

Business Insurance

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CALIF.'S STEVE POIZNER UNDER FIRE OVER IRAN INVESTMENT BAN / PAGE 3

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EUROPEAN REGULATOR SAYS SOLVENCY II MAY DRIVE INNOVATION / PAGE 4

In Brief

NAIC changes course on climate survey

The National Assn. of Insurance Commissioners has voted to make its climate change survey voluntary in some cases, less than a year after approving a previous version. The changes approved last month in the NAIC's plenary session give states the authority to determine whether to mandate that insurers complete the survey on their likely exposure to climate change-related liability. Another change recommends that the survey be voluntary for insurers with less than \$300 million in annual premiums. An additional change makes the survey results confidential in most states.

Hartford targets small, mid-sized firms

Hartford Financial Services Group Inc. announced a new strategy and reorganization plan

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SPOTLIGHT

RISK MANAGEMENT SUMMIT & INNOVATION AWARDS

Read reports from *Business Insurance's* inaugural Risk Management Summit; plus profiles of Innovation Award winners. **PAGE 9**

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NEWSPAPER



Big decision ahead

Employers weigh costs of keeping, dropping health cover

By **JERRY GEISEL**

WASHINGTON—Employers viewing the enactment of health care reform legislation as an opportunity to drop health coverage and escape a huge financial burden may want to rethink that idea, experts say.

The hidden costs of dropping their health care plans could far outweigh the fine that employers would face for not offering health care coverage, they say.

At first blush, though, the financial advantages for an employer that

See **REFORM** page 18

HEALTH CARE REFORM

Employers reviewing options on retiree care

Tax change prompts firms to reconsider drug cover strategies

By **JOANNE WOJCIK**

Employers are rethinking their retiree health benefit strategies in response to a provision in the recently passed health care reform legislation that changes the tax treatment of federal subsidies they've been receiving for providing prescription drug coverage to Medicare-eligible retirees.

However, few of those employers are likely to completely abdicate their entire retiree health obligations, benefit consultants say.

Instead, they may decide to transition their Medicare-eligible retirees into individual Part D programs, which could prove to be less expensive for employers, but just as generous to employees after 2020 when the "donut hole" is closed,

See **PART D** page 19

P/C INSURERS

Outlook brightens for AIG after rating upgrade, unit sales

By **COLLEEN MCCARTHY**

NEW YORK—American International Group Inc. received a key credit rating upgrade last week amid several positive developments for the insurer.

AIG President and CEO Robert H. Benmosche also expressed confidence in the New York-based insurer's ability to repay its federal debt before the 2013 expiration of its credit line, telling Reuters last week that the pending sale of its two life



REUTERS

AIG CEO Robert H. Benmosche remains optimistic the company will repay its federal debt.

insurance units will bring the company to a point at which it can begin formal discussions with the government about an exit.

Separately, a federal judge in New York last week dismissed a share-

holder lawsuit accusing current and former AIG directors of ignoring "red flags" that led to the company's near collapse in 2008, alleviating a significant legal burden, observers say.

On Thursday, New York-based S&P affirmed its A-/A-1 counterparty ratings on AIG and a higher A+ counterparty credit and financial strength ratings on its insurance subsidiaries, Chartis Inc. and SunAmerica Financial Group. S&P warned, however, that it was maintaining a negative outlook on AIG and its subsidiaries due to "the likelihood that pressure on the companies' operating performance could build."

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UNITED IN INNOVATION

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Video interviews with recipients of the inaugural *Business Insurance* Innovation Awards discuss aspects of the innovative products and services that earned the honors.



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HEALTH CARE REFORM SECTION

Business Insurance's section on health care reform compiles updated news and analysis on the sweeping changes signed into law by President Barack Obama. The section also includes downloadable PDFs of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, a health care reform FAQ and more. Click through the Health Care Reform online highlight at the top of the home page.

MOST POPULAR STORIES Week of March 29, 2010

1. Corporate health reform concerns prompt House hearing
2. Obama signs stopgap COBRA subsidy extension
3. Judge rejects policy exclusions in Chinese drywall case
4. Boeing will take \$150M charge due to health reform
5. Gallagher to buy business of Lloyd's of London broker
6. U.S. health law strips companies of tax deal
7. Court allows subrogation claim against US Airways
8. Maximum HSA contribution to rise in 2010
9. President Obama signs final bill in landmark health reform
10. Endurance names chief underwriting officer

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HEALTH CARE WEBINAR

Sign up for "The New Health Care Reform Law: What Will Employers Need to Do to Comply?" a *Business Insurance* webinar that addresses how the new laws will affect your company and employees. It will be held April 15 at 2 p.m. EDT. To register, click on Webcasts/Webinars on the Tools & Resources tab.



BUSINESS INTERRUPTION: CHALLENGES & SOLUTIONS is available in the Research Center. This partner report from Navigant Consulting outlines practical guidance to help risk managers establish a solid business interruption insurance program and is free with registration.

Business Insurance
RESEARCH CENTER

RISK MANAGEMENT

Data security law sparks concerns

Massachusetts rule may boost exposure for companies

By JUDY GREENWALD

Data security regulations in Massachusetts, which many describe as the most stringent such rules to date, are proving to be a challenge for businesses, observers say.

The regulations, which apply to any company that has personal information on a Massachusetts resident regardless of whether the business is based in the state, could lead to increased litigation against firms, legal experts say.

The rules that Massachusetts implemented last month based on a 2007 law are likely to influence other states in developing their own regulations, experts say.

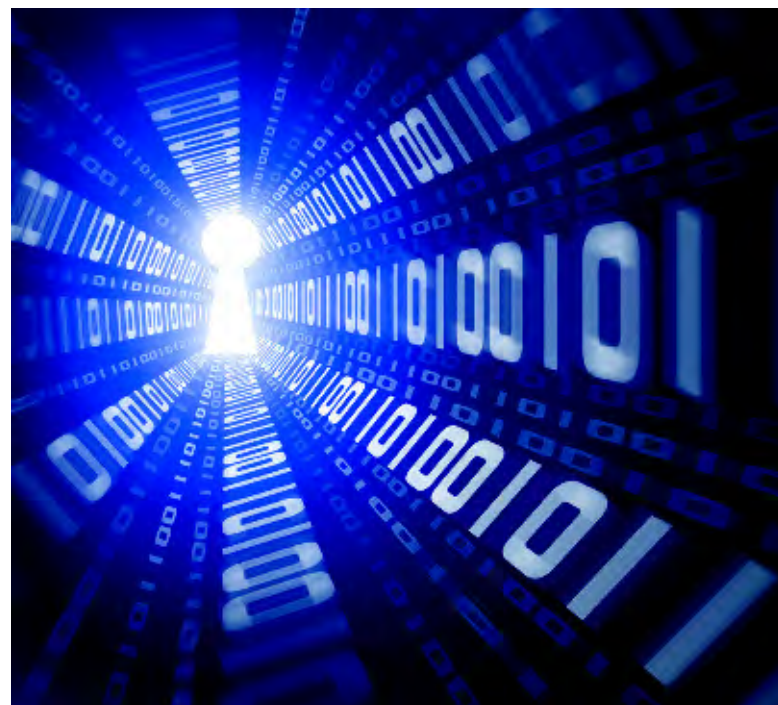
Unlike most previous data security rules, Massachusetts' regulations require businesses to proactively implement security measures to protect personal information before a data breach occurs.

The 2007 law, however, is ambiguous about fines for violating the data protection requirements. It also is unclear how vigorously the state attorney general will enforce the provisions. The law was delayed and revised several times in response to complaints by businesses about its feasibility and expense.

Massachusetts passed the law in response to data breaches by retailers, including Framingham, Mass.-based TJX Cos. Inc., which revealed in 2007 that hackers had obtained millions of its customers' credit and debit card and driver's license information.

The rules implemented last month—based in part on the size, scope and type of business—cover the storage and transmission of information. They require firms to develop a written policy and maintain proper information security practices to personal data in their activities and those of their third-party providers (see box, page 22).

See **DATA** page 22



LIABILITY & LITIGATION



MCT/LANDOV

A Bradenton, Fla., couple look at their home in February 2009 after a builder removed tainted drywall that was made in China.

Momentum building for drywall coverage litigation

By JEFF CASALE

NEW ORLEANS—Policyholders and insurers are watching litigation surrounding Chinese drywall and awaiting clarity on how coverage will respond to losses related to the controversial building material.

Already under way in New Orleans is a key trial that will help shape how hard property/casualty insurers will be hit by claims related to Chinese drywall. In the case, *the Hernandez family vs. Knauf Gips A.G. et al.*, the court must consider how to interpret exclusions in homeowners policies.

In a related development Friday, the U.S. Consumer Product Safety Commission issued interim remediation guidance that calls for gutting homes with the problem drywall. The guidance calls for removing the drywall, electrical components and wiring, gas service piping, and fire suppression and alarm systems.

Hernandez also extends beyond drywall to include plumbing, wiring and appliances, which the court must decide if they should be

replaced as well. The plaintiffs in *Hernandez* are seeking \$200,000 in remediation costs, which include replacement of drywall, corroded wiring and plumbing. The home cost about \$176,000 when it was built in 2006.

Knauf has proposed \$58,000 in remediation costs, according to court documents.

While other suits on the issue have already gone to court, the *Hernandez* case reportedly is the first contested trial and viewed as a bellwether property damage case for thousands of other suits.

"These initial trials give courts and interested parties an idea of what the value of the claims are," said Stephen Herman, trial attorney for the Hernandez family and partner with New Orleans-based Herman, Herman, Katz & Cotlar L.L.P. "These trials will provide guidance, and I expect people to be litigating for indemnity for a long time."

More than 2,000 complaints related to Chinese drywall have

See **DRYWALL** page 21

INTERNATIONAL

Insurers test ban on Iran investments

By ZACK PHILLIPS

Five insurance trade groups have taken legal action to try to stop California's insurance commissioner from implementing regulations that would penalize insurers with ties to companies that conduct business in Iran.

Meanwhile, war risk underwriters at Lloyd's of London have added Iran to their list of risky areas in response to potential increased sanctions by U.S. governmental agencies.

The five trade groups representing insurers filed a petition last week with the California Office of Administrative Law, alleging that recent requirements imposed by California Insurance Commissioner Steve Poizner are illegal, "underground" regulations—or rules that a government agency attempts to pass or enforce without a public



AP PHOTO

Insurers accuse California Insurance Commissioner Steve Poizner of illegally imposing rules on Iran investments.

comment period or other requirements under state law.

The American Council of Life

Insurers, the American Insurance Assn., the Assn. of California Insurance Cos., the Assn. of California Life & Health Insurance Cos. and the Personal Insurance Federation of California filed the petition seeking to invalidate the regulations until they have gone through a formal rulemaking process.

In February, Mr. Poizner released a list of 50 companies that he said do business in the Iranian oil, natural gas, nuclear and defense sectors. He asked insurers licensed in California to eliminate any investments in those companies and pledge by April 2 to avoid such investments in the future. Mr. Poizner threatened to post a public list of those who did not comply, and said last month that 460 insurers had agreed to the moratorium.

Mr. Poizner, who is running in

See **IRAN** page 6

Best Places nomination deadline nears

A little less than a month remains to register for this year's *Business Insurance* Best Places to Work in Insurance program.

In this second year of *BI*'s Best Places to Work in Insurance program, the field of eligible companies has been expanded to recognize U.S. commercial insurance industry employers in five categories: agents/brokers, property/casualty insurers, group life/health insurers, reinsurers and third-party administrators.

Each category will be broken down into three groups by size: companies with 25-249 employees, companies with 250-999 employees and companies with 1,000 employees or more.

The registration deadline for this year's program is April 30. Interested companies can register online at www.bestplacestoworkins.com.

For participating insurance industry employers, the Best Places to Work in Insurance program gives

those that have created high-quality workplaces an opportunity to be recognized for their efforts.

The program also will give companies a chance to see how they measure up against others in the industry as employers of choice, and will provide valuable insight into how employees view the companies they work for in numerous critical areas.

Companies recognized in the 2010 *Business Insurance* Best Places to Work in Insurance program will be revealed in the July 19 issue of *BI*, and will be the focus of a special report Oct. 4. Companies selected also will be honored at a special *BI* event.

Business Insurance's Best Places to Work in Insurance program is being managed by Best Companies Group, specialists in identifying best employers within regions or industries.

For additional information, contact *BI* Special Projects Editor Rodd Zolkos at 312-649-7784.



INTERNATIONAL

Solvency II may drive more insurer innovation: Regulator

New capital regime expected to change product lines, prices

By MICHAEL BRADFORD

DUBLIN—Insurance buyers may see Solvency II spur their insurers to offer products that would not have made it to market but for the risk-based capital framework scheduled to go into effect in 2012, a regulator suggests.

“Solvency II allows a lot more freedom in products,” said Tony Jeffrey, deputy head of insurance supervision at the Central Bank & Financial Services Authority of Ire-

land in Dublin. “Essentially, you can take what risks you like, provided you are adequately controlling them and you’ve got adequate capital.”

Speaking at the European Insurance Forum 2010 in Dublin sponsored by the Dublin International Insurance & Management Assn., Mr. Jeffrey said “it is to be expected that more companies will at least consider taking risks” not previously taken. “The market will change.”

Solvency II, scheduled for implementation in October 2012, also will change the prices buyers pay for coverage, Mr. Jeffrey told attendees.

“For some products, capital requirements will go up; for some products, capital requirements will go down,” Mr. Jeffrey said. “It is



Regulatory change was a key issue discussed at the European Insurance Forum 2010 in Dublin.

expected that pricing criteria will follow accordingly.”

Insurers already should be considering how Solvency II requirements will affect their pricing. “Otherwise, you could be caught offside when other companies innovate before

you do,” he warned insurers.

“There are an awful lot of strategic issues that need to be considered by companies” as the compliance deadline approaches, he said. “Solvency II affects every aspect of an insurance company. It’s going to change all the rules. It’s going to change how you do business.”

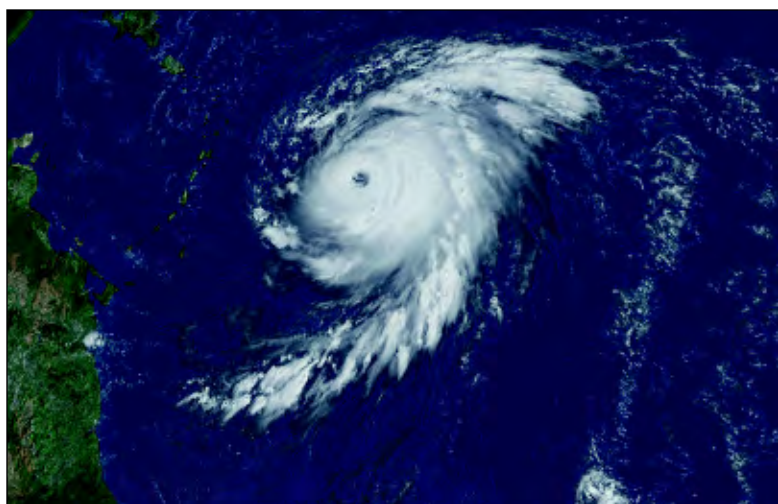
Mr. Jeffrey and other speakers at last week’s forum noted that insurers are beginning to feel the pressure of complying with Solvency II.

“To some extent, even though Solvency II has been going on for the past couple of years, the work is now only really beginning,” said Brian Morrissey, head of the insurance and actuarial practice at KPMG in Dublin.

Insurers are deciding whether to use an internal model to calculate their capital requirements and, if so, how that model should function, Mr. Morrissey said. They also are assessing the proper governance, risk and internal controls that need formal adoption to comply with Solvency II, he said.

Mr. Jeffrey said insurers that haven’t done so need to prepare an own-risk-and-solvency assessment as called for under the proposed framework. Completing the ORSA establishes an insurer’s solvency needs, risk tolerance and compliance with solvency and technical provisions of Solvency II.

See **SOLVENCY** page 20



Hurricane Bill moves in the Atlantic Ocean in August. Swiss Re last week completed a cat bond placement that includes cover for Atlantic hurricanes.

ALTERNATIVE RISK TRANSFER

Swiss Re completes \$120M cat bond placement

By COLLEEN MCCARTHY

ZURICH—Swiss Reinsurance Co. Ltd. said last week that it has completed a \$120 million catastrophe bond placement to cover a portion of its catastrophe losses from North Atlantic hurricanes, European windstorms, and California and Japan earthquakes.

The bond, Successor X Ltd. Series 2010-1, is the second transaction to be issued through Swiss Re’s Successor X program—a Cayman Islands-based special-purpose vehicle. The transaction covers a three-year period ending in March 2013.

Swiss Re said it is the first cat bond transaction to use a European windstorm index based on data from PERILS A.G.—the independent Zurich-based provider formed last year.

In December, Munich Reinsurance Co. and Willis Re placed industry loss warranty contracts to reinsure European windstorm risks using data from PERILS.

PERILS aims to replicate the success of the U.S.-based Insurance Services Office Inc.’s Property ClaimsSer-

vices unit, collecting data from the European reinsurance industry to compile industrywide loss estimates.

In other cat bond activity so far this year, State Farm Fire & Casualty Co., a subsidiary of State Farm Mutual Automobile Insurance Co. last week placed a \$350 million catastrophe bond to cover a portion of its U.S. earthquake exposure, excluding California, according to New York-based S&P, which rated the bond BB+.

The three-year deal is structured to trigger on an indemnity basis. In addition, a cat bond placed by Hartford Fire Insurance Co., a unit of Hartford Financial Services Group Inc., in January was increased to \$180 million due to strong investor demand. The bond, Foundation Re III Ltd., originally was marketed to investors with a target size of \$100 million. The bond uses a state-weighted Property Claim Services index-based industry loss trigger, according to Standard & Poor’s Corp., which rated the notes BB+.

The deals come after an active year for cat bonds in 2009, and a relatively slow 2008.

RETIREMENT BENEFITS

Employers restoring 401(k) matches

As economy rebounds, larger firms lead push to reinstate payments

By JERRY GEISEL

Amid signs of an economic recovery, many employers that suspended or reduced their 401(k) matching contributions are rethinking those moves.

A survey released last week by Boston-based mutual fund provider and 401(k) plan administrator Fidelity Investments found that 44% of employers that suspended their matching contributions last year either have reinstated or intend to reinstate the match during the next 12 months.

“As the economy begins to improve, employers large and small are bringing back their 401(k) matching programs,” James M. MacDonald, president of Fidelity unit Workplace Investing, said in a statement.

The likelihood of employers rein-

stating matching contributions, though, varies significantly by company size. For example, among employers with at least 5,000 employees, 70% either have restored or intend to restore the match within the next 12 months,

44%

44% of employers that suspended their matching contributions last year either have reinstated or intend to reinstate the match during the next 12 months

nearly double the 36% of employers with 500 or fewer employees that either have restored matching contributions or plan to do so.

The results are based on a survey this month of 293 Fidelity clients that suspended or reduced their 401(k) matching contributions last year.

Last week, for example, defense and aerospace company GenCorp Inc. said it is reinstating its 401(k) plan matching contribution, the latest in a growing number of employers that have done so or will be doing the same.

In a Securities and Exchange Commission filing last week, Rancho Cordova, Calif.-based GenCorp said it will restore its 401(k) plan match for nonunion employees at the same rate prior to its Jan. 15, 2009, suspension. The match will be restored in July.

Prior to the suspension, GenCorp matched 100% of employees’ salary deferrals up to the first 3% of pay and 50% of deferrals on the next 3% of pay.

However, GenCorp now will make matching contributions in cash. It had matched contributions with company stock, which a GenCorp spokeswoman previously said was diluting the stock’s value.

A summary of the survey is available at http://personal.fidelity.com/myfidelity/InsideFidelity/index_NewsCenter.shtml

AGENTS & BROKERS

USI may appeal copyright infringement ruling

By SALLY ROBERTS

PHILADELPHIA—USI Holdings Corp. said it is considering whether to appeal a federal judge’s ruling last month to reinstate an \$18.9 million award a jury granted the Graham Co. in 2006 in a copyright infringement dispute involving a USI subsidiary and a former Graham employee.

The case was on remand from the 3rd U.S. Circuit Court of Appeals, which ruled last year that the U.S. District Court in Philadelphia erred in setting aside the jury’s decision and determining that Graham’s

READ documents from this case and other public documents at www.BusinessInsurance.com

claims were barred by the federal Copyright Act’s three-year statute of limitations.

The appeals court ruling stemmed from a second trial in 2008, in which a jury reduced Graham’s award to \$1.6 million based on the statute of limitations.

The case involves USI subsidiary USI MidAtlantic Inc. and Thomas P. Haughey, a former Graham employee who joined one of USI’s predecessor firms in 1991.

Graham sued USMI and Mr. Haughey in 2004, alleging that USMI and Mr. Haughey “knowingly,” “willfully” and without authorization copied Graham’s copyrighted, proprietary insurance service and coverage information to solicit and obtain insurance business for USMI.

Graham alleged that during a 13-year period beginning in 1992, USMI generated 950 proposals containing some of Graham’s copyrighted language for more than 350 clients.

See **USI** page 6

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for more information please contact Becky Briggs

at rbriggs@businessinsurance.com

Iran: Insurers test ban on investments

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the Republican primary for governor, also said that after March 31, California would not count investments in such companies or their affiliates toward reserve requirements for insurers licensed in California.

Federal law already bars U.S. companies from investing directly in Iran. A bill that would impose harsher sanctions on firms that do business with companies that do business in Iran's petroleum, nuclear and defense sectors has passed Congress and is in a conference committee.

"Commissioner Poizner has exceeded his legal authority by his well-intentioned but misguided attempts to bar insurance company investments that are not prohibited by state or federal law," the five trade groups said in a statement. "California's insurance commissioner has broad powers to regulate insurance companies in this state. The conduct of foreign policy is not one of them."

The trade groups argue that Mr. Poizner lacks the legal authority to enforce the Iran divestment initiatives because they would apply to insurers headquartered outside California, among other reasons. Under most states' laws and National Assn. of Insurance Commissioners regulations, insurance companies are regulated in the state in which they are domiciled, the trade groups said.

"Your action would appear to place the (insurers) that are legally domiciled elsewhere in direct conflict with their respective regulators," the groups wrote in a Feb. 19 letter to Mr. Poizner's office.

They also said Mr. Poizner's office has not explained criteria for plac-

PROHIBITED INVESTMENTS

Some 460 California-licensed insurers have agreed not to invest in 50 companies that do business with Iran's petroleum, natural gas, nuclear or defense sectors. The California Department of Insurance says the 50 companies are located in:

Asia: 22 companies

Europe: 20 companies

Russia: 6 companies

Africa: 1 company

Australia: 1 company

Source: California Department of Insurance

ing companies on its list of firms doing business in Iran, which includes Siemens A.G., Royal Dutch Shell P.L.C. and Hyundai E&C Co. Ltd. Some companies on the list no longer do business in Iran, the trade groups said.

"On what basis will the commissioner determine in the future what companies are 'bad'? How will insurers make future investment decisions?...The potential list is limited only by the imagination," the trade groups said.

Insurers' investments in companies on Mr. Poizner's list is primarily in the form of debt, not in shares of the companies, the trade groups said.

A spokesman for Mr. Poizner's office said the commissioner's job is to ensure insurance companies don't make risky investments.

"It is surprising that insurance companies are fighting to retain the

ability to invest in companies that do business in Iran," the spokesman said. "We've identified these companies as risky and our oversight authority of these investments is clear."

Separately, the Joint War Committee of the Lloyd's Market Assn. last month added Iran to its list of areas at greater risk of war, strikes, terrorism and related perils. Underwriters who follow the guidelines now will require that ships traveling to Iran consult the underwriter first, so that he or she can assess the risk of the voyage and, often, assess an additional premium.

Typically, the committee adds an area to the list due to violence or deteriorating security, but in this case it acted because of the potential for increased sanctions from the U.S. government, said Neil Roberts, secretary to the committee. Previous versions of the U.S. legislation would have empowered the Treasury Department to freeze the U.S.-based assets and transactions of an insurer who underwrote a ship that brought refined petroleum to Iran. The final language of that proposal is not yet known but underwriters thought they needed to act in advance, Mr. Roberts said.

"Because the wording (of the legislation) isn't clear, they just need to know what's going in (to Iran)," he said. "It's an imperfect tool to approach a rather unsatisfactory situation. They don't really see what else they can do at the moment."

Mr. Roberts said if the U.S. government prevented an insurance company from trading in dollars, it would "effectively put that company out of business."

Commentary

Roadkill reform fight stinks up legislature



ROBERTO CENICERROS

Senior Editor Roberto Cenicerros can be reached at: rceniceros@businessinsurance.com

While Congress debated health care reform in Washington, state lawmakers here in Idaho pondered legislation that would have allowed anyone with a license to trap or hunt game to "salvage" roadkill.

The bill didn't get very far. It was killed in committee, as they say.

Some lawmakers feared approving the legislation would have encouraged folks to purposely run down game for the right to "harvest" it.

It's an odd array of legislation that state lawmakers spend their days contemplating in a mostly rural mountain state known as one of the most conservative in the nation. Some matters they consider would be more amusing in a "Mayberry R.F.D." sort of way, though, if some serious problems weren't in need of attention.

A local newspaper, for instance, recently reported that only 56% of Idaho employers offered health care benefits in 2009, down from 82% seven years earlier. Like elsewhere, a growing number of Idaho families have lost their health coverage. Yet I haven't seen our legislature devise real ways to help them.

Perhaps our state legislators can't help residents with their health care needs and it's better left to the feds. Maybe tackling the extremely complex business of health care and medical benefits is beyond their scope while focusing on dead game is manageable.

Or maybe a majority preference in Idaho to limit the power of government discourages the thought of helping residents with their health care needs.

But Idaho lawmakers didn't spend their entire three months in legislative session focusing exclusively on issues like the roadkill bill.

Hoping to impede the health care reform legislation that President Barack Obama recently signed into law, Idaho lawmakers passed the Idaho Health Freedom Act. The state law says Idaho citizens should be free to decline health care under the new federal law.

It's ironic to adopt a law that allows people who are losing their health care coverage to be free to decline a potential alternative.

Anyhow, Idaho was the first among several states to recently pass legislation opposing the new federal health care reform plan. The Idaho Health Freedom Act also paved the way for our state's attorney general to join about a dozen other states' attorneys general who have filed suit

to attempt to stop the federal health care changes.

Unlike federal lawmakers, Idaho legislators serve only part time, so many of them support themselves with income from other jobs.

A recent news story said one state senator's income-earning profession helps him address wildlife issues that regularly come up before the legislature. The lawmaker runs a hide and fur company that sells skulls,

It's an odd array of legislation that state lawmakers spend their days contemplating in a mostly rural mountain state known as one of the most conservative in the nation.

bones, teeth and other animal products.

The state Senate Resources and Environment Committee he chairs introduced legislation this year to allow residents to release trapped skunks on a willing neighbor's property. Otherwise, the current law requires euthanizing captured skunks, the newspaper story said. This bill also died in committee.

To be fair, our state legislators also grapple with issues common in most other states. They recently considered a bill that would establish penalties for texting behind the wheel of a vehicle and they dealt with budget cuts necessary because of the recession.

But now, as I watch to see whether the states' lawsuit challenging the constitutionality of President Obama's health care reform law proceeds through the federal court system, I'll have the added amusement of knowing it is being funded, at least in part, by people experienced in weighing real meaty issues like the roadkill and trapped-skunk legislation.

USI: Firm may appeal copyright ruling

CONTINUED FROM PAGE 4

It did not discover the alleged infringement until late 2004, when a USMI customer asked Graham to quote insurance coverage, it said. As such, it contended it was entitled to revenues earned by USMI during all 13 years in which USMI allegedly infringed Graham's copyrights.

USMI argued that the damages were limited to the three years.

The 3rd Circuit disagreed, ruling that there was no evidence to suggest that Graham had actual knowledge of any infringement until 2004. But

rather than reinstating the first jury's \$18.9 million verdict, the appeals court remanded the case to the district court to reconsider the issues.

On March 19, District Court Judge Harvey Bartle effectively reinstated the original verdict ruling that the \$18.9 million was not excessive.

"We cannot say that the jury's award 'shocks the judicial conscience' or that a 'miscarriage of justice' will result if the jury's verdict if allowed to stand," he wrote in his decision.

"We're pleased with the judge's ruling and we look forward to final-

ly receiving compensation for their outrageous and long-standing infringement," said Graham attorney David J. Wolfsohn, a partner with Woodcock Washburn L.L.P. in Philadelphia.

He said Graham is entitled to an additional \$4 million in post-judgment interest and he will ask the court to award prejudgment interest.

USMI attorney Floyd Abrams, a partner with Cahill, Gordon & Reindel L.L.P. in New York, said last week that USMI is considering whether to appeal the ruling in which the judge said the damages are not excessive.

First-quarter cat losses likely record: Willis Re

The first quarter of 2010 likely will be the worst-ever first quarter for natural catastrophe losses, but those losses alone won't turn the market, a report concludes.

The "unprecedented" \$16 billion in insured first-quarter catastrophe losses, including the earthquake in Chile and Windstorm Xynthia in Europe, do not bode well for reinsurers because their largest losses are in smaller markets, where they are less able to generate significant premium volumes, Willis Re said in a

report. At the same time, the first-quarter losses leave reinsurers exposed to the historically more loss-prone third and fourth quarters, the reinsurance brokerage said.

Despite the losses, though, reinsurance rates on loss-free programs are not expected to increase any time soon, Willis Re said.

Meanwhile, reinsurance rates for April 1 renewals declined across most property catastrophe lines of business, intermediary Guy Carpenter & Co. L.L.C. said in

a separate briefing.

And in another report, Aon Benfield Inc. noted reinsurance capacity continues to exceed demand despite first-quarter catastrophe losses.

Aon Benfield said U.S. property catastrophe renewals declined 5% to 15%, while Guy Carpenter said that line declined 8% to 13%, although individual renewals varied significantly depending on each company's loss experience.

—By Sally Roberts and Colleen McCarthy

Products & Services

Starr Surplus targets design firms, architects

NEW YORK—Starr Surplus Lines Insurance Co. Inc. has introduced professional liability coverage for design firms and contractors.

According to a statement, Starr Pro for Architects, Engineers and Contractors targets specialized industries such as architecture, civil engineering, mechanical engineering, laboratory testing, heating and cooling system engineering, among others.

The program aims to provide brokers and clients with an alternative to standard coverage with tailored manuscript endorsements, the Chicago-based unit of New York-based C.V. Starr & Co. Inc. said in a statement.

For more information, contact Jake Sokol, marketing manager at Starr Underwriting Agencies L.L.C., at 646-227-6336 or jake.sokol@cvs-tarr.com.

Zurich offers tech firms ERM HealthCheck

SCHAUMBURG, Ill.—Zurich North America Commercial has rolled out a new assessment tool for technology firms.

The Zurich Enterprise Risk Management HealthCheck Tool aims to assess ERM preparedness for midsize to large technology firms, the Schaumburg, Ill.-based insurer said in a statement.

While HealthCheck Tool assesses ERM preparedness, the unit of Zurich Financial Services Group Inc. said it also provides the companies with suggestions to improve their ERM strategy and processes.

"With an effective ERM program in place, technology firms will be better prepared to manage the risks and challenges to profitability to enable improved strategic decision-making," said David Allred, technology practice leader for Zurich.

Free access to the HealthCheck Tool is available online at <https://www.zurichnac.com/technology-ERM>.

NAS Insurance adds general liability coverage

ENCINO, Calif.—Underwriting manager NAS Insurance Services Inc. said it has enhanced its miscellaneous and technology errors and omissions insurance program.

The enhancement includes the addition of general liability insurance with a limit of \$1 million per occurrence and a general aggregate limit of \$2 million.

The program covers claims such as bodily injury, property damage, personal injury, and damage from slander or false advertising. It includes general damages and medical expenses, the Encino, Calif.-based company said in a statement.

NAS Insurance Services said the general liability enhancement will be underwritten by Lloyd's of Lon-

don, which also underwrites E&O coverage offered through NAS. The general liability enhancement can be added to existing professional liability coverage for \$500 with no deductible.

For more information, contact Michael Palotay, assistant vp, at 818-808-4476 or mpalotay@nasinsurance.com.

PayFlex upgrades online HSA offering

OMAHA, Neb.—PayFlex Systems USA Inc. has enhanced its health savings account online services for employers and health insurers.

The health and benefits third-party administrator said its expanded technology offers employers and

health insurers offering HSA accounts the ability to work with a single bank of their choosing to deposit HSA funds.

Through its enhanced Web-based offering, PayFlex said it aims to increase HSA engagement and ultimately drive down costs.

Aside from an easy-to-use Web interface, the enhancements include streamlined systems to expedite HSA enrollment, an account investment platform and debit cards to access HSA funds.

Omaha, Neb.-based PayFlex said it processes nearly \$1 billion in employee benefits transactions per year.

For more information, contact Darren M. McCue, executive vp, at 301-766-4200 or dmccue@payflex.com.

Mutual Boiler Re develops podcasts

MALVERN, Pa.—Mutual Boiler Re has developed a series of podcasts geared toward its business and products.

The Malvern, Pa.-based equipment breakdown reinsurance unit of Factory Mutual Insurance Co., which does business as FM Global, said the Web-based audio broadcasts by Mutual Boiler Re employees consist of four topics: an introduction to Mutual Boiler Re and breakdown coverages available for commercial, farm and homeowners equipment.

Additional podcasts are planned on equipment breakdown coverage, including tips to prevent break-

downs and how to differentiate coverage.

In a statement, Mutual Boiler Re said the audio broadcasts will be archived and partners will receive an e-mail notification about new podcasts.

To listen, log on to www.mutual-boilerre.com and click the podcasts link.

TO SUBMIT ITEMS

BI's Products & Services column reports on new product offerings. Please send Product & Services news to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. or e-mail mtsikoudakis@businessinsurance.com.



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Business Insurance OPINIONS

Fate of drug subsidy should rest on cost

SOME ARE CONCERNED that the federal subsidy given to employers that provide retiree prescription drug coverage that is at least equal to Medicare Part D is a taxpayer rip-off.

When asked at a briefing about a rash of companies taking charges on their financial statements due to changes in health care reform legislation signed into law last month, White House Press Secretary Robert Gibbs said many consider the subsidy to be a "loophole."

Under a provision in the health care reform law that takes effect in 2013, the tax-free subsidy will continue, but employers no longer will be allowed to take a tax deduction for costs equal to the subsidy.

We don't think the subsidy is a loophole.

We don't think the subsidy is a loophole. In fact, sound policy reasons led to its incorporation in the 2003 law that created the Medicare prescription drug benefit.

What legislators did not know at the time was whether a robust private insurance market would develop to provide the prescription drug coverage and, if it did, whether it could handle 40 million Medicare beneficiaries.

Because of that concern, Congress gave employers a financial incentive to retain their coverage of Medicare-eligible retirees, resulting in several thousand U.S. employers doing so.

Now the question facing legislators—who will hold a hearing on the issue this month—is not whether the subsidy is a tax loophole, but whether the incentive still makes sense. Clearly, a large private market has developed to provide the coverage.

But the critical question we don't think has been addressed is whether it will cost the government less to continue subsidizing employers providing the coverage than it would cost to subsidize premiums for retirees buying private coverage. The answer to that question is what should determine the fate of the tax break.

Revisiting Marsh's announcement on pay

MARSH & McLENNAN Cos. Inc.'s announcement that it won't resume taking contingent commissions on much of its business was addressed in this column March 29, but a clarification is needed, as our opinion confused two facts.

"Enhanced commissions" are not related to the placement of coverage. Marsh has stated that it will continue to accept enhanced commissions from insurers for services it provides to them. Such services are more common in the United Kingdom and might include, for example, policy issuance.

We also suggested that a Marsh statement to clients was ambiguous as to whether the brokerage will accept contingent pay on international placements. Marsh stated it "will not accept contingent commissions on any placements" for U.S. and Canadian clients in its core broking operations. Outside North America, Marsh said it will look at compensation arrangements on a fully disclosed basis, subject to guidance from clients. Marsh acknowledged that different countries have different rules regarding broker compensation and, therefore, the company does not consider a one-size-fits-all approach to be appropriate.

We applaud the commitment to disclosure by Marsh and any other brokers, but we must reiterate our opinion that all brokers should be compensated solely by their clients. That is the simplest way to ensure that the broker's and client's interests are aligned—no matter where that client happens to be.



WRITE

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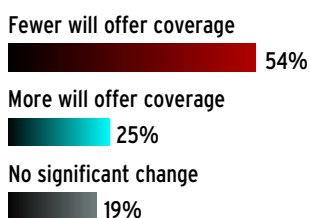
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THIS WEEK'S RESULTS

Q What impact will health reform have on the number of employers offering health coverage?



NEXT WEEK'S QUESTION

Q: Will the health care reform law help U.S. businesses reduce their costs?

PERSPECTIVES

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Making risk top of mind

BI launches networking event: the Risk Management Summit

The inaugural *Business Insurance* Risk Management Summit gathered dozens of risk managers from among the largest U.S.- and Europe-based



multinational companies as well as senior executives from the insurance industry for high-level discussions March 8-9 in New York. The summit was focused on four core topics of global programs and risks, global regulatory and legislative developments, innovations in risk management, and counterparty risks. The event

included keynote addresses by a prominent legislator and topic experts; risk managers-only roundtables; and industry panel discussions. Also held during the summit was the first Innovation Awards dinner, recognizing leadership and innovation in products and services designed for risk managers. In addition to our reporting here, please view videos and other content on the summit at www.BusinessInsurance.com/RMSummit. We're already planning the 2011 Risk Management Summit and hope you can join us.

REGIS COCCIA, EDITOR



The inaugural Risk Management Summit, held March 8-9 in New York, presented views from leading risk managers and industry executives.

MICHAEL MARCOTTE

Risk Management Summit & Innovation Awards

SPOTLIGHT

Managing global risks requires diverse approaches: Panel

By ZACK PHILLIPS

NEW YORK—Companies implementing a worldwide insurance program must find ways to overcome a variety of evolving challenges, experts told attendees at the *Business Insurance* Risk Management Summit in New York.

Laws and regulations on premium taxes, claim definitions, nonadmitted insurance and other issues vary widely by country, meaning risk managers often must analyze subsidiary coverage by country, said Michael Kerner, the New York-based CEO of Zurich Global Corporate in North America.

"It's not one-size-fits-all for any organization," Mr. Kerner said at last month's summit. "There are a lot of rules out there, but the rules really aren't clear and not everyone has the same opinion of the rules."

Mr. Kerner said Zurich has found 140 jurisdictions worldwide that prohibit companies from purchasing nonadmitted insurance. In such cases, multinational corporations often supplement locally admitted policies with a global policy to provide difference-in-conditions or difference-in-limits coverage. But Mr. Kerner said some countries' laws could be interpreted as barring nonadmitted DIC or DIL coverage.

Aside from potential penalties and fines, "you could have coverage that's actually viewed as null and void; and that could put you in position where you thought you had coverage, but after a claim you don't really have coverage," he said.

This is particularly true for directors and officers liability coverage. Behavior that is covered by a D&O claim in the United States may be viewed as

'There are a lot of rules out there, but the rules really aren't clear and not everyone has the same opinion of the rules.'

Michael Kerner, Zurich Global Corporate

a crime in other countries and not be covered under a conventional D&O policy, said Eric Andersen, CEO of U.S. retail for Aon Risk Services in New York. At the same time, the litigious U.S. environment has spread to other countries, he said.

Managers of foreign subsidiaries are pushing their global parents to buy extensive D&O coverage, but companies often buy locally admitted D&O coverage only in certain countries, he said.

"There are only a handful of potential lead D&O

markets that can write (coverage in) 100-plus, 120 countries," Mr. Andersen said. "So many of the buyers don't necessarily want to give up a U.S. relationship (with a D&O insurer) to solve what they think is a problem on the horizon."

An additional problem is that foreign governments are increasing their enforcement of premium tax laws and other regulations, Mr. Kerner said.

"In this environment...most jurisdictions are looking for tax revenue, so they've actually ratcheted up their focus on this particular issue," he said.

To combat these challenges, Messrs. Kerner and Andersen said it is important that companies choose capable insurers and brokers, and that companies handle bills and claims, issue policies, allocate premium taxes and other risk management services adeptly to avoid provoking concern among subsidiaries accustomed to purchasing their own insurance locally.

"You have to be really careful as you partner with an intermediary or carrier...that you don't actually give the local risk manager a reason to resist" moving to a global policy, Mr. Kerner said.

Companies that successfully manage these challenges in a global insurance policy receive significant benefits in control, coverage and cost, both said.

SPEAKERS

DHERS: GLOBAL PROGRAMS NEED COORDINATED APPROACH

JORGENSEN: RISK INNOVATION CREATES ACTIONABLE ADVICE

KELLY: RESOURCES HELP ASSESS COUNTERPARTY RISKS

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Master program packs advantages, risk manager says

By ZACK PHILLIPS

NEW YORK—Multinational corporations can reap tangible benefits from purchasing a global insurance policy to sit on top of locally bought coverage for certain foreign subsidiaries, a risk manager told attendees at the *Business Insurance Risk Management Summit*.

Frédéric Dhers, corporate risk officer for Paris-based Veolia Environnement, told risk managers at the New York summit in March that his firm found several advantages in implementing a “controlled master program,” in which the parent company buys an overarching international policy and directs the risk management strategy for all subsidiaries, while also buying locally admitted policies in some foreign countries.

“We do think the controlled master program has the advantage of providing a centralized, uniform insurance program, negotiated with an insurance carrier that meets corporate standards, as well as the benefits of having local policies,” he said.

Some countries prohibit companies from pur-



Mr. Dhers

chasing nonadmitted insurance. Rather than relying entirely on admitted policies or nonadmitted policies, a corporation with a controlled master program would purchase admitted policies for certain foreign subsidiaries and obtain a global policy that includes difference-in-conditions or difference-in-limits coverage, Mr. Dhers said. The DIC/DIL coverage would respond if a locally purchased policy provided lower limits or less coverage than the corporate parent desired.

Mr. Dhers said Veolia, an environmental services company serving the water, energy, transportation and waste management industries, has experienced several benefits from its controlled master program. The corporation’s purchasing power helps reduce premiums and other costs, and the global reach of the program helps avoid accumulating risk and diversifies risks faced across the company’s many subsidiaries, he said.

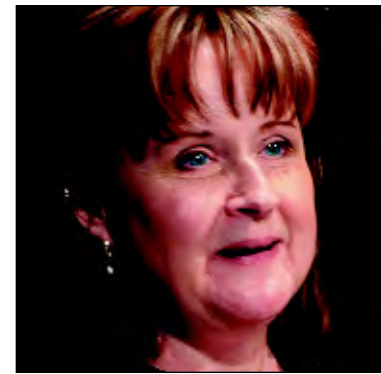
It also produces a large amount of useful information about risks around the world, which can help develop best practices and create a risk management community within the company, he said.

“For me, that is crucial,” Mr. Dhers said. “The global structure induces the creation of a worldwide organization where regional risk managers can interact with the (company) head. This sort of communication will stand forever because everyone understands the value of it.”

But Mr. Dhers, who said Veolia insures 8,000 properties around the world, said the controlled master program also presents some challenges to multinational corporations. It requires a large amount of information to manage properly and local risk managers and their brokers may resist the change, he said.

“The people are used to working on their own (and) now you tell them that they have to serve a global program that has been written in Paris or London or in New York City,” he said. “It’s quite challenging to explain to (the) regional risk manager that he can reconcentrate his job, no longer on the procurement of insurance but on the risk management side, and (explain) to the local broker that he has advantages in working for the (parent company).”

It is also difficult to stay in compliance with individual countries’ regulatory requirements on contracts, nonadmitted insurance, tariffs and premium allocation, Mr. Dhers said.



Ms. Jorgensen

Business intelligence spells action

By MARK A. HOFMANN

NEW YORK—For Lori Jorgensen, risk management is not insurance.

Instead, “it is providing my company with business intelligence that is actionable,” the senior director, finance-risk management for Redmond, Wash.-based Microsoft Corp. said during a discussion of innovations in risk management at the inaugural *Business Insurance Risk Management Summit* in New York in March. Ms. Jorgensen was a member of *Business Insurance’s* 2009 Risk Management Honor Roll.

In fact, Ms. Jorgensen said when assembling her team, she looks for people with “great analytical skills.” “We can teach them the insurance component.”

“My team is made up of people who are a heck of a lot smarter than I am,” she said. They are drawn from a variety of disciplines. Having that type of organization helps create a culture of innovation, she said.

Ms. Jorgensen said part of a culture of innovation is empowering people to fail, which she said allows people to retool and try again.

Communication is essential in an innovative culture and a systemwide commitment to share information builds success, she said.

One innovation that Ms. Jorgensen described was her department’s weekly 360-degree report, which provides a global picture of the company’s financial exposures.

The report, issued every Tuesday, provides a “holistic view of our total economic exposure” to specific entities. Exposure projections already include Microsoft’s investment portfolio, accounts receivable and bank balances, and Ms. Jorgensen said her team is working to add accounts payable. She said Microsoft is particularly interested in exposures presented by sole-source providers, but she noted that getting financial health information about private companies can be difficult.

The exposure report “substantially improves the velocity at which effective action can be taken,” but the report continues to evolve, she said.

For example, Microsoft recently added what is called a PIIGS component. That refers to Portugal, Ireland, Italy, Greece and Spain—European Community members that have been suffering economic problems. The new component shows Microsoft’s exposures in those countries.

Questions to ask when weighing counterparty exposures

By COLLEEN MCCARTHY

NEW YORK—Risk managers who want to manage their counterparty exposures need to ask informed questions of their insurers and themselves to better understand their potential risks, an expert says.

While the financial crisis has prompted many risk managers to increase their scrutiny of insurers’ financial state, it remains a challenge because “it’s a dynamic moving target, it’s a market and we’re following that market all the time,” William J. Kelly, president of WJK Advisory L.L.C., told attendees at the *Business Insurance Risk Management Summit* last month in New York.

Rather than view counterparty risk in a vacuum, he suggested risk managers view insurance like an investment portfolio, where “there is no one-size-fits-all approach,” he said.

He said basic questions can help guide the process. For example, What are the goals of the specific insurance program we are concerned about? How are those goals affected by the quality of the finances of the counterparty?



Mr. Kelly

Mr. Kelly said risk managers need to look within their own organization and ask, Who are the insured? Are we a major corporation with significant assets and capital for which the limited capacity of the insurance market provides a (profit-and-loss) buffer? Or, are we a small to midsize corporation with more limited needs, but for whom insurance could mean survival?

Identifying an insurance program’s funding goals is essential because the significance of the counterparty exposure will vary, he said.

For example, risk managers may have more flexibility when dealing with a property program because the short-term nature of the policy would let a risk manager change insurers if a company’s ratings were downgraded or it suffered other financial issues, he said. However, programs with long-term goals, such as casualty risks or directors and officers liability coverage, present counterparty concerns because “you absolutely want a carrier that is going to be there when the liability arises,” which could be years later, he said.

While risk managers “are not credit analysts,”

insurance buyers need to understand the issues involved, including risk aggregation, reinsurance, liquidity and insurer investments, Mr. Kelly said.

Beyond that, risk managers should tap all available resources to manage counterparty risk. These include rating agency information, although ratings tend to be lag indicators and “don’t give you a real-time picture of what’s happening,” he said.

Public information such as any financial filings, information from brokers, and independent assessments by actuaries and consultants also can help in evaluating an insurer, Mr. Kelly said.

To reduce their potential exposures, risk managers can adopt a variety of strategies, such as requiring minimum ratings for insurers, retaining more risk or moving risk into a captive insurer.

As far as concentration of risk, buyers should consider policy limits or overall exposures as a percentage of surplus, he said. While many buyers have diversified their programs to include multiple insurers when possible, another approach is to layer the program and place insurers with strongest credit ratings on the bottom, primary layer and place insurers with the lowest acceptable ratings at the highest layers. He also suggested broadening policy cancellation criteria to allow cancellation should an insurer’s rating change.

Pace, scope of regulatory changes pose major challenges

By MARK A. HOFMANN

NEW YORK—Banks and insurance companies are not the same, and regulators and politicians need to recognize that, a risk management expert says.

Christopher Lajtha, owner of Paris-based risk and insurance consulting firm ADA-GEO, made a high-level approach to the subject of global regulatory and legislative change for multinational risk managers at *Business Insurance’s* inaugural Risk Management Summit in New York in March.

He noted that risk managers and insurers are confronted by the specter of significant regulatory changes likely to emerge in the next few years. Both the rate of change and the potential scope of such regulation pose a challenge to corporations, he said.

For example, insurers have to deal with how the regulatory fallout from American International Group Inc.’s near-collapse in 2008, even though the problem did not arise from conven-



Mr. Lajtha

tional insurance activities. He said the AIG crisis spurred debate on the nature of systemic risk and how to control it. He noted Congress has held 100 or so meetings on systemic risk since 2008.

Insurers need to convince regulators that insurance companies aren’t as exposed to systemic risk as are banks. “There is a big difference between insurance companies and banks, notably with respect to liquidity,” he said.

Mr. Lajtha noted the process of regulation is neither neutral nor flawless and offered examples.

He referred to Sir David Arculus, a former chairman of the U.K. Better Regulation Task Force, who was quoted in the *Financial Times* in 2009 as stating that members of the

British Parliament are “far keener on passing new laws” than amending existing ones to fit the laws’ purpose. Not only do governments need to arrest the flow of overlapping laws, they also need to reduce the number of out-of-date and redundant laws, according to Sir David, Mr. Lajtha said.

Citing an analysis in the *Economist* magazine, Mr. Lajtha also said there appears to be a big difference between U.S. and E.U. approaches to regulation. U.S. regulation turns on a cost-benefit analysis, in a judicial context, where companies tend to enjoy a presumption of innocence. Punishment for error or fault comes from the market and a barrage of lawsuits, according to the analysis. But E.U. regulation rests more on a “precautionary principle,” where corporate innocence is not assumed, he said.

In the same *Economist* article, a U.S. official warned that the European Union is “winning the regulatory race.” The suggestion is that the European Union’s adherence to a precautionary principle could be seen as an indirect form of protectionism, in which multinational companies set their compliance objectives to meet the higher regulatory requirements.

Mr. Lajtha noted that Philip K. Howard, chairman of Common Good—a New York-based legal reform group—has said that Americans face a crisis of authority, not because they have too few rules, but because they have too many.

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Flexibility key to surplus lines market, must be defended

By **MARK A. HOFMANN**

NEW YORK—Freedom of rate and form is “an essential element” of the surplus lines insurance market and should be defended, a Lloyd’s America Inc. executive says.

Ironically, this flexibility is coming under U.S. government pressure as more policyholders depend on the surplus lines market, particularly when seeking to cover catastrophic exposures, said Joseph P. Gunset, general counsel of New York-based Lloyd’s America during a panel discussion of global regulatory and leg-

islative developments at the inaugural *Business Insurance* Risk Management Summit in New York in March.

With freedom of rate and form being eroded by the courts and, at times, regulators, “I would urge each of you to lobby your respective regulators” against curbing the surplus lines market’s flexibility. Mr. Gunset also said he looked forward to the enactment of the Nonadmitted and Reinsurance Reform Act, a measure that would streamline regulation and taxation of surplus insurers while easing qualified risk managers’ access to those markets. The mea-

sure has passed the U.S. House.

Mr. Gunset said Washington’s focus on health care means “it is sometimes easy to forget” that much remains to be done in the area of financial services regulation. He said he wanted to engage his audience as “advocates of prudent regulation.”

Mr. Gunset said Lloyd’s of London welcomes Solvency II and views the insurer capital rules as balanced, “cutting-edge regulation.”

However, he and fellow panelist Paul Mattera, senior vp of Boston-based Liberty Mutual Group, indicated that Capitol Hill needs to

learn more about insurance.

“We were very bullish on state regulation, but then 9/11 happened,” said Mr. Mattera in referring to the 2001 U.S. terror attacks that led to establishing the U.S. government’s terrorism insurance backstop.

But when discussing insurers’ post-9/11 problems, Mr. Mattera said he found Congress was “misinformed” about insurance economics.

“I do think there’s a lack of sophistication about insurance in Washington,” Mr. Gunset said.

Washington, however, found itself thrust into insurance affairs

when American International Group Inc. received a government bailout in September 2008.

Whether one believes the crisis was due to market or regulatory practices, “wherever the fault, something had to be done,” said Mr. Mattera. “The risk to the economy was really too great.”

But he said a difference exists between failing markets and failing companies. Saving failing companies serves private interests, he said.

“What’s done is done. The question is how to unwind the government’s position in private markets,” Mr. Mattera said.

He said the financial services regulatory reform bill the House passed in December is “kind of an exit strategy” because it calls for establishing a resolution fund to deal with failing financial institutions and would impose assessments on financial institutions with more than \$50 billion in assets to pay for the fund.

Mr. Mattera, like many others in the property/casualty insurance industry, criticized the idea. He said it can lead to moral hazard because it doesn’t differentiate between firms and because it would create winners and losers with a \$50 billion asset assessment threshold.

He said insurance holding companies would be part of the systemic risk regulatory regime while insurance operating companies would be subject to state guaranty funds.

“We bear much of the cost, but get little of the benefit,” said Mr. Mattera. In fact, he said to assess insurers at all for the resolution fund seems unfair and should strike buyers as unfair, because they would end up bearing some of the cost too, he said.

Innovation, execution go hand in hand

By **MARK A. HOFMANN**

NEW YORK—“Innovation” cannot happen without “execution,” said David A. North, president and CEO of Sedgwick Claims Management Service Inc. in Memphis, Tenn.

There are a lot of great ideas that occur in the insurance industry to improve business operations, but that also means “somebody has to execute it,” Mr. North said during an executive panel discussion of innovations in risk management at *Business Insurance*’s Risk Management Summit in New York in March.

Innovation “becomes a core earning stream,” another panelist said. It becomes the basis of how a company competes, said Matthew Power, president of Risk Specialists Cos. Inc. and executive vp of Lexington Insurance Co. in Boston. Mr. Power said some companies make the mistake of trying to compete on the basis of being the best in their field, which he called a “limited structure.”

Instead, he said being unique is

Continued on next page

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Risk managers need method to identify counterparty risk

By COLLEEN MCCARTHY

NEW YORK—Exposure to counterparty risk is a key concern for risk managers and some experts say the industry is struggling to devise the best method to determine insurers' credit worthiness in real time.

While credit rating agency reviews are an obvious tool in assessing counterparty exposures, they contain certain limitations, John D. Dempsey, managing partner of forensic accounting and claims-related service provider Dempsey Partners L.L.C., told the audience at the *Business Insurance* Risk Management Summit in New York last month.

Mr. Dempsey, who spoke as part of a industry executive panel, said despite the methodology and extensive data rating agencies use to scrutinize insurers, rating changes and re-evaluations take time because "they need to get it right." Ultimately, "what comes out of it is an opinion," he said.

"The take-away for risk managers should be that opinions take time," he said. But that "lag time" presents a challenge because "risk managers need to know how their insurers are doing today."

The industry is "struggling to learn what tools risk managers can use to help them answer that question," Mr. Dempsey said.

There is also evidence that risk managers may be relying too heavily on this "lagging indicator," he said. For example, a recent survey of risk managers, which will be presented at the Risk & Insurance Management Society Inc.'s annual conference this month, showed many

are assessing counterparty exposure with a narrow view rather than utilizing a variety of exposure measures and risk metrics, he said of the "very traditional" approach to assess insurer solvency.

For example, almost all risk managers surveyed said they rely on credit rating agencies to evaluate insurer solvency. Risk managers also said it was very important that the insurers understand and know the policyholder. They rated insurer cash flow as important, but not as important as other factors, Mr. Dempsey said.

However, almost half of the respondents did not consider insurers' stock price as an important factor in assessing financial strength. In addition, about 40% of the risk managers surveyed said they were not concerned with the price of credit default swaps.

Monitoring actively traded CDS of insurers could help risk managers identify potential red flags, if for example the spreads on these contracts increase, "it could provide a market-driven snapshot" of the credit risk, he said.

Investors and money managers

typically track CDS spreads—or the price of the swaps—to measure potential default. A high spread indicates a greater perceived risk.

In the survey, risk managers said more transparency is needed in the various data they receive to help assess market security. They also are trying to understand "what's around the bend" when it comes to their insurers' financial security.

Insurers also are taking aggressive steps to manage counterparty exposures, said Jacob Rosengarten, chief enterprise risk officer at XL Capital Ltd. in Stamford, Conn., who also

spoke as a panelist.

Potential sources of insurers' counterparty risk include their reinsurance contracts, investment portfolios and various relationships with trading partners, including parent and subsidiary companies, Mr. Rosengarten said.

One of XL's most important factors in managing counterparty exposure has been to develop a "defined and agreed-upon level of credit risk appetite," he said. "This is something that should be embedded and approved by the company's board."

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Continued from previous page

the basis of innovation. This means understanding trends and anticipating how those trends will affect buyers, he said.

The third panelist—John Merkovsky, global leader-Marsh Risk Consulting in New York—said he was struck by the observations of the featured speaker at the summit's Innovation Awards dinner.

Frans Johansson, the author of "The Medici Effect," stressed during his presentation that innovation occurs at the intersection of different fields of knowledge or activities, and is fueled by diversity. Seemingly unrelated things can interact to create new things, he said.

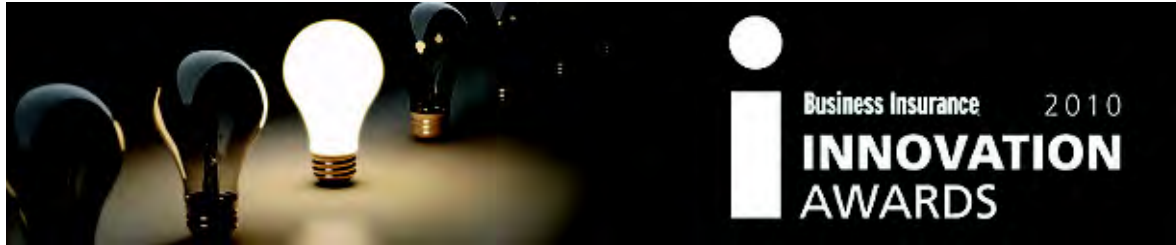
"If you think about the language of a CFO," much of it involves terms such as ROI—return on investment, said Mr. Merkovsky. Risk managers are being asked questions about the things they have always done, such as what is the analysis that supports the company's insurance limits. As a result, clients ask him, "Can you help us with the financial terms?" he said.

Risk managers need to speak the language of financial executives when confronted with questions such as, "Is the insurance policy we're buying the best use of capital?" he said. "Should we be buying an insurance policy at all?"

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EIGHT COMPANIES ARE THE WINNERS of the inaugural *Business Insurance* Innovation Awards, a new program recognizing leadership and innovation in products and services for professional risk managers. *BI* invited industry companies to submit entries using an official form. An independent panel of judges, comprising professional risk managers, selected the Innovation Award winners by scoring entries on the basis of originality, creativity, problem-solving, execution of concept and results achieved. Judges for the 2010 Innovation Awards were: Julie Bean of Duchossois Group Inc., Ryan Brown of Peabody Energy, Ron Cooley of W.W. Grainger Inc., Ronald Gandolfi of Corn Products International Inc., Ellen Marie Menas of Potash Corp., Sarah Pacini of Advocate Health Care Network, Terry Sampson of the Art Institute of Chicago and Cindy Slubowski of Kraft Foods Inc. The awards were presented at a dinner March 8 at the Waldorf=Astoria Hotel in New York in conjunction with the Risk Management Summit. For information or to enter the 2011 awards, please visit www.BusinessInsurance.com/InnovationAwards. The following profiles were reported by Mike Tsikoudakis and Colleen McCarthy.

ACE USA

ACE DigiTech and ACE Privacy Protection

www.aceusa.com

The ACE DigiTech and ACE Privacy Protection policies offer risk transfer and mitigation tools to address the rising expense of data breaches.

ACE DigiTech integrates coverage for errors and omissions liability, privacy liability, media liability and network security liability for technology companies.

ACE Privacy Protection provides privacy, network security and media liability coverage for all industries.

Additionally, the policies are combined with ACE's eRisk Hub, a Web-based loss prevention tool that assists policyholders in managing their cyber risks in the event of an incident.

Since its inception 12 years ago in response to risks posed by computer hackers, ACE's privacy and network liability products have evolved with tech-

nology developments and privacy regulations.

Today, ACE DigiTech offers coverage changes and enhancements to its privacy and network liability products, such as a simplified form, first- and third-party expenses, legal expenses incurred by the insured to ascertain their indemnification rights under an insurance contract and the ability to settle disputes.

The ACE DigiTech and ACE Privacy Protection program was released in April 2009.

"Some risk managers came to us saying, 'It's great that ACE is providing coverage for data breaches, but we could use more help finding the vendors to deal with an event,'" such as forensic investigators, legal advisers and crisis communication consultants, said Toby Merrill, vp and national product manager for technology E&O at ACE Professional Risk, a division ACE USA. "That was the primary driving need risk managers were asking for" that led ACE to create the data breach products and services, he said.



Aon Risk Services

Aon Global Risk Insight Platform

www.aon.com

The Aon Global Risk Insight Platform, or Aon GRIP, allows Aon brokers and their clients to see real-time market conditions and behaviors across 19 geographies when binding placements.

Aon GRIP is a Web-based platform that captures, archives and reports on Aon broking activity entered worldwide. The online repository of global insurance placement information is accessible to Aon brokers and allows them to see what coverages and limits carriers are quoting and the business they are binding or failed to bind. The combination of innovative technology and leveraging existing data led Aon to conceptualize Aon GRIP in March 2008 and launched it globally in May 2009.

On behalf of their clients, the platform helps Aon brokers understand market insights, such as what limits to purchase, areas of individual insurers' risk appetite, budgetary needs, and comparing local and wholesale markets.

Risk managers are able to see real-time prices and coverage that is being placed, allowing for greater market transparency.

Aon GRIP is available in 19 countries. "GRIP is a tool that is used internally right now to assist us in placing our clients' coverage, to finding the right markets, to helping risk managers make more informed, fact-based decisions," said Maureen Burm, chief operations officer for Aon's brokerage group and a member of the team that developed Aon GRIP.

Aon Benfield Inc.

FACConnect

www.aon.com

Aon Benfield's FACConnect is a Web-based facultative reinsurance brokerage platform for risk managers.

FACConnect allows clients to submit their facultative insurance placements, receive quotes and bind coverage from their computers within five minutes.

Users log in through a Web portal, enter their risk data and then receive an automatic facultative reinsurance quote from their prenegotiated market of choice. Once the risk is accepted, a Fac Summary Page is generated, which provides coverage, limits and premium information.

The platform accommodates high-volume, low- to medium-facultative reinsurance transactions, which historically were not economical for reinsurance brokers due to frictional costs and costly to clients because of minimum premium requirements.

After two years in development and with its Sept. 3,



2009, release, FACConnect brought the facultative market and greater choice and competition to risk managers.

"Within the reinsurance marketplace, one of the biggest issues is when you're creating bordereaux, is to make sure you're capturing the appropriate information and to make sure that it's information that the ceding company and the reinsurance market agree with," said Dawnmarie Black, co-head of global products at Aon Benfield. A bordereau is a periodic report on reinsurance premiums and losses, usually provided by a ceding insurer to a reinsurer. With FACConnect, "it takes under two minutes to create the bordereau," Ms. Black said.

Chartis Europe S.A.

BusinessGuard Director

www.chartisinsurance.com

Chartis Europe developed BusinessGuard Director as gap coverage in response to a new German law that requires self-insured retentions for directors and officers covered by liability policies of companies.

The law requires a 10% deductible per loss on directors and officers coverage for directors on the executive board of German corporations that is capped at 150% of their fixed annual earnings.

Neither a D&O nor a liability policy, BusinessGuard Director instead is a stand-alone policy

purchased by the individual and an add-on to the company's D&O policy. It is triggered when there is a covered claim in the company's D&O policy and if the mandatory self-insured retention applies to the respective loss and specific individuals. It covers only the gap produced by the law, therefore protecting the director's personal assets.

BusinessGuard Director responds solely to the demand created by closing the gap created by the law and preserving the original D&O policy.

This policy, introduced in 2009, offers complete protection for German executive directors for the risk they face due to their managerial liabilities and recent regulations.



FM Global

RiskMark

www.fmglobal.com

After spending more than 12,000 hours in development starting in 2004, Factory Mutual Insurance Co., which does business as FM Global, completed its Web-based analytics tool, RiskMark, in 2009.

RiskMark is a fact-based property risk quality-benchmarking tool accessible to risk managers from their desktops. It allows risk managers to benchmark the risk quality of their location, define the basis to prioritize risk improvements and administer scenarios to maximize their limited risk improvement budgets.

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To all persons or entities interested in the affairs of THE INSURANCE CORPORATION OF NEW YORK Notice is Hereby Given

I. James J. Wrynn, Superintendent of Insurance of the State of New York, has been appointed by an order of the Supreme Court of the State of New York, New York County, entered March 10, 2010 (the "Liquidation Order"), as the liquidator (the "Liquidator") of The Insurance Corporation of New York ("INSCORP") and, as such, has been: (i) vested with title to INSCORP's property, contracts, rights of action and all its books and records; and (ii) directed to liquidate INSCORP's business and affairs, pursuant to New York Insurance Law ("Insurance Law") Article 74. The Liquidator has, pursuant to Insurance Law Article 74, appointed Dennis J. Hayes, Special Deputy Superintendent of Insurance (the "Special Deputy") as his agent to liquidate the business of INSCORP. The Special Deputy carries out his duties through the New York Liquidation Bureau, 123 William Street, New York, New York 10038-3889.

II. In accordance with Insurance Law Section 7432(b), all claims against INSCORP must be presented to the Liquidator by July 9, 2010. Claims presented after July 9, 2010, will not share in the distribution of assets until all allowed claims that were filed on or before July 9, 2010 have been paid in full with interest. All policyholders or claimants who appear on INSCORP's books and records as of the date of entry of the Liquidation Order are deemed to have duly filed proofs of claim prior to July 9, 2010.

III. In accordance with Insurance Law Section 7405, all contracts and agreements, including all leases, tax sharing agreements and employment contracts of INSCORP, however described, shall terminate and all liability thereunder shall cease and be fixed as of the date of entry of the Liquidation Order, unless expressly ratified in writing by the Liquidator.

IV. The Liquidator is authorized, permitted and allowed to sell, assign or transfer any and all real or personal property, stocks, bonds or securities of INSCORP at market price or better, or if there is no market price, at the best price obtainable at private sale at such times and upon such terms and conditions as, in his discretion, he deems it in the best interest of the creditors of INSCORP, and he is further authorized to take such steps and to make and execute such agreements and other papers as may be necessary to effect and carry out such sales, assignments and transfers.

V. INSCORP, its officers, directors, shareholders, members, depositories, policyholders, trustees, agents, servants, employees, attorneys, managers and affiliates, and all firms, corporations, associations, and other persons or entities: (i) having all property, records, books or papers belonging to INSCORP, wherever located, including but not limited to insurance policy, claim and legal files; shall preserve all of them and are directed to promptly assign, transfer, turn over and deliver them to the Liquidator; and (ii) having any property, records, books or papers relating to INSCORP, wherever located, shall preserve all of them and are directed, upon the Liquidator's request, to promptly submit them to the Liquidator for examination and copying.

VI. Any persons or entities providing claims processing services, data processing services, electronic records retention services or other information technology services to INSCORP shall maintain and preserve all information in its possession ("Information") relating to INSCORP, wherever located, including but not limited to all documents, data, electronic files and records, and are directed, upon the Liquidator's request, to promptly submit all such information to the Liquidator for examination and copying.

VII. Any bank, savings and loan association, other financial institution or any other entity or person, which has on deposit or in its possession, custody or control any of INSCORP's funds, accounts or assets shall immediately, upon the Liquidator's request and direction: (i) turn over custody and control of such funds, accounts or assets to the Liquidator; (ii) transfer title of such funds, accounts or assets to the Liquidator; and (iii) change the name of such accounts to the name of the Liquidator; (iv) withdraw funds from such bank, savings and loan association or other financial institution; or (v) take any lesser action necessary for the proper conduct of the liquidation proceeding.

VIII. Any distribution of assets shall be in accordance with the priorities set forth in Insurance Law Article 74.

IX. The officers, directors, shareholders, members, depositories, trustees, policyholders, agents, servants, employees, attorneys, managers and affiliates of INSCORP and all other persons are permanently enjoined and restrained from: (i) transacting INSCORP's business; (ii) wasting or disposing of, or permitting to be done any act or thing that might waste or dispose of, INSCORP's property; and (iii) interfering with the Liquidator in the possession, control or management of INSCORP's property or in the discharge of his duties.

X. All persons are permanently enjoined and restrained from commencing or prosecuting any actions or proceedings against INSCORP, the Liquidator or the New York Liquidation Bureau, its employees, attorneys and/or agents, with respect to any claims against INSCORP.

XI. All persons are permanently enjoined and restrained from obtaining preferences, judgments, attachments or other liens, or making any levy against INSCORP's assets or any part thereof.

XII. All persons who have first-party policyholder no-fault loss claims pursuant to Article 51 of the Insurance Law against INSCORP are enjoined from presenting and filing claims with the Liquidator for a period of 90 days from the date of entry of the Liquidation Order.

XIII. All communications relating to INSCORP and to the liquidation thereof should be addressed to:
New York Liquidation Bureau,
123 William Street, New York, NY 10038-3889
(212) 341-6560

JAMES J. WRYNN, Superintendent of Insurance of the State of New York as Liquidator of The Insurance Corporation of New York

DENNIS J. HAYES, Special Deputy Superintendent of Insurance and Agent for the Superintendent as Liquidator of The Insurance Corporation of New York

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In a single place, RiskMark archives FM Global's risk findings of tens of thousands of clients worldwide and condenses them into a single score along with a summary of risk conditions.

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tected facilities. FM Global has shown that these scores correlate directly with loss expectancy and a company's earnings stability.

Additionally, risk managers can run "what-if" scenarios to learn the level of risk to their property, such as fire, natural disasters, equipment malfunctions and people.

RiskMark has been available since May 2009.



InterSys Ltd.
Supply Chain Analysis of Interruption Risks (SCAIR)
www.supplychain-risk.com

InterSys' Supply Chain Analysis of Interruption Risks, or SCAIR, is a mapping tool that tracks suppliers across a portfolio of products.

SCAIR uses a collection of data from the business to map out critical supply points, produce loss estimates for failures in supply chains that could result in supply interruption, generate internal site and supplier risk profiles, and estimate the impact of various threat scenarios.

Risk managers build their supply maps by product families and can stress test them against threats such as fire, financial failure or product recall.

The information is presented in a graphical interface that allows sea-

soned risk managers and nonrisk professionals to assess various impacts to their supply chain and select the most effective risk-mitigation course. The loss estimates, which can be updated as new data becomes available, also can be used to steer insurance-buying and risk-financing decisions.

Furthermore, users of SCAIR control company-sensitive information by keeping it behind the firewall.

SCAIR was made available to risk managers on Dec. 1, 2008.

"One of the main challenges" in managing supply chain risk in the past "is it falls between parts of the organizations. It doesn't have a natural home anywhere," said Catherine Geyman, senior consultant and director at InterSys. "Whilst SCAIR is a risk management tool, arguably the areas that benefit most are supply chains and operations," she said.

Lexington Insurance Co.
LexCap Overturn
www.lexingtoninsurance.com

LexCap Overturn allows policyholders to purchase a medical professional liability endorsement in case a statutory cap on noneconomic damages is overturned during the policy term.

At the time the product was developed, three states had their statutory caps on noneconomic damages overturned on constitutional grounds. In response, LexCap Overturn provides risk managers the flexibility to manage their noneconomic risk exposure during statutory uncertainty.

LexCap Overturn coverage is endorsed to the client's medi-

Continued on next page

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cal professional liability policy for 1% of the premium paid for the underlying coverage. Once the insured uses the coverage, they are obligated to pay additional premium for the additional limit.

The product helps risk managers identify loss exposures with constitutional challenges to statutory caps on noneconomic damages, analyze the timing of when the losses might occur, and provides greater risk financing flexibility to pay losses.

Lexington began developing the product in December 2008. It was made available to risk managers on Oct. 12, 2009.

"For risk managers and boards of directors, it's

sleep-at-night insurance. The reason why anyone would buy insurance is because they believe there might come a day when they'll need it," said Shep Tapasak, zonal manager for Lexington, who developed LexCap Overturn with the late Richard Bucilla, executive vp in the insurer's health care division.

"Health care facilities over time have enjoyed for the most part an improving malpractice environment," Mr. Tapasak said. "What LexCap Overturn does is transfer the risk that's currently in the court system to Lexington. We're willing to take the risk that the caps might be overturned in these states and, in turn, we would provide the insured an option to buy this coverage and trigger it."



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Marsh Inc.

Variable Cost of Risk Evaluator
www.marsh.com

Marsh's Variable Cost of Risk Evaluator, or VSCORE, helps risk managers improve their financial outcomes by comparing workers compensation claims administrators on estimated variable costs per year, rather than unit price.

VSCORE uses actual data from claims administrators' books of business. The retained loss from workers comp estimates is calculated based on the claims administrators' outcomes from clients with similar risk profiles. The information is used to focus attention on the ultimate claim cost outcome per year rather than claim frequency and unit price.

Risk managers can use the information from VSCORE to determine actual anticipated claim cost, which they then can use to select better vendor partners and achieve lower costs.

VSCORE was developed in March 2007 after Marsh helped a client with workers comp claims costs. Several months prior to its release, Marsh focused largely on approval of releasing the book of business data, improvements and assessments of VSCORE. It was released to risk managers in March 2009.

"The idea for VSCORE came when a client marketing its workers comp program was visited by several vendors claiming to have the best outcomes and the best savings," said Pamela Hobbs, senior vp and member of the innovation team at Marsh Risk Consulting.

Using the vendor-provided data, subject to nondisclosure agreements, "now we can tell clients who would provide the biggest impact," said Sri Sridharan, senior vp in the claims consulting practice.

Ms. Hobbs said the use of VSCORE in marketing TPA partners is "very client specific," and VSCORE therefore cannot provide an overall ranking of vendors. "The No. 1 and No. 2 vendor is different in almost every case," she said.

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Reform: Big decision ahead for employers

CONTINUED FROM PAGE 1

terminates its health insurance plans are compelling.

Employers that take that route would have to pay a \$2,000 per employee penalty to the federal government starting in 2014. But with health insurance costs averaging about \$9,000 per employee, the savings from the elimination of coverage would dwarf the penalties paid.

"You don't have to be a health care actuary to know that \$2,000 is a lot less than \$9,000," said Linda Havlin, a partner with Mercer L.L.C. in Chicago.

Some employees also could benefit from health care plan terminations. Lower-paid employees would be entitled to federal health insurance premium subsidies to buy coverage through state insurance exchanges that the reform law authorized and are to be set up by 2014. Those subsidies could result in some employees paying less for coverage than they do under their employer's plan.

Those apparent advantages are why many employers are asking their consultants, brokers and agents whether a plan termination makes financial sense.

"The question comes up at almost every presentation I make," Mercer's Ms. Havlin said.

But the perception that every employer will come out ahead financially by dumping their health care plan differs from reality, experts say.

"When we have drawn up models, the vast majority of employers would pay more" compared with maintaining their plans, said Dave Osterndorf, senior health and group

benefits actuary in the Milwaukee office of Towers Watson & Co.

"There may be scenarios where plan terminations may make economic sense, but they would be rare," said Marcia Benshoof, president of broker IMA of Colorado Inc. in Denver. "We are counseling against any knee-jerk reactions."

There are several reasons why a plan termination would not be cost-effective for employers, with the most significant being the cost that employers likely would incur by increasing salaries of employees not eligible for premium subsidies and those whose subsidies would be far less than their current share of the group premium.

Under the new law, employees with adjusted gross family incomes exceeding \$88,000 would not be eligible for a federal subsidy and would have to pay the full premium. Since family premiums already often exceed \$15,000 a year, upper middle-income and upper-income employees would effectively have a huge reduction in compensation if their employers terminated coverage and employees had to pay for their own coverage.

To make up for that huge loss of compensation, employers wishing to retain workers would have to bump up salaries, which would increase employers' share of FICA taxes.

Take the case of an employer plan that costs \$15,000 for family coverage, with the employer paying \$12,000 and the employee paying \$3,000. For an employee who earns \$50,000 and has a working spouse earning \$50,000, no subsidy would be available.



AT WHAT COST?

Potential costs for employers to consider if they terminate health care plan coverage

- Increased salaries for employees who aren't eligible for premium subsidies
- Increased FICA taxes
- Higher employee turnover
- Inability to influence employees' habits through health plan design and wellness incentives
- Employee exposure to huge medical bills if they don't purchase health insurance on their own

REFORM SURVEY: Results of a survey of U.S. business executives by *Business Insurance* and sister publications at Crain Communications Inc. will appear in the April 12 issue.

The employer, though, would have to give the employee more than \$12,000 to prevent a reduction

in total compensation. That is because employees currently almost always pay their share of the total with pretax dollars through salary reductions, reducing their taxable incomes.

If the employer boosts employees' salaries, their taxable income would increase. In addition, Social Security and Medicare payroll taxes, paid by both the employer and employees, also would increase.

In addition, the employer would have to pay the \$2,000 per employee penalty for not offering coverage.

There also could be other costs. Employers would lose their ability to influence employees' health through wellness programs, which could result in a less healthy, less productive workforce, said Andy Anderson, a partner with Morgan, Lewis & Bockius L.L.P. in Chicago.

Yet another concern, some say, is that if employers drop coverage, employees might not purchase coverage on their own. While employees would be hit with financial penalties for not buying health coverage, those penalties are relatively modest, which may lead to some employees deciding to pay the penalty rather than buying coverage.

If those employees then became ill or were injured and incurred large medical bills, the employees would face enormous financial stress that also could affect productivity.

There would, however, be situations in which employers, even after paying the \$2,000 penalty, increasing salaries and incurring higher payroll taxes would come out ahead financially by terminating coverage. The most obvious situation is where employers have a

large proportion of low-wage employees.

The economics will "depend on wage calculations," said Thomas P. Miller, a resident fellow at the American Enterprise Institute in Washington.

Indeed, an employer could gain a competitive advantage by terminating coverage in some cases, said Michael Cannon, director of health policy studies at the Cato Institute in Washington.

Acknowledging that it might appear to be "counterintuitive," such a financial advantage could happen during a strong economy when employers have difficulty in recruiting low-wage employees, Mr. Cannon said.

Those employees would only have to pay a small percentage—generally 2% to 4% of income—to buy coverage in insurance exchanges. As a result, any increase in employee salary to compensate for employees' additional health insurance costs would be modest. Employers then could give employees several thousand dollars in additional salary and still be far ahead financially, Mr. Cannon said.

There also could be cases where employers choose to terminate health care plans for the simplicity of just paying a fixed assessment to the government, said Grace-Marie Turner, president of the Galen Institute, an Alexandria, Va.-based free-market health policy organization.

"Some employers will say, 'I'll write the check and I'm out of here,'" Ms. Turner said.

If large numbers of employers did that, the costs of providing coverage to the uninsured through the exchanges could explode, resulting in legislators having to find a lot more revenue than projected to pay the higher costs, Ms. Turner warned.

AIG: Key credit rating upgrade bolsters other positive developments

CONTINUED FROM PAGE 1

But perhaps more importantly, some analysts said, the rating agency also upgraded AIG's stand-alone credit profile to BB from BB-, with a positive outlook. The stand-alone grade reflects the New York-based insurer's creditworthiness absent government support, S&P said.

The revised assessment "reflects the company's continued momentum in re-establishing its multiline insurance market presence through its Chartis and SunAmerica operation, good progress in the unwinding of AIG Financial Products Corp., and the improved liquidity position of its noninsurance operations," S&P analyst Kevin Ahern said in a statement.

In March, AIG struck deals to sell its two biggest non-U.S. life units, American Life Insurance Co. and AIA Group Ltd., to Metlife Inc. and Prudential P.L.C., respectively, for a combined total of about \$51 billion. It pledged the proceeds to pay down debts on a credit line it received from the Federal Reserve as part of its \$182.3 billion rescue package. The transactions are expected to close by year-end, the companies said.

S&P said, if successful, the two

acquisitions will improve AIG's financial profile. After the close of the transactions, the rating agency may further revise AIG's stand-alone profile upwards by two notches, to investment grade, it said.

After the sale of ALICO and AIA, 'the size and scope of available units to sell will drop off significantly, making it difficult to generate really large sums of money' to put toward the remaining debt.

John L. Ward, Cincinnatus Partners L.L.C.

Mr. Benmosche said the sales of ALICO and AIA will make a significant dent in its federal debt.

"We are well on our way to paying back the Federal Reserve" with the sales of ALICO and AIA Group Ltd. "We are beginning to show the appropriate returns you'd expect of a company of our stature."

AIG last week completed the sale of its third-party asset management business, renamed PineBridge Investments, to Hong Kong-based Pacific Century Group for \$277 million in cash, the companies said.

Separately, AIG last month raised \$452 million through the sale of its remaining ownership of reinsurer Transatlantic Holdings Inc.

Mr. Benmosche last week told the New York Times he viewed the S&P report as vindication of the strategy he devised after becoming AIG chief last year, essentially slowing the pace of asset sales until improved market conditions could fetch higher values for the units.

Analysts viewed S&P's rating action as positive. "They got some big endorsements, and that kind of recognition doesn't come easy," said John L. Ward, CEO of Cincinnatus Partners L.L.C. in Cincinnati. Mr. Ward said the developments should "offer reassurance" to insurance buyers that there is further stability, and perhaps "create a calming effect," he said.

Bill Bergman, an analyst with Morningstar Inc. in Chicago, said Mr. Benmosche's reported statements about repaying government debt by 2013 "is the first time we've really heard anything that specific.

You have to respect that. I think the needle is moving in the right direction."

However, analysts noted AIG will continue to face challenges. After the sale of ALICO and AIA, "the size and scope of available units to sell will drop off significantly, making it difficult to generate really large sums of money" to put toward the remaining debt, Mr. Ward said.

Even after the sale of ALICO and AIA, the insurer will still owe roughly \$70 billion in various forms of aid, "and that's a pretty steep hill to climb," he said.

In addition, AIG's "underwriting profitability has been weak relative to its peers" and "there is still loss reserve uncertainty," said Mr. Bergman.

Despite Mr. Benmosche's reported optimism about freeing the insurer from government control, the company remains under close supervision by the federal government. Last week, the U.S. Treasury Department named two people to serve on AIG's board of directors: former chief executive of E*Trade Financial Corp. Donald H. Layton, and former chief executive of Electronic Data Systems Corp. Ronald A. Rittenmeyer. The government had the right to make the appoint-

ments because AIG failed to pay dividends for four quarters on AIG preferred stock held by the Treasury Department, the agency said in a statement.

Meanwhile, a legal victory for AIG last week brings the insurer one step closer to resolving nearly all outstanding litigation.

U.S. District Judge Laura Taylor Swain dismissed a shareholder derivative suit against AIG and its directors, accepting AIG's argument that the plaintiffs failed to meet legal requirements, namely "they did not make a demand on the company's board of directors prior to bringing the action," according to court documents.

The plaintiffs—led by the Louisiana Municipal Police Employees Retirement System pension fund—accused executives of ignoring the potential for catastrophic losses stemming from exposure to credit default swaps, largely tied to subprime mortgage-related debt, through its AIG Financial Products unit.

The suit sought remedies on behalf of AIG, including restitution and "extraordinary equitable relief."

Mark Herr, a spokesman for AIG, said the company was pleased with the ruling.

Part D: Employers reviewing options

CONTINUED FROM PAGE 1

benefit consultants predict. The “donut hole” is the gap in coverage that occurs for retirees who spend more than \$2,830 annually on prescriptions.

Another option employers are considering is to contract with an insurer or a pharmacy benefit manager to offer employer group waiver plans, which consultants describe as “group” Part D programs that enable employers to cover retirees altogether under a single, national program, either on a fully insured or self-insured basis.

Under the Medicare Prescription Drug, Improvement and Modernization Act of 2003, employers that retain prescription drug coverage for retirees that are at least equivalent to Part D coverage receive a tax-free contribution from the federal government equal to 28% of the employer’s annual drug costs that are between \$310 and \$6,300 per beneficiary. In addition, they are permitted to deduct their entire retiree prescription drug expense, including costs for which they receive the tax-free government subsidy.

But health care reform legislation signed into law last month by President Barack Obama will alter that tax treatment beginning in 2013. While the tax-free subsidies will continue, employers receiving them no longer will be allowed to take a tax deduction for the portion of prescription drug expenses subsidized by the government.

Because U.S. accounting rules require publicly traded companies to immediately recognize the impact of such a change on their financial statements, many companies that had been accepting the tax-free subsidy began reporting one-time earnings charges as soon as the legislation passed Congress. Perhaps the biggest earnings hit was announced by Dallas-based AT&T Inc., which reported a \$1 billion non-cash charge on March 26, while other companies reported lesser amounts (see box).

The loss of the retiree drug subsidy tax deduction will cost employers approximately \$233 per retiree per year based on average annual retiree drug expenditures of \$2,800, according to Dave Osterndorf, chief health actuary at Towers Watson & Co. in Milwaukee.

A March report by Towers Watson estimates for-profit employers that provide prescription drug benefits to Medicare retirees receive a nontaxable RDS averaging \$665 per plan member per year. By comparison, Medicare prescription drug plans receive about \$1,050 per retiree per year.

Moreover, the Patient Protection and Affordable Care Act gradually will increase that amount between 2013 and 2020, when it reaches approximately \$1,500 per retiree per year, Mr. Osterndorf pointed out.

This increased federal subsidy paid to PDPs is designed to fill the “donut hole.” In 2010, retirees with Part D coverage are uninsured for drug expenditures between \$2,830 and \$4,550 annually, when catas-

Firms eager to access fund for retiree care

Employers that provide health benefits to retirees before they are eligible for Medicare are lining up to receive their share of \$5 billion being made available as part of the recently approved health care reform law, consultants say.

The Patient Protection and Affordable Care Act establishes a temporary reinsurance program to reimburse employer-sponsored health plans up to 80% of early retirees’ health care costs between \$15,000 and \$90,000.

The program, which is being administered by the U.S. Department of Health and Human Services, begins on June 21 and ends by 2014, or whenever the funding runs out.

“First, they had to deal with the accounting issues” related to the loss of the tax deduction for the retiree prescription drug subsidy for retirees receiving Medicare, said Derek Guyton, a principal and worldwide partner at Mercer L.L.C. in Chicago.

“The next thing employers are addressing is the temporary early retiree reinsurance program, which begins in 90 days. They’re concerned the \$5 billion will disappear quickly,” he said.

—By Joanne Wojcik

‘It’s a moving target since things will be happening gradually, like the closing of the ‘donut hole.’ Some may find they no longer need to provide drug coverage. Others are looking at immediate changes to offset the hit to earnings.’

Derek Guyton, Mercer L.L.C.

trophic coverage kicks in.

“It’s hard to justify for the employer receiving a \$500 per person subsidy when there’s going to be a \$1,500 subsidy for plans out in the individual marketplace,” Mr.

Osterndorf said.

According to a March 16 report by the Moran Co., a health care research and consulting firm based in Washington, as many as 1.5 million to 2 million of the 6 million to 7 million retirees who receive drug benefits from their former employers could lose them because of the tax change.

In fact, most employers that have received the subsidy already have begun re-examining their retiree drug programs, benefit consultants say.

“We’re talking to almost all of our clients about what to do,” said John Grosso, a Norwalk, Conn.-based principal and actuary in Hewitt Associates Inc.’s health management consulting practice. “What they’re going to be looking to do is reduce their costs. We don’t see companies terminating their plans entirely. But they’ll be looking for new ways to get retirees drug benefits that are cheaper than what they’re paying today.”

For example, Mr. Grosso expects some employers will do what General Electric Co. did in 2009. The Fairfield, Conn.-based company contracted with a Medicare-approved prescription drug plan offered to provide drug benefits to its retirees, thereby forgoing the subsidy.

An employer that chooses this route more than likely will do so on a self-insured basis because that often is more cost-effective, according to Mr. Grosso.

And because the PDP receives a larger federal subsidy than employers do, the cost of the coverage may end up being lower for those employers, he said.

Moreover, “from a participant standpoint, the group PDP could be relatively seamless,” he said.

The other option, which may be a little more disruptive to retirees, according to Mr. Grosso, would be “to send retirees to the individual Part D market and provide a tax-free subsidy” to help them pay for it.

With such an approach, the employer contribution is generally deposited into a health reimbursement arrangement that retirees can use to pay their Part D premiums, as well as any other out-of-pocket medical expenses, Mr. Grosso explained.

Derek Guyton, a principal and worldwide partner at Mercer L.L.C. in Chicago, said many of the companies he has consulted adopted the RDS originally because it was the best financial deal for them at the time, and it will continue to be until the end of 2012, when the tax deduction expires.

“Now they are going back to see whether the decision they made five years ago still makes sense,” he said. “But it’s a moving target since things will be happening gradually, like the closing of the ‘donut hole.’ Some may find they no longer need to provide drug coverage. Others are looking at immediate changes to offset the hit to earnings.”

“I’m not saying a lot of employers will drop coverage or make huge cuts to coverage, but a lot will be looking at it because the landscape has changed,” Mr. Guyton said.

Health care reform law removes benefit incentive

Paul Dennett, senior vp for health care reform at the American Benefits Council in Washington, said the tax-free drug subsidy was created by Congress when it passed the Medicare prescription drug program in 2003 to prevent employers from discontinuing retiree drug benefits.

“When the Medicare drug benefit was enacted in 2003, there was a concern whether it would displace employer-sponsored drug coverage,” he said.

At the time, the Congressional Budget Office estimated that as many as a third of employers providing retiree drug coverage could discontinue it and instead send retirees into the individual Part D market. “The subsidy was intended to provide a financial incentive to employers to maintain the benefit,” Mr. Dennett said.

But some members of Congress still didn’t think the 28% tax-free subsidy would be enough, Mr. Dennett recalled. Because budget constraints prevented lawmakers from increasing the subsidy to make it more attractive to employers, they instead allowed tax deduction for costs covered by the subsidy, he explained.

In response to health care reform’s elimination of the tax deduction, the ABC, which represents about 300 large employers, is asking Congress to repeal the provision, saying it would deal a significant blow to corporate profits and lead employers to do what it was intended to prevent—prompt employers to drop retiree drug coverage. The House Energy and Commerce Committee scheduled a hearing for April 21 to hear employer concerns.

—By Joanne Wojcik

TAKING A HIT

Employers have announced expected earnings charges in the first quarter of this year related to loss of the retiree prescription drug subsidy tax deduction

| Company | Estimated charge |
|------------------------------|------------------------------|
| AT&T Inc. | \$1 billion |
| Verizon Communications Inc. | \$970 million |
| Boeing Co. | \$150 million |
| Deere & Co. | \$150 million |
| Caterpillar Inc. | \$100 million |
| Prudential Financial Inc. | \$100 million |
| Lockheed Martin Corp. | \$96 million |
| 3M Co. | \$85 million to \$90 million |
| Exelon Corp. | \$65 million |
| Ingersoll-Rand P.L.C. | \$41 million |
| AK Steel Holding Corp. | \$31 million |
| Eaton Corp. | \$25 million |
| Illinois Tool Works Inc. | \$22 million |
| Xcel Energy Inc. | \$17 million |
| Valero Energy Corp. | \$15 million to \$20 million |
| Honeywell International Inc. | \$13 million |
| Goodrich Corp. | \$10 million |
| Carpenter Technology Corp. | \$5.9 million |
| Allegheny Technologies Inc. | \$5 million |

Source: Securities and Exchange Commission filings

U.S. proposal may be far-reaching

Fortress mentality could cause increase in protectionist measures

By MICHAEL BRADFORD

DUBLIN—A reinsurance tax proposal in the United States and the country's growing protectionist attitude could affect the insurance market far outside America's borders, experts said at an insurance forum in Dublin.

The U.S. fortress mentality that appears to be developing will give rise to an increase in protectionist measures, said John Bruton, a former prime minister of Ireland and former European Union ambassador.

Speaking at the European Insurance Forum 2010 last week sponsored by the Dublin International Insurance & Management Assn., Mr. Bruton said "the increasing success of Democrats in elections in the Senate and House has brought into both houses of Congress a significant number of protectionists."

Bradley Kading, president and executive director of the Assn. of Bermuda Insurers and Reinsurers, pointed out that Bermuda has felt the brunt of the U.S. protectionist attitude.

"U.S. politics, particularly populist politics, has always associated Bermuda with two things: job loss and corporate inversions—the policies of a handful of U.S. companies to change their legal domiciles to escape the burdens of U.S. regulatory and global tax policy," Mr. Kading said.

There could be a further protectionist impact on Bermuda and other countries if legislation introduced by Rep. Richard Neal, D-Mass., becomes law, Mr. Kading said during the forum. The proposal would tax premiums and limit tax deductions for reinsurance that insurers cede to affiliates outside the United States.

The bill, H.R. 3424, would alter the U.S. Internal Revenue Code to cap the deductibility of nontaxed reinsurance premiums paid by insurers to their foreign affiliates.

Reinsurers seek out Ireland for business

DUBLIN—Ireland's insurance and reinsurance sector has performed well in the global economic downturn, but now is not the time for complacency, President Mary McAleese warned during an address to the European Insurance Forum 2010.

"The international insurance and reinsurance sector has been operating successfully, thankfully, in very, very challenging local and global conditions," the president of Ireland said during the March 29-30 forum in Dublin. "Ireland continues, of course, to consolidate its position as one of the more sought-after reinsurance locations."

"But despite that kind of success, neither complacency nor self-congratulation is any guarantee in the teeth of what is very stiff international competition and still a very big uphill climb in terms of the challenging global environment," President McAleese said.

The president made her remarks to about 140 attendees at the forum, which was held at the Royal Dublin Society Concert Hall.

Information on the Dublin International Insurance & Management Assn., which sponsored the event, and the forum is available online at www.europeaninsuranceforum.com. Dates for next year's forum have not yet been set.

—By Michael Bradford

Rep. Neal has argued that foreign insurers shift premiums offshore to lower their U.S. tax burden, putting U.S.-based firms at a disadvantage.

The bill would have a far-reaching impact, affecting foreign insurers with U.S. operations, Mr. Kading said.

The legislation proposes a "puni-

tive tax on nearly all affiliated reinsurance transactions between a U.S. subsidiary and its foreign affiliate," Mr. Kading said. "The tax rate equates to a 25% gross receipts tax on the subject premium and it leads to a disqualification of tax deductions for 85% of affiliated reinsurance being used today."

"The administration's discriminatory reinsurance tax proposals affect all international insurers, whether they are Bermuda-based, or German or Irish, U.K., Australian or Canadian," Mr. Kading said. "They are all affected by the reinsurance tax proposal that has been advocated by Rep. Richard Neal."

Mr. Kading said passage of the bill could spark unwelcome moves by U.S. trading partners.

"The imposition of the tax would basically signal the end of the post-war commitment to cross-border trade and financial services," Mr. Kading said. "Our opponents in the U.S. note that their goal is to have all group capital supporting U.S. insurance risks to be taxed under the U.S. tax code. If that happens, cross-border trade will be lost in a wave of protectionist zeal."

Mr. Kading's group, DIMA and the Risk & Insurance Management Society Inc. are among groups that oppose the bill.

Countering opponents' concerns, the bill has the backing of the Coalition for a Domestic Insurance Industry, a group of U.S. insurers that includes W.R. Berkley Corp., Chubb Corp. and Travelers Cos. Inc. They argue the bill would level the playing field for domestic insurers.

Mr. Bruton pointed out that the chance of passage doesn't seem high in the short term. The bill "has been hanging around for a while and it hasn't gotten very far," he said. Rep. Neal reintroduced the bill late last July in the House after Congress failed to act on a similar measure in 2008.

If the bill were to pass, what is worrisome is that revenue it would generate likely would be earmarked for unrelated expenditures that "could be quite onerous," Mr. Bruton said.

Solvency: Rules may drive innovation

CONTINUED FROM PAGE 4

At another session during the forum, Matthew Elderfield, head of financial regulation at the Central Bank & Financial Services Authority in Dublin, said captives may be particularly concerned about ORSA obligations and his office is prepared to provide some guidance.

"We're prepared to work with DIMA to assess a handful of captives' ORSAs on a pilot basis and use this for broader industry feedback," Mr. Elderfield said. "This way DIMA's members will have a clearer picture of what we view as good practice and where we think more work is needed."

Captives "will receive a fair hearing from my staff" if they take the time to put together a "sensible assessment," said Mr. Elderfield.

"Frankly, if the first effort isn't great, we're prepared to be pragmatic and work with firms in an iterative process to see that the ORSA is improved over time."

Lloyd's of London already is in good shape to meet Solvency II's compliance deadline, said Sean McGovern, director, general counsel at Lloyd's. "One of the difficulties, of course, is at the moment we are trying to implement something when the details are far from clear."

Mr. McGovern criticized the Committee of European Insurance and Occupational Supervisors' advice to the European Commission regarding Solvency II as heavy-handed.

"I think it is unfortunate that the CEIOPS approach has been so penal" and distracting from more significant implementation issues,

Mr. McGovern said.

Mr. Jeffrey took issue with that characterization.

"Whether or not the CEIOPS-suggested requirements were conservative, too conservative or not conservative enough is to be debated," he said. "But I never see it as penal to be asked to hold lots of capital. That's not penal."

"Well, in Lloyd's case it would be over double our existing capital requirement," said Mr. McGovern. "I think what I'm comforted by is if you talk to policymakers in Europe, what they are saying is that they believe the industry in Europe is adequately capitalized. I don't think they are anticipating that Solvency II is going to see a massive increase in capital whether you describe it as penal or otherwise."

UP Comings & Goings CLOSE



ELLEN M. RIZZO

NEW JOB TITLE: Worcester, Mass.-based chief financial officer, Hanover Insurance Group Inc.'s property and casualty companies.

PREVIOUS POSITION: Hartford, Conn.-based senior vp and chief financial officer, business insurance at Travelers Cos. Inc.

GOALS FOR NEW POSITION: With responsibility for financial oversight of the Hanover's personal lines, commercial lines and claims organizations, I look forward to serving as an important link between the business and financial organizations.

INDUSTRY CHALLENGES: Our industry is at a low point in the pricing cycle, and our country is under economic pressure, which is testing many insurance carriers right now. The Hanover has passed those tests and is demonstrating financial strength and resilience.

FIRST MARKET EXPERIENCE: Working as a staff accountant at Arthur Andersen & Co., one of the big public accounting firms. I had exposure to many

different clients in a variety of industries and with unique financial and business issues. It was a great environment to learn a lot, fast.

CAREER HIGHLIGHT: For me, it all comes down to people. I've had the privilege to work with some of the industry's brightest and most talented leaders. No matter what the professional challenges may be, working with people who are smart, committed, passionate and have unquestionable integrity makes it personally satisfying.

ADVICE: Be committed to learning formally and informally throughout your career and never give your second-best.

WHAT YOU WANTED TO BE WHEN YOU GREW UP: A gym teacher. I figured you get to be with kids and play all day. Plus you don't have to get dressed up.

OUTSIDE THE INDUSTRY, A DREAM JOB: A librarian. I love to read. While in college, I worked at the campus library as a research assistant. I found it exciting uncovering new information on a wide variety of topics, helping professors and grad students writing books and theses.

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Drywall: Litigation will shape coverage

CONTINUED FROM PAGE 3

been filed U.S. courts, most in the Southeast, according to Moody's Investors Service.

At issue is more than 500 million pounds of drywall imported into the United States between 2004 and 2007, when the housing market peaked and the Southeast was rebuilding after Hurricane Katrina. Most of the drywall was traced to Chinese subsidiaries of German manufacturer Knauf Plasterboard Tianjin Co. Ltd.

The CPSC said it has received more than 3,000 drywall-related consumer complaints (see box). "Completed studies show a connection between certain Chinese drywall and corrosion in homes. CPSC is continuing to look at long-term health and safety implications," it said in issuing last week's interim remediation guidance. Homeowners have complained of noxious smells and upper respiratory problems related to the drywall.

In the Moody's report, Chinese Drywall Exposure Manageable for U.S. P&C Insurers, the rating agency said insurers could face significant property damage claims and litigation costs related to Chinese drywall. Moody's analysts noted, however, that bellwether litigation will determine the ultimate claims picture.

"I think some insurance companies will see the weaknesses in their coverage defenses and may decide to step up and provide coverage, while others may dig their heels in and let the courts decide," said Frank Armstrong, Tampa, Fla.-based national director of construction claims with insurance brokerage Willis HRH. "We are still in the very early stages of coverage litigation."

In one early decision, a judge ruled last month that Audubon Insurance Co., a subsidiary of American International Group Inc., cannot cite policy exclusions as an "affirmative defense" to deny coverage of a Chinese drywall-related claim.

In *Simon Finger and Rebecca Finger vs. Audubon Insurance Co.*, a New Orleans Parish Civil District Court judge ruled that the Baton Rouge, La.-based insurer's exclusions for pollution; gradual or sudden loss; or faulty, inadequate or defective planning did not apply to substandard building materials under an all-risk homeowners policy. Audubon is expected to appeal.

Meanwhile, a federal judge in Norfolk, Va., last month dismissed claims filed by Virginia Beach-based homebuilder the Dragas Cos., rul-

ing its insurance policy with Builders Mutual Insurance Co. did not cover the cost of remediating homes built with Chinese drywall.

According to court documents, Dragas spent more than \$5 million to repair 73 condominiums in Chesapeake and Virginia Beach, Va. Raleigh, N.C.-based Builders Mutual argued the builder's decision to remediate the homes was voluntary and that the insurer was not obligated to pay.

Builders Mutual is awaiting the judge's ruling on whether it must pay for damages arising from lawsuits against Dragas over the drywall and whether the insurer must

defend the builder in those lawsuits.

Rodney J. Taylor, Orlando, Fla.-based managing director of Aon Corp.'s environmental services group, said the average claim is roughly \$300,000 or \$400,000 per home, rather than the \$100,000 it would typically take to remediate the work.

Mr. Taylor and others said the extent of insured losses will hinge largely on how courts interpret policy exclusions. "I'm not sure insurance companies are going to step up and pay the damages," he said.

Courts' interpretation of pollution exclusions likely will vary by state, experts say. Rachel Boles, San Francisco-based consultant for Tow-

DRYWALL COMPLAINTS

Some 3,054 complaints from residents in 37 states, the District of Columbia and Puerto Rico related to Chinese drywall have been filed with the U.S. Consumer Product Safety Commission, the vast majority in five states:

| State | Complaints | % of total |
|-------------|------------|------------|
| Florida | 1,797 | 59 |
| Louisiana | 624 | 20 |
| Mississippi | 188 | 6 |
| Alabama | 150 | 5 |
| Virginia | 123 | 4 |
| Other | 172 | 6 |

Source: CPSC

addressing the pollution exclusion, while Florida tends to interpret the exclusion in favor of insurers.

"My impression is that the pollution exclusion in Louisiana is a weak argument," said Mr. Herman. "I think the *Finger* case was pretty much an expected result."

The litigation likely will drive up insurance costs for homeowners, builders and product distributors, said Ron Kozlowski, Hong Kong-based senior consultant with Towers Watson. "A lot of insurers, when pricing their policies, did not anticipate something like this happening," he said.

Observers also expect underwriters to start putting exclusions in policies that would rule out coverage for any potentially toxic drywall.

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last week that targets small- to medium-size businesses. In a statement, President and CEO Liam E. McGee said the company has established three business units to "execute on growth opportunities" including commercial markets, wealth management and consumer markets. The repositioning comes after Hartford repaid \$3.4 billion of U.S. government bailout aid that was made necessary by massive losses during the financial crisis.

Judge dismisses suits against rating agencies

U.S. District Court Judge Jed Rakoff last week dismissed securities class action lawsuits alleging that rating agencies and lenders misled plaintiffs about the safety of investing in residential mortgage-backed securities. Judge Rakoff dismissed the claims against McGraw-Hill Cos., Moody's Investors Service Inc., Credit-Based Asset Servicing and Securitization L.L.C., Merrill Lynch Mortgage Lending Inc. and First Franklin Financial Corp. He also dismissed some claims against Merrill Lynch & Co., J.P. Morgan Securities Inc., ABM AMRO Inc. and some individuals at the firms.

Coca-Cola gets final OK for retiree funding plan

Coca-Cola Co. has received final authorization from the Labor Department for its groundbreaking approach to funding retiree health care benefits through a special trust and Coca-Cola's captive insurance company. The final authorization was published in Friday's Federal Register. Under its plan, Coca-Cola will use assets in a voluntary employees' beneficiary association to purchase medical stop-loss policies from Prudential Insurance Co. of America to pay claims throughout the expected lifetimes of roughly 4,000 retirees and dependents. The medical stop-loss coverage will pay claims that fall between an attachment point and an upper limit. In turn, Prudential will use the premium it receives from Coca-Cola to reinsure the risk with Red Re, a South Carolina-domiciled captive and one of three captives owned by Coca-Cola.

Zurich Financial outlook revised to stable: S&P

Standard & Poor's Corp. revised its outlook on Zurich Financial Services Group Inc. to stable from negative, citing the insurer's "strong" capital adequacy. The revised outlook includes Zurich Insurance Co. Ltd., Zurich Insurance P.L.C. and members of the Zurich's U.S. intercompany pool, S&P said in a statement. New York-based S&P also affirmed its -AA financial strength rating of Zurich Insurance Co. The revision, S&P analysts said, was based on Zurich's risk-based capital adequacy, which S&P views as "strong."

European insurers recover, concerns remain: Moody's

Major European insurance groups seemed to recover in 2009 from the large losses they recorded in 2008, Moody's Investors Service said, citing improved investments as a driving factor. Despite the recovery, Moody's said its outlook is cautious on European insurers' ability to repeat 2009 earnings levels in the wake of the global financial crisis. In its report, 2009 Earnings for European Insurers Show Improvement on 2008, But Concerns Remain, Moody's analysts said weak economic growth and regulatory constraints will limit insurer earnings this year.

Bermuda insurance group names award winners

The Bermuda Insurance Institute has named the three recipients of its 12th annual Insurance Industry Awards. David Ezekiel, chairman of the Assn. of Bermuda International Cos., is the winner of the 2009 Lifetime Achievement Award. Michael McGavick, CEO of XL Capital Ltd., has been named Insurance and Reinsurance Person of the Year. Kirsten Faria, senior vp of healthcare lines at Allied World Assurance Co. Ltd., was named the 2009 Young Insurance and Reinsurance Person of the Year.

Gallagher to buy most of London broker

Arthur J. Gallagher & Co. said it has signed a definitive agreement to acquire most of the insurance brokerage business of London-based broker FirstCity Partnership Ltd., a Financial Services Authority-authorized Lloyd's of London broker. The acquisition reportedly will bring about £20 million (\$29.8 million) in revenues and more than 100 employees to Gallagher.

Data: Law sparks new concerns

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They apply to all businesses that maintain personal information about a Massachusetts resident, whether customer or employee, including their name and Social Security number, driver's license, credit cards or similar personal and financial information.

Helen A. Christakos, an associate with law firm Greenberg Traurig L.L.P. in East Palo Alto, Calif., said Massachusetts' approach differs from other states.

"Other state laws are retroactive, in that after there's a security break, then you're required to take certain steps, potentially, to comply with the law," Ms. Christakos said. "This is forward-reaching. It applies even before you have a data security breach" if a business collects personal information.

Firms' readiness for the new rules has differed. Some companies "are just now really focusing on having their compliance efforts in place," said Mark Paulding, an attorney with Hogan & Hartson L.L.P. in Washington. Others have been more proactive, he said.

Matthew D. Hanaghan, a staff attorney with Nutter McClennen & Fish L.L.P. in Boston, said one of the more difficult tasks companies have faced has been "identifying what information they store, where it is and how it's stored, and conducting a risk assessment to determine how vulnerable that information is, and how they can go about protecting it by applying at least the minimum security that's required by the regulations' standards."

Another challenge has been the rules' required encryption of personal data, attorneys say.

"In some cases, it may be easier for some companies to not distinguish between Massachusetts' personal information and others' and encrypt everything," said Barry A. Guryan, a member of law firm Epstein Becker & Green P.C. in Boston. "On the other hand, that may be so onerous to other companies that it is not a practical solution."

The statute provides for a fine of \$5,000 per violation, but it is unclear whether that applies to a single data breach or whether it applies to every person affected by a data breach, observers say.

A spokesman for the Mas-

MASSACHUSETTS DATA SECURITY RULES

Every business with personal information about Massachusetts residents must develop a written comprehensive information security program appropriate to the size, scope and type of business, its resources, the amount of stored data, and the need for security and confidentiality.

THE PROGRAM SHOULD:

- Designate at least one person to maintain the program.
- Identify and assess "reasonably foreseeable" risks to the data's security and limit them.
- Impose disciplinary measures for violations of security program rules.
- Prevent terminated employees from accessing records containing personal information.
- Oversee service providers, including selecting and retaining those capable of maintaining appropriate security measures.
- Place reasonable restrictions on physical access to records containing personal information.
- Monitor the program regularly to ensure it is operating in a manner to prevent unauthorized access or use of personal information.
- Review the scope of the security measures at least annually.
- Document responsive actions taken in any security breach incident.

THE COMPUTER SYSTEM SECURITY SHOULD:

- Secure user authentication protocols.
- Secure access control measures.
- Encrypt all transmitted records and files that contain personal information that will travel across public networks, and all data containing personal information to be transmitted wirelessly.
- Monitor systems for unauthorized use or access to personal information.
- Encrypt all personal information stored on laptops or other portable devices.
- Have reasonably up-to-date firewall protection for files containing personal information on systems connected to the Internet.
- Have reasonably up-to-date versions of system security software.
- Educate and train employees on the proper use of the computer security system and importance of personal information security.

Source: Massachusetts Office of Consumer Affairs and Business Regulation

sachusetts Division of Insurance, which is part of the Office of Consumer Affairs and Business Regulation, did not respond to a query as to whether these fines can be insured under Massachusetts law.

As for enforcement, "I don't know what resources they have to be able to do this or how aggressive they're going to be," said David Navetta, a partner with the Information Law Group in Denver. "It's not a given that Massachusetts will be able to enforce this statute against out-of-state companies."

There is no private right of action under the law, which means plaintiffs cannot bring suit under the law itself, said Bruce H. Nielsen, a partner with law firm K&L Gates L.L.P. in Washington. But companies found in violation could be sued, for example, for invasion of privacy, he said.

Some observers expect litigation will result from the rules.

"I think it's an invitation to a greater amount of lawsuits against organizations," with the regulations setting a "pretty high bar for companies to establish that they put reasonable security measures in place," said Tracey Vispoli, global cyber security manager for Warren, N.J.-

based Chubb Corp.

The regulations set expectations "for what a company should be doing," said Toby Merrill, Philadelphia-based vp at ACE Professional Risk, a unit of ACE USA. "If a company has an incident and it's clear that they were not living up to that standard, I think the argument is made easier for the plaintiffs bar to go after" that firm, he said.

Past data breach cases generally have not been successful, but they still incur defense costs, with some proceeding as far as the summary judgment stage, said Philip C. Gordon, a shareholder with law firm Littler Mendelson P.C. in Denver.

Amy Crafts, an associate with law firm Proskauer Rose L.L.P. in Boston, said the Massachusetts rules, which are the "most stringent" of any states', could influence other states.

It provides "a blueprint for regulation in this area," said Elizabeth A. Ritvo, a partner with law firm Brown Rudnick L.L.P. in Boston.

"I think that other states will carefully look to see how this goes in determining how they will want to make changes to their notification laws," said Mark Camilo, vp, professional liability with Chartist Inc. in New York.

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Bar insurance with a sweet claim

Ever think of filing an insurance claim for a pilfered candy bar? Well, think again.

In what might be taken as an elaborate April Fools' Day prank but isn't, Nestle USA said April 1 that it had secured "a \$1 million insurance policy (that) ensures the ongoing production of Butterfinger®" through Lloyd's of London, "the world's leading specialist insurance market."

"Putting its money where your mouth is," the company said in a news release, "Nestle purchased the policy to further illustrate the promise behind its tagline, 'Nobody's gonna lay a finger on my Butterfinger!'"

"In addition to securing the \$1 million Lloyd's policy, Nestle USA has created the Butterfinger Bar Insurance program to allow for a free replacement bar should someone lay a finger," Nestle said in the release.

For a limited time, "Nestle USA will replace any Butterfinger bar that someone else lays a finger on (no questions asked!), up to the first 100,000 bars properly redeemed online at Butterfinger.com/BarInsurance," it said.

Those who file a claim will get a coupon for one free Butterfinger. Claimants also can win other prizes, including a one-year supply of the candy.

So candy lovers can rest assured that for a limited time, they could be fully insured if someone with sticky fingers gets too close to their Butterfinger.



Judge swats Spider-Man case

A New York federal judge may have used his Spidey sense in deciding to dismiss a lawsuit over rights to comic book characters such as Spider-Man and the Incredible Hulk.

U.S. District Court Judge Paul A. Crotty last week rejected a suit filed by Jose Abadin and Christopher Belland, shareholders of Stan Lee Media Inc. who alleged that Stan Lee wrongfully transferred creation rights of comic characters to Marvel Entertainment L.L.C. in 1998.

Mr. Lee, who denied he ever assigned copyright interests of his characters to Stan Lee Media, is the co-creator of Spider-Man, the Incredible Hulk and Iron Man and is founder of the media company that went into bankruptcy in 2001.

The lawsuit filed in 2009 sought to reclaim \$750 million from film profits based on Mr. Lee's characters for all Stan Lee Media shareholders.

Judge Crotty rejected the suit, partly because Messrs. Abadin and Belland acquired the shares in 1999, a year after the transfer of Mr. Lee's property to Marvel. He noted that any securities claims already were settled.

The judge also rejected their copyright assertions, citing a lifetime agreement signed by Mr. Lee and Stan Lee Media that



Stan Lee, co-creator of Spider-Man and other comic book characters, lost a copyright suit.

was limited to seven years by California labor laws.

"Furthermore, a fair reading of the amended complaint suggests that Lee has been using his own characters since at least 1999. Plaintiffs cannot wait a decade to enforce their rights," Judge Crotty wrote.

The entanglement surrounding Mr. Lee's characters is far from over. Earlier last month, the children of the late Jack Kirby, creator of Captain America, sued Marvel, now owned by Walt Disney Co., for control of rights over characters their father created or co-created with Mr. Lee.

'Dangerous' pile breeds \$1M suit

A Poquoson, Va., man says he stepped into a world of trouble when he went to a PetSmart store.

Robert Holloway alleges he injured his head and back and knocked out four false teeth when he slipped in a pile of dog feces and fell against something nearby at a Newport News, Va., store.

The 69-year-old reportedly underwent surgery as a result of the January 2009 mishap and sued Phoenix-based PetSmart Inc., seeking \$1 million for negligence.

In the suit, Mr. Holloway alleges that the PetSmart store and its manager should have protected him from the dangerous store conditions that they allowed to happen because pets are allowed inside PetSmart stores.

"You've got a duty to remove dangerous substances," Mr. Holloway's attorney, Michael Goodove, told the *Virginian-Pilot*.

PetSmart denied wrongdoing in a response filed to the lawsuit.

A spokeswoman for PetSmart, which succeeded in moving the suit from circuit court to federal court in Norfolk, Va., told the newspaper, "There's always going to be accidents" and that customers are encouraged to clean up any messes left by their pets.

Mr. Holloway could not see the dog droppings before his mishap because they blended in with the color of the floor, his attorney told the newspaper.



Buyers sue over chocolatiers' fatter prices

The makers of chocolate treats might be getting rich off of inflated prices as candy buyers allege that the chocolate market is fixed.

Late last month, grocery store chain Supervalu Inc. filed a lawsuit in U.S. District Court for the Eastern District of Pennsylvania that alleges chocolate makers Hershey Co., Mars Inc., Nestle USA, and Cadbury P.L.C. fixed prices on chocolate candy from 2002 through at least 2008.

The Eden Prairie, Minn.-based grocer joined a list of retailers including Walgreen Co., Kroger Co. and Safeway Inc. also alleging price fixing.

Chocolate candy prices have gone up 17% during a two-year period ending Feb. 20, according to a report by the *Minneapolis Star Tribune*. The suit was filed as chocolate makers geared up for the Easter holiday.

Litigation against chocolatiers' alleged overpricing began just more than two years ago in several countries, according to reports. However, no definitive rulings have been made that would implicate the chocolate companies in fixing prices.

In its suit, Supervalu argues that chocolate makers conspired in the price fixing.

Officials from Nestle and Hershey recently told reporters that neither company "engages in price fixing in the U.S. marketplace" and that they will defend against the collusion allegations.

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