

FLORIDA MAY CAP PRICES ON PRESCRIPTION DRUGS FOR WORKERS COMP / PAGE 3

COMPANIES MUST ADJUST TO CYBER RISK EXPOSURES FROM ACTIVISTS / PAGE 4

SOCIAL MEDIA TOOLS RESHAPE SCHOOLS' BULLYING RISKS / PAGE 6

inBrief

Chartis no longer writing excess comp

Chartis Inc. has stopped writing stand-alone excess workers compensation coverage, American International Group Inc. said in a U.S. Securities and Exchange Commission filing. The insurer said the coverage has an extremely long tail and is challenging to reserve for because it is sensitive to small changes in assumptions. It also cited possible cost-shifting resulting from health care reform as a reason behind the move.

Goldman Sachs to buy Ariel business

Goldman Sachs Group Inc. will acquire Ariel Holdings Ltd.'s Ariel Reinsurance's Bermuda-based insurance and reinsurance operations,

See **IN BRIEF** page 21

LIABILITY & LITIGATION

Retrial ordered in Gen Re case

Experts say new case will give defendants a stronger hand

By **BILL KENEALY**

HARTFORD, Conn.—Former executives of General Reinsurance Corp. and American International Group Inc., whose convictions in a sham finite reinsurance deal were overturned, have a stronger hand going into a retrial scheduled for next year, experts say.

Last week, U.S. District Court Judge Vanessa Bryant set Jan. 22, 2013, for the retrial of Ronald E. Ferguson, former Gen Re CEO; Christopher P. Garand, former Gen Re senior vp in charge of U.S. finite underwriting; Robert Graham, former Gen Re senior vp and assistant general counsel; Elizabeth Monrad, former Gen Re chief financial officer; and Christian M. Milton, former AIG vp for reinsurance.

In February 2008, a jury convicted the five on charges of con-

WHAT HAPPENED
■ A 2013 retrial has been set for former Gen Re and AIG execs in an alleged sham reinsurance deal.

WHAT'S NEXT
■ Experts say the defendants may have a stronger hand than in the first trial but a settlement is still possible.

spiracy, securities and mail fraud, and making false statements to the U.S. Securities and Exchange Commission stemming from a loss portfolio transaction conducted in 2000 and 2001.

Prosecutors alleged that the defendants constructed the deal to artificially bolster AIG's loss reserves, ultimately costing AIG investors as much as \$597 million as word of the SEC investigation

See **GEN RE** page 17

WORKERS COMP



Obesity problem weighs on comp

By **ROBERTO CENICEROS**

The U.S. obesity epidemic is presenting difficult workers compensation challenges, complicating efforts to return employees to work and to full health.

Not only are obese workers comp claimants likely to miss more work days than healthy-weight co-workers with similar injuries, obese workers are likely to have higher medical costs and are more likely to become permanently disabled, research has shown.

According to the Centers for Disease Control and Prevention, the prevalence of obesity among U.S. adults and children remained steady in 2009-2010 compared with 2007-2008. Some 37.5% of adults and nearly 17% of those up to age 19 were obese, which health experts say increases

See **OBESE** page 21

LIABILITY & LITIGATION

High court could increase corporate liability

By **MARK A. HOFMANN**

WASHINGTON—An 18th century law could have liability implications for 21st century corporations depending on how the Supreme Court rules on a case that alleges

human rights violations.

At issue in *Esther Kiobel et al. vs. Royal Dutch Petroleum Co.* is whether the Alien Tort Statute of 1789 applies to corporations as well as individuals. The law allows non-U.S. citizens to bring tort

actions in federal court for violating the "law of nations" concerning international human rights.

The case, on which the Supreme Court heard oral arguments last week, involves allegations that Royal Dutch "aided and abetted" human rights violations by the Nigerian government in the 1990s.

According to the plaintiffs' filing, the law was designed to avoid potential diplomatic problems if the civil actions were decided in state courts, which were regarded as being more partial than their federal counterparts.

In 2010, a three-judge panel of the 2nd U.S. Circuit Court of Appeals ruled that the law does not apply to corporations, partially

overturning a lower court ruling.

In that ruling, Judge Jose A. Cabranes noted that the law largely was dormant until 1980, when plaintiffs tapped it to pursue allegations of human rights violations outside the United States in U.S. courts. "No corporation has ever been subject to any form of liability (whether civil, criminal or otherwise) under the customary international law of human rights. Rather, sources of customary international law have, on several occasions, explicitly rejected the idea of corporate liability," he wrote.

Mrs. Kiobel, the widow of an activist hanged by the Nigerian

See **ALIEN** page 19

SPOTLIGHT CAPTIVES TRENDS

Strategies anticipate hard market; microcaptives' appeal growing; surplus lines tax treatment; Dodd-Frank makes some rethink domicile; BI rankings. **PAGE 9**

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LAST WEEK'S TOP STORIES
www.BusinessInsurance.com/BI10

1. Chartis no longer writing excess workers comp coverage
2. Doctors, lawyers charged in U.S. auto insurer fraud
3. Take steps to reduce losses from cyber risk: RMS panel
4. Berkshire identifies Buffett successor, not by name
5. Senate defeats amendment to overturn contraceptive rule
6. Goldman Sachs to acquire Ariel's insurance, reinsurance business
7. Gen Re, AIG retrial set for early 2013
8. Bundling knee replacement payments could save up to 10%
9. Calif. seeks to force review of Zurich comp agreements
10. Okla. bills would allow firms to opt out of state comp system

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Business Insurance (ISSN 0007-6864) Vol. 46, No. 10, 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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WORKERS COMPENSATION

Florida may cap prices on workers comp drugs

Successful effort could offer blueprint for additional states

By SHEENA HARRISON

Insurance and business advocates are hopeful that Florida legislators will pass a bill this week that would limit escalating prices for physician-dispensed medications in the state's workers compensation system.

House Bill 511 generally would cap workers comp drug pricing in Florida to a medication's average wholesale price set by the original manufacturer, plus a \$4.18 dispensing fee.

Boca Raton, Fla.-based NCCI

Holdings Inc. would ask Florida's Office of Insurance Regulation for an immediate 2.5% decrease in workers comp rates if the House bill is signed into law by Gov. Rick Scott, said Lori Lovgren, division executive-state relations for the ratings and research organization. The bill would take effect July 1, if approved.

Trey Gillespie, Austin, Texas-based senior workers compensation director for the Property Casualty Insurers Assn. of America, said the pending legislation could provide a framework for other states to tackle workers comp prescription costs.

"I think a lot of people are basically looking at Florida in terms of how the fight is playing out,"

DRUG COSTS

Florida lawmakers are considering two bills to limit drug repackaging costs related to workers compensation.

- **H.B. 511** would cap workers comp drug pricing to a drug's average wholesale price plus \$4.18.
- **S.B. 668** would require providers to issue a \$15 credit to insurers for prescriptions costing more than \$25.
- **BOTH BILLS** are aimed at reducing significantly marked-up prices for doctor-dispensed drugs.

Mr. Gillespie said.

Florida's bill would close a loophole that allows significantly

marked-up prices for physician-dispensed and repackaged drugs, Ms. Lovgren said.

Drug repackaging firms purchase and redistribute bulk medications from pharmaceutical manufacturers. Repackagers can assign a separate National Drug Code for such medications, and assign them with a new AWP that is higher than the average price set by the original manufacturer.

Those repackaged prescriptions are dispensed by physicians directly to patients and typically billed at higher rates than pharmacy-dispensed medications.

Markups for repackaged drugs such as carisoprodol, a muscle relaxant, and oxycodone-acetaminophen were more than 600% higher than prices for non-

repackaged drugs in 2009, according to a presentation last year by NCCI.

With Florida's legislative session set to end Friday, industry experts are hopeful the legislation will pass and help curb steeply rising prescription costs in Florida, said Ken Stoller, Washington-based senior counsel with the American Insurance Assn.

"Nobody's saying that physicians shouldn't dispense medications, just that they should dispense medications at the same price that they were dispensed at a pharmacy," he said.

Senate Bill 668, another bill that aims to limit drug repackaging costs, has been moving

See **DRUGS** page 18

CATASTROPHES

Losses mount as tornadoes hit several states

HARRISBURG, Ill.—A series of tornadoes ripped through several states last week, resulting in destruction and millions in insured losses from the first round of storms alone, according to one catastrophe risk modeler.

Preliminary storm reports indicated the Leap Day tornadoes caused damage across seven states, with significant damage reported in Harrisburg, Ill., and Branson, Mo., said Matthew Nielsen, model product manager at Newark, Calif.-based catastrophe modeler Risk Management Solutions Inc.

"This is an event where, from an insured perspective, (losses) will probably be at most in the tens to hundreds of millions," he said, though his estimate came before additional tornadoes caused more



A tornado in Harrisburg, Ill., damaged or destroyed more than 200 homes and 25 businesses.

AP PHOTO

damage last Friday afternoon.

In Harrisburg, where authorities said six of the 13 people killed were located, winds up to

180 mph damaged or destroyed 25 businesses and more than 200 homes, according to National Weather Service.

Other catastrophe modelers had not yet released estimates late last week.

—By Mike Tsikoudakis

RETIREMENT BENEFITS

Intel simplifies investment options in 401(k) plan

By ROBERT STEYER

Intel Corp. has reprogrammed investments in its \$5 billion 401(k) plan, cutting the number of options to 21 from 72 to reduce overlap and increase ease of choice.

The investment changes are part of a broad effort by the Santa Clara, Calif.-based company to increase participation and better align participant asset allocations with their ages and financial circumstances.

"The primary motivation is to improve outcomes and encourage employees to save enough," said Stuart Odell, assistant treasurer, retirement investments.

Plan officials, who have auto-enrolled new employees since 2007, offered automatic enrollment to 5,000 nonparticipating existing employees for the first time, and 3,000 have enrolled since January. The default is 3% of a participant's salary.

Next year, Intel will begin auto escalation, with an annual

increase of 1% up to a maximum 10% of a participant's salary.

The centerpiece of Intel's investment effort is a revised lineup that retains some options for employees with little or moderate comfort in investing, but also offers a greater choice to those who are more active investors.

Company officials eliminated 55 mutual funds and two commingled trusts in a mutual fund window. That window was replaced by a self-directed broker

option that offers 4,500 mutual funds and exchange-traded funds.

The cuts were made "to give participants a better experience" and reduce overlap in investment styles, said Tamiko Hutchinson, global retirement program office manager. "When confronted with a long list (of options), they didn't know where to start."

For the least experienced investors, Intel retained its cus-

See **INTEL** page 18

White paper: Managing your TPA

Using a third-party administrator for workers compensation programs doesn't mean handing off claims and case management work to someone else and moving on to other things.

Risk managers with successful self-insured programs for workers compensation benefits know that relationships with TPAs involve tough decisions and a lot of mutual effort. And taking a hands-on, collaborative approach to the TPA relationship can improve outcomes for the employer and its injured workers.

This white paper from *Business Insurance* explores the business case for taking a more hands-on approach to TPA relationships, as well as some of the best practices to ensure the success of those partnerships, including how to establish accountability and manage caseloads. In addition, the white paper offers perspectives on deciding whether to pay extra for some services—such as additional adjusters or nurse case managers—that might save money in the long run.

To read a sample and purchase the white paper, visit www.businessinsurance.com/whitepapers.

RISK MANAGEMENT SUMMIT

Minimizing risks of cyber activism

By MATT DUNNING

NEW YORK—It is understandable if risk managers and other corporate executives are not exactly sure what to make of the Internet activist group known as Anonymous, according to Christopher Soghoian, a graduate fellow at the Center for Applied Cyber Security Research in Washington.

While much of Anonymous' notoriety has been achieved through its efforts to thwart government-sponsored Internet censorship, oppression and other human rights violations—the group has been widely credited with a key role in the 2011 Arab Spring uprisings—the group also has made a frequent target of corporations it feels have acted against the public's interest, Mr. Soghoian said during a presentation at the third annual *Business Insurance* Risk Management Summit® in New York.

"Anonymous has engaged in a huge number of high-profile attacks that have been extremely embarrassing for many companies," Mr. Soghoian said. "These attacks are significantly impacting a lot of bottom lines, and for a company that is on the receiving end of one, it can seem like it came out of nowhere."

Unlike cyber criminals and government spies whose primary objectives in accessing protected corporate files are typically money and trade secrets, respectively, Mr. Soghoian said Anonymous' private-sector attacks are usually meant to disrupt business operations or publicly shame companies deemed to be infringing on Internet users' freedoms, including technological development.

In April 2011, Tokyo-based Sony Corp. reported that more than 100 million consumer accounts had been compromised in a series of attacks on its PlayStation Network servers, which were taken offline for nearly a month. Days after the attacks, Sony executives said evidence indicated that Anonymous had committed the hacks, supposedly in retaliation for the company's lawsuit against a New Jersey programmer who had published his hacks of its PlayStation 3 gaming console.

A statement posted in May 2011 on an Anonymous-affiliated blog declared that the group did not officially sanction or condone the attacks, but that individual members may have carried them out on their own.

Mr. Soghoian said the breaches—which reportedly cost Sony in excess of \$170 million—highlight the



MICHAEL MARCOTTE

Christopher Soghoian, a graduate fellow at the Center for Applied Cyber Security Research in Washington, explains how the Anonymous group works.

elusive nature of the organization and the devastating financial and reputational impact it can visit upon corporate entities.

"Not only did it cost the company about \$171 million, but the company's reputation was left in tatters," Mr. Soghoian said.

Conversely, Anonymous' January 2010 attempts to shut down PayPal, the online payment operation owned by eBay Inc.—along with the websites of MasterCard Inc. and Visa Inc. in retaliation for their cutting ties with WikiLeaks—were largely ineffective. The difference between those incidents and the

Sony episode, Mr. Soghoian said, comes down to the firms' respective levels of sophistication in breach prevention and response.

"An attack by Anonymous doesn't have to take down your entire firm, but it can if you have poor security," Mr. Soghoian said.

Companies concerned with becoming Anonymous' next target can take steps to minimize their

See **ANONYMOUS** page 21

MORE RMS:
Read more coverage of the 2012 Risk Management Summit® in next week's issue of *Business Insurance*.

Overcoming key challenges in global coverage programs

By RODD ZOLKOS

NEW YORK—Insurance is highly regulated around the world, but it also is regulated inconsistently, creating a significant challenge in crafting global insurance programs, a global insurance expert says.

Speaking last week at the annual *Business Insurance* Risk Management Summit®, Thomas A. Lawson, executive vp at Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global, said compliance with local insurance regulations can be a matter of perspective. Buyers, insurers and regulators each have their own view of what is compliant, he said.

"You can go from having a broad master policy and no local coverage to the opposite extreme, where you have all local policies and no master," Mr. Lawson said, speaking as part of an executive panel examining global expansion risks. The goal, he said, is to craft "the most compliant policy that works for you."

"You want to make sure you have the coverage you think you have when something bad happens," Mr. Lawson said.

In assembling a global insurance program, it's also essential to focus on contract certainty, Mr. Lawson said. "The loss always finds the hole in the policy."

Another panelist, Mary K. Cline, director, corporate advisory services at Eurasia

Group in Washington, said countries that offer the greatest economic growth for global companies also are likely to present challenges from an insurance and risk perspective.

"There are going to be challenges with high-growth areas," Ms. Cline said. Among them, she said, are the time it takes to start a business, the depth of available credit information, the strength of legal rights, the time it takes to enforce contracts, attitudes toward foreign investment, property rights, intellectual property rights, tax policy and capital movement.

Political risk, by and large, hasn't been incorporated into enterprise risk management and business models, Ms. Cline said. "The biggest kind of black swan right now and the one that everyone is looking at is a kind of political risk," she said.

Examining revenue risk per country vs. political risk per country can help a company identify its most significant exposures, Ms. Cline said.

In seeking success with international claims, the first step is to get the insurance coverage right at placement, said panelist Peter D. Laun, a partner at law firm Jones Day in Pittsburgh.

One thing that makes the biggest differences in international claims is differences between the nonadmitted

See **GLOBAL** page 20

HEALTH CARE REFORM

Guidance on health account contributions raises concerns

By JERRY GEISEL

WASHINGTON—Employers who contribute to employees' health savings accounts or health reimbursement arrangements may not get full credit for that amount when running a key "actuarial value" test that is part of the health care reform law, federal regulators said in a bulletin.

While the guidance issued last month by the Department of Health and Human Services initially would apply only to employers with 50 or fewer workers as well as to health plans offered to individuals, experts say it could well be extended to all employers.

Under that test that begins in

2014, plans must have an actuarial value of at least 60%. While regulators have yet to entirely define a formula to determine that actuarial value, in general, the value would be the percentage of expected costs for benefits covered by the plan.

For example, if the expected annual cost of individual health coverage offered under an employer's plan were \$10,000, and the employer covered \$7,000 and employees paid \$3,000 in deductibles, copayments and other cost-sharing requirements, the plan would have an actuarial value of 70% and would pass the 60% minimum actuarial value test.

If a plan were to fail the actuarial value test, employees with

incomes less than 400% of the federal poverty level would be eligible for premium subsidies to buy coverage in state insurance exchanges. If an eligible employee used the subsidy to buy coverage in an exchange, the employer would be liable for a \$3,000 penalty.

While benefit experts say most employer plans would easily pass the 60% actuarial test, certain very high-deductible plans—including plans where employers offset some of the costs employees are exposed to by making contributions to employees' HSAs—might fail the test. Under federal law, the maximum out-of-pocket employee expense, including deductibles, for CDHPs linked to HSAs this

year is \$6,050 for single coverage and \$12,100 for family coverage.

To partially offset those hefty cost-sharing requirements, 75% of employers offering CDHPs linked to HSAs make contributions to employees' CDHPs. The median contribution for employee-only coverage is \$500, according to a Mercer L.L.C. survey.

In its recent bulletin, HHS said it is considering excluding a "portion" of an employer's contribution to an HSA or HRA in calculating a plan's actuarial value. That is because, HHS said, only a "portion" of these accounts are used towards health in a given year.

However, experts disagree. "All employer contributions to

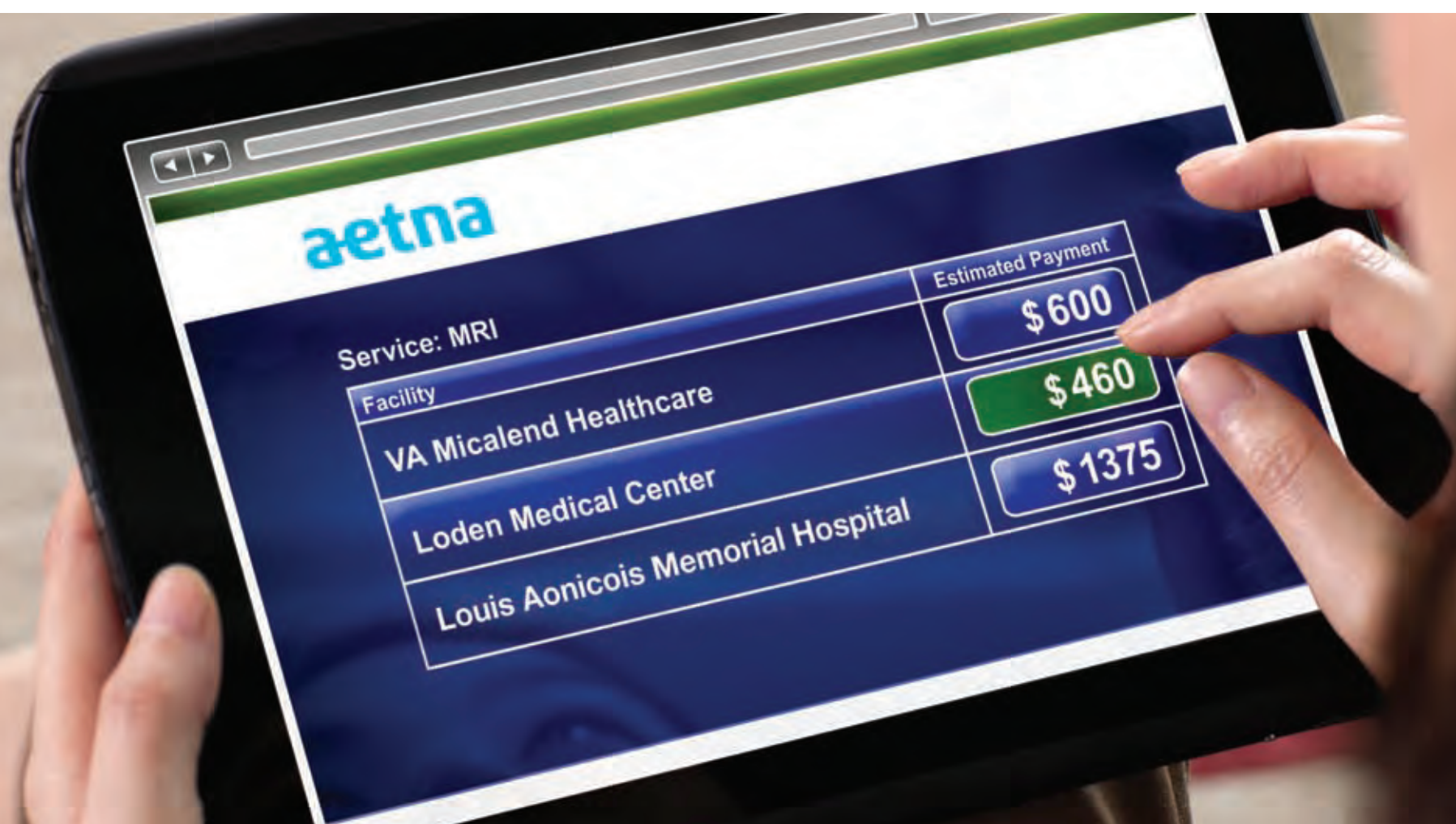
an HRA or HSA should count in the year of the contribution because they can all be spent that year," said Andy Anderson, a partner with Morgan, Lewis & Bockius L.L.P. in Chicago. "To do otherwise will put high-deductible plans at a competitive disadvantage in the marketplace."

And while the bulletin would apply only to employers with less than 50 employees and plans offered through state insurance exchanges to individuals, benefit experts say regulators may extend it to larger employers. They "are not saying this would only make sense for small employers," said Rich Stover, principal with Buck Consultants L.L.C. in Secaucus, N.J.

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Cyber bullying lawsuits test schools' legal reach

By JOANNE WOJCIK

A New Jersey teenager is suing her high school for \$1 million for failing to halt a "cyber bullying" campaign that she claims was carried out by fellow students and a parent over a three-year period.

The suit, filed Feb. 9 in New Jersey Superior Court in Sussex County, is seeking an additional \$1 million in damages from those other students and the parent.

Some legal experts say the suit against High Point Regional High School, located in Morganville, N.J., is part of a larger trend—partly spurred by the passage of state laws requiring school districts to adopt and implement anti-bullying policies and procedures—in which many parents are taking schools to court for allegedly ignoring bullying.

Nearly every U.S. state and jurisdiction, including New Jersey, has enacted such legislation. In recent years, they have been amending those statutes to include cyber bullying, defined as the use of electronic media by students to embarrass, harass or threaten another person. Cyber bullying can be perpetrated using computers, cellphones and other electronic devices. Studies estimate that

20% to 35% of children and adolescents experience cyber bullying.

But some sources suggest that litigation alleging school negligence for failing to stop such bullying may be getting more attention because of the growing use of social media.

"We've always had bullying suits, so I wouldn't say we're seeing any more of them," said Steve Fast, executive director of the Colorado School Districts Self-Insurance Pool in Centennial, Colo. "But awareness that has been built around social media makes it feel like those are on the rise. It's a new twist on an old exposure."

Still, the availability of social media to schoolyard bullies increases schools' exposure to such litigation, legal experts say. In the past, schools only had to worry about physical acts occurring on school property. Today's bullies are tormenting their victims "virtually," sitting somewhere off campus, perhaps even in their own homes.

"It's part of what the Internet is doing to risk," said Bob Jackson, senior vp and information security officer at Sedgwick Claims Management Services Inc. in

Memphis, Tenn. "Cyber bullying is part of the Facebook explosion."

In fact, a group of key education organizations including the National School Boards Assn. and the American Assn. of School Administrators filed a brief asking the U.S. Supreme Court to review a case that would have provided guidance on whether schools can regulate student online speech that originates away from school.

The brief notes that school leaders "have no clear, cohesive body of law to guide their regulation of student online speech originating off campus that disrupts, or reasonably could be forecasted to disrupt, the school environment, or interferes with the rights of others."

However, the high court on Jan. 17 denied certiorari of *Blue Mountain School District vs. Terry Snyder* and *Hermitage School District vs. Justin Layshock*, two cases that were on appeal from the 3rd U.S. Circuit Court of Appeals in Philadelphia that had found online harassment was outside of the scope of schools' authority.

The court declined to take up a third case on appeal from the 4th Circuit in Richmond, Va., *Kowalski vs. Berkeley County Schools*, that had found schools could intervene if the activity interferes with the rights of students to be safe and receive an education.

"Social networking has fundamentally changed the nature of communication in our society

STEPS TO AVERT CYBER BULLYING

Proactive measures school administrators can take to prevent cyber bullying

- Develop clear rules and policies to prohibit the use of school technologies to bully others.
- Educate students and staff members about what types of behavior constitute cyber bullying and how the school district's policies apply to them.
- Provide adequate supervision and monitoring of student use of technology.
- Establish systems for reporting cyber bullying or misuse of technology.
- Establish effective responses to reports of cyber bullying.

and radically altered how students interact with their peers and the school community," said Anne L. Bryant, NSBA's executive director, in a statement. "Schools need national precedent to inform them of their ability, if any, to regulate off-campus speech."

In her suit, the New Jersey student claims that when she reported the harassment to school authorities, providing copies of the Facebook postings to the dean of students, she was told that "nothing could be done."

High Point Regional High School Superintendent John Hannum declined to comment on the pending litigation but said the school has "a very proactive and comprehensive anti-bullying pro-

gram" that "has led to the identification and investigation of 34 reports of concern." He said that "in every case, action has been taken until it is reported by the students involved that the situation in question was resolved in a way that they no longer feel any threat or discomfort with their school environment."

In reviewing the New Jersey suit, Nancy Willard, director of the Eugene, Ore.-based Center for Safe and Responsible Internet Use, said "it is possible that the school district's failure to respond in this case was linked in part to the fact that some of the harassment was occurring on Facebook."

"In the eyes of many educational leaders, this is very confusing. And it might have been resolved had the courts taken up these three cases. There is a question about their authority to respond to student off-campus speech," said Ms. Willard.

"It's a liability issue. It's not simply about having a policy in place. You have to do something about it," said Tom Strasburger, vp at Cincinnati-based PublicSchoolWORKS, a provider of student violence prevention programs and a member of the Atlanta-based Public School Risk Institute's Bullying Prevention Coalition.

"I would anticipate a fair amount of litigation" if schools don't address allegations of cyber bullying, said Timothy Wedeen, a partner at the Englewood, N.J.-based law firm Wedeen & Kavanagh, who represents the New Jersey student. "It was the failure of the system to follow the law and offer assistance. My client alleges she's being tormented online, on the phone, at home. It was pervasive, and really nothing was done to address it."

Schools have some authority to curb cyber bullying of students

By JOANNE WOJCIK

While schools must be careful to respect students' First Amendment rights to free speech, they still have some leverage for addressing cyber bullying, especially if the attacks occur on campus, experts say.

Even in situations involving off-site use of electronic devices, schools may have some authority over student cyber bullying activity if it disrupts or has the potential to disrupt the educational environment, they say.

While nearly every U.S. state has enacted legislation requiring schools to establish bullying prevention and intervention programs, nearly 40 states have amended those statutes to also include cyber bullying, according to the Jupiter, Fla.-based Cyber Bullying Research Center.

Cyber bullying is defined as the use of computers, cell phones or other electronic devices by students to embarrass, harass or threaten another person.

There are several proactive steps that school administrators can take to prevent cyber bullying, according to Patti Agatston, a licensed professional counselor with the Prevention Intervention Center, a student assistance program that serves more than 100 schools in the Cobb County School District near Atlanta, and co-author of "Cyber Bullying: Bullying in the Digital Age."

Among them are:

- Develop clear rules and policies to prohibit the use of school technologies to bully others.
- Educate students and staff members

about what types of behavior constitute cyber bullying and how the school district's policies apply to them.

- Provide adequate supervision and monitoring of student use of technology.
- Establish systems for reporting cyber bullying or misuse of technology.
- Establish effective responses to reports of cyber bullying.

"I would investigate what exposures I might be inviting by leaving computer labs open for nonstructured activity," said Bob Jackson, senior vp and information security officer at Sedgwick Claims Management Services Inc. in Memphis, Tenn. "For instance, do we permit computer labs or publicly available areas to be available for checking Facebook status? Maybe that use expos-

es you to more liability than you feel comfortable with."

Ellen Kelty, a psychologist with Denver Public Schools, also recommends that schools implement programs that promote a positive culture so students feel comfortable about reporting incidents of cyber bullying confidentially without fear of reprisal or being ignored.

"A lot of it is teaching kids that they need to tell an adult. It's similar to suicide prevention. You have to break the code of silence," she said, adding that "there should always be investigation and intervention at the school level."

"Don't assume that this is a normal part of child development. It's not OK, and we need to do something about it," Ms. Kelty said.

Cyber Liability

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As more organizations become aware of their cyber risk exposure, the need to better manage these risks and protect systems from hackers is a growing concern.

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Opinions

EDITORIAL

Industry awaits word from FIO

THE FEDERAL INSURANCE OFFICE'S report on insurance regulatory modernization was supposed to be delivered to Congress weeks ago. We wish the report had been released sooner rather than later, but we're not troubled by the fact that the document hasn't been issued yet.

That's because the FIO report should be one of the more significant documents regarding the state of insurance regulation prepared in recent times. It will, after all, be the first report of its kind written by the federal agency specifically charged with crafting a federal approach to insurance.

We realize that the report is highly unlikely to recommend any sort of federal regulation of insurance beyond the highly circumscribed powers granted the FIO by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

FIO Director Mike McRaith has said more than once that the agency isn't out to regulate insurance. As much as we would prefer regulatory reforms such as an optional federal charter for insurers and brokers, we take him at his word and accept it. The appetite for sweeping regulatory reform simply doesn't exist now in Washington, particularly in a presidential election year.

But we believe that even as an agency devoted to advising the government on insurance rather than regulating insurance, the FIO has a unique role to play. The upcoming report will go a long way toward indicating what that role will be.

We believe the FIO can serve as a bully pulpit for reform even if it does little, if any, regulating itself. It can recommend continuing modernization of state insurance regulation as well as provide the United States with a strong voice in international insurance regulatory affairs.

The report will reflect the FIO's consideration of more than 100 comments made to the agency about regulatory modernization and other issues the FIO is charged with examining. While we obviously don't know what sort of recommendations will be made, we have no reason to doubt that many of them will be sound ones that will more than justify the slight delay.

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

Cash-balance plans had promise

It was nearly 27 years ago—in August 1985—when I first heard the term “cash balance pension plans.”

I had been in New York attending a conference. When the conference was over, I crossed over the George Washington Bridge to go to Fort Lee, N.J., to meet with several executives at Kwasha Lipton, then a major employee benefits consulting firm.

The Kwasha Lipton executives I met with were very eager to discuss a new pension plan design. They called the design “cash balance,” so named because employees' benefits would be expressed, like in 401(k) plans, as a cash lump-sum benefit.

Candidly put, I did not understand the design by the time our meeting came to an end. But the discussion continued when Mike Bullard, then Kwasha Lipton's communications director, gave me a ride back to Washington, where I worked and lived.

I still remember—all these years later—that as we were crossing into Delaware, the proverbial light went on and I understood how cash balance plans truly combined the best features of defined benefit and defined contribution plans.

I was very eager to do a story on the new design and didn't have long to wait. A Kwasha Lipton client—Bank of America Corp.—was the first major employer to set up a plan and agreed to be interviewed.

This all came back to me the other week when Bank of America disclosed that it was freezing its cash balance plan and, like other employers, enhancing its 401(k) plan.

Bank of America certainly is not the first employer to freeze a cash balance plan or, for that matter, other defined benefit plans.

But as it was such an enthusiastic pioneer of the plan, I couldn't help but think: Is there really much of a future for defined benefit plans?

My own hunch is not much, leaving me bitter about the plans' demise. I'm bitter because of the many unfair stories written about cash balance plans. I'm also bitter because of how federal regulators dragged their feet in issuing guidance to clear up various cash balance plan issues, triggering a wave

of litigation by the plaintiffs bar due to the regulatory vacuum.

Even today, regulators have not resolved all the issues, though they certainly have had enough time to do so.

The slanted stories and regulatory foot-dragging may not have stopped employers like Bank of America from freezing their plans and others from starting new ones. But it certainly didn't help.

Contact: jgeisel@businessinsurance.com



**JERRY
GEISEL**
EDITOR-AT-LARGE

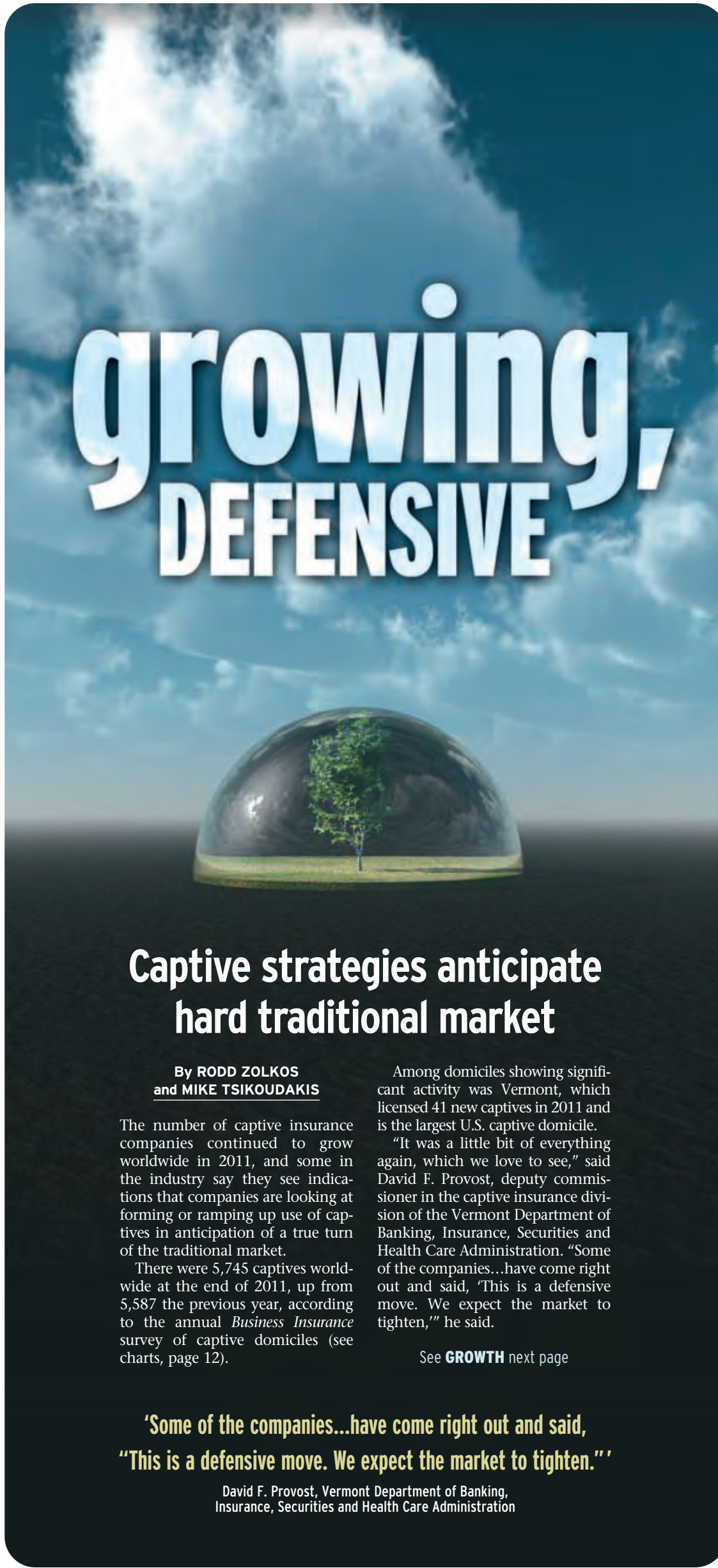
COUNTING CAPTIVES

Ranked by number of captives as of year-end 2011

DOMICILE	2011	2010
Bermuda	862	845
Cayman Islands	707	705
Vermont	590	572
Guernsey	343	341
Barbados	270	242
Anguilla	268	252
Luxembourg	242	244
Utah	239	188
British Virgin Islands	174	219
Hawaii	172	167 ¹
South Carolina	159	155
District of Columbia	157	139
Delaware	150	95
Nevis	147	108
Kentucky	137	127
Isle of Man	133	141
Nevada	127	124
Dublin	101	82
Arizona	97	96
Turks & Caicos Islands	95 ²	211 ²
Montana	83	67
Singapore	60	60
New York	50	47
Sweden	49	49
Switzerland	35	35
Labuan	34	34
British Columbia	31	29
New Zealand	24	24
Missouri	19	11
Alabama	18	10
Gibraltar	16 ³	17 ³
Denmark	16	15 ¹
Georgia	13	15
Netherlands Antilles	12 ⁴	13 ⁴
Malta	11	11
Bahamas	11 ⁵	16
Panama	10	7
Vanuatu	9	11
Norway	9	11
U.S. Virgin Islands	8	7
Micronesia	8	3
Finland	7	8
Michigan	5	4
Colorado	5	5
Tennessee	4	2
South Dakota	4	1
Jersey	4	3
Puerto Rico	3	7
New Jersey	3	0
Guam	3	3
Maine	2	1
Hong Kong	2	2
Dubai	2	1
West Virginia	1	1
Oklahoma	1 ⁴	1
Kansas	1	1
Illinois	1	1
Arkansas	1	1

¹ Restated. ² Excludes credit life insurers. ³ Pure captives only. ⁴ BI estimate. ⁵ Preliminary results.

Source: BI survey
 Researched by Kevin Edison



Captive strategies anticipate hard traditional market

By **RODD ZOLKOS**
 and **MIKE TSIKOUdakis**

The number of captive insurance companies continued to grow worldwide in 2011, and some in the industry say they see indications that companies are looking at forming or ramping up use of captives in anticipation of a true turn of the traditional market.

There were 5,745 captives worldwide at the end of 2011, up from 5,587 the previous year, according to the annual *Business Insurance* survey of captive domiciles (see charts, page 12).

Among domiciles showing significant activity was Vermont, which licensed 41 new captives in 2011 and is the largest U.S. captive domicile.

"It was a little bit of everything again, which we love to see," said David F. Provost, deputy commissioner in the captive insurance division of the Vermont Department of Banking, Insurance, Securities and Health Care Administration. "Some of the companies...have come right out and said, 'This is a defensive move. We expect the market to tighten,'" he said.

See **GROWTH** next page

'Some of the companies...have come right out and said, "This is a defensive move. We expect the market to tighten."'

David F. Provost, Vermont Department of Banking, Insurance, Securities and Health Care Administration

Captives Trends

SPOTLIGHT

BI RANKING OF CAPTIVE MANAGERS, TOP DOMICILES
 PAGE 12

MICROCAPTIVES' APPEAL GROWING FOR SMALLER FIRMS
 PAGE 13

WILL CAPTIVES GET SURPLUS LINES TAX TREATMENT?
 PAGE 14

DODD-FRANK MAKES CAPTIVES RETHINK CHOICE OF DOMICILE
 PAGE 15

Captives waiting to see how Europe's Solvency II will affect them

Captive parents and others in the industry are waiting to find out how the European Union's Solvency II directive will affect them.

While finalization of the sweeping rules has not yet happened, E.U.-based captives need to be on the path to implementation, said Sarah Goddard, Dublin-based CEO of the Dublin International Insurance & Management Assn. Ltd.

In general, the European

Commission, Parliament and the architects of Solvency II are looking specifically at how the directive will apply to captive business despite the fact that many E.U. member states do not host captive operations, "and some have appeared to be resistant to incorporating the captive model into an overall market view," Ms. Goddard said.

Under the directive, captives overall will face drastic regulato-

ry changes that will take into account the totality of risks an entity faces.

"For some captives, this will mean a massive change in their operations and functions, though the risk management direction of Solvency II should mean there is a natural appreciation between the aims of the parent company in using a captive and the aims of the new regime," Ms. Goddard said, noting that captives may feel a con-

straint in resources when putting their Solvency II program in place.

"Even so, I personally believe that once the new structures have been put in place, they will give captive owners an even deeper understanding of their business; and once these structures have become embedded, they will see significant benefits," she said.

—By Rodd Zolkos and Mike Tsikoudakis

Growth: 2011 saw increases

CONTINUED FROM PREVIOUS PAGE

With 590 captives at year-end 2011, Vermont ranked as the world's third-largest domicile, behind Bermuda with 862 captives and the Cayman Islands with 707.

Rounding out the top five were Guernsey with 343 captives and Barbados with 270.

"Particularly in the group (captive) area, we're seeing studies or groups that have been thinking about it for a long time," said Brady Young, president and CEO of Strategic Risk Solutions Inc. in Concord, Mass.

"I think where you're seeing market pressure is more in the middle markets," such companies see group captives as an alternative to a changing traditional market, Mr. Young said. While "interest in primary casualty captives has been pretty slow, that seems to be changing," he said.

Ross Elliot, captive insurance director in the Utah Department of Insurance in Salt Lake City, said thus far he has not seen signs of a firming insurance market definitively resulting in an increase in captive formations.

"We're hearing some of those rumblings that the market is hardening, but we're not seeing any formations as a result," Mr. Elliot said.

"I'm hearing that the market is hardening, but I think there's something of a lag in the reaction to that," said George W. Sumner III, deputy commissioner and captive insurance administrator in the insurance division of the Hawaii Department of Commerce and Consumer Affairs. He said many companies may have to face actual premium increases before they look into forming a captive.

Hawaii licensed 10 captives in 2011 across a range of businesses, ending the year with 172. With three or four nearing licensing, "it's kind of a normal pipeline right now," Mr. Sumner said. "The pulse is pretty much the same as it was a year ago."

Steve Matthews, captive insurance coordinator for the state of Montana in Helena, also said captive growth as a result of hardening insurance prices has yet to occur.

While his company's use of its Guernsey-domiciled captive is "quiet" at the moment, with usage limited to automobile liability, Richard E. Rabs, vp for claims and risk management at Veolia Transportation Inc. in Lombard, Ill., said that could change if the traditional market hardening expands.

If "things start tightening up around our other areas, perhaps there will be incentive then to expand the role of the captive,"

Continued on next page

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CONTINUED FROM PREVIOUS PAGE

Mr. Rabs said. Many domiciles—particularly well-established ones—continued to dissolve captives in 2011, often after parent companies merged. The pace of such captive cleanup efforts appeared to slow in 2011, however.

“That’s primarily because of mergers,” said Mr. Sumner. Other dissolutions resulted from parent companies or groups falling victim to the economic downturn, he said. “The mortgage industry’s been hit, the construction industry, that’s part of it. Nothing out of the ordinary—other than it’s a bad economy.”

Mr. Provost said Vermont recently had a rare example of the reverse of the captive dissolution trend fueled by mergers and acquisitions.

“One of the companies that we licensed was a spinoff from a company that had a captive here,” Mr. Provost said.

Those in the captive industry see several areas potentially fueling captive formations. Utah’s Mr. Elliot said the federal health care reform law may affect captive formations as employers seek alternative ways to fund their health benefits programs.

‘I’m hearing that the market is hardening, but I think there’s something of a lag in the reaction to that.’

George W. Sumner III,
Hawaii Department of Commerce
and Consumer Affairs

“I’m curious about what’s going to happen with health care—how much that is going to impact captives and how many captives may be formed as a result of that,” he said.

“Our largest growth in number of captives (in 2011) was in health care-related captives,” such as nursing homes, hospitals, and other organizations with medical malpractice and professional liability risks for physicians, Mr. Elliot said.

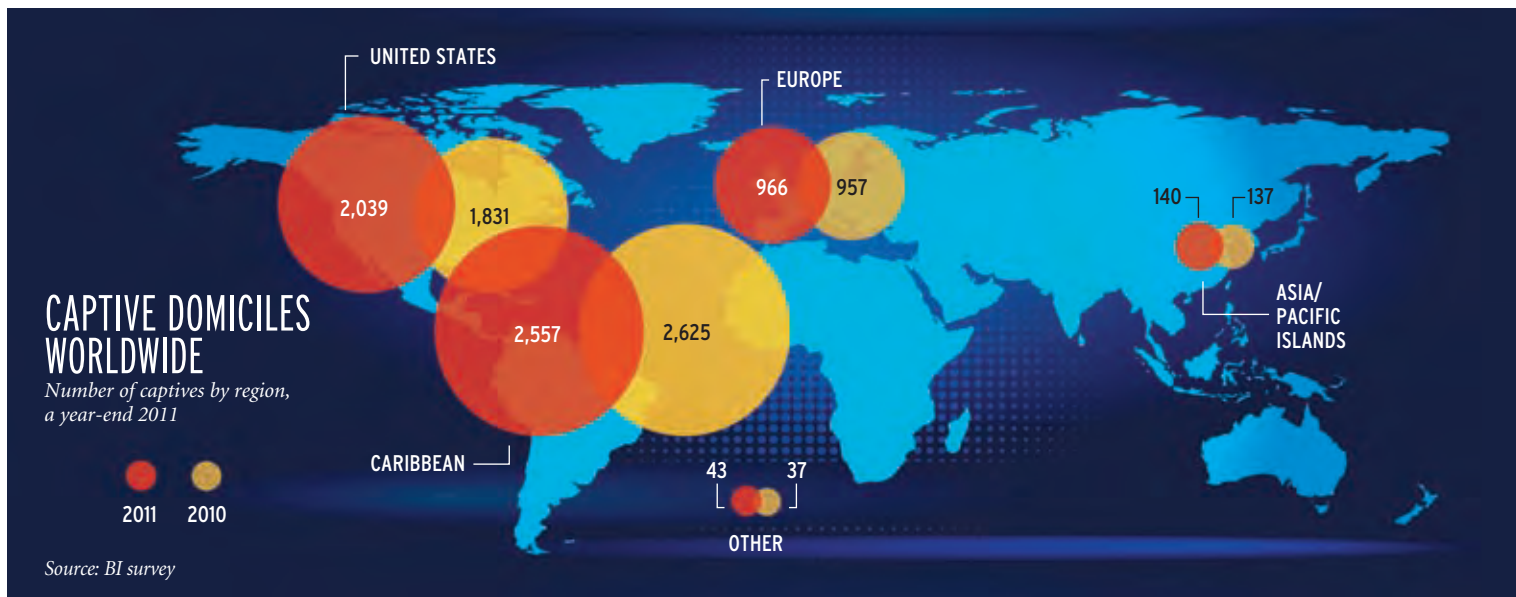
Hawaii’s Mr. Sumner sees recent disasters in Asia driving captive interest.

“Supply chain coverage—that would probably be a big one,” Mr. Sumner said, particularly for technology firms in Thailand.

In the European Union, captive parents and others in the industry continue to anticipate the impact of the Solvency II regulatory regime.

Offshore, SRS manages captives in both Bermuda and the Cayman Islands, and Mr. Young said his company sees continued interest in captive formations in those domiciles.

“Net growth is not great,” he said. “But we still have steady new formations. We’re forming new captives in both domiciles.”



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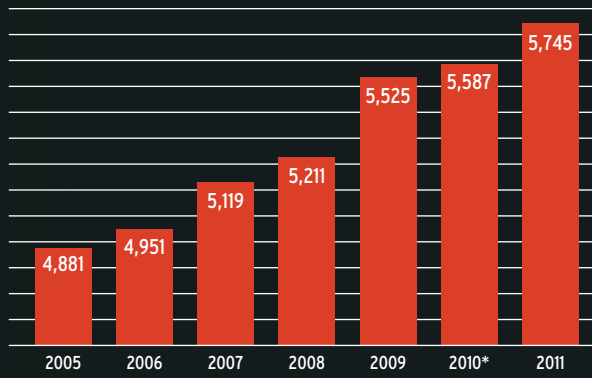
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DATA snapshot

CAPTIVE MANAGEMENT

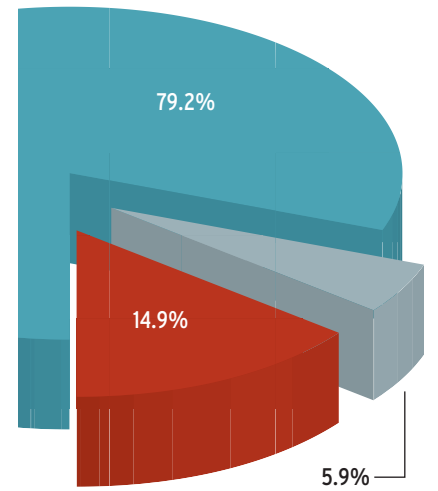
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TOTAL CAPTIVES WORLDWIDE



*Restated

TYPE OF CAPTIVES MANAGED*



- 3,814** Single parent/group
- 286** Protected cell companies
- 716** Captives electing to operate under Section 831(b) of Internal Revenue Code

*Companies listed in BI Captive Managers directory

TOP 10 CAPTIVE MANAGERS

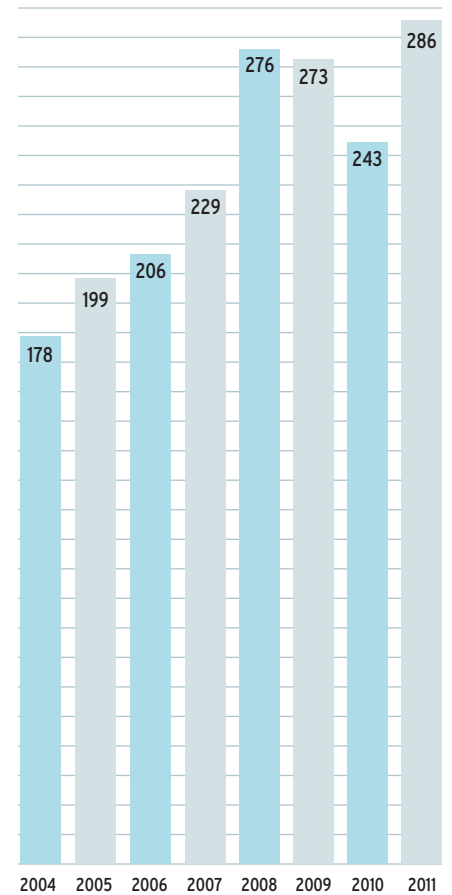
Ranked by captives managed worldwide in 2011*

RANK	Company/address	Phone/website	2011 total captives	2011 captive premium volume	Domiciles	Captives formed in 2011	Total staff	Principal officers
1	Marsh Captive Solutions 1166 Ave. of the Americas, 39th Floor New York, N.Y. 10036	212-345-7769 www.marshcaptive.com	1,231	\$38,217,301,722	36	N/A	450	Jill Husbands, Julie Boucher, Ian Clancy, managing directors
2	Aon Captive & Insurance Management St. George Court, Upper Church St., Third Floor Douglas, 1M1 1EE Isle of Man	44-1624-692-400 www.aon.com	1,192	\$20,953,256,846	28	47	498	Peter Mullen, CEO
3	Willis Global Captive Management The Willis Building, 13th floor, 51 Lime St. London, EC3M 7DQ England	44-203-124-6000 www.willis.com	323	N/A	28	22	159	Tom Coughlin, CEO
4	Kane Group Ltd. Natwest House, Third Floor, Le Truchot St. Peter Port, GY1 1WD Guernsey	44-1481-717-803 www.kane-group.com	233 ¹	N/A	11	N/A	110 ¹	Clive James, group chief operating officer
5	USA Risk Group P.O. Box 306 Montpelier, Vt. 05601	800-872-7475 www.usarisk.com	202	\$2,373,049,711	19	12	67	Gary Osborne, president
6	Strategic Risk Solutions 2352 Main St. Concord, Mass. 01742	781-487-9800 www.strategicrisks.com	141	\$1,903,000,000	11	12	48	Brady Young, president
7	Alta Holdings L.L.C. 2010 Main St., Suite 650 Irvine, Calif. 92614-7492	949-269-1400 www.altaholdings.com	110	\$500,000,000	10	N/A	18	Bruce Molnar, CEO
8	R&Q Quest Management F.B. Perry Building, 40 Church St., P.O. Box HM 2062 Hamilton, HM HX Bermuda	441-295-2185 www.rqih.com	101	N/A	10	4	44	Nicholas M. Frost, president
9	Beecher Carlson Insurance Services L.L.C. 8390 E. Crescent Parkway, Suite 200 Denver, Colo. 80111	303-996-5408 www.beecher-carlson.com	84	\$3,555,468,000	11	5	29	Jason Flaxbeard, senior managing director
10	Chartis Insurance Management Services 30 Main St., Suite 330 Burlington, Vt. 05401	802-658-9405 www.chartisinsurance.com	78	\$1,060,482,328	15	2	42	Robert Gagliardi, senior vp/ worldwide director

*Captives electing to operate under Section 831(b) of Internal Revenue Code are not included. 1 BI estimate. N/A=not available.

PROTECTED CELL COMPANIES

Number of protected cell companies worldwide



LARGEST U.S. CAPTIVE DOMICILES

Ranked by number of captives year-end 2011

	2011	2010
1 VERMONT	590	572
2 UTAH	239	188
3 HAWAII	172	167 ¹
4 SOUTH CAROLINA	159	155
5 DISTRICT OF COLUMBIA	157	139

1 Restated

LARGEST EUROPEAN DOMICILES

Ranked by number of captives year-end 2011

	2011	2010
1 GUERNSEY	343	341
2 LUXEMBOURG	242	244
3 ISLE OF MAN	133	141
4 DUBLIN	101	82
5 SWEDEN	49	49

Source: BI survey. Researched by Kevin Edison

Microcaptives gaining popularity with smaller firms

Potential misuse of tax incentive raises regulatory concerns

By MIKE TSIKOUKAKIS

More midsize and small companies are tapping alternative risk transfer mechanisms and creating 831(b) captive formations.

Also known as microcaptives, the formal name refers to Internal Revenue Code Section 831(b), which allows insurance companies with less than \$1.2 million in annual premiums to elect to have their federal taxes based only on their investment income.

Experts say middle-market and small companies' better understanding of risk and how to transfer that risk has driven much of the growth of microcaptives during the past year.

"A lot (of smaller companies) are recognizing what were previously unknown risks or unappreciated risks. People are recognizing that those things that 'will never happen' sometimes do happen," said Charles J. Lavelle, partner and chair of the federal tax team and its insurance industry team for law firm Bingham Greenebaum Doll L.L.P. in Louisville, Ky.

Alternative risk transfer also is becoming much more mainstream, he said, noting that middle-market companies are attuned to states that are introducing attractive captive legislation and have greater awareness of captive structures through captive service providers (see chart).

As more captives have formed in general, "the exposure to the captive structures has gone down into the middle-market companies," said Ross Elliot, captive insurance director at the Utah Department of Insurance in Salt Lake City. "They're now beginning to see the advantages to them of formalizing their risk management and putting it into in a captive facility."

Of the 69 captives Utah licensed in 2011, Mr. Elliot said 75% were microcaptives based on their premium volume.

Another factor driving microcaptive growth is more knowledgeable captive service providers, experts say.

Property/casualty agents and brokers have become knowledgeable and can recommend captive solutions for hard-to-place risks for middle-market companies, said Karl Huish, senior vp at Artex Risk Solutions Inc. in Mesa, Ariz.

"We also see referrals and introductions made by other trusted advisers," such as certified public accountants, attorneys and other financial advisers, he said. "These other professional advisers are becoming more knowledgeable about captives; and as they become more knowledgeable, they're bringing that up to their clients."

Rob Walling, principal and consulting actuary at Pinnacle Actuarial Resources Inc. in Bloomington, Ill., said captive managers, agents and brokers have done a good job of bringing captives to the forefront for smaller companies that are savvy enough to go into a microcaptive but might not be in a position to go in to a single-parent captive program.

Pinnacle works with microcaptives by looking at exposures and determining loss probability and capital levels needed for the captive.

"As the market is more educated, the insured becomes more educated," Mr. Walling said. "Those middle-market insureds are really feeling a lot of economic strain right now, so anything they could do to control their insurance costs better is better for the business' overall survival."

Taking advantage?

While microcaptive growth may reflect sound risk management, some in the industry fear that some companies are taking advantage of the favorable tax treatment rather than insuring viable risk, which could lead to regulatory scrutiny.

The tax incentive is not necessarily driving the formation, but it does help make a small insurance captive program work, said Kirk D. Mooneyham, managing director of captive management services at Wilmington Trust Co. in Greenwood Village, Colo.

When prospective microcaptive owners talk about setting up their programs, tax incentives are not the first thing mentioned, Mr. Mooneyham said.

"It's about how does the captive work. That's not saying that there aren't people out there that are setting them up to take that advantage, either," he noted.

But if a microcaptive is used solely for tax purposes that have little to do with transferring risk, Pinnacle's Mr. Walling said microcaptives may face regulatory scrutiny in the future.

"831(b) is very intentionally and specifically intended for insurance purposes," Mr. Walling

LARGEST MANAGERS OF 831(b) CAPTIVES

Managers of captives electing to operate under Section 831(b) of Internal Revenue Code*

COMPANY	CAPTIVES
Active Captive Management	181
Artex Risk Solutions Inc.	167
AMS Insurance Management Services Ltd.	92
Atlas Insurance Management	50
USA Risk Group	43
Marsh Captive Solutions	38
Alta Holdings L.L.C.	30
Risk Management Advisors Inc.	26
Strategic Risk Solutions	16
Willis Global Captive Management	16

*An 831(b) captive is defined as a captive formed under Internal Revenue Code Section 831(b), which allows a captive to be taxed only on its investment income if it writes \$1.2 million or less in premiums on an annual basis.

Source: BI survey

said. "I think the worst of what we're seeing right now is 831(b)s that are...surely wealth-management mechanisms that have very little true insurance risk to them, and there is a very real risk presented by those types of programs" in terms of regulatory scrutiny, he said.

State insurance regulators are looking closely at microcaptives to make sure companies set up their programs for nontax business rea-

sons to transfer risks and fund insurance risk, experts say.

Montana, which licensed 24 captives in 2011, views microcaptives as insurance companies.

"We look at them as insurance vehicles and we want them to have an insurance purpose," said Steve Matthews, captive insurance coordinator for the state of Montana in Helena. "If they get a tax advantage out of them, that's an extra that goes with it."

Montana licensed about 15 microcaptives in 2011, and approximately 35 to 40 microcaptives operate in the state, Mr. Matthews said.

"Favorable tax treatment—we do not like to see that in mind initially," Utah's Mr. Elliot said.

Even so, the tax advantages are a key piece in forming the program and must be considered, he said. "It's just too large of an elephant in the room to ignore."



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Will captives face surplus lines taxes?

States' interpretation of NRRRA could spur domiciliary moves

By **DAVE LENCKUS**

While several factors prompt captive insurance owners to redomicile their facilities, surplus lines regulations in the Dodd-Frank Wall Street Reform and Consumer Protection Act eventually could drive that activity inappropriately, captive experts warn.

There is no central repository of data on how often captives redomicile, but captive owners have not been moving their facilities in droves in recent years, observers say.

"I see (redomiciling) as slow and steady. Not too much has changed," said John Lochner, a director at Towers Watson & Co. in Simsbury, Conn.

Nancy Gray, regional managing

director-Americas with Aon Global Insurance Managers in Burlington, Vt., said 2011 was a slightly more active year.

David Provost, deputy commissioner of captive insurance for Vermont, the largest U.S. captive domicile, said there has been a slight increase in activity in recent years, but "no great wave of movement."

As more states have become captive domiciles, however, captive owners have greater ability to relocate their facilities in their home states or nearby, cutting travel costs, experts say.

Nashville, Tenn.-based hospital chain HCA Corp., for example, acted quickly when it had that opportunity, said Joe Haase, vp of risk and insurance at HCA.

When Tennessee modernized its captive insurance law last year to bring it in line with other U.S. domiciles, the change appealed to HCA, which owns a Colorado-domiciled captive. Because of the

premium tax savings HCA will realize, as well as the proximity of Tennessee regulators, HCA moved a workers compensation program to a new Tennessee-based captive, Park View Insurance Co., said Mr. Haase, who also is president of the captive.

Redomiciling "goes in cycles" and legislation can drive that activity, Ms. Gray said.

For example, mid-1980s tax code changes and the 2002 Sarbanes-Oxley Act prompted many U.S. owners of offshore captives to redomicile stateside, she said.

But observers are concerned that the biggest influence on where companies domicile their captives could be the U.S. surplus lines simplification law—the Non-admitted and Reinsurance Reform Act that Congress rolled into Dodd-Frank.

Under the NRRRA, only the home state of a company that purchases state-approved nonadmitted insurance through a surplus lines broker may collect taxes on the insurance premium. It also gives sole premium-taxing authority to the home state of a company that eschews a surplus lines broker and state-approved nonadmitted insurers and, instead, independently procures insurance from unapproved nonadmitted insurers.

The problem for captive owners is the NRRRA does not explicitly exclude captives from its definition of nonadmitted insurers (see story, page 15). So experts are concerned that some states' insurance regulators will conclude that the law gives them the authority to tax captives as surplus lines insurers if the facilities are domiciled elsewhere.

"The way around it is to have

captives based in the same state where the parent company is headquartered," which could trigger significant redomiciling activity, said Jason Flaxbeard, incoming secretary/treasurer of the Captive Insurance Cos. Assn. and senior managing director for Beecher Carlson Insurance Services L.L.C. in Denver.

CAPTIVE REFLECTIONS

Factors to consider when redomiciling a captive from one state to another

- Savings on tax payments for admitted vs. nonadmitted insurance
- Costs of operating in a domicile
- Domicile's insurance regulations
- Domicile's commitment to the captive industry
- Why the original domicile was selected in the first place
- Costs of traveling to domicile

Some states with new or modified captives laws—particularly Missouri, New Jersey and Tennessee—have reputations as domiciles that likely will rely on the NRRRA to either impose nonadmitted insurance taxes on captive owners or encourage redomiciling.

Missouri insurance regulators consider captives that are owned by resident companies yet domiciled elsewhere as nonadmitted insurers, a Missouri Department of Insurance spokesman said.

New Jersey regulators have not decided how they will interpret the law, a New Jersey Department of Banking and Insurance spokesman said.

Tennessee Captive Director Michael A. Corbett said his state does not consider captives to be surplus lines insurers. But, he said, "the dust has not settled" on whether Tennessee will treat captive insurance as independently procured insurance if the captive is domiciled outside of Tennessee.

Mr. Haase said the Tennessee Department of Commerce and Insurance has not pressured HCA to redomicile its Colorado captive. Indeed, HCA pressured Tennessee's regulators to accelerate the approval of HCA's new captive so it could open as soon as the domicile's modified captive law allowed, he said.

In a white paper posted on CICA's website, www.cicaworld.com, attorneys with Washington-based law firm McIntyre & Lemon P.L.L.C. said the NRRRA "raises a question of whether captive insurance could be covered" by a literal reading of the law. But the brief concludes that the NRRRA does not apply to captives, based on the intent of the law's drafters and industry supporters, as well as the law's language when read in context.

Vermont's Mr. Provost agreed with that analysis, but he also said "some captive owners have always been subject to self-procurement taxes" depending on a state's law.

The Vermont Captive Insurance Assn. is examining whether to seek congressional clarification that the NRRRA does not apply to captives.

VCIA President Richard Smith said the group also has to be careful about "unintended consequences" of any clarification.

The next-best alternative is to educate captive owners about the issue, he said.



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Business Insurance
INSIGHTS TODAY FOR THE RISKS OF TOMORROW

Factors to weigh in choosing a domicile

The pros and cons of redomiciling a captive are measured not only in dollars and cents but also in relationships gained and lost, captive experts say.

Considering legal, accounting and license application fees, a captive owner can expect to spend \$15,000 to \$25,000 to redomicile in the United States.

"I don't think it's significant in the grand scheme of things," said John Lochner, a director at Towers Watson & Co. in Simsbury, Conn.

When departing a domicile, captive owners do not face any costs "except paying their taxes before they're gone," said David Provost, deputy commissioner of captive insurance for Vermont.

If a captive redomiciles to the headquarters state of its parent company, the parent could realize significant savings by paying taxes on admitted insurance rather than on nonadmitted or independently procured insurance, Mr. Lochner said.

The parent also might be able to dispense with a separate legal team for the captive and

use its existing legal department, said Jason Flaxbeard, senior managing director for Beecher Carlson Insurance Services L.L.C. in Denver.

The cost of traveling—such as attending captive board meetings—also would be reduced, Mr. Flaxbeard said.

Captive owners should analyze their current and potential domiciles' long-term commitment to the captive industry, "which has wavered in some domiciles over the years," Mr. Lochner said.

Given the factors involved in changing domiciles, an early step would be to analyze why the captive owner originally selected its facility's current domicile, Mr. Lochner said.

Other factors include the cost of operating in a domicile, its insurance regulations and its commitment to the captive industry.

While there are some costs to move a captive's domicile, Vermont's Mr. Provost sees no drawbacks.

"It's the kind of thing where a company ought to look to see that they're in the place they should be," he said.

—By Dave Lenckus

States' reaction to Dodd-Frank adds uncertainty for captives

By **RODD ZOLKOS**

Confusion persists over a federal law that was intended to apply to surplus lines insurance business but has been interpreted by some to apply to captive insurance company premium taxes.

At issue is whether the Nonadmitted and Reinsurance Reform Act, enacted in 2010 as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, applies to captive insurance—and more specifically whether the NRRA's nonadmitted insurance provisions allow home states of captive parents to apply premium taxes to captives domiciled elsewhere.

While the NRRA was intended to apply to surplus lines insurance, according to those who crafted it, it doesn't specifically exclude captive insurance, which has allowed cash-strapped states seeking extra revenue—or those looking to drive captives of home-state companies domiciled elsewhere to redomicile to within their borders—to look to apply the law to captive premium taxes.

The issue is seen as a potentially significant one for states such as Vermont and Hawaii that are home to numerous captives whose parent companies are based elsewhere.

"Everything is happening and nothing is happening," said Charles J. Lavelle, chair of the federal tax and insurance industry teams at Bingham Greenebaum Doll L.L.P. in Louisville, Ky. "I think everybody's taking different positions. Those that were involved in the legislation will say that it was never meant to apply to captives, but there's not a specific exclusion."

David F. Provost, deputy commissioner in the Captive Insurance Division of the Vermont Department of Banking, Insurance, Securities and Health Care Administration, said confusion has been one of the most significant results of the NRRA thus far.

"Confusion's probably the biggest one," Mr. Provost said. "We have seen a couple of companies move." In those cases, the captives were doing most of their business in their parent company's home state and decided to redomicile there, "especially if the home state was a good captive domicile," he said.

In some cases, he's seen companies "decide to form a captive in their home state and cede everything to Vermont," Mr. Provost said.

"We certainly haven't seen a mass exodus to home states, but there have been a few," he said. "And, of course, there are some companies where they're too big for it to matter."

George W. Sumner III, deputy commissioner and captive insurance administrator in the Insurance Division of the Hawaii Department

of Commerce and Consumer Affairs, said the NRRA issue is "still up in the air, and that could really affect captives because of the premium tax" issue.

While it's taken no action, Hawaii is considering the NRRA's potential impact, he said, and officials are brainstorming potential alternatives such as whether the domicile might replace captive premium taxes with an annual fee if the NRRA ultimately is held to

apply to captive premium taxes.

The Hawaii captive operation is funded through premium taxes, along with sources such as fees and licensing charges, Mr. Sumner said. Losing a portion of the premium tax revenue if home states are allowed to claim it could have an impact on the state's captive regulatory operation, he said.

But, he said, the state likely would not have to make a move for several years. "We're flexible

enough and have a surplus, so it wouldn't be something that would affect us right away," Mr. Sumner said. "We wouldn't be in a panic mode."

In October, the Vermont Captive Insurance Assn. released a white paper by Washington law firm McIntyre & Lemon P.L.L.C. that concluded that the NRRA never was meant to apply to captive insurance. The Captive Insurance Cos. Assn. and the National Risk Retention Assn. agreed with the white paper's findings.

Robert H. Myers Jr., managing partner of the Washington office and co-chair of the insurance and reinsurance practice at Morris, Manning & Martin L.L.P., noted that adding to the confusion over

the NRRA is the varying approaches states are taking to the issue.

"The states are adopting different laws," Mr. Myers said. "There is a possibility—at least some discussion—about trying to blend the laws together so it becomes a uniform whole."

He noted that the issue was scheduled to be discussed at the National Assn. of Insurance Commissioners meeting that runs through the early part of this week.

There are no efforts to clarify the law at the federal level, he said.

Mr. Lavelle noted there are competing plans for compacts that would provide a mechanism to share premium taxes among states. Meanwhile, "some states would keep all the money," he said.

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Market Moves

Credicorp Ltd. acquires stake in Willis Peru

LIMA, Peru—Grupo Credito S.A., a subsidiary of financial services firm Credicorp Ltd., has acquired 49.9% of the shares of Willis Peru.

Willis Europe B.V., a unit of Willis Group Holdings P.L.C., said in a statement that Willis Peru also has agreed to offer affinity insurance services to affiliates of Credicorp.

Financial terms of the deal were not disclosed.

Carlos Miguel Vidal Buckley has been named CEO of Willis Peru, subject to regulatory approval.

Jaime Herrera, the CEO since 2005, has been named nonexecutive president of the brokerage.

"This transaction makes excellent commercial sense for Willis and Credicorp," Sarah Turvill, chair of Willis International, said in a statement. "We maintain our independence as a broker and enter a strategic relationship with Peru's top financial services holding company to provide broking and affinity services to Credicorp's customers."

Aon FPE launches security consulting

CHICAGO—Aon Fire Protection Engineering Corp., a unit of Aon Corp., has launched a security consulting practice.

The program offers consultation and individualized security design services, which include benchmarking, risk and security

assessments, targeted workplace violence assessments, organizational reviews, security systems design and force protection planning.

"Security consulting is a logical extension of our core services of fire protection, life safety and building code consulting," Mark Rochholz, chief operating officer of Chicago-based Aon FPE, said in a statement.

"As security has become an ever-growing concern for many organizations over the past decade and they continue to face countless internal and external threats, the timing is right to expand our investment in this area," he said.

Sean A. Ahrens has been named global leader in charge of the practice. Previously, he was security project manager at Aon FPE.

Ironshore opens Boston P/C center

BOSTON—Ironshore Inc. has opened a property/casualty production center in Boston dedicated to the wholesale market.

The Hamilton, Bermuda-based insurer said in a statement that the center will serve the eastern U.S., including New England, New York, Atlanta and the Mid-Atlantic region.

It will complement Ironshore's Risk Agency, a St. Louis-based unit of Ironshore Insurance Services L.L.C. that will continue to service the wholesale insurance market in the central and western portions of the country.

Steven J. England, executive vp of Ironshore Insurance Services L.L.C., will oversee Ironshore's wholesale distribution platform nationwide and be responsible for the Boston and St. Louis centers.

Timothy White has been named manager of the Boston property team, and Michael Sharis will assume responsibilities for Boston casualty lines, the company said.

The company said Rick Wood will head the St. Louis casualty business unit, while Joseph Pisoni will manage the St. Louis property business unit.

Joseph Palumbo will continue to serve as senior vp and agency executive, responsible for development and execution of property/casualty strategic growth within the U.S.

Last month, Ironshore Inc. announced Bermuda-based Ironshore Insurance Ltd. has been designated the insurer's center for energy to consolidate all new property energy underwriting in one location.

The center is located at 75 Federal St., Boston, Mass. 02110. For more information, contact Mr. Sharis at 617-391-6556 or michael.sharis@ironshore.com.

Burns & Wilcox opens Tenn. office

NASHVILLE, Tenn.—Burns & Wilcox Ltd. has opened its first office in Tennessee.

The unit of H.W. Kaufman Financial Group is trying to expand its presence in the U.S. South, the brokerage said in a statement.

Barbara Carter, vp and manager of the Birmingham, Ala., office, will run the branch.

The office is located at 414 Union St., Suite 902, Nashville, Tenn. 37219. The phone number is 800-888-1179.

UP COMINGS & GOINGS CLOSE



JULIENE CONWAY

NEW JOB TITLE: Novato, Calif.-based chief marketing officer for Fireman's Fund Insurance Co.

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Gen Re: Retrial of finite fraud case set for next year

CONTINUED FROM PAGE 1

into the transaction emerged and the stock declined.

Last August, however, the 2nd U.S. Circuit Court of Appeals said Judge Christopher Droney erred in allowing prosecutors to use a line graph tracing AIG's stock price, which the three-judge panel said was prejudicial, and overturned the conviction.

"The defendants appeal on a variety of grounds, some in common and others specific to each defendant, ranging from evidentiary challenges to serious allega-

tions of widespread prosecutorial misconduct," Chief Judge Dennis Jacobs wrote for the appeals court. "Most of the arguments are without merit, but the defendants' convictions must be vacated because the district court abused its discretion by admitting the stock-price data."

Attorneys for the defendants and representatives of the U.S. attorney's office either declined comment or could not be reached for comment.

Lawrence A. Hamermesh, Ruby R. Vale professor of corporate and business law at Widener Universi-

ty's School of Law in Wilmington, Del., said the government will have to rely on evidence other than AIG's stock price during a retrial to convince jurors of the harm resulting from the deal.

"I assume the retrial will have a more limited showing of materiality," Mr. Hamermesh said. "The prosecution won't have the stock price chart to wave at the jury" during a retrial.

Philip Hilder, an attorney at Hilder & Associates P.C., a Houston law firm representing corporate defendants, said that while he does not expect the government

to follow the same playbook as the first trial, prosecutors are limited to the evidence that was introduced in the first trial.

"The government case can't vary too much," Mr. Hilder said. "A retrial is a distinct advantage to the defense because they've already seen the weaknesses in the (prosecution's) case."

Another potential disadvantage for the prosecution is that defense attorneys can exploit the fading memories of witnesses to undermine their credibility, which Mr. Hilder said makes the outcome of a retrial uncertain.



AP PHOTO
Defendants in the case include former Gen Re chief executive Ronald E. Ferguson.



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Intel: Revamp of 401(k) plan boosts age-appropriate allocations to 70%

CONTINUED FROM PAGE 3

tom target-date series. Intel has offered this option through a commingled trust since 2004, although "the glide path and underlying manager lineup have changed since the funds were first introduced," Mr. Odell said.

Originally, Intel used index funds for its target-date series. Now, the target-date series is a mix of active and passive.

About 25% of target-date assets are now in hedge funds, and 5% in commodities.

Another 3%—contained in the fixed-income component of the target-date series—is a combination of Treasury inflation-protected securities, emerging markets debt, high-yield bonds and bank loans.

Intel officials also made some changes in its core options.

Under the old system, Intel offered commingled trusts, stable value, global bonds, large- and small-cap domestic equities, and international equities.

Those options remain, as does a balanced commingled trust. In addition, Intel moved seven mutual funds from the discontinued mutual fund window to the core options menu—a Standard & Poor's 500 index fund and six actively managed funds.

This month, Intel expanded the core by adding a money market mutual fund and four

indexed commingled trusts.

Intel retained its company stock fund and the requirement that a participant may not invest more than 20% of his or her account balance in employer stock.

The company began using

'Hedge funds certainly have good risk-adjusted return characteristics that we found to be compelling for increasing portfolio diversification and taking down portfolio volatility.'

Stuart Odell, Intel Corp.

hedge funds in its target-date series in April 2010, with a 10% allocation that has since been expanded to 25%.

"Hedge funds certainly have good risk-adjusted return characteristics that we found to be compelling for increasing portfolio diversification and taking down portfolio volatility," Mr.

Odell said.

Intel's \$4.9 billion profit sharing plan, known as the retirement contribution plan, has invested in hedge funds since 2007.

That helped in "getting management comfortable" with adding hedge funds to the target-date series, Mr. Odell said.

"We were already doing it, so it is relatively straightforward to put hedge funds into target-date funds," he said. "We didn't have to create a new hedge fund portfolio."

Intel's planning for the changes began in 2009, based on company research that revealed some unsettling facts about participant behavior. Only 35% had asset allocations appropriate to their ages, said Ms. Hutchinson, adding that 20% of employees didn't participate at all.

"We looked at whether their individual asset allocation coincided with what a professional would have recommended for their age and risk tolerance," Mr. Odell said.

Intel officials also tried to determine if participants had rebalanced their portfolios or whether they stayed "the same for 20 years," Mr. Odell said. "Most participants don't rebalance systematically."

The changes were announced through a massive education campaign.

"It was a big job," Ms. Hutchinson said. "We had to reach people with multiple types of sophistication," ranging from office workers to factory workers.

Intel shared its investment behavior research with employees.

It also mailed a customized "total retirement statement" to each employee, describing their investments, telling them if they were "on track" for a successful retirement and showing how improving their savings rate could affect their retirement.

Senior corporate managers visited factory floors at several sites to preach the message of retirement plan savings, including talking to workers at midnight shifts, said Mr. Odell. "We didn't want re-enrollment to be a surprise," he said. "Many participants made changes before re-enrollment."

Employees who didn't make a specific election were defaulted into a target-date fund based on their age and assumed retirement date, Ms. Hutchinson said.

More than 70% of participants now have age-appropriate allocations, Ms. Hutchinson said. About 15% increased their 401(k) plan deferrals.

Also, 8% of nonparticipants have enrolled.

In addition, investments in the target-date series jumped to more than 50% of total plan assets from approximately 10%, she said.

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

Drugs: Bills would limit markups

CONTINUED FROM PAGE 3

simultaneously through the Florida Senate. However, the bill would not limit drug prices to the original manufacturer's average wholesale price. Instead, the Senate bill would require providers to issue a \$15 credit to insurers for each repackaged or relabeled prescription that costs more than \$25.

A version of the bill approved by a Senate subcommittee last month also would require Florida's Office of Insurance Regulation to cut workers comp rates by 2.5%.

It includes a separate possible 2.5% rate reduction, based on a review of whether repackaged drug costs accounted for 2.5% of last year's workers comp rate filing.

NCCI estimates the Senate bill would result in a 1.4% increase in Florida workers comp system costs if passed, partly because it would not cap average wholesale pricing, Ms. Lovgren said.

The Florida Chamber of Commerce is optimistic that state legislators will move forward with one of the drug repackaging bills before the legislative session expires, a spokeswoman said. The House bill would save Florida employers \$62 million in workers comp costs per year, according to the Tallahassee, Fla.-based organization.

"We look forward to seeing how the House progresses with their bill, and also continue to watch and see where things may go with this issue in the Senate," she said.

Physician-dispensed prescriptions represented 28% of all workers comp prescription costs in 2009, up from 23% in 2008 and 19% in 2007, according to an August report from NCCI.

In a separate report, NCCI noted that Florida had the highest rate of physician dispensing nationwide in 2009, with 36% of workers comp drug costs in the state coming from physician-repackaged prescriptions.

Additional efforts to curb drug pricing in Florida have fallen through in recent years. Former Florida Gov. Charlie Crist vetoed a bill in 2010 that would have limited prices for repackaged prescription drugs, and a similar Senate bill died in a budget committee last year.

PCI's Mr. Gillespie said insurance industry advocates are keeping their fingers crossed that Florida can move forward this year with repackaging price limits.

"From a public policy standpoint, there's no question about what the right thing is to do in order to control costs in workers compensation and to provide a reasonable profit to the health care provider," he said.

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Business Insurance

Alien: High court could increase corporate liability

CONTINUED FROM PAGE 1

government, appealed to the Supreme Court and had the backing of the Obama administration, which filed an amicus brief supporting her position that corporations should be subject to the 1789 law.

"Courts may recognize corporate liability in actions under the ATS as a matter of federal common law," Solicitor General Donald B. Verrilli Jr. wrote in the government's brief. "The text and history of the AFS itself provide no basis for distinguishing between natural and juridical persons. Corporations have been subject to suit for centuries, and the concept of corporate liability is a well-settled part of our 'legal culture.'"

In its brief supporting Royal Dutch, the U.S. Chamber of Commerce viewed the matter differently.

Robin S. Conrad, executive vp of the National Chamber Litigation Center Inc., which handles litigation for the chamber, wrote that the chamber agrees with Royal Dutch that "corporate ATS liability for the offense alleged here does not comport with customary international law. But even if the question were close, the 'practical consequences' of such a regime would counsel against its adoption."

Practical consequences, the chamber argued, include ATS-based suits against corporations that are "often based on nothing more than allegations" that the companies did business in countries where human rights abuses occur; that ATS suits hurt not only corporations but the countries in which they do business as well; and that ATS liability can hurt the U.S. domestic economy by discouraging foreign investment.

Observers say the high court's decision could significantly affect corporate liability for U.S. companies.

"I think it is a significant moment," said Paul Regan, associate professor of law at Widener University School of Law in Wilmington, Del., who attended the oral arguments. "The Alien Tort Statute has been a source of litigation in other settings, but the big question has always been, 'Can you use it against corporate defendants?'"

"American businesses that are involved in operations around the

'American businesses that are involved in operations around the world have this open question: Are we somehow exposed to claims based on human rights violations by local governments or military figures?'

Paul Regan, Widener University School of Law

world have this open question: Are we somehow exposed to claims based on human rights violations by local governments or military figures? It's a risk management issue in terms of operations and compliance with your own poli-

cies," he said. "With the uncertainty being if our own policies aren't followed, is it not just a business problem but a legal liability issue as well?"

Richard Samp, chief counsel of the Washington Legal Foundation,

noted that even if Royal Dutch prevails, individual corporate officers still could be sued for alleged complicity in human rights abuses. But he said plaintiffs' aim in such cases is not so much to go after officers as to "highlight conditions in Third World countries and try to shame businesses to pull out of those countries."

"The allegations are of the most heinous crimes," said Anne Cohen, a partner in the New York office of Debevoise & Plimpton L.L.P., who wrote a brief supporting Royal Dutch on behalf of the Product Liability Advisory Council Inc. "I think companies take this very seri-

ously. Even if they are dismissed or even if they are eventually won, they are very expensive to defend" and damage companies' reputations, she said.

During oral arguments last week, Supreme Court Associate Justice Samuel Alito asked, "What business does a case like that have in the courts of the United States?" But before the plaintiffs attorney could respond, Justice Alito said, "There's no connection to United States whatsoever."

Justice Alito added that when the law was enacted, there appeared to be a consensus that that it was meant to prevent international tension. However, "this kind of a lawsuit only creates international tension," he said.

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Anonymous: Risk of cyber activism can be addressed

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vulnerability to the group's activities, Mr. Soghoian said. In the first place, firms should exercise caution when considering legal action against developers who publish hacks and workarounds to their proprietary software.

"Make sure your efforts are focused on engineering and not legal retaliation," Mr. Soghoian said.

"Everyone has a right to build software that protects your business model, but people in the technological community don't like it when you use lawyers to enforce that protection. You gain nothing by threatening someone."

Mr. Soghoian also advised companies to account for the personal reputations of executives, noting that the group also has been known to publish compromising photos and messages mined from personal social media and email accounts in its efforts to shame a corporation.

Companies also should consider whether any of its operations, policies and business rela-



MICHAEL MARCOTTE

Attendees at the third annual Business Insurance Risk Management Summit® held last week in New York learned from a variety of speakers about how to mitigate risks involving global expansion, cyber risk, supply chain issues and more.

tionships directly or indirectly contribute to activities that could be construed as censorship, surveillance or other violations of individual rights.

"If you're in doubt, talk to your in-house

Internet cultural experts in your IT department," Mr. Soghoian said.

"Technologists know intrinsically how the Internet will react to your activities. You all employ these people, so use them."

Understand local markets to address risks

By **RODD ZOLKOS**

NEW YORK—There are different ways a global company can cover exposures around the world, but it needs to understand the various local markets in which it operates and how its business and products affect those markets to effectively manage its risks, the risk manager of a major global business said last week.

Speaking at *Business Insurance's* annual Risk Management Summit® in New York, Jorge D. Luzzi, group risk management director of Pirelli & C. S.p.A. in Milan, said: "To build a global program, we need to try to understand what happens on a global basis."

"If you want to do business all over the world, you need to open your brain to what goes on in the countries where you go," Mr. Luzzi said in delivering a case study during a session on "Risk of Global Expansion."

In assessing a company's approach to exposures in various countries, it must consider local factors such as values, customs, how locals manage obligations, whether they're flexible, language and religion, Mr. Luzzi said.

A company also needs to understand local legislative factors, human factors, geographical issues, political risk, the impact of the company's products on the area, the company's image in the area and the local insurance market. "You need to understand what you sell to the rest of the world. That is very important," said Mr. Luzzi, who also is the president of FERMA, the European risk management association.

The Pirelli risk manager said risks that companies must consider vary by region. In the United States, for example, those risks include terrorism, hurricanes and tornadoes.

Elsewhere, drug-related crime has caused terrorism and kidnapping risks to increase in Mexico, Mr. Luzzi said. Terrorism also is a risk in Colombia, while political risk issues come into play in countries such as Argentina, Bolivia, Peru and Venezuela.

Among risks companies must consider in

Europe are the current economic issues in Spain, Italy, Portugal and Greece, as well as the potential impact on Germany of the economic crises in other European Union countries.

The Middle East and Africa is "a very complicated part of the world," Mr. Luzzi said. "My company works in that part of the world, too. We have a huge factory in Egypt." The Arab Spring uprising last year against the administration of former Egyptian President Hosni Mubarak tested his company's business continuity plan, Mr. Luzzi said.

Among the risks in Asia is Japan's efforts to find a new approach to nuclear power since the Fukushima nuclear plant crisis, he said.

Mr. Luzzi said there are various approaches to covering global exposures.

In a global program, he said, the worldwide risk is covered by primary policies in each country in which the company does business. Then, an umbrella or master policy above those policies covers differences in conditions or differences in limits.

In a pooling approach, the coverage is different in each country, but the company takes a worldwide approach with mutuality for the entire group.

Meanwhile, with a global policy approach, a single policy covers a risk worldwide.

Mr. Luzzi said that while a company with a global insurance program has different policies in each country, it must make sure the overall master policy doesn't cause problems with local regulators who believe too much coverage is being placed in the master, allowing the company to avoid local premium taxes.

With global exposures, "the most important thing is you need to be present," Mr. Luzzi said, at least in the most important markets and following catastrophic claims. "A business contingency plan is very important."

"To approach the world, you need to know yourself, know your company," Mr. Luzzi said. "But also you have to have the curiosity to try to know others."

Global: Challenges of coverage

CONTINUED FROM PAGE 4

global master insurer and local insurers, Mr. Laun said. Local experience is the key in many coverage situations, he said.

Even if a loss is addressed in the global master policy, if it's a loss not typically covered by local insurers in the country, a local insurer might say "We don't pay that," he said.

Choice of forum and choice of law in resolving disputes also can be critical elements of policies, Mr. Laun said. "If you get a claim dispute, where do you end up in court?"

In assembling a claims team to address a foreign loss, the proper team structure likely is a case-by-case decision. "I've gone with all-U.S. teams and I've gone with all-local teams, and I've gone with hybrids," Mr. Laun said. "And the answer is not always clear."

"You never know what you're going to run into with international claims," he said. So before a company begins to structure a claim, it's important to determine coverage details, identify any potential potholes, and structure the claim and the company's approach accordingly.

Unusual claims always present challenges in international programs, Mr. Laun said. "One of the things I've found to be the hardest in claims over the years is that the nontraditional claim makes for some head scratching."

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Obese: Obesity problem weighs on workers comp

CONTINUED FROM PAGE 1

the risk of co-morbid conditions that include hypertension, diabetes, stroke, coronary heart disease and cancer.

Co-morbid conditions complicate workers comp cases and make it difficult for treating physicians to help workers attain maximum medical improvement or permanent-and-stationary status, several sources said.

Obesity-related complications in workers comp claims are becoming more common, some workers comp managers say.

Doctors may recommend weight-loss programs or even gastric bypass surgery for such patients, which also can prolong the case, said Laurie Ogsaen, workers compensation manager for Evergreen International Aviation Inc. in McMinnville, Ore. Then, workers compensation payers may be on the hook for the bypass surgery as well as related medical complications or adverse reactions, she said.

"It just opens up a whole can of worms," said Ms. Ogsaen, who noted that she is seeing obesity-related claims "creeping in more and more" across the 38 states where Evergreen operates.

In one such case, for example, a worker weighing more than 300 pounds sprained an ankle. Even though he was in his mid-20s, the worker's treatment dragged on for seven months without reaching maximum medical improvement, despite physical therapy and light-duty jobs.

"I was reading over the doctor's notes, and the first thing that jumped out at me was that the doctor indicated after seven months that, in his opinion, this employee's ankle would not get better and he would not become maximum medical unless he lost a significant amount of weight," Ms. Ogsaen said. "As soon as (the doctor) mentioned weight I said, 'Oh no.'"

Ultimately, the claimant agreed to settle the claim, perhaps to avoid a weight loss program.

Obesity is an ongoing workers comp issue and can add costs to a claim, said William Zachry, vp-risk management at Safeway Inc.

DEFINING 'OBESITY,' 'OVERWEIGHT'

According to the Centers for Disease Control and Prevention, "overweight" and "obesity" are labels for ranges of weight greater than the weight generally considered healthy for a given height.

The terms also identify ranges of weight shown to increase the likelihood of certain diseases and health problems.

For adults, overweight and obesity ranges are determined by using weight and height to calculate a number called the "body mass index."

An adult with a BMI between 25 and 29.9 is overweight, while one with a BMI of 30 or higher is obese.

Workers compensation claims where obesity is a factor are 2.8 times more expensive than nonobese claims after 12 months of maturity, but the cost difference climbs to a factor of 4.5 after three-year maturity and to 5.3 after five years, according to a Boca Raton, Fla.-based NCCI Holdings Inc. report, "Reserving in the Age of Obesity."

—By Roberto Cenicerros

in Pleasanton, Calif. He cited the example of knee replacement surgeries that otherwise may not be necessary.

Research has documented some of the ways obesity adversely affects workers comp claims.

A 2007 landmark Duke University analysis, for example, found that obese workers filed twice the number of workers comp claims as their counterparts. Their medical costs were seven times higher and they missed 13 times more days of work due to their injuries than did employees who were not obese.

In late 2010, Boca Raton, Fla.-based NCCI Holdings Inc. also released research (see box) that found "the range of medical treatments and costs, as well as duration, typically is greater" for

obese workers than those who are not obese with similar injuries.

Treatments that tend to be primary cost drivers in claims where obesity is a factor include complex surgery, physical therapy and drugs, NCCI found.

Additionally, NCCI found that "there is greater risk that injuries will create permanent disabilities if the injured worker is obese."

About 28% of claims handled by Sedgwick Claims Management Services Inc. involve workers who are overweight or obese, said Teresa Bartlett, the third-party administrator's medical director in Troy, Mich.

"But then when we look at the top six most expensive claims—that (includes) musculoskeletal, fractures, strains and sprains—46% of those claimants are obese, so (they account for) the highest cost," Ms. Bartlett said.

Such cases present an additional challenge for workers comp managers because the longer an injured worker is away from the job, the greater risk they will "decondition" and gain additional weight, making it even harder to help them return to work, several sources said.

According to workers comp claim experts, there also is the risk of increased mental health problems and challenging claimant behaviors, such as drug abuse, when claimants are obese, sources added.

For example, when a client asked him to evaluate their claim files on injured workers suffering from chronic pain—which often is treated with prescription pain drugs—Michael J. Shor said he noticed a high percentage of the claimants had body mass indices indicating they were obese.

Then looking through medical literature, the managing director of Best Doctors Occupational Health Institute in Boston said there was some correlation between obesity and chronic pain.

And injured workers' social fears, due to their body image, can complicate efforts to help them through exercise programs that can aid in reducing their weight, said Julie A. Fortune, senior vp and chief claims officer for Arrowpoint Capital in Charlotte, N.C.

"They may be extremely uncomfortable" participating in an exercise program, Ms. Fortune said. "It's also a challenge for the doctor to put together an appropriate treatment plan and for the claimant."

inBrief

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Goldman and Ariel announced. The acquired business will become part of Goldman Sachs Reinsurance Group under the brand name Ariel Re. The acquired operations will be combined with Goldman's existing business underwritten through Lloyd's syndicate 1910. The transaction, terms of which were not disclosed, is expected to close on April 1, subject to regulatory approval.

U.S. attorney subpoenas Penn State records

Federal authorities have subpoenaed Pennsylvania State University seeking information about payments by trustees to Penn State, or to third parties on behalf of Penn State, in connection with child sexual abuse allegations against former assistant football coach Gerald A. Sandusky. The Feb. 2 subpoena also requests documentation about the reporting requirements of employees and staff relating to misconduct allegations by the staff or individuals associated with Penn State.

Large corporate pension funding improves

Aided by a strong equities market, the funding levels of large corporate pension plans improved in February but still are significantly below levels of just a few months ago, according to an analysis by Mercer L.L.C. The average funding level of pension plans sponsored by companies in the S&P 1500 improved to 79% as of Feb. 29, up from 78% as of Jan. 31 and 75% as of Dec. 31, 2011.

Employers boosting wellness incentives

Employers are boosting the values of incentives they offer employees to encourage them to take action to improve their health, according to a new survey. The National Business Group on Health and Fidelity Investments survey found that just under 73% of employers used incentives in 2011 as part of their health improvement programs. The average incentive

value was \$460, up from \$430 in 2010 and \$260 in 2009.

Calif. seeks review of Zurich agreements

California's Department of Insurance is seeking to force Zurich Financial Services Ltd. units to cease issuing workers compensation "large-deductible agreements" that have not been properly reviewed. The California Insurance Code requires insurers to submit workers comp policy forms and endorsements to the state Department of Insurance and to the Workers' Compensation Insurance Rating Bureau of California for legal review before they are issued to policyholders. However, Zurich American Insurance Co. and Zurich American Insurance Co. of Illinois may have evaded such a review, the insurance department said in announcing that it had begun an administrative enforcement action.

GM pension plan underfunding rises

General Motors Co.'s U.S. pension plan obligations grew faster in 2011 than its plan assets as low interest rates inflated the value of plan liabilities. In its annual 10-K report, GM disclosed that the value of promised benefits jumped to \$108.6 billion at the end of 2011, up from \$103.4 billion at year-end 2010. U.S. pension plan assets increased to \$94.3 billion, up from \$91.0 billion a year earlier. With liability growth outpacing asset values, plan underfunding rose to more than \$14.2 billion at year-end 2011, up from \$12.4 billion a year earlier. To reduce liability growth, GM will completely freeze defined benefit plans covering salaried employees, effective Oct. 1.

Kodak looks to cut retiree health care

Financially troubled Eastman Kodak Co., looking to cut benefit costs as it reorganizes under bankruptcy protection, is seeking to terminate health care coverage for about 16,000 participants in its retiree health care program. In a filing with the U.S. Bankruptcy Court for the Southern District of New York, Kodak said it wants to drop coverage for employees who retired on or after Oct. 1, 1991, and are eligible for Medicare. By eliminating the coverage, Kodak will save \$20.5 million in annual cash costs and a balance sheet liability of \$223 million, the company said in its bankruptcy filing.



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Man dips a toe into litigation

A New York man filed a lawsuit against the manufacturer of a spinach artichoke dip and the store he bought it from after allegedly ingesting an unidentified animal body part.

Andrew Brodsky last week sued Sabra Dipping Co. L.L.C. and Fairway East 86th Street L.L.C. for negligence and strict liability, among other allegations, claiming that while consuming Sabra's dip that he purchased from Fairway, he found some kind of animal toe with the nail still attached, according to court documents.

Mr. Brodsky said he "was caused to sustain severe and permanent personal injuries when the aforesaid foreign object entered his mouth," according to the lawsuit, which was filed Tuesday in New York Supreme Court in Manhattan.

"It's been pretty traumatic for him," Mr. Brodsky's attorney, Michael Schlesinger of Julien & Schlesinger P.C., said in a report. "The nail of the specimen touched his tongue and he had the thing in his mouth. And it's totally, physically sickening to him."

According to the suit, Mr. Brodsky claims to have sustained numerous personal injuries, including emotional distress; was rendered sick, sore, lame and disabled; and suffered mental anguish and anxiety.

Since the incident, Mr. Brodsky has altered his eating habits, avoiding packaged foods and people eating them—the sight of which makes him sick, Mr. Schlesinger said in media reports.

Fairway declined to comment officially, according to news reports.

A Sabra spokeswoman said the company employs "rigorous" quality control, according to news reports.

CONTRIBUTING: Matt Dunning, Mallory Gillikin, Judy Greenwald, Mike Tsikoudakis

End Page



CATLIN SEAVIEW SURVEY

Catlin Group and Google have teamed up to conduct a comprehensive study to document the composition and health of sections of the Great Barrier Reef.

CATLIN, GOOGLE PLUNGE INTO STUDY OF THE GREAT BARRIER REEF

Google Maps is going undersea, but it is not to help people find the fastest route between islands.

Instead, Google Inc. is participating in a major scientific expedition sponsored by London-based Catlin Group Ltd. that will conduct the first comprehensive study to document the composition and health of sections of the Great Barrier Reef.

Google is collaborating with the Catlin Seaview Survey and working on a new feature so 360-degree underwater panoramic images can be uploaded and made available to millions of people worldwide, according to Catlin. About 50,000 panoramas from the Catlin Seaview Survey eventually will be accessible on Google Earth and Google Maps.

The survey's intent, though, goes

beyond finding beautiful undersea views. The survey's science adviser, professor Ove Hoegh-Guldberg of the Global Change Institute at the University of Queensland, said the scientific data gathered by the survey will strengthen our understanding of how climate and other environmental changes are likely to affect ocean ecosystems in the Great Barrier Reef.

The survey is scheduled to begin in September.

Catlin Group CEO Stephen Catlin said Catlin's sponsorship of the survey isn't at all a stretch.

"As an insurer, Catlin offers our clients protection against many types of risks, so it is natural that we should play a leading role in sponsoring research to learn more about the risks of tomorrow."



Shovel driveway before calling 911

Putting aside the irony of suffering an ice-related injury at the scene of a fire, New Hampshire's highest court has ruled that a volunteer firefighter who hurt himself on a slick driveway while fighting a January 2008 blaze can sue the homeowner for negligence.

Jason Antosz, a former volunteer for the Epping, N.H., fire department and a state representative 9th district, sued Epping resident Doree Allain in Rockingham County Superior Court in 2008 for negligence, alleging that Ms. Allain's driveway was "in an unsafe and unreasonable condition as a result of the defendant's failure to remove snow and ice from it."

A lower court rejected the lawsuit, citing state laws that bar firefighters from pursuing legal action for injuries suffered while on the job.

In his appeal to the New Hampshire Supreme Court, Mr. Antosz argued that state law does not apply to volunteer firefighters, nor does it apply to the injury itself because it was unrelated to the fire.

A three-judge panel last week agreed unanimously that the trial court incorrectly applied the "fireman's law" to Mr. Antosz's case because his allegations against Ms. Allain did not arise "from negligent conduct which created the particular occasion for the firefighter's official engagement."

The state high court remanded the case to the lower court for further action.

Noting that other jurisdictions have come to opposing conclusions on whether similar "fireman's laws" can be applied to volunteer firefighters, the court declined to decide that matter in Mr. Antosz's case.



Insurer scores hit with online comedy about business



More than 5 million viewers logged on to watch the first season of Hiscox's 'Leap Year.'

While other television advertisers have watched their viewing audiences nosedive thanks to recording capabilities and online streaming services, Hiscox Inc. has found an innovative way to promote its small business insurance to fast-forward-happy viewers.

The Bermuda-based specialty insurer has renewed its acclaimed comedy "Leap Year," which follows five friends who have founded a tech startup, for a second season.

More than 5 million viewers logged on to watch the series' first season, which recently was awarded the Digital Luminary Award for Best Branded Entertainment Series by the National Assn. of Television Program Executives. The "big series about small business" was created and produced for Hiscox in collaboration with CJP Digital Media and

Happy Little Guillotine Films.

After being laid off by their downsizing company in the first season, the second season will focus on Aaron, Bryn, Derek, Olivia and Jack as they set off to launch their holographic Web conferencing device while avoiding sabotage from a competing startup.

"Hiscox's 'Leap Year' chronicles the trials and successes that our small-business customers experience every day," said Kevin Kerridge, a small business insurance expert at Hiscox. "The ups and downs in this series will resonate with small-business owners, as well as make them laugh."

The second series, which begins filming in San Francisco on March 5, will air on a variety of online platforms, including Hulu, Hulu Plus and Mashable, with Netflix and Amazon Prime planning to add the series to its lineup this year.



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