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Business Insurance

May 24, 2010

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CONGRESS TO CONSIDER COBRA SUBSIDY EXTENSION, PENSION FUNDING / PAGE 3

CALIFORNIA, D.C. REGULATORS CALL TRUCE IN TURF BATTLE OVER RRG EXAMS / PAGE 3

HEALTH CARE REFORM LAW PROMPTS FIRMS TO BOOST WELLNESS EFFORTS / PAGE 4

In Brief

Prudential rights issue to fund AIG unit purchase

Prudential P.L.C. last week launched a $21 billion rights issue to fund its planned purchase of American International Group Inc.'s Asian life insurance unit, after clearing a regulatory hurdle. Prudential now needs the backing of 75% of its shareholders at a June 7 meeting to approve the deal. The financial terms of Prudential's $35.5 billion offer for AIA Group Ltd. were revised in recent weeks, based on U.K. Financial Services Authority concerns about the combined company's capital position. The revised terms are expected to lower the cash component of the deal to $23 billion, rather than $25 billion as planned initially.

Free speech ruling backs administrators

College administrators did not violate offended employees' rights to be free of workplace harassment and have First

See **IN BRIEF** page 21

SPOTLIGHT

RISK MANAGEMENT TECHNOLOGY

Choosing the right RMIS depends on a company's individual needs; consultants seen as vital resource in picking a system; computer hardware upgrades put sensitive data at risk; hard drives used in photocopiers pose risks that are often ignored; *BI* lists risk management information system providers. **PAGE 11**

FEDERAL LEGISLATION

THE TIMES-PICAYUNE/LANDOV

Oil released after the Deepwater Horizon disaster in April inundated parts of the Louisiana coast. In response to the spill, lawmakers have proposed various increases to the $75 million liability limit in the Oil Pollution Act of 1990.

Spill triggers effort to up liability cap

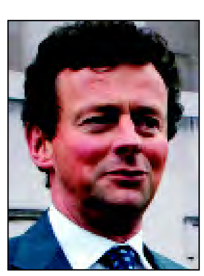
Lawmakers propose limits as high as $10B

By ZACK PHILLIPS

WASHINGTON—Lawmakers are jockeying to adjust the size of liability damages facing the companies involved in the massive Gulf of Mexico oil spill, and insurers have reacted by reducing capacity for oil-drilling operations.

The April 20 fire and explosion aboard the Deepwater Horizon, which sank April 22, killed 11 workers and resulted in three leaks some 5,000 feet below the Gulf's surface that were spewing anywhere from 5,000 to 100,000 barrels of oil a day into the ocean, depending on the estimate.

BP P.L.C., which owned the operating permit for the semisubmersible rig, had limited success last week slowing the rate of the leaks. London-based BP said it would attempt to plug the leak by injecting special mud and concrete into the well as early as May 23.



CEO Tony Hayward said BP will pay all 'legitimate claims.'

BP has taken responsibility for the cost of cleaning up the spill, but executives at the four companies involved in the drilling operation have accused each other of deserving the blame. As of last week, BP said 19,000 claims had been filed related to the oil spill and 8,000 payments had been made.

Previous estimates have put insured losses from the spill as high as $3.5 billion, with pollution liability and business interruption major components of anticipated

See **SPILL** page 20

WORKERS COMPENSATION

States' financial woes squeeze comp systems

Budget gaps, layoffs increase litigation, slow claims resolution

By ROBERTO CENICEROS

State budget shortfalls are hindering the resolution of workers compensation cases and may increase employer claims costs as states cut back on judges and other critical staff, risk managers say.

Furloughs of state workers including administrative law judges, auditors and other public employees that handle claims are increasing litigation expenses and even hamper return-to-work efforts, risk managers say.

Other sources say having fewer judges and other state employees dedicated to resolving workers comp claims may be appropriate because there has been a nationwide decline in injury frequency for several years.

But several observers who manage claims say claims resolution problems have increased in the past year as states cut or furloughed staff.

In an April report, the National Conference of State Legislatures said "state budget gaps loom as far as the eye can see." It said 31 states and Puerto Rico foresee fiscal 2012 budget gaps of at least $73.5 billion, and 21 states project fiscal 2013 budget gaps of at least $64.7 billion. "Including previous amounts, states will have addressed budget gaps in excess of $531 billion since the recession began in December 2007," according to the report.

The issue is not apparent in all jurisdictions and depends on the state, risk managers say.

In Michigan, for example, seven of 27 magistrates were not reappointed in January because of state budget problems and an ongoing reduction in claims frequency that has led to fewer litigated claims, said Jack A. Nolish, director of Michigan's Workers' Compensation Agency.

Because the reduction occurred in January and other unknown factors, it is too early to determine how

See **CUTS** page 17

FEDERAL LEGISLATION

Buyers hail bill to reform financial services sector

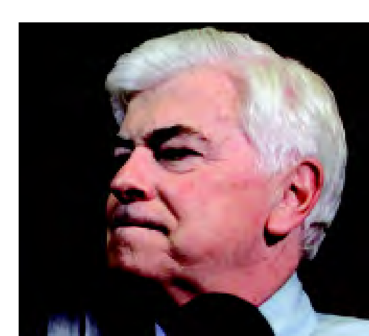
By MARK A. HOFMANN

WASHINGTON—Three longtime risk management legislative goals moved considerably closer to reality last week with the Senate's approval of comprehensive financial services regulatory reform legislation.

Although the Restoring American Financial Stability Act of 2010 focuses largely on banks and investment firms, the measure also calls for establishing a federal insurance office in the Treasury Department.

Another provision would streamline surplus lines taxation and regulation, ease qualified risk managers' ability to access the surplus lines market, and reform reinsurance regulation.

A third provision would require some publicly held corporations to set up risk committees that include at least one risk management expert.



AP PHOTO

Sen. Christopher Dodd, D-Conn., pushed financial services regulatory reform through the Senate last week.

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CHRIS KOLENO

VIDEO: MAKING DO WITH LESS

In a new Issues in Risk Management video, risk managers from colleges and universities talk with *Business Insurance* about doing more with less.

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COBRA SUBSIDY FAQ

Experts say employers should brace for another extension of the federal subsidy of COBRA health insurance premiums for laid-off workers. Editor-at-Large Jerry Geisel answers frequently asked questions about the COBRA provisions online. Go to the Online Features section of the home page.

WEBINARS & WEBCASTS

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Week of May 17, 2010

1. Most employers waiting to cover adult children: Survey
2. Many firms to be hit by Cadillac health plan tax: Study
3. Executives who own parking lot can be sued in fall: Court
4. Agency clarifies workers comp Medicare set-aside rules
5. Maker of tainted drywall settles homebuilder's suit
6. Bill would extend COBRA, provide pension funding relief
7. Injured plane passenger can sue under state law: Court
8. XL Insurance names North America construction leader
9. Workers comp denial no bar to third-party lawsuits: Court
10. Health savings account enrollment surges 25%: Study

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HEALTH CARE BENEFITS

COBRA, pension funding in tax bill

By JERRY GEISEL

WASHINGTON—Federal lawmakers are making a fresh attempt to extend soon-to-expire federal COBRA premium subsidies as well as providing pension plan funding relief long sought by employers.

This week, the House and Senate are expected to take up a revamped tax bill—The American Jobs and Closing Tax Loopholes Act of 2010—that includes the COBRA premium subsidy and pension funding provisions.

Washington observers say the prospects of the measure, which was put together by the chairmen of the Senate Finance and House Ways and Means Committees, are good but not certain amid concerns by some conservative Democratic lawmakers about the costs and financing.

"The chances of the legislation being passed are strong, but issues—principally the costs and financing of the overall bill—still have to be fully worked out," said Frank McArdle, a consultant in the Washington office of Hewitt Associates Inc.

The COBRA provision is identical to the one in a tax bill that the Senate passed in March but on which the House did not act.

Under the proposal, the 65%, 15-month federal premium subsidy would be provided to employees involuntarily terminated through the end of 2010. Without an extension, workers who are laid off after May 31 would not be eligible for the subsidy.

The subsidy, which has enabled millions of laid-off workers and their families to retain employer coverage, was included as part of a broad economic stimulus bill that Congress passed in February 2009. Since then, lawmakers have extended the subsidy several times, either just before or just after the prior extension expired, causing considerable uncertainty for employers and health care plan enrollees.

By extending the subsidy through the end of year—at a cost to the federal government of nearly $8 billion, according to congressional tax analysts—uncertainty will end for a while.

"There was so much confusion before. Employers definitely will take that certainty," said Chantel Sheaks, a principal in the Washington office of Buck Consultants L.L.C.

The pension provisions largely mirror those in the earlier tax bill. Under current law, employers must amortize funding shortfalls over seven years. The tax bill, H.R. 4213, would give employers two alternatives to that schedule.

Under one alternative, employers

See **TAX BILL** page 20

EXTENDED BENEFITS

What the tax extenders bill would do

- Extend the 65%, 15-month federal COBRA premium subsidy to employees laid off through Dec. 31.
- Give employers more time to amortize pension funding shortfalls.
- Require employers adopting slower funding schedules to make additional contributions if they pay "excessive" employee compensation or "extraordinary" dividends.
- Temporarily ease rules that freeze benefit accruals for participants in severely underfunded plans.
- Improve disclosure of 401(k) plan fees.
- Extend the National Flood Insurance Program through Dec. 31.

EMPLOYMENT PRACTICES

NYT PHOTOS

Amy Velez is the lead plaintiff in a gender discrimination suit that led to a jury award of $250 million in punitive damages against Novartis A.G.

'Breathtaking' Novartis award a wake-up call

Gender discrimination verdict points up need to enforce policies

By COLLEEN McCARTHY

NEW YORK—A record jury verdict against pharmaceutical giant Novartis A.G. over gender discrimination charges underscores employers' duties and is likely to spur additional gender bias lawsuits, legal experts say.

Last week, a New York jury said Basel, Switzerland-based Novartis should pay $250 million in punitive damages for discriminating against thousands of female sales representatives over pay, promotion and pregnancy.

Lawyers for the approximately 5,600 employees covered by the 2004 class action lawsuit said it was the largest U.S. gender discrimination case ever to yield a jury verdict.

The jury of five women and four men previously found that the company's U.S. division, East Hanover, N.J.-based Novartis Pharmaceuticals Corp., engaged in a pattern of discrimination against women who worked for the company between 2002 and 2007.

The jury also awarded $3.37 million in compensatory damages to 12 women who were named plaintiffs in the case and who testified at trial. Compensatory damages for the remainder of the class will be determined separately and could be determined by a court-appointed special master.

Legal experts said Novartis could pay as much as $1 billion overall, once compensatory damages are calculated for the remainder of the class.

The size of the award is "breathtaking" said Mike Delikat, partner at Orrick, Herrington & Sutcliffe L.L.P. in New York, and chair of its employment law practice group. "Companies really need to sit up and look at their potential expo-

See **NOVARTIS** page 17

ALTERNATIVE RISK TRANSFER

Regulators resolve turf war over RRGs

Compromise proposal lets states coordinate examination efforts

By RODD ZOLKOS

An effort to craft guidelines for examining risk retention groups is moving forward thanks to last week's resolution of a dispute concerning language related to domiciliary authority over those exams.

The issue arose in April when California regulators objected to language that the District of Columbia proposed be included in guidelines being developed by the RRG Subgroup of the National Assn. of Insurance Commissioners' Financial Examiners Handbook Technical Group.

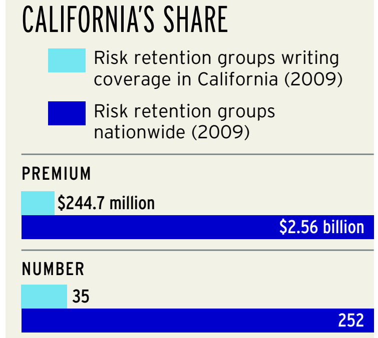
California objected to the D.C. regulators' proposal that the guidelines for RRG examinations include a sentence specifying that, under the federal Liability Risk Retention Act, "the domestic regulator shall have exclusive authority to determine the scope of all examinations, and the grounds for conducting any unscheduled examinations."

But in a Thursday subgroup conference call, regulators from the district and the state agreed to modified language offered by D.C. regulators. Through its general counsel, Robert H. Myers Jr., a partner at Morris, Manning & Martin L.L.P. in Washington, the National Risk Retention Assn. also agreed to the change.

The disagreement hinged on the fact that "the LRRA has language allowing another state to do an exam of an RRG doing business in their state if the domiciliary state refuses to do an examination," and what constitutes such a refusal, Dana Sheppard, associate commissioner, Risk Finance Bureau, in the District of Columbia Department of Insurance, Securities and Banking,

See **RRGs** page 6

CALIFORNIA'S SHARE



Source: NAIC Database/California Department of Insurance, Risk Retention Reporter

HEALTH CARE BENEFITS

HSA enrollment grows amid cost cuts

By JERRY GEISEL

Enrollment in high-deductible health insurance plans linked to health savings accounts continues to surge, with the biggest growth in plans offered by larger employers.

As of Jan. 1, 10 million people were enrolled in HSA-linked health insurance plans, a 25% increase in a year, according to an annual census released last week.

HSA enrollment rose in all markets, according to the Washington-based America's Health Insurance Plans.

The large-employer market saw the biggest percentage gain. Employers with at least 51 employees had 5 million people in HSA-linked plans as of Jan. 1, an increase of about 33% in the past year.

+33%

THE LARGE-EMPLOYER MARKET saw the biggest percentage gain. Employers with at least 51 employees had 5 million people in HSA-linked plans as of Jan. 1, an increase of about 33% in the past year.

In the small-employer market—employers with up to 50 employees, as defined in this particular survey—HSA enrollment increased to about 3 million, up about 22%.

Meanwhile, individual market enrollment climbed to slightly more than 2 million people, a 12% increase.

HSAs, authorized under the 2003 federal law that added a prescription drug benefit to the Medicare program, became available on Jan. 1, 2004, and enrollment has risen steadily since then (see chart, page 6). In all, AHIP estimates that 4.8% of the privately insured U.S. population younger than 65 was enrolled in HSA-linked HDHPs as of Jan. 1.

The most significant factor driving HSA growth is that premiums for HDHPs, to which HSAs must be linked by law, tend to be lower than more traditional health plans that impose less cost-sharing on employees.

For example, the average annual premium for family coverage provided through the best-selling HSA-

See **HSAs** page 6

HEALTH CARE REFORM

Employers prepare to expand wellness efforts: Survey

Higher incentives cap puts greater emphasis on employee health

By SALLY ROBERTS

The costs of the health care reform law make it more important than ever that employers keep their workers healthy and motivated to adopt healthy lifestyles, a vast majority of employers said in a recent survey.

Not only did 78% of employers agree or somewhat agree with that statement, most also said they are likely or very likely to create or expand corporate wellness programs as a result of an incentive provision in the new law.

Effective Jan. 1, 2014, employers will be able to use employee wellness program rewards or penalties of up to 30% of the cost of individual health coverage, up from the current limit of 20%.

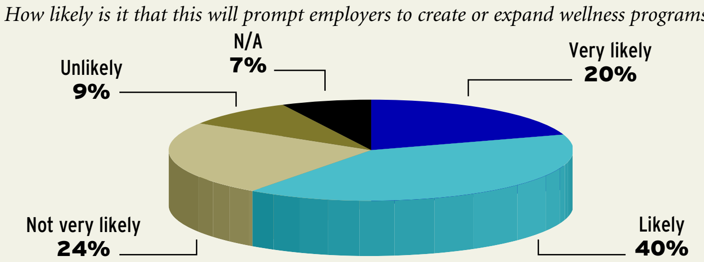
The survey conducted by the Chicago-based Midwest Business Group on Health in partnership with *Business Insurance* found that 60% of employers are likely or very likely to create or expand their wellness programs as a result of the wellness provision, while 33% said they are unlikely or not very likely to do so, and 7% did not answer.

The survey of 1,300 employers, including MBGH members and the National Business Coalition on Health, gauged their intentions and perspectives concerning the Patient Protection and Affordable Care Act.

MBGH will present the survey findings this week at a health care seminar in Chicago.

KEEPING WORKERS HEALTHY

Effective January 1, 2014 employers will be permitted to use employee wellness program rewards or penalties up to 30% of the cost of coverage, up from the current limit of 20 %. How likely is it that this will prompt employers to create or expand wellness programs?



Source: Midwest Business Group on Health

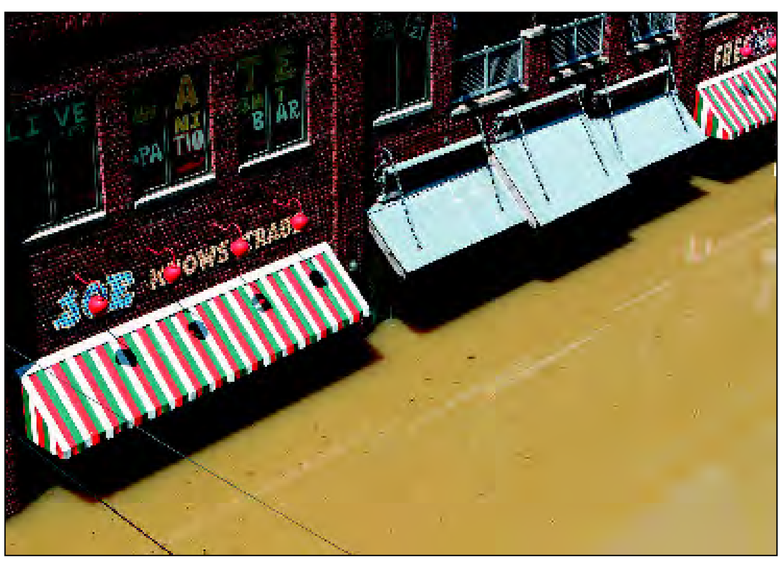
Larry S. Boress, president and CEO of MBGH, said the most significant finding of the survey is the recognition among employers of how critical the health of their employees is to the success of their companies.

"Employers have recognized that under health reform, more than ever, the investment in human capital is what they need to be looking at as opposed to thinking of benefits as just an expense of doing business," Mr. Boress said.

The survey also found that when it comes to communicating information to employees, 52% are educating employees about how the law affects their benefits; 36% are

See **MBGH** page 19

FEDERAL LEGISLATION



UPI/LANDOV

Heavy rains led to flooding in Nashville, Tenn., earlier this month. The losses may prompt Congress to extend the federal flood insurance program.

Nashville floods put pressure on Congress to extend NFIP

Short-term fix likely as expiration date looms

By JEFF CASALE

NASHVILLE, Tenn.—Severe flooding that hit Nashville, Tenn., shows the pressing need to extend the National Flood Insurance Program and may be the catalyst to get a reluctant Congress to act, experts say.

According to the National Weather Service, 13.5 inches of rain fell on the Nashville area between May 1-2, causing the Cumberland River to flood much of Music City USA. Insurance industry and weather experts have categorized the event as a 500-year flood. However, it affected areas of Nashville and Davidson County that were never expected to flood.

The Property Claim Services unit of Insurance Services Office Inc. does not have an insured loss estimate, but has assigned the event a catastrophe serial number, which means estimated insured losses exceed $25 million.

Nashville Mayor Karl Dean estimated damages in the city alone could top $1 billion, while insurance industry experts said losses could top $1.5 billion. According to New York-based consultant Towers Watson & Co., a $1.5 billion loss would make the Nashville flood the seventh-largest nontropical convective storm event on record.

Of 25,082 in-force flood polices in Tennessee as of March 4, 100 were in Davidson County, which includes Nashville, according to the Federal Emergency Management Agency, which runs the NFIP.

However, the NFIP will expire May 31 if Congress doesn't extend it. The program has lapsed twice this year.

House Financial Services Committee Chairman Barney Frank, D-Mass., has proposed H.R. 5255, which would extend the NFIP temporarily. Additionally, the House Financial Services Committee has

See **FLOOD** page 21

INTERNATIONAL

UK tax change may help London's allure

Corporate rate cut could halt trend of insurers moving

By MICHAEL BRADFORD

LONDON—A pledge by the new U.K. government to reduce corporate taxes may help stem the tide of insurers leaving the United Kingdom for more tax-friendly jurisdictions, experts say.

Prime Minister David Cameron's Conservative Party promised before last month's election that it would include in its first budget a measure that would reduce the corporate tax rate from 28% to 25%. The coalition government formed as a result of the election is to unveil the budget June 22.

"I don't think that objective has been dropped, so we would expect some mention of it shortly," Miles Trotter, London-based general manager with rating agency A.M. Best Co. Inc., said last week.

PA PHOTOS/LANDOV

New U.K. Prime Minister David Cameron's Conservative Party promised to lower corporate taxes.

"It's a meaningful change and I think it would be helpful," said Colin Graham, tax partner with PricewaterhouseCoopers L.L.P. in London. "But it's not entirely clear how they would fund that" proposed tax cut.

Mr. Graham said Conservatives also have indicated that the way British insurers are taxed on foreign earnings could change. Making those taxes more manageable could improve competitiveness of the London market, he said.

"What everyone wants is a more competitive tax environment here, one that is stable so they can make long-term decisions about their business," Mr. Graham said.

U.K. tax obligations led several insurers in recent years to leave for domiciles where tax rates are lower.

See **UK TAXES** page 18

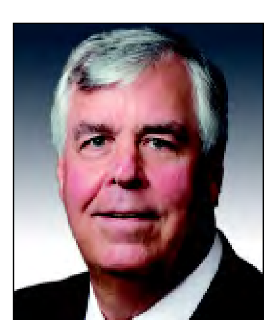
RISK MANAGEMENT

Economy tests industry/buyer relations

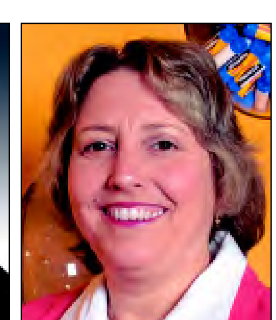
By REGIS COCCIA

CHICAGO—The relationship between risk managers, brokers and insurance companies is good, but their loyalty has been tested during the difficult economy, panelists said at the 2010 Harold H. Hines Jr. Memorial Symposium.

During a 90-minute question-and-answer discussion last week in Chicago, three panelists explored the changing dynamic of how buyers, brokers and insurers work with each other and some of the challenges they face. "Partners in Risk: Collaboration among Buyers, Brokers and Insurers" was the theme of the Hines Symposium, which is presented annually by the Chicago chapter of the Risk & Insurance Management Society Inc., *Business Insurance* and the Insurance School of Chicago.



Mr. Glantz



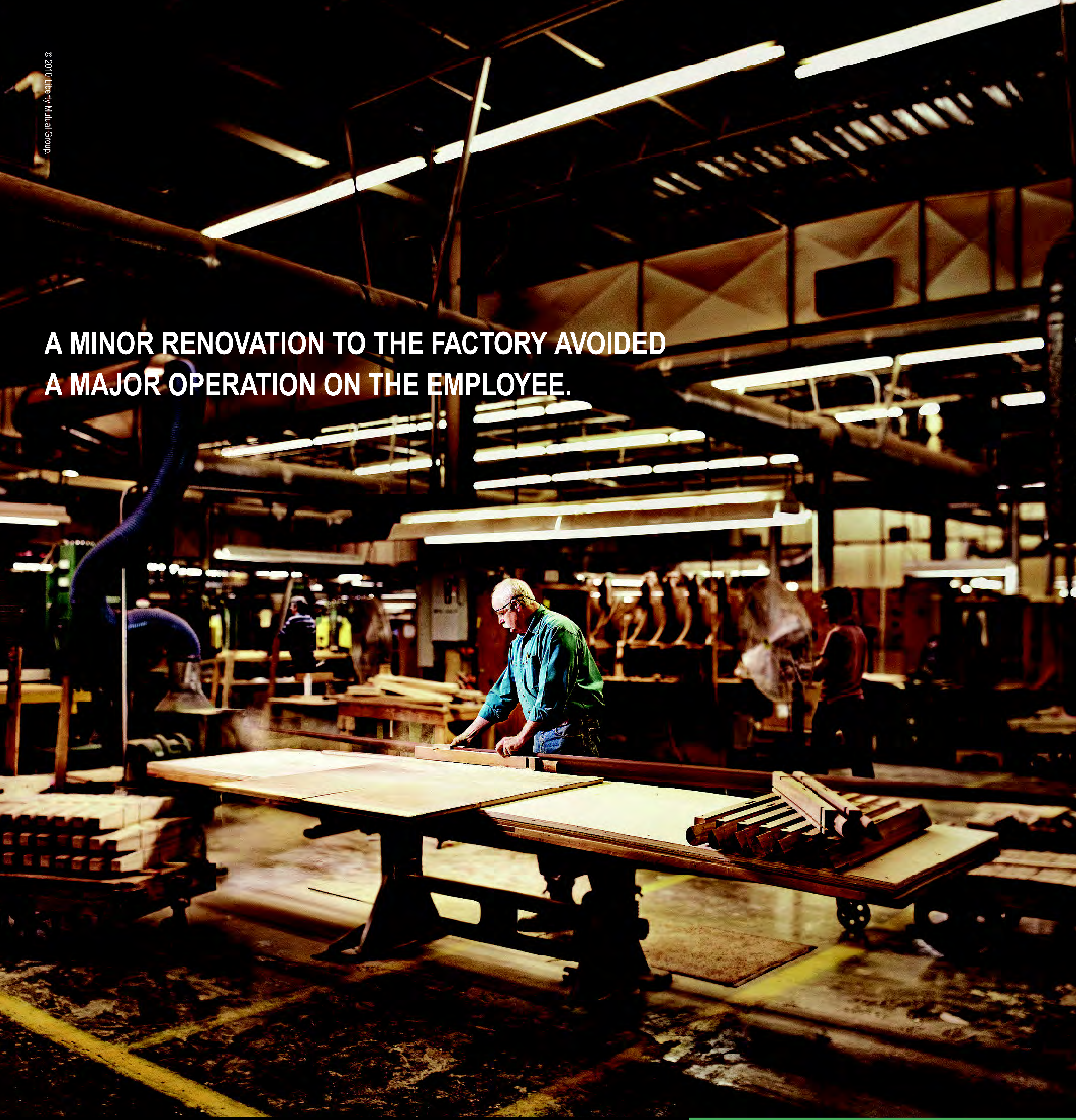
Ms. Arendall

Mr. Schoberth

"In today's economy, pressure to control costs is undermining loyalty" in business relationships, said Dave Glantz, chairman of Hays Cos. of Illinois, a Chicago-based insurance brokerage. He said he has seen some risk managers in the past two years change insurance companies to save small amounts of money.

Carol Arendall, vp of risk management at Rosemont, Ill.-based U.S. Foodservice Inc., advised risk

See **HINES** page 19



When an employee from a large furniture manufacturer developed recurring wrist pain, our Workers Compensation experts teamed with his doctor to quickly assess the situation. We discovered that changing the layout of his workspace would avoid painful surgery and allow him to continue working while he healed. Our regional medical directors, 24-hour claim response teams and loss control experts work together with you and your broker to develop effective solutions that help you keep employees safer and get them back to work. That's our policy. For more information, contact your broker or agent or visit libertymutualgroup.com/workerscomp.

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RRGs: Regulators resolve turf war

CONTINUED FROM PAGE 3

said in an interview prior to Thursday's subgroup conference call.

"We were just a little concerned with the original proposal, the tone of some of the coordination language," said Jill Jacobi, senior staff counsel at the California Department of Insurance, during last week's conference call.

While noting in their revised proposal that, "Generally, financial examinations of RRGs are performed solely by the domiciliary state," D.C. regulators allowed that with many RRGs doing business in multiple states, "regulatory coordination of financial examinations may be appropriate."

Domiciliary states should notify other states of planned examinations through the NAIC's Exam Tracking System, according to the revised proposal. "While this notice doesn't permit other regulators to participate on the examination," it would allow other states where the RRG does business "to contact the domestic regulator with any questions or concerns" they would like considered in the examination, the D.C. proposal said.

The new language also provides that, if appropriate, the domestic regulator can invite other states' regulators to participate in examinations. It also notes that that while the LRRA allows nondomiciliary states to examine RRGs if the domiciliary state refuses to conduct an examination, the examination coordination process in the proposed guidelines should reduce the need for other states to take such steps.

'After the last call, we did realize that the language was a little strong and probably unacceptable to several members of the group.'

Dana Sheppard,
District of Columbia Department of Insurance, Securities and Banking

"We actually think the District of Columbia's revised proposal is pretty good and would support it," California's Ms. Jacobi said.

"After the last call, we did realize that the language was a little strong and probably unacceptable to several members of the group," said D.C.'s Mr. Sheppard. While saying D.C. regulators "want to control our exams as much as possible," the regulators also want to make it possible to coordinate with other states where D.C.-domiciled RRGs do business. "I think this strikes that balance," he said.

Mr. Myers said it is important that any guidelines "emphasize coordination among regulators …without diminishing the authority of the state of domicile."

"Ultimately, it is up to the state of domicile to conduct the exam," Mr. Myers said. "And that's what the federal law allows and that's what we support."

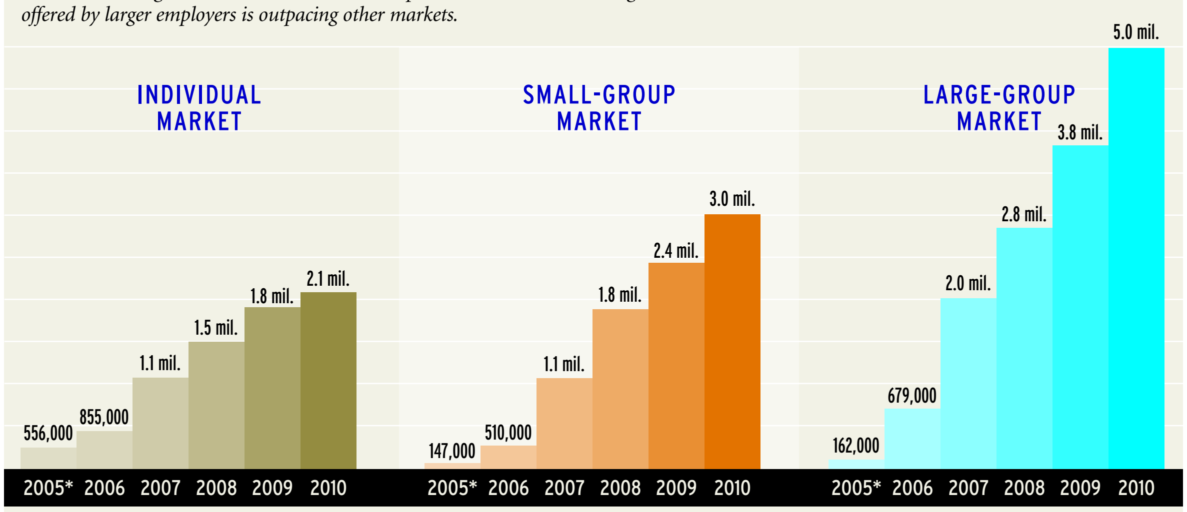
"I support this and the NRRA supports it," Mr. Myers said.

Ultimately, the RRG Subgroup approved its proposed guidance for the examination of RRGs including the new D.C. language to coordinate examinations among states, moving it on to the NAIC's Financial Examiners Handbook Technical Group for its review and consideration.

Mr. Sheppard said the RRG examination guidance is important not only to help steer regulators' RRG exams, but also to help states that license RRGs as captives position themselves for NAIC accreditation reviews. "We're trying to get some guidance on how we do the exams so we can get through the accreditation without any difficulty," he said.

ON THE RISE

Enrollment in high-deductible health insurance plans linked to health savings accounts offered by larger employers is outpacing other markets.



**As of March 1; all other years as of Jan. 1*
Source: America's Health Insurance Plans

HSAs: Enrollment grows amid cost cuts

CONTINUED FROM PAGE 3

linked HDHP in the large-group market was $9,767 for family coverage this year. That compares with $13,375 for employer-sponsored family coverage last year, according to a Kaiser Family Foundation survey. The Kaiser figure is based on all plan types.

Another key appeal of HSA-based plans is tax breaks that are not available with other plan designs. Employee contributions to HSAs are made on a pretax basis, can be rolled over indefinitely, earn interest tax-free and are distributed tax-free to pay uncovered health care expenses.

By contrast, employee contributions to flexible spending accounts also are pretax and distributions are tax-free, but account balances are forfeited at the end of the year or, if an employer adopts a grace-period FSA, can be used to pay claims incurred during the first two and one-half months of the next plan year.

Still, HSA-linked plans have their drawbacks for employees, especially workers who are major users of health care services, as the arrangements impose significant employee cost-sharing.

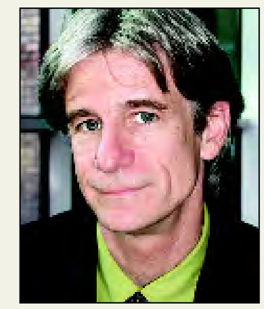
In 2010, federal rules stipulate that the deductible can't be less than $1,200 for single coverage and $2,400 for family coverage. In fact, deductibles tend to be higher than the federal minimum. The AHIP survey found that the average deductible for the best-selling plan in the large-group market was $2,203 for single coverage and $3,907 for family coverage this year.

The AHIP census is based on information reported by 93 insurers and their subsidiaries offering HSA-linked health insurance plans. AHIP said it believes its census covers virtually all people enrolled in plans linked to HSAs.

The "2010 Census" is available online at *www.ahipresearch.org*.

Commentary

Hurricane would put salt in Gulf's wound



MICHAEL **BRADFORD**

Senior Editor Michael Bradford can be reached at: mbradford@businessinsurance.com

Folks in the communities along the U.S. Gulf Coast from Texas to Florida are getting ready for their yearly dose of dread.

Hurricane season arrives June 1, and residents of coastal areas will switch on the evening news each night wondering if there will be a small swirl off the coast of Africa that could grow a few weeks later into their worst nightmare.

This year, Gulf Coast residents may want to skip the weather report and pray instead. If a hurricane batters the region in 2010, it could rip into some communities already hanging by a thread. The massive oil slick from the Deepwater Horizon drilling rig catastrophe is threatening the livelihood of shrimpers, fishermen and businesses along the hurricane-exposed coast in Louisiana and Alabama.

Many Gulf Coast communities have struggled to get back on their feet since Hurricane Katrina in 2005. A big storm in the oily Gulf would be a very cruel blow.

A hurricane this year would pile misery upon misery. If it hits in the midst of the oil spill cleanup, who would blame the people in towns like Venice, La., from throwing up their hands and walking away? How many times can you get knocked down before conceding that enough is enough?

If a hurricane batters the region in 2010, it could rip into some communities already hanging by a thread.

Experience from Katrina, though, shows that isn't likely to happen. Shrimpers and oyster fishermen are a tough breed. Many along the Gulf Coast have harvested seafood from the Gulf for decades, some carrying on a lifestyle that has been in their families for generations. When Katrina blew through and took their homes and boats, many dug in, cleaned up and got back to work.

But they have never faced a hurricane season with their morale already battered by a catastrophe. In normal times, there's enough stress this time of year. Add hundreds of thousands of barrels of oil to the Gulf, and hurricanes become even more of a potential horror.

If they didn't have enough to worry about, Gulf Coast residents are dealing with the inevitable circus that surrounds any environmental disaster.

The spill triggered the expected rush of attorneys. There is no more certain guarantee that lawsuits are about to flood the courts than oil gushing into a waterway. In New Orleans, lawyers have established their ground zero in the high-stakes derby for tens of thousands of potential plaintiffs.

And we all get to be entertained by the show of hand wringing in Washington. Puffed-up politicians have hauled oil company executives before Congress to answer sternly delivered questions. President Barack Obama, no slouch himself in the art of blame, has angrily chastised the executives for pointing fingers at each other for the cause of the spill during the congressional hearings that he labeled a "ridiculous spectacle."

All of this, of course, is paving the way for more government regulation of the oil industry, which may not be a very popular move among the people most affected by the spill. Big oil provides a lot of jobs in the region. If a clampdown leads to cutbacks in jobs, more regulation will only make things worse.

Meanwhile, because of a gigantic risk management mishap, there is a very large oil slick sloshing around the Gulf of Mexico. Unless the companies responsible for putting it there figure out a way to clean it up quickly, it has the potential to destroy livelihoods, kill wildlife and reshape cultures along parts of the coast.

As for the good folks of the Gulf Coast, all they can do is pitch in and help clean up the mess, pausing occasionally to remember the good old days, when hurricane season was all they had to worry about.

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Business Insurance OPINIONS

Give employers pension funding relief

ONCE AGAIN, Congress is poised to give employers more time to fund their pension plan obligations, and this time we hope the legislation is approved.

As we report on page 3, the House and Senate this week are to consider a broad tax bill that includes pension funding relief similar to that in a tax bill the Senate passed in March but on which the House did not act. In general, we approach rule changes to ease funding requirements skeptically, given the history around pension funding.

For decades, the rules were lax and filled with loopholes. The result was that employers could promise rich benefits and then not come close to funding those promises.

Then, when those employers got into financial trouble and had to ditch their plans, the federal Pension Benefit Guaranty Corp. was forced to pick up much of the tab. Because the PBGC gets the money to pay for failed plans from employers with ongoing plans, the good guys in some cases had to pay for the bad actors.

> *Extraordinary situations demand special rules.*

In 2006, Congress finally woke up to the dubious logic of that system and dramatically tightened funding rules. The result over the long haul will be plans that are better funded and employers that are more responsible about benefits they agree to provide.

While we support those goals, extraordinary situations demand special rules. The equities market meltdown of late 2008 and early 2009 that battered pension plan funding levels is such a situation.

Absent funding relief, employers—because of circumstances beyond their control—will have to funnel huge amounts of money into their plans, jeopardizing their own financial recovery.

Temporarily giving employers more time to meet those obligations will increase the likelihood that employers won't be drained of the cash they need to stay in business and continue their pension plans.

We hope Congress sees the logic of that and gives employers the needed relief.

Higher liability limit may spill everyone's cash

THE GROWING ECOLOGICAL DISASTER resulting from the oil spill in the Gulf of Mexico is prompting calls for change in U.S. energy policy. While we agree that pollution protections are needed, we fear some proposals may lead to unintended consequences for all businesses.

It is no exaggeration to assert that oil and gas fuel the global economy. Very few human activities do not in some way consume oil and/or gas.

As we report on page 1, legislation in Congress would raise the liability cap under the Oil Pollution Act of 1990 from $75 million to, under one proposal, $10 billion. BP P.L.C., which owns the Gulf well that is leaking thousands of barrels of oil a day, has said it will pay all "legitimate" claims resulting from the recent spill.

Increasing energy companies' liability exposure will result in higher costs for consumers, directly and indirectly. The direct costs will be passed along in the form of higher prices at the pump, and it wasn't so long ago that a spike in fuel prices brought the United States to the brink of recession. Indirect costs include higher financial responsibility costs, such as energy companies' heightened insurance requirements, and redeployment of capital away from exploration. Resulting higher fuel costs will inflate the expenses of businesses and individuals. Global recession is a real risk.

We encourage policymakers to consider the big picture and not take actions aimed at energy companies that will cause pain for all.

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THIS WEEK'S RESULTS

Q Will the Supreme Court's changing composition be favorable to businesses?

President Barack Obama has nominated Elena Kagan to the U.S. Supreme Court.

Likely
7%

Unlikely
82%

Not sure
9%

NEXT WEEK'S QUESTION

Q: How high a cap should there be for oil spill liabilities: $100 million or less, $1 billion or less, $10 billion or less or unlimited liabilty?

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Business Insurance

2010 BENEFIT MANAGER of the year FORUM

Right RMIS depends on business needs

From robust to reliable, systems to manage risk need to be adaptable

By KRISTIN GUNDERSON HUNT

Selecting a risk management information system requires more than just comparing vendors and prices. It requires determining which features and service packages are critical to an organization's operations.

"You need a robust system, but you have to find a balance between the system being robust and the system being so complicated that not everyone can use it," said Tim East, director of risk management for Walt Disney Co. in Burbank, Calif.

In general, RMIS are automated tools that track and analyze claims exposures so risk managers can make better decisions about where their losses are occurring, said David Tweedy, risk information consulting practice leader at Albert Risk Management Consultants in Needham, Mass.

Just as levels of risk are vastly different at every company, a specific business' RMIS needs also vary widely. Still, risk managers say some RMIS qualities are particularly important to any organization, regardless of size or risk level—namely customization.

"The No. 1 requirement I would look for is the ability of the software platform to be configured and customized to meet the needs of that risk manager's organization," Mr. East said.

Elizabeth Morrell, senior risk analyst at Southern Co., an electric company based in Atlanta, said a visually appealing and intuitive system that users can learn easily is extremely important. She also said it's important to have an easy-to-understand, powerful ad hoc report writer that generates customized reports to meet specific company reporting requirements.

Also along reporting lines, Mr. East said systems that have the ability to provide quick reports for simple questions and robust reports for more complex issues are especially helpful.

"Sometimes, you just need a quick answer to a quick question and you shouldn't have to go into a complex reporting system, but you also need the ability to dig deep into your data for more complex analysis," Mr. East said.

'The No. 1 requirement I would look for is the ability of the software platform to be configured and customized to meet the needs of that risk manager's organization.'

Tim East,
Walt Disney Co.

Reed Wykes, director of risk management for Parker Drilling Co. in Houston, said a RMIS dashboard, which organizes and usually presents information graphically and uses easy-to-understand terms, is not necessary for every organization, but it is a feature that he appreciates.

"Some people think dashboards are important. Some people think dashboards are overrated," Mr. Wykes said. "I like dashboards so I can see some basic information on things I routinely follow."

What is a necessity, Mr. Wykes said, is a Web-based RMIS that risk managers can access from any location at any time.

"Risk managers are out in the field all the time," he said. "They need to be able to access the system from anywhere across the globe. Everything else is Web-based now, so this needs to be Web-based as well."

Whether to use a RMIS consultant is another decision that must be made (see story, page 13).

RMIS providers aren't stopping at Web-based systems, though. Mobile versions of RMIS, accessible on mobile devices such as the iPhone and BlackBerry, are hitting the marketplace.

In April, Travelers Cos. Inc. said its e-Carma RMIS platform will be available on mobile devices by the end of the year. Riskonnect Inc.; CS Stars L.L.C., a unit of Marsh & McLennan Cos. Inc.; and Aon Corp., which offers RiskConsole, are among RMIS companies that offer mobile applications, said Mr. Tweedy, who added that he expects more providers to introduce mobile applications in the near future.

Ms. Morrell said reliability and the ability of the RMIS to evolve with an organization are two of the most important things to consider when investing in the technology.

"Reliability comes first," she said. "If you consider how many of your department's or company's business processes will be integrated into a new system, quality control and infrastructure are critical. Second, look for flexibility and innovation to meet your needs over the long term."

Intertwined with reliability is the service package that comes with a RMIS, which risk managers say is equally important as the system's features.

"The service aspect is the part of the equation that is most challenging for the buyer," Mr. Tweedy said. "The more customized the system, the more difficult it is to get the best service. If the system is off-the-shelf with (some) bells and whistles built in, it's easier."

He said it's more difficult to receive quality service for a highly customized system because so few people understand that specific system. As a result, he said clients with highly customized systems should require specific contract language about how fast improvements will be made and the level of quality assurance that will be offered.

"You want to have someone you can actually call," Mr. Tweedy said. "You don't want to get bounced from person to person's voice mail."

Mr. East said when needed, Disney has direct access to system developers, not just customer service help lines. Finally, he said training is a critical component of a service package.

"If people aren't trained to use the system, then they won't exploit its full capabilities," Mr. East said. "Training should be part of the service package. Don't skimp on the training."

Ms. Morrell said risk managers should look for providers with happy clients, a good reputation, experienced staff and a track record of loading data correctly, as referenced by other risk managers. She said a positive relationship with accessible and knowledgeable customer service representatives is imperative.

"The relationship with sales is one thing, but you really want to know about levels of turnover, experience and customer satisfaction with service for a long-term relationship," she said.

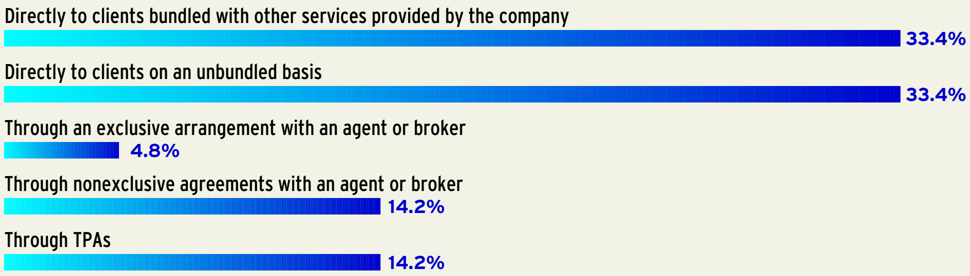
Mr. Tweedy said selecting the appropriate RMIS is important because it can add value to a risk program. He said it's a decision that warrants thorough research on the features and service available.

"It's a tremendous tool," he said, "so (risk managers) ought to invest the necessary amount of time to pick the right system and the right vendor."

Risk Management Technology

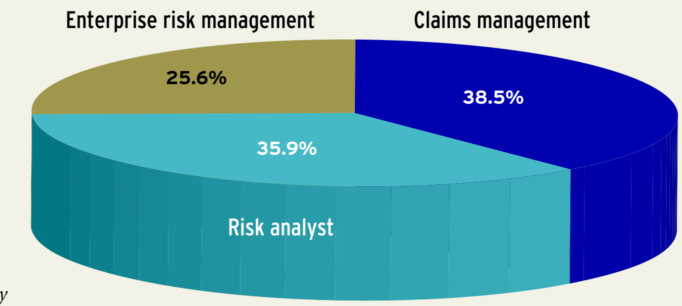
SPOTLIGHT

HOW RMIS PRODUCTS ARE SOLD



Source: BI survey

TYPE OF SYSTEMS OFFERED



Source: BI survey

Risk management information systems providers

Company/Address	Phone/Web site	System names	System type(s)	Systems first offered	Principal officer
Aon eSolutions 200 E. Randolph St., Chicago, Ill. 60601	800-299-2711 *www.aon-esolutions.com*	iVOS, RiskConsole, SafetyLogic	Claims management, enterprise risk management, risk analyst	1972	Kathleen Burns, CEO
Audit Integrity 11111 Santa Monica Blvd., Suite 220, Los Angeles, Calif. 90025	310-444-8820 *www.auditintegrity.com,* *www.trustworthycorporations.com*	Regulatory Enforcement Model, Bankruptcy Model, Class Action Litigation Model, Financial Restatement Model, Stock Price Model	Enterprise risk management	2002	John C. Zwingli, CEO
Cantor & Co. 8796 Hollywood Blvd., Los Angeles, Calif. 90069	310-657-4505 *www.cantorandco.com,* *www.riskmapsoftware.com*	MQMS Plus Risk Management	Claims management, risk analyst	1982	Alan Cantor, president
CS STARS L.L.C. 500 W. Monroe St., Chicago, Ill. 60661-3630	800-927-3343 *www.csstars.com*	STARS	Claims management, enterprise risk management, risk analyst	1967	William B. Diaz, president
DAVID Corp. 200 Pine St., Second Floor, San Francisco, Calif. 94104	800-553-2843 *www.davidcorp.com*	NavRisk	Claims management, risk analyst	1984	Alex Aminian, president/CEO
Ebix Inc.[1] 10639 Welch Road, Orient, Ohio 43146	614-344-4640 *www.ebix.com*	RiskEnvision	Claims management, enterprise risk management	1994	Robin Raina, CEO
Effisoft USA 57 E. Main St., Suite 217, Westborough, Mass. 01581	508-475-0670 *www.effisoft.com*	Webrisk	Claims management, enterprise risk management, risk analyst	1989	Will Warren, president
INFORM Applications Inc. 888 Veterans Memorial Highway, Hauppauge, N.Y. 11788	631-851-0222 *www.informapplications.com*	INFORM	Claims management, enterprise risk management, risk analyst	1980	Alan R. Josefsek, president
Liberty Mutual Insurance Co. 150 Liberty Way, Dover, N.H. 03820	800-294-3316 *www.libertymutualgroup.com*	RISKTRAC®, ClaimTrac, ClaimStatus PLUS	Claims management, risk analyst	1983	Frank Radack, manager
MFX 412 Mount Kemble Ave., Suite 200S, Morristown, N.J. 07960	866-639-6399 *www.mfxfairfax.com*	ClaimsAssure	Claims management	2001	Raymond A. Roy, chairman/CEO
Origami Risk L.L.C. 516 Madison Ave., Glencoe, Ill. 60022	888-481-1115 *www.origamirisk.com*	Origami Risk	Claims management, enterprise risk management, risk analyst	2009	Robert Petrie, president
Quantar Solutions Ltd. St. John Innovation Centre, Cowley Road, Cambridge, CB4 0WS England	44-1223-422-384 *www.quantarsolutions.com*	n-NORM , n-STS , n-REP	Enterprise risk management	2000	Phillipe Evrard, managing director
Risk Sciences Group Inc., a Crawford Co. 1001 Summit Blvd., Atlanta, Ga. 30319	800-726-8898 *www.risksciencesgroup.com*	Dmitri and Sigma Encore	Claims management, risk analyst	1978	Brenda Rarick, senior vp
Riskonnect Inc. 30 South Park Square, Suite 200, Marietta, Ga. 30060	770-790-4700 *www.riskonnect.com*	Riskonnect ERM, Riskonnect RMIS, Riskonnect Incident Management, Riskonnect Certificates, Riskonnect Portal, Business Intelligence	Claims management, enterprise risk management, risk analyst	2007	Bob Morrell, CEO
Specialty Risk Services L.L.C. 55 Farmington Ave., Hartford, Conn. 06105	888-236-4684 *www.specialtyriskservices.com*	@venture	Claims management, risk analyst	1993	A. Joseph Boures, president
Specific Software Solutions L.L.C. P.O. Box 1007, Brentwood, Tenn. 37024-1007	800-929-4052 *www.specificsoftware.com*	ModMaster Suite, WorkCompEdge.com	Risk analyst	1991	Timothy Coomer, CEO
TecnoRisk L.L.C. 1441 N. Northlake Way, Suite 105, Seattle, Wash. 98105	425-738-8525 *www.tecnorisk.com*	TecnoClaims, TecnoSafety	Claims management, enterprise risk management, risk analyst	1985	Roger G. Phillips, president
Travelers Cos. Inc. 1 Tower Square, Hartford, Conn. 06183	860-277-2770 *www.travelers.com*	e-CARMA	Claims management, risk analyst	1983	Matthew L. Carden, vp

1 Formerly Envision Technology Solutions
Source: *BI* survey
Researched by Kevin Edison and Karen Tucker

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Questions to ask when evaluating which system to use

By KRISTIN GUNDERSON HUNT

Choosing the appropriate risk management information system for an organization is critical considering the time and money invested in selecting and integrating the technology.

"The time and expense to fully implement a RMIS system make it almost like a root canal—once you've completed the process, it has to get really painful before you'd risk disrupting your operations to do it again," said Elizabeth Morrell, senior risk analyst for Southern Co., an electric company based in Atlanta.

As a result, she and other risk managers say consultants can be helpful.

"RMIS consultants are invaluable," Ms. Morrell said. "They will have a far broader range of experience with different systems than a corporate (information technology) department, and they can help you learn from others' mistakes and success stories."

However, consultants might be more essential for systems that have a large number of users, said Reed Wykes, director of risk management for Parker Drilling Co. in Houston.

> **'The time and expense to fully implement a RMIS system make it almost like a root canal—once you've completed the process, it has to get really painful before you'd risk disrupting your operations to do it again.'**
>
> Elizabeth Morrell, Southern Co.

Mr. Wykes said he is evaluating a RMIS with enterprise risk management capabilities to supplement Parker Drilling's current system. He has not used a consultant because the system will have about 10 users, but he said a consultant would be more helpful in choosing a system with 30 users or more.

Even if an organization hires a consultant, risk managers said the corporate information technology department still should be included in the evaluation process. Mr. Wykes said IT has to ensure that the RMIS can be supported internally and the information it contains is secure.

David Duden, national RMIS practice leader for Deloitte & Touche L.L.P. in Hartford, Conn., recommends including a variety of stakeholders in the organization—such as the human resources, benefits and finance departments—in the RMIS selection process.

"Get many areas of the company involved because adoption is often easier if (multiple departments) were involved in the process," Mr. Duden said.

Networking and consulting with other risk managers on their RMIS systems is as important as the feedback that internal colleagues will provide, risk managers said.

"I know my counterparts and I ask questions because everyone is either in the market or has been in the market," said Tim East, director of risk management for Walt Disney Co., in Burbank, Calif. "Talk to other risk managers and learn from their experiences."

Aside from references from prior clients, risk managers said some questions to ask potential RMIS providers include: How the system will handle data; how long it will take the system to get up and running; how easy or difficult the system will be to use; what overhead is required; and whether it will improve the functionality of the organization's data.

"Take your time and ask a lot of questions," Mr. East said. "These are unique systems. You need to understand the applications."

Mr. Wykes said he prefers talking to the RMIS designers of the systems he reviews. He said they explain their thought processes while developing the systems, so he can understand why the systems exist and how they may benefit his organization. He said he also likes to ask the designers—instead of salespeople—about the shortfalls and limitations of the technology.

"I'd rather have an honest story than a marketing story," he said.

Aside from asking questions, organizations can run tests to determine the validity of RMIS vendors' claims about their products. Demonstrations of the applications are interesting, risk managers said, but the real value comes from running a trial that compares reports using actual organizational data from the current and prospective systems.

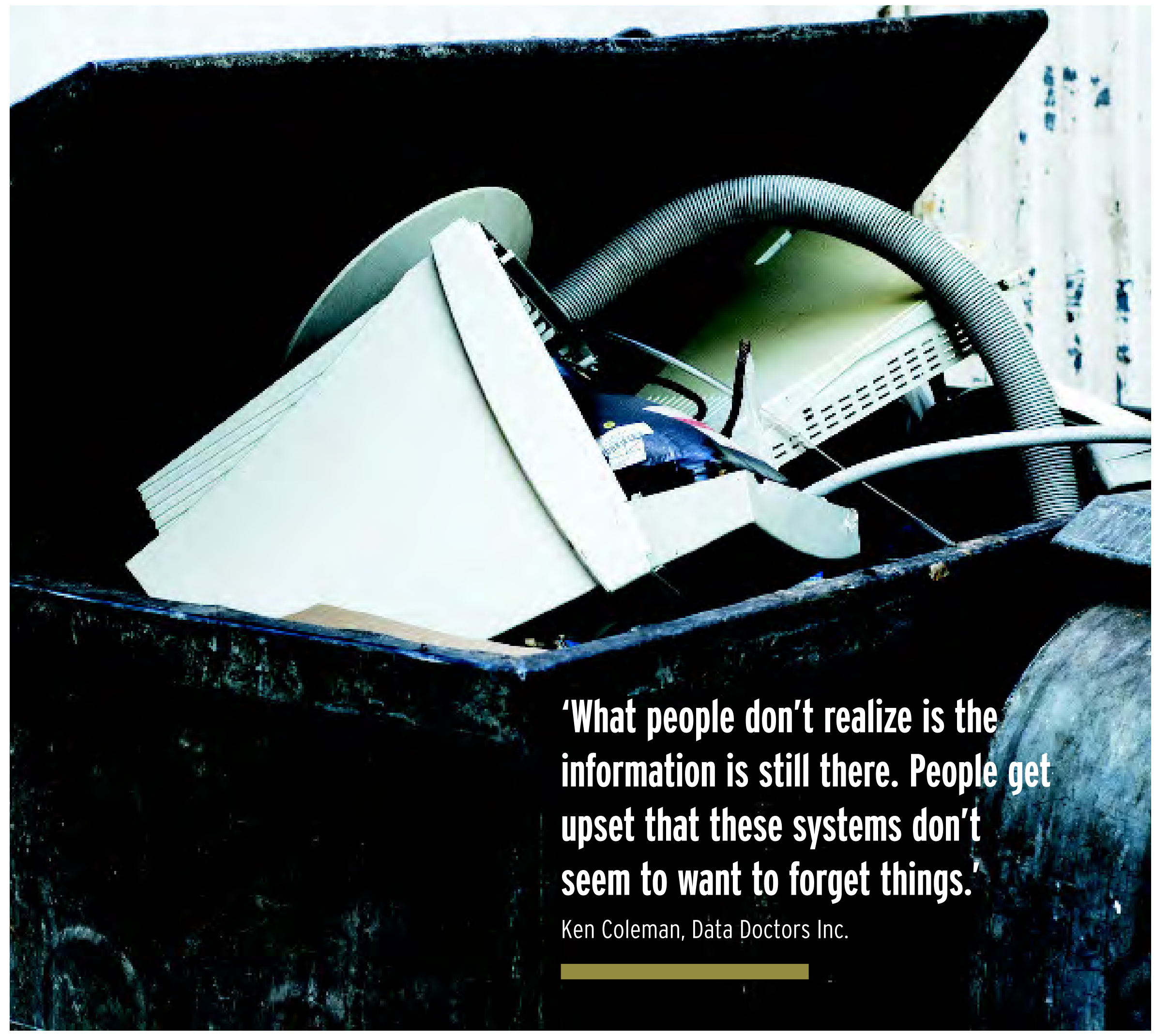
"A trial that uses your own data will paint a truer picture than a glossy demo system," Ms. Morrell said.

When selecting a RMIS, risk managers can't overdo due diligence, said David Tweedy, risk information consulting practice leader, Albert Risk Management Consultants in Needham, Mass. "It is one of the most important acquisitions a risk manager will make," Mr. Tweedy said. "Therefore, they ought to do their homework. It can really make their jobs a lot easier."

System upgrades require tight data security

Hard drives must be wiped clean before tossing old equipment

By LOUISE ESOLA



Companies that range from the largest financial institutions to the smallest mom-and-pop stores often miss an important step when getting rid of outdated computers and software: protecting the data from identity thieves, experts say.

Most companies and organizations have access to and store mounds of personal employee and customer information on their computers.

"The first pitfall companies make is not thinking about the issue of data security when upgrading their computers," said Alan Brill, New York-based senior managing director with the Kroll Inc.'s secure information services group. "The second pitfall is not thinking about it at the right technical level. A little bit of prevention can prevent a disaster."

Even as identity thieves proliferate, many companies ignore the issue of securing data on their out-of-date systems, said Ken Coleman, president of Data Doctors Inc., a Tempe, Ariz.-based computer recovery and technology services company. He said the problem also extends to smartphones and office copying machines (see story, page 15).

"Everyone realizes that your digital information is critical," Mr. Coleman said. "What a lot of companies don't have are procedures in place. We hear a lot of, 'I thought you were going to do it' responses" in disposing of equipment and software, he said.

"This is not something you can avoid by simply passing the buck," said Mr. Brill, adding that a common yet dangerous practice is deleting files, emptying the trash and then sending computers "on their way."

"What people don't realize is the information is still there," Mr. Coleman said. "People get upset that these systems don't seem to want to forget things."

Many companies rely on computer leasing companies to handle cleaning hard drives when computers are returned, said Kory Bostwick, president and CEO of PC Disposal L.L.C., an Olathe, Kan.-based computer hard drive-cleaning company. "The thing that gets missed is when there is not a clear procedure in place with the leasing company on who has to wipe hard drives."

Companies typically rely on computer leasing companies to have hassle-free, up-to-date computers in their offices.

"Companies try to avoid it by handing it over to the leasing company, which expects a clean computer," said Mr. Bostwick. "And the information is still there. Companies don't realize how expensive it can be when their information gets out."

Nick Winters, account manager of Trident Leasing Co., which leases computers to small- and medium-size firms, said the San Jose, Calif.-based company's procedure is to leave the hard drive cleaning to the customer and that most leasing companies have the same rules.

"It's up to them," Mr. Winters said. "Otherwise, we just wipe it clean anyway."

Mr. Bostwick said unclear or conflicting instructions are part of the problem and that companies with data to protect need to take the steps themselves. For companies leasing computers, this information may get lost in the contract or the firm renting the computer may not realize it is responsible for cleaning, Mr. Bostwick said.

"It takes up to 12 hours to completely wipe a hard drive," he said. "Never assume someone else is going to do it."

Mr. Brill said companies that lease computers should examine their contract. "Some leasing companies want computers back in operable condition, which means they can't completely wipe the hard drive. They can only wipe their files," he said.

There are ways to mitigate the risk, experts say.

Outsourcing to reputable companies to wipe hard drives is a popular way to avoid the dangers of data breaches associated with upgrading systems. "It isn't always the cheapest way to handle the issue," said PC Disposal's Mr. Bostwick. "But a data breach can ruin a business. This is the No. 1 reason people outsource this job."

Cheryl Flees, manager of office administrative services for Reston, Va.-based Quadramed Inc., which designs software for hospitals, said she has turned to PC Disposal several times when closing branch offices or getting rid of old computers.

"We knew it was a time-consuming process and we knew it had to be done," she said. "We don't have the technology or the manpower, so we went with another company we knew would get rid of data so that our information was safe and secure."

Kroll's Mr. Brill said companies also can buy or download the software to wipe their hard drives, but also said it can be time consuming. "Another problem is there are literally hundreds of programs out there that promise to wipe out your hard drive, but some are less effective than others," he said.

Even donating old computers to a school or sending them to a recycler presents risks. "What we tell people is that recycling or donating is not free," Mr. Bostwick said. "Anyone who comes up to you and tells you to not worry and that they will clear your system for free, watch out. It is your job to take care of your information."

Companies that store their data at a central online location may not realize that their employees could back up sensitive information on their individual computer's hard drive, Mr. Brill said. "Companies losing track of data is huge right now," he said.

Ben Beeson, London-based executive director of technology risk

Continued on next page

Copy machines often discarded with sensitive data on hard drives

Any organization or company that deals with people and personal information has its workers put documents on a copying machine and press the "start" button.

But experts say most don't realize that whatever is digitally photocopied onto a piece of paper also is stored on the copier's hard drive. Most don't even know the copier has a hard drive, experts say.

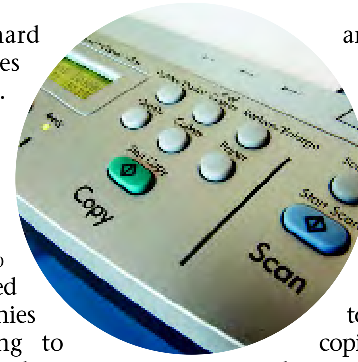
"People are in shock," said John Juntunen, founder and chief operating officer of Shingle Springs, Calif.-based Digital Copier Security Inc. "Nobody knows who's responsible for this or what they are supposed to do" when they sell or return a leased copier.

Since 2002, most major copier manufacturers have used hard drives in the machines to allow multiple functions, including scanning and printing documents and, in some cases, even faxing them. The copiers store scanned material in the machine's hard drive to perform jobs in order, said Mr. Juntunen, whose company clears copier hard drives.

As part of a recent story for the CBS television news network, Mr. Juntunen bought several used copiers from resale shop and found hundreds of pages of medical records, pay stubs with Social Security numbers and even confidential police records involving drug raids.

Ken Coleburn, president of Tempe, Ariz.-based Data Doctors Inc. and radio commentator, conducted a similar experiment and found human resources records for a popular apparel company on a copier's hard drive.

"We say computers are a good starting point," said Mr. Coleburn, whose business helps companies recover and destroy information on computer hard drives. "But it goes way beyond that. Copiers aren't getting as much attention as they should."



Mr. Juntunen said roughly 90% of copiers are leased and leasing companies are just beginning to notify their clients that it is the customer's responsibility to return copiers with cleaned hard drives.

"People are getting these notices and saying, 'I don't want to pay for that,'" Mr. Juntunen said.

Digital Copier Security charges upwards of $500 per machine, depending on model, brand and location, to clean hard drives on copiers. "It's not something companies are worrying about," he said.

Because medical records are among the top documents copied and the Health Insurance Portability and Accountability Act requires organizations housing medical records to protect patient privacy, Mr. Juntunen said hospitals and doctor offices that send a copier on its way with an unclean hard drive already have committed an offense by releasing and not protecting private medical records.

Mr. Coleburn warned that the market for used copiers and the information they might contain already is hot.

"This is the computer equivalent of Dumpster diving: buying old machines," Mr. Coleburn said.

—By Louise Esola

Continued from previous page

with Lockton Cos. L.L.C., said companies have much to lose.

First, there's the cost of notifying anyone whose private information has been breached, a practice now mandated in all states except Alabama, New Mexico, Kentucky and South Dakota. That plus good-faith credit monitoring that often is offered can be costly, said Mr. Beeson.

According to the 2009 "Cost of a Data Breach in the United States" conducted by Ponemon Institute L.L.C., a Traverse City, Mich.-based data protection research firm, the cost was $204 per record, or person, affected.

"When you think about how many people's information you may have on your systems, you can see how quickly this can add up," Mr. Beeson said. The study also found that the average cost of a data breach in the United States in 2009 was $6.75 million. "And that is before litigation," he said.

Companies that suffer data breaches as a result of a mishandled out-of-date computer or otherwise could face class action lawsuits and regulatory investigations.

"This is a huge risk to organizations that don't handle their data" property, Mr. Beeson said. "If you have data, you are on the hook."

Companies also face data breach risks from their vendors or subcontractors and often fail to ensure that their partners dispose of their computers properly, he said.

"The best thing a company can do is to make sure, with contract language and due diligence, that the people they do business with have their own strategies in place," Mr. Beeson said. "Otherwise, you're on the hook, whether it was your own computer or that of a business partner."

Market Moves

Liberty Mutual sets up bonding surety unit

HAMILTON, Ohio—Liberty Mutual Surety, a unit of Liberty Mutual Group Inc., has formed Liberty SuretyFirst, an operating unit serving independent agents with clients that have small- to midsize bonding needs.

According to a statement, Hamilton, Ohio-based Liberty SuretyFirst aims to offer regional accessibility but national scope and technology to combine small-contract, commercial and fidelity bond writing, field services and the previously acquired operations of Safeco Insurance Co. of America and Ohio Casualty Insurance Co.

"Recognizing that the underwriting and marketing viewpoints for small to midsized businesses are unique, Liberty SuretyFirst will be a cohesive, agent- and customer-oriented service organization specifically dedicated to this market," said Tim Mikolajewski, president and CEO of Plymouth Meeting, Pa.-based Liberty Mutual Surety, in the statement.

Senior Vp Lloyd Geary, who previously oversaw Liberty Agency Underwriters' bond unit, will lead the unit, the company said.

Weiss repurchases ratings unit

JUPITER, Fla.—Weiss Group L.L.C. has repurchased its bank and insurer ratings unit from TheStreet.com Inc. and revived Weiss Ratings Inc.

Weiss Ratings provides rating information for 900 life and annuity insurers, 2,700 property/casualty insurers and 600 health insurers in the United States and generates revenue from the sale of rating information to consumers, the Jupiter, Fla.-based agency said in a statement. It does not accept compensation from the companies it rates.

The deal, for which financial terms were not disclosed, includes a licensing agreement between TheStreet.com and Weiss Ratings through which TheStreet.com will resume distributing independent ratings on publicly traded companies. TheStreet.com also has licensed Weiss Rating's bank and insurer ratings to distribute to its clients.

"With this change, Weiss Ratings analysts can focus mostly on research that helps safeguard bank depositors and insurance policyholders, while TheStreet analysts can focus primarily on publicly traded companies bought and sold by investors," Michael D. Weiss, chairman and founder of Weiss Ratings, said in the statement

Weiss Ratings also said it has rehired its former bank and insurance analysts and staff, who will be based in Jupiter.

New York-based TheStreet.com, a provider of financial news, analysis and commentary, acquired Weiss Ratings in 2006.

New Marsh unit targets energy area

PITTSBURGH—Marsh Inc. has established a unit to help clients manage exploration, drilling and servicing operational exposures in the Marcellus Shale area of the U.S. Northeast.

The Pittsburgh-based unit, part of Marsh's U.S. energy operations, will provide operators and contractors in the Marcellus area, a sedimentary rock formation running along the Appalachian Basin that contains natural gas, with access to its specialists, consulting and insurance placement, the brokerage said in a statement.

"The establishment of our dedicated energy unit here responds to the needs of the growing number of clients involved in Marcellus and reflects our commitment to the local business community in western Pennsylvania," Mike Barbarita, head of Marsh's Pittsburgh office, said in the statement.

Marsh said the unit will serve all segments of the Marcellus gas business, including operators, drilling contractors and oil field equipment manufacturers.

For more information, contact Bertil Olsson, leader of Marsh's U.S. energy practice, at 713-276-8711 or *bertil.olsson@marsh.com*.

PMA Cos. expands in New England

MERIDEN, Conn.—Blue Bell, Pa.-based workers compensation and risk management services provider PMA Cos. has expanded its operations in New England with a focus on third-party administration accounts and property/casualty business.

According to a statement, the expansion began in 2008 with the acquisition of a Meriden, Conn.-based TPA, now called PMA Management Corp. of New England, by parent company PMA Capital Corp.

PMA said the Meriden office will act as a regional hub for the New England expansion, which focuses on Connecticut, Massachusetts, Rhode Island and Vermont. The office will offer TPA and risk management services through PMA Management Corp. of New England and property/casualty insurance services through PMA Insurance Group.

TO SUBMIT ITEMS

MARKET MOVES

BI's Market Moves column reports on activities by insurance industry companies and related entities.

PRODUCTS & SERVICES

BI's Products & Services column reports on new product offerings.

Please send Product & Services and Market Moves news to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. 60601 or e-mail *mtsikoudakis@businessinsurance.com*.

Finance: Bill advances three major industry goals

CONTINUED FROM PAGE 1

All of these reforms have been legislative objectives of the New York-based Risk & Insurance Management Society Inc. for the past several years.

Senate Banking, Housing and Urban Affairs Committee Chairman Chris Dodd, D-Conn., shepherded the measure, which he drafted, through four weeks of Senate debate. Ultimately, he was able to get four Republicans to support the measure, although he lost the support of two of his fellow Democrats.

The Senate action, however, is not the final word on the matter. The measure must be reconciled with a bill that the House approved last year.

While most of the differences between the measures deal with matters unrelated to risk management—such as the structure of a financial services consumer protection agency and whether financial services companies should be required to prefund a $50 billion pool to cover failing firms—the bills differ on how far the proposed federal insurance office could pre-empt state regulators. The Senate bill would give the office more power to do so on certain international insurance issues than would the House version.

Despite the differences, House Financial Services Committee Chairman Barney Frank, D-Mass., issued a statement shortly after the Senate vote expressing confidence "that we can have a bill ready for President Obama's signature very soon."

RIMS welcomed the Senate's action on the bill.

"We feel very, very pleased that our hard work in moving forward these three agenda items as part of the bill will serve our membership well, and actually will elevate, in our opinion, the status of risk managers in their organizations," said Scott Clark, RIMS secretary and director-external affairs.

RIMS wants the language establishing a federal insurance office to provide expertise at the Treasury to "be as strong as possible," said Mr. Clark, who also is risk and benefits officer for the Miami-Dade County Public Schools in Miami. He noted that RIMS will hold its annual RIMS on the Hill legislative conference June 6-8 in Washington.

The president of the Washington-based Council of Insurance Agents & Brokers, which had the surplus lines reform atop its legislative priority list this congressional session, is optimistic that the reforms will become reality. The CIAB also strongly supported the federal insurance office.

"While the broader bills must now be reconciled, a process that could be contentious on several big issues, the surplus lines provisions appear to be quite secure," CIAB President Ken A. Crerar said in an e-mail.

In addition, Mr. Crerar said, "We expect to see a flurry of efforts to change state law in anticipation of implementation of the surplus lines provisions."

A group representing the surplus lines industry also hailed the Senate action.

"Senate approval of the language is a giant step toward achieving needed reforms of surplus lines regulation," Richard Bouhan, executive director of the Kansas City, Mo.-based National Assn. of Professional Surplus Lines Offices Ltd., said in a statement.

The president and CEO of the Washington-based American Insurance Assn. said that while the group has some concerns about how provisions such as proposed restrictions on propriety trading could affect some members, AIA was pleased that the bill recognized that property/casualty insurers did not present a systemic risk to the financial system.

Financial services reform initially was approached with a "very bank-centric perspective," said the AIA's Leigh Ann Pusey. "The concern was that if you're a large financial institution, including a large property/casualty insurer, you must be systemically risky." But the bill distinguishes insurers from other financial institutions and leaves them in the state-based guaranty fund system that pays for the resolution of insolvent insurers rather than forcing them to pay into a pool to resolve other failed financial instructions, she said.

In addition, the federal insurance office "provision is one that we have always embraced," Ms. Pusey said.

"We're glad to see this package nearing completion as it will bring more certainty back to the market," said Jimi Grande, senior vp in the Washington office of the National Assn. of Mutual Insurance Cos. While not perfect, he said the package "certainly respects the state-based system of insurance regulation and, for the most part, recognizes the unique nature of property/casualty insurance."

But Mr. Grande said NAMIC "absolutely" prefers the House bill's call for a more restricted federal insurance office.

The Property/Casualty Insurers Assn. of America also hopes "the final product adopts the House position on the federal insurance office and further distinguishes state-regulated insurers in the provisions relating to assessments and proprietary trading," PCI President David Sampson said in a statement.

"We're pleased to see Congress continuing to make progress toward a more rational system of regulation for reinsurance," said Frank Nutter, president of the Reinsurance Assn. of America in Washington.

'We're glad to see this package nearing completion as it will bring more certainty back to the market.'

Jimi Grande,
National Assn. of Mutual Insurance Cos.

Novartis: Appeal expected of jury award

CONTINUED FROM PAGE 3

sures in this area," he said.

The ruling signals a "new day" for employers, said William Martucci, Washington-based partner with Shook, Hardy & Bacon L.L.P. and global employment practice leader. "It's no longer enough just to have solid compensation and promotion policies in place," he said. "You have to enforce them, and you have to respond aggressively if complaints or allegations of discrimination are made," he said.

Although several of Novartis' witnesses claimed during the trial that the company had a "zero-tolerance policy" of discrimination, those witnesses each admitted that the company's managers were never terminated or demoted, even when complaints of discrimination were substantiated by its own human resources department, David Sanford, partner with Sanford Wittels & Heisler L.L.P. in Washington, and a lawyer for the women, said in a statement.

Legal experts also said they expect to see additional class action lawsuits filed in the wake of the ruling, as well as more individual claims of gender and race discrimination.

While class action discrimination suits are not uncommon, very few actually result in a finding of liability. Those that have been successful have seen significantly lower awards, Mr. Delikat said.

"This certainly gives plaintiffs lawyers the motivation they need to bring suits forward, and I think they will be seeking higher damages," Mr. Delikat said.

The Novartis verdict comes after a recent federal appeals court ruling that said a 2001 gender-discrimination case against Wal-Mart Stores Inc. could move forward as a class action suit, a decision some legal experts said "opened the door" for large gender bias class action lawsuits to move forward.

Now with Novartis, "there will be a tidal wave of reaction to come from the plaintiffs bar to bring similar cases," said Mr. Martucci.

In a statement, Novartis said it "strongly disputes" the claims of discrimination. It did not respond to a request for comment on plans to appeal.

Legal experts said an appeal is likely given the size of the award and the proportionality of punitive to compensatory damages.

Cuts: State budget woes hurt comp case resolution

CONTINUED FROM PAGE 1

the reduction in litigated claims and judges will affect the ability to resolve cases in a timely manner, Mr. Nolish said.

"Obviously, if there are fewer places and people to handle cases, it's going to show," Mr. Nolish said. "We don't know how long the downward trend will continue in terms of case filings. On the other hand, the budget continues to be a huge problem."

But Michigan's reduction of judges is causing a case backlog, said Lesley Zielinski, manager of workers comp for Troy, Mich.-based temporary staffing firm Kelly Services Inc.

"It affects the cost of litigation as it takes more time to resolve cases," said Ms. Zielinski, who also is a board manager for the Michigan Self-Insurers' Assn. Other self-insured employers have expressed similar concerns, she said.

Risk managers say they also are concerned.

During the Risk & Insurance Management Society Inc.'s annual conference last month in Boston, for example, Debra L. Rodgers, vp-global risk management for Philadelphia-based ARAMARK Corp., said legislative changes, the erosion of workers compensation reforms in certain states and a shortage of judges stands to harm her company's risk profile despite its risk management efforts.

"We can't get people back to work because we can't get hearings," Ms. Rodgers said. "Part of that is driven not just by legislative changes, but is also driven by jurisdictions not having the funds to have enough administrative law judges…to hold court hearings. So we are seeing claims get dragged out a lot."

In California, courts deciding workers comp cases have reduced the hours of judges, clerks and other court staff, said Fred O. Pachón, vp of risk management for Santa Barbara, Calif.-based Select Staffing Inc.

"This, of course, creates additional costs for employers and insurers as benefits must continue until the courts decide the different disputes," Mr. Pachón said. "It is the norm now for judges to overload their calendars and, on the day of the hearing, the judge decides unilaterally that the matter cannot be heard because of limited resources and time. Once again, insurers and employers pay the bills for their defense attorneys and translators to be there for nothing."

This hampers some employees from returning to work, he said.

Meanwhile, senior claims managers for third-party administrators say their adjusters report that some state workers comp agencies are taking more time to respond to claims questions, approve settlements and schedule hearings.

"You can tell the process has slowed down a bit," said Darrell Brown, workers comp practice lead for Sedgwick Claims Management Services Inc. in Long Beach, Calif. "You can't get the answers like you could, or it's taking a little longer to get an award signed or get a hearing."

In Ohio, such problems have increased in the past year, said Kay Turney, Ohio workers compensation manager for TransGlobal Adjusting Corp. in Akron.

It is taking longer for Ohio's Bureau of Workers' Compensation to process claims "and it takes them longer to respond back to us if we have a question," Ms. Turney said. She also is seeing more mistakes in the bureau's handling of claims.

Ohio Bureau of Workers' Compensation employees were forced to take two weeks of unpaid leave in July, a spokeswoman said. In addition, the state agency has not filled several positions during the past few years because improved technology has made it unnecessary, she added.

It is possible that a reduction in judges and support staff in some jurisdictions could amount to "rightsizing" because claims frequency has been declining nationwide since 1995, said Bill Zachry, vp of risk management for Pleasanton, Calif.-based grocery store chain Safeway Inc.

"If you have a drop in frequency, (judges) should be more efficient because they have fewer cases," Mr. Zachry said.

Last week, the California Supreme Court said it will decide whether Gov. Arnold Schwarzenegger has the authority to furlough nearly 500 employees of the State Compensation Insurance Fund, an outgrowth of a March appellate court ruling that said the governor did not have the authority to order the unpaid leaves.

The California high court, which ordered written arguments filed by July 9, said its decision in the challenge brought by the group representing the furloughed SCIF employees—the California Attorneys, Administrative Law Judges, and Hearing Officers in State Employment—could apply to other furloughed state employees.

Employers are not the only ones concerned about workers comp expense reductions.

In Michigan, injured workers have complained about having to drive farther because some hearing sites closed in recent years, Mr. Nolish said.

'You can tell the process has slowed down a bit. You can't get the answers like you could, or it's taking a little longer to get an award signed or get a hearing.'

Darrell Brown,
Sedgwick Claims Management Services Inc.

UK Taxes: Cut may help London's allure

CONTINUED FROM PAGE 4

Among those are Brit Insurance Holdings P.L.C., which departed for the Netherlands; Hiscox P.L.C., which established a Bermuda-domiciled holding company; and Beazley Group P.L.C., which incorporated a new parent company in Jersey that is a tax resident in Ireland.

"There has clearly been a shift away from the U.K. by holding companies," said Mr. Graham. In some cases, insurers have left their holding companies in place while consolidating underwriting operations in locations such as Luxembourg and Ireland with easy access to European markets, he said.

"We've not seen interest in the U.K. as a place to locate top companies or their underwriting operations," said Mr. Graham. "This tax reform is a key to stemming the tide of those redomiciling or moving their underwriting operations."

"If we get the tax platform right here, there is a chance that some of the groups that left may come back," he said.

The Assn. of British Insurers did not respond to questions regarding the proposed tax change and the British Insurance Brokers Assn. declined to comment, preferring to wait until details are released next month.

A Lloyd's of London spokesman said, "We just don't know which way the coalition government will go" in implementing tax changes. "Clearly, anything that reduces Lloyd's tax bill will be good."

The potential tax change could help London remain an attractive jurisdiction and provide a sense of stability, which might discourage insurers from leaving London, Best's Mr. Trotter said.

He said companies that move to Switzerland, for example, locate in various parts of the country, so they do not have the advantage of the London market's concentration of insurers and reinsurers that makes it easier to do business.

Tax rates are "only part of the picture," Mr. Trotter said. "But it definitely has been a clear motivation for companies that have left. In terms of other considerations, the U.K. looks pretty good. It clearly has market benefits."

Tax rates are one of many factors affecting insurance costs, Mr. Trotter said, and a change in the U.K. corporate tax rate is unlikely to have an immediate effect on pricing.

Apart from supporting lower corporate taxes, conservatives during the campaign also said the U.K. Financial Services Authority, which regulates banks and insurers, should be abolished and its regulatory authority handed over to the Bank of England. However, the idea seems to lack support in the coalition government of conservatives and liberals, sources say.

"The Conservatives' plan to move regulation to the Bank of England appears to have been put to one side," said Mr. Trotter. If regulation of insurers remains with the FSA, "that would represent the preferred solution for many insurers."

"Lloyd's has a very good relationship with the FSA," the Lloyd's spokesman said. "We hope that, and they, will continue."

Mr. Graham said he expects more collaboration in financial services oversight. "The FSA will work more closely with the Bank of England," he predicted. "Clearly, there will be a greater combined effort."

UP CLOSE
Comings & Goings

MIKE TEMPLE

NEW JOB TITLE: Chattanooga, Tenn.-based senior vp and chief risk officer of Unum Group.

PREVIOUS POSITION: Vp and chief risk officer of Unum Group.

GOALS FOR NEW POSITION: My goal is to successfully lead Unum's enterprise risk management program.

INDUSTRY CHALLENGES: First, what will the post-financial crisis world look like? Marketplace winners will need to successfully manage through a host of external changes including health care reform, financial regulatory reform, potential accounting and solvency regime changes. Second, firms will need to find profitable growth opportunities in the likely slow-growth economies of the U.S. and Europe over the near term.

INDUSTRY OUTLOOK: Insurers have strengthened their balance sheets and improved their earnings power. Coupled with more favorable economic and capital market conditions, the outlook for the industry is solid and improving.

CAREER HIGHLIGHT: Leading the industry's only two disability insurance securitizations. These large, complex transactions helped serve as a catalyst to enhance our financial flexibility.

HOW I GOT WHERE I AM: Bosses who gave me opportunities, (along with my) good fortune, talented colleagues and hard work.

WHY YOU WENT INTO THIS LINE OF WORK: I love finance, and I can earn a good living working for a company and industry that help people in a time of need. It doesn't get much better than that.

WHAT YOU WANTED TO BE WHEN YOU GREW UP: Philanthropist.

OUTSIDE THE INDUSTRY, A DREAM JOB: Defensive coordinator in the NFL.

MOST PASSIONATE ABOUT: Family, friends and leaving things better than I found them.

HOBBIES: European travel and football.

REQUEST FOR PROPOSAL

Request for Proposal
Captive Management Services

The WTC Captive Insurance Company is seeking proposals for captive management services. The Captive is an independent, not-for-profit corporation, created by the City of New York, licensed by the New York State Insurance Department and domiciled in New York State. The Captive received slightly less than $1 billion from the Federal Emergency Management Agency on December 3, 2004. The Captive is insuring the City and its contractors for claims arising from their FEMA funded work performed at the debris removal site.

The Request for Proposal solicits proposals from firms to provide the following services, among others:

1. Accounting and finance services, including bookkeeping on all transactions, reconciliation of all bank accounts monthly, maintaining all books and records for the company in compliance with GAAP, coordinating the annual financial audit, and maintaining and providing various financial data, among other matters.
2. Regulatory and compliance services, including the preparation and submission of the New York State Insurance Department Annual Statement and ensuring compliance with all other applicable requirements of New York Insurance Law, assisting the WTC Captive during regulatory exams, and interacting with the Insurance Department as requested by the WTC Captive, among other matters.
3. Services unique to the WTC Captive, including providing reporting as required under our formation documents, and other matters, as described in the Request for Proposal.

Please contact clasala@wtccaptive.com or jschoenbeck@wtccaptive.com to request a copy of the Request for Proposal. Proposals are due by Friday, June 11, 2010 at 12 noon.

LEGAL NOTICE

IN THE MATTER OF SECTION 104B OF THE COMPANIES ACT 1981 OF BERMUDA (THE "ACT") AND IN THE MATTER OF THE AMALGAMATION OF CELTIC INSURANCE COMPANY LIMITED AND CELTIC INSURANCE COMPANY, INC.

NOTICE IS HEREBY GIVEN that Celtic Insurance Company Limited, a Bermuda exempted company intends to amalgamate pursuant to the provisions of Section 104B of the Act with and into Celtic Insurance Company, Inc., a Vermont corporation, and to continue as Celtic Insurance Company, Inc. in Vermont, an appointed foreign jurisdiction for the purposes of the Act.

APPLEBY
Bermuda Attorneys for the Applicant

3600221.1

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:

Mike Tsikoudakis
Business Insurance
360 N. Michigan Ave.
Chicago, Ill. 60601-3806
mtsikoudakis@businessinsurance.com

POSTING THIS WEEK

AGENTS:
- Associated Risk Managers International Inc.

ASSOCIATIONS:
- International Foundation of Employee Benefit Plans

INSURERS:
- CNA Financial Corp.
- XL Insurance
- Zurich North America Commercial

MANAGED CARE:
- Medical Mutual of Ohio

OTHER PROVIDERS:
- Crawford & Co.
- Kane Group Ltd.

Hines: Test of relations

CONTINUED FROM PAGE 4

managers, especially newer ones, to have "vision."

"If you save 5% or 10% this year at renewal, what are you going to be expected to deliver next year?" Ms. Arendall asked. A longer-term view is better because it helps build relationships that pay off when a claim occurs. "I want somebody who's going to be there with me when I have a claim," she said, adding that switching insurers to save a few percentage points in premium won't earn a risk manager much consideration when a claim hits.

"The key is to have a long-term relationship," said Uwe Schoberth, senior vp and Midwest regional executive for XL Insurance, a division of XL Group, in Chicago.

For insurers, "the objective must be to make the program better every year" by communicating with the client and the broker, Mr. Schoberth said. "The world is constantly changing, and exposures for a client might change. So you must work with the client, work with the broker and be there for the long term."

Among other topics the panelists discussed was communication between risk managers and underwriters.

"Most good brokers encourage direct communication between client and underwriter. There's no better person than the risk manager to present the exposure to the carrier," Mr. Glantz said.

"It's critical that you try to institutionalize the relationship" with a broker and insurer, Ms. Arendall said. "It's a people business, but there also has to be a relationship between the two companies."

"You can't have a relationship with only one or two individuals at an organization. People change constantly," Mr. Schoberth agreed. Whenever possible, it's beneficial to have senior executives at the insurer reach out to their counterparts at the client company, he said.

"Every relationship on the insurance side is put to the test when you have a claim. It's very important, in my opinion, to have a triangle relationship—all three parties constantly talking with each other," he said.

Moderating the discussion was Tim Cunningham, a partner at OPTIS Partners L.L.C. in Chicago.

MBGH: Employers prepare to expand wellness efforts

CONTINUED FROM PAGE 4

describing what they, as the employer, plan to do; and 35% are explaining to employees what's contained in the new law.

Conversely, 38% of the employers surveyed said they haven't decided what to communicate to employees and 6% said they don't plan to inform employees about the law.

Mr. Boress said he was not surprised by the lack of communication by employers.

"There's so much confusion and uncertainty about what, in fact, is going on in health care and what do these rules really mean and how it's all going to play out," he said.

Employees are "running scared," he said. "They don't know if they're going to have benefits" in the future. "In the immediate case…I think employers have an obligation to tell people what they know (about the law) and what they don't know and start with that."

Among other findings from the survey, "Employers Intentions and Perspective of the New Health Reform Law," were:

- Fifty-four percent of employers said it is unlikely or not very likely that they will drop health care coverage and pay the $2,000 per employee fine as stipulated under the law. However, 18% said it is likely or very likely that they will consider dropping benefits.
- Employers were split as to whether they are likely to charge more for dependents as a result of a provision that extends coverage to adult children up to age 26. Forty-seven percent said they were likely or very likely to charge more for coverage, and 47% said they were not very likely or were unlikely to charge more.
- Seventy-four percent of employers said they were not very likely or were unlikely to reduce the number of employees working 30 to 40 hours a week as a result of the law's requirement that they extend health care coverage to employees who work 30 or more hours a week or face penalties.
- Fifty-five percent agreed it is likely or very likely that employees will have more out-of-pocket costs or reduce their health care usage due to a $2,500 cap on employees' annual contributions to flexible spending accounts that goes into effect in 2013. There is no limit today, but employers typically impose limits between $4,000 and $5,000. Twenty-eight percent said the provision is not very likely or unlikely to cause employees to spend more, while 17% did not answer.

For more information, visit *www.mbgh.org*.

ADVERTISER INDEX

Issue of May 24

Spill: Disaster triggers efforts to raise liability cap

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losses. Commercial fishing was banned in a wide swath of the Gulf and wary travelers canceled vacations along the coast.

Meanwhile, the owner and operator of the sunken rig has asked a court to limit its liability to the value of the rig after the accident (see related story).

Under the Oil Pollution Act of 1990, BP's liability would be limited to $75 million. That law also set up the Oil Spill Liability Trust Fund, which is financed primarily through a fee on imported oil, to pay damages beyond the $75 million up to a limit of $1 billion per incident.

BP CEO Tony Hayward, who has said the firm will honor "all legitimate claims" related to the spill, called the liability limit "irrelevant." In a letter to administration officials, BP said it would pay for all cleanup and remediation "costs and damages, regardless of whether the statutory liability cap contained in the Oil Pollution Act applies," Interior Secretary Ken Salazar said last week.

"That liability limitation does not apply to this incident because BP has affirmatively stated and has memorialized in writing that they will pay for all damages resulting from this incident," Mr. Salazar said during a hearing before the Senate Committee on the Environment and Public Works.

Still, Democratic lawmakers sought to pass legislation that would increase the liability limit to $10 billion. However, Sens. James Inhofe, R-Okla., and Lisa Murkowski, R-Alaska, on several occasions blocked the bill sponsored by Sen. Robert Menendez, D-N.J., from moving forward.

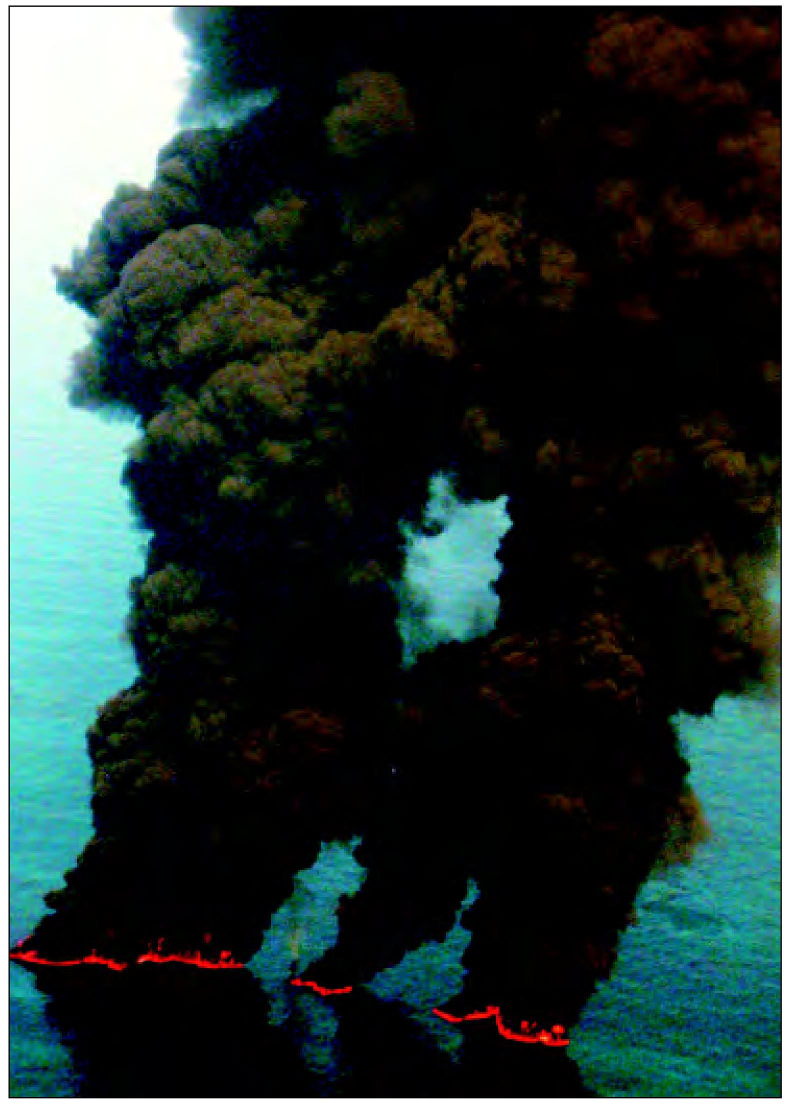
Sen. Inhofe said he supports increasing the $75 million liability limit. But he and industry officials said boosting it to $10 billion would drive small and midsize operators out of the Gulf of Mexico because only the supermajor oil companies could afford it.

Independent natural gas and oil producers hold 90% of the leases and produce about 30% of the oil in the Gulf of Mexico, according to the Independent Petroleum Assn. of America.

"The bill is so punitive that the only producers to stay afloat would be big oil companies, such as BP, and it would in turn make us more dependent on foreign and state-owned oil companies," Sen. Inhofe said last week.

An analysis by the American Petroleum Institute, an oil industry trade group, estimated that a $10 billion liability limit would increase offshore operational costs 25% and make adequate insurance coverage unavailable.

The OPA requires operators to demonstrate the financial ability to pay up to the liability limit through a letter of credit, surety bond, insurance or self-insurance. To demonstrate adequate self-insurance, the API says a company's stockholder equity must be 10 times the financial responsibility threshold, meaning that a $10 billion cap would require energy companies operating in the Gulf to have $100 billion in shareholder equity.



MCT/LANDOV

Crews conduct controlled burns on the oil slick in the Gulf of Mexico last week in an effort to reduce the amount of oil in the water.

Alternatively, companies could demonstrate financial responsibility with insurance, but API says it would be impossible to obtain $10 billion per-well coverage. Others agree.

Capacity for third-party pollution liability coverage was about $1.5 billion per project and likely decreased 15% after the Deepwater accident, said Benjamin D. Wilcox, executive vp and director of marine and energy at Alliant Insurance Services Inc. in Houston.

If Congress significantly increases "the $75 million liability limit, based on our experience, operators and nonoperators in the U.S. Gulf of Mexico will be unable to obtain adequate protection from insurance," Mr. Wilcox wrote in a letter to Sen. Menendez. In "our view, only major oil companies and national oil companies will be financially strong enough to continue current exploration and development efforts," Mr. Wilcox said in the letter.

John Lloyd, chairman and CEO of London-based Lloyd & Partners Ltd., largely agreed. In a separate letter to Sen. Menendez, Mr. Lloyd said capacity likely will decrease because insurers fear they may face exposure from all the companies involved in a project, including operating groups, drilling contractors, mud and cementing contractors, manufacturers of blowout preventers and other service contractors.

"We have therefore already seen in the market a realization that if every party involved in the loss...are successfully sued, then the market will be exposed to a degree much larger than anticipated when committing capacity to individual insureds," Mr. Lloyd wrote.

Although President Barack Obama chided Republicans for delaying the measure to raise the liability limit, Mr. Salazar expressed some agreement with those arguing against a $10 billion liability cap in a Senate hearing last week.

"You don't want only the BPs of the world to essentially be the ones that are involved in these efforts," Mr. Salazar said. "But having said that, it ought to be high enough so that we make sure that the responsible party will be able to live up to whatever consequences result from their activity."

If smaller operators create the same risk as larger companies, they should face the same liability cap, countered Sen. Menendez, who said lawmakers would consider an unlimited liability cap—a position Senate Majority Leader Harry Reid, D-Nev., has advocated.

"Regardless of what BP ends up committing to pay for this disaster, there is no such thing as a 'too-safe-to-spill' oil rig, and there should be no legal wiggle room for oil companies that devastate coastal businesses and communities," Sen. Menendez said.

Sens. David Vitter, R-La., and Jeff Sessions, R-Ala., introduced separate legislation that would raise the liability limit to $150 million or the amount of profits the responsible company earned in the past four quarters, whichever is greater.

In separate action, Sens. Max Baucus, D-Nev., and Carl Levin, D-Mich., included a provision in the American Jobs and Closing Tax Loopholes Act that would raise the Oil Spill Liability Trust Fund's $1 billion per incident limit to $5 billion and raise the 8 cents per barrel tax to 32 cents per barrel.

Transocean asks court to limit its liability

HOUSTON—Zug, Switzerland-based Transocean Ltd., which owned and operated the Deepwater Horizon, filed a petition in U.S. District Court for the Southern District of Texas to limit its liability in the case.

The petition argues that under the federal Limitation of Shipowner's Liability Act, the owner's liability is capped at the after-accident value of its interest in the vessel. The value of the Deepwater Horizon, which is considered a vessel because it was capable of navigation, is $26.8 million, Transocean said in court documents.

The company acknowledged it has received $481 million from insurers in compensation for the lost rig.

The petition also asked the court to consolidate all lawsuits related to the Deepwater Horizon to be heard in the Houston court.

More than 100 lawsuits in Alabama, Florida, Louisiana, Mississippi and Texas have been filed related to Deepwater, according to court documents filed by Transocean. Some plaintiffs attorneys have sought to have the cases consolidated in Louisiana.

Legal observers say the attempt to limit liability may help the effort by BP P.L.C., Transocean and others to have all related cases heard in Houston.

—By Zack Phillips

Tax bill: COBRA, pensions included

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could amortize funding shortfalls over 15 years for any two plan years between 2008 and 2011.

Under the other alternative, employers would have to pay interest on a funding shortfall for only the two plan years they choose. After that, the seven-year amortization period would begin.

For example, if an employer chose the latter approach, which is known as the "two and seven" funding approach, for the 2010 plan year, it would pay interest on the shortfall in 2010 and 2011, while the shortfall would be amortized over seven years starting in 2012.

Either approach would significantly reduce the cash pension plan contributions employers would have to make compared with current requirements. Pension plans' funding levels have been battered by the fall in the equities' markets and low interest rates that have pushed up the value of liabilities.

"Certainly, this will provide relief for some employers," said Mike Archer, a director with Towers Watson & Co. in Parsippany, N.J.

Other provisions, though, would erode the relief by stretching out plan contributions, said Eric Keener, a Hewitt Associates principal in Norwalk, Conn. Those provisions would require employers that use either temporary funding schedule to contribute extra cash to their plans to equal "excess" employee compensation or "extraordinary" dividends. Excess compensation is considered annual pay that is greater than $1 million.

For example, companies with excess employee compensation would have to deposit in their pension plan an amount equal to a worker's pay in excess of $1 million. If an employer had 10 employees who each made $1.5 million, the employer would have to contribute an extra $5 million to its plan.

Employers adopting the "two-and-seven" approach would be bound by the cash-flow rule for three years. For employers adopting the 15-year amortization schedule, the cash-flow rule would apply for five years.

While employer groups lobbied to get the cash-flow provisions removed, the political climate in Congress is such that was not possible, said Kathryn Ricard, senior vp-retirement policy at the ERISA Industry Committee in Washington.

Yet another provision would benefit plan participants. Under a 2006 law, plans must be temporarily frozen and participants cannot accrue new benefits if their funding levels fall below 60%.

Under the proposed legislation, employers with plans that are less than 60% funded would be allowed in 2010 and 2011 to look at their plans' funding levels as of Jan. 1, 2008—before the equities market plunged—to determine if the benefit accrual stoppage rule applied.

News In Brief

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Amendment protection for permitting a professor to disseminate ideas perceived as racist, the 9th U.S. Circuit Court of Appeals ruled. According to court documents in *David M. Rodriguez vs. Maricopa County Community College District*, a math professor sent three "racially charged" e-mails over a distribution list maintained by the district. Plaintiffs, who are Hispanic district employees, filed suit alleging violation of Title VII of the Civil Rights Act of 1964 and the 14th Amendment's Equal Protection Clause.

Employers see higher costs from health reform law

One-quarter of employers expect the requirements that group health care plans extend coverage to employees' adult children up to age 26 and that they eliminate lifetime dollar limits will increase plan costs at least 3%, according to a survey. Thirteen percent of employers responding to the Mercer L.L.C survey expect the adult-child and dollar-limit provisions to boost costs by 3% to 4%, while 12% expect cost increases of at least 5%.

Munich Re cat bond covers U.S., European risks

Munich Reinsurance Co. said it has obtained $80 million for U.S. hurricane and European windstorm protection through EOS Wind Ltd. The catastrophe bond deal provides the reinsurer with four years of reinsurance protection against extreme loss events from U.S. hurricanes and European windstorms.

Kentucky approves higher comp rates for mining

The Kentucky Department of Insurance has approved an NCCI Holdings Inc. request to increase workers compensation rates for coal mining operation expenses tied to the federal health care reform law. The law contains an amendment that changed the federal Black Lung Benefits Act, making it easier for coal miners and their families to access workers comp benefits. NCCI obtained approval for a 3.8% increase for surface mine workers comp rates and a 6.2% increase for underground operations, effective July 1.

Study finds 401(k) plan balances surge

Buoyed by a resurgent equities market, the value of 401(k) plan account balances has regained ground from the low point just over a year ago, according to a study by Fidelity Investments. The average account balance jumped 41% to $66,900 as of March 31, up from $47,500 at the end of March in 2009.

RRG premiums, numbers decline: Analysis

Premiums written by risk retention groups decreased slightly in 2009 from the prior year, according to the Risk Retention Reporter. According to the newsletter's analysis of risk retention groups' annual financial statements, RRGs wrote just over $2.56 billion in premiums in 2009, a nearly 0.6% decrease from 2008. In contrast, the 2008 premium volume was a slight increase from 2007. At the end of last year, there were 252 RRGs compared with 262 at the end of 2008.

Lloyd's approved to write direct insurance in China

Lloyd's of London says it has been granted a license to write direct insurance in China by the Chinese Insurance Regulatory Commission. The market already had a license to write reinsurance in China.

Most employers waiting to cover adult children

More than three-fourths of employers will wait until the effective date to comply with a provision in the health care reform law that requires group plans to extend coverage to employees' adult children up to age 26, according to a survey by Towers Watson & Co. Among 661 employers that responded, 16% said they would extend the coverage before the required effective date, 78% said they would wait until the effective date and 6% did not yet know.

Noted

Kevin H. Kelley, chairman and CEO of **Ironshore Inc.**, will be honored with the City of Hope's National Insurance Industry Council's Spirit of Life Award at the Spirit of Life dinner Nov. 13 in Los Angeles....Mike Bertrand, deputy commissioner of the **Vermont Department of Banking, Insurance, Securities and Health Care Administration**, will become commissioner in mid-June, succeeding Paulette Thabault, who is leaving to take a private-sector position.

LANDOV

Items from flooded homes sit on a street in Nashville after massive flooding this month. Insurance industry experts predict much of the losses from the flood may be uninsured.

Flood: More pressure on Congress to extend NFIP

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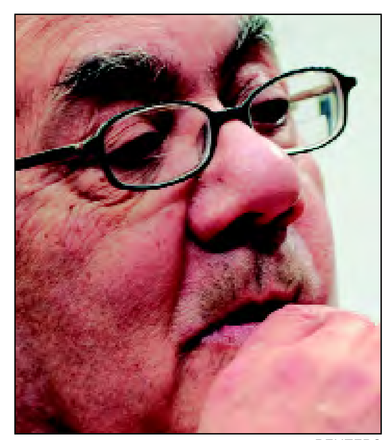
endorsed H.R. 5114, a comprehensive NFIP reform bill brought by Rep. Maxine Waters, D-Calif.

Rep. Frank's bill, the Stable Flood Insurance Authorization Act of 2010, would extend coverage through Sept. 30. Rep. Waters' bill, the Flood Insurance Reform Priorities Act of 2010, would extend coverage through Sept. 30, 2015.

The idea is to provide two options to the Senate, which has been reluctant to approve a long-term NFIP extension because lawmakers disagree on various changes. The options are a short-term solution to get through hurricane season and a long-term solution that backers say would provide stable rates, eliminate subsidies and increase limits for homeowners and businesses.

Outside of those two measures, a third bill—H.R. 4213—which focuses mostly on federal COBRA premium subsidies, also includes an NFIP extension through the end of the year.

The National Assn. of Mutual Insurance Cos., the Independent Insurance Agents & Brokers of America and Property Casualty Insurers Assn. of America back the measures proposed by Reps. Frank and Waters.



REUTERS

Rep. Barney Frank introduced a bill that would extend NFIP through Sept. 30.

"I think (the Nashville) flood might definitely influence Congress to come up with ways to continue the NFIP, but I think they will just extend it for the short term," said John DiMartini, Stamford, Conn.-based executive vp and catastrophe manager at Towers Watson.

With roughly 4,000 in-force NFIP policies at the time of the flood, many insurance industry experts speculated much of the loss may be uninsured.

"Outside of the Opryland area, which had extensive damage, claims are anywhere between $5,000 and $500,000," said Rich Lafayette, Atlanta-based vp and managing director of Crawford & Co., an independent claims handler. Opryland contains the Opryland Hotel and Convention Center as well as the famed Grand Ole Opry House music theater.

NFIP coverage has a $250,000 limit for homeowners and a $500,000 limit for commercial businesses.

As for the flood insurance market, Mr. DiMartini said he expects coverage will be available to those who live in flood-prone areas.

"Under normal circumstances, insurers would retreat and become more aware of flood potential and reduce capacity," Mr. DiMartini said. "But in a soft market, underwriters tend to have short memories. There might be an initial reaction to get a handle on their flood exposures, but I don't think (people) will have trouble finding coverage."

Al Tobin, New York-based managing director for Aon Risk Services, said the need for NFIP could not be more important given this year's flooding in Nashville and New England. He also cited 2008 Midwest floods that affected Iowa and Missouri.

"If this program didn't exist during the flooding that took place in Cedar Rapids (Iowa) in 2008, the damage to the communities in that area would have been devastating," Mr. Tobin said. "The extension of NFIP is a big concern, but Congress doesn't seem too excited to extend it on a long-term basis."

Business Insurance
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Contributing: Jeff Casale, Regis Coccia, Mark A. Hofmann

ID protection firm's founder also a client

Identity theft protection agency LifeLock Inc. apparently couldn't keep CEO Todd Davis' life or identity on lockdown.

Mr. Davis, known for plastering his Social Security number on a wide variety of advertisements, boasts in the ads that he is so confident in Tempe, Ariz.-based LifeLock's services that he can reveal that unique, government-issued number without compromising his identity.

Unfortunately for him, the claim is false, the Phoenix New Times reported.

According to the newspaper, Mr. Davis' identity has been stolen at least 13 times since 2007, resulting in collection agencies nationwide trying to get him to pay other people's debts.

"To our knowledge, there have been 13 successful uses of my information over the past five years, however we are not aware of any new incidents in more than a year," Mr. Davis said in a statement. "I was never out any money, I was saved many hours of invaluable time and my credit report has been corrected."

Further, the Federal Trade Commission in March slapped LifeLock with a $12 million fine for deceptive advertising. Still, LifeLock says its identity protection is backed by a $1 million guarantee, which the newspaper says is "full of exceptions."

The New Times also reported that LifeLock co-founder Robert J. Maynard Jr. was arrested in 2003 for failure to pay $16,000 in gambling debts at the Mirage casino in Las Vegas, though Mr. Maynard at one point reportedly said he was falsely accused. However, he later paid the gambling debt, the newspaper reported.

An attempt to reach LifeLock for comment was unsuccessful.

Make some noise to curb deadly silence

Automakers, with urging from the National Highway Traffic Safety Administration and advocates for the blind, agreed to find ways to keep electric and hybrid cars from being silent killers.

The groups recently presented Congress with proposed minimum noise levels that future electric cars would have to make so pedestrians, blind and sighted, can hear their approach.

Last year, an NHTSA study showed that hybrid cars tend to hit pedestrians twice as often as cars with internal combustion engines in situations where an approaching car cannot be seen.

The Alliance of Automobile Manufacturers, Assn. of International Automobile Manufacturers, the American Council of the Blind and the National Federation of the Blind presented Congress with suggested language that could become part of the Motor Vehicle Safety Act of 2010, a bill that would establish new auto safety rules.

The proposal reportedly would have the NHTSA set up a new safety standard for electric-powered cars involving a minimum sound requirement when operating at low speeds.

However, vehicle owners could not "customize" the sound, such as a song, and automakers would have to provide an approved sound or sounds for a given make and model of the car.

COURTESY OF AON SOUTH AFRICA

Liza Kok of Aon South Africa (Pty) Ltd. shows off Manchester United's customized game ball while outside one of the stadiums where the 2010 World Cup will be played.

Aon having a ball as Man U sponsor

North American soccer fans curious to see Aon Corp.'s logo adorning Manchester United jerseys will get the opportunity starting in July, when the U.K. team travels to the United States, Canada and Mexico for a series of matches.

Chicago-based Aon is a major sponsor of the Man U team, replacing American International Group Inc. effective June 1.

Aon President and CEO Greg Case told *Business Insurance* that the four-year sponsorship of one of the world's most recognized sports brands is an "amplifier" for how Aon is uniting as a global firm. The Man U sponsorship "is reinforcing the idea of how we deliver the global Aon around the world, and it's reinforcing our spirit of community and our investment in local communities," he said.

To kick off the sponsorship, the Aon Foundation will make a donation to a Manchester, England, charity identified in partnership with Man U. In July, each local Aon office will conduct an activity with charities of their choice, said Hans Van Heukelum, Aon Risk Services' head of global marketing.

To rally Aon employees, the company in June 2009 began a "Follow the Football" campaign, sending a Man U ball to all Aon offices around the world. As of this month, the symbol has traveled more than 96,000 miles, according to Aon.

AP PHOTO

The "Spygate" mess led NFL Commissioner Roger Goodell to fine New England Patriots Coach Bill Belichick (above) $500,000 and the team another $250,000. The team also had to forgo a first-round draft pick.

COURT CALLS FOUL ON 'SPYGATE' SUIT

Will the Supreme Court ultimately decide whether the illegal taping of New York Jets coaches' signals by the New England Patriots constitutes consumer fraud?

Carl Mayer, a Princeton, N.J., lawyer who once worked for consumer advocate Ralph Nader, certainly hopes so. According to the Wall Street Journal's website, Mr. Mayer, whose $185 million lawsuit against the Patriots, Patriots Coach Bill Belichick and the National Football League was tossed by a federal appeals court last week, says he plans to appeal to the high court.

The "Spygate" mess began during the opening game of the 2007 season, in which the Patriots handily beat the Jets. But it turned out that the Patriots had been illegally videotaping Jets coaches' signals during the game. That led NFL Commissioner Roger Goodell to fine Coach Belichick a cool half-million dollars and the team another $250,000. The team also had to forgo a first-round draft pick.

But that wasn't enough for Mr. Mayer. He argued that the taping interfered with the game's outcome and thus defrauded consumers. The WSJ story says he held that Jets fans spent $61 million to watch eight Jets-Patriots games from 2000—the year Mr. Belichick became Patriots coach—to 2007, when Spygate occurred. He sued for triple the amount under federal anti-racketeering law.

Neither a lower court nor a three-judge panel of the 3rd U.S. Circuit Court of Appeals found merit in Mr. Mayer's argument and dismissed the suit.

But with three justices with New York ties already on the high court, and a strong possibility that a fourth—U.S. Solicitor General Elena Kagan—may join them, perhaps Mr. Mayer hopes he'll receive a more sympathetic hearing if his case ever reaches the nation's highest court.