medical examiner must ultimately determine whether a driver can continue driving.

If an examiner decides a driver likely suffers from sleep apnea, a sleep study will be advised, including the use of a continuous positive airway pressure—or CPAP—machine. Treatment can last anywhere between one and four weeks, depending on the condition's severity.

It should be noted the FMCSA provides no guidance on how to identify commercial drivers at risk for sleep apnea. The administration includes a question on its commercial driver medical certification form that asks specifically about sleep disorders, but it's up to medical examiners if they want the driver to go through a sleep study, or screening.

The FMCSA's medical review board made a recommendation in January 2008 that the FMCSA should require screening for sleep apnea in all drivers with a BMI more than 30, however there has been no action on that recommendation to date.

Gary Hull, who has worked for eight years as a long-haul trucker and is a member of Kansas City, Kan.-based chapter of AWAKE Truckers with a Cause, a support group for truckers with sleep apnea, said he thinks testing and treatment for sleep apnea has improved over the years, though he said putting jobs at risk because of the condition is not fair.

Mr. Hull said drivers are not always honest about health problems out of concern that they will lose their jobs. He added that there needs to be more research on the effects of sleep apnea on truck drivers and its relationship to crashes.

"We can have millions of accident-free miles, but unfortunately if it's found that you have sleep apnea or signs of it, you are shut down," said Mr. Hull. "If they were safe to drive yesterday, why should they be disqualified today because of sleep apnea? They most likely have been living with it for years."

> **'We can have millions of accident-free miles, but unfortunately if it's found that you have sleep apnea or signs of it, you are shut down.'**
>
> Gary Hull, AWAKE Truckers with a Cause

Mr. Hull said there needs to be some form of standardized testing for drivers at the federal level, but said drivers want the testing—and any restrictions placed on drivers—to be "based on good science."

Deborah Luthi, director of enterprise risk management solutions for Matheson Inc., a trucking company based in Sacramento, Calif., said motor carriers are concerned about this issue, but said Matheson does not specifically test drivers for sleep apnea outside of its driver medical screening process.

Ms. Luthi said Matheson has taken an active approach in promoting health and safety with its drivers, including fatigue abatement training to drivers and supervisors. She also said Matheson is working with its broker, Marsh & McLennan Cos. Inc., in the development of a training module linking driver fatigue with sleep apnea.

Sleep apnea first was classified as a sleep condition in 1965 but only recently has gotten significant attention, said Ed Grandi, executive director of Washington-based American Sleep Apnea Assn.

In May, the ASAA, FMCSA and ATA will co-host a sleep apnea and trucking conference in Baltimore. The hope, Mr. Grandi said, is to bring all parties to the table to discuss how best to address the problem.

"A loss exposure exists, and trucking companies and drivers need to recognize this," Mr. Grandi said.

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News In Brief

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measure would not impose the change on medical malpractice insurers. The Health Insurance Industry Fair Competition Act is posted at *http://www.rules.house.gov*, the Web site of the House of Representatives' Rules Committee, which will set rules for its consideration this week.

P/C rating upgrades beat downgrades: Best

Thirty-six commercial property/casualty insurers received rating upgrades in 2009 while 24 were downgraded, A.M. Best Co. Inc. said in a special report. In Upgrades, Downgrades Moved at a Similar Pace in 2009, Best said upgraded commercial lines insurers "generated strong operating results in select business segments, such as surplus lines and medical professional liability." Copies of the report can be obtained by going to *www.bestweek.com* and clicking on Best's Special Reports in the upper-left tool bar.

Humana to cut workforce by 5%

Humana Inc. said it is cutting its workforce by approximately 1,400 positions, or 5%, as part of a streamlining effort. The reductions, which will occur throughout this year, will include a total of 2,500 positions, but 1,100 new jobs will be added in growth areas such as medical-cost containment capabilities, pharmacy management and specialty products. Employees unable to obtain another position within Humana will be offered severance packages with temporary continuation of health and other benefits.

CMS delays Medicare reporting requirement

The Department of Health and Human Services' Centers for Medicare and Medicaid Services said it will delay implementation of Medicare Secondary Payer mandatory reporting, which was to begin April 1, to Jan. 1, 2011. Sources say the delay applies only to nongroup health plan reporting, not group health plan reporting.

Endurance leader to retire, successors named

Endurance Specialty Holdings Ltd. President and CEO Kenneth J. LeStrange will retire effective March 1, the specialty insurer said. David Cash, chief underwriting officer, has been named Endurance's new CEO. William M. Jewett, president and CEO of Endurance's worldwide reinsurance division, has been named president. Both will be nominated to Endurance's board of directors in May, the company said in a statement. Mr. LeStrange will continue as chairman of the board until March 2, 2011, the company said.

401(k) accounts recover, but still trail 2007

Employees' 401(k) account balances in 2009 recovered investment losses suffered in 2008, but still were less than year-end 2007, according to a study. The average 401(k) account balance was $64,200 last year, up 27.9% from $50,200 from year-end 2008. Still, the average 401(k) account was less than 2007 when the average was $69,200, the study by mutual fund provider and 401(k) plan administrator Fidelity Investments found.

Fairfax Financial to buy Zenith National Insurance

Fairfax Financial Holdings Ltd. will acquire workers compensation insurer Zenith National Insurance Corp., the companies said. The transaction is expected to close in the second quarter and is subject to approval by Zenith National stockholders and regulators, the companies said. The transaction would total approximately $1.4 billion.

AIG life unit executive named Hartford CFO

Hartford Financial Services Group Inc. said Christopher J. Swift will serve as the company's executive vp and chief financial officer, effective March 1. He succeeds Lizabeth Zlatkus, who will become chief risk officer, as announced previously.

Noted

Ironshore Inc. named **Jordan Gantz** senior vp and chief underwriting officer of its U.S. specialty casualty unit....Ironshore also named **Dutch Phillips**, assistant vp of casualty underwriting at Ironshore Risk Agency, to the expanded role of vp of U.S. specialty casualty....Zurich North America Commercial named **Daniel W. Riordan** president of its specialties business unit.

Disorder: Guide revision raises bias worries

CONTINUED FROM PAGE 4

included in the DSM, plaintiff attorneys would argue to juries that "the best psychiatric minds in the nation have agreed, after exhaustive deliberation, that this is a medical condition that does amount to a recognized psychiatric disorder, and they will use that as a launching pad to say it's a disability in the eyes of the law."

Diana L. Hoover, a partner with law firm Mayer Brown L.L.P. in Houston, said: "Ultimately, I think there may be more claims that employers have to deal with" by including binge eating in the DSM, but its impact will take "quite a while to work through the (Equal Employment Opportunity Commission), the Department of Labor and the courts." Any determination would be "fact-specific and case-specific," she said.

"As a general proposition, people who are obese are not even considered…disabled, nor are they necessarily protected against discrimination because of their obesity," so it may take time for binge eating "to be considered by the courts as a disability deserving of the protections of the ADA," Ms. Hoover said.

An employee must show the problem interferes with a major life activity under the ADA, "so they'd have to show it interferes with their ability to work, for example, or their ability to sleep at night because they had to binge," Ms. Hoover said.

If approved for inclusion in the DSM, employers can avoid problems by trying to accommodate the worker through an interactive process, observers say.

"If an employee claims disability, regardless of how unusual the employer may consider the facts to be, they should take it seriously" and treat the workers with respect, Ms. Hoover said. "I would absolutely do anything I could to respond" to the issue.

Peter J. Petesch, a shareholder with law firm Littler Mendelson P.C. in Washington, said: "Going through the process in good faith insulates an employer from higher damage claims and may ultimately defeat a claim if the employee drops the ball in the process" or unreasonably asks for an indefinite leave of absence as an accommodation.

"One would think the most common accommodation requests would be limited to leaves of absence for treatment for that condition," which may be covered under the Family Medical Leave Act, he said.

Not everyone agrees the revised DSM is likely to affect employers.

"Disabilities are not measured by whether they are included in the DSM," said D. Greg Valenza, managing partner with law firm Shaw Valenza L.L.P. in San Francisco. "They're measured by specific legal standards as to whether there's been impairment and substantial limits to major life activities."

Wendy M. Lazerson, a partner with law firm Bingham McCutchen L.L.P. in East Palo Alto, Calif., agreed. "I think it would be a stretch for any judge to find that somebody's…binge eating is going to rise to the level" of a substantial limit on a major life activity, she said.

Other changes to the DSM proposed by the Arlington, Va.-based APA include a new category of behavioral addictions in which gambling would be the sole disorder. Observers note, however, that gambling is expressly excluded as a disability under the ADA, so it will not affect employers.

P&I: Rate hikes ease on reduced claims

CONTINUED FROM PAGE 4

Reinsurance rates on dry cargo vessels went up 4.7% at renewal.

The group also said that, for the second consecutive year, the U.S. oil pollution surcharge rate would be reduced 10%.

The moderate rate increases for shipowners couldn't have come at a better time for policyholders hit hard by hikes in 2009, experts say.

Joseph E.M. Hughes, chairman and CEO of Shipowners Claims Bureau Inc., the New York-based manager of American Steamship Owners Mutual Protection & Indemnity Assn. Inc., said shipowners still are not in the best financial shape or state of mind to deal with significant increases in insurance costs.

"Shipowners are more concerned about their own affairs than the clubs' affairs," Mr. Hughes said. "The (rate increases) are relatively modest and the shipping industry is under economic stress. The owners are preoccupied with their freight rates," he said, and concerned about spending too much money when their income is down.

The American Club sought an increase of about 4% at this year's renewal, Mr. Hughes said. The Swedish Club asked for an even smaller increase of 2.5%, Mr. Gard said.

Of the 13 member clubs of the International Group, eight sought increases of 5%, according to an Aon bulletin in January. Assuranceforeningen Gard was the only member that did not seek an increase. The Japan Ship Owners' Mutual Protection & Indemnity Assn. in Tokyo sought the largest hike, 12.5%.

Alistair Groom, chief executive of Charles Taylor & Co. Ltd. in London, which manages the Standard Steamship Owners' Protection & Indemnity Assn. (Bermuda) Ltd., said the club sought a 3% increase this year.

Negotiations with buyers found the two sides closer than in recent years, Mr. Groom said. "Compared to other renewals, there are relatively small differences" between what insurers wanted and shipowners could afford, he said.

The clubs also have seen improved investment income that blunted the need for sharply higher rates.

Those that didn't panic and bolt from equity investments during the downturn have fared the best, Mr. Griffiths said.

Investment income "will vary from club to club, obviously," Mr. Hughes said. "It depends on how committed they are to the equities market."

The American Club holds about 30% of its portfolio in equities and saw a return of about 12.5% last year, Mr. Hughes said, "which is probably the better end of it."

"We reduced our equity content but decided to stay in, which was a good decision," Mr. Groom said of the Standard Club. "We recovered a lot of the losses from the previous 12 months."

Mr. Gard explained that the mutuals are not like publicly owned companies, which feel pressure to produce large profits from underwriting and investments.

"If you look at the members of the International Club, these are not commercial companies that have to return 15% on equity to shareholders," Mr. Gard said. "Our target is to have a 100% combined ratio or better. We're not like a profit-based organization."

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Contributing: Jeff Casale, Judy Greenwald, Mark A. Hofmann

Facebookers want their privacy back

Facebook finds itself at the center of another controversy over its privacy settings and, naturally, a class action lawsuit has been filed.

Filed in U.S. District Court for the Northern District of California, the lawsuit alleges that Facebook's modifications to its privacy settings late last year actually reduced privacy protections for the social network's users rather than increasing them, as the company said it would.

According to court documents, Facebook's privacy setting changes "had the outright opposite effect, resulting in public dissemination of personal information that was originally private."

The lawsuit, filed by five Facebook users on behalf of all Facebookers, alleges that the social networking site's modifications have resulted in more personal information being shown on the Web, whereas only the user's name and networks they belonged to were made available previously.

Facebook argued that the changes were designed to give users more control over information people could see.

However, the lawsuit alleges Facebook's claims are misleading and false, allegations on which Facebook has not commented.

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Till bankruptcy do us part

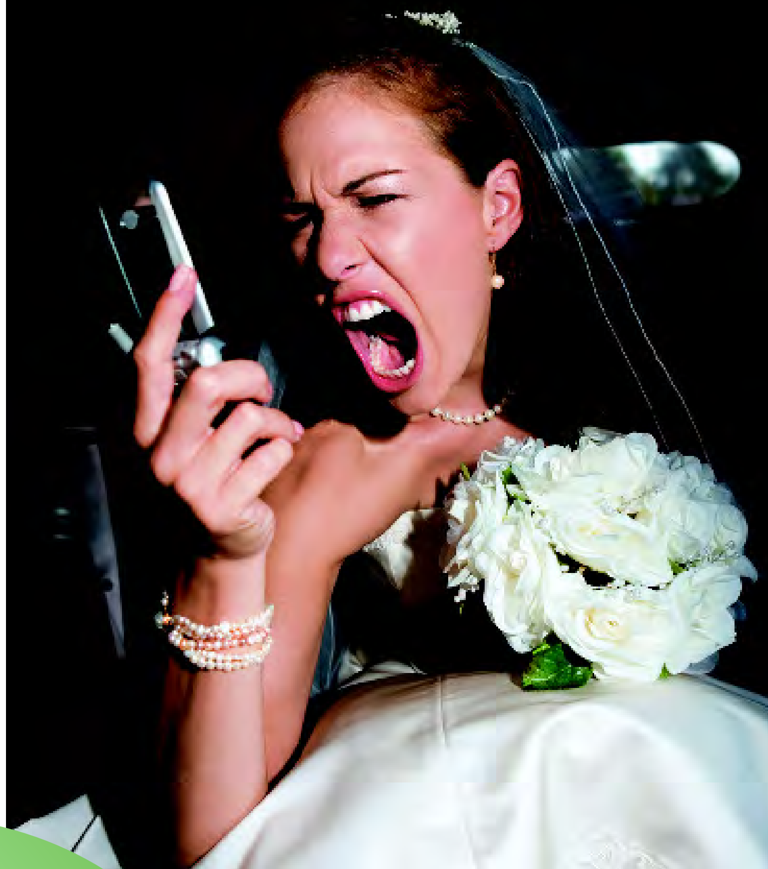
Given the state of the economy, perhaps it's no surprise that vendor and venue bankruptcies and service issues are the most frequent causes of wedding day mishaps for the second year in a row.

In fact, according to an analysis of 2009 claims by Travelers Cos. Inc., 62% of all wedding insurance claims last year resulted from vendor and venue problems, including claims arising from vendors and venues going out of business. That was a 19% jump in that category from 2008, Travelers said in a statement last week.

Other complaints included missing flowers and photos, caterers failing to deliver what they promised, and DJs simply not showing up. Inclement weather, poorly altered attire, the illness or death of key family members, and travel delays also led to claims, according to Travelers.

"Protecting the wedding day budget from some common problems gives couples peace of mind in an investment that's likely costing them $20,000 or more," Chantal Cyr, vp for Travelers wedding insurance, said in a statement. "Wedding-related businesses are as vulnerable as any other in today's economic environment."

Now if only Travelers and other insurers could provide insurance coverage for all the risks that couples will face long after the ceremony has ended.



Thomas' keeps tight hold on nooks, crannies

Those beloved "nooks and crannies" in Thomas' English muffins are causing one food industry executive considerable grief.

The English muffins' maker, Horsham, Pa.-based Bimbo Bakeries USA Inc., has been granted a preliminary injunction preventing its former vp of operations for California, Chris Botticella, from accepting a comparable position at rival Hostess Brands Inc.

Bimbo argues that Mr. Botticella, one of just seven people who know the secret process for making the muffins, has stolen trade secrets.

Mr. Botticella in mid-October accepted a job offer from Irving, Texas-based Hostess, but did not inform Bimbo. His employer learned of it on Jan. 13, two days before he planned to resign, according to a Feb. 9 decision by a federal district court ruling in *Bimbo Bakeries USA Inc. vs. Chris Botticella*. In the meantime, he had access to confidential company information, according to the opinion.

According to the Philadelphia court's decision, Mr. Botticella accessed 12 company documents on his laptop computer within minutes of telling Bimbo he would leave. Mr. Botticella said "he was simply practicing with his computer to prepare himself for his new job," an explanation that the court found "not credible."

"We are compelled to conclude that the evidence demonstrates a substantial likelihood, if not an inevitability, that defendant will disclose or use Bimbo's trade secrets in the course of his employment with Hostess," the court ruled in granting a preliminary injunction.

The preliminary injunction enjoins Mr. Botticella from working for Hostess or from divulging trade secrets, and orders him to return any confidential information in his possession.

An April 12 trial is scheduled.

WEB USERS CLEANING UP VIRTUAL ACTS

Nearly 30% of people have cleaned up their online social networking profiles in anticipation of a job interview, a survey concludes.

In addition, 27% of people questioned in a survey by Chubb Group of Insurance Cos. say they post comments on news Web sites or blogs—a proportion that grows to 33% for those 18 to 34 years old, and 37% for those who make $100,000 or more a year, according to the telephone survey of 1,000 individuals.

Among other survey findings, 45% of the respondents were members of four networking sites, with Facebook leading with 37%; MySpace, 19%; LinkedIn, 9%; and Twitter, 6%. Nearly 60% of respondents earning $100,000 or more were members of the sites.

While a substantial portion of survey participants have tweaked their personal online profiles to be ready for a job interview, comments that they have posted on social networking, news sites and blogs pose a definite risk, says Christie Alderman, vp of Chubb & Son and new-product and services manager with Chubb personal insurance.

"A foolish post or a Tweet could cost you a job or even trigger a libel lawsuit," Ms. Alderman said in a statement. "We all should think twice before posting any comment online."

So far, though, only 2% of respondents said they have their lawyer review comments before posting them to blogs.

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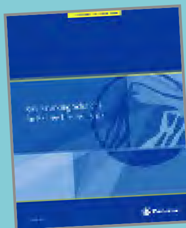

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