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inBrief

AIG, GenRe executives working on settlement

Attorneys for five former executives at General Re Corp. and American International Group Inc. last week asked for an extension on their retrial over a 2000 sham reinsurance deal, saying the "parties have been, and continue to be, engaged in discussions concerning a potential global resolution of this matter." The five were found guilty in 2008 of violating federal law, but were granted a retrial in March.

N.Y. grand jury urges opioid drug monitoring

A New York grand jury investigating an epidemic of controlled substance abuse has called on pharmaceutical manufacturers to help fund electronic monitoring of opioid

See **IN BRIEF** page 21

SPOTLIGHT

INDUSTRY DEEP DIVE: REAL ESTATE

Data offered to curb prices; lenders demand more insurance information; real estate risk management turns site specific. **PAGE 9**

SPACE RISKS

AP PHOTO

Space Exploration Technologies Corp.'s Falcon 9 rocket launched to berth with the International Space Station last week. The launch marks a new era for commercial space flights.

Space flights launch demand for coverage

By BILL KENEALY

The first privately owned spaceship to rendezvous with the International Space Station launched a new era in space flight last week, but experts say the space insurance market remains volatile despite the increase in commercial launches.

In a demonstration mission under NASA's Commercial Orbital Transportation Services program, Space Exploration Technologies Corp.'s Falcon 9 rocket launched from Cape Canaveral in Florida and docked at the ISS last week, and is to return to earth this week.

Jan Schmidt, Zurich-based head of space corporate solutions at Swiss Re Ltd., said that with roughly 20 to 25 insured commercial space launches a year, they remain relatively

See **SPACEX** page 20

WORKERS COMPENSATION

Workplace safety efforts draw scrutiny

Some incentive programs may deter injury reports

By ROBERTO CENICEROS

"Rate-based" safety incentive programs are drawing federal scrutiny for their potential to discourage workers from reporting accidents and injuries.

However, rate-based incentives, which reward employees when few or no injuries are reported during a set time period, can improve workplace safety without running afoul of regulators when they are implemented properly, experts say.

While many observers agree that rate-based safety programs show an employer's dedication to preventing injuries, such programs also can have a "dark side," said Calvin Beyer, head of manufacturing for Zurich North America Commercial in Edina, Minn.

That dark side was the subject of a Government Accountability Office audit report criticizing the Occupational Safety and Health Administration for taking only "limited action to address the potential effect of such programs and other workplace safety policies on (workers') injury and illness reporting."

The April report cited a 2005 BP Products North America Inc. explosion at a

See **OSHA** page 18

HEALTH CARE REFORM

Treasury weighs affordability test for family cover

By JERRY GEISEL

WASHINGTON—An issue that employers thought had been settled—when they are liable for penalties if their health plans flunk an "affordability" test under the health care reform law—is back on the regulatory table.

Under a provision in the Patient Protection and Affordable Care Act, employer-provided coverage is considered unaffordable if the premium paid by employees exceeds 9.5% of household income.

Last year, the Treasury Department said employers could, under a Treasury safe harbor, use employees' income, as reported on their W-2 statements, in running the affordability test. It also made clear that the test would apply only to single coverage.

In situations where premiums for single coverage exceed 9.5% of income and an employee is eligible for a federal premium subsidy and uses it to buy coverage through an insurance exchange, the employer would face a $3,000 penalty.

But earlier this month, Treasury said future regulations may address whether the penalty also

See **AFFORDABILITY** page 19

9.5%

Under a provision in the Patient Protection and Affordable Care Act, employer-provided coverage is considered unaffordable if the premium paid by employees exceeds 9.5% of household income.

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NEWSPAPER

Business Insurance

Online features & highlights
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Business Insurance BEST places to work 2012

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www.BusinessInsurance.com/BITop10

1. GALLERY: Tornado damage at St. John's Medical Center
2. Treasury to re-examine health coverage affordability penalty
3. Early tropical storms form in Atlantic, Pacific simultaneously
4. Analysis highlights 'surprising' P/C strength in first quarter
5. Health reform law ruling likely complicated: WorldatWork exec
6. Health reform law rejection would raise tax, benefit issues
7. Marsh forms specialist team for political risk, credit insurance
8. GALLERY: Supreme Court justices on health care reform law
9. Business Insurance In FOCUS video: Wellness program success
10. New York workers comp board seeks 11.5% rate increase

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PROFESSIONAL LIABILITY

Most med mal cases thrown out

Suits that reach trial usually see verdicts in physicians' favor

By JUDY GREENWALD

Most medical malpractice claims lead to litigation, but most cases are dismissed and more than three-quarters of the relatively few suits that do result in a trial verdict are resolved in the physician's favor, researchers say.

The study, led by Dr. Anupam B. Jena of Massachusetts General Hospital and Harvard Medical School in Boston, appears in the Chicago-based American Medical Assn.'s current issue of Archives of Internal Medicine.

One observer noted, however, that the study presents national data and that experience may differ dramatically by locality, region or state.

The study examined more than 10,000 claims nationwide closed between 2002 and 2005 that involved some defense costs. Some 55.2% resulted in litigation, ranging from 46.7% for claims against anesthesiologists to 62.6% for claims against obstetricians and gynecologists.

While courts dismissed 54.1% of the total medical malpractice cases filed, rates varied by specialty. They were highest among internists and medicine-based subspecialists at 61.5%, and lowest among pathologists at 36.5%.

Among internists and medicine-based subspecialists, 33.3% of litigation claims were resolved before a verdict, compared with 49.6% among pathologists.

33.3%

Among internists and medicine-based subspecialists, 33.3% of litigation claims were resolved before a verdict, compared with 49.6% among pathologists.

Claims resulted in a trial verdict 4.5% of the time on average, ranging from 2% among anesthesiologists to 7.4% among pathologists. Cases against internists and medicine-based subspecialists, at 2.7%, were among the least likely to result in a verdict.

Cases that led to a verdict found in the physician's favor 79.6% of the time, according to the analysis.

The mean time to close a claim was 19 months, with 11.6 months and 25.1 months required for nonlitigated and litigated claims, respectively.

"While most claims were ultimately decided in a physician's favor, that resolution came only after months or years," the researchers said. "The substantial portion of litigated claims that are not dismissed in court and the length of time required to resolve litigated claims more generally may help explain why malpractice claims undergoing litigation are an important source of concern to physicians."

New York-based Moody's Investors Service Inc. said in a January report that the evolving U.S. health care delivery system represents opportunities and challenges for medical professional liability insurers.

Moody's Vp and Senior Credit Officer Alan Murray, who coauthored the Moody's report, said the Archives of Internal Medicine study provides helpful information for industry participants "to be able to benchmark how they look vs. the industry overall."

Mr. Murray noted, however, that the disposition of medical malpractice liability claims, probably more than most other classes of business, fares differently by state, region and even locality.

The differences "can be very dramatic in terms of the propensity of cases to go to jury and the propensity for large rewards," Mr. Murray said.

Because most medical liability insurers are state-specific, operate in a limited number of states or operate in a particular region, "I would think that these aggregate national averages probably look very little like most individual insurers' book of business, because there's only a handful of really large national med mal writers that would have a fully countrywide view of the total situation," he said.

"Certainly," Mr. Murray added about the study, "some things do ring a bell relative to general understandings." He pointed to the relatively high percentage of claims involving obstetricians and gynecologists that went to litigation. "Hence, (there has been) a lot of talk over time about the high premium rates or costs" of insurance for such specialists.

CATASTROPHES

Italy quake to impact food, auto industries

Cat models predict damages won't top 2009's L'Aquila quake

By RODD ZOLKOS

BOLOGNA, Italy—The earthquake that hit the Emilia-Romagna region of northern Italy last week left seven dead, damaged national heritage sites and is likely to significantly affect the region's well-known food industry.

Catastrophe modeler EQECAT Inc. estimated that insured losses from the magnitude-6.0 earthquake are likely to be approximately €100 million ($125 million). They are unlikely to surpass the €200 million ($250 million) in insured losses resulting from Italy's 2009 L'Aquila earthquake, Oakland, Calif.-based EQECAT said, adding that the loss figure from the 2009 quake represents "a credible upper bound" for the recent event.

The earthquake's epicenter was located between the cities of Bologna, Modena and Ferrara. Catastrophe modeler Risk Management Solutions Inc. noted that Emilia-Romagna is considered one of the richest and most developed regions in Europe and is a major center for food and automobile production.

Newark, Calif.-based RMS cited reports of damage to significant cultural heritage buildings near the earthquake's epicenter as well as factory collapses in the towns of Ponte Rodoni Di Bondeno and Sant'Agostino di Ferrara and in the industrial area of Mirandola, including several mechanical assembly plants and a biomedical facility.

The catastrophe modeler also noted the earthquake's impact on the region's food industry, including the collapse of warehouses storing more than 300,000 wheels of Parmesan and Grana Padano cheese. Reports of the value of the cheese ranged from €50 million to €250 million ($63.7 million to $313 million), RMS said.

While the city of Modena, which has a population of around 175,000, was subject to significant shaking, reports indicated there was little damage, RMS said. Modena is home to automaker Ferrari S.p.A.'s headquarters, factory and other operations, but Ferrari indicated they

See **ITALY** page 21

REUTERS

Numerous national heritage sites, such as this old tower in Finale Emilia, Italy were damaged by a magnitude-6.0 earthquake on May 20.

AGENTS & BROKERS

Mr. McGill

Aon names new group president

McGill to oversee broker's three units

By BILL KENEALY

LONDON—Aon P.L.C.'s promotion of Steve McGill to group president should result in greater coordination of resources across the brokerage's three business units, analysts said after the announcement last week.

As the brokerage has grown with significant acquisitions over the past several years, Mr. McGill has been charged with leading the drive to make best use of the skills acquired—such as data analytics—across its insurance brokerage, reinsurance brokerage, and its human resources and benefits consulting units.

The promotion comes seven years after Mr. McGill joined Aon from Jardine Lloyd Thompson Group P.L.C. in London. He was based in Chicago for some of that time, but he is now based in London. Aon relocated its corporate headquarters to London earlier this year.

Mr. McGill will maintain his position as chairman and CEO of the firm's main insurance brokerage unit, Aon Risk Solutions. He will continue to report to Aon President and CEO Greg Case.

Mr. McGill's new role will require him to oversee development and execution of the firm's overall growth strategy, according to an Aon statement. While he will focus primarily on ARS and reinsurance brokerage Aon Benfield, he also will work with consulting unit Aon Hewitt.

"Steve is an exceptional leader for our firm," Mr. Case said in a statement. "We are excited that he is taking on this new role and confident he will bring the same focus, passion and leadership capabilities he has demonstrated in Aon Risk Solutions to the rest of the firm."

See **McGILL** page 18

RETIREMENT BENEFITS

Employers offering DB plans stand by pensions

Defined benefit plans could help employers attract, retain talent

By JERRY GEISEL

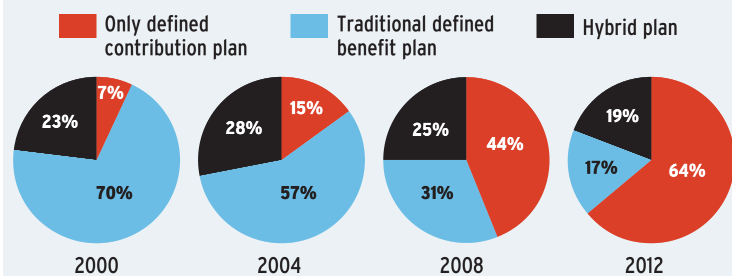
The biggest retirement plan trend in recent years—the shift by employers away from defined benefit plans—may start to ease, a survey suggests.

As recently as 2000, more than 90% of large employers offered defined benefit plans to new employees, according to a Towers Watson & Co. survey of 424 employers, mostly Fortune 1000 companies.

But following a surge of pension plan freezes starting around 2004, only 36% of those employers now offer defined benefit plans to new employees, according to the Towers Watson survey released last week. By contrast, nearly two-thirds of those employers now offer only defined contribution plans to new employees (see chart).

CHANGING MIX

The percentage of employers offering defined benefit plans to new employees has plummeted since 2000, with nearly two-thirds of employers now offering only defined contribution plans to new hires, according to a Towers Watson & Co. survey.



Source: Towers Watson & Co.

In the past 12 months alone, well-known employers such as Bank of America Corp. and General Motors Co. have announced pension plan freezes for salaried employees.

There are several reasons why employers have moved away from defined benefit plans, including—most recently—mandated low interest rates that employers must use to value plan liabilities. That has fueled increases in plan liabilities, forcing employers to significantly increase contributions to their plans.

"With low interest rates, there has been more of a financial burden on employers to offer defined benefit plans," said Alan Glickstein, a Towers Watson senior retirement consultant in Dallas.

But employers' shift away from defined benefit plans may slow in the years ahead, the Towers Watson survey suggests. Of the 36% of employers that still offer defined benefit plans to new employees, 68% said they remain committed to offering them over the next two to three years.

More than 70% of employers cited employee attraction and retention as the key reasons why they intend to continue to offer defined benefit plans to new employees.

Indeed, attracting and retaining employees will assume greater importance in the years ahead as the baby boom generation retires and the pool of available employees shrinks.

See **SURVEY** page 17

QUESTIONS & ANSWERS

Randy Schreitmueller is vp-global services and market relationships at Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global. He recently discussed the impact of the past year's catastrophes on the property market and the demand for loss control with Business Insurance Senior Editor Mark A. Hofmann.

2011 cats test supply chains, claims process

Q: What impact are last year's near-record catastrophe losses having on the commercial property insurance market?

It's very interesting to see the evolution of the types of losses that we had. Everybody has a tendency to talk about the magnitude of their losses. But look at the types of losses we had. Start with the number. FM Global typically might have five large nat cat events in any given year. That would be global. 2010 we thought was a very big cat year—we had something like 14, and that was by far the record number in one year. 2011 had 20. And these were all large natural catastrophe occurrences. So the sheer number was a big thing.

But probably even more significant, we started to look at the geographical spread. We had Christchurch, New Zealand. At the same time, you would have Alabama tornadoes, you would have Japan earthquake and tsunami events. You had Brisbane floods. These 20 occurrences were all over the world.

I think it tended to be a stress test on two or three different levels. One would be just the claims response: Can you get the right people to the right place in order to settle them quickly and effectively? That was a very big thing. Everybody in the industry was tending to draw on the same claims resources at the same time. Most of them rely on independent adjusters, so that was really a test of the claims adjustment model.

Then, of course, claims-paying ability was big.

The other thing, from our standpoint, was a stress test of the clients' supply chains. Particularly in FM Global's experience in Japan, that didn't turn out to be as big a loss in terms of magnitude or adjustment challenge as we thought it might have been. That's because clients had at some level arranged backup suppliers and so forth. What became evident later in the year was that some of those backup suppliers were in places like Thailand. The good news is they had a backup plan; the bad news is the next loss occurred in the wrong place.

Q: Have you seen a heightened interest in loss control as a result of the catastrophes?

See **SCHREITMUELLER** page 21

HEALTH CARE BENEFITS

Few savings in dropping plans

Analysis shows hidden costs of not offering health cover

By JERRY GEISEL

ORLANDO, Fla.—Many employers who think they will save a lot of money by terminating their health care plans and bumping up employees' salaries to enable them to buy coverage in state insurance exchanges are likely to be disappointed.

When comparing the costs of continuing coverage vs. dropping coverage, "The numbers come out awfully close," said Ed Bray, director of compliance with Burnham Benefits Insurance Services Inc. in Irvine, Calif.

Speaking last week at the WorldatWork Total Rewards 2012 Conference & Exhibition in Orlando, Fla., Mr. Bray said if an employer doesn't offer coverage, it will not necessarily save money.

The passage of health care reform legislation in 2010 has been a catalyst for financial modeling by employers to compare the costs of continuing group coverage with the costs of discontinuing it.

That is because the law gave employees a viable alternative to employer-sponsored coverage through provisions authorizing state insurance exchanges, where participating health insurers will start issuing policies on Jan. 1, 2014, and the elimination of pre-existing condition exclusions.

In addition, in the case of lower-income employees without employment-based

See **COVERAGE** page 17

High court health reform ruling could spawn further legislation

By SHEENA HARRISON

ORLANDO, Fla.—The U.S. Supreme Court's upcoming ruling on the Patient Protection and Affordable Care Act could be complicated and result in a flurry of legislation if all or part of the law is declared unconstitutional, human resource association WorldatWork said last week.

Cara Woodson Welch, Washington-based vp of policy and public affairs for the Scottsdale, Ariz.-based organization, presented the group's outlook on court cases, legislation and federal regulations that could affect employee compensation and benefits on Monday.

Speaking at WorldatWork's Total Rewards 2012 Conference & Exhibition last week in Orlando, Fla., about the expected Supreme Court ruling on the health care reform law, Ms. Welch said it's unclear whether the court will rule on the

See **PPACA** page 17

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

Moving past workplace violence

Counseling assists traumatized workers

By SHEENA HARRISON

Physical attacks on employees are rare but when they happen, employers should be ready to provide psychiatric resources for victims as they work to cope with trauma.

Violent incidents involving customers, co-workers or outside aggressors can leave workers who have experienced or witnessed attacks with depression, anxiety, or post-traumatic stress disorder.

As they seek to help traumatized employees, companies can turn to specialty insurance coverages to pay for counselling.

Whether they have coverage or not, experts advise employers to be ready to provide the resources employees need.

"If it does happen, it is so emotionally, financially and psychologically devastating to the employees and the organization that we do strongly counsel people to make sure that you're prepared," said Gregory Bangs, vp and product manager for crime and kidnap and ransom insurance at Chubb Corp. in Warren, N.J.

Michael Mantell, a clinical psychologist and corporate workplace violence consultant based in San Diego, said people tend to experience a range of emotions after being victimized or witnessing an attack.

Healthy individuals often feel shock, disbelief or denial in the days or weeks after an attack, followed by a "cataclysm of emotion" that stems from traumatic anxiety and can involve a "roller-coaster" of reactions related to the office violence, Mr. Mantell said.

A third stage of coping occurs weeks or months after a violent incident, Mr. Mantell said, when people start to confront and deal with their reactions.

While most people reach emotional equilibrium in the third stage, some individuals go on to develop PTSD or other long-term mental effects that could hinder them from moving forward, Mr. Mantell said.

Larry Poague, senior loss control and prevention specialist with Lockton Cos. L.L.C. in Kansas City, Mo., said the range of reactions can be based on how an employee learned to cope with traumatic events as a child, or whether that person has positive relationships at work and home that can serve as a support system.

Employees who experience difficult reactions to workplace violence often can become less productive or experience absenteeism compared with coworkers who are more effective at processing such traumatic events, Mr. Poague said.

"Some people are going to be back (to work), and work is what's going to carry them through," he said. "But there will also be a six-month or eight-month lag for some folks before they start to experience what happened."

While rare, workplace violence can be costly when it occurs, according to NCCI Holdings Inc. (see related story).

Sources agree that companies that have had an incident of workplace violence need to make sure they provide mental health resources to help employees move forward in a healthy fashion.

Jay Supnick, a clinical psychologist and owner of Law Enforcement Psychological Associates in Rochester, N.Y., said it can be necessary for companies to offer multiple group counseling sessions or "debriefings" for employees that allow them to discuss trauma and process their emotions.

"One person may need a number of sessions, another person may not need anything," Mr. Supnick said.

Experts say employers that hold debriefings should make sure that such discussions are helping employees rather than harming them. For instance, Mr. Mantell said, a counseling session may be ineffective if it talks only generally about the stages of grief but doesn't give employees a chance to discuss their own feelings about recent violence.

"If debriefing sessions turn into complaints about the company, it really fosters a lot of negativity, and that attaches itself to anxiety," he said.

Mr. Supnick said companies should try to schedule debriefing sessions when employees seem ready to discuss the situation, rather than forcing workers to talk immediately after workplace violence. He encourages companies to seek professional help in striking the right balance.

"I think you need to have some skilled clinicians that do this kind of work, and it probably should not just be one session that happens," Mr. Supnick said. "It should be tailored to people's needs."

Chubb's Mr. Bangs said most individuals can benefit from intensive counseling for a 10-day period after workplace violence. But he said some workers could need additional counseling to process traumatic events.

Insurance coverage can help pay for the cost of such assistance. For instance, Chubb offers workplace violence insurance that will pay for such benefits as crisis mental health counseling and a consultant to help ensure that a facility is "hardened" to prevent future attacks, Mr. Bangs said.

Chartis Inc. also offers a product as part of its employment practices liability coverage that helps pay for costs that result from workplace violence. That includes employee counseling, security counseling or public relations consulting that can help companies allay reputational damage, said Joni Mason, senior vp and employment practices liability product manager for Chartis in New York.

Companies that experience workplace violence should evaluate whether they missed signs or did not provide effective procedures to help prevent attacks in the first place, experts say. Such introspection can lead companies to make security improvements that allow employees to feel safe at work again after violence occurs, said Kim Brown, senior workers compensation consultant for Lockton.

Employers also should work to make sure employees are trained in techniques that can help them prevent or escape violent scenarios, Chubb's Mr. Bangs said. That information can help employees feel empowered if they face an unlikely event of workplace violence, he said.

"If you do that up front, you're going to help things down the road," Mr. Bangs said.

On-the-job violence a rare but costly event

Workplace violence is a rare event, but it can have costly impacts on organizations, according to a study released in January by NCCI Holdings Inc., a Boca Raton, Fla.-based workers compensation ratings and research agency.

Homicides account for 11% of workplace deaths, and nonfatal assaults account for less than 2% of total injuries and illnesses that result in lost work time, according to NCCI.

The agency said most workplace assaults are committed by health care patients. However, most workplace homicides involve retail and service workers who are robbery victims, such as service station attendants, taxi drivers and barbers.

While crime-related injuries only account for 1.1% of lost-time workers comp claims, such claims tend to have higher severity rates than other types of injuries, such as falls or muscle strains, NCCI said.

Kim Brown, senior workers compensation consultant for Lockton Cos. L.L.C. in Kansas City, Mo., said PTSD claims for workers who experience or directly witness workplace violence tend to be covered by workers comp in most jurisdictions.

—By Sheena Harrison

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Opinions

EDITORIAL

Health changes need attention

How the Supreme Court will rule on the challenge to the health care reform law remains an unanswered question.

The only safe conclusion that can be made at this point is that the high court will hand down its decision by the end of June.

It also probably is safe to conclude that the justices will either find that the Patient Protection and Affordability Care Act's individual mandate is constitutional or unconstitutional.

If the latter, the Supreme Court also likely will decide whether or not to strike down the entire law.

Even with so much uncertainty, it would behoove employers to start thinking now about their plan of action if the court does strike down the entire law. As we have reported, employers have a whole host of issues before them. Among significant concerns are whether to keep plan design changes that they had to make to comply with the law's requirements, even if they no longer were compelled by law to do so.

Even more important, we would hope that federal regulators and Congress would respond quickly and appropriately should the Supreme Court overturn the law.

For example, the law required employers to amend their health care plans to offer coverage to employees' adult children up to age 26, with the coverage provided tax-free. Previously, the coverage was tax-free for employees' children up to age 19, or to 24 for children who were full-time students.

If the law were struck down, presumably that would mean that the coverage that was provided in some cases, such as to 25-year-olds, would be taxable.

We shudder to think of the time, expense and confusion that would result if employers had to issue to affected employees new W-2s to reflect the change in tax status of the health insurance coverage due to a Supreme Court decision.

We would hope that regulators—or, if they lacked the authority, then Congress—would intervene quickly to make it clear that employers who complied in good faith with the law should not be required to make retroactive changes.

And we also would hope that lawmakers—this time on a bipartisan basis—begin work on a new reform measure that could pass legal muster and be in the national interest.

LETTERS

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SCHILLERSTROM

COMMENTARY

Hurricane forecasts a welcome relief

The 2012 Atlantic hurricane season begins this week, and coastal property owners and property catastrophe insurers and reinsurers are keeping fingers crossed that the season plays out as depicted in most forecasts.

Those forecasts generally predict a less active North Atlantic hurricane season this year. Insurers who experienced sizable catastrophe losses in 2011—and property catastrophe insurance buyers who've seen premiums increase since midyear last year as a result—all hope they're right.

In their forecast, Philip J. Klotzbach and William M. Gray of the Department of Atmospheric Science at Colorado State University in Fort Collins, Colo., predict that this year's Atlantic hurricane season will be less active than the median 1981-2010 season. They forecast approximately four hurricanes compared with a median of 6.5, and 10 named storms compared with a median of 12.

RODD **ZOLKOS**
SENIOR EDITOR

Of those hurricanes, the Colorado State researchers expect two to be major Category 3, 4 or 5 storms, a figure in line with the median. And they envision the probability of U.S. major hurricane landfall at about 80% of the long-term average.

The National Oceanic and Atmospheric Administration offered its own forecast last week, calling for a "near-normal" season with nine to 15 named storms, four to eight hurricanes, and one to three major hurricanes.

An unusually cool tropical Atlantic and the possibility of an El Niño event in the Pacific are key factors shaping this year's hurricane season forecasts.

Others taking some comfort from this year's forecasts might be officials of Florida's Citizens Property Insurance Corp. and the Florida Hurricane Catastrophe Fund. Both might benefit from improved bond yields if they issue debt in the months ahead.

Given the reduced likelihood of Florida experiencing a major hurricane hit this season, the spread between outstanding Citizens' debt and AAA bonds has narrowed recently, showing that investors feel comfortable requiring less of a yield penalty on the debt issued to finance possible Florida hurricane cleanup costs.

Forecasts aside, the 2012 season couldn't wait to rush from the gate, with Tropical Storm Alberto forming in the Atlantic May 19, well before the traditional June 1 start of the season. Can one read anything into that premature start? Risk modeler EQECAT Inc. referred to Alberto's formation and the May 14 formation of Tropical Storm Aletta in the Pacific only as "interesting."

Despite the good feelings around this year's predictions, forecasts remain forecasts; and even if fewer storms than average make landfall, those that land still can create havoc.

As Messrs. Klotzbach and Gray sagely noted in their forecast, "Coastal residents are reminded that it only takes one hurricane making landfall to make it an active season for them, and they need to prepare the same for every season, regardless of how much activity is predicted."

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INDUSTRY DEEP DIVE:
Real Estate

SPOTLIGHT

STRONGER FOUNDATIONS

Risk managers offer data in effort to curb price hikes

By RODD ZOLKOS

Property catastrophe insurance prices have increased consistently since mid-2011, and while capacity remains adequate, market experts see some owners of catastrophe-exposed property taking steps to get the best prices they can in the market.

One of the most significant of those steps is providing comprehensive information about the company's properties to underwriters.

"We have several large portfolios in the U.S., and about all of those have cat exposure," said Janice Ochenkowski, managing director at Jones Lang LaSalle Inc. in Chicago. "We have found that the market is hardening and prices are increasing."

"If you think about how a risk manager needs to respond, this is where relationships with insurers are important, especially if your account has been profitable," Ms. Ochenkowski said.

During any time of market hardening, attention to risk management fundamentals is essential, she said.

"Data is key," said Ms. Ochenkowski, adding that it's critical that owners of catastrophe-exposed areas have as much information about properties as possible.

Beyond that, she said, insurance buyers need to understand insurers' concerns and address them proactively. "Should you have mitigating factors to make your risk more attractive, you need to understand those yourself and communicate those to your underwriter," Ms. Ochenkowski said.

"We're seeing more and more in the property market statistics, and analytics are really driving the pricing of property programs," said Duncan Ellis, U.S. property practice leader at Marsh Inc. in New York. "That's the major message that we're trying to get out there to our clients: 'How is your premium developed?'"

Once a buyer understands the factors that contribute to the company's premium, he or

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Property: Policyholders offer data to curb hikes

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she can take steps to influence it, Mr. Ellis said.

"It's how your individual account contributes to the (probable maximum loss) of an underwriter's portfolio," he said. If a buyer tries to market a heavily windstorm-exposed program to an underwriter that has a heavily wind-exposed portfolio, they can expect to see a higher price than if they take that account to an underwriter with less windstorm exposure, he said.

David Finnis, executive vp and national property practice leader at Willis North America in Atlanta, is advising owners of property in cat-exposed areas to start the renewal process early and have good information. "If you don't have very detailed information about all your physical assets and meet starting at least 90 days out, you could be asking for trouble," he said.

From an insurer's perspective, Dan Kleiman, head of the real estate practice at Zurich North America Commercial in Schaumburg, Ill., said that with the combination of the industry's recent hurricane experience and the impact of industry catastrophe models, "there's been a shift in the way the marketplace views wind."

"And I think a number of the larger purchasers of wind capacity have changed their views, so you're seeing a difference in the way the marketplace views cat," Mr. Kleiman said.

"In general, it's clear that the price of catastrophe lines capacity is going up, in some cases severely," Mr. Kleiman said. At the same time, though, "I don't think I've seen an acute reaction out of the real estate marketplace," he said.

"I think they've done their homework more now," Mr. Kleiman said of many real estate company property catastrophe insurance buyers. "But I don't think I've seen a shift in anybody's buying strategy. It's always going to be expensive to buy windstorm in Florida."

One change Mr. Kleiman said he has seen is that some buyers who previously might have been more comfortable buying all their windstorm capacity from a single insurer now are willing to carve the program up and bring several excess and surplus lines insurers into their programs.

"They may be buying less. They may decide to take a higher deductible," Mr. Kleiman said. "Our underwriting teams are being asked to provide far more options than they have in the past. Buyers want to see a number of options on the table."

In general, the brokers questioned said most property catastrophe price increases haven't been too extreme.

Willis' Mr. Finnis said he's seeing increases of 7.5% to 12.5% for cat cover. "It's not the end of the world, and the capacity's there, so that's a good thing," he said. "There's not too many horror stories out there."

"The important thing to note in the catastrophe property area is we don't have a supply problem," said Al Tobin, managing principal, property practice at Aon Risk Solutions in New York. "There's adequate capacity out there."

Like others, though, Mr. Tobin said it will be interesting to watch the experience of buyers who saw the first round of price hikes last year and see whether insurers seek additional increases from them at this year's midyear renewals.

"If you're a May 15 or June 1 renewal, you probably paid a little bit more last year," Mr. Tobin said. "You're not so happy about having to pay more on top of last year."

"I think what you're going to hear from the underwriters is that on an overall basis, their books are underpriced," said Marsh's Mr. Ellis, so they're likely to be looking for price increases from the "worst offenders"—those that have the greatest cat exposures or have previously produced losses.

"Probably everybody's going to get a rate uplift, but those who've been the most offensive will get the worst," he said.

Stephan Upshaw, vp of risk management at Chicago-based Equity Residential, said his company had a good renewal experience recently, despite the fact that adding property assets in areas like Los Angeles, Silicon Valley and Miami had worsened its property cat risk profile.

"We actually had a great property renewal, considering how our risk had changed," Mr. Upshaw said. The overall increase was less than 20% even as the company increased catastrophe limits from $200 million to $250 million "because the capacity was there up top," Mr. Upshaw said. The company increased the number of insurers on its property cat program to 34 this year up from 32 last year, he said.

"I've heard horror stories of people not buying limits, and it will be interesting to see how the lenders respond to that," Mr. Upshaw said.

Lenders may force some of those property owners that have sought to reduce limits back into the insurance market to increase those limits to prior levels, and for some of those property owners, "I think that's going to be cost-prohibitive," Mr. Upshaw said.

> **'Our underwriting teams are being asked to provide far more options than they have in the past. Buyers want to see a number of options on the table.'**
>
> Dan Kleiman, Zurich North America Commercial

Risk manager writes the book on property cover presentation

As rising property catastrophe insurance prices are prompting many real estate companies to provide more exposure information to underwriters, a risk manager of one real estate firm is using the same technique he's used for nearly 20 years.

Throughout his career, Stephan Upshaw, vp of risk management at Equity Residential in Chicago, has put together property/casualty renewal books detailing his employer's exposures for underwriters.

Mr. Upshaw recalls that early in his career, there was little art to the way real estate companies' exposure information was presented to underwriters. "You spend millions of dollars on insurance purchases, and back then you were working on really crude spreadsheets," he said.

It struck him as "crazy that all these household-name companies and their consumer groups would put out these really fancy books, and their investor groups would put out their investor books, and then you'd have these really crummy PDFs," Mr. Upshaw said.

Mr. Upshaw works closely with Equity Residential's investor relations department in developing the underwriting books. Those books ultimately look much like those the company prepares for investors.

The property insurance renewal book is a concise—the 2012 book was 16 pages—and attractive document that quickly explains what distinguishes Equity Residential as a company, the company's economic and financial fundamentals, details about its property holdings and insured values, an overview of its loss history, and a discussion of key risk management factors. The booklet is illustrated with high-quality images of Equity Residential properties.

"We're a very large cat risk. I have to differentiate us from all our competitors, which I think these do," Mr. Upshaw said. Given the size of his company's account, he said, he often deals with senior-level people at the insurers he works with, which makes "the ability to give them in 10 minutes what they're looking for" significant.

Mr. Upshaw's earliest underwriting books were assembled using clip art. They've evolved considerably since then.

"I've had underwriters say this is just fantastic," he said.

—By Rodd Zolkos

Lenders scrutinize property insurance programs

Inadequate coverage can impede approval of real estate loans

By MATT DUNNING

Prior to the collapse of the credit markets in 2007 and 2008, most lenders' requirements for proof of insurance in commercial mortgage agreements were treated as little more than a formality, real estate and insurance experts say.

Today, as the markets recover, commercial financiers are not only more comprehensive in examining applicants' property insurance programs—including natural catastrophe and terrorism coverage—but also more diligent in tracking continuous compliance with the insurance requirements in their commercial mortgage agreements.

"Historically, insurance was a speed bump in the lending process, but now it's a land mine," said Kevin Madden, real estate practice managing director for Aon P.L.C.'s Aon Risk Solutions unit in New York. "Now that liquidity has dried up, lenders are firmly in the driver's seat, and they're able to insist on their terms."

Because much of the information commercial lenders now request calls for more familiarity with insurance programs than typically exists at the executive level (see story, page 12), risk management expertise has become essential to the successful execution of loan agreements, experts say.

"There's much more individualization in the requirements than there had been in the past," said Janice Ochenkowski, managing director of global risk management at Chicago-based Jones Lang Lasalle Inc. "You can't just send a lender a blanket certificate of insurance anymore."

For the most part, risk managers in the real estate industry have responded well to the increased responsibility in loan negotiations, though challenges still persist. Predictably, experts say, smaller, resource-squeezed companies have had a more difficult time addressing the additional workload associated with commercial real estate loans.

"We've seen a greater impact on the owners where the person wearing the risk management hat also wears other hats within the organization, like CFO, COO, etc.," said Mark DeLawter, the Charlotte, N.C.-based real estate and financial institutions practice leader at Zurich North America.

Regardless of staff size and capabilities, one of the more pervasive challenges facing risk managers in negotiating commercial property insurance requirements is the structure of those negotiations, experts said.

In most cases, risk managers' primary points of contact—third-party loan servicers acting on behalf of the originating lender—do not have the authority to change covenant terms or documentation requests, and might have only a working knowledge of the insurance marketplace.

While negotiating covenants for traditionally structured insurance programs already is challenging, negotiating terms for non-standard risk-transfer models such as captives can be exponentially more difficult.

Shari Natovitz, vp of risk management at New York-based Silverstein Properties Inc., said that while the company has generally been successful in its negotiations over insurance requirements for its properties—including several towers at the World Trade Center site in Lower Manhattan—it still frequently encounters issues regarding its Terrorism Risk Insurance Act-backed terrorism insurance policies, which it funds through captive programs.

"The captive allows us to provide significant limits that we would not be able to get through a purchase in the open market," Ms. Natovitz said. "In that way, we're actually able to exceed the requirements of our lenders."

However, lenders are becoming increasingly insistent on ratings thresholds for a borrower's insurers.

Unlike in years past, the tighter requirements on ratings now typically apply to all insurers and reinsurers on a program. And in most cases, simply having rated underwriters on a policy might not satisfy requirements, as lenders are better positioned to insist on minimum ratings thresholds.

But many captive programs might not be rated at all, as is the case with Silverstein Properties' TRIA captives—though they are backed by rated reinsurers. In those instances, risk managers must carefully explain their program's mechanics and ensure that any reinsurers to the program are sufficiently rated in order to satisfy their lender's rating requirements, Ms. Natovitz said.

"It takes some time and a good deal of documentation for the lender to understand how that works," she said. "That has been and continues to be our biggest challenge."

See **LENDERS** next page

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Lenders: Cover for property scrutinized

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Aside from stricter documentation requirements that began after the Great Recession, many property underwriters have changed their standard terms and conditions—from large-scale shifts for catastrophe-exposed property to lesser changes such as rolling back eliminating insurers' notice-of-cancellation clauses.

"In a lot of cases, we've asked lenders to put the onus on us," said Chris Nassa, global risk management director at Los Angeles-based commercial realtor CBRE Inc. "Where the insurers have said, 'We're not going to give notice of cancellation anymore,' we've said to the lenders that, as the property owner, we'll take on that responsibility."

And while potential owners may be lured back to the property market by low real estate prices and low interest rates, the net benefit of doing so can erode quickly if a risk manager must purchase additional, possibly unnecessary property coverage to avoid jeopardizing the loan.

"We've certainly seen that happen," Mr. Madden said. "The problem is, those additional insurance policies are usually acquired in the 11th hour of the lending process. It's very difficult to get a good price on insurance in those circumstances."

Under pressure to expedite negotiations over a lender's proposed insurance covenants, risk managers also must take care not to betray their firm's duty of confidentiality to its tenants or insurers, experts said.

For example, risk managers may forward on to the lender the summaries of insurance distributed to its subsidiaries or tenants to satisfy the lender's request for detailed information on a blanket insurance program.

"Insurers likely wouldn't be too happy with those companies broadcasting to the world that they receive these additional coverages or additional leeway in their program that others might not be offered," Mr. Nassa said.

Similarly, lenders may ask to see a schedule of valuation for an entire portfolio of assets, not just those involved in the loan, experts said. That, too, could amount to a breach of confidentiality, as those valuations can be viewed as proprietary information belonging to subsidiaries and tenants, he said.

One way some risk managers have satisfied many lenders' requests for information and reduce the need—real or perceived—of additional insurance is through the use of benchmarking studies.

"Benchmarking has become a big part of this process," said Jeffrey Alpaugh, the Boston-based global real estate practice leader at Marsh Inc. "We'll take similarly sized portfolios and benchmark them across certain metrics like limits, deductibles and policy language. That way, you can see what the appropriate levels of insurance are for comparable assets and comparable portfolios, based on recent renewals. We've found that to be a big help."

Absent access to formal benchmarking studies, experts said risk managers can reduce the likelihood of encountering problematic insurance requirements in lending agreements by involving themselves earlier in the negotiating process, or even before a loan application is submitted.

"If the risk manager is involved with the financial managers or other executives in setting the loan criteria for the company as a whole, or gets involved early enough in a loan relationship, they can identify ahead of time where things might become difficult," Ms. Ochenkowski said. "They can provide the commercial viewpoint of a particular concession, and what the practical cost of that concession is going to be."

COURTESY OF SILVERSTEIN PROPERTIES

Silverstein Properties Inc. said while the company has generally been successful in its negotiations over insurance requirements for its properties, including several towers at the World Trade Center site, it still frequently encounters issues regarding its Terrorism Risk Insurance Act-backed terrorism insurance policies, which it funds through captive programs.

Better economy may not alter tight requirements

Tightened insurance requirements by commercial lenders, which began during the Great Recession, look to continue even if the lending market improves, experts say.

"I think (the new requirements) will extend past any recovery the lending market experiences," said Brian Ruane, executive vp and national real estate and hospitality practice leader at New York-based Willis North America.

"Lenders became more conservative on their insurance requirements as a continuation of the overall trend toward more conservative loan underwriting. It's hard to predict the future, but I would suggest that these principles and practices need to become standard operating procedure."

Janice Ochenkowski, managing director of global risk management at Chicago-based Jones Lang LaSalle Inc., said some lenders might relax covenant language at a later date so it better reflects the market or allow less stringent enforcement of current requirements.

"But for the relatively near future, we're not going to see much relaxation of the standards and requirements, nor will lenders be any less diligent about their implementation," she said. "I can't imagine that a lender would decide that now that the crisis has passed, they can relax a bit."

—By Matt Dunning

Financiers' expectations of covenants

Commercial lenders are closely scrutinizing insurance covenants included in their loan agreements with real estate firms, demanding more favorable coverage terms and conditions, and requiring greater access to policy documentation and risk modeling data, experts say.

While individual requirements may differ by lender, experts say risk managers in the real estate industry should expect most financiers' insurance requirements to include:

- Documentation of primary and excess property coverage for all insured assets, even those that are not part of the financing agreement, with a particular focus on the availability and distribution of limits, deductibles, indemnity clauses and other terms. This may include a schedule of valuation for the entire asset portfolio, regardless of relevancy to the loan itself.
- Probable maximum loss studies and other catastrophe risk modeling data for the entire insured asset portfolio. Lenders also may ask to see documented disaster recovery and repair plans.
- Minimum ratings for all underwriters on the master property program, including the reinsurers providing limits above the valuation of the insured assets.
- Recent changes to zoning laws, building codes and other regulations that might substantially affect the size, construction or use of an insured asset after a loss.

Additionally, experts say, lenders in recent years have tended to insist on specific terms and conditions, often without regard for their market availability or the additional risks and cost inflicted on borrowers. Common requests include:

- Additional primary or excess property coverage limits, particularly for catastrophe-exposed properties.
- Deductibles at far lower levels than are customary in the property insurance market, as low as $10,000 or $20,000 for large property owners. In order to protect the health of the loan, lenders insist on low deductibles to keep owners from using revenue that ordinarily would be committed to mortgage payments for repairs in an effort to keep premium costs low.
- Extending the post-repair period of indemnity, which also is known as the "lease-up period." The indemnity provides property owners with financial support for the time it takes to refill a property with tenants once it has been repaired. Insurers generally limit the coverage window to 12 to 18 months, but many lenders have asked for periods as long as 36 months.

—By Matt Dunning

Addressing real estate risks on site

Decentralizing management customizes risk responses

By RUSS BANHAM

One best practice in managing the risks confronting real estate portfolios taps decentralized risk management at the site level that is directed and overseen centrally by a corporate risk manager, experts say.

It wasn't always this way, however.

"When I started in real estate risk management 25 years ago, it was almost exclusively a decentralized model," said Stephan Upshaw, vp of risk management at Equity Residential, a Chicago-based apartment complex owner and operator with more than 400 properties in 14 states. "What was wrong with this model was that the property manager at the local level frankly didn't focus much on risk management, while risk management at headquarters was considered the insurance procurement department."

Real estate risk management has evolved since then, pressured by litigation and catastrophes. "You can no longer simply think in terms of transferring all the risk to insurance policies—you have to manage overall risk centrally, and ensure that property managers are following specific risk reduction tactics locally," said Mr. Upshaw. Senior management agreement is essential, he said.

'Most property managers want to do the right thing from the standpoint of risk, but it is up to the centralized risk manager to give them the tools to do that.'

Janice Ochenkowski, Jones Lang LaSalle Inc.

Equity Residential's hazard insurance programs involve very high self-insured retentions—a minimum of $1 million per property, he said. "If we have losses, it costs us money; if we don't have losses, we make more money," he said. "That's why centrally managing risk is crucial."

Rather than sending local managers reading material, "risk management is woven into our operations," he said of procedures such as daily property inspections. "They know they're accountable," he said.

Jeffrey Alpaugh, managing director and global real estate practice leader at broker Marsh Inc. in New York, said a property's uses affect the risks it faces.

"The risks vary on a site-by-site basis, with retail malls, for instance, inviting certain exposures, and hotels and warehouses having other exposures," he said. "Geography also comes into the equation, with buildings in Miami more at risk of a windstorm, those in California subject to earthquakes, and buildings in Washington D.C. and New York City subject to terrorism threats. That's why you always need local property managers focused on the different types of risk at the local level."

While larger real estate concerns typically have a centralized risk manager or risk management team overseeing on-site property managers, smaller firms often rely on insurance brokers and consultants to manage risk locally.

"We advise either a first-party property manager that is an arm of the real estate firm or third-party managers hired by it," Mr. Alpaugh said. "Loss control falls into their laps."

Like Equity Residential, Jones Lang LaSalle Inc., another large real estate and financial services company, pursues a centralized risk management approach, said Janice Ochenkowski, managing director of global risk management at the Chicago-based company.

"The local property manager is essentially the on-site risk manager, as they are first responders to potential hazards," Ms. Ochenkowski said, "but there are corresponding risks to deal with."

Property managers have responsibilities other than risk management, often with constrained budgets and staff, she said.

"Most property managers want to do the right thing from the standpoint of risk, but it is up to the centralized risk manager to give them the tools to do that," said Ms. Ochenkowski, a former president of the Risk & Insurance Management Society Inc. Jones Lang LaSalle supports online classes and hosts training conferences.

When a loss occurs, the on-site manager can call a toll-free phone number to get help in responding. "We've also begun to incorporate social media to assure better communication between our property managers and centralized risk management," she said.

Both real estate concerns financially reward their respective on-site property managers for loss prevention.

"We have a pay-for-performance compensation structure that rewards property managers for keeping losses down. They're essentially accountable for their bonus," he said, "but everything rolls up to me."

Catholics file birth control coverage suit

By JERRY GEISEL

WASHINGTON—More than 40 Catholic organizations, including the archdioceses of New York and Washington and Catholic University of America, have sued in federal courts to block implementation of part of a final Department of Health and Human Services rule that will require health insurance coverage of prescription contraceptives.

Under that part of the regulation, health insurers of nonprofit affiliates of religious organizations, such as universities and health care systems, will be required to offer the coverage at no cost.

That part of the regulation would apply for plan years starting on or after Aug. 1, 2013.

The administration also is developing a rule that would apply to religious organizations' affiliates that self-insure their health care plans.

As of last week, 12 suits had been filed by Catholic or Catholic-related organizations to block the requirement.

U.S. "history and tradition, embodied in the First Amendment of the U.S. Constitution...safeguard religious entities from such overbearing and oppressive governmental action," according to the suit.

In the suit filed in U.S. District Court for the District of Columbia, the Archdiocese of Washington and several other organizations that joined the suit said the mandate would require Catholic entities to "violate their sincerely held religious beliefs."

U.S. "history and tradition, embodied in the First Amendment of the U.S. Constitution ...safeguard religious entities from such overbearing and oppressive governmental action," according to the suit.

The litigation comes after a warning earlier in May by the U.S. Conference of Catholic Bishops that it would file suit if the administration did not rescind the rule or provide an exemption for entities that object to the requirement.

Other parts of the rule require nonreligious organizations to comply for plan years that begin on or after Aug. 1, 2012.

The administration, however, exempted religious organizations, such as churches that primarily employ those with the same beliefs, from the mandate.

Perspectives

The Chinese drywall "crisis" hit when the southeastern United States suffered a shortage of building materials after several major hurricanes. Andrea Cortland, an associate in the global insurance group at Cozen O'Connor, looks back at the predictions made about insurers' liabilities arising from the use of toxic drywall and how the problem may have changed the industry.

Uncovering the likely cost of Chinese drywall liabilities

By Andrea Cortland

Ms. Cortland

It has become clear that Chinese drywall will not be 'the asbestos of the 2000s.'

Three years after Chinese drywall claims made national headlines, we now know which of the early predictions regarding their effect on the insurance industry materialized and which were proven incorrect.

Between 2004 and 2007, more than 500 million pounds of drywall were imported from China to the U.S. in response to a shortage of building materials, caused by multiple hurricanes that hit the Southeastern states. This drywall primarily was used to build or repair homes in Florida, Louisiana and Virginia. Subsequently, it became evident that the drywall was causing a litany of problems, including the corrosion of metals and emanation of a rotten-egg smell. Hence, the "Chinese drywall crisis" was born.

In 2009 and early 2010, commentators made quite a few predictions about the potential effect of the Chinese drywall problem on the insurance industry, and some of them were spot-on. For example, in April 2010, *Business Insurance* noted that commentators "expect underwriters to start putting exclusions in policies that would rule out coverage for any potentially toxic drywall."

Sure enough, now it is fairly common to see a tainted drywall or gypsum-containing building materials exclusion endorsement in liability policies.

In July 2009, another insurance publication predicted that "a homeowner with the right lawyer in the right venue" could win big. Almost one year later, on June 18, 2010, a Miami jury awarded a verdict of $2.5 million against Banner Supply Co. to a couple in the nation's first Chinese drywall jury trial.

Various observers also predicted that states would enact insurance-related legislation in response to the Chinese drywall problem, and on July 12, 2010, Louisiana passed a law that prohibits insurers from canceling or refusing to renew homeowners' policies because of the presence of Chinese-manufactured drywall in the home. This law, which applies only to drywall imported from China before 2010, imposes a $15,000 fine on violating insurers.

Moody's Investors Service Inc. issued a report in early 2010 titled "Chinese Drywall Exposure Manageable for U.S. P&C Insurers" in which it made quite a few accurate predictions. For example, Moody's said costs will be managed within insurers' earnings rather than their capital, due to the limited timeframe within which drywall was imported to the U.S. from China and the isolated geographic area in which the drywall was installed.

Although it still is too early to affirmatively say whether the insurance industry will bear the Chinese-drywall related costs within the normal course of business, it has become clear that Chinese drywall will not be "the asbestos of the 2000s"—in other words, insurers will not be dealing with Chinese drywall-related claims across the nation for the next 20 to 30 years. Rather, unlike asbestos, which was truly an insurance industry crisis, the Chinese drywall "crisis" is proving to be a finite problem, largely because the defective drywall was used in a limited area for a limited amount of time.

Moody's also said the results of Consumer Product Safety Commission testing will have an impact on bodily injury claims, depending on whether a conclusive link is established between Chinese drywall and health problems. True to form, to date there has been little focus on homeowners' alleged bodily injury claims because evidence that definitively ties Chinese drywall to health problems has yet to be produced.

On the other hand, some early predictions were wildly off base. On March 22, 2010, a Louisiana state court judge ruled that a pollution exclusion in a homeowners' insurance policy does not exclude coverage for Chinese drywall claims. See *Finger vs. Audubon Insurance Co.*, No. 09-8071 (Louisiana District Court, Orleans Parish). In a Florida newspaper shortly thereafter, a commentator predicted that the Finger decision could be a "game-changer." This has not only been disproved by subsequent Louisiana and Virginia decisions holding that several policy exclusions preclude coverage under homeowners' policies, but by the multidistrict litigation court's Dec. 16, 2010, ruling that the faulty materials and corrosion exclusions in various homeowners' policies bar coverage for the damages associated with Chinese drywall, in part because "the whole basis of the…claims is that the Chinese drywall…was faulty and rendered homes unlivable." See *In re: Chinese Manufactured Drywall Products Liability Litigation*, MDL No. 2047 (Eastern District of Louisiana).

Pollution exclusions

Similarly, in October 2009, a past president of the Louisiana Assn. for Justice, who was involved with representing policyholders in the MDL, stated, "I haven't seen a commercial policy yet that wouldn't seem to cover" damages from Chinese drywall.

As it turns out, judges in Florida, Virginia and Alabama have better vision: To date, there are more than 15 state and federal cases holding that a pollution exclusion in a liability policy precludes coverage for Chinese drywall claims. These decisions—many of which make clear that the pollution exclusions are unambiguous, that gypsum can be considered a "pollutant," that the sulfide gases that emanate from the drywall qualify as irritants or contaminants, and that the exclusions do not apply only to traditional environmental pollution and, rather, can apply to a release of gases inside a home—leave little room for insureds in those jurisdictions to argue that coverage exists under their liability policies for Chinese drywall claims. See, for example, *FCCI Commercial Insurance Co. vs. AL Brothers Inc.*, No. 10-CA-002840 (Lee Cty. Cir. Ct., Fla., April 19, 2011); *Nationwide Mutual Insurance Co. et al. vs. The Overlook L.L.C. et al.*, No. 4:10-cv-69 (E.D. Va. May 13, 2011); *QBE Insurance Co. vs. Estes Heating & Air Conditioning Inc.*, No. 10-456-CG-N (S.D. Ala. Feb. 8, 2012). Whether a pollution exclusion in a liability policy will be interpreted the same way under Louisiana law, however, is still uncertain.

It also remains to be seen whether other early predictions will prove correct. In its 2010 report, Moody's predicted that the Chinese drywall litigation process likely will be long, with major legal expenses incurred by insurers as they defend their insureds. Likewise, in late 2009, an insurance publication warned insurers that economic losses from Chinese drywall could fall in the $15 billion to $25 billion range, and legal fees could account for 40% to 50% of the total claim cost.

Within the past six months, however, there have been quite a few significant settlements:

- Knauf Plasterboard Tianjin Co., a Chinese manufacturer of the defective drywall, entered into a global settlement valued at $800 million to $1 billion, with all plaintiffs involved in either state or federal litigation.
- Banner Supply Co. and its insurers settled with the MDL plaintiffs for the totality of Banner's insurance proceeds, approximately $54.5 million.
- Interior/Exterior Building Supply L.P. and its primary insurers settled with the MDL plaintiffs for $8 million.
- A global settlement between the MDL plaintiffs and all installer, builder and supplier defendants is also on the horizon, and any installer, builder or supplier defendants who chose to participate in the settlement are encouraged to do so after reaching an agreement with their insurers.

In light of these settlements, it is possible that the litigation process is winding down, or at least the litigating parties are thinning. Although we do not know exactly how much Chinese drywall claims will cost the insurance industry, we do know that the multiple state and federal court decisions precluding recovery for damage associated with Chinese drywall under homeowners and liability policies, as well as the recent settlements and anticipated future settlements, will play a significant role in minimizing the effect.

Luckily for insurers, the effect of the Chinese drywall "crisis" will not rival that of asbestos, as some initially thought it would.

Andrea Cortland is a Philadelphia-based associate in the global insurance group at Cozen O'Connor. She focuses her practice in insurance coverage litigation and has substantial experience with Chinese drywall coverage cases. She can be contacted at acortland@cozen.com.

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Products & Services

Allied World launches broader Side A D&O cover

PEMBROKE, Bermuda—Allied World Bermuda has launched a directors and officers liability policy that provides broad Side A coverage for nonindemnified losses.

Called the Executive ForceField, the coverage is available on an excess or primary basis. The policy includes broad definitions of loss and difference in conditions, and preclaim inquiry costs are covered under the policy. Coverage is available outside of the U.S.

Limits are available up to $25 million, and the policy provides flexible attachment points to a traditional D&O program or on a primary basis.

"Our new Executive ForceField policy incorporates many innovative enhancements to the usual Side A coverage," said Ed Moresco, Allied World's senior vp, Bermuda and international professional lines product line manager, in a statement. "We saw a growing need for more precise coverage in this space over the past several years and a void in the current market for such a targeted product."

For more information, contact Joyce Duarte at 441-278-5428 or *Joyce.Duarte@awac.com*.

ACE USA offers enhanced pollution liability cover

PHILADELPHIA—ACE USA has introduced an enhanced pollution liability insurance product covering environmental risks for public and educational entities, the division of ACE Ltd. announced.

The policy is available on an admitted basis in 36 states and combines a standard premises pollution product with the specific risks associated with public entities. These include the transportation and disposal of wastes as well as the illicit abandonment of wastes, fungi and legionella. Also, the contractor pollution liability product covers maintenance tasks such as applying pesticides and herbicides.

The product applies to public schools, utilities and power co-ops, cities and counties, special districts and parks and recreational facilities.

"Escalating environmental regulations are of great concern to these organizations, and it is crucial for this community to understand the risks they face and how to address these exposures," said Paul Cunney, vp and ACE USA public entity industry practice leader, in a statement.

Policies and coverage areas vary by state, and limits are available up to $50 million per claim/aggregate, including defense.

For more information, contact Jon Peeples, vp, ACE environmental risk, at *jon.peeples@acegroup.com* or 215-640-5888.

Beazley adds data breach protection for small firms

FARMINGTON, Conn.—Beazley P.L.C. has announced the launch of a data breach protection service for smaller firms.

Targeted toward companies with less than $10 million in revenue, Beazley Breach Response Select is similar to the insurer's existing product for larger companies. Forensic, legal, notification, credit monitoring, public relations and call center services are included.

According to a company statement, the policy is based on the number of individuals affected by the breach—normally between 25,000 to 250,000—instead of a fixed dollar amount. Third-party liability also is available up to $5 million.

"Small businesses are at least as vulnerable to data breaches as their larger counterparts," said Jamie Orye, the Philadelphia-based head of Beazley's private enterprise underwriting team, in a statement.

"Indeed, in many cases they may be more vulnerable, as they cannot afford the latest technological weaponry to keep ahead of hacking and malware threats."

For more information, contact Mr. Orye at 215-446-8450.

Marsh forms team for political risk, credit cover

NEW YORK—Marsh Inc. has formed a group of specialists to help its clients find public agencies for political risk and credit insurance, the broker said in a statement.

The team, based within its political risk and trade credit practice, was created to access public bilateral and multilateral agencies and export credit agencies. Often, the benefits of using these agencies can range from longer coverage periods to a greater acceptance of high risks compared with private groups, according to the statement.

The team's specialists are knowledgeable in environmental, social, developmental and other policy requirements that come with having public agency coverage, according to Marsh. They will be based in Washington, New York, London, Toronto, Paris, Mumbai and Singapore.

"The public sector has always been a major provider of political risk and trade credit insurance, but is often overlooked by organizations until the risk landscape worsens and the need for more insurance grows," said Julie Martin, a senior vp within Marsh's political risk practice and leader of the new public agency team, in a statement.

For more information, contact Ms. Martin at 202-263-7813 or *julie.a.martin@marsh.com*.

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LEGAL NOTICE

IN THE MATTER OF THE APPLICATION OF THE SUPERINTENDENT OF FINANCIAL SERVICES OF THE STATE OF NEW YORK FOR AN ORDER TO RE-OPEN THE LIQUIDATION OF BAKERS MUTUAL INSURANCE COMPANY

Supreme Court County of New York
Index No. 41696/78

NOTICE

Pursuant to Article 74 of the New York Insurance Law, Benjamin M. Lawsky was the Superintendent of Financial Services of the State of New York as Liquidator of Bakers Mutual Insurance Law ("Bakers Mutual"). The Liquidator has, pursuant to Insurance Law Article 74, appointed Jonathan L. Bing, Special Deputy Superintendent ("Special Deputy"), as his agent to liquidate the business of Bakers Mutual. The Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038. The Liquidator has submitted to the Court a verified petition ("Verified Petition") seeking an order: (i) re-opening the Bakers Mutual liquidation proceeding in order to utilize money received for the benefit of Bakers Mutual and its creditors; (ii) authorizing the distribution of the assets of Bakers Mutual to the next class of creditors in accordance with the priorities set forth in Insurance Law Section 7434, to the extent that funds are available; (iii) authorizing the payment of administrative costs and expenses; (iv) authorizing the immediate closure of the liquidation by the Liquidator upon the payment of administrative costs and expenses and the distribution of Bakers Mutual's assets to creditors; (v) authorizing the Liquidator to distribute any additional money received pursuant to Insurance Law Section 7434 without further order of the court; and (vi) granting such other and further relief as the Court may deem just and proper.

This matter is scheduled for submission on the 20th day of July, 2012, at 9:30 a.m., before the Court, at the Motion Submission Part, Room 130, at the courthouse located at 60 Centre Street Street, New York, New York, 10007. If you wish to object to the Verified Petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Liquidator and Clerk of the Court, at least seven business days prior to the hearing. Service on the Liquidator shall be made by first class mail at the following address:

Superintendent of Financial Services of
the State of New York as Liquidator of
Bakers Mutual Insurance Company
110 William Street
New York, New York 10038
Attention: John Pearson Kelly, General Counsel

The Verified Petition is available for inspection at the above address. In the event of any discrepancy between this notice and the documents submitted to Court, the documents control.

Requests for further information should be directed to the New York Liquidation Bureau, Creditor and Ancillary Operations Division at (212) 341-6665.

Benjamin M. Lawsky
Superintendent of Financial Services
of the State of New York as Liquidator of
Bakers Mutual Insurance Company

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Public Entity Risk Management

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Classified Ad Close: May 29

Bonus Distribution: PRIMA

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COMINGS & GOINGS

STEVE FOMCHENKO

NEW JOB TITLE: Morristown, N.J.-based senior vp for property for Crum & Forster Insurance Co.

PREVIOUS POSITION: Jersey City, N.J.-based global head of general property at Torus Insurance Holdings Ltd.

LOOKING FORWARD TO: Building upon the existing Seneca property platform and offering new products to our Crum & Forster customers.

GOALS FOR NEW POSITION: Achieve profitable results with great underwriters and technical tools.

CHALLENGES FACING INDUSTRY: Training new underwriting talent for the future.

INDUSTRY OUTLOOK: An uncertain economic recovery will influence both appetite and results. Intelligent underwriting is still the key.

BEST THING ABOUT A BAD ECONOMY: It makes you more analytical.

FIRST EXPERIENCE IN JOB MARKET: I worked for Factory Mutual Engineering as a loss prevention consultant. This was my first job after graduating college. I was very fortunate to have this experience.

COLLEGE MAJOR: B.S. in electrical engineering and M.S. in management engineering.

ADVICE: Listen before talking.

OUTSIDE THE INDUSTRY, A DREAM JOB: Investing in startup opportunities.

HOBBIES: I wish I had time for hobbies.

FAVORITE BOOK: I recently read "Steve Jobs" by Walter Isaacson. This is my favorite so far this year.

CAN'T-MISS TELEVISION SHOW: "Shark Tank." I have seen every episode.

FAVORITE MEAL: There's little I won't eat, from Japanese sushi to Mexican burritos to Italian pasta. Not necessarily at the same meal.

ON A SATURDAY AFTERNOON: Working on my house.

EMAIL OR PHONE, AND WHY: Phone, because it is more personal.

Comings&Goings

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

TO SUBMIT ITEMS

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

Anna Gaynor
Business Insurance
150 N. Michigan Ave.
Chicago, Ill. 60601-7524

agaynor@businessinsurance.com

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- Endurance Specialty Holdings Ltd.
- Torus Insurance Holdings Ltd.
- Golden Eagle Insurance Corp.
- Arch Insurance Group Inc.

BROKERS
- Poms & Associates Insurance Brokers Inc.
- Cooper Gay & Co. Ltd.

REINSURANCE
- Greenlight Capital Re Ltd.

OTHER PROVIDERS
- Marsh Berry & Co. Inc.
- Devonshire Claims Services Inc.

Coverage: Few savings in dropping plan

CONTINUED FROM PAGE 4

coverage, the health care reform law provides premium subsidies to partially offset the cost of policies purchased in exchanges. The subsidies, though, decline sharply with income and are not available to those earning more than 400% of the federal poverty level.

To come up with possible cost savings that could be achieved through plan termination, several calculations have to be made, Mr. Bray said.

"You can't just compare the penalty and (current) coverage costs," Mr. Bray said, referring to the $2,000 per full-time employee penalty the Patient Protection and Affordable Care Act will impose starting in 2014 on employers not offering coverage.

In doing the calculations, several factors have to be considered, Mr. Bray said. For example, the $2,000 penalty is not tax-deductible, which boosts its actual cost for employers.

In addition, when employers bump up employees' salaries to reflect how much employers previously paid for coverage, that amount will be added to employees' taxable income, which will increase payroll taxes—which are based on employees' taxable income—paid by their employers.

Employees' taxable income also will be higher because employees now typically pay for their share of the group premium through pretax contributions. The end of those pretax contributions would result in further increases in employees' taxable incomes and another boost in the amount of money employers are shelling out in payroll taxes.

When all those factors are considered, the costs savings resulting from terminating coverage are likely to be small, Mr. Bray said.

And money isn't the only factor employers need to weigh in deciding whether to continue coverage. Employees might have myriad plans to choose from in the exchanges, Mr. Bray said. Comparing the features of exchange plans could be very time consuming and a distraction that could affect employee productivity, he said.

At the same time, there are several key unknowns about exchange coverage. For example, it isn't known if the exchanges will be hit with adverse selection, in which those with health problems are more likely to seek coverage than healthier individuals.

If significant adverse selection results, exchange coverage premiums will rapidly increase, putting pressure on employers to boost employees' pay to offset some of the increases.

"You have to look at beyond 2014," said Doug Ramsthel, a Burnham Benefits vp, who also spoke at the session.

Meanwhile, while federal health care regulators have issued numerous rules to help employers comply with the law, many issues have yet to be addressed.

For example, rules have yet to be developed on a health care reform law provision that requires employers with at least 200 employees to automatically enroll employees who don't select a health care plan, while rules to test whether a plan discriminates in favor of highly compensated employees haven't been published.

"The good news is we have gotten guidance on some issues," Mr. Bray said.

And in some cases, the guidance can change. For example, federal regulators proposed limiting a health care reform law affordability test to individual coverage. Under that test, coverage would not be considered affordable if the premiums paid by an employee exceed 9.5% of wages.

If the premium percentage paid by the employees exceeds 9.5% and the employee is eligible for a federal premium subsidy and uses it to buy coverage through an insurance exchange, the employer would be liable for a $3,000 penalty.

But this month, the Treasury Department said it will take another look at whether the penalty should apply if the cost of coverage for family coverage exceeds the 9.5% threshold.

WorldatWork conference draws 1,500 to Orlando

ORLANDO, Fla.—About 1,500 people attended the WorldatWork Total Rewards 2012 Conference & Exhibition held May 21-23 in Orlando, Fla., at the Gaylord Palms Resort & Convention Center.

Sessions covered a wide range of issues of interest to human resource, compensation and employee benefit executives.

Founded in 1955, the 30,000-member nonprofit organization based in Scottsdale, Ariz., provides education, conferences and research focused on global human resources issues that include compensation, benefits, work/life and integrated total rewards to aid employers in attracting, motivating and retaining a talented workforce.

Next year's conference will be held April 29-May 1, 2013, in Philadelphia.

Additional information is available at *www.totalrewards.org*.

—By Jerry Geisel

PPACA: Ruling could drive legislation

CONTINUED FROM PAGE 4

law as a whole or rule on specific parts of the law.

"I think it's going to be a very complicated decision," she said.

If the court were to strike down the individual mandate that requires most U.S. residents to enroll in a qualified health care plan, Ms. Welch said it's likely that Congress would draft legislation to uphold pieces of the mandate. That includes a ban on insurance exclusions for people with pre-existing health conditions.

Ms. Welch said a fine for individuals who do not adhere to the individual mandate could be deemed to be a tax by the Supreme Court. If so, that could prevent the court from ruling on whether the individual mandate is constitutional, because the penalty wouldn't take effect until 2014.

"You can't have a lawsuit on a tax if it hasn't been collected yet," Ms. Welch said.

Additional lawsuits and legislation moving forward right now could affect areas such as equal pay for people who hold similar jobs and provisions that allow employers to provide flexible schedules for employees, Ms. Welch said.

In a separate session, John Barkett, Washington-based director of product marketing for Extend Health Inc., said state health insurance exchanges established by the Patient Protection and Affordable Care Act could help companies offer affordable health insurance for their employees and retirees by creating a competitive market similar to Medicare.

> **'You can't have a lawsuit on a tax if it hasn't been collected yet.'**
>
> Cara Woodson Welch, WorldatWork

San Mateo, Calif.-based Extend Health operates the largest private Medicare exchange in the United States.

"The Affordable Care Act, in changing the dynamics of the individual market, could provide a viable, sustainable alternative to group health plans for employers who want to offer benefits," said Mr. Barkett, who is a former analyst with the Office of Health Reform at the U.S. Department of Health and Human Services.

Carl Cudworth, Austin, Texas-based director of benefits for textbook company Houghton Mifflin Harcourt Publishing Co., described how the Boston-based company worked with Extend Health to provide health benefits to about 700 of the company's retirees who are over age 65—many of whom receive subsidized or fully paid health benefits from Houghton Mifflin.

Last year, the company used Extend Health's exchange to help retirees choose from nearly 200 Medicare plans offered by 36 insurers. The plan allowed Houghton Mifflin to save 15% on its health care costs for older retirees, while allowing them to receive benefits that were "equal to or greater than" the company's previous group health benefits for those retirees, Mr. Cudworth said.

The success of the Medicare exchange program has prompted Houghton Mifflin to consider expanding the benefit structure to more retirees, Mr. Cudworth said.

"If we can recreate this with pre-65s, I'd love to see it," he said.

Representatives from Genesis HealthCare System in Zanesville, Ohio, discussed pharmacy benefits management strategies in another session.

Employers can use copay pricing structures to drive employees toward generic prescriptions and help keep drug costs down, said Jim Clouse, pharmacy manager for Zanesville-based Northside Pharmacy, which is owned by Genesis HealthCare.

For instance, Mr. Clouse recommended that employers set copays for brand-name drugs that are at least $20 more than generic prescriptions. Alternatively, he suggested that companies could encourage employees to choose generic prescriptions by requiring them to pay for any difference in cost between a brand-name drug and its generic substitute.

"If the patient chooses the brand name, you're going to pay what you would pay for the generic" prescription, Mr. Clouse said.

Jeff Robinson, benefits and compensation manager for Genesis HealthCare, said the system has seen success with enlisting its doctors to conduct peer-to-peer reviews with physicians whose prescribing habits are geared toward brand-name or costly medications.

"Engaging those docs...is a mutually beneficial thing to help their patients," Mr. Robinson said, whose hospital system has 3,500 employees.

Survey: DB plans attractive

CONTINUED FROM PAGE 4

"Keeping a defined benefit plan could make an employer a little more attractive and better able to keep employees they critically need," Mr. Glickstein said.

Still, most employers that have closed or frozen their defined benefit plans are not likely to reopen them. Seventy-one percent of employers with frozen plans said their decision to freeze their plans is final, while 57% of respondents with closed plans said their decision is final, according to the survey.

In a pension plan freeze, new employees are not allowed to join the plan, while current participants do not accrue future benefits. In a plan closure, some or all current participants continue to accrue benefits, but new employees cannot join the plan.

The survey also found that employers have moved away from traditional defined benefit plans more rapidly than hybrid plans, which typically are cash balance plans.

> **82**
>
> This year, 82 respondents offered a hybrid plan compared with just 70 employers that offered a traditional plan to new hires.

For example, in 2004, 240 respondents offered a traditional defined benefit plan, while 115 sponsored a hybrid plan. In 2008, 132 employers offered a traditional plan compared with the 104 who offered a hybrid plan.

But this year, 82 offered a hybrid plan compared with just 70 employers that offered a traditional plan to new hires. The remaining 272 respondents only offered defined contribution plans to new employees.

Cash balance plans have enjoyed a mild resurgence in the wake of a 2006 law that made clear that the basic design of the plans does not violate age discrimination law.

Since then, several large well-known employers, including The Coca Cola Co., Dow Chemical Co. and MeadWestvaco Corp., have adopted cash balance plans.

OSHA: Feds scrutinize programs

CONTINUED FROM PAGE 1

Texas City, Texas, refinery in which 15 workers died and 180 others were injured. The refinery maintained a safety incentive program that tied employee bonuses to achieving low injury rates, according to the report.

The GAO report contrasted rate-based and behavior-based safety incentive programs, which reward workers for reporting "near-miss incidents" or recommending safety improvements.

While OSHA is not required to regulate safety incentive programs, its inspectors may miss opportunities to educate employers on avoiding policies that can discourage workers from reporting injuries because safety incentive programs are not addressed in OSHA's guidance materials, the GAO said.

That issue also surfaced in a Department of Labor memo, issued a month before the GAO report, on employer practices that may violate workplace regulations. Richard E. Fairfax, deputy assistant secretary of labor, sent the memo to OSHA field compliance officers and whistle-blower investigators.

According to the guidance, practices that may be problematic include taking disciplinary action against employees injured on the job, sanctioning workers who report injuries, imposing disciplinary actions for injuries that resulted from an employee's violation of safety rules, and establishing programs that provide incentives for employees not to report injuries.

"For example, an employer might enter all employees who have not been injured in the previous year in a drawing to win a prize, or a team of employees might be awarded a bonus if no one from the team is injured over some period of time," the memo states.

AP PHOTO

The explosion and fire that killed 15 at a Texas City, Texas, refinery could have been avoided by activating the "automatic liquid level control, as mandated in the startup procedure," BP Products North America Inc. said in an April 2006 report. An internal investigation "revealed significant deficiencies in the work and safety culture at Texas City," which BP said in December 2005 that it would correct. The refinery maintained a safety incentive program.

"Such programs might be well-intentioned efforts by employers to encourage their workers to use safe practices," it continues. "However, there are better ways to encourage safe work practices, such as incentives that promote worker participation in safety-related activities, such as identifying hazards or participating in investigations of injuries, incidents or near misses."

Providing incentives so employees don't report incidents might result in a short-term reduction in an employer's injury rate, said James Thornton, chairman of the American Society of Safety Engineers' governmental affairs committee.

"But in the long term, there is just no benefit in it," said Mr. Thornton, who is also director of environmental health and safety for Newport News Shipbuilding, a unit of Huntington Ingalls Industries Inc. in Newport News, Va.

"Safety managers…are wise enough to know you can only incent underreporting for a while and eventually it will bubble up to the surface, and that will not be good," Mr. Thornton said.

Rate-based incentive programs can encourage underreporting or late reporting of injuries or dangerous incidents, Zurich's Mr. Beyer agreed.

That eliminates an employer's ability to collect accurate information about injuries or near misses, and employers don't know what corrective actions will prevent future accidents without that information, Mr. Beyer said.

"I view those as warning bells and whistles" that give employers "the opportunity to correct those underlying management deficiencies," he said.

But the programs do have their place because they can build workers' safety awareness and build morale around safe work practices, Mr. Beyer said.

They should, however, just be one part of a broader, "holistic workers compensation/risk management process," with which the GAO report essentially agrees, Mr. Beyer said.

They can be used, for example, in conjunction with programs that encourage workers to promptly report incidents so supervisors can investigate and follow up with a root-cause analysis that identifies corrective action, Mr. Beyer said.

"Posters and toasters programs," which pass for safety programs by rewarding workers with inexpensive prizes or cash when they don't report injuries, is not a practice that safety professionals support, said Michael Eckert, director of WorkSafe Consulting Services, a unit of Accident Fund Insurance Co. of America in Lansing, Mich.

"One of my favorite sayings is, 'Safety is not the absence of accidents. Safety is a comprehensive philosophy,'" driven by top management with safe workplace ideas pushed up from the rank and file, Mr. Eckert added.

But safety incentives can work as part of a broader effort, he said.

Employers that have derived positive results combine safety incentives with other practices, such as penalizing supervisors or workers who do not report incidents, Mr. Eckert said.

McGill: Coordinating analytics across business units

CONTINUED FROM PAGE 3

In an interview, Mr. McGill said a primary goal was to unite capabilities from each of the businesses. While the skill sets and technological capabilities at ARS and Aon Benfield were developed to serve different sectors, they complement each other, he said. For example, he said, technology developed by Aon Benfield to help insurance companies track their risk exposures in real time in the event of catastrophic losses could be repurposed to help ARS clients.

"We've been amazed by some of the analytics capabilities that exist in Aon Benfield," he said. "Some of that technology is very relevant to our large corporate retail clients."

The analytics capabilities also can be used to help assess total cost of risk, Mr. McGill said.

"When you look at total cost of risk, the premium a client pays is a pretty small proportion of their total cost of risk," he said. "So, we have shifted our focus to the big prize, which is empowering results for our clients and helping them to drive profitable growth."

Mr. McGill added that incorporating data-derived insights into the business was vital from a competitive standpoint. "We are incorporating analytics and technology into the DNA of the firm," he said. "We think it's a huge differentiator for us and of significant value to our clients."

Although he would not divulge the metrics the company would deploy to gauge success in this arena, he said that the transformation toward using analytics would be evident in how the company grows its business.

"As we go on this journey and start uniting the best content and capability that the firm has around clients, we expect it over time to translate into continued good organic growth," he said. "Working with colleagues to realize the full potential of Aon has been an incredible experience, and we still feel we are at the early stages of that journey. I'm very confident that there is everything in place to execute on the vision."

Observers said the move should help Aon integrate its capabilities.

Meyer Shields, director at St. Louis-based financial services firm Stifel Nicolaus & Co. Inc., said Mr. McGill's appointment makes sense in light of the moves the company has made in recent years.

"What we are seeing come to fruition are some ideas that Greg Case has had for a long time," Mr. Shields said. "Some of it was buying companies such as Hewitt and Benfield, some of it was combining internal platforms that the various brokers and intermediaries could use. So I think the next phase now that all the tools are there is to make sure they are operating in as efficient manner as possible."

The appointment "makes sure that the strengths are transferred from company to company," he added.

Paul Newsome, managing director and senior insurance analyst at investment banking firm Sandler O'Neill & Partners L.P. in Chicago, said the integration of the business capabilities was a necessity, given that the largest brokerages have grown through acquisitions.

"There's a long history of insurance intermediaries not being too efficient," Mr. Newsome said. "Many were never fully consolidated. Aon has been going through a multiyear effort to try to fix these legacy issues. At the same time, you are looking at an ever increasingly competitive environment."

Affordability: Treasury weighs changes

CONTINUED FROM PAGE 1

should apply if the cost of family coverage exceeds the 9.5% of income affordability test.

"Future regulations concerning employer-sponsored coverage will provide final rules on determining affordability for related individuals," Treasury said, noting that "some comments suggested that the affordability of coverage for related individuals should be based on the portion of the annual premium the employee must pay for family coverage."

Benefit lobbyists and others say the law is clear on the breath of the affordability test.

"It is quite clear that for purposes of the penalty that the determination of affordability would apply to self-only coverage," said Paul Dennett, senior vp-health care reform with the American Benefits Council in Washington.

"That is what the law says," said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

If the affordability test were expanded to apply to family coverage, far more employers would fail the test for one obvious reason: the cost of family coverage is far more expensive compared with single coverage.

"A significant number of employers would be impacted," Mr. Stover said.

Even if the test were expanded, employers could decrease the likelihood that they would be hit with the $3,000 penalty. For example, employers might lower the premium employees pay while increasing other out-of-pocket expenses, such as boosting deductibles and coinsurance.

In fact, 81% of employers responding to a Mercer L.L.C. survey said they would make changes to avoid paying the penalty, while 19% said they would make no changes and pay if necessary.

Whether Treasury will expand the premium affordability test to include family coverage isn't known. One factor that could reduce the likelihood of such an expansion would be the added cost to the government, observers said.

"There is a significant dollar-and-cents issue here for the government," said Gretchen Young, senior vp-health policy with the ERISA Industry Committee in Washington.

Under another issue addressed in the Treasury Department guidance, employers could not include their contributions to health savings accounts in running the 9.5% affordability test. That position was expected since HSA contributions cannot be used by employees to offset premiums.

In addition, Treasury said health reimbursement arrangements that are designed so that employer contributions cannot be used to pay premiums also could not be counted in running the affordability test.

However, Treasury said it may address in future guidance on how other types of HRAs are treated for the affordability test.

In addition, Treasury affirmed earlier guidance that individuals eligible for premium subsidies could use the subsidies to buy coverage in exchanges that states set up as well as "federally facilitated" exchanges.

"The relevant legislative history does not demonstrate that Congress intended to limit the premium tax credit to state exchanges," Treasury said.

That expansion is significant because exchanges are unlikely to be set up in states where a majority of lawmakers oppose the federal health care reform law. Under PPACA, the federal government can move in and help to set up exchanges in situations where states fail to act.

ADVERTISER INDEX

Issue of May 28

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SpaceX: Private firm takes flight

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rare events.

"One of the biggest challenges is the volatility of the space insurance market, because we only have a limited number of insured risks per year, but each risk has a high insured value," Mr. Schmidt said.

With the end of NASA's space shuttle program, the federal agency awarded SpaceX a 12-launch, $1.6 billion contract to ferry supplies to the ISS until 2016. Because the SpaceX vehicle was launched from the United States, it is licensed by the Federal Aviation Administration and needs third-party liability insurance.

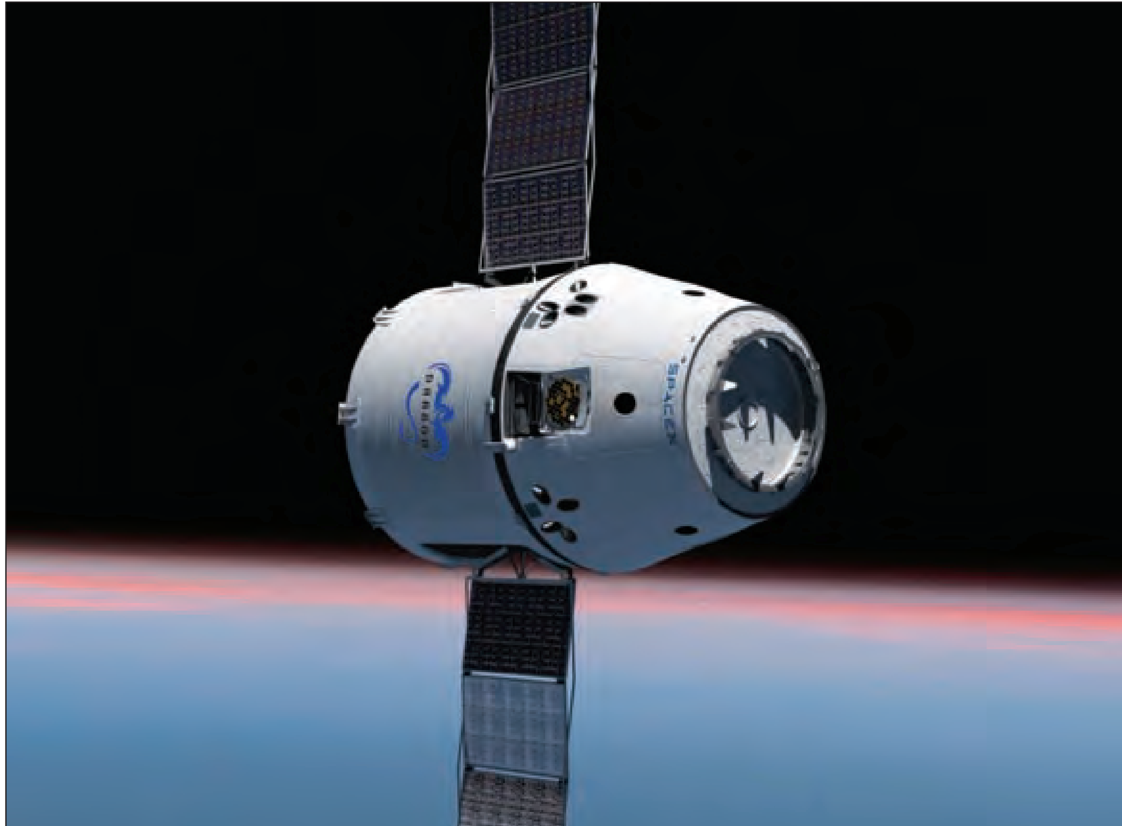
"NASA self-insured all the shuttle missions, so now we have the opportunity with private launch companies such as SpaceX to insure their missions," Mr. Schmidt said. "This is a great opportunity."

Despite the historic nature of the company's flight last week, SpaceX's plans to launch commercial satellites will have a greater effect on the space insurance market, Mr. Schmidt said.

Currently Reston, Va.-based International Launch Services Inc., which uses Russia's Proton heavy-lift rocket, and Evry, France-based Arianespace, which uses the heavy-lift Ariane 5 rocket, dominate the market. The addition of SpaceX and other companies creates opportunities and challenges for insurers.

"When new technology is introduced, the risk assessment and underwriting is challenging for underwriters because you don't have any historical failure data," Mr. Schmidt said. "Space insurers like flight-proven hardware, so new launch vehicle companies will initially pay higher launch insurance premiums until they are well-established and have made some progress on the learning curve."

In the case of SpaceX, this unease is amplified by the relative newness of the Hawthorne, Calif.-based launch company, which was formed in 2002, said Thierry Colliot, head of aviation for France and general manager of SpaceCo, a Paris-based subsidiary of Allianz Global Corporate & Specialty. "New technology is coming into a very traditional industry," he said.



AP PHOTO

Space Exploration Technologies Corp.'s Dragon spacecraft linked up last week with the International Space Station, a commercial venture that poses opportunities for the inherently risky space market.

> **'When new technology is introduced, the risk assessment and underwriting is challenging for underwriters because you don't have any historical failure data.'**
>
> Jan Schmidt, Swiss Re Ltd.

Chris Kunstadter, New York-based senior vp at XL Insurance, expressed confidence in SpaceX and NASA's oversight of the program, adding that XL insured a small payload that was part of last week's flight.

"As with any new technology, we are always a bit nervous; but in this case, you have some flight history as well as NASA looking over their shoulder." Mr. Kunstadter said. "As far as we are concerned, it's being done the right way."

Jeff Poliseno, Washington-based CEO of Aon Risk Solutions' international space brokers practice, a unit of Aon Corp, also lauded SpaceX's safety efforts.

"From the viewpoint of our customers, the satellite operators, SpaceX has become a commercially viable option in a market that is extremely narrow," he said.

"The sentiment grows more positive by the day in the commercial insurance market from the insurance carriers' point of view. They are taking all the right measures that insurance companies like to see from a risk management and mitigation standpoint," Mr. Poliseno said.

Despite the mission's successes, Mr. Kunstadter, said space flight is inherently risky, and all parties involved need to guard against complacency.

"We wouldn't say that the industry has matured to the point where this is routine," he said. "The manufacturers are always trying improve capability and performance, which means making changes. And every time you make a change, you introduce more risk."

Mr. Schmidt noted that insurance premiums are proportional to the track record of the company. While the market has sufficient capacity and prices have been stable, this could change rapidly with a single accident.

"Just one big Ariane 5 launch failure with two insured satellites on board could, in theory, wipe out the entire annual premium income of the space insurance market," Mr. Schmidt said. "That's why everyone involved is so nervous before launches."

Higher pensions for younger workers violate ADEA

By JUDY GREENWALD

PHOENIX—An Arizona school district that was charged by the Equal Employment Opportunity Commission with having age discriminatory retirement plans has agreed to a $148,092 settlement.

According to the EEOC, Tempe Elementary School District No. 3 used an early retirement incentive plan and a normal retirement plan that granted greater economic benefits to younger employees based solely on their age in violation of the Age Discrimination in Employment Act.

School Superintendent Chris Bush said Friday that its attorney-approved retirement policy had been in place for several decades with no complaint. But the agency said that as a result of its investigation and litigation, the school district has revised its retirement plans to comply with the ADEA.

The school district also has agreed to pay workers who retired after April 3, 2008, the difference between what they received and what they should have been paid for those leave payouts had there been no unlawful discrimination. The settlement affects 49 retirees, according to the EEOC.

The consent decree approved by a federal court in Phoenix also requires anti-discrimination training and a review of the school district's policies and practices, according to the EEOC.

"Early retirement incentive plans and normal retirement plans which are facially discriminatory need to be changed," EEOC Regional Attorney Mary Jo O'Neill said in a statement. "Discrimination on the basis of age is simply illegal….A retirement plan which states, for example, that employees 52 years old will receive a greater economic benefit than an employee 61 years old for retiring early is discriminatory on its face."

Ms. Bush said the school district had a policy for several decades under which school employees who retired at age 55 received 52% of their salary, a percentage that declined as they got older. The policy was reviewed by attorneys, she said.

"No employees ever brought it to our attention, nobody every argued with it. Everybody retired and took their money and went on their way," she said.

"In 2010, the EEOC determined that the policy itself would possibly be discriminatory and launched an investigation, and the minute the EEOC made us aware of it, we changed the policy, and so everybody who's retired is paid at 52% of their daily rate of payment," she said.

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Italy: Low insurance penetration

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were not damaged.

While the quake was felt in Bologna, which has a population of about 370,000, there were no reports of damage there. In addition, automaker Lamborghini, which has its headquarters in Sant'Agata Bolognese in the Bologna province, also did not report any damage, RMS said.

The penetration of earthquake insurance in the Italian market is relatively low, so insured losses from past Italian earthquakes have been small. The penetration rate is greater for commercial and industrial properties than residential ones, RMS said, with the modeler estimating that 40% of commercial and industrial exposures are covered.

Still, even where earthquake insurance is offered in Italy, the amount of coverage provided under the policies generally is limited, according to RMS, with full-value earthquake policies rare in the country.

Instead, most policies typically have limits of 20% to 50% of the value insured, with limits tending toward the lower end of that range in Italy's more seismically active areas and deductibles generally applying as well, RMS said.

In its analysis, EQECAT suggested that losses from the recent quake will mostly involve older, more vulnerable unreinforced brick masonry buildings, with limited classes of more modern structures possibly experiencing damage.

"The application of earthquake design codes to more modern structures, together with relatively modest earthquake insurance penetration, are expected to mitigate insured losses to around €100 million," EQECAT said.

An analysis by SNL Financial L.C. indicated that a number of U.S. companies have units reinsuring Italian property/casualty insurers. Among them, Berkshire Hathaway Inc.'s National Indemnity Co. unit assumed $73.5 million in premium from Italian insurers in 2011, according to SNL, including $46.4 million from Assicurazioni Generali S.p.A.

In addition, SNL noted, Alleghany Corp. unit Transatlantic Reinsurance Co. and HCC Insurance Holdings Inc. unit Houston Casualty Co. also reinsure Generali policies.

AP PHOTO

Overturned shelves of Parmesan cheese wheels in a factory in San Giovanni, Italy. A magnitude-6.0 earthquake shook northern Italy last week, killing at least three people and toppling buildings.

Schreitmueller: Cat losses preventable

CONTINUED FROM PAGE 4

Yes is the short answer. Obviously, a lot of people think natural catastrophe losses are acts of God: What can you do to prevent them? But we do believe windstorm losses, earthquake losses can be prevented very effectively. One thing we've been doing is putting a lot of energy into codes and standards. In this country, when you build an office building, you can take for granted if it's in a major city, it's going to be sprinklered. If you move to China or Indonesia or Malaysia, that's probably not going to be the case. So we have a group that's trying to work with local authorities to influence the codes.

The other area we're working in is making sure equipment and building materials are available so our clients—or really anybody—can build fire-safe, windstorm-resistant, earthquake-resistant buildings.

Those are two of our big efforts that seem to be gaining a lot of momentum.

Q: Do you see any signs that we're in the midst of a market turn?

Market turn is probably a bit too dramatic. We are seeing definite firming of the market. It's not going down as quickly as it once was. We are seeing some signs that RMS Version 11 windstorm model is having an impact on the industry in terms of availability of capacity.

We think we've benefited from that. We don't rely on RMS 11 to the extent other companies do.

inBrief

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pain medication prescribing. The Suffolk County Supreme Court Special Grand Jury's 99-page report also recommended mandating electronic prescribing for controlled substances, or else mandating that all pharmacy dispensers enter controlled substance prescription data into a central registry.

Medical costs spike in Calif. comp claims

California has seen a "steep" increase in medical costs for workers compensation claims despite reforms to the system that initially reduced costs, said the Workers Compensation Research Institute. The Cambridge, Mass.-based WCRI said California's medical costs per workers comp claim increased 8% a year from 2005 to 2009 after seeing a 30% overall decrease in costs from 2002 to 2005. WCRI attributed the cost increase to an increased use of medical services, a workers comp fee schedule increase, and a higher percentage of claims including costs for radiology services.

Starr unit registers as investment adviser

A unit of C.V. Starr & Co. Inc. has filed with the U.S. Securities and Exchange Commission as a registered investment adviser looking to originate direct private equity investments. According to the filing, Starr Principal Holdings L.L.C. "primarily provides nondiscretionary investment advice on strategic, growth equity and debt investments in privately held companies." Starr Principal Holdings' clients include C.V. Starr & Co., Starr International Co. Inc. and the subsidiaries of Starr International, the SEC filing said.

Senate OKs extension of flood cover program

The Senate last week approved a measure that would extend the National Flood Insurance Program for 60 days beyond its May 31 expiration date. Before the vote, Sen. David Vitter, R-La., issued a statement saying he had reached an agreement with Senate Majority Leader Harry Reid, D-Nev., to allow debate this year on a bill that would extend the NFIP for five years.

Atlantic hurricane season predicted near normal

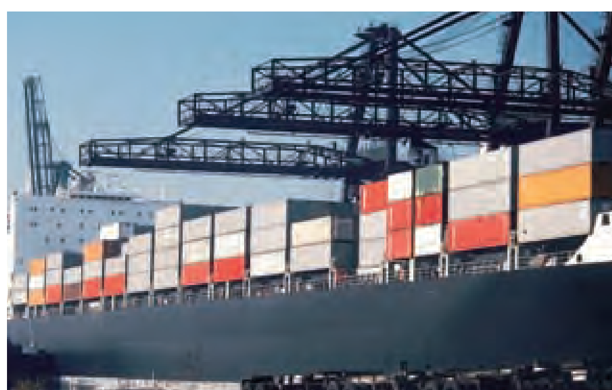
The Atlantic Basin should experience near-normal hurricane activity during the hurricane season that begins June 1, the National Oceanic and Atmospheric Administration said. NOAA said there is a 70% chance that nine to 15 named storms will form during the six-month hurricane season, which ends Nov. 30. Four to eight of those storms will grow to hurricane strength, according to NOAA, and one to three of those will grow into "major" hurricanes with winds of at least 111 mph, said NOAA. Meanwhile, tropical storms in the north Atlantic and eastern Pacific basins marked the earliest simultaneous start of a hurricane season on record, according to EQECAT Inc. Tropical Storm Aletta formed May 14 in the Pacific and Tropical Storm Alberto formed May 19 in the Atlantic. The official start of the 2012 hurricane season is June 1.

P/C strength 'surprising' in first quarter results

Property/casualty insurers showed considerable strength in their first-quarter 2012 results, Keefe, Bruyette & Woods Inc. said. But going forward, the analysts said they don't believe the first quarter's strength is likely to be repeated. "We expect that some of the 'luck' of good weather (in the first quarter) is unlikely to hold and that the pressures of slowing reserve releases and weak investment yields will pressure returns," the report said. It noted that reserve releases averaged 4.8% in the first quarter of this year, down from 5.3% the previous year, but that was "still a surprising result," KBW said.

16 former Dewey attorneys join Duane Morris

Attorneys continue to exit financially ailing Dewey & LeBoeuf L.L.P., as Duane Morris L.L.P. said it is adding 16 former Dewey & LeBoeuf lawyers to its firm. The lawyers, who have experience in the areas of corporate, insurance regulatory, energy, mergers and acquisitions, tax and employee benefits, will join Duane Morris in its New York, Boston and Washington offices.



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POM'S JUICE SUIT VS. MINUTE MAID PROVES FRUITLESS

Minute Maid can keep labeling one of its beverages "Pomegranate Blueberry" even though the drink contains barely a whisper of either juice, says an appellate court.

According to news reports, the 9th U.S. Circuit Court of Appeals in San Francisco held last week that Minute Maid can keep labeling one of its beverages "Pomegranate Blueberry" even though it is made up almost entirely of apple and grape juices and contains only 0.3% pomegranate juice and 0.2% blueberry juice.

The court said it is up to the U.S. Food and Drug Administration to rule on this matter, and that its regulations allow juice makers to name their product after a "flavoring" juice that is not the primary product.

"As best we can tell, FDA regulations authorize the name (Minute Maid) has chosen," said Judge Diarmuid O'Scannlain in the three-judge panel's unanimous ruling. "For a court to act when the FDA has not—despite regulating extensively in this area—would risk undercutting the FDA's expert judgments and authority."

However, the court said in its ruling, "We do not hold that Coca-Cola's label is not deceptive."

Minute Maid is a unit of The Coca-Cola Co.

The juice product, introduced in September 2007, has the label "Help Nourish Your Brain" above a drawing of fruits. Below the drawing are the words "pomegranate blueberry" in large letters, followed by "Flavored blend of 5 Juices" in smaller letters. The ingredients are 99.4% apple and grape juices, which are cheaper than pomegranate and blueberry juices.

Pom Wonderful L.L.C. sued Coca Cola in 2008, charging it was misleading consumers on the product composition and challenged its name, labeling, marketing and advertising. The 9th Circuit's ruling upheld a lower court ruling on the issue.

CONTRIBUTING: Matt Dunning, Judy Greenwald, Mike Tsikoudakis, Joanne Wojcik

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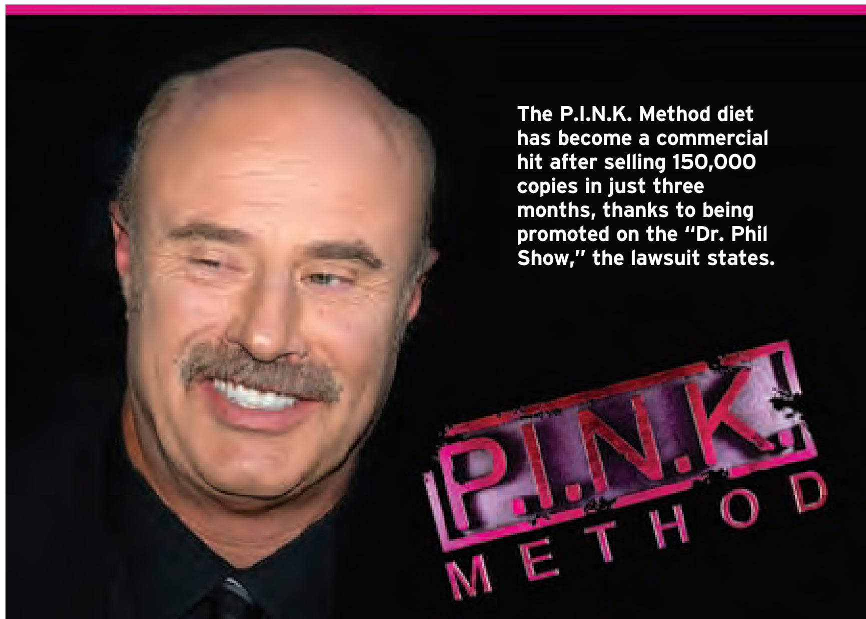

The P.I.N.K. Method diet has become a commercial hit after selling 150,000 copies in just three months, thanks to being promoted on the "Dr. Phil Show," the lawsuit states.

AP PHOTO

Pink Iron seeing red over Dr. Phil TV promo

The owners of Pink Iron women's fitness studio in Los Angeles have turned a deeper shade after Dr. Phil's son allegedly pilfered their gym's name and brand to create a new diet and exercise system being sold on the celebrity psychologist's TV show.

In a breach of contract lawsuit filed this month in Los Angeles County Superior Court, Pink Iron founder Holly Holton and Pink Iron President Rick Robles claim that Jay McGraw, the son of TV personality Dr. Phil McGraw, used Pink Iron's name and brand to create home fitness videos, fitness clothes and accessories without compensating them. In addition, the suit asserts that these purloined items are being marketed in conjunction with a weight-loss program called the "P.I.N.K." (Power, Intensity, Nutrition and Kardio) method created by Cynthia Pasquella, a former fitness competitor who is unrelated to the gym.

The dispute began after an agreement reached in January between Ms. Holton, owner of Pink Iron gym, and Pink Iron Home Fitness President Scott Waterbury fell apart, and Mr. Waterbury changed the name of his company to P.I.N.K. Method after incorporating Ms. Pasquella's diet program.

The P.I.N.K. Method diet has become a commercial hit after selling 150,000 copies in just three months, thanks to being promoted on the "Dr. Phil Show," the lawsuit states.

Moreover, "it does not appear to be a coincidence that defendant Pink Iron Home Fitness' spokesperson, Holly Holton, and defendant P.I.N.K. Method's spokesperson, Cynthia Pasquella, share a striking resemblance," according to the complaint.

In addition to naming Jay McGraw, the lawsuit also names his publishing company, M Print Publishing Inc., along with Mr. Waterbury and the creator of the P.I.N.K. weight-loss program.

It does not, however, name Dr. Phil.

BRITONS' SOFTER SIDE UNCOVERED

The British stiff upper lip appears to be relaxing. In fact, homeowners in Britain have become positively sentimental, putting a greater value on their family portraits than their most expensive worldly goods, according to a study by insurance resources website Confused.com.

In a survey of 2,000 homeowners in the United Kingdom, 74% said items like family photos, letters and children's drawings were more precious to them than the most expensive items in their homes. On the spectrum of valued possessions, 41% listed photos as the most precious.

Men were slightly more likely than women (29% to 23%) to say that the most financially valuable item in their home was the most precious to them, though more women included jewelry among their most precious items, according to the survey results.

However valuable—financially or otherwise—their possessions might be, there's a good chance they're not insured against theft or damage. According to Confused.com, more than one-third of Londoners said they do not have any home insurance, compared with the national average of 20% without insurance. The survey noted that deferral of insurance persists even as one in every five homeowners say they've been burglarized.

LADDER THIEF'S CAR INSURANCE CLAIM COMES UP SHORT IN COURT

Climbing the ladder of financial success does not involve stealing it.

A thief who fell off a van driven by his uncle after the pair stole some ladders cannot sue his uncle's car insurer, according to court documents filed in the High Court of Justice, Queen's Bench Division, in London.

According to the ruling by Justice Cooke, David Michael Joyce's fall cannot succeed as an insurance claim as a result of criminal activity.

In 2009, Mr. Joyce and his uncle, Edward Green O'Brien, placed the stolen ladders in the back of the van, which stuck out of an open door because of their length.

Mr. Joyce stood on the rear foot plate of the van as it was driven by his uncle, but fell off after his uncle incorrectly negotiated a sharp left turn, according to court documents.

"As a matter of general public policy, a participant in a joint enterprise theft which involves a speedy getaway in a van, with one participant driving and the other clinging dangerously on to the stolen items and the rear of a semi-open van, with a door swinging, cannot recover for injuries suffered in the course of that enterprise," Justice Cooke wrote in the ruling.

"For the reasons given, the claim fails," he said.

If success was what they were looking for, maybe they should have used an elevator.

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