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CANADIAN COURT RULES D&O POLICY COVERS POLLUTION CLAIM / PAGE 3



In Brief

Senate passes NFIP renewal

The Senate voted last week to extend the National Flood Insurance Program through Sept. 30, 2013. Unlike an NFIP reauthorization bill passed by the House last year, the Senate measure does not require the NFIP to add windstorm coverage to the program. The Office of Management and Budget said that it would recommend President Bush veto any extension bill that contained the windstorm provision. House and Senate negotiators will have to iron out differences between the two bills so the NFIP can be extended beyond its Sept. 30 sunset.

AIG ups target for capital raising

American International Group Inc. said last week it plans to

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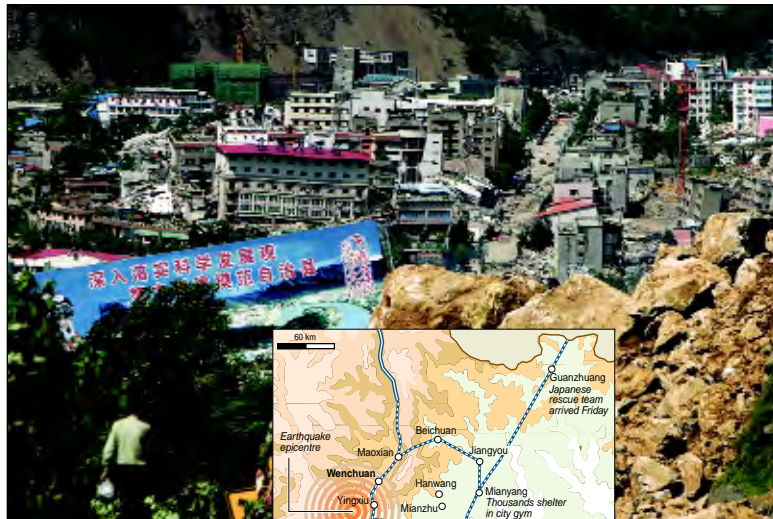


PHOTO:ZUMA PRESS, MAP NEWSCOM/AFP

A strong earthquake shook the Sichuan province of China killing thousands. Landslides blocked roads to several cities, including Mianyang.

Chinese quake claims may exceed \$1 billion

But many damaged properties uninsured

By **MARK A. HOFMANN** and **COLLEEN MCCARTHY**

Insured property losses from last week's devastating earthquake in China could reach as high as \$1 billion, the largest insured loss in China's history, according to observers.

And at least one broker said that business interruption losses eventually could surpass property losses from the disaster.

The death toll from the 7.9 magnitude quake is in the tens of thousands, with up to 50,000 listed as missing last week. While modelers project that total economic damage could reach as high as \$20 billion, they say insured damage will be much smaller.

Commercial properties often carry earthquake insurance, which is an extension of fire coverage in China, but insurance penetration for residential properties and in rural

areas is quite limited.

"Insurance penetration—premiums as a percentage of gross domestic product—in China in 2007 was 2.9%: 1.8% in life insurance, 1.1% in nonlife insurance," Peter Zimmerli, head of Swiss Re's Cat Perils Hub for Asia in Hong Kong, said in an e-mail. This compares with 8.8% in the United States in 2006, according to Swiss Re.

"We do not have specific insurance penetration rates for Sichuan, but it is likely to be at least on par with the national average. However, considering the sharp contrast between the fast growing provincial capital of Chengdu and the remote mountain areas, the penetration for the earthquake-impacted area, mainly in the remote region, is believed to be much lower," he said.

In addition, the exposure of inter-

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States may require wellness programs

Bills focus on efforts among state contractors

By **JOANNE WOJCIC**

As if paying heed to the adage that an ounce of prevention is worth a pound of cure, state legislators are looking at ways to encourage—or force—employers to offer worksite wellness programs to their employees.

While most of the measures gently encourage employers to promote wellness by offering financial incentives, at least two states are now considering taking a harder line: A California Assembly committee passed a bill earlier this month that would require employers contracting with the state to

offer one or more wellness programs to their employees. A bill introduced in Michigan would require that the state give preference to employers that offer wellness programs in awarding contracts.

California Assembly Bill 2360, introduced by Assemblyman Lloyd Levine, D-Van Nuys, in February, would apply to employers with 10 or more employees bidding on state contracts worth more than \$1 million. Businesses could comply in a variety of ways, from subsidizing memberships to fitness clubs, set-

See **WELLNESS** page 25

House panel faults war zone comp cover

Lawmakers blast insurers for overcharging

By **ROBERTO CENICEROS**

WASHINGTON—Insurers that provide Defense Base Act workers compensation coverage for U.S. Department of Defense contractors in Iraq and Afghanistan were accused last week of reaping excessive profits from the government-mandated program.

A report prepared for Democrats on the House Committee on Oversight and Government Reform said the Defense Base Act coverage has been "extremely profitable" for insurers and contractors. Members of the committee, which is looking into potential misuse and fraud involving the program, also criticized the Defense Department for DBA program costs that are

higher than other governmental agencies.



'What we are really talking about here, folks, is war profiteering—private companies making money, profits off of people who are injured or killed in a war zone.'

Rep. Jim Cooper, D. Tenn.

The Defense Base Act, which was passed in 1941, mandates workers comp cover for workers on military bases outside the United States. Later the act was expanded to require contractors and subcontractors working for other U.S. government entities to buy the coverage.

The Department of Labor administers the program and authorizes insurers to provide the coverage.

The four largest insurers providing DBA coverage over the past five years have earned a 40% underwriting profit that totals \$600 million, said the committee's chairman, Rep. Henry R. Waxman, D. Calif.

See **COMP** page 24

SECTOR BRIEFING

ENERGY

Some oil companies steer clear of insurance despite increased capacity; talent shortage squeezes petroleum companies; coal mines face rate hikes; Q&A with Statoilhydro exec on rising exposures, political risks. **Page 9**

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BI VIDEO

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Key lawmaker slams consumer-driven plans

House panel chair says high-deductible health coverage just shifts costs to low-income members

By JERRY GEISEL

WASHINGTON—Amid double-digit enrollment growth in high-deductible health insurance plans linked to health savings accounts, the chairman of a House panel said the arrangements should be a cause for concern.

The term "consumer-driven" has been used to describe the HSA-linked health plans, but Rep. Pete Stark, D-Calif., said that is a "soft, fuzzy" way to mask the real intent of the plans: shifting costs to enrollees.

Speaking last week at a House Ways and Means Health subcommittee hearing on HSAs and other CDHPs, Rep. Stark continued his long-standing criticism of health

savings accounts.

HSAs, he said, "simply shift costs to consumers, not control costs." Those who opt for the arrangements tend to be the "healthy, wealthy," which can result in a "devastating" shift of costs to lower-income, less healthy employees who enroll in other health care plans, he said.

While proponents say HSA enrollees use services more carefully because of their exposure to greater costs than traditionally designed plans, Rep. Stark disagreed that



Rep. Pete Stark, D-Calif.

makes enrollees in high-deductible plans better health care consumers.

Selecting health care services is not like buying an automobile or television, he said. At times, those needing health care services choose a provider when they are ill, disoriented and unable to make rational decisions, he said.

Furthermore, Rep. Stark said, an expansion of the HSA market could lead to higher—not lower—health care costs, because enrollees may delay getting needed care, leading

to more expensive treatment at a later date.

Rep. Stark wasn't the only panel member critical of HSAs. For example, Rep. Xavier Becerra, D-Calif., described HSAs as tax shelters for the wealthy. "What we are doing is creating another shelter" for those who have already made the maximum contributions allowed to their 401(k) and other retirement savings plans, Rep. Becerra said.

But illustrating the sharp political differences on the subject in the House, panel member Rep. Dave Camp, R-Mich., defended HSAs as an arrangement that has helped expand health coverage.

Citing a recent *America's Health*

See **HSAs** page 23

Judge upholds all finite reinsurance verdicts

Sentencing of ex-Gen Re, AIG execs delayed

By SALLY ROBERTS

HARTFORD, Conn.—A Connecticut federal judge last week rejected a motion to overturn the convictions of five former executives of General Re Corp. and American International Group Inc. found guilty in March of helping AIG inflate its loss reserves with a sham reinsurance deal.

U.S. District Judge Christopher Droney also denied a motion for a new trial for the executives: Ronald Ferguson, former Gen Re chief executive officer; Christopher Garand, former Gen Re senior vp in charge of U.S. finite underwriting; Robert Graham, former Gen Re senior vp and legal counsel; Elizabeth Monrad, former Gen Re chief financial officer; and Christian Milton, AIG's former vp of reinsurance.

A jury in March convicted the defendants on all charges against them, including conspiracy, securities and mail fraud, and making false statements to securities regulators (www.businessinsurance.com/GenReTrial).

Last week, Judge Droney ruled that there was sufficient evidence at trial to support all counts of conviction against the former executives and rejected their motions for acquittal and a new trial.

Among other arguments, the defendants claimed that no rational jury could have found AIG's misstatements about its loss reserves to be material. They also argued that the various defendants should have been tried separately.

In regard to the misstatements, Judge Droney said that although the \$500 million of loss reserves at issue could be "quantitatively insignificant" when viewed in the larger context of AIG's overall business, there was sufficient evidence at trial for a rational jury to find

that the misstatements were material.

Several witnesses at trial testified about the importance that AIG's investors placed on the amount of the company's loss reserves, changes in the amount of loss reserves and the effect of declining loss reserves on earnings, Judge Droney noted in his opinion.

In addition, the government presented evidence that the loss portfolio transaction was initiated to counteract industry analysts' negative reactions to AIG's reported third-quarter 2000 decline in loss reserves.

"From this evidence, the jury could have inferred that management at AIG, assisted by management at Gen Re, intended to deceive AIG's investors about the true state of AIG's loss reserves to quell market criticism," Judge Droney ruled.

A jury also could have considered AIG's stock drop following news that regulators were investigating the reinsurance deal as evidence that supported the significance of the misstatements to investors, he added.

Judge Droney also ruled that the defendants' trial rights were not violated as a result of their joint trial.

Although the defendants did not present identical defenses and some evidence was admitted against only certain defendants and not others, it did not cause substantial prejudice to any defendant that warrant separate trials, the judge said.

The five former executives are awaiting sentencing. The original May 15th sentencing date has been postponed and no new date has been set, according to a clerk in Judge Droney's office.

Attorneys for the former executives either declined to comment or could not be reached.



AP PHOTOS

The pollution exclusion in a D&O policy bars pollution-related losses, but not all pollution-related claims, a Canadian appeals court ruled.

Policyholder wins cover in Canadian D&O case

Court ruling limits scope of pollution exclusion

By GLORIA GONZALEZ

TORONTO—The first Canadian appeals court decision to examine how a pollution exclusion in a directors and officers policy applies to a securities claim has gone firmly in favor of the policyholder.

Risk managers, though, must be vigilant, as insurers responding to the decision are expected to tighten their policy language to ensure that pollution exclusions limit coverage as intended.

The coverage dispute in *Boliden Ltd. vs. Liberty Mutual Insurance Co.* began with an April 1998 environmental disaster when a tailings dam collapsed, releasing toxic waste and contaminating the surrounding land at a zinc mine in southern Spain that was owned by a subsidiary of the mining company.

Shareholders sued Boliden and its directors and officers in Ontario and British Columbia later that year for alleged misrepresentations in its 1997 initial public offering on the

Toronto Stock Exchange.

Boliden, which was based in Toronto and later moved its headquarters to Stockholm, Sweden, advised Liberty Mutual of the securities class actions and sought indemnification under its D&O policy. The insurer, however, denied the claim for any part of the loss, including more than \$3 million in defense costs of the directors and officers, relying on the pollution exclusion in the policy, court papers say.

In April, the Ontario Court of Appeal rejected Liberty Mutual's claim that the pollution exclusion in the D&O policy should be read as excluding all losses arising from a claim that relates to or involves a pollution loss. The court agreed with a lower court's determination that the clause excluded pollution-related losses, not pollution-related claims, and applying the exclusion clause required considering whether

See **RULING** page 23



San Francisco Mayor Gavin Newsom held a news conference last week to celebrate the California Supreme Court's ruling that overturned a law that banned same-sex marriages, a ruling he sparked with a 2004 order to revise marriage license application forms to remove gender or sexual orientation.

Calif. ruling sanctions same-sex marriages

Most employers already cover domestic partners

By JUDY GREENWALD

SAN FRANCISCO—California last week became the second state to recognize same-sex marriages, but the change is not expected to have a significant effect on most employers' benefit plans.

Observers note that California already has a comprehensive domestic partnership law that essentially extends the same rights and responsibilities of married couples to registered domestic partners. Changes that California employers have already made in response to that law diminish the impact of last week's decision by the California Supreme Court overturning a law that banned same-sex marriages. The ruling is effective 30 days from the May 15 court decision.

In addition, the California Insurance Equality Act, which went into effect in 2005, already requires policies offered by commercial health insurers to provide equal coverage to spouses and registered domestic partners, although self-insured companies are exempt under a pre-emption provision in the Employee Retirement Income Security Act.

Jay Kirschbaum, vp-national director in Willis Group Holdings Ltd.'s legal and research group in St. Louis, said: "From a macro perspective, (the ruling is) almost a non-issue. I think most employers in California already cover domestic partners of their employees in a very broad way, even broader than they would be required to under the California law."

"I think most employers, even with self-funded plans, cover domestic partners and cover them on a pretty broad basis as well," said Mr. Kirschbaum. Few have relied on the ERISA exemption, he said.

Johan DeKeyzer, an Irvine, Calif.-based senior vp with Aon Consulting, said that while there is variation based on the industry and size of the firm, he estimates close to 60% of California employers offer domestic partner benefits.

With the California Supreme Court's 4-3 decision last week, California joins Massachusetts in allowing same-sex marriages. However, efforts already are under way to put a measure on November's ballot that would change the state constitution to effectively overturn the ruling.

Declaring current law barring such unions unconstitutional, the court said in its ruling that the "substantive rights of two adults who share a loving relationship to join together to establish an officially recognized family of their own...constitutes a vitally important attribute of the fundamental interest in liberty and personal autonomy that the California Constitu-

tion secures to all persons for the benefit of both the individual and society."

The opinion says that under current statutes, a distinction is drawn between the official family relationship of opposite-sex couples, which is "marriage," and that for same-sex couples, which is "domestic partnership."

"Assigning a different designation for the family relationship of same-sex couples, while reserving the historic designation of 'marriage' exclusively for opposite-sex couples, poses at least a serious risk of denying the family relationship of same-sex couples of such equal dignity and respect," the decision states.

"We therefore conclude that although the provisions of the cur-

See **MARRIAGE** page 6

Physicians object to Sierra purchase

Associations seek federal court review of \$2.6 billion UnitedHealth deal

By GLORIA GONZALEZ

WASHINGTON—The possibility of a federal court overturning the Justice Department's approval of UnitedHealth Group Inc.'s proposed acquisition of Sierra Health Services Inc. is extremely unlikely but could happen, antitrust lawyers say.

Federal courts usually defer to the Justice Department when reviewing proposed settlements of antitrust issues, although in limited cases they have rejected the agency's proposals.

The American Medical Assn., Nevada State Medical Assn. and Clark County Medical Society in Nevada jointly filed comments last week with the Justice Department

and the U.S. District Court for the District of Columbia that seek a court review of the deal.

In February, the Justice Department approved Minnetonka, Minn.-based UnitedHealth's \$2.6 billion acquisition of Las Vegas-based Sierra after UnitedHealth sold part of its Medicare Advantage health maintenance organization.

The Justice Department's approval is inconsistent with its past enforcement actions that required health insurers to make larger divestitures and fails to fully address anticompetitive concerns in the Nevada insurance market, according to the physician organizations.

"I think that raises a very serious

concern about whether or not the Justice Department's action is inadequate," said David Balto, former policy director of the Federal Trade Commission and an antitrust attorney in Washington representing the physician groups.

A UnitedHealth spokeswoman said in an e-mail statement that the deal has been approved by state and federal authorities and the company believes the concerns raised are without merit.

Opponents of the deal have made a good case but face several hurdles, including the Justice Department's unusually long 11-month review, which could reassure the court it

See **AMA** page 6

Private companies urged to buy D&O

Protection needed when acquisitions go awry, families argue: Lawyer

By COLLEEN MCCARTHY

NEW YORK—Directors and officers of private companies rarely have D&O insurance but should consider the cost-effective coverage to minimize their risks, a lawyer says.

Directors and officers of private companies can face lawsuits by employees, vendors, customers, shareholders, investor groups and federal regulators. Other claims can arise as a result of mergers and acquisitions, bankruptcy or disputes between family members who share ownership of a company, Spiro Bantis, a partner at London Fischer L.L.P. in New York, said at the Fourth Annual Directors and Officers Insurance Execusummit in New York May 6-7.

It's a common misconception that private directors and officers do

not need this level of protection, but directors and officers of private companies still are subject to liability for their decisions and actions, Mr. Bantis said.

CONTINUED COVERAGE: Soft market prompts insurers to offer more favorable terms, but buyers must ask for them. **PAGE 23.**

officers breached their duties to the shareholders by mismanaging the company's affairs, or by self-dealing to the detriment of the company, or by treating the minority shareholders unfairly in a buy-out or merger situation," he said.

Private company D&O insurance would cover claims that arise from alleged wrongdoing by directors and officers in their corporate capacities. Unlike its public company counterpart, coverage in a private company D&O policy is much broader and is generally considered all-risk because the protection extends to the employees and the organization itself, Mr. Bantis said.

Private company D&O policies generally cover claims other than bodily injury, defamation and property damage, he said.

Currently, one of the biggest factors influencing a company's decision to purchase a private D&O policy is the policy's employment practices liability component. However, less than half of all claims made

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Insurance buying process evolves

Details change, but keys players need to work on communication skills

By KRISTIN GUNDERSON HUNT

CHICAGO—Relationships among insurance buyers, brokers and underwriters are changing, all the while they staying the same, according to a panel of industry experts.

Discussing the theme, "Odd Couples or Strange Bedfellows: Can This Relationship Survive?" at the annual Harold H. Hines Jr. Memorial Symposium last week in Chicago, panelists explored topics relating to the insurance-buying process.

Advances in technology and the evolution of the Internet have increased buyers' access to information and, as a result, the role of the broker will likely change in the future, said Rod Fisher, senior vp and division manager of the central division for Factory Mutual Insurance Co., which does business as FM Global, in Park Ridge, Ill.

There likely will be a shift from the broker being the facilitator of a transaction itself and more toward purely providing advice, he said.



'Regardless of how the market changes, there will always be a place for the broker.'

Tim Kelly, Lockton Cos. L.L.C.

"It will become easier for buyers to access information about markets and market trends," he said. "We're bombarded with information, so it's fairly easy to tap into what's going on in the market."

Tim Kelly, president and chief executive officer of the Houston office of Kansas City, Mo.-based brokerage Lockton Cos. L.L.C. and

director of Lockton's National Financial Services Practice, said while the role of the broker might eventually change, he does not think the broker will vanish from the transaction process entirely. He said clients will always need experts for guidance, no matter how much information with which they are armed.

"You can be an expert in many things, but not all things," he said. "Regardless of how the market

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Marriage: California court OKs same-sex unions

CONTINUED FROM PAGE 4

rent domestic partnership legislation afford same-sex couples (with most of the substantive elements embodied in the constitutional right to marry, the current California statute nonetheless must be viewed as potentially impinging upon a same-sex couple's constitutional right to marry under the California Constitution," the court reasoned.



The decision had its origins in 2004, when San Francisco Mayor Gavin Newsom directed the city clerk to revise marriage license application forms so that licenses could be provided without regard to gender or sexual orientation.

At that time, the Supreme Court held that this activity was unlawful in the absence of a court ruling that California statutes limiting marriage to a union between a man and a woman were unconstitutional. The subsequent legal proceedings included a ruling by a lower court in favor of same-sex marriage that was later reversed by an appellate court.

In light of the ruling, employers need to review the language of their benefits plans, consultants say.

J.D. Piro, an attorney with Hewitt Associates Inc. in Norwalk, Conn., said, "Employers should take a look at the definition of a 'spouse' under their plan to determine whether a same-sex spouse is entitled to enroll under the plan's terms." For example, if the plan language states that a spouse is defined by the federal Defense of Marriage Act, under which only opposite-sex unions are recognized, the employer must decide whether to change that language in determining "what benefits to offer—and then document that decision," he said.

Mr. DeKeyser of Aon Consulting said: "If, for some reason, there is a moral or philosophical debate at the organization and they feel strongly about changing the (health plan) eligibility criteria of their plan they can definitely do so" and exclude individuals by changing the definition of "spouse."

Observers note that as a result of California's comprehensive domestic partner law, employers may not necessarily have to make extensive changes to their current plan.

Employers, for instance, have already extended the California Family Rights Act, which provides time off for employees whose spouses have serious health conditions, to registered domestic partners, said Jamerson C. Allen, an attorney with Jackson Lewis L.L.P. in San Francisco.

In re Marriage Cases, Supreme Court of California, S147999, May 15, 2008

Michigan bars same-sex benefits

Public employers making benefit plan changes to get around ruling

By JUDY GREENWALD

LANSING, Mich.—Michigan public employers that have not already altered their benefit plans to preserve health insurance coverage for employees' same-sex domestic partners are now mulling that approach in light of the state supreme court's decision barring such benefits.

Institutions that have already revised their benefit plans generally addressed the expected decision by expanding eligibility to include anyone—of either the same or opposite sex—residing with the employee for at least 18 months who is not a dependent.

Observers note relatively few employees had taken advantage of domestic partner policies to begin with, and even expanding eligibility has not materially increased employers' benefit costs.

The court's 5-2 decision in *National Pride at Work Inc. vs. Governor of Michigan* earlier this month upholds a 2007 appellate court decision, which had overturned a lower court ruling.

The focus of the decision is the 2004 marriage amendment to the Michigan constitution, which says "the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose." The employment-related impact of the amendment was limited to public employees.

A domestic partnership is a union similar to marriage, says the majori-

ty opinion in barring same-sex domestic partner benefits. "A union does not have to possess all the same rights and responsibilities that result from a marriage in order to constitute a union 'similar' to that of marriage," the opinion states. Furthermore, "for any purpose," it says, "obviously includes for the purpose of providing health-insurance benefits."

The opinion notes that none of the decisions from other states on this issue "involves the specific language contained in Michigan's marriage amendment."

But the dissenting opinion says the amendment's language "itself prohibits nothing more than the recognition of same-sex marriages

'We believe our current policy completely complies with the Supreme Court decision.'

Louis Lessem, Wayne State University

or similar unions. It is a perversion of the amendment's language to conclude that, by voluntarily offering the benefits at issue, the public employer recognizes a union similar to marriage."

Public employers including the city of Ann Arbor, Mich.; Ingham County; Ann Arbor Public Schools; the University of Michigan in Ann Arbor; Michigan State University in East Lansing; and Wayne State University in Detroit have in recent years expanded their domestic partner same-sex health care benefits policies by offering benefits to any domestic partner of a certain duration, generally 18 months.

Central Michigan University in Mount Pleasant is still developing a policy. A spokesman for Saginaw Valley State University in University Center said the school has been awaiting the opinion before making

any changes to its policy. Northern Michigan University in Marquette, which still has a same-sex domestic partner program under some of its union contracts, has not yet taken any action, said a spokeswoman.

"We've had to completely rewrite the benefit," following the appellate court decision, said Matthew Myers, controller/administrator for Ingham County in Mason. The county expanded its definition of who was eligible for benefits from married couples and same-sex partners to "other qualified adults," who could include opposite-sex partners, said Mr. Myers.

In fact, said Mr. Myers, the current policy is more restrictive than the previous domestic partner policy because it requires that the partner have lived with the employee for at least 18 months, while employees also have to present evidence of financial commitments such as a life insurance policy, checking or savings account, or proof of joint vehicle ownership. Previously, all these employees had to do was present their partner and they were permitted to sign up for the domestic partner benefit, said Mr. Myers.

"We believe our current policy completely complies with the Supreme Court decision, and so we think we're in pretty good shape for continuing that policy," said Louis Lessem, vp and general counsel at Wayne State University.

"We're still reviewing the opinion" to see if Ann Arbor's policy complies, said city attorney Stephen K. Postema.

"If you broaden the definition" of who is eligible for coverage "so it's no longer similar to marriage, then you probably do have a pretty good argument that it passes constitutional muster under the Michigan constitution," said J.D. Piro, an attorney with Hewitt Associates Inc. in Norwalk, Conn.

National Pride at Work Inc. vs. Governor of Michigan, No. 133429, Michigan Supreme Court May 7, 2008

AMA: Physician groups oppose Sierra purchase

CONTINUED FROM PAGE 4

was thoroughly vetted, said Michael Cowie, a partner in the antitrust practice group of Howrey L.L.P. in Washington and a former assistant director of the Federal Trade Commission's Bureau of Competition.

"The AMA made a substantial submission that the court will review and consider, but it remains highly likely that the district court will bless the Justice Department's settlement," Mr. Cowie said.

In more than 90% of cases, the federal court has approved the Justice Department's enforcement action, he said.

The court's discretion to reject

the settlement is fairly limited, said Mark Ostrau, a partner and co-chair of the antitrust practice of Fenwick & West L.L.P. in Mountain View, Calif. "They can only reject it if the deal completely misses the mark," he said.

In some cases, the courts or the Justice Department have made minor modifications to proposed settlements in response to submissions received during the comment period, lawyers say.

"It's extremely rare that the settlements get rejected," Mr. Ostrau said. "It's likely over."

"It's not that common, but this is a pretty uncommon merger," Mr. Balto said.

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Business Insurance OPINIONS

Unlimited COBRA an ill-advised notion

WE CAN UNDERSTAND why congressional Republicans want to improve their image as a party that is committed to supporting legislation that will help families.

Given the dramatic demographic changes that have occurred over the past few decades—for instance, a majority of mothers with young children now work outside the home—a political party that isn't perceived as family-friendly runs the risk of alienating a big block of voters.

That fear, no doubt, is the reason why the House Republican leadership last week unveiled what it calls "The American Families Agenda," which is a listing and description of the bills Republicans have introduced to aid families.

We don't know how much time Republican leaders devoted to analyzing which proposals belonged on their agenda, but clearly there is one measure on the list that that shouldn't be there: a bill introduced by Rep. Charlie Dent, R-Pa., that would allow COBRA beneficiaries to

Should an employer face financial exposure for decades of health care claims incurred by such short-service employees?

retain health care continuation coverage indefinitely, effectively removing the current 18- and 36-month limits on coverage.

From the beginning, we have supported COBRA. We don't think it is unreasonable to require employers to extend health care coverage to former employees and their dependents for a reasonable period of time. Such coverage can be a vital bridge, ensuring that individuals have coverage until they are covered under a new employer's health plan or, for older individuals, become eligible for Medicare.

But allowing indefinite COBRA coverage exceeds anything close to what could be considered reasonable. Take the case of an employee who quits after one month. Should that individual and his or her family have the right to what could be decades of COBRA coverage? Should an employer face financial exposure for decades of health care claims incurred by such short-service employees?

The answer clearly is no. There are plenty of ways Republicans can show their support for families, but endorsement of this measure isn't one of them. It should be removed from their family agenda.

Adult dependent cover worth the modest cost

A GROWING NUMBER of states have passed legislation that requires employer health plans to offer coverage for employees' adult dependent children—generally those in their 20s—for a longer period of time.

The new laws address a real-world problem: child dependents losing group health coverage when they reach a certain age. Typically under state insurance laws, children are no longer considered dependents after they turn 19, or 23 if they are full-time students.

The state laws extend the age that dependent children can hang on to coverage, typically by a year or two.

We think the small added cost—if any—to employers is outweighed by the benefits of such an extension. With the cost of coverage so much lower for the group market compared with the personal lines market, more young people will stay in their parents' group plan. That will mean a reduction in the number of uninsured and, with that, less uncompensated care incurred by health care providers and less cost-shifting to insured patients.

These measures, if they are successful, will only slightly reduce the number of uninsured. But even small steps taken to address such a big problem are worth taking.



BI beats list

In an effort to ensure continuing timely coverage of risk management, insurance and benefit-related news, Business Insurance has formalized a list of its reporters' assigned beats. This list is not intended to be exclusive but rather to represent core subject areas of importance to BI readers. BI welcomes ideas and tips from readers on these and other areas. Following is a list of the beats and the principal reporters for each:

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Joanne Wojcik.

Benefits—retirement savings/pensions:
Jerry Geisel.

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Gloria Gonzalez.

Commercial auto:
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Environmental risk management: Sally Roberts.

Federal regulation/legislation—benefits:
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Industry Focus: Rodd Zolkos, Meg Fletcher.

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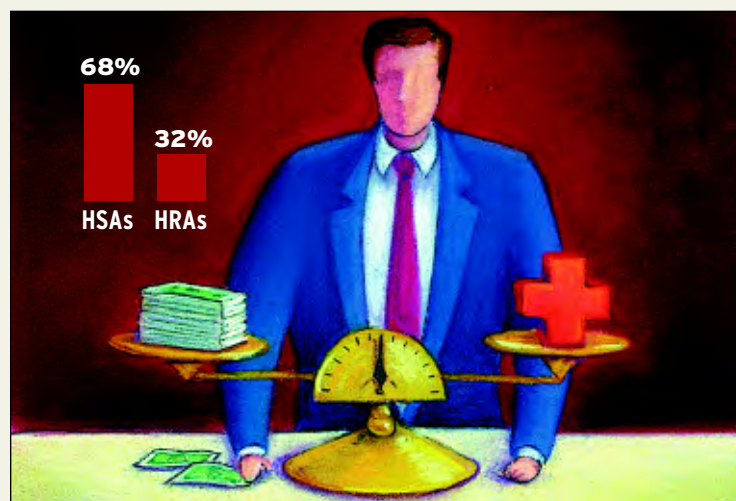
Tort reform: Mark A. Hofmann.

Work/life benefits and EAPs: Sally Roberts.

Workers compensation:
Roberto Cenicerros.

Online Poll at www.businessinsurance.com

Which consumer-driven health care plan—a health savings account-based plan or a health reimbursement arrangement-based plan—does a better job of controlling costs?



NEXT WEEK'S POLL: Are mandates extending the age that employer health plans must cover dependent children too burdensome?

BI Online Poll tool sponsored by Wausau Insurance Cos.

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BP P.L.C. said it will be late 2008 before oil and natural gas production starts on Thunder Horse, the world's largest floating oil platform, to recover from 2005 damage (above) caused by Hurricane Dennis. BP said extraordinary testing found components of the subsea system had to be replaced.

AP PHOTOS

SECTOR BRIEFING

ENERGY

Oil industry rethinks retention vs. transfer

Despite increased windstorm capacity, petroleum producers 'used to taking risk'

By **DAVE LENCKUS**

After operating with sheared windstorm coverage for two hurricane seasons, many owners of oil production platforms and drilling rigs in the Gulf of Mexico are not securing the additional capacity available this renewal season, market executives report.

While underwriters are offering up to \$100 million of additional limits by some estimates, market capacity remains just a fraction of its robust total four years ago.

But many risks, emboldened by their risk management measures and strong balance sheets, still are not buying all the limits they could during the January-to-June renewal period, when up to 90% of platform and rig owners and operators renew their coverage, market executives say.

"Some clients have taken a completely different view on how to manage those risks, and it doesn't include the insurance markets," said broker John Keely, a senior vp and the director of exploration and production at Aon Natural Resources Group of Aon Risk Services Southwest Inc. in Houston.

"They're looking at it in terms of 'insurance is not my only option,'" said broker Jim Pierce, a managing director and the chairman of the Houston-based Marsh Global Marine &

Energy unit of Marsh Inc.

As they have the past two years, hurricane forecasters predict an active 2008 season. The last two seasons, however, have been relatively benign, though two Category 5 hurricanes hit the southern Gulf last year. But after blowing across the Yucatan Peninsula on their way to Gulf, the storms lost much of the energy needed to whip up waves, which are the main menace for oil platforms and rigs.

STANDARDS: Industry lauds new federal rules governing oil platform building to trim the risks from hurricanes. [Page 12](#)

Before the destructive 2004 and 2005 hurricane seasons, owners of oil production and drilling rigs could purchase enough limits to cover all of their facilities. At the time, worldwide capacity was \$2 billion to \$3 billion, market experts estimated.

After the 2005 hurricane season, however, windstorm capacity shrank to between \$200 million and \$250 million, experts said.

Insurers offered some additional capacity last year, and insurers' two-year respite from losses gave them profits they needed to offer up to \$100 million of additional capacity this year, market executives said.

Buyers can purchase up to \$450 million of windstorm limits by some estimates, with

about \$50 million to \$150 million of that from operators' and owners' core property/casualty insurers and the rest from excess insurers.

In the excess market, more capacity is available this year from new market entrants, experts note. In addition, a startup Bermuda-based facility plans to offer windstorm coverage beginning in June, brokers and insurers report.

Members of Bermuda-based mutual insurer Oil Insurance Ltd. also can purchase up to \$250 million of windstorm coverage. But those limits are subject to the facility's \$750 million aggregation limit, which means OIL members would have to split the aggregate limit if a storm caused widespread losses in the Gulf.

At the same time, windstorm rates are down 5% to 20%, market experts said.

Accounts that sustained big losses in 2004 and 2005 and were tagged with big rate hikes now are negotiating major reductions if they had two good loss years, said Frank Costa, the New York-based president of the AIG Oil Rig division of AIG Global Marine & Energy, a unit of American International Group Inc.

Even steeper rate cuts are possible "if you're

See **WINDSTORM** next page

INSIDE

TALENT SHORTAGE SQUEEZES PETROLEUM INDUSTRY AS SAFETY CONCERNS MOUNT
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Q&A WITH STATOILHYDRO EXEC ON RISING EXPOSURES, PRICES AND POLITICAL RISKS
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Windstorm: Energy producers retain more risk despite greater capacity

CONTINUED FROM PREVIOUS PAGE

willing to move your business to a new market," Aon's Mr. Keely said.

"The market is definitely softening," Mr. Costa said.

"It's definitely an easier year than last year," Mr. Keely agreed. "However, that's a relative term when you consider where we came from."

"Adequate wind limit is available" for most risks, said Chris Pluchino, a Houston-based vp-marine energy and engineering for the Liberty International Underwriters unit of Liberty Mutual Group Inc.

Based on LIU studies, "wind lim-

its seem to be adequate for one event in a season," Mr. Pluchino said.

Of course, there could be more than one devastating hurricane in a season. That was what hardened the windstorm market after 2004 and especially 2005, when record-setting Rita broke the previous record for oil platform and rig damage in the Gulf that was set less than a month earlier by Katrina, Mr. Pluchino noted.

Even after the rate cuts, the cost of coverage remains many times higher than it was before 2004, according to market experts.

So owners and operators of oil

platforms and rigs are counting on the risk management lessons learned during 2004 and 2005 (see story, page 12) and their stronger balance sheets to prevent losses and finance their risk.

Indeed, many owners and operators are not buying all the limits they could, market executives say.

'A little smarter'

"Buyers and insurers alike have become a little smarter about these coverages," said Bertil Olsson, an executive vp and the Houston energy practice leader for Willis Group Holdings Ltd.

When blanket limits were avail-

able and the cost of coverage was cheap, "why spend a lot of time looking at it?" Mr. Olsson said.

Now, buyers are looking much more closely at their balance sheets and are "buying what they can from the market at what they deem a reasonable amount," Marsh's Mr. Pierce said. "That may be the biggest difference in buyers' mentality in 2008 vs. 2006 and 2007."

Some buyers considered catastrophe bonds but determined they were not feasible for a variety of reasons, though the cost and required multiyear commitment to the instruments drove away most buyers, Mr. Olsson said.

Oil production companies "better understand the exposure" today than they did a few years ago, said Reed Wykes, director of risk management for Parker Drilling Co. in Houston. Mr. Wykes was in the process of renewing the company's coverage in late April and did not want to say how much windstorm coverage he sought.

For example, he said, last year's hurricane season indicated that equipment off the Yucatan Peninsula is not as exposed as equipment elsewhere in the Gulf. "It changed the way we looked at storms in the southern Gulf of Mexico vs. the northern Gulf of Mexico," he said.

But whether buyers have struck the right balance between risk transfer and retention is "where the rubber hits the road" in 2008, Mr. Pierce said.

"Everyone has a plan until they get hit," he said, paraphrasing former world heavyweight boxing champion Mike Tyson.

"If Katrina and Rita manifested themselves in the summer of 2008, there'd be a lot of second-guessing," Mr. Pierce said. After limiting its exposure to windstorm losses, the insurance market would not "be brought to its knees," but some buyers' balance sheets "would be more exposed than anticipated."

"But the decision is theirs, as it should be. I am not going to second-guess clients' decisions," Mr. Pierce said.

Choosing not to purchase all available windstorm insurance capacity is risky, "but the (oil production) business is risky to start with," said Willis' Mr. Olsson, noting that drilling a hole could cost up to \$30 million with no guarantee it will produce oil. "They're used to taking risk."

Still, "whoever gets hit will have to answer to management about why they took such a big hit," Parker Drilling's Mr. Wykes said. As a result, some companies will ask for more windstorm coverage next year, but some will buy even less, he said.

If the 2008 hurricane season is mild, a year from now underwriters likely would offer even more windstorm capacity at lower rates, experts said.

Buyers then could face another coverage decision: retain the same amount of their windstorm risk or shift more of it back to the insurance market.

However, if rates fall too much owners of capital might find a different market to earn a better return, Aon's Mr. Keely said.

Even if this year's hurricane season is mild, market conditions could change quickly because of the rapidly increasing cost of rebuilding platforms and rigs, which largely is driven by labor shortages.

"With values going up so drastically, it really doesn't take much to produce a big loss," Mr. Olsson said.

In addition, underwriting results worldwide will factor into the market for Gulf of Mexico risks, AIG's Mr. Costa said.

"There will be another 2005," Mr. Costa said. "It may not be this year or next," but buyers and insurers will face another tough loss year again, he said.

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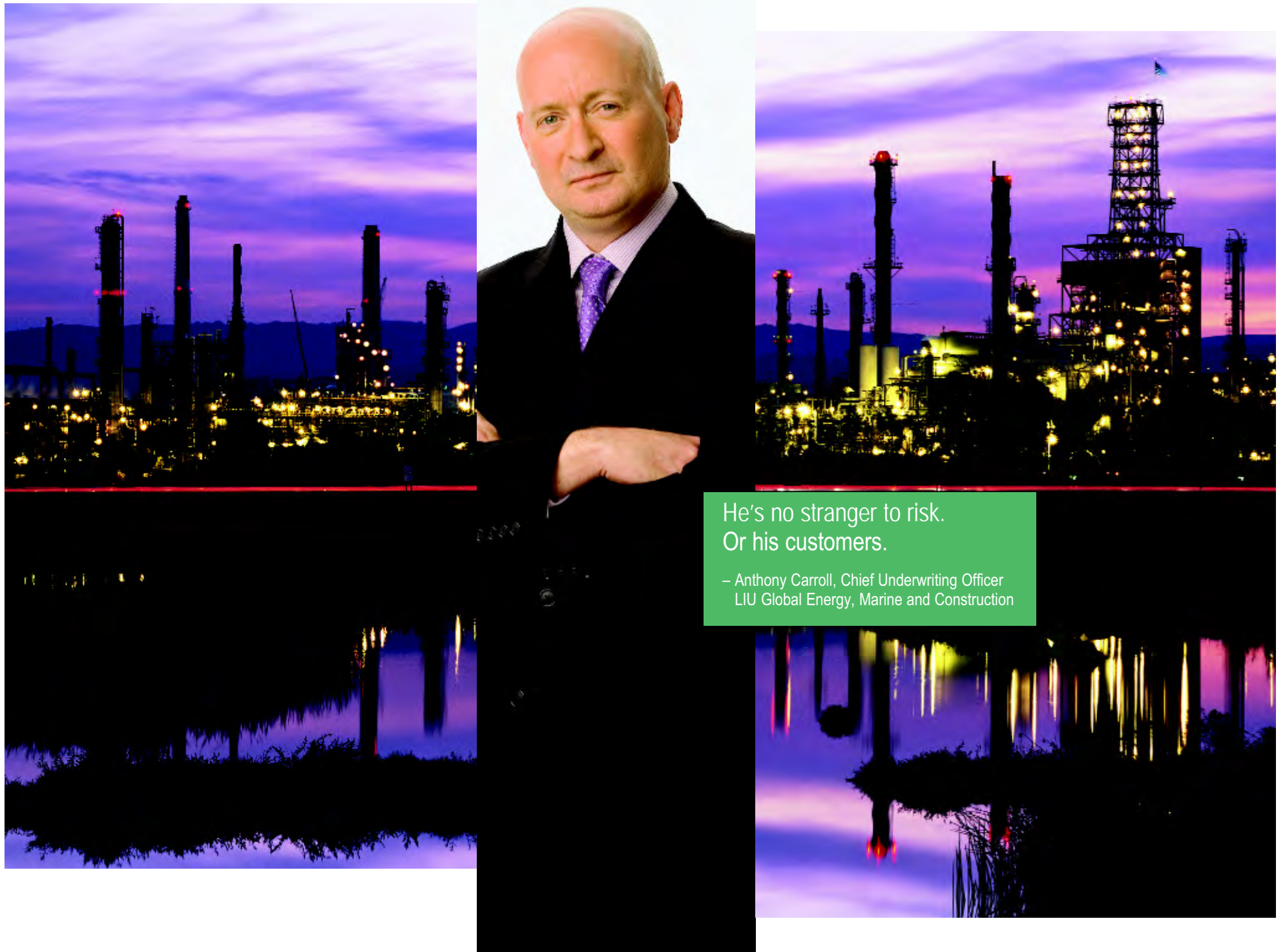
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Hurricanes provide lessons in risk management

Katrina, Rita and Charley were more than destructive forces of nature. Those hurricanes and others that barreled through the Gulf of Mexico in 2004 and 2005 were teachers.

The risk management lessons that the oil production industry learned from them has convinced many owners and operators of oil production platforms and drilling rigs that they can afford to cut their insurance costs by retaining far more risk.

Hurricane-inflicted damage during 2004 and 2005 included

the destruction of 123 fixed structures and one floating unit and damage to dozens of other structures, according to the U.S. Minerals Management Services, a division of the U.S. Department of the Interior.

But under and between the toppled and twisted metal, there were lessons for the oil production industry on how they can design structures on the outer continental shelf to better withstand hurricane-fueled waves, winds and storm surges. The MMS, the American Petroleum

Institute and individual industry members collaborated on developing those lessons, and the MMS issued its final rule in the April 15 U.S. Federal Register.

The rule, which incorporates various API bulletins on hurricane preparedness, became effective May 15.

Insurer and broker executives say just a few of the measures would reduce hurricane risks measurably:

- Build platform decks high enough to withstand 100-year storms. The deck should sit about 45 feet above the Gulf's water surface, they said.

- Remove idle iron. Wells that no longer are producing should be immediately plugged, and the conductor piping between the well and the platform should be removed so there is less structure for waves to crash into. The procedure would improve the survivability of the platform and avoid the costlier effort of plugging wells after a storm has deposited twisted iron on top of them.

- Add bracing to the platform structure.

- Secure rigs with 12 anchors, instead of eight.

—By Dave Lenckus



An oil platform in the Gulf of Mexico was ripped from its mooring in August 2005 after Hurricane Katrina passed through the area.

AP PHOTO



LANDOV

As oil companies compete for workers at all levels, recruiting has become more difficult, which may be due in part to the industry's lackluster image. Above, workers inspect a pipeline at an oil field in China.

Oil industry grapples with labor shortage

Loss of older workers could increase safety risks

By MICHAEL BRADFORD

Oil companies have found that soaring prices are a double-edged sword. The revenue provides resources to meet unprecedented global demand for petroleum but also makes the need for skilled labor even more pressing.

As oil companies scramble to keep up, they compete for workers at all levels and find them hard to find in an industry where the average age is as high as 47 by some estimates. This means a wave of retirements is not far off and that could leave oil companies with less experienced employees who are more prone to safety mistakes, experts say.

Recruiting workers has become difficult, sources say, partly because the oil business has lost much of its glamour. It also has a history as a boom-and-bust industry, which scares some workers away, experts say.

"There are massive shortages when you are talking about labor for the energy market," said Andrew George, managing director of Marsh Inc.'s marine and energy practice in Dubai, United Arab Emirates.

A big problem for many energy companies is a lack of qualified university graduates to fill open positions, said Mr. George and others. "There are a lot fewer qualified engineers coming out of university," he said.

Other professions 'flashier'

The shortage is acute for senior engineers, and petroleum companies also need middle managers, said Anna Marie Detert, senior consultant with Towers Perrin in London. "In the past, petrochemical engineering had been very successful in attracting graduates," she said.

But that has changed as professions such as financial services and technology are seen as flashier and more challenging than oil compa-

nies, experts say.

"It is less of a sexy industry than it used to be," Ms. Detert said of the oil business, and students are not as attracted to the jobs.

Students have decided to focus on areas they view as more exciting, Mr. George said, and many avoid the petroleum industry because they fear the cyclical nature of the business that could leave them unemployed.

Others say the talent shortage extends beyond engineering and management.

"I think here, in the (Middle East), it is pretty much across the board," said Mohammed

'There are massive shortages when you are talking about labor for the energy market.'

Andrew George, Marsh Inc.

Benayoune, who operates an office in Oman for consulting firm Achievement Centre International, which is based in Toronto. "People tend to mention operational and maintenance most of the time. From my experience, though, it is across the board."

Middle East companies are losing expatriate workers from places such as India as they return home to improving economies, Mr. Benayoune said. "So the pool is shrinking as the number of projects is increasing. Companies are poaching each other's people, offering high salaries. But this will make things much worse in the long run."

Energy companies have, to an extent, brought on the problem themselves, according to Energy

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Questions Answers

Soaring petroleum costs and increased demand have meant greater risks for energy companies. As the value of their product rises, so do their business interruption exposures. Compounding the challenge for energy industry risk managers is a shortage of skilled labor, which brings its own set of problems. Gaute Samuelsen, head of captive and corporate insurance at energy producer Statoil-Hydro ASA in Stavanger, Norway, talked with Business Insurance Europe Senior Reporter Michael Bradford about risk management issues in the current marketplace.



Energy industry faces heightened exposures

Q. Has the rising cost of petroleum had an impact on your company?

Of course. There are the indirect effects. With the high price, there is more activity. Replacement costs and offshore expenses are also increasing along with values. The direct effect is the business interruption exposure. We need to think about alternative capacity for that.

Q. Is capacity a problem for the rising business interruption exposures?

It could be a problem for the combined property damage/business interruption risk. If we were to insure 100% of our exposure, there would definitely be a capacity issue. We have chosen a net present value approach for our combined property damage and business interruption risk.

Q. Have your insurance costs risen along with the price of oil? If so, how much?

Absolutely. How much is not the easiest question to answer. We merged with Hydro (Statoil and Norsk Hydro A.S.A. merged their oil and gas operations last October), so we have a very different portfolio compared to a year ago. Insured values are increasing every year and so the cost of insurance is increasing as well, even if we are experiencing a softening insurance market.

Q. How do you handle the additional stresses on manpower and equipment brought on by increased production?

We have maintenance programs in place that we follow all the time. We see in the North Sea and other regions that finding skilled labor is a big problem. Because of

that, new projects take a lot longer to complete than we would hope for. But the labor shortage is just one element; there is a shortage of rigs, vessels, everything.

Q. Have there been changes to safety regulations, particularly after the March 2005 explosion at the BP P.L.C. facility in Texas?

Being a North Sea operator, we have worked under a different regime for many years. But I do feel that the regulatory part is receiving more attention. This is also because of the Statoil merger with Hydro. We do not have two large companies competing with each other any longer (in Norway) and that may be of interest to the regulatory people.

Q. Is political risk more of a factor in your operations than in prior years?

Absolutely. As a national oil company looking for international projects more and more, the political aspect is a greater part of it. Oil tends to be where there is political instability. We take that into consideration in our efforts to grow.

Q. Is political risk insurance widely available?

For some countries, it is difficult. For others, it is available but somewhat limited. It is not easy to put political risk insurance in place, not the least because of the detailed information requirement from insurers. It takes a long time to implement.

Labor: Oil companies scramble for skilled workers during shortage

CONTINUED FROM PAGE 12

Market Review published by London-based Willis Group Holdings Ltd. earlier this year. When oil prices crashed in 1986, oil companies stopped investing in graduate engineers and supporting institutions that educated them, the report states.

A shortage of jobs at the time caused graduates to lose interest in the petroleum industry, the report says, and now energy companies find themselves with an alarming gap of qualified engineers.

Oil companies that 15 years ago would have had an engineer involved with a project from conception through perhaps four years of its operational cycle now are challenged to find engineers willing to commit to lengthy projects in a highly competitive labor market, the report states.

"During the downturn of the 1980s, all of the oil companies

turned off recruitment," said John Savage, head of transaction advisory services, oil and gas, at Ernst & Young L.L.P. in London. "That was then compounded in the late 1990s by megaconsolidation, when a lot of people left the industry."

"In the late 1990s, oil companies were in the mode of laying people off," said Marsh's Mr. George. "Many workers that were 51 or 52 and had a nice retirement package never came back."

Some experts say the coming retirement of aging workers could leave oil companies vulnerable to an increase in accidents as younger and less experienced workers become a larger portion of the workforce.

Companies lose a lot of knowledge about best practices when a lot of older employees retire, said Ms. Detert. "If you lose too many senior people too quickly, there could be safety risks," she added.

'When you have to work really hard to source people, sometimes people are put into jobs that are too big a step up for them.'

John Savage, Ernst & Young L.L.P.

"That is a problem," Mr. George agreed. "You can lose a generation of experience overnight."

"I do not think there are demonstrable patterns" yet of safety problems related to the loss of experienced personnel, Mr. Savage said. "But these are the things that worry people. When you have to work really hard to source people, some-

times people are put into jobs that are too big a step up for them."

Mr. George likened the oil companies' predicament to that of an airline that buys a new fleet and trains recruits to fly them. They may be capable of handling the technical aspects of the job, he said, "but that is not perhaps as good as having someone with 25 years of experience and the intuition that comes with gray hair."

Emphasis on training

Some energy companies are taking steps to lessen the manpower shortage.

"For many big companies, it is at the top of their agendas," Mr. George said. "They are addressing it. It is just that it is very difficult for them to fix."

Some companies have developed their own training facilities to ensure that the smaller, younger workforces are trained properly, Mr.

George said.

Ms. Detert said some companies have encouraged retired employees to be consultants and coaches to younger workers, and have achieved some success.

The oil industry is increasing its safety training, Mr. Savage said. "I think training is becoming more intensive in this particular environment."

Employers also are working to make the jobs more attractive to recruits, sources say. Apart from substantial salaries, other benefits, such as flexible work arrangements, make oil industry jobs worth a look, they note.

"Companies are waking up to the fact that their people are looking for more challenge in their work," said Mr. Benayoune. "So they are training them, giving them more responsibility. Once they start taking care of people, I think they can turn this problem into an opportunity."



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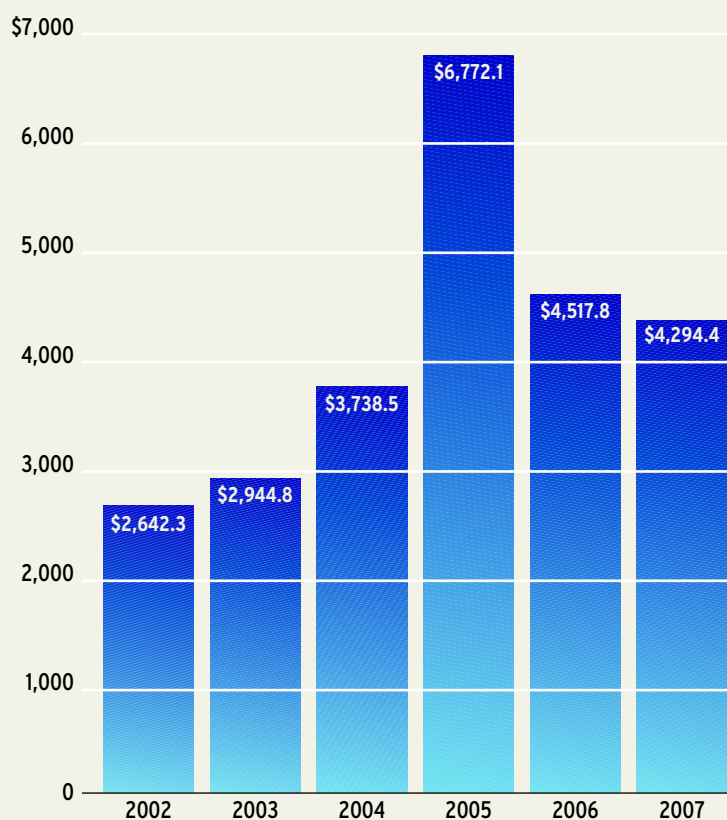
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Huge losses in coal industry look to stiffen midyear rates

INSURED LOSSES FROM MAN-MADE DISASTERS 2002-2007

In millions of dollars



Source: "Natural Catastrophes and Man-Made Disasters in 2007," Swiss Reinsurance Co. Sigma

Property, business interruption claims outstrip premiums by \$2 billion

By **STACY SHAPIRO**

The coal mining industry worldwide is about to face a tough July 1 renewal for property and business interruption risks, as the sector's insurers have been stung by significant losses worldwide over the past year—particularly in Queensland, Australia, brokers and underwriters predict.

Premium rates could rise and deductibles could increase as certain insurers are likely to consider withdrawing from underwriting mining since the mining industry has incurred up to \$3 billion in insured losses in the past six months alone, they say.

This hardening of the coal mining market runs counter to commercial property insurance generally, which continues to soften, experts say. But coal mining property and business interruption insurance programs are complicated to place because of the nature of the risks, experts agree.

"Coal mining has always been a difficult class of business for various reasons," said Stanley Cochrane, head of property energy onshore and mining for Swiss Reinsurance

Co. in Zurich. "Underground mines in particular present special challenges because of access problems in the event of a fire or explosion, the presence of explosive gases in some mines and the need to potentially shut down the operations to ensure worker safety after an event."

Special challenges

Certain aspects of coal mining cause particular concern for underwriters, said Steve Higginson, mining and metals industry practice leader for Willis Global Markets International in Melbourne, Australia, part of London-based brokerage Willis Group Holdings Ltd. He said these include:

- Coal is a "soft" rock and is less stable than "hard" rock mining of copper, gold, etc.;
- Inherent instabilities sometimes found where the coal seam meets the surrounding rock make open-cut/surface mining more dangerous;
- Water present in large quantities complicates the extraction process;
- And frequent methane gas brings considerable danger of explosion and poisoning.

"The majority of losses have come from the United States, Poland and Eastern Europe," Mr. Higginson said. "China has a poor record in this sector, but the losses are generally retained in China and not ceded abroad."

Nine of the 19 mining disasters listed as the worst catastrophes last year by Swiss Re's Sigma research occurred in China. This includes a December gas explosion in a Xinyao coal mine that killed 105 people and injured 18, according to Sigma's "Natural Catastrophes and Man-Made Disasters in 2007."

Recently, however, significant insured losses have hit the Bowen Basin mining area in Queensland, Australia, which Mr. Higginson said "are expected to cost the insurance market dearly."

"Recent losses are spread across different brokers and markets, but the general perception is that losses in the last six months exceed \$3 billion," said Eddie Gilbert, head of the mining team at Aon Ltd. in London, part of Chicago-based brokerage Aon Corp. "This is set against an estimated \$500 million of annu-

See **COAL** page 18

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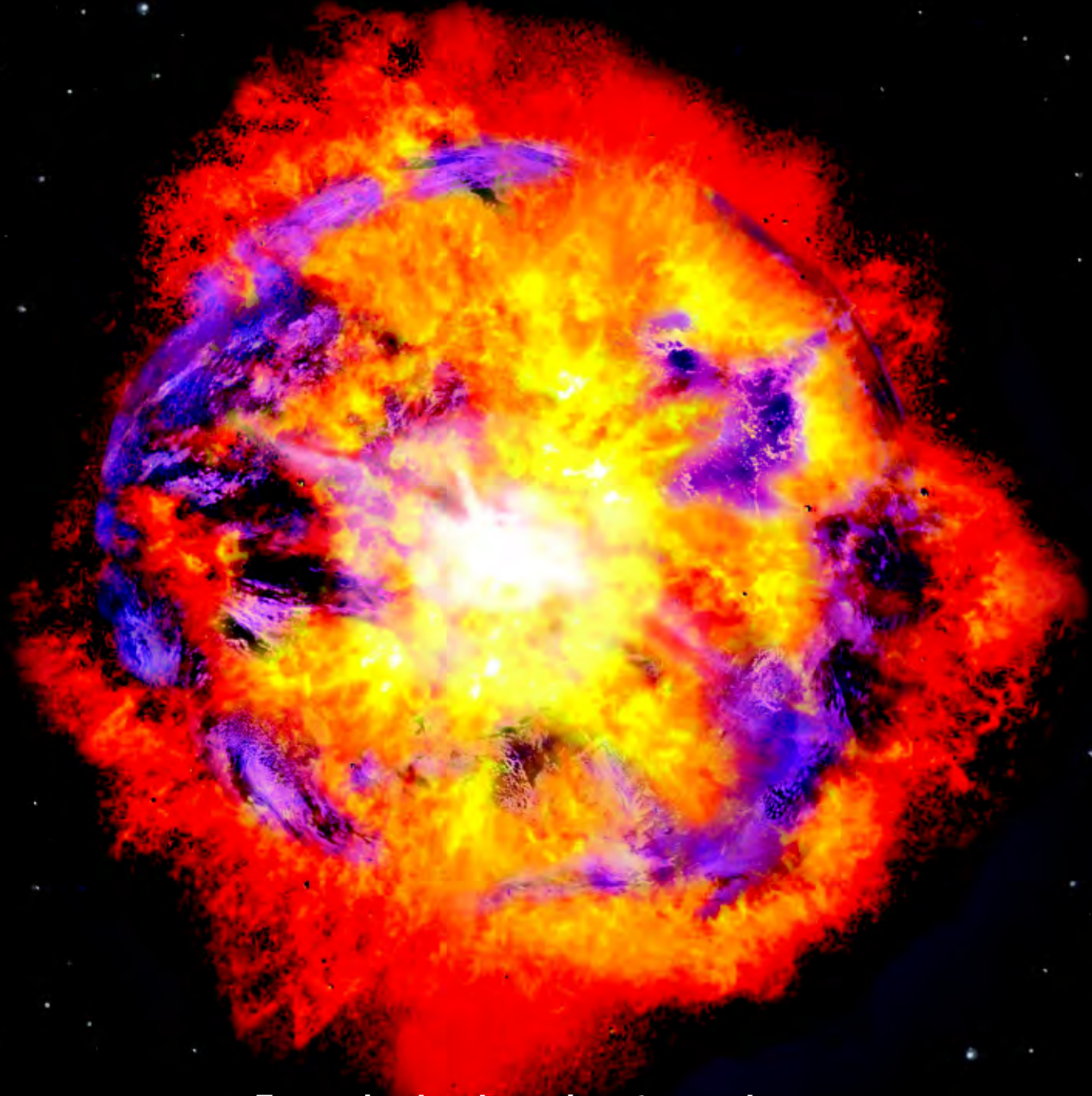
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Coal: Rates seen climbing, capacity shrinking with July 1 renewals

CONTINUED FROM PAGE 16

al mining premium currently available to the global market."

The Queensland flood losses have affected both coal and hard-rock mines, Mr. Gilbert said. "There have also been (semiautogenous grinding) mill failures and smelter explosions in South America and Africa," he said.

"Total ground-up losses in the mining industry are probably approaching the \$2.5 billion figure," Mr. Cochrane said.

"Much of this will be absorbed by captive retentions and deductibles. Nevertheless, the market has to reckon within the order of \$2 billion in potential claims," Mr. Cochrane said.

This includes January and February floods in Queensland where losses of \$1.5 billion are being discussed, Mr. Cochrane said.

As a result of these losses, "there definitely has to be a change in the market and premium rises is one of those changes," said a European reinsurer who did not wish to be named.

"Other changes include the adequacy of the deductibles and retentions and the valuations of the mines need to be as precise as possible. These valuations have been



GETTY IMAGES/NEWSCOM

Flooding early this year hit Queensland, Australia, and resulted in as much as \$1.5 billion in coal mining losses, which "are expected to cost the insurance market dearly," said Steve Higginson of Willis Global Markets International.

increasing by the rate of inflation, but they must reflect the real values, which have gone up substantially," he said.

Until now, a typical property and business interruption limit for com-

panies involved entirely in coal mining would be about \$150 million. Large mining conglomerates with coal operations seek as much as \$1 billion in limits, underwriters and brokers agreed. Usually,

however, there would be substantial self-insured retentions and sublimits for underground property, they said.

Deductibles have varied depending on the location, so that typical deductibles for U.S. underground operations would be \$1 million to \$2 million and 60 to 90 days waiting period for business interruption for "longwall" underground mining, and 45 to 60 days for surface operations, they added.

Capacity seesaw

Brokers and underwriters believe that capacity may shrink come July 1 renewals, however, and lead to a hardening of the coal mining property and business interruption market.

"We do expect a withdrawal of some capacity, but there is, as always, new capacity which may be tempted into the sector as a result of the improvement of terms and conditions, which the recent losses will demand," Willis' Mr. Higginson said.

"Premium adjustments are yet to be fully realized. This will occur to the renewals coming up in the next few months, with July 1 being an important date. I believe there will be premium increases, but the extent will be determined by the

capacity required, the degree of natural catastrophe exposure, the level of retention held by the cedent and the scope of cover bought," Mr. Higginson said.

"A number of insurers and reinsurers have recently withdrawn from this class and others are assessing whether they can write the business profitably in the current environment," Aon's Mr. Gilbert said.

"The scale of recent losses has meant that the market has begun to demand time deductibles or their monetary equivalent. Smaller (mining) companies will be facing 30 days as a minimum with as much as 90 to 120 days for the more difficult covers," Mr. Gilbert said.

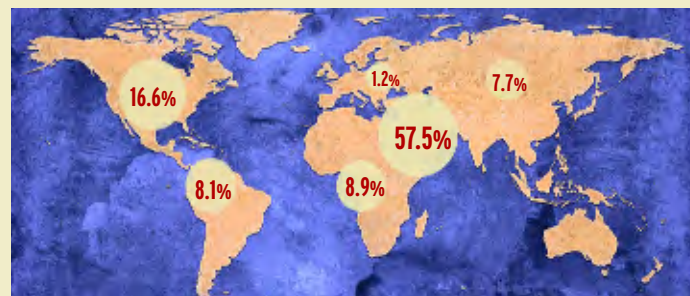
Typically, a mining company's business interruption policies include a time element, based on an average daily value calculation, Mr. Higginson said. Programs also may include a material damage deductible that would vary by mining risk depending on value at risk, he said.

"There have been rumors of capacity shrinking or withdrawing, but I think it is still too early to tell," said Swiss Re's Mr. Cochrane. "There are some big renewals coming up at June 30/July 1, which will provide a better indication."

SECTOR SNAPSHOT ENERGY

THE ENERGY INDUSTRY includes a wide variety of oil, gas and consumable fuel companies in this growth sector of the global economy. Information provided by **Advisen Ltd.** offers insights into the insurance purchasing practices of various organizations.

1,284.8 BILLION BARRELS IN OIL RESERVES

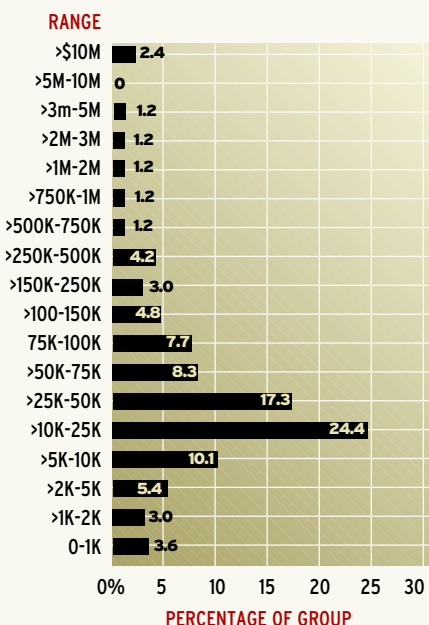


Five countries in the Middle East dominate reserves of the world's crude oil: Saudi Arabia, Iran, Iraq, Kuwait and United Arab Emirates.

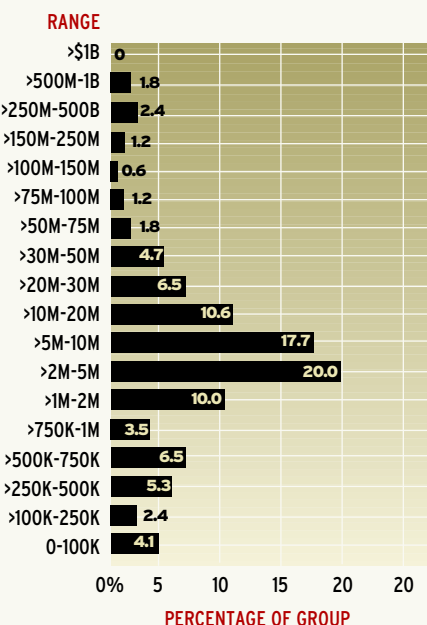
Source: Energy Information Administration, Oil and Gas Journal 1/1/07

Premium and limits distributions for oil, gas and consumable fuels companies

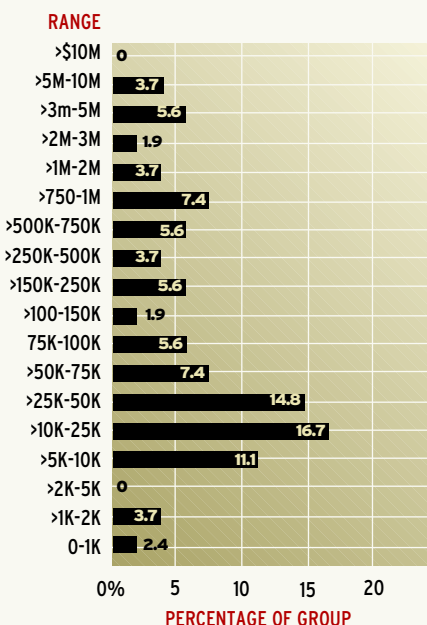
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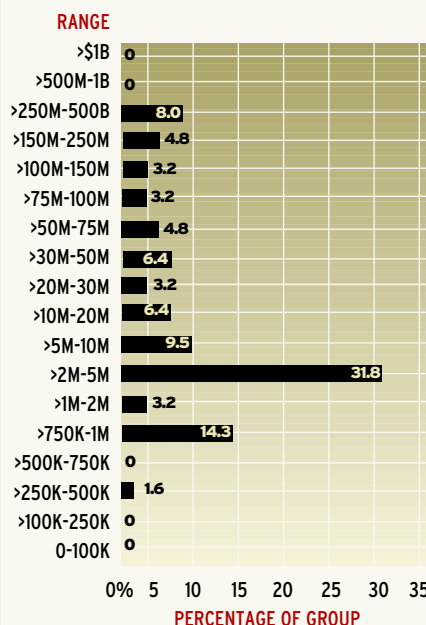
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Comings & Goings

BROKERS

Wells Fargo Insurance Services Inc. has named **Mark Stokes** managing director for its San Francisco office. He will continue as managing director for the Petaluma and



Mr. Stokes

Santa Rosa, Calif., offices.

Willis Group Holdings Ltd. has named **Bob Gore** executive vp of Willis North America's construction practice in New York. Previously, he was executive vp of Aon Corp.'s residential practice group.

Also at Willis' construction practice, **Rob Lieske** has been named senior vp. Before joining Willis, he was a vp in Aon's residential practice.

Tony Page has been named senior vp and unit manager of Lockton Insurance Brokers L.L.C. in San Francisco. Previously, he was a construction risk management consultant for ABD Insurance & Financial Services.

Also at Lockton, **Dr. John Esslinger** has been named medical director for Lockton Benefits Group in Kansas City, Mo. Previously, he was a medical director for

WellCare Health Plans Inc.

And **Rob Livingston** has been named senior vp and producer for all property/casualty lines in Lockton's Chicago office. Previously, he was a senior vp at Aon Risk Services.

Cherry Hill, N.J.-based Commerce Insurance Services Inc. has named **Heather A. Steinmiller** senior vp and general counsel. Previously, she was a member of the employment, benefits and labor practice group of Blank Rome L.L.P.

Hariett Rose has joined Burns & Wilcox Ltd. as a commercial underwriting manager in the Cleveland office. Most recently, she worked at United States Excess & Surplus Lines as a broker.

Charlotte, N.C.-based AmWINS Group Inc. has appointed **Donna Hargrove** general counsel. Previously, she was lead cor-

porate in-house counsel for BB&T Insurance Services Inc.

INSURERS

Schaumburg, Ill.-based Zurich North America Commercial has named **Vincent C. Tizzio** president of a newly formed unit focused on commercial insurance customers that fall between the traditional small-commercial and middle-market business segments. Previously, he was president of AIG Small Business.

Hartford, Conn.-based XL Insurance, a unit of XL Capital Ltd., has named **Bernard R. Horovitz** chief underwriting officer of its global professional lines of business. Before his promotion, he was chief actuary-professional.

New York-based American International Group Inc. has made several senior-level appointments in its AIG Commercial Insurance Group, formerly known as the Domestic Brokerage Group:

- **Michael W. Smith** has been named president of AIG Executive Liability. He formerly was president of AIG Financial Lines Claims.

- **Louis P. Iglesias** has been named chairman and chief executive officer of AIG Risk Management Group. Previously, he was president of AIG Global Risk Management.

- **Russell Johnston** has been named president of AIG Risk Management. He formerly was division president of national accounts and president of Domestic Risk Management.

- **Douglas M. Worman**, formerly domestic brokerage group zonal executive for the greater New York region, has been appointed president of the AIG Excess

Casualty Group.

- **John O'Brien**, former chief operating officer and executive vp of AIG Environmental, has been appointed president of AIG Environmental.

- **Susan M. Clarke** has been appointed executive vp and COO of AIG Domestic Accident & Health. Previously, she was a senior vp of specialty markets for the Accident & Health division.

REINSURANCE

Edmund Kelly has been appointed chief executive officer of Paris Re America Insurance Co. in Miami. He joins Paris Re from ICAT Holdings, where he was president and COO.

OTHER PROVIDERS

Phillip Harrington has joined Deloitte L.L.P. as a director in the regulatory and capital markets consulting practice in Philadelphia. Previously, he was deputy chief compliance officer for Prudential Financial Inc. and chief compliance officer for its insurance division.

TO SUBMIT ITEMS

Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to: Allison Martinat, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; amartinat@businessinsurance.com.

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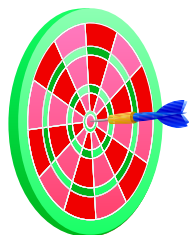
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UP CLOSE

Geraldine Henley

NEW JOB TITLE: Vp/director of claims, Commerce Insurance Services Inc., in Cherry Hill, N.J.

START DATE: Feb. 11

PREVIOUS POSITION: I was the senior claim consultant and member of the leadership group at the Graham Co.

REASON FOR THE SWITCH: This opportunity was too good for me to pass up. I was offered the chance to manage Commerce's claims department and help take it to the next level. It's been wonderful to join such a high-caliber team and work with many great clients.

VITAL STATISTICS: I attended Philadelphia University and earned an Associate in Claims and Associate in Risk Management. Prior to Graham, I worked at St. Paul Insurance Co. as a workers compensation claims supervisor.

GOALS FOR NEW POSITION: Two areas I'd like to focus on are: making life easier for our clients and being even more proactive in our approach. By simplifying the claims process, we can lift a huge burden off our clients' shoulders and allow them to focus on their business. And as proactive leaders, we're able to avoid more



claims and be better prepared when they do occur. For example, we help our clients develop relationships with industry claims experts, defense attorneys and physicians so if a loss happens, we're ready with a full team to handle the situation.

FIRST TIME IN THE JOB MARKET: In 1978, I took a job as a customer service representative at Colonial Penn Insurance Co. This experience early on truly shaped my career. It taught me how to listen and how to deliver results. Thirty years later, I'm doing the same thing.

TOP ADVICE: A good friend once told me, "Reach for your professional goals, but never at the expense of your personal life." It's a motto that I stand by firmly.

OUTSIDE THE INDUSTRY, A DREAM JOB: I've always deeply admired physicians. They are true difference-makers in all of our lives and I'd love to be one.

International NEWS

Swiss brokers may face insurer payment ban

Proposal would force intermediaries to pick broker or agent status

By MICHAEL BRADFORD

BERN, Switzerland—Swiss brokers would be forced to reject commissions paid by insurance companies or become agents tied to the insurer that pays them, and give up their ability to place business with other markets, if a proposed revision of Switzerland's insurance contract law is passed.

The controversial proposal is part of a draft revision of Switzerland's 100-year-old Insurance Contract Act, which was partially revised four

'Whether this draft will become law is still open.'

Moritz Kuhn
Swiss Insurance Brokers Assn.

years ago and now is targeted for a more sweeping overhaul. The country's Federal Office of Private Insurance is preparing to open the draft to public comment, perhaps as early as this summer, sources say.

A spokesman for the FOPI would not say when the office expects the public comment period to begin, nor would he comment on details in the draft revision.

Sources point out that it is far from certain that the provision that would make brokers choose how to be remunerated will be included in a final version of any legislation.

After the public comment period, the draft law could go through more revisions. FOPI could not say how long the process will take to generate a final legislative proposal.

"Whether this draft will become law is still open," Moritz Kuhn, president of the Zurich-based Swiss

Insurance Brokers Assn., said in an e-mail. Any revision, he said, could take years to get through Switzerland's legislative process.

The association is waiting to comment on the proposal until the draft becomes available to the public. "Once it is out, we will have a lot of work to do" in examining the proposed revision and working to shape its final structure, he added.

Risk managers are cautious about the issue for now.

The Swiss Assn. of Insurance & Risk Managers has not formed an official opinion regarding the commission proposal, said Beat Affolter, president of the association and risk and insurance manager for Die Schweizerische Post—Switzerland's postal service.

The group plans to wait until the draft becomes available before forming an opinion as to how a final version can be shaped and its potential impact on risk managers, he said.

But risk managers do recognize the controversy over the proposal to establish new rules for broker compensation.

"It is quite a sensitive topic, and I'm not sure it will go into the final version of the law," said Lorenz Stampfli, vp of the buyer's group and head of insurance and risk management at the Conseil Européen pour la Recherche Nucléaire, the particle physics laboratory in Geneva.

If the proposal is adopted and some brokers opt to align themselves with insurers, that would mean insurance buyers dealing with such brokers would see their choice of insurance markets taken away, Mr. Stampfli said.

But such a scenario would be less likely among large brokers than smaller ones, some sources said. And brokers placing personal lines insurance might be more inclined to tie themselves to life insurers than brokers handling commercial accounts would be to align themselves with property/casualty companies, they noted.

Insurer group seeks policy exclusions on fire following cover

By GLORIA GONZALEZ

CALGARY, Alberta and VANCOUVER, British Columbia—Insurers in Alberta and British Columbia advocate allowing exclusions for fire following earthquake and terrorism, but risk managers are prevailing in the debate over proposed revisions to insurance laws in the provinces.

A lobbying effort by the Insurance Bureau of Canada to allow insurers the option to exclude these risks fell short: The proposed legislation did not include language permitting the exclusions. Both provincial governments still have to develop accompanying regulations, but have shown no inclination to allow the risks to become permitted exclusions.

Risk managers in the provinces are expected to experience some benefits from the efforts to harmonize and update the insurance legislation if the proposed bills were passed. The proposals include provisions to standardize certain clauses in insurance policies and recognize the importance of elec-



REUTERS

The government of British Columbia, which is hosting the 2010 Olympic Games, is unconvinced that insurers should be allowed to exclude from coverage fires that follow earthquakes or terrorist attacks.

tronic communication (see story).

The provinces embarked on a review of their insurance laws following two Supreme Court of Canada decisions in 2003 that found their laws to be out of date with modern insurance practices.

During the review, the IBC—the trade association for property/casualty insurers in Canada—promoted a proposal to give insurers the ability to package all elements of earthquake coverage under one endorse-

ment by allowing fire following earthquake and fire following terrorism to be permitted exclusions in fire policies.

The British Columbia Risk & Insurance Management Assn.—the British Columbia chapter of the Risk & Insurance Management Society Inc.—and the RIMS Canada Council rejected the proposal to add the risks to the list of permitted

See **EXCLUSIONS** next page

Standardizing time limit to file P/C claims seen as benefit to Canadian risk managers

By GLORIA GONZALEZ

Risk managers in Alberta and British Columbia would benefit from proposed revisions to the Canadian provinces' insurance laws, namely a standard limitation period for property/casualty insurance policies.

Under current law, fire insurance policies limit claims to one year from the date of the loss while all-risk policies limit claims to one year from filing proof of a loss. The proposals would amend the insurance laws to extend the limitation period to two years from the date that the claimant

knew or ought to have known of a loss in all P/C policies.

"Insurance clients will benefit from the change to longer prescription periods across the board, and it will reduce confusion," said Lance Kayfish, risk manager for the city of Kelowna, British Columbia and a member of the RIMS Canada Council's communication and external affairs committee.

Insurers sometimes denied claims based on the shorter fire insurance limitation period, but the Supreme Court of Canada ruled in two 2003 cases that the statutes did not bar the claims

and urged the provinces to amend their laws to reflect modern insurance practices.

Under the proposals, commercial buyers would have more time to determine if they want to sue insurers that have not paid a claim, according to the British Columbia Ministry of Finance.

Another critical change that both risk managers and insurers approve of would allow electronic delivery of insurance policies and other related communications, updating current law that requires certain documents to be

See **CLAIMS** next page

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Commentary

'Little guy' polluters intensify the problem

When Andrea signed the lease for the cute little bungalow she had been dying to rent in the Hillcrest neighborhood of San Diego, she had no idea that it could literally kill her.

The tiny house was nestled in a hillside, surrounded by palms and eucalyptus, and a lemon tree next to her kitchen door.

But before she moved in, her landlord issued a stern warning: Don't eat the lemons. When she asked why, he said he had dumped several gallons of bleach at the base of the tree in preparing the house for her arrival.

At the time, Andrea didn't question his method of disposal or why he used bleach instead of a more environmentally friendly cleaning agent. Perhaps he was just being frugal, she thought.

Less than a month after Andrea settled in, she became very ill. She thought at first it was just a virus, but when it lingered and she developed asthma-like symptoms, she went to her doctor, who diagnosed a sinus infection and prescribed penicillin.

Andrea spent the next few weeks sequestered in her house, trying to recuperate. She closed her windows and doors to prevent a draft and slept a lot. But she constantly felt nauseated and couldn't keep food down, so when her husband returned from an

extended business trip and found her practically emaciated, he took her to the hospital. A battery of tests found that Andrea was dehydrated, but the cause of her illness could not be determined.

After some Internet research and speaking with knowledgeable friends and acquaintances, Andrea hired an expert to perform an environmental assessment of her residence. The vendor discovered that new drywall had been installed over old plasterboard that was coated with toxic black mold. That's when Andrea remembered the bleach.

The amateur remediation effort may have put the mold out of sight, but did nothing to stop the health risk. Andrea has since moved out of the bungalow and is still receiving treatment for her illness.

When the Environmental Protection Agency started cracking down on corporate polluters back in the 1980s, was anyone paying attention to small-time operators doing similar harm to the environment and, in many cases, to people? Is anyone paying attention now?

In addition to the seemingly innocent cover-up by Andrea's landlord, I can think of many other instances involving small-business owners and individuals



**JOANNE
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who are thoughtlessly damaging the environment or, when they realize what they've done, do something equally ignorant to cover their tracks.

What about the auto repair shop owner who dumps the old motor oil he's collected on the weeds behind his garage? Or the painter who mixes his old paint cans with other, nontoxic trash? While many of us may think we are being good environmentalists by recycling our newspapers, plastic bottles and aluminum

We're all potentially responsible parties or, in EPA jargon, PRPs.

cans, what are we doing with our old batteries? Believe it or not, people in some parts of the United States still burn garbage. In some ways, we're all potentially responsible parties or, in EPA jargon, PRPs.

While small businesses and consumers do not contribute large amounts of pollution, taken collectively they emit more of some types of pollutants than some large industries. In Texas, for example, emissions from dry cleaners, paint and auto body shops contribute more to smog formation than do major stationary sources, according to the Texas Center for Policy Studies and Environmental Defense.

Mold was only recently identified as a pollutant and the EPA has set no standards for acceptable airborne mold levels. But insurers quickly responded by excluding it from most insurance coverage. Neither Andrea's rental insurance nor her landlord's property insurance cover mold remediation.

But excluding mold does not ensure that unsophisticated policyholders like Andrea's landlord will try to manage this risk. More likely, they'll just continue hanging new drywall and dumping bleach until some savvy lawyer takes it all away.

Exclusions: Buyers battle fire restrictions

CONTINUED FROM PREVIOUS PAGE

exclusions.

It is critical for fire insurance policies to cover fire resulting from an earthquake because fires after an earthquake can cause significant losses on the scale of the losses caused by the shaking, said Lance Kayfish, risk manager for the city of Kelowna, British Columbia, and a member of the RCC's communication and external affairs committee.

The insurance industry has argued that buyers should not have the benefit of fire-following earthquake coverage if they have not purchased an earthquake policy, he said. The IBC proposed the coverage be unbundled, which would allow insurers to issue separate policies for general fire, earthquake and fire following an earthquake, Mr. Kayfish said.

"From a risk management perspective, that would end up being very confusing," he said.

In addition, fire following terrorism should not be a permitted exclusion because risk managers need "reasonable availability of insurance to cover risks associated with terrorist attacks," according to a discussion paper by BCRIMA and the RCC.

There is a limited market for reinsurance for fire following terrorism, which is a "very serious concern for

insurers," said Lindsay Olson, vp, British Columbia, Saskatchewan and Manitoba, for the IBC, whose members account for nearly 95% of the property/casualty market in Canada.

For fire following earthquake, there is reinsurance available and it appears to be relatively easy to acquire, Ms. Olson said. "It's not a

Limited availability of reinsurance for fire following terrorism is 'a very serious concern for insurers.'

Lindsay Olson, Insurance Bureau of Canada

matter of insurers being exposed, rather it's more of a concern for the consumer...that there should be clarity and consistency in their coverage."

In drafting the legislation, government officials decided the exclusion list should be determined by regulation rather than legislation, to allow flexibility to address local concerns. Earthquake risk, for example, is a major concern in

British Columbia, while Alberta has ongoing concerns about terrorism or large-scale fires due to its oil sands, according to the Alberta Ministry of Finance. Additionally, British Columbia is hosting the 2010 Winter Olympic Games in Vancouver.

The British Columbia government is unconvinced that fire following earthquake or terrorist attacks should be listed as permitted exclusions, according to the province's Ministry of Finance.

"We will have to wait for what the regulations say," said Larry Munn, a partner with Clark Wilson L.L.P. in Vancouver. "When you're allowed to exclude it, it clarifies the fact that you have to buy some additional insurance and some additional earthquake coverage."

For the IBC, it is worrisome that the government chose to leave the exclusions issue to regulations because of the ease of changing regulation vs. amending legislation, Ms. Olson said. For example, even if the current government of British Columbia chose to permit the exclusion, the decision could be quickly reversed by a new government as an election is scheduled for British Columbia next year, she said.

"Unless legislatures provide that certainty, I don't think insurers would feel comfortable making these changes," Ms. Olson said.

Claims: Standard filing period proposed

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delivered by registered mail.

"They're going to clearly allow insurers to move into the electronic age," said Larry Munn, a partner with Clark Wilson L.L.P. in Vancouver, British Columbia.

The timing of passing the pro-

posed amendments is uncertain, particularly in British Columbia where the government has delayed considering the bill until at least the fall, according to the Ministry of Finance.

The proposal has been introduced in Alberta, but still must go through debate before final passage.

Both provinces are committed to working together and achieving harmonization in their insurance legislation, a move that all parties praised.

"Certainly, one of the concerns is that there is less-than-perfect harmonization in the insurance acts," Mr. Kayfish said.

Hines: Communicate to build cooperation

CONTINUED FROM PAGE 4

changes, there will always be a place for the broker."

What hasn't changed and likely won't change, panelists said, is the critical nature of communication among all parties involved in a transaction.

Claudia Temple, assistant treasurer of global risk management and insurance at Kraft Foods Inc. in Northfield, Ill., said a communication triangle among brokers, underwriters and buyers must exist. The process shouldn't just involve the buyer speaking to the broker, who then speaks to the underwriter, she said. All parties must interact.

Mr. Kelly said brokers should not feel threatened by buyers having a direct relationship with underwriters. He said they should be confident enough with their knowledge and technical capabilities that they should not fret over being left in the dark or left out of the process.

Panelists said communication is essential to getting all parties on the same page, clearly defining roles

and responsibilities, and setting expectations. Establishing a common purpose and action plan, as well as gaining an understanding of the buyers' business and needs are the results of solid communication,

'It should be an embarrassment to not get us the policy on time.'

Claudia Temple, Kraft Foods Inc.

they said. Doing these things also sets up a system of measurement whereby they can evaluate one another and determine how to improve the process going forward.

"The weakest link is the one that fails to execute the agreed-upon value proposition," Mr. Kelly said.

Ms. Temple said she expects "the best coverage at the best price," and

the company should get whatever the market can bear. Additionally, she said she expects "professional, error-free and on-time issuance of policy."

However, she said she rarely receives on-time issuance of policies. "It should be an embarrassment to not get us the policy on time," she added.

Mr. Fisher said a formal process should be in place and all parties should have the discipline to get together periodically—not just at renewal time—to discuss goals, changes in the market and whether the buyer's needs are being met.

"It's unrelenting and unending," Mr. Kelly said of engaging everyone in the process to determine how everyone can work together to meet a common goal. "This doesn't just come up with renewal cycles."

The Hines Symposium is a free event sponsored by the Chicago chapter of the Risk & Insurance Management Society Inc., the Insurance School of Chicago and *Business Insurance*.

HSAs: Key lawmaker slams consumer-driven plans

CONTINUED FROM PAGE 3

Insurance Plans survey finding that enrollment in HSA-linked high-deductible health plans increased 35% in the past year to 6.1 million, it is "indisputable" that the arrangements have enabled millions of U.S. residents to purchase more affordable health insurance coverage, Rep. Camp said.

He noted that the greatest growth in HSAs has been among the small-employer market, in which AHIP said enrollment grew more than 70% between January last year and January this year.

The availability of HSAs, which Congress authorized as part of 2003 legislation that added a prescription drug benefit to the Medicare program, has enabled some small employers to offer health insurance coverage for the first time, he said.

Rep. Camp also disagreed with Rep. Becerra's description of HSAs as tax shelters. Under law, HSA distributions taken to pay expenses other than health care are taxed, he said,

while an additional 10% penalty tax is imposed for withdrawals before age 65 that are not related to health care.

While enrollees may be able to amass a considerable amount of money in their HSAs by the time they reach retirement age, "having more seniors with a retirement nest egg is a good thing," Rep. Camp said.

Another witness, Wayne Censor, chief executive officer of Alegent Health, an Omaha, Neb.-based health care system, told the panel that Alegent's 2006 adoption of plans linked to HSAs and health reimbursement arrangements has slowed the rate of health care cost increases and increased usage of preventive services.

Enrollees in HSA-based plans consume more preventive care than enrollees in other plans, while 45% of enrollees completed health care risk assessments compared with just 16% of enrollees in Alegent's more traditionally designed preferred provider organization plan, he said.

D&O: Coverage advised for private companies

CONTINUED FROM PAGE 4

against such policies relate to employment practices, Mr. Bantis said in citing an Advisen Ltd. study. After excluding employment liability claims, the remaining sources of claims that trigger private company D&O policies are customers with 43%, government/regulators at 29%, vendors at 17%, and shareholders with 11%, according to the survey.

"To rely on EPL coverage alone is

short-sighted," Mr. Bantis said.

While D&O insurance for private companies is optional, companies should consider purchasing coverage to protect themselves, he said.

Many private D&O liability policies are written on a duty-to-defend basis, a term that generally is not available to public companies in D&O policies, he said. This feature can be valuable to a private organization because it would provide 100% reimbursement for defense costs where at least one allegation of a lawsuit, regardless of its merit, is potentially covered by the policy.

A private D&O policy can also cover subprime-related claims, "to the extent the company is in any way involved in the mortgage business, or to the extent it invested its assets in mortgage-related investments," he said.

Directors and officers of private companies are particularly vulnerable because "so often their personal wealth is tied to the company balance sheet and assets," Mr. Bantis said. "Any defense or settlement money related to a claim will likely come out of the company coffers."

While the purchase of private company D&O coverage is increasing, the market is still relatively small. It is estimated that only a minority of private companies, roughly 50,000 to 70,000, buy such coverage, with a total premium of about \$2 billion, he said.

While organizations should work with their broker to fully assess their risks, private company D&O insurance can be an effective risk management tool.

"It's basically sleeper insurance. When you weigh the cost of the premium against the exposure, it's not very expensive," Mr. Bantis said.

Ruling: Limits scope of pollution exclusion

CONTINUED FROM PAGE 3

the alleged wrongful acts or omissions by the directors and officers gave rise to both pollution losses and nonpollution-related losses.

The *Boliden* ruling is important because it is the first time a Canadian appeals court has ruled on a D&O policy pollution exclusion in a securities case and helps provide clarity and consistency on D&O coverage issues, said Murn Meyrick, senior vp, corporate counsel for Toronto-based Executive Risk Services Ltd. "It's lovely to have our courts giving us some direction," she said. "This is a well-reasoned decision."

The claim was actually related to securities litigation and clearly was a claim of lost shareholder value, said Patrick Bourk, a Toronto-based senior associate at Integro (Canada) Ltd. responsible for Canadian legal affairs. "That is the real nature of the claim. It just happens to be couched in a pollution-related matter," he said.

The lower court correctly ruled the insurer should indemnify Boliden for 80% of the defense costs under an endorsement to the D&O policy, the Court of Appeal ruled. The motion judge also correctly determined that the exclusion clause should be strictly and narrowly interpreted against the insurer and any ambiguities should be decided in favor of the policyholder, the court ruled.

"That's a very well-established principle of Canadian insurance law," said Mark Gelowitz, a partner in the litigation department of Osler, Hoskin & Harcourt L.L.P. in Toronto.

The company and lawyers for both parties did not return requests for comment. "We don't comment on matters in active litigation," a Liberty Mutual spokeswoman said in an e-mail.

Although the ruling was a victory for the policyholder, risk managers should read their policies carefully because different wording may have resulted in a different decision, said Brian Rosenbaum, a member of the legal and research practice of the financial services group of Aon Reed Stenhouse Inc. in Toronto.

In the competitive D&O market, many insurers have attempted to distinguish themselves by broadening coverage, brokers and insurers say. The pollution exclusion used to be very broad, but insurers have included securities coverage for directors and officers as the market has softened, they say.

"A lot of insurers in these times, because the market is so competitive, are prepared to offer that, when in the past they wouldn't have," Mr. Bourk said.

In light of the decision, though, insurers are likely to consider tightening their policy language because they may not have anticipated that they granted this type of broad coverage, Ms. Meyrick said.

"The lesson learned by insurance carriers is that they may ultimately clean up that language or try to make it less ambiguous," Mr. Rosenbaum said.

Pollution exclusions featuring the terms "directly or indirectly" likely would be added by insurers to D&O policies with greater frequency, said Eric Dolden, an insurance attorney with Vancouver, British Columbia-based Dolden Wallace Folick L.L.P.

Risk managers "should look very carefully if the word 'indirectly' is used, because it can broaden the potential scope of the exclusions," Mr. Dolden said.

Risk managers should consider negotiating an exception for securities claims related to a pollution incident or purchasing a Side A difference-in-conditions policy to cover such matters when the primary policy will not, Mr. Rosenbaum said. Buyers must decide if they want the enhanced coverage and if they are willing to pay for it, but the soft market makes this a good time to seek the coverage, he said.

Boliden highlights the value of a DIC policy, which could drop down in situations when the primary insurer denies coverage and could be used to fight a primary insurer, Mr. Bourk said. Risk managers "may take it more under advisement than they have before," he said.

Boliden Ltd. vs. Liberty Mutual Insurance Co., Court of Appeal for Ontario, 2008 ONCA 288, April 17, 2008.

Buyers urged to negotiate D&O cover

Insurers offer favorable terms, but buyers must ask for them

By COLLEEN MCCARTHY

As more companies negotiate enhanced directors and officers policy terms, buyers should be aware of key issues during the underwriting process.

Sixty-one percent of D&O buyers participating in an annual Towers Perrin survey reported an increase in the number of enhancements to their D&O policies during 2007, said Michael Turk, senior consultant at the Stamford, Conn.-based company, during the fourth annual National Directors and Officers Insurance ExecuSummit held in New York.

That is nearly double the 31% who reported coverage enhancements in Tower Perrin's 2006 Directors and Officers Liability Survey of Insurance Purchasing and Claims Trends.

"Right now, carriers are much more amenable to offering broader coverage terms, but the buyer has to ask for it," said Gordon Davenport III, a partner with law firm Foley & Lardner L.L.P. in Madison, Wis., who also spoke at the conference.

Because D&O policy forms are not standardized, many terms are open to negotiation, Mr. Davenport said. To obtain or renew the best possible D&O policy, companies should consider several key issues during the underwriting process.

One of the most important features would provide nonrescindable coverage, Mr. Davenport said. "It is increasingly possible to obtain policy language that makes D&O coverage nonrescindable," he said.

Buyers also "should try to obtain as close to full severability as possible," Mr. Davenport said.

The severability provision comes into play if the insurer rescinds coverage in the event of misrepresentations on the insurance application, and could result in a loss of coverage for all officers and directors. The rescission issue can be addressed by obtaining "full severability" language in the provision, which would secure coverage for those directors and offices considered "innocent" of making false statements, he said.

If using a particular law firm is important to the buyer, then the organization should negotiate coverage terms to pre-approve the law firm in the event defense counsel is needed. Approval would be likely if the company agrees to an insurer's rates and procedures, Mr. Davenport said. Companies should communicate their desire to use a particular firm during the underwriting process. "Don't wait until a claim arises," he said.

Another often negotiable feature is a provision for punitive damages. While some states, such as California, do not allow this coverage, buy-

ers can obtain coverage for this prohibition by negotiating "most favorable jurisdiction" language into the D&O policy. This language broadens traditional language that says punitive damages are covered "where insurable," and would allow an insurer to offer coverage if they can find insurability in any state that has a relationship to the claim, Mr. Davenport said.

Another important consideration is the personal conduct exclusion, which would deny coverage for a director or officer in the event of fraud, dishonesty or other illegal behavior. The threshold for applying the exclusion often is negotiable, said Mr. Davenport. "Buyers should try to obtain strong final adjudication language for personal conduct exclusions, to ensure the exclusion is not triggered until a court decides the conduct has been fraudulent," he said.

Since most claims are settled well before an actual court judgment, Mr. Davenport said, "if you have this language, you can avoid the exclusion ever coming into play."

Buyers should form a strong relationship with the insurer and involve all parties, including brokers, in discussions about the policy terms. If the negotiation process is approached openly, then the insurer is likely to consider alternatives, he said.

Event covers D&O issues

NEW YORK—About 50 people attended the fourth annual National Directors and Officers Insurance ExecuSummit that was held May 6-7 in New York.

The event featured discussions with lawyers and major underwriters of D&O liability insurance. Topics that were discussed included buying trends, the future of the D&O insurance industry and the impact of the subprime mortgage crisis on D&O and errors and omissions insurers.

Next year's event, put on by New York-based event developer ExecuSummit, is scheduled for May 5-6, 2009, in New York.

For more information, go to www.execusummit.com.

—By Colleen McCarthy

Quake: China claims may top \$1 billion

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national insurers and reinsurers to losses from the quake appears to be minor, given preliminary information.

But the earthquake—which struck parts of China's Sichuan province May 12—could result in the largest insured losses in China's history, Newark, Calif.-based catastrophe modeler Risk Management Solutions Inc. said last week. RMS predicted that total property damage in the area is likely to range between \$10 billion and \$15 billion.

Another catastrophe modeler, AIR Worldwide Corp., said that insured damage from this earthquake could reach \$1 billion. AIR estimated that the total value of damaged property in Chengdu is more than \$15 billion, but only a small portion of that is insured, the Boston-based unit of the Insurance Services Office said in a statement. AIR estimated that the total property value in all the areas of Sichuan affected by the quake is about \$215 billion.

"Based on preliminary estimates, the earthquake in China is not expected to have a material impact on the balance sheets of the Hong Kong-listed Chinese insurance companies," said Fitch Ratings' Hong Kong office in an analysis released last week. "If market shares in the affected areas are used as guidance, the insured losses from the earthquake will likely be spread among the largest companies in the market."

Foreign insurers reported little impact from the quake.

"Zurich Financial Services AG has no exposure on the P/C side from China's recent earthquake as we started our P/C operations only 18 months ago and are mainly active in the region of Beijing, which was

not affected," said a spokesman for the insurer in Zurich, Switzerland.

"We're aware of several client losses and it appears that none of those losses would exceed the individual client's retention," said a spokesman for Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global.

The quake will likely have little effect on global reinsurance markets, said Imelda Powers, principal and senior vp of Philadelphia-based Tower Perrin Re in an interview from Beijing last week.

"There are several reinsurers that are already in the China market. Most of the reinsurance still goes to China Re. Since China joined the WTO, China Re does not have the monopoly," Ms. Powers said. "Insurance companies are not forced to cede to China Re. But in practice, China Re still owns the lion's share of the reinsurance market."

Tom Larsen, senior vp at Oakland, Calif.-based modeler EQECAT said that he does not think the quake will cause significant losses for international reinsurers. "Insurance penetration is very uneven. A lot of it has tended to follow outside investment," he said. "We're trying to look at the various industries to determine the degree of penetration, (but) we do not expect this to be significant in terms of a capital event."

"This event should encourage greater focus on risk management, and should also encourage companies and insurers to examine their levels of insurance and reinsurance purchase to ensure adequacy of cover for companies on the one hand and compliance with regulator's solvency concerns for insurers on the other," John Obey, London-based director-international of Aon Re said in an e-mail.

"From a reinsurance perspective,

it's too soon to make a call as to the size of this loss, but it could affect the lower to middle layers of companies' catastrophe excess of loss programs," said Mr. Obey. "From a more technical perspective, I would expect the loss to quickly impact pro-rata treaties and may test the level of event limits contained therein."

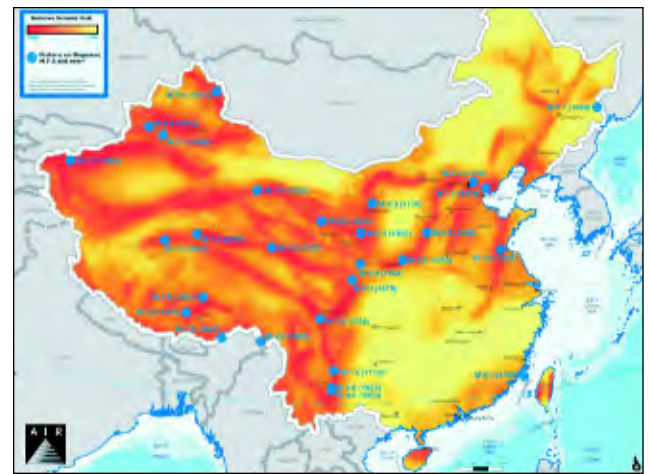
"My estimate is that business interruption is likely to produce higher losses than property damage losses, as companies are dealing with suspended operations and halted transportation of goods and supplies," said Howard Tsang, executive director-China at Willis Risk Solutions in New York. He said business interruption coverage typically has a 14-to-30 day time deductible, so there may be a delay before these claims come in.

In addition, some policyholders have suppliers who have been affected, causing them to stop production, said Mr. Tsang. "This will likely trigger contingent business interruption coverage."

Observers are split on whether the quake would increase insurance penetration. Towers Perrin's Ms. Powers said she was "not too optimistic" because the "issue is not so much that quake insurance is not offered, (but that) the population doesn't buy it." She noted that even in California, some homeowners don't carry earthquake insurance if they are not required to by their mortgage lenders.

"If I look at analogies in other regions, it typically does," said EQECAT's Mr. Larsen. "In general, it's going to increase the visibility of earthquake insurance. One, it increases awareness. Two, there will be a big rebuilding effort. A lot of it will be commercial, and that will be done with loans, and some of those loans will have caveats for earthquake insurance. That will be

AIR Worldwide's China quake model displays China's seismic hazard. AIR estimates the insured damage from last week's quake could top \$1 billion.



AIR WORLDWIDE CORP.

another incentive."

"In the past few years, growth in nonlife insurance in China has been phenomenal," said Domenico del Re, senior model manager in RMS' London office.

The quake will also probably increase interest in building codes and enforcement.

"China has a well recognized seismic code," said Mr. del Re. "The high-profile buildings will be built in strict adherence to this code. Some of the more regular buildings, including residences, might fall through the net."

"A number of multinational companies operate in Chengdu, and they did not report significant damage," said Ms. Powers. "That's because the codes are better enforced with these commercial enterprises and in the more developed cities." But in some areas, people may already be stretching their budgets and adding 5% to construction costs to meet the code may seem too much, she said.

Several U.S.-based firms with units near China's quake zone appear to have escaped serious damage.

Bentonville, Ark.-based Wal-Mart Stores Inc. has more than 20 properties in China's Sichuan province, and temporarily halted business at

all facilities when the quake struck last week, a spokeswoman for the retailer said.

Wal-Mart's facilities include retail stores, offices and distribution centers, and so far the company has not determined the extent of any financial losses, she said, adding that as of last Friday, three stores remained closed.

"We are conducting an engineering assessment and inspections with officials, and also conducting independent inspections of the facilities to determine if the structures are safe," the spokeswoman said.

Holiday Inn Hotels and Resorts, a unit of the InterContinental Hotels Group, operates four hotels in Chengdu, Gary Rosen, senior vp-sales and marketing, IHG Asia Pacific in Singapore, said in an email.

"IHG's hotels in Chengdu experienced tremors from last Monday's earthquake and precautionary safety procedures were activated," he said.

The hotel properties were built between 1997 and 2007 according to Chinese Government standards, and were certified by the relevant government authorities. "Overall, we had minimal damage to the properties and they are all operating as usual," he said.

Comp: Defense Department's DBA costs higher than other agencies

CONTINUED FROM PAGE 1

In contrast, workers comp insurers in the United States typically pay out as much in claims and expenses as they collect in premiums, while earning their money from investing the premiums, the California Democrat said.

According to the New York-based Insurance Information Institute, U.S. workers comp insurers' accident year combined ratios have ranged from 140% in 1996 to 87% in 2006.

"What we are really talking about here, folks, is war profiteering—private companies making money, profits off of people who are injured or killed in a war zone," said Rep. Jim Cooper, D-Tenn.

Rep. Waxman released a draft of a bill that would require the Pentagon to purchase workers comp coverage from a single pool insurer similar to other governmental agencies.

The largest Defense Department contract in Iraq, held by Houston-based energy, construction and services company KBR Inc., illustrates the problem, according to the

Democratic report. KBR paid New York-based American International Group Inc. \$284 million in premiums during the five-year period. Under terms of the "cost-plus contract," KBR is allowed an \$8 million markup above AIG's premium.

Out of that \$292 million paid by the government, \$73 million was spent to provide benefits to injured contractors in the war-torn countries, the report states. In all, AIG had almost \$100 million in profits, the report states.

In a written response, a spokesman last week said AIG had not reviewed documents Rep. Waxman relied on concerning AIG's DBA profitability.

"However, AIG is confident that we price our DBA coverage as accurately and fairly as possible, given the inherent high risks of this insurance line in these regions, the uncertainties concerning the frequency and severity of future claims, and the obligation to pay claims for many years after the losses occur, including lifetime death and disability benefits," AIG's response said.

A committee spokesman said the four largest insurers cited by Rep. Waxman as providing Defense Department contractor DBA cover are AIG, Chicago-based CNA Financial Corp., Philadelphia-based ACE USA and Warren, N.J.-based Chubb Group of Insurance Cos.

Chubb wrote less than 0.5% of the premiums cited and did so only to accommodate its insureds, a spokesman for the insurer said.

A spokesman for ACE declined comment.

The report said CNA paid out 8% more in claims and expenses than it collected in premiums. CNA insures contractors for the U.S. State Department, the Army Corps of Engineers and the U.S. Agency for International Development. But CNA has just 10% of the insurance market in Afghanistan and Iraq, the report states.

The other governmental agencies, those covered by CNA, employ a different insurance procurement method. Following a competitive process, the three agencies select a single DBA insurer that provides

fixed rates for all their contractors. The Defense Department allows civilian contractors and subcontractors to negotiate their own insurance purchases.

The Government Accountability Office said eight Defense Department contractors were paying \$10 to \$21 per \$100 of payroll for DBA insurance, John K. Needham, the GAO's director of acquisition and sourcing management issues, told the committee. State Department and AID contractors, meanwhile, paid \$2 to \$5 per \$100 of salary.

Through a December 2005 pilot program, the Defense Department now pays \$3.50 to \$7.25 per \$100 of salary using a single insurer, Mr. Needham said.

Committee members expressed frustration that the Defense Department had not expanded the pilot program. But Rep. Tom Davis, R-Va., said a single insurer may not be willing to provide coverage for the entire Defense Department contractor risk.

Committee members also questioned recent allegations that two Iraqi contractors working for the

Army Corps of Engineers were billed for insurance they didn't purchase. The details of the alleged practice emerged through routine contract oversight, James Dalton, chief of engineering and construction for the Army Corps of Engineers told the committee last week.

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News In Brief

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raise a total of at least \$11.9 billion in common stock and equity unit offerings, up from the \$7.5 billion it previously said it planned to raise. AIG said it priced its \$6.5 billion public offering of 171 million shares of common stock at \$38 per share. In addition, it priced a \$5.4 million public offering of 72 million equity units, with an initial stated amount of \$75 per unit, which consist of forward purchase contracts and subordinated debt securities. Also, AIG granted the stock underwriters a 30-day option to purchase up to an additional 25.7 million shares of common stock to cover over-allotments. It also granted underwriters a 13-day option to buy up to an additional 6.4 million equity units to cover over-allotments.

Arizona expands captive options

Companies with captive insurance

companies in Arizona will be able to expand the use of their captives under legislation that received final approval last week. The legislation, in part, builds on a 2007 measure that included a provision that gives parents with captives in other domiciles the ability to set up branch captives in Arizona to fund employee benefit risks. Under the new measure, H.B. 2081, a branch captive could be established to cover any risk a traditional single-parent captive could write. Other provisions make clear that Arizona captives can write coverage for employment practices risks and that a single-parent captive can be organized as a limited liability corporation.

California may boost disability benefits

California's Division of Workers' Compensation has proposed increasing permanent disability benefits by an average of 16% as part of changes to the state's permanent disability rating schedule. Workers comp reforms required the disability rating schedule to be based on empirical data tying wage loss to injury type, DWC administrative director Carrie Nevans said in a statement. The DWC now has enough data to support an increase, she said.

Republicans endorse COBRA extension

The House Republican leadership last week unveiled an agenda that would allow COBRA beneficiaries to retain coverage indefinitely, among other changes. Under current law, employees who quit or who are let go can retain coverage from their former employer for 18 months. In the case of death, divorce or marital separation, beneficiaries can keep coverage for 36 months. In their proposal, called the "American Families Agenda," GOP leaders say the time limits on COBRA coverage need to be lifted to ensure that employees and their families can enjoy the same quality of coverage "they have been accustomed to during a prolonged job search."

Cephalon gets OK for benefits in captive

Biopharmaceutical maker Cephalon Inc. received final Labor Department approval to fund employee benefits through the Vermont branch of its Bermuda-domiciled captive insurer. Cephalon will reinsure group term life, accidental death and dismemberment and long-term disability policies written by Prudential Insurance Co. of America that cover about 2,100 employees.

HSA contribution caps to rise in '09

In 2009, the maximum contribution that can be made to a health savings account for employees with single coverage will be \$3,000—up from \$2,900 in 2008—while the maximum contribution for those with family coverage will rise to \$5,950 from \$5,800, the Internal Revenue Service said. In addition, the maximum out-of-pocket expense—including deductibles—that employees with single coverage can be required to pay will rise to \$5,800, up from \$5,600. For those with family coverage, the maximum will rise to \$11,600 from \$11,200. The minimum deductible of the health plan to which HSAs must be linked will increase to \$1,150 next year for employees with single coverage, up from \$1,100; the minimum deductible for those with family coverage will increase to \$2,300 from \$2,200.

Noted

Arch Capital Group Ltd. promoted Mark Lyons to chairman and chief executive officer of Arch Insurance Group. He succeeds Ralph Jones, who is retiring July 1. Mr. Lyons has served as president and chief operating officer of Arch Insurance Group since June 2006.

Wellness: States weigh requiring employer programs

CONTINUED FROM PAGE 1

ting up their own fitness facilities, sponsoring amateur sports teams comprised of employees, or provid-

CALIFORNIA MANDATE

AB 2360 would require that employers bidding on state contracts provide their employees with one or more wellness or fitness benefits, including, but not limited to, the following:

- A facility used exclusively for the purpose of promoting physical fitness of employees including a gymnasium, weight training room, aerobics workout space, swimming pool, running track or any indoor or outdoor court, field or other site used for competitive sports events or games.
- Financial support to an amateur athletic team that is under the sponsorship of the prospective bidder, if the team consists entirely of its employees.
- Subsidies of employees' membership in a health studio or health club.
- Classes or presentations on the employer's premises by a qualified person or organization providing information and guidance on subjects relating to personal and family health and fitness.

ing employees with health information.

Assemblyman Levine's bill was introduced after state legislators rejected a sweeping health care reform proposal by Republican Gov. Arnold Schwarzenegger that, among other things, would have provided incentives to plan members such as gym memberships;

weight management programs; and reductions in health insurance premiums to promote prevention, wellness and healthy lifestyles.

A.B. 2360 has been referred to the Assembly Appropriations Committee, where it will be considered along with all other bills that could have a financial impact on the state, according to a spokesman for Assemblyman Levine.

Michigan's wellness measure would require the state's Department of Management and Budget to give preference to business entities that have wellness programs in place for their employees in awarding a contract for services and items needed by state agencies. The bill does not define wellness beyond "a health promotion program offered by an employer to his or her employees."

A report by the Senate Fiscal Agency for the state of Michigan found that the bill, which was introduced in February 2007 by state Sen. Roger Kahn, R-Lansing, would have no fiscal impact on state or local government. The bill has been referred to the Michigan Senate Committee on Health Policy.

This wave of wellness-related state legislation is a relatively recent phenomenon, according to Amy Winterfeld, a health policy analyst for the National Conference of State Legislatures in Denver.

It is apparently being driven by the need to address the growing burden that chronic disease is putting on state budgets, according to a June/July 2007 legislative brief published by the NCSL. Chronic disease is now the principal cause of disability and use of health services, accounting for 78% of U.S. health expenditures, and state budgets are affected by these higher medical

costs through additional costs borne by Medicare and Medicaid, the NCSL report says.

"There wasn't much state legislation at all on this subject before two

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or three years ago," Ms. Winterfeld said. Now, however, "there has been a noticeable increase in the number of bills promoting wellness."

Some of the measures overrule bars on differential rating and allow employers to offer financial incentives to their employees to encourage participation in wellness and health promotion programs. Others permit health insurers to offer premium rebates or discounts for enrollment in wellness programs. A measure enacted last year in Indiana provides tax credit to small businesses that offer wellness programs to their employees that are equal to 50% of the programs' cost.

While most employers acknowledge the benefits of wellness and prevention programs, they are not keen on laws mandating that they provide them to their employees.

"We already have several wellness programs," but "I don't like to be mandated," said Lea Gerber, director of risk management and benefits at Elixer Industries, a diverse manufacturer in Mission Viejo, Calif.

Among other things, Elixer's benefit plan covers bariatric surgery, provides incentives for plan members with chronic conditions to adhere to their medication regimens and provides free car seats to

pregnant women who enroll in a prenatal program, according to Ms. Gerber.

"Employers have to weigh what's most important to them. If they can't afford a health plan, and many small businesses can't, they certainly can't afford wellness," she said.

Elixer currently doesn't have any contracts with the state of California, Ms. Gerber said.

Benefit consultants shared Ms. Gerber's sentiments.

"The intention of this bill is laudable," said Kirby Bosley, a consultant with Watson Wyatt Worldwide in Los Angeles. "But it's a very expensive proposition for employers, especially smaller ones."

J.D. Piro, an attorney with Hewitt Associates Inc. in Norwalk, Conn., likened the California legislation to a 1996 San Francisco ordinance requiring city contractors to offer domestic partner benefits, which some members of the benefits community felt was intended to influence the benefit programs of all employers, not just state contractors.

"It certainly does fit in with what is becoming a pattern in California," he said. "These are certain policies that the state wants employers to follow."

Because the legislation raises awareness of wellness benefits, it could result in more employers providing them, just as more employers began offering domestic partner benefits following passage of San Francisco's domestic partners ordinance, said Johan DeKeyser, senior vp in the health and benefits practice of Aon Consulting based in Irvine, Calif.

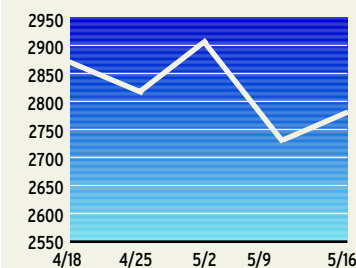
"It's a very small step in the right direction," he said.

Stock Index

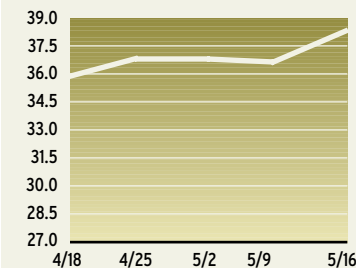
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.IndustryFocus.com.

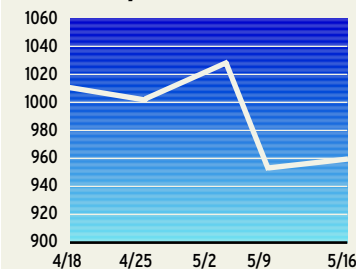
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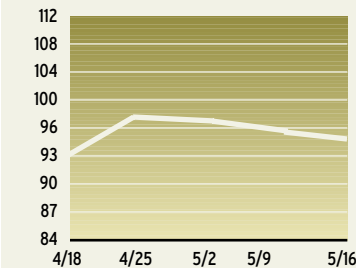
BI BROKERS INDEX



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Percentage change of BI Stock Index vs. key indicators

Index	Value	Change
BI STOCK INDEX	2763.58	0.89%
DOW JONES	12986.80	1.89%
S&P 500	1425.35	2.67%

LARGEST GAINS

CNA Financial Corp.	8.29%
Hilb Rogal & Hobbs Co.	6.72%
ING Groep N.V.	5.82%
Marsh & McLennan Cos. Inc.	5.62%
Axis Capital Holdings Ltd.	4.92%

LARGEST LOSSES

Ambac Financial Group	-12.10%
HCC Insurance Holdings Inc.	-3.48%
Markel Corp.	-3.41%
Health Net Inc.	-2.96%
Humana Inc.	-2.73%

Source: Financial Content Inc. <http://fjfinancialcontent.com>



All you need is love...leave, says lawmaker in Finland

STOP! In the name of love. At least that's what a member of Finland's Parliament is trying to accomplish by introducing legislation that would grant workers paid time off to save their relationships.

The bill—which was sponsored by Tommy Tabermann, who is also a poet—would allow Finns to take a paid seven-day “love vacation” once a year in an effort to lower divorce rates in the country.

According to news reports, Mr. Tabermann said the purpose of these vacations would be preventing relationships from unraveling and spouses from drifting apart.

“Love is a human right,” he said, according to reports. The vacations would allow Finns to connect “on an erotic as well as an emotional level,” he added.

To pass the legislation, 100 members of Parliament would have to back the bill. So far, only 13 members have signed the bill.

“People can take love vacations, but shouldn't be paid for them,” Bjarne Kallis, a politician who opposes the bill, told reporters. “This isn't really necessary. You have a lot of free time already today.”

Finnish workers are entitled to 30 paid days of vacation and as many as 10 paid public holidays.

Business Insurance END PAGE

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Gunderson
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Bird calls foul over B&B plans

“Larry Legend” does not want to also become a legend in the hospitality business.

Hall-of-Fame basketball player Larry Bird last week sued the Legend of French Lick L.L.C., a company that purchased Mr. Bird's former home in West Baden, Ind., last year with plans to open it as a bed-and-breakfast later this month.

The Web site for the 12-acre Legend of French Lick Resort advertises the property as “the former home of Larry Bird” and even invites people to play basketball on the court where Mr. Bird “spent hours practicing and perfecting his shot.”

In a lawsuit filed May 12th in the U.S. District Court for the Southern District of Indiana, however, the former Boston Celtics great claims the resorts' owners, Georgianna Lincoln and Christopher Cooke, did not receive permission to use his trademarked name in association with the property and that they are attempting to illegally profit off of it.

Reached last week by phone, Mr. Cooke said the only way in which Mr. Bird's name is being used is to state the fact that it was his home.

Mr. Cooke said he was told “several times” by Mr. Bird's business associates during negotiations of the home's sale that although they could not give them permission to use Mr. Bird's name, “we cannot stop or prevent you from saying things about the property and about

Boston Celtics great Larry Bird is seeking to stop a company from profiting from the use of his name.

Larry Bird's ownership of the property that are true, such as it is the former home of Larry Bird,” Mr. Cooke said. “If we had not been told that, we would never have bought it.”

According to its Web site, the Legend of French Lick Resort offers three large master suites and two additional bedrooms with private baths. It features a gated entrance, a large pool and cabana and lighted tennis and basketball courts.



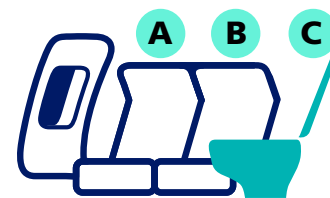
Legroom the least of one flier's concerns

Although an airline passenger was given the throne to sit on during a transcontinental flight, it doesn't seem that he received the royal treatment. Gokhan Mutlu, of New York, allegedly was asked by a JetBlue Airways Corp. pilot to “hang out” in the bathroom during his flight from San Diego to New York.

Mr. Mutlu filed a lawsuit in Manhattan Supreme Court on May 9, in which he claimed the pilot told him about 90 minutes into the five-hour flight that he'd have to ride it out in the can while a flight attendant took his seat. He is suing JetBlue for more than \$2 million.

Mr. Mutlu, who was flying standby on the Feb. 23 flight, had taken the last seat on the plane, according to news reports.

A flight attendant, who was initially



sitting in the plane's “jump seat,” took Mr. Mutlu's seat when she complained that she was uncomfortable, the lawsuit said. Mr. Mutlu asked if he then could sit in the jump seat, but he was denied by the pilot as only JetBlue employees were permitted to sit there, according to the suit.

While Mr. Mutlu was reluctant to go sit in the bathroom, the pilot told him that “he was the pilot, that this was his plane, under his command and that (Mr. Mutlu) should be grateful for being on board,” according to the complaint.

When the aircraft hit turbulence, Mr. Mutlu was forced to handle the bumpy ride without a seatbelt in the tiny lavatory. Only later, according to the suit, did a flight attendant knock on the door and tell Mr. Mutlu that he could go back to his original seat.

A spokesman for JetBlue said that they would not comment on the suit as it was still in litigation.

Police say accident victim's story doesn't add up

In Lawrence, Mass., a person can be in two places at once—until they're busted for fraud.

Lawrence Police Chief John J. Romero said investigators recently discovered Ernie Baez was involved in a 2003 two-car automobile crash because he listed himself as being a driver in one car and a passenger in the other car by using an alias. Chief Romero said Mr. Baez allegedly committed fraud by collecting money for vehicle repairs and medical treatment.

Chief Romero said investigators discovered the link thanks to a New York arrest report on Mr. Baez, which listed the alias he used in other unrelated crimes. That alias matched the one he used in the Lawrence accident report. A New York driver's license linked

the faces and confirmed it was the same person. He is currently serving a prison term in New York on drug charges.

Mr. Baez is accused of auto insurance fraud, conspiracy and other counts in Lawrence, according to Chief Romero. The charges are the latest in a multiagency investigation that began following the 2003 death of a grandmother who participated in a separate sham accident. Since then, charges have been brought against hundreds of people, including attorneys and chiropractors.

In 2003, insurers paid \$50 million for claims in Lawrence, with a population of 7,000, Chief Romero said. He said those involved intentionally caused the accidents to defraud insurers.

“It just showed how brazen these people were and how this whole cottage industry was flourishing,” Chief Romero said.

With help of other agencies, the attorney general's office and the Insurance Fraud Bureau, which once said Lawrence was well-known as “the insurance fraud capital of Massachusetts,” numerous fraudulent claims overrunning the city have been resolved.

Since implementing the task force, the number of accidents in Lawrence has fallen 30% since 2004, and claims and premiums also have dropped substantially, Chief Romero said.

In 2006, insurers paid less than \$20 million in accident claims in the city and premiums have fallen by \$15.5 million since 2003.





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