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RIMS GIVES GOODELL AWARD TO DISNEY RISK MANAGER STEPHEN M. WILDER / PAGE 4

In Brief

Chartis places $250M catastrophe bond

Chartis Inc. has entered the insurance-linked securities market with a $250 million catastrophe bond placement, Standard & Poor's Corp. said. The bond, Bermuda-based special-purpose vehicle Lodestone Re Ltd., will provide Chartis subsidiary National Union Fire Insurance Co. of Pittsburgh, Pa., three years of reinsurance protection against U.S. hurricane and earthquake losses. The deal is structured in two tranches; S&P rated the Series 2010-1 Class A and Class B notes BB+ and BB, respectively.

Shareholders sue Goldman Sachs

Goldman Sachs Group Inc. shareholders have sued the investment bank alleging that Goldman withheld information

See **IN BRIEF** page 22

SPOTLIGHT

TRANSPORTATION RISKS: COMMERCIAL AUTO

Hitting the brakes on driver mishaps; fleet managers fight distracted driving; liability follows personal use of company vehicles; personal car use does not eliminate employer risks. **PAGE 11**

Oil skimmers last week aided efforts to clean up a huge oil slick caused by the explosion of the Deepwater Horizon rig in the Gulf of Mexico.

Oil rig claims may top $1B

Massive spill follows blast, sinking

By MICHAEL BRADFORD

VENICE, La.—When cleanup is complete after the blast that sank the Deepwater Horizon oil drilling rig—leaving 11 workers missing and feared dead and a well gushing tens of thousands of gallons of oil a day into the Gulf of Mexico—insurers will have a loss of more than $1 billion, energy market sources say.

U.S. Coast Guard crews late last week began experimental burns on portions of the 600-mile oil slick as it drifted toward the Louisiana coast.

A well that erupted on the floor of the Gulf of Mexico after the rig began burning April 20 and sank two days later was gushing what the National Oceanic and Atmospheric Administration estimated was 5,000 barrels of oil a day.

See **RIG** page 21

THE TIMES-PICAYUNE/LANDOV

Court allows Wal-Mart bias class action

By JUDY GREENWALD

SAN FRANCISCO—The 9th U.S. Circuit Court of Appeals decision to uphold certification of a class action lawsuit by six Wal-Mart Stores Inc. employees could lead to more and larger lawsuits against employers, observers say.

However, many experts are optimistic the U.S. Supreme Court will hear the case because of its size, potential damages that could reach into the billions and the San Francisco-based appeals court's sharply

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

divided opinion (see story, page 18).

Plaintiffs in the suit, originally filed in 2001, charge that women employed by Bentonville, Ark.-based Wal-Mart were paid less than men in comparable positions despite higher performance ratings and greater seniority. They also allege that women received fewer and waited longer for promotions to in-store management positions than did men.

The plaintiffs are seeking injunctive and declaratory relief, lost pay and punitive damages.

The case, which by some estimates encompasses more than 1.5 million members, is said to be the largest class action suit ever certified.

In 2007, a divided three-judge appeals court panel upheld a lower court's 2004 ruling that granted class action status to women who work or have worked in one or more of Wal-Mart's 3,400 stores at any time since 1998.

See **DUKES** page 18

Health insurers extend coverage to adult children

Moves prompted by upcoming law change

By JERRY GEISEL

WASHINGTON—Health insurers, in a show of practical good will and at the urging of the Obama administration, are extending coverage to employees' children up to age 26 before a provision in the new federal health care reform law requires them to do so.

The nation's largest insurers, including Aetna Inc., Blue Cross & Blue Shield Assn. plans, CIGNA Corp., Humana Inc., Kaiser Permanente, UnitedHealth Group Inc. and WellPoint Inc., said they have or soon will extend coverage to older adult children.

In addition, the Internal Revenue Service last week said that the cost or value of the coverage will not be added to employees' taxable income even if the coverage is extended before the effective date in the reform law (see story, page 20).

Under the law, the extension of coverage to employees' children up to age 26 takes effect on the first day of a plan year that starts six months after the March 23 enactment of the law, or Sept. 23. For employers with calendar-year plans, which are the most common, the requirement begins Jan. 1, 2011.

The insurers' extensions are limited. They will apply only to adult children who already are covered by the insurers. The extensions would not apply, for example, in the case of an employee's child who already graduated from college or lost eligibility for coverage under his or her employer's health care plan. That adult child would have to wait until the effective date of the health care reform provision to regain coverage.

The biggest winners of insurers' moves to implement the reform law's adult child provision will be high school students about to graduate who will not attend college and college students about to graduate. Typically, insurers and self-insured employers stop coverage for employees' children at age 18 or 19, or 22 or 23 if the child is a full-time college student.

In such situations, employees can

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NEWSPAPER

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RESULTS

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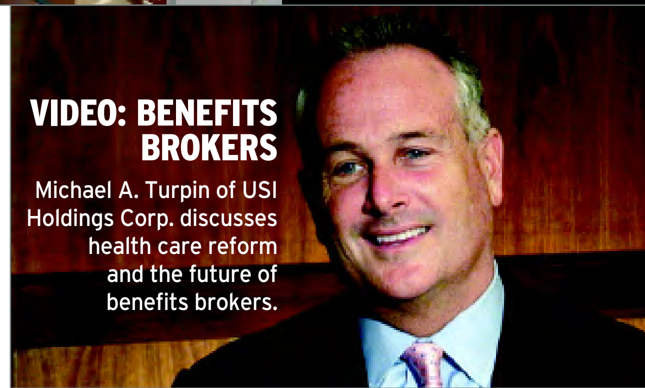

VIDEO: BENEFITS BROKERS

Michael A. Turpin of USI Holdings Corp. discusses health care reform and the future of benefits brokers.

HEALTH CARE REFORM FAQ

BusinessInsurance.com's Health Care Reform section includes an updated FAQ that describes key provisions of the new law for employers.

MOST POPULAR STORIES

Week of April 26, 2010

1. Insurance cover of children through age 26 tax-free: IRS
2. Broker violated law on contingent commissions: Court
3. Many plans fail health reform affordability test: Analysis
4. AIG 'stable,' GAO says, but analyst slams shares
5. Hannover Re, Munich Re expect oil rig explosion claims
6. Ignore conventional wisdom to find opportunity: Pat Ryan
7. Owner to retain sizable losses in oil rig explosion
8. U.S. property/casualty insurers post higher profits: Best
9. Obama signs short-term COBRA subsidy extension
10. SEC queried AIG on exec's description of 'worthless' stock

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LIABILITY & LITIGATION

Supreme Court to clarify rules for arbitration agreements

Case's central issue: Who decides if pact signed under duress?

By JUDY GREENWALD

WASHINGTON—The ability of arbitration to settle disputes quickly at a modest cost is under challenge in a case in which the U.S. Supreme Court heard oral arguments last week, observers say.

The issue in *Rent-A-Center West Inc. vs. Antonio Jackson* is whether a court or an arbitrator decides if an arbitration agreement was entered into under duress.

The issue is particularly relevant to employment contracts, which often have clauses that say an arbitrator will decide any claim, including any concerning the enforceability of the arbitration agreement, say observers.

"A lot of employers use arbitration as means to resolve disputes" because it takes less time and is less costly, said Nigel F. Telman, a partner with law firm Proskauer Rose L.L.P. in New York.

But observers say the effectiveness of arbitration would be undermined if courts rather than arbitrators decide whether a case should be arbitrated when this is in dispute.

The case involves Mr. Jackson, an employee of Rent-A-Center West Inc., a unit of Plano, Texas-based Rent-A-Center Inc., who filed a lawsuit in 2007 accusing his employer of race discrimination and retaliation. The employer moved to dismiss the case and compel arbitration based on an agreement Mr. Jackson signed as a condition of his employment.

The employment agreement said the arbitrator "shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this agreement," according to court records.

The employer argued that in light of the provision, the arbitrator, not the court, should decide whether the arbitration agreement was enforceable.

Mr. Jackson argued that the agreement was "unconscionable," or signed under duress, in part because it was presented as a nonnegotiable condition of his employment.

A district court ruled in the employer's favor and dismissed the case. Mr. Jackson appealed to the 9th U.S. Circuit Court of Appeals in San Francisco, which reversed the district court last September and held the lower court was required to determine if the arbitration agreement was unconscionable.

When "an arbitration agreement delegates the question of the arbitration agreement's validity to the arbitrator, a dispute as to whether the agreement to arbitrate arbitrability is itself enforceable is nonetheless for the court to decide," the 9th Circuit said in its 2-1 decision.

The dissenting opinion, however, said the majority would send the case "to a minitrial in the district court to determine an agreement's validity based on just the bare allegation of unconscionability, even when the contract language 'clearly and unmistakably' chose a different forum for that question. This is counter to the general policy favoring arbitration of disputes."

See **RENT-A-CENTER** page 18

FEDERAL LEGISLATION & REGULATION

AP PHOTO

Sens. Richard Shelby, left, and Chris Dodd agreed to drop a proposed $50 billion resolution fund from the financial services regulatory reform legislation.

Insurers leery of elements in financial services reform

Industry concerned it will have to pay for errors by others

By MARK A. HOFMANN

WASHINGTON—Property/casualty insurers remain concerned that financial services regulatory reform could force some insurers to bail out other financial institutions even though insurers already pay for their counterparts' insolvencies through state guaranty funds.

The U.S. Senate last week took up financial services reform legislation after Democratic leaders agreed to strip a provision that would have established a $50 billion resolution fund to cover failing institutions. The fund, which Republicans argued would lead to endless bailouts, would have been paid for though pre-event assessments on financial institutions.

After days of wrangling, Sen. Richard Shelby, R-Ala., played a leading role in getting Banking, Housing and Urban Affairs Committee Chairman Chris Dodd, D-Conn., to drop a proposed $50 billion resolution fund from financial services regulatory reform legislation. That allowed the bill to proceed to the Senate floor, where it is expected to be the subject of numerous amendments.

But large insurers—those with consolidated assets of more than $50 billion—still could be assessed to cover the costs of other types of financial institutions that collapsed, industry observers say. Insurers hold that doing so would be unfair, because they already cover the cost

See **REFORM** page 20

INTERNATIONAL

UK cracks down on corporate bribes

By STUART COLLINS

LONDON—Recently passed anti-bribery legislation in the United Kingdom could significantly increase the exposure of corporate directors to liability claims, legal experts say.

In response to the law, U.K. companies should review their risk management practices, governance controls and directors and officers liability coverage, they say.

The Bribery Act 2010 became law last month. The law replaces the existing patchwork of legislation and common law covering bribery, creates new offenses, and establishes tougher penalties for companies and individuals. In addition, it codifies existing laws to create several corporate offenses, including offering and accepting a bribe, and the offense of bribing a foreign public official. The law also creates the new offense of failure by a commercial organization to prevent a bribe being paid on its behalf.

> **BRIBERY ACT 2010**
>
> *New law replaces existing legislation and common law*
>
> - A company can be held liable if a person associated with a company and performing services on its behalf is involved in bribery.
> - Applies to a company or individual with 'connection' to the U.K.
> - Liabilities for companies and their directors likely to increase.
> - Senior corporate officers can be liable if they consented to or were involved in a bribe.

The legislation likely will make it easier for authorities to prosecute companies and their directors for bribery offenses, said Neil Beresford, London-based partner at Clyde & Co. Previously, prosecutors had to prove senior management were the "directing mind and will" behind a bribery offense. Now, there is a new offense of failure to prevent a bribe.

The scope of the law is much broader than existing bribery and corruption laws, said Eleni Petros, senior vp of financial and professional practice at Marsh Ltd. in London. For example, a company can be held liable if a person associated with a company and performing services on its behalf, such as a consultant or an adviser, is involved in bribery.

In addition, U.K. law previously did not create criminal offenses in relation to the acts of U.K. citizens or companies carried out entirely overseas. The new law, however, applies to any company or individual with a "connection" to the United Kingdom, even if the company is incorporated overseas or if

See **BRIBES** page 22

P/C INSURERS

AIG 'relatively stable,' GAO report says

Government sees improvement signs, but analyst leery

By JUDY GREENWALD and GAVIN SOUTER

NEW YORK—American International Group Inc.'s financial position remains "relatively stable," and its property/casualty operations have "shown some improvements," according to a report released last Tuesday by the Government Accountability Office.

But a stock analyst warned in a separate report that the troubled insurer's publicly traded shares are "grossly overvalued."

> **$129.1B**
>
> The GAO noted that the outstanding balance of government assistance provided to AIG is $129.1 billion, which is about $8.4 billion more than the balance on Sept. 2, 2009.

According to a client note by Cliff Gallant, an insurance analyst at Keefe, Bruyette & Woods Inc., AIG still faces significant challenges as it strives to recover from the government bailout of the company in 2008.

In its report, however, the GAO, which is the auditing arm of Congress, said that since it conducted its last report on AIG in September 2009, the New York-based insurer remains in a stable condition. The GAO noted that the outstanding balance of government assistance provided to AIG is $129.1 billion, which is about $8.4 billion more than the balance on Sept. 2, 2009.

And AIG's core insurance operations are showing signs of improvement, the GAO report said.

"For the first time since the second quarter of 2008, additions to AIG life and retirement policyholder contract deposits have exceeded

See **AIG** page 17

AGENTS & BROKERS

Broker violated law on contingent commissions: Court

By JEFF CASALE

HARTFORD, Conn.—A Connecticut judge has ruled that insurance brokerage Acordia Inc. violated the law when it failed to disclose contingent commissions, a ruling a state official hails as setting precedent on brokers' fiduciary duties.

The Connecticut Superior Court on April 21 ruled in favor of the state and Connecticut Attorney General Richard Blumenthal, stating that Acordia, now a unit of insurance brokerage Wells Fargo Insurance Services Inc., had the fiduciary duty to notify its clients that it received contingent commissions in exchange for placing business with "preferred" insurers.

Those preferred insurers included Travelers Cos. Inc., Hartford Financial Services Group Inc., Chubb Group of Insurance Cos., Atlantic Mutual Insurance Co. and RSA Insurance Group P.L.C., authorities said.

The court said Chicago-based WFIS should have disclosed accepting contingent commissions from insurers as those commissions are a conflict of interest.

Connecticut's case is the first case to go to trial on the issue of whether an insurance broker owes a fiduciary duty to its clients to disclose contingent commissions, Mr. Blumenthal said in a statement.

"This decision confirms our hard-fought position (that) secret agreements and kickbacks are bad for businesses and bad for consumers," Mr. Blumenthal said in the statement. "There can be no confusion that brokers owe a duty of honesty to their clients. Wells Fargo must now identify and eventually disgorge profits that it illegally earned at the harm of Connecticut businesses and consumers."

Mr. Blumenthal

Connecticut is one of several states that have brought cases against insurance brokers over contingent commissions since 2004. Mr. Blumenthal alleged that Acordia took in nearly $200 million in fees between 2000 and 2005 under an agreement it had with insurers.

In January 1999, Acordia initiated the Millennium Agency System Partnership to obtain financial support over a three-year period to offset costs associated with the launch of AMS Segetta, an agency management system to link its offices with its partner insurers on the Web. Mr. Blumenthal alleged that this provided partner insurers an "inside track" for future business with Acordia.

Under the partnership, the insurers were offered various ways to help Acordia meet its financial objectives, including paying a 1% commission, the attorney general said.

The court did not determine a dollar amount to disgorge, but ordered Wells Fargo to identify and disclose how much it earned from contingent commissions. Wells Fargo purchased Acordia in 2001.

Wells Fargo plans to appeal the ruling, a spokeswoman said.

According to a statement from Wells Fargo, the court's ruling was based on an "incorrect interpretation of the Connecticut Unfair Insurance Practices Act."

The brokerage added: "The court order specifically states Wells Fargo's insurance brokers acted in the best interests of their customers, that no customer suffered any financial detriment and that all customer premiums were the same regardless of the contingent commissions....Since 2005, Wells Fargo has voluntarily been disclosing all compensation it receives, including contingent commissions."

Questions & Answers

Peter Eastwood, a 19-year veteran of American International Group Inc., became CEO of Lexington Insurance Co. after the December 2008 resignation of Kevin H. Kelley. Mr. Kelley left as Lexington's chairman and CEO after AIG's liquidity crisis and subsequent government bailout to become CEO of Bermuda-based Ironshore Inc. Mr. Eastwood, who previously was executive vp of Lexington's health care insurance operations, spoke with Business Insurance Senior Editor Sally Roberts about the past 16 months at the helm of the nation's largest surplus lines insurer.

Lexington charts course

Q: What has changed about Lexington since you took over as CEO?

First and foremost, I think what has not changed is the way we function in the marketplace and the way we view ourselves. We continue to be a very strong risk-taking organization that empowers its people across our broad platform to make decisions, and ultimately to find ways to say, "Yes," to our customers and broker partners and develop creative solutions to problems.

Q: So what's different then?

The way I view the organization and the way we function today is one that is more team-oriented, which leads to greater collaboration across the platform and a higher level of communication—both internally and externally. The net result is heightened transparency in terms of our operational and financial performance. We've spent a lot of time...making sure all of our stakeholders and business partners understand how the organization is performing.

Q: What's morale like now vs. a year ago?

Morale is quite good in the organization, and it is much better than it was a year ago. To the extent there was any problem with morale in the past, it was driven principally by uncertainty both within the organization and in the external environment. With more certainty in the internal and external environments, there is added stability and people feel more secure about the future of the organization and its prospects for success.

Q: What steps are you and your managers taking to help keep staff focused and engaged?

Throughout the last 18 months, post-September 2008, I think the team has remained remarkably focused in making sure that we drive as much value into the organization as possible. There

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RIMS 2010 READ MORE RIMS COVERAGE IN NEXT WEEK'S *BUSINESS INSURANCE*

Uncertain times seen as chance for risk management to advance

By RODD ZOLKOS

BOSTON—With 2010 marking the Risk & Insurance Management Society Inc.'s 60th anniversary, this year is a time to at once look back at the organization's history and ahead at a future of opportunity for risk managers, said RIMS President Terry Fleming.

Mr. Fleming

In his remarks last Monday opening RIMS' annual conference in Boston, Mr. Fleming noted that as the organization worked to spread the risk management message a decade ago, in many organizations, risk management still was something of a back-office profession.

"Ten years later, it couldn't be more different," said Mr. Fleming, director of the division of risk management for Montgomery County, Md. With businesses, governments and others looking for answers to how to cope with changing times and new exposures, "There's never been a better time to be in risk management," he said.

"It's up to us to seize the opportunity to push ourselves forward," Mr. Fleming said, with RIMS supporting risk managers in those efforts.

Meanwhile, at a conference press event Tuesday, RIMS Executive Director Mary Roth noted that RIMS was enjoying "a quite successful conference" with preregistration up about 20% over that of last year's meeting. She noted

See **PRESIDENT** page 6

Goodell Award for Disney's Wilder

By MATT SCROGGINS

BOSTON—The Risk & Insurance Management Society Inc. last week presented its highest honor, the Harry and Dorothy Goodell Award, to Stephen M. Wilder, vp of risk management at Burbank, Calif.-based The Walt Disney Co.

Mr. Wilder

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.

"This is truly an incredible moment for me," said Mr. Wilder in accepting the award last Monday at the general session of the Risk & Insurance Management Society Inc.'s annual conference in Boston.

"I'm joining a who's who of risk management and insurance, the giants before me who've won the Goodell Award....I've been surrounded by the best and the brightest in the industry my whole career, and for that I am truly grateful," said Mr. Wilder, who is a former *Business Insurance* Risk Manager of the Year.

RIMS presented several other awards during its awards luncheon last Monday, including the Richard W. Bland Memorial Award, which was given to Lance Kayfish, risk manager at the City of Kelowna, British Columbia. The award recognizes efforts in the areas of legislation and regulation.

In addition, the Ron Judd Heart of RIMS Award was presented to Mark Ryan, director of casualty insurance at Occidental Petroleum Corp. and member of the Dallas-Fort Worth Chapter of

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President: Uncertainty chance to advance

CONTINUED FROM PAGE 4

that as of last Monday night, the conference had drawn 4,700 registrants with more signing up on-site, as well as more than 3,900 exhibitors.

During his address at last Monday's general session, Mr. Fleming identified five key objectives he said he's committed to moving forward at the organization. The first is furthering efforts to maintain RIMS' leadership in enterprise risk management. "It's one thing to say the world is looking to us for guidance, but then we'd better have the right advice," Mr. Fleming said.

Next is continuing to advocate for risk management-related legislation and regulation.

"RIMS is becoming well known to Congress as the voice of the commercial insurance consumer," Mr. Fleming said.

Mr. Fleming said his third objective is continuing to develop RIMS' international strategy. He noted that RIMS' international committee is developing a strategy to help U.S. companies with international business, and to assist those areas of the world in need of risk management education.

His fourth objective is supporting RIMS' efforts to continue to encourage students to enter risk management careers.

"For students engaged in risk management study, we are providing free RIMS membership, including access to our job bank," Mr. Fleming said.

Finally, he said he wants to encourage more peer-to-peer benchmarking and information sharing across the RIMS membership.

"As RIMS members, we're really well positioned to put best practices into, well, practice," the RIMS president said.

Mr. Fleming said information he gained by networking with fellow RIMS members helped him save his employer $1 million last year on insurance for a courthouse construction project. "There's always someone there who can help you," he said. "You just have to make that connection."

During the general session, Ms. Roth said the society's success "begins at the chapter level."

Ms. Roth noted that the organization had 23 local chapters in 1960, 64 when she joined RIMS in 1985 and today has 80 worldwide. "We're growing and we're strong," she said.

The RIMS executive director also stressed RIMS' efforts to bring new risk managers into the profession. As part of those efforts, more than 750 students have benefited from RIMS student involvement program, she said. Meanwhile, since the Spencer Educational Foundation Inc. was started in 1979, it has awarded $4 million in scholarships and $2 million in grants.

Even as the world has changed, four concepts—information, education, networking and advocacy—"have always reflected what RIMS stands for," Ms. Roth said.

Mark A. Hofmann contributed to this article.

MICHAEL MARCOTTE

Preregistration at the 2010 Risk & Insurance Management Society Inc. conference was up 20% over last year's, and it drew more than 4,700 registrants, as well as more than 3,900 exhibitors.

'As RIMS members, we're really well positioned to put best practices into, well, practice.'

RIMS President Terry Fleming

Awards: Goodell for Disney's Wilder

CONTINUED FROM PAGE 4

RIMS. The award, which was established in tribute to the legacy of former RIMS Executive Director Ron Judd, recognizes achievements in furthering risk management at the chapter level.

The Arthur Quern Quality Award, which honors innovations in risk management, was given to Paychex Inc. for its predictive model within its enterprise risk management program, RIMS said.

RIMS also presented the Cristy Award to Stanley Jurewicz, director of risk management at Florida State University in Jacksonville. The award recognizes the individual who scored the highest on the three exams required to earn the Associate of Risk Management designation.

Also at the luncheon, RIMS and *Business Insurance* presented the 2010 Risk Manager of the Year Award to Debra L. Rodgers, vp of global risk management at Philadelphia-based ARAMARK Corp.

RIMS and *Business Insurance* also announced the members of the 2010 Risk Management Honor Roll: Scott Borup, director of corporate risk management at Johnson & Johnson in New Brunswick, N.J.; and Christine Eick, executive director of risk management and safety at Alabama's Auburn University.

MICHAEL MARCOTTE

RIMS President Terry Fleming, right, presents the Harry and Dorothy Goodell Award to Stephen M. Wilder, vp of risk management at The Walt Disney Co., at last week's Risk & Insurance Management Society Inc. conference.

Commentary

Knowledge is key to health care reform

JOANNE **WOJCIK**

Senior Editor Joanne Wojcik can be reached at: jwojcik@businessinsurance.com

It's been more than a month since the president signed into law the most sweeping health care reform legislation since the creation of Medicare in 1965, yet most people remain as uninformed as they were when it was under debate.

In fact, there still is considerable misinformation circulating on the Internet, in the media and even at insurance industry-related gatherings—one place where I expected people to be more knowledgeable.

Unfortunately, while attending the 60th annual Risk & Insurance Management Society Inc. conference in Boston last week—an event I attend regularly to seek out new sources—I found myself in the position of disseminating more information than I was gathering. I also found myself dispelling some myths that opponents are perpetuating.

That said, now I understand why I had so much difficulty obtaining salient comments from risk and benefit managers about the legislation. Most people I encounter who are affiliated with either health care or the insurance industry still are in denial. Some fully expect the lawsuits filed by state attorneys general challenging the legislation as unconstitutional will halt its implementation, while others hope a change in the political complexion of Congress after the midterm elections will lead to its repeal.

But ignoring it won't make it go away.

Fortunately, we are now in the "influencing phase," as a speaker at one of RIMS' hot topic sessions on health care reform described it.

"As they move to implement this…you will have people at the table who actually understand how insurance works. One of the problems with ceding some of this to political bodies is that they have never been on the ground to understand how insurance works. When you delegate it to people who have that experience, and include consumers as well as insurers in the process, as the (National Assn. of Insurance Commissioners) does, then we'll have a better, more practical result, and that's critical for the implementation," said Randy Kammer, vp, regulatory affairs and public policy at Blue Cross and Blue Shield of Florida Inc.

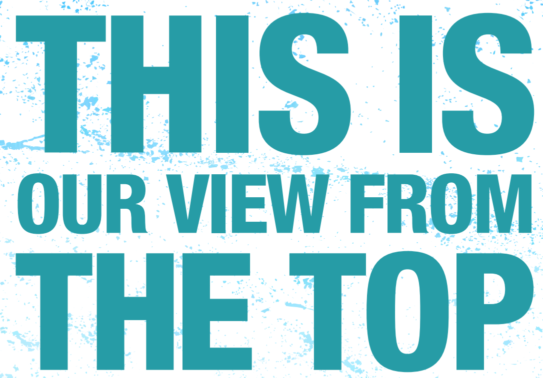
She estimates it will take about 100,000 pages of rules and regulations to enact the roughly 2,400-page bill. Each time regulations are promulgated, there will be opportunities for public comment, something I hope RIMS and other risk and benefits management organizations will do. Even though the NAIC has been drafted to participate in developing some rules to implement the health care reform law, other insurance industry members also need to be at the table.

I found myself in the position of disseminating more information than I was gathering.

Congressional Democrats may have created the framework they believe ultimately will make health care more affordable and accessible to most U.S. residents, but that's all it is. Now we need a detailed road map that will take us there. That also means setting aside our political differences—something Republicans and Democrats failed to do during debate.

We also need to make sure the regulations facilitate implementation of provisions designed to lower costs and improve the quality of health care, preserving the part of our system that once was the envy of the world. This includes fostering wellness through financial incentives, reforming the reimbursement system to discourage overutilization, and investing in comparative effectiveness research to determine which treatments work best and for whom.

Admittedly, there's something in health care reform for everyone to hate; but there's also something in it that we can learn to live with, and perhaps even like one day. We need to muster the courage to change the things we can, accept the things we can't change, and be informed so we are wise enough to discern the difference.



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Business Insurance OPINIONS

Timely IRS guidance welcome on health law

HOW OFTEN do federal regulators issue guidance within weeks of enactment of legislation?

We wouldn't say never, but it certainly is very rare. In fact, the typical pattern is for regulations to be delayed, leaving those in need of guidance in the dark as to what is permissible and what is not.

That pattern makes it even more striking that, as we report on page 1, the Internal Revenue Service issued guidance last week on a key health care reform law provision just a month after President Barack Obama signed it into law.

The IRS guidance involves a provision that will require health insurance plans to extend coverage to employees' adult children until age 26. For most plans, the effective date of the requirement is Jan. 1, 2011.

> *We hope this timely guidance is a sign that regulators will tackle myriad other health care reform issues in an equally fast and thoughtful way.*

To prevent a gap in coverage, insurers are amending plans they underwrite to allow adult children who would have lost coverage in the coming months, typically due to college graduation, to remain covered by their parents' health plans.

With that action, employers questioned whether something done before the provision's effective date would jeopardize its tax-favored status, with employees being taxed on the value or cost of the health care coverage.

Very clearly, the IRS said no. While the coverage requirements don't go into effect immediately, the accompanying change in tax law to ensure the expanded coverage is tax free went into effect when the president signed the legislation at the end of March, the IRS said.

We hope this timely guidance is a sign that regulators will tackle myriad other health care reform issues for which rulemaking will be necessary in an equally fast and thoughtful way.

Regulatory reforms move closer to reality

SENATE DEBATE has begun in earnest over the future of the nation's financial services regulatory system thanks to removal of a roadblock that had threatened to scuttle the whole effort.

The roadblock was a provision of a bill that would have set up a new pre-funded $50 billion resolution fund to deal with failing financial institutions, an entity Republicans charged would create a perpetual bailout fund. Democratic leaders agreed to drop that provision as the price of getting the bill to the floor.

Now the Senate can move forward on the bill, which is certain to see further change. Property/casualty insurers, for example, are still concerned that large insurers will have to pay assessments to prop up endangered financial institutions even though insurers are covered by state guaranty funds. That's a legitimate concern that needs to be addressed. Insurers shouldn't have to foot the bill for two resolution mechanisms, even though persuading lawmakers that's the case may be a hard sell.

But we hope any changes do not threaten two key provisions supported by risk managers: establishing a streamlined system to allow risk managers easier access to surplus lines markets and establishing a new insurance office within the Treasury Department to provide insurance expertise at the federal level.

Both initiatives are more than worthy, and deserve to be part of any financial services regulatory reform law that emerges in this Congress. The removal of the resolution fund roadblock can only increase the odds that both reforms will become reality.

WRITE

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360 N. Michigan Ave.
Chicago, Ill. 60601-3806

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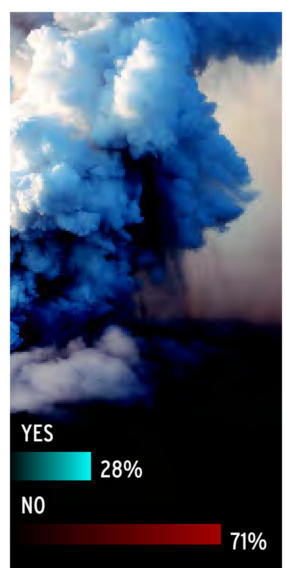
THIS WEEK'S RESULTS

Q Has your organization been affected by the volcanic ash over Europe?

AP PHOTO



NEXT WEEK'S QUESTION

Q: Will financial services regulatory reform raise the cost of insurance coverage?

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TECHNICALLY SAFER

Hitting the brakes on driver mishaps

By JEFF CASALE

Understanding and improving driver behavior often is atop a fleet manager's or risk manager's list when looking to mitigate exposures, and experts say advancing technology can play a vital role in that process.

With a host of driver aids ranging from in-cab cameras to telematic systems that can monitor anything from seatbelt to brake usage, technology can be used to improve driver behavior, but experts caution that it is not a cure for all bad habits.

"The driver is a lone worker out there," said Dave Melton, director of transportation and technical consulting with the Boston-based Liberty Mutual Research Institute for Safety. "They're always remote, and without technology it is difficult to understand their driving behaviors and habits out there."

Mr. Melton said he believes in using technology to help manage multivehicle commercial and trucking fleets, adding that devices that record incidents as they happen allow fleet and risk managers to establish an environment that enforces safe driving behavior and avoids difficult driving situations.

See **TECHNOLOGY** next page

Transportation Risks: Commercial Auto

SPOTLIGHT

FLEET MANAGERS STRIVE TO FIGHT DISTRACTED DRIVING
PAGE 12

LIABILITY FOLLOWS PERSONAL USE OF COMPANY VEHICLES
PAGE 14

USING PERSONAL CARS DOES NOT ELIMINATE RISKS FOR EMPLOYERS
PAGE 14

NEXT SPOTLIGHT May 10: RIMS Conference Report

Technology: Companies hitting the brakes on mishaps by drivers

CONTINUED FROM PREVIOUS PAGE

"I find that if technology is used well by managers that drivers tend to be more aware of their risky behavior and are more likely to correct it," Mr. Melton said, adding that it is important to provide regular follow-up and feedback to drivers to ingrain good driver behavior.

According to the American Trucking Assn., crash and fatality rates have improved. The number of truck-involved crash injuries per 100 million miles has dropped 25% and the truck-involved fatality rate has dropped 22% since the Department of Transportation began keeping those records in 1975. Over the same period the fatal crash rate declined 66% and is now at its historical low, according to the ATA.

At United Parcel Service Inc., technology supports driver training, but it does not supplant it.

The Atlanta-based package delivery giant spends more than $50 million annually on training its drivers, making sure they increase driver proficiency and efficiency and reduce risks. With more than 100,000 drivers covering more than 3.3 billion miles globally, safety and efficiency is important, according to a UPS spokesman.

UPS uses a host of technologies ranging from a black box-type system to a driver simulation program to focus driver skills. The black box, the spokesman said, is similar to equipment used in aviation, but instead of recording conversations, it records events such as hard-braking incidents, when vehicles back up and seatbelt usage.

UNITED PARCEL SERVICE INC.

A UPS truck that the delivery company uses as part of its "Clarksville" simulation. Cameras monitor drivers' eye movements to make sure they are completing the necessary steps while driving.

Prior to the using the system, which was installed in 2007, about 98.5% of drivers used a seatbelt. Today, driver seatbelt usage is "about 100%," according to the company.

"When you're out there all day, day after day, you're just focusing on delivering and where the next delivery is going to be," the spokesman said. "You can sometimes lose sight of things."

To help sharpen drivers' focus, UPS encourages them to use what is know as the "triangle viewing method," which encourages drivers to scan activity using side mirrors as well as the road in front of them. To ensure that drivers, particularly new drivers, use this method, UPS built a training facility dubbed "Clarksville" in Landover, Md.

> **'Making left turns takes more time and raises the exposure for loss.'**
>
> Emilio Lopez, United Parcel Service Inc.

The facility, which features a 3-D simulation that allows drivers to "drive" through the faux village of Clarksville to deliver packages, also offers webcasts and classroom work. During simulations, drivers' actions are recorded to ensure they are practicing good driving habits.

"The technology allows for a virtual ride," said Emilio Lopez, fleet safety manager for UPS.

Using technology can save costs in the long run, said Nancy Bendickson, St. Paul, Minn.-based senior consultant with Chicago-based Aon Corp.'s global risk consultant group, who specializes in private and nontrucking fleets. However, due to the high cost of installing monitoring equipment into fleets, she said many of the companies she works with still are in the testing phase to see if they will get a return on their investment.

Some technology used by private mixed-vehicle fleets and tractor-trailers include anti-roll devices, which deactivate cruise control and activate brakes; lane departure warning systems, which signal if the vehicle veers out of a lane without driver control; closing-distance avoidance systems, which monitor how close a driver is to another vehicle; backing cameras; and electronic control module data systems, which are similar to UPS' black box units.

Many of the driving aids are becoming standard on some commercial trucks, particularly tractor-trailers, said David Mitchell, director of risk control and safety management with Aon's trucking division in Little Rock, Ark.

Still, Ms. Bendickson noted, the technology is not meant to replace a driver's duty to be safe while on the road.

"There can be too much reliance on technology and drivers can forget to do basic things like using their mirrors…so that's why driver training and follow-up driver training are necessary," she said. "Ongoing training is needed to keep people engaged on key issues and ways to mitigate losses."

Using technology is not always related to safety. For example, New York-based communications giant Verizon Communications Inc., has equipped 15,500 of its 50,000 vehicles with global positioning systems to offer quicker dispatching and route efficiency. This improves customer service and fuel efficiency, said Brian Helperbrandt, Verizon's fleet manager.

UPS has a similar system in place, which includes a routing system that maps delivery routes more efficiently. Taking it one step further, UPS drivers make only right-hand turns while driving routes, except when necessary, which Mr. Lopez said improves fuel consumption by cutting down idle time and reduces exposure to losses.

"Making left turns takes more time and raises the exposure for loss," Mr. Lopez said.

"If you make right-hand turns only, you can shave minutes off of a route, improve fuel efficiency and you're not as exposed to a loss," he said.

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Effort to ban texting by drivers gains traction

Risk, fleet managers strive to eliminate distracted driving

By JEFF CASALE

So much recent attention has been focused on distracted driving that even Oprah Winfrey has gotten in on the act.

Despite state and federal laws banning the use of hand-held communication devices while driving, risk and fleet managers are challenged to enforce policies that ban the use of wireless devices while driving.

> **6,000**
> Nearly 6,000 people died and more than 500,000 were injured in 2008 crashes involving a distracted driver.

Data showing the hazards of distracted driving does exist. The National Highway Traffic Safety Administration says nearly 6,000 people died and more than 500,000 were injured in 2008 crashes involving a distracted driver.

Further, the Insurance Institute for Highway Safety says drivers who use hand-held devices are four times as likely to get into a crash.

So far, seven states and the District of Columbia have banned hand-held devices while driving. In addition, 19 states and the District of Columbia have banned texting while driving. In January, U.S. Transportation Secretary Ray LaHood imposed a federal ban on texting on commercial truck drivers.

The message has caught mainstream appeal, with Oprah Winfrey partnering with the Governors Highway Safety Assn. in an awareness campaign called "No Phone Zone," which asks drivers to discontinue cell phone use while driving. She also hosted an April 30 show with interviews of government officials and families of victims of distracted driving crashes.

But in a business climate with people always on the go and emphasis on productivity, risk and fleet managers are relying on their drivers and employees to be responsible and not talk, text, check

Continued on next page

CONTINUED FROM PREVIOUS PAGE

e-mail or surf the Internet while driving.

"You have to institute a policy that doesn't allow hand-held devices while driving," said Nancy Bendickson, St. Paul, Minn.-based senior consultant with Chicago-based Aon Corp.'s global risk consultant group, who specializes in private fleets and nontrucking fleets. "Typically, fleet managers and risk managers are not going to find out a driver is using them until there is a crash. It's something that is difficult to monitor and companies are struggling with ways to do so."

Her colleague, David Mitchell, director of risk control and safety management with Aon's trucking division in Little Rock, Ark., said voluntary driver cooperation is needed to make the policies work.

Many companies, including United Parcel Service of America Inc. and Verizon Communications Inc., already have a broad, zero-tolerance policy on using cell phones and other hand-held wireless devices while driving. Fleet managers from both companies said that if drivers need to make a call, they should pull off the road, stop safely and then place it.

"We operate by the code of no distractions in the cab," said Emilio Lopez, UPS fleet safety risk manager, who oversees about 102,000 drivers who drive 3.3 billion miles per year. "We comply with all federal and state rules when it comes to this."

According to Verizon's policy, the New York company "prohibits the reviewing or sending e-mails, texts, videos, pictures, note-taking, checking calendars with wireless devices...to conduct Verizon business while driving regardless of whether it is a company-owned or personal device." Verizon's policy notes that if a driver makes a call while driving, it must be on a hands-free device.

James Noble, senior risk engineering consultant for Schaumburg, Ill.-based insurer Zurich North America, co-authored a white paper, "Cell Phone Liability for Employers," which states that having a cell phone policy in place helps reduce exposures and improves safety, but it is not a catchall.

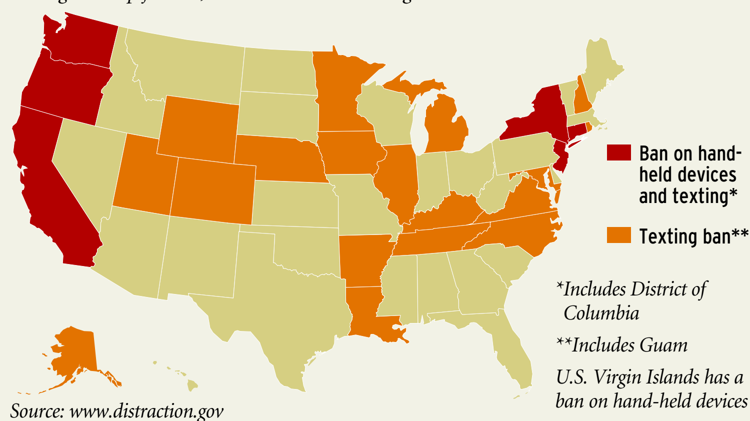
"Unless the enforcement is strong enough, it is not likely to discourage drivers from using a cell phone while driving," the white paper states. "The prudent practice for a company is to consider developing a cell phone use policy and implementing it uniformly in order to manage this risk proactively in their fleet operations."

Dave Melton, director of transportation and technical consulting with the Boston-based Liberty Mutual Research Institute for Safety, said in light of the information available about the dangers of distracted driving, the problem boils down to a "management and culture issue."

"In service organizations especially," Mr. Melton said, "they are required to perform at a certain level and maintain a certain level of productivity." That could result in some drivers thinking that productivity during driving time is more important than observing company policy.

FOCUS ON THE ROAD

To promote safe driving and less distraction behind the wheel, several states have enacted bans on the use of hand-held devices while driving and bans on texting while driving. Taking it a step further, some states have laws against both.



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Weekend driving in company vehicles creates extra risks for employers

By KRISTIN GUNDERSON HUNT

Company-provided cars can be an asset to an organization and its workforce, but they also pose liabilities when used for personal travel and weekend trips that have nothing to do with business, risk managers say.

"The use of vehicles is key to our business," said Ron Cooley, director of risk management for W.W. Grainger Inc., an industrial supplier of maintenance, repair and operating products in Lake Forest, Ill.

"We think it's an important part of our strategy. It certainly presents risks, but we feel those risks can be managed effectively," he said.

The risks are heightened when employees use company cars for personal use, simply because weekend driving increases usage by nearly 30%, said David Jones, Philadelphia-based vp at Lockton Cos. L.L.C. Not only does driving increase, but typical weekend activities such as parties or teaching teenagers to drive might result in more erratic driving.

As a result, companies must worry about more than the obvious risk of an employee causing or being involved in a vehicle accident that results in bodily injuries to one or more people or extensive damage.

They also must consider the public relations risks if an accident is bad enough to spur negative media attention, Mr. Jones said.

Still, companies generally allow their employees to use company cars for personal travel, Mr. Jones said. While an accident might not be tied to work-related travel, the company's commercial auto policy would apply because it is standard for the insurance on the car at fault to respond first.

Some companies may require employees to carry their own additional insurance and furnish evidence that secondary coverage exists. Should the company's carrier subrogate, it would then have something to subrogate against and the company wouldn't incur a higher loss ratio.

"At the end of the day, the company is on the hook," Mr. Jones said. "It's their car and they willingly gave the keys to the driver, thus the driver has legal care, custody and control of the car, and the owner is liable for damages to third parties."

That potential liability makes instituting clearly defined policies and procedures critical to managing the risks of company-owned cars driven by employees, he said.

"Policies and procedures will reduce the frequency and severity of claims," he said.

Mr. Jones said companies should ensure that employees who use a company car take a drivers-safety training course, which can be offered online and is available through a multitude of insurance companies and brokers.

Another safeguard, he said, is to run a motor vehicle record on drivers at least every six months. He also said companies should implement a screening process to evaluate and eliminate higher-risk drivers.

They also might consider instituting a shared deductible program with employees to provide incentives for good behavior through economic penalties, he said.

Grainger has about 200 company cars in use, all of which may be driven for personal purposes, Mr. Cooley said. While he declined to comment on the company's specific policies, he said companies should establish qualifications for drivers, including disallowing points on an individual's license from exceeding a certain level, prohibiting DUI violations and requiring employees to self-report any violations.

Employees who don't meet the qualifications could have their driving privileges revoked, he said.

"It comes down to making sure you have people who have good track records in terms of driving history, having monitoring programs in place once they are on the road, and being sure to have policies and programs in place in case of an event," Mr. Cooley said.

Some companies may require employees to carry their own additional insurance and provide evidence that secondary coverage exists.

Wayne Salen, director of risk management for Labor Finders International Inc., said the West Palm Beach, Fla., company has moved away from providing company cars and provides car allowances or mileage reimbursements for employees' personal cars. However, the company still has a small fleet of fewer than 10 cars, and personal use is not prohibited, he said.

He said Labor Finders' policies include disallowing cell phone use and text messaging while operating the car; limiting vehicle use to employees and their spouses, and not extending driving privileges to employees' children; and prohibiting equipment that indicates if law enforcement is in range, typically used to avoid speeding tickets.

The company also does not pay for any citations.

Mr. Salen said company car privileges depend upon annual reviews of employees' driving records and may be revoked at any point. Employees also must sign a contract annually, acknowledging they are aware of the policies and will abide by the company's rules.

He said a signed contract stating the policies is important to ensure employees understand them, as well as mitigate damage in court should the company be pulled into a lawsuit regarding an accident involving one of its cars.

"If you don't have something (like policies or a contract), in a court case you don't look good," Mr. Salen said.

"We have to exercise our due care relative to our business operations," he added.

Kelly Pappas, a claims manager for Liberty Mutual Insurance Co. in Weston, Mass., said companies should require employees sign the contract annually.

"Unless you do it every year, it can possibly be of no use depending on jurisdiction," Ms. Pappas said.

Mr. Cooley said the company car policies and procedures should be clearly and effectively communicated to employee drivers.

"Make it clear the vehicle is an extension of the company," Mr. Cooley said. "Where it's located and how it's used can have consequences for the company, and that needs to be the overarching theme for how (the car is) used."

Requiring workers to use own cars can help reduce liability for firms

By KRISTIN GUNDERSON HUNT

Requiring employees to drive their personal cars for business purposes minimizes the risk for employers, but it does not eliminate it entirely, risk management experts say.

"It's a different type of challenge from the company's point of view," said Ashutosh Riswadkar, line of services director in risk engineering at Zurich Financial Services Ltd. in Schaumburg, Ill.

Companies still run the risk of being held at least partially liable for damages even when a vehicle is not company-owned. While an individual's insurance typically would be triggered first in the event of an accident, the insurer may take action against the employer for subrogation purposes if it discovers the individual was driving for business.

Many personal auto policies have drive-for-business exclusions, requiring individuals to inform their agents that they drive for work and to acquire an endorsement, said David Jones, a Philadelphia-based vp for Lockton Cos. L.L.C. This makes their policies more expensive, which is why so many people don't inform their insurers, he said.

Without the endorsement, insurers may refuse to cover a claim, possibly putting the burden on companies. A similar problem might occur if individuals buy only the minimum insurance required by their specific jurisdiction and have inadequate coverage because of low limits, said Kelly Pappas, a Liberty Mutual Insurance Co. claims manager in Weston, Mass.

Distracted driving incidents related to work also have implications for companies, Mr. Riswadkar said. Companies may be held accountable for employees talking on the phone while driving or taking part in business-related teleconferences. Companies also may run into trouble if their employees' cars aren't properly maintained or in unsafe operating condition, increasing the likelihood of an accident, he said.

"Be aware of the risks and don't just have policies, but actively enforce and communicate those policies to employees," Mr. Riswadkar said.

Because personal vehicle policies typically are triggered first, it is not always pertinent whether an individual is driving for work.

However, in cases where it is relevant, work-related driving typically consists of driving from the office to another location for business purposes or from a work-related event to the office or home, Mr. Jones said. He said companies should clarify this for employees.

Companies that provide vehicles to employees also should purchase hired and nonowned coverage within their commercial auto policy, Mr. Jones said.

Hired coverage is for vehicles not owned by the driver or company, such as rental cars and small moving trucks. Nonowned coverage protects vehicles owned by employees but used on a company's behalf. When an employee involved in an auto accident exhausts his or her limits, this insurance picks up where the other policy left off if a company has to pay damages.

As for company-specific procedures, Mr. Jones suggested requiring proof of insurance every six months and running motor vehicle reports on employees at least every 12 months. Companies also may require a minimum level of insurance beyond what a state requires. He said companies should ask employees to furnish the declaration page of their policy, confirming they have the required insurance limits plus an endorsement that removes the exclusion on driving for business.

Many personal auto policies have drive-for-business exclusions, requiring individuals to inform their agents that they drive for work and to acquire an endorsement.

Companies sometimes offer a stipend to help with the higher insurance premium that comes with a drive-for-work endorsement, Mr. Jones said.

The additional stipend often may be cheaper than paying increased premiums resulting from claims on the company's insurance because employees weren't adequately covered under their own policies.

Companies may require that employees' vehicles be in safe operating condition and that they undergo an annual safety inspection to ensure the vehicles meet safety requirements in the jurisdictions where the employee vehicle operates while on company business, Mr. Riswadkar said.

Wayne Salen, director of risk management at Labor Finders International Inc., said the West Palm Beach, Fla., company requires liability coverage, including personal injury and medical limits, of at least $500,000 per accident for its associates. In case of a work-related accident, he said the company also has nonowned and hired auto insurance.

It checks employees' motor vehicle records annually, but reserves the right to check more often if necessary. Also, managers of employees who drive for work are directed to look out for any maintenance or safety issues related to their subordinates' vehicles and address those issues with employees.

"We make sure management is sensitive to the fact we don't want people running around with bald tires and missing bumpers," Mr. Salen said. "The company has an interest in (employees') cars and safety."

Just having solid procedures in place and communicating those procedures can cut risks substantially, Mr. Jones said.

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Insurers boxed in by thinking on executive hiring strategies

Courting the next generation essential to industry success

Talent is critical to the success of the insurance industry, but recent examples show many companies are overlooking new skills and ways of thinking in favor of maintaining the status quo, writes Business Insurance columnist Myron M. Picoult. Not "rocking the boat" by refusing to hire contrarians or those with fresh perspectives is a dangerous habit, he says.

By Myron M. Picoult

Let's start out with a few postulates. It is human nature not to risk hiring someone for the office next to you if you believe they could take your job in a nanosecond. Secondly, all corporations have dead wood in their organizations and periodic pruning is healthy. Finally, there remains a disturbing predisposition among many insurance industry executives not to think outside of the box.

The industry has long coveted the opportunity to hire cutting-edge business school graduates and marketing gurus. Right or wrong, many prospective job candidates perceive the industry as a dull and unexciting business without good growth opportunities on a personal and business level. In general, the industry has done a poor job of eradicating these perceptions.

According to a 2009 report by McKinsey & Co., the number of employees in the insurance industry 55 or older increased by 74% in 10 years compared with a 45% increase for the overall U.S. workforce. In addition, the number of college graduates of risk management and insurance programs meets only 10% to 15% of the property/casualty industry's needs, according to the survey.

For example, it is no great secret that the property/casualty industry has a gnawing problem dealing with the need to replace aging senior underwriters. Furthermore, the industry has been very slow to recognize the online proclivity of Gen Xers and Yers, as prospective customers, existing customers and employees as technology improvements in their business spheres have lagged.

The economic tsunami we have faced during the past 18 months has dislodged a lot of talent that could be very attractive to the insurance business. In many instances, these are the very people with skill sets that have been coveted by industry executives. Furthermore, compensation parameters also have declined because of the unemployment situation. I have been privy to numerous situations where exceptionally qualified talent (part of this new talent pool) has been interviewed for executive positions. More often than not, these folks have been passed over for more "traditional" and "seasoned" insurance operatives and/or have never heard back from the interviewing company. This "arrogance" or lack of civility toward job applicants is not unique to the insurance industry. Indeed, it has permeated all of corporate America and, along with the decline in ethical behavior, can simply be described as a pox.

For example, I am aware of a situation where a CEO position went to an older applicant (vs. a younger talent pool individual) who has toiled in the insurance business for many years, because the board of directors was afraid of change—even though they acknowledged that change is/was needed.

I also have been made aware of several situations where the names of individuals with unique skill sets (that were/are applicable to specific positions or general inquiries) were given to executive talent by the top officers in a firm, only to have the "introduction" lost or totally ignored. In yet another situation, again a clearly qualified applicant went through several interviews before receiving a request to attend an interview with the president of the company.

The president arrived late for the meeting, never apologized for or explained his tardiness and texted throughout the interview. Needless to say, the applicant was not pleased with the interview nor impressed with the company. The latter point is something that prospective employers should be much more sensitive to because the reputation of their companies as places to work has long tentacles.

I am sure that there are many folks reading this article who believe the comments are tied to a "sour grapes" attitude. That is not the case. I am not involved in any form of executive search. The simple fact is that the industry has not sufficiently differentiated itself from the poor employment practices and standards that have permeated the current corporate employment scene.

I recently had a conversation with a very astute colleague, who also has been around the industry for a very long time, on the inability of the industry to attract the kind of talent it covets. He simply said the executive hierarchy makes a very good living, is basically out of the Wall Street spotlight and does not want change.

When I first was employed as an analyst many many years ago, a wonderful middle-aged gentleman, who was a senior analyst covering various industrial companies, took me aside and told me, "It doesn't matter that the wind is blowing. What does matter is whether the direction has shifted."

The age dynamic of the insurance industry's customers and prospective employees is changing. The industry has to become much more astute at creating a work environment that appeals to the Gen Xers and Yers. Modernized work processes that can more effectively enable carriers to capture the experience and knowledge of their "new employees" and upgraded staff is critical. As my old friend said, "the wind has shifted."

Taking STOCK

Myron M. Picoult is an independent insurance consultant. An archive of Mr. Picoult's columns is available at www.businessinsurance.com. He can be reached at mpicoult@aol.com.

UP CLOSE
Comings & Goings

CHRIS WILLIAMS

NEW JOB TITLE: Nashville, Tenn.-based senior associate for San Diego-based Dubraski & Associates Insurance Services L.L.C.

PREVIOUS POSITION: Nashville-based senior benefits consultant for Gallagher Benefit Services Inc., a division of Arthur J. Gallagher & Co.

GOALS FOR NEW POSITION: Using my 19 years of experience in the insurance industry, I will help Dubraski with new business growth and client retention efforts within the employee benefits practice. We will assist health care-related organizations in designing cost-effective solutions and aid in benefit communication and administration. Our concentrations include health care, life, disability, pharmacy benefit management and voluntary benefits. Being a leader in managed care stop-loss, we will also build upon this proven model.

INDUSTRY CHALLENGES: As health care and related benefits (costs) continue to escalate, a constant challenge in our industry has always been the employer's balancing act: providing quality benefit programs, but doing so cost-effectively. Recently, the passage of health care reform has left most employers and employees confused about what to do next. Employers historically have not communicated well on benefits. (We are) helping our clients understand the complexities of health care reform and how it will impact employees and benefit programs.

FIRST MARKET EXPERIENCE: In 1990, I was recruited into Provident Life & Accident's group insurance training program. (The) program consisted of nine months of home office and field training. It enabled me to gain valuable experience in all areas of group benefits: underwriting, claims, sales, customer service and compliance.

OUTSIDE THE INDUSTRY, A DREAM JOB: Professional tennis player.

E-MAIL OR PHONE: People think e-mail is faster. However, I most often prefer phone. E-mail can sometimes be taken out of context. This can lead to multiple e-mails and a lengthy process that could have been easily addressed by a quick phone call.

Comings & Goings ONLINE

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

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

Mike Tsikoudakis
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Eastwood: Lexington charts course

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were distractions along the way, but when those distractions arose, we identified what they were, we communicated effectively to our people as to the implications for the organization, and then we put our heads back down and quickly moved to drive the business forward.

Q: What drives innovation at Lexington? Where do the best ideas for new products generally come from?

Innovation is part of Lexington's culture. In addition, the excess and surplus lines industry allows for freedom of rate and form, which enhances our ability to be innovative, at least from a product standpoint. In terms of where the best ideas come from, we get opportunities from customers and brokers, and we receive strong idea generation from our employee base.

We also have a chief innovation officer at Lexington, Karen O'Reilly, as well as a second resource we've recently added. Those individuals spend 100% of their time focused on innovation and making sure that we're driving as many innovative products and services into the marketplace as we can. Innovation for Lexington is about being responsive to our clients' needs.

Q: How is Lexington coping with the current market conditions? Soft cycles usually aren't kind to E&S companies. Are you pulling back from any business areas or trying to get into new ones?

There's no business that we're looking to get out of. We like all the businesses that we're involved in, and it comes down to whether we're getting the proper return on the capital that we have in each of our businesses.

There are segments where we think we need to get rate, so we will move to get rate where we think it's appropriate. There are other segments where we think the margins in the business are healthy and, as a result, we're looking to grow those businesses.

READ an unabridged version of this interview online at www.BusinessInsurance.com

A key to success, especially in the kind of market that we're in right now, is making sure that we see as much business as we can, which makes submission flow a very big focus in the organization. If we don't see the business, we can't write the business; and the more we see, the better chance we have of selecting that business where we can get the best return on our capital.

So it's about submission flow and risk selection. It's also about differentiation and making sure that we set ourselves apart from our competitors, ensuring that our broker partners, customers and prospects have a reason to come to Lexington.

AIG: GAO says insurer in 'relatively stable' condition

CONTINUED FROM PAGE 3

withdrawals. AIG's property/casualty companies also have shown some improvements," the report said. However, the insurer continues to operate in a market environment where property/casualty rates are declining, the GAO said.

The report noted that AIG is making progress in repaying government debt, but much of that debt has been converted into preferred equity, the GAO report said.

"Consequently, the government's exposure to AIG is increasingly tied to the future health of AIG, its restructuring efforts, and its ongoing performance," the report said.

Meanwhile, Mr. Gallant of New York-based Keefe Bruyette downgraded his outlook for AIG shares in an investor note last week.

"Under the current ownership and capital structure, we see little long-term value in the common shares, despite the strength of the underlying franchises," he said.

Mr. Gallant, who now rates the shares as "underperform," said Keefe Bruyette's $6 target price for AIG shares is "optimistic and somewhat implausible, requiring an exit of government interests which we believe may not be executable. Without a significant and unusual change in the company's financial and ownership structure, we view a runoff scenario as still realistic."

Mr. Gallant previously had rated the AIG shares as "market perform."

"Would AIG be in business today without government aid?" Mr. Gallant asked in the note. "Or consider (President and CEO Robert Benmosche's) public admission that selling all of the pieces of AIG would not be enough to fully repay AIG's debts. Doesn't this imply negative real worth, despite a positive book value calculation?"

He said that "one of the few routes viable and therefore most likely" is conversion of the government-owned shares to common shares, a process that he said would be difficult to execute.

"The process would normalize the ownership structure; but even with all forms of government debt gone, AIG's capital structure would remain highly leveraged, likely putting the company under rating agency pressure in our view. Would the company avoid bankruptcy but still essentially have to go into runoff, unable to write new business? The past destruction of real equity value may yet still prove to be too much to overcome, in our view."

An AIG spokesman had no comment on the assessment.

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AP PHOTO

Betty Dukes, right, is the lead plaintiff in a class action discrimination lawsuit against Wal-Mart Stores Inc. Other plaintiffs pictured are, from left, Patricia Surgenson, Stephanie Odle and Christine Kwapnoski.

Case may go to high court

SAN FRANCISCO—Many expect the U.S. Supreme Court to agree to hear last week's decision by the 9th U.S. Circuit Court of Appeals in *Betty Dukes et al. vs. Wal-Mart Stores Inc.* because of the large size of the class, the ruling's split with other appeals courts on the issue and the sharp divide within the appeals court.

"Given the differences in the circuits on the issues and given the amount of money at issue in this case, this certainly seems to be an area where there is great flux and variation from circuit to circuit, and those are the conditions under which the Supreme Court is most likely to take cases," said Gerald L. Maatman Jr., a partner with law firm Seyfarth Shaw L.L.P. in Chicago.

Felix Shafer, an attorney with Horvitz & Levy L.L.P. in Encino, Calif., said the 9th Circuit's decision "aggravated a deep split among the appellate courts as to when these types of class actions are appropriate and…really presents the (Supreme Court) with the chance to provide businesses with some very helpful guidance."

Right now, "it's unclear when a class action should go forward," he said.

"I think the likelihood is very high this will be reviewed by the Supreme Court," said Anthony J. Oncidi, a partner with law firm Proskauer Rose L.L.P. in Los Angeles.

"The Supreme Court loves to review 9th Circuit opinions." That along with the split among appeals courts and the split within the 9th Circuit court all "goes into the mix," he said.

—By Judy Greenwald

Dukes: Wal-Mart bias class action OK'd

CONTINUED FROM PAGE 1

In last week's ruling, an en banc 9th Circuit Court ruled 6-5 to uphold most aspects of the district court's ruling in a technical opinion. It concluded that the proposed plaintiffs in the case had enough in common to create a class despite varying jobs the women held, which ranged from part-time, entry-level employees to full-time, salaried managers, and the thousands of sites at which they worked.

"Plaintiffs' factual evidence, expert opinions, statistical evidence and anecdotal evidence provide sufficient support to raise the common question whether Wal-Mart's female employees nationwide were subjected to a single set of corporate policies (not merely a number of independent discriminatory acts) that may have worked to unlawfully discriminate against them" in violation of the law, said the court's majority opinion.

"Evidence of Wal-Mart's decision-making policies suggests a common legal or factual question regarding whether Wal-Mart's policies or practices are discriminatory. Many other courts have reached the same conclusion based on similar evidence," the appeals court said.

> **'It really comes down to how much evidence the district court is going to have to have before it can certify a class action.'**
>
> James Severson, Bingham McCutcheon L.L.P.

However, a sharply worded dissent says while "the six plaintiffs allege they have suffered discrimination at the hands of a few individual store managers, they fail to present 'significant proof' of discriminatory policy or practice of Wal-Mart that would make it possible to conclude that 1.5 million members of the proposed class suffered similar discrimination."

The majority remanded the case to the district court to decide whether to certify a class with respect to punitive damages. It also remanded the issue of whether the class should include women who no longer work for Wal-Mart.

In a statement responding to the ruling, Wal-Mart said, "It is important to remember the court did not address the merits of this case…We do not believe the claims alleged by the six individuals who brought this suit are representative of the experiences of our female associates. Wal-Mart is an excellent place for women to work and fosters female leadership among our associates and in the larger business world."

Wal-Mart said it is considering an appeal to the U.S. Supreme Court.

The plaintiff attorney in the case, Brad Seligman, is executive director of the Berkeley, Calif.,-based Impact Fund, which says it backs litigation to achieve economic and social justice. "The bottom line from our point of view is ultimately the ruling is that the discrimination laws apply no matter how big you are," he said.

"It really comes down to how much evidence the district court is going to have to have before it can certify a class action," said James Severson, a partner with law firm Bingham McCutcheon L.L.P. in San Francisco.

Appeals court dissenters said there must be substantial proof for the class to exist. But the majority said substantial proof is not needed. Instead, "more than mere allegations, but somewhat lower than substantial proof" is the required standard, Mr. Severson said of the 9th Circuit ruling.

Attorneys say if the ruling stands, it could lead to more and larger class actions against employers.

D. Gregory Valenza, a partner with law firm Shaw Valenza L.L.P. in San Francisco, said the ruling is "going to make it easier to have class certification when there isn't evidence of a common set of criteria affecting all members of the class."

The decision could open the door to larger class actions, said Michael S. Kun, a member of law firm Epstein Becker & Green P.C. in Los Angeles.

"One of the biggest issues in this case is that this decision appears to say that a class with approximately a million class members would be manageable," Mr. Kun said. "If this case remains good law," it will "remove the manageability analysis from class actions," he said.

"Simply put, in a class that 'only' has 10,000 or 15,000 class members, plaintiffs counsel are always going to be able to point to Wal-Mart and say their class is clearly manageable, if not more manageable, than Wal-Mart's," Mr. Kun said.

Should Wal-Mart decide to settle the case, employers within the states covered by the 9th Circuit—Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington—will remain subject to the principles enunciated by the majority opinion, said Anthony J. Oncidi, a partner with law firm Proskauer Rose L.L.P. in Los Angeles.

Betty Dukes et al. vs. Wal-Mart Stores Inc.; 9th U.S. Circuit Court of Appeals, Nos. 04-16688, 04-16720; April 26, 2010.

Rent-A-Center: Court to clarify rules for arbitration agreements

CONTINUED FROM PAGE 3

Rent-A-Center's appeal to the U.S. Supreme Court had support from an amicus brief by the Washington-based U.S. Chamber of Commerce, which said that affirming the 9th Circuit ruling would have "significant and deleterious practical consequences, effectively rewriting millions of contracts and severely undermining the very interests that arbitration was designed to serve."

Sarah R. Cole, a law professor at Ohio State University's Moritz College of Law in Columbus, said, "The *Jackson* side of this is saying it's just unconscionable" to "be stuck with an arbitrator's decision about unconscionability because arbitrators want to arbitrate cases. They get paid to arbitrate cases. They usually get paid by the business side of the case, so it's just wrong to let the arbitrator" determine this issue.

"On the other side, the business is saying, 'We have a contract here. There's clear and unmistakable language'" calling for arbitration, Ms. Cole said.

Phil J. Loree Jr., an attorney with arbitration specialist law firm Loree & Loree in Manhasset, N.Y., said, "There's a lot of attention being paid to this case because it's very frequent that you have challenges to arbitration agreements on unconscionability grounds made by employees and consumers."

> **'The 9th Circuit's decision flies in the face of virtually every well-reasoned decision on arbitrability and jurisdiction.'**
>
> Richard Faulkner, Blume Faulkner P.L.L.C.

Aaron A. Roblan, a shareholder with law firm Ogletree, Deakins, Nash, Smoak & Stewart P.C. in San Francisco, said, "There's a tremendous amount of litigation over the enforceability of contracts in the employment context, simply because there have been concerns over whether mandatory arbitration contracts," which often are a condition of employment, "protect employees' substantive rights."

Donald M. Falk, a partner with law firm Mayer Brown L.L.P. in Palo Alto, Calif., and representing the Chamber of Commerce in this case, said, "I think the significance of the case comes from where the court draws the line as to what extent arbitration agreements have to be enforced as written."

This case also raises "the question of how far state courts or federal courts purporting to follow federal case law use the mere assertion of an argument about unconscionability as a way to deny enforcement of an arbitration clause," Mr. Falk said.

"The 9th Circuit's decision flies in the face of virtually every well-reasoned decision on arbitrability and jurisdiction," said arbitrator Richard Faulkner, a partner with Richardson, Texas-based law firm Blume Faulkner P.L.L.C.

Products & Services

Travelers updates risk management tool

HARTFORD, Conn.—Travelers Cos. Inc. has updated its risk management information system application for mobile telephones.

The e-CARMA platform is accessible on any mobile device with a Web browser, including iPhone and BlackBerry smartphones, the company said in a statement.

Developed by Travelers National Accounts and Risk Management Information Services, both units of Travelers Cos., the mobile platform allows risk managers and brokers to report claims instantly, access various documentation during the claim process, and review information, such as an adjuster's case notes, among other features.

"Risk management professionals are more mobile than ever, visiting manufacturing facilities, regional offices and job sites around the world," said Matthew Carden, vp of RMIS at Travelers. "The mobile e-CARMA platform will allow risk managers to get away from their desks and laptop computers without sacrificing their access to important, mission-critical data."

Hartford, Conn.-based Travelers, which displayed the application at last week's annual conference of the Risk & Insurance Management Society Inc., said the mobile e-CARMA application will be available this year.

For more information, contact Mr. Carden at *MCARDEN@travelers.com.*

Hartford offers program for leave management

HARTFORD, Conn.—The Hartford Financial Services Group Inc. has developed a integrated program for employers to manage employee absences.

The Hartford Productivity Advantage program integrates short- and long-term group disability and workers compensation coverage with its leave management services to help employers cut lost productivity costs, the Hartford, Conn.-based insurer said in a statement.

"The average productivity loss due to an individual employee's disability-related leave of absence is nearly $23,000," said Juan Andrade, president and chief operating officer of Hartford's property/casualty unit."

Hartford said components of the program including disability, workers comp and leave management services can be integrated per the employers' objectives and timelines. Employers will also have access to analysis that shows the impact on productivity due to employee absences.

Under the program, employees have a single point of contact to report absences and will receive support from medical professionals if they experience a disability on or off the job, the company said.

For more information, contact Marjorie Savage, director of absence management for Hartford's benefits division, at 860-843-1880 or *marjorie.savage@hartfordlife.com.*

Kidnap coverage for religious groups

CHEVY CHASE, Md.—Underwriting manager Victor O. Schinnerer & Co. Inc. has developed kidnap and ransom coverage for religious organizations.

According to a statement, the program is available to churches and religious organizations of any size or denomination and provides coverage against acts of violence resulting in serious injury or death, threats of violence and extortion, damage to property, kidnapping for ransom and the disappearance of members from a church-sponsored activity.

"Houses of worship are not immune to threats of violence," Sarah Katz, assistant vp of the Chevy Chase, Md.-based company's kidnap and ransom program, said in a statement. "Both domestically and internationally, religious organizations are experiencing an increase in cases of kidnap and extortion—especially those that do work overseas while on world missions or attending conferences."

Schinnerer said the insurance would cover directors, officers, mission attendees, students, chaperones and independent contractors, among others.

The policy is underwritten on behalf of Great American Insurance Co., a unit of Great American Insurance Group.

For more information, contact Ms. Katz at 301-961-9898 or *Sarah.J.Katz@Schinnerer.com.*

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Those most likely affected immediately by the extension of health insurance coverage to employees' young adult children are students about to graduate from college or those who are about to graduate from high school but do not plan to attend college.

Children: Insurers extend cover immediately

CONTINUED FROM PAGE 1

obtain COBRA coverage for their children. But the cost—often $400 to $500 a month—can be prohibitive for lower-income employees.

Insurers say they decided to extend coverage sooner than required to reduce the likelihood of gaps in coverage for young adult children, a group that also can include stepchildren, adopted children and foster children.

"We felt this was the right thing to do," a spokeswoman for Minnetonka, Minn.-based UnitedHealth Group said.

Industry observers note that insurers were under pressure from the Obama administration to extend coverage sooner than required, saying the administration is eager to show benefits of the new law to counteract complaints about its costs.

"In a sense, the insurers are doing what is being asked of them," said Frank McArdle, a consultant in the Washington office of Hewitt Associates Inc.

Also, the early implementation of the provision is a public relations plus for insurers, which were criticized for some of their underwriting practices while the reform plan worked its way through Congress.

"They are anticipating some good will for doing this," said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

In addition, by continuing coverage to employees' adult children, insurers avoid the administrative hassle and cost of dropping coverage and then resuming it a few months later.

"Keeping them in the plans is administratively easier than taking them off and putting them back on" soon thereafter, said Christopher Renz, a partner in the San Francisco office of Mercer L.L.C.

The cost of extending coverage to young adult children before insurers are required to do so will be very low. Some benefit consultants peg the cost increase at a little more than 0.1%, a reflection of the relatively low number of adult children who would be covered initially.

"The initial exposure is very small," said Randy Abbott, a senior consultant with Towers Watson & Co. in Wellesley Hills, Mass.

Another factor mitigating costs is that many states already require insurers to extend coverage beyond age 22 or 23. For example, a New Jersey law allows employees' children to retain coverage through a parent's health insurance plan through age 30, as long as the adult child is not married and has no dependents. In Utah, a law allows unmarried dependents to retain coverage until age 26, according to the National Conference of State Legislatures in Denver. Those laws, though, do not apply to self-insured plans, unlike the new federal law.

Initially, insurers are not expected to pass on cost increases to employers due to adopting the expansion-of-coverage provision sooner than required, consultants say. With premium rates set at the beginning of a plan year, there would be little ability for insurers to pass on the increase now.

However, an employer's premium at renewal could be affected based on claims incurred as a result of early adoption of the provision, said Sara Taylor, a Hewitt Associates consultant in Lincolnshire, Ill.

When the provision is fully implemented, cost increases reflecting the small increase in the number of people covered and the relatively low cost of young adults' health care will be modest. Consultants have said cost increases for self-funded employers likely will range from 0.5% to 1.5%.

Demographics will be a key factor affecting costs. For example, employers with young workforces would likely have few employees with young adult children, while employers with a high number of employees between ages 45 and 60 likely would have many employees with young adult children.

In all, according to a Hewitt Associates estimate, employers with self-insured plans will cover 5% to 10% more children than they currently do once they expand their plans to implement the provision.

Consultants say employers with self-insured plans are considering early adoption of the adult child coverage provision, but few have acted already.

"We are very cost-claim sensitive," said Kathy Dupree, benefits manager at Core Laboratories Inc., a Houston-based company that provides services to petroleum companies. "With insurers, the law of large numbers balances things out. But for us, just a couple of big claims can dramatically affect our costs," she said.

Core Laboratories now covers employees' children up to age 19, or until age 23 if the child is enrolled in college, Ms. Dupree said, adding that the company will amend its health care plan to be in compliance with the adult child coverage mandate on Jan. 1, 2011.

Employees won't be taxed on adult children coverage

WASHINGTON—Employers can amend their health care plans immediately to extend coverage to employees' adult children without employees being taxed on the cost of the coverage, the Internal Revenue Service said last week.

IRS Notice 2010-38 involves a provision in the health care reform law that will require health care plans to extend coverage to employees' adult children up to age 26 and allows—for employers that wish to—tax-favored coverage through the end of the calendar year in which the child turns 26.

That adult child coverage provision takes effect on the first day of a plan year that starts six months after the March 23 enactment of the law. For employers with calendar-year plans, which are the most common, the requirement begins in Jan. 1, 2011.

Many major health insurers already have said they will expand coverage to adult children ahead of the mandate, unless employers object. The group includes Aetna Inc., Blue Cross & Blue Shield Assn. plans, CIGNA Corp., Humana Inc., Kaiser Permanente, UnitedHealth Group Inc. and WellPoint Inc. In addition, some self-funded employers are considering amending their plans.

Typically, group plans have offered coverage of employees' children to age 18 or 19, or age 22 or 23 if the child is a full-time college student.

The insurers' moves, though, triggered questions from employers concerned that expanding coverage ahead of the effective date would result in employees being taxed on the cost of the coverage.

Prior to the health care reform law, U.S. Tax Code allowed tax-free coverage of employees' children up to age 19, or up to age 24 for full-time students.

In its notice last week, the IRS clearly ended employer concerns about any adverse tax consequences to employees if adult child coverage is expanded now, prior to the effective date of the health care reform law's requirement.

In the notice, the IRS said the tax law change regarding insurance coverage of employees' adult children took effect when President Barack Obama signed the health care reform legislation at the end of March.

"This notice makes clear that parents who can keep their children under 27 on their health insurance plan won't have to pay additional taxes to do so," said Treasury Department Assistant Secretary for Tax Policy Michael Mundaca.

The notice also makes clear that flexible spending accounts can be amended now to pay for uncovered expenses of employees' dependent children up to age 27. The IRS said it will issue regulations, which would be retroactive to when President Obama signed the legislation, to allow FSAs to cover such expenses for nondependent children up to age 27 at a later date.

Government officials said they acted rapidly in developing the guidance to expedite adoption of the coverage.

"We want to make it as easy as possible for employers to quickly implement this change and extend health coverage on a tax-favored basis to older children of their employees," IRS Commissioner Doug Shulman said.

–By Jerry Geisel

Reform: Insurers leery of elements of financial services reform bill

CONTINUED FROM PAGE 3

of insurer insolvencies through state guaranty funds.

"Dropping the $50 billion fund on the front end is significant because post-event is better than pre-event, but from an insurance perspective, paying once is better than paying twice," said Ben McKay, senior vp in the Property Casualty Insurers Assn. of America's Washington office.

"We think that's inequitable," he said. "Unfortunately, the politics are such that it's hard to explain the guaranty funds in a way that makes politicians comfortable in changing the law so that insurers only pay once."

"The Senate is going to spend at least the next two weeks looking at this legislation," said Leigh Ann Pusey, president and CEO of the American Insurance Assn. in Washington. "We haven't seen the details, but our understanding is the $50 billion pre-fund will dropped. That's good news.

"We remain very concerned that insurers with consolidated assets of more than $50 billion would still be included in a post-event assessment," Ms. Pusey said. "We've opposed that because the bill provides that insurers will be resolved through the existing state-based regulatory system," she said, adding that "we don't think we should be taxed to pay for" the failure of other types of financial institutions.

"In lieu of an assessment across the whole financial industry, we would support the concept of recouping those dollars from entities that had benefited from the resolution," she said.

Jimi Grande, senior vp in the National Assn. of Mutual Insurance Cos.' Washington office, said of the proposed $50 billion find: "It wasn't 100% clear whether the fund would impact property/casualty insurers, so we're glad it's gone."

Regarding possible post-event assessments, "paying into the fund should be limited to those that would require the fund. The property/casualty industry has a long-established record of a working, proven guaranty fund system combined with strict state regulation that has prevented insolvency. When it comes to solvency, we know it works," Mr. Grande said.

Rig: Insured losses top $1 billion

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REUTERS/LANDOV

The Deepwater Horizon burns in the Gulf of Mexico on April 21. Many insurers are exposed to claims from the loss of the oil drilling rig.

Burning the crude was one way to keep the oil from reaching Louisiana's coast, where experts feared significant damage to the seafood-rich region and wildlife, and reduce it to a waxy residue that could be skimmed from the water.

Energy market sources say insurance coverage that will respond to claims on the property loss, death and injuries, and environmental damage is spread throughout the London, Bermuda and U.S. markets.

The loss already is large enough that it should halt softening energy rates, sources say.

"People are talking about $1 billion to $2 billion," said Simon Williams, head of marine and energy at Hiscox Ltd. in London. "There's no question it will be $1 billion" and could go higher depending on the size of liability claims that are filed, he said.

The loss is almost certain to firm rates in the energy market, particularly because there have been several large losses in the sector during the past 18 months, sources said.

If the market doesn't turn after this, it would be hard to imagine what it would take to convince underwriters to raise rates, Mr. Williams said.

The rig's owner, Transocean Ltd., a Zug, Switzerland-based drilling contractor, said the insured value of the rig is $560 million. In its most recent annual report, the company said deductibles on the loss of any unit in its 139-rig fleet ranged from $500,000 to $1.5 million on coverage written by the commercial market and captive insurers (see related story).

Lloyd's of London is expected to bear a sizeable portion of the property loss and some of the liability claims, sources say.

At least one lawsuit already has been filed against Transocean and BP P.L.C., which operated the rig. Allegations in the suit, filed in U.S. District Court in New Orleans by the wife of one of the missing workers, include negligence on the part of Transocean and BP for failing to properly train and supervise crews on the rigs. The April 21 suit seeks an undetermined amount of damages.

Transocean said in its 2009 annual report that it carries a $10 million per-occurrence deductible on personal injury liability and a $5 million per-occurrence deductible on other third-party noncrew claims.

Transocean also carries $950 million in third-party liability insurance exclusive of personal injury liability deductibles, third-party property liability deductibles and other retention amounts, according to the annual report. The company retains the risk for liability losses above $950 million.

The drilling company said it does not carry coverage for loss of revenue unless contractually required.

BP CEO Tony Hayward told Reuters Friday that the oil company will compensate anyone with damages from the spill. "We are taking full responsibility for the spill and we will clean it up and, where people can present legitimate claims for damages, we will honor them," he said.

BP self-insures its risks except in cases where regulations require the company to purchase insurance, according to the company's annual report. Its self-insurance program includes Jupiter Insurance Ltd., a Guernsey-based captive insurer.

Anadarko Petroleum Corp. holds a 25% interest in operation of the well, according to the energy market source. Anadarko, based in The Woodlands, Texas, purchased operators extra-expense insurance covering up to $62.5 million in costs the company incurs from the accident and cleanup, the source noted.

Transocean's drilling contract with BP is written so that Transocean is not liable for costs related to seepage and pollution from the well, the source said, but is responsible for pollution that originated from the rig.

In its annual report, Transocean acknowledged that "pollution and environmental risks generally are not totally insurable."

"There are going to be hundreds of millions in costs" in each of the categories of environmental damages, death and personal injury, and the loss of the rig, said Keith Hall, an attorney who represents energy companies with New Orleans law firm Stone Pigman Walther Wittmann L.L.C.

Environmental regulations have been tightened since the 1989 Exxon Valdez spill in Alaska, Mr. Hall noted, which could mean responsible parties in the sinking of the Deepwater Horizon could be assessed significant fines and other costs by the U.S. government.

Any oil that reached the U.S. coast could result in "material resources damage," Mr. Hall said. "The government could put a dollar value on it" or force those found responsible to create new wetlands, he said.

The U.S. Coast Guard and U.S. Minerals Management Service were investigating to determine the cause of the explosion and whether criminal or civil offenses were committed.

Energy companies will pay more for insurance at their next renewals as a result of the loss, experts agree.

"Yes, we consider this event to be a market-changing event concerning energy rates," said Thomas Artmann, Munich-based product line manager-marine at Munich Re. "Quotations in the last week already showed a trend of increasing prices," he said in an e-mail.

Despite significant recent losses, energy rates have remained soft because coverage is well-distributed among global insurers, but the Deepwater Horizon loss will be large enough to affect the entire market, Mr. Williams said. "This loss involves so many different companies; very few haven't incurred some loss from this event."

"A significant amount of offshore business comes up (for renewal) this time of year," said David Croom-Johnson, chief underwriter at AEGIS London, the U.K.-based subsidiary of Associated Electric & Gas Insurance Services Ltd. "I would expect rates in the market will start moving up in light of this loss."

Insurers, reinsurers start assessing rig explosion losses

Several insurers and reinsurers are exposed to claims from the loss of the Deepwater Horizon oil drilling rig.

ACE Ltd., AXIS Capital Holdings Ltd. and Lancashire Holdings Ltd. are believed to have "very significant exposures on a direct basis," one energy market source said.

A spokesman for Zurich-based ACE would not comment on whether the insurer writes coverage for Transocean or others associated with the risk. A spokesman for Bermuda's Lancashire confirmed it is on the risk but would not provide specifics.

AXIS President and CEO John Charman confirmed in a conference call with analysts on April 27 that it writes a $150 million layer of liability coverage in excess of $50 million for Transocean.

Mr. Charman said during the call that his company's exposure is heavily reinsured and Bermuda-based AXIS' net retention is around $8 million.

Hiscox Ltd. in London and Catlin Group Ltd. in Bermuda confirmed they are on the risk, but did not provide details of their exposure. "A lot of the loss will probably end up in the reinsurance market," said Simon Williams, head of marine and energy at Hiscox.

Bermuda reinsurer Partner Re Ltd. said it expects $60 million to $70 million in losses, primarily within its Paris Re Holdings Ltd. unit and global specialty operations.

Montpelier Re Holdings Ltd. could see losses of as much as $20 million, the Bermuda-based reinsurer confirmed in an analysts call on April 28.

New York-based reinsurer Transatlantic Holdings Inc. said it expects insured losses to total around $1.5 billion, with its share less than 1%, or $15 million, of the industry loss.

Bermuda-based Validus Holdings Ltd. estimated its losses would range from $38 million to $45 million, net of reinstatement premiums, reinsurance and other recoveries.

Germany's Hannover Reinsurance Co. said it expects a claim of about €40 million ($53.5 million), and Munich Reinsurance Co., also of Germany, said it expects an undetermined loss related to the explosion.

—By Michael Bradford

News In Brief

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concerning subprime mortgage-related deals that are the center of fraud charges filed by the Securities and Exchange Commission. In at least three separate suits, shareholders made various allegations about Goldman's alleged nondisclosure of material information regarding a synthetic collateralized debt obligation deal linked to subprime mortgages investigated by the SEC. The investors allege that Goldman failed to disclose information about the SEC investigation and that the bank did not disclose to investors that it had received a Wells notice from the SEC. The day after details of the SEC charges were revealed, Goldman's stock fell $24.05 to close at $160.70, according to court documents. Goldman shares plunged to $145.20 Friday after reports that the Justice Department was investigating the firm.

IFRIMA names top officers

The International Federation of Risk & Insurance Management Assns. has named as president Carl Leeman, chief risk officer of Belgian company Katoen Natie. He succeeds Jorge D. Luzzi, group risk management director at Italy's Pirelli Group & Cie. SpA, as IFRIMA president.

Many health plans fail affordability test: Analysis

More than one-third of employers have at least some employees for whom coverage would be considered unaffordable under the new health care reform law, according to an analysis. Under a health care reform law provision that begins in 2014, employers are subject to penalties if premiums paid by full-time employees exceed 9.5% of their household income. Mercer L.L.C. estimates that 38% of employers have at least some employees who pay premiums above that threshold.

Climate change raises worries about rules: Survey

More than three-quarters of risk managers say they are concerned about regulatory risk arising from climate change, according to a survey presented at last week's Risk & Insurance Management Society Inc. Annual Conference & Exhibition in Boston. In a survey of more than 200 risk managers across a variety of industries, nearly 79% of respondents indicated they believe their organizations will have to address regulatory risks imminently or in the near term, within two to 10 years. Nearly 9% said they believe they will face regulatory risk in more than 10 years, while almost 13% believe they won't face the risk at any time. The survey was conducted by Ceres, a coalition of investors, environmental groups and other organizations that works with businesses to address sustainability challenges, including climate change.

Lance J. Ewing Educational Scholarship awarded

The National Alliance for Insurance Education & Research said Valerie Clark, senior director of risk management at QIP Holder L.L.C., the parent company of Quiznos, has been awarded the Lance J. Ewing Educational Scholarship. Ms. Clarke was awarded the scholarship for her work in renovating the risk management programs for QIP Holder's corporate and franchise Quiznos operations. The scholarship was established in honor of Mr. Ewing's work as a risk manger and efforts to help professionals understand the importance and values of risk management.

Chinese drywall bill would bar dropping cover

A bill that would ban property insurers from changing or dropping coverage of buildings that contain Chinese drywall has passed the Louisiana Senate and moves to the Louisiana House for consideration. The bill, proposed by state Sen. Julie Quinn, R-Metairie, would prohibit property insurers from canceling, refusing to renew, or increasing premiums or deductibles for businesses and homeowners due to a property containing Chinese drywall.

W.R. Berkley names president of new unit

W.R. Berkley Corp. said Dale H. Pilkington has been named president of Verus Underwriting Managers L.L.C., its newly formed Richmond, Va.-based subsidiary. Verus Underwriting Managers provides property/casualty excess and surplus lines coverage on behalf of Greenwich, Conn.-based W.R. Berkley member companies.

Bribes: U.K. cracks down on corporations

CONTINUED FROM PAGE 3

the perpetrator is not a U.K. resident, Ms. Petros said.

Liabilities for companies and their directors for actions against them for bribery will increase as a result of the Bribery Act, said Ms. Petros. "The act creates new criminal offenses for bribery and increases penalties from seven years up to 10 years (of) imprisonment and unlimited fines."

These apply to individuals as well as corporate entities, she said.

In addition, senior corporate officers can be held liable if they consented to or were involved in offering a bribe, Ms. Petros said.

The law significantly increases liabilities for companies, said Mr. Beresford. "There is no longer a requirement for dishonesty; the law now applies where there is an intent to secure an improper performance. Crucially, the burden of proof is reversed, as it is now up to the company to show it has adequate procedures in place to prevent a bribe being paid on its behalf."

The law does, however, provide companies with a defense if they can show they have "adequate procedures" to prevent bribery. Government guidance on adequate procedures and penalties is expected at a later date, said Mr. Beresford.

But companies should act now to ensure that they have adequate guidelines in place, experts advise. For example, they should prepare a global code of conduct that deals with bribery, establish anti-bribery committees, train staff, screen third-party payments, and conduct due diligence on the selection and appointment of service providers.

U.S. companies with U.K. subsidiaries already should have anti-bribery procedures and controls in place to comply with the U.S. Foreign Corrupt Practices Act of 1977, said Will Kenyon, London-based partner at PricewaterhouseCoopers L.L.P. However, they should review their procedures in light of the U.K.'s Bribery Act, he said.

The Bribery Act is, in places, broader than the U.S. law, he said. For example, the U.K. law covers commercial/private and public-sector bribery, whereas the U.S. law is concerned with the bribery of public officials.

Insurers expect the law will lead to an increase in the number of regulatory investigations for bribery. D&O insurance likely would cover defense costs for corporations (see story).

"We would expect greater scrutiny, and the regulatory authorities may look to make examples of companies and come down heavily where they find evidence of bribery to show the act has teeth," said Gary J. Everson, head of commercial D&O for Allianz Global Corporate & Specialty in London, a unit of Munich-based Allianz S.E. "The act is a heavier stick to make companies act more ethically," he said.

The bribery law likely will lead to an increase in the number of regulatory proceedings and investigations by U.K. authorities, agreed Doug Robare, London-based D&O insurance manager at Zurich Global Corporate U.K. in London, a unit of Zurich Financial Services Group Inc. And the law likely will lead to more international investigations, he said.

In addition to the U.K. changes, European and U.S. authorities recently have been investigating alleged bribery at European corporations, resulting in several settlements. For example, German engineering firm Siemens A.G. paid more than $1 billion to U.S. and European authorities to settle bribery charges in 2008.

"In Europe, we have seen regulators go after companies, and we see more and more cross-border cooperation between authorities investigating bribery claims," Mr. Robare said. "Armed with the new Bribery Act, regulators are expected to step up regulatory proceedings," he said.

Engineering, infrastructure and technology companies are likely to be under the most scrutiny, particularly those with business in countries like Nigeria, India and parts of Latin America, he added, because these industries secure large contracts with overseas governments, and these countries have a culture of facilitating payments and corruption.

D&O insurers will examine anti-bribery procedures that companies have in place. "The challenge at board level will be to embed anti-bribery controls in their organizations and get the message across that this issue is important," said Mr. Everson of Allianz. Such policies need review in light of the new law, he said.

Changes in terms possible

LONDON—Directors and officers liability policies already provide cover for defense costs associated with regulator investigations for bribery, but companies should consider the implications of the U.K.'s new Bribery Act when buying insurance.

It is against U.K. public policy for insurers to pay claims for a fraudulent or criminal act, but coverage is available under D&O policies for a director's defense costs, up to the point where he or she is found guilty or where there is an admission of guilt, said David Walters, London-based vp financial lines at Chartis Insurance U.K. Ltd.

Defense costs associated with allegations under the Bribery Act will not likely to be a coverage issue, said Doug Robare, London-based D&O insurance manager at Zurich Global Corporate U.K. Ltd. in London, a unit of Zurich Financial Services Group Inc. "D&O coverage is as broad as it can be, and already will cover legal expenses arising from regulatory proceedings and investigations."

But underwriters are looking at the implications of the Bribery Act for D&O insurance. "It is too early to say exactly what any changes in coverage would look like, but the D&O market has a long history of responding to legislative and legal change. So I would expect some movement from the market," said Mr. Walters.

There are several implications of the Bribery Act for D&O insurance, said Eleni Petros, senior vp of financial and professional practice at Marsh Ltd. in London. Insurers are concerned about their increased exposures to regulatory investigations into bribery and corruption after a recent spate of cases involving European companies. As a result, underwriters may try to insert bribery exclusions into D&O policies and avoid covering prosecutions brought under the law, said Ms. Petros.

Directors should resist such an exclusion or ensure that it applies only on a "final adjudication basis" to ensure that funds to fight an investigation or prosecution are available until any offense is proven, said Ms. Petros. Directors also should make sure they have cover for regulatory investigations or prosecutions up to full policy limits and for disqualification actions against them, she added.

—By Stuart Collins

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Contributing: Michael Bradford, Jeff Casale, Mike Tsikoudakis, Joanne Wojcik

Smackdown! Broker refutes Hogan charge

Wells Fargo will not be pinned by Hulk Hogan—not without a fight anyway.

In late April, the handlebar mustache-wearing former World Wrestling Federation champion, whose real name is Terry Bollea, served up a lawsuit against Wells Fargo Southeast, a subsidiary of Wells Fargo Insurance Services Inc., in a Florida court alleging the brokerage didn't advise him that he needed an umbrella or excess liability policy to cover his insurance needs.

According to the suit, Mr. Hogan's $30 million fortune was left exposed by Wells Fargo when he was forced to personally pay the medical bills of John Graziano, a passenger in the car of Mr. Hogan's son, Nick, when the son was involved in a 2007 crash. Nick Bollea was illegally street racing in Clearwater, Fla., when his car struck a palm tree and disabled Mr. Graziano, according to court documents.

UPI/LANDOV

Wrestler Hulk Hogan and Wells Fargo are locked in a legal dispute over umbrella coverage.

Mr. Hogan's $250,000 policy limits did not cover all the medical bills and he was forced to pay the rest.

WFIS argues there "is clear evidence" that it offered to procure a personal umbrella policy for the Bolleas, but Mr. Hogan rejected it, according to a statement by the Chicago-based company. "The claims made by (Mr. Hogan) and his attorney are without merit and Wells Fargo intends to vigorously defend this frivolous lawsuit," WFIS said in a statement.

Wil H. Florin, Mr. Hogan's attorney and a partner with Palm Harbor, Fla.-based Florin Roebig, said via e-mail that he and Mr. Hogan stand by their complaint and said Mr. Hogan "was never informed or advised of the need for excess liability or his lack of adequate liability coverage by Wells Fargo."

"(Mr. Hogan) placed his trust in Wells Fargo to act as a fiduciary in this regard," Mr. Florin said. "This suit is based upon the sound law of fiduciary duty as enunciated by the Florida Supreme Court case law and is anything but frivolous."

REUTERS/LANDOV

Jockey William Buick, a 21-year-old rising star, is promoting insurance and other products from Markel International in a two-year sponsorship deal.

Markel plays odds in marketing effort

Twenty-one-year-old jockey and rising star William Buick has signed a two-year sponsorship deal with Markel International Ltd. to wear the Markel name and be an ambassador for the insurer and its underwriting units.

It comes as no surprise as Markel launched its equine and livestock insurance unit in 2009, which generated an estimated $130 million in annual premiums in the Lloyd's of London market, the London-based specialty insurer said in a statement.

"Markel is a distinguished brand with a long history and a growing reputation in international insurance markets, so I was delighted to be asked to represent the company and wear the Markel name on race tracks in this country and overseas," Mr. Buick, who is from Norway, said in a statement.

Markel said it was keen to enlist the support of Mr. Buick as one of the leading thoroughbred racing names after its successful sponsorship of National Hunt jockey Sam Thomas, winner of the 2008 Cheltenham Gold Cup.

Mr. Buick recently was named first jockey to Newmarket, England-based trainer John Gosden and made headlines for winning the Dubai Sheema Classic at the Dubai World Cup in March, riding 5-year-old mare Dar Re Mi.

"We are thrilled to have such a gifted sportsperson carrying the Markel name and helping to promote our worldwide brand," William Stovin, president and chief operating officer of Markel International, said in the statement. "We could not have a better public face for our company and look forward to William's continued international success."

Driver's digits get thumbs-up from sponsor

Insurance coverage written for Formula One race car driver Fernando Alonso is nothing to thumb your nose at.

In a move to bring attention to a new campaign for its life and accident insurance products, Banco Santander S.A. wrote €10 million ($13.4 million) in coverage to protect Mr. Alonso's thumbs, which the popular Spanish driver often flashes after a successful run on the track.

In a statement, the Spanish bank said Mr. Alonso's thumbs are essential elements to pilot a Ferrari at high speeds.

"Alonso's thumbs are a symbol as well as being essential for driving a Formula One car," the Madrid-based bank said in a statement. Mr. Alonso's thumbs "make a sign of victory and show that everything is under control and well-protected," the bank said.

"Fernando Alonso's thumbs are safe" and he "received as a present from Banco Santander a life insurance, including his thumbs, worth €10 million," his team said in a statement.

Mr. Alonso currently is No. 3 in overall points among Formula One drivers.

The publicity drive featuring Mr. Alonso began ahead of this week's Spanish Grand Prix in Barcelona and focuses partly on reducing risks—an important quality to finish a Formula One race with both thumbs held high.

REUTERS/LANDOV

Formula One driver Fernando Alonso's thumbs have been insured for $13.4 million by a Spanish bank.

EXERCISE, SOUTH AMERICAN STYLE

While First Lady Michelle Obama is urging Americans to eat more vegetables to become healthier, Brazil's health minister has a more provocative suggestion.

As part of a campaign to prevent high blood pressure, which affects 25% of Brazil's population, Health Minister Jose Gomes Temporao is urging Brazilians to "walk, dance and have safe sex."

It may sound like a joke, but Dr. Temporao insists he is serious.

"People need to be active," Dr. Temporao said during a news conference in Brasilia. "Having regular physical exercise also means sex, always with protection, of course."

"Dancing, having sex, keeping weight under control, changing dietary habits, doing physical exercise" all help to keep blood pressure down, he said.

He added that there is a health "time bomb" ticking in Brazil, warning that without a change in direction that a "gigantic percentage" of the population will suffer from chronic illnesses, high blood pressure, diabetes and high cholesterol.

Dr. Temporao may have a point. According to a 2005 study by researchers at the University of Paisley in Scotland, men who had regular sexual intercourse experienced lower spikes in blood pressure during stressful situations.

For women, according to the researchers, blood pressure levels fell as a result of a romantic hug.

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