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VIRGINIA SUPREME COURT UPHOLDS PRO-INSURER CLIMATE RULING / PAGE 4

RISE OF CLOUD COMPUTING SPURS DATA CONCERNS FOR MID-MARKET FIRMS / PAGE 6

inBrief

AIG's net income changes in 2011, 2010

A change in the accounting standards applied to insurance companies led American International Group Inc. to post new figures for net income for 2011 and 2010. Under the new standards, which took effect Jan. 1, AIG's 2011 net income would have been reported as $21.33 billion compared with $17.8 billion under existing standards. Income for 2010 using the new standard increased to $10.06 billion from $7.89 billion.

P/C 2011 net income dropped to $19.1B

Net income for U.S. property/casualty insurers fell to $19.1 billion in 2011 from $35.2 billion the previous year, according to an analysis by the

See **IN BRIEF** page 21

POLITICAL RISKS

Argentina move spooks insurers

Move to nationalize oil company YPF spurs cover rethink

By MARK A. HOFMANN

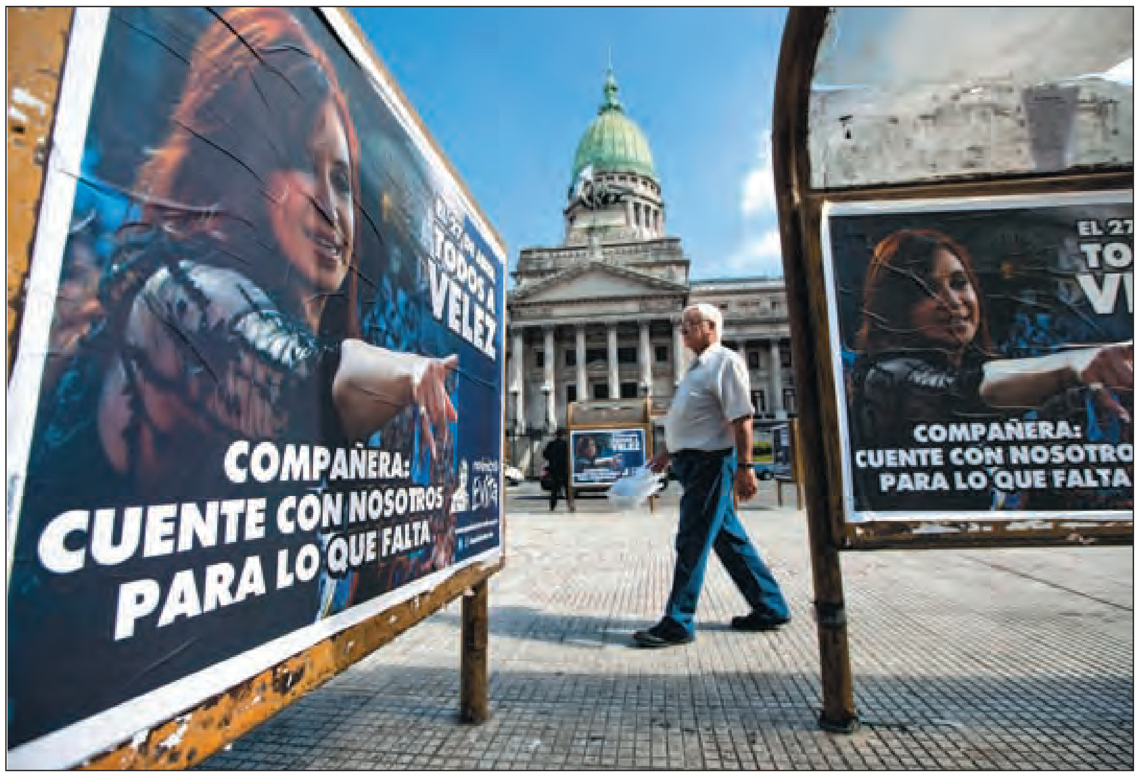
BUENOS AIRES—Argentina's move to nationalize an energy company has made political risk underwriters even more leery of that country and may result in coverage drying up, at least for some risks.

But while Latin American countries have a history of nationalizing firms that deal in natural resources, many experts do not expect other nations to follow Argentina's lead at this point. But Argentina itself may expand its nationalization efforts as it seeks to add revenues and jobs, some experts say.

Argentine President Cristina Fernandez last week announced the government's intention to take over Yacimientos Petroliferos Fiscales, a subsidiary of Madrid-based Spanish energy company Repsol YPF S.A., which is Argentina's largest oil company. The Argentine government accused Repsol of not spending enough on exploration and said it would compensate the company, with an amount determined after the takeover.

Repsol posted a statement on its website saying that it will take "all legal measures to preserve the value of its assets and interests of all shareholders. The company considers the announced measure to be manifestly unlawful and grave-

See **POLITICAL** page 18



AP PHOTO

Argentina President Cristina Fernandez last week announced plans to nationalize Spanish energy company Reposol's unit in Argentina.

SPOTLIGHT

RIMS CONFERENCE REPORT

Coverage of events and sessions at last week's Risk & Insurance Management Society Inc. conference.

PAGE 9

PRESCRIPTION DRUG BENEFITS

PBM merger seen driving competition, deals

By SHEENA HARRISON

ROCKVILLE, Md.—The $4.4 billion purchase by SXC Health Solutions Corp. of Catalyst Health Solutions Inc. is likely to increase competition among the industry's largest pharmacy benefit managers and could drive prescription discounts for major employers, expert say.

The deal announced last week also is a sign that more PBM mergers and acquisitions are on the horizon as companies cope with drug pricing pressures.

"We're just at the beginning of acquisitions in this space," said Brenda Motheral, executive director of the Pharmacy Benefit Management Institute in Plano, Texas.

$28

Catalyst shareholders will receive $28 in cash and a 0.66 share of SXC stock for each Catalyst share under the transaction.

SXC and Catalyst said the boards of directors of each company unanimously approved the merger in which Catalyst shareholders will receive $28 in cash and a 0.66 share of SXC stock for each Catalyst share under the transaction, the firms said in a joint statement.

The pending acquisition would create an estimated $13 billion company that would be headquartered in Illinois and maintain offices in Maryland, according to last week's statement. The deal is expected to close in the second half of 2012, pending regulatory and shareholder approval.

SXC reported $4.98 billion in 2011 revenue, while Catalyst reported $5.33 billion in revenue, the PBMs said in their annual reports.

Employers are hopeful the merger will result in a major PBM market player that can negotiate prescription pricing deals, said Edward Kaplan, New York-based

See **SXC** page 19

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1. GALLERY: Largest insured losses in 2011
2. Property/casualty rates going up: Willis report
3. RIMS announces 2012 inductees to Risk Management Hall of Fame
4. U.S. P/C insurers' 2011 net income dropped to $19.1B
5. 2011 provides business interruption, other lessons
6. VIDEO: Day 1 RIMS Conference Coverage
7. Travelers smashes estimates, insurance rates rising
8. Cyber attacks targeting more small, midsize businesses: Panel
9. Zurich Insurance launches apps for risk managers
10. GALLERY: Looking back: Deepwater Horizon

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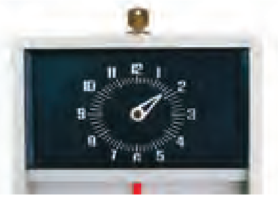

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LIABILITY & LITIGATION

EPA rules unlikely to stem flow of fracking lawsuits

Large firms likely already complying with pollution rules

By BILL KENEALY

WASHINGTON—New standards intended to reduce air pollution associated with natural gas production that the U.S. Environmental Protection Agency announced last week will do little to quell controversy surrounding hydraulic fracturing.

Widely known as fracking, hydraulic fracturing is a process that uses high-pressure water, sand and chemicals to free natural gas from subterranean shale deposits.

The rules, required by the Clean Air Act, mandate that all operators of fractured natural gas wells use "green completion" equipment to capture gases known to be volatile organic compounds as they escape from the well. Until 2015, when the rules go into effect, operators will have the option of burning the emissions through a process known as flaring.

"I don't think the regulations will have much of an impact on larger operators that were already practicing or looking at green completion. But it may present issues for the smaller operators," said Jeffrey Hanneman, Houston-based director of the environmental practice of Aon Risk Solutions.

Laura Foggan, a partner with law firm Wiley Rein L.L.P., said she doubts the rules will stem the tide of lawsuits and invective aimed at fracking.

"I don't think these rules change anything," Ms. Foggan said. "I think we are going to continue to see litigation. There's a lot of pressure points and press attention around fracking right now."

Len Kurfirst, a partner at Boston-based Edwards Wildman Palmer L.L.P., agrees that the rules will have minimal short-term impact but also said they may moderate emissions-related litigation in the longer term.

"The overall insurance issues you see out there in terms of coverage under commercial general liability policies are still going to be out there," he said. "These regulations will not impact those determinations that need to be made."

Moreover, Mr. Kurfirst noted that many suits concerning fracking center on groundwater contamination and that fracking was explicitly exempted from the Clean Water Act. Thus, much of the regulatory oversight involving fracking is at the state level and, by extension, the courts, he said.

The process of fracking is not new, having long been used at wells located in states such as Texas and Wyoming. However, the process has much greater scrutiny from the media and environmental groups as the energy industry has tapped gas deposits in the Marcellus Shale Formation that runs beneath parts of New York, Pennsylvania and Ohio.

"This is something that the industry has been doing for years," said Bertil Olsson, U.S. energy, mining and power practice leader with Marsh Inc. in Houston.

Mr. Olsson said insurers have

See FRACKING page 21

AP PHOTO

Rows of pumps used in the hydraulic fracturing process at a Rance Resources site in Claysville, Pa. New standards intended to reduce air pollution associated with fracking were announced by the EPA last week.

PENSIONS

Plan designers searching out middle ground

Pension blueprint borrows elements from DB, DC plans

By JERRY GEISEL

Worried about employers' ongoing move away from defined benefit pension plans, benefit experts are working on a new design they say could recharge employer interest in offering the plans.

The design borrows elements from defined benefit and defined contribution plans. From defined benefit plans, the design would provide a guaranteed minimum pay-related amount.

Employers would decide the plan's design in allocating investment income to participants' account balances. For example, the interest credit could be based on the yield of a target date fund.

For that second component, the design would shift investment risk entirely to employees.

If, for example, the target date fund did poorly, employers would not be liable.

On the other hand, if a selected investment did well, the employee would receive the entire gain. No matter what, the employee's account balance would be at least the amount generated by pay-related credits.

Benefit experts say the new design is a middle ground between traditional defined benefit plans in which employers bear all the investment risk and defined contribution plans in which all investment risk is shifted to employees.

"It is a middle ground. It is a sharing of risk," said Alan Glickstein, a senior retirement consultant in the Dallas office of Towers Watson & Co.

If employers did not "have to shoulder all the investment risk, there is a much higher probability that they would" sponsor a defined benefit plan, said Richard Shea, a partner with Covington & Burling L.L.P. in Washington.

Experts say if that happens, employers and employees would benefit, noting some of the negative consequences as employers have shifted to offering only defined contribution plans (see chart).

For example, if employees invest poorly or not enough, the odds increase that they won't have earned a big enough benefit to retire at a normal retirement age. The problem is exacerbated if employees withdraw or borrow funds or simply do not contribute enough to the plans.

"That is the fundamental problem with defined contribution plans," said Larry Sher, a partner in the Morristown, N.J., office of benefit consultant October Three L.L.C. "There is a lot of leakage."

See DESIGN page 17

DISAPPEARING ACT

In 2004, nearly three in four Fortune 100 companies offered a defined benefit pension plan to new salaried employees. Today, nearly three in four offer only a defined contribution plan.

YEAR	DB PLAN OFFERED	ONLY DC PLAN OFFERED
2004	73%	27%
2005	62%	38%
2006	57%	43%
2007	53%	47%
2008	47%	53%
2009	43%	57%
2010	37%	63%
2011*	30%	70%

**As of May 31, 2011*
Source: Towers Watson & Co.

WORKERS COMPENSATION

Drug studies shed light on key comp cost drivers

Antidepressants, narcotics among most common Rx

By ROBERTO CENICEROS

Narcotics, anticonvulsants, anti-inflammatory medications and antidepressants remain among the most commonly prescribed drugs for workers compensation claimants, according to separate analyses released last week.

While observers note that the data is limited to the clients of the two pharmacy benefit managers conducting the studies, the PBMs' information still provides valuable insight into prescribing trends and costs that affect employers.

Evaluating workers comp prescription drug trends is crucial because pharmaceuticals comprise a significant part of employers' spending on injured workers, said Mark Noonan, managing principal at Integro Insurance Brokers Ltd. in Boston.

"The cost of the drugs is an extremely large piece of the comp pie," Mr. Noonan said.

Prescription drugs account for 19% of all workers comp medical expenses, according to a study last September by Boca Raton, Fla.-based NCCI Holdings Inc.

Aside from analyzing the most frequently used drugs to treat injured workers, the reports from Express Scripts Inc. and Progressive Medical Inc. provide insight into the prescribing of compounded prescriptions, which have come under increasing scrutiny by the workers comp industry, and on the rising use and prices of topical medications known as dermatologicals.

In addition, St. Louis-based Express Scripts' "Workers' Compensation Drug Trend Report" states that more than $2.1 billion in workers comp prescription expense waste occurs annually across the United States, which it said is due largely to prescribing more expensive medications when lower-cost equivalent drugs are available.

Westerville, Ohio-based Progressive Medical's study, meanwhile, reveals that the cost of medications rose 5.8% overall in 2011 due to average wholesale price inflation.

Express Scripts said its report is based on a review of millions of claims, while Progressive Medical said its evaluation included more than 200,000 claims representing about 3 million transactions (see charts, page 21).

Results drawn from studies

See DRUGS page 21

EXCESS & SURPLUS LINES

Wholesaler AmWINS changes hands in PE deal

By MIKE TSIKOUDAKIS

CHARLOTTE, N.C.—AmWINS Group Inc. last week entered a definitive agreement for a $1.3 billion recapitalization with New York-based private equity firm New Mountain Capital L.L.C., which will acquire a 70% interest in the wholesale insurance brokerage.

For AmWINS, which was ranked as the No. 1 wholesale brokerage by *Business Insurance* last year based on 2010 premium volume of $4.1 billion, the deal will end its relationship with Parthenon Capital Partners L.L.C., which held a 55% stake in the company since 2005.

The Charlotte, N.C.-based wholesaler will not rebrand, change management or make any other changes as a result of New Mountain's ownership, and employee shareholders will continue to own 30% of the company, which is valued at $160 million, said M. Steven DeCarlo, CEO of AmWINS.

Employee share dropped from 45% to 30% as employees were allowed to cash out as part of the transaction, Mr. DeCarlo said.

Subject to regulatory approvals and closing conditions, the transaction is expected to close within 60 days. Other terms of the transaction were not disclosed.

The deal reflects the normal cycle of private equity groups' short-term investment in brokerages, industry experts say.

Because several brokers went through leveraged buyouts and recapitalizations in 2006 and 2007, investors are ready to capitalize, said Bruce Ballentine, vp and senior credit officer for Moody's Investor Service Inc. in New York.

"This is perfectly within that vein," he said.

"Typically, private equity investors want to capitalize their investment every five to seven years," said Timothy J. Cunningham, a partner at Chicago-based OPTIS Partners L.L.C.

New Mountain will be AmWINS' third private equity owner since its start in 2002, preceded by Parthenon Capital and Pegasus Capital Advisors L.P.

New Mountain did not return calls seeking comment.

AmWINS has grown during the past 10 years, organically and through the acquisition of

Mr. DeCarlo

approximately 30 companies, Mr. DeCarlo said.

"Our goal is to continue to do that. Our strategy has been consistent," Mr. DeCarlo said, noting that AmWINS will continue to acquire companies that fit its strategy.

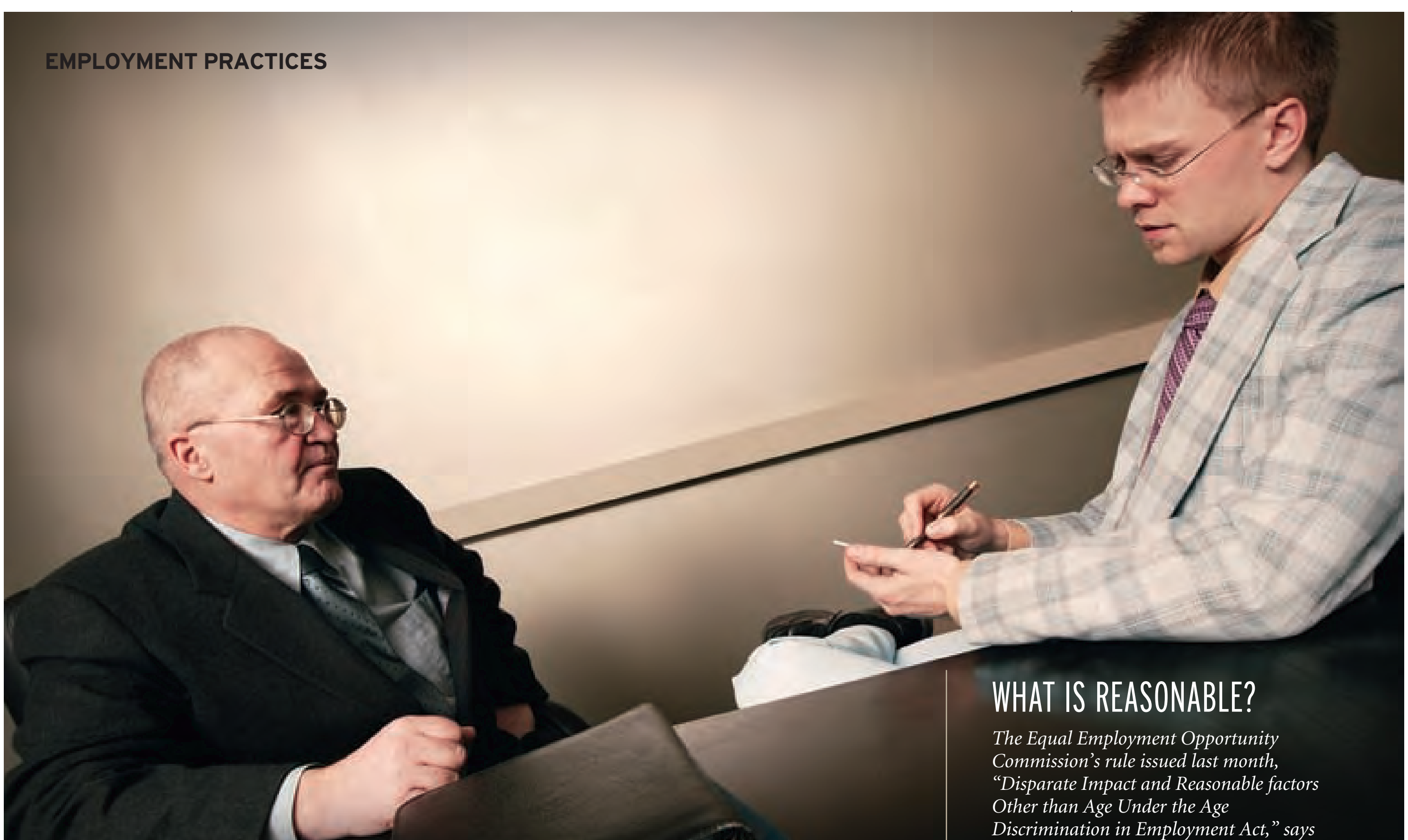
"It's time for (Parthenon Capital) to exit because we've been with them for seven years and that's normal course for a private equity group," he said. "We will pick up a new partner with New Mountain to continue our strategy of growing and diversification."

AmWINS registered for an initial public offering, but it withdrew the filing in 2007. However, that option still is viable, Mr. DeCarlo said.

"Every option is on the table," he said. "We think we are a public company after the normal three,

See **AMWINS** page 20

EMPLOYMENT PRACTICES



Age discrimination guidance increases employer burdens

EEOC rule expands on Supreme Court rulings

By JUDY GREENWALD

WASHINGTON—The Equal Employment Opportunity Commission's recently issued guidance on age discrimination policies goes beyond the U.S. Supreme Court's rulings on the issue and will add a burden to employers, say many observers.

Observers charge that the new ruling creates impractical and unworkable standards that employers must use to evaluate whether their actions have a discriminatory impact on older workers.

An EEOC official, though, defended the agency's guidance.

The EEOC issued its final rule on "disparate impact and reasons other than age that still comply with the Age Discrimination in Employment Act" last month.

According to the EEOC, the rule clarifies that the 1967 ADEA prohibits

See **AGE** page 20

WHAT IS REASONABLE?

The Equal Employment Opportunity Commission's rule issued last month, "Disparate Impact and Reasonable factors Other than Age Under the Age Discrimination in Employment Act," says considerations employers must weigh in determining whether a factor is reasonable when deciding to take actions that may adversely impact older workers include:

- The extent to which it is related to the employer's stated business purpose.
- The extent to which the employer defined the factor fairly and accurately.
- The extent to which the employer limited supervisors' discretion to assess employees subjectively.
- The extent to which the employer assessed the adverse impact of its employment practices on older workers.
- The degree of harm caused to individuals within the protected age group.

CLIMATE CHANGE

Va. high court backs insurer in climate case

Steadfast CGL policy not triggered by suit against policyholder

By JOANNE WOJCIK

RICHMOND, Va.—The Virginia Supreme Court last week affirmed its ruling that Steadfast Insurance Co. has no obligation to defend or indemnify Arlington, Va.-based AES Corp. in a climate change liability suit.

Meanwhile, another closely followed climate change suit that blamed power and chemical companies for increasing the severity of Hurricane Katrina in 2005 is being appealed for a second time (see story, page 18).

In its Friday ruling, the Virginia high court said a civil complaint against AES by native Alaskans did not constitute an occurrence under the commercial general liability policy Steadfast wrote for AES.

The underlying suit, *Village of Kivalina et al. vs. ExxonMobil Corp. et al.*, alleged that AES and other companies damaged the village by causing global warming. *AES vs. Steadfast* was considered by many to be the first insurance coverage case involving climate change litigation.

In first ruling last September, Virginia Supreme Court Justice S. Bernard Goodwyn noted that the Steadfast CGL policy's definition of occurrence was "an accident,

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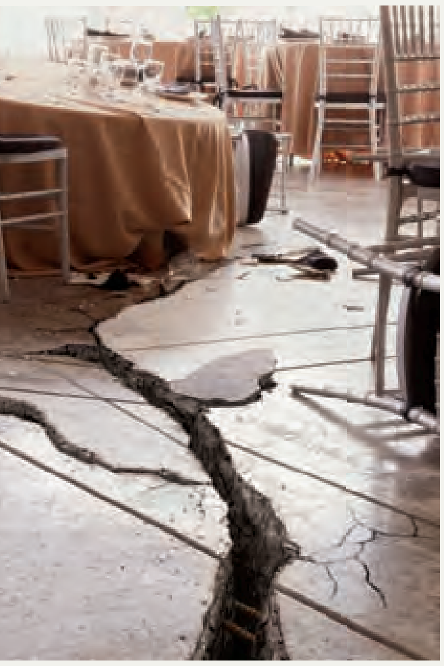
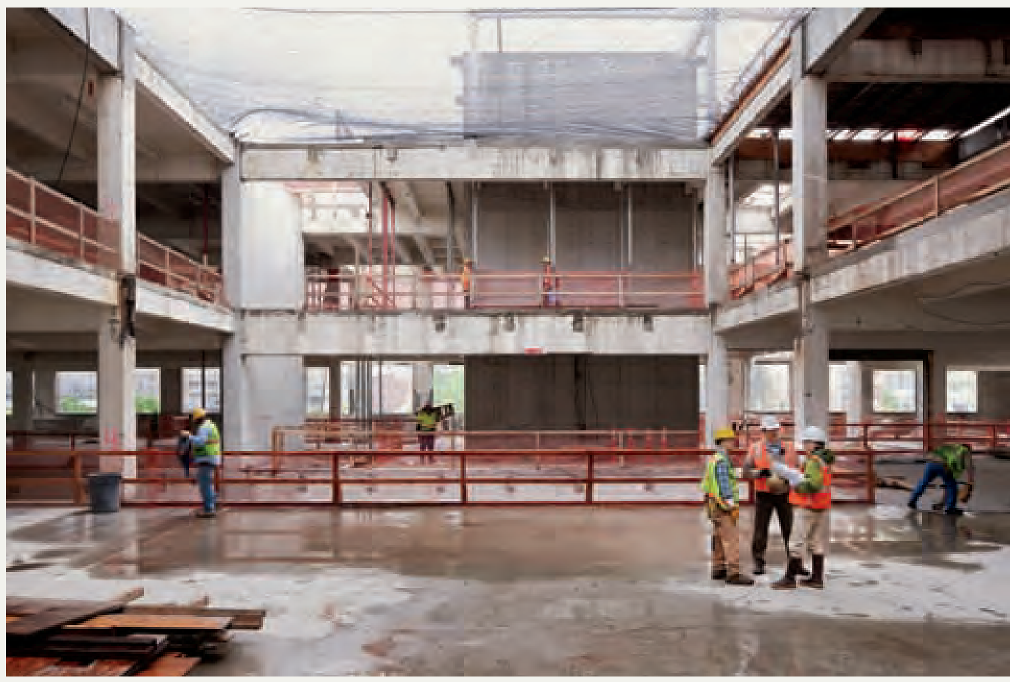


THE BUILDING PLANS WE EXAMINED DIDN'T CALL FOR CUTTING CORNERS.

INDUSTRY:
WHOLESALE

CUSTOMER:
LUMBER AND BUILDING SUPPLY COMPANY

CASE OBJECTIVE:
HELP DEFEND CUSTOMER AGAINST AN UNWARRANTED LAWSUIT



CASE SPECIFICS:

When poor workmanship led to the collapse of a dining room floor, the building owner sued the contractor. The contractor, in turn, tried to blame our customer who supplied the materials. At Liberty Mutual Insurance we investigated the situation, retained experts, and established that the contractor was solely responsible. We then made sure our customer wasn't held liable for repair costs and that its reputation remained intact, while sending a message that Liberty Mutual Insurance relentlessly protects its customers from unwarranted liabilities. Experience, expertise, and unwavering tenacity — that's how we help protect your business. To learn more, contact your agent or broker, or go to **libertymutualgroup.com/floor**

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Mid-Market EXECUTIVE

Helping C-level executives at midsize firms overcome critical risk and benefits challenges

Don't let your data get lost in the cloud

Cloud models offer financial benefits, but add to risks

By BILL KENEALY

Proponents of cloud computing contend that by turning computing into a utility akin to electricity or water, enterprises that rely on it can save money and focus on their business.

While the term is nebulous, the value proposition of cloud computing to businesses is pretty straightforward: The on-demand computing model offers customers the prospect of lower up-front costs, rapid scalability and ease of implementation, while also eliminating the expense related to buying and maintaining physical infrastructure.

The utility computing model appealed to Alan Gutowski, risk finance manager for the City of Albuquerque, N.M., for these and other reasons when the city replaced its aging claims administration system this year.

Mr. Gutowski's team opted for PCIS ClaimsVISION, a software-as-a-service offering from New York-based P&C Claims Inc.

"It saves on the bottom line, not having to have the hardware, servers and updates to worry about," Mr. Gutowski said, who added that the browser-based application adds convenience because his staff can access it remotely.

Yet his enthusiasm for cloud computing contains one large caveat—data security.

"There's always that question in the back of your mind, 'Where's my data?'" Mr. Gutowski said.

Peter Ennen, risk manager for the city, said it is imperative for businesses considering cloud offerings to cast a critical eye on the data storage practices of potential providers.

"Our decision to go this way was on the advice of our (information technology) department because that's the way they are going now," Mr. Ennen said.

While the hype around cloud computing may make the technology seem exotic, the reality is that it is ubiquitous. Anybody who has a Google Inc. Gmail account is familiar with software-as-a-service (see story, page 7). The customer relationship management software from Salesforce.com also is delivered via SaaS.

10 QUESTIONS TO ASK CLOUD PROVIDERS

- Are cloud computing users allowed to view the cloud provider's third-party audit reports?
- Are the results of internal and external audits available to users at their request?
- Does the cloud provider conduct network penetration tests of its cloud service infrastructure regularly as prescribed by industry best practices and guidance?
- Does the provider have the ability to logically segment or encrypt customer data so that, in the event of a subpoena, data may be produced for a single user only, without inadvertently accessing another data?
- Can the cloud provider logically segment and recover data for a specific customer in the case of a failure or data loss?
- Is the cloud provider able to sanitize all computing resources of user data once a customer has exited a particular cloud?
- Does the cloud company provide documentation that describes scenarios where data may be moved from one physical location to another?
- Does the provider encrypt user data at rest (on disk/storage) within its environment?
- Does the cloud provider use encryption to protect data and virtual machine images during transport across and between networks?
- Does the provider have anti-malware programs installed on all systems that support the cloud service offerings?

Source: Cloud Security Alliance

Cloud computing also is prevalent in disaster recovery services, where companies mirror their servers in off-site data centers.

"A lot of companies may be in the cloud and not even know it," said Claudia McCarron, general counsel at Blue Bell, Pa.-based law firm Nelson Levine de Luca & Horst L.L.C.

The inherent intermediary aspect of cloud computing is problematic from a risk management perspective. "As someone concerned about risk management, you are now one entity removed from where your data truly resides," Ms. McCarron said. "You really have no clue about where your data is truly sitting."

While cloud computing providers invest heavily in security measures, Ms. McCarron said there are reasons to be concerned about data loss or theft.

"If you are transferring medical or legal documents or anything that has a Social Security number or personal identity info, it's a legitimate concern, not fear mongering," she said.

A primary benefit of the cloud model is that it eliminates the need for a large up-front capital expenditure, enabling smaller firms to compete with larger rivals with better-funded IT departments. Nonetheless, Ms. McCarron warned that the cloud model does not absolve smaller firms from being concerned about areas such as data encryption.

"A lot of middle-market companies are just not equipped to do encryption," Ms. McCarron said. "They fail to appreciate that somewhere their sensitive information is sitting unencrypted, accessible to anybody who can hack into the server."

So how can companies leverage cloud computing while mitigating their risks?

Much can be done at the contractual level, said Mr. Gutowski. For example, a forward-thinking company could stipulate security measures in its service agreement with a cloud provider (see box).

Ms. McCarron also recommends explicit confidentiality clauses, indemnification and hold-harmless provisions in any contract with a cloud provider. Customers also should ask to see the agreement between the cloud computing provider and outside companies with which it works.

"There's a lot of proprietary information in those contracts that they don't want to share, but they will share some of it," Ms. McCarron said. "You can at least see what the confidentiality and security arrangements are between service provider and the entity that actually hold the data. Until you've asked, you can't even

Continued on next page

Working definition of cloud computing established

By BILL KENEALY

While cloud computing may seem vague and confusing, the National Institute of Standards and Technologies recently completed a working definition for the term after years of work and 15 drafts.

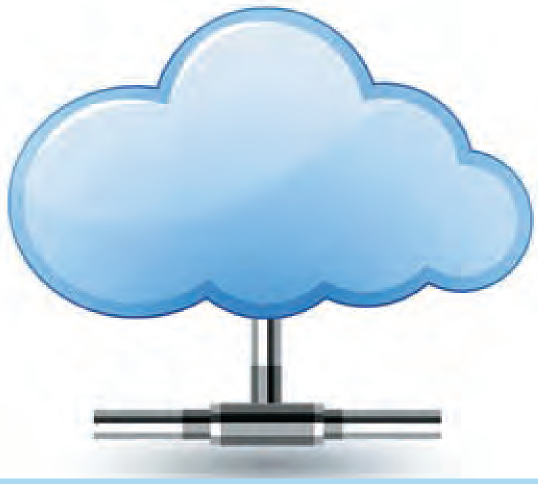
According to the official NIST definition, "cloud computing is a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction."

NIST'S FIVE ESSENTIAL CHARACTERISTICS OF CLOUD COMPUTING ARE:

- On-demand self-service
- Broad network access
- Resource pooling
- Rapid elasticity or expansion
- Measured service

NIST'S CLOUD COMPUTING SERVICE MODELS ARE:

- **SOFTWARE-AS-A-SERVICE:** A remotely hosted, on-demand version of software. Examples include the popular customer relationship management offering from Salesforce.com.
- **PLATFORM-AS-A-SERVICE:** Provides enterprises with the hardware and software to run applications. Prominent examples include Microsoft Azure and Google Apps Engine



CONTINUED FROM PREVIOUS PAGE

be sure what country your data is residing in."

Becky Swain, a founding member of the Cloud Security Alliance—a nonprofit group with members that include some of the largest cloud providers such as Hewlett-Packard Co., Microsoft Corp. and Oracle Corp.—agreed that secure use of cloud computing requires knowing the company's business partners.

"With cloud (computing) comes a supply chain," she said.

On its website, the alliance has a free cloud-control matrix to help businesses understand how to employ cloud computing safely.

"You can think of it as a baseline set of controls that allow a customer and provider to agree on what requirements need to be established in that relationship within the context of compliance rules," Ms. Swain said.

The alliance recently added the Security Trust and Assurance Registry, which lists cloud providers that have completed security questionnaires.

"Ultimately we want to see a reduction in cycle time for the due diligence companies do to select a cloud provider," she said. "We want to see a trusted cloud ecosystem with better transparency."

Another effective risk-shifting mechanism for cloud computing is insurance, but uncertainty exists about whether the typical general liability policy provides coverage for these risks, Ms. McCarron said.

"There are dedicated cyber policies, but they are relatively new products and they haven't been interpreted by the courts," Ms. McCarron said. "It's a risk where a lot of companies may be bare on insurance coverage."

Meghan Hannes, co-founder and managing director of New Smyrna Beach, Fla.-based Cloud Insure, also sees typical cyber security policies as being inadequate to deal with the risks surrounding cloud computing.

"All of the policies in the cyber liability market today assume that the infrastructure ownership is at the insured level," she said. "In cloud computing, you have transfer of risk to the third party that doesn't own the infrastructure. These policies are not intended to extend beyond the IT department's walls."

Opinions

EDITORIAL

Pension plan creativity key

The biggest and most unfortunate trend in the nation's retirement system is the withering away of defined benefit pension plans. As recently as a decade ago, the overwhelming majority of big employers offered defined benefit plans, as did many smaller firms.

But by 2011, the percentage of Fortune 100 companies offering a defined benefit plan to new salaried employees had fallen to just 30%, down from more than 80% in 2002, according to Towers Watson & Co. research.

Why have so many employers moved away from defined benefit plans? The reasons are well-known, with the most significant being inflexible federal funding rules that require employers in a low-interest rate environment to contribute far more than is necessary to fund promised benefits, depriving companies of cash they could use for other business purposes.

Foot-dragging by regulators and lawmakers in developing rules for cash balance plans, which once were being eagerly embraced by employers, also didn't help. That regulatory vacuum was filled by a slew of lawsuits by plaintiffs who contended the plans' basic design was age discriminatory.

Congress, as part of a broader measure in 2006, made clear that the plans did not violate age discrimination law. But by that time, the years of legal uncertainty had cooled employer interest in the plans.

And even today, despite ample time, regulators have not issued all rules needed—especially on how to credit interest to employees' accounts—for employers to know which cash balance plan designs will pass regulatory muster.

Still, all is not gloom and doom. The Senate last month passed legislation that would ease and give greater predictability to employers as to how much they would have to contribute to their plans. We urge the House of Representatives to quickly follow the Senate's lead.

Perhaps even more importantly, federal regulators and private-sector experts are discussing and mapping out new defined benefit plan designs that could boost employer interest.

As we report on page 3, under one design, employees' basic pay-related benefit would be guaranteed but investment or interest rate risk would not.

This thought and creativity is welcome, and we hope it continues. The shift away from defined benefit plans in favor of defined contribution plans definitely has many downsides, not the least being that some employees will not have saved enough for retirement and will stay on the job far longer than their employers expected, perhaps blocking advancement of younger employees.

LETTERS

Please send your letters to:
Letters to the Editor, Business Insurance,
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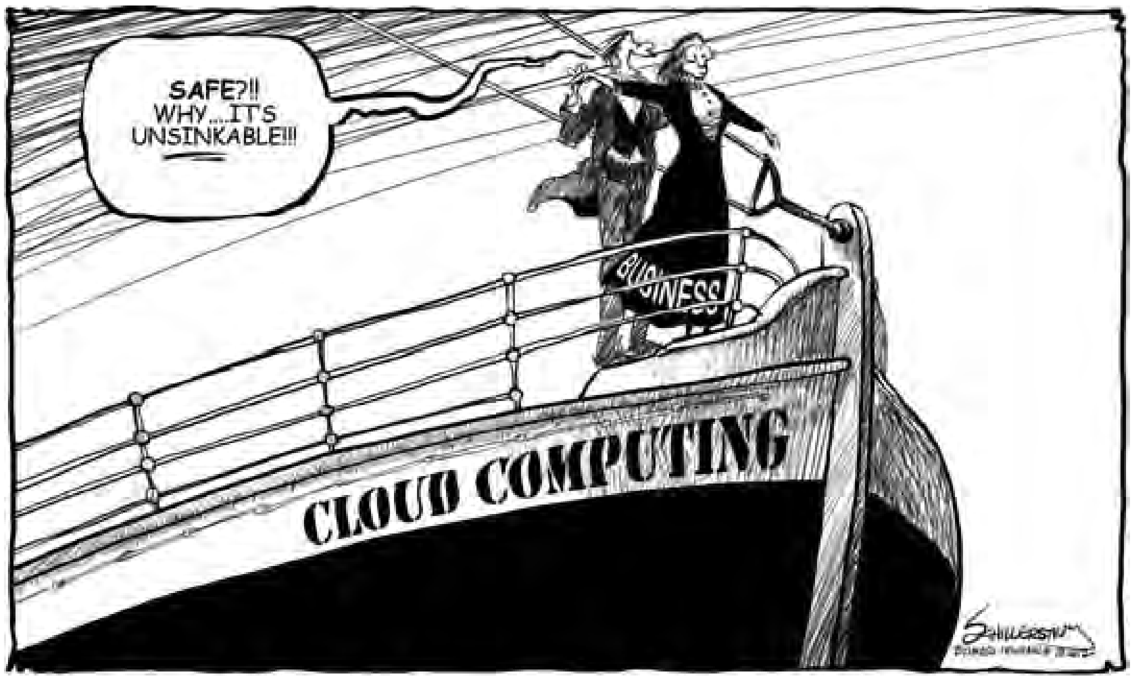
SCHILLERSTROM



COMMENTARY

For your post-election consideration

The calendar may say April, but there's a good chance that the dog days of summer will be descending on Washington very soon, at least where Congress is concerned.

In fact, there's some sign they're already here, and odds are they'll still be here well into autumn if not longer.

Put bluntly, that means not to expect much in the way of action on any risk management or insurance issues between now and the post-election period.

MARK A. **HOFMANN**
SENIOR EDITOR

While a lot of political oxygen already has been sucked out by ongoing battles over the budget, the deficit and other issues, the election looks like the key reason for legislative inactivity. All eyes are on Nov. 6, particularly given that it's a presidential election year. Nobody wants to make the fatal error of actually doing something if that something turns out to be a failure. That's just too great a chance to take while elections loom.

The partisan divide only serves to exacerbate matters. There is no political gain to be had through compromise, even on small matters.

So what does that mean in practical terms?

To begin with, little out of the routine will move forward. Congress probably will reauthorize the National Flood Insurance Program, but it may do so on a short-term basis, as has been the case in the recent past. House and Senate advocates of a long-term extension coupled with reform of the debt-ridden program have yet to agree on any legislation to achieve their objective.

On the subject of natural risks, there's probably next to no chance Congress will take up any catastrophe-related legislation before the election. Only a major catastrophe would be likely to spur action.

Don't expect much, if anything, in the way of insurance regulatory reform, no matter what the long-awaited report on insurance regulation has to say. It's an esoteric subject, and candidates like to keep things relatively simple in an election year.

Tort reform? No way. Preliminary discussion about extending the federal terrorism insurance backstop? Nope.

Instead, expect a lot of posturing between now and Nov. 6. But after Nov. 6, things could get considerably more interesting.

There's always the chance that a lame-duck session of Congress could be summoned after any election. The one that occurred in 1980, after Ronald Reagan defeated Jimmy Carter and the Republicans won control of the Senate for the first time in decades, gave us the Superfund. While the odds of even a lame-duck Congress doing something of equal impact this time around are slimmer, strange things happen when defeated lawmakers aren't worrying about re-election.

For the time being, expect little to nothing and you won't be disappointed. As they say after every sports season, wait 'til next year. You don't have any choice.

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RIMS Conference Report

SPOTLIGHT

RIMS sets out goals for future

Membership pool expanded to include related disciplines

By **JOANNE WOJCIK**

PHILADELPHIA—The Risk & Insurance Management Society Inc. has a new mission statement and five strategic goals that reflect the greater scope and range of issues risk management professionals are being asked to address today.

First among the organization's new goals, announced during the 50th RIMS conference last week, is expanding RIMS' membership to encompass related professions such as strategic planning, compliance and information technology and security.

The new mission statement and goals are designed to help RIMS members "use risk management to help the leaders of our organizations make better, smarter decisions about risk and opportunity," said RIMS President Deborah M. Luthi, enterprise risk manager for the San Francisco Public Utilities Commission.

MICHAEL MARCOTTE

Ms. Luthi

There was a time when "risk manager" was synonymous with "insurance buyer" in many organizations, she said. But today, risk management has become much more complex, encompassing much more than traditional property and liability risks. Today's risk managers must deal with operational risks, market risks, supply chain risks, regulatory and compliance risks, technology risks and climate change risks, she said.

In some organizations, risk managers are finding ways to leverage risk to create opportunities. Because of the evolving nature of risks, risk managers increasingly "are interacting with people and functions at the very senior levels of our organizations," Ms. Luthi said. "This requires not only outstanding interpersonal and persuasive

See **MISSION** next page

> Risk managers increasingly 'are interacting with people and functions at the very senior levels of our organizations.'
>
> RIMS President Deborah M. Luthi, San Francisco Public Utilities Commission

Awards recognize risk management

Risk professionals celebrated for skills, contributions

By MATT SCROGGINS

PHILADELPHIA—The Risk & Insurance Management Society Inc. last week presented several awards recognizing achievements and contributions to the risk management profession.

The Harry and Dorothy Goodell Award, which is RIMS' highest honor, was presented to Peggy Accordino, vp-director of risk management for National Financial Partners Corp. in New York. The Goodell Award is named for RIMS' first president and is awarded annually to an individual who has advanced risk management as a discipline and has furthered the goals of RIMS.

During an awards luncheon last week at the society's annual conference in Philadelphia, RIMS also presented the Richard W. Bland Memorial Award to Donald Lassaw, president and CEO of L.T.D. America Total Care Inc. of Boca Raton, Fla. The RIMS Kansas City Chapter created the award in 1974 to recognize a member's dedicated commitment in the area of legislation or regulation.

In addition, the Ron Judd "Heart of RIMS" Award was given to Cheryl Berman, regional risk manager for ProBuild Holdings Inc. and member of the San Diego Chapter. The award, which is given in tribute to longtime RIMS Executive Director Ron Judd, recognizes outstanding achievements in furthering risk management at the chapter level.

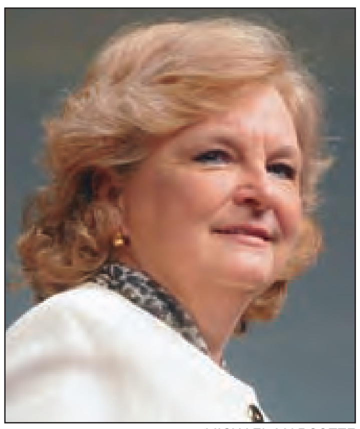
Also at the luncheon, Larry Collins, vp of e-solutions for Zurich Services Corp., accepted the Arthur Quern Quality Award, which recognizes innovation within the risk management industry.

In addition, RIMS and *Business Insurance* magazine presented the 2012 Risk Manager of the Year® Award to John J. Marren, director, global risk and insurance management at CSL Ltd.

Among other awards, the society also recognized several RIMS chapters for their outstanding work and recognized this year's inductees to the Risk Management Hall of Fame (see related story).

MICHAEL MARCOTTE

Risk Manager of the Year® John J. Marren accepts this year's award from *Business Insurance* Publisher Mark Stach.

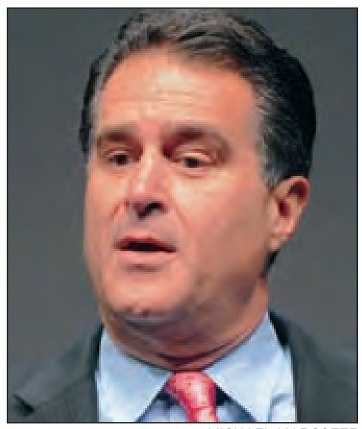


MICHAEL MARCOTTE

Ms. Accordino

MICHAEL MARCOTTE

Ms. Berman



MICHAEL MARCOTTE

Mr. Lassaw

Four honored with Risk Management Hall of Fame induction

PHILADELPHIA—The Risk & Insurance Management Society Inc., in partnership with Chartis Inc., last week announced the 2012 inductees to the Risk Management Hall of Fame.

The RMHF, which was created last year, recognizes individuals who have made significant contributions to the history and tradition of risk management. Criteria for the award include significant contributions and achievements in the field, innovation and trend-setting, demonstrated leadership, character and service, and the highest caliber of ethical and professional conduct.

This year's inductees were announced last week at the RIMS conference. They are:

MARC DARBY

Mr. Darby worked for nearly 30 years at Bombardier Inc., retiring in 1998 as director of risk management and insurance. He served as president of RIMS and the Quebec Risk & Insurance Management Assn., was named to the *Business Insurance* Risk Management Honor Roll® in 1992 and won the RIMS Harry and Dorothy Goodell Award in 1997.

DAVID R. HAIGHT

During a career in risk management spanning more than 35 years, Mr. Haight held several positions, including director of risk management for CF Industries Inc., from which he retired in 1998. In addition, he held various chapter officer positions in the Minnesota and Northeastern Illinois chapters of RIMS.

EDITH F. LICHOTA

Ms. Lichota had a long career in risk management, including working as assistant treasurer of Carborundum Corp. in the 1970s and fighting against New York regulations that would have limited risk financing options. She later became vp-government affairs with INA, during which time she supported development of the captive law in Vermont. She was the first woman to be named Risk Manager of the Year® by *Business Insurance*, received the RIMS Richard W. Bland Memorial Award and the RIMS Harry and Dorothy Goodell Award. She died in 1994.

MICHAEL MARCOTTE

RIMS leaders stand with RIMS Risk Management Hall of Fame inductees.

RONALD E. STRINE

Mr. Strine retired from Aetna Life & Casualty Co. in 1992 after 26 years, including 12 as the director of corporate risk management. He also served on the Overseas Security Advisory Council and contributed to industry education efforts, including working with the Insurance Institute of America—now The Institutes—teaching at the University of Connecticut, and developing the University of Hartford Graduate School curriculum for their risk management course. He retired in 2005.

—*Matt Scroggins*

Mission: RIMS sets out goals

CONTINUED FROM PREVIOUS PAGE

skills, but also familiarity with functions like finance, information technology, supply chain management and other areas where significant risks are encountered."

To develop the mission statement and goals, RIMS contracted with an outside consultant to engage staff and board members to "take a fresh look at what RIMS is all about in today's world," Ms. Luthi said. "We started by asking ourselves not what we do, or how we do it, but rather why we do it."

The end product was a succinct yet broad statement: "The mission of RIMS is to advance risk management for your organization's success."

"Risk management is not a static concept," observed Mary Roth, RIMS' executive director.

"'Advance risk management' has two meanings. First, it means we'll continue to develop risk management beyond its current boundaries as the needs of our members evolve. Second, it means we'll actively promote and advocate risk management as a vital tool for achieving organizational success," according to Ms. Roth.

The five strategic goals outline specific steps RIMS must take to fulfill its mission, she explained.

For example, "manufacturing executives have a real need to identify the risks associated with their suppliers. Loss of a particular commodity or even a tiny part can shut down a production line and delay a product going to market," she said. "Risk management expertise is crucial, and RIMS is where they can get it."

"Risk management has evolved into a multidimensional, multidisciplinary skill set that affects virtually every area and function within an organization," said Ms. Luthi. "In many organizations, there are probably several people who could benefit from membership in RIMS," she said, such as those involved in strategic planning, compliance, security, information technology and distribution.

Increasing the size and scope of the society's membership also will create a broader range of career options for risk professionals, possibly creating advancement opportunities within their organizations, Ms. Roth suggested.

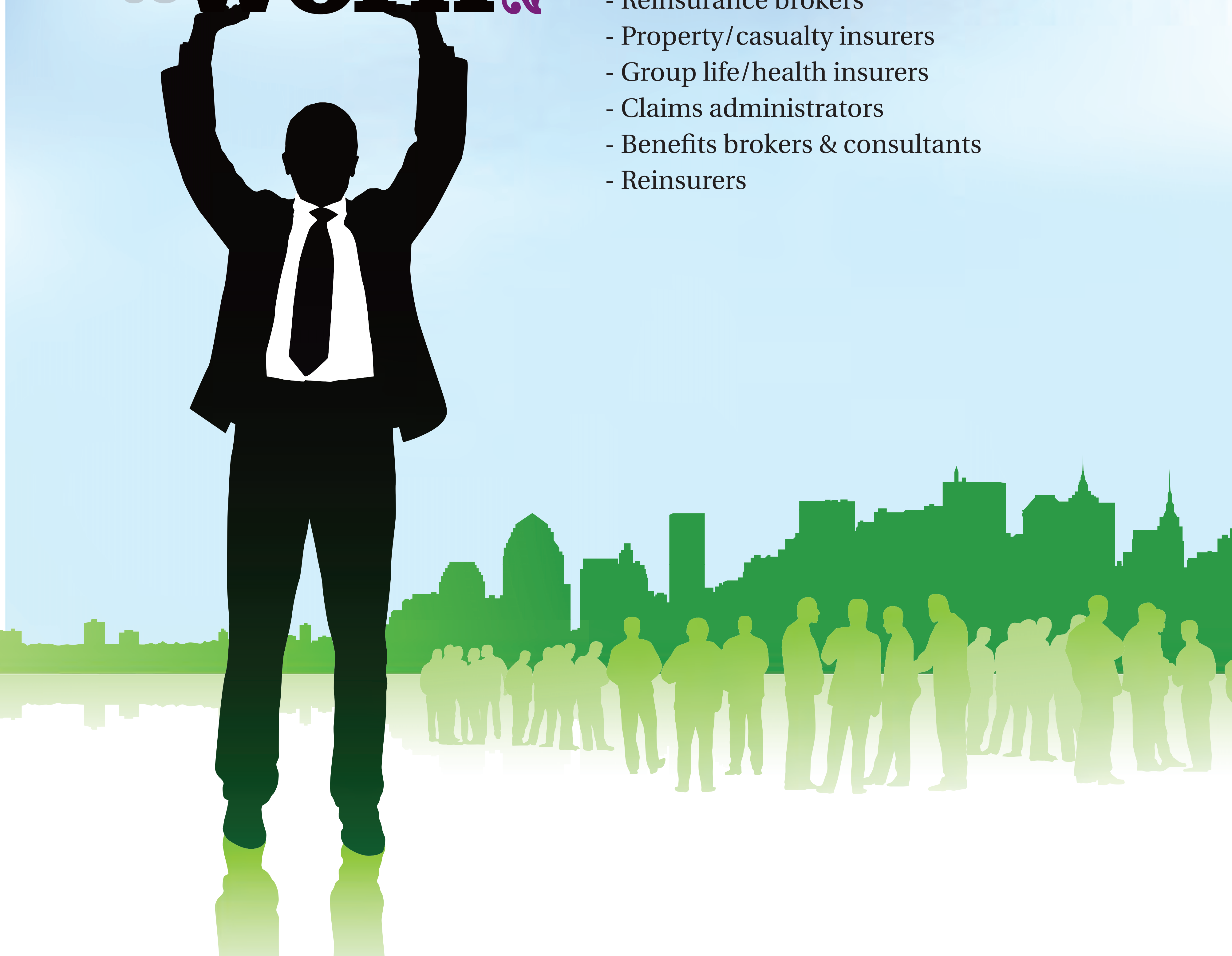
"That makes it important for RIMS to engage with professionals outside our professional realm of experience," she said.

Business Insurance

BEST places to work 2012

In this year's Best Places to Work in Insurance program, Business Insurance will recognize commercial insurance industry employers in several categories. We invite applications from top employers from the following types of companies serving risk and benefits managers:

- Retail agents/brokers
- Wholesale brokers/managing general agents
- Reinsurance brokers
- Property/casualty insurers
- Group life/health insurers
- Claims administrators
- Benefits brokers & consultants
- Reinsurers



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Advice from ex-presidents

Past RIMS leaders offer views on risks, market changes

By **MARK A. HOFMANN**

PHILADELPHIA—Don't leave senior management in the dark about a hardening insurance market.

That was one of several pieces of advice offered during a panel discussion featuring five former presidents of the Risk & Insurance Management Society Inc. last week in Philadelphia.

"You need to prepare management for what is coming," said Lou Drapeau, 1996-97 RIMS president and director of risk management for the University of Kentucky in Lexington.

Risk managers need to get face time with senior managers to prepare them for the hardening market, said Lance Ewing, 2003-04 RIMS president and Cordova, Tenn.-based regional industry practice leader-hospitality and leisure for American International Group Inc.'s Chartis Inc. unit. Mr. Ewing also advised his listeners to "know your data," because underwriters need that information.

Panelists also highlighted the risks arising from social media.

Michael Liebowitz, 2005-06 RIMS president and director-insurance and risk management at New York University, said risk managers need to look at their organizations' tolerance for social media. Do they, for example, block certain websites? He said brand control is the biggest issue arising from this exposure.

"My biggest exposure is my brand," he said. Various factors ranging from a cyber attack to a research project that "goes the wrong way" can affect NYU's brand and reputation, he said. Rebuilding a brand is difficult and expensive, Mr. Liebowitz said.

MICHAEL MARCOTTE

Mr. Liebowitz

Mr. Drapeau cited the aftermath of the University of Kentucky's recent victory in the men's national collegiate basketball championship game as an example of an event that can hurt an institution's reputation. Some students celebrated the win by setting fires.

"After five minutes, you would have thought that the entire city of Lexington was on fire" because of televised images, said Mr. Drapeau. In reality, the fires were confined to three small areas, he said.

Janice Ochenkowski, 2007-08 RIMS president and managing director at Chicago-based Jones Lang LaSalle Inc., said Jones Lang LaSalle has embraced social media such as tweeting and blogging. "We need to use it positively, but that doesn't mean we can ignore the risk," she said.

Looking ahead, the panel considered exposures risk managers will face. Mr. Ewing said he believes reputational risk will continue to grow, while Mr. Liebowitz cited intellectual property. Ms. Ochenkowski said risk managers will have to deal with climate change issues.

Mr. Ewing also cited the potential impact of the new Federal Insurance Office on risk management. He noted that the FIO is intended to be a non-regulatory body, but, given that regulation drives Washington, he wonders how long the new office will remain that way.

The former presidents also focused on the challenges facing the organization itself. Christopher Mandel, 2002-03 RIMS president and now president and managing consultant of Boerne, Texas-based Excellence in Risk Management L.L.C. cited two challenges in particular for RIMS: being timely and supporting a "viable, vibrant chapter structure." Mr. Ewing said that one of the challenges is determining how to get more members to give the organization their input.

RIMS hopes PAC boosts clout

By **MARK A. HOFMANN**

PHILADELPHIA—The Risk & Insurance Management Society Inc.'s political action committee is designed to make RIMS more visible in political matters, according to RIMS President Deborah M. Luthi.

Speaking at a press conference during the RIMS annual conference in Philadelphia last week, Ms. Luthi, who is also enterprise risk manager for the San Francisco Public Utilities Commission, said that as risk managers move into enterprise risk management and strategic risk management, they find that politics, regulation and compliance issues become more important for them. RISK PAC, RIMS' bipartisan PAC that was launched at last year's RIMS conference, hopes to raise $28,000 this year, she said.

The PAC is intended to expand RIMS' political visibility, Ms. Luthi said. The organization wants to "ensure that RIMS has a spot at the table," she said.

Mr. Luthi also noted that RIMS will hold its 14th annual RIMS on the Hill legislative conference in Washington in early June, and Federal Insurance Office Director Michael McRaith has been invited to speak.

Dan Kugler, the society's board liaison to the RIMS external affairs committee, listed four major federal legislative initiatives with which RIMS is involved this year. According to Mr. Kugler, who is also assistant treasurer of corporate risk management at Snap-on Inc. in Kenosha, Wis., these are:

- Reauthorizing and reforming the National Flood Insurance Program, which is slated to lapse on May 31;
- Streamlining the reporting process for secondary payers to repay the Medicare trust fund;
- Amending federal risk retention law to allow risk retention groups to offer property as well as liability insurance to members; and
- Blocking efforts to subject certain reinsurance transactions to new taxes.

RIMS Executive Director Mary Roth said the conference was drawing "very strong" attendance numbers. As of last Monday night, the gathering had drawn 5,100 attendees by Monday night, according to Ms. Roth. In addition, she said that 3,900 exhibitor personnel had registered, bringing the total to 9,000.

Harder market, new risks among challenges: Execs

By **JOANNE WOJCIK**

PHILADELPHIA—The hardening commercial property/casualty insurance market and the emergence of new risks will test the mettle of risk managers, industry leaders say.

And risk managers need to think beyond insurance as they look to cover emerging risks, such as cyber risks and supply chain exposures, amid budget restrictions, the executives said during a panel discussion at the Risk & Insurance Management Society Inc. conference in Philadelphia.

Commercial insurance rates are increasing in several areas, said J. Patrick Gallagher Jr., chairman, president and CEO of Arthur J. Gallagher & Co. in Itasca, Ill. In particular, the commercial middle market and small account market are seeing rate increases across all lines and in most geographical locations, he said. Workers compensation and property lines are seeing the biggest increases, Mr. Gallagher said.

Also changing is risk managers' role, said Eric Andersen, CEO of Aon Risk Solutions-Americas.

"The role of the risk manager outside of the normal corporate financial or legal framework—I think those days are gone," he said. "For the work that is done by risk management to be valued and invested in their organizations," risk managers' language needs to change from "insurance-speak" to "financial-speak."

Risk managers should take a more strategic approach, focusing their insurance purchasing on exposures that have the potential to cause the greatest damage to their organizations, he added. "You have to know…what brings the firm down," Mr. Andersen said.

Growing globalization also is creating new exposures for businesses, according to John Lupica, chairman and president of ACE USA in Philadelphia.

"There is no question that our clients in North America are more multinational now than ever before. The growth rate of their overseas exposures outpaces that of their North American exposures," he said.

MICHAEL MARCOTTE

Several prominent executives from major insurers and brokerages spoke during a panel discussion last week.

Shivan S. Subramaniam, chairman and CEO of Factory Mutual Insurance Co., which does business as FM Global, said contingent time-element losses stemming from the Japan earthquake and tsunami and the flooding in Thailand show how businesses increasingly are intertwined globally.

The incidents also prompted the realization that "insurance coverage is only going to take care of part of that exposure," Mr. Subramaniam said, noting that "a lot of that exposure is going to have to be mitigated through risk management principles."

Peter Eastwood, president and CEO of the Americas for Chartis Inc. in New York, recommended that risk managers make greater use of predictive modeling to gauge the potential financial impact of such catastrophes on their organizations and tailor coverage.

And David Bidmead, Marsh Inc.'s CEO-U.S., suggested that in some cases insurance solutions that have worked historically may not be as effective in today's business climate.

"Don't get too comfortable with…what you've done in the past," he said. "If the market changes—and maybe it's going to change quickly—the expectation that people who we all report to have about our contribution is going to change. Members of the C-suite are demanding more of risk and insurance professionals.

Ease ERM program implementation by simplifying process

By MIKE TSIKOUDAKIS

PHILADELPHIA—Risk managers implementing enterprise risk management programs at their organizations first must define what value ERM will bring their organizations, panelists said during a session at the Risk & Insurance Management Society Inc.'s conference in Philadelphia.

Ways risk managers can demonstrate value to senior leaders at their organizations include enhanced reputation, improved credit scores, risk avoidance through hedging and insurance, elimination of silos, and the ability to assess risk across the organization, panelists said.

But failing to tie an ERM program to an organization's strategic objectives can leave a hole in the value statement and result in the demise of the ERM program, said Carol Fox, New York-based director of strategic and enterprise risk practice for RIMS.

"Organizations are not only trying to protect value, but they're really looking at how to create value for the organization—and you can do that through ERM," Ms. Fox said during the session.

Panelists offered attendees 10 steps to consider when initiating ERM programs at their organizations (see box).

ERM has reached a tipping point of acceptance, panelists said, and risk managers at organizations need to evaluate and understand nonregulatory risk management standards and frameworks.

There are various risk management models that provide guidance on how to structure an ERM program, such as ISO 31000 and BS 31100, but most practitioners are not following any one particular standard, Ms. Fox said.

"They're adapting," she said of many risk managers, who are taking common elements from many models and building their own framework according to their business' strategy, risks and exposures.

Richard W. Sarnie, vp of risk management for Great Atlantic & Pacific Tea Co. Inc. in Montvale, N.J., stressed the importance of risk management departments spearheading ERM initiatives.

"The risk manager should be leading ERM efforts in your organizations," he said, noting that risk managers should not be focused on just buying insurance. "It's the noninsurable risks that are taking companies down."

"It's not about (property) hazard risks; we've got that nailed," Ms. Fox added.

When approaching senior management, risk managers should define themselves as the ERM facilitator, Mr. Sarnie said.

"You're the leader, the expert on how to manage risks," he said. "Stop talking insurance."

Risk managers also need to identify who in the organization has a stake in the ERM discussion and develop a working committee of all stakeholders, including operations, sales, accounting, legal, Mr. Sarnie said.

"You need to have someone in the C-suite to be your sponsor and your champion to back you on this," he said, noting that organizations often make the mistake of hiring consultants too early in the ERM implementation phase, which is costly.

"You have the talent and expertise in-house. It's just a matter of harnessing and putting it together," he said.

A critical step when implementing ERM is to keep it simple, avoiding insurance language and terminology that often leads to confusion, panelists said.

To avoid losing senior management's attention and getting bogged down in too many procedures, Mr. Sarnie said to keep the process "cartoonlike."

"Don't make a 20-page report to senior management," he said. "One page: Here's what we're doing. Here's how we're managing it."

As the process can be complex and daunting, it's important to have "people understand what they need to do or what they don't need to do," Ms. Fox said.

Mr. Sarnie recommended that risk managers start by questioning which risks can most adversely affect their organization.

"You need to start small. You want to demystify the process," Mr. Sarnie said.

10 STEPS IN IMPLEMENTING ENTERPRISE RISK MANAGEMENT

1. Define ERM's value to organization.
2. Understand ERM standards and framework.
3. See what the organization is already doing.
4. Seek support and help.
5. Keep it simple.
6. Start small.
7. Go for quick "wins."
8. Delegate "fixes" to risk owners.
9. Report on progress.
10. Develop "soft skills."

Strategic outlook key to successful risk management

Organizational goals must be considered at program's outset

By RODD ZOLKOS

PHILADELPHIA—Risk management and enterprise risk management efforts often fail because risk management is not connected or integrated with an organization's strategy or execution of that strategy, according to one strategic risk management expert.

But, according to Mark L. Frigo, director of the Center for Strategy, Execution and Valuation and the Strategic Risk Management Lab at DePaul University in Chicago, "Strategic risk management is a necessary element and a necessary foundation for risk management."

Speaking last week at the annual conference of the Risk & Insurance Management Society Inc. in Philadelphia on a panel examining how high-performing companies harness opportunities through strategic risk management, Mr. Frigo noted other reasons enterprise risk management efforts fail include focusing risk assessments on the wrong risks and not focusing on strategic risks.

Other causes of ERM failures include risk management efforts not being executed as a continuous and repeatable process or risk management silos creating barriers. "Rule 1 is don't create new silos," Mr. Frigo said.

Looking at patterns of strategies in strong, resilient companies, "There was a natural evolution toward developing a risk framework," Mr. Frigo said. Management and boards in those organizations naturally honed in on some of those companies' risk activities and that naturally led to the creation of a risk framework, he said.

"Risks are not independent. They are very interrelated," Mr. Frigo said. "A supply chain risk is going to impact reputation risk."

Another panelist, Brenda Boultwood, senior vp and chief risk officer at Constellation Energy Group Inc., stressed that, in order to succeed, strategic risk management efforts need support at the highest level of the organization. And those programs must be fully aligned and integrated across the organization, she said.

MICHAEL MARCOTTE

RIMS conference attendees convened in Philadelphia last week. Session topics included strategic risk management and environmental risks.

Developing a strong strategic risk management program at Constellation Energy—recently acquired by Exelon Corp.—also involved a convergence of various functions such as risk management, legal and human resources, Ms. Boultwood said. "We implemented a system and really gained a lot of operational efficiency," she said.

In addition, "We asked management to write down their risk appetites," she said. "It doesn't mean that you can't go beyond it. It just means there's governance."

Strong strategic risk management also requires clear communications and deliberate thinking, Ms. Boultwood said. It's necessary for the risk manager to show how "risk management jargon" relates to the company's various business drivers, she said.

Business resiliency is also essential, she said. "You have to grow," said Ms. Boultwood. "And growth only comes one way: through taking additional risk. So how do you react when something goes wrong? Are you all on the same page?"

Also, she said, the organization has to put a price on its risks. "If you get to that number and you can't be competitive in your market, then you have some real serious conversations with your business people," Mr. Boultwood said.

Finally, the organization's risk culture is an essential element of a successful strategic risk management approach, Ms. Boultwood said. "Everybody's a risk manager and there has to be accountability at all levels of the company," she said.

"We have to remember that a big part of risk management is making sure that we've got the controls in place," Ms. Boultwood said. The first layer of defense is the business, she said, the second layer of defense is risk management, while internal and external audit provide the third layer of defense against risk.

"Every organization including your organization has some significant underlying business risks," Mr. Frigo said. "They have to be honestly addressed and managed."

It's important to "end the happy talk" and have the hard conversations about those exposures, said Ms. Boultwood.

Mr. Frigo described a seven-step "closed loop" process for strategic risk assessment. The process begins with assessment of the strategy itself, he said, followed by gathering data and views on strategic risk. Next the organization needs to prepare a preliminary strategic risk profile, then it must validate and analyze that strategic risk profile.

The fifth step is developing a strategic risk action plan for the organization, followed by communicating the strategic risk profile and action plan across the organization. The final step is to implement the strategic risk action plan, including using it to exploit opportunities the plan might help identify.

"There are barriers," to implementing such a plan, he said, including communication and education.

"Strategic groups often do not like working with risk management types," Mr. Frigo said. "They often view risk management as putting on the parking brake when they want to go 100 mph."

Risk managers required to address wide range of environmental issues

Climate change suits, financial assurance among concerns

By MIKE TSIKOUDAKIS

PHILADELPHIA—Environmental issues affecting risk managers now extend well beyond traditional pollution liability exposures.

Financial assurance financing, climate change liability and natural resource damage liability are growing concerns for a wide range of organizations, panelists said during a session at the Risk & Insurance Management Society Inc. conference in Philadelphia.

Environmental financial assurances are mandated by federal authorities for certain industries. The tools demonstrate that there are sufficient financial resources for environmental risks and future environmental obligations to compensate affected third-parties and mitigate bankruptcy, said Michele Schroeder, vp of environmental for Zurich in New York.

Types of financial assurance instruments include surety bonds, bank letters of credit, insurance, trust funds or escrow accounts, and net worth tests and parental guarantees.

Over the past five years, due to economic pressures from the 2008 financial crisis, there has been a realignment regarding which instruments can be used, Ms. Schroeder said.

For example, surety bonds have been retracted from certain classes, fees for bank letters of credit have increased and there is limited capacity available.

"There has been more of an interest in the insurance policy as a financial assurance tool than there ever was before," Mr. Schroeder said during a session on emerging environmental liabilities.

"If insurance is something that you're interested in as a tool for a financial assurance requirement, there needs to be a dialogue and a discussion of an adjustment to the underwriting process for the expected future costs," she said, which typically involves fronting arrangements such as collateral.

Also, new financial assurance regulations set forth by the Environmental Protection Agency—and expected to come into force in 2013—have identified new industry segments that previously were not compelled to have financial assurance in place, Ms. Schroeder said.

In addition to the expanding industry segments that will need financial assurance in place, risk managers are facing other emerging environmental liabilities.

John G. Nevius, shareholder and chair of the environmental law group at Anderson Kill & Olick P.C. in New York, said that risk managers need to effectively manage potential climate change exposures.

A key legal issue for this exposure is causation, Mr. Nevius said during the session, noting that such questions as whether humans affect the temperature of the planet or whether defendants' conduct caused global warming are being debated. A key issue is whether insurers have a duty to defend any allegations.

"The duty to defend is a huge issue and generally the issue in a lot of environmental disputes because the allegations are mixed and the question is, do you get a defense against them?" Mr. Nevius said.

In addition, well-known cases such as the Deepwater Horizon oil spill have brought natural resource damage liability to the forefront, said Gene P. Devine, senior vp at Arthur J. Gallagher Risk Management Services Inc. in Garden City, N.Y.

Natural resource damage refers to the injury or loss of land, fish, wildlife, biota, ground water, drinking water and other such resources held in trust by any federal or state authority.

While many federal agencies' budgets recently have been reduced, the EPA has increased its enforcement budget and states are actively taking on any violations, Mr. Devine said (see box).

"Any party that has possibly contributed to the pollution or degradation of the natural resource is liable," Mr. Devine said.

The driver behind this exposure "is cleaning up the sediment and making these resources clean again—it's an expensive proposition."

Most commercial pollution legal liability policies include natural resource damage within the definition of property damage, Mr. Devine said.

While approximately 30 insurers—many of them new entrants—offer such coverage, each form is underwritten differently, he said.

Still, Mr. Devine said, "there are a lot of options out there. There is a lot of capacity."

NATURAL RESOURCE RECOVERIES

Current state trends for natural resource damage liability

- At least 36 states have some program to pursue recoveries.
- State recovery programs vary widely in scope, focus and enforcement.
- Recoveries aren't tied just to federal regulations, but also are subject to state statutes and regulatory frameworks.
- Recoveries generate hundreds of millions of dollars in state revenues.

Limiting impact of workplace violence

Thorough planning, good communication essential to recovery

By MATT DUNNING

PHILADELPHIA—While there is no way to fully eliminate the risk of a violent incident occurring within the workplace, comprehensive crisis prevention and response planning can help companies greatly reduce an incident's impact, a panel of experts said last week at the Risk & Insurance Management Society Inc.'s conference in Philadelphia.

Of course, protecting employees, customers and clients from harm should be the primary concern of any company's security personnel as well as its senior executives. However, security and safety planning that is focused too narrowly on restricting facility access or containing an incident once it's in progress often fails to account for the longer-term impacts of workplace violence, panelists said.

"What's at stake are both direct and indirect expenses," said Sean Ahrens, Aon Global Risk Consulting's Chicago-based security consulting practice leader. "Direct expenses are easy enough to quantify; it's going to be your financial obligations as a result of the incident. But you're not going to be able to determine the long-term indirect costs associated with the damage to your brand and image.

"As a result, you'll see a lot of organizations that experience a workplace violence event and fail to recover afterwards," he added.

In order to better manage the short- and long-term impacts of violent incidents in the workplace, as well as reduce their likelihood of happening in the first place, companies should take a holistic approach to security and safety planning, panelists said.

For starters, risk managers should assess their existing security stock of personnel and equipment for function and value, instead of merely quantity, said Sarah Pacini, vp of risk management and insurance at Oak Brook, Ill.-based Advocate Health Care Network. Those assessments will not only inform the company's immediate crisis response planning, but likely will influence security hiring and procurement guidelines in the future, Ms. Pacini said.

"Your security program also needs to be represented among your company's senior leadership in order to communicate the value of adequate financial investment in your security infrastructure," she said.

Communication is a second critical aspect of effective incident response planning, panelists said. Risk managers that have had success in minimizing the short- and long-term damage of a violent event have done so largely by ensuring clear and consistent communication of their company's response plans and tactics with employees, senior management and especially local law enforcement agencies.

"Make no mistake, when there's an incident like an active shooter or hostage-taking, if you haven't planned for that event, the police are going to take over and dictate what's going to happen within your organization," Mr. Ahrens said. "If you involve them in the planning stages and collaborate with law enforcement, you'll find it much easier to recover the way you want to recover."

Additionally, panelists said, risk managers should develop ahead of time a robust series of protocols for answering questions from the media and the community at large during and immediately after an incident if they hope to have any control over the public's perception of the company's handling of the event.

Nearly as important as developing policies and protocols to address workplace violence is the documentation of those policies, panelists said, particularly where potential lawsuits after an incident are concerned. Any policy or procedure adopted regarding workplace violence prevention or response needs to be written out and formalized, Ms. Pacini said.

And once you've published the policy, "it's very important that your front-line leaders know what that policy entails, especially from a litigation standpoint," Ms. Pacini said.

"Just because it's down on paper doesn't mean that it's known and understood throughout the organization."

WHAT TO DO

One key element of effective preparation for a violent incident in the workplace is a checklist of priority concerns during and after an event, panelists said. That checklist should, at minimum, include:

DURING

- Staff and customer/client safety
- Assignment of employee and management response roles
- Emergency alert systems

AFTER

- Employee assistance programs for post-incident counseling
- Communication protocols (media, community, workforce, law enforcement, etc.)
- Root cause analysis

Teamwork aids resolution of tough workers comp claims

Early intervention, creative settlements help limit losses

By SHEENA HARRISON

PHILADELPHIA—Employers, adjusters, insurers and others involved in handling workers compensation claims should work together as a team to manage cases and avoid significant losses, experts say.

Mary Proietti, risk manager of Lake Forest, Ill.-based Packaging Corp. of America, said the packaging manufacturer has used that sort of collaborative effort to settle some of the company's longstanding workers comp claims—some of which date back to 1984.

She was one of several panelists who spoke at the Risk & Insurance Management Society Inc.'s conference in Philadelphia during a session titled, "Claims Triage: Identifying and Settling Big-Ticket Claims."

By consulting with the company's excess workers comp insurer and claims adjusters, Packaging Corp., which has a $1 million self-insured retention, has been able to mitigate losses in some of its most difficult claims, Ms. Proietti said.

"My responsibility is to get everyone with expertise involved in the process," said Ms. Proietti.

It's important for employers such as Packaging Corp. to identify and intervene in high-cost workers comp claims before they spin out of control, said Donna Urbanski, a Southington, Conn.-based independent claim consultant.

"Every $100,000 claim in (the) portfolio is potentially a $1 million claim," she said.

While medical expenses are the largest portion of high-cost workers comp claims, companies can help limit those losses by working with consultants that specialize in medical or prescription management, Ms. Urbanski said.

Insurers can provide key connections to consultants for companies that need the assistance, providing early intervention that can help companies gain control of their workers comp costs, she said.

"That's why it's crucial to use your carrier as a resource," Ms. Urbanski said.

Greg Gitter, president of San Diego-based Gitter & Associates Inc., a consultant that works to resolve high-exposure workers comp claims, said creativity is a key strategy when crafting settlements to close long-term claims.

For instance, his firm worked with a claimant who was reluctant to settle for $50,000. During a meeting, the worker mentioned to Mr. Gitter that he enjoyed bass fishing.

So the consultant offered the worker a settlement of $8,000, plus a new bass-fishing boat that the company purchased for $38,000. The claimant readily accepted that offer, Mr. Gitter said.

"We were able to provide this man with exactly what he wanted," Mr. Gitter said. "It's about listening to what these people have to say."

Mark Walls, St. Louis-based vp of claims for Safety National Casualty Corp., agreed that flexibility in settlements can help close claims that otherwise could result in high costs that last for a worker's lifetime.

"Drawing a line in the sand never works out well for you," said Mr. Walls, who moderated the panel.

He said it's also helpful to provide claimants with specific settlement amounts to help them weigh whether such a deal would work for them.

"It's a lot more difficult to reject a number than it is a concept," Mr. Walls said.

Panelists said there are early steps employers can take to identify and intervene in potentially problematic workers comp claims.

For instance, Mr. Gitter said companies and insurers should identify co-morbidities—such as smoking or diabetes—that could complicate medical treatments for a work-related injury.

Employers also should maintain communication with injured workers to stay up-to-date on their recovery, panelists said. Such discussions can help workers feel valued and encourage them to get back to work.

"That level of communication from the beginning has such an impact on changing the entire course of the case," Mr. Gitter said.

STEPS TO CONTROL COMP LOSSES

Things employers can do to keep workers compensation claims from resulting in significant losses

- Employers, insurers and claims adjusters should collaborate to help manage workers compensation cases before they result in large costs.
- Creativity is essential in devising settlements that appeal to a claimant and close a longstanding claim.
- It's important to identify and treat co-morbid health conditions that could hinder an injured worker's medical improvement and result in a long-term, costly claim.

Some industry firms work to put women in C-suite

Sponsorship efforts closing gender gap in highest ranks

By JOANNE WOJCIK

PHILADELPHIA—Although the number of women entering the risk management profession is growing, women remain underrepresented among senior management on the insurance industry side of the business.

But at least two companies—Chartis Inc. and Aon P.L.C.—are taking steps to change that.

Most women who make it into the ranks of middle-management get stuck there, due largely to the lack of sponsorship within their organizations, Carol Murphy, managing director at Aon Risk Solutions in Chicago, said during a session on "Women's Leadership in Risk and Insurance" at the Risk & Insurance Management Society Inc. conference in Philadelphia.

Citing the 2011 "Women in the Economy" report by McKinsey & Co., Ms. Murphy said "there is a huge drop-off between middle management and senior management."

According to the consulting firm's report, fewer than 3% of Fortune 500 CEOs are women. In addition, while women's share of corporate jobs is 53% at the entry level, their representation falls to 14% at the executive-committee level.

"The solution is for companies to actively sponsor women in middle-management roles to help them make that leap," Ms. Murphy said. "So many of our customers are women, it helps to have that diversity of thought."

In an attempt to groom more women for leadership positions within its organization, New York-based insurer Chartis established an Executive Diversity Council and a Talent-Steering Committee, said Chandra Metzler, Chartis' product line executive for financial lines and executive liability in the United States and Canada.

Both programs create development plans for women with potential, evaluating their strengths and weaknesses, and tracking their progress as they move up the corporate ladder, she said.

Similarly, Ms. Murphy said, Aon just last month formed a Women's Leadership Governance Board with representatives from all three of the organization's business units inside and outside the United States: broker Aon, benefit consultant Aon Hewitt and reinsurance intermediary Aon Benfield.

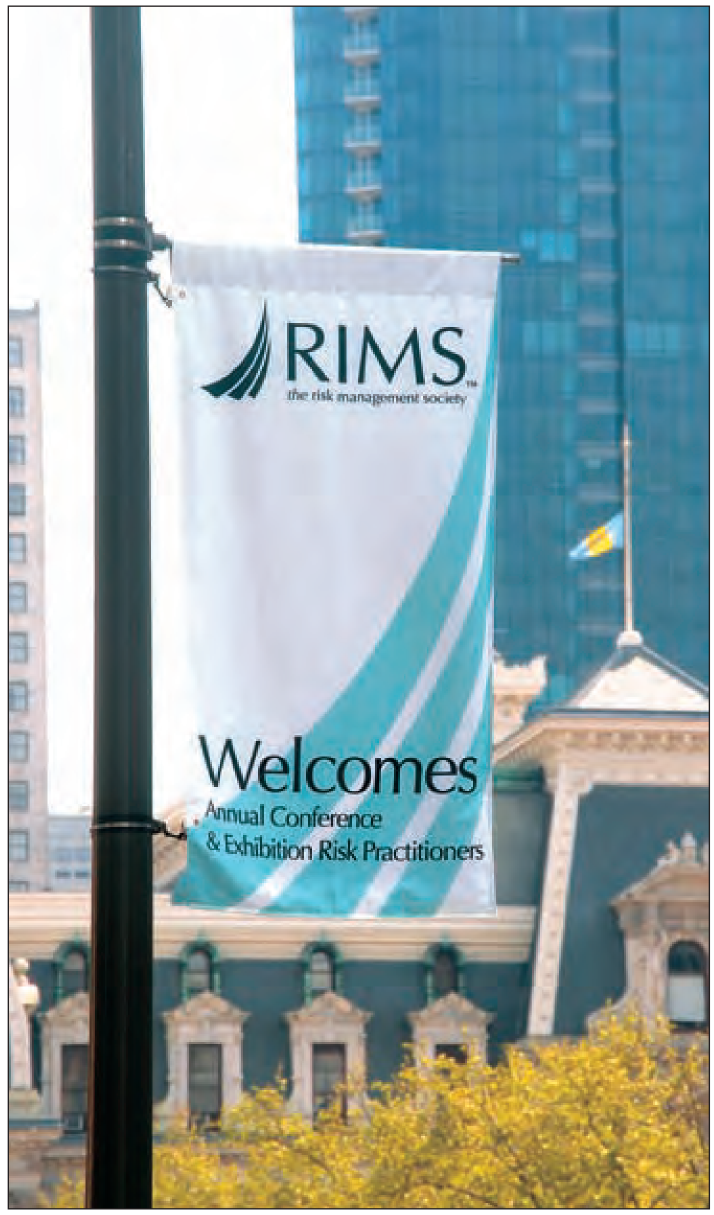
Aon Hewitt, based in Lincolnshire, Ill., historically has had greater representation of women than either of the other two units, she noted.

Aon's Women's Leadership Governance Board will "look at the metrics and challenge some of the assumptions that we have about why some women leave" or don't advance in their careers, she said.

In fact, she said, the McKinsey research already has dispelled one common misconception—that most women take time off work to start families.

"Women aren't leaving to stay home after having children. They are changing jobs to find more supportive environments," Ms. Murphy said.

The session was moderated by Sarah E. Pacini, vp of risk management and insurance at Advocate Health Care Network in Oak Brook, Ill.



MICHAEL MARCOTTE

Philadelphia offered warm temperatures and plenty of historical attractions as the host city of the 2012 Risk & Insurance Management Society Inc. conference. Next year's conference will be in Los Angeles.

Backers of Medicare reform bill see benefits for workers comp

By SHEENA HARRISON

PHILADELPHIA—A bill pending in Congress could help resolve Medicare Secondary Payer system problems that hinder settling workers compensation and liability claims, advocates of the legislation say.

H.R. 1063, the Strengthening Medicare and Repaying Taxpayers Act, aims to simplify the Medicare reimbursement process for claim settlements and judgment awards under the Medicare secondary payer law. The issue affects beneficiaries who have received Medicare-funded medical services or are likely to receive them in the future, and are expected to set aside settlement money to repay the Medicare Trust Fund.

The legislation was discussed at the Risk & Insurance Management Society Inc. conference in Philadelphia during a session titled "How to Fix the Medicare Secondary Payer Act." The SMART Act was referred to the House Energy and Commerce committee last year.

U.S. Rep. Tim Murphy, R-Pa., who introduced the bill in March 2011, said litigants often are reluctant to settle lawsuits because it is unclear how much of the award should be set aside for Medicare reimbursements.

He told the audience that it is important to simplify Medicare Secondary Payer compliance so plaintiffs can receive settlement benefits as soon as possible.

"Some of these people are in ill health and rely on a settlement to pay their bills," Rep. Murphy said, speaking to RIMS attendees by phone. "If we enact the SMART Act, those senior citizens would receive what is rightfully theirs now."

Among several provisions, the SMART Act would require litigation parties to request a final bill from the Centers for Medicare and Medicaid Services, which would detail how much money a beneficiary would need to pay to Medicare out of his or her settlement.

CMS generally would be required to provide that statement within a 65-day window, allowing parties to pay the amount immediately and close the beneficiary's liability or workers comp claim.

Attorney David Farber, counsel for the Washington-based Medicare Advocacy Recovery Coalition, said Medicare Secondary Payer reform proponents have aimed to make the SMART Act "short, simple and realistic" in hopes of helping the bill pass.

"It is an incredibly efficient, focused and appropriate process where everyone gets what they should be getting in time," said Mr. Farber, a partner with Washington-based law firm Patton Boggs L.L.P.

The bill has received support from various interest groups—including businesses and trial lawyers—who want to promote litigation settlements while ensuring that the Medicare Trust Fund maintains the funding it needs, said MARC co-chair Roy Franco.

"The right thing to do is to pay back Medicare, but to do it in a way that makes sense and works well," Mr. Franco said.

Panelists said backers of H.R. 1063 aim to reach 190 co-sponsors for the bill in order to improve the bill's chance of passing. The bill had 99 co-sponsors as of last week.

Panelists encouraged attendees to contact legislators in their states and ask them to co-sponsor H.R. 1063.

Products&Services

BMS program targets construction industry

LONDON—BMS Group Ltd. is offering a multiproduct line for the construction industry.

As a part of BMS' wholesale risk solutions division, the program offers multiple lines of coverage that include property damage, general liability, professional indemnity and specialist construction claims handling.

The London-based team is led by Gavin Madell. Previously, he was director of power and construction business at Price Forbes & Partners Ltd.

The construction product line is available globally to BMS Group clients in the wholesale and facultative markets.

For more information, contact Nick Cook, head of the wholesale division, at *nick.cook@bmsgroup.com*.

Willis, IronHealth launch policy for new ACOs

NEW YORK—Willis Group Holdings P.L.C. and IronHealth have rolled out a liability policy for new accountable care organizations.

ACOs were established as a part of the Patient Protection and Affordable Care Act, which allows health care providers to offer a range of services for patients by banding together. Intended to address the challenges of having multiple stakeholders, the ACO policy is underwritten by Simsbury, Conn.-based IronHealth, a division of Ironshore Inc.

Potential problems that ACO members face include privacy issues, regulatory risks, group billing challenges and legal challenges stemming from state and federal laws, Willis said in a statement.

Regardless of how the U.S. Supreme Court rules on the health care reform law, there will be changes in health care delivery models, Frank Castro, national health care practice leader at Willis North America, said in a statement. The ACO liability policy will help cover such risks, he said.

The coverage includes general liability, directors and officers, managed care errors and omissions, medical professional liability, first- and third-party privacy protection, fiduciary liability and a government billing errors and omissions liability option.

Aggregate limits are available up to $25 million. Self-insured retentions can be as low as $15,000 and limits may vary based on coverage part.

For more information, contact Mr. Castro at 213-607-6304 or *frank.castro@willis.com*.

EQECAT readies updated cat modeling platform

OAKLAND, Calif.—EQECAT Inc.'s catastrophe modeling platform, Risk Quantification & Engineering version 13, will be released this fall.

Replacing WORLDCATenterprise, the updated platform is the result of the Oakland, Calif.-based firm's three-year revision process that included client input.

Giving clients more transparent and manageable information about their risks is "imperative to us because the models are getting more complex," said Tom Larsen, senior vp and product architect at EQECAT.

Overall, more than 180 perils for 96 countries and territories are included, Mr. Larsen said. Vulnerability and hazard updates include recent scientific research and analyses of claims and exposure data from recent events.

Correlation and simulation updates also have been made so clients can more easily combine multiple portfolios.

For more information, contact Mr. Larsen at *pr@eqecat.com*.

Humana unit offers prescription options

LOUISVILLE, Ky.—Humana Pharmacy Solutions has rolled out two prescription drug options for self-insured employers.

The new options include the Wal-Mart Rx Network, which directs employees to fill prescriptions at the international retailer, and the Rx4Value formulary, which swaps certain brand drugs for generics, the pharmacy benefits management unit of Humana Inc. said.

"This is all about predictability," said William Fleming, president of Louisville, Ky.-based Humana Pharmacy Solutions. By influencing where drugs are purchased and which drugs are purchased, the offerings give employers more certainty about their annual prescription drug costs, he said.

The Wal-Mart-focused network averages 10% savings on annual prescription costs, while the formulary averages 15%. If employers choose to enact both plans, the average savings can increase to 20%.

The program is available to self-insured employers with at least 500 employees. By early 2013, Humana plans to offer similar options to fully insured employers, Mr. Fleming said.

For more information about the pharmacy benefits options, call 855-605-6383.

UP CLOSE

COMINGS & GOINGS

SARAH LAMBERG

NEW JOB TITLE: Chicago-based private enterprise underwriter for Beazley Group P.L.C.

PREVIOUS POSITION: Chicago-based professional liability underwriter for Chartis Inc.

LOOKING FORWARD TO: I am really looking forward to getting to know everyone in the company and keeping my relationships going in the brokerage community. I have been in the insurance industry since 2003, and over the years I have worked with several firms throughout the Midwest consistently...I am looking forward to keeping in touch with them and bringing in new business and working on ways to provide products to costumers.

CHALLENGES FACING INDUSTRY: Pricing is a challenge. There are a lot of competitors in professional liability. There are a lot of new products out there. We want to find a way to maintain underwriting integrity and discipline in this market.

INDUSTRY OUTLOOK: It's hit its rock bottom on how low it can go. In the next couple of years, we'll start to see the market harden a bit.

BEST THING ABOUT A BAD ECONOMY: A lot of the insurers we work with are watching their dollars closely. I don't think in our business there is a "best thing."

ADVICE: It's a very diverse field. There's a lot you can do and a lot of ways you can grow in the field. Be aggressive and find what it is you want to do. There are a lot of areas you could tap into: underwriting, claims, marketing (or) product development.

HOBBIES: Since becoming a mom nine months ago, I would say it's taking care of my daughter. My hobbies used to include working out, but there is not much time for that these days. But when the weather is nice, our family loves to get outside and enjoy nature.

CAN'T-MISS TELEVISION SHOW: I love documentaries. Watching the real human element is fascinating. I love nonfiction, knowing that things have actually happened. I love hearing other people's stories—how they help themselves, how they challenge themselves. That's the most interesting to me.

FAVORITE MEAL: I am a Chicago pizza fan.

ON A SATURDAY AFTERNOON: Usually I am sitting on our living room floor, playing with toys with my daughter.

Design: In search of middle ground

CONTINUED FROM PAGE 3

That can have serious workforce management issues for their employers. If employees stay longer because they lack sufficient retirement plan savings, that can block the advancement of younger employees.

"When you shift all the investment risk to employees, that can come back to haunt you," Towers Watson's Mr. Glickstein said.

Conversely, the workforce management issue can work both ways, Mr. Glickstein said. When the economy is booming and defined contribution plan investment results are skyrocketing, employers may lose valued and needed employees to retirement just when they need them the most.

For employees, having a minimum guaranteed benefit, as they would through the new plan design, would ease another problem associated with a defined contribution plan-only approach: the risk that they will outlive their account balance, said Jim McHale, a principal with PricewaterhouseCoopers L.L.P. in New York.

> **'Longevity risk is the risk employees can least likely bear.'**
>
> Jim McHale,
> PricewaterhouseCoopers L.L.P.

"Longevity risk is the risk employees can least likely bear," Mr. McHale said.

At this early stage, it is impossible to gauge precisely the level of employer interest in a new defined benefit plan design.

Still, employers embraced the most recent redesign of a defined benefit plan—cash balance plans that emerged in the 1980s. In all, more 1,000 employers set up cash balance plans, typically converting existing final average pay plans to the new design.

The popularity of cash balance plans waned beginning around 2000 amid numerous lawsuits alleging the plan design was age discriminatory. Federal lawmakers later made clear that the plans were not age discriminatory. While such plans never regained their popularity, a few big employers, including The Coca-Cola Co. and Dow Chemical Co., have set up new plans in recent years.

The new plan design would require regulatory approval, and employers would not adopt the plans without such approval, Mr. Shea said.

"Employers would need regulatory clarity, and it would be nice if this approach could be allowed to develop before there is a retirement income crisis," Mr. McHale said.

Comings&Goings

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

TO SUBMIT ITEMS

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

Anna Gaynor
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POSTING THIS WEEK

INSURERS
- Iron-Starr Excess Agency Ltd.
- Fireman's Fund Insurance Co.

BROKERS
- Willis Group Holdings P.L.C.
- Integro Ltd.
- Cigna Corp.

OTHER PROVIDERS
- Wilson Elser Moskowitz Edelman & Dicker L.L.P.
- Broadspire Services Inc.

Political: Argentine move sends negative message

CONTINUED FROM PAGE 1

ly discriminatory." A Repsol representative did not immediately respond.

The seizure of YPF is not the first time Argentina's government has nationalized a private concern, said Eugenio J. Aleman, a senior economist at Wells Fargo Securities in Charlotte, N.C. He said the government took over the pension system a few years ago. Now, "they are starting to step it up, and it will depend on how weak the economy gets," he said. The government is looking for more money, and nationalizing YPF is a way to get it. The government also is looking to expand employment, and government-owned companies traditionally employ more people than their private counterparts, he said. He said this could be the beginning of a process that involves more utilities.

Mr. Aleman queried Argentina's argument that Repsol did not invest enough in exploration and production. He said the argument ignores the government's efforts to keep domestic oil price artificially low at below $30 a barrel. "Nobody will invest when the international price of petroleum is over $100 per barrel."

"It'll be a long process of working this out and determining compensation," said Stuart Barrowcliff, vp and senior underwriter-political risk and trade credits for XL Group P.L.C. in New York.

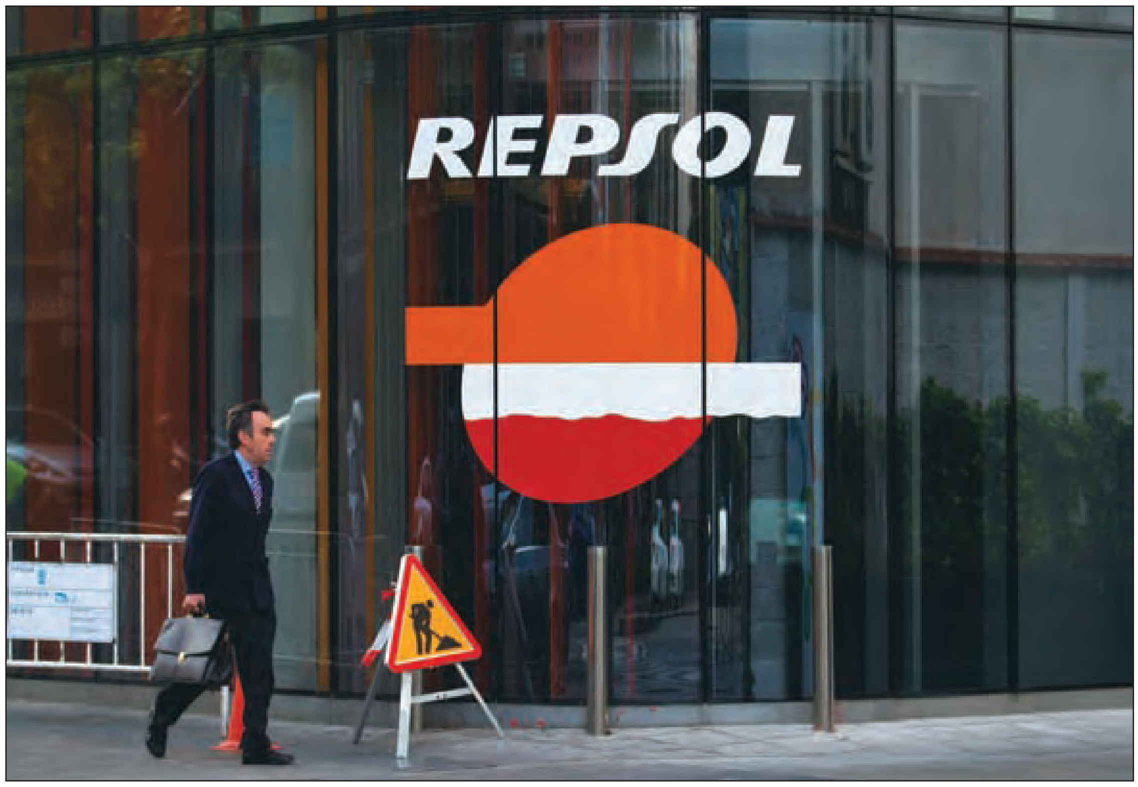
In addition, Spain and the European Union could take economic measures against Argentina, Mr. Barrowcliff said. He said that for Argentina, foreign direct investment is important, particularly in the oil and gas sector. "This could shoot them in the foot in terms of what they need for production," he said.

"There's always technically recourse through the legal systems, but you're going to run into issues of sovereign immunity," said Roger Schwartz, senior vp in Aon Risk Solutions' political risk practice. He said the dispute could end up in arbitration, but added that Argentina has a "boatload of unhonored arbitration awards."

Robert Hartwig, president of the Insurance Information Institute Inc. in New York, said that "with the possibility of civil unrest—also covered by political risk coverage—down the road (in Argentina), political risk insurers are likely to be very cautious when it comes to exposing themselves to Argentine political risk for years to come."

"For all intents and purposes, the political risk market has had an amber flag out for Argentina for some time," said John T. Lavelle, head of political and credit risks, North America, at Willis Group Holdings P.L.C. in New York. "I think this puts a stop on it."

Mr. Lavelle added that he believes the move is more of an economic play than a nationalistic play because Argentina is "blowing through a lot of foreign exchange" because of oil imports.



AP PHOTO

Argentina's takeover of Yacimientos Petroliferos Fiscales, its top energy company, from parent Repsol YPF S.A. might solve the country's short-term energy needs, but observers say it heightens the sense of political risk.

XL's Mr. Barrowcliff said the political risk market has been "cautious" on Argentina for some time. "This will certainly cause everybody to maybe take a further step back. People are willing to look at this to see if this is a trend that might bleed into other sectors."

"The concept of resource nationalism in Latin America is nothing new—it goes back to the oil company confiscations in Mexico in 1938," said Aon's Mr. Schwartz. He noted that the late Chilean President Salvador Allende took over the copper industry.

Nationalizations in Latin America tend to deal with natural resources, said Willis' Mr. Lavelle. He said it was too early to tell whether Argentina's strategy would be copied by other countries. He pointed out, though, that nations such as Brazil, Mexico, Chile and Peru are investment-grade countries with growing economies that would be less likely to do so.

"It is probably going to stay in Argentina," said Wells Fargo Securities' Mr. Aleman. But he added, "you might see something happening" in countries such as Bolivia or Ecuador that are not friendly toward the United States.

"Recent events have demonstrated that political risk can arise in emerging economies at unpredictable times," Evan Freely, global leader of Marsh Inc.'s political risk and structured credit practice in New York, said in an email. "It is imperative that energy companies and others operating in these emerging markets be aware of such political risks, and have strong insurance and risk mitigation programs in place to address these concerns when they arise."

AES: Court favors insurers in climate change case

CONTINUED FROM PAGE 4

including continuous or repeated exposure to substantially the same general harmful condition."

The Kivalina community alleged that AES intentionally released carbon dioxide and other greenhouse gases into the atmosphere while generating electricity.

In seeking a rehearing, AES argued that no authority cited by the court supported that finding and argued that the duty to defend is excused only when the complaint alleges a defendant "should have known to a substantial probability" that its conduct would cause the alleged harm.

In omitting the words "substantial probability" from the duty to defend test, AES maintained, the court "radically redefined 'accident' to exclude coverage in virtually all negligence cases."

In its second ruling last week, also written by Justice Goodwyn, the Virginia Supreme Court disagreed and applied the "eight-corners rule," which compares the "four corners" of the underlying complaint with the "four corners" of the insurance policy to determine whether the allegations in the underlying complaint are covered.

"The relevant policies only require Steadfast to defend AES against claims for damages for bodily injury or property damage caused by an occurrence or accident," the court noted. "Whether or not AES's intentional act constitutes negligence, the natural or probable consequence of that intentional act is not an accident under Virginia law."

The decision is "a major victory for insurers in the first-ever climate change-related coverage case, with important implications for both insurers and companies with potential exposure to climate change-related tort claims," said Joanne L. Zimolzak, a partner in the Washington office of McKenna Long & Aldridge L.L.P. who has been following the case.

"Although policyholders and their counsel may yet attempt to press similar coverage issues in more favorable jurisdictions, the decision nonetheless stands as a significant step toward resolving the question of whether such claims are covered under CGL policies," Ms. Zimolzak said.

Citing a concurring opinion by Justice William C. Mims that disagreed with the majority's eight-corners reasoning, "He went on to signal his view that the court's decision may have a broader effect on other CGL policies in which the insured risk is defined as an 'occurrence,' an issue that bears further exploration by both insurers and policyholders," Ms. Zimolzak said.

Justice Mims wrote: "While I agree with my colleagues that Steadfast had no duty to defend AES in the underlying action based on the CGL policies in this case, I also must acknowledge the broader effect that this conclusion, and the underlying case law that compels it, may have on other CGL policies in which the insured risk is defined as an 'occurrence.' Our precedents may have painted us into a jurisprudential corner."

J. Wiley Donald, a Wilmington, Del.-based partner at McCarter & English L.L.P., said the implications of AES could be severe.

"If you are sued based on allegations that you changed lanes without looking, which was negligent because you could reasonably foresee that you would hit someone, don't expect to be insured…Under AES, that kind of accident is not a covered occurrence," Mr. Donald said.

John Nevius, a policyholder attorney with Anderson, Kill & Olick P.C. in New York, agreed: "They're drawing a distinction between negligence and accidental—it has to be accidental for it to be covered."

Murphy Oil USA lawsuit resurrected by plaintiffs

NEW ORLEANS—A climate change lawsuit thought dead after the U.S. Supreme Court declined to hear an appeal of its dismissal on procedural grounds is being resurrected.

In *Ned Comer et al. vs. Murphy Oil USA et al.,* a group of Mississippi property owners alleged that greenhouse gas emissions by Murphy Oil USA—through more than 100 oil, coal and chemical companies—contributed to climate change and exacerbated property damage Hurricane Katrina caused in 2005.

The plaintiffs sought damages under Mississippi common law, but a federal judge dismissed the case, saying it posed a political question that could not be decided by the courts.

A three-judge panel of the 5th U.S. Circuit Court of Appeals reversed the ruling in October 2009. The defendants sought an en banc hearing by the full court, which was granted. But when eight of the court's 16 standing judges recused themselves due to conflicts of interest, the court voted 5-3 last summer to dismiss the appeal, letting the district court's dismissal stand.

The plaintiffs appealed that dismissal this month, arguing that the three-judge panel's decision should stand.

—By Joanne Wojcik

SXC: Deal signals changes

CONTINUED FROM PAGE 1

senior vp and national health practice leader at The Segal Co., an independent benefit, compensation and human resources firm.

"You get to a point where you're big enough where the big manufacturers have to take you seriously, and that should help them negotiate rebate savings," Mr. Kaplan said.

The institute's Ms. Motheral agreed that the deal could mean more prescription discounts.

"For larger employers, this is probably pretty positive because it gives another option of a player who can compete effectively," she said.

SXC and Catalyst face competition from PBMs that are several times their size. Medco Health Solutions Inc. of Franklin Lakes, N.J., ranked No. 1 in the *Business Insurance* 2011 ranking of the 10 largest PBMs, with $66 billion in unbundled PBM revenues for 2010.

Woonsocket, R.I.-based CVS Caremark Corp. ranked No. 2 in the 2011 ranking, reporting $47.8 billion in unbundled PBM revenues in 2010. St. Louis-based Express Scripts Inc. was No. 3 with nearly $45 billion in unbundled PBM revenues.

Citing Express Scripts' deal earlier this month to buy Medco for $29.1 billion, Ms. Motheral said consolidation in the PBM market is being driven largely by decreasing margins in the mail-order pharmacy business.

During a conference call with analysts last week, SXC CEO Mark Thierer said SXC and Catalyst—which have specialized in mid-market clients—plan to compete directly against larger PBMs.

"The combination brings together two highly complementary businesses, which collectively will have an increased scale and scope to better control drug costs and deliver customized solutions to payers, including employers, health plans and government clients," said Mr. Thierer, who will remain CEO of the combined company whose stock will trade under the SXC symbol.

While SXC and Catalyst separately are much smaller than the top PBMs, their combined strength could help them double in size during the next five years, said Brian Tanquilut, a Nashville-based health care services equity research analyst with Jefferies & Co. Inc.

"This allows them to play offense and really try to go head-to-head with the larger PBMs to gain as much market share as possible," Mr. Tanquilut said.

Brooks O'Neil, Minneapolis-based senior research analyst with Dougherty & Co. L.L.C., said SXC is known for having a sophisticated information technology structure. That system, along with increased negotiation power, could make SXC-Catalyst a strong contender to the top PBMs, Mr. O'Neil said.

"You need to be able to help your clients manage their pharmacy costs in the ways that are most comfortable for them and you need to be able to deliver exceptional quality of care to members," Mr. O'Neil said.

SXC and Catalyst may look to gain customers from Express Scripts and Medco as that merger shakes out, Mr. Tanquilut said.

"There are lots of clients that are evaluating their relationship with Express Scripts right now, so there's a lot of opportunity for these guys to pick up...market share," Mr. Tanquilut said.

As the Express Scripts and SXC mergers move forward, the institute's Ms. Motheral said other PBMs likely will consider similar deals in order to stay competitive.

"I suspect we'll see one (deal) every quarter for the next 18 months or so," she said.

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Age: Employers burdened by guidance

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policies and practices that have the effect of harming older individuals more than younger individuals, unless the employer can show the policy or practice is based on a reasonable factor other than age.

"The final rule strikes the appropriate balance between protecting older workers from discriminatory, unreasonable business decisions and preserving an employer's ability to make reasonable business decisions," said the EEOC in a statement.

The guidance is intended to address situations such as when an employer implements a reduction-in-workforce plan and terminates a higher percentage of older workers than younger workers.

The EEOC has said its rule, which goes into effect April 30, is based on the Supreme Court's 2005 *Azel P. Smith et al. vs. City of Jackson* ruling, which allowed "disparate impact" claims that do not require showing discriminatory intent under the ADEA, and its 2008 decision in *Meacham vs. Knolls Atomic Power Laboratory*, in which the high court held that employers must show that there was a reason other than age discrimination in cases where layoffs appear to target older workers.

Also cited by the EEOC in its commentary on the rule is the Supreme Court's 2009 ruling in *Jack Gross vs. FBL Financial Services Inc.*, in which the court held that plaintiffs in age discrimination cases must prove age was the determinative factor in an adverse job action, not just one of several motivating factors, to successfully pursue their case. This case is the focus of legislation that would overturn it (see related story).

Experts say the guidance creates difficulties for employers. Jeffrey D. Polsky, a partner with law firm Fox Rothschild L.L.P. in San Francisco, said the EEOC rule "contains a lot of terms that are difficult to define and therefore make it harder for a court to decide that there's no issue there to go to the jury," and dismiss the case.

For example, the definition says that a reasonable factor other than age must be one that is "objectively reasonable when viewed from the position of a prudent employer mindful of its responsibilities under the ADEA under like circumstances."

"There's an awful lot in there for lawyers to argue about," said Mr. Polsky. "What is 'objectively reasonable,' and what is a 'prudent employer' and what does it mean to be mindful of their responsibilities under like circumstances?" he asked. It also states that these determinations "must be decided based on all the particular factors and circumstances," which "gives no guidance at all."

"I think they're being protective of employees and going beyond the standard as it's been defined by the Supreme Court," Mr. Polsky said.

Michael A. Kalish, a member of law firm Epstein Becker & Green P.C. in New York, said the rule "injects a whole lot of what an employer needs to do in order to establish" that it has acted reasonably, defining "reasonable factors other than age" through a "multifactor test that seems a whole lot more stringent" than it was previously thought would be required.

Gregg M. Lemley, a shareholder with law firm Ogletree Deakins Smoak Nash & Stewart P.C. in St. Louis, said, "I think the EEOC has taken some pretty serious liberties with the standard established by the Supreme Court." It "creates a basically unworkable standard for an employer," he said.

Richard B. Cohen, a partner with Fox Rothschild in New York, said, "It does seem the EEOC has used the Supreme Court as a springboard to expand and go beyond" the rulings.

However, Thomas H. Christopher, a partner with law firm Kilpatrick Townsend & Stockton L.L.P. in Atlanta, said, "I think it'll have a negative effect, to some extent, but not a seismic impact.

"I would say it's kind of picking at the margins of the law, rather than really going into the core" of the ADEA. However, it does make "the burden greater on employers," he said.

Employers' unhappiness with the ruling will eventually be heard in court, some observers say. Mr. Lemley said the question remains as to the degree to which the courts will uphold the regulations.

While employers should adhere to the rules, "the story's only partially told, and I think there's a fairly good likelihood these will be at least limited in some respects by the courts."

EEOC senior attorney adviser Cathy Ventrell-Smith defended the guidance, stating it fairly implements the Supreme Court's *Smith* and *Meacham* decisions. "The Supreme Court did not provide any guidance" as how to establish a "reasonable factor other than age" standard to a policy that disproportionately harms older workers, which is the EEOC's role, she said.

"The Supreme Court itself said that employers do have a burden. They have to actually present evidence as to a reasonableness of the factors they relied on that sets a standard," she said.

Ms. Ventrell-Smith said, "It seems that employers' complaints may stem from the fact that prior to the Supreme Court decisions, there really wasn't much of a standard, and the courts pretty much found that almost anything was reasonable."

As a result, "If you juxtapose almost no burden prior to the Supreme Court cases, and the EEOC now providing guidance and explaining what employers need to do, that can appear to be more of a burden."

Measure seeks to overturn age discrimination ruling

By JUDY GREENWALD

WASHINGTON—Legislation has been introduced that would overturn the U.S. Supreme Court's 2009 ruling in *Jack Gross vs. FBL Financial Services Inc.*, which made it easier for employers to defend age discrimination lawsuits, but the bill is given little chance of passage, observers say.

The Supreme Court held in its 5-4 ruling that plaintiffs in age discrimination cases must prove age was the determinative factor in an adverse job action, not just one of several motivating factors, to successfully pursue their case.

In sex and other discrimination cases, plaintiffs have to only establish that discrimination was a motivating factor in an adverse employment decision, and it does not necessarily have to be the determinative factor.

The proposed legislation, S. 2189, Protecting Older Workers Against Discrimination Act, which was introduced last month, would establish this same standard in age discrimination cases.

The bill states that Congress had intended that courts would interpret federal statutes, such as the Age Discrimination in Employment Act, that are similar to Title VII of the Civil Rights Act of 1964 "in ways that were consistent with the ways in which courts had interpreted similar provisions" in Title VII. The *Gross* decision "departed from this intent and circumvented well-established precedents."

The bill has been referred to the Senate Committee on Health, Education, Labor and Pensions.

A similar bill introduced in 2009 died in committee.

Observers say one positive factor that enhances the bill's chances of success is its bipartisan support. Its sponsors include Sens. Tom Harkin, D-Iowa, Patrick Leahy, D-Vt., and Chuck Grassley, R-Iowa.

Still, it is given little chance of success in today's congressional environment. Its prospects are "fairly slim," said Todd A. Hanchett, a partner with law firm Stoel Rives L.L.P. in Portland, Ore.

The previous version did not even come up for a vote, and given the changes since in the House and Senate, one has to assume "it's fairly unlikely" this bill will be more successful, Mr. Hanchett said.

AmWINS: New ownership

CONTINUED FROM PAGE 4

five, seven years of being part of New Mountain."

The recapitalization is likely to have little change on AmWINS' operations, industry experts say.

"It's business as usual" for AmWINS, Mr. Cunningham said.

AmWINS is "likely to continue their course of moderate organic growth and occasional small to midsized acquisitions," Mr. Ballentine said.

The deal also could signal that private equity firms are showing increased appetite for insurance brokerage operations, experts say.

The wholesale brokerage business is more attractive to investors today, Mr. Cunningham said. "It was near doldrums three, four years ago. It's certainly coming back, I think even more so than the retail business," he said.

In a prolonged soft market, retail brokers often compete in the wholesale space, but as the market hardens they go back to more traditional lines, Mr. Ballentine said.

In AmWINS' case, New Mountain's partnership is a vote of confidence in both management and the wholesale space, said John Wicher, principal at John Wicher & Associates in San Francisco.

"There have been over the last cycle—which has been almost 10 years for the wholesale space—questions about its continued relevancy, whether they would be disintermediated as a result of the retailers having more direct access to product," he said.

"This settles ownership exactly at the time the retail agent is going to his or her customers with the need to look to that market in the coming years for both capacity and being able to place difficult risks," Mr. Wicher said.

"What we hear and know is that there remains a lot of private equity interest in the space," Mr. Cunningham said. "I think it's even more attractive now since we're seeing some lift in rate and an improving economy."

Jim Auden, Chicago-based managing director in Fitch Ratings Inc.'s insurance group, said the brokerage business tends to be heavy with acquisitions.

"All the largest brokers have grown through acquisitions over time," he said. "There's a history that there's an ability to buy and sell companies which makes the investment attractive to private equity firms," he said.

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Drugs: Data reveals costs

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comparing data from several PBMs would be more helpful and less biased than reports based on claims data from each PBM's customer base, Mr. Noonan said.

"I would be much more interested in how one (PBM) compares to the other," Mr. Noonan said.

Nonetheless, the reports released last week provide insight to help employers in directing their medical network providers, clinics and other workers comp providers to get the best outcome on claims, he said.

The studies are valid in their reporting of price changes and general trends that are likely felt systemwide, said Joseph Paduda, principal at Health Strategy Associates L.L.C. in Madison, Conn.

The PBMs' annual reports do help the workers comp industry stay abreast of significant trends, such as prescribing trends involving compound drugs, which are expensive because pharmacists must mix them manually, other observers say.

"Those are the trends (workers comp observers) really want to look at," said Paul Braun, managing director of casualty claims for Aon Global Risk Consulting in Los Angeles.

Understanding compound drug use is critical because they can be prescribed to avoid state price caps on standard medications, Mr. Braun said.

Compound medication costs have posted double-digit increases since 2008, and per-user-per-year costs increased 13.7% in 2011 to $1,872, according to Express Scripts' report.

DRUG USAGE

Six therapy classes accounted for 76.2% of total workers compensation prescription drug spending in 2011, according to Express Scripts Inc.

Therapy class	PUPY cost[1]	Trend
Narcotic analgesics	$508.38	down
Anticonvulsants	$120.50	down
Nonsteroidal anti-inflammatory drugs	$101.90	up
Dermatologicals	$101.49	up
Antidepressants	$100.25	up
Muscle relaxants	$85.03	down
Total[2]	$1,334.60	down

1 Utilization per user per year.
2 Includes all drug therapy classes.

Source: Express Scripts Inc.'s "Workers' Compensation Drug Trend Report"

As for highly addictive narcotic drugs, Express Scripts reported that narcotic analgesics—such as OxyContin, Tramadol and oxycodone—accounted for 38% of its clients' workers comp pharmaceutical expenses and 34% of their prescription drug claim utilization during 2011.

In addition to their generally high expense, narcotics are widely prescribed for workers comp claimants because pain is a common result of workplace injuries.

But Express Scripts said it helped its clients reduce narcotics utilization by 4.2% in 2011.

"That is reflective of the importance of programs to manage utilization for that therapy class...not necessarily just from the perspective of controlling overall costs, but maintaining the safety of injured workers," said Jennifer Kaburick, Express Scripts' St. Louis-based director of workers comp product management.

Similarly, Progressive Medical reported that narcotics account for 35% to 40% of its workers comp clients' drug spending.

Though the narcotic drug category is still the largest percentage of overall meds being filled, Progressive Medical said it helped its clients cut their total spending for the narcotics, achieving a 3.9% reduction in 2011.

"This is largely due to Progressive Medical's emphasis on conducting interventions earlier in the life cycle of a claim," according to the PBM's "2012 Workers' Compensation Mediation Trends Report."

"Globally, we are (also) seeing anticonvulsants, anti-inflammatories, antidepressants and muscle relaxants in the top category of prescriptions," said Tron Emptage, Progressive Medical's chief clinical officer.

Express Scripts, meanwhile, reported an increase in the utilization and price of dermatologicals such as Flector, Lidoderm and Voltaren gel. The topical medications often are prescribed with oral pain medications, said Sharon Frazee, St. Louis-based vp of research and analysis for Express Scripts.

Although dermatological prescriptions do not cost as much as narcotics, they remain expensive and may not have a generic alternative, so state mandates requiring the use of available generics would not apply, according to Express Scripts.

"The average cost per prescription is $248.56 for (dermatologicals), so they are relatively expensive medications," Ms. Frazee said.

Fracking: EPA rules won't stem suits

CONTINUED FROM PAGE 3

looked at the risks associated with fracking and decided that it's a risk they are willing to take.

"There is not a segmented market for fracking exposures and nonfracking exposures," he said. "There are some carriers that have more of a concern with certain operational aspects such as fracking, but the market in general feels that this is a risk that they can understand and underwrite."

Mr. Hanneman, added that while some insurers may opt not to provide coverage in certain areas where fracking is being used, others are entering the market with specialty products tailored to the risk.

"The industry does have a large cloud over it because of the media attention and the ongoing EPA study, but the underwriters that understand the technology and how it works are comfortable with the risk," he said.

Theresa Fadul, energy practice director and senior vp at Denver-based IMA Financial Group Inc., said companies operating in the sector should acquire specialty pollution coverage to augment general liability policies. While general liability insurance may cover sudden events such as explosions, many claims evolve over time.

"There are a couple issues regarding the trigger for general liability and umbrella policies which require a specific event or occurrence that's identifiable or definable in time," Ms. Fadul said. "The triggers under a specialty pollution policy are broader, so you need to have specialty coverage to be comfortable that you would have complete coverage."

inBrief

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Property Casualty Insurers Assn. of America and Insurance Services Office Inc. Catastrophe losses were a major factor in the industry's underwriting losses, which grew to $36.5 billion in 2011 from $10.5 billion in 2010.

'Difficult, uncertain' year for maritime industry

The hull insurance market in 2012 will be challenging for the maritime industry as marine liability underwriters seek 5% increases going forward, according to a Willis Group Holdings P.L.C. report, which found that the maritime industry faces a "difficult and uncertain year" in the wake of the January capsizing of the Costa Concordia cruise ship, eurozone concerns, pirate attacks and sanctions.

Catastrophes hit Bermuda results

Catastrophe losses limited 22 Bermuda insurers and reinsurers to $1.49 billion in profit 2011, down from $11.37 billion the previous year, according to a report. The Assn. of Bermuda Insurers & Reinsurers noted that 12 of its members reported combined ratios greater than 100% and that 10 of the 22 companies reported net losses for the year. While net income declined sharply in 2011 vs. 2010, the group's surplus base was down only slightly from 2010 at nearly $88.84 billion.

N.H. bill would allow contraceptive exclusion

Legislation approved by the New Hampshire House of Representatives to allow insurers to exclude prescription contraceptive coverage from group plans if plan sponsors have "religious objections" to the coverage faces an uncertain future after a Senate committee vote to further study the bill. A committee voted 4-0 that the full Senate should study H.B. 1546 further. If approved, it would amend a New Hampshire law that requires group health insurers to include contraceptive coverage on the same basis as the coverage they provide in group plans for other prescriptions.

Calif. comp volume reached $1B in 2011

California workers compensation underwriters reported that written premiums rose by $1 billion to $10.8 billion during 2011, the Workers' Compensation Insurance Rating Bureau of California said. The written premium for 2011 is the largest amount since 2007, when it totaled $13 billion, the WCIRB stated in its 2011 fourth-quarter insurer experience report.

Higher rates expected in surplus lines market

Excess and surplus lines insurers experiencing underwriting losses in 2011 due to high catastrophe exposures and low interest rates will increase pricing and tighten underwriting standards, according to a report by Moody's Investors Service Inc. The report noted that E&S insurers have experienced declining premiums since 2006 because of the weak economy and competition from standard insurers.

Oklahoma Senate OKs alternative comp system

The Oklahoma Senate voted 28-17 in favor of H.B. 2155, a bill that would allow certain companies to exempt themselves from the state's workers compensation system, which has been criticized as being too expensive. The bill has been returned to the Oklahoma House of Representatives for consideration.

Maine workers comp reform bill signed

Maine Gov. Paul LePage signed into law legislation overhauling Maine's workers compensation system. An Act To Review and Restructure the Workers' Compensation System—L.D. 1913—reduces the maximum benefit for total disabilities from 80% of an employee's weekly wage to 66% for injuries occurring on or after Jan. 1, 2013.

Vt. licensed 8 new captives in first quarter of 2012

Vermont licensed eight new captives during the first quarter of this year, the most new captives formed in the state during a first quarter since 2005. Five of the new captives are single-parent captives, one is a special-purpose financial captive, and two are sponsored captives.

CONTRIBUTING: Roberto Ceniceros, Judy Greenwald, Sheena Harrison

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WHEN STEALING YOUR OWN CAR, TURN OFF LOJACK

A car owner allegedly attempting to commit auto insurance fraud was busted when the vehicle's LoJack system alerted sheriff's deputies to the theft, according to the San Bernardino County, Calif., Sheriff's Department.

The system, devised by Canton, Mass.-based LoJack Corp., helps investigators track and locate many stolen automobiles, a department spokeswoman said.

But it's the first incident she has heard of in her 10 years on the job in which a LoJack system helped nab a car owner suspected of hiding his vehicle in an alleged insurance fraud scheme, the spokeswoman said.

"I believe this gentleman was not aware his vehicle had been equipped with the LoJack system," she said. "That is why he overlooked that."

A LoJack alert directed deputies to the location of the car that was hidden behind a house. Deputies detained four people at the residence and allegedly learned the car's owner, Ricardo Felix, had conspired with relatives to hide the car.

Meanwhile, Mr. Felix had a relative drive him to another location where he reported the car stolen. He then contacted State Farm Mutual Automobile Insurance Co. and filed a claim.

The suspect was arrested recently and charged with insurance fraud and conspiracy to commit a crime. Potential charges are pending for the other alleged conspirators, authorities said.

AP PHOTO

Pop duo LMFAO is being sued by management firm RPM GRP for breach of contract. The pair is accused of signing a contract with RPM in 2008, then dropping their managers after LMFAO's career took off.

LMFAO ex-managers don't see funny side

Lawsuits are no laughing matter for pop group LMFAO, which reportedly is being sued by management firm RPM GRP for breach of contract.

The company filed a lawsuit in California's Santa Monica Superior against LMFAO members Stefan "Redfoo'" Gordy and Skyler "SkyBlu" Gordy, according to reports. The pair is accused of signing a contract with RPM in 2008, then dropping their managers after LMFAO's career went "from 0 to 60."

The poofy-haired pop performers—who are related to Motown Records founder Berry Gordy Jr.—are best known for their hits "Party Rock Anthem" and "Sexy and I Know It."

LMFAO appeared to be taking news of their legal troubles in stride. Gossip website TMZ showed "Redfoo" Gordy posing for pictures with a process server, who delivered the lawsuit last Thursday.

WAS THIS INJURY FROM BUSINESS OR PLEASURE?

A woman injured while enjoying sex in a motel room during a work-related trip is entitled to workers compensation benefits, an Australian judge recently ruled.

The federal judge found that the injury occurred during the unnamed woman's course of employment, reports state.

The injury happened after she arranged to meet a friend living in a town she had been ordered to travel to by her employer, Australia's Human Relations Section of the Commonwealth Government.

After a dinner, the woman and her male friend went to her motel room.

The friend stated they were "going hard" when a glass light fitting separated from the wall above the motel bed in 2007.

"I think she was on her back when it happened, but I was not paying attention because we were rolling around," the friend said.

Her workers comp claim for facial and psychological injuries initially was rejected, the reports state. But her attorney argued that sex is an ordinary life activity, similar to showering in a motel room.

The federal judge agreed, stating that had the claimant been similarly injured while playing a game of cards in her motel room she also would have been entitled to workers comp benefits.

INSURER'S APP PUTS SCARY MOVIE IN YOUR HOME

Talk about too close to home.

A Cardiff, Wales-based insurance marketer has launched a Facebook video app called "House of Horrors" that shows a burglar breaking into the viewer's own house.

According to Confused.com, a comparative insurance website owned by auto insurer Admiral Group P.L.C., this is accomplished through a Google Maps image of the user's street that is displayed in the clip. Taking information from a user's profile, such as photos, the app places them around the house "to make them feel as though it is their own" residence being burglarized, Confused.com said in a statement.

As if this were not enough, the video app lays on eerie music and a threatening burglar character who handles photos of the app user around the house and steals a laptop that displays the user's Facebook profile. The last shot shows the burglar holding a photo frame containing an image of the user, with the message, "Cover your possessions at Confused.com."

Sharon Flaherty, head of content at the website, said the video "is bound to make people feel uneasy as though their home really has been broken into. However, this is a situation which is very much a reality given that the British Crime Survey reported a 5% rise in burglary in the 12 months to September 2011."

"We're looking to spark conversation with this video app and make people understand the importance of having home insurance," Mike Hoban, marketing director at Confused.com, said in a statement.

The statement, however, doesn't address the issue of why anyone would want to watch such a video or give any word about insurance for the nightmares it may cause.