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In Brief

Labor backs Verizon's captive funding plan

The Labor Department has proposed allowing Verizon Communications Inc. to use its Vermont captive insurance company to reinsure group term life insurance benefits. Under the arrangement, Exchange Indemnity Co. would reinsure 100% of the risk with Prudential Life Insurance Co., which underwrites life insurance covering employees of Verizon and Verizon Wireless.

Workers comp market 'deteriorating': NCCI

The workers compensation insurance market is "deteriorating," NCCI Holdings Inc. said. Insurers' calendar-year combined ratio hit 115% in 2010, up five percentage points from a year earlier, according to NCCI. However, three points

See **IN BRIEF** page 25

CYBER RISKS

Sony grapples with data loss

Hacker attacks offer lessons for companies

By **JUDY GREENWALD**

TOKYO—Sony Corp.'s recent data breaches, in which hackers accessed more than 100 million consumer accounts, offer several lessons for companies, experts say.

Among them are the importance of firms frequently monitoring their systems' security, collecting and retaining as little personal information as possible, encrypting what is kept and obtaining cyber insurance, experts say.

Sony shut down its PlayStation Network multiplayer game network on April 20 and disclosed that hackers had stolen names, birth dates and possibly credit

card numbers from 77 million accounts on the network.

Then last week, the Tokyo-based firm disclosed that hackers also breached security on a second online service, which provides multiplayer games for personal computers, and gained access to personal information of 24.6 million customers, as well as information from an outdated 2007 database.

In a letter sent last week to the House Subcommittee on Commerce, Manufacturing and Trade, Sony Chairman Kazuo Hirai said no major credit card companies had reported fraudulent activity as a result of the attacks.

Mr. Hirai said steps Sony has taken in response include additional automated software

See **SONY** page 21



More than 100 million customer accounts were accessed in recent Sony PlayStation Network data breaches.

AP PHOTO

SPOTLIGHT

WORKERS COMPENSATION AT 100

State-based system called "the great compromise;"



system endures despite strains; new injury types expand coverage; insurers begin writing

policies for workers comp; Iowa businesses set up mutual to retain control.

PAGE 10

TERRORISM

Will death of bin Laden increase terrorism risk?

Companies urged to weigh travel needs

By **MATT DUNNING**

Risk managers worldwide should keep a close eye on international travel, gather information and be prepared for potential disruption of their operations due to fallout stemming from the death of terrorist leader Osama bin Laden, corporate security consultants say.

After the May 1 raid in Pak-

STAND-ALONE: Rise in terrorism, political risk rates began before killing of al-Qaida leader. **PAGE 25**

istan in which a team of U.S. Navy SEALs shot and killed Mr. bin Laden, retaliatory attacks by al-Qaida or sympathizers are a very real possibility, the consultants said.



AP PHOTO

Outside the U.S. Embassy in Cairo last week, protesters decried the killing of Osama bin Laden.

REGULATION

Industry slams new reinsurance rules in Brazil

By **SARAH VEYSEY**

BRASILIA, Brazil—International risk managers and insurance and reinsurance groups say they hope Brazil's government will overturn recently changed reinsurance rules, which they say could drastically reduce the amount of capacity in the country.

Among the changes enacted at the end of March is a requirement that 40% of reinsurance business be placed with local reinsurers.

International associations representing insurers, reinsurers and brokers late last month jointly wrote the Brazilian government, saying the regulations

When or where an attack might occur is difficult to forecast, but companies—particularly those with considerable structural and personnel interests in the Middle East, North Africa and major European cities—could be vulnerable to losses even if their assets are not targeted directly.

See **BIN LADEN** page 24

See **BRAZIL** page 6

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video

2011 RIMS IN FOCUS: See what you missed at the Risk & Insurance Management Society Inc.'s Annual Conference & Exhibition in Vancouver, British Columbia, or relive the fun by watching daily video features. Go to www.BusinessInsurance.com/video.

MOST POPULAR STORIES Week of May 2, 2011

1. Berkshire's loss projection draws mixed reactions
2. First Risk Management Hall of Fame members named
3. Treasury plan would determine full-time workers for health cover
4. RIMS defines strategic risk management, sharpens focus
5. Property/casualty rates still falling: MarketScout
6. Former AIG chief Greenberg set to appeal Gen Re, Capco rulings
7. AIG ordered to pay \$86 million in breach-of-contract dispute
8. Marsh & McLennan appoints first chief innovation officer
9. Insured losses from tornadoes in South, Midwest may hit \$5B
10. Alabama sees tornado insured losses exceeding \$2B

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WEBINARS & WEBCASTS

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RIMS SHOW DAILY: See each day's electronic version at www.BusinessInsurance.com/RIMS2011.

Business Insurance RESEARCH CENTER

DIRECTORY: *BI*'s Directory of Risk Management Consultants is updated for 2011. Available in the Research Center.

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Aon Risk Solutions

Cyber risk or cyber ready?

The 2011 edition of Aon's Global Risk Management Survey report, issued last week, marked the first time technology failure/system failure made it into the Top 10 risks identified by business leaders across all geographies. As reliance on technology continues to grow, organizations are becoming more vulnerable to system and component failures, which can result in business interruption, damage to reputation and loss of customers.

Evolving risks, such as those related to social media, cloud computing and privacy issues, continue to pose challenges and opportunities, and organizations that manage these risks now will be a step ahead of their competitors. Whether your business is in Silicon Valley or solely exists in the clouds, Aon can help you address exposures and identify solutions and opportunities.

Visit aon.com/globalrisksurvey to see how your peers view the risks facing businesses, and how their perceptions compare to your own.



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HEALTH CARE REFORM

Treasury clarifies health reform cover mandate

Proposal sets out which employees are full-time workers

By JERRY GEISEL

WASHINGTON—A Treasury Department proposal would ease the administrative burden on employers in determining whether they owe a penalty for not offering health care coverage to their full-time workers.

Benefit experts praised the approach as providing greater certainty for employers by enabling them to know ahead of time to which employees the penalty would apply while giving employers the opportunity to extend coverage to those employees and

avoid the penalty.

The penalty, \$2,000 per year for each full-time employee not offered coverage, is part of the health care reform law and goes into effect in 2014. The law defines full-time employees as those who work an average of at least 30 hours a week in a month.

That responsibility could pose a difficult administrative challenge for employers, such as those in the hospitality and retail industries, where the number of hours part-time employees work can vary dramatically by month. Often, part-time employees are not eligible for group coverage.

Employers would have to constantly track employees' weekly hours worked to know if they hit that 30-hour-a-week threshold that triggers the penalty for not offering



Under a proposal the Treasury department published last week, employers would have greater flexibility in calculating the amount of hours employees work for purposes of being eligible for health care benefits.

coverage, the Treasury Department acknowledged last week.

"A determination of full-time

employee status on a monthly basis for purposes of calculating" penalties "may cause practical dif-

iculties for employers....This issue is particularly acute in circumstances in which employees have varying hours or employment schedules," Treasury said.

Recognizing the practical difficulties of determining on a month-by-month basis which employees are full time and which are not, the Treasury Department last week unveiled—for public comment—an alternative "look-back/stability" approach.

Under this method, outlined in Notice 2011-36, an employer would determine each employee's full-time status by looking back not less than three but no more than 12 consecutive months, as decided by the employer, to determine if an employee worked an

See **PART TIME** page 22

RISK MANAGEMENT

Senior execs pushing for ERM efforts

Financial crisis ups expectations on risk managers

By MIKE TSIKOUKAKIS

Senior executives increasingly want risk managers to implement enterprise risk management within their organizations, according to a survey conducted by Marsh Inc. and the Risk & Insurance Management Society Inc.

Eighty percent of survey respondents said that expectations about company risk management departments have risen in the wake of the financial crisis, according to the survey of more than 1,000 risk managers and C-suite and finance executives. The survey, "Excellence in Risk Management VIII: Greater Expectations, Greater Opportunities," was released last week at RIMS' annual conference in Vancouver, British Columbia.

Approximately 60% of respondents said risk managers need to integrate risk management deeper with operations, while a similar percentage said they need to execute day-to-day activities more efficiently. In addition, 58% said risk managers should do more to lead ERM activities at their organizations, according to the survey.

Fifty-four percent of respondents said risk managers need to provide better quantification and analysis on risk management, as well as

60%

of respondents said risk managers need to integrate risk management deeper with operations, while a similar percentage said they need to execute day-to-day activities more efficiently.

54%

of respondents said risk managers need to provide better quantification and analysis on risk management, as well as develop greater understanding of noninsurance risks and increase their involvement in strategic-planning efforts.

develop greater understanding of noninsurance risks and increase their involvement in strategic-planning efforts.

Senior corporate executives are recognizing the value of the risk management function and ERM as a result of the financial crisis, according to Brian C. Elowe, managing director at Marsh USA Inc. in Boston.

"Many times the ERM work actually...helped organizations manage through the crisis more effectively," Mr. Elowe said. "There is an evolution—as a result of the crisis—in ERM where people want to go beyond the identification of risk and the reporting"

See **SURVEY** page 22

CAPTIVES

Vermont legislators update captive law

By RODD ZOLKOS

MONTPELIER, Vt.—The Vermont Legislature last week gave final approval to a bill that includes several changes to the state's captive insurance law.

Among other things, the captive legislation, H. 438, would allow formation of incorporated protected cell companies.

The measure also would address perceived restrictions on potential sponsors of cell captives by replacing a list of approved sponsors with a provision that sponsors will be approved at the discretion of Vermont's insurance commissioner.

David F. Provost, deputy commissioner in the Captive Insurance Division of the Vermont Department of Banking, Insurance, Securities and Health Care Administration, said it remains to



The Vermont Legislature approved a bill that makes several changes to the state's captive law.

be seen how many captives would take advantage of Vermont adopting the incorporated protected cell

provision. But he added that doing so "certainly puts us in the same room with a lot of other people if you want to have an incorporated cell structure."

Other changes to the captive law include making permanent a first-year premium tax credit new Vermont captives have enjoyed since mid-2009.

The new captive legislation also aims to simplify sponsored captive business by eliminating the requirement that sponsored captive business be fronted, reinsured or secured by a trust, instead putting the requirement at the discretion of the commissioner.

Vermont Gov. Peter Shumlin is expected to sign the measure.

The District of Columbia adopted an incorporated protected cell provision in 2006, and recently other U.S. captive domiciles, such as Montana, have moved to follow suit.

WEBCAST

Advice on crafting social media policy

Social media tools present risk managers with an array of high-stakes challenges and questions around the issues of worker privacy, free speech, employee monitoring, hiring/screening, reputational risk, libel and other potentially damaging exposures.

An upcoming *Business Insurance* webcast will explore how well companies are addressing these complex issues and offer cutting-edge advice on the best practices for avoiding problems.

Topics to be discussed include



Ms. Riechert



Mr. Brill

how to structure a corporate social media policy, how to react to violations of company policy and other ways to mitigate social

media risk.

Presenting will be Alan E. Brill, senior managing director for technology services at Kroll Ontrack Inc., and Melinda S. Riechert, partner at Morgan Lewis & Bockius L.L.P. The webcast will be moderated by *Business Insurance* Senior Editor Judy Greenwald.

The webcast will be held May 25 and will be available on an archived basis after that. The cost to attend is \$49.

To register for this event, please visit www.businessinsurance.com/webinars.

RIMS 2011 CONFERENCE NEWS

Inaugural group of risk managers enter hall of fame

By MIKE TSIKOUKAKIS

VANCOUVER, British Columbia—The inaugural class of the Risk Management Hall of Fame was introduced last week at the Risk & Insurance Management Society Inc.'s Annual Conference & Exhibition in Vancouver.

The first inductees are Douglas Barlow, Donald Barrett, Eldrich Carr, Cheri Hawkins and John Pinner (see box).

The Risk Management Hall of Fame, co-founded by RIMS and Chartis Inc., American International Group Inc.'s property/casualty unit, aims to recognize individuals who have made significant contributions to the history and tradition of risk management, RIMS and Chartis said in a statement.

"We're doing it to recognize those that, over their careers and longevity in risk management, have added to the discipline and the professionalism," said Mary Roth, executive director of New York-based RIMS.

"The idea was to find a way to honor those that have left their mark on the risk management community and furthered the profession in a way that had an impact on the industry more broadly than just at their own company," said John Doyle, CEO of global commercial lines at New York-based Chartis.

While other awards honor people in the field of risk management, the Risk Management Hall of Fame honors career achievements, Ms. Roth said.

"One of the criteria is having been retired for three years and recognizing them over their career and what they have done for risk management and the discipline," Ms. Roth said.

The idea, hatched last year, resulted from discussions between RIMS and Chartis representatives about how to better recognize those who have con-

tributed to and shaped the history and tradition of risk management, Ms. Roth said.

"As both RIMS and Chartis discussed it and the idea took shape and everyone got excited about it, we decided the RIMS conference would be the forum to roll it out and to honor some specific individuals," Mr. Doyle said.

Individuals can nominate themselves or be nominated for the honor, which then is vetted by a selection committee, Ms. Roth said. The number of annual inductees may vary.

The selection committee comprises the RIMS' president and executive director, two Chartis executives, one former

'It's a very broad award that will take us hopefully into the future.'

Mary Roth, Risk & Insurance Management Society Inc.

RIMS president, one member of the Spencer Educational Foundation Inc. board of directors and one risk manager with at least 10 years of experience in the field, Ms. Roth said.

Criteria for the award include significant contributions and achievements in the field, innovation and trend-setting, demonstrated leadership, character and service, and the highest caliber of ethical and professional conduct, according to the statement.

This award is not specific to risk managers who handle insurance, strategic risks or enterprise-wide risks, Ms. Roth said.

"It's a very broad award that will take us hopefully into the future," she said. "As risk management evolves, the individuals that are changing and shaping the industry could potentially, down the road, be eligible."

Ms. Roth said the information

FIRST INDUCTEES

Inaugural Risk Management Hall of Fame honorees



DOUGLAS BARLOW: Mr. Barlow created the first global insurance and risk management program at Toronto-based Massey-Ferguson Ltd. and is credited with devising the idea that

an organization's total cost of risk extends beyond insurance and includes factors such as its investment in loss prevention, unreimbursed loss expenses and administration expenses. Mr. Barlow died in 1998



DONALD BARRETT: Mr. Barrett was former manager of corporate affairs and risk management for Newfoundland and Labrador Hydro Group of Cos. in St. John's, Newfoundland,

and a founding member of the Newfoundland and Labrador RIMS Chapter. In 1985, he became the first Newfoundlander to receive the Canadian Risk Management designation.

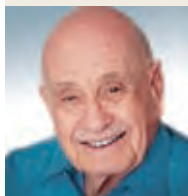


ELDRICH CARR: Former manager of global risk management for The Goodyear Tire & Rubber Co. in Akron, Ohio, Mr. Carr was an early user of the Internet for under-

writing submissions as well as a proponent of reducing insurance-related administrative and transactional costs.



CHERI HAWKINS: Former assistant treasurer and director of insurance for Weyerhaeuser Co. in Tacoma, Wash., Ms. Hawkins became the first female president of RIMS in 1990.



JOHN PINNER: Mr. Pinner was former assistant treasurer of Mattel Inc. in El Segundo, Calif., and spent 42 years with the toy company creating and shaping its risk management

function, including formation of Mattel's captive insurance company in Bermuda.

on the nomination and selection process for the Risk Management Hall of Fame will be available on RIMS' website at www.rims.org.

RIMS honors contributions to risk management field

By MATT SCROGGINS

VANCOUVER, British Columbia—The Risk & Insurance Management Society Inc. presented its highest honor, the Harry and Dorothy Goodell Award, to Glen Frederick, director of risk management client services for the Government of British Columbia.

The Goodell Award is named for RIMS' first president and is awarded to an individual who has advanced risk management as a discipline and has furthered RIMS' goals.

RIMS presented several other awards during its Annual Conference & Exhibition, including the Richard W. Bland Memorial Award, which was given to Wayne Salen, director of risk management for Labor Finders International. The award recognizes efforts in the areas of legislation and regulation.

The Ron Judd Heart of RIMS Award was presented to Janice McGraw, associate director of risk management and insurance for McGill University. 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



Glen Frederick is the 2011 Goodell Award recipient.

chapter level.

The Arthur Quern Quality Award, which honors innovations in risk management, was given to Steve Willis, head of insurance for International Power of London.

RIMS gave the Cristy Award to Dylan P. Lauzon, risk analyst for Big 5 Corp. The award recognizes the individual who scored the highest on the three exams required to earn the Associate of Risk Management designation.

Also, RIMS and *Business Insurance* presented the 2011 Risk Manager of the Year Award to Lisa L. Havens, director of risk management and associate general counsel for Scott & White Healthcare.

SESSIONS IN FOCUS

Think twice before googling job applicants, employees

By JOANNE WOJCIK

VANCOUVER, British Columbia—Employers that access social media sites or search engines to perform background checks on job applicants, investigate employees or make other employment-related decisions could be violating employment and privacy laws, according to legal experts.

"A lot of employers are Googling away on their applicants. They just want to see what they can find on candidates," said Tamara Russell, an attorney at Barran Liebman L.L.P. in Portland, Ore.

But performing an Internet search on job applicants is akin to interviewing them, she said during a session on social media at the Risk & Insurance Management Society Inc.'s Annual Conference & Exhibition in Vancouver, British Columbia, last week.

"You cannot ask certain questions online that you

wouldn't and shouldn't otherwise ask during an interview," Ms. Russell said.

To illustrate her point, she provided photos found online of hypothetical job candidate Jean Faluzi.

"If you did a Google search on this candidate and these



pictures popped up, what's the first thing that runs through your mind?" she asked.

Among the images that appeared were a photo of a Ms. Faluzi smoking, one of a Ms. Faluzi holding a sign protesting her husband's imprisonment for marijuana use, another of a cancer sur-

See **SOCIAL** page 19



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PROPERTY & CASUALTY

GROUP BENEFITS

RETIREMENT



Brazil: Industry slams new reinsurance rules

CONTINUED FROM PAGE 1

will “severely limit the development of a competitive Brazilian insurance industry and will undermine the ability of local businesses to use insurance and reinsurance for risk management related to important infrastructure projects planned for the next decade.”

Risk management groups already voiced concern about the changes they argue may even threaten the viability of large projects such as the upcoming 2014 FIFA World Cup Brazil and the 2016 Summer Olympic Games.

The rules were imposed by the Brazil Council of National Private Insurance.

While Brazil in April revoked a rule that had banned insurers from ceding reinsurance to intra-group reinsurers, risk managers and insurers say the change, which now allows 20% of each reinsurance treaty to be ceded to an overseas reinsurer in the same group as the insurer, does not go far enough.

In their letter, the insurers, reinsurers and brokers ask Brazilian authorities to enter into discussions with them to try to “frame regulations that would allow the growth and sustainable development of strong and dynamic Brazilian insurance and reinsurance markets.”

Michaela Koller, director general of the Brussels-based Comité Européen des Assurances, which

represents insurers and reinsurers in Europe and was one of 18 signatories on the letter, said the regulations would “severely restrict the ability of international (re)insurers to provide capacity and coverage for Brazilian risks, which will ultimately have a negative effect on both the Brazilian consumer and economy.”

Dave Snyder, vp and associate general counsel at the Washington-based American Insurance Assn.—another signatory on the letter—said the rules risk undermining progress that has been made since Brazil liberalized its reinsurance market in 2007.

Overseas companies have made large investments in Brazil, one of the world’s fastest-growing economies, and see major opportunities for growth and demand has increased, Mr. Snyder said.

Insurers are seeking the discussions to try to understand public policy reasons behind the changes and change the regulations that he described as “protectionist.”

The Brussels-based Federation of European Risk Management Assns. and the International Federation of Risk & Insurance Management Assns., of which the New York-based Risk & Insurance Management Society Inc. is a member, also have called on the Brazilian government to change the rules.

In a statement last month, IFRIMA Chairman Peter den Dekker said the association is open to dis-

cussions with Brazilian authorities to try to “reach a consensus that is reasonable for all the involved parties.”

IFRIMA Chairman Jorge Luzzi, who also is group risk management director at Milan-based Pirelli & C. S.p.A., said risk managers are very concerned that the rule changes could severely reduce insurance capacity at a time when overseas companies are making large investments in Brazil.

Companies from Europe and the United States have expanded in Brazil in recent years and need high-quality, secure and available insurance capacity to be able to continue their development there, Mr. Luzzi said.

In addition, he said, the surprising nature of the changes has raised concern among risk managers about the transparency of Brazil’s regulation.

The rules were changed without notice or comment period, which runs contrary to international norms and transparency commitments by the Group of 20 countries, of which Brazil is a member, the AIA’s Mr. Snyder said.

“This sets a very negative precedent because, for a highly regulated industry like insurance, a proper process needs to be observed,” he said.

Insurers and reinsurers will continue to make their case publicly and privately, he said, and will attempt to persuade the Brazilian authorities that a fully open insurance and reinsurance market is of benefit to the country.

Mr. Luzzi said IFRIMA is confident that the Brazilian authorities would heed international calls to amend the regulations.

Commentary

Risk management takes center stage

We’ve all heard the story. A company is “right-sizing” or “downsizing,” so the CEO calls in a consultant to scrutinize every department to determine which personnel to cut and duties to consolidate.

Often perceived as part of middle management, risk managers were easy targets at many companies, especially during the Great Recession and financial markets’ collapse.

I met a couple “between-positions” risk managers during last week’s Risk & Insurance Management Society Inc. Annual Conference & Exhibition.

One lost her job after a consultant determined that outsourcing risk management would save the company salaries of two risk managers and a claims manager.

Another lost his job when his company ran into financial problems and the CFO decided to assume the risk manager role.

After a few months, both risk managers started receiving calls from their former employers asking for help, as top executives realized how important risk management is to the organization.

“There’s a misperception that all risk managers do is buy insurance,” Cindy Wilkerson, former director of risk management for the California Charter Schools Assn. in Sacramento. “But that’s not true.”

In fact, she previously managed a mostly self-insured property, liability, workers compensation and student accident program for 489 charter schools in the state, as well as claims.

“I think circumstances are driving risk management to be more important than it ever was,” said Gordon Adams, senior vp and director of risk management and human resources at Tri Marine Management L.L.C. in Bellevue, Wash. He said corporate boards of directors are rethinking the role risk management plays, wondering if good risk management might have mitigated, or perhaps even prevented, what happened during the financial crisis.

He may be on to something. During a speech hosted by Marsh Inc., the fraud investigator who helped uncover Bernie Madoff’s massive Ponzi scheme said many risk managers were “squeaky wheels” when purloined funds were channeled through banks. “It takes a lot of courage to be a risk manager” and point out irregularities, said Harry Markopolos, author



**JOANNE
WOJCİK**

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

of “No One Would Listen: A True Financial Thriller.”

“Most people don’t know what risk management does until something goes wrong, and then they come and find you,” said Markie Davis, risk management unit supervisor for the state of Colorado.

Now that risk managers have gotten some attention, it’s time for them to strut their stuff and show their organizations what they can do to pre-

It’s time for risk managers to strut their stuff and show their organizations what they can do to prevent more tragedies.

vent more tragedies, mitigate losses and, in some cases, even save money.

And opportunities will present themselves sooner rather than later. RIMS reports that for every five risk managers who are retiring, only one is entering the profession to fill their shoes.

As Mr. Adams put it, “that door is cracked.” He is hopeful that the next generation of risk managers, most of whom studied it in college, will help elevate risk management to C-suite level, unlike the last generation, whose backgrounds more often were in accounting and finance.

Douglas De Risi, director of risk management at Structural Integrity Associates Inc. in Annapolis, Md., took advantage of the 1989 Loma Prieta earthquake to persuade his company, whose finance and accounting system was based in San Jose, to set up a backup system in Denver.

“You’re either a hero or a zero” and “every once in a while, you can be a superstar,” he said.

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**Henri Lebossé, Bouygues Construction,
Head of Risk and Insurance Department**

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For the construction of Miami’s first underwater tunnel, Zurich helped Bouygues Construction by providing risk expertise and a global team of specialists already familiar with the company. Zurich solved the complex, local insurance requirements of the lenders, the State of Florida and the company’s management. It’s an example of how Zurich HelpPoint delivers the help businesses need when it matters most. To learn more about this case, visit www.zurichna.com/stories1



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Business Insurance OPINIONS

Flexibility necessary on health reform rules

WE APPLAUD FEDERAL REGULATORS for their flexible and open-minded approach in developing rules to implement the health care reform law.

The latest example of that welcome flexibility, as we report on page 3, is a Treasury Department proposal that would make it much easier for employers to determine whether they are liable for a penalty of \$2,000 per employee per year for not offering health insurance to their full-time workers.

The law requires employers to offer coverage to employees who work an average of 30 hours per week during a month or pay the required assessment.

That would be an added administrative challenge for employers with part-time employees, who typically are not eligible for coverage in group health care plans.

It is common for the hours worked by part-time employees to fluctuate dramatically. As a result, employers would be in constant state of uncertainty as to when they would have to pay the penalty and when they would not.

The Treasury Department has a much simpler approach, on which it began seeking public comment last week.

Employers could look at a prior period, calculate the number of hours a part-time employees worked and use the average number of hours worked during that prior period as the basis of whether the assessment applies going forward.

Employers would have certainty and the ability to decide whether to offer coverage or pay the penalty.

We think that is a logical proposal and encourage regulators to adopt it.

We think that this is a logical proposal and we encourage regulators to adopt it.

N.J. governor justified in veto of anti-RRG bill

NEW JERSEY Gov. Chris Christie got it exactly right when he told state lawmakers last week why he was vetoing a bill affecting taxi cab operators.

As we have reported, legislation would have required taxi cab operators to buy primary liability insurance coverage from insurers admitted in the state.

To be admitted, an insurer has to be a member of the state guaranty association. That requirement closes off risk retention groups as a potential source of coverage for the taxi companies. That is because federal law bars RRGs from becoming members of guaranty associations.

We are not sure why the legislation incorporated such a requirement. If it was due to the goal of better protecting the public, such a requirement clearly is unwarranted because state regulators have the authority to go to court to shut down risk retention groups they believe are in hazardous financial condition.

What the legislation would have done is reduce competition in the marketplace. In fact, Gov. Christie said in his veto message that RRGs provide about 65% of taxicab liability insurance in New Jersey. If such a big supply of coverage was removed, obviously insurance rates would increase and costs surely would be passed on to riders.

We hope New Jersey lawmakers believe in competition and rewrite the bill, as Gov. Christie has suggested, so taxicab operators can buy the required coverage from any insurer registered in the state, not just those belonging to the guaranty association.



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THIS WEEK'S RESULTS

Should risk retention groups be allowed to cover property risks?



100%

YES

0%

NO

NEXT WEEK'S QUESTION

Q: Do you think the death of Osama bin Laden will increase, decrease or have no effect on terrorism attacks in the U.S.?

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How to avoid suits stemming from layoffs

As the U.S. shakily emerges from the Great Recession, businesses should be aware that the potential for human resources-related litigation is high, says Susan Tribby, associate vp of risk management for Fort Lauderdale, Fla.-based human resource outsourcing company AlphaStaff Group Inc. Ms. Tribby explains why that is and how companies can minimize their potential liability and prevent lawsuits as the face of the workplace changes.

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SPOTLIGHT

WORKERS COMPENSATION at

100

State-based system called 'the great compromise'

By ROSEANNE WHITE GEISEL

The U.S. workers compensation system was successfully implemented 100 years ago because it resolved legal and insurance problems for employers, workers and insurers.

Establishing workers comp has been described widely as "the great compromise" and "the great trade-off."

"It's important that people understand how we got to where we are to avoid mistakes," said James Ellenberger, a former AFL-CIO attorney and retired deputy employment commissioner in Virginia. "People who clamor for changes often do so without any understanding of what they are trying to go back to."

The formation of the workers comp system, said Mr. Ellenberger, co-founder of the National Academy of Social Insurance in Alexandria, Va., is the story of the nation's "industrial democracy."

Before the state-based no-fault workers comp system, an employee who was injured on the job had to bring a negligence suit against the employer. In the fault-based legal system, the worker was

not compensated unless the employer was found to be negligent.

"It was like a roulette wheel," said John F. Burton Jr., professor emeritus at Rutgers and Cornell universities and workers compensation policy expert. "Forty-nine of 50 times the employee lost, but the 50th time they won big. There was dissatisfaction on both sides with the system."

That dissatisfaction prompted three groups—employers, labor and insurers—"to coalesce around a solution," said Shawn Kantor, co-author of "A Prelude to the Welfare State: The Origins of Workers Compensation" and an economics professor at the University of California, Merced.

In 1911, nine state legislatures enacted workers compensation laws. Wisconsin is recognized as the first state to put a workers comp law into effect. California, Illinois, Kansas, Massachusetts, New Hampshire, New Jersey, Ohio and Washington state also enacted workers comp laws that year, according to data published in 2000 by Mr. Kantor and co-author Price Fishback.

At that point, Mr. Kantor noted, "the train had left the station. Workers comp was going to sweep the country no matter what."

By 1921, 44 states had enacted work-

ers comp laws. Today, all 50 states operate their own workers comp system.

"There was often no regard for job safety" 100 years ago, said Alan S. Pierce, a workers comp attorney in Salem, Mass. "Machines weren't guarded. People were working long weeks and long days, and fatigue set in."

As the industrial revolution progressed and machinery became more complex, workplace risks and accidents increased, Mr. Kantor said. "The issue of workers being hurt on the job and not getting enough compensation was publicized," he said.

"It became quite clear that for the economy to flourish, workers had to be compensated for their injuries," Mr. Pierce said.

Mr. Kantor said he and Mr. Fishback, an economics professor at the University of Arizona, found there was no single impetus for judges and juries beginning to turn against employers over worker injuries during the first decade of the 1900s.

State laws also were weakening common law defenses, Mr. Kantor said. The uncertainty about the negligence-based system became too great for employers, he said.

See **COMP** page 12

System endures despite strains

Employers, employees benefit from workers comp

By ROBERTO CENICEROS

State workers compensation systems are, more or less, meeting their 100-year-old challenge of capping employers' liability while delivering benefits to injured workers, experts say.

"In some ways, the original bargain of having a no-fault system for limited liability has held up pretty well," said John F. Burton Jr., professor emeritus at Rutgers and Cornell universities and a workers compensation policy expert.

During its 100-year history, which began when nine state legislatures enacted laws in 1911, workers compensation has helped make the nation's workplaces safer because of its financial incentives for reducing losses, observers added.

Virtually everyone involved in the system can produce a list of substantial shortcomings, ranging from excessive litigation to

inadequate protection for employees. Still, most agree that it serves its purpose.

Citing one key problem in the workers system, Mr. Burton said workers have been losing the battle between labor and business over benefit offerings for the past 20 years. States in competition with each other to attract employers continually have reduced workers comp benefit eligibility during that period, Mr. Burton said.

That includes several states limiting compensability for certain medical diagnoses, such as stress or carpal tunnel syndrome, while implementing evidentiary standards, such as a requirement that injuries be documented by objective medical evidence, Mr. Burton said.

Employers have fought for such measures to ensure that they don't pay for injuries and illnesses that are not work-related.

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NEW INJURY TYPES EXPAND COVERAGE UNDER COMP
PAGE 12

INSURERS BEGIN WRITING POLICIES FOR WORKERS COMP
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COMPLETE CONTROL: IOWA BUSINESSES SET UP MUTUAL
PAGE 17



The nation's first workers compensation policy, which was issued by Employers Mutual Liability Insurance Co. of Wisconsin in 1911.



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New types of injuries expand workers compensation cover

By ROSEANNE WHITE GEISEL

Allyn Tatum—a former Arkansas workers compensation commissioner, former director of workers comp for major employers and an attorney—said the workers comp system was established to cover the basics.

“An employee gets hurt, gets quality medical care and gets back to work,” he said.

The system was meant to be a win-win for the employer and the employee. “That’s the way it was designed and worked for years,” Mr. Tatum said. In his opinion,

however, the system has strayed from those basics.

The system has broadened in part because of technology-driven workplace changes and the inclusion of psychiatric diagnoses in the definition of workplace injuries in the past 30 to 40 years.

“In 1911, the typical source of injury was a traumatic event,” meaning a sudden and severe physical injury caused by a machine, said John F. Burton Jr., professor emeritus at Rutgers and Cornell universities and workers compensation policy expert.

Therefore, the benefit payouts

in the early system were calculated with “shared responsibility” in mind. “There were moral hazard issues,” said Shawn Kantor, co-author of “A Prelude to the Welfare State: The Origins of Workers Compensation” and an economics professor at the University of California, Merced. State legislatures “didn’t want to just write this blank check.”

However, Mr. Burton said, “the accident test became a very tough standard” by which to determine if an injury was caused by the workplace. Lung disease from working in coal mines or asbesto-

sis may not take their toll for decades. One of the “fundamental aspects of workers compensation is to draw a distinction between work-related and nonwork-related injuries,” which becomes difficult beyond the realm of a sudden workplace accident.

Psychiatric diagnoses in more recent years have led to employment liability suits for hostile workplaces, causing what some say is an erosion of the exclusive remedy approach, said Alan S. Pierce, founder of Alan S. Pierce & Associates in Salem, Mass. “These are causes of action not foreseen

100 years ago.”

By the 1970s, “there was broad recognition that the system was dangerously deficient,” said James Ellenberger, a former AFL-CIO attorney and retired deputy employment commissioner in Virginia.

The Nixon administration formed a commission to examine the system. Mr. Burton chaired the National Commission on State Workmen’s Compensation Laws, which in 1972 found state laws to be inadequate, he said. It also led to the 1974 formation of the Occupational Safety and Health Administration, which offered a series of recommendations about the workers comp system, though most were not implemented.

Throughout its 100-year history, benefit levels in the various state systems have been cyclical, Mr. Burton said.

Still, Mr. Tatum said, “I think the most important lesson (from the first 100 years) is that even with all of its flaws, despite the roadblocks, impediments and outliers, the no-fault system works.”

Comp: Fault removed

CONTINUED FROM PAGE 10

The state-based workers comp system was a pragmatic attempt to solve problems rather than a Progressive Era movement to improve care for workers, Mr. Kantor said. It was evolutionary change rather than a revolutionary change, he said.

Employers, which were paying higher wages to lure workers to high-risk workplaces, were willing to accept a no-fault system to avoid the possibility of a huge jury verdict against them. They had to buy workers comp insurance, but they could lower wages to reflect the new protection for employees.

Labor unions originally opposed the workers comp system, as they wanted to negotiate with individual employers, Mr. Kantor said. However, the workers represented by those unions were “fairly risk-averse,” he said.

He and Mr. Fishback said not all workers may have realized that there was a certain amount of trade-off in lower wages to get the workers comp coverage. But the authors conclude that workers still would have thought they were gaining an advantage, considering their inability to find sufficient, affordable private insurance against workplace injuries.

The major trade-off on the workers’ part was accepting the exclusive remedy.

The third interest group, insurers, knew they could sell another type of insurance to employers.

“Most injuries do not occur because someone was at fault,” Mr. Pierce said. “Eliminating fault eliminated a tremendous amount of unnecessary litigation.”



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System: Most companies, employees benefit from workers comp

CONTINUED FROM PAGE 10

William Zachry, vp of corporate workers compensation for Safeway Inc. in Pleasanton, Calif., said problems he sees include attempts to assign responsibilities to the workers comp system it never was designed to address, such as providing medical benefits to workers suffering from age-related issues. "Just like there is tension between Republicans and Democrats, there is always tension between labor and management" over workers comp benefits, said Michael S. Brenton, a workers comp defense attorney at Mur-

phy, Brenton & Spagnuolo P.C. in East Lansing, Mich. "Most of the time, I believe, the system works as it ought to."

Yet for a system originally intended as a no-fault mechanism to process claims efficiently and without adversarial friction, it can break down because of excessive litigation that results in plenty of adversarial tension, Mr. Brenton said.

The constantly evolving legal and regulatory landscape can exacerbate the problems.

Recent budget constraints in several states that led to reductions in courtroom staff or hours,

for instance, have slowed resolution of claims.

Michigan is one state that has reduced the number of judges hearing workers comp cases, Mr. Brenton said. The problem in Michigan appears to be improving, but some cases have dragged out because of it, he added.

"One- or two-year delays in getting claims processed are challenging both for the possibly deserving claimant who doesn't have income or for the employer looking at paying fees and expenses on a protracted basis until a case can get closed," Mr. Brenton said.

Most injured workers nation-

wide, however, receive benefits in a timely fashion and return to work, said Richard A. Victor, executive director of the Cambridge, Mass.-based Workers Compensation Research Institute.

"There is some percentage of workers where their injury or their situation is more complicated; but for the overwhelming majority of workers, the system works as planned," Mr. Victor said.

The vast majority of claims are for minor injuries and workers are provided with prompt medical treatment that gets them back to work without lost time, Mr. Zachry said.

"It is the smaller percentage of claims involving litigation where, for some reason, the employee never goes back to work that are the claims that drive the whole system," Mr. Zachry added.

But in general, workers have benefited from constant improvements in medical care and access to it, Mr. Victor said.

Employers also have benefited as injury frequency has steadily declined over time, reducing system costs, Mr. Victor added.

Injuries "have gone down over the last 100 years," Mr. Victor said. "The average cost per claim has been rising in most states, but frequency of injuries has fallen; and if you look at insurance premiums, there have been periods of increase and periods of decrease, but the falling frequency has been a dominant trend as long as the numbers have been reported."

Data provided by Boca Raton, Fla.-based NCCI Holdings Inc. shows, for example, that nearly 25 out of 100 manufacturing workers suffered illnesses or injuries in 1926. Although there have been spikes in injury frequency during certain periods since 1926, a consistent downward trend reduced manufacturing worker injuries to about five per 100 workers in 2009—the latest data available.

The continued decrease in frequency due to increased safety measures and use of technology is a sign that state workers comp systems "generally, are working well," said Peter Burton, NCCI senior division executive in Wayne, Pa.

"The issue that is so important to workers and employers is frequency," Mr. Burton said. "And it is going down, down, down. Workers are not getting injured. Hence, it's helping very much to contribute to lower loss costs in general."

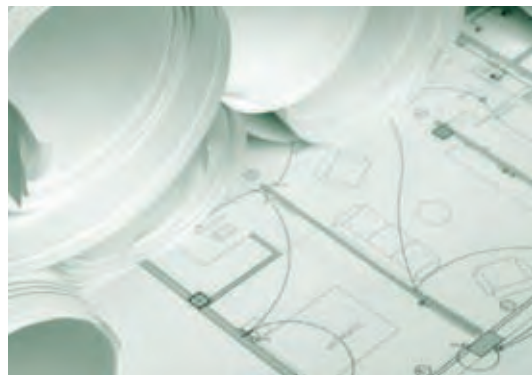
Employees and employers also benefit because a system that was considered revolutionary 100 years ago now creates a high level of certainty for both, said Eric J. Oxfeld, executive director of the International Workers' Compensation Foundation Inc. in Ormond Beach, Fla.

"It has made the cost of disability part of the cost of doing business, which simultaneously promotes health and safety" practices, Mr. Oxfeld said.

Promoting health and safety and processes that return employees to productive employment are areas where labor and management usually find common ground, despite their differences over benefits eligibility and adequacy, several sources said.

The disagreements over the role of workers compensation are, in the end, good for the systems, several sources added. It helps ensure the state systems remain responsive to modern needs.

"I think at the margin, the different stakeholders are aware that things can be improved," Mr. Victor said. "But (concern) at the margin doesn't mean the apple is rotten. It's actually a pretty good apple."



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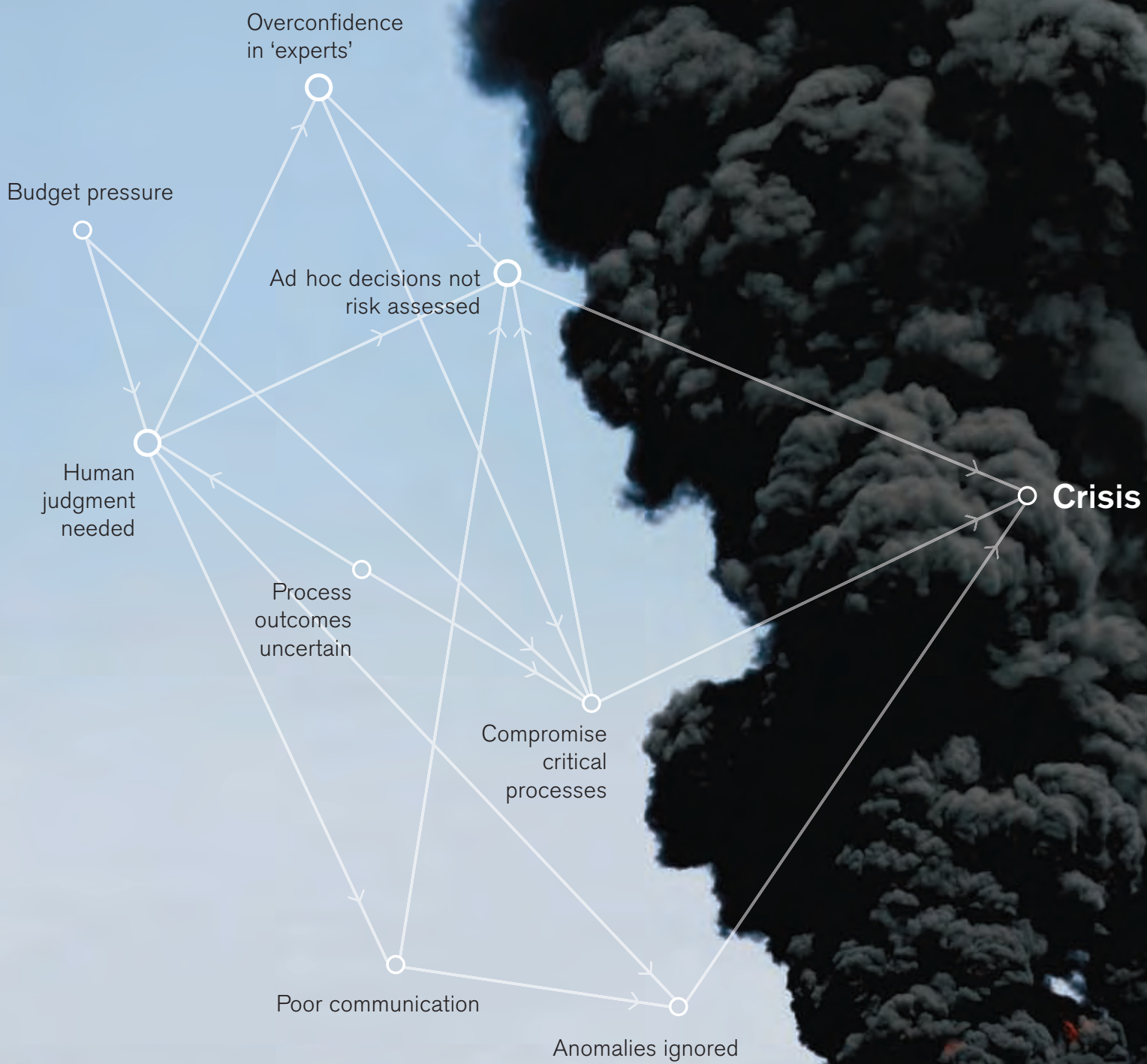


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Insurers form to write workers comp business

As states passed laws, insurance companies saw new opportunity

By **MATT DUNNING**

When the first workers compensation laws were enacted 100 years ago, employers and their workers marked their passage as a victory for both sides: fairer treatment of workers and more predictable costs for employers.

The insurance industry, mean-

while, saw in the fledgling market ample opportunity to expand their underwriting, but also saw a score of questions that needed to be answered.

Prior to the advent of the state-based no-fault workers comp system, insurers had little to offer U.S. employers—and even less to offer employees and their families—in protecting against the onerous costs of on-the-job injuries and illnesses.

Before 1911, when Wisconsin and eight other states enacted the nation's first laws dictating pre-

scribed dollar amounts payable to employees injured, sickened or killed while working, the only viable recourse for collecting money to pay medical bills and support their families was to sue an employer in court.

A worker's chances of success were minimal at best; and even if an employer's negligence could be proven under the liability statutes, the legal costs of doing so often ate up most of funds awarded.

For their part, insurers offered coverage for employers to protect themselves from large payouts to

an injured worker due to a rare loss in court. Beyond basic life insurance policies, which in effect only covered burial costs, many insurers were reluctant to sell individual accident policies, largely because they attracted workers only in the most hazardous industries. Companies that offered individual accident coverage did so at prices most workers could not afford.

"The options were very limited and there was a growing sense that there was a need for a workers compensation system," said a

spokesman for the Madison, Wis.-based Workers' Compensation Centennial Commission.

In anticipation of the Wisconsin law's passage, a handful of industrialists in September of 1911 formed a mutual insurer, Employers Mutual Liability Insurance Co. of Wisconsin, which issued the nation's first workers compensation insurance policy to a paper manufacturer, according to the Workers' Compensation Centennial Commission.

"It went a long way in some respects towards stabilizing the relationship between labor and management," the commission's spokesman said. "It didn't solve all the problems, but it certainly helped."

California, Illinois, Kansas, Massachusetts, New Hampshire, New Jersey, Ohio and Washington state would follow Wisconsin's lead later in 1911. By 1920, all but five states had abandoned the negligence liability system for a state-based workers comp system. All states now have some form of workers comp law.

The laws' enactment would give rise to a wave of new mutual insurers, including the Boston-based Massachusetts Employees' Insurance Assn. (renamed Liberty Mutual Holding Co. in 1917), the Des Moines-based Employers Mutual Casualty Assn. of Iowa (later renamed EMC Insurance Cos.; see story, next page) and Stevens Point, Wis.-based Wisconsin Hardware Ltd. Mutual Liability Insurance Co. (later renamed Sentry Insurance Cos.).

In the first 10 years, private insurers saw workers comp premiums rise from nothing to more than \$114 million annually, said Kathy Muedder, a vp at Hartford, Conn.-based Travelers Cos. Inc., one of the first publicly traded companies to write workers comp policies.

"Workers compensation presented insurers with greater spread of risk since it covered all employees for an employer rather than just those most exposed to workplace injuries," Ms. Muedder said. "Because most employers also wanted the product, there was more premium available for insurers in the market."

As rapid as the market's expansion was, it suffered considerable growing pains. Insurance companies, even those with experience writing employer liability policies, found themselves struggling with a lack of reliable information on which to base rates. Instead, underwriters turned to newly established rating bureaus to determine pricing.

"The pricing, no doubt, was not extraordinarily accurate in those early days," said Robert Hartwig, president of the New York-based Insurance Information Institute. "Most insurers wouldn't have had the in-house data that would have produced for them the frequency and severity information necessary to

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Iowa business owners form mutual insurer to take comp risk in their own hands

When word of workers compensation legislation passing in Wisconsin, Massachusetts and seven other states reached the Iowa Manufacturers Assn. in 1911, the business owners' group decided not to wait for their state to act.

Many association members had purchased liability policies to protect themselves against large payouts stemming from lawsuits over workplace injuries. With workers comp on the rise and amid fears of shareholder-

owned insurance companies inflating their liability premiums, the IMA leaders—including Scottish-born steam valve manufacturer John A. Gunn—voted to form their own mutual called Employers Mutual Casualty Assn., which is known today as EMC Insurance Cos. based in Des Moines.

"They saw the law coming," said Bruce Kelley, the company's president and CEO and great-grandson of Mr. Gunn. The com-

pany will mark its 100th anniversary with release of a comprehensive study of its history.

"It was a discrete group, the IMA. Now our policyholders range from small surety bondholders to large corporations with lots of property to insure or large workforces to insure," Mr. Kelley said, noting that EMC has grown its own workforce from a single receptionist to 2,100 employees today. "We started out as a 100% (workers compen-

sation) company in Iowa, and now we have 147 lines of business in 42 states."

Mr. Kelley said the association worked with reinsurers to write policies for its members in advance of the Iowa Legislature's enactment of a workers compensation law in 1913. As was the case among many business owners at the onset of the state-based workers comp system, Mr. Kelley said the IMA leaders chose to form their own

mutual rather than seek coverage from a private insurer.

"By having their own company, they could keep the money local," Mr. Kelley said. "Back in those days, lots of (mutual) insurance companies were fraternal organizations, where you'd buy it from your friends. So you had some confidence that people from the same ethnic groups, from the same congregation would keep your interests at heart and not be predatory."

CONTINUED FROM PREVIOUS PAGE

accurately produce rates. Their experience was more associated with litigation than it was the actual estimation of what the payout cost would be."

Securing the right to compete with state-run insurance funds set up with the state-controlled workers comp systems was—and in some states remains—an issue for private underwriters of workers compensation policies. States with weak lobbies for the insurance industry and agriculture—which was exempt from workers compensation laws but opposed state insurance funds on principle—weren't able to fend off progressive reformers and labor unions pushing for monopolistic state agencies, said Price Fishback, professor of economics at the University of Arizona and co-author of "Prelude to the Welfare State: The Origins of Workers Compensation."

Today, four of the seven states that passed workers comp laws without private insurers participating in the market maintain those monopolies. They are: Ohio, North Dakota, Washington and Wyoming.

"State insurance funds were much cheaper to operate, with much lower administrative costs," than private insurers, Mr. Fishback said.

Another early stumbling block for most insurers entering the workers comp market was the voluntary nature of their domicile state's law. Of the first 25 states to ratify new statutes, only eight required employers to buy insurance to cover their payouts, and only six allowed private companies to participate in the market. In the states with voluntary participation laws, many underwriters and employers doubted the system's longevity.

"Certainly in that first year or two, there was a fair amount of uncertainty about whether or not the system was going to work because of the voluntary component," the commission spokesman said, adding that all but two states—New Jersey and Texas—since have switched to a compulsory compensation system.

"As time went on, of course it did work, and the system became much more sophisticated in the succeeding years," he said.

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DATA snapshot

RISK MANAGEMENT CONSULTANTS

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LARGEST INDEPENDENT U.S. RISK MANAGEMENT CONSULTANTS

Companies deriving a majority of their gross revenues from unbundled risk management consulting*

Rank	Company/address	Phone/website	2010 unbundled revenue from risk management consulting	Unbundled clients	Professional staff
1	J.H. Albert International Insurance Advisors Inc., dba Albert Risk Management Consultants 72 River Park, Needham Heights, Mass. 02494-2631	781-449-2866 www.albertrisk.com	\$7,000,000	600	28
2	Corporate Risk Solutions L.L.C. 178 Myrtle Blvd., Larchmont, N.Y. 10538	914-834-1234 www.crslimited.com	\$6,000,000	352	8
3	Risk International Services Inc. 4055 Embassy Parkway, Suite 200, Fairlawn, Ohio 44333	216-255-3400 www.riskinternational.com	\$4,350,000	48	21
4	Alpha Risk Management Inc. 60 Cutter Mill Road, Great Neck, N.Y. 11021	516-829-3500 www.alpharisk.com	\$3,760,000	73	17
5	Robert Hughes Associates Inc. 508 Twilight Trail, Suite 200, Richardson, Texas 75080	972-980-0088 www.roberthughes.com	\$2,700,000	250	13
6	Risk Navigation Group L.L.C. 37 Dumont Road, Suite 100, Far Hills, N.J. 07931	908-470-1010 www.risknavigation.com	\$2,650,000	75	9
7	Insurance Buyers' Council Inc. & First Risk Management/IBC Inc. 9720 Greenside Drive, Suite 1E, Cockeysville, Md. 21030	410-666-0500 www.consultibc.com	\$2,485,000	130	9
8	Pinnacle Risk Services Inc. 620 Freedom Business Center, Suite 200, King of Prussia, Pa. 19406	610-205-6116 www.pinnacle riskservices.com	\$2,475,000	78	3
9	Kevin F. Donoghue & Associates 190 High St., Boston, Mass. 02110	617-482-7015 www.kfda.com	\$1,850,000	101	11
10	Ron Rakich & Associates Inc. 24632 San Juan Ave., Suite 230, Dana Point, Calif. 92629	888-883-8086 www.ronrakich.com	\$1,412,179.00	18	10

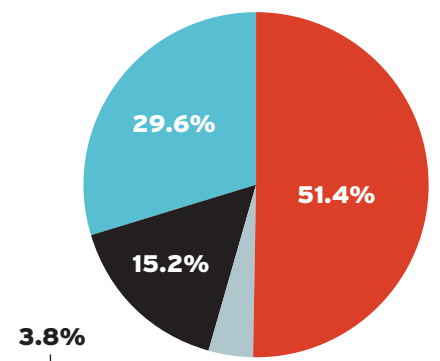
*Business Insurance defines independent consulting operations as those that are not owned by insurers or brokers. In addition, companies deriving 50% or more of their revenues from actuarial, captive, environmental, property loss or safety consulting are not ranked.

Source: BI survey

Researched by Karen Tucker

BREAKDOWN OF PROFESSIONAL STAFF

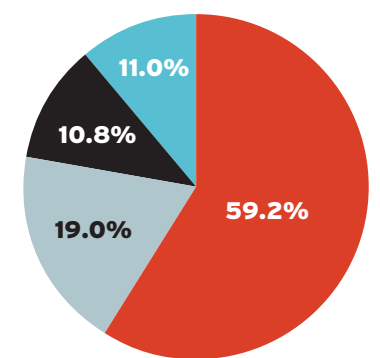
Risk management professionals for all companies listed in the directory



- Consultants
- Principal consultants
- Analysts
- Actuaries

BREAKDOWN OF REVENUES

Revenue sources for all companies listed in the directory



- Continuous consulting
- Special consulting projects
- Risk management audits
- Actuarial/accounting services

SESSIONS IN FOCUS

Social: Job checks can bring risks

CONTINUED FROM PAGE 4

Faluzi on a blog called "I am a Muslim woman."

"Look at all the questions that you have asked without even opening your mouth," she said. "A picture may be worth 1,000 words, but what do any of these pictures tell you about Jean Faluzi's skills, her ability to do the job?"

Employers also shouldn't base their hiring or firing decisions on what they unearth online because mistaken identity is possible, Ms. Russell warned.

"There are 14 LinkedIn Tamara Russells out there. Which one is me?" she asked. "You'll find one of them is a judge in Colorado and another one likes to take photographs of cats holding beer bottles and cigarettes."

If the Internet is used to research a candidate, first get their permission and then give them a chance to explain anything questionable that turns up, Ms. Russell said. She also advised that employers wait until making a conditional offer of employment before conducting such a search.

Employers should be equally cautious about using information that turns up in Internet searches to terminate employees, she said.

To prevent employees from using social media in a way that may tarnish an employer's business or reputation, Melissa Krasnow, a partner at Dorsey & Whitney L.L.P. in Minneapolis, advised employers to adopt guidelines stating how and which employees are permitted to use social media.

"You do need to use it to understand it, but don't do it without guidance and direction," Ms. Krasnow said. "I find it works best when all stakeholders are consulted and have a role in shaping corporate social media policy."

Social media policy should be consistent with other company policies, she added. In addition, she recommended that employers educate and train employees who use social media to be cognizant of its impact.

Because companies all have different objectives in using social media, whether it be marketing, customer service, human resources or investor relations, Ms. Krasnow recommended that an employer tailor its social media policies to the organization's needs.

Employers also should review their liability insurance programs, including employment practices, to make sure they are covered if they are sued by employees or job prospects in connection with the use of social media, said Chad Jackson, staff director-risk management at FedEx Corp. in Mem-

phis, Tenn.

Although the use of social media is relatively new, the risks it poses for employers are not. It's simply a different venue, said Rennie Muzii, managing director at Marsh USA Inc. in Portland, Ore., and moderator of the RIMS session.

Considering that, it may not be necessary to purchase a special insurance policy to respond to social media-originated claims, he said.

"Just be sure your other insurance programs cover social media exposures," Mr. Muzii said.

Managing doctors pays dividends

Provider evaluations boost workers compensation outcomes

By **ROBERTO CENICEROS**

VANCOUVER, British Columbia—Managing doctor involvement for optimal return-to-work outcomes is a common ingredient among three successful workers compensation programs, speakers said at the Risk & Insurance Management Society Inc.'s Annual Conference & Exhibition.

Nissan North America Inc. measures the performance of doctors who treat its employees injured while working at its major manufacturing plants in Tennessee, said Kerry Dove, the auto manufacturer's senior manager, safety and medical management in Smyrna, Tenn.

Doctors are measured, for instance, on how long it takes the employees they treat to

return to the workplace. To do that, Nissan tracks various data including the average number of days spent away from work for specific medical procedures, he explained.

"We measure every physician we do business with," Mr. Dove said. "We identify low performers and present them with data

See **DOCTORS** next page

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SESSIONS IN FOCUS

Doctors: Evaluate

CONTINUED FROM PREVIOUS PAGE

(that compares them) with their colleagues and how they are performing on their work comp cases for us. We guarantee them we are going to pay them very quickly, so they like to do business with us, but they have to perform at certain levels."

Yet Nissan strives to ensure its employees are well enough to perform certain tasks when returning to the job. That may require Nissan's in-house plant physicians to assign work restrictions even when, say, an orthopedic surgeon has released the employee to perform more challenging tasks, Mr. Dove said.

At American Electric Power Co. Inc., a modified duty return-to-work program is designed for each injured employee, said Loyd A. Hudson, integrated disability manager for the Columbus, Ohio-based company.

Each program consists of certain work tasks that progress in difficulty based in part on the number of weeks an injured employee is expected to spend performing light duty, he said.

After a certain number of weeks performing light duty, injured workers progress to "medium duty" tasks for a certain time period. Then they can

progress to performing "heavy duty" tasks prior to progressing to "very heavy duty" tasks, Mr. Hudson said.

Mr. Hudson shares each injured worker's progression plan with his or her doctor to win the physician's approval for returning the employee to the workplace.

"Most doctors find having such an outline very beneficial," he said. "All they have to do is look at it and sign it. Every once in a while, I get a doctor call me and say, 'I don't think he can do this in week five, but if you move it back to week six or seven, I will go ahead and (approve) it.'"

Even then, however, employees return to their normal responsibilities on a two-week trial basis getting the go-ahead to return permanently.

"It's a staged process," Mr. Hudson said.

Roy Manns, risk manager in Milpitas, Calif., for Flextronics International Ltd., said he meets with the doctors and clinics that treat the company's workers.

"I try to visit the clinics in the area, and I encourage my human resources and safety people to do that," Mr. Manns said.

He also invites the doctors to walk through Flextronics work sites "so they know exactly what we are doing there and how we are doing it," he said. That way the doctors know the specific tasks required of employees and whether they are capable of performing them.

Self-examine before self-insuring

Careful analysis should precede any changes, RIMS panelists say

By JOANNE WOJCIK

VANCOUVER, British Columbia—While self-insurance can save some organizations money and give them better control over claims, it may not be the best option for "nervous Nellies"—organizations that are uncomfortable with volatility, two self-insurance experts said.

"I believe in Murphy's Law when it comes to self-insurance: Anything that can go wrong will go wrong at the worst possible moment, which is usually at the beginning of a self-insurance program," Victor Nolan, risk and benefits manager of Clean Water Services in Hillsboro, Ore., said during a session on self-insurance at the Risk & Insurance Management Society Inc.'s Annual Conference & Exhibition last week.

Self-insurance works best in organizations where management understands and supports it as a financial strategy aimed at lowering costs by retaining more risk and controlling how and which claims are paid, Mr. Nolan said.

Self-insurance also provides an incentive to implement safety and loss-control programs in organizations, he said.

But "self-insurance is not for everyone, if large single losses could leave you devastated finan-

cially," said Mr. Nolan. "Or maybe instead of going fully self-insured, go with a retention program until you get comfortable with it."

An organization can move into self-insurance gradually by raising deductibles or self-insured retentions, or by participating in pooling arrangements or captive programs with other organizations that have similar risk tolerance levels, said Scott Moss, property/casualty trust director of City County Insurance Services in Salem, Ore.

To address the prospect of a

'I believe in Murphy's Law when it comes to self-insurance: Anything that can go wrong will go wrong at the worst possible moment, which is usually at the beginning of a self-insurance program.'

Victor Nolan,
Clean Water Services

potentially devastating loss, in some cases organizations can cap their liabilities through stop-loss programs that pay sums above a specified threshold, Mr. Moss said.

Though retrospectively rated insurance programs require an additional payment if losses exceed projected amounts, they also have the potential of paying rebates when claims fall below expected levels, he said.

Before deciding whether to self-insure, organizations should perform feasibility studies that take into account at least three years of prior and projected claims experience, the amount of working capital available to fund reserves and local regulations governing self-insurance. The study also should take into account whether the organization has sufficient resources to handle claims internally, or can afford to outsource

that function to a third-party administrator, Mr. Nolan said.

Organizations also should prepare a "loss triangle," a table of loss experience showing total losses over a period of time that reflects the change in amounts as claims mature, Mr. Moss said.

Mr. Moss suggested that risk managers unfamiliar with this type of statistical analysis enroll in a community college class to get a better understanding so they can perform the study themselves.

"You can do this. There is no reason you have to pay an actuary," Mr. Moss said.

Otherwise, organizations can expect to pay from \$10,000 to \$50,000 for a consultant to perform a self-insurance feasibility study. The more complicated the self-insurance solution being considered, the more it will cost, he said.

Organizations should also consider a "worst-case scenario," but "don't dwell on it," Mr. Nolan said.

For example, to determine the worst-case scenario for a benefit program, take the number of lives and multiply that by the maximum payable benefits for the year.

"It may be a high number, but it gives you the maximum probable loss," Mr. Nolan said, adding that, in his experience, when he presented that scenario to a chief financial officer, that made the CFO more comfortable with the self-insurance concept.

Organizations looking to self-insure also should consider tax issues, because in most cases they will lose the tax deduction for premium payments. However, they still can deduct the cost of claims paid on income taxes, Mr. Moss said.

He said organizations should save "at least 15%" above the cost of traditional commercial insurance to make self-insurance feasible.

Organizations also should evaluate their programs regularly to make sure self-insurance is still the best solution, Mr. Nolan said.

"There's no shame in going back to fully insured; it's just a risk financing tool. Use what makes sense for your organization at the appropriate time," Mr. Nolan said.

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REPORT

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IN NEXT WEEK'S ISSUE OF BUSINESS INSURANCE.

Sony: Company grapples with data loss

CONTINUED FROM PAGE 1

monitoring, enhanced levels of data protection and encryption, enhanced ability to detect software intrusions, implementation of additional firewalls, a plan to move to a new data center with enhanced security and the appointment of a chief information security officer.

At least two lawsuits seeking class action status related to the data breaches have been filed in San Francisco and Toronto. Both accuse Sony of negligence for failing to prevent the attacks and taking too long to inform its clients.

"In many cases, if you had a security incident of this magnitude, it's fairly difficult afterwards to effectively establish that you did everything that a reasonable person would have done under the circumstances" to avoid it, said Robert J. Scott, managing partner with law firm Scott & Scott L.L.P. in Dallas.

The defense of these lawsuits "is going to be very expensive," Mr. Scott said.

However, observers also said it is difficult for plaintiffs to prevail in such cases unless they can prove actual damages.

Sony has said it has a variety of types of insurance that cover hacking-related damages, and certain insurers have been put on notice of potential claims. A Sony spokesman declined to release additional information.

Observers said while there is no guarantee of security on the Internet, there are steps companies can take to limit their potential liability (see box).

Company executives "need to understand information security is not a commodity, but an ongoing process" that "goes to the very heart of the continuity and value of the enterprise," said Gene Spafford, director of the Center for Education Research Information Assurance and Security in West Lafayette, Ind.

Mr. Spafford said firms should have appropriately trained personnel who are given the appropriate resources and the authority to take necessary action based on the risk.

"They should regularly monitor and observe what's going on" and have a plan in place to allow a quick response when something goes wrong, he said.

Experts recommend frequent testing of companies' security systems.

Peter S. Vogel, a partner with law firm Gardere Wynne Sewell L.L.P. in Dallas, said it behooves companies "to have their systems tested on a regular basis by third parties to discover where they are vulnerable, to improve security."

"This is such a fast-moving area...that you can't just put (a security system) in place and then forget about it. It needs constant monitoring and updating," said Richard J. Bortnick, a member of Cozen O'Connor P.C. in West Conshohocken, Pa. "It's like a game of cat and mouse because as

the security systems become more secure, the cyber criminals become more sophisticated...and there's no panacea."

"The best you can hope for is to keep out" at least the casual hacker, said Shari Claire Lewis, a partner with Rivkin Radler L.L.P. in Uniondale, N.Y.

It helps to limit the information

'It's fairly difficult afterwards to effectively establish that you did everything that a reasonable person would have done under the circumstances' to avoid a data breach.

Robert J. Scott,
Scott & Scott L.L.P.

that is obtained and stored, experts said.

Referring to the outdated 2007 database that was hacked, Mr. Spafford said, "So, the question is, why was that kept?"

For information that is necessary, one obvious step is to encrypt all the data, said E. Leonard Rubin, of counsel to law firm Query & Harrow Ltd. in Chicago.

Another is to make sure infor-

mation can be disseminated only on a need-to-know basis, said Mr. Rubin. "That's something that companies are often careless about," he said.

Observers say under federal law and most state laws, customers must be informed when personally identifiable information has been breached.

It took Sony several days to inform clients of the breach. In his letter to the House subcommittee, Mr. Hirai said Sony was concerned that releasing partial or tentative information would cause confusion.

Mr. Bortnick, said, however, "There comes a point where you have to stop waiting for information and you've got to make a decision....Inaction is no action."

Observers said cyber insurance can help companies with the costs associated with hacking incidents, including the expense of notifying clients of the breach.

Towers Watson & Co.'s 2011 risk and finance manager survey found, however, that 73% of companies surveyed have not purchased network liability insurance coverage, with one-quarter of those saying either they were not overly concerned about the risk, or were unable to understand the value of information or the cost of a breach.

Jeanne Oronzio, senior technical specialist at Philadelphia-based brokerage and consulting firm The Graham Co., said cyber policies, which are manuscripted, are offered by all the major insurance markets, with premiums varying based on the coverage.

HACKER PROTECTION

Steps that experts recommend companies take to protect their online systems from hackers include:

- Appropriately train personnel and have a plan to respond if an event occurs.
- Test systems to be sure they have necessary protection.
- Limit to the extent possible the personally identifiable information obtained from customers.
- Delete personally identifiable information as soon as possible.
- Encrypt any remaining data.
- Disseminate data only on a need-to-know basis.
- Inform customers promptly of any breach.
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Treasury: Rule clarified

CONTINUED FROM PAGE 3

average of 30 hours per week during the measurement period, according to the Treasury Department proposal. Treasury also is considering a proposal in which employees who work at least 130 hours a month would be counted as full time.

If an employee worked enough hours to be considered full time, he or she would be treated as a full-time employee during a subsequent "stability" period regardless of the number of hours an employee worked during the stability period.

Under Treasury's approach, for an employee determined to be full time during the measurement period, the stability period would be at least six consecutive months after the measurement period and be no shorter than the measurement period.

If the employee were determined to be part time during the measurement period, the employer could treat the employee as part time during a stability period that is no longer than the measurement period.

If an employee did not work enough hours during the measurement period to be considered full time, the employer would not have to pay the penalty even if the employee worked enough hours during the stability period to be considered full time. The \$2,000 penalty is applied on a monthly basis, so an employer would pay about \$167 for each month an employee determined to be full time lacked coverage.

Benefit experts say the approach would be appealing for employers who want greater certainty about which employees for whom the assessment would apply.

"It is nice to know this in advance," said Anne Waidmann, a director in the Washington office of PricewaterhouseCoopers L.L.P.

"Employers have better things to do than make these calculations on hours worked every month for every part-time employee," said Andy Anderson, a partner with Morgan, Lewis & Bockius L.L.P. in Chicago.

"It is a very practical approach," Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J., said of the Treasury Department proposal.

Others commended Treasury for floating new approaches and seeking public comment long before the 2014 effective date of the employer responsibility requirement.

"I'm encouraged by Treasury's openness in laying out approaches," said Tom Lerche, Aon Hewitt Inc.'s national health care reform leader in Chicago.

Survey: Push for ERM

CONTINUED FROM PAGE 3

for regulatory purposes, to one where "they actually incorporate doing something about the risk within their organization."

Risk managers in the survey also said communication between risk

managers and senior executives needs to improve, with both groups of respondents acknowledging that "siloeed approaches" were a significant barrier to ERM, according to the survey.

"There are some risk managers who aren't really even well aware

of the corporation's strategy and are not focused on the corporation's strategy," said Pamela G. Rogers, senior vp at Marsh Risk Consulting in Minneapolis. "We want this study to be a strong tool for risk managers."

"Get more involved within the operation," urged Carol Fox, director of the strategic and enterprise risk practice at RIMS.

UP Comings & Goings CLOSE



TRAVIS DUTTON

NEW JOB TITLE: Washington-based 409A executive benefits consultant and vp for Lockton Cos. L.L.C.

PREVIOUS POSITION: Bethesda, Md.-based regional vp and 409A consultant for Principal Financial Group Inc.

GOALS FOR NEW POSITION: Lockton has a significant presence in the 401(k)-buying marketplace and from what we've seen, there is a lot more integration between 401(k) plans and 409A (deferred compensation) plans. I would say the main goal is to overlay best practices for 401(k) consulting on top of 409A consulting. These are things like investment review (and) maximizing corporate life insurance efficiency and making sure the client understands the differences between policies and how they look in financial modeling.

INDUSTRY OUTLOOK: I see a converging market with very trusted providers providing world-class products under one roof.

FIRST MARKET EXPERIENCE: I have always been involved in

the business-to-business consulting side. I started off with T. Rowe Price (Retirement Plan Services Inc.) in the retirement plan services divisions working with all of T. Rowe Price's 401(k) clients. I started off on the telephones and then traveled around the county handling plan allocation meetings. Then my career morphed into this role.

ADVICE: You should always have a direction, a point that you are aiming for, and make a plan on how to get to that point.

OUTSIDE THE INDUSTRY, A DREAM JOB: A fly-fishing guide.

HOBBIES: I enjoy camping, hiking and reading.

MOST PASSIONATE ABOUT: Raising my children.

FAVORITE BOOK: I would say my favorite author is C.S. Lewis.

CAN'T-MISS TV SHOW: "The Office." It's the only one that I watch. It's a great portrayal of a provincial town of different personalities. It's off the beaten path.

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IN THE MATTER OF SECTION 104B OF THE COMPANIES ACT 1981 OF BERMUDA (THE "ACT") AND IN THE MATTER OF THE AMALGAMATION OF CAMRON (BERMUDA) INSURANCE, LTD. AND WHITE MOUNTAIN INSURANCE COMPANY

NOTICE IS HEREBY GIVEN that Camron (Bermuda) Insurance, Ltd., a Bermuda exempted company, intends to amalgamate pursuant to the provisions of Section 104B of the Act with and into White Mountain Insurance Company, a Vermont captive insurance company, and to continue as White Mountain Insurance Company, in the State of Vermont, an appointed foreign jurisdiction for the purposes of the Act.

APPLEBY
Bermuda Attorneys for the Applicant

LEGAL NOTICE

STATE OF RHODE ISLAND
PROVIDENCE, SC
IN RE GTE REINSURANCE COMPANY, LIMITED

SUPERIOR COURT
P. B. No.: 10-3777

IN THE MATTER OF GTE REINSURANCE COMPANY LIMITED COMMUTATION PLAN PURSUANT TO RHODE ISLAND CHAPTER 27-14.5 BETWEEN GTE REINSURANCE COMPANY LIMITED AND ITS COMMUTATION PLAN CREDITORS (as defined in the Commutation Plan)

NOTICE IS HEREBY GIVEN that, by an Order dated April 27, 2011 made in the above matter (the "April 27 Order"), the Superior Court in and for the County of Providence, Rhode Island (the "Court") granted the Motion of GTE Reinsurance Company Limited for an Order Implementing the Commutation Plan ("Motion to Confirm and Implement"), and ordered that the GTE RE Commutation Plan shall be implemented as follows:

- All litigation in all jurisdictions between GTE RE and creditors, other than in the instant action, is hereby enjoined absent leave of the Court;
- All creditors shall submit the Claim Form information requested in the Commutation Plan to the Run Off Manager on or before August 1, 2011 (the "Final Claim Submission Time");
- GTE RE may pay any Agreed Claim upon submission, review and approval of a final Claim Form;
- GTE RE shall agree all claims properly and timely submitted on or before August 28, 2011;
- GTE RE shall pay all final, approved claims on or before September 30, 2011;
- GTE RE shall be released of and from all obligations to all of its creditors upon payment of the Agreed Claims as specified in the Commutation Plan as received by the Final Claim Submission Time and as agreed by GTE RE or as determined by the Commutation Plan Adjudicator;
- GTE RE shall file quarterly reports to the Court and to the Rhode Island Department of Business Regulation regarding GTE RE's progress in implementing the Commutation Plan beginning with the end of the second quarter of 2011;
- The Commutation Plan and this Implementation Order shall be binding upon GTE RE and upon all creditors and owners of GTE RE, whether or not a particular creditor or owner is affected by the Commutation Plan or has accepted it or has filed any information on or before the Final Claim Submission Time, and whether or not a creditor or owner ultimately receives any payments under the Commutation Plan;
- GTE RE shall give notice of entry of the Court's Implementation Order;
- Upon completion of the Commutation Plan, GTE RE shall advise the Court.

Commutation Plan information is available, and will be updated, at <http://runoffresolve.com/gte-re-plan.php>. Copies of the Commutation Plan and the Claim Form may be obtained from the Run Off Manager or in the manner set out below and are available for download at <http://runoffresolve.com/gte-re-plan.php>.

As noted above, Claim Forms must be submitted to the Run Off Manager on or before August 1, 2011;

Any Commutation Plan Creditor that is unclear about or has any questions concerning the action it is required to take should contact the Commutation Plan Advisor in the manner set out below.

Dated: April 28, 2011

Run Off Manager
Marsh IAS Management Services (Bermuda) Ltd.
Victoria Hall, 11 Victoria Street
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+1 441-294-7826 (facsimile)
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Commutation Plan Advisor
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RunOff Re.Solve LLC
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Market Moves

Lloyd's of London firm expands in Europe, Asia

DUBLIN—Mitsui Sumitomo at Lloyd's is expanding its European operations.

Alan Sheil, previously the Ireland country manager at Warren, N.J.-based Chubb Corp., will head Mitsui Sumitomo at Lloyd's new branches in Dublin as well as Belfast, Northern Ireland, the company said in a statement.

In a statement, the Mitsui Sumitomo Insurance Co. Ltd. subsidiary said the expansion is part of the company's ongoing development of a mid-market presence, particularly in Ireland, Northern Ireland and Scotland.

A unit of Tokyo-based MS&AD Insurance Group Holdings Inc., Mitsui Sumitomo Insurance Co. Ltd. last week announced that it also plans to acquire 50% of Jakarta, Indonesia-based PT Asuransi Jiwa Sinarmas (Sinarmas Life Insurance) for approximately \$821.5 million.

In a statement, Mitsui Sumitomo said it expects Indonesia's growing middle class to support growth in the life market in the coming years.

The company also noted Indonesia's Muslim population, the world's largest, as an opportunity for growth in its Takaful insurance offerings.

First Niagara acquires New England-based firm

NORWALK, Conn.—First Niagara Financial Group Inc.'s insurance subsidiary has expanded its operations in New England with the acquisition of Norwalk, Conn.-based broker, consulting and third-party administrator Pierson & Smith Inc., the company announced last month.

First Niagara's bank and financial services arm entered Connecticut and Massachusetts in mid-April with the completion of its merger with NewAlliance Bancshares Inc.

Its insurance subsidiary, First Niagara Risk Management Inc.,

already writes personal and commercial property/casualty, workers compensation, professional and environmental liability coverage in New York, Pennsylvania, Connecticut and Massachusetts.

The company selected Pierson & Smith for its strong position in the industry—Pierson & Smith holds policies with commercial clients in 22 states—and its local market expertise, First Niagara said in a statement.

Terms of the deal, which closed April 8, were not disclosed.

CNA Financial merges with surety operation

CHICAGO—CNA Financial Corp. and its CNA Surety Corp. unit

have signed a definitive merger agreement, the companies said in a statement.

CNA Financial said it will purchase all outstanding shares of CNA Surety common stock not already owned by units of CNA at \$26.55 per share.

In a statement, CNA Surety President and CEO John Welch called the merger a "vote of confidence" in his company.

The price per share represents a 38% markup of the closing price of CNA Surety's common stock on Oct. 29, 2010, the day before CNA Financial announced its intent to acquire the public minority stake, and a 21% bump from CNA's initial offer of \$22 per share.

The deal will provide CNA

Surety stockholders the opportunity to cash in on their investments "at a substantial premium to their historical stock price," while allowing CNA Financial to expand its specialty underwriting, CNA Financial Chairman and CEO Thomas Motamed said in the statement.

The deal, approved last month by CNA Surety's board of directors, is expected to close by the end of the second quarter.

PMA expands into Illinois

SCHAUMBURG, Ill.—PMA Cos. Inc., a Blue Bell, Pa.-based commercial insurer, third-party administrator and risk management consulting

firm, has opened an office in Schaumburg, Ill., the company said last week.

PMA Capital Corp. and its subsidiaries merged in October with the Chicago-based Old Republic International Corp., at which point the company was renamed PMA Cos. Inc.

TO SUBMIT ITEMS

BI's Market Moves column reports on activities by insurance industry companies and related entities. Please send news of Market Moves to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. 60601 or e-mail mtsikoudakis@businessinsurance.com.

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Bin Laden: Increased terror risk?

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"It's all still very fresh at this point, but the main thing is to be vigilant and cautious," said Donald Henne, an associate managing director at New York-based risk consultant Kroll Inc.

Although the U.S. Department of Homeland Security said it does not plan to issue a National Terror Advisory System alert solely in response to the death of the mastermind of the Sept. 11, 2001, terrorist attacks, the State Department issued a global travel alert last week warning U.S. citizens of the "enhanced potential for anti-American violence" abroad.

"It's time now to go back, look at your policies and procedures, planning and crisis management, and see if there's anything you need to do to tighten it up," said Mr. Henne.

Last week, Chicago-based brokerage Aon Corp. and London-based intelligence and security company Risk Advisory Group Holdings P.L.C. released a joint report saying "no formal communiqués" from al-Qaida or its affiliated groups had yet surfaced regarding possible targets, but there is a "high near-term risk" of attacks in response to Mr. bin Laden's death "against Westerners and Western interests."

"Organizations with traveling personnel should provide them with up-to-date risk information and training, and ensure they have robust crisis management plans in place in order to effectively respond to a terrorist event," said Neil Henderson, global head of counterterrorism for Aon's crisis management team in London.

A public sector risk manager said Mr. bin Laden's death had only a "situational short-term impact" on his risk management program. He also made sure employees were aware of the State Department's bulletin.

"There is no long-term impact in the way we manage risk," said the risk manager, who asked not to be named.

Several other risk managers, who also requested anonymity, said the event had no impact on their programs.

"Pretty much business as usual," said the risk manager for a nonprofit organization. "We're vigilant, but nothing really has changed."

Another risk manager, for a structural engineering firm based in the Middle Atlantic, said he expects travel and business abroad will be safer in the near term because of increased awareness, similar to after the 2001 terrorist attacks.

If terrorists were to attack in the next several weeks, it likely would be a relatively small attack and almost certainly outside the United States, said Francisco



AP PHOTO

Egyptian army soldiers stood guard in Cairo on Friday, as protesters attended afternoon prayers during a protest against the killing of Osama bin Laden by U.S. Navy SEALs in Pakistan. Security experts advised vigilance against likely attacks by terrorist groups in response to the killing.

'It's not going to happen right now. These things take a little time, but there will be an attempt. I can almost guarantee that.'

Francisco Quinones, Arcis International L.L.C.

Quinones, managing director for Washington-based security consultants Arcis International L.L.C. He said U.S. embassies and military posts are the most attractive targets, adding that hotels, shopping malls and other high-traffic public areas have been preferred targets in the past.

"There's not going to be any major, massive counterattack, but there are very likely going to be some smaller incidents," Mr. Quinones said, adding that it may be several weeks before al-Qaida or its affiliates are in a position to mobilize an offensive. "It's not going to happen right now. These things take a little time, but there will be an attempt. I can almost guarantee that."

Robert Cruz, Atlanta-based vp for terrorism and global response at Hiscox USA, agreed that any retaliatory attack likely would be limited in scale, but said the United States could be a target.

"I'd say the threat level is equal between the U.S. and abroad," Mr. Cruz said. "I don't think we're any

less susceptible for a hit than targets in foreign countries. People are here, just waiting for their opportunities."

Travel risks

Company travel advisories should include destinations in countries allied with U.S. military operations in the Middle East, Mr. Quinones said.

"Any European country that has troops in the region or any NATO country involved in the missile strike against Libya, they obviously run the risk of an attack," Mr. Quinones said. "As far as travel to the Middle East is concerned, it's probably not the best time to be doing that. Unless you really have to go, don't go."

While safety and security of personnel and other assets should be top priority in considering potential fallout from Mr. bin Laden's killing, Mr. Cruz said risk managers and other corporate leaders would be well-served to use the news of the al-Qaida leader's death as an impetus to review

their firm's terrorism coverage, particularly where foreign assets are concerned.

"If there's a civil unrest and there's a loss against a building, would that be a terrorism loss, a political violence loss or is it a civil war loss?" Mr. Cruz said.

"Businesses really need to look at their cover when they're dealing on an international basis. There are definitely some gray areas there," he said.

Risk managers also should consider possible ancillary repercussions. There is likely to be a power struggle within al-Qaida for leadership of the group, Mr. Quinones said, which could lead to more demonstrative attacks carried out by operatives seeking to move up in the group's ranks.

With Mr. bin Laden dead, President Barack Obama's plan to reduce U.S. troop levels in Afghanistan this summer likely will meet less political resistance from Congress, said Elizabeth Stephens, head of credit and political risk analysis at London-based

brokerage Jardine Lloyd Thompson Group P.L.C. However, withdrawing troops could provide terrorist cells an opportunity to expand their recruitment efforts, she said.

Terrorism backstop

Another potential implication of Mr. bin Laden's death is its impact on the federal terrorism insurance backstop, one terrorism expert said.

"We have to be very careful not to have a knee-jerk reaction that this would have an immediate impact on terrorism insurance," said Wendy A. Peters, Radnor, Pa.-based senior vp of Willis Group Holdings P.L.C.'s terrorism practice.

"We're a long way from having completed the mission," she said, saying that Mr. bin Laden's death is a "positive event in the war on terrorism."

"We have to be extra vigilant right now," she said,

She also said the action should not lead to an end to the federal terrorism insurance backstop, slated to expire on Dec. 31, 2014. The insurance industry has shown no evidence that it is willing to step up to the plate if the government program ends, she said.

Sarah Veysey, Joanne Wojcik and Mark A. Hofmann contributed to this report.

Death of bin Laden not expected to raise stand-alone terror rates

By SARAH VEYSEY

LONDON—Rates for stand-alone terrorism insurance are unlikely to increase due solely to the death of Osama bin Laden, London market experts say.

However, unrelated violence during recent protests in the Middle East and North Africa, coupled with hardening reinsurance rates prompted by heavy reinsurer losses from natural catastrophes this year, already have resulted in some rate increases for terrorism and political violence coverage despite ample capacity, underwriters and brokers say.

In addition, they say any revenge attacks on Western targets by supporters of Mr. bin Laden could affect rates.

It is too early to assess what impact the death of Mr. bin Laden may have on the terrorism and political violence insurance market, particularly given widespread perception that there may be reprisal attacks by al-Qaida or other organizations sympathetic to its cause, said Neil Henderson, global head of counterterrorism in Aon Corp.'s crisis management team in London.

He said clients should ensure they have robust crisis management plans in place should there be such attacks.

"An immediate reaction to the death of Osama bin Laden from the stand-alone terrorism insurance market is unlikely. Capacity remains in

plentiful supply, which in turn means that, despite this news, market terms and conditions are likely to remain stable and rates, in the absence of any significant loss, are unlikely to increase," said Stephen Ashwell, London-based head of global response at Hamilton, Bermuda-based insurer Hiscox Ltd.

Mr. bin Laden's death has had no immediate effect on rates for stand-alone terrorism coverage, said Tim Press, head of special risks at London-based brokerage Miller Insurance Services Ltd.

But the recent outbreaks of violence in the Middle East and North Africa have prompted more demand for terrorism coverage and wider political violence insurance, such as war-on-land coverage, Mr. Press said.

Rates for coverage in the Middle East and North Africa had been "generally moving upwards" for political violence coverage, he said.

Because terrorism and related coverages are written on a highly aggregated basis, capacity always is limited for any region, he said.

While there has been much publicity surrounding potential retaliatory attacks after the killing of Mr. bin Laden, most companies that have operations in likely target areas typically already have terrorism insurance, said Kelly Crouch, head of terrorism at London-based bro-

kerage Jardine Lloyd Thompson Group P.L.C.

In areas where risk is highly aggregated—such as Manhattan—rates for terrorism coverage typically are high, she said.

But the violence in the Middle East and North Africa has had a knock-on effect on the marketplace. "We are seeing a slight hardening" of rates for terrorism coverage, Ms. Crouch said.

Losses from events that include the earthquake and tsunami in Japan likely will push up reinsurance rates in many classes of business, which is expected to filter through to result in higher rates for terrorism coverage, she added.

Mr. bin Laden's death and the threat of reprisals serve to heighten the awareness of worldwide terrorism risk, said David Cheales, executive director and head of war and terrorism business at Lockton Cos. L.L.P., a London unit of Kansas City, Mo.-based broker Lockton Cos. L.L.C.

In recent months, rates for terrorism coverage have been flat to slightly higher, due in part to the Middle East and North Africa violence, he said.

In addition, losses suffered by reinsurers from natural catastrophes late last year and early this year mean rates for many types of reinsurance coverage have hardened and this is affecting rates for terrorism insurance, he said.

While there is unlikely to be a knee-jerk hardening of rates as a result of Mr. bin Laden's death, any future events could cause rates to increase, he said.

Rates for stand-alone terrorism insurance have, in general, been softening since 2002 and 2003 when they reached peak levels after the Sept. 11, 2001, terrorist attacks in the United States, brokers said.

In 2001, there was about \$150 million of capacity for stand-alone terrorism insurance, said Lockton's Mr. Cheales. In 2011, there is worldwide capacity of about \$2.5 billion, he said.

An influx of capacity, and the absence of any large insured losses, has meant that rates have been steadily falling in recent years, he said. But rates now are likely at a level where they "can only go up," he said.

The death of Mr. bin Laden enhances the potential for anti-Western violence and terrorism, said Greg McPhee, divisional director for wholesale and facultative business at London-based brokerage BMS Group Ltd.

The terrorism and political violence insurance and reinsurance markets will be watching developments very closely, he said.

Rates for political violence coverage have increased "immeasurably" in the Middle East since the "Arab Spring" protests began, he said, and there has been a great deal of focus from underwriters on wordings for terrorism, political violence and related coverage, such as strike insurance, he said.

\$2.5B

In 2011, there is worldwide capacity of about \$2.5 billion for stand-alone terrorism insurance.

News In Brief

CONTINUED FROM PAGE 1

of the five-point increase in combined ratio that occurred from 2009 to 2010 was caused by one insurer adding more than \$800 million to excess workers compensation reserves, NCCI said.

Property/casualty rates still falling

U.S. property/casualty insurance rates dropped an average of 4% in April compared with the same period in 2010, MarketScout said last week. Property/casualty rates also declined 4% in March. The pace of decline in the "market continues to moderate," MarketScout CEO Richard Kerr said in a statement. Insurers gave the most aggressive price reductions to their largest customers. Meanwhile, the Council of Insurance Agents & Brokers said commercial property/casualty insurance pricing continues to decline overall, dropping 2.9% in the first quarter of this year. But the first-quarter decline compares with a 5.4% drop in pricing during the fourth quarter of last year.

MMC appoints first chief innovation officer

Ben Allen has been appointed to the post of chief innovation officer at Marsh & McLennan Cos. Inc. In the newly created position, Mr. Allen will partner with leadership teams at Marsh Inc., Guy Carpenter & Co. L.L.C., Mercer L.L.C. and Oliver Wyman "to create market-driven products and solutions," MMC said in a statement. Mr. Allen, 46, was president and CEO of Kroll Inc., an MMC unit, until its sale last year to Altegrity Inc.

RIMS defines SRM, seeks leading role

The Risk & Insurance Management Society Inc., as part of an effort to foster the growth of strategic risk management as a discipline, has issued a definition for SRM. In a statement, RIMS defines SRM as "a business discipline that drives

deliberation and action regarding uncertainties and untapped opportunities that affect an organization's strategy and strategy execution." "While many organizations have included strategic risk management as an integral part of their respective enterprise risk management practices, others are developing or practicing strategic risk management as a distinct discipline outside of a formal enterprisewide risk management model," Carol Fox, director of RIMS' Strategic and Enterprise Risk Practice, said in the statement. "RIMS aims to be the leading global authority on SRM at all levels."

Missouri employment bias bill vetoed

Missouri Gov. Jay Nixon has vetoed legislation that would have made it more difficult for plaintiffs to successfully pursue employment discrimination litigation in the state. Among other provisions, S.B. 188 would have changed the standard to the alleged discriminatory action being a motivating factor in employment discrimination, rather than a contributing factor as is currently the case. The measure also would have excluded individuals being named as defendants in employment discrimination suits, prevented the federal government being named as a defendant in such lawsuits and stipulated that prevailing parties in employment lawsuits are not entitled to attorney fees.

New CEO named for Greenlight Re

Greenlight Capital Re Ltd. said CEO Len Goldberg will retire Aug. 15 and be succeeded by Bart Hedges, the reinsurer's president and chief underwriting officer. Mr. Goldberg has been CEO and a director at Greenlight Re since August 2005 and will remain an active member on the board. "I have made a personal decision to return to the U.S. to spend more time with my family," Mr. Goldberg said in a statement. "I intend to continue to have a significant interest in Greenlight Re, and I am committed to a seamless transition." Mr. Hedges, who joined Greenlight Re in January 2006 as president and chief underwriting officer, has 25 years of experience in the property/casualty insurance and reinsurance industry.

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Contributing: Matt Dunning,
Judy Greenwald, Sarah Veysey

Next step in consumer driven care?

A growing number of Pennsylvania shoppers can buy not only the latest fashions at their local mall but health insurance as well.

Pittsburgh-based Highmark Inc., an independent Blue Cross & Blue Shield Assn. licensee, which opened its first retail stores in 2009, said late last month it plans to open two more in Lancaster and Easton, bringing its total health insurance retail outlets in the state to eight.

Highmark, which says it is the only health insurer to operate retail stores in Pennsylvania, says its stores have had more than 63,000 visitors since opening.

"As consumers become more involved in buying health insurance—



HIGHMARK INC.

Highmark Inc. says it is the only health insurer to operate retail stores in Pennsylvania.

particularly with recent health care reform legislation—Highmark wants to help them better understand their options," Matt Fidler, vp of consumerism and retail marketing at Highmark, said in a statement.

"The stores have helped customers better understand what they are purchasing and make more informed decisions about their health," he said.

The stores, which sell health insurance to individuals and small businesses, also offer ancillary products, including dental coverage.

Customers also can purchase a genetic program that is personalized for their individual genetic risks, according to the company.

Business Insurance ENTREPRENEUR

Texas Rangers pitcher Colby Lewis has become the first MLB player to officially go on paternity leave.

Paternity leave catching on

Paternity leave no is longer restricted to the cubicle-bound.

Texas Rangers pitcher Colby Lewis last month became the first Major League Baseball player to officially go on paternity leave, thanks to the MLB's new collective bargaining agreement with the players' union.

While the right-hander was the first player to officially go on paternity leave, others have taken time off for their child's birth, but unofficially.

The leave allowed Mr. Lewis to watch his wife give birth to their daughter, Elizabeth Grace, in a Bakersfield, Calif., hospital.

His decision to take paternity leave was not universally welcomed. A columnist for the Dallas Observer complained that for the millions they are paid,

baseball players should schedule their children's births during the off-season. The columnist was met with a storm of criticism.

While Mr. Lewis' daughter was born in April, there's no telling how baseball fans would react had she had kept her father from making a postseason appearance.

Meanwhile, Rangers President and Hall of Fame pitcher Nolan Ryan discussed how times have changed.

During his day, "they never allowed you to go home for a child to be born. It's just something you heard about if it happened during the season," Mr. Ryan reportedly said. Wives would call on the phone and say, "By the way, you have a new son or daughter," said Mr. Ryan, laughing.

AP PHOTO



Ozimals Inc., which sells virtual rabbits, claims Ranch Breedables L.L.C. has infringed its copyright.

Cyberspace no escape from lawsuits

Risk managers already concerned about the litigious nature of the physical world can add a worry to their list: the increasingly litigious nature of the virtual society.

In one such case, a San Francisco federal judge has allowed a copyright lawsuit brought by a company that developed virtual horse characters to proceed against a company that sells virtual rabbits.

Moreno Valley, Calif.-based Amaretto Ranch Breedables L.L.C., which developed online horse characters that can breed within the virtual world of Second Life, was granted a temporary injunction late last year when another company, Ozimals Inc., which sells virtual rabbits, asked Second Life to remove Amaretto's products from the site because it believed they infringed its copyright.

Amaretto countered that if its products were removed from the site, users would not be able to buy food and water for the virtual horses they had bought, thus endangering the virtual horses' lives.

Late last month, U.S. District Court Judge Charles Breyer—the very real brother of U.S. Supreme Court Justice Stephen Breyer—extended the temporary injunction granted to Amaretto Ranch Breedables and allowed claims of unfair competition and copyright infringement to proceed.

ARTIST DRAWS UP LAWSUIT AGAINST MOVIE STUDIO

Former boxer Mike Tyson has been featured in his share of oddball storylines, but his signature facial tattoo is getting the attention this time.

Waynesville, Mo.-based tattoo artist Steven Victor Whitmill, who inked the left side of the former heavyweight champion's face in February 2003 with an original tribal design, has asked for a preliminary injunction and unspecified damages against Warner Bros. Entertainment Inc.

The artist has accused the studio of pirating his copyrighted design for a gag in its forthcoming film, "The Hangover Part II."

According to documents filed in St. Louis federal court, Mr. Whitmill secured a copyright for the "Original Tattoo" on April 19. Nine days later, his attorneys filed the civil complaint against Warner Bros., alleging the studio stole the tattoo design for scenes in the movie as well as preview clips, posters and other promotional materials.

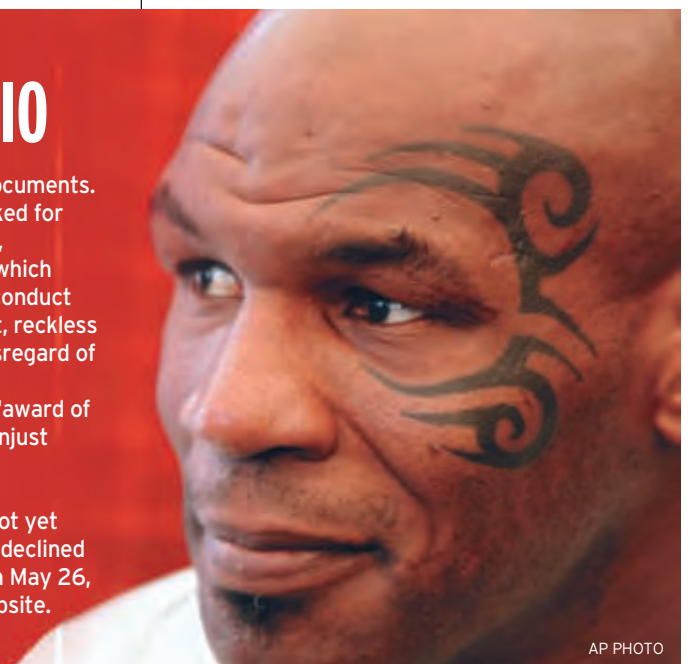
Mr. Tyson, who appears in both films as himself, signed a release before getting the tattoo naming Mr. Whitmill sole owner of all artwork, sketches and drawings related to the design and any photographs of his

tattoo, according to court documents.

Mr. Whitmill never was asked for permission to use the tattoo, according to the complaint, which alleges that Warner Bros.' "conduct constitutes, at the very least, reckless copyright infringement in disregard of the rights of Mr. Whitmill."

The artist also is seeking "award of (Warner Bros.) profits and unjust enrichment realized from its infringement."

Warner Bros., which had not yet responded to the complaint, declined comment. The film is to open May 26, according to the studio's website.



AP PHOTO

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