

INSURERS OFFER PROGRAMS TO HELP ADDRESS PROBLEM OF OPIOID ABUSE / PAGE 3

BROKERS INTENSIFY PUSH TO CHANGE HEALTH REFORM RULE AFFECTING PAY / PAGE 3

COVERAGES DEVELOP TO NARROW SOME GAPS IN D&O POLICIES / PAGE 6

inBrief

Chartis reorganizes management team

American International Group Inc.'s Chartis Inc. unit has reorganized its operations under a single management team in an effort to improve customer service, capitalize on the shared strategic initiatives of the two teams and to drive improvement in Chartis' loss ratio. Eric Martinez was named to head the new unit as executive vp of global claims, operations and systems. Kim Garland, most recently United Guaranty's chief operating officer, will succeed Mr. Martinez as president and CEO of United Guaranty. Mr. Martinez succeeds Charles Schader, who has been promoted to the new post of senior vp of applied research and reports to Charles Shamieh, AIG's chief actuarial officer.

See **IN BRIEF** page 25



SPOTLIGHT
SPECIALTY RISKS

Shipowners stemming tide of piracy; nursing liability changing; cover for clean energy evolves; insurers increase scrutiny of events after accidents. **PAGE 10**

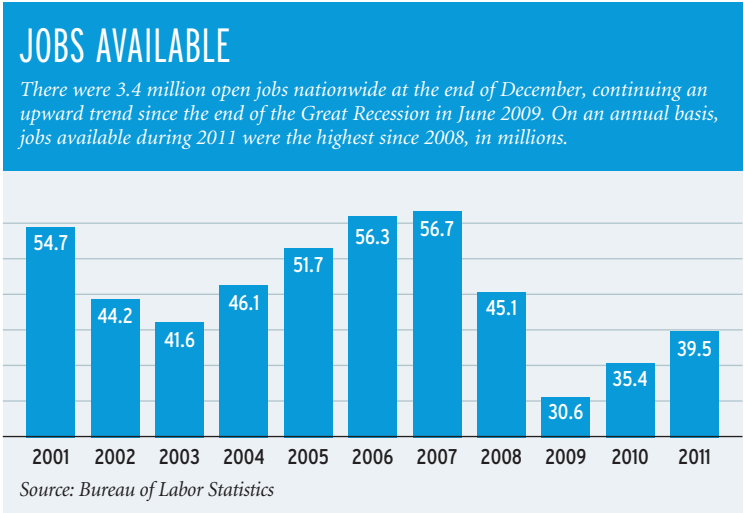
WORKERS COMPENSATION

Comp risks shift as jobs return

New, rehired workers can pose greater risk for at-work injuries

By SHEENA HARRISON

A modest rebound in post-recession hiring has experts keeping an eye on work-related injuries associated with new employees as well as those returning from extended unemployment. Though workers who change employers typically are at higher risk for injury, sources say rehired employees also can pose safety concerns when returning to their former employers after months or even years off the job. "Those employees who are coming back are at just as high a risk for injury as those people who are brand new and trying to learn," said Mark Noonan, man-



aging principal at Integro Insurance Brokers Ltd. in Boston. The national unemployment rate was 8.3% in January, according to the U.S. Bureau of Labor Statistics, the lowest jobless rate since February 2009. The number of job openings increased somewhat in 2011 after two years of declines (see chart). That modest job growth appears to be contributing to a recent uptick in work-related injuries. The frequency of workers compen-

sation claims increased 3% in 2010, according Boca Raton, Fla.-based NCCI Holdings Inc. The ratings and research organization said the increase—the first since 1997—likely was due in part to the “firming job market and (a) modest increase in employment since the start of the recovery in the middle of 2009.” Texas Mutual Insurance Co. has seen employer payrolls increase and workers comp claims rise during the past six months, a spokesman said. Much of the growth for the Austin, Texas-based insurer of last resort is coming from the oil and gas industry, which is “booming” right now and hiring new and laid-off workers, he said. “Here in Texas, there’s no doubt in our mind that the economy is rebounding,” he said.

See **JOBS** page 25

RISK MANAGEMENT

Reputation issues in focus at credit rating agencies

By MIKE TSIKOUdakis

High-profile events, such as child sexual abuse allegations involving Pennsylvania State University and the Costa Concordia cruise ship capsizing off the coast of Italy, have focused credit rating agencies' attention on reputational risks. A damaged reputation can significantly affect an organization's bottom line and, ultimately, its ability to borrow capital. Doug Kilcommons, managing director and sector head for the education and nonprofit institu-

tions group for Fitch Ratings Ltd. in New York, said the rating agency's primary focus is the ability and willingness of an entity to make full and timely payment of debt service on its financial obligations. “To the extent that a poor reputation prevents that ability, we would be very concerned,” he said. More than a decade ago, Standard & Poor's Corp. “significantly increased” its emphasis on reputational risks related to corporate governance, said Mark Puccia, chief criteria officer of global corporate ratings at S&P in New York.



AP PHOTO

Moody's placed Penn State University's rating on review for a possible downgrade as it weighed potential reputational damage from allegations.

“We are highlighting the governance-related elements of this much more these days,” Mr. Puccia said. “So to the extent that we identify governance-related concerns that could cause reputational risk, absolutely that is a ratings consideration. And it does change ratings.” As reputational risks emerge for a company or organization, S&P estimates the impact on revenue and cash flow and how that changes debt servicing needs,

he said. Two days after the Carnival Corp. cruise ship ran aground and capsized, S&P issued a bulletin saying that costs associated with the Costa Concordia disaster would negatively affect Carnival's 2012 operating performance, including “any investment associated with restoring the reputation of the Costa brand, which is one of Carnival's largest and most well-known.”

See **REPUTATION** page 25

INDEX

Advertiser Index	23
Business Resources	20
Classified	22
Commentary	8
End Page	26
Opinions	8
Mid-Market Executive	6
Products & Services	21
Up Close	22

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2. Chartis reorganization seeks to improve service, loss ratio
3. Hartford names veterans to commercial market posts
4. Laws leave cruise-ship victims at sea
5. Wells Fargo revamps U.S. regional office structure
6. Worker's suspension may have violated FMLA: Appeals court
7. Judge rejects contempt for Alliant in Aon poaching suit
8. Stand-alone Hartford P/C unit could reap higher rating: Moody's
9. BP, Anadarko liable for U.S. spill damages
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Business Insurance (ISSN 0007-6864) Vol. 46, No. 9, is published weekly, except for combined issues the first and second week of July, the fourth and fifth week of August and no issue the last week of December, by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Email address change to customerservice@businessinsurance.com or mail to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. \$5 a copy and \$125 a year in the U.S. \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A. Copyright © 2012 by Crain Communications Inc.

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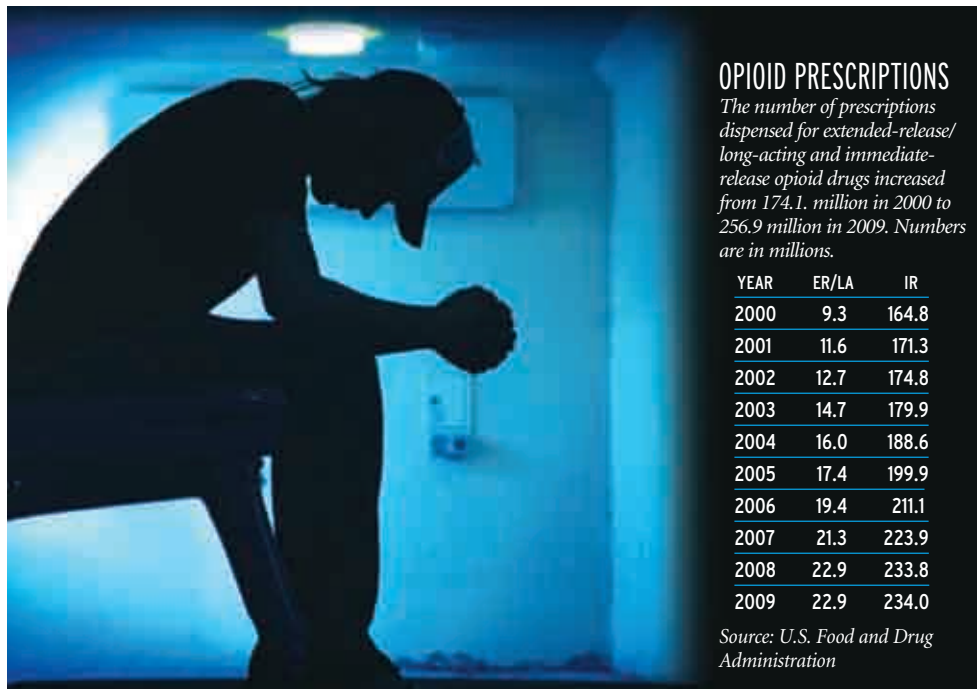
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WORKERS COMPENSATION



Insurers help tackle pain med problems

By **ROBERTO CENICEROS**

Workers compensation programs are springing up to help steer injured employees away from prescription opioid pain medications that are blamed for addictions and overdose deaths, yet experts say more work needs to be done.

While there is plenty of discussion within the workers comp industry about the negative consequences of opioids that are prescribed inappropriately for claimants, experts say more insurers and other providers must get involved.

"I think there is very good discussion and I think there is really good perspective (on opioid-related problems)," said Patrick J. Walsh, vp and chief claims officer for Lansing, Mich.-

based Accident Fund Holdings Inc., "I don't think people are overreacting to what clearly is a problem, but candidly, I am not seeing a lot of action yet."

Accident Fund's discussions with pharmacy benefit managers during 2011, for example, revealed that while PBMs monitor opioid prescribing, several still lack specific "actionable initiatives or processes that would then help make a difference" by reducing such prescriptions and their impact, Mr. Walsh said.

While other industry sources say more can be done, efforts have increased to address questionable narcotics prescribing for workplace injuries. Overall, opioid prescriptions have risen steadily (see chart).

"There have been a lot of actions and efforts in the last couple of years to try to better monitor, control and assure the appropriate use of opioids, both in workers comp and in other medical systems," said a spokesman for the California Workers' Compensation Institute in Oakland.

Examples include a requirement implemented last year by the California State Compensation Insurance Fund that its network doctors obtain authorization before prescribing an extended regimen of opioids, the spokesman said.

Earlier this month, Accident Fund launched a program that includes "real-time" detection of opioids prescribed to injured workers. The insurer's claims managers, nurse case managers and other personnel are then alerted to develop intervention strategies on a case-by-case basis, Mr. Walsh said.

The intervention could be as simple as an adjuster calling the prescribing doctor, Mr. Walsh said.

"Or because of the complexity of the case," Mr. Walsh said, "do we want to get another physician involved or a vendor involved who specializes in pharmaceuticals to talk to that (treating) physician or even to start thinking of a (detoxification) program to get somebody weaned off of a narcotic?"

Among other measures, Chartis Inc. utilizes a "formulary approach" that relies on its PBM system to flag new prescriptions for "long-lasting" opioids, said Don Hurter, senior vp of medical management services in Maitland, Fla.

Flagged claims then are screened using medical guidelines and, when necessary, channeled to a Chartis medical director for peer-to-peer discussions with prescribing doctors.

Those discussions may involve whether the patient is an appropriate candidate for narcotics and potential alternative treatments.

The early intervention strategy has resulted in the denial or revision of claimants' prescriptions in 80% of such cases, Mr. Hurter said.

Compared with even a year or two ago, there are more workers comp industry programs to address overprescribing opioids, said Kevin T. Glennon, executive director of clinical services for Total Medical Solutions, a workers comp

See **OPIOIDS** page 24

AGENTS & BROKERS

Alliant didn't violate order in Aon dispute

Aon failed to prove rival broke injunction, according to judge

By **MARK A. HOFMANN**

NEW YORK—A New York state judge has handed Alliant Insurance Services Inc. a victory in ongoing litigation with Aon Corp. over allegations that Alliant poached Aon employees.

In an order filed earlier this month, New York State Supreme Court Judge Bernard J. Fried rejected Aon's bid to have Newport Beach, Calif.-based Alliant held in contempt for allegedly violating a preliminary injunction the judge issued last year.

Chicago-based Aon alleged that the former executives conspired with Alliant to solicit at least 40 other employees of Aon's construction services group to quit Aon and join Alliant in 2011.

In the December ruling, Judge Fried temporarily barred Alliant and some former Aon employees who had joined Alliant's construction services group from soliciting business from certain Aon clients—those on whose accounts the former Aon employees had worked or served as producers.

In his order, Judge Fried said Aon was "likely to succeed on the merits" of several of its claims against its former employees and Alliant. The allegations against the former employees include breach of contract and violations of fiduciary duty, while those against Alliant include allegations that it had interfered with employment contracts.

Aon had alleged that Alliant violated the order because of materials sent this year to certain Aon clients, arguing that it should be held in contempt. However, Judge Fried rejected that argument, holding that Aon failed to establish "clear and convincing evidence" that Alliant had indeed disobeyed the order.

"We are pleased that the court has rejected Aon's efforts to improperly expand the injunction beyond what Justice Fried previously ruled," Jeffrey S. Klein, lead counsel for Alliant and chair of the employment litigation practice at Weil, Gotshal & Manges L.L.P., said in a statement. "This is an important and positive development, and we will continue to defend our client against Aon."

"The parties are continuing to pursue their respective rights and we look forward to pursuing a favorable outcome for Aon," an Aon spokesman said in an email.

HEALTH CARE REFORM

Brokers intensify push for health reform rule change

By **MARK A. HOFMANN**

WASHINGTON—The looming presidential election could have an impact on whether insurance producers will be able to get their commissions excluded from minimum medical loss ratio calculations under the Patient Protection and Affordable Care Act.

Under the health care reform law, health insurers must spend at least 85 cents of every premium dollar collected on health care in the large-group market and 80 cents in the individual and small-group markets.

Agent and broker groups have tried to have their commissions excluded from the requirement, and the National Assn. of Insurance Commissioners late last year bolstered its case with a recommendation that the commissions be carved out.

But in November, the U.S. Department of Health and Human Services issued a final rule

that did not carve commissions out of the MLR calculation. That led producers to redouble their efforts on Capitol Hill, where Rep. Mike Rogers, R-Mich., already had introduced the Access to Professional Health Insurance Advisors Act—H.R. 1206—in the U.S. House of Representatives last March. The bipartisan bill has nearly 180 co-sponsors.

But the Senate did not move until this month, when Sen. Mary Landrieu, D-La., introduced S. 2068, which bears the same title as the House measure. Three other senators—one Democrat and two Republicans—have signed on as co-sponsors.

One of those Senate co-sponsors said the value-added services of agents never were intended to be negatively affected by health care reform.

"Agents will always have an important role to play" in helping people understand their coverage options, Sen. Ben Nelson,



AP PHOTO

Sen. Ben Nelson, D-Neb.

D-Neb., said during a legislative conference held by the Washington-based Council of Insurance Agents & Brokers this month.

He urged the audience to put pressure on HHS to understand the role of the agent.

Supporters of the MLR carve-out, which includes major broker and agent groups representing producers who sell commercial property/casualty and employee benefit products, welcomed the introduction of the Senate bill, but they pointed out that getting

both chambers to approve legislation in a presidential election year will be an uphill battle.

"I still think it's very difficult in a presidential election year to get anything to the finish line," said Joel Wood, senior vp at the council. "Its enactment is a big priority," he said. "Opening up any aspect of the health reform law is challenging in this environment."

"We don't worry about whether employers need brokers; they need them more than ever before to navigate these turbulent times and manage costs as best possible," Mr. Wood said. "So for us, this isn't an issue so much about protecting agent jobs."

He said the council has several objections to the MLR.

"First, it is a governmental cost control, the antithesis of what we stand for," he said. "Second, it inhibits innovation and may undercut cost-saving efforts by

See **MLR** page 22

ENTERPRISE RISK MANAGEMENT

First steps can make or break ERM programs

Right approach needed to find, measure risks

By **RODD ZOLKOS**

Many companies seeking to embrace enterprise risk management stumble when it comes to identifying and measuring key risks across the organization, often because of the challenge of dealing with unknowns or focusing more on compliance than risk, according to some ERM experts.

To understand risks across the organization and how they might affect one another or pose systemic threats, it's necessary to involve stakeholders from across the organization, they say.

James W. DeLoach, managing director of consultant Protiviti Inc. in Houston, noted that traditional approaches such as creating

risk maps have been the baseline. But other, more specific approaches could add more value, he said (see related story, page 22).

Steven Minsky, CEO at ERM software and solutions provider LogicManager Inc. in Boston, said that, at the highest level, the ERM risk assessment process is not unique from one organization to the next. "But finding out how to apply it is unique," he said.

Mr. Minsky cited four factors that speak to an organization's ERM risk maturity in terms of identifying and measuring risks.

The first is the number of systemic risks identified, he said, noting that if a risk starts having an impact across the company, "it's indicative of a bigger problem.

RISK MATURITY

Four key factors that help identify enterprisewide risk

- Number of systemic risks identified
- Percentage of process areas involved in risk assessments
- Key risks identified
- Key risks monitored

And that's actually measurable."

The second is the percentage of the organization's process areas involved in risk assessments. "If you're not identifying risks in a whole area, you've got a blind spot," Mr. Minsky said.

The third factor is key risks identified. Organizations should be able to match their risk mitigation activities against those key areas, Mr. Minsky said. The process should involve identifying key risks in each process, he said. "Then you say, 'What happens when you start to put all these processes together?'"

The fourth factor is the percentage of key risks monitored. "You connect your monitoring activity to your control activity to your risks," Mr. Minsky said.

"In the risk maturity model sense, what most companies have is a bunch of tests that go against those controls," he said. "And most of those tests have been implemented for compliance purposes."

But, in taking a compliance-

focused approach to those monitoring efforts, too often companies have no sense of how their monitoring might match up against the organization's actual risks, Mr. Minsky said. What's more, compliance tends to be reactive rather than proactive, he said. "Basically compliance is behind whatever was the last disaster," Mr. Minsky said.

Mr. DeLoach noted that in ERM risk assessment, the proper mindset involves focusing extensively on what you don't know. And, he added, "Recognize that your worst-case scenarios may not be extreme enough."

Useful tools in the process include contrarian analysis, "what if" analysis and stress testing, and

See **ERM** page 22



Deadline for nominations extended

The nomination deadline for *Business Insurance's* 2012 Benefit Manager of the Year® award has been extended to March 9.

The *Business Insurance* Benefit Manager of the Year® award recognizes excellence in administering employee benefits programs. The highest-scoring candidate selected by an independent panel of judges is named the Benefit Manager of the Year®. Other high-scoring candidates are eligible to be named to the *Business Insurance* Benefit Management Honor Roll®.

Submissions will be scored by an independent panel of judges, with the criteria including how well a benefit manager: innovatively and effectively applies benefit programs to solve one or more major problems; exhibits leadership in achieving change within the organization; and skillfully uses technology to administer benefit programs and/or identify and address major problems such as health care cost drivers.

Anyone involved in managing the benefits provided by his or her organization, anywhere in the world, is eligible for consideration.

Profiles of honorees will appear in the May 21, 2012, issue.

To download a nomination form, visit www.BusinessInsurance.com/BMOYnominate.

PENSION BENEFITS

Employers ready push for pension relief

By **HAZEL BRADFORD**

Executives of corporate defined benefit plans who've gone to Congress before to seek funding relief are preparing to make another request.

The latest bid is spurred by the effects of the Federal Reserve's low-interest-rate policy, which has led to soaring pension liabilities.

On Jan. 25, Federal Reserve officials announced their decision to keep the federal funds rate at what they acknowledged are "exceptionally low levels" of zero to 0.25% at least through late 2014. The prospect of three more years of flat federal fund rates has pension plan sponsors gearing up to ask Congress for relief from soaring corporate pension liability calculations driven by those rates.

Employer groups are working on proposed legislation with two main elements—to allow segment discount rates to be based on average interest rates of the preceding two years, as

long as the segment rate is within 10% of a preceding 25-year average; and to lengthen amortization periods for unfunded shortfalls of plans between 80% and 100% funded to 15 years from the current seven-year time frame.

According to an analysis by the American Benefits Council in Washington, the seven-year amortization periods dictated by the Pension Protection Act of 2006 were appropriate when it passed in 2006, "but the last few years have opened everyone's eyes to the dramatic volatility that is possible with respect to funding obligations and the markets. Seven-year amortization created unmanageable obligations after the 2008 downturn and is threatening to create even more unmanageable obligations for 2012 and subsequent years. If the PPA's amortization period has created multiple severe problems in just a few years, we need to learn from that."

Pension executives are worried enough now to at least plant the idea of funding relief before

a Congress distracted by federal budget deficits and upcoming elections. They've been there before: Past efforts were caused by funding constraints and interest rates dictated by the PPA that were exacerbated by the financial crisis, forcing companies to make tough choices with their limited cash.

While a few legislators are sympathetic, legislative aides say it will take awhile to build the pension funds' case.

An opening bid for attention came at a Feb. 2 hearing of the House Subcommittee on Health, Employment, Labor and Pensions. "The actions by the Fed to control interest rates potentially put a significant near-term burden on sponsors of defined benefit plans, something that the Fed has acknowledged," testified Gretchen Haggerty, executive vp and CFO for United States Steel Corp. in Pittsburgh. Ms. Haggerty also chairs the Pittsburgh-based U.S.

See **FUNDING** page 24

RETIREMENT BENEFITS

Companies adding income options to DC plans

By **PATTY KUJAWA**

Like many companies, Wise Alloys L.L.C. froze its defined benefit plan for union employees when the Great Recession hit.

Salaried employees didn't have one, and the company's benefits committee felt like it wasn't doing enough to prepare workers for retirement with only a defined contribution plan.

"We wanted a product that looked like a defined benefit plan," says Sandra Scarborough, plan administrator for the Muscle Shoals, Ala.-based aluminum can producer. "Our people are looking for a guaranteed monthly income" once they retire.

Last year, Wise decided to offer an investment option within its defined contribution plan called IncomeFlex, a guaranteed income product managed by Newark, N.J.-based Prudential Financial Inc. IncomeFlex is a target-date fund that freezes the target-date fund schedule 10 years before retirement, activating a guaranteed income for participants.

When a participant is ready to retire, IncomeFlex guarantees a specific level of income over that person's lifetime to hedge against stock market declines. If a participant leaves the company offering IncomeFlex, the participant can

leave with IncomeFlex assets if the plan sponsor allows it, or the participant can take the market value or roll the value into a Prudential Individual Retirement Account.

Ms. Scarborough says she doesn't have an exact usage number but says participants have responded well to the new investment option.

"As a company, we felt we needed to do more, and this is a very popular option" for participants, Ms. Scarborough says.

With the continued descent of the number of defined benefit plans, employers are becoming more concerned about workers having enough money to sustain

their retirement. Defined contribution plans, when first introduced, were supposed to be a supplement and not the main driver for retirement savings.

Now that these plans are in the front seat, employers are looking at guaranteed defined benefit-like investment options, mostly referred to as "retirement income solutions," to help employees have more secured savings to tap throughout retirement.

"I don't think we're going back to defined benefit plans," says Martha Tejera, an actuary and project leader for Tejera & Associates L.L.C. in Bainbridge Island, Wash.

See **MODEL** page 24





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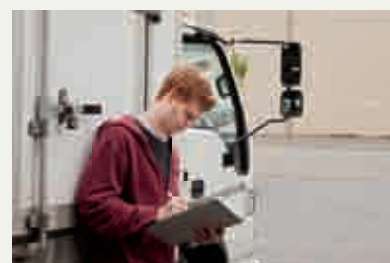
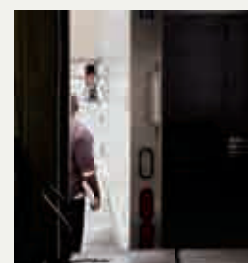
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Does your policy cover bribery?

Investigation costs can easily outstrip D&O policy limits

By MATT DUNNING

Middle-market executives who expect their company's traditional directors and officers liability insurance to completely absorb the financial impact of a foreign bribery or corruption investigation could be in for a sour surprise should a probe occur.

Whether publicly or privately owned, most middle-market companies' D&O policies will provide coverage for costs arising from formal proceedings and investigations brought against individual executives for violations of the U.S. Foreign Corrupt Practices Act, as well as derivative civil lawsuits filed by investors or other stakeholders, according to several attorneys and insurance professionals.

But even with a comprehensive D&O policy in place, experts noted, middle-market firms in particular may find their coverage doesn't address the bulk of costs typically associated with enforcement actions and investigations conducted by U.S. regulators, let alone foreign governments (see related story).

Most FCPA investigations are conducted on an informal basis prior to an insured's receipt of an official complaint or subpoena, events that typically trigger D&O coverage. Absent some form of supplemental coverage, those "preclaim costs"—which can run into the millions of dollars—ultimately fall on the company or its directors.

"D&O doesn't respond very well to FCPA investigations, as opposed to actual FCPA proceedings," said Machua Millett, a Boston-based senior vp at Marsh USA Inc. "You're not incurring a great deal of costs in relation to the actual

'It's red-alert stuff because the potential consequences for the company or its executives can be so severe.'

Kevin LaCroix,
OakBridge Insurance Services L.L.C.



complaint, you're incurring them through the course of an investigation, much of which might not be covered by your D&O insurance."

Additionally, some insurers may exclude expenses associated with internal investigations, or any other costs deemed "voluntary," according to Robert Yellen, chief underwriting officer for executive liability at the New York-based Chartis Inc.

"Practically speaking, most folks are going to feel extremely compelled to comply with any request from a regulator, even if, legally speaking, they're not required to do anything," Mr. Yellen said. "In that circumstance, it's possible that an underwriter is going to deny payment because the policyholder wasn't obligated to take on those expenses."

Severability can be another sticking point for policyholders when D&O coverage responds to an FCPA enforcement action, as not all traditional policies provide separation of exclusions for insured parties.

The U.S. Securities and Exchange Commission and the Department of Justice have offered leniency in the past for cooperation or self-reporting a violation. But doing so without additional liability coverage could be risky, because many traditional D&O policies do not provide severability of exclusions for all insured parties.

Aside from constraints embedded in policy definitions and conditions, experts said many middle-market companies' D&O coverages might not be able to withstand an FCPA violation from a purely financial standpoint.

"Often times, companies don't seem to have purchased big enough limits on their D&O policies," said Greg Husisian, a Washington-based attorney with Foley & Lardner L.L.P.

In 2008, the New York Law Journal estimated that internal investigations alone can cost between \$2 million and \$20 million.

Considering breadth of materials regulators tend to request in the course of even an informal inquiry, the potential length of an investigation, and ever-rising legal and forensic accounting fees, Mr. Husisian estimated that the average cost of an FCPA probe has more than doubled in the past five years.

Derivative lawsuits also can present a problem for middle-market companies.

"When these things come up, they're very serious matters," said Kevin LaCroix, executive vp at

International bribery probes on horizon

By MATT DUNNING

Though the vast majority of bribery and corruption enforcement actions for activities abroad have been brought by U.S. regulators, experts say it is a matter of time before other governments pursue bribery cases in their countries.

If and when that happens, U.S.-based companies may need to augment or supplement their existing directors and officers liability policies to protect themselves from lawsuits and criminal proceedings in foreign territories, experts say.

"My own view is that in the next five years, companies are really going to have to take account of their insurance policies' viability in foreign markets," said Greg Husisian, a Washington-based attorney at Foley & Lardner L.L.P.

So far, governments with anti-bribery and anti-corruption statutes similar to the U.S. Foreign Corrupt Practices Act have been content to let U.S. regulatory agencies take the lead on enforcement actions against companies and executives accused of bribing foreign officials. Instead, foreign governments have played a valuable role in collecting information and evidence used to bolster cases brought in the United States, experts say.

"I have to think that at some point, some of these other governments are going to start getting in on the direct enforcement end of this," Mr. Husisian said. "As a result, companies are going to need a much more global response."

While D&O underwriters usually offer a worldwide extension of coverage for executives working abroad, middle-market policyholders should know the coverage may not be honored in every foreign territory or that it can carry substantial excise taxes and fees, experts said.

"The challenge is going to be in those jurisdictions

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Opinions

EDITORIAL

Defined benefits remain at risk

If any further evidence was needed on how the nation's defined benefit pension plan system is unraveling, Bank of America Corp.'s announcement last week that it will freeze its plan provided it.

More than a quarter of century ago, Bank of America was at the forefront in the defined benefit pension plan design arena. It recognized, after much analysis, that its traditional plan, where significant benefits accrued only after many years of service, was of little value to a big chunk of its workforce, many of whom left after a few years of service.

In response, Bank of America became the first company to put in a cash balance plan—a much more appealing design to many employees due to the more rapid buildup of benefits and the visibility of the benefits, which are expressed and communicated as a cash lump sum.

But now, even this cash balance plan pioneer, like so many other big employers, is phasing out its plan. And who can blame it?

The climate for offering a defined benefit plan could not be worse. Government policymakers—as a way of boosting the economy—have held interest rates down to historic lows.

A low-interest-rate policy may be good for the economy, but it is poison for pension plan sponsors. That is because the mandated use of low interest rates inflates the value of pension plan liabilities, forcing employers to contribute far more than is necessary to the plans in order to comply with federal funding rules.

With pension plans becoming such a big cash drain on corporate finances, it should be no surprise that more and more employers are closing out the plans in favor of beefed-up 401(k) plans, which have no such requirements.

Some employees—those who are skillful investors—may in fact benefit from such a change. But plenty of others will not.

We urge Congress to look more closely in this area to see what actions it can take to encourage employers to retain their defined benefit plans, while there are still ongoing plans left.

LETTERS

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

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SCHILLERSTROM



COMMENTARY

Disasters put focus on supply chains

Nearly a year after Japan's Tohoku-Oki earthquake and tsunami, the catastrophe's effects still are being felt.

Among the most obvious, no doubt, is the impact on those who lost family members or loved ones in the March 11, 2011, tragedy. In addition, there are the approximately 80,000 people displaced by the 12-mile exclusion zone around the crippled Fukushima Daichi nuclear power plant, an area that may well remain abandoned for decades.

Other issues remain, too, far from the scene of the catastrophe. Officials in the United States and Canada, for example, continue to survey the level of radiation that might have traveled from the Fukushima plant across the Pacific to North America.

Scientists also are working to determine what might become of all the debris swept into the Pacific by the tsunami.

The Los Angeles Times last week reported on efforts to predict where ocean currents and winds ultimately might carry that debris. The post also noted that while Japanese officials estimated the tsunami created 25 million tons of debris, not all of it is destined to wash up on Hawaiian beaches. Some never made it into the ocean, some will sink and some will join the Great Pacific Garbage Patch.

The effects of the catastrophe linger as well in the heightened risk awareness they produced. The March event—along with the floods in Thailand later in 2011—dramatically increased many

organizations' awareness of the risk of supply chain disruptions. As the events in Japan disrupted various industries' supply chains, what previously had been a procurement issue in many companies suddenly became a topic of interest in the C-suite.

The 2011 catastrophe in Japan also has prompted reviews of the seismic safety of U.S. nuclear plants, and has raised the sense of urgency to address risk mitigation efforts in many earthquake- and tsunami-exposed areas, including the Pacific Northwest.

Something tells me the events of March 11, 2011, and the subsequent issues are likely to find their way into discussions at an event taking place in New York this week: *Business Insurance's* 2012 Risk Management Summit. The annual gathering taking place this Wednesday and Thursday brings senior risk managers from the largest companies in the U.S. and elsewhere together to focus on discussions of key issues facing their organizations.

Topics to be examined at this year's summit include cyber liability, risks of global expansion, supply chain risk management and captive insurance strategies. We'll be reporting on the summit in print and online, as well as tweeting from the event. (You can follow me at twitter.com/BusInsRZolkos.) I'm looking forward to the discussions, as well as any feedback or thoughts you might provide.

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Specialty Risks

THE SPOTLIGHT

**NURSING LIABILITY
CHANGING WITH
NATURE OF JOB**
PAGE 14

**INSURANCE COVERAGE
FOR CLEAN ENERGY
EVOLVES WITH RISKS**
PAGE 16

**INSURERS INCREASE
SCRUTINY OF EVENTS
AFTER INCIDENTS**
PAGE 19

Shipowners stemming tide of piracy

*Use of armed guards
seen as key approach
for foiling attacks*

By **STUART COLLINS**

Pirate attacks remained a major problem for shippers last year, but countermeasures by shipowners and governments in piracy hotspot the Gulf of Aden are limiting the number of successful attacks, experts say.

At the same time, the cost of piracy insurance has fallen due to those loss-prevention efforts as well as greater competition among insurers.

In recent years, specialist kidnap and ransom insurance has emerged as the most effective way to cover the costs of a hijacking, experts say (see related story).

There were 439 recorded incidents of piracy and armed robbery worldwide in 2011 compared with 445 in 2010, according to the International Maritime Bureau Piracy Reporting Center in Kuala Lumpur, Malaysia.

Somali pirates were responsible for 54% of all attacks, it said.

While 10 vessels and 159 hostages were being held by Somali pirates at the end of January, figures for last year show a potentially positive trend is emerging. According to the IMB, while the number of attempted hijackings by Somali pirates increased to 237 in 2011 from 219 in 2010, the number of successful hijackings declined to 28 last year from 49 in 2010.

The reduction in successful hijackings reflects efforts by naval forces to address piracy and the shipping industry's tactics to limit their losses, said Erik Rabjerg Nielsen, head of daily operations for container operations at A.P. Moller-Maersk A/S in Copenhagen.

"At Maersk, we have been monitoring piracy for a long time, but we have drastically stepped up our efforts. Last year, we recruited a dedicated piracy manager and conducted extensive risk analysis," he said.

Maersk, the world's largest shipper, according to Alphaliner, also has been working with its closest rivals—Geneva-based Mediterranean Shipping Co. S.A. and Marseille, France-based CMA CGM Group—sharing information on piracy, said Mr. Nielsen.

However, it still is too early to tell if the decline in successful pirate attacks will be sustained, said Neil Smith, London-based head of underwriting at Lloyd's Market Assn.

"Statistics suggest that preventive measures have had an effect and that the trend is headed in the right direction, but poor weather conditions may also be behind the improvement, and it is



REUTERS

Some crew members aboard the MV Asphalt Venture, a Panama-flagged ship that pirates seized off the coast of Africa in September 2010, were freed after a ransom was paid, but seven others were held, reportedly in retaliation for the Indian navy's arrest of alleged Somali pirates.

Specialist K&R insurance common hijack cover

Specialist kidnap and ransom insurance has emerged as the most effective way to cover the costs of a hijacking, said Will Miller, London-based divisional director of special contingency risks in Willis Group Holdings P.L.C.'s kidnap and ransom division.

K&R coverage can be packaged with marine hull and war insurance to cover vessel damage and hijacking costs, he said.

Shipowners buying a K&R policy receive a discount in their war risk premiums, and underwriters may be willing to return a portion of the premium for preventive measures, such as the

transit consulting services that help plan the safest routes to avoid pirate hotspots, experts say.

While shipowners look primarily to their marine hull, war and K&R policies to cover physical damage and ransoms, P&I clubs also are paying certain piracy-related losses, said Andrew Bardot, secretary and executive officer at the London-based International Group of P&I Clubs.

P&I club coverage is triggered chiefly by risks to shipping crews, said Joe Hughes, chairman and CEO of New York-based Shipowners Claims Bureau Inc., the manager of the American Club.

—By Stuart Collins

still too early to say if this is a long-term trend," Mr. Smith said.

Claims are linked to the monsoon season and the number of vessels held at pirate strongholds, said Andrew Moulton, marine hull and war underwriter at Ascot

Underwriting Ltd. in London.

"The use of armed guards on board vessels appears to have been a very effective deterrent. However, pirate demands are escalating as the rate of successful attacks reduces," Mr. Moulton said.

Fewer hijackings means less available claims data, said Will Miller, London-based divisional director of Special Contingency Risks Ltd., the kidnap and ransom division of Willis Group Holdings P.L.C.

However, the cost of claims typically reflects the type of vessels being hijacked, with tankers and very large container vessels yielding the highest ransoms for pirates. And there have been no such vessels—which are more likely to have armed guards and other preventive measures—successfully hijacked for some time, according to Mr. Miller.

The use of armed guards is among factors helping shipowners benefit from reduced piracy insurance premiums, he said. "Exposure has reduced for

shipowners that have invested in preventive measures, and we see premium rates reduce accordingly," he said.

Reductions are being given for the use of armed guards and for bulk purchases, said Sean Woollerson, London-based partner at JLT Specialty, a unit of Jardine Lloyd Thompson Group P.L.C. "Premiums have also come down as capacity and competition have increased, in particular with the development of K&R insurance for piracy, he said.

Underwriters still consider the speed of a vessel and the height of its freeboard—the distance from the water to the upper deck—but they will look to apply a discount for mitigation measures, such as a robust citadel, which is a fortified hiding place for the ship's crew, or using an experienced armed team, Mr. Miller said.

In some cases, reductions in premiums have been significant, he said. Where a premium in 2008

See **PIRACY** page 12

BEST PRACTICES

Risk-mitigation steps that shipowners, managers and charterers should take to get K&R coverage.

- Ships should travel at the fastest possible speed the weather allows.
- Register ships with the Maritime Security Center and the U.K. Maritime Trade Operations Office.
- Comply with Best Management Practices for Protection Against Somali-Based Piracy, version 4.
- Citadels should be equipped to safeguard the crew for 48 hours.
- Train the crew and have a piracy plan for all high-risk areas.

Source: Aon Ltd.

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Piracy: Successful attacks limited

CONTINUED FROM PAGE 10

may have been \$25,000 per transit for a fast ship with a high freeboard, today it has declined to \$6,500 for the same vessel.

However, the security measures pose a shipowner cost, he said.

Piracy cost shipowners and governments \$6.6 billion to \$6.9 billion last year, according to the One Earth Future Foundation. Fuel and rerouting cost shipowners \$3.4 billion; security equipment and armed guards, \$1.1 billion; and insurance, \$635 million, the Broomfield, Colo.-based OBP said.

Maersk alone spent \$200 million to battle piracy last year, which includes insurance and risk mitigation efforts—double its 2010 spending, Mr. Nielsen said.

While no vessel with armed guards aboard has been successfully hijacked, this means the risk has increased for vessels not using armed guards. “Pirates tend to look for the weakest and least protected vessels,” Mr. Miller said.

Regarding a standard contract that shipowners could use to contract with maritime security firms, the Baltic and International Maritime Council is working on GUARDCON, a standard contract developed with the involvement of insurers and protection and indemnity clubs. The contract is to be published in March, said a spokesman for the international association.

Insurers will welcome GUARDCON as it should make it easier for underwriters to get more information from shipowners on the use of armed guards, Mr. Smith said.

Brokerage-backed private navy expects to set sail soon

By **STUART COLLINS**

An insurance industry solution for Somali-based piracy is to become operational soon, offering an insurance-backed guarantee combined with an armed convoy escort service that some argue may raise other risks.

The Convoy Escort Programme Ltd., developed with support of London-based brokerage Jardine Lloyd Thompson Group P.L.C., is in discussions with potential backers.

Once up and running, CEP is to use patrol boats and rigid inflatable boats for an armed escort service for ships navigating the Gulf of Aden.

The insurance-backed guarantee is to be placed with London market insurers including Marketform Managing Agency Ltd. and Ascot Underwriting Ltd., which leads the insurance.

While backers intended to have the service in operation last year, CEP remains in discussions with investors. Once an agreement is reached, the program should launch fairly quickly, said Angus Campbell, chief executive of the Newcastle upon Tyne, England-based company.

Shipowners have expressed interest in the convoy concept, he said. “There has been an increase in the use of armed guards on board vessels, but

some shipowners would prefer to keep guns off their ships and are looking for an alternative,” Mr. Campbell said.

“We have used the time wisely and are ready to move forward,” he said. “CEP will register the patrol boats in Cyprus and expect to begin operations by the end of the second quarter 2012.”

While CEP has the support of shipowner body Baltic & International Maritime Council, not everyone in the sector is convinced about the approach.

It is the role of government, not industry, to provide freedom of the seas, said a spokesman for the International Assn. of Independent Tanker Owners. “CEP sounds good in practice, but there are too many uncertainties. It is unclear who certifies them and what authority they have to act in international waters, in terms of opening fire or if they were to capture pirates,” the spokesman said.

The shipping sector needs to look at all the options, but “the logistical issues are troubling,” said Neil Smith, London-based head of underwriting at the Lloyd’s Market Assn. “Any private navy will have to be robust if it is to avoid legal issues.”

However, Mr. Campbell disagreed. “We have taken the time to make sure that what we are doing is legally

appropriate,” he said. “We have the same rights as other vessels in international waters to defend ourselves.”

“There has been a misapprehension that we will act as a naval force. Our remit is to escort merchant vessels through dangerous waters, but we are not in the business to arrest pirates,” said Mr. Campbell.

The U.K.-based CEP’s offering is unique, said Sean Woollerson, partner with JLT Specialty in London, a unit of Jardine Lloyd Thompson P.L.C. “Shipowners will be provided with an indemnity for damage to vessels caused by piracy and hijacking across the Indian Ocean,” he said. “We will charge a fee based on a vessel’s speed, and not its value, and offer convoy protection that will include an insurance guarantee,” he said. The chance of attack is lower as the vessel travels faster, but faster travel uses more fuel and requires more costly ships.

“CEP is not selling insurance, but it will offer a guarantee as part of the service. It is not an insurance contract; rather, it is an insurance-backed guarantee offered by CEP,” said Mr. Woollerson.

Initially, CEP will look to cover 10% of traffic—or 220 vessels—per month rising to 25% of traffic, or 470 vessels, when operating at full capacity.

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Changing nature of nursing creates new risks, liabilities

Additional responsibilities may lead to higher rates

By JUDY GREENWALD

The market for nurses liability insurance is generally stable and immune from the cyclical nature of the commercial general liability insurance market, say most observers.

But the profession is changing, along with the risks nurses face as they increasingly move away from acting under doctors' direct orders and toward taking on independent responsibilities that ultimately may lead to higher rates.

Although nurses may have some liability coverage through their employers and could be provided coverage if they work through staffing agencies, most obtain their own insurance coverage, often through risk purchasing groups. This is because the interests of nurses and their employers may not necessarily be directly aligned, observers say.

"The employer's policy is there primarily to protect the employer," said Scott Kelley, senior vp and health care business leader for Marsh U.S. Consumer, a unit of Marsh Inc., in New York. "It's not unheard of, after a lawsuit is dismissed, to go after the nurses

for damages also."

By purchasing their own insurance, nurses "don't have to depend on the hospital's attorney to defend them should a claim come through" against them individually, said Michael Scott, assistant vp, underwriting, at CNA HealthPro, a unit of CNA Financial Corp. in Chicago.

An employer's policy may not protect them in cases where, for instance, they give medical advice to a neighbor outside of the workplace, they have to defend their licenses before their state nursing licensing boards, or the employer no longer exists as an independent entity because of consolidation.

Observers say these policies are relatively inexpensive. A registered nurse's policy that provides a \$1 million-per-occurrence, \$6 million-aggregate policy may cost around \$100 in annual premium, they say. And rates are generally stable.

Nurses who buy their own policies through risk purchasing groups generally are immune to the market's cyclicity, said Mr. Kelley.

"The market conditions, whether they're hard or soft, do not really come into play on affinity-based programs. We go through risk purchasing groups, and so the experience of all the nurses we have in our program drives



NURSES RISKS

Nursing specialties with the highest average paid indemnity claims during 2006-2010

- Obstetrics
- Neurology/neurosurgery
- Plastic/reconstructive surgery

Source: Nurses Service Organization

how the rates go, and once you reach critical mass, you're pretty much...insulated from any kind of external factors."

"It's just one of those areas that have had a fair amount of stability over time," said Michael Auerbach, vp of allied health and miscellaneous programs for Liberty International Underwriters in New York.

"We've seen severity creep up," but it has been more stable "and a much slower pattern" than has been the case for other health care lines, said CNA's Mr. Scott.

And finding coverage is not a problem, said Judy Simmons, president and owner of Richardson, Texas-based Bill Beatty Insurance Agency Inc., which specializes in medical professional liability insurance. "There's certainly lots of insurance available," she said.

Robert Allen, Jersey City, N.J.-based senior vp of U.S. medical professional liability for Torus Insurance Holdings Ltd., which spe-

See **NURSES** page 16

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Nurses: Changes create additional risks, liabilities

CONTINUED FROM PAGE 14

cializes in large nurse staffing agencies, said agencies that have implemented best practices for credentialing and training and who "are proactive about settling their own accounts" even may be seeing rate decreases.

However, staffing agencies that focus on high-risk areas, such as pediatrics or plastic and reconstructive surgery, "are seeing increases," which are "typically based on experience," he said. Mr. Allen said he estimates large staffing agencies account for about 10% of the nursing population at hospitals.

Yet the nature of the profession is changing, say observers. Mr. Kelley said there has been a "paradigm shift" since he first began working in this area in the mid-1990s. "In the past, plaintiff lawyers and some judges used to look at nurses simply as custodians" who take direction from physicians, Mr. Kelley said.

But now, plaintiffs attorneys are "looking at nurses and pursuing claims, from the perspective of nurses as clinicians" who can be held accountable for diagnosing and interpreting findings for medical administration and dosages. As one would expect, he added, with greater responsibilities

"comes greater risk."

Today, insurers will ask a few more questions on the application and delve "a little bit deeper into what nurses are doing, because we have a lot more nurses and nurse practitioners doing a lot of things they haven't done in the past," said Ms. Simmons.

Nursing specialties with the highest average paid indemnity claims during 2006-2010 were obstetrics, neurology/neurosurgery and plastic/reconstructive surgery, according to a report issued last month by the Hatboro, Pa.-based Nurses Service Organization, a division of Aon Affinity, in collaboration with CNA HealthPro.

"Nurses' exposure to risk is almost a direct correlation to the acuity that the patient is suffering," said Torus' Mr. Allen. For instance, the highest severity of claims would be among obstetrics nurses. "If you're failing to properly monitor during a delivery, that could have implications of millions of dollars for an extended care plan for that compromised child," he said.

Valoree Celona, assistant vp and product manager for health care programs with Chartis Inc. in New York, said as a result of this increasing responsibility, she anticipates that rates will start to

\$100

A registered nurse's policy that provides a \$1 million-per-occurrence, \$6 million-aggregate policy may cost around \$100 in annual premium.

Risk management helps nurses avoid claims

By JUDY GREENWALD

Good communications with patients and their families, staying up to date on practices and procedures, and adequate documentation are among the risk management steps nurses must take to avoid claims and defend themselves should they be sued.

"Be nice," said Edie Ann Brous, a New York-based attorney and registered nurse. "It's very hard to sue someone whom you like." If a patient's interaction with a nurse makes them believe she has acted in their best interest "you're not likely to be sued." Those who are unkind, insensitive, abrasive and have no interpersonal skills run the greater risk of being sued, "even if you haven't made a bad mistake," said Ms. Brous.

Maintaining patient confidentiality also is critical, said Scott Kelley, senior vp and health care business leader for Marsh U.S. Consumer, a unit of Marsh Inc., in New York. In today's world, which is driven by the Health Insurance Portability and Accountability Act, "you've got to be very concerned and protect anything that's not public information that deals with (patients') privacy," Mr. Kelley said.

Observers say nurses should be sure to stay within the guidelines of their particular state's nurse practices act, which sets out the scope of their practice and responsibilities. "It's very hard to defend a nurse if they're working outside the scope of their practice and do something wrong," said Judy Simmons, president and owner of Richardson, Texas-based Bill Beatty Insurance Agency Inc., which specializes in medical

professional liability insurance.

Familiarize yourself with the policies and procedure manuals of the particular institution that employs you, experts say. Many nurses work in multiple settings, each of which have different requirements, said Michael Auerbach, vp of allied health and miscellaneous programs for Liberty International Underwriters in New York.

Nurses must be "fully oriented to their position," whether they are working in a hospital setting, ambulatory setting or a physician's office, said Emily Rhinehart, vp and division manager of global loss prevention health care for Chartis Inc. in New York, who also is a registered nurse.

Nurses must stay up to speed on developments in their field, say observers. A recent study found nurses 51 or older accounted for 66.9% of the claims filed.

Documentation is also critical. It "can be your best friend or your worst enemy," said David Griffiths, Philadelphia-based senior vp of the Nurses Services Organization, a division of Aon Affinity Insurance Services Inc. He said NSO has heard from nurses "who have sat there in the courtroom and had their documentation put on a projector and a screen," while they are asked questions by an attorney.

"You have to document the actions as soon as you can after they're taken," as well as the exact time those actions were performed, said Ms. Simmons. "It's just amazing how many times we've had to provide a defense for a nurse and those notes are missing, or not accurate or they're not timely," she said. "Basically, you're tying your defense attorney's hands if you didn't make those notes."

move up during the next few years. "As the responsibilities expand, so do the liabilities in the marketplace," she said.

Health care reform also could lead to more responsibilities for nurses. Robin Burroughs, New York-based consulting director,

risk control at CNA HealthPro in New York, said, "It'll be interesting to see what happens during health care reform."



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Insurers adapt to cover clean energy business

Constant changes create challenges in creating policies

By SHEENA HARRISON

As clean energy technologies evolve and increase in sophistication, so is insurance coverage for companies involved in the clean energy business.

In most cases, green energy firms require the same commercial property/casualty

insurance that more traditional industries purchase.

However, experts say the challenge is insuring the performance and longevity of energy-efficient systems and products, which are constantly changing.

"There are certain types of risks that are much more difficult to insure and a lot of the carriers, I think, are still challenged with trying to provide those solutions," said

See **CLEAN** page 18



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Clean: Insurers adapt to cover clean energy business

CONTINUED FROM PAGE 16

Kirstin Simonson, St. Paul, Minn.-based underwriting director with The Travelers Cos. Inc.

Insurers are working to cover a growing clean energy market. Green companies—including solar, wind, biofuel and other energy-related firms—received nearly \$9 billion last year in venture capital investments, according to San Francisco-based renewable energy research and advisory firm Cleantech Group L.L.C.

That is up from \$7.9 billion invested globally in such firms in 2010.

2.67M

The U.S. clean energy sector employed 2.67 million workers in 2010, according to a report last year from the Brookings Institution, a Washington policy think tank. The industry grew 3.4% on average per year between 2003 and 2010, the report showed.

In North America, clean energy firms received \$1.42 billion in

venture capital investment during the fourth quarter of 2011, up 18% from the fourth quarter of 2010, according to Cleantech.

While it is generally agreed that solar, wind and geothermal power are clean energy, industry and advocacy groups often disagree about whether other industries, such as mass transit or recycling, should be grouped in with high-tech “green” companies (see story, page 19).

As the clean energy sector expands, companies and their investors are looking for insurance that can protect them from potential liabilities, as well cover energy

projects and tools that often are contracted to provide decades of power generation, said Cleantech Executive Vp Greg Neichin.

“There’s long-term performance risk, and I think you see that in solar, wind (and) energy efficiency projects,” Mr. Neichin said.

More insurers are setting up specialized clean energy units, and the insurance market for those businesses has become “very competitive,” said Rick Niehaus, New York-based senior vp of energy for Liberty International Underwriters.

As a result, clients are seeing favorable rates, deductibles and

policy terms, he said.

“They’re getting very competitive insurance rates, and they’re able to negotiate their premiums and probably negotiate smaller deductibles and broader coverages,” Mr. Niehaus said.

Still, there are challenges to underwriting some risks associated with clean energy companies. As technology advances across various clean energy industries, underwriters are working to cover those products while ensuring the business is profitable.

Insurers often are tasked with devising risk models for newly developed solar panels, wind turbines and other energy-related prototypes that are increasingly efficient, but don’t yet have a proven track record of performance, said Travelers’ Ms. Simonson.

“There’s just no historical data” for newer technology, Ms. Simonson said. “So when you think about what an insurance company is really looking at when they’re trying to develop a product, they’re looking back as to how do we plug this into our standard model. And there’s just no information.”

Michael Buckle, London-based renewable energy practice leader at Willis Group Holdings P.L.C., said insurers often are hesitant to underwrite energy-related equipment or projects that have existed less than 12 months.

“They won’t just underwrite any new piece of invention that comes out,” Mr. Buckle said. “They’re looking for some certainty around the design and the build.”

The products produced by one company, such as a solar panel manufacturer, also may be entirely different than those made by their peers, said Amy Ingram, Tampa, Fla.-based worldwide clean tech segment manager with Chubb Commercial Insurance.

“Two companies that actually work in the same space could be so different that it really is an individual risk underwriting approach,” Ms. Ingram said.

Willis’ Mr. Buckle said insurers are developing in-house teams of experts to conduct intensive due diligence on clean energy devices that they plan to insure.

“I think the insurance market will do as much due diligence as a financier would on a new project,” Mr. Buckle said.

And Liberty’s Mr. Niehaus said insurers are finding ways to cover even the newest technologies. “You can always do it through policy language, through pricing and other terms and conditions,” he said.

Experts say they expect the insurance market for clean energy to continue growing as the sector grows and produces a greater proportion of overall energy generation.

Travelers’ Ms. Simonson said it will be critical for insurers to work closely with the clean energy sector to mitigate potential risks for the maturing industry.

“It’s really about collaborating and having that open dialogue,” Ms. Simonson said.

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What really is 'renewable'?

While many associate the clean energy sector with solar and wind power, the industry includes a wide variety of firms working to generate environmentally friendly energy.

The U.S. Environmental Protection Agency defines renewable energy as "electricity generated by fuel sources that restore themselves over a short period of time and do not diminish." Those sources can include solar, wind and geothermal power generation.

"Clean tech" companies covered by insurers also often include industries that work to improve power generation and delivery processes, such as smart grid firms that attempt to devise more efficient electricity delivery networks.

San Francisco-based renewable energy research and advisory firm Cleantech Group L.L.C. includes transportation, recycling, biofuel and energy storage firms as part of its analysis of the clean energy industry.

Insurance experts say some smaller industries also can be considered to be part of the green energy sector, including ocean wave power and coal gasification, but often there are disagreements among the industry and advocates about whether certain energy-related industries are genuinely environmentally friendly.

"This space really includes...the full life cycle—(research and development firms), startups, manufacturers and service providers that are involved in efficiency solutions and environmental performance," said Kirstin Simonson, St. Paul, Minn.-based underwriting director with The Travelers Cos. Inc.

And insurance industry experts say the definition of clean energy is shifting as new technology is developed.

"The technology within each one of these segments evolves over time," said Rick Niehaus, New York-based senior vp of energy for Liberty International Underwriters.

—By Sheena Harrison

Stage collapses highlight event safety risks

Insurers ask more questions but rates still competitive

By MIKE TSIKOUKAKIS

Underwriters have increased their scrutiny of event risks as a result of high-profile stage collapses last year, but pricing and capacity remain competitive.

In addition, while municipalities are reviewing safety regulations and standards for temporary structures, any changes may take years to materialize, industry experts say.

Stage collapse incidents include one that happened during an Aug. 13, 2011, perfor-

mance by Sugarland at the Indiana State Fair in Indianapolis, which resulted in seven deaths and left more than 40 people injured. Another in Hasselt, Belgium, during a Smith Westerns performance at the Pukkelpop Festival, killed five and injured up to 140 people later that month.

Other incidents include a video screen toppling during an August Flaming Lips concert in Tulsa, Okla., and a stage roof coming down during a Cheap Trick show in Ottawa.

To make informed underwriting decisions for event liability risks, insurers are asking buyers questions that include structural integrity of all temporary structures, what kind of emergency preparedness and evacua-

tion plans are in place, and ingress and egress controls, experts say.

Buyers of event insurance need to reconsider liability limits and be prepared to provide underwriters with risk management plans and procedures for crowd control issues, weather-related exposures, emergency preparedness plans and more, experts say (see box, page 20).

"We're concerned with being able to put on a concert or an air show...but at the same time protecting the 431,000 citizens that we have in the city and putting on a quality show," said John Grook, risk man-

See **EVENTS** next page

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Ingo Zimmermann, Head of EADS Corporate Insurance Risk Management

Events: Stage collapses highlight safety risks

CONTINUED FROM PREVIOUS PAGE

agement administrator for the City of Virginia Beach, Va. Virginia Beach holds a variety of events, including festivals and concerts, air and water shows, fire-works on the beach, surfing competitions and sports racing events with 20,000 participants and nearly 100,000 people coming into the city, Mr. Grook said. Because of Virginia Beach's size, Mr. Grook said he often works with large promoters and vendors who are required to purchase liability insurance coverage for events. "We actually found coverage that wasn't too difficult to find," he said. Risk management controls also are essential for major events such as the Olympics (see related story). Having such risk plans in place helps underwriters make informed decisions. Since the recent spate of stage collapses, as event organizers buy event liability insurance, "absolutely there will be tightening of underwriting," said Peter Williams, president of Los Angeles-based specialty insurer OneBeacon Entertainment, a unit of OneBeacon Insurance Group Ltd. that provides coverages for the entertainment, sports and leisure industries. "Now people are actually listening to our risk control recommendations. And certainly now for anybody putting on an outdoor event, it will be about the experi-

BEFORE THE EVENT

There are several steps organizers can take before an event to minimize their potential risks:

- Have emergency entry and exit plans in place.
- Monitor social media for potential outside activities that could affect an event.
- Review contracts with performers, providers and insurers before the event.
- Monitor the weather and have a plan to halt an event should severe weather occur.
- Get involved in industry associations to learn about event liability and share best practices.

ence of the promoters, it will be about them listening and partaking actively in a risk management program, and certainly having a very effective wind plan," Mr. Williams said. James Chippendale, executive vp at entertainment insurance broker Doodson Insurance Brokerage L.L.C. in Austin, Texas, said that while promoters and organizers who typically purchase \$1 million in general liability limits are not seeing rate changes for events coverage, they are reconsidering their coverage limits. "We are pushing our clients to take a look at this again to consider much higher liability limits based on the sheer fact that one

Insurers review risk management controls

As underwriting scrutiny increases for event liability exposures in the aftermath of recent stage collapses, insurers are looking at risk management controls to better understand the risks. Ron Holton, chief risk officer at the University of British Columbia in Vancouver and former vp of risk management and assurance services for the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games, said the exposures at events such as the Olympics are very significant, and the International Olympic Committee requires substantial general liability coverage for the games. "A key part of getting the coverage without difficulty was having a well-defined and strong enterprise risk management framework in place at VANOC," Mr. Holton said. "As part of that, what we planned to do in terms of loss prevention activities at all of our venues...was an extremely important factor enabling us to get the substantial limits we were looking for and to get them at generally favorable terms and conditions," said Mr. Holton, who also does consulting work for upcoming

Olympic games. Since the stage collapses at the Indiana State Fair and other festivals worldwide, underwriters are focused on good risk management, said Peter Williams, president of Los Angeles-based specialty insurer OneBeacon Entertainment, a unit of OneBeacon Insurance Group Ltd. that provides coverages for the entertainment, sports and leisure industries. "We're looking at the experience of the organizers and the promoters," he said. "We want people who are willing to actively engage in the risk management process." John Grook, risk management administrator at City of Virginia Beach, Va., functions within a framework that allows his risk management department to work with other city departments to identify, assess and safely manage event risks. "One of the things that we've been really successful down here with is we have a task force for special events" that includes members from the police and fire departments, public works, public utilities and public schools, he said. —By Mike Tsikoudakis

catastrophe can eat up that \$1 million limit within seconds," he said. As stages and other structures at events can be massive in size and risk, municipal authorities also will be taking a closer look at safety requirements, said Bill DesPres, Atlanta-based risk engineer with Zurich Services Corp. "I do see places looking closer at these types of structures and developing more robust requirements for inspection and construction," he said, noting also that building code changes takes time.

However, stages such as the one that collapsed at the Indiana State Fair are not considered structures, and there are no requirements to inspect them, Mr. DesPres said. "To change that, it has to be done—and it varies from state to state—at the legislative level," he said. For example, when new codes are introduced for approval by municipalities, the adoption time causes 2010 codes to be implemented in 2012 or 2013, Mr. DesPres said. "Codes and standards generally lag what's actually adopted by the authorities having

jurisdiction," he said. In the wake of the recent stage collapses, concerns about social media have added a new spectrum to event liability risks, said Lori Shaw, director of sports and leisure in the entertainment practice group at Aon Risk Solutions in Charlotte, N.C. With the upcoming U.S. elections this year, many political events will take place with an extra emphasis on crowd control and violence risks. "The underwriters are all sitting there seeing on (television) the same things we are with what's happening in Oakland with Occupy," Ms. Shaw said, referring to the ongoing series of demonstrations by the Occupy movement in Oakland, Calif., that often have erupted in violence. In preparation for the G8 and NATO summits in Chicago in May, city officials and law enforcement agencies have begun to brief property, retail and business owners about increased and comprehensive security measures to address potential violent demonstrations. Many property managers, schools, and businesses are drawing up emergency and crisis plans to deal with any violence, property damage and safety, according Crain's Chicago Business, a sister publication of Business Insurance. In this context, social media outlets are a platform that enables a large mass of people to communicate and organize. Twitter, Facebook or other specific websites are used "to try to gain awareness and encourage people to show up at different sites in order to have a large enough group to get some media attention," she said. Rate increases for event liability insurance are not on the horizon yet as an excess capacity has made pricing lower, OneBeacon's Mr. Williams said. But, as more insurers are unwilling to participate in the risk or extend high limits exit the field, competition will decrease and prices may firm, he said.

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Products & Services

Ironshore, Cochrane team on firearms cover

HAMILTON, Bermuda—Ironshore Inc. and Cochrane & Co. have launched a coverage program for the firearms industry.

The Cochrane Ammunition and Rifle Manufacturing Specialist, or ARMS, program covers 12 classes of clients, including firearms retailers; wholesalers and distributors; ammunition, bullet and cartridge manufacturers; indoor and outdoor ranges; clay pigeon manufacturers; and hunting and shooting clubs and associations.

Many of these companies are smaller, independent groups that may be financially unable to handle unexpected losses.

The ARMS program covers costs associated with the limited recall of products; federal investigations by the Bureau of Alcohol, Tobacco, Firearms and Explosives; medical expenses; and damage to premises, among others.

The limits of the program are \$1 million per occurrence, \$1 million for personal and advertising injury, and \$2 million aggregate.

For more information, contact Anitta Valdez of Cochrane & Co. at 509-462-1151, or Joseph Girardi of Ironshore at 646-826-4846.

XL, Hays Affinity roll out liability cover for dentists

EXTON, Pa.—XL Group P.L.C. and Hays Affinity Solutions, a division of Hays Cos., have launched professional liability insurance tailored to dentists.

Available options include defense coverage for Health Insurance Portability and Accountability Act violations, disciplinary actions, medical waste legal defense, medical payments, defense assistance reimbursement, military and disability leave, and optional practice liability.

The coverage offered by the select professional insurance underwriting unit of Dublin-based XL and Minneapolis-based Hays Affinity is available for offices with fewer than 20 dentists. Up to \$5 million in liability limits are offered, and policies are available on an occurrence or claims-made basis.

For more information, contact Tom McDonough, president of Hays Affinity, at 847-939-8300 or tmcdonough@hayscompanies.com.

Ironshore offers U.S. firms political risk coverage

HAMILTON, Bermuda—Ironshore Inc. has launched a new coverage option for U.S. companies with international operations vulnerable to political and terrorism risks.

Political risk and political violence coverage is a joint offering from Ironshore and the Political Risk and War and Terrorism unit

of Pembroke Managing Agency Ltd.'s syndicate 4000 at Lloyd's of London. Previously, losses from strikes, terrorist acts, civil wars and other disruptions to business often were not covered. Incidents such as the Arab Spring uprisings and protests in Thailand have left many risk managers reassessing their international plans, said Daniel L. Sussman, president of

Ironshore's political risk group.

"Political risk coverage traditionally has been focused on European-domiciled commercial risks, with less than 10% of business underwritten for U.S.-based insureds," Mr. Sussman said in a statement. "Given recent upheaval and political unrest throughout the global business environment, demand for this specialty class of business is increasing at a significant pace."

Traditional confiscation coverage has a \$15 million maximum limit, and political violence coverage, which includes terrorism, has a \$25 million limit.

For more information, contact Mr. Sussman at daniel.sussman@ironshore.com.

Private maritime security coverage from Marsh

LONDON—Marsh Inc. has launched an insurance facility to serve the private maritime security company industry.

The facility meets the requirements laid out by the Security Assn. for the Maritime Industry, as well as the recommendations by the International Maritime Organization, Marsh said in a statement.

"The insurance industry has failed to keep pace with the rapid development of the maritime security sector," Nick Roscoe, a managing director in Marsh's global marine practice, said in a statement.

"Many policies have been 'borrowed' from other industries and knitted together to provide cover with little thought" of the specific needs of private maritime security companies, Mr. Roscoe said.

The package covers five areas: public liability, professional indemnity, maritime employer liability, employer liability and personal accident. Additional coverage can include kidnap and ransom, and hull and machinery losses and damage.

The facility, which also offers enhanced limits, is available only to SAMI members.

For more information, contact Mr. Roscoe at 011-44-207-357-2185 or nicholas.roscoe@marsh.com.



IIS 48TH ANNUAL SEMINAR



The United Nations Environment Programme Finance Initiative will launch the Principles for Sustainable Insurance at the 48th IIS Annual Seminar. IIS delegates will have the opportunity to partake in this landmark initiative of the UN and the global insurance industry, which supports the aims of the 2012 UN Conference on Sustainable Development in Rio. The initiative addresses environmental, social and governance risks and opportunities in a changing global risk landscape, and is consistent with the theme of our seminar:

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Ikuo Uno, Executive Advisor to the Board, Nippon Life Insurance Company, Japan

"To me the greatest value of attending the IIS meeting is the insight one obtains from the mix of practitioner and academic perspectives on the future of the global insurance industry."

Dr. Qixiang Sun, Dean of School of Economics, Director of CCISSR, Peking University, China

The IIS preferential rate at the Sofitel Rio Copacabana expires on April 16, 2012, but the hotel will be at full capacity well before then.

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ERM: Make
or break

CONTINUED FROM PAGE 4

competitive intelligence, he said.

“At the end of the day, trying to identify and quantify risk is all about trying to look into the future,” Mr. DeLoach said.

Larry Warner, staff officer of risk management at food maker Mars Inc. in McLean, Va., described the process his company went through as it embraced enterprise risk management late last year at the Risk & Insurance Management Society Inc.’s inaugural ERM Conference.

Mr. Warner said Mars’ interest in ERM was based in a desire to take risks and grow. Mars leaders wanted a tool that would enable Mars units to know what they could achieve in terms of the company’s overall objectives, that would improve alignment and accountability around pursuit and execution of business unit goals, foster a “risk discussion mentality,” enable managers to knowledgeable and comfortably take on risk, and objectively track performance, he said.

To find out key exposures, Mr. Warner started rolling out unit-specific workshops in Australia, China, Russia and Europe in 2005, with a full rollout of the workshops in 2006. The company used the “Delphi method” to identify risks, by which experts from the units present risk information “and basically by group think they’re able to come up with better

Risk assessment processes
enhance ERM implementation

When trying to implement an enterprise risk management program, organizations often try to take a traditional approach, said James W. DeLoach, managing director of consultant Protiviti Inc. in Houston.

This includes creating risk maps, plotting exposures based on severity and likelihood of occurrence.

But, he said, “We point out that shuffling known knowns around on a risk map does not add a lot of value in the C-suite or the board room. Neither does focusing on minutiae.”

Instead, Protiviti typically makes two suggestions to its clients, Mr. DeLoach said: Focus on risks through a risk assessment process based on sound principles—looking at risks in terms of the “velocity” of their impact, the persistence of their effects, and the organization’s readiness to deal with the risk, among other things—and be sure to involve all stakeholders.

In assessing an organiza-

tion’s risks, periodically revisit changes in the corporate environment and whether changes in the business environment are undermining critical elements of the organization’s strategy, Mr. DeLoach said. “Pay attention to the strategic uncertainties. Pay attention when critical assumptions of the business strategy become invalid.”

Organizations also should consider conducting an end-to-end assessment of the value chain, he said. “Organizations are now boundary-less,” and companies trying to assess enterprisewide exposures must look at risks involving their suppliers and at risks associated with their consumers.

They also must make sure the risk assessment process “provides insight, promotes debate and adds to the body of knowledge.” And, an organization should conduct regular post-mortems of past risk assessments to see how well they performed.

—By Rodd Zolkos

decisions” than individuals alone.

Now business units are responsible for submitting summary quarterly reports to corporate, and in each quarterly report must note the unit’s progress in dealing with

its five most significant risks and five most important risk treatments.

“Most units want to do this,” Mr. Warner said. “We get called all the time for help around this.”

MLR: Brokers
push change

CONTINUED FROM PAGE 3

brokers and health plans by branding those expenditures as administrative overhead. And third, it is a perverse disincentive for plans to put downward pressure on premiums. After all, the bigger the premium, the easier it is to make the 80% or 85% ratio. This goes to the core of our problems with the PPACA. What we need is health care reform. What we got is health insurance reform.”

Moving a bill forward in a presidential election is “certainly not an easy lift,” said Charles Symington, senior vp of the Alexandria, Va.-based Independent Insurance Agents & Brokers of America. “However, we have renewed momentum with the introduction of the Senate bill and we have strong bipartisan support.”

Noting that the IIABA will have more than 1,000 members in Washington for its April legislative conference, a key objective is seeking more Senate co-sponsors of the bill, he said.

Mr. Wood said one reason the House hasn’t moved is that House leaders wanted bipartisan legislation introduced in the Senate.

85% 80%

The medical loss ratio provision of the Patient Protection and Affordable Care Act requires insurers to report plan costs for the purpose of calculating the insurers’ medical loss ratio.

That’s the percentage of insurance premium dollars spent on reimbursement for clinical services and activities to improve health care quality.

Large group insurers must spend at least 85% of premium dollars on claims and activities to improve health care quality. Individual and small-group insurers must spend at least 80% on claims and quality improvements.

“Now that that’s happened, we will push to have the House bill considered,” he said.

Mr. Wood added that council is following “the efforts by major health plans to move toward a fee system rather than commissions. In some jurisdictions, you can’t take a fee for placement services.”

“We’ve had significant success on the House side getting support; we want to do that in the Senate,” Mr. Symington said.

“The more sponsorship we can get on both bills, hopefully the more heat we can put on the administration on this topic,” Mr. Symington said.

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AS PROVISIONAL LIQUIDATORS OF
INDEPENDENT INSURANCE COMPANY LIMITED,
DEBTOR IN A FOREIGN PROCEEDING
CASE NO. 01-13899 (SMB)

NOTICE IS HEREBY GIVEN THAT ON FEBRUARY 15, 2012, THE BANKRUPTCY COURT ENTERED AN ORDER (THE “ORDER”) CONTINUING THE PRELIMINARY INJUNCTION ORDER PURSUANT TO 11 U.S.C. §304 ORIGINALLY ENTERED IN THIS CASE ON JULY 31, 2001. THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING SCHEDULED TO BE HELD ON FEBRUARY 14, 2013 AT 10:00 A.M. (THE “RETURN DATE”) BEFORE THE HONORABLE STUART M. BERNSTEIN, UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT LOCATED AT ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING THE CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE STUART M. BERNSTEIN AND SERVED ON COUNSEL FOR THE PETITIONERS LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONERS.

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Model: Companies add income options

CONTINUED FROM PAGE 4

“We need to make defined contribution plans more efficient in providing participants reliable retirement income.”

It seems employers with defined contribution plans agree. In a February study by consulting firm Aon Hewitt, only 4% of the 500 employers surveyed said they were very confident their workers would retire with enough assets—a 26 percentage-point drop from the previous year.

Helping employees retire with enough money is a top priority for nearly half, or 44%, of employers responding to the survey, called “2012 Hot Topics in Retirement.” Many employers are expanding savings choices, including offering in-plan retirement income options, similar to what Wise Alloys offered its participants.

Today, almost all participants take a lump-sum distribution at retirement. Many go out into the

market and purchase annuities, which are insurance contracts that guarantee lifetime income. In-plan income options are a defined benefit-like feature allowing participants to put money in an annuity investment before retirement.

Sixteen percent of respondents offer an in-plan retirement income solution, and 22% of respondents said they plan to adopt this kind of investment vehicle in 2012, Aon Hewitt’s survey revealed.

“There seems to be a growing sense of urgency in offering these solutions,” says Pam Hess, director of research for the Lincolnshire, Ill.-based consulting firm.

Data from Prudential also shows an uptick in retirement income solutions being offered by plan sponsors. In 2011, 267 of Prudential’s clients had a retirement income solution in their 401(k) plan investment lineup. That is a 58% increase from 2009, when Prudential started offering IncomeFlex.

“Three years ago, most people didn’t know what we were talking about,” says Sri Reddy, Prudential’s senior vp for institutional income. “Plan sponsors are now more aware of this need.”

Meanwhile, providers are finding different ways to offer retirement income solutions. In October, Hartford Financial Services Group Inc. introduced the Hartford Lifetime Income, which allows 401(k) plan participants to purchase retirement income shares; each share’s price is determined by participant age and interest rate value at the time of purchase and will provide a minimum of \$10 of guaranteed monthly income per share for life. So 50 shares would mean \$500 per month.

“People are wanting some kind of guaranteed income stream, but they want to keep it simple,” says Patricia Harris, Hartford’s actuary who designed the product. “It’s certainty and simplicity of design.”

For years, plan sponsors toyed

with the idea of offering an in-plan solution but were hesitant because of fiduciary concerns, a long-term commitment with an investment company and other issues, Ms. Hess says.

But just as employees are realizing they need to be better savers for retirement, employers are becoming more aware that they need to provide some type of stability so workers can move out of the workforce at the right time, says Ms. Tejera.

“We are finally getting to the place where plan sponsors are saying we need defined contribution plans to do more to help us manage our workforce,” says Ms. Tejera, who recently wrote a brief for the Institutional Retirement Income Council on guaranteed income investments. “Employees don’t want to work past their productive lives, but if they can’t afford to retire, they are going to stay in their jobs.”

Patty Kujawa is a freelance writer for Workforce Management, a sister publication of Business Insurance.

Funding: Employer push

CONTINUED FROM PAGE 4

Steel and Carnegie Pension Fund, which had an estimated \$6.475 billion in assets as of Sept. 30, according to data from Pensions & Investments, a sister publication of *Business Insurance*.

Pension plan executives calculate their liabilities by discounting projected future payments to a present value based on corporate bond rates tied to the Fed rate. That bond rate is dictated by the PPA, which requires plans to use an interest-rate yield curve to get the rate for calculating pension liabilities and minimum funding requirements. The liability rate is inversely proportionate to the interest rate—the lower the rate, the higher the liability and funding demands.

“Plan sponsors need more predictable funding requirements for budgeting purposes and for managing cash flow,” Deborah K. Forbes, executive director of the Committee on Investment of Employee Benefit Assets in Bethesda, Md., wrote in an email. Members of CIEBA, which represents more than 100 of the largest U.S. corporate pension plans with a combined \$1.5 trillion in defined benefit and defined contribution plan assets, “want to fund their plans responsibly but, with interest rates being kept at artificially low rates, plan funding obligations are overstated.”

The low rates “are creating an artificial funding crisis,” said Ken Porter, a former chief actuary of the E.I. DuPont de Nemours & Co. in Wilmington, Del., and former director of the American Benefits Institute in Washington. Mr. Porter told the House subcommittee members that, contrary to the Federal Reserve’s objectives for stimulating the economy, the increased funding demands from lower interest rates threaten to

divert money from job creation and tax revenue into pension funds that “will be vastly overfunded in a few years when interest rates return to normal.”

For a typical pension plan, Mr. Porter said, the effective interest rate required by law has dropped roughly 70 basis points since 2011, pushing liabilities up 10%.

PENSION PLANS

The number of U.S. pension plans peaked in 2000 at 735,651, according to Department of Labor data going back to 1975. Defined contribution plans, one component of the measure, also reached their zenith that year. Defined benefit plans, the other component, topped out at 175,143 in 1983 and have generally declined since then.

YEAR	TOTAL	DEFINED BENEFIT	DEFINED CONTRIBUTION
2009	706,667	47,137	659,530
2008	717,530	48,374	669,156
2007	707,787	48,982	658,805
2006	694,550	48,579	645,971
2005	679,095	47,614	631,481

Source: Department of Labor Form 5500 filings

For a plan with \$7 billion in liabilities, that creates a \$700 million shortfall that forces the company to put an additional \$119 million into the plan for each of seven years, even while benefit payments have not changed.

Proponents stress that it is not funding relief that they seek, but rather “funding stabilization.” Their strongest argument is jobs. U.S. Steel’s Ms. Haggerty said her company’s capital investment program calls for spending \$1 billion annually in 2011 and 2012 on new facilities that would create

thousands of jobs and boost the local economy, but those investments “could take a back seat to our pension funding demands in this current low-interest-rate environment.”

Speaking for her company and as a member of the ERISA Industry Committee, Ms. Haggerty warned that without congressional action, “the economy will continue to disappoint and underperform.”

Ms. Haggerty noted that in 2009, while the company lost \$1.4 billion, cut costs and idled five steel plants, “we still made a \$140 million voluntary pension contribution.” That made the plan 101% funded, but “if we had used today’s exceptionally and artificially low interest rates resulting from Federal Reserve policy,” it would have been only 85% funded.

The key argument for funding relief they have is that fewer tax-deferred dollars going into pension fund coffers means more tax revenue for the U.S. Treasury, with some estimates as high as \$10 billion.

Between asset losses and higher unfunded liabilities, pension plans are getting hit from both sides, Jon Waite, director of investment management for the institutional group at SEI Investments Co. in Oaks, Pa., said in an interview. “The (Fed) put the pension sponsors in a very difficult position. To hedge out the interest rate has become extremely difficult.”

That reality is starting to get sympathy on Capitol Hill, where a Senate proposal to stabilize pension funding rules was recently added to a fast-moving highway funding bill. Sen. Tom Harkin, D-Iowa, who chairs the Senate Committee on Health, Education, Labor and Pensions “is committed to making sure pension funding rules are working well,” said an aide who did not want to be identified.

Hazel Bradford is a reporter at Pensions & Investments, a sister publication of Business Insurance.

Opioids: Problems

CONTINUED FROM PAGE 3

complex care company in Lake Mary, Fla.

Yet more insurers, PBMs, third-party administrators and other providers need encouragement to engage their medical resources to develop “cohesive, comprehensive programs,” according to Mr. Glennon.

Such programs must go beyond merely monitoring opioid prescriptions to providing services such as non-narcotic options for managing chronic pain, he added.

“I think what we will see happen more and more is that (insurer) medical directors are going to be speaking with the primary physicians and questioning their prescribing patterns,” he said.

One improvement applies pharmaceutical tracking systems to red flag opioid prescribing earlier than the more established retrospective practice of identifying claims needing attention after opioid prescriptions have been filled, sources said.

“The challenge with that (approach) is the cow may already be outside the barn,” said Jeffrey D. Miller, chief operating officer at Santa Ana, Calif.-based Paladin Managed Care Services Inc.

Paladin soon will launch a program that reaches out to treating doctors at “the front end of the (treatment) process” to learn about narcotics prescriptions before they are filled, Mr. Miller said.

“You really have to get to as close to when it’s prescribed as possible,” Mr. Miller said.

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Jobs: Workers comp risks shift as jobs return

CONTINUED FROM PAGE 1

NCCI Chief Economist Harry Shuford said workers are at greatest risk of injury during their first year with a company, regardless of whether they change positions within that firm. The risk level drops once an employee has been with a company for five years.

Employees who are learning to perform new jobs correctly pose much of the injury risk, Mr. Shuford said.

So far, it's difficult to determine whether the injury clock resets for workers who leave and then return to a company. However, Mr. Shuford said, he believes that rehired workers could pose more safety concerns than those who continued on the job.

"If you've been away for an extended period of time and have now returned, it will still take you a while to get back in the groove," he said.

Integro's Mr. Noonan said laid-off employees sometimes return to work operating new machinery that could increase their risk

of injury.

Workers in physically demanding positions also could lose muscle conditioning while off the job, which also increases their risk of injury when they return, Mr. Noonan said.

Additionally, rehires and new hires may feel extra pressure to perform their jobs well, which could lead to overexertion and injury, said Paul Braun, managing director of casualty claims at Aon Global Risk Consulting in Los Angeles.

"Because people are very...desperate to get a job, there's a tendency to say 'I'll do everything' or 'I can do everything,'" Mr. Braun said.

Safety for rehired workers is a focus for General Motors Co.'s Toledo transmission plant in Ohio. The facility has been adding jobs recently, most filled by laid-off GM workers, said George Williams, human resources manager for the transmission plant.

Though the employees are experienced with GM plant work, Mr. Williams said many of

REDUCING INJURY RISKS

Experts cite several major approaches to keep new and rehired workers safe.

- Conduct thorough employment screenings to ensure that new hires are qualified to perform a job.
- Provide training that shows workers how to perform their job roles safely.
- Create checklists of procedures and policies that changed during an employee's unemployment, and review list items with returning workers.
- Give rehired workers time to ease back into their jobs. Don't immediately expect them to be as productive as peers.

the Toledo jobs require workers to operate unfamiliar machinery.

"Our plant is a manufacturing plant...and a lot of people transferring in are from assembly plants," Mr. Williams said. "The work is similar in that it has hazards, but unique in that the processes are different."

GM requires new and returning workers to complete an extensive orientation program, including safety training, to help

lessen their risk of getting injured, Mr. Williams said.

Training employees to properly perform their roles is a critical safety procedure for all companies, whether dealing with new or rehired workers, Mr. Braun said.

Companies hiring laid-off workers can benefit from making a checklist of procedures and policies that have changed since an employee last worked, which can be reviewed with rehires. Employers also should conduct thorough employment screenings and check references to ensure that new hires are qualified to perform their jobs safely and effectively, he said.

Companies should ease workers into their jobs to reduce injury risks, Integro's Mr. Noonan said. While rehired employees may be experienced in their jobs, it could take time for them to reach the same productivity level of peers who stayed on the job.

"It certainly might be a week or two to get to the point where they have the physical strength...and understanding of the job," he said.

Mr. Noonan said he believes that protecting new hires will be among the top safety issues for employers as the economy gradually recovers.

inBrief

CONTINUED FROM PAGE 1

Exxon Mobil sues Lloyd's, insurers over defense

Exxon Mobil Corp. has filed suit against Lloyd's of London underwriters and other insurers in New York state court seeking to recover defense costs and payments resulting from asbestos claims. The suit seeks coverage for thousands of asbestos-related claims brought against Exxon Mobil; ExxonMobil Oil Corp.; Mobil Corp.; and the company's Vermont captive, Ancon Insurance Co. Inc. The claims were brought under primary and excess general liability insurance policies sold by the defendant insurers.

Former NFL player's family sues league over his death

The family of former National Football League player Dave Duerson filed suit against the National Football League, alleging the league's concealment of information about concussion risks and failure to take adequate steps to address brain injuries led to brain damage that contributed to Mr. Duerson's suicide last year. The suit also names football helmet manufacturer Riddell Inc. The suit says Mr. Duerson suffered at least three concussions during his 11-year NFL career, and that examination of his brain at Boston University after his death indicated he suffered from progressive, advanced brain damage known as chronic traumatic encephalopathy.

Noted

President Barack Obama has reappointed David M. Strauss, who was executive director of the **Pension Benefit Guaranty Corp.** from 1997-2001, as chairman of the agency's advisory committee. Mr. Strauss will continue to represent the general public on the six-member panel, which has responsibilities that include advising on PBGC investment policies, trusteeship of terminated plans and other issues.

Reputation: Rating focus

CONTINUED FROM PAGE 1

"That's an example where reputational risks emerged, we identified it and immediately started to make some projections about that," Mr. Puccia said.

In the Penn State case, Moody's Investors Services Inc. placed the university's rating on review for possible downgrade in November as it weighed potential reputational damage days after misconduct allegations surfaced involving former assistant football coach Gerald A. Sandusky and two former senior university officials.

This month, Moody's confirmed Penn State's long-term credit rating of Aa1 with a negative outlook, citing indirect effects on enrollment and philanthropy as reasons for the negative outlook.

Public universities rely heavily on their reputation and brand as a strategic asset to attract students, philanthropic support and research grants, said John Nelson, managing director for university and hospital ratings at Moody's in

New York.

In addition, there has been "more of an emphasis" on reputational risks for universities as support from financially strapped state governments has dwindled, Mr. Nelson said.

"So, across the board, universities are heavily reputation-driven and we measure that in a variety of indicators," which include its selectivity in accepting students and growth in donations and research funding, he said.

"Those are pretty important strategic drivers in the university world and pretty important credit factors when evaluating the risk of them retaining their debt," Mr. Nelson said.

Randy Nornes, executive vp of Aon Risk Solutions in Chicago, said reputational distress within an organization increases uncertainty, prompting rating agencies to issue warnings or actions more quickly.

"Companies go on and off watch lists all the time. It's a red flag. Most manage through it,"

MAINTAINING A GOOD REP

Proactive organizations can take several steps to address credit rating agencies' focus on reputational risks, experts say. They include:

- Having a thorough corporate governance program and management with diversified experience.
- Establishing disclosure practices for investors and stakeholders.
- Conducting internal audits.
- Having procedures that allow a quick response to any reputational issues.
- Having a risk committee to identify and manage all reputational risks.
- Demonstrating a successful recovery from past reputational issues.

Mr. Nornes said. "But when the red flag turns into more sustained liquidity issues...it might trigger a material adverse change clause in a loan facility," which would require immediate payment or

adjustment of interest rates or change other terms of the loan.

"From a treasury standpoint, that's a big deal because (the organization is) charged with managing liquidity," he said.

Organizations are aware how reputational risks can affect their credit rating, and experts say proactive organizations attempt to work directly with these issues as they arise (see box).

"Increasingly we've also seen universities really develop enterprise risk management systems, and part of that is to cover this type of reputational issue that may come up over time," he said.

Howard Mills, director and chief adviser in the insurance industry group at Deloitte L.L.P. in New York, said much of the awareness is driven by today's 24-hour news cycle and social media's potent ability to disseminate bad news quickly.

"Clearly, you're seeing the credit rating agencies responding to this heightened awareness," Mr. Mills said. "Institutions are obviously very concerned with their rating as well as their reputation; and now, the two are irrevocably linked, it seems."



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After setting up an elaborate accident scene in pursuit of a workers compensation payout, a Target Brands Inc. store worker blew her alleged scam by failing to check for surveillance cameras.

Security camera video shows the New Jersey Target worker repeatedly banging her head with a handful of batteries and washing down crackers with a beverage before kneeling down and vomiting them up.

But that was only part of her accident setup, according to a report on the recent indictment of Victoria Colon of Union City, N.J.

The customer-service worker at a North Bergen, N.J., Target store claimed a box she was hauling banged a shelf, causing other boxes to fall on her head and neck. She also claimed that caused her to vomit.

But the security video allegedly shows her arranging a storeroom shelf so the boxes it held would fall. She then arranged the containers around her before pulling a shopping cart with other items on top of her.

She also banged her head with the batteries and left the scene at one point, returning with the crackers and beverage before restaging the scene and then photographing it.

Ms. Colon is out on bond after authorities arrested her. But she faces up to 10 years in prison if found guilty of workers comp fraud.

CONTRIBUTING: Roberto Cenicerros, Matt Dunning, Mark A. Hofmann

End Page



President Franklin Delano Roosevelt's desk, used when he worked at the Fidelity & Deposit Co. of Maryland, has been donated to the FDR Presidential Library by Zurich.

FDR's contribution to insurance honored

President Franklin Delano Roosevelt generally is remembered as one of the nation's greatest presidents, having guided the United States through the Great Depression and World War II.

He is not, however, generally thought of as someone with much interest in business—and in fact was regarded by some of his contemporaries and later observers as being somewhat hostile toward business.

But a gift to the FDR Presidential Library and Museum in Hyde Park, N.Y., may change that perception just a bit. The gift—given by Zurich Financial Services Ltd.'s Zurich American Insurance Co. unit as part of its commemoration for operating 100 years in the United States—is a desk at which FDR sat when he served as vp in the New York office and member of the board of directors of the Fidelity & Deposit Co. of Maryland, which is now a Zurich-owned company.

FDR worked for the insurer between 1921

and 1928. He was on hiatus from politics, having been the running mate of James Cox, the unsuccessful 1920 Democratic nominee for president and before FDR's successful 1928 bid for New York governor, which was followed by his successful 1932 presidential campaign.

"The desk helps tell the story of one of the most critical periods in FDR's life, from 1920-1928, when he struggled to recover from polio and used his position with F&D to benefit the company as well as maintain his contacts with important leaders in business and politics," said Lynn Bassanese, acting director of the FDR Presidential Library and Museum, in a statement accepting the gift of the desk and documents related to FDR's insurance career.

The desk will be exhibited at Zurich's North American headquarters in Schaumburg, Ill., until later this year. It will go on display at the FDR library and museum in 2013 after renovation of the facility.

Naked Cowboy loses his suit

Though certainly a unique approach to earning a living, playing guitar in your underwear and a cowboy hat is not a copyrightable act unto itself, a federal judge has ruled.

Robert Burck, better known to New Yorkers as the Naked Cowboy, sued the producers of the long-running CBS soap opera "The Bold and the Beautiful" in a Manhattan federal court this month for allegedly copying his distinctive look.

Mr. Burck's Naked Cowboy persona has become something of a New York City institution; he has been singing and playing guitar in and around Times Square dressed in white briefs and a cowboy vest, boots and hat since 1997.

In his Feb. 14 lawsuit, Mr. Burck claimed the soap opera's producers, as well as the CBS network, violated the trademark he holds for his costume when it aired an episode in November 2010 featuring a character named "Oliver" dressed in similar fashion and playing a guitar.

Mr. Burck had sought as much as \$1.5 million in compensation for the alleged violation.

On Thursday, Southern District Justice Barbara Jones rejected the lawsuit on the grounds that "Oliver's" costume lacked enough of the specific elements that make up Mr. Burck's trademarked look, including the words "Naked Cowboy" on the hat, briefs and guitar, as well as the "Tips" or "\$" emblem on the boots.

"The court concludes that the combination of distinctive characteristics and level of recognition make the Naked Cowboy costume a protected trademark," Judge Jones wrote in her decision. "Oliver's costume, on the other hand, contains none of the distinctive characteristics of the Naked Cowboy costume."

Judge Jones also rejected Mr. Burck's claim that a clip of the episode CBS posted to YouTube violated his trademark rights because it included the search tags "naked" and "cowboy." Judge Jones said it was clear that the network intended only to describe the content, not the character.



Basketball legend Michael Jordan has sued a Chinese sportswear and sneaker company over use of his name, "Jumpman" logo, jersey number, and names of his children.

MJ CRIES FOUL, LOOKS FOR SLAM DUNK IN COURT

When you're as famous as Michael Jordan, seeing your name and image used on billboards, retail signage and other promotional materials is simply part of the game.

However, a Chinese sportswear and sneaker company's attempt to rebrand itself using Mr. Jordan's name, image and variation of his iconic "Jumpman" logo without his permission has the Hall-of-Famer crying foul.

In a lawsuit filed in a Beijing court on Feb. 21, Mr. Jordan accused Qiaodan Sports Co. Ltd. of illegally appropriating his identity and brand. According to Mr. Jordan, Qiaodan is the Chinese name by which he has been known in China since the late 1980s.

According to materials posted to Mr.

Jordan's website regarding the suit, Qiaodan has attempted to trademark its name and the number 23—Mr. Jordan's jersey number during most of his professional career—and the names of Mr. Jordan's children, Jeffrey and Marcus, in Chinese characters and the corresponding pinyin Romanization.

According to Mr. Jordan's website, a Shanghai sports product marketing company conducted an independent survey involving 400 respondents in 2009, finding that 90% of young people in China's small cities believed Qiaodan Sports was Mr. Jordan's own brand in China.

Mr. Jordan said any money he is awarded from the lawsuit "will be invested in growing the sport of

basketball in China."

According to the Chicago Tribune, Qiaodan has denied any connection to Mr. Jordan, arguing that any similarities between its branding and promotional materials and those of the basketball star are purely coincidental.

"There is no connection," a Qiaodan spokesman told reporters in China, according to the Chicago Tribune. "Twenty-three is just a number like \$23 or \$230... I don't think there is a problem at all here."

"Not everyone will think this is misleading," the spokesman added. "There are so many Jordans besides the basketball player. There are many other celebrities both in the U.S. and worldwide called Jordan."

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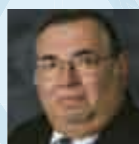
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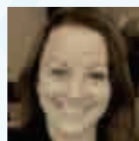
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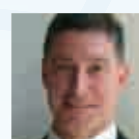
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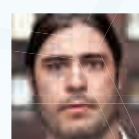
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